

Predominance of Union law:

Union law prevails over State law in case of conflict/overlap

Parliament can legislate for State List in following cases

- ✓ During President's rule
- ✓ During National Emergency
- ✓ To implement international agreements
- ✓ When RS passes resolution by 2/3rd majority (**Article 249**)
- ✓ When two or more states pass resolution (then those states lose power)

Note:

Federal system (dividing powers b/w Centre States) was taken from GoI Act 1935 and Canada
Strong Center and Residuary powers with Centre was taken from GoI Act 1935 and Canada
Concurrent list was taken from Australia

Union list:

List-1
 Defence, Atomic energy
 Foreign affairs, Foreign trade
 Rail, Air, Port, Post, Telegraph, Census
 Banking, Currency
 Insurance, Stock exchange
 Labour safety in mines/oilfields
 Fisheries beyond territorial water
 Tax: Income, Corporation, Capital

Concurrent list:

List-3
 Education, Electricity
 Newspapers, books, printing press
 Forest, protection of animals
 Factory, Boilers, Trade Union
 Adulteration of food
 Population control, family planning
 Marriage, Divorce, Adoption, Will, Succession
 Transfer of property other than agri land
 Economic and Social Planning

State list:

List-2
 Health, Sanitation, Liquor
 Trade & Commerce
 Gas and gas work
 Police, Public order, Prison
 Local govt, State Public Services
 Agri, Tax on agri income
 Animal husbandry, Fisheries
 Land, Property tax
 Capitation tax, Treasure trove

Prelims 1992

Which one of the following is not in State List under Constitution of India?
 (a) Fisheries
 (b) Agriculture
 (c) Insurance
 (d) Betting and Gambling

42nd amendment

transferred 5 subjects from State list to Concurrent List:

1. Forests
2. Protection of wild animals & birds
3. Weights & measures
4. Education
5. Administration of justice (constituting courts except SC/HC)

Prelims 2004

With reference to the Constitution of India, which one of the following pairs is not correctly matched?
 (a) Forests: Concurrent List
 (b) Stock Exchanges: Concurrent List
 (c) Post Office Savings Bank: Union List
 (d) Public Health: State List

Subjects often confused

Union (list-1)	Concurrent (list-3)	State (list-2)
	Criminal law	Police, Public Order
Railway		Railway Police
Lottery	Betting, Gambling	Liquor
Election to state legislature		Election to state legislature
Labour safety in mines/oilfields	Labour dispute, Welfare of Labour	

<https://www.mea.gov.in/Images/pdf1/S7.pdf>

Prelims 2006

Which one of the following subjects is under the Union List in the Seventh Schedule of the Constitution of India?
 (a) Regulation of labour and safety in mines and oilfields
 (b) Agriculture
 (c) Fisheries
 (d) Public health

Amendment to 7th schedule needs:

Special majority in Parliament and ratification by 50% states by simple majority

Grey area? Concurrent list

Sarkaria commission said that concurrent list subjects are neither exclusively national, nor exclusively local, hence they occupy Constitutional grey area.

I read I forget, I see I remember | See explanation video on app "All Inclusive IAS" or website www.allinclusiveias.com

1919 Govt of India Act 1919

It reduced Centre's control on Provinces by separating central and provincial subjects

1901	1911	1921	1931	1941
1902	1912	1922	1932	1942
1903	1913	1923	1933	1943
1904	1914	1924	1934	1944
1905	1915	1925	1935	1945
1906	1916	1926	1936	1946
1907	1917	1927	1937	1947
1908	1918	1928	1938	1948
1909	1919	1929	1939	1949
1910	1920	1930	1940	1950

1935 Govt of India Act 1935

It distributed legislative power into three lists

Constitution divides b/w Centre & States:

- ✓ Legislative power (Part-11)
- ✓ Executive power (Part-11)
- ✓ Financial power (mostly in Part-12)
- ✗ Judicial power (integrated judiciary)

1950 Constitution of India

Incorporated 7th schedule

Article 245 → gives power to make laws

- State to make law for State
- Parliament to make law for India (& outside India)

Article 246 → divides subjects

- Parliament to make law for List-1 subjects
- Both to make law for List-3 subjects
- State to make law for List-2 subjects

Article 248 → gives Residuary powers to Centre

- Matters not in 7th schedule like Space, Cyber, etc.
- India, Canada and GoI Act 1935 gave residuary powers to Centre
- USA, Australia and Objectives Resolution gave residuary powers to States

PART XI - Relation Between Union and States

(Article 245-263)
 Legislative relations
 Administrative relations
 Inter-state water disputes (262)
 Inter-state disputes & Inter-State Council (263)

Q. Which article empowers to repeal/amend laws?

Article 245 (as laws are repealed by creating law)
 First time done in 1950 (72 laws were repealed)

Prelims 1994

In which respect centre-state relations have been specifically termed as municipal relation
 (a) Centre's control of state in legislative sphere
 (b) Centre's control of state in financial matters
 (c) Centre's control of state in administrative sector
(d) Centre's control of state in planning process

Prelims 2013

Parliament can make any law for whole or any part of India for implementing international treaties
 (a) with the consent of all the States
 (b) with the consent of the majority of States
 (c) with the consent of the States concerned
(d) without the consent of any State

Read more....

Revisit the seventh schedule to improve Centre-State relations

01-05-2022, Mint

<https://www.livemint.com/opinion/online-views/revisit-the-seventh-schedule-to-improve-centre-state-relations-11651424987318.html>

I read I forget, I see I remember | See explanation video on app "All Inclusive IAS" or website www.allinclusiveias.com

Significance of 7th Schedule

- It prevents concentration of power by dividing subjects b/w two levels of govt.
- It prevents secessionist tendency by giving limited autonomy to States.
- It prevents conflict by clearly dividing power b/w center and states.
- It allows States to frame policies as per regional needs.

