Drishti IAS

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INDIAN POLITY

Drishti IAS, 641, Mukherjee Nagar, Opp. Signature View Apartment, New Delhi

Drishti IAS, 21 Pusa Road, Karol Bagh New Delhi

Drishti IAS, Tashkent Marg, Civil Lines, Prayagraj, Uttar Pradesh

Drishti IAS, Tonk Road, Vasundhra Colony, Jaipur, Rajasthan

e-mail: help@groupdrishti.in, Website: www.drishtiias.com

Contact: 8010440440, WhatsApp: 9311406442

Contents

Digitisation of Indian Judiciary

The Covid-19 restrictions provided a major thrust to the digitisation of Indian courts. The judiciary, led by the **Supreme Court** and the High Courts, adopted **e-filing for urgent matters** and conducted frequent hearings over video conferencing.

Digitisation, for the Indian judiciary, presents a golden opportunity to reduce the pendency of a plethora of cases and preserve the decade-old documents.

Hence, it is imperative that the **use of digital technology be discussed to better utilise its potential,** particularly in terms of digitisation of court records, e-filing of cases and their virtual hearing, live streaming of court proceedings.

The Advent of Technology in Judiciary

When did it Begin?

- In India, **e-governance** in the field of administration of justice began in the late 1990s, but it accelerated after the enactment of the **Information and Technology Act, 2000**.
- As the 21st century began, the focus was on digitising the court's records and establishing **e- courts** across the country.
  - In the year of 2006, e-courts were launched as a part of the **National e-Governance Plan (NeGP)**.
- What Steps have the Courts Taken for Digitisation of Judiciary?
- The Allahabad High Court is a guiding example in this regard. As the Chief Justice of Allahabad High Court (HC), **Justice D Y Chandrachud** conceptualised and **initiated the project to digitise approximately one crore case files** in one year.
- The **hearing of matrimonial cases through video-conferencing** was approved by the Supreme Court in the matter of ***Krishna Veni Nagam v Harish Nagam (2017)***. However, the direction was short-lived.
- In 2018, the Supreme Court allowed the live-streaming of cases of constitutional and national importance on the basis of the judgement in ***Swapnil Tripathi vs Supreme Court Of India, 2018***.
  - The livestreaming of court proceedings is a step towards ensuring transparency and openness.
  - The **Gujarat HC in July 2021 became the first court in the country t**o livestream its proceedings.
    - It was emulated by the HC of Karnataka, Odisha, Madhya Pradesh and Patna.
- The latest Vision Document for Phase III of the **e-Courts Project** was introduced during the Covid-19 pandemic to address the judiciary's digital deprivation.
  - It envisages an infrastructure for the judicial system that is 'natively digital' and reflects the effect that the pandemic has had on India's judicial timeline and thinking.
- Recently, the Law Minister has said that for implementing phase two of the eCourts project, there is a need to adopt new, cutting edge technologies of **Machine Learning (ML)** and **Artificial Intelligence (AI) to increase the efficiency of the justice delivery system**.
  - To explore the use of AI in the judicial domain, the Supreme Court of India has constituted an **Artificial Intelligence Committee.**

Why is Digitisation of Judiciary a Need?

- **Difficulty in Maintaining Physical Records:** Not only a large space is required to store so many files, it is also **quite difficult to manually preserve the decades-old documents**.
  - It has been observed that **cases are adjourned simply because affidavits filed several years ago** were not restored with the record or were not traceable.
- **Acquittal of Convicts:** Another purpose is to ensure that these files are traceable electronically as and when required. The consequences of missing court records are grave.
  - In many old cases, criminal records are found to go missing thereby leading to the **acquittal of the accused.**
  - In ***State of Uttar Pradesh v. Abhay Raj Singh***, it was held by the Supreme Court that if court records go missing and re-construction is not possible, the **courts are bound to set aside the conviction.**
- **Delays in Cases:** The time consumed in **summoning records from the lower courts to the appellate courts** is one of the major factors that cause delays in cases.

Note:

What Challenges are being Faced in the Digitisation of Judiciary?

- **Connectivity Issues:** Internet connectivity issues and the **need for a well-equipped space** where lawyers can conduct their cases are some of the major problems requiring attention.
  - Lawyers in semi-urban and rural districts find online hearings challenging, mostly due to connectivity issues and an unfamiliarity with this way of working
- **Digital Literacy:** Many judges, court staff and lawyers are **not well-versed with digital technology** and its benefits.
- **Privacy Concerns:** With increasing digitisation, especially of court records, **privacy concerns are likely to be at the forefront** of judicial and public deliberations in the coming years.
- **Hacking and Cybersecurity:** On the top of technology, cyber-security will be a huge concern too. The government has initiated remedial steps to address this problem and formulated the Cyber Security Strategy.
  - However, the **practical and actual implementation of the same remains a challenge**.
- **Other Challenges:**
  - The digitisation of courts over the last decade has been singularly focussed on individual litigants, with court websites designed to allow access to individual cases. There is **no mechanism for a system-level examination** of the judiciary.
  - Deployed with adequate planning and safeguards, technological tools can be a game changer. However, **technology is not per se value-neutral** — that is, it is **not immune to biases.** Power imbalances need to be checked upon.

What Steps can be Taken to Promote the Digitisation of Judiciary?

- **Role of Judges and Lawyers:** Political will and the support of judges and lawyers are necessary for the digitisation process to succeed.
  - The need of the hour is for them to be made aware of the **associated technologies and receive adequate training.**
  - Conducting **training sessions to familiarise the Judges with the e-courts** framework and procedure can give a huge impetus to the successful running of e-courts.
- **Virtual Hearing in Certain Cases:** Virtual hearings cannot be a substitute for physical court hearings in all cases.
  - However, **in certain categories** of cases as identified by the court administration, **virtual hearing should be made mandatory.**
- **Regulation of Technology Usage:** As the technology grows, concerns about data protection, privacy, human rights and ethics will pose fresh challenges and hence, will require **great self-regulation by developers of these technologies.**
  - It will also require **external regulation by the legislature through statute**, rules, regulation and by the judiciary through judicial review and constitutional standards.
- **Training:** The government must make dedicated efforts in the **training of personnel to maintain all the e-data.**
  - These include maintaining proper records of e-file minute entries, notification, service, summons, warrants, bail orders, order copies, e-filing etc. for ready references.
  - **Creating awareness about e-courts and technologies** in the judiciary through **seminars** can help bring to light the facilities and the ease that such initiatives can facilitate.

GST and Fiscal Federalism

The ongoing discords between the **Centre and states** over **issues ranging from the allocation of financial resources to fixing of Goods and Services Tax (GST) rates** has once again brought to the fore issues pertaining to our federal structure, the resolution of which is essential for the country's growth.

The traditional approach to federalism that sees competition and cooperation at loggerheads is no longer relevant in the post-1990s scenario. A **combination of cooperative and competitive spirit ensures the economic prosperity** and welfare of the nation in an equal and equitable manner.

The rising stature of the Indian economy on the world stage can only be strengthened by a tailored approach to cooperation and competition.

What do We know about Federalism?

- **Federalism** in essence is a dual government system including the Centre and a number of States. Federalism is one of the pillars of the **Basic Structure of the Constitution of India.**

Note:

- A Federal theorist **K.C. Wheare** has argued that the nature of Indian Constitution is **quasi-federal in nature**.
  - The Supreme Court, too, in ***Sat Pal v State of Punjab and Ors (1969)***, held that the Constitution of India is more Quasi-federal than federal or unitary.
- The respective **legislative powers of states and Centre** are traceable to **Articles 245 to 254** of the Indian Constitution.

What are the Recent Efforts to Promote the Spirit of Federalism?

- Recent efforts in this direction include providing **greater leeway to states in the functioning of the NITI Aayog**, frequent meetings of the Prime Minister with the Chief Ministers and periodic meetings of the President of India with **Governors**.
- The **functioning of "PRAGATI"** to review the progress of developmental efforts has also generated the requisite synergy between the Centre and states.

What are the Challenges Posed by States regarding GST?

- The GST has **taken away much of the autonomy** available to states and has **made the country's indirect tax regime unitary in nature.**
- After the introduction of the GST in 2017, state governments **lost their independent taxation powers**.
  - **Liquor and fuel are the only two significant avenues left for states** to generate their own tax revenues, without having to seek approval from the Union government, since they are outside the GST regime.
- India's **GST is precariously held together by the loose thread of "compensation guarantee"**, under which states surrendered their fiscal powers in return for guaranteed revenues.
  - However, during the Covid-19 pandemic, the Union government repeatedly **violated the compensation guarantees to the States under the GST regime**. Delay in paying the States their due worsened the impact of the economic slowdown.
  - The GST compensation period expires in June 2022, and despite multiple requests from the States, the **deadline has not been extended.**

What is the SC's Recent Judgment about Federalism regarding GST?

- Recently, the Supreme Court in a judgment invoking the spirit of **"Cooperative Federalism"** for the well-being of democracy, held that **Union and State legislatures have "equal, simultaneous and unique powers"** to make laws on **Goods and Services Tax (GST)** and the **recommendations of the GST Council are not binding on them.**
  - The apex court's decision came while confirming a Gujarat High Court ruling that the Centre cannot levy **Integrated Goods and Services Tax (IGST)** on ocean freight from Indian importers.
- In simple terms, Parliament and State Legislatures have simultaneous powers to legislate under the GST.

What can be the Way Forward?

- **A Reformed Approach toward States:** The Centre could strive to be **more conciliatory towards States' concerns** and fiscal dilemmas.
  - The **Council should also meet more often** to nurture the critical fiscal federalism dialogue in the right direction and minimize trust deficits.
  - There are many **pending reforms** that require the Centre to work more cohesively with States to take India's economy forward and lift those left behind - **land, labor markets as well as the agrarian sector.**
- **Horizontal and Vertical Level Cooperation:** Cooperation between the Centre and states is required at both vertical (between Centre and states) and horizontal (among states) levels and on various fronts.
  - This includes **fine-tuning of developmental measures** for desired outcomes, development-related **policy decisions, welfare measures, administrative reforms,** strategic decisions, etc.
- **Reforms in GST Council:** It may be time already for reform of the GST. What is needed is **statesmanship at the GST Council** even if the Court has said that the Council is a place as much for political contestation as for co-operative federalism.
  - The Council should **transcend political rivalries** of the day.
  - The States should have the **right to dissent in the Council** and their voice should not be drowned in the pursuit of unanimity in decision-making.

Note:

How and Why Should Positive Competition be Promoted?

- **How:**
  - The competitive aspect of federalism can positively be harnessed by **encouraging states to adopt each other's best practices**. This positive competition can be ensured vertically as well as horizontally.
  - **Positive efforts of states towards attracting investment** can create a conducive environment for economic activities in urban and backward regions alike.
  - Healthy competition coupled with a **transparent ranking system** would ensure the full materialization of the vast but least utilized potential of the federal framework.
    - Healthy competition among states would also help them **innovate and generate the requisite synergies for local businesses.**
- **Why:**
  - Adoption of best practices and implementation of reforms at the ground level would **positively impact the ease of doing business for MSMEs.**
  - This would **raise India's manufacturing capacity** to the next level and radically transform India's growth story.
  - The **rise in economic activities would result in higher GST collection** and thereby boost the government's welfare measures.
  - Competition among states along with hand-holding by the Centre has the potential to enable the **realization of the goal of a five-trillion economy** by 2024.
- **Related Initiative:**
  - To promote positive competition among states NITI Aayog's sector-specific indices have proven to be a great contribution. Such indices are:
    - **School Education Quality Index**
    - **Sustainable Development Goals Index**
    - **State Health Index, India Innovation Index**
    - **Composite Water Management Index**
    - **Export Competitiveness Index**

Freebie Politics in India

Recent news on the **collapse of the Sri Lankan economy** has engendered a fresh debate on the state's role. The government of Sri Lanka cut taxes across the board and provided several free goods and services. Consequently, the economy collapsed and the heavily-indebted country was left with no choice but to default on its commitments.

As a corollary, the issue of freebies given out by Indian states has come under the lens here. Over the years the **freebies** have become an integral part of the politics in India; be it for making promises in the electoral battles or providing free facilities to remain in power.

What are Freebies?

- Political parties promise to offer **free electricity/water supply, monthly allowance** to unemployed, daily wage workers and women as well as gadgets like laptops, smartphones etc. in order **to secure the vote of the people.**
  - The states have become habituated to giving freebies, be it in the form of loan waivers or free electricity, cycles, laptops, TV sets and so on.
- Certain kinds of expenditure that are done under populist pressures or with elections in mind may be questionable.
  - But given that in the last 30 years there has been **rising inequality**, some kind of **relief to the population in the form of subsidies may not be unjustified** but actually necessary for the economy to continue on its growth path.

What are the Arguments in Favour of Freebies?

- **Facilitates Growth:** There are some examples which show that some expenditure outlays do have overall benefits such as the **Public Distribution System**, **employment guarantee schemes**, **support to education** and **enhanced outlays for health**, particularly during the pandemic.
  - These go a long way in increasing the productive capacity of the population and help build a healthier and a stronger workforce, which is a necessary part of any growth strategy.
  - The same goes for a State spending on education or health.
- **Boosts Industries:** States like Tamil Nadu and Bihar are known for giving women sewing machines, saris and cycles, but they buy these from budget revenues, **contributing to the sales of these industries.**
  - It can be considered a **boost for the supplier industry** and not a wasteful expenditure, given the corresponding production.

Note:

- **Essential for Fulfilling Expectations:** In a country like India where the states have (or don't have) a certain level of development, upon the emergence of the elections, there are **expectations from the part of people which are met by such promises** of freebies.
  - Moreover, there are also **comparative expectations** when the people of the adjoining/other states (with different ruling parties) get freebies.
- **Helps Lesser Developed States:** With the states that have comparatively lower level of development with a larger share of the population suffering from poverty, **such kind of freebies become need/demand-based** and it becomes **essential to offer the people such subsidies for their own upliftment.**

What are the Downsides of the Freebies?

- **Macroeconomically Unstable:** Freebies undercut the basic framework of macroeconomic stability; the politics of freebies **distorts expenditure priorities** and **outlays remain concentrated on subsidies** of one kind or the other.
- **Impact on States' Fiscal Situation:** Offering freebies, ultimately, has an **impact on the public exchequer** and most of the **states of India do not have a robust financial health** and often have very limited resources in terms of revenue.
  - If states keep spending money for supposed political gains, their finances will go awry and **fiscal profligacy would prevail.**
    - As per the **Fiscal Responsibility and Budget Management (FRBM) rules** the **states can't borrow beyond their limits** and any deviation has to be approved by the Centre and central bank.
    - Therefore, while states have flexibility on how they choose to spend their money, **they cannot in ordinary conditions exceed their deficit ceilings.**
- **Against Free and Fair Election:** The promise of irrational freebies from public funds before elections unduly influences the voters, **disturbs the level playing field and vitiates the purity of the poll process.**
    - It amounts to an unethical practice that is **similar to giving bribes to the electorate.**
- **A Step Away from the Environment:** When the freebies are about giving free power, or a certain quantum of free power, water and other kinds of consumption goods, it **distracts outlays from environmental and sustainable growth**, renewable energy and more efficient public transport systems.
  - Moreover, it is a general human tendency to **use things in excess (thus leading to wastage of resources) when it is provided for 'free'.**
- **Debilitating Effect on Future Manufacturing:** Freebies **lower the quality and competitiveness of the manufacturing sector** by detracting from efficient and competitive infrastructure that enable high-factor efficiencies in the manufacturing sector.
- **Destroys Credit Culture:** Giving away **loan waivers** in the form of freebies may have undesired consequences such as destroying the whole credit culture and it blurs the very basic question as to why is it that a large majority of the farming community is getting into a debt trap repeatedly.

What can be the Way Forward?

- **Realising Economic Impacts of Freebies:** It is not about how cheap the freebies are but **how expensive they are for the economy,** life quality and social cohesion in the long run.
  - We must strive instead for a **race to efficiency through laboratories of democracy** and **sanguine federalism** where states use their authority to harness innovative ideas and solutions to common problems which other states can emulate.
- **Judicious Demand-Based Freebies:** India is a large country and there is still a huge set of people who are below the poverty line. It is also **important to have all the people accommodated in the development plan** of the country.
  - The judicious and sensible offering of freebies or **subsidies that can be easily accommodated in the states' budget** do not do much harm and can be leveraged.
  - Ideally, a proportion of state expenditure should be earmarked to ensure better overall utilisation of resources.
- **Differentiating Subsidies and Freebies:** There is a need to understand the impacts of freebies from the economic sense and connect it with the taxpayers money.
  - It is also essential to distinguish between subsidy and freebies as **subsidies are the justified and specifically targeted benefits** that arise out of demands.
  - Although every political party has a right to create subsidy ecosystems to give targeted needy people the benefits, **there should not be a long-term burden on the economic health** of the state or the central government.

Note:

Need For Federal Judiciary

Nearly 150 years ago, A.V. Dicey wrote, "The essential characteristic of federalism is the distribution of limited executive, legislative and judicial authority among bodies which are coordinated with and independent of each other". Much has been written about the federal structure in relation to the legislature and the executive.

India is a union of States. The Supreme Court of India has held that the federalist nature of our country is part and parcel of the basic structure of the Constitution. But is this the case for Judiciary, one of the important organs of the state?

What is Federalism in Judiciary?

- Federalism is a midpoint between unitarism which has a supreme centre, to which the States are subordinate, and confederalism wherein the States are supreme, and are merely coordinated by a weak centre.
- The idea which lies at the bottom of federalism is that **each of the separate States should have approximately equal political rights** and thereby be able to maintain their non-dependent characteristics within the larger union.
- An integral requirement of a federal state is that there be a **robust federal judicial system** which interprets this constitution, and therefore adjudicates upon the rights of the federal units and the central unit, and between the citizen and these units.
- The federal judicial system comprises the Supreme Court and the High Court in the sense that it is only these two courts which can adjudicate the rights.
- Dr. B.R. Ambedkar stated in the Constituent Assembly: "**The Indian Federation though a dual polity has no dual judiciary at all**. The High Courts and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law."

Whether the Supreme Court and High Courts are Equal in Status?

- The Indian Constitution envisaged the equality of power of High Court judges and Supreme Court judges, with a High Court judge not being a subordinate of a Supreme Court judge.
  - Famously, the Chief Justice of the Bombay High Court, Justice M.C. Chagla and the Chief Justice of the Madras High Court, Justice P.V. Rajamannar, when offered seats in the newly formed Supreme Court, rejected the offer, preferring to be Chief Justices of prestigious High Courts than being ordinary judges in a newly formed court.
- The Supreme Court has, on many occasions, reiterated the position that the **Supreme Court is superior to the High Court only in the appellate sense**.
  - Therefore, the theoretical position has always been that **High Court judges and Supreme Court judges are equals**.
- A delicate balance between two courts existed from Independence onwards, until the **1990s. Since then**, however, **it has been tilting in favour of the central court**.
  - The need for this balance was underscored during the Emergency, when the High Courts (a significant number, at least) stood out as beacons of freedom, even as the Supreme Court failed in this duty.
- In recent years, **three specific trends have greatly eroded the standing of the High Court,** leading to an imbalance in the federal structure of the judiciary.
  - First, the Supreme Court (or rather, a section of its judges, called "the Collegium") has the power to appoint judges and chief justices to the High Courts and the Supreme Court. This Collegium also has the power to transfer judges and chief justices from one High Court to another.
  - Second, successive governments have passed laws that create parallel judicial systems of courts and tribunals which provide for direct appeals to the Supreme Court, bypassing the High Courts.
  - Third, the Supreme Court has been liberal in entertaining cases pertaining to trifling matters.

What are the Issues of Centralisation of Judiciary?

- **Centralised Ruling**: This has inevitably led to the balance tipping in favour of a centralisation of the judiciary. The greater the degree of centralisation of the judiciary, the weaker the federal structure.
- **Centralised Judiciary More in Interests of Centre:** In the United States, empirical research by the legal researcher shows that the U.S. Supreme Court is far more likely to strike down a state statute as unconstitutional than a federal statute.

Note:

- This research leads to the conclusion that judicial review by a centralised judiciary tends toward unitarism (the opposite of federalism).
- In Nigeria, a similar federal country, research has shown that the Supreme Court favours the jurisdiction of the central government over the State units, and this has manifested itself in recent litigations over mineral rights and subsoil rights, where the Supreme Court has favoured interpretations which support the rights of the centre over the States.

- **Interference of SC in High Courts:** The Supreme Court of India today, by playing the role of a collegium, effectively wields the power to appoint a person as a judge to a High Court or to transfer him or her to another High Court, or to appoint (or delay the appointment) of a sufficiently senior High Court judge as a chief justice or as a judge of the Supreme Court. The practical impact of this in the power dynamic between a High Court judge and a Supreme Court judge, leaves little to be said or imagined.
- **Interference of SC in Matters of Local Importance**: An aggressively interventionist Supreme Court leads many to approach it directly as a panacea for all ills befalling the nation. In 2018, some individuals from Delhi directly filed a petition in the Supreme Court to curtail Deepavali celebrations.
  - The Supreme Court interferes in matters which are clearly of local importance, having no constitutional ramifications. The Court itself observed recently, "Frivolous matters are making the institution dysfunctional... These matters waste important time of the court, which could have been spent on serious matters, pan-India matters."
- **High Court Becomes Redundant:** Every time the Supreme Court entertains an appeal against a High Court decision, it second guesses the High Court. This makes the high court look like a redundant body.
- **High Court can Effectively Dispose PILs:** Every time the Supreme Court entertains a Public Interest Litigation(PIL) on some matter which could just as effectively have been dealt with by the High Court, raises doubts on the effectiveness of the High Court.
- **The creation of parallel hierarchies of courts and tribunals**, whether it be the Competition Commission, or the company law tribunals, or the consumer courts. In all these cases, the High Courts are bypassed.
  - Laws have been drafted such that the High Court has no role to play and the Supreme Court directly acts as an appellate court.

What Can Be The Way Forward?

- The Supreme Court should itself recognise the importance of self-abnegation and restore the federal balance by re-empowering the High Courts. This will be in the best interest of the nation.
- The Supreme Court was created under the Constitution, and is a relatively new court. On the other hand, some of the High Courts in our country have been in existence since the 1860s (and some existed even before that, in their earlier avatars as supreme courts of the Presidencies).
  - It is advisable that their role should not be minimised even unintentionally.
- A **delicate balance is required** to be maintained between the Supreme Court and the High Courts in order for the constitutional structure dreamt of by B.R. Ambedkar to work.

Uniform Prescription in Educational Institution

Recently, the government of Karnataka passed an order stating that students of pre-university colleges will have to mandatorily wear the uniform prescribed by the college administrative board. In the absence of any prescription, **"clothes which disturb equality, integrity and public law and order" couldn't be worn**. The order came in response to a set of incidents in various colleges, where women students wearing the hijab were forbidden from entering the campus.

What is the Debate Around Prescription of a Uniform?

- **Arguments For:**
  - Supporters of the administration's actions have argued that college spaces ought to be free of any public displays of religion.
  - Still others have argued that wearing the hijab is not an exercise of genuine free choice, but an imposition of patriarchal structures — which cannot be defended in the vocabulary of freedom.
- **Arguments Against:**
  - Some argue that the wearing of the hijab is an essential element of Islam, and its prohibition violates the students' constitutionally **guaranteed freedom of religion.**

Note:

- Some have argued that in a country where a chief minister can carry a religious title, it is hypocritical to deny Muslim women the right to wear a hijab in public spaces.

What are the Issues Associated With the Government Order ?

- Religious Freedom Protected under the Constitution:
  - Article 25(1) of the Constitution guarantees the "**freedom of conscience and the right freely to profess, practise and propagate religion**".
  - It is a right that guarantees a negative liberty — which means that the state shall ensure that there is no interference or obstacle to exercise this freedom.
    - However, like all **fundamental rights**, the state can restrict the right for grounds of public order, decency, morality, health and other state interests.
- Hijab ban may create more **problems for girls in getting education**. Their families may ask them to not attend schools and this may go against the right to education of all.
- Muslim women are not wearing hijabs to disrupt colleges or force any other group of students to adopt or give up any dress or practice. They are wearing hijabs with uniforms the same way Sikh men wear turbans, or Hindus wear bindis/tilak/vibhuti with uniforms.
- Court Judgements in related cases:
  - In 2015, at least two petitions were filed before the Kerala High Court challenging the prescription of dress code for All India Pre-Medical Entrance which prescribed wearing "light clothes with half sleeves not having big buttons, brooch/badge, flower, etc. with Salwar/Trouser" and "slippers and not shoes".
    - Admitting the argument of the Central Board of School Education (CBSE) that the rule was only to ensure that candidates would not use unfair methods by concealing objects within clothes, the **Kerala HC directed the CBSE to put in place additional measures for checking students** who "intend to wear a dress according to their religious custom, but contrary to the dress code".
  - In **Amna Bint Basheer v Central Board of Secondary Education (2016)**, the Kerala HC examined the issue more closely.
    - The Court held that the practice of wearing a hijab constitutes an **essential religious practice** but did not quash the CBSE rule.
    - The court once again allowed for the "additional measures" and safeguards put in place in 2015.
  - However, on the issue of a uniform prescribed by a school, another Bench ruled differently in **Fathima Tasneem v State of Kerala (2018).**
    - A single Bench of the Kerala HC held that **collective rights of an institution would be given primacy over individual rights** of the petitioner.

What is the Way Forward?

- Religious sentiments should not prevail while taking decisions on such matters but it should be based on the combination of rationality and modern views.
- Educational institutions should avoid the violation of the rights of individual students in the name of their right to administer a school or college.
- Our daily lives require us to live together with people who look different from us, wear different clothing, and eat different food, why should those differences be shut out from educational spaces in particular.
- Our Constitution guarantees to everyone an inviolate "**zone of freedom**" in personal matters, as long as the effect of this freedom does not cause harm, or discrimination, at a broader social level. In the case of the hijab, there is no such harm or discrimination.
- However, an **Essential Religious Practices Test** is required for Hijab as it was done for keeping a beard. The Supreme court in 2006, held that keeping a beard was not an essential part of Islamic practices.

Challenges to a Federal India

On January 26, 1950 when the Indian Constitution came into force, it was a big step for the nation that had longed to achieve the **ideals of justice, equality, liberty and fraternity.**

In a country of subcontinental proportions, it is necessary that the **ideals mentioned in the Preamble to the Constitution should extend to all levels of governance**. The overall emphasis on equality in the Constitution is visible in all arrangements made around the **federal spirit** and ideas.

Note:

Conscious of the differential needs of the populations of different states, the drafters of the Constitution made provisions for an equitable share of powers and responsibilities among different levels of governments. Unfortunately, India in recent years has been **witnessing the worst assault on the federal system** and on institutions.

The Federal Structure of India

- **Nature of Indian Federalism:** A Federal theorist **K.C. Wheare** has argued that the nature of Indian Constitution is quasi-federal in nature.
  - The SC in ***Sat Pal v State of Punjab and Ors (1969)***, held that the Constitution of India is more Quasi-federal than federal or unitary.
- **Constitutional Provisions for Ensuring Federalism:** The respective legislative powers of states and Centre are traceable to Articles 245 to 254 of the Indian Constitution.
  - The **lists in the 7th Schedule** of the Constitution — Union, State and Concurrent also exemplify equitable share of powers, wherein each level of government has its own sphere, enabling context-sensitive decision-making.
  - **Article 263** provided for the **establishment of an Inter-State Council** for smooth transition of business between the Union and states and resolution of disputes.
  - **Article 280** provided for the constitution of the **Finance Commission** to define the financial relationship and terms between the Union and states.
  - Also, the institutions for **local self government** were added through the **73rd and 74th amendments**, to strengthen the grass roots democracy.
- **Institutions for Federalism:** The **Planning Commission** always had space for discussion on issues concerning the federal nature of the polity and was sensitive to the different developmental requirements of states.
  - The **inter-state tribunals, the National Development Council** and other informal bodies have **served as vehicles of consultations** between the Union, states and UTs.
  - These bodies have been instrumental in tackling difficult issues democratically through deliberations while upholding the cooperative spirit between the Union and states.

Challenges in Maintaining the Federal Spirit of India

- **Ineffective Functioning of Several Bodies:** The **Planning Commission has been scrapped**, the Inter-State Council has **met only once in the last seven years** while the **National Development Council has not met at all.**
  - These events have led to obstructions in upholding the cooperative spirit between the Union and states.
- **Issues in Tax Regime:**The misconceived Goods & Services Tax (GST) has already taken away much of the autonomy available to states and has **made the country's indirect tax regime unitary in nature.**
  - During the pandemic, the Union government **repeatedly violated the compensation guarantees to the States under the GST regime**. Delay in paying the States their due worsened the impact of the economic slowdown.
- **Encroachments Upon States' Autonomy in State Subjects:** Many important and politically sensitive decisions have been taken in the past few years, without reference to, and consultation with, the concerned states such as:
  - **Article 370** was removed without consulting the state legislature.
  - Parliament legislated on "agriculture" in the state list, to **enact the three contentious farm laws**, overstepping its jurisdiction and imposing a law on the states.
  - The **New Education Policy 2020** has also been flagged as encroaching on the federal nature of the polity.
  - Additionally, the **BSF's jurisdiction was extended** in Assam, West Bengal and Punjab **without any consultation** with the concerned states.
- **Impact of Covid-19:** The states were curtailed in aspects relating to Covid-19 management such as procurement of testing kits, vaccination, the use of the **Disaster Management Act, 2005**, and the unplanned national lockdown.
  - Moreover, the ill-prepared government during the **Second Wave** countered criticism by claiming health as a 'State subject'.

Note:

Way Forward

- **Recognition of Federalism:** It should be underlined that **Article 1** of the Constitution declares that "India that is Bharat is a union of states", and that **devolution of powers is necessary in such a setting.**
  - A conscious recognition of the federal character of India's polity is essential to protect its national character.
  - A struggle at all levels shall be waged against those who try to usurp the federal rights of the other, be it the local level government against the states or the state government against the centre.
- **Strengthening Inter-State Relations:** State governments shall consider **deploying human resources** to support them in preparing responses to the consultations initiated by the Union, especially with a **focus on the federalism angle.**
  - Instead of reaching out to each other only during crisis situations, **Chief Ministers may create forums for regular engagement** on this issue.
    - This would be crucial in the advocacy of major demands like the extension of GST compensation to 2027 and inclusion of cess in the divisible pool of taxes.
- **Bringing Reforms while Balancing Federalism:** A diverse country India requires a proper **balance between the pillars of federalism** (autonomy of states, centralisation, regionalisation etc). **Extreme political centralisation or chaotic political decentralisation shall be avoided** as both lead to the weakening of Indian federalism.
  - Proper utilisation of the institutional mechanism of the Inter-state Council must be ensured to **develop political goodwill between the Centre and the States** on contentious policy issues.

Ensuring Transparency in Election Commission of India

The **Election Commission of India (ECI)** is a constitutional body envisaged to **uphold the values of equality, equity, impartiality, independence** enshrined in the Indian Constitution and the rule of law in superintendence, direction, and control over the electoral governance.

It was established to **conduct the elections with the highest standard of credibility, freeness,** fairness, transparency, integrity, accountability, autonomy and professionalism.

However, over the last years, the ECI has faced multiple accusations regarding its independence and impartiality in electoral governance and the process of appointment of its members.

Perhaps, a more **transparent and independent method in appointment of the members** of the ECI, that is also free from a dominant participatory role of the Executive, is what India requires for a better functioning of the body.

Members of the Election Commission of India

- **Constitutional Provisions: Part XV** of the Indian constitution deals with elections, and provides for the establishment of the ECI.
  - **Article 324** to 329 of the constitution deals with powers, function, tenure, eligibility, etc of the commission and the members.
- **Statutory Provisions:** Originally the commission had only one election commissioner but after the enactment of the **Election Commissioner Amendment Act 1989,** it has been made a multi-member body.
  - The commission consists of one **Chief Election Commissioner** and two **Election Commissioners**.
- **Role of Parliament:** The members of the ECI are appointed by the President of India **based on the recommendations made by the Prime Minister.**
  - However, **Article 324(2)** provides that the Parliament is **entitled to enact legislation regarding the appointment** of Election Commissioners (ECs).
- **Recommendations for Appointment of ECs:** In 1975, the **Justice Tarkunde Committee** recommended that **ECs be appointed on the advice of a Committee** comprising the Prime Minister, Lok Sabha Opposition Leader and the Chief Justice of India.
  - This was **reiterated by the Dinesh Goswami Committee in 1990** and the **Law Commission in 2015.**
  - The 4th Report (2007) of the **Second Administrative Reforms Commission (ARCs)** additionally recommended that the **Law Minister and the Deputy Chairman of the Rajya Sabha be included** in such a Collegium.

