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- User friendly layout
- Infographic aid and interactive elements

Comprehensive Current Affairs Coverage for Mains 2024

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CONSTITUTIONAL ISSUES

Constitutional Bench

News Excerpt:

Recently, CJI D.Y. Chandrachud announced his intent to **create Constitution Benches** of varied strengths as a permanent feature of the Supreme Court.

Historical Background of Supreme Court (SC):

- India had three SCs during colonial times: Bombay, Calcutta, and Madras.
- The Indian High Courts Act of 1861 replaced the Supreme Courts with separate regions, while the Government of India Act 1935 created the Federal Court of India.
- The Supreme Court was founded on January 28, 1950, under **Article 124** of the Constitution. It came into being in Delhi as a result of **Article 130**.
- The first SC had eight judges, including the Chief Justice of India (CJI). As the workload increased, the number of judges was increased, with the **current number being 34.**

About Constitution Benches of the Supreme Court:

- **Article 145(3)** of the Constitution provides for the setting up of a Constitution Bench.
  - It says a **minimum of five judges** (odd numbers- 5, 7, 9, etc.) need to sit to decide a case involving a "substantial question of law as to the interpretation of the Constitution" or for hearing any reference under **Article 143**, which deals with the power of the President to consult the SC.
  - The Court sits in benches of **varying sizes**, as determined by the Registry on the directions of the **CJI, the Master of the Roster.**
- It deliberates on a specific issue related to constitutional law.
- **Delayed Justice:** Delays can be **incentives and disincentives** for parties involved in litigation, with the well-resourced but legally weaker parties benefiting from the delays.
- **Political Influence:** The **Chief Justices** are known to **influence** the **outcomes** of important cases by using their administrative powers of **case assignment.**
- **Institutional Instability: Short tenures** and **early retirements** contribute to institutional instability and **encourage judges** to **comply** with the Government of the day.
  - The appointment and transfer of judges in India is carried out through the **collegium system**, which has been criticized for its **opaque functioning.**
  - Since the inception of the Supreme Court, **only 11 women** have been appointed as judges, and none as Chief Justices.
- Typically, cases before the Supreme Court are heard by Division Benches (of two or three judges) or Constitutional Benches (of five or more judges).

Issues identified:

- **SC** has faced numerous frivolous public interest litigations (PILs), including demands to **remove secularism** from the Preamble to the Constitution, etc.
- **Limited Judicial Access:** Despite their best efforts to provide wide access to the Supreme Court, judges have inadvertently **limited access to justice**, particularly for under-resourced groups.

Way Forward:

- In **1984**, the **Tenth Law Commission** of India proposed splitting the Supreme Court into the **Constitutional and Legal divisions**. This would make justice more accessible and reduce litigants' fees.
- **Eleventh Law Commission** 1988 stated that dividing the Supreme Court into parts would make justice more widely available and significantly **decrease litigants' fees**.
  - The top Court mostly handles matters from **nearby high courts**, while courts far away have fewer appeals due to **accessibility and costs**. That is, appeals from the **Punjab and Haryana High Court**, **Allahabad High Court**, and **Delhi High Court** formed the **major chunk** of matters.
- In **Bihar Legal Support Society v. Chief Justice of India (1986),** the Supreme Court proposed establishing a **National Court of Appeal** to entertain **special leave petitions**, allowing it only to address constitutional and public law-related questions.
- The **229th Law Commission Report (2009)** recommended **four regional benches** in **Delhi**, **Chennai or Hyderabad**, **Kolkata**, and **Mumbai** to hear non-constitutional issues, with six judges from each region taking appellate responsibility.
- A Constitution Bench **(V. Vasanthkumar v. H.C. Bhatia) analys**es the issues and contemplates measures to **protect citizens' basic right to access** the Supreme Court.

CAA rules

News Excerpt:

The Ministry of Home Affairs has notified the rules for implementing the **Citizenship (Amendment) Act, 2019.**

What is CAA?

- The notification enabled the implementation of the **Citizenship (Amendment) Act (CAA) 2019,** which, for the first time, **allows citizenship based on religion.**
- It amended the **Citizenship Amendment Act 1955**, making **two key changes** to **facilitate citizenship for undocumented migrants** belonging to **six non-Muslim** communities—**Hindu, Sikh, Buddhist, Jain, Parsi, or Christian** from **Afghanistan, Bangladesh, and Pakistan**—who **entered India on or before December 31, 2014**.

- The Act **reduces the period to qualify for citizenship** by naturalization from the existing 11 years **to 5 years.**

Key provisions of the rules:

- The Rules specify documents that **must be uploaded to an online portal before the citizenship application can be processed.**
- **Providing details of passport and visa is optional**, but the following documents are mandatory:
  - A document issued by a government authority in the three countries.
    - These include **birth certificates, school or educational certificate**s, any **identity document, licence,** etc.
    - **land or tenancy records** issued by the government of Afghanistan, Bangladesh, or Pakistan,
    - any document that shows that **either of the parents or grandparents or great grandparents** of the applicant **is or had been a citizen of one of the three countries** or
    - **registration certificate or residential permit** issued by the Foreigners Regional Registration Officer (FRRO) in India.
  - One document issued by Indian authorities:
    - The applicant must upload **any of the 20 listed documents**, such as **Aadhar, PAN card, electricity bill, marriage certificate**, etc. to prove entry in India before December 31, 2014.
  - A sworn affidavit declaring the country of origin and date of entry in India and that the applicant 'irrevocably' renounces the existing citizenship.
  - An **eligibility certificate** issued by a locally reputed community institution certifying that a **person follows one of the six faiths is mandatory.**

Significance of CAA:

- CAA removes legal barriers to rehabilitation and citizenship for members of these six communities.
  - It will give a dignified life to refugees who have suffered for decades, and such citizenship rights will protect their **cultural, linguistic, and social identity.**
  - It will also ensure **economic, commercial, free movement, and property purchase rights.**

Areas Where CAA Does Not Apply:

- These amendments do not apply to areas covered by the Constitution's **6th schedule.**
  - These are the autonomous tribal-dominated councils in **Assam, Meghalaya, Tripura, and Mizoram.**
- CAA also does not apply to states with an **inner-line permit (ILP) regime**, primarily in **Northeast India.**
  - The ILP is in place in parts of Arunachal Pradesh, Nagaland, Mizoram, and Manipur.

Opposition of CAA and Government's Defence:

- Opposition to CAA has been based on concerns of **discrimination against Muslims** and its potential **impact on the Assam Accord of 1985** and the **National Register of Citizens (NRC)** process**.** They argue that it violates the right to equality enshrined in the Constitution.
- However, the government defends CAA on grounds of **historical obligation**, **humanitarian grounds**, and the **protection of religious minorities** facing persecution in the neighbouring countries.

Challenges:

- **The legal challenge:**
  - The amendment was challenged before the Supreme Court in 2020 by the Indian Union Muslim League (IUML).
  - Since then, more than 200 petitions have been filed and tagged with the IUML's challenge.
- **The right to equality:**
  - The CAA is challenged because it violates **Article 14 of the Constitution,** which states that **"the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."**
    - The petitioners argue that **using religion as a qualifier or a filter violates the fundamental right to equality.**
  - The petitioners have argued that the **National Register of Citizens (NRC)** in Assam to identify illegal immigrants, along with the CAA, will result in the targeting of Muslims.
  - The Court will have to look into whether the special treatment given to the so-called "persecuted minorities" from the three Muslim-majority neighbouring countries is only a reasonable classification under Article 14 for granting citizenship and whether the state is discriminating against Muslims by excluding them.
  - The Supreme Court has held that the law has to clear two legal hoops to pass the equality test when it is challenged on the grounds of Article 14. First, any differentiation between groups of persons must be founded on an **"intelligible differentia"**; second, **"that differentia must have a rational nexus to the object sought to be achieved by the Act".**
  - The government has said that Muslims have been excluded from the group of **"persecuted"** minorities because Pakistan, Afghanistan, and Bangladesh are Islamic countries where Muslims are in majority.
    - However, it will be tested whether these three countries were picked essentially to keep Muslims out — this is because groups like Tamil Hindus in Sri Lanka, the Rohingya in Myanmar, or minority Muslim sects like Ahmadiyyas and Hazaras are also persecuted minorities in these countries.

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- Making **religion a ground for citizenship** eligibility violates secularism, a basic feature of the Constitution.
- **The CAA and Assam:**
    - Apart from the equality argument, part of the challenge to the CAA also rests on the fate of Section 6A of The Citizenship Act, 1955, which too is under challenge before the SC.
    - In December 2023, a five-judge Constitution Bench led by Chief Justice of India D Y Chandrachud reserved its verdict on the validity of Section 6A, which was introduced in the Citizenship Act after the signing of the Assam Accord between the Centre and the leaders of the Assam movement in August 1985.
    - The Accord determines who is a foreigner in the state of Assam.
        - Clause 5 of the Accord states that January 1, 1966, shall serve as the base cut-off date for the detection and deletion of "foreigners", but there are provisions for the regularization of those who arrived in the state after that date, and up to March 24, 1971.
        - This was also the basis of the final NRC, which was published in 2019.
    - **Section 6A of the Act** allows foreign migrants who came to Assam after January 1, 1966, but before March 25, 1971, to seek Indian citizenship.
        - If the effective cut-off date of March 24, 1971, is upheld by the SC as the cut-off date for entry into the state, the CAA could fall foul of the Assam Accord since it creates a different timeline.

Related:

National Population Register- A register of residents in India that includes demographic and biometric data.

National Register of Citizens- A register of all Indian citizens so that illegal immigrants can be identified and deported.

CAA, 2019- To grant citizenship to persecuted minorities from neighbouring Muslim-majority countries of Pakistan, Bangladesh, and Afghanistan.

Way Forward:

- Develop a more inclusive refugee policy for India in line with the UN Refugee Convention.
- Promote public understanding of the principles enshrined in the Indian Constitution.
- Ensure that citizenship laws prioritise principles of equality and non-discrimination.
- Assist individuals, particularly marginalised communities, in obtaining the necessary documentation to prove their citizenship status.
- Help individuals navigate the citizenship verification process, thereby mitigating the risk of statelessness through support services and resources.
- Facilitate meaningful Stakeholder Engagement, dialogue and consultation with civil society organisations, religious leaders, and communities against it to address grievances related to the CAA.
- Engage with neighbouring countries, particularly Pakistan, Afghanistan, and Bangladesh, to address concerns related to religious persecution and human rights violations.
- India should also work towards regional cooperation and diplomatic initiatives to promote religious freedom and tolerance.
- Conduct educational and awareness campaigns to disseminate accurate information about citizenship laws and dispel misinformation.

Uniform Civil Code (UCC)

News Excerpt:

The **Uttarakhand Legislative Assembly** has **cleared** the Uniform Civil Code **(UCC)** Bill, becoming the **first State** to **adopt** a UCC **post-independence**.

Uniform Civil Code (UCC):

- A UCC seeks to create a **uniform set of laws** to **replace** the distinct **personal laws of every religion** pertaining to subjects such as **marriage, divorce, adoption,** and **inheritance.**
- This stems from **Article 44** of the **Constitution,** which mandates that the state **"shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."**
    - The provision is a part of the **Directive Principles of State Policy (Part IV of the Constitution)**, which, although not enforceable, play a pivotal role in the country's governance.

- The State's UCC is based on a **draft submitted by a committee** formed by the Uttarakhand government under the chairmanship of retired Supreme Court judge **Justice Ranjana Prakash Desai.**
- The committee submitted its **final report** to the **Chief Minister** of Uttarakhand on February 2.

Concerns raised around Uttarakhand UCC:

- With the UCC in place, the **in-laws of the woman can force her** to take up a **legal fight** with her parents for **property**.
    - The in-laws can harass the woman even now.
- **Exclusion criteria:**
    - **Hindu Undivided Family (HUF)** has been **kept out** of it. A law cannot be uniform if it doesn't apply to the majority of the State.
        - HUF is a **legal entity** that allows Hindu taxpayers to claim **beneficial tax treatment.**
    - Bill leaves the **tribal population out of its ambit**, even while claiming that it would apply to the whole of the State.

- This Bill **contradicted** Central laws like the **Shariah Act,** the **Hindu Marriage Act** and the **Special Marriage Act**.

Views On UCC:

Constituent Assembly and Constitution:

- The Constituent Assembly witnessed a **lengthy discussion** on a common civil code while adopting it as a **directive principle.**
  - When the said Article was being discussed, **several members** (Mohamad Ismail-Madras, Naziruddin Ahmad-West Bengal) **suggested** adopting a common civil code with a caveat that it would apply to citizens with **prior consent.**
  - **KM Munshi** said that Hindus themselves have their separate laws.
  - **Dr. B.R. Ambedkar** underlined the possibility that a future Parliament could make provisions for applying the UCC in a **"purely voluntary"** manner.
- **Article 44** of the Constitution states that the **State shall endeavour** to secure a UCC for citizens throughout the territory of India.

Supreme Court Judgments:

- **Shah Bano case (1985):** The Supreme Court (SC) stated, "A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies".
- **Sarla Mudgal v Union of India (1995):** SC said that the need for a UCC "can hardly be doubted".
- **Jose Paulo Coutinho v. Maria Luiza Valentina Pereira (2019):** The Court hailed Goa as a **"shining example"** where "the uniform civil code is applicable to all, regardless of religion except while protecting certain limited rights" and accordingly **urged** for its **pan-India implementation.**

21st Law Commission:

- It suggested that UCC is presently deemed **unnecessary and not recommended**.
  - It emphasised **reforming family laws** across various religions to ensure gender equality.
  - It expressed its support for achieving **"equality within communities"** between men and women instead of pursuing **"equality between communities".**

Arguments in favour of UCC	Arguments against UCC

• UCC is a **constitutional objective aimed at ensuring equitable justice for all communities.**
• In different rulings, like the famous Shah Bano case from 1985, Sarla Mudgal case (1995) and Paulo Coutinho vs. Maria Luiza Valentina Pereira case (2019), the SC has asked for the UCC to be in place. In the Kesavananda Bharati case (1973), the SC stated that a UCC "is essentially desirable in the interest of the integrity and unity of the country".
  o In 2023, the SC upheld the constitutional jurisdiction of states to establish committees to examine the implementation of the UCC. E.g. Uttarakhand Govt. and Gujarat Govt.
• To ensure **equitable dispensation of justice to women from diverse religious backgrounds**, encompassing matters such as marital conflicts and property inheritance disputes, consent, the age of marriage, divorce, guardianship and custody of children.
• UCCs are **followed in countries like the US, Pakistan, Bangladesh, Malaysia, Turkey, Indonesia, Egypt, and Ireland.** Several countries, including Morocco and Tunisia, have implemented laws that promote gender equality.
• The idea of UCC is not new to India; it **already exists in Goa.**
	• The **Sixth Schedule** provides certain protections to some states; the **21st Law Commission paper** said that while framing laws, it must be remembered that **cultural diversity cannot be compromised**.
	• UCC is perceived as **infringing** on the constitutional **Right to freely exercise one's chosen religion**.
	  o **Article 25** grants each religious collective the entitlement to autonomously administer its internal matters.
	  o **Article 29** defines the Right to conserve distinctive culture.
	• Personal laws in the **Concurrent List (Entry No. 5)** appear to be motivated by the **desire to maintain legal diversity.**
	  o If the **primary concern** had been the establishment of **uniformity in laws**, personal laws would have been incorporated into the **Union List.**
	• **Tribal cultural traditions** and **religious practices** engage in **polygamy** and **polyandry**, which would potentially fall under the purview of a UCC.
	  o The distinct personal laws of Adivasis may also face **prohibition.**
	• **HUF,** a **legal entity** that allows Hindu taxpayers to claim certain benefits, will be **scrutinised** on the grounds of **equality before tax law** and **uniformity** in application across religions.

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Way Forward:

- It is **imperative** to ensure that certain groups or **marginalised segments** of society are **not** subjected to **disadvantageous treatment** during this endeavour.
- UCC, if implemented, can be made **voluntary,** and, when citizens accept it, further changes can be made accordingly.
- **Communities** can come forward and give assurance to **reform** the **regressive personal laws,** as the **21st Law Commission suggested.**

Fundamental Rights & DPSP

News Excerpt:

The Supreme Court (SC) in **Property Owners Association vs State of Maharashtra** has a chance to resolve the clash between Fundamental Rights (FRs) and Directive Principles of State Policy (DPSP).

- The Constitution expressly makes FRs enforceable, while "DPSPs" are regarded as goals that the state is expected to work towards.

History of the clash between Fundamental rights & DPSP:

- **Constitutional Provisions:**
  - **Article 13** of the Indian Constitution declared that any law inconsistent with or in derogation of Fundamental Rights would be void.
  - On the other hand, **Article 37** states that DPSPs are not enforceable by any court but are fundamental in governance, guiding the state in making laws.
- **Hierarchy of Rights:** Early judgments, like Mohd. Hanif Quareshi vs State of Bihar (1958) established that while the state should implement DPSPs, it must not do so at the expense of abridging FRs.
- **Introduction of Article 31C:** The 25th Amendment, introduced in 1971, introduced Article 31C, aiming to protect laws made to implement certain DPSPs from judicial review under Articles 14 and 19.
- **Kesavananda Judgement (1973):**
  - The landmark Kesavananda Bharati vs State of Kerala case established the Doctrine of Basic Structure, asserting that **Parliament's amending power is not unlimited and that any amendment** violating the Constitution's basic structure would be void.
  - While the 25th Amendment was partially struck down, the exemption of certain laws from FRs challenges remained ambiguous.
- **42nd Amendment (1976):** Parliament further amended Article 31C through the 42nd Amendment, extending the protection to laws made in furtherance of any DPSP, not just Articles 39(b) and (c).
- **Minerva Mills vs Union of India (1980):** In this case, the SC declared the expanded Article 31C unconstitutional, emphasizing that while DPSPs provide the goals of governance, FRs constitute the means to achieve these goals.
- **Waman Rao vs Union of India:** In a subsequent case, Justice Y.V. Chandrachud held that the original, unamended Article 31C was valid, contradicting the ruling in Minerva Mills. However, this decision has been criticized for overlooking the potential infringement of FRs by laws made in furtherance of DPSPs.

