



Polity

Classroom Study Material 2018

(September 2017 to June 2018)



POLITY AND CONSTITUTION

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1. CENTRE-STATE RELATIONS

India is a federation-based democracy. Any nation with more than one level needs to share its powers, responsibilities and resources among them. The division of federal power in India can be put into three different categories - Legislative, Executive and Financial.

	Division between centre and state	Issues in centre-state relations
Legislative	<ul style="list-style-type: none"> • Territorial division: Parliament can make laws for whole or any part of the territory of India, States can make laws for the whole or any part of state. • Distribution of Legislative Subjects in three list where Parliament has exclusive powers to make laws for Union list, States for State List and both can make laws for matters in the concurrent list. 	<ul style="list-style-type: none"> • Encroachment by Centre on State list in extraordinary circumstances such as Emergency. • Discretion of governor in reservation of state bills for the consideration of the President. • Power with centre to redraw territorial boundary of a state.
Administrative	<ul style="list-style-type: none"> • Territorial division with respect to subjects in three list: Executive Power of Centre extends to whole of India for Union List and executive power of States extends to their respective territories for State List. • On matters under concurrent list, executive powers rests with the states except when the Constitution or Parliament has directed otherwise. 	<ul style="list-style-type: none"> • Appointment and Dismissal of Governor by centre. • Imposition of President's Rule. • Deployment of Central forces in states to maintain Law and Order. • Control over officials in All India Services, CBI etc.
Financial	<ul style="list-style-type: none"> • Taxation powers: Both Parliament and State legislature has power to levy taxes on subjects mentioned in their respective lists. For concurrent list, both can levy taxes; however residuary power of taxation rests with the Parliament. 	<ul style="list-style-type: none"> • Distribution of finance between Centre and States. For eg; many states are demanding special category status. • Discrimination in financial allocations to the states through Terms of Reference of Finance Commission decided by centre.

1.1. MECHANISMS OF CO-OPERATION

1.1.1. NITI AAYOG

Why in news?

Recently, fourth meeting of the **Governing Council of NITI Aayog** was held

About Niti Aayog

- The National Institution for Transforming India (NITI Aayog), was formed via a resolution of the Union Cabinet on January 1, 2015.
- It has emerged as the premier policy 'Think Tank' of the Government of India fostering the spirit of cooperative federalism. The key functions which refer to 'Cooperative Federalism' are:
 - To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States in the light of national objectives.
 - To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognising that strong States make a strong nation.
- Its other objectives include:
 - To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
 - To pay special attention to the sections of our society that may be at risk of not benefitting adequately from economic progress.

Difference with Planning Commission:

- It has a structure similar to the Planning Commission, but its functions will be limited to only acting as a policy think tank relieving it of the two more functions viz. formation of five year plans and the allocation of funds to the States.
- The major difference in approach to planning, between NITI Aayog and Planning Commission, is that the former will invite greater involvement of the states, while the latter took a top-down approach with a one-size-fits-all plan.

- To design strategic and long-term policy frameworks and monitor their progress and their efficacy.
- To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.

Significance of Niti Aayog

- **Cooperative federalism:** State governments have been given prominence in the functioning of NITI Aayog and it has also expedited the resolution of issues between the central ministries and state and UTs.
- **Competitive federalism:** States are competing to perform better in indices developed by NITI Aayog which measures incremental annual outcomes in critical social sectors such as Digital Transformation Index, innovation index, health index.
- **Focus on inclusive development:** It started a special initiative focusing on transformation of 115 aspirational districts. It is also the nodal body for monitoring implementation of Sustainable Development Goals
- **Evidence based policy making:** It focuses on policy formulation based on adequate data such as it brought out three-year action agenda, development of composite water management index, promotion of GIS based planning etc.
- **Economic Reforms:** It brought out policy paper on reforms in APMC Act, rejuvenating fertilizer sector, doubling farmer's income, Model Act on Agricultural Land Leasing etc.
- **Knowledge and Innovation hub:** It acts as a Repository of information as it engages in Compiling, transmitting and emulating best practices across states. It also launched Atal Innovation Mission and hosted Global Entrepreneurship Summit, 2017.
- **Balanced regional development:** such as focus on areas such as North East. For eg: NITI Forum for North East which aims to identify various constraints in the way of accelerated, inclusive and sustainable economic growth of the North Eastern Region (NER) is co-chaired by the Vice-Chairman of NITI Aayog.



Challenges for NITI Aayog

- **Overlapping functions:** In discharging the assigned tasks, the Aayog overlaps with the Inter-State Council, which is a constitutional body, and the office of the cabinet secretary that at present strives to achieve inter-departmental coordination.
- **Favor advance states:** Its promotion of competitive federalism may work in favour of already advanced states to the detriment of others.
- **Lack of statutory nature:** It is established by executive resolution, thus, the chances of government interference is more.
- **Lack of active actionable targets:** It needs to take active measures to solve some of the challenges that India faces today such as job creations, increasing economic growth, etc. Even its three-year action agenda has too wide approach for imminent challenges.
- **Limited focus on implementation:** It doesn't focus adequately on the practical aspects of its recommendations such as fixing accountability of bureaucrats, government-citizen interaction etc. which is core to several good ideas remaining on paper.

Conclusion

Moving beyond cooperative federalism it is now 'competitive cooperative federalism' that defines the relation between Centre and states as NITI Aayog puts onus on states to drive transformation in India. India is facing many challenges in its path to SDGs 2030. The central government has initiated many mission mode programs viz Smart City, Skill India, Swach Bharat, Housing and Electricity for All etc. Success of all these

depends on active cooperation and healthy competition among states and centre. NITI Ayog is poised to play the role of catalyst in achieving this cooperation.

1.1.2. INTER-STATE COUNCIL

Why in News?

The Inter-State Council and the standing committee of the Inter-State Council have been reconstituted recently.

About ISC standing committee

- The **Standing Committee of the Council** was set up in 1996 for continuous consultation and processing of matters for the consideration of the council.
- The Committee consists of following members-
 - Union Home minister (Head)
 - Five Union Cabinet Ministers
 - Nine Chief Ministers
- The Committee is assisted by **Inter-State Council Secretariat**, set up in 1991 and headed by a Secretary to Government of India.

Significance of the ISC

- **Constitutional Backing-** Unlike other platforms for Centre State cooperation, ISC has constitutional backing which puts the states on more solid footing.
- **Cooperative federalism-** In times of different political parties heading the Centre and various states the need for dialogue assumes a greater importance. Thus, ISC provides a platform for states to discuss their concerns.
- **Resolving disputes linked to state-state & centre-state-** In 2016 & 2015, 140 & 82 such issues were resolved respectively.
- **Decentralized decision making-** If the goal of a more decentralised polity, which needs interaction between various levels of government, is to be achieved, Interstate Council is a crucial first step.
- **Makes governments more accountable-** Given its status as a platform for dialogue and discussion, it makes the governments, both at centre and state level, more accountable for their actions.
- **A safety valve-** The council helps to bridge the trust deficit between the centre and the states. If not always a problem solver, it at least acted as a safety valve.
- **Lack of other avenues:** Other constitutional avenue such as Zonal council for such issues, too are restrictive in terms of their geographical scope.

Issues in the functioning of ISC

- It is seen as a mere talk shop. Thus, it needs to show that it can follow up.
- Its recommendations are not binding on the government.
- It does not meet regularly as recently Inter-State Council met after a gap of 12 years.

What needs to be done to strengthen the ISC?

- The return of the single-party majority government at the Centre has necessitated the **strengthening of inter-governmental mechanisms** for the harmonious working of the federal structure through institutions like ISC.

Inter State Council

- **Article 263** It shall be lawful for the President to establish an ISC for **inquiring, discussing and advising** upon:
 - disputes which may have arisen between States;
 - subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
 - such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.
- It was set up on the recommendation of **Sarkaria Commission by a Presidential Order in 1990.**
- The council consists of the PM as the Chairman, CMs of all states and UTs, Administrators of UTs not having Legislative Assemblies and six union cabinet minister including Home Minister nominated by PM.
- Its function is **complementary to Supreme Court's** jurisdiction under Art 131 to decide a legal controversy between the governments.
- It is a **recommendatory body** on issues relating to inter-state, Centre-State, and Centre and Union Territory relations.
- It is **not a permanent constitutional body** but it can be established 'at any time' if it appears to the President that the public interests would be served by the establishment of such a council.

- **Sarkaria Commission** recommended that it needs to be given all the **powers contemplated in the Constitution** like **Art 263(a)** which gives it the power to investigate issues of inter-state conflict but was dropped in the Presidential order of 1990.
- It should provide **greater opportunities to civil society** institutions and the corporate sector to make their representations.
- Further, its **secretariat may be shifted** from the Union Home Ministry to the Rajya Sabha secretariat so that it would be under the direction of a neutral federal functionary, the vice-president of India rather than Union home minister.
- It should be strengthened as a forum for not just administrative but also **political and legislative give and take between centre and states**. For instance, while legislating on subjects that have been transferred from the state list to the concurrent list such as education and Forests, the centre must consult states more extensively and offer them greater flexibility.
- Some of the following recommendations of **Punchhi commission** should also be considered
 - The Inter-State Council must meet at least thrice in a year on an agenda evolved after proper consultation with States.
 - The Council should have experts in its organizational set up drawn from the disciplines of Law, Management and Political Science besides the All India Services.
 - The Council should have functional independence with a professional Secretariat constituted with experts on relevant fields of knowledge supported by Central and State officials on deputation for limited periods.
 - After ISC is made a vibrant, negotiating forum for policy development and conflict resolution, the Government may consider the functions for the National Development Council also being transferred to the ISC.

Though, there are other bodies such as the NITI Aayog's Governing Council with similar composition, including the prime minister, chosen cabinet ministers and chief ministers that could address centre-state issues. But, the ISC has constitutional backing, as against the NITI Aayog which only has an executive mandate. This puts the states on more solid footing in building the atmosphere of cooperation needed for calibrating centre-state relations.

1.1.3. GOVERNOR

Why in news?

The role of governor came under question in recent Karnataka legislative assembly elections.

More about the news

- It came under question that whether Governor should call single largest party to form the government and prove its majority in the House or a post-poll alliance to form a majority that overcomes the single largest party and form the government
- **Article 164(1)** provides for the appointment of chief minister by governor. Supreme Court clarified that there is no qualification mentioned in article 164(1) and reading it with collective responsibility in 164(2), the only condition chief ministerial candidate need to satisfy is that he/she should be commanding majority in the house.
- But this discretionary power is being misused by governors. It may encourage horse trading of MLAs, defections against the spirit of tenth schedule and decline in public trust in the office of Governor.
- In case of Goa and Manipur, the single largest party was not given preference to form the government unlike in Karnataka. Thus, raising question mark on the role of Governor and also forcing Supreme Court to take cognizance of the issue.

Importance of post of governor

- Under the constitutional scheme, the Governor's mandate is substantial such as
 - overseeing government formation
 - reporting on the breakdown of constitutional machinery in a State
 - maintaining the chain of command as well as effective communication between the Centre and the State
 - reserving his assent to Bills passed by the State Legislature
 - promulgating ordinances if the need arises.
- As a figurehead who ensures the continuance of governance in the State, even in times of constitutional crises, his role is often that of a neutral arbiter in disputes settled informally within the various strata of government, and as the conscience keeper of the community.

Issues with role of governor

- **Misuse of discretionary powers:**
 - **Article 200 and 201:** The Governor has the power to withhold the assent to a bill along with reserving the bill for the consideration of the president. States allege that this provision has often been misused by the governor who acts on behest of the union government.
 - **Article 356:** To recommend the imposition of constitutional emergency in a state. For political gains, this power has been abused by central governments more than 120 times till date. However, Supreme Court in the case of **S.R. Bommai v. Union of India**, held that such exercise of control of the Union executive over the State executive is opposed to the basic scheme of the Indian Constitution.
- **Appointment by centre:** The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day. Consequently, a candidate wedded to a political ideology could find it difficult to adjust to the requirements of a constitutionally mandated neutral seat.
- **Arbitrary removal before the expiration of their tenure:** Even after Supreme Court Judgement in *B.P. Singhal v. Union of India* calling for a fixed tenure for Governors to encourage neutrality and fairness in the discharge of their duties, it is not being implemented on ground.

Suggestions

- **Sarkaria Commission** and a constitutional bench judgement in *Rameshwar Prasad v Union of India*, 2005 held that:
 - The party or combination of parties with widest support in the Legislative Assembly should be called upon to form the Government.
 - If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.
 - In case no party or pre-poll coalition has a clear majority, the Governor should select the CM in the order of preference indicated below:
 - ✓ The group of parties which had pre-poll alliance commanding the largest number.
 - ✓ The largest single party staking a claim to form the government with the support of others.
 - ✓ A post-electoral coalition with all partners joining the government.
 - ✓ A post-electoral alliance with some parties joining the government and the remaining supporting from outside.
- **M M Punchhi Commission** elaborated that the governor should follow “**constitutional conventions**” in a case of a hung Assembly.
- While **SR Bommai case** related to discretion of Governor does not apply to hung assembly but it laid emphasis on floor test in the house within 48 hours (although it can be extended to 15 days) so that legislature should decide the matter and Governor’s discretion should merely be a triggering point.
- A possible solution would be not to nominate career politicians and choose “**eminent persons**” from other walks of life. Both the Sarkaria and M.M. Punchhi Commissions seem to hint at this.
- Supreme Court to investigate claims of mala fide in the Governor’s report, a similar extension to cover mala fide in the invitation process could be a potential solution.

The rules governing government-formation should be clearly specified in the Constitution itself as the Governor has enough discretion to skew the political process in the direction that the Central government desires. However, The Governor must be true to the oath of office and must ensure that the person he/she invites to be Chief Minister will be able to form a responsible and reasonably lasting government in the State. Even Dr. B.R. Ambedkar in his speech described how a Governor should use his discretion not as “representative of a party” but as “the representative of the people as a whole of the State”.

1.2. STATES WITH SPECIAL STATUS

1.2.1. SPECIAL CATEGORY STATUS (SCS)

- Recently, Andhra Pradesh MPs have been protesting for special category status for the state which centre has refused.
- The demand is claimed on the basis of **Andhra Pradesh Reorganisation Act** which provides that “the Central Government may make appropriate grants and also ensure that adequate benefits and incentives in the form of special development package are given to the backward areas of that State”.

- While Centre agreed to provide the **monetary equivalent** of SCS but has refused granting the status on the basis that 14th Finance Commission doesn't provide for such treatment to Andhra Pradesh.
- In **March 2018**, Centre said it was committed to giving Andhra Pradesh 90 per cent of the funds, equivalent to special category states, through other means like external agencies, accepting the state government's suggestion of routing such funds through NABARD.
- Similarly, **Special package** was announced by the prime minister for **Bihar** in 2015 amounting to Rs. 1.25 lakh crore.

What is SCS?

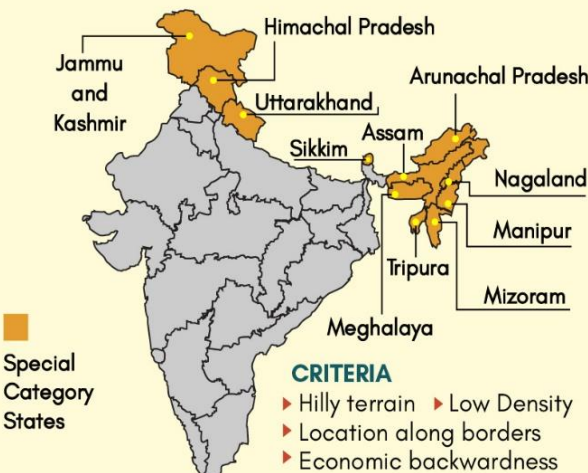
- The Constitution does not include any provision for categorisation of any State as a SCS. But, recognising that some regions in the country were historically disadvantaged in contrast to others, Central plan assistance to SCS States has been granted in the past by the erstwhile Planning Commission body, National Development Council (NDC).
- The concept of a special category state was first **introduced in 1969 by the 5th Finance Commission** based on the **Gadgil formula**. The formula was modified various times to suit the contemporary needs.
- In **1991 the Gadgil-Mukherjee formula** was adopted that was in use till the 14th finance commission.
- The rationale for special status was that certain states, because of inherent features, have a low resource base and cannot mobilize resources for development.

Challenges for SCS demands

- **14th FC recommendations:** The Fourteenth Finance Commission effectively removed the concept of Special Category States after its recommendations were accepted in 2015.
- **Demands from more states if granted:** The populist promise to grant the special category status during elections creates further rise in such demands. Aside from Andhra Pradesh, Odisha, Bihar, Chhattisgarh and Rajasthan had demanded SCS status.
- **Arbitrary criteria:** Special category status was awarded by the now-defunct National Development Council, on the recommendation of the Planning Commission, based on criteria evolved by it that was criticized for being arbitrary, for instance, Jharkhand and Chhattisgarh were denied this status after their creation in 2001 just because they did not share an international boundary.
- **No perceptible change in conditions:** The per capita Central plan assistance received by SCS states was four times more than that for “general category” states. Besides, they received tax incentives aimed at attracting industries, including capital investment subsidy, excise duty and income tax exemptions, and transportation cost subsidies. However, these incentives largely failed to industrialise these states.
- **Lack of adequate financial audited data** was a major challenge for 14th FC. So it just consolidated raw data and apportioned it between the two states which resulted in inadequate allotment of funds to states at the time of their bifurcation.

NOT SO SPECIAL ANYMORE

The Centre claims that following the increase in tax devolution to States from **32% to 42%** of divisible pool of central taxes, there is no further need to give 'Special Category' status to any State



Special Category States

CRITERIA

- ▶ Hilly terrain
- ▶ Low Density
- ▶ Location along borders
- ▶ Economic backwardness

BENEFITS AS PER GADGIL-MUKHERJEE FORMULA

On account of their location and backwardness, Special Category States have been allocated assistance as grants

They are provided 30% of the total central assistance (90% of it as grants)	Special plan assistance for projects (90% of it as grants)	Central incentives for the promotion of industry on account of economic backwardness
Untied special central assistance (100% of it provided as grant)	Assistance for externally aided projects (90% grant)	Accelerated Irrigation Benefit Programme (AIBP) assistance (90% as grant)

DILUTION FOLLOWING UNION BUDGET 2015-2016

Very few externally aided projects	Discontinued are central assistance, special central assistance & special plan assistance
Allocations under AIBP reduced from Rs. 8,992 crore in 2014-15 to just Rs. 1,000 crore: scheme to be run with a higher matching contribution by States	

Way Forward

- Since Planning Commission ended, there has been a drastic cut in the allocation to SCS and the difference between funds allotted to SCS and other States have been sizeably reduced and the **status has remained more of symbol of Political mileage**.
- With recent increase in tax devolution to 42% and decrease in normal central assistance to states, the benefits under SCS have reduced. But there is still a need of evolving more equitable methods of fund devolution.
- The **recommendations by Raghuram Rajan committee (2013)** for the introduction of the "least developed states' category (based on the 10 equally weighted indicators for monthly per capita consumption expenditure, education, health, household amenities, poverty rate, female literacy, percentage of the Scheduled Caste/Scheduled Tribe population, urbanisation rate, financial inclusion and physical connectivity) and abolition of "SCS" may be introduced for better understanding the development needs of individual states.

1.2.2. OTHER SPECIAL PROVISIONS

Part XXI of the Indian Constitution, 'Temporary, Transitional and Special Provisions', includes special provisions for various states of India:

- **Article 370** — Temporary Provisions with respect to the State of Jammu and Kashmir
- **Articles 371 to 371J** – contain special provisions for 12 states - Assam, Maharashtra, Gujarat, Sikkim, Arunachal Pradesh, Karnataka, Nagaland, Mizoram, Manipur, Andhra Pradesh and Telangana and Goa.

Difference between Special status and Special Category Status (SCS)

- Special status is guaranteed by the Constitution of India through an Act passed by the two-third majority in both houses of the Parliament whereas SCS was granted by the National Development Council (NDC), an administrative body of the government.
- Special Status empowers legislative and political rights while SCS deals only with economic, administrative and financial aspects.
- The concept of a SCS was first introduced in 1969 when 5th Finance Commission sought to provide certain disadvantaged states with preferential treatment in the form of central assistance and tax breaks. However, Articles 370 and 371 (special provisions) have been part of the Constitution since its commencement while the latter set of provisions were incorporated into the Constitution by Parliament through amendments.

Reasons for Special Status under 371

- To meet the aspirations of the people of backward regions of the states or
- To protect the cultural and economic interests of the tribal people of the states or
- To deal with the disturbed law and order condition in some parts of the state or
- To protect the interests of the local people of the states.

Some issues with respect to article 371

- **Politicization:** According this status is seen as a strategy for attracting vote bank when some benefits become tangible such as reservation in education and employment and funds for infrastructure development after inclusion of Article 371-J for six socio-economically backward districts of the Hyderabad-Karnataka region. However, this also ensured that the demand for a separate State does not resurface.
- **Preference to local people:** Article 371 D for some districts of Andhra Pradesh, provides for reservation of 85% of the jobs to local people. Similarly, Sikkim having special status under 371F, is again attempting to bring legislation to reserve 90% jobs in private sector for local Sikkim residents.
- **Lack of access to more resources:** Inclusion of districts in this Article does not always bring resources to the region. For example- districts of Karnataka covered under 371J still suffers from overdetermined deprivation.
- **Hampers citizen's fundamental rights:** The tribal bodies of Nagaland went against the decision of reserving 33% seats for women in municipal elections citing 371A which provides safeguard to their tribal customs. Thus, hampering political rights of women.

More about Article 370

- In 2015, Jammu and Kashmir High Court ruled that Article 370 has assumed place of permanence in the Constitution and the feature is beyond amendment, repeal or abrogation.
- It also added that Article 35A gives "protection" to existing laws in force in the State.
- However, Supreme Court said that only Parliament can take a call on scrapping Article 370 that accords special autonomous status to Jammu and Kashmir.

- To remove Article 370, an amendment of the Indian Constitution under Article 368 is required. But at the same time, to remove 370 the recommendation of the “Constituent Assembly” is necessary. Thus, it means it would require the “State’s concurrence” under clause (1)(d) of the existing Article.

Can Article 370 be revoked Unilaterally?

- According to the clause 3 of Article 370, “The President may, by public notification, declare that this article shall cease to be operative, ‘provided that he receives the “recommendation of the Constituent Assembly of the State (Kashmir).”
- Thus, Article 370 can be revoked only if a new Constituent Assembly of Kashmir recommends revocation.
- Since the last Constituent Assembly was dissolved in January 1957 after it completed the task of framing the state’s Constitution, so if the parliament agrees to scrap Article 370, a fresh constituent Assembly will have to be formed.
- The constituent Assembly will consist of the same MLAs elected to the State Assembly. Simply put, the Centre cannot repeal Article 370 without the nod of J&K State.

About Article 35A

- It was incorporated into the Constitution in 1954 by a **Presidential order** issued under Article 370 (1) (d) of the Constitution.
- It empowers J&K legislature to define state's "**permanent residents**" and their **special rights and privileges** without attracting a challenge on grounds of violating the Right to Equality of people from other States or any other right under the Constitution.
- It protects certain provisions of the J&K Constitution which denies property rights to native women who marry from outside the State. The denial of these rights extends to her children also.
- The Article bars non-J&K state subjects to settle and buy property in J&K.
- It is contended to be violating fundamental rights under Article 14, 19 and 21 as it is discriminatory against non-residents as far as government jobs and real estate purchases are concerned.

1.2.3. 5TH SCHEDULE

Why in news?

Recently, Union Cabinet has approved to expand the Scheduled Areas under **Schedule-V of the Constitution** of India in some areas of Rajasthan.

More on News

- After the **last expansion** of scheduled areas in Rajasthan in 1981, another expansion was approved in 2014 due to reorganization in state as per the 2011 Census.
- The areas will now be a part of the **Tribal sub-plan** within the existing schemes of central and the state governments.

The Fifth Schedule (Article 244)

- The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam Meghalaya, Tripura and Mizoram.
- It designates “Scheduled areas” in large parts of India in which the interests of the “Scheduled Tribes” are to be protected. The Scheduled area has **more than 50 percent tribal** population.
- **Powers of Governor under 5th Schedule**- Various powers of the Governor include-
 - To make **regulation for peace and good governance** of any area in a state which is a Scheduled Area like prohibiting or restricting the transfer of land by or within members of the Scheduled Tribes in Scheduled areas; regulating the allotment of land to members of the Scheduled Tribes in those

Criteria for declaring an area as Scheduled Area

- preponderance of tribal population
- compactness and reasonable size of the area
- under-developed nature of the area
- marked disparity in economic standard of the people.

These criteria are **not spelt out in the Constitution** of India but have become well established.

States with scheduled areas

Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana, are under provision of scheduled areas.

Tribal Advisory Council

- It will be established on the direction of the President in a State having Scheduled areas, also in any State having Scheduled Tribes but not Scheduled Areas therein.
- It consists of **twenty members** of which three-fourths must be representatives of Scheduled Tribes in the Legislative Assembly of that State.
- The Governor may make rules for regulating into number of members of these councils, mode of their appointment, appointment of the chairman, officers and servants of these councils, conduct of its meeting and general business.

areas; regulating the money lending business by those who lend money to people of the Scheduled Tribes in such area.

- **To direct about non-application** of any act which has been passed by Parliament or Legislature of the State to a Scheduled Area.
- In the process of making such regulation discussed above, the Governor may **repeal or amend any Union or State law.**
- The Governor can make such **regulations only after consultation with the TAC** of the state.
- **Tribes Advisory council (TAC)**- Under 5th schedule it shall be the duty of TAC to **advise the Governor** on such matters pertaining to the welfare and the advancement of the STs in the State, as may be referred to them by the Governor.
- **President and the Schedule Areas-**
 - The President possesses the power **to alter the boundaries** of any Schedule area after consulting with the Governor.
 - The regulations made by the Governor come into effect only when they are accepted by the President. Governor is required to submit **annually the reports** regarding administration of the Scheduled areas to the President.
- **Amendment of the Schedule-** Parliament through a law can amend any of the provisions of this Schedule by way of addition, variation or repeal. Any such law is not deemed to be an amendment under Article 368 of the Constitution.
- The provisions of the Fifth Schedule have seen further legal and administrative reinforcement in the form of **Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996.**

The Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996

- The provisions of Part IX of the constitution relating to the Panchayats are not applicable to the Fifth Schedule areas. However, the Parliament may extend these provisions to such areas, subject to such exceptions and modifications as it may specify.
- Under this provision, the Parliament has enacted the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, popularly known as **PESA**.
- At present, ten states have Fifth Schedule Areas. These are: Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.
- Important Features of the act include that every village shall have a Gram Sabha
 - To protect the traditions, beliefs and culture of the tribal communities.
 - To resolve local disputes.
 - To manage and protect common properties based on their traditional systems of management and protection.
 - To give permission in case of land acquisition by administration, to restore land to the tribals.
 - To control over money-lending to tribals and to have the rights over minor forest produce.
 - To have the control over local markets and melas as well as to have rights to control the distillation, prohibition and manufacture of liquor.
 - To give recommendations for grant of prospecting license/mining lease for minor minerals in the Scheduled Areas grant of concession for the exploitation of minor minerals by auction.

Limitations and reasons for ineffective implementation of PESA, 1996

- **Lower level of awareness and education:** among the tribals comes in the way of raising assertive voices. Gram Sabha largely remain **subordinate to Gram Panchayats.**

Issues in 5th schedule

- It shows tendency to centralise the authority and power to govern the scheduled areas which opens the door for Union government to interfere in the name of welfare through governor's office.
- Issues with TAC:
 - Creation of TACs without any powers, unlike the autonomous district councils (ADCs), which have legislative and financial powers to some extent.
 - No clarity on the composition of TAC, especially the remaining one-fourth of the membership
- Issues with role of governor:
 - Often, the office of governor practically gets reduced to a mere annual report-writing institution.
 - Ambiguity of the discretionary role of governor
- Sometimes cabinet ministers from tribal communities are also appointed as members, which is a conflict of interest because the person heading the state cabinet also chairs the TAC.

- **Superficial administrative and fiscal decentralization of powers:** Major power still remains with the State Governments.
- **Inadequate powers to levy and collect taxes, fees, duties or tolls:** Recommendations of State Finance Commissions have been either accepted partially or implemented selectively.
- **Displacement of tribals:** Extensive collusion, between politicians, bureaucrats and the private companies, which has displaced scores of tribals from their land.
- **Circumvention of provisions by State government:** For example, PESA is for rural areas, states upgrade rural panchayats in scheduled areas to urban panchayats to bypass PESA and give clearance to mining and industries in tribal areas.
- **No time limit to frame rules:** The PESA Act does not specify rule making power or provide a time period by which States have to frame Rules.
- **No provision for appeal against the decisions:** There is a complete absence of a functioning grievance redressal mechanism to address routine violations of rights of tribals.

Way Forward

- PESA is a powerful legislation which can play an instrumental role in recognizing the rights of the tribal population in Scheduled areas over natural resources thus transforming their quality of life.
- Initiatives to enhance the capacity of government machinery and stakeholders who play vital role in actual implementation of the Act at the ground level must be taken by state governments. Civil Society Organizations can play a strategic role in building awareness among the stakeholders at each level and organizing the politically divided tribal communities. So, a multi-pronged strategy to address the issue from different aspect is the need of the hour.

1.2.4. 6TH SCHEDULE

The Sixth Schedule of the Constitution contains special provisions regarding the administration of the tribal areas in the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram to preserve their cultural identity and customs.

Advantages of inclusion in 6th schedule

The entry into 6th schedule gives sizeable amount of autonomy to the people in these areas for self-government through following features:

- **Autonomous districts**, with several **autonomous region** depending upon the different tribes inhabiting the region, within the executive authority of the state
- Each autonomous district has a **district council** and each autonomous region has a separate **regional council**, both of which administer the areas under their jurisdiction.
- **Legislative power** to make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on
- **Judicial power**- The councils can constitute village councils or courts for trial of suits and cases between the tribes where the jurisdiction of high court over these suits and cases is specified by the governor.
- **Regulatory power**- The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But such regulations require the assent of the governor.
- **Tax revenue collection**- The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.

6th schedule vis-a-vis 5th schedule

Although both 5th and 6th schedule of the constitution have been formulated to empower tribal communities but still 6th schedule is considered better from 5th schedule because

- It provides better autonomy.
- The council in 5th schedule is creation of state legislature while in 6th schedule it is the product of constitution.
- It has financial power to prepare budget for themselves unlike council in 5th areas.
- Greater powers are devolved and power to make legislation on numerous subjects. In fifth schedule, tribal advisory council have only advisory powers to the state government and that too only on the matters referred to the council by governor. In cases related to transfer of land, it could exercise power on its own.
- They also receive funds from consolidated fund of India to finance schemes for development, health, education, roads.

- **Limitation to power of Parliamentary or state legislature over autonomous regions-** The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.

However, inclusion in 6th schedule is not a panacea, as it also suffers from some problems such as:

- **No Decentralization of powers and administration** – It has not taken place in many 6th schedule areas. For example: in Bodo Territorial Area districts, there is only district council which elects few people who enjoy unbridled power. Thus, units should be created that will represent people at all strata.
- **Lack of development** – Although 6th schedule was enacted to give more benefit to the people and bring fast paced development, yet due to no panchayats or parishad at people level, they have no power and money which non-6th schedule areas have for implementation of various schemes like MGNREGA etc.
- **Corruption and illicit activities** – Some members of autonomous council are allegedly helping siphoning of money to the extremist group factions. For example – The North Cachar autonomous council is under scrutiny of NIA and CBI.
- **Legislative power of state over councils** - The laws made by the councils require the assent of governor. This process has no time limits, thus, legislations get delayed for years. Also, **Para 12 (A) of the Sixth Schedule** clearly states that, whenever there is a conflict of interest between the District Councils and the state legislature, the latter would prevail.
- **Overlapping functions without coordination** - Lack of comprehensive activity mapping leading to overlap in functions and jurisdictions of council and state. For example – there is no arrangement between state water resource department and the council for conserving and reclaiming water resources rendered toxic.
- **Non-involvement of state finance commission** - They are less provided in terms of grants to their counterparts PRIs as they are not covered by State finance commission. Thus, PRIs in non-6th schedule areas are liberally funded. So, direct funding of the councils should be done under Article 280 of Constitution instead of grant-in-aid under Article 275 (major source of income currently).
- **Conflict in discretionary powers of governor** - There are different views whether certain powers of governors with respect to these areas are discretionary or not.

More steps that need to be taken with respect to 6th schedule

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

1.3. INTER-STATE WATER DISPUTES

India has about twenty major river basins running through the nation and many of these traverse more than one state. This leads to conflicts regarding the use and distribution of water.

Constitutional and legislative provisions for inter-state water disputes

- **Article 262**
 - **Article 262(1)** provides that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter State river or river valley.
 - **Article 262(2)** empowers Parliament with the power to provide by law that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint.
- Under Article 262, two acts were enacted
 - **River Boards Act 1956:** It was enacted with a declaration that centre should take control of regulation and development of Inter-state rivers and river valleys in public interest. However, not a single river board has been constituted so far.
 - **The Interstate River Water Disputes Act, 1956 (IRWD Act)** confers a power upon union government to constitute tribunals to resolve such disputes. It also excludes jurisdiction of Supreme Court over such disputes.

- **Seventh Schedule**

- **Entry 17 of State List:** Water that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to entry 56 of Union List.
- **Entry 56 of the Union List:** Regulation and development of inter-State rivers and river valleys.

Major River Water Disputes in India

- **Cauvery Water Dispute:** the Cauvery Waters Tribunal was established in 1990 and its final order came in 2007. The current dispute started with SC's order to Karnataka government to release 15,000 cusecs of water a day for 10 days, to Tamil Nadu. On June 1, the Union Water Resources ministry notified the **Cauvery Water Management Scheme, 2018** after direction from SC.
- **Mahanadi water dispute:** Recently, Ministry of Water Resources notified the setting up of a Tribunal to resolve the dispute between Odisha and Chhattisgarh over the sharing of the waters of the Mahanadi River as per the apex court direction in **January 2018**.
- **Other major disputes include:** Mahadayi river disputes between Goa, Karnataka and Maharashtra, Krishna river dispute between Maharashtra, Karnataka and AP etc.

Significance of the SC judgment in Cauvery water dispute

- According to the SC the **principle of equality** among riparian States does not imply equal division of water; it suggests just and reasonable use and “**drinking water requirement**” must be placed on a higher pedestal.
- It sets down two principles that may have a ripple effect on other inter-state river water disputes
 - **Groundwater-**A certain quantity of water was reduced from the quantum allocated to Tamil Nadu, because of availability of groundwater in the state. Other water tribunals, such as Narmada Water Dispute Tribunal and Krishna Water Dispute Tribunal, had not considered groundwater to be a factor while apportioning water.
 - **Warrantable flexibility-** The city of Bengaluru had grown over the years thus, registering an ever-enhancing demand for all civic amenities. This is similar to the argument put forth by Karnataka in the ongoing **Mahadayi Water Disputes Tribunal** on the share of the river for addressing water scarcity in the Hubli-Dharwad region from the Malaprabha basin.
- It referred to the **Helsinki Rules of 1966**, which recognize equitable use of water by each basin State taking into consideration the geography and hydrology of the basin, the climate, past utilization of waters, economic and social needs, dependent population and availability of resources.
- It also refers to the **Campione Rules** in the context of the Cauvery dispute. These Rules hold that basin States would in their respective territories manage the waters of an international drainage basin in an equitable and reasonable manner.
- An inter-State river like Cauvery is a ‘**national asset**’, and no State can claim exclusive ownership of its waters or deprive other States of their equitable share.

Cauvery Water Management Scheme, 2018

Under the scheme, the Center established **Cauvery Water Management Authority (CWMA)** and the **Cauvery Water Regulation Committee (CWRC)**.

Functions of CWMA:

- **To monitor the storage, apportion shares, supervise operation of reservoirs and regulate and control Cauvery water releases** with the assistance of the Cauvery Water Regulation Committee.
- **To regulate release of water by Karnataka, at the inter-state contact point at Billigundulu gauge.**
- **To determine the total residual storage in the specified reservoirs** at the beginning of the water year (June 1 each year).
- **Advise the states to take suitable measures to improve water use efficiency**, by promoting micro-irrigation (drip and sprinkler), change in cropping pattern, improved agronomic practices, system deficiency correction and command area development.
- **To take appropriate actions** in case any party state defaults, it can also **seek the help of the central government for implementation of the award.**

Significance of CWMA

- It is a **permanent body** under the Union Ministry of Water Resources and its decisions are **final and binding on all the party States**.
- The share of each state will be determined on the basis of the flows so assumed together with **the available carry-over storage in the reservoirs**.

Cauvery Water Regulation Committee (CWRC)

- **CWRC would act as a technical arm with following functions:**

- Ensuring implementation the final Award by periodically **collecting data regarding levels, inflows, storages and release of water.**
- **Preparing seasonal/annual report of the water account** for SW monsoon, NE monsoon, Hot weather.

Challenges

- **Forging federal consensus on Centre's role in inter-state rivers:** the states will have to agree to cede the necessary functional space to the Centre in the governance of inter-state river waters as the CWMA's powers and functions are loaded in favour of the Centre under **Entry 56** of seventh schedule,
- **Political and bureaucratic will power** is extremely necessary for success of this scheme.
- **Concerns raised by Karnataka:** (a) the "scheme" should be debated in the Parliament, (b) Authority can interfere in deciding the crops to be raised and farmers might take a long time to switch over to modern farming practices, and (c) Situations where Tamil Nadu face floods due to North East Monsoon, releasing water would then result in wastage.