Need for reforms in 7th Schedule

- It is not updated with 21st century issues like terrorism, space, cyber law, etc.
- Concurrent list creates disputes as Centre & State frames law on same subject.
- It doesn't assign subjects to third tier of govt i.e. municipalities & panchayats.

SUGGESTIONS

Remove obsolete entries:

- List-3 Entry 27: Rehabilitation of persons displaced due to partition
- List-3 Entry 37: Boilers (technology is now advanced, special entry not needed)

Add entries as per present governance needs:

- Include emerging technologies like blockchain, gene editing, etc.
- Make entry for Consumer Protection, as despite a central law on it, there is no specific entry in 7th schedule.

Transfer entries between the lists:

- NITI Aayog has suggested moving police and public order to Concurrent List.
- 15th FC chairman suggested that health should be shifted to Concurrent list.

Sarkaria Commission recommendations:

- Transfer Residuary powers from Union List to Concurrent List
- Centre should consult States before making law on concurrent list subjects.
(also recommended by NCRWC and Puncchi Commission)

CONCLUSION

Cooperation, not confrontation, should be the mantra for national progress.

Centre and States are supreme in their respective domains and should respect vertical distribution of power.

7th Schedule is the basis of Indian federation. Any reforms in it should be done only after elaborate discussion and consensus.



Q. Do you think 7th schedule should be removed?

7th schedule divides responsibility between centre and states.
i.e. it is a necessary tool to implement Federalism.
Its removal will make our polity Unitary in nature.

Q. What's the problem with unitary polity? UK, France, Singapore are all unitary polity.

Their population is a fraction that of India.
Serving 140 crore people through unitary polity will be an administrative nightmare.

Q. But even China is a unitary polity (same population as India)

China is an authoritarian state, hence, for them to control 140 crore people is not a challenge.
CCP controls people, so they follow concentration of power.
India serves people, so we follow distribution of power

Understand the concept How CCP rules over 140 crore people, and should India follow?

In China, all power is concentrated in one party – Chinese Communist Party (CCP)
CCP neither shares power horizontally with judiciary, nor vertically with states.
To implement same system in India, there are two options:

Option #1: (one step approach)

Amend the Constitution to bring one-party system.
This will bring de-jure and de-facto concentration of power.
Hence, such amendment is unlikely.

De-jure = by law (Officially)
President is most powerful
De-facto = in fact (Reality)
PM is most powerful

Option #2: (step by step approach)

Gradually reduce horizontal and vertical distribution of power.

Step-1: Concentrate power horizontally:

Already Legislature forms Executive.

If Executive starts forming Judiciary, then horizontal concentration of power will be complete.

i.e. horizontally, there will be de-jure distribution of power, but de-facto concentration of power.

Step-2: Concentrate power vertically:

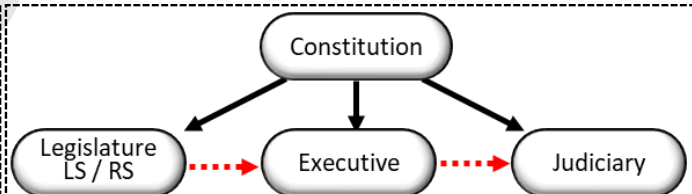
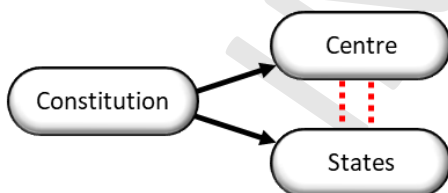
Already Centre is more powerful than States. Reason: (a) 7th Schedule (b) Central agencies (c) Funds

If elections to Centre and States are held on same day, then chances of same party at both levels will increase.

i.e. vertically, there will be de-jure distribution of power, but de-facto concentration of power.

Vertical distribution of power:

Vertical means different levels i.e.
Centre & States are powerful *within their level*



Horizontal distribution of power:

Horizontal means same level i.e.
all three organs are *equally powerful*

There is also Option #3 – follow the US model

- Nazi Germany ruled by concentration of power. It failed.
- USSR ruled by concentration of power. It failed.
- China rules by concentration of power. It may fail.
- USA is following distribution of power for centuries.
Instead of becoming weak, it has become more powerful with time.

Mature democracies like USA share power even with media & civil society.
But in China, media is controlled by Govt and civil society activists are labelled anti-national and put in jail.

Did this topic increase your knowledge for Prelims / Mains / Interview?

Yes, it increased my knowledge → See video of other topics also. And revise multiple times.

No, it didn't increase my knowledge → Don't waste your time here. Study from better sources.

I read I forget, I see I remember | See explanation video on app "All Inclusive IAS" or website www.allinclusiveias.com

UPSC Mains 1993

Describe the doctrine of colourable legislation (150 words, 10 marks)



Colorable Legislation

It means coloring the law to hide its real purpose.

When legislature cannot do something directly, it colors the law with a substitute purpose, to accomplish original goal.

Doctrine of Colorable Legislation

→ What cannot be done directly, cannot also be done indirectly.

→ The doctrine was fully discussed by Supreme Court in Gajapati vs Orissa case 1953.

Significance

Courts use it to test competence of legislature to enact a law. (However, motive of enacting the law is not considered by the courts.)

It prevents legislature from exceeding its legislative powers. e.g.