About the case:

- Two questions of seminal importance are at stake in **Property Owners Association vs State of Maharashtra**, in which hearings concluded before a nine-judge Bench of the Supreme Court of India.
  - First, **what does the term "material resources of the community" used in Article 39(b) of the Constitution denote?**
  - Second, **are laws made in furtherance of the goal stipulated in Article 39(b)** — i.e., legislation aimed at securing ownership of resources and distributing them to best subserve the common good — **immunized from challenges premised on the FRs to equality and freedom?**
- The second of these questions sharply focuses on a clash between Part III of the Constitution, which delineates FRs, and Part IV, which enumerates DPSP.
- The Constitution expressly makes **FRs enforceable, while DPSPs are regarded as goals that the state is expected to work towards**.
- Here, the court will **decide on the validity of a law that allows a State government board to acquire complete control over dilapidated buildings if done with the consent of at least 70% of residents.**
- To resolve this, it will **examine whether the law furthers Article 39(b) under which it is purportedly made**.
- But even assuming it answers this in the affirmative, the question still remains: **can the statute also be tested on the touchstone of Articles 14 and 19?**

Way Forward:

- Regardless of the judgments in Waman Rao and Sanjeev Coke Manufacturing Company vs Bharat Coking Coal (1982), which followed it, **to date, there is no conclusive analysis from the SC on Article 31C, in the form introduced by the 25th Amendment, and its adherence to the Constitution's basic structure.**
- This has meant that FRs and DPSPs have been in perennial conflict. The court has a chance in Property Owners to resolve this clash and, in the process, provide a fillip to the Constitution's most cherished guarantees.

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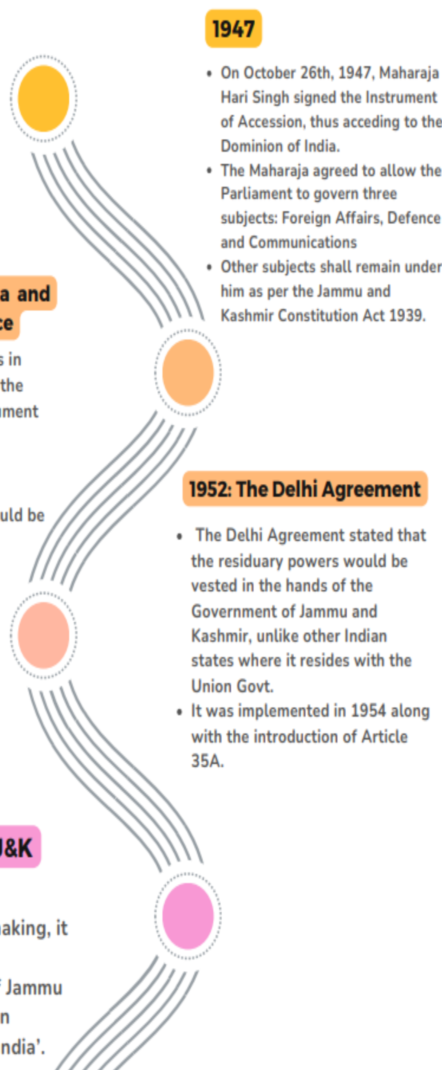
The Article 370

News Excerpt:

A five-judge Constitution Bench of the Supreme Court (SC) upheld the Centre's decision to abrogate Article 370 of the Constitution through a presidential order issued on August 5, 2019.

About the Supreme Court Ruling:

- A Constitution Bench headed by Chief Justice of India D.Y. Chandrachud held that **Article 370** was intended to **"enhance constitutional integration** between the Union of India and the State of Jammu and Kashmir" and not cause any "disintegration".
- The Abrogation (Repealing) of **Article 370** in 2019 put Jammu and Kashmir on **par with the other states.**
- The entirety of the Indian Constitution would now apply to Jammu and Kashmir.



What is Article 370?

- Article 370 of the Constitution of India was a **temporary provision** that provided special status to the State of Jammu and Kashmir.
- It was temporary because the Constituent Assembly of Jammu and Kashmir had the **right to modify, delete, or retain it,** and it was considered temporary only until a plebiscite was held to ascertain the public opinion.
- The temporary provision of this Article is derived from **Part XXI of the Constitution under the title "Temporary, Transitional and Special provisions", which grants special status to the State of Jammu and Kashmir.**

Historical Background:

- In 1947, the Indian Independence Act was passed in the British Parliament; the former British colony was partitioned to create the Dominion of India and the Dominion of Pakistan.
- Article 370 was therefore introduced in the Constitution to preserve the specific terms under which Kashmir had

Before and After abrogation of 370

BEFORE	AFTER
Dual Citizenship	Single Citizenship
Special Powers Conferred	No Special Powers
Art 365 and 360 not applicable	Now applicable
Separate Flag	Tricolor will be the only flag
No reservation for Minorities	Reservation for Minorities
Separate Constitution	Constitution of India

agreed to accede to India, unlike the other 565 princely states.

- **Vallabhbhai Patel was given the credit for the country's successful integration**.

- **The Dominion of India** became a Republic in **1950** with the enactment of the Constitution of India. However, the **Dominion of Pakistan** ceased to exist in the year **1956**.
- On **26 January 1950**, the Constitution came into force along with this unique provision of Article 370.
- Jammu and Kashmir acquired its modern shape under **Ranjit Singh.**
- The people first named the valley as **"Kashyap-Mar"**, meaning abode of Kashyap, and **"Kashyap-Pura"**, meaning city of Kashyap, in Sanskrit.
- **Hari Singh** sought privileges for his people along the lines of a law that **denied outsiders the right to own property.**
- **Maurya emperor Ashoka** had a strong connection with Kashmir. He founded the city of Srinagar and brought Buddhism to Kashmir.

ARGUMENTS FOR Article 370	ARGUMENTS AGAINST Article 370
Strengthening the spirit of Integration -	**A tilt in Federal Balance towards Centre**

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• **"Ek Bharat, Shreshtha Bharat"** by Integrating Indians by abrogating Article 370 and bringing J & K to par with other states. • One nation, One flag, and One Constitution.	The Supreme Court, in upholding the abrogation of Article 370 of the Constitution, seemed to tilt the federal balance in favour of the Union.
Providing equal rights to sanitation workers, women, and non-resident Indians by abrogating Article 35A.	**The challenge of a standstill Government:** According to the present CJI, every decision taken by the Union on behalf of the State during Presidential rule is not open to challenge. This may lead to the administration of the State to a standstill.
Provides them with the **Right to Education and the Right to Information.**	**Setback for 'One Nation and One Election':** The Court directed the Election Commission of India to hold elections "by September 30, 2024", which was interesting as it effectively meant directing an autonomous body (the Election Commission) which is meant to decide on when to hold polls independently.
The decline in violence in Jammu and Kashmir since the abrogation of Article 370. • According to official data, the **number of terrorist incidents has decreased by over 50%**, and security forces have killed over 300 militants in the last four years. • This has been possible **due to increased security measures, better intelligence gathering, and a decline in public support for militancy.**	**Challenges to fundamentals of the Constitution:** • The Court is not going into the question of whether Parliament can convert a state into a union territory and left this open. • The Union can now **impose the President's Rule first and then substitute parliamentary approval in place of the Assembly**, even for highly divisive issues like the splitting of a state.
Promotes Economic Development: • **Tourism:** Jammu and Kashmir has seen 1.62 crore tourists in 2022, the highest in India's 75 years of independence • **Infrastructure:** New Roads, Tunnels and Bridges have seen the light of the day	**Loss of Regional Identity-** • Article 370 was created to respect and preserve the unique identity, history, and culture of the State of Jammu and Kashmir. This abrogation can **raise insecurity among the regional communities**, depriving them of special treatment or protection. • The **separatist elements can use this verdict to fuel separatism and radicalism.**

Way Forward:

- **Restoration of Statehood:** As directed by the Supreme Court, working towards the restoration of statehood for Jammu and Kashmir, could reinstate local governance and allow the region to have more autonomy in decision-making.
- **Truth and Reconciliation Commission:** Establishing a Truth and Reconciliation Commission can significantly address past human rights violations and foster reconciliation.
- **Security Measures and Counter-terrorism Actions:** Continued focus on maintaining security measures to combat terrorism and extremist activities, ensuring the safety and security of the populace, and preventing external forces from destabilizing the region. Also, there is need to stop the misuse of AFSPA
- **Political Dialogue and Engagement:** Initiating meaningful and inclusive dialogue involving all stakeholders, including political representatives from Jammu and Kashmir, to address grievances, aspirations, and concerns. The dialogue should restore trust and confidence among different communities in the region.
- **International Diplomacy and Bilateral Engagement:** Engaging in diplomatic efforts and bilateral dialogues with neighbouring countries, particularly Pakistan, to address cross-border terrorism issues and seek cooperation in maintaining peace and stability in the region.

Sub-categorization within Castes

News Excerpt:

In an election rally in **Telangana,** the Prime Minister promised to investigate the sub-categorisation of Scheduled Castes (SCs) to identify and help the most backward among them.

Sub-categorization of Castes:

- States argue that certain SCs are **under-represented** despite reservation compared to other castes.
- Over the past two decades, several Indian states, including **Andhra Pradesh**, **Punjab**, **Bihar,** and **Tamil Nadu**, have attempted to introduce reservation laws at the state level to sub-categorize SCs and determine their respective quantum of reservation.
  - However, these plans have been **stalled** in courts as the Supreme Court forms its **larger Constitution Bench** to decide the matter.

Background:

- The issue first surfaced in **1996** when the **Andhra Pradesh** government formed a **Commission** of Justice Ramachandra Raju, which **recommended sub-categorizing** SCs based on community representation.
  - In 2000, the Andhra Pradesh legislature passed a **law** reorganising Scheduled Castes into sub-groups.

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- However, this law was declared **unconstitutional** in a 2005 Supreme Court ruling.
- In **2007, Bihar** established the **Mahadalit Commission** to identify castes within Scheduled Castes that were left behind.
- In **Tamil Nadu**, a **3% quota** is given to the **Arundhatiyar caste**, as they hold only 0-5% of jobs.
- **Punjab** has had laws that provided preferential treatment to **Balmikis** and **Mazhabi Sikhs** within the SC quota.

Arguments for sub-categorization	Arguments against sub-categorization
• Special protections for SCs in India stem from the belief that **all castes have suffered social inequity,** regardless of economic or educational factors. • **Justice Raju Commission**: It is needed due to **graded inequalities among communities.** o The more forward communities have access to basic facilities, while backward communities are disadvantaged. • **States**: It aims to represent all SCs in government services equitably and provide them with fruitful opportunities and **does not violate the right to equality.** • It leads to the further upliftment of the SCs, **leveraging their social status and correcting social injustice.**	• **Supreme Court: Social and educational backwardness tests** cannot be applied to SCs and STs suffering from untouchability. • Allowing states to change the proportion of reservations will **appease one vote bank or another.** • Reservation's objective is to ensure that **all backward classes march together**, but social transformation's Constitutional goal **can't be achieved without dealing with the changing social realities.** • NCSC and NCST believe separate reservations within categories will not address the root cause. o The NCST believes that backward SCs are lagging forward SC communities, and a separate quota would not help.

Constitutional status regarding sub-categorisation:

- The Indian Constitution allows **special treatment** for **SCs** and **STs** to achieve **equality** but does **not specify** the castes and tribes to be called Scheduled Castes (SCs) and Scheduled Tribes (STs).
- This power is left to the Union Central Executive, i.e., the **President.**
  - **Articles 341 and 342:** The President, after consultation with the Governor, may specify the castes, races, tribes or parts of groups within castes or races, which shall be deemed to be SCs and STs.
- According to the Constitution, all SCs shall be treated as a **homogeneous group**.

Judicial Interventions:

- In **2004**, the Supreme Court ruled that the State did **not** have the power to unilaterally **sub-categorize communities** in the list of SCs or STs.
- In the 2005, **E.V. Chinnaiah case, Supreme Court** ruled that special protection of SCs is based on the premise that all SCs can **collectively enjoy** the benefits of reservation regardless of **income inequality.**
  - It also stated **only** the **President** has the power to notify the **inclusion** or **exclusion** of a caste as SC, and states **cannot tinker** with the list.
  - However, in **2020 Supreme Court** ruled that deciding on the quantum of benefits in the notified lists would **not** be considered **"tinkering."**
- In the 2018, **Jarnail Singh v Lachhmi Narain Gupta judgement**, the Supreme Court upheld the concept of the **"creamy layer"** within SCs; justifying that it provides an income ceiling on those eligible for reservation.

Executive actions:

- In 2004, the Supreme Court ruling on SC sub-categorization prompted the Union government to **explore legal options.**
- In **2005**, the Attorney-General of India **(AGI)** suggested that it was possible to sub-categorize SCs, provided there was "unimpeachable evidence to indicate a necessity" for it.
  - The AGI suggested a **Constitutional amendment** to facilitate this.
- The **Union government** formed a **National Commission** to investigate this issue in **Andhra Pradesh,** and the **cabinet** recommended an **amendment** to **Article 341** of the Constitution.
  - However, the **National Commission on SCs** and **STs** argued that a Constitutional amendment was unnecessary.

Way Forward:

- Need for **concrete data**: The **Parliament** can handle the sub-categorization of castes. Still, concrete **population numbers** and **socio-economic data, along with appropriate percentages,** are crucial for determining how castes can be classified.
- **NCSC** and **NCST** recommend that **existing schemes** and government **benefits reach** the SCs before sub-categorization. Both bodies believe **addressing** these **disparities** is **crucial** for ensuring representation at all levels.

Haryana's Private Sector Quota

News Excerpt:

The Punjab and Haryana High Court (HC) recently **quashed a law** passed by the Haryana government in 2020 that **provided 75% reservation in private jobs to local state residents**.

Key Points:

- According to the HC, a government cannot discriminate against individuals simply because they do not belong to that state.
- According to the bench of **Justices G S Sandhawalia and Harpreet Kaur Jeewan, the Haryana State Employment of Local Candidates Act 2020** violated **Part III of the Indian Constitution,** containing fundamental rights.
  - In its ruling, the court said the law would be ineffective **"from the date it came into force".**
- The **Andhra Pradesh Employment of Local Applicants in Industries/Factories Bill 2019,** reserved three-fourths of jobs for local applicants within three years of the Act's implementation.
  - The Andhra Pradesh HC challenged the law, saying that it **"might be unconstitutional."** The challenge, however, has yet to be heard on the merits.

About the Law:

- The Haryana Assembly enacted a bill in **November 2020** that **reserved 75% of jobs in the private sector** that paid less than Rs 30,000 (initially Rs 50,000) per month for Haryana residents.
  - The Bill came into effect on January 15, 2022.
- The Act covered all corporations, organisations, trusts, limited liability partnership firms, partnership firms, and significant individual employers.
- Any person or entity that employs 10 or more individuals on salary, wages, or other remuneration for manufacturing or delivering any service and any entity that the government may notify were covered.
- However, the Act **did not apply to national or state governments or organisations owned by them.**
- According to the law, a candidate **"domiciled in the State of Haryana,"** known as a **"local candidate,"** might take advantage of the reservation after registering on an authorised internet portal. Employers were obligated to conduct all recruitments through this platform.
- Employers could apply for an exemption under the Act, but doing so required a lengthy procedure and the belief of government-appointed officers that the employer's exemption request was valid.

Arguments against the act:

- The **Faridabad Industries Association and other Haryana-based associations** filed a lawsuit, claiming that Haryana was attempting to create reservations in the private sector by **instituting a "sons of the soil"** policy, which **violated employers' Constitutional rights.**
- **Petitioners' Argument:**
  - The petitioners argued that **jobs in the private sector are solely based on skills** and an analytical mindset and that employees have a fundamental right to work in any part of India.
  - They argued, "The act of the respondent or government forcing the employers to employ local candidates in the private sector vide this impugned Act is the **violation of the federal structure framed by the Constitution of India**, whereby the government cannot act contrary to the public interest and cannot benefit one class".

Arguments in favour of the act:

- **Haryana Government argument:**
  - It had the power to make these reservations under Article 16(4) of the Constitution, which states that the State may "make any provision for the reservation of appointments or posts in favour of any backward class of citizens".
  - It does not preclude the right to equality in public employment.

High Court's judgement:

- The court noted that **Section 6** — which required employers to submit quarterly reports with details of local candidates employed and appointed —and **Section 8** — under which authorised officers could call for documents or verification to ensure the law was being implemented — of the Act amounted to "Inspector Raj", and that private employers were being put under the State's anvil on whom to employ.
- Under **Section 20** of the Act, the bar on legal proceedings against any authorised or designated officer acting in "good faith" tied the employer's hands.
- The state's action amounted to exercising **"absolute control over a private employer,"** which is **"forbidden for public employment."**
- The restrictions were **"gross to the extent that a person's right to carry on occupation, trade, or business"** under Article 19(1)(g) of the Constitution was being impaired.
- Thus, the current private sector quota provided by the state government to their residents is a violation of the Fundamental Rights of private company owners and outsiders.