Issues Associated

- **Failure of Parliament in Enacting Laws:** It is the Parliament responsible for making laws with respect to the appointment of the ECs,
  - However, apart from enacting a law in 1989 enlarging the number of ECs from one to three, Parliament has so far **not enacted any changes to the appointment process.**

Note:

- **Over-dependence on the Executive for Appointment:** The Election Commission renders a quasi-judicial function between the ruling and other parties. In such a case, the **executive cannot be a sole participant in the appointment of ECs.**
  - The current practice of appointment of ECs by the Centre **violates Article 14, Article 324(2)**, and Democracy as a **basic feature of the Constitution.**

Way Forward

- **Multi-Institutional Committee:** Given that **ECI is the institutional keystone holding up the edifice of Indian democracy**, establishing a multi-institutional, bipartisan committee for fair and transparent selection of ECs can enhance the perceived and actual independence of ECI.
  - The **quasi-judicial** nature of ECI's functions makes it especially important that the **appointments process conform to the strictest democratic principles.**
  - Such a procedure is already with regard to appointment of the authorities such as the Chief Information Commissioner, Lokpal, **Vigilance Commissioner**, and the Director of the **Central Bureau of Intelligence**.
- **Recommendations of Second ARC Report:** The Second ARC report recommended that an **ECI collegium headed by the PM** should make recommendations for the President for appointment of the ECI members.
  - The ***Anoop Baranwal v. The Union of India*** **(2015)** case also **raised the demand for a Collegium system** for the ECI.
  - A Bench comprising **Chief Justice J S Khehar** and **Justice D Y Chandrachud** had also noted that the ECs supervise and hold elections across the country and their selection has to be made in the most transparent manner.
- **Role of Parliament:** Parliament would do well to **pre-empt judicial strictures by going ahead and formulating a law** that establishes a multi-institutional, bipartisan Collegium to select ECs.
  - There is a **need for debate and discussions in the Parliament on the issue** of independence of ECI and consequently passing of required legislation.
  - After all, separation of powers is the gold standard for governments across the world.

Conclusion

ECI's constitutional responsibilities require a fair and transparent appointment process that is beyond reproach, which will reaffirm the faith of the people in this vital pillar of the Indian polity. The existing veil over the appointment process of ECs potentially undermines the very structure on which India's democratic aspirations rest.

Reviving Federalism

Federalism in essence is a dual government system including the Centre and a number of States. Federalism is one of the pillars of the **Basic Structure of the Constitution.**

However, in recent years, the **coercive policies introduced by the Central Government** coming on top of the **pandemic-induced economic shock**, have **worsened the political as well as fiscal situation of State governments.**

As the **Supreme Court** iterated in the ***S.R. Bommai vs Union of India case***, the States are not mere appendages of the Union and the **latter should ensure that the powers of the States are not trampled with.**

Federalism in India

- **Nature of Indian Federalism:** A Federal theorist K.C. Wheare has argued that the nature of Indian Constitution is quasi-federal in nature.
  - The SC in ***Sat Pal v State of Punjab and Ors (1969)***, held that the Constitution of India is **more Quasi-federal than federal or unitary.**
- **Constitutional Provisions:** The respective legislative powers of states and Centre are traceable to **Articles 245 to 254 of the Indian Constitution.**
  - The **Seventh Schedule of the Constitution** contains **three lists** that distribute power between the Centre and states (Article 246).
    - On 98 subjects in the Union List, the Parliament has exclusive power to legislate.
    - On 59 subjects of the State List, the states alone can legislate.
      - On the subjects of the Concurrent List (52), both the Centre and states can legislate.
      - However, in case of a conflict, the law made by Parliament prevails **(Article 254).**

Note:

- **Absolute Power of State in Certain Matters:** According to various decisions of the Supreme Court (such as in the ***State of Bombay vs F.N. Balsara case, 1951***), if an enactment falls within one of the matters assigned to the State List and reconciliation is not possible with any entry in the Concurrent or Union List after employing the **Doctrine of "Pith and Substance"**, the **legislative domain of the State Legislature must prevail.**

Issues Related to Federalism

- **Increasing Central Dominance in Fiscal Policies:** A series of steps by the Union government undermined the principles of fiscal federalism. This has been manifested by:
  - Increasing monetary share of the States in **Centrally Sponsored Schemes (CSS).**
  - Imposition of **demonetisation without adequate consultation with the States.**
  - Outsourcing of the statutory functions under the **Smart Cities Mission**
  - As of 2020-21, the Union government's share in the total contribution of the petroleum sector was 68%, **which left only 32% to the States.**
    - In 2013-14, the **Union:State share was almost 50:50.**
- **Impact of the Covid-19:** The states were curtailed in aspects relating to Covid-19 management such as procurement of testing kits, vaccination, the use of the **Disaster Management Act, 2005**, and the unplanned national lockdown.
  - Moreover, the ill-prepared government during the **Second Wave countered criticism by claiming health as a 'State subject'.**
- **Legislations Weakening States' Autonomy:** Several other bills and amendments introduced by the Union government in the recent past have also led to the weakening of States' autonomy. These include:
  - The **farm laws** (which have been repealed now)
  - Banking Regulation (Amendment) Act of 2020
  - **Government of National Capital Territory Amendment Act, 2021**
  - Indian Marine Fisheries Bill, 2021
  - Draft Electricity (Amendment) Bill, 2020
  - **National Education Policy of 2020**
- **Taxation Related Issues:** Enlarging the non-divisible pool of taxes in the form of cess in petrol tax and instituting the Agriculture Infrastructure and Development Cess have resulted in a situation where the **Union continues to exclusively benefit from tax collection.**
  - The share of non-divisible pool cess and surcharge in total taxes collected by the Union government has **increased from 12.67% in 2019-20 to 23.46%** in 2020-21.
  - The 2021-22 Budget Estimates indicate that the **States' share of Union tax** has **reduced to 30% against the mandated 41%** devolution prescribed by the **15th Finance Commission.**
  - **GST Specific Issues:** During the pandemic, the Union government repeatedly violated the **compensation guarantees to the States under the GST regime**.
    - **Delay in paying the States their due** worsened the impact of the economic slowdown.
    - The **GST compensation period expires in 2022**, and despite multiple requests from the States, the **deadline has not been extended.**
- **Inadequate Funding:** Cash-starved States have been **seeking non-tax avenues to generate funds** to sustain their programmes.
  - The **suspension and transfer of the Member of Parliament Local Area Development (MPLAD)** funds to the **Consolidated Fund of India** led to a major crisis situation for most States.
  - Although the Government has raised the borrowing limit under the **Fiscal Responsibility and Budget Management Act (FRBM)** from 3% to 5%, it has **imposed certain restrictive conditions** making it more difficult for the states to borrow.

Way Forward

- **Relooking into Federalism:** The above mentioned policy misadventures call for research and introspection on federalism.
  - States should demand the **creation of a formal institutional framework to mandate and facilitate consultation** between the Union and the States in the areas of legislation under the Concurrent List.
- **Strengthening Inter-State Relations:** State governments shall consider **deploying human resources to support them** in preparing responses to the consultations initiated by the Union, especially with a focus on the federalism angle.

Note:

- Instead of reaching out to each other only during crisis situations, **Chief Ministers may create forums for regular engagement** on this issue.
  - This would be **crucial in the advocacy of major demands** like the extension of GST compensation to 2027 and inclusion of cess in the divisible pool of taxes.

- **Consultation is the Key:** The intention of the framers of the Constitution was to ensure that public welfare is subserved and the key to that lies in listening to stakeholders.
  - The **essence of cooperative federalism lies in consultation and dialogue** whereas a unilateral legislation without taking the States into confidence will only lead to protests on the streets.
- **Bringing Reforms while Balancing Federalism:** A diverse country India requires a **proper balance between the pillars of federalism (autonomy of states, centralisation, regionalisation etc).** Extreme political centralisation or chaotic political decentralisation can both lead to the weakening of Indian federalism.
  - **Proper utilisation of the institutional mechanism of the Inter-state Council** must be ensured to develop political goodwill between the Centre and the states on contentious policy issues.
  - The **gradual widening of the fiscal capacity of the states** has to be legally guaranteed **without reducing the Centre's share.**

Conclusion

The presence or lack of federal flexibility plays a crucial role in shaping democracy. The Union government needs to invest resources towards facilitating effective consultation with States as a part of the lawmaking process. It is critical to establish a system where citizens and States are treated as partners and not subjects.

Slumbering Parliamentary Opposition

Parliamentary democracy is characterised by a system of mutual accountability of the ruling party and opposition party and a much-crucial deliberative process.

The **Parliamentary Opposition** plays a crucial role in preserving the true essence of the democracy and raising the concerns of a larger number of people of the country.

However, today, India's parliamentary opposition is not merely fragmented but also in disarray. There seems to be hardly any Opposition party with a vision or strategy for its institutional working or for the Opposition as a whole.

Reviving and strengthening the parliamentary opposition of India becomes extremely important for the world's largest democracy, especially, when its global rankings, in various indices evaluating democracy, are declining.

Parliamentary Opposition in India

- **About Opposition:** Parliamentary opposition is a form of political opposition to a designated government, particularly in a Westminster-based parliamentary system.
  - The title of "Official Opposition" usually goes to the largest of the parties sitting in opposition with its leader being given the title "**Leader of the Opposition**".
- **Significant Role of Opposition:**
  - The opposition **reacts, questions, scrutinises the government on a day-to-day basis** in parliament and its committees and outside the parliament, in the media and among the masses.
  - The role of the opposition is to e**nsure that any government maintains the constitutional guardrails.**
  - Whatever a government adopts as a policy measure and legislation, the **opposition views it from an essentially critical gaze.**
  - Moreover, in parliament, the opposition goes beyond merely following the government and raises, **demands and appeals for the specific needs of their constituencies,** amendments and assurances using various **parliamentary devices**.
- **Powerful Opposition in the Past:** From the early 1960s powerful movements broke out all over India on issues such as land reforms, rights of the industrial working class, unemployment, foodgrains and their distribution, ethnic demands and language rights.
  - The then **opposition significantly connected itself to these social movements**.
    - It also **encompassed the broadest spectrum of the Opposition,** including the communists.
  - The parliamentary Opposition in history had **imparted creativity and ingenuity to India's parliamentary democracy.**

Note:

- **Weak Opposition and Irresponsible Government Spells Doom:** A weak opposition is far more perilous than a weak government; an irresponsible government in combination with a timid opposition spells doom.
  - A weak opposition simply refers to the opinions/ demands of a large populace (who did not vote for the ruling party) left unaddressed.
- **Need for a Strong Opposition:** India's current government has drawn severe criticism from multiple quarters.
  - The current moment is marked by a slide in India's status in international **rankings on democracy**, **human rights** and **press freedom**, an ever-increasing number of **sedition** cases and spiralling **UAPA cases**.
    - Further, many laws passed by Parliament are increasingly being seen as unacceptable.
  - These instances clearly indicate an ineffective and weaker opposition as well.

Issue with the Parliamentary Opposition

- The contemporary crisis of the opposition is primarily the **crisis of its effectiveness and electoral representation** of these parties.
- There is also a **lack of trust and absence of leadership** in the political parties.
- The opposition parties are always stuck with **clustered forms of representativeness limited to some specific social groups** and are unable to extend this umbrella beyond a few identities.
- The representational assertion enabled the opposition to be formed, expanded and consolidated.
  - However, the inability of this phenomenon to realise **substantive representation within all sections of the society** contributed to the **shrinking of the opposition's space.**
- A key failure of the opposition in the past few years has also been its **failure to set the political agenda and persuade fence-sitters to their side.**
  - This is reflected in its **inability to corner the government on its numerous failures.**

Way Forward

- **Reviving Opposition:** There is a need to **revive and reconstitute parties in villages, blocks and districts** as opposed to dictating from the top.
  - The opposition parties require a **sustained perennial campaign and mobilisation.** There is no shortcut or "artificial stimulus" that could build an effective opposition.
  - Parties in opposition need to **shed their acquired identities and embrace newer ones,** which are broader and deeper in perception and practice.
- **Strengthening the Role of the Opposition:** In order to strengthen the role of the opposition, the institution of **'Shadow Cabinet'** can be formed in India.
  - Shadow cabinet is a unique institution of the British cabinet system formed by the opposition party to balance the ruling cabinet.
  - In such a system each action of a Cabinet Minister must be countersigned by the minister in the shadow cabinet.
- **Intrinsic Factors to Strengthen Opposition:** The intrinsic factors go beyond just weaving an opposition by uniting several parties to electorally replace the ruling party.
  - The need is to **revamp the party organisation,** to **go for mobilisation** and acquaint the masses with respective party programmes and also to **adopt mechanisms for a timely evaluation of internal democracy** in the parties.
- **Responsibility of Representation:** At this juncture, an important responsibility lies with the Opposition to **ensure coordination on common issues**, strategise on parliamentary procedures and above all, **endeavour to represent the suppressed voices.**
- **Lessons from Legacy:** The parliamentary opposition in India has much to learn from its own legacy.
  - It can **draw from its lessons to position itself as the representative voice** of democratic and egalitarian urges.
  - It also may be the opportune context to think of **new ways by which dissent and opposition can be sustained in a new media-induced public culture** that invariably breeds docility and compliance.
- **Role of Ruling Party Members:** While the opposition needs to **take up the responsibility to challenge and probe the government**, the idea of representation requires that all the **MPs are sensitive to public opinion.**
  - Moreover, independence of ruling party members is connected both to **intra-party democracy and intra-party factionalism.**
    - When parties have factions, they become democratic in their internal functioning.
- For the Parliament to regain its representative character, **ruling party members need to be more sincere** about the parliamentary system.

Note:

Conclusion

As a polity following the 'first past the post' system of voting, the role of the opposition is especially significant. Engendering a parliamentary opposition that is the conscience of the nation is important for India to function as a true democracy.

Democratising Political Parties

Democratic theory includes both **procedural** and **substantive democracy**. Procedural democracy can be said to refer to the practice of universal adult franchise, periodic elections, **secret ballot**, while substantive democracy can be said to refer to the internal democratic functioning of the parties, which purportedly represent the people.

The roots of the most pertinent challenges faced by Indian politics today can be traced to the **lack of intra-party democracy** in candidate selection and party elections.

Need for Democracy in Political Parties

- **Representation:** The absence of **intra-party democracy** has contributed to political parties becoming **closed autocratic structures**. This adversely impacts the constitutional right of all citizens to **equal political opportunity** to participate in politics and contest elections.
- **Less factionalism:** A leader with **strong grassroot connection** would not be sidelined. This will allow less factionalism and division of parties. Eg. Sharad Pawar formed Nationalist Congress Party (NCP), Mamata Banerjee formed All India Trinamool Congress after leaving Indian National Congress (INC).
- **Transparency:** A **transparent party structure** with **transparent processes** will allow proper ticket distribution and candidate selection. The selection would not be based on the whims of a few powerful leaders in the party but will represent the choice of the larger party.
- **Accountability:** A democratic party will be **accountable to its party members**, for they will lose elections in the next cycle for their shortcomings.
- **Decentralising power:** Every political party has **State and local body units**, an election at each level will allow creation of power centres at different levels. This will allow **decentralisation of power** and the decision making will take place at the ground level.
- **Criminalization of Politics:** As there is **no well-defined process for the distribution of tickets** to candidates before elections, tickets are given to candidates on the vague concept of **winnability**. This has led to an additional problem of **candidates with criminal backgrounds** contesting elections.

Reasons for Democracy Deficit

- **Dynasty politics:** The **lack of intra-party democracy** has also contributed to the growing **nepotism in political parties**. With senior party leaders fielding their kins in elections, the succession plans for "family" constituencies are being put in place.
- **Centralised structure of Political Parties:** The **centralised 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.
- **Lack of Law:** Currently, there is **no express provision** for internal democratic regulation of political parties in India and the only governing law is provided by Section 29A of the **Representation of the Peoples' Act, 1951** which provides for registration of political parties with the ECI. However, the ECI's power to require parties to hold regular internal elections for office bearers, and candidate selection is compromised in the **absence of any penal provisions**.
- **Personality cult:** There is a **tendency of hero worship** in people and many times a leader takes over the party and builds his own coterie, ending all forms of intra-party democracy. For example, **Mao Zedong** taking over the People's Republic of China; **Donald Trump** hijacking the Republican Party of the USA.
- **Easy to subvert internal elections:** The ability of existing repositories of power to subvert internal institutional processes to **consolidate power and maintain the status quo** is unquestionable.

Recommendations

- By **Law Commission**: The **170th report of the Law Commission of India** on reform of electoral laws, dedicated an entire chapter on the necessity of providing laws relating to internal democracy within parties.
  - It observed that a political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country.

Note:

- **NCRWC Report:** The **National Commission for Review of Working of Constitution** states that there should be a comprehensive legislation regulating the registration and functioning of political parties or alliances of parties in India.
- **2nd ARC Report:** The **Administrative Reforms Commission's (ARC)** 2008 **Ethics and Governance Report** pointed out that **corruption is caused by over-centralisation** since the more remotely power is exercised from the people, the greater is the distance between authority and accountability**.**

Way forward

- **Law to Compulsify Elections:** It shall be the **duty of the political party** to take appropriate steps to ensure holding of **elections at all levels**. The political party shall hold elections of national and State levels in **the presence of the observers** to be nominated by the ECI.
- **Amending Anti Defection Law:** The **Anti-Defection Act of 1985** requires the party legislators to act according to the party whip which is decided by the diktats of the highest party leadership. One way to democratise political parties is to promote **intra-party dissent**.
  - The anti defection law can be limited to disqualification of Members only if they vote against their party whip during important events such as **no-confidence motions.**
- **Reservation:** Seats can be **reserved for women** and members of the **backward community including minorities**.
- **Financial transparency/ Audit:** It must be made mandatory for all political parties to submit their statements of expenditure to the ECI, **within the prescribed time limit.** Political parties not submitting on time or in the prescribed format should be heavily penalized.
- **Empowering ECI:**
  - The ECI shall be competent to **inquire into allegations of non-compliance** of any of the provisions requiring elections.
  - **Penalties for non compliance**: ECI should have the **penal power to deregister** a party until free and fair elections in the party are conducted.

Conclusion

Politics is inseparable from political parties as they are the prime instruments for the execution of democracy in the country. Introducing **internal democracy and transparency within political parties** is important to promote **financial and electoral accountability**, **reduce corruption**, and **improve democratic functioning** of the country as a whole.

It is imperative that political parties open their eyes to growing calls for electoral political reforms and take steps towards bringing in **intra-party democracy.**

Reflections On The Quasi-Federal Democracy

Parliamentary disruption is quite a common phenomenon in the Indian political system. Amidst the disruption, a large number of Bills affecting the federal structure of the State (for eg. the three Farm Laws Bills), have been passed without any deliberation in the Parliament.

This has raised several issues with respect to structural flaws in India's Federal democracy which require serious consideration.

Indian Federalism

- Federalism in essence is a dual government system, constituting a Centre and a number of States.
- **Unique Characteristics of Indian Federalism**: Apart from the above Characteristics, Indian Federalism also has the below mentioned features:
  - **Single Constitution:** In India, there is only one Constitution. It is applicable to both the Union as a whole and the States. In a true federation, there are separate Constitutions for the Union and the States.
  - **Division of Power:** In a federation, **power is divided equally** between the two governments.
    - But in India, the Central government has been given more powers and made stronger than the State governments. **(In the Union List of Schedule 7, there are more and important items than in the State List)**
  - **Constitution is not strictly rigid:** The Constitution of India can be amended by the Indian Parliament as per the needs of time.
    - On many subjects, the Parliament does not need the approval of the State legislatures to amend the Constitution.(**Article 3 allows alteration of areas, boundaries or names of existing States)**.

Note:

- However, on certain subjects affecting States' functions and rights, the consent of half the States is necessary. **(Article 368 of the Constitution)**

- **Unified Judiciary:** India has a unified or integrated judicial system. The High Courts which are the highest Courts in the State come under the Supreme Court in the hierarchy.
- **Single Citizenship:** Indian States do not provide separate citizenship (Single Citizenship under **Part II of the Constitution**).
  - All the Indian citizens are the citizens of State. This is **unlike USA**, where there is dual citizenship: one, federal and the other, State.

- **Nature of Indian Constitution**
  - Federal theorist **K.C. Wheare** has **argued** that the nature of Indian Constitution is **quasi-federal** in nature.
  - The SC in ***S R Bommai vs Union of India (1994)***, a nine-judge Bench of Supreme Court held federalism a **part of the Basic Structure of the Constitution**.
  - The SC in ***Sat Pal v State of Punjab and Ors (1969)***, held that the Constitution of India is more Quasi-federal than federal or unitary.

Benefits of a Quasi Federal System:

- **National Integration:** The **Constituent Assembly's decision** to not create a true federation was taken after looking at the precarious situation of the time.
  - With creation of Pakistan, a Nation created on the basis of religion, there were voices of separate Nation States in other states too. As a result, various provisions like **Article 356** were added. A federal structure with unitary features allowed scope for such maneuver.
- **Cooperation and Coordination:** A Quasi Federal structure **allows Centre to coordinate National level programmes** like Pulse Polio Programme.
  - The recent case of **allocation of oxygen to different States as per their requirement during Covid-19** was possible because of a Central authority.
- **Single Market Economy:** Having a quasi federal structure allows India to be a single market for the World. The recent introduction of **Goods and Services Tax (GST)** has allowed creation of India as a single market.
  - Moreover, there is a **single Income Tax** in all of India and the States do not have power to impose it. Thus, Indian citizens are saved from double taxation.
- **Procedural Ease:** The Indian Parliamentary system with **its bicameral legislature** allows for easy passage of law as compared to passage in a true federation like the USA.
  - A bicameral legislature also ensures proper representation of States in the Upper House.
- **Resolving Inter State Conflicts:** A quasi federal structure allows **centre to act as an arbiter** in case of Inter State dispute. For eg, Border dispute and **River Water dispute (Article 262 Constitution of India: Adjudication of disputes relating to waters of inter-State rivers or river valleys)**.

Challenges of Quasi Federal system:

- **Abuse of Power by Centre:** The federal provisions of the Constitution can only be amended with consent of the States. **Schedule 7** of the Constitution provides for a separate List for Centre and State.
  - However, the Centre regularly violates the provision by legislating on State subjects. **For eg, the recent Farm Laws**.
- **Office of Governor:** The power vested upon the governor by the **Article 154 of the Indian Constitution** states that all the executive powers of the state are held by him.
  - This provision implies that the Governor can appoint the Chief Minister and the Advocate General of the State, and State Election Commissioners. This has been frequently misused by the Centre to favour its State unit or a regional Party which is in coalition to it.
  - The most paramount executive power at his disposal is that he can **recommend the imposition of constitutional Emergency in a state.**
- **Regionalism:** Regionalism establishes itself through demands for autonomy on the grounds of language, culture etc.
  - The nation thus faces the challenge of internal security in the form of insurgency and this causes upheavals in the basic notion of Indian federation.

Note:

Way Forward

Reforms at the **institutional and political level** can deepen the roots of federalism in India.

- The contentious role of the Governor in undermining the States' authority for Centre's interest needs to be reviewed.
- Proper utilisation of the institutional mechanism of the **Inter-State Council** must be ensured to develop political goodwill between the Centre and the states on contentious policy issues.
- The gradual widening of the **fiscal capacity of the states has to be legally guaranteed** without reducing the Centre's share.

Conclusion

The Chairman of Drafting Committee, **Dr. Ambedkar** had rightly said that, "*Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances*"

In view of the above, It would be more apt to consider Indian federalism as a separate type of federalism or ***Federalism sui generis***.

Representative Judiciary in India

The nation may soon have its first **woman Chief Justice of India (CJI- Justice BV Nagarathna**). This is a welcome step.

However it has raised the larger issue of low representation of women in the judiciary.

State of Women Representation in Judiciary

- **Women Representation in Supreme Court:** The first-ever woman judge (Justice Fatheema Beevi) in the Supreme Court (SC) was appointed in 1989, 39 years after the apex court came into existence.
  - Since then, only 10 women have become judges in the apex court.
- **Women Representation in High Courts:** The share of women judges in High Courts (HCs) was no better. Overall, women judges account for only 11% of HC judges.
  - In five HCs (Patna, Meghalaya, Manipur, Tripura and Uttarakhand high courts), no woman served as a judge, while in six others, their share was less than 10%.
  - The percentage of women judges at the Madras and Delhi High Courts was relatively high.
- **Women Representation in District Courts:** Women's representation in the judiciary is slightly better in the lower courts where 28% of the judges were women as of 2017. However, it was lower than 20% in Bihar, Jharkhand and Gujarat.

Reasons For Low Women Representatives

- **Opaque Collegium System Functioning**: More women tend to enter the lower judiciary at the entry level because of the method of recruitment through an entrance examination.
  - However, the higher judiciary has a collegium system, which has tended to be more opaque and, therefore, more likely to reflect bias.
- **No Women Reservation:** Many states have a reservation policy for women in the lower judiciary, which is missing in the high courts and Supreme Court.
  - Reservation quota for women is perhaps just one among many factors that encourages and facilitates more women to enter the system.
  - In states where other supporting factors are present in sufficient measure, women's quotas perhaps help bridge the gap in gender representation.
  - However, the Bill for giving 33% reservation to women in Parliament and state legislatures has not been passed till date, despite all major political parties publicly supporting it.
- **Familial Responsibilities:** Factors of age and family responsibilities also affect the elevation of women judges from the subordinate judicial services to the higher courts.
  - A lot of female judges join the service very late, which makes their chance of making it to the high courts or Supreme Court bleak.
  - Then there are some who are not able to focus on their growth as a judge because their focus shifts towards their families after joining service.
- **Not Enough Women in Litigation:** Since lawyers elevated from the bar to the bench form a significant proportion of judges in the high courts and Supreme Court, it is worth noting that the number of women advocates is still low, reducing the pool from which women judges can be selected.
  - While official data on the number of women in the legal profession as a whole is not available, a 2020 news report estimates that women make up only 15% of all enrolled advocates in the country.

Note:

- **No serious attempt** has been made during the past 70 years to give adequate representation to women either in the high courts or in the Supreme Court.
  - In India, women constitute about 50% of the total population and a large number of women are available in the Bar and in the judicial services for elevation but, in spite of that, the number of women judges is small.

Significance of High Women representation

- **Motivates More Women to Seek Justice:** Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice and enforce their rights through the courts.
  - Though not true in all cases, having a judge who is the same gender as litigant, can play a role in setting the litigant's mind at ease.
  - For instance, think of a transgender woman as a judge listening to the case of other trans women. That would inspire confidence in the litigant, as well.
- **Different Point of Views:** It is definitely valuable to have representation of various marginalities in the judiciary because of their different lived experiences.
  - Diversity on the bench would definitely bring in alternative and inclusive perspectives to statutory interpretations.
- **Increase Judicial Reasoning:** Increased judicial diversity enriches and strengthens the ability of judicial reasoning to encompass and respond to varied social contexts and experiences.
  - This can improve justice sector responses to the needs of women and marginalized groups

Way Forward

- **Changing Patriarchal Mindset:** The need of the hour is to correct the patriarchal mindset in recommending and approving the names of those who are to be elevated as high court judges and come out with more representation to worthy women lawyers and district judges for elevation.
  - Unless women are empowered, justice cannot be done to them.
- **Provision of Reservation:** It is high time that all those who matter in the appointment of judges to the high court and the Supreme Court, realise the need of giving adequate representation to women in the judiciary.
  - In fact, the superior judiciary should also have horizontal reservation for women such as subordinate judiciary without diluting merit.
- **Vacancies as an Opportunity:** There are more than 40% of the vacancies in high courts. But it gives an opportunity to make up for the deficiency in the matter of representation to women in higher judiciary.
- **Removing Gender Discrimination:** It will be a step in the right direction and ultimately may lead to more social and gender harmony in the judiciary.
  - Any step in this direction will be a benchmark for society with many more young women students coming forward and opting for law as a profession.

Conclusion

To be truly diverse, the Indian judiciary would need representation of judges from not only different gender identities, including trans and non-binary but also different caste, socioeconomic, religious, and regional backgrounds.

It would also mean appointment of judges from doubly marginalised sections to allow for the representation of intersectional voices.

Impartial Speaker For Thriving Democracy

The **Office of the Speaker** occupies a pivotal position in our parliamentary democracy. It has been said of the Office of the Speaker that while the members of Parliament represent the individual constituencies, the Speaker represents the full authority of the House itself.

He/She symbolises the dignity and power of the House over which he/she is presiding. Therefore, it is expected that the holder of this Office of high dignity has to be one who can represent the House in all its manifestations.

However, over the last two decades, paralysing Parliament has become the standard operating procedure of every Opposition party. The misuse of the post of speaker in the functioning of India's Parliament — and state assemblies as well — is one among many reasons for falling levels and productivity of the legislatures.

Importance of Speaker's Independence

- **Supreme Authority:** In the Lok Sabha the Speaker is the supreme authority. He has vast powers, and it is his primary duty to ensure the orderly conduct of the business of the House.

Note:

- **Symbol of Nation's Freedom:** Jawaharlal Nehru referred to the Speaker as "the symbol of the nation's freedom and liberty" and emphasised that Speakers should be men of "outstanding ability and impartiality".
- **Guardian of the House:** MN Kaul and SL Shakdher referred to the speaker as the **conscience and guardian of the House**.
  - As the principal spokesperson of the Lok Sabha, the Speaker represents its **collective voice**.

Roles and Responsibility of Speaker

- It is the Speaker's duty to decide what issues will be taken up for discussion.
- **Interpretation:** He/She is the final interpreter of the provisions of the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha and the parliamentary precedents, within the House.
- **Joint Sitting of Both Houses:** He/She presides over a **joint sitting** of the two Houses of Parliament.
- **Adjournment Motion:** He has the sole discretion to permit an adjournment motion to be tabled or to admit a calling attention notice, if the issue is of urgent public importance.
- **Money Bill:** He/She decides whether a bill is a **money bill** or not, and his/her decision on this question is final.
- **Disqualifying Members:** It is the speaker who decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the **Tenth Schedule**.
- **Constitution of Committees:** The Committees of the House are constituted by the speaker and function under the speaker's overall direction.
  - The Chairmen of all Parliamentary Committees are nominated by him/her.

Issues with the Post of Speaker in Lok Sabha

- **Favour Ruling Party:** Several judgments on the **anti-defection law** have been rendered by the Supreme Court. A common factor that shows up in these rulings is the **blatant, partisan conduct of speakers** in various state assemblies.
  - Over the last decade and more, an impartial and independent Speaker is difficult to find.
- **Party Interest Over National Interest:** The present practice of the Speaker continuing to be an active member of the ruling party has the inevitable result of his refusing to allow any debate or discussion that may be essential in national interest but may embarrass the ruling party.
- **Increased Disruption in Parliament:** Partisan conduct of the speaker and his apathy towards opposition parties' demands many times leads to constant disruption of Parliament by the Opposition.
  - Indeed, a Speaker who continues to be a member of the ruling party is like an umpire being appointed by the batting side.
  - The persistent disruption of Parliament causes extensive damage not only to the prestige of the House, but also frustrates the primary function of any legislature: The responsibility to make laws for the good governance of the country after careful debate and deliberation.
- **Bills are Not Referred to Committees:** The stalling of parliamentary proceedings has led to the passing of important bills in several sessions without any discussion.
  - In the 2021 monsoon session, not a single bill was referred to any select committee.

Way Forward

- There must be two essential qualities in a Speaker: **Independence and impartiality**.
- **Independence of Speaker:** The separation of powers is part of the **basic structure** of our Constitution. If Parliament ceases to be relevant, the foundation of our democracy will progressively get weaker.
  - It is imperative that the Speaker of every legislature resigns from his party to honour his constitutional obligation of independence and impartiality.
  - For example, in 1967, late N Sanjiva Reddy resigned from his party when he became the Speaker.
- **Choose the Best Option:** Indeed, the option is a binary: Either allow Parliament and state legislatures to descend into terminal decline or make the Speaker truly independent and let every legislature perform its constitutional function of deliberating on matters of public importance and passing laws after proper debate.

Note:

- **Responsibility of Speaker to Ensure Continuation of Debates:** In 1951, a nine-judge bench of the Supreme Court (In Re Delhi Laws Act Case) held that essential legislative functions cannot be delegated to the bureaucracy; law-making must remain the domain of the legislature.
  - The speaker must ensure that the legislature meets continuously and debate the bills.
- As per **GV Mavalankar**, the first Speaker, once a person is elected Speaker, he should rise above parties, above politics. He should belong to all the members or belong to none.
  - He should hold the scales of justice evenly, irrespective of party or person.

Conclusion

The Office of the Speaker in India is a living and dynamic institution which deals with the actual needs and problems of Parliament in the performance of its functions.

The founding fathers of our Constitution had recognised the importance of this Office in our democratic set-up, and it was this recognition that guided them in establishing this Office as one of the prominent and dignified ones in the scheme of governance of the country.

Agenda For The Ministry of Cooperation

Cooperatives, as an organic idea and an organisational platform, are relevant, if re-imagined and implemented skilfully.

Carving out a **ministry for cooperation** must be understood in the context of the cooperative sector's immense transformative power that has not been optimally realised so far.

The objective of the new ministry is to **strive towards creating a legal, administrative and policy framework**, facilitating the "**ease of doing business" for cooperatives** and helping the emergence of "**multi state cooperative societies**".

The emphasis is on transforming cooperatives from small entities to big enterprises, facilitated and sustained by enabling businesses to address the problem of entry and growth barriers.

However, the ministry of cooperation will have to take various measures to bring the most benefits of the cooperative societies.

