

Remember:

The perfect answer does not exist.

Class-1

Judicial Activism

Judicial review:

- courts review constitutional validity of laws.
- Article 13, 32 and 226 forms the core of judicial review.
- e.g. NJAC struck down for violating separation of power.

Judicial activism:

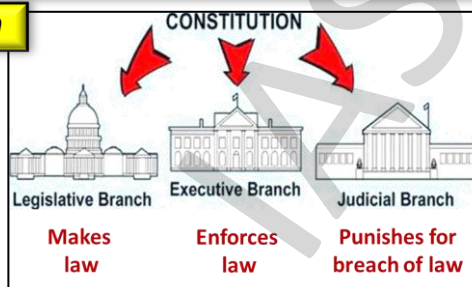
- courts proactively act to promote justice in society
- like activist, court tries to bring political/social change
- e.g. introduction of PIL; candidates disclosing qualifications

Judicial overreach / Judicial legislation

- courts act beyond their jurisdiction
- It challenges the doctrine of separation of powers
- e.g. courts fixing timings for Diwali fireworks

Judicial restrain:

- courts restrict the use of their powers.
- e.g. SC refused to temporarily stop Centra Vista construction during second wave
- e.g. SC refused to look into reduced purchase of Rafale (36 instead of 126)
- e.g. SC refused to take decision on tractor rally (Jan 2021)



Separation of power will be discussed as a separate topic.

Activist is not the one who fights for his own rights, it's the one who fights for rights of others.

Some more examples to quote for Judicial activism/overreach:

- Evolution of doctrine of **Basic Structure** in 1973
- "**Due Process of Law**" in Maneka Gandhi case 1978 (Due process of law checks whether any law in question is fair and not arbitrary)
- Playing **National Anthem in cinema halls** made compulsory by SC in Shyam Narayan Chouksey case.
- **Liquor sale ban** within 500 metres of highways.
- Cancelled 122 telecom licenses and mandated **compulsory auction for natural resources**.
- Issued **Vishakha guidelines** 1997 to protect women from sexual harassment at workplace.
- Ban on sale of **BS-IV vehicle** should be sold after March 30, 2020
- Allahabad HC ordered that **bureaucrats** must send **kids** to **govt schools**

Arguments against Judicial Activism:

- **Against** spirit of the **Constitution** by violating **separation of power**, e.g. against **Article 50** Separation of judiciary from executive.
- **Reduces trust of people in Executive**, which can be dangerous for democracy. e.g. courts seen as savior against tyranny.
- Judiciary is **not accountable to people** unlike Executive. Also, it can punish for contempt.
- (ncert) Proactive judiciary accepting large number of PILs **overburdens the courts**.
- (ncert) It has blurred the line between executive and judiciary. e.g. controlling pollution or corruption is **not duty of judiciary**.

Arguments in support of Judicial Activism:

- **Article 142:**
 - SC can issue any order to ensure **complete justice** in any case.
- It **fills the void** created due to non-activity of other organs of government.
 - e.g. ban on sale of firecrackers in Delhi;
 - e.g. restrictions around Taj Mahal to protect it.
- Helps protect **spirit of the constitution**,
 - by giving wider interpretation to articles like 14 and 21.
- Prevents curbing of **citizen's rights** by state.
 - e.g. 40,000 prisoners released from jail as a result of **Hussainara Khatoon case**
- (ncert) It has forced executive **accountability**.
- (ncert) It has **democratised the judicial system**
 - by giving not just to **individuals** but also **groups** access to the courts.
- (ncert) Made **electoral system** free and fair
 - by mandating candidates to declare assets, educational qualifications, criminal cases.

Closing remarks:

- There is a **thin line** between judicial activism and judicial overreach.
- **Judicial discipline** must be maintained.
- Cases invoking **Article 142** be referred to bench of **at least 5 judges**.
- For political & social change in society, **Activism** is necessary, but should be **within limits**.
- Courts must exercise restraint and **not act as a super-legislature**.
- Judicial activism is **good** as an extension of judicial **review**. However, it should **not** grow into judicial **overreach**.

Previous Year Questions:

- ❑ **Mains 2020: Judicial Legislation** is antithetical to the doctrine of **separation of powers** as envisaged in the Indian Constitution. In this context justify the filing of large number of **public interest petitions** praying for issuing guidelines to executive authorities.
- ❑ **Mains 2014:** Starting from inventing the **basic structure** doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by **judicial activism** in achieving the ideals of democracy.
- ❑ **Mains 2008:** What is meant by **Judicial Activism**? Evaluate its role in the context of the functioning of Indian Polity.
- ❑ **Mains 2005:** Is it possible to distinguish between **judicial review** and **judicial activism** in India? Does the recent behavior of the Indian judiciary partake more of judicial activism? Argue with suitable example.
- ❑ **Mains 1996:** What is meant by '**Judicial Activism**'? Evaluate its role in reducing corruption in public life.

BarBench SIGN IN

News Columns Dealstreet Interviews

Supreme Court Regional Benches: A Private Member Bill by P Wilson, appeal by Bar Councils to CJI Ramana for Southern Bench revive debate

Meera Emmanuel .

Published on : 27 Jul, 2021 , 10:34 pm

Regional Benches of Supreme Court

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Vice President Bats For Regional Benches Of Supreme Court

LIVELAW NEWS NETWORK
12 Aug 2019 9:27 AM

The SC should have separate divisions to deal with appeals and constitutional issues, he suggested.

Under article 130:

- **Delhi** is the seat of Supreme Court of India.
- **CJI** can set up regional benches after President's approval.
- **Constitutional amendment** is not needed to set up regional benches.

How will regional benches help?

- ❑ **Access to justice:** Litigants have to travel long **distance** and spend huge amount of **money** to fight case in Delhi. Many don't file appeal due to this reasons.
- ❑ **Pendency:** **65,000 cases** pending in SC; disposal will fasten with regional benches
- ❑ **Efficiency:** SC at Delhi would only hear **Constitutional cases**, which are otherwise delayed due to large number of appeals.
- ❑ **DPSP Article 39-A:** justice should not be denied due to economic reason or other disability.

<i>Arguments against regional benches</i>	<i>Counter-arguments</i>
<ul style="list-style-type: none"> ▪ It will dilute the authority of SC. 	<ul style="list-style-type: none"> ▪ Regional benches of Bombay HC have not diluted its authority. ▪ Only SC at Delhi will deal with constitutional matters, so no question of dilution/competition.
<ul style="list-style-type: none"> ▪ It will weaken the integrated system of judiciary. ▪ In 2010, full court of SC cited this as reason to reject law commission recommendation. 	<ul style="list-style-type: none"> ▪ Regional benches of HCs have not affected integrated judiciary system.

❑ Law Commission

- **1984:** SC should consist of two divisions: (a) Constitutional Division, and (b) Legal Division
- **2009:** Constitution bench at Delhi; four regional benches for appeals

❑ Parliament:

- In 2004, 2005, 2006, Standing Committees of Parliament recommended regional benches.

❑ Supreme Court in 1986:

- recommended establishment of National Court of Appeal with regional Benches at Chennai, Mumbai and Kolkata.

Conclusion:

With rising case pendency and difficulties faced by poor litigants, it is time that the idea of regional benches be put into action.

Cooling off period for Judges

Points can be used in:

- Independence of Judiciary
- Separation of power

2020: Retd CJJ made RS member within 4 months of retirement.

2014: Retd CJJ made Governor within 4 months of retirement.

Such cases have re-ignited demand for cooling-off period for judiciary.

Question: Should there be a cooling-off period for judges?

No, cooling-off period is not needed:

- Article 124(7)** restricts **post-retirement appointment** in judiciary itself, not in legislature or executive.
- Appointments to legislature helps bring **legal perspective** on important bills; add value to debates.
- Nomination** to RS by President is not same as joining a political party; so **impartiality** should not be in question.
- Its not for the first time. [Ranganath Mishra retd. in 1991; joined RS in 1998]

Yes, cooling-off period is need of the hour:

- Such nominations **influences judiciary** to give a favorable ruling in return for attractive post-retirement jobs.
- It weakens the Constitutional spirit of **Separation of power**.
- It will strengthen **independence of judiciary**, and people's faith in courts.
- Both LS and RS already have top **lawyers as members**, to give legal perspective.
- M Hidayatullah became VP after 9 years; Ranganath Mishra became RS-MP after 7 years.

Way forward:

- Implement **cooling-off period**, as in practice for Group-A officers (two years).
- Just like Section-8 of Lokpal Act 2013, bar judges from taking assignment as ambassador, Governor, etc.
- British practice** of automatic nomination to upper house could be explored. (Each and every judge of the Supreme Court has the right to sit in the House of Lords for the rest of his or her life.)

Constituent Assembly debates:

- KT Shah** suggested to bar retired SC/HC judges from executive posts, to prevent any temptation affecting independence of judiciary.
- Ambedkar** argued that judiciary decides cases in which govt hardly has any interest. (true for those times)
- However, today this argument is not valid as **govt. is the largest litigant** in courts.

Additional info:

- Law Commission:**
 - in its 14th report 1958 recommended banning post-retirement **government employment** for Supreme Court judges.
 - But, Nominations to **RS** or appointment as **Governor** are **not** considered as govt. **employment**.
- Article 80:** President can nominate 12 persons to RS: arts, literature, science, social service.
- Group-A** Government officers cannot seek commercial employment within 2 years, post their retirement, without the permission of the government.



Properly Framed 'All India Judicial Service' Important To Strengthen Justice Delivery System: Centre Tells Rajyasabha

Sparsh Upadhyay 5 Aug 2021 10:28 PM

The Union Law Minister today informed the Rajyasabha that the Government is engaged in a consultative process with the stakeholders to arrive at a common ground regarding the creation of an All India Judicial Services (AIJS) and that its creation is essential for a strong justice delivery system. The Union Law Minister was responding to the query raised by MPs

All India Judicial Service

- First proposed by 14th report of Law Commission in 1958.
- Presently being pushed as a part of judicial reforms.

What?

- A centralized cadre of **district judges**.
- Recruit district judges through an **all India exam**

Constitution Articles:

- Article 233**: district judges are appointed by Governor in consultation with HC
- Article 312**: Parliament can create AIJS if RS passes resolution by 2/3rd majority.

Issues with present system (need for AIJS)

- Vacancies**: There are more than 5,000 vacancies in lower judiciary, mainly due to slow recruitment process. AIJS will speed up filling vacancies through regular examination.
- Inefficiency**: Recruitment exams are inefficient and full of loopholes. AIJS will improve quality of exam.
- Training**: training is not up to the mark in some states. AIJS will be trained by Union govt. institutions.
- Unattractive**: Talented law graduates prefer being lawyer than become district judge. AIJS will provide excellent career opportunities, and uniform pay scales.
- Beneficial to states**: states poor in human resource will be able to find talent.

Challenges:

- Federalism**: AIJS will transfer power of states (article 233) to Centre.
- Language & culture**: Lower courts work in local language. Local laws and customs vary across states.
- Reservation**: OBCs in state list, but not in Central list, will no longer get reservation.
- Inequality**: due to national competition, candidates from weaker background may not be able to compete.
- Promotion**: members of State Judicial Service will find it difficult to get promotion.
- High courts**: AIJS may reduce control of High Court over Subordinate judiciary.

Way forward:

With ever increasing cases in courts, its time to build consensus on AIJS, and at the same time, insulate it from influence of Centre and State governments.

Judicial Pendency

Non-functioning / partial functioning of courts during pandemic has substantially increased judicial pendency.

Total pending cases:

- Jan 2020: 3.7 crore
 - Jan 2021: 4.2 crore
 - July 2021: 4.5 crore
- National Judicial Data grid

Reasons for large number of pending cases:

- Increasing literacy:
 - people becoming aware of their rights
- Shortage of judges:
 - Low Judge/population ratio: presently 20/million; Law comm. recomm. 50/million
 - 25% vacancy in subordinate courts; 40% in HCs
- Inefficient investigation:
 - non-scientific investigation by police drags cases longer.
 - Forensic evidence results in faster verdict.
- Burden of govt. cases:
 - Govt. is the biggest litigant; accounts for 46% of cases
- Frequent adjournments:
 - Frequent adjournments, sometimes on flimsy grounds
 - only 3 adjournments per case are allowed but this rule is not followed
- Low budgetary allocation:
 - leads to poor infra at courts
- Special leave petition: (Article 136)
 - 40% of cases pending in SC are from SLP

Impact:

- People lose faith in judiciary:
 - Justice delayed is justice denied; Speedy justice is the right of every litigating person
- Higher crime rate:
 - Delay in conviction encourages criminals.
- Overcrowded prisons:
 - due to more number of undertrials (150% of capacity in some prisons)
- Economic impact:
 - delay in contract enforcement; cost of doing business increases; discourages investment

What can be done:

- Fill vacancies:
 - include timeline in MoP for each step; appoint ad-hoc judges; Constitute AIJS; timely conduct of state judicial service exams
 - Increase in working days of courts
- Efficient court management: (efficiency in administrative functions)
 - Professional Court Managers as suggested by the 13th Finance Commission.
 - Establish Indian Courts and Tribunal Services to focus on the administrative aspects of the legal system.
 - Improve court infra, new campuses, computerisation of all courts
 - Use of IT solutions like e-courts
- Adjournments:
 - Penalty for adjournment on flimsy grounds
 - Time bound case disposal
- For petty cases:
 - Start evening courts for petty offences, as in Delhi since 2008.
 - Use of Lok Adalat, Gram Nyaylayas

Collegium

- SC has asked govt. to give a timeline within which it will clear names given by Collegium.
- Judges of SC and HCs are appointed by the President of India under Articles 124 and 217.
- But the process of selection is not clearly given in Constitution; hence a debatable issue.

Collegium system:

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

Three Judges cases:

- Article 124(2) says that the President must consult CJI.
- But, what 'consult' means is not defined, hence debatable.

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:

- Article 50:** State shall take steps to separate Judiciary from Executive.
- Independence of Judiciary:** protects judiciary from political influence.
- Democratic process:** Decision taken by majority; unlike Executive where leader has disproportionate influence.
- Talent recognition:** Judges can better assess the suitability of candidates.

Arguments against Collegium system:

- Opaque system:**
 - There is **lack of transparency** in working of Collegium.
 - Reasons for selecting or rejecting candidates is not made public.
- Nepotism:**
 - Judges selecting Judges increases possibility of nepotism and favouritism.
 - Uncle Judges Syndrome** as mentioned by LC in 230th report.
- No permanent commission:**
 - Law Commission in 1987 and NCRWC in 2002 recommended that a permanent commission be set up for appointments to higher judiciary.

99th Constitution (Amendment) Act, 2014

- inserted articles 124A, 124B, 124C.
- established **National Judicial Appointment Commission**
- Composition:** CJI, two senior-most SC judges; **Law Minister**; two **eminent persons**.
- Struck down** by SC in 2015 through judicial review.

SC verdict:

- 99th CAA 2014 is **unconstitutional and void**.
- Inclusion of **law minister** is against independence of judiciary and separation of powers.
- It is against **primacy of judiciary**, a basic feature of constitution
- Collegium** system will **continue**; steps can be taken to **improve** it.

Way forward:

- Amend MoP for timeline for each step
- Reform Collegium system:
 - more transparency in functioning
 - basis for selection must be made public
 - take public inputs with confidentiality
 - Judge having a relative in a HC should not be appointed in the same court

Mains 2017:

Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.



Supreme Court timeline for judges' appointments a shift from Memorandum of Procedure

The Supreme Court's ruling comes in the backdrop of it repeatedly underlining that several names are pending with the government for months now, at a time when HCs are staring at over 40% vacancies.

Written by **Apurva Vishwanath** | New Delhi |
Updated: April 21, 2021 7:05:27 am

Memorandum of Procedure (MoP):

- It is an agreement between judiciary and government.
- It has guidelines for making appointments to SC and HCs.
- In 2016 MoP was re-negotiated after SC had stuck down NJAC

News:

- To fill HC vacancy: HC Collegium → Central govt → SC Collegium
- HC C.J. must send names at least 6 months before occurrence of vacancy.
- But there is no timeline in MoP for govt to take action on HC Collegium's recommendation.
- SC has now ruled that HC Collegium's recommendation must reach SC Collegium within 4 months.

Transfer of High Court Judges:

- Collegium recommended transfer of Madras HC C.J. to Meghalaya HC; C.J. resigned
- While some questioned lack of transparency in collegium's decision; Collegium clarified that it had strong reasons for the transfer.

Transfer of HC judge:

- President consults CJI
- CJI consults:
 - 4 senior most SC judges
 - CJs of the two HCs

What is the basis for transferring a HC judge?

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

Arguments against the transfer:

- HC are not subordinate to SC [except in case of appeals].
- Transfer is used to punish judges for unfavorable judgement.

Arguments in support of the transfer:

- Collegium system is a well-established system, used even for appointments.
- Judges can't be removed for every wrong, so transfer acts like a warning.

Way forward:

- Reasons for transfer must be substantive and put on record.
- Steps should be taken to improve transparency in functioning of collegium.

Class-1: Judicial Activism -- Regional Benches of SC -- Cooling off period for Judges

Class-2: AIJS -- Judicial Pendency -- Collegium -- MoP -- Transfer of HC Judges

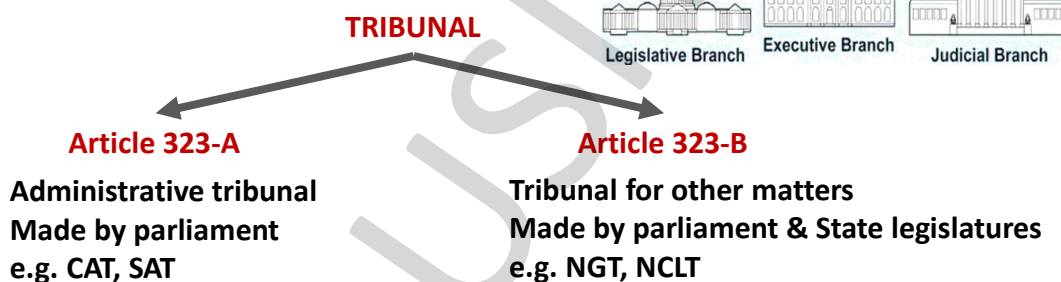
Class-3: Tribunals -- Contempt of Court – Gram Nyayalays -- Fast Track courts

Tribunals

- ❑ **Mains 2016:** What is **quasi judicial body**? Explain with the help of concrete examples.
- ❑ **Mains 2018:** How far do you agree with the view that **tribunals** curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India?

Tribunals in India:

- **Quasi-judicial** bodies for speedy and specialized justice
 - ↳ Executive body performing judicial function



Constitutionality of Tribunals:

- ❑ **42nd amendment** inserted articles **323-A** and **323-B** for Tribunals.
- ❑ **Sampath Kumar case 1987:** SC ruled that
 - ❑ Administrative Tribunals Act 1985 **does not violate basic structure** of Constitution.
 - ❑ Appointment must be based on recommendation of a **committee chaired by CJ**
- ❑ **L. Chandra Kumar case 1997:** SC ruled that
 - ❑ All decisions of Tribunals are subject to jurisdiction of **High courts**.
 - ❑ A **single agency/ministry** should be there for appointment, administration, etc.

Since decisions of Tribunals can be challenged before HCs, are the Tribunals useless? No.

Case reaching HC after Tribunals has two benefits:

- 1) **Frivolous** cases will be **filtered** out by Tribunals.
- 2) HC will benefit from **reasoned decision** of the Tribunals.

National Tribunals Commission:

- **idea** first mooted by **SC** in L. Chandra Kumar case **1997**.
- **independent body** to supervise the functioning of tribunals.
- It will **reduce interference of Executive** and bring efficiency to their functioning (fill up vacancies, upgrade infra, etc.)

Benefits of Tribunals:

- **Specialisation:** expertise is required to decide complex cases of **technical** nature.
- **Relief to Courts:** they reduce case **burden** on courts
- **Flexibility:** not bound by rigid **rules of procedure**; good for changing socio-economic scenario; follows principle of natural justice (no strict application of archaic laws)
- **Less Expensive:** ensures **cheap & quick** justice. (as experts have subject area knowledge)

Issues with Tribunals:

- **Against separation of power:** Executive does work of judiciary
- **Against natural justice:** Controlled by **Executive**, which is **party to cases**
- **Lack of independence:** they don't enjoy same constitutional protection as high courts, hence are vulnerable to **political influence**.
- **Non-experts:** many expert positions are filled by **administrative officials** who are not expert in the field
- **Large number of Vacancies:** as repeatedly pointed by the SC
- **Administrative issues:** non-accessible due to geographical concentration; inadequate infra, non-functional websites, high pendency, etc.

Finance Act, 2017:

- **26 Central laws** were amended
- **Delegated powers** for criteria, selection, terms of service, removal, etc. to Central govt.
- **Govt framed rules** for the same.

Rojer Mathew case 2019:

- SC struck down the rules framed under Finance Act, 2017
- Rules violate **judicial independence**
- **Executive** is litigant in many cases, so **can't dominate** selection committee.
- Selection committee for most tribunals has only **one judge and three secretaries**.

Madras Bar Association cases (2010, 2014):

- ❑ Selection committee must comprise:
 - ❑ **CJI** as chairperson with casting vote
 - ❑ **SC Judge** / HC C.J.
 - ❑ **Secretaries** of **Finance** Ministry and **Law** Ministry
- ❑ **Administrative support** must come from Law Ministry, **not from parent ministry**

Tribunals Reforms Act, 2021: (same problems)

Central govt can frame rules for appointment, removal, etc.

Selection committee composition:

- CJI as chairperson
- Chairperson of Tribunal
- Two Secretaries to govt
- Secretary of concerned ministry

Issues with Tribunal Reforms Act:

- # Selection committee dominated by **Executive**
- # **Judiciary** has only token representation
- # Against the SC judgement in **Roger Mathews case**
- # Against judicial independence, natural justice, etc.

Way forward:

- Establish **NTC** under Law Ministry
- Selection committee can have more representation from **judiciary**
- Tribunals should have **benches** in different parts of India

Before 2017: (ignore this box for Prelims)

➤ appointment, removal, etc. governed by law

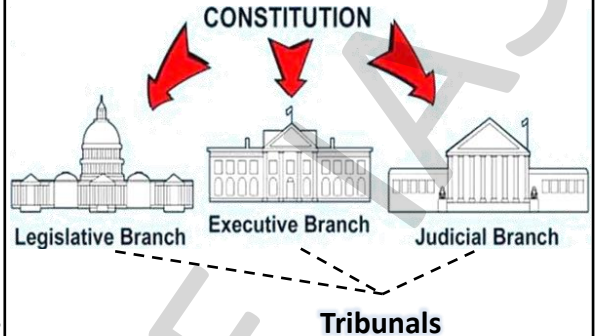
Finance Act, 2017:

- Merged some tribunals
- Gave Central govt power to change things at will
- Central govt framed rules; SC stuck them down
- New rules in 2019; again SC suck them down

2021:

- Tribunal Reform Ordinance 2021; same things
- So, stuck down by SC
- Tribunal Reform Act, 2021; same as Ordinance
- SC expressed unhappiness; also issue of vacancies

Tribunals



Tribunals:

1950: No provision

1976: 42nd Amendment added **Part XIV-A**

1985: "Administrative Tribunals **Act**, 1985

Tribunals:

- Quasi-judicial body,
- For Speedy and specialized justice
- Follows principles of natural justice

			By	For what purpose?	Hierarchy?
42 nd Amendment	323A	CAT SAT	by Parliament, under Administrative Tribunals Act, 1985	Original jurisdiction for public service matters (employees of Centre & States)	No
	323B	Taxation, Tenancy, etc.	Parliament; State legislatures	for other matters	Yes

Prelims 2009:

Consider the following statements:

1. CAT was set up during the Prime Ministership of Lal Bahadur Shastri. (1985)
 2. **Members** of CAT are drawn from both **judicial** and **administrative** streams.
- Which of the above statements are correct?
 (a) 1 only **(b) 2 only**
 (c) Both 1 and 2 (d) Neither 1 nor 2

Additional info:

- CAT & SAT members are appointed by President.
- Appeal against CAT goes to HC (not directly to SC)
- SAT is not yet in all states.

Original jurisdiction:

power to hear a dispute in the first instance (**directly**), not by way of appeal.

Exclusive jurisdiction:

no other court can decide such disputes.



Contempt of Court

While the judiciary issues orders, they are implemented by the government or private parties. If the courts are unable to enforce their orders, then the rule of law itself will come to grinding halt.

Contempt of Courts Act 1971

Civil contempt

- willful disobedience of court order
- willful breach of an undertaking given to the court
- e.g. in February 2019, SC found Reliance Communication guilty of civil CoC in Ericsson dues case.

Criminal contempt

- ❑ Interference in judicial proceeding
- ❑ Scandalize or lower authority of any court
- ❑ e.g. in August 2020, SC found Prashant Bhushan guilty of criminal CoC for tweets criticizing SC and CJs

Contempt:

- ❑ Disobey court order
- ❑ Breach of undertaking given to court
- ❑ Interfere with judicial proceedings
- ❑ Scandalise the court

Not contempt:

- ❑ Fair criticism of judgement
- ❑ Mere criticism of court (*PN Dua case 1988*)
- ❑ Defaming judge but not interfering with proceedings
- ❑ Justification by truth is valid defence (*2006 amendment*)

Constitution:

- ❑ Does not define what is contempt
- ❑ Article 129: SC can punish for its contempt
- ❑ Article 215: HC can punish for its contempt
- ❑ Article 19(2): CoC is reasonable restriction on freedom of speech & expression

Contempt of Courts Act 1971:

- ❑ Defines contempt (civil & criminal)
- ❑ HCs can punish for contempt of subordinate courts
- ❑ Punishment: 6 months jail / Rs 2000 fine
- ❑ Not applicable if offences is more than 1 year old
- ❑ No contempt unless there is substantial interference in due process of justice (Section 13)
- ❑ 2006 amendment: justification by truth is a valid defence (added defence of truth to section 13)

Consent for "Criminal" contempt cases:

- ❑ SC: Attorney General / Solicitor General
- ❑ HC: Advocate general / Lower court
- ❑ Consent not needed for suo-motu cases

Some notable judgements of Supreme Court:

- ❑ PN Dua v Shiv Shankar case 1988:
 - Mere criticism of the Court is not contempt.
- ❑ Pritam Lal v. High Court of M.P 1992:
 - It is the duty of the Court to punish for contempt to preserve its dignity.
- ❑ Various judgements of SC and HCs:
 - Court's shoulders are broad enough to shrug off comments

How judiciary responds to criticisms in other countries?

England:

- ❑ Contempt Law has now been abolished. Last contempt proceedings occurred in 1931.
- ❑ This is against the principle that one cannot be a judge in their own case.

USA:

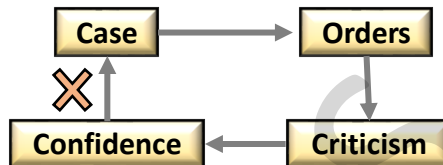
- ❑ Courts don't use contempt law against comments on judges or legal matters.
- ❑ Courts won't be respected if discussions about the Courts were silenced.

Canada:

- ❑ Courts are free to be criticised unless there is any imminent danger to administration of justice.

Why courts need contempt powers?

- To ensure court proceedings go on smoothly
- To ensure compliance of court' orders.
- To maintain authority and dignity of courts.
- To maintain public confidence in judiciary.



Do you think Contempt of Courts Act 1971 needs to be relooked?

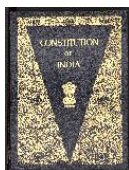
- It stifles freedom of speech and expression.
- Definition of criminal contempt is too wide.
- Countries like US, Canada and England have abolished the 'scandalizing the court' as an offence.

Way forward

- Criticism of Judiciary may be taken out of the purview of contempt powers.
- Contempt powers should be limited to enforce compliance and against obstructions in judicial proceedings.
- An institution as important as the Supreme Court of a country must be open to public discussion without the fear of retribution.

Law Commission on Contempt of Courts Act, 1971 (April 2018):

There is no requirement to amend the Act, for the reasons stated below:



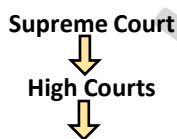
- 1) SC and HCs derive their contempt powers from the Constitution. The Act outlines the punishment for contempt. Therefore, deletion of the offence from the Act will not impact the inherent constitutional powers of SC and HCs. These powers will continue to remain, independent of the 1971 Act.



- 2) If there is no definition for criminal contempt in the Act, superior courts may give multiple interpretations to what constitutes contempt. The Commission suggested retaining the definition for the purpose of ensuring clarity.



- 3) High number of cases justify the continuing relevance of the Act. 96,993 civil and 583 criminal contempt cases are pending in various High Courts and the Supreme Court.



- 4) The Act allows High Courts to punish for contempt of subordinate courts. If the definition of contempt is narrowed, subordinate courts will suffer as there will be no remedy to address cases of their contempt.

Subordinate courts



- 5) International comparison. UK abolished the offence of "Scandalizing the Court" in its contempt laws. But India should not. There are two reasons: (a) last offence of Scandalizing the Court in the UK was in 1931. (b) Scandalizing the Court continues to be punishable in UK under other laws. So, abolishing the offence in India would leave a legislative gap.



- 6) Adequate safeguards already exist in the Act to protect against its misuse.

Gram Nyayalays

Gram Nyayalays:

- aka mobile village courts
- Recommended by 114th report of **Law Commission (1986)**
- Gram Nyayalaya Act 2008 expected to set up 5,000; **only 208** are functioning
- Only 11 states have taken steps to notify GNs.

Gram Nyayalaya Act 2008:

- ❑ Set up for every Panchayat at **intermediate level**.
- ❑ **State govt.** in consultation with **High Court** decides:
 - **Area** under GN
 - Presiding **officer** of GN (Judicial Magistrate of First class)
- Types of cases heard:
 - **Civil** cases
 - **Criminal** cases (No death penalty, No life imprisonment)
 - Follows principles of **natural justice**, not bound by Evidence Act, 1872
- **Appeal** lies at district level court (District court, Sessions court)

Significance of GN:

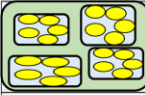
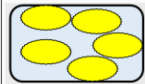

- **DPSP Article 39-A:** justice should not be denied due to economic reason or other disability.
- **Rule of Law:** Provides people alternative to informal courts (khap panchayats)
- **More democratic:** It allows social activist as mediator.
- **Time bound justice:** as cases must be decided within 6 months.

Issues: (Funds, Functions, Functionaries)

- ❑ **Funds:** slow utilization of funds due to lack of proposals from States to set up GN.
- ❑ **Functions:** Overlapping jurisdiction with regular courts, most states have set up regular courts at Taluk level.
- ❑ **Functionaries:** non-availability of judicial officers, notaries, stamp vendors, etc.
- ❑ **Frequency:** holding court just once or twice a month is not sufficient
- ❑ **Low awareness:** among general public, and even police officers.
- ❑ **Political inertia:** only 11 states have set up Gram Nyayalays (SC penalized some states in 2020 for not taking any steps to set up GNs)

Way forward:

- **All states** must establish GNs at the earliest.
- Create **separate cadre** of Gram Nyayadhikaris.
- Training of Gram Nyayadhikari in local **language**.
- Create **awareness** among various stakeholders.

	Level	3-tier Panchayati Raj System	Justice System
	District level	Zila Parishad	District court, Session court
	Intermediate level	Panchayat Samiti	Gram Nyayalaya
	Village level	Village Panchayat	Nyaya Panchayat

** The above is only a broad outline. Variations exist across states.*

Tip: If you can't recall points, think of:

- **FFF:** Funds, Functions, Functionaries
- **PESTEL:** Political, Economic, Social, Technological, Environmental, Legal
- Law, Policy, History, Culture, etc.

Fast Track Special Courts

Brief background:

- 2000: 11th Finance Commission recommended 1734 FTCs, for five years.
- 2005: scheme extended till 2011 on SC directions.
- 2011: some states continued FTCs as a permanent feature.

Scheme on Fast Track Special Courts: (recently brought by Centre)

- Set up **1023** FTSCs (650 as of now) to dispose off 1.6 lakh cases of **rape and POCSO**.
- Districts with more than 100 pending POCSO cases will have dedicated courts only for POCSO.
- Funding will be on pattern of **Centrally Sponsored Schemes**.
- FTSC will be set up **for one year**, continuance will depend on external evaluation.
- Each FTSC to have **one judicial officer** and seven staff members.

Issues with FTSCs:

- Systemic issues:** inadequate staff, IT infra, lack of forensic evidence; weak witness protection leading to witness turning hostile.
- Judges** are not freshly recruited, but **deputed** from existing pool, increasing pendency in other courts.
- Practically, they are special courts, **not fast track** courts.

Way forward:

- Fill **vacancy** of judges, establish AIJS
- Establish **permanent** special courts; invest in **infra**.
- increase use of **forensic** evidence (training of police, more labs)
- **Police reforms** like separation of investigation from law & order

10th Schedule

10th Schedule was introduced by 52nd Constitution (Amendment) Act, 1985. It lays down process by which **legislators** may be **disqualified** on grounds of **defection**.

Provisions of the law:**❑ Grounds for disqualification:**

- **Disobeying** party on a vote.
- Voluntarily **resigning** from party.
- **Independent** member joining any party.
- **Nominated** member joining any party after six months.

❑ Deciding authority:

- **Presiding Officer** of the House.

❑ Exceptions:

- It does not apply when **2/3rd** members agree for a **merger**.
- **Presiding officer** resigns from party.

Criticism of anti-defection law:

- It restricts **free speech** of legislators
- It does not differentiate between **dissent** and defection.

Arguments in support of the law:

- Legislators win on **party's support**, hence should obey the party on votes.
- Legislators can register their **dissent within** the party.
- Brings **efficiency** to house proceedings.
- Checks political **corruption** (prevents horse-trading and lure of office)

Kihoto Hollohan case 1992

Supreme Court ruled that:

- 10th schedule **does not curtail right** to free speech in house
- Parties should limit whip to:
 - Votes crucial to **existence of government**
 - Votes integral to **electoral program** of party.
- Presiding officer's decision is subject to **judicial review**.

The law needs to be strengthened:

- There is **no time limit** for presiding officer to take action.
- It allows **group defections** (Sikkim 2019: 10 MLAs switched party within 3 months of elections)
- It has **failed** to prevent defections (Speaker does not take decision; no judicial review at pre-decisional stage)

Way forward:

- Defectors should be debarred from **ministerial office**.
- **Dinesh Goswami Committee**: restrict it to no-confidence motion
- **Venkantchaliah Commission**: Decision should be by President/Governor on advice of EC
- Set **time limit** for presiding officer to take decision

Mains 2013: The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the anti-defection law which was legislated but with a different intention?

Mains 2019: Individual Parliamentarian's role as the national lawmaker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss.

Parliamentary Privilege

Rights and immunities enjoyed by legislators, so that they can effectively **discharge their functions**.

Parliamentary privileges

Individual privileges

- Not liable for any **speech** in parliament.
- Exempted from **jury** service when house is in session.
- No **arrest** in civil cases during, **40 days** before and 40 days after session.

Collective privileges

- Only Parliament can make rules to **regulate its own proceedings**.
- **Courts** can't inquire into house proceedings.
- Can exclude **strangers** from proceedings; hold **secret sitting**.

Origin:

The idea of parliamentary privileges emerged after **English Civil war** (1642-1651), when English Parliament tried to **protect freedom of speech** of its members **from** excesses of **King**. King used to get members who spoke against him arrested.

Importance:

- Protects **freedom of speech** of people's representatives.
- Legislators & committees can function without **fear or influence**.

Mains 2014:

The 'Powers, Privileges and Immunities of Parliament and its members' as envisaged in Article 105 of the Constitution leave room for a large number of un-codified and un-enumerated privileges to continue'. Assess the reasons for the absence of the legal codification of the parliamentary privileges. How can this problem be addressed?

Source of privileges:

- **Constitution** articles **105** (Parliament) and **194** (States).
- Laws; House rules; conventions; judicial interpretations

Codification of Privileges:

- Article 105 empowers Parliament to codify privileges
 - but Parliament has **not codified** privileges.
 - doing so will make privileges subject to **judicial scrutiny** (Hint: Class-3 page-5 Law Commission second point)
- Until Parliament codifies
 - it has same privileges that British House of Commons had in 1950.

Need for codification:

- **People** have restricted freedom of speech (**Article 19**), but not their **representatives**.
- It is **against Constitutionalism** (limited power) as non-codification of privileges gives unlimited power to parliament.
- Against **natural justice**: speaker acts as complainant, prosecutor, Judge.
- Without codification **how does one know** what is breach of privilege
- **Misused** for political vendetta; to suppress freedom of press
- Invoked on grounds of **defamation** despite availability of legal remedy.

Way forward:

- Steps must be taken to **codify** the privileges (NCRWC recommendation)
- Trial must be through independent **tribunal**.
- Example of other countries: UK and Australia

Some instances of breach of privileges:

- **1978**: Indira Gandhi held guilty of breach of privilege; expelled from LS; sentenced to jail
- **2003**: TN assembly against The Hindu; **2017**: Karnataka assembly against two journalists

Parliamentary Committees

Ad hoc

formed for specific purpose;
cease to exist on completion of task.

Standing

Permanent;
work on continuous basis.

Work before Parliament is varied and voluminous, but time at its disposal is limited.
Therefore, Parliament is assisted by a number of committees.

Role of parliamentary committees:

➤ Detailed scrutiny:

- Parliament meets only for 70 to 80 days in a year;
- not enough time to study important bills

➤ Consensus building:

- anti-defection law does not apply to them,
- hence MPs give impartial opinion

➤ Feedback:

- expert's opinion can be obtained.
- e.g. RBI Governor for demonetization; Army Vice-chief for defence budget

➤ Executive's accountability:

- analyses govt. policies and budgetary allocation

➤ Less politicization:

- closed-door meetings, not televised unlike house proceedings

Concerns with their functioning:

- Bypassed: In 16th Lok Sabha only 25% bills were referred to PCs. [71% in 15th LS]
- Low attendance: around 50% for last five years.
- Lack of expertise: Members lack expertise to study technical issues like those on finance
- Tenure: one year tenure gives little time for specialization
- Politicization: with increasing public interest, members are taking strict party lines

Way forward:

NCRWC 2002 recommended:

- all bills must be referred to the committees;
- longer tenure for members
- dedicated research support

- ❖ Mains 2018: Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee.
- ❖ Mains 2017: Discuss the role of Public Accounts Committee in establishing accountability of the government to the people.

Public Accounts Committee:

- ❑ Examine **CAG reports** on:
 - appropriation accounts
 - finance accounts
 - public undertakings
 - ❑ Examine public expenditure to discover technical **irregularities**
 - ❑ Examine public expenditure from the point of view of economy, prudence and **wisdom** to bring out cases of waste, loss, corruption and inefficiency.
- In the fulfillment of the above functions, the committee is **assisted by the CAG**. In fact, the CAG acts as a guide, friend and philosopher of the committee.

Limitations:

- It is **not concerned** with the questions of **policy** in broader sense.
- It conducts a **post-mortem** examination of accounts (showing the expenditure already incurred).
- It can **not** intervene in the matters of **day-to-day administration**.
- Its recommendations are **advisory** and not binding on the ministries.
- It is **not** vested with the power of **disallowance** of expenditures by the departments.
- It is not an executive body and hence, cannot issue an order. Only the Parliament can take a final decision on its findings

Estimates Committee:

- Examine budget and suggest economies/improvements in expenditure
- Suggest alternative policies to bring efficiency in administration
- Suggest the form in which the estimates are to be presented to Parliament

Limitations:

- Its work is in the nature of a **post-mortem**. It **examines** the budget estimates only **after they have been voted by the Parliament**, and not before that.
- It **cannot question the policy** laid down by the Parliament.
- Its recommendations are **advisory** and not binding on the ministries.
- It examines every year **only certain selected ministries** and departments. Thus, by rotation, it would cover all of them over a number of years.
- It **lacks the expert assistance of the CAG** which is available to the Public Accounts Committee.

Parliament and its panels

Vivek K. Agnihotri

SEPTEMBER 16, 2020 00:15 IST
 UPDATED: SEPTEMBER 16, 2020 00:33 IST

The Department-related Parliamentary Standing Committees have a so-called tenure of one year. There was speculation in the media that the Chairman of the Rajya Sabha, M. Venkaiah Naidu, is keen on amending the rules to give them a fixed tenure of two years. However, since these are joint committees of the two Houses of Parliament, the Speaker of the Lok Sabha also has to concur.

According to sub-rule (4) of Rule 331D of the Lok Sabha Rules and sub-rule (3) of Rule 269 of the Rajya Sabha Rules, the term of office of the "members" of the committees shall not exceed one year. Thus, it is the term of office of the members and not that of the committees *per se* that is one year.

Parliamentary Committees

Parliament has limited time and expertise
 So, it is assisted by number of committees

Two types of PCs:

Standing: Permanent; reconstituted every year

Ad-Hoc: Temporary; cease to exist on completion of task

Constitution mentions PCs? Yes

Constitution gives their composition, tenure, etc.? No
 (Rules of the two houses)

Minister cannot be a part of following committees:

- Committee on Estimates
- Committee on Public Accounts
- Committee on Public Undertakings → **Added in PDF after class**
- Committee on Government Assurances
- Departmental Standing Committees
- Committee on Empowerment of Women
- Committee on Petitions
- Committee on Subordinate Legislation
- Committee on Welfare of SCs and STs

Departmental Standing Committees: (since 1993)

- Members: 31 = 21 + 10; nominated by Speaker/Chairman; Term 1 year
- Currently 24; they cover all ministries / departments of Central Government
- They consider (not all) Bills, Demands for Grants, long term policy, etc. (not day-to-day matters)

Financial Committees

	Purpose	Members (LS + RS)	Chairman	Miscellaneous
Public Accounts Committee	Examine CAG reports on: → appropriation accounts → finance accounts → public undertakings	22 = 15 + 7	<input type="checkbox"/> From Opposition (convention) <input type="checkbox"/> Appointed by Speaker	<input type="checkbox"/> Since 1921 under Gol Act 1919
		Method: PR		
		Term: 1 year		
Estimates committee	Examine budget and suggest economies in expenditure	30 = 30 + 0	<input type="checkbox"/> From Ruling party <input type="checkbox"/> Appointed by Speaker	<input type="checkbox"/> Since 1950 <input type="checkbox"/> aka 'continuous economy committee'
		Method: PR		
		Term: 1 year		
Committee on Public Undertakings	Examine reports on PSUs (by CAG and others)	22 = 15 + 7	<input type="checkbox"/> From Lok Sabha <input type="checkbox"/> Appointed by Speaker	<input type="checkbox"/> Since 1964
		Method: PR		
		Term: 1 year		

Committees to inquire

	Purpose	LS committee	RS committee
Committee on Petitions	To examine petitions on bills and matters related to Union subjects	15 members	10 members
Committee of Privileges	To examine breach of privilege of House and its members	15 members	10 members
Ethics Committee	To enforce code of conduct of MPs	Since 2000	Since 1997

Miscellaneous

	Purpose	LS committee	RS committee
Committee on Government Assurances	Examine status of promises made by ministers on the floor of the house.	15 members	10 members
Committee on Subordinate Legislation	Examine whether powers to make subordinate legislation are being properly exercised by the Executive	15 members	15 members
Rules Committee	Consider procedure and rules of the House	15 members, including Speaker as ex-officio chairman	16 members, including Chairman as ex-officio chairman
Business Advisory Committee	allocate time for business of the House	15 members, including Speaker as ex-officio chairman	11 members, including Chairman as ex-officio chairman

Legislature's control on Executive

India has a Parliamentary system of government.
In parliamentary system, Executive is responsible to Legislature.

Mains 2001:

Bring out the aberrations of the parliamentary system of government in India.