Way Forward:

- Voluntarily Code of Conduct to ensure social justice in the organisations.
- Focus on Human Development.
- Shift the government's focus from guaranteeing Jobs to reducing inequalities.
- Upholding Fundamental Rights in Policy Making.

Rights of the unborn child

News Excerpt:

The **Supreme Court** declined permission to a married woman to terminate her over 26-week pregnancy after the **AIIMS Medical Board** had confirmed that the pregnancy was not a cause of immediate danger to her life or the foetus. It has raised crucial questions on the decisional

autonomy of a woman to abort and the legislative framework.

Law on abortion:

- In the 1960s, in the wake of a high number of induced abortions taking place, the Union government ordered the Constitution of the **Shantilal Shah Committee** to deliberate on the **legalization of abortion in the country.** To reduce maternal mortality owing to unsafe abortions, the Medical Termination of Pregnancy (MTP) Act was brought into force in 1971. This law is an exception to the Indian Penal Code (IPC) provisions 312 and 313 and sets out the rules of how and when a medical abortion can be carried out.
- Under Section 312 of the IPC, a person who "voluntarily causes a woman with child to miscarry" is liable for punishment, attracting a jail term of up to three years or a fine or both, unless it was done in good faith where the purpose was to save the life of the pregnant woman. This section effectively makes unconditional abortion illegal in India.
- Section 313 of the IPC states that a person who causes a miscarriage without the consent of the pregnant woman, whether or not she is in the advanced stages of her pregnancy, shall be punished with life imprisonment or a jail term that could extend to 10 years, as well as a fine.
- The Medical Termination of Pregnancy Act **(MTP Act)** allows the termination of pregnancy in **three stages** –
    - **Stage 1:** Termination of pregnancy **up to 20 weeks** is allowed on one doctor's advice.
    - **Stage 2:** If a pregnancy is **20-24 weeks**, the right to seek abortion is determined by two registered medical practitioners as an exception, only under certain categories like forced pregnancies, rape in case of minors or sexual assault, women with disabilities, change in the marital status of women during pregnancy.
    - **Stage 3: After 24 weeks**, a medical board must be set up in "approved facilities", which may "allow or deny termination of pregnancy" only if substantial foetal abnormality exists.
- **Concerns:**
    - The **decision** to terminate after 20 weeks is shifted to **doctors** and not the woman.
    - The **legal framework** on reproductive rights **tilts** to the side of the **woman's autonomy** to decide and choose more than the rights of the unborn child.
    - The Indian legal scenario is unclear on whether the foetus has similar rights and is a living being.

Figure: Rights of the Unborn

The landmark 1973 US Supreme Court verdict in **Roe v Wade** that made **abortion** a **constitutional right** allowed abortion **up to the point** of **foetal viability**, that is the time after which a foetus can survive outside the womb.

Concept of Foetal viability:

- It means the **ability** of the **foetus** to survive post-delivery. Foetal viability in the 1970s was pegged at **28 weeks**, which is now with scientific advancement lower at **23-24 weeks**.
- Abortion is lawful or accessed with **less difficulty** before the point that a foetus is deemed viable. After viability, abortion is lawful in a **narrower** set of circumstances.
- Foetal viability is determined based on **physical characteristics** indicating if the foetus has reached an expected stage of development and the general appearance, including **cyanosis**, the **placental blood** and **cord**, and **skin colour**.

- While courts have read the MTP Act liberally, the test of "foetal viability" as a **benchmark** for consideration of abortion is **new** in **India**.

Reproductive rights of Women:

- Access to safe and legal abortion is a matter of **bodily autonomy** - deciding the number and spacing of children and enjoying the benefits of scientific progress and its availability.
  - United Nations Population Fund (UNFPA)'s State of the World Population Report 2022- Between 2007-2011, 67% of abortions in India were classified as unsafe.
  - Unsafe abortions are the third leading cause of maternal mortality in India, and close to 8 women die from causes related to unsafe abortions each day.
- **Paramount** consideration should be given to the mother, her **conscious decision** to not have the baby should be **respected.**
  - **According to the UNFPA's report - one in seven unintended pregnancies in the world takes place in India. The unintended pregnancies and subsequent abortions are intimately linked with the overall development of the country.**
- Forcing a woman to continue a pregnancy endangering her health would **violate her fundamental rights**, i.e., non-discrimination, equality, life, health, and privacy.
- The **gestation period** in pregnancy as a basis to allow or deny abortion is an **artificial construct**.
  - The **2022 WHO Abortion Care Guidelines** recommend against laws prohibiting abortion based on the gestational age limit.
- Forcing a pregnant individual to carry an unwanted pregnancy to full term can result in severe **psychological trauma** and may be seen as a form of **torture**, infringing upon her **mental health**.
  - Earlier this year, the **SC** granted permission for abortion primarily based on the **"risk to mental health"** of the pregnant person.
  - In 2022, the **Kerala High Court** allowed a later-term termination on mental health grounds.

Way forward:

There is a need for a **balanced decision**. On one side, it is imperative to ensure that abortion remains safe, legal, and affordable. In contrast, the argument against it argues that this will kill the unborn baby, especially the girl child. Strict law **enforcement** and **monitoring** would achieve multiple goals simultaneously, leading to a humanitarian approach.

India, that is Bharat

News Excerpt:

The government at the Centre has decided to use Bharat instead of India in some official communication and documents. For instance, Rashtrapati Bhawan's invitation to G20 guests had the word **"The President of Bharat".**

Related Provisions:

- **Article 1** of the Indian Constitution mentions our country as 'India, that is Bharat' is a 'Union of States'.
- In 2015, the government told the Supreme Court that the Constituent Assembly had **"deliberated extensively"** before adopting Article 1 and that "there is no change in the circumstances to consider any change in Article 1 of the Constitution of India".
- In 2020, the Supreme Court dismissed a PIL seeking to remove India from the Constitution and retain only Bharat to ensure the citizens of this country get over the colonial past. The court stated that India is already called Bharat in the Constitution itself.
- Almost **10 countries** have undergone the process of changing their names, with Thailand, Iran, Sri Lanka, Myanmar and Turkiye being among the few.

Debate in the Constituent Assembly:

- The **first draft** moved by Dr. B.R Ambedkar in **November 1948** didn't have the name "Bharat". Though some members flagged the omission of a native name, in **September 1949,** Ambedkar moved an **amendment to draft Article 1**. The amendment proposed for India, that is Bharat, shall be the Union of the states.
- However, this sparked a passionate discussion among the members of the Constituent Assembly. **H.V Kamath** suggested **two alternatives** – **Bharat, or in the English Language India,** shall be the Union of the states, and **Hind, or in the English language India,** shall be the Union of the states. He pointed out that in many other countries, India was still known as "Hindustan", and its inhabitants were referred to as Hindus regardless of their religion.
- Seth Govind Das, Kamalapati Tripathi, Ram Sahay and Hargovind Pant joined the debate in favour of Bharat.
- In the end, a show of hands within the Constituent Assembly resulted in 38 votes in favour of Kamath's proposal and 51 against it.
- Consequently, the original wording **"India that is Bharat shall be the Union of the States" prevailed**.

Constitution and Government aspects:

- **Article 1** declares that all the various entities comprising the country will come together as one nation, preserving the territorial integrity and sovereignty of India. It acknowledges that India, that is, Bharat, shall be the "Union of States". It also recognises both "India" and "Bharat" as the legitimate names of the country.
- The English version of the **Preamble** starts with "We the people of India..." while the Hindi version uses the word "Bharat".
- Also, the IITs, IIMs, RBI, ISRO, Indian Railways, etc. all use **"India"** in their English names while **"Bharatiya"** in their Hindi names.

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Procedure to change the name:

- If the government decides to make **only "Bharat"** the **official name** of the country, it will need to introduce a **bill** to **amend Article 1** of the Constitution.
- **Article 368** provides the framework for **amending the Constitution**. It allows amendments through **two distinct processes** – a **simple majority** amendment and a **special majority** amendment.
- To change the name, a special majority is required. This necessitates the **approval** of **at least two-thirds** of the **members** present and voting in both Houses of Parliament.

Demand for Inclusion of Ladakh under Sixth Schedule

News Excerpt:

The functionaries of the Ministry of Home Affairs (MHA) and six Ladakh leaders from the Leh Apex Body (LAB) and the Kargil Democratic Alliance (KDA) will hold a meeting regarding different issues pertaining to the UT, including the Sixth Schedule issue.

What is at the heart of the demand?

- This has to do with Article 35A, which gave the erstwhile state of Jammu and Kashmir power to define permanent residents who can only buy land or take jobs in the state. However, abolition of Article 370 has taken away this protection from Jammu & Kashmir and Ladakh — two new Union Territories carved out on August 5, 2019.
- Article 35 A was believed to be good for the people of Ladakh as nobody from outside could buy land here. But now, the people as well as council can transfer lands to anyone. This can change if safeguards are granted under the Sixth Schedule. Then after, people here can't transfer land to non-tribals. They can transfer their land to only tribals.
- There are administrative issues too that have cropped up after Ladakh became a Union Territory. At present, the officers at the council are accountable to the Centre.
- Their transfer and annual progress report is under Centre, so when a decision taken at the council level gets delayed in execution because the person or the chief executive overseeing the development is accountable to the Centre. These issues, can only be resolved when the council is given autonomy under the Sixth Schedule.
- The government to amend the Ladakh Hill Development Council Act, passed in 1997. It needs to be defined what will be the role and responsibility of the central government, the Union Territory administration and the Lieutenant-Governor.
- Along with this, (it needs to define) how the roles of gram panchayats and town councils will be streamlined with. The LAHDC Act also needs to be amended to grant Constitutional safeguards with regard to land, employment and cultural identity on the lines of certain regions in the North-East under the Sixth Schedule.

Sixth Schedule and Tribal Protection

- The Sixth Schedule of the Constitution — Articles 244(2) and 275(1) — has provisions for the administration of tribal areas in the border states of Assam, Meghalaya, Tripura and Mizoram.
- Under the Sixth Schedule, autonomous districts and councils, administered by elected representatives, have a varying degree of autonomy to frame laws to protect the interests of tribal people.
- This is a demand that has been gathering momentum in Ladakh, too.
- The leaders in Ladakh, however, are demanding powers similar to what has been given to the Bodoland Territorial Council under the Sixth Schedule.
- The Bodoland Territorial Council has been given greater autonomy to frame laws in comparison to other District Councils.
- As per the Constitution, the Bodoland Territorial Council can make laws on 39 additional subjects such as culture, education, health and agriculture, labour and employment, land and revenue among others.

Fear of demographic change in Ladakh

- Ladakh has more than 90 percent tribal population with distinct ethnicity, culture, custom, these can be protected only if the state has constitutional safeguards under the Sixth Schedule.
- The biggest concerns are change in demography and protection of tribal lands. The biggest fear among Ladakhis is that now people will set up industry here, buy lands, bring people from outside that will lead to demographic change and loss of jobs for locals.
- Now, the new concern is the domicile law for Jammu and Kashmir. The people in Ladakh have this fear that Centre may bring a similar law allowing outsiders to become residents after 10-15 years. There is no need to bring any demographic change in Ladakh as the people here are nationalists. Ladakhis are demanding the sixth schedule because it will provide safeguards for tribal lands as non-tribal people cannot buy them and jobs will be for tribal.

Conclusion

This development dragged media attention from Ladakh's border to inner Ladakh when a body called the "Apex Body of Peoples Movement for Sixth Schedule for Ladakh" called for complete boycott of the upcoming sixth round of Ladakh Autonomous Hill Development Council (LAHDC) Leh elections. This came immediately after a media report suggested the central government had defied Ladakh's demand for inclusion in the Sixth Schedule of the Indian constitution. The Apex Body of Peoples Movement for Sixth

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Schedule for Ladakh, unanimously resolved to boycott the ensuing 6th LAHDC Leh election till such time the constitutional safeguard under the sixth schedule on the lines of Bodo territorial council in not extended to UT Ladakh and its people.

LGBTQIA+ Rights in India

News Excerpt

A five-judge Constitution Bench of the Supreme Court recently reserved judgment on a batch of pleas seeking legal validation for same-sex marriage.

Timeline of the LGBTQIA+ Movement in India

- 1990-91, the **LPG reforms** ushered in **western influences** viz. western **NGOs**, sought equal rights for LGBT communities. With the rise of **HIV AIDS** largely in the gay community, the demand for programmes and policies to limit HIV were **mainstreamed**.
- In 1999, Kolkata hosted India's first Gay Pride Parade, **Calcutta Rainbow Pride parade**.
- With the increased **awareness** about **LGBT rights**, the issue was challenged in the courts. Various judgments were passed, increasing the **acceptance** of LGBT community thereon.
- In 2015, MP **Shashi Tharoor** introduced a **private member bill** in the Parliament.
- In 2022, MP **Supriya Sule** introduced a private member Bill in Lok Sabha to legalize same-sex marriage in the country.
- The **first codified legislation** on homosexuality, **Section 377** of the **IPC** prohibited the LGBT individuals for **"unnatural offence"** and having **"carnal intercourse against the order of nature".**
- Though the **Right to Equality** was granted under **Article 14** but **homosexuality,** remained a **criminal offence** under section 377.

Judgments related to LGBTQIA+ Rights

- **Naz Foundation vs. Government of NCT, Delhi**: High Court stated that Section 377 violates Articles **14, 15 and 21**.
- **National Legal Services Authority vs. Union of India, 2014**: SC declared transgenders as the **'Third Gender'**. Their fundamental **rights** were affirmed and **reservations** in education and jobs were granted.
- **Justice K.S. Puttaswamy vs. Union of India 2017**: SC ruled that **Right to Privacy** is intrinsic to life and liberty and thus, comes under **Article 21**. SC declared that **bodily autonomy** was an integral part of the right to privacy. This bodily autonomy has within its ambit **sexual orientation** of an individual.
- **Navtej Singh Johar v, Union of India 2018**: **five-judge bench** of SC held **Section 377** to be **unconstitutional.** The decision relied on the Puttaswamy judgment.
- **Deepika Singh vs Central Administrative Tribunal 2022:** Ruling recognised "**atypical**" families, including **queer marriages.**

Laws and Provisions related to LGBTQIA+

There are **no specific law** covering **whole** of LGBTQIA+ community.

- **Transgender** Persons (Protection of Rights) **Act**, 2019
- National **Council** for Transgender Persons
- **Garima Greh**: To provide shelter, food, medical care and recreational facilities to transgender persons.
- National **Portal** for Transgender Persons
- **Skill development** training to transgender beneficiaries through **PM-DAKSH**.
- **SMILE** Scheme, Ministry of social justice and empowerment.

Constitutional safeguards

- **Preamble**: **Justice (**social, economic, and political) and **Equality of status.**
- **Article14** (Right to Equality) provides for **rule of law** and **equal protection of the laws**.
- **Article 15 and 16** (Right against **Discrimination** and Equality of **Opportunity**).
- **Article 21** Rights to **Life** and Personal **Liberty.**
- **Article 23** Right against **Exploitation** and prohibits acts like human trafficking and beggary.

International scenario

- **Yogyakarta principles**: It is a Document about human rights regarding **sexual orientation** and **gender identity**. Yogyakarta Principles **plus 10** in 2017, expanded to include **LGBTIQ+ people**.
- **International Labour Organization (ILO):** Released a document on **"Inclusion of LGBTIQ+ persons in the world of work"**. It recommends ensuring equal **opportunities** and treatment for LGBTIQ+ persons at **work**.
- **Ireland, USA, Brazil, Canada, France,** etc., have legalized same sex **marriage**.12 out of the G20 countries, including the EU, have permitted same-sex marriages.
- Recently, **Uganda** passed **Anti-Homosexuality Act of 2023**, which criminalizes same-sex conduct, including a potential death penalty for those convicted of "aggravated homosexuality."

Challenges faced by LGBTQIA+ community

- **Ostracization**: LGBT people are ostracized by **society**. Village **medics and baba's** often prescribe quack methods and **conversion therapy** to cure homosexuality.
- **Discrimination:** In employment, educational institutes, within families and society, severely affecting their overall **wellbeing**.
- **Identity crisis**: They often find themselves in selecting an identity due to the difference in **gender assigned** at birth and **gender of expression**.

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- **Social Stigma**: Many Families refuse to accept them. They generally face difficulty in property inheritance and adoption.
- **Political Under-Representation:** Severely underrepresented in politics, vicious circle of not being mentioned in **the policies and programmes**.
- **Drug Abuse**: They often fall prey to drug abuse and drug **cartels**.
- **Victims of Hate Crimes:** Because of the lack of social acceptance from society and families.