Significance of Cooperatives

- **Protect Vulnerable From Market Distortion:** Cooperation is essential because the market cannot take care of the needs of the vulnerable. Wherever cooperatives have succeeded, they have addressed the issue of market distortions.
  - They have also compressed the supply chain by removing intermediaries, ensuring better prices for producers and competitive rates for consumers.
- **Prevent Distress Sales:** Cooperative societies, equipped with basic infrastructure and financial resources, prevent distress sales and ensure bargaining power.
- **Decentralised Development:** They have the potential to realise the paradigm of decentralised development.
  - Just as **panchayati raj institutions(PRI)** carry forward decentralised rural development, cooperative societies can become the medium to cater to business requirements.
- **Successful Business Models:** Exist in at least two sectors — **dairy and fertilisers**.
  - Organic leadership, the involvement of members, techno-managerial efficiency, economies of scale, product diversification, culture of innovation, commitment to customers and sustained brand promotion are factors that account for their success.
  - These practices can be replicated for other sectors as well

Challenges With Cooperative Society

- Mismanagement and Manipulation:
  - A hugely large membership turns out to be mismanaged unless some secure methods are employed to manage such co-operatives.
  - In the elections to the governing bodies, money became such a powerful tool that the top posts of chairman and vice-chairman usually went to the richest farmers who manipulated the organization for their benefits.
- **Lack of Awareness:**
  - People are not well informed about the objectives of the Movement, rules and regulations of co-operative institutions.
- **Restricted Coverage:**
  - Most of these societies are confined to a few members and their operations extended to only one or two villages.

Note:

- **Functional Weakness:**
  - The Co-operative Movement has suffered from inadequacy of trained personnel.

Way Forward

- **Caters Local As Well As National Need:** At the local level, cooperative societies should continue to cater to the needs of their members across segments of the primary sector.
  - At the national level, they must emerge as organisations capable of competing with the behemoths of the private sector.
- **Scale of Economy:** Segments of the primary sector can be successfully scaled up and turned into cooperatives, followed by segments of secondary and tertiary sectors.
- **Promote Brand of Cooperative:** There will also be a need to promote the brand of cooperatives through upgradation and value addition to the quality of products and services delivered by them.
  - This will entail expanding production, operation, distribution and scale of the economy.
- **Flexibility to Keep Abreast With Business Environment**: The Act, rules and by-laws will be required to provide flexibility to keep abreast with the business environment.
  - Further, the management of multi state cooperative societies will have to be vested in the hands of market-driven managers capable of ensuring efficiency.
  - The board of directors of multi state cooperative societies will have the responsibility to oversee business decisions to ensure they don't lose sight of ethics and social responsibility.
- **Avoiding Overregulation:** The equation between the government and cooperatives, **between control and autonomy**, is fraught with dilemma.
  - With over-regulation, cooperatives will end up losing their autonomous character.
  - With the government leaving cooperative societies to fend for themselves, these societies can flounder. It is difficult but desirable that this dichotomy is resolved.
- **Transparency:** The government will have to ensure that processes are transparent. The integrity of the managing committees and their operational autonomy is necessary.
- **Training And Capacity Building:** Cooperative departments will have to evaluate the training needs of cooperatives, along with designing and imparting training interventions to ensure that they are at par with the current business environment.

Conclusion

All stakeholders including the government, institutions for cooperative development and the entire cooperative movement will need to collaborate to achieve the aim of community- and people-centric development involving modern business practices at the local and national level.

It is hoped that the new ministry will create the necessary synergy in the system and will act as a force multiplier.

Parliamentary Disruption

Disruption is replacing discussion as the foundation of our legislative functioning. The passionate debate is taking place everywhere other than in Parliament.

Moreover, the government is considering curtailing the monsoon session of Parliament, if this happens, then all four sessions since last year would have been cut short. The first two because of **Covid-19**, 2021 budget session because of **campaigning in state elections**, and the **ongoing session on account of disruptions**.

Parliament's job is to conduct discussions, but in recent years Parliament proceedings are marred by frequent disruptions.

Parliamentary Disruptions - Data

- A PRS (PRS Legislative Research) report says during the 15th Lok Sabha (2009-14), frequent disruptions of Parliamentary proceedings have resulted in the Lok Sabha working for 61% and Rajya Sabha for 66% of its scheduled time.
- Another PRS report said, the 16th Lok Sabha (2014-19) lost 16% of its scheduled time to disruptions, better than the 15th Lok Sabha (37%), but worse than the 14th Lok Sabha (13%).
- The Rajya Sabha lost 36% of its scheduled time. In the 15th and 14th Lok Sabhas, it had lost 32% and 14% of its scheduled time respectively.

Note:

Reasons for Disruption

- **Discussion on Matters of Controversy and Public Importance:** It appears that a number of disruptions in Parliament stem from discussions on either **listed topics that are controversial**, or **unlisted matters that are of public importance.**
  - The matters such as the **Pegasus Project**, **Citizenship Amendment Act,2019** are such examples of causing disruptions.
- **Disruptions May Help Ruling Party Evade Responsibility:** The maximum number of disruptions have been found to take place in the **Question Hour** and the **Zero Hour**.
  - While these disruptions are largely attributable to the behaviour of members of the opposition, they may also be a consequence of executive action.
- **Lack of Dedicated Time For Unlisted Discussion:** Disruptions also get triggered due to lack of adequate time for raising questions and objections in respect of matters that are not listed for discussion in a particular, or during a particular session.
- **Scarce Resort to Disciplinary Powers:**Another systemic reason why disruptions are not effectively prevented relates to the scarce resort to disciplinary powers by the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha.
  - As a result, most members engaging in disorderly conduct are neither deterred nor restrained from engaging in such conduct.
- **Other Reasons:** In 2001, a conference was held in the Central Hall of Parliament to discuss discipline and decorum in legislatures. It identified four reasons behind the disorderly conduct by MPs.
  - Dissatisfaction in MPs because of inadequate time for airing their grievances.
  - An unresponsive attitude of the government and the retaliatory posture of the treasury benches.
  - Political parties not adhering to parliamentary norms and disciplining their members.
  - The absence of prompt action against disrupting MPs under the legislature's rules.
- **Party Politics:** When a contentious issue crops up, the government dithers on debating it, leading to Opposition MPs violating the conduct rules and disrupting the proceedings of Parliament.
- Since they have the support of their parties in breaking the rules, the threat of suspension from the House does not deter them.

Issues

- **Infringement of Constitutional Right:** The right to ask questions flows from **Article 75** of Indian constitution which says that the council of ministers shall be collectively responsible to the House of the people and people of the country in general.
  - Thus, the curtailment of question hour and zero hour undermines the principle of parliamentary oversight over executive.
- **A Hindrance To Representative Democracy:** Parliamentary discussion is a manifestation of a representative kind of democracy in operation, in the sense that representation of the people directly questions the government on matters of governance.

Way Forward

- **Code of Conduct:** To curb disorder in Parliament there is a need for strict enforcement of code of conduct for MPs and MLAs.
- These ideas are not new. For example, the Lok Sabha has had a simple code of conduct for its MPs since 1952. Newer forms of protest led to the updating of these rules in 1989.
- The Lok Sabha Speaker should suspend MPs not following such codes and obstructing the Houses' business.
- **Increasing Number of Working Days:** Recommended by the 2001 conference, there should be an increase in the working days of Parliament. It resolved that Parliament should meet for 110 days every year and state legislative assemblies for 90 days.
  - In the United Kingdom, where Parliament meets over 100 days a year, opposition parties get 20 days on which they decide the agenda for discussion in Parliament. Canada also has a similar concept of opposition days.
- **Democratic Participation:** Not all disruptions in the Parliament are necessarily counter-productive. Thus, the government of the day needs to be more democratic and allow the opposition to put their ideas in free manner.
- **Proposals in Individual Capacity:**
  - In 2019, Rajya Sabha Deputy Chairperson mooted an idea of evolving a **'Parliament Disruption Index'** to monitor disruptions in Parliament and state legislature.
  - In the Lok Sabha, some members proposed **automatic suspension of members who cause disruption** and rush to the Well of the House.

Note:

- But the proposals are still in a nascent stage.

- **Productivity Meter:** The overall productivity of the session also can be studied and disseminated to the public on a weekly basis.
  - For this, a "Productivity Meter" could be created which would take into consideration the number of hours that were wasted on disruptions and adjournments, and monitor the productivity of the day-to-day working of both Houses of Parliament.

Conclusion

Democracy is judged by the debate it encourages and sustains. More strengthening of the Parliament is the solution to prevent disruption of its proceedings. There should be a deepening of its role as the forum for deliberation on critical national issues.

Democide: Causes And The Way Forward

The global surveys are everywhere reporting dipping confidence in democracy and marked jumps in citizens' frustrations with government corruption and incompetence. Young people are the least satisfied with democracy — much more disaffected than previous generations at the same age.

In its **Democracy Report 2021**, Sweden's V-Dem Institute noted that India "has almost lost its status as a democracy". It ranked India below Sierra Leone, Guatemala and Hungary.

In this context, it is important to understand the true meaning and challenges the democracy in India faces.

True Meaning of Democracy

- Democracy is much more than pressing a button or marking a box on a ballot paper. It goes beyond the mathematical certitude of election results and majority rule.
- It's not reducible to lawful rule through independent courts or attending local public meetings.
- Democracy is a **whole way of life**. It is freedom from hunger, humiliation and violence.
- Democracy is saying no to every form of **human and non-human indignity**.
- It is **respect for women, tenderness with children**, and **access to jobs** that bring satisfaction and sufficient reward to live comfortably.
- In a healthy democracy, citizens are not forced to travel in buses and trains like livestock, wade through **dirty water from overrunning sewers**, or **breathe poisonous air**.
- Democracy is equal **access to decent medical care** and sympathy for those who have fallen behind.
- It's the **rejection of the dogma** that things can't be changed because they're "naturally" fixed in stone.

Causes For Death of Democracy (Democide)

- **Government Failure:** Wild rumours and talk of conspiracies flourish. Street protests and outbreaks of uncontrolled violence happen. Fears of civil unrest spread. The armed forces grow agitated.
  - As the government totters, the army moves from its barracks onto the streets to quell unrest and take control. Democracy is finally buried in a grave it slowly dug for itself.
  - The military coup d□états against the elected governments of Egypt (2013), Thailand (2014), **Myanmar** and Tunisia (2021) are some of the examples.
- **Weak Institutions:** When the judiciary becomes vulnerable to cynicism, political meddling and state capture, threat to democratic values and constitutional morals emerges.
- **Social Emergencies:** When social fabric weakens, the threat to democracy emerges. Democracy suffers a slow-motion social death.
  - When a constitution promises its citizens justice, liberty and equality, the division among and shattering of social life induce a sense of legal powerlessness among citizens.
- **Inequality in the Society:** Massive imbalances of wealth, chronic violence, famine and unevenly distributed life chances also make a mockery of the ethical principle that in a democracy people can live as citizen partners of equal social worth.
- **Unavailability of Basic Amenities:** Domestic violence, rotten health care, widespread feelings of social unhappiness, and daily shortages of food and housing destroy people's dignity. It kills the spirit and substance of democracy.
- **Vulnerable Remain Unheard:** Citizens' ability to strike back, to deliver millions of mutinies against the rich and powerful, is inherent in a democracy.
  - But the brute fact is social indignity undermines citizens' capacity to take an active interest in public affairs, and to check and humble the powerful.

Note:

- **Demagoguery:** When democratically elected governments cease to be held accountable by a society weakened by poor health, low morale, and joblessness, **demagogues** are prone to blindness and ineptitude.
  - They make careless, foolish, and incompetent decisions that reinforce social inequities.
  - Those who exercise power in government ministries, corporations, and public/private projects aren't subject to democratic rules of public accountability.

Demagoguery

- It is political activity or practices that seek support by appealing to the desires and prejudices of ordinary people rather than by using rational argument.

- **Ineffective Redistribution:** In the absence of redistributive public welfare policies that guarantee sufficient food, shelter, security, education, and health care to the downtrodden, the ideal of democracy weakens among citizens.
  - Democracy begins to resemble a fancy mask worn by wealthy political predators.
  - Society is subordinated to the state. People are expected to behave as loyal subjects, or else suffer the consequences.

Way Forward

- **Constitutional Renaissance:** It refers to the process of **constant repair and renewal of "constitutionalism"** as a function of adjudication.
  - It includes the following:
    - Obeisance to the constitutional spirit, vision and letter.
    - The interpretation of the constitution by the judiciary in a way that glorifies its democratic spirit and reflects a 'reverence' towards the constitution.
    - **Protection of "rights of all,** which means that people are true sovereign and they should not be treated as just 'subjects' and all forms of public power should be placed at the service of constitutional ends.
- **Constitutional Morality:** It specifies norms for institutions to survive and an expectation of behaviour that will meet not just the text but the soul of the Constitution. It also makes the governing institutions and representatives accountable.
- **Purposive Interpretation:** This refers to the interpretation of the constitution by the judiciary in light of the interest of the people of India and maintaining institutional integrity.
- **Good Governance:** The ultimate motive of constitution-related judicial articulation and government schemes and programmes should be enabling a good governance system.
- **Voices Should be Heard:** The Government should hear criticism rather than rejecting it outrightly. Suggestions on eroding democratic values need a thoughtful, and respectful response.
- **Checks on Executive Powers:** The press and the judiciary, which are considered the pillars of India's Democracy, require it to be independent of any executive interference to enable auditing of the
- **Need For Strong Opposition:** Strong democracy requires strong opposition. Without an alternative choice, the very objective of election to provide a check on arbitrary power gets defeated.
- **Social Equality:** If redistributive public welfare policies are effective, the inequality in the society would be reduced. Thus, it must be the priority of the government to maintain social and economic equality and inclusive growth.

Conclusion

The institutionalization of constitutional democracy has helped the people of India realize the importance of democracy and inculcate democratic sensibilities among them. At the same time, it is important that all the government organs work in harmony to uphold the trust people of the country have held in them and ensure objectives of true democracy.

New Challenges to Federalism

Federalism believes in shared sovereignty and territoriality between multiple constituent units of governance. In India, Federalism is a device to accommodate India's multiple linguistic, religious, and ethnic identities.

Presently, in different parts of the world, the federal system of government is facing some of its biggest trials yet, from the Covid-19 pandemic. However, much before the pandemic, the federal principles in India have been under pressure, to co-produce a political culture of flexible federalism.

Note:

Today, the union and states often share a conflicting stance on issues like vaccines, **Goods and Services Tax (GST)**, appointment of Chief Secretary, and much more. This growing tension can also be seen in a possibility of re-emergence of the Third front Government (Union government formed by coalition of several regional parties).

However, Federalism in India, like always has its own political relevance that needs to be protected.

New Challenges to India's Federalism

- **Federalism & Development Challenge:** To accelerate progress, the Indian have proposed several schemes and visions which may undermine the federal principle.
  - For example, developmental narratives like '**one nation, one market**', '**one nation, one ration card**', '**one nation, one grid**'.
- **Undermining States:** The downgrading of a full-fledged State in **Jammu and Kashmir into a Union Territory in 2019**, or more recently, the notification of the **NCT of Delhi (Amendment) Act, 2021**, reflected the centralising tendencies of the Union government.
  - Similarly, the union government had invoked the Epidemic Diseases Act and the Disaster Management Act, centralising the powers to deal with the pandemic.
  - However, state consultation is a legislative mandate cast upon the centre under these acts and binding Covid-19 guidelines are being issued by the Centre to the States.
- **Increasing Inter-State Divergence:** Growing divergence between richer (southern & western) and poorer States (northern & eastern), remains an important source of tension in inter-State relations that can become a real impediment to collective action amongst States.
  - This has created a context where collective action amongst States becomes difficult as poorer regions of India contribute far less to the economy but require greater fiscal resources to overcome their economic fragilities.
- **Silent Fiscal Crisis:** The realities of India's macro-fiscal position risk increasing the fragility of State finances.
  - Weak fiscal management has brought the Union government on the brink of what economist Rathin Roy has called a silent fiscal crisis.
  - The Union's response has been to squeeze revenue from States by increasing cesses.

Way Forward

- **Inter-State Platform:** An inter-State platform that brings States together in a routine dialogue on matters of fiscal federalism could be the starting point for building trust and a common agenda.
  - In this context, the Inter-state council can be revived.
  - Economic growth trajectories since liberalisation have been characterised by growing spatial divergence.
- **Relaxing FRBM Norms:** The relaxation of limits imposed by the **FRBM Act**, regarding the market borrowings by the states, is a step in the right direction.
  - However, these borrowings can be backed by sovereign guarantee by the Union Government.
  - Moreover, the Union government can provide money to states so that they can take necessary action to deal with the crisis at the state level.
- **Political Will:** Upholding federalism requires political maturity and a commitment to the federal principle. A politics for deepening federalism will need to overcome a nationalist rhetoric that pits federalism against nationalism and development.

Conclusion

The most fundamental lesson from India's experience with the second wave of the COVID-19 pandemic, is that managing a grave national crisis requires healthy cooperation between the Centre and states.

All India Judicial Service

The government of India has recently proposed to pass a bill to establish an All-India Judicial Service (AIJS) to recruit officers for subordinate courts through an entrance test.

The provision of an all-India judicial service (AIJS) on the lines of the Indian Administrative Service and the Indian Police Service was mooted soon after Independence.

In the present times, the idea of AIJS is being proposed in the **backdrop of judicial reforms**, especially to check persisting vacancies in judiciary and pendency of cases. The establishment of AIJS is a positive step, but faces many constitutional and legal hurdles.

Constitutional Perspective To AIJS

- The AIJS was first proposed by the 14th report of the Law Commission in 1958.

Note:

- The 42nd Constitutional amendment in 1976 amended Article 312 (1) empowering Parliament to make laws for the creation of one or more All-India Services, including an AIJS, common to the Union and the States.
- Under Article 312, Rajya Sabha is required to pass a resolution supported by not less than two-thirds of its members present and voting. Thereafter, Parliament has to enact a law creating the AIJS.
  - This means no constitutional amendment will be required for establishment of AIJS.
- The Supreme Court of India also endorsed the same in the All India Judges Association vs. Union of India' case (1993) laying down that AIJS should be set up.

Advantages of AIJS

- **Addressing Judges To Population Ratio:** A Law Commission report (1987) recommended that India should have 50 judges per million population as against 10.50 judges (then).
  - Now, the figure has crossed 20 judges in terms of the sanctioned strength, but it's nothing compared to the US or the UK — 107 and 51 judges per million people, respectively.
  - Thus, AIJS envisages to bridge the underlying gap in judicial vaccines.
- **Higher Representation of Marginalised Sections of Society:** According to the Government, the AIJS to be an ideal solution for equal representation of the marginalised and deprived sections of society.
- **Attracting Talent Pool:** The government believes that if such a service comes up, it would help create a pool of talented people who could later become a part of the higher judiciary
- **Bottoms-Up Approach:** The bottoms-up approach in the recruitment would also address issues like corruption and nepotism in the lower judiciary. It will improve the quality of justice dispensation in the lower levels of society.

Associated Challenges

- **Dichotomy Betwwen Articles 233 and 312:** As per Article 233, recruitment to subordinate judiciary is the prerogative of the State.
  - Due to this, many states and high courts have opposed the idea on the ground that it would go against federalism.
  - If the fundamental power of the States to make such rules and govern the appointment of district judges is taken away, it may be against the principle of federalism and the basic structure doctrine.

Note:

- Article 233(1) of the Constitution lays down that "appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State".

- **Language Barrier:** Since cases in lower courts are argued in local languages, there have been apprehensions as to how a person from north India can hold hearings in a southern state.
  - Thus, another fundamental concern regarding AIJS is the language barrier.
- **Constitutional Limitation:** Clause 3 of Article 312 places a restriction that AIJS shall not include a post inferior to that of a district judge.
  - Thus, appointment of subordinate judiciary through AIJS, may face a constitutional barrier.
- **Dilution of Adminstarrtive Control of High Court:** Creation of AIJS would lead to an erosion of control of the High Courts over the subordinate judiciary, which might affect the judiciary's independence.

Conclusion

The insurmountable number of pending cases calls for establishment of a recruitment system that recruits efficient judges in large numbers for speedy dispensation of cases. However, before AIJS gets into the legislative framework, there is a need to build consensus and take a decisive step towards the AIJS.

Right To Be Forgotten

Recently, the Delhi high court has granted relief to a petitioner seeking to exercise '**right to be forgotten** (RTBF). The petitioner, who was earlier acquitted in a narcotics case, had come before the high court praying for the removal of the judgment of his acquittal from online platforms.

The court's order assumes significance by removing it from online platforms to protect an individual's right to privacy and the need to balance it with the right to information of the public and maintenance of transparency in judicial records.

Note:

The Right To Be Forgotten

- The 'right to be forgotten' is the right to have publicly available personal information removed from the internet, search, databases, websites or any other public platforms, once the personal information in question is no longer necessary, or relevant.
- RTBF gained currency after the 2014 decision of the Court of Justice of the European Union ("CJEU") in the Google Spain case.
- RTBF has been recognised as a statutory right in the European Union under the **General Data Protection Regulation (GDPR)**, and has been upheld by a number of courts in the United Kingdom, and in Europe.
- In India, there is no law that specifically provides for the right to be forgotten. However, the **Personal Data Protection Bill 2019** recognised this right.

Google Spain Case:

- In this case, the CJEU ruled in favour of a Spanish national who had requested Google to remove two links to newspaper articles about him.
- It held that personal information found to be inadequate, irrelevant, or excessive in relation to the purposes of the processing should be erased, even if it was published lawfully.

RTBF in India & Need

- In India, RTBF doesn't have legislative sanction yet. However, in the Puttaswamy judgment, the Supreme court held that the right to privacy is a fundamental right.
- In the Puttaswamy judgment, the Supreme Court observed that the "right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the Internet".
- Currently, many High courts have expressly recognised the right to be forgotten in their judgments, taking note of international jurisprudence on this right.
- With deeper integration of technology and the digitisation of data, a simple Google search can yield a plethora of information about an individual, which may hurt a person's reputation & dignity guaranteed under Article 21 of the constitution.
- At a time when the judiciary is entering Phase III of its ambitious eCourts project, rights such as RTBF will have to be coded into any technology solution that is developed for judicial data storage and management.

Challenges Associated With Right to Be Forgotten

- **Legal Challenge:** Right to be forgotten may get into conflict with matters involving public records.
  - For instance, judgments have always been treated as public records and fall within the definition of a public document according to Section 74 of the Indian Evidence Act, 1872.
  - According to a report by Vidhi Centre for Legal Policy, RTBF cannot be extended to official public records, especially judicial records as that would undermine public faith in the judicial system in the long run.
- **Information in the Public Domain is Like Toothpaste:** Like once toothpaste is out of the tube one can't get it back in and once the information is in the public domain, in the digital era, it will never go away.
- **Individual vs Society:** Right to be forgotten creates a dilemma between the right to privacy of individuals and the right to information of society and freedom of press.

Way Forward

- **Making Privacy as Reasonable Restriction:** In order to implement the right to be forgotten, privacy needs to be added as a ground for reasonable restriction under Article 19 (2) by a major amendment to the Constitution.
- **Balancing Privacy & Information:** There is need for development of framework, the right to be forgotten can be restricted. For example:
  - In exercising the right of freedom of expression and information;
  - Compliance with legal obligations;
  - The performance of a task carried out in public interest, or public health;
  - Archiving purposes in the public interest;
  - Scientific or historical research purposes or statistical purposes; or
  - The establishment, exercise or defence of legal claims.

Conclusion

Given that the Personal Data Protection Bill 2019 is already tabled in parliament, there needs to be a comprehensive debate. So as to minimize the conflict between the two fundamental rights that form the crucial part of the golden trinity (Art. 14,19 and 21) of the Indian constitution.

Note:

Union vs. Centre

Recently, the Tamil Nadu government has decided to shun the usage of the term 'Central government' in its official communications and replace it with 'Union government'.

After going through the 395 Articles in 22 Parts and eight Schedules in the original Constitution, it can be stated that the term 'Centre' or 'Central government' is nowhere used.

Even though there is no reference to the 'Central government' in the original Constitution, the General Clauses Act, 1897 gives a definition for it.

Therefore, the real question is whether such definition for 'Central government' is constitutional as the Constitution itself does not approve of centralising power.

Origin: Union Government & Central Government

- Under the British rule, the administration that the governor general ran was often described as the "Central Government" .
  - In 1919, for example, when a new Government of India Act passed by Britain's parliament introduced a rudimentary form of self-government and federalism in India, powers were split between "central" and "provincial" subjects
- The modern term "Union" was first officially used in 1946 by the Cabinet Mission Plan, a British scheme to keep India united after transfer of power.
- Many members of the Constituent Assembly were of the opinion that the principles of the British Cabinet Mission Plan (1946) be adopted.
  - Cabinet mission contemplated a Central government with very limited powers whereas the provinces had substantial autonomy.
- However, the Partition and the violence of 1947 in Kashmir forced the Constituent Assembly to revise its approach and it was resolved in favour of a strong Centre.
- Due to this, the possibility of the secession of States from the Union weighed on the minds of the drafters of the Constitution and ensured that the Indian Union was "indestructible".
- Thus, Article 1 of Indian constitution states that "India, that is Bharat, shall be a Union of States".

Difference Between Union & Centre

- According to constitution expert Subash Kashyap, from the point of the usage of the words, 'centre' indicates a point in the middle of a circle, whereas 'Union' is the whole circle.
- In India, the relationship between the so-called 'Centre' and States, as per the Constitution, is actually a relationship between the whole and its parts.
- The sharing of powers between the Union and the States is not restricted to the executive organ of the government, it extends to other organs of government also.
- For instance, the judiciary is designed in the Constitution to ensure that the Supreme Court, the tallest court in the country, has no superintendence over the High Court.
  - Though the Supreme Court has appellate jurisdiction — not only over High Courts but also over other courts and tribunals — they are not declared to be subordinate to it.
  - In fact, the High Courts have wider powers to issue prerogative writs despite having the power of superintendence over the district and subordinate courts.
- Parliament and Assemblies identify their boundaries and are circumspect to not cross their boundaries when it comes to the subject matter on which laws are made.

Associated Issues With the Term Central Government

- **Discarded By Constituent Assembly:** The word 'Centre' is not used in the Constitution; the makers of the Constitution specifically discarded it and instead used the word 'Union'.
  - BR Ambedkar clarified that " Both the Union and the States are created by the Constitution, both derive their respective authority from the Constitution.
  - According to him, the one is not subordinate to the other in its own field and the authority of one is to coordinate with that of the other".
- **Colonial Legacy: '**Centre' is a hangover from the colonial period because the bureaucracy in the the Secretariat, New Delhi), who are used to using the word 'Central Laws,' 'Central legislature,' etc, and so everyone else, including the media, started using the word.

Note:

- **Conflict With Idea of Federalism:** India is a federal government. The power to govern is divided between a government for the whole country, which is responsible for subjects of common national interest, and the states, which look after the detailed day-to-day governing of the state.
  - According to Subash Kashyap, using the term 'Centre' or 'central government' would mean state governments are subservient to it.

Conclusion

The members of the Constituent Assembly were very cautious of not using the word 'Centre' or 'Central government' in the Constitution as they intended to keep away the tendency of centralising of powers in one unit. The 'Union government' or the 'Government of India' has a unifying effect as the message sought to be given is that the government is of all.

India's Election Funding System

In a democracy, political power is in theory supposed to flow from popular or people's approval, as measured by results in elections. However, in practice, this system is often distorted by a number of factors, financial power being the most prominent of them.

This leads to the scenario, where the Political parties often shape policy not as per the desires of their voters but their funders.

Moreover, the government has brought many legal changes in **Foreign Contribution (Regulation) Act (FCRA), 1976**, **Companies Act, 2013**, which may increase the influence of anonymous corporate funding in the elections.

Further, the lack of transparency in political funding is a cause for concern and **electoral bonds** have made it worse. Unfortunately, these changes in India's election funding system creates more loopholes which allows moneyed interest groups to clandestinely influence political parties.

Issues In India's Election Funding System

- **Electoral Bonds:** In 2017, the introduction of electoral bonds brought a new form of anonymity to thousands of crores of donations.
  - Under the electoral bond scheme, only the ruling party via the State Bank of India (SBI) has a full account of all donations being made via electoral bonds.
  - Parliament, the Election Commission and the Opposition parties do not have this information, nor do the public.
  - In effect, electoral bonds give political power to companies, wealthy individual donors, and foreign entities, thus diluting the universal franchise of one voter-one vote.
- **Amendments in FCRA, 1976:** In 2014, the Delhi High Court held that two national political parties were guilty of illegally accepting donations from two companies registered in India but whose controlling shareholder was a foreign company.
  - In 2016 and 2018, the government amended the FCRA through the annual Finance Bills, to retrospectively legalise the violations.
  - As per the amendment, earlier, foreign companies or companies where the controlling stake was held by a foreign company couldn't contribute; now they can.
  - According to the **Election Commission of India**, this may allow unchecked foreign funding of political parties in India, which could lead to Indian policies being influenced by foreign companies.
- **Amendments in Companies Act, 2013:** The Finance Bill of 2017 amended **Section 182 of the Companies Act of 2013** to remove the requirement for declaring disaggregated donations to political parties.
  - Earlier, only profit-making domestic companies could contribute to political parties; now loss-making companies can too.
  - Further, the limit of 7.5% for corporate donations to political parties has been removed.
  - With this amendment corporations are free to donate any amount of money and are not liable to declare the recipient of their donations.
- **Nullifying RTI Effect:** The **Right to Information (RTI) Act of 2005** enables easier access to information held by public authorities.
  - However, above changes could in effect nullify the impact of transparency provisions even if political parties come under the Right to Information (RTI) umbrella.

Way Forward

- **Transparency in Electoral Bonds:** Even though the Supreme Court upheld the constitutionality of electoral bonds, it could order full and real-time disclosure, to the actual benefit of transparency and accountability.

Note:

- **Moral Leadership:** Companies and political parties could exercise moral leadership and voluntarily disclose the identity of recipients and donors, as the Jharkhand Mukti Morcha recently did.
- **State Funding of Elections:** In many advanced countries, elections are funded publicly. This ensures principles of parity and there is not too great a resource gap between the ruling party and the opposition.
  - 2nd ARC, Dinesh Goswami committee, and several others have also recommended state funding of elections.
  - Further, until the elections do not get publicly funded, there can be caps or limits on financial contributions to political parties.
- **Transition Towards Civic Culture:** India has been working well as a democracy for nearly 75 years. Now in order to make the government more accountable, the voters should become self-aware and reject candidates and parties that violate the principle of free and fair elections.

Conclusion

Every vote is not equally valuable if companies can influence policies through hidden donations.

The winner of this arrangement is the ruling party, whether at the Centre or in a State, and the loser is the average voter.

Digital Justice Delivery

In popular perception, Indian courts are associated with long delays and difficulties for ordinary litigants. According to data released by the Supreme Court in June 2020, 3.27 crore cases are pending before Indian courts, of which 85,000 have been pending for over 30 years.

Technological interventions in the form of **e-courts** are being established to address the issue of pendency and other problems.

However, technology can only be used to revolutionise India's courts when it operates within the constitutional framework of the fundamental rights of citizens. If not, technology can further exclusion, inequity and surveillance.

The e-Courts Project: Background

- The e-Committee of the Supreme Court of India recently released its draft vision document for Phase III of the e-Courts project.
- Phases I and II had dealt with digitisation of the judiciary, i.e., e-filing, tracking cases online, uploading judgments online, etc. This has helped in easing justice delivery procedures.
  - For example, Phase II of the e-Courts project saw the development of the National Service and Tracking of Electronic Processes, a software that enabled e-service of summons.
- Despite some hiccups due to the Covid-19 pandemic, the Supreme Court and High Courts have been able to function online.
- Phase III of the e-Courts project, reaffirms its commitment to the digitisation of court processes, and plans to upgrade the electronic infrastructure of the lower judiciary and enable access to lawyers and litigants.
- Most importantly, the Phase III proposes an "ecosystem approach" to justice delivery.

Ecosystem Approach: Intended Benefits

- **Seamless Exchange of Information:** Through this data can be exchanged between various branches of the State, such as between the judiciary, the police and the prison systems through the **Interoperable Criminal Justice System (ICJS).**
- **Uniformity and Standardisation:** Data aggregation under Phase III can be useful when it provides anonymous, aggregated, and statistical information about issues without identifying the individuals.
  - This could be made possible in Phase III by encouraging uniformity and standardisation of entry fields.
- **360-Degree Profiling:** Phase III envisages creating a 360-degree profile of each person by integrating all of their interactions with government agencies into a unified database.
  - Once any government department moves online, their pen-and-paper registers will become excel sheets, shareable with a single click.
  - Localised data will become centralised which can lead to great advancements in problem-solving.

Ecosystem Approach: Associated Challenges

- **Exacerbating Inequalities:** It has been pointed out by organisations such as the Criminal Justice and Police Accountability Project that the ICJS will likely exacerbate existing class and caste inequalities that characterise the police and prison system.

Note:

- For Instance, the exercise of criminal data creation happens at local police stations.
- Local stations have historically contributed to the criminalisation of entire communities through colonial-era laws such as the Criminal Tribes Act of 1871, by labelling such communities as "habitual offenders".