→ When Union/State tries to make law on State/Union list subject

→ When legislature misuse their constitutional power e.g. Balaji vs Mysore 1962

Balaji v. State of Mysore 1962

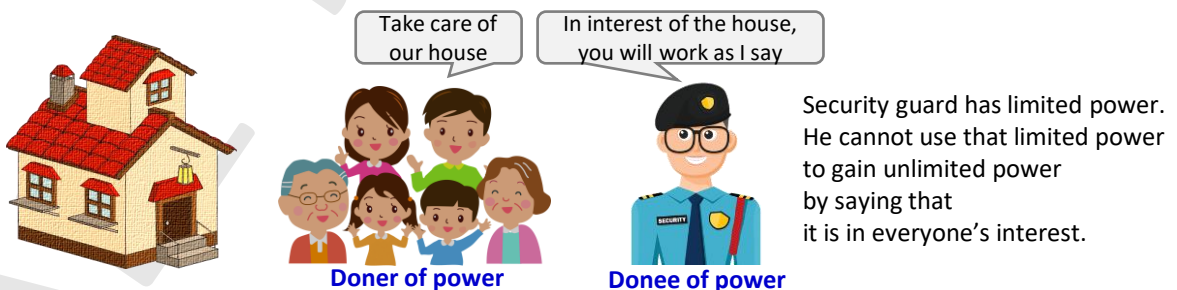
→ Article 15(4) provides reservation to socially and educationally backward.

→ State law declared all communities (except Brahmins) as socially and educationally backward (to give them reservation benefits).

→ Supreme Court held it as fraud on Article 15(4).

Understand the concept What cannot be done directly, cannot be done indirectly.

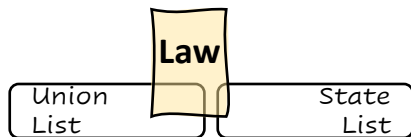
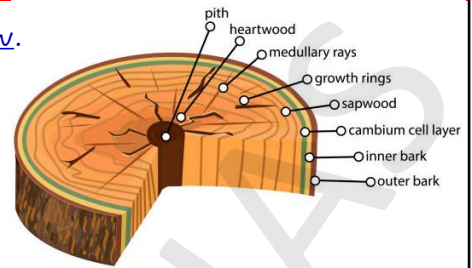
Security guard cannot become owner of house directly. This means, he cannot become owner indirectly as well.



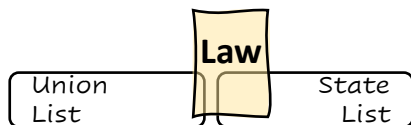
Donee of a limited power cannot, by exercise of that power, convert the limited power, into an unlimited one.

I read I forget, I see I remember See explanation video on app "All Inclusive IAS" or website www.allinclusiveias.com

- It is used by judiciary to find true nature of a law.
- In India, Supreme Court first used it in State of Bombay vs Balsara case 1951
- Incidental encroachment by a law, into some matter of another list, does not make it invalid.



If main substance of a Union law lies in Union list, then incidental encroachment into state list does not make it invalid.



If main substance of a State law lies in State list, then incidental encroachment into Union list does not make it invalid.

Significance:

Strict separation between the three lists is not possible.

When laws are framed, some overlap into the other list is possible.

Hence, this doctrine helps courts in upholding the law, in case of incidental encroachment into the other list.

Example: in Pandurang case 2020, SC held that Sarfaesi Act (Union List) is applicable to 'Cooperative Banks' (State list).

Pandurang Judgment (05-05-2020)

2002 → Centre enacted Sarfaesi Act (Banking is in Union List)

2003 → Centre extended its provisions to Cooperative banks also.
Problem: 'Cooperative societies' is in State List

2022 → SC held that Sarfaesi act's application on cooperative banks is 'incidental encroachment', which is permissible in law.

Hence, Sarfaesi Act is now applicable to Cooperative Banks.

<https://www.barandbench.com/columns/a-blow-to-borrowers-supreme-courts-nod-to-co-operative-banks-taking-the-sarfaesi-route>

Sedition is against Government. Treason is against Country.

Sedition law

- by British to tackle dissent in its colony
- still used in independent India (democracy)

- 1837: drafted by Macaulay
- 1860: not included in IPC
- 1870: added to IPC

Who said "Sedition has become my religion" ?
Gandhi in 1930 (CDM)

Section 124A of IPC defines sedition as "disaffection towards govt. established by law"

- It is a non-bailable offence
- Maximum punishment is life imprisonment
- During trial, the accused:
 - must surrender passport
 - can't apply for govt. job

Famous sedition cases:

- 1891: 1st trial was of Jogendra Chandra Bose (editor of Bangobasi) for criticising Age of Consent Act, 1891. Acquitted.
 - Bal Gangadhar Tilak (1897, 1909, 1916)
 - Gandhi (1922) arrested (6 years → 2 years)
 - and many other nationalists
- Mainly for publishing articles criticising govt.*

- ❖ 1917: Sedition Committee (Sidney Rowlatt Committee) appointed to evaluate political terrorism.
- ❖ 1919: Anarchical and Revolutionary Crimes Act, 1919 (aka Rowlatt Act, Black Act)
 - ❖ Newspapers described it as No dalil, No vakil, No appeal
 - ❖ It was extension of the Defence of India Act 1915
 - ❖ It empowered govt to quell sedition by silencing the press, detaining political activists without trial, and arresting without warrant.
 - ❖ It authorised govt to arrest anybody suspected of terrorist activities.
 - ❖ The act was repealed in 1922 by Lord Reading.

The Hindu Quiz on sedition on 12-05-2022 and its solutions on 13-05-2022

THE DAILY QUIZ

In a major decision, the Supreme Court has frozen the British-era sedition law till it is re-examined. Here's a quiz on prominent personalities related to the sedition law

1 The first recorded trial under Section 124A of the sedition law in India was against a newspaper editor who had opposed the British government's decision to change the age of consent from 10 to 12. Name the editor and the newspaper.

after publishing an article in his newspaper Kesari defending the actions of Khudiram Bose and Prafulla Chaki in Muzaffarnagar, who was acting as his lawyer in the case?



4 The judge who passed the verdict sentencing Lokmanya Tilak to imprisonment in 1908 also happened to be the lawyer arguing Tilak's case in a similar trial in 1897. Name him.

