



GS2: Polity & Constitution

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Disclaimer: These notes are for guidance & reference only, based on our study, experience, & memory. Some fun mnemonics/terms may be included just to aid recall—no offence is intended. Please use your judgment and keep them updated over time.

About Us



Madhav Agarwal and Ratnesh Agrawal — two friends, one mission, and a bond forged through shared dreams. From school classrooms to college corridors, their journey was always side by side. United by a common goal of cracking the UPSC, they spent over 300 hours on video calls — dissecting concepts, solving doubts, and building the notes that would become the backbone of their preparation.

Madhav went on to secure AIR 211 in CSE-2023 and then soared to **AIR 16 in CSE-2024**. Now set to join the **Indian Administrative Service**, he is living proof that quiet determination, when sustained with laser focus, can turn even the toughest dreams into destiny.

Ratnesh, who reached the **UPSC interview stage in CSE-2023**, chose a different but equally powerful path. With the same intensity and sharp thinking that marked his preparation, he stepped into the world of real estate. Today, he's a **dynamic builder in Indore** — shaping skylines and lives with a vision rooted in public purpose and entrepreneurial fire.

These notes are a result of their shared struggle, deep friendship, and uncompromising pursuit of excellence — a **gift to future aspirants**, from two dreamers who refused to settle for average, each leaving a mark in his own way.

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Note: These notes are the result of a group effort over the past few years. You'll find pink (or other coloured) highlights at the start of many topics—these usually mark key terms, definitions, quotes, etc., based on our memory cues at the time. While most content is updated, some sections—especially in GS3—may contain older material, so do cross-check and update where needed. Don't get confused by the highlights; use what's useful and feel free to build your own notes from them.

GS-2 Polity & Constitution

Common Points

- **Dimensions:**
 - **JAC → Judgement, Article, Committee? Is needed in every answer**
 - **Impact can be analysed on** security, at international agreements, Linguistic Minorities and vulnerable, Cooperative F; Think of impact on indiv rights; Does it uphold constitutional morality;

- Think of stakeholders while making points eg: For Parliament (MPs, Chairperson, Admin Team, Opposition, Committees, Society which they represent, Regional parties, Expert nominations, etc)
- Try to **recall the mindmap of the topic** and relate the question with content
- **Keep syllabus** in mind while writing questions, 3 organs of states, Parts of constitution
- **Miscellaneous:** Transaction of Business Rules 1961, **Transformative Constitution (from medieval hierarchical society to modern egalitarian one)**
- **Mention - ICCPR is violated** - International Covenant on Civil & Political Rights (ratified by India) for anything wrong or -ve
- **Terms:**
 - **Rule of law**, Maintains supremacy of constitution, Constitutionalism, **Political/Soc/Eco Democracy promoted, Prevent authoritarianism, Cooperative F**, Constitutional morality, **Liberal democracy**
 - **Socially sanctioned atrocities** like mob lynching which are **on rise as per NCRB**
 - Multi-cultural society (special right to ling/religious minorities)
 - **Beacon of democracy**
 - **Deliver the objectives of Preamble such as JLEF** (eg: FR does it Justice via Article 15/16, Liberty via Article 21)
 - Democracy as a way of life
 - **Article 32 makes SC as the protector and guarantor** of FR (as indiv can approach directly)
 - BSD as an embargo upon the parliamentary power; **BSD ensures the brute majority does not turn into tyranny of majority**
 - **Egalitarian Society based on JLEF envisaged by founding fathers of constitution**
 - Borrowed constitution, **hotch-potch** constitution
 - **Sine qua non**

Syllabus

- Indian Constitution—**historical underpinnings, evolution, features, amendments**, significant provisions and basic structure
- Comparison of the Indian constitutional scheme with that of other countries.
- Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein
- Separation of powers between various organs dispute redressal mechanisms and institutions.

- Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these.
- Structure, organization and functioning of the Executive and the Judiciary—Ministries and Departments of the Government;
- Salient features of the Representation of People's Act
- Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies.
- Statutory, regulatory and various quasi-judicial bodies

Polity PYQs (categorised as per syllabus)

1. **Indian Constitution—historical underpinnings, evolution, features, amendments, significant provisions and basic structure; Comparison of the Indian constitutional scheme with that of other countries**
 - a. 2021: Q1. 'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions. (Answer in 150 words) 10;
 - b. Q13. Analyze the distinguishing features of the notion of Equality in the Constitutions of the USA and India. (Answer in 250 words) 15
 - c. Comparison of India and USA political systems
 - d. French vs Indian Secularism
 - i. How right to freedom of religions makes India a secular state?
 - e. Do you think there is a need for a review of the Indian Constitution? Justify
 - f. Article 370: Current status? Impact?
 - g. Article 371A: Directives of M/o P&NG seen as threat by Nagas
 - h. Why does the Constitution of India contain different forms of Oath for the President, the Ministers, the Legislators and the members of the Judiciary? Discuss their significance (repeat question)
 - i. **Historical underpinnings**
 - i. Did the Government of India Act, 1935 lay down a federal constitution? Discuss.
 - j. **FR**
 - i. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy
 - ii. Article 14/19 vs 21: Diwali crackers vs right to clean environment
 - iii. Freedom of speech and expression? Does it cover hate speech? Why do films in India stand on a different plane?
 - iv. Section 66A of IT Act and violation of Article 21

1. *Section 69A of IT is seen as censorship by various sections due to its secrecy & arbitrary application - This needs to be avoided to ensure freedom of speech and expression*
2. Also Cover Sedition aspects Pg 737 Hero Notes

k. FD

- i. Essentially all that is contained in Part IV-A of the Constitution is just a codification of tasks integral to the Indian way of life. Critically examine this statement
- ii. Enumerate the fundamental duties incorporated in the Constitution after the 42nd amendment

l. Preamble

- i. Discuss each adjective attached to the word 'Republic' in the preamble. Are they defensible in the present circumstances? (Collect good examples)
- ii. Significance of Preamble? Bring out the philosophy of the Indian polity as enshrined in the preamble of the Indian Constitution

m. DPSP

- i. Factors that inhibit enacting uniform civil code
- ii. Measures taken by the GOI to implement DPSP
- iii. Briefly state the stages through which the present position of the Directive Principles vis-a-vis the Fundamental Rights has emerged (DPSP vs FR) (repeat question)

n. Basic Structure (Pg 14 of Judiciary File)

- i. Whether parliament under article 368 of the constitution can destroy the Basic structure of the constitution by expanding its amending power? Explain (repeat question)
- ii. 2013- The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically

o. Amendments

- i. 101st AA? Is it efficacious? (Read aim and impact of recent Amendment Acts)
- ii. Summary of other importance amendments: 44th, 24th, 42nd, 73rd

p. Important Acts and Misc

- i. "If amendment bill to the Whistle-blowers Act, 2011 tabled in the Parliament is passed, there may be no one left to protect." Critically evaluate
- ii. Financial Emergency? Circumstances? Consequences?

2. Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein

- a. 2021: Q3. How have the recommendations of the 14th Finance Commission of India enabled the states to improve their fiscal position? (Answer in 150 words) 10
- b. (2020) Indian constitution exhibits centralising tendencies to maintain unity and integrity of the nation. Elucidate in the perspective of the Epidemic Diseases Act, 1897; The Disaster Management Act, 2005 and recently passed Farm Acts.
 - i. This question shows how we need to link static content with current happenings
- c. Federalism in theory but unitary in spirit: make model answer
- d. Cooperative federalism? drawbacks in the existing structure? How can cooperative federalism help?
- e. (2020) How far do you think cooperation, competition and confrontation have shaped the nature of federation in India? Cite some recent examples to validate your answer
- f. Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss. (Cover recent bill); Analyze the major disputes with special reference to Southern states (repeat question)
- g. Examine the demand for greater state autonomy and its impact on the smooth functioning of India polity (collect reforms needed for centre-state relations); Also cover what are areas bring centre and states to a dispute) (repeat question)
- h. Discuss the major extra-constitutional factors influencing the federal polity in India (repeat question)
 - i. Administrative relation between the centre and the states
 - j. Essentials of a true federation? 'The planning operation's in India have led to erosion of federalism.' Discuss
- k. (2018) Political tussle b/w Lt. Governor and elected government of Delhi? Status? SC Judgement? 69th AA? (repeat question)
- l. Financial Emergency? Circumstances? Consequences?

3. Panchayati Raj; Financial and other Issues

- a. "The reservation of seats for women in the institution of local self-government has had a limited impact on the patriarchal character of the Indian political process". Comment
- b. Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources the Panchayats can look out for financing developmental projects?
- c. "The local self-government system in India has not proved to be effective instrument of governance". Critically examine the statement and give your views to improve the situation

- d. (2020) The strength sustenance of local institutions in India has shifted from their formative phase of 'Functions, Functionaries and Funds' to the contemporary stage of 'Functionality'. Highlight the critical challenges faced by local institutions in terms of their functionality in recent times.
- i. In absence of a well-educated and organized local level government system, 'Panchayats' and 'Samitis' have remained mainly political institutions and not effective instruments of governance. Critically discuss
- e. Discuss critically the actions taken by the legislative, executive and the judiciary to control Khap Panchayats?
- f. What were the aims with which Panchayati raj was created in India? Have these aims been fulfilled? What is the present situation obtaining in the country? Describe its organisational setup? (repeat question)
- i. Cover core principles highlighted by 2nd ARC 6th Report
4. **Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these**
- a. **structure,**
 - i. Q14. Explain the constitutional provisions under which Legislative Councils are established. Review the working and current status of Legislative Councils with suitable illustrations. (Answer in 250 words) 15
 - ii. Parliamentary vs Presidential form of government; Pros and Cons (repeat question)
 - iii. What is meant by the sovereignty of the parliament? Consider whether the Indian parliament is a sovereign body?
 - iv. Explain the relevance of Rajya Sabha as a second chamber in the federal set up of Indian Parliamentary System (100 years of RS in 2019) Role in today's changing political scenario? (repeat question)
 - v. 2020- Rajyasabha has been transformed from a 'useless Stepney tire' to the most useful supportive organ in past few decades. Highlight the factors as well as areas in which this transformation could be visible. (Answer in 250 words)
 - vi. Joint Session? Enumerate the occasions when it can and cannot happen with reasons?
 - b. **functioning,**
 - i. 2021: Q4. To what extent, in your view, the Parliament is able to ensure accountability of the executive in India? (Answer in 150 words) 10
 - ii. How does Parliament control the Union Executive? How effective is its control? (repeat repeat question)
 - iii. Individual parliamentarian's role as the national law maker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss (repeat question) How far can

this be attributed to the anti-defection law which was legislated but with a different intention?

- iv. Anti-Defection Law: Features, factor responsible for growth of defections, analysis, reforms needed (repeat question)
- v. Discuss the methods by which Parliament controls public expenditure in India

c. conduct of business,

- i. 2020- 'Once a Speaker, Always a speaker'! Do you think this practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implication for the robust functioning of parliamentary business in India? (Answer in 150 words)
- ii. Parliamentary committees: Are they useful? Role of Estimate Committee? Public Accounts Committee? (repeat repeat repeat question)
- iii. Q15. Do Department -related Parliamentary Standing Committees keep the administration on its toes and inspire reverence for parliamentary control? Evaluate the working of such committees with suitable examples. (Answer in 250 words) 15
- iv. What are the grounds of disqualification of a Member of Parliament from either House? Quote relevant provisions in your answer (repeat question)

d. powers & privileges

- i. Discuss the powers, privileges and immunities of the Indian Parliament
- ii. Parliamentary Privileges (Article 105)? Reasons for absence of its legal codification? How to address the problem? How is breach of Parliament Privilege different from Contempt of the House?

e. and issues arising out of these

- f. Read for Prelims: Doctrine of colourable legislation, power of president regarding scheduled areas, consultative committees attached to diff ministries,

5. Structure, organization and functioning of the Executive; Ministries and Departments of the Government

a. President:

- i. Structure
 1. Composition of electoral college and process of President elections (comparison with US) (repeat question)
- ii. Organization
 1. Exceptions when President is not bound by aid and advice of CoM?
 2. Discretionary powers of both governor as well as the President (repeat question)

3. Evolution of Presidents power over the years (42 and 44th AA)
 - iii. Functioning
 1. 'The exercise of **executive clemency** is not a privilege but is based on several principles, and discretion has to be exercised in public consideration.' Analyse this statement in the context of judicial powers of the President of India (repeat question)
 2. Commuting death sentences: Why there is delay? Should there be time limit?
 - a. Discuss the question of death sentence? Pros and Cons
 - b. Governor
 - i. How is the governor of a state appointed in India? Does the manner of his appointments ensure his independent functioning? Reforms needed? Envisaged role and actual conditions?
 - ii. Discretionary powers
 - c. Others
 - i. How far is the efficacy of a government inversely related to the size of the cabinet?
 - ii. Despite all talk of an effective opposition why has it not been possible to develop an effective opposition in India?
- 6. Structure, organization and functioning of the Judiciary**
- a. Structure/Functioning/Procedure
 - i. 2021: Q2. Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness. (Answer in 150 words) 10
 - ii. (2020) The judicial systems in India and UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.
 - iii. 2017: Critically examine the Supreme Court's judgement on National Judicial Appointments Commission Act, 2014
 - iv. 1997: Present your views for and against the creation of an All India Judicial Service
 - v. 2002: How far does Supreme Court play its role as guardian of the Constitution?
 - vi. 2018: Do tribunals curtail the jurisdiction of ordinary courts? Discuss the constitutional validity and competency of the tribunals in India?
 - b. Judicial review, activism, overreach
 - i. 2016: IR Coelho Case? Can you say that judicial review is of key importance amongst the basic features of constitution?

- ii. 2014: Evaluate the role played by judicial activism in achieving the ideals of democracy? (repeat question)
- iii. 2005: Is it possible to distinguish between judicial review and judicial activism in India? Does the recent behaviour of the Indian judiciary partake more of judicial activism? Argue with suitable example

7. Separation of powers between various organs dispute redressal mechanisms and institutions

- a. 2019: Do you think Constitution of India does not accept principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. (Comparison of sep of power with US constitution)
- b. 2015: Ordinance Power: Nature and rationale for this power? Does it violate sep of power? SC decisions on the same? Should this power to be repealed? What safeguards are there against possible misuse?
- c. 1983: Separation of powers is essential to ensure Individual liberty. Discuss provisions in the Constitution and practices adopted so far?
- d. 2013: 'The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically
- e. (2020) Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities. (250 words, 15 marks)
- f. *Prepare dimensions to analyse separation of power topic: Such as indiv liberty, international examples, indian examples,*
- g. Dispute redressal mechanisms and institutions
 - i. Major changes brought in the Arbitration and Conciliation Act, 1996. How far will it improve India's dispute resolution mechanism? Discuss. (Syllabus topic: various organs dispute redressal mechanisms)
- h. Other
 - i. From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain

8. Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies. Statutory, regulatory and various quasi-judicial bodies

- a. Cover dimension highlighted in the syllabus for each body; Also cover challenges faced by these bodies
- b. Constitutional
 - i. 2019: "The **Attorney-General** is the chief legal adviser and lawyer of the Government of India." Discuss

- ii. 2018: Whether **National Commission for Scheduled Castes (NCSC)** can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine.
- iii. 2018: "The **Comptroller and Auditor General (CAG)** has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise
 1. *Delay in submission of audit report: Between 2014-19, more than 90 days delay was there between signing and tabling 42 audit reports;*
 2. *Need to amend CAG (DPC) Act, 1971 to prescribe time limits*
- iv. 2016: Discuss whether audit of the Government's Policy implementation could amount to overstepping its own **(CAG)** jurisdiction
- v. 2018: **Finance Commission**: How is it constituted? ToR of recent body? Function of State Finance Commission?
- vi. 2013: Discuss the recommendations of the 13th **Finance Commission** which have been a departure from the previous commissions for strengthening the local government finances (comparison of 13, 14 and 15th FCs)
- vii. 2017: **Election Commission**: Electoral reforms suggested in 2016? Are they sufficient? What other reforms are needed?
- viii. 2008, 1991: Discuss the composition and functions of **Union Public Service Commission**? How its independence is maintained?

c. Statutory

- i. Q12. Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analyzing their structural and practical limitations, suggest remedial measures. (Answer in 250 words) 15
- ii. Q11. The jurisdiction of the Central Bureau of Investigation(CBI) regarding lodging an FIR and conducting probe within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India. (Answer in 250 words) 15
- iii. 2020: "Recent amendments to the Right to Information Act will have profound impact on the autonomy and independence of the **Information Commission**". Discuss.
- iv. 2020: Which steps are required for constitutionalization of a Commission? Do you think imparting constitutionality to the

National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons.

- v. 2017: Is the **National Commission for Women** able to strategize and tackle the problems that women face at both public and private spheres? Give reasons in support of your answer (Cover this type of angle for other commission as well for eg: whether NC for SC able to tackle prob of SCs?)
 - vi. 2014: **National Human Rights Commission (NHRC)** in India can be most effective when its tasks are adequately supported by **other mechanisms** that ensure the accountability of a government. In light of the above observation assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards.
 - vii. **Inter- State Council, National Integration Council**: Have they become defunct? Current relevance (question not asked but predicted based on our analysis)
 - viii. Bodies **not asked** as of now: **NC of ST, NCBC (102nd), Lokpal, NC for Minorities, etc.**
- d. Quasi judicial body
- i. 2019: "The Central Administrative Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain
 - ii. 2016: What is a quasi-judicial body? Explain with the help of concrete examples
- e. Misc
- i. 2015: "For achieving the desired objectives, it is necessary to ensure that the regulatory institutions remain independent and autonomous." Discuss in the light of the experiences in recent past.
 - ii. 2014: The setting up of a Rail Tariff Authority to regulate fares will subject the cash strapped Indian Railways to demand subsidy for obligation to operate non-profitable routes and services. Taking into account the experience in the power sector, discuss if the proposed reform is expected to benefit the consumers, the Indian Railways or the private container operators

9. **Salient features of the Representation of People's Act/Electoral reform till now and scope for more**

- a. (2020) "There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of Peoples Act." Comment. (150 words, 10 marks)


- b. 2019- On what grounds a people's representative can be disqualified under the representation of people act, 1951? Also mention the remedies available to such person against his disqualification
- c. 2018- In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?
- d. 'Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people' Discuss
 - i. *It was a norm until 1967; Law Commission in 2018 provided for structural changes to implement the same*
 - ii. *+ves: Frequent elections leads to hindrances in announcement of new policies due to application of Model code of conduct; Focus from governance gets diverted; Reduced cost; Increased voter turnout; Reduced engagement of security forces for non-core activities*
 - iii. *-ves: Reduce govts. accountability to people; Difference in issues at state and national level; Operational issues as to how to sync it for the first time or what to do in case of govt losing majority before 5 years*
- e. Controversial Sections
 - i. Section 11 - misused in Sikkim CM Case

10. Pressure Groups and formal/informal associations and their role in polity

- a. Q5. "Pressure groups play a vital role in influencing public policy making in India." Explain how the business associations contribute to public policies. (Answer in 150 words) 10
- b. Methods used to influence policy-makers? Are these effective? (Prepare generally; Question was asked specific to farmer's organizations)
- c. Influence on Indian political process? (Open various dimensions in political process such as elections, policy making, legislation, foreign policy) Also collect examples wrt to groups related to women, environment, financial etc); Do you agree with this view that **informal pressure groups** have emerged as powerful than formal pressure groups in recent years?
- d. Assess structure and functioning of pressure groups in India?
- e. Pressure group are an anonymous empire and are an unofficial Government. Do you agree with above statement? Substantiate with reasons?
- f. Analyse how political parties and pressure groups are different from each other? (in context of they both sharing intimate and inconclusive relationship)
- g. Reasons for the rise in pressure groups and their failure to make impact in India. (rise in terms of number)
- h. Pressure groups in India are not matured but they are too diverse. Analyse the characteristics of pressure groups in India?

- i. Functioning of pressure groups differ widely in India and western countries. Analyse?

Local Self Governance (asked in 2022)

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**

- **Intro** (73/74th AA, Gandhian principle-u/a 40; 11/12th Sch); **Need/Signif/Core Principles** as per **2nd ARC 6th Report** (Principle of Subsidiarity-dec close to people and constant check by community, Democratic Decentralisation, Convergence of urban-rural; Transforms representative democracy to participatory democracy, People Centricity, Constitutionally mandatory to hold regular elections); **Women Empowerment** (49% elected women; Women empowerment; **Leaders-Chhavi Rajawat**; Greater inv in water/sanitation; Crimes ↓; Anganwadi/MDM prosper; **Issues**-Dual burden, sarpanch pati, freq rotation of reserved seats, unable to travel far for work; Measures-पंचायत महिला शक्ति अभियान; Success-Fatima Bi-UNDP award; Kerela mayor-21 yrs; **WF**-Greater % in PRI; Need for Mahila Gram Sabhas);
- **Stakeholders for Issues:** SG/SFC/SEC, Bureaucracy, Governance, Infrastructure (Hard/Soft), Funding, 15th FC, Politics); **Issues of PRI** (State not delegating fx, reports of SFC/SEC not tabled; **Admin**-some states require budget approval from Bureac, Lack of own staff, no clarity of powers among 3 levels; **Political**-Delay in elections-2yr WB, No elec Puducherry since 2011, Parallel bodies set up to take PR space-eg: SPV/MPLAD/SHG, **Decentralisation of Corruption**-Manishankar Aiyer C. Khap Panchayats; **Infrastructural issues**-no full time secretary/inadquate office; **Funding**-Tied natures of funds, virtually become 'govt agencies' to only implement schemes; Trapped in **low equilibrium trap** as per Eco Survey - as they avoid becoming unpopular by taxing people they are close contact with, thus become mere implementing bodies; ES survey said Panchayts own source of revenue only 5% (vs 40% Brazil); Revenue domain of higher 2 level is < 3rd level; Property tax India 0.2% of GDP vs 3% in developed nations-**15th FC** reasoned-due to underval of prop/incomplete tax records/ineff tax administration; hesitant to tax own comm);
- **Best Practices** (KILA by Kerela, Village volunteer scheme by AP, **Audit Online** by M/o PR, E-Gram swaraj, **V4KOCHI**; **e-Gov measures taken - PRIASoft for accounting & records; PlanPlus for bottom up planning; ActionSoft to**

- monitor progress of projects); WF** (Local body ombudsman-in Kerala; 2nd ARC-6th R=**Insitutional**-SFC: Common format, ATR in 6m, Set qualification for SFC, SEC-Collegium to appoint, Stability in reservation 2 terms of 5 yrs each; **Financial**-devolution by activity mapping, Broadening their tax jurisdiction (with new subjects), Flow of funds via PRI rather than MPLADS/MLADS; **Admin**-Social audits, e-panchayats, training, power to recruit personnel; Well functioning District Planning Committee with rep from rural/urban); Read → [74th CA](#), (Read bold points); States like Kerala, Karnataka and Madhya Pradesh are good examples depicting how the 73rd CAA'1993 can achieve the features of the principle of subsidiarity
- Organisation Setup: The system has three levels: Gram Panchayat (village level), Block Samiti or Panchayat Samiti(block level), and Zila Parishad (district level)
 - Give equal emphasis to urban and rural local governance in answers as questions specify local govts. in general; Also talk about State Election Commissioner in answers of Local governance as it is the body responsible for conduct of their elections (Note all above points can be used for ULBs as well - 2% land 70% GDP; 12th Sch; 3 types of municipalities)
 - **Key Words**: Women empowerment (33%), Powers include-(Women & child dev, Minor irrigation), Bring PESA linkage in answers, Use Distt Planning Committee/Wards Committee as way fwd)
 - SWAMTIVA (lead to better quality Gram Panchayat Development Plans (GDPD), inc local property tax generation, land can act as collateral, Post disaster rehab can be better due to land records)
 - **74th CA**
 - Need (Need for demo decentralisation)
 - Cities engines of eco growth- **occupy only 2% land but contribute approx 70% of GDP**, acts as centre of knowledge and innovation, pull people out from agri to industry and services
 - UN Population fund report - currently 3.3 B people in world live in cities and by 2030 half of population will live
 - Urban governance dealt by MoHUA at central level
 - Features of 74CA
 - Three types of Municipalities- Nagar P, Municipal council, Municipal corporation
 - Wards committee
 - Reservation to SC/ST/W
 - SEC, SFC
 - 12th Schedule
 - **District Planning Committee**, Metropolitan planning committee
 - **Challenges** (specific to 74th)
 - Mayor ceremonial head- Municipal commissioner not under city but state govt- issues in case of diff pol. Party (eg: **Mayor is of opposition party leads to hindrances** in project execution)

- **Centralised planning** without adequate participation by local leaders
- Finance- ULB little autonomy to charge taxes (however opposite also true- Indore parking taxes, cleaning taxes)
 - Share of local govt finance in china-25% but only 3% in india
- **Human resource issues**- State controlled and city controlled- need more city cadre;
- **2022:**
 - Work of ULBs being taken over by parallel corporate structures (Smarty City SPVs who are not accountable to people)
 - GST has weakened the finances of ULBs (due to subsuming local taxes);
 - **Functional domain (no state devolved all fx); The work of ULBs still require approval of SGs (therefore no authority as such)**
 - **SFC issues (not setup regularly-only 9 states made the 6th SFC out of 26 states, some did not make 4/5th SFC; Moreover, devolution recommended by them is 9%-15% compared to 41% by Union FC; their quality of report is questioned; filled with bureaucrats-therefore not autonomous; Guidelines to devolve funds are largely ignored)**
- Infra issues
- Write other common administrative, political issues of Panchayati raj
- Way forward
 - **2nd ARC points relevant here**
 - **Solution: Establish ombudsman for probity; Municipal bonds; Capacity bldg and ICT; Mayor and admin coordination**
 - 74CA created only skeleton, need of political wheel to ensure administrative wheel of urban govt move freely
 - Best Practice: New trend observed in Kerala: Conducting elections at lower levels via non-political groups such as V4KOCHI are claiming democratic space; as at lower level familiarity and accessibility matters most rather than political affiliation
- **PESA Act 1996 (25 years of PESA 2021)**
 - **73AA was not applicable to 5th schedule areas (10 states)-** but Parliament may extend with such exceptions it may specify- enacted PESA 1996
 - **Objectives: self rule** to tribals, to make gram sabha nucleus of all activities, **safeguard traditions, prevent higher authorities assume power of lower institutions**

- **Features:**

- **Legislation by state govt. must respect customary laws,** religious and social practices
- Gram Sabha will consists of all persons in electoral roll
- **GS will approves plans before implementation by panchayat; Gram Sabha will also identify beneficiaries**
- **Panchayat must obtain certificate of utilization of funds** for plans/prog
- **At least half seats reserves for STs along with all seats of chairpersons**
- SG may nominate unrepresented tribe (max 1/10th)
- Recomm of GS needed for granting prospecting license for minor minerals
- Right to **manage minor water bodies** and **ownership of minor forest produce**
- Regulate **sale of liquor, manage village markets**
- Powers: **Prevent land alienation through mandatory consultation;** Control over lending practices, etc.

- **Challenges**

- Lack of coordination & overlapping influence b/w M/o PR, M/o Tribal affairs and M/o Rural development
- **Governor have desisted from getting involved** in tribal affairs
- **No legal definition** of the terms like minor water bodies, minor minerals → **ambiguity in interpretation** by bureaucracy
- Lack of operationalisation: Jharkhand, Odisha, Chhattisgarh and Madhya Pradesh **have not framed their State PESA Rules so far** (reply in RS question hour by Minister)
- General issues: Awareness abt PESA among tribals is low, **Illiteracy, Lack of training,** Issues with forest dept, Reluctance to accept PESA over customary practices (trust deficit), bureaucratic control
- **Incidences of Pathalgadi Movt.** (In JH, villagers would erect giant stone plaques declaring the gram sabha as the only sovereign authority under PESA, to claim their independence from the state. They would prohibit the entry of government officials. Many booked under IPC 124A (sedition) But now CM dropped all the cases)
- Dilution of role of Tribal Advisory Councils in 5th schedule which also oversees tribal affairs

- **Way forward**

- Framing rules using **M/o PR Model Rules of 2009**

- **Odisha Model - 1st state in country to make separate budgetary provision; Confident of full roll out of act by 2024; Recently JH also released draft rule**
- Along with PESA also need **MESA-Municipalities Extension to Scheduled Areas - for urban tribal areas**
- Ensure autonomy of gram panchayats; **Inter-ministerial coordination**; Harmonise various legislation such as Forest Act 1980, National Mineral Policy with the provision of PESA
- **2nd ARC 6th Report**
 - Regular **Annual Reports from the Governor of every State as stipulated under the Fifth Schedule must be given due importance**
 - State Governments **should form a special planning unit to prepare their Tribal-Sub Plans**
 - The Union and State legislations that impinge on provisions of PESA should be immediately modified so as to bring them in conformity with the Act.

PRI - Extra Content

- Introduction
 - *When the panchayat raj is established, public opinion will do what violence can never do. — Mahatma Gandhi*
 - Gandhian principle of gram swaraj- Article 40
 - PR estb in all states by acts of State legislatures to build democracy at grassroots level
 - Constitutional articles- 243,243A-O, Municipalities(243P-243ZG)
- Need and aims of PR (Core Principles as per 6th Report 2nd ARC - Local Governance)
 - Principle of Subsidiarity: The decisions must be taken at the lowest level as far as possible and delegate upward the rest
 - Democratic Decentralisation: process of devolving functions & resources of the state from the centre to the elected representatives at the lower levels- democratic seed drilling in Indian soil
 - Delineation of Functions: This is needed to clarify the roles and responsibilities b/w state and local authorities as well as within the various tiers of local govt.
 - Devolution in Real Terms: so as to ensure local govts can frame regulations, take decisions and enforce them; For real devolution designated public servants must fully work under them subject to protection of their service conditions
 - Convergence: Complex governance system often becomes compartmentalised but needs of the citizens are inevitable thus calling

- for convergences in areas such as rural & urban local govt, avoid diverging functions to parastatal bodies as it creates multiplicity
 - Economic benefits- help develop “developement pschye” in people
 - Socio-cultural benefits- Tackle social ills through empowerment
 - Citizen Centricity: Unlike at national level, it is practical for citizens to directly participate in decision making (has educative value)
- Before status and major commrtitees
 - Rural dev started with Community dev program(through bureaucracy-Nehruvian app)
 - Balwant Rai Mehta C- CDP as dev needs participation- need for 3 tier PR
 - Phases of PR- 60's(phase of enthusiasm)- 70's-80's(phase of stagnation as state govt/Bureauc insecure to Democratic decentralisation as well as centralising tendencies of union, Ashok Mehta C- but not tabled)- 1990's(phase of revival- based on LM Singhvi C- const status to PR)
 - Efforts by Rajiv gandhi(64th CAB)- failed- seen as attempt to marginalise states, then Narsimha rao(73rd,74th CA,1992- conflicting sections made voluntary for states)
 - Now phase of disillusionment but potential
- Present Status of PRI (question asked)
 - Write about aims, challenges, way forward
- Significance of 73rd and 74th CA
 - *Impact on working of P due to 73rd CA*, organisational setup and other features
 - Features
 - 3 tier PR mandatory
 - Gram Sabha as foundation of PR
 - Regular elections and estb SEC
 - Estb SFC for finance
 - Tenure of 5 years and election within 6 months if dissolution
 - Reservation for SC/ST and Women (inclusive democracy)
 - 11th schedule
 - *How 73rd & 74th A deepened democracy, ensured rural dev, social justice*
 - Enhanced women empowerment?
 - 73,74 CAA- One third reservation for W in both urban and local bodies, not less that one third chairpersons in panchayats.
 - Positives
 - 13.72 lakh elected women rep in PRI's which is 44% of total elected (2017)
 - Enhanced respect for W- reduced prejudice in society wrt social ills, W in decision making process- raised confidence
 - Women protection from gender crimes
 - Effective imp of Mid-day meal, anganwadi, sanitation drives (mother effect)

- In districts with female sarpanchs, significantly greater investments are made in drinking water, public goods
- Success case studies
 - Fatima Bi- Sarpanch in Andhra- eco emp of woman- recognised by UNDP
 - All Women panchayats in Haryana- efforts to control declining sex ratio
 - Dhani miya gram panchayat in Haryana- built training centre for W and every child to school initiative
 - Kerela- 21 year old Mayor
- Shortcomings
 - Dummy candidate for male of their family- Baap, Pati, Beta syndrome, Pati panchayats
 - Proxy for rural elite- less autonomy
 - Household burdens, society outlook- less people hear them
 - SC/ST women- double burden of caste and gender discrimination, women from minorities
 - Difficulties in travelling far for PR works
 - Frequent rotation of reserved seats- affects empowerment for long time in that constituency
- Govt initiatives and Way forward
 - Panchayat, Yuva and Mahila Sashaktikaran Abhiyaan should be imp in letter and spirit
 - Need for Mahila Gram sabha for women issues to tackle patriarchy (eg moderate Gulabi gang in UP)
 - 243D can be ammended to inc percentage of women in panchayat
- Challenges
 - State objections made voluntary
 - Issues in 11th and 12th(74th) schedule- States not giving functions for effective PR, inability of PR/ULB to handle those functions fully and effectively, same functions to multiple agencies
 - State finance commision/State election commision report not tabled regularly in SL assembly
 - *Pol decentralisation not matched with admin decentralisation?*- Remained merely political and not effective governance?
 - Adminstrative- Incompatible relations between 3 tiers- upper tiers dominating lower ones and neglecting their role, non-elected and ex-officio members at upper level vs elected at lower level- unable to fulfill democractic needs
 - Lack of coordination btw bureaucracy and local govt- high handedness due to multiple institutions eg:

- some states require PR bodies to get their budget/other technical matters approved from bureaucrats- distort role of Sarpach as elected head
 - Lack of conceptual clarity among people wrt functions and powers of PR's due to collector culture
 - Staff- Lack of own staff affects effective functioning as dual control of staff to both state and PR along with frequent transfer affects Panchayats
 - Many state acts not laid down powers of gram Sabha- ineffective deliberation of issues
 - Political issues- caste factionalism over development, inefficiency, scant regard for procedures, political interference, parochial loyalties
 - State govt dissolution at will of PR's, politicisation of PR- works better when same pol party at state and PR level
 - Parallel bodies- For faster speedy implementations- take PR space
 - Khap panchayat culture
 - PR led to decentralisation of Corruption, nexus btw panchayat heads and state bureaucracy (Manishankar Aiyer C)
 - Delay in elections/announcement of result (results of PRI not announced for 2 years after elections in West Bengal); Since 2011 local body polls have not held in Puducherry [because 1) Delimitation not over 2) State election commissioner not appointed due to Tussle bw LG & CM]
 - Infrastructural issues- No full time secretary, Inadquate office buildings, computers
- PR Finance sources and challenges
 - Sources
 - Grants in aid from Central(based on FC), State(based on SFC), Zilla Parishad or Panchayat samiti
 - Taxes imposed by PRs- on land, houses, water fee etc
 - Loan from Central/state govt, Programme specific allocation under centrally sponsored schemes
 - Gift from MPLADS
 - Challenges
 - Funding issues- hesitant to charge their own community, ineffective devolution by states, tied nature of funds
 - Even in Kerela,Karnataka,TN which are progressive in PRI's- dependent on govt grants
 - Scheme specific funds- little descretion in expenditure as well not appropriate acc to local circumstances


- Other 2 tiers dependent only on tolls, fees, non-tax revenue due to most of the taxation powers to panchayats (limited tax and people contact- less responsibility to perform better)
 - Revenue domain of intermediate and distt. panchayats has been kept much smaller as compared to village panchayats
 - Non implementation of SFC recommendation by states
 - Property Tax constitutes 0.2% of GDP compared to 3% of other nations
 - Non-constitution or non completion of State Finance Commissions by several states
- Successful Cases/ Best Practices
 - Kerala: Six-month-long academic programme for newly elected leaders of local bodies through Kerala Institute of Local Administration (KILA)
 - Andhra Pradesh: Village Volunteer System where volunteer is paid 5k per month and has to ensure benefits reach to 50 households in the village (in towns they have ward volunteers)
 - To promote admin and election on non-partisan basis, various SGs (such as GJ, HY, HP, AP) provide financial incentives to those sarpanches and members who have been elected unanimously eg: Samras Scheme of GJ
 - Gram Panchayat dev plan- Sabki Yojana Sabka Vikas- audit of accounts, public display of source of funds, stakeholder involvement, social audits etc
 - E-Gram swaraj- prepare Gram p dev plans, portal for monitoring and accountability
 - Odisha CM announced all public rep. starting from sarpanch to disclose their property every year
 - Audit Online by M/o Panchayati Raj to conduct online audit of gram panchayats
- Way forward
 - Punchhi commission- Ineffective representation of local govt in Legislative councils (not in all states) - need local govt rep in making state laws
 - 2nd ARC recommendations: (all points below are its recommendations)
 - There shall be a well functioning District Council in every district with representation from both urban and rural areas
 - Devolution of powers/responsibilities is not a one-time exercise and has to be done continuously
 - Institutional
 - State Finance Commission: Prescribe their qualifications; Action taken report within 6 months; Adopt common formats
 - The State Election Commissioner should be appointed by the Governor on the recommendation of a collegium, comprising the

Chief Minister, the Speaker of the State Legislative Assembly and the Leader of Opposition in the Legislative Assembly.

- Rotation of reserved seats can be after at least 2 terms of 5 years each so that there is possibility of longevity of leadership and nurturing of constituencies
- Financial
 - Effective devolution by activity mapping- eg sending poverty alleviation funds directly to GP account
 - Financial incentivisation of states for effective 3F's to Panchayats
 - State Governments should by law expand the tax domain of Panchayats. Simultaneously it should be made obligatory for the Panchayats to levy taxes in this tax domain
 - The flow of funds for all public development schemes in rural areas should be exclusively routed through Panchayats (and not through MPLADS/MLADS)
 - Audit committees may be constituted by the State Governments at the district level to exercise oversight
- Administrative
 - Better Social audits, e-panchayats, training- eg Rashtriya gram swaraj abhiyaan (CSS scheme of GOI)
 - Panchayats should have power to recruit personnel and to regulate their service conditions subject to such laws and standards
 - There should be special capacity building programmes for women members
 - A local body Ombudsman should be constituted to investigate cases of maladministration (like Kerala-Panchayat ombudsman)
- **Khap Panchayats**
 - Khap is a cluster of villages united by caste (same gotra) and geography (cover several neighbouring village). It is as old as 14th century started by upper caste jats to consolidate their power and position. Khap panchayats (KP) are prevalent in Haryana, western Uttar Pradesh and parts of Rajasthan
 - aka: Called as Gavki in MH, Katta Panchayat in South India;
 - Issues:
 - It's a form of parallel govts. also acting as quasi-judicial bodies which undermines existence panchayat system
 - Rights of an individual are not respected
 - Informal and not elected → yet signif influence
 - Rule of men rather than rule of law prevails
 - Conservative and harsh approach
 - Steps taken to counter:

- Strengthening of formal organisation of governance through enactment of 73rd AA
- Khap Panchayats in North India and Katta Panchayats in Tamil Nadu have been declared as illegal and barbaric by Supreme Court
- Sessions Court at Karnal in 2010 awarded death penalty to membs of Khap panchayat for murdering young couple who married against the KP's diktat
- Maharashtra government has proposed a bill called "Maharashtra Prohibition of Social Boycott Act 2015" against social boycott of individuals or families by Caste Panchayats and termed any action of social boycott as crime
- In 2018 SC marked that an attempt to hamper marriage bw 2 consulting adults would be considered illegal
- Way Fwd
 - Concentrated action on the part of political parties, civil societies, community
 - Need for change in social attitude

Federalism

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**

- **F:** Political arrangement where federal and provincial govt share power based on principle of subsidiarity; **Indian F** = 'sui generis'; **K.C. Wheare** said its quasi-federal; **Dr. BR A** - emphasized the need for a strong center to maintain unity and prevent fissiparous tendencies (need balance sharing of power b/w C/S); **Federal Features** (F=part of BSD as per **SR Bommai**; Written const, Rigid const, Independent judiciary, Bicameralism, Dual Government Polity, Division of Power) **Unitary Fed** (Leg power of U>States; Emergency powers 356&360, No power to amend constitution; New state creation or reorg-J&K; CAG audit both, CEC, Governor, Financial dependence 26-50%); But Indian F a balance b/w Unitarianism and Confederalism (states don't have the right to secede; rather than Indian Fed envisages interdependence through cooperative federalism)
- **Coop F** (Share horizontal r'ship; Stressed by **Sarkaria C**; Unlike layered cake, CF is a Marble cake fed=C/S not separate but integrated + states collaborate/converge and do not act in diff spheres eg: IS Council, Ken-B Tripartite Agreement, Assam-MG solved border dispute; Union 2m fund transf to states; Pan-India Ministerial meetings of G20 to involve states over 60 cities); **Comp F** (C v/s S and S v/s S; Signif after 1991; **NITI Aayog** at front; eg: SDG Index, Attracting FDI; But must not become race to bottom by overruling env/lab/regional disparity/tribal culture); **Assymetric Fed** (90:10 funding,

UTs < power than states, 371A-J, 5/6th Sch, 371D for Andhra Pradesh - Needed for inclusive growth/internal sec/culture; However - diff to role back-370, cascading claims by other; **True Federalism** is opposite of Assym Fed/Unitary Fed); **Contested Areas-Constitutional** (Legislative, Administrative, Financial, Inter-state river dispute - read from below), **Contested areas-Extra/Non-Const** (Regionalism, Planning issues at NITI, Diff in pol party at C&S), **Concl:** Need Team India spirit with mutual recognition & coordination to work for India's development; Overcentralisation can lead to BP at centre and anaemia at periphery; A diverse and large country like India requires a proper balance between autonomy of state and ensuring national integration); **Triple Engine Government**

- **Read following below:** Contested Areas (Constitutional); Selective Federalism, Suggestions of Punchi, Sarkaria, SR Bommai, Delhi 269AA question, River water dispute question)
- **Contested areas (Confrontational F)**
 - **Constitutional** (Legislative, Administrative, Financial, Inter-state river dispute) - **SF = LAFI**
 - Legislative- Union list more subjects, concurrent overshadow state list (farm acts), residuary to centre, power of governor to reserve bill, exceptional 5 cases where RS can authorise law on state subject (**Must not violate Doctrine of Colourable Legislation**) Invocation of NDMA for public health; 99th CAA on cooperative turned down partially
 - **Lack of consensus** - Union making laws on subjects in concurrent list without consulting states
 - Administrative: Misuse of 356 (used more than 100 times till now), AI Service, Deployment of paramilitary force (tussle b/w CAPF and police force),
 - Centrally sponsored schemes (Article 282) - formulated by centre and implemented by state (against coop F); These are sometimes overly prescriptive (input based) - they need to be output based to be more effective (CSS route being used to offset Schedule VII - as Union can give discretionary funds even for state subjects) - More than 131 such schemes
 - Tussle b/w CAPF and state police forces, similarly investigation agencies involved turf war (or Use of central agencies to attack state govts.)
 - Lack of proper consultation → States leaving the PM Fasal Yojana
 - Kerala govt appoints Vasuki as 'foreign secretary' in state
 - Resistance shown by GJ while transferring Asiatic lions to MP
 - Tamil Nadu passes Bill to take over Governor's power to appoint University V-Cs

- Even forums like **NITI Aayog Governing council** which promotes federalism are not attended, recently **10 CMs boycotted** these meetings
 - **Financial-** Centre position strong- horizontal imbalance (State-state), vertical imbalance (C-S)
 - Borrowing restriction to states (Centre permission for international loan, already owe to centre)
 - Leading to state bypassing article 293 eg: Kerela Infrastructure Fund (KIIFB) borrowing from abroad
 - Excessive use of cess and surcharges (using power of Article 271) **reduce divisible pool(despite being increased to 41%)**
 - States can only cover 38% of expense from own revenue in FY20, compared to 69% in 1956 (**overall states rely on CG for around 26-50% across states**)
 - Inherent bias of Finance Commission
 - GST issues- major state taxes subsumed, GST council- centre has effective veto, GST compensation issues, **Mohit Mineral Case** (recommendations made non-biding)
 - **Tied** nature of funds
 - Selective grants in aid- political issues due to diff party (2 types of grant in aids: as only Statutory grants by FC but other **Discretionary grants are by Finance Ministry**); *Generally **Discretionary Grants are greater than Statutory Grants***
 - Southern states contribute more to tax pool - thus a cross subsidy mechanism is created where south compensates for the north
 - Tamil Nadu and other states demand compensation from the Union govt over monetisation of land it brought when transferred to third party in case of privatised airports
 - Inter-state water disputes- Issues in constitutional mechanisms, structure, process inadequacy, current status (eg: Tussle between HY and Delhi over Yamuna waters); Mekedatu Water Project dispute between Karnataka and TN (over Cauvery waters)
 - Territorial disputes eg: Odisha vs AP; or KR vs MH over Belgavi
 - There has been an **emergence of selective federalism** ie harmonious federal relations with few selected areas
- **Reforms (read bold points reforms)**
 - Legislative reforms: (Sarkaria Commission)

- Other residuary powers (apart from taxation related) under concurrent list; **Consult states in matters of concurrent list before law made by Centre**
- **If president withhold state bills, reasons should be communicated**
- **Punchhi: Equality of seats to states in Rajya Sabha to make it truly federal institution**
- **States have constitutional provision under Article 32, 226 (writs of HC), 131 (SLP) to protect their rights**
- **15th FC said that the concurrent list, 7th Schedule (Article 246) and Article 282 (CSS) require an in depth holistic review**
- **Need to reform Schedule VII through the addition (disaster mgmt, emerging tech such as AI, consumer protection), removal (Relief and rehabilitation of persons during partition, Courts of Wards for the estates of rulers of Indian states) and appropriate placement (labour must be exclusively in state list as labour is heterogeneous, **overlapping entries wrt land in central list need to be removed, taking health to concurrent**) of entries**
- Administrative Reforms:
 - **Sarkaria: Consult states while deploying central armed forces**
 - **Punchhi Comm: Governor reforms: 5 yr term, detached from local politics**, Impeachment of governor by state assembly on lines of impeachment of president, SR Bommai case
 - **Punchhi: Make interstate council under 263 a powerful mechanism for resolving disputes** (same recommendation also by **NCRWC**)
- Financial Reforms: (Punchhi Commission)
 - **Involve state in finalisation of TOR of FC**
 - **Permanent Finance commission for effective C-S fiscal federalism**
 - Greater economic power to states so that they can collect taxes directly; For poorer states a transition period could be offered
- Important judgements
 - **SR Bommai**- misuse of 356 in arbitrary manners disturbs constitutional balance- although judiciary cannot enquire advice to president but on the basis of rational person doctrine can take decision
 - **Assembly should not be dissolved until approved** by Parliament (SC reinstated Arunachal P assembly)
 - **Proclamation of the imposition of Article 356 is subject to judicial review**
 - **States are not satellites of centre** but within the sphere allotted to them they are supreme

(2018) Political tussle b/w Lt. Governor and elected government of Delhi? Status? SC Judgement? 69th AA? (repeat question)

- New Bill passed in March, 2021
- Trick to remember: 69th AA → 6=2*3 → 23 in place of 6 in 69 makes 239AA - the article for Delhi 😊
 - **Changes made via new amendment:**
 - The term "government" referred to in any law shall **imply Lieutenant Governor** (LG; mind the spelling)
 - On certain matters, as specified by the LG, his opinion must be obtained before taking any executive action
 - **Rules can be made by LA** for its procedure and conduct of business **but** the rules must **not be inconsistent** with those in the **Lok Sabha**
 - **LG can now reserve** those Bills for the President which **'incidentally' cover** any of the matters outside the purview of LA (police, public order, land)
 - Prohibits LA from making rule to consider the matters of day-to-day administration or conduct an enquiry
 - Issues:
 - LG becomes 'default administering authority' of the NCT instead of the elected LA
 - **LG will be the 'government'** but the **same is not responsible** to the assembly/**people of Delhi**
 - Against **Co-operative Federalism**: as may lead to **centralization of power**
 - **Violation of the Supreme Court judgment, 2018** which said LG's concurrence is not required on all matters and is limited to 3 areas + LG cannot refer every matter to Prez + LG bound by CoM except for 3 areas
 - Act has been passed in **haste without being referred to the Select committee**
- SC judgement: The **court held that Parliament can legislate for Delhi** on **any matter** in the State List and the Concurrent List **but the executive power** in relation to Delhi except the 'Police', 'Land' and 'Public Orders' vests only in the state government headed by the Chief Minister
 - **Unresolved areas in SC decision**
 - Overlapping Areas: Though the court has settled that LG is bound to act on the aid and advice except in respect of 'Land', 'Public Order' and the 'Police'. However, Public Order is a very wide connotation, which subsequently leads to overlapping executive powers.

- Still No Clarity on Article 239AA (4): The court **did not very clearly** delineate the issues in respect **of which the LG can refer a decision** taken by the Council of Ministers to the President in the event of a difference of opinion between the LG and the State government.
 - **Open-Ended Terminologies:** In the event of referring any matter to the President, the **Court enunciated that LG must adhere to** the constitutional principles of **collaborative federalism, constitutional balance and the concept of constitutional governance**. However, these terms are very wide and open-ended and subject to different interpretations.
- **Way forward**
 - **Incorporating the Washington DC Model:** Indian Government can emulate the model of administrative sharing of power between the Federal Government of US and state of Washington.
 - Under that scheme, only the strategic areas and buildings are under the effective control of the federal government and the rest of the areas are under jurisdiction of Washington state
 - Given this, the institution of strategic importance like Parliament, Supreme Court etc. can remain under the jurisdiction of Union Government and areas other than these can be given statehood.
 - Harmonious Functioning: For the sake of adhering to the principle of representative democracy and cooperative federalism, it is required that both the constitutional offices (LG as President nominee and council of ministers as rep of people) should function in harmony within the Constitutional parameters

Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein

1. **Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss. (Cover recent bill); Analyze the major disputes with special reference to Southern states (repeat question)**
 - a. Inter state water dispute- most contentious as most rivers flow through two or more states and dispute arise wrt water use, hydro req etc
 - b. Current framework
 - i. **Entry 56 of Union List** empowers the **Union Government for the regulation and development of inter-state rivers** and river

valleys to the extent declared by Parliament to be expedient in the public interest

- ii. **Article 262:** Parliament can may by law provide for the adjudication of any dispute wrt Inter-state rivers and can debar SC or other courts from exercising their jurisdiction
 1. Inter-State River Water Disputes Act, 1956: Provides for Water Disputes Tribunal by CG on request of SG (and CG is satisfied that dispute cannot be settled by negotiations)
 2. River Boards act- to manage river so that disputes doesn't arise

Major Inter-State River Disputes	
River (s)	States
Ravi and Beas	Punjab, Haryana, Rajasthan
Narmada	Madhya Pradesh, Gujarat, Maharashtra, Rajasthan
Krishna	Maharashtra, Andhra Pradesh, Karnataka, Telangana
Vamsadhara	Andhra Pradesh & Odisha
Cauvery	Kerala, Karnataka, Tamil Nadu and Puducherry
Godavari	Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh, Odisha
Mahanadi	Chhattisgarh, Odisha
Mahadayi	Goa, Maharashtra, Karnataka
Periyar	Tamil Nadu, Kerala

2.

a. Positive Role: Resolution by Narmada Tribunal Awarded; Judgement equivalent to the verdict of the SC; Ensures rule of law; Power of civil courts

b. Issues in current framework (ISRWD Act 1956)

i. Structural Issues

1. Multiplicity of river water tribunals, in existence for years without any award (eg Ravi Beas tribunal existence for 30 yrs)
2. No river board constituted till now
3. Act debars judicial interventions but state used Article 136 to reach SC
4. Composition of the tribunal is not multidisciplinary
5. Inter-state river under Union list but topic of water under State List

ii. Process Issues

1. Delay in proceedings: The **Cauvery** Water Disputes Tribunal, **constituted in 1990**(formed 20 years after the dispute arise), gave its **final award in 2007**

2. Opacity in the institutional framework and guidelines that define these proceedings
 3. Role of CG and conflicts with state might lead to politics over water- which sabotages the dispute resolution
- c. Inter state river water disputes(amendment) Bill 2019 (for making DR more robust)
- i. **Formation of Disputes Resolution Committee** by Centre which will try to solve the dispute in 1yr + 6m term before going to tribunal
 - ii. **Single** Interstate RW Tribunal with **multiple benches** (rather than river wise bodies); Timeline 2+1 years, award final and binding
 1. All existing tribunals will be dissolved and cases transf to above
 2. **Memb will be appointed** by the central government on the recommendation of a **Selection Committee**, also **appoint water specialists** (not from state of dispute though)
 - iii. Data Bank: Under the Act, the central government maintains a data bank and information system at the national level for each river basin
- d. Analysis - likely to speed up the process, data bank will lead to continuous evaluation, however states like TN,Odisha concerns over more power to Centre which it can use for same party states benefit
- e. WF- **Use Inter state council instead of dispute**, Mihir Shah Report- Bring water into concurrent list (some water subjects in state and some in union list) and central water authority can be constituted to manage rivers, interlinking for adequate distribution of water (Ken betwa instead of disputes)

Extra Content

- Intro
 - F comes from latin“foedus’ meaning contract- i.e govt by contract
 - AV Dicey- F is political arrangement where units desire union without uniformity
 - Based on subsidiarity principle- sth can be done at individual level- govt should not do, local level- state should not do, state level- centre should not do
 - SC in SR Bommai case- Federalism basic structure of const.
 - Justice R. S. Sarkaria Commission 1983 stressed on cooperative federalism and noted that the federalism is more a functional arrangement for cooperative action than a static institutional concept. At the same time, it did not equate strong centre with centralization of

powers because *over-centralisation leads to blood pressure at the centre and anaemia at the periphery*

- Constitutional provisions
 - Legislative: (articles 245-255 Part XI)
 - 245: Extent of laws made by Parliament (whole of india as well as extra territorial) and state legislature (within the state)
 - 246: Division of power - Schedule VII
 - 5 cases where parliament can legislate on state list
 - 254: Covers what happens in case of Inconsistency b/w laws by both sides
 - Governor can reserve certain type of bills passed by states
 - Administrative: (articles 256-263 Part XI)
 - Executive powers wrt to concurrent list rests with the states
 - Mutal delegation of functions to each other (unlike legislative powers, delegation of executive powers is thus not rigid)
 - 261: Full faith and credit to public acts, records and judicial proceedings
 - 263: Provisions of Inter-state council
 - Financial (Fiscal F) (articles 268-293 Part XII)
 - Taxation by Centre (Union, concurrent list, residuary list); State list (state, concurrent list)
 - 280: Finance Commission
 - Inter-govt tax immunities
 - 293: Borrowing provision for centre and state
 - Other Articles:
 - Article 1, 2, 3 (covered below)
- Unitary (centralising tendencies) or cooperative F?
 - Quasi federal- strong union
 - Unitary features-
 - Legislative overrrding powers, more subjects in union list,RS 5 cases
 - Art 2 and 3- destructible states with simple majority,
 - Constitutional amemdment by Parliament
 - Emergency powers(president rule,National emergency)
 - All India services- recruited and trained by C as well as ultimate control over them
 - Integrated audit- By CAG of both centre and state accounts but appointment, removal by president
 - EC- appointed by President - conducts both centre and state elections
 - Governor- agent of centre, veto over state bills
 - Financial dominance- dependence on union grants
- Cooperative F- Features and Prospects? Drawbacks in CF ? *Moved to competitive from cooperative?*

- In Cooperative federalism the Centre and states share a horizontal relationship, where they cooperate in the larger public interest. (aka marble cake federalism)
 - Features: Division of powers; Written constitution; Bicameral govt at the centre;
 - Prospects: Write challenges in a +ve manner
 - Eg: Inter-state councils, Zonal Councils, Finance Commission
 - Ken-Betwa river link pact (Tripartite agreement between Center, Govt of UP and MP)
- In Competitive federalism States need to compete among themselves and also with the Centre for benefits.
 - Gained signif after 1991 reforms as both sides compete with each other to attract funds and investment
 - Niti Aayog- Competitive F a force multiplier to achieve features of cooperative federalism
 - Eg: Competing for better ranks in SDG Index, Nativist reservation policies in pvt sector pushed forth by Govt of Haryana and UP
- Conclusion:
 - Cooperative and competitive federalism are not mutually exclusive. They have the same basic principle underlying i.e. development of the nation as a whole. They are two sides of the same coin as the competition alone cannot give the best results, it is competition with cooperation that will drive the real change.
 - Requires a "Team India" approach to work for India's development
- *Assymmetric F?*
 - Meaning: F based on unequal powers and relationships in pol, admin and eco spaces
 - Evidences that show AF in India:
 - Population as a criteria rather than formal equality: No equality of state rep in RS and LS (UP-80 seats, Manipur- 1 seat)
 - Economic: Special category states with 90:10 sharing
 - Political: UTs are directly admin by centre; Difference in treatment of UTs some have legis and some do not; Even UTs having legis have differences Puducherry vs Delhi
 - Tribal: Greater autonomy to 5th/ 6th Schedule areas
 - Special provisions for states eg: Article 371 series
 - Why is AF needed?
 - It can help dampen secessionist conflicts
 - Bring Inclusive growth by focusing on weaker states
 - Cultural practices can be preserved
 - Administrative dividends can be harnessed by smaller areas represented as UTs
 - Issues:


- Discriminatory towards other units
 - Used to serve vested political interests
 - Cascading claim by other units eg: in North east most states wont 6th schedule status
 - Difficult to roll back provisions eg: Article 370
 - WF: Transparent and rule based AF can ensure unity in diversity - hence needs to be protected
- Contested areas (confrontational F)
 - Constitutional
 - Legislative- Union list more subjects, concurrent overshadow state list (farm acts), residuary to centre, power of governor to reserve bill, exceptional 5 cases where RS can authorise law on state subject
 - (state- RS not federal in true sense, int agreements covers almost everything, gov arbitrarily reserve bill)
 - Governor not following constitutional duties
 - Centre alleged transgressing into state territory eg: APMC Acts
 - Administrative- Misuse of 356 (used more than 100 times till now), AI Service, Deployment of paramilitary force
 - Centrally sponsored schemes - formulated by centre and implemented by state (against coop F); These are sometimes overly prescriptive (input based) - they need to be output based to be more effective
 - Tussle b/w CAPF and state police forces, similarly investigation agencies involved turf war (or Use of central agencies to attack state govts.)
 - Lack of proper consultation → States leaving the PM Fasal Yojana
 - Territorial disputes eg: Odisha vs AP; or KR vs MH over Belgav
 - Financial- Centre position strong- horizontal imbalance (State-state), vertical imbalance (C-S)
 - Borrowing restriction to states (Centre permission for international loan, already owe to centre)
 - Leading to state bypassing article 293 eg: Kerala Infrastructure Fund (KIIFB) borrowing from abroad (CAG marked it to be)
 - Selective grants in aid- political issues due to diff party
 - GST issues- major state taxes subsumed, GST council- centre has effective veto, GST compensation issues
 - Inter-state water disputes- Issues in constitutional mechanisms, structure, process inadequacy, current status

- Extra constitutional issues
 - Planning issues - top down planning, Issues with NITI Aayog
 - *Not constitutional law but political factors determine C-S relations?*
 - Political- Differences in ruling party at centre and state or difference in ideologies
 - Regionalism → Demand for independent states eg: Greater Nagalim
 - Zonal councils formed through Act of Parliament
 - Non-state actors: Issues of tamils in SL; Demand for J&K by Pakistan; Arunachal P seen as China
- Mechanisms for resolving C-S disputes
 - eg issues in Interstate council(recom by Sarkaria - use ISC when decisions/bills affects interests of the states), other mechanism
 - Interstate council
 - Zonal council
 - Interstate water tribunal
 - GST council
 - Issues in efficacy of Mechanisms and reforms needed
 - No effective use of Interstate councils
 - Centre dominance in GST council
 - Issues of water tribunal given below
 - SC used two mechanisms:
 - The Doctrine of Pith and Substance says that the constitutionality of legislation is upheld if it is largely covered by one list and touches upon the other list only incidentally.
 - The Doctrine of Colourable Legislation states the fact that what cannot be done directly, cannot also be done indirectly
- Reforms
 - 1st ARC 1966- Appointment of persons having long experience in public life and nonpartisan attitude as governor
 - Sarkaria C (1983)
 - Overcentralisation leads to blood pressure at centre and anaemia at periphery
 - Also cant curtail necessary powers of centre(as rec by RajamannarC, West bengal memorandum)
 - Other residuary powers(apart from taxation related) under concurrent list
 - Art 365 use only sparingly
 - Consult states while deploying central armed forces
 - Prescribe in constitution- consulting CM for governor appointment
 - Governor term of 5 years should not be disturbed except some compelling reason
 - If president withhold state bills, reasons should be communicated

- Punchhi Commission (2007)
 - Cooperative F key for sustaining India;s unity,integrity and socio-eco development
 - Need for broad agreement btw centre and states before introducing legislation on concurrent list(eg farm acts)
 - Period of 6 months for state legislature to act on bill when returned by President can be made applicable for president too for assenting/withholding assent on state bill, same with governor- decide on assent or reserve for president within 6 months
 - Governor- should be from outside the state, detached from local politics, removal should not be a sweet will of centre
 - Impeachment of governor by state assembly on lines of impeachment of president
 - Art 163- Governor descretion apart from aid and advice of council of ministers should not be arbitrary
 - Concept of local emergency to contain law and order issue and not full state emergency (for art 355)
 - Make interstate council under 263 a powerful mechanism for resoving disputes
 - Equality of seats to states in Rajya sabha to make it truely federal institution
 - Involve state in finalisation of TOR of FC
 - Permanent Finance commision for effective C-S fiscal federalism
- Need to reform Schedule VII through the addition (disaster mgmt, emerging tech such as AI, consumer protection), removal (Relief and rehabilitation of persons during partition, Courts of Wards for the estates of rulers of Indian states) and appropriate placement (labour must be exclusively in state list as labour is heterogeneous, overlapping entries wrt land in central list need to be removed) of entries
- Important judgements
 - SR Bommai- misuse of 356 in arbitrary manners disturbs constitutional balance- although judiciary cannot enquire advice to president but on the basis of rational persoan doctrine can take decision
 - Assembly should not be dissolved untill approved by Parliament (SC reinstated Arunachal P assembly)
 - Proclamation of the imposition of Article 356 is subject to judicial review
 - States are not sattelites of centre, within the sphere allotted to them they are supreme
- Way Fwd
 - A diverse and large country like India requires a proper balance between autonomy of state and ensuring national integration

- Leveraging the true potential of our multi-level federal system represents the best way fed towards developing ----- (use it according to demand of question)

Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**

- **Parliamentary powers** (Ch&Bal over Exec, Debating Fourm, Electoral fx-elect Prez/VP, Financial power, Judicial Fx, Legislative → **CDEF**)
- **Key Issues:** RS (Rehab chamber, 10 states=70% seats, 'domicile' removed, use of fin bill route), Passing of Bills(fin bill route, lack of debate due to voice vote route eg: EWS reserv passed on same day; Ordinance route; 76% budget approved w/o discussion), Role of chairperson (seen to be biased; Absence of deputy speaker in 17th LS), Parliament (meets 70 days in a year from 120 in 1950, Cabinet dominates indiv member), Committees (25% in 16thLS from 60-70%-PRS data), MPs (Pvt members bill majorly undiscussed, Absent, Unruly, lack capacity/R&D), State legislature (59% on same day, no committee unlike Parl)
- **Key Solutions:** (read all)
 - Rajya Sabha Reforms: Appointments Commission like in UK (for nomination of members); V.Naidu: Direct election
 - **Indian Legislative Service (Article 312)** can be brought to provide parliament with technical and human resource competency in line with that of executive. Through effective scrutiny of executive would be possible. **A strong Parliament means a more answerable/accountable executive**
 - Revival of Parliamentary Forums which act as platforms for MPs to discuss critical issues with experts/nodal officers. This sensitises them about ground situation and equip them to debate better in parliament or parliamentary committees (not formed in 16th, 17th LS)
 - Utilisation of Consultative Committees (non-parl committee) which provide a forum for informal discussion b/w ministers and MPs on policies and prog of the govt
 - Dinesh Goswami Committee on electoral reforms (1990) suggests that the issue of disqualification/defection should be decided by the President/Governor on the advice of the Election Commission

- The NCRWC 2002 suggested that defectors should be barred from holding public office in future
- NCWRC recommended that privileges should be defined and delimited eg: as done by Australia in 1987
 - Trial for Priveleges must be conducted by independent and impartial tribunal (rather than presiding officer)
- R&D support to members on lines of US's congressional research service; Shift from voice vote to division of votes using vote recorders
- Periodic Review: According to NCRWC, DRSCs should be periodically reviewed so that the parl committees which have outlived their utility can be replaced with new ones
- Enforcing a code of conduct and code of ethics for members of the house
- Doctrine of Neutrality can be quoted in context of various official functionaries such as Governor, CAG, ECI, Speaker (UK Model-Speaker permanent even if govt changes)

1. Structure

a. **Parliamentary vs Presidential form of government; Pros and Cons (repeat question)**

- i. Parliamentary system vs Presidential system: India already had some experience of running the parliamentary system under the Acts of 1919 and 1935
 1. India already had some experience of running the parliamentary system under the Acts of 1919 and 1935. This experience had shown that in the parliamentary system, the executive can be effectively controlled by the representatives of the people.
- ii. BR Ambedkar- Democratic executive must satisfy two conditions: stability (more in USA) and responsibility (more in Britain)- India preference for more responsibility due to nature of Indian society

b. **What is meant by the sovereignty of the parliament? Consider whether the Indian parliament is a sovereign body? - Write in brief as it an old question**

- i. Parliamentary sovereignty means **supremacy of the legislative body over all other government institutions including executive and judicial bodies**
- ii. Sovereign legislature may change or repeal any previous legislation and is not bound by any written law like constitution- eg British Parliament- no legal restriction on its authority and jurisdiction(De Lolme- BP can do everything except make woman a man and a man a woman), no system of judicial review of constitutionality of British Parl laws by judiciary
- iii. In India there is no parliament sovereignty rather there is constitutional sovereignty.

iv. Check to Indian parliamentary sovereignty by various provisions of constitution:(this dimension can be opened in the answer, just remember that)

1. Written Constitution: In India Constitution is written which put limitations on all organs of the state(limited power to amend). In UK, as there is no written constitution, the Parliament possesses legislative sovereignty.
2. Independent judiciary and Judicial review: It can declare any law or ordinance passed by the legislature void, if any of its provisions violate one or more of the constitutional provisions.(NJAC)
3. Federal structure/Division of powers: Schedule 7 divide law making power between centre and state. Parliament cannot make laws on state list. Any law in state subject would require state's consent through majority.
4. Limited amendment power: cannot amend the 'basic features of the constitution'. Further some amendments need special majority and states' legislature resolution.
5. Limit by Presidential vetoes: A bill cannot become law without presidential assent. President can practice various veto powers like pocket veto that act as limitation on parliament sovereignty.
6. Bar on discussion of conduct of judges: Article 121 and 211 of Indian Constitution states that no discussion shall take place in the Legislature of a state or in the Parliament with respect to the conduct of any judge of the Supreme Court or of the High court in the discharge of his duties.

v. Thus Constitution being sovereign has balanced powers of parliament through sufficient checks and balance, needed to ensure democracy. It is successful in striving a balance between legislative, executive and judicial body.

c. **Explain the relevance of Rajya Sabha as a second chamber in the federal set up of Indian Parliamentary System (100 years of RS in 2019) Role in today's changing political scenario? (repeat question)**

i. Rajya Sabha' or the 'Council of States' is the second chamber of the Indian parliament, **which traces its origin to Montagu-Chelmsford Reforms, 1919**

1. Key Features: It play role of **permanent house** (it never dissolves like Lok sabha), **revisionary house** (reconsidering bills passed by the Lok Sabha) and offers a degree of continuity in the underlying policies or laws passed by parliament, and also institutionalising the federal principle of Indian democracy.

- ii. Constituent Assembly Debates Regarding Rajya Sabha - show that role and relevance of RS have been a matter of debate
1. Against the Rajya Sabha: The section opposed to the idea of Rajya Sabha held that it was not essential and opinionated that such a chamber can prove to be a "clog in the wheel of progress" of the nation, by delaying the legislative process.
 2. In favour of Rajya Sabha: Proponents of the Rajya Sabha held that it would lend a voice to the states in the legislative scheme of things and check the legislation passed in haste

iii. Importance of Rajya Sabha

1. **Safety Valve of India's Federal Polity:** Bicameralism is necessary for a federal constitution to give representation to the units of the federation, it acts as a safety valve within the legislature itself, easing federal tensions.
 2. **Review and Revaluation Role:** Act as a re-visionary house to keep a check on the hasty legislation that could be passed by the lower house under populist pressures, also can check authoritarianism in case ruling dispensation has brute majority in lower house.
 3. **A Deliberative Body:** Role of the Upper House is to be a deliberative body besides balancing the "fickleness and passion" of the Lok Sabha
 4. **Representing the Vulnerable Sections:** Women, religious, ethnic and linguistic minority groups are not adequately represented in the Lok Sabha (due to first past the post-election system).
 - a. An indirect form of election (through propositional representation) to the Rajya Sabha, therefore, would give them a chance to get involved in the nation's law-making process.
 5. **Special Powers of Rajya Sabha:** Power to transfer a subject from the State List to Union List for a specified period (Article 249); To create additional All-India Services (Article 312); To endorse Emergency under Article 352 for a limited period when the Lok Sabha remains dissolved.
- d. **2020- Rajyasabha has been transformed from a 'useless Stepney tire' to the most useful supportive organ in past few decades. Highlight the factors as well as areas in which this transformation could be visible. (Answer in 250 words)**
- i. Why useless stepeny tire- One party dominant system- congress era- most state govt too congress so LS more powerful.

- ii. Initial decade saw the upper chamber predominantly seen as a **rehabilitatory chamber** for politicians. It did not perform much other than a dilatory role most of the times.
- iii. **Areas where change is visible:**
 1. Law making: Majority in Rajya Sabha became important for parties in power to ensure passage of laws in recent times.
 2. Deliberation: The **discussion on bills like Triple Talaq bill and Citizen Bill as reflective of society's reaction was **only possible due to RS** as it easily passed in LS.**
 3. Fixing accountability and addressing the challenge of majoritarianism: Balance of power in Rajya Sabha is such that no party in power can have its way easily due to rising say of regional parties in Rajyasabha (Ex- Big regional players like AIADMK, AITMC, BJD etc. have become significant player)
 4. Expert nomination has given it an upper hand in having quality membership. Ex- Manmohan Singh, Arun Jaitley and others are being brought in to effectively represent parties position.
 5. Productivity: Except few instances the Rajyasabha has consistently seen longer hours of discussion for law making.
 6. Rajya Sabha elections becoming visible and event of significance now
- iv. **Factors for change:**
 1. One party dominance giving way to coalitions: This has made role of smaller regional players important in Parliament with government almost always needing support of some regional parties in Rajya Sabha.
 2. Prominent members contributing to its dignity: From Indira Gandhi to Manmohan Singh to Arun Jaitley to Ghulam Nabi Azad has raise the dignity and quality of Rajya Sabha debates
 3. Increased role of Opposition: Initial years post-independence saw either poor presence of opposition or absence. But, today situation is different and opposition sees Rajya Sabha as an effective place to put across their views and fix accountability of the government
- v. Thus, Rajya Sabha in recent times has seen qualitative change. Though few issues like walkout, unruly behaviour or low productivity have also accompanied it and needs major disciplinary role of chairperson.

2. Functioning

- a. **How does Parliament control the Union Executive? How effective is its control? (repeat repeat question)**

- i. **Legislative Control:** While enacting any law in Parliament, the Government needs to explain its all provisions and answer questions asked by the MPs. Thus, it does not allow the executive to enact any arbitrary acts.
 - ii. **Financial Control:** The Government is required to pass budget and financial bill in both the Houses. Parliament does not allow the Government to expense unnecessarily. The Government cannot withdraw any amount of money from the consolidated fund without Parliamentary authority.
 - iii. **Collective and Individual Responsibility:** The whole council of ministers is answerable to Lok Sabha for any step taken by any of the minister. Even the minister is answerable individually to the Lok Sabha for steps taken by his ministry. If Lok Sabha does not approve the act of the minister. The whole cabinet has to resign, because of collective responsibility.
 - iv. **Electoral Control:** Appointment of Prez & VP; Prez is the head of executive
 - v. **Representative Control:** MPs represent different sections of people. They ask questions to the executives as representatives and thus they save the interest of their people through representation.
- b. **Tools for Parliamentary control**
- i. **Question hour**
 - ii. **Annual Financial Statement (112)**
 - iii. **Parliamentary Committees-** Public account, Estimates, Public undertaking
 - iv. **Motions (Cut, Economy), Resolutions; Debates and Discussions**
 1. Calling Attention Motion, Adjournment motion
 2. Policy cut, Economy cut
 3. No confidence motion
- c. Limitation of Parliamentary control (Refer [Problems in parliamentary functioning](#)); Also think of how other organs are taking role of Legislature
Eg: Exec-subordinate legis, ordinance; Judiciary using JA route
- d. **Individual parliamentarian's role as the national law maker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss (repeat question 2019, 2013) How far can this be attributed to the anti-defection law which was legislated but with a different intention?**
- i. Reasons for decline:
 1. Quality of elected Individual Parliamentarians is on a decline (quote data on criminal record of members-as Quality of the elected Individual Parliamentarians also affect the quality of debate)

2. Near impossible for private members to introduce private member's Bill due to majority of ruling party
 - a. From 2014-2018 about 900 private member Bills were introduced in the Parliament **but not even 2%** of these bills were discussed
 3. Resortment to ordinance making which bypasses the formal route of debate and discussions
 4. Anti defection law discourages any deviation from the party decision which otherwise could have opened diverse perspectives
 5. Decisions are taken at by the cabinet and does not even involve all members of the ruling party
 6. Other reasons: Absenteeism, Politicization of role of speaker; other parliamentary issues discussed above
- e. **Anti-Defection Law: Features, factor responsible for growth of defections, analysis, reforms needed (repeat question)**
- i. For a very long time, the Indian political system was impacted by political defections by members of the legislature (Aaya ram gaya ram politics) This situation brought about greater instability and chaos in the political system.
 1. The problem became severe after the 1967 elections - more than 100 defections took place in 3 years
 2. Thus, in 1985, to curb the evil of political defections, the **52nd Constitution Amendment Act on anti-defection was passed and the 10th Schedule** was added in the Indian Constitution.
 3. Supreme court in 1992 (Kihoto Hollohan) held that the anti defection law does not violate any rights of the basic structure of parliamentary democracy. (under this case law, the act was challenged as it violates freedom of speech, freedom of conscience and right to dissent)
 - ii. **Grounds of disqualification**
 1. When the elected member voluntarily gives up his membership of a political party
 2. If he votes or abstains from voting in such house contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission.
 3. Independent members would be disqualified if they joined a political party.
 4. Nominated members who were not members of a party could choose to join a party within six months. After that period, they were treated as a party member or independent member.

5. The Schedule provides for two exceptions to defection i.e. if prior permission has been taken from the party whip or if the action of the member is condoned by the party.
- iii. **Positives (Kihoto Hollohan judgement - members must abide party ideology, if they wish to step away then take fresh mandate from people - hence justifying 10th sch); Terms to use: Floor crossing; Engineered defections; Aim: Prevent Aya ram Gaya ram politics;**
- iv. **Issues with AD as a concept and the current AD law -** Breaking of the accountability chain-rather than accountable to people—to be the agent of the party; no mention of time frame for Speaker SC said 3m; Loophole of resignation; Provision not limited to confidence motions/money bills; Undermines role of indiv parliamentarian; Constitution framers chose parliamentary system over presidential system due to accountability feature but this bill weakens the accountability mechanism; Voters have seen it as routine exercise rather than an evil practise (19 out of 22 defectors re-elected in MP) thus corruption and defection do not matter much to people; **Loopholes** (when expelled from house one is not disqualified)
- v. Way forward
1. Dinesh Goswami Committee on electoral reforms (1990) suggests that the issue of disqualification should be decided by the President/Governor on the advice of the Election Commission.
 - a. Supreme court- Permanent Tribunal to decide on disqualification instead of speaker
 2. The NCRWC 2002 suggested that defectors should be barred from holding public office in future.
 3. Need to define the entire procedure clearly and set definite time limits for each step of the process, ensuring transparency.
 4. The onus is also on the parties to strengthen their internal system eg: where members can rise higher in the party based on their competence
- vi. Defections are blot on our democracy. They reduce the trust of people in our parliamentary system. Defections bring a culture of corruption, instability, etc. They needs to be nipped in the bud.
- vii. **Conclusion: As defections continue unabated and Speakers refrain from acting on these developments based on their political loyalties, there is a strong case to reform the above law**
- f. **Methods by which Parliament controls public expenditure in India**

- i. Issues in effective financial control - technical nature of demand for grants, post mortem works by PAC/Estimates committee, increased guillotine use, delegated legislation

3. Conduct of business

- a. **2020- 'Once a Speaker, Always a speaker'! Do you think this practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implication for the robust functioning of parliamentary business in India? (150 words)**

- i. India's first Prime Minister Pt. Jawahar Lal Nehru had said that in a parliamentary democracy, the Speaker represents the dignity and the freedom of the House and because the House represents the country, the speaker in a way becomes the symbol of the country's freedom and liberty.
- ii. The office of the Speaker is a Constitutional Office. (Art 93-97) The Speaker is guided by the constitutional provisions and the Rules of Procedure and Conduct of Business in Lok Sabha.
- iii. **Range of functions of the Speaker:** Under 10th Sch; Ultimate interpreter and arbiter in the house; Uses **casting vote** to resolve deadlock; Representative of the house
- iv. Issue of alleged bias (will be removed in case of once a speaker always a speaker)
 1. Allegations of bias by the Speaker: On several occasions, the Speaker's role has been questioned on the allegation of bias eg: Money bill, not allowing other members to speak on sensitive issues
 - a. The Supreme Court has observed in Jagjit Singh versus State of Haryana- Instances of Speaker impartiality on issues decided on his capacity as a Tribunal." (10th schedule)
 - b. Money Bill issue as sole authority determining it
 - c. Not allowing other members to speak in case of sensitive issues
 2. **Structural issues:** There are structural issues regarding the manner of appointment of the Speaker and her tenure in office
 3. Offering future rewards for performance as a Speaker has made the position a stepping stone for political ambition
Speaker rulings
- v. **Way forward**
 1. Revamp the structure: What is required is not merely incidental changes in the powers of the Speaker; rather a major revamp in the structure of the office itself is necessary.


2. **Replicating the UK model:** Once elected, the Speaker gives up all-partisan affiliation, as in other Parliaments of British tradition, but remains in office until retirement, even though the majority may change. (Once a speaker always a speaker)
3. In Ireland, parliamentary systems close to ours, the position of Speaker is given to someone who has built up credibility by relinquishing his or her political ambitions.

vi. Conclusion

1. Impartiality, fairness and autonomy in decision-making, Doctrine of Neutrality should be the hallmark of a this institution of speaker.

vii. General Note on Doctrine of Neutrality

1. Meaning: About being third and not getting involved in conflict
2. Can be quoted in context of various official functionaries such as Governor, CAG, ECI, Speaker
3. Lead to: Write on advantage for each of the above functionary eg: Uphold federalism when talking abt governor; True and fair financial health in case of CAG; Similarly fair election process
 - a. Other general advantages: Uphold constitutional trust; Ensure political fairness

b.  **Parliamentary committees: Are they useful? Role of Estimate Committee? Public Accounts Committee? (repeat repeat repeat question)**

- i. Genesis-Constitutional Provisions: Parliamentary committees draw their authority from Article 105 (on privileges of Parliament members) and Article 118 (on Parliament's authority to make rules for regulating its procedure and conduct of business).

ii. **Quote** - *Congress in session is Congress at Display and Congress at committee is Congress at work - Imp of Parl committee*

iii. Types:

1. Most committees are '**standing**' as their existence is uninterrupted and usually reconstituted on an **annual basis**;
2. Some are **Adhoc** such as '**select**' committees formed for a **specific purpose**, for instance, to deliberate on a particular bill (Article 105)
3. **Standing PCs includes:** Finance Committees (PAC, EC, Committee on PU); **24** DRSCs (memb 31); Committee to Inquire (eg on Priveleges, Ethics C); Committee to Day to Day Business (BAC, Rules Committee); House Keeping Committees

4. **Ad-hoc Committees:** cease to exist on completion of the task assigned to them eg: Select and Joint Committees on Bills
 - a. Under Rules of RS Rules and Procedure MP can call for formation of select committee (Minister-in charge is generally a memb, take oral evidence, investigate in detail, ask govt officials to explain intent, form sub-committees)
 - iv. Allocation of Business: The chair uses her discretion to refer a matter to a parliamentary committee but this is usually done in consultation with leaders of parties in the House.
- c. Significance of PC System (**write based on various types of PCs**)
 - i. **Inter-Ministerial Coordination:** They are assigned the task of **looking into the demands for grants** of the ministries/departments concerned, to examine Bills pertaining to them, to consider their annual reports, and to look into their long-term plans and report to Parliament (work of DRSC)
 - ii. **Instrument For Detailed Scrutiny:** solicits expert advice and elicit public opinion, Bills that are referred to committees are returned to the House with significant value addition. eg: Their suggestions made laws such IBC, Motor Vehicle act much more effective
 - iii. **Acting As Mini-Parliament:** These Committees are smaller units of MPs from both Houses, across political parties and they function throughout the year. + non bound by whip + informal nature of discussion
 1. Also, Parliamentary committees are not bound by the populist demands that generally act as hindrance in working of parliament.
 2. As committee meetings are 'closed door' and members are not bound by party whips, the parliamentary committee work on the ethos of debate and discussions. (free from fear of anti-defection)
 3. Moreover, they work away from the public glare, remain informal compared to the codes that govern parliamentary proceedings, and are great training schools for new and young members of the House.
 - iv. Build cross party consensus; Allow MPs to engage with experts; Resolve conflicting interests; Eg: The success of GST can be attributed to long discussions without which it would have failed Ensure to keep Executive accountable: By arranging hearing on reports submitted by CAG; eg: Based on Conservation of Coastal ecosystem report submitted by CAG → the standing committee can pull Env Ministry to explain the omissions pointed out by CAG

- d. A Gradual Marginalisation
- i. Decline in Matters Referred: According to data by PRS Legislative Research, while 60% of the Bills in the 14th Lok Sabha and 71% in the 15th Lok Sabha were referred to DRSCs concerned, this proportion came down to 25% in the 16th Lok Sabha. Apart from the DRSCs, there are negligible bills referred to Select Committees of the Houses or Joint Parliamentary Committees
 1. Apart from the DRSCs, there are negligible bills referred to Select Committees of the Houses or Joint Parliamentary Committees.
 2. The last Bill referred to a Joint Parliamentary Committee was The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, in 2015.
 - ii. Neglected in The Matters of Great Public Importance: such as farm bills, labour codes
 - iii. Other Shortcomings: Other issues affecting the functioning of the committees are low attendance of MPs at meetings; Constitution of DRSCs for a year leaves very little time for specialisations; No own research staff; Reports not discussed
- e. **Way Forward: Need a New C: Standing Committee on National Economy, Matters on which conflict b/w committee and government that report must be mandatorily discussed; Be open to Press like in USA; NCRWC (periodic review, longer tenure, research staff)**
- i. Periodic Review: According to NCRWC, DRSCs should be periodically reviewed so that the parl committees which have outlived their utility can be replaced with new ones
 1. NCWRC also recommended for longer tenure of members, adequate research staff
 - ii. Setting Up New Committees: Given the increasing complexity in matters of economy and technological advancement there is a need for setting up new parliamentary committees. For example:
 1. Standing Committee on National Economy to provide analysis of the national economy with resources for advisory expertise, data gathering and research facilities.
 2. Standing Constitution Committee to scrutinise Constitutional Amendment Bills before they are introduced in Parliament
 - iii. **Mandatory Discussion: Major reports** of all Committees should be discussed in Parliament especially in cases where there is disagreement between a Committee and the government.

1. The recommendations of the PACs should be accorded greater weight and they must be treated as the "conscience-keepers of the nation in financial matters".
- iv. Parliamentary committee meetings should become **more open to press similar to USA** to increase accountability and transparency
- f. Conclusion
 - i. Parliament deliberates on matters that are complex, and therefore needs technical expertise to understand such matters better. There is a need to strengthen the parliamentary committees rather than bypassing them for the betterment of the parliamentary democracy.
4. **Estimates Committee** - aka Continuous Economy Committee, Suggest economies in expenditure, 30 members, suggest alternate policies, brings into of parl the ineffectiveness of the policy; cannot enforce decision, Advisory role, Post facto
 - a. Estimates Committee comprises of 30 members solely from Lok Sabha; aka Continuous Economy Committee
 - b. Its main agenda is to examine the estimates included in the budget and suggest economies in public expenditure
 - c. It suggests alternative policies in order to bring about the efficiency and economy in administration.
 - d. It brings to the notice of the Parliament, the ineffectiveness of the policy and the need for changes in policy.
 - e. Challenges:
 - i. The committee can only examine the budget after it is voted upon and not before that
 - ii. All the recommendations made by the committee are advisory in nature and stand non-binding for the parliament
 - iii. In a year, the committee does not examine the all budgets of all the ministries/departments. It chooses a few departments whose budget it wants to examine. Therefore, budget estimates of all the ministries/departments are examined over a period of years and not in one year.
 - iv. Nowhere the power to question the policies of the Parliament has been conferred upon the committee (cannot enforce decisions)
 - f. Way Fwd: Quote general way fwds as suggested by NCRWC
5. **Public Accounts Committee** 🔥 100 years 🔥: 15-LS, RS-7 (**22 member and 100 yrs in 2022**) Examine 3 reports of CAG (AR on appropriation, AR on finance a/c and AR on public undertaking), **Ch=opposition**, watchdog of public purse; not only from legal and formal point but propriety/prudence; Whether appropriation (Legal, Sanctioned by competent authority, Rules followed); No power to disallow expenses; WF: Better r'ship with CAG (consult PAC for CAG

appointment); Atleast 2.5 hr per session for PAC recomm discussion in Parliament; Make PAC recommendation binding

- a. Public Accounts Committee (PAC) (15-LS, RS-7) is a financial committee constituted every year to examine the annual audit reports of submitted by CAG and reports its finding to the parliament. Chairman from Opposition (unlike Estimate which has from Ruling party)
- b. PAC acts as the watchdog of the public purse by examining the audit report on appropriation account and finance account.
 - i. Examining the demand for excess grants before they are presented to the Parliament for regularisation.
 - ii. **3 Audit Reports submitted by CAG**
 1. AR on appropriations a/c
 2. AR on finance a/c
 3. AR on public undertaking (except those allotted to Comm on public undertakings)
- c. It scrutinise the appropriation account to verify:
 - i. If the funds were legally available.
 - ii. If a competent authority sanctioned it's use.
 - iii. If the rules laid by procedure were followed.
- d. It further establishes the accountability of the government by examining reports of Comptroller and Auditor General (under article 151) on the execution of the projects and programmes by the various ministries.
- e. The committee examines public expenditure not only from legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses.
- f. **Some issues and challenges:**
 - i. Even if it brings out the irregularities in the public expenditure there are no mechanisms to enforce the corrective measures.
 - ii. It examines the expenditure which has already been done by the government.
 - iii. Its recommendations are only advisory in nature and are not binding on the ministry of the day.
 - iv. It is not vested with the power of disallowance of expenditures by the departments
- g. **Conclusion-** PAC through its criticism of the inefficient public expenditure of the government, creates a strong public opinion against the government. The incumbent government to remain in power tries to rectify the inefficiency in its public expenditure and policy making. Thus the committee helps in enforcing accountability of the executive to the people.

6. ✨ **What are the grounds of disqualification of a Member of Parliament from either House? Quote relevant provisions in your answer (repeat question)**

- a. **Three Things 102 (1;** Prez on recomb of ECI eg: Office of pt, Unsound, Undischarged insolvent, not a citizen of india, etc), **102(2;** covers defection + decision by Presiding officer), **RRA'51** (prez on recomb of ECI; guilty by court > 2yrs, failed to lodge election expense, dismissed from govt service, preaching social crime)

7. **Powers & Privileges**

- a. ★ **2024: SC** overturned a 25-year-old majority opinion in the P V Narasimha Rao v State (CBI/Sp) Case, 1998 also known as the **JMM (Jharkhand Mukti Morcha) bribery case**. The SC stated that the **bribery is not protected by parliamentary privileges** under 105/194 as its **unrelated to the core duties of lawmakers**. The previous ruling had stated that lawmakers who accepted bribes could not be prosecuted for corruption if they vote after it
- b. **Discuss the powers, privileges and immunities of the Indian Parliament**
- i. Parliamentary privileges are certain rights and immunities enjoyed by members of Parliament, individually and collectively, so that they can "effectively discharge their functions"; Multiple source: Article 105, judicial rulings, conventions
 - ii. Justice DY Chandrachud in Kerela Assembly Case said - Legislators cannot unleash violence, run riot in Parliament or a Legislative Assembly and then claim parliamentary privilege and immunity from criminal prosecution
 1. According to the Constitution, the powers, privileges and immunities of Parliament and MP's are to be defined by Parliament. No law has so far been enacted in this respect.
 2. Current Affairs:
 3. 5 Sources:
 - a. Constitution: Article 105 for Parliament and 194 for State Legislatures
 - b. Rules of LS and RS
 - c. Parliamentary conventions
 - d. Judicial interpretations
 - e. Various laws of both houses
 - iii. Privileges of Parliamentarian (individually): No arrest during session 40 days before/after (only civil not criminal), Exempted from jury service when house in session; Freedom of Speech & Expression

1. No arrest during session and 40 days before and 40 days after the session (only in civil cases and not in criminal cases)
 2. Exempted from jury service when the house is in session
- iv. Privileges of Parliament (collectively): Secret meeting, Parli regulate own proceeding, Bar on court to inquire into proceeding of house Article 122; Publish true report of house
1. Exclude strangers from proceedings. Hold a secret sitting of the legislature
 2. Freedom of press to publish true reports of Parliamentary proceedings (except in case of secret sittings)
 3. Only Parliament can make rules to regulate its own proceedings
 4. There is a bar on court from making inquiry into proceedings of the house (speeches, votes etc.)
- v. Process and punishment: Role played by Privelege Committee (to examine cases of breach), Can ensure attendance, Warning, can be sent to prison
1. Role of Privelege Committee: examines the cases of breach of the privileges of the House and its members and recommends appropriate action. 15 memb in LS and 10 in case of RS
 2. The house can ensure attendance of the offending person. The person can be given a warning and let go or be sent to prison as the case may be
- vi. Parliamentary Priveleges Issues: Breach of constitutionalism (legislators decide their priveleges), Unruly behavior by Kerela Leg Assembly, Concept borrowed from UK but parliament is not supreme in India; Can supersede FR of citizens (as held under Search Light Case 1958); Courts are barred to enquire; Misused (WB Speaker allowed MLAs to stay on premise to avoid arrest); MPs enjoy certain exemptions from security checks at airports and other public places which has been misued sometimes
1. Breach of constitutionalism (opposite of constitutionalism is despotism): legislators decide what their privileges are, what constitutes their breach, and what punishment
 2. Used arbitrally against journalists & scribes eg: Karnataka Assembly imposing fines and imprisonment on two journalists
 3. Discourages genuine criticism of members of the house

4. The U.S. House of Representatives has been working smoothly without any penal powers for well over two centuries
 5. Misused eg: Speaker in WB gave temporary permission to two communist MLAs to remain on the Assembly premises in order to avoid arrest
 6. Privileges used as a shield for unruly behaviour (Kerala Leg Assembly ruckus in 2015)
 7. 40 days before and after session along with meeting time amounts to protection of close to a year
 8. Concept borrowed from british house of commons w/o considering that we do not have parliamentary supremacy like britain
 9. Sovereign people have restricted free speech whereas representatives have absolute freedom of speech in the house. This also brings court and parliament at loggerhead as the former protects indiv rights of citizens and later its priveleges
- vii. Way Fwd: Need for codification of priveleges eg: as done by Australia in 1987; NCWRC recommended that privileges should be defined and delimited
1. Trial must be conducted by independent and impartial tribunal (rather than presiding officer)
 2. Need to strike right balance between FR of the citizens and priveleges of lesiglature
- c. **Parliamentary Priveleges (Article 105)? Reasons for absence of its legal codification? How to address the problem? How is breach of Parliament Privilege different from Contempt of the House?**
- i. Reasons why not codified: Bring them under judiciary; Difficult to codify lead to rigidity; Diff to evolve new privelegs; Harm the rights of parl/members; Why needed though - Clarity and Precision; Accountability; Checks and Balances;
 - ii. Need Periodic Review is needed for once codified principles; **Concl**: any codification should respect the unique nature of the Indian parliamentary system while upholding constitutional principles
 1. ★ Bring the priveleges subject to judicial procedure (main reason why its avoided) - Against Article 122
 2. Harm the rights of Parliament and its members
 3. Difficult to codify rights and more over it will add an element of rigidity
 4. Will act as an hindrance to evolution of new privileges

5. Contempt of House is wider than parliamentary privileges. Normally one may include the other. However there can be cases involving contempt without breaching privileges; eg: Disobedience to legitimate order of house is CoH but not breach of privilege

Additional Content - Parliament

Parliament- supreme representative authority which embody diverse will of people, reconciles conflict through dialogue, debate and compromise.

- Art 79-122 in Part V deal with organisation, composition, officers, powers, privileges etc of Parliament
- Compared to public attention devoted to executive arm, relatively limited attention is paid to legislature

Parliamentary powers (Legislative, C&B, Debating Fourm, Financial power, Electoral fx-elect Prez/VP, Judicial Fx)

1. The Parliament enacts legislations for the country
2. Perhaps the most vital function of the Parliament is to ensure that the executive does not overstep its authority and remains responsible
3. The Parliament is the highest forum of debate in the country. Members are free to speak on any matter without fear. Parliament represents the divergent views of members from different regional, social, economic, religious groups of different parts of the country
4. The financial powers of the Parliament, involve grant of resources to the government to implement its programmes. The legislature also ensures that the government does not mispend or overspend. This is done through the budget and annual financial statements
5. Parliament also performs some electoral functions. It elects the President and Vice President of India
6. The judicial functions of the Parliament include considering the proposals for removal of President, vice-President and judges of High Courts and Supreme Court

Shortfalls in our Parliamentary System

1. Anti-defection law restrains MPs from voting according to their conscience, inhibits individual parliamentarian to oppose laws affecting his constituency interests
2. Party affiliation of the Speaker making her dependent on the party leadership for re-election prospects.

3. Frequent bypassing of committees (just 25% of Bills have been referred to committees in 16th Lok Sabha compared to 60-70% in prev 2 LS - PRS Legislative)
4. Insufficient time and research support to examine Bills. There is a need for research support for all MPs
5. Lack of a predictable calendar (Parliament is held at the convenience of the ruling government)
6. Lack of recorded voting as a norm which reduces the accountability of the MP as voters don't know which way the MP voted on each issue

Problems in parliamentary functioning

1. Protests and walkouts: rendered the sessions chaotic and a waste of functional days, coming in the well hampers legitimate business
2. Lack of debate and discussion over key issues: The recent 124th constitutional amendment bill which provided 10% reservation to EWS was passed after just a single day of discussion
3. Duration for which Parliament meets: Average number of days parliament met has come down to 70 in 2017 from 120 in 1950s.
4. Un-parliamentary behaviour: Several instances of disruptions and physical violence have been witnessed. Ex: Shouting communal slogans during oath of minority leaders, bringing placards into the well, using pepper sprays, etc.
 - a. Waste of taxpayers' money: The budget session washout of 2018 (out of 48 hrs only 8 hrs worked) is estimated to have cost the nation almost 200 Crore based on loss of productivity and expenses of running both houses
5. Absence of MPs: Several MPs have been reported to be absent for most of the working sessions including ministers during question hours.
6. Poor image in world media: Records of disruptive, unproductive parliamentary functioning, tarnishes the image of India as a vibrant democracy.
7. Voice vote issue (rushed lawmaking)- not allowing to take voice vote for knowing real numbers in Rajya sabha (farm bills)
8. Using the finance bill route for unrelated matters (eg: restructuring of tribunals, electoral bonds were included in Finance bills)
9. Insufficient role in policy making: Several critical issues raised on the bills in the Parliament have seen a slow death. (Neglect of opposition views due to use of guillotines, selective timings for passings of bill)

Measures to improve its efficiency


1. Revival of Parliamentary Forums which act as platforms for MPs to discuss critical issues with experts/nodal officers. This sensitises them about ground situation and equip them to debate better in parliament or parliamentary committees (not formed in 16th, 17th LS)
2. Parliament (enhancement of productivity) Bill 2017- (Private bill rejected by RS)

- a. A minimum 120 days of meeting of both the houses must be mandated through legislation.
3. Setting up of coordination committees with members of ruling party and opposition for smooth conduct of the House.
4. Salaries and privileges of legislators must be linked to their performance. Penalising the members including imposition of fines, suspension from session etc. for unruly members.
5. Not relying on volume of bills passes in a session as a sign of efficiency, but rather the quality discussion on them
6. Enforcing a code of conduct and code of ethics for members of the house.
7. Empowering the Presiding Officers of the House with additional powers to punish unruly members.
8. Making political parties more responsible for their conduct inside the Parliament.
9. Proper training for members of parliament in conducting the business of the house.
10. Providing MPs with research support to ensure effective scrutiny and discussion over bills

State Legislature

- Issues
 - In 2020, 59% of the Bills were passed on the same day that they were introduced in the legislature
 - In Parliament, bills are often referred to Parliamentary Standing Committees for detailed examination while in most states, such committees are non-existent
 - In the absence of a robust committee system and fewer working days, state legislatures barely spend any time scrutinising legislative proposals brought before them

Structure, organization and functioning of the Executive; Ministries and Departments of the Government

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**

President: India vs US Prez elections: Role of primaries and caucuses along with National convention to decide presidential nominee; then voters elect officials called electors (538) who then vote for President and VP. Electors prop to state pop; Prez who gets majority electors will get all votes from that state (read image)

Differences (Only natural born citizen in USA; 14 years minimum stay in USA; Min age of 35 yrs in both; India follows prop rep by means of single transferable vote; Electoral college of India vs USA; India-above fixed quota wins where in USA-one with most electoral votes win)

Process of Indian Presidential Election	Process of US Presidential Election
To be eligible for election as President she should be a citizen of India and should have completed 35 years of age, among other things.	President must be 35 years of age, be a natural-born citizen, and must have lived in the United States for at least 14 years.
President's election is held in accordance with the system of proportional representation by means of the single transferable vote	The two main political parties - Republican and Democratic - hold primaries and caucuses to choose the best candidate to represent them in the general election.
Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates.	Each party holds a national convention to select a final presidential nominee. State delegates from the primaries and caucuses will "endorse" their favorite candidates.
President is elected by members of electoral college consisting of elected members of <ul style="list-style-type: none"> both the Houses of Parliament, legislative assemblies of the states; legislative assemblies of the Union Territories of Delhi and Puducherry. 	US citizens vote to elect a group of officials called electors, (the total being 538) who choose the president and vice-president. The number of electors in a state is proportionate to the size of its population.
Candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes.	The candidate who receives the majority of the votes from the people of a state will receive all electoral votes of that state. The presidential nominee with the most electoral votes becomes the President.

Impeachment in US and India

Specification	USA	India
Applicability	President, Vice President, and all civil officers of Federal Government.	Only President (under Article 61).
Grounds of Impeachment	Treason, Bribery, or other high crimes and misdemeanors.	Violation of Constitution
Process	<ul style="list-style-type: none"> Charges: Any member of House of Representatives. Voting: Simple majority of House of Representatives. Presiding Officer for trials: Chief Justice of US. 	<ul style="list-style-type: none"> Charges preferred by: Either House of Parliament provided such charges are signed by at least 1/4th of members of House. Voting: Resolution needs to be passed by not less than 2/3rd of total membership of each House. <ul style="list-style-type: none"> Once passed in one House, it is sent to other House, where an investigation into charges precedes vote on resolution. Presiding Officer: Presiding Officer of respective Houses.
Consequence	<ul style="list-style-type: none"> Impeachment serves as an indictment, not removal. 	<ul style="list-style-type: none"> Impeachment results in removal of President from office.

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<ul style="list-style-type: none"> After impeachment, Senate (upper house) is convened like a court. President can only be removed if at least 2/3rd of Senate votes for it after hearings. Andrew Johnson, Bill Clinton, and Donald Trump were impeached but none were removed. 	<ul style="list-style-type: none"> No President has been impeached so far.
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Key differences: Reasons, Applicability, Consequence (indictment vs impeachment), None impeached vs Trump/Bill Clinton

Discretionary powers of Prez (Dismissal of CoM when cannot prove confidence, Refer bck indiv min decision for collective consideration, Article 78 seek info from PM, Powers of care taker govt; Exercising suspensive veto **APJ Kalam** returned office of profit bill/**Giani Singh** used pocket veto)

Article 72 (Exec clemency; Pardon/Suspend/Commute(lighter form, character changed)/Remit/Respite; Prez-Union law, court martial, death; Prez vs Governor: Death cannot be pardoned, court martial; **Objective** (avoid judicial lapse, maybe unduly harsh); **Principles by SC**: Act of grace not right, not need to specify rules, not bound to give reasons; advice of cabinet is must) **Issues** (Loopholes used, No time frame for Prez, Subjectivity, No transparency, Federal tension-Rajiv Gandhi case), Success (not misused unlike in USA by Trump); **Should there be time limit, Analyse?** - With time limits (we can reduce adverse pschy impact on convicted, Justice); Setting limit (Would go against SC said we need no guidelines, Lead to hasty decision, Make process rigid); Side Note: Pranab Mukherjee commuted sentence even after cabinet asking to not do so (Prez not a rubber stamp)

Side Note: **SF is RCM** (Before Mercy Petition, we have Review petition (in 30d, correct apparent error) and Curative petition (No time limit; to avoid miscarriage of justice; Origin from Rupa Ashok Hurra Case) -

Capital Punishment: Pros (Needed to maintain L&O as cited by SC, Hostile neighbours, Bachan S Case Rarest of the Rare) & Cons (Gandhi says punish crime, irreversible, subjective, vulnerable sections more harmed; major countries in world );

Law Commission in 262th Report said abolish capital punishment except for terrorism

President's Rule: Circumstances (Article 356-const mach, 365-direction of centre, no govt formed, collapse of coalition) **Need** (Unity & Integ-1992 riots, Maintain peace Khalistan issues, Avert political crisis of no govt) **Issues** (Used to serve vested interests, Biased reports by Governor, *No proper definition of 'breakdown of const. mach'*, 100+ uses) **Way Fwd** (SR Bommai-objective material+JR possible+not dissolve assemb untill approved; Punci Commi-5 yr tenure, outside state, Impeachment of governor on line of Prez, Local emergency; Follow sequence in hung assembly by Sarkaria C)

Governor: Appointment (Prez under warrant & seal; Canadian model; Framers rejected American model), **Role** (lynch pin, role towards tribals, Nominal head), **Issues** (Reservation of bills, Misuse of discretion eg: MH/KR, Can't be impeached, No tenure

security, Mostly politicians/civil servants; Have nominal fx only as observed by Former MP Governor); Need Code of Conduct to lay down principles

★: Governor is like an umpire of cricket match, thus must not become the player itself. The role here demands propriety, impartiality along with probity.

Discretionary power of Governor (Add pts of Prez, Reserve bill article 201, Prez rule, Matters of adjoining UT, Amt payable to ADCs, Matters of his report to be sent to Prez, SC said Floor test is also discretion, Unlike Prez discretion of governor mentioned in constitution) **Nabam Rebia Case** (discretion is ltd, aid and advice), Shamsheer Singh Case, BP Singhal, etc

If question on Number of ministries: Mention **91st AA** restricted number of ministers to 15%; Present size of 75+ ministers; Reasons for growth (Regional rep; Coalition politics; Manage complex work); Drawbacks of increase (siloed vision; slow DM; Inter-min conflicts); WE (merge ministries; Min Govt max governance; **NCRWC** said **limit ministers to 10%**) Also there needs to be a **balance neither large size nor too small (specialisation will be lost)**

Current Ministerial Structure (as per 1861 Act); Issues: (today's IR 4.0 calls for coordination among dept rather than siloed approach of ministry like cybercrime/privacy; Bureaucratic maze needed to be replaced by experts in fields; Fragmented nature makes easier to escape accountability); Solution: (Rationalization of Secretary level posts; Even Britain has reformed its system; Redefining ministries in a way a ministry would mean a group of departments whose functions and subjects are closely related) **2nd ARC** said entire structure of the ministry and department should be done away with and a new structure based on principle of subsidiarity should be adopted

Factors responsible no effective opposition: Toothless cannot influence much-only speeches; Distribution problem - divided on party lines; Represent special interest (caste) therefore small size; No united agenda unlike UK (shadow cabinet)-**Shadow Cabinet concept of UK can be adopted in India too**

Extra Content Executives

1. Structure

- a. **Composition of electoral college and process of President elections (comparison with US) (repeat question)**

Process of Indian Presidential Election	Process of US Presidential Election
To be eligible for election as President she should be a citizen of India and should have completed 35 years of age, among other things.	President must be 35 years of age, be a natural-born citizen, and must have lived in the United States for at least 14 years.
President's election is held in accordance with the system of proportional representation by means of the single transferable vote	The two main political parties - Republican and Democratic - hold primaries and caucuses to choose the best candidate to represent them in the general election.
Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates.	Each party holds a national convention to select a final presidential nominee. State delegates from the primaries and caucuses will "endorse" their favorite candidates.
President is elected by members of electoral college consisting of elected members of <ul style="list-style-type: none"> • both the Houses of Parliament, • legislative assemblies of the states; • legislative assemblies of the Union Territories of Delhi and Puducherry. 	US citizens vote to elect a group of officials called electors, (the total being 538) who choose the president and vice-president. The number of electors in a state is proportionate to the size of its population.
Candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes.	The candidate who receives the majority of the votes from the people of a state will receive all electoral votes of that state. The presidential nominee with the most electoral votes becomes the President.

2.

3. Organization

a. **Discretionary powers of President (repeat question) or Exceptions when President is not bound by aid and advice of CoM**

- i. All important decisions regarding the country are taken in the name of Indian President, though most of these will be based on the binding advice given by Council of Ministers(CoM), as per Article 74 of Indian Constitution
- ii. Appointment of PM when no party has clear majority in the Lok Sabha
- iii. Dismissal of CoM when it cannot prove the confidence of LS
- iv. When he exercises suspensive veto ie. when he returns a bill (not money bill) for reconsideration of the parliament (APJ Abdul Kalam returning bill - but signed after Cabinet rec again)
- v. Refer back decision of indv minister for collective consideration of CoM to enforce collective responsibility
- vi. Under **Article 78** the President enjoys the right to seek information from the PM regarding the administration of the affairs of the union
- vii. President decides what functions to be allowed to 'care taker govt
- viii. Use of veto by the President (depends on Prez to Prez- like Giani Zail Singh used pocket veto and prevented post office act from becoming a law)

b. **Evolution of Presidents power over the years (42 and 44th AA)**

- i. BR Ambedkar - President occupies the same position as King under English constitution
- ii. Article 53: Executive power of Union is vested in President and shall be exercised by him or through officers

- iii. Initial president established that this post is not a weak authority. They differed on many counts but respected the constitutional values & maintained separate domains
- iv. 42th AA 1976 made President bound by the advice of CoM headed by PM
- v. 44th AA 1978 authorised President power to reconsider such advice once

4. Functioning

- a. **'The exercise of executive clemency is not a privilege but is based on several principles, and discretion has to be exercised in public consideration.'** Analyse this statement in the context of judicial powers of the President of India (repeat question)

i. Basics

1. Under **Article 72** of the constitution, the President can grant pardon, suspend, remit or commute a sentence of death. However, President acts on the advice of the Council of Ministers. The view of the Union Ministry of Home Affairs (MHA), conveyed to the President in writing, is taken as the view of the Cabinet.
 - a. Exception- Pranab Mukherjee commuted sentence even after cabinet asking to not do so(as term was ending govt did not make a big issue) - shows Prez can be activist
2. Under Article 161, the Governor in India too has pardoning powers.
3. President's power extends for: 1. Punishment or sentence is for an offence against Union Law. 2. Punishment or sentence is by a court martial. 3. Sentence is sentence of death.
4. Procedure: Petition comes to President → MHA → Consultation with state govt. → Recomm to president
5. Objective: correcting any judicial errors in the operation of law; To afford relief from a sentence which is unduly harsh
6. The pardoning power of President is wider than the governor and it differs in the following two ways:
 - a. The power of the President to grant pardon extends in cases where the punishment or sentence is by a Court Martial but Article 161 does not provide any such power to the Governor
 - b. The President can grant pardon in all cases where the sentence given is sentence of death but pardoning power of Governor does not extend to death sentence cases.

ii. Principles highlighted by SC

1. The petitioner for mercy has no right to an oral hearing by the President
2. The President can examine the evidence afresh and take a view different from the view taken by the court
3. The power is to be exercised by the President on the advice of the union cabinet (Maru Ram Case 1980)
4. The President is not bound to give reasons for his order
5. There is no need for the Supreme Court to lay down specific guidelines for the exercise of power by the President. The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, malafide or discriminatory. (Epuru Sudhakar Case 2006)
6. Grant of pardon by the President is an act of grace and not a matter of right (Kehar Singh Case)
7. Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition

iii. Issues:

1. No fixed timeframe for disposing of a mercy petition - for both MHA and President leading to extraordinary delays as highlighted by SC
2. There is lot of subjectivity involved in the entire process and it depends upon the views of the each President
3. Became a contention between centre & state over pardoning powers of governor and president eg: Rajiv Gandhi assassination case
4. Loopholes in the system are used to delay the conviction eg: as happened in Nibhaya rape case
5. Lack of transparency in the whole process

iv. Success of Indian System:

1. Blatant overuse and misuse of Presidential pardoning power by Trump to help his corrupt/fraud friends, before 20/1/2021 when his term expires. (=how Indian constitution much better)

- b. **2014: Should there be time limit, Analyse?** - With time limits (we can reduce adverse pschy impact on convicted, Justice); Setting limit (Would go against SC said we need no guidelines, Lead to hasty decision, Make process rigid)

i. Impact of delay in pardoning:

1. Adverse psychological impact on the convicted
2. Justice to the victims

- ii. However, setting a time limit:
 1. May go against norms set up by SC which says there is no need of separate guidelines
 2. Also it may lead to hasty decisions which may amount to criminals getting released or innocent ones being executed
 3. Make the process rigid and prone to misuse where matter is made complicated for the President/Governor
- iii. Conclusion: Need to restrict unnecessary delay in filing and granting mercy petition

c. **Pros and Cons of awarding capital punishment**

- i. Pros
 1. Rarest of rare cases: The death penalty is imposed only in rarest of rare cases that shock the conscience of society (Bachan Singh case)
 2. Problem of terrorism & neighbourhood: India's neighbourhood is not peaceful, unlike Scandinavia. On the contrary, every day vested interests attempt to destabilize the very idea of our nation from across every border.
 3. Controlling law and order: In 1991, the Supreme Court cited its use in defending law and order as the reason for its continuance
 4. Retributive/Deterrence effect
- ii. Cons:
 1. Subjectiveness in the process (judge-centric variations)
 2. Irreversibility - if later discovered that evidence was false
 3. No evidence that it has greater deterrent effect than life imprisonment
 4. Vulnerable sections are much more prone rather than the wealthy
 5. Pressure from public opinion - evoking nation's emotion
 6. Gandhian principles also asks for killing crime and not criminal.
- iii. The Supreme Court has covered considerable ground in limiting the scope, to the rarest of rare case. The treatment of death row prisoners has been humanized and there is scope for judicial review even against a sovereign decision denying clemency

d. **🔥 President's Rule 🔥**

- i. According to Article 356, President's rule can be imposed in a state if a situation has arisen in which the Government of the state cannot be carried on in accordance with the provisions of the constitution
- ii. Circumstances in which it is imposed

1. Art. 356: When the state government is not being carried on according to constitution i.e. break down of constitution.
 2. Art. 365: When the state Government does not follow the executive directions of the Centre.
 3. Serious breakdown of law and order
 4. The state legislature is unable to elect a leader as Chief Minister
 5. The collapse of a coalition government due to disagreements, parting ways within the members.
- iii. Need:
1. Preserving the unity and integrity of the nation. For example, Prime Minister P.V. Narasimha Rao's government dismissed four state governments lead by the BJP in the wake of the destruction of the Babri Masjid. Supreme court in SR Bommai case upheld the dismissal.
 2. It is necessary is when no party can form a government and a political crisis arises.
 3. Maintaining peace and harmony in the state. Ex: In Punjab during Khalistan Movement
- iv. Issues:
1. Misused to serve vested political interests when centre-state have bitter relation eg: as done by Congress and Janta Dal during 1970s
 2. Frequent use (100+) rather than being a dead letter as envisaged by BR Ambedkar
 3. No proper definition of 'breakdown of const. mach.' or 'direction from centre'
 4. Biased and distorted reports sent by the governor
- v. Measure taken
1. SC ruled in the **1994 SR Bommai case** that the President rule under Article 356 must be based 'objective material' which has satisfied the President; Though material's sufficiency cannot be questioned, the legitimacy of inference is open to judicial review + **Assembly should not be dissolved until approved + PR is subject to Judicial Review**
- vi. Way Fwd: Punchhi Commission, 2nd ARC

Governor

1. **How is the governor of a state appointed in India? Does the manner of his appointments ensure his independent functioning? Reforms needed? Envisaged role and actual conditions?**

- a. Basics: Article covered Article 153 to Article 162
- b. Appointment: Appointed by the President by warrant under his hand and seal (in lines with Canadian Model)
 - i. The framers rejected the direct election of governor (American Model) as it would have led to conflicts, governor not being neutral as after election would belong to ruling party
 - ii. The governor hold a term of 5 years subject to pleasure of the president. Moreover this pleasure is non justifiable as per SC
- c. Reforms needed in appointment process
 - i. Sarkaria Commission
 1. Gave the sequence to be followed in case of hung assembly
 - ii. Punchhi Commission
 1. Fixed tenure of five years and their removal should not be at the sweet will of Centre
 2. Governor- should be from outside the state, detached from local politics, removal should not be a sweet will of centre
 3. Impeachment of governor by state assembly on lines of impeachment of president
 4. Concept of local emergency to contain law and order issue and not full state emergency (for art 355)
- d. Envisaged Role
 - i. Maintain equilibrium between people of state and govt.
 - ii. Act as communication link b/w centre and state
 - iii. Ensure effective functioning of constitution
 - iv. Framers of constitution envisaged that political decencies and correctness would be observed both by the Governor and the CM
- e. Actual Condition
 - i. Misuse of A-356 for political purpose to dispose rivals (used more than 110+ times)
 - ii. Reservation of Bills - used by centre to veto/delay state legislation
 - iii. Questionable role played in hung assemblies
 - iv. MH/Karnataka Governor misused his discretion wrt invitation to form govt
 - v. Arunachal Pradesh - Assembly dissolved → SC reinstated govt as there was no parliamentary approval
- f. Issues
 - i. Ignore facts take the feel: 53% of governors were politicians, 26% civil servants and a mere 20% from the judiciary and other walks of public life
 - ii. Misuse of discretionary powers such as invitation to form govt. in case of hung assembly (Maharashtra case)
 - iii. Legislature both at the Centre and state can't impeach governor, giving him absolute patronage of central executive

- iv. The arbitrary removal of the Governor before the expiration of his tenure (Puducherry Governor)
- v. Former Governor of Madhya Pradesh observed that he had no public function to perform except making the fortnightly report to the President (as most of the times he is bound by CoM)
- g. Conclusion: Need for Code of Conduct laying down norms and principles to guide governor must developed in consensus with SG, CG, St. legislature and Parliament

2. Discretionary powers

- a. Article 163 of the Constitution says that the Governor acts on the aid and advice of the cabinet. Thus in effect 163 limits discretionary power of governor to cases where the Constitution expressly specifies such discretion
- b. Discretionary powers
 - i. Reservation of a Bill for consideration of the President (Article 200, 201)
 - ii. Recommendation for imposition of President's rule in state (Article 356)
 - iii. Exercising his functions as administrator of an adjoining union territory.
 - iv. Seeking information from Chief Minister with regard to administrative and legislative matters of the state (Article 167)
 - v. Appointing Chief Minister when no party has acquired clear cut majority and dismissal of the Council of Ministers when they lose confidence of assembly
 - vi. In the States of Assam, Meghalaya, Tripura and Mizoram, Governor determines the amount payable to an Autonomous District Council
 - vii. Matters to be included while sending report about affairs of the state to President
 - viii. Article 163 (2) - If there is any conflict whether the matter falls under governor or not, the decision of governor is final
 - ix. Floor Test is Governor's Discretion: Supreme Court
 - 1. Governor's power to call for a floor test is not restricted only before the inception of a State government immediately after elections, but continues throughout its term
 - 2. A Governor need not wait for the Speaker's decision on the resignation of rebel MLAs before calling for a trust vote
 - x. Wider powers when compared to President
 - 1. While the president enjoys situational discretionary power, the discretionary power of the governor is mentioned in the constitution itself

- a. Unlike President he is not bound by advice of the state's cabinet

Others

1. 2014: How far is the efficacy of a government inversely related to the size of the cabinet?

- a. Article 75 of the Constitution states that the total number of Ministers, including PM, in the CoM must not exceed 15% of the total number of members of the LS. There is no minimum limit
- b. Size of cabinet depends on political compulsions, representation of various factions, mode of functioning of the Prime ministerial candidate, experience and capabilities of ministers, etc.
- c. Larger cabinet allows all factions under a coalition govt to be represented.
- d. Negatives of large sized or very small sized cabinet
 - i. conflict of interest between players due to overlapping of duties
 - ii. Ineffective specialisation when cabinet is too small
 - iii. Chaos → too many cooks spoiling the broth
 - iv. Delay in decision making or hasty decision making
- e. Need for mid size cabinet which can:
 - i. Ensure effective sharing of responsibilities
 - ii. Provide for coordination rather than confrontation
 - iii. Less burden on the Public Exchequer
 - iv. Decision making is quicker
- f. Prime Minister described as "the steersman of steering wheel of the ship of the state". The size must be appropriate to the ground reality

2. Despite all talk of an effective opposition why has it not been possible to develop an effective opposition in India?

- a. Factors responsible no effective opposition: Toothless cannot influence much only speeches; Distribution problem - divided on party lines; Represent special interest (caste) therefore small size; No united agenda unlike UK (shadow cabinet)-**Shadow Cabinet concept of UK can be adopted in India too**
 - i. Parliamentary system keeps the Opposition toothless - such that they can make speeches, ask questions but cannot largely influence govt. policies
 - ii. The opposition in India has a 'distribution' problem which is divided on party lines
 - iii. Most parties stay small as they represent special interest, caste, or religion
 - iv. Opposition always lacks an agenda - unlike UK concept of shadow cabinet is not practised

- v. Use of 3Cs by Centre against opposition
- b. A strong and effective opposition is the need of the hour to ensure that the elected government at the Centre is responsive, transparent and accountable
- c. **Shadow Cabinet concept of UK can be adopted in India too**

Pressure Groups

Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.

- Examples (use PESTEL):
 - Pol/Legal: Mazdoor Kisan Shakti Sangathan (MKSS) led to RTI Act
 - Eco: NASSCOM (active support for growth of Startups in India → later Startup India scheme)
 - Social: Nirbhaya movt led to changes in criminal laws, Naz Foundation advocated for LGBT community; Wrestlers fighting for gender justice
 - Environmental: Narmada Bachao Andolan, Protests by local people against Sterlite Copper Plant (env movement)
 - Others: RCEP pullout, Karnataka Milk federation led to rise in milk prices, Think Tanks such Oxfam, Centre for Policy Research;
 - ★: IMA Declared nationwide strike for RG Kar Rape case. Informal strike by students in ORN after death of students at underground library
- A pressure group is involved in (OPD) organising, promoting and defending their common interest; aka interest groups or vested groups'
- Features: Narrow issue focus, Exert pressure from o/s, United by cause eg-env cause-irrespective of their caste/party preference; Modern means (financing of political parties, keeping bureaucracy satisfied) without fully giving up the traditional ways (eg: exploitation of caste, creed and religion)
 - **Richard D. Lambert** views it as unofficial government (the role of govt. which is policy formulation, education, representation and connect it with how it is done by the the PGs themselves which shows they are unofficial govt); **Finer** has characterised pressure groups as 'anonymous empire'
- Reasons for rise: Scarce resources (may not be allocated equitably otherwise), Indv is not effective, Failure of PPs to hear ppl, Changed gender role + higher edu leads to more participation, Role of eco groups that can shift investment/prod
- Types: **Institutional Groups** (closely related to state; IAS/IPS Assosiation, Bank PSU Union, Ex-Army associations), **Associational Groups** (are organised;

example-Business groups, Trade Unions, Think Tanks, Agrarian Groups, Student Unions, Prof groups-doc, banking), **Non-Associational Groups** (are unorganised/informal; maybe small caste, language groups, protest without a banner); **Anomic Groups** (sporadic, spontaneous and event based eg: Justice for Nirbhaya movement)

- **Fx/Role:** SF=L-REPP; Lobbying (CAIT for reforms), Representation (SEWA represent women rights → Domestic violence act 2005), Educating, Political Participation (ADR leading to greater info to voters), Policy formulation (Business groups during budget); Remain in touch with public opinion (IAC movement)
- **Methods used:** Lobbying, Electioneering (favourable candidate into system), Educating, Direct Action, Protests/Rallies/Fast unto death, International Support (TUs seeking ILO intervention for labour codes)
- **Limitation:** Obstructing reforms (farm law protest); Undermine India's Development (2-3% loss as per IB report); Short life due to low resources eg: manual scavenger group, Lack of demo org, Used as political launchpad eg: IAC movt, Shifting loyalties of PGs; Focus on self interest, Serves interests of the powerful leading to widening inequalities; Unconstitutional methods (Rail roko), Seen to clog development; Largely influence on the implementation process rather than the formulation;
- **PG vs PP: Resemble** (Some parties also represent narrow issues eg: regional party; Some PG used electioneering, Both benefit from coop); **Difference** (narrow vs national interest, homogenous vs heterogenous interests eg: coalition in MH, adhoc vs permanent, may resort to illegal/violent means unlike PP)
- **Western PGs:** Significance (WPG 4th organ, IPG not so vital role), Target (WPG target congress & its committees, IPG target cabinet and civil servants), Foreign Policy (IPG has minor role in FP), Lobbying (USA/Canada regulate lobbying as legitimate right while India has no regulations or recog of lobbying), Types (India had caste, religion based groups)
- **PYQs:** Are PGs effective (Yes: give examples of PGs that impacted; No: highlight limitations); Influence on Indian political process? (Open various dimensions in political process such as elections, policy making, legislation, foreign policy)

PG Extra Content

- **Associational Interest Groups :** These are **organised** specialised groups formed for interest articulation, but to pursue limited goals
 - **Business Groups** – Federation of Indian Chamber of Commerce and Industry (FICCI), Associated Chamber of Commerce and Industry of India (ASSOCHAM), CII
 - **Trade Unions** – All-India Trade Union Congress (AITUC), Hind Mazdoor Sabha (HMS), Bharatiya Mazdoor Sangh (BMS)

- **Professional Groups** – Indian Medical Association (IMA), Bar Council of India (BCI), All India Federation of University and College Teachers (AIFUCT), IAS Association, IPS Association, Bank employees association in case of mergers
- **Student's Organisations**- Akhila Bhartiya Vidyarthi Parishad (ABVP), All India Students Federation (AISF), National Students Union of India (NSUI)
- **Agrarian Groups**- All India Kisan Sabha, Bharatiya Kisan Union, etc
- **Think Tanks**- such as ORF, Centre for Civil Society, etc.
- **Non-Associational Interest Groups:** These are the kinship and lineage groups and ethnic, regional, status and class groups that articulate interests on the basis of individuals, family and religious heads. These groups have **informal** structure. These include caste groups, language groups, etc.
 - **Religious Groups** – Rashtriya Swayam Sevak Sangh (RSS), Vishwa Hindu Parishad (VHP), Jamaat-e-Islami, etc.
 - **Caste Groups** – Harijan Sevak Sangh, Nadar Caste Association, etc
 - **Linguistic Groups** – Tamil Sangh, Andhra Maha Sabha, etc
 - **Tribal Groups** – National Socialist Council of Nagaland (NSCN), Tribal National Volunteers (TNU) in Tripura, United Mizo federal org, Tribal League of Assam, etc.
 - Some agri groups could be non-associational too
 - **Ideology based Groups** – Narmada Bachao Andolan, Chipko Movement, Women's Rights Organisation, India Against Corruption etc.
- **Anomic (disorganised) Interest Groups:** By anomic pressure groups we mean more or less a **spontaneous** breakthrough from the society such as riots, demonstrations, assassinations and the like.
 - In India those who were against the use of Hindi in offices in Tamil Nadu, black painted all signboards
 - **Anomic Groups** - Naxalite Groups, Jammu and Kashmir Liberation Front (JKLF), United Liberation Front of Assam (ULFA), Dal Khalsa, etc.

Reasons for Formation

- Securing their interests individually will not be possible → Collective groups (interests could be to preserve culture, hegemony, social status, economic interest)
- Developing countries have scarce resources → claims and counter claims → Allocation is done through policy → some satisfied and some unsatisfied → PGs needed to express their resentment
- Membership of political parties has declined. It has been argued that this reflects the failure of the political parties adequately to reflect the needs of different groups of people in society, and that cause groups offer a more

promising route for bringing about political change. eg: Yogendra Yadav leaving AAP

- Higher educational standards have increased the numbers of people with the organisational skills to contribute to pressure groups.
- Changes in gender roles have removed many of the barriers to participation by women in pressure group activity.
- Globalisation has strengthened pressure groups in a number of ways. eg: Rise of business grouping which can relocate production and investment, so exerting greater leverage on national governments

Structure of PGs

Sociologist Morgan defined 4 kinds of PGs - Fire Brigade (issues with new proposals), Think Tank (carry out research), Political cause (want change in politics), Latent cause (not fully evolved)

For Structure use content of broad types

Characteristics/Key Features

1. They exert influence from outside, rather than to win or exercise government power. (neither contest elections, nor capture power)
2. Pressure groups do not make policy decisions, but rather try to influence those who do.
3. They typically have a narrow issue focus.
4. Members are united by a shared belief in a particular cause. People with different ideological and party preferences may thus work happily together as members of the same pressure group. eg: People under environmental groups will combine to fight together irrespective of their caste, party preference
5. They try to follow modern means (financing of political parties, keeping the bureaucracy satisfied) of exerting pressure, without fully giving up the traditional or old ways (eg: exploitation of caste, creed and religious feelings) of operation.
6. Some groups are not mature and are in latent stage. There is also lot of diversity among PGs in India

Methods Used/ Functioning

Covered in answer below [2019: Methods used to influence policy-makers? Are these effective? \(Prepare generally; Question was asked specific to farmer's organizations\)](#)

Role Played/ Functions of PGs (SF=L-REPP)

The capacity of a pressure group is determined by: a) leadership b) organisational abilities c) mass media d) economic power base e) mobilisational techniques

1. Representation: Pressure groups provide a mouthpiece for groups and interests that are not adequately represented through the electoral process or by political parties.
2. Political participation: Pressure groups have become an increasingly important agent of political participation. eg: Student Unions attracting youth support for a political party
3. Lobbying government: It include contacting members of parliament, ministers and bureaucrats to disseminate information about the positive or adverse effects of proposed legislation. Ex: CAIT lobbying Government to bring reforms in e-commerce which is hurting traditional businesses
4. Educating public at large, government officials, their own members, and potential interest group members. through sources like TV advertisements, sponsored news paper articles, social media, etc.
5. Mobilising public: Draw the general masses into agitational and protest politics. eg: India against corruption movement
6. Policy formulation and implementation: Vital source of information and advice to governments. They are regularly consulted by the govt. Ex: Business associations meeting FICCI, ASSOCHAM while budget formulation

What is the influence of PGs/ Role played in Democracy

- Positive:
 - Compile data and provide specific information to policy makers eg: NASSCOM has been in active support for growth of Startups in India which later led to launching of Startup India mission
 - Ensure that rights of minorities are heard
- Negative:
 - Resorting to various unconstitutional method as strikes, agitation, demonstration, lockout eg: Rail Roko adopted by various groups
 - Self interest over the common interest

- Act as clog in the wheel of development by spreading unhealthy propoganda

Are these methods effective? or How far they have been able to influence politics or Have they just risen in number?

Limitations covered below

2019: Methods used to influence policy-makers? Are these effective? (Prepare generally; Question was asked specific to farmer's organizations)

Pressure groups resort to three different techniques in securing their purposes

- Electioneering: Placing in public office persons who are favourably disposed towards the interests the concerned pressure group seeks to promote by campaigning to influence the result of an election
- Lobbying: Persuading public officers, whether they are initially favourably disposed toward them or not, to adopt and enforce the policies that they think will prove most beneficial to their interests.
 - RCEP pull out
- Propagandizing: Influencing public opinion and thereby gaining an indirect influence over government, since the government in a democracy is substantially affected by public opinion.
 - Eg Karnataka Milk federation had to increase buying price of milk demanded by dairy farmers
- Protests/Rallies/Fast unto death, blocking roads, refusal to pay bills (Farmer throwing onions)
- Direct Action - taking the somewhat violent route
- Advertising - Posters and leaflets or through social media websites
- Attracting international support which can create indirect pressure eg: Trade unions seeking ILO's support or Farmer unions getting supported by Indian diaspora/Canadian & UK officials

Are these effective?- Limitations of PG

- Effectiveness depend on genuiness of problem, impact on public of their demands, financial resources(Punjab farmer- rich so able to protest)
- Depends on time of elections too - 2008 mega loan waiver due to upcoming 2009 elections

2017: Influence(role played) on Indian political process? (Open various dimensions in political process such as elections, policy making, legislation, foreign policy) Also collect examples wrt to groups related to women,

environment, financial etc); Do you agree with this view that informal pressure groups have emerged as powerful than formal pressure groups in recent years?

Role played covered above

Of late, informal unorganized groups have asserted more power in the political decision making process. Despite being unstructured and having limited access to financial resources, these groups have proven to be much more impactful than otherwise thought possible. The issue around which they are centered resonates and connects with people cutting across religions, castes, languages and gender – resulting in the group taking the shape of a movement. This was seen in the cases of:

- Nirbhaya movement which led to changes in the Vishakha guidelines, setting up of Justice Verma committee and also an amendment in the Juvenile Justice Act.
- India against corruption movement which led to the Lokpal Act.
- Environment related causes eg: Chipko Movement, Narmada Bachao andolan
- Me too Movement revealed oppression faced by women

These movements were informal, not associated to any identities or entities – but were issue based, yet led to legislative action at the Centre.

2013: Pressure group politics is sometimes seen as the informal face of politics. Assess structure and functioning(role played)of pressure groups in India?

Covered above

2009: Pressure group are an anonymous empire and are an unofficial Government. Do you agree with above statement? Substantiate with reasons?(Both impacts/postives and negatives/limitations with example)

Finer has characterised pressure groups as 'anonymous empire'. Richard D. Lambert views it as unofficial government.

Explain the role of govt. which is policy formulation, education, representation and connect it with PG how it is done by the the PGs themseleves which shows they are unofficial govt.

Role played +ve and -ve

Limitations covered below ↓

1999: Pressure groups in India are not matured but they are too diverse(types). Analyse the characteristics (features/role played) of pressure groups in India?

Types, role played, features covered above

2008: Analyse how political parties and pressure groups are different from each other? (in context of they both sharing intimate and inconclusive relationship)

Pressure groups and political parties greatly resemble each other. Both of them are channels through which public can communicate with the government. Prima facie, both of them carry out representation, facilitate political participation and contribute to the policy process.

Their resemblance:

1. Many small political parties resemble pressure groups in that they have a narrow issue focus. For example, the British National Party (BNP) is primarily concerned with issues of race and immigration.
2. Secondly, some pressure groups use elections as a tactical weapon as a means of gaining publicity and attracting media attention, with little expectation of winning the election. (Savarna Samaj Party in India for highlighting their issues with reservation & abolish the same)
3. A pressure group with a close relationship to a political party may work to its advantage. But this can be harmful at times especially when the opposing party comes to power

However, in reality, groups and parties are very different from each other.

1. Pressure groups work for their own narrow interests while Political parties work for their idea of national interest.
2. Political parties can combine heterogeneous interest to secure majority in the election (Shiv sena-NCP-congress). While, pressure groups has people with homogenous interests. (Farmers vs Importers)
3. Pressure groups may be ad-hoc or permanent depending on their objectives and goals. Political parties are permanent as not disbanded easily due to large cadre.
4. Political parties contest elections while pressure group just influences the political party in the power. While pressure groups influence public policy, political parties create public policies.
5. Pressure groups can resort to illegal means and violence openly while political parties generally adhere to non-violent means as have to face elections

2006: Reasons for the rise in pressure groups and their failure to make impact in India. (rise in terms of number)

Reason for limited impact(Limitations)

1. In India, organised groups largely influence the implentation process rather than the formulation of policy- gap is created between policy formulation and implementation. (Recent farm acts)


2. Many of the groups have a very short life because of the lack of resources(Manual scavengers group limited impact due to less resources compared to agri-groups)
3. The leadership of these groups tends to lack democratic organisation- may demonstrate the desires of the leader who articulate the groups policy interests to government.(Use of PG ass entry into politics while neglecting the aims of groups)
4. Instead of the pressure groups exerting influence on political process, they become tools and implements to serve political interest.(India against corruption movement used for political benefits by political parties to gain power)
5. Most pressure groups except business groups and big community groups do not have autonomous existence. They are unstable and lack commitment, their loyalties shift with political situations which threatens general welfare.(Different opinions of farmers groups on means used in recent protests)

1997: Functioning of pressure groups differ widely in India and western countries. Analyse?

Indian vs western pressure groups differences

1. American/western pressure groups are regarded as the fourth organ of the government (arms lobby-Boeing/Rafele influencing foreign policies) but the Indian pressure groups are not yet able to play such significant role in politics.
2. In India, the cabinet and civil service are the main targets of pressure groups for lobbying purposes rather than the Parliament. However, the targets of American pressure groups are the Congress and its committees for favourable laws.(Due to nature of govt- Indian parliament- cant take decisions without executive support)
3. In India pressure groups based on caste, religion, region, etc., are more powerful than the modern groups like business organisations.(i.e informal more vocal than formal)
4. A significant feature of American pressure groups is that in the USA pressure groups take interest in foreign policy issues while in India pressure groups do not seem to have interest in foreign policy matters. More concerned domestically.


Judiciary - Structure, organization and functioning

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**

- **Intro/Concl: Independent judiciary** (along with free press) act as a **"self-correcting mechanism"** that could repair challenges to any democracy; **Justice DY Chandrachud** said SC acted as **'Truth Commission'** during the pandemic; **Ease of justice** is as important as EoDB and Ease of Living (PM Modi)
 - Court has been given the role of **'Watchful Guardian'** with regards to the "fundamental rights"
 - According to a 2018 report by the **Institute for Economics and Peace**, the inability of the Indian state to deliver timely justice and ensure the rule of law resulted in preventable violence which cost India as much as **9% of our annual GDP**
- **Major issues plaguing judiciary** (Pendency-4.32 cr cases NJD Grid; Judge to Popu 10-1mn vs 50 Law C; Court vs govt in appointments; Govt major litigator; 2/3rd prisoner are undertrials-of which **55%** minorities/weaker sections NCRB; Weak infra -Jud budget ~1% of GDP)
 - President Murmu coined the phrase 'black coat syndrome' for the high stress levels ordinary citizens experience in courtrooms
- *Side Note: Reasons for under-trials: Cannot afford bail bonds (poverty); Delays; Absence of under-trial review committees*
 - Large pendency of cases (National Judicial Data Grid over 3.5 crore case are still pending of which ~90% are at lower courts)
 - Vacancy in Courts
 - Currently, the Judge to Population ratio is 10 to 1 million while the Law Commission report in 1987 recommended at least 50 to 1 million
 - Lower courts: Vacancy rate is ~26% (main reason for huge pendency)
 - High Courts: As on March 2021 - Total sanctioned strength = 1080, working strength = 661 (419 vacancies or 39% vacancy rate)
 - Differences between govt and collegiums delaying appointment (SC Bench seeks details on 213 names cleared by SC Collegium but pending with government)
 - Govt is major litigator (nearly half of all litigation involve govt.)
 - Undertrial prisoners constitute more than two-thirds (67.6 per cent) of our prison population (of which over 55% of undertrials are Muslims, Dalits and tribals as per NCRB)
 - Weak infrastructure as the budget allocated to judiciary is less than 1% of GDP
- **Minor Issues** (CJI-master of roster; Opacity in collegium; Sealed covers to receive info; RTI gaps in HC; Jud Overreach, Judicial Evasion-inability to form benches to hear sensitive cases); Failure to remove judges due to rigid process despite guilty (eg: P D Dinakaran, Justice S Sen)

- CJI as the 'master of the roster' → cases allocated to judges arbitrarily (any executive seeking to influence SC just needs a compliant CJI)
- Opacity in the collegium wrt to appointment and transfers of judges
- Using sealed covers as means to receive info → defeats the purpose of open & transparent justice
- Judiciary and RTI
 - Lack of transparency in High Courts applying RTI: Many HCs have amended the RTI Rules on their own and have enacted additional reasons for denial of information or changing the mode of payment of fees (say stamp duty only)
 - Presently, only information related to administrative functioning of the Supreme Court can be availed under the RTI Act. The Delhi High Court recently held that RTI Act could not be resorted to in case the information sought for is related to judicial function of the Supreme Court
- Issues of Judicial Overreach eg: Prevention of Atrocities Act
- Judicial Evasion - inability to form constitutional benches to hear sensitive cases such electoral bonds, revocation of article 370, etc
- **Reforms needed:** Nat Jud Infra Auth of Ind (NJIAI) pushed by CJI Ramana; National Judicial Council as collegium recomm by 2nd ARC; Revision of National Litigation Policy; ADR to be ↑; Plea bargaining suggested by Malimath Committee 2003 (Promote ADR, Victim protection fund, Stringent punishment for false cases, Confession before SP rank be admitted in court); More liberal bail reforms (Section 436A of the Cr.P.C if half time of max prison then bail on personal bond; SC urged centre to simplify bail law; 🏆-Bail Act of UK); AIJS (u/a312); ES recom Indian Court and Tribunal Services; Female judges; Using AI/IT technology better; Cooling off period post retirement; Fast Track Courts (can be formed through a mere resolution by SG in consultation with HC); Reforms in Criminal Justice System India (without which there is pendency of cases, huge undertrials, ineffectiveness; Ranbir Singh Committee recently formed to review criminal laws)
 - **Suggestions by e-Committee of SC to help in reduction of pendency of cases: Computer algo** to decide case allocation **based on FIFO** (to ensure unfair power enjoyed by powerful is dismayed); Courts should **focus on e-filing** (can save 3 lac trees annually); Focus should be on virtual hearings; **Filling sanctioned judicial positions** - (courts can be **run in 2 shifts to meet infra issues**)
 - **eg: Reducing shortage of stenographers via speech to text technology**
- **(2024 - Prez Draupadi recommended AIJS, 28% vacacny in distt courts) All India Judicial Services:** Article 312, 42nd AA; Recommended by NITI@75; AIJS=Cadre of District Judges who will be recruited centrally through an all-India examination compared to current fragmented set up; **+ves** (reduce appeals, fill

vacancies, existing system at SPSC+HC is ineff & corrupt; Improve EoDB); **-ves** (Fear of centralisation; Language barriers due to central hiring; Judicial vacancies unique to each state; Against federalism; Reservation issues State OBC list v/s Centre; Central rec not panacea 22% IAS vacancies); **Way Fwd:** **116th** Law Comm Report recomm **National Judicial Service Commission** (retired judges, legal academics, memb of bar) to regulate & control the AIJS (keeping it immune from SG/CG)

- **Success of Indian Judiciary:** Unmarried women on equal footing to avail abortion (X vs Delhi Govt); Advocated for bail reforms (Balchand, Satendra Kumar); Discourse over freebies (S. Subramaniam Balaji); 3 member invest committee for Pegasus, Babita Puniya Case (permanent commission), NALSA (Transgender); Disposed 30k cases in pandemic months;
- **NJAC (National Judicial Appointments Commission)** brought to replace collegium system and issues related to it; Powers via 99th CAA and 2014 Act; Arguments favour (issues of collegium-no transp, could not fill vacancies, Parliament accountable to people who want speedy justice; Law was passed with laid procedure); Arguments against (Min of Law and 2 nominated experts are its part; Any 3 person can veto thus indirect control to govt; Indep of J=BSD, Judges may start giving favourable judgements to get selected; Know the law or know the law minister to become judge; Rejection based on extraneous national security norm); Reforms are needed was ack by same bench; Memorandum of Procedure in draft stage can be starting point; **Law Commission Report said** J Independence and J Accountability are 2 side of themes coin and judicial independence is not absolute)
- **Contempt of Court:** Article 129/215; CoC Act 1971; **Types** of contempt-Civil (wilful disobedience), Criminal (scandalises court or obstructs admin of justice); **Exemption**-if fair & accurate; punishment-2000/6m; **Need** (prevent scandalisation, essential to maintain faith; ensure leg/exec do not undermine J); **Issues** (Vague → wide scope of contempt; Used to muzzle free speech; Some criticism is needed for reforms/check corrupt; Appeals are decided in closed chamber; High number of cases shows misuse; Against international comparison such as UK); **Law Commission 2018 274th Report** (Act must be maintained and **definition may be restricted to Civil contempt**-because → Still high no. of cases + act is just procedural as power is in const; Also if act  then HC will not be able protect contempt of lower courts; Internationally contempt in UK was last in 1931 bt India regular so)
- **Tribunals:** T=quasi-judicial body established in India by an Act of Parliament or State Legislature under Article 323A (admin tribunals) or 323B (other trib); **Issues** (against Sep of Power; Bypassing HC during appeal such as NGT; appeals to SC negating Chandra Kumar Case 1997; Overburden HC/SC; Conflict of interest-appointers are litigators; Non-unif selection process; Pendency is high eg: **44k** cases at CAT); **Advantages** (Subjects call for technical expertise; Flexible

rather than rigid like courts; Summary procedure; Less costly); **Way Fwd:** National Tribunals Commission- independent agency to overview all matters regarding them) **New rules:** Provisions (4 member search cum selection committee, term of trib 4 yrs, non-reapp allowed), Issues (More rep of judiciary needed on search comm, Term shud be 5/7 yrs, No Jud Impact Assessment done, Litigator is appointer-secretary of ministry part of committee) - Law Commission **272th** Report (impartial appointments, etc)

- Online Measures taken: e-Courts Mission Mode, NJDG, Judicial Service Centre like Common S.S. (for lawyers/litigants to file petitions), E-Committee of SC, LIMBS (Legal Information Management & Briefing System; monitor court cases of govt dept)
- **JR/JA/JO**
 - **JR:** to pronounce upon the constitutionality of laws and exec orders; can be done of exec, leg or own action; JR part of BSD held under Minerva M case; Source of JR: Article 13, 32/226 (writs), 136 (spcl leave petition)
 - Article 13: declares all laws that are inconsistent with or in derogation of any fundamental rights shall be void
 - Helped in ensuring constitutional supremamcy: eg: Right to privacy as FR, Restoring govts of Uttrakhand/ArunP; Restoring power of delhi govt. (without JR, FR would render futile)
 - JR is critical but it must not become JO which can violate SoP, BSD and the constitution
 - **Miscellaneous Pointers:**
 - **Judicial Review:** can talk of IR Coelho case (said JR applied to 9th sch as well);
 - **JA:** proactive assertive role played by the judiciary to force the other organs to discharge their constitutional functions effectively; Source of JA: not constitutional but PIL/SLP or need for no locus standi; Factors calling for JA: Near collapse of responsible government, a legislative vacuum due to coalition govt and Public confidence in judiciary)
 - PIL pioneered by **Justice Iyer and Justice Bhagwati**; PIL is necessary for maintaining rule of law, furthering the cause of justice and accelerating the pace of realisation of consitutional objectives
 - **JA examples: Conduct NEET exam; Direction of BCCI reforms, Vishaka Guidelines; Babita Puniya**(Perm Commission for women in Army)
 - **Husainara Khatoon Case of PIL** - 40k undertrials were released
 - **JO:** Thin line of diff with JA; when JA crosses its limits & becomes Judicial adventurism it is known as JO; Source of JO: nowhere its undesirable in democracy; Cons of JO/JA (SoP violates; burden jud already pendency high; Jud is ill-equipped to deal with complex governance issues in env/eco; J not accountable to ppl)

- **Concl:** Need to uphold Article 50 sep of power; Each organ must fulfill its duty; Division bench in courts to inspecting PIL/SLP before admission; JA/JO can be medicine but cant be daily bread; Jud must avoid acting as 'Super Legislature'; Need for Judicial Accountability (Annual reports on their functioning)
- 🌟 [Examples of JA/JR/JO](#) 🌟 - Read Bold examples

Examples of JA/JR/JO

1. Judicial Review:

- Striking down of the Section 66A of the IT Act as it was against the Fundamental Rights guaranteed by the constitution
- Social Justice: Navtej Singh Johar Case: Decriminalised homosexuality** by striking off parts of Section 377
- Human rights: Judiciary by incorporating due process of law (Meneka Gandhi case)
- Constitution: By bringing **Article 356** (Prez rule) **under judicial review in SR Bommai case**, SC has emerged as a protector of federalism

2. Judicial Activism:

- Invention of the 'basic structure doctrine'** in the 'Keshavanad Bharati case' (1973) by which Supreme Court further extended the scope of Judicial Review
- Right to Food Case (People's Union for Civil Liberties v Union of India)** - Globally, it is the most cited case on right to food and even judicial activism (court appointed its own officers to bring ground reality to court room)
- Electoral reforms **Rambabu Singh Thakur Case: Directed PPs to publish details of criminal antecedents within 48 hrs** of selection otherwise contempt of court
- Judiciary has given the Vishakha guidelines** for safety of women
- Environment: Stopping of polluting industries of Agra, beautification and protection of Taj Mahal from pollution, GRAP for delhi, etc.

3. Judicial overreach:

- Examples highlighted by **Venkaih Naidu**: SC **banning diesel cabs in Delhi** led to widespread protests, **Banning crackers, Monitoring police investigations**
- Making national anthem compulsory** (Shyam Narayan Chouksey 2018)
- In 2015, the Allahabad High Court passed an order stating that children of public functionaries/ bureaucrats in Uttar Pradesh should be enrolled only in government schools.
- AP HC judgement of seeking to inquire whether a constitutional breakdown in the state machinery happened in the state (violates separation of powers) → AP HC judgement was stayed by SC

4. **2016: IR Coelho Case? Can you say that judicial review is of key importance amongst the basic features of constitution?**
- a. **I.R. Coelho v. State of Tamil Nadu: Ninth schedule under judicial review**
- i. In this case, a nine-member bench of Supreme Court held that ninth schedule items are not immune to judicial review
 1. 9th Schedule and Art 31B was introduced by the 1st amendment to protect certain acts from getting invalidated due violation of FR
 2. SC held that **no blanket immunity for laws under 9th schedule and open to challenge if violate basic structure or FR's such as 14,15,19,21** (for laws placed after April 24, 1973, case is of 2007 but date was kept as that of KB Case 1973)
 - ii. **Issues:** Creates parliamentary hegemony when unchecked; Using 9th sch to save themselves of judicial scrutiny (Essential commodity act); Outlived utility (as other than land reforms also becoming part eg: TN 69% reservation); Judicial review denied (mention that JR is part of BSD as per MM Case-always mention this case with JR)

Judiciary - Extra Content

- Introduction:
 - SC derives its power from **Articles 124-147** in **Part V** of Indian Constitution
 - According to a 2018 report by the Institute for Economics and Peace, the **inability of the Indian state to deliver timely justice** and ensure the rule of law resulted in preventable violence which cost India as **much as 9% of our annual GDP**
 - Justice DY Chandrachud said SC acted as 'Truth Commission' during the pandemic
 - Read Issues and Reforms needed (pink content)
 - Independent judiciary (along with free press) act as a **"self-correcting mechanism"** that could repair challenges to any democracy
- Success of Indian Judiciary: 3 member invest committee for Pegasus, Babita Puniya Case, NALSA (transgender); Disposed 30k cases in pandemic months
 - Setting up of **3 member investigation committee** for Pegasus allegations
 - **Disposed 30,000+ cases during the months of public health crisis** (not missed a day of work in the pandemic)
 - Important Judgements of Indian Judiciary

- SC in **Babita Puniya Case** granted permanent commission to women in army
- **NALSA Case 2014** - recognised transgenders as the “third gender”
- Called for police reforms via Prakash Singh Case
- State election commissioners cannot be govt. employees
- Maneka Gandhi Case
- SC hears more cases annually when compared to total 76 cases heard by the SC of USA
- Right to freedom of religion: Hadiya Case, Sabrimala Case, Declared the practise of the triple talaq as null and void, Banned FGM in Dawoodi-Bohra community, Protected rights such as those of transgender, brought CJI under RTI
- Constitutional articles wrt Judiciary
 - Art 13- examine constitutionality of laws inconsistent with FR
 - Art 32,226 (writs)
 - Art 129(court of record)
 - **Art 130 (regional benches)**
 - Art 131(original jurisdiction in C-S disputes)
 - Art 136(Special Leave petition)
 - Art 137(Review petition)
 - Art 141(Law by SC binding on all courts and govt- where no legislation SC law applies- eg Vishaka guidelines was used as law before sexual harrasment at workplace act 2013)
 - Art 142(Sky is the limit- SC judge complete justice in the case)
 - Art 143(President opinion)
 - **Art 129/215 Contempt of Power**

Judicial Reforms (all reforms address key issue plaguing the judiciary)

- Justice Ramana called for National Judicial Infrastructure Corporation with support of centre & state for improving judicial infra more so in case of lower courts (in later news NJIAI)
- 2nd ARC recommended formation of National Judicial Council - collegium having representation of the executive, legislature and judiciary; lay down the code of conduct for judges
- Further revision of National Litigation Policy to ensure govt. becomes efficient and responsive litigant
- Alternative modes of dispute resolution must be promoted
- In cases of criminal offences, the option of plea bargaining suggested by Malimath Committee should be utilized. (Plea Bargaining: If the accused admits

- his crime then in return he is given less punishment which will result into speedy delivery of justice)
- Bail Reforms: (are linked to increasing undertrials) More liberal bail (as bail is the norm, jail is exception as said by SC); Avoid declining bail for minor offences
 - Sincere implementation of Section 436A of the Cr.P.C., under which undertrials who have completed half of the maximum prison term prescribed for the offence may be released on personal bond
 - The 18th Law Commission had highlighted the fact that the strength of the Judges in the Supreme Court should also be increased; Decentralize SC by forming regional benches (u/a Article 130)
 - Atleast the virtual hearings can be allowed to continue till regional benches are made; Benefits: Allows litigants to choose local advocates rather than lawyers around Delhi; It can beat geographic concentration of cases in SC (higher number of cases in the SC originate in HCs nearby delhi which highlights that other areas are under-represented in SC docket of cases)
 - Formation of AIJS (under Article 312); ES advocated for Indian Court and Tribunal Services for better administration
 - Attorney General Venugopal stressed on having more women judges in courts to improve gender sensitivity of judiciary
 - Streamlining procedures using information technology, AI
 - Others: Cases belonging to similar category can be clubbed together and accordingly prioritized by the court; Strengthening RTI wrt judiciary; Guidelines to regulate post retirement employment of judges; Need for Independent Judiciary Lokpal; Set up specialized commercial fast track courts to expedite the enforcement; Formation of National Court of Appeal to reduce the burden over SC; Diversify the power of master of roster currently only held by CJI; Cooling of period after retirement for judges;

Contempt of Court:

- Contempt refers to the offence of showing disrespect to the dignity or authority of a court. Article 129 and 215 of the constitution of India empower the supreme court and high court respectively to punish people for their contempt and the judiciary was provided with this power under Contempt of Court Act, 1971
- It divides contempt into civil and criminal contempt.
 - **Civil contempt** refers to the **willful disobedience** of an order of any court.
 - **Criminal contempt** is the publication of any matter or the doing of any other act which **scandalises or lowers the authority** of any court, or interferes with the due course of any judicial proceeding, or **obstructs the administration of justice** in any other manner

- Punishment: The Contempt of Court Act of 1971 punishes the guilty with imprisonment that may extend to six months or fine of ₹ 2,000 or both.
- Exceptions to contempt of Court: Fair and accurate reporting of judicial proceedings; The Act was amended in 2006 and introduced truth as a valid defence, if it was in public interest and was invoked in a bona fide manner
- Need for such law
 - Prevent scandalisation or lowering the authority of any court. It is needed to maintain the dignity of the higher courts. Strengthen court's image as legal authority and that no one is above the law.
 - To prevent public opinion and media criticism from hampering the decision making based on justice.
 - To prevent the legislative and the executive to undermine the independence of the courts, by distorting facts.
 - It ensures that one could not defy court orders according to one's own free will.
 - The power to punish for contempt is essential to maintain the faith and confidence of people in the judiciary
- Issues with contempt of court
 - Vague and wide jurisdiction: Definition of criminal contempt in India is extremely wide and can be easily invoked because of the Suo motu powers of the Court to initiate such proceedings.
 - Criticism of courts will probably help to maintain a check on corruption in judiciary
 - Against civil liberties: Contempt of Court proceedings have the effect of muzzling free speech guaranteed under Article 19 eg: Ex: Contempt of court case against Arundathi Roy
 - Limited right to appeal: Currently there is a right to file a review petition against the judgment and that plea is decided in chambers by the bench usually without hearing the contemnor
 - Against Natural Justice: Contempt law enables judiciary to sit in judgement on itself.
- Should the provision be retained or not? In 2018, the Department of Justice asked Law Commission of India to examine Contempt of Courts Act, 1971. Law Commission has submitted a report stating that there is no requirement to amend the Act, for the reasons stated below:
 - High number of contempt cases: High civil and criminal contempt pending in various High Courts and the Supreme Court justify the continuing relevance of the Act
 - Source of contempt power: Courts derive their contempt powers from the Constitution. The Act only outlines the procedure in relation to investigation and punishment for contempt. Therefore, deletion of the offence from the Act will not have an impact.

- Impact on subordinate courts: The Constitution allows superior courts to punish for their contempt. The Act additionally allows the High Court to punish for contempt of subordinate courts. If the definition of contempt is narrowed, subordinate courts will suffer as there will be no remedy to address cases of their contempt.
- International comparison: Commission warranted a continuation of the offence in India as India continues to have a high number of criminal contempt cases, while the last offence of Scandalising the Court in the UK was in 1931
- Adequate safeguards into the Act to protect against its misuse. Provisions in 1971 act suggest that the courts will not prosecute all cases of contempt. The Commission further noted that the Act had withstood judicial scrutiny, and therefore, there was no reason to amend it
- Restrict court power: 1971 Act was a good influence as laying down procedure, restricts the vast authority of the courts in wielding contempt powers. Amending the definition of contempt will lead to ambiguity
- Way Fwd:
 - The Law Commission of India held that there is a need to retain the provision regarding the contempt of courts. However, it also recommended the definition of contempt in the Contempt of Court Act should be restricted to civil contempt, i.e., willful disobedience of judgments of the court
 - An independent authority having members from legislative, judiciary and civil society should be constituted to determine which cases constitute contempt.

Comparison of various courts

	Statutory	What stage	Matters covered	Appeal
Lok Adalats	Legal Service Authorities Act 1987	Anytime before the judgement (thus incl cases pre litigation as well as pending in courts as it's a form of ADR)	Compoundable offences only	No appeal is allowed
Permanent Lok Adalats	Legal Service Authorities (Amedment) Act 2002	Compulsory pre-litigative mechanism for public utility services	Compoundable offences only; Upto 1 crore 10 lakhs (can be inc by CG Parliament)	Case decided on merit/facts if parties don't reach on an agreement; No appeal
Family Courts	Family Courts Act 1984	Set up by State Govts ; Mandatory in one million+ towns	Marriage and family affairs (although these matters are also overseen by Lok Adalats)	Appeal allowed to HC
Gram Nyayalaya	Gram Nyayalayas Act 2008	-	Civil as well as Criminal matters	Appeal to District Court/Court of Session within 6m as the case maybe

Functioning/Procedure

1. **2020: The judicial systems in India and UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.**

a. Differences:

- i. In case of British system, the **lack of concept of 'Basic Structure'** makes amending power of the Parliament supersede any judicial pronouncement
- ii. **UK courts do not have power of judicial review**
- iii. UK adopts Rule of Law and India adopts Due Process of Law
- iv. UK Judicial system is slow and gradual evolution where as powers of judiciary in India is defined by the constitution
- v. **UK uses information to design its "forward programme for judicial recruitment"** where recruitment cycles are mapped out for the next five years

b. Similarities:

- i. Procedure for removal of judges requires consent of houses
- ii. The actions of executive can be declared ultra vires in both the system
- iii. Single integrated judicial system

2. **2017: Critically examine the Supreme Court's judgement on National Judicial Appointments Commission Act, 2014**

a. NJAC was a statutory body formed under the act and sourced its powers from the 99th CAA; It was a body intended to replace the collegium system

b. Need for NJAC = Arguments against the collegium system

- i. Close door affair → process is prone to biases and issues of corruption and nepotism can arise
- ii. system overlooks several talented junior judges and advocates
- iii. two decade old system of a collegium has not been able to keep the vacancies filled
- iv. May be prone to old rivalries → each other's favourites getting vetoed
- v. Collegium is not accountable to any other authority

c. Arguments against current form of NJAC

- i. The composition of the NJAC, especially the inclusion in it of the Union Law Minister and two eminent persons impinged on the doctrine of separation of powers.
- ii. The NJAC act gave any two members a veto over all decisions, raising the question whether the nominated representatives could veto and allow govt to control NJAC
- iii. Inst. mech to appoint judges impinge on the independence of judiciary which a basic feature of the constitution

- d. Conclusion: There is no doubt that reforms within the system are needed at the earliest as was acknowledged by the bench overruling the NJAC itself; In 2015, the **Supreme Court had ordered the Central government to frame a new Memorandum of Procedure (MOP)** which lays down the procedure for appointment of judges to High Courts and the Supreme Court. However only a draft for the same is prepared as of now (image attached)

MEMORANDUM OF PROCEDURE

- | | |
|--|---|
| ■ Appoint up to 3 SC judges from members of the Bar, distinguished jurists | ■ HC acting chief justice's term must be limited to 3 months |
| ■ Document reasons if a senior judge is overlooked for elevation to SC | ■ Union Law Minister must seek CJI's recommendation for appointment of his successor at least a month before his retirement |
| ■ Set up permanent secretariat to maintain records | |

e.

3. 1997: Present your views for and against the creation of an All India Judicial Service

- a. Recommended by 14th Report of the Law Commission in 1958, First National Judicial Pay Commission, Strategy for New India@75, etc.
- b. Article 312 was amended under 42nd AA to include an all-India judicial service
- c. It aims at creating a centralized cadre of District Judges who will be recruited centrally through an all-India examination and allocated to each State along the lines of the All India Services (AIS). Currently, the appointments of District Judges and Subordinate Judiciary are done by the respective State governments
- d. Pros:
 - i. To fill up vacancies: It would help fill the approximately 5,000 vacancies across the District and Subordinate Judiciary in India
 - ii. Reduction in appeals as it is expected that efficiency of the judges would increase due to intensive training
 - iii. The existing system under which High Courts or State Public Service Commissions are recruiting judges to the district judiciary is full of loopholes, delays and inefficiency
 - iv. Lead to better bar-bench relation, help attract best talent
 - v. The problems in lower judiciary deny us an opportunity to have better judges at the high courts and Supreme courts

- vi. India has a unified judiciary. This makes the constitution of an AIJS a very natural phenomenon
- e. Issues:
 - i. Fear of centralization as currently under Article 233 appointment is done by Governor in consultation with HC
 - ii. Up to the court of District and Sessions Judge, the proceedings are conducted and the judgments are written in the local language
 - iii. Reservation issues: State OBC list might not match the centres OBC list
 - iv. It may also end up not taking into account local laws, practices and customs which vary widely across States, vastly increasing the costs of training for judges selected through the mechanism.
 - v. Centralised recruitment is no panacea (IAS recruitment by UPSC as 22% vacancy rate)
- f. Conclusion:
 - i. AIJS should be designed in a manner to remove its shortcomings and it can be an effective solution to the vacancy in Judiciary.
 - ii. 116th report of the Law Commission proposed National Judicial Service Commission consisting of retired and sitting judges of the Supreme Courts, members of the bar and legal academics which will recommend that appointments, postings and promotions to the AIJS (and keep it immune from influence of CG and SG)
 - iii. Need to take concurrence from SGs and HCs
 - iv. Need to investigate the reasons and causes for the large number of vacancies in the poorly performing States
- 4. **2002: How far does Supreme Court play its role as guardian of the Constitution?**
 - a. *Cover issues prevailing along with its successes*
- 5. **2018: Do tribunals curtail the jurisdiction of ordinary courts? Discuss the constitutional validity and competency of the tribunals in India?**
 - a. Basics: 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. These articles inserted through the 42nd Amendment Act of 1976 on recommendation of Swaran Singh Committee.
 - i. Article 323A deals with administrative tribunals
 - ii. Article 323B deals with tribunals for other matters
 - b. **Tribunals Curtailing Jurisdiction of Ordinary Courts**
 - i. Tribunal, being a quasi-judicial body, goes against the Doctrine of Separation of Powers and allows dilution of judicial mechanism - the exclusive arena of ordinary courts.
 - ii. The SC in Chandra Kumar case (1997) held that the power of the HC under Article 226 and 227 to exercise judicial superintendence

over the decisions of all courts and tribunals is a part of the basic structure of the Constitution. However, decisions of some of the tribunals, like National Green Tribunal continue to be taken on appeal only before the SC bypassing the HC as Court of Appeal, depriving them of their power of judicial review.

- iii. Conferring a direct right of appeal to the SC from tribunals has changed the SC from a constitutional court to a mere appellate court and has also resulted in a backlog of cases.
 - iv. Appeals from SC would require SC to deal with the finer nuances of disputes under specialised areas of law from afresh. This is not ideal for a court of last resort.
- c. **Competency of Tribunals:** Tribunals are dependent for appointment, tenure, funding, infrastructure and mode of removal on the **Executive-the largest litigant** in the country. This **creates a conflict of interest situation**, putting a question mark over their independence. However, tribunals play **significant role in following ways:**
- i. Their administrative members can better appreciate the technical nuances of the matters brought before them and can enhance the quality of justice delivery system.
 - ii. They have flexibility and adaptability in adjudication as they are not restrained by rigid rules of procedure. (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)
 - iii. They are less formal, less expensive, and a faster way to resolve disputes.
 - iv. They also give much needed relief to ordinary courts of law, already overburdened with numerous suits.
- d. **Way forward**
- i. Given their benefits, tribunals should be revamped keeping in mind the 272nd Law Commission report for restructuring of tribunals and the ruling of SC in Chandra Kumar Case, and **bringing tribunals under independent agency**. Hence, tribunals are meant to supplement ordinary courts and cannot supplant them
- e. **New Rules for tribunals brought after previous rules of 2017 were struck down by SC**
- i. Appointments to the above Tribunals will be made by Central Government on the recommendations by the "**Search cum Selection Committee**" **composed of 4 people**:- The Chief Justice of India, or a judge nominated by the CJI o President/chairperson of tribunal concerned o Two government secretaries from the concerned ministry/department

- ii. Rules also provide a **fixed term of four years** to the Tribunal members
- iii. Search Cum Selection Committee has the power to recommend the removal of a member, and also to conduct inquiry into allegations of misconduct by a member
- iv. Only persons having judicial or legal experience are eligible for appointment
- v. Members **not eligible for re-appointment**
- vi. **Issues with new rules** (Principles laid down in UOI vs R Gandhi, Madras Bar Association case (2010) not met)
 1. Regarding composition, it stated that among the 4 membered search-cum-selection committee, there **should be 2 judicial appointments**
 2. **Term:** the court held that the term of office shall be **five or seven years**
 3. New rules **do not remove the control of parent administrative ministries (ministries against which the tribunals have to pass orders)**
 4. **Secretary of the ministry against which the tribunal is to pass orders sits on the committee for selecting**
 5. **No Judicial Impact Assessment was done prior to abolition** of the tribunals through this ordinance
- vii. **Way Fwd:** In this context, an independent autonomous body such as a **National Tribunals Commission (NTC)**, responsible for oversight as well as administration of tribunals, (also look after disciplinary proceedings against members, admin and infra needs), can go a long way in remedying issues that plague the functioning of tribunals. (NTC can have a corporatised structure with Board/CEO etc)
- viii. Income Tax Appellate Tribunal works under Ministry of Law and Justice rather than M/o Finance. Other tribunals can also follow this model rather than the being under parent ministry

Judicial Review

- Though legislature has the power to make laws, this power is not absolute. Power of judiciary to adjudicate on both executive and legislature actions to ensure their consistency with broader constitutional morality
- Concepts of Law:
 - Procedure Established by Law: It means that a law enacted by the legislature or the concerned body is valid only if the correct procedure has been followed to the letter.

- Due Process of Law: It is a doctrine that not only checks if there is a law to deprive the life and personal liberty of a person but also ensures that the law is made fair and just.
- Generally follows procedure established by law but JA based on due process of law
- Articles giving power of JR
 - Art 13- Examine constitutionality of laws inconsistent with FR; Art 32,226 (writs); Art 131(original jurisdiction in C-S disputes); Art 136(Special Leave petition)
- Judgements reaffirming JR
 - K Bharti case- basic structure doctrine
 - Minerva mills- JR basic structure of constitution
 - Meneka gandhi case
 - SR Bommai- Secularism/Federalism BS
 - IR Coelho case(2007)- Ninth schedule under judicial review
- Judicial review can be done of legislative action, executive action or judicial decision
- Importance of Judicial Review:
 - It is essential for maintaining the supremacy of the Constitution.
 - It is essential for checking the possible misuse of power by the legislature and executive.
 - Without judicial review, basic structure rec by KB case(1973) would be rendered powerless and open to violation by arbitrary or draconian laws.
 - extremely necessary keeping in mind the bad experiences of Emergency.
 - JR effective means to protect the fundamental rights of citizens from legislative oversight.(Meneka gandhi, Navtez Johar, NALSA)(Art 32,226), bail to climate activist recently /political dissidents
 - It maintains the federal balance.
 - It is essential for securing the independence of the judiciary.
 - Independent judiciary (along with free press) act as a “self-correcting mechanism” that could repair challenges to any democracy
- Problems with Judicial Review:
 - It violates the limit of power set to be exercised by the constitution when it overrides any existing law.
 - The concept of separation of powers is not adhered to strictly. However, a system of checks and balances have been put in place in such a manner that the judiciary has the power to strike down any unconstitutional laws passed by the legislature.
 - The judicial opinions of the judges once taken for any case becomes the standard for ruling other cases.

- Judicial review can harm the public at large as the judgment may be influenced by personal or selfish motives.
- Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.
- Exec & Legis are representatives of ppl unlike judiciary

Judicial Activism and Overreach

Article 50 calls for separation of judiciary from the executive. Judiciary, legislative and executive are the 3 principle organs of our democracy. The role, powers and actions of these three are demarcated in the constitution. Problems arises when they interfere in each other's area knowingly or unknowingly.

Difference between activism and overreach

1. Judicial activism connotes the proactive assertive role played by the judiciary to force the other organs to discharge their constitutional functions effectively. Ex: PIL is an facilitator of JA. Its more about the positive role played by the judiciary owing to the factors like a near collapse of responsible government, a legislative vacuum due to coalition governments and public confidence in judiciary.
 - a. Discontinuation of the principle of Locus Standi, have allowed the Judiciary to intervene in many public issues, even when there is no complaint from the concerned party
 - b. Thus JA, unlike JR, has no constitutional articles to support its origin
 - c. Issues: Judiciary unlike legislature is not elected - thus does not represent wish of the people
2. When judiciary takes the powers of the executive or the legislature, it is called as judicial overreach. - "Judicial activism should not become judicial authoritarianism" - Soli Sorabjee (former Attorney-General of India)
 - a. The line between Judicial activism and Judicial Overreach is very narrow. In simple terms, when Judicial activism crosses its limits and becomes Judicial adventurism it is known as Judicial Overreach
 - b. High energy state of Judiciary when jumps into orbit of Legislature/executive
 - c. JO refers to an extreme fom of JA where interventions into leg. domain become unreasonable, arbitrary and frequent. It leads to disturbance in balance of powers
3. Example- subjectivity involved depending on who is getting benefited- eg J asking to release food grains can be considered JA by consumers but JO by economists.

Reasons for activism

- Written constitution

- Executive overreach, Decline of parliamentary chamber, police excesses, civil society activism, India judge respect culture

Examples of JA/JR/JO

1. Judicial Review:

- Striking down of the Section 66A of the IT Act** as it was against the Fundamental Rights guaranteed by the constitution
- Social Justice: Navtej Johar Case:** Decriminalised homosexuality by striking off parts of Section 377
- Human rights: Judiciary by incorporating due process of law (Meneka Gandhi case)
- Constitution: By bringing Article 356 (Prez rule) under judicial review in **SR Bommai case**, SC has emerged as a protector of federalism

2. Judicial Activism:

- Invention of the 'basic structure doctrine'** in the 'Keshavanad Bharati case' (1973) by which Supreme Court further extended the scope of Judicial Review
- Right to Food Case (People's Union for Civil Liberties v Union of India)** - Globally, it is the most cited case on right to food and even judicial activism (court appointed its own officers to bring ground reality to court room)
- Electoral reforms **Rambabu Singh Thakur Case:** Directed PPs to publish details of criminal antecedents within 48 hrs of selection otherwise contempt of court
- Judiciary has given the **Vishakha guidelines** for safety of women
- Environment: **Stopping of polluting industries of Agra**, beautification and protection of Taj Mahal from pollution, **GRAP for delhi, etc.**
- Babita Puniya Case: Permanent Commission in all 10 streams where they already get short commission (as denial violates Article 14)
- Law and order: Ban on tinted glasses in vehicles help prevent criminals escape after committing heinous crimes.

3. Judicial overreach:

- Examples highlighted by Venkaih Naidu: SC **banning diesel** cabs in Delhi led to widespread protests, **Banning crackers**, Monitoring police investigations
- In 2015, the **Allahabad High Court** passed an order stating that children of public functionaries/ bureaucrats in Uttar Pradesh should be enrolled only in government schools.
- AP HC** judgement of seeking to inquire whether a constitutional breakdown in the state machinery happened in the state (violates separation of powers) → AP HC judgement was stayed by SC

d. Compulsory National anthem in cinema halls (now made voluntary)

Cons of overreach (SoP violates; burden jud already pendency high; Jud is ill-equipped to deal with complex governance issues in env/eco; J not accountable to ppl)

Steps to curtail overreach

1. Drafting clear guidelines for PIL/Special Leave Petition so that only very urgent and not mundane issues are taken up
 - a. Establishing a division bench in courts to inspecting PIL/SLP before admission.
2. Judges should not peddle interfere in executive domain with individual perceptions - A judge's solemn pledge has to remain embedded to protection of constitution and examine constitutionality of laws.
3. Accountability mechanism for court whereby people can move to court against the court for frivolous judgments that hampered economic growth.

Way Forward


- JA/JO can be medicine but cant be daily bread
 - There is a very fine line between judicial activism and overreach. Judges should understand this and restrain themselves from crossing this line too often. The judiciary cannot rule the nation by legislating as well as executing through its judgements.
- Other 2 branches of govt should fulfill constitutional duties rather than criticising judiciary
- The Judiciary, while eschewing the temptation to act as a 'Super Legislature', must maintain a balance between judicial activism and judicial restraint in line with the constitutional vision

Judicial review, activism, overreach

1. **2016: IR Coelho Case? Can you say that judicial review is of key importance amongst the basic features of constitution?**
 - a. Coelho case(2007)- landmark judgment on the interpretation of the doctrine of basic structure of the constitution as laid down in Kesavananda Bharti case.
 - b. **I.R. Coelho v. State of Tamil Nadu: Ninth shedule under judicial review**
 - i. In this case, a nine-member bench of Supreme Court held that ninth schedule items are not immune to judicial review

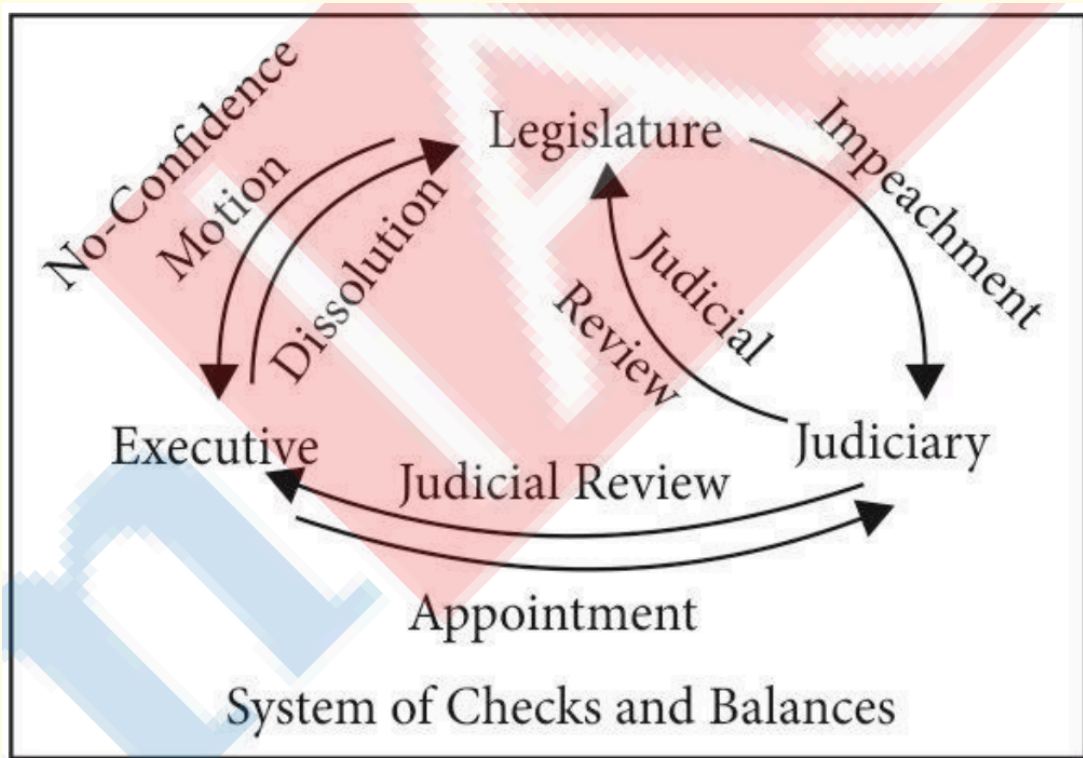
1. 9th Schedule and Art 31B was introduced by the 1st amendment to protect certain acts from getting invalidated due violation of FR
 2. SC held that no blanket immunity for laws under 9th schedule and open to challenge if violate basic structure or FR's such as 14,15,19,21(for laws placed after April 24, 1973)
- c. JR key importance among the basic structure of the constitution as:**
- i. maintaining the supremacy of the Constitution; maintain federal balance; ensure indep of judiciary; JR allows it to protect FRs using article 32; Quote cases as examples
2. 2014, 2008: Evaluate the role played by judicial activism in achieving the ideals of democracy? (repeat question)
 - a. Write about judicial review(imp cases), positive implications given above(ideals of democracy- HR, FR, constitutional protection, federalism, minority protection, responsible media etc)
 - b. End with small issues of overreach and conclude
 3. 2005: Is it possible to distinguish between judicial review and judicial activism in India? Does the recent behaviour of the Indian judiciary partake more of judicial activism? Argue with suitable example
 - a. Given above - explain JR(positive) to JA to Jo(negative), give examples
-

Separation of powers (SOP)

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**

- **Intro:** Montesquieu (the spirit of laws); Article 50/121/122/211/212; Idea behind the doctrine of separation of powers is to **create separate power centers rather than having all power concentrated in a single institution**. Though on the whole, the doctrine of separation of power in the **strict sense is not possible** in modern political system, **its value lies in emphasis of checks and balance**; It was **Kesh Bh case** that **said SOP is part of BSD**(therefore its must be mentioned wherever SoP is mentioned);
 - *The principle of judicial independence is a natural corollary of the 'Doctrine of separation of powers' and is designed to protect the system of justice*
- Indian model is one of **interdependence** rather than a water tight separation of powers
 - There are **personnel overlapping** as well as **functional overlapping** eg: CoM is derived from the legislature and at the same time is collectively responsible to the lower house (Lok Sabha/Vidhan Sabha)
- **Concepts covered:** Evidences that show functional SOP in India (DPSP Article 50-Sep J from Exec, Article 121/211-Conduct of J cannot be discussed in legis;

Article **122/212** Courts cannot enquire in working of legis; Office of pt is seen as disq; Immunity from arrest to MP/MLA during working of house; Prez/Governor given civil/criminal immunity); Evidences that show that there is a overlap instead (Legis-MPLADS, Judicial power to enforce parl priveleges/impeach prez; Exec-Subordinate legis, Ordinances, Tribunals appointed by exec, Ministers as legis; Jud-eg: of JA, CJI acting as Prez); System of checks and balance unlike strict SOP (strict SOP is seen in US where as India has C&B as envisaged in various case laws; IG vs Raj Narain case held that strict SoP like US does not apply to India; Examples of C&B: **Exec**-App&transf of Judges, Delegated legislation; **Jud**-eg: of JR for exec and BSD for legis; **Legis**: No conf motion, Impeach/Remove Judges) Weakening C&B in India (No definition for office of pt thus misued; Weakened opposition; 25% bills to PCs; Whip impacted legis conscience, Executive excesses eg: weakened RTI, Judicial overreach also weakens SoP)



-
- **PYQs**

- Ordinances ✨ (Article 123/213, 3 Condition triangle-house not in session, circumstances exist ✓, Circums warrant Immediacy ✓); Issues (SoP violated, Freq re-promulgation, Bypasses Legis, Hampers centre-state relations, Lack of clarity on emergency use), Constitutional safeguard-6 week of reassemb, present st of reasons & Judicial safeguards DC Wadhwa case (use in exceptional situations as not a substitute to law making), RC Cooper case (subject to JR); Way Fwd-Healthy practice to disclose reason in preamble of bill)
- PILs (Need-same as JA, Issues-used to gain publicity; burdens jud; eg: can be same as JA)

- **ADR** (dispute resolution that is non-adversarial; Laws-The Legal Services Authorities Act, Arbitration and Conciliation Act; Lok Adalats alone disposes 50 lakh cases pa); Arbitration and Conciliation 2016 (Arbitration Council of India-ACI was set up; SC to appoint arbitrators) & 2019 (8th sch removed-now qualif by ACI; Unconditional stay on award in case of frauds); Current Affairs - New Delhi International Arbitration Centre (NDIAC = statutory body to promote & facilitate ADR); **Mediation Act 2023**
- In **Divisional Manager, Aravali Golf Course v. Chander Haas (2007)**, the Supreme Court stated that "judges must know their limits and are not to run the government. Application: SoP/JO/Judicial a/c and BSD

SOP - Extra content

- SOP ensures that different branches of government should work autonomously with minimal interference from others. It also aims to reduce over-centralisation of power in the hand of any branch of the Government and thus reduce instances of abuse of power.
- Despite there being no clear provision recognising the doctrine of separation of powers, the Constitution does make provisions for a reasonable separation of functions and powers between the three organs of Government.

Functional separation

1. Article 50 lays down that State shall take steps to separate the judiciary from the executive in public services of state.
2. Disqualification when a person have office of profit (as it violates separation of power b/w exec and legis)
3. Article 121 and 211 provides that judicial conduct of a judge of the Supreme Court and the High Court cannot be discussed in the Parliament and the state legislature.
4. Article 122 and 212 provides that courts should not enquire into working of legislatures- ensures the separation and immunity of the legislatures from judicial intervention.
 - a. Parliamentary privileges (art 105)- immunity from arrest to MP/MLA during house working and 40 days before and after for civil wrongs
5. Articles 53 and 154 provides that the executive power of the Union and the State shall be vested with the President and the Governor and they enjoy immunity from civil and criminal liability.
6. Article 361 declared that President or the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

Functional overlap (negation of strict separation of power in Indian constitution);
When writing pt about one think of other two

1. Legislature
 - a. The legislature besides exercising law making powers exercises judicial powers in cases of breach of its privilege, impeachment of the President and the removal of the judges
 - b. MPLAD scheme
2. Executive
 - a. The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions eg Administrative tribunals
 - b. Ministers are members of the legislature (Parliamentary system)
 - c. Legislative power can be exercised by the executive. For example, President or the Governor can promulgate ordinances when the legislature is not in session.
 - d. Civil servants- delegated legislation
 - e. The executive makes appointments to the Judiciary and thus affects its functioning
3. Judiciary
 - a. Common laws or judge made laws- Vishakha guidelines, Witness protection scheme
 - b. When President office falls vacant by resignation, death, removal and then VP too- CJI (and if this vacant too- senior most SC judge)- discharges powers and function of President
4. Besides the functional overlapping, the Indian system also lacks the separation of personnel amongst the three departments (IAS controlled by DoPT as Rajyasabha secretary general)

Judicial Pronouncements

Constitutional scheme does not provide any formalistic division of powers. It is through judicial pronouncements, passed from time to time, that the boundaries of applicability of the doctrine have been determined.

1. In the Delhi Laws Act case, SC observed that one organ should not perform functions which belong to others in India.
2. In Keshavananda Bharti case, the doctrine of separation of powers is acknowledged as an integral part of the basic features of constitution.
3. In the Indira Gandhi vs Raj Narain case, this doctrine was made clearer. Court observed that rigid **separation of powers** as under the American Constitution does not apply to India rather a system of **checks and balances**.

Checks and balances

1. The constitution of India provides a system of checks and balances in order to prevent the arbitrary or capricious use of power.
2. Checks and balances implies each branch has power to check other branches to ensure balance of exercise of powers.

(This part is different from functional overlap in the sense that here one organ is controlling the other 2 where as in functional overlap one organ is acting like other 2; so examples will be generally different)

Legislature Control

- On Judiciary: **Impeachment and the removal of the judges.** (Judges Inquiry Act 1968- Speaker/Chairman may refuse too the motion of impeachment of judges) Power to amend laws declared ultra vires by the Court and revalidating it.
- On Executive: Through a **no-confidence vote** it can dissolve the Government. (**Art 75**- COM responsible to LS) Power to assess works of the executive through the question hour and zero hour. Impeachment of the President.

Executive Control

- On Judiciary: Making **appointments & transfer** to the office of Chief Justice and other judges.
- On Legislature: Powers under **delegated legislation.** Authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution.

Judicial Control

- On Executive: **Judicial review** i.e. the power to review executive action to determine if it violates the Constitution (J cannot remain silent spectator when rights of citizens are infringed)
 - Judge impeachment by laid down procedure by legislature not arbitrarily by executive who appoints them
- On Legislature: Unamendability of the constitution under the **basic structure doctrine** pronounced by the Supreme Court in Kesavananda Bharati Case 1973.
 - Judicial review of laws

Weakning system of checks and balance

- Weakened Opposition in India: In a Parliamentary system, these checks and balances are provided by the opposition party- However, the **majority of a**

single party in the Lok Sabha has diminished the role of an effective opposition in the Parliament.

- **Not defining office of profit comprehensively** which allows it to be **misused (2nd ARC 4th R - calls for definition); (office of pt is not defined but merely mentioned in constitution)**
- Weakened Legislature Scrutiny: According to data by **PRS Legislative Research**, while 60% of the Bills in the 14th Lok Sabha and 71% in the 15th Lok Sabha were **referred to** Department-related Standing Committees (**DRSCs**) concerned, this proportion came down to **27% in the 16th Lok Sabha**.
 - Apart from the DRSCs, there are negligible bills referred to Select Committees of the Houses or Joint Parliamentary Committees.
- **Judiciary Being Averse to Checks & Balances:** The Supreme Court has held the 99th constitutional amendment, which provided for the establishment of the National Judicial Appointments Commission as ultra-vires.
- **Judicial Activism:** In many recent judgments, the Supreme Court has become hyper-activist in making judgements that are deemed as laws and rules. This transgresses the domain of legislature and executive (as exec has the benefit of expert suggestions)
- **Executive Excesses:** Executive in India is alleged of over-centralisation of power, weakening of public institutions like CIC & RTI and passing laws to strengthen law, order & security of the state but curbs freedom of expression as well like UAPA.

PYQs-SOP

1. **2019: Do you think Constitution of India does not accept principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. (Comparison of sep of power with US constitution)**
 - a. Cover functional overlapping (how not real Separation of powers unlike USA) given above then explain checks and balances
2. **2013: Ordinance Power: Nature and rationale for this power? Does it violate sep of power? SC decisions on the same? Should this power to be repealed? What safeguards are there against possible misuse?**
 - a. **Article 123** of the Constitution grants the President certain law-making powers to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an Act of Parliament but are in the nature of temporary laws, vested for dealing with unforeseen or urgent situations; Likewise, the Governor of a state can issue ordinances under **Article 213** of the Constitution, when the state legislative assembly is not in session.
 - b. **Conditions for ordinance (draw a triangle showing 3 conditions)**
 - i. Houses must not be in session
 - ii. Circumstances exists

- iii. Circumstances must warrant immediate action
- c. Issues in ordinance making power
 - i. **Deliberate bypassing of the legislature** - Instances that legislature is being deliberately bypassed to avoid debate and deliberations on contentious legislative proposals
 - 1. Supreme Court- re-promulgation of ordinances is a “fraud” on the Constitution and a subversion of democratic legislative processes, especially when the government persistently avoids placing the ordinances before the legislature.
 - 2. For example, a series of ordinances were issued by the Bihar Governor between 1989 and 1992 regarding the taking over of private Sanskrit schools by the state.
 - ii. **Infringement of principle of separation of powers:** The power of the executive to issue ordinances goes against the principle of separation of powers as lawmaking is the domain of legislature.
 - 1. The Securities Laws (Amendment) Ordinance, 2014 was re-promulgated for the third time during the term of the 15th Lok Sabha.
 - 2. Triple talaq as ordinance, farm bills as ordinance
 - iii. **The satisfaction of President:** Ordinance can be promulgated only when the President is satisfied that circumstances exist for the same thus providing the scope of misuse of the power.
 - iv. Ordinance power has been used quite regularly instead of being the last resort.
- d. **Constitutional Safeguards**
 - i. Every ordinance issued must be laid before both the Houses of Parliament or state legislature **within six weeks from the reassembly** of Parliament or state legislature and it ceases to exist if it is not approved within six weeks of reassembly.
 - ii. Whenever a Bill seeking to replace an ordinance is introduced in the House, a **statement explaining the circumstances that had necessitated** immediate legislation through ordinance route should also be **placed before the House**.
 - iii. **Only on respective list** of centre and state executive
 - iv. ~~44th Constitutional Amendment has reiterated that the satisfaction of the President to promulgate ordinance could be challenged in case an ‘immediate action’ was not required.~~
- e. **Judicial Safeguards**
 - i. Supreme Court in **RC Cooper vs. Union of India** (1970) held that the President’s decision to promulgate ordinance could be challenged on the grounds that ‘immediate action’ was not

required, and the ordinance had been issued primarily to bypass debate and discussion in the legislature.

- ii. It was argued in **DC Wadhwa vs. the State of Bihar (1987)** as well as *Krishna Kumar Singh v. the State of Bihar* 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 of the legislature.
 - iii. **AK Roy Case 1982:** Ordinance making power is legislative power (hence its motive cannot be questioned just as in the case of parliament/legislature)
 - f. Conclusion: The executive must show self-restraint and should use ordinance making power only in unforeseen or urgent matters and not to evade legislative scrutiny and debates.
 - g. **Healthy convention** should develop whereby the preamble of ordinance should state the **immediacy** for the its promulgation; This will enhance transparency (agar nahi bhi karenge toh SC puch hi lega so better disclose them in first place)
3. **1983: Separation of powers is essential to ensure Individual liberty. Discuss provisions in the Constitution and practices adopted so far?**
- a. Provision in constitution covered above
 - b. Individual liberty- Write imp of judiciary to protect it without interferece from executive, what will happen if too much executive power without judiciary (HR abuses, minority issues in case of majoritarian govt)
 - c. Judicial overreach impacting individual liberty- in case of Land acquisitions, rights of business in case of shut down, mining bans
 - d. Legislative overreach- disruptions hampering genuine law making, unreasonable laws impacting individual liberty
4. **2020: Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities. (250 words, 15 marks)**
- a. Need for PILs
 - i. Dereliction of Duty: legislature failing to make the necessary legislation to suit the changing times and the executive fails to perform their administrative functions.
 1. Sabrimala, 377, Adultery
 - ii. Need to Fill the Vacuum: In this vacuum of legislature, driven by the motive to help the poor, marginalized and underrepresented, individuals resort to Public Interest legislation (eg NGO common cause, env groups)
 - b. Challenges
 - i. An unanticipated **increase in the workload** of the superior courts due to increasing litigations year on year.

- ii. Judicial **overreach** and judgement without technical expertise- eg ban on diesel cars, 2G case- TRAI recommended sale instead of auction to increase tele- density
 - iii. Supreme Court (SC) voiced its concerns on PIL becoming a front for settling corporate rivalry or personal vendetta. The concern were expressed while hearing PIL challenging the allocation of 4G spectrum to Reliance Jio.
 - iv. It is being **misused** by people by seeking **publicity** in the garb of public interest. PIL has become **Personal Interest Litigation**.
- c. Present status + Advantages of PILs
- i. Spectrum of issues raised in PIL have expanded tremendously such as from the protection of environment, right to education, relocation of industries, good governance, general accountability of the Government etc. In recent years, anyone could file a PIL for almost anything.
 - ii. This is contradictory to the main objective of the PIL, which is meant to provide the remedial jurisprudence for those who can't approach the court on account of poverty or some other disability.
 - iii. Instrument of Social Change: According to the Supreme Court, the aim of PIL is to give to the common people of this country access to the Courts to obtain legal redress.
 - 1. In MC Mehta case, SC lashed out at civic authorities for allowing untreated sewage to make its way into River Ganga. It has also helped in expanding the jurisprudence of fundamental and human rights in India. Ex: Expanding scope of Article 21 to include right to clean air, livelihood, etc.
 - iv. Inclusive: PIL is a method to justice even to voiceless and vulnerable sections of society.
 - 1. In Hussainara Khatoon vs State of Bihar case, regarded as the first PIL in India, courts focussed on the situation of under-trials in Bihar who had been in detention in excess of the maximum sentence for their offences.
 - v. Monitoring of Institutions: It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc. It is an important tool to make human rights reach those who have been denied rights. E.g.: issues related to degraded bonded labourers, tortured under trials and women prisoners, blinded prisoners, exploited children, beggars, and many others.
 - 1. Hathras case - Allahabad HC direction to UP govt for police excesses
 - 2. PIL also become an instrument to promote rule of law, demand fairness and transparency, fight corruption in

- administration, and enhance the overall accountability of the government agencies. Ex: Cancellation of 2G licenses.
- vi. Judicial legislation- Through PIL, judiciary also initiated legislative reforms and filled in legislative gaps in important areas. Ex: Vishakha guidelines on sexual harassment at workplace.
- d. **Conclusion:** Public Interest Litigation has produced astonishing results which were unthinkable three decades ago. However, the Judiciary should be cautious enough in the application of PILs to avoid Judicial Overreach that is violative of the principle of Separation of Power.
5. **2019: From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain (10m)**
- a. Division of power is a basic feature of federalism. The Constitution provides for a three-fold distribution of legislative subjects between the Union list, the state list, and the Concurrent List in the Seventh Schedule. However, contention develops in categorization of legislation into the entries of these three lists. To resolve these contentions, courts have evolved various principles
- b. **Principle of Federal Supremacy**
- i. According to the principle of federal supremacy, even though both the Union and the States in India derive legislative powers from the same Constitution, the States would have no legal rights as against the overriding powers of the Union, because of a **general theory of paramountcy or superiority of the Union**
 - ii. The state and concurrent list are subordinate to the Union list. The Supreme court can **apply this principle as a last resort** if attempts to find a solution under the Principle of Harmonious construction fails.
- c. **Principle of harmonious construction:** According to this doctrine, a provision of the statute should not be interpreted or construed in isolation but as a whole, so as to remove any inconsistency or repugnancy. The courts must avoid a clash on contradicting provisions and they must construe the opposing provisions so as to harmonize them. When the court is unable to reconcile the differences between opposing provisions, the courts must interpret them in such a manner that both the opposing provisions are given effect as much as possible.
- i. Eg could be managing DPSP and FR in a law, managing centre and states laws
 - ii. When there is a conflict between the statute's provisions between the union and state list then the rule of harmonious construction needs to be adopted.

- iii. The rule follows a very simple premise that every statute has a purpose and intent and should be read as a whole. The widest interpretation of the provisions of the statute should be allowed.
- iv. Also, the Court should help in removal of the inconsistency of the statute's language in order to reconcile the contention.
- v. For instance, the conflict between centre and state arose in *Shri Krishna Rangnath Mudholkar vs Gujarat University, 1963 on the validity of Gujrat University Act*. The court used this principle to **allow the State government to make law on excluded items(reserved for the centre) as an extension to its power to legislate on education, to the extent it does not contradict the union law.**
- vi. Harmonious construction principles laid down by SC in landmark case of *CIT v Hindustan Bulk Carriers*.
- d. In the era of cooperative and competitive federalism, conflicts should be minimized as far as possible. States should bring reform in important areas like Police, Agriculture marketing, etc. and coordinate with other states and centre in order to have a uniform legislative framework in key areas. With the recent steps like one nation, one ration card, more federal cooperation would be necessary.

6. **Dispute redressal mechanisms and institutions**

- a. **2015: Major changes brought in the Arbitration and Conciliation Act, 1996. How far will it improve India's dispute resolution mechanism? Discuss. (Syllabus topic: various organs dispute redressal mechanisms)**

Alternative Dispute Resolution (ADR) Mechanisms


- ADR is a mechanism of dispute resolution that is **non adversarial**, i.e. working together co-operatively to reach the best resolution for everyone.
- ADR can be instrumental in reducing the burden of litigation on courts, while delivering a well-rounded and satisfying experience for the parties involved.
- Forms of ADR
 - Arbitration: The dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is mostly binding on the parties
 - Conciliation: 3rd person provides proposals to reduce dispute and discussion is made on these proposals
 - Mediation: Mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves; Usually no proposal is put fwd by Mediator
 - Negotiation: Both sides sit down to discuss the matter out of court without any 3rd person

- Advantages
 - Procedural flexibility saves valuable time and money and absence of stress of a conventional trial
 - It is more viable, economic, and efficient
 - Maintain confidentiality
 - Possibility of ensuring that specialized expertise is available on the tribunal in the person of the arbitrator, mediator, conciliator or neutral adviser
 - It has proven its ability to deliver justice beyond formal courts with **Lok Adalats alone disposing more than 50 lakh cases every year**
- ADR in India
 - **The Legal Services Authorities Act, Arbitration and Conciliation Act adopted**
 - **Lok Adalat or "people's court"**
- Issues with ADR
 - **Difficulty to find neutral arbitrators**
 - With the exception of arbitration, which results in a binding decision, the ADR process may not always yield a resolution.
 - There is skepticism among parties about the process and ADR depends upon the good faith of the parties
 - mains issue is the lack of awareness
- Way Fwd
 - The government is trying to build such centers through bills such as the **New Delhi International Arbitration center Bill (2018)**. More efforts are needed in this aspect.
 - There needs to be an attitudinal change among people to make them go for ADR mechanisms with confidence and trust.
 - Alternative dispute resolution is an important **tool to unburden the judiciary** and fulfill the constitutional mandate of justice delivery and making it free and easily available
- **Arbitration and Conciliation (Amendment) Act, 2019**
 - 1. An **independent body called the Arbitration Council of India (ACI)** will be set up for promotion of ADR mechanisms, framing policies for grading arbitral institutions and accrediting arbitrators, maintaining a depository of arbitral judgments made in India and abroad, and maintenance of uniform professional standards for all ADR matters.
 - 2. **Appointment of arbitrators will now be done by the Supreme Court** designated arbitral institutions, which was earlier used to be done by parties themselves.
 - 3. It seeks to remove time restriction for international commercial arbitrations and says tribunals must try to dispose of international arbitration matters within 12 months.



- 4. Written submissions to be completed within six months of the appointment of the arbitrators. Earlier there was no time limit.
- **Arbitration and Conciliation (Amendment) Bill, 2021** - Key features are:
 - It **does away with** the qualifications of the arbitrators under **8th Schedule** of the Arbitration and Conciliation Act, 1996.
 - The **qualifications for accreditation** of arbitrators is proposed to be prescribed by regulations to be framed **by ACI** to be set up.
 - Unconditional Stay on Awards: If the Award is being given on the basis of a **fraudulent agreement or corruption, then the court can grant an unconditional stay** as long as an appeal under Section 34 of the arbitration law is pending

RPA Act and Electoral Reforms

(Regular Qs in 17,18,19,20, RPA in 2022)

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**


Representation of People Act 1951

- **Intro:** The holding of **free and fair elections is the sine-qua-non of democracy**. To ensure this, **Part XV** (324-329) **empowers Parliament** to make laws to regulate electoral process; **Elections form the bedrock** of largest democracy in the world - India
- **Sections:** 8 (for disq), 123(3)(no seeking vote on R/C/L), Section 81 (debars for 6 yrs if convicted for more than 2 yrs); 126A (no exit poll dissemination), Part IIB, III, IV cover provisions for electoral roll
- **Features:** Talks about Qualification of candidate (reg as voter + min 25 yrs); Disqualification u/s 8   (if 2 yr convict, then disq for jail+6yrs, bribery, rape case convict, etc), Candidate (must submit affidavit-criminal records+A&L), PPs (must submit details for donation > 2000), During Elections (123(3)-cannot seek vote of R/C/Lang; 48 hrs before election promotion by TV not allowed; 126A-No exit poll dissemination, Defined corrupt practices-Bribery, Booth Capturing; Section 81-calls to debar for 6 yrs if convicted for more than 2 yrs; Part IIB, III, IV of RPA 1950 provision for updation of electoral rolls)
- **Issues:** (unable to curb false disclosure of A&L; Cannot curb criminal/money power; Does not cover paid news as offence; 48 hr rule does not apply to print/social media; No prov to control misuse of official machinery by ruling party; Complex process of disq in the act)
- **WF:** (MCC legal backing, More elections benches in HCs, Power to deregister parties with ECI with new chapter IV-C; Cap election exp on party; Prescriptive

tone for issues); Insertion of definition of 'paying for news' under sec 2); **2nd ARC (PP audit by CAG);**

- **2019-Remedies against disqualification under RPA'51: Approach HC; Prez/Governor has final authority to disqualify but based on recomm of ECI; ECI has power of civil court during investigation; ECI can even reduce or remove disq (under section 11)**


Electoral Reforms

 **Note: Highlighted points in pink/yellow below are my short notes — they include key words for quick understanding. For full details, please refer to the section that follows.**

Issues: Money Power & Freebie culture (Entry barrier-88% crorepatis in 17th LS-ADR; Later rent seeking); Paid News & media biasness (disrupts the level playing field; ECI recom 2 yr jail + power to Press Council of India); Electoral Bonds: For (prevent victimisation, electronic process) Issues (↓ transp, ECI cannot check violations of RPA, Most bonds went to ruling party; SC said same funds be used for terror/protests; SBI as a state run entity; WF: SC directed SBI to share details to ECI); Criminalisation of Politics (Vohra Committee - SC Data 43% in 2019 + only 6% conviction rate; Criminals have higher success rate); Caste/Communal politics (despite being an offence u/s 123); Others (Fin security not there with ECI; Lack of intra party democracy eg: G23, Lack of faith in EVM machines, Weaknesses of RPA'51)

Measures taken: Legislative (Exp limit on elections on LS ~70 lakhs); ECI (PPRTMS, SVEEP leading to highest turnout in 2019, cVigil, Removed all PM photos from petrol pumps as violate MoC); Judicial (ADR Case 2002-need to disclose all A&L; Lily Thomas case 2013- disq under article 103 = automatic & immediate; PUCL 2013-brought NOTA; Rambabu Singh Thakur Case-publish crim records in 48hrs of selec or CoC; Other-Bureaucrats cannot be State ECs)

Reforms needed: ECI (deregister party; disq candidate; LC 255th R: appoint by collegium like CBI director + give more teeth to ECI; Const protection to all 3 ECs rather than CEC); Legislative level (State Funding of Elections, Simultaneous polls; Reforms in FPTP-set min % votes to win; SC 2018 said onus on Parl to bring law to prevent Criminalisation); Party level (Cap on exp at party level; Bring them under RTI; Intra-part demo & self-discipline); Voter Level (must vote on character/calibre rather than caste/cash/crim prowess-this is ultimate solution); To counter freebie culture (**15th FC** said need to contemplate adoption of concept of sub-national bankruptcies);

-  **One Nation, One Election (PYQ):** It was a norm until 1967; Law Commission in 2018 provided for structural changes to implement the same; **+ves:** Frequent elections leads to hindrances in announcement of new policies due to application of Model code of conduct; Focus from governance gets diverted; Massive social cost-teacher missing from school; Can save on massive expenditure of repeated elections; Increased voter turnout; Reduced

engagement of security forces for non-core activities; -ves: Reduce govts. accountability to people; Difference in issues at state and national level; Operational issues as to how to sync it for the first time or what to do in case of govt losing majority before 5 years; Need huge spendings on EVMs together (as life is 15 yrs, then useless)

- **State Funding of Elections:** State bears election exp of PPs → transparency in funding; **Recommendation:** Indrajit Gupta C- only to registered political party, D. Goswami committee - offer partial state funding; **Issues:** PP will become organs of state rather than a civil society; Countries like Finland/Italy/Israel brought it but no correspondent reduction in corruption; Tax payer money for PPs they dont approve; Fiscal deficit issues; Many Registered Unrecognised Political Parties (RUPP)-misuse of funds; How to check if not getting doing exp from other sources) **Way Fwd:** PPs under RTI, Strict Auditing norms for PPs, NCRWC- no SF rather regulate PP finances
- **Legislation of MCC:** MCC is norms for regulation of PPs and candidates during election period from date of announcement to completion; **Favour** (Standing committee on personnel, Law and justice 2013 said most MCC prov already enforceable under IPC/CrPC; Can approach judiciary; Deterrence & trust of ppl ↑); **Against** (ECI said No-MCC demands quick action while courts may delay post legalisation; 324 allows to 'take all necessary steps' extraordinary power to ECI-it must use them; ECI launched c-vigil to ensure violations reduce); **Way Fwd:** Need special bench in HCs, greater need is to strengthen the current institutional mechanism, etc

Extra - RPA Act and Electoral Reforms

- Background:
 - The holding of **free and fair elections is the sine-qua-non of democracy**. To ensure the conduct of elections in free, fair and in an impartial manner, the constitution-makers incorporated Part XV (Articles 324-329) in the constitution and empowered Parliament to make laws to regulate the electoral process.
 - To provide a legal framework for the conduct of elections, Parliament passed the Representation of the People Act, 1950, Representation of the People Act, 1951 and Delimitation Commission Act of 2002.
 - RPA, 1950 merely provided of delimitation & allocation of seats of LS, LAs of states, LCs of states; qualification/ disqualification of voter, electoral rolls (Note: Allocation of seats of RS is done Schedule IV of constitution)
 - RPA, 1951 addressed reg. of PPs, qualif/disqualif of contestants/MPs/MLAs, disputes, notification of general elections, administrative machinery for elections, free supply of certain material to candidates of recognised PPs, corrupt practices and electoral offences
- Other salient features under RPA 1951

- Talk about Qualification (elector + 25 yrs); Disqualification (if 2 yr convict, then disq for jail+6yrs), Candidate (must submit affidavit-criminal records+A&L), PPs (must submit donation > 2000), During Elections (123(3)-cannot seek vote of R/C/Lang; 48 hrs rule; No exit poll dissemination, Corrupt Practices-Bribery, Booth Capturing)
- Issues: (unable to curb false disclosure of A&L; Cannot curb criminal/money power; Does not cover paid news as offence: 48 hr rule does not apply to print/social media)
- WF: (MCC legal backing, More elections benches in HCs, Power to deregister parties with ECI; Cap election exp on party)
- Qualifications: A person must be an elector anywhere in India. Age MLA/MPs is 25 years
- Act states that if an MP or MLA is convicted for any other crime and is sent to jail for 2 years or more, he/ she will be disqualified for 6 years from the time of release
- Section 62 of the RPA,1951 also ensures that every person who is in the electoral roll of that constituency is entitled to vote (similar to Article 326)
 - Voting not allowed for undertrials, persons in prison; But allowed if under preventive detention
 - Act allows those serving sentences less than 2 years to contest elections from prison
- It is mandatory for the political parties to submit to the ECI a list of donations they received above Rs. 2,000
 - Political parties cannot receive more than Rs 2000 as cash donations.
- Individuals contesting elections have to file an affidavit, declaring their criminal records, assets & liabilities and educational qualification.
- Section 126: 48 hours before the polling ends or concludes, displaying of any election matter by television or similar apparatus in a constituency is prohibited. Section 126 is not applicable to the print media, news portals and social media
- Section 126A prohibits the conduct of exit poll and dissemination of its results during the period mentioned.
- Section 123 (3): Cannot seek vote on religion, race, caste, comm, lang
- Corrupt Practices are defined such as Bribery, Booth Capturing
 - All government or non-government officials are included within the scope of corrupt practices.
 - Bribery: Any gift/offer/promise or gratification to any person as a motive or reward.
 - The publication by a candidate any statement of fact which is false in relation to the personal character/conduct of any candidate
 - Booth capturing by a candidate or his agent or other person

- The hiring or procuring of any vehicle by a candidate of any elector to or from any polling station.
 - Section 8 (4) allowed convicted MPs, MLAs and MLCs to continue in their posts, provided they appealed against their conviction/sentence in higher courts within 3 months of the date of judgment by the trial court. The SC in 2013 struck down section 8(4) of the RPA, 1951 and declared it ultra vires and held that the disqualification takes place from the date of conviction
 - Section 123 (3A): Promoting feelings of enmity or hatred between different classes of citizens may lead to imprisonment upto 3 years
 - A candidate contesting polls in large states can spend up to Rs 70 lakh in the Lok Sabha election and Rs 28 lakh in an Assembly election.
 - Any class of person can be notified by the ECI in consultation with the concerned government which can give their votes by postal ballot.
- Issues with current election framework
 - (unable to curb false disclosure of A&L; Cannot curb criminal/money power; Does not cover paid news as offence: 48 hr rule does not apply to print/social media) WF (MCC legal backing, More elections benches in HCs, Power to deregister parties with ECI; Cap election exp on party)
 - Unable to curb false disclosure of assets and liabilities made by candidates
 - Failed to check money power, Criminalisation of politics, etc
 - RPI does not cover paid news as an electoral offence
 - RPAs lack clear provisions and guidelines on the matters related to the misuse of official machinery by the party in power
 - ECI does not have independent staff of its own so whenever elections take place, it has to depend upon staff of Central and State Governments hence the dual responsibility of the administrative staff, to the government for ordinary administration and to the ECI for electoral administration
 - Way forward
 - SC- explore options to disqualify candidates facing criminal trial at the stage of framing of charges
 - Umesh Sinha comitee- extend 126A RPA to print, social media and just TV and other electronic media (radio etc)
 - It should provide for de-registration of political parties for failure to comply with directions of ECI
 - Should give **statutory backing to the Model Code of Conduct with penal actions**
 - Constitution of **one or more "election benches" in each High Court**, to exercise jurisdiction over all election disputes under the RPA

- Expenses done by the political parties and their leaders should also be capped
- Delimitation Commission
 - The Delimitation Commission is appointed by the President of India (not Parliament) and works in collaboration with the Election Commission of India. Note: President of India has been conferred the power to amend orders delimiting constituencies
 - Under Article 82 of the Constitution, the Parliament by law enacts a Delimitation Act after every census. Once the Act is in force, the Union government sets up a Delimitation Commission;
 - DC works on majority rule; Last was set up in 2002; Orders of the commission have the force of law and cannot be called in question before any court; Further the report is laid before House of the People and the State Legislative Assembly concerned but no modifications are permissible;
 - DC is a statutory body and not a constitutional body
- Election Symbols (Reservation and Allotment) Order 1968 provides for 'recognition' of political parties (as 'State Party' or National Party')

Issues in elections

Money Power & Freebies

- Expenditure: The accounted legitimate expenditure is a mere percentage of actual spending by the candidate and their corresponding political parties. According to NCRWC, high cost of elections creates a high degree of compulsion for corruption in the public arena.
- Vote-buying: The rise of illegitimate expenditure on vote-buying - makes politics for rich rather than deserving person who wants socio-political change
 - As can be seen, out of 533 candidates elected to the 17th Lok Sabha (2019-present), 475 Parliamentarians (accounting for 88%) are 'crorepatis'- Paradox rich parliamentarians representing country with majority of poor (Data by Association of Democratic Reforms-ADR)
- Freebies: Freebie is something provided or given free of charge, ranging from rice at cheapest rates to laptops & bicycles- politics not on development rather on freebies

Paid News

- Paid news is any news or analysis appearing in any media (Print and Electronic) for a price in cash or kind. An issue like Paid News disrupts the level playing field and circumvents the election expenditure limits as difficult to regulate.(reasons- corporatisation of media)

- Law commission on electoral reform 2015- Make paid news an electoral offence- leading to disqualification
- ECI- paid news should lead to 2 year jail, enhance punitive powers of PCI

Issuance of Secret Bonds

Electoral bonds are the bearer bonds that were launched in 2017 in order to cleanse the system of political funding in the country.

- Issues- its anonymous feature in which neither the donor nor the political party is obligated to reveal whom the donation comes from defeats the fundamental principle of transparency in political finance (as the voters are unaware of the source of funds that are spent by the political parties in the election process).
 - Also, as the issuing entity is the State Bank of India, i.e. a State-run entity, there is a fear of retribution amongst the donors as the government at any point of time can look for the names of the anonymous donors and can target opposition.
 - 94.6% EB to ruling party in 2017-18, Unlimited corp donation (as 7.5% limit of profits removed)
 - EC- Does not allow EC to check violation of RPA regarding donation received by PP, allow unchecked foreign funding as body incorporated in country can donate even if foreign (whereas FCRA limits for NGO's)
 - SC flagged that the same funds can be used for terror/starting protest apart from being used for as election expenditure
- (Arguments for- Limits use of cash- curbs black money(KYC)
 - Prevent pol victimisation as anonymity
 - Eliminate fraudulent funding by small parties as limits on who can get acc to poll performance
 - WF: above a limit need for declaring to break corporate politico nexus, SC directed SBI to give details to EC for monitoring of RPA

Criminalisation of Politics

- It refers to a situation in which the anti-social elements enter the electoral process by contesting elections, getting elected to the legislature, and consequently occupying public offices.
 - 2014 LS- 185/542- declared criminal cases against them(ADR)
 - MPs with pending criminal history: 2004 = 24%; 2009 = 30%; 2014 = 34%; 2019 = 43%; (Quoted by SC 2020)
 - Chance of winning for criminal candidate is 13% and non criminal is only 5% (ADR)
 - C of politics leads to C of police

Laws in the Criminal Justice System

- In India, an accused is presumed to be innocent unless pronounced guilty by the Courts. The rate of conviction for politicians is abysmally low, with just 6% in criminal cases- therefore not disqualified from contesting elections further.

Caste-based Politics

- Caste politics in the last three decades have been marked by the desire for power on the caste-lines rather than a substantial agenda for social reform of the downtrodden even when election campaigns along communal or caste lines are banned under the election rules.

Other Issues

- Financial security to ECI where its funds are routed directly from the CFI
- Lack of intra-party democracy within the political parties eg: G23 within INC
- In case of conviction only disqualified from parliament but not from being head of a political party which may win elections
- Media biasness- diff to implement MCC properly

Measures Undertaken

Legislative Measures

- Limit on spending of candidate: At present, under Rule 90 of the Conduct of Election Rules, 1961, a candidate contesting Lok Sabha polls can spend up to ₹70 lakh for LS election and in an assembly election up to ₹28 lakh, depending on the state in which s/he is contesting polls.
 - Recently, a Private Member's bill was introduced in the Parliament which intended to do away with the cap on election spending by candidates as it leads to candidates to under-report their expenditure

Measures by ECI

- Political Parties Registration Tracking Management System (PPRTMS): To allow an applicant to track the progress of his/her application.
- Systematic Voters' Education and Electoral Participation Programme (SVEEP): ECI organizes voter awareness campaigns in order to educate the voters
 - 2019 LS- Highest voter turnout (67.11%) till now
- CVigil app for proper imp of MCC
- Stalling movie biopics under power of art 324
- Ordered removing PM Modi's photos from all petrol pumps as it violated model code of conduct

Measures by Judiciary

Supreme Court in following cases recommended various reforms:

- In *Union of India versus Association of Democratic Reforms 2002 case*: Contesting candidates need to disclose all their assets and liabilities, criminal convictions, etc. at the time of filing their nomination paper.
- In *Ramesh Dalal versus Union of India 2005 case*: A legislator is disqualified from contesting elections if, on the day of filing the nomination papers, he/she stands convicted in a Court of law.
- In *Lily Thomas versus Union of India 2013 case*: The nature of disqualification for being a member of the House as provided under Article 101(3) & 190(3) is automatic and takes place with immediate effect.
- In *People's Union of Civil Liberties versus Union of India 2013 case*: Voters enjoy "Right to Negative Vote" in the election process and directed the ECI to include the choice of "NOTA" in the ballot paper.
- Recent reform- reasons why ticket was giving to criminal candidates by political party on party website, reasons can't be merely winnability of candidates
- 2021: SC held that bureaucrats cannot be State Election Commissioners
- Rambabu Singh Thakur Case - publish criminal antecedents within 48 hrs of selection otherwise it will be contempt of court

Other reform undertaken: Totalizer machine (do not disclose votes polling station wise), VVPAT

Needed reforms

Institutional level

- ECI reforms
 - Issues- No power to deregister party, Lack of proactive use of authority- Told SC difficult to disqualify politician in case of electoral offence, No role in enforcing intra-party democracy, weak capacity to enforce MCC
 - Law commission 255- collegium of PM, LOP, CJI should appoint EC's (like CBI director)
 - Const protection from removal to all 3 instead of just CEC

Legislative Reforms

- State Funding of Elections: System in which the State bears the election expenditure of political parties that are contesting elections. This can bring transparency in the funding process as public finance can limit the influence of interested donors' money and thereby help curb corruption and quid pro quo
 - Indrajit Gupta C- only to registered political party, NCRWC- no SF rather regulate PP finances, ECI- No SF, need radical reforms; Goswami committee - offer partial state funding

- Issues- Distance btw PP and citizen- no need to ask for donations, PP will become organs of state rather than Civil society, Tax payer money cant be given to candidates whose policies they dont approve, Fiscal deficit issues, how to check if not getting doing exp from other sources, Countries like Italy/Finland/Israel brought it but no correspondent reduction in corruption
- Need: PPs under RTI, Strict Auditing norms for PPs
- Can supplement but cant be substitute
- Simultaneous Polls: advantages including reducing the costs of holding elections by the ECI and spending by political parties.
- Central Legislation: In the *Public Interest Foundation & Ors. vs. Union of India 2018* case, SC put the onus on the Parliament to frame a law to prevent criminalization of politics and take concerted efforts to cleanse the political system of the country.
 - The time has come to frame suitable legislation on the lines of FRBMA, 2003(Fiscal Responsibility and Budget Management Act- that puts a cap on fiscal deficit).
 - If a cap is introduced on populist announcements (based on the proportion of budgetary resources they have) by the parties within the ambit of law, then perhaps all political parties will have a level playing field and the unsustainable populist measures could be kept under check.
- Law Commission in its 255th Report on Electoral Reforms inter-alia recommended strengthening of the office of the ECI in order to provide more independence and tooth to the institution.
- The 'First Past the Post System', in which a person with the highest votes (even with one extra vote) is declared winner, needs to be changed. Rather, a minimum percentage of total votes polled can be fixed for declaring a candidate as the winner

At Party Level

- Limit on Party Expenditure: There must be a limit on the expenditure of the party.
 - Consequently, audit of political parties accounts must be conducted in order to make them accountable.
- Political parties need to rise morally and self-discipline themselves restricting their use of money power. Also, the flow of black money into the election process needs to be taken care off.
- Political parties need to be brought under the ambit of Right to Information Act (RTI) Act, 2005.

- All parties should be given equal media space or air time so as to provide a level playing field.

At Voter's Level: Voters need to be educated regarding the significance of their vote. They should be made aware & well-informed about the candidate they seek to vote, thereby rejecting those who try to entice them with freebies.

Other

- NOTA win- relections (already in local body election in maharashtra)
 - Also only rule needs to ammneded by Law ministry- no parliamnetary sanction required

Conclusion

- A voter forfeits the right to question the government when he/she compromises on moral values and accepts gift or cash for his/her vote. Therefore, citizens must vote in elections based on character, conduct, calibre and capability of the candidates and not based on cash, caste, community and criminal prowess. This could be the ultimate solution to check money power in politics.

One Nation, One Election

- **One Nation, One Election:** It was a norm until 1967; Law Commission in 2018 provided for structural changes to implement the same; **+ves:** Frequent elections leads to hindrances in announcement of new policies due to application of Model code of conduct; Focus from governance gets diverted; Reduced cost; Increased voter turnout; Reduced engagement of security forces for non-core activities; **-ves:** Reduce govts. accountability to people; Difference in issues at state and national level; Operational issues as to how to sync it for the first time or what to do in case of govt losing majority before 5 years

Legalisation of MCC

- Set of norms issued by ECI) for **guidance of political parties and candidates** during election period. Enforced from the date of announcement of election schedule by the ECI and is operational till the process of elections are completed
- Favour:
 - The **Standing committee on personnel, Law and justice,** recommended a statutory status for the MCC in 2013. According to the committee, **most of the provisions of the MCC are already enforceable** with the aid of Representative of People Act, 1951, the

Indian Penal code (1860) and the Code of Criminal Procedure (1973). So, the **remaining provisions could also be made enforceable**

- deterrance against election malpractices; Another reason is rising breach of breach of MCC
- With a legal MCC in place, any citizen could **approach the judiciary** for the breach of a law.
- Against:
 - **ECI is against giving legal backing** to MCC: any violation of MCC **warrants a quick action** which might not be possible if the cases go to the **courts**
 - Article 324 **already provides** some powers to the ECI in extraordinary cases. For instance, in 2014 polls, the ECI banned a party leader from campaigning in order to check his vitiating speeches.
 - In 2018, the EC **launched the C-vigil application** for citizens to report on matters of political misconduct pertaining to violation of the MCC.
 - The Supreme Court in S. Subramaniam Balaji v. Govt. of Tamil Nadu stated that the Election Commission has, in order to prevent the vitiation of the process **has been issuing instructions under the MCC**
- Need special bench in HCs, greater need is to strengthen the current institutional mechanism, etc
- 1. **2019- On what grounds a people's representative can be disqualified under the representation of people act, 1951? Also mention the remedies available to such person against his disqualification**
 - a. Provision laid down by under RPA 1951
 - i. He must not have been convicted by a court of any offence and sentenced to imprisonment for a period of more than two years.
 - ii. He must not have been found guilty by a court or on election tribunal of certain election or corrupt practices in the elections.
 - iii. He must not have failed to lodge on his election expenses within time and in a manner prescribed by law.
 - iv. He must not have any interest in government contracts, execution of government work or services.
 - v. He must not be a director or managing agent nor hold an office of profit under any corporation in which the government has any financial interest >25%
 - vi. He must not have been dismissed for corruption or disloyalty from government services.
 - vii. Not have been punished for preaching and practising social crimes such as untouchability, dowry and sati
 - b. **Remedies against disqualification under RPA, 1951:**
 - i. An election can be called in question only by an election petition. Election petitions are to be heard in the High Court with its appeal

lying at the Supreme Court. They act as a mechanism of grievance redressal for the affected parties.

- ii. Furthermore, on the question of whether a legislator is subject to any of the disqualifications the final authority to decide rests with the President (in case of members of Parliament) and the Governor (in case of members of State legislature). However, the President or Governor shall act according to the advice of the Election Commission of India.

1. In case of any enquiry, the Election Commission is conferred the powers of a civil court for summoning and enforcing the attendance of any person or any evidence.
2. Besides, after a legislator is disqualified, the Election Commission may, on certain grounds, remove any disqualification or reduce the period of any disqualification

2. **(2020)“There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of Peoples Act.” Comment. (150 words, 10 marks)**

- a. Cover basics of disqualification
- b. Highlight how there are delays in conviction process along with reasons for the same eg: Lalu Prasad Yadav case where he was not debarred until convicted; Lack of simplification allows criminal politics to continue (quote data)
- c. Measures that can be taken = Fast track courts, special courts, bar the candidate even at the trial stage for the heinous crimes and corrupt practices

3. **2018- In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?**

- a. Cover issues wrt to election framework
- b. EVM- consists of controlling unit and balloting unit, manuf by BHEL, ECIL.
 - i. Safety features- No external communication, cast votes only once, No post manufacturing tampering
 - ii. Go back to ballot- EVM not foolproof that's why VVPAT introduced, Manufacturing defaults to favour single party possible, opposition issues on transparency
 - iii. Continue EVM's- easy to use by illiterate voters (less cancellation of votes), No cheating possibility in case of booth capture, faster results, less paper use, VVPAT help anyway
 - iv. WF- Need increased use of VVPAT (for crosschecking) not just 5 constituency

4. **2017: ‘Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government’s accountability to the people’ Discuss**

- a. It was a norm until 1967; Law Commission in 2018 provided for structural changes to implement the same such as amending constitution/RPA/Rules of procedure of LS; The Election Commission has also extended its in-principle support for the simultaneous elections
- b. It refers to holding elections to Lok Sabha, State Legislative Assemblies, Panchayats and Urban local bodies simultaneously, once in five year.
- c. +ves: Frequent elections leads to hindrances in announcement of new policies due to application of Model code of conduct; Focus from governance gets diverted; Reduced cost for both administration and political parties; Increased voter turnout; Reduced engagement of security forces for non-core activities; Populist measures by governments will reduce
- d. -ves: Reduce govts. accountability to people; Difference in issues at state and national level; Operational issues as to how to sync it for the first time or what to do in case of govt losing majority before 5 years; threat to federal character;
 - i. An analysis by IDFC institute shows that on average, there is a 77% chance that the Indian voter will vote for the same party for both the State and Centre when elections are held simultaneously
- e. Way fwd:
 - i. A focused group of constitutional experts, think tanks, government officials and representatives of political parties should be formed to work out appropriate implementation related details
 - ii. Other alternatives to reduce election related expenses like - state funding of elections, transparency in political funding, etc.

Indian Constitution—historical underpinnings, evolution, features, amendments, significant provisions and basic structure; Comparison of the Indian constitutional scheme with that of other countries

1. Indian Constition regarded as borrowed constitution but:

- a. Did not blindly copy - Indian model of secularism was set up (Quasi-federal)
2. The constitution is the supreme law of the land, deriving its power from the people
3. PM Modi: Need campaign for New KYC (Know your constitution)
4. **COMPARION #readagain (read below of UK, US, France)**
5. **UK**
 - a. Unwritten
 - b. Flexible too much

- c. Ordinary law ki tarah
- d. Unitary
- e. Monarchy
- f. P sovereign
- g. No need to renounce citizenship
- h. JR nahi hai
- i. PM must be from Lower house
- j. Shadow Cabinet
- k. Once a speaker, always a speaker
- l. NJAC hai
- m. Legal respon of the ministry by countersigning official acts
- n. 6m wala minister/MP not allowed
- o. Appt commission for nomination_RS
- p. Each bill refer to PC

6. USA

- a. Due Process of Law
- b. Shortest constitution
- c. 27 amend - super majority
- d. Truly federal
- e. Symmetric vs Asymmetric
- f. India - Indestructible union of dest states
- g. Dual citizenship
- h. Not integrated judiciary
- i. Coming together vs Holding together
- j. Bill of rights not in original Cn
- k. Freedom of Press, holding arms
- l. Right to property
- m. Senate me equal seats
- n. Presidential form of govt
- o. Strict SoP
- p. Impeachment, Elections different
- q. Bi-party system vs Multi-party
- r. No age bar for SC judge
- s. Each bill directly refer to cmt
- t. Pigeon holding of bill

7. FRANCE

- a. Semi-presidential form of govt
- b. Even Prez can form laws
- c. PM is assistant to Prez
- d. Prez appoint PM
- e. Bi-cameral : same
- f. Natl Assembly and Senate
- g. Negative secularism

- h. Dual citizenship
 - i. Amend - 60% majority
 - j. Frequently amended
8. **2018: India and USA are two large democracies. Examine the basic tenets of which the two political systems are based #readagain**
- a. Compare both countries on the basis of the table given below
 - b. **Crucial difference is that In USA, there is a clear-cut separation of powers** between judiciary, executive and legislature while the same is not observed exactly in India, as there is fusion between executive and legislature
 - c. Compare federal system in both nations (union of india vs indestructible state in USA)
 - d. US has **bi-party system** while India has multi-party system
 - e. **Indian vs US Judiciary: American Supreme Court has no advisory jurisdiction** but Indian Supreme Court has advisory jurisdiction (inspired from Canadian Const). **Indian Supreme Court's jurisdiction and powers can be enlarged by Parliament** whereas **American Supreme court's jurisdiction are limited** as it is conferred by the constitution. Judges in **India retire (at 65 years of age)**, US Supreme court judges never retire; **Judiciary Integrated in India** unlike USA
 - f. **Bill of Rights vs FR in India:**
 - i. **Similarity:** Essence from French Revolution; Reasonable restriction in both; Guided by principles of NJ
 - ii. **Differences:** US did not have FR at the beginning (as Bill of Rights); Freedom of press explicitly given in US BoR; Due Process vs PEBL; Right to Property and Right to hold arms in US const
 - iii. **Conclusion:** Largest and oldest democracy have constitutions that works well in their own socio-political context
 - iv. **2023:** Recently, **affirmative action was turned down by US Court** as it **violated the concept of equality**
9. **India vs UK's Polity Comparison #readagain**
- a. **Indian Parliament similarities: Collective responsibility of the executive; Membership of the executive in the legislature; Dissolution of the lower house; Majority party rules under the PM**
 - b. **Differences:** Republic vs Monarchy; Const vs Parliament's Sovereignty; **PM in UK must be member of Lower house**; UK has legal respon of the **ministry by countersigning official acts**; Shadow cabinet is present in UK's system; No restriction on ministers being an MP on appointment in India (**6m become member**) **but not allowed in UK**
10. **French 'laicite' (secularism) vs Indian Secularism**
- a. Indian Secularism

- i. Indian secularism deals not only with religious freedom of individuals but also with religious freedom of minority communities
 - ii. India places equal focus on intra-religious and inter-religious domination. Therefore it will equally oppose oppression of dalits/women in hinduism as well as islam, christianity, etc
 - iii. Indian secularism has made room for and is compatible with the idea of state-supported religious reform eg: Ban on untouchability, promotion of inter-caste marriages. There could also be a positive mode of engagement such as Indian Constitution grants all religious minorities the right to establish and maintain their own educational institutions along with assistance from state
 - iv. **Nehru - secular state to be one that "protects all religions, but does not favour one at the expense of others and does not itself adopt any religion as the state religion** eg: **Gazetted holidays in India cover all religious festivals** (Indian philosophy of secularism is related to "Sarva Dharma Sambhava")
 - v. In India, **state has the policy of setting up Departments of Religious Endowments, Wakf Boards, etc.** It is also involved in appointing Trustees to these boards.
 - vi. Eg: Indian allows sikhs to carry Kripans unlike france
- b. Western Model: the state will not intervene in the affairs of religion and, in the same manner, religion will not interfere in the affairs of the state. Religion is a private matter, not a matter of state policy or law
- i. **Why France needs to adapt:**
 1. Unlike the past, modern France is a **more heterogeneous** and multi-religious society
 2. **Minorities feel disconnected** and thus current form may rather promote extremism
 3. **Can learn** - Balancing Secularism and Cultural Pluralism, Emphasis on Dialogue and Consensus, Principle of State Neutrality, Accommodation of Religious Diversity
 - c. Conclusion: Indian secularism is not an end in itself but a means to address religious plurality and aims to achieve peaceful coexistence of different religions. Europe and America and some parts of the Middle-East are beginning to resemble India in the diversity of cultures and religions which are present in their societies. **These societies are watching the future of the Indian experiment of Secularism** with keen interest

11.2008: Do you think there is a need for a review of the Indian Constitution?

Justify

- a. **Successes** of Indian Constitution

- i. Studies showed that **average lifespan of a constitution is 17 years**; Longer constitution are more durable which suggests that **'specificity' matters** (Indian Const will age 70 years in 2020)
 1. This also shows the farsightedness of our founding fathers & mothers; and the strong commitment showed by the govts. that followed
 - ii. **Smooth transition of power through 18 general election** in India shows the strength of Indian democracy
 - iii. India adopted adult suffrage from the very start which was bold, highly remarkable and unique. Even UK, USA failed to do so
 - iv. Amendments have been done to keep up the spirit of 'Constitution as living document'
 - v. Evolution of basic structure doctrine by SC which was empowered by the constitution
 - vi. **No instance of military taking over civilian govt.**
 - vii. Able to provide benefits to oppressed classes → Social mobility
 - viii. **Decentralisation** through 73rd, 74th AA
- b. **Failures** of Indian Constitution
- i. Existence of **inequality of wealth** and prevalence of poverty (Oxfam Report) despite DPSP/FR provision
 - ii. Misuse of **office of governor** → lack of cooperative federalism
 - iii. Inability to check **electoral frauds, money & muscle** power in India
 - iv. **Bureaucratic corruption**, Article 311 misused by dishonest officials
 - v. **Gender injustice** - despite FR provisions
 - vi. **Judicial system issues** → Delays, opacity in appointments, overreach, etc
- c. Way Forward
- i. Reforms related to centre-state relations
 - ii. Reforms needed in election machinery
 - iii. Reforms needed in civil services
 - iv. Measures needed for inclusive growth

12. **Why does the Constitution of India contain different forms of Oath for the President, the Ministers, the Legislators and the members of the Judiciary? Discuss their significance (repeat question)**

- a. President Oath administered by - CJI or Senior most SC Judge
 - i. Preserve, protect and defend the constitution + promote welfare of people
- b. Legislators - only allegiance to constitution + Upholding sovereignty and integrity of India
- c. Ministers - Oath administered by President

- i. Allegiance to constitution + Upholding sovereignty and integrity of India + discharge functions faithfully
- ii. Maintain secrecy of the office + perform duty without fear/favour/affection/ill-will
- d. Judiciary - Oath administered by President or Governor
 - i. allegiance to constitution + perform duty without fear/favour/affection/ill-will
- e. Significance: Due to differences in their functions they are entrusted with different type of oaths. The common theme is allegiance to constitution

13. Historical underpinnings:

- a. Several laws and regulations passed by the British played their role in shaping the Constitution:
 - i. **Post the Charter Act of 1833**, there was a **gradual increase in the membership of the Governor-General's Council** and further separation of powers.
- b. The Government of India Act, **1858** passed shortly after the 1857 revolt led to **bureaucratic development** in India **#readagain**
 - i. The Indian Councils Act, **1861** sowed the seed for **the legislature as an independent entity (along with Portfolio system)** separate from the Executive Council, a step forward in the Parliamentary type of system.
 - ii. The Indian Councils Act, **1892 (legislative councils to discuss budget)**, **Morley-Minto reforms of 1909 (powers to the members of council to ask supplementary questions, move resolution on budget, brought 'element' of election)** and **Montagu-Chelmsford report of 1919** cemented the distribution of power and **growth of representative government (by separating of central and provincial subjects , introduction of bicameralism majority of members were to be elected, further the Simon commission recommended continuation of responsible government)**
 - iii. In a way today's parliamentary system has **evolved through the various charters and acts** , which itself were the result of the efforts of freedom fighters during the freedom struggle , **making the parliamentary democracy Organic to India.**

GOI 1919

- Montagu took over as the Secretary of State for India in July 1917, described as "the most liberal Secretary of State since Ripon"- historic declaration that British policy in India would have an overall objective of "gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British empire".

- However GOI 1919 also aimed at appeasing Indians to persuade to support British during First World War (1914-18).

Features

1. Provincial Diarchy (Dual Rule) – The Act provided a dual form of government (a 'diarchy') for the major provinces. It relaxed control over provinces by demarcating subjects as 'central subjects' and 'provincial subjects'. Provincial subjects were further divided as reserved and transferred subjects (on recom of COM)
2. **For the first time introduced 'Direct Elections'** and limited franchise was granted.
3. A bicameral system at centre (the Central Legislature would comprise **two chambers – the Council of State** and the Indian Legislative Assembly) was introduced and majority members of both the houses in this bicameral system were directly chosen.
4. Establishment of unicameral Provincial Legislative Councils.
5. The revenue resources were divided between the centre and the provinces, with land revenue going to the provinces, and income tax remaining with the centre.
6. The Governor-General was given powers to summon, prorogue, dissolve the Chambers, and to promulgate ordinances. Thus, despite reserved and transferred list, governor-general decision was final.
7. The number of **Indians in Viceroy's Executive Council was increased to three out of eight members**. The number was increased. however, the council still remained at best an advisory body and no real power conferred.
8. **At this stage there were 2 kinds of services: Imperial (union) and Provincial. With the 1919 act, Imperial Civil Services was divided into All India Services and Central Services**

Significance

- It established parliamentary democracy in India
- The structure of this Act also **allowed Britain to use the Princely States (who were directly represented in the Council of States) to offset the growing power of the native political parties**
- One important significance of the reforms was that demand by nationalists for self-government or Home Rule couldn't be termed as seditious since the attainment of self-government for Indians now **officially became a government** policy which was indicated in August Declaration of Montagu.

Why failed to satisfy pol demands:

1. Being "limited by ideas of continuing British presence". Many Indians by this time had **moved beyond the idea of self-government within the empire** **Their new goal was Swaraj**, which was soon going to be defined as complete independence.
2. Another major disagreement between Congress and the British was **separate electorates for each community(extended to SEC-Sikhs, Europeans, Christians)**
3. However a **faction of Congress was in favour of accepting** government proposals. Led by Surendranath Banerjee, they formed 'Indian Liberal Federation and were known as Liberals.

Did the Government of India Act, 1935 lay down a federal constitution? Discuss.

Model Answer:

- **Federal features under the Act:** All India Federation; Provincial Autonomy; Distribution of Legislative Power (via 3 lists); Setting up of a federal bank & court
- **Not a true federal system: Discretionary powers of GG; Emergency Procl** (federal legis can enact laws on provincial list); Defective federation (Entry into the federation was compulsory for the Provinces but voluntary for the Princely States); Residuary powers with GG
- The 1935 Act was **aimed to perpetuate British rule and design to appease Nationalists**. The act also had regressive provisions such as **separate electorate and had divide and rule** as it's guiding philosophy. An analysis of the features concludes that despite the provision to draft a federal Constitution, the Government of India Act fell **short of an actual federal Constitution**
- The Government of India Act, 1935 was a result of the following: Simon Commission Report; Nehru Report; Round Table Conference; Report of the Joint Select Committee; Lothian Report over Franchise;

Features

All India Federation

- While under previous Governments of India Acts, the Government of India was unitary, the Government of India Act, 1935 prescribed a federation, taking provinces and princely states as units- provinces were now no longer delegates of Central Government but were autonomous units of administration.
- Although, it was optional for Indian states to join the Federation. Hence the federal scheme never came into being.

Provincial Autonomy

- It **ended dyarchy at the provinces** introduced in the Government of India Act, 1919. The **executive authority was to be exercised by a Governor on behalf of Crown** and was required to act with advice of Ministers responsible to legislature. (introduced in 1937 but discontinued in 1939)
- However, the **autonomy at provinces was limited** as certain **discretionary powers remained with the Governors** appointed by the British government and the British authorities also retained a right to suspend the responsible government.

Dyarchy at Centre

- Governor-General had two functions:
 1. Administration of defence, external affairs, tribal area in his discretion with the help of 'counsellors' who were not responsible to legislature.
 2. Other subject matters- on advice of 'Council of Ministers' who were responsible to legislature.

The Legislature

1. The Central Legislature was bicameral, consisting of Federal Assembly and Council of States.
2. The Council of States was to be upper house - composed of 260 members of which 156 were to be representatives of British India while, 101 of the Indian states.
3. The Federal Assembly was the lower house. While the seats reserved for princely states were to be filled by nominated members, the provinces seats were filled by indirect election. The term of the assembly was five years but it could be dissolved earlier also.
4. Also, in **six of the Provinces, the Legislature was bicameral.**

Distribution of **Legislative powers between Centre and the Provinces (3 Lists)**

1. Federal List- External Affairs, Currency and coinage, Naval, Military, Air-Force, Census.
2. Provincial List- Police, Provincial Public Service, Education, etc.
3. Concurrent List- Criminal Law and procedure, Civil Procedure, Marriage and Divorce, Arbitration, etc.

Federal Bank was established

- The Government of India act, 1935 provided for the establishment of a Federal Bank to control the currency and credit of the country.

Federal Court was established

- The Government of India Act, 1935 provided for the establishment of a Federal Court which would interpret the Act and adjudicate disputes relating to the federal matters.

Emergency powers to Governor-General

- In case of emergency, the Governor-General could issue a Proclamation of Emergency and empower the Federal Legislature to make laws on Provincial subjects. He could also issue directions to the Governors to act in a manner that the peace and order of the country was not endangered.

Franchise to one-sixth of adults only

- The Government of India Act, 1935 extended the **franchise to one-sixth of the adults.**

Strategy of British Government at that time

1. They hoped that reforms would revive the political standing of the Liberals and other moderates who believed in the constitutional path.
2. They **hoped that Congressmen would be weaned away from mass political action** and guided **towards constitutional politics.**
3. They hoped that reforms could be used to **promote dissensions and a split within the demoralised Congress ranks** on the basis of constitutional vs non constitutionalist and Right vs Left.

Conclusion

The Act of 1935 was condemned by nearly all sections of Indian opinion and was unanimously rejected by the Congress. The Indian National Congress demanded instead, the convening of a constituent assembly elected on the basis of adult franchise to frame a constitution for an independent India.

Issues

- **Nehru- we are provided with a car, all brakes and no engine.**
 - Numerous safeguards for GG acts as breaks, in provices - emergency powers
- Rigid constitutions- right of ammendment to British parliament

The significance of Government of India Act, 1935 can be best summed up in the words of the then Viceroy Lord Linlithgow himself: " After all we framed the

constitution....of 1935 because we thought it the best way... to hold India to the Empire."

The Government of India Act 1935, however, had introduced several features which later formed the nucleus of our Constitution. (more than half features of const. have resemblance to GOI Act 1935)

Fundamental Rights

1. 2017: Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy

a. Judgement:

- i. In Justice KS Puttaswamy Case 2017 it was held that fundamental right to privacy is an intrinsic part of life and liberty under Article 21
- ii. Right to Privacy may be restricted **only if it passes 3 tests: Backed by a law; Legitimate state interest; Test of proportionality**

b. Impact on scope of other FR:

- i. This will strengthen freedom of thoughts, expressions, beliefs etc. under Article 19
- ii. Prevent the situation of surveillance by the state
- iii. Act as a **guide for SC** to evaluate actions under Section 32 eg: **Aadhar was upheld by SC**
- iv. Aided in **revocation of section 377 as sexual orientation is a part of the right to privacy**
- v. **Accountability** of pvt. players and **social media intermediaries** can be ensured
- vi. This opens doors for further debates, will encourage awareness about the rights enjoyed by the citizens

c. Current Issues wrt privacy:

- i. MHA authorised 10 Central agencies to monitor any computer in the country (matter sub judice)
- ii. Idea of Social Media Monitoring Hub to snoop social media communications - later revoked
- iii. **Focus on looking at data as the new oil rather than as rights based approach**
- iv. **Project Insight of IT dept. seen as mass surveillance**

d. Steps taken:

- i. Draft data protection law
- ii. IT Act 2000

e. Steps needed:

- i. Need for a independent data protection authority
 - ii. Individual consent should be must for data sharing
 - iii. Awareness to be ↑ and ensure violations are penalised
 - f. Way Fwd: A rights-oriented data protection legislation is the need of the hour
2. **2015: Article 14/19 vs 21: Diwali crackers vs right to clean environment**
- a. Article 21 of Indian constitution guarantees Right to Life and Liberty. Subsequent judgements by the apex court (especially after Maneka Gandhi case) have enlarged its scope and right to clean environment has been brought under its ambit
 - b. Issues with burning of crackers: Noise pollution, 30% to 40% increased cases of respiratory diseases
 - c. Balance between Right to Environment and Right to Religious freedom: All freedoms come with certain reasonable restrictions. To ensure the fundamental right to clean environment, the government may take steps to regulate burning crackers during Diwali. In 2015, the Supreme Court dismissed a petition which was aimed at putting a blanket ban on bursting of crackers on Diwali or designating a particular place for bursting crackers.
 - d. Ban on burning Crackers is not the solution:
 - i. Totality of causes for pollution need to be tackled: The burning of crackers is just a two day event and only partly contributes
 - ii. Cultural Sentiments – A blanket ban on cracker bursting would also be problematic and would annoy the majority of pupulation as bursting crackers during Diwali is a century old tradition.
 - iii. Implementation issue – There are already various restrictions over the type of crackers that can be manufactured and sold. Authorities have failed to implement these guidelines.
 - iv. Bursting crackers is matter of individual freedom as well as religious freedom. Worldwide crackers are used to celebrate new year and Christmas festivals
 - e. Conclusion: It is necessary to exercise certain prudence and caution in this situation and best way to go about it is to hoslistically tackle the problem of pollution. Steps to sensitize people about the environmental problems is a better solution
3. **2014: Freedom of speech and expression? Does it cover hate speech? Why do films in India stand on a different plane?**
- a. Covered below
4. **2013: Section 66A of IT Act and violation of Article 21**
- a. Section 66A dealt with information related crimes in which sending information, by means of a computer resource or a communication device, which is inter alia offensive, derogatory and menacing is made a punishable offence

- b. This had led to the **Supreme Court striking section 66A down as unconstitutional in March, 2015 in Shreya Singhal v. Union of India**
- c. SC said:
 - i. Arbitrarily, excessively and disproportionately invades the right of free speech u/a 19
 - ii. Inconvenience, danger, obstruction and insult are undefined
 - iii. Section 66A did not have procedural safeguards
 - iv. It is also contrary to article 21
- d. After that government had appointed an expert committee (T.K. Viswanathan committee) which proposed a legislation to meet the challenge of hate speech online
- e. Current status: Continued to be invoked by police across India in FIRs registered due to communication gap at the ground level
- f. **Section 69A of IT Act**
 - i. Chinese Apps were banned under Section 69A
 - ii. Section **gives the CG the power to block public access to any information online** — whether on websites or mobile apps if it threatens **India's defence, its sovereignty and integrity**, friendly relations with foreign countries and **public order**
 - iii. **Shreya Singhal Case upheld the validity of Section 69A; It said website could be blocked only on the basis of reasoned order**
 - iv. Section **69A** of IT is **seen as censorship by various sections** due to its secrecy & arbitrary application - This needs to be avoided to ensure freedom of speech and expressio

5. **Matters in News:**

- a. **HATE SPEECH:** Incitement of hatred against a group defined by religion/gender/race; No particular sections to regulate (but touched in 153A, 295A of IPC, Cinematography Act); **Causes:** (religious tensions; vote bank politics; lack of strong laws/enforcement; social media amplification); **Solutions** (Promotion of fraternity/social endosmosis; Counter speech-Jonathan Maynard; Media regulation; Tough policing; Using AI);
 - i. **267th Law Commission** Report has recommended the **addition of a new law specific to hate-speech** along with the Constitutional Amendment to **add "hate speech" as one of the restrictions under Article 19(1)**
- b. **Citizenship Amendment Act 2019** - provide **fast-track citizenship** to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who entered India on or before **December 31, 2014** through **reduced time for naturalisation**
 - i. **Issues:** does not cover refugees like Tamils from Sri Lanka or Rohingyas from Myanmar; Violate secularism; Violated Article 14 as diff non-citizen as per religion

- ii. **WF:** Reflecting India's civilizational character in protecting the persecuted, CAA 2019 is right in its intent, but is limited in scope. A **comprehensive refugee policy** is the ideal way forward.

Static Notes FR

★ Read Image below ★

Category	Consists of
1. Right to equality (Articles 14–18)	(a) Equality before law and equal protection of laws (Article 14). (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). (c) Equality of opportunity in matters of public employment (Article 16). (d) Abolition of untouchability and prohibition of its practice (Article 17). (e) Abolition of titles except military and academic (Article 18).
2. Right to freedom (Articles 19–22)	(a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19). (b) Protection in respect of conviction for offences (Article 20). (c) Protection of life and personal liberty (Article 21). (d) Right to elementary education (Article 21A). (e) Protection against arrest and detention in certain cases (Article 22).
3. Right against exploitation (Articles 23–24)	(a) Prohibition of traffic in human beings and forced labour (Article 23). (b) Prohibition of employment of children in factories, etc. (Article 24).
4. Right to freedom of religion (Article 25–28)	(a) Freedom of conscience and free profession, practice and propagation of religion (Article 25). (b) Freedom to manage religious affairs (Article 26). (c) Freedom from payment of taxes for promotion of any religion (Article 27). (d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
5. Cultural and educational rights (Articles 29–30)	(a) Protection of language, script and culture of minorities (Article 29). (b) Right of minorities to establish and administer educational institutions (Article 30).
6. Right to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) <i>habeas corpus</i> , (ii) <i>mandamus</i> , (iii) prohibition, (iv) <i>certiorari</i> , and (v) <i>quo war-rento</i> (Article 32).

Madhav Agarwal (AIR 1)

Article	Restrictions	Remarks
14	-	-
15	R/R/C/S/ PoB (Residence is not written; therefore for eg: state may offer concessional fees for education to its residents)	PoB is present in both cases
16	R/R/C/S/ PoB/Residence/Descent	-
17	-	-
18	-	-
19	Sovereignty and integrity of India, public order , the security of the State, friendly relations with foreign States, decency or morality or in relation to contempt of court , defamation or incitement to an offence	Speech & Expression
	Sovereignty and integrity of India or public order (incl maintenance of traffic)	Assembly
	Sovereignty and integrity of India or public order or morality	Association/Union
	<i>Interests of the general public</i> or for the protection of the interests of any ST	Movement
	<i>Interests of the general public</i> or for the protection of the interests of any ST	<i>Settle(permanent)/Reside (temp)</i>
	<i>Interests of the general public</i> or qualification or govt. monopoly	Profession
20	Only criminal cases & criminal proceedings	
21	Procedure established by law	
21A	-	
22	-	Arrest & Detention
23	State can impose compulsory service for public purposes (Exception)	Human trafficking & Forced labour
24	-	
25	Public order, health or morality	Religion
26	Public order, health or morality	Collective
27	-	
28	-	
29	-	All sections (even if majority)
30	-	Only minorities
31	-	
32	-	

- **FR Importance:** Promote political democracy; **Prevent authoritarian & despotic rule;** Ensures **constitutionalism (main role of FR)**; Think of FR and make points related to theme
- Features:
 - Not absolute but qualified therefore reasonable restrictions are ✓
 - Most are available against action of state while **some against the action of private individuals** [eg: 15, 17, 23, 24, 32 (Only Habeaus Corpus)]
 - Most of them are negative thus place limitations while others are positive - conferring certain privileges
 - **Justiciable & Defended and guaranteed** by SC (Article 32) and HC (Article 226)
 - Not sacrosanct or permanent (can be amended)
 - Can be suspended during National Emergency except FR u/a 20 & 21
 - **Scope of operation is limited by Article 31A, 31B, 31C; as well as while martial law** is in force
 - Most of them are directly enforceable. **For few an enabling law can be made only by Parliament** Ex - 21A, PoA Act, 1989
- **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

- Equality before the law (British; Negative concept): 1. Absence of any special privileges in favour of any person 2. **Equal subjection of all persons to the ordinary law** 3. **No person is above the law**
- Equal protection of the law (American; Positive concept): 1. **Equality of treatment under equal circumstances** 2. Similar application of same law to all people who are similarly situated 3. **Like should be treated alike** without discrimination
- Exceptions:
 - **President of India and Governor** of the state (No criminal proceedings/arrest during their office)
 - **Foreign sovereigns, ambassadors** and diplomats; Immunity to UNO
 - Art 31C – Laws made for implementing DPSP under 39(b), 39(c) shall not violate Article 14/19
 - Article 105, 194 –MPs and MLAs are not liable for any of their action inside legislature
 - Article 361A - No person shall be liable to any proceeding for true reporting of freedom to publish proceedings of Parliament and State Legislature
- **Article 15:** There shall not be any discrimination against citizens only on the grounds of race, religion, caste, sex or place of birth
 - 15 (1): No discrimination in giving access to shops, public restaurants, hotels and places of public entertainment – applicable to discrim by state
 - 15 (2): No discrimination in Use of wells, tanks, bathing ghats maintained by state funds for general public. Applies to discrim by both pvt. indiv and state
 - Exceptions where spcl provisions can be made for:
 - 15(3): Women and children
 - 15(4): Socially and educationally backward classes of citizens, SC, ST (in general)
 - 15(5) same as 15(4) but specific to admission to educational institutions (except MEIs) (Note: RTE is **also NA** on MEIs)
 - 15(6): 10% reservation for EWS
- **Article 16:** Equality of opportunity in Public employment
 - No citizen can be discriminated or made ineligible for employment of any office under the state and on the grounds of only religion, race, caste, sex, descent, place of birth or residence
 - Exceptions:
 - Residence as conditions for certain types of employment (only by the parliament) Eg: AP & Telangana b. State can provide for reservations to socially and educationally backward if they're not adeq represened

- Incumbent of an office related to religious or denominational institutions belonging to particular religion

Evolution of Reservation

- It is a form of affirmative action whereby a percentage of seats are reserved in the government service and educational institutions
- Current Reservation policy: 27% reservation to OBC, 15% to SC, 7.5% to ST, 3% to PwD, 10% to EWS
- Champakam Dorairajan 1951 struck down order regarding caste-based reservation in government jobs and educational institutions → introduction of article 15(4)
- Narsimha Rao Govt. introduced gave 27% reservation (Mandal commission); 10% to EWS
- **Indra Sawhney Case 1992: (aka Mandal case)**
 - Reserve 27% for OBC allowed, but struck down 10% to EWS;
 - **Subject to Conditions:** Creamy layer in OBC; No reservation in promotions; C/f rule allowed but subject to 50% cap (Will of BR Ambedkar as reservation must be for minority ie. <50%)
- Govt added Article 16(4A) which enabled to continue reservation in promotions & applied creamy layer only to OBCs (*thus kept SC/ST out*); Article 16(4B) was also introduced later to allow carry forward of unfilled vacancies & not apply 50% cap
- **M Nagraj Case 2006:** SC validated parliament's decision to extend reservations for SCs and STs to include promotions with three conditions:
 - Provide proof for the backwardness; Collect quantifiable data showing inadequacy of representation; Show how reservation would further administrative efficiency
- Jarnail Singh v. Lachhmi Narain Gupta (2018)
 - SC overruled the need for quantifiable data as stated in Nagraj case as it went against Indra Sawhney case 1992 which said no need to prove backwardness once it is part of president list
 - Upheld that creamy layer must also apply to SC/ST also
- CG has demanded a review of 2018 verdict related to reservations in promotions for SC/ST
 - Arguments for not applying creamy layer to SC/ST: Discrimination faced by SC/ST is independent of economic consideration and depends on stigma attached to their untouchable status; There are differences in discrimination faced by SC/ST compared to OBC
- **Way Fwd:** Use other tools to promote dev such as dalit entrepreneurship; **Under Prevention of Atrocities Act no report bringing out nature of**

discrimination faced by dalits has not been released in last 20 years (which was to be released every 5 years)

EWS Quota (103rd AA)

- Pros of reservation on basis of EWS: Alternative to current caste centric definition of backwardness; **Caste injustice is not the sole determinant of backwardness**
- Cons of reservation on basis of EWS: Breaches 50% limit (denies equality of opportunity; against will of BR Ambedkar; as reservation must be for minority ie. <50%); Open pandora box of demands; Dilute the primary purpose of reservation which aimed to support marginalised and not poverty alleviation; Tool for populism; Only a relief not a LT solution to curb economic ineq
- 103rd AA, 10% reservation, Articles 15(6), 16 (6), Article 46 (DPSP - promote interest of other weaker sections). Preamble talks about economic justice; Presently 49.5% for SC/ST/OBC + 10% for EWS
- Criteria: Income 8 lac & other criterias
- **SC Judgement**: 3 questions of laws - 1. Eco criteria, 2. 50% cap 3. Exclusion of SC/ST/OBC
 - Janhit Abhiyan vs UOI upheld the EWS Reservation via 3:2 majority
 - Eco criteria can be a criteria; Parl is aware of the needs of the ppl; Goes with preamble of const too
 - 50% cap came in Indira Sawhney Judgement as to uphold principle of equality in const - based on which even Maratha reservation was violated; Majority judgement said 50% ceiling was for caste based criteria and this is different; In IS case SC said 50% is not hard & fast thus can be altered based on circumstances
 - Exclusion of SC/ST/OBC is necessary to avoid double advantage;
 - **Justice Maheswari** (majority side) - Poverty is not merely a stage of stagnation but a point of regression. Hence eco criteria can be imp criteria to allow empowerment. Reservation is the means & inclusion is the end; Poverty also is a visible marker of deprivation
 - **Minority judgement view**: Eco criteria is valid for subsidy or allocating goods but not reservation; 50% cap breaches equality; 3 sections must not be excluded
- **Distinguishing feature of SC Judgement**: Reservation regime is changing (from caste based to class based; From community based reservation to individual centric)
- Article 19 (Speech & Exp, Assemble, Form assoc/co-op, Move freely, Residence, Profession)

- Freedom of speech and expression: all citizens have the right to express their views and opinions freely not only words of mouth, but also a speech by way of writings, pictures, movies, banners. It also includes the right not to speak. (also includes Freedom of press, Right to propogate one's views, Freedom of silence)
 - Reasonable restrictions- sovereignty and integrity of the country, security of the state, friendly relations with foreign states, public order, decency or morality, defamation, incitement to offence or contempt of court.
- Freedom to assemble: The State guarantees every person the freedom to assemble peacefully without arms.
 - Reasonable restrictions can be imposed in the interests of the sovereignty and integrity of the country and public order (traffic maintenance)
 - Section 144 Crpc (restrict any assembly if danger to human life,public order), Section 141 IPC(five or more unlawful)
- Freedom to form associations/unions/cooperative societies:
 - RR- integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order
 - This freedom gives workers the right to form trade union but right to strike is not FR.
 - The Police Forces (Restriction of Rights) Act, 1966 prohibits police personnel from forming trade unions
 - The Constitution also allows the Parliament to pass a law restricting the right to form political association to members of the armed forces, intelligence bureaus, persons employed with telecommunication system.
- Freedom to move freely: A citizen of India can move freely throughout the territory of India
 - RR- for general public (SC- prositutes movement restriction for health etc) for protecting the interests of the Scheduled Tribes(entry of outsiders banned for protecting their customs,manners etc) (Inner line permit)
- Freedom of residence: Citizens of India have the right to reside in any part of the country
 - RR- same as above
- Freedom of profession: All citizens have the right to carry on any trade or profession/occupation, provided the trade or occupation is not illegal or immoral
 - RR- the law does not prevent the State from making laws related to technical or professional qualifications required for practicing the occupation or trade or carry on by itself any trade
- **Colonial Laws that violate free speech in India:**

- **Official Secrets Act, 1923** (punished for disclosure of secret but term is vague; 2nd ARC asked to repeal) **Sedition Law** (Sedition should be redefined as per Kedarnath Singh)
- Section 295A of IPC (Blasphemy law): to penalize “acts, intended to outrage or insult religious feelings; Defamation can be made a civil offence only and not a criminal offence

Sedition

- Why in news?
 - 2 Telugu news channels were freed from sedition charges by SC (Andhra Pradesh)
 - Case against Vinod Dua regarding sedition was quashed by SC (verdict held that “strong words” of disapproval about the ruling regime did not amount to sedition)
 - CJI questioned the need of section 124A - a colonial provision used to jail the Mahatma - in the law books of modern democracy
- Colonial era law under Section 124A of the Indian Penal Code (IPC)
 - It defines sedition as an offence committed when "any person by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or **attempts to bring disaffection towards the government established by law in India**".
 - Sedition is a **non-bailable offence**. Punishment under the Section 124A ranges from imprisonment up to three years to a life term, barred from a government job
 - In 1962, the SC decided on the constitutionality of Section 124A in Kedar Nath Singh vs State of Bihar.
 - It **upheld the constitutionality** of sedition, **but limited its application** to “acts involving intention or tendency to **create disorder**, or disturbance of law and order, or **incitement to violence**”.
- **Arguments in Support of Section 124A:**
 - Section 124A of the IPC has its utility in combating anti-national, secessionist and terrorist elements.
 - Many districts in different states face a maoist insurgency and rebel groups virtually run a parallel administration. These groups openly advocate the overthrow of the state government by revolution
 - **Complete abolition of Section 124A would be ill-advised merely because it has been wrongly invoked** in some highly publicized cases
 - **Freedom of speech and expression is not an absolute right** and the Constitution itself lists grounds which include national security;

- Needed to **curb anti-national activities**; Argument by **Anushka Singh in 'Sedition in Liberal democracies'**
- **Arguments against Section 124A:**
 - It is a constraint on the legitimate exercise of constitutionally guaranteed freedom of speech and expression.
 - Right to question, dissent and change rulers is very fundamental to the idea of democracy.
 - The sedition law is being misused as a **tool to persecute political dissent**.
 - The British, who introduced sedition to oppress Indians, have themselves abolished the law in their country. There is no reason why India should not abolish this section.
 - Dissent and **criticism of the government are essential ingredients of robust public debate in a vibrant democracy**
 - The terms used under Section 124A like '**disaffection**' are **vague** and subject to different interpretations to the whims and fancies of the investigating officers.
 - **Non-bailable offence** (but jails overcrowded);
 - **IPC and Unlawful Activities Prevention Act 2019 have provisions** that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are **sufficient for protecting national integrity**.
 - In 1979, India ratified the International Covenant on Civil and Political Rights (**ICCPR**)- misuse of sedition and arbitrary slapping of charges are **inconsistent with India's international commitments**.
 - According to NCRB, case under sedition & UAPA saw growth in 2019, but **only 3% resulted in conviction** (thus the **process itself is the punishment**)
 - In **Australia/UK**, the term 'sedition' was removed. Even in India, in August 2018, the **Law Commission published a consultation paper recommending that it is time to rethink or repeal Section 124A**
 - **SC in Vombatkere vs UOI 2022 suspended 124A and asked govt to re-examine the law**
 - **22nd Law Commission asked to retain; Recent Criminal reforms removed sedition (replaced with new section)**
 - Sedition section has **chilling effect on people's movt/dissent** towards the party in power

Way Forward

- As suggested by Law commission, Section 124A should not be misused as a tool to curb free speech. The SC caveat, given in Kedar Nath case, on prosecution under the law can check its misuse.

- The word 'sedition' is extremely nuanced and needs to be applied with caution. It is like a cannon that ought not to be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.

- SC Judge Justice Sanjay Kaul said 'Voicing dissent against govt. is not sedition'

- **Article 21**

- No person shall be deprived of his life or personal liberty **except according to procedure established by law (DPL came under Menaka Gandhi Case)**

Criteria	A.K. Gopalan Case Protection	Menaka Gandhi Case Protection
Arbitrary executive actions	Available	Available
Arbitrary Legislative actions	Not Available	Available (Un reasonable unjust, unfair laws can be questioned by judiciary.)
Due process of law	Not Available	Available
Meaning of Liberty	It means only liberty relating to person, body of the individual	Wider and positive interpretation of liberty i.e., opportunity to live with dignity and to develop to ones capacities.

- Under PEBL court will check whether the Legislature is competent to frame the law and whether it had followed the procedure laid down to legislate and would not assess the intent of the said law
- **Under DPL** court not only checks if there is a law to deprive the life and personal liberty of a person but also ensures that the **law is made fair and just**. It provides for more **fair treatment of individual rights**
- In 2018, the SC legalised passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state.
- **Regarded as fundamental of all FRs; Backbone of Part III and Part IV**
- **It includes right to marry, right to speedy trial, right to decent env, right to livelihood, right to health, etc**

- **Article 21A (86th AA)**

- 86th AA: Free and compulsory education to children in the age of 6 to 14 years
- RTE Act 2009 completed 10 years in 2019

- RTE act provides for mandates 25% reservation for disadvantaged sections and EWS at entry level (class one)
 - **Qualitative norms: teacher-student ratio of 1:30, ramps** for students, playground, drinking water, etc
 - **Success:** Every year **3mn students benefiting** from 25% norm; Increase in primary level enrolment; **Removal of “no detention policy” has brought accountability (as no detention allowed)**
 - **Issues: Only 13% schools achieved full compliance** of norms; **Fill rate of 25% quota has hovered only between 20-26%**; PESA Results not good or ASER Report; Implementation hurdles such lack of awareness; Issues in computation of per child cost leading to **diff in claiming reimbursements from CG by SGs**
 - Way Fwd: The **focus** of the RTE Act **must shift from enrolment to attendance**; Need to revisit per-child cost calculation; Parents need to be made aware
- **Right to Freedom of Religion**
 - Article 25: Freedom of conscience, freedom to profess, practice and propagate religion (does not incl religious conversions)
 - **Reasonable Restrictions: Public Order, Morality, Health**
 - Article 26: Religious denominations can establish, maintain, manage, and acquire property for religious and charitable purposes
 - Necessary conditions (by SC) to be considered as religious denomination: 1) System of belief 2) Common organisation 3) Distinctive name
 - Reasonable Restrictions: Public Order, Morality, Health
 - Article 27: Freedom from taxation for religious institutions – tax cannot be levied but fees against the service can be levied
 - Article 28: Freedom from attending religious instructions in educational institutions
 - Institutions wholly maintained by state = Completely prohibited
 - Institutions Administered by state but established under any endowment or trust = Religious instructions permitted
 - Institutions recognized by the state & Institutions receiving aid from the states = Permitted on voluntary basis, student may or may not attend
 - Sabrimala Case:
 - 2018 Verdict: Practice in sabrimala violates Article 17 (purity-impurity concept)
 - Justice Indu Malhotra dissented - interfere only in pernicious practices such as sati
 - **Doctrine of Essentiality was invented in Shirur Mutt Case 1954 where court took upon itself the**

- The SC has power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include **habeas corpus, mandamus, prohibition (to prohibit), certiorari (to certify) and quo-warranto.**
- In case of the enforcement of Fundamental Rights, the jurisdiction of the SC is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226.
- The SC has ruled that where relief through the high court is available under Article 226, the aggrieved party should first move the high court.
- In the **Chandra Kumar case (1997), the SC ruled that the writ jurisdiction of both the high court and the Supreme Court constitute a part of the basic structure of the Constitution.**
- Background:
 - During the 1975 Emergency, a five-judge bench of the Supreme Court, in the ADM Jabalpur vs Shivakant Shukla case, had ruled that the right to constitutional remedies under Article 32 would remain suspended during a national emergency. People were unable to seek recourse to enforcement of their fundamental rights.
 - The **44th Amendment** - according to **Article 359**, the **president could issue orders suspending** the right to move any court for the enforcement of fundamental rights, under Article 32, during a national emergency, with **the exception of Article 20 (No retrospective punishment, No double jeopardy, No self incrimination) and Article 21** (protection of life and personal liberty).
 - Subsequent to 44th Constitutional Amendment 1978 and **Puttaswamy judgement 2017**, even under proclamation of national emergency, article 32 can still be invoked for protecting the right to life
 - Article 32 makes judiciary act as the protector and guarantor of fundamental right
- Significance:
 - No fundamental right had any meaning without Article 32- protect individual liberty
 - **Dr B.R. Ambedkar** - "If I was asked to name any particular article in this Constitution as the most important — an article without which this Constitution would be a nullity — I could not refer to any other article except this one (Article 32). **Article 32 is the very soul of the Constitution and the very heart of it."**
 - The ambit of Article 32 broadened- A PIL can be filed by any person under Article 32, not solely for her or his personal gain or

pecuniary benefit but for the public benefit at large (no locus standi)

○ **Issues**

- **Top court should be consistent in matters** it takes up because only then will the desired result be achieved. In some cases the **top court says one should go to the high court**, while it hears other cases. (Arnab goswami)
- **Even as the SC underlines the powers of the high courts, it has in the past transferred cases to itself from the high courts (using powers of writs)**
 - Most recently, the SC transferred the case involving land use for the national capital's Central Vista project to itself from the Delhi High Court. Incidentally, the petitioners had not sought such a transfer.
 - When such transfers (From HC to SC) are made, the **petitioners lose a stage of appeal** that would otherwise have been available had the high courts heard and decided the case.
- SC also conveyed its concerns that in many matters involving personal liberty, the High Courts are not exercising their jurisdiction as constitutional courts.

● **Exceptions:**

- 31A: It prohibits five categories of laws from being invalidated for violation of article 14 and 19. They are related to land reforms, industry and commerce and include, Acquisition of States, Management of properties, amalgamation of corporations, modifications of rights of directors and share holders, modification of mining leases etc.
- **31B: Saves acts and regulations placed in 9th schedule from judicial review** - however IR Coelho 2007
- **31C: It states that Art. 39(b) and Art. 39(c) can override article 14 and 19**

Fundamental Duties

Fundamental Duties

1. Fundamental duties in the Indian constitution are **inspired by the constitution of erstwhile USSR**. Article **51A in Part IV A**, which contains fundamental duties, was added into the constitution through 42nd amendment after **Swaran singh Commitee** recommendations.

2. As rights and duties are the two side of the same coin, it is expected that one should observe one's duties in order to seek the enforcement of one's fundamental rights.

Integral to Indian way of life

- Since time immemorial, an **individual's "kartavya"** — the performance of one's duties towards society, his/her country and his/her parents, was emphasised.
- In the **Gita, Lord Krishna** ordains, "One should do one's duties without expectation of any fruits".
- According to **Mahatma Gandhi** the very **performance of a duty secures us our right**. Rights cannot be divorced from duties.
- Other points- think of FD and past history

FUNDAMENTAL DUTIES

51A. It shall be the duty of every citizen of India— Fundamental duties.

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; **A for Anthem= Abide flag, anthem**

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom; **B for Bapuji= Bapuji's Noble Ideals**

(c) to uphold and protect the sovereignty, unity and integrity of India; **C for Centre: unity, sovereignty and integrity**

(d) to defend the country and render national service when called upon to do so; **D for Defense: Defend country when called**

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; **E for Equality: encourage brotherhood and women**

(f) to value and preserve the rich heritage of our composite culture; **F for Forts: We preserve forts as well as culture**

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; **G for Green: Green for Environment**

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform; **H for Hitech and Humanism**

(i) to safeguard public property and to abjure violence; **I for an I make whole world blind.**

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; **J for Jenius OR Genius in all spheres**

*[(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.] **K for Knowledge i.e. education**

See if it make sense or try your own and comment

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- To provide opportunities for education to his child or ward between the age of six and fourteen years (added by the 86th Constitutional Amendment Act, 2002)

Importance of FD:

1. They **serve as a warning against anti-social activities** like burning the national flag, destroying public property and so on.
2. **Responsible citizenship- example -Singapore, whose growth story** has been fuelled by its emphasis on the relentless **pursuit of duties by its citizens**.
3. They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are no mere spectators but active participants in the realisation of national goals.
4. They help the courts in examining and determining the constitutional validity of a law. In 1992, the Supreme Court ruled that in **determining the constitutionality of any law**, if a court finds that the **law in question seeks to give effect to a fundamental duty**, it may consider such **law to be reasonable**.
5. They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty for failure to fulfill any of them

Drawbacks

1. They are not well defined. Their ambiguity and **vagueness** make it **difficult for common man to understand them**.
2. They are merely moral postulates and do not have justiciability. There is no provision in the constitution for direct enforcement of these duties.
3. **Fundamental duties miss some important duties** such as casting vote, paying taxes, family planning etc.
4. They should have added after Part III so as to keep them on par with fundamental rights.

Status today (Write one duty and contrary evidences) - No need to read details below (**Amrit Kaal is the Kartavya Kaal**)

- Fundamental duty enshrined under Article 51A(e) seeks to promote harmony and the spirit of common brotherhood, transcending the barriers of religion, language, etc.
 - However, India's democratic setup, over six decades has not fully able to forge this common brotherhood
- Similarly, there is a duty under Article 51A(g) to protect and improve the environment, but India has been severely affected by air & water pollution and the impact of climate change.
- Fundamental duty envisaged under Article 51A(h) developing a sense of oneness, a scientific temper and the spirit of inquiry, nor a healthy, secular attitude
 - On the contrary, the school environment and social milieu are such that children learn all the wrong things about each other and become victims of social prejudices.

- India has a composite culture (under Article 51A(f)), “Vasudhaiva Kutumbakam” sums up that perspective
 - However, presently there is growing intolerance in Indian society, reflected by cases of cow vigilantism, mob lynching, etc.
- Awareness Campaigns: **Nagrik Kartavya Palan Abhiyan** create mass awareness about the Fundamental Duties as enshrined in The Indian Constitution; **Nodal Ministry** is the Department of Justice under the **Ministry of Law and Justice**

What duties can be added

1. Duty to vote: The state can take several steps to ensure that this **duty to vote is made operational and effective**. One method through which this may be achieved is by developing a system of incentives for voters and conversely disadvantages for those who abstain from performing their duty to vote.
2. Duty to pay taxes: The incorporation of the right to pay taxes as part of Fundamental Duties in the Constitution will **shift the onus onto the taxpayer to pay taxes rather than the tax department to collect** them.
3. **Duty to help accident victims**: With the increase in the number of accidents, it has become pertinent for India to recognise this duty as one owed by its citizens towards each other.
4. Duty to keep the premises clean: The most effective mechanism to **tackle uncleanliness is to sensitise people about this duty**.
5. Duty to prevent civil wrongs: It is not enough that a citizen refrains from committing wrong, he has a duty to see that fellow citizens do not indulge in the commission of wrongs.

Fundamental Duties constitute the conscience of our constitution and they should be treated as constitutional values that must be propagated by all citizens.

Legal provisions for FD

- In 1998, Atal Bihari Vajpayee’s government had **appointed the Justice J.S. Verma Committee** to operationalise the suggestions to teach fundamental duties to the citizens of the country. Committee also identified legal provisions for implementation of some of FD
 - **Prevention of Insults to National honour act (1971)**- disrespect to flag, constitution, anthem etc
 - WPA 1972, FCA 1980
 - RPA 1951 for disqualification in case promoting enmity, asking votes on caste, religion
 - SC/ST prev of atrocities act- for punishment for offences related to caste discrimination
 - Other- Sexual harrasment at workplace act etc

- **Essentially all that is contained in Part IV-A of the Constitution is just a codification of tasks integral to the Indian way of life. Critically examine this statement**
 - Explain FD with focus on Indian way of life- mention their positive impact, also shortcoming today's with way forward
- **Enumerate the fundamental duties incorporated in the Constitution after the 42nd amendment**
 - Covered above

Preamble

Preamble- horoscope of nation as tells time, place of adoption, personality elements- sov, socialist, gives future- society based on justice, liberty etc

- **Identity card of constitution (NA Palkhivala), based on an objective resolution moved by Nehru; Offers a 'key to the minds of constitution makers'**
- Although not enforceable in court, the Preamble states the objectives of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.
- **Preamble envisages society with 4 ideals: (JLEF) (Ideals or aka objectives)**
 - Justice: It is necessary to **maintain order in society** that is promised through various provisions of Fundamental Rights and Directive Principles of State Policy provided by the Constitution of India. **Justice comprises three elements, which is social, economic, and political.**
 - Social Justice – Social justice means that the Constitution wants to create a **society without discrimination on any grounds like caste, creed, gender, religion, etc.**
 - Economic Justice – Economic Justice means **no discrimination can be caused by people on the basis of their wealth, income, and economic status.** Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.
 - Political Justice – Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities.
 - Liberty: The term 'Liberty' means **freedom for the people to choose their way of life**, have political views and behavior in society. Liberty does not mean freedom to do anything, a person can do anything but in the limit set by the law.

- Equality: The term 'Equality' means **no section of society has any special privileges** and all the people have given equal opportunities for everything without any discriminations. Everyone is equal before the law.
- Fraternity: The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation.

Significance of the preamble:

1. The preamble embodies the basic philosophy and fundamental values on which the constitution is based
2. It contains the grand and noble vision of the constitution assembly
3. It **reveals the source of the authority of the constitution** i.e. the people of India in the opening words of it.
4. It tells the **nature of Indian state as sovereign, socialist, secular, republic and democratic polity (remember them apart from JLEF)**
5. It specifies the objective of the constitution as justice, liberty, equality and fraternity to its people
6. It is also important in understanding the ambiguous provision of the constitution.
7. It **helps the common man understand what our constitution is about**, given the simple language, unlike the constitution itself which is tough to understand
8. It helps the supreme court in making judgements regarding whether a particular provision/legislation is in line with the spirit of the constitution
 - a. When supreme court **struck down Article 377 of IPC** (homosexuality), it also held one of the provision of the preamble i.e. **dignity of individual**

Preamble part of constitution? (Berubari Case - not part, then KB Case said its a part)

- The preamble being part of the Constitution is discussed several times in the Supreme Court. It can be understood by reading the following two cases.
 - Berubari Case: It was used as a reference under Article 143(1) of the Constitution which was on the implementation of the Indo-Pakistan Agreement related to the Berubari Union and in exchanging the enclaves - the Court stated that 'Preamble is the key to open the mind of the makers' but it can not be considered as part of the Constitution. Therefore it is not enforceable in a court of law.
- Kesavananda Bharati Case: In this case, for the first time, a bench of 13 judges was assembled to hear a writ petition. The Court held that:
 - The Preamble of the Constitution will now be considered as part of the Constitution.

- The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.
- So, it can be concluded that preamble is part of the introductory part of the Constitution.
- In the 1995 case of Union Government Vs LIC of India also, the Supreme Court has once again held that Preamble is the integral part of the Constitution but is not directly enforceable in a court of justice in India.

Amendments made in preamble - 42nd AA - Sec, Soc, Integrity

- 42nd Amendment Act, 1976: After the judgment of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution.
 - As a part of the Constitution, preamble can be amended under Article 368 of the Constitution, but the basic structure of the preamble can not be amended.
- The term 'Socialist', 'Secular', and 'Integrity' were added to the preamble through 42nd Amendment Act, 1976.
 - 'Unity of the Nation' was changed to 'Unity and Integrity of the Nation'.

Realized ideals	Unfulfilled aspirations
<ol style="list-style-type: none"> 1. India is the largest democracy; India has been successful in building strong democratic institution (Parliament, ECI, judiciary etc.) and has served as a 'beacon of democracy' for the world. 2. Fundamental rights have ensured equality through Article 14-18; Article 19 gives various types of freedom and liberties; Dignified life is ensured through article 21; and religious freedom is granted through Article 25. 3. India has been able to maintain unity, integrity and sovereignty. 4. India has reduced its poverty from 70% in 1948 to 21.1% in 2011 ensuring economic equality. Schemes of inclusive development like Prime minister's 15-point programme, formation of National Scheduled Caste Finance and Development Corporation is a move toward socio economic justice. 5. India continues to be a multi-cultural society and spirit of brotherhood still exists. To conserve this, the Constitution has provided special rights to linguistic and religious minorities. 	<ol style="list-style-type: none"> 1. Democracy has not percolated to the grassroots, the experiment of LSG remains incomplete; caste and religion continues to dominate electoral narratives; criminalization of politics is on the rise. 2. SC and ST continue to face discriminations, caste/religion based social hierarchies are still intact; State has been accused on restricting free speech; Dignified life is still an aspiration for many (Eg. Transgenders, undertrials etc.); Religion continues to play an important role in public life (politics and society). 3. Regionalism, Naxalism, insurgency in NE etc. reflect threat to unity and integrity of the nation. Aggression by China and Pakistan may challenge sovereignty. 4. Rising inequality undermines the term 'equality' enshrined in the preamble. For eg: Oxfam report says top 10% holds 77% of total wealth. Violence against minorities, women etc., act as hurdle to goal of social justice. 5. Critics have pointed out rising polarization and intolerance; targeted hate and socially sanctioned atrocities that have diluted fraternity. Eg. Increase in mob lynching activities as per NCRB.

Discuss each adjective attached to the word 'Republic' in the preamble. Are they defensible in the present circumstances? (Collect good examples)

- **Republic:** India as a republic has an elected head of the state with political sovereignty vesting with the people and public offices open to every citizen without discrimination. The preamble states that India is a sovereign, socialist, secular and democratic republic.
- **Sovereign:** This implies that **India is an independent state and has the freedom to conduct its own affairs.** Whether it be **opting for a Non-alignment** in its foreign affairs during the cold war or even domestically, India has the power to legislate on any subject **without influence of any** other state or **external power.**
 - Impact of tech co., globalisation movements against HR,
 - Though recently, global considerations have played an important factor in decision making due to India's membership of WTO, IMF and WB
- **Socialist:** (means of production, distribution, and exchange should be owned or regulated by the community as a whole) India envisages to be a socialist state to end poverty, disease and inequality by pursuing democratic socialism i.e. co-existence of both public and private sectors **(we follow democratic form of socialism, rather than communistic form of S)**
 - **-ve: Privatisation of PSU's,** Impact of globalisation
 - Though there has been a roll back of the state with the opening of the economy, **post-1991 economic reforms, the role of state has changed but has not entirely eroded as a regulator and facilitator** in ensuring welfare of public.
- **Secular:** This means that in India all religions are protected and supported equally by the state and the state does not uphold any religion as state religion.
 - Mob lynchings, police excess on minorities, regulating marriages by the state
 - Even in current times of intolerance, the faith, worship, ritual and secular activities of religious groups are protected under Fundamental Rights
- **Democratic:** The Preamble envisages India to be democratic **not only politically but also socially and economically.** The democratic character of India is evident through the **periodic elections based on universal adult franchise,** rule of law, independence of judiciary etc.
 - Increasing role of money and muscle power in elections, has resulted in parliamentary inefficiency, but the democratic character of India has **only weakened, not destroyed** (smooth transition of power)

Conclusion: If we follow ideals of preamble to its fullest, India will be a heaven on earth.

Directive Principles of State Policy (DPSP) - Article 36-51 Part IV

- The Directive Principles of State Policy are considered **fundamental in the governance of the country, and establish socio-economic democracy in India**. The DPSP draws its power from Irish constitution including Gandhian principles. They are described **under Part-IV** of our constitution.
- BR Ambedkar called DPSP along with FR as soul of constitution.

Features of DPSP

1. These are constitutional instructions to the state in legislative, executive and administrative matters.
2. They **resemble 'Instrument of Instruction'** enumerated in Government of India Act, 1935.
3. Non justiciable but help court in determining **constitutional validity of law. (beacon lights to courts)**
4. DPSP constitute a very comprehensive economic, social and political programme for modern democratic state. They **embody the concept of the welfare state instead of police state**.
5. BR Ambedkar had pointed out that the directives have great value because they lay down that the goal of Indian polity as 'economic democracy' as distinguished from 'political democracy'.
6. **Amplify preamble as well as fill vacuum of Part III with social and eco rights**

Classification

Socio-economic principles

- to promote the welfare of the people by securing a social order permeated by social, economic and political justice and to **minimise inequalities in income, status, facilities and opportunities. (Art 38)**
 - **Land reforms** and abolition of zamindari system. **Ceiling has been placed on land and property** to fix the limit of person's holdings.
- Article 39
 - (a) the right to adequate means of livelihood for all citizens;
 - Schemes like MGNREGA (Right to work),
 - **(b) the equitable distribution of material resources** of the community for common good;
 - Nationalisation of banks, life insurance, abolition of privy purse
 - **(c) prevention of concentration of wealth** and means of production;
 - **Progressive taxation**, cess on higher incomes
 - **(d) equal pay for equal work for men and women;**
 - Parliament has brought a **Minimum Wages Act, 1948** under which rules require that both men and women be paid equal wages for equal work

- (e) preservation of the health and strength of workers and children against forcible abuse; and
 - Child labour prohibition and regulation act
- (f) opportunities for healthy development of children.
 - SABLA, ICDS, Mid-day meal scheme
- to promote equal justice and to **provide free legal aid to the poor.** (Art 39A)
 - Creation of NALSA has led to a nation-wide network to provide free and competent legal aid to the poor and to organise lok adalats for promoting equal justice.
- to secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. (Art 41)
 - National Social Assistance Program
- to make provision for just and humane conditions for work and maternity relief. (Art 42)
 - National commission for the welfare of women has been established by the Government. Maternity benefit act, 2016 has been enacted to protect interests of women workers.
- **to secure a living wage, a decent standard of life** and social and cultural opportunities for **all workers (Art 43)**
- to take steps to secure the **participation of workers in the management of industries (Art 43A)**
- to raise the level of **nutrition and the standard of living of people** and to improve public health. (Art 47)
 - POSHAN abhiyaan

Gandhian Principles

1. to organize village Panchayats and endow them with necessary powers and authority to enable them to function as units of self government. **(Art 40)**
 - a. 73rd and 74th Amendment
2. to **promote cottage industries** on an individual or co-operation basis in rural areas. (Art 43)
 - a. **Khadi and Village industries board, Coir board, Silk board** and so on have been setup for the development of cottage industries in rural areas.
3. to promote voluntary formation, autonomous functioning, democratic control, and **professional management of co-operative societies. (Art 43B)**
4. to promote the **educational and economic interests of SCs, STs and other weaker sections** of the society and to protect them from social injustice and exploitation. (Art 46)
 - a. Seats are reserved for SCs and STs and other weaker sections in educational institutions and government services. The protection of civil rights act, 1976 and Schedule Castes and Scheduled Tribes (prevention of

atrocities act, 1989) have been enacted to protect the SCs and STs from social injustice and exploitation.

5. to prohibit the consumption of intoxicating drinks and drugs which are injurious to health. (Art 47)
 - a. Narcotics control bureau, Drugs and Psychotropic substances act
6. to prohibit slaughter of cows, calves and other milch and drought cattle and to improve their breeds. (Art 48)
 - a. Laws to prohibit slaughter of the cows, calves and bullocks have been enacted in some states, Rashtriya Kamdhenu Aayog

Liberal-intellectual

1. Article 44: To secure for all citizens a uniform civil code (UCC) throughout the country.
2. Article 45: To provide early childhood care and education for all children until they complete the age of six years.
3. Article 48: To organise agriculture and animal husbandry on modern and scientific lines.
 - a. providing irrigation facilities, HYV seeds, Project CHAMAN
4. Article **48-A: To protect and improve the environment and to safeguard forests and wild life. (WPM is 43A)**
 - a. The wildlife protection act, 1972 and Forest conservation act, 1980
5. Article 49: To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.
 - a. **The Ancient and Historical Monument Act (1951)**
6. **Article 50: To separate the judiciary from the executive** in the public services of the State.
 - a. Criminal procedure code (1973) separated judiciary from the executive
7. Article 51: To promote international peace and security.
 - a. India has been promoting policies of non-alignment and Panchsheel to promote international peace and security.

Criticism

1. The DPSP are **non-justiciable in nature** i.e. they are not legally enforceable by the courts for their violation
2. The directives are **neither properly classified nor logically arranged**. The declaration mixes up relatively unimportant issues with the most vital economic and social questions
3. DPSP lead to constitutional conflict between Centre and states, Centre and President, Chief minister and governor

Importance/Significance of DPSP (write based on different DPSPs)

1. Sustainable development: Their implementation must for achieving SDG goals by 2030
2. Inequalities: With liberalisation and globalisation inequalities have increased as reflected in the Oxfam report, which says that India's richest 1% holds over 40% of national wealth. Transition from socialist pattern of society to liberalization and market economy where inequalities were bound to come, it is the duty of the state to reduce these inequalities through tax structure, subsidies, various welfare schemes, etc.
3. **Accountability**: DPSPs are important as it **allows the citizens to hold the government accountable** in their policy formulations and implementation e.g. equality at work, minimum wages etc.
4. Fair market: Globalization is based upon competition and monopolistic tendencies in the market. DPSP humanises capitalism.
5. Human rights: Liberalisation and capitalism has scant regards to the human work environment, wages, gender sensitivity and labour concerns. DPSP are relevant to provide a humane work milieu, equal wages for equal work and increase quality of standard of living of workers. It also provides for participation of workers in management of industries.
6. **Human capital**: Modern industries seek the best talent and most productive labour from the market having required skills and education. DPSP puts an **obligation on the part of the government to provide free, compulsory and quality education up to primary level** and improve public health.
 - a. Although the school enrolment has almost reached universal, the high dropout rate and quality of education remains an area of concern.
7. **Environment**: Further it obliges the government to protect and improve the environment and safeguard forest and wildlife in the era of indiscriminate exploitation and deforestation based globalization.
8. Women rights: Liberalisation and globalisation has led to women empowerment. DPSP put an **onus on the state to work towards women education, equal opportunity, equal wages, uniform civil code etc.** that would further enhance women rights. Recent triple talaq act was in this direction.
 - a. Not very impressive LFPR
9. Strengthening democracy
 - a. 73CAA- However PRI suffers from the lacunae of funds, functions and functionaries.
 - b. Enable opposition to exercise influence on govt as well as serve as common political manifesto.

Though much has been achieved but still there is a long way to go to accomplish this objective of a welfare state. The DPSP have long shaped the policy making in India and

will continue to do so, as the principles enshrined are fundamental in nature. The recent packages of Atmanirbhar Bharat showcase the vigils of the state to abide by the DPSP.

Uniform Civil Code

2015: Factors that inhibit enacting uniform civil code

- A Uniform Civil Code means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly. They **cover areas like- Marriage, divorce, maintenance, inheritance, adoption and succession** of the property. It is based on the premise that there is no connection between religion and law in modern civilization.
- Things to Quote: Article 44; Judicial interventions-Shah Bano case (1985), Daniel Latifi Case laid ground for UCC in India; Goa Uniform Civil Code praised by SC (equal division of income and property between husband/wife and children irrespective of Gender)
- **Arguments in favour of the Uniform Civil Code:**
 - It will **Integrate India**- brings every Indian, despite his caste, religion or tribe, under one national civil code of conduct.
 - Personal Laws Are a Loophole- By allowing personal laws we have constituted an alternate judicial system that still operates on thousands of years old values. Many provisions of specific personal laws are in violation of human rights
 - Sign of a modern progressive nation- While our economic growth has been significant, our social growth has lagged behind.
 - It will Give More Rights to Women- Religious personal laws are misogynistic in nature; (in matters related to divorce, custody of children, consent, marital rape) or providing women unhindered access to places of worship across faiths
 - Constitutional obligation under Article 44; Promote National Integration/Fraternity
 - It Promotes Real Secularism- A uniform civil code doesn't mean that it will limit the freedom of people to follow their religion, it just means that every person will be treated the same as equal laws regardless of religion
 - Will produce a more coherent legal system- reduce the existing confusion and enable easier and more efficient administration of laws by the judiciary.
 - Will Help in Reducing Vote Bank Politics
 - 3 arguments - constitution (Article 44), SC laws (given above), Constitutional debates, give more rights to women
- **Challenges in implementation**

- Misinformation about UCC – Content of UCC has not been spelt out leading minorities to believe that it is a way of imposing majority views on them (there is lack of blueprint/consensus)
- Perceived Majoritarianism; One size fit all approach (diversity of Khasi matrilineal society at risk)
- ★ **Patriarchal mindset** of Indian society **poses a big challenge** in implementation of UCC.
 - This can be reflected by the fact that, the **Hindu code bill** has been already in place from mid-1950s, **yet** the quantum of **land actually inherited by Hindu women is only a fraction** of the land they are entitled.
 - Personal laws regardless of religion treat women as not equal to a man in cases of marriage, inheritance and have to deal with issues like adultery, bigamy, polygamy
- Implementation issues: in the case of Child Marriage, which though banned by legislation, still prevails in several sections of society
- **21st Law Commission** recommended simultaneous election to LS and Assembly and regarded that the time is **not ripe** for Uniform Civil Code
- **State Paternalism: impression of the State's moral policing** in the personal sphere of the citizenry. This might be seen as a **violation of Right to Privacy**
- Lack of political will due to the complexity and sensitivity of the issue.
- Protection of Diversity - salient principle of India
- Opponents of UCC argue that personal laws are derived from religious beliefs- risk of tension between various religious communities. Also, India being a secular country **guarantees its minorities** the right to follow their own religion, culture and customs under Article 25-28, **29 and 30** (against concept of salad bowl)
- Minerva Mills case: If UCC is implemented for the sake of Article 44 (DPSP) it would inturn violate the Article 25,26 (Fundamental rights);
- In 2018, a report by the **Law Commission** of India stated that the Uniform Civil Code is “neither necessary nor desirable at this stage” in the country. The Commission said secularism cannot contradict the plurality prevalent in the country. National cohesion does not require imposition of common identity instead accomodation of diversity. Hence any decision on Article 44 need to be preceded by environment of consensus. Need reforms between as well as within religions; Use Piecemeal approach; **Pannalal Basnilal Pitti Case (said UCC highly desirable but in pluralistic soc and one go can go counter-productive)**
- **Way forward** : Instead of using it as an emotive issue to gain political advantage, **political and intellectual leaders should try to evolve a consensus**. Government **must adopt a “Piecemeal” approach-** could bring

separate aspects such as marriage, adoption, succession and maintenance into a uniform civil code in stages

★ **Property Owners Association vs State of Maharashtra** - opportunity to settle a constitutional clash b/w FR & DPSP

1998: Briefly state the stages through which the present position of the Directive Principles vis-a-vis the Fundamental Rights has emerged (DPSP vs FR) (repeat question) #readagain

- **Champakam Dorairajan Case (1951)** Supreme Court ruled that **in any case of conflict between Fundamental Rights and DPSPs, the provisions of the FR would prevail** but SC also ruled that Parliament can amend Fundamental Rights to implement DPSPs.
 - Result: Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.
- **Golaknath Case (1967)** Supreme Court ruled that **Parliament cannot amend FR to implement DPSP**
 - Result: Parliament enacted the 24th Amendment Act 1971 & 25th Amendment Act 1971 declaring that it has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. 25th Amendment Act inserted a new Article 31C containing two provisions:
 - No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b) and (c) shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14, Article 19 or Article 31.
 - No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.
- **Kesavananda Bharti Case (1973)** Supreme Court ruled out the second provision of Article 31C added by the 25th Amendment Act during Golaknath Case of 1967. It termed the provision 'unconstitutional as judicial review basic structure. However, it held the first provision of Article 31C constitutional and valid.
 - Result: Through the **42nd amendment act**, Parliament extended the scope of the first provision of Article 31C. It accorded the position of legal primacy and **supremacy to the all Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31.**
- **Minerva Mills Case (1980)** Supreme Court held the extension of Article 31C made by the 42nd amendment act unconstitutional and invalid. It made DPSP

subordinate to Fundamental Rights [ie. FR > DPSP except FR 14, 19 is subordinate to 39(b) and (c)]

- Supreme Court also held that ‘the **Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.**’ They are like 2 wheels of chariot, one no less than the other. To give absolute primacy to one over the other is to disturb the harmony of the constitution.
- Conclusion: Today, Fundamental Rights enjoy supremacy over the Directive Principles. Yet, Directive Principles can be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

Basic Structure (Need, current status, issues)

- **2019: “Parliament’s power to amend the constitution is a limited power and it cannot be enlarged into absolute power”. In the light of this statement explain whether parliament under article 368 of the constitution can destroy the Basic structure of the constitution by expanding its amending power? (repeat question)**
 - Discuss the evolution of BSD
 - Can Parliament destroy the Basic Structure of the Constitution by expanding its amending power:
 - **Immediately after** the decision of the Supreme court in **Kesavananda Bharati** and **Indira Gandhi’s case**, the parliament introduced the **42nd Amendment and added the word secular and socialist in the preamble and added clause 4 and 5 to Article 368 (It indirectly declares that there is no limitation on the power of the parliament regarding the Amendment)**
 - **Minerva Mills Case: Clauses (4) and (5) inserted in Art. 368 by the 42nd Amendment Act are invalid** because they take away the right of judicial review.
 - In essence Parliament’s power to amend the Constitution is not absolute and the Supreme Court is the final arbiter over and interpreter of all constitutional amendments
- **2013- The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.’ Discuss critically**
 - Pros and Cons of BSD covered below
 - Cases where SC checked arbitrary power
 - In **Indira Gandhi v. Raj Narain**, a Constitutional amendment to regularise Prime Minister Indira Gandhi’s **election was struck down citing the basic features of democracy**, rule of law and equality.

- **Minerva Mills Case**
- NJAC Case Law

Basic Content

- The basic structure doctrine (BSD) is an Indian judicial principle that the Constitution of India has certain basic features that cannot be altered by parliament. They have not been explicitly defined by the Judiciary and are determined by the Court in each case that comes before it
- **The Basic Structure of the constitution was the result of the tussle between the government and the supreme court with regards to the amendment to the fundamental right.**
- Eg: Rule of law, judicial review, federalism, secularism, free and fair elections
- Evolution
 - In Shankari Prasad case (1950), SC said that the parliament can amend any part of the constitution (law under article 13(2) does not incl constitutional amendments)
 - In Golaknath case (1967), SC said that FR cannot be amended at all. (power only with Constituent Assembly)
 - 24th Amendment Act - stated that constitutional amendments are not 'law' under article 13 and parliament can amend any power of the constitution; made president to give compulsory consent for const amendment acts
 - 25th AA: Curtailed right to property, Added Article 31-C which said DPSP such as 39b/39c will take precedence over article 14/19/31 FR; Courts cannot interfere
- **Keshavananda Bharti case 1973, (🔥 50 Years 🔥) SC over-ruled the judgement in Golaknath case and declared that FRs can be amended.** However, Parliament cannot amend the 'basic structure' of the constitution (amendments such as 24th, 25th, 26th and 29th amendment were challenged)
 - The **case dealt with a petition against the Kerala Government challenging the compulsory acquisition of his land by the Government under the Kerala Land Reforms Act 1963, as a violation of FRs, as Articles 25, 26 and 31** (RTP not removed till then)
 - **Outcomes:** Court upheld 24th AA and said parliament can alter anything incl FR subject to BSD; It also upheld 25th and 29th AA except for the parts that curtailed judicial review
 - In Minerva Mills (1980) case, SC said that judicial review is the basic structure of the constitution and hence can't be taken away (overruled clauses 4/5 inserted in Art. 368 by 42nd AA that took away JR). Hence, giving a stamp to the basic structure.
 - In Waman Rao Case 1981, SC said BSD will apply to amendments post 24th April 1973

- **Significance: #readagain**
 - BSD is the testimony to the theory of **constitutionalism** (acts a moral check on the parliament)
 - **Check on unbridled power of parliament** and ensures its accountability
 - Policies and rights are formed keeping BSD into consideration
 - **Being dynamic in nature, it is more progressive** and open to changes in time unlike the rigid nature of earlier judgements.
 - Birth of basic structure is a **novel innovation to maintain the sanctity of the constitution and to ensure constitution morality**
 - **CJI DY Chandrachud called it a 'north star'** (providing invaluable guidance to interpret the constitution)
 - Ensures **federal structure** of constitution is not undermined
- Criticism
 - **Guardians of the Constitution have become guardians over the Constitution** - said jurist **Fali S. Nariman**
 - Even the Vice president of India outlined the judiciary cannot legislate as the parliament is supreme law making body
 - BSD is a "**vague and undefined** concept". Herein lies the judiciary's 'limitless power'
 - Can lead to **judicial overreach as its broadness usurps the powers of other organs**
 - Overall easy to bypass BSD due to its broad nature whereby the legislatures make minor changes to the laws struck down by judiciary
 - Former CJI R. Gogoi said BSD has a debated jurisprudential basis
 - The power to decide the constitution lies upon people of india who exercise their power through representatives
 - SC is not above constitution. It can only amend interpret const and not add new features to it
- **Simple point:** Critics of the doctrine have called it **undemocratic, since unelected judges can strike down a constitutional** amendment. At the same time, its proponents have hailed the concept as a safety valve against majoritarianism and authoritarianism.
- Conclusion: It is to be noted that, the **doctrine of basic structure does not undermine the legislative competence of the parliament, rather it helps in maintaining the supremacy of the constitution** and upholding the constitutional spirit
 - The basic structure of the constitution **is like a north pole star which guides Indian democracy in the times of darkness**

Amendments in Constitution

- **2017: Explain the salient features of the constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough 'to remove cascading effect of taxes and provide for common national market for goods and services'?**
 - Covered in GS-3 content on GST
- Summary of other important amendments:
 - 1st AA:
 - Brought article 15(4): Empowered state to make special provisions for the advancement of socially & economically backward classes
 - Made the grounds under article 19 'reasonable' & hence justifiable
 - **Added Ninth schedule**
 - **7th AA:**
 - **Reorganisation of states on linguistic basis**, Abolition of Class A, B, C and D states and Introduction of Union Territories
 - Same person as governor for 2 or more states/UT; Common HC
 - Special officer for linguistic minorities u/a 350-B
 - 24th, 25th AA covered above in BSD; 26th AA abolished privy purse
 - **42nd AA 1976: #readagain**
 - Later restored
 - Made **constitutional amendments beyond judicial scrutiny**
 - **Curtailed power of judicial review** and writ jurisdiction
 - Article 31C: **Any DPSP can override FR 14/19/31** (and not just 31b/c as done in 25th AA)
 - **Did away with quorum in parliament** and state legislature, **increased tenure of LS to 6 years**
 - **Made the president bound by the cabinet**
 - Added **three new words to Preamble**; 3 new DPSP added; Added **FDs**
 - **Tribunals were created 323A and 323B**
 - Provided for creation of **all-India judicial services**
 - National **Emergency to a part territory** of India
 - Shifted five subjects from the state list to concurrent list -- education, forests, environment, weights, etc.
 - **44th AA 1978: #readagain**
 - **Constitutional protection to publication in newspaper** of the proceedings of the Parliament and State Legislatures
 - Restored the jurisdiction of High court and the Supreme Court in respect of judicial review and issue of writs

- Empowered **president to send back advice of council of minister for reconsideration**
 - FRs guaranteed by Articles **20 and 21 cannot be suspended during a national emergency**. It replaced the word "internal disturbance" with "armed rebellion". It made president to declare national emergency only on **written recommendation** of cabinet. Duration of national emergency should not be extended more than 6 months at a time. Also made certain procedural safeguards with respect to national emergency and President's rule
 - The **Right to Property was deleted from the list of fundamental right**. It is now only a legal right under the Constitution
 - It restored the power of judicial review of election of president, governors and LS speaker
 - Omitted the reference to British House of Common in article pertaining to parl privelege
- 52nd AA: Anti-defection law
 - 61st AA: To reduce the voting age from 21 years to 18 years
 - **69th AA 1991: Spcl status to NCT, 70 memb, 7 memb in CoM**
 - 73rd and 74th AA 1992: PRIs and ULBs
 - 86th AA 2002: Free and compulsory education to children between 6 and 14 years
 - 91st AA 2003: 15% limit on CoM; Deleted exemption from defection in case of split by 1/3 members
 - **93rd AA: Provided for 27 percent reservation for OBCs** in government as well as private higher educational institutions
 - **97th AA: Constitutional status and protection to co-op socities**
 - 100th AA: Land boundary agreement with bangladesh
 - **101 AA: GST**
 - 102 AA: Constitutional status to NCBC
 - 103 AA: Amended article 15/16 for EWS 10% reservation
 - 104 AA: Extended reservation for SC/ST and stopped for anglo indians
 - **105 AA: Restored the power of states to specify backward communities**
 - **106th AA: (Nari Shakti Vandan Adhiniyam)** Reserves one-third of all seats for women in Lok Sabha, State legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs

Women Reservation Act 2023

WOMEN Reservation Act, 2023

(106th Constitutional Amendment Act)

OBJECTIVE

- Reserve 1/3rd of total seats in LS and state Legislative Assemblies (LAs) for women

BACKGROUND

- Bill previously introduced in: 1996, 1998, 2009, 2010, 2014
- Related Committees:
 - Committee on the Status of Women in India (1971)
 - Committee under Margaret Alva (1987)
 - Geeta Mukherjee Committee (1996)
 - Committee on the Status of Women (2013)

Key Features

Articles Inserted:

- Article 330A - Reservation for Women in LS
- Article 332A - Reservation for Women in State LAs
- Article 239AA - Reservation for Women in NCT of Delhi
- Article 334A - Reservations to become effective after delimitation is undertaken and Census is conducted

Time Period:

- Reservation to be provided for **15 years** (can be extended)

Rotation of Seats Reserved:

- After each delimitation

NEED

- Political Underrepresentation:
 - Only **82 Women MPs in LS (15.2%)** and 31 in RS (13%)
 - On avg, women constitute only **9% of the total members in State LAs**



ARGUMENTS

In Favour:

- Vital step towards gender equality
- Broader range of perspectives to the decision-making process
- Helps eliminate discrimination against women in political/public life

Against:

- Delimitation based on 2021 census (yet to be conducted) is mandatory
- No women's reservation in RS and State Legislative Councils

STEPS AHEAD

- Reservation for women within political parties
- Independent political decision-making by women; **overcoming Sarpanch-patism**



Drishti IAS

Procedure to amend constitution

Procedure of Amendment in Constitution

In Written Text - By Art- 368 (2)

By Simple Majority
(for passing an Ordinary Law- Art. 5,269,239-A)

By Special Majority of Both Houses of Parliament
(Special Majority 2/3rd)
e.g. Art- 4,169,239-A etc.

By Special Majority and Ratification by States

When Ratification By 50%+ States is required ?

- Art 54 & 55 (President)
- Art. 73 & 162 (Executive power)
- Ch. -1, Part- 11 & 7th Sch. (L.P.)
- S.C. (Ch. 4-Pr 5)/H.C. (Ch 5-Pr 6)
- 4th Schedule (Repre. of st. in R.S.)

Constitutional Morality

Landmark Judgements that shaped the contemporary interpretations of the doctrine

- **Navtej Singh Johar v Union of India (2018):** To protect the rights of LGBTQ community, the apex court passed a judgement which partially struck down Section 377 of IPC which made "carnal intercourse against the order of nature" (including Homosexuality) a crime.
 - Applying the doctrine, the judges found that court must not be remotely guided by majoritarian view or popular perception but they must be guided by constitutional morality.
 - The courts differentiated between public and constitutional morality and said that the ideal of justice always have an overriding effect .i.e. constitutional morality have an overriding effect on public morality.
- **Joseph Shine v. Union of India (2019):** Upholding the right of gender equality and right to equality supreme court struck down Section 497 of IPC which made adultery a crime for a man to have sexual intercourse with a married woman, though the married woman was not to be punished as an abettor.
 - Here it was noted by court that the constitutional validity of criminal laws should not be determined by popular/-public morality which is not in consonance with constitutional morality. The idea of "Husband as master of women" or "a woman as a possession of her spouse" was held to be completely contrary to the spirit of constitution facets and ideals. Here doctrine comes as counterpoise to "Public Morality".
- **Government of NCT of Delhi v. Union of India :** The court was called upon to decide as to what power does the Lt. Governor of Delhi wield in the Indian Constitutional scheme.
 - In this case, Courts equated constitutional morality to a 'second basic structure doctrine' and it was observed by the Supreme Court that constitutional morality is "not just the forms and procedures of the Constitution, but provides an enabling framework that allows a society the possibilities of self-renewal".
- **Indian Young Lawyers Association v. State of Kerala:** SC held that exclusion between the age of 10-50 in Sabrimala temple for worship of Lord Ayyappan is violative of 4 key constitutional morality tests, which includes: Justice, Liberty, Equality and Fraternity.
 - In this, Court noted that the word "morality" in Article 25 & 26 must mean constitutional morality and not popular morality and existing structures of social discrimination must be evaluated through the prism of constitutional morality.
 - This judgements has been interpreted as the biggest blow on the Public morality and also been criticised by religious prophets among others.

Important Acts and Constitution Comparison

- “If amendment bill to the Whistle-blowers Act, 2011 tabled in the Parliament is passed, there may be no one left to protect.” Critically evaluate
- **National Emergency**
 - Under **Article 352**, the president can declare a national emergency **when the security of India or a part of it is threatened by war or external aggression or armed rebellion**

National Emergency (Article 352)	President's Rule (Article 356)
1. It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion.	1. It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2. During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under the Constitution. Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	2. During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers
3. Under this, the Parliament can make laws on the subjects enumerated in the State List only by itself, that is, it cannot delegate the same to any other body or authority. <i>(It may or may not use this power)</i>	3. Under this, the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him. <i>So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President's Acts.</i>
4. There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months. <i>Approval in 1m</i>	4. There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state. <i>Approval in 2m</i>
5. Under this, the relationship of the Centre with all the states undergoes a modification. <i>Power #</i>	5. Under this, the relationship of only the state under emergency with the Centre undergoes a modification.
6. Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority.	6. Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority.
7. It affects fundamental rights of the citizens.	7. It has <u>no effect on Fundamental Rights of the citizens.</u>
8. Lok Sabha can pass a resolution for its revocation.	8. There is no such provision. It can be revoked by the President only on his own.

As law making is the main power of Parliament
Upper limit is 3yr but only conditionally beyond 1yr

- **consolidated fund pending its sanction by the**
 - **Effects on the centre-state relations: Exec, Leg, Financial**
 - **Executive:** Centre becomes entitled to give executive directions to a state on 'any' matter
 - **Legislative:** The parliament becomes empowered to make laws on any subject mentioned in the state list, the president can issue ordinances on State subjects also, if the parliament is not in session. The laws made on state subjects by the parliament become inoperative six months after the emergency has ceased to be in operation.
 - **Financial:** the president can modify the constitutional distribution of revenues between the centre and the states.

- **Life of the Lok Sabha** may be extended beyond the normal term for one year at a time
- Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights
 - **Article 358, Article 19 automatically suspended** under war or external aggression and not in the case of armed rebellion
 - Article 359: **remedial measures are suspended and not the Fundamental Rights; 44th AA-President cannot suspend the right to move the court for Article 20 and 21**
- Financial Emergency? Circumstances? Consequences? (**Emergencies are covered under Part XVIII of Constitution**)
 - **Article 360** empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the **financial stability or credit of India or any part of its territory is threatened**

Short Form: for basis points RRAW PF PC (RAW ne PF ke paise se PC liya) → Republic/Const Monarchy, Residuary powers, Amendment, Written Const, Parliamentary vs Presidential, Federalism (or unitary), Party system, Citizenship

Basis	India	UK	USA	France	Japan	Germany
Written Constitution	Lengthiest WC	No WC, based on conventions, common law, statutes	First WC (1787)	Changes its constitution very often	WC is short	Formed as a 'basic law'
Flexible vs Rigid	Balanced	Most flexible; No distinction between ordinary law and constitutional law	Most rigid constitution; special procedure for amendment is there	Rigid - Both houses with 60% majority; President can refer amend	Oldest unamended constitutions since 1947 - aka Pacifist constitution	Rigid; Requires 2/3rd majority

				ment to people by referendum		
Unitary or Federal	Federal with unitary bias	Unitary	Truly federal	Unitary feature	<i>Unitary</i>	Federal
Residuary Powers	Centre	-	States	-	-	States
Parliamentary or Presidential	Parliamentary form	Parliamentary form	Presidential Form	Semi-Presidential system	Presidential Form	Parliamentary form
Republic	Yes	Constitutional Monarchy	Yes	Yes	Constitutional Monarchy	Yes
Sovereignty of whom?	Constitution	Parliament with unlimited powers	Constitution	Parliament with limited powers; Legislature has list for which it can make laws		

President	Nominal head; Real head is PM	NA	Real executive power	Most powerful - President can even make laws, dissolve parliament (unlike USA); PM is assistant to President	NA	Nominal head; Chancellor is the PM
Citizenship	Single citizenship	Liberal - no need to renounce other country's citizenship	Dual Citizenship	Dual Citizenship		Dual Citizenship
Due Process of Law or Procedure established by law	PEBL but moving towards Due process of law	PEBL	DPL		PEBL	

Fundamental Rights	Available with restrictions	Mentioned in HR Act 1998	Available but comparatively stronger and has less restrictions		Available	
Fundamental Duties	Only India is major democracy with FDs	-	-	-	-	-
Party System	Multi party system	Majorly Biparty system	Majorly Biparty system	<i>Multi party system</i>	Multi party system	Multi party system
<i>Yellow means not completely sure</i>						

Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies. Statutory, regulatory and various quasi-judicial bodies

1. Constitutional

- a. 2022 - Discuss the role of the National Commission for Backward Classes in the wake of its transformation from a statutory body to a constitutional body.
- b. 2021: Q3. How have the recommendations of the 14th Finance Commission of India enabled the states to improve their fiscal position? (Answer in 150 words) 10

- c. 2019: "The **Attorney-General** is the chief legal adviser and lawyer of the Government of India." Discuss
- i. Covered below
- d. 2018: Whether **National Commission for Scheduled Castes (NCSC)** can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine.
- i. Discuss about NCSC and its mandate
 - ii. Discuss Article 15(5) and Article 30 and role of MEIs; minority educational institutions, which have a 50 per cent reservation for students belonging to a minority community, do not have to provide reservations for SC/ST and OBC category students
 - iii. The Supreme Court held in the Case of P.A. Inamdar 2006 Case held that
 1. The policy of reservation to admit students is not applicable to a minority institution
 2. The policy of reservation in terms of employment is not applicable to a minority institution
 - iv. NCSC directed the Aligarh Muslim University (AMU) to provide reservations for SC/ST and OBC category students. Till now, AMU did not provide reservations since it is considered a religious minority institution under article 30
 - v. However the matter is subjudice - SC refers to 7-judge bench issue of determining correctness of minority status to AMU
- e. 2018: "The **Comptroller and Auditor General (CAG)** has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise
- i. Covered below
- f. 2016: Discuss whether audit of the Government's Policy implementation could amount to overstepping its own **(CAG)** jurisdiction
- i. Covered below
- g. 2018: **Finance Commission**: How is it constituted? ToR of recent body? Function of State Finance Commission?
- i. Covered below
- h. 2013: Discuss the recommendations of the 13th **Finance Commission** which have been a departure from the previous commissions for strengthening the local government finances (comparison of 13, 14 and 15th FCs)
- i. Covered in brief below
- i. 2017: **Election Commission**: Electoral reforms suggested in 2016? Are they sufficient? What other reforms are needed?
- i. ECI 2016 reforms
 1. Ban on paid news- should come under RPA
 2. Ban on exit and opinion polls

3. Ceiling on campaign expenditure by political parties
 4. PP under RTI
 5. Hate speech should be enforceable through MCC
 6. Appointment of additional judges in HC for hearing election petitions
- ii. Other reforms covered above in RPA
- j. 2008, 1991: Discuss the composition and functions of **Union Public Service Commission**? How its independence is maintained?
2. Statutory
- a. 2021 - Q12. Though the **Human Rights Commissions** have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analyzing their structural and practical limitations, suggest remedial measures. (Answer in 250 words) 15
 - b. 2021 - Q11. The jurisdiction of the **Central Bureau of Investigation (CBI)** regarding lodging an FIR and conducting probe within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India. (Answer in 250 words) 15
 - c. 2020: "Recent amendments to the Right to Information Act will have profound impact on the autonomy and independence of the **Information Commission**". Discuss.
 - i. Amendment covered below - need to be combined with importance of RTI and functions of RTI to answer the same
 - d. 2020: Which steps are required for constitutionalization of a Commission? Do you think imparting constitutionality to the **National Commission for Women** would ensure greater gender justice and empowerment in India? Give reasons.
 - e. 2017: Is the **National Commission for Women** able to strategize and tackle the problems that women face at both public and private spheres? Give reasons in support of your answer (Cover this type of angle for other commission as well for eg: whether NC for SC able to tackle prob of SCs?)
 - f. 2014: **National Human Rights Commission (NHRC)** in India can be most effective when its tasks are adequately supported by **other mechanisms** that ensure the accountability of a government. In light of the above observation assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards.
 - g. Inter-State Council, National Integration Council: Have they become defunct? Current relevance (question not asked but predicted based on our analysis)

- h. Role of **NITI Aayog** in the formulation of public policy? Role of GST Council?
- i. Bodies **not asked** as of now: **NC of ST, NCBC (102nd), Lokpal, GST Council, NC for Minortities, etc.**
3. Quasi judicial body
- a. 2019: "The Central Administrative Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain
- b. 2016: What is a quasi-judicial body? Explain with the help of concrete examples
4. Misc
- a. 2015: "For achieving the desired objectives, it is necessary to ensure that the regulatory institutions remain independent and autonomous." Discuss in the light of the experiences in recent past.
- i. Highlight the importance of independence and autonomy along with their **relation with accountability**
 - ii. **Role regulatory agencies** → impacts private investment, customer confidence, growth of sector
 - iii. **Take examples of of various bodies:**
 1. **ECI and its independence**
 2. **Terming of CBI as caged parrot by SC**
 3. Interference of respective ministries in functioning of bodies such as TRAI, Electricity Regulatory Commissions, etc.
 4. Good Role: Competition Commission of India, TRAI
 5. **Issues of independence of CIC, SIC after RTI amendment**
 6. NHRC and issues
 7. Merger of Fwd Market Commission with SEBI → as SEBI is more autonomous and independent
 - iv. **Highlight how independence in operation given to RBI/SEBI has led to larger financial market stability; Good Role: Competition Commission of India, TRAI**
 - v. Suggest way fwd for few of the above problems related to institutions
 - vi. Conclude with 'desired objectives' related to 5TD economy, inclusive growth require above measures
- b. 2014: The setting up of a Rail Tariff Authority to regulate fares will subject the cash strapped Indian Railways to demand subsidy for obligation to operate non-profitable routes and services. Taking into account the experience in the power sector, discuss if the proposed reform is expected to benefit the consumers, the Indian Railways or the private container operators

Common Points for Bodies

- **Introd: Rethinking Good Governance by Vinod Rai** - says 'accountability institutions script the destiny of nations'. He said **vital bond between people and the government is that of trust and that public institutions are the custodians of that trust**
- **Organisation that have power of Civil court:** CAG, Fin Commission, NCSC/ST/BC, CIC, NCW
- Organisations not bound by Civil Procedure and follow principles of NJ: NGT, CAT
- Common Fx: IRRLA - Investigates cases related to, Review matters...., Recommendation sent to....., Look into complaints....., Advising the CG/SG, Regular reporting to Prez/Govt, Recommending steps to be taken to further the socio-economic development
- **Ways to give Independence to a body:** Not eligible for further office, fixed tenure, expenses are secured, conditions of persons under cannot be changed without consulting
- **6 year tenure of:** CAG, ECI, UPSC (Bulwarks of the Indian Constitution)
- **List of Common Issues:** No independent staff/secretariat have to depend on govt sources/bureaucrats; Post-facto nature of work; Delay in tabling report + non-discussion; Recomm not binding; Vague selection and appointment process of members/experts not chosen; Leads to policy paralysis in case of CAG/CBI/CVC/Courts; Large number of complaints while their capacity to deal with them is very limited
- **WF: (SF - ABCD kar do** Autonomy, By filling vacancies, Capacity bldg, Data & tech) Give autonomy; Use data & tech; Capacity building; Fill vacancies, Govt should immediately implement recommendations given by the body; Creating a separate Parliamentary Standing Committee for deliberating on the reports of these Commissions
- **Conclusion:** The degree of autonomy with which organisations like the NCM, NCSC, NCST or NCBC are able to function eventually decides how healthy a democracy is; Institutions must not be extractive (**Why Nation's Fail - Daron and James**); **Rethinking Good Governance by Vinod Rai** - says 'accountability institutions script the destiny of nations'. He said vital bond between people and the government is that of trust and that public institutions are the custodians of that trust
- Also Read → [General Issues with Statutory Organisations](#)

Comptroller and Auditor General (asked in 2018, 2016)

- Article 148 provides for an independent office of CAG: He is the **head of the Indian Audit and Accounts Department- guardian of the public purse** at both the levels- the centre and state.

- Regarded CAG as **most imp functionary in constitution by BR Ambedkar even more than that of judiciary**
- Kautilya mentions about public officers wrt corruption - that you cant tell when fish swimming in water (public money)- drank it, CAG precisely to monitor that
- Constitutional Articles:
 - Art. 148: broadly speaks of the CAG, his appointment, oath and conditions of service
 - Art. 149: broadly speaks of the Duties and Powers of the CAG (which are laid by Parliament)
 - Art. 150: The accounts of the Union and of the States **shall be kept in such form as the President** may, on the **advice of the CAG, prescribe**
 - Art. 151: Audit Reports: The reports of the CAG relating to the accounts of the Union shall be submitted to the president, who shall cause them to be laid before each House of Parliament.
- Independence of CAG:
 - Security of tenure (of 6 years) and can be removed by the President (process same as a judge of SC)
 - **Not eligible for further office**
 - **Salary/service conditions cannot be varied to his disadvantage after appointment**
 - His administrative powers and the **conditions of service of persons serving in the IAAS Dept** shall be prescribed by the President only after consulting him
 - Administrative expenses of the office of CAG, including all emoluments of persons serving in that office are charged upon CFI and are not subject to the vote of Parliament
 - **No minister can represent CAG in parliament**
- Duties, Powers & Functions of CAG
 - He audits the accounts related to all expenditure from the Consolidated Fund of India, Consolidated Fund of each state and UT having a legislative assembly, also audits Contingency & Public Accounts of both centre and state
 - He **audits all trading, manufacturing, profit and loss accounts, balance sheets** and other subsidiary accounts kept by any department of the Central Government and the state governments.
 - He audits the **receipts and expenditure** of all bodies and authorities **substantially financed from the Central or State revenues;** government companies; other corporations and bodies, when so required by related laws **or any other authority when requested by the President** or Governor **e.g. Local bodies**
 - All these audits evaluates performance of imp agencies and provide inputs which further stimulate GG

- Audit Report is submitted to President/Governor → Laid down before houses (helps Parliament ensure executive accountability)
- He ascertains and certifies the net proceeds of any tax or duty and his certificate is final on the matter.
- He compiles and maintains the accounts of state governments
- **Role in good governance**
 - Accountability synonymous with the goal of GG
 - Acts as friend, philosopher and guide to PAC
 - In addition to financial audit, also ensures **discretionary performance audit (value for money spent) in terms of economy, efficiency and effectiveness (3 E's)**- led to unearthing of irregularities in 2G, Commonwealth
- Limitations on role of CAG
 - Quality of Audits- often questioned- Acc to International Organization of Supreme Audit Institutions (INTOSAI) in 2012- 50% CAG report weren't supported by enough evidences
 - Role is **post facto** + not really a comptroller unlike CAG in UK, **Secret service expenditure is outside the purview** of the CAG - has to accept a certificate from the competent administrative authority
 - Tabling of CAG reports: Delay in tabling by govt of CAG reports and PAC findings on govt policy
 - Between 2014-19, **more than 90 days delay** was there between **signing and tabling** 42 audit reports
 - Lack of clarity on the criteria/process of appointment of CAG; **Demoralising effect of IAAS cadre** as generally IAS officers are chosen as CAG
 - **Appointment lacks independence issues/conflict of interest** where head of supreme audit institution is appointed at the discretion of the govt.
 - Current practice is that the Cabinet Secretary prepares a shortlist for the finance minister who then submits it before the PM. The PM recommends one name from that list to the President who then appoints it under his hand & seal
 - **Fault finding rather than fact finding; name comptroller auditor general is a misnomer;**
 - CAG is criticised by **Paul H Appleby** that CAG might promote **unwillingness to act by govt employees; CAG knows auditing and not administration, Eco survey- 4C's and policy paralyis-**
courts,CAG,CVC,CBI,
 - More freedom with regard to audit of expenditure than with regard to audit of receipts and stock
 - Does not cover audit of PPP investment, NGOs funded by govt, does not fully audit PRI and ULBs

- Action taken on reports- reports highly repetitive- shows absence of strict corrective actions by govt
- Reforms needed
 - **2nd ARC**- Need to **prescribe time limits** of CAG report and PAC findings tabling
 - Need for **conferring legal power and quasi judicial power to take action** against irregularities and missapprrprietation of public money
 - NCRWC 2002- **need of audit commision/board to share resp of CAG as in Japan** before placing before parliament to tackle poor quality of reports
 - Strengthen PAC- should examine all and not partial reports by CAG- should be made. Time limit of PAC can be inc to bring stability in examination of reports
 - Reforms suggested by Vinod Rai (former CAG)
 - **A collegium type mechanism** to choose a new CAG on the **lines of selecting a CVC** rather than only by executive (yet to be brought for CAG 😞)
 - Bring all PPPs, Panchayati Raj Institutions and government-funded societies, within the ambit of the CAG
- **Successes:** CAG came out with a **Big Data management policy in 2016** and also established a Centre for Data Management and Analytics in Delhi; **CAG successfully audited the UN headquarters**; 2G, coal scam, etc., Report on PPP projects of krishna godavari basin with Reliance- showed how much Reliance owes to public exchequer
 - 2022: Report on Conservation of Coastal Ecosystem: Noted large scale violations of CRZ norms, NCZMA not being notified as permanent body, EIA being done by non-accredited consultants using outdated data
- **Way Fwd:** CAG's work should go beyond the question of whether government funds are being spent appropriately to ask whether programs and policies are meeting their objectives and the needs of society
- **Can CAG go into policy decision?**
 - Background: govt. getting uncomfortable due to audit findings such as 2G, Coal blocks, Common wealth, etc.
 - Justifications:
 - CAG is bound by his oath of the office to uphold the constitution
 - Essential to bring accountability to executives
 - **The word 'audit' has not been defined in either the Constitution or in the CAG Act, 1971**
 - It is within the mandate of CAG to comment on a policy in cases wherein-
 - The financial implications of a policy were not gone into at all before the decision was made

- The assessment of financial implications was quite clearly wrong
 - The numbers were correct but the reasoning behind the decision was questionable
- Concl: CAG has maintained all India character as envisioned by Dr BR Ambedkar and is also known for its institutional integrity. To keep it efficient and effective in its functioning it should be reformed, and strengthened so that it has a greater level of expertise.

Finance Commission (asked in 2021, 2018, 2013)

- FC is constituted by the President under **Article 280** of the Constitution, mainly to give its recommendations on distribution of tax revenues between the Union and the States and amongst the States themselves
- Composition: 1 chairman + 4 members (Eligible for re-appointment);
Qualification are defined as per Fin Comm Act, 1951
 - Chairman: Exp in **Public Affairs**
 - Members: **J of HC** or qualified to be one; Wide knowledge of **Fin & A/cs** of govt; **Fin matters & admin; Economics**
- Report is submitted to the President → Lay before both houses **along with Action taken report** of govt. and **explanatory memorandum**
- Functions:
 - Union Taxes' **vertical devolution** to the states, and its **horizontal distribution** among the states
 - the **principles which should govern Union's grant-in-aids to the states**
 - the measures needed to **augment the Consolidated Fund of a State** to supplement the resources of the Panchayats and Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;
 - **any other matter referred** to the Commission by the President in the interests of sound finance [given under Article 280(c)]
- ToR of 15th FC: (apart from above 3)
 - suggest ways for allocation of non-lapsable funds for defence and internal security
 - Performance based incentives to the state governments in areas such as power sector, adoption of DBT, solid waste management, etc
 - Use **Census-2011** for your calculation
 - Keep in mind Union's responsibilities for New India 2022 vision
 - How to **finance the disaster management** initiatives
- Powers: **FC has powers of the Civil Court** as per the Code of Civil Procedure, 1908. It can call any witness, or can ask for the production of any public record or document from any court or office. Thus it is **also a quasi-judicial body**

- **Recommendation of 15th FC:**

- Vertical Devolution: **41%** (compared to 42% by 14th FC due to J&K/Ladakh as UT)
- Horizontal Devolution: **Refer image below (SF=IA-PDFT)**
- Revenue Deficit Grants to States: Recommended post-devolution revenue deficit grants amounting to about Rs. 3 trillion over the five-year period ending FY26.
- **Performance Based Incentives and Grants to States:** example related to health and education, agriculture and the maintenance of **rural roads, grants for judiciary** & aspirational districts and blocks; performance-based incentive system for the power sector
- Fiscal Space for Centre: Total 15th FC transfers (devolution + grants) constitutes about 34% of estimated Gross Revenue Receipts to the Union, leaving adequate fiscal space
- Constitute high powered inter-govt group to review FRBM Act and recommend new framework for centre and state; Inverted duty structure must be resolved; Defence modernisation fund, State and Centre must estab Disaster Risk Mitigation Fund, States must spend 8% of their budgets on health
- Grants to Local Governments:
 - **15th FC allocated 4.36 lcr to local bodies compared to 2.87 lcr by 14th FC**
 - Two game-changer entry conditions pertaining to publishing of audited annual accounts and notification of floor rates for property tax applicable to every municipality, to avail any grant from FC
 - In grants for Urban local bodies, basic grants are proposed only for cities/towns having a population of less than a million. For Million-Plus cities, 100% of the grants are performance-linked through the Million-Plus Cities Challenge Fund (for the **first time grants based on population**)


- **Criticism of 15th FC**

- **Performance linked incentives disincentivizes independent decision-making** of states in executive domain
- Concerns/Worries regarding the usage of the **2011 population**- The share of southern states in India's population has decreased by 4 percentage points (between 1971 to 2011) whereas the share of the northern state has increased- **southern states anxious** that - Does the FC incentivize/reward backwardness?
 - There is no denying that the rich states will have to help the poorer states but the developmental gap has not narrowed even after assisting for decades

- However - Compared to large developing democracies India's devolution looks much more regressive. In the case of India, the bottom 25% of the states received 22% of the transfers it was 30% and 36% in the case of South Africa and Brazil respectively
 - ToRs have been **skewed in favour of the central government** like the one which deals with the review of the enhanced allocation of funds because of 14th FC recommendations and its impact on the fiscal situation of the central government(not inc from 42).
- Giving **Permanent Status to FC (recommended by Shaktikanta Das)**
 - **Arguments against:** Already have NITI Aayog/GST Council for discussion; Lead to overlapping of functions wrt CAG; Continuous allegations by state may lead to wastage of time of Fin Ministry
 - Arguments for: implement & monitor the recommendations till the next commission starts functioning; **Adequate data and resource persons may aid future FCs**; EC also permanent though elections every 5 years

Election Commission of India (asked in 2017, 2022-in line with Model Code)

- The Election Commission of India is an autonomous constitutional authority responsible for administering **Union and State election** processes in India including offices of the **President and Vice President** in the country.
- **Article 324 to 329 of the constitution** deals with powers, function, tenure, eligibility, etc of the commission and the member.
- Power with ECI: Supreme Court held in Mohinder Singh Gill vs CEC that **Article 324 contains plenary powers** to ensure free and fair elections and these are vested in the ECI which **can take all necessary steps** to achieve this constitutional object (this fortified ECI to take tough measures)
- **Appointment and removal**
 - The commission consists of **one** Chief Election Commissioner **and two** Election Commissioners.
 - Election Commissioner Amendment Act 1989 made ECI multimember body
 - The President appoints Chief Election Commissioner and Election Commissioners- fixed tenure of **six years**, or up to the age of 65 years, whichever is earlier, also **same status, salary, perks as available to Judges of the Supreme Court** of India.
 - The **Chief Election Commissioner** can be **removed** from office only through a process of removal similar to that of a **Supreme Court judge** for by Parliament.
- **Functions**

- Administrative
 - superintendents, **direct and control** the entire process of conducting **elections**,
 - **decide the election schedules, prepares electoral roll**, issues Electronic Photo Identity Card (EPIC)
 - **issues the Model Code of Conduct** in election for political parties and candidates so that the no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.
- Advisory
 - **advisory jurisdiction** to President and governor in the matter of post election **disqualification of sitting members** of Parliament and State Legislatures.
- Quasi judicial
 - grants **recognition to political parties & allot election symbols** to them along with **settling disputes** related to it, monitors election expenditure by candidate
 - **Cancel polls in even of rigging-** In LS election of Vellore, Tamil nadu when amount more than election limit seized as well as unaccounted source from a candidate
- Success examples
 - **Vellore cancellation- first LS seat cancellation** in history
 - **Awareness** about electoral processes- **SVEEP (2019 LS- 67.11%** highest voter turnout till date)
 - Not allowing movie biopics exercising powers under Art 324
 - ECI under the watch of Commissioners like T.N. Seshan, M.S. Gill and James M. Lyngdoh- from merely election conducting body to a successful referee
 - Measures taken: **VVPAT**, mandatory use of **bank route for exp>20k;** Opened a **separate division** in EC to **oversee election expenditure**
- Challenges
 - Tenure of EC less secure than CEC- constitutional lacunae, **Not necessary that EC may become CEC-** govt can bring new- makes them vulnerable (promotion must be automatic and based on seniority)
 - The other 2 ECs can be removed w/o impeachment process unlike CEC - these ECs **feel like they're in probation and are upto pleasing the govt. in power for their security**
 - **Appointment process** of Commissioners done **without consultation with opposition** (process needs to be more inclusive via collegiums; **ironic** at one place even **non-stat non-const body like CBI has collegium** while constitutional body like ECI fails to do so - shows how our priorities are upside down)
 -  - Has been brought recently

- Politicisation of EC- Constitution **not debarred** retiring CEC/EC from **further appointment**
- The ECI has limited power in enforcing inner-party democracy and regulation of party finances. (Admission in SC- that have inadequate powers to discipline politicians who ask votes in name of caste/religion)- unable to arrest criminalisation of politics, **No power to deregister PP even for gravest violation** when itself is the registering authority under Sec 29A of RPA, 1951
- **No full time staff**- staff on deputation may be biased, corrupt
- Rampant abuse of power by the state government who at times make large-scale transfers on the eve of elections and posts pliable officials in key positions, using official vehicles and buildings for electioneering, flouting the ECI's model code of conduct
- Internal issues- Ashok Lavasa (former EC) left after disputes during 2019 LS
- Implications of ECI challenges- erosion of inst integrity- may lead to loss of trust of people in elections- breakdown of democracy
- **Way Forward**
 - Const protection of removal to all 3, institutionalise convention that senior most among EC automatically elevate to CEC to prevent politicisation
 - Reducing ECI dependence of Law ministry, Home ministry- should **appoint and recruit staff on its own**
 - Administrative **expenses should be charged on const** and not voted such as UPSC (EC(Charging on CFI) bill introduced in 1994 never reintroduced after dissolution of LS in 1996.
 - Regarding election: Power to deregister PP, power of barring candidates with serious criminal charge (before 1 year of elections) if framed by judge
 - Law Commission in 255th report- Collegium of PM, LOP and CJI should appoint all EC's
 - Need to be vigilant and watchful against the collusion at the lower level of civil and police bureaucracy in favour of the ruling party of the day.
- Conclusion- ECI since 1990's enjoyed **enormous public trust- even political uncertainties wrt EVM etc - not dented faith of Indians**- thus must be empowered fully to protect its autonomy and strength of election system.

Attorney General of India (asked in 2019)

- The Attorney General (AG) of India is a **part of the Union Executive**. AG is the highest law officer in the country. **K.K. Venugopal** was appointed the 15th AG of India in 2017

- Appointment, eligibility, removal: AG is appointed by the President on the advice of the government under **Article 76**
 - Must be a person who is **qualified to be appointed a judge of the Supreme Court**
 - **Term** of the office is **not fixed** by the Constitution; **No upper age limit**
 - Holds office **during the pleasure of the President** (may be removed by the President at any time)
- Duties and Functions:
 - To **give advice to the GOI** upon such legal matters, which are referred to her/him by the President
 - To perform such other duties of a legal character that are assigned to her/him by the President
 - To appear on behalf of the GOI in all cases in the SC or in any case in any HC in which the GOI is concerned
 - To **represent the GOI** in any reference made by the **President to the SC under Article 143** (Power of the President to consult the SC) of the Constitution
 - To discharge the functions conferred on her/him by the Constitution or any other law
- Rights and Limitations:
 - Right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which s/he may be named a member, but without a right to vote.
 - Enjoys all the **privileges and immunities** that are available to a member of **Parliament**
 - AG's consent is mandatory when a **private citizen wants to initiate a case of contempt of court** against a person. Before such a plea can be filed, the **Attorney General must sign off on the complaint**, determining if it requires the attention of the court at all
 - AG is **not the full-time counsel** of the Government. He does not fall in the category of government servants and he is **not debarred from private legal practice**. But, he should not advise or hold a brief against the GOI and he should not defend accused persons in criminal prosecutions without the permission of the GOI
 - **Unlike** the Attorney General of the United States, the **AGI does not have any executive authority. Those functions are performed by the Law Minister of India**
- Other related points:
 - Solicitor General of India and Additional Solicitor General of India assist the AG in fulfillment of the official responsibilities
 - Corresponding Office in the States: Advocate General (Article 165)

NCSC (asked in 2018)

- NCSC is a **constitutional body** that works to safeguard the interests of the SCs in India
- Initially, the constitution provided for the appointment of a Single Special Officer under **Article 338** for both SC & ST. 89th Amendment in 2003 replaced the earlier multi-member commission with separate NCSC and NCST
- **Composition: (1+1+3)**: It consists of a Chairperson, a Vice-Chairperson and 3 other Members who are appointed by the President by warrant under his hand and seal. **Service conditions and tenure are also determined by President**
- **Functions:**
 - **Investigating & monitoring of all issues** concerning the safeguards provided for the SCs under the constitution
 - **Enquiring into complaints** relating to the deprivation of the rights and safeguards of the SCs
 - Taking part in and **advising the central or state governments** with respect to the planning of socio-economic development of the SCs
 - **Regular reporting to the President** of the country on the implementation of these safeguards
 - **Recommending steps** to be taken to further the socio-economic development and other welfare activities of the SCs
 - Present report to President annually or such other times as it may deem fit → laid before house → **memorandum explaining action taken** and reasons for non acceptance
- **Power of Civil Court** are given to the commission and can determine its own procedure
 - Also performs similar functions for **Anglo-Indians**
- **Issues:**
 - The Commission has **not used its powers of suo motu cognisance actively enough** → thus for the most part, acts on complaints
 - **Delay in conducting inquiry** + perception that the commission tends to confirm the government's position
 - The incidents like **Hathras, Dalit lynching in Una**, Gujarat; caste related honour killings in Haryana **shows that the commission** has been **ineffective in bringing behavioral change** in the society.
 - The case of Rohith Vemula that discrimination is practiced in best of the best universities and workplace.
 - Criticised for inefficient **functioning, vague selection and appointment process** (NCSC used for unemployable politicians/bureaucrats), exorbitant budget, lack of infrastructure

- Even though the Commission has extensive powers of investigation and inquiry in this area and can fix responsibility and recommend action, its **recommendations are not binding** and w/o any penal powers
- Reports are often **tabled two or more years** after they have been submitted + frequently **not discussed**
- **Measure taken**
 - **NCSC Brochure in 2018 to create awareness**
 - **Monitoring** regarding **disbursement of loans under** Mudra Scheme, Stand-up India scheme, etc
 - **State wise review - state profile generation, actionable points**
 - Various special reports such as Plight of Safai Karamcharis, Atrocities against Kuravan community in Tamil Nadu, etc.
- Steps that can be taken by NCSC (**use this as a common framework for any commission**)
 - **Behavioral nudge through debates, deliberations**, awareness campaigns
 - **Capacity building and sensitisation**: can help in **capacity building of lawyers, judges and policemen** to ensure empathetic engagement with members of SCs
 - **Existing legal framework can be strengthened** - via facilitation of online reporting and tracking of crime, SOPs in local languages
 - **Incentivise good work**: Innovation, effectiveness, and positive impact of the work done by a department or a body can be rewarded by the Commission.
 - The Commission can discuss with legislators and prioritise **outcome-oriented fund expenditure** across the Ministries via the **15% of budget** allocated for **Scheduled Caste Sub Plan**
 - Preparing for future challenges: Inviting central universities and civil societies to first identify the five biggest challenges that Dalits are likely to face in the next five years and to suggest ways to mitigate them

NCST

- 65th Constitutional Amendment Act of 1990- combined NC for SC,ST
- But geographically and culturally, the STs are different from the SCs and their problems are also different
 - Special Culture, Geographical Isolation, Backwardness, Characteristics Of Tribes, Shyness (8.6% of popIn-2011 census)
 - PVTGs with population of less than a 1000 persons : Sentinelese, Great Andamanese, Onge, Birhor (Madhya Pradesh) etc (total 18 under 1000)
- Thus in 1999, a new Ministry of Tribal Affairs was created to provide a sharp focus to the welfare and development of the STs as not administratively

feasible for the Ministry of Social Justice and Empowerment to perform this role.

- Also by passing the **89th Constitutional Amendment Act of 2003**-amendment the Article 338 and inserted a **new Article 338-A** in the Constitution for separate National Commission for STs.

Appointment

- Consist of Chairperson, Vice Chair Person and 3 other members.
- Appointed by President by warrant under his hand and seal.
- Service condition and tenure of chairpersons and members of NCST is determined by president of India

NCST has powers of a civil court and in particular in respect of the following matters: Summoning and enforcing the attendance; Requiring the discovery and production of any document; Receiving evidence on affidavit.

Other Functions apart from NCSC (**basic function same of both**)

- Measures that need to be taken over **conferring ownership rights in respect of minor forest produce** to the Scheduled Tribes living in forest areas, work for other livelihood opportunities
- Measures to be taken to safeguard rights to the Tribal Communities over mineral resources, water resources etc. as per law.
- Measures to be taken to **improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects** - prevent alienation of tribals.
- Measures to be taken to **ensure full implementation of the PESA Act 1996** Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996
- Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment.
- Measures to be taken to elicit maximum cooperation and involvement of Tribal Communities for protecting forests and undertaking social afforestation.

Success stories

- **Recommended Ladakh to be declared as 6th schedule** due to 98% ST population
- **Asked state to compensate when tribals were killed** in Jharkhand
- Asked for report from MHA over American killed in andaman island

Issues

- 2022: The NCST has been **dysfunctional for the last four** years and has **not delivered a single report to Parliament**, a parliamentary committee has said in a recent report.
 - **Pending reports with M/o TA:** Study of impact of the **Indira Sagar Polavaram Project in Andhra Pradesh** on the **tribal population**
- **Manpower and budgetary shortage; Less number of applicants as the eligibility bar is set too high;** Its **rate of pendency of resolution of complaints** and cases that it receives is also **close to 50 per cent**.
- **NCRB data** shows a **spike in the number of cases filed under SC/ST Prevention of Atrocities Act** which shows the discrimination and atrocities are only increasing.
- NCST was helpless and ineffective in stopping the eviction of tribals in the name of development which deprived them of their basic human rights. E.g.
 - The supreme court order of eviction more than one million forest dwelling people went against the spirit of Forest rights act.
 - The commission was **unable to safeguard the tribal rights of** Dongria Kondh community of **Odisha** who faced eviction on a **Vedanta development** project.
 - The **rights of tribals over natural resources have been reduced** over the years through the concepts of protected forests etc.,
 - **Tribal culture and identity has been declining. As per a report by People's Linguistic Survey of India, as much as 250 tribal languages have disappeared. NCST has failed to arrest the phenomenon.**

Way forward

- **Functions of commission vast- should be distributed among members** for better performance as well as easy grievance redresses
- Need to reform the institutions like criminal investigation, power to penalize, fixed time period for discussion of commission reports, suo moto powers etc. to bring discernible change and address the real issues more effectively.

NCBC (asked in 2022)

- Background:
 - SC in Indira case, had directed the establishment of the permanent NCBC as a statutory body → **Earlier NCBC Act 1993** (as earlier set up temporarily like Mandal under art 340)
 - The NCBC was given limited powers - only to recommend to the government inclusion or exclusion of a community in the central list of OBCs whereas the power to hear complaints of the OBCs and protect their interests remained with the NCSC
 - **102nd Constitution Amendment Act, 2018** provided constitutional status to NCBC via **Article 338B**

- Composition : It consists of a Chairperson, a Vice-Chairperson and 3 other Members who are appointed by the President by warrant under his hand and seal. Service conditions and tenure are also determined by President
- **Powers & Functions: Same as NCSC** but restricted to socially and educationally backward classes
- **What's new: (after getting constitutional status)**
 - The new NCBC is entrusted with the **additional function of grievance redress** of backward classes. The amended Bill will give the Commission **powers equivalent to that of a civil court**
 - Power to "summon and enforce" the presence of any person, demand any document, receive evidence on affidavits, etc.
 - Article 342(A) introduces greater transparency as it made mandatory to **take the concurrence** of Parliament for **adding or deleting any community in the backward list**
- Issues/Challenges:
 - All points applicable to NCSC will apply
 - **Skewed representation of OBCs** in various committees, commissions, boards and other different forums of the government eg: OBCs have **negligible presence in the SC/HC**
Mere Acts will not do as they did not percolate down to the grassroots level, as recent data showed that only 7 out of 100 teachers in the Central Universities belonged to SC/ST and OBC categories
 - Critics argue about the scope of reservation when NITI Aayog is promoting public-private partnership and privatisation of public sector undertakings
 - The SC/ST commissions have had judicial powers all along → But issues not taken up due to issues related to report discussion in parliament
- Way Fwd:
 - The **sub-categorization of OBCs** will ensure increased access to benefits such as reservations in educational institutions and government jobs for less dominant OBCs
 - The composition should reflect the feature of an expert body as mandated by the SC
 - **Political parties should "rise above vote bank politics** and work towards social justice"
- Currently in news due to:
 - 'Why no reservation in lateral entry?' OBC panel asks Modi govt after new lateral entry advertisement
 - NCBC is in favour of four sub-categories of Other Backward Classes, in line with what the Justice G Rohini
 - The **Justice Rohini Commission** was constituted on October 2, 2017. It was given 12 weeks to submit its report, but has been given several extensions since.

- Data: 37% OBC communities have zero representation in central jobs and universities; while 10% of OBC communities accrue 24.95% of jobs and admission
- Best Practice: Equal Opportunities Commission of US or UK (which uses data to analyse deprivation and suggest suitable policy changes) - this single body can cover caste/gender/religion/etc

National Commission for Women (2019, 2017)

- The National Commission for Women is a **statutory body** established in January 1992 under the **National Commission for Women Act, 1990** to review const and legal safeguards for W, recommend remedial measures and provide voice to their issues and concerns (Based on recom of Commission of status of women that published towards equality report 1974)
- **Appointment**
 - The NCW is made up of a chairperson, five members and a member secretary. A person 'committed to the cause of women' is nominated and appointed as Chairperson by the Central Government. The Five members are also **nominated by** the central Government as well as **removed by Central Government** (inc chairman)
- **Functions**
 - **Look into complaints and take suo moto action** against individual, org that indulges in derogatory practices against W as well as suo motu notice of non-compliance of policy decisions and legislation for welfare of W.
 - **Investigate and examine all matters** relating to the safeguards provided for women under the Constitution and other laws
 - **Make recommendations** for effective implementation of such safeguards to Union or state governments
 - **Review women related to legislations** and bring out inadequacies and **shortcomings (here give eg: of laws Dowry Prohibition Act 1961, PNDT Act 1994, Indian Penal Code 1860, etc)**
 - Take up cases of violation of law against women to appropriate authorities
 - **Call for special studies** or investigations into specific problems or situations
 - The Commission **presents an annual report to the Central Government** who places in front of parliament with reason for non-acceptance of recommendation, if any.
- **Powers**
 - Power of civil court wrt summoning and enforcing attendance of witness, official etc, requiring discovery of document

- The Central Government should **consult the Commission on all major policy** matters affecting women.
- **Working of the Commission**
 - The complaints received relate to various categories of crimes against women such as domestic violence, harassment, dowry, torture, murder, kidnapping/abduction, complaints against NRI marriages, desertion, bigamy, rape, police harassment, brutality, cruelty by husband, deprivation of rights, gender discrimination, sexual harassment at workplace and so on.
 - The complaints are acted upon in the following manner:
 - Specific cases of police apathy are sent to the police authorities for investigation and cases are monitored.
 - Family disputes are resolved or compromises struck through counseling.
 - In sexual harassment complaints, the concerned organizations are urged to expedite cases and the disposal is monitored, complaints further used as case study for sensitisation
 - For serious crimes, the Commission constitutes an Inquiry Committee to provide immediate relief and justice to the victims of violence and atrocities.
 - Has set up cells such as complaints cell, legal cell, NRI cell etc, collab with NGO, as well have own library since 1994 as for women research and studies
 - **Success examples**
 - The commission raised objections against Minister for women and child development (2016) for the draft National policy on women when not consulted as well objections to trafficking person draft bill which it felt needed to be strengthened.
 - Public hearings under activists such as Justice VR Krishna Iyer and Swami Agnivesh were held to understand problems of of Kol women in Bundelkhand, deserted W of hill districts.
 - NCW evolved an **innovative concept of Parivarik Mahila LokAdalat (PMLA)**, which supplements the efforts of the District Legal Service Authority (DLSA) for redressal and speedy disposal of the matters related to marriage and family affairs pending in various courts. - also gives financial assistance to NGO or State women commisiomns to organize PMLA
 - Instrumental in enactment of DV act 2005 and recommended amendment to laws such as MT of Pregnancy act, maternity benefit act
 - **Hathras-** seeked for UP police chief explanation for cremation as well as **notices to people who revealed identity of victim on social media**

- Report on **improving the Condition of Women Inmates** in Prisons; **Periodicals "Rashtra mahila"**; NCW has played key role in extending the paradigm of women rights. E.g., role in POSH Act ,2013, Domestic Violence Act, 2005
- Work done: Took up **publicity campaigns** against female foeticide, violence against women; **organized workshops/consultations**, constituted **expert committees on economic empowerment** of women
- **Issues**
 - NCW's members are appointed by the government - apathy wrt **delay in appointing members**- was functioning with only single chairperson during Me too- called toothless tiger
 - **Irresponsible statements**- NCW head accused women of crying rape to settle property disputes and to claim compensation, Earlier heads have, on various occasions, revealed the name of a molestation victim, or **questioned women's failure to protect themselves** - comparatively DCW more proactive
 - The **recommendations of the NCW are not binding** on the Union or state governments as well as limited role in various imp debated around W- called toothsoldier of frivolousness
 - **Regional disparities**: Recent case (May 2023) of mass sexual assault of a tribal women in Manipur; Rekommedatory/Non-binding in nature NCW Drafted Bill for the Victims of Acid Attacks in 2008 but failed to become a law; Write other women issues (low FLFP, high crime rate shows ineffectiveness)
 - **Focus on files/paper work rather than field visits** to sensitize/understand/connect with people; NCW **just forwarded the complaints to local police in manipur without ensuring accountability**; Political appointments are made thus becoming **vary of criticising the govt (loyalty to the political bosses)**
 - Cannot choose its own members; Financial dependence on CG;
 - Often it takes action only of the issues are brought to light. Unreported cases of suppression and oppression are generally ignored by the Commission.
 - Currently, National Commission for Women does not have the power to penalize, more often than not **those summoned fail to turn up to attend** the commission's hearings. Though the commission won't have the power to arrest, it could recommend initiation of prosecution if the inquiry finds a violation of women's rights by any public servant.
- **Way Forward**
 - The National Commission for Women received 23,722 **complaints of crimes committed against women** in 2020, the highest in the

last six years- issues of Domestic violence, sexual harassment in age of MeToo **need more proactive role of NCW**

- **WF:** Collegium system for apolitical appointment (wider rep of CSOs); Power of indep investigation & enforcement; Pam Rajput Committee Comment; Constitutional status can be delved upon; Sensitization of members
- Longer duration field visits must be undertaken by members of NCW/SCW
- Need for doing away with the existing system of making political appointments to the NCW
- More awareness has to be created especially among the rural women about the existence of the Commission. The Commission can employ a person at the district level to bring into light the atrocities occurring at the district level.
- Implement- National Commission for Women draft Bill yet to be tabled before Parliament since April 2015. The Bill, if passed, would give the Commission extensive powers of a civil court, allowing it to impose fines on offenders, demand documents, or ask a magistrate to issue arrest warrants if anyone defies its orders.

National Human Rights Commission (also read SHRC, 2021, 2014)

- Statutory body (**Protection of Human rights act, 1993**), watch dog of HR in country for protecting life, liberty, dignity of individual as guaranteed by constitution or International covenants (**UDHR, Paris principles**)
- To deny people their human rights is to challenge their very humanity — Nelson Mandela
- **Appointment and structure**
 - Multi-member body having Chairman and seven other members. (**members- chairman of national commissions as well as other nominees**)
 - President appoints the Chairman and members of NHRC on **recommendation of high-powered committee headed** by Prime Minister (inc HM, LOP(both house), Speaker, Deputy chair RS)
- **Role**
 - NHRC **investigates grievances** regarding the violation of human rights **either suo moto** or after receiving a petition
 - **Visiting the jails** or any other such public institutions under state government to inquire about the living conditions of inmates.
 - It can review the safeguards provided under the constitution or any law for the protection of the human rights and can recommend appropriate remedial measures.

- It also has the **authority to recommend payment of compensation or damages to victim**, approach SC/HC for issuance of writs
- NHRC has taken several measures to promote right to education in India like inclusion of human right in curriculum of schools and colleges.
- **Success of NHRC**
 - NHRC opened the state to judicial and moral scrutiny: Commission has kept a watch on incidences of '**encounter killings**' and '**custodial deaths**'. It has issued guidelines wherein **every death in police action has to be reported to the NHRC within 48 hours** of the incident.
 - Vocal in its opinion against laws: Such as the Terrorist and Disruptive Activities (Prevention) Act (TADA) and Prevention of Terrorism Act, 2002 (POTA), which had scope for misuse and possible human rights violations.
 - Suo-moto cognisance of human rights violations: Based on media reports or other sources of information and investigate them. For example, the **NHRC issued a notice to the Home Ministry over the planned deportation of about Rohingya immigrants**. Soon after its creation, the NHRC in 1994 had taken up the issue of safety of the Chakma community in Arunchal Pradesh.
 - Enlarging its ambit/mandate: The Commission has also gone beyond the physical violation of human rights to protect the economic, social and cultural rights of people. Being assigned to look into the extreme poverty, starvation in Kalahandi, Bolangir and Koraput regions of Odisha etc.
- **Why NHRC is tooth less tiger**
 - NHRC **can only recommend remedial measures** or direct the state concerned to pay compensation. Its recommendations are not binding on the Government.
 - NHRC do **not have any kind of contempt powers** thus it **cannot penalise authorities** who do not implement its recommendations in a time bound manner.
 - The NHRC at times, has been unable to take a critical stand of the government of the day. For example, during the Kairana exodus, it submitted a report vindicating the government stand, without undertaking a thorough investigation.
 - The **Act does not categorically empower** the NHRC to act **when** human rights **violations through private parties** take place.
 - Under the Act, human rights commissions **cannot investigate** an event if the complaint was made **more than one year after the incident**. Therefore, a large number of genuine grievances go unaddressed.
 - **Scarcity of resources** is another big problem. Large chunks of the budget of commissions go in **office expenses**, leaving disproportionately small amounts for other crucial areas such as research and rights awareness programmes.

- Was denied **A grade accreditation in 2017** by the Global Alliance of National HR institutions (**GANHRI**- UN based body) due to failure in ensuring gender balance and rising political interference (**amendment in 2019 corrected some concerns**- will enable NHRC to be compliant with Paris principles)
- Salaries, allowances and conditions of service are determined by Central govt (State govt in case of SHRC) - lack of independence
- **Protection of HR Amendment act 2019**
 - The **chairperson** of the NHRC is a person who has been a **Chief justice of the SC or Judge of SC** (earlier only who has been CJI)
 - The Act **reduces the term of office to three years** from five or till the age of **seventy years**, whichever is earlier.
 - The Act provides for **three persons** to be appointed as members of the NHRC of **which one being woman** (earlier was 2 persons with knowledge of HR) - (issue- govt will have free choice as removed qualification for posts- issue as govt is major party accused for HR violations)
 - The Act provides for **including the chairpersons** of the **NCBC**, the National Commission for the Protection of **Child Rights**, and the Chief Commissioner for **Persons with Disabilities** as members of the NHRC (due to instances of HR violations against these vulnerable sections)
 - The Act removes the five-year limit for reappointment.
- **Way Forward**
 - Governments should **immediately implement the recommendations** made by NHRC as NHRC's orders are passed by persons who had long training and experience as judges of the supreme court and high courts.
 - Also, a large number of human rights violations occur in areas where there is insurgency and internal conflict. Not allowing NHRC to independently investigate complaints against the military and security forces only compounds the problems (called themselves toothless tiger over inability to do justice to extra-judicial killings in Manipur)
 - As **non-judicial member positions are being filled by ex- bureaucrats**, credence is given to the contention that NHRC is more an extension of the government, rather than independent agency exercising oversight. NHRC also needs to develop an independent cadre of staff with appropriate skills on HR.
- **NHRC effectiveness can be improved if supported by judiciary** (as lack power to punish directly should work with judiciary to ensure HR with court directions), education and awareness (need culture of HR rather than encounter hero culture), civil society and academia movements (to ensure GG by state)

Umbrella Human Rights Commission

GS-2 2018: Multiplicity of various commissions for the vulnerable sections of the society leads to problems of overlapping jurisdiction and duplication of functions. Is it better to merge all commissions into an umbrella Human Rights Commission? Argue your case.

- Issues of multiplicity- **conflicting judgements (clash between NCM and NHRC on Assam riots in 2013)**, NHRC overlapping functions wrt women, dalits, interest of women and children are related, **Duplication, NHRC cannot inquire into any matter which is pending before any other commission**
- Cons in merging- **Overburdened commission, diff issues of diff vulnerable section, need special experts, ST very diff from others**
- Therefore improve existing org-reforms covered in polity along with note on Umbrella HRC below

An idea is to **merge all commissions into a comprehensive Human Rights Commission** with separate divisions for Scheduled Castes, Scheduled Tribes, Women and Children. **Chairpersons of the NCM, NCSC, NCST and NCW are anyway members of NHRC**

- Multiplicity of commissions leads problems of overlapping jurisdictions and even duplication of efforts. Sometimes different commissions may even contradict each other. For example, there was a clash between NCM and NHRC on Assam riots in 2013.
- NHRC cannot inquire into any matter which is pending before any other commission. But in the absence of networking and regular interaction between different commissions human rights suffer.

However

- The existence of a different dedicated commissions should enable each one of them to look into specific complaints and areas thereby ensuring speedy action.
- **Merger in larger states and at the national level is impracticable** and would fail to adequately address the special problems of different disadvantaged groups. However, such a **merger may be possible in** case of some of the **smaller States**.
- While the **most important contribution of NHRC** has been its ability to **raise awareness through dialogue** about the need for human rights protection in the country, its **role in future would be diversified** towards **new emerging concerns like business and human rights, environmental impact on human rights and LGBT rights**.

Central Information Commission (asked in 2020)

- CICs jurisdiction extends to all central public authorities and UTs. Its a **statutory body** estab under RTI Act **2005**
- Composition: Sanctioned strength of **one CIC + 10 ICs** → whereas **currently only 7 ICs apart from CIC**
- Appointment: The commissioners are appointed by the President on the recommendation of a committee consisting of PM + Leader of Opposition in LS + any Union cabinet min nominated by PM
- Submits **annual report to Central Govt. (not president)** → lays before houses
- **Functions**:
 - Order enquiry into any matter on reasonable grounds only (suo-moto power)
 - **Secure compliance of its decisions** from any public authority.
 - **Receive and inquire into a complaint** from any person:
 - Who has **not received** any response to his request for information within a specified time
 - Who deems the information given to him/her **incomplete, false or misleading**, and any other matter related to securing the information
 - Who **was refused the information** requested
 - Who has been unable to submit a request for information due to the non-appointment of an officer
 - Who considers the fees so charged unreasonable
 - The commission has the power to **examine any record** under the control of the public authority. All such records have to be given to the Commission during the examination and **nothing shall be withheld**.
 - During inquiries, the CIC has the **powers of a civil court**
- Amendment in 2019
 - All ICs will hold office for such **term as prescribed by the Central Government**
 - Salaries, allowances and other service conditions to be decided by CG
 - Same provisions for SICs as well → assault on the idea of federalism
 - ~~Status of CIC brought in par with Elec Comm and status of SIC with Chief Secretary in states (need to reconfirm this)~~
 - It **removed the provisions regarding deductions in salary** of the CIC, an IC, the State CIC, and a State ICs due to pension or any other retirement benefits received by them for their previous government service
 - MP Shashi Tharoor called this bill as an “RTI elimination Bill”
- **Key Issues Faced by CICs (write issues of RTI)**
 - Based on a survey done on 22 central information commissions it was found that **97% of cases deserving penalties were not being imposed**

- **on govt officials in 18-19**; Leading to increase in their own workload and delayed responses to citizens; Also there are **vacancies in govt jobs** to be filled
- **High pendency of > 2 lakh cases** and delayed appointments in ICs
- Returning of appeals: For **every two cases** the CIC registers, it **rejects one appeal due to inadequate documentation**
- SC ordered all 25 states and centre to establish **web portals to accept applications** — Few states such as Delhi & MH have online portals; Necessary for old age and NRIs
- **No centralised database of RTI applicants** at the centre/ state level, thus resulting in decreased accuracy of the annual RTI reports submitted by CIC
- **Lack of monitoring and review mechanisms in CIC** to make public officers comply with the provisions of the RTI Act
- Way Fwd:
 - **Supreme Court** has also stated that the government should ensure that **non-bureaucrats are appointed**
 - **Earlier positions of Information Commissioners (ICs) being equivalent to Election Commissioners** should be restored in terms of remuneration
 - Need for **greater autonomy** and independence to ICs
 - **Delays in appointment** needs to be **rectified**
 - Cover other recommendations & successes pertaining to RTI Act covered in GS4 notes
- Currently in news due to:
 - The Central Information Commission cites two SC judgments to rule that minutes of Lokpal Selection panel meetings cannot be made public under RTI

Lokpal & Lokayukts

- **Lokpal Act 2013** allows setting up of anti-corruption ombudsman called Lokpal at the Centre and Lokayukta at the State-level.
- Composition: The Lokpal will consist of a **chairperson and a maximum of eight members**.
- Applicability: The Lokpal will cover **all categories of public servants, including the Prime Minister**. But the armed forces do not come under the ambit of Lokpal. The Act also includes the Lokpal's own members under the definition of "public servant"
- Composition
 - **Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person**

- with impeccable integrity** and outstanding ability, having special knowledge and expertise of **minimum 25 years in the matters** relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- Out of the maximum eight members, half will be judicial members and **minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.**
 - The **judicial member** of the Lokpal either a **former Judge of the Supreme Court** or a **former Chief Justice** of a **High Court**.
 - The **non-judicial member** should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and **expertise of minimum 25 years** in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
 - The **selection committee is composed of the PM + Speaker + LoO LS + CJI + Eminent Jurist** (Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge nominated by him/her and One eminent jurist)
- **Term of Office:**
 - The term of office for Lokpal Chairman and Members is **5 years** or till **attaining age of 70 years; Exp/sal charged to CFI; Salary allowances similar to CJI/J of SC**
 - The salary, allowances and other conditions of service of chairperson are equivalent to Chief Justice of India and members is equivalent to Judge of Supreme Court. If the person is already getting the pension (for being a former judge), the equivalent pension amount will be deducted from the salary.
 - The source of salary for Lokpal and Members is Consolidated Fund of India. (all exp/sal/pensions charged to CFI)
 - **Jurisdiction and Powers:**
 - The Lokpal will have the power of **super-intendence and direction over any investigation agency** including CBI for cases referred to them by the ombudsman.
 - As per the Act, the Lokpal **can summon or question any public servant** if there exists a prima facie case against the person, even before an investigation agency (such as vigilance or CBI) has begun the probe. Any **officer of the CBI investigating** a case referred to it by the Lokpal, **shall not be transferred** without the approval of the Lokpal.
 - Lokpal has the **power to recommend transfer or suspension of public servant connected with allegation of corruption.** It has the power to give directions to **prevent the destruction of records** during the preliminary inquiry.

- **Special courts will be instituted** to conduct trials on cases referred by Lokpal.
- The Act also incorporates **provisions for attachment and confiscation of property** acquired by corrupt means, even while the prosecution is pending.
- Lokpal & PM:
 - The Act does not allow a Lokpal inquiry if the allegation against the PM relates to international relations, external and internal security, public order, atomic energy and space.
 - Also, complaints against the PM are not to be probed unless the full Lokpal bench considers the initiation of an inquiry and at least two-thirds of the members approve it
- Issues:
 - Various states have **not yet setup Lokayuktas**
 - The Lokpal is **not given any constitutional backing** and there is no adequate provision for appeal against the Lokpal
 - Lokayukta Issues:
 - States, in fact, have complete autonomy over how their own Lokayuktas are appointed, how they work, and under what conditions they serve
 - Delay in the investigation and resolution of complaints
 - Dependent on the state government for funding and infrastructure
 - Themselves have been indulging in corrupt practices as in 2015 karnataka Lokayukta was accused of running an extortion racket
 - **Positive Role:** Karnataka Lokayukta santosh Hedge exposed corruption in iron ore mining; Madhya Pradesh lokayukta unearthed black money worth 800cr rs; Goa lokayukta indicted several ministers for corruption; Karnataka lokayukta even has its own police
 - The chairperson and members of the Lokpal were **appointed only in 2019 → lack of political will**
 - Inquiry and prosecution wings of the anti-corruption ombudsman are yet to be set up
 - **Delay in bringing rules for functioning** of Lokpal (brought only in 2020)
 - Justice Dilip B Bhosale before quitting from Lokpal highlighted lack of work, and gaps in processes
 - The biggest lacuna is the **exclusion of judiciary from the ambit of the Lokpal**
- **Lokpal (Complaint) Rules, 2020:**
 - According to the complaint form, a complainant has to **give a valid proof of identity**
 - **Foreign national can lodge** complaint → along with passport

- The complaint can be **filed electronically, by post** or in **person**.
- The **identity of the complainant or the accused official will be protected** by the Lokpal till the conclusion of inquiry or investigation.
- Language in english — Lokpal may also entertain in other languages fo 8th Schedule
- Way Fwd:
 - In order to tackle the problem of corruption, the institution of the ombudsman should be strengthened both in terms of **functional autonomy and availability of manpower**
 - Lokpal and Lokayukta must be **financially, administratively and legally independent** of those whom they are called upon to investigate and prosecute

GST Council

- It is a constitutional body under **Article 279A**. It makes recommendations to the Union and State Government on issues related to Goods and Service Tax and was introduced by the 101st Constitution (One Hundred and First Amendment) Act, 2016
- The GST Council is **chaired by the Union Finance Minister** and other members are the Union Minister State for Finance and Ministers in-charge of Finance or Taxation of all the States
- It is **considered as a federal body where both the centre and the states** get due representation
- Every decision of the Goods and Services Tax Council shall be taken at a meeting (**quom 50%**) by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:
 - the vote of the **Central Government** shall have a **weightage of one third** of the total votes cast, and
 - the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting
- Economic Survey 2017-18 also **hailed the GST Council for its cooperative federalism** technology which brings together the Center and States and can be applied to many other policy reforms.
- **The Goods and Services Tax Council shall make recommendations to the Union and the States on—**
 - the **taxes, cesses and surcharges** levied by the Union, the States and the local bodies **which may be subsumed** in the goods and services tax;
 - the goods and services that may be subjected to, or exempted from the goods and services tax;
 - model Goods and Services Tax Laws, principles of levy and the **principles that govern the place of supply;**

- the **threshold limit of turnover** below which goods and services may be exempted from goods and services tax;
- the **rates including floor rates** with bands of goods and services tax; any special rate or rates for a specified period, to **raise additional resources** during any **natural calamity** or disaster;
- special provision with respect to the various States (Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand); and any other matter relating to the goods and services tax, as the Council may decide
- recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel

Union Public Service Commission (Asked in 2008, 1991)

Constitutional body and **Central recruiting agency**. **Art 315- 323** contains details regarding composition, appointment, removal, independence, powers etc

Appointment

- The UPSC consists of a Chairman and other members (presently 11 incl CP) who are appointed by the President of India.
- The Constitution- 50% of the members of UPSC should be those who have held government office for atleast 10 years. **6 or 65 years**
- **Removed by the President** before the expiry of their term on the basis of either of the following **four circumstances**: bankrupt, paid employment outside the official duties, mentally or bodily infirm, misbehaviour (**matter enquired before SC**, if found guilty- removed)

Independence (asked in PYQ)

- The chairman or a member of the UPSC can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. Thus, they enjoy **security of tenure**.
- The **conditions of service** of the chairman or a member, though determined by the President, **cannot be varied to his disadvantage** after his appointment.
- The entire expenses including the salaries, allowances, and pensions of the Chairman and members of the UPSC are **charged on the Consolidated Fund of India** and are not subject to the vote of Parliament.
- The **chairman or a member of UPSC is not eligible for reappointment** to that office for a **second term**
- The chairman of the UPSC on ceasing to hold office is **not eligible for further employment** in the Government of India or any state.

- A member of the UPSC is eligible for appointment as the Chairman of UPSC or a State Public Service Commission but not for any other employment in the Government of India or any state

Role of UPSC

- Conducts exams for appointment to the All-India Services, Public services of centrally administered territories and central services.
- It assists the States (if requested by 2 or more states) in formulating and implementing the **schemes of joint recruitment for any services** for selecting special qualification from candidates.
- **Advises** the government on **promotion and disciplinary matters** when consulted.
- It acts as a **"watchdog of merit system in India"**, as envisioned in the Constitution of India.
- It can serve any or all needs of the state upon their Governor's request by permission of the President.

Issues

- Since the **emergence of CVC**, the **role of UPSC in disciplinary matters has been affected**. Both are consulted by the government while taking disciplinary action against a civil servant- chances of selective consultation
- Recommendation **advisory** to govt
- **Emergence of CAT** and frequent **litigations delays examination processes**
- **Attempts to defame** institution by sensationalist media bringing **communal angle**

Suggestions to improve UPSC

1. UPSC should try to **go beyond the recruitment** role to evolving answers to issues relating to civil services and their role in a rapidly changing society. It should serve as a **think tank on personnel issues**.
2. Services are often out of touch with new developments in technology and knowledge. UPSC should liaison with such research institutions to **conduct** regular specially designed **courses for administration**.
3. The increase in work of the commission has been manifold, it currently **handles more than 14 lakh applications** and scrutinises and advises in regard to 650 Recruitment Rules of different services/posts- **need decentralisation** for effective grievance redressal of applicants.
4. Should be consulted in case of transfers to bring objectivity, Appointments of imp posts like DIG (Supreme court order making mandatory to consult UPSC), state chief secretary etc
5. **Lateral entry in future** should be done with **help of UPSC** to bring objectivity.

- UPSC so far has worked with remarkable competence, impartiality and integrity and is one of shining institution to which millions of candidates trust.

Inter-State Council

Article 263 contemplates the establishment of an Inter-State Council to improve **cooperation, coordination and evolution of policies affecting interests of centre and states**. The **President can establish** such a council. However, it has been largely under utilised.

Importance of ISC

- It provides a forum for discussion of topics lingering between states and centre.
Ex: **Water disputes, contentious issues.**
- Gradually subjects have been shifted from state list to concurrent list. ISC provide a **platform for discussion** of the **legislation** related to **concurrent subjects** so that State doesn't feel left out in the process. **(Farm acts)**
- Unlike other forums** such as Niti Aayog, NDC, **ISC has a constitutional backing** thus give much more room, voice and space to states to bring out problematic areas on table.
- As it is chaired by Prime Minister himself along with respective Chief Ministers, the value of discussion get enhanced.
- ISC was crucial** in the **implementation** of many of the **Sarkaria Commission's recommendations** wrt C-S relations

Under-utilisation of ISC

- There is **no compulsion** on government of the day to **accept the outcomes** of the meetings.
- No frequent meetings happen. Meeting in 2016-17
- Overlap of role** between **NITI and ISC.**
- Clause-A of Article 263, which gave the council the power to investigate issues of inter-state conflict, was dropped in the presidential ordinance establishing the ISC.

Changes required in ISC

- The ISC needs to be given all the powers required for efficient federal dispute resolutions.
- 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 organisational set up** drawn from the disciplines of Law, Management and Political Science besides the All India

Services. It should provide greater opportunities to civil society institutions and the corporate sector to make their representations.

4. The Council should have **functional independence with a professional Secretariat** or shift its secretariat to Rajya Sabha secretariat.
5. It should be strengthened as a forum for not just administrative but also political and legislative give and take between centre and states.

Recent (2019) reconstitution of ISC as well as Standing Committee of ISC (chaired by HM) is step in right direction. It should be used for settling current and future federal disputes for India's growth story and democracy

Central Administrative Tribunal (2019)

- CAT is a **quasi-judicial body** established by the central government under the **Administrative Tribunals Act, 1985** (also estb SAT) The central government gets its power to establish such tribunal under Article **323-A** of the Constitution of India.
- There are **17 benches (head bench in Delhi)** and 21 circuit benches of CAT all over India.

Appointment

- The CAT comprises of a chairman, vice-chairman and other members who are appointed by the president.
- The membership is filled by the members of judicial and administrative fields. A person who is a sitting or retired judge of a High Court is appointed as a chairman of the CAT.

Functions (**Talk about general benefits of Tribunal-no need to read below**)

- It has been established for **adjudication of disputes** and complaints with respect to **recruitment and conditions of service of persons** appointed to public services and posts in **connection with the affairs of the Union** or other authorities under the control of the government.
 - Also looks into service issues of PSU's notified by govt
- The working of the CAT is flexible, i.e. it does not follow the stringent procedures like the courts. Since the tribunal follows the principles of natural justice, judgment tends to be in favour of the vulnerable party.
- Tribunals, including the CAT, provide faster relief and justice due to specialised nature, unlike the mainstream court system in India.

Powers (**Acting as independent** judicial authority)

- Working of CAT is **not bound by the procedure given under the Code of Civil Procedure, 1908**; it is guided by the principles of natural justice and has power to frame its own rules.
- Administrative Tribunals **Act, 1985 confers** jurisdiction upon the **CAT to punish for its contempt**. CAT has exclusive jurisdiction in relation to criminal contempt proceedings.
- Recently **CAT reversing decisions of Karnataka PSC (good thing)**
- The **orders of CAT** are challenged or **appealed in the respective High courts** under Article 226/227 of the Indian Constitution. [L. Chandra Kumar vs Union of India, 1997]
- Due to **frequent taking up of cases by CAT** even by single aspirant, the exam schedule of UPSC and other SPSC's get **delayed** (EWS issue recently)
- The CAT recently took strong objections to an order of Delhi High Court for directing it to swiftly decide a matter that was originally pending before the tribunal.

Issues

- Administrative tribunals are **subject to the exercise of power and pressures** from the government **executives**.
- Central Administrative Tribunal, with its separate laws and procedures often made by themselves, puts a serious limitation upon the principles of Rule of Law.

However **not acting as fully independent** judiciary authority

- **Tribunal members do not** enjoy power like judges who have **security of tenure**
- **Lack of autonomy in appointments** unlike judiciary
- It **doesn't have jurisdiction to adjudicate the disputes** related to a member of **armed forces, any officer of Supreme Court or any high court**, any person appointed to the secretarial staff of the either of the parliament, state legislature or union territory having legislature.

With passing time the Central Administrative Tribunal has become more assertive in discharging its duties as an independent judicial authority. This is even recognised by the judiciary however it is natural as CAT is solving crucial matters of govt employees with other party as govt and its institutions.

National Commission for Minorities

National Commission of Minorities is set up under **NCM Act 1992**. The Act defines a **minority as “a community notified as such by the Central government.** (**currently 6 national religious minorities**- Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsis), Act recognises that Minorities have suffered from inequality and discrimination despite legal safeguards.

- **Appointment**

- NCM consists of a Chairperson, a Vice-Chairperson and five members (all of them shall be from the minority communities)- nominated by the Central Government from amongst the persons of eminence, ability and integrity. The **Ministry for Minority Affairs recommends the names to the Prime Minister’s Office.**(3 year tenure)

- **Functions:**

- Evaluation of the progress of the development of minorities under the Union and States and **making recommendations** for the effective implementation of the relevant safeguards given in constitution and in laws
- It **ensures** that the **PM’s 15-point programme (2020) is implemented** and the programmes for minority communities are actually functioning.
- **Looking into specific complaints** regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities.
 - Aggrieved persons belonging to the minority communities may approach the concerned State Minorities Commissions for redressal of their grievances and then NCM
- It **investigates matters of communal conflict** and riots. For example, the 2011 Bharatpur communal riots, as well as the **2012 Bodo-Muslim clashes in Assam**, were investigated by the commission and their findings were submitted to the government.
- It observes the Minorities Rights Day every year on 18th December which marks the adoption of the “Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities” by the United Nations in 1992.
 - The declaration states that countries shall protect the existence of the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories

- **Issues**

- **NCM has only one member left**, other posts have been vacant since May 2020- not the first time that vacancies have not been filled. In **2017**, **all seven posts** remained **empty** for over **two months**.
 - No prescribed selection process for making appointments with arbitrarily picking up of names from a list suggested by the nodal ministry.

- Apathy of officers- not follow orders and absent for meetings (NCM chair said commission powerless)
 - Also **limited role of state level minority commissions** - they are not in sync with NCM and **states have not empowered them** as well
- Reports of NCM have **not been tabled** in Parliament since 2010
- **Unlike the National Commission for SCs and for STs, NCM is a statutory body**
 - The Constitution (One Hundred and Third Amendment) Bill, 2004, proposed to establish a new minorities Commission, with constitutional status- got trapped in the quagmire of who is a 'minority', and the Bill lapsed.
 - **Insufficient investigative powers**-There is need of **strengthening investigative power** of NCM (like NCST/NCSC/NCBC to safeguards constitutional and legal rights of minority communities (current challenges- hostile media, delhi riots, minority artist in jails (Indore incident- SC came to rescue)
 - The empirical **data provided** by the **Post-Sachar Evaluation Committee Report (2014)** suggest that **minorities are facing socio-economic difficulties.**
- **Way forward**
 - Standing Committee on Social Justice and Empowerment (2017-18), in its 53rd report noted that the NCM is "almost ineffective" in its current state to deal with cases of atrocities against minorities. The committee recommended **constitutional status to the body "without any delay"**.
 - If granted constitutional status, the NCM can penalise or suspend an officer for two days or send him/her to jail if failed to protect minorities (cases of police atrocities during delhi riots)
 - Efforts should also be made to **protect minorities in states (eg Kashmiri Hindus)**
 - Need **better coordination with NHRC** in cases of riots, mob lynchings for better protection.
 - Need for NCM **active role in sensitisation of police** as well as more proactive approach in case of sensationalist media affecting rights of minorities.
- **Constitutional and Legal Provisions Related to Minorities**
 - National Commission for Minority Educational Institutions (NCMEI) Act, 2004: It gives the minority status to the educational institutions on the basis of six religious communities notified by the government.
 - The term "**minority**" is **not defined in the Indian Constitution.** However, the Constitution recognises religious and linguistic minorities.

- Article 15 and 16, Article 25 (1), 26 and 28, Article 29,30. (350A and 350B for linguistic minorities)

General Issues with Statutory Organisations

Appointment issues: Activists with long track record of social work are not appointed while active politicians are- hampers efficiency RATHER Personnel chiefly drawn from Government only led to red tapism - need for motivated individuals for the cause

Functioning issues: Do not have independent investigating agencies, Overlapping fxs NCW/NHRC/NCM; Large number of complaints while their capacity to deal with them is very limited

WF: creating a separate Parliamentary Standing Committee for deliberating on the reports of these Commissions

Conclusion: The degree of autonomy with which organisations like the NCM, NCSC, NCST or NCBC are able to function eventually decides how healthy a democracy is.

Constitutionalism debate

Benefits of constitutionalisation: Greater autonomy, Suo motu, and have powers of a civil court, Provide more independence due to security of tenure, Removal is comparatively tougher, Write other benefits- Exp charged, some cases chairman not eligible for further office (CAG)

Steps for constitutionalism: Ammendment under art 368 through ordinary majority by both houses + Presidential assent (Latest NCBC)

Quasi-Judicial Bodies

(can use points from Tribunals wrt advantages and issues)

- A quasi judicial body is an organization on which **powers resembling a court of law** have been conferred. Such a body can **adjudicate** and decide upon a situation and **impose penalty** upon the guilty. **But these are not courts.**
- Their **jurisdiction is specified unlike courts.** For example, **Consumer disputes redressal commission deals only with those disputes in which a consumer feels cheated by a service/product provider.**
- A presence of person from administrative rather than purely judicial background **make a body quasi-judicial.**

- 🙄 They deal basically **with disputes with the administration.**

Need

- As the welfare state has grown up in size and functions, more and more litigations are pending in the judiciary, making it over-burdened. It requires having an alternative justice system.
- Ordinary judicial process has become slow and costly.
- With scientific and economic development, laws have become more complex, demanding more technical knowledge about various specific sectors.
- Further, a bulk of decisions, which affect a private individual come from administrative agencies exercising adjudicatory powers- need faster resolution without going to ordinary judicial process

List of Quasi-Judicial Bodies in India are:

1. **National Green Tribunal (NGT)**
2. **Central Information Commission (CIC)**
3. **National Human Rights Commission (NHRC)**
4. **Tribunal- IT Appellate Tribunal, Intellectual Property Appellate Tribunal**
5. **Competition Commission of India (CCI)**

Note: A single body can be a statutory, regulatory, and quasi-judicial body

Difference between Judicial and Quasi-judicial Bodies

- Judicial decisions are **bound by precedent in common law**, whereas **quasi-judicial decisions are generally not.**
- Quasi-judicial **needn't adhere to strict judicial rules** (of procedure and evidence).
- Judicial decisions may create new laws, but quasi-judicial decisions are based on existing law.
- Quasi-judicial bodies can hold formal hearings only if they are mandated to do so as per their governing laws.

Shortcomings

- A person **can again appeal in the court against the decision of the Quasi Judicial body.** This fades away the advantage of cost and time provided by the Quasi Judicial body.
- Their recommendations are mostly advisory in nature like NHRC and CIC. Some **can't even award compensation or relief to the victims directly**, but can only recommend it.

- Many Quasi Judicial bodies are suffering with lack of strength. So proper and quick investigation is not being done.
- These are **not as independent as the judiciary**. Frequent interference from the executive is evident.

Other Bodies & Miscellaneous Points

- **10 Years of NGT**
 - Statutory and Quasi-judicial body under NGT Act 2010;
 - **Aim:** Reduce burden on SC/HC; Regional benches to speed up process
 - **Powers: Provide relief**, Regulate own procedure (not bound by Civil procedure); **Disposal in 6m; Appeal to SC in 90 days; Principle of NJ**
 - **Chairperson, Judicial Members and Expert Members** - Appointed by CG in consultation of CJI in case of CP and selection committee in case of 2 member categories
 - **Major Success:** Banned diesel vehicles in delhi, 5 cr fine on Art of living festival at Yamuna; Enforced polluter must pay principle
 - **Challenges:** Dismissal of orders based on procedural grounds; Vacancies (only 3 jud and 3 expert against 10 each); Issued generic order (look in matter and take action as per law); No jurisdiction on WPA 1972 and Forest Right Act 2006; Unable to enforce orders due to lack of inst mechanism (several landmark orders remain unenforced)
 - **Way Fwd:** Benches to be increased; Vacancies to be filled; Must be specific in dismissal of cases
- **Data Sovereignty**
 - Digital sovereignty is the **right of a state to govern its network to serve its national interests**, the most important of which are security, privacy and commerce
 - **Significance:** Safeguard oneself from **digital colonialism of GAFAs** (Google, Apple, Facebook and Amazon) and NATUs (Netflix, AirBnb, Tesla and Uber); Reduce technological dependence; Internal security; Protect data from being used to alter citizen behavior
 - **Challenges to Digital Sovereignty:** WTO's legal architecture was inked in the pre-internet era; Data localisation may lead to surveillance by state; Seen as trade barrier by several nations (may harm India IT exports)
 - **WF:** Engage internationally to boost partnerships and cooperation
- **Central Bureau of Investigation (CBI) - non-statutory (mention Delhi Special Police Establishment Act 1946)**
 - Asked in 2021
 - **Issues: Tranf of officers in middle of invest; Exempt from RTI; State issues (need permission; 9 states(WB/AP) withdrew general consent**