- **Housing of Data With Home Ministry:** This is of particular concern since the data collected, shared and collated through the e-Courts project will be housed within the Home Ministry under the ICJS.
  - While it is understandable why the courts could reasonably benefit from access to police and prison records, courts deal with a variety of matters, some of which may be purely civil, commercial or personal in nature.
  - There is no clear explanation offered for why the Home Ministry needs access to court data that may have absolutely no relation to criminal law.
- **Data Privacy Issue:** Data aggregation can not violate the privacy standards that it set in **Puttaswamy v. Union of India (2017),** especially since India does not yet have a data protection regime.
- **Fear of Targeted Surveillance:** 360-degree profiling of an individual has been perfected by social media platforms and technology companies for targeted advertisements.
  - However, the difference is that when technology companies do this, we get targeted advertising, but if the government does it, we get targeted surveillance.

Conclusion

Since the Phase III vision document is a draft, there is still an opportunity to use technology in order to streamline judicial processes, reduce pendency, and help the litigants. However, this should be done within the framework of our **fundamental rights.**

One Nation One Election

As the elections in four states and one Union territory in March-April are suspected to have contributed to the second wave of Covid infections, a well-reasoned debate on a concept as important as "one nation, one election" is called for.

The concept needs to be debated mainly around five issues: Financial costs of conducting elections; cost of repeated administrative freezes; visible and invisible costs of repeatedly deploying security forces; campaign and finance costs of political parties; and the question of regional/smaller parties having a level playing field.

Simultaneous Election: Background

- The idea has been around since at least 1983, when the Election Commission first mooted it. However, until 1967, simultaneous elections were the norm in India.
- The first General Elections to the House of People (Lok Sabha) and all State Legislative Assemblies were held simultaneously in 1951-52.
- That practice continued in three subsequent General Elections held in the years 1957, 1962 and 1967.
- However, due to the premature dissolution of some Legislative Assemblies in 1968 and 1969, the cycle got disrupted.
- In 1970, the Lok Sabha was itself dissolved prematurely and fresh elections were held in 1971. Thus, the First, Second and Third Lok Sabha enjoyed full five-year terms.
- As a result of premature dissolutions and extension of terms of both the Lok Sabha and various State Legislative Assemblies, there have been separate elections to Lok Sabha and States Legislative Assemblies, and the cycle of simultaneous elections has been disturbed.

Arguments For Simultaneous Election

A NITI Aayog paper says that the country has at least one election each year; actually, each state has an election every year, too. In that paper, NITI Aayog argued that multiple elections incurs many direct and indirect disadvantages

- **Incalculable Economic Costs of Elections:** Directly budgeted costs are around Rs 300 crore for a state the size of Bihar. However, there are other financial costs, and incalculable economic costs.
  - Each election means government machinery misses out on their regular duties due to election duty and related work.
  - These costs of the millions of man-hours used are not charged to the election budget.
- **Policy Paralysis:** The Model Code of Conduct (MCC) also affects the government's functionary, as no new significant policy can be announced and executed after the elections are announced.
- **Administrative Costs:** There are also huge and visible costs of deploying security forces and transporting them, repeatedly.

Note:

- A bigger invisible cost is paid by the nation in terms of diverting these forces from sensitive areas and in terms of the fatigue and illnesses that repeated cross-country deployments bring about.

Arguments Against Simultaneous Elections

- **Federal Problem:** Simultaneous elections are almost nearly impossible to implement, as it would mean arbitrarily curtailing or extending the term of existing legislatures to bring their election dates in line with the due date for the rest of the country.
  - Such a measure would undermine democracy and federalism.
- **Against Spirit of Democracy:** Critics also say that forcing simultaneous elections is against democracy because trying to force an artificial cycle of elections and restricting the choice for voters is not correct.
- **Regional Parties At Disadvantage:** Regional parties are supposed to be at a disadvantage because in simultaneously held elections, voters are reportedly likely to predominantly vote one way, giving the dominant party at the Centre an advantage.
- **Diminished Accountability:** Having to face the electorate more than once every 5 years enhances the accountability of politicians and keeps them on their toes.

Conclusion

It is obvious That the Constitution and other laws would need to be amended for implementing simultaneous elections. However, it should be done in such a way that it doesn't hurt the basic tenets of democracy and federalism.

In this context, the Law Commission has suggested an alternative i.e. categorising states based on proximity to the next general election, and having one round of State Assembly polls with the next Lok Sabha election, and another round for the remaining States 30 months later. But there is still no guarantee that mid-term polls would not be needed.

Pendency of Cases

The Covid-19 pandemic has impacted virtually every aspect of socio-economic-political setup in India and quite obviously Judiciary hasn't been immune to it. By and large, the courts have not worked with a full caseload since March 2020.

As a result, when the lockdown of March 2020 was declared, there were 3.68 crore cases across all levels; which have already shot up to 4.42 crore.

These delays and inefficiencies arising from the heavy dockets in Indian courts have long been a matter of concern and complements the saying that justice delayed is justice denied.

Thus **Judicial reforms**, if taken seriously, expeditious and effective justice can see the light of day.

Reasons for Delay

- **Persisting Vacancies:** Across India, there are vacancies against even the sanctioned strengths of courts and in the worst performing states those vacancies exceed 30 per cent.
  - Due to this, the average waiting period for trial in lower courts is around 10 years and 2-5 years in HCs.
- **Poor State of Subordinate Judiciary:** District courts across the country also suffer from inadequate infrastructure and poor working conditions, which need drastic improvement, particularly if they are to meet the digital expectations raised by the higher judiciary.
  - Also, there is a yawning digital divide between courts, practitioners and clients in metropolitan cities and those outside. Overcoming the hurdles of decrepit infrastructure and digital illiteracy will take years.
- **Government, the Biggest Litigant:** Poorly drafted orders have resulted in contested tax revenues equal to 4.7 per cent of the GDP and it is rising.
  - Crowding out investment: Roughly Rs 50,000 crore are locked up in stalled projects and investments are reducing. Both these complications have arisen because of injunctions and stay orders granted by the courts primarily due to poorly drafted and poorly reasoned orders.
- **Less budgetary allocation:** The budget allocated to the judiciary is between 0.08 and 0.09 per cent of the GDP. Only four countries — Japan, Norway, Australia and Iceland — have a lesser budget allocation and they do not have problems of pendency like India.

Way Forward

- **Increasing Strength of Judicial Service:** One of the solutions is to substantially increase the strength of the judicial services by appointing more judges at the subordinate level — improvements must start from the bottom of the pyramid.

Note:

- Strengthening the subordinate judiciary also means providing it with administrative and technical support and prospects for promotion, development and training.
- Institutionalising All-India Judicial Service can be a step in the right direction.

- **Adequate Budgeting**: The appointments and improvements will require significant but absolutely necessary expenditure.
  - The recommendations of the Fifteenth Finance Commission and the India Justice Report 2020 have raised the issue and suggested ways to earmark and deploy funds.
- **Hibernating Unnecessary PILs:** The Supreme Court should mandate summary disposal of all 'hibernating' **PILs** – those pending for more than 10 years before HCs – if they do not concern a question of significant public policy or law.
- **Correcting Historical Inequalities:** Reforms in Judiciary should also encompass addressing social inequalities within the judiciary.
  - Women judges, and judges from historically-marginalised castes and classes must finally be given a fair share of seats at the table.
- **Promoting Alternative Dispute Resolution:** It should be mandated that all commercial litigation will be entertained only if there is an affidavit from the petitioner that mediation and conciliation have been attempted and have failed.
  - Mechanisms such as **ADR (Alternate Dispute Resolution)**, Lok Adalats, Gram Nyayalayas should be effectively utilised.

Conclusion

Courts are sitting on a pendency bomb and it has never been more urgent to strengthen the judiciary. Thus, there is a need to take a holistic and realistic view of the present situation of the Indian Judiciary.

National Tribunals Commission

Recently, the **Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance 2021** has been promulgated by the central government. Through this ordinance the centre has abolished several appellate tribunals and transferred their jurisdiction to other existing judicial bodies.

The Ordinance has met with sharp criticism for not only bypassing the usual legislative process, but also for abolishing several tribunals such as the Film Certification Appellate Tribunal without consultations with stakeholders.

Further, **this is not the time** that the central government has tried to interfere with the functioning of the tribunal. This interference of the executive in the domain of the tribunals can be dubbed as violation of separation of powers.

One way to regulate the matters of tribunals without compromising their independence is the establishment of the National Tribunals Commission (NTC).

Current State of Tribunals in India

- **Lack of Independence:** According to the Vidhi Centre for Legal Policy report (Reforming The Tribunals Framework in India) the lack of independence is one of the key issues plaguing tribunals in India.
  - At the outset, the system of appointment through selection committees severely affects the independence of tribunals.
  - Additionally, the issues of reappointment and the proclivity to appoint retired judges have the potential to affect the independence of tribunals.
- **Problem of Non-Uniformity:** Added to this is the problem of non-uniformity across tribunals with respect to service conditions, tenure of members, varying nodal ministries in charge of different tribunals.
  - These factors contribute significantly to malfunctioning in the managing and administration of tribunals.
- **Institutional Issues:** Executive interference in the functioning of tribunals is often seen in provision of finances, infrastructure, personnel and other resources required for day-to-day functioning of the tribunals.

National Tribunals Commission & Its Impact

The idea of an NTC was first mooted by the Supreme Court in L. Chandra Kumar v. Union of India (1997).

- **Objective:** NTC is envisaged to be an independent umbrella body to supervise the functioning of tribunals, appointment of and disciplinary proceedings against members, and to take care of administrative and infrastructural needs of the tribunals.
- **Uniformity:** NTC will support uniform administration across all tribunals. It could set performance standards for the efficiency of tribunals and their own administrative processes.

Note:

- **Ensuring Separation of Powers:** Giving the NTC the authority to set members' salaries, allowances, and other service conditions, subject to regulations, would help maintain tribunals' independence.
  - The NTC could pave the way for the separation of the administrative and judicial functions carried out by various tribunals.
- **Expansion of Services:** A 'corporatised' structure of NTC with a Board, a CEO and a Secretariat will allow it to scale up its services and provide requisite administrative support to all tribunals across the country.
- **Autonomous Oversight:** NTC could function as an independent recruitment body to develop and operationalise the procedure for disciplinary proceedings and appointment of tribunal members.
  - An NTC will effectively be able to bring in uniformity in the appointment system meanwhile ensuring that it is independent and transparent.

Way Forward

- **Legal Backing:** Developing an independent oversight body for accountable governance requires a legal framework that protects its independence and impartiality.
  - Therefore, the NTC should be established via a constitutional amendment or be backed by a statute that guarantees it functional, operational and financial independence.
- **Learning From NJAC Issue:** NTC will need to adhere to the standards set by the judiciary in maintaining its independence.
  - Due to an overwhelming executive role, the National Judicial Appointments Commission (NJAC) was seen to be severely compromising the independence of the judiciary.
  - Thus, the executive as well as the bar, being relevant stakeholders, should form a part of any NTC, but it needs to give primacy to judicial members.
- **Doing Away With Re-Appointments:** The NTC must also do away with the system of re-appointment of tribunal members due to its impact on the independence of the tribunal.

Conclusion

It is important to understand that the tribunals were set up to reduce the burden of cases from regular courts. A reform to the tribunals system in India may as well be one of the keys to remedy the age old problem that still cripples the Indian judicial system – the problem of judicial delay and backlog.

In this context, establishing the NTC will definitely entail a radical restructuring of the present tribunals system.

Governor: An Agent of the Centre?

Recently, the **Governor** of Kerala refused to convene a special session of the Kerala Assembly that was intended to discuss the ongoing farmer protest in New Delhi.

This conduct is comparable to the many actions of governors of Karnataka, Madhya Pradesh, Maharashtra, etc., that led to unwarranted interference of centre in states' politics. These states happen to be ruled by the political parties governed by the opposition parties at the centre.

Such instances portray the negative image of the state governors as **an agent of the centre**. The Governor's office's misuse to undermine duly elected State governments undermines democratic processes and compromises one of the Basic Structure doctrine elements, i.e. federalism.

Governor: Acting As Agent of Centre & It's Effect

- **Source: Article 163** of Indian Constitution states that the Governor should exercise his functions based on the **state's Council of Ministers' aid and advice**, except it is required to exercise his functions at his discretion.
  - Therefore, Article 163 acts as a source of the discretionary power of the governor.
  - As the union government nominates the governor, the combined effect with Article 163 provides the scope centre meddling in the state's affairs.
- **Nature of Intervention:** The present controversies have been around issues like:
  - Selecting the Chief Minister,
  - Determining the timing for proving legislative majority,
  - Demanding information about day-to-day administration,
  - Giving assent to bills or reserving bills for the President,
  - Frequent use of Article 356 for removing state governments run by opposition parties based on the governor's recommendation.

Note:

- Commenting adversely on specific policies of the state government.

- **Effect:** The encroachment upon the legislature's powers and the elected government amounts to an abuse of Governor's authority as a nominal head under the Constitution.
  - Various wrongdoings of the centre through the governor's office damage India's essential federal structure and the democratic process.

Envisaged Role of Governor

- **Taking Clues From Constituent Assembly Debates:** On analysing the constituent assembly debates, it can be inferred that the constituent assembly envisaged creating 'responsible government' in the states as much as at the centre.
  - According to **Dr Ambedkar**, "I have no doubt in my mind that discretionary power is in no sense a negation of responsible government. It is not a general clause giving the governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard."
- **Taking Clues From Constitution:** As the states were indeed sovereign within their own domain, the discretionary power, beyond the specific situations mentioned in the constitution, does not enable a governor to override the state government.
  - Therefore, selecting a chief minister of his choice or creating/utilising opportunities for defections to change the party in power cannot be a governor's job.
- **Taking Clues from Various Committees on Centre-States Relation:** In the last few decades, various committees were appointed to understand the governor's role in India's federal democratic setup.
  - These committees made extremely valuable recommendations to make the governor's office the **"linchpin of the state's constitutional apparatus."**

Note:

- Various Committees on Centre-States Relations
  - The Administrative Reforms Commission of 1968,
  - The Rajamannar Committee of 1969,
  - Committee of Governors of 1971,
  - The Sarkaria commission of 1988,
  - Punchhi Commission, 2007.

Way Forward

- **Governor's Discretion Should Be Only Her Discretion:** For the smooth functioning of a democratic government, it is equally essential that the governor must act judiciously, impartially and efficiently while exercising his discretion and personal judgment.
  - As the Sarkaria Commission put it, the governor's task **"is to see that a government is formed and not to try to form a government,".**
- **Strengthening of Federalism:** In order to check misuse of the office of governor, there is a need to strengthen federal setup in India.
  - In this regard, the Inter-State council and the role of Rajya Sabha as the chamber of federalism must be strengthened.
- **Reform the Method of Appointment of Governor:** In order to end the monopoly of the centre in selecting its 'own man' as governor, the appointment can be made from a panel prepared by the state legislature and actual appointing authority should be the Inter-state Council, not the central government.
- **Code of Conduct for Governor:** In order to enable the governor to successfully discharge his functions under the centre and states governments should agree on a 'Code of Conduct'.
  - This 'Code of Conduct' should lay down certain 'norms and principles' which should guide the exercise of the governor's 'discretion' and his powers which he is entitled to use and exercise on his judgment.
  - In this context, the inspiration for such a code can be derived from the various recommendations of the Sarkaria Commission on centre-states relations.

Rights to Freedom

Farmers protesting on the borders of New Delhi and the Union Government are engaged in a tussle regarding **three farms laws**. After the protest turned into chaos on Republic day, the government has tightened the security.

However, the level of barricading that has been done by the government has been questioned by civil society nationally and internationally. Moreover, there have been active efforts by the government to deter critical reporting.

This can be reflected in instances like nine senior journalists were charged under the law of sedition, a young freelance journalist was arrested, a number of

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social media pages run by newspapers were blocked and executive order stating that employees of the social media company, Twitter, could face arrest for failure to comply.

These steps may be constituted as an assault on the "rights to freedom" granted under Article 19 of the Constitution.

Issues Related With Rights to Freedom

- **Non-Obstante Clause:** Like several other articles in the Fundamental Rights chapter of the Indian Constitution, Article 19 includes a non-obstante clause, which means these rights are qualified by reasonable restrictions like law & order, sovereignty & security of the country, etc.
  - These clauses under article 19(2) were for the most part inserted by the First Amendment to the Indian Constitution.
  - However, many times when the government has to balance out the fine line between freedom of citizens and reasonable restrictions, it results in a conflicting condition and compromise on the rights to freedom.
- **Broad-Terms & Negligence:** Often the dichotomy between freedom of citizens and reasonable restrictions, result in misuse of power by the government, through **Sedition law under section 124A of IPC.**
  - Taking this in cognizance, the Supreme Court in Kedar Nath Singh vs State Of Bihar, 1962 held that sedition will be applicable only to activities intended to create disorder or disturbance of public peace by resort to violence".
  - However, as these terms are vague, it leads to often misuse of sedition law and neglect of Supreme Court guidelines.
- **Dis-Proportionate Judicial Remedy:** In recent years the judicial system has emerged as a luxury, whereby rich and influential media houses & journalists get bail quickly and bail gets delayed or denied to independent journalists and smaller media houses.
- **New Legal Weapon:** Apart from being charged with sedition and other offenses, the free press now has to deal with more stringent the **Unlawful Activities (Prevention) Act, 2019** which could potentially result in indefinite detention.
- **Angle of Religion:** Even if religion finds no specific mention as reasonable restrictions under Article 19(2), the politics of religious offense constitute another clear threat to freedom of speech and expression.
  - This can be reflected in the recent case of the web series, whose producers and cast face charges despite multiple apologies.

Way Forward

- **Active Role of Judiciary:** The higher judiciary should use its supervisory powers to sensitize the magistracy and police to the constitutional provisions protecting free speech.
- **Narrowing Down Sedition Law:** The definition of sedition should be narrowed down, to include only the issues pertaining to the territorial integrity of India as well as the sovereignty of the country.
- **Adherence to Media Ethics:** Regarding the responsibility of media, it is important that the media stick to the core principles like truth and accuracy, transparency, independence, fairness and impartiality, responsibility, and fair play.
- **Strengthening Institutional Framework:** Rather than the government, news regulatory bodies (the Press Council of India & News Broadcasters Association), should be empowered to put effective checks & balances over media.

Conclusion

There is the need to maintain a balance between free expression of individual rights and collective security of the society and state; this responsibility should not be borne by the government alone, but by all those who enjoy these rights.

Right To Dissent

Recently, in the pretext of farmer's protest, a review petition on the Shaheen Bagh protest has been filed in the Supreme Court. The court refused to review its earlier verdict which declared that there is no absolute **right to protest**, and it could be subjected to the orders of the authority regarding the place and time.

This brings into focus the tug-of-war between morality and state security, freedom, and responsibility. On one hand, it is the government's responsibility to ensure that any protest should not turn into violent chaos. On the other hand, public protests are the hallmark of a free, democratic society, whose logic demands that the voice of the people should be heard by those in power and decisions be reached after proper discussion and consultation.

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In spite of this dilemma, in order to preserve the democratic fabric of the Indian society, it is the responsibility of stakeholders in a democracy that all freedoms under Article 19 of the Constitution shouldn't be seriously impaired.

Significance of Right to Dissent

- **Fundamental Right:** The Right to protest peacefully is enshrined in the Indian Constitution—Article 19(1)(a) guarantees the freedom of speech and expression; Article 19(1)(b) assures citizens the right to assemble peaceably and without arms.
- **Historical Context:** The background of the Indian Constitution is formed by its anti-colonial struggle, within which the seeds of a political public sphere and democratic constitution were sown.
  - The Indian people fought hard and long to publicly express their views on colonial policies and laws and form a public opinion against them.
- **Checking Abuse of Power:** The Right to the association is required to form associations for political purposes — for instance, to collectively challenge government decisions and to even aim, peacefully and legally, to displace the government, to not merely check abuse of power but to wrest power.
  - The Right to peaceably assemble allows political parties and citizenship bodies such as university-based student groups to question and object to acts of the government by demonstrations, agitations and public meetings, to launch sustained protest movements.
- **People as Watchdogs:** People act as watchdogs and constantly monitor governments' acts, which provides feedback to the governments about their policies and actions after which the concerned government, through consultation, meetings and discussion, recognizes and rectifies its mistakes.
- **Supreme Court's Observation:** In Ramlila Maidan Incident v. Home Secretary, Union Of India & Ors. case (2012), the Supreme Court had stated, "Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action."

Challenge to Right to Dissent

Any form of public action to challenge the government's proposals or decisions is also constitutionally legitimate, as long as it is done peacefully. Article 19(2) imposes reasonable restrictions on the right to assemble peaceably and without arms.

These reasonable restrictions are imposed in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation, or incitement to an offense.

- However, in the recent review petition, the petitioners apprehended that the observations in the Shaheen Bagh judgment against the indefinite occupation of public space may prove to be a license in the hands of the police to commit atrocities on the legitimate voice of protest.
- Recently, not only the protesting farmers but also their supporters, including comedians and journalists, were charged with the Sedition.
- Further, any arbitrary restraint on the exercise of such rights — for instance, imposing Section 144 — shows the inability of the government to tolerate dissent.

Way Forward

- **Pro-Active Judiciary:** A fair and effective adjudicative mechanism in constitutional matters can meaningfully prevent agitation on the street.
  - Studies have shown that social movements could be less radical and less oppositional when the issues could be effectively sorted out by way of fair litigation means.
  - Further, courts need to ensure timely agitation, because had there been a timely adjudication of the validity of the laws which was questioned by the process recognized by the law, the agitation on the street could have been probably reduced.
- **Establishing Public Enquiry System:** In the United Kingdom there exists a robust public enquiry system that processes ecological demands, integrates them into the political system, and minimizes radicalization of the movement arising out of exclusion and marginalization.
- **Imbibing Civic Culture:** On part of citizens, there is a need to imbibe a civic culture that is characterized by the acceptance of the authority of the state and a belief in participation in civic duties.

Conclusion

In order to participate in public protest, the right to freedom of speech & expression, association, and peaceful assembly are necessary. In this context, there is a need for debate in public discourse that it is time when reasonable restrictions outlined in Article 19(2) should be brought under review.

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Structural Issues of Union Territories

Recently, some MLAs from the Puducherry legislative assembly resigned. These resignations reflect a familiar pattern to the resignations of Members of the Legislative Assembly. Such resignations reduce the party's majority in the House abruptly, which invariably leads to the fall of the government.

The intent behind this pattern is that no MLA has to defect and face disqualification under the anti-defection law. In general, these resignations take place only from the ruling parties in the States which are opposed to the ruling party at the Centre.

However, this is not the only way where the elected governments in Union territories are undermined. There are many constitutional and legal provisions that reflect the structural fragility of Union Territories (UTs) as units of the Indian federation.

Structural Fragility Of Union Territories

- **Composition of the Legislature:** Article 239A was originally brought in, by the 14th Constitutional amendment act, 1962, to enable Parliament to create legislatures for the UTs. Under this article, the parliament enacted the Government of Union Territories Act, 1963.
  - The aftermath of this law is that a simple amendment in the Government of Union Territories Act, 1963 can create a legislature with more than 50% nominated members.
  - However, the question remains, how can a predominantly nominated House promote representative democracy.
- **Issue of Nomination:** The Government of Union Territories Act provides for a 33-member House for Puducherry of whom three are to be nominated by the Central government.
  - So, when the Union government nominated three members to the Assembly without consulting the government, it was challenged in the court.
  - The Supreme Court in K. Lakshminarayanan v. Union of India, 2019 case held that the Union government is not required to consult the State government for nominating members to the Assembly and the nominated members have the same right to vote as the elected members.
- **Arbitrariness in Nomination:** There is provision for the nomination of members to the Rajya Sabha (under Article 80). The Article specifies the fields from which they will be nominated.
  - The purpose of this nomination is to enable the House to draw on the expertise of those eminent members who are nominated and thus enrich the debate in the House.
  - However, in the case of nomination to the Puducherry Assembly, no such qualification is laid down either in Article 239A or the Government of Union Territories Act.
  - Due to this, the law invites arbitrariness in dealing with the nomination of members to the UT legislature.
- **Administrator's Power:** The UTs were never given a fully democratic set-up with the necessary autonomy. The power vested in the administrator (Lieutenant Governor) conflicts with the powers of the elected government of UTs having a legislature.
  - Section 44 of the Government of Union Territories Act and Article 239 AA(4) (proviso) of the Constitution vests the power in the administrator to express his or her disagreement and refer the matter to the President
  - The President decides on the advice of the Union government. So, in effect, it is the Union government that finally determines the disputed issue.
  - This can be reflected in the Chief Minister of Puducherry asking removal of the Lt. Governor.
  - Similarly, in the National Capital Territory of Delhi, one often hears complaints against the Lt. Governor from the ministers about the non-cooperative federalism being practised by him.
- **Overlapping Areas:** Under Article 239A and 239AA the Lieutenant Governor is bound to act on the aid and advice except in respect of 'Land', 'Public Order' and the 'Police'.
  - However, Public Order is a very wide connotation, which subsequently leads to overlapping executive powers.

Way Forward

- **Practising Cooperative Federalism:** The Constitution Bench of the Supreme Court in NCT of Delhi v. Union of India (2019), had said that the administrator should not misuse this power to frustrate the functioning of the elected government in the territory and use it after all methods have failed to reconcile the differences between him/her and the Council of Ministers.

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- However, this judgement has not been observed in the letter and spirit. Thus, both the government and UTs need to imbibe the ethos of cooperative federalism.

- **Exploring the Washington DC Model:** Indian Government can emulate the model of administrative sharing of power between the Union government and the Governments of UTs.
  - Under that scheme, only the strategic areas and buildings are under the effective control of the federal government and the rest of the areas are under the jurisdiction of Washington state.
  - Given this, the institution of strategic importance like political institutions, defence establishments, etc. can remain under the jurisdiction of the Union Government, and areas other than these can effectively be handed over to UTs governments.
- **Necessary Reforms:** For effective autonomy to the governments of union territories, there is a need for amendment in the legal and constitutional provisions.

Conclusion

The Union government should respect the reason why these UTs were thought fit to provide a legislature and Council of Ministers to some of the UTs. The ostensible reason is to fulfill the democratic aspirations of the people of these territories.

In this context, the Union government should take note of the Supreme court's observation that the administration of Union Territories is by the Central government but that does not mean the Union Territories become merged with the Central government. They are centrally administered but retain their independent entity.

Time to Review Tenth Schedule

Recently, the resignation of MLAs in the Puducherry assembly, yet again, highlighted the absurdity of the **anti-defection law**. Resignations are done with the intent of lowering the numbers required for a no-confidence motion to succeed. This formula has been seen recently in other states such as Madhya Pradesh and Karnataka.

In this way, no MLA has to face disqualification under the anti-defection law. The anti-defection law was included in the Constitution as the Tenth Schedule in 1985 to combat the "evil of political defections."

The primary purpose was to preserve the stability of governments and insulate them from the defections of legislators. However, the law has reduced legislators to being accountable primarily to the party and failed to preserve governments' stability.

Issues Related to Anti-Defection Law

- **Undermining Representative Democracy:** There are two broadly accepted roles of a representative, such as an MP in a democracy. One, as agents of the voters, and the other is to exercise their judgement on various issues of public interest.
  - After enacting the Anti-defection law, the MP or MLA has to follow the party's direction blindly. This leaves them with absolutely n**o freedom to vote their judgement on any issue.**
  - It makes the MP neither a delegate of the constituency nor a national legislator but converts them to be just **agents of the political party.**
  - Thus, this provision goes against the concept of representative democracy.
- **Eroding Legislatures:** An important consequence of the anti-defection law is the hollowing out of our legislatures.
  - The core role of an MP to examine and decide on a policy, bills, and budgets is side-lined.
  - Instead, the MP becomes just another number to be tallied by the party on any vote that it supports or opposes.
- **Undermining Parliamentary Democracy:** While introducing the draft Constitution, Dr. B.R. Ambedkar outlined the differences between the presidential and parliamentary forms of government.
  - According to him, the presidential form had higher stability, but lower accountability as the President is elected for four years, and cannot be removed except for proven misdemeanor.
  - In the parliamentary form, the government is accountable daily through questions and motions and can be removed any time it loses the support of the majority of members of the Lok Sabha.
  - In India, this chain of accountability has been broken by making legislators accountable primarily to the political party. Thus, anti-defection law is acting against the concept of parliamentary democracy.

Note:

- **No Longer Provides Political Stability:** The Anti-defection law envisages political stability by ensuring that any person disqualified for defecting cannot get a ministerial position unless they are re-elected.
  - However, Puducherry's example shows that the political system has found ways to topple governments by resigning rather than vote against the party.
- **Controversial Role of Speaker:** Resigning from the membership of the House is every member's right.
  - However, according to Article 190 of the Constitution, the resignation **should be voluntary or genuine.** If the Speaker has information to the contrary, they are not obliged to accept the resignation.
  - In many instances, the Speaker (usually from the ruling party) has delayed deciding on the disqualification.
  - The Supreme Court has tried to plug this by ruling that the Speaker has to decide in three months, but it is not clear what would happen if a Speaker does not do so.

Way Forward

- **Strengthening Intra-Party Democracy:** If government stability is an issue due to people defecting from their parties, the answer is for parties to strengthen their internal part of democracy.
  - If people rise within the party hierarchy on their capabilities (rather than inheritance), there would be a greater exit barrier.
- **Regulating Political Parties:** There is an ardent need for legislation that governs political parties in India. Such a law should bring political parties under RTI, strengthen intra-party democracy, etc.
- **Final Authority of Election Commission:** Chairman/ Speaker of the house, being the final authority in terms of defection, affects the doctrine of separation of powers.
  - Designating the Election Commission as the final authority in dealing with matters of defections may curb the menace of defection.
- **Restricting the Scope of Anti-defection Law:** In order to shield the detrimental effect of the anti-defection law on representative democracy, the scope of the law can be restricted to **only those laws, where the defeat of government can lead to loss of confidence.**

Conclusion

To sum up, the anti-defection law has been detrimental to legislatures' functioning as deliberative bodies that hold the executive to account on behalf of citizens. It has turned them into fora to endorse the decision of the government on Bills and budgets. In this context, it is time to review the Tenth Schedule to the Constitution.

Covid-19 Crisis & Centre–State Relations

The history of federal relationship between the states and the centre in India can be exemplified by the terms like cooperative federalism, bargaining federalism or quasi-federalism.

However, in most of times, Indian federalism has been conflicting rather than cooperative, which can be reflected in, central government being discriminatory in its attitude towards the states with oppositional political background.

Recently, the tussle between Union & states over vaccine distribution, oxygen supply, availability of life-saving medicines, have not only bode well with the idea of cooperative federalism but also led to loss of many lives of the citizens.

Therefore, as Covid-19 demands unprecedented efforts to fight this pandemic, it is the duty of the government at every level to act in a concerted manner to save the country from this crisis.

Federal Issues Accentuated During the Pandemic

- **Case of Inconvenient Federalism:** On account of the Central government being the sole agency to regulate the production and distribution of the vaccine and oxygen, it was the exclusive responsibility of the centre to ensure adequate and judicious distribution.
  - However, many states are complaining of discrimination on distributuion of the vaccination, supply of medicines, availability of oxygen, etc.
  - Moreover, the new vaccination policy, in the garb of relaxing controls, seeks to pass the burden on to the states as it makes the states responsible to procure vaccines directly from the producers and allows for differential price-setting.

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- This would not only add to the financial burdens of the states that are already squeezed but also could give rise to conflicts between different states.

- **Centralising Powers:** The centre had invoked the Epidemic Diseases Act and the Disaster Management Act, centralising the powers to deal with the pandemic.
  - However, state consultation is a legislative mandate cast upon the centre under these acts and binding COVID-19 guidelines are being issued by the Centre to the States.
- **Covid-19 Entering Rural India:** First wave of Covid-19 witnessed the mass exodus of the migrant workers into their home states like Uttar Pradesh, Bihar.
  - Now, as these workers again had to reverse migrate to their home states, this has brought a life of fears that Covid-19 entering into rural India.
  - Moreover, the sustenance of agricultural, industrial and construction activities would be difficult in the absence of a majority of the workforce in the backdrop of the lifting of restrictions, given these workers are going back to their hometowns.
  - If both centre and state governments had taken lessons from the first wave, the devastating effects of this crisis could have been minimized.

Way Forward

- **Relaxing FRBM Norms:** The relaxation of limits imposed by the FRBM Act, regarding the market borrowings by the states, is a step in the right direction.
  - However, these borrowings can be backed by sovereign guarantee by the Union Government.
  - Moreover, the Union government can provide money to states so that they can take necessary action to deal with the crisis at the state level.
- **Real Cooperative Federalism:** A successful approach to tackle the crisis would still need Centre's intervention and guidance in a facilitative manner, where the Centre would communicate extensively the best practices across states, address the financial needs effectively, and leverage national expertise for scalable solutions.
- **Long Term Measures:** Management of disasters and emergencies (both natural and manmade) should be included in the List III (Concurrent List) of the Seventh Schedule.
  - Also, the government should consider making the Inter-State Council a permanent body.

Conclusion

The present situation suggests that one needs to go beyond the framework of cooperative federalism, which is basically based on the act of invoking and promoting participation of centre and the states in achieving the development of the nation as well as regions.

National Tribunals Commission

Recently, the **Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance 2021** has been promulgated by the central government. Through this ordinance the centre has abolished several appellate tribunals and transferred their jurisdiction to other existing judicial bodies.

