

WHITE BOOK

**LET US  
DEMYSTIFY  
POLITY  
AND  
CONSTITUTION  
FOR CIVIL SERVICES  
EXAMINATION**



**IAS COACH ASHUTOSH  
SRIVASTAVA**



**IAS COACH MANISH  
SHUKLA**

**8009803231**

**9236569979**

# Saarthi

THE COACH

**1 : 1 MENTORSHIP BEYOND THE CLASSES**

- **Diagnosis** of candidates based on background, level of preparation and task completed.
- **Customized solution** based on Diagnosis.
- One to One **Mentorship.**
- Personalized **schedule planning.**
- Regular **Progress tracking.**
- **One to One classes** for Needed subjects along with online access of all the subjects.
- Topic wise **Notes Making sessions.**
- One Pager ( **1 Topic 1 page** ) Notes session.
- **PYQ** (Previous year questions) Drafting session.
- **Thematic charts** Making session.
- **Answer-writing** Guidance Program.
- **MOCK Test** with comprehensive & swift assessment & feedback.



**Ashutosh Srivastava**  
**(B.E. , MBA, Gold Medalist)**  
Mentored 250+ Successful Aspirants over a period of 12+ years for Civil Services & Judicial Services Exams at both the Centre and state levels.



**Manish Shukla**  
Mentored 100+ Successful Aspirants over a period of 9+ years for Civil Services Exams at both the Centre and state levels.

# HISTORICAL BACKGROUND

The Constitution of India stands as a powerful symbol of the nation's remarkable journey from colonial rule to a sovereign republic. As a living document, it underpins the democratic functioning of the world's largest democracy. Rooted in inclusivity, it has played a crucial role in uniting India's vast and diverse population under a shared national framework.

## EVOLUTION OF INDIAN CONSTITUTION: A JOURNEY THROUGH KEY ACTS AND REFORMS

### GOVERNMENT OF INDIA ACT, 1919/MONTAGU-CHELMSFORD REFORMS

- **Inclusion of Indians in the Executive Council:** The Act mandated the appointment of three Indian members to the Viceroy's Executive Council, marking a step forward in Indian representation at the highest administrative level.
- **Bicameral Central Legislature:** A dual-house legislative system was introduced at the centre, consisting of the **Legislative Assembly** (lower house) and the **Council of State** (upper house), laying the foundation for future parliamentary structure.
- **Provincial Decentralization:** The Act distinguished between **central** and **provincial subjects**, thus reducing the control of the Centre over provincial matters and promoting administrative autonomy.
- **Introduction of Dyarchy in Provinces:** The provincial subjects were split into two categories:
  - **Transferred subjects:** Administered by Indian ministers answerable to the legislatures.
  - **Reserved subjects:** Retained under the control of British officials.
- **Public Service Commission Formation:** It proposed the creation of a **Public Service Commission**, which led to the establishment of the **Central Public Service Commission** in 1926 — the forerunner of today's UPSC.

### ▪ **Significance of the Act**

- **Enhanced Indian Involvement:** By including Indians in governance and administration, the Act marked a move towards limited self-rule.
- **Legislative Evolution:** The introduction of a bicameral legislature and wider voting rights helped increase political participation and awareness among Indians.
- **Foundation for Provincial Self-Governance:** Though limited, the **dyarchy system** allowed Indian leaders some control over provincial matters, creating administrative experience and preparing the ground for future reforms.

### GOVERNMENT OF INDIA ACT OF 1935

- **Government of India Act, 1935 – A Major Constitutional Milestone**
  - The **Government of India Act, 1935** marked a turning **point** in India's constitutional development. It was largely shaped by critical political events of the time, such as the **Simon Commission**, the **Nehru Report**, and outcomes from the **Round Table Conferences**. Though never fully implemented in its intended federal form, it laid the groundwork for India's future governance structure.

### MAJOR PROVISIONS OF THE ACT

- **Proposed All-India Federation:** The Act proposed a federal structure, bringing together British Indian provinces and princely states under one union. However, since most princely states refused to join, the federation never came into existence.
- **Provincial Autonomy (1937–1939):** For the first time, provinces were granted partial autonomy, with elected Indian ministers given authority over provincial subjects. Governors still retained discretionary powers.

- **Dyarchy at the Centre (Not Operationalised):**  
A dual scheme of governance was suggested at the central level, dividing subjects into **reserved** (under British control) and **transferred** (under Indian ministers), but it was never brought into force.
- **Limited Bicameralism:**  
A two-house legislative system was introduced in select provinces. However, this arrangement was not universal and had functional limitations.
- **Widened Electoral Base:**  
Franchise was expanded, allowing nearly **10% of the Indian population** to vote. Separate electorates were continued for religious and minority communities.
- **Administrative Restructuring:**
  - The **Council of India** (based in London) was abolished.
  - Instead, advisors were appointed to assist the **Secretary of State for India**.
  - **Public Service Commissions** were established at the **federal, provincial, and joint** levels for recruitment and administrative services.
- **Establishment of Federal Court (1937):**  
A **Federal Court** was set up to handle constitutional disputes and appeals, forming the judicial backbone for central governance.
- **Historical Significance**
  - **Most Comprehensive Pre-Independence Law:**  
It was the **largest and most detailed legislation** passed by the British Parliament concerning India.
  - **Training Ground for Indian Leadership:**  
The Act allowed Indian leaders to gain firsthand experience in legislative and executive functions, which helped prepare them for future self-rule.
  - **A Step Toward Responsible Government:**  
Although the Act retained many imperial controls, it was a step forward in the evolution of a fully accountable and democratic system in India.

## Key Provisions of the Indian Independence Act, 1947

- **Termination of British Sovereignty:**  
The Act marked the formal end of British rule in India by recognizing **India and Pakistan as two separate dominions**, effective from **15th August 1947**.
- **Empowerment of Constituent Assemblies:**  
The respective **Constituent Assemblies of India and Pakistan** were granted full authority to **draft and adopt their own constitutions**, functioning as sovereign law-making bodies.
- **Legalization of Partition:**  
The legislation provided the legal framework for the **division of British India into two independent nations** — India and Pakistan — and the subsequent division of territories, assets, and administrative machinery.
- **Historical Importance of the Indian Independence Act, 1947**

The Indian Independence Act of 1947 **formally concluded British colonial rule** in the Indian subcontinent. It led to the **birth of two sovereign dominions** — **India and Pakistan**, each granted the authority to govern itself and draft its own Constitution.

- **Conceptual Highlights (NOTE:- Insight)**
  - **Dual Governance:**  
A recurring theme in earlier acts, the colonial setup often separated powers between British officials and Indian representatives without real autonomy.
  - **Centralized Authority:**  
Most legislative and administrative control remained concentrated in British hands until the transfer of power in 1947.
  - **Restricted Self-Rule:**  
Previous reforms offered only **limited administrative control** to Indians under British oversight.
  - **Indirect Political Participation:**  
Representation was often through **nominated or limited electorates**, restricting true democratic involvement.

## INDIAN INDEPENDENCE ACT OF 1947

- **Communal Electorates:** Earlier acts institutionalized **separate electorates** for religious and minority communities, deepening social divides.
- **Proposal of All-India Federation:** The 1935 Act proposed a federal union of provinces and princely states, though it was never realized.
- **Dyarchy System:** Introduced at the provincial (1919) and proposed at the central level (1935), this dual system split subjects into "reserved" and "transferred" categories.
- **Provincial Autonomy:** The 1935 Act offered **greater legislative powers to provinces**, a step towards decentralization, later leading to full autonomy post-1947.

## CONSTITUENT ASSEMBLY OF INDIA

- Formation and Role of the Constituent Assembly
  - The idea of forming a Constituent Assembly was formally endorsed by the **Cabinet Mission Plan of 1946**, which recommended setting up a body to draft the Constitution of free India.
  - The Assembly was composed of members **indirectly elected** from British Indian provinces and **nominated representatives** from princely states. Though not based on universal adult suffrage, it reflected broad regional and communal representation.
  - Over the course of **nearly three years**, the Assembly engaged in detailed discussions and debates to craft the constitutional framework of a sovereign India. Eminent leaders like **Dr. B.R. Ambedkar** were instrumental in drafting various provisions and ensuring the document's democratic character.
  - The Constitution was **adopted on 26th November 1949**, and came into **force on 26th January 1950**, marking the formal transition of India into a **sovereign, democratic republic**.

### Criticism of the Constituent Assembly

- Despite its historic significance, the **Constituent Assembly of India** has been the subject of several criticisms:
  - **Limited Representativeness:** Some critics argue that the Assembly did not reflect the will of the general population, as its members were **not elected through universal adult franchise**.
  - **Lack of Full Sovereignty:** Since the Assembly was established under the framework proposed by the **British Cabinet Mission**, some believed it lacked complete autonomy in its functioning and origin.
  - **Dominance of Legal Professionals:** A large portion of the members were from **legal backgrounds**, which, according to some, contributed to the Constitution's **complex and technical language**.
  - **Majoritarian Concerns:** Figures like **Winston Churchill** criticized the Assembly for being **dominated by the Hindu majority**, claiming it did not adequately represent the interests of minority communities.
  - **Lengthy Drafting Period:** The Constitution took **almost three years to be finalized**, leading to concerns about the **efficiency and pace** of the process.
  - **Balanced Perspective:** While these critiques exist, it's important to note that the **diverse composition** of the Assembly — including representatives from various **regions, ideologies, castes, and communities** — ensured a wide range of perspectives. The **extended deliberations** were essential to **reconcile differing viewpoints** and lay a **strong, inclusive foundation** for the Indian Republic.

## CRITIQUES OF THE INDIAN CONSTITUTION

### Carbon Copy of the 1935 Act:

- **Criticism – Overdependence on 1935 Act:** Renowned British constitutional scholar **Sir Ivor Jennings** criticized the Indian Constitution for being overly reliant on the **Government of India Act, 1935**, claiming that a substantial portion of its content was directly adopted without significant innovation.

- **Rebuttal – Vision Beyond Colonial Framework:** **Dr. B.R. Ambedkar** strongly refuted this viewpoint, emphasizing that while some **administrative and structural provisions** were retained for continuity, the Indian Constitution represented the **aspirations of a free nation**. It introduced transformative elements like **Fundamental Rights, Directive Principles of State Policy, Universal Adult Franchise, and a secular, sovereign democratic framework** — features entirely absent in the colonial legislation.

- While the Constitution may appear complex, its **precise legal terminology** is necessary to ensure **clarity, consistency, and protection against ambiguity** in interpretation. In a country as **diverse and legally intricate** as India, such exactness helps prevent loopholes and misuse. Though meant to empower the people, the Constitution must also serve as a **robust legal foundation** for governance and justice.

### Bag of Borrowings:

- Some critics describe the Indian Constitution as a **"collection of borrowed elements"** from various international constitutions, suggesting that it lacks **distinctive or original features**. This view portrays the document as **more derivative than innovative**, raising concerns over its **indigenous character and creative independence**.
- **Counterargument:** While it is true that the Indian Constitution drew inspiration from several global sources, the framers carefully **tailored each borrowed idea** to align with **India's distinct historical, social, and political realities**. Rather than blind imitation, it reflected **deliberate and contextual innovation**.
- As **Dr. B.R. Ambedkar** clarified, this criticism often stems from a **superficial reading** of the text. The Constitution goes far beyond imitation — it is a **deeply original document in spirit**, blending global best practices with **India's own democratic aspirations and diversity-driven challenges**.

### Excessive Length and Detail:

- **Critique – Excessive Length and Complexity-** Some critics contend that the **Indian Constitution is unusually long and overly detailed**, making it **complex and difficult to navigate**. They argue that such volume can hinder quick reference and flexibility in interpretation.
- **Counterpoint – Comprehensive by Design-** The **detailed nature** of the Constitution is a **deliberate choice** by its framers to ensure **clarity, inclusiveness, and effective governance** in a socially and culturally diverse nation. Its **extensive scope** helps cover a wide range of issues — from **fundamental rights to administrative procedures** — thereby reducing **ambiguity and legal loopholes**. Rather than being a flaw, its length reflects the **careful thought and inclusivity** that went into its making.

### Federalism with a Unitarian Bias:

- **Critique – Tilted Towards Centralization-** Many scholars have criticized the **Indian federal structure** for being **more unitary than federal** in nature. They argue that the Constitution grants **greater powers to the Centre**, especially during emergencies, which can **dilute the autonomy** of states and undermine the **true spirit of federalism**.
- **Counterpoint – Federal Flexibility for National Cohesion-** Supporters of the current model emphasize that in a **diverse and populous country** like India, a **strong central authority** is crucial to ensure **political stability, economic coordination, and national security**. The Constitution also incorporates **features of cooperative federalism**, such as inter-

### Lawyer's Paradise:

- **Critique – “A Lawyer’s Paradise”**
  - British constitutional expert **Sir Ivor Jennings** criticized the **language and structure** of the Indian Constitution, describing it as overly **technical and legalistic**. He referred to it as a **"lawyer's paradise"**, suggesting that its complexity makes it inaccessible to the general public and overly dependent on legal interpretation.
- **Counterpoint – Legal Precision Ensures Clarity and Safeguards**

**governmental councils, financial devolution, and constitutional safeguards** for state powers, promoting **collaborative governance** rather than rigid separation.

### Too Rigid or Too Flexible:

- **Critique** – Perceived Rigidity in Constitutional Amendment
- Some critics argue that the **Indian Constitution is relatively rigid**, especially when compared to more easily amendable constitutions. They contend that the **complex and multi-tiered amendment process** can slow down reforms and limit the Constitution’s ability to **respond swiftly to evolving socio-economic challenges**.

### Counterpoint – Balanced Flexibility for Stability and Change

- Supporters highlight that the **Constitution has a built-in flexibility**, allowing for amendments under **Article 368**, which provides **different procedures for different types of changes**. This ensures that **core values are preserved**, while **necessary reforms can be introduced**. The amendment mechanism maintains a **balance between constitutional stability and the need for adaptation** in a changing democracy.

**KEY WORDS:** Carbon copy, Lawyer's Paradise, Bag of borrowings, Excessive length

### Recent Developments

- **106th Constitutional Amendment Act, 2023** – Women’s Reservation

- **Purpose:**  
Introduced **33% reservation** for women in the **Lok Sabha, State Legislative Assemblies, and the Delhi Legislative Assembly**.
  - **Coverage:**  
The reservation applies to **one-third of total seats**, including seats reserved for **Scheduled Castes (SCs) and Scheduled Tribes (STs)**.
  - **Implementation:**  
To be enforced **after the next delimitation**, expected post-Census 2026.
- **105th Constitutional Amendment Act, 2021 – State Power on SEBCs**
    - **Purpose:**  
Restored the **authority of State Governments to recognize and maintain their own list of Socially and Educationally Backward Classes (SEBCs)** for the purpose of affirmative action.
    - **Context:**  
Enacted after a **Supreme Court ruling in the Maratha Reservation case (2021)** which limited state powers on SEBC identification.
    - **Effect:**  
Reaffirmed the role of states in **identifying backward classes**, ensuring that **central and state lists remain separate and valid** for reservation and welfare policies.

# CONSTITUTIONAL AMENDMENTS IN INDIA

- The **Indian Constitution** stands as a powerful symbol of the country's transformation from **colonial rule to an independent republic**. It reflects the collective will and aspirations of a diverse population committed to democratic governance.
- **Pt. Jawaharlal Nehru** once emphasized that while a constitution must be strong and enduring, it should also have the **flexibility** to evolve with the nation's **progress and changing realities**.
- True to this vision, the Indian Constitution includes provisions for **amendments**, allowing it to stay relevant in a dynamic socio-political environment. This adaptability ensures that the Constitution remains responsive to new challenges and opportunities without losing its foundational values.
- As of now, the Constitution has been **amended 106 times**, with the **procedure for amendment outlined in Article 368**. This article provides a structured mechanism for making changes, balancing **constitutional stability with necessary evolution**.

## TYPES OF AMENDMENTS

The Indian Constitution can be amended in 3 ways.

### 1. Amendment by Simple Majority of Parliament

(Outside the scope of Article 368)

These are amendments that do **not require special majority or state ratification** and are passed like ordinary laws.

**Examples include:**

- Formation or admission of new states
- Changes in the **boundaries, names, or areas** of existing states
- Creation or abolition of **State Legislative Councils** (Article 169)
- Delimitation of constituencies
- Salaries and privileges of public officials

### 2. Amendment by Special Majority of Parliament

(Under Article 368 – Clause 2)

Requires a **special majority**:

- A majority of the total membership of each House
- Plus two-thirds majority of members present and voting

**Covers changes to:**

- **Fundamental Rights (Part III)**
- **Directive Principles of State Policy (Part IV)**
- Any other provisions **not requiring state ratification**

### 3. Amendment by Special Majority + Ratification by Half the States

(Under Article 368 – Clause 2, Proviso)

In addition to a special majority in Parliament, **ratification by at least half of the state legislatures** is required.

**Applicable to amendments involving:**

- **Election process of the President**
- **Powers and roles of the Union and State Executives**
- **Judiciary (Supreme Court and High Courts)**
- **Distribution of legislative powers (Union, State, Concurrent Lists)**
- **Representation of states in Parliament**
- **Procedure for amending the Constitution itself**

## INFORMAL AMENDMENTS

## Judicial Interpretation

- The **Supreme Court of India** plays a pivotal role in giving meaning to constitutional provisions. Through landmark judgments, it can **redefine how the Constitution is understood and applied**, even without altering the actual text.
- A prime example is the **Basic Structure Doctrine**, laid down in the **Kesavananda Bharati case (1973)**. It established that **certain fundamental features of the Constitution cannot be amended**, thereby placing limits on the amending power of Parliament — a principle not explicitly mentioned in the Constitution but created through interpretation.

## Constitutional Conventions

- These are **non-statutory practices** that have evolved over time and are followed due to **political tradition or historical precedent**. Though not legally binding, they ensure smooth functioning of the democratic process.
- A key example is the **practice of appointing the Prime Minister** from the party or coalition with a **majority in the Lok Sabha**, even though this is **not mandated explicitly** in the Constitution.
- Such conventions are **flexible and adaptive**, evolving with political realities, and contributing to the **unwritten aspects of constitutional governance**.

**NOTE:-** Judicial interpretation, conventions, basic structure

## THE NECESSITY OF CONSTITUTIONAL AMENDMENTS

- The **Indian Constitution** is designed to be a living document, capable of evolving with the **changing needs of society, governance, and technology**. Constitutional amendments serve as instruments to **update, refine, and reinforce** the nation's legal and institutional framework.

## Promoting Social Justice and Equity

As society progresses, there is a continuous need to **safeguard vulnerable communities** and promote inclusion.

- **Example:**  
The **106th Constitutional Amendment (2023)** introduced **33% reservation for women in the Lok Sabha, State Legislative Assemblies, and the Delhi Assembly**, marking a historic step towards gender justice.

## Enhancing Democratic Institutions

Amendments are often required to **correct flaws** in the political process and **stabilize democratic functioning**.

- **Example:**  
The **52nd Amendment (1985)** brought in the **Anti-Defection Law**, aiming to **curb political opportunism** and strengthen party discipline by disqualifying defecting legislators.

## 3. Responding to Technological Change

New and emerging technologies raise **complex legal and ethical questions**, requiring constitutional or legislative response.

- **Example:**  
With growing concerns about **digital privacy and surveillance**, discussions are underway to **explicitly recognize the Right to Privacy** in the digital age, especially after the **Puttaswamy judgment (2017)**.

## Realizing Grassroots Governance

Amendments can help **fulfill long-standing social and constitutional goals** such as **decentralization and participatory democracy**.

- **Example:**  
The **73rd and 74th Amendments (1992)** institutionalized **Panchayati Raj and Urban**

**Local Bodies**, translating Mahatma Gandhi's vision of 'Gram Swaraj' into constitutional reality.

### Facilitating Economic and Structural Reforms

To enable economic planning and national integration, structural amendments are sometimes required.

- **Example 1:** The **44th Amendment (1978)** moved the **Right to Property** from Fundamental Rights to a legal right, making way for **land reforms and socio-economic equality**.
- **Example 2:** The **101st Amendment (2016)** implemented **GST (Goods and Services Tax)**, creating a **single national market** and streamlining India's indirect taxation system.

### ISSUES WITH CONSTITUTIONAL AMENDMENTS

- India's Constitution has been amended frequently compared to other democracies, raising questions about stability and respect for the original document. Some argue the frequent amendments indicate a lack of foresight in the initial drafting or a tendency for political expediency over long-term vision.
- Excessive amendments might alter the balance of power between various institutions, such as the Parliament and Judiciary, Centre and States, leading to instability.
- The current process relies on Parliament and state legislatures, with limited public involvement. Recent amendments haven't had extensive public discussions or consultations with stakeholders, raising concerns about democratic legitimacy.
- A strong central government with a large majority could push through amendments without considering minority viewpoints. Concerns exist that amendments impacting the federal balance or fundamental rights might be passed based on the ruling party's majority alone.
- There's ongoing debate about the extent to which Parliament can amend the Constitution's "basic structure" (unchangeable principles). Landmark

Supreme Court judgements established the "basic structure" doctrine, but its precise scope remains debated, creating uncertainty around the amendment process.

### CRITICISM OF THE AMENDMENT PROCEDURE

- Critics argue that the power to amend the Constitution rests heavily with Parliament, potentially neglecting the federal balance by giving less weight to the voice of individual states.
- The current amendment process lacks provisions for direct public involvement, such as referendums. This could enhance the democratic legitimacy of amendments by incorporating public opinion.
- Unlike some nations, India doesn't have a designated body like a Constitutional Convention specifically tasked with proposing amendments. This could potentially streamline the process and ensure a more comprehensive review.
- Except for the special majority requirement, the amendment process is quite similar to passing ordinary bills. Critics argue for a more rigorous procedure for fundamental changes.
- The Constitution doesn't specify a time frame for state legislatures to ratify amendments, leading to potential delays and uncertainties.
- There's no clarity on whether states can withdraw their approval after initially ratifying an amendment.
- The process lacks a mechanism for resolving deadlocks if both houses of Parliament disagree on an amendment.

### WAY FORWARD

#### Creation of a Dedicated Review Body

- A **permanent constitutional review committee** or advisory council could be set up to **evaluate proposed amendments** in detail. This body would assess their **necessity, implications, and alignment with the Constitution's core values**, thus avoiding impulsive or politically motivated changes.

#### Formation of a Joint Parliamentary Committee (JPC)

- Introducing a **Joint Parliamentary Committee** with representation from both the **Lok Sabha and Rajya Sabha**, including all major political parties, would enable **in-depth examination and bipartisan**

dialogue on constitutional proposals. This fosters wider political consensus and discourages unilateralism.

### Mechanism for Resolving Parliamentary Deadlocks

- To address potential disagreements between the two Houses, a **structured deadlock resolution process** could be instituted. This might include:
  - **Joint sitting models**
  - **Mediation panels**
  - **Temporary supermajority thresholds** for contentious amendments

Such mechanisms would ensure **institutional balance and smoother functioning** of the amendment process.

### Strengthening the Role of State Legislatures

- Greater **consultation and involvement of state assemblies** can reinforce India's **federal character**. Encouraging their **active participation** — beyond mere ratification — would enhance the **representativeness and legitimacy** of amendments affecting Centre–State relations.

### Clarifying Procedural Guidelines

- Codifying **detailed and transparent procedures** for proposing, debating, and passing constitutional amendments would minimize **ambiguities and procedural misuse**, thereby enhancing **accountability**.

### Imposing Time Limits on State Ratification

- To avoid indefinite delays, a **fixed time frame** (e.g., 6 months or 1 year) could be introduced for **state legislatures to respond** to proposed amendments that require their ratification. This would bring **certainty and discipline** to the process.

## 106<sup>TH</sup> CONSTITUTIONAL AMENDMENT, 2023

### Key Provisions:

- The Act mandates **33% reservation for women** in the **Lok Sabha, State Legislative**

**Assemblies, and the Delhi Legislative Assembly.**

- This **one-third reservation** applies to both **general and reserved categories**, i.e., it includes seats reserved for **Scheduled Castes (SCs) and Scheduled Tribes (STs)**.
- The reservation will be **implemented post-delimitation**, expected after the **Census 2026**.

### Significance:

- Aims to **enhance women's participation** in formal political spaces and **advance gender equity** in governance.
- Expected to improve **representation of women's concerns** in legislative discussions and policymaking.
- Can serve as a **motivational force**, encouraging more women to pursue careers in public service and politics.

### Key Criticisms & Concerns:

- **Rotational Reservation Issue:** The **rotation of reserved constituencies** in each election may disrupt continuity and make it difficult for women leaders to **build long-term political careers**.
- **Overlap with Existing SC/ST Reservations:** Some critics argue that **reserving a portion of already-reserved SC/ST seats for women** may reduce the number of seats available for male candidates from these communities, potentially **altering internal representation dynamics**.
- **Quota Within Quota Debate:** Implementation of **sub-reservations for SC/ST women** raises questions of **operational complexity** and **inclusiveness** for other backward groups.
- **Numbers vs. Merit Debate:** Critics argue that **mere reservation may not ensure quality leadership**, and that capability, training, and institutional support are equally important.
- The 106th Amendment is a **landmark step toward empowering women** in India's political system. While it marks progress on the path to equality, experts emphasize that **true gender**

justice will require broader structural reforms, including capacity-building, political support, and attitudinal change in society.

## **BASIC STRUCTURE OF THE CONSTITUTION**

The **Basic Structure Doctrine** is a judicial innovation developed by the **Supreme Court of India**, asserting that certain **core elements of the Constitution** are so fundamental that they **cannot be altered or destroyed**, even by a constitutional amendment under **Article 368**.

### **Origin and Evolution:**

- This concept is **not explicitly stated** in the Constitution. Instead, it **developed over time through judicial interpretation**.
- It was formally articulated in the **landmark judgment of Kesavananda Bharati v. State of Kerala (1973)**, where the Supreme Court ruled that while Parliament has wide powers to amend the Constitution, it **cannot alter its "basic structure."**
- Earlier cases like **Golaknath (1967)** laid the foundation for this evolution by limiting Parliament's amending powers.

### **KESAVANANDA BHARATI JUDGEMENT**

In the historic **Kesavananda Bharati v. State of Kerala (1973)** case, the Supreme Court of India ruled that **Parliament cannot alter the "basic structure"** of the Constitution, even while exercising its amending powers under **Article 368**.

- The case was heard by a **13-judge Constitutional Bench**, the **largest bench ever constituted** in the history of the Supreme Court.
- The judgment struck a crucial balance by upholding Parliament's right to amend the Constitution, while simultaneously asserting that **core constitutional principles** such as **democracy, secularism, federalism, and judicial review** must remain intact.

**Kesavananda Bharati**, the seer of Edneer Mutt in Kerala and the petitioner in the case, became a pivotal figure in Indian constitutional history. He passed away in 2020, leaving behind a legacy tied to the **doctrine that protects the Constitution's foundational ethos**.

### **ELEMENTS OF BASIC STRUCTURE**

Over the years, the Supreme Court has through various judgments recognized many features as part of the Constitution's basic structure.

#### **Some of the examples include:**

- The Supremacy of the Constitution;
- Secular and federal character of the Constitution;
- The Sovereignty of India;
- The Unity and Integrity of the Nation
- Judicial review;
- Balance between Fundamental Rights and Directive Principle etc

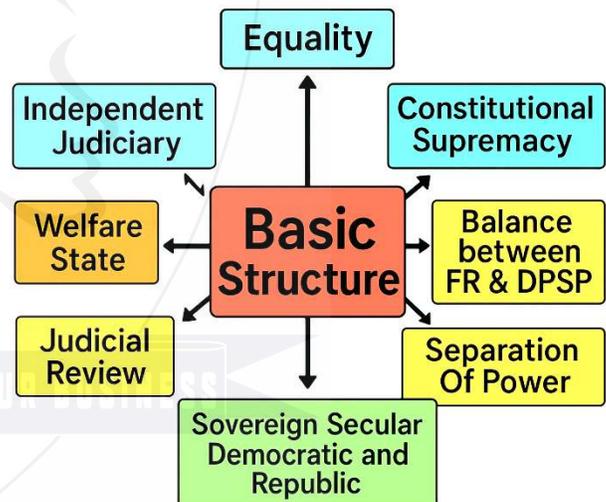


Fig: Basic Structure of the Constitution of India

### **SIGNIFICANCE OF BASIC STRUCTURE**

- The basic structure doctrine safeguards the fundamental principles envisioned by the Constitution's framers, ensuring India remains a democratic, socialist, secular, and republic nation.
- It prevents the Parliament from making radical changes that could destroy the Constitution's essence.

For example, Parliament can't abolish judicial review power or introduce a theocratic state.

- By placing limitations on amendments, the basic structure doctrine upholds the Constitution as the supreme law, preventing its erosion by a temporary majority in Parliament.
- It empowers the judiciary to review amendments and strike down those violating the basic structure. This was crucial in the Kesavananda Bharati case (1973) where the Supreme Court protected fundamental rights from absolute parliamentary control.
- Basic structure doctrine ensures independence of judiciary by preventing encroachment of Parliament in the judicial sphere.
- For instance, the 99th Constitutional Amendment Act 2014, which proposed the National Judicial Appointments Commission (NJAC), was struck down due to violating the basic structure of the Constitution.

### CRITICISM OF BASIC STRUCTURE

- Critics argue it grants excessive power to the judiciary, allowing them to subjectively define the "basic structure" and potentially overstep their role.
- The concept of "basic structure" is itself unclear, lacking clear definition and potentially leading to inconsistent application.
- The doctrine weakens the principle of Parliament's supremacy in law-making.
- Critics argue it restricts Parliament's power to amend the Constitution, even for potentially beneficial changes.
- The doctrine isn't explicitly mentioned in the Constitution, raising questions about its legal legitimacy.

These issues surrounding the doctrine's subjectivity must be addressed, potentially through codification of basic features by judicial and parliamentary cooperation to ensure that doctrine truly acts as a safeguard against majoritarianism and authoritarianism, thus protecting the constitution and democracy in India.

## **I.R. COELHO CASE: STRENGTHENING THE BASIC STRUCTURE DOCTRINE**

The I.R. Coelho case is a landmark judgment that further cemented the concept of the Basic Structure doctrine in Indian constitutional law. The main aspects of the case are as follows:

**Ninth Schedule Limited:** The Court ruled that laws added to the Ninth Schedule (offering extra protection from challenge) after 1973 can be struck down if they violate the Constitution's basic structure.

**Judicial Review Upheld:** The case reaffirmed judicial review as a fundamental aspect of the basic structure, ensuring all laws, even those in the Ninth Schedule, can be reviewed for constitutionality.

**Safeguard Against Overreach:** This judgment solidified the principle that no power, including amendment power, is above judicial review. This protects against arbitrary actions by the legislature or executive.

**Preserving Core Values:** The Court reiterated that amendments breaching the Constitution's core principles would be void, safeguarding its essential values.

**KEY WORDS:** Constitutional Machinery; Constitutionality; Majoritarianism; Authoritarianism; Third Chamber; Judicial overreach; Majoritarianism; Authoritarianism.

### Previous Year Questions

Q. "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?- 2019

Q. What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?- 2016

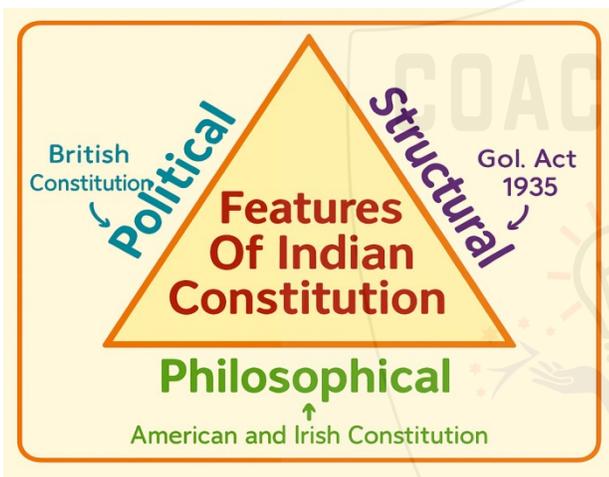
## SIGNIFICANT PROVISIONS IN THE INDIAN CONSTITUTION

India, or Bharat, is a sovereign, socialist, secular, and democratic republic that follows a parliamentary form of governance. It comprises a Union of States functioning under the framework of the Indian Constitution.

**Key Features of the Indian Constitution:** These include the essential pillars of the Constitution such as the Preamble, Fundamental Rights, Fundamental Duties, Directive Principles of State Policy, Universal Adult Franchise, Single Citizenship, and the Doctrine of Separation of Powers.

### SIGNIFICANT PROVISIONS: AN IN-DEPTH ANALYSIS

#### ▪ Preamble



#### **Features of Indian Constitution**

- The term refers to the introductory part of a document. India's Constitution's Preamble summarizes its core principles.
- Based on Pandit Nehru's "Objectives Resolution," the Preamble outlines the Constitution's fundamental values political, moral, and religious. It captures the vision of the Constituent Assembly and the aspirations of India's founders.
- It has come under scrutiny from various quarters, with debates on whether the terms 'socialist' and 'secular' should be removed or retained.
- **Universal Adult Franchise:**
  - It embodies the democratic principle of "one person, one vote," ensuring political equality.
- **Single Citizenship:**
  - This unique feature grants all citizens the same rights and privileges regardless of their state of residence.

- In the context of increasing interstate migration and discussions surrounding the National Register of Citizens (NRC), this provision holds significant relevance.

#### ▪ **Fundamental Rights:**

- The Indian Constitution enshrines a set of fundamental rights, legally enforceable by courts, covering civil liberties, political rights, and fair trial procedures.
- These rights act as a shield against arbitrary state power, safeguarding citizens from government overreach.
- The recent Citizenship Amendment Act (CAA) sparked debates about how it might affect the right to equality and the principle of secularism.

#### ▪ **Directive Principles of State Policy:**

- These are non-justiciable guidelines for the government, aiming to establish a just and equitable society.
- While not directly enforceable in court, they guide the state in formulating laws that promote social welfare.
- The ongoing discourse around implementing a Uniform Civil Code, envisioned in Article 44, exemplifies the dynamic interpretation of Directive Principles.

#### **Fundamental Duties:**

- Fundamental Duties, a concept inspired by the USSR, are an essential aspect of Indian citizenship.
- They emphasize responsibilities alongside rights, promoting civic morality and social cohesion. However, their non-justiciable nature means enforcement relies on individual conscience.
- Discussions about mandatory voting often highlight the importance of citizens fulfilling their fundamental duties.

#### **Separation of Powers**

- The separation of powers is a fundamental principle that divides government authority among the legislature, executive, and judiciary.
- This distribution of power ensures that no single branch becomes too powerful and prevents abuse of authority.
- The judiciary's role as the guardian of the Constitution, particularly during debates about judicial activism, exemplifies the significance of this principle.

## PREAMBLE

The Constitution's Preamble outlines its core principles and purpose. Drafted by Vengalil Krishnan Krishna Menon, it establishes the "We the People" source of authority and defines India's character along with the Constitution's objectives.

### Removal of Socialist and Secular Words from Preamble

- Context: The Supreme Court was hearing a pair of petitions that sought deletion of words "secular" and "socialist" from the Preamble.
- Recently, the Supreme Court (SC) agreed to examine whether the words "socialist" and "secular" could have been inserted in the Preamble of the Indian Constitution in 1976 even though the date of the adoption of the Constitution remained unaltered i.e. November 26, 1949.

### Arguments in Favor of Retaining "Socialist" and "Secular" in the Preamble:

- Reinforces Core Values: These words explicitly emphasize the commitment to social and economic justice, reducing inequality, and protecting the rights of all citizens.
- Continuity and Stability: Removing them could be seen as tampering with the Constitution's original intent and potentially creating uncertainty.
- Addresses Historical Context: These words were added post-independence to address concerns about minorities and economic disparity, reflecting India's unique situation.
- Flexibility in Interpretation: The terms "socialist" and "secular" don't prescribe a rigid economic model or religious policy. They allow for adaptation and interpretation based on evolving needs.
- Secular Identity: Removing "secular" might raise concerns about India's commitment to religious tolerance and equal treatment for all faiths. This could embolden religious nationalism and create anxieties among minority communities.

### Arguments Against Retaining "Socialist" and "Secular" in the Preamble:

- Historical Imposition: Critics argue these words were inserted during the Emergency (1975), a period of authoritarian rule, and don't reflect the original democratic spirit.
- Redundancy: The core principles of justice, equality, and liberty are already enshrined in the Preamble. These words might be seen as unnecessary repetition.
- Economic Model Debate: The term "socialist" could be seen as outdated or hindering economic growth in a globalized world.

- Secular Misinterpretation: Some argue it creates a false sense of secularism, while India is inherently a multi-religious society.
- Political Agenda: The push for removal might be driven by a political agenda to change the character of the Indian state.

Secular nature of the constitution and Establishment of the Egalitarian social Order through the rule of law, are part of the Basic Structure of the Indian Constitution. Hence, as stated in the Kesavananda Bharti Case, the Parliament can amend any part of the constitution including the Preamble without compromising the basic structure and constitutional values.

## SIGNIFICANCE OF PREAMBLE

- Source of Authority: It declares the source of the Constitution's authority as "We, the People of India," establishing a democratic foundation.
- Defines the Nation: It defines India as a Sovereign, Socialist, Secular, Democratic Republic, outlining the core principles of the nation.
- Sets Goals: It lays out the fundamental goals of securing justice (social, economic, and political), liberty, and equality for all citizens.
- Guiding Light for Interpretation: Courts use the Preamble to interpret the Constitution's provisions during legal disputes.
- Reflection of Ideals: It reflects the idealistic vision of the Constitution's framers for a just and equitable society.

## AMENDABILITY OF PREAMBLE

- The question of whether the Preamble can be amended has been discussed in several landmark cases.
- Limited Amendment View (Berubari Case, 1960): Initially, the Supreme Court, in the Berubari Case (1960), held that the Preamble wasn't part of the Constitution and therefore couldn't be amended.
- Preamble as Amendable (Kesavananda Bharati Case, 1973): However, a landmark shift occurred in the Kesavananda Bharati Case (1973). The Court reversed its position, declaring the Preamble to be part of the Constitution and amendable, provided the amendment doesn't violate the "basic structure" of the Constitution.
- Recent Proposals: In light of this, recent proposals have included one to replace the word "socialist" with "equitable" in the Preamble, sparking debate about the potential exercise of this amendability.
- The Preamble embodies the values that guided India's freedom struggle and serves as the foundation for the country's democratic structure. These values are crucial to the nation's progress and the pursuit of justice, liberty, equality, and fraternity.

- **NOTE:-** Source of authority, Identity card, Guiding Light, Reflection of Ideals.

grounded in the Republican values of **liberty, equality, and fraternity.**

**Differences between Indian and French Secularism**

- **Freedom of Religion:-** Individuals are free to **profess, practice, and propagate** their religion without facing discrimination.
- **Legal Equality:-** The law **does not differentiate** between citizens on the basis of religion.
- **Government Impartiality:-** The **state maintains neutrality** and does not promote or endorse any particular religion.
- **Protection of Minorities:-** Both countries are committed to **safeguarding the rights and identities** of religious minorities.
- **Freedom of Thought and Expression:-** People are allowed to **discuss, critique, or question** religious doctrines, reflecting a commitment to open dialogue.

**ISSUES IN NEWS**

**Laicite: French Principle of Secularism**

- **Background:**
  - France recently prohibited the use of abayas (long robes resembling burqas) in public schools, justifying the move under its core secular principle known as **Laïcité**.
  - In the French context, secularism is interpreted as the **freedom to grow independently through education**, where religious identity should not be visually expressed in public educational spaces.
- **Understanding Laïcité:**
  - Originating in the **19th century**, **Laïcité** represents France's model of a **strict division between religion and the state**.
  - It is embedded in the **French Constitution** and supports a **religion-neutral public sphere**,

**DIFFERENCES BETWEEN INDIAN AND FRENCH SECULARISM**

Basis	India	France
<b>Core Principle</b>	"Sarva Dharma Samabhava" - equal respect for all religions. This fosters a more inclusive approach to religion in public life.	Laïcité - emphasizes a strict separation of religion from the state and public sphere.
<b>Religious Expression</b>	Generally, permits religious symbols in public spaces. Sikhs, for instance, are exempt from wearing helmets while riding two-wheelers due to their turbans.	Has stricter policies regarding religious symbols, such as banning conspicuous ones in public schools, sparking controversy
<b>State Funding</b>	Allows state funding for religious institutions	Prohibits state funding for religious institutions as part of Laïcité
<b>Personal Laws</b>	Recognizes separate personal laws for different religious communities governing marriage, divorce, and inheritance (e.g., Hindu Succession Act).	Maintains a unified civil code that applies to all citizens regardless of religion
<b>State Involvement</b>	The state frequently interacts with and supports various religious communities and their institutions.	Public institutions must remain entirely secular, avoiding any religious endorsement or involvement.

Secularism in every country is shaped by its specific historical, cultural, and social background, making it a context-dependent concept rather than a universal model. France, while adhering to its own legal and historical traditions, can selectively draw from aspects of Indian secularism that align with its national ethos and policy goals.

**Previous Year Questions**

- Q. Explain the constitutional perspectives of Gender Justice with the help of relevant Constitutional Provisions and case laws.-2023
- Q. What can France learn from the Indian Constitution's approach to secularism?- 2019
- Q. Discuss each adjective attached to the word 'Republic' in the 'Preamble'. Are they defensible in the present circumstances?- 2016

## FUNDAMENTAL RIGHTS (PART III, ARTICLE 12-35)

**Fundamental Rights**, detailed in **Part III of the Indian Constitution (Articles 12 to 35)**, represent the **essential freedoms and protections** available to every Indian citizen. These rights are crucial for ensuring a life marked by **dignity, liberty, and equality**.

They serve as a **check on arbitrary state power**, preventing the government from infringing upon individual freedoms. Regardless of one's **caste, religion, gender, or socio-economic background**, these rights apply **equally to all citizens**, reinforcing the principles of justice and non-discrimination.

# CLASSIFICATION OF FUNDAMENTAL RIGHTS

The Constitution of India provides six Fundamental Rights, which are:

**I. RIGHT TO EQUALITY**  
(Article 14-18)

**III. RIGHT AGAINST EXPLOITATION**  
(Article 23-24)

**V. CULTURAL AND EDUCATIONAL RIGHTS**  
(Article 29-30)

**II. RIGHT TO FREEDOM**  
(Article 19-22)

**IV. RIGHT TO FREEDOM OF RELIGION**  
(Article 25-28)

**VI. RIGHT TO CONSTITUTIONAL REMEDIES**  
(Article 32)

### DISTINCTIVE FEATURES OF FUNDAMENTAL RIGHTS

- **Enforceable by Law:** Fundamental Rights (Part III) are legally binding and can be directly enforced through courts. Citizens have the right to move the Supreme Court or High Courts using writ petitions if these rights are infringed.
- **Subject to Reasonable Restrictions:** These rights are not unlimited. The State can impose justified limitations in areas like national security, public order, decency, or morality. The courts ensure such restrictions are fair through the process of judicial review.
- **Capable of Evolution:** The judiciary plays a key role in broadening the scope of Fundamental Rights through dynamic interpretation. This allows the Constitution to remain responsive to changing societal needs and values.
- **Include Positive Obligations:** Along with protecting individuals from arbitrary state action (negative rights), the Constitution also mandates proactive provisions such as the Right to Education under Article 21A, reflecting positive responsibilities of the State.
- **May Be Temporarily Curtailed During Emergencies:** In times of national emergency, certain rights can be suspended by the President. However, rights under Articles 20 and 21 remain

protected, and any such suspension is subject to oversight by the judiciary.

### ARTICLE 12

- **Scope of "State" under Article 12:-** The term "State" as per Article 12 of the Indian Constitution includes not only the Union and State governments but also:
  - The Central Government (Parliament and Executive)
  - State Governments (Legislature and Executive)
  - All Local Authorities (e.g., municipalities)
  - All Other Authorities (both established by law and those not requiring a formal statute)
- **Judiciary's Status under Article 12:-** While discharging core judicial functions (like delivering judgments or interpreting laws), the judiciary is **not treated as "State"** under Article 12. However, when performing **non-judicial or administrative roles** (such as recruitment, transfers, etc.), its actions **can be scrutinized** and challenged via writs, especially under Article 226.
- **Exclusion of International Bodies:-** Global entities such as the **United Nations or its agencies** are **not included** within the ambit of "State" under Article 12. Therefore, their activities **cannot be questioned** in Indian courts under Fundamental Rights provisions.

### ARTICLE 13

- **Article 13 – Safeguard of Fundamental Rights:-** This article ensures that **any existing or future law that violates Fundamental Rights** is considered **null and void** to the extent of such violation. It forms the **constitutional basis for judicial scrutiny** of legislative and executive actions.
- **Authority of Courts for Judicial Review:-** The **Supreme Court (under Article 32)** and **High Courts (under Article 226)** are empowered to **examine the validity** of laws. If any law **infringes upon Fundamental Rights**, the judiciary can strike it down as **unconstitutional**.
- **What Can Be Challenged?** The term "law" has a broad interpretation. Here's what can be challenged in court for infringing upon Fundamental Rights and potentially declared null and void:
  - Permanent laws passed by Parliament or state legislatures.
  - Temporary laws like ordinances issued by the President or state governors.
  - Secondary legislation (delegated legislation) by the executive, including orders, bylaws, rules, regulations, or notifications.
  - Non-legislative sources of law such as established customs or practices with legal force.
- **Judicial Review and Constitutional Amendments:-** Constitutional amendments are generally **excluded from the definition of "law"** under Article 13 and

hence **cannot be invalidated** merely for violating Fundamental Rights.

- **Basic Structure Doctrine – Kesavananda Bharati Case (1973):-** In a historic judgment, the Supreme Court clarified that while **constitutional amendments** are not "ordinary laws," they **can be reviewed and struck down** if they **alter or damage the basic structure** of the Constitution — which includes key Fundamental Rights. This ruling ensures **judicial oversight even on constitutional changes**.

### Inclusion of Personal Laws under Article 13

✎ The question of whether personal laws fall under the ambit of Article 13, which prohibits laws inconsistent with fundamental rights, is a complex and debated issue in India. Here are some key points outlining the arguments:

#### Arguments against inclusion:

- ✎ **Not "Law in Force":** A landmark judgement in *State of Bombay vs Narasu Appa Mali (1952)* held that personal laws, derived from religious texts and customs, are not "laws in force" as envisaged in Article 13. They argued these weren't enacted by a legislature.
- ✎ **Preserving Religious Identity:** Supporters of this view argue that including personal laws under Article 13 would infringe on religious freedom and cultural practices enshrined in Articles 25 and 26.

#### Arguments for inclusion:

- ✎ **Discrimination and Inequality:** Critics argue that personal laws, particularly those pertaining to inheritance, marriage, and adoption, can be discriminatory, especially towards women. For example, some religious personal laws allow polygamy for men only and some allow for women only. This allegedly violates the right to equality (Article 14).
- ✎ **Fundamental Rights Supremacy:** Proponents believe that fundamental rights should be supreme, and personal laws that violate them, like discriminatory inheritance rights, should be invalidated.

#### Court Judgements:

- ✎ The Supreme Court has reiterated that personal laws are outside the scope of Article 13. It emphasised legislative reform (Uniform Civil Code) as the solution.
- ✎ Some High Court judgements have tried to bring personal laws under Article 13, but these were overruled by the Supreme Court.
- ✎ The Indian Parliament has not enacted a Uniform Civil Code (UCC) that would apply a common set of laws to all citizens across religions. This inaction is seen by some as a missed opportunity to ensure equality.

**NOTE:-** Magna Carta of India, Political Democracy, Limited Rights, Not Absolute but qualified, reasonable restrictions, Justiciable, Doctrine of judicial review

**RIGHT TO EQUALITY (ARTICLE 14-18)**

- **Right to Equality (Articles 14 to 18)** stands as a foundational pillar of the Indian Constitution, reflecting the **democratic ethos of equal status and opportunity** for all citizens.
- It ensures **uniform application of laws**, bars **unfair discrimination** on grounds such as religion, caste, gender, or place of birth, and upholds **equal access to public places, employment in government services, and the abolition of untouchability and titles.**

**ARTICLE 14: EQUALITY BEFORE LAW**

- **Article 14** guarantees that every individual within the territory of India shall be treated **equally before the law** and shall enjoy **equal protection of the laws**, ensuring that **no one is given special privilege or unfairly discriminated against** by the State.

**EQUALITY BEFORE LAW VS EQUAL PROTECTION OF LAWS**

- **Equality Before Law:** Rooted in **British legal tradition**, this principle implies that **no individual is above the law**, and all are subject to the **same set of legal norms**. It denies the existence of **any arbitrary privileges** for certain classes and mandates equal subjection to the ordinary courts.
  - **Illustration:** Whether it is a government official or a street vendor, if either commits theft, the **same criminal law and legal procedures** apply uniformly.
- **Equal Protection of Laws:** Inspired by the **American Constitution**, this ensures that **individuals in similar situations** are treated **equally** by the law. It allows for **reasonable classification**, but **prohibits discriminatory treatment** without just cause.
  - **Illustration:** If the government provides **concessions to small-scale industries**, then all qualifying businesses, irrespective of their sector or location, must receive the **same benefits** under similar conditions.