Issues in Including LGBTQIA+ in Indian society

- **Civil law system**: Civil law of **marriage**, **adoption**, **divorce** will need retrofitting. In a gay or lesbian marriage, one cannot be differentiated as **husband and wife**. Moreover, if they get divorced who will be getting **custody of child** and **alimony**. Single men cannot adopt a girl child according to the current laws, should the same be applicable for bisexuals. Further, **adoption** of LGBT kids would be another issue, what if no one adopts them.
- **Education**: **Sex education** is not provided in Indian education system. **Hostels** and dormitories of both genders are separate. **Reservation** cannot be more than 50% according to SC judgment, how will LGBTQIA+ will be given reservation.
- **Employment:** There are **different tax limits** for both the genders. **Sexual Harassment** at workplace will be an issue, how can the different categories of LGBTQIA+ be identified. **Maternity leaves** given to women is more while **paternity leave** given if any, is less.
- **Social Benefits**: Maternity benefits program, **old age pension** varies for both the genders. Which category of people will be identified under **nutrition for adolescent girls** scheme, will be another hurdle.
- **Gender fluidity**: Another major issue is with the **changing nature** of gender fluidity in LGBTQIA+.
- Around **65% population** is still residing in **rural areas** in India. There is a lack of exposure in rural setup. It will take time for them to accept the notion of LGBTQIA+.

Potential benefits of providing rights to LGBTQIA+

- **Capability Approach:** Recognizing rights will lead them towards **self-confidence**, overcoming their fear and insecurity and they will live openly and safely.
- **Acceptance**: It will lead to their acceptance in family and society. Prevailing laws always have an **influential effect** on society. Even if their family is abandoning them then their rights will help them to get what they deserve.
- **Opportunities:** It will help them in getting **education** and their career prospects would be brighter.
- **Social Development**: Their individual development will uplift the social indicators of health viz. Resolving **mental health** issues, **HIV-AIDS**, **drug abuse**, **beggary,** etc.
- **Economic Development:** When various sections of the society excel, the nation moves towards inclusive growth. **GDP, poverty**, **unemployment** indicators will rise.
- **Unity in diversity**: It will uphold the **mantra** of India "unity in diversity",

Way Forward

- **Education and Sensitization**: Introducing **sex education** in schools, sensitization of **community** will go a long way in changing the attitudes towards LGBTQIA+ community.
- **Anti-Discriminatory Law**: That recognizes the protection of the **rights** of LGBTQIA+ community and criminalizes their harassment or **discrimination**.
- **Government bodies**, especially related to Health, and Law and Order need to be **sensitised** and should be made **aware**.
- **Yogyakarta Principles** should be adopted in true letter and spirit.
- LGBTQIA+ community **lacks** many rights like **marriage**, **adoption, surrogacy** etc. which gradually, if not sooner should be granted to the community.

Basic structure doctrine

News Excerpt

Former Chief Justice of India's recent remark in Parliament on the Basic Structure of the Constitution has again sparked a debate on the legitimacy of the doctrine.

Elements of basic structure

The basic structure consists of-

- Supremacy of the Constitution;
- Republican and democratic form of government;
- Secular character of the Constitution;
- Separation of powers.
- Various other judgements added to this list, such as sovereignty, unity of India, federalism, rule of law, judicial review, etc.

Indian Constitution and basic structure

- It has no explicit mention in the constitution. Even the supreme court has not clearly defined as to what constitute the basic structure.
- The apex court through its various judgements, keeps on adding and evolving this doctrine.
- It greatly extended the scope of its judicial review by claiming the authority to evaluate all constitutional amendments, and not only those that concerned fundamental rights.
- The judiciary is the guardian of the constitution. It ensures the enforcement the fundamental rights of people. the basic structure doctrine acts a shield that guards Indians against absolutism and majoritarianism of the Executive and Legislature.

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Evolution of basic structure

- **1951**, Shankari Prasad vs Union of India: Parliament has absolute power to amend the Constitution including fundamental right provisions (reiterated in subsequent decisions) under Article 368 of the Constitution.
- **1967:** Golak Nath vs State of Punjab: Earlier decision reversed to say that power to amend the Constitution has limitations, and fundamental rights cannot be taken away or abridged.
- **1971:** 24th Constitutional Amendment Act: Parliament amends Article 368 to provide that Parliament has constituent power to amend any provision of the Constitution, by way of addition, variation or repeal.
- **1973:** Kesavananda Bharati case: 24th Constitutional Amendment Act held as valid. Parliament has power to amend any provision including fundamental rights, but this power is subject to inherent limitations. Parliament cannot use this power to change the basic structure or framework of the Constitution
- **1976:** 42nd Constitutional Amendment Act: Parliament amends Article 368 to bar courts from exercising judicial review over constitutional amendments, and provide that there will be no limitations on power to amend.
- **1980**: Minerva Mills vs Union of India: 42nd Constitutional Amendment Act held invalid. Power of judicial review and a limited amending power are basic features of the Constitution.

Way Forward

Currently, there is no disagreement about the existence of the doctrine. The recurring challenge revolves around its specific components. While certain elements have consistently gained affirmation from the courts, others remain subjects of ongoing discussions. The fundamental structure doctrine provides a delicate equilibrium between the necessary adaptability and steadfastness inherent in the amending authority of any constitution.

Marital Rape

News Excerpt

Recently the Supreme Court said that it would list a batch of petitions pertaining to matters related to marital rape.

- Marital rape refers to **unwanted intercourse** by a man on his wife obtained by force, threat of force or
- physical violence or when she is **unable to give consent.**
- According to data from the National Family Health Survey-5 (NFHS-5), one in every 25 women in India
- reported being subjected to sexual violence by her husband.
- In India, **marital rape exists de facto but not de jure**, that means the definition of rape under section 375 of Indian Penal Code does not include marital rape as a criminal offence.
- Also, marital rape is not a criminal offence and it is only covered under the definition of domestic violence which is defined under the Protection of Women from Domestic Violence Act, 2005.

Types of Marital Rape

- **Battering rape:** In battering rapes, women are battered to experience both physical and sexual violence in the relationship and they experience this violence in various ways. Majority of marital rapes fall under this category.
- **Force-only rape: Husbands use only the amount of force necessary to coerce their wives**
- **Obsessive rape: Women experience what has been labelled sadistic or obsessive rape.**

Legal Position of Marital Rape

Criminal Law Aspect	Civil Law Aspect	Constitutional Law Aspect
• **Section 375 of the Indian Penal Code defines Rape but doesn't mention about marital rape. Also, Sexual intercourse by a man with his wife, the wife not being under fifteen years of age, is not rape.** • **Under Section 376-A, rape of judicially separated wife is criminal offence**	• Marital rape is not a criminal offence in India but it is partially covered under a civil law under Protection of Women from Domestic Violence Act, 2005	• **Violation of Article 14:** Constitution guarantees equality to all, Indian criminal law discriminates against female victims who have been raped by their own husbands. • **Violation of Article 21:** No person shall be denied of his life and personal liberty except according to the procedure established by law.

History of Marital Rape in India

In 1889, Phulmani Dasi a 10-year-old child bride died because of her 35 years old husband raped her, and cited his right to have sex with his wife according to the contract of marriage. The government at the time tried to bring the age of consent bill but the bill faced severe opposition from many upper caste Hindu sections of the society. An incident that happened more than a century ago is imperative in our understanding of why India has still not criminalized marital rape. Historically, our society has found it difficult to comprehend the concept of marital rape.

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Status of Marital Rape

- Of 185 countries in the world, 77 have laws that clearly criminalise marital rape. Another 74 have legal provisions that allow for cases to be filed against spouses.
- India is part of this gallery of 34 with an exemption for marital rape in its sexual assault law.

Most Possible causes of Marital Rape

- **Dominance of gender:** When the discord between spouses increases, the husband may try to assert himself by forcing himself upon the woman. To one-up, his wife will use the ultimate weapon in his arsenal to demean and degrade her. In this way he is showing his dominion over her and destroying her privacy.
- **Power: Sexual dissonance between the couple:** At times the woman may not be interested in sex for reasons that are clear only to her and may refuse her husband. Men are generally more oversexed than women are. So, when the man is denied sex, he treats it as an insult to his manhood. This in turn causes discord between the couple. It is also believed that a man in a bid to overcome the humiliation of sexual rejection, will eventually force himself upon the wife.

Judgments related to Marital Rape

- The Supreme Court in **Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018**) stated that the wife does not have a right to initiate proceedings against her lawfully wedded husband for the offence of rape punishable under Section 376 as the idea is that, by marriage a woman gives irrevocable consent to her husband to have sex with her any time he demands it.
- Recent judgment by the Karnataka High Court that allowed the prosecution of a man for raping his wife.
- Recent split verdict by a two-judge Bench of the Delhi High Court on a challenge to the constitutional validity of the 'marital rape immunity' in the Indian Penal Code.

Marital Rape: Impact on Women

Marital Rape causes physical, psychological, and mental health issues to the female victim which hurt the emotional as well as the physical wellbeing of the women in the long run

- **Psychological Effects** women who have experienced marital rape have experienced sadness, fear, low self-esteem, rape trauma syndrome, as well as sexual instability, inaccessibility, or malfunction.
- **Health Issues** Most women have chronic pain as a result of being raped frequently. This ultimately results in black eyes, fractured ribs, knife wounds, and body marks from the assault. Most victims have described experiencing pain and vaginal bleeding. Intense vaginal rupture is the cause of bleeding.

Conclusion

Almost all studies show an association between marital rape and adverse mental health outcomes, despite likely widespread underestimation of marital sexual abuse prevalence. The qualitative studies provided relevant context regarding the lack of recognition of actions that may be considered abuse and mental health symptoms.

- Thus, it is high time that the judicial system in India makes laws criminalizing marital Rape to preserve the dignity and psychological wellbeing of the woman.
- **Prof Sandra Fredman of the University of Oxford** once said that, it would take training and awareness programmes should be provided to ensure that all levels of the criminal justice system and ordinary people are aware that marriage should not be regarded as extinguishing the legal or sexual autonomy of the wife.

Ninth Schedule

News Excerpt

Recently, the Government of Chhattisgarh passed two bills in the assembly that will pave the way for a 76% quota for Scheduled Caste, Scheduled Tribes and Other Backward Classes but asserted that they would come into force only after the Centre carries out amendments to include these in the Ninth Schedule of the Constitution.

About Ninth Schedule

- The Ninth Schedule contains a list of central and state laws which cannot be challenged in court. The Schedule became a part of the Constitution in 1951 through the first amendment.
- Through the First Amendment, Article 31A (extends protection to 'classes' of laws) and Article 31B (shields specific laws or enactments- giving birth to Schedule IX) were also added.
- Article 31B has a retrospective operation. If an act is held unconstitutional and thereafter is put under the 9th schedule it will be considered as its part since its commencement. SC had termed it as a drastic and novel method of an amendment
- The First Amendment added 13 laws to the Schedule. Currently, there are 284 such laws shielded from judicial review.
- Most of the laws protected under the Schedule concern agriculture/land issues, the list includes other subjects, such as reservation.

Understanding Judicial Review

- Judicial Review act as a cornerstone for the principle of constitutionalism as it upholds the principle of the rule of law and the doctrine of separation of powers.
- On a broader scale, there are mainly three aspects of judicial review, they are-
  - Judicial review of administrative actions
  - Reviewing Judicial pronouncements, and
  - Review of the action of the legislature.

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- The nature of the judicial review is procedural. Indian Judicial review has its root directly in several Articles of the Indian Constitution e.g. Articles 13, 32, 131 to 136, 143, 226, and 246.
- Judicial review is responsible for balancing the interests and powers of different organs of the government and in assisting in the maintenance of control by marking a boundary to limit uneven encroachment of the authorities towards a person's constitutional rights and among themselves.

Courts and Ninth Schedule

Three key judgements answer the question of whether the Ninth Schedule is completely Exempt from Judicial Scrutiny. These are:

- ***Keshavananda Bharati v. State of Kerala***– The court introduced a new concept of the "Basic structure of the Indian Constitution" and stated that, "all provisions of the constitution can be amended but those amendments which will abrogate or take away the essence or basic structure of constitution which included Fundamental Rights are fit to be struck down by the court".
- ***Waman Rao v. Union Of India***–SC ruled that "those amendments which were made in the constitution before 24th April 1973 (date on which judgement in Keshavananda Bharati was delivered) are valid and constitutional but those which were made after the stated date are open to being challenged on the ground of constitutionality and the State is only immunized for its acts before the judgement in Keshavananda Bharati. This is also known as the **"Doctrine of Prospective Over-Ruling" which means that 'only what follows after is bound to abide by the rules and what has happened earlier will not be taken into account.**
- ***I R Coelho v. State of Tamil Nadu***: It was held that every law must be tested under Art. 14, 19, and 21 if it came into force after 24th April 1973. In addition, the court upheld its previous rulings and declared that any act can be challenged and is open to scrutiny by the judiciary if it does not align with the basic structure of the Constitution. In addition, it was held that if the constitutional validity of any law under the ninth schedule has been upheld before, in the future it cannot be challenged again. So, **the laws included in IX schedule after April 24, 1973, are now open to judicial review**.

Conclusion

By its very nature, Article 31B and Ninth Schedule are prone to misuse which started after the 4th Amendment when few non-agrarian laws were excluded from the scope of judicial scrutiny. But ultimately, the intervention of the Apex Court from time to time ensured to put a check on the powers of the law-making body by describing the basic structure of the Indian Constitution and the provisions of judicial review.

Extra-Judicial Killings (EJK)

News Excerpt

Supreme Court recently stated in an observation that Extra-Judicial Killings in India are in clear violation of Fundamental rights enshrined under **Article 21 (Right to life)** of the Constitution of India.

Understanding Extra-Judicial Killings

- Extra-judicial killing is the act of killing a person by the state or its agents without any legal proceedings or justification.
- It is illegal and violates human rights and the rule of law as a person is killed without a trial, due process, or any legal justification.
- It can take different forms, such as extrajudicial executions, summary executions, and enforced disappearances.

> **Article 21**
>
> The Constitution guarantees the Right to Life and Personal Liberty under Article 21, which is non-negotiable and applicable to everyone. It is the responsibility of the police to follow the Constitution and protect the Right to Life of every individual, regardless of innocence or guilt.

- Between 2016-17 and 2021-22 India has seen a 15% decline in encounter killing cases. However, after March 2022, the cases shot up by 69.5% in the last two years.
- Since April 2016, Chhattisgarh recorded the most extrajudicial killing cases at 259, followed by Uttar Pradesh at 110 and Assam with 79.
- Under Section-46 of the Criminal Procedure Code, Police in India are allowed to use lethal force to arrest someone accused of a serious crime.

Guideline Related to Encounters in India

Supreme Court

The Supreme Court of India in the case of People's Union for Civil Liberties v State of Maharashtra issued guidelines for investigation of police encounters that result in death:

- Compulsory registration of a First Information Report (FIR) along with magisterial inquiry.
- Any inquiry must involve the next of kin of the deceased.
- All intelligence inputs must be kept in written records.
- To ensure a fair and impartial investigation independent agency to be included.
- Information about the incidents must be sent to NHRC or SHRC. However, NHRC will get involved only when there is serious doubt about the independent and impartial investigation.
- These norms are treated as law declared under Article 141 of the Constitution of India.

National Human Rights Commission

- NHRC first gave guidelines in 1997 which included:
    - Independent investigation by the State CID

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  - Compensation to the deceased if in case police officers are being convicted.
- In 2010, NHRC gave another guideline which included:
  - FIR registration along with magisterial inquiry
  - Report to NHRC within 48 hours by the Senior Superintendent of Police or Superintendent of Police.
  - Second Report after three months along with the postmortem report, inquest report, and enquiry findings.

Conclusion

Encounter killings should be investigated in a thorough manner so that the credibility of the state is not tarnished. Further, the State has an ultimate responsibility to uphold the rule of law and its strict implementation. The rise of encounter killings is resulting in human rights violations, therefore police officers must be educated on the issue and trained to handle unforeseen situations and protect those in police custody.

Right against adverse effects of climate change

News Excerpt:

In a case relating to the conservation of the critically endangered Great Indian Bustard (GIB), the Supreme Court (SC) has asserted that individuals possess a **"right to be shielded from the detrimental impacts of climate change," a right that ought to be upheld under Articles 14 and 21 of the Constitution.**

The intersection between climate change and human rights:

- **States owe a duty of care to citizens to prevent harm and ensure overall well-being,** and the Right to a healthy and clean environment is undoubtedly part of this duty of care.
- States are **compelled to take effective measures to mitigate climate change** and ensure that all individuals have the necessary capacity to adapt to the climate crisis.
- **For e.g.,** It is essential to harness power from renewable energy sources in Rajasthan and Gujarat to meet the rising power demand in the country expeditiously and sustainably.
- This is also **necessitated by India's international commitments with respect to climate change.**

Key arguments given by SC:

- Referring to the environmental aspects of the Directive Principles of State Policy (DPSP), the Court underscored **the need to interpret them in conjunction with the Right to life and personal liberty** guaranteed under Article 21 of the Constitution.
- Although **Article 48A and Article 51A** are not justiciable provisions of the Constitution, they indicate that the Constitution recognizes the importance of the natural world.
- **Article 21** recognizes the Right to life and personal liberty, while **Article 14** indicates that all persons shall have equality before the law and the equal protection of laws.
- **The Right to a clean environment means that** the Right to life is not fully realized without a clean environment that is stable and unimpacted by the vagaries of climate change.
- The **Right to Health** (part of the Right to life under Article 21) is impacted by factors such as air pollution, shifts in vector-borne diseases, rising temperatures, droughts, shortages in food supplies due to crop failure, storms, and flooding.
  - The inability of underserved communities to adapt to climate change or cope with its effects violates Article 21 and Article 14.
- The CJI also touched upon the **issues of climate change jurisprudence and the need to harness renewable energy,** especially solar power, as well as balance the conservation of the GIB with the conservation of the environment as a whole.
- It set up a **nine-member committee of experts** to **assess the feasibility of undergrounding power lines in specific areas**, considering factors such as terrain, population density and infrastructure requirements.
  - The committee consists of **independent experts, National Board of Wildlife members, power company representatives, and other stakeholders.**
  - It asked the committee to complete its task and submit a report to SC through the Union Government on or before July 31, 2024.
- The SC also made **additional observations concerning climate change and legal proceedings in other jurisdictions**. The ruling emphasized India's obligations to prevent climate change and mitigate its adverse impacts.