Reasons for rising river disputes

- **Demographic factor-** Increasing population in the river basin hence increased demand of river water.
- **Changes in agriculture patterns** as farmers are now ditching water-efficient crops such as millets and ragi and moving towards paddy and sugarcane.
- **Climate and geographical factors:** A study in 2011 had predicted that climate change might cause a reduction of up to 50 per cent in the waters of the Cauvery sub-basins by 2080.
- **Political factors-** Regional political forces have grown stronger and assertive with the growing nexus between water and politics have transformed the disputes into turfs of vote bank politics. Politics often lead to constitutional and governance crises such as Karnataka's ordinance defying the tribunal order in 1991 or Punjab's unilateral decision to annul water sharing agreements with Haryana in 2004.
- Uneven distribution of **water resources** along with increasing Rainfall variability and frequent droughts.
- **Disputes due to bifurcation of states:** Once Telangana came into existence in 2014, the Godavari water and the Polavaram project became the bone of contention.
- **Activities taken up by upper riparian state on the rivers** for instance Andhra Pradesh began constructing a flood flow canal over Vamsdhara river, and Chhattisgarh developed barrages over Mahanadi river resulted in disputes with Odisha. Similarly, Karnataka proposed to link Mahadayi river with Malprabha river resulted in dispute with Goa.

Issues in Inter-State Water Disputes

- **Issues in Resolution of Water dispute**
 - **Historical:** The dispute over sharing Cauvery's water is over a century old. It first cropped up between the princely state of Mysore (now Karnataka) and the Madras Presidency (now Tamil Nadu). Two water-sharing agreements were signed since then, but the last one lapsed in 1974. In 1990, the Union government constituted the Cauvery Water Dispute Tribunal (CWDT) to resolve the dispute, which gave its final recommendations in 2007.
 - The Constitution, **under Article 262**, bars the jurisdiction of the Supreme Court or any other court over interstate water disputes. However SC using its **power of Special Leave Petition (under Art. 136)** accepts the petitions hence resulting in pending litigations.
 - In the times of coalition politics and assertive regional political forces, the Central government's mediation for resolution becomes difficult.
 - **Non-compliance of tribunal awards** by States is the critical weak link in dispute resolution, which may persist even when a permanent tribunal exists.
- **Issues with the present Inter State River Water Dispute Act, 1956:**
 - A **separate Tribunal** has to be established for each Inter State River Water Dispute.
 - **Inordinate delay in securing settlement** of such disputes. Tribunals like Cauvery and Ravi Beas have been in existence for over 26 and 30 years respectively without any award. There is no time limit for adjudication. In fact, delay happens at the stage of constitution of tribunals as well.
 - **No provision for an adequate machinery** to enforce the award of the Tribunal.
 - **Issue of finality.** In the event the Tribunal holding against any Party, that Party is quick to seek redressal in the Supreme Court. Only three out of eight Tribunals have given awards accepted by the States.
 - Control over water is considered a right which has to be jealously guarded. Compromise is considered a weakness which can prove politically fatal.

- The Act gives no indication of the principles that have to be applied by the tribunal in deciding water disputes.
- There is no age limit for the chairperson or members of the tribunals.

Steps taken by government

Inter-State River Water Disputes (Amendment) Bill, 2017 was introduced in Lok Sabha which proposes to streamline the adjudication of inter-state river water disputes and make the present legal and institutional architecture robust. Key Provisions include:

- **Dispute Resolution Committee (DRC)**, to be established by the Central Government before referring dispute to the tribunal, to resolve the dispute amicably by negotiations within a period of one year extended by 6 months.
- **Single Tribunal** - Bill proposes a Single Standing Tribunal instead of existing multiple tribunals.
- It provides for the **appointment of Assessors to provide technical support to the tribunal**. They shall be appointed from amongst experts serving in the Central Water engineering Service not below the rank of Chief Engineer.
- **Composition of Tribunal**- Tribunal shall have one chairperson, one vice-chairperson and not more than six other members. It limits the tenure of the chairperson to five years or till they attain the age of 70, whichever is earlier. The term of office of Vice Chairperson and other member of tribunal shall be co-terminus with the adjudication of the water dispute.
- **Timeline:** The tribunal should settle a dispute in four-and-a-half years.
- **Finality** - The decision of the Tribunal shall be final and binding.
- **Data Collection and maintenance of a data-bank** at national level for each river basin by an agency to be appointed and authorized by central government.
- **Technical Support:** Provides for the appointment of Assessors to provide technical support to the tribunal. They shall be appointed from amongst experts serving in the Central Water engineering Service.

Issues in the Inter-State River Water Disputes (Amendment) Bill, 2017

- Benches of Permanent Tribunals are proposed to be created as and when need arise. Thus it is not clear how these temporary benches will be different from present system.
- The Supreme Court had said that it can hear appeals against water tribunals set up under ISWDA, thus delaying the judicial proceedings.
- Institutional mechanism to implement tribunal's award is still mired in ambiguities.

Suggestions and way forward

- **Inter-State Council (ISC)** can play a useful role in facilitating dialogue and discussion towards resolving conflicts.
- For implementation purposes, **River Boards Act 1956** under entry 56 of union list, the most potent law available for the purpose should be suitably amended. **River Basin Organization (RBOs)** can be set up under this act to regulate and develop inter-state rivers and their basins.
- **Moving towards mediation:** Mediation is a flexible and informal process and draws upon the multidisciplinary perspectives of the mediators. In the South Asian context, the World Bank played the role of mediator between India and Pakistan, which resulted in a successful resolution of the conflicts surrounding the rivers of the Indus basin.
- **Supply Side Management:** Many scholars have argued that augmenting the water supply might be one way of dealing with such issues. Thus, water resources should be utilised and harnessed properly through undertaking long-term measures towards saving water and rationalising its use.
- **Declaration of Rivers as National Property:** which may reduce the tendency of states which consider controlling of river waters as their right.
- **Bringing water into concurrent list:** as recommended by Mihir shah report where central water authority can be constituted to manage rivers. It was also supported by a Parliamentary Standing Committee on Water Resources.
- **Institutional Model for inter-state water issues-** The challenges of water-sharing in distress years remain because the country lacks institutional models for implementing inter-state river water awards. Thus, there is a need for a permanent mechanism to solve water disputes between states without seeking recourse to the judiciary.

- Apart from institutional mechanism, a sense of responsibility in states **towards humanitarian dimension of water disputes** needs to be infused.
- **Following 4Rs**-There is a need to practice the concept of the **4Rs** (Reduce, Reuse, Recycle, Recover) for water management in line to achieve **goal 6** (Ensure access to water and sanitation for all) **of the SDGs**.
- **Following National Water Policy**- Further the provisions given under the National Water Policy for rational use of water and conservation of water sources must be followed. Urban water management of cities like Bengaluru should incorporate conservation of wetlands that replenish ground water along with appropriate sewage treatment.
- **Other measures**- Water disputes need to be depoliticized and not be made into emotional issues linked with regional pride. Further, there is a need for scientific management of crop patterns by bringing out policy measures that promote water efficient crops and varieties.
- **Interlinking of rivers**- can help in adequate distribution of river water in the basin areas.

1.4. STATEHOOD FOR DELHI

Why in news?

- The ruling Aam Aadmi Party (AAP) has decided to give another push to its demand for full statehood to Delhi with a public campaign.

Why statehood should be granted?

- In 1991, when the **69th Amendment to the Constitution** created the Legislative Assembly of Delhi, the city's population was much smaller. Today, there are nearly two crore people in Delhi.
- Nowhere in any democracy are two crore people represented by a government with restricted powers.
- When the Union Territories were first created, the idea was to provide a flexible yet transitional status to several territories that joined the Indian. With time, Goa, Manipur, Himachal Pradesh and Tripura have been granted statehood.
- It would also provide equal right of people for representation and self-governance.
- Now, the time has come to enter the second and final stage to create the full State of Delhi.
- **United Nations report** projects that Delhi urban agglomeration will make it the most populous city in the world by 2028.
- An elected government representing a massive population need to have a say in law and order and land management.

Background

- Till 1992, except for a brief interlude, Delhi was a union territory under the complete control of the Government of India.
- Delhi was allowed its 'statehood' early in the 1990s, with a Chief Minister and a popularly elected unicameral legislature though the 'State' remained truncated in its powers.
- But It remained in substance a union territory and in form a State, with the Lt. Governor retained as its chief executive.
- The Chief Minister and his Cabinet made a late entry into space where Lt Governor and several municipal corporations already existed which created friction.
- Many departments of the Centre, State, scores of parastatals and five ULBs (urban local bodies) providing bits of governance in the city.
- It could safely be asserted that Delhi has more government and less governance than any other city or state in the country.

Recent Supreme Court Verdict on Delhi-Centre Power Tussle

- The Supreme Court judgement in the Government of NCT Delhi vs Union of India case, overturned the August 2016 judgment of the Delhi high court, which had ruled that since Delhi was a Union territory all powers lay with the central government, not the elected Delhi government.
- Resolving the dispute over the demarcation of powers between the Union Government and the Government of Delhi, the Supreme Court laid down a few key principles:
 - Delhi government has power in all areas except land, police and public order and **the LG is bound by the aid and advice of the government** in areas other than those exempted
 - The only exception to this rule, it said, was a proviso to **Article 239-AA**, which allowed **the LG to refer to the President any issue** on which there was a difference of opinion with the council of ministers. In such a case, the LG would be bound by the President's decision.
 - Delhi Lieutenant Governor cannot act independently and must take the aid and advice of the Council of Ministers because national capital enjoys special status and is not a full state. Hence, the role of the L-G is different than that of a Governor.
 - It observed that neither the state nor the L-G should feel lionized, but realize that they are serving Constitutional obligations and there is no space for absolutism or anarchy in our Constitution.

Why statehood should not be granted?

- The support for full statehood has not been a national compulsion, but a call fuelled by Delhi's local political ambitions.
- Delhi is the national capital and must necessarily be viewed from the prism of the interests of the entire country.
- Delhi is home to vital institutions such as the president's estate, the Parliament and foreign embassies. All of these infrastructures require special security cover and close coordination with centrally administered agencies such as the Research and Analysis Wing (RAW) and Intelligence Bureau (IB).
- These institutions are the sole responsibility of the Union Government and not of any one particular state legislative assembly
- Indian government must have some territory under its control; it cannot possibly be an occupant or a tenant of a state government
- Many regional parties have expressed their strong reservation to acceding full statehood for Delhi. For them, India's national capital belongs to every citizen of the country and not just those who reside in the city
- Statehood would deprive Delhi of the many advantages it gets as national capital.
 - For instance, the entire burden of policing—involving the coordination of a mammoth staff—is borne by the federal government.

Way forward

- Overlapping jurisdictions in a national capital is inbuilt and constitutional entities have to manage this reality.
- Provide greater autonomy and reasonably robust fairer power-sharing arrangements among different constituents
 - For a start, Delhi should demand the urgent revision of the existing constitutional provisions (i.e. 69th Amendment, Article 239) and Rules of Business.
- Given the overlapping and often-contested jurisdictions, it is imperative to strive for a **credible and institutionalised dispute-resolution mechanism** as has been adopted by national capitals all over the world.
 - The existing system of referring the disputes to the office of the president is a failed model that lacks credibility and invariably gets resolved in favour of the national government.
- City-government should have a hand in the running of the local municipal bodies.
 - What is required is an empowered Mayor, performing the functions of a municipal body extending to all such subjects where the GoI does not operate.
- The functions of the parastatals, unrecognised by the Constitution, need to be merged in the ULB. Any such subject/function that operationally is difficult to be merged with the ULB can function under the aegis of the Lt Governor.
- Governance restructuring would need to be done in a manner that accountability in relation to specific functions falls squarely on a single organisation/individual.

1.5. FISCAL FEDERALISM

Why in News?

- The Union cabinet recently approved the setting up of the 15th Finance Commission (FC) with N.K. Singh as its Chairman.

Significance Fiscal Federalism

- Fiscal federalism entails the division of responsibilities in respect of taxation and public expenditure among the different layers of the government, namely the Center, the states and the local bodies. For the successful operation of the federal form of government, financial independence and adequacy form the backbone.

Constitutional provisions dealing with Centre-state fiscal relations

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

- It helps governmental organization to realize cost efficiency by economies of scale in providing public services, which correspond most closely to the preference of the people.
- It also creates a unified common market, which promotes greater economic activity.
- The Finance Commission is envisaged in the Constitution (Article- 280) as the key institution responsible for dealing with fiscal imbalances between the center and states, as well as among the states.

Finance Commission & Federalism in India

- The Constitution envisages the FC as the **balancing wheel of the Fiscal federalism in India**.
- Every successive FC has to do a **political balancing act** by giving more resources to the states given the growing importance of sub-national governments in the Indian political economy.
- It also needs to ensure that centre is not fiscally constrained given its role in key national public goods such as defence.
- Successive finance commissions have increased the proportion of tax revenue that goes to the states—a necessary change given the growing importance of direct taxes as well as the need for higher spending by state governments in local public goods.
- The First Finance Commission headed by K.C. Neogy had recommended that the states get a tenth of total taxes collected centrally. That share has steadily increased. The 14th Finance Commission headed by Y. V. Reddy recommended that the share of the states should be 42%.
- Federalism can flourish only when it is accompanied by a strong central agency that credibly enforces the rules for a new political economy equilibrium.

About the Finance Commission

- **Article 280** of the Constitution provides for a FC as a **quasi-judicial body**.
- It consists of a chairman and four other members to be appointed by **the President** every 5th year or at such earlier time as he considers necessary.
- The FC makes recommendations to the President on following matters-
 - The **distribution of the net proceeds of taxes** between the centre and the states, and the allocation between the states of the respective shares of such proceeds.
 - The **principle that should govern the grants-in-aid** to the states by the centre (out of the Consolidated Fund of India).
 - The **measures to augment the Consolidated Fund of a state** to supplement the resources of local governments on the basis of recommendations made by the state finance commission.
 - Any other matter referred to it by the President.
- Recommendations made by the FC are **only advisory in nature**.
- The **Constitution empowers** the FC to go beyond the core issues of how to divide **taxes vertically** between centre and the states on the one hand and **horizontally** between states on the other.
- It also allows FC to make **broader recommendations in the interests of sound finance**.

Issues with Fiscal Federalism in India

In India, States are not vested with adequate financial powers (limited tax bases with maximum expenditure responsibility) to meet their expenditure responsibilities leading to

- **Vertical Fiscal Imbalance:** Persistence disparities in different components of revenue and expenditure of centre and states, where state's share of own revenue capacity is estimated to be 37.5% (average) as against 55.6% (average) of revenue expenditure or basic requirement.
- **Horizontal Fiscal Imbalance:** Fiscal health of states has been deteriorated over time with considerable level of inequality among states in meeting their revenue requirement from 37.6% (Bihar) to 82.6% (Haryana) of their respective capacity.
- **Imbalances after Liberalization:** Market-based reform generates more inequality due to unequal capacity among states for infrastructure development. The major challenge faced by poorer states in the post reform period is to chase competitive infrastructure investment in order to attract foreign capital investment
- **Financial Deterioration of States:** Per capita Revenue Deficit, Fiscal Deficit and Primary Deficit of states have been growing at 27.05, 11.53 and 61.85 % respectively, indicating financial deterioration of states and reflected by
 - Mounting debt burden on States
 - Lack of scope for expansion in social and economic service.
 - Lack of scope for capital investment

- The process of devolution of revenue become ineffective.
- The institutions contemplated in the Constitution to safeguard the fiscal autonomy of the States have not helped to correct the vertical imbalance.
- The unitary elements already embedded in the Indian Constitution have gained further strength over the years with concentration of fiscal powers in the Centre and growing dependence of the States on transfers from the Centre.
- The **terms of reference** of Finance Commission is decided unilaterally by central government which leads to raising of various issues by state governments.

Way forward

- The Centre has to discharge its coordinating, corrective and lead functions in a truly federal set-up.
- The States should have their due share in responsibilities as well as rights.
- A continuing system of communication and clearing should be available.
- 14th Finance Commission suggested that the transfers from the Union to the States outside the recommendations of the Finance Commission should be through a new institutional arrangement that should involve Union, States and domain expertise, ideally under the aegis of inter-state Council
- The enforcement of the FRBM parameters should be made more rigorous.
- The TOR can be made a joint exercise rather than a top-down exercise by union.

Issues with TOR of 15th Finance Commission

- **Using 2011 Census to calculate population for allocation** of Union tax revenue in place of 1971 Census. This seems to be penalizing those states which have focused on family planning and population control.
- **Second thoughts on increased devolution:** as TOR “The impact on the fiscal situation of the Union Government of substantially enhanced tax devolution to States following recommendations of the 14th Finance Commission” reflects an unease of central government about revenue sharing.
- **Control or lack of it in incurring expenditure on populist measures:** This TOR seems to be going against the spirit of cooperative federalism as it questions the choices made by states in expenditure.
- **Find ways to Encourage the Ease of Doing Business:** This index has many problems, especially as it always scores less regulations better than more regulations. This may promote race to the bottom among states to dismantle all regulation, good or bad, which is not in India’s overall interests.
- **Provision of revenue deficit grant:** It was enacted to provide comparable public services and taxation to all citizens of various states. The TOR allows The Commission to examine whether revenue deficit grants be provided at all
- **Curtail borrowing by states:** The ToR wants to curtail borrowing by States from the present 3% of Gross State Domestic Product (GSDP) to 1.7% severely curtailing capital expenditure of states.

1.6. DEMAND FOR SMALLER STATES

The demand for smaller states is a complex issue in India. The first state reorganisation commission, led to the single largest realignment of states along linguistic lines in State Reorganisation Act, 1956. This idea of splitting states based on a common language/community has stood the test of time. **Article 3** of the Indian Constitution provides for the creation of a new state through a bill tabled in Parliament on the President's recommendation after consultations with the legislatures of the affected states.

India has gone through several more independent exercises to carve out smaller states from larger states, and it has also involved conversion of union territories into states leading to rise in number of states to 29 from 14 in 1956. Various regions including Gorkhaland in West Bengal, Bodoland in Assam, Saurashtra in Gujarat; Vidarbha in Maharashtra, Maru Pradesh in Rajasthan, Nagalim in Nagaland, are demanding separate states.

Reasons for demands

- **Historical:** For instance: demand for the bifurcation of Tamil Nadu was based on the fact that Tamil-speaking region in the past comprised kingdoms centred around Kanchipuram and Tanjore/Madurai.
- **Administrative:** Much of the new demands are a result of uneven growth within states and a perception that splitting large states into smaller chunks will improve administration by bringing power centres closer to the people. For instance, developmental backlog in Vidarbha region due to large size of Maharashtra. Even without Uttarakhand, Uttar Pradesh is larger than Brazil, Japan or Bangladesh in terms of population.
- **Economic:** The sentiment of being deprived even after being rich in natural resources are grounds for the demand of a separate state.
- **Socio-Cultural:** Even after linguistic divisions, states have a vast diversity which often leads to a feeling of ‘culturally subjugated and victimized’ by some ethnic groups. So, for preserving ethnic identity demands for

a new state are made. For instance, Gorkhland out of West Bengal, Nagalim demand in North East, Bhojpuri speaking Purvanchal region from Uttar Pradesh, etc.

- **Political:** Jat dominated western UP region is demanding Harit Pradesh for more political clout which presently rests with Yadavs.

Arguments for Creation of Smaller States

- **Decentralisation of Power:** Smaller administrative units would bring distant provincial governments and administration in remote capitals closer to the people. It will accelerate the pace of modernisation by increase in administrative efficiency, fulfil the political aspirations of the people of the backward regions and help the states create separate policy based on local realities.
- **Resolve the problem of identity crisis** among the ethnic groups and enable them to develop their own language and culture thus helping them in getting rid of the '**feelings of internal colonialism**'.
- **Make the federation more balanced** by making the representation of the present-day large-sized States, like UP, MP and Maharashtra, and the small States, like Punjab, Haryana and Himachal Pradesh, more proportionate.
- **Better management, implementation and allocation of public resources:** A relatively homogeneous smaller state allows for easy communicability, enabling marginal social groups to articulate and raise their voices.
- **No more fear of balkanization:** Earlier, demands were opposed for the fear of balkanization, however, after 70 years of independence such fear is no more there.

Arguments against creation of smaller states:

- Statehood **cannot guarantee rapid economic development** of those backward regions which do not have the required material and human resources. Besides, some of the small States may not be having the potential for economic viability.
- Small States could also **lead to the hegemony of the dominant community/caste/tribe** over their power structures. There could develop aggressive regionalism too in such States leading to the growth of the sons-of-the-soil phenomenon and the consequent intimidation of the migrants.
- It may also lead to certain **negative political consequences** as because of the small strength of state legislature, the majority of the ruling party or ruling coalition would remain fragile. The case of Jharkhand where even an Independent MLA has manipulated to become the CM may be seen.
- **Risk of centralisation of powers** in the hands of the Chief Minister and the Chief Minister's Secretariat would be greater and the State might become a fiefdom of the Chief Minister.
- It may lead to **increase in inter-State-water-power-and-boundary disputes** as seen in the case of Andhra Pradesh and Telangana.
- It would be a **strain on their limited financial resources** as huge funds would be required for building new capitals and maintaining the growing number of Governors, Chief Ministers, Ministers and administrators.
- Past experiment of smaller states show that **mere formation of a smaller State is no guarantee** for better development. For e.g.: Uttarakhand continues to be at the lower end in the Human Development Index, Chhattisgarh has witnessed the largest displacement of tribals, Jharkhand was mired in corruption and maladministration

Suggestions and way forward

- **Better governance:** Use of technology to reach remote regions for better public service delivery and addressing the problems of displacement and discontent among people.
- **Smaller districts** to bring government and administration closer to the people. The office of District Collector and zila parishad can be empowered further to make administration more efficient and fix accountability for under development.
- **Decentralising administration and strengthening local self-governments:** It would be far more efficient, healthy and beneficial if the local self governments have a greater hand and say in the local development. Power should be decentralised based on the principle of subsidiarity.
- **Political stability** which lends continuity of policies matters the most and not 'largeness' of states. An efficient and willing administrator can manage even a large state fairly satisfactorily.
- A **Second States Re-organisation Commission** to look into this and carve out provinces in a more objective and scientific manner might be the way to address the issue.

2. ISSUES RELATED TO CONSTITUTIONAL PROVISIONS

The term **constitutionalism means** that the power of leaders and government bodies is **limited**, and that these limits can be enforced through established procedures. As a body of political or legal doctrine, it refers to government that is devoted both to the good of the entire community and to the preservation of the rights of individual person.

The constitutionalism **guarantees the foundational human rights** yet if the law is not supreme the citizens will not enjoy these rights. Therefore, constitutionalism **sustains democracy**, which guarantees the fundamental human rights.

In India we have a **constitutional democracy** where the powers, rights and obligations of both the citizens as well as the government are defined. However, ever since its adoption, the constitution has faced many issues. Various issues currently in news are-

2.1. HATE SPEECH

Why in News?

The **T. K. Viswanathan committee**, constituted by the Centre, has recommended introducing stringent provisions for hate speech.

Introduction

While hate speech can often be dismissed as bigoted ranting, it could also serve as an **important warning sign** for a much more severe consequences. Increasingly virulent hate speech is often a precursor to **mass violence**. Adding on to the problem is the increasingly influential **role of the Internet** and text messages in transmitting and spreading hate speech.

However, **a balance must be found** between prohibiting hate speech and encouraging the fundamental right to freedom of expression.

Background

- SC had observed that the issue of hate speech deserved deeper consideration for which the Law Commission submitted its report on Hate Speech.
- The committee was formed to **assist the government** in establishing a legal framework to better deal with cybercrimes related to hate speech and provoking violence, and to examine the Law commission's report on hate speech.

Related Laws in India

- **Article 19 of the Constitution**- Freedom of Speech and Expression is guaranteed to all the citizens of India. However, the right is subjected to reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Hate Speech

- **SC had observed** that “hate speech is an effort to marginalize individuals based on their membership in a group. It seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society. It, therefore, rises beyond causing distress to individual group members and lays the groundwork for later, broad attacks on vulnerable....”
- **Law Commission in its 267th report** had observed that “Hate speech generally is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief. Thus, hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.”
- The **Human Rights Council's 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression'** expressed that freedom of expression can be restricted on the following grounds:
 - Child pornography (to protect the rights of children),
 - Hate speech (to protect the rights of affected communities)
 - Defamation (to protect the rights and reputation of others against unwarranted attacks)
 - Direct and public incitement to commit genocide (to protect the rights of others)
 - Advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others, such as the right to life).

There are provisions in the **Indian Penal Code**, restricting the freedom of expression:

- **Section 153(a):** Whoever, by words, signs or otherwise promotes enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- **Section 295(a):** Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, visible representations or otherwise, insults the religion or the religious beliefs of that class, shall be punished.

Why these changes are needed?

- Where **speech injures dignity**, it would undermine the “**implicit assurance**” that citizens of a democracy, particularly minorities or vulnerable groups are placed on the same footing as the majority.
- Also in the absence of proper cyber-law framework, women are being targeted with a lot of abuse and other humiliations and hate speech is very rampant.

Observations of the Committee

- It was of the opinion that it was more effective to insert the substantive provisions in the IPC instead of the IT Act, since the IT Act was primarily concerned with e-commerce regulation.
- **Section 78 of the IT Act** primarily ‘dealt with capacity building’ and needs to be relooked to sensitize the officers and give them support with electronic expertise, computer-forensics and digital-forensics.
- It has **recommended amendments in CrPC** to enable each state to have a **State Cyber Crime Coordinator (Sec 25B)** and a **District Cyber Crime Cell (Sec 25C)**.
- The offensive speech should be “highly disparaging, abusive or inflammatory against any person or group of persons”, and should be uttered with the intention to cause “fear of injury or alarm”.
- The committee also expressed the desirability of having **guidelines in place to prevent the abuse of provisions by investigation agencies** and to safeguard innocent users of social media.
- Many recommendations were taken from the Law Commission report, which are-
 - Insertion of **Section 153C** to prohibit incitement of hatred through online speech on grounds of religion, caste, community, gender, sexual orientation, tribe, language, place of birth etc.
 - **Section 505A** was proposed to be inserted by the Law Commission to prevent causing of alarm, fear, provocation of violence etc. on grounds of identity.
 - It was clarified that the **need for intent** has to be established.

Law Commission has recommendation for punishment

- **Prohibiting incitement of hatred:** If a person:
 - uses threatening words or signs within the hearing or sight of a person with the intention of causing fear, or
 - advocates hatred by words or signs that incites violence, he will be punishable with imprisonment of up to two years, and fine up to Rs 5,000. However, the incitement of hatred must have been on grounds of religion, caste, community, sex, gender identity, sexual orientation, place of birth, residence, disability, etc. This would be a cognizable and nonbailable offence.
- **Causing fear, alarm or provocation of violence in certain cases:** If a person uses threatening or derogatory words or signs in public on certain grounds (e.g. religion, caste, community, sex, gender identity):
 - within the hearing or sight of a person creating fear.
 - with the intent to provoke violence, it will attract a punishment. The punishment will be imprisonment up to one year, and/or fine up to Rs 5,000. This would be a non-cognizable and bailable offence.

Concerns associated with Committee’s recommendations -

- The Law Commission identifies the status of the author of the speech, the status of victims of the speech, the potential impact of the speech, in order to qualify something **as Hate Speech**. However, these concerns are apparently **not well reflected in the committee report**.
- Besides, **extremely broad terms** like, highly disparaging, indecent, abusive, inflammatory, false or grossly offensive information, etc., have been used by the report which takes us back to the ambiguity that the section 66A held.

Conclusion

- It is vital to examine the **context in which speech is made** in order to properly determine the motivation behind it – and the effect it is likely to have. The dangerousness of speech cannot be estimated outside

the context in which it was made or disseminated, and its original message can become lost in translation.

- Supreme Court in **Pravasi Bhalai Sangathan v. Union of India in 2014**, states that hate speech must be viewed through the lens of the **right to equality**. However, few loopholes need to be plugged when it comes to regulation of hate speeches, so as to transform our country from being a procedural democracy to also a substantive one.

2.2. PASSIVE EUTHANASIA

What is Euthanasia?

Euthanasia, also known as **assisted suicide**, and more loosely termed **mercy killing**, means to take a deliberate action with the expressed intention of ending a life to relieve intractable (persistent, unstoppable) suffering.

- The Supreme Court has recently given judgement on Passive Euthanasia.
- The bench upheld that the **fundamental right to life and dignity includes right to refuse treatment and die with dignity** because the fundamental right to a "meaningful existence" includes a person's choice to die without suffering (including terminally ill).
- The judgment includes **specific guidelines to test the validity of a living will**, by whom it should be certified, when and how it should come into effect, etc.
- The guidelines also cover a situation where there is no living will and how to approach a **plea for passive euthanasia**.
- A person need not give any reasons nor is he answerable to any authority on why he should write an advanced directive.
- But the judge held that **active euthanasia is unlawful**.

Euthanasia, also known as assisted suicide, and more loosely termed mercy killing, means to take a deliberate action with the express intention of ending a life to relieve intractable (persistent, unstoppable) suffering.

In **active euthanasia** a person directly and deliberately causes the patient's death. In **passive euthanasia** they don't directly take the patient's life, they just allow them to die.

India is witnessing a debate on whether right to die is a part of right to life under **Article 21**.

Background

- The **196th Law Commission** of India report in 2002 advocated passive euthanasia. However, it decided not to make any laws on euthanasia.
- In the **Aruna Shanbaug's case in (2011)**, a major milestone, the Supreme Court decided to legalise passive euthanasia by means of withdrawal of life support to patients in a persistent vegetative state (PVS). According to the Court, the decision of the patient must be an informed decision.
- The **Law Commission**, later in its 241st report came out in favour of **allowing withdrawal of life support** for certain categories of people — like those in persistent vegetative state (PVS), in irreversible coma, or of unsound mind, who lack the mental faculties to take decisions.
- The Supreme Court guidelines form the law of the land regarding euthanasia, till the time. Active euthanasia is still not legal in the country.
- Recently, the Central government,

SC judgements

- In **P. Rathinam case**, 1994, the Supreme Court held that the "right to die" is a right enshrined under Article 21 of the Constitution and hence Section 309 of Indian Penal Code was unconstitutional.
- SC in **Gian Kaur vs State of Punjab in 1994** had held that both assisted suicide and euthanasia were **unlawful**. The bench stated that the right to life did not include the right to die, hence overruling the two-judge bench decision in P. Rathinam vs Union of India.

Related Information

- A '**living will**' is a concept where a patient can give consent that allows withdrawal of life support systems if the individual is reduced to a permanent vegetative state with no real chance of survival.
- It is a type of **advance directive** that may be used by a person before incapacitation to outline a full range of treatment preferences or, most often, to reject treatment.
- When a person is not in a position to give his consent for the keeping or withdrawing the treatment, two cardinal principles of medical ethics are crucial:
 - His wishes expressed in advance in the form of a living will, or the wishes of surrogates acting on his behalf (substituted judgment) are to be respected.
 - Beneficence which means acting in what is the patient's best interest and is not influenced by personal convictions, motives or other considerations.

objected to legalising the concept of 'Living Will' — an advance written directive to physicians for end-of-life medical care.

Arguments in favour of Passive Euthanasia

- Some believe that every patient has a **right to choose when to die** similarly as they have right to life enshrined in the constitution.
- Proponents believe that euthanasia can be safely regulated by government legislation. Passive euthanasia has **already been practised in various cases** around the world.
- In case of **palliative sedation**, widely used across the world, many of the sedatives used carry a risk of shortening a person's lifespan. So, it could be argued that palliative sedation is a type of euthanasia.

Arguments against Passive Euthanasia

- **Alternative treatments** are available, such as palliative care and hospices. We do not have to kill the patient to kill the symptoms. Nearly all pain can be relieved.
- There is **no 'right' to be killed'**. Opening the doors to voluntary euthanasia could lead to non-voluntary and involuntary euthanasia, by giving doctors the power to decide when a patient's life is not worth living.
- The assumption that patients should have a right to die would **impose on doctors a duty to kill**, thus restricting the autonomy of the doctor. Also, a 'right to die' for some people might well become a 'duty to die' by others, particularly those who are vulnerable or dependent upon others.
- Centre has also opposed the concept of a **living will**, stating that there was **risk of misusing** such a provision.

Provision Draft Medical Treatment of Terminally ill Patients Bill

- **Rights of a competent patient:** Every competent patient (including minors above the age of 16 years) will have the right to decide and request the medical practitioner to withhold, withdraw, or continue medical treatment in case of a terminal illness. The practitioner will act on the request if he is satisfied that the patient is competent to take an informed decision. In case of minors above 16 years, the consent of the parent and the major spouse will also be required.
- Before proceeding with the decision, the medical practitioner will be required to inform persons including the spouse, or parent, etc. of the need (or otherwise) for withdrawing treatment.
- **Protection to medical practitioners and competent patients:** If a patient suffering from terminal illness refuses medical treatment, he will not be liable for any offence under the Indian Penal Code, 1860. Without regard to provisions in any other law, in cases where a medical practitioner withdraws treatment on the request of a patient, his action will be lawful.
- **Procedure for incompetent patients:** In case of an incompetent patient (persons of unsound mind, etc.), a near relative, medical practitioner etc., can apply to the High Court for granting permission to withdraw or withhold medical treatment. The Court having considered the report of panel of experts (providing expert medical opinion) and the wishes of the spouse, parents, etc. will grant or refuse permission (or grant permission with certain conditions).

Way Forward/Parameters to be considered in implementing Passive Euthanasia

Euthanasia is an important issue as it deals with the right to die and right to live a dignified life of an individual. Currently, we do not have adequate laws and rules to regulate it and ensure it is not misused. There are various considerations that require attention, like-

- It is essential to **assess the mental health status** of the individual seeking euthanasia because according to them the main reasons for opting euthanasia are depression, hopelessness, pain and lack of care. Patients can overcome their decision on euthanasia or to receive natural death when they are well taken care of.
- A committee headed by **Dr. M R Rajagopal** tabled a report with the government **listing the parameters** and the threshold values at which 'passive euthanasia' and 'living will' can be implemented in the state. Important recommendations of the report are-
 - It stated that the **usage of the term 'passive euthanasia'** is 'misleading' (as it carries the meaning of intention to kill) and said the procedure should rather be called as 'withholding or withdrawing futile treatment'.
 - A **doctors' panel** may be constituted at the **district-level to process 'living will'** and requests the government to direct the respective District Medical Officers to constitute the panel in advance as 'when the need arises, time will not be wasted for finding the doctors.

2.3. RIGHT TO CONVERT

Why in News?

Similarly, the **Supreme Court** recently gave a judgement regarding a person's right to choose a religion.

More about the news

- The observations are part of judgment the Supreme Court in the **case of Hadiya**, a 26-year-old Homeopathy student. Supreme court has given following judgement in the case:
 - **Right to Choice:** Freedom of faith is essential to individual's autonomy. Choosing a faith is the substratum of individuality without which the right of choice becomes a shadow.
 - **Liberty:** Matters of belief and faith, including whether to believe, are at the core of constitutional liberty and the Constitution exists for believers as well as for agnostics.
 - **Identity:** Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. Society has no role to play in determining our choice of partners
 - **Constitutional Protection:** Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere.
- Further SC held that Right to choose religion and marry is an intrinsic part of meaningful existence. Neither the State nor "patriarchal supremacy" can interfere in person's decision.
- This is a change from SC's earlier interpretation of the word "propagate," to mean "to transmit or spread one's religion by an exposition of its tenets," but to not include the right to convert another person to one's own religion.

Constitutional provisions Regarding Right to Freedom of Religion:

Article 25: All persons are equally entitled to "freedom of conscience and the right freely to profess, practise and propagate religion." **subject to public order, morality and health**, and to the other fundamental rights guaranteed in the Constitution.

Article 26: gives every religious group a right to establish and maintain institutions for religious and charitable purposes, manage its affairs, properties as per the law. This guarantee is available to only Citizens of India and not to aliens.

Article 27: This Article mandates that no citizen would be compelled by the state to pay any taxes for promotion or maintenance of particular religion or religious denomination.

Article 28: This Article mandates that No religious instruction would be imparted in the state funded educational institutions.

The judgement reinvigorates freedom of religion and freedom of conscience which has been recognized under the international law under the Universal Declaration on Human Rights recognizing fact that the entire humanity enjoys certain alienable rights. India is also a signatory of the same.

Issue of Religious Conversion in India

- Indian **constitution in its Part III (Articles 25 to 28)** endorses the freedom of religion in India (for Indian citizens and anyone who resides in India) along with specified limitations. However, the term **religion is nowhere defined in the Indian Constitution** but it has been given expansive content by way of judicial pronouncements.
- Although Indian position on the freedom of religion entails limited & permissible interference of the state in religious matters, various state governments (Uttarakhand, Jharkhand, MP, Odisha etc.) have **enacted anti-conversion laws** with the purported aim of preventing conversions brought about by coercion or inducements. Such laws have been a subject of intense criticism and have been alleged as infringing on one's right to freedom of religion.
- What further compounds the issue is the absence of any explicit right to convert in the provisions relating to the concerned fundamental right in the Constitution. Court judgements in various cases have brought a certain crucial understanding on the matter of conversion in the country in light of freedom of religion and the individual's right to choice.

Conclusion

It is important to understand that right to freedom of religion would be illusory if one were not permitted to change it, of course without any coercion or allurements. All the major international instruments explicitly mention the right to conversion as implicit in the right to freedom of religion. Even solicitation has been held lawful in USA and any ordinances or orders passed to ban such soliciting have been quashed by the courts. The Indian Constitution guarantees the right to freedom of religion but it does not explicitly mention right to

conversion. There may not be a fundamental right to religious conversion (as held in Stanislaus case) but it certainly is a right to convert one's religion if there are no elements of fraud, coercion and allurements.

2.4. RESERVATION IN PROMOTION

Why in news?

The Supreme Court has permitted Central government for reservation in promotion to SC/ST employees working in the public sector in "accordance with law".