The Ordinance has met with sharp criticism for not only bypassing the usual legislative process, but also for abolishing several tribunals such as the Film Certification Appellate Tribunal without consultations with stakeholders.

Further, **this is not the time** that the central government has tried to interfere with the functioning of the tribunal. This interference of the executive in the domain of the tribunals can be dubbed as violation of separation of powers.

One way to regulate the matters of tribunals without compromising their independence is the establishment of the National Tribunals Commission (NTC).

Current State of Tribunals in India

- **Lack of Independence:** According to the Vidhi Centre for Legal Policy report (Reforming The Tribunals Framework in India) the lack of independence is one of the key issues plaguing tribunals in India.
  - At the outset, the system of appointment through selection committees severely affects the independence of tribunals.
  - Additionally, the issues of reappointment and the proclivity to appoint retired judges have the potential to affect the independence of tribunals.
- **Problem of Non-Uniformity:** Added to this is the problem of non-uniformity across tribunals with respect to service conditions, tenure of members, varying nodal ministries in charge of different tribunals.
  - These factors contribute significantly to malfunctioning in the managing and administration of tribunals.
- **Institutional Issues:** Executive interference in the functioning of tribunals is often seen in provision of finances, infrastructure, personnel and other resources required for day-to-day functioning of the tribunals.

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National Tribunals Commission & Its Impact

The idea of an NTC was first mooted by the Supreme Court in L. Chandra Kumar v. Union of India (1997).

- **Objective:** NTC is envisaged to be an independent umbrella body to supervise the functioning of tribunals, appointment of and disciplinary proceedings against members, and to take care of administrative and infrastructural needs of the tribunals.
- **Uniformity:** NTC will support uniform administration across all tribunals. It could set performance standards for the efficiency of tribunals and their own administrative processes.
- **Ensuring Separation of Powers:** Giving the NTC the authority to set members' salaries, allowances, and other service conditions, subject to regulations, would help maintain tribunals' independence.
  - The NTC could pave the way for the separation of the administrative and judicial functions carried out by various tribunals.
- **Expansion of Services:** A 'corporatised' structure of NTC with a Board, a CEO and a Secretariat will allow it to scale up its services and provide requisite administrative support to all tribunals across the country.
- **Autonomous Oversight:** NTC could function as an independent recruitment body to develop and operationalise the procedure for disciplinary proceedings and appointment of tribunal members.
  - An NTC will effectively be able to bring in uniformity in the appointment system meanwhile ensuring that it is independent and transparent.

Way Forward

- **Legal Backing:** Developing an independent oversight body for accountable governance requires a legal framework that protects its independence and impartiality.
  - Therefore, the NTC should be established via a constitutional amendment or be backed by a statute that guarantees it functional, operational and financial independence.
- **Learning From NJAC Issue:** NTC will need to adhere to the standards set by the judiciary in maintaining its independence.
  - Due to an overwhelming executive role, the National Judicial Appointments Commission (NJAC) was seen to be severely compromising the independence of the judiciary.
  - Thus, the executive as well as the bar, being relevant stakeholders, should form a part of any NTC, but it needs to give primacy to judicial members.
- **Doing Away With Re-Appointments:** The NTC must also do away with the system of re-appointment of tribunal members due to its impact on the independence of the tribunal.

Conclusion

It is important to understand that the tribunals were set up to reduce the burden of cases from regular courts. A reform to the tribunals system in India may as well be one of the keys to remedy the age old problem that still cripples the Indian judicial system – the problem of judicial delay and backlog.

In this context, establishing the NTC will definitely entail a radical restructuring of the present tribunals system.

Pendency of Cases

The Covid-19 pandemic has impacted virtually every aspect of socio-economic-political setup in India and quite obviously Judiciary hasn't been immune to it. By and large, the courts have not worked with a full caseload since March 2020.

As a result, when the lockdown of March 2020 was declared, there were 3.68 crore cases across all levels; which have already shot up to 4.42 crore.

These delays and inefficiencies arising from the heavy dockets in Indian courts have long been a matter of concern and complements the saying that justice delayed is justice denied.

Thus **Judicial reforms**, if taken seriously, expeditious and effective justice can see the light of day.

Reasons for Delay

- **Persisting Vacancies:** Across India, there are vacancies against even the sanctioned strengths of courts and in the worst performing states those vacancies exceed 30 per cent.
  - Due to this, the average waiting period for trial in lower courts is around 10 years and 2-5 years in HCs.

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- **Poor State of Subordinate Judiciary:** District courts across the country also suffer from inadequate infrastructure and poor working conditions, which need drastic improvement, particularly if they are to meet the digital expectations raised by the higher judiciary.
  - Also, there is a yawning digital divide between courts, practitioners and clients in metropolitan cities and those outside. Overcoming the hurdles of decrepit infrastructure and digital illiteracy will take years.
- **Government, the Biggest Litigant:** Poorly drafted orders have resulted in contested tax revenues equal to 4.7 per cent of the GDP and it is rising.
  - Crowding out investment: Roughly Rs 50,000 crore are locked up in stalled projects and investments are reducing. Both these complications have arisen because of injunctions and stay orders granted by the courts primarily due to poorly drafted and poorly reasoned orders.
  - **Less budgetary allocation:** The budget allocated to the judiciary is between 0.08 and 0.09 per cent of the GDP. Only four countries — Japan, Norway, Australia and Iceland — have a lesser budget allocation and they do not have problems of pendency like India.

Way Forward

- **Increasing Strength of Judicial Service:** One of the solutions is to substantially increase the strength of the judicial services by appointing more judges at the subordinate level — improvements must start from the bottom of the pyramid.
  - Strengthening the subordinate judiciary also means providing it with administrative and technical support and prospects for promotion, development and training.
  - Institutionalising All-India Judicial Service can be a step in the right direction.
- **Adequate Budgeting**: The appointments and improvements will require significant but absolutely necessary expenditure.
  - The recommendations of the Fifteenth Finance Commission and the India Justice Report 2020 have raised the issue and suggested ways to earmark and deploy funds.
- **Hibernating Unnecessary PILs:** The Supreme Court should mandate summary disposal of all 'hibernating' **PILs** – those pending for more than 10 years before HCs– if they do not concern a question of significant public policy or law.
- **Correcting Historical Inequalities:** Reforms in Judiciary should also encompass addressing social inequalities within the judiciary.
  - Women judges, and judges from historically-marginalised castes and classes must finally be given a fair share of seats at the table.
- **Promoting Alternative Dispute Resolution:** It should be mandated that all commercial litigation will be entertained only if there is an affidavit from the petitioner that mediation and conciliation have been attempted and have failed.
  - Mechanisms such as **ADR (Alternate Dispute Resolution)**, Lok Adalats, Gram Nyayalayas should be effectively utilised.

Conclusion

Courts are sitting on a pendency bomb and it has never been more urgent to strengthen the judiciary. Thus, there is a need to take a holistic and realistic view of the present situation of the Indian Judiciary.

Is the Election Commission of India Free?

The **Election Commission of India (ECI)** is a creation of the Constitution. Article 324 says the superintendence, direction, and control of all elections to Parliament, the State legislatures, and the offices of the President and Vice-President shall be vested in the ECI.

The article has been interpreted by courts and by orders of the ECI from time to time to mean that the power vested in it is plenary in nature. It is seen as unlimited and unconditional in the matter of holding elections.

However, there are many issues and ambiguous provisions that affect the functioning of ECI.

Source of Power of ECI

- **Constitution:** ECI derives its power and functions from Article 324 of the Constitution.
- **Supreme Court Judgement:** The Supreme Court held in Mohinder Singh Gill vs Chief Election Commissioner 1978 that Article 324 contains plenary powers to ensure free and fair elections and these are vested in the ECI which can take all necessary steps to achieve this constitutional object.
- **Model Code of Conduct:** The **model code of conduct** issued by the ECI is a set of guidelines meant for political parties, candidates, and governments to adhere to during an election.

Note:

- This code is based on consensus among political parties. Its origin can be traced to a code of conduct for political parties prepared by the Kerala government in 1960 for the Assembly elections.
- It was adopted and refined and enlarged by the ECI in later years and was enforced strictly from 1991 onwards.

- **Independence of ECI:** The independence of the ECI is preserved by clauses in the Constitution that say the Chief Election Commissioner cannot be removed from office except in the manner provided for the removal of a Supreme Court judge.
  - Also, the conditions of his service cannot be varied to the incumbent's disadvantage after appointment.

Associated Issues With The ECI

- **Undefined Scope of Powers:** Besides the MCC, the ECI issues from time to time directions, instructions, and clarifications on a host of issues that crop up in the course of an election.
  - The code does not say what the ECI can do; it contains only guidelines for the candidates, political parties, and the governments.
  - Thus, there exists a considerable amount of confusion about the extent and nature of the powers which are available to the ECI in enforcing the code as well as its other decisions in relation to an election.
- **No Legal Backing of MCC:** MCC is framed on the basis of a consensus among political parties, it has not been given any legal backing.
  - However, it does not have statutory value, and it is enforced only by the moral and constitutional authority of the EC.

Note:

- Paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968 says that the commission may suspend or withdraw recognition of a recognized political party if it refuses to observe the model code of conduct.
- However, the issue is when the code is legally not enforceable, how can the ECI resort to a punitive action such as withdrawal of recognition.

- **Transfer of Officials:** Another issue that pertains to the functioning of the ECI, is the abrupt transfer of senior officials working under State governments by an order of the commission.
  - In Mohinder Singh Gill's case, the Court had made it clear that the ECI can draw power from Article 324 only when no law exists which governs a particular matter.
  - However, the transfer of officials, etc is governed by rules made under Article 309 of the Constitution which cannot be bypassed by the ECI under the purported exercise of the power conferred by Article 324.
- **Conflict With the Law:** According to the MCC, Ministers cannot announce any financial grants in any form, make any promise of construction of roads, provision of drinking water facilities, etc or make any ad hoc appointments in the government.
  - Section 123 (2)(b) of the Representation of the People Act, 1951 says that the declaration of a public policy or the exercise of a legal right will not be regarded as interfering with the free exercise of the electoral right.
- **Lack of Enforceability:** The EC does not have the power to disqualify candidates who commit electoral malpractices. At best, it may direct the registration of a case.
  - That is why, in the 2019 general election, ECI admitted to the Supreme Court that it was "toothless", and did not have enough powers to deal with inflammatory or divisive speeches in the election campaign.

Conclusion

The role played by the ECI has bestowed a very high level of confidence in the minds of Indian citizens in ensuring the purity of the elected legislative bodies in the country. However, the grey areas in the legal sphere must be rectified, so that ECI can ensure the proper functioning of the democracy via free and fair election.

Repromulgation of Ordinances

Recently, the central government has repromulgated the **Commission for Air Quality Management** in the National Capital Region and Adjoining Areas Ordinance, 2020. The ordinance establishes a commission for air quality management in the National Capital Region.

This raises questions about the practice of issuing ordinances to make law and that of re-issuing ordinances without getting them ratified by Parliament.

Historically, in the 1950s, central ordinances were issued at an average of 7.1 per year. However, the number peaked in the 1990s at 19.6 per year. The last couple of years has also seen a high spike in ordinance promulgation (16 in 2019, 15 in 2020).

The ordinance was originally conceived as an emergency provision. However, in recent times the frequent use of ordinance route has led to the undermining the role of the legislature and the doctrine of Separation of powers.

Constitutional Provisions Regarding Ordinances

- The Constitution permits the central and state governments to make laws when Parliament (or the State Legislature) is not in session.
- The Indian Constitution, in Article 123, authorizes the executive to promulgate ordinances if certain conditions are satisfied.
  - Ordinances may be promulgated only if **at least one House of Parliament is not in session.**
  - President is satisfied that **"immediate action"** is necessary.
- The Constitution states that the ordinance will lapse at the end of six weeks from the time Parliament (or the State Legislature) next meets.
- Similar provisions also exist for **state governments under article 213.**

Supreme Court's Judgement on Ordinances

- **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.
- **DC Wadhwa Case 1987:** The issue of frequent promulgation of ordinances was again brought up in the Supreme Court through a writ petition.
  - The petition was regarding the promulgation of 256 ordinances between 1967 and 1981 in Bihar.
  - This included 11 ordinances that were kept alive for more than 10 years and famously dubbed as ordinance raj.
  - The Supreme court held that the legislative power of the executive to promulgate ordinances is to be **used in exceptional circumstances** and not as a substitute for the law-making power of the legislature.
- **Krishna Kumar Singh Case 2017:** Supreme Court in Krishna Kumar Singh v. the State of Bihar held that the authority to issue ordinances is not an absolute entrustment, but is "conditional upon satisfaction that circumstances exist rendering it necessary to take immediate action".
  - It further stated that the re-promulgation of ordinances is a fraud on the Constitution and a subversion of democratic legislative processes.

Associated Issues with the Ordinance Route

- **Usurpation of Legislative Power:** As lawmaking is a legislative function, this power is provided for urgent requirements, and the law thus made has an automatic expiry date.
  - An ordinance "ceases to operate" six weeks after the two Houses reassemble, except if it is converted into an Act by then. Repromulgation sidesteps this limitation.
  - To repromulgate is to effectively extend the life of an ordinance and lead to the usurpation of legislative power by the executive.
- **Undermining the Doctrine of Separation of Powers:** In the Kesavananda Bharati v State of Kerala case 1973, the Supreme Court listed the **separation of powers as a "basic feature"** of the Constitution.
  - The ordinance mechanism, in effect, is designed to remedy situations of legislative urgency when Parliament is not in session; it is not an alternative to parliamentary legislation.
  - However, article 123 places no numeric limits on ordinances.
  - In this way, the repromulgation undermines the separation of powers, as it effectively allows the executive to make permanent legislation without legislative input or approval.
- **Ignoring Supreme Court's Judgements:** Even after tough judgments on the use of ordinances, both the Centre and state governments have ignored the Supreme Court's observations.
  - For example, in 2013 and 2014, the Securities Laws (Amendment) Ordinance was promulgated three times.

Note:

- Similarly, an ordinance to amend the Land Acquisition Act was issued in December 2014, and repromulgated twice – in April and May 2015.

Conclusion

Indian Constitution has provided for the separation of powers among the legislature, executive, and judiciary where enacting laws is the function of the legislature. The executive must show self-restraint and should use ordinance making power only in unforeseen or urgent matters and not to evade legislative scrutiny and debates.

Rajya Sabha: The Upper House

Why in News?

- The **Upper House of the Parliament, Rajya Sabha or Council of States** was **constituted on 3rd April 1952** and the first session was held on 13th May 1952. Since then, it has contributed to the **welfare and progress of the country** in many ways.

What are the Key Points?

- **Features:** Rajya Sabha has its **own distinctive features** and reflects the federal character of the constitution and **protects the rights of States.**
- **Origin:** The origin of the Rajya Sabha or the Second Chamber can be traced to the **Montague-Chelmsford Report of 1918.**
  - This report introduced a **bicameral legislature,** the Lower House or Central Legislative Assembly and the Upper House or Council of State.
- **Contribution:** Rajya Sabha has passed **several important legislations** related to social change, economic transformation, agriculture, health, education, environment, science and technology, national security, and matters related to states, etc.

What is Rajya Sabha and How is it Different from Lok Sabha?

From the point of view of the Indian Federation, Rajya Sabha has its **own significance in the legislative map of India** and **represents the voice of the states** whereas the **Lok Sabha** represents the voice of the people directly.

- **Rajya Sabha:** It is the Upper House (Second Chamber or House of Elders) and it **represents the states and union territories** of the Indian Union.
  - The Rajya Sabha is called the **permanent House of the Parliament** as it is never fully dissolved.
  - The **IV Schedule** of the Indian Constitution deals with the allocation of seats in the Rajya Sabha to the states and UTs.
- **Lok Sabha**: It is the Lower House (First Chamber or Popular House) and it **represents the people of India as a whole.**

Provisions	Rajya Sabha	Lok Sabha
Composition	The maximum strength of Rajya Sabha is **250** (out of which 238 members are representatives of the states & UTs (elected indirectly) and **12 are nominated by the President).** The **current strength of the house is 245,** 229 members represent the states, 4 members represent the UTs, and 12 are nominated by the president.	The maximum strength of the Lok Sabha is fixed at **550** out of which 530 members are to be the representatives of the states and **20 of the UTs**. The **current strength of Lok Sabha is 543**, out of which 530 members represent the states and 13 represent the UTs. Earlier, the President also nominated two members from the Anglo-Indian **community, but by the 95th Amendment Act, 2009, this provision was valid till 2020 only.**

Note:

➢ **Election Representatives**	➢ The representatives of states are **elected by the members of state legislative assemblies.** ❍ The representatives of each UT in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. ➢ **Only three UTs** (Delhi, Puducherry, and Jammu & Kashmir) **have representation in Rajya Sabha** (others don't have enough population). ❍ The members nominated by the President are those who have **special knowledge or practical experience in art, literature, science, and social service.** ■ The rationale is to provide eminent persons a place in the house without going through elections.	➢ The representatives of states are **directly elected by the people from the territorial constituencies** in the states. ❍ By the Union Territories (Direct Election to the House of the People) Act, 1965, the members of Lok Sabha from the UTs are chosen by direct election.
➢ **Functions**	➢ Rajya Sabha has an **important role in reviewing and altering the laws** initiated by the Lok Sabha. ➢ It **can also initiate legislation** and a bill is required to pass through the Rajya Sabha in order to become a law.	➢ One of the most important functions of the Lok Sabha is to **select the executive**, a group of persons who work together to implement the laws made by the Parliament. ❍ This executive is often what we have in mind when we use the term government.

What is the Difference Between the Powers of both the Houses?

Both houses have equal powers in terms of the legislation and also in terms of the bills. The only **difference is in terms of the money bills** for which the Lok sabha has the powers.

➢ Powers of Rajya Sabha
- ❍ **State Related Matters:** The Rajya Sabha provides representation to the States. Therefore, any matter that affects the States must be referred to it for its consent and approval.
  - If the Union Parliament wishes to remove/ transfer a matter from the **State list,** **the approval of the Rajya Sabha is necessary.**

➢ **All-India Services:** It **can authorise** the Parliament to create new **All-India Services** common to both the Centre and the states (Article 312).

➢ **During Emergency Conditions:** If a proclamation is issued by the President for imposing a **national emergency** **or president's rule or financial emergency** at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place within the period allowed for its approval, then the **proclamation can remain effective even if it is approved by the Rajya Sabha** alone (Articles 352, 356 and 360).

➢ **Powers of Lok Sabha**
- ❍ **Power in Money Matters**: Once the Lok Sabha passes the budget of the government or any other money-related law, the **Rajya Sabha cannot reject it.**
  - The Rajya Sabha **can only delay it by 14 days** or suggest changes in it, however, the former may or may not accept these changes.
- ❍ **Decisions in Joint Sitting:** Any **ordinary law** needs to be passed by both the Houses.
  - ■ However, in case of any difference between the two Houses, **the final decision is taken by calling a joint session** of both the Houses.

Note:

- Due to a larger strength, the view of the Lok Sabha is likely to prevail in such a meeting.

- **Power over Council of Ministers:** The Lok Sabha **controls the Council of Ministers.**
  - If the majority of the Lok Sabha members say they have 'no confidence' in the Council of Ministers, **all ministers including the Prime Minister, have to quit.**
  - The **Rajya Sabha does not have this power.**

What are the Unique Features of Rajya Sabha?

- Rajya Sabha has **always played a constructive and effective role**. Its performance in the legislative field and in **influencing Government policies** has been quite significant.
- As a federal chamber, it has **worked for the unity and integrity of the nation** and has reinforced the faith of the people in parliamentary democracy.
- In Rajya Sabha debates, **all the members are always encouraged to use their regional languages.**
- The 12 members that are nominated by the President **bring their expertise to the house from different fields.**

What can be the Way Forward?

- As Rajya Sabha is the voice of the states, it is important that more voices pointing out state-specific concerns are raised. The same shall be responded positively from the government's side as well in order to maintain democracy and federalism in its true essence.
- It is also important to spend more time on debates and discussions and less on disruptions to ensure that all the legislation goes through proper and productive parliamentary scrutiny.

Election Freebie Politics and Economy

Why in News

With the poll season around the corner, political parties are busy planning to lure the electorate with their promises which also include freebies.

- Over the years the **politics of freebies has become an integral part of the electoral battles** and the scenario is no different in the forthcoming assembly polls in five states, Uttar Pradesh, Uttarakhand, Goa, Punjab And Manipur.

Freebies in Indian Politics

- **About**: Political parties **promise to offer free electricity/ water supply**, monthly **allowance to unemployed,** daily wage workers and women as well as gadgets like laptops, smartphones etc. **in order to secure the vote of the people.** There are arguments both in favor of and against this practice:
  - Supporters of such freebies argue that **pole promises are essential for voters** to know what the party would do if it comes to power and they have the chance to weigh these options.
  - Those against the freebies point out that this **places a huge economic burden on the exchequer of state** as well as center (if the elections are held for Lok Sabha).
- **Arguments in Favor of Freebies:**
- **Essential for Fulfilling Expectations:** In a country like India where the states have (or don't have) a certain level of development, upon the emergence of the elections, there are **expectations from the part of people which are met by such promises** of freebies.
  - Moreover, there are also **comparative expectations** when the people of the adjoining/ other states (with different ruling parties) get freebies.
  - **Helps Lesser Developed States**: With the states that have comparatively lower level of development with a larger share of the population suffering from poverty, **such kind of freebies become need/ demand-based** and it becomes **essential to offer the people such subsidies for their own upliftment.**
- **Arguments Against Freebies:**
- **Unplanned Promises:** Offering freebies has become a competitive bidding done by every political party, however, a big problem is the subsidies or any of the freebies announced are **not incorporated into the budget proposals.**
  - The financing of such proposals are often not incorporated into the memorandums or manifestos of the parties.

Note:

- **Economic Burden on States:** Offering freebies, ultimately, has an **impact on the public exchequer** and **most of the states of India do not have a robust financial health** and often have very **limited resources in terms of revenue.**
- **Unnecessary Expenditure:** Announcing freebies in haste without legislative debate does not produce the desired benefits but only ends up in irresponsible expenditure.
  - Welfare schemes in the form of power and water bill waivers could be justified if it were to help the poor.
  - However, election-induced impractical announcements by parties turn out to be far removed from the budgetary and infrastructure realities of the States.

Way Forward

- **Better Policy Reach:** If the political parties go for effective economic policies where the welfare policies or **government schemes have good reach without any leakages or corruption** and it is **targeted at the right audience**, then infrastructure and development will take care of itself and the **people will not require such kinds of freebies.**
  - The economic policies or development models that the parties plan to adopt have to be very clearly stated and implemented effectively.
  - Moreover, the parties should have (and provide) a proper understanding on the economics and expenditure of such policies.
  - The **ruling parties at center and states shall be the first one to follow** such measures and set examples.
- **Judicious Demand-Based Freebies:** India is a large country and there is still a huge set of people who are below the poverty line. It is also **important to have all the people accommodated in the development plan** of the country.
- The judicious and sensible offering of freebies or subsidies that can be easily accommodated in the states' budget do not do much harm and can be leveraged.
  - The subsidies in basic necessities such as giving **free education to younger children** or **offering free meals** at schools are **rather positive approaches.**
- **Utilizing the Time in Power**: The right notion is to utilize the time in power i.e. the **five-year tenure when a political party is a ruling government** and make provisions in this crucial period rather than making promises in terms of freebies.
  - It is the responsibility of the government and all the other political parties to **ensure betterment of the society** and **good governance,** therefore, it is important to have a limit to offering such freebies to the people.
- **Differentiating Subsidies and Freebies**: There is a need to understand the impacts of freebies from the economic sense and connect it with the taxpayers money.
  - It is also essential to distinguish between subsidy and freebies as **subsidies are the justified and specifically targeted benefits** that arise out of demands. However, the freebies are quite different.
  - Although every party has a right to create subsidy ecosystems to give targeted needy people the benefits, **there should not be a long-term burden on the economic health** of the state or the central government.
- **Awareness Among People:** The People should **realize the wrong they do in selling their votes for freebies.** If they do not resist, they cannot expect good leaders.
  - If the money spent for freebies is utilized constructively by creating job opportunities, building infrastructure such as dams and lakes and better facilities and providing incentives to agriculture, there will definitely be social uplift and progress of the State.
  - It is the people who can more effectively discourage the political parties from offering such freebies by making the right choices.

Conclusion

While talking about the promises made during the election campaigns, solely considering the political aspect is not wise, it is also important to keep in mind the economic part because ultimately the budgetary allocation and resources are limited. Politics and economy should go hand in hand when talking about freebies.

Note:

Accessible and Affordable Judicial System

Why in News?

- The Vice President of India has recently raised concerns over making the entire judicial system more accessible and understandable for the common man.
  - He said that "inordinate delay, cost of legal processes and inaccessibility are impeding the effective delivery of justice to the common man".

Key Points

- **Equal Justice:** Accessible and Affordable Justice has been enshrined in DPSP under **article 39 (A)**.
  - However, due to various structural and systematic challenges, the aspiration to meet this objective looks blur.
- **High Pendency of Cases:** The total pendency of cases in the several courts of India at different levels, sums up to a total of **about 3.7 crores** thus increasing the demand of a better and improved judicial system.
- **Inferences from Pendency of Cases:** In 2010, Justice VB Rao (Andhra Pradesh HC) estimated it to take **320 years to clear the backlog of 31.28 million** (3.12 crore) pending cases (the then rate of pending cases) in various courts.
  - The **National Court Management,** a report of the **Supreme Court** in 2012, studied the data of pendency of cases and vacancy of judges.
    - It showed that in the last 3 decades, the number of cases increased by 12 folds while the number of judges increased only by 6 folds.
- **Widening Gap:** The gap between the number of judges and cases is widening.
  - In the next 3 decades, the number of cases is expected to rise by approximately **15 crores requiring a total no of judges about 75000.**
    - In fact, currently the 25 high courts have the strength of **less than 1200 judges.**

Article 39 (A)

- Article 39 (A) of the Constitution directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way.

The Poor Judicial System of India

- **Judge to Population Ratio:** The judge-population ratio in the country is not very appreciable.
  - While for the other countries, the ratio is about 50-70 judges per million people, in India it is **20 judges per million heads.**
  - Although it is an increase from 12 judges per million people in the past, it does not make us anywhere close to an affordable judicial system.
- **Involvement of Technology:** It is only since the pandemic that the court proceedings have started to take place virtually too, earlier the role of technology in the judiciary was not much larger.
- **Recruitment Delays:** The posts in the judiciary are not filled up as expeditiously as required.
  - India is a country with a population of more than 135 million and total strength of judges with only around 25000.
    - Almost 400 posts are vacant (40%) in the high courts.
    - Around 35% of the posts are lying vacant in the lower judiciary.
    - However, there are not too many vacancies in the Supreme Court. The total number is 34 with only 2-3 vacancies.
- **Procedural Delays:** Frequent adjournments are granted by the courts to the advocates which leads to unnecessary delays in justice.
  - The process of judicial appointment is delayed due to **delay in recommendations** by the **collegium** for the higher judiciary.
  - **Delay in recruitment** made by the state commission/ high courts for lower judiciary is also a cause of the poor judicial system.

Challenges Associated

- **More Awareness More Cases:** As far as increasing awareness of the citizens about their rights and laws is concerned, it is undoubtedly very necessary and appreciable but more knowledge of rights means an increased number of cases.
  - The increasing awareness can and must not be discouraged but the increasing cases should be dealt with efficiently.
- **Overlapping of Laws:** A number of laws exist in India at central and state levels many of which are quite similar in nature.
  - This creates clumsiness and chaos, these laws must be codified and the redundant ones must be repealed.

Note:

- **Complex Language of the Laws:** Language used in the laws are responsible for most of the litigations.
  - In case the legislations are drafted in a simpler language, probably the number of cases being filed in court specifically related to taxation matter can also be reduced.
- **Lack of Assessment:** When a new legislation is formed, there is no judicial impact assessment done by the government on how much burden is going to be casted on the judiciary.
  - The probabilities of generating more litigations or requirement of more judges is not taken into account.

Way Forward

- **Streamlining the Appointment System:** The vacancies must be filled without any unnecessary delay.
  - A proper time frame for the appointment of judges must be laid down and the recommendations must be given in advance.
  - The Constitution of the **All India Judicial Services** is also an important factor which can definitely help India establish a better judicial system.
- **Use of Technologies:** People are becoming more and more aware of their rights and which is why the number of cases filed in court are also increasing.
  - To deal with that **judicial officers need to be trained, vacancies for the judges must be filled up expeditiously** and in addition the **use of technology particularly** artificial intelligence must be encouraged.
- **Dispute Resolution:** The adjudication of disputes within a **short time frame** is important to ensure the trust of the people within the judicial system.
  - Delayed justice erodes faith in the system and it can lead to **vigilantism.**
- **Out of Court Settlement:** Resolving every case within the court premises is not mandatory; other possible systems must also be accessed.
  - There is also a need to promote the alternate dispute resolution mechanism for which the arbitration and conciliation act has been amended three times to ensure that people go for commercial litigation mode and sort it out either by mediation, conciliation or arbitration.
- **Use of Local Languages:** For making the entire judicial system more understandable to the common man, one way the use of the local languages in courts.
  - The use of local language in court provides the common man a better understanding of his rights, the laws created and the hearings of court proceedings too.
  - The local languages in the court is already permissible right upto the district level. Some of the high courts are also working in the local languages.

All India Judicial Services (AIJS):

- **About:**
  - The government is in the process of finalising a bill to establish an **All-India Judicial Service to recruit officers for subordinate courts through an entrance test.**
  - Those who clear the **pan-India** test would be appointed by high courts and the State governments.
  - The AIJS exams will be conducted in four zones; East, West, North and South.
- **Constitutional Provision:**
  - The provision of AIJS was included in Article 312 of the Constitution through the **42nd Amendment in 1976.**
- **Background:**
  - The move is in line with the present UPSC examination pattern, where such exams are conducted in multiple languages.
- **Language:** The government plans to conduct AIJS examinations in **22 languages.**
- **Related Issue:**
  - Since cases in lower courts are argued in local languages, there have been apprehensions as to how a person from a particular state can hold hearing in another state that has completely different language.
    - But the government is of the view that even IAS and IPS officers have served in different States overcoming the language barrier.

Note:

Conclusion

- A sound judicial system is one based on an objective enquiry, practical and unbiased analysis of evidence and delivery of timely and even-handed justice to all citizens.
- The government must take hard and fast actions on reducing the pendency of cases as the justice delayed is justice denied.

Judicial Activism, Restraint & Overreach

What does it Mean?

- **Judicial Activism:**
  - Judicial activism signifies the proactive role of the Judiciary in protecting the rights of citizens.
  - The practice of Judicial Activism first originated and developed in the USA.
  - In India, the Supreme Court and the High courts are vested with the power to examine the constitutionality of any law, and if such a law is found to be inconsistent with the provisions of the constitution, the court can declare the law as unconstitutional.
  - It has to be noted that the subordinate courts do not have the power to review constitutionality of laws.
- **Origin:**
  - The term judicial activism was coined by historian Arthur Schlesinger, Jr. in 1947.
  - The foundation of Judicial Activism in India was laid down by Justice V.R Krishna Iyer, Justice P.N Bhagwati, Justice O.Chinnappa Reddy, and Justice D.A Desai.
- **Criticism:**
  - Judicial Activism has led to a controversy in regard to the supremacy between Parliament and Supreme Courts.
  - It can disturb the delicate principle of separation of powers and checks and balances.
- **Judicial Restraint:**
  - Judicial Restraint is **the antithesis of Judicial Activism**.
  - Judicial Restraint is a theory of judicial interpretation that **encourages judges to limit the exercise of their own power**.
  - In short, the courts should interpret the law and not intervene in policy-making.
  - Judges should always try to decide cases on the basis of:
    - The original intent of those who wrote the constitution.
    - Precedent – past decisions in earlier cases.
    - Also, the court should leave policy making to others.
  - Here, courts "restrain" themselves from setting new policies with their decisions.
- **Judicial Overreach:**
  - When Judicial Activism goes overboard, and becomes Judicial Adventurism, it is referred to as Judicial Overreach.
  - In simpler terms, it is when the **judiciary starts interfering** with the proper functioning of the legislative or executive organs of the government.
  - Judicial Overreach is undesirable in a democracy as it breaches the principle of separation of powers.
  - In view of this criticism, the judiciary has argued that it has only stepped when the legislature or the executive has failed in its own functions.

Why is it Required?

- **Judicial Activism:**
  - **Judicial activism has arisen mainly due to:**
    - **The failure of the executive and legislatures to act.**
    - **Since** there is a doubt that the legislature and executive have **failed to deliver the desired results**.
    - It occurs because the entire system has been plagued by **ineffectiveness and inactiveness**.
    - **The violation of basic human rights** has also led to judicial activism.
    - **Due to the misuse and abuse of some of the provisions of the Constitution,** judicial activism has gained importance.

Note:

- **Necessity of Judicial Activism:**
  - To understand the increased role of the judiciary, it is important to know the causes that led to the judiciary playing an active role.
- There was rampant corruption in other organs of government.
- The executive became callous in its work and failed to deliver results required.
- Parliament became ignorant of its legislative duties.
- The principles of democracy were continuously degrading.
- Public Interest Litigations brought forward the urgency of public issues.