Constitutional Provisions (DPSP) related to Climate Change:

- **Article 48A** of the Constitution provides that the State shall endeavour to protect and improve the environment and safeguard the country's forests and wildlife.
- **Clause (g) of Article 51A** stipulates that it is the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

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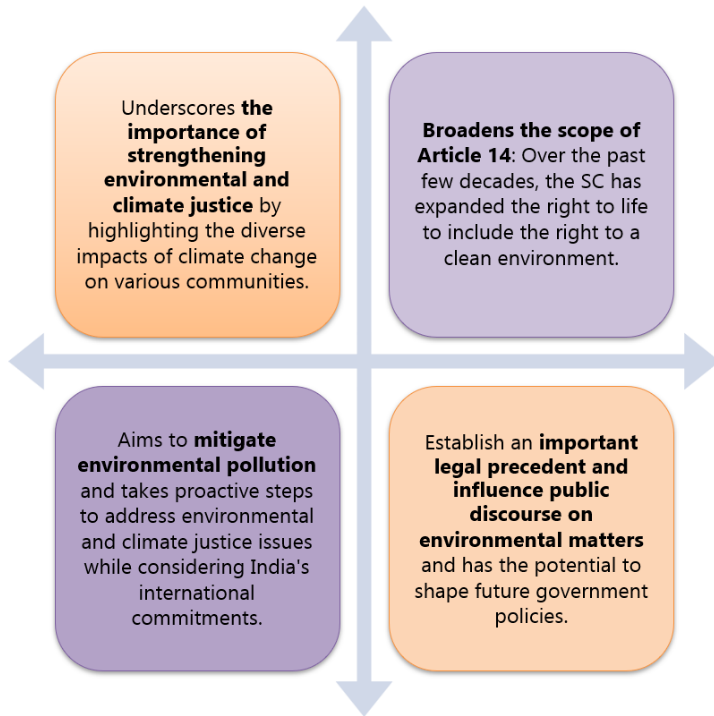
What are the implications of the SC's judgment for environmental jurisprudence?



Way Forward:

Despite governmental policy, rules, and regulations recognizing the adverse effects of climate change and seeking to combat it, **no single or umbrella legislation in India relates to climate change and its related concerns.** However, this does not mean that the people of India do not have a right against the adverse effects of climate change. The SC has frequently invoked the Constitution to uphold human rights related to environmental issues, including the Right to live in a healthy environment, access to pollution-free water and air, and residing in a pollution-free setting. Such recognitions typically highlight broader public interest concerns where existing laws and policies are insufficient.

Constitutional Morality

News Excerpt:

The Chief Justice of India (CJI) elaborated on **the notion of 'Constitutional Morality'** as a restraining factor for the state that should be derived from the Preamble of the Constitution.

CJI's remarks on Constitutional Morality:

- Morality imposes restraints on the rights of citizens, whereas Constitutional Morality serves as a restraint on the state.
- Constitutional morality is an overarching principle that is derived from but is not confined to, specific rights or values that are enshrined in the Constitution.
- It **promotes Diversity, Inclusion, and Tolerance.**
- It is crucial for all levels of the judiciary, from higher courts to district courts, where common citizens first engage with the legal system.
    - Judges must ensure their personal ideologies do not override constitutional morality, maintaining their role as servants, not masters, of the Constitution.
- He also highlighted the **language barrier** faced by common citizens and discussed the **Supreme Court's initiative to translate 37,000 judgments into all recognized languages of the Constitution, including Bengali.**

What is constitutional Morality?

- Adherence to the **fundamental tenets of constitutional democracy is known as constitutional morality.**
- It refers to the **ability to successfully balance the competing interests of various parties** with administrative cooperation in order to resolve disputes amicably between the various interest groups.
- It is a **belief** that ought to be **ingrained in the hearts of law-abiding citizens** and upheld by a fair judiciary that upholds moral standards.
- Constitutional morality offers a **moral framework** for understanding how to carry out governmental functions.
- It outlines **expectations for behaviour that will adhere to the Constitution's spirit** and the necessary standards for institutions to survive. Additionally, it holds representatives and the governing bodies responsible.

SC Judgements that upheld Constitutional morality over public morality

LAW

01 NAVTEJ SINGH JOHAR VS. UNION OF INDIA (2018)

Decriminalizing consensual homosexual acts, emphasizing individual dignity and equality.

02 INDIAN YOUNG LAWYERS ASSOCIATION V. STATE OF KERALA (2018)

Allowing women of all ages to enter the Sabarimala temple, reinforcing gender equality and religious freedom.

03 JOSEPH SHINE V. UNION OF INDIA (2018)

Decriminalizing adultery, emphasizing individual autonomy and equality.

- On November 4, 1948, before the Constituent Assembly, **B.R. Ambedkar said that "Constitutional morality is not a natural sentiment. It has to be cultivated.** We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic."
  - To him, it meant "**a paramount reverence for the forms of the Constitution**" and those forms of the Constitution must be sacred in the eyes of both those who are in power and his opponents.

Provisions of the Constitution upholding Constitutional morality:

- **Article 14**: Ensuring equality before the law.
- **Article 19**: Guaranteeing freedom of speech and expression, with reasonable restrictions.
- **Article 21**: Protecting life and personal liberty.
- **Article 25**: Ensuring freedom of religion.

Significance of Constitutional Morality:

- Upholds the rule of law while incorporating society's shifting aspirations and ideals.
- Highlights the importance of maintaining public's faith in democratic institutions and making it possible for individuals to work together and coordinate to pursue constitutional goals that cannot be achieved alone.
- Use laws and other legal structures **as tools to influence and transform ingrained social morality.**
  - For instance, when the practice of Sati was outlawed through legislation, widows received the right to dignity and life.
- Acknowledges **the plurality and diversity in society.** It makes people and communities more inclusive in how they function by continuously offering room for improvement and reforms.
  - For instance, the SC provided a framework in Navtej Singh Johar vs. Union of India to reaffirm the rights of LGBTQ and all gender non-conforming people to their dignity, life, liberty, and identity.

Concerns:

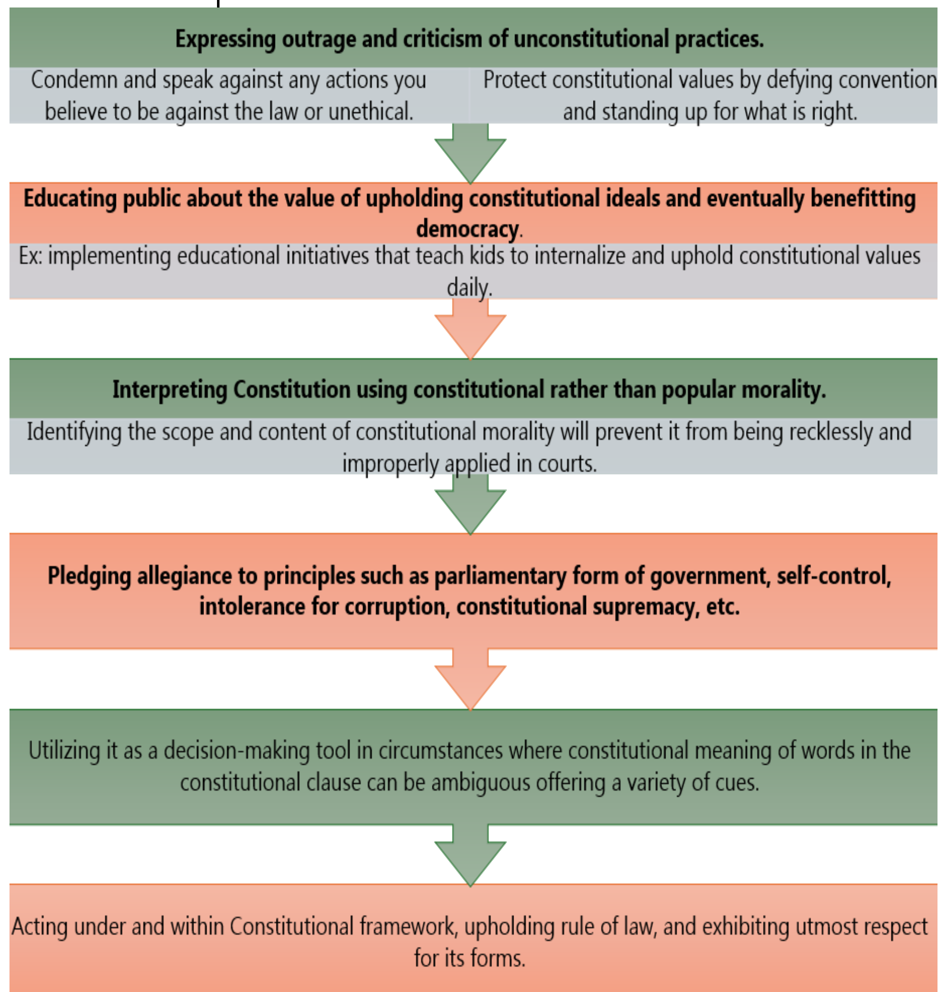
- **The SC has yet to define the term precisely, leaving it open to the judges' subjective interpretations.**
- This top-down approach to morality may hamper the possibility of organically emerging solutions to society's enduring ethical issues.
- **It establishes judicial supremacy over parliamentary supremacy, violating the separation of powers principle**. It goes against the fundamental tenets of democratic government.
- This doctrine pits "constitutional morality" against "societal/popular morality" and, many times is labelled as **judicial overreach.**

Need to Uphold Constitutional Morality:

- Freedom and self-control are the two main tenets of constitutional morality. The preservation of freedom under an appropriate constitutional government required self-control.
  - In order to uphold constitutional morality, social and economic goals must be achieved using constitutional means.
- Dedication to the Constitution's goals and ideals.
  - **Creation of public awareness about the rights that the Constitution guarantees.**
- **Exercising fundamental rights while adhering to fundamental duties.**

Way Forward:

The effectiveness of constitutional laws depends on constitutional morality. A constitution's operation tends to become arbitrary, unpredictable, and capricious without constitutional morality.



Should education be brought back to the State list?

News Excerpt:

Recent paper leak incidents like NEET-UG and CSIR NET have once again brought back the discussion of putting the subject of Education under the state list.

Historical Context:

- During British rule, the **Government of India Act of 1935** introduced a federal structure, distributing legislative subjects between the federal legislature (now the Union) and provinces (now States).
- **Education, being a significant public good, was originally placed under the provincial list.**
- **This arrangement continued post-independence, with education remaining under the State list as per the distribution of powers.**
- During the Emergency period, the Congress party established the Swaran Singh Committee to recommend constitutional amendments.
- One key recommendation was **to place 'education' in the concurrent list to enable the formulation of nationwide education policies**.
- This recommendation was implemented through the **42nd Constitutional Amendment in 1976,** moving education from the State list to the concurrent list.
  - This **shift occurred without extensive debate and was ratified by various States.**
- After the Emergency, the Janata Party government, led by Morarji Desai, passed the **44th Constitutional Amendment in 1978** to reverse several controversial changes made by the **42nd Amendment.**
  - However, **the proposal to return 'education' to the State list was passed in the Lok Sabha but not in the Rajya Sabha; since then, education has been part of the concurrent list.**

International Practices:

United States	• State and local governments set educational standards, mandate standardized tests, and supervise colleges and universities. • The federal education department primarily handles policies for financial aid, addresses key educational issues, and ensures equal access.
Canada	• Education is completely managed by the provinces.
Germany	• The Constitution grants legislative powers for education to the Länder (equivalent to States).
South Africa	• Education is governed by two national departments: school and higher education. • The provinces have their own education departments to implement national policies and address local issues.

Arguments for including in State List:

- The primary argument for keeping education in the concurrent list is **to ensure a uniform education policy, enhance standards, and foster synergy between the Centre and States.**
  - However, given India's vast diversity, a **'one size fits all' approach may not be practical or desirable.**
- According to the Ministry of Education's 2022 report on the 'Analysis of Budgeted Expenditure on Education,' **States bear the lion's share of education expenditure, with 85% of the revenue expenditure coming from the States and only 15% from the Centre.**
- Even when considering all other departmental expenditures on education and training, **the States still contribute 76% compared to the Centre's 24%.**
- The recent controversies surrounding the NEET-UG exam, including allegations of paper leaks and other irregularities, **highlight that centralization does not necessarily eliminate corruption and inefficiency.**
  - Therefore, **there is a growing need for autonomy, allowing States to develop tailored policies for syllabus, testing, and admissions, particularly for higher education and professional courses like medicine and engineering.**

Way Forward:

- A productive discussion on **moving 'education' back to the State list is necessary, given the States' significant role in funding education.**
  - **This move would enable States to address local needs more effectively.**
- **Central institutions like the National Medical Commission, University Grants Commission, and All India Council for Technical Education could continue to regulate higher education.**

Application of Creamy layer to SC/ST quota

News Excerpt:

The Supreme Court recently permitted **sub-classification of Scheduled Castes and Scheduled Tribes** for the purpose of granting separate quotas for those more backward within these communities.

- The Union Cabinet categorically asserted that the principle of creamy layer does not apply to reservations for **Scheduled Castes (SCs) and Scheduled Tribes (STs)**.

More about the news:

- In a 6:1 ruling, the Bench headed by **Chief Justice of India D Y Chandrachud** permitted states to create sub-classifications within the SC and ST categories for the purpose of according wider protections through fixed sub-quotas to the most backward communities within these categories.

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- This overturns the **apex court's 2004 decision** in **E V Chinnaiah v State of Andhra Pradesh**, in which it had held that the SC/ST list is a **"homogenous group"** that cannot be divided further.
- A separate but concurring judgment authored by **Justice B.R. Gavai** said that States must evolve a policy for identifying the **'creamy layer'** even among the SC and ST categories and deny them the benefit of reservations.
- At a Cabinet briefing, the Union Minister talked about the extensive discussion held on the recent **Supreme Court judgment** that allowed States to sub-categorize SCs and STs.
- He said "the government is committed to the Constitutional provisions given by Babasaheb Bhim Rao Ambedkar. There is no provision of creamy layer in Babasaheb's Constitution. The Cabinet's well thought through decision is that it is only as per Babasaheb's Constitution that reservations for **SC/ST** should be provided".

Background:

- **Article 341** of the Constitution allows the **President**, through a **public notification**, to list as SC "castes, races or tribes" that suffered from the historical injustice of untouchability. SC groups are jointly accorded 15% reservation in education and public employment.
- Over the years, some groups within the SC list have been underrepresented compared to others. States have made attempts to extend more protection to these groups, but the issue has run into judicial scrutiny.
- In 1975, Punjab issued a notification giving first preference in SC reservations to the **Balmiki and Mazhabi Sikh communities**, two of the most backward communities in the state. This was challenged in 2004 after the apex court struck down a similar law in Andhra Pradesh in **E V Chinnaiah**.
- The court had held that any attempts to create a differentiation within the SC list would essentially amount to tinkering with it, for which the Constitution did not empower states. **Article 341** only empowers the President to issue such a notification, and Parliament to make additions or deletions to the list. The court also said that sub-classifying SCs violates the right to equality under Article 14.
- Based on this ruling, in 2006, the Punjab & Haryana High Court in **Dr Kishan Pal v State of Punjab** struck down the aforementioned 1975 notification. However, the very same year, the Punjab government again passed the **Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006**, reintroducing the first preference in reservations for the Balmiki and Mazhabi Sikh communities.
- This Act was challenged by Davinder Singh, a member of a non-Balmiki, non-Mazhabi Sikh SC community. The HC, in 2010, struck down the Act, leading to an appeal at the Supreme Court. In 2014, the case was referred to a five-judge Constitution Bench to determine if the E V Chinnaiah decision had to be reconsidered.
- In 2020, Justice Arun Mishra-headed Constitution Bench in **Davinder Singh v State of Punjab** held that the court's 2004 decision required reconsideration. The ruling noted that the court and the state **"cannot be a silent spectator and shut its eyes to stark realities".** Crucially, it disagreed with the premise that SC are a homogeneous group, saying there are "unequals within the list of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes."
- But since this Bench, like in **E V Chinnaiah**, comprised five judges, a seven-judge Bench heard the issue in February 2024.

Supreme Court's Judgement:

- The court in E V Chinnaiah held that SC must be treated identically since the Constitution envisaged the same benefits for them, without taking into account their individual relative backwardness. In the current judgment, CJI Chandrachud rejected this premise, stating that "The inclusion [in the Presidential list] does not automatically lead to the formation of a uniform and internally homogenous class which cannot be further classified".
- The CJI termed the Presidential list of SCs a **"legal fiction"** — something that does not exist in actuality but is "treated as real and existing for the purpose of law". A **Scheduled Caste** is not something that existed before the Constitution came into force, but it is recognized so that benefits can be provided to communities on the list. CJI Chandrachud said this legal fiction cannot be "stretched" to claim that there are no "internal differences" among SCs.
- The majority opinion held that "t**he State in exercise of its power under Articles 15 and 16 is free to identify the different degrees of social backwardness** and provide special provisions (such as reservation) to achieve the specific degree of harm identified".
- The CJI underlined that any form of representation in public services must be in the form of **"effective representation"**, not merely **"numerical representation".** As a result, even if an SC community is represented adequately just by the numbers, they may be barred from achieving "effective" representation by being promoted to higher posts. So the state must prove that the "group/caste carved out from the larger group of Scheduled Castes is more **disadvantaged and inadequately represented,** and this must be based on quantifiable data".
- Four of the seven judges on the Bench separately said the government should extend the "**creamy layer principle**" to **Scheduled Castes and Scheduled Tribes**,

like in the case of **Other Backward Classes (OBC) category**. It was necessary to exclude the affluent individuals or families from the benefits of reservation and make room for the really underprivileged within these classes.