5 A participant in the freedom movement, this person was once part of the Forward Bloc and later joined the "Forward Communist Party". He was arrested and later tried for sedition in 1962 in a case where the Supreme Court, while upholding the law (and convicting him), defined the scope for its use. Name him.

2 "It is my duty to judge you as a man subject to the law, who has by his own admission broken the law and committed what to an ordinary man must appear to be grave offences against the State." These were the words used by Justice R.S. Broomfield before sentencing which person who was standing trial for sedition exactly 100 years ago?

3 When Bal Gangadhar Tilak was sentenced for sedition

◀ This member of the Constituent Assembly and later a founder of the Vishva Hindu Parishad was one of the most vehement speakers against sedition during the Constituent Assembly deliberations that resulted in the omission of the word from the Constitution. Name him. WIKIPEDIA COMMONS

Questions (abridged) and answers to the previous day's daily quiz: 1. The first recorded trial under Section 124A of the sedition law in India was against this newspaper editor. **Ans: Jogendra Chandra Bose, editor of Bangobasi**

2. Justice R. S. Broomfield sentenced this person who was standing trial for sedition exactly 100 years ago. **Ans: Mahatma Gandhi**

3. Bal Gangadhar Tilak's lawyer who was acting on his behalf when he was sentenced for sedition after publishing an article in his newspaper Kesari defending the actions of Khudiram Bose and Prafulla Chaki. **Ans: Mohammad Ali Jinnah**

4. The judge who passed the verdict sentencing Lokmanya Tilak to imprisonment in 1908. **Ans: Justice Dinshaw Davar**

5. A participant in the freedom movement, this person was tried for sedition in 1962 in a case where the Supreme Court, while upholding the law, defined the scope for its use. **Ans: Kedar Nath Singh**

Visual: This person was a member of the Constituent Assembly and later a founder of the Vishva Hindu Parishad. **Ans: K.M. Munshi**

Quotations

Dissent is the highest form of patriotism.

- Thomas Jefferson / Howard Zinn

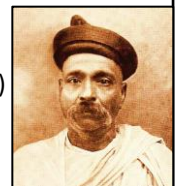
Locking up dissenters does not reduce dissent, it fosters it.

- Amal Clooney

Did you know?

In 1908 Tilak was arrested on sedition charges and sent to Mandalay (Burma) Jail.

In jail, (1908-1914) he wrote the book Gita Rahasya, published in 1915.



I read I forget, I see I remember | See explanation video on app "All Inclusive IAS" or website www.allinclusiveias.com

Supreme Court has suspended court proceedings under sedition cases while allowing the Union to reconsider the British-era law.

Arguments in support of section 124A

- Article 19(2) allows reasonable restrictions on free speech.
- Law cannot be revoked just because it has been misused.
- It is necessary to combat anti-national, secessionist and terrorist elements

Arguments against section 124A

- Sedition has no place in Democracy (no criticism = no democracy)
Elections are meaningless if govt can't be criticised
- Anti-govt does not mean Anti-national
Criticism of govt. is not same as criticism of nation
Gandhi and Tilak spoke against Govt, not nation
- Other laws exist
UAPA can be used against anti-national activities
- Other countries have removed it
UK and Australia have revoked their sedition law

Allegations of misuse

- SC guidelines are not followed. People are arrested for criticising govt.
- Law is used to control dissent. Public image of accused is tarnished forever.
- Process is the punishment. Arrests are made despite low conviction rate.
2015-18: 191 cases filed, only 4 convictions

Supreme Court Judgements

Kedarnath case 1962:

- People can speak and write anything against Govt.
- Criticism however strongly worded, which shuns violence, is not sedition.

Balwant Singh case 1995:

- raising of slogans alone is not sedition.

Law Commission in 2018

- IPC Section 124A should be reconsidered
- If govt is not open to criticism, there is no difference between pre- and post-Independent India.

Way forward

- Police must strictly follow the Supreme Court guidelines.
- For serious offences, use more suitable laws like UAPA.
- Replace with word "disaffection" with "violence"; "government" with "country".

Conclusion

Dissent is the safety valve of democracy.
Colonial mindset of suppressing dissent has no place in modern India.
Its high time that we see criticism as opportunity for improvement.

I read I forget, I see I remember | See explanation video on app "All Inclusive IAS" or website www.allinclusiveias.com



Q: SC has put sedition law on hold. What is Sedition?

A: IPC section 124A defines sedition as "disaffection towards govt. established by law"

Q: Why has SC suspended it?

A: In many court cases it was seen that cases were filed to suppress criticism of govt

Q: If criticism of govt is not sedition, then what is sedition?

A: As per various court rulings, along with criticism, there should be

- Disruption of public order, or
- Attempt to violently overthrow the govt, or
- Threat to national security

Q: If sedition law is not removed, what amendments would you suggest?

A: Two areas need amendment:

- SC rulings in various judgements, should be mentioned in law, so that misuse reduces.
- Restrictions on the accused must be reduced. Conviction rate is just 3%, that means most people booked for sedition are innocent.

Q: If they are innocent, let them prove it in court, why ease restrictions?

A: Because process is punishment. Cases take years to conclude. During trial, accused cannot appear for govt job. Half of the accused are below 30 years of age. Their eligibility will end by the time they are proved innocent. They are wrongly denied the right to appear in govt job exam.

Q: Govt job is a right?

"Applying" for job is a right, getting selected is not. 😊

<https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms>

Arrests under sedition charges rise but conviction falls to 3%

By Bahul Tripathi, ET Bureau
Feb 17, 2021, 07:51 AM IST

NEW DELHI: Arrest of Disha Ravi, a 21-year-old green activist from Bengaluru, by Delhi Police on Saturday brings into focus a spike in state and central governments using **sedition charges** to deal with dissent or criticism even as not even 4% of the accused are convicted.

1	11	21	31	41	51	61	71	81	91
2	12	22	32	42	52	62	72	82	92
3	13	23	33	43	53	63	73	83	93
4	14	24	34	44	54	64	74	84	94
5	15	25	35	45	55	65	75	85	95
6	16	26	36	46	56	66	76	86	96
7	17	27	37	47	57	67	77	87	97
8	18	28	38	48	58	68	78	88	98
9	19	29	39	49	59	69	79	89	99
10	20	30	40	50	60	70	80	90	100

AGE Group (Arrested)	MALE	FEMALE	Pendency rate
18-30	54	01	69.4%
30-45	33	00	Convicted
45-60	08	00	02

Process is punishment
but only for accused!



Read more....

- <https://www.thehindu.com/news/national/sc-asks-centre-states-to-not-file-fresh-firs-in-sedition-cases/article65403622.ece>
- <https://www.thehindu.com/news/national/sedition-law-supreme-court-order-has-the-effect-of-making-bail-the-rule-in-section-124a-cases/article65404690.ece>
- <https://indianexpress.com/article/india/supreme-court-landmark-sedition-cases-vinod-dua-disha-ravi-7911200/>
- <https://timesofindia.indiatimes.com/line-of-no-control/Sedition-vs-sedation/cartoonshow/51346033.cms>
- <https://blog.ipleaders.in/landmark-sedition-cases-in-india/>

How our Constitution makers debated & rejected the draconian sedition law

26-01-2019 - *The Print* - <https://theprint.in/opinion/how-our-constitution-makers-debated-rejected-the-draconian-sedition-law/183548/>

- Constituent Assembly decided against making sedition 'a reasonable restriction' on freedom of speech & expression.
- Essence of democracy is criticism of Government. (Constituent Assembly debates, 1 December 1948, K.M. Munshi)

Law Commission calls for re-think on sedition clause

30-08-2018 - *The Hindu* - <https://www.thehindu.com/news/national/law-commission-backs-dissent-in-a-democracy/article24822850.ece>

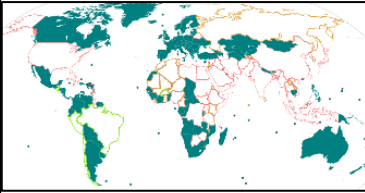
- IPC Section 124A should be reconsidered
- Criticism of govt. is essential ingredient of democracy.
- If govt is not open to criticism, there is no difference between pre- and post-Independent India.
- National integrity should not be misused as tool to curb free speech.
- Singing from the same songbook is not a benchmark of patriotism.

I read I forget, I see I remember | See explanation video on app "All Inclusive IAS" or website www.allinclusiveias.com

Capital Punishment

PT 365

Supreme Court is reviewing the process by which trial courts award death penalty. SC referred the matter to Constitution Bench. [September 2022 update]



Abolished in Nepal, Bhutan, Canada, Mexico, Australia (total 109 countries)
Still practiced in USA, Japan, India, China, Middle East, etc.

Europe:

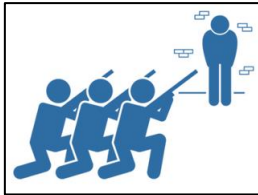
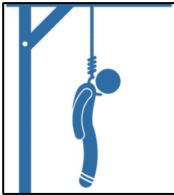
Abolition is a **pre-condition** for entry into European Union.
 Only **Belarus** continues to actively use capital punishment.

UN Convention on Rights of Child 1989

- ✓ It forbids capital punishment for **juveniles**
- ✓ It has been **signed by all countries**
- ✓ It has been **ratified** by all signatories **except USA**

United Nations resolutions:

Between 2007-2020,
 UNGA adopted 8 **non-binding** resolutions to stop Executions



Permitted methods: ✓ Hanging ✓ Shooting

Civilians → only **Hanging**
 as per CrPC section 354(5)

Court Martial → **Hanging** and **Shooting** (Army, AF, Navy)
 as per Army Act 1950, AF Act 1950, Navy Act 1957

CrPC 1898

- Death was the default punishment for murder
- Judge had to give reasons in judgment if he gave life imprisonment

CrPC 1955 amendment

- Removed requirement of written reasons for not giving death sentence

CrPC 1973

- Life imprisonment became the norm
- Death penalty imposed only in exceptional cases

For offences under which of the following laws, can death sentence be given?

- ✓ Army Act, BSF Act, etc.
- ✓ Geneva Convention Act 1960
- ✓ Explosive Substances Act 1908
- ✓ Maharashtra Control of Organised Crime Act, 1999
- ✓ Narcotics Drugs & Psychotropic Substances Act 1985
- ✓ Sati Act 1987
- ✓ SC ST Act 1989
- and few more...

Some people cannot be executed: Juvenile, Pregnant woman, Person with mental illness

Read more....

Caution!

Most media reports mention that Shabnam (Amroha murder case) could become first woman to be executed in independent India. Actually, **Rattan Bai Jain** was the first woman executed in independent India (**1955**)

https://en.wikipedia.org/wiki/Capital_punishment_in_India

Executed person	Nationality	Year	Victim(s)	President
Dhananjoy Chatterjee	Indian	2004	Hetal Parekh	A. P. J. Abdul Kalam
Ajmal Kasab	Pakistani	2012	26/11 victims	Pranab Mukherjee
Afzal Guru	Indian	2013	2001 parliament attack victims	
Yakub Memon	Indian	2015	1993 Bombay bombing victims	
Mukesh Singh	Indian	2020	Jyoti Singh	Ram Nath Kovind
Akshay Thakur	Indian			
Vinay Sharma	Indian			
Pawan Gupta	Indian			

If mercy petition is rejected, can the person still be saved? Yes

e.g. in 2014 Prez rejected mercy petition of Seema Gavit and Renuka Shinde
 But in 2022 Bombay HC commuted their sentence to life, due to delay in decision on mercy petition
<https://www.hindustantimes.com/cities/mumbai-news/gavit-sister-case-files-how-a-25-year-old-legal-battle-unfolded-101642525732195.html>

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Execution of an individual, by the state, after due process of law.

It is based on principle of retributive justice (making criminal suffer for wrongs)

Arguments in support of Death penalty

- Those who take other's life, lose their right to life.
- It creates deterrence. Fear of death reduces chances of serious crimes.
- It is given only in rarest of rare cases. Only eight people executed since 2004.
- It is demand of Democracy. Most people favor continuance of death penalty.
- It is given after following due process. Accused is given ample opportunity to appeal against death sentence.

Arguments against Death penalty

- Creates no deterrence: No study has shown that death penalty reduces crime.
- There are judge-centric variations. This has forced SC to review the process.
- Media trials and public discourse can influence courts decisions.
- It is irreversible: there is no remedy if innocence is proved after execution.
Ravji Rao and Surja Ram were hanged in 1996 and 1997. Later, SC said they were wrongly Executed.
- Low confirmation rate: Between 2004 & 2013, SC confirmed only 3-4 death sentence each year, while ~3,700 death sentences were commuted to life imprisonment.

Supreme Court Judgements

Bachan Singh v. State of Punjab, 1980:

Death penalty can be given only in "rarest of rare" cases.

Shatrughan Chauhan v. Union of India, 2014:

Delay in execution is torture and is ground for commutation of sentence.

Law Commission's 262nd report

Capital punishment should be abolished except for waging war against India.

Way forward

- Frame uniform guidelines for trial courts awarding death sentence.
- Ensure Speedy trial. Real deterrence comes from quick arrest and conviction.
- Provide competent lawyers if accused is from economically weaker section
- Strengthen criminal justice system to avoid miscarriage of justice.
- Time bound disposal of mercy petition to avoid commutation due to delay.

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Pardoning power

PT 365

Pardoning power of the President:

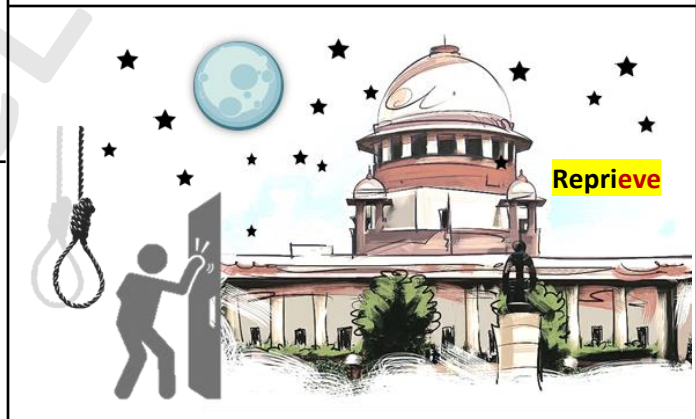
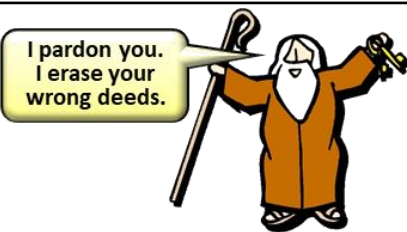
- ❑ On advice of Union Cabinet (no such restriction in USA)
- ❑ It is Executive power independent of Judiciary
- ❑ President does not sit as court of appeal.
- ❑ Can be challenged in court if it is arbitrary, irrational, mala fide or discriminatory.

	President	Governor
Article	72	161
Laws of	Union	State
Court martial	Yes	No
Death sentence	Pardon, Commute	Commute

President uses these powers when:

Person broke Union law (not State law)
Death sentence (by Union or State law)
 Punishment is by military court

Pardon (भूल जाओ जो हुआ)	Removes conviction and sentence	As if he never did the crime
Commutation (commute)	Replace hard punishment with lighter one	Jail instead of hanging
Remission (Remittance)	Reduce amount of sentence without changing character	5 years jail reduced to 2 years
Respite (pity)	Lesser punishment due to special fact	Pregnancy; Disability
Reprieve (evening)	Give time to seek pardon	Temporarily suspend hanging



Pardoning power

MAINS 365

Rationale:

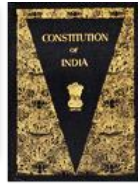
It gives human touch to complex legal process
 It can prevent execution of innocent person

Problem:

There is no time limit on President to decide on mercy petition
 There is lack of transparency as reasons are not given for acceptance or rejection.

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INDIA TODAY
 Supreme Court to have full bench strength of 34 judges after 2 years, for one day
New Delhi, UPDATED: May 8, 2022 12:09 IST



President must "consult" Chief Justice of India

Regarding appointment of Supreme Court Judges, Article 124 (2) says: *"in the case of appointment of a Judge other than the Chief Justice, CJI shall always be consulted"*. What does "consulted" mean?

<p>1st Judges case 1982</p> <ul style="list-style-type: none"> Consultation means <u>exchange of views</u>. CJI's advice not binding. 	President	<p>Not binding</p>	CJI
<p>2nd Judges case 1993</p> <ul style="list-style-type: none"> Consultation means <u>concurrence</u>. CJI's advice binding CJI must consult <u>two</u> senior-most judges 	President	<p>Binding</p>	CJI must consult two senior-most judges
<p>3rd Judges case 1998</p> <ul style="list-style-type: none"> Consultation means <u>concurrence</u>. CJI's advice binding CJI must consult <u>four</u> senior-most judges 	President	<p>Binding</p>	CJI must consult four senior-most judges
<p>4th Judges case 2015</p> <ul style="list-style-type: none"> In 2015, Govt. amended Constitution SC ruled that NJAC is unconstitutional 	President	<p>Binding</p>	CJI Union Law Minister Two senior-most judges Two eminent persons

Qualification to be SC Judge: Indian citizen, and HC judge for 5 years, or HC advocate for 10 years, or Distinguished jurist in opinion of President

Qualification to be HC judge: Indian citizen, and HC advocate for 10 years, or Held judicial office in India for 10 years
 There is no minimum age to become SC/HC Judge

- Strength of **SC** decided by - **Parliament**
 - Strength of **HC** decided by - **President**
- Current sanctioned strength of SC is **34** including CJI

Which of the following are correct?

- ✓ Originally, **Constitution fixed** number of SC judges
- ✓ **Parliament** can **increase** number of judges of SC without amending the constitution.

Transfer of HC judge:

President consults CJI; CJI consults:

- 4 senior most SC judges
- CJs of the two HCs

Basis for transferring a HC judge?

- Transfer can be only in 'public interest' for '**better administration of justice**'.
- It cannot be a punitive measure.

	SC Judge	HC Judge
Appointed by	President	
Resigns to	President	
Oath by	President	Governor
Retirement age	65	62
Term	No	

	SC Judge	HC Judge
Salary	C.F. of India	C.F. of State
Pension	Consolidated Fund of India	
Amount decided by	Parliament	
Can it be reduced?	Only during financial emergency	

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- Judges of SC and HCs are appointed by the President u/a 124 and 217.
- As per Constitution, President must consult CJI.
- But, what 'consult' means is not defined, hence debatable.

Collegium system

- ❑ CJI and four senior-most Judges recommend appointment & transfer of judges of higher judiciary.
- ❑ It is not mentioned in Constitution.
- ❑ It has evolved through the three Judges cases.

1st Judges case, 1982:

- Consultation means exchange of views.
- CJI's advice is not binding on President.

2nd Judges case, 1993:

- Consultation means concurrence
- CJI's advice is binding on Prez.
- CJI must consult two senior most judges

3rd Judges case, 1998:

- CJI must consult four senior-most judges

Arguments in support of Collegium system

- ❑ It protects judiciary from political influence.
- ❑ It implements article 50 which asks State to separate Judiciary from Executive.
- ❑ It helps in talent recognition as Judges can better assess other judges.
- ❑ It is a democratic process as decision is taken by majority. In Executive, leader has disproportionate influence.

Arguments against Collegium system

It's an opaque system:

- There is lack of transparency in working of Collegium.
- Reason for selecting or rejecting candidates is not made public.

It promotes Nepotism:

- Judges selecting Judges increases possibility of nepotism and favouritism.
- Uncle Judges Syndrome as mentioned by Law Commission in 230th report.

Way forward

- Amend Memorandum of Procedure to define timeline for each step
- Reform Collegium system, basis for selection must be made public
- Judge having a relative in HC should not be appointed in the same court

- Set up u/a **263**, but **not permanent** Constitutional body (think of ECI)
- Set up by a **Presidential order** in **1990**, on recommendation of **Sarkaria** Commission
- To promote coordination, dialogue, etc.
- All **States & Union Territories** have representation.



Article 262: inter-state **water** disputes
Article 263: inter-state disputes

Can it discuss some legal controversy b/w governments?
 Yes, but its decision is **advisory** (SC decision u/a 131 is binding)

Inter-State Council Secretariat:

- Set-up in **1991**
- Headed by a secretary to the Central govt.
- Since 2011, also functioning as secretariat of Zonal Councils.

Standing Committee:

- set-up in **1996**
- Union **HM** is Chairman
- 5 Union Cabinet ministers
- 9 CMs

	ISC	Five Zonal Councils	North-Eastern Council
Type of body	Constitutional (Article 263)	Statutory (States Reorganization Act, 1956)	Statutory (North Eastern Council Act, 1971)
Chairman	PM	Union HM	Union HM
Vice-Chairman	--	CMs by rotation	MoS in Ministry of DoNER

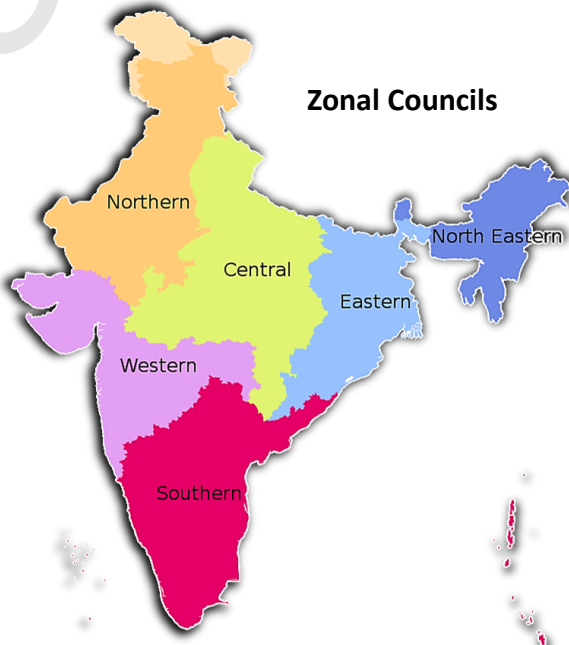
Prelims 2013:

Which of these bodies do **not** find mention in Constitution?

1. National Development Council
2. Planning Commission
3. Zonal Councils

Select the correct answer using the codes given below.

- (a) 1 and 2 only
- (b) 2 only
- (c) 1 and 3 only
- (d) 1, 2 and 3



Prelims 1995:

Which of the following are **extra-constitutional** and **extra-legal** device(s) for securing cooperation and coordination between the States in India?

1. National Development Council
2. The Governor's Conference
3. Zonal Councils
4. Inter-State Council

Codes:

- (a) 1 and 2
- (b) 1, 2 and 3
- (c) 3 and 4
- (d) 4 only

National Development Council:

- Neither constitutional nor statutory body
- First meeting **1952**; last **2012**
- Composition similar to NITI's Governing Council
- No work assigned, no meetings

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What is the significance of Inter-state council?

- It is a Constitutional body, unlike NITI Aayog which is a Executive body
- It reduces trust deficit between Centre and states by providing platform for dialogue.
- It acts like a safety valve by giving states opportunity to voice their grievances.
- It can help resolve disputes between centre-state and state-state.

Why it has not been very successful?

- Low frequency of meetings. It has met only 11 times since 1990
- There are other platforms for more regular meetings b/w centre-state.
- Its advice is non-binding.

How can ISC be strengthened?

- Regular meetings should be conducted.
- Include representatives from NGOs, civil society, domain experts, etc.
- ISC must have continuing auditing role in concurrent list matters (recommended by Punchhi commission)

THE HINDU

Thiruvananthapuram Declaration seeks passage of reservation Bill

Two-day National Women Legislators' Conference draws to a close

May 27, 2022 07:25 pm | Updated 07:34 pm IST - THIRUVANANTHAPURAM

How many women in Constituent Assembly?
15 (3 from Kerala)

How many women in first Lok Sabha 1952?
24

Current status:
15% LS MPs
15% MLAs
45% in local bodies

IPU's Women in Parliament rankings 2022

Globally, 26% of lawmakers are women.
India's rank fell from 95 in 1998 to 143 in 2022
109 Bangladesh #111 Pakistan #143 India

Inter-Parliamentary Union: (not UN agency)

- It is a global organization of national parliaments
- est in 1889, HQ Geneva Switzerland
- 178 members. India? Yes USA? No

Women in politics

INTERVIEW



Are there any reserved seats in Lok Sabha?

Seats are reserved in Lok Sabha for SC & ST on the basis of population.

How much in percentage terms?

Approximately 15% for SC and 8% for ST

By bringing 33% reservation for women, what percentage of seats in LS will be reserved?

If implemented, women reservation will be a horizontal reservation, not vertical reservation.
Hence, 33% of SC seats, 33% of ST seats, and 33% of unreserved seats will be reserved for women.

Quiz on women MPs (The Hindu 31-10-2022 pg-13)

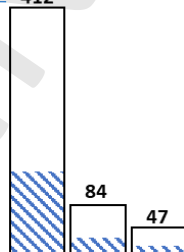
New Zealand	women representation in parliament recently crossed 50% mark
Rwanda	Country with highest women representation in Parliament (61%)
Cuba	Country with highest women representation in Parliament despite no quota (53%)
Annie Mascarene	one of the 15 women in Constituent assembly, also first woman MP from Kerala
Geeta Mukherjee	was seven times LS MP, spearheaded 33% women reservation demand
Chandrani Murmu	currently youngest serving MP in India, representing Keonjhar, Odisha
Sonal Mansingh	a nominated member of RS and also a renowned classical dancer

https://mea.gov.in/Uploads/PublicationDocs/19167_State_wise_seats_in_Lok_Sabha_18-03-2009.pdf

Seats in Lok Sabha as per orders of Delimitation Commission in 2008:

412 unreserved
084 reserved for SC
047 seats for the ST

Max total seats: UP (80 seats)
Max seats for SC: UP (17 seats)
Max seats for ST: MP (06 seats)



Women in Constituent Assembly

- Sarojini Naidu
- Sucheta Kriplani
- Vijalakshami Pandit
- Rajkumari Amrit Kaur
- Durgabai Deshmukh
- Hansa Jivraj Mehta
- Annie Mascarene
- Dakshayani Velayudhan
- Ammu Swaminathan
- Begum Aizaz Rasul
- Malati Choudhury
- Purnima Banerjee
- Kamla Chaudhary
- Renuka Ray
- Leela Roy

Read more....

- <https://pib.gov.in/PressReleasePage.aspx?PRID=1828466>
- <https://prsindia.org/billtrack/womens-reservation-bill-the-constitution-108th-amendment-bill-2008-45>
- <https://indianexpress.com/article/political-pulse/national-women-legislators-conference-reservation-defamation-7941098/>
- <https://indianexpress.com/article/opinion/columns/derek-obrien-writes-the-bjps-false-promises-on-the-womens-reservation-bill-8420766/>
- <https://newsonair.com/2022/05/26/president-kovind-inaugurates-national-conference-of-woman-legislators-in-thiruvananthapuram-lauds-role-of-women-in-constituent-assembly-of-india-of-which-3-were-from-kerala/>

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What are the different ways in which women participate in Politics?

- Women in legislature: 15% LS MPs, 15% MLAs, 45% local bodies
- Women in Union Executive: 23% in 2019 (9% in 2021)
- Female voter turnout: 68% for both males and females in 2019 elections
- Women related issues in elections: Crime against women by politicians
- Women as campaigner, office bearer of political party, etc.

Benefits of increased women participation in politics:

- It brings gender balanced perspective to policy making
- It reduces use of money & muscle power and political corruption
- It encourages more women to study and participate in job market

Why low women participation in politics?

- Lack of education: some states mandate 8th class as eligibility to fight Panchayat elections
- Lack of Finances: Fighting elections need money; but women have less money at their disposal.
- Proxy candidates: Most women are proxy candidate of their husband e.g. Sarpanch Pati
- Nature of elections: Use of money & muscle power discourages women from fighting elections.

Steps taken:

- Article 243D: It gives 33% reservation to women in panchayats.
- Women reservation Bill: It has been presented in Parliament repeatedly

Arguments in support of women reservation Bill:

- Lok Sabha has just 15% women MP, compared to 26% global average.
- Reservation in Panchayats has shown positive effect of women empowerment. This should be replicated at State and National level.

Arguments against women reservation Bill:

- It restricts choice of voters to women candidates.
- It will weaken status of women in society since they would not be perceived to be competing on merit.

What can be done?

- Encourage gender equality in all aspects in society.
- Introduce 33% reservation in Lok Sabha and state assemblies.
- Train/guide first time women legislators to help them function independent of male support.