**EXCEPTIONS UNDER ARTICLE 14**

- **Protective Discrimination (Affirmative Action):-** To uplift historically marginalized groups, the Constitution empowers the State to frame **special measures** for **Scheduled Castes (SCs), Scheduled Tribes (STs), Socially & Educationally Backward Classes (SEBCs),**

women, and children. This provision was introduced via the **First Constitutional Amendment (1951).**

- **Educational Reservations for Backward Groups:-** As per the **93rd Constitutional Amendment (2005)**, the State can reserve seats in **government and private unaided educational institutions** (excluding minority-run ones) for **SCs, STs, and socially backward classes** to **promote educational inclusiveness.**
- **Reservation for Economically Weaker Sections (EWS):-** The **103rd Constitutional Amendment (2019)** allows the government to provide **10% reservation** in educational institutions and public employment to **EWS**, ensuring that **economic disadvantage alone** can also be a basis for affirmative support.
- **Legal Immunity to High Constitutional Authorities:-** **Article 361** provides the **President and State Governors** limited immunity from criminal and civil proceedings during their tenure, so they can function without fear or external influence.
- **Legislative Privileges:-** **Articles 105 (for Parliament) and 194 (for State Legislatures)** grant **MPs and MLAs certain freedoms and protections**, such as freedom of speech within the House and immunity from legal action for anything said or voted in the legislature. These enable **independent and fearless lawmaking.**

**ARTICLE 15: PROHIBITION OF DISCRIMINATION**

- **Ban on Discrimination (Article 15):** The Constitution forbids the State from **discriminating against any citizen** solely based on **religion, race, caste, sex, or place of birth** in matters of access to public services or laws.
- **Equal Access to Public Facilities:** All citizens are entitled to **unhindered access** to public amenities such as **shops, restaurants, hotels, entertainment venues, public wells, tanks, bathing ghats, roads, and other public places**, ensuring **social equality in daily life.**
- **Permissible Positive Discrimination:** Article 15 also empowers the State to frame **special measures for women and children** to address their **historical and social disadvantages** and promote their **welfare and development.**

**ARTICLE 16: EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT**

- **Fair Access to Public Employment (Article 16):-** The Constitution ensures that **every citizen** has an **equal right to apply and compete** for appointments to public offices under the State, fostering a **level playing field** in government recruitment.
- **Protection Against Discrimination in Jobs:-** The State is **barred from denying employment opportunities** on grounds such as **religion, race, caste, sex, descent, place of birth, or residence**. This provision promotes **inclusive governance and merit-based selection**.
- **Exceptions:** The article allows some exceptions:
  - **Residential Requirements:** Parliament can make laws requiring citizens to have a residency period within a state for government jobs there.
  - **Reservation Policy:** The government can reserve appointments for backward classes (Scheduled Castes, Scheduled Tribes) and Other Backward Classes to promote social equality.
  - **Reservation for Economically Weaker Sections:** A 10% reservation for economically weaker sections of society has been added through a recent amendment.
- **Importance of Article 16:-** This provision is crucial in establishing a **merit-based public employment system**, ensuring that **selection and appointment to government jobs** are driven by **fairness and equality**, not social background. It acts as a tool to **dismantle systemic exclusion** and foster **equal representation** in governance.
- **Persisting Challenges:-** Despite constitutional safeguards, **discriminatory practices** — especially **caste-based bias, underrepresentation of marginalized groups**, and regional favoritism — still affect recruitment processes. This reflects a gap between **legal intent and ground realities**, requiring **effective enforcement and social sensitization**.

#### Demand for Local Reservation in Private Sector Jobs

The demand for local reservation in private jobs has sparked debate in India. Proponents argue it empowers locals and addresses unemployment, while opponents raise concerns about constitutionality and hindering meritocracy.

#### In Favor:

- **Empowering Locals:** Local youth often have a better understanding of the region's needs and can contribute more effectively.
- **Addressing Unemployment:** Reservation can create opportunities for locals facing high unemployment rates.
- **Social Cohesion:** It can foster a sense of ownership and reduce resentment towards outsiders.

#### Against:

- **Constitutionality:** Article 19(1)(g) guarantees the right to practice any profession throughout India. Reservations based solely on residence might violate this.
- **Meritocracy:** Companies may struggle to find the most qualified candidates if restricted to a local pool.
- **Investment Discouragement:** Strict reservation policies could deter businesses from investing in certain regions.

#### Examples:

- **Haryana:** The state passed a law in 2020 reserving 75% of private jobs for locals, but it was struck down by the High Court due to constitutional concerns.
- **Maharashtra:** Proposed a similar policy reserving 80% of private jobs, raising similar legal questions.
- **Finding a balance** between local aspirations and national economic freedom is crucial. Skill development programs alongside relaxed residency requirements could be a more effective approach.

### ARTICLE 17: ABOLITION OF UNTOUCHABILITY

- **Eradication of Untouchability (Article 17):-** This article firmly **prohibits untouchability in all its forms**, declaring the practice **unconstitutional and illegal** within Indian society.
- **Ban on Discriminatory Practices:-** Any form of **social exclusion or denial of access** to public places, religious sites, or occupations on the basis of caste-linked untouchability is strictly **barred**.
- **Legal Consequences:-** Violating this article is a **criminal offence**. The **Protection of Civil Rights Act, 1955** (initially named Untouchability Offences Act) prescribes **penalties and procedures** for its enforcement.
- **Constitutional Importance:-** Article 17 represents a major **step toward achieving social equality** and is a **symbol of India's commitment to justice and dignity** for all citizens, especially Dalits and marginalized communities.
- **Ground-Level Realities:-** Though legally banned, **untouchability-related discrimination persists** in various regions. Article 17 continues to serve as a **powerful constitutional safeguard** to challenge and eliminate such social evils.

### ARTICLE 18: ABOLITION OF TITLES

- **Ban on Conferring Titles (Article 18):-** The Constitution bars the State from granting any **titles or honorifics** that promote **social**

**hierarchy or inherited privilege.** The objective is to **uphold the principle of equality** and prevent the creation of a titled nobility.

- **Permissible Exceptions:-** Only **military honors** (e.g., *Param Vir Chakra*) and **academic distinctions** (e.g., *Doctorate degrees*) are allowed, as they recognize **merit and service**, not **social status**.
- **Spirit of the Provision:-** Article 18 reflects the Constitution's commitment to a **merit-based society**, discouraging any revival of colonial or feudal systems of ranking individuals through titles.
- Abolition of hereditary titles of nobility conferred by colonial States.

**NOTE:-** Equality before Law and equal protection of law, prohibition of discrimination, equality of opportunity, untouchability, civil rights

**RIGHT TO FREEDOM (ARTICLE 19-22)**

**ARTICLE 19: PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH, ETC.**

- **Freedom Under Article 19:** Article 19 provides **six essential freedoms** to Indian citizens, forming the **bedrock of democratic participation** and individual expression in public life.
- **Exclusive to Citizens:** These rights are **enforceable only by citizens** and do not extend to **foreign nationals** or **corporate entities**. However, in certain contexts, **shareholders may claim these rights** in relation to company matters.
- **Not Unlimited:** The freedoms under Article 19 are **subject to reasonable restrictions**. The State can regulate these rights in the interests of **sovereignty, public order, morality, decency, and national security**, ensuring a **balance between liberty and social stability**.
- Rights under Article 19(1):
  - Freedom of Speech and Expression: Fundamental right to articulate one's opinions and ideas without fear of retaliation, censorship, or legal sanction.
  - Right to Assemble Peaceably and without Arms: The right to come together and collectively express, promote, pursue, and defend common interests.
  - Right to Form Associations or Unions [or Co-operative Societies]: The right to join with others to collectively

- express, promote, pursue, and defend common interests.
- Right to Move Freely throughout the Territory of India: Allows citizens to move freely within the territory of India- though this right can be restricted in the interests of the general public or Scheduled Tribes.
- Right to Reside and Settle in any Part of the Territory of India: The right to live and settle in any part of the territory of India.
- Right to Practice any Profession, or to Carry on any Occupation, Trade or Business: The right to conduct any lawful profession, or to carry on any occupation, trade, or business.
- **Permissible Limits on Freedoms – Article 19(2):-** The Constitution allows the **State to impose reasonable restrictions** on the exercise of Article 19 freedoms to safeguard broader national interests. These include **sovereignty and integrity of India, security of the State, public order, decency or morality, contempt of court, defamation, and incitement to an offence**.
- **Balancing Liberty and Social Harmony:-** Article 19 is designed to maintain a **careful balance** — protecting **individual rights**, while ensuring they do not disrupt **collective welfare, ethical standards, or national unity**.

**Landmark Supreme Court Cases and Free Speech in India**

**Shreya Singhal Case (2015):** This case challenged Section 66A of the Information Technology Act, 2000. This section penalized sending "grossly offensive" or "menacing" information online. The Supreme Court struck down Section 66A, recognizing it as a crucial victory for online free speech in India.

**Kedar Nath Singh Case (1962):** This case addressed the interpretation of sedition under Indian law. The Supreme Court upheld the constitutional validity of the sedition law, clarifying that criticism of the government does not constitute sedition unless it incites or advocates for violence

**ARTICLE 20 (PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES)**

- **Article 20 – Legal Safeguards for the Accused:-** This article serves as a **constitutional shield** for individuals facing criminal charges, ensuring **fairness in the process of prosecution and punishment**.
- **No Retroactive Criminal Liability:-** A person cannot be **punished for an act that was not a criminal offence** at the time it was committed. **New laws cannot be applied retrospectively** to penalize past actions.
- **Ban on Double Punishment (Double Jeopardy):-** An individual **cannot be tried and**

**punished more than once** for the same offence. This upholds **finality in criminal proceedings** and protects against harassment.

- **Protection Against Self-Incrimination:-** No accused can be **compelled to testify against themselves**, ensuring that confessions or evidence must be **voluntary**, not forced.
- **Core of Fair Trial Rights:-** Article 20 **limits arbitrary state power** and guarantees **due process**, reinforcing the idea that **justice must be based on fairness, legality, and human dignity**.

### **ARTICLE 21 (RIGHT TO LIFE AND PERSONAL LIBERTY)**

- **Article 21 – Heart of Fundamental Rights:-** Widely regarded as one of the most important constitutional provisions, Article 21 secures the **right to life and personal liberty** for every individual within Indian territory.
- **Protection Through Due Process:-** It states that **no individual shall be deprived of life or personal freedom** except by a **legally established procedure**, ensuring that **State actions must follow fair and just laws**.
- **Expansive Judicial Interpretation:-** Over time, the judiciary has **expanded the scope** of Article 21 to include rights such as the **right to privacy, right to a dignified life, clean environment, healthcare, education**, and more — turning it into a **gateway to various human rights**.

#### **Crucial cases:**

- **A.K. Gopalan Case (1950):-** In this early constitutional case, the Supreme Court took a **narrow view of Article 21**, holding that the phrase "*procedure established by law*" referred only to **legally enacted processes**, thus offering protection **solely against executive overreach**, not unjust laws themselves.
- **Maneka Gandhi Case (1978):-** Marking a turning point, the Court adopted a **broader and liberal interpretation**, ruling that any procedure under Article 21 must be **just, fair, and reasonable**. This brought Indian jurisprudence closer to the American doctrine of "**due process of law**", extending protection to **both legislative and executive actions**.
- **Justice K.S. Puttaswamy Case (2017):-** In a landmark judgment, the Supreme Court **affirmed the right to privacy** as an **essential part of the right to life and personal liberty** under Article 21. This ruling laid the

groundwork for significant reforms, including the **decriminalization of homosexuality (Section 377 IPC)** and **striking down adultery laws (Section 497 IPC)** as unconstitutional.

These interpretations ensure that Article 21 protects not just basic survival but also a life with dignity and essential living conditions.

### **Article 21: Right to Privacy versus Right to be Forgotten**

- **Emerging Dimension in Digital Privacy:-** The **Right to Be Forgotten** allows individuals to **restrict or erase online access to personal data** that is outdated, irrelevant, or harmful to their dignity. It empowers people to seek **removal, correction, or delinking** of such content from search engines or digital platforms.
- **Role in Data Protection:-** The **B.N. Srikrishna Committee on Data Protection** recognized this right as a **key component of informational privacy** in the digital age, especially where online content may affect personal reputation and autonomy.
- **Need for Balance with Other Rights:-** Enforcing this right requires **careful reconciliation** with the **freedom of speech and expression**, as well as the **public's right to access information**. Overreach may risk **ensorship or information suppression**.
- **Complexities in the Global Digital Environment:-** The **borderless nature of the internet** and the **absence of uniform global laws** make it challenging to implement the RTBF effectively. Data stored across jurisdictions complicates enforcement and compliance.

### **ARTICLE 21A (RIGHT TO EDUCATION)**

- **Foundation for Empowerment:-** Education plays a transformative role in shaping individuals and empowering society. Recognizing its critical value, the **86th Constitutional Amendment (2002)** inserted **Article 21A**, elevating education to the status of a **Fundamental Right**.
- **Guarantee of Free and Compulsory Schooling:-** Under this article, the **State is mandated to ensure free and compulsory education** for all children aged **6 to 14 years**, making it a legal obligation rather than just a policy goal.
- **Flexible Mode of Implementation:-** The Constitution gives States the authority to **decide the**

**mode and mechanism** for delivering this right — typically done through laws like the **Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)**.

- **Emphasis on Quality:-** While Article 21A doesn't mention "quality" explicitly, the RTE Act lays down norms for infrastructure, teacher-student ratio, learning outcomes, and inclusive classrooms, thus ensuring not just access but meaningful learning.
- **Positive Outcomes:-** The enforcement of this provision has led to a notable rise in school enrollment, especially among marginalized groups, making elementary education more accessible and inclusive.
- **Recent Developments – NEP 2020:-** The National Education Policy 2020 proposes to expand the scope of compulsory education from ages 3 to 18, thereby covering early childhood care and education (ECCE) and secondary schooling, aiming for a holistic and lifelong learning approach.

#### ARTICLE 22 (PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES)

**Protection under Criminal Law (for ordinary arrests):**

- **Right to Know the Grounds of Arrest:-** Any individual taken into custody must be immediately informed of the reason for arrest, ensuring transparency and accountability.
- **Access to Legal Representation:-** The arrested person has a fundamental right to consult and be defended by a lawyer of their choosing, reinforcing the right to a fair trial.
- **Mandatory Production Before Magistrate:-** Every person arrested must be presented before a magistrate within 24 hours, excluding travel time, to prevent unlawful detention.
- **Right to Release Beyond 24 Hours Without Magistrate's Approval:-** Unless judicial permission is obtained, the individual cannot be detained beyond 24 hours, serving as a check on police overreach.

#### RIGHT AGAINST EXPLOITATION (ARTICLE 23-24)

##### ARTICLE 23 (PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR)

- **Article 23 of the Indian Constitution** offers a fundamental safeguard against two major types of exploitation: **human trafficking** and **forced labour**.
  - **Prohibition:**  
This provision explicitly bans practices such as:
    - **Human trafficking:** Treating people as objects for sale and purchase.
    - **Begar:** Work extracted without payment, often tied to historical practices like bonded labour for debts.
    - **Other forms of involuntary labour:** Any situation where someone is forced to work against their will through threats, coercion, or pressure.
  - **Offense and Punishment:-** Breach of this article is considered a **punishable offense under law**, providing victims with a **legal remedy**.
  - **State's Power:-** The article permits the State to mandate **compulsory service** for public purposes (like national duties), but such service must be **free from discrimination** based on religion, caste, race, or class.
  - **PUDR vs. Union of India:-** This landmark verdict clarified that **economic compulsion**, which deprives a person of meaningful choice and forces them into labour, also qualifies as **forced labour** under Article 23.
- #### ARTICLE 24 (PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC.)
- **Article 24 offers specific protection to children against hazardous employment.**
  - **Ban on Child Labour:-** It strictly prohibits the employment of children under the age of 14 in factories, mines, and other dangerous occupations.
  - **Scope Limitation:-** The provision does not prohibit all forms of child work. Children may be involved in non-hazardous or suitable tasks, provided these do not harm their health or development.
  - **Supporting Legislation:-** To give effect to this constitutional safeguard, the **Child Labour**

**(Prohibition and Regulation) Act, 1986** and other laws have been passed by the Parliament.

- **Objective:-** Article 24 plays a vital role in **protecting children from exploitation**, promoting their **education and well-being**, and ensuring a **safe and nurturing environment** for their growth.

## RIGHT TO FREEDOM OF RELIGION (ARTICLE 25-28)

### ARTICLE 25:

- **Article 25 serves as a foundational element of India's secular framework**, ensuring **religious freedom** for every individual.

- **Guaranteed Freedoms:-** It upholds four key rights:

- **Freedom of conscience** – to personally believe in any faith or none.
- **Right to profess** – to openly declare one's religion.
- **Right to practice** – to follow religious customs and rituals.
- **Right to propagate** – to share and spread one's religion, but **without coercion or forced conversions**.

- **Equal Protection:-** These rights are **available to all persons**, regardless of whether they are **citizens or non-citizens**.

- **Permitted Restrictions:-** The exercise of these freedoms is subject to concerns like **public order, morality, and health**, allowing the State to **impose reasonable limitations** when needed for societal welfare.

- **Neutrality of the State:-** The Constitution bars the government from **favoring or opposing any religion**, reinforcing India's **secular character**.

- **Importance:-** Article 25 plays a crucial role in fostering **religious harmony, respect for diversity, and peaceful coexistence** in a multi-faith society.

### ARTICLE 26:

- **Rights Provided:-** Article 26 grants every **religious denomination** the autonomy to **organize and manage its religious matters, own and**

**acquire property, and administer such property** in line with legal provisions.

- **Difference from Article 25:-** While **Article 25 focuses on the individual's right** to practice religion, **Article 26 protects the collective rights** of religious groups or communities.

- **Not Unrestricted:-** These rights are subject to **reasonable limitations** based on **public order, morality, and health**, allowing the State to intervene when required for broader social interests.

- **Importance:**

- Shields religious groups from **state intrusion** into their internal functions.
- Enables them to **run their institutions, rituals, and finances independently**.

- **Illustrations:-** Temples can choose their own priests, churches can organize religious ceremonies, and religious trusts can oversee and manage their assets.

### ARTICLE 27:

- **Rights Ensured:-** Article 27 guarantees that **no person shall be forced to pay any tax** whose proceeds are used for the **promotion or upkeep of any specific religion**.

- **Secular Neutrality:-** This clause reinforces the idea that the **State must remain neutral** in religious matters and **must not financially support any particular faith**.

- **Illustration:-** If the government were to levy a **tax solely for the renovation of religious places belonging to one faith**, such an act would **breach Article 27**, as it implies preferential treatment.

### ARTICLE 28:

- **Rights Protected:-** Article 28 **bars the imparting of religious instruction** in educational institutions that are **entirely funded by the State**.

- **Specified Exception:-** This restriction does **not apply to institutions run by the State** but **established under endowments or trusts** that mandate the inclusion of religious education.

- **Purpose:-** The provision ensures that **education remains free from religious influence** in government-funded schools, while still allowing **certain institutions to uphold their religious identity**, provided **students are informed and participation remains voluntary**.

### **CULTURAL AND EDUCATIONAL RIGHTS** **(ARTICLE 29-30)**

The Constitution, appreciating India's vast cultural diversity, also protects cultural and educational rights under Articles 29 and 30, ensuring that no minority group is alienated or marginalised.

#### **ARTICLE 29:**

- **Safeguarding Diversity:-** Article 29 plays a key role in **protecting India's cultural richness**, offering **constitutional support to minority groups** in preserving their identity.

- **Right to Preserve Heritage:-** Citizens having a **distinct language, script, or cultural tradition** are entitled to **protect and promote** their unique heritage. This ensures that **minority communities can sustain their cultural roots**.

- **Equal Educational Access:-** No individual can be **denied entry into government or government-aided educational institutions** on the grounds of **religion, caste, language, race, or any such factor**. This provision strengthens the **principle of non-discrimination in education**.

- **Significance:-** Article 29 reinforces **national integration through cultural inclusion**, by safeguarding **minority rights while promoting unity in diversity**.

#### **ARTICLE 30:**

- **Right to Establish and Administer:-** Religious and linguistic minorities are empowered to **set up and manage educational institutions** that reflect their community's values and needs.
- **Instruction in Native Language:-** This right includes the ability to **educate children in their own mother tongue**, helping preserve their linguistic identity.
- **Subject to Reasonable Regulation:-** While this autonomy exists, the State may introduce rules to **maintain academic standards and ensure quality education** in such institutions.

- **Equal Access to Financial Support:-** The government **cannot deny financial aid** to a minority-managed educational institution **solely because it is run by a minority community**.

- **Protection of Property – Article 30(1A):-**If the State acquires property belonging to a minority institution, it must provide **just and fair compensation**, protecting their constitutional rights.

**NOTE:-** Secularism, State Religion, Minority Rights, Religious and linguistic Minorities

### **REMEDIES FOR ENFORCEMENT OF RIGHTS** **(ARTICLE 32)**

- **Article 32 holds a central place in India's constitutional framework**, as it ensures the **enforceability of Fundamental Rights** granted under Part III.

- **Citizen Empowerment:** This provision allows any **individual to directly move the Supreme Court** if their **Fundamental Rights are infringed** by the State or any public authority.

- **Legal Enforcement Mechanism:** Article 32 transforms rights into **actionable legal remedies**, ensuring they are not merely symbolic, but can be **upheld through judicial intervention**.

- **Writ Jurisdiction:** The Supreme Court can issue various **constitutional writs—habeas corpus, mandamus, prohibition, certiorari, and quo warranto—to correct violations of Fundamental Rights**.

- **Role of Parliament:** Parliament can empower other courts, including High Courts under **Article 226**, to issue writs. However, the **Supreme Court's authority under Article 32 is original and cannot be diluted**.

- **Importance:**
  - **Upholds the rule of law**, ensuring State action remains within constitutional limits.
  - Offers a **legal pathway for citizens** to claim their rights.
  - Functions as a **shield for vulnerable and marginalized communities**.
  - Considered a **basic feature of the Constitution**, Dr. B.R. Ambedkar described Article 32 as *“the heart and soul of the Constitution”*.

## WRITS

- **Original but Not Exclusive Jurisdiction:-** In matters involving the enforcement of Fundamental Rights, the Supreme Court holds original jurisdiction. However, this is not exclusive, as High Courts can also entertain such cases under Article 226.

## Types of Writs under Article 32

- **Habeas Corpus:**  
This writ is issued to bring before the court a person who is allegedly detained unlawfully. The court examines the legality of the detention.
  - It can be directed at both government officials and private individuals.
- **Mandamus:**  
A directive issued by the court to a public official compelling them to carry out their lawful duties which they have neglected or refused to perform.
  - It may also be issued to public bodies, corporations, tribunals, or lower courts.
- **Prohibition:**  
This writ is issued by a higher court to a lower court or tribunal, restraining it from acting beyond its jurisdiction or interfering in matters it is not empowered to handle.
- **Certiorari:**  
Issued by a superior court to a lower court or tribunal, either to transfer a case or to quash its order on grounds such as jurisdictional overreach or legal error.
- **Quo Warranto:**  
This writ challenges a person's right to hold a public office. The court demands to know "by what authority" the person occupies the position.
  - It helps prevent unauthorized occupation of public roles.

## ARMED FORCES AND FUNDAMENTAL RIGHTS

- **Objective:-** Article 33 grants Parliament the authority to limit the application of Fundamental Rights for personnel serving in the Armed Forces, paramilitary units, and potentially intelligence agencies, even though the latter are not specifically named.
- **Reason for Restrictions:-** These limitations are meant to maintain discipline, integrity, and

efficient functioning within such forces, where absolute individual liberty could interfere with national security or operational readiness.

- **Scope of Rights Affected:-** While Article 33 does not list specific rights, it allows any Fundamental Right to be curtailed for such personnel, as deemed necessary. However, these restrictions are subject to judicial scrutiny if they appear unreasonable or excessive.

- **Illustration:-** A soldier's freedom of speech (Article 19) may be curtailed to preserve military discipline or prevent the leakage of sensitive information during active duty.

## MARTIAL LAWS AND FUNDAMENTAL RIGHTS

- **Martial Law Provision:**  
Article 34 comes into effect when martial law is declared in any region of India, meaning the military temporarily assumes control over civil administration to restore or maintain order.
- **Limiting Fundamental Rights:**  
Under such circumstances, Parliament is authorized to enact laws that may limit the application of Fundamental Rights listed in Part III of the Constitution.
- **Legal Protection for Actions Taken:**  
The article also empowers Parliament to provide legal immunity to public officials or others for actions undertaken to maintain or restore public order while martial law is in force.
- **Purpose and Importance:**
  - Article 34 strikes a balance between individual liberties and national security in times of crisis.
  - It allows for temporary restrictions on rights when necessary for restoring peace.
  - It also safeguards those acting in good faith during emergencies from legal consequences.

## RIGHT TO PROPERTY

- **Change Brought by the 44th Amendment (1978):**  
The amendment altered the constitutional status of the right to property by removing it from the list of Fundamental Rights and placing it under Article 300A as a constitutional legal right.
- **Earlier Protection under Article 31:**  
Previously, property rights enjoyed strong legal

**safeguards** as a Fundamental Right, requiring **strict procedures and fair compensation** for any government acquisition.

- **Now a Legal Right (Article 300A):** After the amendment, **property can still be acquired**, but the **legal protection is weaker**. It provides the State with **greater leeway** in land acquisition for **development and public welfare** initiatives.

- **Continued Judicial Oversight:** Even though it is no longer a Fundamental Right, **courts can still examine acquisition cases** under Article 300A to ensure **due process and fairness** are followed.

**Reasonable compensation**, though not explicitly guaranteed, can be interpreted by courts as part of fair treatment.

- **Specific Cases Where Compensation Is Still Protected:**

- **Article 30:** If property belonging to a **minority educational institution** is acquired, **compensation is mandatory**.
- **Article 31A:** If land under **personal cultivation within ceiling limits** is acquired, the law still requires **compensation**.

- **Overall Impact:** The 44th Amendment sought to **strike a balance** between individual ownership and the **State's developmental needs**. While it facilitates **faster land acquisition**, there are still **concerns about fairness and potential misuse**, especially regarding compensation.

#### EXCEPTIONS TO FUNDAMENTAL RIGHTS

### Article 31A

This provision offers **constitutional protection** to certain laws, shielding them from being challenged for **violating the right to equality (Article 14)** and **freedom (Article 19)**.

It specifically safeguards laws related to:

1. **Agrarian reforms,**
2. **Abolition of estates,**
3. **Management of property by the State,**
4. **Amalgamation of corporations, and**

5. **Acquisition of property for public purposes** in the sectors of **agriculture, industry, and commerce**.

### Article 31B

Laws placed under the **Ninth Schedule** of the Constitution are protected from being invalidated on the grounds of **contravening Fundamental Rights**. However, in the **I.R. Coelho judgment (2007)**, the Supreme Court clarified that this **immunity is not absolute**.

Any law **inserted into the Ninth Schedule after April 24, 1973** can be **challenged and struck down** if it violates the **basic structure or core provisions of Fundamental Rights**.

### Article 31C (25th Constitutional Amendment)

This article was introduced to:

- (a) Safeguard laws that seek to implement **Directive Principles of State Policy**, specifically **Article 39(b) and 39(c)**, even if they conflict with **Article 14 or 19**.
- (b) Prevent courts from questioning whether a law genuinely serves the objectives of these directive principles.

In the **Kesavananda Bharati case (1973)**, the Supreme Court ruled that **removing judicial review** from such laws was **unconstitutional**, as **judicial review is a part of the basic structure** of the Constitution.

However, the **first part of Article 31C**—offering protection to laws aiming to implement **certain Directive Principles**—was **upheld as valid**.

#### SIGNIFICANCE OF FUNDAMENTAL RIGHTS

- **Safeguard Against Misuse of State Power:-** Fundamental Rights serve as a **constitutional shield**, protecting citizens from **arbitrary actions by the State**. They ensure that government authorities act **within legal and ethical boundaries**, respecting individual freedoms.
- **Promotion of Equality and Inclusion:-** These rights uphold the principle of **non-discrimination** by forbidding unequal treatment based on **religion, caste, race, gender, or place**.

of birth, thus encouraging a just and inclusive society.

- **Preservation of Dignity and Personal Freedom:-** Fundamental Rights secure essential civil liberties such as freedom of speech, movement, and association, enabling individuals to express themselves, grow, and lead lives of dignity and autonomy.
- **Protection Against Majority Domination:-** While democracy runs on majority rule, Fundamental Rights act as a safeguard for minorities and individuals, preventing majoritarian oppression and ensuring a balance between collective will and personal liberty.
- **Tool for Legal Redress and Accountability:-** Citizens can approach the courts to challenge any law or action that infringes upon their rights. This empowers the judiciary to uphold the Constitution, reinforcing the rule of law and democratic accountability of the executive and legislature.

### ISSUES AND CHALLENGES PERTAINING TO FUNDAMENTAL RIGHTS

- **Gap Between Law and Practice:-** Although the Constitution guarantees Fundamental Rights, real-world enforcement is often inadequate, resulting in rights violations and denial of justice in many cases.
- **Persistent Social Inequalities:-** Disadvantaged communities, including those facing caste, gender, religious, or ethnic discrimination, frequently encounter barriers in accessing their rights, especially those related to equality and non-discrimination.
- **Judicial Ambiguity:-** The interpretation of Fundamental Rights by courts can sometimes lead to uncertainty or varying outcomes, causing inconsistencies in how these rights are applied or protected.
- **Erosion of Rights During Emergencies:-** In times of national emergency, there have been episodes where freedoms like speech and personal liberty have been restricted, prompting debates on the limits of executive power.
- **Digital Age Concerns:-** With the growing penetration of technology, issues like data privacy, digital surveillance, and misuse of personal information have emerged as new threats

to individual freedom and autonomy under the guise of security or governance.

### WAY FORWARD

- **Spreading Awareness and Education:-** Launch public awareness initiatives and educational efforts to ensure citizens are well-informed about their Fundamental Rights and understand how to assert and protect them effectively.
- **Judicial and Legal Reforms:-** Introduce systemic improvements to speed up the justice process, reduce case pendency, and enhance the efficiency of courts in handling Fundamental Rights violations.
- **Rights Protection in Emergencies:-** Develop stronger legal checks to prevent the misuse of emergency powers, ensuring that any restrictions on rights are justified, proportionate, and temporary.
- **Digital Privacy Framework:-** Implement comprehensive data protection laws that defend citizens' privacy in the digital realm, and regulate state surveillance mechanisms to maintain a balance between national security and individual liberty.
- **Judicial Capacity Enhancement:-** Organize specialized training and knowledge-building programs for judges and legal professionals to deepen their understanding of rights-related jurisprudence and promote uniformity in interpretation.
- **Grassroots and Community Involvement:-** Encourage dialogue with local communities, NGOs, and civil society to identify ground-level challenges and develop context-specific strategies for safeguarding Fundamental Rights.

### ISSUES IN NEWS- MAHARASHTRA'S MARATHA RESERVATION BILL

#### Background

The Maharashtra legislature approved a bill granting 10% reservation in government jobs and educational institutions for the Maratha community, classified under the Socially and Educationally Backward Classes (SEBCs), while

excluding the creamy layer (economically advanced individuals within the group).

## Why the Demand for Reservation?

- **Economic Struggles:-** Many Marathas are facing **declining agricultural returns** and difficulty adjusting to a **modern, competitive job market**.
- **Preference for Government Jobs:-** Due to **low job security and wages** in the private sector, **public sector employment** is seen as a more stable and desirable option, especially if reservation benefits are available.
- **Caste-Based Mobilization:-** The rise in **caste-based political movements** reflects growing pressure among communities like the Marathas to secure **affirmative action benefits**.
- **Perceived Inequity:-** There is a **sense of unfairness** among Marathas who see **other communities availing reservations** despite facing **similar socio-economic challenges**.
- **Internal Economic Divide:-** While some Marathas are **wealthy and influential**, a significant portion remains **economically and socially disadvantaged**, fueling demands for inclusion in reservation policies.

## Arguments in Support of Caste-Based Reservations

- **Pursuit of Social Justice:-** Seeks to **correct historical discrimination** and **uplift disadvantaged caste groups**.
- **Fair Representation:-** Aims to ensure **adequate participation** of marginalized communities in **public employment and education**.
- **Real Equality:-** Goes beyond formal equality to address **deep-rooted caste-based inequalities**, moving toward **substantive equality**.

## Critiques of Caste-Based Reservations

- **Neglect of Other Backwardness Indicators:-** Caste alone may not reflect backwardness; **economic condition, geography, and occupation** are also crucial.
- **Risk of Entrenched Privilege:-** If not reviewed periodically, it may **continue**

**benefiting the already privileged** within the caste group.

- **Obstacle to Casteless Society:-** It may **reinforce caste identities**, rather than help dissolve them.
- **Widening Demands:** **Politically dominant communities** seeking inclusion can **overburden the system** and dilute the purpose of reservations.
- **Intra-Caste Economic Inequality Ignored:-** Treating the entire caste as backward **ignores disparities within the group**.

## Suggested Way Forward

- **Evidence-Based Policy:-** Conduct a **nationwide socio-economic and educational survey** to determine eligibility for reservation in **constitutional spirit**.
- **Development-Oriented Approach:-** **Boost rural economy, create jobs**, and invest in **regional infrastructure** to reduce the dependence on reservation as a survival tool.
- **Strict Creamy Layer Application:-** Ensure that **reservation benefits reach the truly underprivileged**, not the economically advanced within the group.

## Conclusion

The Maratha reservation issue reflects the **complex realities of caste, economy, and opportunity** in India. While aiming to **promote social equity**, such policies must be **carefully calibrated** to achieve **inclusive growth and genuine equality**.

## PERSONALITY RIGHTS

### Context

In a recent judgment, the **Delhi High Court** extended protection to a prominent **Bollywood actor**, restraining third parties from **unauthorized use of their identity**. This ruling signifies the emerging legal recognition of **individual control over personal image and public persona** in India.

### What Are Personality Rights?

**Personality rights** refer to the legal protection of an individual's identity, granting them the **exclusive right to manage the commercial use of**

their name, photograph, voice, likeness, or other distinctive features.

**Example:** A celebrity has the right to **take legal action against a brand** that uses their image in an advertisement **without consent**.

### Why Personality Rights Matter

- **Autonomy Over Public Image:-** Gives individuals the power to **decide how they are represented** in the public domain.
- **Protection from Commercial Misuse:-** Prevents **unauthorized exploitation** of a person's identity for **profit by third parties**.
- **Reputation Management:-** Allows individuals to **guard their image** from misleading or defamatory usage.
- **Encourages Individual Merit:-** Safeguards the **value created through one's achievements**, especially in public-facing careers like sports, film, or social media.

### The Way Forward

- **Clear Legal Framework:-** Enact **specific legislation** defining personality rights and outlining enforcement mechanisms.
- **Balance With Free Speech:-** Any law should **respect artistic freedom and public interest**, while still **protecting individual identity**.
- **Public Education:-** Increase **awareness among citizens**, especially digital creators, regarding rights and available legal remedies.
- **Global Cooperation:-** Align with **international standards** to combat

emerging threats like **deepfakes** and **cross-border digital misuse** of personal identities.

### Conclusion

A **functioning democracy demands that individuals be treated with dignity**, not just in relation to the State, but also within society. **Fundamental Rights empower individuals** to move beyond being passive subjects and claim their place as **active and protected citizens**, including in the realm of **digital identity and public image**.

Previous Year Questions	
1. The Construction of India is a living instrument with capabilities of enormous dynamism. It is a constitution made for a progressive society". Illustrate with special reference to the expanding horizons of the right to life and personal liberty. 15 Marks- 2023	
2. "Right of movement and residence throughout the territory of India are freely available to the Indian citizens, but these rights are not absolute. "Comment.-2022	
3. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy.- 2017	
4. Does the right to clean the environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and Judgement(s) of the Apex Court in this regard.-2015	
5. What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss.-2014	
6. Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution.-2013	

## DIRECTIVE PRINCIPLES OF STATE POLICY (DPSPs) (PART IV, ARTICLE 36-51)

The **Directive Principles of State Policy** are **guiding principles** laid down in the Indian Constitution to help the government work towards achieving **social and economic well-being** for all citizens. These provisions reflect the **Constitution's commitment to a welfare state** and draw inspiration from the **Constitution of Ireland**.

Unlike **Fundamental Rights**, which are **legally enforceable through courts**, the Directive Principles are **not justiciable**. However, they hold **immense constitutional importance**, as they provide a **moral and political framework** for law-making and guide the State in formulating **policies aimed at justice, equality, and national development**.

### FEATURES/SIGNIFICANCE OF THE DPSPs:

- **Justice in All Realms:-** DPSPs aim to build a society where **social, economic, and political justice** is ensured for every individual, creating a **balanced and fair social order**.
- **Not Legally Enforceable:-** Unlike Fundamental Rights, these principles **cannot be enforced through courts**. They are **non-justiciable**, meaning individuals cannot file a lawsuit for their implementation.
- **Guiding Role:-** These provisions act as **policy directives** for the government, offering

**constitutional guidance** in crafting laws and framing welfare programs.

- **Reflect Socialist Values:-** The principles embody **socialist philosophy** by advocating for **equitable wealth distribution, dignified working conditions, and equal opportunities** for all sections of society.
- **Governance Blueprint:-** DPSPs provide a **visionary framework** for governance, helping the State **progressively work towards a welfare and egalitarian society**.
- **Link Between Rights and Reality:-** By assigning duties to the State to realize social goals, DPSPs help **translate constitutional promises into real-world outcomes**, thereby **supporting the spirit of Fundamental Rights**.

### CONFLICT BETWEEN DPSP AND FR

The **Indian Constitution** presents a **scope for tension** between **Fundamental Rights (FRs)** and **Directive Principles of State Policy (DPSPs)**. While **Fundamental Rights are legally enforceable** and provide individuals with justiciable claims, **DPSPs serve as non-enforceable directives** aimed at guiding the State in promoting social and economic welfare.

This **potential conflict between enforceable rights and non-justiciable directives** has been the subject of extensive interpretation by the **Supreme Court in landmark cases**.

<p><b>Champakam Dorairajan Case 1951</b></p>	<ul style="list-style-type: none"> <li>☞ <b>Court's Ruling:</b> The Supreme Court acknowledged Article 37, which states that Directive Principles are not enforceable by courts.</li> <li>☞ <b>Fundamental Rights Take Priority:</b> The Court declared that the chapter on Fundamental Rights is paramount. Directive Principles must be compatible with and subordinate to the Fundamental Rights.</li> <li>☞ <b>Precedence Established:</b> This landmark judgment established the principle that Fundamental Rights take precedence over Directive Principles of State Policy (DPSPs) in cases of conflict.</li> </ul>
<p><b>Golak Nath Case 1967</b></p>	<p>The court in this case laid down that Fundamental Rights cannot be abridged/diluted to implement the directive principles.</p>
<p><b>Kesavananda Bharati Case 1973</b></p>	<p><b>Basic Structure Doctrine:</b> The Supreme Court ruled that Parliament can amend the Constitution (including FRs) to implement DPSPs, but the "basic structure" of the Constitution (including FRs) cannot be destroyed.</p>
<p><b>Minerva Mills Case 1980</b></p>	<p><b>Balance Between FR and DPSP:</b> The Supreme Court held that the Constitution exists on the balance of Part III and Part IV. Giving absolute primacy to one over other will disturb the harmony of the Constitution. The Constitution Bench had held that the Fundamental Rights and the Directive Principles are two wheels of the chariot in establishing the egalitarian social order.</p>

Following the **Minerva Mills judgment**, the **Supreme Court clarified** that there is **no inherent contradiction** between **Fundamental Rights** and **Directive Principles of State Policy**. Instead, both are seen as **integral and complementary components** of the Constitution, working together to achieve justice and welfare.

The judiciary has consistently sought to **strike a balance between protecting individual liberties and advancing the State's social objectives**. While **Fundamental Rights hold legal supremacy**, **DPSPs continue to guide policy and lawmaking**, provided they do not impose **unreasonable limits** on individual freedoms.

This ongoing **constitutional interpretation** helps ensure that **India's legal framework remains dynamic and responsive** to changing societal needs.

### UNIFORM CIVIL CODE: QUEST FOR A UNIFORM CIVIL CODE - A PATH TOWARDS A UNIFIED NATION

The **Uniform Civil Code (UCC)** is mentioned under the **Directive Principles of State Policy** in the Indian Constitution. It envisions the adoption of a **common set of civil laws** for all citizens, irrespective of their religious background.

The UCC aims to **standardize laws** in areas such as **marriage, divorce, inheritance, and adoption**, which are currently governed by **distinct personal laws** rooted in **religious traditions and customs**.

At present, different religious communities follow **separate sets of personal laws**, resulting in **inconsistencies in civil rights and obligations** across groups.

Implementing a UCC is expected to foster **equality before the law**, eliminate **religion-based legal disparities**, and contribute to **national unity and social integration**.

### KEY DEVELOPMENTS AND LEGISLATION

#### Historical Background

#### Pre-Independence Developments

- **Lex Loci Report (1840)**: Recommended the **uniform codification of laws**, while advising that **personal laws be excluded** from such codification.
- **Queen's Proclamation (1859)**: Assured Indian communities of **non-interference in their religious affairs**, including customs and personal laws.
- **B.N. Rau Committee (1941)**: Set up to examine the **codification of Hindu law**, due to the growing complexity of personal legal matters.

#### Post-Independence Steps

- **Directive Principles (DPSP)**: The **Uniform Civil Code** was included in **Article 44**, reflecting the **aspirational goal** of having common civil laws for all citizens.
- **Hindu Succession Act (1956)**: Aimed at **codifying succession laws** for Hindus, Buddhists, Jains, and Sikhs.
- **Special Marriage Act (1954)**: Provided a **secular framework for civil marriages**, irrespective of religion.

#### Judicial Developments

- **Shah Bano Case (1985)**: The Supreme Court emphasized the **need for Parliament to enact a UCC**, to ensure gender justice.
- **Sarla Mudgal Case (1995)**: Highlighted the **problems of bigamy** and conflicts arising from different personal laws.
- **Shayara Bano vs Union of India (2017)**: The apex court **struck down triple talaq**, terming it unconstitutional, reaffirming the call for UCC.

#### Recent Development: Uttarakhand's UCC Bill

Uttarakhand became the **first Indian state** to pass a **Uniform Civil Code Bill**, introducing **uniform laws on personal matters** such as marriage, property, and inheritance, **excluding tribal communities**.

### Key Provisions:

- **Coverage:** Applies to **all state residents**, excluding those governed by **tribal customary laws**.
- **Compulsory Registration:**
  - **Marriage:** Must be registered within **60 days**.
  - **Live-in Relationships:** Mandatory registration within **30 days** (LGBTQIA+ partnerships excluded).
- **Marriage Practices:**
  - **Polygamy, nikah halala, and triple talaq** prohibited.
- **Children's Rights:**
  - Legal recognition for children born in **void or voidable marriages** or **live-in relationships**.
- **Inheritance:**
  - **Equal property rights for sons and daughters**.
  - **Abolishes the coparcenary system** under Hindu law.

### Why UCC Is Considered Important

- **Equality Before Law:** Promotes **uniformity and equal treatment** by eliminating religion-based legal inequalities.
- **Gender Justice:** Can **eliminate discriminatory provisions** in personal laws that disadvantage women.
- **Secular Framework:** Reflects India's **secular constitutional ethos**, ensuring uniformity in civil matters.
- **Freedom in Personal Choices:** Allows individuals to **marry or adopt outside religious boundaries**, promoting **individual liberty**.
- **Protection for the Marginalized:** Can provide **stronger legal safeguards** for **women, children, and minorities**.
- **Symbol of Progress:** Seen as a **step toward a modern, inclusive society** beyond religious and caste-based divides.

### Concerns and Challenges

- **Religious Sensitivities:** Risk of being seen as **intrusive** in matters traditionally governed by **faith and community customs**.

- **Minority Concerns:** Some minority groups worry it could lead to the **dilution of their cultural identity** or **majoritarian dominance**.
- **Impact on Cultural Diversity:** A **uniform code** may unintentionally suppress **pluralistic traditions** across India.
- **Drafting Complexity:** Framing a **universally acceptable UCC** that respects all traditions is a **legislative challenge**.
- **Law Commission (2018):** Recommended **reforming and codifying existing personal laws** rather than pushing for a full-scale UCC.
- **Constitutional Tensions:** A UCC must **balance Article 14 (equality)** with **Article 25 (freedom of religion)**, which can create legal friction.

### WAY FORWARD

#### Suggested Approach for UCC Implementation

- **Step-by-Step Introduction:** Adopt a **phased or gradual model** for implementing the Uniform Civil Code to **reduce resistance**, ensure smoother transition, and allow **communities time to adapt**.
- **Prioritizing Legal Equality:** Throughout the drafting and enforcement process, focus on **ensuring fairness and equal rights** for all citizens, upholding the **principle of legal equity** irrespective of religion or gender.
- **Encouraging Dialogue:** Promote **open, inclusive public discussions** on proposed personal law reforms to maintain **transparency**, resolve doubts, and build **trust across communities**.
- **Expert Involvement:** Engage with **legal scholars, social scientists, and community leaders** to ensure the code reflects the **realities and values of diverse social groups**, while remaining constitutionally sound.
- **Universal and Just Principles:** Base the UCC on **neutral, universally accepted values** such as **dignity, equality, freedom, and justice**, in line with the **spirit of the Constitution**.

## Conclusion

The introduction of a **Uniform Civil Code** has the potential to **strengthen India's commitment to equality, inclusivity, and secularism**. However, to preserve the **country's pluralistic fabric**, the process must be approached with **caution, consultation, and cultural sensitivity**. The focus must be on building a **framework that respects India's diversity** while working toward the **Directive Principles' vision of a Welfare State**, ensuring **social and economic justice and true democratic participation** for all.

## RIGHT TO HEALTH

### Constitutional Backing for Right to Health

Articles **38, 39, 42, 43, and 47** of the Constitution assign a **duty to the State** to promote public health and well-being. These **Directive Principles** aim to make **healthcare accessible, affordable, and equitable**, forming the foundation for recognizing health as a fundamental right in practice.

### Recent Developments Supporting Right to Health

- **Rajasthan's Right to Health Initiative:** The **Chief Minister of Rajasthan** unveiled the **Rajasthan Model of Public Health**, aimed at incorporating a **Right to Health**. The model focuses on **preventive, primary, and curative care**, in line with **World Health Organization (WHO) standards**.

### Key Government Measures to Strengthen Healthcare Access

- **Aatmanirbhar Bharat Health Package (Budget 2021-22):** Several **short-term and long-term initiatives** were introduced to enhance healthcare infrastructure and preparedness under the **self-reliance mission**.
- **PLI Scheme for Health Sector:** The **Production-Linked Incentive (PLI) schemes** aim to **promote domestic manufacturing** of critical **pharmaceutical products and medical equipment**, strengthening India's health security.
- **One Nation One Ration Card (ONORC):** Rolled out in **32 States and Union Territories**, this scheme ensures **food security for 690 million beneficiaries**, thereby supporting **nutritional health**, especially for migrant workers.
- **Focus on Basic Needs (NHP 2017):** The **National Health Policy (2017)** recognizes the **interdependence of health, nutrition, clean drinking water, sanitation, and air quality**, emphasizing an **integrated approach** to health.
- **Expanded Vaccine Coverage:** The government announced **nationwide expansion** of the **indigenously developed pneumococcal vaccine** in Budget 2021. This vaccine, aimed at **preventing pneumonia in children under five**, has the potential to **save around 50,000 lives annually** once fully implemented.

#### Previous Year Question

Q. Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy.- 2015

## FUNDAMENTAL DUTIES (PART IV A, ARTICLE 51A)

### Fundamental Duties in the Indian Constitution

While the Constitution guarantees **Fundamental Rights**, it also outlines the **ethical obligations of citizens** in the form of **Fundamental Duties**, listed under **Part IV-A (Article 51A)**. These duties are **not legally enforceable**, but serve as **moral responsibilities** that support the functioning of a democratic and harmonious society.

### Key Characteristics of Fundamental Duties

- **Added by the 42nd Amendment (1976):** These duties were **not originally part of the Constitution**. They were incorporated through the **42nd Constitutional Amendment**, influenced by recommendations of the **Swaran Singh Committee**.
- **Fostering Patriotism and National Spirit:** The duties aim to develop a **sense of national pride, unity, and civic responsibility** among citizens.
- **Upholding National Symbols and Institutions:** Citizens are expected to **honour the Constitution, respect the National Flag and Anthem, and cherish India's pluralistic heritage**.
- **Encouraging Social Cohesion and Environmental Awareness:** Promoting **peaceful coexistence among communities** and ensuring **protection of the natural environment** are essential components.
- **Personal Growth and National Contribution:** Individuals are urged to **pursue excellence** in all areas of life, contributing towards **national development and collective progress**.

### Duties and Rights: Complementary, Not Contradictory

The **Supreme Court**, particularly in the aftermath of the **Kesavananda Bharati judgment**, has clarified that **Fundamental Duties and Fundamental Rights are not in conflict**. Instead, they are seen as **mutually reinforcing pillars** of the Constitution, working together to build a **just, inclusive, and welfare-oriented society**. Similarly, **Directive Principles of State Policy** and

duties complement rights by **guiding legislative and civic behavior** in the interest of public good.

### RIGHTS AND DUTIES

### Interrelationship Between Fundamental Rights and Duties in Indian Democracy

The Indian Constitution not only assures citizens certain inalienable **Fundamental Rights**, but also outlines corresponding **Fundamental Duties** under **Part IV-A (Article 51A)**. Together, these form the moral and constitutional foundation of a **responsible and harmonious democratic society**.

### Philosophical and Constitutional Foundations

- **Mahatma Gandhi's Viewpoint:** In *Hind Swaraj*, Gandhi emphasized that **true rights arise from the fulfillment of duties**, portraying the two as inseparable elements of a just society.
- **Harold Laski's Assertion:** The renowned political thinker suggested that **"a right is also a duty"**, reinforcing the notion that civic liberties entail responsibility.

### Judicial Interpretations and Recognition

- **AIIMS Student Union vs AIIMS:** The **Supreme Court emphasized** the equal importance of duties alongside rights.
- **Rural Litigation and Entitlement Kendra vs State of UP:** This case expanded the idea of **environmental responsibility** as a constitutional duty for both citizens and the state.
- **Justice Ranganath Mishra Commission (2003):** Recommended **backing fundamental duties with legal and social enforcement**, to reinforce civic accountability.

### Why Aligning Rights and Duties Matters

- **Mutual Reinforcement:** Rights and duties **complement each other**,

creating a social contract where freedoms are balanced with obligations.

- **Civic Accountability:**  
Duties remind citizens to use their rights **constructively** and with **social responsibility**.
- **Protection of Liberties:**  
When duties are honored, **liberties are preserved** in a socially cohesive atmosphere.
- **Building Social Capital:**  
Duties promote **mutual respect and cooperation**, strengthening the social fabric.
- **Empowering State Functions:**  
Duties assist the government in **realizing constitutional goals** through **voluntary and participative citizenship**.
- **Peaceful Coexistence:**  
Responsible exercise of rights contributes to a **stable and inclusive democratic order**.

### Challenges in Balancing Rights and Duties

- **Enforceability Gap:**  
Rights are **justiciable**, while duties are **non-enforceable**, which can reduce their perceived importance.
- **Ambiguity in Scope:**  
Some duties lack **clear definitions**, leading to subjective interpretations or conflicts with **religious/cultural norms**.
- **Conflict of Application:**  
Rights and duties may sometimes **appear in tension**, e.g., right to religion vs duty to promote harmony.
- **Dependency Relationship:**  
Fulfilling certain **duties requires the realization of basic rights** like education or health.

### Criticisms of Fundamental Duties

- **Incomplete and Vague:**  
The **list of duties is limited**, and some entries are **unclear** in scope and application.

- **Symbolic Value:**  
Critics argue that these are **moral principles** already implied in civic life, making their formal inclusion redundant.
- **Lack of Legal Force:**  
Since they are not **legally enforceable**, their impact remains **normative rather than practical**.

### Legislative Reinforcement of Duties

While not directly enforceable, many **laws reflect the essence of Fundamental Duties**, such as:

Duty Theme	Corresponding Law
Respect for national symbols	<i>Prevention of Insults to National Honour Act, 1971</i>
Social harmony and non-discrimination	<i>Protection of Civil Rights Act, 1955</i>
Respect for public property and order	<i>Indian Penal Code, 1860 (various sections)</i>
Environmental conservation	<i>Wildlife Protection Act, 1972 and Forest Conservation Act, 1980</i>

### Conclusion

The **interdependence of rights and duties** is fundamental to the vision of a **democratic and inclusive India**. As the Constitution evolves to meet new challenges like the **COVID-19 pandemic**, honoring our **duties** becomes as crucial as asserting our **rights**. A citizenry that actively upholds both ensures a **just, progressive, and peaceful society**.

#### Previous Year Question

Q. 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.- 2020

## CITIZENSHIP (PART II, ARTICLE 5-11)

Citizenship serves as the **core identity** of an individual within a sovereign state, establishing a legal and political bond between the **citizen and the nation**. It forms the **bedrock of a democratic society**, defining both the **rights enjoyed and duties expected** of individuals.

In the Indian context, the **Constitution addresses the issue of citizenship comprehensively in Part II (Articles 5 to 11)**. These articles laid down the **initial framework for determining Indian citizenship** at the commencement of the Constitution.

### Key aspects include:

- **Automatic Citizenship:** Article 5 granted citizenship to individuals based on criteria like **domicile, birth, and migration** at the time of independence.
- **Acquisition and Termination:** The provisions also outlined **how citizenship could be acquired or renounced** through legal and constitutional means.
- **Legislative Power of Parliament:** Article 11 **authorizes Parliament** to make laws regulating **citizenship acquisition, termination, and related matters** post-1950.

Thus, the constitutional foundation of citizenship in India not only defined **who qualifies as a citizen** but also empowered the **legislature to adapt citizenship laws** to future national needs and challenges.

### CITIZENSHIP ACT 1955

#### **Citizenship Act, 1955: Overview and Contemporary Relevance**

The **Citizenship Act of 1955** serves as the **primary legislation** regulating matters related to Indian citizenship. It was designed to **codify and streamline** provisions under the Constitution and has undergone several amendments to address evolving political and social contexts, notably in **1986, 2003, and 2019**.

#### **Five Legal Pathways to Acquire Indian Citizenship**

Under this law, Indian citizenship can be acquired through the following methods:

1. **By Birth:** Applies to individuals born in India, with specific conditions depending on the date of birth and parents' citizenship status.

2. **By Descent:** Granted to those born abroad to Indian parents, subject to conditions outlined by law.
3. **By Registration:** Available to persons of Indian origin, or those married to Indian citizens, who have resided in India for a prescribed period.
4. **By Naturalisation:** Available to foreigners meeting criteria such as long-term residence, good conduct, and an intention to permanently reside in India (as specified in the **Third Schedule**).
5. **By Incorporation of Territory:** In cases where new territory becomes part of India, residents can be granted citizenship.

#### **Overseas Citizenship of India (OCI) – 2005 Reform**

The **Citizenship (Amendment) Act, 2005** introduced the **OCI scheme**, allowing:

- Persons of Indian origin residing abroad, and
  - Foreign spouses of Indian citizens or OCI holders
- to **live and work in India indefinitely**, though **not eligible for voting rights or government employment**.

#### **Recent Development in News: Citizenship for Pakistani Migrants**

##### **Context:**

In a significant administrative move, the **Ministry of Home Affairs (2021)** delegated powers to **District Collectors** in select regions of **Gujarat, Rajasthan, Chhattisgarh, Punjab, and Haryana** to process citizenship applications from minorities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians) who have migrated from **Pakistan, Afghanistan, and Bangladesh**.

Under this order, **108 migrants from Pakistan** were recently granted Indian citizenship in **Gujarat**.

### CITIZENSHIP (AMENDMENT) RULES, 2024

#### **Updated Citizenship Provisions in India: CAA 2019 and Rules 2024**

##### **Recent Context**

The **Ministry of Home Affairs (MHA)** has officially operationalized the long-awaited **Citizenship (Amendment) Act, 2019 (CAA)** by notifying the **Citizenship (Amendment) Rules, 2024**. These rules update the older **Citizenship Rules, 2009**, and enable the implementation of the CAA passed in **December 2019** under **Article 11** of the Constitution.

## Key Features of Citizenship (Amendment) Rules, 2024

### Eligibility Criteria

Citizenship can now be applied for by:

- Persons of Indian origin
- Spouses of Indian citizens
- Children of Indian citizens
- Individuals with ancestral or historical ties to India

### Application Process

- Applications will be filed **online** and scrutinized by a **District-Level Committee**, which forwards them to an **Empowered Committee**.
- The applicant must **renounce prior citizenship** upon being granted Indian citizenship.

### Ease of Documentation

Proof of entry into India may now include:

- Visa and long-term stay permits
- Aadhaar card
- Electricity and land records

### Language Proficiency

Applicants must demonstrate working knowledge of at least one Indian language listed in the **Eighth Schedule**.

## About the Citizenship (Amendment) Act, 2019

### Purpose

To offer expedited Indian citizenship to **persecuted religious minorities** from **Pakistan, Afghanistan, and Bangladesh** who entered India **before December 31, 2014**.

### Communities Covered

- Hindus
- Sikhs
- Buddhists
- Jains
- Parsis
- Christians

These groups are exempted from provisions under the **Foreigners Act, 1946** and **Passport Act, 1920**.

### Relaxed Residency

Residency requirement for **naturalization** reduced from **11 years to 5 years** for eligible groups.

## Arguments Supporting CAA

- **Humanitarian Ground:** Provides shelter to minorities facing persecution in Islamic neighboring countries.
- **National Security Balance:** Differentiates refugees from illegal migrants, aiding better management.
- **Legal Recognition:** Offers legal protection and dignity to long-term displaced individuals.

## Criticisms & Concerns

- **Religious Filtering:** Excludes **Muslims** and minorities persecuted in other nations (e.g., Rohingyas, Ahmadiyyas).
- **Arbitrary Cut-off Date:** December 31, 2014 lacks clear justification.
- **Secularism Debate:** Critics argue it challenges **Article 14** (equality before law) and India's secular framework.
- **Verification Issues:** No robust system to verify religious persecution claims.
- **Diplomatic Fallout:** May negatively affect ties with neighboring countries.

## Way Forward

- **Religion-Neutral Approach:** Consider amending CAA to include **all persecuted minorities**, irrespective of religion.
- **Transparent Verification:** Develop a mechanism to verify persecution claims.
- **Gradual Assimilation:** Ensure national security concerns are addressed while granting citizenship.
- **Legislative Review:** Ensure any further modifications adhere to **constitutional morality** and **basic structure doctrine**.

## Conceptual NOTES for UPSC

- **Citizenship by Naturalization**
- **Single Citizenship**
- **Friendly & Enemy Aliens**
- **Overseas Citizens of India (OCI)**
- **Secularism & Equality (Article 14, 15)**
- **Article 11 – Power of Parliament to regulate citizenship**

## SCHEDULED AND TRIBAL AREAS (PART X, ARTICLE 244-244 A)

Under Article 244 of the Constitution, certain parts of India with sizable tribal populations are governed under special arrangements to safeguard their interests and promote development:

### • **Scheduled Areas**

- These are regions identified as having substantial tribal communities.
- They enjoy enhanced safeguards for self-rule, customary law, and cultural heritage under the Fifth Schedule.
- State governors, in consultation with tribal advisory bodies, have authority to adapt laws and oversee development suited to local needs.

### • **Tribal Areas**

- Found in Assam, Meghalaya, Tripura, and Mizoram, these territories are managed according to the Sixth Schedule.
- Administration is carried out through autonomous district and regional councils empowered to legislate on land use, local governance, and social customs.
- Both the Union and the respective state governments collaborate to ensure welfare measures, infrastructure, and cultural preservation tailored to tribal communities.

### **FIFTH SCHEDULE**

India's Fifth Schedule creates a tailored governance model for regions with large tribal populations, ensuring their rights, customs and development needs are prioritized.

#### **1. Designation of Scheduled Areas**

Under the President's authority, certain districts, blocks or smaller contiguous regions may be notified as Scheduled Areas if they meet criteria such as:

- **Substantial tribal concentration**
- **Compact geography** and clear administrative boundaries
- **Relative economic backwardness** compared to neighbouring areas

#### **2. Dual-Layered Administration**

- **State Government Role:** Day-to-day executive functions remain with the state.
- **Governor's Special Mandate:** The Governor, answerable to the President, can:
  - **Suspend or adapt** any central or state law in a Scheduled Area (after consulting the Tribes Advisory Council).

- **Frame bespoke regulations** governing land transfers, moneylending, and customary practices (subject to Presidential approval).
- **Reserve for Presidential scrutiny** any state legislation or bills affecting Scheduled Areas.
- **Central Oversight:** The Governor must forward an annual report on these regions to the President, and the Union may issue directives to safeguard tribal interests.

#### **3. Tribal Advisory Council**

Each state with Scheduled Areas must maintain a Council composed predominantly of tribal MLAs. Its responsibilities include:

- Advising on welfare and development schemes
- Recommending modifications to laws and regulations

#### **4. Key Legislation & Commissions**

- **PESA (1996):** Extends Panchayati Raj institutions into Scheduled Areas, granting Gram Sabhas powers over resource management and local planning.
- **Commission on ST Welfare (Art. 339):** The President appoints periodic commissions (initially and every ten years) to review administration and tribal welfare.
- **Schedule Amendments:** Changes to the Fifth or Sixth Schedules can be made by simple Parliamentary order, without invoking the constitutional amendment process under Article 368.

#### **5. Funding & Development Mechanisms**

- **Tribal Sub-Plan / ITDPs:** A proportion of plan outlays (both central and state) is ring-fenced in line with the tribal population share.
- **Centrally Sponsored Schemes:** Examples include Eklavya Residential Schools and the Vanbandhu Kalyan Yojana, aimed at education, healthcare, livelihoods and infrastructure.
- **Forest Rights Act (2006):** Grants forest-dwelling tribes ownership and user rights over land and minor forest produce.

#### **6. Persistent Obstacles**

- **Inadequate 3Fs:** Shortages of Funds, Functions and Functionaries undermine Gram Sabha authority under PESA.
- **Administrative Resistance:** Bureaucratic inertia often overrides local decisions, especially on land and resource use.

- **Awareness Deficit:** Many tribal citizens remain unaware of their legal entitlements under PESA and related laws.
- **Statutory Conflicts:** State enactments sometimes clash with PESA's spirit, while subsequent national laws (e.g., Land Acquisition Act, 2013) duplicate provisions and sow confusion.

## 7. Path Ahead

- **Capacity Building:** Train Panchayat and Council members to exercise their powers confidently.
- **Legal Literacy Drives:** Educate communities and officials on PESA, FRA and Gram Sabha functions.
- **Rights-Based Advocacy:** Support NGOs and civil society in monitoring land acquisitions and ensuring free, prior and informed consent.
- **Statutory Alignment:** Urge states to harmonize their laws with PESA and amend related statutes (e.g., Indian Forest Act) to vest control of water bodies, forests and minerals in Gram Sabhas.

## SIXTH SCHEDULE

The Sixth Schedule establishes autonomous governance structures in tribal regions of Assam, Meghalaya, Tripura and Mizoram, reflecting their distinct cultural traditions.

### 1. Rationale for Special Autonomy

Tribes in these northeastern states have largely retained unique social systems and customary laws, necessitating self-governance arrangements that respect their heritage.

### 2. Autonomous Districts & Regional Councils

- **Constitutional Setup:** The Governor may delineate or reconfigure autonomous districts or regions within a state.
- **Council Composition:** Each autonomous district council (ADC) and regional council comprises 30 members—26 elected (five-year terms) and 4 nominated by the Governor.

### 3. Powers & Functions

1. **Legislative:** Councils can legislate on matters such as land management, inheritance, village administration and social customs—subject to the Governor's assent.
2. **Judicial:** They may establish lower courts to adjudicate tribal disputes, with appeal limits set by the Governor.

3. **Executive & Development:** Councils oversee schools, health centres, roads and local commerce; they can regulate non-tribal enterprises and collect certain taxes.
4. **Selective Law Application:** Central or state laws do not automatically extend to these areas unless the district council permits or the Governor prescribes adaptations.

### 4. Governor's Oversight

- Power to summon commissions of enquiry, recommend dissolution of councils, and supervise boundary changes.
- Councils must operate within parameters defined by the Governor's notifications.

### 5. Recurring Challenges

- **Financial Constraints:** ADCs often depend on irregular state grants, impeding long-term planning.
- **Governor's Pre-eminence:** Excessive central oversight can stifle genuine autonomy.
- **Unequal Powers:** Disparities in departments and functions assigned to different councils fuel grievances.
- **Governance Gaps:** No firm deadline exists for holding fresh elections after a council is dissolved.
- **Institutional Handover Delays:** State reluctance sometimes blocks transfer of departments or staff.
- **Representation Deficits:** Women and smaller tribal groups remain under-represented in council membership.

### 6. Recommendations for Strengthening Autonomy

- **Stable Finance:** Mandate regular, formula-based transfers to ADCs via State Finance Commissions.
- **Prompt Re-elections:** Enforce a six-month limit for holding fresh polls after dissolution.
- **Grassroots Inclusion:** Legally recognise village-level tribal bodies within the Sixth Schedule framework.
- **Gender & Minorities:** Reserve seats for women and smaller tribes to ensure diverse voices in councils.

These reforms can bridge the gap between constitutional intent and ground realities, empowering tribal communities to manage their own affairs and preserve their cultural identity.

# EXPLORING ISSUES AND CHALLENGES IN INDIA'S FEDERAL STRUCTURE

## INDIAN FEDERALISM: THE “QUASI-FEDERAL” MODEL

India's Constitution establishes a two-tier government—Union and States—with a unique balance of shared authority and central predominance, often termed “quasi-federal” or a “federation sui generis.”

### 1. FOUNDATIONS AND COMPARISON

- **Federalism Defined:** Power is divided between a national center and constituent units.
- **India vs. USA:**
  - **United States:** Federalism emerged from sovereign states ceding specific powers.
  - **India:** A unitary entity first, whose provinces were later empowered with statehood and devolved responsibilities.

### 2. CORE FEATURES

1. **Dual Polity:** Distinct Union and State governments each with their own executive and legislature.
2. **Seventh Schedule:** Clearly enumerates Centre-only, State-only, and Concurrent subjects.
3. **Written & Supreme Constitution:** Only amendable via prescribed procedures; all laws must conform.
4. **Rigidity:** Amendments require special majorities—ensuring stability.
5. **Judicial Arbiter:** An independent Supreme Court settles inter-governmental disputes.
6. **Bicameral Legislature:** Lok Sabha (people's house) and Rajya Sabha (states' house).

### 3. UNITARY ELEMENTS

- **Single Constitution & Citizenship:** One legal framework and nationality for all.
- **Integrated Judiciary:** A unified court system, with the Supreme Court at its apex.
- **Emergency Provisions:** In crisis, the Centre can legislate on State matters and even assume state governance.
- **All-India Services:** IAS, IPS, etc., appointed by the Centre but serving in States, ensuring administrative coherence.
- **Governor's Role:** Central appointee who can withhold or reserve State bills.
- **Territorial Control:** Parliament may reorganize State boundaries without state consent.

- **Fiscal Centralisation:** Major tax and revenue sources lie with the Union; States rely on devolution and grants.

### 4. EMERGING ISSUES

1. **State Creation Powers:** Centre's authority to carve new States can impinge on regional autonomy.
2. **Governor's Discretion:** Perceived as a tool for political interference.
3. **Rajya Sabha Imbalance:** Seats allocated by population, not equally per State.
4. **Service Cadre Control:** Limits State flexibility in managing its bureaucracy.
5. **Emergency Misuse:** History of over-application undermines trust.
6. **Central Oversight Mechanisms:** Election control, audits and bill vetos can stifle State initiatives.

#### Additional Shortcomings:

- **Coordination Gaps:** Central and State schemes sometimes overlap or duplicate.
- **Jurisdictional Clashes:** Shared subjects like education generate friction.
- **Top-Down Planning:** National plans may overlook local priorities.
- **Resource Imbalance:** Unequal fiscal powers breed dependency.
- **Political Gridlock:** Party rivalries hamper cooperative governance.

### 5. NOTES

*Federation sui generis · Quasi-federalism · Seventh Schedule · Division of Powers · Cooperative Federalism · State Autonomy · Financial Devolution · Inter-State Disputes*

## ASYMMETRIC FEDERALISM

### 1. RATIONALE

- Acknowledges that some regions require special rights or autonomy.
- Tailors governance to historical, cultural or economic realities (e.g., Article 371 for Northeast).

### 2. BENEFITS

- **Unity through Diversity:** Eases separatist pressures.
- **Social Justice:** Compensates for long-standing disadvantages.
- **Enhanced Representation:** Minority areas gain stronger voices.
- **Cultural Protection:** Safeguards distinct traditions.

### 3. CHALLENGES

- **Perceived Inequity:** Other States may view special powers as unfair.
- **Coplex Administration:** Multiple models complicate policy alignment.
- **Risk of Political Misuse:** Exceptional provisions can be exploited.

## CENTRE–STATE RELATIONSHIP

### 1. CONSTITUTIONAL FRAMEWORK

- **Article 263:** Allows an Inter-State Council for consultation.
- **Articles 246 & 254:** Divide legislative subjects and resolve inconsistencies.
- **Article 356:** Permits President’s Rule under specific circumstances.

### 2. LANDMARK SUPREME COURT VERDICTS

- **S.R. Bommai v. Union of India (1994):** Curtails arbitrary use of President’s Rule.
- **B.P. Singhal v. Union of India (2010):** Strengthens legislative scrutiny of emergency proclamations.
- **Kuldip Nayar v. Union of India (2006):** Clarifies Governor’s discretionary powers.

### 3. CONTEMPORARY FLASHPOINTS

- **Article 356 Overuse**
- **Governor vs. Elected Ministry**
- **Concurrent List Friction**
- **Revenue Sharing Disputes**
- **All-India Services Management**

## REFORM PATHWAYS: COMMISSION RECOMMENDATIONS

Commission	Principal Suggestions
First Administrative Reforms (ARC)	<ul style="list-style-type: none"> <li>– Constitute a permanent Inter-State Council (Art. 263)</li> <li>– Appoint experienced Governors</li> <li>– Delegate more functions to States</li> <li>– Enhance State financial autonomy</li> </ul>
Sarkaria Commission	<ul style="list-style-type: none"> <li>– Make ISC a statutory body</li> <li>– Restrict Article 356 usage</li> <li>– Strengthen All-India Services</li> <li>– Improve transparency on State bills</li> <li>– Revive Zonal Councils</li> </ul>
Punchhi Commission	<ul style="list-style-type: none"> <li>– Clarify Governor’s discretionary limits</li> <li>– Guidelines for hung</li> </ul>

	assemblies – Permanent, rotating Finance Commission – Equalize Rajya Sabha seats among States
NCRWC	– Inter-State Trade & Commerce Commission (Art. 307) – Mandate dialogue before imposing President’s Rule – Define concurrent list boundaries clearly

## NITI AAYOG & COOPERATIVE FEDERALISM

Since 2015, NITI Aayog has driven a “Team India” approach—engaging States in national planning, monitoring Centrally Sponsored Schemes, and fostering both cooperative and competitive federalism through rankings and best-practice sharing.

## INTER-STATE RIVER WATER DISPUTES

### Legal Framework

- **Article 262:** Empowers Parliament to create tribunals and excludes court jurisdiction.
- **River Boards Act, 1956 & Inter-State Water Disputes Act, 1956:** Provide for dispute adjudication.

### Root Causes

- Political posturing over water allocation
- New boundaries after State bifurcation
- Acute scarcity & pollution
- Historic claims vs. modern demands

### Resolution Roadblocks

- Jurisdictional overlap between Centre and States
- Slow tribunal decisions with weak enforcement
- Legal ambiguity on appeal routes
- Over-reliance on engineering fixes without ecological planning

### Suggested Reforms

- Create enforceable mechanisms for tribunal awards
- Supreme Court guidelines on appeals/implementation
- Basin-level integrated water management authorities
- Pre-agreed sharing formulas for drought conditions
- Consider including water in the Concurrent List

## DEMAND FOR SMALLER STATES

### Drivers

- Regions feeling under-represented (e.g., Vidarbha)
- Distinct cultural identities (e.g., Gorkhaland)
- Perceived administrative neglect
- Political mobilization around regional sentiments
- Economic disparities within larger States

### Pros & Cons

- **Pros:** Enhanced local governance, tailored policies, reduced administrative overhead.
- **Cons:** Startup costs, leadership deficits, financial dependence on Union, infrastructure gaps.

### Way Forward

- Define clear viability criteria (population, resources, geography).
- Conduct in-depth socio-economic impact studies.
- Prioritize decentralization and empower local bodies as alternatives.
- Ensure robust financial planning for any new State.
- Promote inter-State cooperation on shared challenges.

## ISSUE IN FOCUS: ARTICLE 370

- **Background:** Granted “temporary” special status to J&K.
- **2019 Revocation:** Presidential orders abrogated Article 370, bifurcating J&K into two Union Territories.
- **SC Directives:**
  - Uphold the Centre’s authority to revoke without State concurrence.
  - Conduct Assembly elections by 30 September 2024.
  - Restore full statehood expeditiously.
  - Set up a Truth & Reconciliation Commission for human-rights redress.

## GOVERNANCE OF NCT OF DELHI (AMENDMENT) ACT, 2023

### Context

- Delhi: A National Capital Territory with a legislative Assembly but limited jurisdiction.
- 2023 SC Verdict: Delhi government controls most services except police, land & public order.

### Key Changes

- **National Capital Civil Services Authority:** Advises the Lieutenant Governor (LG).

- **LG Discretion:** Expanded power to accept/reject council recommendations.
- **Officer Transfers:** Centre gains more say in postings.
- **Routing of Matters:** Defined categories requiring LG notification.

### Critique & Remedies

- **Overcentralization:** Erodes elected government’s authority.
- **Ambiguity:** Terms like “controversial” remain undefined.
- **Global Best Practices:** Study capital-city governance models elsewhere.
- **Municipal Strengthening:** Empower local bodies in a two-tier setup.

**NOTE:-** Unitarian Constitution, Federalism, Cooperative Federalism, Financial Decentralization, Regional Autonomy

### Previous Years Question

Q. Explain the significance of the 101st Constitutional Amendment Act. To what extent does it reflect the accommodative spirit of federalism?- 2023

Q. While the national political parties in India favour centralisation, the regional parties are in favour of State autonomy." Comment.- 2022

Q. 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.- 2020

Q. From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain.- 2019

Q. The concept of cooperative federalism has been increasingly emphasized in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings.- 2015

Q. Though the federal principle is dominant in our Constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. Discuss- 2014

Q. 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. - 2013

# SEPARATION OF POWER AND FUNCTIONAL OVERLAPPING

India's democratic system reflects the idea of Separation of Powers, even without explicitly mentioning it. This principle, championed by Montesquieu, divides government into legislative, executive, and judicial branches to prevent any single group from holding too much power. While India's Constitution allows some overlap between these branches, it also ensures a complex interplay with checks and balances.

## 1. CONSTITUTIONAL FOUNDATIONS

### 1.1 Article 50: Judicial Independence

“The State shall take steps to separate the Judiciary from the Executive in the public services of the State.”

- Originated in the Government of India Act, 1935.
- Led to distinct cadres, pay scales and administrative control: subordinate judges under High Courts (Arts. 233–237), executive magistrates under state governments.

### 1.2 Articles 122 & 212: Legislative Finality

- **Art. 122** bars courts from inquiring into proceedings of Parliament.
- **Art. 212** extends the same protection to state legislatures.
- Ensures “speech-and-debate” immunity: no judicial challenge to what MPs/MLAs say or do in the House.

### 1.3 Articles 105 & 194: Parliamentary Privileges

- Grant each House power to punish for contempt, regulate its proceedings, and protect members.
- Parl. Privileges Act, 1952 codifies these rights—potential friction point if privilege claims impinge on free speech or judiciary’s contempt powers.

## 2. INTERNATIONAL MODELS

Model	Features	Examples
Strict Separation	No personnel crossover; independent budgets	USA
Parliamentary Fusion	Executive emerges from legislature; judicial review	UK, Canada, New Zealand
Quasi-Federal Hybrid	Mix of federal–unitary traits; inter-branch overlaps	India, South Africa

India sits midway: Cabinet drawn from Parliament, but courts possess strong review powers.

## 3. EXECUTIVE–LEGISLATIVE INTERPLAY

### 3.1 President & Parliament

- **Summon/Prorogue/Dissolve** (Art. 85): President can call or end sessions on Council of Ministers’ advice.
- **Ordinances** (Art. 123): When Parliament is not in session, the President may promulgate law—subject to ratification within six weeks of re-assembly.

### 3.2 Council of Ministers

- **Collective Responsibility** (Art. 75): Cabinet answerable to Lok Sabha.
- **Ministerial Duality**: Ministers must be (or become) members of Parliament—wield both policy-making and statutory functions.

### 3.3 Delegated Legislation

- **Enabling Acts**: Parliament often passes broad statutes and empowers Ministries to fill in details via rules, regulations or notifications.
- **Parliamentary Scrutiny**: Delegated instruments can be annulled through resolutions or referred to Joint Committees.

### 3.4 Legislative Controls

- **Question Hour, Zero Hour & Debates**: Direct executive accountability to MPs.
- **Estimates & Public Accounts Committees**: CAG-backed scrutiny of government spending (Art. 149–151).

## 4. JUDICIARY–LEGISLATURE INTERFACE

### 4.1 Judicial Review

- **Art. 13**: Laws inconsistent with fundamental rights are void.
- **Basic Structure**: *Kesavananda Bharati* (1973) held Parliament cannot alter Constitution’s core ethos.
- **Landmark Cases**:
  - *Golaknath* (1967): No abridgement of rights by amendment.
  - *Minerva Mills* (1980): Balanced Directive Principles and rights.
  - *I.R. Coelho* (2007): Concurrent List laws beyond 42nd Amendment invalid.

### 4.2 Public Interest Litigation

- Opens courts to genuine public grievances—leading to policy innovations (environment, education, prison reforms).

- Courts issue binding guidelines where legislature has been silent (e.g., Right to Education rules).

### 4.3 Parliamentary Pushback

- Attempts to restrict PILs via narrower locus standi rules.
- Bills have been proposed to limit judicial review in “service matters” and “policy decisions.”

## 5. JUDICIARY-EXECUTIVE INTERACTIONS

### 5.1 Judicial Appointments

- **Collegium System:** Supreme Court judges recommend appointments; President formally approves.
- **NJAC Episode:** 99th Amendment (2014) creating a mixed commission struck down in *Fourth Judges Case* (2015), reaffirming collegium.

### 5.2 Tribunals & Quasi-Judicial Bodies

- Created under various statutes (Income Tax, Competition, etc.).
- Debate over independence—some staffed by bureaucrats, raising separation concerns.

### 5.3 Executive Immunities

- **Art. 361:** President & Governors immune from criminal or civil proceedings for official acts.
- **Mercy Petitions** (Arts. 72, 161): Exclusive executive power to commute or pardon sentences.

### 5.4 Contempt Jurisdiction

- **Contempt of Courts Act, 1971:** Courts can penalise speech or publication that scandalises or obstructs.
- Risk of chilling public debate if misapplied.

## 6. STRENGTHENING BOUNDARIES

Area	Reform Ideas
Executive–Legislature	Limit ordinance use; mandate sunset clauses; enhance committee review of rules.
Legislature–Judiciary	Codify PIL parameters; institute joint law-court workshops; expand bench diversity.
Judiciary–Executive	Broaden inputs in appointments; fix tenure/terms for tribunals; review immunity scope.

## 7. CHECKS & BALANCES IN PRACTICE

1. **Impeachment Power** (Art. 61) vs. **Judicial Review** (Art. 13)

2. **Parliamentary Sanctions vs. Court Curbs** (e.g., invalidating unconstitutional statutes)
3. **CAG Reports** compel executive to justify expenditures before PAC.
4. **Speaker’s Ruling** on anti-defection refers back to courts for finality.

## 8. ENHANCING COORDINATION

- **Institutional Forums:** Regular tri-branch conclaves (judicial conferences, parliamentary retreats).
- **Personnel Exchanges:** Secondments of secretariat officers to courts; judges as visiting faculty to civil-service academies.
- **Memoranda of Understanding:** Define processes for joint training, data-sharing and crisis management.

### Conclusion

India’s system blends separation and collaboration. By tightening delegated-law oversight, refining judicial tools, clarifying immunities, and building formal dialogue channels, we can preserve each branch’s independence while ensuring they work in concert to uphold democracy and the rule of law.

### Previous Year Question

Q. Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of a large number of public interest petitions praying for issuing guidelines to executive authorities.- 2020

Q. Do you think the Constitution of India does not accept the principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain-2019

Q. Resorting to ordinances has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyze whether the decisions of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate ordinances be repealed?- 2015

Q. Starting from inventing the 'basic structure' doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by judicial activism in achieving the ideals of democracy.-2014

Q. The Supreme Court of India keeps a check on the arbitrary power of the Parliament in amending the Constitution. Discuss critically.- 2013

# PARLIAMENT AND STATE LEGISLATURES - STRUCTURE, FUNCTIONING, CONDUCT OF BUSINESS, POWERS & PRIVILEGES, AND ISSUES ARISING OUT OF THESE

India's democratic strength depends on the vitality of its law-making assemblies—Parliament at the Centre and Legislatures in each State. They enact laws, supervise the executive, safeguard constitutional values and articulate citizens' aspirations.

## 1. PARLIAMENTARY GOVERNMENT: KEY CHARACTERISTICS

1. **Ceremonial vs. Real Authority**
  - The President is the formal (de jure) head of the executive, while real power (de facto) resides with the Prime Minister and Council of Ministers.
2. **Collective Accountability**
  - Ministers answer as a group to the Lok Sabha (Art. 75).
3. **Majority Rule**
  - The party or coalition commanding a Lok Sabha majority forms the government.
4. **Dual Roles**
  - Cabinet members are simultaneously legislators and executives.
5. **Prime Ministerial Leadership**
  - The PM sets policy direction and chairs Cabinet meetings.
6. **Party Cohesion**
  - Ministers generally hail from the ruling party/coalition, ensuring policy unity.
7. **House Dissolution**
  - On the PM's advice, the President may dissolve the Lok Sabha.
8. **Proceedings Confidentiality**
  - Ministers maintain secrecy over cabinet deliberations.

### Rationale for Adoption

- Prevents deadlock between legislature and executive.
- Builds on British parliamentary traditions familiar to Indian framers.
- Ensures broad social representation.
- Embeds both stability and ministerial responsibility (Ambedkar).

## 2. CORE FUNCTIONS OF PARLIAMENT

1. **Legislation**
  - Drafting, amending and repealing laws, including constitutional amendments.
2. **Executive Oversight**

- Instruments like Question Hour, no-confidence and censure motions keep ministers in check.
3. **Electoral Role**
    - Elects the President/Vice-President, Leaders of Houses and Committee Chairs.
  4. **Budgetary Control**
    - Approves withdrawals from the Consolidated Fund; Budget examined by Estimates and Public Accounts Committees.
  5. **Quasi-Judicial Powers**
    - Can launch inquiries, impeach the President or judges, and enforce its own privileges.

## 3. CHALLENGES CONFRONTING LEGISLATURES

- **Fewer Sitting Hours**
  - The 17th Lok Sabha clocked under 1,400 hours—well below historical norms.
- **Disorderly Conduct**
  - Frequent disruptions waste precious debating time.
- **Under-Representation of Women**
  - Roughly 15% in Lok Sabha; even lower in many State Assemblies.
- **Money-Bill Misuse**
  - Non-financial measures often fast-tracked as Money Bills, bypassing Rajya Sabha scrutiny.
- **Hasty Law-Making**
  - Voice votes and minimal discussion prevail.
- **Diminished Committee Referrals**
  - Only about a quarter of bills sent to Departmental Committees in recent terms.
- **Uncodified Privileges**
  - Lack of clear, written rules invites arbitrary use.
- **Ordinance Reliance**
  - Excessive use sidesteps the full legislative process.

## 4. PARLIAMENTARY PRODUCTIVITY: RECENT TRENDS

- **Vacant Key Offices**
  - No Deputy Speaker or recognized Leader of Opposition in the 17th Lok Sabha.
- **Session Suspensions**
  - Record number of MP suspensions.
- **Budget Debates Curtailment**

- Up to 80% of spending approved without detailed discussion.

## 5. RECOMMENDED REFORMS

### 1. Minimum Sitting Days

- Mandate at least 120 days for Lok Sabha, 100 for Rajya Sabha annually.

### 2. Codify Privileges

- Enact clear laws defining rights and immunities.

### 3. Anti-Defection Review

- Restrict party-whip enforcement to confidence motions only.

### 4. Strengthen Committees

- Extend tenures, develop expertise and refer more bills for scrutiny.

### 5. Legislative Impact Assessment

- Introduce formal analysis of proposed laws' social and economic effects.

### 6. Better MP Support

- Provide research staff, real-time data and training.

### 7. Tackle Criminalization

- Enforce stricter eligibility criteria and codes of conduct.

### 8. Virtual Proceedings

- Leverage technology to maintain legislative work during emergencies.

## 6. PARLIAMENTARY PRIVILEGES

### • Supreme Court Ruling (Sita Soren v. UoI, 2024)

- MPs/MLAs accused of bribery cannot claim immunity under Arts. 105/194.

### • Two-Prong Privilege Test

1. Must relate to the House's collective functions.
2. Be essential to legislators' core duties.

#### Scope

- Speech and votes within the House are shielded, but criminal courts retain jurisdiction over corruption charges.

#### Origins & Importance

- Adapted from British practice to protect free debate, maintain order and uphold the Legislature's dignity.
- Yet, Parliament has so far declined to codify these privileges in statute.

## 7. THE OPPOSITION'S VITAL ROLE

### • People's Advocate

- Voices minority and marginalized concerns.

### • Executive Watchdog

- Holds government to manifesto promises; e.g., anti-corruption campaigns leading to the Lokpal Act.

### • Current Obstacles

- Numerical weakness, factionalism and defection undermine cohesive critique.

### • Needed Fixes

- Formal recognition of Leader of Opposition (10% seat rule).
- Cross-party unity on national issues.
- Strengthened anti-defection safeguards.

## 8. WOMEN IN POLITICS

### • Low Representation

- India ranks 141/185 in global women's parliamentary share.

### • Barriers

- Patriarchy, financial constraints, role stereotyping and 'proxy' candidacies weaken genuine participation.

### • Positive Outcomes

- Women leaders often champion sanitation, education and social welfare.

### • Way Forward

- "Zipper" or alternating-seat quotas.
- Inner-party democracy and leadership training.
- Timely enactment of the 106th Amendment for women's reservation.

## 9. ANTI-DEFECTION LAW (Tenth Schedule)

### • Grounds for Disqualification

- Voluntary party exit or voting against party whip; special rules for independents and nominated members.

### • Intended Benefits

- Curb horse-trading, ensure stability and uphold party-based mandates.

### • Shortcomings

- Suppresses MPs' independence, encourages bureaucratic whips, weakens debate.

### • Reform Proposals

- Independent tribunal (per SC) to decide disqualifications.
- Fixed timelines for decisions.
- Possible role for the Election Commission in lieu of the Speaker.
- Tighter merger rules and restrictions on re-contest by defectors.

## 10. PRESIDING OFFICER'S AUTHORITY

### • Election & Tenure

- Speaker (Lok Sabha) and Chairman (Rajya Sabha) chosen by members; hold office until next dissolution.
- **Core Duties**
  - Maintain order; interpret rules; decide Money-Bill status; chair Joint Sittings; oversee committee appointments; rule on disqualifications.
- **Concerns**
  - Delayed or biased anti-defection rulings (Kihoto Hollohan v. Zachillhu).
  - Contentious Money-Bill declarations (e.g., Aadhaar Bill, 2016).
  - Perceived partisanship undermining neutrality.
- **Suggested Safeguards**
  - Judicial review backstops on procedural fairness.
  - Consider UK's convention of a non-partisan Speaker.
  - Establish mixed committees to advise on Money-Bill questions.

- Insist on parliamentary debate of major committee reports.

**Key**

**Terms:**

Quasi-Judicial · Question Hour · Anti-Defection · Parliamentary Privileges · Public Accounts Committee · Estimates Committee · Leader of Opposition · Zipper System · Legislative Impact Assessment.

**11. PARLIAMENTARY SCRUTINY MECHANISMS**

1. **Debates & Question Hour**
  - Members probe government actions; Question Hour covers starred/unstarred/short-notice queries.
2. **Standing & Ad-Hoc Committees**
  - Departmental panels, PAC and Estimates Committee vet policies, budgets and regulator performance.
3. **Ad-Hoc Enquiry Panels**
  - Investigate specific issues or alleged malfeasance.

**Shortfalls**

- Dwindling committee referrals and sittings.
- Interruptions during Question Hour.
- Lack of effective Opposition leadership.

**Enhancement Measures**

- Restore full Question/Zero Hour functions post-pandemic.
- Regularly refresh committee rosters to maintain relevance.
- Provide expert secretariat support.

**Previous Year Questions**

Q. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re- promulgation of ordinances by the Governor without placing them before the Legislature. -2022

Q. Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness.-2021

Q. Rajya Sabha has been transformed from a 'useless Stepney tyre' to the most useful supporting organ in the past few decades. Highlight the factors as well as the areas in which this transformation could be visible.-2020

Q. "The reservation of seats for women in the institutions of local self-government has had a limited impact on the patriarchal character of the Indian Political Process." Comment.-2019

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

Q. What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss.-2015

Q. The 'Powers, Privileges and Immunities of Parliament and its members' as envisaged in Article 105 of the Constitution leave room for a large number of un-codified and unenumerated privileges to continue'. Assess the reasons for the absence of the legal codification of parliamentary privileges. How can this problem be addressed?-2014

Q. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re- promulgation of ordinances by the Governor without placing them before the Legislature.-2022

# JUDICIAL SYSTEM IN INDIA

A comprehensive, multi-layered overview for UPSC Mains, with in-depth explanations under each heading rather than one-liners.

## STRUCTURAL HIERARCHY

**1.1 Supreme Court**  
Constituted under Articles 124–147, the Supreme Court (SC) is India’s apex forum. It comprises the Chief Justice of India (CJI) and up to 33 puisne judges, appointed by the President on the CJI’s recommendation. The SC’s original jurisdiction covers inter-state and Union–state disputes (Art. 131) as well as fundamental rights petitions (Art. 32). Its appellate jurisdiction extends to civil and criminal matters via certificates (Arts. 132–134) and Special Leave Petitions under Art. 136. Additionally, the President may seek its non-binding advisory opinion on complex legal questions (Art. 143).

### 1.2 High Courts

Each State or group of States has a High Court (Art. 214) whose judges the President appoints after consulting the CJI and state governor. High Courts exercise three functions:

- **Original:** Issue writs under Art. 226 for enforcement of rights and statutory review.
- **Appellate:** Hear appeals from district and subordinate courts in civil and criminal matters.
- **Supervisory:** Exercise superintendence over all courts and tribunals in the State (Art. 227).

### 1.3 Subordinate Courts

Under High Courts are district courts (headed by District Judges) and subordinate magistrate courts.

District courts handle major civil disputes and serious criminal trials; sessions courts try offences punishable by death or life imprisonment. Magistrate courts (first/second class) oversee minor criminal cases and preliminary inquiries. Separate specialized forums—family, juvenile, and labour courts—address targeted needs.

**1.4 Specialized Tribunals**  
Statutory tribunals (e.g., Income Tax Appellate Tribunal, National Company Law Tribunal, Central Administrative Tribunal) adjudicate sector-specific disputes. While decongesting general courts, tribunals raise debates on judicial independence and the need for uniform standards of member appointments and tenure.

## CONSTITUTIONAL PROVISIONS

**2.1 Separation of Powers**  
Article 50 directs states to separate the judiciary from the executive “in the public services,” a legacy of the 1935 Government of India Act. This underpins independent judicial cadres and distinct administrative control by High Court registries rather than executive magistrates.

**2.2 Supremacy of Judgments**  
Article 141 declares all courts bound by SC’s pronouncements, ensuring consistency in law. Article 142 grants the SC power to “do complete justice” through any decree necessary for enforcement of rights, filling legislative gaps in the interests of justice.

### 2.3 Writ Jurisdiction

- **Article 32:** Guarantees citizens the right to approach the SC directly for fundamental rights enforcement.
- **Article 226:** Empowers High Courts to issue writs not only for rights protection but also “for any other purpose,” giving HCs broader remedial reach.

## COMPARISON OF INDIAN AND OTHER JUDICIAL SYSTEMS

### INDIA-USA

Judiciary of	India	America
<b>Judicial system</b>	Integrated system: Hierarchy of courts i.e Supreme courts, Highcourts, and subordinate courts.	Double system of courts: Federal judiciary for federal laws and state judiciary for state laws.
<b>Jury system</b>	Does not exist.	Allowed.
<b>Appointment of judges</b>	Collegium system. The Judiciary has a greater role in the appointment.	Justices are nominated by the President and confirmed by the Senate i.e. greater role to elected representatives.
<b>Retirement age for judges</b>	Supreme court: 65 years High court and other subordinate courts: 62 years	Judges serve for a lifetime
<b>Original Jurisdiction of the supreme court</b>	Confined to federal cases	Federal cases + cases relating to naval forces, maritime activities, ambassadors, , etc.
<b>Appellate Jurisdiction of the supreme court</b>	Constitutional, civil, and criminal cases.	Only constitutional cases
<b>Deciding of cases</b>	Indian Judges sit on several benches of 3 to 5 judges and if necessary then more number of judges.	All American judges sit together for decision making
<b>Advisory Jurisdiction of supreme court</b>	Yes	No
<b>Change in Jurisdiction</b>	Can be enlarged by Parliament.	Powers are limited to that conferred by the Constitution.
<b>Control over subordinate courts</b>	Integrated judicial system: Power of judicial superintendence over HCs.	Double (or separated) judicial system-> no such power.

### INDIA-UK

Divergence	India	UK
<b>Jury system</b>	Not Present	Present
<b>Judicial review</b>	Originally Procedure established by law. Post <b>Maneka Gandhi case</b> : 'Due Process of law'. Thus, its scope of judicial review has been widened.	<b>Due process of law</b> -> Parliament is supreme and the court does not check the fairness of the law.
<b>Judicial appointment</b>	<b>Collegium system</b> : Greater role of the judiciary which results in less transparency.	<b>Judicial appointment</b> commission-> Primacy to parliament-> Greater transparency.

## Convergence between Indian and UK Judicial Systems:

- **Judicial Independence:** Both nations uphold judicial autonomy through the principle of **separation of powers**.
  - *Example:* The UK transferred judicial authority away from the **Lord Chancellor's office**, paralleling India's constitutional safeguard of judicial independence seen in the **Kesavananda Bharati case (1973)**.
- **Alternative Dispute Resolution (ADR):**
  - Both India and the UK are increasingly adopting **ADR mechanisms** to enhance access to justice.
  - *Example:* The UK formed the **Ministry of Justice in 2007**, while India initiated a **National Mission for Justice Delivery and Legal Reforms**.
- **Judicial Accountability:**
  - India is seeking greater **transparency in judicial appointments**, with proposals like the **National Judicial Appointments Commission (NJAC)** aiming to reform the existing system.

## 75 Years of the Supreme Court of India – Diamond Jubilee Celebration

On **28th January 2024**, the **Prime Minister of India** inaugurated the **Diamond Jubilee (75 years)** celebration of the **Supreme Court of India** at its auditorium in **New Delhi**, marking a significant milestone in India's judicial journey.

### About the Supreme Court of India

- As per **Article 124(1)** of the Indian Constitution, the **Supreme Court** shall consist of a **Chief Justice of India (CJI)** and not more than **seven other judges**, unless **Parliament decides to increase this limit by law**.
- **Current Strength:** The apex court presently includes the **Chief Justice** along with **33 other judges**, totaling **34 judges** in all.
- **Constitutional Framework:** The functioning, structure, jurisdiction, and powers of the Supreme Court are elaborated in **Articles 124 to 147** of the Constitution of India.

### Key Characteristics of the Supreme Court of India

- **Apex Judicial Authority:** Recognized as the **highest judicial body** in the country, the Supreme Court serves as the **final court of appeal**. Individuals unsatisfied with High Court verdicts may approach it for justice.

- **Advisory Role under Article 143:** The Court can offer **legal advice to the President of India** on matters of constitutional or public significance.
- **Resolver of Federal Conflicts:** Under **Article 131**, it adjudicates disputes involving the **Centre and states** or between **two or more states**, maintaining the federal balance.
- **Power of Constitutional Review:** Through **judicial review**, the Court examines legislative and executive actions to ensure alignment with the **Constitutional framework**.
- **Defender of Fundamental Rights:** By invoking **Article 32**, citizens can directly approach the Supreme Court for the protection and enforcement of their **fundamental rights** through writs.

### Challenges Before the Supreme Court

- **Rising Pendency of Cases:** As per 2023 data, the Court faces a **backlog of over 80,000 cases**, affecting timely justice delivery.
- **Tussle between Activism and Restraint:** A continuing debate persists on whether the judiciary should engage in **activist interventions** or **limit itself strictly to legal interpretation**.
- **Concerns of Nepotism:** The **230th Report of the Law Commission** raised issues of **favouritism in judicial appointments**, often termed the "**Uncle Judge Syndrome**", questioning impartiality.
- **Executive-Judiciary Friction:** Issues like **delay in appointments, proliferation of tribunals**, and public criticisms — especially during the pandemic — have contributed to **institutional strain**.

### Suggested Reforms and the Way Forward

- **Judicial Digitization & Smart Case Management:** Use of **e-filing, AI-based case sorting, and virtual courtrooms** can reduce delays and improve access to justice.
- **Transparency in Appointments:** Enhancing openness in the **judicial selection process** and **easy public access to court verdicts** can build institutional trust.
- **Safeguarding Judicial Autonomy:** A robust separation of powers must be ensured so that the judiciary remains **free from executive pressure or political influence**, preserving its **integrity and independence**.

## MULTIFACETED ROLE OF THE JUDICIARY IN INDIA

### Judiciary as the Guardian of Fundamental Rights:

- The Indian judiciary serves as the **primary defender of citizens' fundamental rights**, ensuring that no individual is deprived of their constitutional protections.
- Under **Article 32**, the Supreme Court is empowered to enforce these rights by issuing writs such as **Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo-Warranto**.
- Similarly, **Article 226** authorizes the High Courts to issue writs for the enforcement of both fundamental rights and other legal rights.
- Moreover, under **Article 13**, the judiciary holds the power to **strike down laws** that are inconsistent with or violate the provisions of Part III of the

Constitution — thus functioning as the **interpreter and protector of the Constitution**.

### Judiciary as the Sentinel of the Constitution and Check on Executive Excesses:

- The judiciary acts as a **constitutional watchdog**, ensuring that all organs of the state function within their constitutional limits.
- It provides a **safeguard against arbitrary and excessive actions** by the legislature and executive by invoking the principle of **judicial review**.
- Through landmark rulings like **Kesavananda Bharati (1973)** and **Maneka Gandhi (1978)**, the courts have emphasized that **rule of law and constitutional supremacy** are the core tenets of Indian democracy.
- This role ensures that **constitutional morality** prevails over **majoritarian or executive impulses**.

### Judiciary as protector constitution and saviour from the arbitrariness of government/state:

<b>Judicial review</b>	Review of constitutional amendments, legislation of the Parliament and State Legislatures, subordinate legislation, and administrative action of the Union and State authorities.
<b>Article 142</b>	Allows the Supreme Court in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice. E.g. Bhopal gas tragedy case the court had awarded compensation of \$470 million to the victims, to do <b>"complete justice"</b> .
<b>Interpretation of constitution</b>	Under its original jurisdiction, the Supreme Court keeps the government within their limits by judicial interpretations.

Therefore, the founding fathers incorporated in the Constitution itself the provisions of judicial review. This enables the judiciary to maintain the balance of federalism, to protect the Fundamental Rights and Fundamental Freedoms of citizens.

### IMPORTANT JUDICIAL CONCEPTS

	Procedure established by Law	Due process of Law
<b>Borrowed from</b>	British	USA
<b>Test to check the validity of a law</b>	<ul style="list-style-type: none"> <li>• Whether there exists a law that authorizes the executive action;</li> <li>• Whether the legislature had the competence to pass that law;</li> <li>• Whether the legislature followed the established procedure to enact that law.</li> </ul>	Along with Procedure established by Law also examines the inherent goodness of the law using principles of natural justice.
<b>Relies upon</b>	Good sense of legislature and the strength of the public opinion.	Also, upon Judicial conscience.
<b>Judicial power</b>	Limited. Can declare laws violative of rights of citizens only on procedural grounds.	Can declare laws violative of rights of citizens on both substantive and procedural grounds.
<b>Protection against</b>	The arbitrary action of the only executive and not legislature.	The arbitrary action of both the executive and the legislature.

## PRINCIPLES OF NATURAL JUSTICE (PNJ)

Natural justice refers to a set of **unwritten legal and ethical rules** that ensure fairness, impartiality, and accountability in decision-making, particularly in administrative or quasi-judicial proceedings. These are not codified laws but **universal principles recognized in democratic societies**.

### Core Tenets of Natural Justice:

- Impartiality of Authority:** Every decision-making body must act in **good faith** and be free from **personal bias or prejudice**.
- Right to Fair Hearing (Audi Alteram Partem):** No individual should suffer penalties without being **given an opportunity to be heard** and to present their side.
- No One Shall Judge Their Own Case (Nemo Judex in Causa Sua):** An individual cannot preside over a matter where they have a **personal interest or conflict**.

### Key Judicial Endorsements:

- Maneka Gandhi v. Union of India (1978):** The Supreme Court widened the scope of **Article 21**

by incorporating the principles of natural justice into the meaning of **‘procedure established by law’**, thus emphasizing **due process**.

- Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly (1986):** The Court observed that natural justice forms an essential part of **Article 14**, making **equality before law** a substantive right, not just a formal one.

## JUDICIAL PENDENCY IN INDIA

Despite the **judiciary’s** critical constitutional role, **delays in justice delivery** have emerged as a serious concern.

### Current Scenario:

- India's courts face **massive backlogs** at every level — Supreme Court, High Courts, and subordinate courts.
- On average, it takes **4.4 times longer for civil cases and 6 times longer for criminal cases** in India compared to European countries.

### Law Commission Observation:

- As per estimates, it would take **464 years** to eliminate the current case backlog at the existing judge-to-population ratio.

Courts	Pendency of cases (As of December 2022)
Supreme Court	69,598
High Courts	59,78,714
Lower courts	4.4 crore

### Reasons:

<b>Personnel</b>	<ul style="list-style-type: none"> <li>327 out of 1114 Sanctioned judges posts in the 25 High Courts are vacant on April 1 (2024)</li> <li>10.5 judges/million population (Law commission recommend 50/million)</li> </ul>
<b>Administrative</b>	<ul style="list-style-type: none"> <li>More than 50% of cases violate the rule of 3 adjournments per case.</li> <li>Supreme court works on average 222 days despite the rule mandating a minimum of 225 days. Summer vacation for judges reflects colonial hangover.</li> <li><b>Special leave petition (Article 136)</b> comprises 40% of the court’s pendency.</li> <li>Lawyers collusive corruption especially at subordinate levels in order to drag the case.</li> </ul>
<b>Infrastructure</b>	<ul style="list-style-type: none"> <li>Existing infrastructure could accommodate only 15,540 out of sanctioned 20,558 judicial officers.</li> <li>0.09% of GDP spent on court infrastructure.</li> <li>Old technologies used in administration increases time of litigation.</li> </ul>
<b>other</b>	<ul style="list-style-type: none"> <li><b>Delayed Investigations:</b> Lack of modern and scientific tools has resulted in a handicapped police investigation.</li> <li>Centre and the States were responsible for over 46% of the pending cases.</li> </ul>

## Institutional and Judicial Reforms

- Use of Ad-hoc Judges:** The 120th Law Commission recommended deploying **ad-hoc**

**judges under Article 128** (for SC) and **Article 224A** (for HCs) to handle case overloads.

- **Functional Division of Supreme Court:** In the **Vasantha R. case**, both the **Law Commission and Supreme Court** supported bifurcating the SC into:
  - A **Constitutional Bench** and
  - A **Court of Appeal** to manage workload and specialization.
- **Judicial Appointments Based on Caseload Dynamics:**
  - Prioritize criminal courts due to their **2.5× higher pendency**.
  - Adopt **Life Cycle Analysis** to identify delay-prone stages (e.g., procedural lapses or staffing issues).
    - *Example: Delhi HC's "Zero Pendency" project.*
- **State-wise Case Clearance Insights:**
  - **Gujarat** shows 100% Case Clearance Rate (CCR),
  - **Bihar** lags with only **55.8% CCR**, highlighting disparities.

### Structural & Technological Measures

- **Boosting Court Productivity:**
  - Increase court **working days**.
  - Enforce **strict codes of judicial conduct** to enhance accountability.
  - **Business Process Reengineering (BPR)** to optimize workflows.
- **Technological Integration:**
  - **e-Courts Mission Mode Project:** Enables **National Judicial Data Grid (NJDG)** for real-time case tracking.
  - Promote **online case filing, virtual hearings, and big data analytics** to reduce delay.
- **LIMBS (Legal Information Management and Briefing System):**
  - Developed by the **Ministry of Law & Justice**, this portal consolidates government litigation data for better tracking and coordination.

### Justice Ramana's Three-Pronged Approach

1. **Strengthen judicial infrastructure** via e-courts and new court establishments.

2. **Promote dispute resolution at the pre-litigation stage** through **mediation and counselling**.
3. **Expand use of ADR methods** such as:
  - **Arbitration**
  - **Conciliation**
  - **Lok Adalats**
  - Use of legal services authorities like **NALSA, SALSA, DALSA, and TALSA** to spread legal awareness and encourage settlements.

### Special Committees for High-Pendency Case Types

- Prioritize bulk case categories for targeted action.
  - *Example: Cheque bounce cases* account for 30–40% of trial court pendency. A **panel-based disposal mechanism** was recently proposed to address this.

### Public Accountability & Civic Awareness

- **Media's Role:**
  - The **fourth pillar of democracy** must report periodically and constructively on judicial pendency.
  - This will enhance **transparency and accountability** while educating the public.

### Need for Legal Culture and Rule of Law

- A **well-functioning judiciary** ensures economic efficiency and social justice.
- **Access to speedy and affordable justice** is fundamental to the **Right to Life and Dignity under Article 21**.
- Reform must be systemic, integrated with governance improvements, and citizen-centric in delivery.

## JUDICIAL APPOINTMENTS IN INDIA

### Recent Development:

- The President of India recently appointed **five new judges** to the Supreme Court, raising the **working strength to 32** out of the sanctioned **maximum of 34 judges**.

- These appointments were made based on the **recommendations of the Supreme Court Collegium**, reinforcing the ongoing practice of judicial appointments.

## Constitutional Provisions Related to Appointment of Judges

### Supreme Court – Article 124(2):

- **Chief Justice of India (CJI):** Appointed by the **President**, after consulting judges of the Supreme Court and High Courts, as deemed appropriate.
- **Other Judges of SC:** Appointed by the **President**, after consulting the CJI and other judges of the SC and HCs, as considered necessary.

### High Courts – Article 217:

- **Chief Justice of High Court:** Appointed by the **President** after consultation with:
  - Chief Justice of India
  - Governor of the concerned state

- **Other Judges of High Court:** Appointed by the **President** in consultation with:
  - Chief Justice of India
  - Governor of the state concerned
  - Chief Justice of the concerned High Court

## The Collegium System (Judicial Precedent-Based Practice):

- The **Collegium** is a body headed by the **Chief Justice of India**, along with the **four senior-most judges** of the Supreme Court.
- It is responsible for recommending the names for:
  - **Appointments and transfers** of judges in the Supreme Court and High Courts.
- Although not explicitly mentioned in the Constitution, the **Collegium system evolved through key Supreme Court judgments**, particularly the **Three Judges Cases** (1981, 1993, and 1998), forming the basis of the **current system of judicial appointments**.

## Three-Judge Cases

<b>First Judges Case (S P Gupta Case) 1981</b>	Consultation with CJI doesn't mean concurrence and it only implies exchange of views. Greater say to the executive.
<b>Second Judges Case, 1993:</b>	Consultation with CJI means concurrence i.e. advice tendered by CJI is binding on the president. However, CJI needs to consult two senior-most judges.
<b>Third Judges Case, 1998</b>	CJI should consult with four senior-most SC judges to form his opinion.

## Gaps and Challenges in the Collegium System

### Issues with the Collegium System:

- **Lack of Constitutional Backing:** The collegium is not a body explicitly created by the Constitution. Its existence stems from judicial interpretation, raising concerns about **judicial overreach in self-appointment**.
- **Transparency Deficit:** The internal workings of the collegium are largely hidden from public scrutiny, giving rise to perceptions of **non-transparency and non-accountability**, contrary to democratic ethos.

- **Concerns by Law Commission (230th Report):** The report highlighted issues like **nepotism, favoritism, and lack of objectivity**, often dubbed the “**Uncle Judge Syndrome**”, where personal affiliations outweigh merit.
- **Article 74 Contradiction:** The collegium sidelines the **Council of Ministers’ advisory role to the President**, raising constitutional concerns over executive exclusion in appointments.
- **Seniority vs Merit Debate:** The rigid adherence to seniority has led to **meritorious**

candidates being overlooked in favour of less competent but senior judges.

- **Inadequate Appointment Process:** The system has **struggled to fill judicial vacancies efficiently**, leading to a backlog and overburdened courts.
- **Absence of Institutional Oversight:** After the **Second Judges Case**, the Chief Justice's recommendations became binding on the President, virtually **eliminating executive checks**, resulting in **concentration of power** within the judiciary.

### Reforms and the Way Forward:

- **Early Finalisation of MoP:** Finalising the **Memorandum of Procedure** for appointments is essential to ensure transparency and timely action.
- **Independent and Permanent Appointment Commission:** A dedicated body with **adequate safeguards for independence**, ensuring **judicial primacy but not exclusivity**, can maintain a balanced structure.
- **Joint Consultation Mechanism:** A **collaborative process between the judiciary and executive** is vital for timely and effective appointments, ensuring diversity, integrity, and competence.
- **Merit-Based, Transparent Criteria:** Establishing **clearly defined eligibility standards** would help clarify selection and rejection decisions, enhancing public trust.
- **Publishing Collegium Decisions:** The **Supreme Court's initiative to disclose reasons for its recommendations** is a welcome step towards openness.
- **Panel-Based Recommendation to President:** The collegium should recommend a **shortlist or panel of eligible names**, prioritised with clear rationale, to restore an element of executive participation.
- **Law Commission Proposal:** The legislature may consider passing a law to **balance judicial leadership with executive inputs**, thereby creating an accountable yet independent appointment mechanism.

### REMOVAL OF JUDGES: CONSTITUTIONAL MECHANISM & ISSUES

### Constitutional Basis for Removal (Article 124(4)):

- A **Supreme Court judge** can be removed **only by the President**, and that too on grounds of:
  - **Proven misconduct** or
  - **Incapacity**
- The removal requires **approval by both Houses of Parliament** through a **special majority** (i.e., a majority of the total membership and a two-thirds majority of those present and voting).

### Issues in the Existing Removal Process:

- **Ambiguity in Terminology:** Terms like *"misbehavior"* are undefined in the Constitution, making interpretation subjective.
- **Cumbersome Procedure:** The process of impeachment is **complex and rarely successful**, making judges practically unaccountable.
- **Lack of Institutional Separation:**
  - The investigative committee (under the Judges Inquiry Act, 1968) includes senior judges, often from the Supreme Court, leading to a *"judges judging judges"* situation.
- **Opacity in Proceedings:** The inquiry process lacks public transparency; deliberations happen behind closed doors.
- **No Interim Suspension:** The judge under investigation **continues to function** as there is no legal mandate for stepping aside.
- **Political Interference:** For instance, the **Justice V. Ramaswami case (1993)** saw political abstention (by Congress), which led to the failure of the removal motion despite adverse findings.

### Suggested Reforms and Way Forward:

- **Transparent Appointments:** The **Memorandum of Procedure (MoP)** should emphasize integrity as a central criterion in judicial appointments to prevent later controversies.
- **National Judicial Council Proposal (2006 Bill):**
  - Establish a **National Judicial Council (NJC)** to examine

complaints against judges of the higher judiciary.

- Allow **citizens to submit complaints** regarding misconduct or incapacity.
- **Independent Oversight Mechanism:**
  - Create a **National Judicial Oversight Committee** with representation from the judiciary, executive, and civil society.
  - Empower it to **investigate, recommend actions,** and enforce accountability.
- **Interim Restrictions:** Judges facing serious allegations should **voluntarily recuse** or be **barred from judicial work temporarily,** pending inquiry.
- **Prevent Politicization:** Removal should be based on merit and ethics, not on political majorities or alliances.

## JUDICIAL ACCOUNTABILITY – A DEMOCRATIC IMPERATIVE

### Meaning:

Judicial accountability refers to the idea that judges must be answerable for their decisions and conduct, ensuring transparency in the judicial process. This could mean institutional oversight, internal checks, or broader public scrutiny through mechanisms like Right to Information (RTI).

### Why Judicial Accountability Is Essential:

1. **Maintaining Public Confidence:** Controversial observations by judges (e.g. in cases of sexual violence) and selective listing of cases may erode public faith in the impartiality of the judiciary.
2. **Opaque Appointment Mechanism:** The collegium system, where judges appoint judges, lacks transparency and excludes input from the executive or legislature.
3. **Conflict of Interest:** Concentration of powers such as the Chief Justice acting as 'Master of the Roster' has raised questions, especially when the CJI is a party in related cases.
4. **Questionable Conduct:** Allegations such as corruption (Justice Ramaswami case) or sexual misconduct (Justice Ranjan Gogoi episode) bring the integrity of top judges into question.

### 5. Lack of Transparency:

Internal mechanisms are used to deal with complaints, but these lack public accountability and external oversight.

### 6. Information Deficit:

SC rules under RTI don't prescribe timelines or appeal procedures for information delay, increasing opacity.

### 7. Contempt Provisions Misused:

The contempt of court tool, though important, has been invoked against legitimate criticism (e.g., Prashant Bhushan, Kunal Kamra), which chills free speech.

### 8. Judicial Overreach:

In efforts to address citizen grievances, the judiciary sometimes crosses into executive territory (e.g., liquor ban near highways, national anthem mandate).

### 9. Independence Without Accountability:

Judicial independence must not translate into insulation from checks. Otherwise, personal discretion may override constitutional morality.

### Steps Taken So Far:

- **Restatement of Judicial Values (1997) and Bangalore Principles (2002):** Ethical frameworks outlining expected conduct from judges.
- **Judicial Standards and Accountability Bill, 2010:** Proposed a National Judicial Oversight Committee for investigating complaints and suggesting action or removal.
- **Live-streaming of Proceedings:** Recently approved by the SC to promote openness and awareness.
- **Draft MoP (2016):** Proposed merit and integrity as key selection criteria; also called for a permanent secretariat to track appointments and performance.
- **RTI Verdict (SC vs Subhash Chandra Agrawal):** Held that the Chief Justice's office is subject to RTI, promoting transparency.

### Suggested Measures for the Future:

1. **Create an Independent Judicial Ombudsman (Lokpal-type body):**

A credible and autonomous mechanism to address complaints against judges.

2. **Code of Ethics:** A legally binding and detailed code of conduct must be adopted and enforced for all judges.
3. **Two-Tier Accountability Structure:** Minor misconduct could attract penalties or suspension; major violations may trigger removal proceedings.

4. **Ensure Diversity and Sensitivity:** Selection of judges must reflect India's pluralism and include criteria like gender sensitivity, social awareness, and regional representation.
5. **Academic Scrutiny & Media Vigilance:** As stated by Arun Shourie: "*Judgments must be studied and debated publicly so that judges know they are being held to standards.*"

## JUDICIAL ACTIVISM AND JUDICIAL OVERREACH

Judicial activism:	Judicial Overreach
It is proactive and assertive role played by the judiciary to force the executive and legislature to discharge their constitutional duties to uphold the rights of citizens.	Extreme form of judicial activism where arbitrary and unreasonable interventions are made by the judiciary into the domain of the legislature or executive.
E.g. Directing to create a new policy to handle drought, setting up a bad loans panel, ordering to restore the Internet in Kashmir, etc.	E.g. Supreme Court, ruling on a PIL which was about road safety, has banned the sale of liquor at retail outlets, as also in hotels, restaurants, and bars, that are within 500m of any national or state highway.

## Judicial Activism in India – A Democratic Tool or Overreach?

### Instruments of Judicial Activism

- **Constitutional Interpretation:** The judiciary often expands the meaning of constitutional provisions to suit the evolving needs of society.
- **Judicial Review:** The power to examine the constitutionality of legislative and executive actions. Any act that violates constitutional provisions can be invalidated.
- **Public Interest Litigation (PIL):** Courts accept petitions filed by individuals not directly affected, provided they represent the interests of the public at large.
- **Supervisory Authority:** Higher courts monitor the functioning of subordinate courts to ensure due process.
- **Reference to International Law:** Courts refer to global human rights conventions or environmental norms to interpret constitutional guarantees.

### Advantages of Judicial Activism

- **Checks on Arbitrary Power:** Provides innovative and bold remedies.

*Example:* Closure of polluting industries near the Taj Mahal safeguarded cultural heritage.

- **Judicial Wisdom for Social Reform:** *Example:* *Vishaka Guidelines* (1997) laid down workplace safety norms for women in absence of legislation.
- **Democratic Accessibility:** By allowing PILs, the judiciary made itself more accessible to common citizens, moving beyond rigid 'locus standi' rules.
- **Holistic Justice Delivery:** *Example:* Use of **Article 142** to award compensation in Bhopal Gas Tragedy and free undertrials from overcrowded jails.
- **Quick Decision-Making:** *Example:* Ban on older vehicles in Delhi addressed pollution concerns swiftly, unlike the slow legislative process.

### Concerns Associated with Judicial Activism

- **Overstepping Constitutional Limits:** At times, judicial pronouncements resemble law-making, infringing on legislative domain.
- **Disruption of Institutional Balance:** Frequent interventions dilute the doctrine of

**Separation of Powers**, weakening democracy's structural integrity.

- **Democratic Deficit:** Since judges are not elected, their extensive role in governance raises concerns of **judicial tyranny**.
- **Personal Bias:** There are fears that judges might base rulings on subjective or ideological leanings rather than strict legal interpretation.
- **Precedential Trap:** Judicial interpretations in one case often become binding for others, even if societal contexts differ.
- **Lack of Practical Understanding:** Judicial orders may overlook administrative and economic constraints.  
*Example:* Sudden ban on BS-IV vehicles faced logistical issues and deadline extensions.

### Judicial Overreach: A Step Too Far

- **Encroachment on Executive & Legislature:** The wide use of **Article 142** can dilute the concept of restrained judicial conduct.
- **Ignoring Ground-Level Realities:** Judicial orders without assessing resource capacity and administrative limitations can cause harm.  
*Example:* Cancellation of coal and telecom licenses severely affected financial institutions.

- **Accountability Gap:** Unlike other organs, judiciary faces no direct electoral or parliamentary scrutiny. Misuse of **contempt powers** can stifle criticism.
- **Economic and Social Disruption:**  
*Example:* Liquor ban within 500m of highways led to widespread unemployment, despite limited data on its impact on accidents.

### Way Forward

- **Strengthen Legislative Process:** Well-drafted laws reduce the need for judicial improvisation.
- **Judicial Self-Restraint:** Courts should avoid assuming legislative or executive functions unless there's a constitutional vacuum.
- **Safeguard Article 142 Use:** Matters invoking extraordinary powers should be dealt with by a **larger Constitutional bench** for robust deliberation.
- **Maintain Institutional Balance:** Each branch of government must operate within its defined role to uphold **constitutional harmony**.
- **People-Centric Governance:** All three organs must work together, respecting each other's domain, to ensure justice, welfare, and democracy.

### Difference between Judicial Activism and Judicial Restraint

Parameters	Judicial Activism	Judicial Restraint
<b>Definition</b>	It is judicial Philosophy of going beyond the traditional role of just checking the legality of the law.	Judicial Philosophy of showing restraint from striking down a law or stopping interfering in the working of the other organs of the government.
<b>Usage</b>	When there is the scope of judicial intervention to correct things.	When there is scope to maintain separation of powers and other grievance redressal mechanisms are available
<b>Examples</b>	The courts taking up Suo moto cases, Banning the sale of liquor on Highways separation of powers and other grievance redressal mechanisms	Expressing restraint from not involving in Speakers actions in deciding anti-defection law.
<b>Famous Case</b>	The 2G Scam verdict cancelling telecom licenses	SR Bommai vs Union of India 1994, Almitra H. Patel vs Union of India 1998

## CONTEMPT OF COURT – A CRITICAL OVERVIEW

### Definition under the Law

The **Contempt of Courts Act, 1971** categorizes contempt into:

- **Civil Contempt:** Willful defiance of a court's judgment, order, direction, writ, or an undertaking made before the court.
- **Criminal Contempt** (not mentioned in original text but relevant): Acts that scandalize or lower the authority of the court, or obstruct the administration of justice.

### Constitutional Provisions

- **Article 129:** Grants the **Supreme Court** status as a 'Court of Record' with the power to punish for contempt of itself.
- **Article 215:** Provides **High Courts** similar powers.
- **Article 142(2):** Empowers the Supreme Court to take actions to punish for its contempt during the course of enforcing its judgments.

### Why Contempt Power is Needed

- **Preserving Judicial Dignity:** The judiciary derives its authority from the **people's faith**; contempt power helps uphold its sanctity.
  - *Example:* In *Pritam Lal v. High Court of M.P.*, the SC held that courts must protect their prestige through contempt jurisdiction.
- **Rule of Law Foundation:** Disobeying judicial orders threatens the core principle of legal supremacy.
- **Upholding Equality Before Law:** Helps ensure even the powerful comply with court rulings.
- **Judicial Independence:** Shields the judiciary from external influences like **media trials** and populist pressures.
- **Reasonable Restriction:** Under **Article 19(2)**, contempt laws act as a permissible limit on freedom of speech and expression.
- **Law Commission's 274th Report:** Recommends safeguards to avoid misuse.
  - *E.g.:* Section 13 of the Act states that if the impact of contempt is trivial, the court need not award punishment.

### Wider Interpretation of Interference

In *Brahma Prakash Sharma v. State of U.P.*, it was held that even **potential** harm to the judicial process can attract contempt provisions — actual disruption need not be proven.

### Arguments Against Current Contempt Framework

- **Freedom of Expression:** In a democracy, public scrutiny of the judiciary is both **inevitable and healthy**.
- **Lack of Judicial Accountability:** Blanket contempt power may hinder legitimate criticism essential for accountability.
- **Ambiguity:** Vague expressions like '*scandalizing the court*' can be misused to suppress dissent.
- **Violation of Natural Justice:** Judges acting as complainant, prosecutor, and decision-maker in contempt matters **violates the principle of impartiality**.
- **Global Perspective:**
  - **USA:** Emphasizes **free discussion of courts** in the public domain. Judicial reputation must stem from public confidence, not protective laws.
  - In many jurisdictions, **contempt powers are used sparingly** and not for personal prestige.

### Challenges in Implementation

- **Delay in Disposal:** Many contempt cases linger far beyond the **one-year limitation period**.
- **Unclear Boundaries:** Often no distinction between attacking a **judgment**, the **judge**, or the **institution**.

### Way Forward

- **Minimize Arbitrary Use:** Contempt law must be guided by objective standards.
- **Differentiate Between Judge and Institution:** Criticism of judicial conduct should not automatically translate into contempt.
- **Enhanced Punishment Where Justified:** Where interference is grave, deterrent punishment must be ensured.

- **National Commission for Review of Working of Constitution (NCRWC):** Suggested **limiting contempt power and judicial review** strictly to SC and HCs.
- **Incorporate ‘Mens Rea’:** Only punish contempt where malicious intent is established.
- **Institutions Must Earn Respect:** Courts must build trust through conduct and integrity — not solely through contempt threats.

## WOMEN IN THE INDIAN JUDICIARY

### Recent Development:

The Supreme Court recently witnessed a historic moment by having an **all-woman bench**, marking only the **third instance** of such a composition in its history — highlighting the need for deeper gender representation in the higher judiciary.

## REASONS FOR GENDER GAP IN JUDICIARY

1. **Socio-Cultural Constraints:**
  - The legal profession demands long, irregular hours, often clashing with **domestic responsibilities traditionally assigned to women**, resulting in early exits from the field.
2. **Rigid Seniority Norms:**
  - Promotions in higher judiciary are based on seniority. This system often **unintentionally sidelines women**, especially those with career interruptions.
3. **Inadequate Infrastructure:**
  - Many courts lack **basic facilities** such as restrooms or child care. A study showed **22% of trial courtrooms lacked toilets for women**, discouraging their participation.
4. **Absence of Reservation:**
  - While several states provide **reservations in lower judiciary**, **no such affirmative action exists in High Courts or the Supreme Court.**
5. **Restrictive Eligibility Criteria:**
  - Requirements such as **7 years of uninterrupted legal practice** and **age limits (35–45)** hinder many women from applying for district judge posts.
6. **Limited Pool of Women Advocates:**

- The **lower participation of women in litigation** reduces the availability of candidates for judicial appointments.
7. **Transfer Policy Challenges:**
    - **Frequent transfers every three years** act as a barrier, especially due to **social expectations about women's domestic responsibilities.**
  8. **Deep-Rooted Patriarchy:**
    - **Gender biases and stereotyping**, as observed in ICJ reports, affect recruitment, postings, and perception about women's capability in handling legal roles.

## WHY WOMEN JUDGES MATTER

1. **Access to Justice:**
  - Women judges and lawyers can make **survivors of sexual violence more comfortable** in reporting cases and seeking justice.
2. **Better Judgement Quality:**
  - **Empathy, fairness, and nuanced understanding** are often associated with female judges, enhancing judicial outcomes.
3. **Public Confidence:**
  - A **gender-inclusive bench** reinforces the legitimacy and credibility of the judiciary in the eyes of citizens.
4. **Breaking Gender Norms:**
  - Female representation challenges the **misconception that women are unsuited for litigation or high-pressure roles.**
5. **Global Goals:**
  - Aligns with **SDG 5 (Gender Equality)** and **SDG 16 (Inclusive Institutions)** to ensure representation in public services.
6. **Diverse Lenses in Interpretation:**
  - Women bring **unique life experiences**, offering diverse perspectives on laws, especially those affecting marginalized communities.
7. **Symbol of Empowerment:**
  - Women in higher judiciary act as **visible role models**, inspiring young women to pursue law and leadership.

## WAY FORWARD

1. **Data and Representation Planning:**
  - Maintain a **database of eligible women** and revise appointment mechanisms to

reflect **inclusive representation**, especially of marginalized women.

## 2. Sensitization Drives:

- Conduct **gender-sensitization sessions** for judges with outdated or regressive views, especially in **cases involving gender-based violence**.

## 3. Retention and Security:

- Offer **stable income, better allowances, and support systems** for female lawyers and lower court judges to encourage continuity.

## 4. Merit-Based Evaluation:

- Promote a culture where **capability outweighs gender stereotypes**, allowing fair opportunities based on performance.

## 5. Reservation in Higher Judiciary:

- Consider **horizontal reservation for women** in High Courts and Supreme Court, similar to what exists in the lower judiciary, without compromising on merit.

## FAST-TRACK COURTS (FTCs) AND FAST-TRACK SPECIAL COURTS (FTSCs)

### Recent Update:

The Union Law Minister recently emphasized the need to **expedite the establishment** of FTCs and FTSCs to ensure **speedy justice delivery**, especially in sensitive cases.

### Constitutional Backing:

- **Article 247** empowers **Parliament** to set up **additional courts** for more effective administration of laws, especially those related to the **Union List**.

### Evolution Timeline:

- **11th Finance Commission (2000):** Recommended the creation of **1734 FTCs** to expedite the disposal of cases, particularly those involving **undertrials**.
- **High Courts** were empowered to appoint **ad hoc judges** from the pool of retired judges and qualified advocates.
- By **2005**, over **1500 FTCs** were operational, with continued central support until **2011**, when funding was discontinued.
- After **2011**, the responsibility for maintaining FTCs shifted to **State Governments**.

- **14th Finance Commission (2015):** Proposed **1800 new FTCs** with an indicative fund allocation of **₹4144 crore**, encouraging states to use their increased tax share (42%) to fund them.

### Recent Initiatives:

- The **Ministry of Law and Justice** rolled out a scheme to establish **1023 Fast-Track Special Courts** for cases under **rape and POCSO Acts**, under the umbrella of the **National Mission for Safety of Women (NMSW)**.

### Notable Cases Handled:

- **26/11 Mumbai Terror Attack**
- **Best Bakery Case (2002 Gujarat riots)**

### Benefits of Fast-Track Courts:

- **Reduction in Backlogs:** FTCs have significantly reduced the burden on regular courts by clearing a large volume of pending cases.
- **Enhanced Judicial Efficiency:** A simplified procedure and focused jurisdiction allow faster case disposal, improving overall judicial performance.
- **Case-Specific Expertise:** FTCs often focus on specific categories (e.g., crimes against women, corruption), enabling appointment of **domain experts** as judges.
- **Consistency in Outcomes:** These courts often exhib

## Fast-Track Courts: Role, Challenges, and the Way Forward

### Role of Fast-Track Courts (FTCs):

- **Deterrence against Crime:** Swift delivery of justice serves as a strong deterrent, reducing the likelihood of crimes in society.
- **Judicial Efficiency:** Prompt trials improve institutional efficiency and help restore public trust in the justice delivery system.

### Key Challenges in FTC Functioning:

#### 1. Structural Constraints:

- **Inadequate Judicial Strength:** The number of fast-track courts and judges is insufficient compared to the case volume. *E.g., many FTCs in Delhi operate with only 1–2 judges.*

## 2. Event-Based Formation (Ad-Hocism):

- FTCs are often established in response to sensational incidents, not as a systemic solution to long-term pendency.

## 3. Rising Caseloads:

- The inflow of cases increases without proportional enhancement in judicial manpower, leading to growing pendency.

## 4. Absence of Fast-Track Processes:

- FTCs often follow regular trial procedures, offering no time advantage.  
*As per NCRB 2018, 78% of 28,000 cases in FTCs took over a year to conclude.*

## 5. Infrastructural Deficits:

- Many FTCs operate within existing court premises and lack dedicated rooms, digital tools, or video/audio recording setups.

## 6. Funding Constraints:

- According to the *Brij Mohan Lal* case, the Supreme Court emphasized that FTC continuation depends on state funding.  
*PRS (2019): 56% of states/UTs had no FTCs at all.*

## 7. Fragmented Governance:

- Jurisdictional overlap and lack of coordination among different tribunals, FTCs, and special courts limit effective functioning.

## Way Forward:

### 1. Capacity Augmentation:

- Recruit more judges and staff, make FTCs permanent, and invest in court-specific infrastructure and digital tech.

### 2. Technological Integration:

- Leverage **Artificial Intelligence** and **Big Data tools** for better case management, clustering, and prioritization.

### 3. Empowering State Governments:

- As recommended in joint conferences of **Chief Ministers and Chief Justices**, states should proactively coordinate with HCs to set up FTCs and ensure timely fund allocation.

## 4. Institutional Coordination:

- Establish a **nodal agency** at central/state level to integrate various FTCs, tribunals, and special courts under a common framework.

## 5. Comprehensive Reform:

- Include police modernization, procedural simplification, and targeted reforms to accelerate case disposal timelines.

## REGIONAL BENCHES OF THE SUPREME COURT – A STEP TOWARDS ACCESSIBLE JUSTICE

### Context & Recent Development

The **Parliamentary Standing Committee on Law and Justice**, in its **133rd report** titled “*Judicial Processes and Their Reform*”, proposed the creation of **regional benches** of the **Supreme Court of India**. The Central Government has agreed in principle to explore this recommendation.

Under **Article 130** of the Constitution, the Supreme Court may **sit at places other than Delhi**, as notified by the President in consultation with the Chief Justice.

*Proposal:* Delhi may continue to hear **constitutional matters**, while **appellate benches** across four or five zones can handle appeal cases — with their verdicts considered **final**, not just intermediary.

### Commission Reports on Regional Benches

- **95th Report (1984):** Suggested creating two wings within the SC — a **Constitutional Bench** and a **Legal Bench**.
- **229th Report (2009):**
  - A **permanent Constitutional Bench** in Delhi.
  - **Four Cassation Benches** for appeals:
    - **North** – Delhi
    - **South** – Chennai or Hyderabad
    - **East** – Kolkata
    - **West** – Mumbai

### Rationale Behind Regional Benches

Concern	Explanation
Inclusive Justice (Article 39A)	The principle of <i>equal access to justice</i> is undermined when SC remains centralised in Delhi.

Geographical Barriers	Remote states like the North-East face logistical and financial challenges in accessing the apex court.
Case Backlog	Over <b>80,000 pending cases</b> in SC (as per NJDG) contribute to delayed justice.
Decline in Constitutional Cases	Only <b>0.12%</b> of SC verdicts in the last decade were by Constitution Benches (5+ judges), down from <b>15% in the 1950s</b> . Regional benches can offload routine cases, allowing Delhi to focus on constitutional matters.
Litigation Culture & Economic Development	Prosperous states often have higher civil disputes, but delayed resolution and high pendency reduce confidence in the justice system. Regional benches can address this imbalance.

### Past Endorsements

- **Parliamentary Standing Committees** (2004, 2006, 2008): Supported decentralisation of SC benches.
- **Law Commission (229th Report)**: Advocated a **centralised Constitutional Bench** and **regional benches** for appellate work.
- **Supreme Court (1986)**: Proposed a **National Court of Appeal** with seats in **Chennai, Kolkata, and Mumbai**.
- **V. Vasantha Kumar Case (2016)**: SC referred the proposal of National Court of Appeal to a Constitution Bench.

### Challenges & Criticisms

Concern	Description
Dilution of Apex Authority	Splitting the SC may be perceived as weakening its <b>centralised authority and uniformity in legal interpretation</b> .
Basic Structure Doctrine	Amending <b>Article 130</b> for permanent benches may be viewed as violating the Constitution's <b>integrated judiciary framework</b> .
Judicial Opposition	In <b>2010</b> , the then Chief Justice and SC judges opposed regional benches, fearing fragmentation of the judicial hierarchy.

### Conclusion

Creating regional benches of the Supreme Court can enhance **access, efficiency, and justice delivery**,

particularly for marginalized regions. However, the model must ensure **judicial integrity, constitutional balance, and institutional coher**

## NALSA and Access to Justice: A Review-Based Insight

### Context:

The **Parliamentary Standing Committee** recently tabled a report reviewing the functioning of legal aid provisions under the **Legal Services Authorities Act, 1987**, assessing the performance of NALSA and related bodies.

### About NALSA (National Legal Services Authority):

- Constituted under the **Legal Services Authorities Act, 1987**.
- Mandated to frame **policies and guidelines** for delivering free legal aid and monitor their implementation across the country.
- Functions in coordination with **State Legal Services Authorities (SLSAs), District Authorities (DLSAs), and Taluka Committees**.

### Constitutional Backing:

- **Article 39A**: Directs the State to ensure free legal assistance to the economically or socially disadvantaged.
- **Articles 14 and 22(1)**: Uphold equality before the law and access to legal representation, forming the foundation for free legal aid mechanisms.

### Core Functions of Legal Services Authorities:

- Deliver **free and competent legal services** to eligible persons.
- Organize **Lok Adalats** for speedy, amicable dispute resolution.
- Conduct **legal literacy and awareness camps**, especially in rural and backward areas.
- Support **crime victims with compensation schemes**.
- Promote **alternative dispute resolution (ADR)** to reduce litigation burdens.

## Eligibility for Free Legal Aid:

Legal assistance is available to:

- **Women, Children**
- **Scheduled Castes / Scheduled Tribes**
- **Industrial workmen**
- **Victims of natural and industrial disasters**
- **Persons with disabilities or mental illness**
- **Detainees, prisoners, and custodial individuals**
- **Persons with income less than ₹1 lakh (or ₹5 lakh in Supreme Court cases)**
- **Victims of human trafficking or forced labor**

## Key Challenges in Ensuring Free Legal Aid:

Challenge	Description
Lack of Awareness	Many citizens remain unaware of their right to free legal aid.
Perception Gap	Free services are often seen as inferior in quality.
Human Resource Deficit	Shortage of dedicated and trained legal aid lawyers.
Low Motivation	Assigned lawyers may not invest genuine effort, impacting outcomes.
Unethical Demands	Instances where legal aid lawyers seek informal payments.
Inefficiencies	Delays and administrative bottlenecks in lawyer assignment and case tracking.

## Suggested Way Forward:

- **Mass Legal Literacy Drives:** Especially in rural areas and among vulnerable communities.
- **Leverage Technology:** Use **ICT tools, AI, and big data** to reduce turnaround time (currently averaging 11 days).
- **Attract Young Talent:** Incentivize with **respectable remuneration**, benefits, and fast-track opportunities for public positions.
- **Institutional Reform:** Recognize legal aid as an **essential public service**, as done in **South Africa and Kenya**.
- **Legal Culture Shift:** Integrate pro bono culture in law schools and bar associations.

## Recent Government Initiatives:

Initiative	Features
DISHA Scheme	Promotes innovative, tech-driven solutions for legal aid access.
Nyaya Bandhu App	Matches pro bono lawyers with eligible citizens and promotes a culture of voluntary legal aid.
Tele-Law Platform	Offers video/tele-legal consultations across <b>2.5 lakh Gram Panchayats</b> in <b>766 districts</b> .
LADCS (Legal Aid Defence Counsel System)	Deploys <b>full-time criminal defence lawyers</b> at the district level, inspired by public defender models of developed nations.

## Global Relevance and SDG-16:

- Aligns with **SDG Goal 16**: “Ensure access to justice for all and build effective, accountable institutions.”
- India's legal aid architecture contributes to **inclusive justice**, citizen empowerment, and democratic deepening.

## NOTES

**Cassation Benches, Inclusive Justice Delivery, Language Barriers, State Legal Services Authorities, Civil Litigation Rates, National Court of Appeal, Legal Empowerment, Essential Services.**

## Judicial Infrastructure in India

The **Chief Justice of India** has suggested the formation of a **National Judicial Infrastructure Authority of India (NJIAI)** to address systemic gaps.

## Meaning of Judicial Infrastructure

Judicial infrastructure refers to all the **physical, digital, and human resources** needed to ensure **equal, efficient, and citizen-centric access to justice**.

It includes:

- Court buildings and tribunals
- Lawyers' chambers
- Technological support (digital platforms, video conferencing)
- Adequate staffing and human resources

A robust judicial infrastructure enables **timely and equitable justice delivery**.

### Challenges in India's Judicial Infrastructure

- **Inadequate Funding:**
  - Judicial infrastructure receives only around **0.09% of GDP**, a significantly low allocation.
- **Infrastructure Deficit:**
  - According to the Supreme Court (2023), court facilities can accommodate only **20,831 district judges**, while the sanctioned strength is **25,081**.
- **Lack of Long-term Planning:**
  - Construction does not account for future needs, leading to rapid overcrowding and outdated facilities.
- **Bureaucratic Complexity:**
  - Multiple state-level departments (e.g., PWD, Finance Ministry, Collectorate) are involved, making **coordination difficult**.
- **Delayed Execution and Unused Funds:**
  - Infrastructure development is primarily a **state responsibility**, yet many states delay projects or **fail to contribute their share**.
- **Dependence on Executive Machinery:**
  - Design and implementation remain under the **control of Public Works Departments**, limiting judicial autonomy.

### Why Reforms Are Urgently Needed

- **Massive Case Backlogs:**
  - Over **4.4 crore cases are pending** across courts.
  - A Ministry of Finance report suggests that **property disputes take nearly 20 years** to resolve.
  - At the current rate, clearing the backlog would take **over 300 years**.
- **Contract Enforcement Issues:**
  - Delays in legal resolution hurt India's **ease of doing business**, making litigation **expensive and inefficient**.
- **Digital Infrastructure Gaps:**

- Post-pandemic, digitization is essential. However, **only 27% of courtrooms** have **video conferencing** capability.
- **Lack of Dedicated Accountability:**
  - No exclusive agency or body ensures execution or oversight of judicial infrastructure, leading to **project delays** and **uncoordinated implementation**.
- **Misallocation and Underutilisation of Funds:**
  - In FY 2019–20, only ₹84.9 crore of the ₹981.98 crore sanctioned under Centrally Sponsored Schemes (CSS) was used by five states—**over 91% of funds went unused**.
  - Some states have redirected judicial funds for **non-judicial activities**.

### Way Forward

Creating a **dedicated national agency** or **special purpose vehicle** for building and maintaining judicial infrastructure would:

- Improve **access to justice** for marginalized groups
- Enhance **efficiency and transparency**
- Foster **institutional accountability**
- Support long-term **modernization and digital transformation**

### Previous Year Question

Q. 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.- 2020

Q. 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.- 2020

Q. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India- 2017

# DISPUTE REDRESSAL MECHANISM

A dispute Redressal mechanism is a structured process that addresses disputes or grievances that arise between two or more parties engaged in business, legal, or societal relationships.

Dispute Redressal Mechanisms are typically non-judicial in nature, meaning that they are not resolved within the court of law.

The different mechanisms Formed in India: Gram Sabha, Nyaya Panchayat, Lok Adalat, Family Court, Counselling Centres, Commission of Inquiry, Tribunal, Consumer Court, Indian Legislation on ADR, etc.

Main Focus: In essence, the system focuses on Mediation rather than winner take all; Increasing Accessibility to justice and Improving efficiency and reducing court delays.

## **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

ADR means any procedure agreed to by the parties of a dispute, in which they use the services of a neutral party to assist them in reaching an agreement and avoiding litigation.

### **Constitutional basis:**

- Article 14: Equality before Law
- Article 32: Right to Constitutional remedies; right of people to seek justice.
- Article 39A: Equal Justice and Free Legal Aid.

## **Benefits of Alternative Dispute Resolution (ADR)**

As outlined in the Law Commission's 222nd Report on the need for efficient justice delivery, the following advantages highlight the growing relevance of ADR mechanisms in India:

**1. Cost-Efficient-** ADR proceedings are significantly more affordable than traditional court cases. Reduced procedural formalities, legal fees, and court charges lead to overall lower expenses.

**2. Faster Resolution-** Since ADR generally avoids multiple layers of appeal, it ensures **speedy disposal** of disputes. The absence of lengthy court procedures accelerates justice delivery.

**3. Flexible and Non-Technical- Unlike rigid courtroom procedures, ADR methods are informal and adaptable. They cater to the unique needs of parties, free from complex legal jargon and procedural hurdles.**

**4. Confidential and Safe-** Parties can express their grievances and negotiate freely without fear of public disclosure or legal repercussions, fostering open and honest dialogue.

**5. Preservation of Relationships-** ADR encourages **collaborative settlement** rather than adversarial confrontation. This helps in **maintaining business or personal relationships** by eliminating the sense of victory or defeat.

**6. Boost to Contract Enforcement-** According to the **World Bank's Ease of Doing Business Index**, India struggles with contract enforcement timelines. ADR can help **streamline enforcement**, making India more attractive for investors.

**7. Higher Compliance Rates-** As parties are active participants in the resolution process, there is usually a **greater willingness to honor the settlement**, reducing the chances of future disputes.

**8. Foreign Exchange Savings** - India often incurs significant costs in **international arbitration** (e.g., Singapore, London). By promoting domestic ADR frameworks, the country can **conserve foreign exchange reserves**.

arbitration, cannot be challenged in the same way as court verdicts, creating hesitation among litigants who seek further legal recourse.

**LIMITATIONS OF ADR**

- Lack of awareness continues to be a major hurdle. Many citizens, lawyers, and even judicial officers remain unfamiliar with the mandate for referring appropriate cases to arbitration and conciliation forums. This leads to underutilization of ADR platforms.
- There exists a perceived disadvantage in succeeding through ADR mechanisms. Some litigants feel that formal court systems offer stronger legal backing and are thus reluctant to shift to alternative models.
- Scepticism regarding the process and its outcomes persists. A considerable number of parties feel dissatisfied with the result and eventually detach themselves from ADR, opting instead for traditional litigation.
- The success of ADR depends on the good faith and informed participation of parties involved. Unfortunately, uninformed or reluctant parties can derail the process by withdrawing or not cooperating fully.
- As ADR is a voluntary process, it cannot be enforced unless both parties agree to resolve the matter through it. This mutual consent requirement limits its scope in contentious or high-stakes disputes.
- Concerns over neutrality and fairness arise frequently. In cases where one party is dissatisfied, accusations of bias are often levelled against the arbitrator or mediator, which weakens the legitimacy of the process.
- Except in the case of arbitration (which results in a binding award), most ADR mechanisms like mediation or conciliation do not guarantee resolution. At times, parties misuse the process simply to delay proceedings rather than to resolve the dispute sincerely.
- ADR has a limited scope. It mainly deals with civil or financial matters and is ineffective for criminal issues or cases requiring court orders such as injunctions or restraining directives.
- There is no appeal mechanism in ADR. Decisions by arbitrators, especially in binding

**WAY FORWARD**

- To achieve speedy and effective dispute resolution, technological interventions like E-Lok Adalats and pre-litigation mediation should be expanded. These tools can instill greater confidence among litigants and promote early dispute settlement.
- ADR should be developed as a career path. This involves training professionals in arbitration and mediation, setting procedures for quality assurance, and establishing ethical and accountability standards.
- The scope of ADR must go beyond commercial matters. Setting up arbitration and mediation centres specifically for family, property, labour, and other civil disputes will make ADR more inclusive and relevant.
- An attitudinal change is essential. Citizens must be encouraged to trust ADR mechanisms, recognizing them as fair, fast, and cost-effective alternatives to courts.
- Efforts should also focus on enhancing physical and digital infrastructure for ADR, skill development of legal professionals, and deployment of sufficient trained personnel.
- The Arbitration and Conciliation (Amendment) Act, 2021 has taken important steps to plug legislative gaps and streamline the arbitration process.
- The proposed Arbitration Council of India can further professionalize the domain by facilitating electronic records of arbitral awards, standardizing appointment procedures (under supervision of SC/HC), and ensuring that arbitrators are legally protected for good-faith actions.

**LOK ADALAT: An Indian Model of Dispute Resolution**

**Concept and Origin**

Lok Adalat, meaning "People's Court," represents a uniquely Indian mechanism rooted in Gandhian ideals of justice and reconciliation. It promotes settlement through mutual dialogue, compromise,

and mediation, without the rigidities of formal court procedures.

The first Lok Adalat in post-independence India was held in Gujarat in 1982, marking the beginning of a people-centric approach to dispute resolution.

## Scope and Applicability

Lok Adalats are authorized to take up:

- Disputes already filed in courts (pending litigation)
- Pre-litigation matters (disputes not yet filed in any court)

Types of cases often handled include:

- Matrimonial or family-related disputes
- Compoundable criminal cases
- Motor accident claims
- Land acquisition and property matters
- Money recovery and labour disputes

Cases involving **non-compoundable offences** (serious criminal matters) are outside the jurisdiction of Lok Adalats.

## Legal Foundation and Structure

The **Legal Services Authorities Act, 1987** gives Lok Adalats a statutory framework, ensuring their institutional presence across India.

### Organizing Bodies:

- Lok Adalats can be convened by Legal Services Authorities at the state, district, high court, and taluk levels.
- They may also be organized under the directives of the Supreme Court or High Courts.

### Panel Composition:

- Presided over by a sitting or retired judicial officer (Chairperson)
- Accompanied by a legal practitioner and a person with social service experience (e.g., NGO representatives, community leaders)

## Legal Powers and Award

- Lok Adalats are granted powers equivalent to a civil court under the Civil Procedure Code (1908) and CrPC (1973) for conducting proceedings.
- The award (decision) issued by a Lok Adalat is considered a **final and binding decree**.
- No appeal is permissible against such an award, ensuring prompt closure of the dispute.

## Advantages of Lok Adalat

- Swift and economical justice delivery
- Informal and flexible proceedings
- Elimination of prolonged court battles
- Friendly settlement reduces adversarial tension
- No court fees required (fees paid earlier are refunded)

## Innovations: Mobile Lok Adalats

In recent times, **Mobile Lok Adalats** have been introduced to extend access to justice in rural and remote areas. These mobile units travel to villages and towns, enabling marginalized communities to resolve disputes at their doorstep.

## Gram Nyayalayas – Grassroots Justice in India

### Background and Evolution

The idea of **Gram Nyayalayas** (village courts) emerged as a solution to make justice delivery more **accessible, speedy, and people-centric**, especially for rural and marginalized communities.

- The **114th Law Commission Report** recommended the establishment of village-level courts to:
  - Deliver justice in a **humane, decentralized** manner.
  - Alleviate the **backlog of cases** in subordinate courts (targeting up to **50% reduction**).
  - **Ease the burden** on higher judiciary.

### Legislative Framework

- Enacted as the **Gram Nyayalayas Act, 2008**.
- Intended to establish **around 5000 local courts** across the country.

- The Central Government allocated ₹1400 crore to support States/UTs in setting them

## Key Features and Functioning

Aspect	Details
Nature	Mobile courts functioning close to rural populations
Presiding Officer	<b>Nyayadhikari</b> (judicial officer equal to a Judicial Magistrate of First Class)
Appointment	Done by <b>State Governments</b> , in <b>consultation with the respective High Court</b>
Jurisdiction	Handles <b>both criminal and civil matters</b> specified under the First Three Schedules of the Act
Location	Typically based at the <b>block-level panchayat headquarters</b> or a <b>cluster of nearby panchayats</b> where intermediate-level panchayats are absent
Procedure	Follows <b>informal procedures</b> , guided by <b>natural justice</b> , <b>not bound by strict rules of the Indian Evidence Act, 1872</b>
Mode of Justice	Emphasis on <b>conciliation and compromise</b> , especially in minor disputes
Appeals	Civil case appeals go to the <b>District Court</b> ; criminal appeals go to the <b>Sessions Court</b>

## Significance

- **Empowers rural citizens** by bringing courts closer to their homes.
- Encourages **alternative dispute resolution mechanisms**, reducing reliance on lengthy formal court procedures.
- Supports the ideal of **decentralized justice** as envisioned in **Article 39A** of the Constitution.

## REASON FOR POOR FUNCTIONING OF GRAM NYAYALAYA

- **Overlapping jurisdiction:** Over the years many states have established regular courts at the Taluka level thereby lessening the need for an additional institution of gram nyayalaya.
- **Lack of attention:** Despite 1400 Cr allocations by the central government Gram Nyayalayas have simply been side-lined by most state governments in their pecking order of policy priorities.
- The slow pace of funds utilization under the Scheme due to the lack of proposals from the States for setting up Gram Nyayalayas.

up.

- **Lack of Human resources:** Shortage of judicial officers for Gram Nyayadhikaris post, Non-availability of notaries, stamp vendors, etc have hampered the progress.
- **Lack of clarity:** Whether Gram Nyayalayas gives an additional option for quick dispute resolution or not is doubtful as alternative forums such as labour courts, and family courts are already available.
- **Lack of awareness:** In general awareness among all stakeholders Le. litigants, lawyers, and police officers involved in case resolutions remain extremely limited.

## WAY FORWARD

- **Mass awareness campaigns:** To sensitize stakeholders on the utility and benefits of such a forum for availing Justice.
- **Establishing permanent Gram Nyayalayas:** In every panchayat and making new judicial officers mandatory to serve in it, to train Gram Nyayadhikaris.
- **A cadre of Gram Nyayadhikari:** Individuals with a degree in social work along with law shall be recruited to this service.
- **Change in Working:** The judicial, political and executive will have been completely missing to establish gram nyayalayas. This needs to be changed first and foremost.
- **Other measures:** Creation of necessary infrastructure like Separate buildings, Local language training to recruit Nyayadhikaris, etc.
- **NOTES:** Gandhian principle, non-compoundable, Legal Services Authorities Act 1987, Legal Services Committee,
- Nyayadhikaris

## TRIBUNALS (PART XIV- A; ARTICLE 323A, 323B)

- Recently, the Supreme Court (SC) ruled that tribunals cannot direct the government to frame policy.
- Also, SC said that making policy is not in the domain of the Judiciary.
- **Definition:** A tribunal is a quasi-judicial institution constituted with the objective of speedy, inexpensive, and decentralized dispute resolution in various matters like administrative or tax-related disputes.

Constitutional provision: Constitution by 42nd

Amendment Act, 1976 (Swaran Singh Committee)

Dimension	Article 323-A	Article 323-B
Purpose	Administrative Tribunals.	Tribunals For Other Matters
Established By	Only By Parliament	Both By Parliament And State
Hierarchy	No	May Be Created

### ADVANTAGES OF TRIBUNALS

- Flexibility: Not restrained by rigid rules under the Civil Procedure Code and the Indian Evidence Act and follow the principles of Natural Justice.
- Relief to Courts: Relief to overburdened ordinary courts of law.
- Less Expensive: Less formal and a faster way to resolve disputes than the traditional court.
- Legally binding decisions: Same powers as a civil court, viz., issuing summons and allowing witnesses to give evidence. Its decisions are legally binding on the parties, subject to appeal.
- Technical expertise: Provision to appoint expert members who play a critical role in the adjudication of matters demanding technical expertise.

### CONCERNS WITH TRIBUNALS

- Against the separation of powers: It has both administrative and judicial members.
- Conflict of interest: Appointments by executive and executive is also the largest litigant in the country.
- Undermining Judicial Authority: Largely replaced HC for disputes under the various Acts. Appeal against the appellate tribunal, directly go to SC, side-stepping the HC. (L. Chandrakumar's case: 1st appeal to HC)
- Lack of autonomy: Operates under parent administrative ministries -> at their mercy for facilities, infrastructure, and also rule-making.
- Low transparency: Lack of information available on the functioning, Websites are routinely non-existent, unresponsive, or not updated.
- Increasing Pendency: Average pendency is 3.8 years (pendency in high courts is 4.3 years)
- Overlapping Jurisdiction: Tribunals function under various ministries and departments creating confusion about the management of the tribunals. Also, multiple tribunals perform similar functions.
- Delayed awards: Cauvery Interstate water dispute tribunal was established in 1990 and took 17 years to pronounce its judgment in 2007. This was further

challenged in the supreme court. This reflects the very purpose of the tribunal as a quick dispute-resolution mechanism.

### WAY FORWARD

- Law Commission: Procedure for improving the working of the tribunal system
- Qualification of judges: transfer of HC jurisdiction-> qualified to be HC judge.
- Appointment: Nodal agency under law ministry to ensure uniformity in the appointment, tenure, and service conditions of all members appointed in the tribunals.
- Vacancy: Filled preferably within six months before occurrence by initiating the procedure well in time.
- Selection of the members: impartial with minimal involvement of government agencies. Separate Selection Committee, for both judicial and administrative members.
- Tenure: Chairman-> 3 years / 70 years and Vice-Chairman and Members -> 3 years/ 67 years.
- Accessibility: benches in different parts of the country ideally where the HC are situated.
- Aligning with the basic structure: tribunal order may be challenged before the Division Bench of the HC having territorial jurisdiction over the Tribunal.

### TRIBUNAL REFORMS ACT 2021

The Tribunals Reforms Bill, 2021 was introduced in Lok Sabha by the Finance Minister, Ms. Nirmala Sitharaman, on August 2, 2021. Now it became an Act, after Presidential assent.

### FEATURES

- Qualifications of tribunal members: Their service terms (such as qualifications, removal and pay) are to be decided by the Central Government.
- Search and selection committees: The Chairperson and Members of the Tribunals shall be selected by the central government based on the recommendations of a Search-cum-Selection Committee.
- State administrative tribunals will have their own search and selection panels.

- The central government shall act on the recommendations of selection committees as soon as possible, preferably within three months of the date of the recommendation.
- Eligibility and term of office: The act establishes a four-year tenure for tribunal members. It establishes a maximum age of 70 years for the chairperson and 67 years for the other members.
- The minimum age for appointments is 50 years.
- Uniform compensation and rules: The statute establishes uniform pay and rules for search and selection committees across tribunals.
- It also allows for the removal of tribunal members. It provides that the central government may remove any Chairperson or Member from office upon the suggestion of the Search-cum-Selection Committee.
- Pay and allowances: The statute specifies that the Chairpersons and Members of the tribunal being disbanded would cease to hold office and will be entitled to compensation equal to three months' pay and allowances for their premature termination.

## INTER-STATE WATER DISPUTES

### Recent Context

The Union Cabinet has recently approved the **Terms of Reference (ToR) for Krishna Water Disputes Tribunal-II (KWDT-II)** under the **Inter-State River Water Disputes Act, 1956**, reviving focus on India's mechanisms for resolving interstate river disputes.

### Constitutional Provisions

#### Article 262 – Adjudication of River Water Disputes

- Empowers **Parliament** to enact laws for the resolution of conflicts regarding:
  - The **use, distribution, or control** of waters in any **inter-State river or river valley**.
- Enables Parliament to **exclude jurisdiction of Supreme Court or any other court** over such disputes.

#### Article 246 and 7th Schedule

- Distinguishes **legislative competence** between Centre and States:
  - **State List (Entry 17)**: Water supply, irrigation, canals, drainage, and embankments within the state.
  - **Union List (Entry 56)**: Regulation and development of inter-State rivers and river valleys when declared necessary in public interest.

## Legal Mechanisms Created by Parliament

### River Boards Act, 1956

- Empowers the Centre to create **River Boards** on the **request of states**.
- These boards provide **advisory support** for integrated development and water sharing.

### Inter-State River Water Disputes Act, 1956 (ISRWD Act)

- Enacted to **resolve disputes** related to inter-State river waters.
- Key Features:
  - **Tribunals are constituted** once a water conflict arises and efforts at negotiation fail.
  - Tribunal awards are **binding** and have the **force of law**.
  - Example: **Cauvery Water Disputes Tribunal, Krishna Water Disputes Tribunal, Mahanadi Tribunal** etc.
  - Amendment in 2002 and further reforms proposed to **streamline** tribunal functioning and **speed up** adjudication.

## ONLINE DISPUTE RESOLUTION (ODR): A Modern Justice Tool

Online Dispute Resolution (ODR) refers to the **use of digital technologies** in combination with **Alternate Dispute Resolution (ADR)** mechanisms — such as negotiation, mediation, and arbitration — to resolve legal conflicts, particularly in low to mid-value cases.

### Current Status in India

- **Ease of Doing Business – Enforcement of Contracts**: India ranked **163rd globally**, showing only slight progress from **186th in 2015**.
- **Delays and Costs**: On average, it takes nearly **4 years** and over **30% of the project cost** to resolve a commercial dispute.
- **Negative Perception**: The **Srikrishna Committee (2017)** highlighted India's **poor arbitration reputation**, affecting investor confidence.

## Advantages of ODR

Benefit	Explanation
Access to Justice	Facilitates user-friendly, non-adversarial resolution, especially for those in remote areas.
Legal Empowerment	Citizens become more aware of rights and gain tools for enforcing them, improving the rule of law.
Speed & Convenience	Cuts down on travel, waiting time, and judicial backlog.
Cost-Efficiency	Minimizes legal expenses and reduces dependence on formal legal counsel.
Bias Reduction	Limits unconscious bias through minimal exposure to socio-demographic cues during hearings.

### Global Examples

- **Singapore:** Built the **Singapore International Arbitration Centre (SIAC)** in the 1990s, which now tops global rankings in **contract enforcement**. Ironically, **many Indian businesses prefer SIAC** over domestic options due to its credibility and efficiency.

### Challenges to ODR in India

Challenge	Description
Outdated Laws	Many legal frameworks (e.g., <b>Notaries Act, 1956</b> ) are incompatible with fully digital operations.
Infrastructure Gaps	Reliable internet and secure digital platforms are lacking in rural and semi-urban areas.
Awareness Deficit	Both litigants and lawyers show low trust and understanding of ODR platforms.
Data Privacy Risks	Concerns around digital impersonation, evidence tampering, and breach of confidentiality.

### Way Forward

- **Digital Infrastructure Enhancement:** Implement **BharatNet** and **Digital India** missions aggressively to provide high-speed connectivity in rural regions.
- **Adopt ODR in Government Litigations:** With **46%** of pending cases involving the government, introducing ODR can significantly reduce court burden.
- **Skill Development:** Provide **ODR training and digital upskilling** to judicial officers and support staff.
- **Legislative Modernization:** Update legal frameworks to accommodate electronic records, remote notarization, and enforceability of digital awards.
- **Promote Public Trust:** Encourage pilot programs and case studies to demonstrate the efficiency and neutrality of ODR systems.

### Previous Year Questions

Q. The Central Administration 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.-2019

Q. How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India.-2018

Q. What is the quasi-judicial body? Explain with the help of concrete examples.-2016

Q. What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss-2015

Q. Constitutional mechanisms to resolve inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss.-2013

## LOCAL SELF GOVERNMENT (PART IX, PART IX-A)

### THE PANCHAYATS

**Local Self-Government in India** refers to the system of decentralized administration where elected local bodies manage local affairs. It strengthens democracy by promoting **people's participation**, enhances **accountability**, and facilitates **inclusive development** by bringing governance closer to the grassroots. These institutions play a crucial role in the **delivery of basic services**, planning, and local resource management.

### ISSUES AND CHALLENGES FACED BY PANCHAYATI RAJ GOVERNMENT

#### Recent

The **Reserve Bank of India (RBI)** recently published a report titled “**Finances of Panchayati Raj Institutions**”, analyzing the financial landscape of PRIs during **2020–21 to 2022–23**. The report highlights challenges related to fiscal decentralization and the uneven flow of funds at the grassroots level.

#### Context:

The **Second Administrative Reforms Commission (2nd ARC)** emphasized that the **ineffectiveness of Panchayati Raj Institutions (PRIs)** stems primarily from the lack of proper devolution in three key areas, known as the **3Fs**:

- **Functions:** Incomplete or unclear transfer of responsibilities to PRIs.
- **Funds:** Inadequate and irregular financial resources to perform those functions.
- **Functionaries:** Shortage of trained and empowered personnel to implement schemes at the local level.

This triad gap continues to hinder the capacity of PRIs to function as effective institutions of self-governance.

### FUNDS:

- **Limited Financial Autonomy:** In the absence of significant internal revenue and insufficient fiscal devolution from state governments, PRIs in several states function more as executing arms of the upper-tier governments rather than independent institutions of self-governance.

- **Restricted Revenue-Generating Powers:** The authority of PRIs to levy taxes, fees, or cess is minimal. Even where such powers exist, local bodies often hesitate to exercise them due to political considerations and fear of public backlash.

- **Delay in Constituting State Finance Commissions (SFCs):**

Although Article 243-I mandates the establishment of State Finance Commissions every five years to recommend fiscal transfers to PRIs, many states have either delayed or diluted the process. Recognizing this gap, the **15th Finance Commission** made it compulsory for states to constitute SFCs by **March 2024** as a prerequisite for receiving central grants.

- **Reluctance in Taxation of Local Populace:**

Gram Panchayats frequently avoid imposing or revising local taxes, leading to poor local resource mobilization. Consequently, their dependency on state and central transfers continues unabated, undermining the goal of fiscal self-reliance.

### FINANCES MECHANISMS OF PANCHAYATS and MUNICIPALITY

#### 1. Grants-in-Aid:

- **From the Central Government:** Allocated on the recommendations of the **Finance Commission under Article 280** of the Constitution.
- **From the State Government:** Based on the recommendations of the **State Finance Commission (SFC) under Article 243-I**, aimed at ensuring vertical and horizontal equity among PRIs.

#### 2. Loans:

- State governments may provide loans to PRIs for developmental activities or infrastructure projects, though such loans are limited and conditional.

#### 3. Own Revenue Sources (Internal Resource Generation):

- **Tax Revenues:** Include property tax, house tax, water tax, and profession tax (where applicable).
- **Non-Tax Revenues:** Derived from license fees, rent from panchayat assets (e.g., shops, markets), fines,

and user charges for services like sanitation and water supply.

#### 4. Program-Specific Allocations:

- Funds received under **Centrally Sponsored Schemes (CSS)** and **Additional Central Assistance (ACA)** for implementing development programs such as MGNREGS, PMAY-G, Jal Jeevan Mission, etc.

#### FUNCTIONS:

##### • Limited Functional Devolution to PRIs:

- Although **Article 243G** of the Constitution empowers State Legislatures to devolve powers and responsibilities to Panchayats, in practice, most States retain control over **core functions** such as water supply, sanitation, rural roads, street lighting, and community assets.
- As a result, PRIs often lack the authority to plan or execute essential services independently.

##### • Non-functional District Planning Committees (DPCs):

- Despite the constitutional mandate under **Article 243ZD**, District Planning Committees — meant to ensure integrated planning across rural and urban local bodies — are either non-existent or merely symbolic in many States.
- This weakens the vision of **bottom-up planning** and **convergent development**.

##### • Tokenism in Women's Representation:

- While constitutional amendments and most States ensure **50% reservation for women** in Panchayats, many elected women representatives (EWRs) remain marginalized.
- In several cases, **male relatives (often husbands)** act as proxy decision-makers — a trend colloquially known as "**Sarpanch Pati**" syndrome — undermining true political empowerment of women at the grassroots.

#### FUNCTIONARIES:

- **Low Manpower:** The municipal administrations don't have enough people to handle even the most fundamental duties. Additionally, because the majority of personnel are hired by higher level departments and deputed to local governments, they do not feel accountable to the latter; instead, they

work as a part of a departmental system that is vertically integrated.

- **Missing Accountability Mechanisms:** Accountability of public funds is at the heart of sound public finance. Not enough progress has been made in this area.
- The 15th FC has included having both provisional and audited accounts online in the public domain to be one of the entry-level conditions for local bodies to receive grants.
- **Delayed Elections:** Delay in PRI elections is becoming a frequent phenomenon that downgrades the effectiveness of PRIs. PRI elections have been delayed in MP, Haryana, and TN.
- **Politicization of PRIs:** Now, Panchayati Raj Institutions are viewed only as organizational arms of political parties, especially of the ruling party in the state.

#### GOVERNMENT EFFORTS FOR EMPOWERING PRI

- **Ensuring Property Rights:** The Ministry has launched a scheme named 'SVAMITVA' to prepare property records of rural people of their houses using drone surveying technology.
- **Capacity Building of PRIs:** A new scheme of Rashtriya Gram Swaraj Abhiyan (RGSA) was launched on 1 April 2018, to develop and strengthen the capacities of PRIs.
- **e-Gram Swaraj:** It assist in enhancing the credibility of Panchayats which would induce greater devolution of funds to PRIs as well as provide a platform for effective monitoring by higher authorities.
- **Gram Panchayat Development Plan (GPDP):** It is an annual exercise carried out by Ministry of Panchayati Raj (MoPR) in all Gram panchayats and other local self-governance bodies where GP development plans are prepared in a participatory manner under people's Plan Campaign.
- **Capacity Building- Panchayat Sashaktikaran Abhiyan (CB-PSA):** It had provided assistance to the States/UTs for capacity building and training of Panchayat Elected Representatives to enable them to perform their functions, including planning and implementation of development programmes, effectively and efficiently.

#### STEPS TO BE TAKEN

- Fiscal Federalism in True Spirit: The 2nd ARC had recommended that there should be a clear-cut demarcation of
- functions of each tier of the government. The Fifteenth Finance Commission (XV FC) in its interim report for 2020-21 and final report for 2021-2026 recommended an amount of Rs 60750 crore and Rs 236805 crore respectively for all three tiers of panchayats.
- District Level Planning: district planning based on grassroots inputs received from the village, intermediate and district levels through people's participation in the gram and ward sabhas.
- Audit Committees: They may be established at the district level by the State Governments to oversee the accuracy of financial data, the effectiveness of internal controls, adherence to the relevant legislation, and the moral character of every member of local bodies.
- Financial Empowerment: Panchayats need to be empowered to levy and collect taxes, tolls, user charges, fees, etc., along with other activities to enhance their Own Source of Revenue.
- Separate Cadre: establish a separate cadre of panchayat officials who would be subordinate to the elected authority, not lording it over them.

### **DIGITAL PANCHAYATS: eGRAMSWARAJ PFMS INTERFACE**

- To strengthen e-Governance in Panchayati Raj Institutions (PRIs), eGramSwaraj has been developed. It is a Simplified Work-Based Accounting Application for Panchayati Raj.
- eGramSwaraj-PFMS Interface (eGSPI) - It was launched in 2018 for enhancing transparency and accountability. In order to facilitate online payments by panchayats for expenses incurred by the Central Finance Commission, the accounting module of eGS and the Public Financial Management System were integrated.

### **ROLE OF WOMEN IN PANCHAYATI RAJ INSTITUTION**

- For women, almost one-third of all constituencies have been set aside. Additionally, it promotes and guarantees women's involvement in public life. It aims to develop a fundamentally sound national policy for women.

### **POSITIVE OUTCOMES AND EMPOWERMENT:**

- Women become more powerful and have their economic, social, and political status in society elevated with the implementation of the reservation system in Panchayati raj institutions.
- It allows for liberalisation within the traditionally male-dominated culture and introduces a new viewpoint on sound governance.
- Women are encouraged to participate in politics thanks to the reservation system.
- It has improved outcomes in terms of health, education, and family income, among other areas.
- The Panchayati Raj system has now recognised women's rights as a result of the passage of this Amendment, a critical step towards realising the potential that women have to contribute to government.
- It makes it possible for women to participate in planning, decision-making, and necessity execution in rural Panchayats.

### **CHALLENGES AND ISSUES:**

- Panchayat pati raj system: Proxy Politics and Gender-Based Discrimination
- Extreme violence was a barrier that the women sarpanches had to overcome in order to challenge established power structures in their communities.
- Additionally, it has been noticed that male family members use the status of the women in their families as an advantage when running for office, allowing the men to use the women to dominate the PRI.
- Both visiting the gram panchayat office and managing and controlling the gram Sabha's were prohibited for Dalit women panchayat leaders. As agents, their husbands were in charge of the office.

### **THE MUNICIPALITIES**

- Recently, the Capacity Building Commission (CBC) in collaboration with MoHUA organized a National Workshop on Capacity Building of ULBs to foster a unified approach to capacity building ULBs across India. The Workshop marked the launch of key initiatives, Le.,
- Annual Capacity Building Plan (ACBP) to enhance the capabilities of MoHUA.
- ACBP for 6 pilot ULBs Le. Ahmedabad, Bhubaneswar, Mysuru, Rajkot, Nagpur, and Pune

## **NEED FOR CAPACITY BUILDING FOR ULBS**

- To cater the needs of increasing India's urban Population which is expected to almost double from 460 million (2018) to 876 million by 2050.
- To deal with regional aspirations by ensuring social and economic development through bottom-up planning.
- For successful and effective implementation of schemes like Smart City Mission, Amrut Mission etc.

## **IMPACT OF LOCAL SELF-GOVERNMENT**

- Decentralization of Power: Local self-governance has empowered local communities to make decisions and implement policies that directly affect their areas.
- Community Participation: For instance, Ward Committees in urban areas provide a platform for residents to voice their concerns, suggest improvements.
- Effective Service Delivery: For instance, Village Panchayats responsible for providing essential services like water supply, sanitation etc. ensure better responsiveness to local needs.
- Grassroots Development: For example, District Planning Committees play a crucial role in formulating district-level development plans that address the unique needs and priorities of the local population.
- Empowerment of Marginalized Communities: For instance, the reservation of seats for Scheduled Castes, Scheduled Tribes, and women in local bodies ensures their active.

## **ISSUES IN MUNICIPALITIES**

- Lesser Functional Autonomy Of ULB: 12th schedule of the 74th CAA, 18 functions are enlisted that are required to be performed by the ULBs but many states have not been allotted all the functions to ULBs.
- In a considerable number of states like Karnataka and Kerala, even water supply still managed by respective state government.
- Low Revenue: property tax is the single largest source of own revenue for ULBs. However, the tax collections are low, due to wide exemptions, undervaluation of property and incomplete land registers.
- Concentration of Power: Power in urban bodies is consolidated in a single municipal body (whether it is

a municipal corporation, municipal council, or town panchayat).

- Poor Link With Urban Citizens: Citizens in urban areas are rarely included or involved in decision-making, especially the marginalised and vulnerable sections of society who indeed are the most affected by the emerging crisis of urbanisation.
- Measures taken for capacity building of ULBS.
- National Urban Digital Mission: It aims to create a shared digital infrastructure working across three pillars of 'People, Processes and Platform' to provide a framework for digital governance in the country.
- Jawaharlal Nehru National Urban Renewal Mission (JNNURM): Focuses on efficiency in urban infrastructure and service delivery mechanisms, community participation, and accountability of ULBs/ Parastatal agencies towards citizens.
- Municipal Bonds: These are financial instruments that municipal corporations and other associated bodies in India issue to raise funds.

## **WAY FORWARD**

- Leveraging City Economy: Each city needs to be recognized as a distinct unit of the economy. In larger cities, City Economic Councils can serve as a clearing house between businesses and governments to hasten the progress of specific projects, improve the ease of doing business and catalyse investments into the city.
- Encourage Transfer Of FFF: State governments can be encouraged to transfer 12th Schedule funds, functions and functionaries to the ULBs.
- Strengthening Finances Of ULB's And Civic Agencies: This includes market-oriented revenue models, value capture techniques, fiscal decentralisation, medium-term fiscal plans, PPPs in urban infrastructure and services, and financial accountability via audited balance sheets and performance MIS reports. It also includes optimising return on assets, particularly land and buildings.
- Citizen Participation: Enhanced citizen participation is needed for greater trust between citizens and governments, improved sustainability, better service delivery and accountability.
- Ward Committees and area sabhas should be activated with a technology-enabled 'Open Cities Framework' and the use of digital tools for feedback and reporting.

- Municipalities in India serve as vital units of local governance, responsible for the administration and development of urban areas. Continued efforts are needed to enhance the effectiveness and efficiency of municipal governance, ensuring sustainable and inclusive urban development in India.
- **NOTES:** Panchayat pati raj system, Capacity Building Commission, State Finance Commission, Decentralization of Power, Community Participation, Ward Committees, District Planning Committees, Functional Autonomy, City Economic Councils, value capture techniques, medium-term fiscal plans, Open Cities Framework.

### MUNICIPAL ELECTIONS

- The Supreme Court invalidated and annulled the outcome of the mayoral elections held for the Chandigarh Municipal Corporation.
- Need for fair and timely Municipal Elections:
- The 'First-mile' Connect: Municipalities are critical since councilors serve as 'first mile' elected citizens' representatives.
- Tackle grassroots level issues: Timely elections would ensure local action which is required to tackle the 21st-century human development priorities which includes environmental sustainability, primary healthcare, gender equality and jobs and livelihoods.

#### Challenges in Municipal Elections

- Untimely elections: Despite the SC-specific direction in Suresh Mahajan v. State of Madhya Pradesh (2022) State governments do not hold timely elections for urban local governments.
- Over 1,500 municipalities did not have elected councils in place from 2015 to 2021 across States.
- Delay in Council Formation: Even after elections, councils are not constituted, and elections of mayors, deputy mayors and standing committees are delayed.
- Delimitation and reservation: Most of the time state delayed the delimitation process, which in turn delayed council elections.
- Inconsistent Mayoral terms: In India, 17% of cities including five of the eight largest ones have mayoral terms less than five years.
- The terms of mayors, deputy mayors and standing committees being less than five years leads to frequent elections.

- SECs lack power: As they depend on state governments to complete the delimitation of ward boundaries and to notify reservations for women as well as marginalized communities.

#### Way Forward

- The power of delimitation: Must be vested in the SECs or an independent Delimitation Commission in each State for conducting the delimitation and reservation process.
- Empowering SECS: Strengthening SECs and giving them a more significant role in the entire election process can help ensure timely, free, and fair municipal elections.
- Single electoral roll: A single electoral roll for all three tiers of Government as suggested by the High-level Committee on Simultaneous Elections will reduce redundancy and duplication across multiple agencies.

#### Previous Year Questions

Q. To what extent, in your opinion, as the decentralization of power in India changed the governance landscape at the grassroots? - 2020

Q. 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. - 2020

Q. "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. - 2019

Q. 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? - 2018

Q. "The local self-government system in India has not proved to be an effective instrument of governance". Critically examine the statement and give your views to improve the situation. - 2017

Q. In the 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. - 2015

# COMPTROLLER AND AUDITOR GENERAL OF INDIA

CAG is considered the guardian of the public purse and is the head of the Indian Audit and Accounts Department. It upholds the Constitution of India and the laws of Parliament in the field of financial administration. For these reasons, Dr B. R. Ambedkar called the CAG as "one of the bulwarks of the democratic system of government" in India.

## DUTIES AND POWER OF CAG

These are laid down by the Parliament in the CAG (Duties, Powers and Conditions of Service) Act, 1971.

## CAG audits the following Government Accounts

- Central government expenditure from the Consolidated Fund of India, Contingency Fund of India, and the Public Account of India.
- State government and UT's (with a legislative assembly) expenditures from the Consolidated Fund of the state, the Contingency fund of the state, and the public account of the state.
- Central and state government departments: All trading, manufacturing, profit & loss accounts, balance sheets, and other subsidiary accounts.
- Bodies substantially financed from the Central or state revenues.
- Government companies.

## Constitutional Provisions for CAG

- **Article 148:** Provisions related to appointment, oath and conditions of service of the CAG.
- **Article 149:** CAG shall perform such duties and exercise such powers as may be prescribed by or under law by Parliament.
- **Article 150:** It advises the President about the prescription of the form in which the accounts of the union and the states shall be kept.
- **Article 151:** 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.
  - Similarly, reports of the CAG relating to the states shall be submitted to the Governor

of the state who shall cause the same to be laid before the state legislature.

- **Acts as a guide, friend, and philosopher** of the Public Accounts Committee of the Parliament.

## CAG AND THE PUBLIC ACCOUNTS COMMITTEE:

A Parliamentary standing committee was created under the GOI Act, of 1919.

It receives the CAG audit reports both at the centre and the state level.

CAG assist the PAC in performing multiple roles. E.g. A suggested corrective action by CAG if not undertaken is reported to the PAC; which takes it up with the government.

## CAG in India vs. CAG in Britain

Aspect	CAG in India	CAG in Britain
Official Role	Called "Auditor General" only in name; performs <b>auditing role only</b>	Performs <b>both auditor and comptroller</b> roles
Nature of Audit	Audit is <b>Ex-post facto</b> (after expenditure is done)	Approval is <b>pre-expenditure</b> ; no money can be withdrawn without CAG's nod
Parliamentary Membership	<b>Not a member</b> of Parliament	<b>Member of the House of Commons</b>

## INDEPENDENCE OF CAG

- **Security of tenure:** Appointed by the President by warrant under his hand and seal. He has a tenure of 65 years or 6 years whichever is earlier.
- **Removal:** By the President under the same procedure as a supreme court judge can be removed.
- **Post-retirement office:** Not eligible for further office under both Central or State Government. Salary and other
- **service conditions:** Determined by the Parliament and the same cannot be altered to the

disadvantage of the CAG after his/her appointment.

- Expenses: The administrative expenses of the office, salaries, allowances, and pensions are charged upon the CFI.
- Administrative powers: Conditions of service of people serving in the Indian Audit and Accounts Department (whose head is the CAG) and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
- No minister can represent the CAG: in the Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

### **LIMITATION OF OFFICE OF CAG**

- Appointment: The appointment of CAG is the complete discretion of the executive which limits its role of holding the executive accountable.
- The auditor general and not comptroller: Its report is post-facto, i.e. it can audit expenditures only when they are done.
- Limited usefulness: Auditors know what is auditing, and not administration; it is a highly pedestrian function with a narrow perspective and very limited usefulness.
- Shorter tenure: The age cap of 65 years affects the proper functioning of the institution.
- Exceeding mandate: It has been criticized for exceeding the mandate sometimes. For E.g. reports on 2G and coal block allocations had outlandish or sensational figures of losses or corruption.
- Limited resources: Shortage of manpower and increment in responsibility results in very few accounts actually being audited annually.
- Discourage risk-taking: CAG while looking into the 'wisdom, faithfulness, economy' of policy, may not consider practical problems of administration.
- Independence: Conflict of interest arises as former secretaries (usually IAS) are appointed as

CAG which compromises the independence of the institution.

- Secret expenditure: CAG cannot ask for particulars of expenditure in some matters and has to accept a certificate from the competent administrative authority.
- Intentional obstruction in audits: Delayed supply of crucial documents to the auditors and sometimes even that is denied.
- No criteria for appointment: either in the constitution or in any statute; is provided for the appointment of a CAG.
- Lack of statutory recognition: for the officials and staff of the Indian Audit and Accounts Department.

The CAG has the constitutional and statutory mandate and responsibility to ensure public accountability, transparency, effective service delivery and good governance. It recently audited the UN headquarters which shows the credibility of the institution.

**NOTES:** First mile' Connect, Delimitation Commission, Bulwarks of the Democratic system of Government, Contingency Fund of India, Philosopher of the Public Accounts Committee, warrant under his hand and seal, Indian Audit and Accounts Department, wisdom, faithfulness, economy of policy.

### **Previous Year Question**

Q. "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. (2018)

Q. Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether an audit of the Government's Policy implementation could amount to overstepping its own (CAG) jurisdiction.- 2016

## NCSC, NCST AND NCBC

### Structure of the Commissions (NCSC / NCST / NCBC)

Each commission comprises the following members:

- Chairperson
- Vice-Chairperson
- Three other Members

All members, including the chairperson and vice-chairperson, are **appointed by the President of India**.

### Core Functions of the Commissions

These commissions (National Commission for SCs, STs, and Backward Classes) perform various duties to ensure the protection and upliftment of the respective communities.

#### 1. Monitoring and Review

- Examine the status of **constitutional safeguards** and other legal protections available to Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).
- Review whether these protections are being implemented effectively by central and state governments.

#### 2. Handling Grievances

- Investigate specific complaints related to the **denial or violation of rights** belonging to SCs, STs, or OBCs.
- Take **suo moto** cognizance of major incidents involving atrocities or injustices.

#### 3. Policy Role in Development

- Advise central and state governments on how to **plan and execute development programs** targeting the socio-economic advancement of these communities.
- Evaluate and give feedback on the **effectiveness** of existing schemes.

#### 4. Reporting to the President

- Submit **annual reports** to the **President of India** detailing:
  - The **status of implementation** of constitutional provisions and laws.
  - Suggestions for improvement in **welfare and rights protection**.

### 5. Recommend Measures

- Suggest **new policies or modifications** to existing laws to ensure **better welfare and social justice** for these communities.

### Special Responsibilities and Tools

#### Digital Access to Justice

- **Online Complaint Portal:** The NCSC allows victims to directly file complaints related to caste-based atrocities via its official website.

#### Judicial Oversight

- Monitor the **establishment and functioning** of **Special Courts** for quick disposal of cases under:
  - **The Protection of Civil Rights Act, 1955**
  - **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**

#### Data Monitoring

- Collect and assess **statistical data** on crimes and injustices faced by SC/ST communities and provide feedback for corrective actions.

#### Law Implementation Watchdog

- Ensure that both central and state governments are **effectively implementing legal provisions** related to the protection, empowerment, and welfare of the SCs, STs, and OBCs.

### SPECIFIC FUNCTIONS OF NCST:

- Conferring ownership rights of minor forest produce (MFP) to STs living in forest areas.
- Measures for the development of tribals and to work for more viable livelihood strategies.
- Seek Cooperation and involvement of tribals in the protection of forests and undertaking social afforestation.
- Take measures to ensure full implementation of PESA,
- Safeguard the rights of the tribal communities over different resources like-water resources, mineral resources etc. as per the law.

- Improve the efficacy of rehabilitation measures taken for the tribals displaced by development projects.
- Take measures to reduce and ultimately eliminate the practice of shifting cultivation by tribals.

### **LIMITATIONS OF CONSTITUTIONAL BODIES TO PROTECT VULNERABLE SECTIONS:**

- Lack of infrastructure, manpower and resources.
- Lack of Capacity and insensitiveness of the institutions towards these communities.
- Commission's recommendations are not binding.
- Inefficient functioning as the bar for appointment is too high given the backwardness of these communities.
- Vague selection and appointment process, exorbitant budget.

### **102ND CONSTITUTIONAL AMENDMENT ACT 2018**

- It added a new Article 338-B, which granted constitutional status to NCBC.
- It enlarged the functions of NCBC to safeguard the interests of the socially and educationally backward classes more effectively.

### **POSITIVES OF GRANTING CONSTITUTIONAL STATUS TO NCBC**

- Giving more teeth: Constitutional status increases the stature of NCBC as a constitutional body will be better placed to ensure the welfare of BCs.
- Greater objectivity: Article 342A makes it mandatory to take the Parliament's concurrence for adding or deleting any community in the backward list.

- The misuse of creamy criteria by certain sections will be reduced.
- Annual report: The constitution obliges central and state governments to provide valid reasons for not acting on the report of the committee.
- Grievance redressal: NCBC will have an exclusive function with all power of civil courts; enabling it to ensure justice for backward classes.
- Wider responsibility: NCBC with an additional scope can look beyond reservation, to ensure holistic development and advancement.

### **CONCERNS THAT REMAIN**

- Non-binding recommendation: This may lead to reduced priority towards the report of NCBC and its budget allocations.
- No power to define: NCBC has no authority to define "backwardness". Hence, it cannot address the demands of various castes to be included as BCs.
- Composition: No exclusive provision for the appointment of experts in the body and leaves it to the discretion of the executive without any mention of qualification.
- Revision of BC list: Article 338B (5) is silent on the periodic revision of the BC list and the role played by NCBC.
- Multi-dimensional challenges: Mere constitutional status can't solve diverse issues like skewed representation and cornering of benefits by few BC castes, etc.
- No link with Art 340: Article 340 ensures the welfare and protection of BCs have not been linked with Article 338B.

### **STEPS NEED TO BE TAKEN**

- Composition: Compulsorily includes experts and females to ensure gender sensitivity.

- Capacity building and sensitization of lawyers, judges, and policemen to ensure proper and empathetic treatment and timely grievance redressal of backward class members.
- Effective implementation of existing government policies and evaluation of their impact for timely course correction.
- Ease to register a complaint: Take steps like registering a complaint via an online portal as done by NCSC.
- Holding regional level meet: The NCBC shall hold regional level meets to increase accessibility to the commission; just like NCSC.
- Timely Discussion: The importance of the annual report is generally overlooked. The President should be empowered to fix a period for the discussion of the Report in Parliament.
- Increased atrocities: 60% out of 16000 complaints received by NCSC were related to atrocities in public places. (NCRB data). E.g. caste-related honour killings in Haryana.
- Tribal eviction: NCSTs have been ineffective in stopping the eviction of STs due to development projects.
- E.g. Rejection of more than 5 lakh tribals' claim.
- Economic deprivation: Visible by the failure to uphold the spirit of FRA, 2006 and depriving access to minor forest produce in the name of "protected forests".
- Vanishing cultural identity: As many as 250 tribal languages have disappeared (report by Peoples Linguistic Survey of India).
- NCSC, NCST and NCBC are critical for the rights of the weaker section of society and tools for their upliftment. They possess great responsibility and to perform these needs to be strengthened further.

### **ISSUES FACED BY COMMUNITIES**

## UPSC AND SPSC

### CONSTITUTIONAL PROVISIONS

#### Article 312 – Creation of All India Services

- The **Parliament is empowered** to create **one or more All India Services** (including **All India Judicial Service**) that are **common to both the Union and the States**.
- This can be done if the **Rajya Sabha passes a resolution by a two-thirds majority**, declaring that such a service is necessary in the national interest.

#### Articles 315 to 323 – Public Service Commissions

These articles deal with the structure, authority, and operations of the **Union Public Service Commission (UPSC)** and **State Public Service Commissions (SPSCs)**.

#### Key Provisions Include:

- **Establishment** of the UPSC for the Union and SPSCs for individual states.
- **Composition:** Number of members, including the **Chairperson**, is defined by the President (for UPSC) or the Governor (for SPSC).
- **Appointment:** Members are appointed by the **President** in the case of UPSC and by the **Governor** for SPSC.
- **Removal:** Conditions and procedures for the removal of members are defined to ensure independence.
- **Functions:**
  - Conduct **recruitment examinations** for appointments to civil services.
  - Advise the government on matters related to:
    - Personnel policies
    - Promotions and transfers
    - Disciplinary actions

### UPSC VIZ-A-VIZ SPSC

#### UPSC

- Composition: consists of a chairman and other members appointed by the president of India.

- Strength: Discretion of the President. Usually 9 to 11.
- No qualifications are prescribed for membership except 50% of members should have held office for at least ten years under the Government of India or the state government.
- Term: six years/ 65 years of age; whichever earlier reached.
- Removal: By President on the ground of adjudging an insolvent, paid employment outside the duties, unfit due to infirmity of mind or body. For misbehaviour - By the President on the inquiry of the supreme court.

#### SPSC

- Composition: consists of a chairman and other members appointed by the Governor of state.
- Strength: Discretion of the Governor of the respective State.
- No qualifications are prescribed for membership except 50% of members should have held office for at least ten years under the Government of India or the state government.
- Term: Six years/62 years of age; whichever is reached earlier.
- Removal: President can remove the members and chairman on the same grounds and in the same manner as he can remove a chairman or a member of the UPSC.

### INDEPENDENCE OF COMMISSION

- Conditions of service: Determined by the President (by the governor for SPSC) & cannot be varied to the disadvantage of the members after their appointment.
- Expenses: salaries, allowances, and pensions are charged by the Consolidated Fund of India and are not subject to the vote of Parliament.
- Security of tenure: Chairman and members can be removed by orders of the President only on the grounds specified in the constitution.
- Post-retirement: The chairman of UPSC is not eligible for further employment with the Union or the state government in any capacity.

- SPSC chairman can be appointed chairman/member of UPSC or member of UPSC. But not eligible for any other employment.
- Member of UPSC (other than the chairman) is eligible to be appointed as chairman of any SPSC or UPSC.
- A member of an SPSC is eligible to be appointed as chairman of an SPSC or UPSC; or member of a UPSC.

### **FUNCTIONS AND LIMITATIONS**

**FUNCTIONS OF UPSC:-** Watchdog of merit system: It conducts examinations for appointments to the all-India services and the central services.

- Assists the states in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- Serves needs of a state: On Governor's request and with the President's approval.
- Consulted for the following matters of personnel management:
  - Methods of recruitment, promotion, and transfer to civil service and for civil posts.
  - All disciplinary matters affecting a person serving under the Government of India in a civil capacity.
  - Reimbursement claims of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his duties.
  - Temporary appointments exceeding 1 year and on regularisation of appointments.
  - To grant an extension of service and reemployment of certain retired civil servants.

- SPSC is consulted by the governor while framing rules for appointment to judicial service of the state (other than the posts of district judges).

**LIMITATIONS:-** Supreme court judgments: since they have the force of the law; can limit UPSC or SPSC.

- Non-binding provisions: The government can act without consultation with UPSC and the aggrieved public servant has no remedy in court.
- Selection by the UPSC does not confer any right to the post upon the candidate. The name recommended is only a recommendation.
- UPSC is not consulted on the following matters:
  - Making reservations for any backward class in appointments.
  - Consider the claims of SC/ST in making appointments to services and posts.
  - For Selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature, and the bulk of group C and group D services.
  - For a temporary appointment, if a person isn't likely to hold the post for more than a year.
- Classification of services, pay and service conditions, cadre management, training, etc.

So far the SPSC and UPSC have performed their duties with remarkable integrity and are rewarded with the faith of millions of aspirants each year. But as per changing times, the UPSC and SPSCs need to incorporate new ways like psychometric tests to ensure people with the highest integrity are appointed.

**NOTES:** All India Services, Infirmity of mind or body, Consolidated Fund of India, Watchdog of merit system, cadre management.

# ELECTION COMMISSION OF INDIA

## INTRODUCTION

The Election Commission of India (ECI) is a permanent and independent Constitutional body established under Article 324 of the Constitution. The ECI is provided with the power of superintendence, direction, and control of elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies, State Legislative Councils, and the offices of the President and Vice President of the country. It is not concerned with the elections of panchayats and municipalities in the states. For that, the Constitution of India provides for a separate State Election Commission.

## APPOINTMENT PROCESS OF ECI UNDER QUESTION:

- Election Commission: The Need for Evolution in the Appointment Process and Bolstering its Autonomy.
- Background of the Judgement: In 2015, a public interest litigation filed by Anoop Baranwal challenged the constitutional validity of the practice of the Centre appointing members of the Election Commission. The crux of the challenge is that since there is no law made by Parliament on this issue, the Court must step in to fill the "constitutional vacuum".
- Supreme Court (SC) on the Appointment of ECs:
- Judgment: A five-judge bench of the Supreme Court in March 2023, unanimously ruled that the members of ECI should be elected by a high-power committee consisting of:
  - The Prime Minister,
  - Leader of Opposition in Lok Sabha, and
  - The Chief Justice of India.
  - The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023: It replaces the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

## Novel Features of the Act:

- The members will be appointed by the President, upon the recommendation of the Selection Committee comprising - The Prime Minister, Cabinet Minister, and Leader of Opposition in Lok Sabha (or leader of the single largest opposition party).

- A Search Committee headed by the Cabinet Secretary will suggest five names to the Selection Committee. The Selection Committee may consider names other than those suggested as well.
- Eligibility criteria: The CEC and ECs must: (i) be persons of integrity, (ii) have knowledge and experience in the management and conduct of elections, and (iii) be or have been Secretary (or equivalent) to the government.
- Salary and pension: It will be equivalent to that of the Cabinet Secretary.

## Key Issues and Challenges with the Act:

- Selection criteria: It may be dominated by the Executive, which has implications for its independence.
- Selection Committee's recommendations to be valid in spite of vacancy or defect in the Constitution: It may effectively lead to a monopoly of Government members in selecting candidates, particularly when Lok Sabha is dissolved.
- Reduced status: Making the CEC and EC's salary equivalent to the Cabinet Secretary may lead to government influence as it is fixed by the government. Further, CECs and ECs also perform quasi-judicial functions and limiting these posts senior bureaucrats may exclude other suitable candidates.

## POWERS AND FUNCTIONS

### Administrative:

- Delimitation: Determine the territorial constituencies throughout the country based on the Delimitation Commission Act of Parliament.
- Electoral rolls: Prepare and periodically revise the electoral rolls of all eligible voters.
- Conduct of elections: Notify the dates and schedules of elections and scrutinize nomination papers.
- Registration: Registration of political parties and granting them national or state party status and allotting election symbols to them.
- Code of conduct: To be observed by the parties & candidates at the time of elections.
- Advisory: Advise the president and governor on matters relating to the disqualifications of the

members of Parliament and state legislature respectively.

- Quasi-Judicial: Act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.

### **INDEPENDENCE**

- Security of tenure: Chief election commissioner can be removed from his office except in the same manner and on the same grounds as a judge of the Supreme Court.
- Other election commissioners cannot be removed except on the recommendation of the chief election commissioner.
- Condition of Service: The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.

### **CONCERNS WITH ELECTION COMMISSIONERS**

- Lack of fixed tenure: The absence of a specified term may lead to concerns about political interference and instability.
- Potential for post-retirement appointments: Retiring Election Commissioners being appointed to other government positions raises concerns about conflicts of interest and impartiality.
- Accountability and transparency: Concerns exist regarding the transparency and accountability of Election Commissioners' decision-making processes.
- Conflict of interest: Perceived or potential conflicts of interest among Election Commissioners can undermine public trust in their neutrality.
- Lack of prescribed qualifications: The absence of specific qualifications raises questions about the expertise and experience required for the role.
- Inadequate enforcement powers: Discussions highlight the need for enhanced enforcement powers to effectively implement directives and tackle electoral malpractices.

### **STEPS TO ADDRESS ISSUES IN APPOINTMENT:**

- 2nd ARC: Establish a collegium headed by the Prime Minister, comprising the Speaker of the Lok Sabha, Leader of the Opposition, Law Minister, and Deputy Chairman of the Rajya Sabha, for transparent appointment of Chief Election Commissioner and Election Commissioners.

- Supreme Court: Fill the legal vacuum to ensure a fair and transparent selection process for Election Commissioners.
- Constitutional Protection: Amend the Constitution to provide constitutional protection to all three members of the Election Commission, rather than just one, ensuring their independence and security.
- Fair Elevation: Introduce provisions in the law where the senior-most Election Commissioner automatically becomes the Chief Election Commissioner, safeguarding the appointment from executive interference.

### **ISSUES FACED BY ELECTION COMMISSION**

- Allegation of Partisan Role: Actions raising concerns over impartiality, such as giving clean chits for Model Code of Conduct (MCC) violations by high-profile individuals.
- Lack of Power: Despite being vested with absolute powers under Article 324, the ECI lacks authority in areas like de-registering political parties and exercising contempt powers.
- Lack of Proactive Use of Authority: Limited power to take action against politicians seeking votes based on caste or religion, hindering effective enforcement.
- Politicization: The absence of post-retirement employment restrictions for Election Commissioners poses obstacles to independent functioning.
- Non-transparency: Lack of transparency in the selection process for the Chief Election Commissioner and Commissioners, influenced by the ruling government.
- Criminalization of Politics: Inability to effectively address the increased use of money and involvement of criminal elements in politics.

### **Other Challenges with the ECI:**

- Use of EVM and VVPAT, an issue of transparency: Use of these technologies has become a matter of concern
- regarding trust in the Election Commission of India (ECI). Although, time and again the ECI has addressed it, it needs to make an error and doubt-free process by conducting regular checks and trials.
- Challenges in ensuring intra-party democracy: Section 29A of the RPA Act, requires political parties to submit
- documents on organizational structure, office-bearers and their appointment, terms and powers & duties of

office-bearers, organizational elections, etc. However, due to lack of express provision for enforcing internal democratic functioning of political parties, and lack of power to de-register parties, the issue of criminalisation of politics, money and muscle power arises.

- Lack of Parity in the removal of ECs and CEC: Only the CEC enjoys the same status of the removal process as that
- of judges of the Supreme Court (SC). The ECs can be removed on the CEC's recommendation. There is a good case for extending the same tenure security to the ECs too.

### **WAY FORWARD**

- Enhance Independence and Impartiality: Ensure transparent and impartial selection processes for Election Commissioners, reducing government influence.
- Strengthen Powers: Grant the ECI additional authority, including deregistration powers and proactive action against violations of the Model Code of Conduct.
- Proactive Enforcement: Empower the ECI to take proactive action against caste and religion-based campaigning.
- Inner-Party Democracy and Financial Regulation: Promote reforms to enforce transparency and accountability within political parties.
- Post-Retirement Employment Restrictions: Implement restrictions on post-retirement employment to prevent conflicts of interest.
- EVM Security and Trust-Building: Improve EVM security measures and engage stakeholders to build trust.

**NOTES:** Dispute Resolution, Legal Complexities, Independence and Impartiality, intra-party democracy, Quasi-Judicial, Voter Awareness, Political Interference.

### **POLITICAL PARTIES AND THE ELECTION COMMISSION OF INDIA**

- The Election Commission of India (ECI) serves as the guardian of democracy and plays a crucial role in regulating political parties in the country. It acts as a watchdog, monitoring party finances, overseeing elections, and taking measures to maintain a level playing field for all political entities.

### **ROLE OF THE ELECTION COMMISSION OF INDIA IN REGULATING THE POLITICAL PARTIES:**

- Registration and Recognition: ECI's authority to register political parties ensures equal compliance with election conduct rules.
- Allocation of Symbols: ECI allows exclusive symbols to recognized parties and provides a list of free symbols for non-recognized parties.
- Model Code of Conduct: The code prevents the party in power from gaining unfair advantages during elections, coming into force from the announcement of the election date.
- Ceiling on Election Expenditure: ECI sets limits on expenditure to prevent undue influence, mandates separate
- accounts, and non-reporting can lead to disqualification.
- Financial Transparency: Registered parties must submit audited reports under section 29C of RPA,1951 to prevent misuse of tax-free donations.
- Appointments of Observers: ECI appoints general and expenditure observers to ensure a free and fair electoral process.

### **STEPS REQUIRED TO IMPROVE EFFECTIVENESS:**

- Power to Deregister Political Parties: Granting the ECI the authority to deregister parties under the RPA,1951 can create a deterrence effect.
- Transparency in Political Funding: The effectiveness of instruments like Electoral bonds, resulting in skewed donations, necessitates a re-evaluation.
- Principle of Precedence: Ensuring consistent actions by the ECI for similar electoral offenses, irrespective of the party involved.
- 2nd ARC Recommendation: Establishing a Collegium comprising key stakeholders for appointment recommendations of the Chief Election Commissioner and Election Commissioners.
- Independence of ECI: Ensuring constitutional security of tenure for all three election commissioners and debarment from post-retirement positions to reduce executive interference in ECI.
- In India's multi-party democracy, effective regulation of political parties by the Election Commission is essential to ensure fair competition, prevent misuse of concessions, and uphold electoral integrity.

## **SIMULTANEOUS ELECTIONS - ONE NATION, ONE ELECTION**

- A High-Level Committee (HLC) headed by Ramnath Kovind, former President of India, was constituted in September 2023 to examine the issue of holding simultaneous elections for the Lok Sabha, State Legislative Assemblies and local bodies of all States. The HLC has invited responses from political parties, the Law Commission and other groups on the proposal to hold simultaneous elections.

## **IN FAVOUR OF SIMULTANEOUS ELECTIONS**

- Expenditure: Lack of expenditure caps leads to high spending in elections.
- Policy Paralysis: Frequent application of the Model Code of Conduct disrupting government functions and civic life.
- Resource Savings: Potential benefits of utilizing the same voter and booth for both elections.
- Social Harmony: Escalation of communalism and casteism during election periods.
- Sustainable Development: Focus on short-term reforms due to the frequency of elections.
- Global Experiences: Implementation of simultaneous elections in countries like South Africa and Sweden.
- Invisible Socio-Economic Costs: Undetermined impact on education, welfare schemes, and resource allocation during election duties.
- Engagement of Security Forces: Diversion of armed police forces from other internal security responsibilities.

## **AGAINST SIMULTANEOUS ELECTIONS**

- Practical difficulties: Resistance from political parties due to adjustments in assembly terms.
- Constitutional hurdles: Lack of fixed tenures for Lok Sabha and state assemblies.
- Anti-federalism: Influence of national issues on state elections and vice versa.
- Reduces accountability: Frequent elections keep politicians connected with voters.
- Grassroots economy: Job creation and economic boost during elections.
- False arguments related to MCC: Misconceptions about restrictions on new schemes.

- Against multiparty democracy: Blurred distinction between state and national elections.
- Inconsistent with Westminster democracy and federalism: Impact on the dissolution of governments and political shifts.
- The disadvantage to regional parties: Dominance of national parties and disadvantage for regional parties.
- Alternative reforms: Expenditure caps, state funding, shorter poll durations, and enhanced security measures.

### Recommendations of the Report by Committee:

- The Ram Nath Kovind Committee has suggested that the President, through a notification issued on the first sitting of the Lok Sabha post general elections, set an 'Appointed Date'. This date would mark the beginning of the new electoral cycle.
- State Assemblies, that are formed after the Appointed Date and before the completion of the Lok Sabha's term, would conclude before the subsequent general elections. After this, elections to the Lok Sabha and all State Assemblies would be held simultaneously.
- The panel recommended that fresh elections could be held to constitute a new Lok Sabha in the event of a hung House or a no-confidence motion, or any such event but the tenure of the House will be "only for the unexpired [remaining] term of the immediately preceding full term of the House".
- When fresh elections are held for Legislative Assemblies, then such new Assemblies shall continue up to the end of the full term of the Lok Sabha, unless sooner dissolved
- To effect these changes, the panel has recommended amendments to Article 83 (duration of Houses of Parliament) and Article 172 (duration of State legislatures) of the Constitution. "This constitutional amendment will not need ratification by the States," the committee noted in its report.
- The panel recommended suitable amendments to the Article 324A of the Constitution to allow simultaneous elections in panchayats and municipalities; Article 325 to allow the Election Commission of India (ECI), in consultation with State election authorities, to prepare a common electoral roll and voter ID cards. Both these constitutional amendments would require ratification by the States, the report said. Presently, the ECI is responsible for Lok Sabha and Assembly polls, while

local body polls for municipalities and panchayats are managed by State election commissions.

### **WAY FORWARD:**

- Law Commission's recommendations to address hurdles:
- Amend the constitution and RPA, 1951: New Lok Sabha and assembly to serve the remaining term after mid-term elections, and replace no-confidence motion with a constructive vote of no-confidence.
- Full house election of PM/CM: Provide stability by electing them similar to the Speaker of the Lok Sabha.
- Dilute anti-defection law: Make exceptions to prevent stalemates in the Assembly during a Hung Parliament.
- Two-phase elections: Conduct synchronized elections in two phases, aligning with Lok Sabha elections and mid-term intervals.
- Scheduled bye-elections: Conduct all vacant seat elections during a predetermined time period.
- Election Commission recommendations:

### **For Lok Sabha:**

- No-confidence motion should include a confidence motion for a named individual as the future Prime Minister.
- In case of unavoidable dissolution, the President can administer the country with an appointed Council of Ministers until the next House is constituted, or hold fresh elections for the remaining term.

### **For Legislative Assembly:**

- Mandatory simultaneous confidence motion with a no-confidence motion to form an alternative government, reducing premature dissolution.
- Provision for the Governor to administer the State with an appointed Council of Ministers or imposition of President's Rule until the term expires if the Assembly has to be dissolved prematurely.
- The debate on simultaneous elections, known as 'One Nation One Election', calls for careful consideration and consensus. Balancing advantages like governance efficiency with regional dynamics and democratic principles is crucial. With thoughtful reforms, simultaneous elections could enhance the electoral process and citizen engagement.

- **NOTES:** One Nation One Election, No-confidence motion, anti-defection law, Scheduled bye-elections, unavoidable dissolution, Resource Savings, Policy paralysis, Sustainable Development.

### **EVM AND ASSOCIATED ISSUES**

- Legal provision: Section 61A of the Representation of the People Act, 1951 empowered the Commission to use voting machines. (This amendment was made in 1988).

### **ADVANTAGES OF EVM**

- Accuracy: EVMs ensure accurate and error-free vote counting, minimizing the chances of manual counting errors and discrepancies.
- Efficiency: EVMs expedite the voting process by reducing the time required for casting and counting votes, allowing for quicker declaration of results.
- Transparency: EVMs provide transparency in the election process as they display the total votes cast and individual party-wise vote counts, ensuring the integrity of the electoral system.
- The integrity of the election: EVMs maintain the secrecy of the voter's choice as the voting is done in a private compartment, preventing any influence or coercion.
- Cost-effective: EVMs eliminate the need for large quantities of paper ballots, reducing the cost and environmental impact associated with printing and transportation.
- Deterrent to booth capturing: EVMs make booth capturing and bogus voting more difficult due to their tamper proof design and the use of technological safeguards.
- Reduced human error: With EVMs, the chances of human errors, such as invalid or wrongly marked ballot papers, are significantly reduced, ensuring a more accurate electoral process.

### **CONCERNS WITH EVM**

- Global precedence: Germany, Netherlands, and Ireland have abandoned EVMs and reverted to paper ballots following concerns and legal rulings. ADR suggested (and later withdrew the suggestion) that India should return to the paper ballot system, citing the example of countries like Germany.
- Lack of secrecy: EVMs may compromise voter

- secrecy as candidates can determine how each booth voted, enabling the potential misuse of this information.
- Storage and counting concerns: EVMs are stored in decentralized locations, and experts emphasize the need for secure storage throughout their life cycle to ensure their integrity.
- Lack of verifiability: Critics argue that EVMs lack a paper trail, making it difficult to verify the accuracy of the voting process. Without a physical record, it becomes challenging to conduct a reliable recount or audit.
- Technological failures: EVMs are electronic devices that are prone to technical malfunctions, such as software glitches or hardware errors. These failures can potentially disrupt the voting process and raise doubts about the integrity of the results.
- Manipulation during transportation: EVMS are transported from storage locations to polling stations, creating opportunities for tampering or unauthorized access. The security of EVMs during transit has been a subject of concern, especially in regions with political tensions or inadequate logistical arrangements.

### **INITIATIVES OF ECIS TO COUNTER THE CONCERNS:**

- VVPAT alongside EVMs: Implementing VVPAT machines in all polling stations enhances transparency and credibility of the electoral process.
- Counting of VVPAT slips: Election Commission of India considers suggestions from political parties and will count VVPAT slips up to a specified percentage, ensuring further verification.
- EVM challenge: ECI conducted a challenge where political parties were given an opportunity to demonstrate any tampering with EVMs, showcasing their commitment to addressing concerns.
- Inclusive participation: EC ensures the active involvement of all political parties in crucial steps like First Level Checking, randomization of EVMs/VVPATs, mock polls, and EVM sealing and storage, promoting transparency throughout the election process.
- EVM prototype for migrants: The ECI developed a remote electronic voting machine (RVM) for domestic migrants, enabling them to vote without traveling to their home districts, promoting voter participation.

- Voter education: The ECI conducts voter education programs through the Systematic Voters' Education and Electoral Participation SVEEP to educate voters on EVM usage and the significance of voting, aiming to increase voter participation for a stronger democracy.

### **VARIOUS JUDGEMENTS OF SUPREME COURT:**

- In its 2013 ruling in the case of Subramanian Swamy v. Election Commission of India, the Court held that "a paper trail is an indispensable requirement of free and fair elections." Later, in 2019, while dealing with a plea seeking 50% cross-verification of EVM votes with VVPAT slips in each Assembly constituency, the Court favored an increase in the number of polling stations in which VVPAT verification would be done from one per Assembly constituency or segment to five

### **Recent Judgment of Supreme Court on VVPAT:**

- While refusing a revival of paper ballots, the Supreme Court on April 26, 2024, upheld the electronic voting machine (EVM) polling system and underscored the need to "exercise care and caution" when raising questions about the integrity of the electoral process. It also declined the petitioners' demand to direct 100% cross-verification of votes cast on EVMs with the accompanying Voter Verifiable Paper Audit Trail (VVPAT) paper slips. Only 5% of EVM-VVPAT counts are currently randomly verified in any Assembly constituency.

### **WAY FORWARD:**

- Procedural change: Implement a system where voters receive a printed paper and drop it in the ballot box.
- Manual counting: Mandate manual verification if the winning margin is less than 10% instead of resorting to court cases.
- Supreme Court: Increase the VVPAT verification rate from one to five random EVMs per constituency.
- Totalizer Machines: Improve voting secrecy by counting votes from multiple polling booths together instead of booth-wise results.
- Safety demonstration: Organize a hackathon, as done in 2017, to challenge individuals to demonstrate the hacking of EVMs.

- Human resources: Provide comprehensive training to all ECI staff to handle any issues that may arise with EVMs at polling stations.

### **CONCLUSION:**

- In democratic systems, the conversion of voters' preferences into a political mandate through free and fair elections is crucial for effective policy-making. Enhancing the accuracy and efficiency of voting procedures strengthens democratic institutions. The Election Commission should actively acknowledge and address concerns raised by different stakeholders, promoting transparency and ensuring the credibility of Electronic Voting Machines (EVMs) in the conduct of impartial and transparent elections.

**NOTES:** Human resources, Procedural change, Inclusive participation, Technological failures, Cost-effective, Deterrent to booth capturing.

### **NOTA**

#### **Background:**

- The introduction of the None of the Above (NOTA) option in India in 2013 came as a result of a Supreme Court judgment in the People's Union for Civil Liberties (PUCL) vs. Union of India case. The Supreme Court mandated the use of NOTA in direct elections for the Lok Sabha and state assemblies.
- Since its implementation, NOTA has gained significant popularity among Indian voters and has even received more votes than the winning margin in some elections.

#### **SIGNIFICANCE**

- Expression of Dissatisfaction: NOTA allows voters to express their dissatisfaction by rejecting all the candidates if they find them unsuitable for the position.
- Encouraging Better Candidates: NOTA acts as a catalyst for political parties to field better candidates who are more capable and have a clean image, as parties aim to avoid losing votes from dissatisfied voters.
- Increased Voter Participation: NOTA can boost voter participation by providing an option for

voters who were previously disinterested or felt compelled to vote for undeserving candidates.

Fundamental right: NOTA allows people to exercise their freedom of expression and right to liberty by expressing consent or discontent to candidates.

Moral pressure: NOTA enables voters to voice their dissatisfaction with unsuitable candidates, exerting

### **ARGUMENTS AGAINST**

- Symbolic gesture without electoral impact: NOTA is seen as a symbolic gesture without electoral value, as the candidate with the most votes is declared the winner regardless of NOTA votes.
- Limited solution to voter dissatisfaction: NOTA fails to address the root cause of voter dissatisfaction, which lies in the lack of good candidates, offering only a rejection option without resolving the problem.
- Potential for voter apathy: NOTA can contribute to voter apathy by allowing voters to abstain from voting if they find no suitable candidates, potentially reducing voter participation and weakening democracy.
- Vulnerability to misuse: NOTA can be manipulated by political parties to influence election results by fielding weak candidates and encouraging supporters to vote for NOTA, potentially splitting opposition votes.
- Resource wastage: NOTA entails additional resources for ballot papers and counting procedures, potentially increasing the cost and time required for elections.

- The NOTA option was introduced in 2013 on the direction of the Supreme Court as a step to empower voters in the expression of their choice. While it has been seen as a symbolic gesture of rejection and as a negative vote, it has been rather a toothless facility than a useful tool to influence the election process.

#### **MODEL CODE OF CONDUCT (MCC)**

- Model Code of Conduct (MCC) is a set of guidelines issued by the Election Commission of India (ECI) to regulate the behavior of political parties and candidates during elections. The Model Code of

Conduct was first introduced by the Election Commission in the assembly election in Kerala in 1960. In 1962, the Election Commission introduced the Model Code of Conduct for general elections. The guidelines of the Model Code of Conduct were made stricter by the Election Commission in 1991 after repeated flouting of norms by political parties.

### **EVOLUTION:**

- 1960: The Model Code of Conduct was first observed during the general election to the State Legislative Assembly in Kerala.
- 1962: The Code was taken into national cognizance during the Lok Sabha Elections and the State Legislative Assembly elections.
- 1991: The Election Commission of India (ECI) issued guidelines for the Model Code of Conduct for political parties and candidates.
- 1993: The ECI issued a revised set of guidelines for the Model Code of Conduct.
- 2013: The Supreme Court of India directed the ECI to include the option of "None of the Above" (NOTA) in the electronic voting machines (EVMs) and ballot papers.

2019: The ECI issued new guidelines for the Model Code of Conduct for political parties and candidates during the Lok Sabha Elections.

### **CHALLENGES:**

- Challenges of the Digital Age: The Model Code of Conduct fails to adequately address the challenges posed by digital platforms, allowing the spread of fake news and hate speech.
- Limited Enforcement Power: The Model Code of Conduct lacks legal enforceability, enabling political parties and candidates to violate it without facing significant consequences.
- Lack of Clarity: The Model Code of Conduct lacks clarity on issues like the use of government resources, leading to confusion and inconsistent enforcement.
- Time-Bound Effectiveness: The Model Code of Conduct is time-bound, losing its effectiveness once the elections are concluded, allowing for pre and post-election violations without repercussions.
- Limited Scope: The Model Code of Conduct only covers the conduct of political parties and candidates

during elections, overlooking crucial areas like campaign finance regulation.

- Loopholes: The Model Code of Conduct has several loopholes that political parties and candidates can exploit. For example, the Code does not prohibit the use of religion or caste in election campaigns, which can lead to communal and divisive politics.

### **MAKING MODEL CODE OF CONDUCT LEGALLY ENFORCEABLE**

- The Standing Committee on Personnel, Public Grievances, Law and Justice recommended making the MCC legally binding and recommended that the MCC be made a part of the RPA 1951.
- Ensuring Accountability: Legal enforceability of the Model Code of Conduct would establish accountability, discouraging unethical practices among political parties and candidates.
- Strengthening Democracy: Making the Code legally enforceable would bolster democracy by ensuring fair and transparent elections.
- Upholding the Rule of Law: Making the Code legally enforceable would uphold the rule of law, preventing the misuse of power by political parties and candidates.
- Feasibility: ECI has opposed this for the reason that elections must be completed in a short time and judicial proceedings take a longer time, therefore it is not feasible to make it enforceable by law.
- Consistency: Legal enforceability would promote consistent enforcement of the Code, eliminating disparities in its application.
- Clarity: Legal enforceability would bring clarity to what constitutes a violation of the Code, facilitating its enforcement.

### **WAY FORWARD:**

- Strengthening penalties: The Election Commission of India (ECI) can consider strengthening penalties for violations of the Model Code of Conduct. For example, in the 2019 Lok Sabha elections, the ECI disqualified a candidate for three years for violating the Code by seeking votes in the name of religion.
- Improved monitoring: The ECI can improve its monitoring mechanisms to detect violations of the Model Code of Conduct. For example, in the 2019 Lok Sabha elections, the ECI used mobile apps to monitor election campaigns and detect violations of the Code.

- Addressing loopholes: The ECI can address the loopholes in the Model Code of Conduct by updating its provisions to include a ban on the use of religion or caste in election campaigns. For example, in the 2019 Lok Sabha elections, the ECI issued guidelines to political parties to refrain from using the armed forces for political propaganda.
- Awareness campaigns: The ECI can launch awareness campaigns to educate voters and political parties about the Model Code of Conduct and its provisions. For example, in the 2019 Lok Sabha elections, the ECI launched a voter awareness campaign called "SVEEP" to encourage voter participation and promote ethical voting.
- The Model Code of Code is inherently an obligatory guideline and cannot be used as a wholesome rulebook before a court of law. The warnings by the Election Commission are the general course of action in case of violation of the Model Code of Conduct. However, if violations fall under the Indian Penal Code, 1860, and the Representation of the People Act, 1951, then there are many serious repercussions, and the violator could even go to jail.

**NOTES:** Addressing loopholes, Rule of Law, Time-Bound Effectiveness, Digital Age, Limited Enforcement Power, Symbolic gesture.

### **ELECTION FUNDING**

- The process by which political parties raise funds for their campaigns and activities, including reaching out to voters, is known as election funding. Concerns have been raised by the Supreme Court about the potential misuse of funds obtained through electoral bonds for purposes such as supporting terrorism or instigating violent protests.

### **CHALLENGES WITH ELECTION FUNDING:**

- Anonymity concerns with electoral bonds: The introduction of electoral bonds in 2017 has raised worries about the anonymity of political donations, allowing unlimited anonymous contributions from companies and increasing the risk of illicit funding influencing elections.
- Opacity in funding sources: According to a report by the Association for Democratic Reforms (ADR), political parties in India receive a high proportion of their income from unknown sources, indicating issues with electoral funding. This lack of

transparency makes it difficult to track the flow of money and identify potential sources of corruption.

- Escalating campaign expenses: Elections in India are costly, requiring political parties and candidates to gather substantial funds for campaigning. This can result in the influence of affluent donors and the adoption of unlawful means to finance political activities.
- Transparency challenges: The Indian political funding system lacks transparency, making it challenging to hold parties and candidates accountable. Uncertainty surrounds the origins of donations, with many contributions made anonymously.
- Limited public funding: Although the government provides some funding for election-related expenses, the amount of public funding available is restricted. Consequently, political parties and candidates rely on private donations, potentially leading to the influence of wealthy donors.
- Electoral Bond Issue:
  - In a landmark judgment on February 15, 2024, a five-judge Bench of the Supreme Court of India declared the electoral bond scheme unconstitutional. This was a scheme which opened the floodgates of unlimited anonymous funding of political parties and consolidated the role of big money in the Indian political system.

### **CONCERNS**

- The Supreme Court stated that anonymous electoral bonds violate the Right to Information and Section 19(1)(a).
- Selective Anonymity and Confidentiality: The court said that the scheme provides for "selective anonymity" and "selective confidentiality" as the details of electoral bonds are available with the State Bank of India (SBI) and can also be accessed by the law enforcement agencies.
- Right to Know Source of Funding: The court criticized the government's contention that voters do not have the right to know the source of funding of political parties.
- Need for a New Balanced System: The court added that the Union government should consider designing a new system that balances proportionality and paves the way for a level playing field.

### **ADVANTAGES**

- **Enhanced Transparency:** Promotes transparency through engagement with election authorities and the public.
- **Preservation of Donor Anonymity:** Allows confidential donations by individuals and organizations.
- **Accountability Assurance:** Donations are credited to disclosed party bank accounts, ensuring explanations of fund utilization.
- **Discouragement of Cash Transactions:** Requires payments through designated banks, reducing cash use.

### Way Forward:

- **National Commission to Review the Working of the Constitution (2001):** Recommended state funding of elections as an anti-corruption measure if certain transparency conditions are met.
- **State Funding of Elections** implies the use of public funds to support the electoral expenses of political parties and candidates.
- **Chilean Experiment - Reserved Contributions:** Under it, the donors could transfer the money they wished to donate to parties to the Chilean Electoral Service. The Electoral Service would then forward the sum to the party without revealing the donor's identity.
- **State Funding of Elections:** In state funding of elections, parties, and candidates receive funds from the public exchequer/state budget rather than having to raise money entirely on their own.

### NEED

- **Lack of Transparency in Political Funding:** There are no limits on campaign spending or mandatory disclosures of sources of funds for parties and candidates.
- **Potential for Corruption:** Private funding can lead to the influence of wealthy individuals, businesses, or interest groups on political decisions.
- **Policy Capture:** Donors and corporations may influence the policies of the parties they fund. This can lead to cronyism and policy capture.
- **Unequal Playing Field:** Those with access to greater financial resources have a competitive advantage, which can hinder the participation of others (having lesser financial resources).
- **Black Money and Illicit Funding:** It can compromise the integrity of the electoral process and erode public trust in the political system.

- **Frivolous Spending:** In the absence of spending limits, parties indulge in an arms race of expenses on rallies, advertising, etc., which may be wasteful.
- **Voter Manipulation:** Unchecked spending on voter gifts, cash for votes, etc., manipulates electoral outcomes through money power.
- **Criminal Nexus:** Unaccounted funding facilitates the nexus between criminals, wealthy businessmen, and politicians.

### CHALLENGES

- **The burden on Taxpayers:** Using public funds for political campaigns places an additional burden.
- **Potential Misuse of Public Funds:** Without proper oversight and accountability mechanisms, there's a risk that public money could be wasted or used for unintended purposes.
- **Unfair to Non-Political Causes:** State funding may divert resources from other essential public services like education, health, and infrastructure that require attention and funding.
- **No Guarantee of Fairness:** Allocation criteria and distribution mechanisms can be manipulated or biased, potentially favoring certain political parties or candidates.
- **Free Speech Concerns:** Restrictions on private funding may limit the ability of individuals and organizations and violate their right to express political preferences.
- **Government Influence:** Parties may become overly dependent on the government for funding, compromising their independence and ability to act as a check on the government.
- **One-size-fits-all approach:** Different regions, parties, and candidates may have varying needs, and a one-size-fits-all approach may not address these differences effectively.

### Committees:

- **Indrajit Gupta Committee on State Funding of Elections (1998):** Recommended partial state funding in the form of limited indirect subsidies for candidates and recognized parties.
- **Law Commission Report on Electoral Reforms (1999):** Advocated partial state reimbursement of election expenses to recognized parties and candidates to reduce corruption.
- **Second Administrative Reforms Commission Report (2008):** Endorsed state funding of elections as part of

a package of reforms to tackle corruption and criminalization in politics.

- National Commission to Review the Working of the Constitution (2001): Recommended state funding of elections as an anti-corruption measure if certain transparency conditions are met.

#### WAY FORWARD:

- Digital transactions: Implementing a complete shift to digital transactions for political donations to enhance transparency and reduce the influence of illicit funding.

Limiting anonymous donations: Restricting anonymous donations to a maximum of 20% to curb the potential corporate-political nexus.

- Transparency through RTI: Bringing political parties under the purview of the Right to Information (RTI) Act, similar to practices in Bhutan and Germany, to ensure transparency in their functioning.
- National electoral fund: Establishing a national electoral fund where donors contribute, and funds are distributed among parties based on their performance in the previous elections.
- State funding of elections: Exploring the recommendation from the Second Administrative Reforms Commission (2nd ARC) for state funding of elections, considering the high costs involved.
- Expenditure cap on political parties: Imposing a cap on the expenditure of political parties, calculated as a multiplication of half of the maximum prescribed limit for individual candidates and the total number of candidates fielded.

**NOTES:** Expenditure cap, State funding of elections, Digital transactions, anonymous donations, Policy Capture, Frivolous Spending, Criminal Nexus, One-size-fits-all approach, Unequal Playing Field.

#### CRIMINALIZATION OF POLITICS

- The Supreme Court recently issued guidelines to monitor the speedy disposal of criminal cases, addressing the alarming issue of the criminalization of politics against Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs).
- After the 2019 Lok Sabha elections, 43% of the newly-elected MPs had pending criminal cases against them, highlighting the issue of Criminalization of Politics. The Association for

Democratic Reforms (ADR) is an advocacy group focused on electoral reforms.

- As per media reports of February 2022, the number of pending criminal cases against sitting and former MLAs and MPs had risen to close to 5,000 towards the end of December 2021.

#### DEFINITION

- The criminalization of politics refers to the infiltration of individuals with criminal backgrounds into the political arena, involving their participation in elections and subsequent election as Members of Parliament (MP) or Members of the Legislative Assembly (MLA).

#### REASON FOR THE CRIMINALIZATION OF POLITICS

##### POLITICAL

- Nexus between politicians and bureaucracy: This undesirable and dangerous relationship leads to the infiltration of criminals, lawbreakers, and corrupt individuals into the political system. For example, the 2G spectrum scam, which involved politicians and bureaucrats, was one of the biggest corruption scandals in India's history.
- Corruption: In every election, political parties put up candidates with a criminal background, and there is an evident link between criminality and the probability of winning. For example, in the 2019 Lok Sabha elections, 43% of the candidates who won had criminal cases against them.

##### LEGAL & VOTERS RELATED

- Disqualification after conviction: The Representation of the People Act, 1951 disqualifies individuals from being MPs/MLAs after conviction, but it doesn't prohibit them from holding positions within the party. Example: A politician convicted of a criminal offense may be disqualified from being an elected representative but can still hold influential party positions or exercise significant control over party affairs.
- Narrow interest: Despite awareness of candidates' criminal history, voters often prioritize narrow interests like caste or religion when casting their votes.
- Vote-buying: The vulnerability of voters to manipulation and the practice of buying votes

undermines the democratic process. Example: Instances have been reported where politicians distribute money, gifts, or other incentives to influence voters' choices, compromising the integrity of elections.

### ECI

- Trust deficit: Delayed action against ruling party candidates and open flouting of the Model Code of Conduct erode public trust in the ECI.
- Lack of infrastructure: Example: Limited manpower, technological resources, and logistical challenges can make it difficult for the ECI to comprehensively monitor campaign activities and enforce election rules.
- Limited powers: The ECI lacks the power, under Section 8 of the Representation of the People Act, to disqualify candidates before conviction.
- Example: ECI may not have the authority to disqualify them from contesting elections until a conviction is secured.
- Lower conviction rate: The low conviction rate in criminal cases against MPs and MLAs creates a perception of impunity and encourages the entry of individuals with criminal backgrounds into politics. Example: The conviction rate for criminal cases

against MPs and MLAs is only 6%, which is significantly lower than the national average conviction rate of 46% under the Indian Penal Code.

### CONSEQUENCES OF CRIMINALIZATION OF POLITICS:

- Parliament's credibility undermined: Criminal lawmakers weaken the legislative quality and erode public trust in institutions.
- Corruption breeding ground: The influx of money fosters a tainted democracy dominated by financial and muscle power.
- Limited voter choice: Criminal candidates restrict options, contradicting free and fair elections.
- Poor governance impact: Substandard legislation, exclusionary policies, and corruption hinder public service delivery.
- Judicial faith in question: Political manipulation raises doubts about an impartial judiciary's independence.
- Disrupting social harmony: Criminal politicians set negative role models, promoting a culture of violence.

### STEPS TAKEN BY SUPREME COURT

JUDGEMENT	IMPORTANCE
1997 judgment	Not to suspend the conviction of a person on appeal if convicted and sentenced to imprisonment under the PoCA, 1988.
ADR vs UoI, 2002	Contesting candidate to disclose pending criminal convictions
Lily Thomas vs UoI, 2013	Automatic disqualification of MP and MLA upon conviction to 2 years jail term.
People's Union for Civil Liberties vs UoI case, 2014	Right to negative vote, NOTA to put moral pressure on political parties
Public interest foundation vs UoI, 2014.	Complete pending trials of MP and MLA cases within 1 year

Lok Prahari Vs UOI case 2018	Mandatory disclosure of the source of income of political candidates as well as their dependents and associates.
Public interest foundation case 2018	Disclose pending criminal cases against candidates through EC & political parties and publicization of the same through different media.
Public Interest Foundation & Ors. Vs. Union of India & Anr. 2020	Mandatory for political parties to publish details of pending criminal cases against candidates & reasons to select them over others

#### **Recent SC Judgement on Vote for Bribe issue:**

The Supreme Court ruled that lawmakers cannot claim immunity from prosecution in bribery cases. The court explained that the legal protection provided to MPs and MLAs under Articles 105 and 194 of the Constitution does not shield them in cases of accepting bribes for votes or speeches in the House. With this verdict, the Supreme Court overruled the 1998 PV Narasimha ruling which held that MPs and MLAs who take bribes for voting and asking questions in the House enjoy immunity as per the Constitution.

## STEPS TAKEN BY THE ELECTION

### COMMISSION:

- 1997: Returning Officers to reject the nomination of candidates who stand convicted on the day of filing nomination papers even if their sentence is suspended
- Flying squads to seize black money during elections
- Candidates are to furnish an affidavit containing information about criminal antecedents, their assets, liabilities, and educational qualification
- Voter awareness campaigns use tools like SVEEP and using celebrities to spread a message to not sell their vote.

### Way Forward:

- Strengthening of legal framework: Candidates against whom charges have been framed in court for serious
- offenses should be disallowed from participating in elections by making an amendment to the RPA, 1951. The 244th Law commission recommends disqualification at the stage of framing of charges, accompanied by other legal safeguards.
- Internal Democracy In Political Parties: Convicted politicians may continue to influence law-making by controlling the party and fielding proxy candidates in the legislature. Although the RPA 1951 disqualifies a sitting legislator or a candidate on certain grounds, there is no regulation over the appointments to offices within the party.
- State Funding: Implementation of state funding of elections, as recommended by Dinesh Goswami and the Inderjeet Committee.
- Right to Recall: Granting voters the power to recall non-performing elected representatives.
- Bar on Contesting: Barring individuals charged with offenses punishable by more than five years from contesting elections.
- Timely Trials and Disqualification: Complete trials within one year and automatic disqualification after one year.
- Law Commission: Amendments to the following sections of RPA, 1951: Disqualification Ground: Section 125A -Conviction as a ground for disqualification under Section 8(1). False Affidavits: Section 125A - Minimum two-year sentence for filing false affidavits. Corrupt Practice: Section 123 - Include filing false affidavits as a corrupt practice.

**NOTES:** Law Commission, Limited voter choice, disrupting social harmony, credibility undermined, Narrow interest, Vote Buying.

## INTERNAL PARTY DEMOCRACY

- Intra party democracy in Indian political parties is essential for fostering internal accountability, inclusive decision-making, and the overall health of the democratic process within political organizations. Internal party democracy means to uphold the decision of the majority of the party members, in accordance with their respective constitution.
- The lack of democratic functioning of the parties is mainly manifested in two fundamental aspects:
- Not open and inclusive Procedure: The procedure for determining the leadership and composition of the parties is not completely open and inclusive. This adversely impacts the constitutional right of all citizens to equal political opportunity to participate in politics and contest elections.
- Centralized mode of functioning: The centralized mode of functioning of the political parties and the stringent anti- defection law of 1985 deters party legislators from voting in the national and state legislatures according to their individual preferences.

## POLITICS OF FREEBIE

- A webinar titled 'Freebies Culture and its Impact on Indian Politics & Democracy' was organized by the Association for Democratic Reforms (ADR) in view of a public interest litigation (PIL) challenging freebies.
- Freebies:
- The Reserve Bank of India (RBI) in a bulletin in June 2022 defined 'freebies' as "a public welfare measure that is provided free of charge. It includes provisions like free electricity, water, public transportation, the waiver of outstanding utility bills, and farm loan waivers.

### Concerns associated with excessive use of freebies:

- Heavy Tax Burden on States: Many states are burdened with substantial debts, limiting their capacity to invest in more significant welfare programs. Punjab's electricity subsidy constitutes over 16 percent of its total revenues.
- Against Constitutional Principles: Making promises when the states lack money to guarantee fundamental

rights and implement directive principles is against constitutional principles.

- Shrinkage of fiscal space: The subsidy burden needs to be funded through debt, which will result in mounting deficits. It will lead to breach of Fiscal Responsibility and Budget Management (FRBM) rules and the states ending up in a debt trap.
- Violation of the principle of a level-playing field: Freebies gives the political parties undue advantage by making
- promises to provide private goods for only a section of voters. For instance, promising cycles for girl students or laptops for college students, or grinders for housewives, etc.
- Social Impact: Despite receiving more resources, the RBI's study reveals a decline in social sector spending by states, particularly in vital areas like health and education.
- Environmental concerns: States offer free electricity to farmers, leading to overuse of groundwater and the continuation of traditional crop patterns. In Punjab and Haryana, the ground water extraction stands at 161% and 134% against the national average of 61% due to highly subsidized electricity.
- **Challenges in curtailing Freebie Culture:**
- Lack of regulatory powers with ECI: The Election Commission of India (ECI) has stated that it lacks the authority
- to regulate or penalize political parties for making electoral promises. According to the ECI, the offering or distribution of freebies, either before or after an election, falls under the jurisdiction of the respective party.
- No assessment of financial viability of populist policies: Political parties often fail to clarify the funding sources for the promises made in the form of freebies.
- Lack of Information to the Voters: They don't delve into the financial aspects of freebies, prompting political parties to compete for promising freebies.
- Supreme Court response on Freebies:
- The Supreme Court Bench in a recent judgment proposed the constitution of an apex body, to address the issue of freebies and poll promises.
- It will comprise several stakeholders like the Niti Aayog, Law Commission, Finance Commission, Reserve Bank of India and members of ruling party and opposition parties,

- The reference is a shift from the court's own stand in the S. Subramaniam Balaji vs Tamil Nadu judgment of 2013.
- S. Subramaniam Balaji vs Tamil Nadu judgment of 2013: The court had held that making promises in election manifestos does not amount to a 'corrupt practice' under Section 123 of the Representation of People (RPA) Act, 1951.

### **Way Forward:**

- Responsibility of voters: Voters need to be vigilant and inquire about the financial implications of the populist policies.
- Empowering the ECI with greater authority: Statutory provisions as a backup or warnings on the use of funds are needed.
- Model Manifesto: ECI could bring in certain measures under the MCC to introduce a responsible way of making promises to the public. Voters need to decide whether an election campaign is credible and whether the promises and the freebies are in their interest.
- Fixing limit of welfare schemes: Fixing spending of 1% of GSDP or 1% of state own tax collections or state revenue expenditure would help to implement welfare schemes properly.
- Tracking social sector budgetary allocations: Prioritizing higher resource allocation to welfare schemes is
- needed. India's spending on health and education, at 4.7%, lags behind that of other developing countries, such as sub-Saharan Africa, which spends 7%.
- Pronab Sen, economist and former chief statistician of India, says the financial landscape of some states would have been more damaging had political parties implemented every promise they had made when they came to power. "The actual impact of freebies on the Indian economy is still limited because some promises remain unfulfilled," The legacy subsidies are the real problem. "At times voters don't mind if a promise is not fully implemented. But once a freebie is given, no political party will dare to withdraw it, fearing a backlash," (Economics Times)

### **AI AND ELECTIONS**

- Artificial Intelligence (AI) refers to the simulation of human intelligence in machines that are programmed to think like humans and mimic their actions. It

includes technologies like machine learning, pattern recognition, big data, self-algorithms etc.

### **SIGNIFICANT POTENTIAL OF AI IN ELECTIONS**

- **Increased and Effective Voter Engagement:** By spreading awareness through social platforms in education
- campaigns, AI can help the voters to understand the issues and candidates, which can consequently result in increased engagement and inform voters more effectively.
- **Promoting Inclusiveness:** With the help of AI-based Apps like Bhashini, the information can be made available in multiple Indian languages. This will be helpful for the deprived sections of the society. AI technologies can help voters with disabilities, such as those who are visually impaired, making the voting process more accessible and inclusive.
- **Election Transparency and Security:** AI can help in the implementation of transparent advertising policies, rolling out content labels, and restricting election-related queries to combat misinformation.
- The AI-based chatbot can be introduced on the Election Commission website to address the grievances. AI tools will monitor polling processes, analyze data, and ensure election integrity through machine learning algorithms and preventive measures.
- **Strengthened Democracy:** The ECI is also making optimum use of the technology with options like online voter registration and releasing the voter's list on the website. They can use AI and Social Media to create awareness and broader reach and address grievances.

### **CHALLENGES ASSOCIATED WITH THE USE OF AI IN ELECTIONS**

- **Misinformation & Disinformation:** Deepfakes and other AI-generated content can create hyper-realistic digital falsification and can potentially be used to damage reputations, fabricate evidence, and undermine trust in democratic institutions.
- **Social Media Amplification:** Social media companies such as Facebook and Twitter compound the influence and misinformation risks, which significantly cut their fact-checking and election integrity teams.

- **Microtargeting:** through micro-targeting techniques, AI algorithms can be used to manipulate voter preferences
- and undermine the fairness of elections by influencing voters.
- **Privacy Concerns:** The main privacy concerns surrounding AI is the potential for data breaches and unauthorized access to personal information. With so much data being collected and processed, there is a risk that it could fall into the wrong hands, either through hacking or other security breaches.
- **Erosion of Trust:** The mere existence of AI-generated content can foster a general atmosphere of distrust, where people question the authenticity of all information. This phenomenon is known as the liar's dividend.
- **No Specific Law:** India lacks specific laws to address deepfakes and AI-related crimes, but provisions under many legislations could offer civil and criminal relief.
- **Example:** Section 66E of the Information Technology Act, 2000 (IT Act) is applicable in cases of deepfake crimes that involve the capture, publication, or transmission of a person's images in mass media, thereby violating their privacy.
- Such an offense is punishable with up to 3 years of imprisonment or a fine of ₹2 lakh.

### **ACTIONS TAKEN BY INDIA**

- **Issuance of Advisory to Digital Platforms:** The Indian government has asked digital platforms to provide technical and business process solutions to prevent and weed out misinformation that can harm society and democracy.
- The government said a legal framework against deepfakes and disinformation will be finalized after the elections.
- The government also said companies should not generate illegal responses under Indian laws or "threaten the integrity of the electoral process".
- **Google-ECI Partnership:** Google has partnered with the Election Commission of India (ECI) to prevent the spread of false information during the general elections. Google is committed to providing reliable information and preventing deceptive AI-generated content.

### **WAY FORWARD**

- **Regulation Framework:** There is a need to establish a precise legal framework mechanism for the use of AI in elections, such as regulations on data protection, transparency in AI-driven advertising and standards for the ethical use of AI.
- **Collaboration:** Governments and electoral bodies must collaborate with technology companies to combat misinformation and secure electoral processes.
- **Public Awareness:** Educating the public about the challenges of AI-generated misinformation can empower voters to evaluate the information critically.
- **Technological Solutions:** The time has come to develop AI systems capable of detecting and flagging false information and deep fakes.

### **CONCLUSION**

- This is an era where technological evolution is inevitable. Maintaining democratic principles whilst utilizing technology for advancement calls for significant thought and constant ethical examination. The proper integration of social media and AI will influence political discourse and decision-making for years to come as Bharat moves towards the Amrit Kaal of its democracy.

### **ELECTORAL LITERACY: Initiatives by ECI**

- An Electoral Literacy Club is a platform to engage school students through interesting activities and hands-on experience to sensitize them on their electoral rights and familiarize them with the electoral process of registration and voting. ELCs are also present in colleges and rural communities. At ELCs, learning is fun. Activities and Games are designed to stimulate and motivate students, provoking them to think and ask questions. Through ELC, Election Commission of India, aims at strengthening the culture of electoral participation among young and future voters. Systematic Voters' Education and Electoral Participation (SVEEP) Programme are undertaken to educate the electors regarding procedure relating to registration of name in Electoral Roll, correct of their existing particulars

in Electoral Roll and deletion of name of shifted and deceased family members.

### **ENCORE:**

The Election Commission of India (ECI) has unveiled 'ENCORE' (Enabling Communications on Real-time Environment), a software solution designed to enhance the management of candidates and election proceedings. This innovative digital platform simplifies the nomination process by allowing candidates to complete forms online, which can then be printed and submitted offline along with required documentation. Candidates are provided the opportunity to register accounts on the ECI's online portal, granting access to nomination forms, the ability to submit security deposits, and the option to arrange appointments with the Returning Officer. ENCORE facilitates the seamless processing of candidate nominations and the authentication of affidavits, empowering Returning Officers to efficiently manage nomination submissions and affidavit verification.

**NOTES:** Erosion of Trust, Freebies, Encore, internal party democracy, dynastic politics, criminalisation of politics, MCC, 2ND ARC, Misinformation, microtargeting, Systematic Voters' Education and Electoral Participation (SVEEP), Misinformation & Disinformation.

### **Previous Year Questions**

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?- 2018

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.- 2017

To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?- 2016

# DELIMITATION COMMISSION

## BACKGROUND

The Delimitation Commission in India is a statutory body responsible for determining the boundaries of various constituencies in the country for the purpose of elections.

## CONSTITUTIONAL PROVISIONS

- Article 81: Every state and UT would be allotted seats in the Lok Sabha in such a manner that the ratio of population to seats should be as equal as possible across states.
- Article 82: Delimitation of parliamentary constituencies after every census by Delimitation Commission established by the Gol under Delimitation Commission Act.
- Article 170: States get divided into territorial constituencies as per Delimitation Act after every Census.
- 84th Constitutional amendment act: Freezing of delimitation till 2026.
- Reasons: Family planning and population stabilization objective.
- Implications: Violation of Article 81 due to unequal representation across constituencies.

## DELIMITATION COMMISSION

- Appointment: The Delimitation Commission in India is appointed by the President and works in collaboration with the Election Commission of India (ECI).
- Composition: It comprises a retired Supreme Court judge, the Chief Election Commissioner, and the respective State Election Commissioners.
- Authority: It is a high-powered body with its orders having the force of law and cannot be challenged in court.
- Reporting: The commission's orders are presented before the Lok Sabha and State legislative assemblies, but modifications are not permitted.

## FUNCTIONS OF THE DELIMITATION COMMISSION

**Boundary Determination:** Determines the boundaries and number of constituencies, ensuring population equality among them.

- Seat Allocation for SC/ST: Decides on the allocation of seats for Scheduled Castes (SC) and Scheduled Tribes (ST) in areas with significant SC/ST populations (as per Articles 330 and 332).
- Readjusting the representation of territorial constituencies: Readjust the representation of territorial
- constituencies in the Lok Sabha (House of People) and Legislative Assemblies based on the latest population census statistics.
- Recommendations and Public Participation: Publishes draft recommendations in the Gazette of India, state
- gazettes, and regional media. Conducts public hearings to consider public opinions, incorporating modifications as necessary.
- Majority Decision: Adopts the majority decision in case of dissent among Commission members.

## 84TH CONSTITUTIONAL AMENDMENT ACT (2002)

**Delimitation Freeze:** The 84th Amendment froze the delimitation of Lok Sabha and State Assembly seats until the first Census after 2026.

### Objective and reasons:

- For Population Stabilization: Keeping in view the progress of family planning programmes in different parts
- of the country, the Government, as part of the National Population Policy strategy, decided to extend the freeze on undertaking fresh delimitation up to the year 2026 as a motivational measure to enable the State Government to pursue the agenda for population stabilization.

### International Practices:

- In a federation like the U.S, the number of seats in the House of Representatives (the equivalent of our Lok Sabha) has been capped at 435 since 1913. The seats among the States are redistributed after every Census through the 'method of equal proportion'. This does not result in any significant gain or loss for any of the States.
- In the European Union (EU) Parliament which consists of 720 members, the number of seats is

divided between 27 member countries based on the principle of 'degressive proportionality'. Under this principle, the ratio of population to the number of seats shall increase as the population increases.

### **SIGNIFICANCE OF DELIMITATION COMMISSION**

- **Supreme Authority:** The Delimitation Commission's decisions and instructions are final and unchallengeable by law or the courts.
- **Responsible For Equitable Representation:** The commission sets constituency boundaries and numbers to ensure nearly equal population distribution. This ensures fair representation. It upholds the principle of "One vote, one value".
- **Fair Regional Distribution:** It ensures fair regional distribution to prevent one political party from outperforming others in an election.
- **Identifying Reserved Seats:** The Delimitation Commission identifies seats that are reserved for Scheduled Castes (SC) and Scheduled Tribes (ST) in areas where these communities have a significant population. This ensures their adequate political representation.

### **CHALLENGES**

- **Southern States' Concerns:** The southern states, with successful population control measures and higher per capita revenue generation, feared losing meaningful political representation compared to the northern states.

- **Disenfranchisement and Economic Contributions:** Delimitation based solely on population would have politically disenfranchised economically developed southern states, while the central government continued to benefit from their economic contributions.
- **Amendments and Postponement:** To address these concerns, the Constitution was amended during the Emergency rule in 1976, suspending delimitation until 2001. Subsequently, another amendment further postponed it until 2026, with the hope of achieving a uniform population growth rate by then.

### **CRITICISM OF THE DELIMITATION COMMISSION**

- **Population Control Bias:** States promoting family planning risk having their seats reduced, while states with less emphasis on population control may gain more seats.
- **Outdated Seat Allocation:** Delimitation done in 2008 was based on the 2001 census, but the total number of seats remained unchanged since 1971, leading to a disparity between population growth and representation.
- **Constitutional Seat Limits:** Because there are fewer seats available (550 for the Lok Sabha and 250 for the Rajya Sabha), fewer representatives can effectively represent larger populations.
- **Unequal Representation:** Fixed seat allocation and population growth lead to unequal representation, impacting the voice and influence of growing populations.

# ATTORNEY GENERAL OF INDIA

## INTRODUCTION

- The Attorney General of India (AGI) is the highest legal officer and chief legal advisor to the government of India.
- Appointed by the President of India, the Attorney General represents the government in legal matters, provides legal advice, and represents the government in the Supreme Court of India.

## ABOUT AGI DUTIES

- **Advising the Government:** The AG provides legal advice to the Government of India on matters referred to them by the President. They offer their expertise and guidance on various legal issues.
- **Performing Assigned Legal Duties:** The AG performs other legal duties assigned to them by the President. These duties may vary and can include providing legal opinions, drafting legal documents, and representing the government in legal matters.
- **Discharging Constitutional and Legal Functions:** The AG carries out functions conferred upon them by the Constitution or any other law. This involves upholding and safeguarding the legal framework of the country.
- **Representation in Presidential References:** The AG represents the Government of India in any reference made
- by the President to the Supreme Court under Article 143 of the Constitution. This refers to cases where

the President seeks the Supreme Court's opinion on certain constitutional or legal matters.

- **Representation in the Supreme Court:** The AG represents the Government of India in all cases before the Supreme
- Court where the government is a party. They present arguments and advocate on behalf of the government's position.
- **Representation in High Courts:** When required by the Government of India, the AG appears in high courts to represent the government in cases where the government is involved.

## LIMITATIONS

- Not to advise or hold a brief against the Government of India.
- Not to advise or hold a brief in cases in which he is called upon to advise or appear for Gol.
- Not to defend accused persons in criminal prosecutions without the permission of the Gol.
- Not to accept an appointment as a director in any company without the permission of Gol.
- Not to advise any ministry/ department of Gol/ any statutory organization/ PSU unless the proposal or a reference for this is received through the Department of Legal Affairs.
- **NOTES:** Legal Duties, Discharging Constitutional and Legal Functions, Grievance Redressal, Spreading Awareness, Constitutional Safeguards.