➢ In such a scenario, the judiciary was forced to play an active role. It was possible only through an institution like judiciary which is vested with powers to correct the various wrongs in society. In order to prevent the compromise of democracy, the Supreme Court and High Courts took the responsibility of solving these problems.

For example, in ***G. Satyanarayana vs Eastern Power Distribution Company (2004),*** Justice Gajendragadkar ruled that a mandatory enquiry should be conducted if a worker is dismissed on the ground of misconduct, and be provided with an opportunity to defend himself. This judgement added regulations to labour law which was ignored by legislation.

- Similarly, **Vishaka vs State of Rajasthan (1997)** is an important case that reminds the need of Judicial activism. Here, the SC laid down guidelines that ought to be followed in all workplaces to ensure proper treatment of women. It further stated that these guidelines should be treated as a law until Parliament makes a legislation for enforcement of gender equality.

➢ **Some other famous cases of Judicial Activism include -**

- **Kesavananda Bharati case (1973):** The apex court of India declared that the executive had no right to intercede and tamper with the basic structure of the constitution.
- **Sheela Barse v. State of Maharashtra (1983):** A letter by Journalist, addressed to the Supreme Court addressing the custodial violence of women prisoners in Jail. The court treated that letter as a writ petition and took cognizance of that matter.
- **I. C. Golaknath & Ors vs State Of Punjab & Anrs. (1967):** The Supreme Court declared that Fundamental Rights enshrined in Part 3 are immune and cannot be amended by the legislative assembly.
- **Hussainara Khatoon (I) v. State of Bihar (1979):** The inhuman and barbaric conditions of the undertrial prisoners reflected through the articles published in the newspaper. Under article 21 of the Indian Constitution, the apex court accepted it and held that the right to speedy trial is a fundamental right.
- **A.K. Gopalan v. State of Madras (1950):** The Indian Supreme Court rejected the argument that to deprive a person of his life or liberty not only the procedure prescribed by law for doing so must be followed but also that such procedure must be fair, reasonable and just.

➢ **Judicial Restraint:**

- Judicial restraint helps in **preserving a balance among the three branches of government,** judiciary, executive, and legislative.
- **To uphold the law established by the government** in the legislature.
- To show solemn **respect for the separation of governmental problems**.
- To allow **the legislature and the executive to follow their duties** by not reaching in their arena of work.
- To mark a **respect for the democratic form of government** by leaving the policy on policymakers.

➢ **Trends in Judicial Restraint:**

- **S.R. Bommai v Union of India (1994)** is a famous example often stated to show restraint practiced by Judiciary. The judgement stated that in certain cases the judicial review is not possible as the matter is political. According to the court, the power of article 356 was a political question, thus refusing judicial review. The court stated that if norms of judiciary are applied on matters of politics, then it would be entering the political domain and the court shall avoid it.
- Similarly, in **Almitra H. Patel Vs. Union of India (1998)** the Supreme court refused to direct the Municipal Corporation on the issue of assigning responsibility for cleanliness of Delhi and stated that it can only assign authorities to carry out duty that is assigned as per law.

Note:

- **Judicial Overreach:**
  - The direct effect of legislative and executive negligence or inability is "judicial overreach".
  - Weak and injudicious results, not only in the making of laws, but also in their application.
  - The Indian judiciary has been criticized by many legal scholars, lawyers and judges themselves, for playing an exceedingly activist role and overreaching.
- **Impact of Judicial Overreach:**
  - Since the legislature is lagging behind in its function, the judiciary tends to Overreach from its function causing a conflict between legislature and judiciary. The clear impacts from such an Overreach of Judiciary are as follows:
    - There is a threat to the doctrine of separation of powers which undermines the spirit of the constitution. There is a lack of harmony between legislature and judiciary and an impression on the public of inaction by the legislature.
    - In certain scenarios like that of environmental, ethical, political, expert knowledge is required which the judiciary might not possess. If it renders judgement while having no experience in these domains, then it not only undermines expert knowledge but also can prove harmful to the country.
    - Judicial Overreach can lead to an expression of disregard by the judiciary in the elective representation. This can decrease the faith of the public in the institution of democracy.
  - Hence, It is an obligation on the part of courts to remain under their jurisdiction and uphold the principle of separation of powers. The Supreme court has itself reminded other courts, in 2007, to practise Judicial restraint. It stated "Judges must know their limits and must try not to run the government. They must have modesty and humility, and not behave like emperors." Further, it said, "In the name of judicial activism, judges cannot cross their limits and try to take over states which belong to another organ of the state".
- **Examples of Judicial Overreach:**
  - A famous case of Judicial Overreach is **censorship of the Film Jolly LLB II**. The case was filed as a writ petition, and alleged that the film portrayed the legal profession as a joke, making it an act of contempt and provocation. The Bombay High Court appointed a three person committee to watch the movie and report on it. This was viewed as unnecessary, as the Board Of Film Certification already exists and is vested with the power to censor. On the basis of the report of the committee, four scenes were removed by the directors. It was seen as violative of Article 19(2), as it imposed restriction on freedom of speech and expression.
  - On a PIL about road safety, **the Supreme Court banned the Sale of Liquor,** at retail shops, restaurants, bars within 500m of any national or state highway. There was no evidence presented before the court that demonstrated a relation of ban on liquor on highways with the number of deaths. This judgement also caused loss of revenue to state governments and loss of employment. The case was seen as an Overreach because the matter was administrative, requiring executive knowledge.

How is it Manifested?

- **Judicial Activism**:
  - **Through Judicial Review**
    - Judicial review is the doctrine under which legislative and executive actions are subject to review by the judiciary.
    - Judicial review is an example of **check and balances** in a modern governmental system.
    - Judicial review is adopted in the Constitution of India from the **Constitution of the United States of America**.
    - It gives power to the Supreme Court to examine the **constitutionality of any law** and if such a law is found to be inconsistent with the provisions of the Constitution, the Court can declare the law as unconstitutional.
  - **Through Public Interest Litigation:**
    - Public interest litigation means a suit filed in a court of law for the protection of public interest.
    - Judicial activism in India acquired importance due to public interest litigation. It is not defined in any statute or act.
    - In India, PIL initially was resorted to towards improving the lot of the **disadvantaged sections of the society** who due to poverty and ignorance were not in a position to seek justice from the courts.

Note:

- **Justices P.N. Bhagwati and V.R. Krishna Ayer** has played a key role in promoting this avenue of approaching the apex court of the country.

❍ **Through Constitutional Interpretation:**
- Constitutional interpretation comprehends the methods or strategies available to people attempting to resolve disputes about the meaning or application of the Constitution.
- The possible sources for interpretation include the text of the Constitution, its "original history," including the general social and political context.

❍ **Through Access to international statutes for ensuring constitutional rights:**
- The court refers to various international statutes in its judgements.
- This is done by the apex courts to ensure the citizens of their rights.
- International Law is referred to by Supreme Court's judgments in many cases. Example: Recently, SC reaffirmed the rights of disabled person to live with dignity in Jeeja Ghosh v. Union of India. The court underlined the Vienna Convention on the law of treaties, 1963 which requires India's internal legislation to comply with international commitments.

➢ **Judicial Restraint:**
- Through referring to the original intent of those who wrote the constitution:
  - Judges look to the original intent of the writers of the Constitution.
  - Judges refer to the intent of the legislatures that wrote the law and the text of the law in making decisions.
  - Any changes to the original Constitution language can only be made by constitutional amendments.

❍ **Through Precedent:**
- Precedent means past decisions in earlier cases.
- Judicially-restrained judges respect stare-decisis, the principle of upholding established precedent handed down by past judges.

❍ **Through leaving the legislature and executive to decide policies:**
- Judicial Restraint is practised when the court leaves policy making to others.
- The courts generally refer to interpretations of the constitution by the Parliament or any other constitutional body.

How do they Differ?

➢ **Judicial Activism VS Judicial Restraint:**

❍ **On basis of Meaning:**
- **Judicial activism:** interpretation of the constitution to advocate contemporary values and conditions.
- **Judicial restraint:** limiting the powers of the judges to strike down a law.

❍ **On basis of Goals:**
- **Judicial restraint:** the judges and the court **encourage reviewing an existing law** rather than modifying the existing law, whereas in judicial activism: it gives the power to **overrule certain acts or judgments**.

❍ **On the basis of Intent:**
- Judicial activism judges should look beyond the original intent of the framers.
- In Judicial restraint, Judges should look to the original intent of the writers of the Constitution.

❍ **On basis of Power:**
- In Judicial activism, the judges are required to use their power to correct any injustice especially when the other constitutional bodies are not acting.
- Judicial restraint is limiting the powers of the judges to strike down a law.

❍ **On basis of their Role:**
- Judicial activism has a great role in formulating social policies on issues like protection of the rights of an individual, civil rights, public morality, and political unfairness.
- Judicial restraint helps in preserving a balance among the three branches of government, judiciary, executive, and legislative.

Conclusion

➢ In India, Judiciary has played an active role through its activism, especially through PIL. This has restored the rights of disadvantaged sections of the society.

➢ The Supreme Courts and the High Courts have worked in favour of progressive social policies and citizens hold a high regard for the institution of judiciary.

➢ However, in a democracy, it is important to maintain the principle of separation of powers and uphold the legitimacy of the three organs of government.

Note:

- It can be possible only when the executive and legislature are attentive and functional.
- At the same time, the Judiciary should be cautious of stepping into spheres of activity that does not belong to it.

Important Judgements of Independent India

- The Constitution of India, **enacted in 1950**, has been the cornerstone of India's democracy. After its enactment, it has **undergone several amendments.**
- The Supreme Court is the **ultimate interpreter of the Constitution** and, by its creative and innovative interpretation, has been the protector of our constitutional rights and fundamental freedom.
- These judgements **are to be appreciated** not only as precedents but also as having laid down the law on issues of paramount importance—**a law that is binding on all courts and authorities in the country.**

A.K. Gopalan v. State of Madras (1950)

Main Theme: In the **A.K. Gopalan v. State of Madras (1950)** case, the Supreme Court interpreted the **Fundamental Rights under Part III of Indian Constitution.**

- In this case, it held that the protection under Article 21 **is available only against arbitrary executive action** and not from arbitrary legislative action.
  - This means that the State can deprive the right to life and personal liberty of a person based on a law.
  - This is because of the expression **'procedure established by law'** in Article 21, which is different from the expression **'due process of law'** contained in the American Constitution.
  - Hence, the validity of a law that has prescribed a procedure cannot be questioned on the ground that the law is **unreasonable, unfair, or unjust.**
- Secondly, the Supreme Court held that **'personal liberty' means only liberty relating to the person or body of the individual.**

Shankari Prasad v. Union of India (1951)

Main Theme: In this case, the constitutional validity of the First Amendment Act (1951)**, was challenged.**

- The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.
- The word 'law' in Article 13 includes only ordinary laws and not the constitutional amendment acts (constituent laws).
  - Therefore, **the Parliament can abridge or take away any of the Fundamental Rights** by enacting a constitutional amendment act and such a law will not be void under Article 13.

Berubari Union Case (1960)

Main Theme: In this case, the issue was resolved about whether **the Preamble is part of the Constitution or not.**

- According to the Supreme Court, in the Berubari Union case (1960), the Preamble shows the general purposes behind the several provisions in the Constitution and is thus **a key to the minds of the makers of the Constitution.**
- Further, where the **terms used in any article are ambiguous** or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble.
- Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is not a part of the Constitution. Therefore, **it is not enforceable in a court of law.**

Golaknath v. State of Punjab (1967)

Main Theme: In that case, the Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights.

- The Court held that the **Fundamental Rights cannot be amended** for the implementation of the Directive Principles.
- The Parliament reacted to the Supreme Court's judgement in the Golaknath Case (1967) **by enacting the 24th Amendment Act** (1971) **and the 25th Amendment Act** (1971).
- The 24th Amendment Act declared that the Parliament has the power **to abridge or take away any of the** Fundamental Rights by enacting Constitutional Amendment Acts.

Note:

- The 25th Amendment Act inserted a new Article 31C which contained the following **two provisions:**
  - No law which seeks to implement the socialistic **Directive Principles specified in Article 39 (b) and (c)** shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14, Article 19, or Article 31.
  - No law containing a declaration for giving effect to such a policy shall be **questioned in any court** on the ground that it does not give effect to such a policy.

Indira Nehru Gandhi v. Raj Narain case (1975)

Main Theme: The doctrine of the basic structure of the constitution was reaffirmed and applied by the Supreme Court in the Indira Nehru Gandhi case (1975).

- In this case, the Supreme Court invalidated a provision of the **39th Amendment Act (1975)** which kept the election disputes involving the Prime Minister and the Speaker of Lok Sabha **outside the jurisdiction of all courts.**
- As per the court, this provision was beyond the amending power of Parliament as it **affected the basic structure** of the constitution.
- The Parliament reacted to this judicially innovated doctrine of 'basic structure' by enacting the **42nd Amendment Act (1976).**
- This Act amended **Article 368** and declared that there is no limitation on the constituent power of Parliament and **no amendment can be questioned in any court** on any ground including that of the contravention of any of the Fundamental Rights.

Minerva Mills v. Union of India (1980)

Main Theme: The Supreme Court reiterated that Parliament can amend any part of the Constitution but it cannot change the "Basic Structure" of the Constitution.

- In the **Minerva Mills case,** the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.
  - They together constitute the **core of the commitment to social revolution.**
- The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights.
- Therefore, the present position is that the Fundamental Rights enjoy supremacy over the **Directive Principles.**
- Yet, this does not mean that the Directive Principles cannot be implemented.
- The Parliament **can amend the Fundamental Rights for implementing the Directive Principles,** so long as the amendment does not damage or destroy the basic structure of the Constitution.

MC Mehta v. Union Of India (1986)

Main Theme: The judgement is considered as one of the major ruling in the field of environmental law in our country. The judgement took up various new situations and ways of interpretation of the laws and Fundamental Rights.

- The Supreme Court, in the M.C. Mehta vs Union of India 1987, found the **strict liability principle** inadequate to protect citizens' rights and replaced it with the absolute liability principle.
  - This judgement came on the **Oleum gas leak case of Delhi in 1986.**
- In this case, the Supreme Court introduced **compulsory learning of lessons on protection and improvement** of the natural environment in all the educational institutions of the country as a part of Fundamental duty under **Article 51-A (g).**

S. R. Bommai v. Union of India (1994)

Main Theme: In this case, the Supreme Court laid down that the Constitution is federal and characterised **federalism as its 'basic feature'.**

- It observed the fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-a-vis the states does not mean that the **states are mere appendages of the Centre.**
- The states have an independent constitutional existence. They are **not satellites or agents of the Centre**. Within the sphere allotted to them, the states are supreme.

Note:

- The fact that during an emergency and in certain other eventualities their **powers are overridden or invaded** by the Centre is not destructive of the essential federal feature of the Constitution.
- They are exceptions and the exceptions are not a rule. Let it be said that the federalism in the Indian Constitution is **not a matter of administrative convenience,** but one of principle–the outcome of our own process and a recognition of the ground realities.

Shayara Bano v. Union of India & Ors. (2017)

Main Theme: In this case, the Supreme Court ruled that Instant **Triple talaq or talaq-e-biddat** **is unconstitutional and illegal.**

- To enforce the Supreme Court ruling, the government brought **The Muslim Women (Protection of Rights on Marriage) Bill,** 2017.
- The bill was passed by Lok Sabha, but the bill remains pending in Rajya Sabha.
- The ordinance **gives effect to the amended version** of The Muslim Women (Protection of Rights on Marriage) Bill, 2017 as presented in Rajya Sabha by the government.

Kesavananda Bharati v. State of Kerala (1973)

Main theme: Propagating the 'basic structure' doctrine as a safeguard against the usurpation of the Constitution.

- It was unique for the reason that it brought a shift in the balance of democratic power. Earlier judgements had taken a stand that Parliament could amend even the fundamental rights through a proper legislative process.
  - But the present case held that Parliament can not amend or alter the fundamental structure a **'Basic Structure'** of the constitution.
- Besides, Kesavananda Case was significant in that the Supreme Court ascribed to itself the function of preserving the integrity of the Indian Constitution.
- The **'basic structure' doctrine** formulated by the court represented the pinnacle of judicial creativity and set a benchmark for other constitutional courts around the world.
- The doctrine ruled that even a constitutional amendment could be invalidated if it impaired the essential features—the basic structure—of the Constitution.

Evolution of the Basic structure doctrine

- Since the adoption of Indian Constitution, debates have started regarding the power of the Parliament to amend key provisions of the Constitution.
- In the early years of Independence, the Supreme Court conceded absolute power to Parliament in amending the Constitution, as was seen in the verdicts in **Shankari Prasad case (1951) and Sajjan Singh case (1965).**
  - This means Parliament had the power to amend any part of the constitution including Fundamental rights.
  - However, in the **Golaknath case (1967),** the Supreme Court held that Parliament could not amend Fundamental Rights, and this power would be only with a Constituent Assembly.
  - The Court held that an amendment under Article 368 is "law" within the meaning of Article 13 of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void.
  - To get over the judgments of the Supreme Court in the Golaknath case (1967), RC Cooper case (1970), and Madhavrao Scindia case (1970), the then government headed by Prime Minister Indira Gandhi had enacted major amendments to the Constitution (the 24th, 25th, 26th and 29th).
  - All the four amendments brought by the government were challenged in the Kesavananda Bharati case.

Maneka Gandhi v. Union of India (1978)

Main theme: Expanding the **meaning of the 'right to life'** under the Constitution of India

- The right to life and personal liberty under Article 21 reads: 'No person shall be deprived of his life or personal liberty except according to **procedure established by law".**

Note:

- In other words, courts were not allowed to question any law—no matter how arbitrary or oppressive—as violating the right to life or personal liberty if the law had been suitably passed and enacted.
- However, by vesting in itself the **power of substantive review under Article 21,** the court transformed itself from being merely a supervisor, to being a watchdog of the Constitution.
- The Supreme Court's judgement in the Maneka Gandhi case effectively meant that **'procedure established by law'** under Article 21 would have the same effect as the expression **'due process of law'.**
  - In a subsequent decision, the Supreme Court stated that Article 21 would read as: **'No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law.**

Mohammed Ahmed Khan v. Shah Bano Begum (1985)

Main theme: Questioning the sanctity of **personal religious laws** and bringing the debate on a **Uniform Civil Code** to the forefront of the national discourse.

- In April 1985, the Supreme Court delivered a judgement on the maintenance a divorced Muslim woman would be entitled to receive from her former husband in the case of Mohammed **Ahmed Khan v. Shah Bano Begum (Shah Bano).**
- It is seen as one of the milestones in Muslim women's fight for rights in India and the battle against the set Muslim personal law. It laid the ground for thousands of women to make legitimate claims which they were not allowed before.
- While the Supreme Court upheld the right to alimony in the case, the judgment set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim personal law.

Indra Sawhney v. Union of India (1992)

Main theme: Delivering the decision relating to the **constitutionality of reservations** under the Constitution of India.

- In the **Indra Sawhney judgment (1992),** the Court upheld the government's move and proclaimed that the advanced sections among the OBCs (i.e, the creamy layer) must be excluded from the list of beneficiaries of reservation. It also held that the concept of creamy layer must be excluded for SCs & STs.
- The Indra Sawhney verdict also held there would be reservation only in initial appointments and not promotions.
  - But the government through this amendment introduced **Article 16(4A)** to the Constitution, empowering the state to make provisions for reservation in matters of promotion to SC/ST employees if the state feels they are not adequately represented.
- The Supreme Court in the judgement also **capped the reservation quota at 50%.**

Vishaka v. State of Rajasthan (1997)

Main theme: Innovating jurisprudence to **prevent sexual harassment at the workplace.**

- In the context of sexual harassment of women at workplace, judicial activism reached its pinnacle in **Vishaka v. State of Rajasthan (Vishaka).**
  - The judgement was unprecedented for several reasons:
  - the Supreme Court acknowledged and relied to a great extent on international treaties that had not been transformed into municipal law;
  - the Supreme Court provided the first authoritative definition of 'sexual harassment' in India; and confronted with a statutory vacuum, it went creative and proposed the route of 'judicial legislation'.
- Since there was no legislation in India related to sexual harassment at the workplace, the court stated that it was free to rely on the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW—signed by India in 1980)** in interpreting **Articles 14, 15, 19 and 215 of the Constitution.**
  - To justify its decision the court referred to several sources including the **Beijing Statement** of Principles of the Independence of the Judiciary, a decision of the High Court of Australia and its own earlier decisions.

Note:

The Supreme Court set out the following significant guidelines:

- The employer and/or other responsible people in a workplace are duty-bound to prevent or deter sexual harassment and set up processes to resolve, settle, or prosecute in such cases.
- For the first time in India, 'sexual harassment' was defined authoritatively.
  - The definition includes 'such unwelcome sexually determined behaviour (whether directly or by implication) such as: physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal or non-verbal conduct of sexual nature'.
- All employers or persons in charge of workplaces must strive to prevent sexual harassment and, if any act amounts to a specific offence under the Indian Penal Code, 1860 or any other law, they must take appropriate action to punish the guilty.
- Even if the act is not considered a legal offence or a breach of service rules, the employer should create appropriate mechanisms so that the complaint is addressed and redressed in a time-bound manner.
- This complaint mechanism must, if necessary, provide a complaints committee, a special counsellor or other support service, such as assuring confidentiality. The complaints committee should be headed by a woman, and at least half its members must be women.
- The employer must sensitize female employees to their rights and prominently notify the court's guidelines.
- Even if a third party is responsible for sexual harassment, the employer must take all steps necessary to support the victim.
- The central and state governments should adopt suitable measures to ensure that private sector employers implement the guidelines.

Aruna Ramachandra Shanbaug v. Union of India (2011)

Main Theme: Accepting **passive euthanasia** as being constitutional

- **Passive euthanasia** is a condition where there is withdrawal of medical treatment with the deliberate intention to hasten the death of a terminally-ill patient.
- The **Aruna Shanbaug case** triggered debate of Euthanasia in India.
- A writ petition under Article 32 before the Supreme Court of India was filed, asking for the legalisation of euthanasia so that Aruna's continued suffering could be terminated by withdrawing medical support.
- Supreme court in 2011 **recognised passive euthanasia** in this case by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision.
- Subsequent to this, in a landmark judgment (2018), the Supreme Court recognised passive euthanasia and **"living will".**
  - A **'living will'** is a concept where a patient can give consent that allows withdrawal of life support systems if the individual is reduced to a permanent vegetative state with no real chance of survival.

Lily Thomas v. Union of India (2013)

Main Theme: Struck down as unconstitutional **Section 8(4) of the Representation of the People Act (RPA)-1951** that allowed convicted lawmakers a three-month period for filing appeals to the higher court and to get a stay on the conviction and sentence.

- **Section 8 of the RPA** deals with disqualification on conviction for certain offences: A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1) (2) and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release.
  - But **Section 8 (4) of the RP Act** gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months.
- The Supreme Court held that chargesheeted Members of Parliament and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.
- The Bench found it unconstitutional that convicted persons could be **disqualified from contesting elections** but could continue to be Members of Parliament and State Legislatures once elected.

Note:

Justice K.S. Puttaswamy vs. Union of India (2017)

Main Theme: SC ruled that **Fundamental Right to Privacy** is intrinsic to life and liberty and thus, comes under Article 21 of the Indian constitution.

- Nine judges of this Court assembled to determine whether privacy is a constitutionally protected value. The issue reaches out to the foundation of a constitutional culture based on the protection of human rights and enables this Court to revisit the basic principles on which our Constitution has been founded and their consequences for a way of life it seeks to protect.
- This case presents challenges for constitutional interpretation. If privacy is to be construed as a protected constitutional value, it would redefine in significant ways our concepts of liberty and the entitlements that flow out of its protection.
- The Puttaswamy judgement of 2017 reaffirmed the **'Right to Privacy' as a fundamental right in Indian Jurisprudence.** Since then, it has been used as an important precedent in many cases, to emphasize upon the right to privacy as a fundamental right and to clarify the scope of the same.
- The Supreme Court upheld the validity of the **Aadhar Scheme** on the ground that it did not violate the right to privacy of the citizens as minimal biometric data was collected in the enrolment process and the authentication process is not exposed to the internet.
  - The majority upheld the constitutionality of the Aadhaar Act, 2016 barring a few provisions on disclosure of personal information, cognizance of offences and use of the Aadhaar ecosystem by private corporations.
  - They relied on the fulfilment of the proportionality test as laid down in the Puttaswamy (2017) judgment.

Proportionality Test under Puttaswamy (2017) judgment

It held that **privacy is a natural right** that inheres in all natural persons, and that the right may be restricted only by state action that passes each of the three tests:

- First, such state action must have a legislative mandate;
- Second, it must be pursuing a legitimate state purpose; and
- Third, it must be proportionate i.e., such state action — both in its nature and extent, must be necessary in a democratic society and the action ought to be the least intrusive of the available alternatives to accomplish the ends

Navtej Singh Johar vs. UnionOf India (2018)

Main Theme: Decriminalised homosexuality by **striking off parts of Section 377 of the Indian Penal Code (IPC)**

- In **Navtej Singh Johar v. Union of India case,** the Supreme Court of India unanimously held that **Section 377** of the Indian Penal Code 1860 (IPC), which criminalized 'carnal intercourse against the order of nature', was **unconstitutional** in so far as it criminalized consensual sexual conduct between adults of the same sex.
- The petition, challenged Section 377 on the ground that it was vague and it violated the constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination guaranteed under Articles 14, 15, 19 and 21 of the Constitution.
- The Court relied upon the judgement in the case of **K.S. Puttaswamy v. Union of India,** which held that denying the LGBT community its right to privacy on the ground that they form a minority of the population would be violative of their fundamental rights, and that sexual orientation forms an inherent part of self-identity and denying the same would be violative of the right to life.

Parliament

Introduction

- **Supreme Legislative Body**: The Parliament is the legislative organ of a Union government and the Parliament of India is its **supreme legislative body.**
  - It occupies a pre-eminent and central position in the Indian democratic political system due to the adoption of the **Parliamentary form of Government ('Westminster' model** of government).
- **First Parliament:** The **first general elections** under the new Constitution of India were held during the year **1951-52** and the **first elected Parliament** came into existence in **April, 1952.**
- **Constitutional Provisions: Articles 79 to 122 in Part V** of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges and powers of the Parliament.

Note:

- **Frame of Reference for Parliament:** The framers of the Indian Constitution **relied on the British pattern for Parliament** rather than the American pattern.
  - The President is not an integral part of the legislature in the USA, however, in India, it is.

Organs of Parliament

- Rajya Sabha (The Council of States):
  - **About**: It is the Upper House (Second Chamber or House of Elders) and it **represents the states and union territories** of the Indian Union.
    - The Rajya Sabha is called the **permanent House of the Parliament** as it is never fully dissolved.
    - The **IV Schedule** of the Indian Constitution deals with the allocation of seats in the Rajya Sabha to the states and UTs.
  - **Composition:** The maximum strength of Rajya Sabha is **250** (out of which 238 members are representatives of the states & UTs (elected indirectly) and **12 are nominated by the President**).
    - **Current strength of the house is 245,** 229 members represent the states, 4 members represent the UTs and 12 are nominated by the president.
  - **Election of Representatives**: The **representatives of states** are elected by the members of state legislative assemblies.
    - The **representatives of each UT** in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose.
      - Only three UTs **(Delhi, Puducherry and Jammu & Kashmir)** have representation in Rajya Sabha (others don't have enough population).
  - The members nominated by the President are **those who have special knowledge or practical experience** in art, literature, science and social service.
    - The rationale is to provide eminent persons a place in the house without going through elections.
  - **Functions:** Rajya Sabha has an important role of **reviewing and altering the laws** initiated by the Lok Sabha.
    - It can also **initiate legislation** and a bill is required to pass through the Rajya Sabha in order to become a law.
- **Power:**
  - **State Related Matters**: The Rajya Sabha provides representation to the States. Therefore, **any matter that affects the States must be referred to it** for its consent and approval.
    - If the Union Parliament wishes to remove/ transfer a matter from the State list, the **approval of the Rajya Sabha is necessary.**
- **Lok Sabha (The House of the People):**
  - **About:** It is the **Lower House** (First Chamber or Popular House and it represents the people of India as a whole.
  - **Composition**: The maximum strength of the Lok Sabha is fixed at **550** out of which 530 members are to be the representatives of the states and 20 of the UTs.
    - The **current strength of Lok Sabha is 543**, out of which 530 members represent the states and 13 represent the UTs.
    - Earlier, the President also nominated two members from the Anglo-Indian community, but by the **95th Amendment Act, 2009,** this provision was valid till 2020 only.
- **Election of Representatives**: The representatives of states are **directly elected by the people** from the territorial constituencies in the states.
  - By the **Union Territories (Direct Election to the House of the People) Act, 1965,** the members of Lok Sabha from the UTs are chosen by direct election.
- **Functions:** One of the most important functions of the Lok Sabha is to **select the executive,** a group of persons who work together to implement the laws made by the Parliament.
  - This executive is often what we have in mind when we use the term government.
- **Powers:**
  - **Decisions in Joint Sitting**: Any ordinary law needs to be passed by both the Houses.
    - However, in case of any difference between the two Houses, the final decision is taken by calling a joint session of both the Houses.
    - Due to a larger strength, the **view of the Lok Sabha is likely to prevail** in such a meeting.

Note:

- **Power in Money Matters**: Lok Sabha exercises **more powers in money matters.** Once the Lok Sabha passes the budget of the government or any other money related law, the **Rajya Sabha cannot reject it.**
  - The Rajya Sabha can only delay it by 14 days or suggest changes in it, however, the former **may or may not accept these changes.**
- **Power over Council of Ministers:** The Lok Sabha **controls the Council of Ministers.**
  - If the majority of the Lok Sabha members say they have 'no confidence' in the Council of Ministers, all ministers including the Prime Minister, have to quit.
  - The Rajya Sabha does not have this power.

➢ **President:**

- **About:** The President of India is **not a member of either of the Houses** and **does not sit in the Parliament** to attend its meetings but s/he is **an integral part of the Parliament.**
  - S/He is the **head of the state** and is the **highest formal authority** in the country.
- **Appointment**: The elected Members of Parliament (MPs) and the elected Members of the Legislative Assemblies (MLAs) elect the President of India.
- **Powers:**
  - **Assent for Passing a Bill**: A bill passed by both the Houses of Parliament cannot become law without the **President's assent**.
- **Summoning and Prorogation of Houses**: He has the power to **summon and prorogue both the Houses, dissolve** the Lok Sabha and **issue ordinances** when the Houses are not in session.

Membership of Parliament

➢ Qualifications:

- **Rajya Sabha**: S/He should be a **citizen of India** and **at least 30 years** of age.
  - S/He should **make an oath or affirmation** stating that s/he will bear true faith and allegiance to the Constitution of India.
  - According to the **Representation of People Act, 1951,** s/he should be registered as a voter in the State from which s/he is seeking election to the Rajya Sabha.
  - However, in 2003, a provision was made declaring, any Indian citizen can contest the Rajya Sabha elections irrespective of the State in which s/he resides.
- **Lok Sabha:** S/He should be **not less than 25 years** of age.
  - S/He should **declare through an oath or affirmation** that s/he has true faith and allegiance in the Constitution and that a/he will uphold the sovereignty and integrity of India.
  - S/He must **possess such other qualifications as may be laid down by the Parliament** by law and must be **registered as a voter** in any constituency in India.
  - Person contesting from the **reserved seat should belong to the Scheduled Caste or Scheduled Tribe** as the case may be.

➢ **Disqualifications:**

- On Constitutional Grounds:
  - If s/he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).
  - If s/he is of unsound mind and stands so declared by a court.
  - If s/he is an undischarged insolvent.
  - If s/he is not (or not anymore) a citizen of India.
  - If s/he is disqualified under any law made by Parliament.
- **On Statutory Grounds (Representation of People Act, 1951):**
  - Found guilty of certain election offences/ corrupt practices in the elections.
  - Convicted for any offence resulting in imprisonment for two or more years (detention under a preventive detention law is not a disqualification).
  - Has been dismissed from government service for corruption or disloyalty to the State.
  - Convicted for promoting enmity between different groups or for the offence of bribery.
  - Punished for preaching and practising social crimes such as untouchability, dowry and sati.

Note:

- **Tenure**:
  - **Rajya Sabha:** Every member of Rajya Sabha enjoys a **safe tenure of six years.**
    - One-third of its members retire after every two years. They are **entitled to contest again** for the membership.
  - **Lok Sabha:** The normal term of Lok Sabha is **five years**. But the President, on the advice of the Council of Ministers, may **dissolve it before the expiry of five years**.
    - In the case of national emergency, its term can be **extended for one year** at a time. But it will not exceed six months after the emergency is over.
- **Officials:**
  - **Rajya Sabha:** The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. S/He presides over the meetings of Rajya Sabha.
    - In his absence the Deputy Chairman (elected by its members from amongst themselves) presides over the meeting of the House.
  - **Lok Sabha:** The **presiding officer of Lok Sabha** is known as Speaker.
    - S/He remains the Speaker even after Lok Sabha is dissolved till the next House elects a new Speaker in her/his place.
    - In the speaker's absence, a Deputy Speaker (elected by the House) presides over the meetings.