Background

- This direction of apex court came in the response to government's complaint that promotions were at a "standstill" due to separate orders passed by various high courts.
- The Supreme Court's decision will permit the government to **fill a large number of vacancies** in various departments.
- 'In accordance with law' points towards the **guidelines laid down in M Nagaraj case 2006** presently applicable as there is **no specific law** which deals with the reservation in promotions.
- The apex court had further that a seven-judge Constitution bench needs to be constituted to look into the **Nagaraj judgement**.
- In **Nagaraj judgement**, apex court while upholding the previous constitutional amendments regarding this issue, put some restrictions on the state that it should:
 - **collect quantifiable data** showing backwardness of the class and inadequacy of representation of that class in public employment.
 - ensure that **efficiency of administration is not reduced** while giving promotion.
 - **not breach the ceiling-limit** of 50% or obliterate the creamy layer or extend the reservation indefinitely.

Related cases and amendments

- **Article 15(4)** allows State to make special provision for the advancement of any socially and educationally backward classes of citizens or for SCs and STs
- In the **Indira Sawhney case (1992)**, the Supreme Court held that the reservation policy cannot be extended to promotions.
- However, **77th Constitutional Amendment (CA)**, inserted **Clause 4A in Article 16** and restored provision of reservations in promotions.
- The court in 1990s restored their seniority once promoted at par with the SC/ST candidates who got quick promotions ahead of their batch mates.
- However, **85th CA Act, 2001** gave back "**consequential seniority**" to SC/ST promotees.

Argument in favour of reservation in promotion

- **For equality of opportunity**- Along with the Constitution the Supreme Court has also, time and again, upheld any affirmative action seeks to provide a level playing field to the oppressed classes with the overall objective to achieve equality of opportunity.
- **Skewed SC/ST representation at senior levels**- The representation of SCs/STs, though, has gone up at various levels, representation in senior levels is highly skewed against SCs/STs due to prejudices. Over the years Institutions has failed to promote equality and internal democracy within them. There were only 4 SC/ST officers at the secretary rank in the government in 2017.
- Overall **efficiency in government is sometimes hard to quantify**, and the reporting of output by officers is not free from social bias. For ex. In Maharashtra, a public servant was denied promotion because his 'character and integrity were not good'.

Argument against the reservation in promotions

- Provisions under articles 16(4), 16 (4A) and 16 (4B) of the Constitution are **only enabling provisions**, and not a fundamental right. In a case the Supreme Court ruled that no reservation in promotions would be given in appointment for faculty posts at the super specialty block in AIIMS.
- Gaining employment and position **does not ensure the end of social discrimination** and, hence, should not be used as a single yardstick for calculating backwardness.
- The reservation in promotion may **hurt the efficiency of administration**.

There is **ambiguity** and **vagueness in promotion process** as of now. Thus, there is a need for a **new, comprehensive law** to be enacted.

2.5. KHAP PANCHAYATS

What are Khap Panchayat?

- **Khap panchayats**, also known as Indian Kangaroo courts, are the traditional social institutions, generally an **all-male**, engaged in dispute resolution in village communities or Khap.
- They are **not illegal organisations per se**, but are age-old, social institutions based on **the kinship feeling or cultural relativism** that gives them strength.
- They are formally **distinct from the lawfully elected village panchayats**. Its organization and its leaders are **unelected and chosen** based on their social clout. They exist almost across the country but are more prevalent in Rajasthan, Haryana and Western UP.

What is Khap?

It is a **cluster of villages** united by caste and geography. It is as old as 14th century started by upper caste to consolidate their power and position. **The main rule is that all boys and girls within a khap are considered siblings.**

Causes behind their clout and popularity

Social Causes

- They settle plethora of social and legal disputes in village, ranging from **minor disagreements to major disputes**, in a swift manner. Village people trust these caste panchayats as they deliver the verdict in usually one sitting whereas court cases drag for years.
- In many cases, especially land dispute, **there are no documentary evidence** hence people prefer these panchayats in place of court of law.
- These panchayats have also frequently made positive pronouncements on social issues to **combat problems like female abortions, alcohol abuse, dowry, and to promote education.**

Political Causes

- Due to the **inherent weakness of democratically elected Panchayati Raj institutions** and its failure to tackle the socio-economic problems, Khap Panchayats have become powerful.
- The sheer **indifference of politicians and vote-bank politics** allow the khap Panchayat's dominance with impunity. The government has not done much to control their power.

Controversial Issues with khap Panchayats

- **Kangaroo courts**- Khap Panchayats functions as **extra-constitutional authorities**. They follow **whimsical ways** of delivering justice without any documentary evidences and their rulings have **no legal sanctity** in the court of law.
- **Regressive and outdated**- Their pronouncements are **based on age-old customs and traditions**, which often appears to be regressive measures to modern social problems.
- **Against individual's Rights**- Their decision often amounts to **violation of human rights fundamental rights** like right to life and liberty, right to privacy, freedom of expression, right of association, movement and bodily integrity among others.
- **Promote Criminal activities**- They have been linked to **honour killings, forced marriages, Child marriages, female foeticide**, excommunication of individuals and families. According to the National Crime Records Bureau data, there were **291 cases related to honour killings** in India between 2014 and 2016.
- **Patriarchal Institution**- Khap panchayats have been seen to hold highly patriarchal views which are further imposed on the women of the village in various restrictions on their day to day activities including special dress code, mobility, employment choices, etc. For e.g. some Khap in UP ordered the **ban on women using mobile phones** in public to restrict their contacts with men.
 - **Love marriages** are considered taboo in areas governed by Khap Panchayats which **restricts a women's right to choose partner of choice.**

Other Judicial Pronouncements

- In **Laxmi Kahhwaha vs. The State of Rajasthan** the Rajasthan High Court held that the Caste Panchayats have no jurisdiction whatsoever and **cannot impose fine or social boycott on anyone.**
- In **Armugam Servai vs. State of Tamil Nadu**, Supreme Court said that **Khaps are illegal and must be rooted/stamped out.**

Recent Supreme Court Judgement

- The court held that any attack against an adult man and woman opting for an inter-caste marriage by khap panchayats or associations is “absolutely illegal”.
- It also **laid down a set of guidelines** meant to stop any such interference by khap panchayats.

Supreme Court Guidelines

- The state governments to **identify districts, sub-divisions and/or villages** where instances of honour killing or assembly of Khap Panchayats have been reported in **the last five years**.
- **Full police protection** must be provided to couple of inter-caste or inter-religious marriage and also to their family members in those areas and if necessary, remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception.
- **Video Recording** of the Meeting of Khap Panchayat must be ensured by the police.
- **Criminal prosecution for each participants of such panchayats** in case of violation of guidelines or passing any diktat contrary to law.
- **Penal provisions** in case of failure by either the police or district officer/officials to comply with the directions.
- State governments and the Centre should work on **sensitisation of the law enforcement agencies to mandate social initiatives and awareness to curb such violence**
- The State Governments should create **special cells with 24-hour helpline** in every District to receive petitions/complaints of harassment of and threat to couples of inter-castes marriage and to provide necessary assistance/advice and protection to the couple.
- **Fast track courts** must be established for cases pertaining to honour killing or violence to the couple(s). The trial must be concluded swiftly **preferably within six months** from the date of taking cognizance of the offence

Way forward

- Khaps obstructing inter-faith or inter-caste relationships reaffirms the fact that the social milieu continues to be under the influence of the medieval era. Such views can only be eradicated with a change in social attitudes.
- This can be done with the help of **educational and awareness campaigns** through all forms of media must be organized to educate people about constitution and adverse impact of khap decision.
- Some legislative measures can be taken as-
 - Constitution of **fast track courts** to deal with honour killings;
 - **Amendments to Special Marriage Act** to reduce duration of registration of marriage;
 - Provide enough **protection to couple** engaged in inter-caste marriage.
- **Government initiatives like** Beti Bachao Beti Padhao must be encouraged to promote gender equality in society which will reduce the influence of such self-appointed courts.

Steps taken by the Government

- **Prevention of Crimes in the Name of ‘Honour’ and Tradition Bill, 2010**
 - The bill was proposed by **National Commission For Women**;
 - **Any assembly of village Panchayat** for the passing diktat against inter caste or inter religious marriage of the couple will **be illegal**. It provides Protection to the couple against the ostracism.
- **Law Commission drafted 2 bills** on khap panchayats specially on prohibiting honour killings
 - The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011
 - Endangerment of life and Liberty (Protection, Prosecution and other measures) Bill, 2011
 - **The two bills are still proposals** and so far no concrete legislative reform has been done.
- “The Prevention of Crimes in the name of Honour and Tradition and Prohibition of Interference with the Freedom of Matrimonial Alliances Bill, 2017” was introduced as a **private member Bill in the Rajya Sabha**.

2.6. MINORITY EDUCATIONAL INSTITUTIONS

What are minority educational institutions (MEIs)?

These are the institutions established to **protect and promote the unique culture** and traditions of minority groups. The minority groups can **either be linguistic or religious**.

What are the criteria?

- The NCMEI has issued a **set of guidelines** for the determination of minority status of educational institutions under Article 30.
- Effectively, there are two conditions that a school must fulfill in order to obtain minority status:
 - Most of Board or trust members must belong to the minority community.
 - It must declare explicitly that it has been established for the benefit of the minority community.
- The state authorities have prescribed similar criteria.

Constitutional provisions

Indian constitution has recognized the right of religious and linguistic minorities to establish and administer educational institutions as **fundamental rights**.

- **Article 29** related to Protection of interests of minorities says: “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.”
- **Article 30** confers all minorities, linguistic or religious, the right to establish and administer educational institutions of their choice. It also prohibits the state in **discriminating against such institutions in granting aid** on the ground that it is under the management of minority.

Recent controversies

- In 2016 the Central government has filed a fresh affidavit in SC saying a **Central University, cannot be granted minority status**.
- SC was hearing an appeal against **Allahabad high court Judgement 2006** in which the minority status accorded to Aligarh Muslim University (AMU) was revoked.
- **The Law Ministry** has recommended revoking the 2011 order of NCMEI declaring Jamia Millia Islamia as a religious minority institution on the same ground.

Who gives Minority Status to Education Institution?

- As held by Supreme Court recently, **National Commission for Minority Educational Institutions (NCMEI)** currently regulates the certification of minority educational institutions all over India. Some states have **their own guidelines** for recognition and certification.
- It gives the minority status to the educational institutions on the basis of **six religious communities** notified by the Ministry of HRD under the NCMEI Act, 2004-- Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains only.
- It was established by Parliament in 2004 through National Commission for Minority Educational Institution (NCMEI) Act. While in 2006 **powers of appeal** against orders of the competent authority was provided to the NCMEI.

Power and functions of NCMEI

- It is a **quasi-judicial body** and has been endowed with the **powers of a Civil Court**. It is to be **headed by a Chairman** who has been a Judge of the High Court and **three members** are to be nominated by Central Government.
- The Commission has 3 functions namely **adjudicatory, advisory** and **recommendatory**.
- It decides on disputes regarding **affiliation of a minority educational institution to a university**.
- It has **power to enquire, suo motu**, into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice.
- It specifies measures **to promote and preserve the minority status and character of institutions** of their choice established by minorities.
- It can also **cancel the minority status** granted to institutions if they are found to have violated the conditions of the grant.
- The Commission's authority **does not extend to** educational institutions established by linguistic minorities.

Why Provision of minority status should be retained?

- It is constitutional rights **under Article 30(1)** of religious and linguistic minorities to establish educational institutions.
- **Art 26(a)** states that religious denominations can establish institutions **for religious and charitable purposes**. AMU and JMIU has been instrumental in bringing social change in minority community by providing education to Muslim youth which can be considered as charitable work under art 26 (a).
- **Art 38** mandates the state to reduce inequalities among different section of society and such MEIs AMU and JMIU act as an agent of change among minority in providing quality and formal education
- In **Azeez Basha case, 1967 SC** ruled that universities come under the definition of “educational institution” in Article 30(1). Thus, in a way, it also made obligatory on government to recognize such MEIs through statute.
- In **Kerala Education bill case** SC restricted the power of state in revoking minority status and depriving the minority from establishing and managing such institutions.

Why it should be revoked?

- A university cannot be conferred Minority status because it can be incorporated only by act of Parliament. Since AMU and JMIU are established through a statute, these institutions cannot be considered as MEIs
- Universities receiving direct funding from states cannot be accorded minority status as this is in direct conflict with **Art 27** which says that **no** proceeds of any taxes shall be utilized for promotion or maintenance of any particular religion or religious denomination.
- Universities established under parliament act **has to follow the reservation policy** of central government but AMU and JMIU **do not provide any reservation to Scheduled Castes, Scheduled Tribes and Other Backward Classes**. Hence the minority tag provided to such institutions is unconstitutional and illegal.
- **Article 15** of the Constitution prohibits **discrimination by state on grounds of religion** and conferring minority status to any institution set up by a parliament or state would be in contravention.
- In **Azeez Basha case, 1967** case, the SC upheld that AMU was **not a minority educational institution** as it was set up by British legislature, and not by Muslims.
- The right under Article 30(1) is **not an absolute right** and it seems to be in contradiction to **Article 29(2)**, which prohibits denial of admission to any citizen into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”

Related News

Recently, the HRD Ministry decided not to grant minority status to any educational institution on linguistic basis.

Issues of Linguistic minority institutions (LMIs)

- The National Commissioner for Linguistic Minorities (NCLM), established **under Article 350B** of the Constitution has **less power than the NCMEI**.
- It can **only review safeguards for the protection of linguistic minority rights** and make recommendations to the parliament based on its findings.

Privileges accorded under Minority status

- **Article 30 provides** that in case of compulsory takeover of property by state, due compensation must be provided to institution.
- MEIs are **out of purview of reservation policy** under Art 15. Recently, **Bombay High Court** came to the aid of MEIs and held that they need not reserve seats for backward class students.
- **Sect 12 of Right to Education Act (RTE) 2009**, which mandates 25% reservation for children belonging to economically weaker section (EWS), is also **not applicable** on MEI.
- In TMA Pai vs State of Karnataka 2002 case
 - SC allowed MEIs to have separate, fair, and transparent and **merit-based admission process**.
 - They can also **have separate fee structure** but not allowed to charge capitation fee.

Challenges faced by MEIs

- MEIs **hardly have any substantial autonomy** as they receive funds from the government. For e.g. while the president of India can nullify any decision of these universities, he has no such power in respect of private universities.
- The real issue is **the maladministration of minority institutions**. Many private unaided minority institutions are in a mess and suffering from mismanagement, corruption etc. For e.g. selling minority seats to non-minority candidates.
- Exemption from RTE act obligations has led to **rent-seeking behaviour among schools**. Poorer sections among minority groups are not able to take admission in such institutions which render the purpose of establishing such institutions defeated.

History of Controversy

ALIGARH MUSLIM UNIVERSITY

- **AMU** was established as **Mohammedan Anglo oriental college in 1875** and given statutory status in 1920 by an act of Indian legislative council.
- In **Azeez Basha case, 1967** case, the SC ruled that AMU was not a minority educational institution as it was set up by British legislature, and not by Muslims.
- In **1981**, Parliament reinstated minority status by amendment in AMU Act.
- **The Allahabad High Court, in 2006**, struck down the 1981 amendment Act on the ground that **it ultra vires of the Constitution**
- The matter is under appeal in Supreme court.

JAMIA MILIA ISLAMIA UNIVERSITY

- It was founded in 1920 during Khilafat non-cooperation movement and given statutory status by parliament in 1988.
- It was given minority status in 2011 by government.

- National level Entrance exams like **National Eligibility and Entrance Test (NEET)** and common counselling have now virtually taken away the minority institutions' **right to admit students of their choice**.
- Many Schools have resorted to acquire fake minority certificate to avoid obligations under RTE act 2009.

Way forward

- The minority status should not be revoked **due to mere technical lacunae**. After all Minorities invest their resources, properties and time and also educate 50% non-minorities in their institutions.
- The **ambiguities and gaps in the current administrative** setup must be removed so that minority status' is not hijacked for private interests at the expense of minority welfare and equitable education
- **More autonomy** must be given to such universities in curriculum design and operation.
- The court has consistently maintained that **the receipt of governmental aid does not mean the surrender of minority character**. Hence Government may provide funding to MEIs in tune with other universities.
- The Supreme Court's decision **to exempt all minority schools from the RTE** need to be reviewed.
- **The separate criteria for linguistic minorities** must be evolved as criteria formulated by the NCMEI for religious minorities cannot be applied indiscriminately on linguistic minorities. For e.g. the medium of instruction in the linguistic minority institution must be in its language. At present, only **Maharashtra** has such a requirement.

2.7. ISSUE ON NATIONAL ANTHEM

Why in News?

Supreme Court in January 2018 reversed its November 2016 order, thus making the playing of national anthem in cinema halls before a film as optional.

Background

- SC in **Shyam Narayan Chouksey v/s Union of India, 2016 case** said that the National Anthem must be played in all cinemas, accompanied by an image of Indian flag and everyone, except disabled, must stand; and that doors must remain closed to prevent people from entering or leaving.
- The above order was challenged by a film club in Kerala which argued that forcing cinemas to play national anthem and instilling that people stood, infringed fundamental rights and created a false equivalence between an "outward show of respect" and an "actual sentiment of respect".
- Earlier in **Bijoe Emmanuel v/s State of Kerala, 1986 case** SC held that standing up respectfully when the national anthem was sung but not singing oneself does not violate Section 3 of the Prevention of Insult to National Honour Act, 1971.

Constitutional and Legislative provisions for National Anthem

- **Article 51A of the Constitution** makes it a fundamental duty for every citizen of India to abide by the Constitution and respect its ideals and institutions, the national flag and the national anthem.
- **The Prevention of Insult to National Honour Act, 1971** deals with the cases of insults to the Constitution, the national flag and the national anthem, providing for penal provision for insulting these symbols.
 - **Section 3** of the act **criminalizes insult** to national anthem or intentional prevention of singing of the national anthem and punishes with an imprisonment of up to three years or fine or both.
 - No section of this Act or Indian Penal Code makes it mandatory for a citizen to stand up when the national anthem is being played.
- **A Home Ministry order issued in 2015** gives a detailed guideline about the playing of national anthem.

Related Information

Recently, SC reversed its previous ruling that made it mandatory for movie theatres to play National Anthem before screening the movies while audiences stood up. Further clarity on the issue will emerge after 6 months following a report from a committee.

- After the ruling now theatres can choose whether to play National Anthem or not. If it is played the audience will have to stand up.
- Exemption granted to differently abled people will remain in force.

Analysis

Being a citizen that involves rights as well as duties, it is the duty of every citizen to abide by the **ideals ingrained in Constitution** and show respect to national anthem and national flag. It also gives boost to citizens' nationalistic conscious. However, the recent order of SC has its own merits like-

- **Makes playing of national anthem as discretionary, but showing respect to it mandatory**, however whenever the national anthem is played it is mandatory for the audience to stand as a mark of respect, except for certain exempted classes of people including ill, handicapped, etc.
- **Overcomes the vagueness in earlier order** which applied only to cinema halls but not to other forms of entertainment like dance programmes, comedy shows, etc.
- **Made little sense in cinema halls** because National anthem involves emotions, pride for the country and singing and respecting it is an emotional decision especially when one is feeling proud, hopeful and joyous. Thus, it made sense in sporting arena but not in cinema hall.
- **Patriotism should not be forced displayed because of a fear of law**- As values are inculcated and not mandated, court mandated patriotism was more of symbolism. The real issues where patriotism appears to be missing like tax evasion, littering of streets, etc. need attention in priority. Moreover, India needs a culture of patriotism and not patriotization of culture.
- **Values the maturity of our democracy**- In a mature democracy, there is no need for any special emphasis or any judicial direction on the occasion and manner in which citizen should display and disseminate their patriotism.
- **Law and order issues**- The directions also lead to many such cases of people taking to violence in cinema halls if someone doesn't stand up for the national anthem (in many cases due to disability or because of being foreign nationals).

Way Forward

- Central government would soon come up with new rules regarding the occasion, circumstances and events for solemn rendering of national anthem on the recommendations of 12 member inter-ministerial committee, which would also examine the need for any amendments to the Prevention of Insult to National Honour Act, 1971, so as to specify the meaning of respect to national anthem. The court's order will hold till then.
- Only a good human being and a good citizen can be a true patriot, thus, the focus of any civilized society should be on character building of its citizens rather than forcing them to be patriot.

फाउंडेशन कोर्स

सामान्य अध्ययन

इनोवेटिव क्लासरूम प्रोग्राम के घटक

o प्रारंभिक और मुख्य परीक्षा के लिए

DELHI 11 Sept	JAIPUR : 24 Aug LUCKNOW : 18 Sept AHMEDABAD : 23 July
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▶ प्रारंभिक परीक्षा, मुख्य परीक्षा और निबंध के लिए महत्वपूर्ण सभी टॉपिक का विस्तृत कवरेज

▶ मौलिक अवधारणाओं की समझ के विकास एवं विश्लेषणात्मक क्षमता निर्माण पर विशेष ध्यान

▶ एनीमेशन, पॉवर प्वाइंट, वीडियो जैसी तकनीकी सुविधाओं का प्रयोग

▶ अंतर - विषयक समझ विकसित करने का प्रयास

▶ योजनाबद्ध तैयारी हेतु करेंट ओरिएंटेड अप्रोच

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3. FUNCTIONING OF PARLIAMENT/STATE LEGISLATURE AND EXECUTIVE

3.1. ISSUES IN PARLIAMENTARY FUNCTIONING

3.1.1. WHIP

Why in News?

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

What is Whip?

- Every Political Party has its own whip, who is appointed by the party to serve as an assistant floor leader.
- He has the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.
- He communicates the decision of the party leader to the members and the opinion of the party members to the party leader.
- The members are supposed to follow the directives given by the Whip. Failing to do so can invite disciplinary actions like disqualification from party membership or expulsion under the Anti Defection Law.
- The office of Whip, in India, is mentioned neither in the Constitution nor in the rules of the house, nor in the Parliamentary statutes.
- It is based on the conventions of the Parliamentary government. In India, the concept of the whip was inherited from colonial British rule.
- Since 1985, there have been a total of 19 cases where MPs lost their seat in Parliament for disobeying the party whip.

Problem

- **Against the Constitutional Philosophy:** Whip undermines the democratic spirit and violates the principle of representative democracy by empowering the party and undermining the relationship between elected representatives and their constituents.
- It creates a '**forced consensus**' on various issues as it is mandatory for the party members to follow the decision of the party.
- **Undermines Participatory Governance:** Whips are issued by parties on 90% issues, restricting the ability of the party members to put forth their individual views or views of the people of their constituency.
- **Poor Quality of Debates:** Whip create mockery of parliamentary democracy by marginalizing debates, as the legislators are not allowed to dissent on important constitutional issue from party line.
- The whip system alongwith the anti-defection law has reduce the MPs to a mere headcount on the floor of the House, and further deter them from exercising their judgment on major issues
- **Restricted internal democracy of the party:** The individual members are not allowed to represent their individual views, impacting their freedom of speech and expression within party.
- **Dictatorial Power:** Political party curbs the legislators' freedom of opposing the wrong policies, bad leaders and anti-people bills proposed by the High Command in arbitrary and undemocratic manner

Whip in USA and UK

- In the USA, the party whip's role is to gauge how many legislators are in support of a bill and how many are opposed to it — and to the extent possible, persuade them to vote according to the party line on the issue.
- In the UK, the violation of certain whips is taken seriously — occasionally resulting in the expulsion of the member from the party. Such a member can continue in Parliament as an independent until the party admits the member back into the party.

Kinds of Whip

- A **one-line whip** is non-binding, informing members of the vote.
- A **two-line whip** requires attendance in the house for the vote.
- A **three-line whip** is a clear-cut directive to be present in the house during the vote and cast their vote in accordance with the party line. Any violation of this whip could lead to an MP's expulsion from the house

Significance of Whip

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

Ensuring Attendance in Parliament for widespread discussion on important issues.

Way Forward

- There is a need to build a **political consensus** so that the room for political and policy expression in Parliament for an individual member is expanded. This could take many forms. For example, the issuance of a whip could be limited to only those bills that could threaten the survival of a government, such as money bills or no-confidence motions.
- **Legislative Action:** Parliament through a bill should amend the anti-defection law to ensure that Whip is not applicable to ordinary legislation that does not threaten the survival of a government.
- Improving Intra-Party democracy by setting rules for elections within political parties to foster intra-party democracy that has been stifled not only by dynasties but also by oligarchies.
- A widespread debate, over such issues in the country, must be undertaken by the government, which would encourage people's participation in the long run.

3.1.2. ISSUES IN ANTI-DEFECTION LAW

What is anti-defection law?

- The 52nd amendment 1985 to the Constitution added the **Tenth Schedule** which laid down the process by which legislators may be disqualified on grounds of defection. The main intent of the law was to combat “the evil of political defections”.
- The law provides the following grounds for disqualification
 - Member of Parliament or State Legislature belonging to a political party is deemed to have defected if he either voluntarily resigns or gives up the membership of his political party, or he disobeys the directives of the party leadership on a vote or abstains from voting without taking prior permission or is not condoned by the party within 15 days from such voting or abstention.
 - An independent candidate joins the party after the election.
 - A nominated member joins a party six months after becoming an MP/MLA.
- The law also made a few exceptions.
 - Any person elected as speaker or chairman could resign from his party, and rejoin the party if he demitted that post, as practiced in UK.
 - A party could be merged into another if at least two-thirds of its party legislators voted for the merger.
 - It initially permitted splitting of parties, but that has now been outlawed.

Issues with anti-defection law

- **Abridging right of free speech of the legislators:** It seems to be reducing MPs from thinking lawmakers to mere numbers required for passing a Bill. However, in **Kihoto Hollohan Judgment**, supreme court held that the law does not violate any rights or freedoms, or the basic structure of parliamentary democracy.
- **Role of speaker:** The law states that the decision is final and not subject to judicial review. However, Supreme Court struck down this part and held that the final decision is subject to appeal in the High Courts and Supreme Court.
- **Lack of clarity after being expelled from one party:** Whether a member can be said to voluntarily give up his membership of a party if he joins another party after being expelled by his old political party is unclear.
- **Applicability to only pre-poll alliance:** The rationale that a representative is elected on the basis of the party's programme can be extended to pre-poll alliances. This raises the issue of instability when alliance is formed post-elections.
- **Dictatorial decisions:** A member may be unable to express his actual belief or the interests of his constituents due to party whip even if the bill does not amount to no-confidence.
- **Reduces accountability:** By preventing parliamentarians from changing parties, it reduces the accountability of the government to the Parliament and the people.

Importance of Anti-defection law

- Provides stability to the government by preventing shifts of party allegiance.
- Ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party policies.
- It promotes party discipline.
- It prevents breach of trust of people due to defection.

Recommendations of various bodies on Anti-defection law

Dinesh Goswami Committee on electoral reforms	<ul style="list-style-type: none"> Disqualification should be limited to cases where (a) a member voluntarily gives up the membership of his political party, (b) a member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence. The issue of disqualification should be decided by the President/ Governor on the advice of the Election Commission.
Law Commission (170th Report, 1999)	<ul style="list-style-type: none"> Provisions which exempt splits and mergers from disqualification to be deleted. Pre-poll electoral fronts should be treated as political parties under anti-defection law. Political parties should limit issuance of whips to instances only when the government is in danger.
Election Commission	<ul style="list-style-type: none"> Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission
Constitution Review Commission (2002)	<ul style="list-style-type: none"> Defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term. The vote cast by a defector to topple a government should be treated as invalid

3.1.3. PARLIAMENTARY SESSIONS

Why in news?

- Recently concluded Budget Session was one of the least productive in the history of Indian Parliament

Background

- By convention, Parliament meets for three sessions in a year- **the Budget session which is held towards the beginning of the year, a three-week Monsoon session (July-August) and Winter session (November-December).**
- The dates for each session are announced at least 15 days in advance so that members have time to submit their questions and give notice for parliamentary interventions.
- The Constitution does not specifically say that when or for how many days should the Parliament meet. **Article 85** of the constitution only requires that **there should not be a gap of more than six months between two parliamentary sessions.** The same applies to state legislatures.
- The President can summon session of Parliament “at such a time and place as he thinks fit” acting on the advice of the Council of Ministers. Therefore, the summoning of the Parliament rests with the government.
- The **Parliament sittings have reduced** from 120 days/year to 65-70 days/year due to various reasons including disruptions leading to adjournment.
- The situation of state assemblies also paints a dire situation. Data for 20 Assemblies over the last five years indicate that they meet for 29 days a year on average.

Consequences of such a scenario

- Compromised legislative business** - A direct consequence of shorter parliamentary session is hasty passage of bills and budgets without due diligence and debate. Over the years, the time spent on discussing the Budget has reduced from an average of 123 hours in the 1950s to 39 hours in the last decade.

Factors that have affected the role of Parliament

- Passing of Anti-defection law in 1985 has made it less necessary for MPs to prepare for their work in Parliament, because they will need to heed the party whip or risk losing their seat in Parliament.
- MPs have no research staff, nor does the Parliament library provide sufficient research support.
- Growth of coalition politics has made managing inter-party mechanisms more difficult.
- The opening up of Parliament to live telecasts has increased the incentives for groups of MPs to grandstand on issues, knowing well that it will be widely covered in the media, beyond the live telecast.

Broad functions of Parliament

- Legislative responsibility:** Parliament is central to ensuring that laws and policies reflect the will and interest of the people.
- Oversight responsibility:** To ensure that the executive (i.e. government) performs its duties satisfactorily.
- Representative responsibility:** To represent the views and aspirations of the people of their constituency in Parliament.
- “Power of the Purse” responsibility:** To approve and oversee the revenues and expenditures proposed by the government.

Why is a Parliament session important?

- Platform for Democratic Discussions-** Law-making is dependent on when Parliament meets which is also responsible for democratic debates and discussions on national issues.
- Executive Accountability-** The executive is responsible to the legislature through various Parliamentary tools like **no-confidence motions, adjournment motion and debates on address.**

- **Lack of Accountability:** In the 16th Lok Sabha, question hour has functioned in Lok Sabha for 77% of the scheduled time, while in Rajya Sabha it has functioned for 47%. Time lost indicates a lost opportunity to hold the government accountable for its actions.
- **Lack of avenues to express dissent** - The Conference of Presiding Officers of Legislatures (2001) found that non-availability of adequate time and consequent frustration of MPs in not being able to raise matters on the floor of the House was a major reason behind MPs disrupting Parliament.
- **Undermines legitimacy** - The decrease in the number of sittings of Parliament reflects poorly on its image as the highest law making body and contributes to undermining the respect representatives ought to have in the eyes of the citizens.
- **Check & Balance:** Between 2012-2016, disruptions took away 30% of the time in the Lok Sabha and 35% of the time in the Rajya Sabha which undermines the delicate system of checks and balance essential for a functioning democracy.
- **Undermining Separation of Power:** A non-functional legislature paves the way for the executive and judiciary to arrogate powers.
- **Financial Cost:** According to government's estimates, each minute of the Parliament costs Rs 2.5 lakh and with both the houses of the Parliament losing 49 hours in winter session 2017, the loss was Rs 73.5 crore. Also cost-to-country of an MP is more than Rs. 35 lakh per year, which is almost 40 times the per capita income of the nation.
- **Undermines government accountability:** For eg: budget session witnessed passing of the budget without any debate, Rajya Sabha took up just 5 out of 419 listed starred questions.

How to improve Parliamentary Efficiency

- **Dilute the power of the government** to be the sole decider of session dates. Government's power to convene the Parliament is in conflict with the principle of the executive being accountable to the legislature.
- Parliament should have more sitting dates and a clear plan of those dates. The **National Commission to Review the Working of the Constitution** has recommended the minimum number of sittings for Lok Sabha and Rajya Sabha be fixed at 120 and 100 respectively.
- **Calendar of sittings** can be announced at the beginning of each year. This would help members plan better for the whole year and reduce the scope for the government to postpone a session if it wants to defer parliamentary scrutiny on some emergent issue.
- **Shadow Cabinet:** Under such a system, opposition MPs track a certain portfolio, scrutinise its performance and suggest alternate programs. This allows for detailed tracking and scrutiny of ministries, and assists MPs in making constructive suggestions.
- **Encouraging e-petition System:** Under this system, if 10,000 people sign an e-petition on certain issue, the prime minister or the minister concerned will have to reply to it. When such a petition is signed by more than one lakh people, it has to be debated in the parliament.
- **Responsible Opposition:** Members must question, object and suggest alternative courses of action, but they must do so through reasoned and persuasive argument.

Issues in functioning of State Legislature

- Recent Study of State legislature functioning points towards low assembly sitting such as Gujarat, Karnataka, Uttar Pradesh and Delhi met for only 33, 40, 17 and 21, respectively in 2017 as there is no constitutional limit on minimum number of sittings.
- Unlike Parliamentary proceeding, legislative debates in the state assemblies are difficult to access, which results in lesser engagement of citizens with general policy-making at the state level.

Steps to address these

- **Live telecast all proceedings of all state assemblies:** Lack of accountability to citizens emanates from the high degree of opacity of proceedings of state assemblies. Live telecast of proceedings will ensure their performance is monitored by citizens in real time, thereby improving the quality of legislation and debates on matters of public importance.
- **Disclosure Under RTI Act:** Citizens should collectively demand mandatory disclosure of the text of legislative debates and questions on assembly websites by all states under the RTI Act, 2005.
- **A constitutional amendment:** To fix the minimum number of days assemblies must sit (in days) in a year.
- **Bilingual websites and documents:** All government resolutions at the state-level, including assembly websites, should be translated into English and be available along with the vernacular language of the state, to ensure more readability and hence more civic and media engagement with state policies and actions.
- **Involvement of various stakeholders and beneficiaries during the drafting of state laws:** Unlike the Centre, where draft bills are often shared by ministries for public comments, the process of conceiving, deliberating and passing of state laws is rather obscure. All states must practice inclusive policy-making.

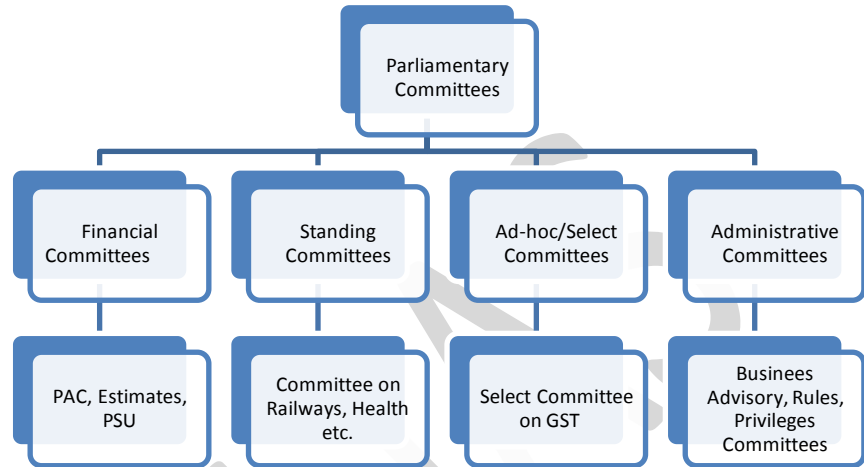
- **Electoral Reform** through public funding of elections, combined with political reform that mandates disclosure on the sources of financing for political parties.
- A **special session can be convened** to provide an opportunity to fix a broken parliamentary calendar, finish unfinished legislative business and help in regaining trust of public in institution.

3.1.4. PARLIAMENTARY COMMITTEES

Recently, there are concerns over the diminishing importance of parliamentary committees and whether proper deliberations are taking place before the passage of various bills. Since the inception of the 16th Lok Sabha, only 29% bills have been scrutinised by parliamentary committees as compared to 60% and 70% of bills being examined in 14th and 15th Lok Sabhas respectively.

Importance of Parliamentary Committees

- **Specialised jobs:** Parliamentary committees are of two types- Standing and Ad-hoc committees. While the former performs specialized jobs, the latter are constituted to perform specific tasks and cease to exist on its completion.
- **Detailed scrutiny:** Due to the magnitude of work and the limited time available in the parliament, MPs are being unable to comprehensively scrutinise legislation on the floor of the House. Also, their working continues to take place even if Parliament sessions are disrupted.
- **Forum for law makers to develop expertise:** Since anti-defection law does not apply to these mini-legislatures, decisions are not usually made on party lines, which provide a platform for building consensus on various issues.
- **Engagement with relevant stakeholders:** The committees regularly seek feedback from citizens and experts on subjects it examines for example, the RBI governor was summoned by the Finance Committee on the subject of demonetization.
- **Uphold government accountability:** It increases the ability of Parliament to scrutinize government policies and make it accountable through an informed debate in the legislature. They examine budgetary allocations for various departments and other policies of the government.
- **Resolving issues in Bills:** For instance, the Prevention of Corruption Amendment Bill which has been pending in the Rajya Sabha since 2013. The Bill has been examined by two parliamentary committees and has gone through a number of iterations. This has resulted in significant issues in the Bill getting addressed.
- **Knowledge Reservoir:** Indian parliamentary committees are a huge reservoir of information, which are made available to MPs in order to enlighten themselves, and contribute ideas to strengthen the parliamentary system and improve governance.



The Standing Committees (DRSC), aligned with specific ministries examine their performance and budgets apart from bills or subjects related to their respective ministries.

The Financial Committees are primarily responsible for scrutinising the expenditure priorities of the government, suggest measures to improve efficiency in spending and performance of Public Sector Undertakings.

The **Select Committee** is formed for analysing a specific legislation/policy and is disbanded after submission of its reports.

The **Administrative Committees** are primarily responsible for ensuring that day-to-day activities of the legislature are planned in consultation with the members.

Issues

- **Fewer bills referred:** The 14th and 15th Lok Sabha saw 60 percent and 71 percent of bills referred to committees. This number has dipped sharply to just 27 percent in the 16th Lok Sabha.

- **Poor attendance of Members:** The attendance of members in committee meetings has been a cause for concern as well, which is about 50% since 2014-15.
- **Short tenure for members:** Constitution of DRSCs for a year leaves very little time for specialisations.
- **Lack of Discussion on Committee Reports:** Since they are recommendatory in nature, reports of the committees are not taken up for discussion in Parliament except for references in certain debates on bills.
- **Lack of expertise:** The members of the committee lack **technical expertise required** to go into intricacies of specialized subjects under consideration of some committees such as accounting and administrative principles.
- **Politicization of the proceedings:** With greater public interest shown in some issues, members have started taking strict party lines in committee meetings.

Way Forward

- **Extend the tenure of committee members** so as to fully utilise their technical expertise on a particular subject in legislative work.
- **Research Support:** Institutional research support will allow committees to examine issues that are technical in nature and serve as expert bodies to examine complex policy issues.
- **Establishing Standing Committee on Economy** to provide space for deliberations on economic policies and its implementation separately.
- **Avoid overlapping functions:** Additional responsibilities of financial oversight can be given to them and doing away with existing finance committees to avoid overlapping of work on budgets etc.
- **Regular Monitoring:** There is a need to formulate mechanism for a regular assessment of the performance of the committee.
- **Adopting Best Practices:** In several countries, the concerned minister appears before the committee to elaborate and defend the policies of the government while in India, ministers don't appear before the committees. Also to refer every bill to a committee for its scrutiny.

Conclusion

Strengthening the committee system can go a long way in improving the quality of laws drafted and minimise potential implementation challenges. The need of the hour is for greater and effective utilisation of Parliamentary Committees to strengthen Parliament as a deliberative body which can ensure effective oversight.

3.1.5. ISSUES RELATED TO SPEAKER

Why in news?

In recent times, many decisions of the speaker have been criticised for being partial and biased.

Issues associated with speaker

- **Claims of Prejudice and the Problem of Partisanship:** Allegations of bias persist because of structural issues regarding the manner in which the Speaker is appointed and his tenure in office. In the recent past, a tradition has developed that the Speaker is chosen from the majority party, and the Deputy Speaker from the opposition side.
- **No convention of Speakers foregoing their party membership:** This is because the Speaker's re-election to the House is not secure.
- Indian Speakers have held **ministerial positions immediately before and after their term**. Thus, it is not surprising that the Speakers in India have been blamed for partisanship even if there is no evidence to support such claims.
- **Challenge of Coalitions:** With the increase in the multitude of parties, time available to each party to represent its interests during discussions is reduced. Also, there has been a decrease in the number of annual sittings of Parliament.
- **Rise in the number of political parties and varied political interest** has made it harder for the Speaker to find consensus between members on use of disciplinary powers
- **Unparliamentary conduct:** Members seek to use unparliamentary means such as disruptions etc. for attaining the indulgence of the Speaker.

- **Role in Anti-Defection Law:** The determination of disqualification of a member offers ample scope for Speakers to exercise discretion which is often used by ruling party to disqualify dissent. 16 MLAs in the Arunachal Pradesh Assembly were disqualified by the Speaker, Nabam Rebia, in 2016 despite not officially leaving the party or defying its directives.
- **Determination of money bill:** It has been criticised for certifying bills such as Aadhaar Bill etc. as Money Bill, though it may not have met the strict criteria laid out in the Constitution.

Way forward

- Adjudicatory role of the Speaker relating to defections, splits and mergers must be entrusted with either the Election Commission or any neutral body outside the legislature.
- A convention should be established to re-elect the speaker without contest.
- In debates and during question hour, attempts should be made to not only give members time as per party strength, but also accommodate members who wish to convey different grievances or views.
- Increasing transparency in his decision-making process to increase trust in the Speaker. For instance, decisions by Speakers should be made available to the public.
- The Speakers' reluctance to take action against disorderly members could potentially be reduced if media plays a constructive role in highlighting instances of disorderly conduct and the adverse impact such conduct has on the performance of the House.

About Speaker

The speaker of Lok Sabha/Legislative assembly in India is the chief parliamentary officer of the Lower House of Indian Parliament/state legislative assembly. The Speaker is elected by the House from among its members as soon as a new House of the People is formed after the general election.

Role, Powers and Functions of Speaker of Lok Sabha

- Maintains order and decorum in the House for conducting its business and regulating its proceedings.
- Adjourns the House or suspends the meeting in absence of a quorum.
- He does not vote in the first instance. But he can exercise a casting vote in the case of a tie
- Presides over a joint sitting of the two Houses of Parliament
- He can allow a 'secret' sitting of the House at the request of the Leader of the House
- Decides whether a bill is a money bill or not and his decision on this question is final.
- He decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule

Independence and Impartiality of Speaker

- Speaker is provided with a security of tenure.
- His salaries and allowances are fixed by Parliament. They are charged on the Consolidated Fund of India
- His work and conduct cannot be discussed and criticised in the Lok Sabha except on a substantive motion.
- Powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any Court.
- Only exercise a casting vote in the event of a tie. This makes the position of Speaker impartial.
- He is given a very high position in the order of precedence. He is placed at seventh rank, along with the Chief Justice of India

3.2. ISSUES RELATED TO EXECUTIVE

3.2.1. ORDINANCE MAKING

Why in news?

It is observed that ordinances are being frequently resorted to by the government such as Insolvency and Bankruptcy Code (Amendment) Ordinance 2018, Fugitive Economic Offenders Ordinance 2018, Land Acquisition Ordinance etc.

Constitutional Provisions

- Article 123 and Article 213 confers power to promulgate ordinance on the President and the Governor respectively.
- Under the Constitution, limitations exist with regard to the Ordinance making power of the executive:
 - **Legislature is not in session:** The President can only promulgate an Ordinance when either of the two Houses of Parliament is not in session.

- **Immediate action is required:** The President cannot promulgate an Ordinance unless he is satisfied that there are circumstances that require taking 'immediate action'.
- **Parliamentary approval during session:** Ordinances must be approved by Parliament within six weeks of reassembling or they shall cease to operate. They will also cease to operate in case resolutions disapproving the Ordinance are passed by both the Houses.

Why frequent resorting to Ordinance Route?

- Reluctance to face the legislature on particular issues.
- Lack of majority in the Parliament.
- Repeated and willful disruption by opposition parties.

Issues

- The executive's power to issue ordinances, goes against the Philosophy of **Separation of powers** between the Legislature, Executive and Judiciary
- It bypasses the democratic requirements of argument and deliberation.
- Re-promulgation defeats the constitutional scheme under which a limited power to frame ordinances has been conferred on the President and the Governors.
- It poses threat to the sovereignty of Parliament and the state legislatures which have been constituted as primary lawgivers under the Constitution.

The Constitution has provided for Separation of Power where enacting laws is the function of the legislature. The executive must show self-restraint and should use ordinance making power only as per the spirit of the Constitution and not to evade legislative scrutiny and debates.

3.3. OFFICE OF PROFIT

Why in news?

Recently, 20 MLAs in Delhi were disqualified by President for holding Office of profit.

More about the news

- In 2015, Delhi government appointed some of its legislators as **parliamentary secretaries**.
- It was followed by amendments to Delhi Members of Legislative Assembly (Removal of Disqualification) Act, 1997, with retrospective effect to exempt the post of parliamentary secretary from the definition of the "office of profit".
- However, Lt. Governor's assent to the amendment bill was not given, requiring the disqualification of the MLAs.
- The Election Commission (ECI) recommended President for their disqualification because:
 - Their position as parliamentary secretaries was a government office.

Important Cases related to Ordinance

- **RC Cooper vs. Union of India, 1970:** SC held that the President's decision could be challenged on the grounds that 'immediate action' was not required; and the Ordinance had been passed primarily to by-pass debate and discussion in the legislature.
- **AK Roy vs. Union of India, 1982:** SC argued that the President's Ordinance making power is **not beyond the scope of judicial review**. Later in case of **Venkata Reddy v. State of Andhra Pradesh (1985)** Supreme court over ruled its own decision and held that the Satisfaction of the President cannot be called in question.
- **DC Wadhwa vs. State of Bihar, 1987:** SC said that the legislative power of the executive to promulgate Ordinances is to be used in exceptional circumstances and not as a substitute for the law making power. It was examining a case where a state government re-promulgated a total of 259 Ordinances and some of them for as long as 14 years.
- **Krishna Kumar Singh vs. State of Bihar, 2017:** Supreme Court held that the failure to place an ordinance before the legislature constitutes **abuse of power and a fraud on the Constitution**. It makes mandatory for an ordinance to be tabled in the legislature for its approval.

Parliamentary Secretary

- S/he is a member of the parliament who assists a more senior minister with his or her duties.
- They often hold the **rank of Minister of State** and have the same entitlements and is assigned to a government department.
- Manipur, HP, Mizoram, Assam, Rajasthan, Punjab, Goa are some of the states where MLAs have been appointed Parliament Secretaries by the Government.
- However, various petitions in the High Court have challenged the appointment of Parliament Secretary.
- In June 2015, Calcutta HC quashed appointment of 24 Parliamentary Secretaries in West Bengal dubbing it unconstitutional.
- Similar actions were taken by the Bombay High Court, Himachal Pradesh High Court, Delhi High Court etc.

- The office had the potential to yield profit and it had executive functions akin to that of a minister
- The recommendations of ECI are binding on the President or Governor regarding the issues related to **article 102 & article 191**.

What is Office of Profit?

- **Articles 102(1) a and 191 (1) a** mention disqualifications on the basis of Office of Profit but it is neither defined in the constitution nor under Representation of People's Act.
- **Supreme Court in Pradyut Bordoloi vs Swapan Roy (2001)**, the Supreme Court outlined the following questions for the test for office of Profit:
 - Whether the government makes the appointment;
 - Whether the government has the right to remove or dismiss the holder;
 - Whether the government pays the remuneration;
 - What are the functions of the holder and does he perform them for the government; and
 - Does the government exercise any control over the performance of those functions
- Further in **Jaya Bacchan v. Union of India case** SC defined it as **“an office which is capable of yielding a profit or pecuniary gain.”** thus it is not the actual 'receipt' of profit but the 'potential' for profit that is the deciding factor in an 'office of profit' case.

Joint Committee on offices of profit

- It consists of 15 members drawn from both the houses of Parliament.
- It examines the composition and character of the Committees appointed by the Central and State Governments and recommends what offices should or should not disqualify a person for being, a member of either House of Parliament.
- **It has defined Office of Profit as:**
 - Whether the holder draws any remuneration, like sitting fee, honorarium, salary, etc. other than Compensatory allowance.
 - Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotments of lands, issue of licences, etc., or gives powers of appointment, grant of scholarship, etc.
 - Whether the body in which an office is held wields influence or power by way of patronage.

Arguments in favor of Disqualifications

- **Against Separation of Powers:** By Holding an Office of Profit a legislator cannot exercise his functions independent of executive of which he/she becomes a part.
- **Circumventing Constitutional Provisions:** Office of Parliamentary Secretaries or other such offices are used by state governments to circumvent the constitutional ceiling of 15 % (10% in case of Delhi) on the number of ministers they can appoint.
- **Exercise of Power by Patronage:** Parliamentary Secretaries participate in high-level meetings of the governments, have full time access to the Ministers and ministerial file which enable them to wield influence and power by way of patronage.
- They are also misused to secure political support and as **alternatives to ministerial berths** in era of Coalition Politics.
- **Threat to Public Interest:** Unlike ministers, the Parliamentary Secretaries are not administered under the Oath of Secrecy (Art 239 AA(4)), yet may be privy to such information which may threaten public interest, breed corruption or may even threaten national security.
- **Other issues** associated with Offices of Profit include arbitrary exercise of legislative power through amending laws, drain of public money due to oversized cabinet, political opportunism through arbitrary use of amendments and, thus, differing status across states.

Arguments in Support of the Posts

- Constitution allows a legislature to pass a law to grant exemption to any office of profit holder. In past, states and Parliament have done this as well. The **SC in UC Raman case** has upheld this.
- Ministers are appointed by the President/Governor. He administers the oath of office and secrecy to them. Without meeting these constitutional requirements, one cannot be treated as a minister. Parliamentary secretaries are not ministers within the meaning of Article 239 AA(4) because they are not appointed by the President and are not administered the oath of office and secrecy by him.

Way Forward

- The office of profit is **inspired from U.K** but in U.K there is **no general theory of disqualifications** and specific list of such offices is provided under legislation. In India, on the other hand, there is **general disqualification** prescribed under the constitution while parliament specifies specific exemptions by law.
- **2nd ARC recommendations:** The Law should be **amended to define office of profit** based on the following principles:
 - All offices in purely advisory bodies where the experience, insights and expertise of a legislator would be inputs in governmental policy shall not be treated as offices of profit.
 - All offices involving executive decision making and control of public funds, directly deciding policy or authorizing or approving expenditure shall be treated as offices of profit.
 - If a serving Minister is a member or head of certain organizations, where close coordination between the Council of Ministers and the organization is vital for the functioning of government, it shall not be treated as office of profit.

3.4. EXCESSIVE GOVERNMENT LITIGATIONS

Why in news?

Recently, Supreme Court in a judgement imposed Rs. 1 lakh penalty on the Government for frivolous litigation as similar appeals had already been dismissed earlier by the Court.

Implications of frivolous litigations

- **Hurts investor's confidence:** As Economic Survey 2017-18 discusses, **economic activity is getting affected** by high pendency and delays across the legal system. Delays of economic cases (company cases, arbitration cases and taxation cases) in courts are leading to stalled projects, legal costs, contested tax revenues, and consequently reduced investment.
- **Adds to the burden of Courts** and collaterally harms other litigants by delaying hearing of their cases through the sheer volume of numbers.
- **Increase in project costs:** Delays in power, roads, and railways projects led to an **increase in almost 60% of the project costs.**
- **Slows down government administrative processes** by delaying decision-making on matters that are the subject of litigation.
- **Diversion of precious resources:** A recent document by the **Ministry of Law & Justice**, state that the government, including PSUs and other autonomous bodies, are party to around **"46%" of the 3.14 crore court cases** pending in various courts in the country, making it the biggest litigant in the country. Handling these cases must be using a major portion of taxpayers money.
- **Affects ease of doing business:** India suffers badly in the World Bank's Ease of Doing Business rankings primarily because of the conduct by government agencies (regulators) that generates litigation by writing orders, even on closed issues. Even after improvement in India's rankings, it ranks very low on Enforcing Contracts.

Challenges in dealing with government litigations

- Government litigation being an **encounter of unequals**, where an ill-equipped individual person or entity is pitted against a massive government machinery with its limitless resources.
- **Lack of adequate and reliable data:** After the **126th Law Commission of India report**, no actual estimate of costs or comprehensive litigation data (regarding number of cases, categories and government department party) has been collated.
- **Risk avoiding attitude of bureaucracy:** Due to fear of CVC, CBI, they tend to shift the burden of taking risky decisions on judiciary.

Some features of National Litigation Policy, 2010

- Government must **cease to be a compulsive litigant**,
- The easy approach "Let the courts decide" must be eschewed and condemned,
- Challenge to the orders of the Tribunal should be an exception and not a matter of routine,
- Proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees,
- It recommends setting up of the **national and regional level monitoring system** to minimize litigation. **"Nodal Officer"** in each department to **"actively"** monitor litigation and track court cases.

However, the policy did not become successful due to reasons such as Ambiguity, rhetoric and generic phraseology, absence of adequate data, No measurable outcomes or implementation mechanism, Lack of any form of impact assessment etc.

Steps taken to reduce pendency

- In 1989, the Department of Public Enterprises set up a “Permanent Machinery of Arbitrators”. Based on this, it directed enterprises that all commercial disputes (excluding disputes on income-tax, customs and excise, later extended also to the railways) should be settled by arbitration, and that this dispute resolution mechanism should be a part of all contractual and tender agreements.
- Adoption of “National Litigation Policy 2010” as part of “National Legal Mission to Reduce Average Pendency Time from 15 Years to 3 Years” to transform government into an Efficient and Responsible litigant. All states formulated state litigation policies after National Litigation Policy 2010.
- An internal portal called **Legal Information Management and Briefing System (LIMBS)**, was created in 2015 with the objective of tracking cases to which the government is a party. As of 11th June 2018, data collected by LIMBS show 2.4 lakh ‘live’ cases.
- In April 2017, the Law Minister called upon each Ministry/Department to chalk out an 'Action Plan for Special Arrears Clearance Drives' to reduce the number of court cases and implement the plan on Mission Mode.
- The Government, in September 2015, proposed a **National Litigation Policy** for out-of-court settlement of cases among government departments, public sector undertakings and other government bodies. However, no concrete decision has been taken yet in this regard.
- Recently, government has proposed that it will at least double the monetary threshold for filing appeals in tax disputes in various forums to cut down litigation significantly.

Way Forward

- **The National Litigation Policy should be revised**
 - It should **address all three stages of dispute**, viz. pre-litigation, litigation and post litigation stage.
 - It must have clear objectives that can be assessed. **Minimum standards for pursuing litigation must be listed out.**
 - The role of **different functionaries must be enumerated** and **fair accountability mechanisms** must be established.
 - **Consequences for violation of the policy** must be clearly provided and a **periodic impact assessment programme** must be factored in.
 - Appointment of a **Nodal Officer to regularly monitor the status of the cases** in every department at the Joint Secretary Level to coordinate effective resolution of the disputes.
 - Promotion of **alternative dispute resolution mechanisms** to encourage mediation as the preferred form of dispute resolution in service related matters. All agreements to mandatorily include a reference to either arbitration or mediation.
- **Suggestions by economic survey 2017-18 may be adopted:**
 - **A Coordinated action between government and the judiciary-** a kind of **horizontal Cooperative Separation of Powers** to complement vertical Cooperative Federalism between the central and state governments– would address the “Law’s delay” and boost economic activity.
 - **Judicial capacity should be strengthened** in the lower courts to reduce the burden on higher courts. Government must increase its expenditure on the judiciary, improve the courts case management and court automation system, and create subject specific benches.
 - **Tax departments must limit their appeals**, given that their success rate is less than 30% at all three levels of judiciary (Appellate Tribunals, High Courts, and Supreme Courts).
 - Courts could consider **prioritising stayed cases and impose stricter timelines** within which cases with temporary injunctions may be decided, especially when involving government infrastructure projects.
- **Solutions unique to each litigation prone department need to be identified:** For instance - robust internal dispute resolution mechanisms for service related disputes within each department will inspire confidence among employees.
- **Quasi-judicial authorities** should be judicially trained or a separate class of judicial officers to discharge quasi-judicial functions should be created.
- The **bureaucracy should be sufficiently motivated** to tackle the issues.
- A major recommendation of the **100th Law Commission of India (LCI) report** was to set up a ‘**litigation ombudsman**’ in each state to manage and handle government litigation. Similarly, the **126th LCI report**

recommends the creation of a **grievance redressal system** within departments, specifically to manage disputes between the government-employer and its employees.

- **Step by step online dispute resolution** must be adopted as done by Ministry of Consumer Affairs on a pilot basis for e-commerce related disputes. The ministry has established an **Online Consumer Mediation Centre** with the motto '**Anytime Anywhere Dispute Resolution**', for mediation services for consumer disputes in e-commerce.
- Conducting a thorough **100-percent audit of all pending appeals** filed by regulators to decide what ought to be withdrawn, would be a good way to start.

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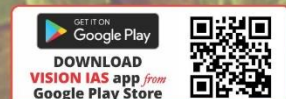
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4. CONSTITUTIONAL, REGULATORY AND OTHER BODIES

4.1. COMPETITION COMMISSION OF INDIA (CCI)

Why in news?

Central Government has decided to reduce the members appointed by it in the CCI.

More on news

- The number of members has been **reduced from one chairperson and six members to one chairperson and three members.**
- Under the CCI Act, all members in office have to sign on an order. Large numbers make this difficult to implement. The reduced strength makes the CCI a potentially **faster decision-making body.**
- It would reduce government interference in CCI and would stimulate business process of corporates and generate job opportunities by speeding up hearings and approvals.

Issues involved in CCI

- **Overlapping jurisdictions** with sector-specific regulators such as issue of Market Dominance and Monopoly Pricing with TRAI, Restrictive Business Practices with SEBI, Merger Control with RBI etc.
- **Issues with reduced strength:** It may be easy to curb dissent as tackling reduced numbers is relatively easy. There could be a demand for members to be experts in new disciplines in the future, which would be difficult to fulfil due to smaller size.
- **Lack of coordination with sector-specific regulators:** There is lack of formal and informal exchanges between various sectoral regulators and CCI. To encourage this, exchange of personnel on deputation or internship basis may be undertaken.
- **Issues with judiciary:** High courts seem to be failing to appreciate the role of CCI as they are brisk in stalling investigations initiated by them.

Competition Commission of India:

- It was established under CCI Act, 2002 with following functions:
 - To Prevent practices having adverse effect on competition
 - To Promote and sustain competition in markets
 - To Protect the interests of consumers
 - To ensure freedom of trade carried on by other participants in the markets of India.
- It was initially envisioned as a 10-member Commission and supposed to have had benches in different cities.
- However, later the provision for creation of benches was removed and it was made a 7-member body to be appointed by the central government.
- Competition Appellate Tribunal (COMPAT) was subsumed into NCLAT (National Company Law appellate Tribunal) in 2017. Now, it is the Appellate Tribunal to hear and dispose off appeals against any direction issued or decision made or order passed by the Competition Commission of India (CCI).

Difference in role of CCI and sector-specific regulators

- **Generalist v/s specialist** – The sectoral regulators have domain expertise in their relevant sectors whereas the CCI has been constituted with a broad mandate to deal with promoting competition in all the economic sectors.
- **Proactive v/s reactive** - Sector specific regulation identifies a problem ex-ante and builds an administrative machinery to address behavioral issues before the problem arises, while on the other hand, CCI would usually address the problem ex post in the backdrop of market conditions.

4.2. RATIONALIZATION OF AUTONOMOUS BODIES

Why in news?

Recently, Cabinet has approved rationalization of Autonomous Bodies under Department of Health & Family Welfare.

What is autonomous body?

- Autonomous Bodies are set up whenever it is felt that certain functions need to be discharged outside the governmental set up with some amount of independence and flexibility without day-to-day interference of the Governmental machinery.
- These are set up by the Ministries/Departments concerned with the subject matter and are funded through grants-in-aid, either fully or partially, depending on the extent to which such institutes generate

internal resources of their own. These grants are regulated by the Ministry of Finance through their instructions as well as the instructions relating to powers for creation of posts and etc.

- They are created with an aim to promote research, higher education, welfare and regulatory wherewithal
- They are mostly registered as societies under the Societies Registration Act and in certain cases they have been set up as statutory institutions under the provisions contained in various Acts.

Issues

- **Mushrooming of Bodies:** There are as many as 679 such bodies directly funded by the Centre now — up from less than 50 in 1950s.
- **Fiscal cost:** According to the 2017-18 Budget, outlays to these bodies is a staggering Rs 72,200 crore, up from Rs 63,975 crore last year. Over 40% of the funds allocated to these bodies are used for payment of salaries
- **Lack of data:** There is little centralised data on the functioning of bodies, their current relevance and whether similar jobs are done by multiple institutions.
- **Nepotism:** Appointments are made to favour some people, who may not even qualify to be appointed as chairman of bodies.
- Some bodies created during Asian Games in India in 1982, for instance, was shut down only recently.

Way Forward

- As per the **Expenditure Management Commission (EMC)**, a meaningful review of their grants could lead to savings of Rs 3,000 crores per annum
- **Corporatisation of the Bodies** can make them separate companies or a special purpose vehicle (SPV) to take over their functioning and resulting into substantial saving and efficiency.
- **Peer Review of Autonomous Organisations:** Ministry shall put in place a system of external or peer review of autonomous organisations every three or five years depending on the size and nature of activity with the following focus:
 - the objective for which the autonomous organisation was set up and whether these objectives have been or are being achieved.
 - whether the activities should be continued at all, either because they are no longer relevant or have been completed or if there has been a substantial failure in achievement of objectives.
 - whether the nature of the activities is such that these need to be performed only by an autonomous organization.
 - whether similar functions are also being undertaken by other organisations, be it in the central government or state governments or the private sector, and if so, whether there is scope for merging or winding up the organisations under review.
 - whether the total staff complement is kept at a minimum considering IT and communication facilities, facilities for outsourcing etc.
 - whether scientific or technical personnel are being deployed on functions which could well be carried out by non-scientific or non-technical personnel etc.
 - whether user charges are levied at appropriate rates and whether scope for maximising internal resources generation is fully achieved to minimise dependence upon government budgetary support.

4.3. NATIONAL COMMISSION FOR MINORITIES

Why in news?

Recently, there were demands for giving constitutional status to National Commission for Minorities (NCM).

About National Commission for Minorities

- It was set up by Union government as a statutory body under the National Commission for Minorities Act, 1992.
- The mandate of the commission, according to the act, includes:
 - Evaluation of the progress of the development of minorities under the Union and States;
 - Monitoring of the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;

- Making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;
- Looking into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities;
- Conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities and making periodic reports and suggesting appropriate measures to the government.

Issues related to NCM

- **Issues related to capacity building:** It is characterized by human resource deficiency at various key positions, and under-utilization of technology. Consequently, it results in high case pendency, non-redressal of grievances and lack of predictability in hearings.
- **Financial planning and expenditure related issues:** Funds allocated are limited, a majority of which is spent on salaries and very little, if at all, on research studies and publications.
- **Legal and authority issues:** Absence of constitutional authority, render it incapacitated to fulfill its mandate. Further, State Minority Commissions are not given adequate powers to implement, monitor, and review developmental programs for Minorities.

Way forward

- **Constitutional status to NCM** to ensure that NCM is able to carry out its legal mandate effectively.
- **Setting baseline targets** to keep pendency in check and result based management to ensure accountability and transparency in the operations.
- **Periodic Human resource assessment** for its efficient functioning considering the volume of cases.
- **Focus on customer satisfaction:** Stakeholder Satisfaction Survey should be undertaken for citizens to anonymously provide feedback regarding the qualitative redressal of their grievances.
- **Easing process of appeals:** Institutionalizing “e-hearing” mechanism which connects appellants from their home districts to the Commission to obviate the need for people to travel far distances for attending hearings.
- **Delineating and strengthening the role of state level commissions** by segregating cases between National and State commissions based on financial loss, extent of hurt, extent of social injustice etc.

4.4. CENTRAL VIGILANCE COMMISSION (CVC)

The Central Vigilance Commission (CVC) was established on 1964 by a resolution of Government of India as an apex body for prevention of corruption in Central Government institutions. Later, in 2003, the Parliament enacted a law conferring statutory status on the CVC

Composition

- The CVC is a multi-member body consisting of a Central Vigilance Commissioner (chairperson) and not more than two vigilance commissioners.
- They are appointed by the president on the recommendation of a three-member committee consisting of the prime minister as its head, the Union minister of home affairs and the Leader of the Opposition in the Lok Sabha.
- They hold office for a term of four years or until they attain the age of sixty five years, whichever is earlier

The functions of the CVC are:

- To inquire or cause an inquiry or investigation to be conducted on a reference made by the Central government wherein it is alleged that a public servant, has committed an offence under the Prevention of Corruption.
- To exercise superintendence over the functioning of the Delhi Special Police Establishment (CBI) insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988.
- To review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.
- To exercise superintendence over the vigilance administration in the ministries of the Central government or its authorities.
- To conduct preliminary inquiry into complaints referred by Lokpal in respect of officers and officials of Groups A, B, C & D.
- The Central Government is required to consult the CVC in making rules and regulations governing the vigilance and disciplinary matters relating to the members of Central Services and All-India Services.

Challenges

- **Appointment of the Chief Vigilance Officer, is not transparent** and clear, as there is no statutory requirement about the selection having to be unanimous or based on consensus among the members of the committee
- **CVC is only an advisory body.** Central Government Departments are free to either accept or reject CVC's advice in corruption cases.
- **CVC does not have adequate resources** compared with number of complaints that it receives.
- The commission does not qualify as a competent authority to sanction criminal prosecutions for offences committed by public officials
- **Public disenchantment with anti-corruption mechanisms:** When it receives a complaint, the CVC calls for inquiry reports from the appropriate agencies, it is observed that in a majority of cases, there is considerable delay in finalising and submitting reports to the Commission
- **Non-acceptance of the Commission's advice or non-consultation with the Commission:** In the case of investigations submitted by Chief Vigilance Officers, almost half of them were closed without any action. It vitiates the vigilance process and weakens the impartiality of vigilance administration.
- **Deviations from the Commission's advice:** The CVC's annual report has stated that it has "observed that during the year 2017, there were some significant deviations from the Commission's advice" by various Ministries.
- **Pending cases:** The CVC, observed that several complaints are pending for long periods with the CVOs. Chief Vigilance Officers are required to furnish investigation reports on complaints sent to them for probe by the Commission within three months.
- Even though CVC has supervisory powers over CBI, it does not have the power to call for any file from CBI or to direct CBI to investigate any case in a particular manner.
- Long-pending vacancies in the Central Vigilance Commission
- **Anonymous and pseudonymous complaints** are affecting the efficiency of CVC
- Although the Act does not specify it, the persons chosen for these posts are expected to possess impeccable integrity, but it is getting compromised on several occasions.

Way forward

- It is recommended that the CVC develops scientific criteria for the selection of CVOs that match the competency requirements
- Sensitising the people about the dangers and evil consequences of corruption
- It is recommended that the CVC expands and intensifies its proactive role and achieves even greater depth and coverage.
- CVC must give firm guidelines to the companies to initiate proceedings under the relevant sections of the IPC and the CrPC in all cases of false, malicious, vexatious, and unfounded complaints that may have delayed strategic decisions.

It is recommended that the CVOs are trained longer and more frequently and given adequate knowledge of management audit, decision making processes etc.

5. ELECTIONS IN INDIA

5.1. ELECTORAL REFORMS

A free, fair and unbiased electoral process along with greater citizen participation is fundamental to safeguarding the values of a democracy. Unfortunately, Indian electoral system is grappling with certain issues which have eroded the trust of many people in the country such as role of black money, issues related to power of Election commission of India (ECI), harassment of voters if voted against a party etc.

Thus, various reforms have been undertaken or proposed to be undertaken to maintain the purity of electoral process:

- **Imposition of additional norms for candidates contesting elections by Supreme Court:** In **Lok Prahari case**, SC has asked the Centre to amend the rules as well as the disclosure form filed by candidates along with their nomination papers, to include the sources of their income, and those of their spouses and dependants. Non-disclosure of assets and their sources would amount to a “corrupt practice” under Section 123 of the Representation of the People Act, 1951.
- **Provision of None of the Above (NoTA):** Supreme Court in the **People’s Union for Civil Liberties v. Union of India case**, 2013 paved the way for the introduction of NOTA. In 2014, ECI issued a circular that the provisions of NOTA be included in the Rajya Sabha elections too. This would help bringing symbolic resentment in open. It may have implications for reduction in criminalization of politics and strengthening of participatory democracy.
- **Proposal for totalizer machines:** through which consolidated result of the group of EVMs can be obtained without disclosing the votes polled by a candidate polling-station-wise, thus, preventing harassment and victimization of voters from pre and post poll intimidation.
- **Introduction of Voter Verifiable Paper Audit Trail (VVPAT) machines** to cross-check EVM results through a paper audit, completing another layer of accountability to the indigenously produced machines.
- **Electronically Transmitted Postal Ballot System (ETPBS):** It was recently used in Chengannur (Kerala) Assembly bypoll for service voters to provide an alternative method of quick dispatch of Postal Ballot paper electronically (earlier delivered by post). The voters can download the postal ballot and votes so cast would be received by the returning officer through post.
- **Other major reforms:** include proposal for restructuring the election cycle and establishing a hybrid electoral system. (These are discussed in subsequent sections).

5.1.1. DEMAND FOR A HYBRID ELECTORAL SYSTEM

Why in News?

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

What is Hybrid Electoral System?

- A hybrid/mixed system refers to an electoral system in which two systems are merged into one combining the positive features from more than one electoral system.
- In a mixed system, there are two electoral systems using different formulae running alongside each other. The votes are cast by the same voters and contribute to the election of representatives under both systems.
- One of those systems is a plurality/majority system (or occasionally an ‘other’ system), usually a single-member district system, and the other a List PR system.
- There are two forms of mixed system-
 - When the results of the two types of election are linked, with seat allocations at the PR level being dependent on what happens in the plurality/majority (or other) district seats and compensating for any disproportionality that arises there, the system is called a **Mixed Member Proportional (MMP) system**.

Various types of Electoral Systems

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

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

- Where the two sets of elections are detached and distinct and are not dependent on each other for seat allocations, the system is called a **Parallel system**.
- While an MMP system generally results in proportional outcomes, a Parallel system is likely to give results the proportionality of which falls somewhere between that of a plurality/majority and that of a PR system.

Why is there a Demand for Hybrid System?

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

About current system of FPTP

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

Why we chose FPTP?

- **Simplicity** – As, most population was not literate at the time of independence, PR SYSTEM would have been complex to understand.
- **Familiarity** - Before independence several elections were held regularly on FPTP basis.
- **Favor to stability** – PR system seemed unsuitable to the parliamentary government due to the tendency of the system to multiply political parties leading to instability in government.
- PR SYSTEM establishes party as a major centre of power whereas FPTP gives an individual as a representative of the people of certain specific area. Given India's condition at the time of independence this was a big concern for our leaders as people connected more to their leaders rather than a certain political party.

Difference between FPTP & PR

Proportional Representation		First Past The Post	
1)	Faithfully translate votes cast into seats won.	1)	It does not completely translate number of votes into seat.
2)	Facilitate minority parties' access to representation.	2)	It might not encourage minority parties.
3)	Makes power-sharing between parties and interest groups more visible.	3)	The power sharing between various groups is not as visible.
4)	The single party dominance is difficult to achieve.	4)	It gives rise to single-party governments.
5)	This system does not exclude the smaller parties from representation.	5)	It excludes smaller parties from 'fair' representation.
However, it is difficult to organise the by-polls in case of PR system.		However, it allows voters to choose between people rather than just between parties. Voters can assess the performance of individual candidates rather than just having to accept a list of candidates presented by a party.	

5.1.2. SIMULTANEOUS ELECTIONS

Why in News?

Recently, Law Commission has released a white paper on **Simultaneous Elections**.

About Simultaneous Elections (SE)

- It means **structuring the Indian election cycle** in a manner that elections to Lok Sabha and State Assemblies are synchronized together under which **voters in a particular constituency vote** for both State Assembly and Lok Sabha the same day.
- It **does not mean** that voting across the country for Lok Sabha and State Assemblies needs to happen on a single day
- Earlier, **SEs were held** in India till 1967 which was disrupted due to **premature dissolution of Assemblies**.
- Election to the third tier of democracy cannot be included in SE because it is a part of state list as well as the number of local bodies is huge.

Need for SE

- Frequent elections lead to **imposition of Model code of conduct (MCC)** over prolonged periods of time which often leads to **policy paralysis and governance deficit** in the form of suspended development programs, welfare schemes, capital projects etc.
- Frequent elections add a huge **event management administrative cost** on the part of government as elections require a whole set of administrative machinery.
- Elections lead to **huge expenditures by various stakeholders** like political parties, individual candidates, etc. The urge to spend more (than the set limit) to win elections is blamed as one of the key drivers for corruption and black-money in the country.
- The **deployment of security forces** (particularly the CAPF) is normally throughout the elections and frequent elections takes away a portion of such armed police force which could otherwise be better deployed for other internal security purposes.
- Frequent elections **hamper legislative work**, because **compulsion to win the next impending election** makes short-term political imperatives an immediate priority.
- It would increase **convenience for the Election Commission**. Since voters, polling personnel, and polling booths are all the same, it does not matter if the voter is casting her vote for one election or two or three.
- Frequent elections lead to **disruption of normal public life** and impact the functioning of essential services. Also, during elections caste, religion and communal issues gain attention and frequency in the process **perpetuates such dividing issues** across the country.

Criticisms of SE

- The synchronization of terms would require reduction or expansion of term of various assemblies which will **not be supported either by the ruling party** (in case of contraction of term) or the opposition (in case of expansion of term).
- It is debatable that **whether it is practically feasible** for the Election Commission of India to conduct elections at such a massive scale.
- Even if SE is achieved it would be **difficult to sustain** it because the fact that (under Art 83(2) & 172(1)) Lok Sabha and state assemblies do not have fixed term.
- It is **against spirit of federalism** as ill-informed voters' choices may lead to National issues impacting electorate's behaviour for voting in State Assembly elections and vice versa.
- Frequent elections **bring the politicians back to the voters** and **enhance accountability** of politicians to the public. This keeps the politicians in touch with 'pulse of the public' and the result of elections at various levels can ensure the government the **necessary 'course correction'**.
- SE takes care of **only 'national' parties** because parties contesting in only one State would anyway be similarly burdened.
- It may lead to **curtailment of the legislature's power to unseat a government**. It would be mandatory to have a 'constructive vote of no-confidence'. This means that no opposition party would be able to table a no-confidence motion unless it has the capacity to also simultaneously form a new government.

Some recommendations of the draft paper

- A **definition of "simultaneous elections"** may be added to Section 2 of the 1951 Act.
- **Article 83 and 172** of the constitution (dealing with duration of both houses and state legislatures respectively) along with **sections 14 and 15 of the 1951 Act** (dealing with notification of general elections in both houses and state assemblies respectively), be appropriately amended. This would mean that the

new Lok Sabha and assembly, constituted after mid-term elections, shall be **only for the remainder of the term**.

- The **Anti-defection Law** laid down under paragraph 2(1) (b) of the **Tenth Schedule of the Constitution** be removed as an exception to prevent stalemate in the Assembly due to Hung Parliament.
- **Sections 14 & 15 of RPA, 1951**, be amended to extend the statutory limit of 6 months for the issuance of notification of general elections to provide the flexibility to Election Commission in conducting the SE.
- An **alternative to premature dissolution** of assembly due to **no-confidence motion** could be that the members while moving such an option may also put forward an option for forming an alternative government.
- **Prime Minister/Chief Minister may be elected to lead** the Lok Sabha/Assembly, by full house like electing the speaker of the Lok Sabha, providing stability to the government.

Implementing the herculean task of SE in India would require coordination and consultation among all the stake holders. Further, a phase-wise synchronization of tenures of Lok Sabha and Assemblies (as **suggested by a Parliamentary Committee**) may be undertaken instead of a one-shot mechanism. Efforts should be made to hold simultaneous elections in those state assemblies which are completing their tenure together rather than forcing simultaneous elections by law.

5.2. ELECTORAL FUNDING REFORMS

Electoral reforms over the years have financial accountability as the main concern. Many reforms such as reducing the ceiling of cash donation from Rs. 20,000 to Rs. 2,000 under Section 29C(1)(a) of the Representation of the People Act, 1951, introduction of electoral bonds, disclosure of IT returns of political parties to public under RTI etc. revolves are reforms in electoral funding.

Despite undertaking various reforms, electoral funding is still marred by various issues such as:

- **Opacity in donations:** Political parties receive majority of their funds through anonymous donations (approximately 70%) through cash. Also, parties are exempted from income tax, which provides a channel for black money hoarders.
- **Lack of action against bribes:** The EC sought insertion of a new section, 58B, to RPA, 1951 to enable it to take action if parties bribe voters of a constituency, which has not come to light.
- **Unlimited corporate donations:** The maximum limit of 7.5% on the proportion of the profits a company can donate to a political party has been lifted, thus opening up the possibility of shell companies being set up specifically to fund parties.
- **Allowing foreign funding:** Amendment of the Foreign Contribution (Regulation) Act (FCRA) has opened the floodgates of foreign funding to political parties, which can lead to eventual interference in governance.
- **Lack of transparency:** Despite provisions under section 29 of RPA, 1951, parties do not submit their annual audit reports to the Election Commission. Parties have also defied that they come under the ambit of RTI act.

5.2.1. ELECTORAL BONDS

Why in news?

- The government has recently **notified the Electoral bonds scheme** announced in budget 2017-18 to boost transparency in political funding.

Background

- According to an ADR (Association of Democratic Reforms) analysis, 69% of the total income of national and regional parties between 2004-05 and 2014-15 was contributed through **funding from unknown sources**.
- The **255th Law Commission Report** on Electoral Reforms observed that **opacity in political funding** results in “lobbying and capture” of the government by big donors.

- Electoral bonds were announced in Union Budget 2017-18 and the required amendments in Reserve Bank of India Act, 1934 (Section 31(3)) and the Representation of People Act, 1951 were made through Section 133 to 136 of Finance Bill, 2017.

Pros of Electoral Bonds

- Tackling Black Money in Political Funding:** As electoral bonds will be purchased through KYC compliance therefore it would induce funding through clean money.
- Increasing Transparency and Accountability** - Filing of returns is a welcome step in evaluating the quantum of money received by political parties as donations.
- Anonymity** - Anonymity will help guard against India's "vindictive" political culture in which parties could penalise donors for funding rival political forces.
- Short span of 15 days for redeeming the electoral bonds will prevent it from being a **parallel currency**.
- Stringent clause of eligibility** will filter out political parties that are formed on the pretext of tax evasion.

Cons

- Opacity** - The knowledge of the quantum of money donated, by whom and to which political party will only be known to certain entities again bringing an element of opacity for the public.
 - Section 29C of RPA, 1951 enjoins political parties to report on all contributions above Rs 2,000 to the EC. However, an amendment in finance bill kept electoral bonds out of the purview of this section. Therefore, parties will not have to submit records of electoral bonds received to the EC for scrutiny.
 - Political parties are legally bound to submit their income tax returns annually under Section 13A of the Income Tax Act, 1961. However, finance bill also sought to **exempt electoral bonds from IT Act**. Thus, removing the need to maintain records of names, addresses of all donors.
- Favours ruling party** - SBI being a government owned bank will hold all the information of the donors which can be favourable to the party in power and also deter certain entities from donating to opposition due to fear of penalisation.

Way Forward

Various ways that may bring more transparency in political funding are-

- Switching to **complete digital transactions**.
- Donations above a certain limit be made public to break the corporate-politico nexus.
- Political parties should be brought under the ambit of RTI** as followed in countries like Bhutan and Germany.

POLITICAL FUNDING CLEAN-UP

- What Is An Electoral Bond**
An interest- free financial instrument for making anonymous donations to political parties; resembles a promissory note
- Who May Purchase These Bonds**
A Citizen of India or a body incorporated in the country
- Bond Denominations**
₹1,000, ₹10,000, ₹100,000, ₹1 million, ₹10 million; can be purchased from selected branches of SBI
- When May Such Bonds Be Bought**
Available for purchase for 10days each in January, April, July, & October
- Lifespan**
Redeemable in the designated account of a registered political party within 15 days since issuance
- Which Political Parties Are Eligible To Receive Donations Through Electoral Bonds?**
Political parties who have at least secured 1% votes in the last Lok Sabha or state assembly elections and are registered under Section 29A of the Representation of the People's Act, 1951
- Other Details**
Political parties will be required to file returns to the Election Commission of the quantum of money itreceives through electoral bonds. Donors will be eligible for tax deduction while political parties will be eligible for exemption, provided returns are filed by the political party.

- Establish a **national electoral fund** where donors contribute and funds are distributed among different parties according to their respective performances in the last elections. This will also weed out black money as well as ensure anonymity to donors.
- **State funding of elections** has been suggested in the past in response to the high cost of elections.

Arguments in favour of state funding	Arguments against state funding
<ul style="list-style-type: none"> • State funding increases transparency inside the party and also in candidate finance, as certain restrictions can be put along with state funding • State funding can limit the influence of wealthy people and rich mafias, thereby purifying the election process. • It will check quid-pro-quo and can help curb corruption. • Through state funding the demand for internal democracy in party, women representations, representations of weaker section can be encouraged as it gives level playing field to all. • In India, with high level of poverty, ordinary citizens cannot be expected to contribute much to the political parties. Therefore, the parties depend upon funding by corporate and rich individuals. • Various committees including Indrajit Gupta Committee 1998, Law Commission of India, 2nd ARC, National Commission to Review the Working of the Constitution, have favoured state funding 	<ul style="list-style-type: none"> • Through state funding of elections, the tax payers are forced to support even those political parties or candidates, whose view they do not subscribe to. • State funding encourages status quo that keeps the established party or candidate in power and makes it difficult for the new parties and independent candidates. • State funding increases the distance between political leaders and ordinary citizens as the parties do not depend on the citizens for mobilization of party fund. • Political parties tend to become organs of the state, rather than being parts of the civil society. • It may lead to candidates running for elections just for the sake of availing monetary benefits • There is a possibility of state funding being used as a supplement and not as a substitute of candidate's own expenditure..

5.3. ISSUES RELATED TO RPA

The Representation of people Act (RPA), 1951 provides for the rules and regulations regarding conduct of election to parliament and state legislature, election offences, registration of political parties etc. Over the years, various issues have been raised regarding these including the recent ones given in table:

Important sections	Issues associated
<p>Section 29A which is regarding registration of political parties with the Election Commission</p>	<ul style="list-style-type: none"> • It does not give EC the power to de-register a political party. • Lack of regulatory power is leading to mushrooming of political parties. Presently, about 20 per cent of registered political parties contest election and remaining 80 per cent parties create excessive load on electoral system and public money as they are entitled to various incentives. • Recently, Supreme Court has decided to examine the powers of ECI in terms of disqualifying convicted persons from forming political parties or becoming office-bearer of a party under this section.
<p>Section 33(7) that allows a candidate to fight from two seats at the same time. (This section was added after recommendation of Dinesh Goswami Committee to restrict candidates to contest from more than two seats earlier)</p>	<ul style="list-style-type: none"> • Recently ECI has favored amendments in this section to allow contesting from one seats. Earlier, Law Commission also proposed the same. • Contesting from two is opposed because: <ul style="list-style-type: none"> ○ Additional financial burden on public exchequer for holding a by-election against the resultant vacancy. ○ Unfair to upcoming leaders, who have to vacate space so that the bigger leaders can get their second seats. ○ Used as an Insurance to Failure against their poor political performance ○ Discriminatory for candidates with relatively lower financial clout. ○ If the dictum of 'One person, one vote' is the norm in democracy then 'one candidate, one constituency' should also be followed. ○ Injustice to the voters as it gives perception of vacated seat as less important constituency and element of betrayal to the voters. • If existing provisions are retained, then candidate contesting from two seats should bear the cost of the bye-election to the seat vacated.
<p>Section 8 of Representation of People Act, 1951 which lays down rules of for disqualification of MP's and MLA's</p>	<ul style="list-style-type: none"> • Election commission (EC) has supported a Public Interest Litigation in Supreme Court demanding a life time ban on convicted politicians from contesting elections and entering legislature to prevent criminalizing of politics.

	<ul style="list-style-type: none"> As of now, disqualification rules are as follows: <ul style="list-style-type: none"> Section 8 (1), (2) of the Act disqualifies for a minimum period of six years irrespective of fine or imprisonment if any of the lawmakers are convicted of heinous crimes; causing enmity over religion, language or region; indulging in electoral violations etc. section 8(3) disqualifies a lawmaker, convicted and sentenced to imprisonment for not less than two years, from date of conviction and further six years from the time released.
<p>Section 123(3) deals with abiding to “corrupt practices” for canvassing votes in an election.</p>	<ul style="list-style-type: none"> Last year, a seven-judge Supreme Court bench ruled that “religion, race, caste, community or language would not be allowed to play any role in the electoral process” and election of a candidate would be declared null and void if an appeal is made to seek votes on these considerations. It is required to preserve the secular concept of elections in our democracy.

5.4. ISSUES WITH ELECTION COMMISSION OF INDIA

Election Commission of India (ECI) is a constitutional body (under Article-324) vested with the responsibilities of superintendence, direction and control of conduct of elections. It consists of a Chief Election Commissioner and two Election Commissioners.

Article 324 states that the Election Commission shall consist of Chief Election Commissioner and such numbers of other Election Commissioners, if any, as the President may from time to time fix and appointment of CEC and other ECs shall, subject to provisions of any law made in that behalf by the Parliament, be made by the President. Still, appointments in ECI is associated with various issues:

- Recently, **lack of security of tenure for Election Commissioners (ECs)** was in news. **Article 324(5) of the Constitution** protects only CEC from removal, except if the manner and grounds of removal are the same as a judge of the Supreme Court. However, ECs can be removed by the government on the recommendation of the Chief Election Commissioner.

- The appointment of CEC and other ECs according to the Article 324, shall be done as per the law made by the Parliament in this regard. However, no such law has yet been made which leaves a “gap” and leaves the **appointment of such a crucial post solely to the executives.**

Steps that can be taken to address issues in appointment

- Appointment by collegium:** 2nd ARC, in its fourth report on 'Ethics in Governance', has said that it would be appropriate to have a collegium headed by the PM to appoint the chief and members of the EC.
- Ensure fair and transparent selection:** The court acknowledged that the appointments of CEC and ECs till now have been fair and politically neutral. But the void in law should be filled.
- Constitutional protection to EC:** Amendment to provide constitutional protection for all three of its members as opposed to just one at present.
- Fair Elevation:** Enabling provisions should be added in law that the senior most EC would be automatically elevated as CEC in order to instill a feeling of security and insulate from executive interference.

Arguments in favour of contempt powers

- International examples** – Election management bodies (eg: Kenya, Pakistan) have direct power to initiate contempt proceedings.
- To Maintain Credibility** – Certain allegations affect the credibility of the commission as one of the important guardian of the democratic process.

Arguments against giving such power

- Knee-Jerk Response:** It is an unwarranted and poorly thought-out response to some strident accusations of partisan functioning
- Need of transparency**– The body, custodian of secret ballot, should choose transparency rather than contempt powers to maintain its track record of honesty and fairness.
- Undemocratic** – Contestation is part and parcel of elections. Thus, powers to silence criticism will undermine this democratic process.
- Adjudicating power to ECI will be against the Principle of Separation of Power
- Against freedom of expression** – Because of this reason even big democracies such as USA and Canada have not given contempt powers to election panel.
- Rejected earlier** – Dinesh Goswami committee on electoral reforms, three decades earlier, had rejected this proposal.
- Satisfaction of people is supreme** – EC does not have to satisfy every politician. It enjoys public confidence and reputation of impartiality. Thus, it just needs to reach out to people and explain process transparently.

- The constitution has **not prescribed the qualifications** (legal, educational, administrative, or judicial) of the members of election commission.
- The constitution has **not debarred** the retiring Election commissioner from any further appointment by the government.
- There is **no clarity regarding the power division** between the Chief Election Commissioner and other Election Commissioners.

ECI has been ensuring democratic transfer of political power from one set of representatives to other since independence. However, in recent times, it is embroiled in various issues & controversies such as EVM malfunctioning, announcement of election dates to benefit ruling government, money and muscle role in elections etc. Thus, ECI has proposed slew of measures to address the same:

- Recently, ECI told the SC that it should be given the **power to make rules under the electoral law**, instead of the Centre. At present, RP Act empowers the Central Government to make rules after consultation with ECI. However, the Central Government is not bound to accept. Thus, impacting various reforms such as power to de-register political parties, insertion of new clause '58 B' be inserted in the RPA Act 1951 to give power to postpone or countermand polls based on evidence that money power was used to influence voters.
- Earlier in 2017, ECI sought an urgent **amendment to the Contempt of Courts Act, 1971**, to empower it to punish anyone being disobedient or discourteous towards its authority.

5.5. ISSUES IN DELIMITATION

Why in news?

The Home Ministry has proposed an increase in the number of seats in the Sikkim Assembly from 32 to 40 as it was observed that Limboo and Tamangs (notified as STs in Sikkim) were not adequately represented in the Assembly.

Delimitation in India

- **Article 82** provides the power to determine the aspects and manner of delimitation to the Parliament. This power has been exercised 4 times through enactment of the **Delimitation Commission Acts 1952, 1962, 1972 and 2002**.
- The **42nd Amendment Act 1976**, froze the allocation of the seats till year 2000 at the 1971 (census) level which was extended for another 25 years, i.e. upto 2026, by the **84th Amendment Act of 2001**.
- The main objective behind extending this was to **encourage population limiting measures**.
- The **87th Amendment Act 2003** provided for delimitation of constituencies on the basis of 2001 census, which was done without altering the number of seats or constituencies.
- **Special constitutional provisions** to Sikkim under article 371(f) have allowed government to make the proposed changes without constituting a fresh delimitation commission as the Article 170 of the Constitution (related to composition of assemblies and some provisions of delimitation for them) does not apply to Sikkim.

Other Constitutional Provisions for Delimitation

- **Clause (2) of Article 81** provided that, there shall be allotted to each State a number of seats in the House of the People in such a manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States.
- Clause (3) defined the expression "population" for the purposes of Article 81 to mean the population as ascertained at the last preceding Census of which the relevant figures have been published.
- Each state is divided into territorial constituencies in such a manner that the ratio between population of each constituency and the number of seats allotted to it is the same throughout the state.
- Constitution prohibits courts' interference in electoral matters. No court can question the validity of any law related to the delimitation of constituencies or the allotment of seats done by Delimitation Commission under Delimitation Act.

Issues in delimitation

- **Violates concept of equal representation:** Current representation deviates from the core principle of universal adult suffrage as a voter representation from Kerala (6.3 MPs per crore persons) is 42% higher than that of a Rajasthani voter (4.4 MPs per crore persons).

- **Poor Urban Governance:** Lack of proportional representation of cities in Parliament (largest city having over three million electors, and the smallest less than 50,000) leading to lack of funding and paucity of infrastructure development
- **Fixed allocation of seats:** Basing the 1971 Census figure of 54.81 crore to represent today's population (121 crore) presents a distorted version of our democratic polity and is contrary to what is mandated under Article 81 of the Constitution.
- **Freezing seats did not solve problem:** Concerns expressed by the States in 1976 which necessitated the freezing of seat allocation on the basis of 1971 population figures would appear to hold good even today.
- Increase in number of parliamentary member would make it a difficult task for the presiding officer to ensure smooth functioning of House.
- Delimitation may favor one party over another, as in the case mentioned above in Sikkim attempt to reduce the representation of racial minorities.

Way Forward

- Delimitation provisions of Articles 82 & 327 and related Articles are not specific. Thus, principles governing the procedure for periodic delimitation need to be enriched.
- Appointment of academicians such as political scientists, social workers, pathologist and NGOs as co-opted members of delimitation commission.
- Provision of strict procedures and guidelines to ensure administrative process of delimitation not liable for political interference.
- Provision for judicial review where erroneous process is found in delimitation of constituency.
- Increasing the seats in Lok Sabha and State Assembly according to the population ratio.
- Provision for reservation for women in proportion to their population.

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6. JUDICIARY

6.1. JUDICIAL APPOINTMENT

Why in news?

Recently, Central government returned the SC Collegium's recommendation to elevate Justice KM Joseph to Supreme Court.

Background of Judges Appointment

- **Constitution** under **Article 124** states that, the President shall make SC Judges appointments after **consulting** with the Chief Justice of India and other SC and HC judges as he considers necessary. While for **HC judges appointment** President (under **Article 217**) should consult the CJI, Governor, and Chief Justice of the High Court concerned.
- **Three Judge Cases:** It created **Collegium system** where a committee of the Chief Justice of India, four senior judges of the Supreme Court and three members of a high court (in case of appointments in the said high courts)

take decisions related to appointments and transfer of judges in the Supreme Court and High Courts.

- **National Judicial Appointment Commission (NJAC):** 99th Constitutional Amendment Act created NJAC as proposed **constitutional body to replace the Collegium system** of appointing judges. However, **SC struck down the Act** as it violates the independence of judiciary and Principle of Separation of Powers between the executive and judiciary, which is a basic feature of the Constitution. Thus, **restoring** the Collegium System of Appointment of Judges.
- The government drafted a Memorandum of Procedure in 2016 to set a fresh set of guidelines for making appointments to the higher judiciary. However, there is lack of agreement between government and judiciary as of now.

Issues with Collegium System of Appointment

- **Constitutionality:** Constituent Assembly had rejected the proposal to vest the Chief Justice with veto power over appointments.
- **Violation of constitutional Provision:** According to 214th Law commission of India Collegium is a clear violation of **Article 74 of the Constitution of India** which demand President to act on the aid and advice of the Council of Ministers.

Cases related to Judicial Appointment

Shamsher Singh vs. State of Punjab, 1974 case: SC held that the approval of CJI is must in appointing the Judges of High court and Supreme Court.

Three Judge Cases

- **First Judges Case, 1981 or S P Gupta Case:** The Supreme Court ruled that the recommendation made by the CJI to the President can be refused for "cogent reasons", thereby giving **greater say to executive**.
- **Second Judges Case, 1993:** It is also known as **Supreme Court Advocates-on Record Association vs Union of India**. CJI only need to consult two senior-most judges over judicial appointments and transfers. **However**, on objection raised by executive on appointment, Collegium may or may not change their recommendation, which is binding on executive.
- **Third Judges Case, 1998:** CJI should consult with four senior-most Supreme Court judges to form his opinion on judicial appointments and transfers.

Feature of Draft Memorandum of Procedure (MoP), 2016

- Include "merit and integrity" as "prime criteria" for appointment of judges to the higher judiciary.
- **Performance Appraisal for promotion as chief justice of a high court:** by evaluation of judgments delivered by a high court judge during the last five years and initiatives undertaken for improvement of judicial administration.
- For appointment of judges in the Supreme Court, the "prime criteria" should be "seniority as chief justice/ judge of the high court".
- Up to three judges in the Supreme Court need to be appointed from among the eminent members of the Bar and distinguished jurists with proven track record in their respective fields.
- **Setting up a permanent secretariat** in Supreme Court for maintaining records of high court judges, scheduling meetings of the Collegium, receiving recommendations as well as complaints in matters related to appointments.
- **Inclusion of National security and public interest** as the new ground of objection to appoint a candidate as a judge. The objections under this will be conveyed to the collegium which will then take a final call.

- **Undemocratic:** Collegium system is **non-transparent and closed** in nature as there exists **no system of checks and balances** which is essential to a democracy.
- **Disturbing Balance of Power** by the **Second Judges case** as provided by the constitution between executive and judiciary.
- **Uncle Judges Syndrome:** Law Commission in its 230th report said that nepotism, corruption and personal patronage is prevalent in the functioning of the collegium system
- **Merit vs Seniority:** There have been numerous cases where people with better qualifications and better track records have been sidelined to make way for someone incompetent due to seniority rule.

SC Collegium Proceedings in Public Domain

Rationale behind the decision

- **Moral obligation:** The Judiciary fulfilled its moral obligation especially after it struck down NJAC.
- **Right to Information:** The proactive disclosure by the judiciary is a welcome step in spirit of Right to Information act, 2005.
- **Openness in procedure:** It not only means openness in the functioning of the executive arms of the state but also in judicial apparatus including judicial appointments and transfers.
- **Right to know:** The step strengthens democratic processes and fundamental right of freedom of speech as the right to know is an inherent part of it. The secretive collegium system was violating that till now.

Some other Measures to boost Transparency in Judicial Appointments

- A complete and periodically updated database of potential candidates which is accessible to the public.
- Applications to be invited by nomination/ advertisement in consultation with members of the Bar and Bar organisations.
- Inputs must be sought from the public with regard to shortlisted candidates while providing immunity (from laws of contempt & defamation) and confidentiality to citizens.
- A complete record of video/audio of collegium deliberations.

Way forward

- **Power Balance:** Law Commission, in its 2008 and 2009 reports, suggested that Parliament should pass a law restoring the primacy of the CJI, while ensuring that the executive played a role in making judicial appointments.
- **System to ensure judicial primacy but not judicial exclusivity:** The new system should ensure independence, accommodate the federal concept of diversity, demonstrate professional competence and integrity. The trend across liberal, constitutional democracies is towards such a commission which preserves judiciary's primacy while also divorcing its membership from the executive.
- **Criteria for Appointment:** Eligibility criteria to judge the performance and suitability must be formulated objectively and must be made public. The reasons for appointment or non- appointment can be only understood well in the context of such a criterion. Recently Supreme Court Collegium has decided to put all its recommendations in Public Domain indicating the reasons.
- **Early Finalisation of Memorandum of Procedure (MoP):** SC in Justice Karnan case underlined the need to revisit the process of selection and appointment of judges to the constitutional court.

6.1.1. ISSUES IN APPOINTMENT TO HIGH COURT JUDICIARY

Why in news?

Recently Supreme Court bench has clarified some aspects of appointment to High court judiciary.

Details

- The SC bench rejected a petition (challenging the appointment of two judges as Additional judges of Rajasthan HC, filed on the basis of previous SC judgments) stating that -
 - Retired judicial officers can be appointed as HC judges under **Article 217(2)(a)** as it did not make it mandatory that the appointee in question should be holding a judicial office at the time when the notification of appointment was issued.
 - **Additional Judges** of High Courts may also be appointed for tenure of less than 2 years (in context of **Article 224**) even if the pendency is more than 2 years as was disputed in S.P. Gupta v. Union of India case.
- Along with this it was held that the process of appointing HC judges needs to be done expeditiously.

Issues with delayed appointments of Additional Judges

- It **defeats the purpose of Art 224(1)** along with frustrating the hopes and trust of litigants facing delays due to lack of judicial capacity.

- **Judicial officers** get a chance for elevation (appointment as HC judges) when only a few years of service are left and undue delays on part of executive further reduces their tenures and sometimes their chances of elevation.

What may be done?

- **Definite timelines** may be drawn for each stage of the appointment process, so that the process is accomplished within a time-bound manner.
- **More transparency in the matters** of appointment may further unveil the causes behind delays.
- **Faster finalization of Memorandum of Procedure** for the appointment of judges in the higher judiciary through proper consultations between executive and judiciary.
- **Physical infrastructure** needs to be expanded and the necessary support staff be provided to de-clog the system.
- **Other Measures:** Reducing government litigation, compulsory use of mediation and other alternative dispute resolution mechanisms, simplifying procedures, recommending precise capacity reinforcements and use of technology.

Article 217 - Deals with the appointment and conditions of the office of a Judge of a High Court

- (1) Every Judge of a High Court shall be appointed by the President ... and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty two years.
- (2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and
 - (a) Has for at least ten years held a judicial office in the territory of India; or
 - (b) Has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

Article 224- Deals with appointment of additional and acting Judges

(1) Additional Judges

Any temporary increase in the business of High Court or by reason of arrears of work... the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

(2) Acting Judge

Absence of or inability to perform duties by any Judge of a HC other than the Chief Justice the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties

- (3) No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of **sixty two years**.

Article 224 A- Appointment of retired Judges at sittings of High Courts (Ad-hoc Judges) by the Chief Justice of HC for any State with the previous consent of the President.

6.1.2. REMOVAL OF JUDGES

Why in news

Recently, a motion for removal of Chief Justice India was moved in Rajya Sabha which was rejected at the admission stage.

Removal of judges: a background

- Under **A.124(4)** of the Constitution a Judge of SC (**A- 217B- Removal of HC Judge**) can be removed only by the President on ground of '**proved misbehaviour**' or '**incapacity**' only after a motion to this effect is passed by both the Houses of Parliament by special majority.
- Constitution requires that misbehaviour or incapacity shall be proved by an impartial Tribunal whose composition is decided under **Judges Enquiry Act 1968**.

Can chairman reject impeachment motion?

- Section 3 of **Judges (Inquiry) Act, 1968**, says the presiding officer may admit or refuse to admit the motion after holding consultations with such persons as he thinks fit, and considering the material before him.
- Earlier also impeachment motions having been shot down. For eg: motion moved against Supreme Court judge J.C. Shah was rejected by the then Lok Sabha Speaker, G.S. Dhillon, in 1970.
- The job of the Chairman is not just procedural to see the required no of signatures but to also see whether there is a *prima facie* case, whether the notice for motion is based on substantial grounds, before admitting or rejecting.
- Even mere admission of an impeachment motion can cause incalculable damage to reputation in this perception-driven world. Thus, motion needs to be admitted very carefully.

Procedure given in Judges Inquiry Act, 1968

- Under the Act, the motion is to be signed by 50 members of Rajya Sabha or 100 members of Lok Sabha and, if it is admitted by the Speaker or Chairman.
 - **An inquiry committee** consisting of a Supreme Court judge, a High Court Chief Justice, and a distinguished jurist is to probe the charges. The committee will frame charges based on which the investigation will be conducted.
- If the charges stand proven, the motion is to be presented to each House of Parliament and passed by a **majority of the House and 2/3rds** of those present and voting in the same session.
- However, even if the charges are proved, Parliament is not bound to remove such a judge. Finally, the President will issue the order removing the judge.

Challenges to Judges Removal

- **Lack of Enforcement:** The Act has only been invoked three times since 1950 and no judge could be successfully impeached till date.
- **Lack of Transparency:** The proceedings are wrapped in secrecy; the judge continues to hold the post. Both the Constitution and the Judges (Inquiry) Act of 1968 are silent on whether a judge facing impeachment motion should recuse from judicial and administrative work till he is cleared of the charges against him.
- **Judiciary removing itself:** Contempt of court ruling may amount to removing him as a judge, thus, amounting to judicially-ordered impeachment.
- **Cumbersome Process:** Impeachment process is tedious and lengthy, judges have virtually no accountability.

Way Forward

- **Authority outside judiciary to take disciplinary actions:** This is one solution being discussed. However, it has several shortcomings:
 - Potential threat to judicial independence
 - May inject fear in judges while taking any decision that it may annoy powers as seen during the time of emergency
 - Design of constitution has been to ensure absolute judicial independence, with no scope for Parliament or the executive interference in judicial conduct or decisions
- **Appointment-** the collegium should take adequate safeguards so that only judges of high caliber and impeccable integrity are appointed to the higher courts. This requires infusion of greater transparency in the selection of judges.
- **Greater Internal regulation:** There were several instances where the Judge behaved inappropriately, disciplinary actions should have been taken promptly at very first instance of such misconduct. For this, a **National Judicial Oversight Committee** should be created by parliament which shall develop its own procedures to scrutinizing the complaints and investigation. The composition of such committee should not affect judicial independence
- **Concurrence with full court** of supreme court before admitting an impeachment motion with time limit on response from the Supreme Court after which it would be a deemed concurrence.

6.2. JUDICIAL ACCOUNTABILITY

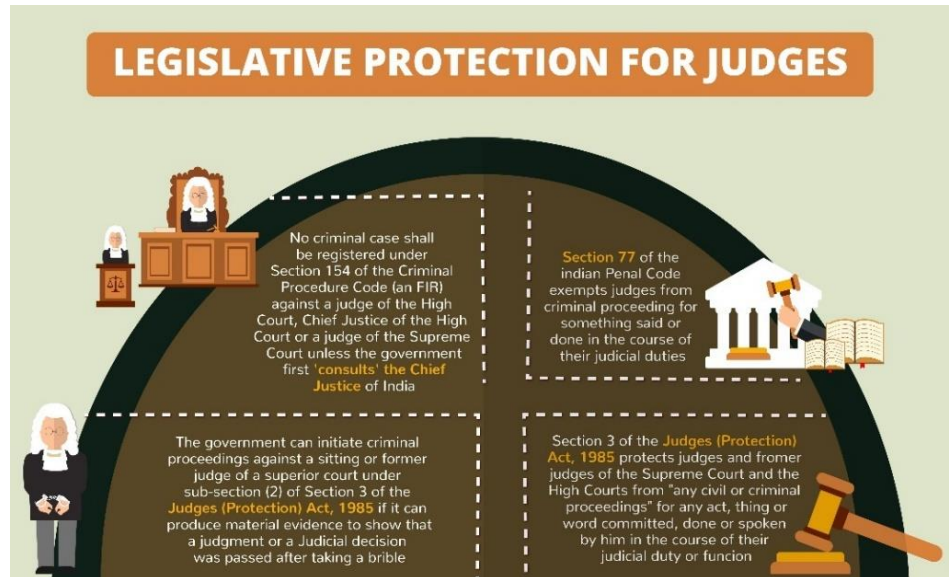
Why in news?

The reputation and credibility of Supreme Court and CJI was recently questioned in a medical college bribery case.

Issues pertaining to Judicial Accountability

- **Inadequacy in legislative mechanisms to tackle judicial corruption:** There are legislative difficulties such as IPC section 77 and Judges (Protection) Act, 1985 in implicating and prosecuting judges.
- **Judicial accountability vs independence of judiciary:** Investigation by CBI against corruption charges can also be misused to seek recusals of judges and may undermine independence of judiciary.
- **Problems with the impeachment:** It is a long-drawn-out and difficult process along with its political overtone.

- **Judges appointing Judges:** The collegium system in India presents a unique system wherein the democratically elected executive and Parliament at large has no say in appointing judges.
- **Non-declaration of assets** of judges and judiciary as judiciary being beyond the purview of RTI.



Suggestions and Reforms for effective Judicial Accountability

- **Bringing a new Judicial standards and accountability bill** along the lines of Judicial Standards and Accountability Bill 2010 to establish a set of legally enforceable standards to uphold the dignity of superior judiciary and establish a new architecture to process the public complaints leveled against the judges.
- A **two-level judicial discipline model** with first level as a disciplinary system that can admonish, fine or suspend judges for misdemeanors along with providing them some limited measures of immunity; and, second level as a system of removal of judges for serious misconduct, including corruption must be established.
- It is also impertinent that the **scope of judicial accountability** must be widened from the issues relating to judicial ethics and judicial misconduct and bring in the issues of **“efficiency and transparency”** through the adoption of a new Judicial Standards and Accountability Bill.
- **Live streaming of proceedings in cases of public importance:** live-streaming has been allowed for both Lok Sabha and Rajya Sabha proceedings since 2004. Similarly, the recording of videos in the highest courts in Canada and Australia, as well as in some international courts, most notably in the International Court of Justice, shows that this exercise is neither novel nor so difficult.
- **Independent judicial Lokpal may be set up** with power to take up complaints and initiate action against judges should be set up to ensure accountability of the judiciary. It should be independent from both the judiciary and the government

Judicial Standards and Accountability Bill, 2010

- It establishes the **National Judicial Oversight Committee**, the **Complaints Scrutiny Panel** and an investigation committee. Any person can make a complaint against a judge to the Oversight Committee on grounds of ‘misbehaviour’.
- A motion for removal of a judge on grounds of misbehaviour can also be moved in Parliament. Such a motion will be referred for further inquiry to the Oversight Committee.
- The **Oversight Committee** may issue advisories or warnings to judges, and also recommend their removal to the President.

6.2.1. JUDICIAL ACCOUNTABILITY & RTI ACT

Why in News?

A recent High Court judgement overturned the Central Information Commissioner’s order regarding SC rules being inconsistent with RTI Act.

Judiciary and RTI

- Numerous petitions seeking information from the court under RTI are **asked to be applied under SC rules**. Apart from this various courts have also framed their own rules under which various regulations.
- Further, although the courts were included in the definition of Public Authorities (**section 2 (h)**) most of the HCs **did not even appoint Public Information Officers (PIOs)** even months after this act came to force which denied people their right to information.

- However, the Supreme Court Rules undermined the RTI in four key ways. Unlike the RTI Act, the Rules do not provide for:
 - a time frame for furnishing information
 - an appeal mechanism
 - penalties for delays or wrongful refusal of information
 - makes disclosures to citizens contingent upon “good cause shown”
- In sum, the Rules allowed the judiciary to provide information at its unquestionable discretion, violating the text and spirit of the RTI.
- The RTI Act does not permit any appeals to be entertained by any court under **Section 23**. Section 23 of RTI Act forbids courts from entertaining “any suit, application or other proceeding in respect of any order made under this Act”. Nevertheless, the **contradiction arises** from the fact that the Indian Constitution gives powers to the Supreme Court and the high courts that override any statute.
- Further, SC has said that the decision of the Registrar General of the Court will be final and not subject to any independent appeal to Central Information Commission. These issues have brought the credibility of judges further under question.

Arguments in favour of Including Judiciary under RTI

- It will increase the amount of transparency in judiciary in case of appointment of judges as it may decrease nepotism and despotism as criticized to be present in judiciary.
- Courts have always been questioned for pending cases. RTI can place yardstick among judiciary for timely disposal of justice.
- It will increase accountability of judiciary as judges can be held accountable for their decisions.
- It will increase the faith of people if they could also know about judicial working.
- In the famous **Raj Narain Vs Indira Gandhi case**, the SC laid down the foundation of Right to Information in India stating that the people of the country have the right to know about every public act. Thus, The Supreme Court should begin practicing what it preaches.

Arguments against

- It may compromise secrecy & security involved in certain cases. This may prove detrimental for our country.
- It may compromise independence of judiciary as specified by constitution and may lead to politicization of judiciary.
- It may create extra burden on judiciary and delays in judicial appointments & transfers as an over conscious approach may be adopted to avoid conflicts.

Way forward

The higher judiciary can be brought under RTI Act with following limitations:

- Sub-judice case where disclosed information can influence judge’s verdict.
- Confidential information to maintain unity and integrity of nation.
- If the information does not deal with issue of a public importance and doesn’t affect the person in any way.

6.3. JUDICIAL PENDENCY

Why in news

According to the **latest National Judicial Data Grid statistics**, over 3 crore cases are pending across courts in India.

Key facts about pendency

- According to National Judicial Data Grid (NJDG), Uttar Pradesh has the highest number of pending cases (61.58 lakh).
- Of all the pending cases, 60% are more than two years old, while 40% are more than five year old. In the Supreme Court, more than 30% of pending cases are more than five years old while in the Allahabad High Court, 15% of the appeals have been pending since 1980s.

- In the **latest Ease of Doing report**, India's ranking on the indicator on enforcing contracts marginally improved to 164 from 172
- A **2009 law commission report** said it would take 464 years to clear pending cases with the current strength of judges.

Reason for pendency

- **Government the biggest litigant:** 46% of all litigation across courts were cases or appeals filed by state or central governments.
- **Low judge-to-population ratio:** India has only 18 judges for every million people, while in the US the judge-to-population ratio is 107 judges. Law Commission in 1987, had recommended that India should raise the number of judges to 50 for every million population.
- **Vacancy:** For 1.7 billion people in India, there are 31 judges in the SC and 1,079 in high courts. Of the latter, there are never more than 600 judges appointed at any point leaving rest of the seats vacant. Also, conflict over MoP have led to vacancies reaching nearly 50% of their sanctioned strength in various high courts.
- **Huge workload:** Judges in high courts hear between 20 and 150 cases every day, or an average of 70 hearings daily. The average time that the judges have for each hearing could be as little as 2 minutes.
- **Police lacks training** for scientific collection of evidences and also police and prison official often fail to fulfil their duty leading to long delays in trial.
- **Judges Vacation:** SC works on average for 188 days a year, while apex court rules specify minimum of 225 days of work.
- **Lack of infrastructure:** such as inadequate support staff for judges and dearth of basic courtroom facilities. A 2016 report published by the Supreme Court showed that existing infrastructure could accommodate only 15,540 judicial officers against the all-India sanctioned strength of 20,558.
- **Not utilizing the court managers potential:** Courts have created dedicated posts for court managers to help improve court operations, optimise case movement and judicial time. But more often their duties are restricted to organising court events and running errands.
- **Unavailability of data to formulate strategy:** A number of lower courts still do not have data under the "Date filed" column, the most crucial piece for identifying delays and rectifying it.

Its impact

- **Socio-economic fallout:** A weak judiciary (defined by the speed and predictability of the trial outcome) can lead to lower per capita income; higher poverty rates; lower private economic activity; poorer public infrastructure; and higher crime rates and more industrial riots.
- **Increasing cost of doing business:** Due to poor enforcement, cost structure of the entire economy to go up as the interest rates on credit are higher, due to the inclusion of a risk premium by the lender.
- **Violation of Fundamental Right:** Supreme Court has said that Article 21 of the Constitution entitles prisoners to a fair and speedy trial as part of their fundamental right to life and liberty.
- **Quality of judgement suffers:** It is not uncommon to see over 100 matters listed before a judge in a day leading to very less time on analyzing every facts of the case.

Way Forward

- **Economic Survey 2017-18** called for **coordinated action between government and judiciary** to reduce pendency of commercial litigation for improving ease of doing business (EODB) and boost economic activities.
- **The issue of the appointments in higher judiciary** should be resolved soon. The judiciary and executive must reach a common ground and prepare a workable memorandum of procedure.
- **Alternate Dispute Resolution mechanism** should be strengthened and people must be made aware about it
- **Use of Information and communication technology (ICT) tools** for setting up a **case management system** (a mechanism to monitor every case from filing to disposal) for timely, transparent and efficient disposal of cases.
- **Economic Boost:** It has been estimated that if court decisions were quick and delays reduced, economic growth could receive a boost to the tune of 1-2% of gross domestic product.

- **Annual targets** and action plans must be fixed for the judicial officers to dispose of old cases where accused is in custody for over two years.
- **Setting standards of judicial recruitment examinations** to improve the quality of district judges.
- Implement the concept of **evening courts** where the services of the retired judges may be taken along with the law graduates to train the young incumbents as well as reduce the pendency.
- **230th Law Commission in its report** “reform in Judiciary” in 2009 recommended
 - There must be **full utilization of the court working hours** and Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.
 - **cases of similar nature should be clubbed** with the help of technology and used to dispose other such cases on a priority basis;
 - Judges must deliver **judgments within a reasonable time** both in civil and criminal matters.
 - Vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour
 - Lawyers must curtail prolix and repetitive arguments and length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.
 - Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.

6.4. TRIBUNALS

Why in news?

- Law Commission released a report titled “Assessment of Statutory Frameworks of Tribunals in India”.
- Recently, Supreme Court stayed the applicability of Central Tribunal, Appellate Tribunal and other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017 which gave primacy to the government in making key appointments to tribunals, including NGT citing independence issues.

Tribunals in India

- A tribunal is a **quasi-judicial body** established in India by an Act of Parliament or State Legislature under **Article 323A or 323B** to resolve disputes that are brought before it.
- **Articles 323-A and 323-B** were inserted through the 42nd Amendment Act of 1976 on recommendation of **Swaran Singh Committee**.
 - **Article 323A** deals with administrative tribunals.
 - **Article 323B** deals with tribunals for other matters.
- **Technical Expert:** They play an important role and part in the sphere of the **adjudication of disputes** especially when the subject demand technical expertise.
- They do not have to follow any uniform procedure as laid down under the Civil Procedure Code and the Indian Evidence Act but they have to **follow the principles of Natural Justice**.

Advantages of Tribunals

- **Flexibility:** Administrative adjudication has brought about flexibility and adaptability in the judicial as they are not restrained by rigid rules of procedure and can remain in tune with the varying phases of social and economic life.
- **Less Expensive:** They are set up to be less formal, less expensive, and a faster way to resolve disputes than by using the traditional court system.
- **Relief to Courts:** The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with numerous suits.

Problems arising out of sidestepping the HC-

- The tribunals do not enjoy the same constitutional protection as high courts as the **appointment process and service conditions** of high court judges are not under the control of the executive. Many tribunals still owe allegiance to their parent ministries.
- Due to **scant geographic availability** across the country, tribunals are also not as accessible as high courts. This makes justice expensive and difficult to access.
- When retired high court judges invariably preside over every tribunal, the justification of **expert adjudication by tribunals disappears**.
- Conferring a direct right of appeal to the SC from tribunals has changed the Supreme Court from a constitutional court to a mere appellate court and has also resulted in a **backlog of thousands of cases in SC** which affects the quality of the court's jurisprudence.
- SC judges hearing appeals from tribunals would have to deal with the finer nuances of disputes under specialised areas of law for the very first time. This is **not ideal for a court of last resort**.

- They enjoy some of the powers of a civil court, viz., issuing summons and allowing witnesses to give evidence. Its decisions are **legally binding on the parties, subject to appeal**.

Problems with Tribunals

- **Tribunalisation Of Justice:** It means over reliance on tribunals to resolve disputes which is criticised for the following reasons:
 - **Violation of Doctrine of Separation of Powers:** Tribunal is not a court of law and is controlled and manned partly by the Executive which is against the principle of separation of powers and allows the Executive to perform adjudication functions.
 - **Undermining the Authority of Judiciary:** It adversely affect the role of the High Courts as Courts of Appeal and deprive them of their power of judicial review. The superiority of the Constitutional Courts (HCs) over the statutory courts (tribunal) is compromised.
 - **Conflict of Interest:** The Constitution protects the independence of the judiciary in terms of qualifications, mode of appointment, tenure and mode of removal, which is not available to members of tribunals. They come under the control of the Executive which is the largest litigant in the country and creates a **conflict of interest** situation.
 - **Increasing Pendency:** Average pendency across tribunals is 3.8 years with 25% increase in the size of unresolved cases while pendency in high courts is 4.3 years.
 - **Mere court of Appeal:** Number of constitutional matter dealt by Supreme court has been gradually declining. Of the 884 judgements delivered in 2014, only 64 judgements were pertaining to Constitutional question.
 - Tribunals many a times have proved **inefficient in delivering quick justice** which erode confidence of the litigants in the apex court.

Way forward

Law Commission of India (LCI), in its 272nd report, has laid out a detailed procedure for improving the working of the tribunal system in the country:

- **Qualification of judges** - In case of transfer of jurisdiction of HC (or District Court) to a Tribunal, the members of the newly constituted Tribunal should possess the qualifications akin to the judges of the HC (or District Court).
- **Appointment of Chairman & members of Tribunals-**
 - It has proposed a common nodal agency, possibly under law ministry to monitor the working of tribunals as well as ensure uniformity in the appointment, tenure and service conditions of all members appointed in the tribunals.
 - Vacancy arising in the Tribunal should be filled up quickly by initiating the procedure well in time, preferably within six months prior to the occurrence of vacancy.
- **Selection of the members of Tribunals-**
 - **Selection should be impartial** with minimal involvement of government agencies as the government is a party in litigation.
 - **Separate Selection Committee**, for both judicial and administrative members, must be formed.
- **Tenure** - The Chairman should hold office for 3 years or till he attains the age of 70years, whichever is earlier. Whereas Vice-Chairman and Members should hold the office for 3 years or till they attain the age of 67 years whichever is earlier.
- Any order from a tribunal may be challenged before the Division Bench of the HC having territorial jurisdiction over the Tribunal or its Appellate Forum since judicial review is the basic feature of Indian constitution. Similar recommendation was given in **L. Chandrakumar v. Union of India**
- The Tribunals must have benches in different parts of the country so that people may have easy Access to Justice, ideally where the High Courts are situated.

6.5. ALTERNATE DISPUTE REDRESSAL (ADR)

Why in news?

The Union Cabinet recently approved introduction of **Arbitration and Conciliation (Amendment) Bill, 2018** in Parliament which will facilitate institutional arbitration and help in making India a centre of robust ADR mechanism.

About ADR

- ADR is a dispute resolution mechanism to bring together the disagreeing parties for an agreement short of litigation.
- The ADR processes conform only to civil disputes, as explicitly provided by law. ADR methods, stated to be alternatives to the court and the formal legal system, is said to be one of the best-suited methods to be adopted for resolving a dispute speedily and in an amicable manner.
- **Various modes of Alternative Dispute Resolution**

- **Arbitration-** Arbitration is a process in which a neutral third party or parties render a decision based on the merits of the case. The process of arbitration can start only if there exists a valid arbitration agreement between the parties prior to the emergence of the dispute.
- **Mediation-** The Process of mediation aims to facilitate the development of a consensual solution by the disputing parties. The Mediation process is overseen by a non-partisan third party - the Mediator. The authority of the mediator vests on the consent of the parties that he should facilitate their negotiations.
- **Conciliation-** This is a process by which resolution of disputes is achieved by compromise or voluntary agreement. In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator.
- **Lok Adalat:** They are constituted under the Legal Services Authorities Act, 1987. It is a form of a public conciliation, presided over by 2 or 3 people who are judges or advocates with experience. They have been given powers of a civil court up to a limited extent.

Salient features of the Bill

- **Establishment of Arbitration Council of India (ACI):** It will be an independent corporate body for grading and accreditation of arbitral institutions, to promote and encourage arbitration and other ADR mechanisms. Its functions include:
 - Facilitating **speedy appointment** of arbitrators through designated arbitral institutions by the Supreme Court of India or the High Court, without having any requirement to approach the court in this regard.
 - Maintaining an **electronic depository** of all arbitral awards & evolving policy & guidelines for establishment, operation and maintenance of uniform professional standards in arbitration.
 - **Composition:** It's Chairperson should have been a Judge of the Supreme Court or Chief Justice or Judge of any High Court or any eminent person. Further, the other Members would include an eminent academician etc. besides other Government nominees.
- Parties may **directly approach arbitral institutions** designated by the Supreme Court for International Commercial arbitration and in other cases the concerned High Courts.
- It imposes a duty of **confidentiality on arbitrators** and arbitral institutions in respect of the arbitral proceedings in India, save for the award itself.
- It will also **protect an Arbitrator from legal proceedings** for any action or omission done in good faith in the course of arbitration proceedings.

Various Provisions of ADR

- **Historical Approach:** Panchayats in India are the earliest known ADR mechanism. It has long been the part of Indian culture to take the help of an unbiased third party to reach a decision.
- **Constitutional provision:** The mechanism finds its basis in the Article 14 (Equality before Law), Article 21 (Right to life and personal liberty) and under Article 32 (Right to Constitutional remedies) which provides for the right of people to seek justice. It can also be implicitly related to the DPSP for Equal Justice and Free legal Aid under Article 39A.
- **Other Provision** Settlement of Disputes outside the Court is a part of the Civil Procedure Code (Section 89), The Gram Nyayalayas Act, 2009, Legal Services Authorities Act (1987) (established Lok Adalat System)
- The report of Justice Malimath Committee (1989-90) also suggested the need for establishing ADR mechanism as a viable alternative.

- **Nayaya Panchayats:** These village courts are guided by local traditions, culture and behavioural patterns of the village community and thus instill confidence in the administration of justice. Pecuniary claims of upto Rs. 200 may be taken. Its criminal jurisdiction extends to minor cases of Negligence, trespass, nuisance etc. Emphasis is laid on conciliation.

Advantages of Alternative Dispute Resolution

- **Less time consuming:** people resolve their dispute in short period as compared to courts
- **Cost effective method:** it saves lot of money if one undergoes in litigation process.
- It is free from technicalities of courts, as informal ways are applied in resolving dispute.
- People are free to express themselves without any fear of court of law. They can reveal the true facts without disclosing it to any court.
- **Efficient way:** It prevents further conflict and maintains good relationship as there are always chances of restoring relationship back as parties discuss their issues together on the same platform.
- **Ease of doing business:** The World Bank's Ease of Doing Business ranking for 2017 reveals that India continues to fare badly on **enforcement of contracts**, with an average of 1,420 days taken for enforcement. Improving enforcement would attract foreign as well as domestic investments
- **Institutionalisation of ADR:** to protect India's foreign exchange reserves as Indian companies lose significant amount of foreign Exchange on arbitration that usually happen in foreign countries like Singapore.

Limitations of ADR

- There is no guarantee of resolution unlike the case in traditional Judiciary.
- Forcible transfer of cases by Judiciary to end pendency of courts.
- The arbitration decisions are final and cannot be repealed in any court. In such a situation chances of one party feeling cheated are higher in case of a biased arbitrator. However, concerned Party can initiate litigation by approaching the court of appropriate jurisdiction.
- Unfamiliarity with the procedure and lack of awareness
- Informal and more opportunity for abuse of power as many parties are absent during the process.

Conclusion

To strengthen ADR in India, the Arbitration and Conciliation (Amendment) Bill, 2018 needs to be enacted to fill the legislative lacunae. This would facilitate cost effective and timely arbitration. Apart from it, following steps should be taken:

- Arbitration and mediation centres should be established for non-commercial disputes as well unlike present where mostly cater to commercial disputes.
- People especially the weaker-poor sections need to be made aware of availability of such mechanisms.
- Mediation should be popularized as a profession and reforms should be undertaken to establish ethical standards, quality control and accountability of mediator.
- Expanding the role of ADRs in pre-litigation stages as at present, most of them come into picture once the parties enter into litigation.

7. TRANSPARENCY & ACCOUNTABILITY

In a latest Corruption Perception Index, India was ranked at 81st position out of 180 countries by **Transparency International**, reflecting high opacity and secrecy in functioning of government.

Importance of Transparency & Accountability (T&A)

- **Reduced Corruption-** T&A potentially changes the way government operates, provides information for citizens about what their Government is doing, leading to reduced corruption.
- **Citizen Empowerment-** T&A potentially changes the relationship between people and government officials as it allows taxpayers to see clearly how public servants are spending tax money and gives citizens the ability to hold their elected officials accountable.
- **Participatory Governance-** T&A enables groups, that otherwise would not be able to participate in governance to be a part of the process. Transparency and accountability are the main constituents of good governance, whereas good governance is a pre-condition to achieving human development.
- **Enrichment of Democracy-** T&A promote democratic local governance initiatives by developing effective systems of public accountability to ensure government servants are responsible to elected officials, who are elected by people and involving people in the process of governance.

Steps Taken to promote Transparency

- The **Right to Information (RTI) Act** was enacted by parliament in 2005 to empower citizens, promote accountability and transparency in the working of the government and contain corruption. Open government is critical to an informed public, and an informed public is critical to democracy.
 - ✓ **Supreme Courts** have held that the right to information is a fundamental right flowing from **Article 19 and Article 21 of the Constitution**, and that transparency in the working of public functionaries is critical in a democracy.
- **Lokpal Act of 2013-** (To be covered in updation)
 - ✓ The Act allows setting up of anti-corruption ombudsman called Lokpal at the Centre and Lokayukta at the State-level.
 - ✓ It incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while the prosecution is pending.
 - ✓ Under the Act, it has been made mandatory for public servants to declare their assets and liabilities along with that of their spouse and dependent children. The Act also ensures that public servants who act as whistleblowers are protected. A separate **Whistle Blowers Protection Act** was passed for this purpose.
- **Prevention of Corruption Act 1988** (To be covered in updation)
 - ✓ It defines what constitutes criminal misconduct by a public servant and specifies penal provisions, which includes jail up to seven years,

Important Government bodies to promote Transparency

- **Central Vigilance Commission (CVC):** The CVC advises the Union Government on all matters pertaining to the maintenance of integrity in administration.
- **Vigilance Units in the Government of India:** All Ministries/Departments in the Union Government have a **Chief Vigilance Officer (CVO)** who heads the Vigilance Division of the organization concerned.
- **Administrative Vigilance Division** of the Department of Personnel & Training is the nodal agency for dealing with Vigilance and Anti-corruption.
- **The Central Bureau of Investigation (CBI):** It's the principal investigative agency of the Union Government in anti-corruption matters. It derives its powers from the Delhi Special Police Establishment Act, 1946 (DSPE Act).

However, Corruption is considered to be one of the greatest impediments on the way towards progress for developing country like India. Although, India has taken several measures to root out corruption, but it still has a long way to go.

7.1. PREVENTIVE VIGILANCE

Why in news?

Recently, 7th edition of vigilance manual of Central Vigilance Commission (CVC) was released.

About Preventive Vigilance

- It is adoption of a package of measures to improve systems & procedures to **eliminate/reduce corruption**, promote transparency and ease of doing business. Vigilance is defined as watchfulness and alertness. Thus, vigilance administration often includes an oversight mechanism to take up preventive and punitive anti-corruption measures and ensure functioning of systems in an efficient way.
- As noted by the Santhanam Committee Report (1964) “Corruption cannot be eliminated or even significantly reduced unless preventive measures are planned and implemented in a sustained and effective manner. Preventive action must include administrative, legal, social, economic and educative measures”.

Related Information

The **Santhanam Committee Report** (1964) identified four major **causes of corruption**, namely-

- administrative delays,
- Government taking upon itself more than what it could manage by way of regulatory functions,
- scope for personal discretion in the exercise of powers vested in different categories of Govt. servants and
- Cumbersome procedures in dealing with various matters which were of importance to citizens in their day to day affairs.

Potential Areas of Corruption, viz.-

- **Procurement** is a vast area ranging from procurement of store materials & services to execution of infrastructure projects.
- **Sale of Goods & Services** along with allocation of scarce and / or precious natural resources is an area of corruption.
- **Human resource management** is common to all organisations and the processes relating to recruitment, promotion, transfer and posting are prone to manipulation and corruption.
- **Delivery of services to public** although not common to all Public Service Sectors.
- **Enforcement of Acts, Rules and Regulations** is also an area vulnerable to corruption mainly due to lack of awareness among citizens and ineffective grievance redressal mechanism.

Preventive vigilance measures

As there are various potential areas of corruption (as discussed above) there is a need to adopt following preventive vigilance measures:

- **Simplification and standardization of rules** by undertaking a complete review of existing rules and regulations. It will improve clarity and accountability and eliminate discretion and arbitrariness, thus reducing corruption.
- **Leveraging technology** - such as E-procurements, E-payments, websites for dissemination of information and creating awareness, CCTV in places of public dealing, GPS enabled devices / RFIDs, computer assisted audit techniques for detecting frauds etc.
- **Transparency, Accountability & Awareness** Transparency removes the information gap between the public and public officials which in turn reduces corruption. A system with clear accountability along with **effective time bound punitive action** in case of misconduct is necessary for smooth functioning & efficiency. Also, Public officials should be made aware of their duties and responsibilities, code of conduct, rules, procedures etc.
- **Control & Supervision:** Regular and routine inspections, surprise inspections, audit and reviews keep a check on aberrant and corrupt behavior. Also, early detection of misconducts may enable recouping the loss and facilitate control of further damage
- **Conducive work environment** - includes identification of sensitive posts and keeping a person with integrity at such posts, protection to whistleblowers etc.
- **Inculcating moral values** - Inculcating ethical behaviour among public, particularly the younger generation is an important tool of preventive vigilance
- **Integrity pact** - a written agreement between Government/Government Department/ Government Company, etc. and all the bidders agreeing to refrain themselves from bribery, collusion, etc. It is implemented by CVC and sanctions are applied on violation of the pact. It is monitored through CVC nominated IEM (Independent External Monitor).

- **Integrity Index** (to be introduced shortly) Through this CVC will bring out **annual scores/rankings** of public sector undertakings, financial institutions, departments and ministries by linking the essential drivers of vigilance with long-term efficiency, profitability and sustainability of public organisations. It will be based on **bench marking internal processes and controls** within an organisation as well as management of relationship and expectation of outside stake holders.

7.2. RIGHT TO INFORMATION ACT

Why in news?

- Law Commission of India (LCI) in its 275th report has recommended to bring BCCI under RTI act.
- Election Commission recently said in an order that political parties are out of the purview of the RTI Act contrary to the Central Information Commission's directive of declaring political parties as public authorities.

What is a Public Authority under RTI act?

- **Section 2(h)** of the RTI Act states that “public authority” means any authority or body or institution of self- government established or constituted-
 - By or under the Constitution;
 - By any other law made by Parliament;
 - By any other law made by state legislature;
 - By notification issued or order made by the appropriate Government, and includes any—
 - ✓ Body owned, controlled or substantially financed (The RTI Act does not define substantial financing. Consequently, courts are often required to decide whether a particular form and quantum of financial aid constitutes substantial finance.)
 - ✓ Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

The RTI Act empowers citizens with the **right to access information** under the control of ‘public authorities’ and imposing penalties on officials of public authorities for failing to disclose ‘information’ defined in **Section 2(f)**.

BCCI as Public Authority

- **Mukul Mudgal Panel** for drafting National Sports Development Bill, 2013 and **Justice R.M. Lodha** suggested bringing BCCI under purview of RTI.

RTI ACT, 2005, Salient features:

- It provides for the **appointment of an information officer** in each department to provide information to the public on request.
- It fixes a **30-day deadline for providing information**; deadline is 48 hours if information concerns life or liberty of a person.
- Information will be free for people below poverty line. For others, fee will be reasonable.
- The Act imposes obligation on public agencies to disclose the information **suo-moto** to reduce requests for information.
- It provides for the establishment of a **Central Information Commission (CIC) and State Information Commissions**. They will be independent high-level bodies to act as appellate authorities and vested with the powers of a civil court.
 - The jurisdiction of the Commission extends over all Central Public Authorities.
 - When it comes to the RTI Act, the CIC is the **only appellate authority** which may declare a body as public authority if it is convinced that the organization fits into the criteria for being under the RTI Act.
- The Act overrides the **Official Secrets Act, 1923**. The information commissions can allow access to the information if public interest outweighs harm to protected persons.
- All categories of exempted information to be disclosed after 20 years except cabinet deliberations and information that affects security, strategic, scientific or economic interests, relations with foreign states or leads to incitement of offence.

Exemption to certain Information under Section 8 of RTI

- National security or sovereignty
- National economic interests
- Relations with foreign states
- Law enforcement and the judicial process
- Cabinet and other decision-making documents
- Trade secrets & commercial confidentiality
- Individual safety
- Personal privacy

However, information pertaining to allegations of corruption or violation of human rights by these organizations will not be excluded.

- Supreme Court in '**BCCI vs Cricket association of Bihar & others**' asked Law Commission of India (LCI) to examine whether it should be covered under RTI.
- LCI recommended its inclusion under RTI as-
 - BCCI can be classified as a **limb of State** within the meaning of Article 12 of the Constitution because government does exercise control over its activities and functioning like requirement of approval for cricket matches between India and Pakistan in view of tense international relations.
 - It also shall be deemed "**Public Authority**" because its functions are of public nature and it receives '**substantial financing**' from appropriate Governments over the years (in the form of tax exemptions, land grants etc.).
 - It is the "**approved**" **national level body** holding virtually monopoly rights to organize cricketing events in the country. It also selects the Indian cricket team.
 - It virtually acts as **National Sports Federation** and like all other sports bodies which are listed as NSFs BCCI should also be covered under the RTI Act and the act should be made applicable to all of its constituent member cricketing associations.

According to **section 2(f) of RTI Act "information"** means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Political Parties as Public Authorities

- Six national parties — the BJP, the Congress, the BSP, the NCP, the CPI and the CPI(M) were **brought under the ambit of the RTI Act** by a full bench of the Central Information Commission in 2013. (The Trinamool Congress was also recognised as the seventh national party in 2016).
- However, the political parties have refused to entertain the RTI applications directed at them.
- Several activists have approached the Supreme Court on the grounds of non-compliance of the CIC order and the matter is pending.

Arguments in favour of bringing Political parties under RTI

- **Need to ensure Transparency in Funding-**
 - According to **Association for Democratic Reforms**, between FY 2004-05 and 2014-15 only 31.55% of the total income of political parties was through voluntary contributions/donations and for the rest 68.45% they have evaded declaring any details by exploiting section 29C of the Representation of the People Act, 1951 which exempts them from declaring any donations below Rs 20,000.
 - **Crony capitalism** - From FY 2004-05 to FY 2014-15, six national parties have declared receiving 88% of their total donations in excess of Rs 20,000 crore from corporate or business houses which is not without any quid pro quo for the corporates.
 - **Black money** -According to ADR, 34% of the donations have been received with no address or any other detail of the donor, and 40% donations have been received with no PAN details.
 - **Illicit foreign contributions:** National parties have been accepting foreign contributions despite The Foreign Contribution (Regulation) Act (FCRA), 1976, prohibited political parties from accepting contributions from foreign companies or companies in India controlled by foreign companies.
- **Political parties are vital organs of the State-** According to CIC, critical role played by these political parties point towards their **public character**. They perform functions like government bodies and they have monopoly over selection of candidates, who will ultimately form the government. Therefore, they cannot escape the scrutiny by the common people of their functioning.
- **Political parties are public authorities-**The CIC held that political parties **enjoy various benefits** directly or indirectly like land for offices of political parties on concessional rates, allotment of free time on Doordarshan/All India Radio and supplying electoral roll copies free of cost during elections hence they are 'public authority' under **section 2(h)** and answerable under the RTI Act.
- **Larger Public Interest:** The disclosure of the information is in larger public interest. Even **170th report of Law Commission of India on reform of the electoral laws** recommended to introduce internal democracy, financial transparency and accountability in the working of the political parties.

Arguments against bringing Political parties under RTI

- **Obstruct party functioning-** Political parties cannot disclose their internal functioning and financial information under the Act as it will hamper their smooth functioning.

- **RTI can be a tool of misuse:** RTI can become a weak spot and rivals with malicious intentions may take advantage of RTI.
- **Not 'public authorities'**- Political parties are not established or constituted by or under the Constitution or by any other law made by Parliament. Even the registration of a political party under the 1951 Act was not the same as establishment of a government body.
- **Transparency provisions for parties already exist** in the Income Tax Act, 1961, and Representation of the People Act, 1951, which demand “necessary transparency regarding financial aspects of political parties.
- **Information in public domain**- Government holds the view that required information about a political body is already in the public domain on the website of the Election Commission.
- **Not envisaged in the RTI Act** -According to the Department of Personnel and Training (DoPT) when the RTI Act was enacted, it was never visualised that political parties would be brought within the ambit of the transparency law.

Other Issues and Constraints in the implementation of the Act

- **Low Public Awareness** - While the Act has been clear in defining the responsibility of the appropriate Government, with respect to creating awareness on the Act, there has been lack of initiative from the Government's side. The efforts made by appropriate Governments and Public Authorities have been restricted to publishing of rules and FAQs on websites. These efforts have not been helpful in generating mass awareness of the RTI Act.
- **Failure to provide information within stipulated time** - It is a known fact that the record keeping process within the Government is a big challenge. Therefore, due to inadequate record management procedures with the Public Authorities, there is failure to provide information within the stipulated 30 days. This situation is further aggravated due to non-availability of trained PIOs and the enabling infrastructure (computers, scanners, internet connectivity, photocopiers etc.).
- **Lack of Monitoring and Review mechanism** - One of the most important roles of the Information Commission is to monitor and review the Public Authority and initiate actions to make them comply with the spirit of the Act. However, this has been one of the weakest links in the implementation of the Act. Monitoring the Public Authority for compliance of the Act is also an important aspect of the role of the Information Commission, which could result in reducing the number of appeals.
- **High level of pendency** - The pendency at the Information Commission is a huge challenge. Unless and until the pendency is kept at manageable level, the objective of the Act would not be met. High pendency of appeals is due to non-optimal processes for disposing of appeals and complaints.

Way forward

- **Sustained mass awareness campaign** both at Central and State levels to increase public awareness about the RTI and its operation, encourage citizen involvement, and increase transparency within the government.
- **Greater voluntary disclosure of information** held with public Authorities. This is the essential ingredient for broadening and deepening of the transparency regime.
- **Use electronic means for record management** and dissemination of information. Indeed, a robust record management is at the very heart of the transparency regime.
- **Sensitize the public functionaries about the Right to Information** and incorporate training module on RTI in all government training programmes.
- The person demanding information under the RTI should be emboldened and secure. Police authorities in States have to be sensitive to this and take effective steps to prevent the occurrence of such incidents.

7.3. SOCIAL AUDIT LAW

Why in News?

Meghalaya became the **first state in India to operationalise a social audit law**- ‘The Meghalaya Community Participation and Public Services Social Audit Act, 2017’.

Important Features of the Act

- A **social audit facilitator** will be appointed to conduct the audit directly with the people who will present findings to the Gram Sabha, which will further add inputs and the result will finally go to the auditors.

- A **Social Audit Council (SAC)** has been established as a panel to review government programmes during the course of their implementation.
- The Act provides a list of programmes, schemes and projects to be audited.

What is Social Audit

- Social audit generally refers to **engagement of the stakeholders** in measuring the achievement of objectives under any or all of the activities of a government organization, especially those pertaining to developmental goals.
- It helps to have an **understanding of an activity** from the perspective of the people in society for whom the institutional/administrative system is designed and to improve upon it.
- The whole process is intended as a means for social engagement, transparency and communication of information, leading to greater accountability of decision-makers, representatives, and managers. It can be a continuous process covering all the stages of the target activity/programme.

Importance of Social Audit

- **Social Audit become crucial** after greater devolution of central fund to PRIs, ULB on the recommendation of **14th Finance Commission** as CAG's audit jurisdiction over such entities is nebulous.
- The mechanism is well established in providing direct evidence for inputs, processes, financial and physical reporting, compliance, physical verification, assurance against misuse, fraud and misappropriation, and utilisation of resources and assets.
- **Strengthening the democratic process:** People directly observe the implementation of Government programmes in their region making the process participatory. This, in the long run, empowers the people and makes the process of development more inclusive.
- It involves scrutiny of both financial and non-financial used by public agencies for development initiatives.

Limitations of Social Audit

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

Recommendations

- **Second ARC recommended for**
 - Mandatory social audit should be carried out for all programmes.
 - **Formal Framework of Cooperation and Coordination:** Operational guidelines of all schemes and citizen centric programmes should provide for a social audit mechanism.
 - Constitute a Social Audit panel for examining areas of public interface with a view to recommending essential changes in procedures to make the organisation more people-friendly.

Important functions of SAC

- Lay down a systematic audit practices.
- Advise the State Government on all matters concerning the implementation of this Act.
- Review the monitoring and grievance redressal mechanism from time to time and recommend improvements required
- Preparation of annual reports to be laid before the Assembly by the State Government on the status of the implementation of the programmes and schemes
- Monitoring the implementation of this Act, etc.

Significance of the move

- It will make it easier and quicker to correct course as it will be conducted alongside the scheme.
- So far, social audits have been done at the initiative of civil society organisations which had no official sanction.
- The legislation provides a legal framework for allowing citizens' participation in the planning of development and various other government programmes.
- It also provides a template for other states to enact such a legislation.

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

7.4. PRIOR SANCTION TO PROSECUTE

Why in news?

Rajasthan government recently introduced **Criminal Laws (Rajasthan Amendment) Bill** granting immunity to public servants, judges and magistrates from investigation without prior sanction.

Debate surrounding the concept of Prior Sanction

Prior sanction is generally mandated to protect public servants from legal harassment for their public action. The issue is whether prior sanction is required before beginning investigation, or before prosecution in court.

- **Government's View** - Prior sanction will protect honest officials from frivolous allegations levelled by vested interests and thus prevent a situation of policy paralysis.
- **Supreme Court's View** - There have been conflicting views of Supreme Court on issue of prior sanction-
 - In **MK Aiyappa case, 2013** and **Narayana Swamy, 2016** case Supreme Court held that even an investigation cannot be ordered under Section 156(3) CrPC without prior sanction.
 - While in some other cases SC has held opposite view saying that prior sanction for investigation impede an unbiased and efficient investigation.
- **Current Legal Status** - Currently under CrPC prior sanction is required before prosecution in courts. Section 19 of Prevention of Corruption Act also requires prior sanction for prosecution of public servants for offences such as taking a bribe or criminal misconduct.
- **Other similar legislations** - The prior sanctions before investigation were also incorporated in Maharashtra legislation also but in that case sanction was to be given within 3 months and it did not prohibit publication of names of accused public officials.

Protection to civil servants in India

- **Constitutional Protection**
 - **Article 310** of the Constitution provides that all members of the civil services of the Union and the All India Service hold any civil post at the pleasure of the President and all members of the civil services of a State do so at the pleasure of the Governor of the State.
 - **Article 311:** It provides certain safeguards regarding dismissal, removal or reduction in rank of persons employed in civil capacities
- **Prevention of Corruption Act:** Section 19 of the PC Act puts a bar on the court to take cognizance of an offence by a public servant except with the previous sanction of government.
 - The bar is against the court to take cognizance for the purposes of trial.
- **Prevention of Corruption Amendment Bill 2016**
 - Complaints regarding corruption on decisions taken or recommendations made by public servants on official duty shall not be investigated without the **prior approval of the Lokpal or Lokayuktas**, as the case maybe.
 - The prior approval will be extended to the retired officials too.

Hota Committee on Article-311

- Recommended that Article 311 of the Constitution be amended
- Facilitate summary removal from service of a corrupt officer;
- Inspire confidence in the minds of the common people that corrupt practice by members of the civil service / persons holding civil posts will not be tolerated;
- Ensure justice to the official so removed in a post-decisional hearing.

Way forward

- While invalidating **Section 6A of the Delhi Special Police Establishment Act**, Supreme Court had observed that provision of prior sanction destroys the objective of anti-corruption legislation, thwarts

independent investigation, forewarns corrupt officers and violates the spirit of article 14. The above judgement should be the touchstone for judging the constitutionality of the pre-investigation sanction requirements.

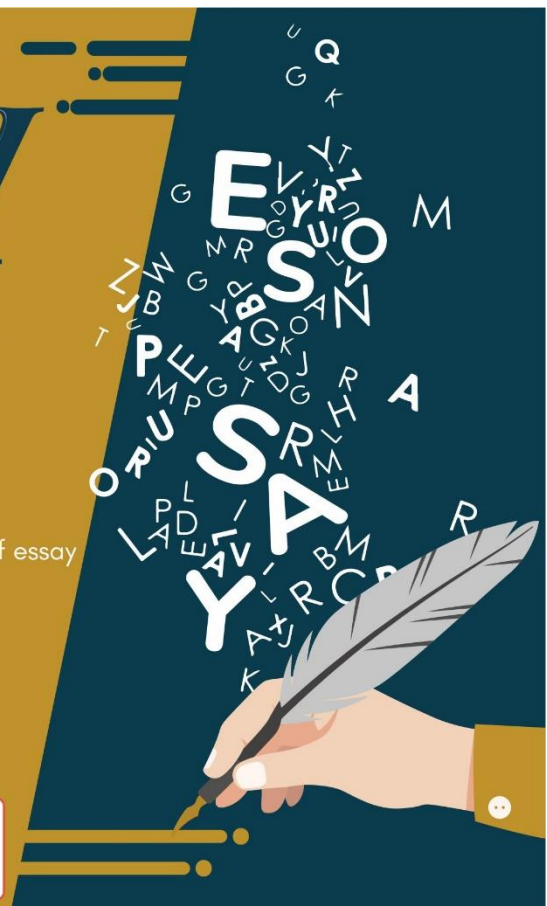
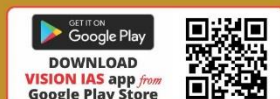
- Further there is need to operationalize **Lokpal Act** to put a check on corruption in higher echelons of public offices.
- **2nd ARC in Ethics in Governance** Observe that
 - The rights of a civil servant under the Constitution **should be subordinate to the overall requirement of public interest** and the contractual right of the State.
 - Ultimately, the public servant, an agent of the State, cannot be superior to the State and it is his fundamental duty to serve the State with integrity, devotion, honesty, impartiality, objectivity, transparency and accountability.
 - Therefore, it recommended to repeal Article 310 and Article 311 of the constitution.
 - It also called for appropriate and comprehensive legislation under Article 309 to cover all aspects of recruitment and service, even with regard to dismissal, removal or reduction in rank.

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8. GOVERNANCE

Introduction

- Governance is the way that organisations or countries are managed at the highest level, and the systems for doing this'. A peaceful and productive society is based on effective state institutions.
- Good governance in this sense means effective and efficient structures which provide optimal support to citizens in leading a safe and productive life in line with their desires and opportunities. Essentially, this involves a combination of democracy, the social welfare state and the rule of law.
- It aims at providing an environment in which all citizens irrespective of class, caste and gender can develop to their full potential. It also aims at providing public services effectively, efficiently and equitably to the citizens.
- The State is responsible for creating a conducive political, legal and economic environment for building individual capabilities and encouraging private initiative.
- The 4 pillars on which the edifice of good governance rests, in essence are-
 - ✓ Ethos (of service to the citizen),
 - ✓ Ethics (honesty, integrity and transparency),
 - ✓ Equity (treating all citizens alike with empathy for the weaker sections), and
 - ✓ Efficiency (speedy and effective delivery of service without harassment and using ICT increasingly)



Barriers to Good Governance

- **Attitudinal Problems of the Civil Servants** wrt to their inflexible, self-perpetuating and inward-looking approaches.
- **Lack of Accountability:** Seldom are disciplinary proceedings initiated against delinquent government servants and imposition of penalties due to cumbersome disciplinary procedure and inefficient performance evaluation system.
- **Red Tapism:** Low levels of Awareness of the Rights and Duties of Citizens
- **Low levels of compliance of Rules by the citizens** also acts as an impediment to good governance: A vigilant citizenry, fully aware of its rights as well its duties, is perhaps the best way to ensure that officials as well as other citizens, discharge their duties effectively and honestly.
- **Ineffective Implementation of Laws and Rules:** While the laws made by the Legislature may be sound and relevant, very often they are not properly implemented by government functionaries.

Steps to be taken

- **Sound Legal Framework-** Constitution is the cornerstone of our legal framework, however a dynamic society requires constant **updating of existing laws** as also enactment of new laws to meet emergent needs and challenges so that the welfare, protection and development needs of citizens is fully met.
- **Rule of Law -Zero Tolerance Strategy-** All public agencies should adopt a zero tolerance strategy towards crime, in order to create a climate of compliance with laws leading to maintenance of public order along with strengthening 3rd tier of government through decentralisation and delegation of power.
- **Transparency and Right to Information** are an essential pre-condition for good governance. Access to information empowers the citizens to demand and get information about public policies and programmes, thus making the government more accountable and helps to strengthen participatory democracy and citizen centric governance
- **Periodic Monitoring & Independent Evaluation of the Quality of Governance-** Government must be effective and efficient in delivering social and economic public services, which are its primary responsibilities. This requires constant monitoring and attention to the design of our programmes.

8.1. CRIMINALIZATION OF POLITICS

When political power is being used by some persons for the attainment of undue privileges and when this is rampant in the arena of politics it is called criminalization of politics.

Reasons behind Increasing Criminalization of Politics

- **Muscle power:** The influence of muscle power in Indian politics has been a fact of life for a long time. Many of politicians choose muscle power provided by criminals to gain vote bank.
- **Money Power:** Criminal activities provide for huge election expenditures.
- **Loop Holes in the functioning of Election:** the voters are not usually aware of the history of the candidate, qualification and cases pending against him.
- **Weak Judicial System & Denial of Justice:** Thousands and thousands of cases are pending in District Courts, High Courts and Supreme Court against these criminal cum politicians

Following are various reasons for the weakness-

- **Institutionalization of political parties** – There is a lack of comprehensive legislation to regulate party activities, criteria for registration as a national or State party - dereconing of parties.
- **Maintenance of regular accounts by the political parties** - The audited accounts of political are not available for open inspection.
- **Structural and organizational reforms** – There is an absence of inner party democracy - regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.

Impact of Criminalization

- **The law-breakers get elected as law-makers-** The people who are being tried for various offences are given the opportunity to make laws for the whole country, which undermines the sanctity of the Parliament.
- **Loss of public faith in Judicial machinery-** It is apparent that those with political influence take advantage of their power by delaying hearings, obtaining repeated adjournments and filing innumerable interlocutory petitions to stall any meaningful progress. This questions the credibility of the judiciary.
- **Tainted Democracy:** Where the rule of law is weakly enforced and social divisions are rampant, a candidate's criminal reputation could be perceived as an asset. This brings in the culture of muscle and money power in the politics.
- **Affects the efficiency of the parliament:** People with such tainted backgrounds have been seen to disrupt the functioning of the Parliament, affecting its efficiency in the long run.
- **Self-perpetuating:** Since the parties focus on winnability of the candidate (also **hampering the inner party democracy**) they tend to include more and more influential elements. Thus, criminalization of politics perpetuates itself and deteriorates the overall electoral culture.
- **Personal welfare vs Public welfare:** Such member gets involved in unholy nexus leading to crony-capitalism, sidelining the public welfare by **underutilizing MPLADs funding**, as can be found from CIC data that only Rs 1,620 crore was released/utilised out of total fund of Rs 2,725 crore entitled under the MPLADS for MPs in Lok Sabha in 2016-17.

Important Data (ADR)- (2014 Lok Sabha elections)

- Out of the 542 winners analysed, 185(34%) winners have **declared criminal cases** against themselves.
- 112 (21%) winners have declared **serious criminal cases** including cases related to murder, attempt to murder, communal disharmony, kidnapping, crimes against women etc.
- The **chances of winning for a candidate with criminal cases** in the elections are 13% whereas for a candidate with a clean record it is 5%.

Various committee observation on Criminalization of Politics

The Santanam Committee Report 1963

- ✓ It referred to political corruption as more dangerous than corruption of officials and recommended for Vigilance Commission both at the Centre and in the States.

Vohra Committee Report (1993)

- ✓ It studied the problem of the criminalization of politics and of the nexus among criminals, politicians and bureaucrats in India.
- ✓ However, even after the submission of report 25 years ago, the report has not made public by Mo Home Affairs.

Padmanabhaiah Committee on Police Reforms

- ✓ It found that Corruption is the root cause of both politicization and criminalization of the police.
- ✓ Criminalization of police cannot be de-linked from criminalization of politics. It is the criminalization of politics, which has produced and promoted a culture of impunity that allows the wrong type of policeman to get away with his sins of commission and omission

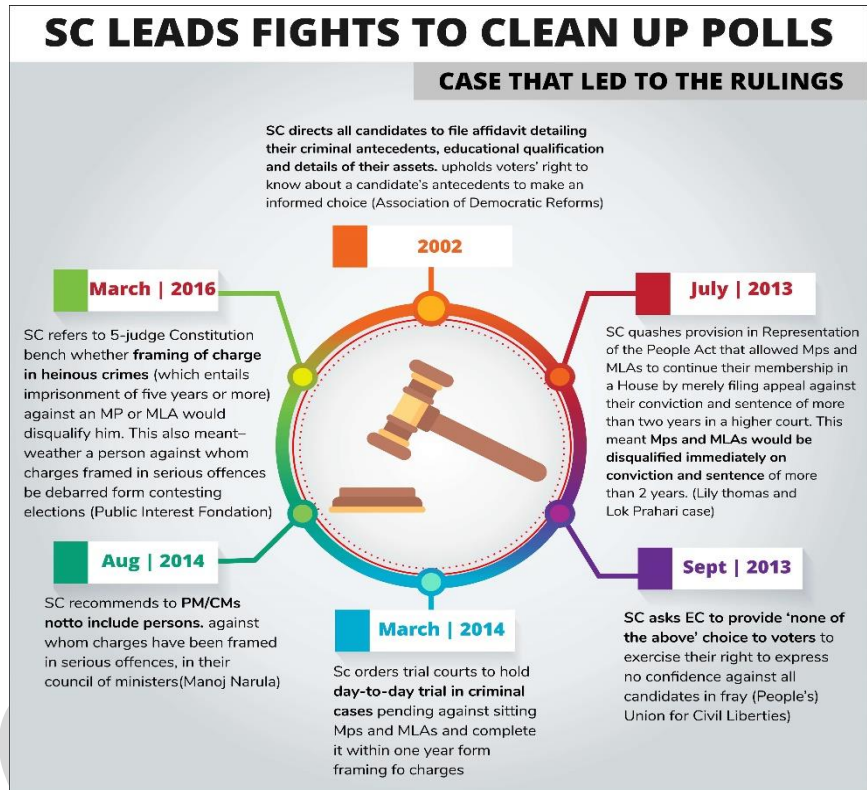
8.2. SPECIAL COURTS FOR TRYING POLITICIANS

Why in News?

The Supreme Court accepted Centre's scheme to set up 12 fast track courts to exclusively prosecute and dispose 1,581 criminal cases pending against MPs & MLAs within a year.

Analysis

- It has the potential of ensuring speedy justice in cases involving influential politicians, which otherwise takes years to deliver. Also, it would be primarily in their own interest to clear their names quickly, lest their candidature be tainted.
- The time bound nature of the new scheme will also provide better information to voters about their representatives.
- However, creating a court for a class of people such as politicians is **discriminatory**. Also, such a step would question the credibility of the regular courts, as it would seem that justice could not be delivered with regular means.
- Another matter of concern is that such special courts are susceptible to having their verdicts overturned on appeal.
- Already multiple experiments with fast track courts have not materially changed the quality of justice delivery in India.



Apart from speeding up the cases of politicians, there is also a need for electoral reforms (as discussed above) and reforms in the political parties.

8.3. INNER PARTY DEMOCRACY

Why in News?

Prime Minister recently spoke about need for inner party democracy in the country.

About Intra-Party Democracy

- Internal democracy in political parties refers to the level and methods of including party members in the **decision making and deliberation** within the party structure.
- Since Independence, the authority in organizational matters has mostly been from the top to the bottom. Thus, leadership in most political parties in India may be democratic in appearance but is **highly oligarchic in reality**.
- Unlike some countries like Germany and Portugal, **India has no legal provision** for enforcing internal democracy in a political party apart from few related provisions in section 29A of RPA & in Election Commission guidelines.

Related developments

- The **17th report of the Law Commission** (1999) of India on reform of electoral laws focused on "Necessity of providing laws relating to internal democracy within parties."
- The **ARC's 2008 Ethics and Governance report** talked about corruption due to high centralization.
- A **committee** headed by the former Chief Justice of India, **M. N. Venkatachaliah**, had drafted a bill to regulate the functioning of political parties.

Some opinions against Intra-Party Democracy-

- It may **threaten the efficiency of party organisations** by making them vulnerable to internal strife.
- It is believed that political parties should be allowed to govern their own internal structures and processes. Any form of outside intervention in their functioning may **threaten pluralist party competition**.

Arguments in Favour of Intra-Party Democracy

- It helps party members to **hold leaders accountable** and engage in policy decision processes meaningfully as it would bring in competition, participation and representation inside the party.
- It may lead to **dismantling of nepotism & dynasty politics** (affiliations based on family background, caste, religion etc.).
- It would give **space for dissent** within the party reducing the possibility of formation of number of off shoots of political parties.
- It may promote **transparency in handling party funds**, thereby reducing **influence of money and muscle power**.
- It may cultivate a **sense of ownership for local politicians** in larger issues facing the nation as policy decisions will involve deliberations and debate within party.

Way Forward

- There is a need for a **comprehensive law** that deals specifically with the framework and relevant provisions for inner party democracy.
- The ECI should be enabled to take steps to ensure better implementation of the existing intra-party democracy measures through certain penal provisions against non-compliance by parties.
- Validation of internal elections by an external organisation would provide them more legitimacy and party membership would also be more open to accepting unfavourable results.
- Anti-defection law should be amended as currently it prevents elected members of a legislature from voting against an order of their party. This impinges upon the basic features of Indian democracy, representation and dissent.

8.4. CRIMINAL JUSTICE SYSTEM

Why in News?

The government is considering revisiting the **Malimath Committee report** on reforms in the criminal justice system (CJS).

Criminal Justice System

- It refers to the **agencies of government** charged with enforcing law, adjudicating crime, and correcting criminal conduct.
- It is composed of **three components**: police, courts, and prisons which are seen as interrelated, interdependent, and striving to achieve a unified goal.
- The Indian Penal Code (IPC) 1860, the Code of Criminal Procedure (CrPC) 1973, along with parts of the Indian Evidence Act 1872, constitute **Indian criminal law**. A large number of special and local laws take care of various other antisocial activities.

About the Committee

- In 2000, the government formed a panel headed by the former Chief Justice of Kerala and Karnataka, Justice V.S. Malimath to suggest reforms in the existing criminal justice system.
- It was the first time that the State constituted such a Committee for a thorough and comprehensive review of the entire Criminal Justice System in the country.
- The committee submitted its 158 recommendations in 2003.
- However, its recommendations were not brought to practice.

Need to Review CJS

- Since the adoption of CrPC & IPC there have been numerous **changes in the situations and the nature of crime** in the country.
- There has been a visible **hike in the number of crimes** committed as well as reported in the country and there is apparent burden on police.
- Due to aspects like Bail Justice & Prison justice system, appx 60 percent of the arrests made every year are **unnecessary and unjustifiable**, as estimated by National Human Rights Commission.
- The current judicial system faces problems like **pendency of criminal cases**, very low rate of conviction, etc. which has gradually made the system an unreliable source of providing justice.
- Nowhere have the broad objectives of the Criminal Justice System been codified, though these can be inferred from different statutes, including the Constitution and judicial pronouncements.

Inquisitorial System

- It is a **legal system** where the court or a part of the court is actively involved in investigating the facts of the case.
- This is opposed to an **adversarial system**, usually followed in India, where the role of the court is primarily that of an impartial referee between the prosecution and the defence.

- All this has led to inadequacy of the system which not only poses grave **challenge to the legitimacy of the system**, but also affects the social system adversely.
- **Other issues** include lack of coordination between investigation and prosecution, inadequate witness protection, insensitivity to the rights of the victim etc.

Some important recommendations of the Report

- **Borrowing from inquisitorial system** in countries such as Germany and France. Also, the courts be bestowed with powers to summon any person — whether or not listed as a witness — for examination, if it felt necessary.
- **Right to silence**- Article 20 (3) of the Constitution that protects the accused from being compelled to be a witness against himself/herself may be modified. The court be given freedom to question the accused to elicit information and draw an adverse inference against the accused in case the latter refuses to answer.
- **Rights of the accused**- A schedule to the Code be brought out in all regional languages so that the accused knows his/her rights, as well as how to enforce them and whom to approach when there is a denial of those rights.
- **Justice to victims of crime**-
 - The victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation.
 - If the victim is dead, the **legal representative** shall have the right to implead himself or herself as a party, in case of serious offences.
 - The State should provide an **advocate of victim's choice** to plead on his/her behalf and the cost be borne by the State if the victim can't afford it.
 - **Victim compensation** is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted.
 - A **Victim Compensation Fund** can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund.
- **Police investigation**- To improve the quality of investigations National Security Commission and State Security Commissions may be constituted, an Addl. SP be appointed in each district to maintain crime data, organisation of specialised squads to deal with organised crime, etc.
- **Courts and judges**- It specified the need for more judges in the country.
 - Further, the higher courts have a separate criminal division consisting of judges who have specialised in criminal law.
 - National Judicial Commission be constituted and Article 124 be amended to make impeachment of judges easier.
- **Witness protection**- The committee batted for a strong witness protection mechanism - it said the judge should be ready to step in if the witness is harassed during cross-examination.
- **Offences against women**- It recommended various changes in regards to crime against women. For example- it favoured making section 498A (dowry harassment) as a bailable and compoundable offence.
- **Organised crime and terrorism**- Though crime is a State subject, a central law must be enacted to deal with organised crime, federal crimes, and terrorism.
- **Periodic review**- Presidential Commission for a periodical review of the functioning of the Criminal Justice System

Three important components of the reforms in Criminal Justice system are-

1. Judicial Reforms (covered above)
2. Police Reforms (to be covered in security mains 365)
3. Prison Reform (as discussed below)

8.4.1. WITNESS PROTECTION IN INDIA

Why in news?

Bombay High Court recently asked CBI about the protection it was giving to the witnesses, as most of them turned hostile.

Importance of witness protection

- Witnesses are the eyes and ears of the justice system. When a witness to an offence is threatened, killed or harassed, it is not only the witness who is threatened, but also the fundamental right of a citizen to a free and a fair trial is vindicated.
- The edifice of administration of justice is based upon witnesses coming forward and deposing without fear or favour, without intimidation or allurements in court of law. If witnesses are deposing under fear or intimidation or for favour or allurement, the foundation of administration of justice not only gets weakened, but it may even get obliterated.
- This has been a big reason behind lower rates of conviction in the country. For instance, victims and witnesses of serious crimes are particularly at risk when the perpetrator is powerful, influential, or rich and the victims or witnesses belong to a socially or economically marginalized community.

A model example- Delhi Witness Protection Scheme

- Delhi State Legal Services Authority (DSLISA) passes protection orders in each case after evaluating the threat.
- The Commissioner of Police is responsible for the overall implementation of the witness protection orders.
- Protection measures can include armed police protection, regular patrolling around witnesses' house, installing closed-circuit television cameras, and relocation.

Provisions for Witness Protection in India-

In India there is no separate legislation regarding witness protection. These provisions are stated in different legislations. Furthermore, these laws are not effective to ensure the safety of the witnesses or his /her relatives. Some of the are-

- Section 151 and 152 of the Evidence Act.
- Section 17 of the National Investigation Agency Act, 2008.

Challenges in witness protection

- **Overlap in jurisdiction-** Police and public order are State Subjects under the seventh Schedule to the Constitution, while the criminal law and criminal procedure are under concurrent list, hence the overlap in jurisdiction creates problem in coming up with a concrete witness protection policy.
- **Issues with policing system** like Lack of independence and accountability affect their ability to provide protection to witnesses. Police force is highly understaffed, there are only 136 police men per one lakh population which is way below the standards of developed countries.
- **Balancing witness protection and rights of accused-** Anonymity of witness in many cases is crucial for their protection but section 327 of the Code of Criminal Procedure classifies the significance of an open trial given the right of the accused in knowing who is giving statement against him are very essential, principally if he has to defend and secure himself against such testimony.
- **Corruption in Administration-** The other major problem is that of deep rooted corruption in the administration and judiciary. Witness protection program cannot function properly with such an inefficient supervision.
- **Issue with the protection of Whistle Blower:** there have been instances when the identity of witness is revealed in public even before the court proceeding leading to extreme in their lives as can be seen from the fact that more than 15 whistle-blowers have been murdered in India in the past three years (2015-2017).
- **Funding:** The witness protection programme would incur huge expenditures which shall be paid by the states. Lack of a fund can contribute to delays in witness protection orders, especially when it requires infrastructure such as installation of CCTV cameras and others.

Witness Protection Bill 2015 - The proposed Bill seeks to ensure the protection of witness by—

- formulation of witness protection programme and constituting **National Witness Protection Council** and **State Witness Protection Councils** to ensure its implementation
- constitution of a "witness protection cell" to prepare a report for the trial court to examine and grant protection to the witness referred as "protectee" after being admitted in the programme;
- providing safeguards to ensure protection of Identity of witness;
- providing transfer of cases out of original Jurisdiction to ensure that the witness can depose freely;
- providing stringent punishment to the persons contravening the provisions and against false testimonies;

Views of different commissions

The subject has been addressed by several committees and commissions in past. For example-

- Law Commission in its various reports has made several recommendations for witness protection like making adequate arrangement for Witness Identity Protection vs Rights of accused
- The **Justice Malimath Committee** on Reforms of Criminal Justice System called for a witness protection law on the lines of the laws in USA and other countries.
- Government had also brought **Witness Protection Bill 2015**, however it has not been passed yet.

Conclusion

The first step in developing a witness protection law is to acknowledge that witness protection is a duty of States. India needs to tackle the problem of witnesses turning hostile due to intimidation through various steps including-

- Witnesses may be given **protection before, during and/or after the trial**. A model similar to the Delhi model of Witness Protection may be developed for the whole country.
- India should develop an **effective legislation** for witness protection involving police, government and judiciary. Government should implement the necessary Acts, legal aspects would be looked by the judiciary and police should execute them.

8.4.2. OVERCROWDING OF PRISONS

Why in news?

The Supreme Court has asked the National Legal Services Authority (NALSA) to provide details and figures of overcrowding of prisons.

More about the news

- SC is hearing a matter relating to inhuman conditions prevailing in prisons across the country.
- SC also agreed to hear issues related to standard operating procedure for Under Trial Review Committees (UTRCs) and responses received from States and Union Territories on open jails.
- According to the **Prison Statistics India 2015** report by the National Crime Records Bureau (NCRB), India's prisons are overcrowded with an occupancy ratio of 14% more than the capacity.

Other issue in prisons

- Neglect of health and hygiene and giving Insufficient food and inadequate clothing
- Cumbersome process to conduct research after new rules have been put in place owing to Nirbhaya documentary incident.
- No policy to monitor and constructively engage the inmates after their release. This hinders their reintegration in the society.
- **Prison management is a state subject**. Therefore, there are great variations in Prison manuals among different states.

Current Developments on the Issue

- Supreme Court in 2017, asked all high courts to register a suo motu petition to identify kin of prisoners who admittedly died an unnatural death after 2012 and award suitable compensation to them.
- It directed all state governments to appoint counsellors and support persons for counselling prisoners, particularly first-time offenders.
- It also directed all states to study the availability of medical assistance to prisoners and take remedial steps wherever necessary.
- It also directed the Ministry of Woman and Child Development to discuss with the official concerned of the state governments and formulate procedures for tabulating the number of children (if any) who suffer an unnatural death in child care institutions where they are kept in custody either because they are in conflict with law or because they need care and protection.

- Whereas according to government data 149 jails in the country are overcrowded by more than 100 per cent and that eight are overcrowded by margins of a staggering 500 per cent.

Reasons for Overcrowding

- **Occupancy by under trials**- 67% of the people in Indian jails are under trials which is extremely high by international standards like it is 11% in UK, 20% in US and 29% in France **despite Supreme Court ordered to release undertrials** who have already completed half of their jail term if they would have been found guilty.
 - Males at 400,855 make up 95.8% of prisoners while females at 17,681 represent 4.2%.
- **Judicial backlogs**-Due to 3.1 crore cases (2016) pending in various courts of the country, jails across the country will remain overcrowded in the absence of any effective systemic intervention.
- **Inadequate prison capacity**- Most Indian prisons were built in the colonial era, are in constant need of repair and part of them are uninhabitable for long periods.

- **Restricted access to legal representatives**-Many inmates are unaware of their rights and cannot afford legal aid, limited ability to communicate with lawyers from within the jail premises hampers their ability to defend themselves.
- **Problems in acquiring bail** - For poor and marginalized it is also difficult to get bail which leaves them no option but to stay in jails and wait for courts final order.
- **Unnecessary' arrests:** Over 60 per cent of arrests were unnecessary and such arrests accounted for 42.3 per cent of jail expenditure.

Impact of Overcrowding Prisons

- **Violation of dignity and basic living conditions** go against UN's Standard Minimum Rules for the Treatment of Prisoners, which suggest that prison accommodation shall be mindful of "minimum floor space, lighting, heating and ventilation".
- **Fundamental rights and human rights** of people violated-despite a landmark Supreme Court ruling that Article 21 of the constitution entitles prisoners to a fair and speedy trial as part of their fundamental right to life and liberty.
- **Difficult to supervise**-The prisons have 53,009 officials to take care of 4,19,623 inmates which amounts to **one official per eight inmates** leading to problems of ineffective monitoring.
- **Clashes between inmates**-Rampant violence and other criminal activities inside the jails as a result of excessive crowding.
- **Poor attention to reforming convicts**-functioning of prisons also becomes order-oriented, there is limited attention on correctional facilities and reform.
- **Social stigma**- Many prisoners lose their family neighbourhood and community ties and livelihoods. Moreover, prison time attaches social stigma to them as individuals and as community members.

Under Trial Review Committees (UTRCs)

- They include the District Judge, the Superintendent of Police and District Magistrate.
- They are set up in every district which deliberates and recommends the release of under trial prisoners and convicts who have completed their sentences or are entitled to be released from jail due to bail or remission granted to them.

Reform Measures

- **Prison manual 2016**, needs to be adhered to.
- As directed by the SC, the idea of **Open Prisons** must be further examined and implemented by the government.
- **Reforming UTRCs** by inclusion of Jail Superintendents and members from civil society in the UTR Committees. Along with this a standard operating procedure (SOP) for the functioning of the UTR Committees also needs to be framed to make their functioning more transparent.
- **Uniformity:** Central Government along with NGO's and prison administration should take adequate steps for a uniform jail manual throughout the country.
- **Following law commission recommendations like-**
 - **Under trials who have completed one-third of the maximum sentence for offences up to seven years be released on bail.** Those who are awaiting trial for offences punishable with imprisonment of more than seven years should be bailed out if they have completed one-half of their sentences.
 - Amending the bail provisions in the Criminal Procedure Code with emphasis on the early release on bail of under trials. (268th report 2017)
 - **Comprehensive anti-torture legislation** on lines of Draft anti torture legislation (suggested by 273rd report)
- **Draft National Policy on Prison Reforms and Correctional Administration, 2007** recommended-
 - Introduction of a provision for **aftercare and rehabilitation services** and the appointment of officers to provide legal aid for prisoners.
 - It further envisaged establishment of a Research and Development wing, and financial assistance to non-governmental organizations working for the rehabilitation of prisoners.
 - Community-based alternatives to imprisonment for offenders convicted for relatively minor offences.

Prison Manual (2016)

It aims at bringing in basic uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners all over the country. Key revisions in the manual include-

- Access to free legal service
- Additional provisions for women prisoners
- Rights of prisoners sentenced to death
- Modernization and prison computerization
- Focus on after care services
- Provisions for children of women prisoners
- Organisational uniformity and increased focus on prison correctional staff
- Inspection of Prisons, etc.

- **All India Committee on Jail Reforms** (also known as Justice Mulla Committee) suggested setting up of a **National Prison Commission** as a continuing body to bring about modernization of prisons in India. Lodging of under trials in jails should be reduced to bare minimum and they should be kept separate from the convicted prisoners.

Other measure to be taken

- **Focus on reformation** - The main objective of 'correction' strategy should be to induce positive change in the attitude of criminals. For this, providing them vocational training, employing them meaningfully after release, creating an open prison system for non-hard core criminals etc. should be tried.
- For **better monitoring**, the **Prison monitors** should regularly visit jails, listen to prisoners' grievances, identify areas of concern, and seek resolution. Supreme Court in 2015, ordered to install CCTV cameras in all the prisons in the country to improve surveillance.
- **Psychological**: Providing counselling to inmates is crucial to deal with the ordeal they undergo in custody.
- **Registering and reporting cases**: File FIR and report all cases of custodial death to the NHRC within 24 hours of their occurrence and giving punishment to the erring prison officials.
- **Independent investigation**: Establishing an independent mechanism for timely and effective investigation of cases of custodial torture and for the rehabilitation and compensation for victims as investigation by police itself may be biased.
- **Reforms in bail laws**: So that bail remains a norm and jail an exception for all people not just rich and affluent.
- **Comprehensive anti-torture legislation** - Even Supreme court has told government to consider passing a comprehensive anti-torture legislation

8.4.3. OPEN PRISONS

Why in news?

Supreme Court has directed the Centre to hold a meeting of prison officials of states and Union Territories to consider setting up of open prisons.

What is an Open Prison?

An open prison also called as minimum-security prison, open camp, or prison without bars is open in four respects:

- **Open to prisoners** i.e. inmates can go out during the day but have to come back in the evening.
- **Open in security** i.e. there is absence of precautions against escape, such as walls, bars, locks and armed guards.
- **Open in organization** i.e. working is based on inmates' sense of self-responsibility, self-discipline, and self-confidence.
- **Open to public** i.e. people can visit the prison and meet prisoners.

Status of Open Prisons in India

- In India, the **first open prison** was started in **1905** in Bombay Presidency and in Uttar Pradesh after independence.
- Prisons in India are governed by Prisons Act, 1900 and various states have enacted their own prison rules as it is a state subject.
- Seventeen states are reported to have about 69 functional open jails housing around 6000 inmates with Rajasthan having 29 such prisons, the highest that any state has. Recently India's first all-women's open jail was opened in Pune, Maharashtra.

Who are eligible for open prisons?

- Every state law defines the eligibility criteria of inmates who can be in an open prison but the inmate has to be a convict and not an under trial.
- Convicts who have served part of their sentence, displayed good conduct and are physically and mentally fit to work may be sent to open prisons. However rapists, terrorists and repeat offenders are not sent for them.

Recommendations related to Open Prisons

- **All-India Committee on Jail Reform, 1980** recommended the government to set up and develop open prisons in each state and UT similar to the Sanganer open camp of Rajasthan.
- **United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)** has highlighted that open prisons provide favourable conditions for rehabilitation of carefully selected prisoners.

Impact of Open Prisons

- **Reduce overcrowding:** as the occupancy rate in jails was observed to be around 117.4% till December 2014.
- **Rehabilitative approach:** Open prisons reward good behaviour and gives them training in self-reliance thus providing a shift from retributive to rehabilitative approach.
- **Economic benefit:** They can also provide dependable permanent labour for public works such as dam construction, road building etc. simultaneously providing income to the inmates.
- **Psychological benefits:** Openness and freedom in these prisons prevent frustrations, create hope among long-term prison mates, and provides a positive self-esteem, lesser insecurity and guilt, a better adjustment to personal problems and more co-operative attitude toward inmates and authorities.
- **Skill training:** They can provide training in agriculture, industry or any other vocational training so that they can find suitable employment after they are released after their term.
- **Suitability for release:** They are helpful in examining the suitability of releasing offenders from prisons before the end of their prison term.
- **Lesser Construction and operational costs** than traditional jail system as they are relatively easier to construct and maintain.

Suggestion

- Common rules of eligibility for admission, remission and providing facilities for offenders in open prisons in all states must be framed.
- A check must also be kept on biases, pressures and corruption in preparing lists of prisoners to be sent to open prisons by superintendents.
- Assign powers to the courts for sending certain types of offenders directly to open prisons.

8.4.4. ANTI TORTURE LEGISLATION

Background

- Though India had signed the U.N. Convention against Torture in 1997 but it is yet to ratify it, making it one among the nine countries across the globe yet to do so.
- Despite **National Human Rights Commission's strong support** for the adoption of Anti-Torture legislation, ever since the **Prevention of Torture Bill 2010 lapsed**, the government has avoided any such legislation.
- The reasons sighted are- lack of consent among states for such a law (since Police and Public Order are State subjects) and that **IPC and the CrPC** were more than sufficient to deal with custodial torture.
- The Supreme Court recently had described custodial torture as an instrument of "human degradation" used by the State while hearing a PIL.
- After this the issue was referred to the Law Commission which recommended **Prevention of Torture Bill 2017** in its 273rd report.

Need of an Anti-torture legislation

- It is important in context of human rights violations, minority rights, use of AFSPA in Jammu-Kashmir and Northeast, misuse of anti-terror laws by Police to torture innocents and human rights in business.
- Further **IPC does not specifically and comprehensively address the various aspects of custodial torture** and is "grossly inadequate in addressing the spiraling situation of custodial violence."
- NHRC highlighted that although Police has to report a custodial death but they need not report custodial violence under current provisions.

UN Convention against Torture (CAT)

It is an international human rights instrument aimed to prevent torture and cruel, inhuman degrading treatment or punishment around the world. This convention is in force since 1987.

Key Provisions:

- **Prohibition on deportation/extradition** of person to another State where there is danger of person being subjected to torture.
- **Universal Jurisdiction** must be established to try cases of torture where an alleged torturer cannot be extradited.
- **Criminal liability for torture:** States need to ensure that all acts of torture are offence under their criminal law.
- **Education and information** for prevention of torture to law enforcement, civil and military, public officials etc.
- **Procedures** for prompt investigation for allegations or victims of torture must be established. Courts must ban the use of evidence produced by use of torture.
- **Protection, Compensation and rehabilitation** to victims and witnesses and providing a system of effective remedies.

- Absence of Anti torture legislation has resulted in **difficulty to secure extraditions** because there is a fear within the international community that the accused persons would be subject to torture in India. For e.g. Denmark denied extradition of Kim Davy in Purulia Arms case due to risk of “torture or other inhuman treatment” in India.
- The legislation will also strengthen India’s **vibrant democratic tradition** and in context of **Article 21** (fundamental right to life and dignity).

Prevention of Torture Bill, 2017

- **Wide Definition of Torture** not confined to physical pain but also includes “inflicting injury, either intentionally or involuntarily, or even an attempt to cause such an injury, which will include physical, mental or psychological”.
- **Sovereign Immunity not for agents of the State**- State to own the responsibility for injuries caused by its agents on citizens as the principle of sovereign immunity cannot override the rights assured by the Constitution.
- **Punishment for torture** for public officials inflicting torture.

Other key recommendations of Law Commission

- **Presumption of guilt:** A new **Section 114B** must be inserted in IPC wherein if a person in police custody is found with injuries, it would be “presumed that those injuries have been inflicted by the police.” The burden of proof is on the police to explain the injury on the under-trial.
- **Compensation and Rehabilitation:** By amending section 357B of IPC a “justiciable compensation” considering the socio-economic background, expenses on medical treatment and rehabilitation of the victim must be provided. CrPC and the Indian Evidence Act, 1872 must also be amended to accommodate provisions regarding compensation and burden of proof.
- **Protection of Victims, Complainants and Witnesses:** An effective mechanism must be put in place in order to protect the victims of torture, the complainants and the witnesses against possible threats, violence or ill treatment.

Section 357 of IPC- Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

8.5. LATERAL ENTRY

Why in News?

Central Government had recently invited applications for senior-level positions via lateral entry.

More About the News

- Department of Personnel and Training (DoPT) has invited applications for 10 **joint secretary-level posts** in the departments of Economic Affairs, Revenue, Commerce and Highways and others.
- **Criteria for selection-** Graduation Degree, Minimum 40 Years age, 15 years’ experience in fields like Revenue, Finance, Transport, Civil Aviation and Commerce.
- The recruitment will be on **contract basis** for **three to five years** depending upon the performance.

Arguments in Favour of Lateral Entry

- **Helpful in Policy Making-** It is essential to have **people with specialized skills** and domain expertise in important positions as policy making is becoming complex in nature.
 - The IAS officers see the government only from within, lateral entry would enable government to understand the impact of its policies on stakeholders — the private sector, the non-government sector and the larger public.
 - **First ARC** had pointed out the **need for specialization as far back as in 1965**. The Surinder Nath Committee and the Hota Committee followed suit in 2003 and 2004, respectively, as did the second ARC.
- **Increase in efficiency and governance-** Political & Economic Risk Consultancy Ltd in its 2012 report rated Indian Bureaucracy as the worst in Asia due to corruption and inefficiency.
 - Career progression in the IAS is almost automatic which could put officers in comfort zone. Lateral entrants could also **induce competition** within the system.
 - A UPSC-commissioned report of the Civil Services Examination Review Committee headed by YK Alagh (2001) had recommended lateral entry into middle and senior levels of the government.

- Niti Aayog, in its Three Year Action Agenda for 2017-2020 had said that sector specialists be inducted into the system through lateral entry as that would “bring competition to the established career bureaucracy”.
- **Entry and retention of talent in Government-** Justice **BN Srikrishna-headed Sixth Central Pay Commission report (2006)** said lateral entry could "ensure entry and retention of talent in the government even for those jobs that have a high demand and premium in the open market".
- **Shortage of officers:** According to a report by Ministry of Personnel, Public Grievances and Pensions there is a shortage of nearly 1,500 IAS officers in the country.
 - **Baswan Committee (2016)** had supported lateral entry considering the shortage of officers.
- **Recruitment of IAS officers at very young age-** makes it difficult to test potential administrative and judgement capabilities. Some who are potentially good administrators fail to make it, and some who do make it, fall short of the requirements. Mid-career lateral entrants with proven capabilities will help bridge this deficiency.
- **Not a new phenomenon:** It has been **successful in RBI** and the erstwhile Planning Commission, as well as its successor, the Niti Aayog.
 - **Ministry of finance** has institutionalised the practice of **appointing advisors** to the government from the world of academia and the corporate sector.
 - Concept already being followed by countries such as the United Kingdom, the United States of America, Australia, Belgium, New Zealand etc.

Arguments against Lateral Entry

- **Difficult to ensure responsibility and accountability-**for the decisions taken by the private people during their service, especially given the short tenures of 3 to 5 years.
- **No long term stakes:** The advantage with the current civil service is that policy makers have long-term interests in government.
- **Bypassing constitutional mechanism-** The recent order of the government instructed the cabinet secretary-headed committee to recruit professionals bypassing the Union Public Service Commission which is an independent organisation.
- **Transparency in Recruitment-** Political interference in the Selection process may occur and it may promote Nepotism and Spoils System (an arrangement that employed and promoted civil servants who were friends and supporters of the political group in power).
- **Lack of field experience-** Officers who will join might score on domain knowledge, but they may fall short on the experience of working in the “fields”.
- **Deters existing talent:** Lateral entry shows that experienced civil servants are less efficient and expert than private professionals, which is a not necessarily true.
 - The best talent can be attracted only if there is reasonable assurance of reaching top level managerial positions.
 - By suggesting a contract-based system for positions of joint secretary and above, the signal would be sent out that only mid-career positions would be within reach in about 15-18 years of service and there would be considerable uncertainty about career progression thereafter.
- **Earlier experiences:** The past experience of inducting private-sector managers to run public-sector enterprises has not been particularly satisfactory. For e.g. Air India, Indian Airlines etc.
- **Issue of Reservation-** It is unclear whether there would be reservation for recruitment through Lateral Entry or not.

Way Forward

India civil services portray all the characteristics of Weberian Ideal bureaucracy i.e. **hierarchy, a division of power**. Various reforms apart from institutionalised lateral entry are the need of the moment such as:

- **Set up public administration universities for aspiring and serving civil servants:** It can create a large pool of aspiring civil servants as well as enable serving bureaucrats to attain deep knowledge of the country’s political economy, increased domain expertise and improved managerial skills.
- **Deputation to Private Sector-** A Parliamentary panel has recommended deputation of IAS and IPS officers in private sector to bring in domain expertise and competition.
- **Central Civil Services Authority** as recommended by 2nd ARC should take decision on posts which could be advertised for lateral entry and such other matters that may be referred to it by the Government.
- **Appraisal mechanisms:** Such as government’s new “360 degree” performance appraisal mechanism for senior bureaucrats, whereby officers are graded based on comprehensive feedback from their superiors, juniors and external stakeholders.

- Incentives for bureaucrats that are linked to their district's annual development indicators can also be offered.
- **Make bureaucratic decision-making less top-down and more transparent:** The colonial Indian Civil Service was designed with the primary aim of maintaining law and order and pursuing state-led development while remaining insulated from the needs of the masses. India must transition away from this top down approach.
- **Institutionalize goal setting and tracking for each department-** Each Ministry and government agency should set outcome-based goals with a clear timeline.
- **Implement an HR system for government employees-** Human Resource Management needs to be a strategic function in the government. It should be implemented through a unified single online platform that covers employees from the time they are hired to when they leave service.
- **E-governance and paperless governance ranking for ministries at central and state levels-** Each government department and agency should be ranked on the basis of their move to the e-office system, reduction of paper use, and citizen engagement through the electronic medium. This would permit increased efficiency, better tracking of progress on files and improved interface with citizens.
- **Outsource service delivery where possible-** We should reduce dependence on government administrative machinery wherever possible. We can make use of the power of Aadhaar based identity verification to allow private channels to provide services wherever possible.
- **Longer tenure of Secretaries-** Currently, by the time an officer is promoted from Additional Secretary to Secretary, usually she has two years or less left before retirement. This feature creates two important inefficiencies. One, with a time horizon shorter than two years, the officer is hesitant to take any major initiatives. Two, and more importantly, to the extent that any misstep may become the cause for charges of favouritism or corruption post retirement, the officer hesitates to take decisions on any major project.

8.6. REGULATING MEDIA

- Independent media are like a beacon that should be welcomed when there is nothing to hide and much to improve. Indeed, this is the concrete **link between the functioning of the media and good governance**-the media allow for ongoing checks and assessments by the population of the activities of government and assist in bringing public concerns and voices into the open by providing a platform for discussion.
- If the media are to function in the public interest, governments have to protect the independent functioning of the media and allow various viewpoints to flourish in society.

Role of media in Democracy

Pandit Jawaharlal Nehru called media '**the watchdog of our democracy**'. It's a medium of connection between citizens and the State.

- **Enriching Democracy:** Access to information is essential for a democratic society because it ensures that citizens make responsible, informed choices rather than acting out of ignorance or misinformation and information also serves a checking function
- **Ensuring Accountability:** It holds the political and permanent executive accountable to the people through its forums for debates, discussions and polls, etc.
- To play vital role in **broadening the thinking of citizens**, by empowering them with knowledge. In a country like India where there is significant rate of illiteracy, it is the duty of media to impart knowledge and broaden their views.
- To **fairly criticize any action** that is against the spirit of justice or essence of democracy.
- To point out the concept practices and play a crucial role in initiating the proper procedure against the people who are accused of any antisocial activities, regardless of any political connection.
- To **foster the spirit of unity and brotherhood** among the people, and install faith in democracy and justice.

Issues with media in current time: With the advent of electronic media, competition between media houses has increased exponentially, resulting in decline in the standards of journalism like

- **High levels of inaccuracies:** One of the defects that cropped up as a result of as a result is high level of inaccuracies in reporting leading to a phenomenon like "Fake news" etc.
- **Sensationalism:** The media generally tries to highlight sensational stories, neglecting important public issues which needed to be addressed.

- **Poor coverage of important issues:** In a mad race to gain TRP and popularity the media tends to show what people want to see, sidelining some important news which are of real public importance go unnoticed.
- **Media's short attention span:** It only gives the news when a particular incident occurs, but rarely keeps the follow up which is very necessary
- **Phenomenon of paid news** by favouring a particular candidate for monetary or other consideration.
- **Fake News** has also become a big menace that harms the democracy (covered later in the section).
- **Trial by media:** The trial by media generally is in criminal cases, where media creates the perceptions of guilt or innocence of the accused, in the mind of people regarding the crime, even before the courts have passed a judgment or sometimes even before the trial commences. Because of this the right of an accused for fair trial is encroached on.

News Broadcasters Association (NBA) guidelines to regulate the media

- **Impartiality and objectivity in reporting:** It is the responsibility of TV news channels to keep accuracy, and balance
- **Ensuring neutrality:** TV News channels must provide for neutrality by offering equality for all affected parties, players and actors in any dispute or conflict to present their point of view
- Reporting on crime and safeguards to ensure crime and violence are not glorified
- **Depiction of violence or intimidation against women and children:** News channels need to ensure that no woman or juvenile, who is a victim of sexual violence, aggression, trauma, or has been a witness to the same is shown on television without due effort taken to conceal the identity
- **Respect Privacy:** As a rule channels must not intrude on private lives, or personal affairs of individuals, unless there is a clearly established larger and identifiable public interest for such a broadcast

Conclusion

The Media is referred as **fourth estate of democracy**. For proper functioning of democracy free press is must. But free press does not mean an uncontrolled press. There shall be an uplifting the standards of journalism can only be solution. Every journalist must honestly and consciously make an attempt not to fall in any trap and raise the standard of journalism.

8.6.1. FAKE NEWS

Why in News?

The Union Information and Broadcasting Ministry constituted a committee to frame rules to regulate news portals and media websites after withdrawal of its guideline on fake news.

About Fake News

- Fake news refers to news, stories, informations, data and reports which is or are wholly or partly false.
- Fake news can be related to anything-
 - Commercially driven sensational content
 - Nation-state sponsored misinformation
 - Highly-partisan news site
 - Social media itself
 - Satire or parody
- Fake news can be propagated through any media- print, electronic and social.
- Some checks and balances, though largely ineffective, exist in the mainstream media against fake news, but social media does not have such mechanism.
- Only few mechanisms exist such as defamation suit, filing of FIR, complaints to bodies like News Broadcasters Association (NBA), Broadcasting Content Complaint Council (BCCC), Press Council of India (PCI) etc.

Issues Associated with Fake News

- **Against Democratic ethos:** It is ironic that the democratic principles that ensure free and fair speech are compromised when the same principles allow for the spread of disinformation.
- **Compromising Election Process:** Political disinformation campaigns in Indian electoral system could lead to the deepening of existing social discord, loss of civic trust in the electoral system, and the compromise of basic democratic principles.
- **Trust in media:** Citizens view any news published by mainstream media as true and also very few citizens try to ascertain the authenticity of news spread on social media.

- **Impact on social harmony:** Fake news exploits the freedom allowed to media in a democracy to spread misinformation that has a deleterious impact on society-
 - **Swinging public opinions** based on misinformation campaigns to gain popularity or to malign the image, character of certain individuals or opponents or to defame them.
 - Creating a **sense of mistrust** between people and government. For example- the news of tampering of electronic voting machine which was based on misrepresentation of facts
 - **Inciting violence and hatred among communities** by using morphed photographs to show riots, insult to religious symbols or deities. For example- Muzaffarabad riots; exodus of North-east people from Bangalore etc.
 - **Radicalization of youths** through false propaganda spread through social media sites.

Challenges in Controlling Fake News

- **No standard definition:** The term 'fake news' is vague and there is no official definition of what constitutes fake news.
- **Lack of regulation:** Self-regulation by mainstream media has largely been ineffective. Any direct effort by the government to control fake news is prone to be seen as an assault on the freedom of media which functions as the fourth pillar of democracy.
- **Difficult to achieve balance:** The efforts to control fake news should not threaten to cramp legitimate investigative and source-based journalism or freedom of expression as guaranteed in Article 19 of the Constitution. Also, distinguishing between conscious fabrication of news reports and news reports put out in the belief that they are accurate.
- **Tracking fake news on social media:** The vastness of the internet users (over 35 crore in India) and social media users (over 20 crore WhatsApp users alone) makes tracing the origin of fake news almost impossible.

Way Forward

- **Bring out policy:** The government should bring out a draft seeking opinion from stakeholders regarding issues of controlling fake news. Any future guidelines on 'fake news' should target 'fake news' and not try to regulate media in the name of 'fake news'.
- **Regulatory mechanism:** The PCI needs to be reformed and empowered in a way so as to enable it to strike a balance between the freedom of media and speech on the one hand, and right to know on the other.
- **Awareness:** People must be made aware about the menace of fake news, their dissemination and to practice caution while believing on any such items.
- **Authentic news:** Official accounts of government organizations should also be present on social media to spread authentic news.
- Social media houses should also come forward to bring in measures to curb the menace of fake news such as Facebook recently announced that it has tied up with Boom Live, an Indian **fact-checking agency**, to **fight fake news** during the Karnataka elections.

Other measure: It includes **decentralized three-point agenda** to address fake news.

- ✓ **Ensure critical media literacy**, with **critical digital literacy** as a component, to focus on encouraging individuals to learn the skills required to navigate the internet and question the content they are exposed to.
- ✓ **Nurture a general culture of scepticism** among citizens towards information. The role of the district administration and local community leaders is key in this regard
- ✓ **Targeted and proportionate legal interventions** can be explored in a limited set of situations, such as when there is threat to life or national security.

8.7. IMPROVING PEOPLES' PARTICIPATION IN GOVERNANCE

People's Participation must be understood as a process by which the people are able to identify their own needs and share in the design, implementation and evaluation of the participatory action. Active citizens' participation can contribute to good governance in the following ways:

- It enables citizens to demand accountability.
- Make government programmes and services more effective and sustainable.
- Enables the poor and marginalized to influence public policy and service delivery.
- Promote healthy, grassroots democracy.
- They are seen as equal stake holders in the development process.

8.7.1. PRE-LEGISLATIVE SCRUTINY

- The need to build linkages between citizens and the policy-making process arises from the necessity to have greater transparency and equality of access for all stakeholders that form the bedrock of a democratic framework.
- Pre-legislative scrutiny involves engagement with the public on Bills before their introduction in Parliament. Under it, Citizens play their part, by debating and deliberating upon upcoming Bills in a process of dialogic engagement with each other and with lawmakers.
- As laws enacted by the Parliament can have a major impact on the lives of citizens, a close public scrutiny ensures that objectives and proposals have a wide acceptance. The Right to Information Act and the Jan Lok Pal Bill, drafted by the civil society are examples of the same.
- In 2014, a **Pre-legislative Consultation Policy** was adopted by the Government of India which mandates that all draft legislations (including subordinate legislation) be placed in the public domain for 30 days for inviting public comments and a summary of comments be made available on the concerned ministry's website prior to being sent for Cabinet approval.
- Further, though public participation with respect to draft bills is not statutorily mandated, the Indian government can adopt various international best practices to increase public engagement, such as:
 - Making a green paper on the legislative priorities addressed by the bill, available to the citizens.
 - Publishing a list of bills proposed to be introduced in the coming year and sending the draft versions of these bills to a parliamentary committee, which takes public comments and consults experts – as is currently practiced by Britain.
- Additionally, the government can take the following steps to further public engagement:
 - Providing the Financial memoranda for each bill specifying the budgetary allocation for the processes/bodies created by the bill.
 - Using social media forums for greater outreach.
 - Expanding the purview of citizen's right to petition their representatives with legislative proposals.
 - Utilizing MyGov platform to invite suggestions on a bill.

Advantages

- **Increases transparency** in the law-making process due to direct public participation in it.
- **Hassle free process**- It provides an opportunity for to make easier changes to a proposed law at an early stage than at a later stage in Parliament.
- **Better and more informed opinion** presented to policymakers and legislators before the formulation of detailed legislation would ensure that the draft law is free of avoidable shortcomings and it could also reduce the likelihood of subsequent amendments to legislation.
- **Strengthening Committee**- It could make Parliamentary Committee debate more enlightened due to various inputs received from different region of country.
- **Democratizing law-making Process**- It produces laws that better reflect the will of the people rather than those of entrenched elites and special interests.
- It can **overcome the lack of debate** and deliberation in our Parliament due to increasing tendency of disruption in Houses.

In the past, the government has taken steps to actively engage the public, such as, in the matters of the draft Direct Tax Code and the draft Electronic Service Delivery Bill. The recommendation of the National Commission to Review the Working of the Constitution that the draft bills should be subjected to thorough and rigorous examination by experts and laymen alike, must be implemented effectively.

8.7.2. CITIZENS CHARTERS

Why in news?

- A PIL has been filed before the Supreme Court which seeks the Central Government to provide a **Citizens' Charter** and notify the **Grievance Redress Officer** in each government department and to establish a **Grievance Redressal Commission**.
- The petition prays that the **Right to time-bound Service** be declared as an integral part of the **right to life under Article 21** of the Constitution.

Nine principles of the Citizens' Charter

1. Set standards of service
2. Be open and provide full information
3. Consult and involve
4. Encourage access and promote choice
5. Treat all fairly
6. Put things right when they go wrong
7. Use resources effectively
8. Innovate and improve
9. Work with other providers

What is a Citizens' Charter (CC)?

- It is an instrument which seeks to make an organization transparent, accountable and citizen friendly.
- It is a public statement that defines the entitlements of citizens to a specific service, the standards of the service, the conditions to be met by users, and the remedies available to the latter in case of non-compliance of standards.

Components of CC

- **Vision and Mission Statement of the organization:**
 - This gives the **outcomes desired** and the broad strategy to achieve these goals and outcomes.
 - This also makes the users aware of the intent of their service provider and helps in holding the organization accountable.
- The organization must state clearly **what subjects it deals with and the service areas** it broadly covers. This helps the users to understand the type of services they can expect from a particular service provider
- The Citizens' Charter should also stipulate **the responsibilities of the citizens** in the context of the charter.

The Benefits of CC:

- **Enhance accountability** by providing citizens with a clear understanding of service delivery standards
- **Increase organizational effectiveness** and performance by making a public commitment to adhere to measurable service delivery standards.
- Create a **way for both internal and external actors** to objectively monitor service delivery performance.
- Create a more professional and **client-responsive environment** for service delivery and foster improvements in staff morale.
- **Increase government revenues** by ensuring that the money citizens pay for services goes into the government's coffers (and not into employees' pockets).

Issues with Citizens' Charter in India

- **Poor design and content**- Most organizations do not have adequate capability to draft meaningful and succinct Citizens' Charter. Critical information that end-users need to hold agencies accountable are simply missing from a large number of charters because end users or NGOs are not consulted while drafting a charter.
- **Lack of public awareness**- Effective efforts of communicating and educating the public about the standards of delivery promise have not been undertaken and many people do not know about it. No funds are earmarked for sensitizing the public about it.
- **Inadequate groundwork** in terms of assessing and reforming its processes to deliver the promises made in the Charter.
- **Charters are rarely updated** and some documents date back from the inception of the Citizens' Charter programme nearly a decade ago.
- **Resistance to change**- The new practices demand significant changes in the behaviour and attitude of the agency and its staff towards citizens. At times, vested interests work for stalling the Citizens' Charter altogether or in making it toothless.
- It has still not been adopted by all Ministries/Departments, primely because of **absence of penal provisions** in case of non-implementation of the spirit of the Charter.
- **Measurable standards of delivery are rarely spelt out** in the Charters, so it becomes difficult to assess whether the desired level of service has been achieved or not.

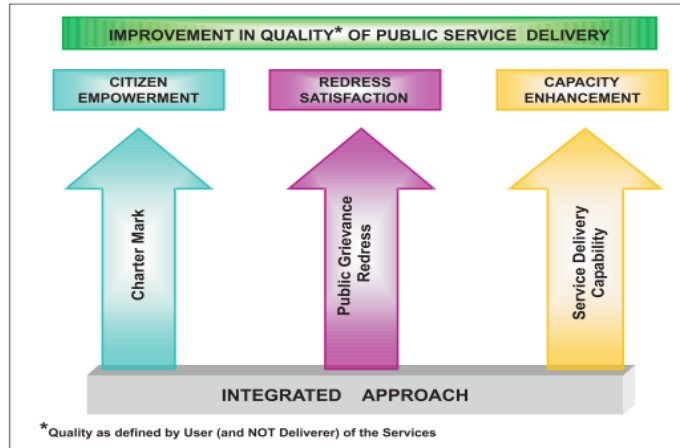
2nd ARC Recommendations:

- **Internal restructuring should precede Charter formulation**- There has to be a complete analysis of the existing systems and processes within the organization and, if need be, these should to be recast and new initiatives adopted.
- **One size does not fit all**, therefore formulation of Citizens' Charters should be a decentralized activity with the head office providing broad guidelines.
- **Wide consultation process**- It should be formulated after extensive consultations within the organization followed by a meaningful dialogue with civil society with a firm commitment.

- **Redressal mechanism in case of default-** It should clearly lay down the relief which the organization is bound to provide if it has defaulted on the promised standards of delivery and citizens must also have recourse to a grievances redressal mechanism.
- **Periodic evaluation of Citizens' Charters** preferably through an external agency.
- **Benchmark using end-user feedback-** Its systematic monitoring and review is necessary even after it is approved and placed in the public domain. In this context, end-user feedback can be a timely aid to assess the progress and outcomes of an agency that has implemented a Citizens' Charter
- **Hold officers accountable for results-** The monitoring mechanism should fix specific responsibility in all cases where there is a default in adhering to the Citizens' Charter.

The Sevottam Model

- It is a Service Delivery Excellence Model which provides an **assessment improvement framework** to bring about excellence in public service delivery.
- The need for a tool like Sevottam arose from the fact that Citizens' Charters by themselves could not achieve the desired results in improving quality of public services.
- It works as an **evaluation mechanism** to assess the quality of internal processes and their impact on the quality of service delivery.



Intended Outcomes of Implementing Sevottam

Components:

- The first component requires **effective charter implementation** thereby opening up a channel for receiving citizens' inputs into the way in which organizations determine service delivery requirements
- **Public Grievance Redress** requires a good grievance redress system operating in a manner that leaves the citizen more satisfied with how the organization responds to grievances, irrespective of the final decision.

Excellence in Service Delivery, postulates that an organization can have an excellent performance in service delivery only if it is managing the key ingredients for good service delivery well, and building its own capacity to continuously improve delivery.

8.8. E-GOVERNANCE AS A COMPONENT OF GOVERNANCE

Introduction

- E-Governance (Electronic Governance) is the application of information and Communication Technologies (ICTs) to the processes of government functioning to accomplish simple, accountable, speedy, responsive and transparent governance. It integrates people, processes, information and technology for meeting goals of the government.
- It is transforming the existing government and brings in **SMART Governance** viz.:
 - **S - Simple:** Simplification of rules and procedures of Government making it user-friendly.
 - **M-Moral:** Infusing ethics and morals into officers again since anti-corruption and vigilance agencies improving.
 - **Accountable:** ICT helps set standards of performance and efficiently measures it.
 - **R- Responsive:** Efficient service delivery and government that is in tune with the people.
 - **T - Transparent:** Information confined to secrecy is out in the public domain bringing equity and rule of law in public agencies.

SMART Governance enables:

1. People participation
2. Accountability and efficiency
3. Transparency
4. User friendly government processes
5. Removal of hierarchical barriers and red tape
6. Better service delivery

Despite the emergence of e-governance and other model of service delivery, there are still some issues related to the implementation of various scheme like

- Multiplicity of laws governing same or similar set of issues.

- Requirement of a large number of approvals/permissions.
- Separate clearances/approvals required from different authorities on same or similar issues.
- Too many points of contact between investor and authorities.
- Lack of transparency in the administration of clearances and approvals.
- Large number of returns and amount of information to be provided to many departments/agencies.
- Little communication and information-sharing among related departments.

To improve **the accountability and ensure effective and efficient implementations of schemes**, recently various steps have been taken by government by enacting various e-governance initiatives like-

8.8.1. PUBLIC FINANCE MANAGEMENT SYSTEM

- It is a web-based software application developed and implemented by the Office of **Controller General of Accounts (CGA)**.
- Its coverage includes Central Sector and Centrally Sponsored Schemes as well as other expenditures including the Finance Commission Grants.
- It acts as a **financial management platform** for government schemes as well as a payment cum accounting network. It is further integrated with the core banking system and has an interface with 170 Banks across the country including the Reserve Bank of India (RBI).

8.8.2. E-VIDHAN MISSION MODE PROJECT

- It is a mission mode project to digitize and make the functioning of State Legislatures in India paperless.
- It is a software suite of **public website, secure website, house applications and mobile apps** that fully automate the functioning of legislative assembly
- The **Ministry of Parliamentary Affairs** is the Nodal Ministry for the project.
- One of the key component of the strategy devised for implementation of the project is to create Project Monitoring Units both at Central as well as State levels.
- Himachal Pradesh became the first state to use e-vidhan site and launch a mobile app.

8.8.3. E-SAMIKSHA

- E-Samiksha is an **online monitoring and compliance mechanism** developed by Cabinet secretariat with technical help from National Informatics Centre.
- It is used for **tracking the progress on projects** & policy initiatives and follow up actions of various ministries by cabinet secretary and Prime Minister on a **real-time basis**.
- An **E-Patrachar** facility has been launched which sends meeting notices and agendas, circulars, letters, etc. through e-mail and SMS, thus promoting the maxim of '**Minimum Government and Maximum governance**'.
- E-Samiksha portal is designed to **enhance efficiency, bring transparency, increase accountability, and improve the communication** between Government to Government, Business to Government and vice versa.

8.8.4. UPAAI APP

UPaAI (**unified planning and analysis interface**) or '**solution**' in English, which will help the members of parliament to track the development work in their states.

Significance

- It will provide an integrated platform for data on infrastructure and social indices for each constituency.
- It is expected to provide district-wise information to the MP on his/her constituency and help him or her take better decisions related to MPLAD funds and also other Central Scheme.
- It will be **monitored by PMO** and is in line with Digital India initiative.
- In the next phase, it will be extended to include state schemes, and bring district magistrates and members of legislative assemblies on same platform.

8.8.5. NATIONAL E-GOVERNANCE PLAN

- Launched in 2006, it focused on e-governance initiatives at the national level to improve the public services' delivery and simplify the process of accessing them.
- It initially comprised of 27 Mission Mode Projects (MMPs). The core ICT infrastructure created by MeitY, under the NeGP, included State Data Centers, State Wide Area Network, State Service Delivery Gateways, Mobile Seva and eGov AppStore.
- The NeGP had strengthened the basic IT infrastructure in many regions and the increasing political support had helped its case. Yet, it suffered from various issues.

Adoption of new technologies	Transformation of processes	Improvement in implementation of NeGP
<ul style="list-style-type: none"> • Emerging technologies such as Mobile, Cloud etc. not leveraged • Weak monitoring and evaluation system • Sub-optimal use of core IT infrastructure 	<ul style="list-style-type: none"> • Lack of Government Process Reengineering in its schemes, projects etc. • Improper databases and applications • Lack of integration and interoperability 	<ul style="list-style-type: none"> • Limited scope of existing MMPs • Non-inclusiveness of various MMPs • Significant time overruns • Problem of last mile connectivity

To address these issues, **e-Kranti Framework (or the NeGP 2.0)** was launched in 2014. The vision of e-Kranti is "Transforming e-Governance for Transforming Governance". There are 44 MMPs under e-Kranti programme, which are grouped into Central, State and Integrated projects.

The **key principles of e-Kranti** are as follows:

- Transformation and not Translation
- Integrated Services and not Individual Services
- Government Process Reengineering (GPR) to be mandatory in every MMP
- Cloud by Default
- Mobile First
- Language Localization
- ICT Infrastructure on Demand
- Fast Tracking Approvals
- Mandating Standards and Protocols
- National GIS (Geo-Spatial Information System)
- Security and Electronic Data Preservation

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9. LOCAL GOVERNANCE

The 73rd and 74th Amendments to the Constitution constituted a new chapter in the process of democratic decentralisation in the country. It has been 25 years since the establishment of these lakhs of self-governing village panchayats and gram sabhas to manage local development. The amendment introduced **Part IX (entitled “The Panchayats”)** and **Part IXA (entitled “The Municipalities”)** of the Constitution consisting of standardized features such as:

Arunachal’s 2-Tier Panchayati Raj

Recently, Arunachal Pradesh Assembly passed a bill to do away with the **Anchal Samiti** (Intermediate level) and set up a two-tier system in the state. It was done to ensure faster planning and execution of schemes due to direct connection between Gram Panchayats and Zilla Parishads and reduction of delay at Anchal Samiti level.

Goa, Manipur, Sikkim, D&N Haveli, Daman & Diu and Lakshadweep also do not have intermediate Panchayat.

- **Mandatory creation of rural and urban local bodies (ULBs):** Article 243 B envisages a three-tier system of Panchayats in all the States/UTs, except those with populations not exceeding 20 lakhs which can have 2-tier. Similarly, 243Q provides for the creation of municipalities in urban areas.
- **Delegation of powers and functions** by State legislatures to Panchayats and Municipalities under Articles 243G and 243W respectively. **Schedule XI and XII** of the constitution details an illustrative list of functions that may be entrusted to PRIS and municipalities respectively.
- **Reservations for historically marginalised communities and women (33%):** In some states such as Kerala, Bihar etc. have increased this to 50% for women.
- **State Election Commission (SECs):** Article 243 K vests preparation of electoral rolls for local elections in SECs and holding of regular elections after every five years.
- **District Planning Committee (DPC):** under article 243 ZD to consolidate the Local Governance plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.
- **State Finance Commission:** Under Articles 243 I and 242 Y, SFCs are constituted by Governor of the State to make recommendations regarding the distribution of funds between the State and the local bodies, the determination of the taxes, duties, tolls and fees which may be assigned to or appropriated by the local bodies, grants-in-aid from the Consolidated Fund of the State, the measures needed to improve the financial position of the local bodies etc.

9.1. PRIS

9.1.1. ISSUES WITH PRIS

9.1.1.1. ISSUES RELATED TO FUNCTIONARIES

- **Concerns related to Human Resource at Gram Panchayat (GP) level**
 - **Non-accountability-** Personnel at GP level are in most cases not accountable to the GP and the Gram Sabha (GS), although they deliver crucial services like education, health and livelihood generation at that level.
 - **Lack of Capabilities-** Their capabilities are not built over a period of time to enable them to assume other responsibilities or multi-task.
 - **Lack of horizontal and vertical convergence** of action at the GP level and vertical integration is not ensured because of different departments and schemes under which they are appointed with specific mandates.
 - **Lack of oversight-** There is poor oversight to check if the existing rules are being violated. Dependence on employees is high if elected functionaries in Panchayats, especially GPs, lack administrative experience. This can lead to exploitation of the situation by the staff or collusion between elected functionaries and officials.
 - **Variation across states-** Wide variation across States in terms of engagement - qualification and mode of recruitment, duration, remuneration, travel allowances and other conditions for similar cadres.

- **Variation in Remuneration-** There is no additional remuneration paid by other departments for additional work. This variation leads to migration of employees from one State to another; sometimes between one scheme to another.
- **No HR policy in majority of the States:** At present, some governments such as Haryana and Rajasthan have **educational qualifications** for candidates contesting elections for PRI's. But no state has clear rules on how the non-elected staff at panchayats should be appointed.
- **Challenges faced by Elected Women Representatives (EWRs):** Although women constitute approximately 44% of total elected representatives in PRIs, they face numerous challenges such as:
 - **Lack of leadership skills:** This makes it difficult for them to assert or even openly express their opinions. Also due to social myths and prejudices as well such as tradition of remaining silent, leaves women silent during panchayat proceedings.
 - **Male domination:** Even after getting elected most of their work in panchayats is done by their husbands.
 - **General absence of EWRs** from panchayat's meetings due to **discouraging attitudes of the family members.**
 - **Illiteracy, lack of awareness** about the structure and functions of PRIs and lack of prior exposure to participation in political processes also hinders the growth and development of women as leaders.

9.1.1.2. ISSUES RELATED TO FINANCES

- **Insufficient local revenue generation:** Highlighted by Economic Survey 2017-18 as '**Low Equilibrium Trap**', local bodies appear to be not collecting revenues from taxes to the extent they can. This is largely because:
 - Most state governments have not devolved enough taxation powers to Panchayats,
 - Even if states have given these powers, their collection is low due to their reluctance to tax locals and they remain dependent on fund devolution.
 - They are also unwilling to revise tax rates periodically.
- **Unwillingness to borrow from Financial Institutions:** Despite being empowered to access loans for public infrastructure and service delivery, most Gram Panchayats have not borrowed making them unable to plan effectively for long term.
- **Non-implementation of recommendations of State Finance Commission:** Being non-binding on state government, they are not implemented in letter and spirit.

Key facts

- Even after 25 years, local government expenditure as a percentage of total public sector expenditure comprising Union, State and local governments is only around 7% as compared to 24% in Europe, 27% in North America and 55% in Denmark.
- The own source revenue of local governments as a share of total public sector own source revenue is only a little over 2% and if disaggregated, the Panchayat share is a negligible 0.3%.

9.1.1.3. ISSUES RELATED TO FUNCTIONS

- **Unscientific distribution of functions between different tiers:** There is very little actual devolution of functions and authorities by the States to PRIs. The roles and responsibilities of local governments remain ill-defined despite activity mapping in several States.
- **Creating parallel bodies** (often fiefdoms of ministers and senior bureaucrats): Legislative approval to these bodies legitimises the process of weakening decentralised democracy. For example: Rural Development Agency of Haryana enter into the functional domain of panchayats resulting in confusion, duplication of efforts and shifting of responsibilities.
- **Appear as 'Government Agencies' and politicization of PRIs:** The responsibility to implement several Central and State government developmental schemes and their dependence on tied grants curtail their autonomy and convert them virtually into Government agencies. The political parties ruling at the state is reluctant to give autonomy to PRIs and view them as their organizational arms resulting in frequent interventions in their day to day functioning and politicization of appointments.
- **Weak and inefficient DPCs:** They are too weak and non-starters in many States. In States like Gujarat, the DPC has not been constituted.

9.1.2. STEPS TAKEN BY GOVERNMENT FOR PRIS

- **Improving political participation of women:** Ministry of Women & Child Development is implementing a project on “Capacity Building Programme for Elected Women

Representatives (EWRs) of Panchayati Raj”. It is working on developing EWRs as “change agents”, while improving their leadership qualities and management skills for better implementation of various programmes of the Government.

- **Panchayat Staffing rules:** Centre is planning to release **guidelines related to recruitment of non-elected panchayat staff** soon. Earlier, Ministry of

Panchayati Raj and Ministry of Rural Development (MoRD) had also issued a circular recommending at least a Panchayat Development Officer (PDO)/Secretary, a Technical Assistant (TA) and an Accountant for a Gram Panchayat or a cluster of Gram Panchayats with 5000 population. Dedicated personnel would result in better utilization of funds, improved service delivery and improved accountability through regular audit report, statements of account etc.

- **Equipping them to handle increasing workload:** For this, recently **Sumit Bose committee** has made recommendations in its report titled “Performance Based Payments for Better Outcomes in Rural Development (RD) Programmes”.
- **Strengthening PRIs through Rajiv Gandhi Panchayat Sashaktikaran Abhiyan:** It is a centrally sponsored scheme which aims at making rural local bodies self-sustainable, financially stable and more efficient.
- **For enhancing efficiency of PRIs:** The government has launched Mission Antyodaya to optimize outcomes and increasing the efficiency of Gram Panchayats through effective social capital, capacity building of PRIs, promoting participatory planning and implementation of the schemes etc.

Need for political empowerment of women

- **Establishing a healthy democracy in India:** For this, rights of almost half of the population including Human Rights as well as their right to be heard in the process of decision making needs to be respected.
- **Tackling poverty:** It may result in India breaking the cycle of poverty as women choose to invest more on health, education and training of children. Even at international level their participation in ensuring the safety and protection of children and vulnerable sections of populations is well recognized.
- **Tackling crimes in society:** Female citizens engage more in civic discussion and women and minorities are more likely to report crimes committed against them.

Sumit Bose Committee recommendations

- **For human resource:** Every panchayat should have a full-time secretary to perform both general administration and development functions. The existing Gram Rozgar Sevaks should be formally trained to carry out essential engineering functions, such as those related to water supply and sanitation.
- **For social accountability:** Holding Gram Sabha meetings regularly, ensuring that meeting notice reach the people at least 7 days in advance, Participatory Planning and Budgeting, Pro-active Disclosures, Social Audit of Panchayats etc.
- **Greater usage of ICT:** Panchayats should use only transaction-based software for maintaining database related to local planning and monitoring progress; financial management including e-procurement; estimation and management of work undertaken, electronic maintenance of cashbook etc.
- **Monitoring performance:** Standards should be developed for all assets being created through rural development programmes. Also, essential data should be compiled, including, area, population, staff, and availability of essential infrastructure for panchayat office, among others.

What is Mission Antyodaya?

Mission Antyodaya is an accountability and convergence framework for transforming lives and livelihoods on measurable outcomes.

Convergence and Saturation

- Convergence of programmes/ schemes with HH/ GP as unit
- Simultaneous interventions to tackle multidimensionality of poverty
- Saturation approach- REGION & NEED SPECIFIC
- Many departments working together, improved access to infrastructure and public services

Focus on Raising Income

- Thrust on raising income of deprived households through sustainable economic activity and diversified livelihoods
- Organize women and youth - social capital
- Linking micro-enterprises to markets - scale

Institutional Strengthening

- Professionals, Institutions and Enterprise as drivers of major transformation.
- Platform for Community, PRIs, Civil Society, Corporates

Integrated Monitoring Dashboard

- Measuring Outcomes against baseline for defined indicators
- Data shared through APIs for integrated view to stakeholders

Why Mission Antyodaya?

Government of India's social sector expenditure amounts to almost Rs. 4 Lakh Crore annually under various schemes. The budgeted expenditure of Rural Development Department itself is projected at Rs. 1,05,448 crore (2017- 18).

Inter- sectoral and convergent approach would optimise outcomes.

Convergence reduces poverty, raises incomes

Targeted coverage- UJJWALA, SBM, PMAY, Skills, Power, Roads, Internet

Women SHGs assist to improve education, health, nutrition

Driving Economic Enterprise with Physical and Social Infrastructure

'Islands of excellence' by saturation- more Hivre Bazaars

5,000 thriving Rural Clusters- will trigger similar action for Poverty Free India- 2022

Leveraging bank loans- Promotes enterprise model

Region specific, need-based livelihoods for transformation

Speeds up diversification of livelihoods- skilling ladder

9.2. ULBS

9.2.1. ISSUES WITH ULBS

- **Lack of powers with elected representatives at local level:** In most municipal corporations, while the mayor is the ceremonial head, the executive powers of the corporation are vested with the State government-appointed commissioner.
- **Ineffective Leadership:** Mayors and Councilors look at their positions as a stepping stone for their political career rather than being change agents bringing out desired urban reforms.
- **Further delegation of powers from ULBs:** For eg- Central government programmes such as the Smart Cities Mission seek to ring fence projects from local government by delegating the decision-making powers available to the ULB to the Chief Executive Officer of the SPV.
- **Excessive State Control-** The state governments have the power to supersede and dissolve municipal bodies under certain circumstances. Further, state governments have powers like-
 - They approve municipal budget (except that of corporation).
 - Even the modified local tax structure needs government's prior approval and later ratification.
 - Control through accounting and audit system, etc.
- **Financial paucity-** Their chief sources of income are the varied types of taxes, most of which is levied by the union and state governments and, the taxes collected by the urban bodies are not sufficient to cover the expenses of the services provided. Indian cities revenue is **less than 1% of gross domestic product**. The net result is that cities do not have adequate financial autonomy.
- **Creation of parastatal Agencies:** such as urban development authorities (which build infrastructure) and public corporations (which provide services such as water, electricity and transportation) are accountable only to the State government, not the local government.
- **Corruption leading to low effectiveness-** The administrative machinery, at the disposal of these local bodies is insufficient and ineffective. The staff which is often underpaid indulges in corrupt practices which lead to loss of income and lack of effectiveness.
- **Lack of effective and efficient Personnel:** Urban government increasingly needs professional services of experts to cope with the increasing needs of the population, both qualitatively and quantitatively. The situation is worsening because the rural influx in town and cities has increasingly converted them in ghettos leading to lack of access to basic services
- **Low level of People's Participation-** People's apathy towards participating in the governance system pushes such institutions into a state of complacency and irresponsibility.
- **Issues highlighted in the Annual Survey of India's City System, 2017** released in March 2018:
 - **Lack of local democracy**, with only two of the 23 cities putting in place ward committees and area sabhas at least on paper.
 - Only 9 of the 23 cities had a **citizen's charter**. Even in the cities where such a charter exists, there is no mention of service levels, or timelines for service delivery etc.
 - An **ombudsman** for resolving citizen's issues is also missing in all but three Indian cities—Bhubaneswar, Ranchi and Thiruvananthapuram.
 - 19 of the 23 cities don't release even **basic data about their functioning** in usable formats.
 - Most Indian cities use **town and country planning acts** which were drafted decades before the economy was liberalized and the lack of a modern, contemporary urban planning framework may be costing India 3% of its GDP every year.

9.2.2. STEPS TAKEN BY GOVERNMENT FOR ULBS

- **Performance linked grants:** The 14th Finance Commission also stipulated that a detailed procedure for the disbursement of the **Performance Grant** to ULBs based on various reforms in areas like accounting, auditing, reporting, etc.
- **Comprehensive road map for municipal reforms** by Union ministry of housing and urban affairs. The road map, consisting of three tiers of reforms along three main avenues - Governance, Planning, and Finance.

Stages	Purpose 	Steps taken/Reforms
Tier I	To accelerate ongoing key financial and service delivery reforms 	<p>Cities have to:</p> <ul style="list-style-type: none"> • Submit financial year audited accounts for the two years preceding the claim for performance grant, • Show an increase in their revenue over the preceding year, as reflected in the audited accounts • Measure and publish service levels for water supply
Tier II	To further fine-tune the reform process. 	<ul style="list-style-type: none"> • Formulating and implementing value-capture financing policy, • Ensuring that all ULBs undergo credit rating and cities with investible- grade rating issue municipal bonds, • Professionalize municipal cadres, filling up posts and allowing lateral entry of professionals, • Implementing the trust and verify model, & Enacting and implementing a land-titling law using information technology.
Tier III	Rapid and even more transformational reforms. 	<ul style="list-style-type: none"> • Deepening decentralization and strengthening ULBs through greater devolution of funds, functions and functionaries, • Own source revenue mobilization for self-reliance, and • Flexibility in urban planning, particularly aligning master plans to changing socio-economic conditions in cities.

- **Municipal Bonds:** In 2017, NITI Aayog in its Three-year Action Agenda document also talks of utilizing Municipal Bond market. This would ensure low cost of borrowing which is required for municipality projects which typically have low viability, long gestation period and low to moderate cost recovery.
- **Directly elected Mayor:** A private member's bill was introduced in the parliament to make provisions for direct election and empowerment of the office of mayor in country. This would help in increasing accountability as mayor can be questioned directly and creating more transparency as communication and reporting will be directly done by mayor.
- **Atal Mission for Rejuvenation and Urban Transformation (AMRUT):** During 2015-17, various basic reforms were undertaken under this scheme resulting in:
 - **Improved collection of user charges:** 104 cities in 14 states collected more than 90% of **user charges**,
 - **Establishment of municipal cadres** in 21 states.
 - **Improved service delivery:** 256 cities started offering **online citizen services**.
 - **Others:** 21 states established **state finance commissions** and 363 cities have completed **credit rating**.

About AMRUT-

- It focuses at transforming 500 cities and towns into efficient urban living spaces over a period of five years.
- It follows a **project oriented development approach** in contrast to the area based approach of Smart Cities Mission.
- It is a centrally sponsored scheme with 80% budgetary support from the Centre.
- It aims to:
 - ensure that every household has access to a tap with assured supply of water and a sewerage connection;
 - increase the amenity value of cities by developing greenery and well maintained open spaces (e.g. parks); &
 - reduce pollution by switching to public transport or constructing facilities for non-motorized transport (e.g. walking and cycling).

Conclusion

Local self-government in India should be strengthened as it captures local needs and ensures responsive governance. As cities struggle to meet the basic needs of their inhabitants, the existing modes of organising power in urban India must be re-examined. Unlike the 73rd Amendment which provides for three levels of panchayats, power in urban areas is concentrated in a single municipal body (whether it is a municipal corporation, municipal council or town panchayat). And as Indian cities are growing exponentially with some crossing the 10 million population mark, we should restructure it.

Different innovative measures may also be adopted to augment the finances of local bodies such as:

- **Special Purpose Vehicles (SPVs) can be created by local communities:** If there is an infrastructure need and the community is willing to pay for it, then the community can form an SPV that can be used to float tenders for the requisite project(s) and route funds.

- **Setting reasonable tax and fee rates**, improving collection efficiencies and expanding financing mechanisms to ensure buoyancy of revenues overtime.
- **Access to debt capital markets** can be a valuable source of financing, providing them the scope for planned infrastructure development. For this, local bodies need to substantially improve their overall administrative and technical capacities to access debt, particularly long-term bonds.

“ The Secret To Getting Ahead Is Getting Started ”

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