# NATIONAL AND STATE HUMAN RIGHTS COMMISSION

## INTRODUCTION

NHRC is a statutory body established in 1993 under the legislation, the Protection of Human Rights Act, 1993. It is the watchdog of human rights in the country. It was established in conformity with the Paris Principles (1991) adopted for the promotion and protection of human rights.

## FUNCTIONS

- Inquire into any violation/negligence of human rights by a public servant, either suo-motu or on a petition presented to it or on an order of a court.
- Intervene in any proceeding involving an allegation of violation of human rights pending before a court
- Review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- Study treaties and other international instruments on human rights and make recommendations implementation. for their effective
- Promote research in the field of human rights and Spread human rights literacy among the people.
- Visit jails and detention places to study the living conditions of inmates.
- Review the factors inhibiting the enjoyment of human rights including an act of terrorism and recommend remedial measures.
- Encourage the efforts of NGOs working in the field of human rights.

## Role played by NHRC:

- It has issued the following guidelines: Prison reforms, reporting of custodial death within 48 hours, and the recommendation to public authorities to deal with manual scavenging.
- Criticized laws like POTA, and TADA with the possible scope of misuse for violating human rights.
- Going beyond physical human right violation to protect the socio-economic rights of people like poverty and starvation in Odisha's Kalahandi.

## CHALLENGES

- Absence of investigation mechanism: It is dependent on Central and concerned State Governments for investigation of the human right violation cases.

- Non-binding orders: NHRC has no power to enforce its decisions. The government often out rightly rejects the recommendation of NHRC.
- Lack of Infrastructure: Despite a 1450% increase in cases between 1995-2005, its strength has been reduced by 16%. This limits cases handled by NHRC.
- Pendency and delays: It is over-burdened with cases that have resulted in more than 10000 cases pending with it.
- Staff-related issue: A maximum of its staff is on deputation. Many times investigating officers belong to the accused service which results in a conflict of interest.
- The U.N.-recognised Global Alliance of National Human Rights Institutions (GANHRI) deferred the accreditation of National Human Rights Commission, India (NHRC-India) citing objections like:
  - Political interference in appointments.
  - Involving the police in probes into human rights violations.
  - Poor cooperation with civil society.
  - Lack of diversity in staff and leadership.
  - Insufficient action to protect marginalized groups.

Limitations to handle cases:

- NHRC can't investigate complaints registered after one year of the incident.
- The exclusion of Armed forces and paramilitary forces from its ambit.
- NHRC takes cases solely on media reports and not through its on-field work.
- It cannot challenge the personal laws: Supreme Court impleads NHRC, NCW in Muslim personal law case.
- Remarks by Soli Sorabjee: "India's teasing illusion due to its incapacity to render any practical relief to the aggrieved party".
- Remarks by Supreme court: It is a "toothless tiger".

## PROTECTION OF HUMAN RIGHTS (AMENDMENTS) ACT, 2019

### Composition:

- Judge of SC can also be appointed as chairman.

- Increased the number of people with human rights knowledge to three with at least one woman.
- Chairpersons of the NCBC, the National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities have been included as ex-officio members.
- Term of office: Reduced office term to 3 years from 5 years.
- Union territories: Central government can confer functions related to human rights cases of UT on nearby SHRC.

### Significance:

- Effective compliance with the Paris Principles i.e. autonomy, independence, and pluralism to effectively protect and promote human rights.
- Facilitated increased representations to civil society.
- Increased accessibility to human rights courts to citizens of Union territories.
- A reduced age limit will ensure the timely filing of vacancies.

### Recent News:

- Recently, the National Human Rights Commission (NHRC) has called for an action taken report from the Odisha government regarding the Balasore train accident.
- The Sub-Committee on Accreditation (SCA) of GANHRI is evaluating the NHRC's accreditation status, which will decide if it retains its "A status" for participation in UN human rights bodies.

### WAY FORWARD

- Enforceable Powers: Decisions of NHRC should be made enforceable.
- Commission's composition: Greater representation to civil society, human rights activists, etc. Instead of ex-bureaucrats. This will ensure the independent functioning of the body.
- Ahmadi commission recommendations: Remove one-year ceiling to take cases by NHRC. Also, the term of the Armed force shall not include paramilitary forces.
- Independent staff: And dedicated investigating team to ensure timely disposal of cases.
- Coordination mechanism: Need to establish coordination mechanism between NHRC and SHRC.
- Diversify the role of NHRC: Towards new emerging concerns like rights of LGBT, industries and human rights, environmental impact on human rights, etc.

### CONCLUSION

- NHRC has played a significant role in many cases since its inception. Disposal of more than 15 lacs cases and more than 100 Cr as victim compensation reflect its success.
- Considering rising cases against vulnerable sections it is high time to strengthen commission in all spheres to ensure fundamental rights enshrined in the Indian constitution are enjoyed by everyone.
- **NOTES:** Enforceable Powers, Coordination mechanism, investigation mechanism, Political interference, Insufficient action, Global Alliance of National Human Rights Institutions (GANHRI).

## CENTRAL AND STATE INFORMATION COMMISSION

### INTRODUCTION

The CIC is a high-powered independent and statutory body to look into the complaints made to it about offices, financial institutions, PSUs, etc. under the Central Government and the Union Territories.

### FUNCTIONS

- Inquiry into complaints and disciplinary action against information officers:
  - Unable to submit information request due to non-appointment of a Public Information Officer
  - Refused requested information not received a response to an information request within the specified time limits.
  - Fees charged are unreasonable
  - Feels that information given is incomplete, misleading, or false.
- Suo-moto power: It can order an inquiry into any matter if there are reasonable grounds
- Powers of a civil court while inquiring.
- Examine any record: All public records must be given to the CIC during inquiry for examination.
- Secure compliance to its decisions from the public authority.
- Promote good governance: CIC promotes citizen participation in governance and promotes transparency and accountability in governance.

### CHALLENGES

- Removal of the fixed term: Instead of the earlier 5 years now terms of CIC, IC and SICs will be decided by the central government.
- Determination of Salary by central government instead of the earlier status of equality with chief election commissioner (in case of CIC) and Election commissioner (In case of ICs).
- Delayed appointments: As per the RTI, since 2014 CIC was functioning without a Chief Information Commissioner for more than 400 days and has not functioned at full strength for more than 4 years.

- Pendency: As per the report by Satark Nagrik Sangathan Over 3.2 lakh pleas are pending before 27 information commissions across country.
- Delayed case disposal: As per the report by Satark
- Nagrik Sangathan CIC takes an average of 388 days to dispose of a case from the date that it was filed before the commission.
- Poor judgments: Government officials in only 2.2% of cases face any punishment for violating the law despite various analyses showing a rate of about 59% violations.

### ISSUES HIGHLIGHTED BY SATARK NAGRIK SANGATHAN REPORT:

- Missing during Covid-19 pandemic: 21 Out of the total 29 studied ICs, were not holding any hearings
- Absence of a centralized database of RTI applicants at the central or state level leads to inaccurate annual RTI reports and analysis.
- No adequate authority: The Act did not give adequate authority to the ICs to enforce their decisions.
- Inadequate Trained PIOs and First Appellate authority: This results in breaking the 30 days timeline for
  - providing information as due to lack of proper training PIOs are not able to provide the information in a time bound manner.
- No punishments: Government officials do not face any penalty for lack of their duty or improper behavior.

### CONCLUSION

- RTI has been termed as historic legislation in India's democratic history. To give teeth to RTI we need strong CIC and SICs. Hence all reforms must be taken to ensure transparency and openness in the functioning of government.
- **NOTES:** Inadequate Trained, Good Governance, Suo-moto power, Bureaucratization, Pendency.

## CENTRAL VIGILANCE COMMISSION (CVC)

The Central Vigilance Commission (CVC) is an apex governmental body in India that is responsible for addressing issues related to corruption and promoting transparency and integrity in public administration. CVC was established in 1964 by an executive resolution on the recommendation of the Santhanam Committee. In 2003, the Parliament conferred a statutory status on the CVC. It is the main agency for preventing corruption in the Central government.

### INDEPENDENCE OF CVC

- **Appointment:** By the President on the recommendation of a three-member committee (PM+ Home minister + the Leader of the Opposition in the Lok Sabha).
- **Removal:** By president only on the ground mentioned in the statute.
- **Composition:** Central Vigilance Commissioner + Maximum two vigilance commissioners.
- **Fixed Tenure:** 4 years/ 65 years whichever is earlier and ineligible for further employment under the Central or a state government.
- **Fixed salary, allowances, and service conditions:** It is similar to the Chairman of UPSC (in the case of chief vigilance commissioner) and similar to a member of UPSC (in the case of vigilance commissioner).
- **Independent staff:** CVC has its Secretariat, Chief Technical Examiners' Wing, and a wing of Commissioners for Departmental Inquiries.

### Functions

- Inquiry or investigation against an alleged employee of the Central Government for an offense under the Prevention of Corruption Act, 1988 (PoCA).
- Superintendence over the functioning of CBI and giving directions to CBI related to the investigation of offenses under the PoCA.
- Superintendence over the vigilance administration in the ministries of the Central Government.
- Doing preliminary inquiry into complaints referred by Lokpal in respect of officials of Groups A, B, C & D.
- Working as Competent Authority: competent authority under the Whistle-blower protection act, 2014 for a person to make a public interest disclosure on corruption.

- Sensitization of citizens: Steps like vigilance week, and integrity pledge help to generate awareness about the ill effects of corruption.

### CHALLENGES

- **Executive dependence:** The appointment of CEC is indirectly under the executive only, hampering its independent functioning.
- **Advisory and non-binding recommendations** to ministries and government organizations.
- **Delay in case handling:** There is a huge delay in the cases that CVC handles, hence it does not act as an effective deterrent.
- **Duplication of efforts:** Due to overlapping jurisdiction of CBI, CVC, and Lokpal.
- **Limitation on CVC:** The need of prior consent of ministries for the above joint secretary-level officials, and exemption of private individuals limits its role in addressing the corruption challenge holistically.
- **Pending Cases:** Lack of funds and human resources results in huge pendency of cases.

### WAY FORWARD

- Ensure the independence of the commission.
- Timely appointment of CVC and VCS and ensure diversity in commission composition.
- Adequate funding: There shall be adequate funds to ensure modern infrastructure for efficient functioning.
- Adoption of modern technology like AI, Big Data and digitization of functioning.
- Avoid overlapping jurisdictions of various agencies like Lokpal, and CBI by ensuring role clarity.

### CONCLUSION

- Corruption is the biggest threat to inclusive development, so steps must be taken to strengthen bodies like CVC, CBI, and Lokpal to ensure PoCA is implemented in letter and spirit.
- Constitutional status for these bodies implies they have a greater role and responsibility in the democratic status of the country, and constitutional protections ensure they are not at the mercy of the government.
- **NOTES:** Independence, Adequate funding, overlapping jurisdictions, Sensitization of citizens.

## UNION EXECUTIVE & STATE EXECUTIVE

### INTRODUCTION

- The organ of the government that primarily looks after the function of implementation and administration is called the executive. While the heads of government and their ministers, saddled with the overall responsibility of government policy, are together known as the political executive, those responsible for day to day administration are called the permanent executive.
- Comparison of Union executive and State executive:

### Union Executive

- Articles 52 to 78 in Part V of the Constitution deal with the Union executive.
- The Union executive consists of the President, the Vice- President, the Prime Minister, the council of ministers and the attorney general of India.
- The President is the nominal executive head whereas the PM is the real executive head.
- Executive power of the Union is vested in the President and is exercised by him either directly or through officer's subordinate to him in accordance with the Constitution (Article 53).
- The president has to act in accordance with aid and advice of the council of ministers headed by the prime minister (Article 74).

### State Executive

- Articles 153 to 167 in Part VI of the Constitution deal with the state executive.
- The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state.
- The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). CM is the real executive head.
- The executive power of the state is vested in the governor, and it is exercised by him either directly or through officer's subordinate to him in accordance with this Constitution (Article 154).

- The Governor has to act in accordance with aid and advice of the council of ministers headed by the CM, except his discretionary functions (Article 163).

### THE PRESIDENT OF INDIA

- The President is the head of the Indian State. He is the first citizen of India and is a symbol of solidarity, unity, and integrity of the nation.

### IMPEACHMENT

- Reason for Impeachment: The President can be removed for 'violation of the Constitution'.
- Impeachment Resolution: It can be initiated by either House of Parliament. These charges should be signed by one- fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President.
- 2/3rd majority of the total membership in the first House (where the process has been initiated): After the impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges.
- 2/3rd majority of the total membership in the second House: The President is removed from office as of the date the impeachment resolution is passed if the other House also upholds the allegations and votes in favor of it by a majority of two-thirds of its members.

### ISSUES WITH IMPEACHMENT

- Term 'violation of constitution' is a very vague term & has not been defined anywhere in the constitution'.
- Elected members of legislative assemblies have no role to play in impeachment proceedings while they have a role in election of the President.
- Nominated members of Parliament have the right to vote in case of impeachment, while no voting right in election of President.
- Procedure & authority to investigate the charges against the President have not been specified nor any definite time period has been specified.

	USA IMPEACHMENT	INDIA IMPEACHMENT
<b>Grounds</b>	Treason, Bribery, or other high crimes and misdemeanors.	Violation of the Constitution
<b>Voting</b>	Simple majority of the House of Representatives. Special Majority in the senate is required.	2/3rd of total membership of each House.
<b>Houses Involved</b>	House of Representatives and Senate	Lok Sabha and Rajya Sabha
<b>Initiation</b>	Any member of the House of Representatives can introduce a resolution of impeachment	Impeachment charges can be initiated by either House of Parliament
<b>Examples</b>	Three USA Presidents Andrew Johnson in 1868, , Bill Clinton in 1998 & Donald Trump in 2019, previously were impeached by the House but acquitted by the Senate.	Not in India

### **CRITICISM OF THE OFFICE OF THE PRESIDENT**

- The President is bound by the aid and advice of the Council of Ministers.
- Article 352, 356 and 360 of the constitution confers upon the President the power to declare emergency, and this so-called power to declare or promulgate emergency is one of the widely abused or violated provisions.
- Misuse of the power to promulgate ordinance:
- One major issue of the ordinance is that the president generally doesn't exercise legislative discretion, the president only promulgates them, it is the council ministers who in reality decide if the ordinance is essential. This influence of the ministers may at times led to arbitrariness.
- The articles of the constitution don't specify any maximum limit of ordinances which can be passed by the president in a period of time. This lack of specification may lead to the president to pass as many ordinances as he wishes under the circumstances that the parliament is not in session and the necessity of an immediate action is met.
- The major issue or problem of the ordinances are relating to the re-promulgation of the ordinances, the question of whether they should be legal or unconstitutional is a debate which has been going on for quite some time.
- Krishna Kumar Singh vs State of Bihar (2017) - In this case, the Apex court held that the re-promulgation of an

- ordinance is a fraud on the Constitution and also ruled that the satisfaction of the President and Governor while issuing an ordinance is subject to judicial review.
- RC Cooper Case 1970: 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.
- D C Wadhwa vs State of Bihar (1987): The court had held that successive Re-promulgation of the ordinances having the same texts and without attempting to pass the bills will amount to a violation to the constitution of India.

### **THE VICE PRESIDENT OF INDIA**

- The Vice-President occupies the second highest office in the country. This office is modeled on the lines of the American Vice-President.

### **CONSTITUTIONAL PROVISIONS**

- Article 63 - The Vice-President of India: There shall be a Vice-President of India.
- Article 64- The Vice-President to be ex officio Chairman of the Council of States: The Vice-President shall be ex officia
- Chairman of the Council of the States and shall not hold any other office of profit.

## **POWERS & FUNCTIONS OF VICE-PRESIDENT**

**Ex-officio Chairman of Rajya Sabha:** He acts as the ex-officio Chairman of Rajya Sabha. His role as the chairman are:

- As Presiding Officer of the House: As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the House.
- He ensures that the proceedings of the House are conducted in accordance with the relevant constitutional provisions, rules, practices and conventions and that decorum is maintained in the House. As the Principal Spokesman of the House: The Chairman is also the principal spokesman of the House and represents its collective voice to the outside world.
- Casting of Vote by the Chairman: Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes
- Powers and Duties of the Chairman, as laid down by the Constitution of India: He is empowered to adjourn the House or to suspend its sitting in the event of absence of quorum.
- Role in the Deliberations of the House: The Chairman does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer.
- However, on a point of order raised or on his own, he may address the House at any time on a matter under consideration with a view to assisting members in their deliberations
- Powers Conferred on the Chairman under the Rules of Procedure of the Rajya Sabha:
- Various powers are conferred on the Chairman under the Rules of Procedure of the Rajya Sabha in connection with the proceedings of the House, Committees and such other matters as questions, calling attention, motions, resolutions, amendments to Bills, authentication of Bills, petitions, papers to be laid on the Table, personal explanations, etc.

**Right of the Chairman to interpret the Constitution and Rules:**

- It is the right of the Chairman to interpret the Constitution and rules so far as matters in or relating

to the House are concerned, and no one can enter into any argument or controversy with the Chairman over such interpretation

- Maintenance of Order in the House: Maintenance of order in the House is a fundamental duty of the Chairman and he has been invested with all the necessary disciplinary powers under the rules for the purpose.
- References by the Chairman: It is customary for the Chairman to make appropriate references in the House on solemn occasions like anniversary of Universal Declaration of Human Rights by U.N., Martyrs Day, Quit India Day, anniversary of bombing of Hiroshima, Nagasaki, etc.
- Powers relating to Bills passed in Rajya Sabha: The Chairman is empowered under the rules to correct patent errors in a Bill after it has been passed by the House and to make such other changes in the Bill consequential on the amendments accepted by the House.
- Powers relating to the Rajya Sabha Secretariat and Precincts of Rajya Sabha: The Rajya Sabha Secretariat functions under the control and direction of the Chairman. Admission to various galleries including Press Gallery, is regulated under the direction of the Chairman.
- Duties conferred on the Chairman: Some statutes also confer duties on the Chairman. For instance, rules made under the Salary, Allowances and Pension of Members of Parliament Act, 1954, do not take effect until they are approved and confirmed by the Chairman and the Speaker.
- Acting President: He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise.
- He can act as President only for a maximum period of six months within which a new President has to be elected.
- During this period, the Vice-President has all the powers, immunities and privileges of the President and receives emoluments and allowances payable to the President.

**COMPARISON OF ELECTION OF PRESIDENT & VICE PRESIDENT:**

**Election of President**

Electoral college Consist Only elected members from Lok Sabha + Rajya Sabha + Legislative

assemblies of State + Legislative assemblies of UTs (Delhi and Puducherry only)

Elected members of the state legislative assemblies are included

**Election of Vice-President**

Electoral college Consist both elected and nominated members from Lok Sabha + Rajya Sabha only.

Exclude the members of the state legislative assemblies.

**TERM, QUALIFICATION & REMOVAL OF THE PRESIDENT AND THE VICE PRESIDENT**

	President	Vice - President
<b>Qualification</b>	He should be citizen of India, completed 35 years of age, qualified for election as a member of the Lok Sabha	He should be a citizen of India, completed 35 years of age, qualified for election as a member of the Rajya Sabha.
<b>Conditions of office</b>	Should not be a member of either House of Parliament or a House of the state legislature Should not hold any office of profit under the government.	Should not be a member of either House of Parliament or a House of the state legislature Should not hold any office of profit under the government.
<b>Term</b>	5 years	5 years
<b>Resignation</b>	To Vice President	To President
<b>Removal</b>	By a process of impeachment for 'violation of the Constitution.	He can be removed by a resolution introduced and passed by effective majority in Rajya Sabha and simple majority in Lok Sabha.
<b>Re-election</b>	Eligible for re-election	Eligible for re-election

**THE GOVERNOR OF STATE**

The head of the state is the governor and the executive power of the state is vested in him.

He is appointed by the president of India who holds the office during the pleasure of the president.

Appointment (Article 155): He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government.

**TERM OF GOVERNOR (ARTICLE 156)**

A governor holds office for a term of five years; However, this term of five years is subject to the pleasure of the President.

He can resign at any time by addressing a resignation letter to the President.

According to the SC, the President's pleasure is not legitimate. There is no term limit and no tenure security for the governor.

The Constitution does not lay down any grounds upon which a governor may be removed by the President.

**QUALIFICATION (ARTICLE 157)**

- Provided in Constitution: He should be a citizen of India and he should have completed the age of 35 years.
- Two Conventions developed regarding appointment of governor:
- He should be an outsider, that is, he should not belong to the state where he is appointed, so that he is neutral to local politics.
- In order to ensure the efficient operation of the state's constitutional machinery, the president is obligated to consult the chief minister of the affected state before choosing the governor.
- Other conditions (similar to President):
- He should not be a member of either house of the Parliament or house of the state legislature.

- He should not hold any office of profit under the government.

## NOMINATED V/S ELECTED GOVERNOR

### Arguments For Nominated Governor

- The direct election of the Governor is incompatible with the parliamentary system established in the states.
- The mode of direct election is more likely to create conflicts between the Governor and the chief minister.
- The Governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his election and spending huge amounts of money.
- An elected Governor would naturally belong to a party and would not be a neutral person and an impartial head.
- The system of Presidential nomination enables the Centre to maintain its control over the states.
- The CM would like his nominee to contest for governorship. Hence, a second-rate man of the ruling party is elected as Governor.

### Arguments For Elected Governor

- Being an outsider, he may not be aware about the culture, language and development urges of the state.
- There is equal likelihood of friction in the case of nominated governors.
- Nominated governors violate the true spirit of federalism.
- Mass removals can be avoided.
- Appointed governors may try to destabilize state governments under instructions from the center.
- Raj Bhavan tends to become a rehabilitation center & often used for political Accommodation.

## POWERS OF PRESIDENT & GOVERNOR

### EXECUTIVE POWERS:

#### President

- All executive actions of the Government of India are formally taken in his name.
- He appoints the prime minister and the other ministers. They hold office during his pleasure.
- He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.
- He appoints the CAG, the chief election commissioner and other election commissioners, the chairman and members of the UPSC, the governors of states, the chairman and members of finance commission etc.
- He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- He can appoint an inter-state council to promote Centre- state and interstate cooperation. He directly administers the union territories through administrators appointed by him
- He has the authority to designate any place as a scheduled area and to oversee the administration of both scheduled and tribal territories.

#### Governor

- All executive actions of the government of a state are formally taken in his name
- He appoints the chief minister and other ministers. They also hold office during his pleasure. He also appoints Tribal Welfare ministers in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha.
- He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor
- He appoints the state election commissioner and determines his conditions of service and tenure of office, He appoints chairman and members of the state public service commission.
- He can recommend the imposition of constitutional emergency in a state to the president.

- He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.
- The Governor of the state has special responsibilities with respect to tribal population in the scheduled area under the fifth schedule.

## LEGISLATIVE POWERS:

### President

- He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament.
- He can address the Parliament at the commencement of the first session after each general election and at the first session of each year.
- He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.
- He can nominate two members to the Lok Sabha from the Anglo-Indian Community (Please see note given below the table).
- He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.
- His prior recommendation or permission is needed to introduce certain types of bills in the Parliament.
- He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu.
- Veto powers with regards to state and central legislations.
- He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament

### Governor

- He can summon or prorogue the state legislature and dissolve the state legislative assembly.
- He can address the state legislature at the commencement of the first session after each

general election and the first session of each year.

- He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
- He may nominate one Anglo-Indian candidate for the state legislature assembly. (Please see note given below the table)
- He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
- He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise (Similar power of the President wrt parliamentary bill).
- He can promulgate ordinances when the state legislature is not in session. (The President also promulgates ordinance when parliament is not in session).
- Veto Power with regard to state legislations.
- He lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

NOTE: In January 2020, The Anglo-Indian Reserved Seats In The Parliament And State Legislatures Of India Were Discontinued By The 126th Constitutional Amendment Bill Of 2019, When Enacted As The 104th Constitutional Amendment Act, 2019.

## FINANCIAL POWERS

### President

- Money bills can be introduced in the Parliament only with his prior recommendation.
- He is to lay before the Parliament the annual financial statement (the Union Budget).
- No demand for a grant in Lok Sabha can be made without his recommendation.

- He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

### Governor

- Money bills can be introduced in the state legislature only with his prior recommendation.
- He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
- No demand for a grant in the Vidhan Sabha can be made without his recommendation.
- He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

### JUDICIAL POWERS

#### President

He appoints the Chief Justice and the judges of Supreme Court and high courts

He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offense

#### Governor

- He is consulted by the president while appointing the judges of the concerned state high court.
- He can pardon, reprieve, respite, remit, suspend or commute the punishment/sentence of any person convicted of any offence against a state law.

### **OTHER POWERS OF PRESIDENT:**

#### Diplomatic Powers

- The international treaties and agreements are negotiated and concluded on behalf of the

President. However, they are subject to the approval of the Parliament.

- He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

### Military Powers

- He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force.
- He can declare war or conclude peace, subject to the approval of the Parliament.

### Emergency Powers

- The Constitution gives extraordinary powers to the President to promulgate the following three types of emergencies:
  - National Emergency (Article 352);
  - President's Rule (Article 356 & 365);
  - Financial Emergency (Article 360).

### **PRIVILEGES AND IMMUNITIES ENJOYED BY PRESIDENT & GOVERNOR (ARTICLE 361)**

- Art. 361 (1): President, or the Governor of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office except the parliament authorized any tribunal, court or body for the investigation of charge under Art. 61.
- Art. 361 (2): No criminal proceeding can be instituted or continued against President or Governor while in office
- Art. 361 (3): No proceedings for the arrest or imprisonment of the President or Governor shall be done by any court while in office.
- Art. 361 (4): Civil proceedings against a Governor or President against things done by him in his personal capacity can be done only with a previous 2 months' notice.

### **COMPARISON OF VETO POWER OF PRESIDENT & GOVERNOR**

#### President

- With Regard to Ordinary Bills of parliament he may give his assent / withhold his assent /return the bill for reconsideration of the Houses.
- When a state bill is reserved by the governor for the consideration of the President, he can give his assent/ withhold his assent/ return the bill for reconsideration of the Houses.
- In case of returning for reconsideration, if the bill is passed by the state and presented to the president for his assent, the president is not bound to give his assent to the bill.
- With Regard to Money Bills, he may give his assent to the bill / withhold his assent to the bill but cannot return a money bill for the reconsideration of the Parliament.
- When a Money Bill is reserved by the Governor for the consideration of the President, he may give his assent/ may give his assent but cannot return a money bill for the reconsideration of the state legislature
- With Regard to Constitutional Amendment Bills He Can only ratify. He can't reject or return the bill.

### Governor

- With Regard to the Ordinary Bill, he may give his assent /withhold his assent / return the bill for reconsideration of the Houses/ reserve the bill for the consideration of the President.
- When the governor reserves a bill for the consideration of the President, he will not have any further role in the enactment of the bill.
- If the bill is returned by the President for the reconsideration of the House or Houses and is passed again, the bill must be presented again for the presidential assent only i.e., assent of the Governor is no longer required.
- With Regard to Money Bills, he may give his assent to the bill / withhold his assent/ reserve the bill for the consideration of the president but cannot return a money bill for the reconsideration of the Parliament.
- When the governor reserves a money bill for the consideration of the President, he will not have any further role in the enactment of the bill. If

the President gives his assent to the bill, it becomes an Act.

- Constitutional amendment bills cannot be introduced in the state legislature.

### **ORDINANCE MAKING POWER OF THE PRESIDENT & GOVERNOR**

- The ordinance-making power is the most important legislative power of the President.
- Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament.
- The ordinance making power of the Governor given under Art. 213 is similar to that of the President given under Art.123).

### Why is ordinance power conferred?

- The power to issue ordinance to president and governor has been conferred to deal with unforeseen or urgent matters.
- It enables the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session.
- Characteristics of Ordinance:
- Ordinance cannot abridge or take away any of the fundamental rights.
- An ordinance like any other legislation, can be retrospective, that is, it may come into force from a back date.
- These ordinances have the same force and effect as an act of Parliament/state, but are in the nature of temporary laws.
- The maximum life of an ordinance can be six months and six weeks, in case of non-approval by the Parliament/state legislature because 6 months is the maximum gap between the two sessions of Parliament/state legislature.
- Ordinance can alter or amend a tax law also. However, it cannot be issued to amend the Constitution.

### President

- He can promulgate an ordinance only when both the Houses of Parliament are not in session or

either of the two Houses of Parliament is not in session.

- He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- His ordinance-making power is co-extensive with the legislative power of the Parliament. This means that he can issue ordinances only on those subjects on which the Parliament can make laws.
- An ordinance issued by him has the same force and effect as an act of the Parliament.
- He can withdraw an ordinance at any time.
- Power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by PM.
- An ordinance issued by him should be laid before both the Houses of Parliament when it reassembles.
- An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of Parliament.
- It may cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it.
- He needs no instruction for making an ordinance.
- An ordinance issued by him is subject to the same limitations as an act of Parliament. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the Parliament cannot make.

### **Governor**

- He can promulgate an ordinance only when the legislative assembly (in case of a unicameral legislature) is not in session or (in case of a bicameral legislature) when both the Houses/either of the two Houses of the state legislature is not in session.
- He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.

- His ordinance-making power is co-extensive with the legislative power of the state legislature. This means that he can issue ordinances only on those subjects on which the state legislature can make laws.
- An ordinance issued by him has the same force and effect as an act of the Parliament.
- He can withdraw an ordinance at any time.
- Power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by CM.
- An ordinance issued by him should be laid before the legislative assembly or both the Houses of the state legislature (in case of a bicameral legislature) when it reassembles.
- An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of the state legislature.
- It may cease to operate even earlier than the prescribed six weeks, if a resolution disapproving it is passed by the legislative assembly and is agreed to by the legislative council (in case of a bicameral legislature)
- He cannot make an ordinance without the instructions from the President in three cases:
  - 1) If a bill containing the same provisions would have required, the previous sanction of the President for its introduction into the state legislature.
  - 2) If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President.
  - 3) If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent.
- An ordinance issued by him is subject to the same limitations as an act of the state legislature. This means that an ordinance issued by him will be invalid to the extent it makes any provision which the state legislature cannot make.
- Re-promulgation Of Ordinances: A Violation To The Spirit Of Constitution?

- The decision of the central government to re-promulgate Commission for Air Quality Management in the National Capital Region and Adjoining Areas Ordinance, 2020 has led to several questions being raised regarding the practice of the issuing ordinances as well as the constitutionality of the ordinances being re-promulgated.

Cases relating to Re-promulgation of ordinances are:

- D C Wadhwa vs State of Bihar (1987): The court had held that successive Re-promulgation of the ordinances having the same texts and without attempting to pass the bills will amount to a violation to the constitution of India
- Krishna Kumar Singh & Anr vs State Of Bihar (2017): This is the landmark judgment in which it was held that the Re- promulgation of

ordinances are a fraud to the constitution. In this case the 7 bench jury held that the power conferred to the executive doesn't make it a parallel law making authority.

- The Supreme Court in 1986 had ruled that the Re-promulgation of ordinances contrary to the basic fundamentals of the constitution and a subversion of democratic legislative processes, the mechanism could be very likely used as an exercise of power by the government to ignore the legislature.

#### Issues:

- Usurpation of the legislative power.
- The doctrine of separation of powers is undermined.
- It violates the fundamental structure of the constitution

#### Why is the ordinance route considered undemocratic?

- SC in 2017 ruled that re-promulgation of ordinances is a fraud on the constitution and a subversion of democratic legislative process.
- Primary law-making power rests with the legislature and not the executive. Ordinance is an undemocratic route to law-making, which is the job of the legislature.
- The executive is only given the legislative power to issue an ordinance to meet an emergent situation, thus it shall not be invoked frequently.
- Re-promulgation represents an effort to overreach the legislative process which is the primary source of law-making in a parliamentary democracy.
- Ordinance is a backdoor to escape the parliamentary scrutiny, debates, discussions etc.

#### Way forward:

- As governments, both at the center and state, are violating this principle, the legislature and the courts should check the practice. That is what separation of powers and the concept of checks

and balances means. By not checking this practice, the other two organs are also abducting their responsibility to the constitution.

#### **PARDONING POWER OF THE PRESIDENT & GOVERNOR**

- Articles 72 and 161 of the Constitution empower the President of India and the governors of states to grant pardon or suspend, remit or commute sentences in certain cases.
- The pardoning power of the President/Governor is independent of the Judiciary; it is an executive power conferred to keep the door open for correcting any judicial errors in the operation of law and to afford relief from a sentence, which the President/Governor regards as unduly harsh.
- In the Maru Ram vs Union of India in 1980, and Dhananjay Chatterjee vs State of West Bengal in 1994, the SC has ruled that the President has to act on the advice of the Council of Ministers while deciding mercy pleas.
- Epuru Sudhakar & Another vs Andhra Pradesh (2006)

- Powers of the President or Governor under Articles 72 and 161 are subject to judicial review.

Their decision can be challenged on the ground that:

- It was passed without application of mind
- It is mala fide
- It was passed on extraneous or wholly irrelevant considerations
- Relevant materials were kept out of consideration
- It suffers from arbitrariness.

### **Pardoning power of the President**

- Pardon- Whenever a convict is Granted pardon by the President of India under Article 72, he is completely Absolved from the punishment imposed on him as also from all penal Consequences
- Commutation- The President may change a Punishment to one of a different sort than that originally awarded by the Court.
- Remission- It means the reduction of the sentence without changing the nature or the character of the punishment awarded by the court.
- Respite- This order results in temporary suspension of a sentence in special circumstances such as the pregnancy of a woman sentenced with death penalty or insanity of a convict. In other words it is a postponement of execution of the sentence to the future.
- Reprieve- It simply stays the execution for a temporary period, or postpone a capital sentence or take back or withdraw A sentence for a time.

### **Difference between pardoning powers of president & governor:**

#### **President**

- He can pardon, reprieve, respite, remit, suspend or commute the punishment/sentence of any person convicted of any offense against a Central law.

- He can pardon, reprieve, respite, remit, suspend or commute a death sentence.
- He has pardoning power in respect to punishment or sentence by a court-martial.

#### **Governor**

- He can pardon, reprieve, respite, remit, suspend or commute the punishment/sentence of any person convicted of any offence against a state law.
- Governor can suspend, remit or commute but he cannot pardon a death sentence.
- He doesn't possess any such power.

### **DISCRETIONARY POWERS OF THE PRESIDENT & GOVERNOR**

The Governor has both situational and constitutional discretion but the president has only situational discretion.

After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.

#### **President**

- Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.
- Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.
- Dissolution of the Lok Sabha if the council of ministers has lost its majority.

#### **Governor**

- Appointment of a chief minister in situations where no party has a clear majority in the state legislative assembly or when an incumbent chief minister passes away unexpectedly and no obvious candidate can take his place.
- Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
- Dissolution of the state legislative assembly if the council of ministers has lost its majority.

#### **Discretionary powers of Governor:**

- Governor has constitutional discretion in the following cases:
- Reservation of a bill for the consideration of the President.
- Recommendation for the imposition of the President's Rule in the state.
- While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).
- Determines the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council.
- Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

### ISSUES RELATED TO GOVERNOR

- Arbitrary removal: The arbitrary removal of the Governor before the expiration of his tenure has also been an important issue in the recent past.
- Rehabilitative appointments: The position has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day.
- Abuse of position: There are various examples of the Governor's position being abused, usually by the ruling party at the Centre.
- Misuse of discretionary powers: Governor's discretionary powers to invite the leader of the largest party/alliance to form the government has often been misused.
- Partisanship Role: Recently, the Governor of Rajasthan has been charged with the violation of the model code of conduct. His support of the ruling party is against the spirit of non-partisanship that is expected from the person sitting on constitutional posts.
- Misuse of power under Art. 356: The imposition of President's rule (Art.356) in case of breakdown of constitutional machinery in a State has been frequently misused by the central government.
- Mere rubber stamp or puppet: Governor is bound by the aid and advice of his council of ministers.

Recent examples:

- The Governor refused to read some parts of the Governor's address which was prepared by the State govt in Tamil Nadu.

- In Maharashtra, The Governor removed the Governor's rule and administered oath to a CM who did not have majority support in the house.
- The WB Assembly passed a Bill for replacing the Governor from the position and making the Chief Minister the Chancellor of State Universities.
- Dispute with state government over the approval of various Bills in Kerala, similar issue is in Telangana as well.

### RECOMMENDATIONS OF SARKARIA COMMISSION

Related to Article 356:

- Art. 356 should be used in very rare cases when it becomes unavoidable to restore the breakdown of constitutional machinery in the State. It should be used as a matter of last resort.
- Before taking action under Art. 356, a warning should be issued to the state government that it is not functioning according to the constitution.

Related to Governor:

- Governors should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha.
- His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons.

Criteria for selection of Governor:

- (i) He should be eminent in some walk of life.
- (ii) He should be a person from outside the State.
- (iii) He should be a detached figure and not too intimately connected with the local politics of the State.
- (iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

Related to appointment of CM:

- If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.
- In the absence of such a party, the Governor shall choose a CM by holding hearings with each of the

following parties or groups of parties in the order of preference listed below:

- An alliance of parties that was formed prior to the Elections.
- The Largest Single Party staking a claim to form the government with the support of others, including independents.
- A post-electoral coalition with all partners joining the government.
- A post-electoral alliance with some parties joining the government and the remaining supporting from outside

Others:

- When the President withholds his assent to the state bills, the reasons should be communicated to the state government.
- The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself.
- The Governor cannot dismiss the council of ministers so long as it commands a majority in the assembly

**NOTES:** Council of Ministers, absolute majority, Constitutional right, discretionary powers, Rehabilitative appointments, Abuse of position, Pardon, respite, Promulgation of ordinance.



# PRIME MINISTER & CHIEF MINISTER

## PART I: PRIME MINISTER OF INDIA

### 1. Constitutional Basis Articles 74 & 75 of the Indian Constitution deal with the position of the Prime Minister (PM).

- Article 74: There shall be a **Council of Ministers headed by the Prime Minister** to aid and advise the President.
- Article 75: The PM shall be appointed by the **President**, but must enjoy **majority support in the Lok Sabha**.

### 2. Role in Parliamentary Democracy

- The PM is the **real executive authority** and the central figure of India's **parliamentary system**.
- Called the **"Captain of the Ship"**, **"Keystone of the Cabinet Arch"** (Morrison), and **"Chief Policy-Maker"**.

### 3. Powers and Responsibilities

#### Executive Powers:

- **Head of the Government:** Exercises control over central administration through ministries and departments.
- **Cabinet Formation:** Recommends the appointment, reshuffling, and dismissal of ministers to the President.
- **Decision-Making:** Chairs Cabinet meetings and coordinates the work of various ministries.
- **Crisis Manager:** Leads in national emergencies (health, defense, disasters).

#### Legislative Powers:

- **Leader of the Lok Sabha** (if a member): Controls the government's legislative agenda.
- Recommends **dissolution of the Lok Sabha** to the President.
- Plays a dominant role in **introducing bills**, particularly Money Bills.

#### Advisory Role:

- Under **Article 78**, the PM is constitutionally obligated to:
  - Communicate decisions of the Council of Ministers to the President.
  - Furnish information regarding government affairs when asked.
  - Submit matters for consideration by the Council when required by the President.

#### Appointment Role:

- Plays a pivotal role in appointment of:
  - **Governor, CAG, Chief Election Commissioner, UPSC members, Ambassadors**, etc.
  - Heads of national security institutions like NSA, RAW, IB.

#### International Role:

- Represents India globally in summits (e.g., G20, UN, SCO).
- Final authority in foreign policy decisions, strategic alliances, defense diplomacy.

#### Party Leadership:

- The PM is usually the **supreme leader of the ruling party or alliance**.
- Decides party's electoral strategy, seat-sharing, and messaging.

### 4. Prime Minister's Office (PMO)

- Established in 1947, PMO is the **nerve center of the government**.
- Functions as a **staff, advisory, and monitoring agency**.
- Headed by the **Principal Secretary**; includes advisors, secretaries, and OSDs.

### 5. Limitations and Criticisms

- No **fixed tenure**; depends on Lok Sabha majority.

- Can become **too powerful** in majority governments (e.g., Indira Gandhi's tenure).
- **Coalition-era PMs** (e.g., Vajpayee, Manmohan Singh) had to balance party and alliance interests.
- Over-reliance on bureaucracy via PMO has led to accusations of **centralisation** and **technocratic decision-making**.

- Ensures passage of bills, motions, and confidence votes.
- Makes policy statements and participates in debates in the Assembly.

#### **Financial Powers:**

- Plays a key role in finalising the **State Budget**.
- Oversees expenditure priorities and implementation of schemes like PDS, pensions, and rural works.

#### **Role in Centre-State Relations:**

- Attends **Inter-State Council, NITI Aayog meetings, and Zonal Council discussions**.
- Participates in national policy decisions (e.g., GST Council, environmental planning).

#### **Political and Party Role:**

- Leader of the state's ruling party/coalition.
- Decides candidate selection, campaign strategy, and party discipline.

#### **4. Administrative Structure**

- Aided by:
  - **Chief Secretary** (top bureaucrat in the state)
  - State Cabinet Ministers
  - District Collectors and police officials

#### **5. Limitations and Challenges**

- Subject to **Governor's discretionary powers** during emergencies.
- In centrally-sponsored schemes, must follow **Union guidelines**.
- Often caught between political obligations and administrative duties.
- In states under President's Rule, CM's role is suspended.

### **PART III: PRIME MINISTER VS. CHIEF MINISTER**

- Both are the **real executive heads** at their respective levels, but the PM has **national and international responsibilities**, whereas the CM's scope is confined to **state administration**.

## **PART II: CHIEF MINISTER OF A STATE**

### **1. Constitutional Basis**

- **Articles 163 & 164** mention the position of Chief Minister (CM).
- The CM is the **real executive authority at the state level**.
- Appointed by the **Governor**, but must enjoy majority support in the Legislative Assembly.

### **2. Central Role in State Government**

- CM is the **head of the State Council of Ministers**.
- Acts as the **channel of communication** between the Governor and the Council (Article 167).
- Leads the formation and execution of policies on subjects under **State List and Concurrent List**.

### **3. Powers and Responsibilities**

#### **Executive Powers:**

- Allocates portfolios among ministers and reshuffles them.
- Coordinates between departments and resolves inter-ministerial conflicts.
- Appoints top state bureaucrats in consultation with the Chief Secretary.
- Guides the administration of **local self-governments**, police, and welfare departments.

#### **Legislative Powers:**

- Recommends summoning, prorogation, and dissolution of the State Legislative Assembly.

- The PM interacts with the **President**, whereas the CM corresponds with the **Governor**.
- The PM leads foreign policy and national security; the CM leads state development and law & order.

- In theory, both are part of a **federal structure**, but in practice, the PM has **greater power and influence**

## COUNCIL OF MINISTERS

### 1. CONSTITUTIONAL BASIS

- **Article 74(1)**: There shall be a **Council of Ministers (CoM)** headed by the **Prime Minister** to aid and advise the President.
- **Article 75**:
  - The Prime Minister is appointed by the President.
  - The other Ministers are appointed on the advice of the PM.
  - The CoM is **collectively responsible** to the **Lok Sabha**.
- **Article 78**: PM communicates all decisions of the CoM to the President.
- **Article 77 & 85**: Relate to conduct of business and Presidential actions on CoM advice.

### 2. COMPOSITION OF COUNCIL OF MINISTERS

The Council of Ministers is a **three-tier body**:

#### (a) Cabinet Ministers

- Senior-most ministers heading important ministries (Finance, Defence, Home, External Affairs, etc.).
- Part of the **Cabinet**, which is the **core decision-making body**.

#### (b) Ministers of State (MoS)

- Junior to Cabinet Ministers.
- May:
  - Be given **independent charge** of a ministry (MoS–Independent Charge), or
  - **Assist a Cabinet Minister** in charge of a department.

#### (c) Deputy Ministers

- Assist the MoS or Cabinet Minister.
- Have **no independent authority**.

Note: The term "Council of Ministers" includes **all levels** of ministers, whereas **Cabinet** refers only to senior ministers.

### 3. CABINET vs COUNCIL OF MINISTERS (Conceptual Difference)

Feature	Cabinet	Council of Ministers
Size	Smaller, ministers	~25 Larger, ~60–70 ministers
Role	Core policymaking body	Implements Cabinet's decisions
Meetings	Meets regularly (chaired by PM)	Rarely meets as a full body
Mention in Constitution	Not explicitly (emerged via convention)	Mentioned in Article 74

### 4. POWERS AND FUNCTIONS

#### Executive Powers

- Real authority to run the government (the President acts on its aid and advice).
- Handles administration through ministries and departments.
- Advises the President on key appointments (Judges, Governors, EC, etc.).

#### Legislative Powers

- Prepares and introduces Bills in Parliament.
- Responsible for ensuring passage of Money Bill.
- Recommends sessions, prorogation, or dissolution of the Lok Sabha.

#### Financial Powers

- Frames and presents the Union Budget.
- Determines expenditure priorities.
- Controls allocation of funds across schemes and ministries.

### Policy-Making Role

- Sets national goals and developmental priorities.
- Coordinates with States via inter-ministerial consultations.

## 5. PRINCIPLES GOVERNING THE CoM

### (a) Collective Responsibility (Article 75)

- The entire CoM is responsible to the **Lok Sabha as a unit**.
- If the Lok Sabha passes a **no-confidence motion, the entire CoM must resign**.
- Promotes unity, coordination, and discipline in government.

### (b) Individual Responsibility

- Ministers are individually responsible for their actions and their ministry's performance.
- Can be **asked to resign by PM**, or be dismissed by the President on PM's advice.

### (c) Secrecy of Proceedings

- Bound by the **Oath of Secrecy** under the Third Schedule.
- Ensures confidentiality in Cabinet deliberations.

## 6. ROLE OF PRIME MINISTER WITHIN CoM

- Chairs Cabinet meetings.
- Allocates and reshuffles portfolios.
- Decides agenda of Cabinet and CoM meetings.
- Acts as the **chief coordinator and crisis manager**.
- Advises the President on ministerial appointments/dismissals.

## 7. DYNAMICS OF CoM IN DIFFERENT POLITICAL SCENARIOS

### (a) Single Party Majority

- PM exercises **strong control** over the CoM.
- High degree of centralisation (e.g., Indira Gandhi, Narendra Modi governments).

### (b) Coalition Governments

- PM needs to accommodate interests of alliance partners.
- Leads to **power-sharing arrangements**, weakened authority of PM (e.g., 1996–2014 era).
- Consensus-building becomes crucial.

## 8. CURRENT CHALLENGES

- **Bureaucratisation of governance** – ministers often sidelined by empowered secretaries and PMO.
- Lack of **intra-Council debate** and Cabinet transparency.
- Growing role of **extra-constitutional bodies** (e.g., NITI Aayog, PMO).
- Issues of **ministerial accountability** in case of policy failures.

## 9. SIGNIFICANCE IN PARLIAMENTARY DEMOCRACY

- Ensures **people's representatives run the government**, not the President.
- Reflects the spirit of **responsible government**.
- Balances **efficiency (via Cabinet)** and **representation (via CoM)**.
- Instrumental in policy continuity and political accountability.

The Council of Ministers is the **pivot of executive governance** in India's parliamentary system. While its effectiveness depends on the leadership of the Prime Minister, its **institutional strength** lies in collective decision-making, constitutional accountability, and responsiveness to the legislature.

A dynamic, disciplined, and accountable CoM is **critical to ensuring democratic functioning, good governance, and policy effectiveness** in India.

# CABINET SYSTEM IN INDIA

A smaller body called cabinet is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real center of authority in the center/state government.

## ROLE OF CABINET

- It is the highest decision-making authority in our politico-administrative system.
- It is the chief policy formulating body of the Central/state government.
- It is the supreme executive authority of the Central/state government.
- It is the chief coordinator of Central/state administration.
- It is an advisory body to the president/Governor and its advice is binding on him.
- It is the chief crisis manager and thus deals with all emergency situations.
- It deals with all major legislative and financial matters.
- It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.
- It deals with all foreign policies and foreign affairs (central Cabinet).
- Kitchen Cabinet: It is an informal body consisting of the Prime Minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem. It advises the prime minister on important political and administrative issues and assists him in making crucial decisions.
- It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister.

## MERITS OF KITCHEN CABINET

- Due to the small unit, a much more efficient decision-making body than a large cabinet.
- Members can meet more often and deal with business much more expeditiously.
- Helps in maintaining secrecy in making decisions on important political issues.

## DEMERITS OF KITCHEN CABINET

- Reduces the authority and status of the cabinet as the highest decision-making body.
- Circumvents the legal process by allowing outside persons to play an influential role.
- Could induce a sense of mistrust among other members of the cabinet.

## CABINET COMMITTEES

- The cabinet works through various committees called cabinet committees. They are set up by the PM/CM according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature and composition vary from time to time.
- They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

## FEATURES OF CABINET COMMITTEES:

- They are extra-constitutional i.e., not mentioned in the Constitution. The Rules of Business provide for their establishment.
- They are of two types-standing and ad hoc. The former is of a permanent nature while the latter are of a temporary nature.

## ADVANTAGES

- They are an organizational device to reduce the enormous workload of the Cabinet.
- They also facilitate in-depth examination of policy issues and effective coordination.
- Committees facilitate efficient utilization of time and human resources.
- Saves the valuable time of the cabinet. More effective deliberation due to smaller size.
- It checks arbitrary actions by ministers. They help in safeguarding the principle of collective responsibility.
- It helps in facilitation of utilization of ministerial expertise.

## DISADVANTAGES

They do not cover all important areas of governmental functioning.

- They can take up a matter only when it is referred to by the Minister concerned or by the Cabinet.
- They do not meet regularly, which is absolutely necessary, if sustained attention is to be given to complex problems and the progress in implementation of important policies and programmes is to be kept under constant review.

## Previous Year Questions

Q. Discuss the role of the Vice-Presidents of India as the chairman of the Rajya Sabha.- 2022

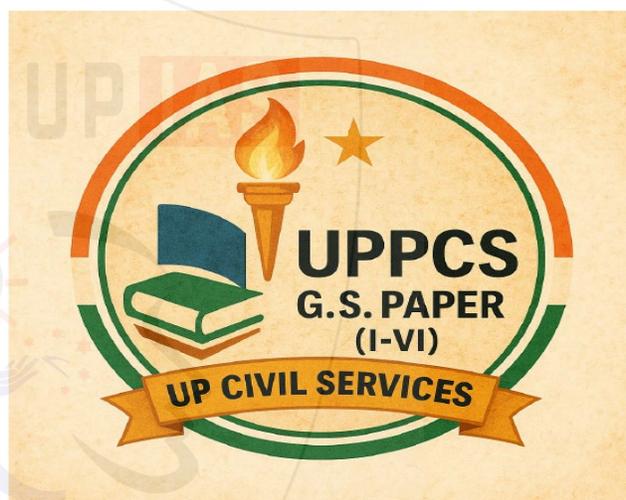
Q. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the

legality of re- promulgation of ordinances by the Governor without placing them before the Legislature- 2022

Q. Instances of the President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyze- 2014

Q. The size of the cabinet should be as big as governmental work justifies and as big as the Prime Minister can manage as a team. How far the efficacy of a government then is inversely related to the size of the cabinet? Discuss- 2014

**COACH UP IAS**  
YOUR SELECTION **Is** OUR BUSINESS



## **UPPCS Mains Theme TOPICxPRESS**

***"One Topic One Page"***

### **ADDRESS**

Aliganj, lucknow

### **WEBSITE**

[www.coachupias.com](http://www.coachupias.com)

**TELEPHONE :- 8009803231/8354021661**



## MINISTRIES OF GOVERNMENT

### INTRODUCTION

In the Indian Parliamentary system, the **Council of Ministers** functions through **various ministries**, each assigned a specific sector such as health, defense, education, or finance. Ministries are the **executive arms of the government**, through which public policies are **designed, implemented, and monitored**.

They represent the **functional division of governance**, enabling **specialisation, accountability, and decentralised decision-making**.

### CONSTITUTIONAL AND LEGAL BASIS

- Though the term "ministry" is not explicitly mentioned in the Constitution, its structure flows from:
  - **Article 77** – Conduct of business of the Government of India.
  - **Transaction of Business Rules, 1961** – Framed under Article 77(3) to define how ministries function.
  - **Allocation of Business Rules, 1961** – Lists responsibilities assigned to each ministry.
- Each ministry is **headed by a Minister**, supported by:
  - **Secretary** (top bureaucrat),
  - **Joint/Additional Secretaries**,
  - **Directorates, Departments, and Autonomous Bodies** (e.g., NITI Aayog under PMO).

### CLASSIFICATION OF MINISTRIES

#### a. Based on Functional Domains:

1. **Core Ministries** – Handle national governance and constitutional functions (e.g., Ministry of Home Affairs, Ministry of Finance, Ministry of External Affairs)
2. **Development Ministries** – Deal with sectoral progress (e.g., Ministry of Health, Education, Rural Development, Agriculture)
3. **Regulatory Ministries** – Deal with regulation and compliance

- (e.g., Ministry of Law & Justice, Environment, Corporate Affairs)
4. **Social Welfare Ministries** – Focus on vulnerable sections (e.g., Ministry of Women & Child Development, Social Justice, Minority Affairs)

### STRUCTURE & FUNCTIONING OF A MINISTRY

#### Head:

- **Cabinet Minister** (political executive) – Sets vision, ensures legislative coordination.
- Assisted by **Ministers of State and Deputy Ministers**.

#### Bureaucratic Arm:

- **Secretary to the Government of India** – Administrative head.
- Supported by Joint/Deputy Secretaries and domain-specific officers.
- Executes policy, prepares Cabinet notes, manages personnel and finances.

#### Field Agencies:

- **Attached/Subordinate Offices** – e.g., CPWD under Urban Affairs
- **Statutory Bodies** – e.g., UGC under Ministry of Education
- **Autonomous Bodies** – e.g., NITI Aayog, ICMR, CSIR

### MAJOR FUNCTIONS OF MINISTRIES

- **Policy Formulation:** Framing new bills, reforms, and strategies (e.g., National Education Policy).
- **Budget Planning:** Preparing annual demand for grants and allocating expenditures.
- **Implementation Oversight:** Managing central schemes like PMAY, MGNREGA, Ayushman Bharat.
- **Legislative Coordination:** Drafting laws and answering in Parliament.

- **Monitoring and Evaluation:** Conducting internal audits, MIS reporting, and impact studies.
- **International Cooperation:** Representing India in sector-specific global platforms (e.g., COP under Ministry of Environment).

## ROLE IN PUBLIC POLICY AND GOVERNANCE

- Ministries are the **custodians of public policy** – from ideation to execution.
- Example:
  - Ministry of Health steered India's **COVID-19 vaccination policy**.
  - Ministry of Jal Shakti rolled out **Jal Jeevan Mission**.
  - Ministry of Finance drives **Union Budget and economic reforms**.

They play a vital role in:

- Ensuring **bureaucratic continuity**,
- Promoting **evidence-based policymaking**,
- Supporting **inter-ministerial coordination**, and
- Ensuring **policy adaptability** in a dynamic governance landscape.

## CONTEMPORARY REFORMS & INITIATIVES

- **Mission Karmayogi** – Capacity building of officers across ministries.
- **Centralised Public Grievance Redress and Monitoring System (CPGRAMS)** – Performance audit of ministries.
- **Digital India Initiatives** – e-office, e-samiksha for paperless governance.
- **Merger of Ministries** for synergy: e.g., Ministry of Education (MHRD renamed), Ministry of Jal Shakti formed by merging Water Resources and Drinking Water.

## CHALLENGES IN MINISTERIAL GOVERNANCE

- **Silo-based functioning** – Lack of coordination between ministries (e.g., Environment vs Power).
- **Bureaucratic delays** and over-centralisation of decisions in PMO.
- **Vacancies and staff shortages**, especially at mid-level positions.
- **Political interference** affecting objectivity and professionalism.
- **Lack of outcome-based evaluation** of ministries and schemes.

## WAY FORWARD

1. **Strengthen Inter-Ministerial Coordination** – Cabinet Committees, Integrated Dashboards.
2. **Adopt Results-Based Management** – Link budgets to performance.
3. **Empower Ministries with Analytics & Data** – Use AI, MIS, and real-time monitoring.
4. **Decentralise Decision-Making** – Empower line departments and regional units.
5. **Build Policy Capacity** – Establish policy labs and in-house think tanks in ministries.

Ministries are the **engines of public governance**. Their effectiveness determines the **success of government programs, the speed of reforms, and the quality of services** delivered to citizens.

In the age of **Good Governance**, **performance-driven ministries** with high transparency, inter-agency cooperation, and citizen-centric approaches are essential for delivering the constitutional promise of a **Welfare State**.

# PARLIAMENTARY COMMITTEES

## INTRODUCTION

Parliamentary Committees refer to bodies that are either elected by the Parliament or nominated by the Speaker/Chairman, and they operate under their authority. These committees submit their reports back to the presiding officers and are supported administratively by the Lok Sabha or Rajya Sabha Secretariat.

They form a crucial part of the **parliamentary oversight mechanism**, helping Parliament discharge its functions more effectively, especially when time and resources are limited in the House.

## ROLE AND SIGNIFICANCE OF PARLIAMENTARY COMMITTEES

### Task-Specific Specialisation

- Standing Committees focus on specific areas like finance, defence, etc., offering long-term oversight.
- Ad-hoc Committees are set up for **short-term objectives** and are dissolved upon completion of the assigned task.

### Enhancing Financial Oversight

- By scrutinising government budgets, accounts, and audit reports, these committees help in promoting **efficiency, economy, and accountability** in public spending.

### Stakeholder Participation

- Committees often consult with experts, civil society, NGOs, and affected citizens during subject reviews.
- Example: The Finance Committee summoned the RBI Governor to discuss demonetisation, allowing external perspectives into parliamentary review.

### Detailed Legislative Review

- Unlike the full House, committees have the **time and space to examine bills in-depth**, clause by clause.
- This allows for more informed decision-making and better law formulation.

## Pre-legislative Conflict Resolution

- Committees identify problematic provisions in draft laws and help in **resolving contentious issues** before they reach the House.
- Example: Amendments in the **Prevention of Corruption Act** were shaped through committee recommendations.

## Promoting Non-Partisan Deliberations

- Since the **anti-defection law does not apply** in committee deliberations, members can freely express their views without party pressure, enabling **consensus-building**.

## CHALLENGES AFFECTING COMMITTEE FUNCTIONING

### Decline in Bill Referrals

- Many important bills, such as the **RTI (Amendment) Act, 2019** and **UAPA Amendment Act, 2019**, were passed without committee scrutiny, reducing opportunities for legislative vetting.

### Low Attendance

- Committees have witnessed only **~50% average attendance** in recent years, reflecting lack of seriousness among members.

### Technical Gaps

- MPs may lack the **domain knowledge or policy expertise** required for evaluating complex matters like cyber governance, digital finance, or environmental regulations.

### Partisan Behaviour

- In sensitive or high-profile cases, committee discussions often reflect **party positions**, undermining the committee's deliberative spirit.

### Inadequate Timeframe

- The one-year term of most committees makes it difficult to **build continuity or specialisation**, especially in areas requiring long-term analysis.
- Example: The IT Committee could not finish its report on **digital safety and women's security online** due to time constraints.

### Limited Parliamentary Engagement

- Committee reports are often **ignored in House debates** and are not binding, limiting their impact on actual policymaking.

### WAY FORWARD

Recommendations by the **National Commission to Review the Working of the Constitution (NCRWC)** and other bodies can help revitalise committee performance:

#### Extend Tenure

- Panels should have a **minimum 2-year term**, allowing more sustained focus and subject expertise. The Rajya Sabha has considered this for DRSCs.

#### Introduce Global Best Practices

- Encourage **ministerial briefings before committees**, and adopt **transparent criteria** for sending bills to committees to ensure systematic scrutiny.

### Institutional Support

- Establish **dedicated research cells** to provide technical inputs to members, helping them deal with complex economic, legal, or scientific issues.

### Evaluate Performance Periodically

- Adopt measurable performance indicators for committee outputs and member participation to enable **mid-course corrections** if needed.

### CONCLUSION

With the steady decline in the number of Parliament sittings—from 120–140 days in the 1950s to **less than 70 days per year today**—Parliamentary Committees serve as critical institutions for **detailed examination, bipartisan dialogue, and institutional continuity**. Strengthening them is vital for ensuring **efficient legislation, robust executive accountability, and democratic governance**.

# REPRESENTATION OF PEOPLES' ACT

## INTRODUCTION

### Representation of the People Act, 1950

- **Enacted by the provisional Parliament** prior to India's first general elections.
- Passed under the authority of **Article 327** of the Constitution.
- **Focuses on the groundwork for elections**, including:
  - Allocation of **seats in the Lok Sabha and State Legislative Assemblies**.
  - **Delimitation** of constituencies.
  - Determination of **voter eligibility** and preparation of **electoral rolls**.
  - Method for filling seats in the **Rajya Sabha** from **Union Territories**.

### Representation of the People Act, 1951

- Deals with the **actual conduct of elections** to:
  - The **Parliament** (Lok Sabha and Rajya Sabha),
  - The **State Legislatures** (both Lower and Upper Houses where applicable).
- Key provisions include:
  - **Election procedures**, including **nominations, campaigning, polling, and vote counting**.
  - Provisions for **disqualification of candidates** on grounds like corrupt practices or electoral offences.
  - Mechanisms for **resolution of election disputes** through Election Tribunals (later vested with the High Courts).

## KEY FEATURES OF THE ACT

- It regulates how elections and by-elections are held.
- It provides the administrative infrastructure for holding elections.
- It deals with political party registration.
- It defines the requirements and disqualifications for House membership.
- It consists of laws to combat corruption and other offenses.
- It outlines the procedure for resolving problems and controversies resulting from elections.

## Significance

- **Strengthening Democracy:** These Acts operationalize the electoral provisions of the Constitution and enable the democratic process by addressing gaps such as defining the tenure of Rajya Sabha members and structuring electoral mechanisms.
- **Upholding Equality:** By ensuring a **single electoral roll** for both **Lok Sabha and State Assembly elections**, and **preventing multiple registrations**, the law safeguards the principle of equal political participation for all citizens.
- **Cleansing the Political System:** Provisions related to **disqualification** of candidates with criminal backgrounds help in reducing criminalization in politics and promoting clean governance.
- **Promoting Electoral Transparency:** Rules mandating the **disclosure of assets, liabilities, and criminal records** of candidates, along with the **right to information** for voters, enhance accountability in the electoral process.
- **Ensuring Free and Fair Elections:** By defining **corrupt practices**, regulating the role of **electoral officers**, and establishing strict norms, the Acts support a level playing field and maintain the **integrity of elections**.

## Challenges

- **Ruling party advantage:** The RPAs do not contain clear provisions and guidelines on reducing the advantage to the ruling party in terms of misuse of official machinery and electoral funding. E.g. BJP has received around 95% of its funding through electoral bonds.
- **Stopping criminal elements:** Even after provisions in RPAs around 43% of MPs in the present Lok Sabha have criminal cases pending against them.
- **Social media:** Social media has blurred the silence period of election campaigning and also enables micro-level targeting of voters.
- **Power to de-register parties:** ECI does not have the power to de-register political parties that do not contest elections and are merely for receiving funds.

- Bureaucratisation of politics: ECI does not have its own official machinery and has to depend on the government, which is not conducive to free and fair elections.

## PROVISIONS REGARDING DISQUALIFICATIONS IN RPA, 1951

### **Section 8: Disqualification on Conviction for Certain Offences**

Section 8 of the RPA, 1951 outlines the disqualification criteria for candidates convicted of specific crimes. It is divided into three key subsections:

#### **Section 8(1): Disqualification for Specific Offences**

A person is disqualified if convicted under laws like:

- Indian Penal Code
- Protection of Civil Rights Act, 1955
- Unlawful Activities (Prevention) Act, 1967
- Prevention of Corruption Act, 1988
- Prevention of Terrorism Act, 2002, etc.

#### **Disqualification period:**

- If punished **with fine only** → Disqualified for **6 years from the date of conviction**.
- If punished **with imprisonment** → Disqualified for **6 years from the date of conviction**, and continues during the term of imprisonment.

#### **Section 8(2): Disqualification for Social and Economic Offences**

Conviction under the following leads to disqualification:

- Laws against **hoarding and profiteering**
- Acts preventing **adulteration of food or drugs**
- **Dowry Prohibition Act, 1961**

#### **Section 8(3): General Disqualification**

Any individual convicted and sentenced to a **minimum of 2 years imprisonment** (excluding offences under 8(1) or 8(2)) is:

- **Disqualified from the date of conviction**
- Remains disqualified for **6 years after their release**

### **Available Remedies for Disqualified Candidates**

#### **Section 11 – Appeal to Election Commission (ECI)**

- A person disqualified under Section 8 can apply to the ECI to **remove or reduce the disqualification, except in cases involving corrupt practices.**

#### **Section 116A – Appeal to Supreme Court**

- If disqualification results from a **High Court election petition**, the person can file an **appeal before the Supreme Court under Section 116A.**

#### **Other offenses:**

- If a person is convicted of any crime and sentenced to two or more years in jail, he or she is disqualified.
- If a person has engaged in corrupt practices.
- If a person is dismissed from a government position due to corruption or disloyalty.
- If a person has a contract with the government in the course of commerce or business or supplies goods to the government.
- If a person is a managing agent, manager, or secretary of any company or corporation (other than a cooperative society) in which the government owns at least 25%.
- If a person fails to file an account of his election expenses on time.

#### **Disqualifications for voting:**

- A person is disqualified from voting at any election for a period of six years if he is convicted of:
- IPC, 1860: Offense of bribery and undue influence or personation at an election
- RPA, 1951: Offense of promoting enmity between classes in connection with the election; removal of ballot papers from polling stations; fraudulently defacing or fraudulently destroying any nomination paper.

#### **Judgements**

- The Supreme Court overturned a fourth subsection, 8 (4), in 2013 (Lily Thomas case): This section allowed convicted legislators to keep their seats if they filed an appeal within three months of their conviction. The Supreme Court in Lily Thomas v. Union of India case, 2013 held the provision that disqualification of a
- member of Parliament and State Legislature shall not take place until three months from the date of conviction, as unconstitutional and provided for immediate disqualification on conviction.

- In 2013, the Patna High Court forbade anybody in judicial or police detention from contesting an election. The recommendations of the 244th report of the Law Commission should be implemented, i.e. disqualification at the stage of framing of charges along with other legal safeguards to curb criminalisation of politics.

The Election Commission lists political parties as-

- National party,
- State party or
- Registered unrecognized party.

The Election Symbols (Reservation and Allotment) Order, 1968 specifies the requirements for being classified as a national or state party.

For recognition as a national or state party, a political party has fulfilled any of the following conditions:

### REGISTRATION OF POLITICAL PARTIES

Registration of Political Parties with the Election Commission of India:

National Party	State Party
6% valid votes in Lok Sabha or Legislative Assembly election in 4 or more states + 4 Lok Sabha seats	<ul style="list-style-type: none"> <li>6% valid votes in Legislative Assembly elections in state + 2 Assembly</li> <li>6% valid votes in Lok Sabha elections in state + 1 Lok Sabha seat</li> </ul>
2% Lok Sabha seats from 3 states	<ul style="list-style-type: none"> <li>3% or 3 Legislative Assembly seats, whichever is more</li> <li>1/25 Lok Sabha seats</li> </ul>
State party in 4 states	<ul style="list-style-type: none"> <li>8% valid votes in Lok Sabha or Legislative Assembly elections in a state</li> </ul>

The following political parties registered with the Election Commission are considered Registered

#### Unrecognized Parties:

- Unrecognized parties are newly registered parties,
- parties that have not received a sufficient percentage of votes in Assembly or General Elections to become state parties, and
- parties that have never contested elections since being registered.

#### Benefits to Recognised Political Parties:

- Exemptions from proposers: Candidates of recognised political parties do not require a subscription from ten proposers at the time of filing of nomination.
- Allocation of an equitable share of time: On the basis of past performance, registered recognised political parties get broadcast/telecast facilities over Akashvani/Doordarshan during general elections.
- Travel expenses of star campaigners: Star campaigners' travel expenses are not accounted for in

the election expense records of their party's candidates.

- Free supply of copies of electoral rolls: to the candidates of recognised political parties.
- Reserved symbols: Candidates of registered recognised political parties get reserved symbols.
- Adjournment of polls: On the death of a candidate of registered recognised political parties, the returning officer adjourns the polls to a later date.

**NOTES:** Equitable share of time, Section 62 of the Representation of People Act, 1951, the Law Commission, Ensuring equality, decriminalization, free and fair elections.

#### **RIGHT TO KNOW**

- Right to Information: A candidate has to furnish information about the following in his nomination paper, whether:
- He is accused of any offense punishable with imprisonment for two years or more, where charges are framed by a competent court;
- He is convicted of any offense and sentenced to imprisonment for one year or more.

### **SUPREME COURT RULING ON RIGHT TO INFORMATION OF ELECTORS**

Case	Supreme Court Ruling
<b>Association for Democratic Reforms v. Union of India, 2002</b>	Candidate has to furnish information regarding any criminal antecedent, educational qualification and assets.

<b>People's Union for Civil Liberties v. Union of India, 2003</b>	Voters have a fundamental right to know the relevant qualifications of candidates for office, including information about their income and assets. Accordingly, section 33B of the RPA, 1951, which stated that candidates could not be compelled to disclose any information about themselves other than their criminal records, was held unconstitutional.
<b>Resurgence India Case, 2012</b>	Made it compulsory for Returning Officers to reject those nomination papers which are accompanied by incomplete/blank affidavits.
<b>Krishnamurthy v. Sivakumar &amp; Ors, 2015</b>	The Supreme Court ruled that a candidate's criminal antecedents (particularly egregious crimes) must be disclosed at the time of filing the nomination paper, as required by law.
<b>Lok Prahari v. Election Commission, 2018</b>	The Supreme Court directed that the Centre alter the guidelines as well as the disclosure form presented by candidates along with their nomination papers to include a source of income for themselves as well as their spouses and dependents.

### **Declaration of Assets and Liabilities (Section 75A – RPA, 1951)**

- **Mandatory Disclosure:** Within **90 days of swearing-in**, every elected MP must declare:
  - Details of **movable and immovable properties** owned individually or jointly by themselves, their spouse, and dependent children.
  - **Financial liabilities** towards the central or state government and any public financial institution.
- **Authority to Frame Rules:** The **Speaker of the Lok Sabha** or the **Chairman of the Rajya Sabha** is empowered to make rules governing these disclosures.
- **Breach of Privilege:** Any **intentional violation** of this rule is treated as a **breach of parliamentary privilege**.

### **Election Expenses (Section 77 – RPA, 1951)**

- **Account Maintenance:** Every contesting candidate must maintain a **clear and accurate record** of their **election-related expenses** from the **date of nomination** until **declaration of results**.
- **Submission Timeline:** This account must be submitted to the **District Election Officer** within **30 days** of the result announcement.
- **Exemptions:** Expenses related to the **travel of “star campaigners”** of political parties, whether by air or other means, are **excluded** from the individual candidate’s account.

### **Corrupt Practices (Section 123 – RPA, 1951)**

Section 123 identifies **certain actions as "corrupt practices"**, if committed by candidates or their agents:

#### **Key Offences Include:**

1. **Spreading Communal Hatred:** Fostering **enmity among communities** on grounds of **religion, race, caste, community, or language**.
2. **Glorifying Sati:** Promoting or publicizing the act or glorification of **sati**.
3. **Bribery:** Offering any **gift, money, or inducement** to sway voter behavior or manipulate candidacy.
4. **Undue Influence:** Intimidating or interfering with **voters' freedom**, including threats to candidates or electors.
5. **Religious Appeals:** Using **religion, caste, race, or community identity** or **national/religious symbols** (e.g., National Flag, Emblem) for electoral gain.
6. **Government Influence:** **Soliciting support** (excluding voting) from government functionaries like **gazetted officers, judges, armed forces personnel**, etc.
7. **Booth Capturing:** Seizing or taking control of a polling booth to rig votes.
8. **False Statements:** Publishing **defamatory or fake content** about a candidate's personal conduct or character.

9. **Expense Violations:** Exceeding the permissible expenditure limit or violating accounting rules.
10. **Free Transport of Voters:** Providing free conveyance to voters (other than the candidate's own family or agent) to or from polling stations.

### Judicial Interpretation:

- In **Abhiram Singh v. C.D. Commachen (2017)**, the Supreme Court ruled that:
  - Elections in India are **secular in nature**.
  - **Appealing for votes based on religion, caste, language, or community is a corrupt practice** under Section 123(3).

## ELECTORAL OFFENSES – RPA, 1951 (Chapter III)

### Major Offenses:

1. **Disruption of Public Meetings:** Intentionally creating disturbances to hinder election-related gatherings or campaign events.
2. **Publishing Exit Polls Prematurely:** Disseminating results of exit polls before the official time—prohibited from the start of polling until 30 minutes post-voting.
3. **Anonymous Election Materials:** Circulation of pamphlets/posters without clearly mentioning the names and addresses of the printer and publisher.
4. **Inciting Communal Hatred:** Promoting enmity between groups based on religion, caste, language, race, or community in relation to elections.
5. **False Declarations in Nomination:** Concealment of facts or misstatements in affidavits or nomination papers.
6. **Late-Night Public Meetings:** Holding political gatherings within 48 hours before the poll concludes is prohibited.
7. **Booth Capturing:** Forceful takeover or manipulation of polling stations is a serious offense.

8. **Tampering with Official Documents:** Defacing/removing notices, electoral rolls, or other material placed by the Returning Officer.
9. **Violation of Voting Secrecy:** Disclosing or interfering with confidential voting procedures.
10. **Officials Misusing Position:** Election officials campaigning for or influencing voters violates neutrality norms.
11. **Unlawful Handling of Ballots:** Taking ballot papers outside polling stations without authorization.

### Other Notable Offenses:

- **Canvassing near Polling Booths**
- **Misbehavior at or around polling premises**
- **Improper conduct inside the polling booth**
- **Deviation from prescribed voting procedures**
- **Negligence in official election duties**
- **Bringing weapons to polling stations**
- **Not granting paid leave on election day to employees**
- **Distribution or sale of alcohol on polling day**

## PAID NEWS: A Threat to Electoral Democracy

### Definition:

“Any news or analysis in print or electronic media appearing in return for payment (cash or kind)” – *Press Council of India*

### Negative Impacts of Paid News:

1. **Money Power in Politics:** Payment in black money undermines transparency and violates campaign finance laws.
2. **Misleads Voters:** Voters are deceived, thinking advertisements are legitimate news, hampering informed decision-making.
3. **Distortion of Public Opinion:** Creates a false image of candidates and manipulates public sentiment.
4. **Unfair Electoral Advantage:** Skews level playing field, favoring candidates with media connections or financial muscle.

5. **Media Compromise:** Undermines media independence—the fourth pillar of democracy.

### Legal & Policy Gaps:

- **Not an Electoral Offense:** Paid news isn't classified as a punishable offense under current RPA provisions.
- **Weak Enforcement:** Offenders can only be prosecuted for **non-disclosure of expenditure**, not for spreading misleading content.
- **Post-facto Measures:** No real-time intervention mechanism to prevent damage.

### Suggested Reforms & Way Forward:

- **Amend RPA, 1951** to include *Paid News* as an explicit electoral offense.
- **Audit Media Houses:** Especially their revenue sources to detect indirect political funding.
- **Single Regulatory Authority:** For both print and digital/electronic media.
- **Press Council Guidelines:** Strict polling-period norms for reporting.
- **'Name & Shame' Policy:** Publicly disclose violators among media outlets and candidates.
- **Public Awareness:** Educate voters to identify biased or planted news.

### Law Commission (255th Report, 2015):

Recommended **paid news be declared an electoral offense** to ensure electoral fairness in the era of media manipulation.

### VOTING RIGHTS FOR NON-RESIDENT INDIANS (NRIs) VIA POSTAL BALLOT

### ETPBS – Electronically Transmitted Postal Ballot System

- ETPBS is a digital initiative by the **Election Commission of India (ECI)**, enabling **electronic delivery of postal ballots** to eligible voters.
- Primarily used by **Service Voters** (e.g., armed forces personnel).

- Voters receive the ballot electronically and return it by **physical post** after voting.
- The system includes **multi-level security**:
  - **Two-layer authentication** via **OTP and PIN**
  - Use of **QR codes** to prevent duplication and fraud
- First time ever: **Online registration** for Service Voters made available through a dedicated ECI portal.

### NRI Voting Rights – Background

- **Voting Rights Introduced in 2011:** Through an amendment to the **Representation of the People Act, 1950**, NRIs were officially granted the right to vote.
- **Voting Conditions for NRIs:**
  - NRIs can vote **only in person**.
  - Voting must be done in the **constituency of their residence in India**, as mentioned in their **passport**.
  - NRIs must **present the original passport** at the polling booth to verify identity.

### Evolution of Reforms:

- Post-2014 Lok Sabha elections, a **12-member committee** was formed to explore options like:
  - Voting at Indian Missions abroad
  - Postal voting
  - Internet-based voting
- In **2015**, the committee proposed:
  - **E-Postal Ballot** and
  - **Proxy Voting** options as **additional modes** for NRI participation in elections.

### Challenges Ahead

1. **Voter Authentication Issues:**
  - Difficulty in ensuring proper identity verification in the absence of party representatives at foreign polling stations.
2. **Security Concerns:**
  - The EC will have to develop mechanisms for policing and

maintaining security at overseas voting locations.

3. **Model Code of Conduct (MCC):**

- Foreign governments are **not legally bound** to uphold India's MCC protocols, potentially risking violations of the silence period.

4. **Infrastructure Constraints:**

- Indian embassies and consulates may **lack the capacity** to serve large NRI voter populations during elections.

**Way Forward**

- Thorough Feasibility Study:**
  - The Ministry of External Affairs (MEA) has noted the need for a **comprehensive review of logistical feasibility** before implementation.
- Infrastructure Readiness:**
  - Adequate **voting booths, security, and manpower** must be ensured at Indian missions to handle large-scale voting.
- Robust Digital Mechanism:**
  - Further strengthening of **ETPBS** or developing secure **proxy/e-voting**

**platforms** will be essential for expanding NRI participation.

**PREVIOUS YEAR QUESTIONS**

Q. Discuss the procedures to decide the disputes arising out of the election of a Member of the Parliament or State Legislature under The Representation of the People Act, 1951. What are the grounds on which the election of any returned candidate may be declared void? What remedy is available to the aggrieved party against the decision? Refer to the case laws.- 2022

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

Q. On what grounds a people's representative can be disqualified under the Representation of Peoples Act, 1951? Also, mention the remedies available to such a person against his disqualification. (250 words, 15 marks)- 2019



**Manish Shukla**  
Mentored 100+ Successful Aspirants over a period of 9+ years for Civil Services Exams at both the Centre and state levels.

**INTRODUCTION:**

Food Processing sector is one of the largest in India, contributing nearly 10% of manufacturing GDP and 12% of employment

**IMPORTANCE – Mnemonic: VALUE CHAIN**

**V** – Value Addition to agriculture (India's food processing level ~10% vs 60-80% in developed nations)  
**A** – Avoids Wastage (Rs 92,000 Cr annual loss due to post-harvest wastage – MoFPI)  
**L** – Link between Farm and Market (86% small/marginal farmers benefit)  
**U** – Unemployment solution (employs over 1.93 million directly)  
**E** – Export Potential (Agro & food exports = USD 43 billion in 2023)  
**C** – Consumer Diversification (demand for organic, fortified food)  
**H** – Health and Hygiene improvement  
**A** – Agro-based Industrialization (14% of total industrial investments)  
**I** – Income Boost to Farmers (targets 2x income goal)  
**N** – Nutritional Security

Food Processing in INDIA



**MODEL ANSWER FRAMEWORK:**

**•MODEL ANSWER FRAMEWORK:**  
**• Intro:** Define sector + quote stats  
**Body:** Use VALUE CHAIN + RAW GAPS + Schemes + Data  
**•Conclusion:** Food Processing = driver of rural jobs + export growth + agri-modernization

**GOVT INITIATIVES:**

- PM Kisan Sampada Yojana (Rs 6,000+ Cr allocation till 2026)
- Mega Food Parks (42 approved; each creates ~5,000 jobs)
- Operation Greens (Tomato-Onion-Potato + 22 perishable crops)
- One District One Product (ODOP - 728 districts mapped)
- PLI Scheme for Food Processing (Rs 10,900 Cr outlay)

**CHALLENGES – Mnemonic: RAW GAPS**

**R** – Regulatory bottlenecks (complex FSSAI norms)  
**A** – Access to cold chain infra (India has <15% cold storage coverage)  
**W** – Wastage due to poor storage (30-40% fruits/vegetables perish)  
**G** – GST anomalies (taxes vary from 0% to 18%)  
**A** – Awareness among farmers (Low training penetration)  
**P** – Packaging and branding limitations  
**S** – Small-scale industry struggles (credit & compliance issues)

GUIDED BY:  
IAS COACH – MANISH SHUKLA



COACH UP IAS  
YOUR SELECTION IS OUR BUSINESS

# COMPARISON OF THE INDIAN CONSTITUTIONAL SCHEME WITH OTHER COUNTRIES

## Comparison: Indian Constitution vs. US Constitution

Aspect	India (Parliamentary Democracy)	USA (Presidential Democracy)
Type of Constitution	<b>Partly rigid and partly flexible</b> – Combination of codified and conventional amendments	<b>Rigid and written</b> – Formal amendment procedure under Article V
Form of Government	<b>Parliamentary</b> – Executive is part of the legislature	<b>Presidential</b> – Clear separation of powers between executive and legislature
Executive Head	<b>President (Nominal head); Prime Minister (Real head)</b>	<b>President</b> – Both head of state and head of government
Election of Executive	Indirect election of President; PM is elected leader of majority in Lok Sabha	President is directly elected by an electoral college
Separation of Powers	<b>Not strict</b> – Principle of <b>checks and balances</b> through overlap of powers	<b>Strict separation</b> – Executive, legislature, and judiciary are independent
Legislature Structure	<b>Bicameral</b> – Lok Sabha and Rajya Sabha	<b>Bicameral</b> – House of Representatives and Senate
Legislative Supremacy	Parliament is supreme but subject to <b>Constitutional limitations &amp; Judicial Review</b>	Congress has legislative supremacy, but strong <b>Presidential veto power</b> exists
Judicial Review	<b>Explicitly provided</b> in Constitution (Art. 13); Supreme Court is guardian of the Constitution	<b>Evolved through practice</b> (Marbury v. Madison); Constitution silent on judicial review
Bill of Rights / FRs	<b>Part III – Fundamental Rights</b> enforceable and justiciable	<b>First 10 Amendments</b> – Bill of Rights provides civil liberties and rights
Directive Principles / SDGs	<b>Directive Principles of State Policy</b> – Non-justiciable guiding principles for governance	No equivalent provision; relies more on policy and state legislation
Amendment Process	Article 368 – <b>Multiple types of procedures</b> , some flexible (simple majority), some rigid	Article V – <b>Rigid</b> , needs 2/3rd Congress + 3/4th states to ratify
Emergency Powers	Detailed emergency provisions – <b>National, State, Financial</b> (Articles 352, 356, 360)	<b>No formal emergency powers</b> in Constitution; powers invoked by interpretation
Federalism	<b>Quasi-federal</b> – Strong Centre (Unitary bias during emergencies)	<b>Pure federal</b> – Strong component of state sovereignty
Citizenship	<b>Single citizenship</b> for all Indians	<b>Dual citizenship</b> – US and individual states
Judiciary Structure	<b>Unified judiciary</b> – Single system for Union and States	<b>Dual judiciary</b> – Federal and State judicial systems operate independently
Language in Constitution	Indian Constitution uses <b>both legal and aspirational language</b>	US Constitution is <b>brief and principle-based</b>
Length of Constitution	One of the <b>longest written Constitutions</b> (~450 Articles + Schedules + Amendments)	One of the <b>shortest written Constitutions</b> (7 Articles + 27 Amendments)

## Comparison of Indian constitutional scheme with UK

- India and the United Kingdom have distinct constitutional systems that have evolved over time.
- The constitutional systems of India and the United Kingdom, though both rooted in a **parliamentary democracy**, exhibit striking differences in their historical development, structure, and function. This comparison aims to examine and contrast the key features and principles of these two constitutional systems, highlighting their similarities and dissimilarities.

Features	Indian Constitution	UK Constitution
Nature of the	<b>Longest written constitution:</b>	<b>Unwritten constitution:</b>

<b>constitution</b>	<ul style="list-style-type: none"> <li>Constitution that is included in a single document and has been meticulously and methodically written down.</li> </ul>	<ul style="list-style-type: none"> <li>It is not codified in a single document and is instead based on established customs, political practices, and traditions.</li> </ul>
<b>Citizenship</b>	<ul style="list-style-type: none"> <li>The Constitution of India does not allow holding Indian citizenship and citizenship of a foreign country simultaneously.</li> </ul>	<ul style="list-style-type: none"> <li>Dual citizenship (also known as dual nationality) is allowed in the UK.</li> <li>One can be a British citizen and also a citizen of other countries.</li> </ul>
<b>Nature of federalism</b>	<p><b>Federal character:</b></p> <ul style="list-style-type: none"> <li>India has a federal system of government with a bias towards a unitary system.</li> </ul>	<p><b>Unitary character:</b></p> <ul style="list-style-type: none"> <li>The British Parliament holds all governing powers and is the supreme authority.</li> </ul>
<b>Head of state</b>	<ul style="list-style-type: none"> <li>The <b>President</b> is the <b>head of the state</b>.</li> <li>The President is <b>indirectly elected</b> by a special electoral college.</li> <li>The President has the power to appoint the Council of Ministers and other key government officials, as well as to veto or send back legislation for reconsideration.</li> </ul>	<ul style="list-style-type: none"> <li>The <b>British Monarch</b> is the <b>head of state</b> of the UK and Commonwealth.</li> <li>It is decided based on descent, religion, and primogeniture.</li> <li>The Monarch does not have the power to appoint or dismiss government officials, and does not have the power to veto or send back the legislation.</li> </ul>
<b>Prime Minister</b>	<ul style="list-style-type: none"> <li>PM can be a member of <b>either house of Parliament</b>.</li> </ul>	<ul style="list-style-type: none"> <li>By convention, the PM will always be a member of the <b>lower house</b>.</li> </ul>
<b>Cabinet</b>	<ul style="list-style-type: none"> <li>Indian cabinet system is based on the UK political system without a shadow cabinet.</li> </ul>	<ul style="list-style-type: none"> <li>UK has a <b>shadow cabinet</b> system composed of major opposition.</li> <li>The purpose is to examine the policies and actions of the government and present alternative policies.</li> </ul>
<b>Parliament</b>	<ul style="list-style-type: none"> <li>The Constitution is supreme in the case of India.</li> <li>In India, the Constitution clearly defines and limits the power of Parliament, but within its scope, it holds supreme authority.</li> </ul>	<ul style="list-style-type: none"> <li><b>Parliamentary sovereignty</b> is the principle of the UK constitution. It makes the Parliament, the supreme legal authority in the UK.</li> <li>In Britain, the Parliament is the only institution that holds sovereign power and is not limited by any written constitution, as there is no such document in place.</li> </ul>
<b>Legislative branch</b>	<ul style="list-style-type: none"> <li>The <b>House of the People</b> and <b>Council of States</b> are the lower and upper houses, respectively.</li> </ul>	<ul style="list-style-type: none"> <li>The <b>House of Commons</b> and <b>The House of Lords</b> are the lower and the upper house, respectively.</li> </ul>
<b>Office of speaker</b>	<ul style="list-style-type: none"> <li>Office of the speaker is similar to the British model. However, some conventions that apply in the UK do not exist in India.</li> <li>Specifically, the Speaker in India is not required to resign from their political party.</li> </ul>	<ul style="list-style-type: none"> <li>In the UK, there is a convention where once a speaker, always a speaker, once a person is appointed as a speaker, he gives formal resignation from his political party.</li> <li>The purpose is to maintain the political neutrality of the office.</li> </ul>
<b>Ministerial responsibility</b>	<ul style="list-style-type: none"> <li>Under the Indian constitution, there is <b>no mention of the legal responsibility</b> of the minister.</li> </ul>	<ul style="list-style-type: none"> <li>In the UK, every order of the king for any public act is countersigned by a minister.</li> <li>For every act of the British government performed in the name of the king, it is the minister who is responsible to Parliament.</li> </ul>
<b>Fundamental rights</b>	<ul style="list-style-type: none"> <li>In India, the Constitution guarantees a wide range of fundamental rights to citizens, including right to equality, freedom of speech and expression, freedom of religion, right to life and personal liberty, right to education, and right to property.</li> <li>Additionally, the Indian Constitution also includes Directive Principles of State Policy, which are intended to guide government policy</li> </ul>	<ul style="list-style-type: none"> <li>The UK does not have a single document that lays out fundamental rights in the same way.</li> <li>However, the UK has a <b>Human Rights Act of 1998</b>, which incorporates the European Convention on Human Rights into domestic law.</li> <li>This guarantees citizens certain rights, such as the right to life, freedom from torture, the</li> </ul>

	and ensure the welfare of the people.	right to a fair trial, freedom of expression, and freedom of assembly.
<b>Directive principles of state policies and Fundamental duties</b>	<ul style="list-style-type: none"> <li>Directive principles of state policies and Fundamental duties are mentioned under <b>part IV and IV-A</b> of the constitution respectively.</li> </ul>	<ul style="list-style-type: none"> <li>Absent in the constitution of UK.</li> </ul>
<b>Rule of Law</b>	<ul style="list-style-type: none"> <li>The <b>Rule of law</b> is based on Britain's rule of law with one difference.</li> <li>In Indian system, the constitution is the source of the individual rights.</li> </ul>	<ul style="list-style-type: none"> <li>The constitution is the result of the rights of the individual.</li> </ul>
<b>Amendment process</b>	<ul style="list-style-type: none"> <li>Neither flexible nor rigid but a synthesis of both.</li> <li><b>Article 368:</b> The Constitution can only be amended by introducing a bill for the purpose in the Parliament and not in the state legislatures.</li> <li>Each House must pass the bill separately. To amend the federal provisions of the Constitution, a bill must be approved by a simple majority in the legislature of at least half of the states as well.</li> </ul>	<ul style="list-style-type: none"> <li>The British constitution is a very <b>flexible constitution</b>. It can be amended, partially or wholly, by an ordinary law passed by the British Parliament.</li> <li>In the UK, the Constitution is not a single document but a collection of laws, conventions, and practices.</li> <li>As a result, there is no formal process for amending the Constitution.</li> <li>Most of the constitutional changes in UK can be made by ordinary Parliamentary legislation.</li> </ul>
<b>Judiciary</b>	<ul style="list-style-type: none"> <li>The fundamental framework of the Indian constitution is reliant on judicial review.</li> <li>In India, judicial laws are codified in the <b>Indian Penal Code (IPC)</b> and the <b>Code of Criminal Procedure (CrPC)</b>.</li> <li>India has a <b>single integrated judicial system</b>.</li> <li>Supreme Court can strike down the legislation.</li> <li>The Indian judicial system posses basic structure doctrine.</li> <li>The judges are appointed by the President by warrant under his hand and seal.</li> </ul>	<ul style="list-style-type: none"> <li>Due to the sovereignty of Parliament, the judiciary does not possess the inherent authority to invalidate an act of Parliament.</li> <li>The United Kingdom does not have a single unified legal system.</li> <li>Instead, there is one system for England and Wales, another for Scotland, and a third for Northern Ireland.</li> <li>Its highest court, unlike the supreme court of India, cannot strike down legislation, but it can review the lawfulness of actions of great public and constitutional importance converging elements to ensure natural justice.</li> <li>The British judicial system does not have basic structure doctrine.</li> <li>The <b>Constitutional Reform Act 2005</b> has prescribed a judicial appointment commission.</li> </ul>

### Comparison of Indian Constitutional Scheme with France

Aspect	India	France
Form of Government	Parliamentary democracy	Semi-presidential system
Head of State	President (Ceremonial, de jure head)	President (Directly elected, powerful executive head)
Head of Government	Prime Minister (Real executive authority)	Prime Minister (Appointed by President; functions under Presidential influence)
Election of President	Indirect election by Electoral College	Direct election by citizens (Two-round system)
Legislature	Bicameral – Lok Sabha & Rajya	Bicameral – National Assembly & Senate

	Sabha	
Role of Parliament	Powerful; directly controls executive through no-confidence motions	Weaker compared to India; President can dissolve National Assembly
Judicial Review	Strong and well-established (Supreme Court + High Courts)	Limited; Constitutional Council reviews only before promulgation
Secularism	Positive secularism – equal respect for all religions	Laïcité (strict separation of religion and state)
Emergency Provisions	Constitutional provisions for three types of emergencies	President can assume emergency powers under Article 16 of French Constitution
Constitutional Amendments	Both flexible and rigid (via special majority and ratification)	Requires approval from both houses or public referendum
Bill of Rights (Fundamental Rights)	Enshrined in Part III; enforceable by courts	Declaration of the Rights of Man (1789); included in the Constitution
Judiciary	Integrated and independent	Dual system – Judicial (Court of Cassation) and Administrative (Council of State)
Federal Structure	Quasi-federal with unitary bias	Unitary with decentralised administration
Citizenship	Single citizenship for all Indians	Single French citizenship

COACH UP IAS

BOOST  
YOUR  
SCORE



COACH UP IAS  
YOUR SELECTION IS OUR BUSINESS



UPPCS MAINS  
GS-1 TO 6

RAPID REVISION

SERIES : Score **120+**



IAS COACH ASHUTOSH SRIVASTAVA



IAS COACH MANISH SHUKLA

Crack UPPCS Mains with **RRS**  
100 ⇔ ⇔ 120 + Guaranteed Path!

D 22&23, Purniya Chauraha, near Mahalaxmi Sweets, Sector H, Sector E, Aliganj, Lucknow, Uttar Pradesh 226024

**8009803231, 9236569979**



SATWIK SRIVASTAVA  
SDM RANK-3



SALTANAT PARWEEN  
SDM RANK 6

## India vs. South Africa: Constitutional Comparison

Feature	India	South Africa
Type of Constitution	<b>Written, lengthy, and adopted in 1950</b>	<b>Written, detailed, and adopted in 1996 (post-apartheid)</b>
Form of Government	<b>Parliamentary democracy</b> with President as nominal head	<b>Parliamentary democracy</b> , but President is both <b>Head of State &amp; Govt</b>
Head of State	<b>President (elected indirectly)</b> – nominal executive	<b>President (elected by Parliament)</b> – real executive
Separation of Powers	<b>Functional overlap</b> between Legislature and Executive (Westminster model)	<b>Strict separation</b> – President not part of legislature
Federal Structure	<b>Quasi-federal</b> – strong Centre with States	<b>Unitary with federal features</b> , provinces with limited autonomy
Bill of Rights / Fundamental Rights	<b>Part III of the Constitution</b> – enforceable and justiciable	<b>Comprehensive Bill of Rights</b> (Chapter 2) – very strong rights framework
Judicial Review	<b>Present</b> – Judiciary can strike down unconstitutional laws	<b>Present</b> – Constitutional Court is supreme authority
Amendment Process	<b>Rigid &amp; Flexible mix</b> – Article 368 provides 3 types of amendments	<b>Rigid</b> – Requires special majorities and provincial consent
Independent Judiciary	<b>Supreme Court of India</b> is apex body	<b>Constitutional Court</b> is the highest for constitutional matters
Language & Diversity Provisions	Recognizes 22 languages; provisions for minorities (Art. 29–30)	11 official languages; strong multicultural and multilingual protections
Reservation / Affirmative Action	Caste-based reservations in education and jobs (Articles 15, 16)	Race-based affirmative action to address apartheid legacy
Constitutional Supremacy	Yes – Any law inconsistent with Constitution is void	Yes – Constitution is supreme, enforced by Constitutional Court
Directive Principles / State Policy	Directive Principles guide the State (non-justiciable)	Socio-economic rights like housing, health, and education are <b>justiciable</b>
Emergency Provisions	Emergency powers under Articles 352–360	No national emergency provision; constitutional rights strongly protected
Election Commission	Independent Constitutional Body (Article 324)	Independent Electoral Commission established by the Constitution

### Previous Year Questions

Q. Analyze the distinguishing features of the notion of the Right to Equality in the Constitutions of the USA and India.- 2021

Q. What can France learn from the Indian Constitution's approach to secularism? (2019)

Q. Compare and contrast the British and Indian approaches to Parliamentary sovereignty. (2023)



THE COACH

**1 : 1 MENTORSHIP BEYOND THE CLASSES**

- **Diagnosis** of candidates based on background, level of preparation and task completed.
- **Customized solution** based on Diagnosis.
- One to One **Mentorship**.
- Personalized schedule **planning**.
- Regular **Progress tracking**.
- **One to One classes** for Needed subjects along with online access of all the subjects.
- Topic wise **Notes Making sessions**.
- One Pager ( **1 Topic 1 page**) Notes session.
- **PYQ** (Previous year questions) Drafting session.
- **Thematic charts** Making session.
- **Answer-writing** Guidance Program.
- **MOCK Test** with comprehensive & swift assessment & feedback.



**Ashutosh Srivastava**

**(B.E. , MBA, Gold Medalist)**

Mentored 250+ Successful Aspirants over a period of 12+ years for Civil Services & Judicial Services Exams at both the Centre and state levels.



**Manish Shukla**

Mentored 100+ Successful Aspirants over a period of 9+ years for Civil Services Exams at both the Centre and state levels.

# WALL OF FAME



UTKARSHA NISHAD  
UPSC RANK - 18



SURABHI DWIVEDI  
UPSC RANK - 55



SATEESH PATEL  
UPSC RANK - 163



SATWIK SRIVASTAVA  
SDM RANK-3



DEEPAK SINGH  
SDM RANK-20



ALOK MISHRA  
DEPUTY JAILOR RANK-11



SHIPRA SAXENA  
GIC PRINCIPAL (PCS-2021)



SALTANAT PARWEEN  
SDM (PCS-2022)



KM. NEHA  
SUB REGISTRAR (PCS-2021)



SUNIL KUMAR  
MAGISTRATE (PCS-2021)



ROSHANI SINGH  
DIET (PCS-2020)



AVISHANK S. CHAUHAN  
ASST. COMMISSIONER  
SUGARCANE (PCS-2018)



SANDEEP K. SATYARTHI  
CTO (PCS-2018)



MANISH KUMAR  
DIET (PCS-2018)



AFTAB ALAM  
PCS OFFICER



ASHUTOSH TIWARI  
SDM (PCS-2022)



CHANDAN SHARMA  
Magistrate  
Roll no. 301349



YOU CAN BE THE NEXT....

8009803231 / 8354021661

D 22&23, PURNIYA CHAURAHA, NEAR MAHALAXMI SWEET HOUSE, SECTOR H, SECTOR E,  
ALIGANJ, LUCKNOW, UTTAR PRADESH 226024

MRP-220 Rs.