Powers/Functions of Parliament

- **Legislative Functions:** Only Parliament can **make laws on the subjects of the Union List.** Along with the State Legislatures, the Parliament is empowered to make laws on the **Concurrent List**.
  - In a subject not mentioned in any list, the residuary powers are vested with the Parliament.
- **Financial Functions**: It is the **custodian of the public money**. The Government can neither impose any tax on the public nor spend the money without the approval of the Parliament.
  - The **budget** is approved by the Parliament every year.
- **Electoral Functions**: It participates in the election of the President of India and also elects the Vice-President
  - The Lok Sabha elects its Speaker and Deputy Speaker and the Rajya Sabha elects its Deputy Chairman.
- **Power of Removal:** Certain high functionaries may be removed from office on the initiative of the Parliament.
  - It can **remove the President, Judges of the Supreme Court and High Courts through impeachment** for violation of the Constitution.
- **Amendment of the Constitution**: Most of the parts of the Constitution can be amended by the Parliament by special majority.
  - Certain provisions can only be amended by the Parliament with the approval of States.
  - The Parliament **cannot change the basic structure of the Constitution.**
- **Power over Executive**: Parliament exercises control over the Executive through **question-hour, zero hour,** calling attention notice, **adjournment motion** etc.
  - The **government always takes these motions very seriously** because the government's policies are criticized severely and their likely impact on the electorate whom the government would have to face ultimately.

Leaders in Parliament

- **Leader of the House:** Under the Rules of **Lok Sabha,** the **'Leader of the House' means the Prime Minister** (or another minister who is a member of Lok Sabha and is nominated by the PM to function as the Leader of the House).
  - There is also a **'Leader of the House' in the Rajya Sabha** who is a minister and a member of the Rajya Sabha and is nominated by the PM to function as such.
  - S/He **exercises direct influence on the conduct of business.**
  - The office of leader of the house is **not mentioned in the Constitution but in the Rules of the House.**
- **Leader of the Opposition:** The **leader of the largest Opposition party** having not less than one-tenth seats of the total strength of the House is recognised as the leader of the Opposition in a House.
  - S/He **provides constructive criticism of the government policies** and to provide an alternative government.

Note:

- The leader of Opposition in both the Houses were **accorded statutory recognition in 1977** and are entitled to the salary, allowances and other **facilities equivalent to that of a cabinet minister.**
- The office of leader of the opposition is **not mentioned in the Constitution but in the Parliamentary Statute.**

➢ **Whip:** Every political party, whether ruling or opposition has its own whip in the Parliament.

- S/He is **appointed by the political party to serve as an assistant floor leader,** charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.
- He **regulates and monitors their behaviour in the Parliament** and the members are supposed to follow the directives given by the whip.
- The office of 'whip' is mentioned neither in the Indian Constitution nor in the other two statues mentioned above. It is **based on the conventions of the parliamentary government.**

Sessions of Parliament

➢ **Summoning:**

- Summoning is the process of calling all members of the Parliament to meet.
  - The summoning of Parliament is specified in **Article 85** of the Constitution.
- The **President** summons each House of the Parliament from time to time.
  - However, the maximum gap between two **sessions of Parliament cannot be more than six months.**

➢ **Sessions:**

- India does not have a fixed parliamentary calendar. By convention, Parliament meets for three sessions in a year.
  - **Budget Session: Longest session,** starts towards the end of January, and concludes by the end of April.
  - **Monsoon Session:** Second session, usually begins in July and finishes in August.
  - **Winter Session:** Third session, held from November to December.

➢ **Adjournment:**

- An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.
- When the meeting is terminated without any definite time/date fixed for the next meeting, it is called **Adjournment sine die.**
- The **power of adjournment** as well as adjournment sine die **lies with the presiding officer (Speaker** or Chairman) of the House.

➢ **Prorogation**

- Unlike adjournment, **Prorogation terminates a sitting as well as the session** of the House.
- It is **done by the President** of India.
- Prorogation is **different from the dissolution** (of Lok Sabha).

➢ **Quorum:**

- Quorum refers to the minimum number of the members required to be present for conducting a meeting of the house.
- The Constitution has fixed **one-tenth strength** as quorum for both Lok Sabha and Rajya Sabha.

➢ **Joint Session of Parliament:**

- The Constitution of India, under **Article 108,** provides for the joint sitting of the Lok Sabha and the Rajya Sabha, in order **to break any deadlock between the two.**
- The joint sitting is **called by the President** and is **presided over by the Lok Sabha Speaker.**
  - In the speaker's absence, the **Deputy Speaker** of the Lok Sabha presides over the meeting.
    - In the absence of both, it is presided over by the **Deputy Chairman of the Rajya Sabha.**

➢ **Lame Duck Session:** It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected.

- Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

Devices of Parliamentary Proceedings

➢ **Question Hour:**

- The **first hour of every parliamentary sitting** is termed as **Question hour**. It is mentioned in the **Rules of Procedure of the House.**
- During this time, the members ask questions and the ministers usually give answers. The questions are of three types:

Note:

- **Starred questions:** These are **distinguished by an asterisk** and **require oral answers.** Hence **supplementary questions can follow.**
- **Unstarred questions:** It **requires a written answer** and hence, **supplementary questions cannot follow.**
- **Short notice questions:** The **matters of public importance** and of urgent character are considered under this type of questions. These are asked by **giving a notice of less than ten days** and are **answered orally.**

➢ **Zero Hour:**

- A Zero Hour is an **Indian parliamentary innovation.** It is not mentioned in the parliamentary rules book.
  - Under this, the Members of Parliament **(MPs) can raise matters without any prior notice.**
- The zero hour starts **immediately after the question hour** and lasts until the agenda for the day (regular business of the House) is taken up.
  - In other words, the time gap between the question hour and the agenda is known as zero hour.

➢ **Half-an-Hour Discussion:**

- It is meant for **discussing a matter of sufficient public importance,** which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact.
- The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.

➢ **Short Duration Discussion:**

- It is also known as **two-hour discussion** as the time allotted for such a discussion should not exceed two hours.
- The members of the Parliament can raise such **discussions on a matter of urgent public importance.**
- The Speaker can allot two days in a week for such discussions. There is neither a formal motion before the house nor voting.
- This device has been in existence since 1953.

Motions in Indian Parliament

Privilege Motion	➢ It is moved by a member when he feels that a minister has committed a **breach of privilege of the House** or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Its purpose is to **censure the concerned minister.** ➢ It can be moved in **Rajya Sabha as well as Lok Sabha.**
Censure Motion	➢ It should state the reasons for its adoption in the Lok Sabha. ➢ It can be **moved against an individual minister or a group of ministers or the entire council of ministers.** ➢ It is moved to **censure the council of ministers for specific policies and actions.** ➢ It can be moved **only in Lok Sabha.**
Call-Attention Motion	➢ It is introduced in the Parliament by a member to call the attention of a minister to a matter of **urgent public importance,** and to seek an authoritative statement from him on that matter. ➢ It can be moved in **Rajya Sabha as well as Lok Sabha.**
Adjournment Motion	➢ It is **introduced in the Lok Sabha** to draw the **attention of the House to a definite matter of urgent public importance.** ➢ It involves an element of censure against the government. ➢ It can be **moved only in Lok Sabha.**
No-Day-Yet-Named Motion	➢ It is a motion that has been **admitted by the Speaker** but no date has been fixed for its discussion. ➢ It can be **moved in Rajya Sabha as well as Lok Sabha.**
No Confidence Motion	➢ **Article 75** of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. In other words, the **Lok Sabha can remove the ministry from office by passing a no-confidence motion.** - The motion needs the support of 50 members to be admitted. ➢ It can be **moved only in Lok Sabha.**

Contd...

Note:

Motions in Indian Parliament	
Motion of Thanks	➢ The **first session after each general election** and the **first session of every fiscal year** is addressed by the president. ❍ This address of the president is discussed in both the Houses of Parliament on a motion called the **'Motion of Thanks'.** ➢ This motion **must be passed in the House.** Otherwise, it **amounts to the defeat of the government.**
Cut Motions	➢ A cut motion is a **special power vested in members of the Lok Sabha** to oppose a demand being discussed for specific allocation by the government in the **Finance Bill** as part of the **Demand for Grants.** ➢ If the motion is adopted, **it amounts to a no-confidence vote,** and if the government fails to jot up numbers in the lower House, **it is obliged to resign** according to the norms of the House. ➢ A motion may be moved to reduce the amount of a demand in any of the following ways: ❍ **Policy Cut Motion:** It is moved so that the amount of the **demand be reduced to Re.1** (represents disapproval of the policy underlying the demand). ❍ **Economy Cut Motions:** It is moved so that the **amount of the demand will be reduced by a specified amount.** ❍ **Token Cut Motions:** It is moved so that the amount of the **demand is reduced by Rs.100** (expresses a specific grievance). ➢ It can be **moved only in Lok Sabha.**
Closure Motion	➢ It is a motion **moved by a member to cut short the debate on a matter before the House.** ➢ If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote. ➢ There are four kinds of closure motions: ❍ **Simple Closure:** It is one when a member moves that the 'matter having been sufficiently discussed be now put to vote'. ❍ **Closure by Compartments:** In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote. ❍ **Kangaroo Closure:** Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed. ❍ **Guillotine Closure:** It is one when the undiscussed clauses of a bill or a resolut-ion are also put to vote along with the discussed ones due to want of time.
Point of Order	➢ A member can raise a point of order when the proceedings of the **House do not follow the normal rules of procedure.** ➢ A point of order should relate to the **interpretation or enforcement of the Rules of the House** or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker. ➢ It is **usually raised by an opposition member** in order to control the government. ➢ It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a point of order.
Special Mention	➢ A matter which is not a point of order or which cannot be raised during question hour, half-an hour discussion, short duration discussion or under adjournment motion, calling attention notice or under any rule of the House can be raised under the special mention in the Rajya Sabha. ➢ Its **equivalent procedural device in the Lok Sabha is known as 'Notice (Mention) Under Rule 377'.**

Note:

Legislative Procedure in Parliament

- **About**: The **legislative procedure** is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House.
- **Bill:** A bill is a **proposal for legislation that** becomes an act or law when duly enacted.
  - **Types of Bills:** Bills introduced in the Parliament are of two kinds; **public bills** (government bills) **and private bills.**
  - **Classification:** The bills introduced in the Parliament can be classified into four categories:
    - **Ordinary bills:** concerned with any matter other than financial subjects.
    - **Money bills:** concerned with financial matters like taxation, public expenditure, etc.
    - **Financial bills:** concerned with financial matters (but are different from money bills).
    - **Constitution Amendment Bills:** concerned with the amendment of the provisions of the Constitution.

Types of Bills	
Public Bill	**Private Bill**
It is **introduced in the parliament by a minister.**	It can be introduced **by any member** of the parliament **other than a minister.**
It **reflects the policies of the government** (ruling party).	It **reflects the mood of the political party** on public matters.
It has a **greater chance to be passed** by parliament.	It is **less likely to be passed** by the parliament.
Its introduction in the house **requires 7 days notice.**	Its introduction in the house **requires a prior notice of one month**.
It is **drafted by the concerned department** in consultation with the Law department.	Its drafting is the **responsibility of the members concerned.**

Classification of Bills

Ordinary Bills

- **About:** Every ordinary bill has to pass through the following five stages in the Parliament before it finds a place on the Statute Book.
- **First Reading:** It can be **introduced in either House of Parliament** either by a minister or by any other member. The bill is **published in the Gazette of India.**
  - The introduction of the bill and its publication in the Gazette constitute the **first reading of the bill.**
- **Second Reading:** It is the most important stage in the enactment of a bill and involves three more sub-stages:
  - **Stage of General Discussion:** At this stage, the House can take any one of the following four actions:
    - It may take the bill into consideration immediately or on some other fixed date.
    - It may refer the bill to a select committee of the House.
    - It may refer the bill to a joint committee of the two Houses
    - It may circulate the bill to elicit public opinion.
  - **Committee Stage:** This committee examines the bill thoroughly and in detail, clause by clause
    - It can also amend its provisions, but without altering the principles underlying it.
  - **Consideration Stage**: The House, after receiving the bill from the selected committee, considers the provisions of the Bill clause by clause.
    - Each clause is discussed and voted upon separately.
- **Third Reading**: At this stage, the **debate is confined to the acceptance or rejection of the bill.**
  - If the majority of the members present and voting accept the bill, the bill is regarded as passed by the House.
    - A bill is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.
- **Bill in the Second House**: In the **second House,** the bill passes through all the three stages. The second House may:
  - **Pass the bill as sent by the first house** (i.e., without amendments).
    - In such a case, the bill is deemed to have been passed by both the Houses and is sent to the president for his assent.
  - **Pass the bill with amendments and return it to the first House for reconsideration.**
  - **Reject the bill altogether.**
  - **Not take any action and thus keep the bill pending**.
    - If the second House rejects the bill altogether or does not take any action for six months; a deadlock is deemed to have taken place for which the **president can summon a joint sitting of the two Houses.**

Note:

- **Assent of the President:** Every bill after being passed by both Houses of Parliament either singly or at a joint sitting is presented to the **President** for his assent. The President may:
  - Give his assent to the bill.
  - Withhold his assent to the bill.
  - **Return the bill for reconsideration of the Houses.** Thus, the President enjoys only a "**suspensive veto.**"

Money Bills & Financial Bills

Characteristics	Money Bills	Financial Bills	
		Financial Bill-I	Financial Bill-II
Constitutional Provisions:	**Article 110** deals with money bills.	**Article 117(1)** deals with Finance Bill	**Article 117(3)** deals with Finance Bills-II
	Deals **'only'** with the provisions of Article 110.	Also deals with matters of general legislation (along with provisions of article 110).	Contains **provisions involving expenditure** from **Consolidated Fund of India** but are not included in Article 110.
Certification of Speaker:	S/He **decides** whether a bill is a money bill or not.	**No Certification** required.	**No Certification** required.
Introduced in:	Only in **Lok Sabha.**	Only in **Lok Sabha.**	In **both houses.**
President's Recommendation:	Needed to introduce them.	Required	Not required
Bills in Rajya Sabha:	**Cannot be amended** or rejected.	**Can be amended** or rejected.	**Can be amended** or rejected.
President's Power:	**Can either accept or reject** a money bill but cannot return it for reconsideration.	**Can return** it for reconsideration.	**Can return** it for reconsideration.
Joint Sitting of the Houses:	**No provision** to resolve the deadlock.	The President can **summon.**	The President can **summon.**

Constitutional Amendment Bills

- **About:** As per the Constitution of India, **Constitution Amendment Bills** can be of **three types** requiring:
  - **A Simple majority** for their passage in each House.
  - **A Special majority** for their passage in each House
  - **A Special majority** for their passage and ratification by Legislatures of **not less than one-half of the States** by resolutions to that effect passed by those Legislatures.
- **House of Introduction:** Under article 368, it can be introduced in either House of Parliament and has to be passed by each House by special majority.
  - There is no provision of joint sittings on a Constitution Amending Bill (or in a Money Bill).

Joint Sitting of Two Houses

- **About: Joint sitting** is extraordinary machinery provided by the Constitution to **resolve a deadlock between the two Houses** over the passage of a bill.
- **Conditions of Deadlock**: A deadlock is deemed to have taken place under any one of the following three situations:
  - If the **bill is rejected by the other House.**
  - If the **Houses have finally disagreed** as to the amendments to be made in the bill.
  - If **more than six months have elapsed from the date** of the receipt of the bill by the other House without the bill being passed by it.

Note:

- **Applicability:** The provision of joint sitting is applicable to ordinary bills or financial bills only and **not to money bills or Constitutional amendment bills.**
  - In the case of a money bill, the Lok Sabha has overriding powers, while a Constitutional amendment bill must be passed by each House separately.
- **Role of Speaker:** The **Speaker of Lok Sabha presides over a joint sitting** of the two Houses and the Deputy Speaker, in his absence.
  - If both are absent, the Deputy Chairman of Rajya Sabha presides.
- **Quorum:** The **quorum to constitute a joint sitting** is **one-tenth of the total number of members** of the two Houses.
- **Instances of Joint Sittings**: Since 1950, the provision regarding the joint sitting of the two Houses has been **invoked only thrice**. The bills that have been passed at joint sittings are:
  - Dowry Prohibition Bill, 1960.
  - Banking Service Commission (Repeal) Bill, 1977.
  - **Prevention of Terrorism Bill, 2002.**

Parliamentary Privilege

- **About:** **Parliamentary privileges** are certain rights and immunities enjoyed by members of Parliament, individually and collectively, so that they can "**effectively discharge their functions".**
  - When any of these rights and immunities are disregarded, the offence is called a breach of privilege and is punishable under law of Parliament.
- **Privileges in the Constitution:** The Constitution (**Article 105 for Parliament and Article 194 for State Assemblies)** mentions two privileges, i.e. freedom of speech in Parliament and right of publication of its proceedings.
- **Provisions in the Rule Book: Rule No 222** in Chapter 20 of the **Lok Sabha Rule Book** and correspondingly **Rule 187** in Chapter 16 of the **Rajya Sabha rulebook** governs the parliamentary privileges.

Judicial Doctrines

Introduction

- **Judicial Doctrine:**
  - A doctrine is a principle, theory, or position that is usually applied and upheld by courts of law.
  - In Indian Constitutional law also, there are different judicial doctrines that develop over time as per the interpretation given by the judiciary.
  - Some of the important judicial doctrines are discussed in this article.

Doctrine of Basic Structure

- **About:**
  - The constituents of **basic structure** are not clearly defined by the **Supreme Court of India.**
  - Parliamentary democracy, **fundamental rights**, **secularism**, **federalism**, **judicial review** etc. are all held by courts as the basic structure of Indian Constitution.
- **Origin:**
  - The origins of the basic structure doctrine are found in the German Constitution which, after the Nazi regime, was amended to protect some basic laws.
- **Important Judgements:**
  - In ***Kesavananda Bharati case 1973***, the **Supreme Court of India** for the first time ruled that the parliament has the power to amend any part of the constitution but it **cannot alter the "basic structure of the constitution".**
  - It was reaffirmed by the SC in the **Indira Nehru Gandhi v Raj Narain case (1975).**
    - The SC court invalidated a provision of the **39th Amendment Act (1975)** which kept the election disputes involving the Prime Minister and the Speaker of Lok Sabha outside the jurisdiction of all courts.
  - Basic structure doctrine was reaffirmed in the ***Minerva Mills case, 1980*** and later in the ***Waman Rao case, 1981.***
    - In this case the Supreme Court examined the validity of **Article 31A** and **Article 31B** of the Constitution of India with respect to the doctrine of basic structure.

Doctrine of Separation of Powers

- **About:**
  - It mainly **signifies the division of powers between various organs of the state;** executive, legislature and judiciary.
  - **Separation of powers** signifies mainly three formulations of Governmental powers:

Note:

- The same person should not form part of more than one of the three organs of the state.
- One organ should not interfere with any other organ of the state.
- One organ should not exercise the functions assigned to any other organ.

➢ **Constitutional Provisions:**
- **Article-50 of the Directive Principles of State Policy (DPSP)** of the Indian Constitution separates the judiciary from executive as, "the state shall take steps to separate judiciary from the executive in the public services of the state and except this there is no formal and dogmatic division of power".

➢ **Important Judgements:**
- In ***Ram Jawaya v. State of Punjab (1955) case,*** the SC held: "Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated."
- In ***Indira Nehru Gandhi v. Raj Narain (1975)***, the SC held: "Separation of powers is part of the basic structure of the constitution. None of the three separate organs of the republic can take over the functions assigned to the other".

Doctrine of Pith and Substance

➢ **About:**
- Pith means **'true nature'** and Substance means **'the most important or essential part of something'.**

➢ **Origin:**
- The doctrine was **first acknowledged in the Canadian Constitution** and In India, it came to be adopted in the pre-independence period, under the **Government of India Act, 1935.**

➢ **Applicability:**
- The **Doctrine of Pith and Substance** is usually applied where the **question arises of determining whether a particular law relates to a particular subject (mentioned in Seventh Schedule),** the court looks to the substance of the matter.
- Apart from its applicability in cases related to the competency of the legislature **(Article 246),** the Doctrine of Pith and Substance is also applied in **cases related to repugnancy in laws** made by Parliament and laws made by the State Legislatures **(Article 254).**
  - The doctrine is employed in such cases to resolve the inconsistency between laws made by the Centre and the State Legislature.

➢ **Important Judgement:**
- In ***Prafulla v. Bank of Commerce (1946),*** the SC held that a State law, dealing with money lending (a State subject), is not invalid, merely because it incidentally affects promissory notes.

Doctrine of Incidental or Ancillary Powers

➢ **About:**
- It has **developed as an addition to the Doctrine of Pith and Substance.**
- This doctrine is invoked **when there is a need to aid the principal legislation** in question.
- The Doctrine of Pith and Substance deals only with subjects but the Doctrine of Incidental or Ancillary Powers **deals with the power to legislate on such subjects and the matters connected thereto.**

➢ **Origin:**
- The evolution of this Doctrine can be traced back to ***"R. v. Waterfield (1963)",*** a decision of the **English Court of Appeal.**

➢ **Constitutional Provision:**
- Article 4 talks about **power to make consequential changes in the law on matters supplemental and incidental** to the law providing for altering the names of states under Article 2 and 3.
- **Article 169** talks about the power given to the parliament on abolition or creation of Legislative Councils in States "as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary."

➢ **Important Judgement:**
- The SC in the ***State of Rajasthan v. G Chawla (1958)*** stated: "The power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given."

Note:

Doctrine of Severability

- **About:**
  - It is also known as the **doctrine of separability** and protects the **Fundamental Rights** of the citizens.
  - As per clause (1) of the **Article 13** of the Constitution, if any of the laws enforced in India are inconsistent with the provisions of fundamental rights, they shall, to the extent of that inconsistency, be void.
    - The **whole law/act would not be held invalid, but only the provisions which are not in consistency** with the Fundamental rights.
  - **Limitation:**
    - If the valid and invalid part are so closely mixed up with each other that it cannot be separated then the whole law or act will be held invalid.
- **Origin:**
  - The Doctrine of Severability **finds its roots in England** in the case of ***Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Company Ltd.*** where the issue was related to a Trade clause.
- **Important Judgements:**
  - In ***A.K. Gopalan v. State of Madras (1950)*****,** the SC held that in case of inconsistency to the Constitution, only the disputed provision of the Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the act.
  - In ***State of Bombay v. F.N. Balsara (1951)*****,** eight sections of the Bombay Prohibition Act were declared invalid, the Supreme Court said that the portion which was invalid to the extent of fundamental rights was separable from the rest of the act.

Doctrine of Eclipse

- **About:**
  - It is applied when any law/act **violates the Fundamental Rights (FR).**
    - In such a case, the **FR overshadows the law/ act and makes it unenforceable but not void ab initio (Having no legal effect from inception).**
  - They can be reinforced if the restrictions posed by the fundamental rights are removed.
  - It is **only against the citizens** that these laws/acts remain in a dormant condition but **remain in operation as against non-citizens** who are not entitled to fundamental rights.
- **Constitutional Provisions:**
  - Doctrine of eclipse is contained in **Article 13(1)** of the Indian Constitution. The doctrine of eclipse **does not apply to post-constitutional laws.**
- **Important Judgement:**
  - It was first introduced in India in ***Bhikaji Narain Dhakras v. State of Madhya Pradesh (1955)*** where in the Central Provinces and Berar Motor Vehicles (Amendment) Act, 1947 empowered the Provincial Government to take up the entire Provincial Motor Transport Business, these are violative of article 19(1) (g).
    - The Supreme Court held that the impugned law became, for the time being, eclipsed by the fundamental right.

Doctrine of Territorial Nexus

- **About:**
  - It says that laws made by a State Legislature are **not applicable outside the state, except when there is a sufficient nexus** between the state and the object.
- **Constitutional Provisions:**
  - The doctrine **derives its power from Article 245** of the Indian Constitution.
    - Article 245 (2) provides that no law made by the Parliament would be invalid on the ground that it would have **extra-territorial operation** i.e. takes effect outside the territory of India.
- **Important Judgements:**
  - In ***A.H. Wadia v. Income Tax Commissioner (1948),*** it was held that a question of extraterritoriality of enactment can never be raised against a Supreme Legislative Authority on the grounds of questioning its validity.
  - In the ***State of Bombay vs RMDC (1952),*** the SC held that there existed a sufficient Territorial Nexus to enable the Bombay Legislature to tax the respondent as all the activities which the competitor is ordinarily expected to undertake took place mostly within Bombay.

Note:

Doctrine of Colourable Legislation

- **About:**
  - This Doctrine is also called **"Fraud on the Constitution".**
  - The **Doctrine of Colourable Legislation** comes into play when a Legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one.
    - By applying this principle the fate of the Impugned Legislation is decided.
- **Origin:**
  - This Doctrine traces its origin to a Latin Maxim which, in this context, implies: **"Whatever legislature cannot do directly, it cannot do indirectly".**
- **Constitutional Provision:**
  - The doctrine is usually applied to **Article 246** which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under **Union list, State list and Concurrent list.**
- **Limitation:**
  - The doctrine has **no application where the powers of a Legislature are not fettered** by any Constitutional limitation.
  - It is also **not applicable to Subordinate Legislation.**
- **Important Judgement**
  - In ***R.S Joshi v. Ajit Mills (1977),*** the SC observed that "In the statute of force, the colourable exercise of or extortion on administrative force or misrepresentation on the constitution, are articulations which only imply that the assembly is clumsy to authorise a specific law, albeit the mark of competency is struck on it, and afterwards it is colourable enactment."

Doctrine of Pleasure

- **Origin:**
  - The doctrine of pleasure has its **origins in English law** as per which, a civil servant holds office during the pleasure of the Crown.
- **Constitutional Provisions**
  - Under Article 155, the **Governor of a State** is appointed by the President and **holds the office during the pleasure of the President.**
  - Under Article 310, the civil servants (members of the Defence Services, **Civil Services**, All-India Services or persons holding military posts or civil posts under the Centre/State) **hold office at the pleasure of the President or the Governor** as the case may be.
- **Limitation:**
  - **Article 311** places restrictions on this doctrine and provides safeguards to civil servants against any arbitrary dismissal from their posts.
- **Important Judgements:**
  - The SC in ***State of Bihar v. Abdul Majid (1954),*** held that the English Common Law has not been adopted in its entirety and with all its rigorous implications.
  - ***In Union of India v. Tulsiram Patel (1965),*** the SC held that the "pleasure doctrine" was neither a relic of the feudal age nor was it based on any special prerogative of the British Crown but was based upon public policy.

Doctrine of Harmonious Construction

- **About**
  - The term harmonious construction refers to such construction by which harmony or oneness amongst various provisions of an enactment is arrived at.
  - When the words of statutory provision bear more than one meaning and there is a doubt as to which meaning should prevail, their interpretation should be in a way that each has a separate effect and neither is redundant or nullified.
- **Origin:**
  - The Doctrine of Harmonious construction originated through interpretations given by courts in a number of cases.
    - The evolution of the doctrine can be traced back to the very first amendment made in the Constitution of India with the landmark judgment of ***Shankari Prasad v. Union of India.***
- **Principles of rule of Harmonious construction:**
  - In the landmark case of ***CIT v. Hindustan Bulk Carriers (2003)*** the supreme court laid down five principles of rule of harmonious construction:
    - The courts must avoid a head-on clash of seemingly contradicting provisions and they must construe the contradictory provisions.

Note:

- The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its efforts, is unable to find a way to reconcile their differences
- When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.
- Courts must also keep in mind that interpretation that reduces one provision to useless number or death is not harmonious construction.
- To harmonize is not to destroy any statutory provision or to render it fruitless.

- **Important Judgements:**
  - In the ***Re-Kerala education bill 1951*** case it was held that in deciding the fundamental rights the court must consider the directive principle and adopt the principle of harmonious construction. So, two possibilities are given effect as much as possible by striking a balance.
  - In ***East India hotels ltd. V. Union of India (2001)*** case, it was held that an Act is to be read as a whole, the different provisions have to be harmonized and the effect to be given to all of them.

Directive Principles of State Policy (DPSP)

Introduction

- **Background:** The source of the concept of **Directive Principles of State Policy (DPSP)** is the Spanish Constitution from which it came in the Irish Constitution.
  - The concept of DPSP emerged from **Article 45 of the Irish Constitution.**
- **Constitutional Provisions:** Part IV of the Constitution of India **(Article 36–51)** contains the **Directive Principles of State Policy (DPSP).**
  - **Article 37** of the Indian Constitution States about the **application of the Directive Principles.**
    - These principles aim at ensuring **socioeconomic justice** to the people and establishing India as a Welfare State.
- **Fundamental Rights Vs DPSP:**
  - Unlike the Fundamental Rights (FRs), the **scope of DPSP is limitless** and it protects the rights of a citizen and work at a **macro level.**
    - DPSP consists of all the **ideals which the State should follow** and keep in mind while formulating policies and enacting laws for the country.
  - Directive Principles **are affirmative directions** on the other hand, Fundamental Rights are negative or prohibitive in nature because they put limitations on the State.
  - The DPSP is **not enforceable by law;** it is non-justiciable.
  - It is important to note that DPSP and FRs go hand in hand.
    - DPSP is **not subordinate to FRs.**
- **Classification of Principles:** The Directive Principles are classified on the basis of their ideological source and objectives. These are Directives based on:
  - Socialist Principles
  - Gandhian Principles
  - Liberal and Intellectual Principles

Directives based on Socialist Principles

- **Article 38:** The State shall strive to promote the welfare of the people by securing and protecting a social order by **ensuring social, economic and political justice** and by **minimising inequalities** in income, status, facilities and opportunities
- **Articles 39:** The State shall in particular, direct its policies towards securing:
  - Right to an **adequate means of livelihood** to all the citizens.
  - The **ownership and control of material resources** shall be organised in a manner to serve the common good.
  - The State shall **avoid concentration of wealth in a few hands.**
  - **Equal pay for equal work** for both men and women.
  - The protection of the strength and health of the workers.
  - Childhood and youth shall not be exploited.
- **Article 41:** To secure the **right to work, to education and to public assistance** in cases of unemployment, **old age, sickness and disability.**

Note:

- **Article 42:** The State shall make provisions for **securing just and humane conditions of work and for maternity relief.**
- **Article 43:** The State shall endeavour to **secure to all workers a living wage and a decent standard of life.**
  - **Article 43A:** The State shall take steps to secure the participation of workers in the management of industries.
- **Article 47:** To **raise the level of nutrition** and the **standard of living** of people and to improve public health.

Directives based on Gandhian Principles

- **Article 40:** The State shall take steps to **organise village panchayats** as units of Self Government
- **Article 43:** The State shall endeavour to **promote cottage industries** on an individual or cooperative basis in rural areas.
  - **Article 43B:** To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.
- **Article 46:** The State shall **promote educational and economic interests of the weaker sections** of the people particularly that of the **Scheduled Castes (SCs), Scheduled Tribes (STs)** and **other weaker sections.**
- **Article 47:** The State shall take steps to **improve public health** and prohibit consumption of intoxicating drinks and drugs that are injurious to health.
- **Article 48:** To **prohibit the slaughter of cows, calves and other milch** and draught cattle and to improve their breeds.

Directives based on Liberal-Intellectual Principles

- **Article 44:** The State shall endeavour to secure for the citizen a **Uniform Civil Code** through the territory of India.
- **Article 45:** To provide **early childhood care and education** for all children until they complete the **age of six years.**
- **Article 48:** To organise agriculture and animal husbandry on modern and scientific lines.
  - **Article 48A:** To protect and **improve the environment** and to safeguard the forests and wildlife of the country.
- **Article 49:** The State shall **protect every monument** or place of artistic or historic interest.
- **Article 50:** The State shall take steps to **separate judiciary from the executive** in the public services of the State.
- **Article 51:** It declares that to **establish international peace and security** the State shall endeavour to:
  - Maintain just and honourable relations with the nations.
  - Foster respect for international law and treaty obligations.
  - Encourage settlement of international disputes by arbitration.

Amendments in DPSP:

- **42nd Constitutional Amendment, 1976**: It introduced certain changes in the part-IV of the Constitution by adding new directives:
  - **Article 39A:** To provide **free legal aid** to the poor.
  - **Article 43A:** Participation of workers in management of Industries.K1M
  - **Article 48A:** To protect and improve the environment.
- **44th Constitutional Amendment, 1978:** It inserted Section-2 to Article 38 which declares that; "The State in particular shall strive to minimise economic inequalities in income and eliminate inequalities in status, facilities and opportunities not amongst individuals but also amongst groups".
  - It also **eliminated the Right to Property** from the list of Fundamental Rights.
- **86th Amendment Act of 2002**: It changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A.

Conflicts Between Fundamental Rights and DPSP: Associated Cases

- **Champakam Dorairajan v the State of Madras (1951): In this case**, the Supreme Court ruled that in case of **any conflict between the Fundamental Rights and the Directive Principles, the former would prevail.**
  - It declared that the Directive Principles have to conform to and run as subsidiary to the Fundamental Rights.

Note:

- It also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendment acts.

