



# Polity

Classroom Study Material 2022  
(September 2021 to June 2022)



# POLITY AND GOVERNANCE

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### Previous Year Question

A reference sheet of syllabus-wise segregated previous year questions from 2014-2021 (for the Polity and Governance Section) has been provided. In conjunction with the document, it will help in understanding the demand of the exam and developing a thought process for writing good answers.



# A NOTE FOR THE STUDENTS

Dear Students,

- Precision of content in good answer is no longer a dispensable luxury, but a simple necessity. And the preparation to write a precise answer starts well before one picks up a pen and starts to formulate the answer. A good understanding of the topic asked along-with a ready set of data and examples assists one in approaching the most difficult of the questions.
- This is further assisted by a good presentation style, which depicts the information in an easy-to-understand manner.



In this context, we made few changes to the Mains 365 documents last year, which included

## Topic at glance:

which gave a comprehensive view of the topic, connecting the current and static aspects along-with providing necessary data and facts.

## Infographics:

Designed in a manner that they can be readily used in the answers

## Previous years questions:

A QR code linked syllabus wise segregated list of previous years questions was added.

Along-with these, this year we have made few more additions to help you revise the topics and approach answers in a precise manner, these include:

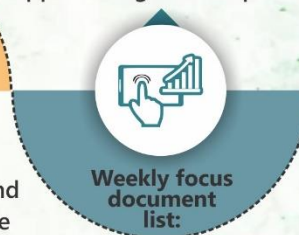
have been designed and added in the articles to help you identify and revise the important datasets of the topics.



## Appendix:

An appendix of key data and facts has been added at the end of the document to facilitate quick revision.

A QR code linked list of relevant Weekly focus documents has been added in the end of the document to ensure easiness in approaching these topics.



We hope that these additions will help you not only developing a comprehensive understanding of the topics but also provide the necessary inputs to write effective and well-presented answers.

**Knowing is not enough: we must apply. Willing is not enough: we must do.**

-Johann Wolfgang von Goethe

All the best!  
Team VisionIAS



# 1. INDIAN CONSTITUTION, PROVISIONS AND BASIC STRUCTURE

## 1.1. RIGHTS AND DUTIES

### 1.1.1. BALANCE OF RIGHTS AND DUTY

#### Why in News?

Recently, the Union Law Minister advocated the need to find a balance **between the fundamental rights and duties for the country's progress** during Constitution Day Celebration.

#### About Rights and Duties

- Fundamental to any civilization, rights represent the **claims of an individual** which are essential to his or her **existence and development**.
  - This includes the **economic, social, and cultural rights (ESC rights)** recognized by society or State through legal, social, or ethical principles of freedom or entitlement.
- Similarly, each person carries certain **duties towards other individuals, society, nation, or humanity** as part of society and its norms.
  - E.g., based on **Rita** (natural order or truth), Vedas gave the principles of **Dharma** (duty) and **Karma** (action).

Benefits of Perceiving Rights and Duties Together	Issues in Perceiving Rights and Duties Together
<ul style="list-style-type: none"> <li>• <b>Complementing Nature:</b> Each right comes with a corresponding obligation to respect and protect the rights of others.                             <ul style="list-style-type: none"> <li>○ E.g., if Media has the right to freedom of speech, it becomes their duty to respect others' privacy as well.</li> </ul> </li> <li>• <b>Immunize Individual Liberties:</b> Though Rule of Law is state responsibility, duties ensure that at least the majority of the population is inclined to uphold law without external enforcement.</li> <li>• <b>Ensure Peace and Harmony:</b> Duties taken together with rights <b>help administration in constructive engagement</b> with people, promote culture of peace and harmony while discouraging acts of violence and all forms of discrimination.                             <ul style="list-style-type: none"> <li>○ E.g., If one abides by the Constitution and respects its institutions earnestly (first fundamental duty), peace and harmony increases.</li> </ul> </li> <li>• <b>Help State in Performing its Duty:</b> Without people's support State can't ensure all rights.                             <ul style="list-style-type: none"> <li>○ E.g., To meet the educational and nutritional needs of everyone, State needs the support of parents or individuals who work on field or help in resource availability by paying taxes.</li> </ul> </li> <li>• <b>Avoid Narrow Egoism:</b> Common humanity and genuine respect for others right require people to overcome selfishness and to avoid human rights violations.</li> <li>• <b>FR cannot be exercised without FD.</b> Every individual has certain rights as well as responsibilities bestowed upon them.                             <ul style="list-style-type: none"> <li>○ For example, <b>Article 26</b> provides for RTE to every citizen. Similarly, <b>Article 51A (k)</b> states that every parent or guardian should provide educational opportunities for the child from 6 years to 14 years.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Difference of Nature:</b> Certain rights are acquired by every human being from the moment of birth, but duties need capable individuals to perform.</li> <li>• <b>Rights are precursors to Duties:</b> Without basic dignity and fulfillment of rights, individuals can't perform their duties.                             <ul style="list-style-type: none"> <li>○ E.g., Without fulfillment of RTE, duties of respecting others' rights, social justice, gender equality etc. are difficult to expect.</li> </ul> </li> <li>• <b>Different legal status:</b> Being justiciable, rights can be enforced through writ of the court or remedy can be sought. But duties are <b>non-enforceable</b>.</li> <li>• <b>Provide a potential leeway to State from its responsibilities:</b> Protection of Rule of law and human rights is a state responsibility for which it enjoys special powers under laws. E.g., non-fulfillment of duties cannot be given as a reason for non-enforcement of rights.</li> <li>• <b>Risks of subordination:</b> In a democracy, fundamental unit of the constitution is an individual. Equal focus on duties carries risk of individual subordination to collective will.</li> <li>• <b>Vague and Subjective Nature:</b> Vague nature of duties and its clash with certain religious principles. E.g., noble ideals of freedom struggle cover a wide diversity and at times conflicting interpretations with other principles.</li> </ul>

#### Way Forward

To **preserve human rights and dignity**, a **minimum balance alongside independent application** should be maintained by-

- **State accepting its primary responsibility** for protection of human rights irrespective of fulfillment of duties by citizens.
- **Meeting the minimum core rights of each citizen** such as economic, social and cultural right of individual to ensure an adequate standard of living before any duties.
- **Deepening the roots of democracy** to address the fundamental issues of inequality, intolerance etc. based on caste, creed, religion, region etc. **minimizing risks of subordination of rights** and **maximizing the possibility of fulfillment of duties**.
- **Creating a basic charter for people** to cultivate **constitutional morality** and create **responsible citizens**. As **Article 29 (1) of Universal Declaration of Human Rights** says, “Everyone has duties to the community in which alone the free and full development of his personality is possible”.

### 1.1.2. ENFORCEMENT OF FUNDAMENTAL DUTIES

#### Why in news?

Recently, AGI said that there was **no need to enact specific laws to “enforce” fundamental duties (FD)** on citizens.

#### More about news

- Earlier, SC sought **response from Centre and states on a petition seeking enforcement of FD** set out in Article 51A of the Constitution including patriotism and unity of the nation, through “comprehensive, well-defined laws”.
- **Petition arguments to enforce FD:**
  - Citizens have a duty to **uphold the country’s ideals** and **contribute to its growth and betterment**, and **failure to do so have a direct impact on FR** guaranteed by Articles 14, 19, and 21.
  - FD have been often **violated by people including the officers of the law** and which in turn resulted in violation of FR of other citizens.
  - SC in **Ranganath Mishra judgment** contended that **FD should be enforced by legal and social sanctions**.

Arguments in favour of legality of Fundamental Duties	Argument against legality of Fundamental Duties
<ul style="list-style-type: none"> <li>• <b>Rights and Duties are co-relative:</b> FDs are meant to serve as a constant reminder to all citizens that, while the constitution grants them certain FRs, it also <b>compels them to follow some basic norms of democratic conduct and behavior</b>, because rights and duties are intertwined.</li> <li>• <b>Enshrined in Hindu scripture:</b> Correlation between rights and duties has been recognized by Bhagvad Gita, which teaches us that ‘your duty is your right’.               <ul style="list-style-type: none"> <li>○ It is the <b>time to balance rights, liberties and freedoms and obligations</b> and instill a “profound sense of social responsibility towards the nation”.</li> </ul> </li> <li>• <b>Enforce critical Duties:</b> There is a pressing need to enforce at least some of FDs such as, uphold and protect sovereignty, unity and integrity of India and render national service when called upon.</li> <li>• <b>Climate change:</b> Preservation of environment and keeping ecological balance unaffected is not only government task but also the responsibility of every citizen, which needs to be enforced.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Ambiguity:</b> There is lack of clarity as some of the duties are <b>vague and terms used therein are complex such as</b> ‘ideals’, ‘institutions’, ‘brotherhood’, ‘humanism’, ‘scientific temper’.</li> <li>• <b>Misuse:</b> Under the garb of holding citizens liable for violation of FDs, government can curtail FRs of the citizens.</li> <li>• <b>Socio- Economic challenges:</b> India is marred with multiple socio-economic challenges like poverty, unemployment, lack of education etc. Enforcing FD’s is neither practicable nor need of the hour.</li> <li>• <b>Existing provisions:</b> As per <b>Verma Committee</b>, some FD are already enforced such as, <b>Prevention of Insults to National Honor act, 1971</b>, where no person can disrespect National Flag, National Anthem and Constitution of India.</li> </ul>

#### Way Forward

- **State accepting its primary responsibility** for the promotion and protection of human rights irrespective of fulfillment of duties by citizens.
- **Meeting the minimum core rights of each citizen** such as economic, social, and cultural right of individual to ensure an adequate standard of living before any duties.
- **Deepening the roots of democracy** to address the fundamental issues of inequality, intolerance etc. based on caste, creed, religion, region etc. **minimizing risks of subordination of rights** and **maximizing the possibility of fulfillment of duties**.

- **Creating a basic charter for people** to cultivate **constitutional morality** and create **responsible citizens**. As **Article 29 (1) of Universal Declaration of Human Rights** says, “Everyone has duties to the community in which alone the free and full development of his personality is possible”.

**Conclusion**

The FDs inherit some of the ideals, thoughts, beliefs of great saints’ philosophers, social reformers and political leaders. They act as a constant reminder that rights and duties go hand in hand and are laid down to draw the attention of the citizens towards the duties they owe towards their Motherland. It clearly elaborates the thoughts of John F. Kennedy “Do not ask what the country can do for you but ask what you can do for the country”.

**1.1.3. RIGHT TO FREE SPEECH**

**Why in news?**

Recently, a debate highlighted the conflict between the right to free speech and the State’s mandate to regulate it through coercive measures.

**About Free Speech**

- Free speech is the **legal right to express or seek out ideas and opinions freely without fear of censorship** or legal action.
- The **Universal Declaration of Human Rights** under Article 19 states that **everyone has the right to express their opinions freely**, in whichever way they want.



Need of Free Speech	Need of Restrictions
<ul style="list-style-type: none"> <li>• <b>Accountability:</b> By reporting on society’s most pressing issues, media outlets and civil society organizations (CSOs) contribute to the public’s perception on government working and strengthen accountability.</li> <li>• <b>Active participation:</b> Free speech <b>reinforces other fundamental rights such as freedom of assembly</b>, which citizens exercise to influence public decision-making by attending protests, demonstrations and strengthens participation.</li> <li>• <b>Promotes equality:</b> By campaigning and speaking openly issues faced by their communities can be brought to forefront, gain public support and thus can put an end to human rights abuses.</li> <li>• <b>Necessary for change and innovation:</b> Free speech <b>protects the creative license of artists</b> and allows them to develop and share ideas freely. These can be academic writings, theatre, cartoons, visual arts etc.</li> <li>• <b>Development:</b> Free speech is essential to freedom of thought because a person cannot develop an independent point of view about the world unless he/she is exposed to different ideas about what is important and what beliefs are most meaningful and is permitted to converse with others about their experiences or beliefs.</li> <li>• <b>Building block:</b> Free speech forms a <b>foundation for other rights granted to citizens, such as the freedom of press</b> which helps in inculcate a better-informed public and electorate.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Sovereignty and integrity:</b> Any speech or expression which can be threat to India can be restricted under article 19(2). <ul style="list-style-type: none"> <li>○ This ground was added by <b>Constitution (Sixteenth Amendment) Act, 1963</b> to impose restrictions on individuals or groups that were instigating secessionist movements in the country.</li> </ul> </li> <li>• <b>Security of the State:</b> Security of the nation is of utmost importance and imposing reasonable restrictions on activities risking the security of the nation is of vital importance.</li> <li>• <b>Friendly relations with foreign States:</b> To curb malicious actions, to jeopardize the reputation of the country and to maintain positive relations with other countries in a globalized world.</li> <li>• <b>Public order, decency, or morality:</b> To prohibit marketing or distribution or advertisement of salacious words or pictures in public places which could lead to social unrest or cause discomfort to a particular society or society at large.</li> <li>• <b>Contempt of court:</b> To maintain stature and preserve public trust in judiciary. It is <b>punishable under Article 129 and Article 215</b> by SC and HC respectively.</li> <li>• <b>Defamation or incitement to an offence:</b> Freedom of speech does not give right to an individual or a group of persons to provoke or instigate someone to commit an offense or encourage communal violence or disturbance and was added by <b>constitution (First Amendment) Act, 1951</b>.</li> </ul>

### Way forward

- **Arbitrariness:** The phrase reasonable restrictions under Article 19(2) should not be arbitrary or of an excessive nature. A balance between the freedoms guaranteed under Article 19(1) (a) to (g) and the social control should be maintained.
- **Nature of restriction:** To determine the reasonableness of the restriction, Court should consider the nature of the **restriction and procedure prescribed by the law** for enforcing the restriction on the individual freedom before arriving at a verdict.
- **Education:** Education can help in development of **understanding of free speech and promote its useful use** such as protection of rights of minorities, women empowerment, transparency in governance etc.
- **Awareness:** Public authorities, NGO, CSO etc. can help in promoting awareness with respect to free speech.



#### Right to dissent and Democracy

- Right to dissent or to **have and express a contrarian view with respect to current affairs or historical events** are the essence of a vibrant democracy.
- It is an **entitlement to disagree**.
- Preamble promises **liberty of thought, expression, belief, faith and worship**. Clauses (a) to (c) of Article 19(1) promise:
  - Freedom of speech and expression.
  - Freedom to assemble peaceably and without arms.
  - Freedom to form associations or unions.
- Dissent act as a tool to **check authoritarianism and push for reforms** e.g. Lokpal Act (Anna Hazare movement against corruption)
- As per Shreya Singhal judgment, **protected and innocent speech** is fundamental for a vibrant democracy.

### 1.1.4. DIGITAL RIGHTS

#### Why in News?

European Commission, in a global first, proposed a set of digital rights and principles recently.

#### More on News

- It is an **extension of Berlin declaration on Digital Society and Value-Based Digital Government** of EU council.
  - Declaration aims to contribute to a value-based digital transformation **by addressing and ultimately strengthening digital participation and digital inclusion** in our societies.
- **Aim is to**
  - **Protect people’s rights, support democracy** and ensure fair and safe online environment.
  - **Provide a guide for policymakers and companies** when dealing with new technologies.

#### Digital Citizenship: Rights and Principles for Europeans

On 26 January 2022, the Commission proposed an inter- institutional solemn declaration on digital rights and principles for the digital decade.



- Promote these principles as a **standard for the world countries.**

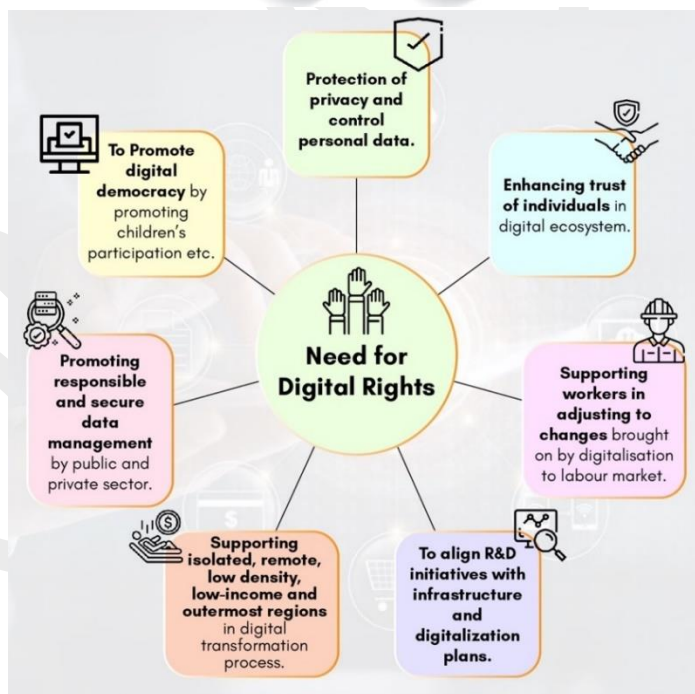
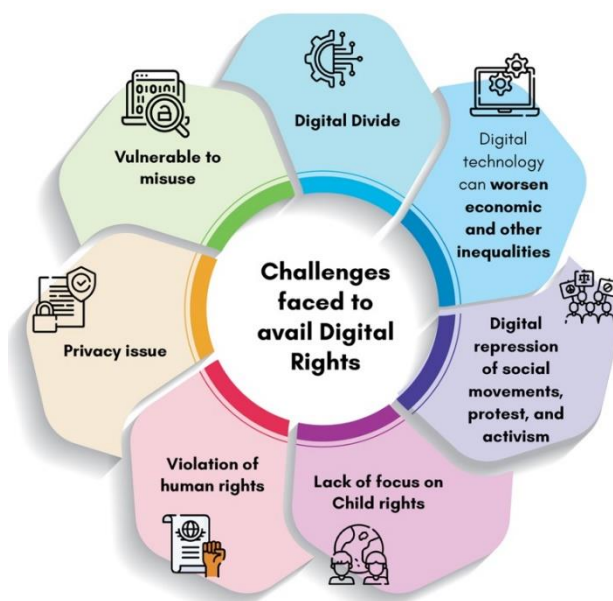
- **Principles outlined are** (refer image)

### About Digital Rights

- Digital rights, closely linked to freedom of expression and privacy, are those that **allow people to access, use, create and publish digital media**, as well as access and use computers, other electronic devices and communications networks.
- Digital rights are **merely an extension of the rights set out in the Universal Declaration of Human Rights** by United Nations as applied to the online world.
- It is a broad term **implying right to privacy and data protection**; it can be related to **trolling, online threats and hate speech**; it can address broader issues of equitable Internet access regardless of economic backgrounds and disabilities.

### Way forward

- **Human-centered technology:** Digital infrastructures, products and services, networks must be in line with international law and should be human-centered, human-controlled, promote human well-being and human dignity.
- **Limit the collection and use of personal data:** Data collection and use should be limited to what is reasonably necessary to provide a good or service requested by an individual. Purpose specification should be strictly enforced.
- **Upholding human rights, ethical values, and democratic participation** in context of digital era by fighting discrimination, disinformation, and other malicious online activities.
- **Promoting multi-stakeholder and wider international cooperation** in digital context, in fields such as standards, infrastructure, data flows, R&D and secure and trustworthy online services.
- **Recognising the importance of green and digital technologies**, as a key element to a new paradigm of economic growth, balancing innovation and competitiveness with social and environmentally sustainable development.
- **Establish a data protection agency:** dedicated to privacy and data protection, oversight, and enforcement, with the authority and resources to address emerging privacy challenges.



### Initiatives taken for digital rights

- **By Governments**
  - Internet Bill of Rights (Brazil).
  - **Christchurch Call** to eliminate terrorist and violent extremist content online (New Zealand).
  - Paris Call for safe and secure cyberspace.
  - India's **Personal Data Protection Bill**.
  - National Policy on Universal Electronic Accessibility (India).
  - General Data Protection Regulation (EU).
- **By Civil Society**
  - Manila Principles for intermediaries' liability.
  - Report of the Secretary-General on Road map for digital cooperation.
  - Delhi Declaration for just and equitable internet.
  - Charter of Human Rights and principles for internet.
  - Universal guidelines for Artificial Intelligence.
- **Others**
  - Asilmoar AI Principles.



## 1.2. PHONE TAPPING

### Why in news?

Recently, an IPS officer was under probe for tapping the phones of political leaders in 2019.

### About phone tapping

- **Definition:** Phone tapping refers to the **monitoring of internet-based communications and phones by a third party by secret means**. The word 'phone tapping' also means **wiretapping or line bugging or interception** of the phone. It was first commenced in USA in the 1890s after invention of telephone recorder.
- **Legal provisions:** Phone tapping is regulated by the **Indian Telegraphic Act, 1885**.

### The Indian Telegraphic Act, 1885

- **Power for phone tapping:** Both, **Central and State Governments** have a right to tap phones under Section 5(2) of Indian Telegraphic Act, 1885.
  - In states, police have the powers to tap phones.
  - At Centre, 10 agencies are authorised to do so: Intelligence Bureau, CBI, Enforcement Directorate, Narcotics Control Bureau, Central Board of Direct Taxes, Directorate of Revenue Intelligence, National Investigation Agency, R&AW, Directorate of Signal Intelligence, and the Delhi Police Commissioner.
  - **Tapping by any other agency would be considered illegal.**
- **Grounds for phone tapping:** If both Centre or states are satisfied that it is necessary in the interest of **“public safety”, “sovereignty and integrity of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence”**.
  - **Exception for the press:** Press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.
- **Power to issue the order for phone tapping:** According to Rule 419A of Indian Telegraph (Amendment) Rules, 2007, phone tapping orders could be issued **only by Secretary, Union Ministry of Home Affairs or his State Counterpart**. The order has to conveyed to the service provider **in writing**; only then can the tapping begin. The competent authority **must record reasons for tapping in writing**.

### Checks against misuse of power of phone tapping

- **Last resort:** The law is clear that interception must be ordered only if there is no other way of getting the information.
- **Time limit:** The directions for interception remain in force, unless revoked earlier, for a period not exceeding 60 days. They may be renewed, but not beyond a total of 180 days.

### Constitutional provisions on phone tapping

- **Schedule 7<sup>th</sup>:** Telephones along with other **communication devices** find mention under **Entry 31 of the Union List**.
- **Right to privacy:** Telephone conversation is an important facet of a person's private life. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.
- **Freedom of speech:** If, a person is talking on telephone, She/he is exercising his or her right to freedom of speech and expression. Thus, **telephone tapping would also infringe Art 19(1)(a) unless it came within the restrictions on this right set out in Art 19(2)**.

## IMPORTANT CASES ON PHONE TAPPING



### PUCL v. UOI (1996)

Held: Telephone tapping infringed the **fundamental right to privacy**, and **created safeguards** against arbitrariness in the exercise of the state's surveillance powers.



### K.L.D Nagasree v. Government of India (2006)

Held: the occurrence of any public emergency or the existence of a public safety interest is the **sine qua non under Section 5(1) & (2)**.



### Rayala M. Bhuvanewari vs Nagaphanender Rayala (2008)

Held: Act of tapping conversation of **wife by husband illegal**.



- **Review committee:** Any order issued by competent authority is **reviewed by committee headed by Cabinet Secretary with Law and Telecom Secretaries** as members. In states, it is headed by the Chief Secretary with Law and Home Secretaries as members. The review committee may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages
- **Destructions of records:** Records pertaining to such directions shall be **destroyed every six months** unless these are, or are likely to be, required for functional requirements. Service providers too are required to destroy records pertaining to directions for interception within two months of discontinuance of the interception.
- **Procedural transparency:** There are multiple provisions aimed at keeping the process transparent:
  - **Written direction to service provider:** The directions for interception have to be conveyed to designated officers of the service providers in writing by an officer not below the rank of SP or Additional SP or equivalent.
  - **Disclosure of information:** Directions for interception are to specify the name and designation of the officer or the authority to whom the intercepted call is to be disclosed
  - **Responsibility of service providers**
    - ✓ The designated nodal officers of the service providers are supposed to **issue acknowledgment letters** to the security/law enforcement agency within two hours on receipt of an intimation.
    - ✓ They are to forward every 15 days a list of interception authorisations received to the nodal officers of the security and law enforcement agencies for **confirmation of authenticity**.
    - ✓ They shall put in place adequate and effective **internal checks to ensure that unauthorised interception of messages does not take place** and extreme secrecy is maintained.
    - ✓ In case of **unauthorised interception**, the service provider may be **finned or even lose its licence**.

#### Related news

#### SC Constitutes Independent Expert Committee to Probe Pegasus Snooping Allegations

- SC appointed a three-member technical committee to **investigate allegations that Pegasus software** was used to snoop on Indian citizens, including journalists and political leaders.
  - Pegasus is a **military-grade spyware made by Israeli cyber security firm NSO Group Technologies**, which is only sold to vetted governments.
- SC in its **judgement listed several compelling circumstances**, to pass this order, including:
  - **Indiscriminate spying of citizens can't be allowed** in a democracy except in accordance with law.
  - Acknowledging that government can decline information on national security issues, SC stated that **mere invocation of national security can't render SC a mute spectator**.
- **Committee will help SC in determining facts of the case**/violations of fundamental rights and **will also make recommendations regarding** issues like:
  - **Enactment/amendment to existing law and procedures** surrounding surveillance and for securing improved right to privacy.
  - **Enhancing and improving cyber security** of the nation and its assets.

#### Recourse against illegal phone tapping

- Unauthorized tapping is in violation of the right to privacy and the aggrieved person can file a **complaint in the Human Rights Commission**.
- **An FIR can be lodged** in the nearest Police Station when unauthorized phone tapping comes into the knowledge of the person.
- Additionally, the aggrieved person can move the Court against the person/company doing the Act in an unauthorized manner **under Section 26 (b) of Indian Telegraphic Act which provides for 3 year imprisonment for persons held for tapping**. The person (s) can also be prosecuted for authorized tapping but sharing of the data in an authorized manner.

### 1.3. SEDITION

#### Why in news?

Recently, SC has ordered that the **152-year-old sedition law under Section 124A of IPC should be effectively kept in abeyance** till the Union Government reconsiders the provision.

## About Sedition

- **IPC defines sedition (Section 124A)** as an offence committed when **any person by words or otherwise brings or attempts to bring into hatred or contempt**, or excites or attempts to excite disaffection towards the government established by law in India by
  - words, either spoken or written
  - signs
  - visible representation, or otherwise
- **Three explanations added to the provision** prescribe that while **“disaffection” shall include disloyalty and all feelings of enmity**, comments without exciting or attempting to excite hatred, contempt or disaffection, will not constitute an offence.
- Sedition is a **cognisable, non-bailable and non-compoundable offence** under the law, entailing life imprisonment as maximum punishment, with or without a fine.
- A person charged under this law is **barred from a government job**. They have to **live without their passport** and must produce themselves in the court at all times as and when required.
- In 2018, **Law Commission of India (LCI)** published a consultation paper recommending that it is time to rethink or repeal the Section 124A of the IPC that deals with sedition.

## Significance of Sedition law

- **Unity of India:** Section 124A of IPC has its utility in **combating anti-national, secessionist and terrorist elements**.
- **Stable Polity:** It **protects the elected government from attempts to overthrow the government** with violence and illegal means like insurgency.
- **Power of contempt:** It is in line with **power of contempt accorded to court to protect its dignity**. Similarly, contempt of government should also attract punishment.
- **Public order:** To **maintain public order and to deter practices like civil war, excite dissatisfaction** to create public disturbance and to protect sovereignty of country.

## Issues associated with Sedition law

- **Violate Fundamental Rights:** Section 124A of IPC **act as a constraint on the exercise of Freedom of speech and expression** guaranteed under Article 19(1) and governments have used sedition to suppress and quell political dissent.
- **Ambiguity:** The terms “bring into hatred or contempt” or “attempt to excite disaffection” can be **interpreted in many ways**. Thus, empowering the police and government to harass innocent citizens.
- **Low conviction rate**
- **Misuse:** For instance, **arrest of the NDTV journalist Vinod Dua** for criticising the government’s response to COVID-19.
- **Violate International Agreements:** International Covenant on Civil and Political Rights (ICCPR), which establishes internationally accepted norms for the protection of freedom of expression, was ratified by India, and the misuse of section 124A goes against this.

## DATA BANK



As per NCRB, **number of cases rose by 160 percent (93 cases)** during 2016-2019.



In 2019, **conviction rate was 3.3%** (i.e. two of the accused convicted) while in 2020, it was 33.3%.



**Highest number of sedition cases (2010-2020) were registered in Bihar**, followed by UP, Karnataka and Jharkhand.

### SC stand on Sedition law

- **Kedar Nath Vs State of Bihar, 1962:** SC held that **"a citizen has a right to say or write whatever he likes about the government**, or its measures, by way of criticism or comment, long as he **does not incite people to violence"**
- **P. Alavi vs State of Kerala, 1982:** SC held that sloganeering, criticising of Parliament or Judicial setup did not amount to sedition.

### Sedition law in other countries

- Many democratic countries, including United Kingdom (UK), Ireland, Australia, Canada, Ghana, Nigeria and Uganda, have held sedition law as undemocratic, undesirable and unnecessary.
- **UK:** Sedition law became **obsolete in the 1960s** and was finally repealed in 2009. However, **Sedition by an alien (resident but not a national of the country) is still an offence**.
- **USA:** Some sedition laws have been repealed or made a dead letter. The courts provide a wide protection to free speech.
- **Australia:** Repealed its sedition law in 2010.

### Way forward

- **Clear definition:** The terms “disaffection”, “bring into hatred” and what constitutes as sedition should be clearly defined **to prevent misuse by authorities.**
- **Procedural Safeguards:** Adding procedural safeguards in Section 124A of CrPC through policy guidelines.
  - For instance, the offences should be made non-cognizable so that there is at least a judicial check.
- **Use sparingly:** As per LCI, Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means.
- **Scrutinizing complains: Dissent and criticism are essential ingredients** of a robust and vibrant democracy. Therefore, every restriction on free speech and expression must be carefully scrutinized **to avoid unwarranted restrictions.**

## 1.4. UNIFORM CIVIL CODE (UCC)

### Why in news?


Uttarakhand Chief Minister announced an expert panel that would examine the possibility of applying the UCC in the State.

### About Uniform Civil Code (UCC)

- The UCC calls for formulation of **one law to be made applicable to all religious communities** in matters such as marriage, divorce, inheritance, and adoption.
- It is intended to **replace the system of fragmented personal laws**, which currently governs interpersonal relationships and related matters **within different religious communities.**
- DPSP under **Article 44** provides that State shall endeavour to **secure for all citizens a UCC throughout the territory of India.**


## Major milestones of UCC

**Origin**




- The idea of UCC was influenced by **similar codes drafted in European countries** during the **19<sup>th</sup> century and early 20<sup>th</sup> century.**
- **French code of 1804 had eradicated all forms of customary or statutory laws prevailing at that time and replaced it with a uniform code.**

**Pre independence**




- The **Lex Loci Report (1840)** emphasised the importance and necessity of **uniformity in codification of Indian law** but recommended that personal laws of Hindus and Muslims should be **kept outside** such codification.
- **B N Rau Committee** (formed in 1941) to **codify Hindu law** recommended a codified Hindu law, which would give **equal rights to women.**

**Post independence**



- The **Special Marriage Act, 1954**, provides a form of **civil marriage to any citizen irrespective of religion**, thus permitting any Indian to have their marriage **outside the realm of any specific religious personal law.**
- Four major **enactments on Hindu Law:** The Hindu Marriage Act, 1955, The Hindu Succession Act, 1956, The Hindu Minority and Guardianship Act, 1956, The Hindu Adoption and Maintenance Act, 1956.

**Supreme Court Judgements**



- **Shah Bano case (1985):** Parliament should outline the contours of a common civil code.
- **Ms. Jordan Diengdeh v. S.S. Chopra (1985):** **Emphasised the urgency** of implementing a uniform civil code.
- **Sarla Mudgal Case (1995):** Reiterated the need for Parliament to frame a Uniform Civil Code.
- **Shayara Bano versus Union of India case (2017):** Questioned the legitimacy of the practice of talaq-e-bidat (triple talaq) and declared it unconstitutional.

Specification	Arguments in favour of UCC	Arguments against UCC
Simplify the Indian legal system	<ul style="list-style-type: none"> <li>• Simplify laws that are segregated at present based on religious beliefs.</li> <li>• Same civil law will then be applicable to all citizens irrespective of their faith.</li> </ul>	<ul style="list-style-type: none"> <li>• Indian laws do follow a uniform code in most civil matters like Indian Contract Act, Code of Civil Procedure, Sale of Goods Act, etc.</li> <li>• There is diversity even under these secular civil laws.</li> </ul>
Legislative power of parliament	<ul style="list-style-type: none"> <li>• Many judicial pronouncements (including Mohd. Ahmed Khan v. Shah Bano Begum, 1985 and Sarla Mudgal v Union of India, 1995) of <b>higher judiciary have favoured UCC</b> in some or the other forms.</li> <li>• <b>Parliament may make a law</b> to make these judicial pronouncements enforceable.</li> </ul>	<ul style="list-style-type: none"> <li>• “personal laws” are mentioned in the <b>Concurrent List.</b></li> <li>• Also, if the framers of the Constitution had intended to have a UCC, they would have given exclusive jurisdiction to Parliament in respect of personal laws, by including this subject in the Union List.</li> </ul>

<p><b>UCC &amp; Fundamental Rights</b></p>	<ul style="list-style-type: none"> <li>• <b>Gender Justice:</b> Mostly the religious or customary personal laws are biased in favour of men.</li> <li>• <b>Religion and personal law are different avenues:</b> In S.R. Bommai v. Union of India, the Apex court upheld that religion is the matter of individual faith and cannot be mixed with secular activities. <b>Secular activities can be regulated by the State by enacting a law.</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Secular state should not interfere with the personal law:</b> A UCC is seen, by many, as a contradiction to the fundamental rights guaranteed under <b>Article 25</b> (individual's fundamental right to religion), <b>Article 26(b)</b> (right of each religious denomination to "manage its own affairs in matters of religion), and <b>Article 29</b> (right to conserve distinctive culture).</li> </ul>
<p><b>UCC and country's diversity</b></p>	<ul style="list-style-type: none"> <li>• <b>Promote national integration:</b> Different laws for different religious groups breed communalism.</li> <li>• Single, secular law governing various aspects of personal matters would arouse a <b>sense of oneness and the national spirit.</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Against the diversity of the country:</b> There has been skepticism whether there could ever be uniformity of personal laws in a democratic and diverse country like India.</li> <li>• <b>Lack of national consensus:</b> UCC still is a politically sensitive issue. There are still many organisations who advocate rights of minorities as well as many religious clerics oppose UCC.</li> </ul>

**Way forward**

- **Educate the citizens:** Educating the individuals regarding the true nature and positive effects of UCC through media support and social media.
- **Eradicating discrimination:** Law Commission underlined the need to eradicate discrimination within personal laws to weed out inequality to the greatest extent.
  - Several women's groups (Saheli etc.) and human rights lawyers' teams have prepared drafts containing technical details of gender-just and secular family laws.
- **Adopting a piecemeal approach:** Given that enactment of UCC in one go may be counter-productive to unity and integrity of the nation, the goal of UCC should ideally be reached in piecemeal manner, like the recent amendment on the age of marriage.
- **Opening personal laws for public debate:** Amendments to Christian marriage and divorce laws in 2001, and Hindu Adoption and Maintenance Act, 1956 are examples of how once codified, personal laws can be opened up for further public debates and scrutiny.
- **Codification of all personal laws:** Through codification, one can arrive at certain universal principles that prioritise equity over imposition of uniform code in procedure which can also discourage many from using the law entirely given that matters of marriage and divorce can also be settled extra judicially.

<p><b>Related News</b></p> <p><b>Essential Religious Practice Test (ERPT)</b></p> <ul style="list-style-type: none"> <li>• Recently, Karnataka HC rules that Wearing Hijab is not Essential Religious Practice</li> <li>• Ruling has come in the backdrop of petition seeking the right to wear hijabs or head scarves along with uniforms inside classrooms.                     <ul style="list-style-type: none"> <li>○ According to the Court, wearing of hijab (head scarf) by Muslim women does not form a part of essential religious practices in Islamic faith and is not protected under right to freedom of religion under Article 25 of Constitution.</li> <li>○ Also, prescription of school uniform does not violate either right to freedom of speech and expression under Article 19(1) (a) or right to privacy under Article 21.</li> <li>○ Further, restriction against wearing of hijab in educational institutions is only a reasonable restriction constitutionally permissible.</li> </ul> </li> <li>• <b>What is the essential religious practice test (ERPT)?</b> <ul style="list-style-type: none"> <li>○ It was evolved by SC in 'Shirur Mutt' case (1954) to protect only such religious practices which were essential and integral to the religion.</li> <li>○ Court held that term "religion" will cover all rituals and practices "integral" to a religion and took upon itself the responsibility of determining essential and non-essential practices of a religion.</li> </ul> </li> </ul>	<p><b>Reasonable accommodation</b></p> <ul style="list-style-type: none"> <li>• It is a principle that promotes equality, enables the grant of positive rights and prevents discrimination based on disability, health condition or personal belief.</li> <li>• The general principle is that reasonable accommodation should be provided, unless some undue hardship is caused by such accommodation.</li> <li>• Its use is primarily in the disability rights sector.                     <ul style="list-style-type: none"> <li>○ In India, Rights of PwD Act, 2016, defines 'reasonable accommodation'.</li> </ul> </li> </ul>
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- This **attempt to differentiate essential and non-essential practices** was taken up in various judgments.
  - ✓ In 1983, **SC upheld Tandava was not an essential religious practice** among those in Ananda Margis sect.
  - ✓ In **Sabarimala case, 2018**, SC ruled that bar on entry of women in the age-group of 10 to 50 was not an essential part of the religion.
- **Criticism against ERPT**
  - Doctrine has tended to **lead court into an area that is beyond its competence**, and given judges power to decide purely religious questions.
  - Essentiality test **impinges on the autonomy of an individual to practice one's religious beliefs** as provided by freedom of religion.

## 1.5. ANTI-CONVERSION LAWS

### Why in news?

The **Karnataka legislative Assembly passed** the Karnataka Right to Freedom of Religion Bill, 2021, commonly referred to as **anti-conversion Bill**.

### Rationale behind anti-conversion laws

- **Not blanket ban on prohibition:** Laws are **not brought to stop the conversion** but are intended to **prohibit fraudulent conversions**.
- **Strengthens religious freedom:** Since they provide stringent provisions for forced conversion, they are considered as **necessary safeguards for the protection of religious freedom**.
- **Prevention of change in demography:** They are considered a **remedial measure to the problem of conversion** which is considered to **bring demographic change**.
- **Constituent assembly debates:** During CA debates, Sardar Patel had expressed concern about forceful conversion which later became as the **moral base of anti-conversion laws in India**.

### Issues with the anti-conversion laws

- **Burden of proof:** that it was 'lawful' lies on the person who has '**caused**' the conversion.
- **Lack of equitable treatment:** Anti-conversion laws both by their **design and implementation** infringe, upon the individual's **right to convert and may favour one religion** over other.

### History of anti-conversion laws in India

<p>Pre-independence</p>	<ul style="list-style-type: none"> <li>● Introduced by Hindu Princely states during the 1930s and 1940s to preserve their religious identity from the influence of the Christian missionaries</li> <li>● Example includes: Raigarh State Conversion Act 1936, the Patna Freedom of Religion Act of 1942, the Udaipur State Anti Conversion Act 1946 etc.</li> </ul>
<p>Failed attempts at national level</p>	<ul style="list-style-type: none"> <li>● 1954: Indian Conversion (Regulation and Registration) Bill was introduced</li> <li>● 1960: Backward Communities (Religious Protection) Bill was introduced</li> <li>● 1979: freedom of religion bill</li> <li>● However, they failed due to lack of parliamentary support.</li> </ul>
<p>Current stand</p>	<ul style="list-style-type: none"> <li>● In 2015, the Law Ministry said that matter is "purely a state subject" and legislating such a law by Parliament would not be in accordance with the tenets of the Constitution.</li> <li>● This means anti-conversion laws are completely in the domain of the states.</li> </ul>

### Legal challenges to anti-conversion laws and pertinent verdicts on the subject

- **Rev. Stainislaus vs State of Madhya Pradesh & Ors (1977):** It examined the **earliest anti-conversion statutes in Madhya Pradesh and Orissa**. Court **upheld the constitutionality of both the Acts** on the ground that these efforts to restrain the conversion are for **securing freedom of conscience and public order**.
- **Sarla Mudgal case (1995):** SC held that conversion to Islam was not valid if done only in order to be **able to practise polygamy**.
  - This position was reaffirmed in **Lilly Thomas case in 2000**, which clarified that **prosecution for bigamy was not a violation of freedom of religion** under Article 25.
- **Lata Singh Vs State of UP:** The apex court highlighted the **need for stringent punishment** over acts of violence or threats in cases of inter-caste and inter-faith marriages.
- **M Chandra Vs M Thangamuthu & Another, 2010**, SC laid down the test to prove conversion: First, there **has to be a conversion** and second, **acceptance into the community** to which the person converted. It also stated that the **need of a conversion** cannot be altogether done away with.
- **Ga Arife alias Arti Sharma Vs Gopal Dutt Sharma, 2010, and in Faheem Ahmed Vs Maviya, 2011:** The Delhi HC lamented that religious conversions are **increasingly used for anything but the primary reason for conversion** i.e., spiritual advancement.

- **Creates an atmosphere of fear:** There are **very rare instances of prosecution or arrest** under anti-conversion laws, but they create **atmosphere of fear** amongst the couples willing to do inter-faith marriages.
- **Vague nature and wide scope:** Terms used in such laws like **force, fraud, allurements etc. are loosely defined**, leaving wide scope for misuse.
- **Against freedom of religion:** Religion or spirituality is the **most integral part of human nature** and thus any undue ban on it can be a **gross violation of human rights**.

### Conclusion

The **constitutional validity** of the anti-conversion laws in **at least four states** – Uttar Pradesh, Uttarakhand, Himachal Pradesh and Madhya Pradesh **is pending before SC**. Court has agreed to test the validity of these laws but **has refused to put a stay** on them. Any challenge to these laws would require the Supreme Court to relook at its **Stainislaus judgment** while also taking the **right to privacy judgment** into account.

## 1.6. Anti-Defection Law

### Why in news?

The Calcutta High Court has given West Bengal Assembly Speaker a deadline to pass an order in the **defection case**.

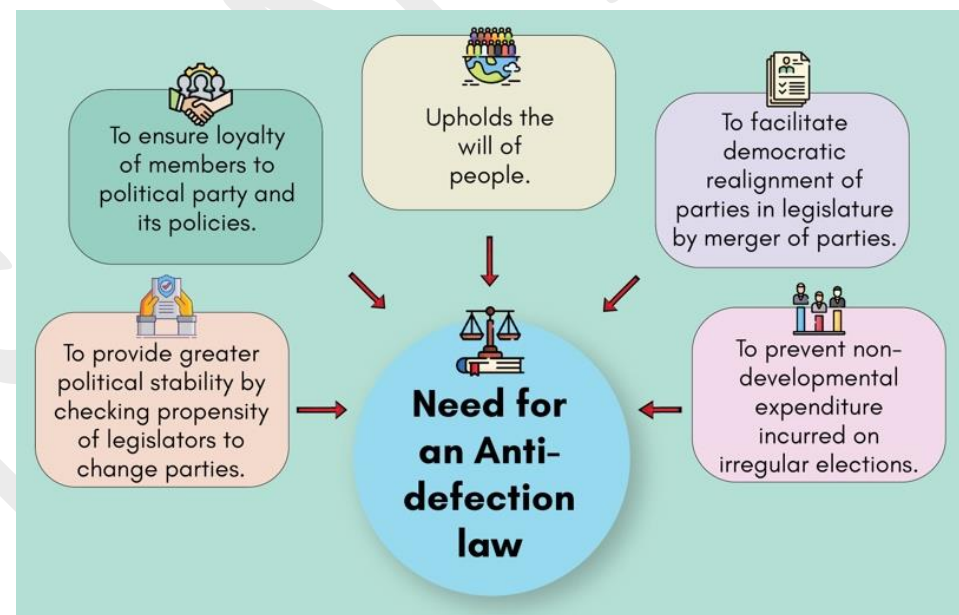
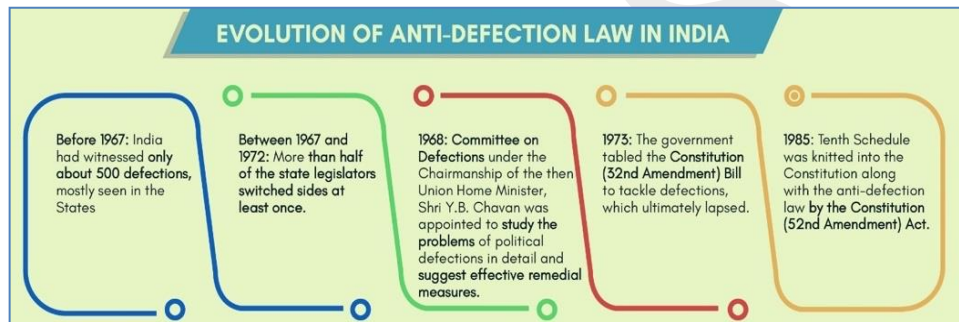
### What is defection?

Defection may be defined as the **practice of floor-crossing** by a member of **one political outfit to another** (also, commonly referred as Horse Trading).

### About Anti-defection Law

The Tenth Schedule contains the following provisions with respect to the disqualification of members of Parliament and the state legislatures on the ground of defection.

- **Disqualification:** A member of a House belonging to any political party becomes disqualified for being a member of the House if
  - He voluntarily gives up his membership of such political party; or
  - He votes or abstains from voting in such House contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.
- **An independent member** of a House becomes disqualified to remain a member of the House if he joins any political party after such election.
- **A nominated member** of a House becomes disqualified for being a member of the House if he **joins any political party after the expiry of six months** from the date on which he takes his seat in the House.
- **Exceptions:** Legislators may change their party without the risk of disqualification in certain circumstances.
  - The law **allows a party to merge with or into another party** provided that at least two-thirds of its legislators are in favor of the merger.



- If a person is **elected as the speaker of Lok Sabha or the Chairman of Rajya Sabha** then he could resign from his party and rejoin the party once he demits that post.
- It must be noted here that the provision of the Tenth Schedule pertaining to **exemption from disqualification in case of split** by one-third members of legislature party has been deleted by the 91st Amendment Act of 2003.
- **Deciding authority:** Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House.
- **Rule-making power:** The presiding officer of a House is empowered to make rules to give effect to the provisions of the Tenth Schedule.

#### Why anti-defection law needs an overhaul?

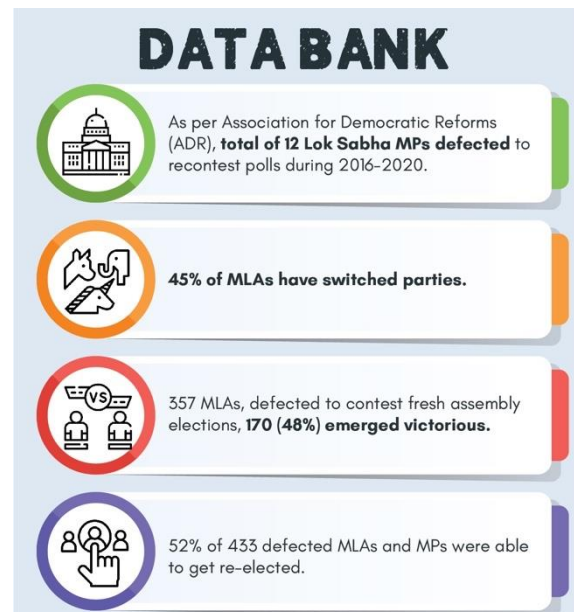
- **No liability for political parties:** It only punishes legislators for switching parties. Political parties who are at the heart of the politics have no liability under the law.
- **Problem with merger provision:** It safeguards the members of a political party where original party merges with another party subject to the condition that at least two-third of the members have agreed to such merger.
  - The exception is based on the number of members rather than the **reason behind the defection**.
- **Power to the presiding officer:** The presiding officer has been given wide and absolute powers to decide the case related to disqualification of the members on the grounds of defection.
- **Unable to curb instability:** With not enough room for elected representatives to harbour a difference of opinion, **en-masse departures of rebelling legislators have become the 'political' normal**. Along with **uprooting incumbent governments**, such departures can also bring **governance to a grinding halt**.
- **Expulsion does not attract disqualification:** The law focuses on voluntary defection and **remains silent about expulsion** of a member from the party. Once expelled, such a member **would then be an independent in the House**, with an option of joining another party, which presents a possible loophole for **exploitation of the Schedule**.

#### What can be done to overcome these issues?

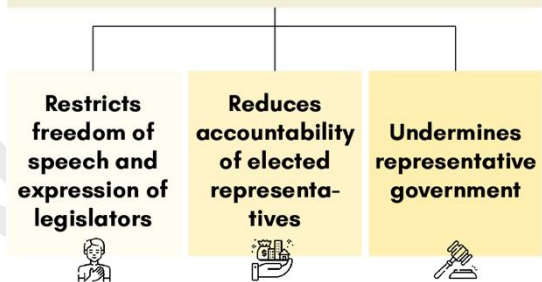
- **Narrowing the definition of defection:** Defining actions or conduct which constitutes defection that **does not inhibit independent thinking and expression** by legislators.
- **Intra party democracy:** This will indirectly create more acceptance for divergence of opinion and stance within the party.

#### How has the law been interpreted by the Courts while deciding on related matters?

- **Interpretation of the phrase 'Voluntarily gives up his membership':** The phrase has a **wider connotation than resignation**. SC has interpreted that in absence of a formal resignation by the member, the giving up of membership can be **inferred by his conduct**.
  - Members who have **publicly expressed opposition** to their party or support for another party should **deemed to have resigned**.
- **Decision of the Presiding officer is subject to Judicial Review:** The law initially stated that the decision of the Presiding Officer **is not subject to judicial review**. This condition was **struck down by SC in Kihoto Hollohan Case, 1992**, thereby allowing appeal against the Presiding Officer's decision in the HC and SC.
  - However, it held that there may not be any judicial intervention **until the Presiding Officer gives his order**.
- **Time limit within which the Presiding Officer has to decide:** The law does not specify a time-period for Presiding Officer to decide on a disqualification plea. Courts have expressed concern about the **unnecessary delay in deciding such petitions**. HC can **direct Speakers to rule on disqualification petitions** if they do not do this within reasonable time.



#### Issues in the prevalent idea of Anti-defection





- **Involvement of Ethics committee:** Active involvement of Ethics Committee, as done in Cash for Query scam, can help in curbing horse trading of legislators.
- **Deciding authority:** 2<sup>nd</sup> ARC has recommended that the issue of disqualification of members on grounds of defection should be **decided by the President/Governor on advice of EC.**
- **Making defection an internal issue of party:** The imposition of sanctions can be watered down in India to **only allow expulsion of a defecting member from his party** without costing him his seat in the Parliament and by making it an **internal issue of every political party.**
- **Bring more clarity:** The law must **explicitly set out what it means by the words ‘voluntarily giving up Membership’** to avoid any confusion.

**International scenario on Anti Defection Law**

- Among the Commonwealth countries, anti-defection law is **prevalent in 23 nations.**
- The perceptible presence of anti-defection laws in countries where **democracy is in a growing stage** indicate that the legislators in those countries are **less informed on the principles of democracy.**
- But the **political ambience in developed democracies** poses a picture of legislators with democratic values.
  - In the **UK Parliament**, a member is **free to cross over** to the other side, without being daunted by any disqualification law.
  - In the **US, Canada, and Australia**, there is no restraint on legislators switching sides.

**Conclusion**

The Parliament should recheck whether the anti-defection law in current form **can achieve the goals** for which it was enacted. If not, a discourse can be started for developing a consensus on why it has not been able to achieve its goals and moving ahead, where should we take this law.

**1.7. RESERVATION**

**1.7.1. LOCAL RESERVATION IN PRIVATE SECTOR**


**Why in news?**

The Haryana government has challenged in SC, the order by the Punjab & Haryana HC, to halt 75% quota in private jobs for locals.

**More on news**

- **Haryana State Employment of Local Candidates Act, 2020**, came into force in January, 2022.

**EARLIER ATTEMPTS RELATED TO EMPLOYMENT OF LOCAL CANDIDATES**

Sector	State	Year	Reservation
 <b>In Private Employment</b>	Andhra Pradesh	2019	75% reservation for locals in industry/factories (including PPP mode)
	Karnataka	2016	100% reservation for locals in blue-collar jobs (except information technology and biotech)
 <b>In Public Employment</b>	Rajasthan	2019	5% reservation to certain communities
	Maharashtra	2018	13% reservation to certain communities
	Telangana	2017	Reservation for backward classes, SC and ST increased to 62%

Arguments in support of local reservation in private sector	Arguments against local reservation in private sector
<ul style="list-style-type: none"> <li>• <b>Step to provide right to employment:</b> It is to <b>protect the right to life/livelihood of people domiciled in state</b> and to protect their health, living condition and their right to employment.</li> <li>• <b>Dealing with shrinking employment opportunities</b></li> <li>• <b>Curbing the selectively discriminating corporations:</b> Employers believe the <b>local workers lack work discipline, unwilling to learn new trades</b>, inclined towards political and trade unions — seen as pressure tactics by businesses.</li> <li>• <b>Address migration:</b> It will <b>discourage the influx of migrants</b> seeking low-paid jobs, which has a “significant impact” on local infrastructure and leads to the “proliferation of slums”.</li> <li>• <b>Less crime rate</b> due to meaningful engagement to youths.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>In contravention of the Constitution:</b> Clause providing for preference in jobs to local candidates domiciled in Haryana was in <b>contravention of Article 14 and 16 and Article 19 (1)(g).</b></li> <li>• <b>Fuels sons-of-the-soil syndrome</b></li> <li>• <b>Stifle the labour market:</b> Such reservation may push businesses to migrate, as their skilled workforce is not sufficiently ‘local’.</li> <li>• <b>Revival of license raj:</b> Many experts believe that allowing reservations in private sector would be akin to nationalization of private sector and it would result in revival of license-raj.</li> <li>• <b>No solution to core issues:</b> <ul style="list-style-type: none"> <li>○ <b>Skewed geographical development:</b> Investors prefer to stick to States where a governance ecosystem is already in place.</li> <li>○ <b>Low quality of education and skills.</b></li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>• <b>Boost SGDP:</b> Reduced absenteeism and dependence on migrant labourers can boost productivity which in turn will boost state growth.</li> <li>• <b>Agrarian Distress:</b> With great stress in agriculture sector across India, local people want to move away from it and seek local jobs.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Competitiveness:</b> Adequate skilled domestic labour may not be available which may hurt their efficiency and competitiveness.</li> <li>• <b>Restricts pool of candidates from which they can hire.</b></li> <li>• <b>Investment:</b> Industries might shift their operations to other state, adversely impacting the very rationale of job creation behind such laws.</li> </ul>
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**Way ahead**

- **Bridging the regional inequalities:** by setting up of educational and skills institutions in backward areas.
- **Promotion of labour intensive industries** to create more jobs.
- Providing **incentives to industries** for more investments and create an enabling environment for employing local people.

**Supreme Court Judgements on reserving jobs for local**

- **Dr Pradeep Jain v Union of India (1984):** Issue of legislation for “sons of the soil” was discussed. Court expressed that such policies would be unconstitutional but did not expressly rule on it as case was on different aspects of right to equality.
- **Sunanda Reddy v State of Andhra Pradesh (1995):** SC affirmed observation in Pradeep Jain to strike down state government policy that gave 5% extra weightage to candidates who had studied with Telugu as the medium of instruction.
- **Indira Sawhney vs. Union of India (1992) and M Nagaraj vs. Union of India (2006):** SC underscored that **reservation cannot exceed beyond 50%** unless there are extraordinary reasons to justify why this ceiling has to be breached.
- **Kailash Chand Sharma vs. State of Rajasthan (2002):** SC **invalidated appointment of government teachers in Rajasthan** in which state selection board gave preference to “applicants belonging to district or rural areas of district concerned”.

**1.7.2. CASTE CENSUS**

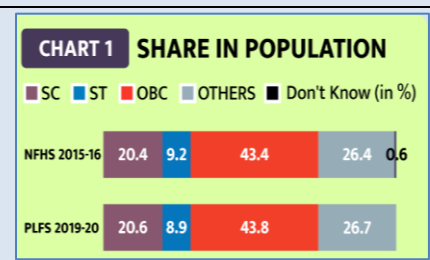
**Why in news?**

Demands by various political parties to have a caste-based Census has triggered a serious debate.

**What is a caste census?**

- Caste Census is the **caste-wise tabulation of population** in the census exercise.
- **Caste, was last included in the Census of India back in 1931.** The practice was stopped by the British in 1941 and the post 1947, the government did not revive it.
- While India publishes separate data on SC and ST, since the first exercise in independent India in 1951, the **Census does not include data on other castes.**

Specification	Arguments against caste census	Arguments favouring caste census
<b>Availability of data on caste</b>	<b>Estimates of caste is already available:</b> through various government surveys like ones conducted by the National Sample Survey Office (NSSO) and NFHS.	<b>Survey is not census:</b> Data of caste such as those collected by NFHS and NSSO are <b>survey-based estimates unlike the census.</b> The latter is actually an enumeration of every person in the country. It also generates data on the educational level, occupation, household assets and life expectancy for each group that it enumerates at each level that it recognises.
<b>Operational challenges</b>	A full caste census, including a jati-wise break-up of all ‘upper castes’, would pose some difficulties, since we don’t have an official list of all castes in the country. This would mean extensive <b>post-census classification work and may cause some delay in the release of General Caste tables.</b>	It is a <b>common practice that some Census tables are released five or seven years after the Census is completed.</b>
<b>Identity politics</b>	It is said that in India voters don’t cast their votes, they vote their caste. Break up of population in various caste would <b>further strengthen caste-based politics in India.</b> Such politics may lead to	It is not just <b>necessary to understand people’s socio-economic status by caste and sub-caste</b> but can also be valuable in <b>designing policies for affirmative action and redistributive justice.</b>



	marginalization of developmental issues like health, education, etc.	<b>out the privileged castes from the benefits of reservations.</b>
<b>Rise in demand for reservation</b>	Caste census would lead to a <b>clamour for higher quotas, and removal of the 50% cap on reservations.</b>	The absence of up-to-date caste data has <b>not prevented demands from various social groups for quotas in public employment and admission to central educational institutions.</b>

**Way Forward**

- **Understanding utility of caste data:** Discussion should be ensued on the caste data that already exists, how it has been used and understood by the government and its various departments to grant or withdraw benefits.
- **Reading all the available data holistically:** Linking and syncing aggregated Census data to other large datasets such as the NSSO or the NFHS that cover issues that the Census exercises do not, such as maternal health, would be significant **for a more comprehensive analysis.**
- **Changes in census to meet the demand of the hour:** Census operations methods should be precise, faster and cost effective, involving coordination between different data sources.
  - However, care must be taken to ensure that digital alternatives and linking of data sources involving Census operations are inclusive and non-discriminatory, especially given the sensitive nature of the data being collected.

**Government to Supreme Court on caste census**

- The Centre, in response to a petition filed by State of Maharashtra, seeking directions to Union of India to disclose the Socio Economic and Caste Census 2011 (SECC-2011), told the court that **“a caste-wise enumeration in the Census has been given up as a matter of policy from 1951 onwards** and thus castes other than SCs and STs have not been enumerated in any of the Census since 1951 till today.
- **Other reasons for not carrying Caste Census**
  - Caste census of OBCs is **administratively difficult and cumbersome.**
    - ✓ Analysis of **OBC data collected by SECC 2011** showed that caste enumeration was fraught with mistakes and inaccuracies and **“is not reliable”.**
  - Unlike SC and ST list, which are exclusively Central subjects, **there are multiple state and union territory lists of OBCs.**
  - According to the Centre, **Population Census is not the ideal instrument for collection of details on Caste,** and the operational difficulties are so many that **there is a grave danger that basic integrity of Census data may be compromised.**
  - **Administrative incapacity** as the enumerators (mostly drawn from a pool of schoolteachers) do not have means to verify the authenticity of information.
  - **Inadequate Knowledge of Sub Castes.**

**Conclusion**

Before another SECC is conducted, a stocktaking of the previous exercise, of what has been learnt from it, and what changes are necessary, beyond changing exclusionary criteria for beneficiaries of state support, are crucial. This would enable the Census to facilitate effective policy work and academic reflection. Concerns about methodology, relevance, rigour, dissemination, transparency and privacy need to be taken seriously to make this exercise effective.

**1.7.3. OTHER NEWS RELATED TO RESERVATION**

<p><b>SC upholds 27% OBC quota in NEET</b></p>	<ul style="list-style-type: none"> <li>• SC upheld the <b>constitutional validity for OBCs in NEET’s All India Quota (AIQ) for undergraduate (UG) and postgraduate medical and dental courses.</b> <ul style="list-style-type: none"> <li>○ Petitioners, several NEET aspirants, had argued that since the <b>top court had limited reservation to 50% in Indira Sawhney judgment,</b> Centre should have got the prior consent of SC before introducing OBC quota in AIQ seats under NEET.</li> <li>○ AIQ scheme was introduced in 1986 to <b>provide domicile free admission to students</b> from across the country. Till 2007, there was no reservation in the AIQ.</li> </ul> </li> <li>• <b>Key observation of SC</b> <ul style="list-style-type: none"> <li>○ <b>Articles 15(4) and 15 (5) are not an exception to Article 15 (1),</b> which itself sets out the principle of substantive equality (including recognition of existing inequalities).</li> <li>○ <b>Merit cannot be reduced to narrow definitions of performance</b> in an open competitive examination which only provides formal equality of opportunity.</li> <li>○ <b>High scores in an examination are not a proxy for merit.</b> Merit should be <b>socially contextualized and reconceptualized</b> as an instrument that advances social goods like equality.</li> </ul> </li> <li>• In related development, <b>Tamil Nadu Assembly re-adopted anti-NEET Bill.</b></li> </ul>
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	<ul style="list-style-type: none"> <li>○ Bill is meant to provide for <b>admission to UG courses in medicine, homeopathy</b> on basis of marks obtained in qualifying examination.</li> <li>○ It also provides for <b>students of government schools to get a 7.5% horizontal quota in medical admission.</b></li> <li>● <b>States' arguments against NEET</b> <ul style="list-style-type: none"> <li>○ <b>NEET favours rich and more privileged class</b> of society, who can afford special coaching apart from pursuing Class XII.</li> <li>○ Students from <b>affluent class do not serve in rural areas</b> after medical UG programmes and often pursue postgraduate courses abroad, leading to a <b>decline in the number of serving doctors</b> in the state.</li> <li>○ <b>Biased in favour of physics, chemistry and biology</b> instead of being open to testing "all possible knowledge" as in State board examinations.</li> </ul> </li> </ul>
<p><b>Vanniyars reservation in Tamil Nadu</b></p>	<ul style="list-style-type: none"> <li>● <b>SC upheld Madras HC judgement to strike down (2021 Tamil Nadu Act) the 10.5% reservation to Vanniyars, a most backward caste (MBC) in Tamil Nadu.</b></li> <li>● <b>Tamil Nadu Second Backward Classes Commission, 1983 recommended</b> for 10.5% reservation to the Vanniyars, formerly known as <b>Vanniakula Kshatriyas.</b> <ul style="list-style-type: none"> <li>○ In 2020, TN has constituted "<b>Commission for collection of quantifiable data on castes, communities and Tribes of Tamil Nadu</b>" due to lack of reliable caste wise population data to administer reservation.</li> <li>○ The Act was passed before 2020 commission report came in.</li> </ul> </li> <li>● Tamil Nadu Backward Classes, SC and ST (Reservation of Seats in Educational Institution and of appointments or posts in the Services under State) Act, 1993 (<b>known as 1994 Act</b>) was introduced under <b>Ninth Schedule of Constitution.</b> Under 1994 Act, <b>Tamil Nadu comprises 69% reservation.</b> <ul style="list-style-type: none"> <li>○ SC, in 2007 case (<b>IR Coelho v State of Tamil Nadu</b>), ruled that court has power to review any legislation added to Ninth Schedule, and so TN law that increased reservation to 69% is open to review.</li> </ul> </li> </ul> <p><b>Judicial interpretation of Vanniyars reservation</b></p> <ul style="list-style-type: none"> <li>● <b>Violate fundamental rights:</b> 2021 Act infringed FRs (Articles 14, 15, 16, 29) and <b>discriminates against 115 other MBC groups and DNCs in TN.</b> <ul style="list-style-type: none"> <li>○ In <b>Indra Sawhney case 1992</b>, SC clearly states that "caste can be the starting point for internal reservation but not sole basis".</li> </ul> </li> <li>● <b>Upheld state competence:</b> Though SC held 2021 Act and its percentages of reservation unconstitutional, it <b>upheld legislative competence of State</b> to enact a law sub-classifying and allocate percentages within identified backward classes.</li> <li>● <b>Lack of consultation by State:</b> State had not taken decision to modify the reservation after consulting National Commission for Backward Classes (NCBC) as mandated by Article 338-B.</li> <li>● <b>Lack of data:</b> Sub-categorisation of reservation was done <b>without any quantifiable data on backwardness</b> of Vanniyars within MBCs.</li> <li>● <b>Ancillary law:</b> 2021 Act was <b>only an ancillary legislation to 1994 Act</b> and was not in conflict with the latter.</li> </ul>

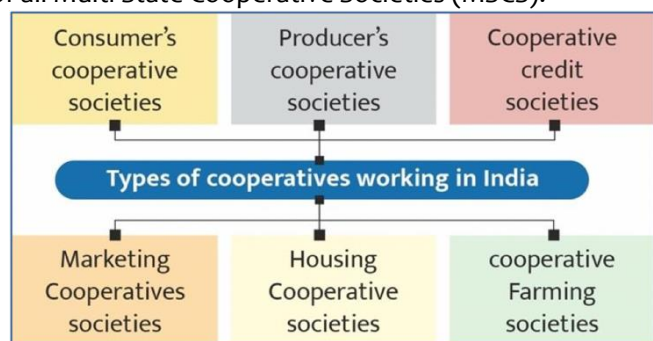
## 1.8. COOPERATIVES

### Why in news?

Parliamentary standing committee recommended government to Introduce necessary legal and institutional framework to protect the interests of the Members of all Multi State Cooperative Societies (MSCS).

### More in News

- **Other recommendations of PSC**
  - Exercise utmost prudence in chalking out **Activities / Schemes / Programmes at National Level** so that the **federal features** of country are not impinged upon.
  - **New National Cooperation Policy** shall be evolved after **wider consultations** with all the stakeholders.
  - Formulate an **effective mechanism** to ensure that Cooperatives get **adequate opportunities/facilities** for existence, growth, and development.



## About Co-Operatives

- It is a **voluntary association of individuals** having common needs, who join hands **for attainment of common economic goals** and interests.
- Through formation of cooperatives, **people come forward as a group, pool their individual resources, utilise them in the best possible manner, and derive some common benefit out of it.**
- In a cooperative society, **people can enter it as per their wish** and they are free to leave a cooperative society, but they **cannot transfer their share.**
  - Few examples of **successful co-operatives in India** are- Indian Coffee House, Self Employed Women's Association etc.
- **97<sup>th</sup> Amendment Act** relates to effective management of co-operative societies in the country. The change in the Constitution has **amended Article 19(1)(c)** to give protection to the cooperatives and **inserted Article 43 B and Part IX B**, relating to them.
  - **Article 19(1)(c):** It guarantees **freedom to form association or unions or cooperative societies** subject to certain restrictions.
  - **Article 43 B:** It says that **states shall endeavor to promote** voluntary formation, autonomous functioning, democratic control and professional management of **cooperative societies.**
  - **Part IX B of the Constitution:** It dictated the terms for running co-operative societies. It went to the extent of determining the number of directors a co-operative society should have or their length of tenure and even the necessary expertise required to become a member of the society.



### Supreme Court on 97<sup>th</sup> Amendment

- In 2021, A three-judge bench of the **Supreme Court annulled part of the 97th Amendment Act and Part IX B of the Constitution** which governs the “Cooperative Societies” in the country.
- **Observations**
  - **‘Cooperatives’ is a ‘State’ subject.** However, the 97<sup>th</sup> Amendment Act was passed by the Parliament **without getting them ratified by State legislatures as required by the Constitution.**
  - The Court declared that **Part IX B of the Constitution is operative only insofar as it concerns multi-State cooperative societies** both within the various States and in the Union Territories.
  - The SC has held that **co-operative societies** come under the **“exclusive legislative power” of State legislatures.**

### Significance of cooperatives in socioeconomic milieu of the country

- **Enhancing social cohesion**
- **Social empowerment by:**
  - **Establishing equal rights**
  - **Enhancing the bargaining power of poor**
  - **Promoting leadership**
- **Promoting moral principles** like unity, trust, honesty, order, cooperation etc. to its members, which ensure social order.
- **Reducing inequality of wealth**
- **Promoting financial inclusion**

## Challenges faced by cooperatives in India

- **Hindrances in democratic functioning of cooperatives:**
  - **Government Interference:** Government is the major source of finances for the cooperatives and has the power to regulate the functioning of the cooperatives through various rules. Therefore, **over the time government has put restrictions on borrowing**, restrictions on other transactions with non-members, restriction on investment of funds which may hamper the efficient performance of cooperatives.
  - **Politicization of Cooperatives:** Many cooperative societies are dominated by locally powerful members of the society, with strong political affiliations.
  - **Internal quarrel and rivalries**
- **Skewed geographical penetration**
  - **Regional imbalance in growth:** The cooperatives in northeastern areas and in areas like West Bengal, Bihar, Odisha are not as well developed as the ones in Maharashtra and Gujarat.
  - **Limited Coverage:** The cooperative movement has also suffered on account of two important limitations on its working-
    - ✓ **Small size of societies**
    - ✓ **Dominance of single purpose societies**
      - For this reason, these societies are unable to take a total view of the people seeking help, nor can they analyze and solve problems from different angles.
- **Operational challenges:** Lack of fair audit mechanism; Lack of coordination among cooperatives existing at different levels.
- **Functional Weakness:** Absence of Economics of Scale; Shortage of skilled workforce; Lack of Professionalism etc.

### Recent Steps taken to promote co-operative culture

- New **Ministry of Co-operation** to streamline the co-operative movement in India.
  - This ministry will provide a **separate administrative, legal and policy framework** for strengthening the cooperative movement in the country.
    - ✓ Prior to this move, the Ministry of Agriculture and Farmers Welfare had the **Department of Agriculture, Cooperation and Farmers' Welfare** for the cooperative movement in the agricultural sector.
  - **Mandate of The Ministry**
    - ✓ Realisation of vision **“from cooperation to prosperity”**.
    - ✓ Strengthening of cooperative movement in the country and **deepening its reach up to the grassroots**.
    - ✓ General Policy in the field of Co-operation and **Co-ordination of co-operation activities in all sectors**.
    - ✓ **Creation of appropriate policy, legal and institutional framework** to help cooperatives realise their potential.
    - ✓ **Incorporation, regulation and winding up of Co-operative societies** with objects not confined to one State including administration of ‘the **Multi-State Co-operative Societies Act, 2002**
    - ✓ **Training of personnel** of co-operative departments and co-operative institutions.

## Way forward

- **Structural reforms:**
  - Weaker and inefficient societies should be wended and merged with strong and efficient societies.
  - **Promoting Multipurpose societies**
- Legislative Reforms for improving functioning of cooperative banks
- Complete Transparency in working
  - Cooperative societies can be **brought under the purview of the Right to Information Act**.
  - The eligibility criteria for becoming the director of the society may **include the mandatory provision of declaration of assets every year**.
  - All the documents along with the remarks/notes etc. of the persons dealing with any financial matter being uploaded on the website of the society.

## Conclusion

Success of cooperatives would mean success of best hope for the marginalized section of India particularly rural India. Therefore, it is necessary to ensure the autonomous and democratic functioning of co-operatives, by ensuring the accountability of management to the members and other stakeholders.

## 2. ISSUES AND CHALLENGES PERTAINING TO THE FEDERAL STRUCTURE

### 2.1. FEDERALISM

## FEDERALISM AT A GLANCE

### Federalism: Idea and its features

Federalism refers to the constitutionally allocated distribution of powers between two or more levels of government—one, at the national level and the other, at the provincial, state or local level.



#### Key features

- ⊖ Consent of both levels is required for a key decision.
- ⊖ Financial Autonomy of each with designated sources of revenue.
- ⊖ Dual objectives of promoting unity and regional diversity
- ⊖ Two or more Tiers of Government
- ⊖ Each Tier has its own jurisdiction
- ⊖ Constitutionally guaranteed Existence and Authority of each tier.



#### Evolution of Federalism in India

- ⊖ The **Government of India Act, 1935 envisaged the federal scheme** and first time introduced the federal concept in India.
- ⊖ However, they **refrained from creating a fully federalised political system in India** at the time of the country's independence because of their fear of further disunity and secessionist tendencies.
- ⊖ One key characteristic of India's federalism is its **asymmetric nature**. The main political units in India are the Centre and the States. But there are other forms, too, all set up to **address specific local, historical and geographical contexts**.

**Post-independence, India's federalism has evolved in phases:**

- ⊖ **First Phase: One-party Federalism (1952-1967):** A **consensual model of federalism** with the co-existence of national and state leadership in their respective realms.
- ⊖ **Second Phase: 'Expressive' Federalism (1967-1989):** **Conflictual federal dynamics** between the Congress-led centre and the opposition parties-led state governments.
- ⊖ **Third Phase: Multiparty Federalism (1989-2014):** The rise of a number of regional parties **led to the beginning of the era of coalition politics**.
- ⊖ **Fourth Phase: The return of 'Dominant Party' Federalism (2014-present).**



#### Trends which showcase weakening federalism

- ⊖ **Increased Centralising Tendencies:**
  - Altercations in the division of Union, State and Concurrent lists.
  - Events in relation to Delhi and Jammu and Kashmir.
  - Objections in association with passing of Farm laws.
- ⊖ **Rising Regionalist Demands:**
  - Growing regional identities culminating to **secessionist tendencies**.
  - Growing regional powers may affect foreign policy.
- ⊖ Arbitrariness in **misusing the office of the governor** has been a subject of debate.
- ⊖ **Economic Incompatibilities of the states** with regard to economic and financial capabilities.
- ⊖ **Developmental narratives like 'one nation, one market', 'one nation, one ration card', 'one nation, one grid'** may undermine the federal principle.
- ⊖ **Fiscal relations between the union and state governments have undergone significant changes** as a result of creation of the NITI Aayog and the introduction of the Goods and Services Tax.



#### Trends which showcase counterbalancing

- ⊖ **Strengthening horizontal federalism** with advent of ideas like **competitive and cooperative federalism**.
- ⊖ **Financial Devolution Reforms** i.e., increasing the financial space for states and making distribution of resources fairer and more effective.
- ⊖ **Vital role played by state governments** on the ground in managing the COVID-19 crisis and Union understandably ceding adequate space and autonomy.
- ⊖ Increased federal character due to **creation of NITI Aayog and the GST Council**.



#### Reforms needed to strengthen the federal structure

- ⊖ There is a **need to relook the distribution of powers under the seventh schedule** of the Constitution.
- ⊖ **Effective utilisation of federal bridging institutions** such as NITI Aayog and the Inter-state council for effecting mutual trust between the State and Central leadership.
- ⊖ **Strengthening the Office of Governor** by implementing the recommendation suggested by commissions including the famous Sarkaria and Punchhi commission.
- ⊖ Provisions for a **higher devolution to the state and local governments** in order to fiscally empower them to achieve state-specific targets of fiscal deficit and to attain the goals of the national development.
- ⊖ **Gradually move away from a one-size-fits-all model towards a flexible model of Federalism** that allows each state to have its own model of governance, bureaucracy and local governments.

## 2.2. ONE NATION ONE LANGUAGE

### Why in news?

Recently, Union Home Minister urged the **use of Hindi as the lingua franca**, rather than English, in inter-State communication.

### About Hindi Language

- Hindi belongs to the **Indo-Aryan branch of Indo-European family of languages**. It is a **descendant of Sanskrit**, which is an ancient Indian language.
- In 1949, **Constituent Assembly adopted Hindi**, along with English, as **Official Language of Union of India**.
- In 1950, Constitution of India **declared Hindi in Devanagari script** as Official language of India **under Article 343**.
- In 1963, **Official Languages Act was passed**, which provided that English 'may' still be used along with Hindi for official communication.
- At present, **Eighth Schedule** of Constitution **specifies 22 languages including Hindi**.

#### Hindi: An option for 'One nation, One language'

- **Widely spoken:** As per 2011 linguistic census, Hindi is most widely spoken by **52.8 crore individuals, or 43.6% of population**, followed by Bengali and Marathi.
  - Also, Hindi is **3rd most spoken language of the world in 2019** with 615 million speakers.
- **National identity:** Hindi was adopted by Indian leaders as a symbol of national identity during the struggle for freedom.
  - **Mahatma Gandhi used Hindi to unite India** and hence the language is also known as the **"Language of Unity"**.
- **Medium of instruction:** As per Unified District Information System for Education Plus (USIDE+), nearly **42% of children in country study in Hindi-medium schools**, followed by English (26%) and Bengali (6%).

### Debates on the issue of One Nation One Language

- **Understanding the Relation Between Language and Identity:** Language is intrinsically tied to identity, and this often includes the identity of a nation.
- **Language and Nationalism:** Language stands alongside architecture, flags and literature as an emblem of nationhood. The relationship between language and nation is a fundamental one, as language is often used in the very creation of nations.

Need of one nation and one language	Issues with one nation and one language
<ul style="list-style-type: none"> <li>• <b>Brotherhood spirit:</b> Bring together Indian Diaspora living around the world and reduced the gap between North and South India.</li> <li>• <b>Administrative efficiency:</b> One language can <b>address the issue of language becoming a barrier</b> to understand people's aspirations and needs.</li> <li>• <b>Enhance Service delivery:</b> For example, in healthcare, language barrier can lead to misdiagnosis; one language can overcome such issue and ensure quality care and patient safety.</li> <li>• <b>Saves Money and time:</b> Having one language saves government money and time that would have been spent translating various public documents as well as offering translation services.</li> <li>• <b>Promotes cooperation:</b> It <b>promotes understanding and economic cooperation</b> and facilitates communication of ideas, values and beliefs, which results in less misunderstandings among people of different regions and cultures.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Against diversity:</b> According to census 2011, there are 19,569 mother tongues in India, thus imposing one language is against the principle of diversity.</li> <li>• <b>Federal issue:</b> As per 2011 Census, people in only 12 out of 36 states and UTs had chosen Hindi as first choice for communication. Thus, imposing Hindi as language is <b>against idea of cooperative federalism</b>.</li> <li>• <b>Pluralistic Society:</b> Language represents a nation has roots in colonialism and is <b>not in tune with Indian history, culture and civilization</b> as India has always been a multilingual society.</li> <li>• <b>Secessionist tendency:</b> Imposition of One language has historically led to <b>division of a country</b>. For instance, <b>imposition of Urdu on East Pakistan</b> was major reason behind creation of Bangladesh as a nation.</li> <li>• <b>Economic Impact:</b> One language idea will be economically disastrous as it will slow down migration, reduce capital flow and increase regional imbalances.</li> <li>• <b>Threat to minority language:</b> For instance, in Andaman and Nicobar Islands, <b>death of Boa, the last speaker of Bo language</b> has led to <b>extinction of Bo language</b> with the history of 7000 years.</li> </ul>

### Way forward

- **Three language formula:** It was first devised by central government in 1968 and incorporated in NEP. All State governments should adopt and implement three language formula i.e. **Hindi, English and Regional language** to bridge the language gap.



- **Respect diversity:** India is a country of different languages and every language has its own importance. Article 29 states that any class of citizens who have their own specific language, script and culture will have the right to protect it.
- **Strengthen local languages:** To preserve ancient philosophy, culture and memory of freedom struggle, it's important to strengthen local languages simultaneously without being biased towards any one language.

## 2.3. REFORM IN SEVENTH SCHEDULE

### Why in news?

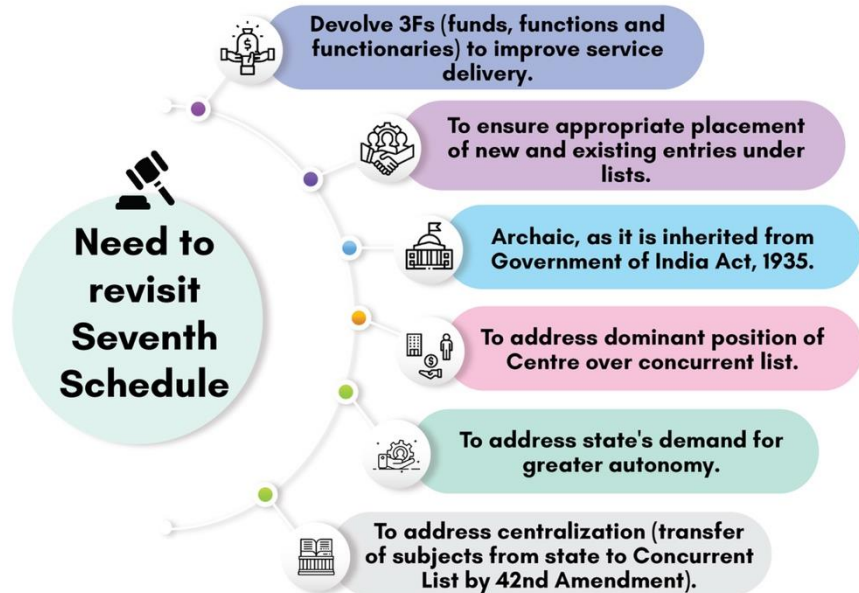
Recently, many experts advocated revisiting the seventh schedule of the Indian constitution.

### About Seventh Schedule

- Seventh Schedule under **Article 246** provides **distribution of powers and responsibilities** between the state and central governments into three lists (Union List, State List and Concurrent List).
- Union list details the **subjects on which Parliament may make laws** while **state list** details those under the **purview of state legislatures**.
  - **Concurrent list** has subjects in which **both Parliament and state legislatures have jurisdiction**.
  - However, the Constitution provides **federal supremacy to Parliament on concurrent list** items in case of a conflict.
- **Article 248** confers **residuary powers on the Parliament**.
  - Residuary powers refer to the **power of jurisdiction upon subjects that are not mentioned in the state or concurrent list**.
- As per **Sarkaria Commission**, concurrent list subjects are neither exclusively of national concern nor of local concern and hence occupy a constitutional 'grey' area.

### Rationale of keeping Seventh Schedule in the Constitution

- **Ensuring Unity and Integrity of India:** Due to partition, there was an **emphasis on national integration** and only a strong central government could protect the nation against external threats and invasions and maintain international relations.
- **Enabling responsive governance:** Local governments under the state list are seen as encouraging political participation, bolster rights of minorities and communitarian values.
- **Achieving Balanced economic development:** Seventh Schedule favours the Union Government to **ensure economic development at the national level** in a coordinated manner and bring **parity in socio-economic development** across states.
- **Promoting Diversity:** Allocation of legislative powers to state can promote cultural autonomy, given the unique diversity in India with respect to its **geographical area, population and number of languages spoken**.
- **Others:** As per Joint Committee Report 1934, it was necessary to ensure that provinces remained truly autonomous to determine their jurisdiction independently in order to **bolster spirit of cooperation between union and states**.
- **Centre State Conflict:** Federal tensions in post-independence India such as **state demand for greater autonomy**, further highlight the need for reforming the Seventh Schedule.



### Way forward

- **Commission:** Constitute a **High-Power Commission**, consisting of eminent lawyers and jurists with administrative experience to examine the entries of Lists I and III in the Seventh Schedule and suggest redistribution of the entries.
- **Institutional framework:** Consideration for a consultative forum for credible policy dialogue between the Centre and the states to give a **boost to cooperative federalism**.
- **Sarkaria Committee Recommendations (1998 Report):**
  - **Residuary Power:** Residuary powers be **transferred from the Union List to the Concurrent List**, except for the residuary power to impose taxes which should be retained in the Union List.
  - **Concurrent List:** States should be **consulted by the Centre** before exercising power over Concurrent List.
- **Periodic review:** Undertake a periodic review of the lists, focusing on removal of outdated entries, addition of new entries, and appropriate placement of existing entries.
- **Transfer of Entries:** As per **M.M. Punchhi Commission, 2010**, Centre should only transfer those subjects to Concurrent List which are necessary for ensuring uniformity in basic issues of national policy.

## 2.4. GOVERNOR-STATE RELATIONS

### Why in news?

Various instances of friction between Governor and state governments have been seen in recent years.

### Causes of Governor- State frictions friction

- **Lacunae in appointment/removal process:** Governor have become **political appointees** and there is **no provision for impeaching** the Governor, who is appointed by President on **Centre's advice**.
- **No security of tenure:** Governor has a **5-year tenure**, though he can be removed by the President **at any time**.
- **No time limit for granting assent to a State Bill:** It has been held in **Purshothaman v. State of Kerala case (1962)**, under Article 200, there is **no time limit** for granting the assent and lack of **guidance** regarding matters he should **accord or withhold assent**.
- **Legitimacy:** Since Governor is **not elected**, his power to **undo the will of the Legislature** by just declaring that he is withholding his assent, raises **concerns of legitimacy**. Additionally, **no court is entitled to go into the justification** of such withholding.
- **Lack of guidelines to exercise powers:** In Constitution, there are no guidelines for exercise of Governor's powers, including for **appointing a CM or dissolving Assembly** and thus Governors have been accused of **acting on behest partisan politics**.
- **Lack of mechanisms to resolve differences:** There are no provisions laid down regarding how **the Governor and the state** must engage publicly when there is a **difference of opinion**. The management of differences has traditionally been guided by **respect for each other's boundaries**.

### FEW RECENT INSTANCES OF GOVERNOR- STATE FRICTIONS



TN Governor returned to **Assembly Speaker** a Bill **seeking to dispense with NEET-based admissions** for UG medical degree courses.



Kerala Governor **turned down a request to summon a special sitting** of Assembly to debate three central farm laws.



J&K Governor **dissolved the Assembly** amid indications that various parties were coming together to form the government.



Arunachal Pradesh **Governor changed the schedule of a session** and set its agenda without a recommendation from Chief Minister.

### Recommendations of Various Commissions

<b>Sarkaria Commission</b>	<ul style="list-style-type: none"> <li>• The procedure of <b>consulting the chief minister in appointment</b> of state governor should be prescribed in Constitution itself.</li> <li>• The governor's <b>term of five years</b> in a state <b>should not be disturbed</b> except for some extremely compelling reasons.</li> </ul>
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	<ul style="list-style-type: none"> <li>The governor <b>cannot dismiss</b> the council of ministers so long as it <b>commands a majority in the assembly</b>.</li> <li><b>Article 356</b> (President's Rule) should be <b>used very sparingly</b>, in extreme cases as a last resort when all the available alternatives fail.</li> </ul>
<b>Punchhi Commission</b>	<ul style="list-style-type: none"> <li>Governors should be given a <b>fixed tenure</b> of five years and their <b>removal should not be at the will</b> of the Government at the Centre.</li> <li>The <b>procedure laid down for impeachment</b> of President, <i>mutatis mutandis</i> can be <b>made applicable for impeachment of Governors</b> as well.</li> <li><b>Exercise of discretionary power</b> must be dictated by <b>reason</b>, activated by <b>good faith</b> and tempered by <b>caution</b>.</li> <li>In respect of bills passed by the state legislature, the Governor should take the <b>decision within six months</b> whether to grant assent or to reserve it for consideration of the President.</li> </ul>
<b>National Commission to Review the Working of the Constitution (NCRWC)</b>	<ul style="list-style-type: none"> <li>The president should appoint the governor of a state <b>only after consultation with the chief minister</b> of that state</li> <li>The question whether the ministry in a state has <b>lost the confidence</b> of the assembly or not should be <b>tested only on the floor of the House</b>.</li> </ul>

### Important Judicial Pronouncements: Guiding light vis-à-vis the Governor

<b>Bommai case (1994)</b>	<b>Rameshwar Prasad case (2006)</b>	<b>Nabam Rabia case (2016)</b>
<ul style="list-style-type: none"> <li>The question of state government <b>losing the confidence</b> of legislative assembly should be decided <b>on the floor</b> of the House.</li> <li>The power under Article 356 is an <b>exceptional power</b> and should be used <b>only occasionally</b> to meet the requirements of special situations.</li> </ul>	<ul style="list-style-type: none"> <li>A Governor cannot shut out <b>post-poll alliances</b> altogether as one of the ways in which a popular government may be formed.</li> <li><b>Unsubstantiated claims of horse-trading or corruption</b> in efforts at government formation cannot be cited as reasons to dissolve the Assembly.</li> </ul>	<ul style="list-style-type: none"> <li>SC held that Governor has <b>no discretion in matter of summoning the house</b> if the <b>Chief Minister enjoys majority</b> in the house and, therefore, is <b>bound to act on the advice</b> of the cabinet.</li> <li>Also, in case the Governor has reason to believe that the Chief Minister has lost his majority, a <b>floor test could be ordered</b>.</li> </ul>

## 2.5. CBI VS STATES

### Why in News?

Central Government told the Supreme Court that West Bengal government **does not have any "absolute" power to keep the CBI from investigating crimes inside the State**.

#### Other recent clashes between Centre & State

- Implementation of Centre-run schemes,
- Goods and Service Tax and
- Actions taken by central agencies like ED and Narcotics Control Bureau (NCB) etc.

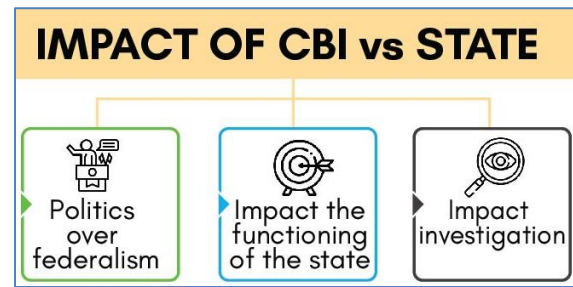
### More about News

- Centre was responding to suit filed by West Bengal Government against Union of India **under Article 131**, which deals with **original jurisdiction of SC**, where apex court deals with any dispute between Centre and a state
- State has challenged the CBI's jurisdiction to register FIRs and conduct investigations in State in numerous cases.
  - West Bengal said it had **withdrawn "general consent" to the CBI** in 2018 and CBI's actions were direct attack on federal structure of governance.
- Nine states have currently withdrawn general consent** to the CBI i.e. Maharashtra, Punjab, Rajasthan, West Bengal, Jharkhand, Chhattisgarh, Kerala, Mizoram and Meghalaya.
- This recent clash arises the question on Cooperative Federalism in India and need **to ensure smooth functioning of federal system in India**.

### What aspects of federalism are affected with respect to CBI vs States tussle?

- Police:** State have exclusive power to make laws on '**Police**'- state subject. However, Delhi Special Police Establishment Act 1946 which establishes the CBI continues to function as a central agency carrying out its functions as '**Police**'.
  - Sections 5 and 6 of DSPE Act deal with extension of powers and jurisdiction** of special police establishment to other areas and requirement of consent of state governments.

- **General consent for the CBI**
  - Under DPSE Act, CBI must **mandatorily obtain the consent of state government** concerned before beginning to investigate a crime in a state.
  - The consent of state government can be **either case-specific or general**.
  - A “general consent” is normally given by states to **help the CBI in seamless investigation of cases of corruption** against central government employees in their states.
  - In absence of general consent, **CBI would have to apply to the state government in every case**, and before taking even small actions.
- **Extra territorial operation:** Concept of CBI is more advanced involving specialized information, technical knowledge whilst incorporating extra territorial operation.



### Why such issues emerge in a case of Cooperative Federalism in India?

Cooperative federalism is the horizontal relationship between union and states and shows neither is above the other. However, various issues have been emerging in ensuring Cooperative Federalism due to following reasons:

- **Concurrent jurisdictions:** Bodies like CBI, NCB etc requires in multi-jurisdictional crimes, yet its concurrence with the local police force and pre-emptions cause re-current federal issues.
- **Power tilted to Centre:** It is injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace.
- **Complexity of Article 131:** Over the years, SC has taken heterogeneous decisions on whether a state can challenge the Centre under Article 131.
  - **Ex:** Under Article 131, Chhattisgarh government challenged National Investigation Act, 2008 passed by Centre in spite of police being a state subject.
- **No body to foster coordination & conflict resolution:** As Inter-State Council Secretariat was set up within Ministry of Home Affairs, it ceased to be an independent body to foster coordination, manage intergovernmental bargaining and conflict resolution.
  - Presently, there is no independent institution to resolve Centre-state and inter-state issues.
- **Centralization of power creating friction:** Trust deficit between Centre and States is widening.
- **Different political parties:** When different political parties form governments at Centre and State, often their interests don't align.

### Way forward

- **Transparency and coordination among Centre and states:** There is need to be transparent about current macro-economic scenario and revisit revenue projections that offers strategic pathways for consultation with states.
- **Committee's Suggestions: Sarkaria and Punchhi Commission** recommended to cultivate cooperative federalism and suggested actionable steps such as:
  - **office of Governor should be apolitical**, and terms of his removal should be altered;
  - extending **the mandate of Inter-State Council** beyond advice and recommendations;
  - laying down guidelines to prevent misuse of **President's veto of legislation**;
  - **Include states** when Centre enters into any international agreements.
- **Giving Fiscal space:** Gradual widening of fiscal capacity of states has to be legally guaranteed without reducing Centre's share.
- **Electoral reforms:** Creating a level playing field for regional political parties to facilitate more competitive political contest between national and regional political forces.
- **Specific recommendations for bodies like CBI:**
  - **Following European principle of subsidiarity**, framing definite grounds on which state governments can restrict general consent or transfer cases to CBI for higher-level investigation can aid in reducing the friction between central and state governments.
  - Giving **statutory recognition to CBI** will provide it with constitutional recognition independent of its existence from DPSE Act.

- A **comprehensive system involving the co-operation** of legislature, executive and judiciary can revamp and revive lost glory of CBI.

## 2.6. INTER-STATE BORDER DISPUTES IN INDIA

### Why in News?

Recently, the Assam and Meghalaya government has agreed to settle the long pending **inter-state border disputes** in at least **six areas**.

### More on News

- Meghalaya was carved out of Assam, and it became a **full-fledged state in 1972**.
- With over **884 km** of border, there are **12 points of dispute** between the two states including Langpih, Boko etc. in **Kamrup, Kamrup Metropolitan** and **Hailakandi** districts.
- These disputes stemmed from the Meghalaya government's refusal to accept the **Assam Reorganisation (Meghalaya) Act of 1969**.
- The recent decision came after the formation of **special regional committees** by both states to resolve the issue.



### Indian Administrative Divisions and its Inter-state border disputes

**State Reorganization Commission (SRC), 1953** divided Indian Territory into **14 states** and **6 UTs** on linguistic and other basis. Today, through subsequent reorganizations, the total number of administrative divisions in India is **28 states** and **8 UTs**. This division is not without cracks in certain borders-

- Reorganization of the State of Assam, starting from Nagaland in 1963 gave rise to **4 inter-state border disputes** in Northeastern region, including **Assam-Meghalaya dispute**-
  - **Assam-Nagaland dispute** over Naga Hills and all Naga-dominated area in North Cachar and Nagaon districts, which were part of Naga territory under 1866 notification from British.
  - **Assam-Mizoram dispute** over boundaries in southern Assam's Barak Valley and the Lushai Hills, based on two British-era notifications of 1875 and 1933 with Mizoram demand on boundary as decided in 1875.
  - **Assam-Arunachal Pradesh** dispute over forested tracts in the plain areas of border.
    - ✓ Both states agreed to **set up district-level committees headed by cabinet ministers** to end the dispute in a time-bound manner.
- Apart from it, some other inter-state border disputes also exist in India, either **active** or **dormant**, such as:



Active	Dormant
<ul style="list-style-type: none"> <li>• <b>Haryana-Himachal Pradesh over Parwanoo region near Panchkula,</b></li> <li>• <b>Maharashtra-Karnataka over Belgaum district with a large Marathi-speaking population.</b> It was part of <b>Bombay presidency</b> before coming under <b>Karnataka</b> in 1956, and</li> <li>• <b>Himachal Pradesh-Ladakh over Sarchu,</b> lying along Leh-Manali highway.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Odisha-West Bengal</b> had issues in the past along its mainland boundaries and over <b>Kanika Sands Island</b> in the Bay of Bengal,</li> <li>• <b>Haryana-Punjab</b> over Chandigarh,</li> <li>• <b>Karnataka-Kerala</b> over Kasaragod, part of Kerala with many Kannada-speaking people,</li> <li>• <b>Gujarat-Rajasthan</b> over Mangadh Hill.</li> </ul>

### Consequences of Inter-state disputes

<b>Social</b>	<ul style="list-style-type: none"> <li>• Violence <b>between States.</b> E.g. recently, the <b>Assam-Mizoram</b> dispute turned into a <b>violent clash</b> with the death of at least 5 police personnel.</li> <li>• Threat to Social Harmony in the region <b>due to damage to the social fabric of society.</b></li> </ul>
<b>Economical</b>	<ul style="list-style-type: none"> <li>• <b>Lack of Growth and Development</b> in the disputed regions.</li> <li>• <b>Unwanted cost escalations</b> for people and businesses due to <b>additional security deployment at disputed borders.</b></li> </ul>
<b>Political</b>	<ul style="list-style-type: none"> <li>• <b>Domino effect</b> or chain reaction at other disputed borders or in other inter-state disputes such as river water, migration of people etc. due to <b>trust deficit between states.</b></li> <li>• <b>Rise of secessionist tendencies</b> and groups which pose a threat to internal security. For instance, it can lead to <b>confluence of groups with enemies</b> of India including hostile neighbors.</li> </ul>

### Way Forward

- **Set up State committees** to work with Survey of India and other neutral agencies for land surveys. The local communities can also be engaged in this demarcation of borders.
- **Maintain peace and tranquility along disputed areas** by limited presence of police personnel and use of technology like **UAV and satellite imagery** for vigilance.
- **Creating no-man's land** along the border and remove the encroachments from both sides. It curtails economic and social interests behind the dispute and help to devise a **"no lose" (non-zero sum)** solution to territory dispute.
- **Frequent meetings of Inter-State Councils** and **Zonal Councils** for **convergence of interests** between states and suggest **institutional solutions** to benefit both by dispute resolution.
- **Time-bound resolution of border dispute cases** and mechanism to implement its orders or recommendations of court-monitored commissions/mediators or tribunals.
  - For instance, **tribunals** can be established to hear inter-state border disputes and interpret the old legal documents (e.g. in Assam-Mizoram dispute) to reach a solution.
- **Creation of conducive environment by Union Government** to facilitate the coming together of states, based on the **spirit of cooperative federalism**, for agreement on mediation or implementing the existing recommendations from committees or **Joint Administration.**
- **Political efforts:** Though an ad hoc measure, but national parties could use their party machinery to reach a **political understanding**, helping to avoid its repercussions in social and economic sphere, keeping the boundaries only on land rather than to be drawn in people minds.

## 2.7. INNER LINE PERMIT

### Why in news?

Recently, Supreme Court sought Centre and Manipur State government's response on a **plea challenging the constitutional validity of Inner Line Permit (ILP) system extension in Manipur.**

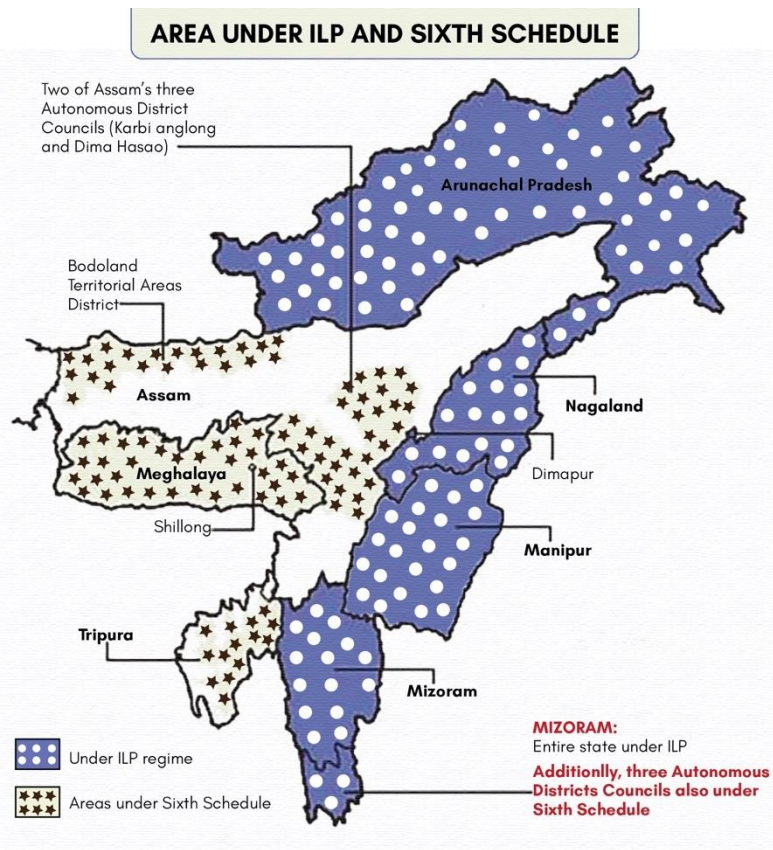
### More on news

- The petition challenged the **decision of Centre in 2019 to extend the ILP system in Manipur.**
- The plea contended that **ILP provides unrestrained power to the state to restrict entry and exit of non-indigenous people** or those who are not permanent residents of Manipur.
- As per plea, ILP **violates the fundamental rights** of the citizens guaranteed under **Articles 14, 15, 19 and 21.**

### About Inner Line Permit

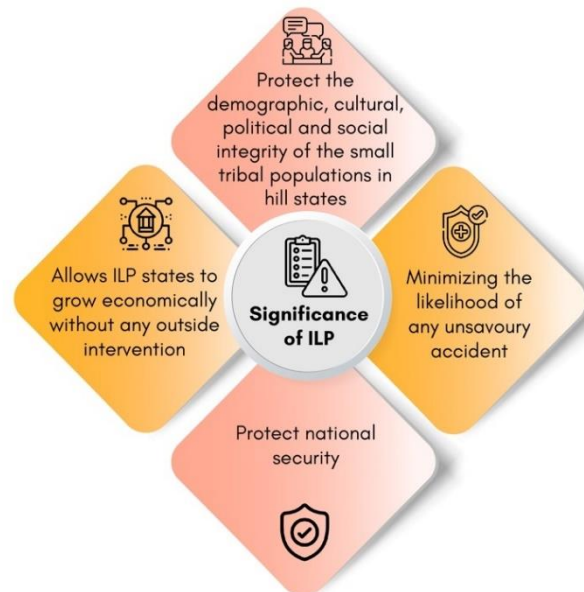
- ILP is an **official travel document or permit granted to outsiders for travel** to protected areas for a limited period.

- Manipur is the fourth State after **Arunachal Pradesh, Nagaland, and Mizoram** where the ILP regime is applicable.
- An ILP is **issued by concerned state government**. Also, provisions of **Citizenship Amendment Act would not be applicable to ILP areas**.
- Different types of permits are provided — **for tourists, for tenants and for other employment purposes, based on the period of stay**.
- **Foreigners need a Protected Area Permit (PAP)** to visit tourist places which are different from ILP needed by domestic tourists.
- It was introduced by British under **Bengal Eastern Frontier Regulation (BEFR), 1873**.
  - British framed regulations **restricting the entry and regulating the stay of outsiders** in designated areas to protect the Crown’s own commercial interests by preventing “British subjects” (Indians) from trading within these regions.
  - In 1950, **Indian government replaced “British subjects” with “Citizen of India”** to address local concerns about protecting interests of indigenous people from outsiders belonging to other Indian states.



**Impact of ILP**

- **Economic Impact** by imposing restrictions on entry of ‘outsiders’ into these hill states, there are apprehensions that **tourism gets affected and local economy is not able to achieve its potential**.
- **Scope of error** in issuing these documents has been observed due to human intervention, which causes inconvenience to the visitors.
- **Fears of marginalization** such as in Meghalaya, where a sizable chunk of non-tribal population also resides. There is fear psychosis among the non-tribals that their interests will be overlooked, if the ILP is implemented



**2.8. SPECIAL CATEGORY STATUS**

**Why in news?**

Recently, **Special Assistance Measure (SAM)** was extended to **Andhra Pradesh** in lieu of Special Category States Status on the request of the State government.

**More on news**

- SAM was extended as per obligation emanating from **Andhra Pradesh Reorganisation Act, 2014**, the recommendations of the **Finance Commissions, NITI Aayog report**.

- It will be provided by **way of repayment of loan and interest for the Externally Aided Projects (EAPs) signed and disbursed** during 2015-16 to 2019-20 by the State.

### About Special Category Status (SCS)

- SCS is a **classification given by Centre to assist in development** of some states that are characterized by a number of features necessitating special consideration (See infographics).
  - In 1969, concept of SCS was first introduced on **recommendations of fifth Finance Commission**.
  - Jammu & Kashmir** was the first state to get SCS.
  - Over the years, more **states were added namely**, Assam, Nagaland, Arunachal Pradesh, Himachal Pradesh, Manipur, Meghalaya, Mizoram, Sikkim, Tripura and Uttarakhand.
- Constitution does not include any provision for categorisation** of any State in India as SCS state.
  - However, a wide range of provisions are available to as many as 11 states that have been listed under Articles 371, 371-A to 371-H, and 371-J.
- After formation of NITI Aayog, **14th Finance Commission** recommendations were implemented and effectively **removed the concept of SCS**.
  - 14th Finance Commission **restricted SCS only to north-eastern and three hilly states**.
  - Earlier, **decision to grant SCS** lies with **National Development Council**, erstwhile Planning Commission body, but **now it is decided by central government**.
- Apart from Andhra Pradesh, **Bihar, Odisha, Goa and Rajasthan had demanded SCS status but they have not been granted** the same as they did not meet the criteria.



### Benefits states confer with special category status

- Central government bears **90% of state expenditure** on all centrally-sponsored schemes and external aid while **rest 10 percent is given as loan to state at zero percent rate of interest**.
- Unspent money does not lapse** and is carried forward.
- States with SCS are exempted** from customs duty, corporate tax, income tax and other taxes to attract investment.
- 30 percent of Centre's gross budget** goes to special category states.
- SCS states can avail the **benefit of debt-swapping and debt relief schemes**.

### Lacunae in the working of Special Category status

- Assigning SCS criteria:** Lack of consent among states on criteria used to assign SCS status to a state has been a persistent issue.
- Economic Progress:** Data reveals that even after awarding SCS states like Jammu and Kashmir, Uttarakhand etc. they still **lag behind non category states** like Haryana, Punjab etc.
- Increased allocation:** Amount of proceeds that states receive has increased (42%) after 14th finance commission. So, the structure does not seem to have any specific relevance in present context.
- Pandora Box:** Considering special status to any new State will result in demands from other States and dilute the benefits further.
- Debt sustainability:** Outstanding guarantee of the State governments pose a challenge to Debt Sustainability in a situation when the borrower defaults.
  - The outstanding guarantee as a percentage of GSDP are 20 percent in Jammu and Kashmir, 10 percent in Himachal Pradesh.

### Difference between SCS and special status

- Constitution provides special status through an Act** that has to be **passed by 2/3rds majority** in both houses of Parliament whereas SCS is granted by NDC which is an administrative body of the government.
- Special status empowers legislative and political rights** while SCS deals only with economic, administrative and financial aspects.
- For example, **J&K enjoyed special status as per Article 370 and also SCS**. But now, **Article 35A has been scrapped** and it has become a union territory with legislature, **SCS doesn't apply to J&K anymore**.



### Way forward

- **Criteria:** There should have been a general consensus among states related to principle used for granting the SCS.
- **Economic policy:** Benefit of SCS may act as a stimulus but rest depends on the individual state policy, thus it's important to follow sound economic policy.
- **Capacity:** States must understand their industrial strengths and create a policy environment to leverage their exclusive resources instead of relying on Centre's support.

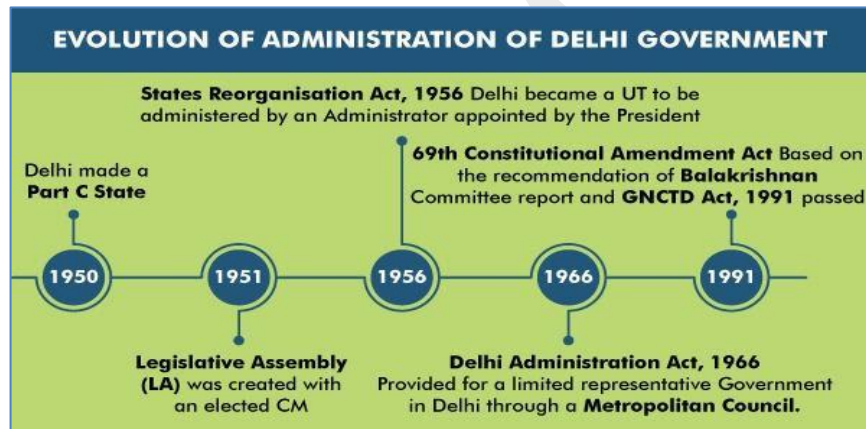
## 2.9. GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ACT (GNCTD) 2021

### Why in news?

Recently, Supreme Court sought Centre's response on a petition filed challenging the sweeping amendments to the Government of National Capital Territory of Delhi (Amendment) Act carried out by the Centre last year.

### Need of the Law

- 2021 Act amends GNCTD Act, 1991 and gives certain powers and responsibilities of the Legislative Assembly and the Lieutenant Governor (LG), in line with the constitutional scheme of governance of NCT.
- The Centre stated that there was no structural mechanism within the 1991 Act to ensure time-bound implementation of the rules.
  - Also, the law gives no clarity about what proposal or matters need to be taken up with the LG before issuing any order.
- The Centre has also stated that this amendment has been brought to give effect to the "interpretation made by Hon'ble Supreme Court in Government of NCT of Delhi v. Union of India (UoI) 2018."



### About the 2021 Act

Specification	GNCTD (Amendment) Act, 2021	Govt of NCT of Delhi Vs UoI, 2018
Meaning of "government"	<ul style="list-style-type: none"> <li>• The term "government" in any law made by the Legislative Assembly shall mean the L-G.</li> </ul>	<ul style="list-style-type: none"> <li>• The L-G would be bound by the aid and advice of the Council of Ministers (CoM) in matters that were not directly under the control of the L-G.</li> </ul>
L-G's concurrence on executive orders	<ul style="list-style-type: none"> <li>• The L-G's opinion shall be obtained before the government takes any executive action based on decisions taken by the Cabinet or any individual minister.</li> </ul>	<ul style="list-style-type: none"> <li>• Barring police, public order and land the L-G's concurrence is not required on other issues.</li> <li>• However, the decisions of the CoM will have to be communicated to the L-G.</li> </ul>

### Other provisions of the 2021 Act

- **Elected government's rulemaking:** Legislative Assembly shall not make any rule to enable itself or its Committees to consider the matters of day-to-day administration of the Capital or conduct inquiries in relation to the administrative decisions. Any of the rule made in contravention of this provision before the commencement of the GNCTD Act, 2021, shall be 'void'.

#### Article 239AA

- 69<sup>th</sup> Amendment 1991 inserted the Article 239AA in the constitution. It granted special status to Delhi among Union Territories (UTs) by providing Legislative Assembly and a Council of Ministers responsible to such Assembly.
- **Public order, Police and Land** in NCT of Delhi fall within the domain of Union Government.
- For remaining matters of State List or Concurrent List, in so far as any such matter is applicable to UTs, the Legislative Assembly shall have power to make laws for NCT of Delhi.

- **LG's assent to Bills passed by the Legislative Assembly:** The L-G will **not assent to and pass on to the President** for consideration any Bill which “**incidentally covers any of the matters which falls outside the purview of the powers conferred on the Legislative Assembly**”. The L-G has the power to refer any matter, over which there is a disagreement with the elected government, to the President under Article 239AA (4).

**Way Forward**

- **Consensus based approach:** The Act could be referred to a **select committee** and not passed in haste. Evolving consensus in such matters would be consistent both with federalism as well as the high principles laid down by the Supreme Court.
- **Mixed balance for Delhi:** Real and substantive power lies with the elected representatives in a democracy and they owe responsibility to the legislature.
  - A **mixed balance** has to be struck considering the special status of the Delhi and **fundamental concerns** as Delhi being the National Capital.
- **Uphold democratic and other principles:** Act must uphold the principles of **participative democracy, cooperative federalism, collective responsibility** to the House and, above all, constitutional morality.



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### 3. PARLIAMENT AND STATE LEGISLATURES: STRUCTURE AND FUNCTIONING

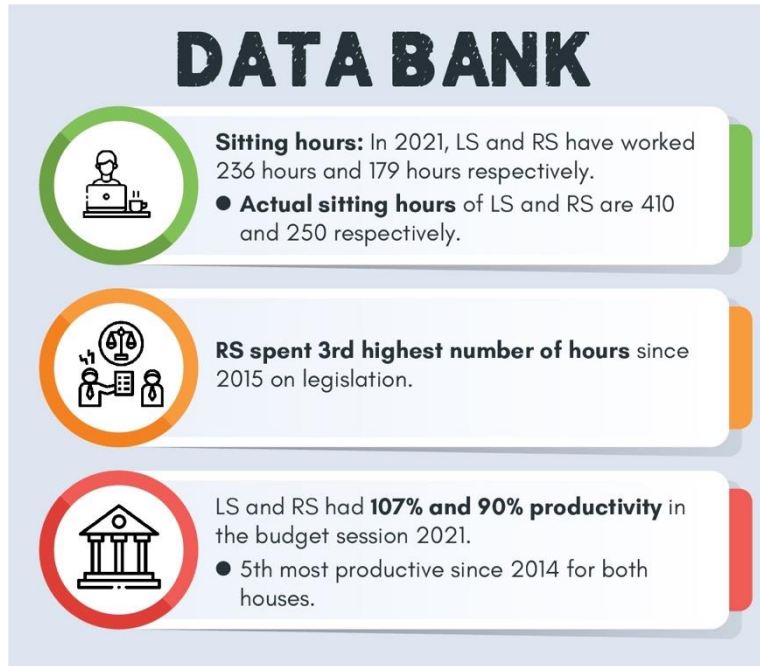
#### 3.1. DECLINING PARLIAMENTARY PRODUCTIVITY

##### Why in news?

Winter Session of Parliament adjourned with Lok Sabha's productivity at 82% and Rajya Saba at 48%.

##### Recent instances of reduced Parliament Productivity

- Absence of Bill scrutiny:** During budget session 2021, 13 Bills were introduced, and not even one of them was referred to a parliamentary committee for examination.
  - For example,** hasty passage of GNCTD (Amendment) Bill, 2021, Mines and Minerals (Development and Regulation) Amendment Bill, 2021, etc.
- Declining trend in referring bills to the parliamentary committees:** Number of bills referred to committees has dipped sharply to just 27% in 16th Lok Sabha and 11% in 17th Lok Sabha (2019-present).
- Absence of Deputy Speaker:** In 17<sup>th</sup> Lok Sabha session, there has been lot of absence of a Deputy Speaker, which is against the Article 93 of the constitution.
- Reducing attendances:** Average attendance in the Lok Sabha dipped to 71% and in the Rajya Sabha to 74%.
- Lack of discussion of Union Budget:** Lok Sabha, in recent budget session, had listed the budget of just five Ministries for detailed discussion and discussed only three of these.
  - 76% of the total Budget was approved without any discussion.



##### Why it is important to ensure productivity of the parliament?

- Central role in Democracy:** Parliament has the central role in our democracy as the representative body that checks and balances the work of the government.

- **Examine Legislative proposals:** Parliament is expected to examine all legislative proposals in detail, understand their nuances and implications of the provisions, and decide on the appropriate way forward.<sup>35</sup>
- **Fulfilling constitutional mandate:** To fulfil its constitutional mandate, it is imperative that Parliament functions effectively by imbibing the **spirit of 3Ds i.e., Debate, Discussion and Deliberation.**
  - **Articles 75** provides that Council of Ministers shall be collectively responsible to the Lok Sabha.
- **Representative body:** Being a diverse country, a well functioned Parliamentary system in India must uphold the grounds of **representativeness, responsiveness and accountability.**

**How Parliamentary productivity can be improved?**

- **Increase the number of sittings:** National Commission to Review the Working of the Constitution has recommended the **minimum number of sittings for Lok Sabha and Rajya Sabha be fixed at 120 and 100 respectively.**
- **Research support to Members of Parliament:** Institutional research support will allow committees to **examine issues that are technical in nature and serve as expert bodies** to examine complex policy issues.
- **Committee referrals:** Requiring that all bills and budgets are examined by committees and extend the tenure of committee members so as to fully utilise their technical expertise on a particular subject in legislative work.
- **Regular Monitoring:** There is a need to **formulate mechanism for regular assessment** of the committee performance.
- **Responsible Opposition:** Members must question, object and suggest alternative courses of action through reasoned and persuasive argument.
  - **Shadow Cabinet** allows for detailed tracking and scrutiny of ministries and assists MPs in making constructive suggestions.
- **Public feedback:** A widespread debate, over Parliamentary functioning in the country, must be undertaken by the government, which would encourage people’s participation in the long run.



Mains 365 - Polity & Governance

**3.2. RELEVANCE OF RAJYA SABHA**

**Why in news?**

Recently, talks have been going on around relevance of Rajya Sabha in recent times and rebalancing both the houses of Parliament.

**Background of Raja Sabha**

- **Origin of the Second chamber** can be traced to the **Montague-Chelmsford Report of 1918.**
- **Government of India Act, 1919** provided for the **creation of ‘Council of State’** as a second chamber.
  - This Council of States **comprised of mostly by nominated members** was a deformed version of second chamber without reflecting true federal feature.

Arguments in favours of Rajya Sabha	Arguments against Rajya Sabha
<ul style="list-style-type: none"> <li>• <b>Safety Valve of India’s Federal Policy:</b> Rajya Sabha institutionalizes the federal principles of power-sharing between the Centre and states and provides a platform to raise concerns of the states.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Not a representative body:</b> In 2003, an amendment to Representation of People’s Act 1952 has done away with the domicile requirement, thus defeating the whole purpose of creation of Rajya Sabha to represent states.</li> </ul>

<ul style="list-style-type: none"> <li>• <b>Review and Evaluation Role:</b> Rajya Sabha was created as a <b>revisionary house to keep a check on the hasty legislation</b> passed by the lower house under populist pressures.                     <ul style="list-style-type: none"> <li>○ When the ruling dispensation has a majority in the Lok Sabha, the <b>Rajya Sabha can prevent the government of the day exercising authoritarianism.</b></li> </ul> </li> <li>• <b>Deliberative Body</b> to debate over issues related to public importance.</li> <li>• <b>Representing the Vulnerable Sections:</b> To give representation to the minorities and vulnerable section of the society through an indirect form of election and give them a chance to get involved in the nation's law-making process.</li> <li>• <b>Experts:</b> Twelve members are nominated by the President of India from amongst persons having special knowledge or practical experience in literature, science, art and social service, thus <b>bringing diverse talent and expertise.</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Low attendance:</b> After getting nominated, members rarely participate in the working of the House.</li> <li>• <b>Delayed legislation:</b> Rajya Sabha has been <b>used by the opposition party to delay essential bills</b>, which deters the growth of nation. For example, Lokpal Bill was delayed by the Rajya Sabha.</li> <li>• <b>Decreased productivity:</b> Frequent disruptions of the house proceedings have led to a decreased productivity, waste of public money and time.</li> <li>• <b>Bypassing Rajya Sabha:</b> Laws are being passed without Rajya Sabha scrutiny thus defeating the very purpose of creation of Rajya Sabha as a revisionary chamber. For example, Aadhar Act was passed as Money bill.</li> </ul>
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### Way forward

- **Representation:** A federal arrangement can be devised to enable equal representation for each state.
- **Election:** Rajya Sabha members can be directly elected by the citizens of a state. This would reduce cronyism and patronage appointments.
- **Use of technology:** Make **Bio metric attendance compulsory**, and pay and allowances proportionate to attendance in order to address low attendance.
- **Parliament (Enhancement of Productivity) Bill, 2017:** The bill seeks for establishment of an effective system to prevent and address the decline in productivity of Parliament due to disruptions of sittings, by means of:
  - **Legal framework to fix the minimum number of days** (100 days as recommended by National Commission to review the working of the Constitution i.e. NCRWC) in a year.
  - **Introduction of special session** in addition to the existing three sessions.
  - Compensation for the hours unutilised due to disruptions.
- **Improve Nomination:** Better procedure of nomination to improve the quality of discussion in the House can be adopted.

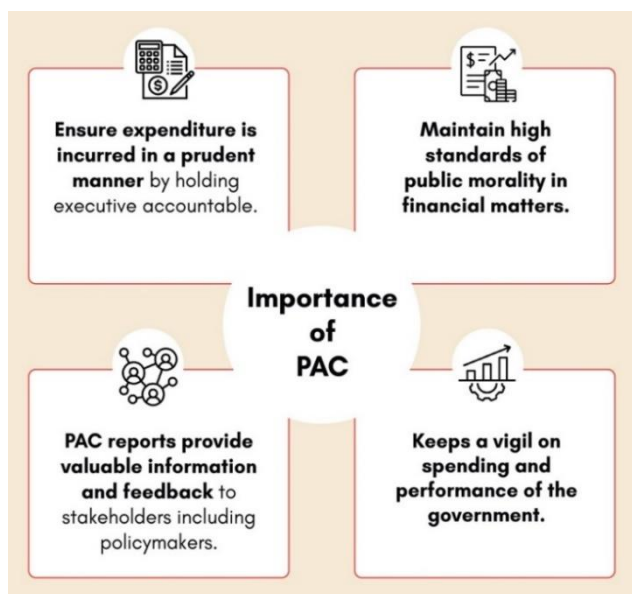
## 3.3. PUBLIC ACCOUNTS COMMITTEE

### Why in News?

Centennial celebrations of Public Accounts Committee (PAC) were held recently.

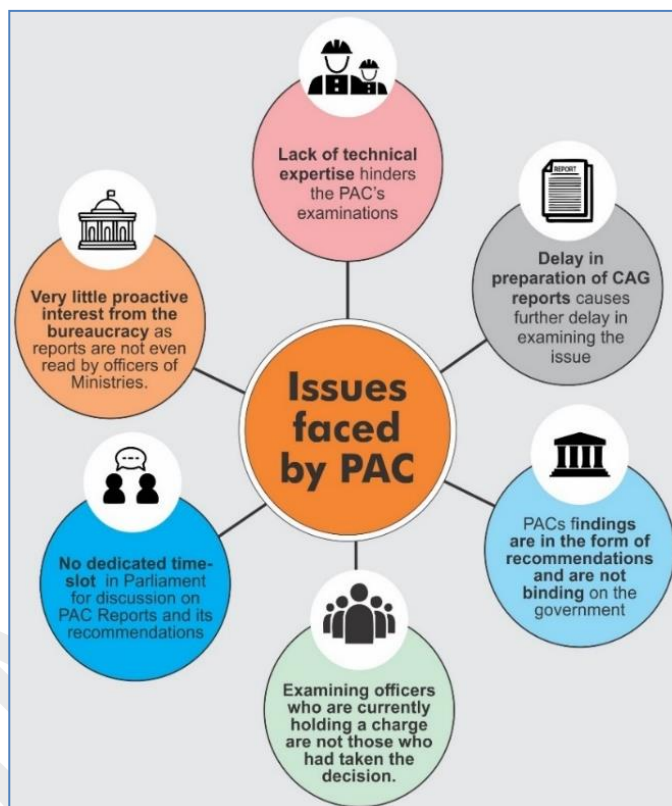
### About Public Accounts Committee (PAC)

- It is the **oldest Parliamentary Committee and was first constituted in 1921** under the provisions of **Government of India (GoI) Act of 1919** (in the wake of **Montague-Chelmsford Reforms**).
- The **Speaker is empowered to appoint the Chairman** of the Committee from amongst its members.
- It is **constituted by Parliament each year for examination** of accounts showing **appropriation of sums granted by Parliament** for expenditure of GoI, **annual Finance Accounts of GoI**, and such **other accounts laid before Parliament as Committee may deem fit** such as accounts of autonomous and semi-autonomous bodies.
  - Accounts of those of Public Undertakings and Government Companies which come under the purview of the Committee on Public Undertakings are **exempted**.



## Major Functions of PAC

- **Scrutiny and Examinations of Accounts:** It scrutinizes the Appropriation Accounts of GoI and reports of the CAG of India.
  - It examines the statement of accounts showing the **income and expenditure of State Corporations, trading and manufacturing schemes, projects and autonomous and semi-autonomous bodies.**
- **Regularisation of Expenditure by satisfying itself that**
  - The **amount shown in the accounts as having been disbursed was legally available for**, and applicable to, the service or purpose to which have been applied or charged.
  - **Expenditure conforms to the authority** which governs it.
  - **Every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.**
- **Others**
  - **Consider the report of CAG** in cases where the President may have required him to conduct an audit of any receipts.
  - **Discuss points of financial discipline and principle**, without getting concerned with questions of policy in the broad sense.



## Way forward for strengthening the functioning of PAC

- **Better relationship wrt CAG:** PAC should be consulted before the appointment of CAG and CAG should be made accountable to the legislature.
  - **CAG reports should be more current**, and their **examination should also be quicker** so that the issues are dealt quickly.
- **Wider ambit:** PACs should take up suo-motu cognisance of public issues and government's flagship programmes and examine financial wrong-doings.
- **Discussion in Parliament:** In each Session, at least two-and-a-half hours, should be allocated for discussion and debate on PAC recommendations vis-à-vis action taken by the Ministries.
- **Public opinion:** PAC, before finalizing their reports, should provide an opportunity to the members of public to give their reactions on the recommendations.
- **Binding recommendations:** PAC recommendations should be made binding on the government.
- **Help from external experts:** Services of experts should be availed by PAC on technical matters. Also, PAC should get the powers to examine the retired officials also.

## 3.4. DEPUTY SPEAKER OF LOK SABHA

### Why in News?

Recently, Delhi HC sought Lok Sabha Secretariat reply to a petition on the vacant post of deputy speaker for over 2 years.

### More about the Deputy Speaker and his election

- Speaker and Deputy Speaker are the **Presiding Officers** of the **Lok Sabha**.
- While the office of Speaker is vacant or during the absence of the Speaker from any sitting of the House, the **duties of the office shall be performed by the Deputy Speaker**.
- Under **Article 94**, the speaker resigns from his office by writing to the Deputy Speaker.
- Under **Article 93**, the House of the People shall choose two members of the House to be respectively **Speaker and Deputy Speaker** when the office becomes vacant.

- Though **no timeline on election** is provided under **Article 93**, being an important **constitutional office**, the election is usually held on next sitting after Speaker selection as President fixes date for Speaker election and after being elected the Speaker fixes the date for Deputy Speaker election.

#### Why has the office remained vacant?

- **Delay in date selection:** For 17<sup>th</sup> Lok Sabha, the date of elections for Deputy Speaker is pending even after more than two years of LS constitution in 2019.
- **Lack of opposition:** Deputy Speaker post (since **Morarji Desai Government**) is conventionally given to the biggest opposition party in the house, with few exceptions. As the **combined opposition lacks in strength to elect a member** of their choice in present LS, the choice for Deputy Speaker falls on the government of the day to either-
  - **Continue with parliamentary convention** and elect Deputy Speaker from biggest opposition party, or
  - **Reach settlement with any other party in LS** for choice of Deputy Speaker. E.g., in 16<sup>th</sup> Lok Sabha it was held by AIADMK.

#### Deputy Speaker in Legislative assembly

- Recently, during the political turmoil to the state of Maharashtra, the role of deputy speaker became crucial in the absence of regular speaker.
- **Under Article 178 of the Indian Constitution**, the Legislative Assembly shall choose one of its members as Deputy Speaker.
  - In the **absence of the Speaker or when the Office of the Speaker is vacant, the duties of the Speaker are performed by the Deputy Speaker.**
  - When the Deputy Speaker presides over a sitting of the Legislative Assembly, he has the same powers as the Speaker.
- The Deputy Speaker **holds office till the dissolution of the Legislative Assembly, unless he ceases to be a member of the Legislative Assembly** for any reasons specified in Article 179 of the Indian Constitution.

#### Conclusion

The vacancy in the post of deputy speaker not only affects the functionality of the Lok Sabha but also symbolically dents the importance of Parliamentary democracy. In this context, it is pertinent that the post of Deputy Speaker is filled at the earliest.

**फाउंडेशन कोर्स सामान्य अध्ययन प्रारंभिक एवं मुख्य परीक्षा 2023**

**इनोवेटिव क्लासरूम प्रोग्राम**

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

लाइव/ऑनलाइन कक्षाएं भी उपलब्ध

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# 4. STRUCTURE AND FUNCTIONING OF JUDICIARY AND OTHER QUASI-JUDICIAL BODIES

## 4.1. CRIMINAL JUSTICE SYSTEM

### CRIMINAL JUSTICE SYSTEM AT A GLANCE

A criminal justice system (CJS) is an organization that exists to enforce a legal code. Its objective are

- ⊖ Prevention of crime
- ⊖ Protection of vulnerable sections
- ⊖ Effective justice delivery
- ⊖ Free & fair trial



#### Components

- ⊖ Legal framework
- ⊖ Enforcement
- ⊖ Prosecutors
- ⊖ Adjudication
- ⊖ Correction



#### Approaches

- ⊖ DETERRENCE like Death Penalty.
- ⊖ RETRIBUTION like 1 year jail for robbery.
- ⊖ INCAPACITATION like House Arrest.
- ⊖ REHABILITATION like special houses under JJ Act.
- ⊖ REPARATION is victim centric like Victim's Compensation



#### Faultline

- ⊖ Laws have a colonial hangover
- ⊖ Low success rate in Extradition
- ⊖ Political Interference in Police
- ⊖ Lack of accountability
- ⊖ Huge burden & lack of staff, resources & mobility
- ⊖ Inadequate members of Prosecutors & witness care
- ⊖ Chronic Pendency of cases
- ⊖ High Judicial Vacancies
- ⊖ Poor Infrastructure
- ⊖ Overcrowded Prisons
- ⊖ Understaffed & under funded



#### Steps taken

- ⊖ Criminal law reforms by MHA
- ⊖ Enhancing autonomy of Police
- ⊖ Installation of CCTVs
- ⊖ Use of informative technology
- ⊖ Witness Production Scheme
- ⊖ CSS for Judicial Infrastructure
- ⊖ Setting up of FTCs & Digitisation of CJS
- ⊖ Open Prison Concept
- ⊖ Skill development of inmates.



#### Way Forward

- ⊖ Legal framework reforms by keeping victim at the centre, adding new offenses & re-classification of crimes.
- ⊖ Legislative reforms in Police, enhancing infrastructure, resources & tech-savviness  
Increase Prosecution independence
- ⊖ Implementing Malimath committee recommendations.
- ⊖ Prehearing Categorisation of cases, faster judges reoriented & Plea-bargaining.
- ⊖ All India Prison Service, Prison infrastructure etc.

### 4.1.1. CRIMINAL LAWS AMENDMENT

#### Why in news?

Recently, the Centre has initiated the process for **comprehensive amendment of criminal laws** in consultation with all stakeholders.

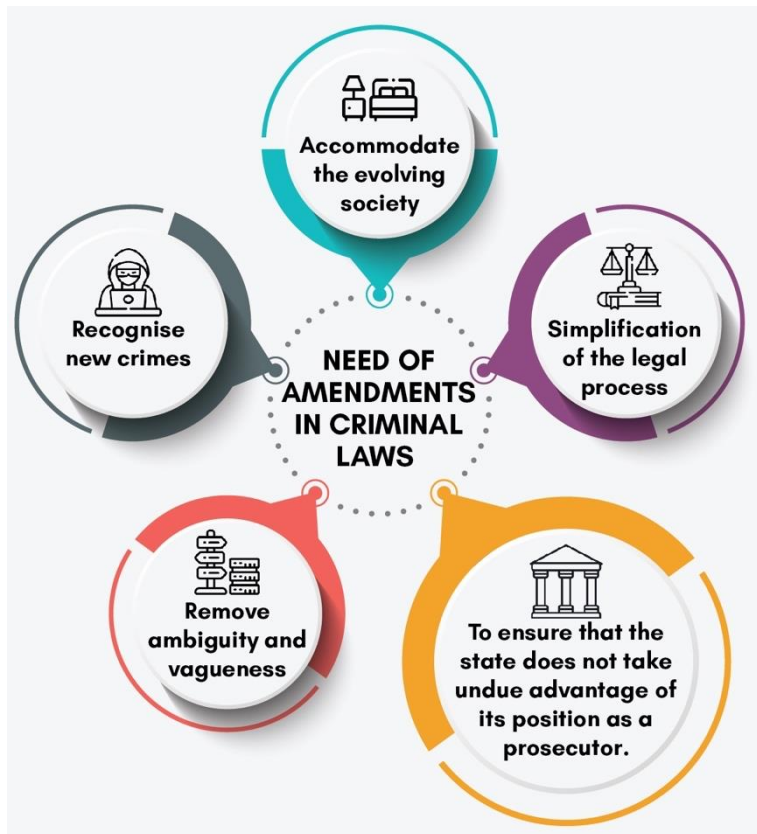
#### About Criminal Laws in India

**Criminal law and criminal procedure fall under Concurrent List** while matters relating to Police and Prisons fall under State List. The laws that govern criminal law in India are IPC 1860; Indian Evidence Act, 1872; and CrPC, 1973.



## Major changes required in criminal laws

- **Criminalization of Marital rape:** Till now, marital rape has not been considered as rape in India. It has been a long-standing recommendation of law commission, various committees and has been demanded by many sections of society.
- **Gender Neutrality in the definition of sexual offences under IPC:** Language of sections relating to sexual offences needs to be amended to be gender neutral rather than continuing with language relating to female gender.
- **Amendment in the language of Section 124A of IPC deals with sedition law:** Language of law is ambiguous and even a simple dissent from policies and decision making of the government may attract a sedition charge.
- **Laws on custodial torture and death:** A tough law is required as there is rise in cases related to custodial torture.



## Way forward

- **Checking Law's relevance and enforceability:** Laws which are outdated and not relevant in present times should be identified and problems with the enforceability should also be addressed.
- **Accommodating new forms of crimes:** To avoid duplicity and confusion, separate chapters on new forms of crimes like cyber laws, economic offences, etc. should be added to IPC.
- **Updated act:** According to **Malimath Committee on Reforms of Criminal Justice System**, the Indian Police Act, 1861 has become outdated and a new Police Act must be enacted on the pattern of the draft prepared by the National Police Commission.
- **Recommendations of Law Commission:**
  - Taking DNA as the material of evidence is totally upon the discretion of the court.
  - Insertion of Section 53A for the **protection of women at the workplace**.
  - It suggested the insertion of Section 436A in Criminal Procedure Code for the release of undertrial prisoners in the jail.

### Earlier amendments to Criminal law

- **Criminal (Amendment) Act, 2013:** It was introduced to make rape laws in India more stringent. It widened the definition of rape by including oral sex and the infiltration of other objects into women's bodies as a crime. Stalking had also been criminalized under this act.
- **Criminal (Amendment) Act, 2018:** It was furthered to strengthen rape laws. The **quantum of punishment was increased from at least 7 to 10 years**. Provisions for punishment for rape of a girl under 12 years and 16 years were also added under it.

### Recent landmark Criminal Law judgments:

- **Amish Devgan v. Union of India (2020):** SC held that it is important to make a **difference between free speech and hate speech**. While free speech does comprise the right to criticize government policies, hate speech.
- **Anuradha Bhasin v. Union of India (2020):** SC held that **Section 144 CrPC cannot be used as a tool to prevent legitimate expression of opinion**. Court further held that Section 144 CrPC is not only remedial but also preventive and shall be exercised only in cases where there is danger or apprehension of danger.
- **Navtej Singh Johar Vs. Union of India 2018:** Section 377 of IPC criminalised consensual sexual intercourse between persons of the same sex for being "against the order of nature".
  - However, Court **upheld the right to equal citizenship of all members of the LGBTQI** community in India.
- **Joseph Shine v. Union of India, 2018:** SC struck down Section 497 of IPC which criminalised adultery while treating a married woman as the commodity of her husband.
  - Court held that the provision was based on gender stereotypes and hence violated Article 14 and Article 15.

## 4.1.2. PRISON REFORMS

### Why in News?

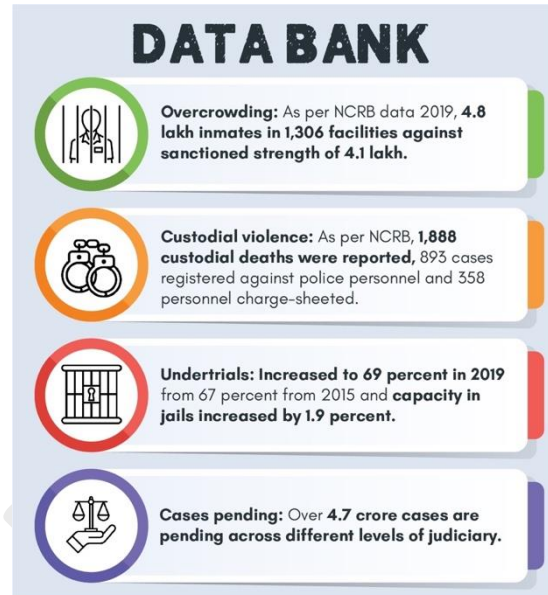
Ministry of Home Affairs issued guidelines for implementation of the Modernisation of Prisons (MoP) Project.

### Background

- **Prison is a State subject** under List-II of the Seventh Schedule in the Constitution.
- The management and administration of Prisons **falls exclusively in the domain of the State Governments**, and is governed by the **Prisons Act, 1894 and the Prison Manuals** of the respective State Governments.
- However, MHA **provides regular guidance and advice to States and UTs** on various issues concerning prisons and prison inmates.

### Need for Prison Reforms

- **Overcrowding by prisoners.**
- **No separation of under-trials:** Undertrials and hardened criminals are kept together, leading to negative influence.
- **Custodial violence.**
- **Health consequences of imprisonment:** Health conditions deteriorate due to lack of nutrition, poor sanitation and inadequate exercise.
- **Imprisonment and poverty:** Family financial burden are exacerbated by the new expenses– such as the cost of a lawyer, transport to prison for visits and so on.
- **Severe staff crunch.**
- **Issues of women prisoners:** These include **lack of female staff, inadequate numbers of toilets, bathrooms** and other basic preconditions for sanitation and hygiene.
- **Detrimental social impact:** Disruption of the family structure affects relationships between spouses, parents and children, reshapes the family and community across generations.
- **COVID-19 induced changes:** Many prison systems have failed to implement critical COVID-19 preventive measures due to **cramped living conditions, lack of hygiene supplies** and poorer health status.



### About Modernisation of Prisons (MoP) Project

- Government of India has decided to provide financial assistance (in form of Grant in aid) to States and UTs, through **MoP for using modern-day security equipment in Prisons for**
  - **Enhancing the security** of jails and
  - **To facilitate the task of reformation and rehabilitation** of prisoners through correctional administration programmes.
- Duration of the project is for five years **2021-26.**
- **Objectives of MoP project**
  - **Filling the existing gaps in security infrastructure** of jails.
  - **Providing new security equipment to jails** in line with modern day technologies.
  - **Strengthening the jail security system**
  - **Focus on correctional administration**, which includes bringing attitudinal change of prison officials etc.
- **Project will cover all States and UTs** and shall broadly cover the following prison types- Central Jails, District Jails, Sub-Jails, Women Jails, Open Jails, Special Jails etc.

### Way forward

- **Issue of overcrowding can be addressed by:**
  - **Open Prisons**
  - **Improving the system of Parole and Furlough**
  - **Fast-Track Courts** should be established
- **Adherence to key international rules and standards such as:**
  - **UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)** that set out the minimum standards for the treatment of people in prison and for good prison management.
  - **UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)** to reduce unnecessary imprisonment of women, and to meet the specific needs of women who are imprisoned.

- **UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)** to promote the use of non-custodial measures and sanctions, as well as minimum safeguards for persons subject to alternatives to imprisonment.
- **Use of technology:** Automation and other technological advances can significantly ease the burden on prison staff.
- **A National Commission for Prisons should be established** to provide a national perspective on prisons and be a central body responsible for these.
- **A robust grievance redressal mechanism:** should be put in place in all prisons to ensure the rights of prisoners are not violated and their concerns are heard impartially.
- **Healthcare needs:** Both physical and mental health needs should be addressed appropriately and regularly. Inmates should have access to doctors and psychologists as and when needed.
- **Skill development:** Educational facilities, Vocational training and skilling facilities in prison should be also be upgraded as it can improve the daily lives of prisoners and give them economic support after release.



### 4.1.3. DEATH PENALTY (CAPITAL PUNISHMENT)

#### Why in News?

Recently, the Supreme Court had Suo moto opened a review of the process by which courts award the death penalty.

#### About Death Penalty

- Death penalty or **capital punishment**, can be defined as 'a practice sanctioned by law whereby a person is put to death by the state as a punishment for a crime after a proper legal trial'.
- Used as a **mode of punishment** since **time immemorial**, the moral acceptability of Death Penalty, i.e., state power to execute people and circumstances is a matter of debate globally.

#### Death Penalty in India and its Framework

- India is among the few countries that retains capital punishment under different laws for serious offences beyond the Law Commission recommendations (see **infographic**).
- By end of **2021**, **488 prisoners** were on death row in India under serious offences with introduction/ Proposal of more laws with Death Penalty such as:
  - **Punjab and Madhya Pradesh** introduced death penalty for causing deaths by spurious liquor.
- In 1980, in **Bachan Singh v State of Punjab**, SC Judges upheld the **constitutional validity** of death penalty due to built-in **reasonable procedural safeguards** and its procedure which is **neither arbitrary nor gives excessive discretion** to judges.
  - However, it gave a **framework** for future sentencing judges when deciding between **life imprisonment** and **death sentence** (see **image**).
- Even after 40 years of judgment, framework remains **subjective**, and is often **misrepresentations**.

### LEGAL EVOLUTION OF DEATH PENALTY

- **Bachan Singh v. State of Punjab, 1980:** Consider **aggravating and mitigating factors** of crime and the accused. Use Death Penalty only in '**rarest of rare cases**'.
- **Machhi Singh v. State of Punjab, 1983:** Identify the manner in which the crime was committed, motive, the anti-social nature of the crime, the magnitude of the crime, and the personality of the victim.
- **Shatrughan Chauhan v. Union of India, 2014:** Undue, inordinate and unreasonable delay in death penalty execution amounts to torture and a ground for commutation of sentence

### Arguments Supporting Death Penalty

- **Deterrence:** Death penalty and its brutalization effect can act as deterrence.
- **Retributive Justice:** Capital punishment is a just form of retribution as people guilty of associated crimes deserve to be punished.
- **Principle of Proportionality:** Justice demands that the punishment amount merited should be proportional to the seriousness of the offence.
- **Will of the citizens:** In 2012, a survey found that nearly 70% of Indians favored capital punishment continuance.
- **Incentive to help Police:** Fear of capital punishment incentivizes prisoners on death row to help police to get reduced sentence (i.e., plea-bargaining).

### Ethical Issues with Death Penalty

- **No statistical proof of death penalty as biggest deterrent.**
- **No constitutional value of retribution** in civilized society as death penalty represents an eye for an eye, i.e., vengeance rather than retribution.
- **Morality of Death Penalty:** It is against **human dignity** and violative of the inalienable **right to life**, even of those who are on the other side of the law.
- **Supporting Death Penalty on grounds that it helps police is worrisome** as similar arguments can be used to **justify torture**, privacy violation and other unethical practices.
- **Restorative and rehabilitative aspects** of justice get sidelined when law and order is approached from the perspective of retributive justice. For instance, with increase in **education** and **socio-economic** conditions of people, even serious crimes **decline**.

# DEATH PENALTY

## DEATH SENTENCES AND EXECUTIONS-2020

**108:** Countries have **abolished Death Penalty**  
**08:** Countries have **abolished Death Penalty for Ordinary Crimes**  
**28:** Countries have **abolished Death Penalty in Practice** (No Execution for at least **10 years**)  
**55:** Countries **retained Death Penalty**

Data source: Amnesty International

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### International Convention

Being of **irreversible nature**, Death Penalty is opposed by UN and its agencies such as:

- Second Optional Protocol to the **International Covenant on Civil and Political Rights (ICCPR)**,
- **Convention on the Rights of the Child (CRC)**,
- **Four UN General Assembly resolutions** since **2007** for **moratorium** on the **use of Death Penalty**

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### Death Penalty in India

**Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.** Also, under the Seventh Schedule- Criminal law and Criminal Procedure are under Concurrent List leading to various laws dealing with Death Penalty such as:

- **INDIAN PENAL CODE, 1860;**
- **NDPS ACT, 1988;**
- **ARMY ACT, 1950; AIR FORCE ACT, 1950 and NAVY ACT, 1956;**
- **COMMISSION OF SATI (Prevention) ACT, 1987**
- **SC/ST (Prevention of Atrocities) ACT, 1989**

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### Article 72/161: Mercy (Pardon) Power of President/Governor

## OTHER ISSUES IN DEATH PENALTY

<b>LACK OF OBJECTIVITY</b> <small>due to no concrete framework on aggravating and mitigating factors</small>	<b>LACK OF PROCEDURAL FAIRNESS</b> <small>due to discretionary interpretation of the rarest of rare cases</small>	<b>LACK OF INTEGRITY</b> <small>as media pressure often dictate the community's collective conscience</small>	<b>ADVERSE CRIMINAL JUSTICE SYSTEM</b> <small>with structural and systemic issues such as lack of resources, ineffective prosecution etc</small>	<b>LONG DELAYS</b> <small>faced by death row prisoners in trials, appeals and thereafter in executive clemency</small>
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### Mercy Plea (Clemency Petition)

- For a person convicted by courts, mercy plea is the **last constitutional resort**, provided under Article 72 (President), and Article 161 (Governor).

#### Why do we need Mercy Petition?

- Mercy Petition adds a **human touch** to judicial process as the punishment can be reviewed beyond the legal angle.
- It can help in **saving innocent persons** from punishment due to **miscarriage of Justice** or in cases of **doubtful conviction**.
  - Miscarriage of Justice/doubtful conviction can happen due to **crisis in our Criminal Justice System** because of issues such as torture, fabrication of evidence, poor legal aid etc.

#### Issues with Mercy Petition

- **No fixed timeframe** to act on the mercy plea leading to long delays. Law Commission has highlighted certain Presidents who put **brakes on the disposal of Mercy Petition**.
- **Lack of transparency** as there is no compulsion to share reasons for rejection or acceptance of mercy plea, but it is subjected to **Limited Judicial Review** (Epuru Sudhakar & Anr. v. Government of Andhra Pradesh case, 2006).

### Way Forward: Principles to be adhered in Ethical Implementation of Death Penalty

- **Resolving the issues of laws, ailing criminal justice system** to avoid any miscarriage or failure of Justice System.
- **Consistent Judicial Approach** with due consideration of the **Restorative and rehabilitative aspects of justice** to avoid any grave cost of imposition of death penalty.
- **Providing compelling justification** for death penalty to avoid excessive punishment and maintaining the utmost respect for the value of life.
- **Ensure that the mercy petition act as final bulwark** against miscarriage of justice with time bound disposal of mercy plea.

#### Related news

#### SC stresses the need for a holistic picture of convicts facing death penalty sentencing

- SC highlighted that the **death is seen as a fit punishment in only rarest of the rare cases**, even in these cases the **courts should be well-informed about the person they are considering sending to their deaths.**
  - Presently, sentencing hearings cover only basic details such as convict's **immediate family structure, educational qualifications and work before arrest.**
  - No effort is made to cover **Psychological Evaluation**-which is pivotal for mitigation, such as:
    - ✓ adverse childhood experiences,
    - ✓ multigenerational history of physical and mental health issues,
    - ✓ exposure to traumatic events,
    - ✓ familial, social, and cultural factors.
- **Mitigation investigators** can help in this through a comprehensive analysis of the mitigating circumstances.
  - **Mitigation investigators** are **professionals qualified in social work, sociology, anthropology, criminology, psychology,** and other social sciences, in **uncovering mitigating circumstances** which would help courts determine the punishment.
  - Through their report, **they can provide a compressive picture of the prisoner's life** experiences on the trial of death penalty row.
  - **Project 39A** of the National Law University provided a **Mitigating investigator.**

## 4.2. JUDICIAL ACCOUNTABILITY

### Why in news?

Recently, the **Orissa High Court** has become the **first in the country to publish an annual report** that gives insights into the performance of the state's judiciary.

### More on news

- The report provides a **district-wise breakup of cases and availability of judges.**
- It provides insight about delays and backlog at the level of the district judiciary due to **abolition of Odisha Administrative Tribunal**, a quasi-judicial body that heard disputes between government employees and employers.

### About Judicial Accountability

- Judicial accountability is defined as the set of mechanisms aimed at **making judges and courts personally or institutionally responsible for behaviours and decisions** contrary to constitutional or legal standards.
  - **However**, being the protector of Fundamental Rights, interpreter of constitution, judiciary is required to be independent and outside influence of political and economic entities.
  - Under Article 235, Constitution provides for **'control' of High Court over the subordinate judiciary** clearly indicating the provision of an **effective mechanism to enforce accountability.**



### Steps taken to promote Judicial Accountability

- **In-house procedure:** Formulation of an in-house procedure to **inquire into any allegation of misbehavior or misconduct against them**, which is considered fit for inquiry by the Chief Justice of India and some of his senior colleagues.
- **Memorandum of procedure, 2016:** It has been under discussion to bring in transparency in judicial appointments and **setting up a permanent secretariat in Supreme Court** for maintaining records of high court judges.
- **Judicial standard and accountability Bill, 2020:** It is under consideration which requires judges to declare their assets, lays down judicial standards, and establishes processes for removal of judges of the Supreme Court and High Courts.
  - In 2009, the Supreme Court and the high courts resolved to publish voluntary declaration of assets by their judges.
  - Also, **Bangalore Principles of Judicial Conduct** were adopted in 2002.
- **Use of technology:** To digitize the legal process and monitor the entire life cycle of a case.
  - **LIMBS (Legal Information Management & Briefing System)**, a **web-based application for monitoring cases** involving the central government of India, in a more effective and transparent manner.
- **Contempt of Courts (Amendment) Bill, 2003:** It was introduced in the Lok Sabha and referred to Parliament Standing Committee on Home Affairs. The Act should be amended to **remove words, ‘scandalizing the court or lowering the authority of the court’** from the definition of criminal contempt.



#### Judicial Independence vs Judicial Accountability

- Judicial independence means **absence of judiciary dependence on other organs of State** i.e. Executive and Legislature, along with power of judiciary to administer justice impartially and honestly.
  - **Provisions highlighting judicial independence** includes Security of tenure, no discussion on conduct of judges in Parliament, **Prohibition on practice after retirement**.
- Both the terms are interrelated in the sense that **excessive independence can decrease accountability and vice versa**. So, it is necessary to maintain balance between both.
  - This balance is achieved by making judiciary accountable for its actions through **removal of judges by parliament, provisions for appeals**, revision and review of the orders of courts, ethical code of conduct for judges etc.

### Conclusion

A more **formal and comprehensive Code of Conduct for Judges** should be put in place which is enforceable by law. Also, **Annual reports on functioning and efficiency** should be published to foster accountability as recently done by Orissa High court.

## 4.3. ALL INDIA JUDICIAL SERVICE (AIJS)

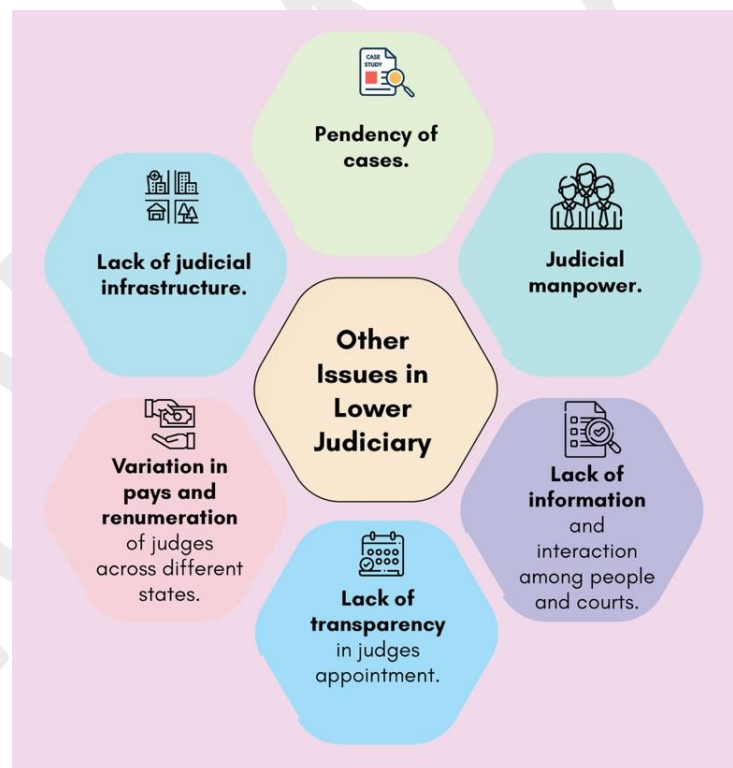
### Why in news?

Recently, Central Government is preparing to give a fresh push to the establishment of an **All-India Judicial Service (AIJS)** for the lower judiciary on the lines of the Central Civil Services.

### Background of AIJS

- Centralised judicial service idea was first mooted in **14<sup>th</sup> Law Commission’s 1958 ‘Report on Reforms on Judicial Administration’**.

- **42<sup>nd</sup> Constitutional amendment in 1976 amended Article 312 (1)** empowering Parliament to make laws for **creation of one or more All-India Services, including an AIJS**, common to Union and the States.
  - Purpose of amendment was to **ensure uniformity in standard of selection** and to **attract bright & young talent** in judiciary so that fair trial and speedy justice made available to every citizen throughout the country.
- In 2006, Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 15<sup>th</sup> Report backed the idea of a **pan-Indian judicial service**.
- **Judiciary's view on AIJS:**
  - In 1992, SC in **All India Judges' Association v. Union of India** directed the Centre to set up an AIJS. Further, creation of AIJS was considered and recommended by first national judicial pay commission, better known as **Justice Shetty Commission**.
  - However, in 1993 review of the judgment, court gave centre the liberty to take the initiative on the issue.
  - In 2017, SC took suo motu cognizance of the issue of appointment of district judges, and mooted a **"Central Selection Mechanism"**.



### What is AIJS?

- It is an initiative to **reform the judiciary by centralising the recruitment of judges** at the level of **additional district judges and district judges** for all states.
- In the same way as UPSC **conducts a central recruitment process and allocates successful candidates to executives**, judges of lower judiciary are proposed to be recruited centrally and assigned to states.
- At present, various HCs and state service commissions hold exams to recruit judicial officers.

### Challenges in creation of an AIJS

- **Judicial vacancies are unique to each state:** An AIJS may fail to address the issue of vacancies adequately. Most of the vacancies are present at subordinate level and not at the level of district judges.
- **Language barrier:** Language and representation are key concerns highlighted by states.
- **Structural issues:** Creation of AIJS will **not address structural issues plaguing the lower judiciary**.
- **Against federalism:** Against fundamental power of States to make rules and govern the appointment of district judges is taken away.
- **Threatens judiciary's independence:** AIJS creation would lead to an **erosion of control of the HCs over subordinate judiciary**, which would, in turn, affect judiciary's independence.
- **Restricts promotional avenues for State officers:** Avenues for promotion would be curtailed for those who had already entered through state services if officers at senior levels are taken through AIJS, which will affect manning of State Judicial Service.

### Way forward

- **Clear up the language barrier problem:** Applicants can fill in with the desired listing of the state that they need to join. And a small language-associated check may be taken earlier than or for the duration of the interview.
- **Adequate funds:** Additional funds required to implement an AIJS.
- **Engaging stakeholders:** Government should engage in a consultative process with the stakeholders to arrive at a common ground.
- **Career growth prospects:** Career growth expectations of lower court judges need to be created.
- **Capacity-building of lower court judges** in the form of continuing legal education is essential.

## 4.4. JUDICIAL INFRASTRUCTURE IN INDIA

### Why in news?

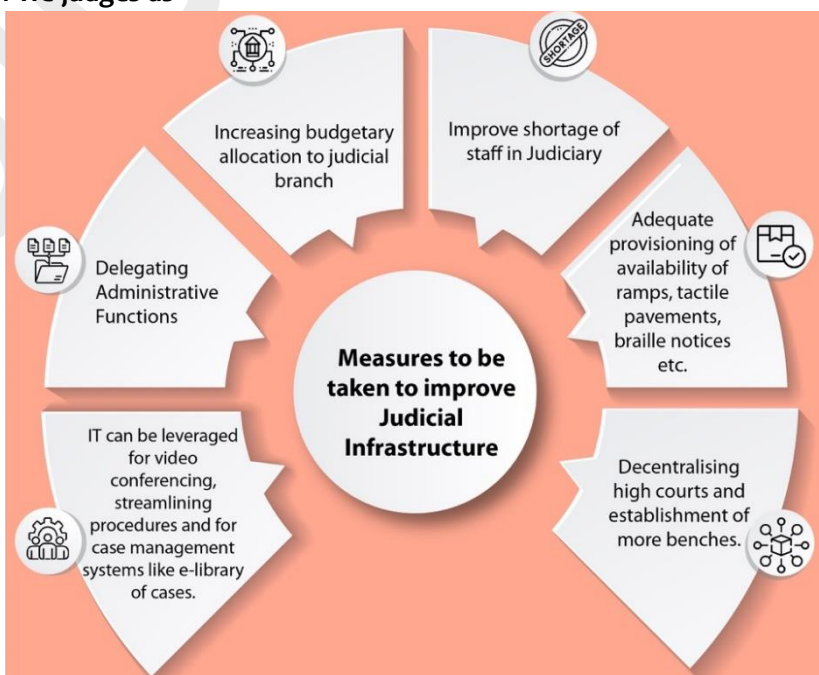
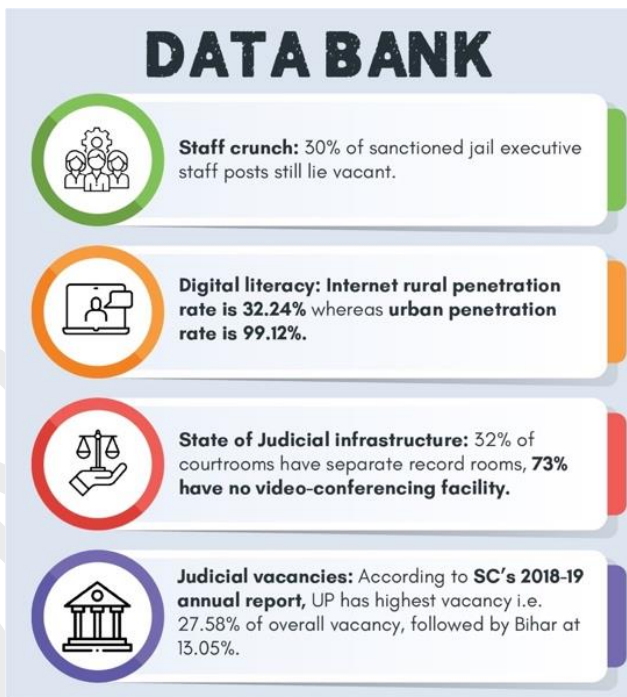
Chief Justice of India has proposed creation of a **National Judicial Infrastructure Authority of India (NJIAI)**.

### About NJIAI

- NJIAI’s objective will be to **take control of the budgeting and infrastructure development of subordinate courts** in the country.
- **Key features of the proposed body**
  - It will be established on **National Legal Services Authority (NALSA) model**, where by it would work as a central agency with each State having its own State Judicial Infrastructure Authority.
  - **CJI would be the patron-in-chief of the NJIAI** and it would be placed under **SC of India**, unlike NALSA which is under Ministry of Law and Justice.
  - In NJIAI, there would be a few **HC judges as members**, and some **Central Government officials**.

### Judicial Infrastructure in India

- Judicial infrastructure includes **physical premises of courts, tribunals, lawyers’ chambers, digital and human resources** etc.
- **Efficient “judicial infrastructure” means providing equal and free access to justice** which can be realised through a “barrier free and citizen friendly environment”.
- At present, primary responsibility of development of **infrastructure facilities for judiciary rests with state governments**.
- Central Government **augments the resources of State Governments** by releasing financial assistance under **Centrally Sponsored Scheme (CSS) for Development of Judicial Infrastructure**.



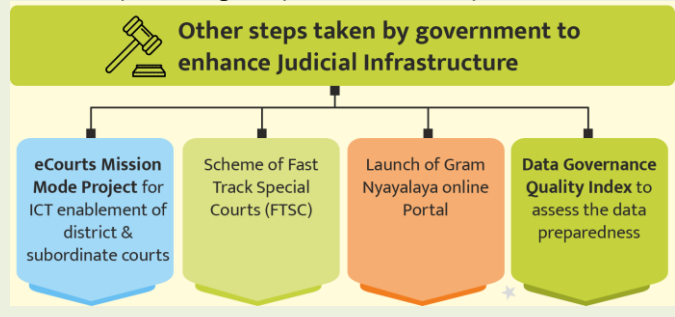


### Need for such reforms in judicial infrastructure

- **Poor state of judicial infrastructure in the country.**
- **Infrastructure and productivity in justice delivery:** judicial infrastructure is pre-requisite judicial officers to efficiently perform their responsibilities while dispensing justice (Present backlog: 3.3 crore cases)
- **Improve digitisation program of government:** In the backdrop of COVID 19 pandemic and the shift towards digital mode, it is important to ensure modernization of judicial infrastructure in the country.
- **Lack of accountability:**
  - **Most district judges**, who head trial courts, do not vigorously pursue development projects due to **short-term appointments and transferable jobs** among others.
- **Under-utilisation of funds:** Some states transfer part of the funds for non-judicial purposes.
- **Implementation issue:** Improvement and maintenance of judicial infrastructure is still being carried out in an ad-hoc and unplanned manner owing to lack of a single dedicated agency for the purpose.

#### CSS for Development of Infrastructure Facilities for Judiciary

- Its objective is to **assist state government in construction of court buildings and residential quarters** for Judicial Officers (JO) in all States / UTs.
- Union government has recently extended the scheme for period from 2021 to 2026.
- Assistance granted under scheme includes funds for implementation of Gram Nyayalayas Scheme as a part of **National Mission for Justice Delivery and Legal Reforms (NMJDLR)**.
  - Gram Nyayalayas or village courts are established under Gram Nyayalayas Act, 2008 for speedy and easy access to the justice system in the rural areas of India.
  - NMJDLR was setup in 2011 to increase access to justice by reducing delays and arrears in system.



### Conclusion

Institutionalising the mechanism for augmenting and creating state-of-the-art judicial infrastructure will help in delivering quantitative and qualitative justice and ensure the bell of justice rings at the door of those deprived and underprivileged.

#### Related news

##### National Courts of Appeal (NCA)

- **Attorney General of India (AGI) pushes for National Courts of Appeal (NCA) to relieve pressure on SC**
  - The idea was also put forward by **Supreme Court itself in 1986** and the **Law Commission in its 229<sup>th</sup> report**.
- **About proposed NCA**
  - NCA would act as **intermediate appellate courts between the State High Courts and the SC**.
  - It will have **15 judges each**.
  - It will act as **final court of justice in dealing with appeals from the decisions of High Courts and tribunals** within their region in civil, criminal, labour and revenue matters.
  - The judgments of these courts of appeal would be **final**.
  - However, establishment of NCA may **require a constitutional amendment**.
- **Significance**
  - **Reduce pendency in judiciary.**
  - **Absorb matrimonial disputes, rent control cases and others** which clog the Supreme Court.
  - **Allow the Supreme Court to focus on interpreting constitutional questions of law**, references, death sentence cases.

##### National Litigation Policy (NLP)

- Government has recently informed that NLP is under consideration to lay down guidelines for **preventing, controlling and reducing litigation**.
  - Earlier, **Law Minister had launched NLP in 2010** with the purpose that the **government should not involve in frivolous litigation, especially where the stakes are not high**.
    - ✓ The policy was not implemented.
- **Steps taken to reduce litigation**
  - **Legal Information Management & Briefing System (LIMBS):** A web-platform for the purpose of monitoring litigation of the Union of India.
  - **Administrative Mechanism for Resolution of Disputes (AMRD):** For the resolution of Inter-Ministerial/ Departmental disputes.

- Commercial Courts Act, 2015 was amended in 2018 for **Pre-Institution Mediation and Settlement (PIMS)** mechanism.
- **Administrative Mechanism** for Resolution of CPSE Disputes (AMRCD).

**Significance of Artificial Intelligence (AI) for Indian Judicial Processes**

- Government has pitched the need to adopt new, cutting-edge technologies of **Machine Learning (ML) and AI to increase the efficiency** of the justice delivery system.
- **Intended benefits**
  - In Indian judiciary, **openly accessible datasets of judgements** are still a challenge.
  - **Expedite judicial process** and improve access to justice through **process re-engineering and automation**.
  - **Improved decision making**, via tools for intelligent legal analytics and research.
  - **Learn from global best practices**, E.g., UK has a system to forecast reoffending criminals.
- **Challenges in AI Adoption in judiciary**

Short term challenges	Long term Challenges
<ul style="list-style-type: none"> <li>● <b>Ensuring transparency</b> as mathematical systems used by the technology for reaching the output are opaque and do not permit public scrutiny.</li> <li>● <b>Preventing data and design biases</b> that may perpetuate social inequalities.</li> <li>● <b>Creating decision support systems</b> that supplement and not supplant human judgment.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>May lead to value lock-in</b> whereby consistent upholding of precedents can cause the legal status quo to become rigid, limiting the possibility of necessary change in legal disposition.</li> <li>● Legitimate question <b>whether an algorithmic decision-making tool can accomplish the complex Constitutional role of judges and separation of powers.</b></li> </ul>

- **Suggestions: Establishing ground rules** for such technologies, identifying and undertaking **stakeholder engagement and forging partnerships** to aid in the development of such technologies.
- **Steps taken so far**
  - **SUVAS (Supreme Court Vidhik Anuvaad Software)** is a language learning application being used to translate judgments of English into regional language.
  - **SUPACE (Supreme Court Portal for Assistance in Court Efficiency)** for improving efficiency and reducing pendency by encapsulating judicial processes that have the capability of being automated through AI.
  - **SCI-Interact a software by SC**, to make all its 17 benches paperless by making judges access to files, annexures to petitions, etc.

## 4.5. PUBLIC INTEREST LITIGATION

**Why in news?**

Recently, Supreme Court objected to frivolous **Public Interest Litigation (PIL) petitions**, and imposed **penalties on petitioners for filing luxury litigation**.

**About Public Interest Litigation and its significance**

- PIL is the **use of the law to advance human rights and equality** or raise issues of broad public concern.
  - Expression PIL has been **borrowed from American jurisprudence**.
  - PIL is **based upon Article 39 A** which makes sure that **state secures and provides justice without any discrimination** based on caste, religion, creed etc.
  - PIL is the power given to the public by courts.
- Public interest cases may arise from **both public and private law matters**.
  - PIL can be filed in **any High Court or directly in the Supreme Court**.

**Issues with Public Interest Litigation**

- **Abuse of the process of law:** Over the years, PIL has degenerated into **Private Interest Litigation, Political Interest Litigation, and Publicity Interest Litigation**.

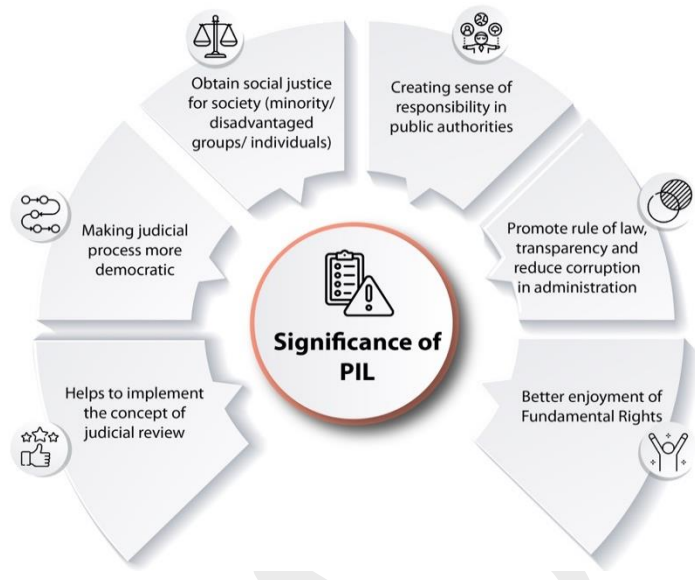
**Background of PIL**

1976	<ul style="list-style-type: none"> <li>● PIL concept introduced by <b>Justice Krishna Iyer in Mumbai Kamagar Sabha v. Abdul Thai</b> case, where unregistered workers association was granted to <b>institute writ petition under Article 32</b>.</li> </ul>
1979	<ul style="list-style-type: none"> <li>● First-ever reported PIL was <b>Hussainara Khatoon v. the State of Bihar</b> that focused on inhumane conditions of prisons and undertrials.</li> </ul>
1981	<ul style="list-style-type: none"> <li>● New period of PIL Movement was started by <b>Justice P.N. Bhagwati in SP Gupta v. Union of India</b> case.</li> <li>● <b>Justice Bhagwati</b> has been called as the <b>father of PIL</b> in India.</li> </ul>

- For instance, increase in the price of onions or in railway fares or the dilapidated condition of railway stations or the Red Fort etc.
- **Encroach judicial time:** Rise in number of frivolous PILs filed has led to encroachment upon valuable judicial time which could be otherwise utilized for considering genuine issues for development of society.
- **Stalling of developmental activities:** PIL has been used as a tool to delay developmental activities. For instance, PIL filled to stall development works undertaken by the Odisha Government at the premises of Puri Jagannath Temple for the benefit of devotees.
- **Violate Separation of Power:** Credibility of PIL process is now adversely affected by the criticism that the judiciary is overstepping the boundaries of its jurisdiction. For instance, Ban on Liquor sale on highways.
- **Delays:** PIL matters concerning the exploited and disadvantaged groups are pending for many years. Inordinate delays in the disposal of PIL cases may render many leading judgments merely of academic value.

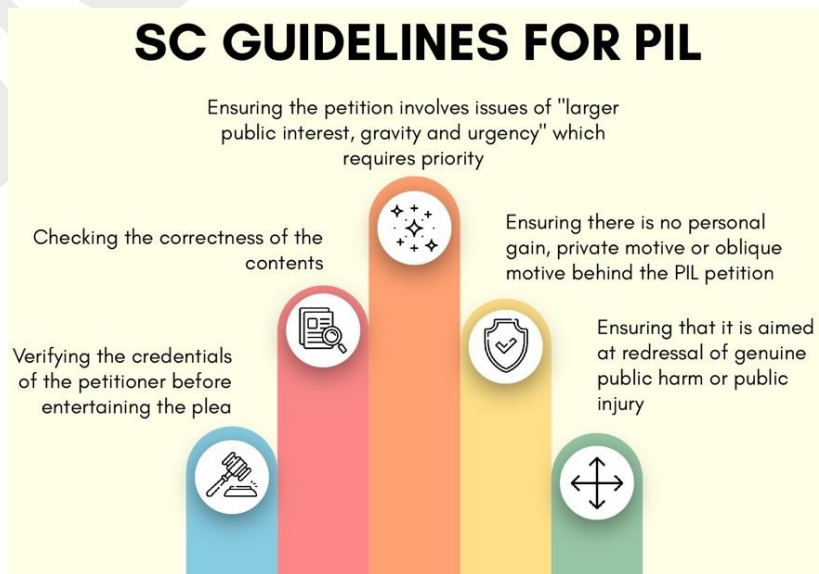
**Way forward**

- **Supreme Court guidelines:** To preserve the purity and sanctity of the PIL, in **State of Uttaranchal v. Balwant Singh Chauhal judgement**, SC issued several directions to help constitutional courts separate genuine PIL petitions from the frivolous ones. (Refer Infographics).
- **Adhere to Doctrine:** Doctrine of Separation of Power should be adhered to, and courts should not step into the jurisdiction of other organs.
- **Timely Disposal:** PIL related to exploited and disadvantaged groups should be taken up in a timely manner to further social development.
- **Penalty:** PILs filed by lawyers, citizens filled without research and on frivolous grounds should be penalized in order to address misuse.



**SC landmark judgments on PIL**

- **SP Gupta v. Union of India, 1981:** Any member of public or NGO acting bonafide, can invoke writ jurisdiction of HC or SC under Article 226 or 32 respectively, seeking redressal against violation of legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court.
- **M.C Mehta v. Union of India, 1987:** PIL brought against Ganga water pollution, SC held that petitioner although not a riparian owner entitled to move the Court for the enforcement of statutory provisions, as he is the personal interest in protecting the lives of the people using Ganga water.
- **Vishaka v. the State of Rajasthan, 1997:** SC recognized sexual harassment as a violation of fundamental rights of Article 14, 15 and 21.
- **Indian Banks' Association, Bombay & Ors. v. M/s Devkala Consultancy Service and Ors, 2004:** In an appropriate case, where petitioner might have moved a court in her private interest and for redressal of the personal grievance.
  - Court in furtherance of Public Interest may treat it a necessity to enquire into state of affairs of the subject of litigation in the interest of justice.
  - Thus, a private interest case can also be treated as public interest case.



## 4.6. TRIBUNALS

### Why in news?

Recently, Supreme Court stated that the **National Green Tribunal (NGT) is subordinate to the High court** in so far as territorial jurisdiction is concerned regarding an **order prohibiting construction work at Rushikonda hills** in Visakhapatnam.

### More on news

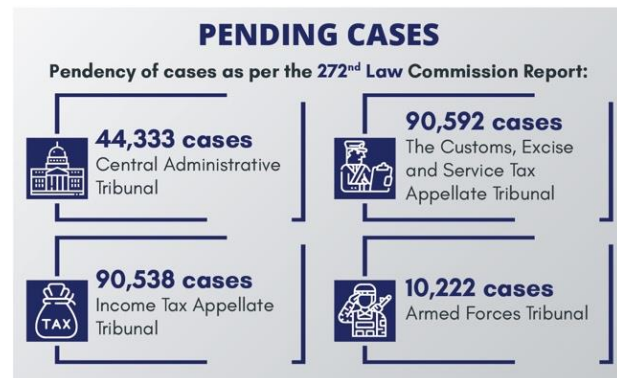
- In case of conflicting orders, **constitutional courts orders will prevail over that of statutory tribunals.**
- Earlier, in **L Chandra Kumar v Union of India (1997)**, SC ruled that the orders of tribunals under Article 323A and 323B of the Constitution are subjected to the **Writ Jurisdiction of the High Court.**

### Tribunals system in India

- Tribunals are **judicial or quasi-judicial institutions** established by an Act of Parliament or State Legislature under **Article 323A or 323B** through **42nd Amendment Act, 1976** on recommendation of **Swaran Singh Committee**.
  - **Article 323-A** deals with **Administrative Tribunals.**
  - **Article 323-B** deals with **Tribunals for other matters.**
- They provide a **platform for faster adjudication of disputes as compared to traditional courts**, as well as expertise on certain subject matters.
- Tribunals are not obliged to follow all the rules and regulations imposed by the Civil Procedure Code and Indian Evidence Act but they have to **follow the principles of natural justice.**
- Tribunals have been **vested with the powers of Civil Court** in respect of some matters including the **review of their own decisions** etc. Its decisions are **legally binding on the parties**, subject to appeal.

### Issues associated with Tribunal system

- **Lack of independence:** In 2010, Supreme Court noted that the **Tribunals in India have not achieved complete independence.**
  - The system of **appointment through selection committees** severely affects the independence of tribunals.
- **Non-uniformity:** The non-uniformity across tribunals with respect to **matter of qualifications, appointments, service conditions, tenure of members, varying nodal ministries in charge** of different tribunals contribute significantly to malfunctioning in the managing and administration of tribunals.
- **Staff shortage:** For instance, the **Central Administrative Tribunal (CAT) has 27 out of 64 posts lying vacant**, leaving some benches without the requisite strength to assemble and hear cases.
- **Lack of infrastructure:** Inadequate judicial infrastructure i.e. courtrooms, basic amenities, etc. for judges, advocates and litigants in the subordinate judiciary and tribunals is a very serious issue.

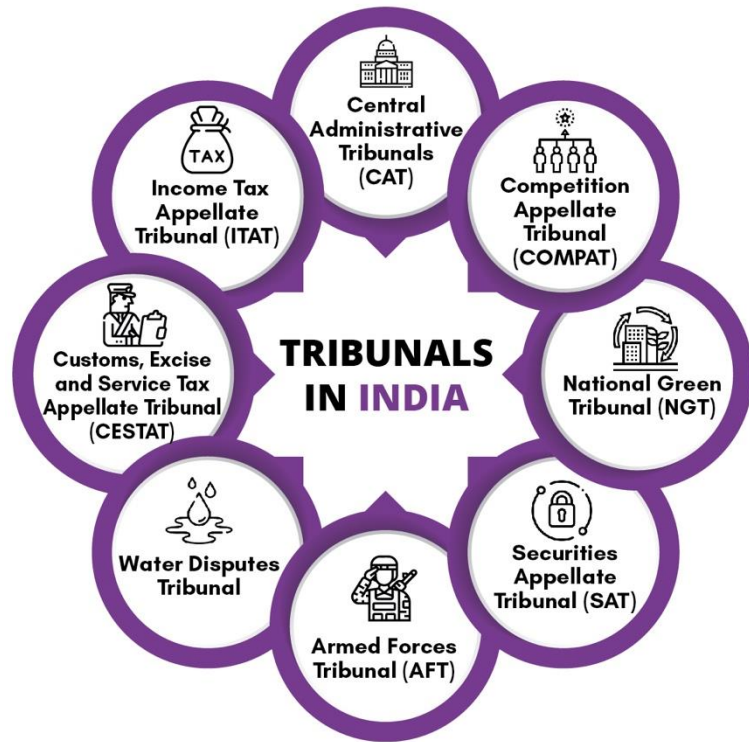


### KEY DEVELOPMENT IN TRIBUNAL SYSTEM IN INDIA

- 1941** First tribunal as Income Tax Appellate Tribunal established.
- 1969** First Administrative Reforms Commission recommended to set up **Civil Services Tribunals** at national and state levels.
- 1974** Sixth Law Commission recommended **separate high-powered tribunal and commission for adjudication of matters in High Courts.**
- 1976** 42nd amendment to Constitution was passed to constitute **administrative tribunals** and other tribunals.
- 2017** Finance Act, 2017 **reorganised tribunal system by merging tribunals** based on functional similarity.
- 2021** **Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021** was introduced in Lok Sabha.



- **High pendency: High rate of pendency** due to avoidable adjournments and absenteeism, **high dependence on the parent ministry** for finances.
- **Breakdown of doctrine of separation of powers:** Executive interference in functioning of tribunals is often seen in matters of appointment and removal of tribunal members, as well as in provision of finances, infrastructure, personnel and other resources required for day-to-day functioning of the tribunals which is against the principle of separation of powers.



### Way Ahead

- **Independent autonomous body:** Setting up of **National Tribunal Commission (NTC)** under **Ministry of Law and Justice** for **monitoring the working of the Tribunals** and **ensuring the uniformity** in the appointment system.

- The idea of an NTC was first mooted by the Supreme Court in **L. Chandra Kumar v. Union of India (1997)**.

- **Selection of members:** 272nd Report of the Law Commission of India suggested that **selection of members should be impartial** and **involvement of government agencies should be minimal**, since the government is typically a party in every litigation.
- **Filling vacancies:** Vacancy arising in the Tribunal should be filled up as early as possible by initiating the procedure well in time, preferably **within six months prior to the occurrence of vacancy**.

- **Tribunal benches:** Tribunals must have benches in **different parts of the country to ensure access to justice** by people across geographical areas. Ideally, these benches should be located where High Courts are situated.

- **Qualified manpower:** Members in tribunal should be a person of ability, integrity, and having special knowledge of and professional experience of not less than fifteen years, in the relevant domain.

- **Redressal mechanism:** A stringent provision for time-bound redressal must be incorporated in all statutes dealing with Tribunals.

### Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021

- It proposes to **dissolve certain existing appellate bodies and transfer their functions** to other existing judicial bodies.
  - For instance, functions of Appellate Tribunal under Cinematograph Act, 1952 transfer to High Court.
- It proposes to **set up a search-cum-selection committee** that will **select and appoint Chairperson and Members of various tribunals**.
- It **amends Finance Act, 2017** to specifies that these Committees will consist of:
  - **Chief Justice of India, or SC Judge nominated by him**, as Chairperson (with second casting vote in case of tie),
  - **Two Secretaries** nominated by central government,
  - **Sitting or outgoing Chairperson, or retired SC Judge, or retired Chief Justice of HC**, and
  - **Secretary of Ministry under which Tribunal is constituted** (with no voting right).
- It retains the **term of office of chairperson or member at four years** (subject to an **upper age limit of 70 years for Chairperson** and **67 years for other members**) with provision for **re-appointment**.

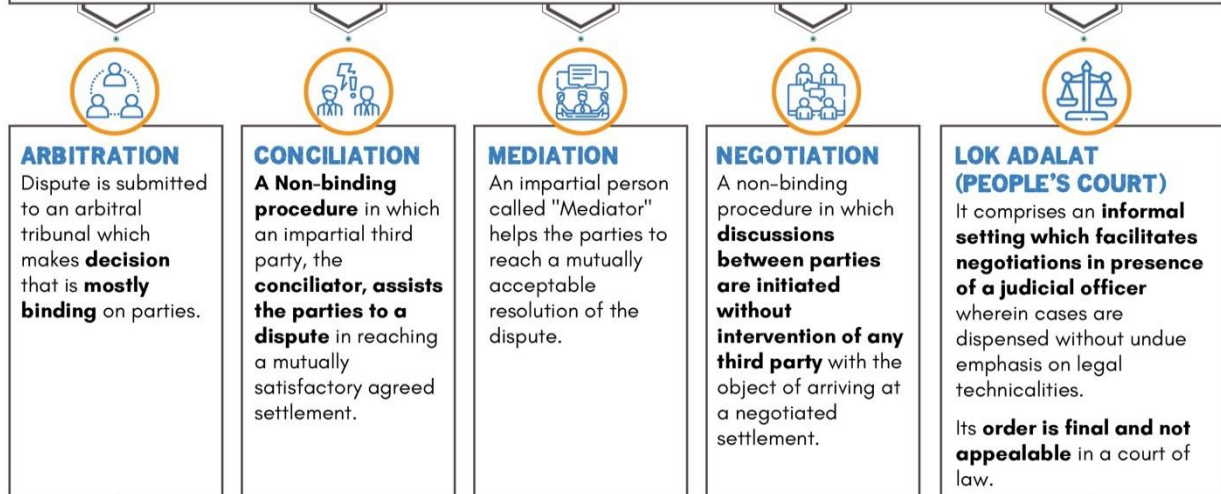
### Speaker as Tribunal

- Speaker office has been under controversies for its decisions on disqualification of MLAs
- SC has asked Parliament to rethink **whether disqualification petitions ought to be entrusted to a speaker as a quasi-judicial authority**, as speaker continues to belong to a political party either de jure or de facto.
- Parliament may seriously **consider amending the Constitution to substitute speaker of Lok-Sabha and Legislative Assemblies as arbiter of disputes** concerning disqualification which arise under Tenth Schedule with a permanent tribunal.

## 4.7. ALTERNATIVE DISPUTE RESOLUTION (ADR)

### ALTERNATIVE DISPUTE RESOLUTION (ADR) AT GLANCE

ADR is the process in which **disputes are addressed and settled outside of the courtroom**. It offers to resolve all type of matters including civil, commercial, industrial etc. and uses **neutral third party** to communicate, and resolve dispute. **Criminal cases involve** the final settlement to be **pronounced in court** in various jurisprudences. There are **five types of ADR**.



#### NEED OF ADR

- ⊙ To **deal with the situation of pendency of cases** in courts, thus **reducing the burden** on the courts.
- ⊙ To **provide social-economic and political justice** and **maintain integrity** in the society enshrined in the preamble.
- ⊙ To **achieve equal justice and free legal aid** provided under Article 39-A relating to DPSP.



#### ADVANTAGES OF ADR

- ⊙ **Less Time Consuming** compared to courts.
- ⊙ **Cost effective method.**
- ⊙ **Free from technicalities of courts** as informal ways are applied in resolving dispute.
- ⊙ People are **free to express themselves and can reveal true facts** without disclosing it to any court.
- ⊙ There are **always chances of restoring relationship back** as parties discuss their issues together on the same platform.
- ⊙ It **maintains good relationship between the parties** and preserves the best interest of the parties.



#### LIMITATIONS OF ADR

- ⊙ **An arbitration award is binding**, i.e., decision is final, thus **lacks the ability to appeal** the decision.
- ⊙ **Little or no check on power imbalances** between parties and may **not protect parties' legal rights**.
- ⊙ **Cross-cultural language barrier**, during ADR process, widens the gap to resolve dispute.
- ⊙ **Lack of Compulsion**: As no party can be compelled to continue negotiating, any party can terminate negotiations notwithstanding the time, effort and money that may have been invested by other party.
- ⊙ **Lack of awareness** among people.



#### WAY FORWARD

- ⊙ **Awareness** can be brought by holding seminars, webinars and workshops.
- ⊙ **Judicial officers must be trained to identify the cases which can be solved outside the courts.**
- ⊙ **Mediation centers can be setup** in districts and tehsil areas to help citizens to resolve their disputes quickly and without going for litigation process.
- ⊙ **ADR mechanisms should be made more viable** to address huge inflow of cases in judiciary.
- ⊙ **ADR decision should be made binding** upon the parties which is not the case at present.

### 4.7.1. ONLINE DISPUTE RESOLUTION (ODR)

#### Why in news?

Recently, the NITI Aayog Expert Committee on ODR submitted the report titled ‘Designing the Future of Dispute Resolution the ODR policy plan for India’.

#### About Online Dispute Resolution (ODR)

- **Definition:** ODR in simple terms is the use of technology to resolve disputes outside of the public court system.
  - ODR is more than just e-Alternate Dispute Resolution for it can include the resolution of disputes through Artificial Intelligence/Machine Learning tools and has no determined set of procedures.

Benefits of ODR	
Cost effective, convenient, efficient	It allows for customizable processes to be developed and can limit unconscious bias that results from human interactions.
More than merely a method to 'resolve disputes'	<p>The diagram illustrates the 'Four layer model for Access to justice'. It shows a vertical stack of four layers:                  <ul style="list-style-type: none"> <li><b>Legal Health Promotion</b> (top layer, light pink)</li> <li><b>Dispute Avoidance</b> (second layer, light yellow)</li> <li><b>Dispute Containment</b> (third layer, light grey)</li> <li><b>Dispute Resolution</b> (bottom layer, light yellow)</li> </ul>                 To the left of these layers, three red double-headed vertical arrows indicate the scope of each layer:                 <ul style="list-style-type: none"> <li><b>ODR:</b> Spans the top two layers (Legal Health Promotion and Dispute Avoidance).</li> <li><b>ADR:</b> Spans the top three layers (Legal Health Promotion, Dispute Avoidance, and Dispute Containment).</li> <li><b>COURT:</b> Spans the bottom two layers (Dispute Containment and Dispute Resolution).</li> </ul>                 A diagonal line separates the ODR/ADR layers from the COURT layer.             </p>
Pandemic	Its immediate benefits can be harnessed during this current COVID-19 crisis, which is likely to lead to an upsurge in the number of cases before the judiciary. For instance, consumer, tenancy and labour disputes are likely to see a rise in numbers.
Court	ODR can help reduce the burden on the courts by leveraging the capacity of the private sector. In the long term, ODR can be the preferred mode of solution for, though not limited to, all low-value high-volume disputes such as those involving e-commerce transactions.

#### Challenges in adoption of ODR

- **Structural**
  - **Digital literacy:** Out of 743.19 million internet subscribers in India, internet rural penetration rate is only 32.24% which is less than one third of the urban penetration rate of 99.12%.
  - **Digital infrastructure:** Access to computers, smart phones and medium to high bandwidth internet connection for at least the length of time it takes to conduct meaningful hearings.
  - **Divide in access to technology:** As per Internet India Report 2019, women constitute only 1/3<sup>rd</sup> of internet users in India and a mere 28% in rural areas. Only 27% of rural population has access to the internet whereas in urban, it is 51%.
- **Operational**
  - **Privacy and confidentiality concerns:** These include online impersonation, breach of confidentiality by circulation of documents and data shared during ODR processes etc.
  - **Difficulty in enforcing ODR outcomes:** There is a legal vacuum in mediation processes that are not initiated by courts. For ODR, settlements can only be enforced as an agreement and any breach of such agreement will result in further judicial processes.
  - **Archaic legal processes:** For example, State Governments still require parties to attach a copy of e-Stamp certificate to the agreement as a proof of payment of stamp duty.
  - **Shortage of competent Neutrals:** Lack independent, qualified third-party who try to help disputants come to a consensus on their own.
- **Behavioural:** Lack of awareness, lack of trust in ODR and reluctance on part of the Government to use ODR.

**Way ahead**

- **Greater access to technology:** It is both in terms of physical access to infrastructure as well as increase in levels of digital literacy.
- **Expand the current capacity:** Institutions that can provide training can be widened and uniform training standards can be mandated, including practical experience and simulations training.
- **Increase in human resource capacity:** Increase the number of trained Neutrals, paralegal volunteers (to assist litigants to use ODR), Court Registry officials and judicial officers (who can refer cases to ODR).
- **Ensuring private sector participation:** Private sector be encouraged to innovate and grow so that both dispute resolution ecosystem and Government can benefit in long run.
- **Enhancing public trust in ODR:** For this, ODR can be integrated within some Government Departments such as Department of Consumer Affairs or help resolve disputes under IBC, 2016.
- **Suitably regulating ODR:** Introduce a light-touch approach to regulation wherein guidelines or principles that, though voluntary, should be adopted in letter and spirit by stakeholders that provide ODR services.
  - The report recommends **three sets of principles** – **Design Principles for ODR Platforms** (which can be hosted within businesses or exist independently) and **separate sets of Ethical Principles for ODR centres and third-party Neutrals.**

India's ODR Readiness		
Executive	Legislative	Judiciary
<ul style="list-style-type: none"> <li>&gt; RBI released an <b>ODR policy for digital payments.</b></li> <li>&gt; The MSME sector saw the introduction of the <b>SAMADHAAN portal</b> and the Department of Legal Affairs is in the process of collating the details of ODR service providers across the country</li> </ul>	<ul style="list-style-type: none"> <li>&gt; <b>Legislative backing for the ADR aspect of ODR</b> (The Arbitration and Conciliation Act, 1996 or the Code of Civil Procedure, 1908) and <b>technology aspect of ODR</b> (The Indian Evidence Act, 1972 and the Information and Technology Act, 2000).</li> <li>&gt; India has also brought into force the <b>United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018</b> this year.</li> </ul>	<ul style="list-style-type: none"> <li>&gt; There have been several pivotal initiatives through the <b>eCourts Mission Mode Project</b> whose impact will percolate both vertically and laterally.</li> <li>&gt; The Lok Adalat has been transformed into online versions- <b>e-Lok Adalats.</b></li> </ul>

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## 5. ELECTIONS IN INDIA

### 5.1. ELECTORAL REFORMS

## ELECTORAL REFORMS AT A GLANCE

Word Election comes from the Latin word 'eligere', means 'to choose, select or pick'. Election is the process of voting to choose an individual at regular intervals for holding public office through free will of the people in a representative democracy.



#### Role of Elections in a Democracy

- ⊖ Make responsible and accountable government
- ⊖ Change of leadership
- ⊖ Participation of political parties
- ⊖ Continuation of democracy
- ⊖ **Symbolic of Nationalism and Patriotism** by bringing focus on common fate.
- ⊖ **Self-corrective system** by keeping check on ruling parties and made to consider the demands of the public.
- ⊖ **Facilitate social and political integration** by linking citizens to each other and thereby confirm the viability of the polity.
- ⊖ **Taking ownership of the democratic process** through expressing partisanship and alienation from the political community.



#### Issues associated with election process in India

- ⊖ Financing of elections
- ⊖ Muscle power
- ⊖ Misuse of Government Machinery
- ⊖ Criminalisation of Politics and Politicization of Criminals
- ⊖ Dummy Candidates in Political Parties
- ⊖ Casteism
- ⊖ Communalism
- ⊖ Influence of Social-Media



#### Reforms for the betterment of electoral process

- ⊖ **Promoting Transparency**
  - Electoral Bonds
  - Mandatory declaration of income sources
- ⊖ **Increasing Voter Participation**
  - Lowering of Voting age
  - Voting through postal ballot
  - Election Laws (Amendment) Bill, 2021
- ⊖ **Leveraging technologies to strengthen voting process**
  - Electronic Voting Machines
  - NOTA option
- ⊖ **Preserving the sanctity of elections**
  - Enactment of Anti Defection Law
  - Prosecution of politicians
- ⊖ **Creating a level playing field**
  - **Model code of conduct**
  - Ceiling on election expenditure
  - Restriction on exit polls



#### Roadmap to achieve the vision of free and fair elections

- ⊖ **Participatory democracy:** Increase the representation of youth and women in the institutional structures of EMBs.
- ⊖ **Financial transparency** by incorporating public scrutiny and partial state funding.
- ⊖ **Intra-party democracy** in the political parties and candidates should be selected democratically.
- ⊖ **Decriminalization of Politics**
- ⊖ **Adjudication of election dispute**
- ⊖ **Review anti defection law**
- ⊖ **Conduct and Better Management of Elections** by putting restriction on opinion poll, proliferation of candidates, introducing the totalizer machines etc.

## 5.2. CRIMINALIZATION OF POLITICS

### Why in news?

Recently, Association for Democratic Reforms (ADR) and National Election Watch have analyzed the criminal, financial and other background details of 226 out of 233 sitting Member of Parliaments (MPs).

### About Criminalisation of politics

- Criminalization of politics can be visualized into two different senses. In narrow sense, it refers either to the **direct entry and interference of criminals into the political parties, state legislatures and parliament** of the country or politicians adopting criminal means to achieve their own political goal.
- In wider sense, it refers to interference of criminals into politics either directly or **indirectly like financing any candidate, providing anti-social manpower, booth capturing, contract killing of rival candidates, providing muscle power services**, as well as campaigning for any candidate contesting elections.

### Reasons of Criminalisation of Politics

- **Muscle power:** There is a growing nexus between political parties and criminals, owing to the ideology that if one party cannot secure faith in society, then fear and violence may aid them in the securing votes to get into power.
- **Money Power:** Culture of **buying votes, freebies to attract voters** has led to increased election expenditure and thus candidates resort to illegitimate practices in order to raise money to secure a win.
- **Lack of governance:** India **doesn't have the proper laws and rules for governing** the procedure of the elections.
- **Divisions in Indian political system:** Criminals take advantage of divisions in our society and portray them as the protector of respective caste, class, religion to enter politics.
- **Judicial Pendency:** Weak justice delivery especially against politicians has further aggravated the issue of criminalization of politics.

## DATA BANK



In 2019, there is an **increase of 109% in the number of MPs** with declared serious criminal cases since 2009.



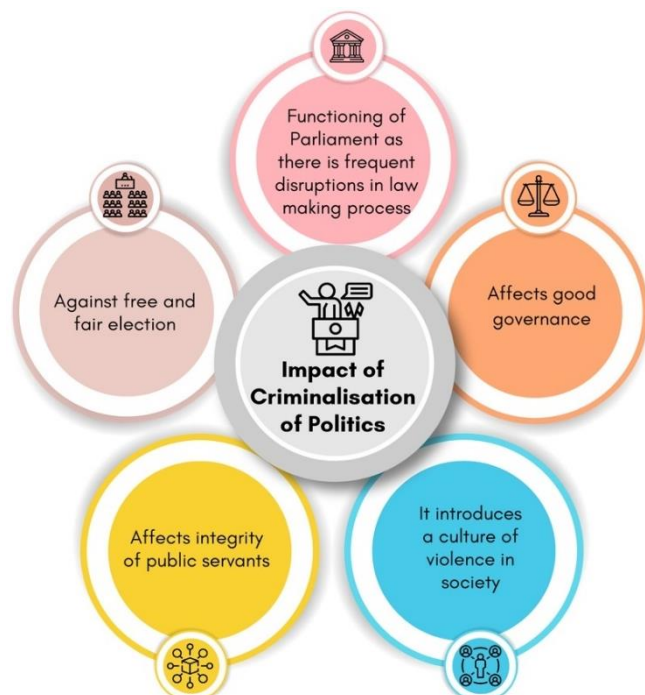
ADR analysis shows that **candidates facing criminal charges had double the chances of winning** as compared to those with clean record.



In 2022, of the 226 sitting Rajya Sabha MPs, **71 (31%) have declared criminal cases** against themselves and 37 (16%) have declared **serious criminal cases**.

### Supreme Court judgements to curb criminalization of politics

- **Union of India Vs ADR, 2002:** Electors had a **fundamental right to know the antecedents of candidates** contesting elections to hold public office.
- **People's Union for Civil Liberties v. Union of India, 2004:** Section 33B of Representation of People Act (RPA) which nullified the decision in ADR case (2002) was challenged.
  - **Section 33B of RPA was held unconstitutional and void** as it infringed the "right of electors' to know".
- **Lily Thomas Vs Union of India, 2013:** MP, State Legislatures convicted of crime with a minimum sentence of 2 years imprisonment would cease to be members of the house.
- In 2017, **Special courts to be set up across the country** to fast-track the long-pending trials of lawmakers.
- In **Public interest foundation case 2018**, Court held that all **candidates will have to declare their criminal antecedents** to the ECI before contesting polls.



### Way forward

- **State Funding of elections:** This would help to **curb corruption, use of black money, curb money power and cleaner candidates** with less financial backup would also be able to contest elections.
- **Law Commission Report:** It recommended that certain serious offences such as booth capturing, rigging and intimidation of voters should itself be added as a ground of disqualification.
- **Strengthening Election Commission:** To **regulate the affairs of a political party** for a cleaner electoral process, it is important to strengthen the election commission.
- **Behavioural Change:** Voters need to be vigilant about misuse of money, gifts and other inducements during the election, thus political parties will be forced to field candidates with clean background.
- **Vohra Committees Report:** Recommendations given by Vohra committee on **criminalization of politics** and of the nexus among criminals, politicians and bureaucrats, should be implemented.
- **Other Measures to Curb Criminalization of Politics are**
  - An amendment should be introduced to **reject the tickets of the politicians with criminal charges.**
  - **Fast track courts should be set up** to quickly dispose of cases pending against politicians.
  - **Intra-party democracy** should be promoted.
  - **Awareness regarding NOTA, i.e., None of The Above** should be generated.

## 5.3. ONE NATION ONE ELECTION

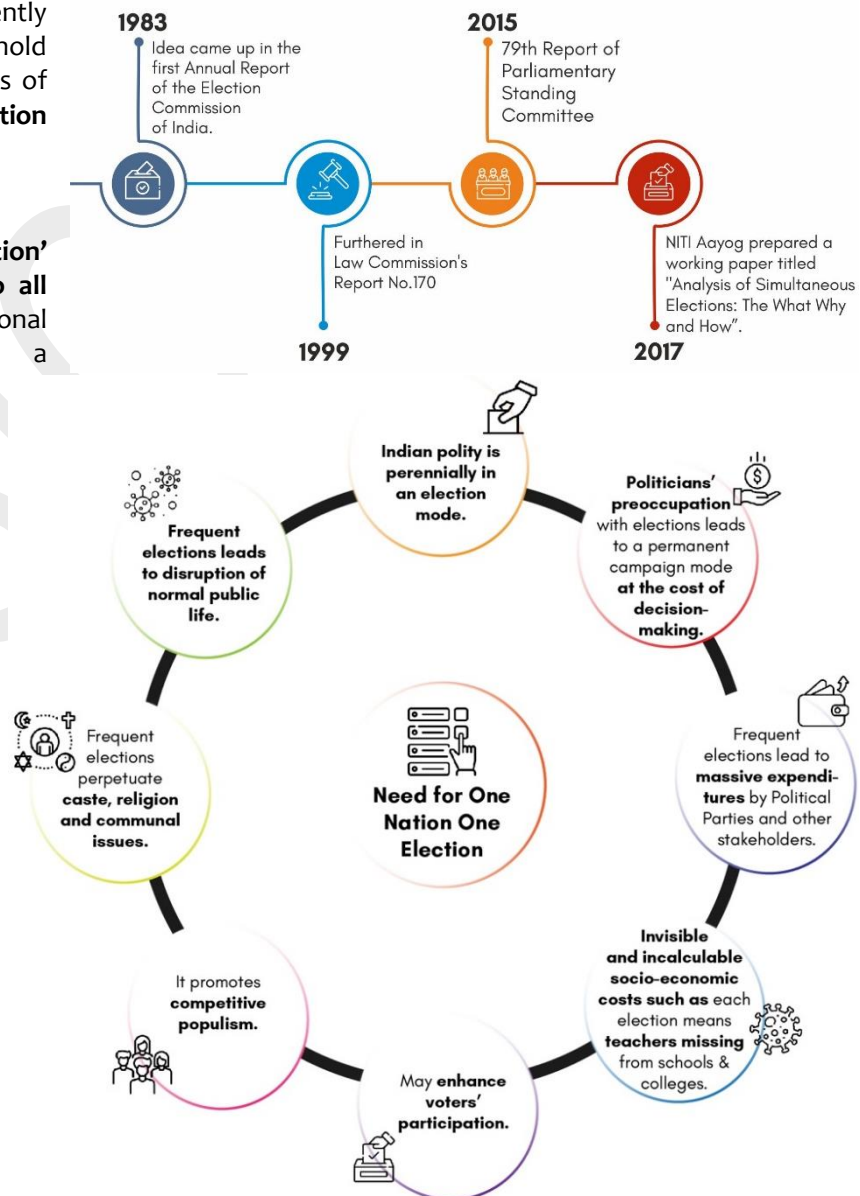
### Why in news?

Chief Election Commissioner recently told that EC is ready to hold **simultaneous elections** on the lines of Prime Minister’s call for ‘**One Nation One Election**’.

### About One Nation One Election

- Ideally ‘**One Nation One Election**’ should imply that **elections to all the three tiers** of constitutional institutions take place in a **synchronized and co-ordinated** fashion. It means that a voter **casts his vote for electing members for all tiers** of the Government on a **single day**.
- However, the **elections to third tier institutions** comes under ambit of **State** as per the Constitution. Further, elections to third tier are **directed and controlled by State Election Commissions (SEC)** and their **sheer numbers** in the country is significantly large.
  - Thus, it would be **impractical** to synchronize and align election schedules of the **third tier** with that of LS and State Assembly election.
- Accordingly, the term “One nation one election” is defined

### Idea of Simultaneous elections



as **structuring the Indian election cycle in a manner** that elections to **Lok Sabha and State Assemblies** are synchronized together.

### Concerns associated with One Nation One Election

- **Operational feasibility:** There are a number of concerns which would **need to be adequately addressed within the constitutional and statutory boundaries.**
  - This includes aspects such as **how would terms** of Assemblies/Lok Sabha **be synchronized** for the first time and would it be feasible **to extend or curtail the existing terms** of some State Assemblies to facilitate one nation one election.
  - As the constitutional provisions do not **fix the term of either State Assembly or Lok Sabha**, it would only be a matter of time when the **electoral cycle gets disturbed again.**
- **Inconsistent with Westminster democracy and federalism:** It would **deprive a state of one of the essential elements** of Westminster democracy-i.e. A government may **choose to dissolve itself**, or a government may **fall if it loses its majority.**
- **Impact on voters' behaviour: Voter may not differentiate** between the voting choices for State Assembly and Lok Sabha in case simultaneous elections are held. This situation could lead to:
  - **National issues** impacting electorate's behaviour for **voting in State Assembly elections;** or
  - **State issues** impacting electorate's behaviour for voting in Lok Sabha elections.
- **Disadvantage to regional parties:** Regional parties may be at a disadvantage as voters are **reportedly likely to predominantly vote one way**, giving the dominant/national party at Centre an advantage..
- **Others:** Having to face **electorate more than once** every 5 year **enhances the accountability** of politicians.

### Road Ahead

- **Conducting election in two phases:** PSC suggested that simultaneous elections be **considered in two-phases.** Phase I is suggested to be in sync with that of the Lok Sabha elections. Phase II is suggested **approximately mid-way** in the term of the Lok Sabha.
  - Thus, it is envisaged to **conduct elections every 2.5 years** (30 months) in the country once the **entire electoral cycles** of Lok Sabha and all State Assemblies **are synchronized.**
- **Avoiding premature dissolution:** Election commission has made following recommendations:
  - **In case of Lok Sabha:** Any 'no-confidence motion' moved should also **necessarily include a further 'confidence motion'** in favour of a government to be headed by a named individual as the future Prime Minister.
  - **In the case of Legislative Assembly:** In the event of a 'no-confidence motion', it should be mandatory **to simultaneously move a 'confidence motion'** for formation of an alternative government. This will, in normal course, **eliminate cases of premature dissolution** of Assemblies.
- **Schedule of Bye-elections:** PSC recommended that **bye-elections to all seats** that become vacant **during a year** may be **conducted together** during a **pre-determined time period.**
- **Law Commission recommendations:** LCI had suggested that elections of legislative assemblies whose term ends **six months after the general elections** to Lok Sabha can be clubbed together. However, the results of such elections **can be declared at the end of the assembly's tenure.**

## 5.4. ELECTION LAWS (AMENDMENT) BILL

### Why in news?

The Election Laws (Amendment) Bill, 2021 was passed by the Parliament.

### About the bill

- Bill amends **RPA 1950 and RPA 1951** to implement certain electoral reforms.
- Changes introduced are given in below table:

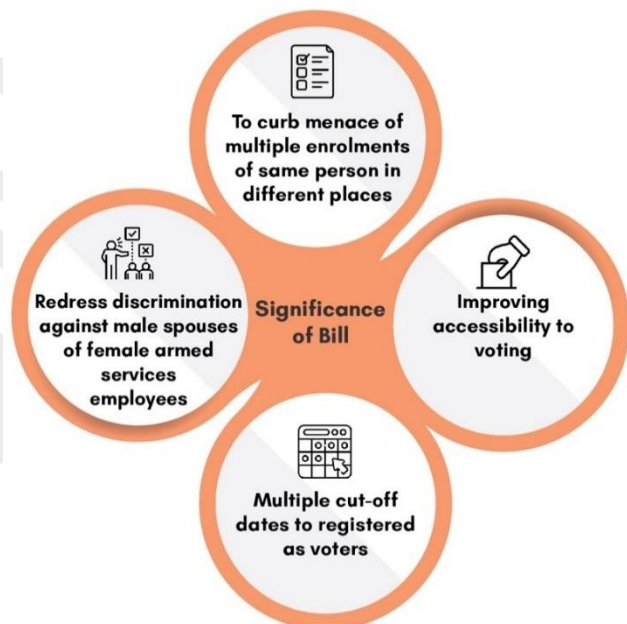
Representation of People Act	
<b>RP Act, 1950, inter alia, provides for:</b>	<ul style="list-style-type: none"> <li>Allocation of seats in and delimitation of constituencies for elections to, the House of the People and the Legislatures of States,</li> <li>Qualifications of voter at such elections and</li> <li>Preparation of electoral rolls, etc.</li> </ul>
<b>RP Act, 1951, inter alia, provides for:</b>	<ul style="list-style-type: none"> <li>Conduct of elections of the Houses of Parliament and to the House or Houses of the Legislatures of each State,</li> <li>Qualifications and disqualifications for membership of those Houses,</li> <li>Corrupt practices and other offences at or in connection with such elections, etc</li> </ul>

Area	Changes brought
Linking electoral roll data with Aadhaar	<ul style="list-style-type: none"> <li>Electoral registration officer <b>may require a person to furnish their Aadhaar number</b> for establishing their identity.</li> <li>If their name is already in the electoral roll, then Aadhaar number may be required for <b>authentication</b> of entries in the roll.</li> <li>Persons will <b>not be denied inclusion</b> in the electoral roll or have their names deleted from the roll, if they are <b>unable to furnish Aadhaar number</b> due to <b>sufficient cause</b> as prescribed.                     <ul style="list-style-type: none"> <li>Such persons <b>may be permitted</b> to furnish alternate documents <b>prescribed by the central government</b>.</li> </ul> </li> </ul>
Qualifying date for enrolment in electoral roll	<ul style="list-style-type: none"> <li>Bill amends this to provide <b>four qualifying dates</b> in a calendar year, which will be <b>January 1, April 1, July 1, and October 1</b>.</li> </ul>
Gender-neutral provisions	<ul style="list-style-type: none"> <li>Bill replaces the <b>term 'wife' with 'spouse'</b> in both the Acts.</li> </ul>
Requisitioning of premises for election purposes	<ul style="list-style-type: none"> <li>Bill <b>expands the purposes</b> for which such premises can be requisitioned.</li> <li>These include using the premises for <b>counting, storage of voting machines and poll-related material</b>, and <b>accommodation</b> of security forces and polling personnel.</li> </ul>

### Concerns associated with the Bill

- **Discretion with electoral officer:** Electoral officer has uncanalised discretion since the law **does not prescribe any guiding principles** to decide when an Aadhaar number may be “required”.
- **Burden of proof shifts:** Instead of the **Government proactively ensuring registration** on the electoral rolls, the **burden now shifts to individuals** who may be **unable/unwilling to link their Aadhaar** to justify their retention on the rolls.
- **Risk of disenfranchisement:** Using Aadhaar to clean the electoral involve the risk of disenfranchisement, especially of **marginalised communities**. The inclusion and exclusion errors of Aadhaar database would cascade to the electoral database.
- **Political profiling:** By linking electoral IDs with Aadhaar numbers, it is easier to **track which voter has accessed welfare subsidies and benefits** using their Aadhaar.
- **Passed in haste:** The bill has been passed without putting up the **legislative text for public consultations**, and **without any discussion**, thus **undermining parliamentary democracy**.
- **Other issues with usage of Aadhaar:**
  - Aadhaar was only meant to be an **identity proof**, not an address proof. In contrast, Registration of Electors Rules, 1960 (formulated under RPA 1950) clearly stipulates **address to be a key index for electoral rolls**.
    - ✓ Also, Aadhaar is **not meant to be a citizenship proof**. Residence of 182 days can make even a non-citizen eligible for an Aadhaar ID and thus voting.
  - The **enrolment processes** for voters’ lists and Aadhaar are **completely different**. Whereas Aadhaar enrolment is based on **production of existing documents**, voter enrolments **involve physical verification and “house visits”** by a registration officer or representative.
  - Maintenance of the voters’ lists is a primary responsibility of the ECI. Since, **ECI has no control on either enrolment or deduplication** in Aadhaar, it appears a potential conflict of interest to use Aadhaar for electoral rolls.
  - There are **no publicly available audit reports** either on efficacy of Aadhaar deduplication or on the authenticity of the Aadhaar database.

### ELECTION LAWS (AMENDMENT) BILL, 2021



### Conclusion

Keeping in mind the above-mentioned concerns, suitable **institutional and technological mechanisms** need to be developed before the move is implemented such as **steadfast implementation of Personal Data Protection Law**. Further, given the tricky and contentious nature of issues, **need for adequate debate and discussions cannot be over-emphasised**.

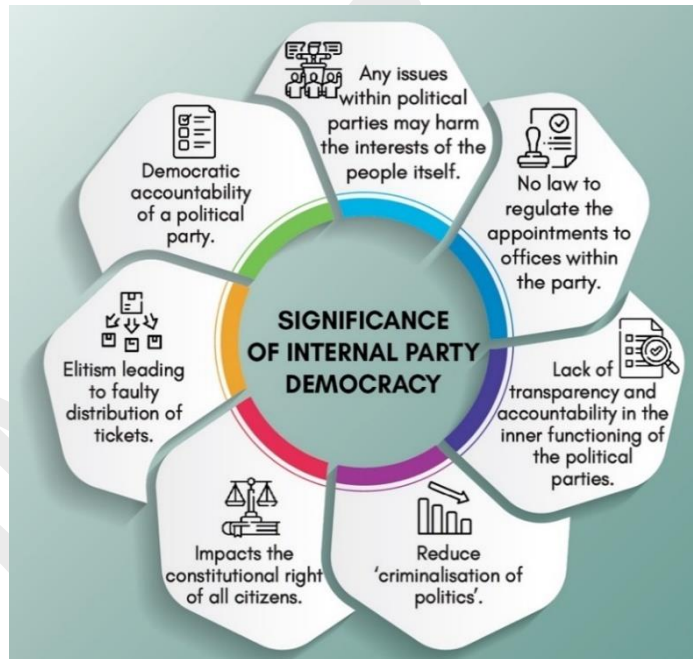
## 5.5. INTERNAL PARTY DEMOCRACY

### Why in News?

Recent furore over factionalism in the ruling Congress in Punjab and the question regarding the leadership of the party at the national-level in recent months has made it important to understand the larger issues of **inner-party democracy in political parties (PP) in the country**.

### About Political Parties and Inner Party Democracy

- A political party is an **organised group of citizens** who hold common views on governance and **act as a political unit** that seeks to obtain control of government with a view to further the agenda and policy they profess.
- Though, Constitution provides for **co-operative societies which is a fundamental right under Article 19 (1)(c)**, but the **Right to form political parties is not**.
- **Internal democracy in political parties** refers to the level and methods of including party members in the decision making and deliberation within the party structure.

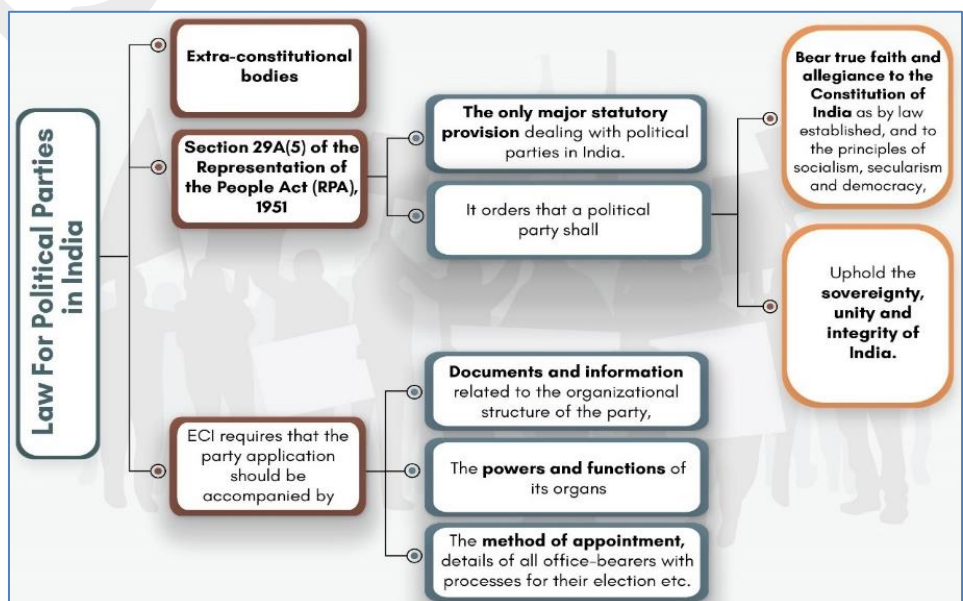


### Challenges in setting up in Party Democracy

- **Inadequate power with Election Commission:** ECI is not equipped to regulate the functioning of the political parties. In the case of 'Indian National Congress vs Institute of Social Welfare & Others', 2002, SC held that **ECI cannot take punitive action against registered political parties for violating the principles of inner-party democracy**.
- **Resistance by Dynastic, caste and religion parties:** Most of the parties are openly caste- or religious-based and also their finances are dubious and opaque.
- **Elitism in parties:** Leadership in political party is mostly decided by a coterie of party functionaries who holds sway over the party administration.

### Way Forward

- **Giving a constitutional status:** Political parties can be given constitutional status. Ex: **Germany** gives constitutional status to political parties. As per its law, their internal organisation **must conform to democratic principles**.



- **Responsible body within Political parties:** Political parties in developed nations maintain high levels of internal democracy.
  - Ex: in the U.K., the Conservative Party has a Central Council and an Executive Committee which **elects its President, a Chairman and Vice Chairmen at its annual meeting.**
- **Disclose their funding:** They must publicly account for their assets and for the sources and use of their funds.
- **Rethink anti-defection law:** Instead of looking at internal party processes, one way to decentralise power is by getting rid of the anti-defection law. The need to canvass votes in the legislature will create room for negotiation in the party organisation too.
- **Implement suggestions from committees etc:**
  - Committees like **Dinesh Goswami Committee, the Tarkunde Committee and Indrajit Gupta Committee**, has strongly argued for more transparent working of the political parties in the country.
  - **1999 Law Commission Report** strongly recommended the introduction of a regulatory framework for governing the internal structures and inner party democracy of the political parties.
  - **A draft Political Parties (Registration and Regulation of Affairs) Act, 2011** was submitted to the Union Law Ministry.
    - ✓ Act aims to regulate the **constitution, functioning, funding, accounts and audit, and other affairs** of and concerning political parties participating in elections.

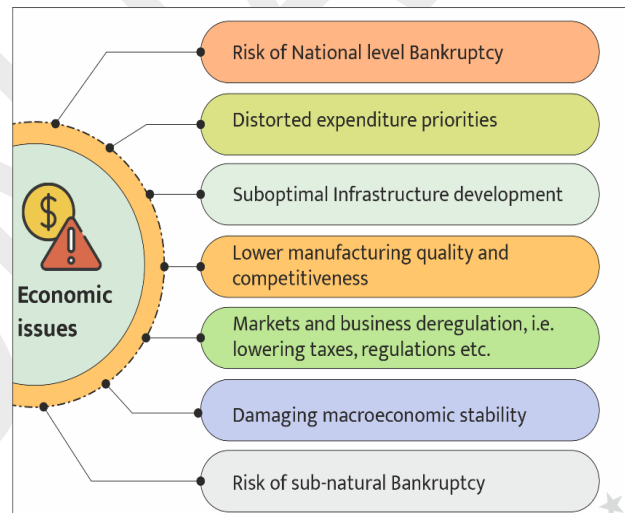
## 5.6. ELECTION FREEBIES

### Why in News?

Recently, 15<sup>th</sup> Finance Commission chairperson raised concerns over growing political election freebies with the need to contemplate adopting the concept of **sub-national bankruptcies**.

### About Election Freebies

- Election Freebies are the **offerings/ distribution of irrational freebies from political parties as part of electoral promises**. E.g., Free electricity, Free Water, Free Rides, Loan Waivers, Allowances, laptops etc.
- Some of these 'freebies' help them to meet **basic needs of people** and **uplift their living standard**. But it goes against the roots of **free and fair election** in a **democracy** and gives rise to several issues.



### Issues with Freebies: Negative Impact of Freebies

- **Economic Issues:** Freebies are a **huge drain** on the state exchequer affecting the fiscal balance and macroeconomic stability of the country. E.g.
  - Telangana has committed 35% of revenue receipts, almost 63% of state's own tax revenue, to finance populist schemes which are centered around freebies.
- **Political Issues:** It goes against **Article 14** by distorting the level playing field among political parties.
- **Socio-psychological Issues:** Distorted economic decisions lack **equity and fairness**, leading to various socio-psychological issues such as reduced efforts or laziness, threats to social cohesion by **creating artificial divides between haves and have-nots** of the associated freebies.
- **Environment:** Freebies promote unsustainable practices by pushing governments and people away from environmentally sustainable practices. E.g.
  - **Free electricity** reduces incentives for farmers and domestic households to **install solar panels** or adopt more efficient public transport systems.

### Way Forward

- **Empowering Election Commission** to enforce MCC by giving it legal status and power to de-register political parties if they violate MCC guidelines.

- **Differentiating between freebies** with priority to DPSPs based or merit goods such as PDS system, education, health etc. for greater prosperity.
- **Need Based Freebies with Transparency** by segregating haves and have-nots and identifying real beneficiaries. E.g., ensuring that farm loan waiver reaches only actual farmers.
- **Financial Budgeting on freebies** between subsidies and freebies with awareness programmes to educate people to promote demand-based interventions.
- **Achieve a more inclusive and higher economic Growth rate** to meet people's aspirations of jobs, better living standard, lesser inequalities etc. to reduce temptation towards freebies.
  - **Outcome-oriented government schemes** can help in this through better policy reach and expenditure efficiency.

**Checking Freebie Politics: Steps taken by ECI**

- In India, conducting Free and Fair elections is the responsibility of ECI.
- In **Subramaniam Balaji Vs State of Tamil Nadu (2013)**, SC observed the lack of provisions and directed ECI to frame guidelines to check freebies in consultation with political parties.
- To ensure electoral process integrity, in 2016 guidelines to check freebies were included under **Part VIII of Model Code of Conduct (MCC)**.
- Allowing welfare measures (as part of **DPSP**), under these guidelines political parties should promise only what they can fulfil in order to gain electoral trust on feasible promises by:
  - **Reflecting the rationale** behind the promises, and
  - Clarify the **Ways and Means** to meet the expenses.
- But it can't regulate policies and decisions of parties due to lack of enabling laws to exercise the power to de-register a political party.

**Conclusion**

Use of public money without proper responsibility carries other risks as well such as tax avoidance from taxpayers. Therefore, if not checked, it can lead to a culture of competitive freebie politics (domino effect) at all levels, creating threat to macroeconomic stability and **integrity of the nation.**

**5.7. ELECTRONIC VOTING MACHINES (EVM)**

**Why in News?**

Citizens' Commission on Elections' Report on EVMs and VVPAT was released recently.

**About Electronic voting machine (EVM)**

- EVM is a **microcontroller-based portable instrument** designed to modernise the election procedure of conducting elections.
- EVMs can cater to a **maximum of 64 candidates** (including NOTA). There is provision for 16 candidates in one Balloting Unit.

**Concerns raised against EVMs**

- **Susceptibility to fraud:** Many software programmers have claimed that EVMs are vulnerable to malicious programming and if it gets affected then any hacker can hack the machine and can tamper the vote counts easily.

Advantages of using EVMs

- More authentic and accurate reflection of the choice of the electorate**
  - EVMs completely eliminates the possibility of casting 'Invalid Votes', which during the paper ballot regime was noticed in large numbers.
- Made the Process Simpler**
  - As one does not need to mark a ballot paper and put it in the ballot box. There are both audio and visual indications for the voter to be assured that his vote has been recorded correctly.
- Secure Stand-alone Machine**
  - EVMs are not hackable as these are stand alone machines and not connected to the internet and/or any other network at any point of time during polling. Hence, there is no chance of hacking.
- Huge Savings**
  - With the use of EVMs, printing of millions of ballot papers for every election can be dispensed with. This results in huge savings by way of cost of paper, printing, transportation, storage and distribution.
- Quick Counting Process**
  - And result can be declared within 3 to 5 hours as compared to 30-40 hours, on an average, under the conventional Ballot paper system.
- Discourage Booth-capturing**
  - With paper ballots, party loyalists would occupy a polling booth by force and stuff the ballot box with fake ballots. EVMs were designed to discourage such fraud by limiting the rate of casting votes to five per minute.
- Sample Headline**
  - This is a sample text that you can edit.
  - You can change font (size, colour, name), or apply any desired formatting.



- **Global precedence:** German constitutional court ruling (2009) forced the country to scrap EVMs and return to paper ballot. Netherlands and Ireland have also abandoned EVMs.
- **Lack of secrecy:** In the case of EVMs, the candidates know which booths voted for or against them and how they fared in each booth, and this knowledge can be misused by a candidate.
- **Storage and Counting concerns:** EVMs are stored in a decentralized manner in different locations. Security experts say that voting machines must remain in a secure environment throughout their life cycle.

### Conclusion

In electoral democracies, free and fair elections convert voters' preferences into a political mandate that forms the basis for policymaking. More precise and efficient voting procedures boost the strength of democratic institutions. EC should address the concerns raised by various stakeholders and should bring in more transparency regarding credibility of EVMs in conducting free and fair elections.

<p><b>ECI initiatives to improve EVMs credibility</b></p> <ul style="list-style-type: none"> <li>• Use of VVPAT machines along with the EVMs in all polling stations to bring utmost transparency and credibility.</li> <li>• ECI has also taken into account suggestions made by various political parties regarding counting of VVPAT slips and will count VVPAT slips up to a definite percentage.</li> <li>• ECI held a challenge and offered opportunity to political parties to demonstrate that EVMs can be tampered.</li> <li>• EC ensures continuous participation of all parties in all crucial steps during elections such as First Level Checking (FLC), randomisation of EVMs/VVPATs, mock poll, EVM sealing and storage etc.</li> </ul>	<p><b>Why EC says Indian EVMs cannot be hacked or manipulated</b></p> <p>Political parties across the spectrum have expressed doubts about electronic voting machines (EVMs) being manipulated. Around the world, paper ballots are more popular with just 25 countries experimenting with EVMs.</p> <table border="1"> <tr> <td>▶ 275 safety protocols make EVMs tamper-Proof. </td> <td>▶ No candidate knows switch allotted to him/her till day of withdrawal of nomination.</td> </tr> <tr> <td>▶ No internet port so no means to receive WiFi/ Bluetooth/wireless signal.</td> <td>▶ Serial number of switch allotted to party may vary from constituency to constituency. </td> </tr> <tr> <td>▶ Produced and processed under sanitized conditions.</td> <td>▶ Before start of election, EVM switch fidelity tested with VVPAT before political party agents.</td> </tr> <tr> <td>▶ EVM chip writable only once; once written into and encrypted, chip can't be read/overwritten. </td> <td>▶ EVM can't be 'stuffed' as each votetakes 7 seconds to register. </td> </tr> <tr> <td>▶ Rigorous physical safeguards in place during transport/storage.</td> <td>▶ Malfunction easily detected.</td> </tr> </table>	▶ 275 safety protocols make EVMs tamper-Proof.	▶ No candidate knows switch allotted to him/her till day of withdrawal of nomination.	▶ No internet port so no means to receive WiFi/ Bluetooth/wireless signal.	▶ Serial number of switch allotted to party may vary from constituency to constituency.	▶ Produced and processed under sanitized conditions.	▶ Before start of election, EVM switch fidelity tested with VVPAT before political party agents.	▶ EVM chip writable only once; once written into and encrypted, chip can't be read/overwritten.	▶ EVM can't be 'stuffed' as each votetakes 7 seconds to register.	▶ Rigorous physical safeguards in place during transport/storage.	▶ Malfunction easily detected.
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▶ Rigorous physical safeguards in place during transport/storage.	▶ Malfunction easily detected.										

## 5.8. SOCIAL MEDIA AND POLITICS

### Why in news?

Recently a survey of was conducted to find out how preferred news source is likely to influence political leaning, and even perception of the post-pandemic economic recovery.

### About Social-media and its importance in politics

Social media refers to wide range of internet-based and mobile related services that allow users to participate in online exchanges of views, contribute towards user-created content, or join online communities. Examples include blogs, social networking sites, status-update services etc.

### Steps taken to address related concerns

- **Instructions issued by Election Commission (EC):** EC has issued Instructions with respect to the use of social media in Election campaigning:
  - The model code of conduct and its pre-certified political advertisement rules will apply to the social media as well.

In 2019, Political parties have spent over Rs **53 crore on digital platforms** like **Google and Facebook** between February and May.

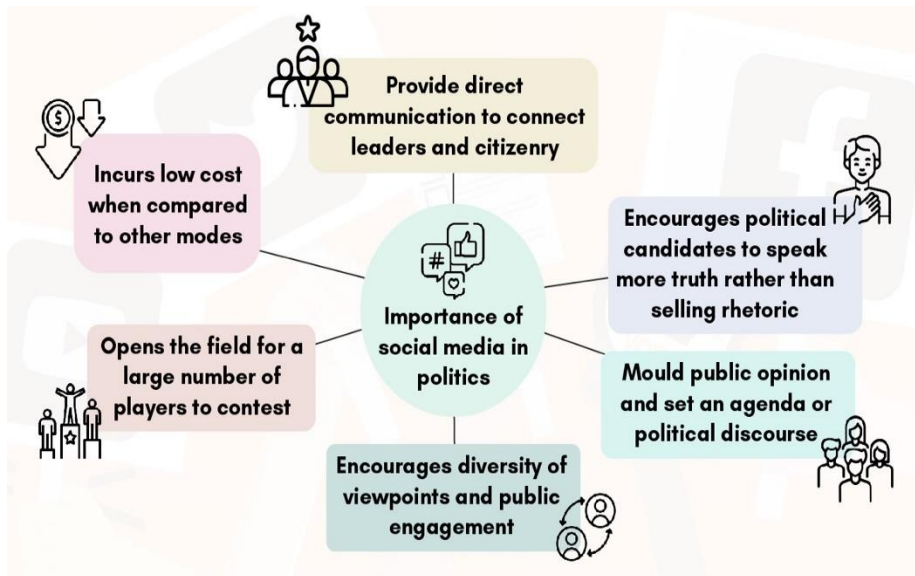
According to the 2017 **CSDS-Lokniti survey**, one-sixth of India's WhatsApp users were part of a WhatsApp group either **managed by a political party or its leader**

A 2019 **CSDS-Lokniti, survey** found that **one in every three Indian citizens** on social media consumes political content **daily or regularly**

Political movement on social media was **higher in 2019 Lok Sabha elections** than in 2014. **30 per cent of 150 million first-time voters** were engaged and influenced through **social media platforms.**

**Facts showing rising use of social media in politics**

- Candidates are required to **furnish details of their social media account (if any)** at the time of filing nominations. The **expenditure incurred on social media campaigning** by them will be included within their **limit of election expenditure**.
- All major social media platforms are required to **adhere to the “silence period”**



that comes into effect 48 hours before the polls.

- A special **social media expert** has been added in district and state-level **media certification and monitoring committees** to monitor social media and report violations.
- **Code of ethics:** Social Media Platforms and Internet and Mobile Association of India (IAMAI) presented a **“Voluntary Code of Ethics for the General Election 2019”** to ensure free, fair & ethical usage of Social Media Platforms to maintain the integrity of the electoral process.
  - The Platforms agreed to create a **high priority dedicated reporting mechanism** and appointment of dedicated teams for **taking expeditious action** on any reported violation. It also promises to **facilitate transparency** in paid political advertisements.
- **IT rules 2021: Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021** has been framed under section 87 (2) of IT Act, 2000 to **empower ordinary users** of digital platforms to **seek redressal** for their grievances and **command accountability** in case of infringement of their rights.

#### Further measures to make use of social media in politics more constructive

- **Responsibility-based approach:** The social media platforms should themselves effectively **halt the spread of disinformation**, and work to guarantee that platforms do not become a **vehicle for social and communal polarization by using advanced technology like AI**.
- 
- **Conducting studies:** Studies should be conducted to understand the dynamism of social media platforms, their **disruptive potential and transformative changes brought in society etc.**
  - **Guidelines towards acceptable and forbidden content, data handling, citizen engagement etc.** are a few **best practices** that requires more attention.



- **Coordination among stakeholders:** Regulatory authorities should work with coalitions comprising of **fact-checkers, civil society organizations, academia, think tanks, etc.,** to put **ethical communication principles into practice** in a social-media age.

### Conclusion

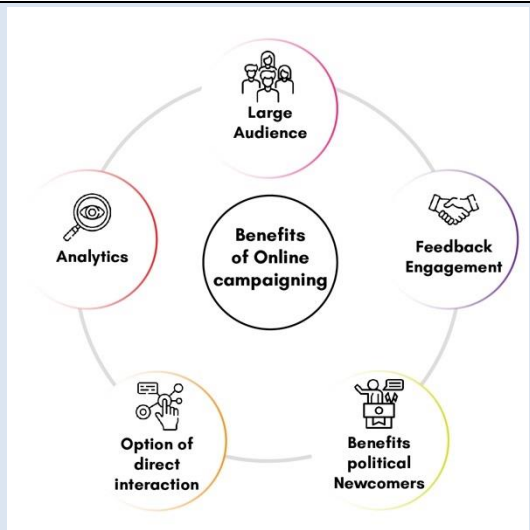
The advent of social media has changed how politics is being organized and conducted, as well as the nature of political communication in India. While democratization of politics has increased, it also created several ethical dilemmas due to non-ethical uses of social media. The issue needs to be tackled on a war footing through a multi-stakeholder approach.

#### Online campaigning

During the ongoing pandemic EC had put temporal restrictions on physical rallies for upcoming state elections while allowing virtual campaigns through social media platforms.

#### Concerns raised against online campaigning

- **Regulation of online campaigning:** Monitoring of e-Campaign and other applicable rules (Opinion polls, exit polls etc.) will be a challenge due to limited EC resources and diverse social media platforms.
- **Transparency concern:** Social media platforms might favour a specific party and accord prominence to its content over others.
- **Campaigning on wedge issues** such as matters on immigration and welfare as messages are being played out largely in secret.
- **Tracking the source of financing:** Expenditure on campaigns run from outside the country can pose serious challenges for regulating expenditure as well as for message dissemination.
- **Role of intermediaries:** Methods used to curate and display information on these sites are opaque which means it is impossible to independently authenticate their claims.
- **Disadvantage to smaller parties:** Disparities in knowledge of and access to online technologies will put the smaller and regional parties at a comparative disadvantage.
- **Digital divide:** Poor and lower castes will be at a disadvantageous position compared to urban, middle and richer classes/castes.
- **Privacy:** An online sphere where every conversation, comment or post is recorded and can be analysed for its commercial and political use could have negative repercussions on privacy and free expression and exchange of views.
- **Other Concerns:** Monitoring proxies used by political parties; control hateful campaigns, fake news etc.



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## 6. GOVERNANCE

### 6.1. GLOBAL STATE OF DEMOCRACY

# GLOBAL STATE OF DEMOCRACY AT A GLANCE



**Democracy is a form of government in which the 'rulers are elected by the people'. Its core values are**

- ⊖ Final decision making power must rest with those elected by the people
- ⊖ One person, one vote, one value
- ⊖ Fair opportunity to the people to change the current rulers
- ⊖ Government rules within limits set by the constitution



**Why is democracy the preferred form of government around the world?**

- ⊖ **Enhances the dignity of citizens** by following the principle of political equality, ensuring civil liberties, etc.
- ⊖ **Ensures unity in diversity** by providing constructive way to resolve differences.
- ⊖ **Reduces the possibility of rash decision making by facilitating** consultation.
- ⊖ **Ensures correction of its own mistakes** by ensuring a space for public discussion.
- ⊖ **Promotes Global security and stability** by abating internal armed conflicts or terrorism.
- ⊖ **Better opportunities for economic growth**



**What are the threats that are pushing countries from democracy to authoritarianism?**

- ⊖ **Economic Dissatisfaction** among citizens of well-established democracies due to low economic growth, high unemployment, poverty, etc.
- ⊖ **Rise of polarisation** which in turn undermines judiciary, hampers legitimate change of government peacefully, among others.
- ⊖ **Digitalisation & disinformation** in the age of social media further aggravate factors threatening democracies.
- ⊖ **Weakening of democratic institutions** like judicial independence, Legislative oversight, Media integrity, Civil Society participation, Election process.
- ⊖ **Climate change** may infringe upon democratic rights and breeding ground for conflict.
- ⊖ **Fragile nature of nascent democracies**, influence of non democracies as well as effect of Covid-19 pandemic.



**Way ahead**

- ⊖ **Prevent coups/ unconstitutional interruptions of the democratic process:**
  - **National efforts:** Constitutional mechanism for Peaceful transition of government, specific legal measures against coups.
  - **Global efforts:** Making countries accountable for deteriorating or threatening democratic regimes.
- ⊖ **Prevent erosion of democracy:**
  - **National efforts:** Address grievances of disgruntled voters, recraft social contracts, strengthen political institutions and processes.
  - **Global efforts:** Develop a set of standards for free and fair elections
  - **Ensure environmental sustainability**
  - **Strengthening Civil society organizations and media Integrity**
- ⊖ **People should diligently exercise their rights and duties.**

#### 6.1.1. DEMOCRATIC PRINCIPLES IN GLOBAL GOVERNANCE

##### Why in News?

Speaking at the first **Summit for Democracy**, the Prime Minister of India advocated for **democratic principles to guide global governance.**

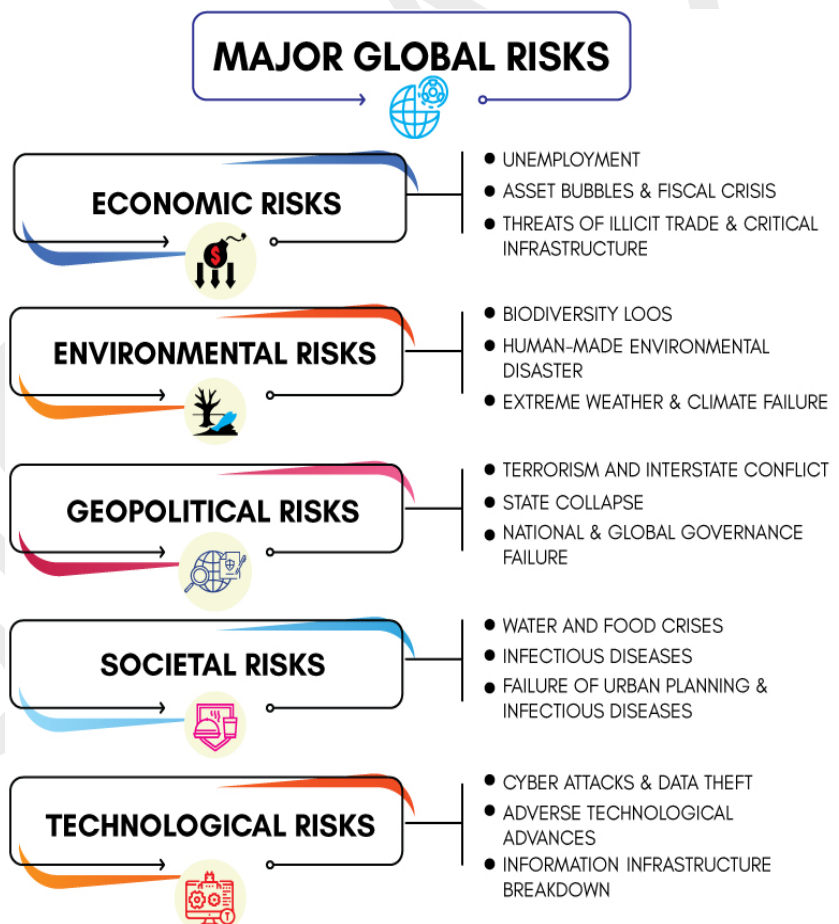
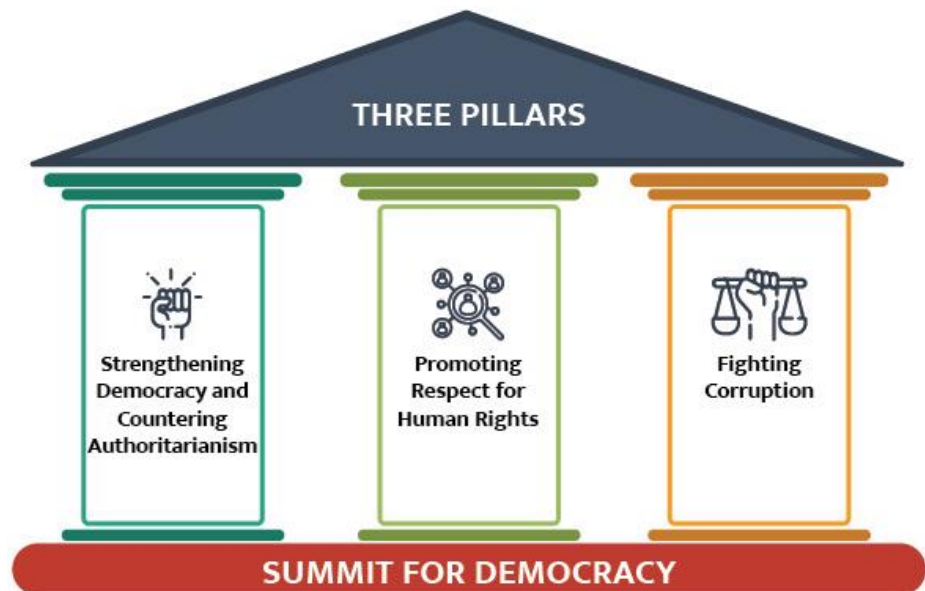
## Global Governance and Global Risks

**Global Governance** is a means to manage issues that cut across national borders to create a fairer and just world.

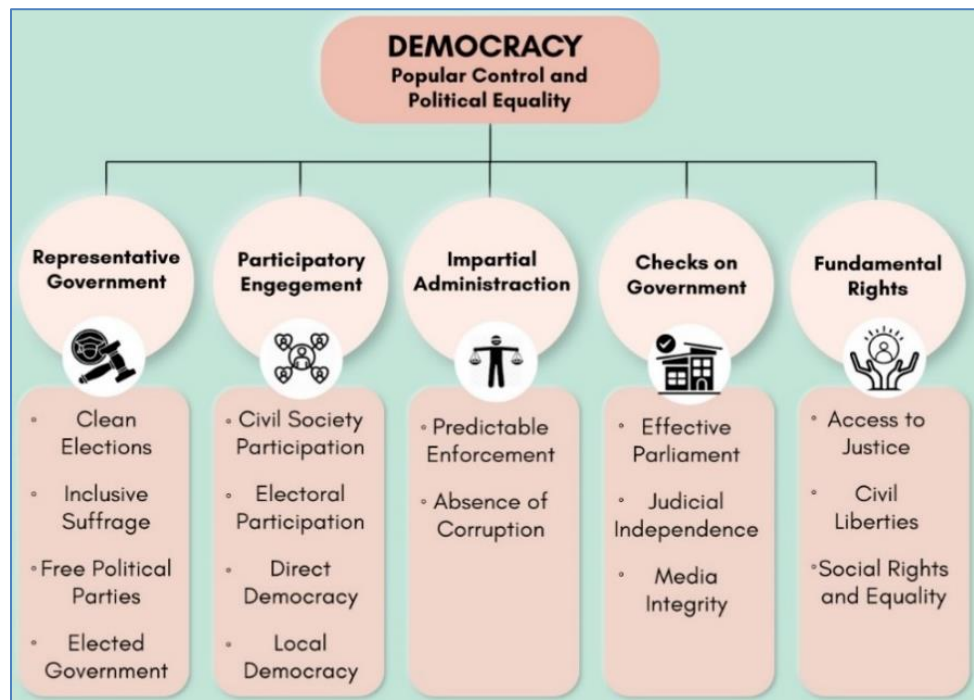
- It involves a **complex of institutions, policies, norms, procedures, and initiatives** to **coordinate collective action** globally and address transnational challenges.
- These interventions include **providing public goods, developing unified standards, and ensuring equality and justice among States and their citizens** to bring more **predictability, stability, and order**.
- Democratic principles can help in this idea by creating a **far less conflicted world** and build **prosperous societies** while protecting **fundamental freedoms** of all without distinction.

### Principles of Democracy and its Benefits in Global Governance

- **Global State of Democracy Report, 2021** identified **five core principles** of democracy with different distinguishing features of democracy from other forms of governance. (see **infographic**)
- Some of the major benefits of these democratic principles in global governance are:
  - **Help in networking** people, corporations, state and international institutions together to build partnerships for **common good**.
  - **Achieve global development goals** through universally accessible and citizen-centric public services.
  - **Protecting fundamental freedom** globally by strengthening UN and other global governance systems through rules-based regimes.
  - **Promoting contemporary human interaction** by including new age actors in governance and allowing increased segmentation and fragmentation of overall governance system across different levels and functional spheres.
  - **Promote Common but differentiated responsibilities and respective capacities** in addressing global issues through its values of justice.
  - **Establishing an inclusive, accountable and responsible sovereign** across nations through control over abuse of power.



- Giving Legitimacy to the government and its decisions. This is visible in little or no rule countries which seek legitimacy by calling themselves a democracy.



**Way Forward**

- **Strengthening democratic values and institutions** with enhanced ties between people, and new transnational actors from the private sector and civil society.
- **Ensure free and fair elections** through cooperation among democracies to ensure competitive elections in which opposition stands a realistic chance of accessing power.
- **Supporting free and independent media** to ensure freedom of press, fighting disinformation and prevent government institutions from using authoritarian means.
- **Fighting corruption** through novel approaches to harness big data, artificial intelligence, and digital technologies to detect and prevent fraud and corruption in governance.
- **Advancing technology for Democracy** through use of technology companies to preserve open and democratic societies, and shape global norms on emerging technologies like social media and crypto currencies.
- **Addressing Democracy Deficits** by bolstering democratic reformers and addressing issues of weak institutions or poor governance.
- **Support transitional democracies and guide regional efforts** through partnerships with regional groupings acting as intermediary bodies. E.g. ASEAN, EU etc.
- **Bring reforms to global institutions** such as UNSC and others to increase the voice of democracies and build partnerships to address global risks.



## 6.2. E-GOVERNANCE

# E-GOVERNANCE AT GLANCE

E-Governance is the **application of Information and Communication Technology (ICT) for providing government services**, interchange of statics, communication proceedings, integration of various independent systems and services.



### TYPES OF E-GOVERNANCE

- **Government to Citizen (G2C):** Services like ration card, passport, taxes, education etc.
- **Citizen to Government (C2G):** Interaction of citizens with government in form of polling, feedback, RTI etc.
- **Government to Government (G2G):** Interaction of governments in states with central government for purpose of administration, coordination, cyber laws etc.
- **Government to Business (G2B):** Interaction of governments with industry for services like E licensing, registration of companies etc.



### PILLARS OF E-GOVERNANCE

- Citizen centricity
- Standardised common infrastructures
- Back-office reorganization
- Governance
- New organisational models
- Social inclusion



### GOVERNMENT INITIATIVES FOR E-GOVERNANCE

- **National e-Governance Plan (NeGP)** to connect e-Governance systems throughout the country and create a nation-wide network for e-delivery of government services.
- **e-Court** provide efficient and time-bound citizen centric services delivery.
- **e-Kranti** is an essential pillar of the Digital India initiative. Its vision is "**Transforming e-Governance for Transforming Governance**".
- **MyGov** to establish a link between Government and Citizens towards meeting goal of good governance.
- **DigiLocker** reduces administrative overhead of Government departments by minimizing use of paper.



### ADVANTAGES OF E-GOVERNANCE

- **Increase the efficiency of work and services** and simplify the process government.
- Use of ICT can **reduce the cost of work**, and also **control the corruption**.
- Help to achieve the **goal of inclusive growth**.
- **Promote transparency and accountability** in government through proliferation of ICT in management and operations.
- **Improve the quality of life** for disadvantaged communities.



### DISADVANTAGES OF E-GOVERNANCE

- **Absence of fairness** in public access to internet, trustworthy information on web **could impact and bias public opinions**.
- **Breach of data can make public lose confidence** in Government's ability to govern the people.
- **High cost involved** in Technology setup and regular maintenance of machines.
- **Digital divide**, as huge gap exists between users and non-users of e-government services.
- **Lack of adequate infrastructure** like electricity, internet and poor adaptability of technology.



### WAY FORWARD

- Educated citizens, concerned institution should **create awareness about e-governance** so that people get benefited by e-services.
- **Mobile governance to be given priority** to reach out citizens from remote control areas.
- **Promote ethical use of e-governance services** by safeguarding government and private sector information and securing the cyber world.
- **Hybrid approach** needs to be adopted for enhancing interoperability among e-governance applications which **will encompass centralized approach** for knowledge management etc.

## 6.2.1. INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES (IT RULES), 2021

### Why in news?

Recently, Ministry of Electronics and Information Technology (MeitY) seeks fresh comments on draft amendments to Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules (IT Rules), 2021.

### More on news

- MeitY draft notification implies that a **government panel would have oversight over content moderation** by intermediaries.
- Proposed amended IT rules aims to **provide additional avenues for grievance redressal apart from Courts** and safeguard Constitutional rights of Indian citizens.
- It will **ensure accessibility of services to users** with reasonable expectation of due diligence, privacy and transparency.
- Key amendments proposed**
  - Set up Grievance Appellate Committee:** It provides users with option to **appeal against grievance redressal process** of intermediaries (legal classification of a social media company).
    - Currently, there is no appellate mechanism provided by intermediaries nor is there any credible self-regulatory mechanism in place.
  - 72-hour deadline for companies: To act on complaints** if they fall under one of ten types of violations, including copyright infringements, defamatory content, and false information.
  - Respect user rights: Addition of new rules** that require intermediaries to respect rights guaranteed to users under the Constitution of India.
    - Government has found several Intermediaries acting in violation of constitutional rights of Indian citizens.

### About Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

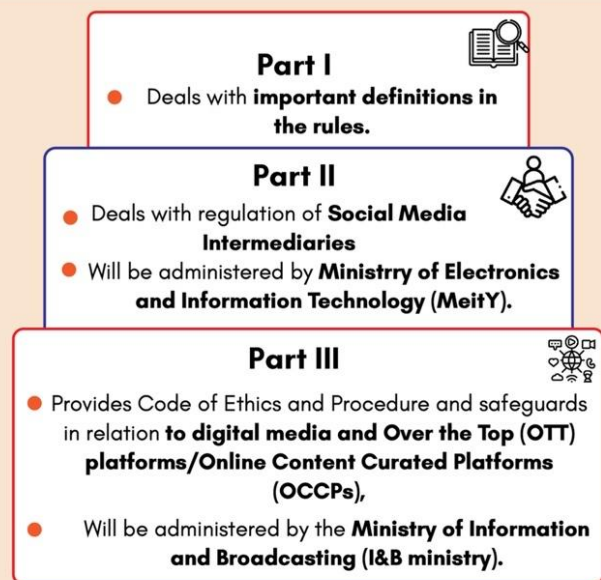
IT Rules 2021 has been **released under section 87 (2) of IT Act, 2000** for Social-Media, Digital Media and OTT platforms and in **supersession of earlier IT (Intermediary Guidelines) Rules 2011**.

- Aim:** To ensure an **Open, Safe & Trusted and Accountable Internet** for all Indian Internet Users and Accountability of intermediaries to their users especially within Big Tech platform.
- Due diligence by intermediaries:** Due diligence must be followed by social media intermediaries like retention of user information for a period of 180 days, reporting cyber security incidents etc.

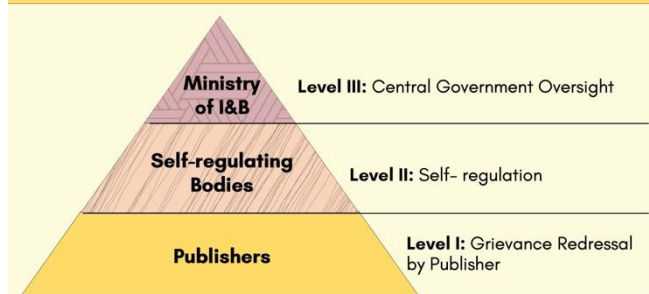
### Content Moderation

- It refers to **process of ensuring user-generated content upholds platform-specific guidelines and rules** to establish the suitability of the content for publishing.
- Benefits of Content moderation:**
  - Provides **online protection for brand and users** against bad actors who share damaging, misleading, or generally toxic content.
  - Helps to **increase traffic & search engine rankings**.
  - Identify and Stop Radical Campaigns** which were used to radicalize minds.
  - Stop rampant abuse of online platforms.
  - Enhance online visibility, customer relations,** encourages buying behavior and process etc.

## 3 PARTS OF RULES



## Three- Tier Grievance redressal Mechanism





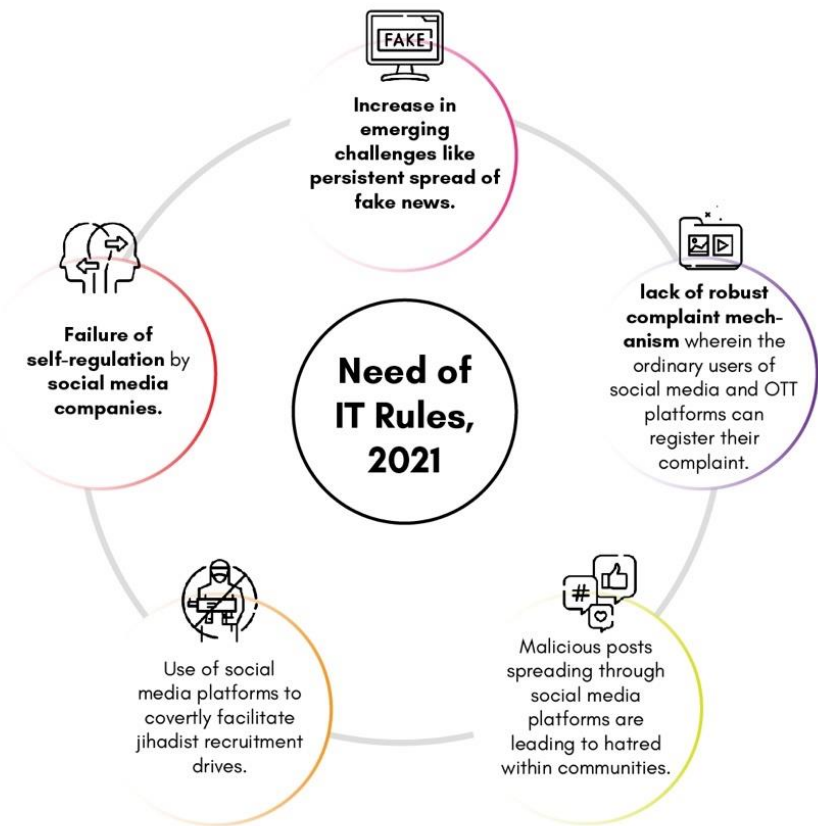
- **Social media intermediaries (SSMIs):** Intermediaries with registered users above a notified threshold will be classified as **SSMIs**. Additional due diligence to be observed by these SSMIs include

- **Appointment of Chief Compliance Officer** for ensuring compliance with Act and Rules, **Nodal Person for 24x7 coordination** with law enforcement agencies, **Grievance Officer**. These above officers must be residents in India.
- **Identification of the first originator** of the information.
- Deployment of technology-based measures.

- **Grievance redressal:** Any person aggrieved by the content of a publisher may file a complaint with the publisher, who must **address it within 15 days**.
- **Digital Media publishers:** It specifies a framework for content regulation of **online publishers of news and current affairs** and curated audio-visual content.
- **Code of Ethics:** For publishers of **news and current affairs**, norms of journalistic conduct formulated by Press Council of India, and Programme code under Cable Television Networks Regulation Act, 1995 will apply.
  - For **online publishers of curated content**, Rules prescribe the code of ethics. This code requires the publishers to **classify content in specified age-appropriate categories**, restrict access of age-inappropriate content by children, **make content more accessible to disabled persons** etc.

**Way forward**

- **Safety of users:** It is important to **address illegal activities on social media** uniform across all social media platforms and ensuring the safety of the majority social media users across India.



- **Use of Technology:** Social media content should be **regularly monitored utilizing emerging technologies** like Artificial Intelligence to remove arbitrary decision making while removing content from a platform.
- **Clear definition:** Terms like anti-national, against sovereignty etc. should be clearly defined to address scope of misuse under the garb of national security.
- **Independent authority:** Appellate committees that will be empowered to review and possibly reverse content moderation decisions taken by social media companies should be independent of government control.
- **Empowering users:** There is need to empower users of digital platforms **to seek redressal for their grievances and command accountability** in case of infringement of their rights.

### 6.2.2. NATIONAL DATA GOVERNANCE FRAMEWORK POLICY

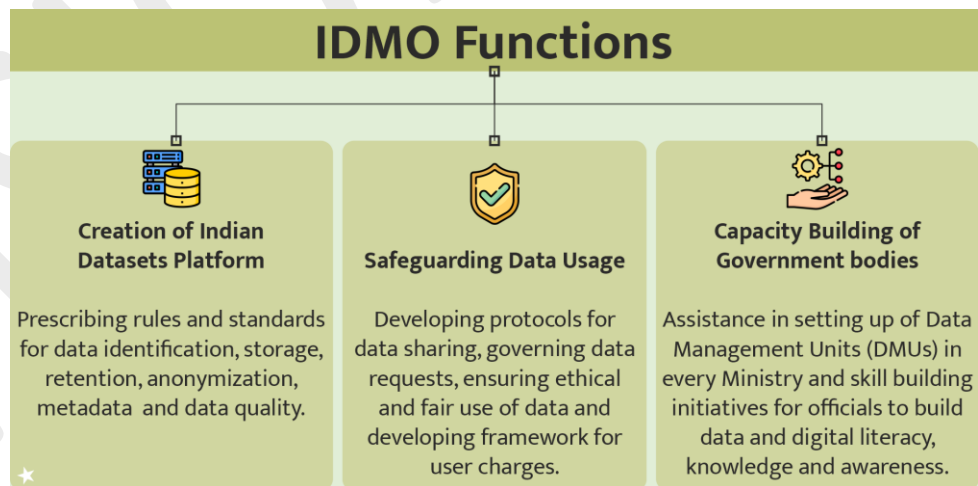
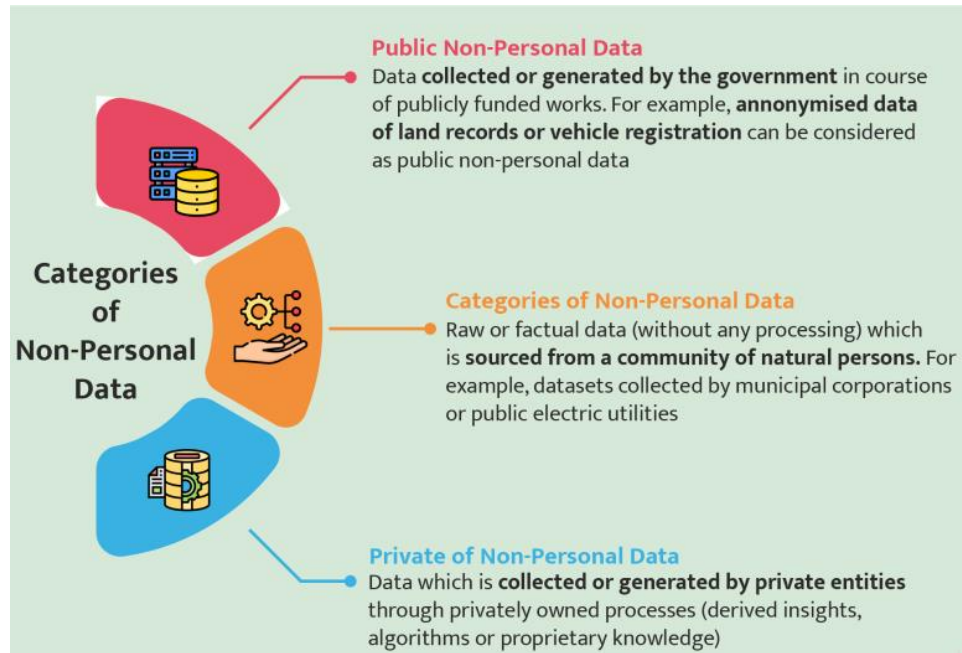
#### Why in news?

The Ministry of Electronics and Information Technology released a revised Draft National Data Governance Framework Policy (NDGFP).

#### National Data Governance Framework Policy (NDGFP)

The framework is the revised version of Draft India Data Accessibility and Use Policy, 2022 which received criticism for considering monetisation of data through sale and licensing to private entities.

- **Aim:** To enhance access, quality, and use of data, in line with the current and emerging technology needs of the decade.
- **Objectives** To accelerate Digital governance, have standardized data



- **Applicability:** All Government departments and entities, all non-personal datasets and data and platform, rules, standards governing its access and use by researchers and Start-ups.
- **Components under NDGFP**
  - **Indian Datasets Platform:** consisting of anonymized non-personal datasets from across Government entities collected from Indian citizens or those in India. This platform shall **process requests and provide access to the datasets to Indian researchers and startups.**
  - **Indian Data Management Office (IDMO):** The framework encapsulates three pronged functions of the IDMO (refer infographic)
  - **Data Management Units (“DMUs”):** Every Ministry/Department shall have “DMUs” that will work closely with the IDMO for ensuring implementation of the Policy.

### Challenges associated with collection and usage of Non-Personal data

- **Mutual exclusion of personal and non-personal data is difficult:** Such data, even if anonymized, bears a risk of re-identification.
- **Security Implications:** Such data could have an impact on national security or strategic interests of the country upon reaching the hands of enemies of the state.
- **Privacy Concerns:** Such data bears risk of collective harm to a group e.g. ghettoization or institutionalised bigotry on the basis of race, religion, sexual orientation etc.
- **Confidentiality Concerns:** Such data could be business sensitive or may include confidential information and may have been derived using proprietary technology developed by such companies.



### Conclusion

Data-led governance is a cornerstone of government’s digital government vision and the framework has a critical role to play in boosting India's Data Economy.

As the **draft only lays down broad contours and the detailed terms of this data sharing regime are yet to be released**, most interactional implications of NDGFP such as **data privacy, security, intellectual property, and data monopoly issues seem open-ended at the moment.**

**Measures to be taken to ensure a safe and transparent data regime:**

- **Finalising the Data Protection Bill, 2021 and the regulations for protection of non-personal data** to work in tandem with NDGFP.
- **Technical threshold for data anonymization should be specified.**
- **Steps are needed to ensure a fair data market** for all and stronger regulations to prevent misuse of non-personal data and market failures.
- **Mandatorily regulating access to privately held non-personal data.**

Specific policies governing standards for data anonymization, rules for conditions of access to such data to private players, rules safeguarding processing and fair and ethical usage of such data by private entities shall be key to ensuring a safe and transparent data regime.

**Related News**

**NITI Aayog launched the National Data & Analytics Platform (NDAP) for open public use**

- NDAP is a user-friendly web platform that hosts **foundational datasets from various government agencies** and is accessible to all users irrespective of **device in use, technology or ability.**
- **Aim:** To democratize access to Public Government Data through improved access and use of published Indian Government Data.
- **Need:**
  - Data is not published in a **user-centric manner** which creates difficulty in further analysis,
  - Data ecosystem is **incoherent** due to different standards
- **Significance:**
  - **User-friendly and engaging**, tailored to the needs of policymakers, researchers, citizens etc.
  - **Standardized** format which makes it easy to do **cross-sectoral analysis**,
  - Standard Operating Procedures to ensure **data is updated regularly**,
  - Encourage **discussion** on social media,
  - **Data-driven** decision making etc

**Hyderabad Declaration’ on e-Governance Adopted**

- **24th National e-Governance conference** unanimously adopted the **Hyderabad declaration.**

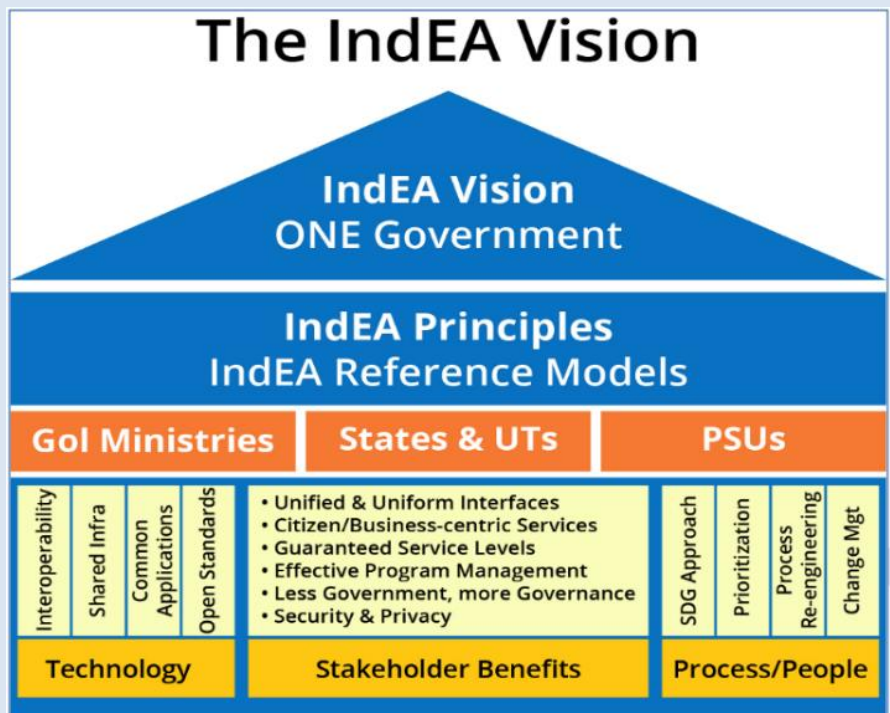
- Conference was jointly held by **MeitY**, Department of Administrative Reforms & Public Grievances, in collaboration with **Telangana Government**.
- e-Governance is **use of ICT** at all levels of Government to **transform relations with citizens, businesses, and other arms** of government.
  - It has helped Government to **enhance coverage, increase transparency, improve response to citizens** and lower costs and has **facilitated citizens to have better access, equity & social empowerment**.
- **Key highlights of Hyderabad Declaration**
  - **Transform citizen services** by using Aadhaar, UPI, Digi-Locker, UMANG, e Sign etc.
  - **Fast track implementation of national level public digital platforms** in key social sectors viz. Health, Education, Agriculture, etc.
  - **Foster responsible use of emerging technology** such as AI, Machine Learning, Blockchain, 5G etc.
  - **Robust technological solutions to withstand pandemic** like disruptions.
  - Make **digital the primary aspect of government service design and delivery**.
  - **National e-Governance Service Delivery Assessment (NeSDA)** to be adopted in collaboration with MeitY.

- **Some e-governance initiatives**
  - **Bhoomi Project for (Karnataka): Online Delivery of Land Records.**
  - **eSeva (Andhra Pradesh)**
  - **Gyandoot (MP): Service delivery initiative.**
  - **Lokvani (UP):** For handling of grievances, land record maintenance and providing a mixture of essential services.
  - **FRIENDS (Fast, Reliable, Instant, Efficient Network for the Disbursement of Services)** in Kerala.

**Related News**

**Meghalaya Enterprise Architecture Project (MeghEA) launched**

- MeghEA aims to **transform traditional service delivery process into a digital service system**.
  - **MeghEA is spread across 6 pillars** i.e. Governance, Human Resources, Entrepreneurship, Primary Sector, Infrastructure and Environment.
- Meghalaya is the first state to implement **India Enterprise Architecture (IndEA)** as MeghEA.
- IndEA (by Ministry of Electronics and Information Technology) is a framework that **enables the development and implementation of Enterprise Architectures independently and in parallel by all governments and their agencies** across India, conforming to the same models and standards.
  - It is a way to establish **Unity in Diversity in the domain of e-Governance**.
- The framework consists of eight reference models such as **Business, Application, Data, Technology, Performance, Security, Integration and Architecture Governance**.
- **Major benefits of IndEA are:**
  - Provide a **ONE Government Experience to the citizens and businesses**, by offering integrated services through multiple channels.
  - **Enhance the efficiency of delivery of services** and improve effectiveness of implementation of developmental and welfare schemes.
  - **Enhance the productivity of employees and agencies** through easy access to information.
  - **Provide integrated and cross-cutting services through seamless interoperability** across the Whole-of-Government.



**6.3. REDUCING AMBIGUITY IN LAWS**

**Why in news?**

Various experts have pointed that ambiguity in law making leads to over-reliance on judicial interpretation.

### About Ambiguity in laws

- In law, there are **two categories of ambiguity: latent and patent ambiguity.**
  - Latent ambiguity** exists when the language used is clear and intelligible so that it suggests one meaning but some **extrinsic fact or evidence creates a need for interpretation** or a choice among two or more possible meanings.
  - Patent ambiguity** is one that **appears on the face of a document** or writing because uncertain or obscure language has been used.
- Some examples of ambiguity in law are as follows:**
  - In Section 124 (IPC)**, terms “bring into hatred or contempt” or “attempt to excite disaffection” can be interpreted in many ways.
  - In Anti-conversion laws**, terms used in such laws like **force, fraud, allurements etc. are loosely defined**, leaving wide scope for misuse.
  - In Criminal Procedure (Identification) Act, 2022**, definition of measurements to include several types of personal information, all of which have **varying degrees of reliability and usefulness** when it comes to criminal investigations, is **manifestly arbitrary**.
  - IT Act 2000**, amended in 2008, **lacks any reference to the internet** in the whole Act.

### Why laws need to evolve?

- Archaic laws:** Land Acquisition Act, that has repeatedly been at the centre of controversy over acquisition of land for large projects, **dates back to 1894**. Similarly, Civil Procedure Code goes back to 1908, Evidence Act to 1872 etc.
- Misuse:** Possibility of some elements using **outdated rules for harassment, bribery and rent seeking**, and courts often have no option but to hand out rulings based on these laws.
  - For instance, Indian Telegraph Act, 1885 has been invoked many times by state-owned Doordarshan to claim telecast rights for cricket matches.

### Lack of clarity:

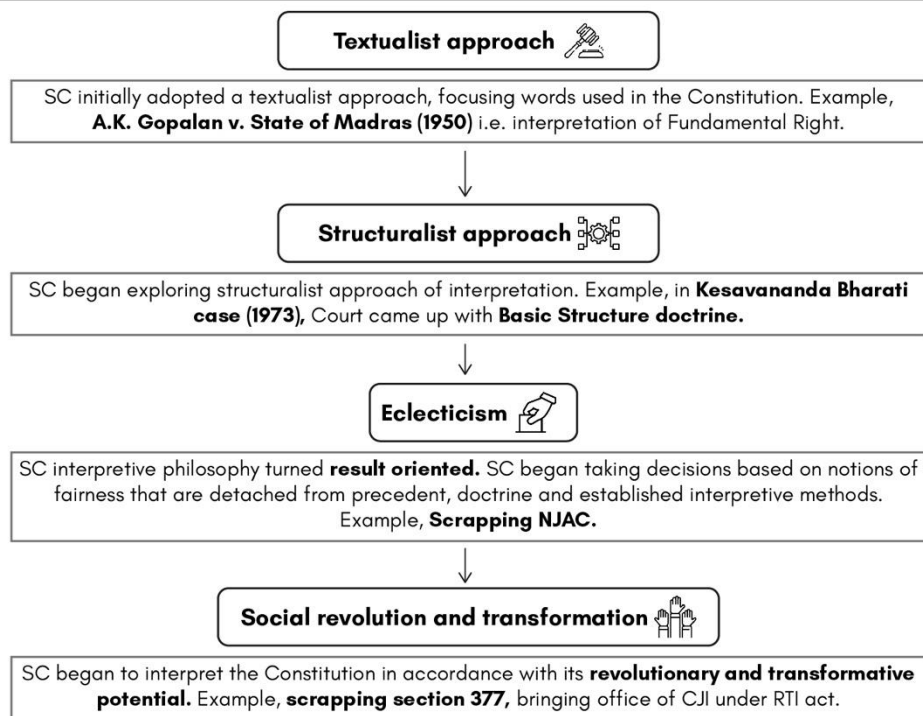
Public order, decency or morality terms mentioned in constitution have not been defined anywhere, thus **leading misinterpretation** and lack of clarity.

### Advancement:

With evolving technology, relying only on government legislation is not advisable. Laws have not been able to continue evolving with political, economic and social changes. Example, Integration of AI, blockchain etc. in present laws.

- Recognise social problem:** Law on Marital rape has been a long-standing recommendation of law commission, various committees and has been demanded by many sections of society.

## JUDICIAL INTERPRETATION OF LAWS IN FOUR PHASES



### Process to repeal law

- Article 245 of the Constitution** which gives Parliament the power to make laws also **gives the legislative body the power to repeal them through the Repealing and Amending Act.**
  - A law can be repealed either in its entirety, in part, or even just to the extent that it is in contravention of other laws.
- The Act was **first passed in 1950** when 72 Acts were repealed.

### What is the impact of ambiguity in law?

- **Threatens Constitutional values:** Use of Sedition Act to curb government criticism is a violation of inherent value prescribed under Article 19 i.e., Freedom of speech and expression.
- **Delayed investigation:** Under Delhi Special Police Establishment Act 1946, for conduct or continuance of investigation into offences committed with the territory of a state, consent of the state is crucial, but such **consent is often either denied or delayed**, severely compromising the investigation.
- **Misuse:** Due to lack of a clear definition, unorganised nature of work and cases not being reported, it's easier for the employers to **employ a large number of children** without worrying about consequences.
  - For instance, different minimum age of child prescribed under plantation labour act, child marriage act.
- **Increased litigation:** Due to lack of understanding of laws, there is **increase in pendency of cases which further overburdening the courts.**

### Way forward

- **Repeal archaic laws:** Colonial legacy in laws such as IPC, Evidence act, etc. needs to be eradicated and updated as per the need of 21<sup>st</sup> century.
- **Well defined:** Clearly define ambiguous terms so that misuse of law, misinterpretation can be avoided and ultimate aim of good governance could be achieved.
- **Address evolving issues:** Contemporary issues like Data privacy, microplastic pollution etc. need to be taken into cognizance and laws should be aimed at protecting and addressing emerging threats.
- **Functionality:** Laws should clearly **outline the roles and responsibilities of ministries/departments** to avoid conflict and must be equipped to address exigencies.
  - Example, Disaster management act, Epidemic act, used during Covid pandemic were not equipped to address the pandemic.
- **Public interaction:** Tools like **pre legislative scrutiny, engaging with stakeholders, parliamentary committees** should be incorporated at all stages of law formulation to ensure that aspirations of all sections of society are met.
- **Focused approach:** It is required to **ignore the strict literal meaning and pay attention to the intention of the legislature** or its purpose behind enacting of laws. This can solve the problem of most of the uncertainties and ambiguities that arise in law.

## 6.4. TECHNOLOGY AND LAW

### Why in news?

Recently, SC judge stressed on the **evolution of laws to address the underlining privacy concerns** in this information age of emerging technologies.

### Emerging technology and Principles for regulating emerging technologies

- Emerging technology is a **term generally used to describe advanced and futuristic technology** at a given point in time and may also refer to the **continuing development of an existing technology (AI, 5G, Blockchain etc.)**.
- In 2020, Ministry of External Affairs (MEA) has established India's first, **New and Emerging Strategic Technologies (NEST) division**.
  - It will help in **collaboration with foreign partners** in the field of 5G and AI.
  - It will help to **assess foreign policy and international legal implications** of new and emerging technologies and recommend appropriate foreign policy choice.

### 5 PRINCIPLES TO REGULATE EMERGING TECHNOLOGIES



#### Adaptive regulation

- Shift from "regulate and forget" to a responsive, iterative approach.



#### Regulatory sandboxes

- Prototype and test new approaches by **creating sandboxes and accelerators**.
- **Sandbox** is an isolated testing environment that enables users to run programs or open files without affecting the application, system or platform on which they run.
- **Accelerators** are designed to speed up innovation.



#### Outcome-based regulation

- **Focus on results and performance** rather than defining the way in which they can be achieved.



#### Risk-weighted regulation

- Move from one-size-fits-all regulation to a **data-driven, segmented approach**.
- Use **data analytics to evaluate the risk of non-compliance** with regulations and enable fast tracked approval processes.

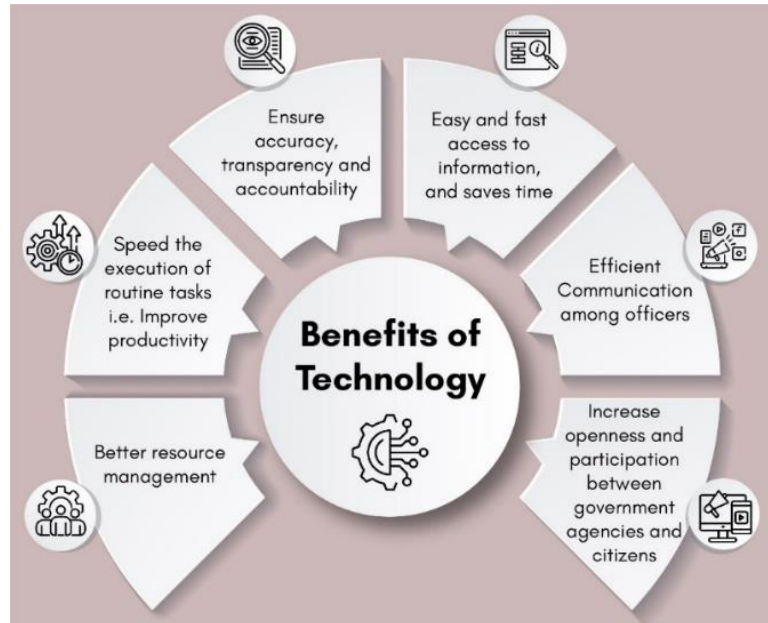


#### Collaborative regulation

- **Align regulation nationally and internationally** by engaging a broader set of players across the ecosystem.

## Why Law needs to change with evolving Technology?

- **To keep up pace:** As per WEF, technology is evolving at exponential rates, thus government legislation are likely to be out-of-date or redundant by the time they are implemented.
- **Data Security:** In 2017, SC ruled that **Indian citizens have a fundamental right to informational privacy**, guaranteed under Article 21.
- **Add specificity:** In era of advanced technology it is imperative to design law with enough specificity to keep check on its misuse.
  - Ex: **IT Act 2000**, amended in 2008, **lacks any reference to the internet** in the whole Act.
- **Crime detection and prevention:** With new age technology, internet provides offenders to operate with an **enhanced level of safety and anonymity to target minors and abuse them online** (via bullying, stalking, impersonation, etc.).
  - **Section 354D IPC penalizes both the offence of offline and online stalking**, without discriminating. However, sub-section (2) fails to clarify the manner in which the victim can be said to be ‘monitored’ or ‘watched’ or what constitutes such acts.
- **New avenues of businesses:** To keep the level playing field for businesses, prevent anti-competitive practices, **laws have to be evolved to accommodate concerns raised by new technologies**.
  - For instance, concerns about Amazon and Flipkart entering into tie-ups with manufacturers to sell phones exclusively on their platforms impacting sales of other distributors.



## Way forward

- **State as a facilitator:** New laws should enable the growth of new technology so that it can be used in a **just and judicious manner** for the welfare of people.
- **Assimilation in daily governance:** The states governance infrastructure should be well equipped and adaptive as per technologies to ensure effective regulation and governance.
- **Social awareness:** With evolving technologies such as AI, Cloud computing, there is need to generate awareness among citizens regarding their use and benefits. For example, **use of Drone in Agriculture to analyse soil samples**.
- **Trained manpower.** Upskilling of manpower is required in order to utilise opportunities provided by new technologies.
- **Focus on 6Cs:** The developing countries need to focus on **6Cs of IT i.e. Computer density, Communication, Connectivity, Cyber laws, Cost and Common sense** to emerge as an effective and well governed country in twenty first century.
- **Technology in practice:** Law must keep up with technology by **incorporating it into daily work routines, encouraging more virtual meetings, and not limiting itself to a single technology** to improve system productivity and efficiency.



## 6.5. CIVIL SOCIETY

# CIVIL SOCIETY AT A GLANCE

### CIVIL SOCIETY

Non-state and non-market part of the public domain where, individuals take up social issues, try to influence the state or make demands on it, pursue their collective interests or seek support for a variety of causes.



#### Evolution of Civil Society in India

- ⊖ **Ancient and Medieval era: Voluntarism was visible extensively** in the fields of education, medicine, cultural promotion etc.
- ⊖ **British era: Self-help emerged as the primary focus of socio-political movements** resulting in establishment of numerous organizations such as Friend-in-Need Society (1858), Prathana Samaj (1864), Satya Shodhan Samaj (1873), Arya Samaj (1875), the National Council for Women in India (1875) etc.
- ⊖ **Post-Independence Era:** Government of India increased its presence in social welfare and development but recognized the potential for civil society to supplement and complement its efforts.



#### Role of Civil Societies in a democracy

- ⊖ **A Social basis for democracy** as they highlight issues of importance and bring credibility to the political system by promoting transparency and accountability.
- ⊖ **Valuable partner in policy formulation and implementation**
- ⊖ **Act as important pressure groups**
- ⊖ **Act as an enabler of and catalyst for cross-sector change**
- ⊖ **Strengthen the feeling of civic solidarity amongst the citizens**
- ⊖ **Promotes Frugal Innovation**
- ⊖ **Inclusion of local knowledge**



#### Barriers in Efficient Functioning of Civil Societies

- ⊖ **Lack of competent volunteers** impacting quality and character of civil society.
- ⊖ **Accountability Issues** as there have been increasing incidences of misuse of funds by these organizations
- ⊖ **Inherent social, religious, ethnic and economic cleavages of Indian society** generates inequality and conflict within CSOs.
- ⊖ **Overbearing attitude and overregulation by government** impacting independence and autonomy of CSOs.
- ⊖ **Negative perception** of CSOs where these are demonised as “anti-national” and “anti-development” and accused of serving foreign interests.
- ⊖ **Elite domination** defeating the very purpose of civil society.



#### Way Ahead to Strengthen Civil Societies and Exploring Potential Opportunities

- ⊖ **Mutual understanding** of the symbiotic relation between Civil society organisations (CSOs) and government.
- ⊖ **Need for transparency on the processes and decision making by the government**
- ⊖ **Granting Legal Personality status to CSOs**
- ⊖ **Ensuring Transparency, Reporting, and Accountability in functioning of CSOs**
- ⊖ **Limiting advocacy and civic engagement** of civil societies
- ⊖ **Exploring new opportunities** for engagement
- ⊖ **Spurring collective action for a transformational recovery post COVID**
- ⊖ **Exploring civil society's role in shaping India's development partnerships**

### 6.5.1. CHANGING ROLE OF CIVIL SOCIETY IN EMERGING INDIA

#### Why in news?

Recently, National Security Adviser (NSA) Ajit Doval said that if civil society can be subverted, divided and manipulated it will “hurt the interest of the nation”.



## What is civil society and their roles?

- According to World Bank, **civil society refers to the wide array of non-governmental and not for profit organizations** that have a presence in public life, express the interests and values of their members and others, based on ethical, cultural, political, scientific etc.
- In civil society, **people voluntarily come together to achieve the desired objective of welfare** of the society or to raise the problems of people before the state.
  - For instance, **Kudumbashree**, community organization of Neighborhood Groups (NHGs) of women in Kerala, has been recognized as an effective strategy for **empowerment of women in rural and urban areas**.



## How with the Emerging India the role of Indian Civil society is changing?

- **Governance:** civil Society is seen as an agent for **promoting good governance like transparency, effectiveness, openness, responsiveness, and accountability**.
  - Civil Society **ensures the right to access to information**. Example- Mazdoor Kisan Shakti Sangathan (MKSS) for RTI Act.
- **Social:** Civil Society **enables the voiceless and unorganized communities' interests** to be represented.
  - For example, NGO's like Childline India Foundation, World Vision, have played important role in raising awareness on child sexual abuse.
- **Economic:** They have played a crucial role in inspiring and pushing through a number of reforms that lastingly changed India legislative landscape.
  - NREGA, **Forest Rights Act**, RTE Act, upcoming Right to Food Bill, and Land Acquisition Act are examples of such laws.
- **Environment:** Environment Movement in India is strong now and has led to cancellation of multiple projects in India after Civil Society agitation.
  - **For instance**, at state level, local activists are working to save Chilika Lake, Khandadhar Fall Protect, Olive Ridley Tortoise, Coastal Beach Protection Movement etc.
- **Political:** Civil Society has the **monitoring function of holding the law-and-order machinery accountable**, implying the control of political parties and electoral process etc.
  - NGO like **Association for Democratic Reforms** have decided to approach the Centre for expediting implementation of all electoral reforms, election management reforms, which are pending for more than two-and-half-decades.

## Challenges in front of Civil Society in realising their full potential

- **Technological:** Majority of Indian citizens **lack digital literacy** and online safety is an alien concept to many who may have digital literacy.
  - **Language, accessibility barriers**, limited data and infrastructural systems further compound the scenario.
- **Economical:** Dependency on donations tied to specific projects makes it difficult for many NGOs to have continuity and coherence in their actions.
- **Social:** They are the driving force in **slowing down the agenda of liberalisation and clearance of corporate projects**, designed to benefit the people in large.
  - **Lack of awareness** among the masses about existence and functioning of the civil society organisations.

- **Political:** In 2015, the centre increased e-filing requirements. NGOs had to make quarterly filings of foreign grants received.
  - For instance, Centre cancelled 10,069 FCRA registration in 2015 and another 4,943 in 2017.
- **Security:** Intelligence Bureau (IB) inputs have shown that foreign funds entering India were used to fund activities that destabilise national peace and security. Example, money used to train naxals.

### Way forward

- **Accountability:** Civil Society Institutions (CSIs) need to be held accountable for their acts of omission and commission which have enormous social, environmental, economic consequences.
- **Funding:** Evolve multiple sources of funding in order to reduce dependence on rich donors.
- **Hiring best talent:** CSIs could work towards **attracting the best of talent**, to work with poor or disadvantaged communities in rural or urban low-income areas.
- **Technological:** Collaboration with the government, funders, and other civil society partners is vital to normalising the use of technology-based interventions at scale.

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## 7. LOCAL GOVERNANCE

### 7.1. PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996

#### Why in News?

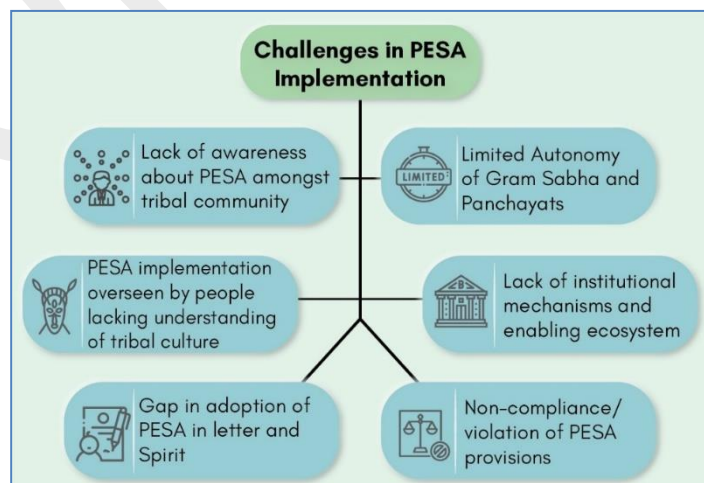
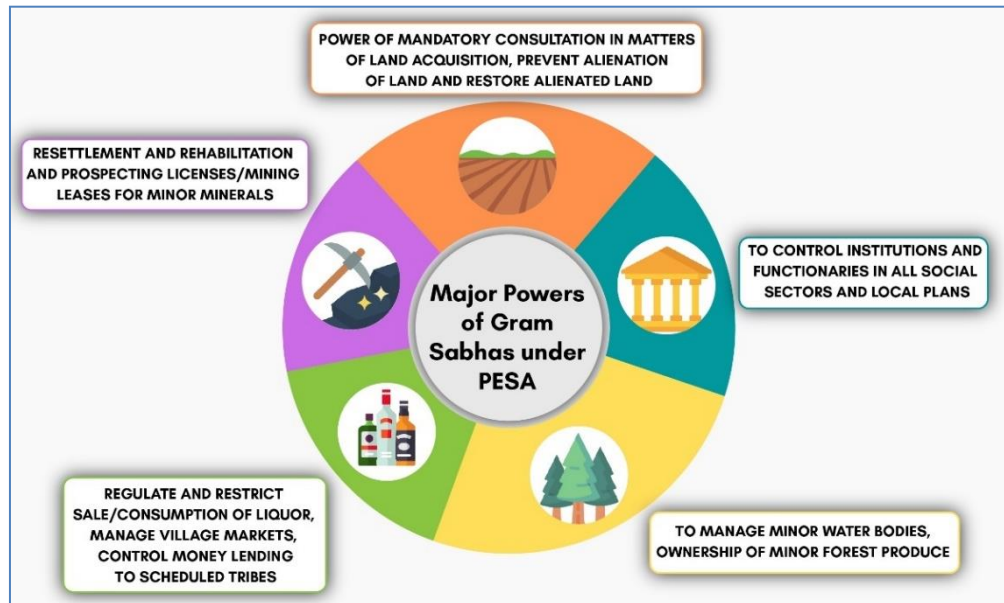
Recently, The Chhattisgarh government approved draft rules under the Panchayat (Extension to Scheduled Areas) Act.

#### More in News

As per the draft rules, there will be **minimum 50 percent representation to the Scheduled Tribes**, while Other Backward Classes, Scheduled Castes and unreserved classes will also get representation according to their population

#### About Panchayats (Extension to the Scheduled Areas) Act or PESA Act, 1996

- **Article 243M** exempts **Fifth Schedule areas** from **Part IX** of the Constitution but the **Parliament** is empowered to **extend its provisions** to **Scheduled and Tribal Areas** by law without it being considered as an amendment to the Constitution.
- Based on the recommendations of **Dileep Singh Bhuria Committee**, **PESA Act** was enacted in **1996** for tribal empowerment and to bring them into the mainstream.
- PESA Act is called a 'Constitution within the Constitution' as it extends the **Provision of Panchayati Raj (Part IX)** to the **Fifth Schedule areas** of **10 States** under **clause (1)** of **Article 244** with certain modifications and exceptions.
  - 10 states: Andhra Pradesh, Chhattisgarh, Gujarat, HP, Jharkhand, MP, Maharashtra, Orissa, Rajasthan and Telangana.



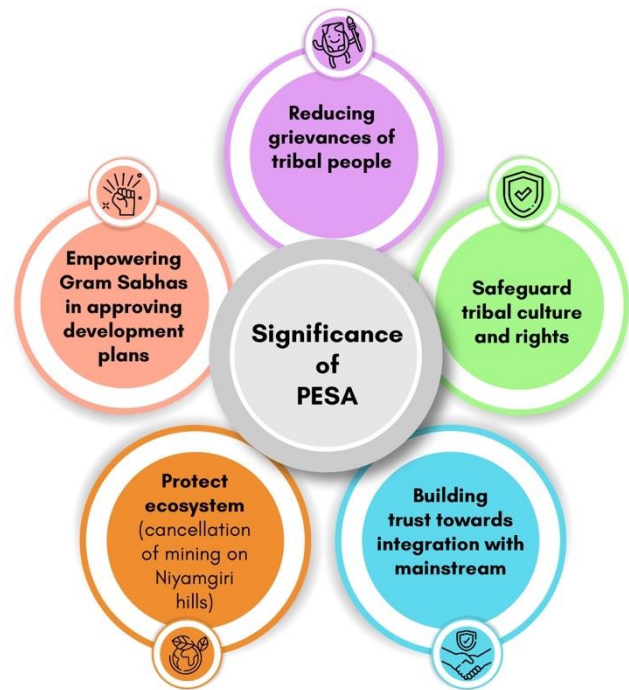
- It recognizes the role of Gram Sabha and community in these areas and directs the state government to devolve **power and authority directly to Gram Sabha and Panchayats**.
- **Ministry of Panchayati Raj** is the **nodal Ministry** for implementation of the provisions of PESA Act.

#### Provisions of PESA Act

Promoting **institutions of Local Self Governance** and **participatory democracy**, all the **State Panchayati Raj Acts** for Fifth Schedule areas have following salient features:

- All State Legislation on Panchayats shall be in conformity with the **customary law, social and religious practices** and **traditional management practices** of community resources.

- Every village to have a **separate Gram Sabha** consisting of persons whose names are included in the **electoral rolls for the Panchayat** at the village level.
- Every Gram Sabha to **safeguard and preserve the traditions and customs** of people, their **cultural identity, community resources** and the **customary mode of dispute resolution**.
- Every panchayat to have **reservation of seats** in proportion to the community population (**minimum of 50%**) with **Chairperson of Panchayats** at all levels to be **reserved for STs**.
- **Roles and Responsibilities of Gram Sabha:** To approve all development works in the village, identify beneficiaries, issue certificates of utilization of funds.



### Limitations of PESA Act

PESA suffers from number of challenges in its implementation (as **given in image**) and lackluster response from certain state government amplifies it, such as-

- **PESA Rules:** Four major tribal States namely **Jharkhand, Chhattisgarh, MP and Odisha** are yet to frame PESA Rules.
- **Use of unfair means for bypassing the law:** Acquisition of land happens under other acts, violating the spirit behind PESA, i.e. safeguard tribal land and consent of Gram Sabhas.
  - E.g., in Korba district of Chhattisgarh, authorities decided to acquire land using Coal Bearing Act, 1957.
- **Poor Implementation of law:** A 2010 study on “Status of PESA” in **Andhra Pradesh, Gujarat, Chhattisgarh, Jharkhand, and Orissa** by Indian Institute of Public Administration (IIPA) highlighted **poor implementation** of the Act.
  - E.g., In Khunti district of Jharkhand, 65% of people whose land was acquired were not even asked about it. Its share in Gumla district of Jharkhand was around 26%.

### Way Forward

- **Implement Municipalities Extension to the Scheduled Areas (MESA):** Bhuria Committee recommended **PESA and MESA** for extending the provisions of **73<sup>rd</sup> and 74<sup>th</sup> amendments** to **Fifthschedule areas**. But **urban tribal areas** are yet to have MESA.
- **Framing of PESA Rules:** The remaining states must frame the PESA rules expeditiously and implement based on the **Ministry of Panchayati Raj model rules of 2009**.
- **Convergence of PESA with other regulations:** PESA provisions shall be converged with Forest Rights Act (2006), Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (2013) etc. **to protect tribal rights/culture**.
- **New Tribal Community Development Model:** **Ministry of Panchayati Raj** and **Ministry of Tribal Affairs** should create a new development model for the **tribal community** while preparing the **GPDP**, keeping in mind the traditions of the tribal community and convergence of efforts.
- **Other Steps:** Reduce Land alienation among tribes and focus on greater social development (health and education) for capacity building of tribal communities.

## 7.2. PEOPLE'S PLAN CAMPAIGN

### Why in news?

Union government launched **People's Plan Campaign 2021- Sabki Yojana Sabka Vikas** and **Vibrant Gram Sabha Dashboard**.

### About People's Plan campaign (PPC)

- PPC is an effective strategy for ensuring the **preparation of Gram Panchayat Development Plan (GPDP) in a campaign mode**. During campaign, **structured Gram Sabha meetings** will be held for preparing **Panchayat Development Plans** for next financial year 2022–2023.
- The meetings will involve physical presence and presentation by frontline workers/supervisors on 29 sectors. Special efforts have been made to ensure **maximum participation of vulnerable sections** of society like SC/ST/Women etc.
- Panchayat Development Plan strengthen the role of **elected representatives of Panchayats** and **SHG Women under DAY-NRLM** in effective Gram Sabha. There are **31.65 lakh elected Panchayat representatives** across the country in which **14.53 lakh** are women.

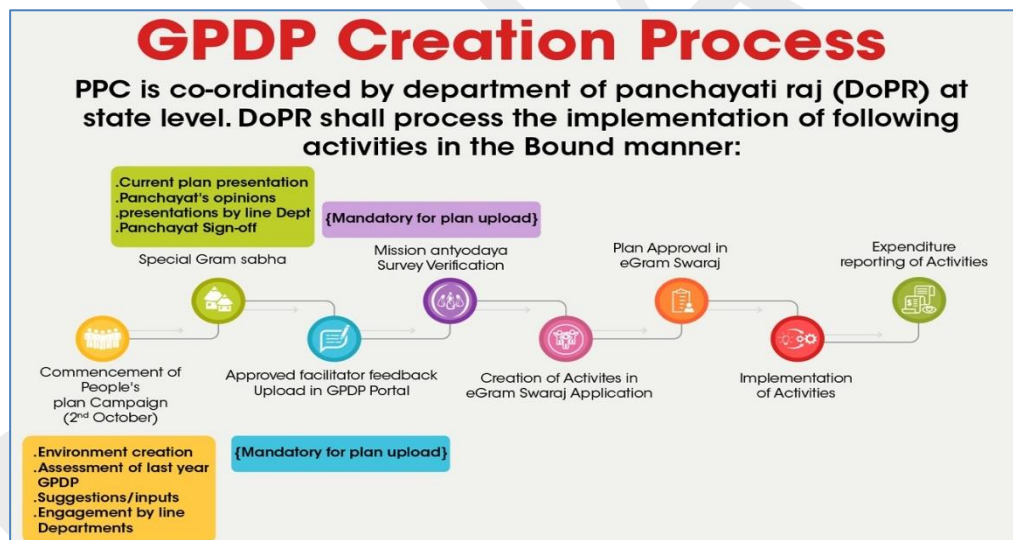


### Gram Panchayat Development Plan (GPDP) and its importance

- **Article 243G** mandates Gram Panchayats (GPs) to prepare and implement GPDP for economic development and social justice. The GPDP does three essential things:

- It provides a **VISION** of what the people would like their village to look like;
- It sets out clear **GOALS** to achieve that vision, and
- Gives an **ACTION PLAN** to reach those goals.

- GPDP should be **comprehensive and based on participatory process** involving the community particularly Gram Sabha, and in convergence with schemes of all related Central Ministries / Line Departments.
- The convergence assumes greater significance in view of the fact that Panchayats can play an important role for **effective implementation of flagship schemes on subjects of National Importance** for transformation of rural India.
- **Ministry of Panchayati Raj has prepared model guidelines** for GPDP and circulated the same to all the States where part IX of constitution is applicable.



## 7.3. ROLE OF PANCHAYATS IN SERVICE DELIVERY

### Why in news?

Recently, in a workshop organised by Ministry of Panchayat Raj, **Mysuru Declaration on Service Delivery by Panchayats** was signed.

### More on news

- **Mysuru Declaration** was signed by participants from 16 States and resolved to **roll out the Common Minimum Service delivery by Panchayats** across the country from April 1, 2022.

- The declaration recognises **Citizen Centric Services** that could be provided by the Panchayats **as the Heart of Governance**.
  - It **aims to foster institution-building at the grassroots level** that empowers and delivers services for citizens thereby improving quality of life specifically for vulnerable and marginalized sections of society.

**What make Panchayats suitable for effective delivery of public services?**

PRIs by design has **many positive features** for the effective delivery of essential services. This includes:

- **Participatory Governance:** Gram Sabhas can facilitate direct participation of people based on local socio traditional knowledge.
- **Social Inclusion:** Constitutionally mandated reservation for women (1/3<sup>rd</sup> seats) and other marginalised communities (SCs, STs) in Panchayats ensure their participation in village level governance and inclusion of their developmental aspirations.
  - For instance, in context of health and family welfare, **women PRI members take an active role in polio eradication**, health camps, mobilize women for services etc.
- **Accountability:** Regular elections and undertaking of social audits (MGNREGA) can enhance accountability of elected representatives.
- **Responsiveness:** Locally elected representatives know their small constituency better and thus can provide better services according to their electorate’s preferences.
  - As per NITI Aayog, **Localising of SDGs** i.e. their implementation at the sub national or grassroots level is essential for achieving the SDG targets for provisioning of basic services.
- **Bottom-up approach:** Gram Panchayats are constitutionally mandated for preparation of GPDP that are in convergence with schemes of all related Central Ministries / Line Departments. This convergence assumes greater significance for effective implementation of flagship schemes.
- **Functional Transparency:** Public disclosure to GP regarding funds made available under various schemes of the line departments and activities to be taken up in each GP area is mandated under the Gram Swaraj Abhiyan.

**Major Initiatives taken by the government to enhance capacities of PRIs**

- **Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA)** to enhance the capacities and effectiveness of GPs and Gram Sabhas, etc.
- **Model Citizen’s Charter:** It details different categories of services rendered to the citizen by the Panchayat, the conditions for such service and the time limit for such service and aligning actions with localised SDGs.
- **Sabki Yojna Sabka Vikas:** An intensive and structured exercise for planning at Gram Sabha through convergence between Panchayati Raj Institutions (PRIs) and concerned departments of the State.
- **Mission Antyodaya:** It seeks to converge government interventions with Gram Panchayats by pooling human and financial resources.
- **E-Gram Swaraj:** A web-based portal which unifies the planning, accounting and monitoring functions of Gram Panchayats.

Mains 365 - Polity & Governance

**Roadblocks for PRIs in effective delivery of services**

- **Elite Capture:** Powers and resources devolved to local bodies are frequently captured by the powerful upper caste people, resulting in inequities in access to services.
- **Lack of fiscal decentralisation:** Over 90 percent of funds that PRIs

**Best Practices in service delivery by Panchayats**

<b>Kerala : Flattening the curve during COVID</b>
Robust system of effective devolution helped the Kudumbashree programme to function in association with the panchayats.
<b>Bearhatty Gram Panchayat, Tamil Nadu : Social Security Benefits</b>
Special initiatives to enlist all eligible beneficiaries and help them access their social security entitlements.
<b>Dakshina Kannada Zilla Panchayat, Karnataka: Total Sanitation Campaign</b>
High Involvement of the Anganwadi Coordination Committee and the Locals, Strong monitoring system, Active SHGs.
<b>Dibrugarh Zilla Parishad, Assam : Vision Document Initiative</b>
Document gives proper perspective of development of the district and includes good administrative practices such as, ensuring transparency of functioning and priority to schemes that address urgent needs of people in the local area.
<b>Gerethang - Labing Gram Panchayat, Sikkim: Service Delivery under Participatory Democracy</b>
Innovative Administrative Practices such as Composite Village Administrative Centre, Single Window System, Motivation of Youth and Multi-Purpose Cooperative Societies (MPCS)

handle are tied to mostly central schemes. Absence of untied funds inhibits efforts and demotivates local bodies from engaging in meaningful planning processes.

- **Structural deficiencies:** Absence of any secretarial support and lower levels of technical knowledge restricted the aggregation of bottom-up planning.
- **Adhocism:** Non-availability of information at the local level leads to adhocism in prioritisation of schemes/ programmes, poor decision-making, and narrow participation of people in the process.
- **Proxy Representation:** There is a **presence of Panch-Pati** and Proxy representation in case of women and SC/STs representatives respectively.
- **Accountability arrangements remain weak** due to manual auditing.
- **Lack of clarity in devolved functions** and paucity of adequate qualified functionaries has allowed concentration of powers with states and thereby restraining the elective representatives who are more aware and sensitive to the ground level.



### Conclusion

The bottom-up pressure from the people demanding efficient delivery of public goods is increasing on the State executive. It can be effectively met only with deeper decentralization. The digital penetration and connectivity in rural areas is reducing the rural-urban information gap and pushing the administration at the local level to function in an effective way.

#### Related News

#### Revised Rural Area Development Plan Formulation and Implementation (RADPFI) Guidelines Released by Ministry of Panchayati Raj

- **RADPFI guidelines** aim is to have **planned spatial development** for overall integrated development of villages.
- **Need of Spatial Planning**
  - **Unplanned spatial development in Gram Panchayats,**
  - Extended Urbanisation Area,
  - Emergence of Census Towns,
  - Improve the Quality of Life & Sustainability of Gram Panchayats,
  - Integration of Reforms/programs (SVAMITVA, RURBAN, re-emphasis on Disaster, Climate Change, etc.)
  - Need to be linked to Agro-Climatic Regions/zones linked to SDGs.
- **New Guideline (2021) is focused on**
  - To prepare spatial development plan, focus on **Typology of villages-** population, agro-climatic zones etc.
  - **Village Town Planning Scheme (VPS)** – Through community based on Collaborative Planning.
  - **Linking 15th Finance Commission with State Finance commission** wrt village level planning.
  - Integrating/Consolidation of GP Development with RURBAN CLUSTERS/Block/District Plan, as per 73rd and 74th Constitutional Development Act and GPDP.
  - Improving **E-Governance through Spatial Data Infrastructure.**
  - **Use of SVAMITVA (Survey of villages and mapping with improvised technology in village areas)** and other digital tools) for Abadi area (linking to land records).
  - **Planning for environmental benefit** and disaster preparedness.

- SVAMITVA, Central Sector Scheme of Ministry of Panchayati Raj, provide 'record of rights' to household owners in rural areas and issue Property Cards.
  - It enables efficient rural planning, aid in preparation of quality GDP, property card as a tool for availing bank loans etc.

## 7.4. URBAN LOCAL BODIES (ULBS)

### Why in news?

Recently, **Delhi Municipal Corporation (Amendment) Act, 2022** was enacted that seeks to **reunify the three Municipal Corporations of Delhi (MCD)**.

### More about news

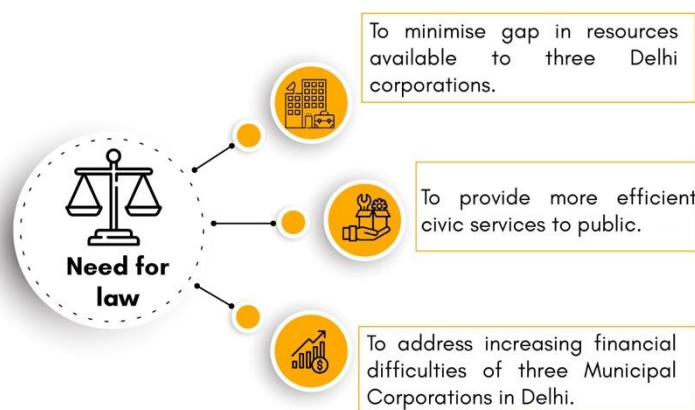
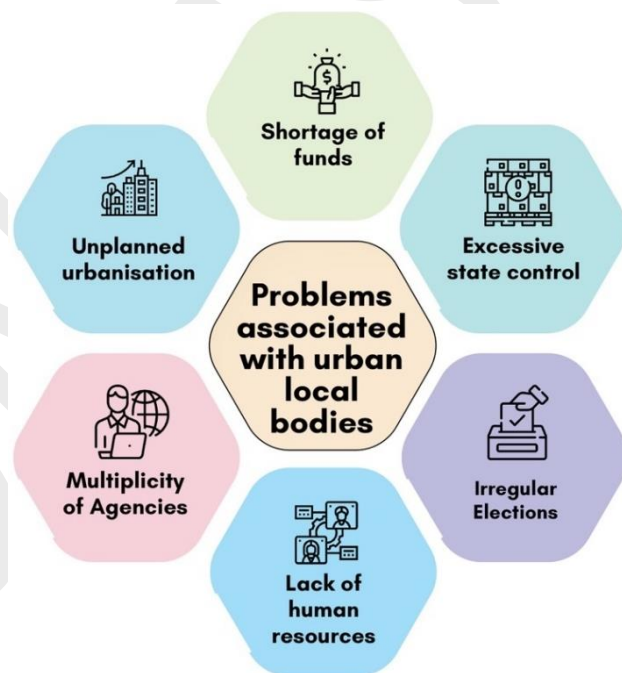
- **Delhi Municipal Corporation (Amendment) Act 2022** amends the 'Delhi Municipal Corporation Act, 1957', to effectively undo the earlier 2011 amendment to the Act by which erstwhile MCD was trifurcated into separate Municipal Corporation of North, South, and East Delhi.
  - Split-up was first proposed in **1987 Balakrishnan Committee Report**, constituted by Ministry of Home Affairs, which was bolstered in 2001 Virendra Prakash Committee Report.
- Municipalities are intended to serve and be responsive to local civic needs. However, recent reports underscore the **extent to which municipalities (ULBs) are mismanaged**.

### Way forward

- **Devolving functions:** Effective devolution of functions as laid down by 74<sup>th</sup> amendment act, 1992 and giving powers and autonomy to Municipalities, Mayor's office is the need of the hour.
- **Building human resource capacity**
  - States need to follow the example of Madhya Pradesh, Gujarat, and Tamil Nadu and create a specialised municipal cadre for effective administration.
- **Increasing accountability:** To ensure accountability of the elected representatives, **robust by-laws outlining the working of the corporation and procedure rules** need to be enacted.
- **Making cities financially independent:** To increase their revenue, city governments should **expand coverage and increase efficiency in tax collection along with transferring the power and authority** to introduce new taxes and revise tax rates.
  - Mumbai is the only example of a city where sanctioning powers have been given to ward committees.
- **Active citizen participation:** For transparency and accountability in the governance process, there needs to be active citizen participation, particularly in areas such as **budget-making and urban planning**.

### Key Provisions of the MCD Act 2022

- It empowers the central government to decide various matters like building regulations, sanctioning of consolidation of loans by a corporation etc.
- Total number of seats in the new corporation **should not be more than 250**.
- It allows the Centre to appoint a **Special Officer to exercise powers of the Corporation** until the first meeting of unified MCD takes place.
- It **omits the provision for a Director** of Local Bodies.
- **Establishing an e-governance system for citizen services** on anytime-anywhere basis for better, accountable, and transparent administration.
- MCD commissioner has been made **accountable only to the Centre**.





- **Citizen grievance redressal mechanisms:** The complaint redressal mechanism **should be centralised for all the public services delivered** in the city, irrespective of whether they're delivered by a city, state, or central agency.
- **Regular Elections:**

Elections to ULBs shall be completed **before the expiry of their duration**. In case of dissolution, election shall be held within six months from that date.

#### Steps taken by government to strengthen ULBs

- **World Bank assisted Capacity Building for Urban Development (CBUD) Project:** To enhance capacity building and strengthening of ULBs to implement urban reforms with World Bank credit.
- **Peer Experience and Reflective Learning (PEARL) program:** To foster cross learning among cities and institutions.
- **Rapid Training Program (RTP):** To prioritize slow performing cities that have lagged behind in accessing JNNURM (Jawaharlal Nehru National Urban Renewal Mission) funds, on three prioritized modules- Governance & Reforms, Supervision/Preparation of Detailed Project Reports (DPRs) and Project Management and Implementation.

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- The Course plan (60 classes) covers important current issues from standard sources like The Hindu, Indian Express, Business Standard, PIB, PRS, AIR, RS/LSTV, Yojana etc.

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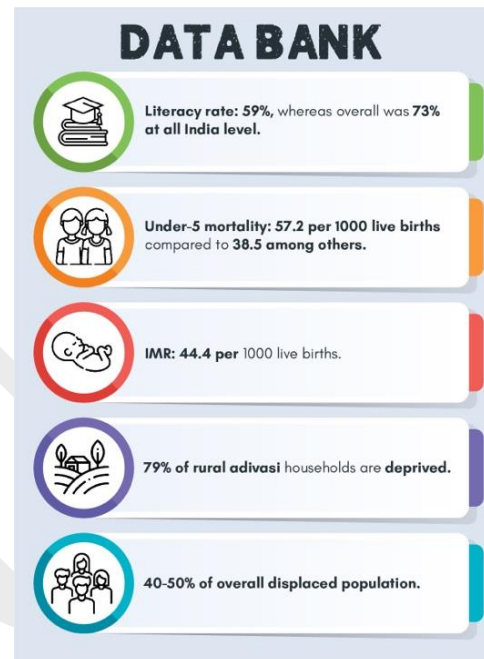
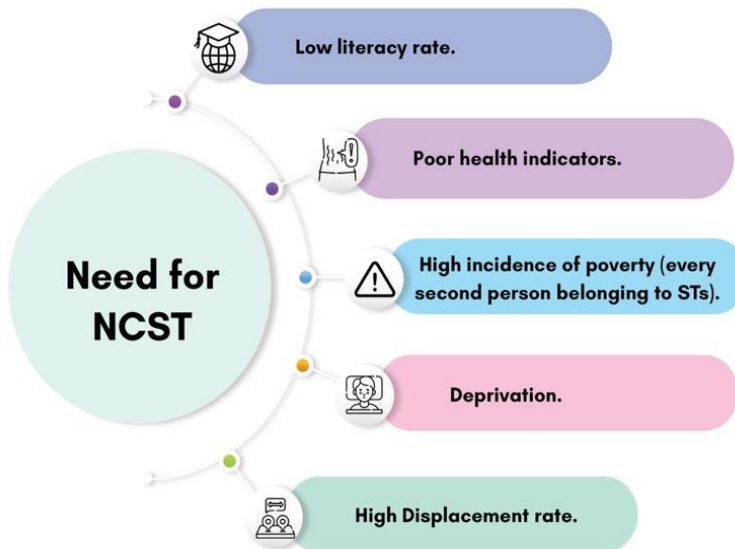
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## 8. STATUTORY, REGULATORY AND VARIOUS QUASI-JUDICIAL BODIES

### 8.1. NATIONAL COMMISSION FOR SCHEDULED TRIBES (NCST)

#### Why in news?

Standing Committee on Social Justice and Empowerment highlighted that **National Commission for Scheduled Tribes (NCST)** has been **dysfunctional** for the last four years and has **not delivered a single report** to Parliament.



#### Functions of the commission (as per Sub-clause (5) of Article 338A)

- To participate and **advise on the planning process** of socio-economic development of STs and to **evaluate the progress of their development**.
- To **present** to the President, annually and at such other times as the Commission may deem fit, **reports upon the working of those safeguards**.
- To discharge **such other functions** as the President may, subject to the **provision of any law** made.
- Commission would also discharge the **following other functions** namely:
  - Measures to be taken over **conferring ownership rights** in respect of **minor forest produce to STs**.
  - Measures to be taken to **safeguard rights to the STs over mineral resources**, water resources etc.
  - Measures to be taken to **eliminate the practice of shifting cultivation** by Tribals.

#### Issues of NCST highlighted by Parliamentary committee

- Pending reports:** Reports of Commission **since 2018** are still **under process** in Ministry of Tribal Affairs and have **not been presented to the Parliament** till date.
  - Pending reports include a study of the impact of **Indira Sagar Polavaram Project** in Andhra Pradesh on tribal population.
- Manpower and budgetary shortage:** Committee noted that **several posts are lying vacant** because of **lack of applicants** as the eligibility bar was **set too high**.
- Other issues related to NCST**
  - As per Commission's website, in FY 2021-22, it has **met only four times**.
  - Its **rate of pendency** of resolution of complaints and cases that it receives is close to **50 percent**.
  - Concerned Ministries/Departments **have not been very forthcoming** about the **status with regard to acceptance/non-acceptance** of recommendations of Commission.

#### Measures needed to strengthen NCST

- Recommendations made by Parliamentary committee:** Committee recommended that necessary action be urgently taken in respect of **recruitment** of officials and **budgetary allocation** for NCST.

- **Encouraging meaningful consultations:** Cabinet Secretariat and Ministry of Law and Legal Affairs should be tasked with responsibility of **ensuring meaningful consultations** with NCST before concerned legislative proposals are **placed before Council of Ministers**.
- **Follow up on reports in a time-bound manner:** Lay down reports of Commission in **Parliament and State Legislatures** within a reasonable period of time i.e. **not exceeding three months**.
  - Further, **memorandum of action taken/proposed** to be taken on its recommendations by Ministry of Tribal Affairs/ respective State Government should be separately laid in Parliament/ State Legislature **within six months of such submission** of report.
- **Feedback from the government:** Proper feedback will **enlighten the Commission** with **final views** of Government on such policy related issues, and enable it to **report the effectiveness of its recommendations** and **refine its recommendations** in similar cases in future.

**Major recommendations of NCST**

- Need to issue **clear guidelines** for giving preference to ST in grant of mining concessions in Scheduled Areas.
- Introduce a bill to give effect to recommendations of **Bhuria Committee 1995** so that in **all industrial enterprises set up in Scheduled Areas** (other than small ventures), the **community should be deemed to be the owner** with 50% shares in its favour by virtue of its **allowing industry to use local resources** and getting established.
- Tribals should be given **vocational training and financial assistance** to enable them to be in a position to run **mining operations**.
- To make specific legal provisions in Acts relating to mines and minerals making it **mandatory** for them to **consult Gram Sabhas** before of any lease about minor minerals.

## 8.2. UNIQUE IDENTIFICATION AUTHORITY OF INDIA (UIDAI)

### Why in news?

Recently, **CAG audit on the 'Functioning of UIDAI'** presented in Parliament has found that the data stored in the Aadhaar Data Vault of the institution is "vulnerable."

### More about news

- The findings are part of the first performance review by UIDAI, which was carried out over **four-year period between FY2015 and FY2019**.
  - After being launched in 2010, **Aadhaar database reached 1.29 billion records by March 2021** and is considered as one of the largest biometric based identification systems in the world.
- **Key findings highlighted by the CAG report**

<b>No residency proof</b>	<ul style="list-style-type: none"> <li>• Aadhaar numbers are <b>only issued to individuals who have resided for a period of 182 days or more</b> in the 12 months before the date of application.</li> <li>• However, UIDAI has <b>not prescribed specific proof/document or process</b> and there is <b>no system in place</b> to confirm that <b>Aadhaar holders in the country are 'Residents'</b> as defined in the Aadhaar Act.</li> </ul>
<b>Bal Aadhaar cards</b>	<ul style="list-style-type: none"> <li>• UIDAI issues Bal Aadhaar cards to <b>children under age of five</b> based on their parents' biometric information, is <b>against the basic tenet of the Aadhaar Act and incurred a huge cost</b> which require the uniqueness of biometric identity to be confirmed (which cannot usually be done at such a young age).</li> </ul>
<b>Data protection</b>	<ul style="list-style-type: none"> <li>• UIDAI manages one of the world's largest biometric databases, but it <b>lacks a data archiving policy</b>, which is considered a critical storage management best practice.</li> </ul>
<b>De-duplication</b>	<ul style="list-style-type: none"> <li>• Though UIDAI has introduced iris-based authentication features for enrolment for Aadhaar, instances like <b>issuing of Aadhars with the same biometric data, faulty biometrics and documents</b> to different residents continue to <b>indicate flaws</b> in the deduplication process.</li> <li>• In 2019, UIDAI had to cancel more than 4.75 lakh Aadhaars for being duplicate.</li> </ul>
<b>Data matching</b>	<ul style="list-style-type: none"> <li>• All Aadhaar numbers were <b>not paired with the documents relating to personal information</b> of their holders and UIDAI was <b>unable to determine the extent of mismatch</b> even after ten years.</li> </ul>
<b>Faulty system</b>	<ul style="list-style-type: none"> <li>• UIDAI <b>charged people for voluntary biometric updates</b> when poor quality data was fed in during enrolment.</li> <li>• 73% of biometric updates were voluntary updates.</li> </ul>
<b>Infrastructure verification</b>	<ul style="list-style-type: none"> <li>• <b>No verification of the infrastructure and technical support</b> of requesting Entities and Authentication Service Agencies before their appointment in ecosystem.</li> </ul>

	<ul style="list-style-type: none"> <li>Also, there is <b>no system to analyze the factors leading to authentication errors.</b></li> </ul>
<b>Inadequate arrangements</b>	<ul style="list-style-type: none"> <li>UIDAI's arrangements with Department of Posts were <b>insufficient to ensure delivery of Aadhaar letters to the correct addressee</b>, as evidenced by the large number of Aadhaar letters returned as undelivered.</li> </ul>

**Other prevalent issues in Aadhaar**

- Unreliable demographic details:** Demographic details on an Aadhaar card are often **unverified and unreliable**, particularly the person's age (date of birth), and **correcting age on an Aadhaar card is often difficult** without supporting documents such as a birth certificate.
- Fraud-prone Aadhaar-enabled Payment System (AePS):** Rampant abuses of AePS by corrupt business correspondents to **extort money from unsuspecting victims** by persuading them.
- Consent:** There is no informed consent about the uses to which the data will be subjected.
- Violation of rights:** Possible leakage of biometric and demographic data, either from the central Aadhaar repository or from a point-of-sale or an enrollment device, violates people's right to privacy.
- Exit Option:** The absence of an exit option to get out of the UIDAI database.
- Lack of accountability:** UIDAI lacks accountability to Parliament if there is a failure in the system and someone suffers in consequence.

**Recommendations suggested by CAG**

- Frame data policy:** UIDAI needs to frame a **suitable data archival policy to mitigate the risk of vulnerability** to data protection along with reducing the usage of data storage by weeding out duplicate data.
- Curb duplication:** UIDAI needs to **strengthen the 'Automated Biometric Identification System'** so that generation of multiple/duplicate Aadhaars could be curbed at initial stage itself.
  - Also, UIDAI must **explore alternate ways to capture the uniqueness of biometric identity** for children below five years, especially since SC has stated that no benefit will be denied to any child for want of Aadhaar document.
- Establish procedure:** UIDAI should go beyond self-declaration, and **prescribe a procedure and required documentation other than self-declaration**, in order to confirm and authenticate the applicants' residence status.
- Avoid complications:** It is required to **take proactive steps to identify and fill the missing documents** in UIDAI database to avoid any legal complications or inconvenience to holders of Aadhaar issued prior to 2016.
- Regular review:** UIDAI should **review charging of fees for voluntary update of residents' biometrics**, as residents were not at fault for capture of poor quality of biometrics.
- Improve success rate:** UIDAI needs to make efforts to **enhance the success rate of authentication transactions** by analysing failure cases.
- Complete verification:** UIDAI should conduct **thorough verification of documents, infrastructure, and technological support** claimed to be available, before on-boarding the entities (Requesting Entities and Authentication Service Agencies) in Aadhaar ecosystem.
- Aadhaar Data Vault:** To ensure the **implementation of Aadhaar Data Vault process and carry out periodic audits independently**, to enhance the security of Aadhaar number storage data by user organizations.

**Benefits of Aadhaar enabled bank accounts**



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# APPENDIX: KEY DATA AND FACTS

## RESERVATION

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊖ <b>Article 14</b> (Right to equality), <b>Article 16</b> (Right to equal opportunity) and <b>Article 19</b> (ensures that citizens can move freely throughout the territory of India).</li> <li>⊖ <b>Article 16(3)</b>, only the Parliament can make a law and not State Legislature.</li> </ul>	<ul style="list-style-type: none"> <li>⊖ <b>Dr Pradeep Jain v Union of India (1984)</b>: Court expressed that such policies would be unconstitutional but did not expressly rule on it.</li> <li>⊖ <b>Sunanda Reddy v State of Andhra Pradesh (1995)</b>: SC affirmed observation in Pradeep Jain.</li> <li>⊖ <b>Indira Sawhney vs. Union of India (1992) and M Nagaraj vs. Union of India (2006)</b>: <b>Reservation cannot exceed beyond 50%</b> unless there are extraordinary reasons.</li> <li>⊖ <b>Kailash Chand Sharma vs. State of Rajasthan (2002)</b>: <b>SC invalidated appointment of government teachers in Rajasthan</b> (preference was given to "applicants belonging to district or rural areas of district concerned)</li> </ul>

## UNIFORM CIVIL CODE

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊖ <b>Article 44</b> of the Constitution Seen, as a contradiction to the fundamental rights guaranteed under <b>Article 25, Article 26(b) and Article 29</b></li> </ul>	<ul style="list-style-type: none"> <li>⊖ <b>SR Bommai vs Union of India case 1993</b>: Secularism is the basic structure of the Constitution.</li> <li>⊖ Many judicial pronouncements (including <b>Mohd. Ahmed Khan v. Shah Bano Begum, 1985</b> and <b>Sarla Mudgal v Union of India, 1995</b>) of higher judiciary have favoured UCC in some or the other forms.</li> </ul>

## ANTI-CONVERSION LAWS

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊖ The <b>Karnataka legislative Assembly</b> passed the Karnataka Right to Freedom of Religion Bill, 2021, commonly referred to as <b>anti-conversion Bill</b>. The Bill will now go to the <b>Karnataka Legislative Council</b>.</li> </ul>	<ul style="list-style-type: none"> <li>⊖ <b>Rev. Stainislaus vs State of Madhya Pradesh &amp; Ors (1977)</b>: It examined the <b>earliest anti-conversion statutes in Madhya Pradesh and Orissa</b>. Court <b>upheld the constitutionality of both the Acts</b> on the ground that these efforts to restrain the conversion are for <b>securing freedom of conscience and public order</b>.</li> <li>⊖ <b>Sarla Mudgal case (1995)</b>: SC held that conversion to Islam was not valid if done only in order to be <b>able to practise polygamy</b>. → This position was reaffirmed in <b>Lilly Thomas case in 2000, which clarified that prosecution for bigamy was not a violation of freedom of religion</b> under Article 25.</li> <li>⊖ <b>Lata Singh Vs State of UP</b>: The apex court highlighted the <b>need for stringent punishment</b> over acts of violence or threats in cases of inter-caste and inter-faith marriages.</li> <li>⊖ <b>M Chandra Vs M Thangamuthu &amp; Another, 2010</b>, SC laid down the test to prove conversion: First, there <b>has to be a conversion</b> and second, <b>acceptance into the community</b> to which the person converted. It also stated that the <b>need of a conversion</b> cannot be altogether done away with.</li> <li>⊖ <b>Ga Arife alias Arti Sharma Vs Gopal Dutt Sharma, 2010, and in Faheem Ahmed Vs Maviya, 2011</b>: The Delhi HC lamented that religious conversions are <b>increasingly used for anything but the primary reason for conversion</b> i.e., spiritual advancement.</li> </ul>

## ANTI-DEFECTION

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊖ 52nd amendment act 1985</li> <li>⊖ Tenth Schedule also known as Anti-defection Law.</li> </ul>	<ul style="list-style-type: none"> <li>⊖ <b>Kihoto Hollohan versus Zachillu and Others, 1992-SC</b> said that <b>judicial review is applicable on a Speaker's decision</b> but cannot be available at a stage prior to the making of a decision by the Speaker/Chairman.</li> <li>⊖ <b>Keisham Meghachandra Singh vs. the Hon'ble Speaker Manipur Legislative Assembly &amp; Ors. (2020)</b> case SC held that disqualification petitions under the Tenth Schedule should be decided by Speakers within three months.</li> <li>⊖ <b>"Administrative Reforms Commission's Report titled 'Ethics in Governance' and various other expert committees</b> have recommended that the issue of disqualification of members on grounds of defection should be decided by the President/Governor on the advice of the Election Commission.</li> <li>⊖ <b>The Supreme Court said the</b> "Parliament should amend the Constitution to substitute the Speaker with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism, to ensure that such disputes are decided both swiftly and impartially."</li> </ul>

## SEDITION

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊖ As per NCRB, <b>number of cases rose by 160 percent (93 cases)</b> during 2016-2019.</li> <li>⊖ In 2019, <b>conviction rate was 3.3%</b> while in 2020, it was 33.3%.</li> <li>⊖ <b>Highest numbers of sedition cases (2010-2020) were registered in Bihar</b>, followed by UP, Karnataka and Jharkhand.</li> <li>⊖ United Kingdom (UK), Ireland, Australia, Canada, Ghana, Nigeria and Uganda, have held sedition law as undemocratic, undesirable and unnecessary.</li> </ul>	<ul style="list-style-type: none"> <li>⊖ <b>Kedarnath Singh vs state of Bihar (1962)</b> - Sedition law is valid.</li> <li>⊖ <b>Balwant Singh v State of Punjab</b>, held that mere sloganeering which evoked no public response did not amount to sedition.</li> </ul>

## INTERNAL PARTY DEMOCRACY

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊖ Constitution provides for co-operative societies which is a fundamental right under Article 19 (1)(c), but the Right to form political parties is not.</li> <li>⊖ <b>Section 29A of the RPA, 1951</b> provides for registration of political parties with the ECI.</li> </ul>	<ul style="list-style-type: none"> <li>⊖ Committees like Dinesh Goswami Committee, the Tarkunde Committee and Indrajit Gupta Committee, has strongly argued for more transparent working of the political parties in the country.</li> </ul>

## COOPERATIVES

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊕ <b>97th Amendment Act:</b> This Amendment Act relates to effective management of co-operative societies in the country.</li> <li>⊕ <b>Article 19(1)(c):</b> It guarantees freedom to form associations or unions or cooperative societies subject to certain restrictions.</li> <li>⊕ <b>Article 43 B:</b> It says that states shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.</li> <li>⊕ <b>Part IXB of the Constitution:</b> It dictated the terms for running cooperative societies.</li> </ul>	<ul style="list-style-type: none"> <li>⊕ The SC has held that co-operative societies (except- Multi-state cooperative society) come under the “exclusive legislative power” of State legislatures.</li> <li>⊕ A three-judge bench of the Supreme Court annulled part of the 97th Amendment Act and Part IX B of the Constitution which governs the “Cooperative Societies” in the country.</li> </ul>

## SEVENTH SCHEDULE

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊕ Seventh Schedule under <b>Article 246</b> provides distribution of powers and responsibilities between the state and central governments into three lists (<b>Union List, State List and Concurrent List</b>).</li> <li>⊕ Union list details the subjects on which <b>Parliament may make laws</b> while <b>state list</b> details those under the <b>purview of state legislatures</b>.                     <ul style="list-style-type: none"> <li>→ <b>Concurrent list</b> has subjects in which both <b>Parliament and state legislatures have jurisdiction</b>.</li> <li>→ However, the Constitution provides <b>federal supremacy to Parliament on concurrent list</b> items in case of a conflict.</li> </ul> </li> <li>⊕ <b>Article 248</b> confers residuary powers on the Parliament.                     <ul style="list-style-type: none"> <li>→ Residuary powers refer to the power of jurisdiction upon subjects that are not mentioned in the state or concurrent list.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>⊕ <b>Sarkaria Committee Recommendations (1998 Report):</b> <ul style="list-style-type: none"> <li>→ <b>Residuary Power: Residuary powers be transferred from the Union List to the Concurrent List</b>, except for the residuary power to impose taxes which should be retained in the Union List.</li> <li>→ <b>Concurrent List: States should be consulted by the Centre</b> before exercising power over Concurrent List.</li> </ul> </li> <li>⊕ As per <b>M.M. Punchhi Commission, 2010</b>, Centre should only transfer those subjects to Concurrent List which are necessary for ensuring uniformity in basic issues of national policy.</li> </ul>

## CRIMINALIZATION OF POLITICS

Constitutional Provision/Data	Judgement/Recommendations
<ul style="list-style-type: none"> <li>⊕ In 2019, there is an <b>increase of 109% in the number of MPs</b> with declared serious criminal cases since 2009.</li> <li>⊕ ADR analysis shows that <b>candidates facing criminal charges had double the chances of winning</b> as compared to those with clean record.</li> <li>⊕ In 2022, of the 226 sitting Rajya Sabha MPs, <b>71 (31%) have declared criminal cases</b> against themselves and <b>37 (16%)</b> have declared <b>serious criminal cases</b>.</li> </ul>	<ul style="list-style-type: none"> <li>⊕ <b>Union of India Vs ADR, 2002: Electors had a fundamental right to know the antecedents of candidates</b> contesting elections to hold public office.</li> <li>⊕ <b>People's Union for Civil Liberties v. Union of India, 2004:</b> Section 33B of Representation of People Act (RPA) which nullified the decision in ADR case (2002) was challenged.                     <ul style="list-style-type: none"> <li>→ <b>Section 33B of RPA was held unconstitutional and void</b> as it infringed the “right of electors’ to know”.</li> </ul> </li> <li>⊕ <b>Lily Thomas Vs Union of India, 2013:</b> MP, State Legislatures convicted of crime with a minimum sentence of 2 years imprisonment would cease to be members of the house.</li> <li>⊕ In 2017, <b>Special courts to be set up across the country</b> to fast-track the long-pending trials of lawmakers.</li> <li>⊕ In <b>Public interest foundation case 2018</b>, Court held that all <b>candidates will have to declare their criminal antecedents</b> to the ECI before contesting polls.</li> </ul>



## GOVERNOR

### Cases/Recommendations/data

- ☉ **Sarkaria Commission: consulting the chief minister in appointment, Article 356** (President's Rule) should be **used very sparingly** etc.
- ☉ **Punchhi Commission:** should be given a **fixed tenure** of five years, **Exercise of discretionary** power must be dictated by **reason** etc.
- ☉ **National Commission to Review the Working of the Constitution (NCRWC):** whether the ministry in a state has **lost the confidence** of the assembly or not should be **tested only on the floor of the House**.



## JUDICIARY

### Cases/Recommendations/data

- ☉ **Presently Cases pending:** Over 4.7 crore cases are pending across different levels of judiciary.
- ☉ **State of Judicial infrastructure:** 32% of courtrooms have separate record rooms, 73% have no video-conferencing facility.
- ☉ **Funds:** Of total of ₹981.98 crore sanctioned, 91.36% funds unused.
- ☉ **Overcrowding:** As per NCRB data 2019, 4.8 lakh inmates in 1,306 facilities against sanctioned strength of 4.1 lakh.

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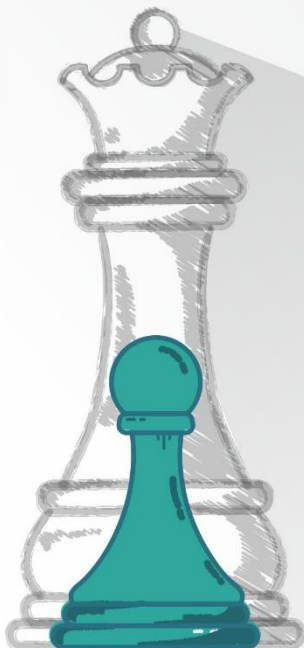
# GENERAL STUDIES

## PRELIMS & MAINS 2024 & 2025

**DELHI:** 5 AUG, 9 AM | 26 JULY, 1 PM | 17 JULY, 5 PM  
7 JULY, 1 PM | 1 JULY, 1 PM | 29 JUNE, 9 AM

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# WEEKLY FOCUS

## Polity and Governance

TOPIC	DESCRIPTION	LEARN MORE
 <p><b>Seventh Schedule of the Indian Constitution - Does it need a relook?</b></p>	<p>The Seventh Schedule determines the level of government at which public intervention and public expenditure occur. This distribution of power orchestrates the federal nature of our polity. This nature does not remain constant but always in a flux, depending upon socio-economic and political circumstances. Does the current context warrants a relook on it?</p>	
 <p><b>Financially Empowering Urban Local Bodies</b></p>	<p>Cities, as the engines of growth, are critical for the development of India. And given that, it follows that our cities need to be well managed. The role of urban local governments becomes prominent here. But is everything well with their financial capacity? The document examines the roadblocks in the financial empowerment of urban local bodies and the imperatives to further strengthen these bodies in their financial management.</p>	
 <p><b>Changing Dynamics of Fiscal Federalism in India</b></p>	<p>Fiscal imbalances, both vertical and horizontal, are common to federations and India is no exception. This document discusses various dimensions of Indian fiscal federalism, the changing contours of union-state fiscal relations and several existing key concerns that have a major impact on achieving India's development goals. Can these concerns be resolved? Read more to know what experts suggest.</p>	
 <p><b>Constitutional Morality</b></p>	<p>In 1846, when Grote wrote about the rise and fall of Athenian democracy, he explained that the diffusion of the sentiment of 'constitutional morality' throughout society is a prerequisite for a stable, peaceful and free society. Is Constitutional Morality a sentiment or an obligation? What does disregard of Constitutional Morality mean? Is that disregard constitutionally justiciable? Exploring the origin and development of the concept of Constitutional morality, the document tries to find a middle ground for its application in upholding the democratic rights of a society.</p>	

 <p><b>Government Budgeting: What, Why and How?</b></p>	<p>The emergence of the welfare state made it important that the government money is being judiciously used to better the living conditions of society in general and the marginalized sections in particular. Therefore, a well-planned budget is of utmost importance for any government. This document elaborates on the evolution of India's budgetary process and takes into account the prevailing weaknesses in the process. Going ahead, it also discusses the factors that ail the credibility of Indian budget and the reforms that are needed to revamp the budgeting process.</p>	
 <p><b>Inter-State Water Governance From Conflict to Cooperation</b></p>	<p>For long, it has been widely speculated that nations will go to war for the control over water that is shared between countries such as international rivers. However, contrary to this apprehension, it has been seen that subnational disputes are far more omnipresent. India has seen a fair share of such hostilities between states flaring up from time to time over interstate river water. This document provides an understanding of the existing challenges and gaps in the institutional and political fabric of interstate river water governance within the Indian federal system and offers recommendations for ensuring an effective river water governance.</p>	
 <p><b>Censorship in Media: A necessary evil?</b></p>	<p>Indian media in the present times is straddling between saving freedoms at one end, and censoring harmful content at the other end. Examining the need and issues related to content censorship in the country, the document discusses the best way forward to balance media censorship with our fundamental right of speech and expression.</p>	
 <p><b>India's Criminal Justice System: Reforming Institutions For Delivering Justice</b></p>	<p>The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System. Understanding the evolution and various components of criminal justice system in India, the document examines various maladies and faults with which the existing criminal justice system is affected. It further pinpoints various alternatives and suggestions for strengthening the system in order to achieve equity and prompt delivery of justice in the country.</p>	
 <p><b>Cooperatives: Prosperity through Cooperation</b></p>	<p>India has had a rich and successful history of the cooperative society and cooperatives today are the best channels to keep alive the spirit of collectivism and democracy afloat. The presence of a large network of social organizations, like cooperatives, would aid in the generation and utilization of social capital and greater the social capital greater would be the possibility of development. Highlighting the relevance and role played by the cooperative sector in India's development, this document examines the existing roadblocks for the sector and the way forward for the sector to flourish.</p>	

 <p><b>Sui Generis Indian Federalism: Evolving Dynamics and Emerging Concerns</b></p>	<p>The founding fathers of the Indian Constitution envisioned a unique federal structure to serve distinctive needs of the diverse nation. A well-designed and well-functioning system of federal governance, by virtue of its manifold benefits, plays a key role in promoting the stability and prosperity of any nation. However, the working of the Indian federation during the past decades clearly depicts friction in the relations between the Centre and the States. Cataloguing the evolving nature and significance of India's federal structure, this document highlights emerging threats and changes impacting it. Moving forward, it prescribes manoeuvres to strengthen the fabric of Indian Federalism which preserves its unique characteristics.</p>	
 <p><b>Electoral Reform: An Approach to Effective Democracy</b></p>	<p>Elections have become India's great festivals-festivals which have been marked since the seventies by rigging, booth capturing, threat to voters and violence in a large number of constituencies in several states. The need for electoral reforms has been recognised by all political parties and many suggestions have been made in this regard. This document explains the basics of free and fair elections, shortcomings of the entire election process and takes one on the journey of electoral reforms in India.</p>	



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AIR



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**SHUBHAM KUMAR**

**3**  
AIR



**GAMINI  
SINGLA**

**4**  
AIR



**AISHWARYA  
VERMA**

**5**  
AIR



**UTKARSH  
DWIVEDI**

**6**  
AIR



**YAKSH  
CHAUDHARY**

**7**  
AIR



**SAMYAK  
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**9**  
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