- Only the opinion of Justice Gavai bats for introducing the **'creamy layer' exception for SCs (and STs)** that is already followed for **Other Backward Classes (OBCs).** This concept places an income ceiling on reservation eligibility, ensuring that the beneficiaries are those in a community that need quotas the most.

Arguments given in judgment for "Creamy Layer":

- A majority of four judges on a Constitution Bench of the Supreme Court called for the need to evolve a "different" set of criteria to exclude the 'creamy layer' among the **Scheduled Castes (SC) and the Scheduled Tribes (ST)** from reservation benefit.
- **Justice B.R. Gavai** explained that an **SC/ST** person would continue to be socially, economically and educationally backwards if he or she could only achieve the position of a peon or a sweeper through reservation.
  - However, on the other hand, individuals who availed quota benefits to reach the "high echelons of life" should be considered as belonging to the creamy layer as they had already "reached a stage where on their own accord they should walk out of the special provisions and give way to the deserving and needy".
  - State must evolve a policy for identifying the creamy layer even from the Scheduled Castes and Scheduled Tribes so as to exclude them from the benefit of affirmative action... the criteria for exclusion of the creamy layer from SC/ST for the purpose of affirmative action could be different from the criteria as applicable to the **Other Backward Classes (OBCs)**.
  - **Justice Gavai** observed that the exclusion of the affluent from quota benefits would achieve real equality.

Concept of a creamy layer:

- The concept of a **creamy layer** arose out of the landmark **Indra Sawhney ruling in 1992.**
- Based on the recommendation of the **Mandal Commission**, the **V P Singh government on August 13, 1990**, had notified **27% reservation for Socially and Educationally Backward Classes (OBC reservation)** in civil posts and services. This was challenged in the Supreme Court by Indra Sawhney and others.
- On November 16, 1992, a nine-judge Bench headed by Justice B P Jeevan Reddy, upheld the **27% OBC reservation** subject to exclusion of the creamy layer, or the more socially, economically, and educationally advanced members among OBCs. This was done in order to ensure that reservation benefits go to those who need it the most.
- **The creamy layer is not the same as sub-classification or sub-categorization.**
  - The latter refers to the community/caste-wise breakdown of a reserved category (like SC) based on various socio-economic or other criteria.
  - **Creamy layer,** however, refers to a group of people within a certain caste/community who are better off than the rest based on certain criteria.
- **Criteria:**
  - The **creamy layer** comprises two broader categories (besides persons holding constitutional post) — people whose parents are/were in government service, and those whose parents work/worked in the private sector. For the latter, the creamy layer determination is based on their parent's income, while for the former, the determination is based on rank.
  - Originally, the income threshold was fixed at **Rs 1 lakh per annum**, with a provision for this figure to be revised every three years.
  - However, since 2017, when the threshold was updated to Rs 8 lakh, no further revision has taken place.
  - In 2015, the **National Commission for Backward Classes (NCBC)** had recommended raising the income threshold to Rs 15 lakh, however no action was taken in this regard.

Way Forward:

Thus, the principle of sub-classification will be applicable to Scheduled Castes if the social positions of the constituents among the castes/groups is not comparable. Sub-categorization within a class is a constitutional requirement to secure substantive equality.

LEGISLATURE

Immunity for legislators taking bribes

News Excerpt:

The Supreme Court (SC) has ruled that lawmakers cannot claim immunity from prosecution in bribery cases.

Key points:

- In a significant move, the SC ruled that Members of Parliament (MPs) and Members of the Legislative Assembly (MLAs) cannot claim immunity from prosecution in cases of bribery for votes or speeches in the House.
- A seven-judge Constitution Bench headed by Chief Justice of India (CJI) D.Y. Chandrachud unanimously overruled the **1998** judgment in **P.V Narasimha Rao v. State** and opened the doors for law enforcement agencies to initiate prosecution against legislators in bribery cases under the **Prevention of Corruption Act, 1988 (Act).**

The SC verdict:

- The SC held that **"Parliamentary privileges do not protect bribery."** Corruption and bribery are destructive of the aspirations and deliberative ideals of the Constitution and create a polity that **deprives citizens of a responsible, responsive, and representative democracy.**
  - This verdict is significant in **addressing the challenge of cash-for-votes trading and safeguarding the integrity of electoral mandates.**
- The recent verdict by the apex court overturns the 1998 judgment in the PV Narasimha Rao case.
  - Here, the SC had ruled with a 3:2 majority that MPs and MLAs were immune from prosecution in bribery cases as long as they fulfilled their end of the bargain.
- The Court also clarified that the principles enunciated by the verdict regarding legislative privileges will apply equally to elections to the Rajya Sabha and to appoint the President and Vice-President of the country.
  - Accordingly, it overruled the observations in **Kuldip Nayar v. Union of India (2006),** which held that elections to the Rajya Sabha are not proceedings of the legislature but a mere exercise of the franchise and, therefore, fall outside the ambit of parliamentary privileges under Article 194.
- **The offence of bribery:**
  - The Court emphasised that the **offence of bribery is complete when the legislator accepts the bribe,** whether or not it is followed up by voting or making a speech in the manner wanted by the giver of the bribe. Equally, the place where the bribe was offered or received did not matter.
  - The verdict further asserted that the first explanation strengthens such an interpretation since it expressly states that the **"obtaining, accepting, or attempting"** to obtain an undue advantage shall itself constitute an offence, even if the performance of a public duty by a public servant has not been improper.

'Articles' dealing with the powers and privileges of MPs and MLAs:

- **Articles 105 and 194 of the Constitution** deal with the powers and privileges of MPs and MLAs in the Parliament and the Legislative Assemblies.
  - **Clause (2) of Article 105 has two provisions:**
    - A member of Parliament shall not be liable before any court with respect **to "anything said or any vote given"** by them in Parliament or any committee thereof.
    - No person shall be liable before any court **"in respect of"** the publication by or under the authority of either House of Parliament of any report, paper, vote, or proceedings.
  - They grant them **freedom of speech and protect them from being prosecuted for their remarks in the House or any vote** they may participate in.
  - These provisions were put in place to ensure that MPs and MLAs can work without the fear of legal action being taken against them.

Way Forward:

Cash-for-vote and other bribery incidents are some of the bigger issues in parliamentary functions. The recent judgement of the SC to stop bribery will help strengthen democracy and the parliamentary process.

Suspension of Member of Parliament

News Excerpt:

Opposition MPs from both the Houses of Parliament are **suspended**. They were suspended for disrupting Parliamentary proceedings while **protesting about the Parliament security breach.**

Causes of the disruption of Parliament:

- **Lack of time** available to MPs to raise important matters.
  - The Government sets the **agenda** in Parliament and decides how much time will be dedicated to any issue.
- **The Government's unresponsive attitude** and retaliatory posture by **Treasury benches.**
  - Parliamentary procedure prioritizes government business over other matters.
- Deliberate disruption by parties for **political** or **publicity purposes**.
- **Absence of prompt action** against MPs disrupting Parliamentary proceedings.
  - Parliament has **not updated** its **rules** in this regard over the last 70 years.

Procedure for suspension of MPs:

- The **Presiding Officer** - the Speaker of **Lok Sabha (LS)** and Chairman of **Rajya Sabha (RS)** - plays a major role in meeting suspensions.
  - In **LS,** the Speaker acts by **Rules 373**, **374,** and **374A** of the **Rules of Procedure** and **Conduct of Business**.
  - In **RS**, the Chairman acts as per **Rules 255** and **256** of the Rules.
- The **procedure** in both Houses is largely similar.
  - First, the **presiding officers** can **direct** an MP to **withdraw** from the House for any disorderly conduct (**Rule 373 in LS**, **255 in RS**).
  - If that does not work and the said **MP continues to disrupt** the House proceedings, the **presiding officer** can **"name"** the legislator (**Rule 374 in LS, 256 in RS**).
  - After that, the House can move a **motion** to **suspend the MP** until the end of the session.

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- While these rules have mostly remained **unchanged since 1952**, in 2001, the Lok Sabha further empowered the Speaker to deal with **"grave and disorderly conduct."**
  - As per the new rule **(Rule 374A),** an MP **"named"** by the Speaker shall **automatically stand suspended** for a period of **five days** or the remaining part of the session.
  - This rule **removes** the need for the House to pass a **motion** for suspension.
  - Notably, the **Rajya Sabha** has **not incorporated** this provision in its procedures.

Types of punishment for MPs:

- Mild offences are punished by -
- **Admonition** (a firm warning)
- **Reprimand** (to tell somebody officially that he/she has done something wrong).
- After this comes the punishment of **"Withdrawal."**
- As per **Rule Number 373** in Lok Sabha's Rules of Procedure and Conduct of Business, The **Speaker,** if he is of the opinion that the conduct of any Member is grossly disorderly, may direct such Member to **withdraw immediately** from the House, and any Member so ordered to withdraw shall do so forthwith and shall remain absent during the **remainder** of the **day's sitting**.
- Refusing the Presiding Officer's directions can invite the punishment of **"Suspension".**
- A member can be suspended, at the **maximum,** for the **remainder** of the **session** only.
- Moreover, the House can **reinstate** a suspended member at any point in time by **passing a motion.**
- In cases of extreme misconduct, the House may **"expel"** a member "to rid the House of persons who are unfit for membership."

Implications of suspension of MPs:

- It affects the **democratic setup** of the country.
- It leads to **the erosion** of the **representation** of people.
  - By suspending the MPs, **no voice is left** in the House of the people s/he was representing.
- In an opposition-less Parliament, the Government can get important **pending bills** passed by the muscle of the majority without any **discussion**, **debate** or **disagreement**.

Way Forward:

- The number of **suspensions** has **gone up** over the last few years.
- The **Presiding Officer** must maintain a **crucial balance** in the House.
  - While enforcement of the **supreme authority** of the Speaker is essential for **the smooth conduct of proceedings**, it must be remembered that her job is to run the House, not lord over it.
  - Therefore, the solution must be **long-term**, **consistent** with **democratic values,** and a changing India.
- Before the suspension of the members, there should be a **detailed discussion** on the matter, and the members to be suspended should be **heard unbiasedly.**

No Confidence Motion

News Excerpt

Recently, Lok Sabha Speaker accepted a no confidence motion moved by the Opposition against the government. It was defeated in Lok Sabha.

About:

As per Article 75(3) of our Constitution, Council of Ministers are collectively responsible to the Lok Sabha (lower house).

- In a parliamentary democracy, a government remains in power only if it commands a majority in the directly elected House. It must demonstrate its strength on the floor of the house.
- For testing this collective responsibility, the rules of Lok Sabha provide for this no confidence motion. While defending the parliamentary system over a presidential system, B.R. Ambedkar had stressed that the former provided accountability
- **A no confidence motion can only be moved in the Lok Sabha.**
- A 'No-Confidence' motion is usually moved when a government is seen to have lost majority in the Lok Sabha. Sometimes, it is also moved to bring important issues to light or to highlight failures of the government.
- No reasons need to be given for moving this motion.

The procedure/process for no-confidence motion

- Any Lok Sabha MP, can introduce it if he/she has support of 50 other members of Lok Sabha.
- **Under Rule 198** of the Rules of Procedure and Conduct of Lok Sabha, a member must move a written notice before 10 am, which will discussed within 10 days of the written motion being submitted.
- The Speaker has the discretion to allot time for discussion of the motion.
- Thereafter, a discussion on the motion takes place. MPs who support the motion highlight the government's shortcomings, and the Treasury Benches respond to the issues they raise.
- Finally, a vote takes place – if motion is passed by majority, the government is bound to vacate the office. If government wins in vote, the motion stands defeated and government remains in power.
- The motion will be passed if it is supported by a majority of the members of the House.

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- The voting may be taken up through voice vote or division of vote or other means.
- The Constitution of India allows for a maximum of 550 members in the House **(provision of reservation of 2 seats for Anglo-Indians was abolished by 104th amendment to constitution).**
- At present, the Lok Sabha has 543 seats filled by elected representatives. Hence the majority mark at the Lok Sabha is 272.
- In India, every party appoints a Chief Whip whose duty is to ensure attendance of the party MPs in the house for important motions like the 'No-Confidence'.
- Direction is given to all the MPs to vote in a particular manner. Any violation of these directions can result in disqualification of the MP **(10th schedule-anti defection law).**

Difference between confidence motion and no-confidence motion

The 'no-confidence' motion is a formal proposal by a member against the ruling government. No confidence motion is usually brought up by the opposition against the ruling government. Confidence motion is brought by government itself to prove its majority in the house.

Confidence motions in Lok Sabha

- 11 confidence motions have been discussed in Lok Sabha. Of the 11 confidence motions discussed in Lok Sabha, seven were accepted. On one instance in 1996, the motion was not put to vote.
- On three instances, governments had to resign as they could not prove that they had the support of the majority the V P Singh government in 1990, H D Deve Gowda government in 1997 and the Atal Bihari Vajpayee government in 1999.

Significance of no confidence motion

Accountability: Accountability is the most important reason that India chooses parliamentary form of government over presidential form.

- No confidence motion is a crucial tool for enforcing accountability of the government to the lower house of parliament.
- It's a tool to highlight the failures, short comings of the ruling government.
- At times its used to bring important issues to light. It gets high media attention and hence public attention is shifted on it.
- It's a tool for opposition to force the Prime Minister to have an elaborate discussion on an important, urgent issue.
- It brings crucial unity in the opposition hence increases the effectiveness of opposition.

Gubernatorial Procrastination

News Excerpt

Recently, the Supreme Court of India has asserted that bills sent to the governor for assent must be returned "as soon as possible" and must not sit over them indefinitely.

Governor Powers over State Bills

- **Under Article 200-** Any bill passed by the state Legislative Assembly should be presented to the Governor for assent. Governor on his part may:
    - Either Assent
    - Withhold Assent
    - Reserve the bill for consideration by the President.
    - Return the bill for reconsideration by the house.
- **Article 201**: If a bill is reserved for the consideration of the President- the President may:
    - Assent to or withhold assent from the bill.
    - Direct the Governor to return the bill to the House for reconsideration.
- The reservation of a bill for the President is compulsory if it endangers the position of the state high court. Governor may also reserve the bill if it is of the following nature:
    - Against the provisions of the Constitution
    - Opposed to the DPSP
    - Against the larger interest of the country
    - Of grave national importance
    - Deals with compulsory acquisition of property under Article 31A of the Constitution.
    - Other reasons deemed necessary by the governor.

Supreme Court Observation

- Under Article 361 of the Constitution of India- the Office of the Governor has complete immunity from court proceedings for any act done in the exercise of their powers. However, the SC in the *Rameshwar Prasad and Ors. vs Union Of India and Anr*case, the court held that immunity under Article 361 doesn't take away the power of the Court to examine the validity of the action including on the ground of malafides.
- SC in a recent judgement observed that the expression as soon as possible" in article 200 has significant constitutional intent and that constitutional authorities should keep this in mind.

Issue with Pendency

- **Violation of State Constitutional obligation**- Governor inaction causes a violation of the constitution as it hampers the constitutional functions of the state government.
- The administrative functioning of the state government is impacted as it causes delays in decision-making as well as delays in the implementation of policies and laws. Both have significant consequences for public welfare.

- In a democracy, a governor being an appointee of the Centre overriding the will of the popularly elected government is not a healthy practice.
- It also damages the reputation of the state government as pending bills are seen as a sign of inefficiency and corruption.
- Withholding a bill without providing any reason shows the lack of accountability on the part of the office of the governor and this undermines the principles of transparency and accountability in governance.

Discretionary Powers of the Governor

Constitutional Discretion

- Recommendation for the imposition of the President's Rule.
- Reservation of a bill for the consideration of the President.
- As Administrator of a Union Territory (in case of additional charge).
- Determining the amount payable to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.
- Seek Information from the chief minister with regard to the administrative and legislative matters of the state.

Other Discretion

- Appointment of chief minister in case of hung assembly or when the chief minister in office dies suddenly and there is no obvious successor.
- Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
- Dissolution of the state legislative assembly if the council of ministers has lost its majority.

Conclusion

The observation of SC in fixing a reasonable time frame for Governors to decide in a time-bound manner will help in strengthening federalism in the country. For this, there is a need for a dialogue between the Centre and States to address this issue and ensure that the constitutional provisions are upheld. Also, Civil Society, media and other citizens should pressurize authorities to act in the public interest.