- **Golaknath v the State of Punjab (1967):** In this case, the Supreme Court declared that **Fundamental Rights could not be amended by the Parliament** even for implementation of Directive Principles.
  - It was contradictory to its own judgement in the **'Shankari Parsad case'.**
- **Kesavananda Bharati v the State of Kerala (1973):** In this case, the Supreme Court overruled its Golak Nath (1967) verdict and declared that Parliament **can amend any part of the Constitution** but it **cannot alter its "Basic Structure".**
  - Thus, the Right to Property (Article 31) was eliminated from the list of Fundamental Rights.
- **Minerva Mills v the Union of India (1980):** In this case, the Supreme Court reiterated that Parliament can amend any part of the Constitution but it cannot change the "Basic Structure" of the Constitution.

Implementation of DPSP: Associated Acts and Amendments

- **Land Reforms:** Almost all the states have passed land reform laws to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include:
  - **Abolition of intermediaries** like zamindars, jagirdars, inamdars, etc
  - **Tenancy reforms** like security of tenure, fair rents, etc
  - Imposition of ceilings on land holdings
  - **Distribution of surplus land** among the landless labourers
  - **Cooperative farming**
- **Labour Reforms:** The following acts were enacted to protect the interests of the Labour section of the society.
  - The Minimum Wages Act (1948), **Code on Wages, 2020**
  - The **Contract Labour Regulation and Abolition Act (1970)**
  - The **Child Labour Prohibition and Regulation Act (1986)**
    - Renamed as the **Child and Adolescent Labour Prohibition and Regulation Act, 1986** in 2016.
  - The **Bonded Labour System Abolition Act (1976)**
  - The **Mines and Minerals (Development and Regulation) Act, 1957**
  - The **Maternity Benefit Act (1961)** and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.
- **Panchayati Raj System:** Through **73rd Constitutional Amendment Act, 1992**, government fulfilled constitutional obligation stated in Article 40.
  - Three tier **'Panchayati Raj System'** was introduced at the Village, Block and District level in almost all parts of the country.
- **Cottage Industries:** To promote cottage industries as per **Article 43,** the government has established several Boards such as Village Industries Board, **Khadi and Village Industries Commission**, **All India Handicraft Board**, **Silk Board**, Coir Board, etc., which provide essential help to cottage industries in finance and marketing.
- **Education:** Government has implemented provisions related to free and compulsory education as provided in **Article 45.**
  - Introduced by the **86th Constitutional Amendment** and subsequently passed the **Rights to Education Act 2009,** Elementary Education has been accepted as Fundamental Right of each child between the 6 to 14 years of age.
- **Rural Area Development:** Programmes such as the Community Development Programme (1952), **Integrated Rural Development Programme** (1978-79) and **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA-2006)** were launched to raise the standard of living particularly in rural areas, as stated in the **Article 47** of the Constitution.
- **Health:** Central Government sponsored schemes like **Pradhan Mantri Gram Swasthya Yojana (PMGSY)** and **National Rural Health Mission (NRHM)** are being implemented to fulfill the social sector responsibility of the Indian State.
- **Environment:** The **Wildlife (Protection) Act, 1972**, the **Forest (Conservation) Act, 1980** and the **Environment (Protection) Act, 1986** have been enacted to safeguard the wildlife and the forests respectively.

Note:

- The **Water** and **Air Pollution** **Control Acts** have provided for the establishment of the **Central Pollution Control Board.**

- **Heritage Preservation:** The **Ancient and Historical Monument and Archaeological Sites and Remains Act (1958)** has been enacted to protect the monuments, places and objects of national importance.

The Office of Speaker of Lok Sabha

Introduction

- **About:**
  - The Office of the Speaker in India is a living and dynamic institution which deals with the actual needs and problems of Parliament in the performance of its functions.
  - **Article 93 of the Constitution** provides for the election of both the Speaker and the Deputy Speaker.
  - The Speaker is the **constitutional and ceremonial head of the House.**
  - Each House of Parliament has its own presiding officer.
    - There is a **Speaker and a Deputy Speaker for the Lok Sabha** and a **Chairman and a Deputy Chairman for the Rajya Sabha.**
- **History:**
  - The institutions of Speaker and Deputy Speaker **originated in India in 1921** under the provisions of the **Government of India Act of 1919 (Montague-Chelmsford Reforms).**
  - At that time, the Speaker and the Deputy Speaker were called the President and Deputy President respectively and the same nomenclature continued till 1947.
  - The **Government of India Act of 1935** **changed the nomenclatures** of President and Deputy President to the Speaker and Deputy Speaker respectively.

The Office of the Speaker: Lok Sabha

- The Lok Sabha, which is the highest legislative body in the country, chooses its Speaker who presides over the day to day functioning of the House.
- Electing the Speaker of the Lok Sabha is one of the first acts of every newly constituted House.
- **Election of Office of the Speaker:**
  - **Criteria:** The Constitution of India requires the **Speaker should be a member of the House.**
    - Although there are **no specific qualifications prescribed** for being elected the Speaker, an **understanding of the Constitution and the laws of the country is considered a major asset** for the holder of the Office of the Speaker.
    - Usually, a member belonging to the ruling party is elected Speaker. The process has evolved over the years where the ruling party nominates its candidate after informal consultations with leaders of other parties and groups in the House.
    - This convention ensures that once elected, the **Speaker enjoys the respect of all sections of the House.**
  - **Voting:** The Speaker (along with the Deputy Speaker) is elected from among the Lok Sabha members **by a simple majority of members present and voting** in the House.
    - Once a decision on the candidate is taken, his/her name is normally proposed by the Prime Minister or the Minister of Parliamentary Affairs.
  - **Term of Office of the Speaker:** The Speaker holds Office from the date of his/her election till immediately before the first meeting of the next Lok Sabha (for **5 years**).
    - The **speaker once elected is eligible for re-election.**
    - Whenever the Lok Sabha is dissolved, the **Speaker does not vacate his office and continues till the newly-elected Lok Sabha meets.**
- **Role and Powers of Speaker:**
  - **Interpretation:** He/She is the **final interpreter** of the provisions of the **Constitution of India**, the **Rules of Procedure and Conduct of Business of Lok Sabha** and the **parliamentary precedents**, within the House.
    - In matters regarding interpretation of these provisions, he/she often gives **rulings which are respected by members and are binding in nature.**

Note:

- **Joint Sitting of Both Houses:** He/She presides over a **joint sitting** of the two Houses of Parliament.
  - Such a sitting is summoned by the President to settle a deadlock between the two Houses on a bill.
- **Adjournment of Sitting:** He/She **can adjourn the House or suspend the meeting** in absence one-tenth of the total strength of the House (called the **quorum**).
- **Casting Vote:** The speaker **does not vote in the first instance but in the case of a tie;** when the House is divided equally on any question, the Speaker is entitled to vote.
  - Such a vote is called a **Casting Vote**, and its purpose is to resolve a deadlock.
- **Money Bill:** He/She **decides whether a bill is a money bill or not** and his/her decision on this question is final.
- **Disqualifying Members:** It is the speaker who **decides the questions of disqualification of a member** of the Lok Sabha, arising on the ground of defection under the provisions of the **Tenth Schedule.**
  - The **52nd amendment** to the Indian Constitution vests this power in the Speaker.
  - In 1992, the Supreme Court ruled that the decision of the Speaker in this regard is subject to **judicial review.**
- **Chairing the IPG:** He/She acts as the **ex-officio chairman of the Indian Parliamentary Group (IPG)** which is a link between the Parliament of India and the various parliaments of the world.
  - He also acts as the ex-officio chairman of the conference of presiding officers of legislative bodies in the country.
- **Constitution of Committees:** The **Committees of the House are constituted by the speaker** and function under the speaker's overall direction.
  - The Chairmen of all Parliamentary Committees are nominated by him/her.
  - Committees like the **Business Advisory Committee, the General Purposes Committee and the Rules Committee work directly under his Chairmanship.**
- **Privileges of the House:** The Speaker is the **guardian of the rights and privileges of the House**, its Committees and members.
  - It depends solely on the Speaker to refer any question of privilege to the Committee of Privileges for examination, investigation and report.

➢ **Removal of Speaker:**

- **Exceptions:** Usually, the **Speaker remains in office during the life of the Lok Sabha.** However, under following conditions, the speaker, may have to vacate the office earlier:
  - If he ceases to be a member of the Lok Sabha.
  - If he resigns by writing to the Deputy Speaker
  - If he is removed by a resolution passed by a majority of all the members of the Lok Sabha.
- **Notification:** Such a resolution can be moved only after giving 14 days' advance notice.
  - When a resolution for the removal of the Speaker is under consideration of the House, **he/she may be present at the sitting but not preside.**

Deputy Speaker of the Lok Sabha

➢ **Election:**

- The Deputy Speaker is also **elected by the Lok Sabha** from amongst its members **right after the election of the Speaker has taken place.**
- The date of election of the Deputy Speaker is fixed by the Speaker (date of election of the Speaker is fixed by the President).
- Upto the 10th Lok Sabha, both the Speaker and the Deputy Speaker were usually elected from the ruling party.
  - Since the 11th Lok Sabha, there has been a consensus that the **Speaker comes from the ruling party/alliance and the post of Deputy Speaker goes to the main opposition party.**

➢ **Term of Office and Removal:**

- Like the Speaker, the Deputy Speaker remains in office usually during the life of the Lok Sabha (**5 years**).
- The Deputy Speaker may vacate his/her office earlier in any of the following three cases:

Note:

- If he ceases to be a member of the Lok Sabha
- If he resigns by writing to the Speaker
- If he is removed by a resolution passed by a majority of all the then members of the Lok Sabha.

- Such a resolution can be moved only after giving 14 days' advance notice.

➢ **Responsibilities and Powers:**

- The Deputy Speaker **performs the duties of the Speaker's office when it is vacant.**
  - He/She also **acts as the Speaker when the latter is absent** from the sitting of the House.
  - In both the cases, he/she assumes all the powers of the Speaker.
- He/She also **presides over the joint sitting of both the Houses of Parliament**, in case the Speaker is absent from such a sitting.
- The Deputy Speaker, like the Speaker, has the **privilege of the Casting Vote** in case of tie.
- The Deputy Speaker has one special privilege, that is, **whenever he/she is appointed as a member of a parliamentary committee, he/she automatically becomes its chairman.**

Note: The Deputy Speaker is not subordinate to the Speaker. He is directly responsible to the House.

Speaker *Pro Tem*:

➢ When the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly-elected Lok Sabha, the **President appoints a member of the Lok Sabha as the Speaker *Pro Tem*.**
- Usually, the senior most member is selected for this.
- The President himself administers oath to the Speaker Pro Tem.

➢ He/She **presides over the first sitting of the newly-elected Lok Sabha** and has all the powers of the Speaker.

➢ The **main responsibility is to administer oaths to the new members** and to enable the House to elect the new Speaker.

➢ When the new Speaker is elected by the House, the office of the Speaker *Pro Tem* ceases to exist.

Fundamental Rights

Introduction

➢ **About:**

- The Fundamental Rights are enshrined in Part III of the Constitution (Articles 12-35).
- Part III of the Constitution is described as the ***Magna Carta*** of India.
  - 'Magna Carta', the Charter of Rights issued by King John of England in 1215 was the first written document relating to the Fundamental Rights of citizens.
- **The Fundamental Rights:** The Constitution of India provides for six Fundamental Rights:
  - Right to equality (Articles 14–18)
  - Right to freedom (Articles 19–22)
  - Right against exploitation (Articles 23–24)
  - Right to freedom of religion (Articles 25–28)
  - Cultural and educational rights (Articles 29–30)
  - Right to constitutional remedies (Article 32)
- Originally the constitution also included **Right to property (Article 31).** However, it was deleted from the list of Fundamental Rights by the **44th Amendment Act, 1978.**
  - It is made a **legal right under Article 300-A** in Part XII of the Constitution.

➢ **Provision for Laws Violating Fundamental Rights:** **Article 13** of the Indian constitution declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
- This power has been conferred on the Supreme Court **(Article 32)** and the high courts (Article 226).
- Further, the article declares that a constitutional amendment cannot be challenged (as it is not a law).
  - However, the Supreme Court in the **Kesavananda Bharati case (1973)** held that a Constitutional amendment can be challenged if it violates a fundamental right.

➢ **Writ Jurisdiction:** A writ is a legal order given by a court of law.

Note:

- The Supreme Court (Article 32) and the High courts (Article 226) can issue the writs of **habeas corpus, mandamus, prohibition, certiorari and quo-warranto.**

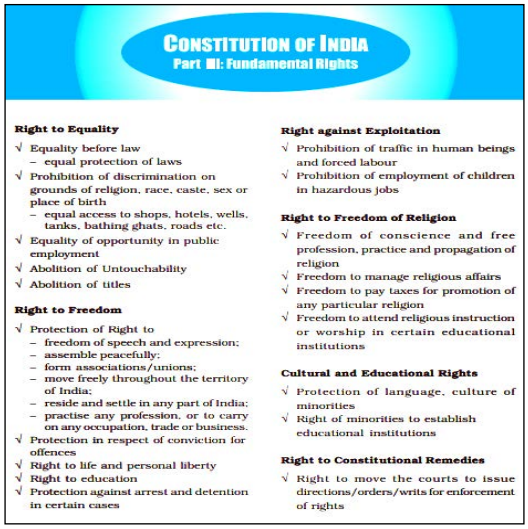
Features of the Fundamental Rights:

- **Protected by Constitution:** Fundamental Rights, unlike ordinary legal rights, are protected and guaranteed by the constitution of the country.
  - Some of the rights are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
- **Not Sacrosanct, Permanent, or Absolute:** They are not sacrosanct or permanent and the Parliament can curtail or repeal them but only by a constitutional amendment act.
  - The rights are not absolute but qualified.
    - The state can impose reasonable restrictions on them, however, the reasonability of the restrictions is decided by the courts.
- **Rights are Justiciable:** The rights are justiciable and allow persons to move the courts for their enforcement, if and when they are violated.
  - Any aggrieved person can directly go to the Supreme Court in case of violation of any fundamental right.
- **Suspension of Rights:** The rights can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.
  - Further, the six rights guaranteed by Article 19 can be suspended only when there is an external emergency war or external aggression) [and not on the ground of armed rebellion (i.e., internal emergency].
- **Restriction of Laws:** Their application to the members of armed forces, paramilitary forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).
  - Their application can be restricted while martial law (military rule imposed under abnormal circumstances) is in force in any area.

Fundamental Rights (available to citizens as well foreigners) (except enemy aliens)	Fundamental Rights available to citizens only Fundamental Rights available to citizens only
➢ Equality before law.	➢ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
➢ Protection in respect of conviction for offences.	➢ Equality of opportunity in matters of public employment.
➢ Protection of personal life and liberty.	➢ Protection of the six fundamental rights of freedom mentioned in article 19.
➢ Right to elementary education.	➢ Protection of language, script and culture of minorities.
➢ Protection against arrest and detention in certain cases.	➢ Right of minorities to establish and administer educational institutions
➢ Prohibition of human trafficking and forced labour.	
➢ Prohibition of employment of children in factories.	
➢ Freedom of conscience and free profession, practice and propagation of religion.	
➢ Freedom to manage religious affairs.	
➢ Freedom from payment of taxes for promotion of any religion.	
➢ Freedom from attending religious instruction or worship in certain educational institutions.	

Note:

The Fundamental Rights



Right to Equality (Article 14, 15, 16, 17 and 18):

- **Equality Before Law: Article 14** says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the territory of India.
  - The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.
  - **Exceptions:** As per article 361, the President of India or Governor of states is not answerable to any court for the exercise of their powers/duties and no civil or criminal proceedings can occur or continue against them in any court during their term of office.
    - As per article 361-A, no civil or court proceedings can occur for a person for publishing any substantially true report of either House of the Parliament and State Legislature.
    - No member of Parliament (article 105) and State Legislature (article 194) shall be liable to any court proceedings in respect of anything said or any vote given by him in Parliament or any committee.
    - The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
- **Prohibition of Discrimination:** Article 15 provides that no citizen shall be discriminated on grounds only of religion, race, caste, sex or place of birth.
  - **Exception:** Certain provisions can be made for the women, children, citizens from any socially or educationally backward class for their upliftment (such as reservation and access to free education).
- **Equality of Opportunity in Public Employment:** Article 16 of the Indian constitution provides for equality of opportunity for all citizens in matters of employment or appointment to any public office.
  - **Exceptions:** There are provisions for reservation in appointments or posts for any backward class that is not adequately represented in the state services.
    - Also, an incumbent of a religious or denominational institution may belong to the particular religion or denomination.
- **Abolition of Untouchability: Article 17** abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.
  - A person convicted of the offence of 'untouchability' is disqualified for election to the Parliament or state legislature. **The acts of offences include**
    - Preaching untouchability directly or indirectly.
    - Preventing any person from entering any shop, hotel, public place of worship and place of public entertainment.
    - Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit.
    - Justifying untouchability on traditional, religious, philosophical or other grounds.
    - Insulting a person belonging to scheduled caste on the ground of untouchability.
- **Abolition of Titles: Article 18** of the constitution of India abolishes titles and makes four provisions in that regard:
  - It prohibits the state from conferring any title on any citizen or a foreigner (except a military or academic distinction).
  - It prohibits a citizen of India from accepting any title from any foreign state.
  - A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President of India.

Note:

- No citizen or foreigner holding any office of profit or trust within the territory of India can accept any present, emolument or office from or under any foreign State without the consent of the president.

Right to Freedom (Article 19, 20, 21 and 22):

- **Protection of 6 Rights: Article 19** guarantees to all citizens the six rights of freedom including:
  - **Right to freedom of speech and expression.**
    - Expressing one's own views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.
  - **Right to assemble peaceably and without arms**
    - Includes the right to hold public meetings, demonstrations and take out processions which can be exercised only on public land.
    - It does not protect violent, disorderly and riotous assemblies or strike.
  - **Right to form associations or unions or co-operative societies.**
    - It includes the right to form (and not to form) political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons.
  - **Right to move freely throughout the territory of India.**
    - The freedom of movement has two dimensions, viz, internal (right to move inside the country) (article 19) and external (right to move out of the country and right to come back to the country) (article 21).
  - **Right to reside and settle in any part of the territory of India.**
    - The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture and customs of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.
  - **Right to practice any profession or to carry on any occupation, trade or business.**
    - It doesn't include the right to carry on a profession that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc,).
- **Protection in Respect of Conviction for Offences: Article 20** grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It provides that:
  - No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act or subjected to a penalty greater than that prescribed by the law.
  - No person shall be prosecuted and punished for the same offence more than once.
  - No person accused of any offence shall be compelled to be a witness against himself.
- **Protection of Life and Personal Liberty: Article 21** declares that no person shall be deprived of his **life or personal liberty** except according to procedure established by law. This right is available to both citizens and non-citizens.
  - The right to life is not merely confined to animal existence or survival but also includes the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.
- **Right to Education: Article 21 (A)** declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years.
  - This provision makes only elementary education a Fundamental Right and not higher or professional education.
  - This provision was added by the **86th Constitutional Amendment Act of 2002.**
  - Before the 86th amendment, the Constitution contained a provision for free and compulsory education for children under **Article 45 in Part IV** of the constitution.
- **Protection Against Arrest and Detention:** Article 22 grants protection to persons who are arrested or detained
  - Detention is of two types, namely, **punitive** (punishment after trial and conviction) and **preventive** (punishment without trial and conviction).
  - The first part of Article 22 deals with the ordinary law and includes:

Note:

- Right to be informed of the grounds of arrest.
- Right to consult and be defended by a legal practitioner.
- Right to be produced before a magistrate within 24 hours, excluding the journey time.
- Right to be released after 24 hours unless the magistrate authorises further detention.

- The second part of Article 22 deals with preventive detention law. Protection under this article is available to both citizens as well as aliens and includes the following:
  - The detention of a person **cannot exceed three months** unless an advisory board (judges of high court) reports sufficient cause for extended detention.
  - The grounds of detention should be communicated to the detenu.
  - The detenu should be afforded an opportunity to make a representation against the detention order.

Right Against Exploitation (Article 23 and 24)

- **Prohibition of Human Trafficking and Forced Labour:** **Forced labour in India** was imposed by landlords, moneylenders and other wealthy persons in the past.
  - The **Article 23** of the Indian Constitution prohibits human trafficking and begar (forced labour without payment) to protect the millions of underprivileged and deprived people of the country.
  - The right is available to **citizens** of India as well as to **non-citizens.**
  - The right provides against human trafficking in the form of:
    - Selling and buying of men, women and children.
    - Prostitution
    - **Devadasis**
    - Slavery.
  - The **Immoral Traffic (Prevention) Act 13, 1956** has been enacted to deal with violations of this fundamental right.
- **Prohibition of Child Labour:** **Article 24** of the Indian Constitution forbids employment of children below the age of 14 years in dangerous jobs like factories and mines.
  - However, it did not prohibit their employment in any harmless or innocent work.
  - The **Child Labour (Prohibition and Regulation) Act, 1986** (renamed as **Child & Adolescent Labour** (Prohibition and Regulation) Act, 1986 in 2016) specifically deals with the violations of related to this right.
    - The **2016 amendment** of this act completely prohibited employment or of children below 14 years of age in all occupations and processes.
    - It also prohibited the employment of adolescents (14-18 years of age) in hazardous occupations or processes.

Right to Freedom of Religion (Article 25-28)

- **Freedom of Conscience, Profession, Practice and Propagation:** **Article 25** of the Constitution of India provides the freedom of conscience, to profess, to practice and to propagate any religion. These rights are **available to citizens as well as non-citizens.**
  - **Conscience:** A person may or may not choose to follow any religion.
  - **Right to Profess:** One can declare his/her religious beliefs and faith openly and freely.
  - **Right to Practice:** Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
  - **Right to Propagate:** Persuading people to convert from one religion to another. However, the Constitution does not allow forcible conversions.
    - It only gives us the right to spread information about our religion and thus attract others to it.
  - **Limitations:** The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health.
    - The government can interfere in religious matters for rooting out certain social evils. For example: banning practices like sati, bigamy or human sacrifice.

Note:

- Such restrictions cannot be opposed in the name of interference in the right to freedom of religion.

- **Freedom to Manage Religious Affairs:** The **Article 26** of the Indian Constitution provides every religious denomination (or any section of it) the **right to establish and maintain institutions for religious and charitable purposes.**
  - It also empowers the religious denominations to manage their own affairs in matters of religion.
  - Moreover, the right to own and acquire movable and immovable property and the right to administer such property is also provided to every religious denomination.
  - The rights provided under Article 26 are also **subjected to public order, morality and health.**
- **Freedom from Taxation for Promotion of a Religion:** The Indian Constitution under **Article 27** lays down that **no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion** or religious denomination.
  - It says that no public money, collected through taxes, shall be spent for the promotion or maintenance of any particular religion.
    - Favouring, patronising or supporting any religion over the other is prohibited.
  - It prohibits only levy of a tax and not a fee.
    - The purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion.
- **Freedom from Attending Religious Instruction: Article 28** states that no religious instruction shall be provided in any educational institution wholly maintained out of State (the territory of India) funds.
  - However, the provision is not applicable to educational institutions administered by the State or established under any endowment or trust.
  - Moreover, no person is required to attend any religious instructions or worship without his consent in any educational institution recognised by the State or receiving aid out of State funds.
    - In case of a minor, the consent of his guardian is needed.

Cultural and Educational Rights (Article 29 and 30)

- **Protection of Interests of Minorities: Article 29** provides that every section of citizens residing in any part of the country have the right to protect and conserve its own distinct language, script or culture (it provides the right to a group/section/community of people).
  - Further, it says that **no citizen shall be denied admission into any educational institution on grounds only of religion, race, caste, or language** (it provides the rights to an individual citizen).
  - Article 29 grants protection to both religious, linguistic as well as cultural minorities.
    - However, the rights are **not necessarily restricted to minorities only,** as it is commonly assumed to be. It includes minorities as well as the majority.
- **Right of Minorities to Establish and Administer Educational Institutions: Article 30** grants all the minorities the following rights:
  - The right to establish and administer educational institutions of their choice.
  - The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them.
    - This provision was added by the **44th Amendment Act, 1978** to protect the right of minorities in this regard.
  - The State shall not discriminate against any educational institution managed by a minority.
  - Thus, the protection under Article 30 is confined only to minorities (religious, cultural or linguistic) and does not extend to any other section of citizens (as under Article 29).

Article 31, 31A, 31B and 31C

- Originally, the **right to property was one of the seven fundamental rights** and provided that **no person shall be deprived of his property except by authority of law.**
  - However, being one the most controversial rights, the **44th Amendment Act of 1978** abolished the right to property as a Fundamental Right and made it a legal right (constitutional right) under **Article 300A in Part XII** of the Constitution.
- Article 31 led to a number of Constitutional amendments; 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments
  - The **First Amendment Act, 1951** inserted Articles 31A and 31B to the Constitution
    - Article 31C was inserted in the Constitution by 25th Amendment Act, 1971.

Note:

- **Article 31A:** It saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 and Article 19.
  - It includes:
    - Acquisition of estates and related rights by the State;
    - Taking over the management of properties by the State;
    - Amalgamation of corporations;
    - Extinguishment or modification of rights of directors or shareholders of corporations
    - Extinguishment or modification of mining leases.
  - It also provides the guaranteed right to compensation in case of acquisition or requisition of the private property by the state.
- **Article 31B:** It **protects the acts and regulations included in the Ninth Schedule** from being challenged and invalidated on the ground of contravention of any of the fundamental rights.
  - The **scope of Article 31B is wider than Article 31A** as it immunises any law included in the Ninth Schedule from the Fundamental Rights (unlike article 31A that protects only five categories).
  - However, the Supreme Court in its judgement in the **I.R. Coelho case (2007)** ruled that **even laws under the Ninth Schedule would be open to scrutiny** if they violated Fundamental Rights or the basic structure of the Constitution.
    - The Supreme Court first propounded the doctrine of 'basic structure' of the constitution in the Kesavananda Bharati on April 24, 1973.
- **Article 31C:** It contained two provisions:
  - It says that **no law that seeks to implement socialistic directive principles specified in Articles 39 (b) and (c), shall be declared void** on the grounds of contravention of the fundamental rights conferred by Article 14 or Article 19.
  - Moreover, no law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

Right to Constitutional Remedies (Article 32)

- **Article 32** is considered the most important article of the Constitution as it provides that the **right to get Fundamental Rights protected is itself a fundamental right.**
  - It confers the **right to remedies for the enforcement of the fundamental rights** of an aggrieved citizen.
- The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it **cannot be abridged or taken away even by way of an amendment** to the Constitution.
- It contains the following four provisions:
  - The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights.
  - The Supreme Court shall have power to issue directions or orders or **writs** for the enforcement of any of the fundamental rights.
  - Parliament can empower any other court to issue directions, orders and writs of all kinds.
    - Any other court here does not include high courts because **(Article 226)** has already conferred these powers on the high courts.
  - The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution.
    - In the case of national emergency, the right can be suspended by the President (**Article 359**).
- Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights etc.
  - The violation of a fundamental right is the ***sine qua non*** (absolutely necessary condition) for the exercise of the right conferred by Article 32.

Article 33, 34 and 35

- **Article 33:** It empowers the **Parliament to restrict or abrogate the fundamental rights of the 'Members of the Armed Forces', paramilitary forces, police forces, intelligence agencies and analogous forces.**

Note:

- The objective of this provision is to **ensure the proper discharge of their duties** and the maintenance of discipline among them.
- The **power to make laws under Article 33 is conferred only on Parliament** and not on state legislatures.
  - Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.
- The 'members of the armed forces' also covers non-combatant employees of the armed forces such as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers and tailors.

➢ **Article 34:** It provides for the **restrictions on fundamental rights while martial law is in force** in any area within the territory of India. The expression 'martial law' has not been defined anywhere in the Constitution but literally, it means 'military rule'.

- The martial law is **imposed under extraordinary circumstances** like war, invasion, insurrection, rebellion, riot or any violent resistance to law.
- Article 34 **empowers the Parliament to indemnify (compensate) any government servant** or any other person for any act done by him in connection with the maintenance or **restoration of order in any area where martial law was in force.**
  - The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

➢ **Article 35:** Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.

- **Powers of Parliament (only) to Make Laws:**
  - Prescribing residence as a condition for certain employment or appointments in a state/UT/ local or any other authority.
  - Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs for the enforcement of fundamental rights.
  - Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc.
  - Indemnifying any government servant or any other person for any act done during the operation of martial law in any area.
  - The Parliament has powers to make laws prescribing punishment for offences such as untouchability and traffic in human beings and forced labour.
- Article 35 extends the competence of the Parliament to make a law on the specified matters even those matters which may fall within the sphere of the state legislatures (i.e., State List).

Conclusion

➢ The Fundamental Rights, despite having a lot of exceptions & restrictions and lack of permanency, are a crucial part of the Constitution of India as:

- They provide necessary conditions for the material and moral protection of man and ensure the liberty of every individual.
- These rights protect the interests of minorities and weaker sections of society and also strengthen the notion of India as a secular State.
- They ensure the dignity and respect of individuals by laying down the foundation of social equality and justice.

Mains Questions

1. Discuss the key challenges India is facing in terms of the digitisation of judiciary and suggest measures that can be taken to overcome these challenges.
2. "It is undeniable that cooperation is key to the smooth functioning of federal design of a country. However, if it is coupled with positive competition among the states, then the overall result would be large-scale economic development across the country". Comment.
3. "Over the years the freebies have become an integral part of the politics in India. While some initiatives such as the Public Distribution Schemes and MGNREGA have become a critical component of India's growth strategy, freebies also undercut the basic framework of macroeconomic stability". Discuss.

Note:

4. A delicate balance is required to be maintained between the Supreme Court and the High Courts in order for the constitutional structure. Discuss the issues with reference to integrated judiciary in India.
5. "Public places ought to be free of any public displays of religion." Critically discuss the statement in reference to recent orders by Karnataka government regarding school uniforms.
6. D Discuss the challenges pertaining to the federal structure of India.
7. "Deficiencies in the present system of appointment of Election Commissioners needs to be removed and adequate safeguards must be put into place to ensure that ethical and capable people head the concerned positions". Comment.
8. "The presence or lack of federal flexibility plays a crucial role in shaping democracy". Comment.
9. Engendering a parliamentary opposition that is the conscience of the nation is important for India to function as a true democracy. Discuss.
10. D "Democratising the political parties in India will democratise Indian Polity." Comment.
11. 'Indian Constitution is both unitary as well as federal according to the requirements of time and circumstances.' In the light of the statement critically examine the quasi-federal nature of Indian polity.
12. 'Higher numbers, and greater visibility, of women judges can increase the willingness of women to seek justice.' In the light of the given statement discuss the issue of lack of women representation in judiciary.
13. D Speaker becomes a symbol of the nation's freedom and liberty. Therefore, the post should always be occupied by persons of outstanding ability and impartiality. Discuss.
14. Cooperative society, as an organic idea and an organisational platform, are relevant, if re-imagined and implemented skillfully. Comment.
    - The legislative body's role must be strengthened and deepened so that disruption of proceedings ceases to be an option. Comment.
15. 'Democracy is very important for human development.' In the light of the statement discuss the challenges democracy is facing today.
16. Upholding federalism requires political maturity and a commitment to the federal principle in present times. Discuss.
16. The establishment of All India Judicial Service is a positive step but faces many constitutional and legal hurdles. Discuss.
17. Striking the right balance between right to privacy of individuals and right to information of society, will be key to the development of Right to be Forgotten India. Discuss.
18. "The term 'Union government' has a unifying effect". In light of this statement, analyze the difference between the terms Union government and central government.
19. Recent changes in India's election funding system creates more loopholes which allows moneyed interest groups to clandestinely influence political parties. Discuss.
20. Technology plays an important role in streamlining the justice delivery system, but it cannot be an end in itself. Discuss the statement in the context of the proposed Phase III e-court project.
21. Do simultaneous elections compromise democracy and federalism? Analyse.
22. Courts are sitting on a pendency bomb, and it has never been more urgent to strengthen the Indian judiciary. Discuss.
23. Establishing the National Tribunal Commission will definitely entail a radical restructuring of the present tribunals system. Discuss.
24. The governor's role and powers have been a controversial issue in Indian politics. Discuss.
25. Punitive measures as the first recourse against critical journalism are against the right of freedom enshrined under the Indian Constitution. Discuss.
26. Freedom of assembly is an essential element of a democratic system and that the public streets are the 'natural' places for expression of opinion and dissemination of ideas. Critically analyse.
27. Union Territories having legislatures with ultimate control vested in the central administrator are not workable. Comment.
28. The premise that the anti-defection law is needed to punish legislators who betray the voters' mandate also seems flawed. Discuss.

Note:

29. The framework of cooperative federalism should allow both the centre and the states to achieve all-round development of the nation without ignoring the development of the states. Comment.
30. Establishing the National Tribunal Commission will definitely entail a radical restructuring of the present tribunals system. Discuss.
31. Courts are sitting on a pendency bomb, and it has never been more urgent to strengthen the Indian judiciary. Discuss.
32. The role played by the Election Commission of India not only ensures free and fair elections but also the proper functioning of democracy. Examine.
33. Ordinances though were meant to be temporary, but repromulgation sidesteps this limitation and makes them permanent. Discuss.
34. 'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions.
35. Divorce is a civil matter and making Triple Talaq a criminal offence is disproportionate to criminal jurisprudence. Comment.
36. What is the Doctrine of Basic Structure'? Discuss its evolution and significance in strengthening the spirit of constitutionalism. (250 words)

Note: