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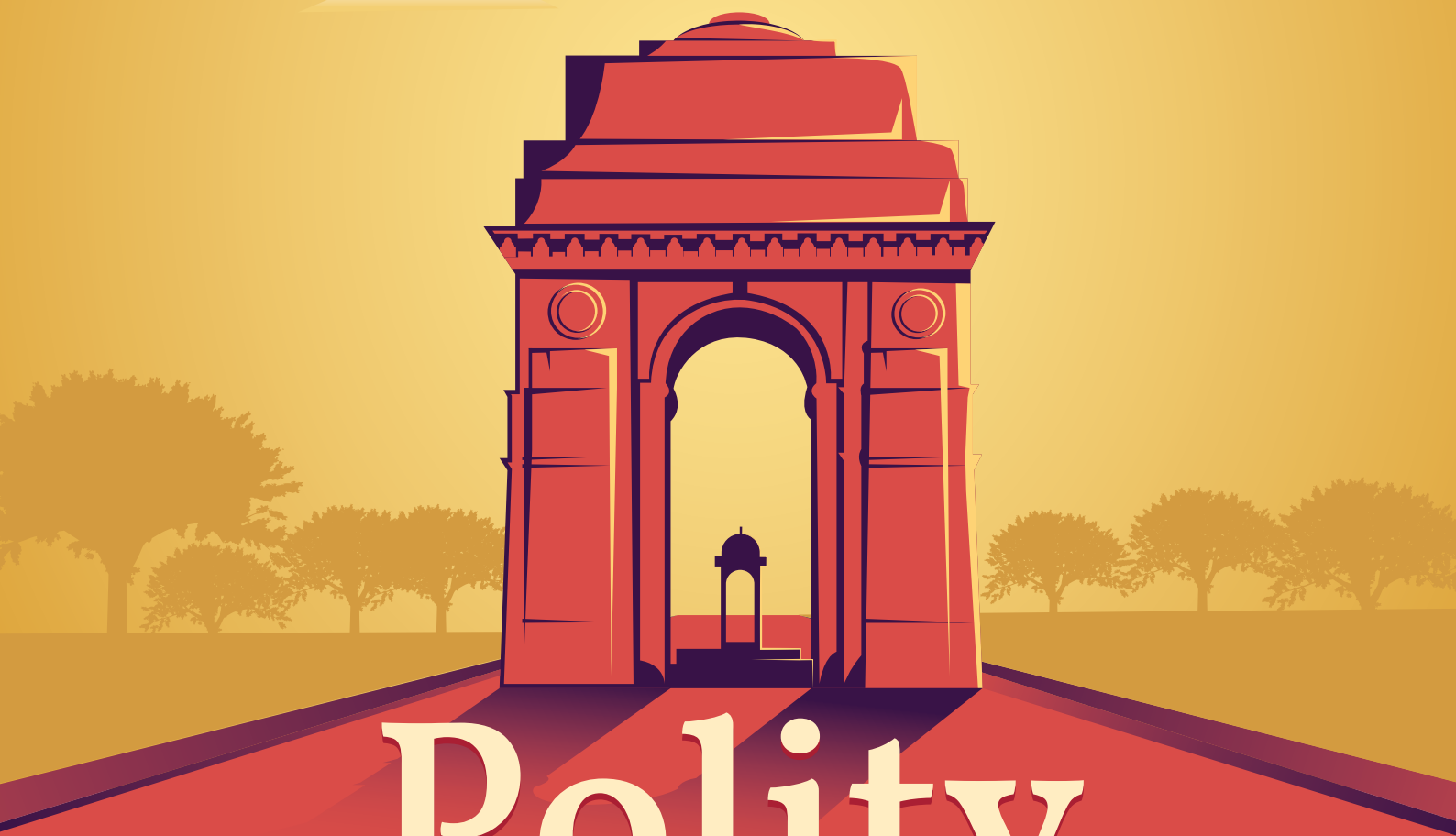

Polity

Classroom Study Material 2022

(August 2022 to May 2023)

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POLITY AND GOVERNANCE

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Previous Year Questions

A reference sheet of syllabus-wise segregated previous year questions from 2013-2022 (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,

- Understanding current affairs can add depth to your perception of intricate issues and help you form nuanced perspectives, especially in the context of the Mains examination.
- In light of this, Mains 365 documents attempt to simplify your study process by including features that assist in creating answers, reviewing content, and retaining information.

Here are the key features we have integrated in the document:

A Topic at Glance:
This offers a comprehensive view of the topic, seamlessly connecting current and static aspects while providing necessary data and facts.

Enhanced Infographics:
These are designed to effectively revise as well as to be readily used in your answers, making your responses more engaging and informative.

Data Banks:
To help you identify and revise the crucial datasets of topics, we have designed and integrated data banks in the articles.

Appendix:
We have added an appendix of key data and facts at the end of each document, aiming to facilitate quick revision.

Weekly Focus Document List:
A QR code linked list of relevant weekly focus documents has been added at the end of each document, ensuring a smoother journey while approaching these topics.

Previous years questions:
To facilitate efficient revision, a QR code linked syllabus-wise segregated list of previous years' questions is added.

Judicial Pronouncements
This aims to facilitate student's understanding with judicial interpretation of the law and legal development & evolution.

We sincerely hope Mains 365 documents will guide you effectively in your preparation and aid you in scoring better in your Mains examination.

"Learn everything you can, anytime you can, from anyone you can. There will always come a time when you will be grateful you did."

All the best! Team VisionIAS

1. INDIAN CONSTITUTION, PROVISIONS AND BASIC STRUCTURE

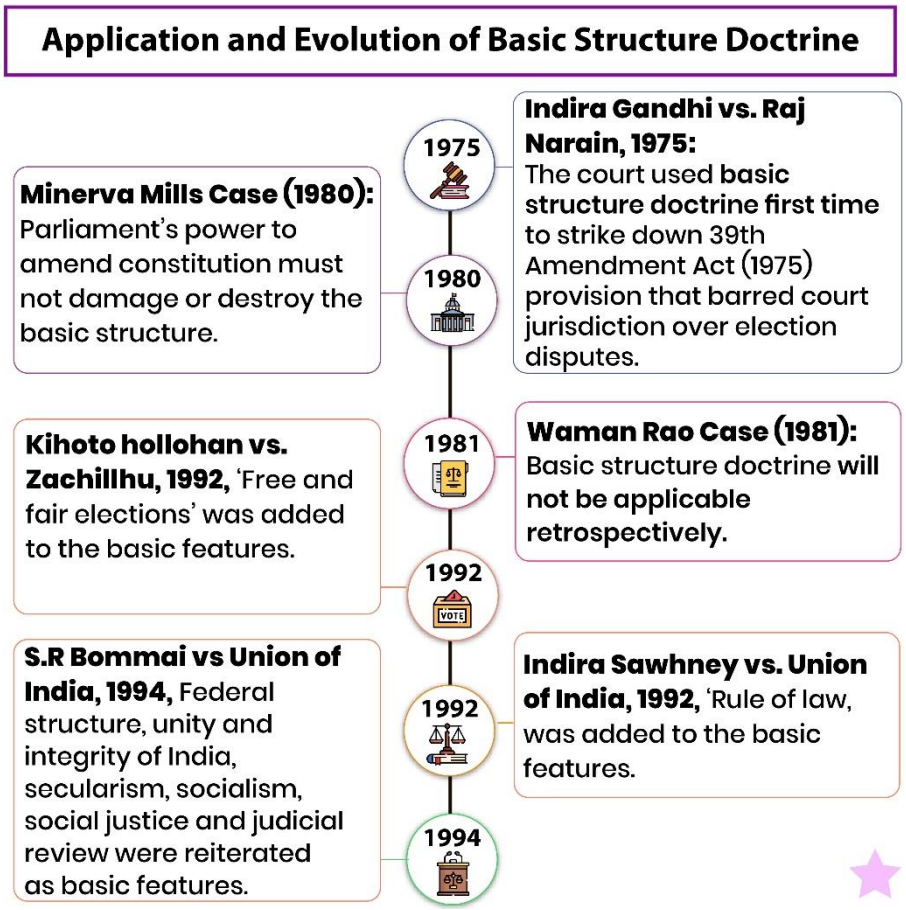
1.1. BASIC STRUCTURE DOCTRINE

Why in news?

The landmark Kesavananda Bharati judgement, 1973 which propounded the basic structure doctrine **completed 50 years.**

About Kesavananda Bharati Case, 1973

- Case involved a petition against Kerala Government **for violating Fundamental Rights (Articles 25, 26, and 31) by compulsorily acquiring land** under Kerala Land Reforms Act of 1963.
- Case was heard by a **Bench of 13 judges — the largest formed in Supreme Court.**
- **Key Outcomes:**
  - **Introduction of Basic Structure Doctrine:** Basic Structure Doctrine **upheld 24th amendment**, stating that **Parliament can amend any part of Constitution (including FRs)** without **altering its fundamental principles.**
  - **Corrected judgments of Golaknath case:** SC ruled that **Article 368 covered amending powers and procedure, distinct from Parliament's** legislative powers.
  - **Other judgments:** SC upheld 25th and 29th Amendments, except for provisions limiting judicial review, and affirmed the amendability of the Constitution's Preamble.



Significance of Basic Structure Doctrine	Challenges with regard to Basic Structure Doctrine
• **Serves as a check on power of Parliament** to amend Constitution. • **Ensures that Constitution remains a living document** while preserving its fundamental values and principles. • **Establish foundational principles in Indian constitutional law** like rule of law, separation of powers etc. • **Ensures that federal structure of Constitution is not undermined.** • **Instrumental in shaping Indian judiciary's approach to constitutional interpretation.**	• **Scope of Basic Structure:** Interpretation of what constitutes "basic structure" is often contested which can lead to differing interpretations and confusion. • **Judicial Activism:** For instance, in 2019 SC struck down NJAC Act to reform appointment process for judges. • **Conflict with parliamentary sovereignty:** For example, removal of special status for J&K under J&K Reorganisation Act, 2019 was challenged in SC on the grounds that it **undermines federalism, secularism, and right to self-determination.** However, SC upheld constitutionality of the act. • **Doctrine makes it difficult to amend Constitution** even when such amendments are necessary to address changing societal needs.

Way ahead

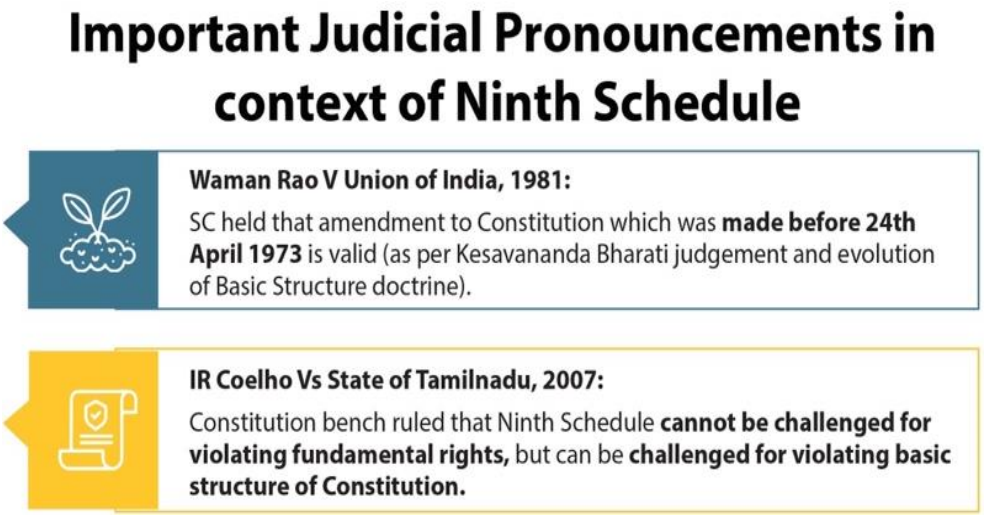
- SC needs to **provide a clear definition of basic structure**, including fundamental principles and values that cannot be amended.

- **Doctrine must be applied consistently in all cases**, ensuring that basic features of Constitution are not tampered with by any organ of the state.
- **Limiting judicial activism:** Courts should **exercise restraint in interpreting Constitution** and upholding basic structure, respecting the separation of powers and role of the Parliament.
- There is a **need for public awareness and participation** in understanding the importance of basic structure doctrine and its impact on governance of country.

1.2. NINTH SCHEDULE

Why in news?

Recently, Chhattisgarh government has urged to Prime Minister to enlist the amended reservation provisions of state which provides for 76% reservation in Ninth Schedule.



About Ninth Schedule

- Ninth Schedule contains a **list of central and state laws that cannot be challenged in court**.
  - It was added by **First Constitutional Amendment Act, 1951** by inserting a **new Article 31B.**
  - Article 31B states that **none of the acts/regulations mentioned in Ninth Schedule** shall be **considered to be void on ground that they are inconsistent with any rights.**
  - **Article 31B is retrospective in nature** and currently, there are **284 acts/laws under schedule**, of which most are related to agriculture and land laws.

Criticisms of Ninth Schedule

- **Against fundamental rights**: Ninth schedule provides complete **blanket protection to Central and State laws, thus hindering fundamental rights** guaranteed in constitution.
- **Against principle of Judicial review**: It deprives the courts of power to examine the constitutionality of Acts.
  - In **L. Chandra Kumar case 1997,** SC affirmed that **power of judicial review** (vested in HCs under Article 226 and in SC under Article 32) **is an essential feature of Constitution.**
- **Outlived its utility**: Primary aim of including Ninth schedule was to **safeguard land reform laws from judicial scrutiny and delays.** However, over time, it has **expanded to encompass laws unrelated to land reforms**, fundamental rights, and DPSPs.
- **Tool to realise political gains**: Since its inception, Ninth Schedule has continuously expanded and currently encompasses 287 acts, **leading to demands for including more laws to shield them from constitutional scrutiny**. For instance, **Tamilnadu law granting 69 percent reservation** is included in Schedule.

Conclusion

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

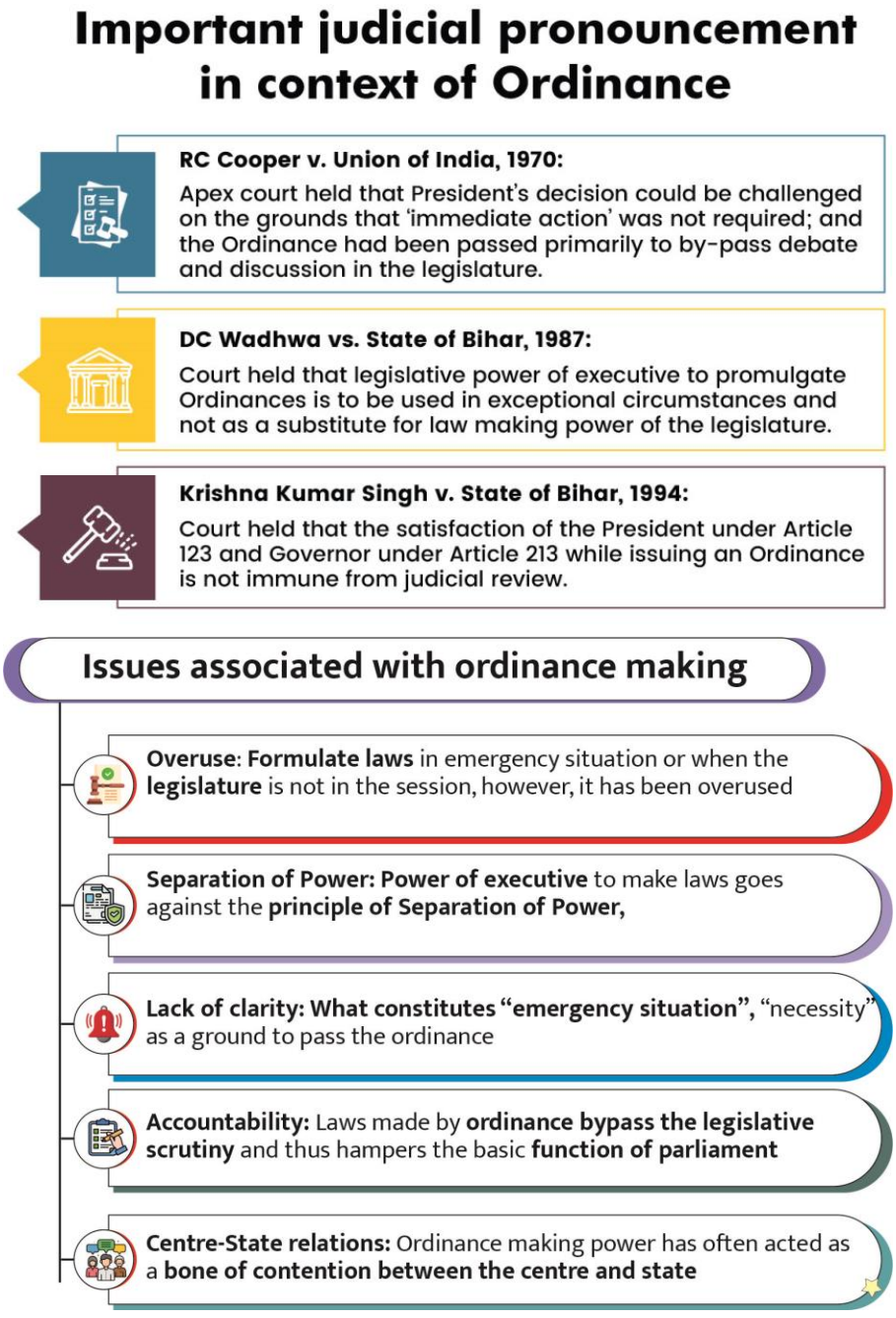
1.3. ORDINANCE

Why in News?

There has been a steady decrease in the number of ordinances promulgated by the Centre since 2019.

Ordinance making power of President and Governor

- Word "Ordinance" is defined as a **law promulgated by State or Central Government without approval of Legislature.**
  - Power to promulgate the Ordinance is vested in **Indian Councils Act, 1861, Government of India (GoI) Act, 1909, and GoI Act, 1935.**
- Ordinance is listed under **Article 123 (Power of President to promulgate Ordinances during recess of Parliament)** and **Article 213 (Power of Governor to promulgate Ordinances during recess of Legislature).**
  - These promulgated ordinances have **same force and effect as an Act of Legislature,** but these acts are likely in **temporary nature.**
  - Ordinance is **valid for 6 weeks from date when next session starts.** If two Houses start their sessions on different dates, the later of dates will be considered.
  - **Ordinance may lapse earlier if President/Governor withdraws** it or if **both Houses pass resolutions disapproving it.**
  - Ordinances can **only be issued on matters on which Parliament or Legislature can make laws** and are subject to the same limitation as Parliament/Legislature to make laws.



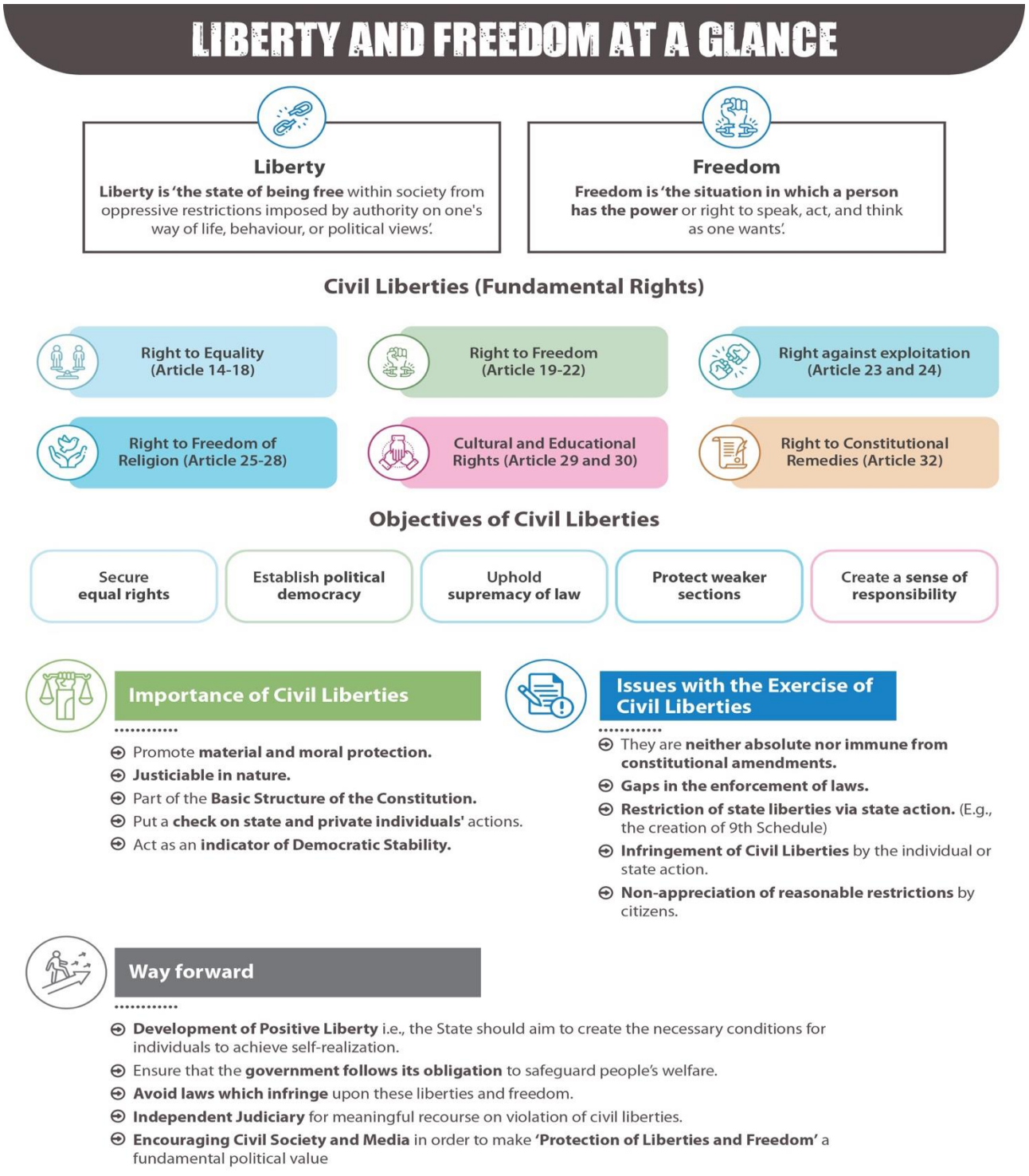
- However, **Governor of a State cannot make an ordinance without the reference of President** in following cases:
  - **Bills that have similar provisions require the prior approval of President** to introduce the Bill in Assembly.
  - If Governor would have deemed, it necessary to **reserve a bill containing similar provisions for consideration of the President.**
  - If an **act of state legislature containing same provisions would have been invalid** without receiving President's assent.

Conclusion

The power to make ordinances holds the potential for positive impact by **promoting order and addressing immediate concerns**. However, it **must be exercised with careful consideration** of individual rights and community needs. **Balancing regulation with fairness and accountability is crucial** to ensure that ordinances serve their intended purpose while respecting the principles of democracy and justice.

1.4. BASIC RIGHTS

1.4.1. LIBERTY AND FREEDOM



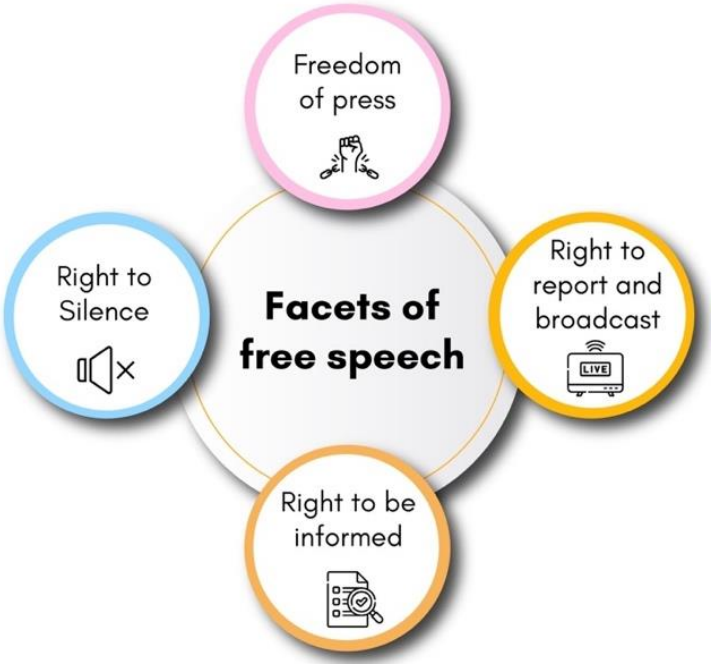
1.4.2. RIGHT TO FREE SPEECH

Why in news?

Recently, Supreme Court ruled that no additional restrictions other than those which are permissible under **Article 19(2) of Indian constitution** can be imposed on free speech of public functionaries.

More on news

- **SC held that**
  - **A statement made by a minister,** even in official capacity, **cannot be attributed vicariously to government by invoking** principle of **collective responsibility.**
    - ✓ **Under Article 75 (3) and 164 (2),** Council of Ministers (CoM) is collectively responsible to House of People and Legislative Assembly of State respectively.
    - ✓ SC stated that **collective responsibility flows from CoM to individual ministers, not on reverse,** namely, from individual Ministers to CoM.
  - **Fundamental right under Article 19, 21 can be enforced even against persons other than state** or its instrumentalities.
  - **A mere statement made by a minister,** inconsistent with rights of a citizen, **may not become actionable as constitutional tort.**
    - ✓ But **if leads to an act of omission or commission** by a public official **then it is a constitutional tort.**
    - ✓ Constitutional tort is a **violation of one's constitutional rights,** particularly fundamental rights, **by an agent of government,** acting in his/her official capacity. A **court of law can award monetary compensation** to the victim in such a case.



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.
- Universal Declaration of Human Rights under Article 19 states that everyone has right to express their opinions freely, in whichever way they want.

Need of Free Speech	Need of Restrictions
• **Accountability**: Media and Civil Society Organizations (CSOs) reporting on pressing issues shape public perception and enhance government accountability. • **Active participation**: Free speech **supports FRs like freedom of assembly, empowering citizens to influence public decision-making** through protests and demonstrations. • **Promotes equality:** Campaigning and openly addressing community issues can bring them to forefront, gain public support, and halt human rights abuses. • **Necessary for change and innovation**: Free speech **protects creative license of artists** and allows them to develop and share ideas freely. These can be academic writings, theatre, cartoons, visual arts etc. • **Development:** Freedom of speech is crucial for freedom of thought as exposure to diverse ideas allows for	• **Sovereignty and integrity: Constitution (Sixteenth Amendment) Act, 1963 added Article 19(2)** to restrict speech threatening India or instigating secessionist movements. • **Security of State** is of utmost importance and imposing reasonable restrictions on activities risking security of the nation is of vital importance. • **Friendly relations with foreign States**: To curb malicious actions, to jeopardize reputation of country and to maintain positive relations with othercountries in a globalized world. • **Public order, decency, or morality**: To prevent marketing or distribution of explicit content in public places, causing social unrest or discomfort to society.

independent perspectives and meaningful discussions. • **Building block**: Free speech forms a **foundation for other rights granted to citizens, such as freedom of press** which helps in inculcate a better-informed public and electorate.	• **Contempt of court**: To maintain stature and preserve public trust in judiciary. It is **punishable under Article 129 and Article 215** by SC and HC respectively. • **Defamation or incitement to an offence: First Amendment Act of 1951** added a provision clarifying that freedom of speech doesn't permit incitement of offense or communal violence.

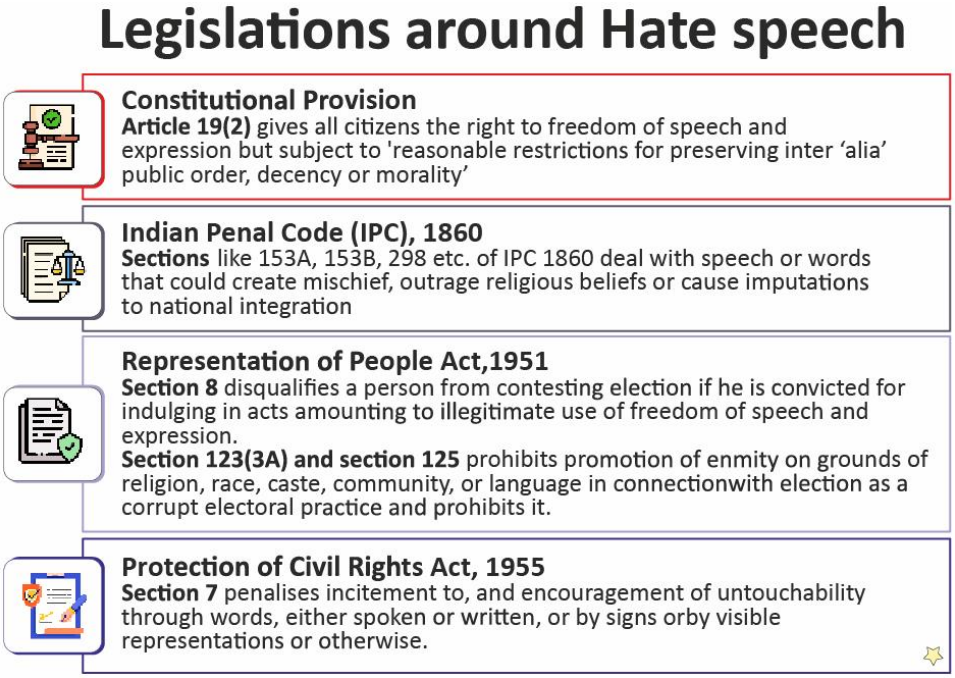
Way forward

- **Arbitrariness:** Reasonable **restrictions under Article 19(2) should avoid arbitrariness and excessiveness,** striking a balance between freedoms and social control.
- **Nature of restriction**: In assessing reasonableness, **Court should consider the nature of restriction and prescribed enforcement procedures** on the individual freedom before arriving at a verdict.
- **Education can help in development of understanding of free speech** and promote its usefulness 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.

1.4.3. HATE SPEECH

Why In News?

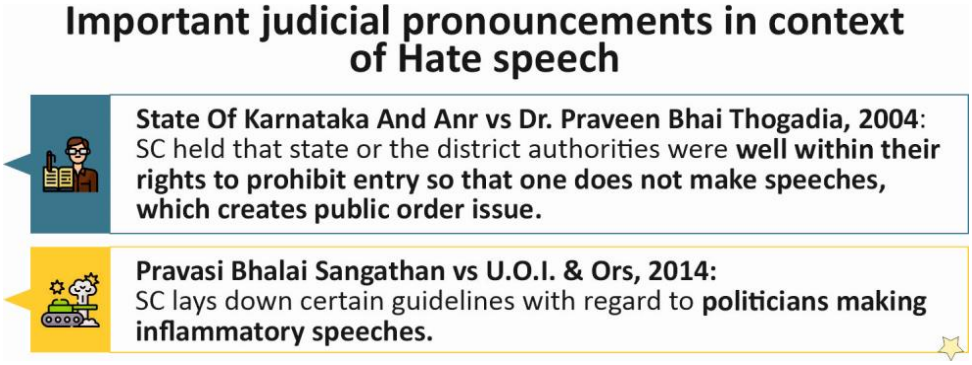
Supreme Court asked governments of NCT of Delhi, Uttarakhand and Uttar Pradesh to take suo motu action against any hate speech crimes taking place within their jurisdiction.



More in News

- SC while hearing a plea to curb hate speeches in country, **issued a set of interim directions** to Governments of NCT of Delhi, Uttarakhand and Uttar Pradesh **including:**
  - Hate speech **cases should be suo motu registered and offenders should be proceeded against** in accordance with law.
  - SC held that any **hesitation to act as per directions would be viewed as contempt of court.**

About Hate speech



- **Law Commission (LC),** in its 267th Report, **defined hate speech** as an **incitement to hatred primarily against a group of persons** defined in terms of race, ethnicity, gender, sexual orientation, religious belief etc.
  - There is **no specific legal definition of 'hate speech' in India.**

Issues with Hate speech

- **Hate speech fuels discrimination, marginalization, and unfair treatment** by reinforcing stereotypes and prejudices, leading to social exclusion and denied opportunities for certain individuals or groups.
- **It affects individuals' overall psychological health** by inducing stress, anxiety, depression, damaging self-esteem, sense of belonging.
- **Incite individuals or groups to commit acts of violence** against targeted individuals or communities.
- **Balancing freedom of speech and countering hate speech requires careful legislation and enforcement** to address harm without suppressing expression**.**

Suggestions to tackle hate speech

- **LC has proposed two new sections**, Section 153C and Section 505A in IPC **to criminalise hate speech** specifically.
  - **Similar proposals** have been made **by Bezbaruah Committee and Viswanathan Committee.**
  - **Also, Committee for Reforms in Criminal Laws (formed in 2020)** is examining issue of having specific provisions to tackle hate speech.
- **Implementing a robust code of conduct** is essential for media agencies like YouTube, Twitter, and Facebook to effectively curb hate speech.
- **Promoting empathy, fostering diversity, and strengthening legal frameworks** to combat hate speech are important for fostering an inclusive and tolerant society.

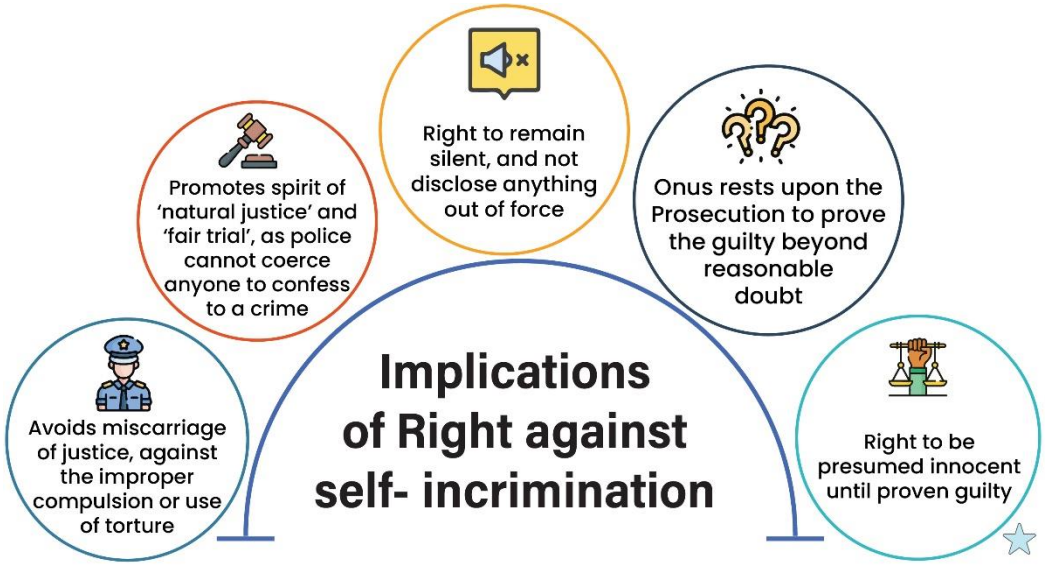
1.4.4. RIGHT AGAINST SELF-INCRIMINATION

Why in news?

Kerala High Court held that **Article 20(3) of Indian Constitution** does not shield an accused from being compelled to provide a blood sample in criminal investigations.

What is Right against self-incrimination?

- Right against self-incrimination is a **Fundamental Right under Article 20(3)** which says, "No person accused of any offence shall be compelled to be a witness against himself."



- This is one of the basic tenets of British Code of penal jurisprudence, which USA followed and introduced into their Constitution.

When it does not apply?

- **Production of material objects**: Right against self-incrimination does **not cover the mandatory production of physical evidence**, such as documents or weapons, relevant to a criminal investigation.
- **Physical specimen**: Right **does not protect a person from providing a thumb impression**, specimen signature, blood specimen, or exhibiting the body.
- **Limited to criminal proceedings**: Article 20(3) of Constitution doesn't protect individuals from self-incrimination in civil or administrative proceedings.

Criticism of Right against self-incrimination

- **Goes against duty to co-operate** in investigation.
- **Task of investigators and prosecutors is made unduly difficult** by allowing the accused to remain silent.
- **Does not deter improper practices** during investigation.
- **Protects guilty** at the cost of such larger societal objectives.
- Scope **restricted to testimonial acts while excluding physical evidence** which can be extracted through compulsion.

Important Judicial pronouncement on Right against self-incrimination

M.P. Sharma v. Satish Chandra (1954):
Supreme Court has widened the scope of Article 20(3) giving out the following essentials.
- **Person must be "accused of an offence".**
- **Protection against "Compulsion" to be a "Witness".**
- **Compulsion to Give Evidence Against Himself.**

State of Bombay versus Kathi Kalu Oghad 1961 case:
- Supreme Court ruled that obtaining photographs, fingerprints, signatures, and thumb impressions would not violate the right against self-incrimination of an accused.

Selvi v State of Karnataka (2010):
Supreme Court held that a **narcoanalysis test** without the consent of the accused would **amount to violation of the right against self-incrimination.**
- Also, **results of these tests cannot be considered as confessions due to their inability to exercise choice in answering questions.**
- However, **obtaining a DNA sample from the accused is permitted.**

Conclusion

Right against self-incrimination as enshrined under **Article 20(3)** prima facie preserves the interests of person accused of an offence but as a fundamental principle it also preserves the interests of State by ensuring **fair trial** so as to maintain law and order in society.

1.5. RESERVATION

RESERVATION AT A GLANCE

Reservation is a tool which gives the underprivileged equal representation and **participation rights, be it in governance or education.** A beneficiary of this reservation is expected to uplift his/ her community.

Reservation is provided to **SCs, STs and OBCs at the rate of 15%, 7.5% and 27%, respectively,** in case of direct recruitment on all India basis by open competition.

10% reservation under the EWS category applies to those not covered under the existing scheme of reservations for the SCs, STs and OBCs.

Constitutional provisions related to reservation

- Reservation in **educational institution has been provided in Article 15(4) while reservation in posts and services has been provided in Article 16(4), 16(4A) and 16(4B)** of the Constitution .
- **Article 46** of the Constitution provides that the State shall promote with special care the educational and economic interests of the weaker sections of the society and, of the SCs and STs and shall protect them from social injustice and all forms of exploitation.
- **Article 243D** provides reservation of Seats for Scheduled Caste and Scheduled Tribes in Panchayats.
- **Article 330** provides reservation of seats for Scheduled Caste and Scheduled Tribes in the House of the People.
- **Article 332** provides reservation of seats for Scheduled Caste and Scheduled Tribes in Legislative Assemblies of the States.

The Mandal Commission

- In 1990, the then Union government announced that Other Backward Classes (OBCs) would get **27 percent reservation in jobs in central government services and public sector units (under Article 16(4) of the Constitution).**
- The **creamy layer criterion** was invoked by Supreme Court in the ruling called the **'Indira Sawhney Judgment' (1992).**
- The **decision was based on Mandal Commission Report (1980).**
- The **education quota came into force in 2006 (under Article 15(4) of the Constitution).**

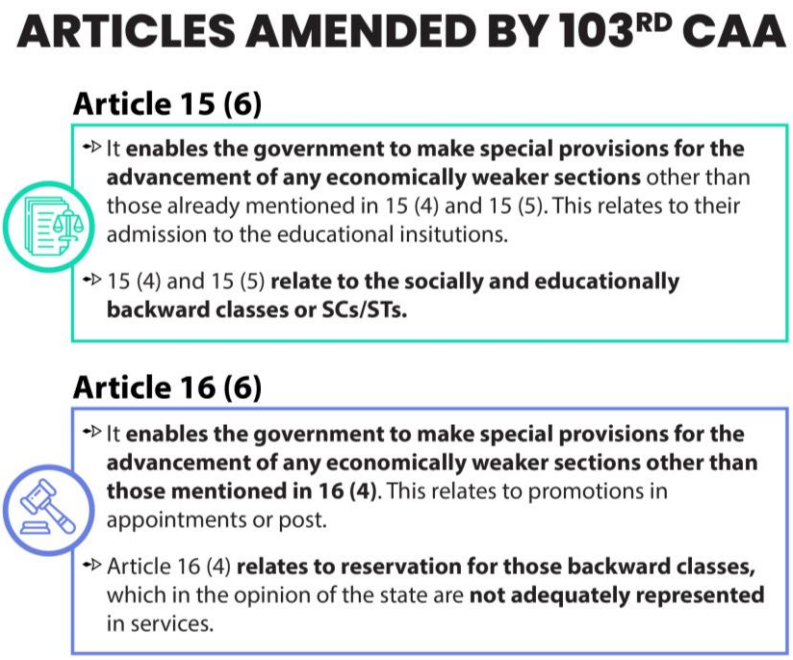
Important Judicial Pronouncement in context of reservation

- **Indra Sawhney case (1992)**
  - Upheld the 27% quota of OBCs
  - Reservation should not cross 50% limit
  - Creamy layer must be eliminated from backward classes
  - No reservation in promotion
- **Nagraja case (2006)**
  - Upheld the constitutional validity of reservations for SCs and STs to include promotion with 3 conditions
  - Quantifiable data on backwardness of SC and ST
  - The fact about the inadequate representation
  - The overall administrative efficiency
- **Janhit Abhiyan v Union of India case, 2022**
  - Reservation on economic criteria alone **did not violate the Basic Structure** of the Constitution.
  - EWS is deemed a **separate and distinct category.**
  - **Exclusion of SC/ST, SEBC** was a part of **reasonable classification** and necessary to avoid double benefits.
  - Also, Reservations as a concept cannot be ruled out in private institutions where education is imparted.
  - 50% rule, formed in 1992 Indira Sawhney judgment, is not deemed inflexible and inviolable. It solely applies to SC/ST/SEBC/OBC, not the general category.

1.5.1. ECONOMICALLY WEAKER SECTIONS (EWS) QUOTA

Why in news?

Supreme Court Constitutional Bench upheld validity of **103rd Constitutional Amendment** which introduced **10% quota** for EWS in **education and public employment.**



About EWS quota

- EWS reservation was granted based on recommendations of **Sinho commission** (submitted report in 2010).
- **103rd Amendment Act 2019** inserted **Articles 15(6) and 16(6)** in Constitution to provide reservation to EWS among **non-OBC and non-SC/ST sections** of the population.
  - Act enables **both central and state governments** to provide reservations to EWS.
  - However, decision to implement reservations for EWS in state government jobs and educational institutions rests with state governments.
- Act **amended Article 15** to **additionally permit** government to provide for advancement of EWS.
  - Further, **up to 10% of seats** may be reserved for such sections for **admission in educational institutions**.
  - Such reservation will not apply to **minority educational institutions.**
- Act **also amended Article 16** to permit the government to reserve up to **10% of all posts for "EWS" of citizens.**
- EWS reservation is in **addition to existing reservation**.
  - A person **not covered under reservation for SCs, STs, and OBCs**, and whose family had a **gross annual income below Rs 8 lakh, was to be identified** as EWS for **reservation.**
  - Also excluded were those who had **five acres of agricultural land,** or
  - A **residential flat of 1,000 square feet**, or
  - A residential plot of 100 square yards and above in notified municipalities, or 200 square yards in other areas.

Significance of Judgement

- **Reshapes politics of affirmative action**: EWS quota moves the reservation discussion **beyond Mandal debate** (weighed in **favor of caste reservation**).
  - In **Ram Singh and Ors. vs Union of India case, 2015,** SC suggested the need for a **non-caste based identification** of backward classes.
- **Attempt to elevate poor among general category**: EWS quota **provides economic justice** to those who have **not been the beneficiaries of affirmative action** like reservation**.**
  - By **reading caste alongside class,** it reconfigures India's affirmative action policy **by offering an expansive view.**

Concerns related to EWS quota

- **Reservation is for social upliftment:** Reservation **cannot** be used as a **poverty alleviation measure**. Poverty can be **alleviated by other means** like scholarships.
- **Violates principle of equality:** By excluding OBCs, SC/ST communities from EWS, there is a **clear violation of equality** in their **eligibility to avail of a part of the open competition opportunities**.
- **Issue with income criteria:** Income criterion of ₹8 lakh a year has already been questioned as it is liable to **result in excessive coverage** of socially advanced classes.

- **Tool of populism:** Critics have raised **concerns about political implications of EWS quota**, highlighting its potential to exacerbate social tensions**.**

Road Ahead

- **A more detailed data and guidelines for identifying most genuine target groups** is crucial to ensure that **extremely needy individuals** get benefit of this policy.
  - Also, government should consider **both opening up the EWS quota to all communities** and keeping income criterion **much lower than ceiling** (can be at same level as **income tax slab).**
- **Continuous evolution of conceptual framework is necessary** to ensure that affirmative actions are increasingly inclusive in capturing backwardness.
- **Policies should focus on expanding employment** opportunity for EWS.
- **Government should prioritize enhancing the quality of educational institutions** to reduce the demand for reservations and ensure equal access for all students.

1.5.2. LOCAL RESERVATION IN PRIVATE SECTOR

Why in news?

Recently, Jharkhand government has launched job portal i.e., Jharniyojan portal to ensure 75% local quota in private sector.

Arguments in support of local reservation in private sector	Arguments against local reservation in private sector

• **Provide right to employment**: It is to **protect the right to life/livelihood of people domiciled in state** and to protect their health,living condition and their right to employment.
• **Dealing with shrinking employment opportunities.**
• **Curbing selectively discriminating corporations:** Employers believe the **local workers lack work discipline, unwilling to learn new trades**, inclined towards political and trade unions — seen as pressure tactics by businesses.
• **Address migration:** It will **discourage influx of migrants** seeking low-paid jobs, which has a "significant impact" on local infrastructure and leads to the "proliferation of slums".
• **Less crime rate** due to meaningful engagement toyouth.
• **Boost SGDP: Reduced absenteeism and dependence on migrant labourers** can boost productivity which in turn will boost state growth.
• **Agrarian Distress:** With great stress in agriculture sector across India, local people want to move away from it and seek local jobs.
	• **In contravention of Constitution:** Clause providing for preference in jobs to local candidates domiciled in Haryana was in **contravention of Article 14, 16 and Article 19 (1)(g).**
	• **Fuels sons-of-the-soil syndrome.**
	• **Stifle labour market:** Such reservation may push businesses to migrate, as their skilled workforce is not sufficiently 'local'.
	• **Revival of license raj:** 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.
	• **No solution to core issues:**
	  ○ **Skewed geographical development:** Investors prefer to stick to States where a governance ecosystem is already in place.
	  ○ **Low quality of education and skills.**
	• **Competitiveness:** Adequate skilled domestic labour may not be available which may hurt their efficiency and competitiveness.
	• **Restricts pool of candidates from which they can hire.**
	• **Investment:** Industries might shift their operations to other state, adversely impacting the very rationale of job creation behind such laws.

Way forward

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

Important Judicial pronouncement in Context of Quota in Private Sector

Dr Pradeep Jain case (1984):
Court expressed an opinion that legislation for "sons of the soil" would be unconstitutional.

Sunanda Reddy v State of Andhra Pradesh (1995):
It striked down a state government policy that gave **5% extra weightage to candidates** who had studied with **Telugu as the medium** of instruction.

Reservation in Civic Body Polls

- Haryana Cabinet has accepted **State Backward Classes Commission's report on proportion of reservation for Backward Classes (BC) Block-A category in Urban Local Bodies (ULBs).**
  - Commission has recommended that **every municipal body shall have at least one councillor belonging to BC (A) if its population is not less than two percent** of total population of ULB.
- **As per article 243 T(6)** 'There will be **no bar on State Legislatures from making provisions for reservation of seats in any municipality** or office of Chairperson in municipalities in favor of a backward class of citizens'.
- SC in **K Krishnamurthy v. Union of India Vikas Kishanrao, 2010** and in **Gawali vs. State of Maharashtra and others, 2021** had outlined **triple test/conditions for finalisation of reservation to OBCs in local bodies**. These include:
  - **Set up a dedicated commission** to conduct a rigorous empirical inquiry into nature and implications of backwardness in local bodies.
  - **Specify the proportion of reservation required** in local bodies in light of commission's proposals.
  - **Ensure reservation for SCs/STs/OBCs taken together does not exceed an aggregate of 50 percent** of total seats.

1.6. CASTE CENSUS

Why in news?

Patna High Court stayed the caste-based census in its interim order while hearing a petition challenging and seeking an interim stay on the caste survey in Bihar.

What is a Caste Census?

- Caste Census, under **administrative control of Ministry of Home Affairs,** is the **caste-wise tabulation of population** in the census exercise.
- Caste Census included as a **parameter in Census data only till 1931 Census**. As per this, data was collected for caste in 1872, 1881, 1901 and so on till 1931.
- Ever since independence, **Census had only the data related to SC and ST populations.**
- Earlier in 2011 attempt was made towards Caste Census by **conducting the Socio Economic and Caste Census (SECC).**

About SECC

- **Ministry of Rural Development** had **commenced SECC** (first paperless census) **in 2011**. SECC is a study of **socio-economic status of rural and urban households** and **allows ranking of households** based on predefined parameters.
  - It provides **data on households regarding various aspects of their socio-economic status** – housing, landholding, educational status, status of women, occupation, possession of assets, SC/ST households, incomes, etc.
- **Concerns associated with SECC**
  - **The flaws in the data** stem primarily from the fact that no registry of castes was prepared before conducting the 2011 caste census. This resulted in mistakes by enumerators, who spelt the same caste in dozens of different ways.
  - **The SECC data may suffer from inclusion and exclusion errors,** leading to the misidentification of beneficiaries.

Specification	Arguments against caste census	Arguments favouring caste census
Availability ofdata on caste	**Estimates of caste is already available** as various government surveys such as ones conducted by NSSO and NFHS collect data on broad share of SCs, STs and OBCs in population.	**Survey is not census:** Data of caste such as those collected by NFHS and NSSO are **survey-based estimates unlike census.**
Operational challenges	Conducting a comprehensive caste census would be challenging due to the absence of an official caste list.	It is a **common practice** that **some Census Tables are released five orseven years after Census is completed.**
Identity politics	Break up of population in various caste would **further strengthen caste-based politics in India.**	It is **necessary to understand people's socio- economic status by caste and sub-caste** and can be valuable in **designing policies for affirmative action and redistributive justice.** • **Indra Sawhney judgment** of SC had **demanded that such evidence be collected every 10 years to screen out privileged castes from benefits of reservations.**
Rise in demand for reservation	Caste census would lead to a **clamour for higher quotas, and removal of 50% cap on reservations.**	Absence of up-to-date caste data has **not prevented demands from various social groups for quotas in public employment and admission to central educational institutions.**

Way Forward

- **There should be a discussion on existing caste data, its utilization by government and departments** for providing or withdrawing benefits, as well as its significance for mapping social inequalities and change.
- **Integrating aggregated Census data with other datasets like NSSO or NFHS,** which address areas beyond Census exercises (e.g., maternal health), is crucial for comprehensive analysis.
- **Changes in census to meet demand of hour** such as employing methods that are precise, faster and cost effective, involving coordination between different data sources.

1.7. SECULARISM

1.8. SEDITION

SEDITION AT A GLANCE

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.

Sedition is a **cognizable, non-bailable and non-compoundable offence** under the law, entailing life imprisonment as maximum punishment, with or without a fine.

Individuals charged under Sedition are **barred from government employment, forfeit their passports, and are required to appear in court as needed.**

Significance of Sedition law

- **Combating anti-national, secessionist and terrorist elements.**
- **Protects elected government from attempts to overthrow the government** with violence and illegal means like insurgency.
- In line with **power of contempt accorded to court to protect its dignity.**
- **Maintain public order and to deter practices like civil war, excite dissatisfaction** to create public disturbance and to protect sovereignty of country.

SC pronouncements 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.
- **Balwant Singh vs State of Punjab, 1995:** SC held that **'Raising some slogan ("Khalistan Zindabad")** a couple of times which **neither evoked any response nor any reaction from the public does not amount to sedition.**

Issues associated with Sedition

- **Violate Freedom of speech and expression** guaranteed under Article 19(1) and governments have used sedition to suppress and quell political dissent.
- **Ambiguity in terms like "bring into hatred or contempt" or "attempt to excite disaffection"** which can be **interpreted in many ways.**
- **Low conviction rate.**

  Instances of the sedition law being misused have been observed.
- **Violate International Covenant on Civil and Political Rights (ICCPR),** ratified by India, which establishes internationally accepted norms for protection of freedom of expression.

Sedition law in other countries

- Many democratic countries, such as UK, USA, Nigeria 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.**

Way Forward

- **Terms "disaffection", "bring into hatred"** and what constitutes as sedition **should be clearly defined to prevent misuse by authorities.**
- **Adding procedural safeguards in Section 124A** of Code of Criminal Procedure or through policy guidelines.
- Section 124A should be **invoked only in cases where intention behind any act is to disrupt public order** or to overthrow Government with violence and illegal means.
- Every restriction on free speech and expression must be carefully scrutinized **to avoid unwarranted restrictions.**

2. ISSUES AND CHALLENGES PERTAINING TO THE FEDERAL STRUCTURE

2.1. FEDERALISM

2.2. COOPERATIVE FEDERALISM

Why in news?

Prime Minister recently underlined the importance of cooperative federalism in India.

About Cooperative Federalism

- Cooperative federalism is the **horizontal relationship between union and states** and shows neither is above the other.
  - It envisages that national and state agencies **undertake government functions jointly** rather than exclusively.
- **Indian constitution has incorporated instruments to ensure co-operation** between the centre and states.
- **NITI Aayog** acts as a platform to promote cooperative federalism in India.
  - Some of the key roles of NITI Aayog include Collaborative policy-making, Center-state dialogue, Incentivizing states and Monitoring and Evaluation.
- Also NITI Aayog encourages **Competitive federalism** among states.
  - **Competitive federalism** refers to **vertical relationship between states and central government** while states compete among themselves.

Challenges to cooperative federalism in India

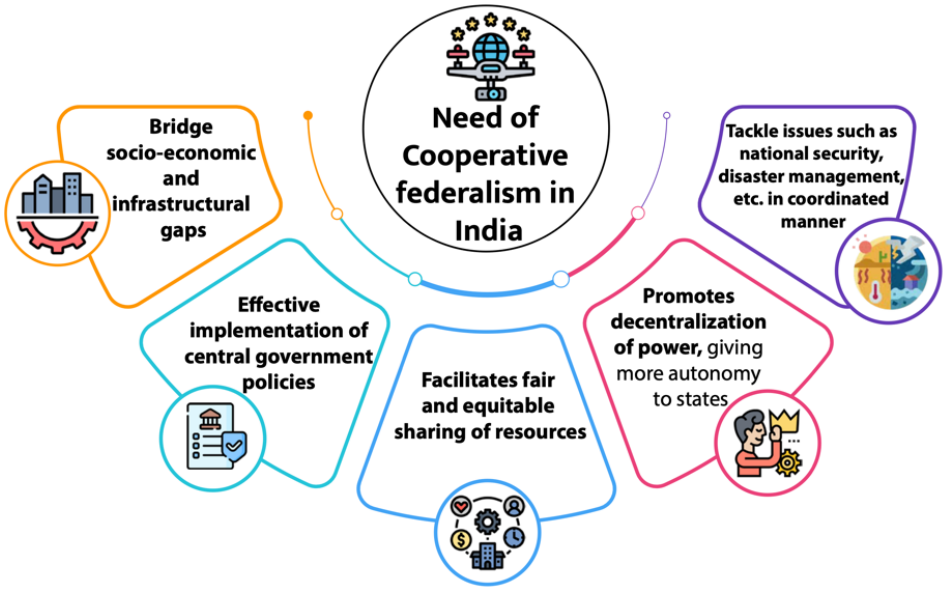
- **Over-Centralization of power:** For example, during COVID pandemic, Disaster Management Act was used by centre to effectively bypass States and assume complete control.
- **Political differences: Central government has been accused of using its power** to target opposition-ruled states and deny them funds and resources.
- **Inter-state disputes:** Central government has often been called upon to **mediate disputes between states over resources such as water and land** and has been criticized for taking sides.
- **Diversity:** Diverse nature of India **necessitates tailored policymaking for different regions, further complicating cooperation** between central and state governments.
- **Interference in state matters** led to a **lack of autonomy for states.**
    - For example, recent controversy over new farm laws, which are opposed by several states, has highlighted the tension between central government and states.

Way forward to strengthen cooperative federalism in India

- **Empowering Local Bodies** such as Panchayati Raj Institutions and Urban Local Bodies to take up developmental activities.
- **Increasing the share of States in central taxes to increase the financial resources of States** and to promote fiscal federalism.
- **Sharing of best practices** among States **especially on contentious issues like land, labour and natural resources.**
- **Resolving Centre-State Disputes** which will **help in building trust and creating a conducive environment** for cooperation and collaboration.
- **Promoting Paradiplomacy (i.e. foreign policy decentralisation):** States are often equipped better to **undertake diplomatic measures in areas of trade, commerce, FDI, education** etc.
- **Ensuring inclusive decision-making processes** that involve all stakeholders to **promote greater accountability and transparency in governance.**

Constitutional Provisions to promote Cooperative Federalism in India

- **7th schedule** which demarcates central, state, and concurrent lists based on the principle of subsidiarity.
- **All India Services under Article 312**
- **Integrated judicial system** to enforce both states as well as central laws.
- **Inter-State Council under Article 263** to discuss and investigate the subject of common interest between centre and the states.
- **Full Faith and Credit Clause under Article 261** provides that full faith and credit shall be given throughout the territory of India to all the public acts, records, and judicial proceedings of the Union and every State.
- **Zonal council** established as statutory bodies under the State reorganization act of 1956 to ensure coordination.
- **Finance Commission under Article 280** for recommending distribution of financial resources between the Union and the States.
- **GST Council under Article 279A** is responsible for deciding rates of GST and modalities of its implementation.



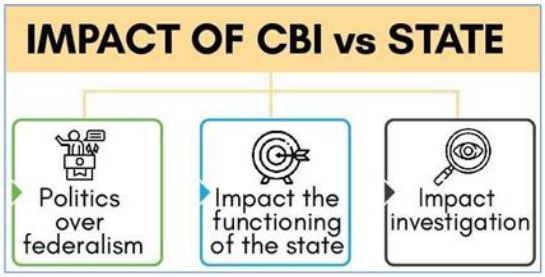
Steps taken to foster Cooperative federalism in India

- **Share of states in central tax revenue has been increased from 32% to 42%** after **recommendation of 14th Finance Commission.**
- **States have freedom to plan their expenditure** based on their own priorities.
- **Restructuring of centrally sponsored schemes.**
- **Financial sector bailout programme** under Ujwal DISCOM Assurance Yojana (UDAY) scheme.
- **State wise Ease of Doing Business ranking.**
- **Goods and Services tax.**

2.2.1. CBI VS STATE

Why in news?

Recently, Tamil Nadu withdrew general consent accorded to CBI to probe cases in state.



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 CBI**
  - Under DPSE Act, **CBI must mandatorily obtain consent of state government concerned** before beginning to investigate a crime in a state.
  - Consent of state government can be either **case-specific or general**.
  - **General Consent** is normally **given by states to help 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 state government in every case**, and before taking even small actions.

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.

- Several states **have currently withdrawn general consent to CBI** such as Tamil Nadu, Punjab, Rajasthan, West Bengal.
- **Extra territorial operation**: Concept of CBI is more advanced involving specialized information, technical knowledge whilst incorporating extra territorial operation.

Exception to general consent
- **SC and HCs can order CBI to investigate** a crime anywhere in country without consent of state.
- **Consent does not apply in cases where someone has been caught red-handed** taking a bribe.

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

- **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 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 (ISC) Secretariat was set up within Ministry of Home Affairs, it **ceased to be an independent body to foster coordination**, manage inter-governmental 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 **mandate of ISC** 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:**
  - Giving **statutory recognition to CBI** will provide it with constitutional recognition independent of its existence from DSPE Act.
  - A **comprehensive system involving the co-operation** of legislature, executive and judiciary can revamp and revive lost glory of CBI.

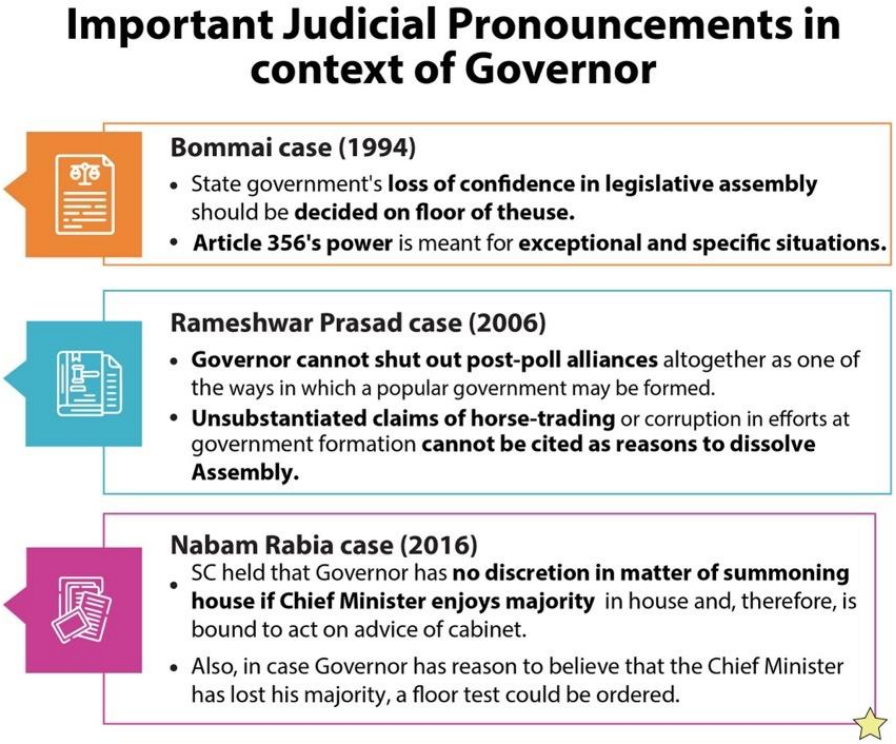
2.3. GOVERNOR- STATE RELATIONS

Why in news?

Kerala Governor locked in a standoff with elected government on a range of issues including appointments to the state-run Kerala University and also threatened to sack ministers who "lowered the dignity" of his office.

Causes of Governor- State 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 **5-year tenure**, though he can be removed by 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 justification** of such withholding.
- **Lack of guidelines to exercise 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** regarding how **Governor and state** must engage publicly when there is a **difference of opinion.**

Recommendations of Various Commissions

Sarkaria Commission	• Procedure of **consulting chief minister in appointment** of state governor should be prescribed in Constitution itself. • Governor's **term of five years** in a state **should not be disturbed** except for some extremely compelling reasons. • Governor **cannot dismiss** the CoMs so long as it **commands a majority in assembly.** • **Article 356** (President's Rule) should be **used very sparingly**, in extreme cases as a last resort when all the available alternatives fail.

Punchhi Commission	• Governors should be given a **fixed tenure** of five years and their **removal should not be at the will** of Government at Centre. • **Procedure laid down for impeachment** of President, mutatis mutandis can be **made applicable for impeachment of Governors** as well. • **Exercise of discretionary** power must be dictated **by reason**, activated by **good faith** and tempered by **caution.** • In respect of bills passed by state legislature, Governor should take **decision within six months** whether to grant assent or to reserve it for consideration of the President.
National Commission to Review the Working of the Constitution (NCRWC)	• President should appoint the governor of a state **only after consultation with the chief minister** of that state. • The question whether the ministry in a state has **lost the confidence** of assembly or not should be **tested only on the floor of House**.

2.4. NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ORDINANCE, 2023

Why in news?

Recently, Central government **issued the Government of National Capital Territory of Delhi i.e., GNCTD (Amendment) Ordinance, 2023** which seeks to **amend GNCTD Act, 1991.**

More about News

- Ordinance **nullifies the effect of recent Supreme Court's decision** that gave Delhi government **powers over administrative services** (**excluding public order, police and land**) in national capital.
- While quoting Article 239-AA, **SC ruled that elected government** of NCTD has **legislative and executive power over "Services" under Entry 41, List II of 7th schedule.**
- **LG is bound by aid and advice of CoM** of NCTD in relation to matters within legislative scope of NCTD.

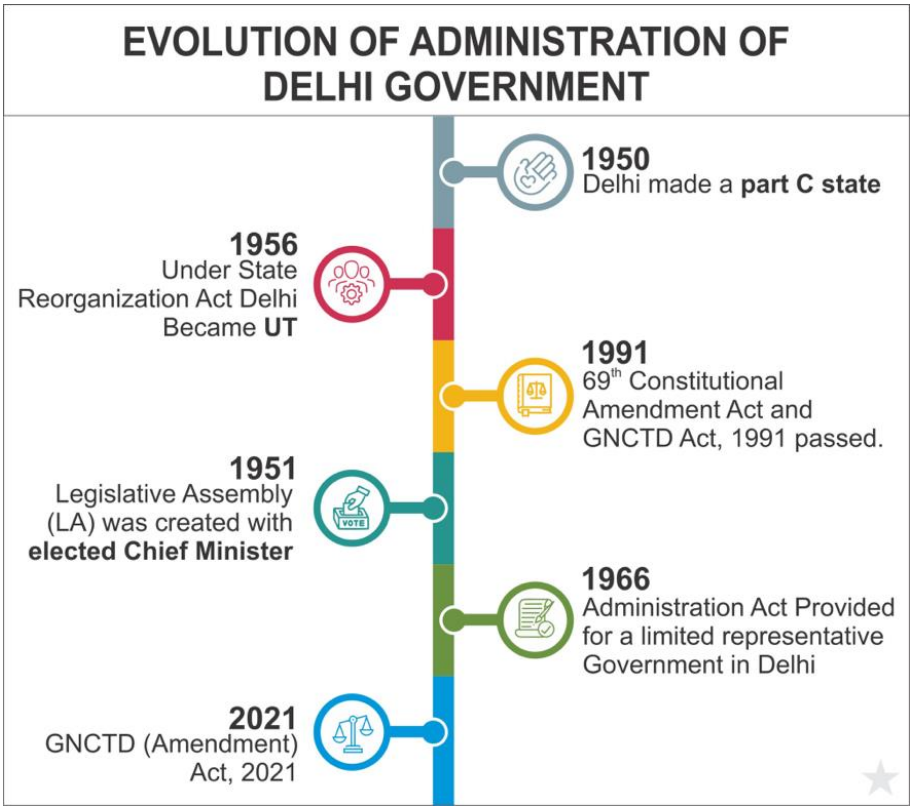
Key highlights of Ordinance

- **Powers to legislate over services**: Ordinance specifies that Delhi Legislative Assembly will **not have power to legislate on subject of 'services', which comes under State List.**
  - Services include matters **related to appointments and transfers of employees** of Delhi government, and vigilance.
- **National Capital Civil Services Authority (NCCSA)**: It creates a new **statutory authority NCCSA – to make recommendations to LG** regarding transfer posting, vigilance and other incidental matters.
  - NCCSA will **consist of Chief Minister (CM) of Delhi** who shall be the **Chairperson of Authority, Chief Secretary and Principal Secretary** of Home department.
  - All matters required to be decided by NCCSA shall be **decided by majority of votes of members present and voting**.
  - **Central government will appoint both** Principal Secretary and Chief Secretary.
- **Powers of LG**: LG will act in his sole discretion. It expands the discretionary role of LG by giving him powers to **approve recommendations of Authority** or return them for reconsideration.
  - **LG's decision will be final in the case of a difference of opinion** between him and Authority.

Present Status of Delhi as UT

- **Article 239-AA**, inserted by **69th Amendment Act, 1991, conferred special status on Delhi** (on recommendations of S Balakrishnan Committee).
  - It provides that **NCT of Delhi will have an administrator and a Legislative Assembly**.
  - **Legislative Assembly** shall have power **to make laws with respect to any of matters in State List or Concurrent List except on** subjects of **police, public order, and land.**
  - **In case of difference of opinion** between L-G and his Ministers, **L-G shall refer it to President.**
- **Government of National Capital Territory of Delhi (Amendment) Act (GNCTD) 2021**
  - Term "**government**" in any law made by Legislative Assembly **shall mean L-G**.
  - **L-G's opinion** shall be obtained before government takes any executive action based on decisions taken by the Cabinet or any individual ministers.
  - L-G will not assent to and pass on to the President for consideration any Bill which "incidentally covers any of matters **which falls outside purview of powers conferred on Legislative Assembly**".

Issues with current setup



- **Against privilege of legislature:** Framing rules to conduct its proceedings is thus a part of privilege each house of a legislature enjoys.
- **No accountability of L-G action:** No rule shall be made by Assembly to conduct inquiries regarding administrative decisions as **executive accountability is a fundamental aspect of constitutional basic structure.**
- **Undermining elected government: L-G**, who will be the government, is under **no obligation to implement any law passed by assembly** or carry out directions of house as he is not responsible to assembly.
- **Concentration of Power:** As stated in GNCTD Act, term "government" in any law made by Legislative Assembly shall mean the L-G.
    - **Article 239AB provides for president's rule in Delhi** when administration of territory cannot be carried on in accordance with provisions of Article 239AA. President's rule is imposed on a report from LG. If 'LG IS THE GOVERNMENT', will she or he have to make a report against themselves.
- **Against Co-operative Federalism:** Act not only negates cooperative federalism but also upturns fundamental principles laid down by **SC in GNCTD vs Union of India case (2018).**
- **Control over Services Department**: Governance has always been a contentious issue since Delhi is not a full state and the Services department comes under the L-G.

Way forward

- **Collaborative structure:** Apex court had rightly concluded that the scheme set out in Constitution and GNCTD Act, 1991, envisages a collaborative structure that can be worked only through constitutional trust.
- **Adopting fine mixed balance:** Considering special status of Delhi and fundamental concerns as Delhi being the National Capital.
- **Reducing politicization:** Not politicizing issue as a struggle for power between two political parties as it is undermine **representative governance**.
- **Clear interpretation** of existing laws, in larger interest of representative democracy, would suffice, as has been established.

2.5. SIXTH SCHEDULE

SIXTH SCHEDULE AT A GLANCE

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

Article 244 provides special system of **administration for certain areas designated as 'scheduled areas' and 'tribal areas.**

Article 275 makes provisions for statutory grants to be charged on Consolidated Fund of India. Such grants also include specific grants for promoting welfare of Scheduled Tribes (STs) or for raising the level of administration of scheduled areas in a state.

Advantages of inclusion in 6th schedule

- Helps in **democratic devolution of powers**
- **Preserves and promote distinct culture of region**
- **Protect agrarian rights including rights on land**
- **Enhance transfer of funds** for speedy development

Issues associated with Sixth Schedule

- **Limited geographical coverage of the Sixth Schedule** excludes numerous tribal communities, leading to unequal treatment and exclusion.
- **Financial mismanagement and rampant corruption have often been detected** in functioning of different Councils under Sixth Schedule provision.
- **Financial dependency** of autonomous councils on their respective state governments.
- **Conflicts emerge over consultation between governors and council of ministers regarding discretionary powers** in administering these areas.
- In absence of local panchayats or parishads, **6th schedule areas lack the authority and resources** for implementing schemes like MGNREGA.
- **Lack of codification of customary law.**
- **Lack of skilled professionals** in development projects without proper technical and financial consideration.

Way Forward

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

2.6. SEVENTH SCHEDULE

SEVENTH SCHEDULE AT A GLANCE

- Seventh schedule, constituted under **Article 246, specifies the distribution of powers and responsibilities between states and centre,** as enumerated in three lists i.e., **Union list (97 entries), State list (66 entries),** and **Concurrent list** consisting of **47 entries. Article 248** confers residuary powers on Parliament

Evolution of Seventh Schedule

- **Indian Councils Act, 1861** brought provincial legislative councils which had substantial Indian representation.
- In **1882, Lard Ripon's resolution introduced elected municipal councils** and rural district boards.
- **Government of India (GoI) Act, 1909 empowered provincial councils,** enabling more Indian representation.
- **GoI Act 1913,** relaxed central control over provinces by **demarcating and separating central and provincial subjects.**
- **GoI 1935 laid down scheme of distribution of legislative powers into three lists,** which has been retained in Indian Constitution.
- In **1946, Constituent Assembly mooted for a stronger Centre** and thereby provided it originally with 97 subjects (now 100), as well as power to deal with the subjects.
- **42nd Amendment Act 1976 moved five subjects from State List to Concurrent List** i.e. Education; Forest; Weights & Measures; Protection of Wild Animals; and Birds Administration of Justice.

Rationale of keeping Seventh Schedule in Constitution

- **Ensuring nation unity and integrity.**
- **Ensure economic development at national level in coordinated manner** and bring parity in socio-economic development across states.
- **Enabling responsive governance.**
- **Promoting cultural autonomy and diversity of state** with respect to its geographical area, population and number of languages spoken.
- **Bolster spirit of cooperation** between union and states.

Need to revisit Seventh Schedule

- **Demotes cultural autonomy of states** due to excessive interference from centre.
- **Address centralisation** as several items, including Education, have been improperly moved from States list to concurrent list without any rationale.
- **Archaic** as it is **inherited from Government of India Act, 1935.**
- **Dominant position of Centre over** concurrent list.
- **Devolve 3Fs (funds, functions and functionaries)** to improve service delivery.
- **Ensure appropriate placement of new or existing entries under list.**
- **Address state's demand for greater autonomy.**

Way forward

- **As per Sarkaria Commission's recommendations:**
  - **Residuary powers should be transferred to concurrent list** than with Centre.
  - **States should be consulted before union government exercises powers** under concurrent list.
- As per **Venkatachaliah Commission's recommendation,** individual and collective consultation with states should be undertaken **over legislations in Concurrent lists.**
- **Forums for consultation between union and state governments like Zonal Councils need to be reinvigorated** and be used as a podium for effective discussion.
- **Undertake periodic review of lists,** focusing on removal of outdated entries, addition of new entries, and appropriate placement of existing 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.

2.7. INTER-STATE BORDER DISPUTES

INTER STATE BORDER DISPUTE AT A GLANCE

Reorganization of State of Assam, starting from Nagaland in 1963 gave rise to **Inter-State Border Disputes** in Northeastern region.

Apart from it, some other inter-state border disputes also exist in India, either **active (Belgaum district in Maharashtra-Karnataka)** or **dormant (Karnataka-Kerala over Kasaragod).**

Reasons for Inter State Border Dispute

- **Political opportunism** of using Inter- state disputes for vote bank politics.
- **British Colonial policy** to create and recreate boundaries based on administrative convenience or commercial interests.
- **Failure of constitutional mechanisms** to address border disputes.
- **Threat perception** of indigenous people from outsiders migration.
- **Complexities of terrain or geographical features** like forest, rivers etc. to properly identify and mark boundaries.
- **Disappointment from Zonal councils** set up under States Re-organisation Act, 1956 and North Eastern Council under North Eastern Council Act, 1971.

Effects of Inter State Border Dispute

- **Lack of growth and development in** disputed regions.
- **Threat to Social Harmony in region.**
- **Cause Human suffering** including displacement, loss of property etc.
- Lead to **strained relationship** between the states involved.
- **Rise of secessionist tendencies** and groups which pose a threat to internal security.

Methods to resolve disputes among states

- **Judicial redressal:** Article 131 of constitution gives Supreme Court **original jurisdiction** over any dispute
  - Between Government of India and **one or more States;** or
  - Between **Government of India and any State** or States on one side and **one or more other States** on the other; or
  - Between **two or more States**
- **Inter-state Council (ISC):** Article 263 gives powers to President to **set up an ISC** for resolution of disputes between states. Council is envisaged as a **forum for discussion** between states and Centre and charged with **duty of**
  - Inquiring into and **advising upon disputes** which may have arisen between States;
  - Investigating and discussing subjects in which **some or all of the States**, or Union and one or more of the States, have a **common interest**
- **Zonal Councils:** For **promoting cooperation and coordination** between states, union territories and Centre. They are **only deliberative and advisory bodies.**

Way forward

- **Adopting a give-and-take approach** and not seeing disputes as zero-sum games is considered a constructive and positive way to resolve conflicts.
- **Policymakers must understand the core issues of dispute** and redouble efforts for a binding political solution mediated by Union government.
- Political leaders should spread awareness about **benefits of settled and peaceful borders** in terms of better **infrastructure, connectivity and development.**
- Inclusion of locals would **bridge the gap between government and people**, thus, enhancing communication.
- **Framing proper Rehabilitation Policy** will **make dispute-resolution process** peaceful and help **develop trust** among people.
- Resolving inter-state border disputes at village level can address genuine grievances and put people's interests first for effective solutions.

2.8. INTER-STATE WATER DISPUTES

INTER-STATE WATER DISPUTES AT A GLANCE

Factors that fuel Inter-State Water Disputes (ISWDs) in India

- **Asymmetrical access to river waters** among riparian states
- **Discretion of states** with regard to user rights over river water
- **Exigency-driven governance of interstate waters** ignoring the idea of interstate cooperation.
- **Rising water demand** amid water scarcity
- **Territorialized perceptions and competitive approaches of states** towards water resource development.
- **Lack of integrated basin approach** in river water governance that takes a holistic view of the land-water-food nexus.

Framework to deal with ISWDs

- Under Seventh Schedule of the Constitution: **Water is a State subject** (Entry 17, State List) and the Union Government has a constitutional role only in the case of inter-State waters (Entry 56, Union List)
  Article 262 allows the Parliament to make laws to provide for adjudication of ISWDs.
  - Under it two such laws have been enacted: **River Boards Act 1956** and **Inter State Water Disputes Act 1956** (as amended in 2002).

Challenges associated with the resolution of ISWDs

- **Ambiguities associated with the current framework** to deal with ISWDs
- **Increasing resistance of states** to any attempt by the Centre over interstate river water governance.:
- **Inefficiencies of the existing legal mechanisms**
- **Consensus building among states** is a challenge as water sharing is seen as an infringement of the state's regional autonomy.
- **Decisions over resolution of ISWDs are often driven by political motivations.**

Steps proposed by the Centre to deal with the issue

- **River Basin Management Bill, 2019:** An attempt to move away from exigency-driven contingent response towards Integrated River Basin Management.
- **Interstate River Water Dispute (Amendment) Bill, 2019:** It prescribes fixed timelines for resolution of ISWDs.
- **Dam Safety Act, 2021:** It seeks to set up an institutional mechanism for safety of dams across the country and to keep a check on State's discretion

Measures to ensure effective governance of inter-state river water

- **NCRWC recommended a comprehensive central legislation** to regulate, develop and control all interstate rivers.
- **Develop strong and resilient institutional models for interstate coordination, compliance or collaboration.**
- **Incorporating Social Justice in Dispute resolution**
- **Interdisciplinary knowledge for devising appropriate River Basin Management plans to adapt to a changing climate**
- **Devising an alternative to political negotiation in the long-term** ★
- Raising public awareness about developmental, economic an environmental losses as a result of disputes.

2.9. MULTILINGUALISM

2.9.1. 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.

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%).

- 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.**

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
• **Brotherhood spirit**: Bring together Indian Diaspora living around the world and reduced the gap between North and South India. • **Administrative efficiency**: One language can **address the issue of language becoming a barrier** to understand people's aspirations and needs. • **Enhance Service delivery**: For example, in healthcare, language barrier can lead to misdiagnosis; one language can overcome such issue and ensure quality care and patient safety. • **Saves Money and time**: Having one language saves government money and time that would have been spent translating various public documents as well as offering translation services. • **Promotes cooperation**: It **promotes understanding and economic cooperation** and facilitates communication of ideas, values and beliefs, which results in less misunderstandings among people of different regions and cultures.	• **Against diversity**: According to census 2011, there are 19,569 mother tongues in India, thus imposing one language is against the principle of diversity. • **Federal issue**: 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 **against idea of cooperative federalism**. • **Pluralistic Society**: Language represents a nation has roots in colonialism and is **not in tune with Indian history, culture and civilization** as India has always been a multilingual society. • **Secessionist tendency:** Imposition of One language has historically led to **division of a country**. For instance, **imposition of Urdu on East Pakistan** was major reason behind creation of Bangladesh as a nation. • **Economic Impact**: One language idea will be economically disastrous as it will slow down migration, reduce capital flow and increase regional imbalances. • **Threat to minority language**: For instance, in Andaman and Nicobar Islands, **death of Boa, the last speaker of Bo language** has led to **extinction of Bo language** with the history of 70000 years.

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.

3. PARLIAMENT AND STATE LEGISLATURES: STRUCTURE AND FUNCTIONING

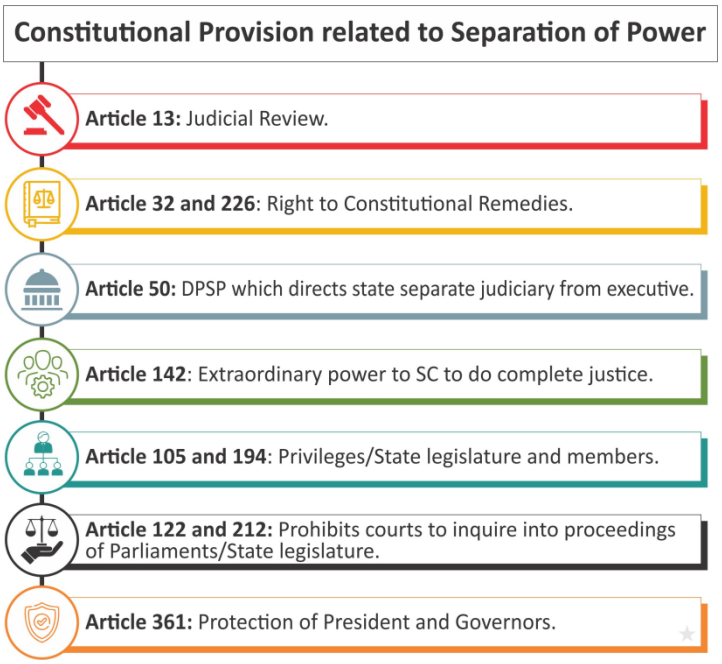
3.1. SEPARATION OF POWER

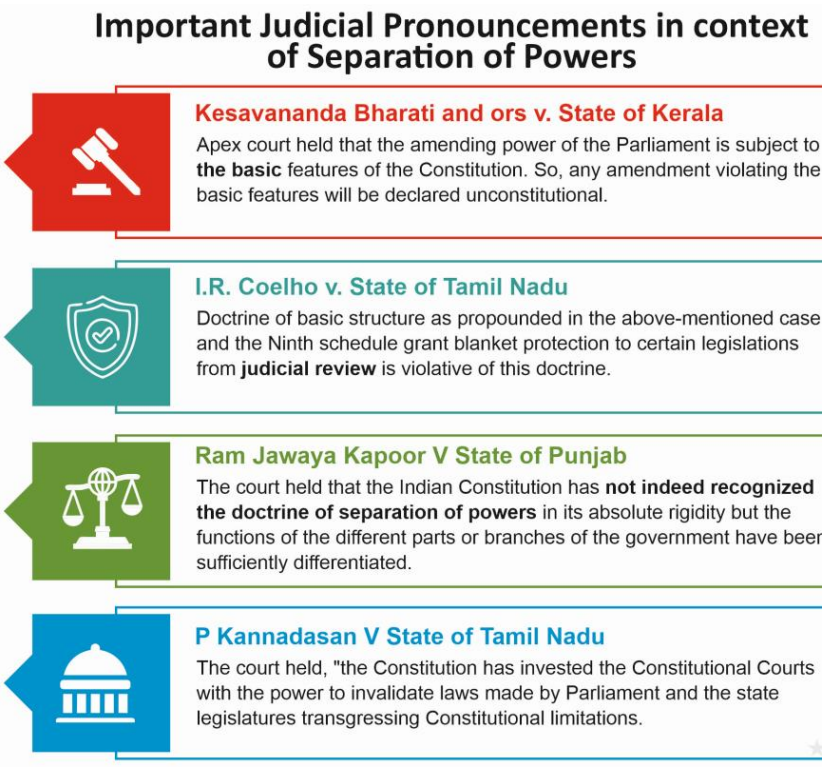
Why in News?

Recently, demand of executive representation in collegium system had started debate over doctrine of separation of Power in Indian Constitutional setup.

Importance of Separation of Power

- **Protect Rights and Liberty of Citizens.** For example, SC in K. S. Puttaswamy (Retd.) vs Union of India case reaffirmed right to privacy as a fundamental right.
- **Distribution of powers leads to limited powers with each organ,** thus prevents rise of dictatorship or anarchy and promote constitutional supremacy.
- **Creates functional specialization among different institutions,** ensuring efficiency in government.
- **Minimizes conflict among government institutions.**
- **Ensure judicial independence.**





Issues in Separation of Power in India

- **Challenges in Division of function:** This doctrine assumes that three functions of Government are independent and distinguishable from one another.
  - However, in practice, there can be an **overlap in their functions and powers,** leading to conflicts and challenges in adhering to separation of powers principle.
  - For example, **if legislature can only legislate, it may face difficulties in punishing someone who commits a breach of its privilege,** as it could be seen as a quasi-judicial function.
- **Leads to encroachment of other organ:** Modern interpretation of doctrine recognizes incidental functions by one organ without encroaching on essential functions of another.
  - However, there's a **risk of encroachment leading to power struggle,** undermining the principles of separation of powers.
- **Practical difficulties in its acceptance:** In practice it has not been found possible to concentrate power of one kind in one organ only.

- The legislature does not act merely as law making body, but also act as an overseer of the executive, the administrative organ has legislative function.
- The judiciary has not only judicial functions but also has some rule making powers.

Way Forward

- **Promote proper checks and balances** between various institutions**.**
- **Timelines:** In **PLR Projects Ltd v. Mahanadi Coalfields Pvt Ltd (2021) case,** Supreme Court stated that recommendations by the Collegium must be cleared by the Centre within 3-4 weeks to avoid any deadlock.
- **Promoting Constitutional supremacy** by focusing welfare of the citizens.

3.1.1. JUDICIAL ACTIVISM AND OVERREACH

Why in news?

Recently, Supreme Court (SC) verdicts in various cases rekindled the debate on judicial overreach and activism in India.

More on News

- Experts point out that the recent **Supreme Court verdict on Section 153C of the Income Tax Act** is an instance of Judicial Overreach.
  - The Section **153C stipulates the conditions under which a search made on a person's premises** could result in the opening of proceedings against other persons and entities.
  - **SC in its verdict has held that this section can be applied in retrospect.** However, experts point out that it is **not an interpretation of the law, but an instance where the law has been made by the Judiciary.**
- Earlier, Supreme Court had passed **judgement related to appointment of Chief Election Commissioner.**
  - While this judgement was appreciated for bringing in **transparency in appointment process,** some criticised the step as **judicial overreach.**

Understanding Judicial Activism and Judicial overreach

- **Judicial activism is a form of Judicial review** in which judges participate in law-making policies.
- Judicial activism is the **use of judicial power to articulate and enforce what is beneficial for society.** However, when judicial activism **goes overboard** it is called judicial overreach.
- The **distinction between judicial activism and judicial overreach can be subjective** and often depends on one's perspective and the specific context in which it is applied.

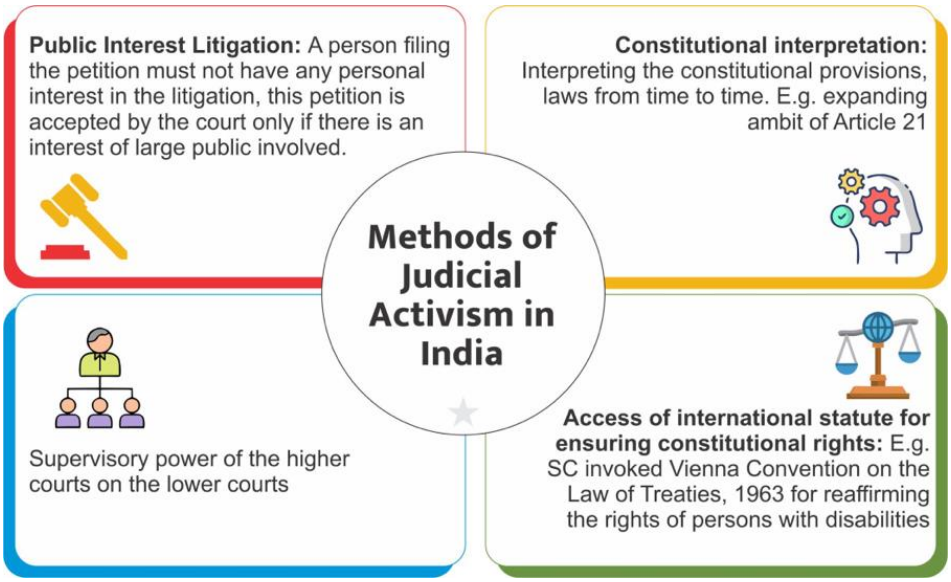
Basis	Judicial Review	Judicial Activism	Judicial Overreach
Goals	To review the laws which are **against fundamental rights.**	It vests the **power to overrule any acts or judgments** or decisions or bring any reformations etc.	▸**Undesirable in democracy.** ▸**Interferes with other organs** of the government.
Intent	**Review the validity of law under Art. 13.**	Use of judicial authority to enforce what is beneficial for the society.	**Tampers with the principle of separation of power** and checks & balances.
Example	**Striking of Section 66A of the IT Act etc.**	**Suo motu cases**, introduction of Public Interest Litigation etc.	**Striking down of NJAC**

Arguments in favour of Judicial Activism

- **Flows from constitution:** Judicial activism flows from the duty entrusted on Higher judiciary which is reflected in **Article 32, 136, 142 and 226.**

- Judicial review is the **power bestowed upon the judiciary** by the constitution, to scrutinize legislative enactments and executive orders to ensure that they are in accordance with the provisions of the Constitution.

- **Addressing legislative or executive inaction:** For example, in **Vishakha v. State of Rajasthan,** the guidelines for the protection of women at workplace from sexual harassment were laid down by the court, due to absence of the law for the same.
- **Protecting Rights and Liberties:** In 1979, in **Hussainara Khatoon v. State of Bihar,** Supreme Court took up a PIL action on behalf of under-trial prisoners who had been in jails for long time.
- **Promoting Social Change:** Judicial activism can set legal precedents that have a lasting impact on society, nudging it towards progress. For instance, in **Navtej Singh Johar case, 2018** Supreme Court decriminalised of same-sex relations.



Why is it criticised?

- **Seen as violation of Separation of powers**: Judicial activism challenges the doctrine of separation of powers, which is part of **basic structure** of our constitution.
- **Diluting balance among organs of the government**: Judiciary overreaching and increasingly interfering in the exclusive domain of the legislature and the executive **creates an undesirable asymmetry**.
- **Overlooking the consequences of Judgements**: In 2016, Supreme Court banned liquor sale at retail outlets that are within 500 meters of any National or State highway. The order was passed without factoring in the economic and employment consequences.
- **Disruption of Policymaking:** When courts venture into making policy decisions that are traditionally within the purview of the legislative or executive branches, it can disrupt the process of policy-making.
- **Legitimacy of the Government**: Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.
- **Judicial populism**: Judges are human beings. Sometimes judges admit PIL cases on account of raising an issue that is (popular in the society.

Way forward

- **Judicial restraint:** The principle of Judicial restraint means that judges should refrain from deciding legal issues, especially constitutional ones, unless the decision is necessary to the resolution of concrete dispute between parties.
  - It says that judiciary should invalidate actions of legislature or executive **only when constitutional limits have been clearly violated.**
- **Continuous Evaluation:** The judiciary should consistently assess and reflect upon the impact of its activism to ensure effectiveness and adherence to legal principles.
- **Public Awareness and Civic Engagement:** When legislative and executive branches fail, focus on public awareness and civic engagement, rather than judiciary assuming their roles.
- **Strengthening Democratic Institutions:** Instead of relying solely on judicial activism, efforts should be made to strengthen democratic institutions.

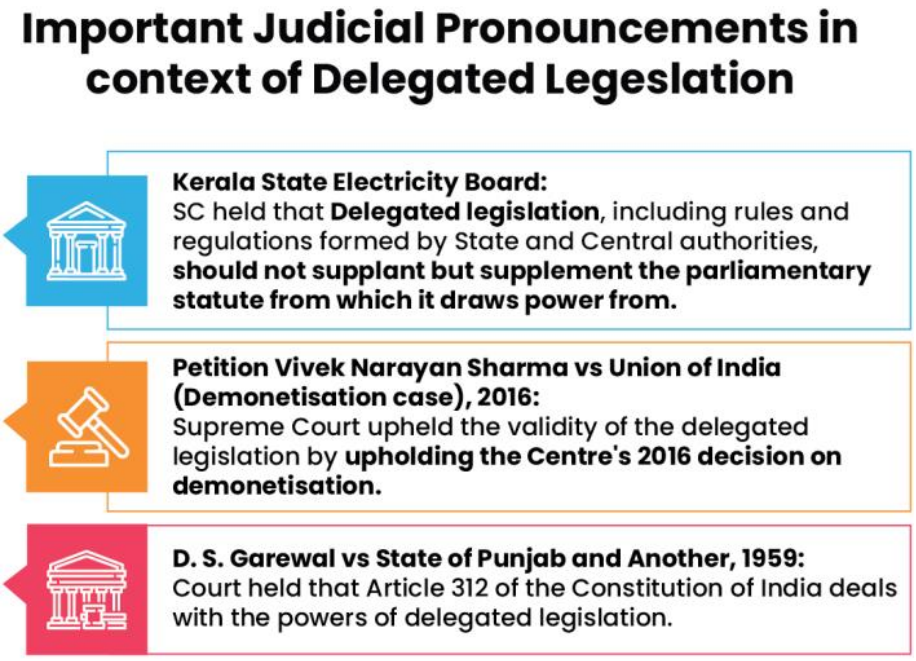
3.2. DELEGATED LEGISLATION

Why in News?

Recently, SC observed that a **delegated legislation which is ultra vires the parent Act cannot be given any effect.**

About Delegated Legislation

- It is a process by **which executive authority is given powers by primary legislation** to make laws to implement and administer the requirements of that primary legislation.
- Parliament thereby, through primary legislation, enables others to make law and rules through a process of delegated legislation.
- Under **Constitution of India,** legislative power is given to legislature while Executive has power to execute laws.
    - Due to **paucity of time,** legislature **limits itself to policy matters; delegating** task of **rule and regulations** to **executive** or any subordinate to supplement **parliamentary statute.**



Issues in Delegated Legislation

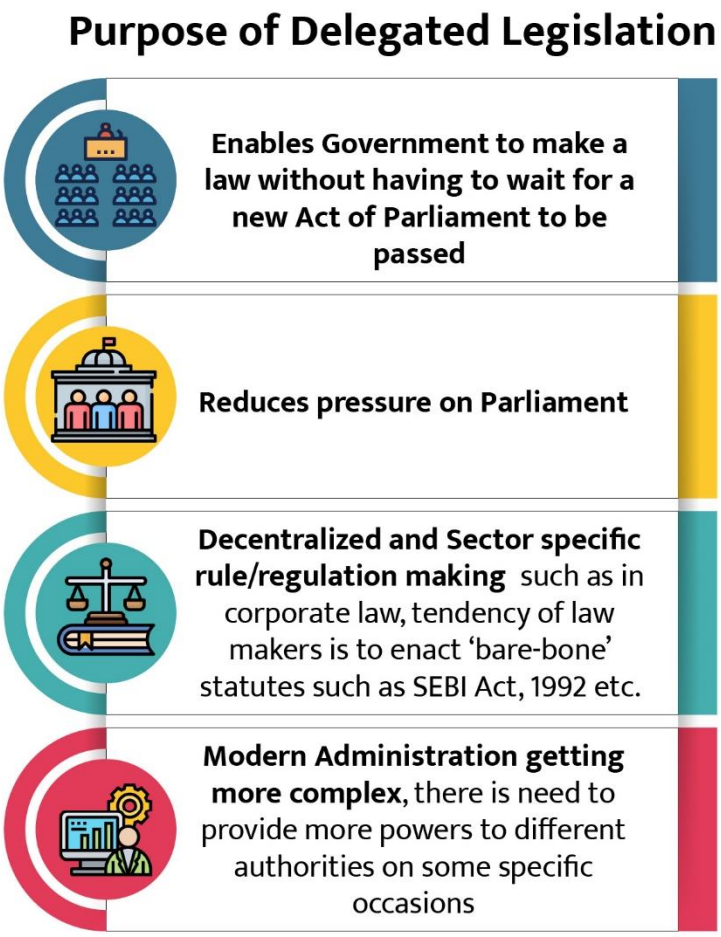
- **Low Scrutiny of Delegated Legislation:** Standing Committee on Subordinate Legislation in both houses of parliament is required to study rules, seek expert and public opinion and submit reports to house.
    - A study has shown that from 2008 to 2012, **only 101 pieces of delegated legislation, out of a total of 6,985 had been scrutinised by the committees.**
- **Frequency** with which the **rules and regulations are notified is very high.**
    - For Example, since enforcement of Companies Act, 2013 ("2013 Act"), MCA has notified 56 Rules under Act, and issued 181 Circulars.
- **Against the spirit of Democracy** as unelected person is involved in rules framing and **Political motive** can also come in delegated legislation.
- **Abuse of ruling making powers by executive:** Failure to oversee delegation legislation can lead to abrogation and abuse of ruling making powers by the executive.

- Bad rules will inevitably lead to litigation and increase the existing backlog of cases.

- **Overlapping of the Function:** As the delegated authorities get work to amend the legislation that is the function of legislators.

Suggestion

- **Parliament procedures must be amended** to require the affirmation of every rule laid through a vote.
- **Additional working committees** under Standing Committee on Subordinate Legislation, with legal and policy experts to help undertake a comprehensive study of all the rules placed in the parliament.
- **Reasons for the delay** to draft the rules within six months from the date of commencement of an Act must be mentioned before the committee.
- **Coordination between MPs and Committees:** If a piece of subordinate legislation is referred to the committee by an MP for an analysis on specific grounds, then it must be mandatorily undertaken and reported to the house in a time bound manner.



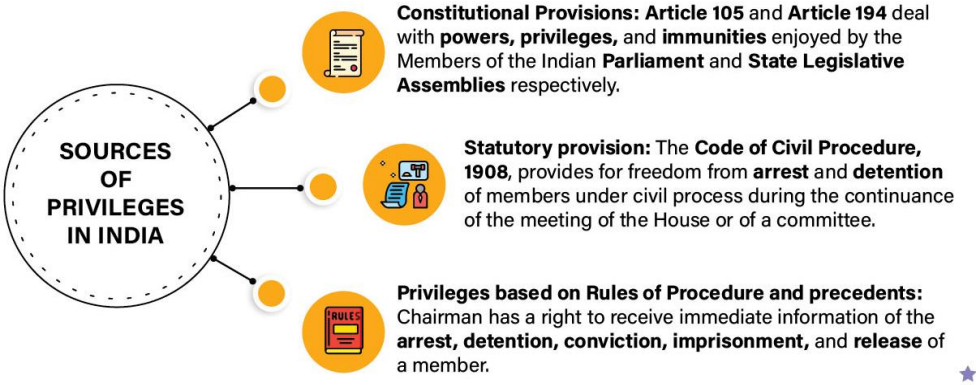
3.3. PARLIAMENTARY PRIVILEGES

Why in the news?

Recently, parts of the leader of the opposition speech on motion of thanks on President's address were expunged.

About Parliamentary Privileges

- Parliamentary privileges are a **legal immunity enjoyed by members of legislatures, in which legislators are granted protection against civil or criminal liability** for certain actions done or statements made in the course of their legislative duties.
- **Parliament is the sole authority to ascertain** if there has been a breach of privilege or contempt of the House— no court is entrusted with this power.
    - If the **presiding officer gives consent, Council can either consider the question and come to a decision or refer it to Committee of Privileges** — a 10-member panel in Rajya Sabha and a 15-member panel in Lok Sabha.



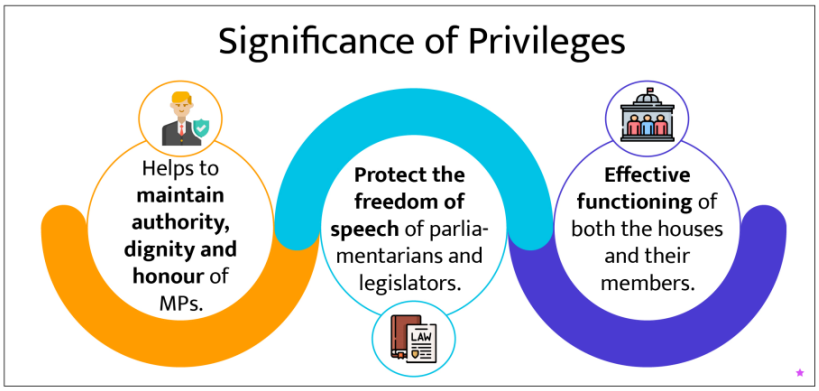
- There are **two types of privileges:**
    - **Individual Privileges** are rights that each Member of Parliament has in his official capacity. For instance, MPs are free to speak their minds in house.

- **Collective Privileges** are collectively conferred privileges and are more generic in nature. For instance, right to publish documents, reports and discussions.

Limitation of Privileges

- **Freedom of speech** should be according to the constitutional provisions and subject to the **procedures and rules of the parliament**, provided under Article 118 of the Indian constitution.
- **Article 121 of the Indian constitution** confers that, the member of the Parliament is **not allowed to discuss the manner and the judgment given by the judges of the SC and the HC.**
- **No immunity and right could be claimed** and held back by the members for anything which is said outside the proceedings and premises of the parliament.

Challenges associated with Parliamentary privileges



- **Against Natural justice:** "Breach of privilege laws" allowing politicians to judge their own cases raises, concerns about conflict of interest and violating fair trial guarantees.
- **Legislators hold exclusive authority to determine breaches of their privileges** and impose suitable sanctions for such breaches.
- **Against constitutionalism or doctrine of limited power:** Absence of codified privileges gives unlimited power to house to decide when and how a breach of privilege occurs.
- **Discredits separation of power:** As the presiding officer acts as a complainant, advocate, and judge. Used as a substitute for a legal proceeding.

Important Judicial pronouncement in context of Privileges

P V Narasimha Rao vs. State:
SC stated that **members need wider protection of immunity against all civil and criminal proceedings** that bear a nexus to their speech or vote.

M.S.M. Sharma case:
SC stated **whenever there is a condition of imbalance** between provision of part V, Article 194(3) (privileges) and fundamental rights conferred by part III, the **fundamental right will remain supreme over the others.**

Way forward

- **Amending Article 19(2):** Wherein the expression **'Contempt of Legislature'** should be added. This course of action would remove some uncertainty from area while at the same time, Houses would not lose its flexibility of approach.
- **Committee of Privileges should be given separate independent status.**
- Committee headed by Speaker or Chairperson as the case may be, **should be empowered to decide and investigate the contempt proceedings.**
- There should be a **relaxation of rules against reporting of proceedings before Parliamentary Committees.**
  - General principle should be that the **proceedings should be open and reportable** unless public interest clearly requires otherwise.

Codification of parliamentary privileges

Question of the codification of privileges is very old. It was argued in Constituent Assembly regarding codification, but it was voted out on the ground that when a new situation arises, it will not be possible to adjust to the same.

Need for codification	Argument against codification of privileges
• **Consistent with fundamental rights.** • Bring them under the ambit of **judicial review.** • **Remove arbitrariness** in their application.	• More advantage would **flow to persons bent on defaming Parliament.** • Courts will be called upon more and more to intervene. • It would make the evolution of **new privileges not possible.**

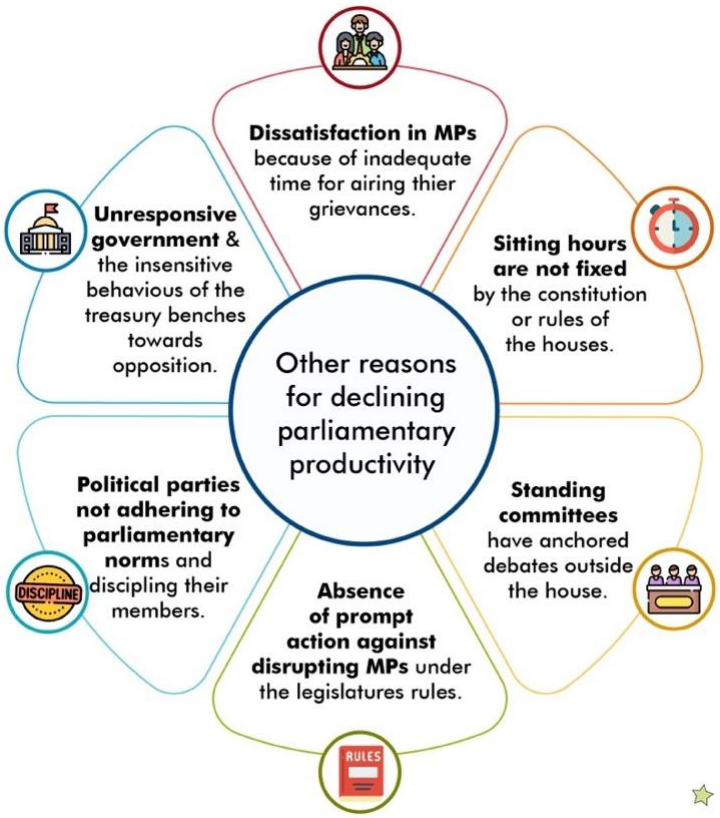
Conclusion

A modern doctrine of Privilege should not rely on an old statute whose main purpose was to assert Parliament's rights. A separate committee should be constituted consisting of members of Lok Sabha, Rajya Sabha, and the Judiciary (retired or acting) to work on the codification of the parliamentary privileges.

3.4. PARLIAMENTARY PRODUCTIVITY

Why in news?

Winter Session of Parliament **adjourned** with **Lok Sabha's productivity at 47% and Rajya Saba at 42%.**



Recent instances of reduced Parliament Productivity/Functioning

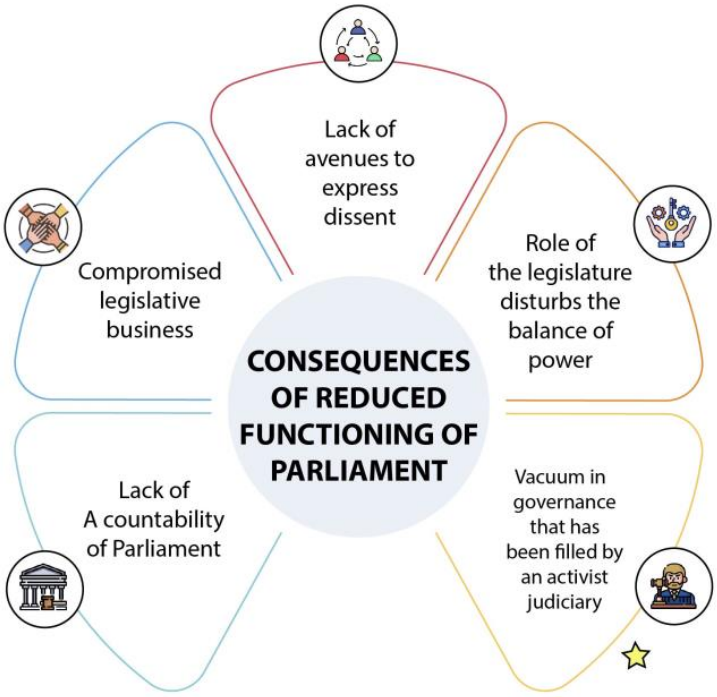
- **Absence of Bill scrutiny: For example,** hasty passage of National Bank for Financing Infrastructure and Development (NaBFID) Bill, 2021, Insurance (Amendment) Bill, 2021.
- **Referral of bills to parliamentary committees:** It has shown a declining trend, with only 27% in the 16th Lok Sabha and 11% in the 17th Lok Sabha.
- **Reducing attendances**: In 2021, Average attendance in the Lok Sabha dipped to 71% and in Rajya Sabha to 74%.

Why it is important to ensure productivity/functioning of the Parliament?

- **Parliament has central role in our democracy** as the representative body that checks and balances the work of government.
- **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.
- 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 CoM shall be collectively responsible to the Lok Sabha.
- A well functioned Parliamentary system in India must **uphold the grounds of representativeness, responsiveness and accountability**.

How Parliamentary productivity/ functioning can be improved?

- **Increase number of sittings**: National Commission to Review the Working of Constitution has recommended **minimum number of sittings for Lok Sabha and Rajya Sabha should 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.

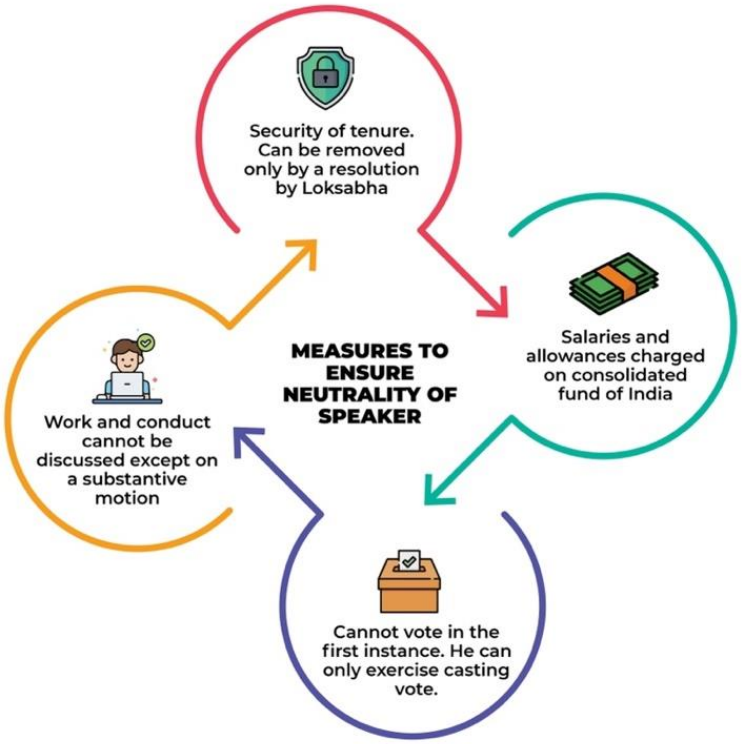


- There is a **need to formulate mechanism for regular assessment** of committee performance.
- **Responsible Opposition:** Members must question, object and suggest alternative courses of action through reasoned and persuasive argument.
  - **Shadow Cabinet** allows for detailed tracking and scrutiny 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.

3.5. OFFICE OF SPEAKER

Why in news?

There have been cases questioning the impartiality of the presiding officer (Speaker) Lok Sabha.



Who is Speaker of Lok Sabha?

- Speaker is the **head of Lok Sabha**, and its representative. It is constitutional office under **Article 93.**
- He/She is the **guardian of powers and privileges of the members.**
  - He/She maintains order and decorum in House for conducting its business and regulating its proceedings.
- He/She is **ultimate interpreter and arbiter** of provisions which relate to functioning of House.
  - His/Her **decisions are final and binding** and ordinarily cannot be easily challenged.

Issues in functioning of office of speaker

- **Role under anti-defection law:** Speaker has authority to disqualify MPs or MLA on grounds of defection. Here role of speaker has been **criticised as being partisan.**
  - For instance, a **disqualification petition was pending for almost three years** before Manipur Speaker in 2020.
- **On declaring money bill:** By terming a Bill as a Money Bill, Speaker has **power to exclude Rajya Sabha from scrutinizing such a Bill completely.**
  - Speaker's decision to **certify Aadhaar bill as money bill** was criticised on this ground.
- **Legislative proceedings:** Speaker's role is to maintain decorum, ensure smooth legislative process, but **allegations of bias and favouritism** have been made.
  - For instance, suspension of MLAs of Tamil Nadu Assembly in 2016, where members of a party were evicted en masse from the House while protesting.

Important Judicial Pronouncement in context of Office of Speaker

Nabam Rebia case (2016):
SC held that a Speaker or Deputy Speaker facing notice of removal cannot decide disqualification proceedings against legislators.

Keisham Meghachandra Singh v The Hon'ble Speaker Manipur (2020):
SC held that decision under anti-defection law should be made **within a reasonable time period.**

Kihoto Hollohan vs Zachillhu case (1992):
A Constitution Bench, while upholding validity of anti-defection law, held that **Speaker's decision was subject to judicial review.**

- **Allegations of partisanship**: In Britain, Speaker relinquishes party membership for impartiality. In India, this convention is not observed, affecting Speaker's impartiality.
- **Disruptions in the house**: Recent **Budget Session had lowest productivity** in five years, and **17th Lok Sabha is expected to have the fewest sitting days** since 1952, raising concerns about Speaker's effectiveness in maintaining House decorum.

Suggestions to reform office of speaker

- **Reduce role of speaker in Anti-defection law**: In **Keisham Meghachandra Singh** case, SC said that current mechanism where disqualification petitions are entrusted to a Speaker, can be replaced by a permanent Tribunal.
- **Follow Britain's model**: As per British convention, parties refrain from opposing the Speaker during elections to uphold impartiality.
- **Continuation based on performance:** Page Committee, headed by V.S. Page, recommended allowing the Speaker to continue in next Parliament if they exhibited impartiality and efficiency during their tenure.
- **Restrictions on political office:** It has been proposed that **Speaker should be ineligible for future political positions,** with certain exceptions, while being granted a lifelong pension.

Conclusion

A watchful Parliament forms the foundation of a well-functioning democracy. The presiding officers of Parliament are the key to securing the effectiveness of this institution. Thus, it is important to ensure **impartiality, fairness and autonomy** in decision-making in the office of Speaker.

3.6. LOKPAL AND LOKAYUKTA

Why in news?

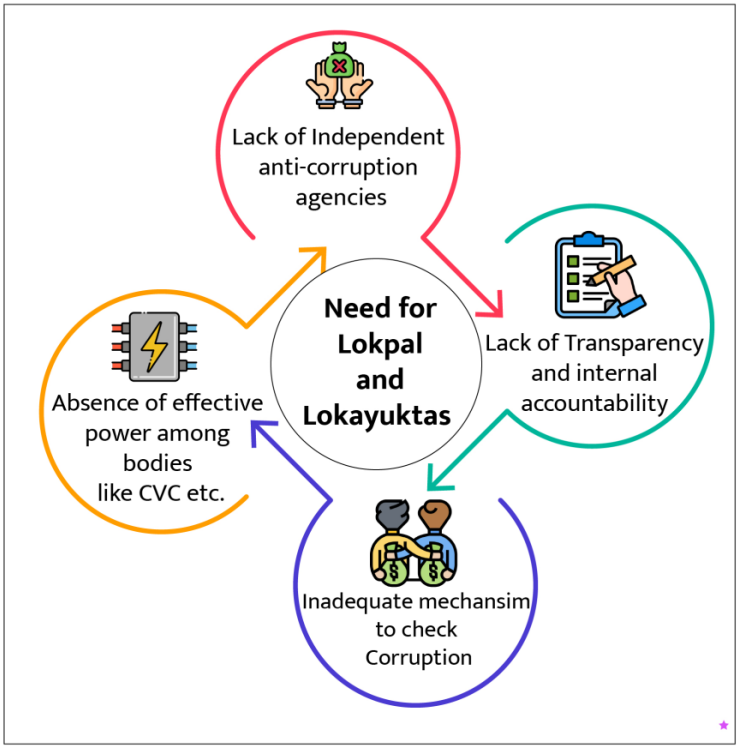
Recently, the Kerala Legislative Assembly passed the **Kerala Lokayukta (Amendment) Bill, 2022**.

Lokpal and Lokayukta Act 2013

- It provides for the establishment of a **statutory body of Lokpal for Union** and **Lokayukta for States.**
- It aims to **inquire into allegations of corruption against certain public functionaries** and for matters connected therewith or incidental thereto.
- Lokpal Jurisdiction extends to **Prime Minister, Ministers, MP, Group A, B, C and D officers and officials of central government.**
  - Any **society or trust or body** that receives **foreign contribution above ₹10 lakh.**
- **Lokpal consists of a chairperson and a maximum of eight members**, of which 50% shall be judicial members and 50% shall be from SC/ST/OBCs, minorities and women.
  - Chairperson and members of Lokpal are **appointed for term of five years** or until attaining age of 70 years, whichever is earlier.
- **Lokayukta shall have jurisdiction over CM, Ministers, MLAs,** all state government employees and certain private entities (including religious institutions).

Exceptions in Jurisdiction of Lokpal

- Corruption charge **against the Prime Minister if** the allegations are **related to international relations, external and internal security, public order, atomic energy, and space.**
- **Judiciary and armed forces** do not come under the ambit of Lokpal.
- **Employees of State Government are not covered** unless they have served in connection with the affairs of the Union.



What are the issues associated with Lokpal and Lokayuktas?

- Lokpal has **not been given constitutional backing.** There are **no adequate provisions for appeal against Lokpal decision.**
- Lokpal and Lokayuktas are **not free from political influence** as the appointing committee itself consist of parliamentarians.
  - Also, there are **no criteria to decide who is an 'eminent jurist'** or 'a person of integrity' which manipulates the method of Lokpal appointment.
- **Delay in appointment: Earlier, India has appointed its first Lokpal** in 2019, after six years of the Lokpal bill being passed, due to the absence of a Leader of Opposition (LoP).
- Lokpal suffered due to **lack of human resources, curtailed budgetary allocations, infrastructural facilities** and delay in forming procedural rules to facilitate and process complaints.
  - **Lokpal has not appointed the Director of Inquiry and Prosecution**, the two top personnel for looking into complaints of corruption and processing prosecution of accused public servants.
- **Limited power:** Act mandates that **no complaint against corruption can be registered after a period of seven years** from the date on which mentioned offense is alleged to have been committed.
- **Trust Deficit**: In 2020–21, number of complaints before Lokpal dipped to 110 as compared to 1,427 in 2019, indicates the **institutional failure and trust deficit.**

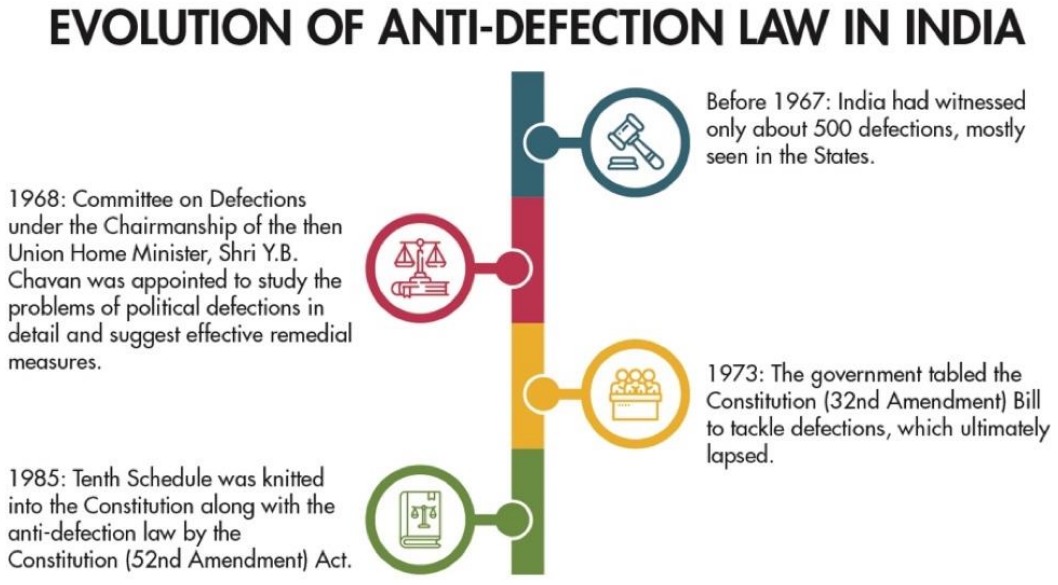
Way forward

- Lokpal and Lokayukta **must be financially, administratively and legally independent** of those whom they are called upon to investigate and prosecute.
- **Appointment of Lokpal and Lokayukta must be done transparently** to minimize chances of political interference.
- There is a **need for a multiplicity of decentralized institutions** with appropriate accountability mechanisms, to avoid the concentration of too much power in any one institution or authority.
- **Monitoring and ensuring protection of whistle- blowers** can be a part of the mandate of Lokpal, which needs a comprehensive statutory backing.
- **Lokayuktas should be set up in the states "on the lines of the Lokpal"** with "all state government employees, local bodies and the state corporations under their purview".

3.7. ANTI-DEFECTION LAW

Why in news?

Recently, SC has put forth its judgement on legislator's disqualification while hearing Anti-defection case in Maharashtra.



More on news

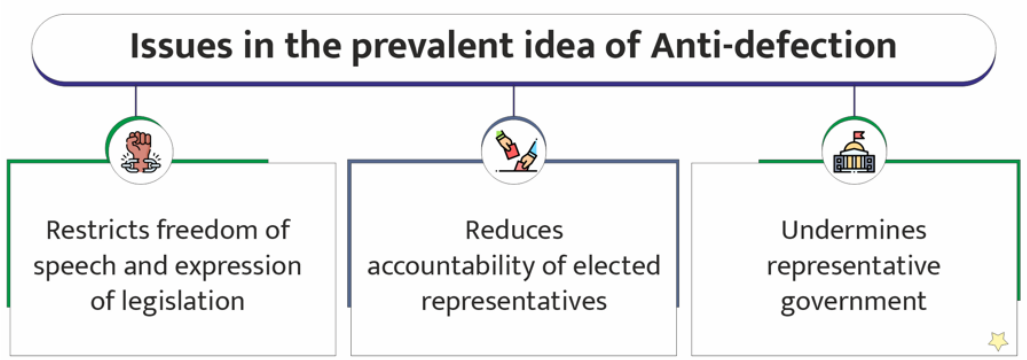
- SC stated that **allowing a Member of Parliament (MP)** or **Member of Legislative Assembly (MLA) who is facing disqualification** under Anti-defection law (ADL) to participate in floor test **would amount to legitimising a Constitutional Sin.**
  - Also, Elected Members of a House are **bound by instructions of whip** in house and **actions defying it will attract disqualification.**

What is Anti-Defection Law (ADL)?

- **ADL** is a legislative framework aimed at **preventing elected members of Parliament and state legislatures from switching political parties** or voting against the party's directives after their election.
- It was **enacted in 1985 as the Tenth Schedule** to Indian Constitution to address issue of political defections.

Why anti-defection law needs an overhaul?

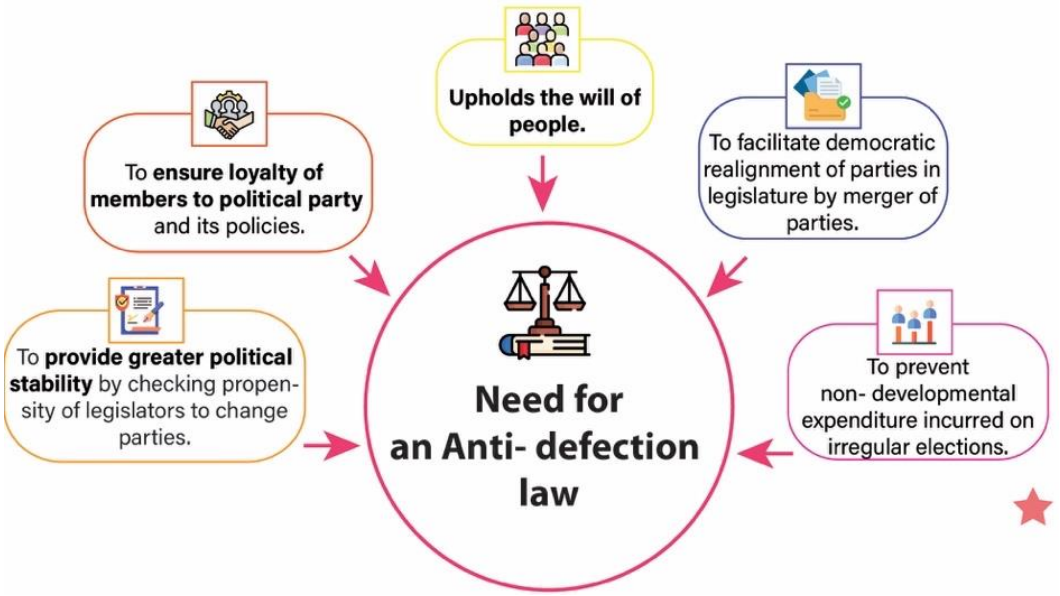
- **No liability for political parties:** It only **punishes legislators for switching parties**.
- **Problem with merger provision:** The merger provision protects members of a political party when it merges with another, requiring at least two-thirds agreement for such merger.
  - Exception is based on number of members rather than **reason behind defection.**



- **Power to presiding officer:** Presiding officer has been given **wide and absolute powers to decide case related to disqualification of members** on grounds of defection.
- **Unable to curb instability:** Limited space for dissent among elected representatives has led to **mass defections and government instability.**
- **Expulsion does not attract disqualification:** ADL addresses voluntary defection but not expulsion of a member, creating a potential loophole for exploiting and joining another party.

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** will indirectly create more acceptance for divergence of opinion and stance within party.
- **Active involvement of Ethics committee**, as done in Cash for Query scam, can help in curbing horse trading of legislators.
- **2nd ARC** has recommended that issue of disqualification of members on grounds of defection should be **decided by President/Governor on advice of EC.**

International scenario on ADL

- Among Commonwealth countries, ADL is **prevalent in 23 nations.**
- In **UK Parliament,** a member is **free to cross over** to the other side, without being daunted by any disqualification law.
- In **US, Canada, and Australia,** there is no restraint on legislators switching sides.

- **Making defection an internal issue of party:** 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:** Law must **explicitly set out what it means by words 'voluntarily giving up Membership'** in order to avoid any confusion.

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

- **Interpretation of phrase 'Voluntarily gives up his membership':** SC has interpreted that in absence of a formal resignation by member, giving up of membership can be **inferred by his conduct**.
  - Members who publicly express opposition to their party or support for another party **should be considered to have resigned.**
- **Decision of Presiding officer is subject to Judicial Review:** Initially, law barred judicial review of Presiding Officer's decision, but in Kihoto Hollohan Case 1992, Supreme Court invalidated it.
  - However, it held that there may not be any judicial intervention **until Presiding Officer gives his order.**
- **Time limit within which Presiding Officer has to decide:** Law does not specify time-period for Presiding Officer to decide on disqualification plea. Courts have expressed concern about **unnecessary delay in deciding such petitions.**

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

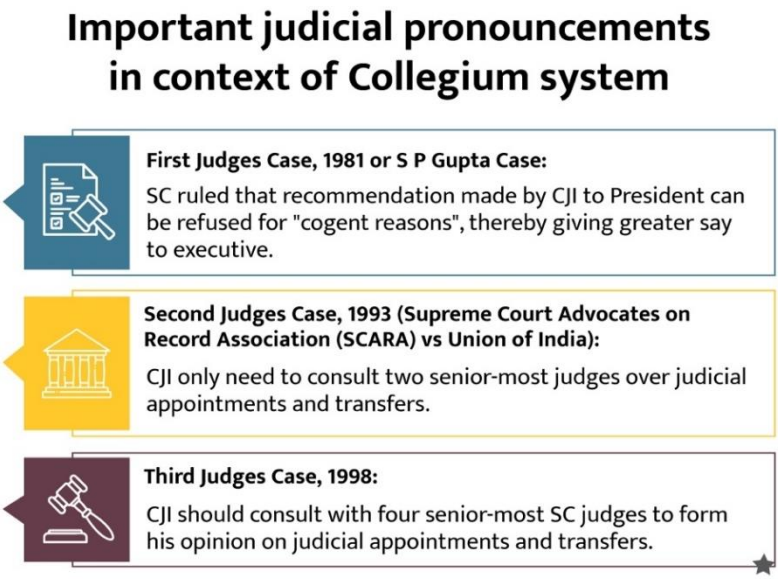
4.1. JUDICIAL APPOINTMENTS

Why in news?

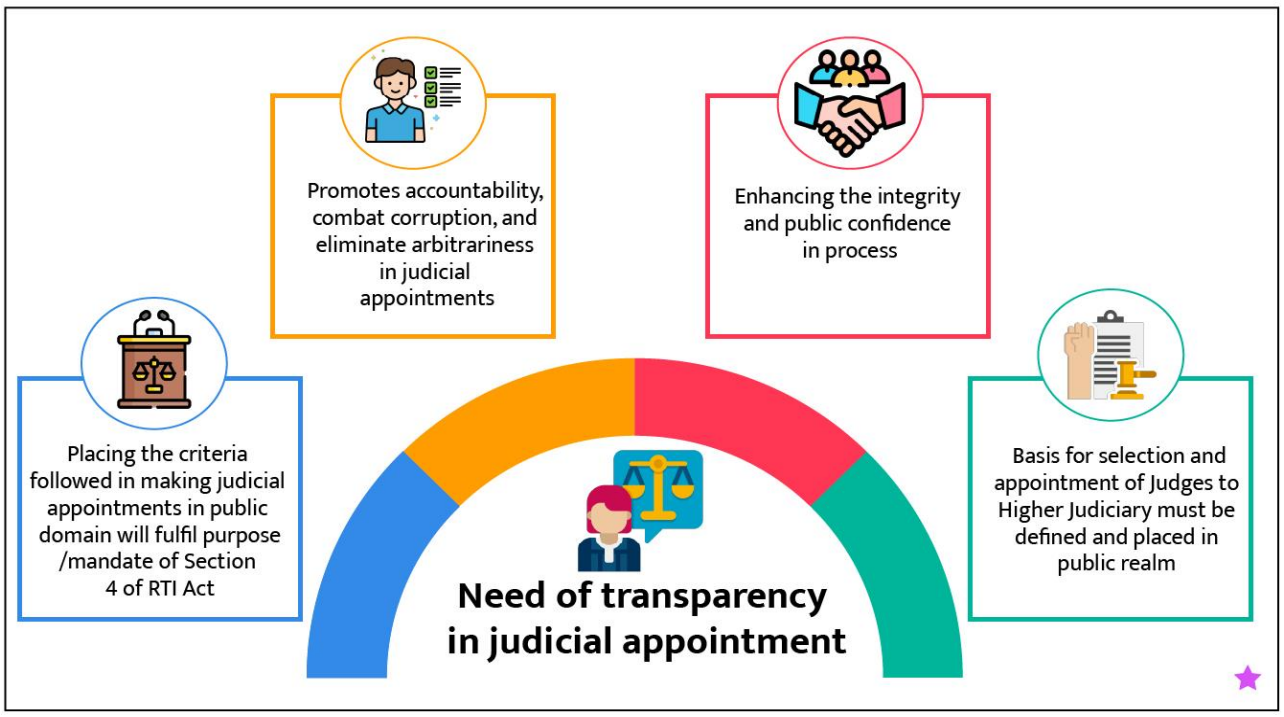
Recently, **President appointed 5 new Judges to SC** (working strength of SC rise to 32 against sanctioned strength of 34), by accepting the recommendations made by Supreme Court collegium.

System of Judges Appointment in India

- **Constitutional mandate:** Constitution under **Article 124** states that the President shall make SC Judges appointments after consulting with CJI and other SC and HC judges as he considers necessary.
  - While for **HC judges' appointment, President (under Article 217)** should consult the CJI, Governor, and Chief Justice of High Court concerned.



- **Collegium system:** It is a system where a committee of CJI, four senior judges of SC and three members of a HC (in case of appointments in the said HCs) take decisions related to **appointments and transfer of judges** in Supreme Court and High Courts.
  - ✓ **Three judges cases** have come from 1981 to 1998 which **sets the collegium system** for appointing judges.



Issues in Judges Appointment/ Collegium system in India

- **Judges appointing judges:** It goes against the **principle of separation of powers** between executive and judiciary and **principle of check and balance** by one branch on another, which is basic structure of constitution.

- **Corrupt practices and politics** that happen within the judiciary and it shall not only be independent of political influences but also from their very own influences.
- **Closed- door affair without a formal and transparent system,** created apprehensions about the process of appointment.
- **Administrative burden of appointing and transferring judges without a separate secretariat** or **intelligence-gathering mechanism** of checking personal and professional backgrounds of prospective appointees.
- **Promotion of Mediocrity:** Limitation of the choice to the senior-most judges from HC for appointments to SC, **overlooking several talented junior judges and advocates**.

Steps to ensure transparency in judicial appointments

- **Formulate Search-cum-Evaluation Committee (SEC),** as proposed by Ministry Law and Justice, to bring transparency in judicial appointments through collegium system.
  - SECs will be entrusted to **prepare a panel of eligible candidates** from which respective collegiums will make recommendations.
- **Eligibility criteria to judge the performance and suitability must be formulated** objectively and must be made public.
  - **Inputs may be sought from the public with regard to shortlisted candidates** while providing immunity from laws of contempt & defamation and confidentiality to citizens.
- **Selection process of judges has to be transparent and fair**, which is only possible by involving other two branches i.e. Executive and Legislature in process of appointments.
  - Law Commission suggested that Parliament should pass a **law restoring the primacy of CJI,** while ensuring that executive played a role in making judicial appointments.
- **Disclosing the decisions of Supreme Court collegium in public domain reduces culture of secrecy associated with judicial appointments.**
- A **complete record of video/audio** of collegium deliberations.

Conclusion

Judiciary carries the trust of the people. It is a unique **wing of constitutional governance**, with authority to review the decisions by the President, prime minister or chief ministers and legislatures both at centre and states. It is the **real guardian of the fundamental rights** of the people.

Private member introduced National Judicial Commission (NJC) Bill, 2022 in Rajya Sabha

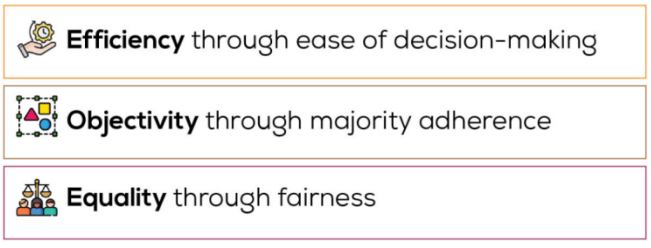
- Bill proposes to **set up NJC for recommending persons for appointment as CJI** and other **Judges of SC** and **Chief Justices and other Judges of HC**.
- **Key highlights of bill**
  - Aims to **lay down judicial standards** and **provide for accountability of Judges**.
  - **Establish credible and expedient mechanisms** for investigating individual complaints for misbehaviour or incapacity of a Judge of SC or HC and regulate procedure for such investigation.
- In 2015, **top court struck down National Judicial Appointments Commission (NJAC)** and 99th Amendment that provided for an independent commission (NJAC) for appointment of judges.
  - It stated that NJAC **damaged basic structure of Constitution** by taking away primacy of judiciary in appointing judges.
  - **NJAC intended to replace collegium system**, whereby, a group of senior-most judges makes appointments to higher judiciary.

4.2. JUDICIAL MAJORITARIANISM

Why in news?

Recently, Constitution bench of Supreme Court in a majority opinion (4-1) **upheld the Government's demonetization order.**

Arguments Supporting Judicial Majoritarianism



More on News

- **Experts have pointed out that some of the most important legal questions** have been decided by a bare majority 5–4 vote of the Supreme Court Judges.
  - **Such cases include legal status of same sex marriage (Supriyo v. Union of India, 2022), electoral finance (ADR vs Union of India, 2021), etc.**

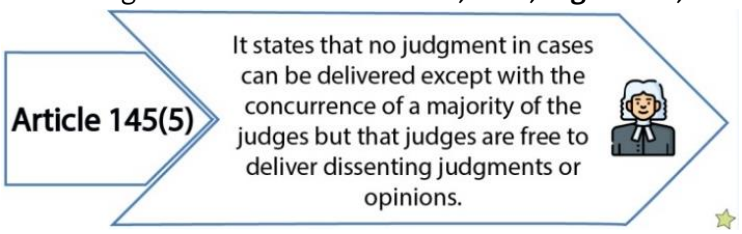
- In judicial terms this way of majority decision making is **known as Judicial Majoritarianism**.

About Judicial Majoritarianism (JM)

- **Constitutional Basis**: The requirement for a majority consensus flows **from Article 145(5) of Constitution**.
  - Numerical majorities are of particular importance to cases, **which involve a substantial interpretation of constitutional provisions.**
  - In such cases, Constitutional Benches, consisting of five or more judges, are set **up in consonance with Article 145(3) of Constitution**.

Concerns related to judicial Majoritarianism

- **Personal misinterpretation:** It is entirely possible that the majority may fall into methodological errors.
  - All judges on a particular Bench give their rulings **on the same set of facts, laws, arguments, and written submissions.**
  - In light of the same, any differences in judicial decisions can be attributed to a difference in either the **methodology adopted or the logic applied** by judges in their interpretation.



- **Avoidance of meritorious dissents:** A meritorious minority decision, irrespective of the impeccability of its reasoning receives little weightage in terms of its outcomes. For example,
  - Dissenting opinion in **A.D.M. Jabalpur v. Shivkant Shukla (1976)** upholds the **right to life and personal liberty** even during situations of constitutional exceptionalism.
  - Dissenting opinion in **Kharak Singh v. State of U.P. (1962)** case **upholding the right to privacy.**
- **Dissent due to influence**
  - Rate of judicial dissent during Emergency in 1976 was 1.27% as opposed to 10.52% in 1980.
  - Rate of dissent where Chief Justice was a part of Bench was lower than in those cases where Chief Justice was not on Bench.

Way forward

- **Exploring Alternatives to Judicial Majoritarianism**
  - **Supermajority Decision (SD):** It requires more than a simple majority of the court to agree upon a result to render a decision for the court.
    - ✓ For example, on a 9-member court, while JM would allow a 5–4 decision to prevail, SD requires a higher vote tally—6–3, 7–2, 8–1, or 9–0.
  - **Panel Majority Decision:** The setup is that there is a larger set of judges from which smaller, subset panels (consisting of an odd number of judges) are chosen. The subset panels then decide cases using majority voting among the judges on the panel.
  - **Weightage on the basis of majority:** A system that may either give more weightage to the vote of senior judges given that they have more experience or to the junior judges as they may represent popular opinion better.
- **Better analysis of the workings of SC:** Absence of a critical discourse on judicial majoritarianism represents one of the most fundamental gaps in our existing knowledge regarding the functioning of our Supreme Court.
- **There should be a critical analysis of the premises and rationales** which underlie head-counting in judicial decision-making.
- **Constitutional Matters: As pending Constitutional Bench** matters are listed for hearing and judgments are reserved, we must reflect upon the arguments of judicial majoritarianism on the basis of which these cases are to be decided.

4.3. WOMEN IN JUDICIARY

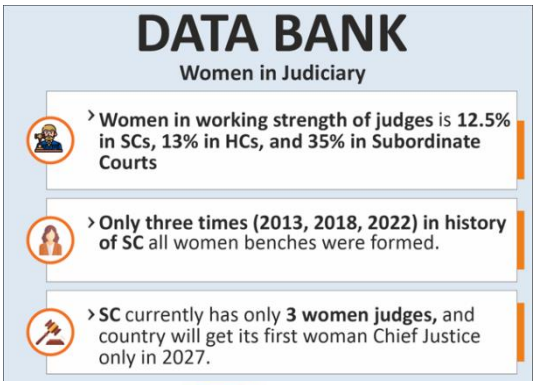
Why in News?

Recently, Supreme Court had an all-woman bench which was only the third time in its history.

Reasons for Low Representation in Women Judiciary

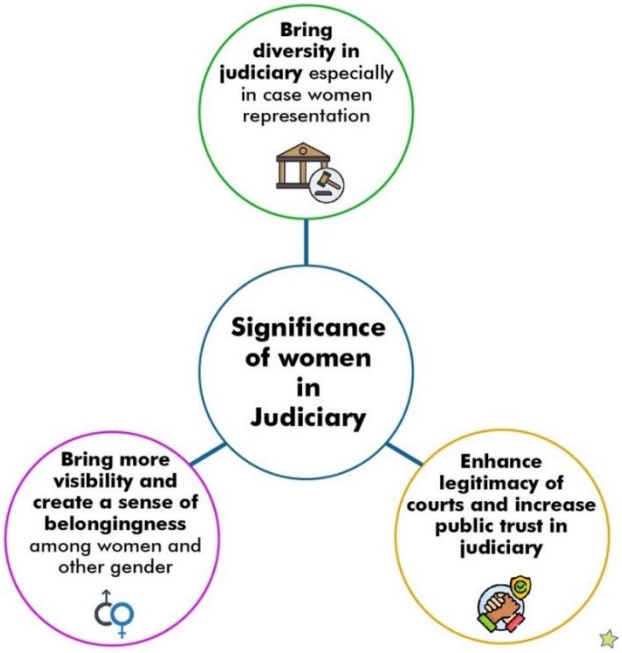
- **Social Factors**: Long and inflexible work hours in law, combined with familial responsibilities, force many women to drop out of practice and they fail to meet the requirement of continuous practice.

- **Eligibility criteria for entrance exams:** A major barrier to women's recruitment as district judges is the eligibility criteria to take the entrance exams.
    - Lawyers need to have **7 years of continuous legal practice and be in the age bracket of 35-45.**
- **Gender disparity in the judiciary:** Except for 1 woman judge till now, no woman judge has made it to the SC collegium of top three judges that oversees appointments in HCs.

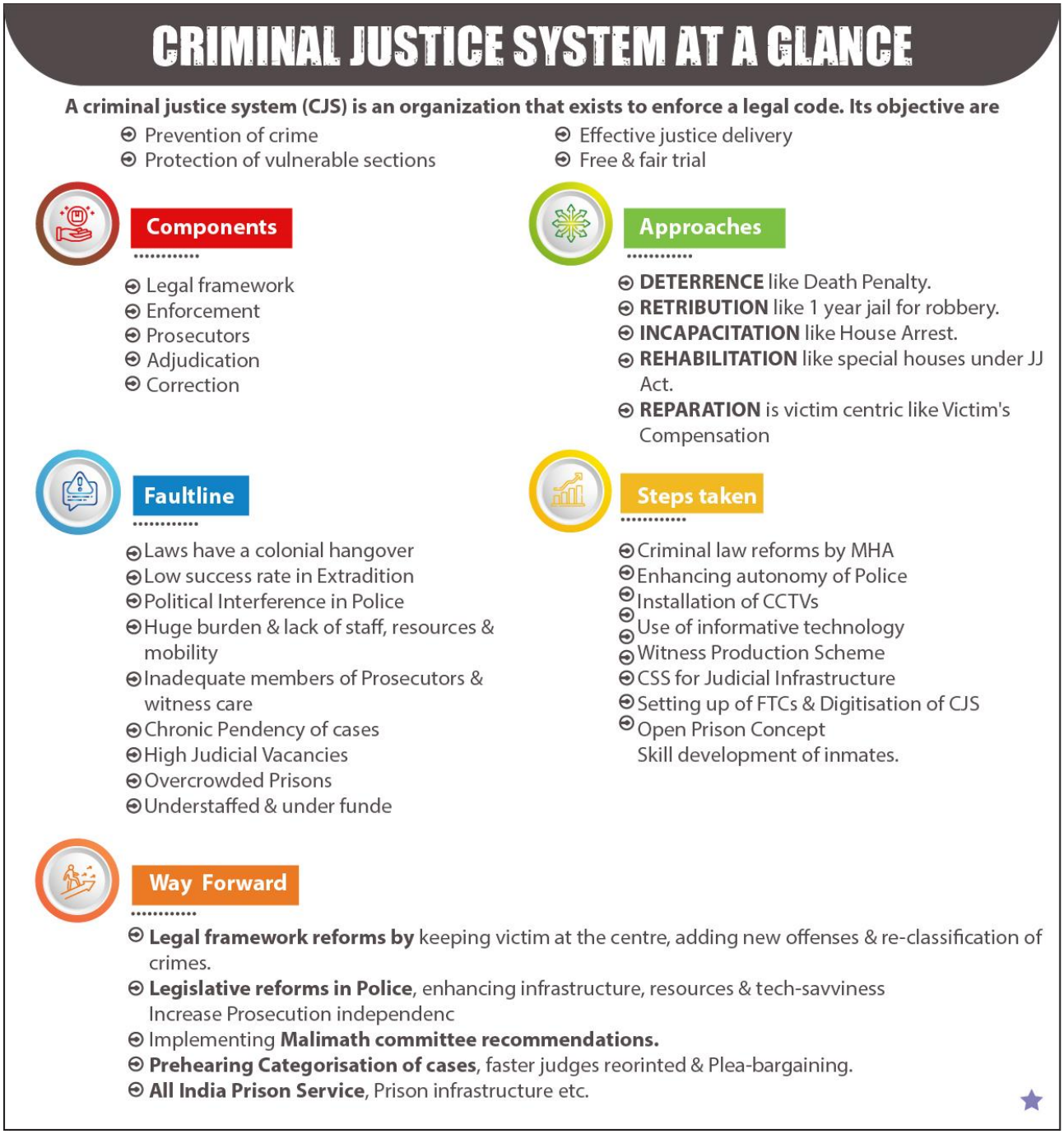


Way Forward

- **Conducive workplace** when men at all levels will participate as important stakeholders in ensuring conducive conditions for women in the workplace and women's problems be treated as all gender problems.
- **Judicial benches** must encourage young female lawyers' participation in court to break the myth or perception against female lawyers' abilities and capabilities.
- **Affirmative action at the bar** by ensuring more women as senior advocates as it improves more women lawyers' participation.
- **Reservation in higher judiciary** up to 50% as suggested by ex-CJI.
- **Higher rate of promotion** of women judges from Lower courts to higher courts.
- **Reorient education system in such a way** that it teaches work-life balance such as Child-raising and domestic responsibilities must be meaningfully shared by both men and women.



4.4. CRIMINAL JUSTICE SYSTEM



4.4.1. CRIMINAL PROCEDURE (IDENTIFICATION) RULES, 2022

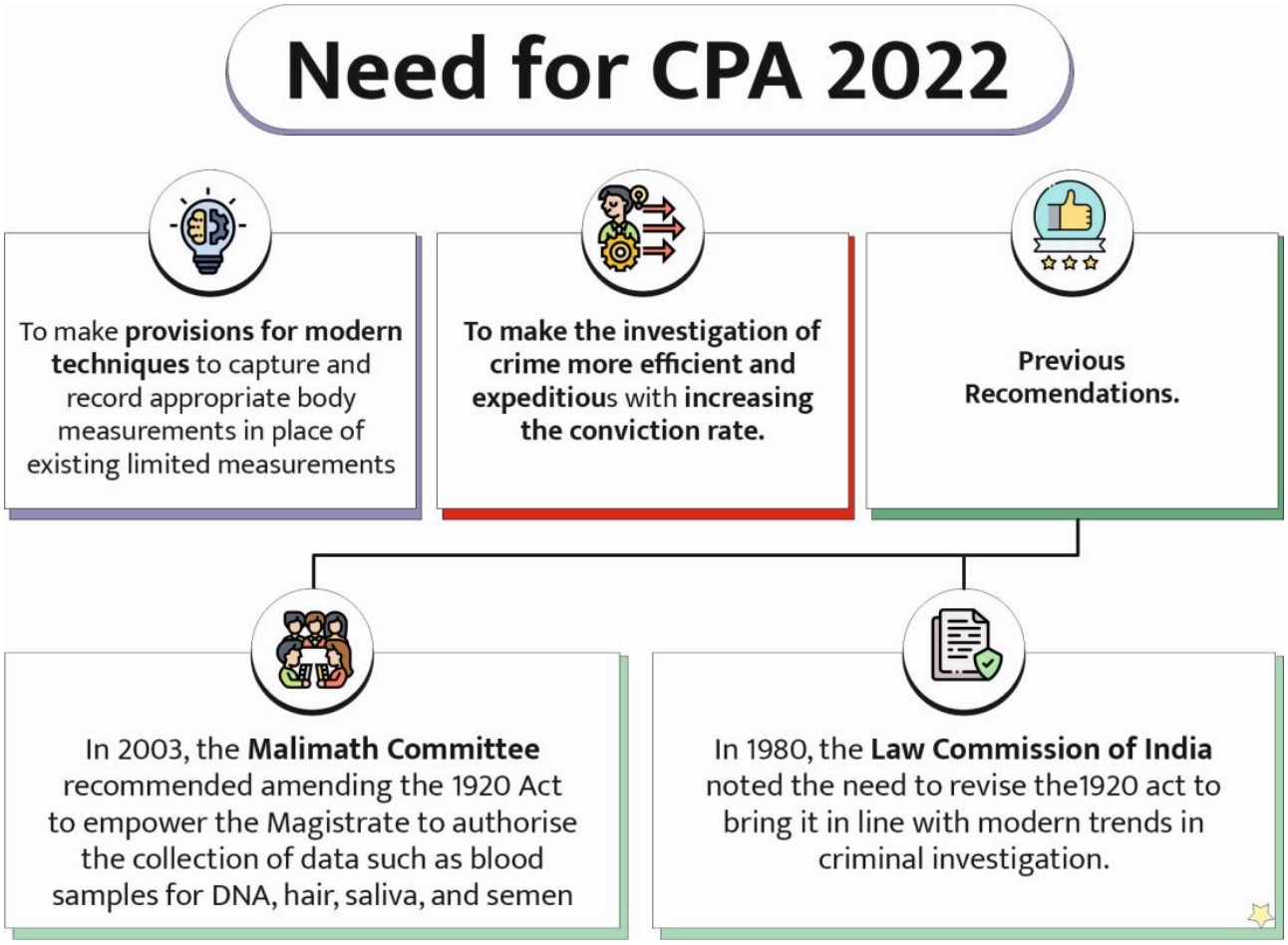
Why in news?

Ministry of Home Affairs (MHA) notified the Criminal Procedure (Identification) Rules, 2022 governing the **Criminal Procedure (Identification) Act (CPA), 2022.**

About Criminal Procedure (Identification) Rules, 2022

- 2022 Rules specify the details for CPA to **lay down the procedure for taking measurements of convicts and other persons for the purposes of identification and investigation** in criminal matters and to preserve records.
- **Key features of rules**
  - **Taking Measurements:** For certain persons**, measurements will not be taken unless they have been charged or arrested** in connection with any other offence.

- **Authorised persons to take measurements:** An authorised user, or **any person skilled in taking measurements, or a registered medical practitioner,** or any person authorised in this behalf may take such measurements.
- **Rule-making power to NCRB:** NCRB under MHA will direct states on how to collect and store information.
- **Punishment:** Any act of unauthorised access, distribution or sharing of data collected under Act shall be punishable as per provisions of **IPC 1860 and IT Act 2000.**



About Criminal Procedure (Identification) Act (CPA), 2022

- **Act repealed Identification of Prisoners Act, 1920** which was enacted to authorise the taking of measurements and photographs of convicts and other persons.
- 2022 Act **expands the scope and ambit of "measurements"** which can be taken under the provisions of law.
  - It will **help in unique identification of a person involved in any crime** and will **assist investigating agencies** in solving criminal case.
- **Key Provisions of 2022 Act**
  - **Details collected to be retained in digital or electronic form for 75 years from date of collection.**
    - ✓ Record **may be destroyed in case of persons who have not been previously convicte**d, and who are released without trial, discharged, or acquitted by the court.
  - **Resistance or refusal to give details will be considered an offence** under Indian Penal Code, 1860.
  - **Empowers NCRB to collect details about persons covered under act** from state governments, UT administrations, or other law enforcement agencies.
    - ✓ Other functions of NCRB under the Bill include **storing, processing, disseminating and destroying those details.**

Comparison of key provisions of 1920 Act and 2022 Act

Parameters	1920 Act	Changes in 2022 Act
Data permitted to be collected	• Fingerprints, foot-print impressions, photographs.	**Adds:** • **Biological samples**, and their analysis,

		• **Iris and retina scan.** • **Behavioural attributes** including signatures, handwriting, • **Examinations** under sections 53 and 53A of CrPC (**includes blood, semen, hair samples, and swabs, and analyses such as DNA profiling**).
Persons whose data may be collected	• **Convicted or arrested** for offences punishable with rigorous imprisonment of **1 year or more.** • **Persons ordered to give security** for good behaviour or maintaining peace. • **Magistrate may order in other cases collection** from any arrested person to aid criminal investigation.	• Convicted or arrested for any offence. However, **biological samples may be taken forcibly only from persons arrested for offences against a woman or a child**, or if the offence carries a minimum of 7 years imprisonment. • Persons detained **under any preventive detention law.** • **On order of Magistrate**, from any person (not just an arrested person) to aid investigation.
Persons who may require/ direct collection of data	• **Investigating officer under CrPC**, officer in charge of a police station, or of rank Sub-Inspector or above. • **Magistrate.**	• **Officer in charge of a police station**, or of rank Head Constable or above. • **Head Warden of a prison.** • **Metropolitan Magistrate or Judicial Magistrate of first class.** Executive Magistrate in case of persons required to maintain good behaviour or peace,
Rule-making power with regard to manner of collecting details etc.	**Vested in state government.**	Now vested in **State as well as Central government.**

Key concerns with the act

- **Violate right to privacy:** Information specified in Act constitutes personal data of individual, and **certain provisions in Puttaswamy) case may not meet the Supreme Court's necessity and proportionality standards** established in 2017.
- **Amounting to forcible extraction:** Act attaches criminal liability for resistance or refusal to allow taking measurements.
  - Such criminalization is in **violation of an individual's right against self-incrimination** under Article 20(3).
- **Heightens possibilities of misuse**: Act allows for measurements to be taken if a person has been convicted/ arrested for any offence, including **petty offences.**
  - Further, there is **no limitation on the use of the data collected**.
  - Collection of such data can lead to mass surveillance when combined with other databases like Crime and Criminal Tracking Network and Systems (CCTNS).
- **Limitations of NCRB**: NCRB is **ill-equipped to deal with quality management for a database** containing records of the proposed measurements, particularly of biological samples and their analysis.
- **Predictive policing:** Inclusion of derivative data such as "analysis" and "behavioural attributes" have raised concerns that data processing may go beyond recording of core measurements for predictive policing.

Conclusion

2022 Act is a welcome piece of legislation which is **targeted towards advanced prisoner identification techniques and a more efficient investigation process.** A law that restricts fundamental rights must **be sufficiently clear and precise in terms of the extent, scope and nature of the interference allowed,** along with the presence of sufficient safeguards to prevent abuse of powers by authorities.

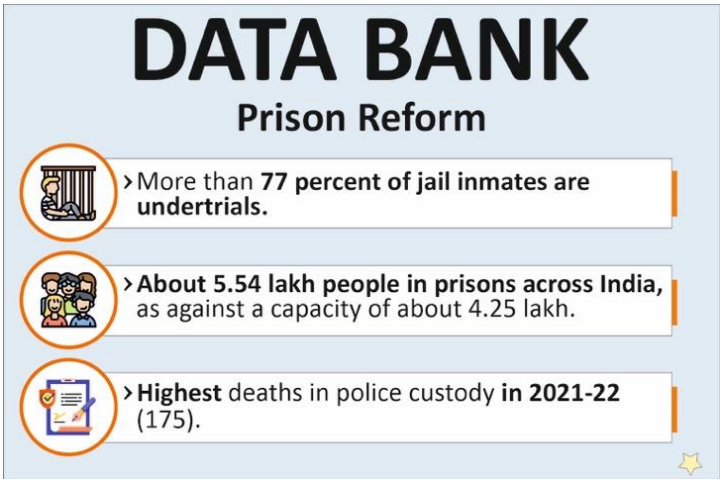
4.4.2. MODEL PRISON ACT 2023

Why in news?

Ministry of Home Affairs (MHA) has prepared the 'Model Prisons Act 2023' that will replace the Prisons Act of 1894.

About Prisons Act 1894

- **First legislation** that governed the management and administration of prisons in India was Prisons Act, 1894.
- Act had its origins in recommendations of **"Prison Discipline Committee"** appointed in 1836 by Lord Macaulay.
- It **defined a "prison"** as "any jail or place used permanently or temporarily for the detention of prisoners", excluding police custody and subsidiary jails.
- It also laid down provisions for prisoners' **employment, health, and visits.**
- MHA found **various shortcomings in the Act** and noticed a significant **lack of emphasis on corrective measures**.
  - It directed Bureau of Police Research and Development (BPR&D) to review laws and prepare a new draft, which culminated in Model Act 2023.



What Constitution says?

- As per provisions of Constitution, **'prisons' and 'persons detained therein'** fall under the State List.
- This means that responsibility of prison management and administration **solely vests with state government**.
- Thus, Model Act **"may serve as a guiding document for the States"** so that they may benefit from its adoption in their jurisdictions.

Need for reforming the Act

- **Colonial hangover:** India's incarceration system is prone to abuse since it was set up by the British to subjugate political prisoners.
- **To make prisons reformative institutions:** Act prioritizes discipline, and order in prisons, **lacking provisions for prisoner reform and rehabilitation.**
- **For better living facilities of prisoners:** There is a need to make jails modern and technologically adept with stringent security measures.
- **Killings and violence within prisons:** Recently, 33-year-old inmate was allegedly stabbed to death by members of a rival gang inside Tihar jail.

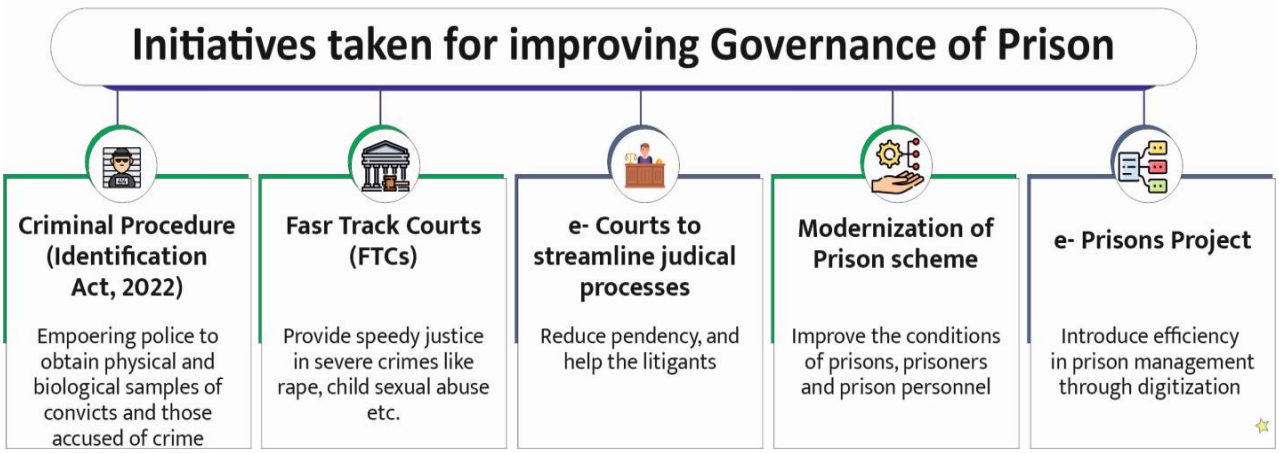
What proposals are included under Model Prisons Act 2023?

- **To encourage good conduct:**
  - Provisions for grant of **parole, furlough, and remission** to prisoners.
    - ✓ Parole is a system **of conditional release of** a prisoner with **suspension of the sentence for a specific period of time.**
    - ✓ Furlough is given in cases of long-term imprisonment. The **period of furlough granted to a prisoner is treated as remission (reduction)** of his sentence.
    - ✓ Bail means **procurement of release from prison** of a person awaiting trial or an appeal.
- **For reformation and rehabilitation:**
  - Bring about **"attitudinal change towards prisoners"**.
  - **Vocational training and skill development.**
- **For better safety and security:**
  - **Separate accommodation for women** and transgender inmates.
  - Use of **technology in prison administration**; establishing **high-security jails**.
- **Other measures:**
  - Provisions for and **open, semi-open jails** have been inserted.
  - Measures for prisoners to video conference with courts have been introduced.
- Along with Prisons Act, 1894, **Prisoners Act, 1900, and Transfer of Prisoners Act, 1950'** have also been reviewed, and their relevant provisions have been assimilated into Model Act.

Challenges in prison governance

- **High undertrials.**
- **High occupancy rate of prisons**
- **Difficulty in obtaining bail** due to delay in adjudication process, lack of support for filing of bail applications, or inability to comply with bail.
  - In this context**, SC directed Union government to consider introducing a separate bail act** to streamline process of granting bail.
- **Vacancies in prison officials:** In Uttarakhand, Chhattisgarh, Bihar and Jharkhand over 60% of officer positions were vacant, **burdening existing officers and resulting in inadequate prison management.**
- **Unnatural deaths in prisons**

- **Vulnerability of women:** Most of the **women inmates are illiterate who are arrested on petty charges** and they are not aware about legal procedures.
- **Corruption persists among prison staff**, with activities such as trafficking drugs, weapons etc., posing national security threats due to bribes.



Suggestions to reform prisons

- Supreme Court has outlined **three broad principles** regarding imprisonment and custody, which shall be followed:
  - First, a person in prison does not become a non-person.
  - Second, a **person in prison is entitled to all human rights** within the limitations of imprisonment.
  - Third, there is **no justification for aggravating the suffering** already inherent in process of incarceration.
- **Easier bail provisions**: As per Section 436A of CrPC, an individual who has served half the maximum imprisonment period (excluding death penalty) is eligible for release on bail, with or without sureties.
- **Faster disposal of bail cases**: In Hussain and Anr. v/s Union of India (2017), SC mandated speedy disposal of bail applications, emphasizing the **principle of bail as norm and jail as exception**.
- **Adherence of Model Prison Manual 2016 by all States and UTs** to bring basic uniformity in laws, rules and regulations governing administration of prisons.
- **Mulla Committee, 1980 on Jail Reforms** recommended that
  - **Prison staff to be properly trained** and organized into different cadre and Setting up an **All India Service** called **Indian Prisons & Correctional Service**.
  - **After-care, rehabilitation and probation** to be an integral part of prison service.
  - **Press and public to be allowed** inside prisons and allied correctional institutions periodically.
  - **Undertrials in jails to be reduced to bare minimum** and they be kept away from convicts.

Conclusion

It is need of the hour that provisions of security of prisoners mentioned in jail manuals must be followed strictly and also well-equipped and trained prison staff should be appointed to look for safety measures.

Important news related to Prison reforms

Right to Vote for Undertrials

- SC has decided to examine law depriving undertrials the right to vote.
- Decision to examine came on a petition challenging **Section 62 (5) of Representation of the People Act (RPA), 1951** which **deprives prisoners of their right to vote.**
  - This restriction **does not apply to a person under preventive detention.**
  - According to latest NCRB report, there are **around 5.5 lakh prisoners in various jails across country.**

Arguments supporting Prisoners right to vote	Arguments against Prisoners right to vote
• Section 62(5) of RPA is **discriminatory because of its broad language** which denies right to vote even to those detained in civil prison. • **Considered unreasonable** as a convicted person allowed to vote if on bail while denying this right to even undertrials, if in prison.	• In **Anukul Chandra Pradhan v. Union of India (1997)**, SC upheld **constitutional validity** of **Section 62 (5)** as: o Right to vote is **not conferred as per Article 14** of Constitution. o Right to vote is **subjected to limitations imposed** by legislature. o It helps to **avoid criminalization of politics** and **maintain election integrity.**

• **Right to vote** is cornerstone of a democracy.	• **Resource crunch as permitting this** would require greater security arrangements.

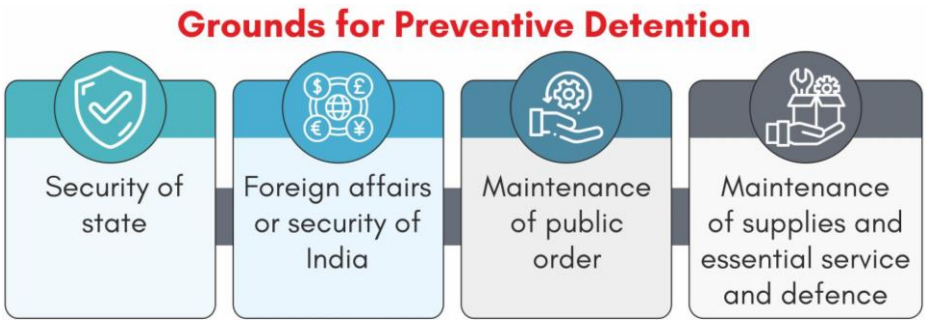
MHA Shared Details of Custodial Deaths in Last Five Years (2018-2022)

- **Key highlights**
  - **Highest number of custodial deaths reported in Gujarat** followed by Maharashtra and Uttar Pradesh.
  - Among UTs, **highest incidents were reported from Delhi** followed by J&K.
- Custodial violence primarily **refers to violence in police custody and judicial custody**. Besides death, **rape and torture are two other forms** of custodial violence.
  - However, the term **custodial violence has not been defined under any law.**
- **Causes for Custodial Deaths:** Traditional habit of **using force by police, Prison overcrowding** leads to **violence between prisoners or suicide, deficiencies in basic services** like medical facilities, food etc.
- **Constitutional safeguards include: Article 20** (Right to protection against conviction of offenses), **Article 21** (Right to life and liberty), **Article 22** (Right to protection against arrest and detention in certain circumstance).
- **Statutory safeguards include** Sections 330 & 331 of **IPC,** Sections 25 & 26 of **Indian Evidence Act,** and Section 29 of **Police Act, 1861** that were enacted to curb tendency of policemen to resort to torture to extract confessions etc.

4.4.3. PREVENTIVE DETENTION

Why in news?

Recently, Supreme Court has ruled that the preventive detention is to be used only in exceptional circumstances.



More on news

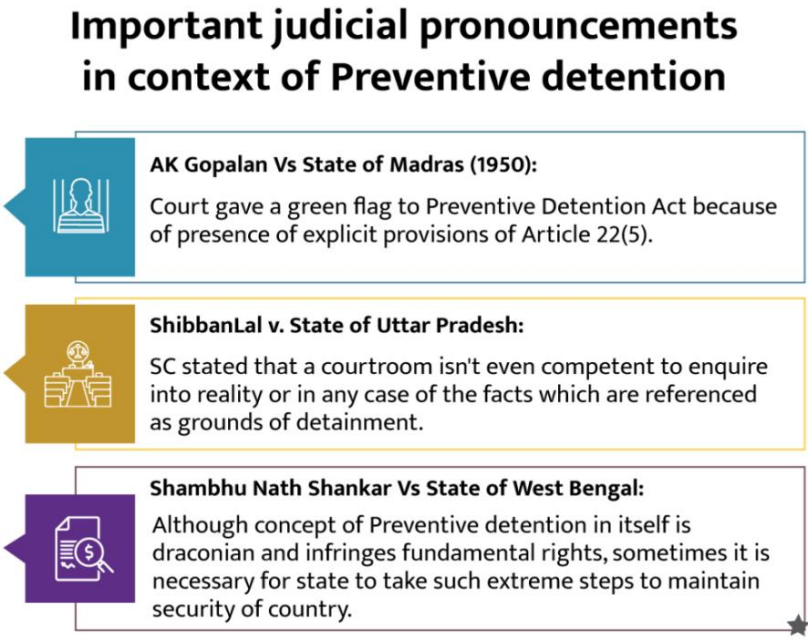
- SC in an order observed that preventive detention **is an exceptional power of the State which affects the personal liberty of individual and has to be employed sparingly**.
  - Court distinguished between law-and-order situations and public disorder. **Preventive detention may apply in the latter** but never for the former situation.
- Bench referred to the **1982 SC decision in 'Ashok Kumar vs Delhi administration' case** which said preventive detention is devised to afford protection to society.
  - Objective is **not to punish a man for having done something but to intercept** before he does it and to prevent him from doing.

Laws Providing for Preventive Detention in India

- **First Preventive Detention Act (1950)** was passed to prevent anti-national elements from carrying out acts that are hostile to Nation's security and defence.
- **Maintenance of Internal Security Act (MISA)** (1971-77) is infamous for its excesses during emergency when it was aggressively used against political opponents, trade unions and civil society groups that challenged the government.
  - **44th Amendment Act of 1978 removed MISA.**
- **Foreign Exchange and Prevention of Smuggling Activities Act, 1974** provided **for preventive detention to maintain and improve foreign exchange** and to deter illegal trade.
- **Terrorist and Disruptive Activities (Prevention) Act (TADA) 1985** is deemed to be most powerful and restrictive laws drawn up under the system of preventive detention.
- **Prevention of Terrorism Act (POTA) 2002** was presented as an act similar to TADA.

About Preventive Detention

- It is the **detention of a person on a mere reasonable apprehension of him doing an activity dangerous to public order and security**.
  - Here, person is **confined in custody without undergoing a trial.**
- Constitution gives **protection against arrest and detention under Article 22 (1) and 22 (2).**
  - These protections are **not available to a person arrested or detained under preventive detention laws (Article 22(3)).**
- **Multiple laws** such as CrPC, Narcotic Drug and Psychotropic Substance Act (NDPS) 1985, UAPA etc. permit Preventive Detention.
  - According to **NCRB 'Crimes in India Report 2021'**, over 1.1 lakh people were placed under Preventive Detention in 2021, highest since 2017.
- **Criminal Procedure Code of India also provides for Preventive detention under Section 151.**
  - According to **Section 151 of CrPC**, police are empowered to make preventive arrests if they believe they must do so to prevent the commission of "any cognisable offence".



Issues associated with Preventive Detention

- **Executive Tyranny:** Preventive detention laws are designed to be **highly administratively steered and restrict the scope of judicial interference.**
- **Violate Fundamental Rights:** Under preventive detention fundamental rights of the detainee under Article 21, 19, 14 are breached to a greater extent than in the arrest.
- **Misuse:** For instance, **78.33% of all detention orders under National Security Act (NSA)** from 2018 to 2020 were found to be incorrect.
- **Backlogs:** Pending cases are **overburdening courts**, so hearing writ petitions against preventive detention orders can take several months.
- **Advisory Board:** Eligibility criteria set by Constitution for members of advisory board under Article 22 gives the State the power to make it a purely executive committee.
  - Such a committee **cannot be regarded as impartial or free from political influence**.
- **Victimisation of the detainee:** Long-time taken by legal system to dispose detention cases, combined with non-availability of redressal mechanism other than filing writ petitions leads to victimisation of the detainee.

Way forward

- **Legal representative:** Detainee should be provided **right to consult, represented by a lawyer of his choice at any stage** to ensure that defence is effectively put before advisory board and to aid informed decision making.
- **Advisory Board**: It should consist of only **sitting judges of High Courts to ensure speedy trial, effective and fair decision** making while deciding validity and extension of detention.
- **Timeframe**: Detention order should be made effective only after approval by advisory boards within a prescribed timeframe.
- **Independent commission should be formed** to enquire into allegations of misuse of preventive detention, allegations of coercive use of authority etc. to **enhance transparency and prevent misuse.**
- **Constitutional safeguards:** Preventive detention must abide by provisions under Article 21 and Article 22 along with the statute in question.

4.4.4. DEATH PENALTY

Why in News?

In a recent order, SC of India has reiterated the **importance of conducting a psychological evaluation of convicts who have been awarded death sentences.**

More on news

- It called for **psychological evaluation of condemned prisoners** by expert doctors and **accesses them by mitigating investigators.**
- It held this will aid Court **to have an independent and holistic picture of the physical and mental condition** and background of the condemned person.

Constitutional provisions related to Death Penalty

- **Article 21:** No person shall be deprived of his life or personal liberty **except according to procedure established by law.**
- **Mercy (Pardon) Power** of President (Article 72) and Governor (Article 161).
- Under **Seventh Schedule, Criminal law and Criminal Procedure are under Concurrent List** leading to various laws dealing with Death Penalty such as:
  - IPC 1860; Army Act 1950; Air Force Act 1950; Navy Act 1956; SC/ST (Prevention of Atrocities) Act 1989 etc.

DATA BANK
Death Penalty

- > 40% increase in **Prisoners on Death Row in 2022** as compared to 2015.
- > **113 countries had abolished death penalty** at end of 2022.

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,** the moral acceptability of Death Penalty, i.e., state power to execute people and circumstances is a matter of debate globally.

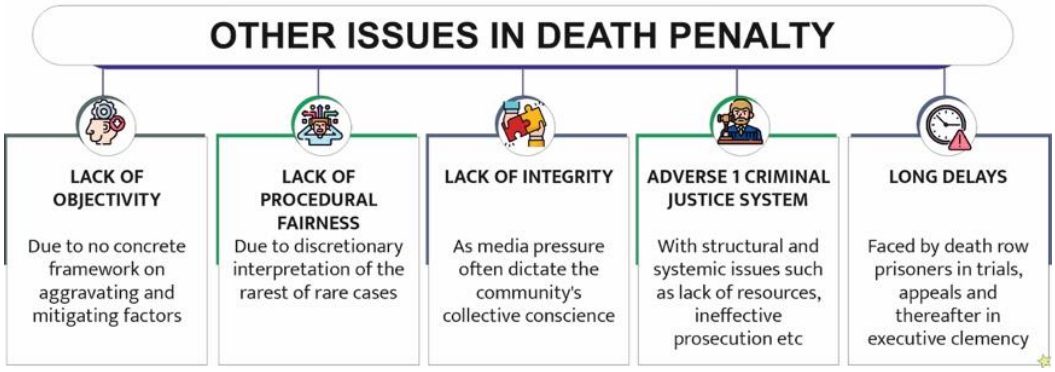
International Convention related to Death Penalty

Death Penalty is opposed by UN and its agencies like

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

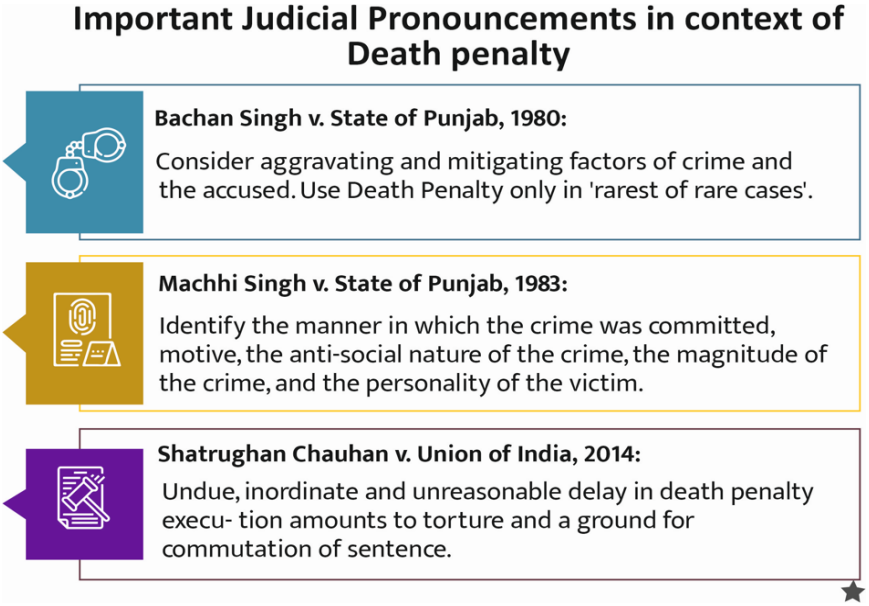
Arguments Supporting Death Penalty	Ethical Issues with Death Penalty
• **Deterrence:** Death penalty and its brutalization effect can act as deterrence. • **Retributive Justice:** Capital punishment is a just form of retribution as people guilty of associated crimes deserve to be punished. • **Principle of Proportionality:** Justice demands that 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).	• **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 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. • **Retributive justice overshadows restorative and rehabilitative aspects.** For instance, with increase in **education** and **socio-economic** conditions of people, even serious crimes **decline.**

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 **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.



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).

Mitigating circumstances in Death Penalty

- SC referred a suo moto plea to Constitution bench to **frame guidelines for courts to examine mitigating factors for convicts** in death penalty cases.
- SC suggested that social milieu, age, educational levels, whether convict had faced trauma earlier in life, family circumstances, etc. were **relevant factors at time of considering whether death penalty ought to be imposed** upon accused.
  - It aims to **ensure a uniform approach on question of granting real and meaningful opportunity to convicts** to put forth mitigating factors in death penalty cases.
- When the **'rarest of rare' doctrine** to award capital punishment was given **in Bachan Singh judgment,** the court laid down the **rules for the same in subsequent Machhi Singh judgment**.
  - Among many rules were **Mitigating and Aggravating circumstances.**
  - Mitigating circumstances comprised of **possibility of reformation and rehabilitation of an accused, his mental health and his antecedents**. These are facts that appear **to mitigate penalty of an offense**.
  - Aggravating circumstances included the **manner in which crime was committed, motive for committing crime, severity of crime**, and victim of crime. These **may increase a sentence.**

4.5. FREE LEGAL AID IN INDIA

FREE LEGAL AID AT A GLANCE

Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding.

Article 39A provides for free legal aid to the poor and weaker sections of the society and ensures justice for all.

Why free legal aid?

- **Promoting Access to Justice for all**
- **Address long pendency of cases-** 77% inmates are undertrials in 2021
- **Equal Protection** under Law

  Promotion of Social Justice and protection Human Rights
- **Preventing Wrongful Convictions**

Steps taken so far

- **Free legal services** are provided under **Legal Services Authorities Act, 1987,** and are operationalised by **National Legal Services Authority.**
- **Pro bono legal services** initiative is a web based platform, through which interested lawyers can register themselves to volunteer pro bono services for the underprivileged litigants, who are unable to afford it.
- **Tele Law initiative,** would connect lawyers with clients through video conferencing facilities at CSCs, operated by para legal volunteers.
- **Lok Adalat which serves as a platform for amicable resolution** of pending cases in courts or those in the pre-litigation stage

Challenges in accessing legal aid

- **Lack of awareness:** Leads to exploitation and deprivation of rights of the poor.
- **Geographical Barriers:** Challenge in providing legal aid services to remote and rural areas.
- **Inadequate Funding:** Hampers their effectiveness and limits the resources available. E.g. Less number of empanelled lawyers.
- **Overburdened judiciary:** High volume of cases, leading to delays in the provision of legal aid.
- **Poor funding:** Per capita spending on legal aid in India is Rs 0.75, as per study by Commonwealth Human Rights Initiative .
- **Poor quality of service:** As per report by NLUD, about 75% of beneficiaries opted for free legal aid as last option.
- **No legal aid at the police station:** Despite Article 22 guarantees the right to a lawyer for an arrestee.

Way forward

- **Public awareness:** To inform and educate the public of its right to free legal aid.
- **Inclusion of all designated senior lawyers:** in the Legal Aid Schemes and requesting them to undertake at certain cases free of charge every year.
- **Better payment,** to the lawyers who provide Legal Aid.
- **Training Para Legal Volunteers** through training Programmes for students, social workers, jail inmates etc.
- **Regular feedback:** To gauge the quality of legal representation.

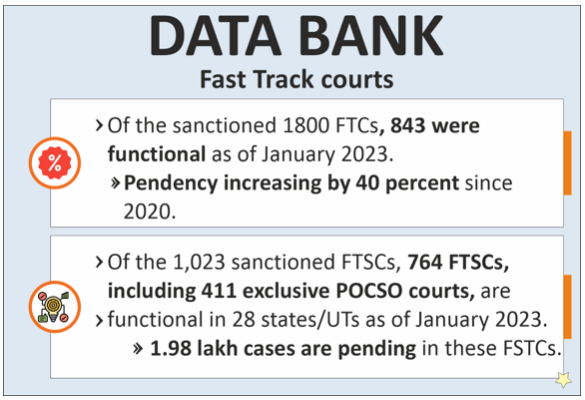
4.6. FAST TRACK SPECIAL COURTS

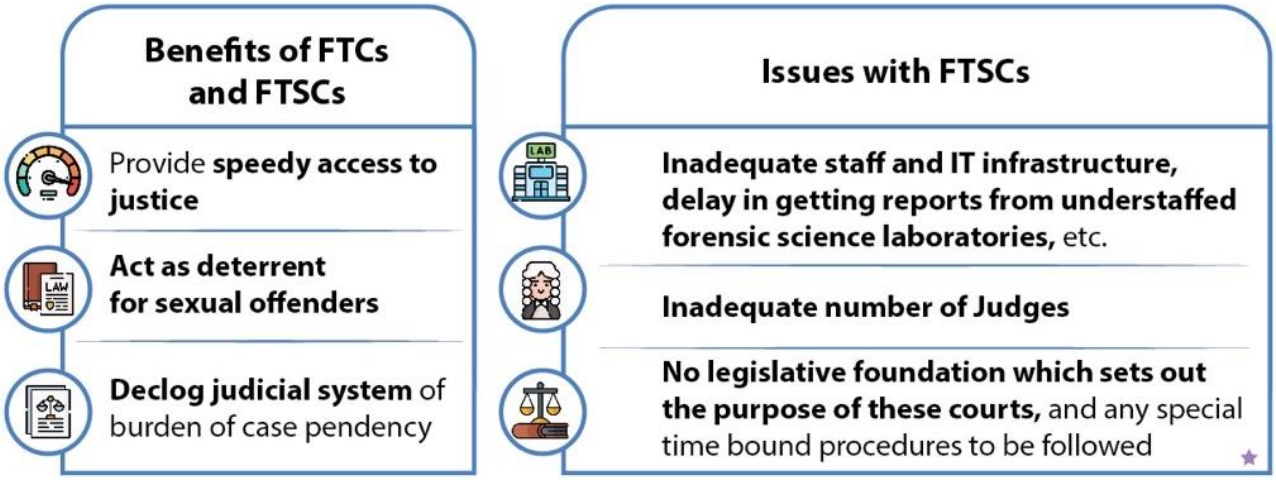
Why in news?

Recently, Law Minister presses for accelerating setting up Fast-Track Courts (FTCs) and Fast-Track Special Courts (FTSCs).

Fast-Track Courts (FTCs) and Fast-Track Special Courts (FTSCs)

- FTCs and FTSCs are **dedicated courts expected to ensure swift dispensation of justice**.
- **Initially 11th and subsequently 14th Finance Commission had recommended setting up of FTCs** to deal with cases of heinous crimes; civil cases related to women, children, senior citizens, HIV/AIDS etc. related cases pending for more than 5 years.
- **FTSCs are set up under a centrally sponsored scheme** for hearing rape and Protection of Children from Sexual Offences (POCSO) Act cases.
- **Their setting up and functioning falls within domain of State Government** in consultation with their respective High Courts.
- FTSCs are **linked to National Judicial Data Grid**.





Way Forward

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

4.7. ONLINE JUSTICE DELIVERY

Why in news?

Recently, for the first time the **SC has live-streamed its proceeding.**

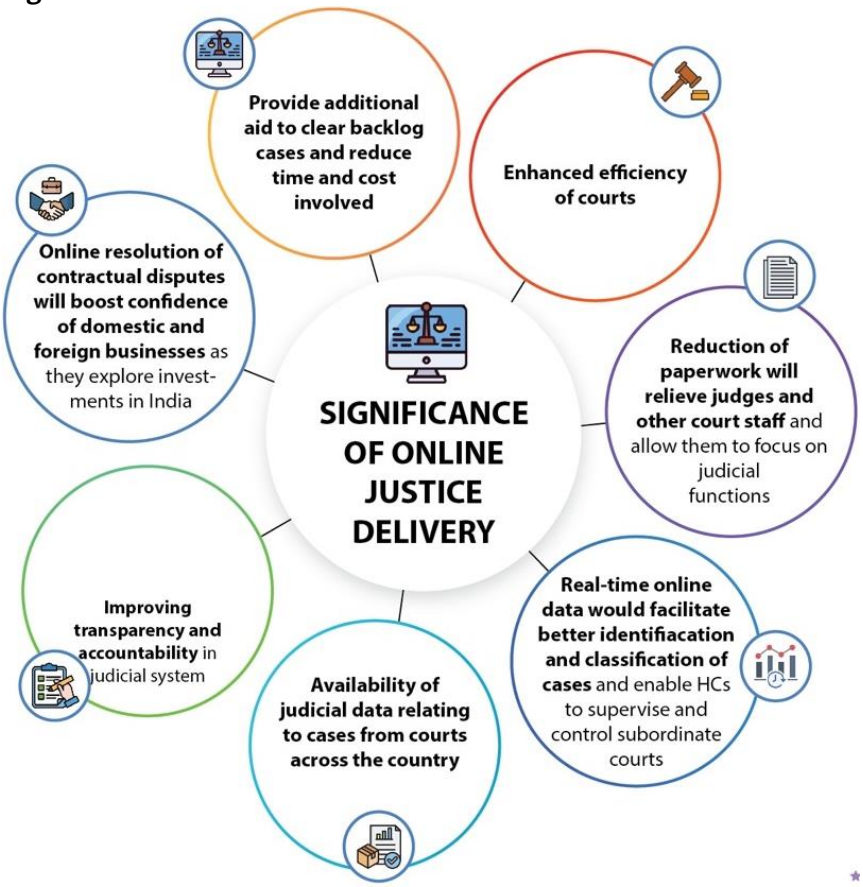
More on news

- In **2021, SC's e-Committee** came out with **model rules for live-streaming and recording** of court proceedings in India.
  - Earlier, in **2018** (**Swapnil Tripathy vs Supreme Court**), SC declared **live telecast of court proceedings** part of the **right to access justice** under **Article 21** of Constitution.
- Currently, **six high courts**, namely **Gujarat, Orissa, Karnataka, Jharkhand, Patna**, and **Madhya Pradesh**, live-stream court proceedings through their channel on YouTube.

- Live-streaming of SC proceedings is part of **third phase of e-courts project,** an initiative **to implement use of information and technology in judiciary.**

Challenges with online justice delivery

- **Lack of investment in court and IT infrastructure** as e-courts require new age technology like high-speed internet connection, cloud computing, availability of sufficient bandwidth etc.
- **Lack of technical knowhow among court officials and staff** and absence of dedicated in-house technical support.
- **Low awareness amongst litigants and advocates.**
- **Digital divide in access to justice due to insufficient infrastructure,** non-availability of electricity and internet connectivity and low digital literacy in rural areas.
- **Interdepartmental Challenges due to lack of coordination, communication and interoperability** of software between various departments.
- **Cyber security threats:** Judicial data comprise of sensitive case information and litigant data, their electronic storing and transmission fuels security and privacy concerns.
- **Procedural problems like authenticity of evidence received through video and/or audio transmissions,** identity of witness, confidentiality of hearings etc.



Way forward

- **Procedural laws / rules may need to be amended to incorporate the suggestions** of having audio-video recording of court proceedings etc.
- **Design and impart regular training courses** for judges, court staff and paralegals for using online systems and maintenance of e-data (such as records of e-file minute entries, summons, warrants etc.).
- **Creating a user-friendly e-courts mechanism and awareness generation** which provides information in multiple Indian languages.
- **Clear rules on data privacy.**

Initiatives Launched Under E-Court Project

- **Newly launched projects include:**
  - **Virtual Justice Clock: Exhibits vital statistics** at Court level giving the details of the cases instituted, cases disposed and pendency.
  - **JustIS Mobile App 2.0**: Tool for judicial officers for **effective court and case management** by monitoring pendency and disposal of cases.
  - **Digital court:** To make court records available to judge in **digitised form to enable transition** to Paperless Courts.
  - **S3WaaS Websites**: To **generate, configure, deploy and manage websites** for publishing specified information and services related to district judiciary.
- **Other initiatives**
  - **Inter-operable Criminal Justice System (ICJS) to enable seamless transfer of data and information** among stakeholders like courts, police, jails
  - **Fast and Secure Transmission of Electronic Records (FASTER) by SC**, a software to transmit Court Orders swiftly, securely through electronic mode.
  - **SUVAS (Supreme Court Vidhik Anuvaad Software)** to translate English judgments into regional language
- **E-Courts Mission Mode Project** is a national e-Governance project **for ICT enablement of district & subordinate courts.** It was **conceptualised based on report submitted by e-Committee**, SC of India.

4.8. 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.**

ARBITRATION
Dispute is submitted to an arbitral tribunal which makes **decision** that is **mostly binding** on parties.

CONCILIATION
A Non-binding procedure in which an impartial third party, the **conciliator, assists the parties to a dispute** in reaching a mutually satisfactory agreed settlement.

MEDIATION
An impartial person called "Mediator" helps the parties to reach a mutually acceptable resolution of the dispute.

NEGOTIATION
A non-binding procedure in which **discussions between parties are initiated without intervention of any third party** with the object of arriving at a negotiated settlement.

LOK ADALAT (PEOPLE'S COURT)
It comprises an **informal setting which facilitates negotiations in presence of a judicial officer** wherein cases are dispensed without undue emphasis on legal technicalities.

Its **order is final and not appealable** in a court of law.

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.

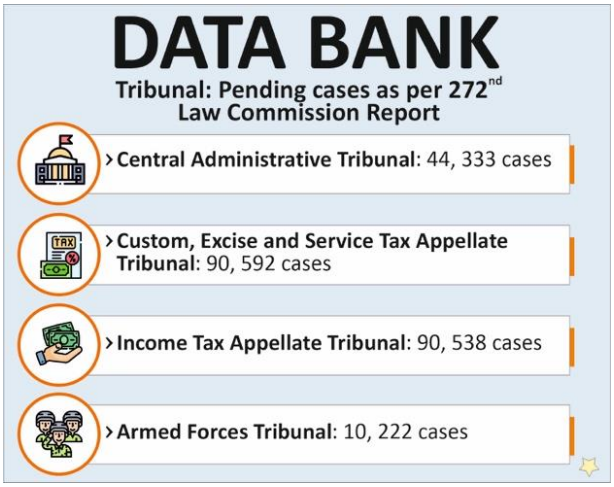
WAY FORWARD

- **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 biding** upon the parties which is not the case at present.

4.9. TRIBUNAL

Why in news?

Recently, the Supreme Court clarified that the provisions of the Constitution do not prohibit the Central government from abolishing a state administrative tribunal (SAT).

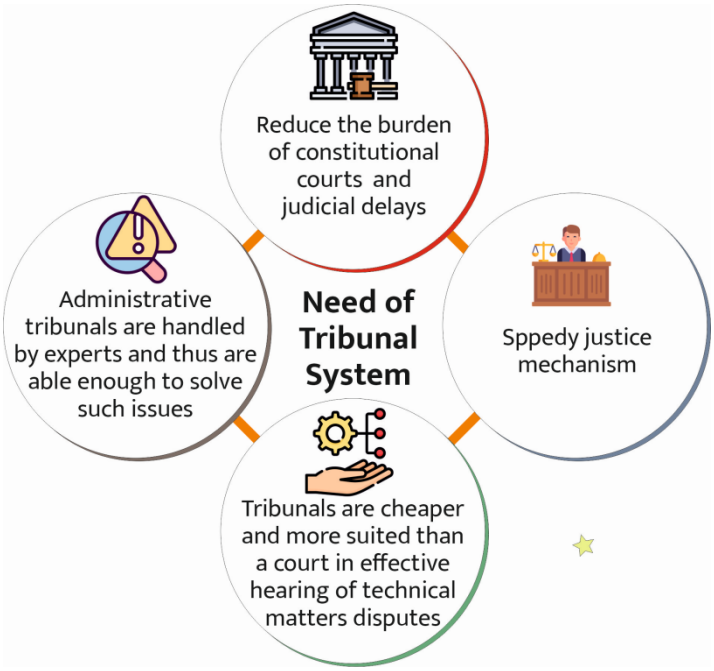


More in news

- The Supreme Court held that the **abolition of the Odisha Administrative Tribunal (OAT) was constitutionally valid.**
  - The apex court was hearing an appeal filed by the OAT Bar Association against a high court order that upheld the notification issued by the central government on August 2, 2019, which abolished OAT.
  - The high court had noted in its order that there was **sufficient material to support the view of the state government that OAT has not served the purpose of delivery of speedy justice to litigants.**
- SC observe that **Article 323-A does not preclude the Union Government from abolishing SATs** because it is an enabling provision which confers the Union Government with the power to establish an administrative tribunal at its discretion (upon receiving a request from the relevant State Government in terms of the Administrative Tribunals Act).

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 rules and regulations** imposed by Civil Procedure Code and Indian Evidence Act but they have to **follow the principles of natural justice.**
- Tribunals have been **vested with powers of Civil Court** in respect of some matters including the **review of their own decisions** etc. Its decisions are **legally binding on parties,** subject to appeal.



Issues associated with Tribunal system

- **Lack of independence**: In 2010, Supreme Courtnoted that **Tribunals in India have not achieved complete independence.**
  - System of **appointment through selection committees** severely affects an independence of tribunals.
- **Non- uniformity** across tribunals' with respect to **matter of qualifications, appointments, service conditions, tenure of members,** lead to malfunctioning in managing and administration of tribunals.
- **Staff shortage**: For instance, **Central Administrative Tribunal (CAT) has 27 out of 64 posts lying vacant,** leaving some benches without requisite strength to assemble and hear cases.

- **Inadequate judicial infrastructure** i.e., courtrooms, basic amenities, etc. for judges, advocates and litigants in subordinate judiciary and tribunals is serious issue.
- **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 inmatters of appointment and removal of tribunal members which is against the principle of separation of powers.

Way forward

- **Independent autonomous body**: Setting up of **National Tribunal Commission (NTC) under Ministry of Law and Justice** for **monitoring the working of Tribunals** and ensuring the uniformity in appointment system.
  - Idea of an NTC was first mooted by SC in L. Chandra Kumar v. Union of India (1997).
- **Selection of members**: To ensure impartiality, 272nd Law Commission of India advised **minimizing government agency involvement in member selection**, considering its frequent litigation participation.
- **Filling vacancies in Tribunal** as early as possible by initiating the procedure well in time, preferably within six months prior to the occurrence of vacancy.
- **Tribunals must have benches** in different parts of 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.
- **Stringent provision for time-bound redressal** mustbe incorporated in all statutes dealing with Tribunals.

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.

4.10. CENTRAL INFORMATION COMMISSION (CIC)

Why in news?

Recently, Parliamentary Committee has urged the Staff Selection Commission to investigate the reasons hindering direct recruitment in Central Information Commission (CIC) which employs many outsourced employees.

More on news

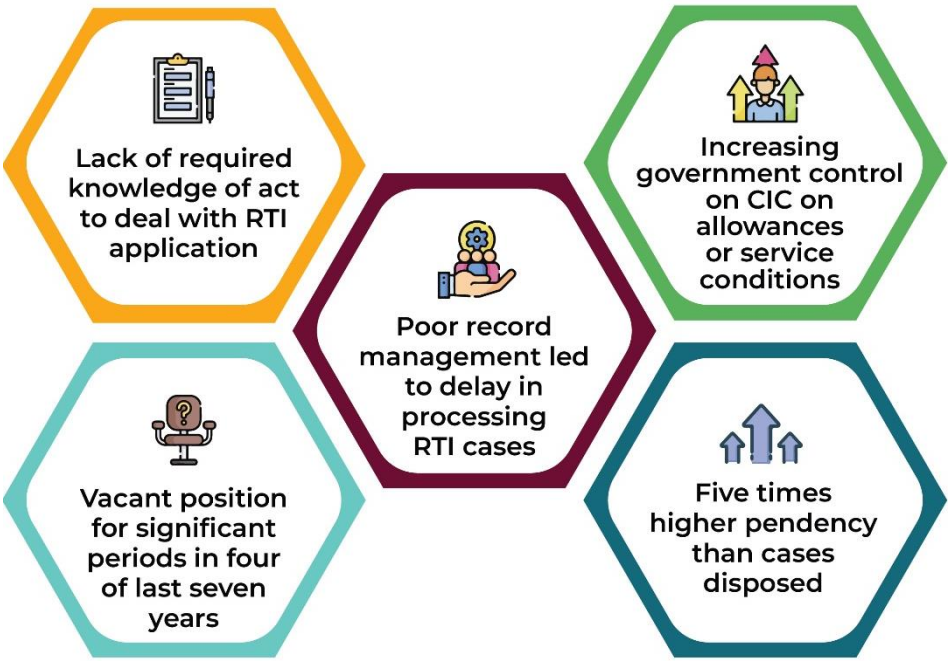
- According to the committee, **CIC has filled 100 out of the 160 sanctioned posts by recruiting outsourced staff** on a contractual basis. This is due to non-availability of suitable candidates.
  - However, Parliamentary Committee stated that contractual staff can supplement the regular workforce but cannot be a substitute for it.
- Committee also noted that **as per Section 25 of RTI Act**, there is a **statutory requirement for public authorities to submit quarterly returns to the CIC**.
  - However, during 2021-22, only 95% of public authorities submitted all four quarterly returns during the reporting year.

About Central Information Commission

- CIC, a **statutory body**, has been constituted with **effect from 2005 under the RTI Act, 2005**. Jurisdiction of Commission extends over all Central Public Authorities.
  - It consists of **Chief Information Commissioner (CIC)** and **not more than ten Information Commissioners (ICs)**.
  - CIC is **not eligible for reappointment**.
- By RTI (Amendment) Bill, 2019, **tenure of the commissioners** has been **cut to three years** in the new rules.
  - Earlier, 2005 Act gave them a fixed tenure of five years or a retirement age of 65 years, whichever is earlier.

- This was done to ensure that **Information Commissioners can use their powers even with the senior-most officers of the administration** without any fear of their jobs.

- **Functions of CIC**
  - CIC have the **same powers as are vested in a civil court** while trying a suit under Code of Civil Procedure, 1908, in respect of the following matters:
    - ✓ **Summoning and enforcing the attendance of persons** and compel them to give oral or written evidence on oath and to produce the documents or things.
    - ✓ **Requiring the discovery and inspection of documents.**
    - ✓ **Receiving evidence** on affidavit.
  - CIC receive and inquire into a complaint from any person,
    - ✓ who has been **refused access to any information** requested;
    - ✓ who has not been given a response to access to information within the time limit specified etc.



Way forward

- **Efficient record management** by uploading disclosable documents on departmental websites, thus reducing burden and physical document storage.
- **Training programmes by experts for handling RTI applications** and in-house manuals containing information with regard to provisions of RTI Act, 2005, important court decision, etc. to **increase efficiency of PIOs.**
- **Creating awareness among citizens** through radio, television, and print media, publishing RTI Act 2005 in regional languages, and incorporating it into educational curricula.
- **Quick Disposal:** There is a need to enhance the number of information commissioner in CIC to quickly dispose pending cases.

Initiatives taken to improve functioning of CIC

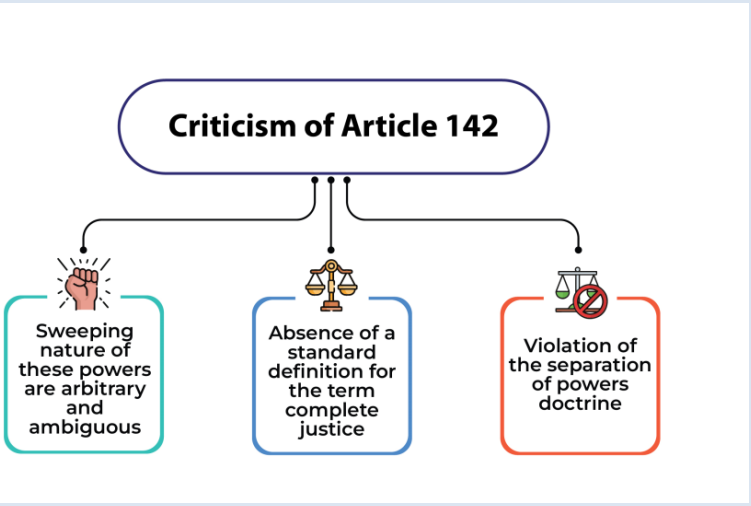
- **Online portal: 24 hours' portal service was introduced** for e-**filing of RTI applications** during any part of day or night and from any part of the country or abroad.
- **E-governance:** Technology has been harnessed for developing mobile based applications, e-hearing, e-notification etc., facilitating task of information seekers in availing remedies under the law.
- **National Federation of Information Commissions of India (NFICI): To facilitate coordination and mutual consultations among CIC and SIC** as well as exchange of information on laws and their interpretation through education, research and dissemination of knowledge, leading to strengthening administration of RTI Act.
- **RTI (Amendment) Bill, 2019**: To further streamline and institutionalize the RTI Act of 2005.

4.10.1. RIGHT TO INFORMATION

4.11. OTHER IMPORTANT NEWS

New Delhi International Arbitration Centre (Amendment) Act 2022	• **Parliament passed the New Delhi International Arbitration Centre (Amendment) Bill, 2022**
	• **It amends the New Delhi International Arbitration Centre Act,** 2019 and **renames the New Delhi International Arbitration Centre** as India International Arbitration Centre.
	• **Key features of the Act**
	  ○ **Manner of conduct of arbitration** and other forms of alternative dispute resolution **will be specified by Central government.**
	  ○ **Allows government** to provide **for removing any difficulties in implementation up to five years** from date of commencement of the Act.
	• **About International Arbitration**
	  ○ It is a means of **settling international commercial and business disputes** through arbitrators where parties opt for a **private dispute resolution procedure** instead of going to court.
	  ○ Availing international arbitration **can be optional, but it could also be made compulsory** by inserting a 'mandatory arbitration clause.

	○ Arbitration awards are **more widely and readily enforceable** due to **Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)** and through **Bilateral Investment treaties.**
Article 142	• Recently, SC held that it **could directly grant divorce,** in cases **where marriage** has **irretrievably broken down, dispensing with period** prescribed **under Hindu Marriage Act (HMA) 1955.** ○ As per Section 13-B of HMA, **after filing first motion** seeking divorce through mutual consent, **parties have to wait for a minimum of six and a maximum of 18 months** before moving the second motion. ○ However, **SC clearly stated that grant of divorce** on ground of irretrievable breakdown of marriage is **not a matter of right, but a discretion.** • **Article 142 provides SC power, to do "complete justice"** between parties, where, at times, law or statute may not provide a remedy. • While **powers under Article 142 are sweeping** in nature, **SC has defined its scope and extent through various judgments.** ○ **Prem Chand Garg case (1962):** Demarcated contours for powers under Article 142. ○ **Union Carbide Corporation vs Union of India:** SC in 1991, while highlighting wide scope of Article 142, ordered compensation for the victims. ○ **Supreme Court Bar Association vs Union of India (1998):** Powers under Article 142 are supplementary and could not be used to supplant or override a substantive law.



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 checks 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.

Issues associated with election process in India

- **Financing of elections**
- **Muscle power**
- **Misuse of Government Machinery**
- **Criminalisation of Politics and Politicization of Crimi**
- **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.

5.1.1. ELECTORAL FUNDING

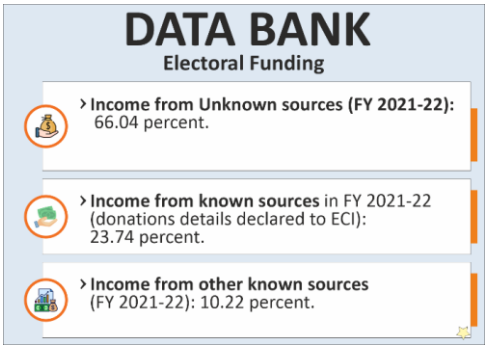
Why in news?

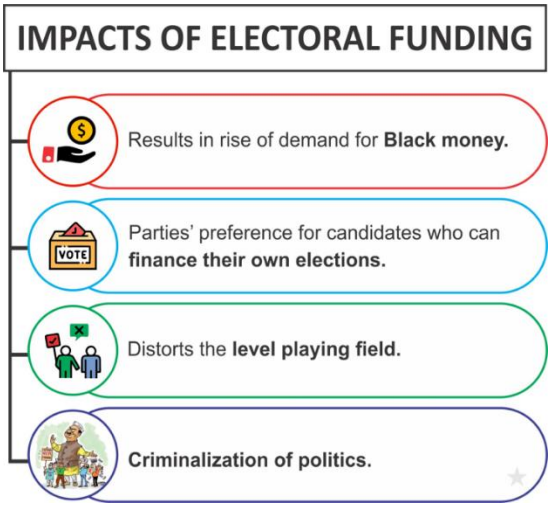
Data from State bank of India **shows that since 2018, political parties have collected more than Rs 10000 cr. from electoral bonds.**

Issues in election funding

- **No limit on political parties:** Under Section 77 of RPA, 1951 and Conduct of Election Rules, 1961, there are limits on election expenditure only for candidates, such a **limit is absent in case of political party expenditure.**

- **Lack of transparency:**
  - Political parties are **not required to provide sources of funds received by them.** As a result, there is no information on donors of political parties.
  - **Contributions** received by parties are **100% exempted from income tax.**
  - Additionally, **only 0.96% of registered unrecognized parties** filed their contribution report to ECI.
- **Corporate and political parties' nexus:** Corporate donations of political parties have been growing significantly. Also, the anonymity provided by Electoral Bonds further strengthens this nexus.





Way Forward

- **Bringing political parties under RTI:** Political Parties should comply with **Central Information Commission 2013 order declaring them public authorities under RTI Act, 2005** to be more accountable and transparent.
- **Comprehensive bill regulating political parties**, dealing with party constitution, organization, internal elections, candidate selection, etc. is need of the hour.
- **ECI should be given the power to de-recognize political parties** and/or impose strict penalties upon parties in case of non-compliance.
- There should be an **upper limit on the amount that can be donated to parties** (like earlier limit of 7.5% of profits set under Companies Act, 2013).
- **Following types of donations can either be banned or capped:**
  - **Public/semi-public entities** to avoid use of public funds for political purposes.
  - **Anonymous sources to ensure transparency** and a greater chance to monitor compliance.
- **Political parties should be required to maintain proper accounts** in predetermined account heads and such accounts should be **audited by auditors** recommended and approved by **CAG of India.**

Advantages & Disadvantages of Electoral bonds

Advantages of electoral bonds	Disadvantages of electoral bonds
Helps political parties to operate in a **more transparent manner.**	**Anonymous donation may compromise with principle of free and fair election.**
Discourages cash in the election funding.	**Indirectly eliminate 7.5%** cap on company donations.
Donations through Electoral Bonds will **only be credited to party bank account** disclosed with ECI.	**Voters will not know** which individual, company, or organization has funded which party.

Global best practices

- **In Norway,** Political Parties Act Committee is an **independent body to enforce compliance** and imposes sanctions and **can act both on its own initiative and following complaints** from members of the public.
- **In France, Business houses are prohibited** from donations including corporations and other legal entities.

5.1.2. ELECTIONS & TECHNOLOGY

Why in News?

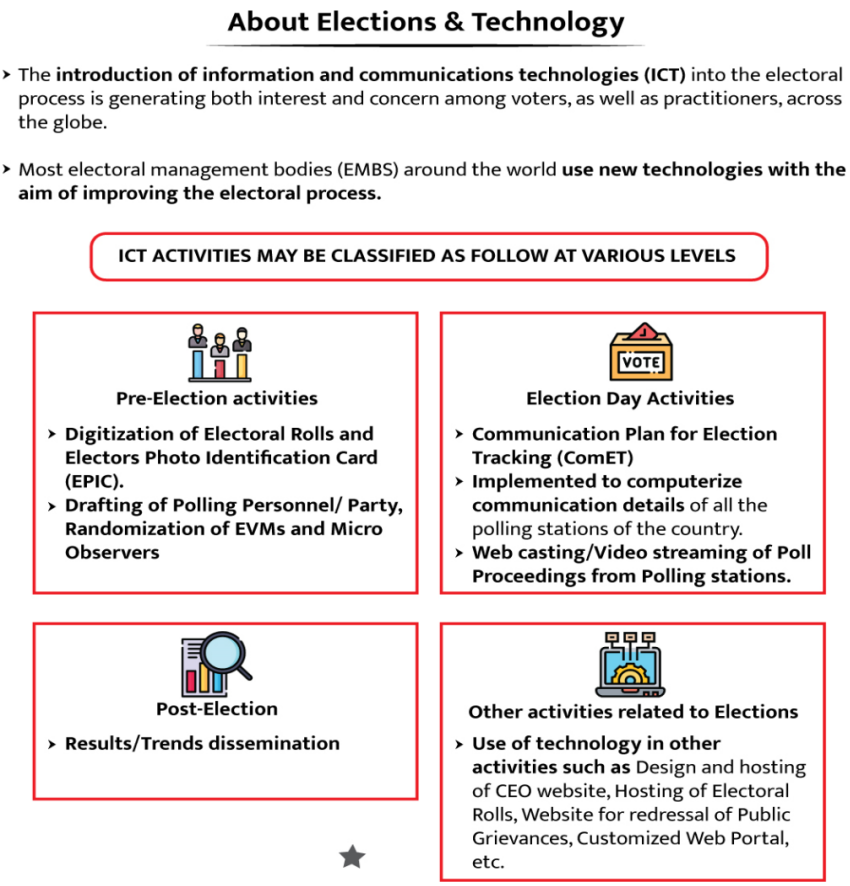
Recently, ECI hosted the 2nd International Conference on theme **'Use of Technology and Elections Integrity'** at New Delhi.

Significance of Technology in Elections	Challenges in use of technology in elections
• **Enables transparency which deters fraudulent activities,** ensuring fair and democratic election process. • **Improve accuracy of voters' register.** For example, in Brazil, electronic voter registration system was	• **Use of Deep Fake** alters public perception and mislead user by repetitively presenting deep fakes as fact. ○ Example, Former Chief Election Commissioner, T S Krishnamurthy deep fake video circulated

created to prevent voters from registering in more than one local registry. • **Improve accessibility.** For example, India introduced **Electronically Transmitted Postal Ballot System (ETPBS),** which has made voting **more accessible to service voters.** • **Improve Efficiency** in election office management processes which includes coordination of employees' activities in election offices, etc. • **Improve voting percentage:** Internet is especially useful for voter outreach especially for younger voters who receive majority of their information online. • **Agencies can disseminate election-related information** through Web sites, e-Newsletters, social media, podcasts, etc.	on EVM hacking just before the election. • **Voters Manipulation:** For example, **Cambridge Analytica, working with Donald Trump's 2016 campaign,** accessed personal information from millions of Facebook accounts for voter profiling. • **Cybersecurity risks: For example,** allegations of Russian interference in 2016 USA elections through hacking into computers that contain vote data. • **Affordable or no-cost technologies can be exploited** by any individual to target vulnerable communities and undermine the integrity of democracy. • **Lacks awareness of Voters regarding profiling by social media and how that impacts the content they see** on their feeds.

Way Forward

- **Data localization extend voter protections to the online space:** By requiring voter data to be stored within the country, it makes more difficult for foreign actors to interfere in electoral process.
- **Accountability mechanisms for big tech companies:** Regulators should order them to stop sharing data with their parent companies, as has been done in countries like UK.
- **Domestic law needs to recognize and punish cyber interference in elections.** This will deter malicious actors from attempting to interfere in electoral process and help ensure fair and free elections.
- **Establish dedicated cybersecurity unit in Election conducting institution** to protect against cyber threats. These units should train officers and political staffers in basic cyber hygiene, such as recognizing phishing attempts etc.



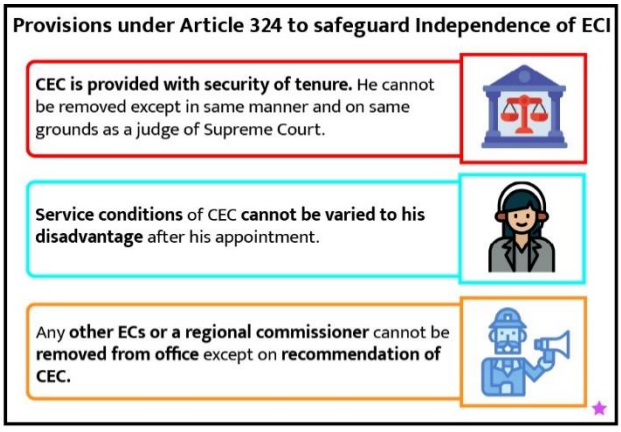
5.2. ELECTORAL MANAGEMENT BODIES

Why in news?

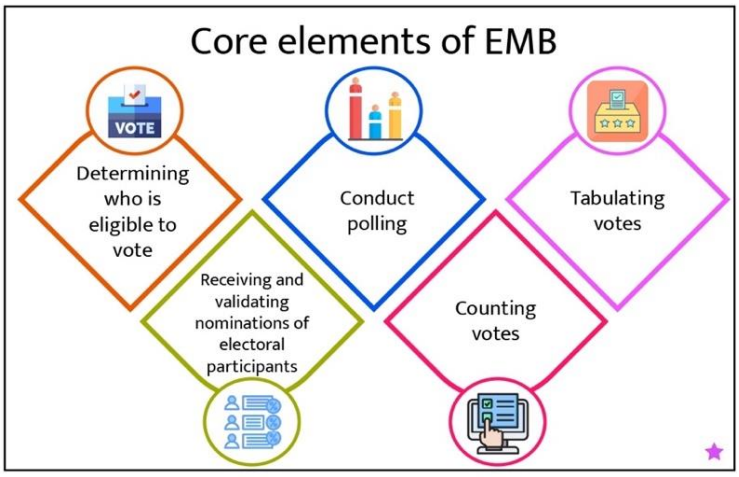
ECI conducted an international conference on the theme **'Role, Framework & Capacity of Election Management Bodies'.**

Electoral Management Body (EMB) in India

- EMB is an **organization** that is legally responsible for **managing elements** that are essential for:
  - Conduct of **elections and**
  - **Direct democracy instruments** (like referendum), if those are **part of legal framework**.

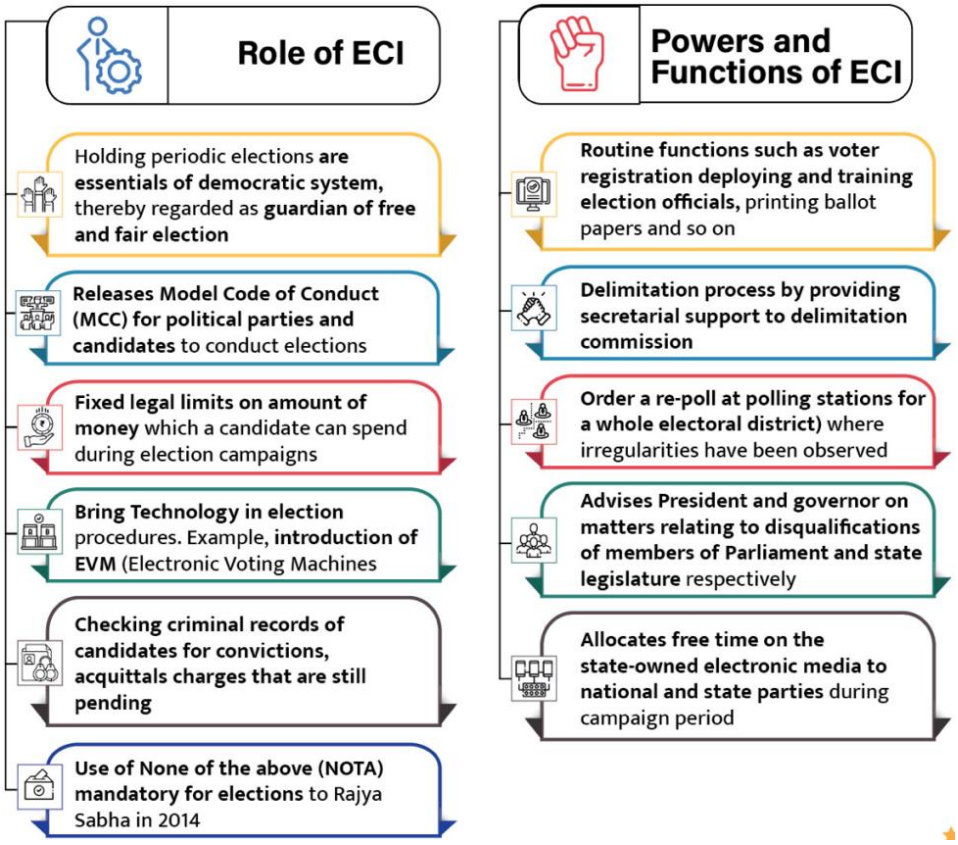


- ECI is widely regarded as a **model of an independent EMB.**
- Constitution (**Article 324**) provides for an **independent Election Commission** to **ensure free and fair** elections in country.
- Parliament enacted **RPA, 1950 and RPA, 1951** to **define and enlarge the powers** of EC.
- Power of **superintendence, direction and conduct** of elections to Parliament, state legislatures, President and Vice President is vested in ECI. At present, ECI consists of **a Chief Election Commissioner (CEC) and two Election Commissioners (ECs).**
    - It is to be noted that elections to panchayats and municipalities are entrusted to the **state election commissions**, which are separate entities.



Issues associated with ECI and appointment of ECs and CECs

- **Gaps in Constitutional provisions:**
    - Neither **prescribed qualifications** (legal, educational, administrative or judicial) of members of ECI and nor **specified term of its members**.
    - **Not debarred retiring election commissioners** from any further appointment by government.
    - SC in **Mohinder Singh Gill & Anr vs Chief Election Commissioner, New Delhi and Ors (1977)** held that Article 324 empowers the Election Commission to act in areas where existing laws are inadequate, ensuring effective conduct of elections by filling gaps and addressing contingencies.

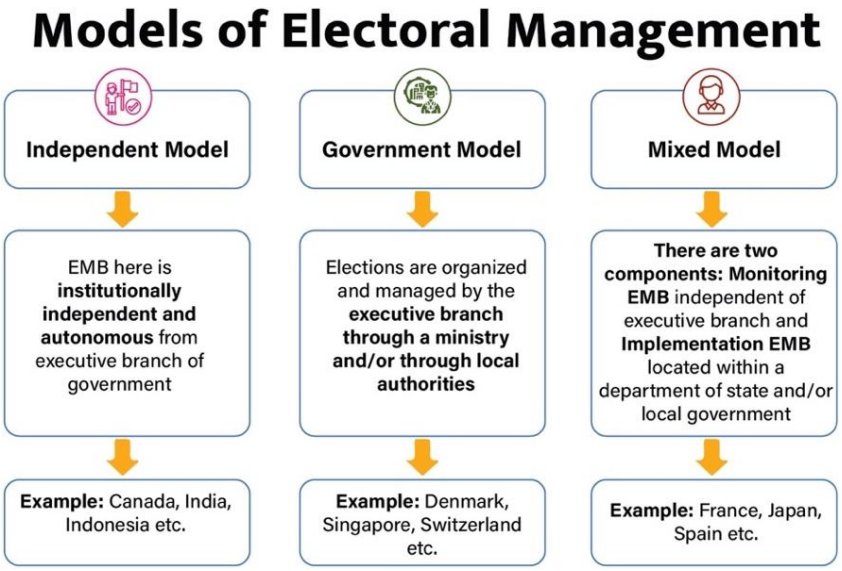


- **Issues in appointment process**: Appointments to the Election Commission **are currently the central government's prerogative**.
    - Recently, SC (in Anoop Baranwal vs. Union of India 2023) has ruled that **ECs and CEC will be chosen by a panel** consisting of Prime Minister, Leader of Opposition in Lok Sabha and CJI.
- **Vagueness in removal procedure of ECs:** Constitution **safeguards CEC from arbitrary removal** (can be removed from office **only by order of President**, just like a judge of SC). However **similar protection is not provided to ECs**.
- **Concerns regarding credibility of EC such as violations of model code of conduct** and **conduct** of ECI in **elections.**
- **ECI possesses limited power** to **register a political party** but it does not possess the **power to de-register** it.

- Lack of power to regulate **internal structures, organisations or elections** of political parties.

Measures to strengthen ECI, ECs and CECs

- **Equal constitutional protection (security of tenure)** should be given to all members of EC in **matters of removability** from office.
- **Creating a permanent and independent Secretariat** for ECI to improve the independence of ECI.
- To secure its **independent functioning**, expenditure of EC should be **charged upon Consolidated Fund of India**.



5.3. INTERNAL PARTY DEMOCRACY

Why in News?

Election Commission is pushing for internal democracy within political parties in India.

About Internal Party Democracy

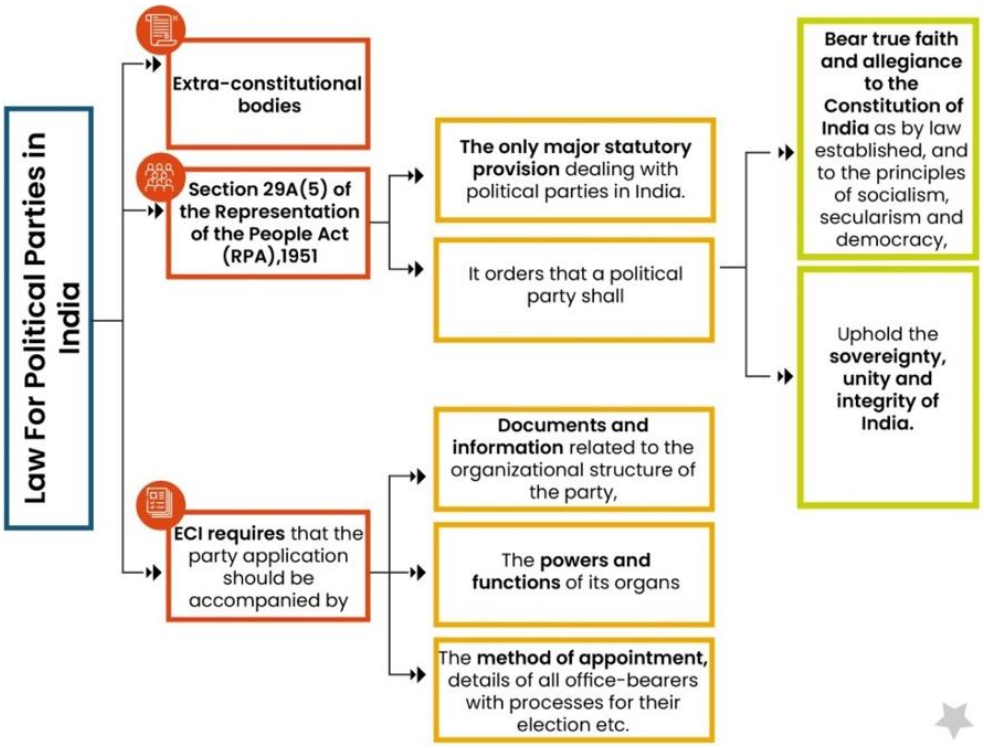
- Internal democracy in political parties **also known as Intra-party democracy** refers to the **level and methods of including party members in the decision making** and deliberation within the party structure.
- It **helps to nurture citizens' political competencies** and **producing more capable representatives** which in turn ensures that party produces better policies and political programmes.
- In India, there are **no explicit provisions in Constitution** that lays down guidelines for regulating the conduct of political parties in India.
  - **Only Section 29 (A) of RPA, 1951** mandates the registration of political parties. (refer infographics)
  - **ECI is also not equipped** to regulate the functioning of political parties.

Need for Internal Party Democracy in India	Challenges for setting up Internal-Party Democracy
• **Ensuring equal representation to participate in politics and contest elections.**	• **Inadequate power with Election Commission:** In **'Indian National Congress vs Institute of Social Welfare & Others', 2002 case,** SC held that **ECI can't penalize registered political parties** for violating inner-party democracy.
• **Prevents nepotism & dynasty politics** (affiliations based on family background, caste, religion etc.)	• **No legal ground on which elections can be mandated** within political parties.
• **Promote transparency and accountability in handling party funds,** thereby reducing influence of money and muscle power.	• **Strict anti-defection law,** which binds party legislators to the party whip, **discourages voting based on individual preferences in legislatures.**
• **Facilitate decentralisation of power and decision making.**	• **Dynastic, caste, and religious parties often exhibit resistance,** with questionable and opaque financial practices.
• **Reduce criminalization of Politics.**	• Party leadership is primarily determined by an inner circle of functionaries, **leading to elitism within political parties.**

Way Forward

- **Constitutional status for political parties.** Ex: Germany gives constitutional status to political parties. As per its law, their internal organisation must conform to democratic principles.
- There should be **specific provision in regulations/ memorandum of party** regarding organisational elections at different levels and periodicity of such elections and terms of office of the office-bearers of the party.

- **Internal elections for leadership positions** should be carried out through debates, meetings and discussions within party. A responsible body within Political parties can solve this purpose.
    - **For instance**, in U.K., Conservative Party has a Central Council and an Executive Committee which elects its President, a Chairman and Vice Chairmen at its annual meeting.



- **Empowering ECI** to deregister parties that fail to comply with rules.
- **State funding of political parties** could bring in equity and accountability among parties.
- **Implement suggestions from committees**
    - Committees like **Dinesh Goswami Committee, Tarkunde Committee and Indrajit Gupta Committee** has argued for more transparent working of the political parties in country.
    - **Draft Political Parties (Registration and Regulation of Affairs) Act, 2011** aims to regulate constitution, functioning, funding, accounts and audit, and other affairs of political parties participating in elections.

5.4. ELECTION FREEBIES

Why in news?

Recently, SC stressed on **creating a balance between welfare of State and economic strain on public exchequer,** while considering a plea seeking directions to ECI to not permit political parties to promise freebies during election campaigns.

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 (refer image):** Example, 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:** Unfair economic choices create imbalances and social divisions, resulting in social division and inequality among beneficiaries.
  - Example, in Rajasthan, 56% of tax and non-tax revenues is spent on pension and salaries.
- **Environment: Example, Free electricity** reduces incentives for farmers and domestic households to **install solar panels** or adopt more efficient public transport systems.

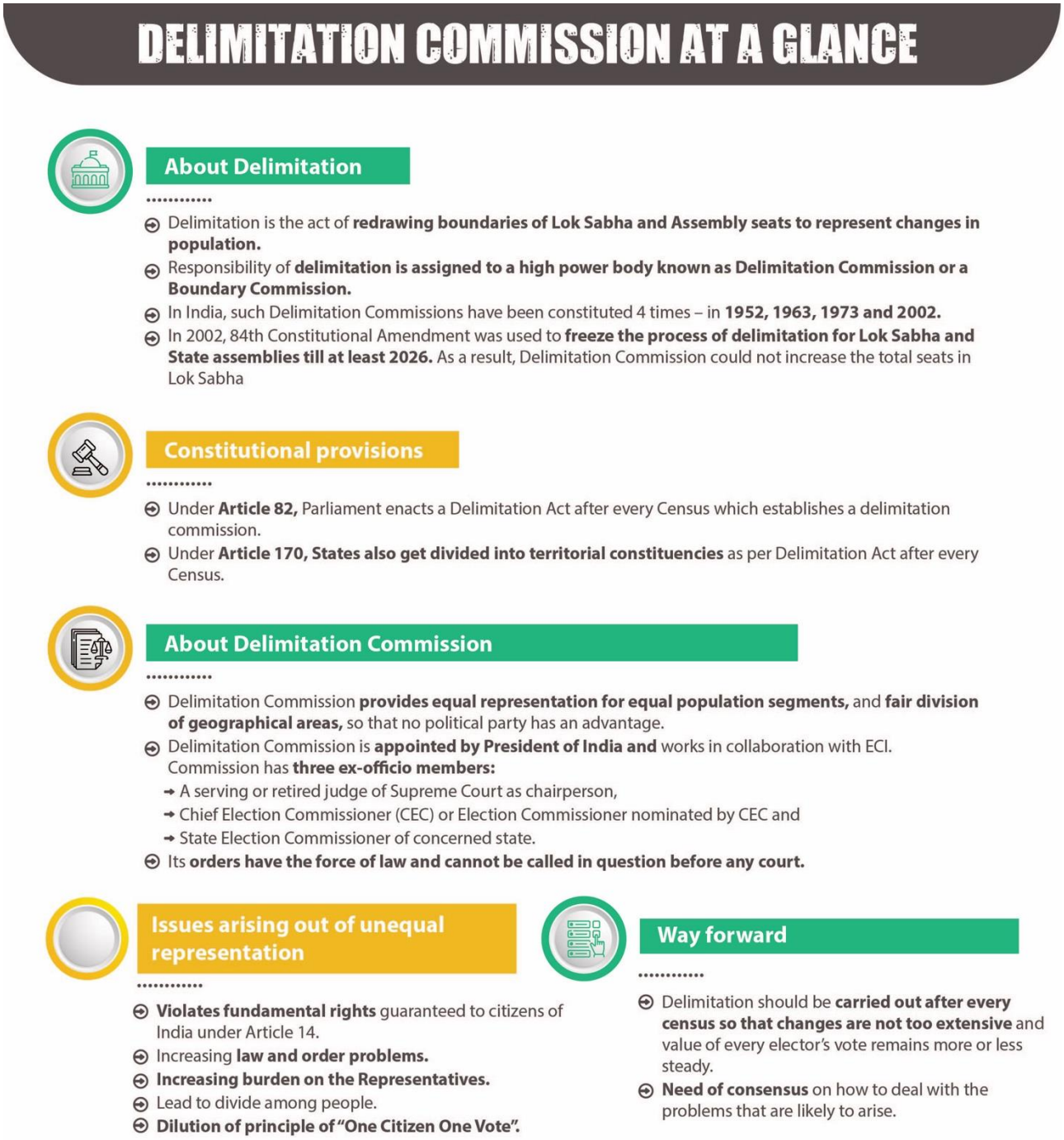
Checking Freebie Politics: Steps taken by ECI

- In **Subramaniam Balaji Vs State of Tamil Nadu (2013),** SC directed ECI to frame guidelines to check freebies in consultation with political parties.
- To ensure electoral process integrity, in 2016 guidelines 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 fulfill to gain electoral trust on feasible promises by:
  - **Reflecting the rationale** behind the promises, and
  - Clarify **Ways and Means** to meet the expenses.

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.
- **Encourage political parties to adopt ethical guidelines** that discourage the distribution of freebies and focus on promoting substantive policies and development agendas.
- **Awareness programmes** to help voters make informed choices based on the candidates' qualifications, policies, and track records, rather than being influenced by freebies.

5.5. DELIMITATION COMMISSION

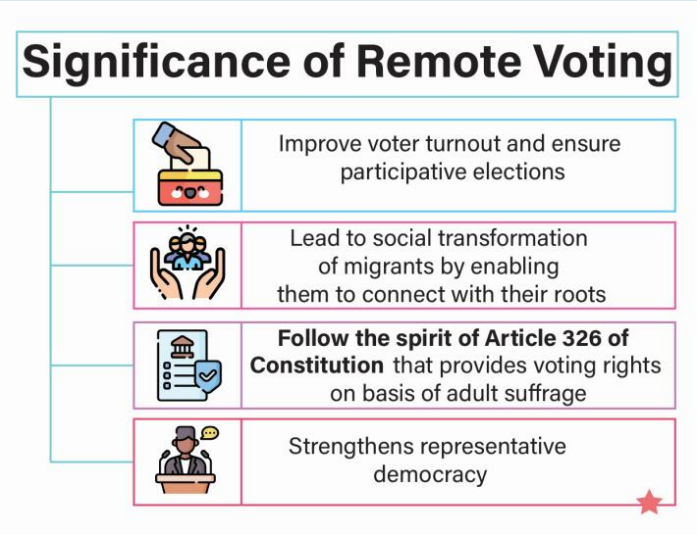


5.6. OTHER IMPORTANT NEWS

Remote Voting for Domestic Migrants	• ECI has **developed a prototype for a Multi-Constituency Remote Electronic Voting Machine (RVM)** which would enable remote voting by migrant voters.
	  ○ **Voter turnout in General Elections 2019 was 67.4 %** indicating over 30 crore electors not exercising their franchise.
	  ○ Apart from urban and youth apathy, **missing vote of domestic migrant is seen as a key factor behind stagnating voter turnout.**
	• RVMs are **stand alone, non-networked system** that will be able to **cater to multiple constituencies** (as many as 72).
	  ○ It will enable migrants **to vote in their home constituencies from a remote location.**
	  ✓ As per 2011 census, **there are nearly 45.36 crore migrants in India** amounting to approximately 37% of country's population.
	• **Remote voting facility for Non-Resident Indians**

- Voting rights for NRIs were **introduced in 2011 through an amendment to RPA 1950.**
- However, **section 20A of the Act** requires overseas electors to be **physically present** in their electoral constituencies to cast their votes.

- **Challenges in implementation**
  - **Administrative:** Enumerating remote voters declaration, maintaining secrecy of voting location, provision of booth setup and personnel, implementation of moral code of conduct etc.
  - **Legal:** several **laws needs relevant amendments** (RPA, 1950 & 1951; Conduct of election rules 1961), process of **defining Migrant worker and Remote voting** etc.
  - **Technological:** Method of remote voting and its counting, familiarity of the voters.



- **Other mechanisms of voting**
  - **Proxy voting (introduced in 2003)**: A registered elector can delegate his voting power to a representative.
    - ✓ Only a **"classified service voter"** which includes members of armed forces, **BSF, CRPF, CISF, General Engineering Reserve Force and Border Road Organisation.**
  - **Electronically Transmitted Postal Ballot System (ETPBS):** Here**, ballot paper is transmitted through Electronic Means to the service voters.**
  - Members of **armed forces, police** (serving outside state), **government employees posted outside India** and their **spouses**; **people under preventive detention**; special voters such as **President of India, Vice President, etc.**

Simultaneous Elections (SE)

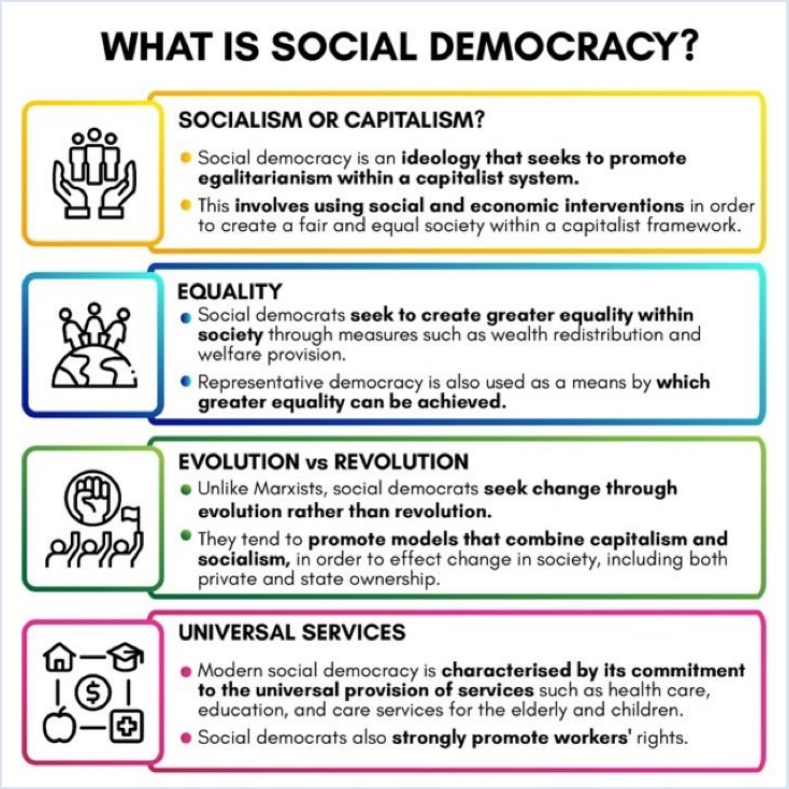
- In a written reply to Lok Sabha, **Minister of Law stated that issue of holding SE** to Lok Sabha and State Assemblies has been **referred to Law Commission.**
  - Idea of SE was **proposed by Election Commission in 1983.** It was also suggested by Law Commission and NITI Aayog.
- Under SE, **Lok Sabha and State Assemblies elections will be synchronized together** such that voters in a particular constituency vote for both on the same day.
  - **SE were the norm until 1967.** But following **dissolution of some Legislative Assemblies** in 1968 and 1969 and that of **Lok Sabha in 1970**, elections to State Assemblies and Parliament **have been held separately**.

Arguments in favour	Arguments against
• **Policy paralysis** due to imposition of Model Code of Conduct over prolonged periods of time. • **Huge expenditures** by political parties, individual candidates, etc. • **Engagement of security forces** impacts their role in other security purposes. • **Disruption of normal public life** and impact on functioning of essential services.	• **Operational feasibility** such as how to synchronize cycle for the first time. • Constitutional requirements such as **Curtailment and extension of terms of Lok Sabha/ State Legislative Assemblies, Amendment to provisions of Constitution** (Article 83, 84, 172, 174, 356) etc. • **National and state issues are different,** holding SE may affect judgment of voters.

Social Democracy

- Nordic model of social democracy is the **combination of social welfare and economic systems** adopted by Nordic countries (Sweden, Norway, Finland, Denmark, and Iceland).
- **Features of social democratic system** include;
  - **Reliance on representative and participatory democratic institutions** where separation of powers is ensured;
  - **Comprehensive social welfare schema with emphasis on publicly provided social services** and investment in child care, education and research among others that are funded by progressive taxation.
  - **Presence of strong labour market institutions** with active labour unions and employer associations.
    - ✓ This **allow for significant collective bargaining, wage negotiations** and coordination besides an active role in governance and policy.

- This model has **helped these countries achieve significant outcomes** like:
  - High levels of international trade and participation in globalization; Economic progress; Low levels of inequality; High living standards; Highest labour participation rates in world.
- **Key reasons for thriving social democratic model** in Nordic countries has been their **relatively smaller and more homogenous populations** enabling focused governance.
- However, **aging populations and immigration are posing recent challenges** to Nordic model of social democracy.



6. GOVERNANCE

6.1. CENSORSHIP

CENSORSHIP TOPIC AT A GLANCE

Censorship refers to **official prohibition or restriction of any type of expression** such as films, books, television shows etc. believed to threaten the political, social, or moral order. It may be **imposed by a governmental authority, local or national, by a religious body, or occasionally** by a powerful private group. It **represents denial of freedom of speech, of expression and of information** but is also **considered rational based on factors ranging from political** (sedition, treason, national security), religious (blasphemy, heresy), moral (obscenity, impiety), to social (incivility, irreverence, disorder).

Framework governing Censorship in India

- **Central Bureau of Film Certification (CBFC),** operational **under Cinematography Act 1952,** regulates public exhibition of films.
- **IT (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2023** regulate content on digital media such as Social Media Intermediaries, online platforms like Facebook, twitter etc.
- **Cable Television Networks Regulation Act, 1995** regulates **broadcasting of programmes on television** along with bodies such as News Broadcasters Association (NBA) and Indian Broadcasting Foundation (IBF).
- **Press Council of India (PCI) maintains and improves the standards of newspapers** and news agencies.
- **Section 95 of Code of Criminal Procedure** allows state government to forfeiture of certain content/ publications.

Need of Censorship in India

- **Maintains Sovereignty and Security** of State by preventing misuse of social media by criminals or anti-national elements.
- **Guarantees personal liberty** by restricting activities such as cyber bullying, trolling, offensive and defamatory content, online sexual harassment etc.
- **Limits spread of Fake news.**
- **Prevents religious and ethnic violence by controlling hate speech which is politically sensitive** and can create inflammable situations.
- **Protects children from exposure to psychologically damaging matters** like obscene or violent content or glorified portrayal of anti-social or unhealthy behaviour.
- **Increases social solidarity** by avoiding insults to shared values e.g., a prohibition on flag burning.

Issues in Censorship

- **Threat to democracy** as it may discourage dissent.
- **Deprives citizens of freedom** of information.
- **May lead to Self-censorship.**
- **Limits creative freedom** and personal autonomy.
- **Can promote an environment of intolerance** towards progressive and new ideas.
- **Lead to suppression of marginalized voices. Restrict growth of Indian cinema/television industries** and infringe upon citizen's right to choose.
- **Implementation challenges** like **lack of objective boundaries, Potential for misuse,** over regulation and abuse, censored content may move underground.

Way forward

- **Encouraging Self-regulation** by including civil society's representatives like business owner and artists, retired judges, professionals etc.
- **Granting citizens the right to choose and consume content** through steps such as usage of content warnings.
- **Promoting professional education** in the media and codifying all media laws.
- **Placing restrictions** upon free speech only to prevent infliction of actual harm based on objectives standards.
- **Adopting proactive or non-punitive steps** to address hate speech such as public education, encouraging diversity etc.

6.2. REGULATION OF FAKE NEWS

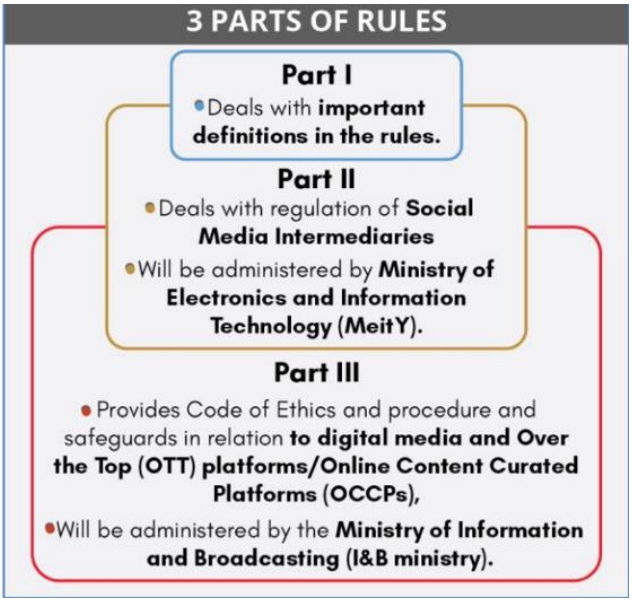
Why in News?

Recently, **MeitY** notified the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023.**

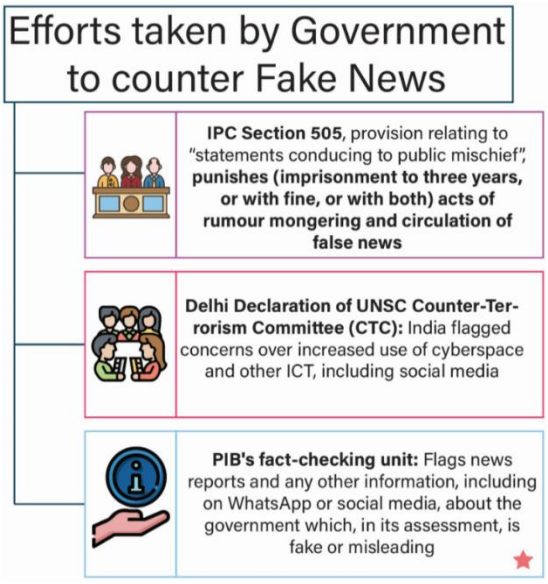
New Amendments in IT Rules 2021

- **Defined Words** such as **'Digital media'** and **'News and current affairs content'**.
- **Due diligence:** Social media intermediaries (such as Facebook, Twitter) and telecom service providers have to inform the user about new rules.
- **Nodal contact person: 24x7 coordination** with law enforcement agencies and officers to ensure compliance to their orders or requisitions.
- **Fact-checking unit of Press Information Bureau (PIB):** Any piece of news that has been identified as "fake" by fact-checking unit, will not be allowed on online intermediaries.
- **Grievance Officer:** Appointed by intermediary or the publisher.
- **Grievance Appellate Committee (GAC):** Central Government shall, by notification, establish one or more GACs.
  - Each GAC will consist of **a chairperson and two whole time members** appointed by Central government.
  - GAC will **hear appeals by social media users against decisions of grievance officers** appointed by intermediary.
- **Online Dispute Resolution Mechanism**, i.e. digital mode of the entire appeal process, from filing of appeal to the decision.
- **Obligations for intermediary:** Intermediaries can develop and implement "appropriate safeguards" to prevent misuse of the grievance redressal mechanism.
- **Time bound:** Companies will be required to **acknowledge complaints from users within 24 hours and resolve them within 15 days or 72 hours in case of an information takedown request**.

Issues arising due to Fake online content



- **Rise in number of Fake News:** Total of 1,527 cases of fake news were recorded in 2020 against 486 cases in 2019 (**NCRB report**).
- **Rise in rate of communal violence**: For example, sharing a fake image and passing it off as one from West Bengal's North 24 Parganas led to communal violence in 2017.
- **Use by Militants and anti-social organisations** for spreading propaganda, radicalisation and conspiracy theories for destabilising societies.
  - Recently, Ministry of Information & Broadcasting has ordered blocking of 35 YouTube based news channels and 2 websites which were involved in spreading **anti-India fake news**.
- **Malign the reputation of organizations** and to manipulate stock markets. E.g., **'Arctic Ready'** hoax targeting **Shell** in 2012.
- **Affecting Free and Fair Elections** by influencing voter behavior based on religion, caste, region, etc. It can also lead to **political polarization and post-truth politics**.



Challenges in countering Fake news

- **Information overload:** Large volumes of information available online makes it difficult for regulators to verify accuracy of every piece of information.
- **High speed of information dissemination:** Advent of Social media platforms has drastically increased the speed of information flow. This makes timely identification and removal of fake news difficult.
- **Lack of Media Literacy:** Large proportion of citizens lack skills to clearly differentiate between reliable and unreliable sources.
- **Maintaining a balance with Freedom of speech:** Countering fake news in certain instances involves controlling the information flow which can hamper freedom of speech and expression. Therefore, a delicate balance between them needs to be ensured.

Way forward

- **Coordination between various stakeholders:** Governments, private sector, public sector, and civil society are needed to harness new and emerging technologies for global good.
- **Enacting a Specific law:** For addressing harms caused by misinformation in their relevant contexts (for example, health or election misinformation).
- **Changing behaviour of citizens:** Towards false/fake news and generating media literacy with regard to authenticity of sources and information.
  - **Promoting idea of FactShala,** a collaborative and multi-stakeholder media literacy network pioneered by over 250 journalists and experts.
- **Balancing Fake news and Freedom of speech:** Creating transparent criteria for identifying and addressing fake news followed by measures that are necessary and proportionate to the extent of the problem.

6.2.1. DIGITAL SERVICES ACT

Why in news?

The European Union (EU) has confirmed that the online content regulations under the Digital Services Act (DSA) of the European Union (EU) will be applied to a total of 19 platforms, including prominent entities like Google, Apple, and Facebook.

About Digital Services Act (DSA)

- DSA is a **first-of-a-kind regulatory toolbox** globally and sets a benchmark for a regulatory approach to online intermediaries.
- In 2020, DSA together with Digital Markets Act (DMA) proposed a **comprehensive framework to ensure a safer, more fair digital space** (will be applicable from 2024).
  - **DMA** affects gatekeeper platforms like Google, Amazon and Meta, and **covers the need for user consent before processing personal data** for targeted advertising.

How does the EU's DSA compare with India's laws for digital content regulation?

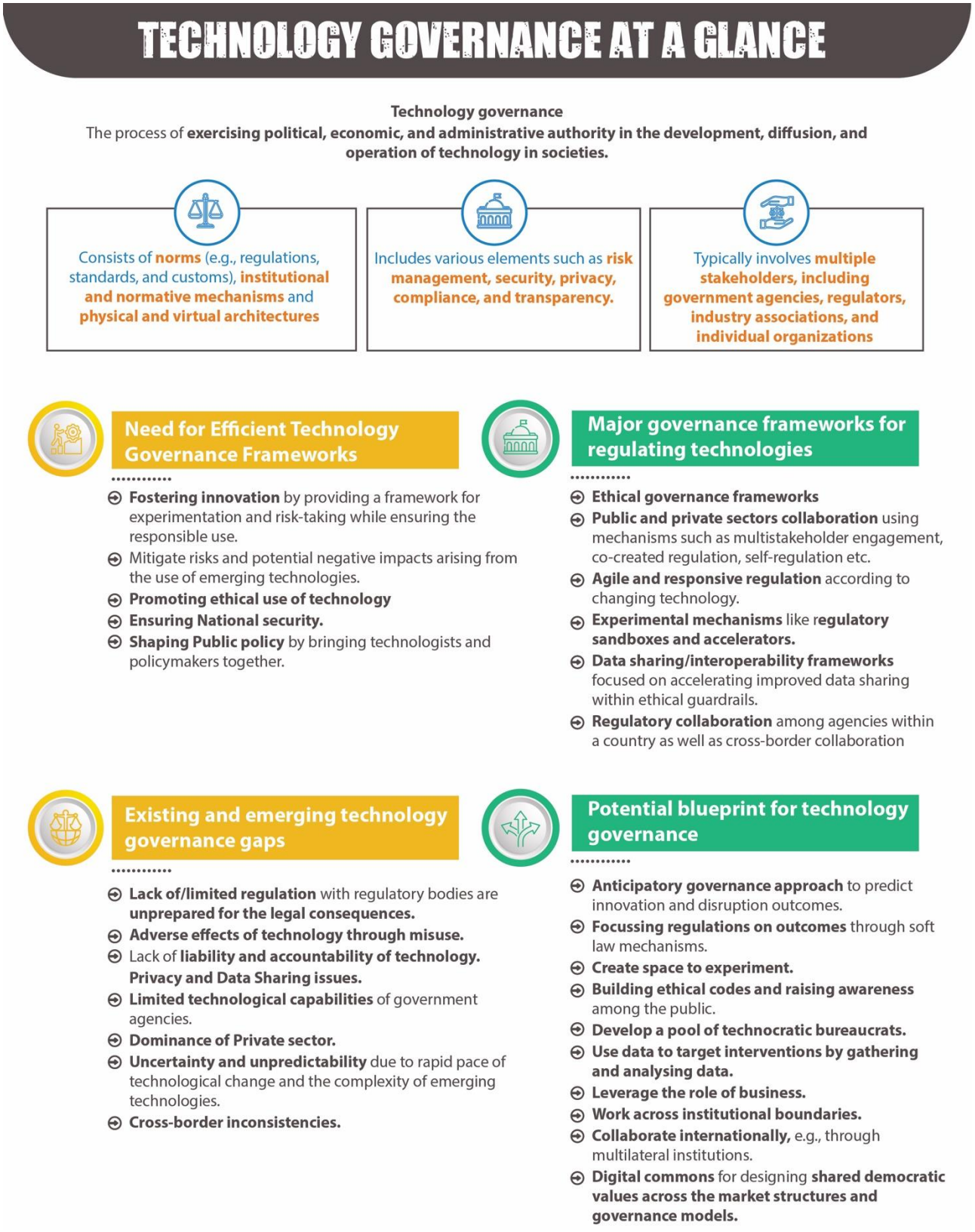
- India's Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, also known as the IT Rules, 2021 are **similar to EU's DSA in terms of Due Diligence Requirements on social media platforms, Content Regulation and a Co-Regulatory approach** for monitoring compliance and for grievance redressal.
- However, there are also **some differences** in their approach and scope:

Key Provisions	India's IT Rules (Information Technology Rules, 2021)	EU's DSA
Scope	Applies to **social media intermediaries, digital news publishers, and OTT platforms** operating in India, irrespective of their country.	DSA applies to a **wider range of online platforms**, including social media, online marketplaces, and cloud computing services operating in EU, irrespective of their country.
Content Moderation	Rules require **social media intermediaries to appoint a grievance officer, a nodal officer, and a chief compliance officer**, and establish a mechanism for receiving and resolving complaints from users.	DSA **proposes a range of compliance requirements** for online platforms, including content moderation measures, transparency obligations, and data protection requirements.

Conclusion

Overall, the DSA is a more comprehensive regulatory framework, taking a more nuanced approach to governing digital content and online platforms. However, the effectiveness of each will depend on how they are implemented and enforced.

6.3. TECHNOLOGY GOVERNANCE



6.4. REGULATION OF ONLINE GAMING

Why in News?

MeitY has amended the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules (IT Rules) 2021.**

More on News

- Aim of these amendments is to **enforce greater due diligence by online gaming and social media intermediaries** in respect of online games & fake misleading information related to Government business.
- Rules and amendments have been brought out under **Section 87 of IT Act, 2000**.

Key features of Rules on Online Gaming

Specifications	Details
Clear Definitions	• **Online games and Online Gaming Intermediary (OGI).** • OGI means any intermediary that enables users of its computer resource to access one or more online games.
Role of Intermediaries	• To make a reasonable effort to **not host, publish or share any online game** that can **cause user harm**, or that has **not been verified as a permissible online game** by an **online gaming Self-Regulatory Body (SRBs)** designated by Central Government.
Additional Obligations on OGI	• Displaying of a **mark of verification** by SRBs on such games. • **Informing their users of policy** for withdrawal or refund of deposit. • Obtaining **KYC details** of users. • **Not giving credit or enabling financing** by third parties to users.
Multiple SRBs	• For the purposes of verifying an online game as a permissible one. An SRB should fulfill following criteria: o **Company registered** under Section 8 (Not-for-Profit entity) of Companies Act 2013. o **Representative of online gaming industry**, promoting online games in responsible manner. o Incorporates provisions related to **grievance redressal, disclosure and reporting** and clear criteria for membership.
Authority of SRBs	• SRB may categories any game as a permissible game if it is satisfied that: o Online game **does not involve wagering** on any outcome, o OGI and game **comply with rules** and requirements under law for being competent to enter into a contract (currently at 18 years). o OGI and game **complies with framework made by SRB** regarding safeguards.
Prohibition	• Online games that involve any kind of gambling (including ads).

Concerns with Regulating Online Gaming Activities

- **Game of skill vs. Game of chance:** Indian laws allow games of skill while prohibiting games of chance. Rules do **not** bring any **clarity on definition of a game of skill and a game of chance**.
- **Obstacles to foreign investment:** India does **not permit FDI in betting and gambling**, hence lack of clarity in defining games of skill may hinder foreign investment in this sector.
- **SRB discretion:** It is **subjective discretion of SRBs** to ascertain if an online game does not involve wagering, i.e., element of chance.
- **Different state laws: Gambling** (whether offline or online) and **betting** is a **state subject** (under Entry 34), which means that **each state can make laws** to regulate online gaming and those laws will supersede rules.
    - This enables **different legal frameworks in different states.** For instance, Tamil Nadu recently banned Online Real Money games in alignment with Telangana, Andhra Pradesh, Assam and Odisha.

Conclusion

Amended IT rules provide **significant clarity to Online Gaming Ecosystem**. For effective regulation of Online Gaming, these rules need to be accompanied by clear definitions, multi-stakeholder engagement (including State and Union Governments), and most importantly **acknowledgement of the size and importance of this industry.**

6.5. INTERNET SHUTDOWN

INTERNET SHUTDOWN AT A GLANCE

Internet shutdowns include **actions that restrict access to internet completely,** or **slow down speed,** or **restrict certain content.**

As per report published by Human Rights Watch and Internet Freedom Foundation, **at least 54 out of 127 internet shutdowns** reported between 2020 and 2022 in India **were in response to protests.** Also, **most number of shutdowns** was observed in Rajasthan.

Techniques used to shutdown internet include DNS Tampering, IP **Blocking, URL filtering etc.**

Provision for Internet shutdown

- **Currently, suspension of telecom services (including internet shutdowns) is governed by Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017,** notified under Indian Telegraph Act, 1885.
- 2017 Rules provide for a temporary shutdown of telecom services in a region on **grounds of public emergency** (up to 15 days at once).
- Such directions can be issued **by Secretary to Government of India in Ministry of Home Affairs in case of Government of India** or by **Secretary to the State Government in-charge of Home Department** in case of a State Government.

Rationale behind usage of Internet Shutdown

- **Maintaining peace:** Misinformation and rumours can lead to deterioration in law and order in an area.
- **Containing fake news:** Internet provides a **faster medium to spread fake news and it became essential for government to ban the spread of audio and videos** through apps like Twitter, WhatsApp, etc.
- **Against terrorism:** To defeat the nefarious designs from across the border to propagate terrorism.
- **National Security:** It is the most frequently cited justification for internet shutdowns globally.
- **Exams:** An increasingly popular form of shutdown aims at stopping students from cheating on exams.

Impact of Internet Shutdown

- **Economic Impact:** In a study quoted by UN, it was suggested that **shutdowns in 46 countries between 2019 and 2021 had led to losses amounting to $20.54 billion.**
- **Impact healthcare:** Supply chains and flow of information critical to the delivery of goods and services can be disrupted.
- **Disrupts political transparency:** Such disruptions **undermine or eliminate access to digital tools** that are critical for campaigning promoting public discussion, conducting voting and overseeing electoral processes.
- **Risk to privacy:** For example, when people turn to untrustworthy VPNs to route around restrictions, their personal data is at risk.
- **Impact education:** They **undermine pedagogical outcomes and interfere with education planning** and communication among teachers, school administrators, and families.
- **Impact on journalism:** It can **harper the reach of on-the-ground reporting** and cause underreporting of local issues.
- **Impact fundamental rights** to speech, conduct business, access healthcare, express dissent, and movement of people in a state.

Way forward

- **Certain apps or websites could be banned,** where possibility of rumours being widely circulated is high.
- **Internet companies should engage and collaborate with stakeholders** including government and civil society to prevent disruption due to shut down.
- **Defining terms like 'public emergency'** to avoid their usage without due cause.
- **Efforts to improve digital media literacy should be expanded,** and international partners should invest in digital literacy, including access to basic digital security skills.
- **Centralized database of all internet shutdowns** by states can be maintained either by DoT or MHA. DoT should lay down a clear-cut **principle of proportionality and procedure** for lifting of shutdown in coordination with MHA.

6.6. SPORTS GOVERNANCE

Why in News?

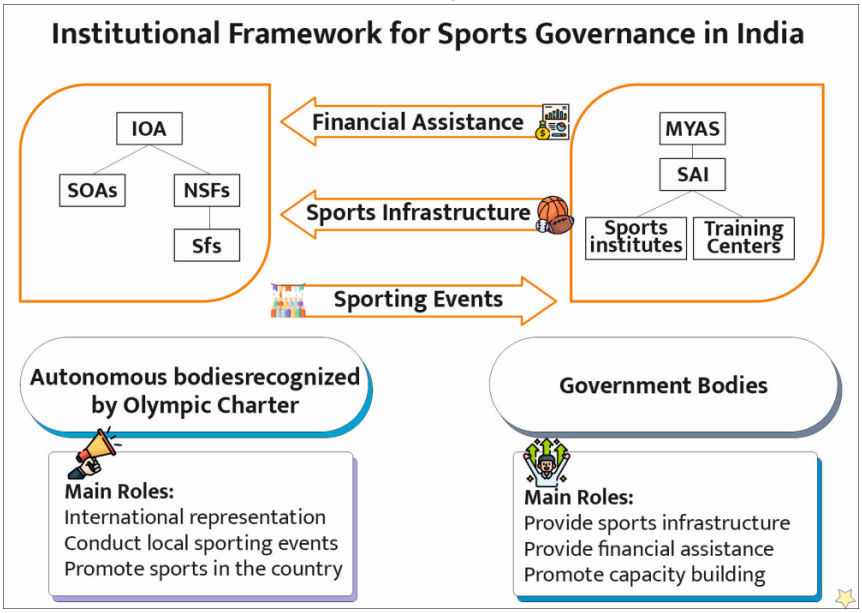
After the dissolution of **Committee of Administrators (CoA)** by **SC**, the **Bureau of FIFA Council** has lifted the suspension on **All India Football Federation (AIFF)**.

More on News

- CoA was appointed by SC to manage **AIFF affairs** and **adoption of its constitution** in line with **National Sports Code and Model Guidelines**.
- **Dissolution of CoA** was a necessary condition from FIFA to lift **AIFF suspension** as it gives AIFF full control on its daily affairs.
  - Earlier, FIFA suspended AIFF due to **'undue influence from third parties'**- a **serious violation under FIFA Statutes**.
- It also helped India to **hold FIFA U-17 Women's World Cup 2022.**

Sports Governance and Administration in India

- Sports governance is defined as **the system by which sports organisations are governed.** This includes defining of the **strategic objectives** and **framework,** i.e.
  - The process of **oversight** (**rules and policies**).
  - The **direction** (**mission, objectives and strategies**), based on which decisions are made and implemented in a sport organisations.



- In India, this oversight and direction is broadly divided under **two wings** (see **image**) as:
  - **Ministry of Youth Affairs and Sports** (MYAS) and its subordinate organisations (e.g. **Sports Authority of India (SAI)**; and
  - **Sports Organisations** under **Olympic Charter**, i.e. **Indian Olympic Association (IOA), State Olympic Association (SOA), National Sports Federation (NSF)** etc.
  - **For non-Olympic sports** such as Cricket, the organisations (**Board of Control for Cricket in India**) have direct affiliation from respective **international federations**.

Issues in Sports Organisations and its impact

Administrative Issues	• **Unclear roles and responsibilities** due to presence of Multiple organisations at various levels **in sports ecosystem.** • **Lack of Professionalism** because of stronghold of **politicians, retired bureaucrats and businessmen** over sports organisations. • **Poor Differentiation in Governance and Management** leading to unwanted compromise on one aspect. • **Inadequate Representation of Athlete's in electoral colleges, i**.e., lack of voice of sportspersons in sports administration. • Sports organisations also face issues of **discrimination** (based on sex or region), **prevalence of unethical practices** such as **doping** and **unauthorized betting** in sports.
Financial Issues	• **Limited Union Government funding**, as **sports is a state subject** (Entry 33 of the State List) and **Financial Irregularities** further multiplies financial issues.
Cooperation and Coordination Issues	• **Governance Structure:** Except some sports like cricket, hockey, badminton, kabaddi etc., India does not have a clear and functional architecture of sporting federations and events. • **Multiple Actors:** Involvement of state governments, local and district bodies, private businesses (through CSR or through sports leagues) etc. in sports management makes ground level cooperation and coordination difficult.

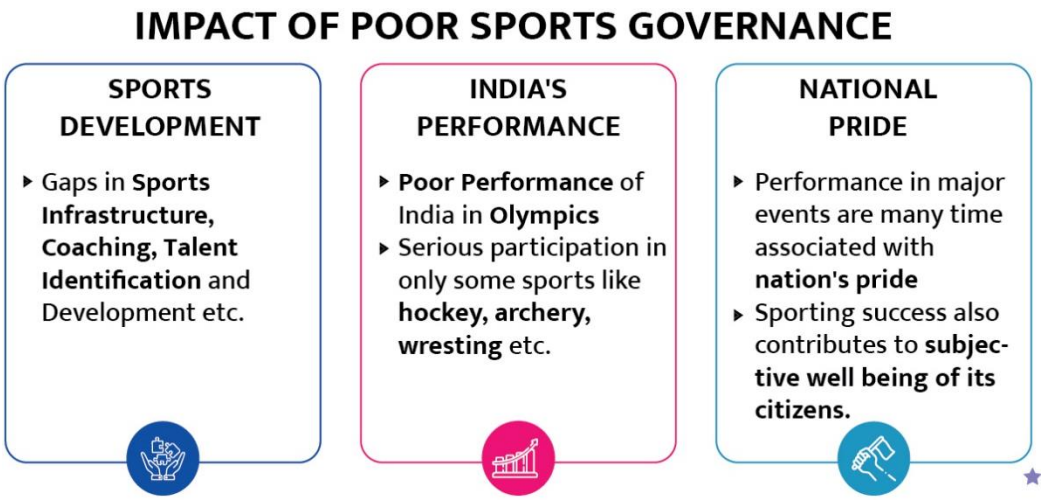
Transparency Issues	• **Poor Accountability and Transparency:** Sports organisations enjoy large discretionary powers leading to issues of **Opaque Decision Making, corruption,** etc.

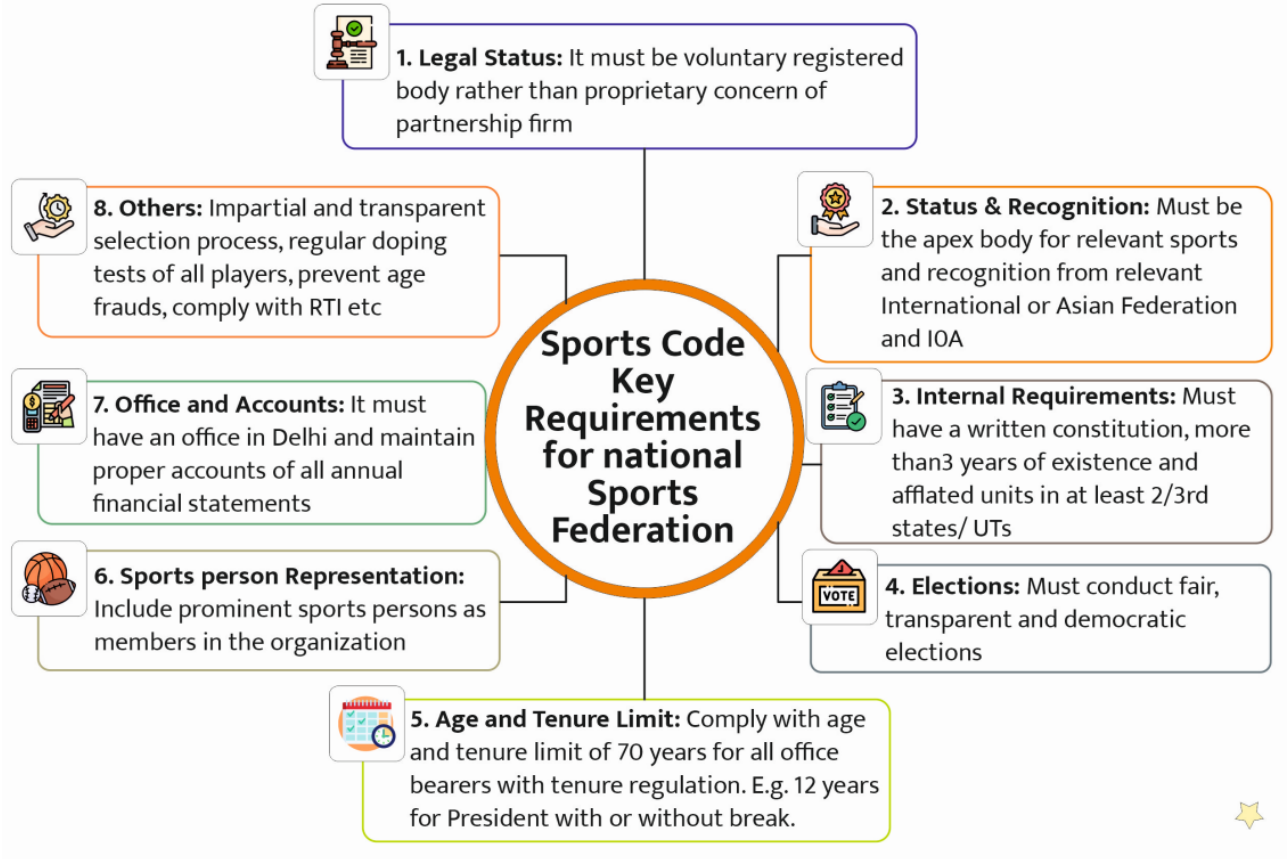
Government Initiatives to address issues in Sports Governance

- **Direct or indirect financial assistance** to **sports federations**. E.g., tax benefits.
- **Sports facilities** for hosting events to NSFs.
- **National Sports Development Code of India, 2011** Aka **Sports Code:** Assembling various government notifications issued since **1975** and important court orders.
  - It provides **minimum standards** to be complied by **sports body** to retain sports ministry's annual recognition and enjoy privileges such as fielding national teams, using national symbols, and receiving government funding (see **image**).
  - It is recognized by **Delhi High Court** as **binding administrative directions** to be complied by **federations for recognition.**

Private Sector Entry in Sports

- Although new to Indian sports, it has **helped in increasing money flow, professionalism, and talent identification** opportunities.
- At the same time, it is leading to issues of **profit as sole motivation, conflict of interests, illegal betting** etc. impacting integrity of sports and players.
  - E.g., Chennai Super Kings and Rajasthan Royals owners' involvement in illegal betting in confluence with players.





Way Forward

- **Framing well-defined sports legislation** to separate governance and management with proper checks and balances with optimized role of every stakeholder in sports governance.
- **Professional Sports Governance and Administration** to curb the abuse of power.
- **Develop Educational Resources on Governance** and **promote collaboration to optimize resources** use and services to meet the needs of sport.
    - E.g., **Governance Principles** for a **values-driven culture, game-plan and measures** to ensure **integrity, accountability, and transparency**.
- **Introduce and Enforce Accountability and Transparency Requirements** such as mandatory Public Disclosures for administrative decisions, regular issuing of statements etc.
- **Adopt Bottom-up approach** to reconstitute and reform district and state bodies which ultimately leads to the national sports governance pyramid.

7. LOCAL GOVERNANCE

7.1. DEMOCRATIC DECENTRALISATION IN INDIA

DEMOCRATIC DECENTRALISATION AT A GLANCE

Democratic Decentralisation in India refers to the devolution of power, resources and decision-making authority from central government to local governments, such as panchayats and municipalities. It was introduced by **73rd** (Constitutionalized PRIs) **and 74th** (Constitutionalized Urban Local government) **Constitutional Amendment Acts, 1992,** empowering local self-government institutions.

Significance of Democratic Decentralisation in India

- **Empowerment of local communities.**
- **Strengthening democracy.**
- Promoting **inclusive development.**
- **Greater representation of marginalised communities.**
- Enhancing **efficiency and effectiveness of public service delivery.**

Significant achievements after Democratic Decentralisation

- Proportion of elected women representatives has been rising since enactment of 73rd amendment Act.
  - Currently, **49 percent of elected local representatives (1.4 million) are women** and **over 4 lakh members belonged to SCs and STs.**
- **Increased spending on community-based welfare** for women, and increased reporting of crimes.
- Healthy competition among various states regarding devolution of 3Fs **(funds, functions, and functionaries).**

Challenges associated with Democratic Decentralisation

- PRIs and Urban Local Bodies (ULBs) **lack control over key areas like education, health, and policing.**
- **Economic Inequalities** as some states and districts have better resources and infrastructure than others.
- **Bureaucratic hurdles** faced by PRIs and ULBs in executing their plans and projects, including delays in approvals, inefficient implementation, and corruption.
- **Lack of political will.**
- **Creation of parallel bodies** by many states to take over the functions assigned for panchayats. **Example,** Haryana created **Rural Development Agency.**
- Women and marginalized communities often face **discrimination in local decision-making processes.**
- **Lack of accountability** and transparency in local decision-making processes.
- **Lack of necessary technical and administrative capacity** in PRIs and ULBs to manage their functions effectively.

Steps taken to strengthen Panchayati Raj Institutions (PRIs)

- **Rashtriya Gram Swaraj Abhiyan** for developing and strengthening capacities of PRIs to become more responsive.
- **e-Gram Swaraj,** web-based portal, unifies planning, accounting, and monitoring functions of Gram Panchayats.
- **People's Plan Campaign (PPC)- Sabki Yojana Sabka Vikas-** to draw up Gram Panchayat Development Plans (GPDPs) in country.
- **National Institute of Rural Development and Panchayati Raj,** an autonomous organisation under Ministry of Rural Development, for **capacity building of rural development** functionaries etc.
- **SWAMITVA Scheme** provides 'record of rights' to village household owners issuance of property cards to property owners.
- Under **Backward Regions Grants Fund (BRGF),** untied funds are given for meeting critical gaps in local infrastructure.

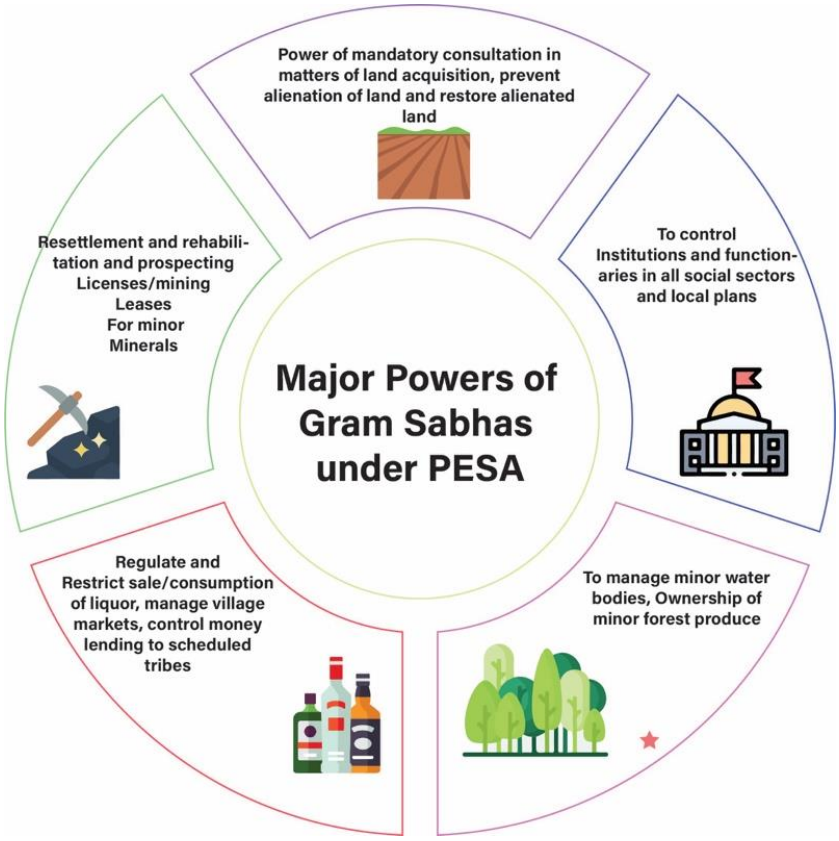
Way Forward

- **Strengthening financial devolution** through **higher allocation of funds from Finance Commissions,** and by exploring innovative sources of financing such as municipal bonds.
- **Provide Capacity building and training** to elected representatives and officials in PRIs through establishment of dedicated training centres and by **developing training modules** in regional languages.
- **Empowering PRIs through legislation.** This can include **provisions for participatory planning, public disclosure of budgets and plans,** etc.
- Efficient **implementation of and awareness building about e-governance platforms** such as online portals and mobile applications that enable citizens to interact with PRIs.
- **Empower women Elected Representatives in PRIs** through training and capacity building to curb prevalent concepts "Sarpanch Pati" or "Pradhan Pati".

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

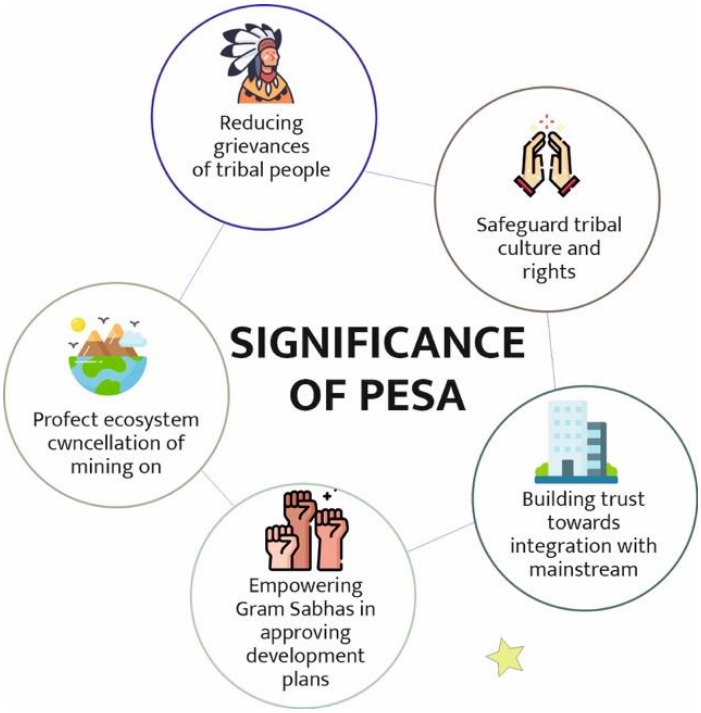
Why in news?

Jharkhand government would soon implement the Panchayat (Extension to Scheduled Areas) Act, 1996, in the state.



About PESA Act, 1996

- **Article 243M exempts Fifth Schedule areas from Part IX of Constitution** but Parliament is empowered to extend its provisions to Scheduled and Tribal Areas by law without it being considered as an amendment to Constitution.
- Based on recommendations of **Dileep Singh Bhuria Committee**, PESA Act was **enacted in 1996** for tribal empowerment and to bring them into mainstream.
- PESA Act is called a **'Constitution within the Constitution'** as it **provides for the extension of provisions of Part IX of Constitution** relating to Panchayats to Scheduled Areas of **10 States** under **Article 244(1) read with Schedule 5,** with certain modifications and exceptions.
    - Ten states are Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana.
- It **recognizes the role of Gram Sabha and community in these areas** and directs 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, 1996

- **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 shall have a Gram Sabha** consisting of persons whose names are included in the electoral rolls for Panchayat at 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.
- **Gram Sabhas has roles and responsibilities in approving all development works** in village, identify beneficiaries, issue certificates of utilization of funds; powers to control institutions and functionaries in all social sectors and local plans.

- Every panchayat to have **reservation of seats** in proportion to the community population (**minimum of 50 percent**) with **Chairperson of Panchayats** at all level to be **reserved for STs.**

Limitations of PESA Act

- **PESA Rules**: Four major tribal States namely **Jharkhand, Chhattisgarh, MP and Odisha are yet to frame PESA Rules**.
- **Use of unfair means for bypassing 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**.

Way forward

- **Awareness and publicity for meetings** of Gram Sabha need to be improved.
- **Panchayat finances should be decentralised towards creation of independent accounts** for each Gram Sabha.
  - **Gram Sabhas should be given with full financial autonomy** for their operations including control over revenues generated out of giving licenses for the exploitation of the minor water bodies and minor minerals.
- **Appropriate measure should be taken to ensure at least one third participation of women** in all meetings at the Gram Sabha level.
- **Community ownership** of resources in PESA areas should be **integrated into provisions of Centrally Sponsored Schemes**.
- There is an **urgent need to amend Indian Forest Act, Land Acquisition Act, and other related Acts** so that the ownership of minor forest produce, water bodies and land resources are explicitly handed over to Gram Sabhas of the PESA areas.

7.3. AUDIT DATA STANDARDISATION

Why in the news?

Recently, CAG of India said that the government must adopt **audit data standards.**

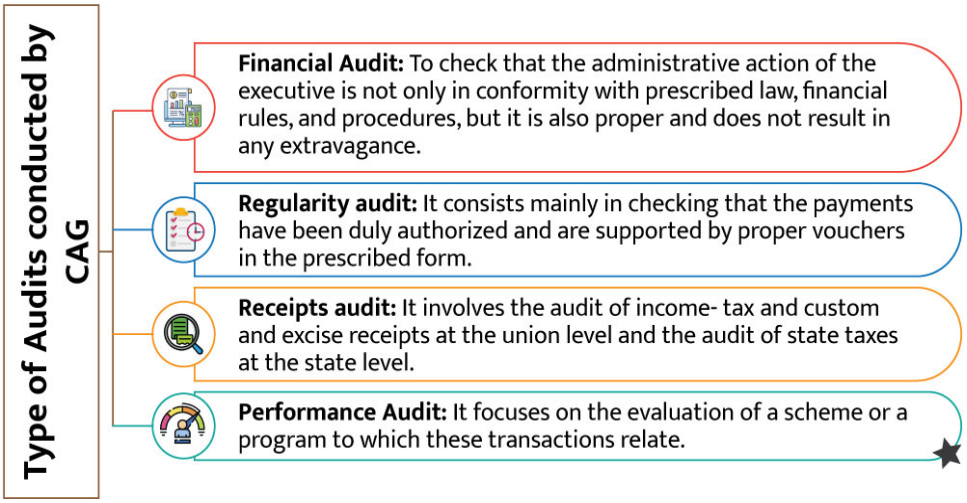
Present system of Audit

- **Statutory Audit**: It refers to the audit conducted by **CAG through the agency of Indian Audit and Accounts Department.**
  - As per **Constitution as well as by the Duties, Power, and Condition of service Act, 1971,** it is the function of CAG to
    - ✓ Audit all expenditures from Consolidated Fund of India, States and UTs with Legislature.
    - ✓ Audit all transactions of Union and of states **relating to contingency funds and public accounts.**
    - ✓ CAG is empowered to inspect **any office connected with the transaction to which his/ her authority extends.**
- **Internal Audit** is internal to the organization. It is conducted by an **agency or department created by management of organization.**
  - It is an integral part of organization and functions **directly under Chief Executive.**
  - Extent of CAG is limited to **test checking of internal audit work**.

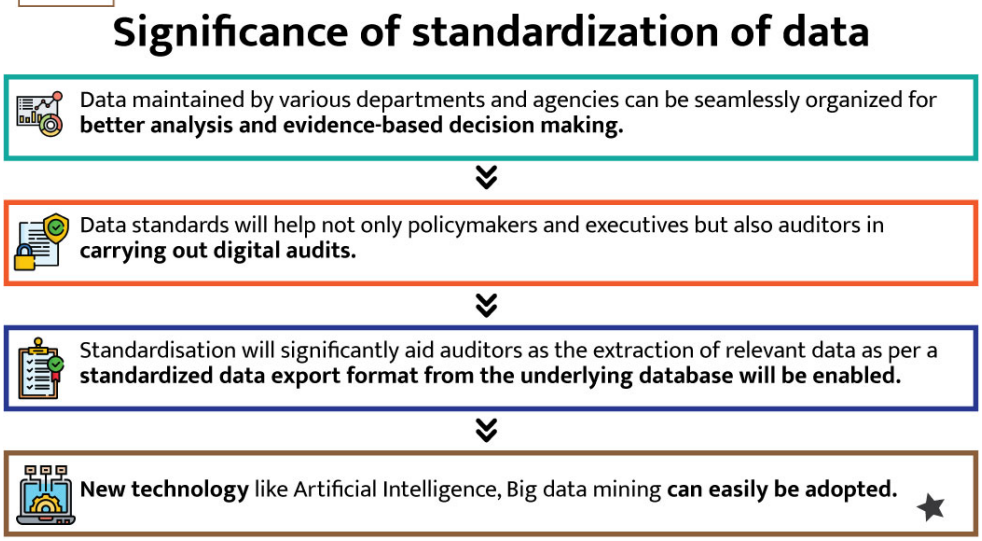
Issues with the existing Audit system

- **Lack of audit standardization:** Government agencies and departments collect vast amounts of data that are not shared among them or provided in machine-readable format, hindering integration and timely utilization.
- **No Powers to Enforce Audit Findings**
- **Chaotic accounts of state companies:**

- **CAG's Act is silent on issue when a public official spends money that** is not legally available.
- **Appointment of CAG undermines federalism** as Centre appoints without state government consultation.



Ways for Data standardization and evidence-based decision making



- **Conduct quality assurance, standardize formats, and integrate data into a centralized state repository** for effective data management
- Enable **data sharing in real-time through Application Programming Interfaces (API)** between data stored across different databases and across ministries in a central location for easy access by public.
- Both **administrative and survey data need to be collected in digital formats** across various sectors in real time to move from paper-based to digitally driven operations.
- **Ensure availability of data at a more granular level** – village/block/district.
- **Tertiary big data collected by private third parties should be used** for better governance and evidence-based policymaking.
- **Data scientists with multiple skills** in areas of statistics, analytics, computer science, and programming should be incorporated into the Indian government.

Reform required in the functioning of CAG
- **Qualification for CAG** should be laid down.
- **Constitutional status** to the state accountant general.
- All publicly funded bodies should fall **under the ambit of CAG.**
- **Quasi-judicial power** should be given.

7.3.1. AUDIT OF LOCAL SELF GOVERNMENT

Why in News?

CAG is planning to expand its presence up to the district level **to exercise audit control over three tiers Panchayati Raj Institution (PRI).**

More about news

- At present, CAG **has presence in state capitals and its accountant general's office** is responsible for auditing accounts of state governments.
- While government departments draw funds from consolidated fund, PRIs draw money from separate fund accounts kept in **bank or treasury.**
- As reported, the **CAG has now decided to assert its constitutional mandate to supervise all government expenditure** whether drawn from the consolidated fund or the state treasury.

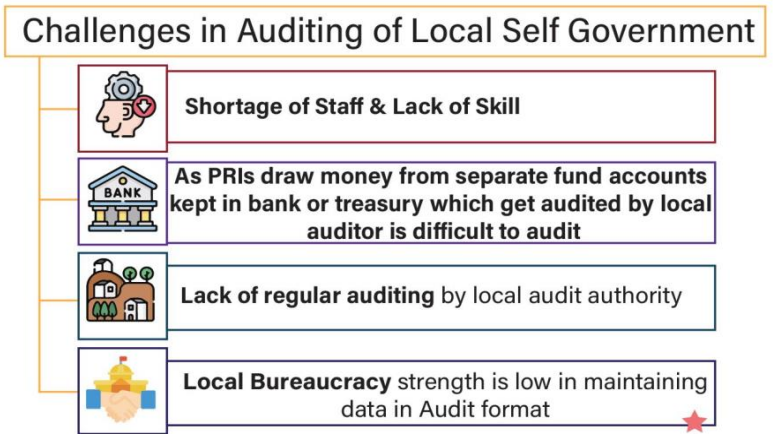
- PRIs come under the purview of audit **under Comptroller and Auditor-General's (Duties, Powers, and Conditions of Service) Act, 1971.**

Case study: Malur in Kolar District, Karnataka

- Audit scrutiny of records (2001–03) of Executive Officer (EO), Taluk Panchayat (TP), Malur in Kolar District disclosed that the EO **misappropriated funds aggregating Rs. 1.74 crore** by preferring fraudulent claims of works/supply bills in violation of Codal provisions.
- Sub-Treasury Officer (STO), Malur facilitated **misappropriation by passing such fraudulent bills without exercising proper checks** as prescribed in Codes and Manuals.

Importance of Auditing of Local Self Government

- **Ensuring Accountability:** Large part of government expenditure directly goes to local bodies for implementation of several central and state level schemes.
  - Existing practice allows PRIs "to prepare monthly and annual accounts of receipts and payments" where **vouchers are retained by them and not submitted to Accountant General for their audits**.
- **Irregular auditing**: Local Self Government is audited by a local fund audit body or an agency appointed by state and many of them are not even audited regularly.
- **Transparency through different sources**: Different types of funding are involved for Local Self Government such as Public-private partnerships model in execution of urban infrastructure, Municipal bonds, etc.
- **Ensures the quality of democratic decentralization.**
- **Public Awareness and risk analysis** are part of audit plan involving PRIs.



Ways to ensure Accountability

- **CAG can prescribe accounting standards and accounts format for local government accounts** to ensure a degree of uniformity.
- **Dedicated agency**: As suggested by 11th Finance Commission the **Director, Local Fund Audit or any other agency made responsible for audit of accounts of local bodies** should work under Technical Guidance and Supervision of CAG.
- **Report of CAG relating to audit of accounts of Panchayats and Municipalities should be placed before** a **Committee of State Legislature** constituted on the same lines as a Public Accounts Committee.
- There is an **urgent necessity for substantial technical skill upgrading** among local fund auditors.
- **The development of a social audit is of utmost importance** in enhancing the effectiveness of the Panchayati Raj Institution (PRI) mechanism, fostering accountability, transparency, and active citizen participation in the auditing process.

7.4. OFFICE OF MAYOR

Why in the news?

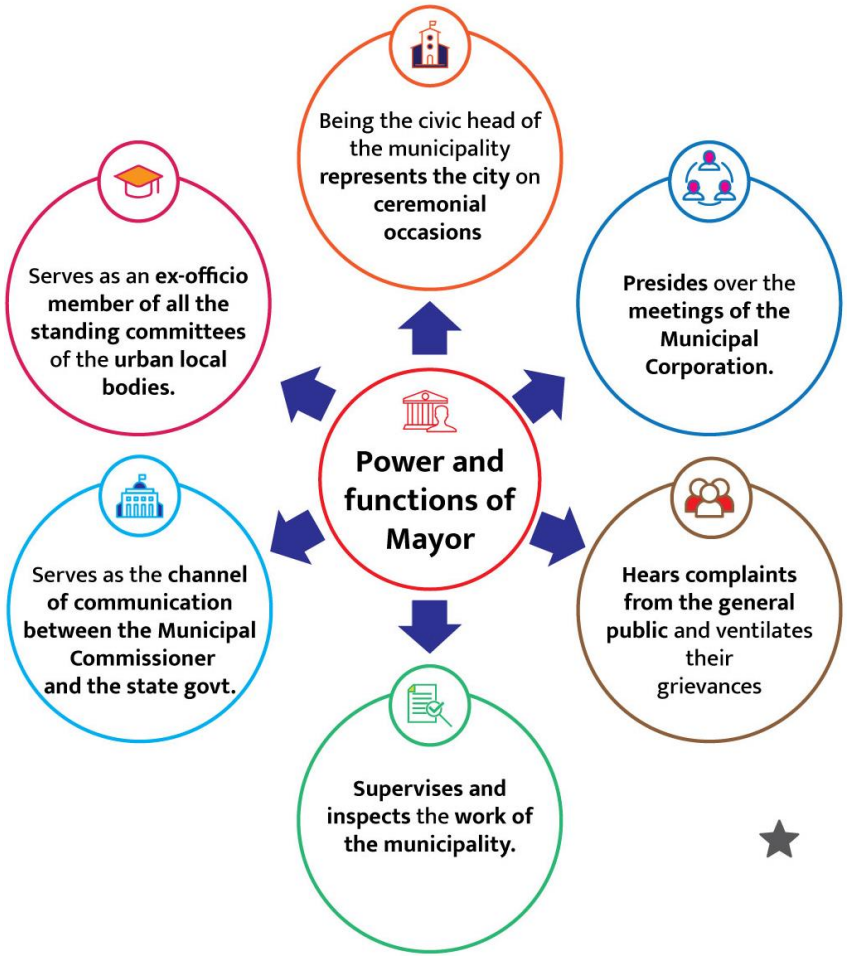
Recently, Supreme Court said the Constitution does not allow nominated members of a municipality the right to vote for selecting post of mayor.

About Indian system for Mayor

- Mayor in Municipal Corporation is usually chosen **through indirect election by councillors from among themselves.**
- **Councillors act by committee,** the most powerful being the Standing Committee with its role of the steering committee exercising executive, supervisory, financial, and personnel powers.
- **Municipal Commissioner is chief Executive Officer** and head of executive arm of Municipal Corporation.
  - All executive powers are vested in Municipal Commissioner.
- 1992 Act provides for **elected and nominated councillors.** Nominated councillors are to be chosen by elected councillors for their special knowledge or experience in municipal administration.

Challenges with Mayor System

- **No real power:** Mayor is merely a ceremonial authority, and **executive decisions are carried out by the municipal commissioner** appointed by state government.
- **Lack of clarity:** 74th amendment did not prescribe the manner of election, tenure, or powers of Mayors/Chairpersons of Urban Local Bodies.
- **Non-uniformity in tenure:** In different states, they have different tenures, even as low as just one year.
- **Lack of harmony between mayor and bureaucrats:** Existing municipal governance structure turns the entire democratically elected councillor against chief executive, a state-appointed bureaucrat which leads to inefficiency.
- **Lack of Political Will:** State governments do not wish to delegate more authority to city-level institutions.



Merits	Demerits
• Speed up **decision-making process** because the system will be action-oriented. • Mayors will have a **personal democratic mandate to 'deliver change'.** • This model can **strengthen democratic politics** and bring **fresh life to local engagement.** • There is evidence to show that directly elected mayors have **improved accountability, and clarity.**	• **Difficult to remove mayor if her/his behaviour is arbitrary** or corrupt. • **Reduce the role of elected** councilors. • **Presidentialisation of mayoral leadership** will be paradoxical in a system based on collective decision-making.

Way forward

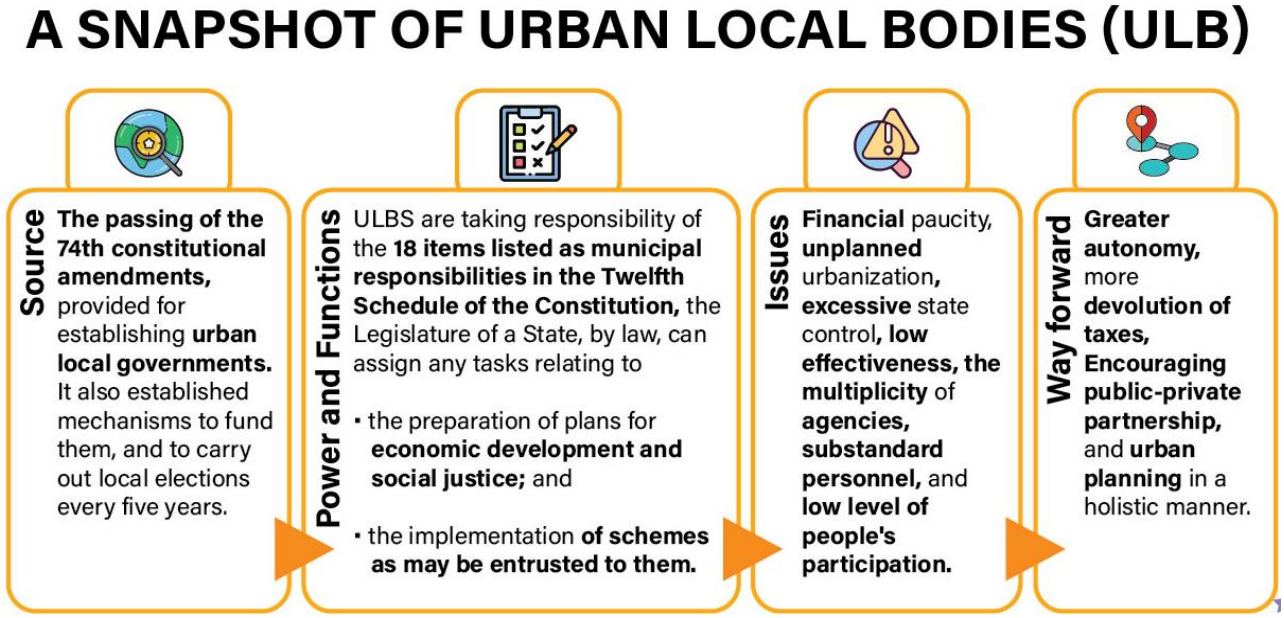
- **Second ARC has recommended that**
  - **Direct election** of Mayor with a **fixed tenure of 5 years.**
  - **Mayor should be the chief executive of a city** or urban government, and the city government should have power to appoint all officials including commissioner.
  - In municipal corporations and metropolitan cities, **mayor should appoint mayor cabinet.**
  - **Mayor should choose the cabinet members** from elected corporators.
  - **Cabinet will exercise executive authority on matters entrusted** to them by the mayor under his overall direction and control.

Kolkata model

An alternative model to the prevailing Commissioner model is the one implemented in Kolkata, West Bengal.

- This model was introduced in 1984 and is known as the **Mayor-in-Council form of city governance.**
  - It can be described as a cabinet government replicating the formula operating at state and national levels.
- This system is composed of **a Mayor and a ten-member cabinet** with individual portfolios chosen from among elected councillors.
- Municipal Commissioner serves as Principal Executive Officer subject to the control and supervision of **Mayor as Chief Executive Officer in this model.**

- **Mayor-in-Council:** In its study McKinsey Global institute has opined that India should consider a political executive in form of a **Mayor- in -Council** at municipal level.



7.5. ASPIRATIONAL BLOCK PROGRAMME (ABP)

Why in news?

Prime Minister launched the government's Aspirational Block Programme (ABP), which is aimed at **improving performance of blocks lagging on various development parameters**.

More on news

- It was first announced in Union Budget 2022-23 and has been **mentioned in Union Budget 2023-24.**
- It is based on the model of **Aspirational District Programme (ADP).**

Features of Aspirational Block Programme (ABP)

- **Coverage:** Programme has been launched for **covering 500 blocks** across 31 states and Union Territories initially.
  - Over **half of these blocks are in 6 states**—UP, Bihar, Madhya Pradesh, Jharkhand, Odisha and West Bengal (in decreasing order). However, states can add more blocks to the programme later.
- **Aim: Saturation of essential government services across multiple domains** such as health, nutrition, education, agriculture, water resources, financial inclusion, skill development, and basic infrastructure.
- **Key indicators:** Government has identified **15 key socio-economic indicators** (KSIs) under such multiple domains.
  - States have the **flexibility to include additional state-specific KSIs** to address local challenges.
- **Periodic rankings:** KSIs will be **tracked on a real-time basis and periodic rankings** will be released across key thematic areas to foster a healthy and dynamic competition among the blocks.
- **Focus of programme: Improving governance** to enhance quality of life of citizens in most difficult and underdeveloped blocks of India by **converging existing schemes**, defining outcomes, and monitoring them on a constant basis.

Why focus on Block Development?

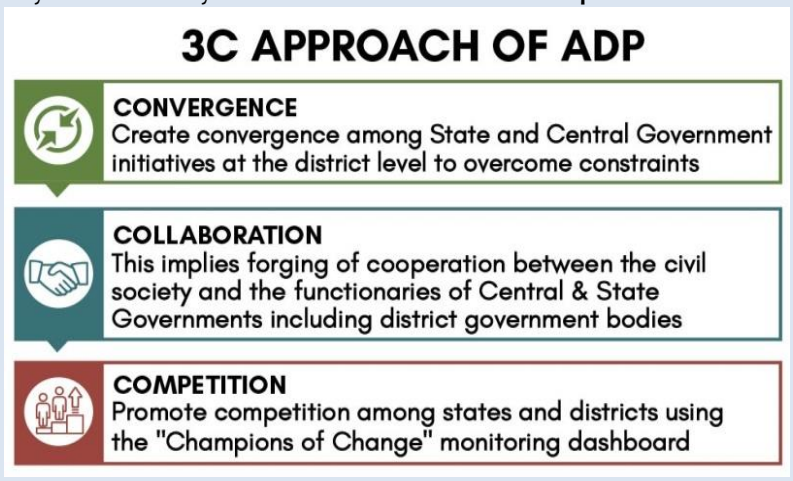
In India, Block based development was **introduced in 1952** under **Community Development Programme** for holistic development of blocks. Since then, they have assumed importance because they enable-

- **Inclusive development:** Social and economic infrastructure at block level ensures that a larger than **proportionate share of development reaches the marginalised and vulnerable sections** of the population.
- **Locally adaptable planning:** As an administrative and monitoring unit, block ensures that a **"one-size-fits-all" approach is not applied** to every part of the country.
- **Grassroot participation: Brings decision-making process closer to grassroots.**

- **Convergence and achievement of target:** Convergence of several line departments of the block administration bridge critical administrative gaps in sustainable development. This can result in **fulfilment of critical targets under SDGs**.

Aspirational District Programme (ADP)

- **Aim:** Launched in 2018, ADP aims to quickly and effectively **transform 112 most under-developed districts** across 26 states and 1 union territory across the country.
- **Focus of programme** is on **strength of each district, identifying low-hanging fruits** for immediate improvement and **measuring progress by ranking** districts on a monthly basis.
- **Key indicators:** ADP focuses on 49 Key Performance Indicators (KPIs) under **5 broad socio-economic themes - Health & Nutrition, Education, Agriculture & Water Resources, Financial Inclusion & Skill Development and Infrastructure.**
  - **Delta Ranking** captures incremental change in district rankings based on these KPIs.
  - **Baseline ranking** captures district performance compared to baseline year.



8. GOVERNMENT POLICIES AND INTERVENTIONS FOR DEVELOPMENT IN VARIOUS SECTORS

8.1. AADHAAR

AADHAAR AT A GLANCE

Aadhaar is a 12 digit individual identification number issued by Unique Identification Authority of India (UIDAI) on behalf of Government of India. The number serves as a proof of identity and address, anywhere in India. Each individual will be given a single unique Aadhaar ID number.

Significance of Aadhaar System

- **Provides single source offline/online identity verification across** the country for residents.
- **Streamlined subsidy transfer** through Aadhaar verification.
- **Financial inclusion** by opening Jan Dhan Account using Aadhaar cards.
- **Eliminating ghost beneficiaries due to use of biometrics in PDS distribution.**
- **Access to multiple government welfare schemes** through single document such as LPG subsidy.
- **Promotes neutrality** as it is randomly generated number that does not depend on caste, creed, religion etc.

Initiatives taken to strengthen Aadhaar System

- **Roadmap drawn for Aadhaar 2.0** focus on **Resident centricity;** enhancing **use of Aadhaar;** further **strengthening people's trust** on Aadhaar; technology upgradation; etc.
- Biometric Service Providers presently use **Facial image as additional biometric attribute** for de-duplication along with **fingerprints and two IRIS.**
- UIDAI introduced **two-factor authentication using AI/ML technology** to verify fingerprint liveness and prevent spoofing attempts.
- UIDAI regularly carries out inspection to **find out deviant behavior among** operators.
- State governments have been roped in **for quality check of all new adult enrolments.**
- An **updated and user-friendly list of supporting documents** required for Aadhaar enrolment/update has been notified.
- **GPS fencing** has been embedded in **Enrolment machines** to discourage misuse of system.

Issues associated with Aadhaar

- **Faulty databse,** as there have been numerous instances where the UIDAI generated Aadhaar numbers with incomplete information, such as a lack of documentation or poor-quality biometrics.
- UIDAI has **not prescribed any specific proof, document, or process** to confirm whether a person applying for Aadhaar has resided in India for period specified by Rules.
- **Authentication errors** due to biometric authentication failures. As per, 2019 survey 2.5 percent of respondents experienced exclusion from a welfare service.
- It **lacks standard security elements** like microchip, hologram, or official seal, making it prone to being copied or falsified.
- **Data leaks and privacy concerns.**
- **The issuance of Aadhaar numbers to minor children (below the age of five) through Bal Aadhaar,** based on their parents' biometrics, contradicts the fundamental principle of the Aadhaar Act.
- Biometrics are **not stable over lifespan** of an individual, so they are asked to **update/re-enrol** their biometrics.

Way forward

- UIDAI should prescribe a **procedure and required documentation** to confirm and authenticate the residence status of applicants.
- **Strengthening grievance system** by introducing a single centralized system to enhance the quality of customer servicing.
- **Strengthening digital network** such as power, internet and mobile connectivity and ensure **correct Aadhaar linking**.
- Need to invest in **households' digital literacy and skills** to use digital tools to maximise Aadhaar usage.
- **Robust data protection framework** is essential to protect **citizens' privacy**, prevent companies and governments from **indiscriminately collecting data etc.**

8.2. DEMOCRACY FOR SOCIAL AND ECONOMIC WELFARE

DEMOCRACY FOR SOCIAL AND ECONOMIC WELFARE AT A GLANCE

Justice - social, economic and political – is a **universal principle;** also pledged to the citizens of India by the Constitution.

The **democratic form of government** and **Directive Principles of State Policy** provides the framework for Justice and achieve **various objectives.**

The Constituent Assembly recognized its role in **preserving India's unity in diversity;** leading to **Multilingualism** becoming a part of India's Constitutional Ethos.

Framework to bring Socio-Economic Justice

- Presence of **multiple political parties** with ECI to regulate them.
- **Election System** under ECI with **Universal Adult Suffrage** and multiple reforms in the election process.
- **Laws and Policies** to address social and economic inequalities. E.g. Measures for **Co-operative societies,** Health and education.
- **Use of science and technology** to bring positive change in people's life.

Importance of ideas of this framework

- **Protects People's Rights** enshrined in the constitution.
- Formation of a **Representative Government.**
- **Rule of Law** with **welfare state** to create an **equitable society.**
- **Separation of power** and an **independent judiciary.**
- Puts **moral obligation on the State** to work for **social** and **economic welfare.**
- Strikes a **balance** between **individualism and socialism.**

Concerns in implementation

- **Opaque** functioning of **political parties** with lack of inner democracy.
- Issues of **Corruption, lack of transparency** etc. in governance.
- Problems of **social polarization, misuse of technology, violence** etc.
- **Limited success** in achieving **social** and **economic welfare** because of no timelines, non- justiciability etc.
- **Creates ground** for constitutional conflict, cultural and religious tensions etc.
- **Emergence of new challenges** like unemployment, populism, workforce casualization etc.

Way Forward for Justice

- **Enhance Democratic Resilience:**
  - Building a culture of **transparency and integrity** in political parties and government.
  - Measures to **ensure inclusive transition** and improve **citizen engagement.**
  - Make **government accountable** with steps for **Social** and **Economic Inclusion.**
- Steps for Social and Economic Welfare:
  - **Detailed Quantitative Assessment** on situations based on the current contexts.
  - Measures to **support livelihood, reform judicial system, infrastructure building** etc.
  - Identifying the **role of private sector, media,** and **civil society.**

8.3. COOPERATIVES

CO-OPERATIVE AT A GLANCE

Co-operative 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 best possible manner, and derive some common benefit out of it.

Co-operative Principles

- Autonomy and Independence
- Voluntary and open membership
- Concern for community
- Cooperation among cooperative
- Education Training and Information
- Democratic member control
- Members economic participation

Types of Co-operative working in India

- Consumers' Cooperative Society
- Producers Cooperative Society
- Cooperative Credit Society
- Cooperative Farming Society
- Housing Cooperative Society
- Marketing Cooperative Society

Constitutional Provisions

- Cooperative fall in the **state list of seventh schedule.**
- **Article 19(1) (c)** guarantees **freedom to form association or unions or cooperative societies** subject to certain restrictions.
- **Article 43 B** says that **states shall endeavor to promote** voluntary formation, autonomous functioning, democratic control and professional management of **cooperative societies.**
- **Part IXB of Constitution** is operative only in so far as it concerns Multi-State Cooperative Societies (MSCS) both within various States and in Union Territories.

Significance of Cooperatives

- **Enhancing social cohesion.**
- **Social empowerment** by establishing equal rights, enhancing 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.**

Steps taken to promote co-operative culture

- New **Ministry of Co-operation** to streamline co-operative movement in India. Ministry will provide **a separate administrative, legal and policy framework** for strengthening the cooperative movement in the country.
- **Multi-State Co-operative Societies (Amendment) Bill, 2022,** amends MSCS Act, 2002, to enhance **transparency, accountability, improve ease of doing business,** and promote better **financial discipline.**

Challenges associated with Cooperatives

- **Lack of democratic spirit:** Government interference, Politicization of Cooperatives, Internal quarrel and rivalries etc.
- **Regional imbalance in growth:** Cooperatives in north-eastern areas and in areas like West Bengal, Bihar, Odisha are not as well developed as the ones in Maharashtra and Gujarat.
- **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.

Way forward

- **Structural reforms:**
  - **Weaker and inefficient societies should be winded and merged** with strong and efficient societies.
  - **Promoting multipurpose societies.**
- **Legislative Reforms** for improving functioning of cooperative banks.
- **Ensure efficiency and transparency** in functioning by bringing cooperative under purview of RTI Act.
- **Capacity building** through skilled employee and infrastructure development.
- **Imparting value based education** that ensures ethical behaviour and spirit of cooperation among member of society.

8.3.1. MULTI-STATE COOPERATIVE SOCIETIES (MSCS) AMENDMENT BILL 2022

Why in news?

Recently, Lok Sabha has referred the **Multi-State Co-operative Societies (Amendment) Bill 2022 to a joint committee of Parliament.**

More on news

- Bill seeks to **amend MSCS Act 2002** in order to **align its provisions with those provided under Part IXB of the Constitution** and address concerns with the functioning and governance of co-operative societies.
- **Provisions provided under Part IXB** includes
  - **Freedom to form cooperative** societies under Article 19 (1) (a).
  - **Promotion of Cooperation societies** inserted as one of the DPSPs under Article 43-B.
- MSCS are cooperative societies whose **activities are not confined to one state** and serve interests of individuals in more than one state.

Key Highlights of Bill

Specifications	Detail
Registration	• **Reduce the period of registration of MSCS acts to 3 months** from earlier 4 months period.
Election of board members	• Establish **Co-operative Election Authority** to conduct elections and bring electoral reforms in co-operative sector. • It will include **Chairperson, Vice-chairperson** and **up to 3 members** appointed by **Central Government.**
Board of Directors	• Maximum of 21 directors with at least **one Scheduled Caste** or **Scheduled Tribe** member and **two women** members.
Amalgamation of co-operative societies	• Allows state co-operative societies to merge into an existing MSCS, **subject to respective state laws.** • At least **two-thirds of members of co-operative society present and voting** at a general meeting **must pass a resolution to allow such a merger**.
Fund for sick co-operative societies	• **Establishes Co-operative Rehabilitation, Reconstruction and Development Fund** for revival of sick MSCS. • A sick MSCS is one that has **accumulated losses equal to or exceeding total of its paid-up capital,** free reserves and surpluses, and **suffered cash losses in the past two financial years.**
Restriction on redemption of government shareholding	• Any shares held in a MSCS by central and state governments cannot be redeemed without their prior approval.
Redressal of complaints	• Central government will **appoint one or more Co-operative Ombudsman with territorial jurisdiction.** • Ombudsman shall inquire into complaints made by members of MSCS regarding their **deposits, equitable benefits of society's functioning, or issues affecting individual rights of members.**
Other provisions	• Increased **monetary penalties** on violations; **Cooperative Information Officer** Appointment by all MSCS; **Concurrent audit** of MSCS with **annual turnover or deposit** of more than the amount as determined by Central Government

Need of MSCS Bill, 2022

- **Since 2002, Cooperatives have undergone significant changes** like transitioning from a department under Agriculture Ministry to a separate Cooperation Ministry in 2021.
- 97th Constitution Amendment Act, 2011 necessitated amendments to MSCS Act **due to insertion of Part IXB.**
- **Address instances of malfunctioning** noticed in MSCS such as financial embezzlements, delay and disputes regarding holding elections, biased selection of auditors, nepotism etc.
- **Proactively implement various reforms** such as **making registration process easier, allowing digital registration**, making membership more vibrant and active, providing Information Officer for increasing transparency, appointing Ombudsman for redressal of member grievances, etc.
- **Strengthen governance in MSCS** in accordance with Cooperative Principles.

Issues with MSCS Bill, 2022

- It may lead to **concentration of power of Central government,** which may **impact the autonomy and functioning of MSCS** and create **potential for misuse.**
- **Granting veto powers to central and state governments** over the redemption of their shareholding could potentially undermine the principles of democratic member control and organizational autonomy.
- It **imposes financial burden on successful cooperatives** to support struggling ones, **potentially undermining their appropriate functioning.**

Way forward

- **High Powered Committee on Co-operatives (2009) had recommended that** central government should create a **National Co-operative Rehabilitation and Institutional Protection Fund** to revive sick units and states should contribute to the fund.
- **There is need to curb nepotism and increase transparency in recruitment.**
- It is necessary to **ensure the autonomous and democratic functioning of co-operatives,** by ensuring the accountability of management to members and other stakeholders.

Cabinet approved three national level MSCS under MSCS Act, 2002

- This will help in **achieving goal of 'Sahakar-se-Samriddhi' (Prosperity through Cooperation)** through inclusive growth model of cooperatives.

3 New Cooperative bodies	Significance
National Multi- State Cooperative Export Society	• **Act as umbrella organization for exports** of surplus goods/service. • Higher exports will **increase production of goods and services** and increase **employment opportunities**. • Increased export will **promote "Make in India"** thus leading to **Atmanirbhar Bharat.**
National Multi- State Cooperative Organic Society	• **Unlock demand and consumption of organic products** in domestic and global markets. • Help **farmers to get high price of organic product** through aggregation, marketing and branding. • **Provide institutional support** for aggregation, certification, storage, processing etc. • Better **management of entire supply chain** of products.
National Multi- State Cooperative Seed Society	• Act as an **apex organization for production, procurement, processing, branding,** labelling, packaging, storage, marketing and distribution of quality seeds. • Develop system for **preservation and promotion of indigenous natural seeds**. • **Increase seed replacement rate**, varietal replacement rate, ensuring role of farmers in quality seed cultivation. • Quality seeds production **reduces dependence on imported seeds, boost rural economy, and strengthen food security.**

APPENDIX

APPENDIX: KEY DATA AND FACTS

Topics	Constitutional Provisions/ Data	Judgements/Recommendations
Basic Structure of Doctrine	**Article 368** (Power of Parliament to amend the Constitution and procedure).	**Kesavananda Bharati Case (1973):** SC ruled that **Article 368 covered amending powers and procedure, distinct from Parliament's** legislative powers. **Indira Gandhi v. Raj Narain (1975):** Court used basic structure doctrine first time to **strike down 39th Amendment Act (1975) provision that barred court jurisdiction over election disputes.** **Minerva Mills Case (1980):** Parliament's power to amend constitution must not damage or destroy basic structure. **Indira Sawhney vs. Union of India (1992): Rule of Law was added** to the basic structures.
Ninth Schedule	**First Constitutional Amendment Act, 1951** added a **new Article 31B.** Article 31B states that **none of the acts/regulations mentioned in Ninth Schedule** shall be **considered to be void on ground that they are inconsistent with any rights.**	**Waman Rao V Union of India (1981):** SC held that amendment to Constitution which was **made before 24th April 1973** is valid (as per Kesavananda Bharati judgement and evolution of Basic Structure doctrine). **IR Coelho Vs State of Tamil Nādu, 2007:** Constitution bench ruled that Ninth Schedule **cannot be challenged for violating fundamental rights but** can be **challenged for violating basic structure of Constitution.**
Ordinance	**Article 123 (Power of President** to promulgate Ordinances during recess of Parliament). **Article 213 (Power of Governor** to promulgate Ordinances during recess of Legislature).	**RC Cooper v. Union of India (1970):** Apex court held that **President's decision could be challenged on grounds that 'immediate action' was not required;** and Ordinance had been passed primarily to by-pass debate and discussion in the legislature. **DC Wadhwa vs. State of Bihar (1987):** Court held that **legislative power of executive to promulgate Ordinances is to be used in exceptional circumstances** and not as a substitute for law making power of the legislature. **Krishna Kumar Singh v. State of Bihar (1994):** Court held that **satisfaction of President** under Article 123 **and Governor** under Article 213 while issuing an Ordinance is **not immune from judicial review.**

 Hate Speech	▶ Section 153A, 153B, 295A etc. of IPC **under which hate speech offenders ought to be booked.**	▶ **State of Karnataka and Anr vs Dr. Praveen Bhai Thogadia (2004):** SC held that state or district authorities were **well within their rights to prohibit entry so that one does not make speeches,** which creates public order issue. ▶ **Pravasi Bhalai Sangathan vs U.O.I. & Ors (2014):** SC lays down certain **guidelines regarding politicians making inflammatory speeches.**
 Right against Self-incrimination	▶ **Article 20(3)** says that "No person accused of any offence shall be compelled to be a witness against himself".	▶ **M.P. Sharma v. Satish Chandra (1954):** SC has **widened the scope of Article 20(3)** giving out the following essentials. ○ **Person must be "accused of an offence".** ○ **Protection against "Compulsion" to be a "Witness".** ○ **Compulsion to Give Evidence Against Himself.** ▶ **State of Bombay versus Kathi Kalu Oghad case (1961):** SC ruled that obtaining photographs, fingerprints, signatures, and thumb impressions would violate right against self-incrimination of an accused. ▶ **Selvi v State of Karnataka (2010):** SC held that a **narcoanalysis test without the consent of accused would amount to violation** of right against self-incrimination. ○ Also, **results of these tests cannot be considered as confessions** due to their inability to exercise choice in answering questions. ○ However, **obtaining a DNA sample from the accused is permitted.**
 Reservation	▶ **Article 14** (Right to equality), **Article 16** (Right to equal opportunity) and **Article 19** (ensures that citizens can move freely throughout the territory of India). ▶ **Article 16(3),** only the Parliament can make a law and not State Legislature. ▶ **Article 240 D:** Reservation of seats for SCs and STs in panchayat.	▶ **Dr Pradeep Jain v Union of India (1984):** Court expressed an opinion that **legislation for sons of soil would be unconstitutional** but did not expressly rule on it. ▶ **Indira Sawhney vs. Union of India (1992) and M Nagaraj vs. Union of India (2006):** Reservation **cannot exceed beyond 50% unless there are extraordinary reasons.**

	▶ **Article 330:** Reservation of seats for SCs and STs in House of people. ▶ **Article 332:** Reservation of seats for SCs and STs in legislative assemblies of state.	▶ **Kailash Chand Sharma vs. State of Rajasthan (2002): SC invalidated appointment of government teachers in Rajasthan** (preference was given to applicants belonging to district or rural areas of district concerned).
 **Sedition**	▶ As per NCRB, **356 cases of sedition were registered during 2015-2020.** ▶ In 2019, conviction rate was 3.3% while **in 2020, it was 33.3%.** ▶ **Highest numbers** of sedition cases (2010-2020) were registered **in Bihar, followed by UP, Karnataka and Jharkhand.** ▶ **UK, Ireland, Australia, Canada, Ghana, Nigeria and Uganda**, have held **sedition law as undemocratic**, undesirable and unnecessary.	▶ **Kedarnath Singh vs state of Bihar (1962):** Sedition law is valid. ▶ **Balwant Singh vs State of Punjab (1995):** Mere sloganeering which evoked no public response did not amount to sedition.
 **Governor**	▶ **Article 154:** The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officer's subordinate to him in accordance with the Constitution of India	▶ **Sarkaria Commission:** Consulting Chief Minister in appointment; Article 356 (President's Rule) should be used very sparingly etc. ▶ **Punchhi Commission:** Given a **fixed tenure of five years;** Exercise of discretionary power must be dictated by reason etc. ▶ **National Commission to Review Working of Constitution (NCRWC):** The question 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. ▶ **Rameshwar Prasad case (2006):** Governor **cannot shut out post-poll alliances altogether** as one of the ways in which a popular government may be formed. ▶ Unsubstantiated claims of horse-trading or corruption in efforts at government formation cannot be cited as reasons to dissolve Assembly.
 **National Capital Territory of Delhi**	▶ **Article 239-AA**, inserted by **69th Amendment Act, 1991, conferred special status on Delhi** (on recommendations of S Balakrishnan Committee). ○ It provides that **NCT of Delhi will have an administrator and a Legislative Assembly.** ○ **Legislative Assembly** shall have power **to make laws wrt any of matters in State List or Concurrent List except on** subjects of **police, public order, and land.**	▶ **Government of NCT Delhi vs Union of India case (2018):** L-G would be **bound by aid and advice of the Council of Ministers (CoM)** in matters that were not directly under the control of L-G. ○ **Barring police, public order and land** the L-G's concurrence is not required on other issues. ○ However, the decisions of CoM will have to be communicated to L-G.

	○ **In case of difference of opinion** between L-G and his Ministers, **L-G shall refer it to President.**	
Seventh Schedule	▶ **Article 246** provides **distribution of powers and responsibilities between state and central governments** into three lists (Union List, State List and Concurrent List). ▶ **Article 248** confers **residuary powers on Parliament.**	▶ **Sarkaria Committee Recommendations (1998 Report):** ○ **Residuary powers should be transferred from Union List to Concurrent List,** except for residuary power to impose taxes which should be retained in Union List. ○ **States should be consulted by Centre** before exercising power over Concurrent List. ▶ **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.
Inter State Border Disputes	▶ **Article 131 gives Supreme Court original jurisdiction over any dispute** ○ **Between Government of India and one or more States.** ○ Between Government of India and any State or States on one side and one or more other States on other. ○ Between two or more States. ▶ **Article 263 gives powers to President to set up an Inter-state Council for resolution of disputes between states.** Council is envisaged as a forum for discussion between states and Centre and charged with duty of ○ **Inquiring into and advising upon disputes** which may have arisen between States. ○ **Investigating and discussing subjects in which** some or all of the States, or Union and one or more of the States, have a common interest. ▶ **Zonal Councils for promoting cooperation and coordination between states,** union territories and Centre.	
Inter State Water Disputes (ISWDs)	▶ **Seventh Schedule (Water is a State subject** (Entry 17, State List) and **Union Government has a constitutional role only in case of Inter-State waters** (Entry 56, Union List)) ▶ **Article 262** allows Parliament to make laws to provide for adjudication of ISWDs.	▶ **National Commission to Review the Working of the Constitution** (NCRWC) recommended a b, develop and control all interstate rivers.
Separation of Power	▶ **Article 13:** Judicial review ▶ **Article 50:** DPSP which directs state separate judiciary from executive. ▶ **Article 105 and 194**: Priveleges to Parliament/ state legislature and members ▶ **Article 122 and 212:** Prohibits courts to inquire into proceedings of Parliaments/State legislature.	▶ **Kesavananda Bharati and ors vs State of Kerala:** Apex court held that **amending power of Parliament is subject to basic features** of Constitution. So, any amendment violating the basic features will be declared unconstitutional. ▶ **I.R. Coelho v. State of Tamil Nadu:** Doctrine of basic structure as propounded in above-mentioned case and **Ninth schedule grant blanket protection to certain legislations from judicial review is violative** of this doctrine.

	▶ **Article 361**: Protection of President and Governors.	▶ **Golak Nath v. State of Punjab**: It was observed that **three organs of government are expected to exercise their functions within their limits** and keeping in mind certain encroachments assigned by constitution.
 **Delegated Legislation**	▶ **Article 361**: Protection of President and Governors.	▶ **Demonetisation case:** SC uphold the validity of delegated legislation by upholding the centres decision on demonetisation. ▶ **D. S. Garewal vs State of Punjab and Another**: Court held that **Article 312 of Constitution deals with powers of delegated legislation.**
 **Parliamentary Privileges**	▶ **Article 105** and **Article 194** deals with **powers, privileges of members of Parliament and State legislature** respectively.	▶ **PV Narasimha Rao vs. State**: SC stated that **members need wider protection of immunity against all civil and criminal proceedings** that bear a nexus to their speech or vote. ▶ **M.S.M. Sharma case**: SC stated whenever there is a condition of imbalance between provision of Part V, Article 194(3) (privileges) and fundamental rights conferred by part III, **fundamental right will remain supreme over the others.**
 **Office of Speaker**	▶ **Article 93** establishes post of both **Speaker and Deputy Speaker.** ▶ **Article 94**: Removal and resignation of Speaker and Deputy Speaker. ▶ **Article 96**: Speaker cannot preside Lok Sabha while a resolution for his removal is under consideration.	▶ **Nabam Rebia case (2016):** SC held that a **Speaker or Deputy Speaker facing notice of removal cannot decide disqualification proceedings** against legislators. ▶ **Keisham Meghachandra Singh vs The Hon'ble Speaker Manipur (2020):** SC held that decision under Anti-Defection Law (ADL) should be made within a reasonable time period.
 **Anti-Defection Law**	▶ 52nd Amendment Act 1985. ▶ Tenth Schedule also known as Anti-defection Law.	▶ **Kihoto Hollohan versus Zachillu and Others (1992):** SC said that **judicial review is applicable on a Speaker's decision** but cannot be available at a stage prior to making of a decision by Speaker/ Chairman. ▶ **Keisham Meghachandra Singh vs. Hon'ble Speaker Manipur Legislative Assembly & Ors. Case (2020):** SC held that **disqualification petitions under Tenth Schedule should be decided by Speakers** within three months. ▶ **"Administrative Reforms Commission's Report titled 'Ethics in Governance' and various other expert committees** have recommended that issue of disqualification of members on grounds of defection should be decided by President/Governor on advice of Election Commission.

Judicial Appointments	▶ **Article 124** states that the President shall make SC Judges appointments after consulting with CJI and other SC and HC judges as he considers necessary. ▶ **under Article 217, for HC judges appointment, President** should consult the CJI, Governor, and Chief Justice of High Court concerned.	▶ **Three judge cases** have come from 1981 to 1998 which **sets the collegium system** for appointing judges.
Preventive Detention	▶ **Article 22:** Right to protection against arrest and detention in certain circumstance.	▶ **AK Gopalan Vs State of Madras (1950):** Court gave a green flag to Preventive Detention Act because of presence of explicit provisions of Article 22(5). ▶ **ShibbanLal v. State of Uttar Pradesh (1953):** SC stated that a **courtroom isn't even competent to enquire into reality or in any case of the facts** which are referenced as grounds of detainment. ▶ **Shambhu Nath Shankar Vs State of West Bengal (1973):** Although concept of Preventive detention in itself is draconian and **infringes fundamental rights**, sometimes it is **necessary for state to take extreme steps to maintain security** of country.
Internal Party Democracy	▶ Constitution provides for co-operative societies which is a fundamental right under Article 19 (1)(c), **but Right to form political parties is not.** ▶ **Section 29A of RPA 1951** provides for registration of political parties with ECI.	▶ Committees like **Dinesh Goswami Committee, Tarkunde Committee and Indrajit Gupta Committee** has strongly argued for **more transparent working of political parties** in country.
Election Freebies	▶ Constitution provides for co-operative societies which is a fundamental right under Article 19 (1)(c), **but Right to form political parties is not.**	▶ In **Subramaniam Balaji Vs State of Tamil Nadu (2013),** SC directed ECI to frame guidelines to check freebies in consultation with political parties. ▶ To ensure electoral process integrity, in 2016 guidelines check freebies were included under **Part VIII of Model Code of Conduct (MCC).**
Cooperatives	▶ **97th Amendment Act** relates to effective management of co- operative societies in country. ▶ **Article 19(1)(c) guarantees freedom to form associations** or unions or cooperative societies subject to certain restrictions. ▶ **Article 43 B** says that states shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of Cooperative societies. ▶ **Part IXB of Constitution** dictated the terms for running cooperative societies.	▶ SC has held that **co- operative societies (except- Multi-state cooperative society)** come under **"exclusive legislative power" of State legislatures.** ▶ Three-judge bench of **SC annulled part of 97th Amendment Act and Part IX B of Constitution** which governs "Cooperative Societies" in country.

WEEKLY FOCUS- POLITY AND GOVERNANCE

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6.	Inter-State Water Governance From Conflict to Cooperation	
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8.	India's Criminal Justice System: Reforming Institutions For Delivering Justice	
9.	Cooperatives: Prosperity through Cooperation	
10.	Sui Generis Indian Federalism: Evolving Dynamics and Emerging Concerns	
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13.	Constitutional Ethos: Democracy for Social and Economic Welfare	
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1 AIR
ISHITA KISHORE


2 AIR
GARIMA LOHIA


3 AIR
UMA HARATHI N

हिंदी माध्यम में 40+ चयन CSE 2022 में

= हिंदी माध्यम टॉपर =


66 AIR
KRITIKA MISHRA


85 AIR
BHARAT JAI PRAKASH MEENA


105 AIR
DIVYA


120 AIR
GAGAN SINGH MEENA


173 AIR
ANKIT KUMAR JAIN

8 in Top 10 Selection in CSE 2021


2 AIR
ANKITA AGARWAL


3 AIR
GAMINI SINGLA


4 AIR
AISHWARYA VERMA


5 AIR
UTKARSH DWIVEDI


6 AIR
YAKSH CHAUDHARY


7 AIR
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8 AIR
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