Control on Executive:

- ❑ **Through Question hour, debates, etc.**
 - issue of public interest can be raised
 - shortcomings in govt policy can be pointed out
- ❑ **Laws and budget:**
 - It is the Parliament that approves bills and budget
- ❑ **Through Committees:**
 - Parliament supervises activities of the Executive
 - helps in detailed scrutiny of bills
 - helps build consensus and obtain expert opinion
- ❑ **No-confidence motion:**
 - Ministers are collectively responsible to Lok Sabha. (Article 75)

Control is ineffective:

Parliament's control on Executive is more in theory than in practice.

- ❑ **Sessions and their duration:**
 - ❑ is controlled by the Executive (Article 85)
- ❑ **Dominated by Executive:**
 - Lok Sabha is dominated by party in power.
 - Lack of strong opposition reduces effectiveness of control.
- ❑ **Bills:**
 - Bills are hastily passed without discussion
 - Aadhaar bill passed as Money bill (Article 110)
- ❑ **Frequent Ordinances:**
 - Frequent use of ordinance powers (Article 123) dilutes role of Parliament
 - 16 in 2019, 15 in 2020.
- ❑ **Delegated legislation:**
 - Growth of delegated legislation has reduced role of Parliament.
 - e.g. Tribunals Reforms Act, 2021 give Executive effective control on Tribunals
- ❑ **Committees:**
 - Most bills are not referred to the committees (only 25% in 16th LS, 71% in 15th LS)
 - Their work is in the nature of a post-mortem, and only advisory.
 - Lacks time & expertise to control administration which is vast & complex.

Way forward:

- ❑ **Sessions and their durations:**
 - Parliament should have power to regulate its sessions and duration.
 - In UK, annual calendar of sittings is issued at the start of the year.
 - Fix minimum number of sittings as recommended by NCRWC (120 for LS, 100 for RS)
- ❑ **Shadow cabinet system (as in UK):**
 - certain opposition MPs closely track each ministry
 - this will bring constructive suggestions and improve quality of laws
- ❑ **Anti-defection law:**
 - disqualification should be limited to no-confidence motion
 - this will improve quality of debates in the houses
- ❑ **Judiciary:**
 - If parliament does not hold Executive accountable, Judiciary needs to step in.

Question hour

Types of questions

*Starred question

Oral answer
supplementary
questions can follow

Unstarred question

Written answer
Supplementary questions
cannot follow

Short notice question

Oral answer
asked by giving a notice of less
than 10 days

Questions to Private Members?

- Yes, if he is responsible for that subject matter.

Question Hour:

- This is first hour of a sitting.
- MPs question ministers to hold them accountable for functioning of their ministries.
- Both Houses of the Parliament follow their own set of rules.
'Half-an-hour Discussion' may be permitted if answer is unsatisfactory.

Significance of Question Hour:

- ❑ It is the principal means of holding Executive accountable.
- ❑ It generates public awareness (proceedings are reported and televised).
- ❑ Improves policies of the government by pointing out shortcomings.
- ❑ Exposes corruption: e.g. 1958 Mundhra scam was exposed as a result of question hour, and ultimately lead to resignation of then Finance Minister.



Issues:

- Not so important questions are given preference over important issues. Consequently, critical issues never get questioned, discussed or debated, and accountability is weak.
- Quality of questions asked, or their answers, are sometimes not up to the mark.
- 2005 cash-for-query scam: 11 MPs were expelled for taking money to raise questions in Parliament.
- Question hour may be suspended.

Zero Hour:

- It starts immediately after question hour and lasts until the agenda for the day is taken up.
- Unlike Question Hour, Zero Hour is not mentioned in Rules of Procedure.
- It is an Indian parliamentary innovation
- It has been in existence since 1962.
- It is not mandatory to have a Zero Hour every day.

Role of Opposition

Role of opposition in democracy:

- Government represents 30-35% votes.
 - Opposition represents 65-70% votes.
 - Hence, Opposition has important role in a democracy like India. (FPTP system)
- a) Opposition checks the autocratic tendencies of the ruling party/ Executive.
 - b) Provide constructive criticism of government policies through debates and discussions.
 - c) Parliamentary committees scrutinize policies of the government.
 - d) Raise urgent issues of public importance during Question hour.
 - e) Consultation in appointment of CVC, CBI chief, etc.
 - f) It provides an alternative government.
 - g) It lets government know public opinion on important matters.
 - h) Opposition is necessary for effective parliamentary control over Executive.
 - i) Without opposition, Parliament and Executive will mean same thing

Money Bill

Prelims pg-40

News:

Two bills passed as money bill (controversially):

- Finance Bill 2017 which gave substantial powers to Govt on Tribunals.
- Aadhaar Bill 2016

Article 109:

- Can be introduced only in LS
- After LS passes it, it is sent to RS
- RS can recommend amendments
- LS may or may not accept amendments
- RS must return it within 14 days
- If not returned in 14 days, deemed to be passed

Article 110:

- It defines Money bill as a bill dealing with "only":
 - Tax
 - Borrowing of money by Govt. of India
 - Consolidated Fund of India
 - Contingency Fund of India
 - Public Account of India
 - In case of doubt, decision of Speaker is final
 - Speaker's certificate is necessary
- Note: Speaker's decision can be challenged in SC

Financial Bills			
	Money bill	Finance Bill (I)	Finance Bill (II)
Article	110	117 (1)	117 (3)
Contents	<u>"Only"</u> matters given in Article 110	<u>"Also"</u> any other matter (in addition to Article 110 matters)	<u>"No"</u> matter of Article 110. But has provisions on expenditure
Introduced	<input type="checkbox"/> Only in LS <input type="checkbox"/> On President's recommendation	<input type="checkbox"/> Only in LS <input type="checkbox"/> On President's recommendation	<input type="checkbox"/> In either house <input type="checkbox"/> President's recomm. needed for consideration, not introduction
Passage	see article 109	Like ordinary bill	Like ordinary bill
Joint sitting	No	Yes	Yes
President can	✓ Give assent ✓ Withhold assent X Return for reconsideration	✓ Give assent ✓ Withhold assent ✓ Return for reconsideration	✓ Give assent ✓ Withhold assent ✓ Return for reconsideration
Mains 2021	GS-2 & GS-3	Class-5	Page-3

Joint sitting

Mains 2017: The Indian Constitution has provisions for holding joint session of the two houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reasons thereof.

Joint sitting:

- Under **Article 108** of Constitution, JS is summoned by **President** and presided by **Speaker**.
- It is governed by Rules of Procedure of **Lok Sabha**.
- It is a feature borrowed from **Australia**.

Why?

- to **resolve deadlock** between the two Houses over passage of a bill.

When?

- bill has been **passed by one** House and transmitted to the other House and: (any of following)
 - Rejected by the other House, or
 - Houses can't agree on the amendments, or
 - 6 months have elapsed.

Applicable to:

- ordinary bills
- financial bills

Not applicable:

- **Money bill:** Lok Sabha has overriding powers
- **Constitution amendment bill:** each House must pass separately
- **LS has been dissolved:** bill would have been lapsed.

Amendments:

During JS, new amendments cannot be proposed except in two cases:

1. amendments that have **caused final disagreement** between the Houses
2. amendments **necessary due to delay** in the passage of the bill.

Bills that have been passed at joint sittings are:

1. **Dowry** Prohibition Bill, 1960
2. **Banking** Service Commission (Repeal) Bill, 1977
3. Prevention of **Terrorism** Bill, 2002

Normally, LS with greater number wins the battle in a joint sitting.

Parliament

- Articles 79 to 122 in **Part-V** of the Constitution deal with Parliament.
- Indian Parliament consists of **President, RS, LS**.

Functions of President vis-a-vis Parliament:

- Bill becomes law after his **assent**
- **summons** and pro-rogues both the Houses
- **addresses** both the Houses
- **dissolves** the Lok Sabha
- issues **ordinances**, etc.

Bicameral legislature**Functions/powers of Parliament:**❑ **Legislative**

- only Parliament can make laws on **Union list**
- **Ordinance** needs its approval within **6 weeks** of reassembly
- authorizes and **reviews rules** made by Executive (delegated legislation)

❑ **Executive**

- **remove** Executive through **no-confidence motion**
- **control** Executive through **debate** and discussions, censure motion, etc.
- **supervise** Executive's activities through **committees**

❑ **Judicial**

- **remove** President, VP, Judges of SC/HC, CEC, CAG
- **punish** for breach of its privilege

❑ **Constitutional**

- only Parliament can **amend** the Constitution

❑ **Financial**

- approves **budget**
- supervise **spending** through three financial committees

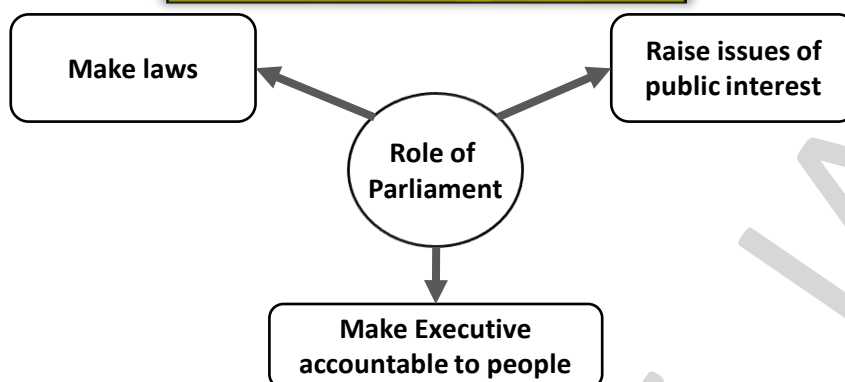
❑ **Electoral**

- participates in election of **President, VP**
- elects **Speaker** and Deputy Chairman

❑ **Miscellaneous**

- approves three types of **emergency**
- create or abolish **SLCs**
- **alter** area or name of **States**
- increase **powers of Supreme Court** (Article 138)

Functioning of Parliament



Some issues in parliament's functioning:

❑ Sittings:

- In 1950s, LS met for 120 days/year on average
- Now its less than 70 days/year
- Untimely curtailment of sessions. e.g. recent monsoon session ended two days before schedule.

❑ Poor attendance:

- just 71% in LS and 74% in RS

❑ Bills not referred to committees:

- Bills referred to committees: 71% in 15th LS, 27% in 16th LS, 11% in current LS
- not one of 13 bills referred to committee in Budget session 2021 e.g. NCT Delhi Bill, Mines amendment bill, etc.

❑ Bills are passed without discussion:

- 76% of budget passed without discussion

❑ Speaker:

- No Deputy speaker elected in current Lok Sabha.
- Alleged bias by Speaker in not allowing opposition speak.

Consequences of ineffective functioning of Parliament:

❑ Disruptions:

- ❑ Lack of avenue to express dissent leads to disruptions inside & public protests outside.

❑ Judicial activism:

- ❑ Judiciary is forced to step in, to fill vacuum created by Parliament.

How can Parliament's functioning be improved? (see class-5 page-1)

❑ Pre-legislative scrutiny:

- Releasing bill in public will give enough time for study and can help build consensus.

❑ Opposition days:

- In UK, on 20/100 days opposition decides subjects for discussion.

❑ Virtual meetings like Judiciary:

- By conducting virtual meetings, number of sittings can be increased.

Closing remarks:

- Parliament is the sacred temple of democracy.
- It should not act as an organ of Executive.
- It should work as per its constitutional mandate, in letter and spirit.

Parliament: India vs Britain

India adopted 'Westminster' model of govt from Britain.
Hence, both have many things in common, but also some differences.

Similarities:

- ❑ Executive is formed from members of legislature.
- ❑ Executive is responsible to legislature.
- ❑ Presence of nominal and real executives:
 - ❑ President is Head of State, ceremonial post
 - ❑ PM is the Head of Govt., real executive
- ❑ India has 'President-in-Parliament' like the 'Crown-in Parliament' in Britain.

Differences:

- ❑ Constitutional sovereignty:
 - Indian parliament has restricted powers due to written Constitution.
 - Britain has parliamentary sovereignty. Parliament is supreme.
- ❑ Elected Head of state:
 - India is a Republic. Head of State is (indirectly) elected.
 - Britain is Constitutional Monarchy. Head of state is hereditary.
- ❑ Head of Government:
 - In India, PM can be from either house.
 - In Britain, PM can be from lower house only.
- ❑ Eligibility to be Minister:
 - In India, non-MPs can be made minister for 6 months
 - In Britain, only MPs can be made minister.
- ❑ Legal responsibility of minister:
 - In India, ministers do not have individual or legal responsibility.
 - In Britain, ministers countersign official acts, so they are individually responsible for acts.
- ❑ No shadow cabinet:
 - In Britain actions of cabinet ministers are closely studied by opposition MPs.
 - No such system in India

Rajya Sabha

Equal status with Lok Sabha:

- Passing ordinary bills & Constitutional amendment bills.
- Election and impeachment of the President.
- Removal of Judges of SC/HC, CEC, CAG.
- Approving three types of emergencies.

Special powers of Rajya Sabha:

- Article 249: RS can authorize Parliament to make law on state list subject.
- Article 312: RS can authorize Parliament to create new All-India Service.
- Vice-President of India: Only RS alone can initiate removal of VP.

Question:

Why not give these functions to LS, and abolish RS?

Unequal status with Lok Sabha:

- ❑ Money bill:
 - can't be introduced in RS
 - can't amend or reject it
- ❑ Joint sitting:
 - Presided by Speaker of LS
 - RS has less members than LS
- ❑ Emergency:
 - resolution to discontinue can be passed only by LS
- ❑ Budget:
 - RS can only discuss the budget, not vote on grants
- ❑ Council of Ministers:
 - responsible to LS, not RS

- Hence, except in financial matters and control over Council of Ministers, status of RS is broadly equal to that of LS.
- Position of RS is not as weak as House of Lords in Britain, nor as strong as Senate in USA.

Issues:

- it **delays** the passing of bills
- RS seats used **to raise funds for party**, leads to crony capitalism
- **Helps in horse trading** by offering RS seat for switching party.

Still useful:

- It checks **hasty** and defective bills passed by LS.
- It helps give representation to **experts** through nomination by President.
- It strengthens **Federalism** by protecting interests of the **states**.

Dr. S. Radhakrishnan said in 1952:

- There is a general impression that RS is a **superfluous body**.
- But there are functions which a **revising chamber** can fulfil fruitfully.
- Because Parliament is not only a legislative but a **deliberative body**.

Mains 2020: Rajya Sabha has been transformed from a 'useless stepney tyre' to the most useful supporting organ in past few decades. Highlight the factors as well as the areas in which this transformation could be visible. (250 words, 15 marks)

❑ **Rise of regional parties:**

- After independence, same party dominated LS and most states.
- With rise of regional parties, RS debates became more representative.

❑ **Talented leaders:**

- Dr. Manmohan Singh & many other leaders could serve as part of Executive due to RS.

❑ **President's rule:**

- RS approved President's rule in Haryana in 1991 when LS was dissolved.

❑ **Removal of Judge:**

- In 2011, RS passed resolution for removal of Calcutta HC Judge Soumitra Sen.
- He resigned before motion could be taken up by LS.

❑ **Expulsion of members:**

- Expelled MPs like Swami Sakshi Ji Maharaj in 2006 for MPLAD irregularities.

❑ **Negated 5 bills:**

- 5 bills passed by LS but stopped by RS. e.g. 24th Constitution Amendment Bill, 1970

❑ **Amended 120 bills:**

- 120 bills passed by LS were amended by RS, e.g. NMC bill 2019 and MV Bill 2019

❑ **Other facts:**

- More than 3,800 laws made, more than 100 amendments done.
- Representation of women in RS increased from 7% in 1952 to 13% in 2014.

❑ **Comments:**

- There has been recent tendency to bypass RS, by labelling ordinary bills as money bill.
- e.g. Finance Act 2017 (Tribunals and Electoral bonds) and Tribunals Reform Bill 2021.
- Such actions negate the importance of Rajya Sabha.

Election Commission

ECI is a permanent constitutional body, under **Article 324**, to conduct **free & fair elections** to:
(a) Parliament (b) State Legislatures (c) Office of President and Vice-President

Sources of powers of ECI:

- 1) **Article 324**: Superintendence, direction and control of elections to be vested in ECI
- 2) **RPA, 1950**: prepare and revise electoral rolls
- 3) **RPA, 1951**: register political parties; conduct elections
- 4) **MCC**: guidelines issued by ECI for conduct of parties and candidates during elections

Administrative Powers:

- a) Prepare and revise electoral **rolls**
- b) Register parties and allot **symbols**
- c) Conduct **free & fair** elections
- d) Conduct **delimitation** exercise



Advisory and Quasi-Judicial powers:

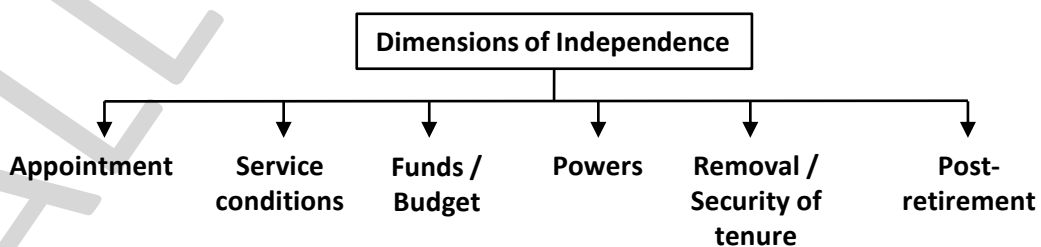
- a) **Act as court** in disputes of **recognition** of political parties and allotment of election **symbols**.
- b) **Advise** President/Governor for **disqualification** of MPs/MLAs/MLCs.
- c) Advise President whether elections can be held in a state under **president's rule** in order to extend the period of emergency **after one year**.

Independence of ECI:

To safeguard independent and impartial functioning of the Election Commission, Constitution has following provisions:

- a) CEC does **not** hold office till the **pleasure of President**
- b) CEC is **removed** in same manner and grounds as **SC judge**
- c) **Other ECs** cannot be removed without CEC's recommendation
- d) **Service conditions** cannot be varied to disadvantage after appointment.

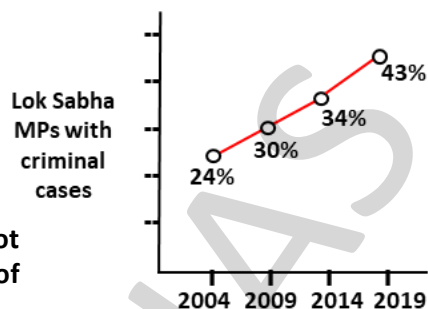
To analyze independence of any body, think of following dimensions



	Problem	Solution
Appointment	<ol style="list-style-type: none"> <u>Qualifications</u> not prescribed On advice of Union <u>Cabinet</u> <u>DoPT</u> appoints officials 	<ol style="list-style-type: none"> <u>Prescribe</u> qualifications <u>Panel</u>, including Leader of Opposition Independent <u>secretariat</u> to end dependence on DoPT
Service conditions	<u>Two ECs</u> don't have same protection as CEC.	Give all three ECs <u>same</u> constitutional protection.
Funds / Budget	Comes through <u>finance ministry</u> . Subject to vote of Parliament.	Expenses be <u>charged</u> on Consolidated Fund of India
Powers	<ol style="list-style-type: none"> <u>MCC</u> is difficult to enforce No provision in law to cancel polls in case of use of <u>money power</u>. 	<ol style="list-style-type: none"> Make MCC <u>legally enforceable</u> Amend section 58(A) of <u>RPA, 1951</u> to include money power, besides booth capturing and muscle power.
Removal	<u>Two ECs</u> don't have same protection as CEC.	Give all three ECs <u>same</u> constitutional protection.
Post-retirement	<u>Post-retirement appointment</u> to govt. office is not barred.	Post-retirement appointment to govt. office <u>should be barred</u> .

Criminalization of Politics

- It refers to criminals entering politics and getting elected.
- 43% of MPs in the current Lok Sabha have pending criminal cases against them.



In August 2021, **SC imposed fine** on 8 political parties for not complying with its Feb 2020 judgement on de-criminalization of politics:

- ❑ Parties must publish entire criminal history of their candidates for Assembly and LS elections **along with the reasons** to field suspected criminals over decent people.
- ❑ This info should be published in **newspapers and social media handles**.

Historical perspective:

Till 1960s

- **re-election rate** of sitting legislators was **high**
- So, criminals helped politicians with **money and muscle power**.
- Politicians helped criminals by **shielding them from police**.

1970s onwards:

- politician's **re-election rate fell**.
- So, **criminals** themselves had to **fight elections** to save themselves.

Side-effect of banning corporate funding:

- 1964 Santhanam committee warned of **crony capitalism**.
- Businesses were supporting IG's opponents. IG **banned corporate funding** to parties.
- But **state funding** of elections **not introduced**.
- **Side-effect:** party's dependence on criminals increased. Ban reversed in 1985.

Criminals fight elections because:

- a) To save themselves from **court cases**
- b) To expand crime **business**
- c) To increase **social clout**



People vote for criminals because:

- a) People **don't know** about criminal background of candidates
- b) People are **influenced** by cash / liquor / etc.
- c) People are weak and easily **threatened**
- d) Criminals help people fight against **corrupt administration**

Parties give ticket to criminals because:

- a) **Funds:** criminals finance election expenditure
- b) **Winnability:** People vote for criminals, so parties give them ticket. According to ADR report, candidates with criminal background have **double chance of winning**, than clean candidates.

Challenges in tackling criminalization of politics:

- ❑ Poor quality of investigation:
 - ❑ Political influence in investigation.
 - ❑ Investigation is done by Police, which is controlled by politicians
- ❑ Slow judicial proceedings:
 - ❑ Undertrials are not debarred, hence criminals remain politicians as verdict takes years to come.
- ❑ Low conviction rate:
 - ❑ Conviction rate of legislators is just 6%, against the overall conviction rate of 46%.
- ❑ People:
 - ❑ Good people don't fight election. If they do, they generally lose elections.

Why is disqualification ineffective:

- a) Position in party remains intact
- b) Party members continue use of money and muscle power
- c) Proxy candidates are used to contest elections
- d) Section 11 of RPA, 1951 empowers ECI to reduce period of disqualification. In September 2019, Sikkim CMs disqualification was reduced from 6 years to just one year one month

Why is it a matter of concern:

- a) Law breakers become law makers
- b) Police gets controlled by law breakers
- c) Honest bureaucrats feel demoralized, and don't work effectively
- d) Law & order breaks down; crimes increase, investments decrease
- e) Ministers with tainted past damages India's image globally

Other steps taken by Supreme Court:

- a) 2002: SC directed candidates to file affidavits declaring pending criminal cases while filing nomination papers.
- b) 2013: Lily Thomas Case automatic disqualification on conviction for two years sentence.
- c) 2013 : SC directs ECI to include NOTA option.
- d) 2014: SC directs trial courts to conduct daily hearings in cases of sitting MPs.
- e) 2016: SC directed candidates to declare source of income of self and dependents.

Committee observations:

1. Santhanam Committee 1963:
 - a) Political corruption is more dangerous than corruption of officials.
 - b) Recommended Vigilance commissions at Centre and States.
2. Vohra Committee 1993:
 - a) Studied nexus between politicians, bureaucrats, criminals
 - b) Some parts of the report still not made public
3. Padmanabhaiah Committee on Police reforms:
 - a) Criminalisation of politics leads to criminalisation of police

Additional comments:

- a) Present conviction rate is dismal, except one/two high profile cases. Former CMs of Haryana and Bihar are in jail.
- b) Politicians go to jail as a result of political vendetta, (and not due to impartial investigation or independent judiciary).
- c) Ultimate guard against criminalization of politics is educated, informed, and honest voters.

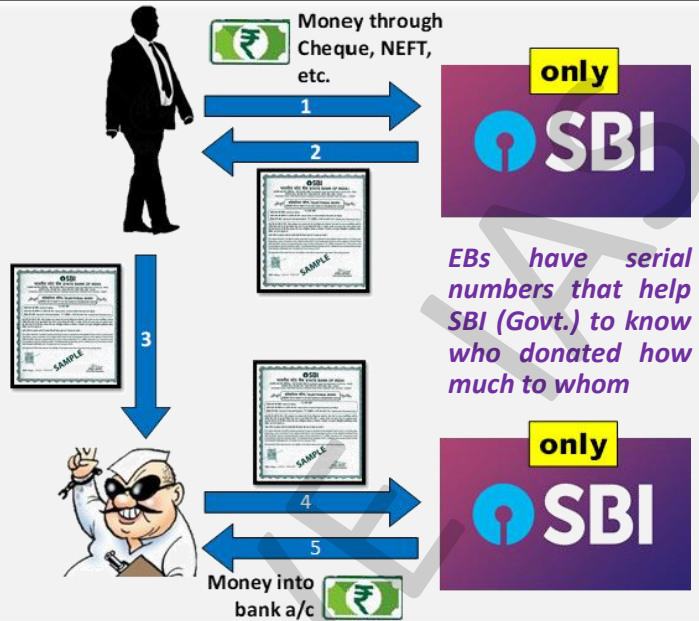
Electoral Bonds

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Electoral Bonds: No Public Interest In Disclosing Identities Of Donors & Donees, Says CIC Rejecting RTI Application

LIVELAW NEWS NETWORK
24 Dec 2020 12:31 PM

The Central Information Commission on Monday held that disclosure of names of political parties to whom contributions are made under the electoral bonds and the donees thereof, is not in public interest.



The Indian EXPRESS

Electoral bonds: Govt ignored red flags raised by Reserve Bank, Election Commission

As per the report, RBI's concerns were dismissed by then Revenue Secretary Hasmukh Adhia in a single short paragraph the same day the finance ministry received the RBI letter.

By: **ENS Economic Bureau** | New Delhi |
November 22, 2019 5:37:22 am

Electoral Bonds: (Introduced by Finance Act, 2017)

A financial instrument to make **anonymous donations** to political parties.

Features of Electoral Bonds:

- Bearer instrument**
Only in physical form; No ownership info; Holder is owner
- In multiples of 10 from **1000 to 1 crore**
- Available only for 10 days after 3 months interval (Jan, Apr, July, Oct.) or as specified by government
- Only through specified branches of **SBI**
- Valid only for **15 days**, else PMRF

Who can buy Electoral Bonds?

- Indian citizens; NRIs; Indian Companies
 - OCI; Foreign nationals; Foreign companies
- Note:** Since 2018 amendment to FCRA, foreign companies are using electoral bonds to donate, but for Prelims ratify the fact **"No foreign funding to political parties"**

Who can get funds via Electoral bonds?

- Registered u/s 29A of **RPA, 1951**
- Secured at least **1% votes** in last Lok Sabha / State legislative assembly elections.

Before Finance Act, 2017	Now
Report source of funds above Rs 20,000	Opaque, as EB don't have name of purchaser
Limit of 7.5% of profit on corporate donations	No limit, even loss making companies can donate
Company's shareholders knew to which party their money was going	Not possible to know

	Small amount	Big amount
Earlier	No problem up to ₹ 20,000	Must disclose identity of donor
Now	No problem up to ₹ 2,000	Must protect identity of donor

I read I forget, I see I remember | See explanation of this PDF on **YouTube** www.youtube.com/c/allinclusiveias

Electoral bonds

- A **financial instrument** to make anonymous donations to **political parties**.
- Introduced by **Finance Act, 2017** to “cleanse the system of political funding in India.”

Arguments in support of Electoral Bonds:

- a) Limits use of cash
- b) Reduces use of black money:
 - a) only in bank account
 - b) KYC mandatory
- c) Protects donors identity from political victimization

Arguments against Electoral Bonds:

- a) Brings **opacity** to political funding, this will encourage **crony capitalism**.
- b) Law Commission in its 255th report observed that **opacity** in political funding leads to ‘**capture of govt. by big donors**’.
- c) Removes cap of **7.5%** of profits clause, so now companies can donate unlimited amount to parties.
- d) Companies no longer need to declare the names of the parties to which they have donated so **shareholders won't know** where their money has gone.
- e) Favors ruling party as **SBI** is a government controlled body.
- f) They open door for **foreign companies** (through their Indian subsidiaries) to donate anonymously unlimited amounts of money to political parties.

ECI's objections:

- a) EBs are **against transparency**.
- b) They are against people's **right to know** source of electoral funding.
- c) They will increase use of **black money** for political funding.
- d) Removal of 7.5% limit will encourage formation of **shell companies**.
- e) EBs will **damage sanctity** of the electoral process.

RBI's objections:

- a) Anonymity is against **KYC** norms.
- b) They are like **quasi-currency**.
- c) **Foreign** companies will be able to donate.

Way forward:

- a) **Remove anonymity** from Electoral Bonds (no need to scrap the system)
- b) Switch to complete **digital** transactions.
- c) Donations above a certain limit be **made public** to break the corporate-politico nexus.
- d) Political parties should be brought under the ambit of **RTI**.
- e) Form **national electoral fund**, whose funds be distributed in proportion to votes gained.
- f) Consider **state funding** of elections.

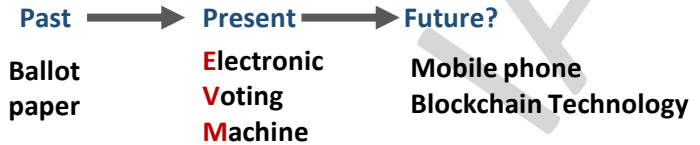
Some additional info:

- a) 91% of money came through EBs of 1 crore denomination.
- b) 99.7% of money came through EBs of 10 lakh and above denomination.
- c) Ruling party received 94.6% of all the electoral bonds sold in 2017-18.
- d) Bonds have serial numbers that help SBI (Govt.) to know which party received how much money from whom.

Online voting

Recently, India's first mobile based e-voting was experimented by Telangana State Election Commission (20th October 2021)

Digitalization of elections



Two methods of e-voting

- Through designated polling booth ECI is exploring this option
- Through mobile phone Telangana SEC conducted dry-run

Benefit of mobile based e-voting:

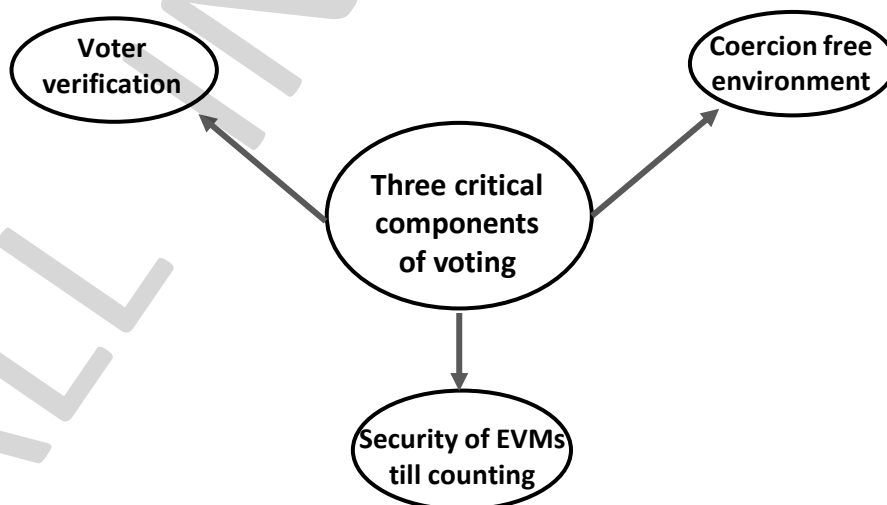
- It will increase voter turnout (place, age, gender, disability, weather, etc.)
- It will help Migrant workers easily cast their votes.
- It will reduce money and manpower needed to conduct elections.
- It will prevent tampering as in blockchain, data is stored in multiple places.

Issues with mobile based e-voting:

- Unreliable internet connection.
- No more secrecy at point of vote: money power, muscle power, women forced by husband, etc.
- Cyber security will always be an issue. (If Pegasus is possible, then anything is)

Benefit of Blockchain technology:

- Records will be kept in multiple places
- This will solve the issue of EVM tampering/replacement



Comments:

➤ Coercion free environment:

- Contemporary discussion is limited to cyber security of the system
- Equally important is security of voter at the time of voting.
- With mobile based e-voting, use of money power and muscle power will increase (e.g. vote on mobile in front of us, and you will get money)
- Even with e-voting at polling booth, people will be misled to believe that their identity will be disclosed by the computer.

➤ Technology:

- With ever evolving technology, no internet connected system can be completely secure.
- This is the main reason why EVMs don't have any port to connect to internet.

➤ Compared to EVMs:

- If EVMs are still being challenged, how would an internet-based system of voting be acceptable.
- Pure digital tech can't be trusted, hence VVPAT introduced to leave a paper trail.

➤ People's trust:

- People's faith in free and fair elections is the bedrock of democracy.
- No matter how secure the voting is, if people lose faith in it, then its useless.
- People losing faith in electoral system can be catastrophic for India.
- Technology is not the issue. Trust in the technology is the issue.

Way forward:

- ECI is considering increased use of digital technologies in electoral infra in the country.
- There should be gradual increase in use of digital technologies in elections.
- Online voter registration and updating of records.
- Replace in-person verification with online filing of documents.
- Linking Aadhaar to Voter ID to remove duplicate entries.
- Biometric authentication of voters at polling booth.
- Continuous streaming/monitoring of stored EVMs with cameras once votes are cast.
- Use Remote Voting System to easily vote from different state.

Additional info:

- One often neglected issue with remote voting: in case of assembly elections, how will campaigning and MCC be applied to other states.

State Election Commission

Pulling up Goa govt, Supreme Court says govt officials can't be appointed SECs

The Supreme Court said entrusting additional charge of State Election Commissioner to a government official results in a mockery of the Constitution.

By: Express Web Desk | New Delhi |

Updated: March 12, 2021 4:15:49 pm

- ❑ **Purpose:**
 - For elections to local bodies
- ❑ **Constitution:**
 - article 243-K (73rd amendment 1992)
 - superintendence, direction and control of:
 - preparation of electoral rolls and
 - conduct of elections
- ❑ **Governor:**
 - Appoints
 - Determines tenure of office
 - Determines conditions of service (can't be varied to disadvantage after appointment)
- ❑ **Removal:**
 - Similar to HC judge

Issues with autonomy:

- ❑ **Appointment:**
 - controlled by State Govt.
- ❑ **Service Conditions and Tenure:**
 - controlled by state legislature by law
- ❑ **Removal:**
 - tenures have been changed to remove sitting SEC
- **Examples:**
 - Goa appointed Law Secretary as SEC (November 2020)
 - Andhra Pradesh removed SEC (April 2020)

Excessive influence of state govt at each stage raises questions on impartiality of the SEC. Hence, Supreme Court in March 2021 had to ban appointment of govt officials as SEC.

Way forward:

- 2nd ARC: Selection by Collegium of CM, Speaker, LoP.
- Separate independent Secretariat for SEC.
- Bring amendment to prevent more cases of removal by changing eligibility.
- State govt should abide by SEC directions, as they abide by ECI.

Comments:

- Free and fair elections are the bedrock of democracy.
- Govt should not interfere in EC/SEC to protect the sanctity of the elections.
- Protecting integrity of important institutions like election commissions is the duty of each of the three organs: executive, judiciary and legislature.

Additional info: In April 2020, Andhra Pradesh Governor (on advice of CM) removed SEC.

- Governor issued ordinance:
 - Tenure reduced from 5 to 3 years
 - Eligibility changed (earlier Principal Secretary, now ret'd. HC judge)
- **Problem:**
 - Article 243-K: conditions of service can't be varied to disadvantage after appointment
 - Article 243-K: removal is similar to HC judge
 - The new norm can only apply to the successor SEC, and not the incumbent.
 - It is a well-settled principle in law that what cannot be done directly cannot be done indirectly.

Model Code of Conduct

What is MCC?

- **Guidelines** issued by ECI **for conduct** of parties and candidates **during elections**.
- **Harbans Singh Jalal Case:**
 - SC ruled that MCC comes into force the moment an **election is announced** and remains in force **till** the **results are declared**.

What is the purpose of MCC?

- To prevent **party in power** from misusing its official position (level playing field)
- To ensure **fair and peaceful** elections, to prevent clashes during campaign, etc.

How?

MCC contains **8 provisions (first 3 are important)**, major features of which are outlined below:
(You need not learn the following as it is. However, some of these points can be useful in framing arguments in any question on conduct of elections in India).

1) Party in power:

- Ministers can't use **official visits** or official machinery for election work
- No **govt ads** to show achievements to increase chances of victory.
- Can't **announce grants**, new **roads**, drinking water projects, etc.

2) General Conduct:

- Criticism of political parties must be limited to their programs and work.
- Prohibits:
 - Use of **caste** and **communal** feelings to secure votes
 - Use of **unverified reports** to criticize candidates
 - **Bribing** or **intimidation** of voters (money & muscle power)
 - **Demonstrations outside houses** of persons to protest against their opinions

3) Election manifestos: (Added in 2013)

- No promises to exert **undue influence** on voters
- Must show **means** to achieve promises

Impact of MCC on Development and Governance:

It is alleged that MCC interferes with governance, because:

- Government cannot announce any **new project**, scheme or policy.
- Ministers cannot combine **official visits** with campaigns.
- Government cannot make any ad-hoc **appointments** in departments, Public Undertakings etc.

However, ECI argues that:

- When government departments approach it to clear proposals and schemes during poll time, it takes a fast decision understanding the urgency involved.

Should MCC be made legally enforceable?

- ✓ Currently, the MCC is **not enforceable by law**.
- ✓ ECI usually resorts to **moral sanction or censure** for its enforcement.
- ✓ However, **certain provisions** such as inciting hatred through political speeches, appealing to caste and community feelings of voters etc. **may be enforced through other laws** like IPC, 1860, RPA, 1951 etc.

Yes, MCC should be made legally enforceable:

- **Parties violate** MCC because it is not legally enforceable. (think of seat belt!)
- Since it is enforced through **executive** decision making, there is **no certainty of action**, this leads to two problems:
 - It further **emboldens/encourages** politicians from violating MCC.
 - Allegations of **partiality** arise.
- Legal backing will be more effective in forcing **social media** platforms to take down posts violating MCC.

No, MCC should not be made legally enforceable:

- Most violations of MCC are **already punishable** under various laws, e.g. IPC and RPA, 1951.
- It will increase the burden of an **overburdened judiciary** (think of election time!)
- Due to the nature of technology, it is very difficult to implement MCC on social media. As new ways to bypass the law is discovered, the **law may need to be updated** every time.
- Elections need to be completed within 1-2 months while the **judicial proceedings** typically take longer.

Way Forward:

- Involve people** in MCC through mobile apps like '**cvIGIL**'. If people reject MCC violators, it will create pressure on politicians to abide by MCC.
- Electoral **reforms** and strengthening of Election Commission.
- If legal backing is given, then **dedicated courts** should be set up, that are as fast in giving decision as ECI.

Model Code of Conduct

Prelims pg-32

- Constitution; Law;
- Guidelines issued by EC
- From the moment elections are announced, till results are declared

- LS election:** throughout the country
- SLA election:** in that state only
- cvIGIL:** mobile app by ECI, for people to report MCC violation
- First time in 1960 Kerala elections

Which of these are violation of MCC:

- ✓ Minister combining **official visit** with election work (PM exempted since October 2014)
- ✓ Use of **official machinery** for election (Indira Gandhi 1975 disqualification)
- ✓ **Govt ads** on achievements to improve victory chances
- ✓ Use of **caste** and **communal** feelings to secure votes
- ✓ Govt announcing new projects or **schemes**.
- ✓ **Transfer** of election related officials.

Note #1:

- Relaxations in MCC can be given by EC, depending on situation (e.g. natural disaster)

Note #2:

- Some MCC violations are also offences under **other laws** like RPA, IPC, etc.
- For example, in 1975 Allahabad HC disqualified Indira Gandhi for corrupt practice under RPA 1951 (use of official machinery for election).

Women in politics

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

- Women in **legislature**:
 - 14%** LS MPs (4% in first LS)
 - 9% MLAs
 - 45% local bodies
- Female voter **turnout**:
 - 46% in 1962
 - 68%** in 2019
 - (Male voter turnout 63% - 68% during same period)
- Women related **issues** as election issue
- Women as campaigner, **office bearer** of political party, etc.

Benefits of increased women participation in politics:

- **Encourages** more women to study and participate in job market.
- Brings gender balanced perspective to **policy** making.
- Greater focus on **health and education** of children, malnutrition, women safety.
- Reduces use of **money & muscle** power
- Reduces political **corruption**

Why low women participation in politics:

- Illiteracy**:
 - some states mandate 8th class as eligibility to fight Panchayat elections
 - Hinders effective functioning as legislator
- Finances**:
 - Fighting elections need money; but women have less money at their disposal than men.
- Proxy**:
 - Most women are proxy candidate of their husband.
- Nature of elections**:
 - Use of money & muscle power discourages women from fighting elections.

What can be done?

(Think of short term and long term measures)

- Encourage **gender equality** in all aspects in society.
- 33% reservation** in state legislatures and Parliament.
- Capacity building** of women, e.g. Nai Roshni scheme for leadership skill building in women from minority community.
- Train/guide first time women legislators** to help them function independent of male support.

Strength of Lok Sabha

New Parliament building will have more seating capacity:

- Lok Sabha : 552 → **888**
- Rajya Sabha: 245 → 384

This has led to speculation that LS seats may be increased in near future.

Article 81:

It defines composition of Lok Sabha as:

- maximum **530** seats from **states**
- maximum **20** seats from **UTs**
- For each state, ratio between **seats and population** should be same.
 - Population as per last census
 - Formula not for states with population < 60 lakh (must have at least one seat)

Yes, seats should be increased:

- **Population** has increased substantially (55 crore in 1977, 130 crore now)
- On an average, each LS MP represents **16 lakh voters**.
- It is **not practical** for MPs to be in touch with such a large number of voters.
- Increased seats will help people of **northern states** to better raise their issues in LS.
- Increased seats can pacify **southern states** if 2011 census is used for delimitation in future.

No, seats should not be increased:

- It will lead to more chaos and **disorder** in the house.
- It will increase the chances of **horse-trading** of MPs, hence corruption.
- It will be on the basis of population, hence **southern states** will be at **relative disadvantage**.

Article 331:

- It allowed President to nominate two Anglo-Indians to Lok Sabha.
- Discontinued by 104th Amendment 2019.

Delimitation

Delimitation:

- **Fixing boundaries** of election constituencies.
- Under **Article 82**, after census, **Parliament** enacts **Delimitation Act**
- Parliament has enacted Delimitation Act **four times (1952, 1962, 1972, 2002)**

Delimitation Commission:

- Fixes **boundaries** of election **constituencies**
- Constituted **four** times (1952, 1963, 1973, 2002) through **Delimitation Act**
- Its orders have force of law and **cannot be challenged** before any court.
- Its orders are laid before **LS and SLA** concerned, but **no modifications** are allowed.

Problem:

- States which controlled population got **less seats**.
- States which did not control population got **more seats**.
- Hence, **42nd Amendment** put a freeze till 2000, at 1971 level.
- Later, **84th Amendment** 2001 extended the freeze till 2026, but allowed internal readjustment. (It was hoped that population growth rate will stabilize by 2026)
- Currently**, its being done for:
 - Arunachal, Manipur, Assam, Nagaland (could not happen earlier due to security reasons)
 - J&K (due to its reorganization)

Problems that the freeze has caused:

- Increased burden:**
 - Lok Sabha MPs today **represents four times** the number of voters, than what an MP did in 1951-52.
- Inter-state disparity:**
 - Rajasthan MP represents 30 lakh voters, but Kerala MP represents 18 lakh voters.

Problems if the freeze is lifted:

- States which controlled population will be at **disadvantage**.
- Lok Sabha sessions may become more **disruptive** if more seats are added.
- If **Census 2011** is taken into account:
 - Four **northern** states will gain **22 seats** (UP, Bihar, MP, Rajasthan)
 - Four **southern** states will lose **17 seats**. (Kerala, TN, AP, Telangana)
 - This can be a major political issue due to:
 - Presence of regional parties in LS will get disturbed
 - Some national parties have core base in some specific regions

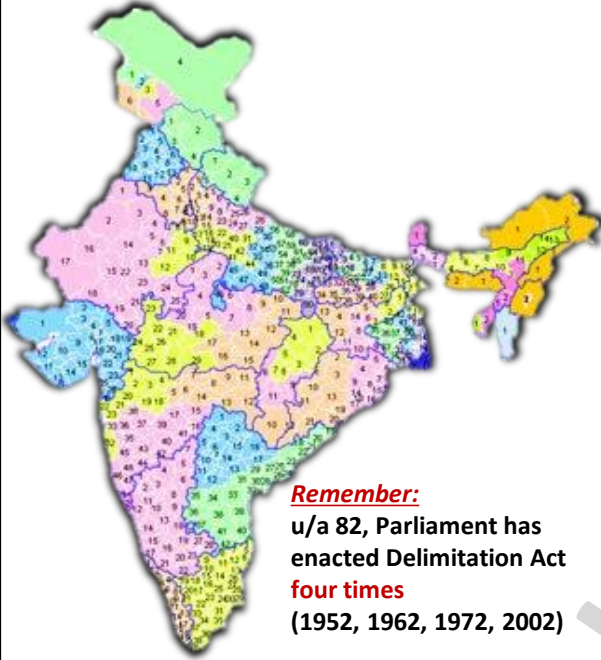
Chairman of 2002 Delimitation Commission recommended that regular delimitation after each census be conducted, so that changes are not sudden.

Mains 2002:

Describe the methods of **delimiting constituencies** for parliamentary elections in India.

LOK SABHA CONSTITUENCY

	Smallest	Largest
Area	Chandni chowk	Ladakh
Population	Lakshadweep	Malkajgiri



Remember:
u/a 82, Parliament has enacted Delimitation Act **four times** (1952, 1962, 1972, 2002)

Delimitation Commission 2020:

Under DM Act, 2002
For J&K and AMAN
(Assam, Manipur, Arunachal, Nagaland)

Delimitation Commission

- ❑ Appointed by President **Prelims pg-36**
- ❑ **Purpose:**
 - Fix boundary of LS/SLA constituency
 - Identify SC/ST seats
- ❑ **Members:**
 - SC Judge (Serving/Retd.) (Chairperson)
 - CEC / EC
 - State EC of concerned states
 - Associate members
- ❑ Orders can't be modified or challenged in court

- ❑ **Aim:**
each LS MP represent same number of people
- ❑ **How:**
delimit boundaries after each Census
- ❑ **Done:**
after Census of 1951, 1961, 1971, (and 2002)
- ❑ **Problem:**
States who controlled population got less seats
- ❑ **Solution:**
(42nd CAA) Pause at 1971 level till 2000
- ❑ **2001:**
(84th CAA) Extended pause till 2026;
Use 1991 data to adjust boundaries within states
- ❑ **2003:**
(87th CAA) Use 2001 data instead of 1991
- ❑ **2008:**
Report submitted, accepted

Simultaneous election

Simultaneous elections:

- Holding elections to Lok Sabha and State Assemblies together
- SE were in practice till 1967.
- Early dissolution of some state assemblies in 1968-69 and of Lok Sabha in 1970, broke the synchronization.

Arguments and counter-arguments:

- ❑ Frequent imposition of MCC impacts governance.
 - MCC does not impact regular governance functions.
 - SE won't end MCC. It would just reduce it to once in five years, instead of twice.
- ❑ Election expenditure by parties is root cause of corruption.
 - Instead of reducing, SE will increase use of money power in elections.
 - Less frequent elections will raise the stakes for parties to win at any cost.
 - Less frequent elections will increase cases of horse trading.
 - If corruption is the problem, then take steps to reduce corruption:
 - remove anonymity from electoral bonds
 - put expenditure limit on parties
 - strengthen RTI, protect whistle-blowers
- ❑ Elections are polarising events. Hate speeches strengthen regionalism, casteism, communalism.
 - Hate speeches are mainly aimed to attract fence sitters, not core voters.
 - Social media is used on a regular basis to create and strengthen core voter base.
 - Nowadays, political parties don't wait for election time to reinforce such divisions.
- ❑ Frequent elections weaken the nation as ministers devote time to elections.
 - Elections ensure accountability of ministers.
 - Bureaucrats and staff in ministries are not used by ministers for elections.

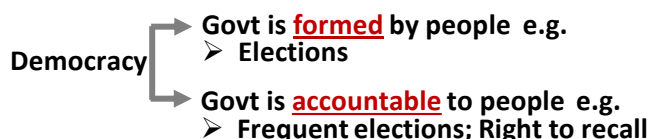
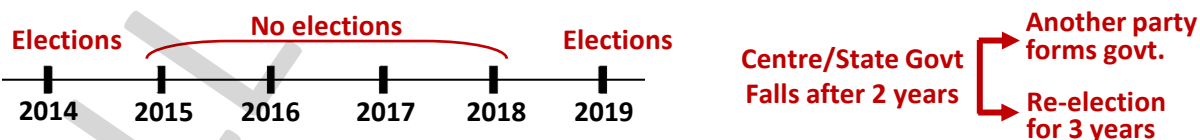
Other challenges:

Will need wide political consensus on certain issues like:

- If central govt. falls, will all state govt. also change term?
- If any state govt. falls, will President's rule be used till next election?

Additional comments:

- No elections = No democracy; Less elections = Less democracy
- Elections are integral part of democracy.
- One less election is one step closer to authoritarian state.
- States like Haryana are bringing Right to Recall for greater accountability at Panchayats.
 - SE would work in opposite way, to reduce accountability of legislators.



Electoral reforms

Need for electoral reforms:

- Ghost/Duplicate voters
- Criminal candidates
- Opaque electoral funding
- Use of money and muscle power
- Use of caste and religion in campaign
- Paid/biased news/ads
- MCC violations
- Post-election violence
- RTI not answered

Electoral reforms before 1996

- **61st amendment 1988** reduced **voting age** from 21 years to 18 years.
- Use of **EVMs** allowed by amending RPA 1951 in 1989.
- Section 58A added to RPA 1951 to adjourn polls in case of **booth capturing**.
- **EPIC** (photo id) cards to be used to prevent impersonation.

Electoral reforms of 1996:

- 6 years disqualification if convicted under **National Honour Act 1971**
- Ban on **liquor** distribution during 48 hours before conclusion of poll.
- Can contest only from **two constituencies**.
- Ban on **carrying arms** near polling station.

Electoral reforms after 1996:

- **Postal ballots** allowed in 1999.
- **Proxy voting** allowed in 2003 for service voters.
- Candidates must **declare criminal cases**, assets, educational qualifications, etc.
- **Rajya Sabha**: domicile requirement removed; Open ballot introduced.
- **Braille** signs in EVMs introduced gradually.

Electoral reforms since 2010

- Publishing result of **Exit polls** banned during polling.
- Allowed **NRIs** to vote by coming to India.
- Allowed **online enrolment** in Electoral Roll
- **NOTA** introduced on directions of SC.
- **VVPAT** machines introduced with EVMs.
- Allowed persons in **jail** or in police custody to **contest elections**.
- Immediate disqualification, ruled by SC in **Lily Thomas case**.
- **Finance Act, 2017** (already discussed)
- **FCRA** 2010 amended in 2018

Electoral Reforms proposed by Election Commission

PROPOSED
ELECTORAL
REFORMS



Amendment the Constitution:

- Give **Constitutional protection for all** members of the Commission
- **Budget** of the Commission should be 'charged' on CFI
- Independent **Secretariat** for the Commission

Electoral Rolls:

- Use **Common** Electoral Rolls for Parliamentary, Assembly and local body elections
- Amend section 60 of RPA 1950: allow proxy voting and postal ballot for **NRI**s.

Election Management:

- Making **false statement** wrt **conduct of elections** should be punishable under RPA 1951
 - Making false statement for **electoral rolls** is punishable under section 31 of RPA 1950
- Filing of **false affidavit** should be punishable with **2 years** jail, instead of 6 months (section 125A of RPA 1950)
- Section 126(1) of RPA 1951 should also include '**print media**' with electronic media. (no election related matter in silence period)
- Insert section 58B to RPA 1951 for (bribing voters), like 58A is for **booth capturing**.

Election Officials and Logistics:

- Use **Totalizer machines** for counting votes (hides result of individual EVM, connects up to 14 EVMs)

Nomination of Candidates:

- Amend section 33(7) of RPA 1951. Allow candidates to contest **only from one seat**.
- Disqualify candidates who have **pending public dues**.

De-Criminalization of politics:

- De- Criminalisation of Politics: **Disqualify even during trial** if punishment can be more than 5 years and court has already framed charges and if case was filed 6 months before elections.
- To **stop misuse of religion** for electoral gains, giving effect to recommendations of **Liberhan Commission**
- Make **bribery** a cognizable offence with minimum **2 years jail**. (amend section 171 of CrPC 1973)

Reforms relating to Political Parties:

- Empower ECI to **de-register** political parties (section 29A of RPA 1951 is for registration)
- **Income tax exemption** be given only to those parties which **win seats**, as some parties are formed merely for availing income tax benefits.
- There should be limit on the campaign **expenditure by political parties**.
- Limit the number of **Star Campaigners for bye-elections** to two.

Election campaign and advertisements:

- Section 126A of RPA restricts Exit polls. Similar restrictions should also apply to **Opinion polls**.
- **Ban Government advertisement** 6 months before elections. (Ads are used to influence voters. Governments use 'election advertising' in the guise of providing information to the public.)
- Amend section 126 of RPA 1951 to ban ads during silence period in **print media**.
- **Paid news** must be made a corrupt practice with two years imprisonment.

Election Petitions:

- Appointment of additional judges in the **High Courts** for cases on elections. (Under section 80 of RPA 1951, election petition can be filed in HC within 45 days of election.)

Other Issues

- **Election Commission**, not central govt, should have **power to frame rules** under RPA 1950 and RPA 1951

RPA 1950 / 1951

Representation Of The People Act, 1950 has provision for:

- Qualification of **voters**
- Preparation of electoral **rolls**.
- **Delimitation** of election constituencies.
- Allocation of **seats** in LS, SLA, SLC (RS is as per 4th schedule)



RPA 1950	Qualification of voters	Preparation of electoral rolls
RPA 1951	Qualification/Disqualification of MP/MLA	Registration of political parties

Representation Of The People Act, 1951 has provision for:

- Qualifications and disqualifications for **legislators**
- Registration of political **parties**
- Actual **conduct** of elections
- **Corrupt practices** and electoral offences
- **Disputes** regarding elections
- **Bye-elections** and time limit for filling vacancies.

Issues and suggestions:

Money power:

- Section 58A of RPA 1951 empowers EC to act against use of **muscle power** (booth capturing)
- Must be amended to also include use of **money power** (paid news, bribing voters)

Foreign funds:

- Section 29B of **RPA, 1951 prohibits** parties from receiving foreign funds.
- But **2018** amendment to **FCRA** changed definition of foreign company.
- This has **allowed** parties to easily receive foreign funds.

Paid news:

- **No specific provision** against paid news.
- EC has to take action for exceeding **expenditure limit**.

Election expenditure:

- Section 77(3) limits expenditure by **candidates**.
- There should also be a limit on expenditure by political **parties**.

Fighting from two constituencies:

- Section 33(7) of RPA 1951 allows candidates to fight from two constituencies.
- It must to amended to allow only one constituency. Reason:
 - A candidate **can represent only one** constituency, then why fight from two.
 - If he wins both seats, **by-elections** need to be conducted. This costs both **money and manpower** to the govt.
- It shows **hunger to get elected**, instead of intention to serve people.

Exit polls and Opinion polls:

- Section 126A of RPA 1951 **regulates Exit polls**, but there is **no** specific mention of **Opinion polls**.
- Instead of showing public opinion, Opinion polls are used to influence public opinion.

Section 11 of RPA, 1951:

- It empowers ECI to **reduce period of disqualification**.
- In 2019, Sikkim CMs disqualification was reduced from 6 years to just one year one month

Qualification to be MP

Constitution:

- Citizen
- Age: **25** for LS, **30** for RS
- Take oath:
 - Bear true **faith and allegiance** to Constitution
 - Uphold **sovereignty and integrity** of India
- Posses other qualifications prescribed by **Parliament**.

RPA, 1951:

- He must be registered as an **elector** in a parliamentary constituency.
- He must be **SC/ST** to contest seat reserved for SC/ST.

Disqualification

Constitution:

- Not a **citizen** of India or taken citizenship of **another** country
- Holds **Office of Profit** under Union or State govt, but
 - Can be a minister
 - Can hold office exempted by Parliament
- He is of **unsound mind**
- He is an **undischarged insolvent** (bankrupt/ unable to repay debts)
- He is disqualified under **law** made by Parliament

RPA, 1951:

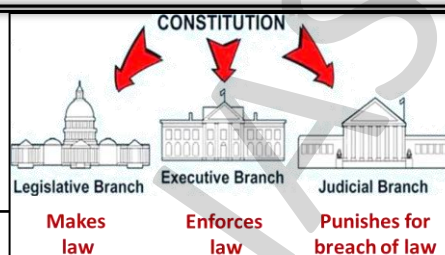
- ❖ Holds **Office of Profit** in a **company** in which govt has more than **25% share**
- ❖ Has interest in **govt contracts**
- ❖ **Dismissed** from Govt service for corruption or disloyalty
- Failed to submit details of election **expenditure** within time.
- Guilty of **corrupt practices** in elections (e.g. IG disqualified in 1975 for use of official machinery in elections)
- Imprisoned for **two** or more **years** (not preventive detention)
- Convicted for:
 - Social crimes** like Untouchability, Dowry, Sati
 - Promoting **enmity** between groups
 - Bribery**

10th Schedule:

- **Disobeying** party on a vote.
- Voluntarily **resigning** from party.
- **Independent** member joining any party.
- **Nominated** member joining any party after six months.

Basic structure

September 2020: Kesavananda Bharati of Kesavananda Bharati case 1973 passed away

**Basic Structure?**

- It is a **judicial innovation** to check amending powers of Parliament.
- It was introduced by the Supreme Court in Kesavanand Bharti case, 1973.
- Because Constitution does not explicitly **restrict amending powers of Parliament**.

Evolution of Basic Structure:

- ❑ **Article 13:**
 - "Law" made by Parliament cannot take away fundamental rights.
- ❑ **1951 Shankari Prasad case:**
 - "Law" (of article 13) means ordinary law
 - "Law" (of article 13) does not means constitutional amendment
 - Result? Constitution amendments **can change** fundamental rights.
- ❑ **1967 Golak Nath case:**
 - "Law" (of article 13) means constitutional amendment
 - Result? Constitution amendments **cannot change** fundamental rights.
- ❑ **1971 24th Amendment**
 - "Law" (of article 13) does not means constitutional amendment
 - Result? Constitution amendments **can change** fundamental rights.
- ❑ **1973 Kesavanand Bharti case:**
 - 24th amendment is correct.
 - Result? Constitution amendments **can change** fundamental rights.
 - But Parliament **cannot change 'Basic Structure'**.
- ❑ **1976 42nd Amendment:**
 - No restriction on Parliament's powers to amend Constitution
 - No amendment can be challenged in any court
- ❑ **1980 Minerva Mills case:**
 - SC invalidated the above provision.
 - Judicial review is basic feature of Constitution.
 - Constitution has given **limited amending power** to parliament,
 - Donee (receiver) of limited power **cannot** use that limited power, to **convert** that **limited power, into unlimited power**.
- ❑ **1981 Waman Rao case:**
 - Doctrine of 'basic structure' applies to amendments made after April 24, 1973
- ❑ **2007 Coelho case (Mains 2016):**
 - aka 9th schedule case
 - 9th schedule items are not immune to judicial review, because, judicial review is a basic feature of Constitution.

Evolution in brief:

- ✓ Parliament cannot take away fundamental rights.
- ✓ 1951 Shankari Prasad case: can
- ✓ 1967 Golak Nath case: cannot
- ✓ 1971 24th Amendment: can
- ✓ 1973 Kesavanand Bharti case: can, but not basic structure
- ✓ 1976 42nd Amendment: nothing like basic structure
- ✓ 1980 Minerva Mills case: Basic structure is correct

What was the Kesavanand Bharti case?

- a) He was head of Edneer Mutt in Kasaragod district, Kerala
- b) He challenged acquisition of his land by Government under the Kerala Land Reforms Act 1963, as violation of Article 26.
- c) Judgement given in 24th April 1973 by 13 Judge Constitution Bench.

Importance of Basic Structure?

- a) It protects basic constitutional values like democracy, rule of law, secularism, etc.
- b) It checks autocratic tendencies of the ruling party.
- c) No government, howsoever powerful, can amend constitution as per its wish.
- d) It strengthens the concept of separation of power.
- e) Through Basic Structure, Supreme Court acts as the true guardian of the Constitution.

Criticism of Basic Structure?

- a) It is not mentioned in the Constitution.
- b) There is no complete list.
- c) It gives too much discretionary power to judges.
- d) It is against democratic principles, as it restricts powers of parliament.
- e) As courts add more subjects to the list, laws made after 1973 become vulnerable to be declared unconstitutional.

<p><u>Some subjects part of basic structure are:</u></p> <ul style="list-style-type: none">✓ Federalism✓ Secularism✓ Separation of powers✓ Judicial review	<ul style="list-style-type: none">✓ Independence of judiciary✓ Parliamentary system✓ Rule of Law✓ Limited power of Parliament to amend the Constitution
--	--

Q4. 'संविधान में संशोधन करने के संसद के स्वैच्छिक अधिकार पर भारत का उच्चतम न्यायालय नियंत्रण रखता है ।' समालोचनात्मक विवेचना कीजिए । [200 शब्द] **Mains 2013**

'The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically. [200 words] 10

12. "संविधान का संशोधन करने की संसद की शक्ति एक परिसीमित शक्ति है और इसे आत्यंतिक शक्ति के रूप में विस्तृत नहीं किया जा सकता है ।" इस कथन के आलोक में व्याख्या कीजिए कि क्या संसद संविधान के अनुच्छेद 368 के अंतर्गत अपनी संशोधन की शक्ति का विशदीकरण करके संविधान के मूल ढांचे को नष्ट कर सकती है ? **Mains 2019**

"Parliament's power to amend the Constitution is a limited power and it cannot be enlarged into absolute power." In the light of this statement explain whether Parliament under Article 368 of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power ? 15

9th schedule

Recently, there were demands to put reservation laws under 9th schedule.

Brief background:

- Soon after independence, many state governments passed laws to abolish zamindari system.
- But Right to property was a Fundamental Right.
- So these state laws were challenged in Supreme Court.
- SC ruled in favor of Zamindars.
- So government inserted 9th schedule to prevent certain land reforms out of scope of Judicial review.

Ninth Schedule:

- Article 31-B prevents laws listed in 9th schedule from being challenged in courts.
- 9th schedule has list of central and state laws which cannot be challenged in courts
- It was added by the First Constitution Amendment Act, 1951
 - to secure the constitutional validity of zamindari abolition laws
- Initially it had 13 laws, currently 284

I.R. Coelho case 2007:

- There cannot be any blanket immunity from Judicial review.
- Judicial review is a part of 'basic structure'.
- Laws placed in 9th schedule after April 24, 1973 are open to judicial review if they violate fundamental rights and basic structure of Constitution.

Q6. कोहिलो केस में क्या अभिनिर्धारित किया गया था ? इस संदर्भ में, क्या आप कह सकते हैं कि न्यायिक पुनर्विलोकन संविधान के बुनियादी अभिलक्षणों में प्रमुख महत्त्व का है ? **Mains 2016**

What was held in the Coelho case ? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution ?

Right to property

Background:

- ❑ **Original Constitution:** Right to property was a fundamental right.
- ❑ **44th Amendment 1978:** removed Right to Property from FRs, and converted it into a constitutional right under article 300-A.
- ❑ **Article 300-A:** No person shall be deprived of his property save by authority of law.

What is the present status of Right to Property in India:

- ❑ Article 300-A protects private property against **executive action** but not against **legislative action**.
- ❑ Right over property can be curtailed by an **ordinary law of Parliament**.
- ❑ In case of violation, the aggrieved person **cannot** directly move Supreme Court under **Article 32**.
- ❑ No guaranteed right to **compensation**, except when:
 - a) property was of **minority educational** institution (Article 30)
 - b) property was under **personal cultivation** (Article 31-A)

Should Right to property be reinstated as Fundamental Right?

Yes:

- Right to private property is a **human right**
- Citizens need to be protected against **compulsory** land acquisition.
- It will give **bargaining power** to land owners to get fair value.

No:

- Being a developing country, India needs land for **developmental projects**.
- Land Acquisition **Act 2013** already ensures fair compensation.

Way forward:

Digitalize land records; ensure proper rehabilitation; compensation should be speedy and adequate; bring Conclusive land titling (see class-22)

Universal Declaration of Human Rights 1948:

- Everyone has the right to own property
- No-one should be arbitrarily deprived of his property

Doctrine of adverse possession:

- ❑ A person occupying a property for **12 years** becomes its owner, if the actual owner did not seek legal action during this time.
- ❑ Logic: the **problem of documents**
 - Despite being rightful owner and living on the land for years, **people don't have documents** to prove ownership.
 - Its logical to **recognize their rights**, instead of labelling them as encroachers.
- ❑ Supreme Court in **Vidya Devi vs State of Himachal Pradesh 2020:**
 - Right to private property is a **human right**.
 - Government cannot claim '**adverse possession**' to grab citizen's property.

Basic Structure of Constitution

FRONTLINE

KESAVANANDA BHARATI

**Kesavananda Bharati:
Unwitting saviour of
democracy**

R. KRISHNAKUMAR IN THIRUVANANTHAPURAM

Print edition : October 09, 2020



Kesavananda Bharati, the seer of Edneer mutt. Photo: By SPECIAL ARRANGEMENT

Kesavananda Bharati (1940–2020) never got the relief that he prayed for before the Supreme Court, but helped win the most significant decision in Indian judicial history when the court evolved an innovative 'basic structure doctrine' and placed itself as the arbiter of Parliament's power to amend the Constitution.

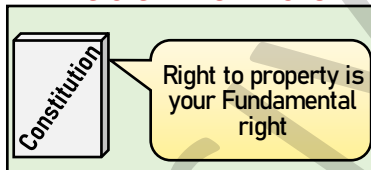
❖ **News:** Kesavanand Bharti passed away

❖ **Prelims:**

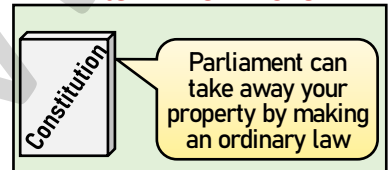
- # Right to property
- # Judicial review, Article 13
- # 9th Schedule
- # Basic structure
- # Constitution Amendment
- # Coelho case

Right to Property

Before 44th CAA 1978



After 44th CAA 1978



Prelims 2005:

Consider the following statements:

1. **Article 301** pertains to Right to Property. **Article 300-A**
2. Right to Property is a legal right but not a Fundamental Right.
3. Article 300-A was inserted in the Constitution of India by the **Congress Government** at the Centre by the 44th Constitutional Amendment. **Janta Party**

Which of the statement given above is/are correct?

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

Right to Property

Type of right

Fundamental right? No
Legal right? Yes

Original Constitution had 19(f) & 31:

- ✓ Fundamental right, but:
- can be taken for public purpose
- compensation is compulsory

44th Const. Amend. Act 1978:

- ✓ Removed 19(f) & 31
- ✓ Inserted 300-A
- ✓ Not a fundamental right
- ✓ Law can take away property
- ✓ Compensation not necessary

Compensation

Compensation is necessary only if:

- a. property was of **minority educational** institution (Article 30)
- b. property was under **personal cultivation** (Article 31-A) (Article 31-A was added by 1st amendment 1951)

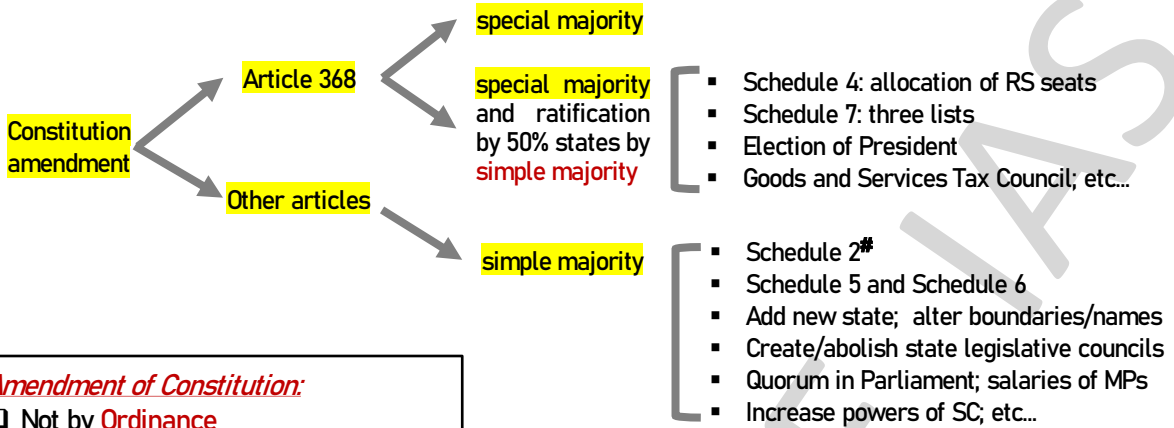
Remember:

- ✓ 300-A: no person shall be deprived of his property save by authority of law
- ✓ 300-A protects property against **executive action**
- ✗ 300-A protects property against **legislative action** ✗

Adverse possession

- ❖ If someone illegally occupied your property for **12 years**, and you did not take legal action, then **you lose its ownership**.
- ❖ But, govt. cannot use this method to take over your property.

Amendment of Constitution



Amendment of Constitution:

- Not by **Ordinance**
- No **joint** sitting
- President **must give assent**; can't withhold or return (24th amendment)
- Bill can be presented:
 - in **either** house
 - by **private** member also

*Schedule 2: Emoluments etc of:

(Executive, Legislature, Judiciary, CAG)

- ✓ President, Governors
- ✓ Speaker, Dy. Speaker, Chairman, Dy. Chairman of LS/RS/SLA/SLC
- ✓ Judges of SC and HCs
- ✓ CAG

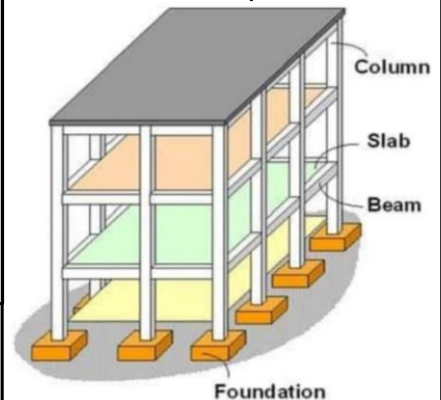
Recent amendments: 101st : GST 102nd : NCBC 103rd : EWS 104th : Reservation in LS/SLA

Basic Structure

Doctrine of Basic structure?

- Not written in constitution**; introduced by SC in Kesavanand Bharati case 1973
- Judiciary decides** what comes under basic structure
- NCRWC 2002** (Venkatachaliah Comm.) **did not oppose** it
- Need?
 - Constitution does not explicitly **restrict parliament's power** to amend Constitution
 - Absence of Basic structure leads to **Rule by Law** instead of **Rule of law** (to be discussed later)

Disturbing basic structure will cause catastrophic failure



Basic structure:

- Federalism; Democracy; Secularism; Equality; Rule of law
- Limited power of Parliament to amend Constitution;
- Independent judiciary; Judicial review
- Powers of SC u/a 32, 136, 141, 142; and HC u/a 226, 227
- Parliamentary system; Separation of power
- Harmony and **balance between FRs & DPSPs**
- Free & fair **elections**; and many more...

- Article 226:** issue order/writ for FR or other purpose
- Article 227:** HC has superintendence on courts/tribunals in its area

- Article 32:** approach SC for FR
- Article 136:** Special leave petition (except military tribunal & court martial)
- Article 141:** SC decision binding on other courts
- Article 142:** SC can pass any order necessary to do "complete justice"

I read I forget, I see I remember | See explanation of this PDF on **YouTube** www.youtube.com/c/allinclusiveias

Kesavananda Bharati. This ruling has contributed to the evolution of the Constitution in the following ways:

- ◆ It has set specific limits to Parliament's power to amend the Constitution. It says that no amendment can violate the basic structure of the Constitution;
- ◆ It allows Parliament to amend any and all parts of the Constitution (within this limitation); and
- ◆ It places the Judiciary as the final authority in deciding if an amendment violates basic structure and what constitutes the basic structure. - NCERT

Kesavananda Bharati Case:

- Head of Edneer Mutt (Kerala) challenged acquisition of his land by govt.
- 13 Judge bench (largest ever);
- Judgement came on **24th April 1973**
- Upheld 24th amendment
- Parliament can **take away any FR**
- Gave **basic structure doctrine**
- Judiciary will decide** basic structure
- Right to property** is not part of basic structure
- Preamble** is part of Constitution

1951	Shankari Prasad	<input type="checkbox"/> Parliament can amend anything
1965	Sajjan Singh	<input type="checkbox"/> Parliament can amend anything <input type="checkbox"/> Dissenting judgement: Constitution has some 'basic features'
1967	Golak Nath	<input type="checkbox"/> Parliament can't amend FR (11 judge bench)
1971	24th Amendment	<input type="checkbox"/> Parliament can amend FR
1973	Kesavanand Bharati	<input type="checkbox"/> 24 th Amendment is correct <input type="checkbox"/> Basic structure doctrine
1975	42nd Amendment	<input type="checkbox"/> Parliament can amend anything
1980	Minerva Mills	<input type="checkbox"/> Parliament has limited amending power <input type="checkbox"/> Can't use limited power to get unlimited power
1981	Waman Rao	<input type="checkbox"/> Basic structure doctrine does not apply retrospectively

Ninth Schedule

Ninth Schedule:

- a) Article 31B: laws in 9th schedule **can't be challenged in courts**
- b) Added by **1st amendment** 1951 to protect zamindari abolition laws
- c) Has both **central & state** laws; initially 13 laws, currently 284.

I. R. Coelho case 2007:

- 9th schedule not immune to judicial review (part of basic structure)
- Law placed in 9th schedule is unconstitutional if:
 1. it violates any FR, and
 2. it violates basic structure

Prelims 2003:

The Ninth Schedule to the Indian Constitution was added by:

- (a) **1st Amendment**
- (b) 8th Amendment
- (c) 9th Amendment
- (d) 42nd Amendment

Prelims 2018:

Consider the following statements:

1. The Parliament of India can place a particular law in the Ninth Schedule of the Constitution of India
2. The validity of a law placed in the Ninth Schedule cannot be examined by any court and no judgement can be made on it.

Which of the statements given above is/are correct?

- (a) 1 only** (b) 2 only (c) Both 1 and 2 (d) Neither 1 nor 2

Prelims 2019:

Ninth schedule was introduced in Constitution during prime ministership of:

- (a) Jawaharlal Nehru**
- (b) Lal Bahadur Shastri
- (c) Indira Gandhi
- (d) Morarji Desai

Uniform Civil Code

- ❑ UCC: common law for all citizens, for personal matters, like marriage, divorce, inheritance, etc.
- ❑ Article 44 of Constitution directs State to bring a Uniform Civil Code.
- ❑ However, diversity of social customs in Indian society has prevented enactment of UCC.

	Arguments in support of UCC	Arguments against UCC
Constitution	Article 44 directs state to bring UCC	Article 26 gives freedom to manage religious affairs
Uniformity	All citizens should be subjected to same laws	Even civil and criminal laws vary across states . Then why push for personal laws.
Secularism	It will bring uniformity across all religions .	UCC is against diversity of India. Secularism does not mean uniformity across religions.
Women	UCC will bring gender justice for women. Most personal laws are patriarchal .	Laws exist to protect interest of women e.g. <ul style="list-style-type: none"> ➤ Muslim Women (Protection of Rights on Marriage) Act, 2019 ➤ Section 125 of CrPC has provisions for maintenance to wife/children/parents.

Challenges:

- If law is against religious customs, **people will not follow** the law.
- Building **consensus** to frame a **common law** for **different religions** will be difficult.
- 'Personal laws' is in **Concurrent list**. So, states too may pass laws which will end uniformity.
- **Constitutional amendments** may be required. e.g. protection given to local customs in some **north-east** states.

Way forward:

- Laws must be enacted against customs that violate **human rights and dignity**.
- If UCC is brought, it should be a tool to **end discrimination**, not a tool for majoritarianism.
- For a united nation, it is not 'uniformity', but **respect for diversity**, that is more important.

Additional comments:

- What exactly will **India gain** if everyone follows same laws in 'personal matters'?
- **Objective** should be clear: bring uniformity or remove discrimination

Mains 2015:

Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy.

Uniform Civil Code

Detail important for Mains, not Prelims

Mentioned in Constitution?

- Yes, in article **44**
- DPSP: Part-IV, articles 36-51

Law Commission in 2018:
UCC is neither feasible nor desirable

Meaning:

- **Same personal laws for all citizens**, irrespective of religion.
- e.g. marriage, divorce, inheritance, etc.
- Criticism: India does not have uniform laws for civil and criminal matters, then why push for personal matters

Personal laws:

- in **Concurrent list**; so not uniform across India
- Different laws for different religions
 - e.g. Hindu Marriage Act, 1955
 - e.g. Muslim Women (Protection of Rights on Marriage) Act, 2019
 - e.g. Indian Christian Marriage Act, 1872
 - e.g. Parsi Marriage and Divorce Act, 1936

Goa civil code: (Portuguese Civil Code 1867)

- appreciated by SC as shining example of **UCC**
- **Single law for all** Goans irrespective of religion
- But it has special provisions for some religions
- e.g. Only **Hindu** men have the right to **bigamy** under special circumstances (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30)

Sedition Law

Sedition is against **Govt.**; Treason is against **Nation**

- 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**"
- Non-bailable** offence;
- Max. punishment: **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** (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**
 - ❖ Further empowered govt to quell sedition by silencing the **press**, detaining the political **activists** without trial, and **arresting** without warrant.

UAPA 1967

Unlawful Activities (Prevention) Act, 1967

- **Unlawful activity**: activity against territorial **integrity** and **sovereignty** of India.
 - Till 2004, "unlawful" activities meant actions related to **secession** and **cession** of territory
 - Centre can declare any activity as unlawful
- Max punishment: **death** penalty
- both Indian and **foreign nationals** can be charged
- Applies even if crime is committed on a **foreign land**
- **2019 amendment**:
 - Govt can designate any individuals as **terrorist** even before commencement of trial.

I read I forget, I see I remember | See explanation of this PDF on  **YouTube** www.youtube.com/c/allinclusiveias

Sedition

When British ruled India:

- **Britain:** govt changed by elections
- **India:** govt was to be of the crown only
- Hence sedition: disaffection against "govt"

Independent India: govt changed by elections

- Hence, no role of sedition
- Sedition is against **Govt.**
- Treason is against **Nation**

About Sedition Law in India:

- IPC section 124A defines sedition as "**disaffection towards govt. established by law**".
- **Non-bailable** offence; Maximum punishment: **life imprisonment**
- **During trial**, the accused:
 - must surrender **passport**
 - can't apply for **govt. job**

Supreme Court rulings on sedition:

- **Kedarnath case 1962:** Citizens have right to say whatever they want against Govt.
- **Balwant Singh case 1995:** raising of slogans alone is not sedition.
- **Common Cause case 2016:** Criticism however strongly worded, which shuns violence, is not sedition.
- Various court rulings have defined **essential ingredients of sedition** as:
 - a) Disruption of public order
 - b) Attempt to violently overthrow a lawful govt.
 - c) Threatening security of state or public

How is sedition law used in modern India?

- People are charged for mere **criticism**:
 - arrested, bail not easily granted, process is punishment
 - their public image is tarnished, labelled as anti-national
- Between 2015-18:
 - 191 cases filed, **only four convictions**
- SC **guidelines** are not being followed.

Should sedition law be removed?

Purpose:

- Purpose of sedition law was to protect British govt.
- But today governments are changed every five years.

Government ≠ Nation

- Criticism of govt. is equated as criticism of nation
- Gandhi and Tilak worked against Government, not nation.

Democracy: (no criticism = no democracy)

- Elections have no significance if government can't be criticised

Law Commission in 2018:

- Criticism of govt. is essential for democracy.
- Section 124A should be reconsidered.

Other countries:

- UK and Australia have revoked their sedition laws.

Sedition is against **Govt.**
Treason is against **Nation**

Way forward:

- Allow **under-trial** to apply for govt. job [innocent until proven guilty]
- Police must strictly follow the Supreme Court **guidelines**.
- **Replace** with word "disaffection" with "violence"; "government" with "country".
- For serious offences, use more suitable laws like **UAPA**.

Rule of Law

Features of Rule of Law:

- Equality before law
- Limitation of powers
- Liberty and civil rights

Rule of Law as per Prof. A.V. Dicey:

- 1) **Supremacy of law:** No one should be punished except for breach of Law
- 2) **Equality before law:** No one is above the law
- 3) **Predominance of legal spirit:** Constitution is the result of rights, not the opposite.

Constitution:

- Article 13 provides for judicial review
- Article 14 ensures equality before law and equal protection of laws
- Article 21 protects personal liberty against arbitrary action

Importance of Rule of Law:

(Think PESTEL Political, Economic, Social, Technological, Environmental and Legal)

- Prevents arbitrary use of political power
- Rules based society has higher and sustainable economic growth
- Social justice for all sections → peace in society (why people prefer west?)

Challenges:

- Law is discriminatory:**
 - SC had to strike down discriminatory laws like Section 497 of IPC (adultery) and Section 377 of IPC (homosexuality) (students are advised not to mention CAA in exam)
- Law is misused by people in power:**
 - Sedition cases filed simply for criticising govt, just 2% conviction rate
- Law makers are law breakers:**
 - 43% of MPs in the current Lok Sabha have pending criminal cases against them
- Courts:**
 - slow justice delivery, 4.5 crore pending cases
 - Difficult for weaker section to access courts (poverty, illiteracy...)

Some points from IE article on CJ's speech:

- Law:** tool of social control that is backed by the sovereign
- Problem:** law can be used for oppression
- Solution:** Law must be fair, just and reasonable
- British used Rule by Law to control Indians
- 1947 marked transition to Rule of Law

Four principles of rule of law:

- 1) **Law must be clear and accessible**
 - Language must be simple and clear.
 - (e.g. disaffection against govt in Sedition law)
- 2) **Equality before law**
 - Equal access to justice for all.
 - No hindrance due to poverty, illiteracy, gender, disability.
- 3) **Right to participate in creation and refinement of laws**
 - Right to change ruler, once every few years, is no guarantee against tyranny.
 - Criticisms and voicing of protests is integral to the democratic process.
- 4) **Strong and independent judiciary**
 - Judicial review limits amending power of parliament
 - Judiciary indirectly controlled by Executive creates illusion of Rule of law.
 - Media trials cannot be a guiding factor in deciding cases.

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Rule of Law vs Rule by Law

Written by N V Ramana |
Updated: July 2, 2021 8:21:49 am

When talking about Rule of Law, it is necessary to first understand what the law is. Law, in its most general sense, is a tool of social control that is backed by the sovereign. However, is this definition complete in itself? I would think not. Such a definition of law makes it a double-edged sword. It can be used not only to render justice, it can also be used to justify oppression.

A nation is not just a territory. A nation is its people. Only when people progress, Nation progresses.

Rule of Law

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WHY DO WE NEED AN INDEPENDENT JUDICIARY?

In any society, disputes are bound to arise between individuals, between groups and between individuals or groups and government. All such disputes must be settled by an independent body in accordance with the principle of rule of law. This idea of rule of law implies that all individuals — rich and poor, men or women, forward or backward castes — are subjected to the same law. The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles disputes in accordance with the law and ensures that democracy does not give way to individual or group dictatorship. In order to be able to do all this, it is necessary that the judiciary is independent of any political pressures.

What is meant by an independent judiciary? How is this independence ensured?



Rule of Man	Rule by Law	Rule of Law
Man	Man + Law	Man + Law + equality/liberty
<p><i>Ok, I will rule you</i></p> <p><i>We elect you to rule us for next 5 years</i></p>	<p><i>I will use laws to rule you</i></p>	<p style="text-align: center;">equality/liberty</p> <p><i>You have limited powers</i></p>
<ul style="list-style-type: none"> <input type="checkbox"/> An elected individual or a group rules as per its wish. <input type="checkbox"/> This is the most common perception of democracy. 	<ul style="list-style-type: none"> <input type="checkbox"/> Law is used as tool of political power <input type="checkbox"/> Illegitimate ideas are given legal sanctity. <input type="checkbox"/> Law becomes instrument of oppression. <input type="checkbox"/> e.g. Use of law to discriminate against Jews (in Nazi Germany) and Blacks (during apartheid in South Africa) 	<ul style="list-style-type: none"> <input type="checkbox"/> Law is necessary, but not sufficient. <input type="checkbox"/> Law has some core principles that ensure basic rights and dignity of each individual. <input type="checkbox"/> Ruler has limited powers.

Prelims 2018:

"Rule of Law Index" is released by which of the following?

- (a) Amnesty International
- (b) International Court of Justice
- (c) UN Commissioner for Human Rights
- (d) World Justice Project

Indian Constitution borrowed Rule of law principle from? **Britain**

Prelims 2018:

Which of the following are regarded as the main features of the "**Rule of Law**"?

1. **Limitation** of powers
2. **Equality** before law
3. People's responsibility to the Government
4. **Liberty** and civil rights

Select the correct answer using the code given below:

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

Right to protest

Public protest: expressing dissent against government action / inaction / suppression of rights

Constitution:

- Article 19(1)(a) → right to freedom of speech and expression
- Article 19(1)(b) → right to assemble peacefully
- Article 19(2) → subject to reasonable restrictions

Supreme Court:

- Right to protest in public space is a **fundamental right** (Various rulings)
- **2012 Ramlila Maidan protests:**
 - RTP is a FR which cannot be taken away by executive or legislative action
- **Shaheen Bagh protests 2020:**
 - Public spaces cannot be occupied indefinitely. People have right to mobility.

Importance of public protest:

- **Democracy** and dissent go hand in hand.
 - Lack of avenue to express dissent leads to protests
- People act as **watchdog** against autocratic actions of govt
 - To question the govt is a basic political right in democracy.
- Protests provide **feedback** to govt about its policies.
 - Issues ignored by media get publicity

Global examples:

- China:**
 - 1989** Tiananmen square protests for democracy and free speech
 - 2019** Hong Kong protests against new national security laws
- USA:**
 - 2011** Occupy Wall street protests against economic inequality
 - 2020** George Floyd protests against police brutality and racism
- Arab world:**
 - 2011** Arab spring protests against corruption and economic stagnation

Protesters can't block roads or public spaces, rules Supreme Court

Dhananjay Mahapatra / TNN / Updated: Oct 8, 2020, 09:59 IST

NEW DELHI: The [Supreme Court](#) on Wednesday ruled that authorities, in future, should not permit Shaheen Bagh-type protests involving blocking of roads and public spaces, and said that such expressions of dissent should be organised at designated places without causing inconvenience to the public at large.

Prison reforms

- Prison is a **state subject** under seventh schedule. **MHA** provides **guidance** to states.
- Prisons in India are governed by the **Prisons Act, 1894** and **Prisoners Act, 1900**, however, each state follows its own prison rules and manuals.
- Nelson Mandela Rules** is the popular name of United Nations Standard Minimum Rules for the Treatment of Prisoners.

What is the purpose of prison system?

- Retribution**: suffer what you did.
- Prevention**: no more crimes by same person
- Reform**: change him into law abiding citizen
- Deterrence**: create fear in common man

However, Indian prisons are infamous as universities for grooming criminals (inhumane conditions, bad influence, etc.)

Why prison system in India needs reforms? (Overcrowded, understaffed, underfunded)

- 69%** of total inmates were **under-trials** (Innocent until proven guilty) (11% in UK, 20% in USA)
- Poor** find it difficult to get bail.
- 4.2 lakh inmates in 1,401 prisons, with average **occupancy** of **114%**.
- Overcrowding **prevents segregation** of serious criminals and minor offenders.
- Poor condition** of prisons: space, ventilation, sanitation, hygiene. (Built during colonial times)
- Torture and abuse** by prison officials; **women** are more vulnerable.
- Suicide** rate in prisons is **50% more** than in normal conditions (Source: NHRC)
- Cases of **unnatural death** of prisoners.
- 30-40% vacancies** in prison departments.
- VIP treatment** given to some prisoners.

Why so many undertrials?

- **Unnecessary arrests**:
 - Law Comm 268th report said 60% of arrests are actually not required
- **No bail**:
 - poor find it difficult to furnish bail amount
- **No legal aid**:
 - poor can't afford lawyers, free legal aid not provided
- **Slow investigations**:
 - understaffed police, less use of forensic evidence

Some committee suggestions:

- All India Committee on Jail Reforms (AN Mulla committee)**:
 - formation of All-India Prison **service**;
 - each state should have **open prisons**.
- Law Commission recommendations**:
 - Early release** of under-trials who have completed:
 - 1/3 of max term (for offences having less than 7 years term)
 - 1/2 of max term (for offences having more than 7 years term)
 - Anti-torture** legislation should be enacted
 - Compensate victims of wrongful arrests
 - Liberalize bail conditions

Justice Amitava Roy (retd.) Committee [Appointed by SC in 2018]

Problems highlighted	Recommendations
Overcrowding: <input type="checkbox"/> 4.68 lakh prisoners against capacity of 3.83 lakh (122% occupancy) <input type="checkbox"/> Between 2016-18, prisoners increased by 8.2%, capacity by 0.7%. <input type="checkbox"/> In 7 states (UP, MP) occupancy is 150%	<input type="checkbox"/> Speedy trial <input type="checkbox"/> At least one lawyer for 30 prisoners <input type="checkbox"/> Special courts for petty offences <input type="checkbox"/> Petty offenders be released on Personal Recognizance (PR) Bond <input type="checkbox"/> Plea bargaining should be promoted
Huge number of under-trials	<input type="checkbox"/> One free phone call daily to family in first week <input type="checkbox"/> Trial through video-conferencing <input type="checkbox"/> Use finer , instead of sending to jail
30-40% vacancies in prison dept. prevents implementation of prison manuals	SC should pass directions to fill vacancies
Kitchens are congested and unhygienic	Modern cooking facilities and canteens

Way forward:

- a) Community-based **alternatives** to imprisonment **for minor offences**.
- b) Modernise **infra**, provide **CCTVs**, etc.
- c) **Model Prison Manual 2016** should be followed by all states.
- d) Involve **NGOs** for **education** and **vocational training** of prisoners.
- e) Focus on **rehabilitation**. Example: Swader Greh (for women victims of difficult circumstances) also includes women released from prison without any social support.
- f) **Open prisons** for prisoners considered a low risk to the public.
 - aka minimum-security prison, open air camps or prison without bars
 - There are no locks and bars.
 - Inmates are free to go out to earn a living.
 - There are 63 open prisons in India. (29 in Rajasthan)

Custodial violence

Custody = guardianship and protective care,

Violence = use of force by one, over another.

Custodial Violence: Crime by a public servant against the arrested or detained person in custody amounts to custodial violence [Law Commission of India 152nd report]

Types of custodial violence:

- a) Physical: torture / beating
- b) Mental: food or sleep deprivation etc.
- c) Sexual: rape / harassment / sodomy (unnatural sexual activity)

What is the status of custodial violence in India?

NCRB data [between 2001 and 2018]:

- Custodial deaths 1,727 (only 26 convictions)
- Human rights violation by police: 2,000 (only 344 convictions)

National Campaign Against Torture (NGO):

- 1,731 custodial deaths in 2019 (5 daily)
- 75% of them due to torture

Brutal methods of torture are used: hammering iron nails on body, roller on legs and burning, 'Falanga' - soles are beaten, hitting private parts, electric shocks, kicking abdomen of pregnant women etc.

What constitutional and legal safeguards are available against custodial violence?

a) Constitution:

- a) Article 21: Right to life and liberty
- b) Article 22: produce before nearest magistrate within 24 hours

b) Laws:

- a) Indian Penal Code section 330: up to seven years imprisonment for police officer causing hurt to extort confession.
- b) Indian Evidence Act 1872 Section 25: confession before Police officer is not admissible in court of law

What has been Supreme Court's stand on cases of custodial violence:

- DK Basu vs State of West Bengal 1987: Against rule of law; offence under Article 21
- Nilbati Behera vs State of Orissa 1993: state is accountable; must pay compensation
- Rama Murthy vs State of Karnataka 1996: emphasis on prison reforms.

Why is it so difficult to stop cases of custodial violence in India?

a) Issues with Policing:

- a) Police Act, 1861 gives no clear provisions on superintendence of police, hence police is controlled by the Executive.
- b) Absence of 'command responsibility'. Under command responsibility, senior is responsible for crimes committed by his subordinates.
- c) Absence of independent complaint authority as recommended in Prakash Singh case guidelines. Only some states have formed it, but even those are not truly independent.

b) Under-reporting of cases

c) Weak witness protection: Witness Protection Bill 2015 lapsed.

d) Lack of strong legislation:

- a) Torture is not defined in IPC
- b) yet to criminalize custodial violence.
- c) yet to ratify UN Convention against torture (signed in 1997)

e) Poor condition of Prisons: overcrowded, poor sanitization, punitive violence.

f) Weak functioning of NHRC: limited to providing compensation and other interim relief in practice; NHRC called itself a 'toothless tiger'

g) Poor conviction rate: just 26 policemen convicted in 1,727 custodial deaths

Why steps can be taken to prevent cases of custodial violence in India?

a) Ensure police accountability:

a) External: Independent Police Complaints Authorities should be formed in all states (Prakash Singh case 2006)

b) Internal: Professional responsibility units for surprise check of lockups. Ensure implementation of 11 points outlined in DK Basu judgement.

b) Strong witness protection system

c) Prevention of Torture Bill, 2017 : defines torture; 10 years imprisonment; state governments to be responsible for individuals safety.

d) Ratify UN Convention against torture

e) Prison reforms: CCTV camera, humane conditions, etc.

f) Training police in scientific methods of investigation; modern non-coercive techniques should be used.

g) Law Commission 273rd report recommendations:

- a) Ratify UN convention against torture
- b) In case of injury, burden of proof shall lie on police
- c) Give compensation to victim

Conclusion :

Torture is not just a criminal act, but also grossly inhumane.

There should be zero tolerance against it.

A country aspiring to be 21st century superpower cannot allow its law enforcers mistreat its citizens.

Police reforms

About Police in India:

- a) Schedule 7: exclusive **state list** subject.
- b) Source of power: largely based on Police Act 1861, IPC 1862 , CrPC 1973 etc.
- c) **States** have their own police force and police acts, e.g. Bombay Police Act 1951, Delhi Police Act, 1978 , Kerala Police Act, 1960.
- d) **Centre** also maintains CAPFs (CRPF, CISF, ITBP, etc.) to assist the states.

States:
Maintain public order;
Prisons

Centre:
Protect states from external & internal disturbances;
Institutes for training, investigation, intelligence

What is the role of Police? [source: BPRD]

- Policemen are the most visible **representatives** of the government.
- Main role is to maintain **law and order**.
- This requires them to do numerous functions like:
 - enforce **law** impartially,
 - protect **internal security** (prevent terrorist attacks, maintain communal harmony, etc.)
 - protect **public property** (roads, railways, bridges, etc.)
 - reduce** opportunities for commission of **crimes** (2018 GS-IV Q9)
 - help people in distress, **disasters**, etc.
 - regulate **traffic**
 - intelligence** gathering and sharing on matters affecting **public peace** (communalism, extremism, terrorism, etc.)

What is the need for Police reforms in India?

- Overburdened police force :**
 - 24% vacancies. Number of policemen per lakh population: 137 actual; 181 sanctioned; 222 UN recommended
 - huge backlog of cases, slow investigations, delay in court cases
- Political interference :**
 - Leads to biased performance by police; detrimental to justice delivery
 - 2nd ARC 2007 noted that police powers are misused to serve political interests.
- Investigative issues :**
 - Police lacks essential skills to deal with complex crimes like economic fraud, cybercrimes, etc.
 - Lack of use of forensic methods of investigation
- Lack of resources :**
 - As per CAG report, weaponry is outdated & insufficient (up to 70%)
 - As per BPRD report, vehicles are outdated & insufficient (up to 30%)
- Constable related issues :**
 - poor incentives, inhuman working conditions.
- Lack of Accountability:**
 - unlawful searches, arrests, torture, custodial violence, etc.
 - complaints against custodial violence go unheard.
- Mistrust between public & police :**
 - public perception of police being corrupt & inefficient

Various Committees:

- a) National Police Commission, 1977: Insulating police from political and bureaucratic interference.
- b) Ribeiro Committee, 1998: Take action on NPC & bring new Police Act.
- c) Padmanabhiah Committee, 2000: dealt with recruitment process, training, behavior with public, investigations, etc.
- d) Malimath Committee 2003: non-registration of FIR should be punishable offence
- e) Soli Sorabjee Committee 2006: Made Model Police Act to replace Police Act, 1861
- f) Prakash Singh Guidelines, 2006
- g) NITI Aayog, 2015: outsource non-core functions; increase women in police (currently 7 percent); move police to concurrent list

Prakash Singh case :

- 1977: National Police Commission set up to give recommendations on police reforms. But its major recommendations were not implemented.
- 1996: PIL by two former DGPs to enforce recommendations
- 2006: verdict came, known as Prakash Singh case:
 1. National Security Commission at union level for selection of chiefs of Central police organizations with minimum two year tenure.
 2. State Security Commission (to reduce state govt.'s influence on police)
 3. Police Establishment Board: to decide transfer, postings, promotions of and below DSP rank (recommend for above DSP rank)
 4. Police Complaints Authority at state and district level against public complaints against police officers.
 5. Separate Investigation and Law & Order functions
 6. Fixed two year term for DGP
 7. Fixed two year term for SPs & SHOs

Way forward:

- Improve salary structure and fill vacancies
- Address the issue of criminalization of politics
- Implement Supreme Court guidelines in Prakash Singh case letter and spirit.
- Modernization of police forces:
 - Modern weapons; vehicles; better surveillance; CCTVs
 - Use of ICT (computerization of police stations, online reporting)
 - Training of police officials should be a continuous process due to evolving nature of crime.
- Encourage community policing:
 - Janamaithri Suraksha in Kerala: close interaction between police and people. Beat Constables know at least one person per family of his area.
 - Meira Paibi (Torch-bearers) in Assam: To prevent drug abuse by youth, after sunset, women light torches to guard entry/exit points of basti.
 - However, it should not lead to vigilantism and mob justice.

Additional comments:

- Perennial dilemma (lasting forever): who will guard the guards?
- Powerful police may lead to violation of citizen's rights, powerless police force will be ineffective in controlling crime.
- Police force needs to be: capable, powerful, independent, accountable.
- Police reforms are sine qua non (absolutely essential) for effective justice delivery system.
- Injustice anywhere is a threat to justice everywhere

Extra-Judicial killings

Context: Public support/celebration of extra-judicial killings e.g. in Uttar Pradesh and Andhra

Extra-judicial killings: execution by state authorities without due process of law

Capital punishment: execution by state authorities after due process of law

Legal backing to police encounters?

No law sanctions encounters. Police officers use the following to justify their actions:

1. **Section 100 of IPC:** right to self defence extends to causing death
2. **Section 300 of IPC:** public servant causing death in an act necessary to discharge his duty, is not murder.
3. **Section 46 of CrPC:** Police officer can use all means necessary to make arrest.

Why people support encounters?	Why police does encounters?
Police investigation <ul style="list-style-type: none"> ➤ Slow (less manpower, overburdened) ➤ Inefficient (untrained, unequipped) 	Police wants to hide its own mistakes. E.g. in Hyderabad case, police did not act on first information.
Courts cases: <ul style="list-style-type: none"> ➤ Continue for decades ➤ System of appeals to higher courts ➤ Acquittal of powerful 	Pressure from media/public to crack case fast (Ryan school case, though it did not result in encounter)
After the verdict is announced: <ul style="list-style-type: none"> ➤ Crime done by convict out on parole ➤ Delay in execution of death sentence 	Hero worshipping of encounter team
State governments: <ul style="list-style-type: none"> ➤ Glorification of encounters ➤ Example: UP govt. lists number of encounters as its 'achievements' 	Encounter team is awarded / promoted by govt.
Media / Social media / Movies: <ul style="list-style-type: none"> ➤ Media trial does not wait for court trial ➤ Movies show encounters as justice 	

Problem with encounters:

- a) It takes away **right to fair trial** in a court of law.
- b) Work of police is investigation; **guilt is judged by court** of law.
- c) It can be used to **silence critics** of police/government.
- d) It **diverts attention** from incompetence of police and courts.
- e) It goes **against law** of the land.
- f) It **promotes mobocracy** at expense of democracy (Rule of Men vs Rule of Law)

Relevant judgements of Supreme Court:

- a) **Om Prakash vs State of Jharkhand 2012:**
 - ✓ Police can't kill the accused just because he is a criminal.
 - ✓ Encounters amount to '**state sponsored terrorism**'.
- b) **Nirmal Singh Kahlon v. State of Punjab 2008:**
 - ✓ fair **investigation** and fair **trial** are **fundamental rights** under Article 21 of the Constitution.
- c) **Prakash Kadam v. Ramprasad Vishwanath Gupta 2011:**
 - ✓ fake encounters fall under '**rarest of rare case**' and thus policemen involved must be given death sentence.

26. We warn policemen that they will not be excused for committing murder in the name of 'encounter' on the pretext that they were carrying out the orders of their superior officers or politicians, however high. In the Nuremberg trials the Nazi war criminals took the plea that 'orders are orders', nevertheless they were hanged. If a policeman is given an illegal order by any superior to do a fake 'encounter', it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death. The 'encounter' philosophy is a criminal philosophy, and all policemen must know this. Trigger happy policemen who think they can kill people in the name of 'encounter' and get away with it should know that the gallows await them.

Supreme Court in Prakash Kadam v. Ramprasad Vishwanath Gupta 2011

Utilitarianism:

- greatest **happiness** for greatest number.
- But, people **celebrate** extra-judicial killings.
- Utilitarianism **can't be sole guide** for our actions.
- Another example:
 - Think of a class that supports frequent **mass bunk**.
 - **Today** they are **happy**. But **tomorrow** they will **suffer**.
 - Today public is happy with encounters, tomorrow public will suffer.

Way forward:

- a) Self-regulatory bodies (like Press Council of India and News Broadcasting Standards Authority) should issue necessary directions for **responsible reporting**.
- b) Impartial and **independent investigation** to ascertain genuineness of encounter.
- c) Implement **police reforms** as per SC directions in Prakash Singh case, 2006 like **separation of investigation** work from that of law and order
- d) **Human rights training** to police personnel from constable level itself.
- e) **Educate public** about dangers of encounters.

Additional comments:



- a) **Mob justice** is no justice at all.
- b) When law enforcers short circuit the law, **damage to institutions** is long-lasting.
- c) When institutions of a country weaken, **democracy becomes mobocracy**.
- d) Just like justice delayed is justice denied, **justice hurried is justice buried**.
- e) **Guilt must be established** before punishment is given.
- f) **Presumption of innocence:**
 - i. legal principle that one is considered "**innocent until proven guilty**".
 - ii. International human right under the UN's **Universal Declaration of Human Rights**, Article 11.

Question: Recent police encounters seems to have restored people's faith in police. They also bring quick justice to the victim, besides creating fear in mind of criminals. Still, there are arguments in support of human rights of accused. Discuss.

Cinematograph Act 1952

Ministry of I&B has proposed to amend Cinematograph Act 1952 to give union government "revisionary powers" over CBFC.

Draft Cinematograph (Amendment) Bill, 2021:**❑ Revisionary Powers:**

- Govt will have power to order **re-examination** of an already certified film

❑ UA category:

- It will be sub-divided into age-based categories like U/A 7+, U/A 13+ and U/A 16+

❑ Film piracy:

- Prohibits unauthorized recording, punishable with **3 years jail** and fine up to 5% of production cost

❑ Validity:

- Certificate issued by CBFC will be valid in perpetuity. Currently its valid for 10 years by law (restriction removed by executive order)

Issues with the proposed amendments:**❑ Super censor:**

- It will lead to direct censorship by the **Executive**
- Govt decides what is suitable for public, without giving any reason

❑ Reduce freedom of expression:

- **Political interference** in types of films made will increase
- It will **increase discretion**, and reduce predictability of certification

❑ Against SC ruling:

- Karnataka HC in KM **Shankarappa case** said govt can't have revisionary powers
- SC upheld the ruling in 2000

❑ Loss to film industry:

- Various groups often **object** to films **just before release**
- **Delay**/rejection on films release will cause **monetary loss** to film industry

Arguments in support of the proposed amendments:

- Article 19(2) empowers govt to make laws to impose reasonable restrictions
- There should be some appellate mechanism, since FCAT has been abolished. (Film Certification Appellate **Tribunal** was **scrapped** in 2021)

Central Board of Film Certification (CBFC):

- Regulates public exhibition of films under Cinematograph Act 1952
- Statutory body under Ministry of Information & Broadcasting
- Chairman and non-official members (all appointed by Central Govt)



Unrestricted Public Exhibition



Unrestricted Public Exhibition - but with a word of caution that discretion required for children below 12 years



Restricted to adults



Restricted to any special class of persons

Global comparison:

- ❑ **UK:** British Board of Film Classification only classifies films into the appropriate age
- ❑ **US:** Classification and Ratings Administration (CARA) which is a group of parents, decide which movies are appropriate for children to watch.
- ❑ **India:** CBFC not only classifies films into categories, but it also suggests revisions.

Ratings:

- **Freedom in the World report 2021** gave India a Civil Liberties Rating of 33/60
- **World Press Freedom Index 2021** ranked India at 142/180 countries

Censorship

Censorship: suppression of speech/info by govt or powerful private groups

Types:

- **Political:** govt preventing free expression to control dissent
- **Religious:** powerful groups forcing removal of material that hurt sentiments
- **Military:** protecting sensitive info from enemy
- **Moral:** prohibiting access to child porn

Need:

- To prevent spread of **fake news** (Twitter deactivating accounts of frequent offenders)
- To maintain **law and order** (Internet ban at Delhi borders during anti-farm law protest)
- To maintain **social cohesion** (regular hate campaigns on whatsapp/FB)

Issues:

- Against right to **free speech**
- **Threat to democracy** if used to control **dissent**
- **Threat of force** may lead to **self-censorship** (no creativity, no progression of ideas)
- **Selective censure** of particular group may **promote revolt** (free speech is like safety valve)

Examples:

- ❑ **Colonial India:**
 - Vernacular Press Act 1878 and Newspapers Act 1908 used to censor any feeling of revolt against govt.
- ❑ **Modern India:**
 - **Censor Board** orders removal of certain portions from movies
 - **Social media** campaigns forcing companies to withdraw advertisements
- ❑ **China:**
 - all info about 1989 Tiananmen square protests is censored
 - **Great Firewall of China** actively censors social media posts that tarnish image of the govt.

03-11-2021 The Hindu:

Brands must stick to their stand:

Advertisements have the **potential to influence people** and society.

To stop ads from influencing people, **people react** in two ways:

1) Launch a coordinated campaign

- Logic: if brands can campaign through ad, people can also campaign by social media.
- e.g. Coca-Cola & Pepsi ads encouraging consumption of soft-drinks.

2) Launch a boycott campaign

- Logic: brands are hurting religious sentiments.
- e.g. Tanishq ad showing Muslim family adopt Hindu ritual

Companies	Boycott campaigns
They ask people to come together and look beyond their differences (positive narrative)	They ask people to hate and boycott others (negative narrative)
Brands don't force anyone to do anything. They propagate a message to sell a product	Boycott campaigns force the brand to comply with their line of thought .

Can miscommunication be the reason?

Yes, sometimes, problem occur due to miscommunication. e.g. Zomato ad showed Hrithik Roshan and Katrina Kaif appreciating delivery guys, and delivery guys treating all customers equally. But people alleged that the ads normalised the stressful working conditions of gig workers. Some even called for boycott of Zomato.

Conclusion:

Both companies and people have right to voice their perspective, but **not the right to bully**. Companies **withdrawing ads** will only **encourage more boycott** campaigns. Govt must take **action against** those who strengthen social **divisions**.

Some regulators

❖ Print Media:

- ❖ Press Council of India (a statutory, quasi-judicial authority).

❖ Television:

- ❖ News Broadcasting Standards Authority (self-regulatory body) set up by the News Broadcasters Association (NBA) regulates television news.
- ❖ Broadcasting Content Complaints Council (independent and self-regulatory) for television entertainment.

❖ Films:

- ❖ Central Board of Film Certification (CBFC) (statutory body) under the Ministry of Information and Broadcasting.

❖ Advertisement:

- ❖ Advertising Standards Council of India (a self-regulatory body).

❖ OTT platforms:

- ❖ Digital Media Content Regulatory Council (DMCRC) created by Indian Broadcasting Foundation (now called Indian Broadcasting and Digital Foundation)

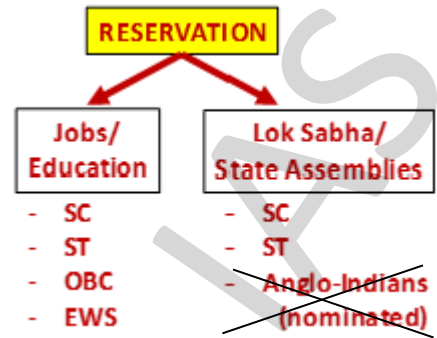
Reservation

Recent Constitutional amendments:

- ❑ 102nd CAA: Constitutional status to NCBC
- ❑ 103rd CAA: 10% reservation to EWS
- ❑ 104th CAA: extended reservation for SC/ST in LS and SLAs for another 10 years; but did not do so for Anglo-Indians

Constitutional provisions for reservation:

- Article 15(4): reservation in education
- Article 16(4): reservation in govt. jobs
- Article 16(4A): reservation in promotion
- Article 243D: reservation in Panchayats
- Article 243T: reservation in Municipalities
- Article 330: reservation in Lok Sabha
- Article 332: reservation in state assemblies



Reservation in India

- It is **affirmative action** by reserving seats for govt. jobs and educational institutions, for **socially and educationally** backward communities.
- **103rd amendment** provided reservation for **economically** weaker sections.
- **Vertical reservation**: 15% SC, 7.5% ST, 27% OBC, 10% EWS
- **Horizontal reservation**: for PwDs 5% in education, 4% in jobs

Important cases on Reservation

- ❑ **Champakam Dorairajan case 1951:**
 - SC struck down **caste** based reservation in govt. jobs & colleges in **Madras**.
 - First Constitutional Amendment added **Article 15(4)**
- ❑ **Indra Sawhney case 1992:**
 - 27% reservation for OBC is valid, but not for **creamy layer** OBC.
 - **Economic backwardness** alone cannot be criteria for reservation
 - Reservation in **promotions** shall not be allowed.
 - Total reservation shall not exceed **50 percent**.
- ❑ **M. Nagaraj case 2006:**
 - Reservation in promotions can be allowed, but:
 - a) Give data on **backwardness**
 - b) Give data on inadequate **representation**
 - c) Administrative **efficiency** should not be affected.
- ❑ **Jarnail Singh v. Lachhmi Narain Gupta case 2018:**
 - **Data** on backwardness **not needed** for reservation in promotions
 - Govt. must consider introducing **creamy layer for SC/ST**

Reservation not a Fundamental Right

In 2012, Uttarakhand govt. filled some posts without reservation to SC/ST. Supreme Court verdict:

- Reservation is **not a fundamental right**.
- Article 16 (4) and 16 (4A) are **enabling provisions**.
- They give govt. discretion to give reservation in case of inadequate representation.

Arguments in support of the ruling:

- In many **past cases** too SC ruled that reservation is not a FR, e.g. CA Rajendran case 1967, Indra Sawhney case 1992, M Nagaraj case 2006.
- Reservation would be **discriminatory** if already there is adequate representation.

Arguments against the ruling:

- Reservation is a way to bring **substantive equality**.
- **NM Thomas case 1976** SC held that for substantive equality, existing inequalities of society must be considered.
- Of 89 Secretaries in Union Govt, there are just **One SC and three STs**. Reservation at entry posts play major role in representation at higher levels.

OBC sub-categorization

- ❑ **Article 340** empowers President to appoint commission, to investigate condition of socially and educationally backward classes.
- ❑ **1953**: First Backward Classes Commission appointed under **Kaka Kalelkar**.
- ❑ **1979**: Second Backward Classes Commission appointed by Morarji Desai Government under chairmanship of B P Mandal (**Mandal Commission**)
- ❑ **2017**: Commission under **Justice G Rohini** to look into **sub-categorization of OBC**.

Brief background:

- ❑ **1979**: Mandal Commission established by Janta party govt.
- ❑ **1980**: Mandal Commission recommends 27% reservation (52% population)
- ❑ **1990**: National Front government announces OBCs will get 27% reservation in jobs in Central government and PSUs; Indra Sawhney filed case saying caste is not reliable indicator of backwardness; SC stayed govt. order
- ❑ **1992**: SC upheld govt. order; but exclude creamy layer; reservation applied
- ❑ **2006**: reservation applied in educational institutes

Sub-categorization of OBCs:

- ❑ **1955**: First Backward Classes commission proposed sub-categorization into two groups – backward and extremely backward.
- ❑ **2015**: NCBC proposed three groups: Extremely BC, More BC, BC
- ❑ **11 states** have already sub-categorized OBCs for reservation.

Findings of G Rohini Commission so far:

- ❑ Reservation benefitted economically stronger classes the most.
- ❑ Of 2,633 central list OBCs:
 - **25% castes got 97% benefits**
 - **10 castes got 25% benefits**
 - **990 castes got less than 3% benefits**
 - **980 castes have zero representation**
- ❑ The commission recommended sub-quota of 10% for 2000 castes

Challenges in implementation:

- Politically **sensitive** issue; will face protests
- There are significant **variations** within castes from state to **state**.

National Commission for Backward Classes (NCBC)

- 1993: NCBC Act 1993; statutory body under Ministry of Social Justice & Empowerment
- Got constitutional status (338-B) by 102nd Constitution Amendment Act, 2018
- Five members; President: appointment, tenure, service conditions
- Examine complaints & welfare measures of social & educational backward classes

Sub-categorisation of SC/ST:

- ❑ **E V Chinnaiiah case 2005**: all SC must get reservation regardless of inequality
- ❑ **States** like Tamil Nadu, Andhra, Punjab have special quotas for most vulnerable SC.
- ❑ In 2007, Bihar set up **Mahadalit Commission** for most backward SC.
- ❑ Sub-categorization can be by **two methods**:
 - **Creamy layer**: as upheld by SC in Jarnail Singh case 2018
 - **Preferential treatment**: Punjab gives preference to Balmikis & Mazhabi Sikhs

Creamy layer in SC/ST quota

Jarnail Singh vs Lachhmi Gupta case 2018:

- SC asked govt. to introduce creamy layer for SC/ST
- If some sections bag all coveted posts, rest of the classes will remain backward.

Creamy layer?

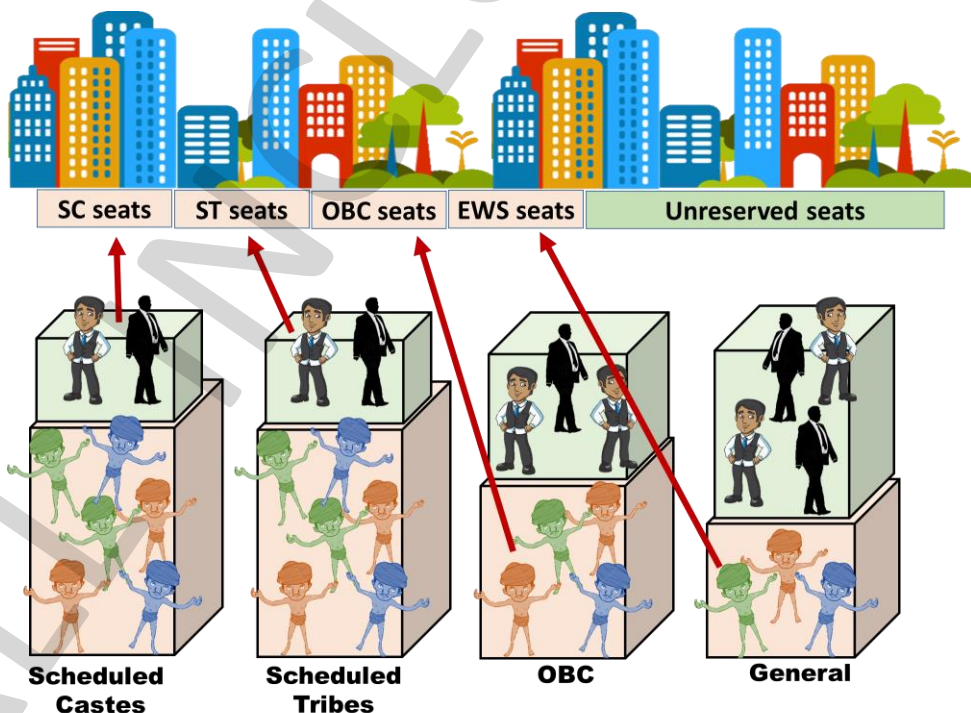
- Group of people at the **top of a marginalized community's** socioeconomic hierarchy
- In **Indra Sawhney case 1992**, SC asked Centre to define creamy layer criteria.
- It currently applies to OBC; not to SC/ST
- It includes: Group-A,B officers of Centre/States; annual income more than 8 lakh

Arguments in support of extending CL concept to SC/ST:

- Whole SC/ST population is '**not**' **homogenous** financially.
- Rich SC/ST have access to **resources**, hence avail most reserved seats.
- Giving reservation to already uplifted serves **no purpose**.
- Benefits will **reach the weakest** among SC/ST.
- Without excluding CL, weak SC/ST will **remain weak forever**.
- Rich eat the whole **cake**, leaving the weak **impoverished**.

Arguments against extending CL concept to SC/ST:

- Reservation for SC is against **social discrimination**, not economic status.
- Despite better financial status, SC/ST face **discrimination in service**
- **Comparison with OBCs** is wrong as OBCs don't face the kind of discrimination that SC/ST face.



EWS quota

103rd Amendment:

- Article 15 (6) : up to 10% seats in **educational** institutes for EWS
- Article 16 (6): up to 10% **jobs** for EWS

Justification:

- **Article 46:** State shall promote educational and economic interests of weaker sections.
- **S.R. Sinho Commission 2010:** Poverty is a socio-economic problem, hence reservation should be on socio-economic criteria

Significance:

- It gives constitutional recognition to EWS.
- New criteria for backwardness – “economic status”, in addition to “social and educational”

Arguments in support of EWS reservation:

- When rich and poor compete for same seat, **rich have advantage** [brings equality]
- Caste is not the only form of **backwardness** [economic, gender, disability]
- Since reservation gives **economic benefit**, it is actually more suitable for economically backward.
- Demand for inclusion in **OBC list** will go down.
- It will help in **poverty alleviation**; reduce economic inequality.

Arguments against EWS reservation:

- Reservation is not a **poverty alleviation** programme.
- **10%** figure is **arbitrary**, not backed by any survey.
- **95%** people come under it [IT data]. 8 lakh limit puts **BPL at par with middle class**.
- Opens **Pandora box** as 50% limit argument no longer holds.
- It will encourage **under-reporting** of income and benami property.
- Shifts focus from **real issue** of lack of employment opportunities.

Way forward:

- Economic criteria should be extended to **SC/ST** as well. [Creamy layer concept]
- Economic **data** collection needs to be strengthened [income, land records]

Comment:

- It would have been better if it was brought as horizontal quota (for all, including general category), and not vertical quota.

Eligibility criteria:

- Not covered in existing quota
- Family income < 8 lakh/annum
- Agri land < 5 acres
- House < 1000 sq. feet
- Residential plot < 100 yards in municipal area
- Residential plot < 100 yards in non- municipal area

Job reservation for locals

- ❑ **Haryana** has enacted law to give 75% reservation to locals in private sector jobs.
- ❑ **Andhra** brought similar law in 2019.
- ❑ Many other states are also planning to bring similar laws.

Why is such a trend increasing?

- **Vote bank politics**, such moves are part of election manifesto
- **Govt jobs are decreasing**, so govt is pacifying people by reserving jobs in private sector.
- **High unemployment** is creating unrest in the masses.
- **High inter-state migration**, locals feel threatened with migrants taking over local jobs.

Arguments in support of reservation for locals in private sector:

- Welfare of its people is state **government's responsibility**.
- Industries get incentives (like **cheap land**) from govt.
- Industries are set up by acquiring **agricultural land**. People lose livelihood.
- It will help control the unsustainable rural-urban **migration**.
- Companies will **skill** locals; will help in **poverty** alleviation

Arguments against: (constitution → country → state → company → people)

- **Article 14** provides for equality before law irrespective of place of birth.
- **Article 15** guards against discrimination based on place of birth.
- 75% limit is against SC ruling of **50% ceiling** on reservation.
- Promotes aggressive **regionalism**
- **More states** will demand such laws.
- Companies will see it has **barrier to doing business**:
 - It will increase **cost of labour** as supply of labour becomes restricted.
 - Move can **backfire** as companies will simply not come to such states;
- **Skilled people** will face difficulty in getting job (no industry in own state, can't migrate to prosperous state)
- Reservation does not address the core problem: **lack of jobs**

Way forward:

- Industries should be **incentivised** (not forced) to skill locals.
- Incentives could be linked to **job creation**.

Caste Census

Many political parties are demanding caste census (for castes other than SC ST) in the 2021 Census. Union govt in an affidavit filed in SC in September 2021 said such an exercise is unfeasible.

Colonial India:

- Data on caste collected in every Census between 1871-1931
- Purpose was to use this data for divide and rule
- In 1941 census, caste data was collected, but not published.

Independent India:

- **Census** has caste data only for **SC/ST**, not for other castes.
- **Mandal** commission used **1931** census **data** (52% OBC population)
 - Mandal report implemented in 1990, 27% reservation given (demand for more)
- **SECC 2011** collected data on socio-economic condition. **Caste data** collected but **not released**.
- Justice **G Rohini commission** for sub-categorisation of OBC in 2017 (yet to submit report)
- Now demand is to include it as part of **2021 census**.

Arguments against caste census:

- **Constitution** does not ask govt to collect caste data.
- It will promote caste based **politics**.
 - It will further **strengthen** the institution of **caste** in India
- Demand for caste based **reservation** will increase.
- It is very **difficult to collect reliable data** on caste. e.g. SECC 2011 says there are 46 lakh castes in India. (Same caste spelled differently, no proper way to combine them, 99% castes have less than 100 people, presence of many sub-castes)
- Data is already collected by **NFHS** and **NSSO**.

Arguments in support of caste census:

- **Constitution** recognises socially and educationally backward citizens.
 - Policy for their upliftment needs to know their socio-economic condition.
- It will give **accurate data** on socio-economic condition (education, occupation, assets, etc.)
 - In Indra Sawhney judgment, SC said such data must be collected every 10 years.
- **Reservation** will become more effective
 - Castes which are no longer backward, castes which could not benefit from reservation
 - Reservation demands can be better tackled with caste wise data
 - Marathas in Maharashtra, Patidars in Gujarat, Gurjars in Rajasthan, Jats in Haryana
- **NFHS and NSSO** does survey, not Census
 - In survey only samples are taken, in census each one is counted
- **NCBC** has urged govt to collected data on OBCs in 2021 census

Asymmetric Federalism



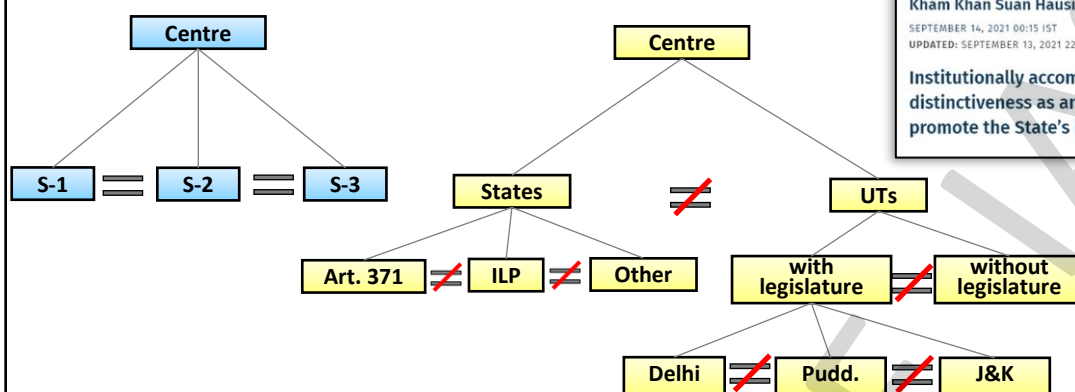
 In Manipur, a case for asymmetric federalism

 Kham Khan Suan Hausing

SEPTEMBER 14, 2021 00:15 IST

UPDATED: SEPTEMBER 13, 2021 22:28 IST

 Institutionally accommodating tribal distinctiveness as an enduring good will promote the State's integrity



Federalism: division of power between two levels of government of equal status

Symmetric federalism: federalism where all state have equal status

Asymmetric federalism: some states have more autonomy than others

Asymmetric Federalism in India:

- ❑ **States vs UTs:** different powers for states and UTs
- ❑ **UTs:**
 - UTs without legislature can't make laws for themselves
 - Puducherry can make laws on state list and concurrent list
 - Delhi can't make laws on police, land, public order
- ❑ **States:**
 - Special provisions for some states u/a Articles 371 to 371J
 - CSS: 90:10 funding for NE and Himalayan states; 60:40 for others
 - Tribal areas: 5th schedule vs 6th schedule states

Why India has asymmetric federalism?

- ❑ **Historical necessity:** To integrate erstwhile princely states, some special concessions were necessary, e.g. 370 for J&K
- ❑ **National integrity:** allowing cultural freedom prevents secessionist tendencies e.g. 371A for Nagaland
- ❑ **Administrative reasons:** administering tribal areas need special provisions, hence 5th and 6th schedule are necessary
- ❑ **Inequality:** Hilly states have weak industrial base due to difficult terrain, hence need greater financial support, e.g. 90:10 in CSS
- ❑ **Security:** Extremism's one major reason is backwardness; greater central support brings development, thus reduces extremism.

Issues with asymmetric federalism?

- ❑ **No going back:** once special provisions are made, it is extremely difficult to take them away. e.g. J&K
- ❑ **Fuels more demand:** Manipur got ILP recently; Arunachal demanding 6th schedule.
- ❑ **Tension among states:** non-fulfilment of demand creates disharmony among states
- ❑ **Promotes secessionist tendencies:** e.g. J&K; Nagaland

Way forward? transparent and rule-based asymmetry.

Federalism during Pandemic

Covid-19 exposed how India's current legal framework, for tackling public health emergencies, is deeply fragmented.

Centre-State issues during Covid-19:

- ❑ Non-Consultative decision making:
 - States not consulted in imposing lockdowns or framing guidelines.
 - This created uncertainty and lack of coordination.
 - e.g. buses stopped by intermediate states; supply chains affected
- ❑ One size fits all approach:
 - Same guidelines for all states; but covid's impact varied across states.
- ❑ Micromanagement by Centre:
 - Centre advised states not to procure PPE, N95 masks and ventilators, rather request Centre for the same [2 April 2021 notification of MoHFW]
 - Central teams sent to some states; but criteria not transparent.
 - This created trust deficit between Centre and states.
- ❑ CSR donations:
 - PM-CARES made eligible for CSR funds; but not CM Relief Funds.
 - This incentivised donations to Centre at expense of states and local relief.
- ❑ Conditions on increased borrowing limit of states:
 - State's borrowing limits increased from 3% to 5% of GSDP.
 - Only 0.5% is unconditional, rest depends on debt sustainability, power sector reforms, job creation, etc.

What legal and institutional gaps were seen in India's Covid response?

Constitution:

- 7th Schedule lacks "disaster management" as a subject.
- Concurrent list entry 23 had to be used "Social security & Social Insurance; employment & unemployment". [*Public order and health is in state list*]

Laws:

- Epidemic Disease Act lacks rules for quarantine; had use of IPC sections.
- It does not have clear definition of 'contagious' disease, 'epidemic', etc.
- Public Health (Epidemics, Bio-terrorism, Disasters) Bill 2017 not introduced.
- DM Act is centralising; Centre can "take all measures as it deems necessary".

Institutions:

- Despite being a health issue, MHA played main role instead of MoHFW.

Way forward:

- Constitution:
 - amend 7th schedule to include DM in Concurrent list [2nd ARC; NCRWC]
- Laws:
 - For epidemics, bring new law with clear division of powers & responsibilities
- Adopt decentralised approach: (*give example of Kerala, Bhilwara, Agra*)
 - Centre should coordinate between states, instead of giving directions.
- International examples:
 - USA, Canada, Australia empower states to deal with health emergencies with support from Centre.

Federalism

Federal govt.	Unitary govt.
Constitution divides power b/w center & states, both operate independently. e.g. USA	Central govt. has all powers; states (if any) derive power from center. e.g. Britain
Dual govt.	Single govt., which may create regional govt.
Written constitution	Maybe written (France) or unwritten (Britain)
Division of powers	All powers with national government
Supremacy of Constitution	Maybe (Japan), may not be (Britain)
Rigid constitution	Rigid (France), flexible (Britain)
Independent Judiciary	May or may not be
Bicameral legislature	Bicameral (Britain), Uni-cameral (China)

Indian constitution does not use the word "Federation", why?

- a) India is **not** the result of **agreement** among states
- b) State have **no** right to **secede** from India

Indian federation resembles Canadian federation in three ways:

- a) using the term 'Union'
- b) formation, i.e. by way of disintegration
- c) Central govt. more powerful than states

Why is Indian Constitution described as "quasi-federal"?

"Indian Constitution avoids the tight mould of federalism. It can be both unitary as well as federal as required by time and circumstances" - B. R. Ambedkar
 ("Federal in form but, unitary in spirit"; "Federation with centralising tendency")
 (Just think of: Constitution and three organs of govt.)

THE HINDU

The 'Union government' has a unifying effect

Mukund P. Unny

JUNE 24, 2021 00:15 IST
UPDATED: JUNE 24, 2021 01:49 IST

The term 'Centre' is absent in the Constitution as the Constituent Assembly did not want to centralise power

Federal features of Indian Constitution	Unitary features of Indian Constitution
Written Constitution	Single Constitution
Bicameralism	Governor appointed by Centre
Dual govt.	Strong Centre
Independent Judiciary	Integrated Judiciary

THE HINDU

Spirit of federalism lies in consultation

Mukund P. Unny

SEPTEMBER 07, 2021 00:27 IST
UPDATED: SEPTEMBER 07, 2021 00:27 IST

- ❖ Essence of cooperative federalism lies in consultation and dialogue.
- ❖ Unilateral legislations, without taking states into confidence will see more protests.

Farm laws:

- Parliament passed farm laws without consulting the States.
- They are related to "agriculture", which is in State List
- Centre used "trade and commerce" entry of Concurrent List.

Indian Ports Bill 2021: (to replace Ports Act, 1908)

- It transfers control of minor ports to Maritime State Development Council (MSDC), which is mainly controlled by the Central govt.
- Ports Act, 1908 empowers States to regulate minor ports.

Electricity Amendment Bill, 2021 (amends Electricity Act, 2003)

- Electricity is in Concurrent list.
- Electricity sector is regulated by State Electricity Regulatory Commissions
- SERCs are manned by individuals appointed by State govt.
- National Selection Committee, dominated by Union, will make appointments.
- Also, a Electricity Contract Enforcement Authority will be established.
- Effectively power to regulate electricity sector will be taken away from states.
- This will help in entry of private sector, even without state govt approval.

Sarkaria Commission: Coordination in areas of concurrent list is necessary for smooth working of Federalism

NCRWC: Centre should consult with States through Inter-State Council

Federalism to be continued in class-30

Why is Federalism important for India?

- It allows people to choose policies that suit their **regional needs**.
- It satisfies demands for autonomy, thus **prevents secessionist** tendencies.
- It **prevents abuse of power** by govt, by dividing power between two levels of governments.

Challenges:

- **Reforms become difficult:**
 - Building consensus on major reforms takes time.
 - e.g. GST bill introduced in 2011, but passed in 2016, as convincing states took time.
- **More demands for autonomy:**
 - Demands for new states for more autonomy
 - e.g. Gorkhaland (West Bengal), Vidarbha (Maharashtra)
- **Strong Centre controls states:**
 - Governors acting as Centre's agents restricts state's autonomy
 - e.g. Governor's role in govt formation in Goa, Manipur and Maharashtra

Cooperative federalism:

- Centre and states share a horizontal relation, where they 'cooperate' in larger public interest.
- e.g. NITI Aayog's Aspirational Districts Programme for development of backward districts

Competitive federalism:

- Relation between Central and states is vertical and between states is horizontal.
- States compete with each other to attract funds and investment.
- e.g. NITI Aayog encourages healthy competition among states through transparent rankings

Challenges:

- Trust deficit between Centre and States.
- Socio-economic condition of states varies a lot.

Some news articles

THE HINDU

Adverse changes, federalism imperilled

Kalaiyarasan A.
M. Vijayabaskar

JUNE 03, 2021 00:02 IST
UPDATED: JUNE 03, 2021 12:30 IST

There needs to be a federal coalition to preserve the idea of a plural India, in terms of culture and politics

The Indian EXPRESS

Home / Opinion / A combative federalism

A combative federalism

Lack of trust, friction between Centre and states is a result of the erosion of faith in Centre administering GST fairly.

Updated: September 29, 2020 7:43:48 pm

BL

From competitive to combative federalism

Updated on October 28, 2020

The 'We know best' attitude of the union Government threatens to derail crucial reforms

Fiscal Federalism:

- ❑ **Cess and Surcharge increased in last few years (Class-24 pg-5)**
 - Share of states in Centre's Gross Tax Revenue fell from 36% in FY19 to 32% in FY20.
- ❑ **GST compensation cess**
 - GST reduced taxation powers of States, they were assured of 14% growth in GST revenue.
 - GST shortfall due to lockdown created friction between Centre and States
 - (Although GST Council is a shining example of cooperative federalism)
- ❑ **Centrally Sponsored Schemes**
 - Finance by both Centre and States (50:50 to 90:10), but implemented by States.
 - Centre frames rules and guidelines, which reduces operational autonomy of states.
- ❑ **Borrowing power of states:**
 - State's borrowing limits increased from 3% to 5% of GSDP.
 - Only 0.5% is unconditional, rest depends on debt sustainability, power sector reforms, job creation, etc.

Institutional transgression

- ❑ **Ignoring governments:**
 - Centre **ignoring elected representatives** of State, holding meetings with State secretaries and district collectors on issues that are primarily under State control.
 - National **lockdown** during first wave without consulting states.
- ❑ **Misuse of agencies:**
 - Centre using institutions such as **IT/ED/CBI/NIA** to intimidate opponents.
- ❑ **Education:**
 - Centre is meddling with **appointments of VCs in universities** funded and run by State governments. This further impacts faculty recruitment.
- ❑ **Health:**
 - Differential prices for states to buy **vaccines**.

Strong Centre

What makes Centre stronger?

Like Canada, India is a federation with strong Centre.

- **Constitution:**
 - Most articles of Constitution can be **amended** by unilateral action of Parliament
- **Legislation:**
 - Central law prevails over state law in matters of **Concurrent list**
 - Parliament can make laws on items in **State List** (Article 249)
 - **Residuary powers** of legislation are vested in Parliament.
- **Executive:**
 - **Governor** is appointed and removed by the Centre
- **Emergency:**
 - During national emergency, state govt come under **complete control** of Centre
- **States/UTs:**
 - Parliament can change area, **boundary** or name of states.
 - Centre unilaterally changed **status of J&K**, brought Govt. of NCT of **Delhi Act 2021**
- **All-India Service:**
 - **Recruited** and trained by Centre, and allotted to states.

What Supreme Court said on a stronger Centre (Bommai case 1994)

- Constitution gives more power to Centre does not mean that states are mere appendages (accessory/ सहायक) of Centre
- States have an independent constitutional existence.
- They are not satellites or agents of the Centre.
- Federalism is part of basic structure.

The following trends in the working of Indian political system reflects its federal spirit: (Laxmikant)

- Territorial disputes between states**
 - e.g. between Maharashtra and Karnataka over Belgaum
- Disputes between states over sharing of river water**
 - e.g. between Karnataka and Tamil Nadu over Cauvery Water;
- Emergence of regional parties and their coming to power**
 - e.g. in states like Andhra Pradesh, Tamil Nadu, etc.
- Creation of new states to fulfil the regional aspirations**
 - e.g. Mizoram, Jharkhand, Telangana
- Demand of states for more financial grants from Centre to meet their developmental needs
- Assertion of autonomy by the states and their resistance to interference from Centre
- Supreme Court's imposition of several procedural limitations on the use of Article 356 (President's Rule in the States) by the Centre

Mains 2014:

Though the federal principal is dominant in our constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. Discuss.

7th Schedule

- ❑ **Article 246** divides law making powers between Centre and States.
- ❑ Only **Centre** can make laws on matters of **List-1** in 7th schedule
 - e.g. citizenship, defence, foreign affairs, railways, banking
- ❑ Only **States** can make laws on matters of **List-2** in 7th schedule
 - e.g. public order, police, health, sanitation
- ❑ Both **Centre and states** can make laws on matters of **List-3** in 7th schedule
 - e.g. Education, Criminal law, Forest, electricity

Suggestions:

- ❑ **Remove entries that are obsolete:**
 - ❑ Entry 27 List-3: Rehabilitation of persons displaced due to partition
 - ❑ Entry 37 List-3: Boilers (technology advanced, no longer special entry required)
- ❑ **Add entries as per present governance needs:**
 - ❑ Emerging technologies like blockchain, gene editing, etc.
 - ❑ Disaster management (need felt during pandemic)
 - ❑ Environmental protection
 - ❑ Terrorism
- ❑ **Moving entries among 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 recommended:**
 - ❑ **Residuary powers** be transferred from Union List to Concurrent List
 - ❑ Centre should **consult states** before exercising power on concurrent list matters. (also said by NCRWC and Puncchi Commission)

42nd Amendment Act 1976 transferred five subjects from State List to Concurrent List

- 1) Education
- 2) Forests
- 3) Weights and measures
- 4) Protection of wild animals and birds
- 5) Administration of justice

Governor

- Governor is nominal **executive head** of states.
- He **signs bills** passed by state legislature.
- He **appoints** CM, Advocate general , etc.
- He **recommends** imposition of President's rule.

Concerns with the role of governor:

Governor's political **neutrality** is often questioned because:

- **Appointment:** Qualifications not mentioned in constitution.
- **Powers:** allegations of misusing discretionary powers at behest of Center
- **Removal:** no security of tenure, can't be impeached by state legislature.

All the above leads to Governor being **committed to Center**.

Examples creating doubt on Governor's neutrality: [Legislature, Executive, Judiciary]

- **Rajasthan** Governor refused to summon state assembly [July 2020]
- State chief of political party in Tamil Nadu appointed governor of **Telangana**. [Sept 2019]
- Former CJI appointed **Kerala** Governor within four months of retirement. [September 2014]

Punchhi Commission recommendations:

- Should not have been in **politics** in last **two years**; Appointment by **committee**.
- Should have **fixed tenure**, preferably five years.
- State legislature should be empowered to **impeach** Governor.

Nabam Rebia case 2016:

Governor can summon, prorogue and dissolve the House only on the aid and advice of the Council of Ministers.

Under **article 163**, Governor exercises his powers under aid and advice of Council of Ministers. However, Governor also enjoys certain discretionary powers:

- **Constitutional discretion:** discretion explicitly mentioned in Constitution
- **Situational discretion:** discretion derived from prevailing political situation

Constitutional discretion:

- **Seek info** from CM on legislative and administrative matters.
- **Reserve bill** for consideration of President
- Recommend **President's rule**
- Determine amount payable to ADCs in **6th schedule**.
- While acting as administrator of adjoining **UT**

Situational discretion:

- **Appoint CM** when no party has a clear majority
- **Dismiss council** of ministers when it cannot prove majority in assembly.
- **Dissolve assembly** if council of ministers has lost its majority.

CBI

☰
SUBSCRIBE Epaper

The Indian EXPRESS

'Release caged parrot': Madras HC asks Centre to make CBI autonomous

Recommending that the CBI should only be accountable to Parliament, a two-judge bench of Justices N Kirubakaran and B Pugalendhi said: "This order is an attempt to release the "Caged Parrot (CBI)."

By: Express Web Desk | New Delhi | Updated: August 18, 2021 11:47:38 am

CBI is the main investigation agency of Central govt against corruption and major cases.

Works under:

- CVC (in corruption cases)
- DoPT (for all other matters)

Director:

- Appointed as per Lokpal Act 2013
- For two year tenure
- Selection Committee: PM, LoP, CJI

History:

- 1941: Special Police Establishment against corruption in War & Supply department during WW-II
- 1946: Delhi Special Police Establishment Act 1946 (CBI derives powers from this act)
- 1963: named as CBI by a Home Ministry resolution

Problem	Solution
Legal loopholes: a) Not a statutory body b) Needs state's consent c) Needs permission under PCA to investigate civil servants	a) Make it a statutory body (2 nd ARC recommendation) b) Give pan-India jurisdiction by law c) Give power to investigate AIS irrespective of state they are serving
Administrative issues: a) Dependent on officers on deputation b) No direct recruitment above SI level	a) Develop own cadre of officers b) Recruit DySP level officers through UPSC as was done till 2000
Overlapping jurisdiction of CVC, CBI, Lokpal	Integrate anti-corruption wings of CBI and CVC under Lokpal for corruption cases (Parliamentary committee 2015)
Political influence	Make it accountable to Parliament
Lack of transparency	Bring under RTI with adequate safeguards

Comments:

Frequent demands for CBI probe shows that people still have faith in CBI for impartial investigation. This reputation of the agency needs to be maintained.

Inter-state water disputes

From Prelims polity pg-52

River water disputes

State list:

irrigation, canal, drainage, water storage, etc.

Union list:

inter-state rivers to the extent necessary

9 out of 12 major rivers in India are inter-state rivers. With demand rising, disputes are natural.

Article 262:

- Parliament can prevent adjudication of SC.
- Parliament can decide how IRWD will be solved.
- Parliament made two laws:
 - 1) **River Boards Act, 1956:**
 - Centre should take control of inter-state rivers
 - Not a single board constituted
 - 2) **Inter-State River Water Disputes Act, 1956**
 - Central govt. to constitute Tribunals
 - Supreme Court can't intervene

Some inter-state river water disputes:

- Cauvery - Karnataka, TN, Kerala, Puducherry
- Periyar- TN, Kerala
- Vansadhara - Andhra Pradesh, Odisha
- Mahanadi - Odisha, Chhattisgarh
- Mahadayi (mandovi) - Goa, Karnataka, Maharashtra
- Krishna- Maharashtra, Karnataka, Telangana, Andhra

Why is cooperation on inter-state rivers important?

- Cheap **transport** through inland waterways, more competitive exports
- **Drought** and **flood** can be better tackled by river inter-linking, dams, etc.
- **Rivers are important** for irrigation, electricity, potable water, etc.

Why are inter-state river water disputes rising? (Demand and supply)

- ❑ **Demographic factor:**
 - Demand is increasing due to increase in **population**
- ❑ **Cropping pattern:**
 - More water-intensive crops like **paddy** and **sugarcane**
- ❑ **Infrastructure:**
 - Construction of **dams** affects water flow in downstream areas
- ❑ **Unpredictable monsoon:**
 - change in **rainfall pattern** distorts/reduces supply
- ❑ **Political factors:**
 - Parties making water sharing a **election issue**
 - **Cauvery** dispute framed as ethnic issue between Tamilians and Kannadigas
 - **Division of states**, e.g. Andhra and Telangana

Why is it difficult to resolve such issues?

- ❑ **Centre:**
 - **Delay** in constitution of Tribunals
 - e.g. Krishna Godavari dispute started in 1956, but Tribunal formed in 1969
- ❑ **Tribunals:**
 - **Delay** in giving award.
 - e.g. Ravi-Beas tribunal formed in 1986
- ❑ **States:**
 - **Non-compliance** of Tribunals award by States
- ❑ **Supreme Court:**
 - Admits SLP u/a 136, despite IRWDA barring SC intervention
- ❑ **Inter State River Water Dispute Act, 1956:**
 - **Separate Tribunal** has to be established for each dispute.
 - **No time limit** for Tribunal to give final award.
 - No institutional mechanism for **implementing** Tribunal's award.

Inter State River Water Dispute (Amendment) Bill 2019:

- Before Tribunal, Disputes Resolution Committee will try to resolve the issue within 1.5 years
- Single permanent Tribunal with multiple benches
- Tribunal to give verdict within 4.5 years
- Decision of the Tribunal shall be final and binding.
- A central data-bank for each river basin

Way forward:

- Set up River Basin Organization under River Boards Act 1956 to regulate inter-state rivers
- Bring water into concurrent list as recommended by Mihir shah report where central water authority can be constituted to manage rivers.
- Inter-State Council can play an important role in facilitating dialogue to resolve disputes.
- Cropping pattern as per water availability, River inter-linking, etc.

Mains 2013:

Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss.

Inter State Council

What is the significance of Inter-state council?

- It is a Constitutional body, unlike NITI Aayog, Zonal Councils, National Development Council.
- It reduces trust deficit between governments by providing platform for dialogue.
- It presents states an opportunity to voice their grievances, acting like a safety valve.
- 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
- Its advice is non-binding.
- There are other platforms for more regular meetings between centre-state.

How can ISC be strengthened?

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

Inter-State Council

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

- 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.

From Centre, **PM + 6** Cabinet minsters (including HM)

↙ CM/Governor
 ↓ CM/Administrator
 ↘ Chairperson

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

GNCTD (Amendment) Act 2021**Mains 2016:**

Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian federal politics?

Mains 2018:

Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.

2021:

Parliament has enacted Government of National Capital Territory of Delhi (Amendment) Act, 2021

GNCTD (Amendment) Act 2021: (amends GNCTD Act 1991)

Executive:

- "Government" shall mean Lt. Governor of Delhi
- Elected govt must take LG's opinion before taking any executive action.

Legislature:

- Legislature cannot conduct any enquiry on actions of govt.
- Any bill can be reserved by LG for consideration of President.

Issues:**Transfer of power:**

- It effectively transfers executive powers from elected govt to LG.

Power without responsibility:

- LG will take all decisions, but is not responsible to Legislature.

Against representative democracy:

- LG is not bound to implement laws passed by the assembly

No time limit:

- There is no time limit for LG to give opinion to elected govt.

Against Supreme Court's 2018 ruling:

- LG does not have any independent decision making power.
- LG should work with aid and advice of Council of Ministers.
- Govt is not under obligation to seek concurrence of LG.
- "Any" matter can be sent to Prez does not mean that "every" matter can be sent.

69th Amendment Act, 1992 (added articles 239AA and 239AB)

Article 239AA:

- Creates legislative **assembly** for Delhi
- Assembly can make laws under **State & Concurrent** lists except public order, police, land
- Council of ministers cannot be more than **10%** of total number of members of assembly
- CoM will **aid and advice** LG (just like article 74 says Union CoM to aid and advice Prez)
- In case of difference of opinion, LG will refer the matter to **President**

Article 239AB:

- It provides for imposition of President's rule in Delhi

Comments:

- **Constitution** provides for an elected govt in Delhi.
- **Mandate of people**, given through election, should not be undermined.
- **Change of govt** in Delhi will have no meaning if LG is the super govt.
- **Spirit of cooperation** between Union govt and Delhi govt is needed.

News:

SC pushed for appointment of **retired judges** in HCs and orally outlined prospective guidelines

Article 127: (ad hoc Judges in SC)

- **CJI** can appoint any HC judge as SC judge
- Must be qualified to be SC judge
- Consent of President and consult with HC CJ

Article 224: (additional and acting Judges in HC)

- Temporary rise in business/pendency: **President** can appoint a qualified person as **additional** judge *for max two years*
- HC judge absent/unable/acting as CJ: **President** can appoint a qualified person as **acting** judge
- Maximum till **62 years** of age

Article 224A: (retd. HC judge in HC)

- After prior consent of President, **CJ of HC** can appoint a **retired** HC judge as judge

Union Territories

69th Amendment 1991:

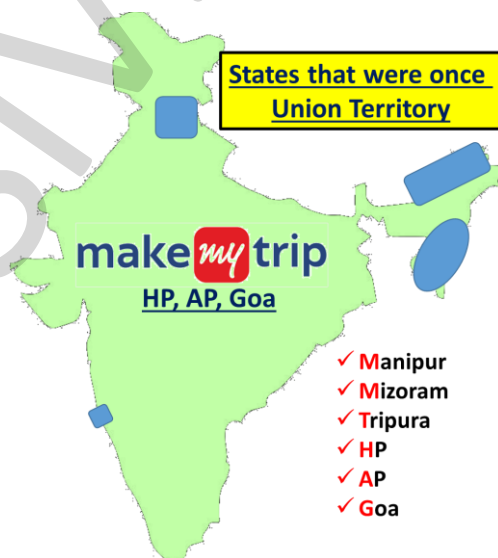
Inserted article **239AA**

Gave Delhi Assembly & CoM

States that were once Union Territory

President can make regulations for the peace, progress and good government of:

	Year	High Court	Assembly
Delhi	1956	DELHI	1992
A&N islands	1956	Calcutta	
Lakshadweep	1956	Kerala	
Dadra & Nagar Haveli	1961	Bombay	
Daman & Diu	1962	Bombay	
Puducherry	1962	Madras	1963
Chandigarh	1966	P & H	
J&K	2019	J&K	2019
Ladakh	2019	J&K	



- ✓ Manipur
- ✓ Mizoram
- ✓ Tripura
- ✓ HP
- ✓ AP
- ✓ Goa

- ❑ **Colonial times** : scheduled districts / Chief Commissioners provinces
- ❑ **1947**: placed in the category of Part 'C' and Part 'D' states.
- ❑ **1956** : constituted as UTs by 7th Constitution Amendment and State Reorganisation Act 1956

NCT of Delhi (Amendment) Act, 2021

- **Assembly** can't make any rules or **committees** for day-to-day **administration** or to conduct **enquiry**.
- Before taking any **executive** action, opinion of **LG** must be obtained.
- "**Government**" to mean "**Lieutenant Governor**"

Delhi Assembly can't make law on public order, police and land
J&K Assembly can't make law on public order and police
Puducherry Assembly can make law on all matters of State list.

- ❑ Parliament can make laws on any subject of State List for union territories, including those with legislature.
- ❑ Is **Governor** of a State an **agent** of President? **No**
- ❑ Is **Administrator** of UT an **agent** of President? **Yes**

NGO / FCRA

About FCRA:

- First introduced in **1976**; new act in **2010**; amended in **2020**
- Responsible ministry: **MHA**
- Aim: to **regulate** inflow and use of **foreign contributions**
- Significance: NGOs need FCRA **license** to receive foreign funds

2020 Amendment:

- ❑ **Exclusions:** public servants cannot receive foreign funds
- ❑ **Documents:** provide Aadhar/Passport of office bearers of NGO
- ❑ **Bank Account:** receive money only in exclusive FCRA designated account in SBI Delhi
- ❑ **Use of money:** can't spend more than 20% (earlier 50%) on administrative expenses (salary, travel, rent, etc.)
- ❑ **Transfer of money:** can't transfer money to any person/NGO not under FCRA
- ❑ **Unused money:** in case of allegations of violation, govt. can restrict use of unused funds, by summary inquiry, pending conviction

Issues:

- ❑ Small NGOs get money from large NGOs, but '**re-granting**' has been banned.
- ❑ Due to 20% limit, small NGOs will not be able to expand **staff**; hamper functioning.
- ❑ Not all NGOs are **Delhi** based. Compulsion to use only SBI Delhi will increase cost.

Way forward:

- ❑ **Second ARC:** FCRA should be **decentralized** and delegated to State Governments/District Administration.
- ❑ **Vijay Kumar Committee:**
 - Modernize registration for seamless application of IT Act and FCRA.
 - Details of NGOs should be made available as searchable database.

Significance of NGO:

- ❑ Mobilizes **public opinion** on social problems (e.g. dowry, casteism)
- ❑ **Acts as Safety Valve** by giving voice to marginal groups they prevent uprisings
- ❑ Operate at **grassroots level** where official apparatus is often non-existent.
- ❑ Helps govt. in **poverty alleviation** (e.g. Rashtriya Mahila Kosh → NGO → SHG)
- ❑ **Gives valuable policy inputs:** Pratham's ASER report even used by ministries; research done by PRS India
- ❑ Complements **govt. machinery** (rehabilitate child labour under NCLP scheme)
- ❑ **Increase accountability:** by performing social audit, e.g. Meghalaya
- ❑ **International relations:** as part of Track-II diplomacy, they help in conflict resolution and furthering national interest.
- ❑ **Strengthens democracy:** ADR for electoral and political reforms

Why should NGOs be regulated?

- ❑ Many NGOs are involved in **money laundering** (due to reasons like tax exemption).
- ❑ They receive **money from government** agencies, hence must be accountable.
- ❑ They are **public authorities** under RTI Act, 2005
- ❑ Just **10%** of 29 lakh NGOs file annual financial details with govt. (CBI in SC)

6th Schedule

Arunachal assembly has passed resolution to include entire state in 6th Schedule. Article 244 provides for administration of 'scheduled areas' and 'tribal areas'.
5th schedule *6th schedule*

About 6th schedule:

- It has special provisions for administration of tribal areas of Assam, Meghalaya, Tripura and Mizoram.
- Why not 5th schedule? Why separate schedule for these states?
 - Tribes in **other states** have **adopted culture** of other people of their state.
 - But tribes of these **four states** have **not assimilated** (mixed) with others.
 - Hence, these people have been given greater autonomy for self-government.

Advantages of inclusion in 6th schedule:

Legislative power:

- can make laws on land, forest, marriage, etc.
- Laws of Parliament and state don't apply or apply with modifications

Judicial power:

- create courts to hear cases involving tribes (appeal lies to HC/SC)

Regulatory power:

- create and manage schools, dispensary, markets, road, etc.

Taxation power:

- can impose and collect certain taxes. They also get grants from CFI.

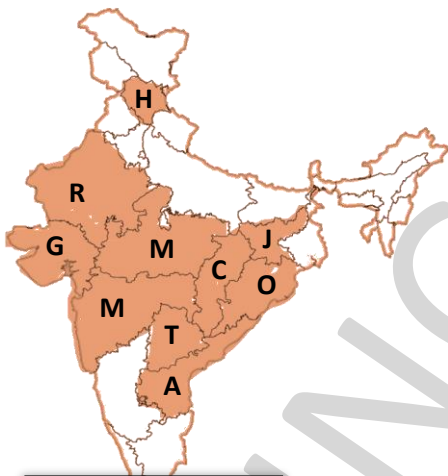
Issues with 6th schedule:

- ❑ **Representation:** 30 members are too less to represent all tribes of the district.
- ❑ **Administration:** ADC's lack administrative expertise.
- ❑ **Laws:**
 - Laws made by ADC needs Governor's assent (not given, delayed).
 - Lack of clarity on Governor's consultation with State Executive.
- ❑ **Finances:**
 - Weak sources of revenue due to low income of tribes.
 - No State Finance Commission for them, so dependent on state's discretion.

How is 6th better than 5th schedule?

- TAC are creation of **state legislature**, but ADC are product of **Constitution**.
- TAC has only **advisory** powers.
- ADC can prepare **budget**.
- ADC receives **grants** from CFI.

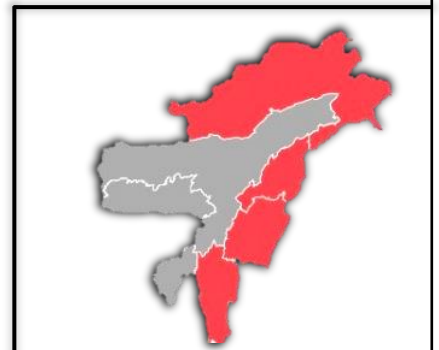
	Fifth Schedule	Sixth Schedule
For	Scheduled Areas Scheduled Tribes	Tribal Areas
Applies to	All India except 4 states	Assam, Meghalaya, Tripura, Mizoram
Who can alter boundary?	President	Governor
Who can declare that laws don't apply or apply with modification?	Central laws – Governor State laws – Governor	Assam Governor Other three President Governor
PESA Act, 1996 applies?	Yes	No
	Tribes Advisory Council: ✓ At state level ✓ 20 members ✓ 15 should be ST MLAs	Autonomous District Council: ✓ At district level ✓ 30 members ✓ 26 should be elected by adult franchise



5th Schedule



6th Schedule



Inner Line Permit

BEFRA 1873

- Bengal Eastern Frontier Regulation Act, 1873
- British made this law to protect British commercial interest
- Continued after independence to protect locals from outsiders

Note:

- Foreigners** need "Protected Area Permit"
- ILP came into effect in **Manipur** from January 1, **2020**
- Meghalaya** Residents Safety and Security **Act, 2016**; amended in 2019; now works just **like ILP** (but not ILP)

- ~~Foreigners~~ **Indian citizens** need ILP to visit certain parts of Indian territory.
- It is issued by ~~Central govt~~ **State governments.**
- AP, Nagaland, Manipur, Mizoram.

I read I forget, I see I remember | See explanation of this PDF on **YouTube** www.youtube.com/c/allinclusiveias

Inner Line Permit

Background:

- British enacted **Bengal Eastern Frontier Regulation Act, 1873**
- To protect **Crown's commercial interest** in certain N-E areas.
- It prevented "**British subjects**" (Indians) from trading with these areas.
- After independence, system was continued to **protect locals from outsiders**.
- The term "British subjects" was replaced with "**Citizen of India**"

What is Inner Line Permit?

- It is **document** (permit) that allows **Indian citizens** to visit certain areas.
- It is issued by respective **state governments**.
- This system is in force in **four states** Arunachal Pradesh, Nagaland, Manipur, Mizoram. (*Manipur: 01-01-2020*)

Note: Foreigners need a different document called "Protected Area Permit"



ILP like law in Meghalaya:

- ILP is not applicable to Meghalaya.
- However, in November 2019, Meghalaya amended **MRSSA 2016**.
- It now works similar to ILP system.

MRSSA 2016: Meghalaya Residents Safety and Security Act, 2016

Issues with ILP:

- **Tourism:** low tourism results in low income for locals
- **Economy:** ILP discourages trade and investment in industries.
- **Integration:** Prevents integration of these states with India.
- **Regionalism:** promotes regionalism, instead of promoting nationalism
- **Discriminatory:** Gives special status to certain states
- **Social unrest:** opposing demand regarding ILP in some states; some tribes fear marginalization due to ILP. (Meitis vs Kukis)

Aspirational Districts

Background:

- India ranked 131/188 in UNDP's 2016 HDI rankings.
- By uplifting backward areas, rank can be quickly improved
- In 2018, NITI launched TAD program to quickly transform 115 districts.

Principles:

- Convergence** (of Central & State Schemes),
- Collaboration** (of Central, State level 'Prabhari' Officers & District Collectors)
- Competition** (among districts based on rankings)

Strategy:

- States** are the main drivers.
- Identify **low-hanging fruits** for immediate improvement
- Measure progress and **rank** districts.
- NITI Aayog releases monthly rankings through **Champions of Change dashboard**
- Focus on **five areas**: (Agri, health, education, skill, infra)
 - Health & Nutrition, Education, Agriculture & Water Resources, Financial Inclusion & Skill Development, and Basic Infrastructure

Structure:

- Central level**: Each district assigned to some ministry.
- State level**: States to form committee under Chief Secretary
- District level**: Central Prabhari Officer (AS/JS rank) for each district

A recent study has found that:

- Most districts doing good on Health & education, but poorly on agriculture
- Challenges:
 - Insufficient **funds**.
 - Multiple ministries lead to lack of **coordination**.
 - There is gap of a few months between survey and data access by districts
 - Ranking** is focused on quantity, not quality (e.g. textbook delivery vs quality of education)
- Suggestion:
 - Reform the ranking index; better mechanism for data collection and sharing
 - Use independent surveys to validate govt. data
 - Involve SHGs, Anganwadis, young professional

Best Practices across districts

- Health and Nutrition**: Hailakandi (Assam): for hospital delivery, parents of new born girl are gifted five fruit plants (nutrition and money!)
- Education**: Rajnandgaon (Chattisgarh): to reduce drop-out rate of girls, toilets were in schools; remarkable result
- Financial inclusion**: Gajapati (Odisha): mini-banks in panchayats w/o banks; also functioned as Common Service Centres.
- Agriculture**: Kupwara (J&K): high density farming introduced in orchards
- Infra**: Dahod (Gujarat): installation of solar powered community tube wells

17. भारत में 'महत्वाकांक्षी जिलों के कायाकल्प' के लिए मूल रणनीतियों का उल्लेख कीजिए और इसकी सफलता के लिए, अभिसरण, सहयोग व प्रतिस्पर्धा की प्रकृति को स्पष्ट कीजिए। (उत्तर 250 शब्दों में दें)

Mention core strategies for the transformation of aspirational districts in India and explain the nature of convergence, collaboration and competition for its success. (Answer in 250 words)

Mains 2018 15

NITI Aayog

Constitutional body; Statutory body; Executive body formed on 1 January 2015

Composition: Chairman ; Vice-Chairman ; CEO ; Members



By Appointment Committee of Cabinet

Governing Council of NITI Aayog:

- NITI: Chairman; VC;
- NITI: Ex-officio & Full time members; Special invitees
- CMs (States + UTs) and Lt. Governors (UTs w/o CM)**

Regional Council of NITI Aayog: (need basis)

- CMs & Lt. Governors; Chaired by PM (or his nominee)

Some index released by NITI:

- **SDG** India Index
- India **Innovation** Index
- **Export** Preparedness Index
- **Data Governance** Quality Index
- School **Education** Quality Index
- Composite **Water** Management Index

Difference from Planning Commission?

- NITI does not allocate funds to states
- PC → 5 year Plan; NITI → 3, 7, 15 year plans

Initiatives:

- SATH:** Sustainable Action for Transforming Human Capital (Health & Education)
- TADP:** Transformation of Aspirational Districts programme
- NDAP:** National Data & Analytics Platform Project (single web portal for accessing data across Ministries)
- Atal **Innovation** Mission
- National **Program & Project Management** Policy Framework (with Quality Council of India)

Transformation of Aspirational Districts Program

For Prelims, just remember:

- Launched by **NITI Aayog** in 2018;
- To improve UNDP **HDI ranking**; by uplifting backward areas (115 districts)
- Convergence** of schemes (Centre and State); **Collaboration** (Officers of Centre & State); **Competition** among districts
- One central **Prabhari** officer for each district

NITI is also responsible for:

- National Institute of **Labour Economics** Research and Development (1962)
- Development **Monitoring & Evaluation** Office
- Achieving **SDG-2030** targets for India
- NGO-**Darpan** Portal

Prelims 2015:

The Government of India has established **NITI Aayog** to **replace** the

- (a) Human Rights Commission
- (b) Finance Commission
- (c) Law Commission
- (d) Planning Commission**

Prelims 2016:

With reference to '**Financial Stability & Development Council**', consider the following :

1. It is an organ of **NITI Aayog**.
2. It is headed by the Union Finance Minister.
3. It monitors macroprudential supervision of the economy.

Which of the above statements is/are correct?

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

Prelims 2017:

With reference to '**National Investment & Infrastructure Fund**', which of the following statements is/are correct?

1. It is an organ of **NITI Aayog**.
2. It has a corpus of Rs 4,00,000 crore at present.

Select correct answer using code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 **(d) Neither 1 nor 2**

Prelims 2019:

Atal Innovation Mission is set up under the

- (a) Department of science of technology
- (b) Ministry of labour and employment
- (c) NITI Aayog**
- (d) Ministry of skill development and entrepreneurship

I read I forget, I see I remember | See explanation of this PDF on **YouTube** www.youtube.com/c/allinclusiveias

Civil Service Reforms

What is the need to reform civil service?

❑ Status Quoist:

- CS resist change as they are wedded to their power and privileges.
- e.g. Despite 73rd amendment, CS are reluctant to give power to panchayats

❑ Rule-book Bureaucracy

- Focus is on following rules, irrespective of people's welfare.
- CS have adopted 'bureaucratic attitude', instead of 'democratic attitude'

❑ Political interference:

- Arbitrary transfer of honest CS creates problems like demotivated honest officers; corrupt officers occupying plum postings. Both of these reduces efficiency of public office.

❑ Generalist nature:

- There are emerging challenges due to technological revolution and globalization.
- This needs Specialist officers with domain knowledge, instead of Generalists.

Steps to be taken:

❑ Recruitment:

- Rationalization of 60 services into just three technical, non-technical and security-related.
- Lateral entry to recruit specialists directly at higher levels of government.
- Outsource service delivery by suitable PPP model for greater efficiency and reduced burden.

❑ Training:

- Develop training modules on a district-by-district basis.
- Inculcate ethical values by implementing Code of Ethics.
- Mid-career exams to decide on future postings.

❑ Accountability:

- Implement Smart Performance Appraisal Report Recording Online Window (SPARROW) in all central and state cadres.
- Compulsory retirement for underperforming officers

Second ARC recommendations:

- Lower the age limit for entry into civil service.
- Establish institutes of public administration for aspiring civil service applicants
- All promotions be based on successful completion of training instead of seniority
- Strengthen accountability by intensive reviews at 14 and 20 years of service
- Fix minimum tenure for senior posts
- Establish safeguards against arbitrary dismissal

Mission Karmayogi

Need for Mission Karmayogi?

- Lack of **standardization** in training methods across institutes.
- Difficulty in finding officials with right **competencies** for a task
- Lack of **linkage** between Role and Competency

Benefits of the Mission

- **Uniform Training:** It will standardize training across the institutes
- **On-site training:** It brings 'on-site learning' to complement the 'off-site' learning.
- **Domain Training:** Gives CS the opportunity to build domain knowledge.
- **Quality training:** It enables partnership with best institutes and universities.
- **Rule Based to Role Based:** Work allocations can be done by matching an official's competencies to the requirements of the post.

Institutional framework:

- **Public Human Resources Council:** headed by PM to give strategic directions to civil service reforms.
- **Cabinet Secretary Coordination Unit:** to monitor the implementation of NPCSCB
- **Capacity Building Commission:** for functional supervision of training institutions
- **Special Purpose Vehicle:** to operate iGOT-Karmayogi Platform.

Challenges:

- It will be **extra burden** on the already overloaded CS.
- It may **interfere** with their ongoing posting.
- Online training is **not substitute** to on-campus training (lack of peer learning).
- CS are status-quoist, hence it may face **resistance** within bureaucracy.

National Recruitment Agency

National Recruitment Agency:

- NRA will be registered as a **society**; headed by Chairman of rank of **Secretary**.
- It will conduct **Common Eligibility Test (CET)** for recruitment to **non-gazetted posts** in government and PSBs.

Salient features of CET:

- It will be held **twice** a year; score will be valid for **three years**.
- No limit on number of **attempts**, subject to age limit.
- It will be in **12 languages**, not just English and Hindi.
- 1000 test centers across India; at least one center in **every district**.
- It will be the **first level** to shortlist candidates for SSC, RRB, IBPS; to be expanded later.

Advantages:

❑ For students:

- No need to appear in multiple exams; single exam fee; **less financial burden**.
- Save **travel** time and cost; encourage **women** to appear for exam.
- No more **clashing** of exam dates.

❑ For Institutions:

- Removes **workload** of conducting preliminary test.
- Reduces **cost and time** of recruitment exercise.

E-Governance

Government is a system with the authority to govern a country.

Governance is the process by which decisions are made and implemented

E-Governance is use of Information & Communication Technology (ICT) in governance

Background:

- a) **1970**: Department of Electronics established
- b) **1976**: National Informatics Centre established- the prime builder of e-governance applications in India.
- c) **1970s-80s**: NICNET for e-governance in central govt. ministries and departments.
- d) **1985-90**: e-governance extended to states; District Information System of National Informatics Centre (DISNIC) to computerize all district offices in the country.
- e) **2006**: National e-Governance Plan launched; 27 mission mode projects; Common Service Centers started; Aim is to make govt. services available to citizens online
- f) **2009**: National e-Governance Division (under Meity) established (UMANG, DigiLocker, etc.)
- g) **2015**: e-Kranti: NeGP 2.0 launched
 - a) **Cloud by default**: all govt. info should be stored in govt. cloud only
 - b) **Mobile first**: All applications must allow service delivery through mobile
 - c) **Language localization**: all e-gov services must be available in Indian languages as well.

Some major programmes based on ICT:

- a) **2007 CPGRAMS**: to address grievances of general public
- b) **2009 Aadhaar**: using technology to establish unique identity of each individual
- c) **2009 CCTNS**: national database of crimes and criminals.
- d) **2013 eCourts**: CJI launched portal providing case status, cause list, orders, etc of district and Taluka courts.
- e) **2013 DBT**: money transferred directly to bank account of beneficiary.
- f) **2015 DigiLocker**: cloud storage of citizen's authentic documents.
- g) **2015 Pragati**: PM interacts with secretaries and monitors project implementation.
- h) **2018 India Enterprise Architecture**: One personalized account for each individual to avail all government services
- i) **2020 Bhuvan Panchayat 3.0**: use of satellite info by Panchayats for decentralized planning

State govt. initiatives:

- a) Uttar Pradesh: **Lokvani**: public grievance, land records, etc.
- b) Rajasthan: **E-Mitra**: Pay bills, get forms, register grievances.
- c) Andhra Pradesh: **eSeva**: single window to connect citizens to govt. departments
- d) Kerala: **Friends**: payment of taxes and other dues

Benefits / Importance:

- a) Better service delivery: JAM, DBT
- b) Increases Transparency: online filing of RTI
- c) Public Grievance redressal: CPGRAMS (pgportal.gov.in)
- d) Ease of doing business: MCA21, GSTN
- e) Efficiency in tax collection: GSTN
- f) Reduces scope of corruption: faceless assessment by IT department
- g) Ease for senior citizens: Jeevan Praman
- h) Rural development: CSCs; m-Kisan, e-NAM

What stops India from exploiting the full potential of e-Governance?

- a) **Political:** nexus with middlemen; lack of will, qualified leaders, etc.
- b) **Economic:** initial investment by govt., mobile and internet cost for public
- c) **Social:** low literacy, low digital literacy
- d) **Technological:** frequently changing technology (4G only network); lack of infra (optical fibers); vulnerability to cybercrimes etc.
- e) **Psychological:** resistance to change , fear of bad influence on youngsters.

What should be done?

- a) **Enhance digital infrastructure:**
 - a) Stronger mobile networks and optical fibers (NOFN / BharatNet)
 - b) Andhra Pradesh used existing electric poles to take optical fiber; connected all villages by 2017
- b) **Provide services digitally:**
 - a) More govt. services should be available online
 - b) Requirement of sending printed forms should end.
- c) **Empower citizens:**
 - a) Local language; simple interface; mobile friendly
 - b) Increase digital literacy e.g. PM Gramin Digital Saksharta Abhiyan (PMGDISHA)

Nine Pillars of digital India::

1. Broadband Highways
2. Universal Access to Mobile Connectivity
3. Public Internet Access Programme
4. e-Governance: Reforming Government through Technology
5. e-Kranti - Electronic Delivery of Services
6. Information for All
7. Electronics Manufacturing
8. IT for Jobs
9. Early Harvest Programmes

Online Justice Delivery

Benefits of online justice delivery:

- **Less paperwork** reduces administrative work, allowing focus on judicial functions.
- Use of **digital databases** will improve efficiency.
- **Reduces cost** due to less use of court buildings, security, etc.
- Increases access to justice by reducing need for physical **travel**.
- Improves **transparency** by allowing audio-video recording of court proceedings.

Challenges:

- Availability of quality IT **infra** with all participants.
- Ability to make proper **use** of IT system.
- Fear of **cyber-security** threats to case data.
- **Not suitable** for all situations, cases, authenticity of evidence.

Way forward:

- Make **rules** for use of electronic devices.
- Create **user-friendly** system for all stakeholders.
- Impart **training** to court staff, lawyers, etc.
- Setting up robust **cyber-security** framework.

Some initiatives:

- **eCourts project**: portal providing case status, cause list, orders, etc. of district and Taluka courts
- **National Judicial Data Grid**: portal to show number of cases pending in any court in the country.
- **Interoperable Criminal Justice System**: to integrate e-courts, e-prison, CCTNS, etc.
- **Re-engineering committees in High Courts**: eliminate redundant processes and make court process ICT enabled.

RTI Act 2005

RTI Act, 2005:

A law to empower citizens to seek info from public authorities.

Salient features of RTI Act 2005:

- Applies to **all** public authorities
- Puts **time limit** on public authorities to give reply.
- Provides for setting up of **CIC and SIC**.
- **Exempts** certain info under section 8 and 9.

What is a "public authority" for the purpose of RTI?

Section 2(h) of RTI Act 2005 defines public authority as:

- any body constituted:
 - under **Constitution** (e.g. SC, ECI, CAG, UPSC)
 - under central or state **law** (e.g. NHRC)
 - by **notification** of govt. (e.g. NITI Aayog)
- any body **owned, controlled** or substantially financed by govt (e.g. PSUs)
- any **NGO** substantially financed by govt. (e.g. DAV Trust)

RTI Amendment Act 2019

Earlier	Now
Fixed term of 5 years	Central govt. will notify term
Salary equivalence: Centre: <ul style="list-style-type: none"> ▪ CIC → CEC ▪ ICs → ECs State: <ul style="list-style-type: none"> ▪ CIC → ECs ▪ ICs → Chief Secretary 	Central govt. will determine
Terms and conditions of service: legal protection (Protected by RTI Act)	<ul style="list-style-type: none"> ▪ Central govt. will decide; ▪ Binding on CICs/ICs; ▪ Final interpretation also by Central govt.

Arguments in support of the amendment:

- Parity between IC and EC is wrong as:
 - IC is a statutory body but EC is Constitutional body
 - Their functions differ widely
- Salary of IC = Salary of EC = Salary of SC judge
 - But, orders of IC are challenged before High Courts

Arguments against the amendment:

- a) Right to information is a **Fundamental right** under article 19(1) as ruled by SC in various rulings since 1975.
- b) **Right to Info** and **Right to vote** are equally important rights, hence parity between IC and EC is not wrong.
- c) Even President's orders are challenged before **High Courts**.
- d) It is against **federalism** as Centre can now change service conditions of state ICs.
- e) Eminent people **won't apply** to be IC with downgraded salary & service conditions.
- f) With reduced stature, orders won't have same force, **corruption** will increase.

Way forward: Given the importance of RTI, Information Commissions must be given Constitutional status.

Section 4 of RTI

Each govt. department should:

- a) Maintain duly indexed records
- b) Suo-motu disclose info by annual reports and websites.

News?

- CIC did audit of quality of suo-motu disclosures by various public authorities.
- 85% authorities did not disclose info in some areas

Advantages of suo-motu disclosure:

- a) Limits **corruption**
- b) Keeps officials under **constant watch** of public
- c) **Equality** in access: whole public gets info rather than few individuals.
- d) Protects **security** of individuals as filing RTI can put one's life in danger
- e) **Reduces burden** on officials as less RTI applications would be received.

Reasons for non-compliance:

- a) Lack of awareness among PIOs.
- b) Info not updated regularly.
- c) Obsolete record management in some authorities.
- d) All info is not digitalized.
- e) Lack of basic infra like Xerox and scanner machines.

Way forward:

- a) Improve **record management** practices
- b) Upgrade basic **infra** like Xerox machines and scanners
- c) **Train** public officers to comply with RTI provisions and use of ICT tools.

Political Parties under RTI

- CIC in 2013 declared political parties to be under RTI Act.
- CIC considered them as "public authority" as defined u/s 2(h) of RTI Act.
- Still, parties refuse to entertain RTI applications. The matter is pending in SC.

Should the RTI act apply to political parties?

Yes:

- a) They have **monopoly** over selection of candidates
- b) They form/amend government **policies**
- c) They use government **funds**:
 - Land at concessional rates
 - Free air time on TV/radio
 - Free copies of electoral rolls

No:

- a) They are **not statutory bodies**.
- b) EC **website** already hosts information about them.
- c) It will obstruct their smooth **functioning**.
- d) It may be **misused** by political rivals.

Conclusion:

Given their important role in democracy, their transparent functioning is essential to maintain public trust in the electoral process.

CJI under RTI

Important SC ruling on RTI in Judiciary:

❑ Office of CJI:

- It is a 'public authority' under RTI Act, 2005.
- Rationale: Office of CJI is part of SC; SC is a public authority.

❑ On disclosing personal info of judges:

- Can be disclosed under RTI if it serves larger **public interest**.
- Right to info is **not absolute**, should be balanced with right to privacy.
- RTI should not be used as a tool for **surveillance**.

❑ On judicial appointments:

- Names of judges recommended by Collegium (**output**) **can be disclosed**,
- Reasons (**inputs**) for such decisions **cannot be disclosed**

❑ Other points:

- Transparency and accountability should go hand-in-hand.
- Increased transparency under RTI is no threat to judicial independence

RTI and Judiciary:

RTI Act 2005 **empowers CJs** of SC & HCs to carry out its provisions.

The courts framed rules.

❑ SC rules undermine RTI act in following ways:

- no **time** limit to give info
- no **appeal** mechanism
- no **penalty** for refusal of info
- makes disclosure dependent on "**good cause shown**"

❑ HCs too framed unfriendly rules.

- For example, Allahabad HC requires **Rs 500** for each info (not Rs 10).

Hence, it can be said that Judiciary provides info at its **discretion**, violating the spirit of the Act.

Section 2(h)	It defines " Public authority ".
Section 4(2)	Public Authorities should provide info suo motu , so that public has minimum need to file RTI applications.
Section 8	Exemptions from disclosure of Information.
Section 8 (1) (j)	personal information should not be disclosed, unless larger public interest is served.
Section 8 (2)	Info protected under Official Secrets Act, 1923 can be disclosed under RTI if public interest outweighs the harm.

Official Secrets Act

Official Secrets Act, 1923:

- ❑ Originally brought in **1889** to suppress voice of newspapers opposing government policies.
- ❑ Deals with two issues:
 - **Section 3** - Spying or espionage
 - **Section 5** - Disclosing official secrets
- ❑ Maximum punishment is **14 years**.

Issues:

- **Denies info:** Officials can deny citizens any info by terming it as "official secret".
- **Harassment:** misused by officials to harass journalists trying to expose corruption.
- **Conflict with RTI:** RTI Act Section 8(2) states that info protected under OSA 1923 can be disclosed if public interest outweighs harm.

Recommendations:

- **Law Commission:** OSA should not apply if the 'secret' document did not harm national interest.
- **2nd ARC:** repeal OSA and introduce a chapter in NSA 1980 on official secrets
- **MHA Panel 2015:** amend OSA to make it more transparent in line with RTI
- **Delhi HC 2009:** publishing a document merely labelled as "secret" does not make journalist liable under OSA.

Some famous spy cases:

- 1985: **Coomar Narain** spy case: 12 people sentenced to 10 year term
- 1994: **Nambi Narayan** case; falsely implicated; acquitted
- 2010: Ex-diplomat **Madhuri Gupta** supplied info to Pakistan
- 2018: BrahMos engineer **Nishant Agarwal** supplied technical info to Pakistan

Neutrality

What do you understand by neutrality of Constitutional offices?

- Constitutional offices must adhere to **constitutional values**.
- They must not get involved in **political activities** or debates.
- There must be **absence of bias** while discharging duties.

Why is Neutrality needed?

- ❑ **To uphold federalism:** Governor must act as Constitutional office and not as agent of Centre [Otherwise it is inhibition on state's rights]
- ❑ **To maintain Separation of power:** Judiciary acting under executive's influence weakens checks and balances.
- ❑ **For democracy:** free and fair election, in letter and spirit, is bedrock of democracy. ECI should not ignore MCC complaints against ruling party.
- ❑ **For stable governments:** Speaker's partiality in deciding on 10th schedule cases encourages future horse trading; weakens importance of elections.
- ❑ **For good governance:** Executive should be impartial towards all sections of public; should not favor its vote bank, party members, ideologies.
- ❑ **For financial health:** CAG audits check economic misconduct by Executive, and brings efficiency in govt. expenditure.

THE HINDU

NEWS > NATIONAL

NATIONAL

SC verdicts a strong message to constitutional authorities on neutrality

Krishnadas Rajagopal

NEW DELHI, NOVEMBER 30, 2019 20:50 IST
UPDATED: NOVEMBER 30, 2019 20:50 IST

In back-to-back judgments, it says they should not favour party politics

The Supreme Court, through its back-to-back decisions in November while resolving the political crises in Maharashtra and Karnataka, has sent a strong message to high constitutional authorities who shed their neutrality to favour party politics in States.

The court has highlighted the need for authorities like the Speaker and the Governor to be faithful to constitutional morality and not vacillate under "prevailing political pressures".

The court has made it clear that as "the sentinel on the *qui vive* of the Constitution, it is under obligation to see that the democracy prevails and not gets hollowed by individuals".

In its November 26 order in the Shiv Sena-NCP-Congress combine's petition against the Governor's decision to appoint the Devendra Fadnavis government in Maharashtra, the Bench led by Justice N.V. Ramana agreed to judicially examine the extent of a Governor's 'satisfaction' on who commands the majority to form the government.

Justice Ramana wrote that these were issues "touching upon the democratic bulwark of our nation".

The order was preceded by a November 13 judgment based on a bunch of petitions filed by 17 former dissident JD(S)-Congress Karnataka legislators against the Speaker's decision to disqualify them for defection.

"In order to uphold the Constitution, we need to have men and women who will make a good Constitution such as ours, better," Justice Ramana, who authored the verdict, had observed.

"If Speaker is not able to disassociate from his political party and behaves contrary to the spirit of the neutrality and independence, such person does not deserve to be reposed with public trust and confidence," Justice Ramana wrote in the Karnataka verdict.

Obsolete laws**Why India needs to repeal/amend laws?**

- ❑ With changing **socio-economic conditions**, some laws have lost their relevance. e.g. Sarai Act 1887
- ❑ **Newer law** on the same subject have been made. e.g. Births, Deaths and Marriages Registration Act, 1886
- ❑ Old laws not compatible with **rights of citizens**, e.g. SC had to strike down discriminatory laws like Section 497 of IPC (adultery) and Section 377 of IPC (homosexuality) (students are advised not to mention CAA in exam)
- ❑ **They inhibit free speech:**
 - Section 124A of IPC (Sedition law): to suppress disaffection against British govt.
 - Section 295A of IPC (Blasphemy law): against actions that insult religious feelings.
 - Section 499/500 of IPC (Defamation law): it makes defamation a criminal offence.
 - Official Secrets Act 1923: discretion to decide what is 'secret document' lies with govt.

Challenges:

- ❑ Identifying obsolete laws is a **time** taking task.
- ❑ Once repealed, all relevant **stakeholders** need to be informed about the repeal.

Way forward:

- ❑ **Periodic review** of all laws after set number of years.
- ❑ Add **sunset clause** to all future laws, compelling their review after certain time.
- ❑ Court should adopt the practice of **desuetude** (not in use), i.e. laws that have not been used for a long period would lapse automatically.
- ❑ There is also a need to **consolidate multiple laws**. Codification of multiple labour laws into four codes is a step in the right direction.

Extra info:

- ❑ **Law Commission** 248th report 2014 identified 1,086 laws for repeal.
- ❑ **Ramanujam Committee** 2014 identified 1,741 Central acts for repeal.
- ❑ Government has repealed **1,175 laws** through four repealing Acts in 2015, 2016, 2017 and 2019.

Reform in criminal laws

Centre has constituted a **Committee to suggest reforms in Criminal laws** [IPC, CrPC, Indian Evidence Act, NDPS Act].

Why there is a need to reform Criminal Laws?

- ❑ **Purpose:** Their purpose was to aid the colonial government, i.e. to rule the nation, not serve the citizens.
- ❑ **Compatibility:** When they were framed, there was no Universal Declaration of Human Rights or Constitution.
- ❑ **Long Pending:** They were framed in the late 19th century, and have not undergone comprehensive revision.
- ❑ **Represents Victorian Morality:** Sections on adultery, homosexuality, etc. do not represent Constitutional morality of liberty and equality.
- ❑ **New age crimes:** New crimes need to be defined & addressed in IPC, especially related to technology (cyber-crimes, AI, etc.)

 **The Indian EXPRESS** SUBSCRIBE Epaper
 Scrapped 6 yrs ago, 66A still in use: Shocked Supreme Court seeks govt reply

Self Help Groups

What?

Informal group of 10-20 individuals, of similar socio-economic status, coming together to save small sum of money and for mutual help.

Basic idea?

Problems like poverty, illiteracy, lack of skills, lack of formal credit, etc. cannot be tackled at an individual level and need collective efforts.

Functions of SHGs:

- Build capacity of poor in income generating activity
- Solve problems by mutual discussions.
- Develop savings habit.
- Give collateral free loan.

History:

- 19th century: ROSCA – Rotating Savings and Credit Association in some European countries.
- 1970s: Work on micro-credit of Muhammad Yunus in Bangladesh (Nobel Peace Prize 2006)
- 1992: SHG Bank Linkage Project (SHG-BLP) by NABARD. Banks were allowed to open savings account for SHG and give loans without collateral.

Microfinance? very small loans (micro-loans) to individuals and small businesses.

Why? Because they lack collateral guarantee, regular income, etc., and therefore cannot access conventional banking services.

Benefits of SHGs:

- An economically poor individual gains strength as part of a group.
- It helps borrowers overcome the problem of collateral.
- Reduced influence of informal lenders in rural areas, increased financial inclusion.
- Low transaction cost for both bank and borrower. (Single account, not multiple)
- They have nearly 100% recovery performance. (How? members use collective wisdom and peer pressure to ensure proper use of loan)
- Leads to women empowerment (It is observed that 85% of SHGs linked with banks are formed exclusively by women)
- By social audits, SHGs enhance efficiency of government schemes.
- They help ease dependence on agriculture.
- They also help to build social capital among the poor, especially women. Women discuss their problem & find solutions.
 - Social capital is core of SHG. Social capital means value generated from interpersonal relations from social networks.

Weakness:

- Patriarchal mindset prevents many women from coming forward.
- Dominated by some, not all members of a group are from the poorest families.
- Their activities require primitive skills. Due to low value addition, their income remains low.



NEWS SERVICES DIVISION
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Mar 08, 2020, 8:57PM

Govt plans to create 75 lakh SHGs by 2022: Narendra Singh Tomar

The government is planning to create a total of 75 lakh Self Help Groups by 2022 to enable more women to get a livelihood. Rural Development Minister Narendra Singh Tomar said this while addressing a programme on Women's Empowerment to mark International Women's Day in New Delhi today. Mr Tomar said, Women's Self Help Groups are the backbone of poverty alleviation programmes and the entire focus of the Ministry is oriented towards women's emancipation. He said there are over 60 lakh SHGs across the country mobilizing more than six crore 73 lakh women. The Minister said, Government is providing funds and training to them for livelihood missions and linking them with banks for easy credit flow.

Mr Tomar said, Government is not only supporting women and rural population but also providing them with platforms like the Government e-Marketplace for fetching better prices for their products.

- d) Lack of trained personnel who could upgrade skills of SHGs.
- e) Difficulty in marketing their products.
- f) Regional imbalance among and within states.
- g) They are usually dependent on NGO support. Withdrawal of support leads to their collapse.

Government initiatives:

- a) **1992:** SHG-BLP
- b) **1993:** Rashtriya Mahila Kosh (Ministry of Women & Child Development). Gives loans to NGOs-MFI who then lend to women SHGs.
- c) **1999:** Swarn Jayanti Gram Swarajgar Yojana to promote formation and skilling of SHGs.
- d) **2011:** National Rural Livelihoods Mission
- e) **2015:** DAY NRLM (DAY is Deendayal Antyodaya Yojana)
- f) State government initiatives such as Kudumbashree in Kerala.

What's so different about Kudumbashree?

- a) Neighborhood Groups → Area Dev. Societies → Community Dev. societies
- b) It has a three tier structure with core committees of elected coordinators at all three levels; direct elections every three years
- c) Majority members of all committees should be women from poorer sections; also there is reservation for Dalit and Adivasi women.
- d) Govt. officials are appointed on deputation to help and guide.

Way forward:

- a) Extend Kudumbashree model to other states.
- b) Focus on digital literacy. Digital literacy enables people to learn and improve skill themselves.
- c) If Panchayats are institutions of representation, women's self-help groups are institutions of participation.

Q.10. ग्रामीण क्षेत्रों में विकास कार्यक्रमों में भागीदारी की प्रोन्नति करने में स्वावलंबन समूहों (एस.एच.जी.) के प्रवेश को सामाजिक-सांस्कृतिक बाधाओं का सामना करना पड़ रहा है। परीक्षण कीजिये।

The penetration of Self Help Groups (SHGs) in rural areas in promoting participation in development programmes is facing socio-cultural hurdles. Examine. **Mains 2014** 12½

9. आत्मनिर्भर समूह (एस० एच० जी०) बैंक अनुबंधन कार्यक्रम (एस० बी० एल० पी०), जो कि भारत का स्वयं का नवाचार है, निर्धनता न्यूनीकरण और महिला सशक्तीकरण कार्यक्रमों में एक सर्वाधिक प्रभावी कार्यक्रम साबित हुआ है। सविस्तार स्पष्ट कीजिए।

The Self-Help Group (SHG) Bank Linkage Programme (SBLP), which is India's own innovation, has proved to be one of the most effective poverty alleviation and women empowerment programmes. Elucidate. **Mains 2015** 12½

6. "वर्तमान समय में स्वयं-सहायता समूहों का उद्भव राज्य के विकासात्मक गतिविधियों से धीरे परंतु निरंतर पीछे हटने का संकेत है।" विकासात्मक गतिविधियों में स्वयं-सहायता समूहों की भूमिका का एवं भारत सरकार द्वारा स्वयं-सहायता समूहों को प्रोत्साहित करने के लिए किए गए उपायों का परीक्षण कीजिए। (उत्तर 250 शब्दों में दीजिए)

"The emergence of the Self-Help Groups (SHGs) in contemporary times points to the slow but steady withdrawal of the State from developmental activities." Examine the role of the SHGs in developmental activities and the measures taken by the Government of India to promote the SHGs. **Mains 2017** (Answer in 250 words) 15

Capital Punishment

What?

- execution by state authorities **after** due process of law
- It is based on the principle of **retributive justice**.

Justice:

- Reparation** - punishment should **compensate** the victim.
- Reformation** - punishment should **reform** the criminal.
- Retribution** - punishment should make the criminal **suffer** for the wrongs.

Arguments against Death Penalty:

- Right to life**: Every human has right to life, even the criminal.
- No deterrence**: No study has shown that the death penalty deters murder more than life imprisonment. Real deterrence comes from quick detection, arrest and conviction.
- Arbitrariness**: There are judge-centric variations. Media trials and public discourse influences judge's decisions. Between 2004 & 2013, 3,751 death sentences were commuted to life imprisonment & SC confirmed only 3-4 of these death sentences each year.
- Class difference**: Investigations are biased against the poor. Poor people don't get good lawyers to defend them.
- Irreversibility**: there exists no remedy if innocence is proved after execution. Ravji Rao and Surja Ram had been executed in 1996 and 1997 respectively. SC later admitted that they were wrongly sentenced to death.

Arguments in favor of Death Penalty:

- Retribution**: one who has taken life of another, has lost his own right to life.
- Deterrence effect**: death will deter others from committing such crimes.
- Democracy**: most people favor continuance of death penalty
- Terror**: Cases of violent terror are constant reminders of the need to protect national stability.
- Procedure**: There is elaborate procedure to make appeals against death sentence.
- Rare**: It is given only in rarest of rare cases that shock conscience of society. In last 13 years, only eight people have been executed.

Status in India:

- Death penalty can be given for about **14 crimes** like murder, terrorism, drug trafficking, mutiny against state, etc.
- Exemptions**: Juvenile at time of crime, pregnant women, mentally ill person cannot be executed.
- Constitution**:
 - Article 21** No person shall be deprived of his life or personal liberty except according to procedure established by law.
 - Articles 72 & 161** allows convict or his relative to submit mercy petition to President / Governor. However, it is subject to judicial review.

Important Supreme Court judgments:

- Bachan Singh v. State of Punjab, 1980**: SC held that death penalty can be given only in "rarest of the rare" cases.
- Kehar Singh v. Union of India, 1989**: Pardoning power of executive is subject to judicial review.
- Shatrughan Chauhan v. Union of India, 2014**: delay in execution amounts to torture and is a ground for commutation of sentence.

Way forward:

- As recommended by Law Commission in 262nd report, capital punishment should be abolished except for waging war against India.
- Focus should be on creating effective deterrence which comes with speedy and just trial.

One Nation One Language

How many languages? According to Census 2011:

- India has 121 mother tongues, of which 22 are in 8th Schedule.
- 43% Indians have Hindi (including all dialects) as first language.

National Language (Rashtriye Bhasha) राष्ट्रीय भाषा ? None

Official Language of Union? Hindi and English

Constitution says:

- Hindi in Devanagari script is official language of Union
- English to continue till 1965
- Parliament can extend use of English beyond 1965

Official Language Act in 1963:

- It extended use of English for 10 years (indefinitely).

Official Language of States? State Legislatures are free to decide.

Language of Judiciary?

- All proceedings as well as orders of SC and all HCs are to be in **ENGLISH**.
- But other languages can also be allowed by law by Parliament/State legislatures.
- At present, Supreme Court hears only those who petition or appeal in English.

Constitutional provisions on Hindi:

- **Article 343:** Hindi in Devanagari script shall be the official language of the Union.
- **Article 344:** Every 10 years, a Parliamentary committee to recommend to President on increase in use of Hindi
- **Article 351:** It is the duty of Union to promote Hindi.

Should Hindi be promoted as India's common language?

Yes:

- It is the most **widely spoken** language.
- There are **constitutional** provisions to promote Hindi.
- It is intricately related to India's glorious **past**.

No:

- Substantial variations in **dialects** of Hindi
- Most people in **South and NE** do not use Hindi.
- **Tamil, Telugu**, etc. are more ancient than Hindi.
- **English**, not Hindi, is the language of **science & commerce**.

Should India have a common language?

Yes:

- It will lead to greater **national integration**.
- It will give India a new **global identity**.
- It will make **administration** easier.

No:

- The idea that nation gets its **identity** from language is a colonial construct.
- Difficult to achieve **consensus** on what language it should be.
- It will kill India's linguistic **diversity**.

Municipal Finances

Also see class-23

What is the status of Municipal finances in India?

- **Low revenue:** Municipal revenue to GDP ratio is just 1% for the last 10 years.
- **Low own revenue:** own revenue as percent of total revenue has fallen from 55% in 2008 to 43% in 2018.
- **Low Govt. grants:** municipalities get just 0.45% of GDP; compared to 10% in UK.
- **Property tax:** municipalities get 60% of their taxes from property tax.

Challenges:

- **User charges:** poor quality of service discourages people to pay for municipal services.
- **Accounts:** CAG reports have pointed out several shortcomings in the way ULBs maintain their financial accounts.
- **Borrow:** Most municipalities need state governments permission to borrow from market. Municipal bonds market is not well developed.
- **Tax:** States have not empowered ULBs to collect most of the local taxes, other than property tax.
- **GST:** many local taxes have been subsumed under GST, e.g. entry tax, advertisement tax.
- **Smaller tax base:** urbanization that is unplanned or outside municipal limits reduces scope of funds to ULBs
- **Parastatal bodies:** most cities have separate bodies for water, electricity, transportation, etc. This reduces scope of fund generation for ULBs.

Steps taken:

- **Grant** given by states is being **linked** to steps taken by ULBs to **reform** their accounting, reporting, auditing, etc.
- **National Municipal Accounts Manual** guides ULBs in following suitable accounting policies.
- Financial support from **MoHUA** to ULBs through schemes like **AMRUT** and **Smart City Mission**.
- **Municipal bonds** are being encouraged. Since SEBI's 2015 regulations on muni bonds, seven ULBs have raised Rs 1,400 crore from muni bonds.

Way forward:

- **Empower municipalities** to impose profession tax, Local Body Entertainment Tax, motor vehicles tax etc.
- **Monetize land** value by developing infra, using Value Capture Financing.
- Improve **property tax** collection by using GIS maps; set up property tax boards as recommended by 13th Finance Commission.
- **Capacity building** by providing technical help and quality human resource.

Municipal Bonds:

- These are bonds issued by ULBs, for projects like roads, flyovers, schools, etc.
- In 1997, Bangalore Municipal Corporation was the first to issue them.
- Challenges faces by ULBs in raising money through Muni bonds:
 - **Credit ratings** of most ULBs is low due to weak finances.
 - Unrealistic revenue goals and poor quality of **project report**.
 - Weak corporate **bond market** in India.

Govt advertisements

Why govt. gives advertisements?

- **Administrative need:** Ads for recruitment, tenders, public notices.
- **Spread awareness** about matters of public importance, e.g. Jago Grahak Jago, Covid
- People have the **right to know** about government's work.

Issues with govt. Ads?

- Huge amount of money** is spent which could have been used for better purpose.
- They glorify personalities and parties, encourages **personality cult**.
- Unfair advantage** to party in power before elections.
- They encourage media groups to **report favourably** about government.
- They **penalise** some media groups for activism e.g. 2019 ad freeze for The Hindu

SC guidelines on govt. ads?

(Not applicable on classified ads)

- Allowed **pics** of only CJI, Prez, Governor, PM, CM, ministers
- Should not present **pre-existing policies as new**.
- Should not be aimed to promote **political interests** of the ruling party.
- Set up a **3-member impartial body** to ensure compliance to these guidelines.

Status of implementation?

- I&B Ministry ordered states to form three-member committee as **stopgap measure** until a legislation is brought.
- Most of the **states have not formed** the committee.

Way forward:

- Establish **standards** to regulate govt. ads. [Suggested by ECI, CAG, Law Commission]
- No govt. ads for **six months** before elections [ECI's recommendation]

Government advertisement on social media platforms

Ministry of I&B has issued guidelines to empanel social media platforms for Centre's paid outreach campaigns.

Benefits of using social media:

- **Targeted reach:** social media ads can be person specific, whereas mass media ads are same for everyone.
- **Manage Perception:** Govt. can effectively shape public opinion through social media.
- **Real time engagement:** During Libyan crisis, MEA used Twitter to help evacuate Indians.

Challenges:

- Ensuring availability of **funds** and trained **manpower**.
- Framing **rules** of engagement for interaction with public.
- Choosing which **platforms** to use, so as to reach maximum people.

Intra-party democracy

Benefits of intra-party democracy:

- Develop **capable leaders**, who will lead the party, and then country.
- Reduces chances of formation of **new parties**.
- It helps party members to hold leaders **accountable**.

Why is it lacking:

- Culture of **Personality cult** in Indian society.
- **No legal provisions** unlike other countries like Germany and Portugal.
- EC **guidelines** are not legally enforceable.

Way forward:

- **Law Commission** in 170th report in 1999: political party should not be 'dictatorship inside, democracy outside'.
- **NCRWC**: parties seeking registration must declare that they will follow democratic values in party's functioning.
- **Venkatachaliah commission** had drafted a bill to regulate functioning of political parties.

Voting behavior

Why study voting behaviour?

- To understand what people want.
- It helps political parties shape their campaign.

Factors that affect voting behaviour:

- Perceptions created by WhatsApp, FB, newspapers, news channels.
- Personality cult. [Modi, Yogi, Gandhi, Nehru]
- Caste and religion of candidate.
- Commitment to certain ideology.
- Fence-sitters vote for the candidate with maximum chance of winning.
- Work done by representative in the constituency.
- Perceived performance of the representative.

All-Inclusive GS-2 & GS-3 MAINS 2022

Class-61

Classes 1-60 are repetition of Mains 2021

Rights and Duties

Right is an entitlement <small>हक</small> Duty is an obligation <small>कर्तव्य</small>	<p style="background-color: yellow;">Original Constitution</p> <ul style="list-style-type: none"> → Gave Rights to people (FR) (justiciable rights of people) → Directions to govt (DPSP) (non-justiciable rights of people) 			
Citizenship is a blend of rights and duties	<p style="background-color: yellow;">42nd amendment during Emergency</p> <ul style="list-style-type: none"> → Gave Duties to people. → Govt pushed the idea that Duties are more important than Rights. 			
Part-3: FR 1950 Part-4: DPSP 1950 Part-4A: FD 1976				
<p style="background-color: yellow;">Can Rights exist without Duties?</p> <ul style="list-style-type: none"> <input type="checkbox"/> FRs are in Constitution since 1950, FDs were added only in 1976. <input type="checkbox"/> USA, UK don't have FDs for citizens. 	<p style="background-color: yellow;">Rights are claims of citizens against State, because rights are essential for survival.</p>			
	<p style="background-color: yellow;">Right vs Luxury:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Right is different from luxury: <ul style="list-style-type: none"> ▪ Availability of water is right. ▪ 24x7 piped water is luxury. <input type="checkbox"/> People demand rights, not luxuries. 			
<p style="background-color: yellow;">Rights can be:</p> <p>Human rights Right to life</p> <p>Fundamental rights Right to equality</p> <p>Constitutional rights Right to vote</p> <p>Legal rights Right to Information Act 2005</p> <p> Right to Work (MGNREGA 2005)</p> <p> Right to Food (NFSA 2013)</p>	<p style="background-color: yellow;">Duty can be towards:</p> <p>Humanity help road accident victim</p> <p>Family education to children, geriatric care for parents</p> <p>Society promote harmony and brotherhood</p> <p>Nation protect sovereignty, unity and integrity of India</p>			
<p style="background-color: yellow;">Examples for People not performing their duties:</p> <ul style="list-style-type: none"> <input type="checkbox"/> People don't help road accident victims <input type="checkbox"/> Old parents are often expelled from house by their children <input type="checkbox"/> Instead of promoting brotherhood, people forward social media posts that promote hatred. <input type="checkbox"/> Instead of protecting unity of India, politicians give hate speech that creates social divisions. <input type="checkbox"/> Instead of developing scientific temper, people spread pseudo-science (cow dung gives oxygen to patient) <input type="checkbox"/> Instead of protecting heritage, there are campaigns to pull down monuments like Taj Mahal 				
<p style="background-color: yellow;">Should enjoyment of rights be made dependent on performance of duties?</p> <p>Yes, because we can't demand our rights if we don't do our duties</p> <ul style="list-style-type: none"> <input type="checkbox"/> Media has Right to free speech, and also duty to respect people's privacy. <input type="checkbox"/> If it does not respect people's privacy, its right to free speech may be taken away. <p>No, because rights are not dependent on duties.</p> <ul style="list-style-type: none"> <input type="checkbox"/> If media is violating privacy, or spreading fake news, then laws should be used to punish it, for that particular offence. 				
<p style="background-color: yellow;">MK Gandhi:</p> <ul style="list-style-type: none"> ▪ The true source of rights is duty. ▪ Real rights are a result of performance of duty. ▪ If we all discharge our duties, rights will not be far to seek. 	<p style="background-color: yellow;">JF Kennedy (former US Prez):</p> <p>Do not ask what the country can do for you but ask what you can do for the country</p>			
<p style="background-color: yellow;">Conclusion:</p> <ul style="list-style-type: none"> <input type="checkbox"/> As per various SC judgements, FR have been given primacy over DPSP and FD. <input type="checkbox"/> Any shift in policy, giving primacy to duties of people, will be a disservice to millions, for whom realisation of even FRs is still a work in progress. 				
Mains 2022	GS-2 & GS-3	Class-61	Page-01	© All Inclusive IAS

Rights are independent of duties: (Rights don't depend on duties)

- Rights come from birth, duties need capability:**
 - Everyone has rights, but only capable people can perform duties
 - Every child has right to education, but every parent is not capable to provide it.
- Rights are precursor to duties**
 - Duties can be performed only after basic rights are given
 - Duty to develop scientific temper can be performed only if one gets education
- Rights are justiciable, duties are not:**
 - People can approach courts to get their rights enforced.
 - Non-fulfillment of duties cannot be the reason for non-enforcement of rights

Some examples that indicate link between rights and duties

Rights	Duty	Interlink
Children have Right to education (Article 21-A)	Parents have Duty to provide education (Article 51-A k)	Poverty does not allow parents to get children educated.
People have Right to vote (Article 326)	Govt has Duty to conduct free & fair elections (Article 324)	If elections are not free & fair, they lead to pseudo-democracy
People have Right to equality (Article 14: Equality before law and equal protection of law)	Govt has Duty to apply law in similar manner to everyone. (Article 14)	When govt applies laws selectively , people lose right to equality



LOK SABHA ELECTION

Madras High Court upholds President's decision to cancel Vellore poll

They pointed out that it was the EC that had made the recommendation for countermanding the polls to the President on Sunday by exercising powers conferred on it under Article 324 of the Constitution, Section 21 of the General Clauses Act of 1897 and other enabling powers aimed at ensuring the conduct of free and fair elections.

Right to vote (in China):

- **Constitution** gives Right to vote to citizens above **age 18**.
- **Officially**, 9 political **parties exist**.
- **Practically**, only **one party** holds effective power.

If there is no opposition to chose, its not democracy.

Prelims 2021

A legislation which confers on executive or administrative authority an unguided and uncontrolled **discretionary power** in matter of **application of law** violates which of the following Articles?
 (a) **Article 14** (b) Article 28
 (c) Article 32 (d) Article 44

Article 14

Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Points to ponder:

- What makes a nation strong? Rights of its people, or duties of its people?
- Why do thousands of students migrate to USA and Europe every year, and settle there?
- Because **people** enjoy **rights**! Because **govt** there performs its **duties**!

Frequent protests, through which people demand their Rights, makes India weak. Do you agree?

- People **elect** govt, so that govt can **protect their rights**.
- When People **demand** their rights, govt comes under pressure to **perform**.
- When govt **performs** better, country becomes **stronger**.

Think: why do we elect MP/MLA?
So that our favourite MP/MLA can enjoy luxuries, or so that he can protect our rights?

Remember: Govt/Bureaucrats are given power, not as a reward to enjoy, but as tool to serve

Question:
Who 'needs' Rights the most: The weak or the powerful?
Who 'must' abide by Duties: The weak or the powerful?

Hint:
A sweeper did not notice national flag in garbage. Hence he was fired from his contractual job. What will help him feed his family: rights or duties?

Way forward:

- ❑ **Deliver basic rights to people**, so that they become capable enough to perform their duties.
- ❑ **Implement existing laws impartially**, so that people get motivated to perform their duties.
- ❑ **Address real issues like casteism**, communalism, regionalism which hinders rights of people.
- ❑ **Follow Rule of Law** (class-27) in true spirit, so that rights don't depend on party in power (West vs India)

Remember:

- ❑ **Rights** are claims of citizens against the State
- ❑ **Right to Constitutional remedies** is the **heart and soul** of the Constitution - Dr B.R. Ambedkar
- ❑ The purpose of including **DPSP** in Constitution is to establish **social and economic democracy**.

Food for thought: Govt derives its powers from people, not the other way round.

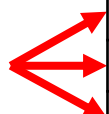
- ❑ **In dictatorship**
 - **people depend on ruler** for their rights.
- ❑ **In democracy**
 - People have inherent rights, not dependent on anyone's benevolence.
 - **Govt is bound** by the Constitution to protect people's rights.

Remember at least this:

- ❑ Both are important as
 - Constitution mentions both FR and FDs
- ❑ One is not dependent on the other as
 - Constitution does not link FRs and FDs

Example to show inter-relation between FR, FD, DPSP:

86th
Amendment
2002



FR 21A: State to provide free & compulsory education to all children of 6-14 age
FD 51A: To provide education to children of 6-14 years age
DPSP 45: Care & education to all children till 6 years of age

Some laws to quote:

- ❑ **Good Samaritan** rules notified under Motor Vehicles Act, 1988
- ❑ Maintenance and Welfare of **Parents** and Senior Citizens Act, 2007
- ❑ Prevention of Insults to **National Honour** Act, 1971
- ❑ **Flag** Code of India, 2002
- ❑ SC and ST (Prevention of **Atrocities**) Act, 1989
- ❑ **Dowry** Prohibition Act, 1961
- ❑ IPC section 509: Word, gesture or act intended to insult the **modesty** of woman.

Free Speech

Also see:

Class-28 page-2 Censorship

Class-26 page-10 Sedition

What is free speech?

- Ability to express opinion without fear
- Article 19 of Universal Declaration of Human Rights:
 - Everyone has the right to freedom of opinion and expression
- Article 19(1) (a) of Indian Constitution:
 - All citizens shall have the right to freedom of speech and expression

Differentiate between Free Speech, and its misuse:

- Free speech is about asserting our rights, its not about supressing other's rights
- Free speech is about spreading real news, its not about creating fake news
- Free speech is about expressing our opinion, its not about threatening others for their opinion

Restrictions on free speech:

CONSTITUTION reasonable restrictions under Article 19 (2)

- India's sovereignty, integrity, security
- Friendly relations with foreign states
- Public order, decency, morality
- Defamation, Incitement to offence
- Contempt of Court

LAWS: (from class-55)

- **Section 124A of IPC (Sedition law):** to suppress disaffection against British govt.
- **Section 295A of IPC (Blasphemy law):** against actions that insult religious feelings.
- **Section 499/500 of IPC (Defamation law):** it makes defamation a criminal offence.
- **Official Secrets Act 1923:** discretion to decide what is 'secret document' lies with govt.

Benefits of Free speech:

- Free speech is essential for democracy
 - It allows people to call for change of govt
- Free speech is basis for other rights
 - Freedom of Press, Right to fight elections
- Media can highlight problems in administration
 - mid-day meal benefits not reaching children
 - Aadhaar authentication issues
- People can speak about issues facing their community
 - day-to-day discrimination faced by weaker sections
 - #MeToo movement exposed silent suffering of women

For what purpose do people misuse Free speech: (learn by chronology)

- To spread misinformation through social media:
 - Cow dung releases oxygen to treat Covid
- To spread fake news through social media
 - class-45 page-10
- To create hate on basis on caste, religion, region
 - WhatsApp forwards against Brahmins, Dalits, Muslims, Biharis, etc.
- To promote secessionist tendencies: (create separate country for self, or for others)
 - Demands for Khalistan

If left unchecked, misuse of Free speech can create problems like:

- ❑ **Erode people's faith in govt**
 - As per I&B ministry, Sudarshan TV's "UPSC Jihad" programme showed UPSC in poor light
- ❑ **Impact friendly relations with foreign states**
 - Indian diplomacy faced issues in Middle East after June 2022 hate speech episode
- ❑ **Reinforce social divisions**
 - Some Panchayats openly call for social/economic boycott of Dalits/Muslims
- ❑ **Create Law and order problem**
 - When Hate is left unchecked, it grows into violence/riots



Way forward:

- ❑ **Reasonable restrictions** on free speech must be imposed.
- ❑ **Educate people** about importance of free speech, and consequences for its misuse.
- ❑ **Encourage fact-checking** of free speech that spreads fake news and misinformation.
- ❑ **Punishment for misuse** of free speech should be impartially implemented

Right to Dissent

Dissent: expressing opinion at variance with those officially held.

Right to Dissent: entitlement to disagree; implicit part of free speech u/a 19(1)

Importance of dissent:

- Dissent helps **check abuse of power** by people in power
- **Elections have no meaning** if government can't be criticized

Issues:

- **Arresting dissenters** has chilling effect on free speech (process is punishment).
- **Diversion of investigative agencies** to tackle dissenters, weakens national security.
- **Use of anti-terror tools** like Pegasus, to suppress dissent weakens democracy.

"**I may disagree** with what you say, but **I shall defend** to death, **your right** to say it"

(*The Friends of Voltaire*, by Evelyn Beatrice Hall)

Students are advised to get more points from:
Free speech (class-61)
Censorship (class-28)
Sedition (class-26)

Enforcement of FDs

News: A petition in SC seeks to enforce FDs by law

Steps taken to make people obey FDs:

- Schools:** FDs are part of school curriculum
- Awareness:** In 2020, Dept of Justice launched awareness drive about FDs
- Law:** Certain laws enforce some fundamental duties

THE HINDU

In Supreme Court, AG says no need to enact specific laws to 'enforce' fundamental duties on citizens

Krishnadas Rajagopal

NEW DELHI APRIL 04, 2022 14:23 IST
UPDATED: APRIL 04, 2022 15:46 IST

Enforceable/Justiciable by courts:

One can move court against their violation

✓ FR ✗ FD, DPSP

Enforceable by law:

Parliament can make law to enforce them

✓ FR, FD, DPSP

Should FDs be enforced by law?

Yes:

- Rights and duties are **corelative**.
 - If people want to enjoy rights, they must perform duties.
- They **strengthen the nation**
 - To protect unity and integrity of India.
- They **protect the environment, which benefits entire humanity**
 - To protect and improve natural environment.
- They **help govt maintain law and order**
 - Duties promote discipline in society.
 - Duties act as warning against anti-social activities.

No:

- Duties need **capability**:
 - poverty violates basic human rights. Expecting poor to perform duties is impractical.
- Duties are **difficult to enforce**:
 - prosecuting someone for not promoting "brotherhood" is difficult
- Law could be **misused**:
 - violation of FDs can be used as excuse to curtail people's rights
- Vague and **ambiguous**:
 - words like "noble ideals" and "humanism" are difficult to define

Ranganath Mishra judgment 2003:

- SC **did not order** that FDs should be enforced by law.
- SC **merely mentioned** that it was brought to the notice of the court that Justice Verma Committee 1998 recommended "FDs should be enforced by legal and social sanctions"

<https://indiankanoon.org/doc/504576/>

Netizen = Net Citizen (Citizen of the Net)
Actively involved in online communities

Digital Citizen

Also see:

- Class-48 pg-05, Right to Internet
- Class-16 pg-02, Presidio Principles

Digital citizen: People who use internet, to engage in society, politics and government

Digital citizenship: People's role in society by use of digital technologies

How to be a good digital citizen:

- Communicate **respectfully** (raise your issues, politely)
- Stand up against **cyberbullying** (of self and others)
- Respect other's **privacy** (don't share pic without consent)
- Respect **IPR** intellectual property rights (because digital content is easy to copy)

What are Digital rights:

- Digital rights are extension of **human rights in digital world**.
- People have **same** rights in **digital** world as in **physical** world.
- e.g. freedom of expression, right to privacy

Should Digital Rights be framed separately? Yes

- **People** become **aware** of their rights.
- **Policymakers** and **companies** get **guidelines** while dealing with new technology e.g. blockchain.



Some basic digital rights and principles:

- **Inclusive:** Everyone should have **access to internet** and digital skills.
- **Law:** What is **illegal** offline should also be illegal online.
- **Rights:** Technology should **protect people's rights**, not inhibit them (Free Speech vs Surveillance/Censorship)
- **Choice:** People should have freedom to choose between different **service providers**
- **Privacy and Data security:** Users should have **control** over their own data
- **Society:** Technology should **unite**, not divide people
- **Sustainability:**
 - People must know the **environmental impact** of energy consumed by their devices
 - Blockchain transactions consume lot of **electricity** (Bitcoin uses > 110 Terawatt Hours/year)
- **Democracy:**
 - Tech must **support** democracy (enable people to voice their concerns)
 - Tech must **not weaken** democracy (Russian interference in 2016 US elections)

Challenges in protecting Digital rights:

- Easy access to technology makes it easy to violate law**
 - a single college student was able to violate privacy of thousands of women through Bulli bai app
- Vastness of internet makes it difficult to monitor illegal content**
 - social media is full of hate content, but taking down all of it is impractical
- Digital divide worsens economic inequalities**
 - People with internet have better access to health, education, jobs
- Digital illiteracy makes people vulnerable to fraud**
 - Lack of safe surfing habits makes people fall prey to phishing, OTP scams, etc

Initiatives:

- **GDPR** General Data Protection Regulation by EU
- **Presidio Principles** by WEF's Global Blockchain Council
- **Christchurch Call** by New Zealand to eliminate online extremist content
- India's National **Cyber Crime Reporting Portal**
- India's National policy on **universal electronic accessibility**

Way forward:

- Clearly lay down digital **rights**
- Establish a dedicated data protection **regulator**
- Increase **international** cooperation with like-minded democracies

Fundamental Rights

Articles 14-18: Right to **equality**
 Articles 19-22: Right to **freedom**
 Articles 23-24: Right against **exploitation**
 Articles 25-28: Right to freedom of **religion**
 Articles 29-30: **Cultural and educational rights**
 Article 32: Right to constitutional **remedies**

Equality before law and equal protection of laws	14	Equality
Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth	15	
Equality of opportunity in matters of public employment	16	
Abolition of untouchability and prohibition of its practice	17	
Abolition of titles except military and academic	18	
Freedom of: (i) speech & expression (ii) assembly (iii) association (iv) movement (v) residence (vi) profession	19	Freedom
Protection in respect of conviction for offences	20	

Freedom	21	Protection of life and personal liberty Right to elementary education (Article 21A)
	22	Protection against arrest and detention in certain cases
Exploitation	23	Prohibition of traffic in human beings and forced labour
	24	Prohibition of employment of children in factories , etc
Religion	25	Freedom of conscience and free profession, practice and propagation of religion
	26	Freedom to manage religious affairs
	27	Freedom from payment of taxes for promotion of any religion
	28	Freedom from attending religious instruction or worship in certain educational institutions
Cult & Edu	29	Protection of language, script, culture of minorities
	30	Right of minorities to establish and administer educational institutions

Fundamental Duties

It shall be the duty of every citizen of India:

- 1) To abide by the **Constitution** and respect its ideals and institutions, the National **Flag** and the National **Anthem**;
- 2) To cherish and follow the noble ideals which inspired our national **struggle for freedom**;
- 3) To uphold and **protect** the sovereignty, unity and integrity of **India**;
- 4) To defend the country and render **national service** when called upon to do so;
- 5) To promote **harmony** and the spirit of common **brotherhood** amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the **dignity of women**;
- 6) To value and preserve the rich **heritage** of our composite **culture**;
- 7) To protect and improve the natural **environment** including forests, lakes, rivers, wildlife and to have compassion for living creatures;
- 8) To develop the **scientific temper**, humanism and the spirit of inquiry and reform;
- 9) To safeguard **public property** and to abjure **violence**;
- 10) To strive towards **excellence** in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- 11) Who is a parent or guardian, to provide opportunities for **education** to his child, or as the case may be, ward between the age of **six to fourteen years**.

Fundamental duty #11 was added by 86th constitution amendments in 2002

Directive Principles of State Policy

- Constitution divides rights into **justiciable** and **non-justiciable** (as advised by Sir B N Rau)
- Source: **Instrument of Instruction** of 1935 Gol Act and Irish Constitution
- Article 37**: DPSP are **fundamental to governance** and it shall be the duty of the state to apply them in making laws.
- 1971 25th Amendment**:
 - No law for DPSP **article 39 b&c** shall be void for violating FR of articles 14, 19, 31
- 1976 42nd Amendment:
 - extended scope of 25th Amendment to all DPSP
- 1980 Minerva Mills case:
 - extension given by 42nd amendment held unconstitutional by SC.
 - SC also said that absolute primacy of one over other will disturb harmony of Constitution
- Present position is that FR enjoy supremacy over the DPSP. Parliament can amend the FR for implementing DPSP (without damaging basic structure of Constitution)

Features of Fundamental Rights

- ❑ All FRs are available against actions of **State**
 - State is defined in Article 12
 - It includes Govt and all its agencies, even private companies working on behalf of govt
- ❑ Some FRs are also available against actions of **private individuals**
 - 15(2), 17, 23, 24
- ❑ FRs are **not absolute** but qualified
 - State can impose restrictions. Courts can decide if its reasonable.
- ❑ They are **not permanent** or sacrosanct
 - **Parliament** can amend or repeal FRs, but without affecting basic structure
- ❑ Negative and positive in character:
 - Some are negative i.e. they impose **restriction** on State, e.g. 22
 - Some are positive i.e. they give **privileges** to people, e.g. 26
- ❑ **Supreme Court** is defender and guarantor of fundamental rights
 - Under **Article 32**, one can directly move SC
 - To enforce FRs, jurisdiction of SC is **original, but not exclusive**. (concurrent to HC u/a 226)
- ❑ **Article 13**: laws inconsistent with FRs shall be void.
 - Hence, it provides for judicial review. SC has this power u/a 13, and HCs have this power u/a 226
- ❑ Their application to **armed forces** etc. can be restricted by Parliament (**Article 33**)
- ❑ Their application can be restricted during **martial law** (**Article 34**)
- ❑ Some are self-executory, some can be **enforced by law**
 - **Parliament**, not states can make law to enforce FRs (**Article 35**)

Features of Fundamental Duties

- ✓ FDs are **non-justiciable** (Justiciable: One can move court against their violation)
- ✓ FDs are **enforceable by law** (Parliament can make law to enforce them)
- ✓ Our Constitution says nothing about their enforcement.
- ✓ FDs help courts in examining constitutional **validity of law**.
- ✓ FDs apply only to citizens, **not foreigners**.
- ✓ FDs were introduced by Indira Gandhi govt on recommendation of **Swaran Singh** Committee
- ✓ FDs are inspired by **USSR** constitution.
- ✗ Enjoyment of FRs is dependent on fulfilment of FDs

Rights outside part-III:

(aka constitutional rights or legal rights or non-fundamental rights)

- ❑ **265** → No **tax** except by authority of law
- ❑ **300-A** → No person shall be deprived of his **property** save by authority of law
- ❑ **301** → **Trade**, commerce and intercourse throughout the territory of India shall be free

In Conjunction (TH) (25-01-2022)

Context: PM said that India has wasted lot of time fighting for rights and neglecting one's duties

- ❑ Emphasis on duty more than rights was a feature of pre-republican times
 - Think of rights and duties before we became Republic
- ❑ As republic nations evolve, rights of people expand
 - e.g. Right to information, Right to Education, Right to Privacy.
- ❑ In reality, there is **no dichotomy or hierarchy** between the Rights and Duties.
 - Rights and Duties are two sides of same coin. One is meaningless without the other.
- ❑ There is right to **education**, and also a duty to develop **scientific temper**
 - Education without scientific temper is just literacy
- ❑ There is right against **discrimination**, and also a duty to promote **brotherhood**
 - When one person spreads hatred, many people have to suffer discrimination.

Anti-conversion laws

News: Some state laws have put restriction on religious conversion
 2022 March: **Haryana** assembly passed anti-conversion law
 2022 May: **Karnataka** brought ordinance to bring anti-conversion law
"Freedom of Religion Act" is the official name of some anti-conversion laws

Religious conversion often comes in news as:
 Ghar Wapsi (Hinduism)
 Love Jihad (Islam)
 Missionaries (Christianity)

Anti-conversion laws in India:

No Central law: Attempts were made, like Freedom of Religion **Bill 1979**, but failed.

State laws: UP, MP, Haryana, Karnataka, etc have enacted anti-conversion laws.

In **1930s/40s**, some **princely states** ruled by Hindu royal families, brought anti-conversion laws, to protect Hindu identity against Christian missionaries.

Are anti-conversion laws needed?

- Yes:** They help stop conversions by fraud and force.
- No:** Laws already exist to protect people against fraud, coercion, etc. e.g. intimidation (Section 506 IPC), threat of divine displeasure (Section 508 IPC) etc.

Problem with anti-conversion laws: (2020 UP law)

- Burden of proof:**
 - Burden of proof, that the conversion was lawful, lies on the **person who caused the conversion**.
 - It ignores the person who was actually converted.
- Vague nature:**
 - "**Convincing**" someone for conversion has been made **illegal**.
 - This creates wide scope for **misuse**. (**Article 25** gives right to **propagate** religion)
- Mass conversion:**
 - Defines 'mass conversion' as **two or more people** converting.
 - Thus, it makes conversion by any **family** as illegal.
- Conversion for marriage:**
 - The law makes it illegal if conversion is done for marriage. (Marriage will be declared void).
 - It is in potential conflict with liberty guaranteed u/a 21.

Important judgements:

- **1977 Stainislaus case:** Article 25 gives right to propagate religion, not right to convert others.
- **2018 Hadiya case:** In choices of faith, belief and marriage, individual autonomy is supreme.

Conversion and marriage: Hadiya case 2018 (can be used to conclude the answer)

Girl converted to Islam, married Muslim boy. Father approached HC against 'forced' conversion. HC lodged her in hostel, terminated her marriage, gave her to father. SC overturned HC order. SC said:

- Constitution protects** personal liberty from disapproving audiences.
- Right to marry** person of one's choice is integral to **Article 21**. (Prelims 2019)
- Freedom of faith** is essential to individual's autonomy.
- In choices of faith, belief and marriage, **individual autonomy is supreme**.
- Choosing a faith is substratum of individuality** and sans it, right of choice becomes a shadow.
 किसी आस्था को चुनना व्यक्तिवाद का आधार है, और इसके बिना, चुनने का अधिकार छाया बन जाता है।

Article 25 of Indian Constitution:

Freedom of conscience and free profession, practice and propagation of religion

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

Conscience: अंतःकरण / अंतरात्मा की आवाज **Profess:** खुले आम स्वीकर करना **Practice:** आचरण करना **Propagate:** प्रचार करना

Article 18 of Universal Declaration of Human Rights:

Everyone has right to freedom of thought, conscience and religion, including freedom to change his religion (i.e. we all have right to our own beliefs, to have a religion, have no religion, or to change it)

Harm principle:

Each individual is free to take actions that are not harmful to oneself and others

Food for thought:

- ❖ What is religion? How many religions are there?
- ❖ Religion creates people, or people create religion?

Religion

Article 26 gives us freedom to manage our religious affairs

Article 25 gives me right to practice religion. Article 17 prohibits untouchability.

- ❖ Prohibition of menstruating women from worshipping is not an essential religious practice.
- ❖ Exclusion due to menstruation is a type of untouchability.
- ❖ Constitutional morality of Article 25 is violated by ban.



The word 'MORALITY' used in Articles 25 and 26, refers to constitutional morality. It includes the values of justice, liberty, equality and fraternity. To pass Constitutional muster, religious practices must meet these four tests. Practices excluding the entry of women into temples do not withstand legal scrutiny on this point.

Right to Freedom of Religion

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Shirur Mutt case 1954. SC held that the term "RELIGION" in Article 25 covers all rituals and practices that are integral to it. With time, the Judiciary developed the 'essential religious practice' test. Only those practices 'essential' to the religion were deemed deserving of Constitutional protection.

Anti-conversion laws

- by X Centre ✓ States
- Bans religious conversion? No
- Bans conversion by fraud, force, etc.

Mass religious conversion

- In 1935, Dr. B. R. Ambedkar said that he was born a Hindu but would not die a Hindu.
- In October 1956, he converted to Buddhism with > 5 lakh people
- In December 1956 he died as a Buddhist.

Sacrilege / Blasphemy

- Disrespecting religious place / object
- IPC section 295: intentional damage to any religious object
- IPC section 295A: words that insult religious sentiments

Hate Speech

- Not defined in any law
- Existing laws can be used
- IPC section 153A and 153B punishes acts that cause hatred between two groups

I read I forget, I see I remember See explanation of this PDF on YouTube www.youtube.com/c/allinclusiveias

Prelims 2022 Current Affairs Polity Page-57 © All Inclusive IAS

Mains 2022 GS-2 & GS-3 Class-62 Page-02 © All Inclusive IAS

Cooperatives

What is a cooperative?

- A Cooperative is a **jointly owned** and **democratically controlled** enterprise
 - It is a **voluntary association** of people to fulfil common **socio-economic needs**
 - Members **pool** their resources, **manage** them, and **share** the benefits
- Producer's** coop, **Consumer's** coop, Coop Group **Housing** society, **Marketing** coop, Coop **Credit** society, etc.

Popular examples:

- Amul** Kaira District Cooperative **Milk Producers** Union
NAFED National **Agri**cultural Cooperative **Marketing** Federation
IFFCO Indian Farmers **Fertiliser** Cooperative

Constitution	Law	Ministry	Body
97 th Amendment 2011 7 th schedule: State list	Multi-State Cooperative Societies Act 2002	Ministry of Cooperation	National Cooperative Development Corporation

Importance of cooperatives:

- ❑ **Social cohesion:** brings people **together**
- ❑ **Social empowerment:** being part of a group increases **bargaining power** of low income groups
- ❑ **Women empowerment:** helps in women **employment** e.g. Lijjat papad by Shri Mahila Griha Udyog
- ❑ **Promotes equality:** all members are equal and have equal **voting power** (one person one vote)
- ❑ **Leadership:** many new **leaders emerge** from cooperative societies
- ❑ **Rural development:** Success of coop means success of **marginalised sections** particularly in rural India
- ❑ **Financial inclusion:** people can get loan at low **interest rate**, reducing the role of moneylenders. e.g. cooperative banks disburse more than Rs 1.5 lakh crore loans every year

Challenges:

- ❑ **Low capital:** since members are mostly from low income groups
- ❑ **Undemocratic functioning:** instead of collective decision making, few people take all decisions
- ❑ **Small size:** most cooperatives are small, hence can't benefit from economies of scale
- ❑ **Politicisation:** Most cooperatives are dominated by local politicians
- ❑ **Regional imbalance:** Cooperatives in eastern India are not as developed as those in western India
- ❑ **Low competitiveness:** due to lack of professional guidance, managerial expertise and skilled manpower

Way forward:

- ❑ **Merge small/inefficient societies with stronger ones.**
 - Big societies have more resources, can employ competent manpower, improve competitiveness.
- ❑ **Frame a new National Cooperation Policy**
 - After consulting with all stakeholders
- ❑ **Bring transparency in functioning of cooperatives.**
 - Make RTI applicable to all cooperatives.
- ❑ **Increase awareness among members and public.**
 - When members become aware of their legal rights, they will question autocratic functioning of leaders.

Ministry of Cooperation:

- ❑ In 2021, a new Ministry of Cooperation was formed (earlier Dept of Coop came under **MoA&FW**)
- ❑ It aims to realize vision of "Sahkar se Samridhi" (prosperity through cooperation)
- ❑ It will strengthen the **legal, policy, and administrative** framework for **cooperative movement** in India.
- ❑ It will improve '**Ease of doing business**' for cooperative societies, improving their **competitiveness**.
- ❑ It will use cooperatives to make each **village prosperous**, and through this, make **India prosperous**.

June 2022 news:

- Govt has allowed cooperatives to access GeM portal as buyer.
- 8.5 lakh registered cooperatives and their 27 Crore members will benefit from it.

97th Amendment 2011: (added new FR, DPSP, Part)

Article 19(1)(c): guarantees freedom to form cooperative societies

Article 43-B: State shall promote formation and functioning of cooperative societies

Part-IX-B: Provisions for regulation, Board members, audit of accounts, etc.

Why was 97th amendment introduced?

Because certain **weaknesses** were seen in functioning of cooperatives:

- State laws:** Some state laws were weak and needed reforms.
- Low accountability:** Elections were often postponed, thus administrators remained in-charge for long time. This reduced their accountability to members.

Hence, to ensure **accountability**, improve **functioning**, and create **deterrence** for violation, 97th amendment was introduced.

2021 Supreme Court ruling: (In 2021, SC struck down certain provisions of 97th Amendment)

- 'Cooperatives' is in **State list** under 7th schedule.
- But 97th amendment was **not ratified** by half the state legislatures.
- Hence, SC ruled that Part IX-B is operative only to **Multi-State** Cooperative Societies

Brief timeline: (not important)

1904: Cooperative Credit Societies Act

1919: Cooperatives became provincial subject

1984: Multi-State Cooperative Societies Act (1984/2002)

2002: National Policy on Cooperatives

2011: Forming cooperatives became FR by 97th Amendment

The Indian EXPRESS Epaper

Premium

Explained: What laws govern tapping a phone; what are the checks in place?

Written by Deeptiman Tiwary | New Delhi |
Updated: April 23, 2022 8:20:17 am

What is Phone tapping?

- Secretly listening to communication between two or more parties.
- It is regulated by:
 - Section 5(2) of Indian Telegraph Act **1885**
 - Section 69 of Information Technology Act **2000**
 - Information Technology Rules **2009**

Legal provisions

- Phone tapping can be done by:**
 - Centre: 10 agencies like ED, CBI, IB, NIA, RAW, etc.
 - States: State police
- Grounds for phone tapping:**
 - Sovereignty and integrity of India
 - Friendly relations with foreign states
 - Public order and safety, etc.
- Order for phone tapping is given by:**
 - Home Secretary in Centre
 - Home Secretary in States

Role of telecom service providers:

- Orders for phone tapping are given to Telecom service providers.
- Service providers are bound by law to comply with such orders.

Did you know?

- **"Off-air phone-tapping"** can be done without involving telecom operators!
- It is illegal to do so, and created a huge storm in army exactly 10 years ago!

Hindustan Times Get App

Army to disband VK Singh's snoops

Updated on Aug 23, 2012
02:12 AM IST

A clandestine military intelligence unit — set up by former army chief Gen VK Singh and accused of tapping the phones of top political leaders — is to be shut down.

The so-called 'technical support division' was controlled directly by VK Singh, who had taken on the government over a dispute on his age — a battle he eventually lost in Supreme Court.

Safeguards:

- **Time limit:** Tapping permitted for 60 days only. Can be renewed, but not beyond 180 days.
- **Review Committee:** headed by Cabinet Secretary in Centre, and Chief Secretary in States.
- **Written record:** Orders and reason for phone tapping must be conveyed in writing.
- **Freedom of press:** Press messages of accredited correspondents shall not be intercepted.

Constitutional provisions:

- 7th Schedule:**
 - Communication comes under Union list
- Article 21:**
 - Right to privacy is violated by unlawful phone tapping
- Article 19(1):**
 - Freedom of speech is violated if people can't communicate without fear

Important judgements:

SC in PUCL case 1997: Illegal phone-tapping violates right to privacy u/a 21

Andhra HC in KLD Nagasree case 2006: Phone-tapping can be done only in case of public emergency or safety

Way forward / Should phone-tapping be outlawed? No

- Surveillance laws are necessary**
 - They help to expose corruption, track organised crime, etc.
- Misuse of law cannot be a ground for its repeal**
 - Rather create checks to prevent misuse

Inter-State Border Disputes

Lord Curzon (Viceroy 1899–1905) once said:

Modern boundaries as Europeans knew it were unknown in the Asiatic world before colonialism arrived.

Background**❑ Traditional idea of territory:**

- Closely administered central area, with gradual loosening of grip towards frontiers.
- People belong to land; multiple tribes belong to same land, so there is high tolerance

❑ Modern idea of territory:

- Centre and borders are administered with equal intensity. No ambiguity over land is allowed.
- People possess land; only one tribe can own particular land, hence disputes

Hence, traditional idea of territory is elastic, and not in congruence with modern demarcation of borders.

Solution

- ❑ Modern boundaries can be drawn for administrative efficiency.
- ❑ But people's relation with land must not be disturbed.
- ❑ Modern borders can co-exist with land-people relations e.g. Free Movement Regime with Myanmar



1951



1970



Today

Except **Tripura** and **Manipur**, NE states were once part of Assam.

1963: Nagaland was carved out of Assam's **Naga hills**

1972: Mizoram was carved out of Assam's **Mizo hills**

1972: Meghalaya was carved out of Assam's **Garo, Khasi, Jaintia hills**

1972: Arunachal was carved out of Assam's **NEFA**

Assam-Arunachal:

- ❑ Arunachal claims that many forest areas of tribals were wrongly given to Assam in 1972
- ❑ Namsai Declaration (July 2022) reduced number of disputed villages to 86 from 123

Assam-Nagaland:

- ❑ Both states accuse each other of encroaching upon land

Assam-Mizoram:

- ❑ In colonial times, Mizoram was known as Lushai hills, a district of Assam
- ❑ 1875 notification mainly differentiated Lushai Hills and Cachar (of Assam)
- ❑ 1933 notification mainly differentiated Lushai Hills and Manipur
- ❑ Mizoram does not want to follow 1933 notification as Mizos were not consulted

Assam-Meghalaya:

- ❑ Meghalaya claims that Assam's Karbi Anglong was part of Khasi and Jaintia Hills
- ❑ In March 2022, agreement was reached to solve dispute in 6 out of 12 areas

Some other inter-state boundary disputes:

Region	Currently in	Claimed by	
Belgaum	Karnataka	Maharashtra	1947: part of Bombay State; 1956: made part of Mysore Languages (2011 census): 40% Kannada, 39% Marathi
Parwanoo	Himachal	Haryana	Survey of India report claims that Himachal has encroached on some of Haryana's land at Parwanoo.
Sarchu	Himachal	Ladakh	Himachal accuses Ladakh of encroaching upon its land.

Reason for inter-state boundary disputes: (History, Geography, Polity, Culture)

HISTORICAL REASONS

- British practice of recreating borders for administrative convenience based on annexations.
- 1956 State Reorganization mostly used district boundaries created by British

GEOGRAPHICAL REASONS

- Shifting rivers, thick forests, difficult terrain makes demarcation difficult

POLITICAL REASONS

- Some parties provoke people for political gains

Negative impact of inter-state border disputes:

- Economic impact:** companies are reluctant to invest in disputed areas, this impacts regional development
- Loss of life:** July 2021 violence at Assam-Mizoram border led to death of 5 policemen
- Regionalism:** border disputes give rise to strong community sentiments and spoil inter-state relations.
- Social impact:** feeling of alienation develops in certain groups, leading to social divisions and hatred
- Security:** security of region is endangered with insurgents and criminals gaining upper hand

Constitutional mechanisms to solve boundary disputes: (Think of three organs of Govt)

- Article 263** → **Inter-State Council** can give recommendations to solve inter-state disputes (but not binding)
- Article 3** → **Parliament** can change boundary/area/name of any state
- Article 131** → **Supreme Court** can hear cases of dispute between two or more states

Way forward:

- Involve all stakeholders** to find solution that is **acceptable to everyone**.
- Demarcate borders** without impacting people's **relation with land**.
- Make borders irrelevant** by protecting ethnic/linguistic group's **cultural rights**.

North Eastern Space Application Centre (HQ Meghalaya, est. 2000)

- JV of **Department of Space** and **North Eastern Council**
- Uses **space science for development** of North-East
- e.g. land mapping, flood early warning, etc.

Importance of maps:

- Maps** are useful in boundary '**demarcation**'. Satellite images provide most accurate maps.
- But '**disputes**' arise because communities lay **claim over same area** (i.e. **our area** vs **your area**)
- Hence, maps have **limited role** in solving border disputes.



State reorganization

1951	1961	1971 Himachal	1981	1991	2001	2011
1952	1962	1972 Mani, Megha, Tripura	1982	1992	2002	2012
1953 Andhra	1963 Nagaland	1973	1983	1993	2003	2013
1954	1964	1974	1984	1994	2004	2014 Telangana
1955	1965	1975 Sikkim	1985	1995	2005	2015
1956	1966 Haryana	1976	1986	1996	2006	2016
1957	1967	1977	1987 Arunachal, Goa, Mizo	1997	2007	2017
1958	1968	1978	1988	1998	2008	2018
1959	1969	1979	1989	1999	2009	2019
1960 Gujarat, Maharashtra	1970	1980	1990	2000 Uttara, Chhat, Jhark	2010	2020

1948	Dhar Commission by Govt; JVP committee by Congress (Linguistic Provinces Commission)	<input checked="" type="checkbox"/> Linguistic basis; <input checked="" type="checkbox"/> Administrative convenience
1953	First linguistic state Andhra created States Reorganisation (Fazal Ali) Commission	Report in 1955; Accepted linguistic basis
1956	States Reorganisation Act 1956 7 th Constitution Amendment Act 1956	14 states and 6 UTs created
1960	Bombay Reorganisation Act, 1960	Bombay divided into Maharashtra and Gujarat
1966	Punjab Reorganisation Act, 1966 Shah Commission	Punjab divided to create Haryana and Chandigarh

Speaker

Article 93: Lok Sabha must choose Speaker and Dy Speaker as soon as possible.
i.e. electing Speaker & Dy Speaker is mandatory, it's not a choice.

Speaker derives powers and duties from:

- Constitution** of India
- Rules** of Procedure and Conduct of Business of Lok Sabha
- Conventions** of Parliament (precedents / unwritten understanding about how something should be done)

Functions/Duties/Powers of Speaker (not merely a presiding officer):

- He can **suspend MPs** for 5 sittings or remainder of session
- He decides on disqualifications under **10th schedule**
- He decides whether a bill is a **money bill** or not
- He is the final **interpreter** of Constitution/Rules/Convention within the House
- He is **guardian** of powers and **privileges** of LS members and its committees
- He appoints **chairperson** of all committees of LS

Independence/impartiality is ensured by:

- Vote:** cannot vote in first instance.
- Salary:** 'charged' on CFI, not subject to vote of Parliament.
- Criticism:** His work cannot be discussed/criticised, except on substantive motion.
- Tenure:** Removal by effective majority, not ordinary majority.

Example of Britain:

- 1) **Speaker resigns** from his party.
 - 2) **Political parties don't field** candidates against the Speaker in General Election.
- Hence, the Speaker continues in that position, as long as he wants.

But in India, **Speaker depends on party** for next election, hence acting impartially is difficult.

India's 4th President Shri V.V. Giri observed: (for Speaker)

- Speaker is **guardian** of privileges of Lok Sabha, **not political party**.
- The holder of such extensive **powers** must discharge duties **impartially**.

Way forward:

- Follow British convention**
 - Speaker resigns from party, and is assured of win in next election
- Elect Speaker from opposition party**
 - To divide cake impartially, let one person cut it, let another person choose any part
- Disqualifications under 10th schedule:**
 - Could be decided by President/Governor on recommendation of EC (recommended by 2nd ARC)

Such steps can boost **people's trust** in parliamentary democracy.

Speaker should not only be neutral, but must be **seen to be neutral**.

Food for thought:

- Ruling party** has majority in LS. Hence, it can easily **get bills passed**.
- So, who is the **Speaker should not matter**. Then why such tussle?

Hint: passing bills is not the only work of LS. By raising uncomfortable issues, MPs hold govt **accountable**.

Speaker has major role in allowing MPs to **speak**, allowing **questions, suspending/disqualifying** MPs, etc.

Some controversies: (Students should not write them unless specifically asked)

- Deputy Speaker** post lying vacant for past three years.
- Frequent suspension** of opposition MPs.
- Aadhaar Bill** certified as Money bill by Speaker.
- FB whistleblower** Sophie Zhang was not allowed to appear before Standing Committee on IT.
- Unparliamentary words:** corrupt, ashamed, eyewash, drama, hypocrisy, incompetent, snoogate, etc.

SPEAKER		1 st Speaker: G.V. Mavalankar 1 st Dy Speaker: Ananthasayanam Ayyangar	
<u>Election:</u> ✓ Date fixed by President ✓ by LS, from amongst its members Resigns from party? ✓UK ✗ India	<u>Speaker vacates his seat when:</u> ✗ The house is dissolved ✓ He ceases to be a member of the House ✓ He is removed by effective majority of LS	<u>Does the Speaker vote?</u> ➤ Does not vote in first instance. Votes in case of tie (casting vote). ➤ When resolution for his removal is being considered, he does not preside, hence votes in first instance, not in case of tie.	<u>When House is dissolved:</u> Speaker continues in office until immediately before the first meeting of the new House (given in Constitution) <u>Speaker:</u> ✗ Holds office during pleasure of President ✗ Must become MP within 6 months of becoming Speaker
Prelims 2017 Consider the following statements: 1. In election for Lok Sabha or State Assembly, winning candidate must get at least 50 per cent of the votes polled, to be declared elected. 2. According to the provisions laid down in Constitution , in Lok Sabha, Speaker's post goes to the majority party and Deputy Speaker's to the Opposition . Which of the above statements are correct? (a) 1 only (b) 2 only (c) Both 1 and 2 (d) Neither 1 nor 2		Prelims 2000 The Speaker can ask a member of the House to stop speaking and let another member speak. This phenomenon is known as (a) decorum (b) crossing the floor (c) interpellation (d) yielding the floor	
<u>Deputy speaker:</u> ➤ Date of election fixed by Speaker ➤ Usually the post goes to main opposition party ➤ Seat vacant since 26 th May 2019 (as on 8 th March 2022) ➤ Automatically becomes Chairman of any parliamentary committee of which he is member.		<u>Speaker Pro Tem:</u> ✓ appointed by President ✓ usually senior-most member ✓ has all powers of Speaker ✓ presides over first sitting of new LS, to administer oath to new members, and let the house elect Speaker. ✓ Ceases to exist once new Speaker is elected.	
<u>Note:</u> Speaker and Deputy speaker don't take any separate oath (other than as MP)			

Judicial Independence

Role of judiciary:

- Resolve **disputes** as per law
- Protect **rights** of the individual
- Interpret and protect the **Constitution**

SC protects FRs in two ways

- (a) **issue writs** like Habeas corpus, mandamus, etc.
- (b) **judicial review** to declare laws unconstitutional

Food for thought:

- Why is **judiciary** needed in a **democracy**? Why can't popularly elected **govt decide everything**?
 - Even if there is judiciary, what's wrong if **courts** give rulings **as per** wishes of **party in power**?
 - If courts don't rule in favour of democratically elected govt, are courts being anti-people/anti-democracy?
- Hint: revise the topic '**Rule of Law**' (Prelims polity class-5 and Mains class-27)

NCERT:

- ❖ Principal role of judiciary is to protect **rule of law** and ensure supremacy of law.
- ❖ It safeguards **rights** of individual, settles **disputes** in accordance with law and ensures that **democracy** does not give way to individual or group **dictatorship**.
- ❖ In order to be able to do all this, it is necessary that the judiciary is **independent** of any political pressures.

Independence of judiciary means:

- Other organs of govt should not **restrain functioning** of judiciary
- Other organs of govt should not **interfere with decision** of judiciary
- Judges are able to **function without fear or favour**

Why is independence of judiciary needed?

- In any society, **disputes** are **natural**.
- But disputes must be settled by an **independent body**.
- If adjudicating body is **not independent**:
 - **Order wont be respected** by party that loses the case
 - **Adjudication is of no use** if the result is known

Independence of judiciary is ensured by:

- Appointment**: Legislature is **not involved** in appointment. Political loyalty is not a criteria for selection.
- Tenure**: **Fixed** tenure ensures that judges function without fear and favour.
- Removal**: Very **difficult** removal process have been prescribed in Constitution (special majority).
- Finances**: salaries and allowances of judges are not subjected to **approval** of legislature.
- Contempt**: judiciary has the power to **penalise** those who are guilty of contempt of court.
- Criticism**: Parliament **cannot discuss** the conduct of the judges except when the proceeding to remove a judge is being carried out.

Judicial Independence vs Judicial Accountability:

- Independence**: (a) not dependent on Executive/Legislature (b) deliver justice without impartially
 - Accountability**: (a) Removal of judges by Parliament (b) Transfer by collegium (c) In-house proceedings
- Independence** does not mean absence of **accountability**. Both are necessary.
To maintain **people's faith** in courts, an independent and accountable judiciary is **sine-qua-non**.

Judicial Accountability

Annual Report of Odisha High Court:

- Odisha HC** has become first in India to publish an annual report.
- It gives **district wise data** on cases and judges.
- It also provides **insights about delays** due to abolition of Odisha Administrative Tribunal.

Judicial Accountability:

- Judges being **responsible** for the orders they give.
- It is a two-fold mechanism:
 - Judges giving **reason** for their decisions
 - Disciplinary **action** for deviation from constitutional and legal standards

Need for judicial accountability:

- Appointment & transfers:**
 - **Collegium** system is opaque, reasons for decision are not made public.
- Case allocation:**
 - CJI's conduct as '**Master of Roster**' was questioned at the unprecedented press conference by four senior-most SC judges in 2018
- Pendency:**
 - **4.7 crore** court cases are pending across India
- Orders:**
 - SC has repeatedly criticised HC judges for poor **quality of judgements**
- Post-retirement:**
 - Judges accepting **lucrative positions** after retirement raises question on their impartiality.

Provisions to ensure Judicial Accountability

- Constitution:**
 - **Article 124 & 218:** impeachment of SC/HC judges
 - **Article 235:** HCs control over subordinate judiciary (can be used to enforce accountability)
- Law:**
 - **RTI** is partially applicable to judiciary (class-54 page-6)
 - **Judges (Inquiry) Act 1968** outlines process to investigate misbehavior or incapacity of a judge
- Judiciary:**
 - **in-house proceedings** and transfer by collegium (students can quote example from Prelims class)

Way forward:

- Permanent Committee** to enquire complaints against judges must be established.
- Annual report** by SC and all High Courts must be made mandatory.
- Live-streaming** of all court cases should be undertaken.
- Cooling-off period** for judges on the lines of civil servants.
- British practice** of automatic nomination to upper house could be explored. (Each and every judge of the Supreme Court has the right to sit in the House of Lords for the rest of his or her life.)

Transparency in working of courts is the best way to extract **accountability** from judiciary. As remarked by Justice Chandrachud in the live-streaming case "**Sunlight is the best disinfectant**".

The Tribune

Home CWG 2022 Trending Entertainment Nation

SC troubled by quality of judgments written by high courts

NEW DELHI: Days after it set aside a Himachal Pradesh High Court verdict for poor and incomprehensible English, the top court has remanded back a case to the Rajasthan High Court after it found that the verdict under challenge neither set out facts nor did it give any reasons for the conclusions reached.

Posted: Apr 23, 2017 09:32 PM Updated: 5 years ago

Hindustan Times Get App

Judge's cow, peacock remarks: Legal fraternity says law and faith shouldn't be mixed

India News
Updated on Jun 01, 2017 10:10 PM IST

The legal fraternity in Rajasthan is aghast at former high court justice **Mahesh Chandra Sharma** for the cow and peacock statements he made on the last day of his tenure, saying "constitutionally the judgment was not correct".

NEWS • LIVE TV INDIA TODAY APP MAGAZINE

Unprecedented judges' press conference was 'spur of the moment' decision: Ex-CJI Ranjan Gogoi

New Delhi
December 9, 2021

On the morning of January 12, 2018, Justice Ranjan Gogoi with three colleagues -- Justice Jasti Chelameswar, Justice Madan Lokur and Justice Kurian Joseph -- for the first time in history, held a press conference to address the press on matters pertaining to the Supreme Court functioning and then Chief Justice of India (CJI) Dipak Misra. The judges said that the press conference was triggered due to the allocation of the PIL on the death of Judge Loya before a bench headed by Justice Arun Mishra by the then CJI who was the "master of the roster".

Charges against SC/HC Judge

From Prelims class-3

Three options

Transfer HC judge to smaller HC by Collegium

*Madras HC CJ
Tahilramani to
Meghalaya*

In-House Procedure by SC

*2019 Ranjan Gogoi
2020 NV Ramana*

Removed by President on Parliament's recommendation

None removed so far

*1993 V. Ramaswami:
1st judge against whom proceedings initiated;
Resolution failed to get 2/3
2011 Soumitra Sen:
RS passed resolution; Resigned*

In-house procedure:

- Adopted in 1997 by Full Court of SC
- Mentioned in Constitution/law? No
- CJI examines → Committee → asked to resign

Complaint against	HC Judge	HC CJ	SC Judge
Committee members (three)	HC Judge CJ of other HC CJ of other HC	SC Judge CJ of other HC CJ of other HC	SC Judge SC Judge SC Judge

Constitutional provisions on removal of SC/HC Judge:

- Proved misbehaviour or incapacity (not defined)
- Special majority in both houses
- Parliament to frame process [Judges (Inquiry) Act 1968]



Judicial Infrastructure

(in lower courts)

Judicial infrastructure can be categorized as:

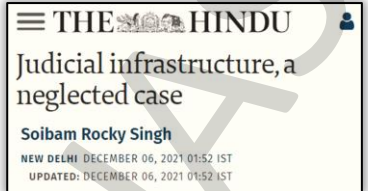
- Physical infra:** courtrooms, lawyers' chambers, residential units
- Digital infra:** video-conferencing devices, broadband connectivity
- Human resources:** judges, lawyers, support staff

Data:

- **24,520** Judicial officers (Sanctioned strength)
- **19,350** Judicial officers (working strength, hence 5k vacancy)
- **20,143** Court halls
- **17,800** Residential units for judicial officers
- **16%** courts don't have **gents toilets**
- **26%** courts don't have **ladies toilets**
- **49%** courts don't have **library**
- **68%** courts don't have separate **record room**
- **73%** courts don't have **computer on judge's table**

Delay in Justice:

- Justice **delayed** is justice **denied**.
- More than **4 crore** cases are pending in lower courts.
- Lack of court **infra** is major reason for **delay** in justice.
- For judicial pendency, see class-2, page-2

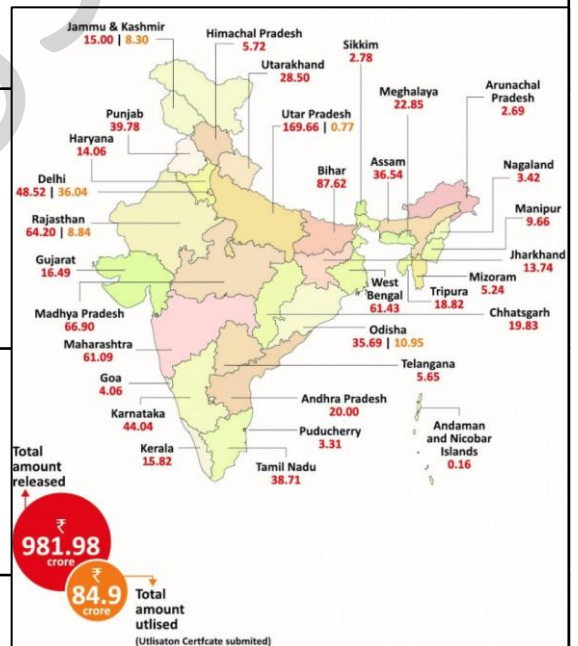


Present mechanism to develop court infra:

- States are responsible** to develop court infra
- Centre helps** by a centrally sponsored **scheme** since 1993 "Development of Infrastructure Facilities for Judiciary":
 - Court buildings, Digital computer rooms, Toilets
 - Residential quarters for judicial officers
 - Lawyers' halls

National Judicial Infrastructure Authority of India:

- Proposed** by CJI N.V. Ramana
- Rejected** by Centre & many states
- Statutory body** to improve court infra
- Benefit:** institutionalisation of mechanism through dedicated agency



Way forward

- Centre-State coordination**
 - Dept. of Justice must coordinate with States, for proper implementation of the central scheme
 - Update infra status on court websites**
 - Accountability can be ensured if status of infra projects is regularly updated on court websites
 - Performance audit of utilisation of funds**
 - Before allocating new funds, detailed audit must be conducted
 - Develop new and upgrade existing**
 - Simultaneous efforts to modernise existing courtrooms with better technology
- ❖ Providing **speedy, fair and affordable justice** is a non-negotiable sovereign function
- ❖ It is high time that infra in lower courts gets the **attention it deserves**.
- ❖ As CJI NV Ramana said "**Institutionalising the mechanism for judicial infra** is the best gift we can give to our country in this 75th year of Independence"

eCourt project: (PIB 22-07-2022 <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1843360>)

- Launched in **2007** as part of National **eGovernance** Plan
- It aims to **improve access to justice** using technology
- Phase-1 2007-2015:** 14,249 Court sites were computerized
- Phase-2 since 2015:** 18,735 Court sites have been computerised so far
- Progress:
 - High-speed **broadband** in 99.3% courts complexes
 - **Case Information Software** has been developed
 - **National Judicial Data Grid** provides case status to lawyers and litigants
 - **20 Virtual Courts** in 16 States / UTs for traffic offences
 - **Live streaming** of proceedings started in certain HCs.
 - **E-filing system** for Vakalatnama, eSigning, oath, online payment, etc initiated
 - '**Judgment & Order Search**' portal created to search for orders of HCs

NJIA

From Prelims Polity class-6

Miscellaneous

National Judicial Infrastructure Authority of India

- Central body, headed by CJI, for better infra in courts
- States** are responsible to develop court infra
- Centre** helps by a centrally sponsored scheme since 1993
Development of Infrastructure Facilities for Judiciary

National Litigation Policy:
to **reduce** govt litigations

Legal Info Mgmt & Briefing System LIMBS
portal to **monitor** govt litigations

National Mission for Justice Delivery and Legal Reforms 2011:
Increase access to justice, reduce delays, enhance accountability

eCourts project:
portal providing **case status**, cause list, orders, etc. of district and Taluka courts

Administrative Mechanism for Resolution of Disputes:
for resolution of Inter-Ministerial/Departmental disputes

Re-engineering committees in HCs:
eliminate redundant **processes** and make court process ICT enabled.

National Judicial Data Grid:
Web portal to show number of cases **pending** in any court in the country

FASTER: Fast & Secured Transmission of Electronic Records
To **transmit** e-copies of stay **orders**, bail orders, etc

Interoperable Criminal Justice System:
 Central Sector Scheme; lead by **NCRB**
 integrate e-courts, e-prison, CCTNS, e-prosecution, e-forensic, etc.

SUVAAS: SC Vidhik Anuvaad Software
AI tool to translate SC judgments to **vernacular languages**

Sentinel on the qui vive
SC's role to guard democracy and rights

SUPACE: SC Portal for Assistance in Court's Efficiency:
AI tool collects relevant **facts & laws** and shows them to judge

Lok Adalat

Cases where compromise is not allowed

- Civil;
 Criminal;
 Pending cases;
 Pre-litigation;
 Non-compoundable;
 Divorce cases



NEWS SERVICES DIVISION
ALL INDIA RADIO

Jul 11, 2020, 7:38PM

Chhattisgarh organises India's first e-Lok Adalat

In the wake of the financial crisis faced by the people and the lawyers due to the Corona virus pandemic, the High Court and Chhattisgarh State Legal Services Authority decided to organize e-Lok Adalat for resolving the pending cases. Inaugurating the e-Lok Adalat, the Chief Justice of Chhattisgarh High Court P R Ramchandra Menon said that in this difficult time of pandemic, e-Lok Adalat is a noble initiative to bring relief to people and to reduce the pendency.

Article 14:
Equality before law

Article 39-A: (42nd CAA)
free legal aid to poor & weaker sections

Lok Adalats:

- By NALSA, SALSA, DLSA
- under Legal Services Authorities Act, 1987
- Chairman: Judicial officer
- Members: Lawyer and social worker
- final and binding; no appeal

Prelims 2005:

Consider the following:

1. Disputes with mobile cellular companies
2. Motor accident cases
3. Pension cases

For which of the above are Lok Adalats held?

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

Prelims 2009:

With reference to Lok Adalats, consider the following statements:

1. An award made by a Lok Adalat is deemed to be a decree of a civil court and no appeal lies against thereto any court.
2. Matrimonial/Family disputes are not covered under Lok Adalat.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
 (c) Both 1 and 2 (d) Neither 1 nor 2

Prelims 2010:

With reference to Lok Adalats, which of the following statements is correct?

- (a) Lok Adalats have the jurisdiction to settle matters at pre-litigating stage and not those matters pending before any court
 (b) Lok Adalats can deal with matters which are civil and not criminal in nature.
 (c) Every Lok Adalat consists of either serving or retired judicial officers only and not any other person.
 (d) None of the statements given above is correct.

NALSA

- National Legal Services Authority
- Legal Services Authorities Act, 1987
- Provide free legal aid; Organize Lok Adalats
- Patron-in-Chief → CJI
- Chairman → SC Judge (serving-ret'd.)

NALSA: National Level

SLSA: State level (HC C.J.)

DLSA: District level (District Judge)

Prelims 2013:

With reference to National Legal Services Authority, consider the following statements:

1. Its objective is to provide free and competent legal services to the weaker sections of the society on the basis of equal opportunity.
2. It issues guidelines for the State Legal Services Authorities to implement the legal programmes and schemes throughout the country.

Which of the above statements are correct?

- (a) 1 only (b) 2 only
 (c) Both 1 & 2 (d) Neither 1 nor 2

Prelims 2020:

Legal Services Authorities provide **free legal services** to which of the following type of citizens?

1. Person with an annual income of less than Rs. 1,00,000
2. Transgender with an annual income of less than Rs. 2,00,000
3. Member of Other Backward Classes (**OBC**) with an annual income of less than Rs. 3,00,000
4. All **Senior Citizens**

Select the correct answer using the code given below:

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

Note for students:

- All states have different income ceiling.
- UPSC framed this question based on **eligibility criteria for Delhi**
- Still, one could have attempted the question based on options (3) and (4) as the **1987 act does not mention OBCs and Senior Citizens.**

Eligibility for free legal aid (www.nalsa.gov.in)

- SC, ST, Women, Child, Disabled
- Industrial workman; Person in custody
- Victim under article 23 of Constitution
- Victim of mass disaster/ethnic violence/ etc
- Earning less than 5 lakh/year for Supreme Court
- Earning less than <state govt limit> for other courts

Eligibility criteria in Delhi

General	Rs 1 lakh
Senior citizen	Rs 2 lakh
Transgender	Rs 2 lakh



Initiatives launched by Ministry of Law & Justice in 2017 :

- Tele-Law initiative:** Lawyers at SLSA give legal aid through CSCs
- Pro bono legal service:** Lawyers give free legal advice to poor people
- Nyay-mitra scheme:** Focus on cases older than 10 years

Common Service Centres:

- Initiative of **Meity**.
- For delivering Govt **e-services** in rural areas
- Set up in **2006** as part of National e-Governance Plan

ADR

Alternate Dispute Resolution to solve conflicts outside ordinary law courts

Binding orders,
But not a court of law



Orders not binding



Parties find solution,
with 3rd persons help



Amendments to Arbitration and Conciliation Act, 1996:

- 2015:** imposed time limit of 12 + 6 months for arbitral award
- 2019:** removed time limit for international arbitration; allowed appointment of arbitrators by 'arbitral institutions' designated by SC/HC; provided for setting up Arbitration Council of India
- 2021:** removed qualification criteria for arbitrators; stay on arbitral award if induced by fraud

Arbitration Council of India:

- for grading arbitral institutions and accreditation of arbitrators
- Chairman:** SC Judge / HC CJ / HC Judge / Eminent person
- Chairman **appointed by Central Government** in consultation with CJ
- Ex-officio members: Secretary (Dept. of Legal Affairs); Secretary (Dept. of Expenditure); CEO ACI
- Two full time and one part-time members from academia/industry

UN Convention on International Settlement Agreements Resulting from Mediation:

- aka Singapore Convention on Mediation
- First UN treaty to be named after Singapore
- Came into force in September 2020
- India has signed it? Yes

Clarification for Polity class-2:

In the list "Minister cannot be part of following committees" given on page-14, please add "Committee on Public Undertakings"

I read I forget, I see I remember

See explanation of this PDF on **YouTube** www.youtube.com/c/allinclusiveias

Alternative Dispute Resolution

For online justice delivery, refer class-54 page-3

- ❖ Litigation in courts is marred by **delays**, complex **procedure**, poor judge to population **ratio**, etc.
- ❖ ADR mechanisms solve conflicts **outside ordinary law courts**.
- ❖ It mainly includes Arbitration, Conciliation and Mediation.

Note: For Benefits & Issues, students can reproduce points from Tribunals (Class-3 page-2)
The points may not exactly fit in, but will work.

Benefits of ADR:

- ❑ **Specialisation:** expertise is required to decide complex cases of **technical** nature.
- ❑ **Relief to Courts:** they reduce case **burden** on courts
- ❑ **Flexibility:** not bound by rigid **rules of procedure**; good for changing socio-economic scenario; follows principle of natural justice (no strict application of archaic laws)
- ❑ **Less Expensive:** ensures **cheap & quick** justice. (as experts have subject area knowledge)

Issues with ADR:

- ❑ **Against separation of power:** Executive does work of judiciary
- ❑ **Lack of independence:** they don't enjoy same constitutional protection as high courts, hence are vulnerable to **political influence**.

Election Laws Amendment

Refer class-10 for electoral reforms and RPA 1950/51

Election Laws (Amendment) Act, 2021:

- ❑ It amends RPA 1950 & 1951 to implement certain **electoral reforms**.
- ❑ **Link electoral roll with Aadhaar:**
 - Aadhaar number may be required for authentication of name in electoral roll.
- ❑ **Qualifying date for name in electoral roll:**
 - Provides four dates instead of one. (January 1, April 1, July 1, October 1)
- ❑ **Gender neutral:**
 - Replaces the word 'wife' with 'spouse' in both the Acts

Benefits of linking electoral rolls with Aadhaar:

- ❑ Helps in **de-duplication** of electoral rolls, as currently many people are enrolled as voter in multiple places.
- ❑ Helps in preventing **bogus voting** and frauds

Concerns:

- ❑ **Aadhaar is not mandatory**
 - Hence, **people without Aadhaar** number may face harassment by officials.
- ❑ **Aadhaar is not a proof of citizenship**
 - Only citizens can vote. But many **non-citizens have Aadhaar**.
 - Using Aadhaar for authentication will **enable non-citizens to enrol as voter**.
- ❑ **Misuse of data:**
 - Aadhaar number can reveal if the voter has accessed **welfare subsidies**.
 - This data can be used for **targeted election campaigns**.

Way forward:

- ❑ **Error-free electoral roll** is sine qua non of free and fair election.
 - Hence, use of Aadhaar to clean electoral rolls is a step in **right direction**.
- ❑ However, a robust **data protection law** should be introduced at the earliest.
 - It will help in addressing concerns about possible **misuse of data**.

Public Interest Litigation (PIL)

Social
Action
Litigation

SC has expressed concern at the mushrooming growth of frivolous PILs.

Public Interest Litigation:

- ❑ Litigation in SC/HC to secure public interest.
- ❑ It is a relaxation from the rule of locus standi.

Locus standi: petitioner must be directly/indirectly affected by defendant

Constitutional basis of PIL? Article 32 & 226

People have right to move SC/HCs against violation of rights.
However, PIL is not defined in any article of Constitution or law.

Significance of PILs:

- ❑ Makes judiciary more accessible
 - Public spirited citizens can file petition on behalf of those who cannot easily approach courts.
- ❑ Strengthens democracy
 - Court mandated election candidates to file affidavit about their income, assets, education, etc.
- ❑ Ensures accountability of public authorities
 - Prison officials misusing their powers, to torture inmates taken up in Sunil Batra case 1980
- ❑ Social justice for weaker sections
 - Free legal services to poor & needy is essential element of justice (Hussainara Khatoon case 1979)
- ❑ Protects Environment:
 - MC Mehta case 1987: SC brought principle of absolute liability (instead of strict liability)
 - (For absolute liability, see class-40 pg-11)
- ❑ Fills void left by Executive:
 - Vishaka case 1997 on preventing sexual harassment at workplace. It led to enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Problem with PILs:

- ❑ Misuse by Public:
 - Many PILs are filed for personal or political interest
 - PIL to bar media from reporting mass covid deaths
- ❑ Stalls development:
 - Some PILs are used to delay development activities.
 - Kudankulam Nuclear plant was opposed by several PILs in 2011
- ❑ Clogs wheels of justice:
 - More than 25,000 PILs are filed in Indian courts every year
 - Frivolous PILs encroach on judiciary's precious time to deliver justice
- ❑ For business rivalry:
 - Some PILs are filed by industrial groups to gain advantage over rivals
 - 2011 Kalyaneshwari case PIL was filed by rivals to promote their products as asbestos substitutes.
- ❑ Against Separation of Power:
 - Courts use PILs to enter into the domain of policy-making
 - e.g. Ban on BS-IV vehicles from April 1, 2020
- ❑ Judicial activism:
 - PIL is the chief instrument through which judicial activism has flourished in India
 - e.g. Compulsory singing of National Anthem in cinema halls (2016-18)

Way forward:

- ❑ Identify frivolous PILs
 - Follow SC guidelines to separate genuine PILs from motivated ones.
 - Public interest and urgency must be involved
 - Credentials of petitioner must be verified before entertaining the plea
- ❑ Impose penalty on those misusing PILs
 - ₹ 1 lakh penalty has been imposed on several occasions for frivolous PILs
- ❑ Accountable Executive
 - If Executive functions responsibly, courts won't be needed to fill the void

Live Law
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Frivolous PILs Should Be Nipped In Bud; They Encroach Judicial Time, Stall Development Activities : Supreme Court
LIVELAW NEWS NETWORK 4 June 2022 9:51 AM

Live Law
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Delhi High Court Dismisses PIL Seeking Bar On Media For Reporting Mass Scale Deaths, Broadcasting Negative News In Wake Of Second Covid Wave
Nupur Thapliyal 3 May 2021 2:29 PM

Brief Background:

1979 Hussainara Khatoon vs. Bihar case

- Newspapers published reports of **undertrials** in jail for more than the maximum punishment.
- Advocate **Kapila Hingorani** filed case in SC, before bench of Justice **P N Bhagwati**.
- 40,000** prisoners were subsequently **released**.

1980 Sunil Batra vs. Delhi Administration

- A prisoner of **Tihar** jail sent a piece of paper to Justice **Krishna Iyer** of SC
- It described physical **torture** of the prisoners.
- Justice Krishna Iyer got it converted into a **petition**.

- ❖ Before 1979, only affected persons could approach the courts .
- ❖ Justices **PN Bhagwati** and **Krishna Iyer** were among the first to admit PILs.
- ❖ They did not insist on **procedural technicalities** and even **ordinary letters** were treated as writ petition.
- ❖ Subsequently, PIL became the most important **vehicle of judicial activism**.



Election freebies

A bribe is a bribe,
be it in cash or kind.

Election freebies: given free of charge, with intention to get favourable vote.
Political parties are outdoing each other in promising election freebies.

Arguments in support of freebies	Arguments against freebies
People get <u>basic needs</u> like water, electricity <u>for free</u>	Free encourages excess use, leading to <u>wastage of resources</u> It is govt's <u>duty</u> to meet basic needs at nominal charges
People's <u>standard of living</u> rises by laptop, mobile	<u>Poverty</u> struck people have <u>other priorities</u>
Freebies make <u>people happy</u>	<u>Once in 5 year gifts</u> are no substitute to development, cannot alleviate <u>daily suffering</u>
India is a <u>welfare state</u> and freebies reduce economic inequality.	<u>Basic welfare</u> delivered through PDS/schools/hospitals is of <u>poor quality</u> .
If <u>companies</u> can be given ' <u>incentives</u> ' to invest, why can't <u>poor</u> be given ' <u>freebies</u> ' to vote?	<u>Investment</u> benefits <u>everyone</u> , but <u>vote</u> benefits only political <u>party</u>
Bulk order boosts <u>factory output</u>	Assured sale <u>reduces competitiveness</u>

Some other arguments against freebies:

- Undermines democracy:**
 - It is like bribing the voter; Performance of party in power is ignored by voters
 - Freebies shake the root of free and fair elections (SC in Subramaniam Balaji case 2013)
 - Use of govt funds by party in power disturbs level playing field
- Burdens state finances: (Fiscal stress)**
 - States have limited financial resources
 - Freebies are passport to fiscal disaster, can cause sub-national bankruptcy (15th FC chair NK Singh)
- Damages environment:**
 - Free water & electricity leads to wastage of natural resources
- Against development:**
 - Capital expenditure takes back seat due to paucity of funds
 - Freebies divert attention from real developmental issues
- Domino effect:**
 - Other parties/states also come under pressure to announce freebies.
- Spoils people:**
 - People expect freebies in all elections
 - Credit culture is destroyed if people are repeatedly given loan waivers

SC in Subramaniam Balaji case 2013:

- Election freebies shake the root of free and fair elections.
- SC directed EC to frame guidelines on election manifestos.
- EC made changes to Model Code of Conduct. Manifesto must:
 - Reflect reason for the promise
 - Indicate the ways and means to meet the expenses

Can EC regulate freebies?

Yes:

- Article 324 empowers EC to conduct free and fair elections.
- Section 123 of RPA 1951 declares gifts that influence voters as 'corrupt practice'

No:

- EC lacks authority to regulate any act which is done before the announcement of election date.
- EC lacks power to deregister political parties for making any 'irrational promises' to voters.
- There is no objective criteria to grade which freebies are justified and which are not.

Business Standard

Can't ban promise of freebies by parties, amount to overreach: EC to SC

The EC told the SC that offering freebies either before or after elections is a policy decision of a political party, and it cannot regulate state policies and decisions taken by the parties.

IANS | General News Last Updated at April 09 2022 13:47 IST

The EC clarified that it does not have power to deregister a political party, except on three grounds, which were outlined by the top court in case of Indian National Congress Vs Institute of Social Welfare and others (2002).

The grounds are -- registration obtained on fraud and forgery, party ceased to have faith and allegiance to the Constitution, and any other alike ground.

Way forward:

- Give legal status to MCC; **empower EC** to deregister parties if they violate MCC
- Ban new schemes 6 months before elections, **ban anything that's free** in party manifestos
- **Spread public awareness** about negative economic impact of freebies (its taxpayer's money!)

Why Parties give freebies?

- To hide their **poor performance**
- To alter voter's mindset from **real issues**

Why People vote for freebies?

- People lack knowledge to **evaluate performance**
- People like anything that's for **free**

Food for thought

- ❑ Money came **from people**, money went **to people**.
 - So what's wrong with freebies?
- ❑ **Simply spending money**, launching schemes, creating infra, **is not enough**.
 - Money needs to be **spent wisely**.
 - e.g. Sri Lanka spent money on 'infra', but it turned into liability, instead of asset.
- ❑ **MNREGA** creates assets that benefit locals
 - People 'earn' by working.
- ❑ **Right to Education** 'empowers' youth
 - Free mobiles cannot replace quality education.

Example of UP Assembly election 2022:

- ❑ **BJP**: LPG cylinders on Holi/Diwali; Free electricity to farmers; 2 crore mobile/tablets for students
 - ❑ **INC**: 3 LPG cylinders/year; Farm loan waiver; Free travel for women in bus; mobile/scooty for girl students
 - ❑ **AAP**: 300 units free electricity; Farm loan waiver; Free travel for women in bus; ₹ 1000/month to all women
- But, at whose expense? What if this money is used for 'real development' (empowerment of the weak)

Note: Students must be clear about the difference between:

- ❑ **Duty of govt:** Food, work, education, health
- ❑ **Right of people:** NFA 2013, MNREGA 2005, RTE Act 2009
- ❑ **Scheme of govt:** PM-JAY (₹ 5 lakh health insurance to about 10 crore families)
- ❑ **Freebies for vote:** free electricity/water/transport/mobile/scooty

Home Common Ground India Fix Eco India Latest

Bad loans of Rs 10 lakh crore been written off as 'muft ki revdi': Varun Gandhi's dig at Modi

The BJP MP cited government data to call out the phrase the prime minister recently used while commenting on freebies announced by political parties.

- ❑ **Some developed countries** also give freebies,
 - but that is given 'after' basic rights are delivered
 - Also, motive is not votes, but environment, etc.
- ❑ **In India**, is the govt fulfilling its duty, and people getting their rights, that we are jumping to freebies?

← Note:

- ❑ Election freebies is currently a hot **political topic**.
- ❑ Hence, **newspapers are filled** with such articles/news.
- ❑ Students are advised **not to mention** any such statement, or name any political party or leader in their answer.

Lending a hand is better than giving dole

- ❑ Give a man a **fish**, you feed him for a **day**
 - Teach him **fishing**, you feed him for a **lifetime**
- ❑ **Empowering** the weak **is better**
 - **than** doing favours out of **sympathy**.
- ❑ **Krishna did not fight** on behalf of Arjun,
 - rather **he empowered** Arjun to fight.
- ❑ **Schemes redistribute** the wealth
 - But **laws empower** the weak (NFA, MNREGA, RTE, RTI)
- ❑ **Public money** must be spent to **empower the public**,
 - not to show **greatness of govt**.

Students can also refer class-21 page-9 (redistribution vs empowerment)

Article 38:

- State shall **promote welfare** of people.
- State shall endeavour to **eliminate inequalities** in status

Section 123 in The Representation of the People Act, 1951

*123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:— 1[

(1) “Bribery”, that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or 2[to withdraw or not to withdraw] from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for 3[having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;

Elections cannot be said to be 'Free and fair' in following cases:

- Manipulating district boundaries** to get undue advantage (Gerrymandering)
- Massive financial advantage** with any party
 - People are influenced by online/offline campaigns, all this needs money
 - More money → more campaign → more votes
- Use of government resources** to advantage of the ruling party (Offence under RPA 1951) (HC disqualified PM for this in 1975)
- Govt officials** favouring ruling party
 - Bureaucrats play key role in elections
 - Police vans are allegedly used to transport money for party in power

 Become a Q-Insider 

Women in Madhya Pradesh Win Panchayat Elections, but Male Relatives Take Oath

VISHNUKANT TIWARI INDIA

Published: 05 Aug 2022, 11:51 AM IST 1 min read

THEWEEK

‘Acted as a political agent’: MP High Court blasts Panna collector

By Sravani Sarkar

Updated: August 04, 2022 18:56 IST

Prelims 2017:

Democracy's superior virtue lies in the fact that it calls into activity

समझदार जनता

(a) **the intelligence and character of ordinary men and women**

मजबूत सरकार

(b) the methods for strengthening executive leadership

दूरदर्शी नेता

(c) a superior individual with dynamism and vision

समर्पित कार्यकर्ता

(d) a band of dedicated party workers

Right to vote is not democracy if:

- If elections are not free and fair.
- If there is no opposition to chose.
- If people are influenced by money/muscle power.

Democracy calls into activity **character of people.**

If people vote on the basis of freebies/caste/religion etc, then democracy becomes defective.

Role of Social Media in Elections

Also see
class-45 page-07
"Fake news"

Importance of social media in elections:

- Direct two-way communication** between leaders and people in real time.
- Feedback from public** can be obtained by opinion polls, online survey, user comments, etc.
- Fact checking of claims** made by political leaders by sharing video proof on social media.
- Cost-effective** method of reaching masses, instead of expensive print media ads.

Need to regulate:

- Social media has become the dominant **tool for shaping public opinion**.
- It has **changed the way elections** are fought and won in India.
- Its **impartial regulation** is necessary for free & fair elections.

Steps taken:

Given the importance of social media in elections, EC has taken following steps:

- Candidates' social media handle must be mentioned in election affidavit**
 - But, campaigning is done through lakhs of accounts of party workers.
 - Compare: how many candidates you follow vs how many campaign messages you receive
- MCC, silence period, and other electoral regulations apply to social media as well**
 - But, fake accounts are used to bypass all regulations
- Expenditure on social media ads is counted as election expense of candidate**
 - But public opinion is shaped through posts/forwards, and not ads on social media

Issues:

- Difficult to monitor:**
 - **WhatsApp** group messages cannot be monitored, unless some group member files complaint.
- Fake news:**
 - Unverified info **spreads** freely on social media **without** any **checks**.
- Use of proxy accounts:**
 - Candidates use **fake accounts** to spread **malicious messages**, and **campaign** during silence period.
- Online abuse:**
 - Trolling of people with **dissenting opinion**
- Misuse of data:**
 - Cambridge Analytica scandal exposed how all parties do **targeted messaging** on social media.
 - **Digital footprint** is used to create psychological profile for electoral gains.
- Echo chambers:**
 - Algorithm used by FB creates echo chamber where people only see **viewpoints they agree with**.
- Biased action by platforms** (Facebook, Twitter, etc)
 - **Sophie Zhang case** revealed how FB allows govt to manipulate political discourse in its favour.

Way forward:

- Fight misinformation:**
 - Govt should **encourage fact-checking** websites which debunk misinformation with proof.
- Protect data:**
 - A **data protection law** should be brought to prevent misuse of user data for political purpose.
- Increase transparency:**
 - All **complaints** received by platforms, and **action taken** in each case, must publicly accessible.

Food for thought: In election matters, why some people become so emotional?

EXECUTIVE	
Permanent Executive (Civil Servants)	Political Executive (Ministers)
SELECTED ; procedure conducted by UPSC	ELECTED ; procedure conducted by EC
CANDIDATES compete , only some emerge winner	CANDIDATES compete , only some emerge winner
SUPPORTERS don't fight among themselves	SUPPORTERS fight ; violence occurs; society is divided
WINNERS are bound by Rule of law ; expected to serve everyone impartially	WINNERS are assumed to be above law ; expected to rule in favour of certain sections
Mains 2022	GS-2 & GS-3
Class-65	
Page-01	© All Inclusive IAS

Democratic Decline:

- ❑ **Democratically elected** govts are adopting **authoritarian tactics**:
Politicization of judiciary; Manipulation of Media; Restriction on civil rights; Weakening of civil society
- ❑ Such actions enjoy significant **public support**.
- ❑ **Brazil & India** are the most worrying examples.

Class-63 page-06: Judiciary ensures that **democracy** does not give way to individual or group **dictatorship**.

Threat to Democracy:

- ❑ **Non-acceptance of election result by some groups in public**
 - Trump supporters stormed **Capitol building** after his defeat in 2020 Presidential elections
- ❑ **Disinformation on Social media to manipulate public opinion**
 - Russian interference in 2016 **US presidential elections**
- ❑ **Rising polarization in society on political lines**
 - Polarisation makes it **difficult** for opposing parties **to reach agreement**
 - Polarisation refers to splitting of public opinion into **two opposing extremes**
- ❑ **Marginalisation of minorities encourages tyranny of majority**
 - Biased laws, or discretionary application of law, **violates equality**
 - Sri Lanka briefly **banned burials** citing covid spread
- ❑ **Commercialisation of news reduces public trust in media**
 - Weakening of fourth pillar of democracy **reduces govt's accountability**
- ❑ **Politicization of judiciary weakens rule of law (gives way to Rule of Men/Group)**
 - Independent judiciary ensures that **democracy** does not give way to **dictatorship**

Way forward: To curb rising authoritarianism following steps can be taken:

- ❑ Invest in **democracy education** at all levels of schooling.
- ❑ Strengthen **checks & balances** that are essential in democratic systems.
- ❑ **Bring reforms** to close the gap between what people want and what govt delivers.
- ❑ **Learn from other countries'** experience in fighting disinformation.

Five core attributes of democracy:

- ❑ **Representative govt:** Inclusive suffrage, Free political parties, Clean elections
- ❑ **Fundamental Rights:** Equality & Social rights, Access to Justice
- ❑ **Impartial administration:** Predictable enforcement, Absence of corruption
- ❑ **Checks on govt:** Judicial independence, Media integrity, Effective Parliament
- ❑ **Participatory engagement:** Direct democracy, Civil society participation

Why is democracy preferred form of govt?

- ❑ **Reduces possibility of rash decision-making**
 - Sudden decisions by Executive are less likely, as decisions are taken after consultation
- ❑ **Gives opportunity to correct mistakes**
 - People can protest against decisions, judiciary can strike down Executive decisions
- ❑ **Promotes peace and stability**
 - Internal armed conflicts are rare as people's rights are respected
- ❑ **Ensure global security**
 - Democracies are less likely to go to war, as people can overthrow warmonger leaders

Quotes:

- ❖ In a **democracy, dissent** is an act of **faith**. - JW Fulbright
- ❖ **Democracy is good**. I say this because **other** systems are **worse**. - JL Nehru
- ❖ I understand democracy as something that gives the **weak** the same chance as the **strong**. - MK Gandhi
- ❖ Best argument against democracy is a 5-minute conversation with the average **voter**. - Winston Churchill
- ❖ Democracy cannot succeed unless people **choose wisely**. Therefore, the real safeguard of democracy is **education**. - Franklin D. Roosevelt

IT Rules, 2021

Why were IT Rules 2021 needed?

- ❑ **Failure of self-regulation** by social media companies.
- ❑ **Weak grievance redressal** mechanism on social media platforms.
- ❑ **Social peace is disturbed** by spread of malicious messages on social media.
- ❑ **Proliferation of child porn** and sexual violence content on social media.

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

- ❑ Framed under section 87 (2) of IT Act, 2000; replaces IT Rules 2011

SOCIAL MEDIA

- Identify 'first originator' of content that authorities consider anti-national
- Appoint grievance officer, resolve complaints in 15 days
- File monthly compliance report on complaints received, action taken

DIGITAL NEWS

- Follow Press Council of India, Cable TV Networks (Regulation) Act norms.
- Self-regulatory bodies to oversee adherence to Code of Ethics
- I&B Ministry to form panel, oversight mechanism

OTT PLATFORMS

- Self-classify content into five age-based categories: U (universal), U/A 7+ (years), U/A 13+, U/A 16+, and A.

- Parental locks for any content classified as U/A 13+ or above.
- Age verification mechanism for content classified as 'A' (adult)

Also, for Social media intermediaries:

- ❑ **Remove intimate pictures** within 24 hours of complain
- ❑ **Remove unlawful info on govt orders**, that is against interest of sovereignty and integrity of India, public order, decency, morality, etc.
- ❑ **Safe harbour provisions won't apply** if rules are not followed (immunity from legal prosecution for any content posted on their platform)

Some issues:

- ❑ **Rules remove protection given by law** (Section 79 of IT Act 2000)
 - If intermediaries don't follow the rules, they won't enjoy safe harbour protection
- ❑ **Rules go beyond the powers delegated under parent act**
 - Rules define new types of entities and state their obligations
- ❑ **Identification of the first originator of information**
 - Enabling traceability impacts privacy of individuals, makes them vulnerable to cyber attacks
- ❑ **Excessive govt control**
 - Rules can be misused to curb criticism and dissent against govt

Way Forward:

- ❑ Bring data protection law
- ❑ Bring law that is debated in Parliament, instead of using rule-making powers
- ❑ Application of rules should be impartial, to ensure equality as per Article 14

Amendments to 2021 rules:

(They were proposed, were withdrawn, hence not important for Mains exam)

- ❑ **'Grievance Appellate Committee' to appeal against decision of intermediary**
 - Issue: it will make govt controller of permissible speech on internet (like China?)
- ❑ **Resolve all complaints within 72 hours**
 - Issue: shortened timeline will not allow fair scrutiny (high load during elections)

Civil Society

Civil Society

- ❑ Voluntary groups that contribute to the **functioning of society**.
- ❑ It is the **'third sector'** of society, other than the govt and business.
- ❑ e.g. groups for political reforms, civil rights, environment protection, women's rights, NGOs, etc.

'Civil Society' became popular in 1980s when it started **non-state movements defying authoritarian regimes**, especially in Eastern Europe and Latin America.

Importance of Civil society:

Students can reproduce points from class-31 pg-03. Also:

Role in democracy:

- ❑ Democracy is **not limited to elections**
- ❑ Democracy is about citizens **holding power-holders accountable**

Role during Covid lockdown:

- ❑ Govt took help of 92,000 Civil Society organizations to deliver food, shelter, etc. to the needy (source: PIB)

Role in Lokpal Act:

- ❑ Civil society played key role in drafting The Lokpal and Lokayuktas Act, 2013
- ❑ **Joint Drafting Committee (5 ministers + 5 members of civil society) held more than seven meetings.**
- ❑ Though India got the Act in 2013, it was only in 2019 that we got the first Lokpal.

Two examples from 2nd ARC 2007: (Ethics in Governance, Fourth Report)

- ❑ **Mazdoor Kisan Shakti Sangathan in Rajasthan:**
 - used **Jan Sunwai** (public hearings) to expose corruption in local public works
- ❑ **Parivartan NGO in Delhi:**
 - used RTI to expose corruption in PDS shops (grain diverted to open market)

Issues:

- ❑ **Misuse of govt funds** by some NGOs
- ❑ **Money laundering** by some non-profit organisations
- ❑ **Stalling of development** projects through public protests, filing PILs, etc.

Should Civil society be banned?

Civil society is sometimes seen as a threat to national security. Should it be banned? No, because

- ❑ **Executive is accountable** to people through civil society, media, legislature, judiciary, etc.
 - Democratic govt cooperates with CS, while authoritarian govt criticizes CS.
- ❑ **Hence friction is natural** between Executive and other pillars of democracy.
 - **Absence of friction** means **absence of checks** on Executive's powers.
- ❑ **All pillars must be equally strong** for democracy to function optimally.
 - When **everyone** is equally **strong**, **no one** can **misuse** power.

Note: never say that any law/institution should be repealed/banned. Always do constructive criticism, show scope of improvement, and positively conclude the answer.

Article 19: guarantees right to form associations and freedom of speech & expression

Remember: Free speech is about **asserting our rights**, its not about **suppressing other's rights** (class-61 pg-04)
Hence, groups can be formed to **fight against rights violation**, but **not to advocate rights violation**.

Chronology: groups openly advocate rights violation → govt loses authority → people take security in own hands → social divisions strengthen → nation weakens

The Telegraph

NSA Ajit Doval says civil society is 'new frontier of war'

New Delhi | Published 15.11.21, 02:11 AM

"The new frontier of war, what you call the fourth-generation warfare, is civil society... that can be... manipulated to hurt the interest of a nation," Doval said at an IPS passing-out parade at the National Police Academy, Hyderabad, on Friday.

A former Intelligence Bureau director said Doval's statement was "shocking" and unbecoming of a national security adviser.

"He is, in effect, asking trainee IPS officers to act against civil society groups and crush dissent. (Doval) seems to have forgotten that India is still a democracy and not a police state," he told The Telegraph.

All-Inclusive GS-2 & GS-3 MAINS 2022

Class-66

Not to be confused with
Civil Society (class-65 pg-4)

Pressure Groups

Example of three techniques:



- Group of people who **pressurize govt** to promote own interest.
- They are also called as '**interest group**' or '**vested group**'.
- They **influence policy** making & policy implementation, by:
 - Legal methods**: petition, debate, form public opinion, etc.
 - Illegal methods**: threat, violence, corruption, etc.

Techniques used: They broadly use three techniques:

- Electioneer**: place in public office, people with similar interest
- Lobby**: influence public officials
- Propaganda**: influence public opinion

Are they different from political parties?

- Yes, they are different because **they don't fight elections**.
- But, many Pressure groups do **election campaign** for political parties, and also frame/influence **govt policies**.

	Political Parties	Pressure Groups
Fight elections	Yes	No
Do election campaign	Yes	Maybe
Influence govt policy	Yes	Yes

Some types of pressure groups:

- Religious organizations**: RSS, Jamaat-e-Islami Hind
- Business associations**: FICCI, ASSOCHAM
- Trade unions**: AITUC (CPI), INTUC (INC), Bharatiya Mazdoor Sangh (BJP)
- Farmer groups**: All India Kisan Sabha, Bhartiya Kisan Union
- Professional associations**: Indian Medical Association, Bar Council of India
- Student organizations**: NSUI (INC), ABVP (BJP), SFI (CPM)

Importance of Pressure Groups:

- Consultations in law-making**:
 - Legislators & ministries hold formal/informal discussions with PGs while drafting bills
 - e.g. **pre-budget discussions** of industry groups with Finance Minister
- Brings political socialisation**:
 - They increase **people's knowledge** about political issues in the country
 - e.g. **seminars**/magazines/websites/WhatsApp groups are run by many PGs
- Pulse of the people**:
 - Opinion & demands of people are **brought to govt's notice** by PGs
 - e.g. through **public protests**, farm/labour unions voice public sentiments

Problem with Pressure Groups: (students can create points corresponding to importance)

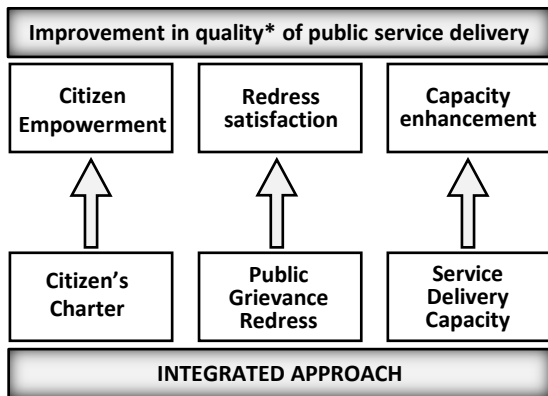
- Narrow interest**:
 - PGs push their own interests, but govt policy has to consider all sections of society
- Misinformation**:
 - PGs may spread misinformation in public to suit their own agenda
- Violent protests**:
 - Some groups incite public to violence which creates law & order problem

Civil Society	Pressure Groups
Helps in functioning of society, by protecting civil rights	Creates pressure on govt, to protect own rights
Tries to serve society, considering everyone is equal	Tries to shape society, considering own ideology/interest as superior
Remains equally active irrespective of party in power	Role changes with party in power (protest against govt or cooperate with govt)

The above comparison does not mean that CSO are good, and PG are bad. What matters is the objective: Promote rights (of self/others) or Suppress rights (of others)

Citizen Charter

From Polity Prelims class-5



*Quality as defined by User (and NOT Deliverer) of the services

Sevottam model for excellence in public service delivery

Components:

- Vision & Mission
- Services provided
- Standard of services (time, quality, etc.)
- Grievance redressal
- Expectations from client

Legally enforceable? No

Rights of Citizens for Time Bound services Bill 2011, brought, but lapsed in 2014

➤ **1990s:** concept developed in UK

➤ **1997:** India adopted

➤ Initiatives launched by **DARPG**

Department of Administrative Reforms and Public Grievances (Mo.P.PG.P)

- ❖ Citizen's Charter is a **document of commitments** made by a govt organization to citizens/client groups in respect of the services provided.
- ❖ Basic objective of CC is to empower citizens in relation to public service delivery.

Six principles of Citizens Charter:

- 1) **Quality:** Improving the quality of services
- 2) **Choice:** Wherever possible
- 3) **Standards:** Specify what to expect and how to act if standards are not met
- 4) **Value:** For the taxpayers money
- 5) **Accountability:** Individuals and Organisations
- 6) **Transparency:** Rules, Procedures, Schemes, Grievances

Importance:

- It brings transparency in working of public office
 - People know the **purpose of public office** (vision, mission, **services offered**, etc)
- It makes administration **accountable to people**
 - **People raise questions** when deadlines are not met by officials
- It makes PSUs **competitive**
 - Due to better **customer service**, PSUs lose less clients to private companies
- It helps **fight corruption:**
 - When citizens know their rights, they can't be asked for bribe.

Problems faced in implementing Citizen's charter:

- Excessive Centralization (One size fits all approach):**
 - **Same CC for all offices** under parent organization **overlooks local issues**.
- Lack of consultation:**
 - **Staff, Public, and Civil society** are not consulted when CCs are drafted.
- Poor design and content:**
 - Absence of critical **information** that people need **to hold** agencies **accountable**.
- Not updated:**
 - Charters are rarely updated, making it a **one-time exercise**, frozen in time.
- Lack of awareness:**
 - Efforts are not undertaken to educate **public** about charter
 - Even **staff** is not aware about goals and features of charter
- Funds not earmarked:**
 - for orientation of **staff** or awareness generation in **public**

Audit findings:

- ❑ **No proof of residency:** (182 days in last one year)
 - Aadhaar act mandates that only '**Residents**' can be issued Aadhaar.
 - But Aadhaar is issued based on a casual **self-declaration** by the applicant
 - There is **no system to verify** the declarations made by the applicant
- ❑ **De-duplication Problem:**
 - **Uniqueness of identity** is the most important feature of Aadhaar.
 - But in many cases **multiple aadhaar numbers** were issued to same biometrics.
- ❑ **Issue of Bal Aadhaar numbers:**
 - Children less than age 5 are issued Aadhaar **without confirming uniqueness** of identity.
 - This is a **violation** of the Aadhaar Act.
- ❑ **Faulty document management:**
 - Many Aadhaar numbers are **not paired** with the documents of the Aadhaar holder.
- ❑ **Authentication errors:**
 - UIDAI lacks mechanism to understand **reason for authentication errors**.
- ❑ **Faulty Enrolment Process:**
 - UIDAI **charged people for updates** when poor quality data was fed during enrolment.
- ❑ **No data archiving policy:**
 - UIDAI lacks a **data archiving policy** which is vital for a biometric databases.

Recommendations by CAG: (Students can use audit findings to frame points)

- ❑ Authenticate **residence** status on the basis on some **documents**, not just self-declaration.
- ❑ **Curb duplication** by an automated system
- ❑ Explore ways to establish unique **identity of children** less than 5 years age
- ❑ **Review charges** for biometric update as people are not at fault for poor quality of data capture
- ❑ **Frame** a suitable **data archival policy** to mitigate the risk of data vulnerability

Some other challenges: (not in CAG report)

- **Enrollment:** low enrollment (50-60%) in NE, except Tripura (94%) (2020 data)
- **Authentication:** fingerprints of laborers get eroded; connectivity issues in villages
- **Officials:** govt. officials need to be trained in secure use of Aadhaar data
- **Privacy:** fear of misuse/surveillance if data gets into hands of enemy country.



Supreme Court dismisses Aadhaar review petitions

Legal Correspondent

NEW DELHI, JANUARY 20, 2021 18:27 IST
 UPDATED: JANUARY 20, 2021 19:33 IST

The Supreme Court, in a majority view, dismissed a series of petitions seeking a **review of its 2018 judgment** upholding the Lok Sabha Speaker's certification of **Aadhaar law as a Money Bill** and its subsequent passage in Parliament.

Two questions had come up for review regarding the five-judge Aadhaar Bench's judgment in 2018.

One, whether the Speaker's decision to declare a proposed law as Money Bill was "final" and cannot be challenged in court. The second, whether the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 was correctly certified as a 'Money Bill' under Article 110(1) of the Constitution.

Data collected:

- Demographic:** Name; DoB/Age; Gender; Address
- Biometric:** Ten fingerprints; two iris scans; facial photography

Required for:

- IT return, PAN, Welfare schemes (PDS, NREGA, etc.)

Not required for:

- Bank, Sim card, school admission, registration of birth/death

Virtual ID:

A temporary 16 digit number generated online
 Does not reveal Aadhaar number

Paperless Offline e-kyc:

Can be authenticated without biometrics
 Does not reveal Aadhaar number

Appellate Tribunal:

Telecom Disputes Settlement and Appellate Tribunal

Prelims 2018:

Consider the following statements:

1. Aadhaar card can be used as a proof of citizenship or domicile.
2. Once issued, Aadhaar number cannot be deactivated or omitted by the Issuing Authority.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
 (c) Both 1 and 2 (d) Neither 1 nor 2

Prelims 2018:

The identity platform 'Aadhaar' provides open "Application Programming Interfaces (APIs)". What does it imply?

1. It can be integrated into any electronic device.
2. Online authentication using iris is possible.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
 (c) Both 1 and 2 (d) Neither 1 nor 2

Incorrect statements	Correct statements
It is a 12 digit number issued to Indian citizens .	It is a 12 digit number issued to residents of India. But, NRI are allowed to get Aadhaar.
It is issued by UIDAI, which is a statutory body under Home Ministry	It is issued by UIDAI, which is a statutory body under Meity .
To protect citizen's privacy, UIDAI is exempt from RTI Act, 2005	UIDAI is not exempt from RTI Act, 2005, though some restrictions apply.
Blue Aadhar is issued to handicapped people who cannot provide biometrics	Blue Aadhar is issued to children up to 5 years of age.
Aadhaar-PAN linking is not compulsory	Aadhaar-PAN linking is compulsory .

Panchayats

Also see class-8
State Elec Comm

73RD AMENDMENT ACT OF 1992

Significance:

- Added new part & schedule to Constitution**
 - Added Part-IX (Articles 243 to 243-O) and 11th schedule
- Gave constitutional status to panchayats**
 - States are now **bound by Constitution** to form panchayats, hold elections, etc.
- Strengthens grassroot democracy**
 - It transforms **representative** democracy into participatory **democracy**
- Implements DPSP Article 40**
 - State shall organise village panchayats as units of self-government

Salient features:

- Mandatory creation of PRIs**
 - **Article 243-B** mandates creation of Panchayats at three levels (village, intermediate, district)
- Election to panchayats:** (5-year term)
 - **Direct election** for all members at all three levels
 - **State Election Commission** to conduct elections
- Reservation of Seats:**
 - **SC/ST** reservation on basis of **proportion** in population
 - **Women** to have at least **1/3rd seats** reserved
- Finances:**
 - State legislature may authorise panchayat to **levy**, collect and appropriate **taxes**/duties/tolls/fees
 - **State Finance Commission** to review financial position of panchayats

Compulsory Provisions	Voluntary Provisions
<input type="checkbox"/> Organize Gram Sabha for village or group of villages	<input type="checkbox"/> Giving powers & functions to Gram Sabha
<input type="checkbox"/> Organize panchayats at village, intermediate, district levels	<input type="checkbox"/> Devolution of powers to perform functions listed in 11 th Schedule
<input type="checkbox"/> Direct election of all members	<input type="checkbox"/> Manner of election of chairperson of village panchayat
<input type="checkbox"/> Indirect election of chair at inter & district level	<input type="checkbox"/> Reserved seats for backward classes
<input type="checkbox"/> Reserved seats for SC/ST/Women	<input type="checkbox"/> Authorize Panchayats to levy/collect/appropriate tax
<input type="checkbox"/> Establish SFC (5 years) to review financial position	

Reason for ineffective performance:

- Inadequate devolution of power by States:**
 - States have not devolved 3Fs (functions, funds, functionaries) to PRIs
 - Many state laws have **not defined powers** of Gram Sabha, or **procedure** for their functioning.
- Excessive control by bureaucracy:**
 - In some states, Panchayats are placed in **subordination to bureaucracy**.
 - Sarpanches have to **visit Block Offices** for funds and approvals.
- Problem with funds:**
 - 90% of funds are **tied to schemes** of Centre/States, leaving little fiscal choice with PRIs
 - Panchayats are **reluctant to impose tax** on people they live with (also due to low paying capacity)
 - **SFC** not appointed on time; its recommendations are not implemented by States.
- Poor Infrastructure:**
 - Many Panchayats lacks full time Secretary, office buildings, database for planning, monitoring etc.
 - Members lack education/training, hence unable to perform functions efficiently.
- Proxy representation:**
 - **Sarpanch-pati** (husband of elected woman) exercise real political power
- Elite capture:**
 - Dominant group in village captures most of the resources devolved to panchayats
- Politicization of Panchayats:**
 - Panchayats represent political parties, instead of institute of local self-govt

Some initiatives:

Rashtriya Gram Swaraj Abhiyaan

- Umbrella scheme for capacity development of Panchayati Raj Institutions

eGramSwaraj

- Portal to show progress of various activities of Panchayati Raj Institutions

People's Plan Campaign / Sabki Yojna Sabka Vikas

- Preparation of Gram Panchayat Development Plan (GPDP) in campaign mode
- Facilitates convergence between PRIs and departments of State govt

Bhuvan Panchayat

- ISRO satellite data helps in decentralized planning by Panchayats

Panchayat Audit: AuditOnline

- It helps in financial audit of accounts of all three levels of Panchayats

Way forward:

(Students may frame points from issues)

- Capacity development** of PRIs to enable them **to perform functions** efficiently.
- Involve people** in planning process to know about **area specific needs**.
- Use technology** (ICT, GIS) to plan, implement, and monitor **projects**.
- Mandatory Social audit** through Gram Sabha (on lines of **MNREGA**)

Also see
class-32 pg-07

NCST

As per a parliamentary committee's recent report, NCST is dysfunctional for last 4 years.

Issues highlighted by Parliamentary committee:

- Number of meetings:**
 - NCST met only 4 times last year
- Huge vacancies:**
 - Due to lack of applicants as the eligibility criteria is set too high.
- Pendency of complaints:**
 - More than 50% of complaints are yet to be resolved
- Pending reports:**
 - Since 2018, Commission's reports are pending with MoTA, not yet tabled in Parliament.
 - e.g. impact of Polavaram Project in Andhra on tribal population
- Action by ministries:**
 - Ministries are not very forthcoming about the acceptance of Commission's recommendations

THE HINDU

National Commission for Scheduled Tribes is dysfunctional: House panel

Special Correspondent

NEW DELHI MARCH 18, 2022 20:42 IST
UPDATED: MARCH 18, 2022 20:42 IST

In a recent report, it pointed out that in last four years, Commission has not tabled a single report in Parliament

Recommendations of Parliamentary committee

- Fill vacancies** immediately as recruitment rules have been suitably revised.
- Review budgetary allocation** for the Commission so that its functioning does not suffer.

Powers of NCST: (Constitutional body u/a 338-A)

- NCST has power to regulate its **own procedure**.
- NCST has **powers of a civil court** while investigating any matter/complaint.
- NCST is **consulted by Centre/States** on all major policy matters affecting STs.

From Prelims class (society page-05)

89th Amendment 2003:

- amended Article 338, inserted 338A
- replaced "NC for SCST" by two separate Commissions NCSC NCST

Article 338 : NCSC

Article 338A : NCST (89th amendment 2003)

Article 338B : NCBC (102nd amendment 2018)
NCST under MoTA, other two MoSJ&E

National Commission for...

- evaluate working of safeguards, etc
- evaluate planning, progress, etc
- inquire into specific complaints
- give recommendations (non-binding)
- any other matter referred by President

Report of NCST:

- NCST submits annual report to the **President**.
- President places the reports before **Parliament**.
- A memo explains the **action taken**, and reasons for action not taken, on NCST's report.

In 2005, President allocated some functions to NCST for welfare of STs:

NCST must recommend measures to be taken for:

- Conferring ownership rights of **minor forest produce** to STs living in forest areas
- Improve **livelihood strategies** for STs
- **Rehabilitation** of STs displaced by development projects
- Ensure full implementation of **PESA** 1996
- Reduce and ultimately eliminate practice of **shifting cultivation** by tribals