Parliamentary Committees

News Excerpt:

The process to reconstitute Parliamentary panels was set rolling with the Parliamentary Affairs Minister moving **two motions to set up the Public Accounts and Estimates committees.**

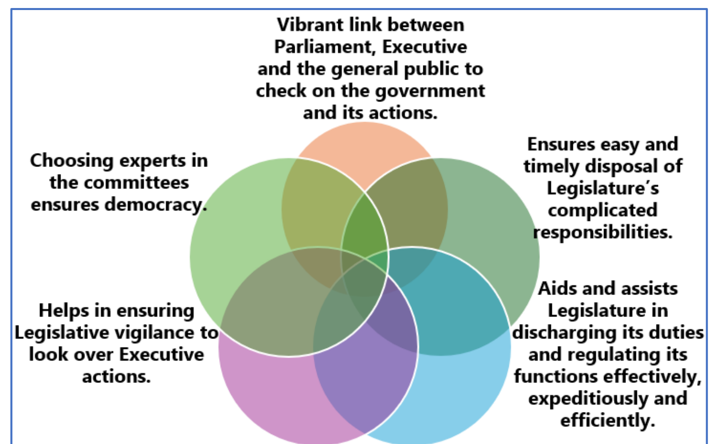
What are Parliamentary Committees?

- A parliamentary Committee is a committee that is appointed or elected by the House or nominated by the Speaker, works under the direction of the Speaker, and presents its report to the House or to the Speaker and the Secretariat.
- These are of two kinds-**Standing Committees and Ad-hoc Committees.** The former are permanent i.e. constituted every year or periodically and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Standing committees are classified into six broad categories:

- Financial Committees
- Departmental Standing Committees
- Committees to Enquire
- Committees to Scrutinise and Control
- Committees Relating to the Day-to-Day Business of the House
- House-Keeping Committees or Service Committees

Significance of the Parliamentary Committees:



Challenges associated with the committees:

- **Weakening of Parliamentary Oversight:** In a parliamentary democracy, the principle of checks and balances is pivotal. Parliamentary committees are instrumental in scrutinizing legislation, ensuring transparency, and holding the government accountable. **Bypassing** these committees undermines their oversight role, **potentially weakening democratic processes**.
- **Emphasis on Brute Majority:** The Indian legislative framework allows discretion to the Chair (Speaker in Lok Sabha, Chairperson in Rajya Sabha) on whether bills should be referred to committees. This discretion becomes problematic in a scenario where the ruling party holds a significant majority. It risks **sidelining meaningful debate and scrutiny, concentrating power disproportionately.**

Way Forward:

- **Mandatory Committee Review:** Drawing from practices in countries like Sweden, Finland, and Australia, where bills routinely undergo committee scrutiny, India should consider mandating the referral of all bills to appropriate parliamentary committees. This practice

enhances **thorough examination and ensures comprehensive deliberation** involving diverse perspectives, including from opposition members.

- **Rule Amendment:** To enforce mandatory committee referral, amendments to parliamentary rules of procedure are essential. This would institutionalize robust scrutiny and contribute to informed decision-making on legislative matters.
- **Periodic Committee Evaluation:** As recommended by the National Commission to Review the Working of the Constitution (NCRWC), the effectiveness of parliamentary committees should be periodically assessed. **Outdated committees should be replaced with new ones that address contemporary challenges and legislative needs**.
- For instance, specialized committees could focus on critical areas, such as the national economy or constitutional amendments, equipped with necessary resources for expert analysis and research.

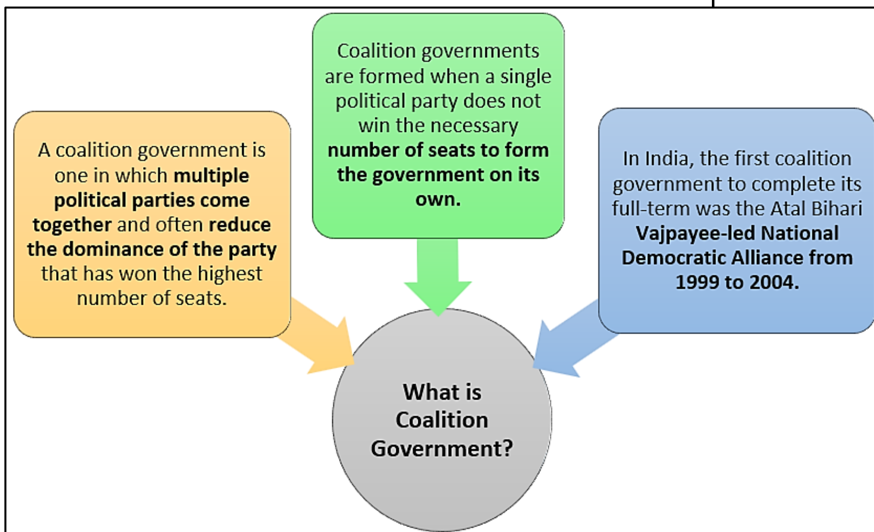
EXECUTIVE

National Coalition Government

News Excerpt:

In the recently concluded general elections, voters did not give the Bharatiya Janata Party (BJP) a complete majority. The BJP, with its 240 Lok Sabha seats, formed the government along with its coalition partners, the National Democratic Alliance (NDA).

- While some say that coalition governments generate more inclusive policies, others believe that coalitions impose constraints on policymaking.



Advantages of Coalition Government:

- **Promotion of Federalism**
  - Coalition governments promote federalism by recognizing and accommodating the **diverse interests of various states and regions**. This leads to policies that are more tailored to **regional needs, fostering a sense of inclusion and participation among different states.**
  - The inclusion of regional parties like the Telugu Desam Party (TDP) in the NDA helps ensure that the specific interests of states like Andhra Pradesh are considered at the national level.
- **Plurality and Representation of Diverse Views**
  - Coalitions bring in a **plurality of views and can be more representative of the country's diversity.**
  - The inclusion of regional parties like the **Shiv Sena and the Janata Dal (United)** in the NDA highlights how coalitions can incorporate a wide range of perspectives, ensuring that various **regional and local interests are represented at the national level.**
- **Accommodation of Regional Interests**
  - **Regional parties** representing different states and interests can be accommodated in coalition governments, ensuring greater representation.
  - This inclusivity helps address regional issues more effectively, as seen in the NDA and UPA governments, which included **multiple regional parties addressing local concerns within the national policy framework.**
- **Deliberation and Moderation of Policies**
  - Coalitions can foster more deliberation and act as a check on radical policies.
  - **The presence of multiple parties with varying ideologies** ensures thorough debate and consideration before implementing significant policies, potentially preventing drastic measures like **demonetization that might face greater scrutiny in a coalition setup.**
- **Proportional Representation for Smaller Parties**
  - Coalition governments provide an avenue for smaller parties to have a say in governance proportionate to their strength.
  - This proportional representation ensures that **even smaller political entities can influence policy decisions and governance, contributing to a more balanced and inclusive political environment.**

Challenges of Coalition Government:

- **Lack of Coherent Policy Agendas**
  - Coalitions of convenience, without **ideological coherence, tend to lack coherent policy agendas and can be divided from within.**
  - For instance, the Janata Party government (1977-1979) splintered due to ideological differences among its diverse alliance members, leading to its collapse after only two years in power.

- **Increased Likelihood of Corruption and Overspending**
  - Coalition governments are more likely to be **corrupt and overspend to satisfy the demands of various coalition partners.**
  - This was evident in the early coalition governments like the Janata Party, where internal divisions and power struggles led to inefficiency and instability, ultimately causing the government to fall apart.
- **Difficulty in Agreeing on a Common Minimum Programme**
  - It can be challenging for coalition partners to agree on **a common minimum programme,** as their primary goal is often just to keep the incumbent party out of power.
  - The National Front coalition under VP Singh in 1989, supported by the BJP, fell apart when the BJP withdrew its support due to ideological differences and specific issues like the Ram Temple movement.
- **Prioritization of 'Club Goods' Over Broader Public Goods**
  - Regional parties in coalitions may prioritize the distribution of **'club goods' (benefits for specific communities they represent) over broader public goods spending.**
  - For example, the United Front government (1996-1998) faced challenges in maintaining a unified policy direction due to the varied interests of its regional partners, leading to its eventual downfall.

Criminalisation of Politics

News Excerpt

Recently, the **Association for Democratic Reforms (ADR)** wrote a letter to the Election Commission of India (ECI) urging the Commission to take action against political parties that have failed to disclose the criminal backgrounds of candidates they have nominated in various assembly elections conducted in recent years.

Challenges Associated with the Criminalisation of Politics

- **Wilful Disobedience**: According to ADR, political parties are flouting the Supreme Court's orders and the ECI's subsequent directions. Many political parties did not have functional websites to publish the information, and those that did, had not maintained the information and/or had inaccessible website links.
- **Weakening of democratic values**: The presence of criminals in politics undermines the core principles of democracy, such as accountability, transparency, and the rule of law.
- **Governance issues**: Criminal politicians often prioritize personal gains over the welfare of the public. For example, some **politicians are facing criminal charges** due to their association with corrupt practices, diversion of public funds for personal benefit etc.
- **Increase in crime rates**: The association between criminals and politicians can **embolden criminal activities** and create a sense of impunity, leading to an increase in crime rates in some areas.
- **Deterrence to honest candidates**: The presence of criminals in politics can discourage honest and capable individuals from entering the political arena, as they might perceive it as a hostile and corrupt environment.

Legal provisions for disqualification of criminal candidates

- In a decision of the **Supreme Court**, the **Representation of People Acts (RPA) 1951** was amended by inserting **section 33-A** which requires a candidate to **furnish information** on whether S/he is accused of any offense with imprisonment of two years or any pending cases in which charges have been framed and whether they been convicted for one year or more.
- In **Public Interest Foundation vs. Union of India (2019)**, Supreme Court ordered political parties to publish the criminal records of their candidates on their websites, social media handles and newspapers.
- The RP Act 1951 mentions the **criteria to disqualify** a person to contest the election:
  - **Section 8** of the Act says that a person punished with a jail term of more than two years cannot contest an election for six years after the jail term has ended.
  - The law **does not bar any person** who has criminal cases pending against them. Therefore, the disqualification of candidates with criminal backgrounds depends on their conviction.
- The **Law Commission in its 179th report** recommended:
  - People with criminal backgrounds should be disqualified for five years or until acquittal.
  - Person who wants to contest the election must furnish details regarding any pending case, with a copy of the FIR/complaint, and also furnish details of all assets.

Way Forward

- **Electoral Reforms**: Strengthening the electoral process is crucial to preventing criminals from entering politics.
  - Introduce reforms to increase transparency in political **party funding**.
  - Implement recommendations from the Election Commission to curb the use of **money and muscle power** during elections.
- **Fast-track Courts**: Establish more special fast-track courts to expedite the trial of cases involving politicians with criminal backgrounds.
  - **Allocate funds and resources** to set up these courts and ensure their effective functioning.
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- Collaborate with the judiciary to **prioritize cases** involving politicians to ensure timely justice.

- **Decriminalisation of Politics**: Enact legislation to bar individuals facing serious criminal charges from contesting elections.
  - Collaborate with political parties to **build consensus on electoral reforms** and the selection of candidates with clean backgrounds.
  - Propose amendments to the Representation of the People Act to **disqualify candidates** facing charges of heinous crimes.
- **Public Awareness Campaigns**: Raise awareness among citizens about the negative consequences of electing candidates with criminal backgrounds.
  - Launch nationwide campaigns to **educate citizens** about the importance of voting for clean and ethical candidates.
  - Utilize **social media and other communication channels** to disseminate information about criminal backgrounds of candidates.
- **Political Party Accountability**: Hold political parties accountable for fielding candidates with criminal records.
  - Introduce **penalties** for political parties that nominate candidates with criminal backgrounds.
  - Set up an **independent body to monitor** the criminal antecedents of candidates and initiate actions against parties that violate rules.

Role of J&K Lieutenant Governor Extended

News Excerpt:

The Union Ministry of Home Affairs (MHA) has significantly expanded the administrative authority of the Lieutenant Governor (LG) of Jammu and Kashmir (J&K) through amendments to the Transaction of Business Rules.

Establishment of LG in J&K:

- On August 5, 2019, the Indian government revoked the special status of J&K under Article 370 of the Constitution.
- This move bifurcated the former state into two Union Territories: Jammu and Kashmir and Ladakh.
- **J&K retained its assembly, and the position of LG was established as an Administrator**.
- The **original rules for administration in the Union Territory of J&K, as specified by the MHA on August 28, 2019, delineated the functions of the LG and the Council of Ministers.**
- The **recent amendments** further refine and expand these roles, **reinforcing the LG's central position in the administrative hierarchy of J&K.**

Provisions of amendment:

- The **MHA** has notified the amended rules under Section 55 of the Jammu and Kashmir Reorganisation Act, 2019.
- **The new sections explicitly define the expanded role of the LG, particularly in matters that traditionally required the Finance Department's concurrence.**
- The notification specifies that **no proposal related to police, public order, All India Services (AIS), and the Anti-Corruption Bureau should be approved or rejected without the LG's discretion.**
  - This process **must be channelled through the Chief Secretary.**
- Furthermore, **the Department of Law, Justice, and Parliamentary Affairs is now required to submit proposals for the appointment of the Advocate-General and other Law Officers for the LG's approval**, again routed through the Chief Secretary and the Chief Minister.
- Any proposals **related to the grant or refusal of prosecution sanctions or the filing of appeals** must be presented to the LG by the Department of Law, Justice, and Parliamentary Affairs through the Chief Secretary.

Administrative Impact:

- **This change enhances the LG's involvement in key areas such as police, public order, All India Services (AIS), and their transfers and postings, all of which now require the LG's prior concurrence through the Finance Department.**
- The amendments **also extend the LG's oversight to matters connected with Prisons, the Directorate of Prosecution, and the Forensic Science Laboratory.**
  - This move **consolidates administrative control** and ensures that significant decisions within these domains have the LG's direct involvement.

Current political setup in J&K:

- **Since June 2018, J&K has been under Central rule, with the government promising to restore statehood following assembly elections.**
  - A Constitutional Bench of the **Supreme Court has mandated the Election Commission to conduct these elections before September 30, 2024.**

Way Forward:

The MHA's recent amendments to the Jammu and Kashmir Reorganisation Act reflect a **strategic enhancement of the Lieutenant Governor's administrative powers.** This move will streamline governance and ensure that critical decisions are subject to thorough oversight by the LG. As Jammu and Kashmir prepares for its assembly elections, these changes underscore the evolving governance framework in the region.

JUDICIARY

Political Affiliations of Judges

News Excerpt:

A retiring judge of the Calcutta High Court (HC) openly acknowledged his longstanding membership to a right-wing volunteer organization during his farewell speech.

Appointment of judges:

Pre collegium system:	During collegium system:
• Prior to the 1970s, the political ideology of judicial candidates was not significant for the judicial appointments process. • However, this changed following setbacks faced by the Indira Gandhi government in the Supreme Court (SC) during cases such as Golak Nath, bank nationalization, and privy purses.	• Since the **1990s**, the appointment process for judges in the SC and HCs has been governed by the **Collegium system,** in which judges participate in selecting new judges. • In contemporary India, there exists a presumption of judicial neutrality, with judges generally expected to refrain from overt political affiliations. • However, a controversy arose with the **appointment of Lekshmana Chandra Victoria Gowri** as an **additional judge of the Madras HC**, owing to her prior role as the national general secretary of the BJP women's wing. • The **SC asserted** that the **judiciary should refrain from delving into questions of the suitability of judicial appointments.**

Ethical concerns related to Judges joining politics:

Judicial Impartiality:

- Judges should be neutral and decide cases based only on facts and laws, not personal biases or outside pressures.
- A judge's decision to join a political party after being in controversies may make people doubt if he can be fair in cases involving politics.
- This makes people lose trust in the court's ability to give fair justice.

Judicial Independence:

- It's important for judges to be free from outside influence, especially from politics, to keep the law and democracy strong.
- If a judge joins a political party right after leaving the bench, it makes people wonder if politics affected their past decisions.
- This raises doubts about whether the court can work without being influenced by politics.

Conflict of Interest:

- Judges must avoid situations where they might have conflicting interests and keep the legal process fair.
- When a judge gets involved in politics after making controversial rulings, it raises concerns about fairness.

Public Trust and Confidence:

- The public needs to trust the courts to work effectively in society.
- If judges' actions make people doubt their fairness and honesty, it harms trust in the whole justice system.
- When a judge moves from the bench to politics, people might start to question if the courts can remain independent and fair.

Way Forward:

- **Improving Judicial Ethics and Standards:**
  - Making the rules and standards for judges stricter, both while they're serving and after they retire, can help keep the judiciary fair and honest.
  - Judges should focus more on earning the public's trust in the court system rather than their own personal interests.
- **Increasing Transparency:**
  - We need to be more open about how we pick retired judges for new jobs after they leave the bench.
  - This means telling people how we choose them, letting everyone apply for these jobs equally, and explaining why each person gets picked.

Issues with the legal profession

News Excerpt:

CJI highlighted four issues within the judiciary on **Foundation Day,** addressed in the **Supreme Court's 75th year of establishment**, that will have to be addressed through "difficult conversations."

Why is there a need to reform the Judiciary in India?

- **Judicial Delay and Backlog:**
  - The judiciary in India is burdened and remarkably slow. Backlogs and delays in legal proceedings contribute to immense suffering for litigants.
- **Under-Trial Prisoners:**
  - India has a high number of under-trial prisoners, with over two-thirds of the nearly 4.2 lakh inmates awaiting trial. Prolonged legal processes contribute to the large population of under-trial prisoners.
- **Citizen Turn to Extra-Legal Alternatives:**
  - Frustration with the slow judicial system has led citizens to seek extra-legal alternatives. Lack of timely justice encourages individuals to explore non-legal means for dispute resolution.
- **Dependence on the Judiciary for Justice:**
  - The propagation of justice in Indian society heavily relies on the judiciary. The judiciary's credibility is crucial for maintaining civil order and ensuring social justice.
- **Need for Judicial Credibility:**

- The judiciary's credibility is central to citizens' belief in court mechanisms. As long as citizens have faith in the judiciary's integrity, they remain the interpreters of laws and the determinants of society.

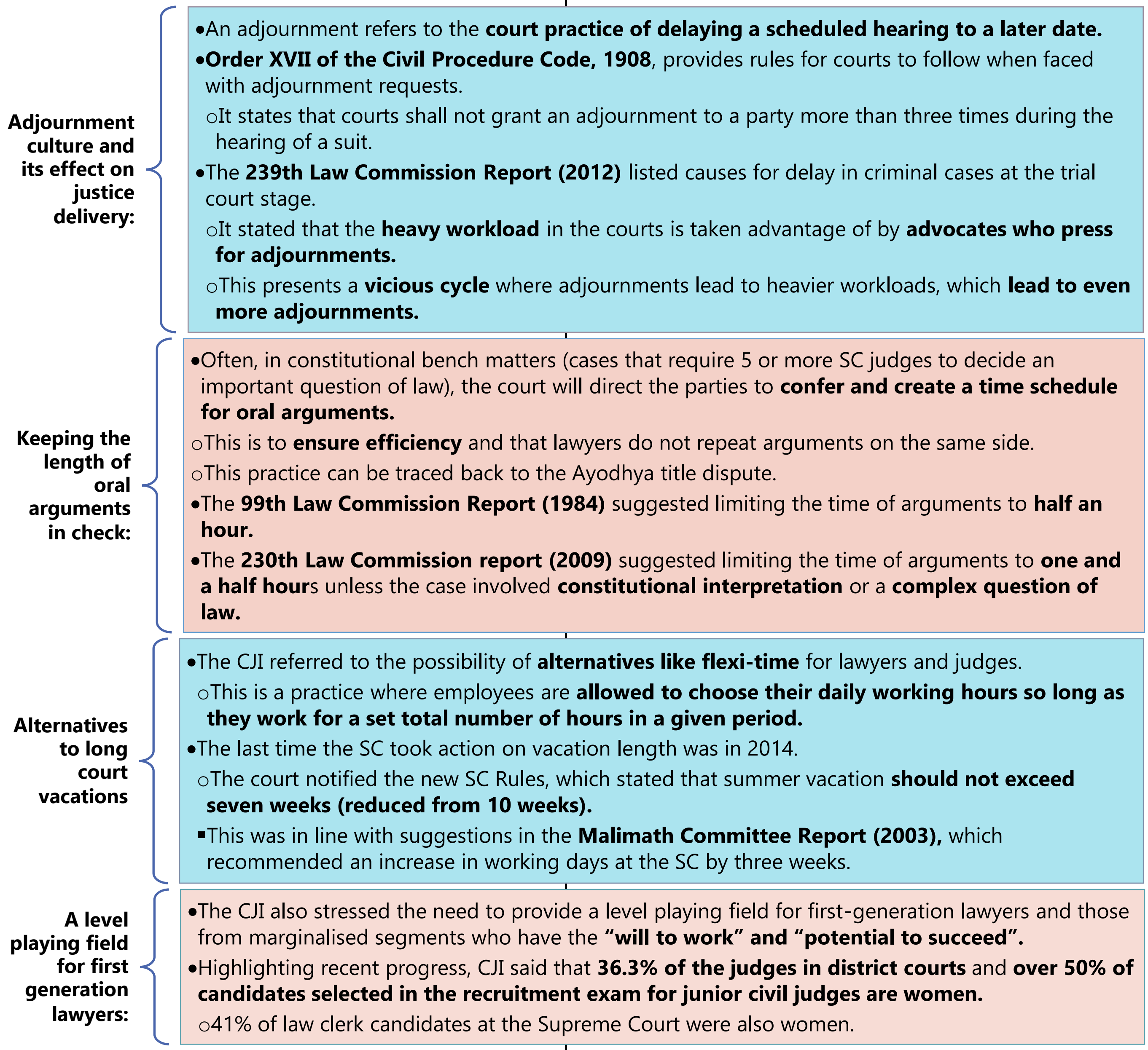

FIGURE: CJI MENTIONED 4 ISSUES TO REFORM THE INDIAN JUDICIARY

Suggestions to reform the judiciary system in India:

- **E-Courts Project:** The e-Courts project, started in 2005, aims to make the justice delivery system more efficient through the use of technology. This project can serve as a model for leveraging technology to improve the functioning of the judiciary.
- **Comprehensive Reform**: Reforms should seek to remake the administrative functions of the judiciary comprehensively, accommodating various stakeholders' ideas and interests over time. This includes the establishment of a National Judicial Infrastructure Corporation to focus on the judiciary's administrative functions.
- **National Mission for Justice Delivery and Legal Reforms:** The National Mission for Justice Delivery and Legal Reforms was set up to increase access by reducing delays and arrears in the system.
    - This involves better infrastructure for courts, computerization, an increase in the strength of the subordinate judiciary, and policy and legislative measures in areas prone to excessive litigation.
- **Appointment System:** There is a need to reform the judges' appointment system, including the collegium system of appointing judges to High Courts and the Supreme Court. The appointment process should be transparent and based on merit to ensure that only deserving candidates are selected.

Conclusion:

CJI has **identified critical issues** within the judiciary, emphasizing the **urgent need for reforms.** From tackling the adjournment culture and optimizing oral arguments to exploring alternatives for court vacations and ensuring a level playing field, **these challenges require open dialogue and proactive measures** to enhance the **efficiency and inclusivity of the Indian judiciary.**

Tribunals cannot direct the Government to frame policy: SC

News Excerpt:

The Supreme Court (SC) has clarified that **tribunals** functioning under the **strict parameters** of their **governing legislations** cannot direct the Government to make policy.

- The SC was dealing with whether the **Armed Forces Tribunal (AFT)** could have **directed** the Government to make a **policy** to fill up the **Judge Advocate General (Air) post.**

Armed Forces Tribunal (AFT):

- The **Armed Forces Tribunal Act 2007** led to the formation of AFT.
- It has the power provided for the adjudication or trial by AFT of disputes and complaints with respect to the **commission**, **appointments**, **enrolments** and **conditions of service** in respect of persons subject to the **Army Act, 1950**, **Navy Act, 1957** and **Air Force Act, 1950.**
- It can further provide for **appeals** arising out of **orders, findings** or **sentences** of **courts-martial** held under the said Acts and for matters connected therewith or incidental thereto.
- Besides the **Principal Bench** in **New Delhi**, AFT has **Regional Benches** at Chandigarh, Lucknow, Kolkata, Guwahati, Chennai, Kochi, Mumbai, Jabalpur, Srinagar and Jaipur.
- Each Bench comprises a **Judicial Member** and an **Administrative Member.**
    - Judicial Members are retired High Court Judges.
    - Administrative Members are retired Members of the Armed Forces who have held the rank of Major General/ equivalent or above for a period of three years or more. **Judge Advocate General (JAG),** who has held the appointment for at least one year, are also entitled to be appointed as the **Administrative Member.**

Reasons given by SC:

- The **AFT** was vested with the powers of a **civil court.** It did **not** have the **powers** of the **Supreme Court** or the **High Courts (HC)**.
    - Even the **HCs cannot**, in the exercise of the powers under **Article 226** of the Constitution, **direct** the **Government** or a department to formulate a particular **policy.**
- Creating or **sanctioning** a **scheme or policy** regarding the service of defence personnel or their regularisation was the **"sole prerogative of the Government"**.
- **Making policy** is **not** in the **domain** of the **judiciary.**
- The Tribunal is a quasi-judicial body that cannot direct those responsible for making policy to make a policy in a particular manner.

The distinction between Courts and Tribunals:

Court of Law	Administrative Tribunal
Vested with general jurisdiction over all the matters.	Deals with service matters and is vested with limited jurisdiction to decide a particular issue.
It can decide the validity of legislation.	It cannot decide the validity of legislation.
It is strictly bound by all the rules of the Evidence Act and by the procedure of the CPC.	It is not bound by the rules of the Evidence Act and the CPC unless the statute which creates the tribunal imposes such an obligation.
It is presided over by an officer expert in the law.	It is not mandatory that all the members need to be trained and experts in law.
Does not follow investigatory or inquisition functions.	Perform investigatory functions as well, along with its quasi-judicial functions.
Its decision is **objective,** i.e. based on the evidence and materials produced before the court.	Its decision is **subjective,** i.e., it decides the matters while taking into account policy and expediency.
It is bound by precedents, the principle of res judicata and the principle of natural justice.	It is not obligatory to follow precedents and the principle of res judicata, but the principle of natural justice must be followed.

Tribunal System:

- The **42nd Amendment** to the Constitution introduced **Part XIV-A,** which empowers Parliament to create tribunals. It includes:
    - Article **323A: Administrative tribunals** (both at central and State level) for adjudication of matters related to recruitment and conditions of service of public servants and
    - Article **323B: Other tribunals** for adjudication of certain subject matters, including industrial disputes, taxation (such as levy and collection of taxes), and foreign exchange.

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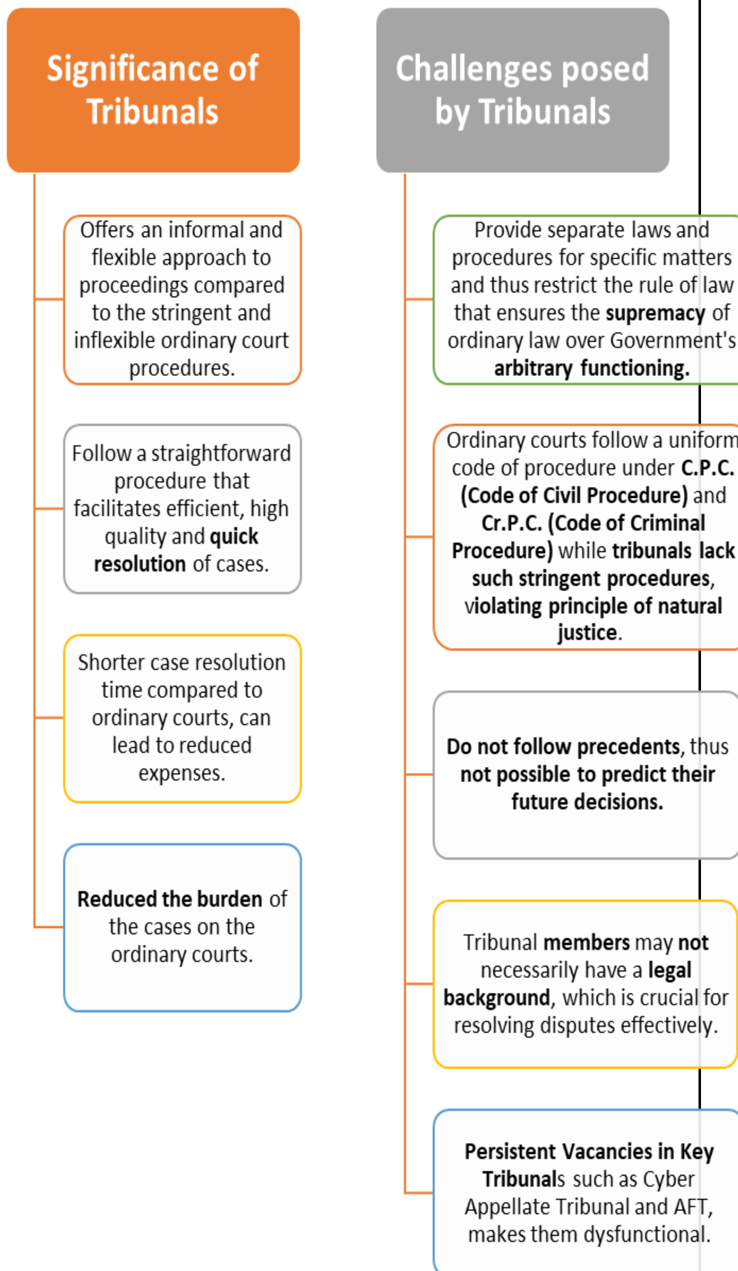
- The SC has ruled that tribunals, being quasi-judicial bodies, should have the **same level of independence from the executive as the judiciary.**



- In order to ensure that tribunals are independent from the executive branch, the **SC recommended that all administrative matters be managed by the Law Ministry** rather than the ministry associated with the subject area.

Way Forward:

- The creation of a National Tribunal Commission (NTC) was recommended by the 74th report of the Parliamentary Standing Committee on Law, released in 2023, to address concerns such as the selection process, setting eligibility criteria for appointment, etc.
- In 2019, the SC recommended a judicial impact assessment to analyze the amalgamation of tribunals.
- The **SC in Union of India vs. R. Gandhi (2010)** stated that when the existing jurisdiction of a court is transferred to a tribunal, its members should be persons of a rank, capacity and status as nearly as possible equal to that of the court.
- The Ministry of Law & Justice should provide administrative support for all Tribunals.
- The judgment serves as a reminder of the importance of separation of powers among different government institutions in a democratic setup. This decision has significant implications for how tribunals and courts interact with policy-making processes, emphasizing judicial restraint and adherence to the constitutional framework.

Witness protection in India

News Excerpt:

The Supreme Court-appointed Special Investigation Team **(SIT)** re-investigating nine 2002 **Gujarat riot cases** has **withdrawn** police and paramilitary **protection** to all the witnesses. The only exception has been made for Zakia Jafri.

About the witness:

- A witness may be defined as a **person who gives evidence or deposes** before a judicial tribunal.
- The term **"witness"** has **not been defined** anywhere in the **Criminal Procedure Code (CrPC).**
- **Any court,** however, at any **stage of inquiry**, **trial** or other proceeding under the CrPC, can **summon any person as a witness**, or examine any person in attendance, though not summoned as a witness, or recall and re-examine such person if his evidence appears to be essential to the just decision of the case.
- **Section 161 CrPC** dealt with the examination of witnesses and allowed investigating police officers to orally examine anyone **"supposed to be acquainted"** with the case's facts and circumstances. It also said the witness is bound to answer all questions **"truly"** but needn't answer questions that expose them to criminal charges, penalties, or forfeiture.
- **Section 398 of the Bharatiya Nagarik Suraksha Sanhita**, which has replaced the CrPC, states that **every state government shall prepare and notify a Witness Protection Scheme** for the State to ensure the protection of witnesses.

Need to protect witnesses:

- **Judicial Interpretation:**
  - In **Swaran Singh vs. the State of Punjab (2000),** the SC observed that a criminal case is built upon the edifice of evidence that is admissible in law; for that, witnesses are paramount.
- **Law Commission:**

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- The **14th report of the Law Commission**, 1958, highlighted the tribulations commonly encountered by witnesses, like **difficulty accessing courts** owing to **expenses**, **travel**, **time**, and frequent **adjournments.**
- The **Law Commission's 154th and 178th reports** also discussed various facets of witness protection.

- **Other factors:**
  - Witnesses in India are **mistreated**, given **no facilities**, and face the danger of **bodily harm**, **death**, **abduction**, and **threats**, besides other forms of mental and physical **harassment**.
  - Several **witnesses also turn hostile** and do not tell the truth when the party calls them.
    - In cases like the **Jessica Lal murder case** or the **Salman Khan hit-and-run case,** the prosecution failed after witnesses turned hostile.

Efforts made to protect witnesses:

- The **Justice V.S. Malimath Committee Report (2003)** recommended enacting a law to protect witnesses and their families, following laws in the **USA** and **other countries.**
- The **Delhi government** also notified a Witness Protection Scheme in **2015**.
- In 2017, the **SC questioned the Centre** about the witness protection rules along the lines of the NIA Act 2008 not being framed.
- Protections in laws such as Section 195A **IPC**, Sections 151–52 of the **Indian Evidence Act, 1872** and Section 327 of **CrPC**, like criminalizing threatening of witnesses, prohibiting parties from asking insulting questions to witnesses and empowering magistrates to shield court proceedings from the public.
- In **2018,** the SC drew up a nationwide **Witness Protection Scheme.**

Witness Protection Scheme 2018	
The Ministry of Home Affairs prepared "Witness Protection Scheme, 2018" in consultation with the National Legal Service Authority, Bureau of Police Research & Development and the State Governments.	Supreme Court in Mahender Chawla vs. Union of India (2019) endorsed the scheme and directed the Centre, states, and UTs to enforce this scheme.

Categories of witness:

Category 'A'	**Category 'B' -**	**Category 'C'-**
Where the threat extends to the life of a witness or his family members.	Where the threat extends to their safety, reputation, and property.	Where the threat is moderate and extends to their harassment or intimidation.

Procedural framework:

An application is made by a witness, their family member, lawyer, or the concerned IO/SHO/SDPO/Jail Superintendent before "a competent authority.	A "Threat Analysis Report" is prepared and submitted by the Head of the Police in the investigating district.	Depending on the urgency, the "competent authority" can pass orders for interim protection.

Competent Authority under the Scheme:

Standing Committee in each district chaired by the District and Sessions Judge, with the Head of the Police in the District as Member and Head of the prosecution in the District as its Member Secretary.

State Witness Protection Fund:

Proposed under the Scheme to meet the expenses incurred while implementing the Witness Protection Order	Sources of the fund: Budgetary allocation, Fines ordered by the courts/tribunals; Donations and contributions permitted by the Government; and Funds contributed under Corporate Social Responsibility

The Witness Protection Scheme, 2018, is the **first attempt** at the **national level** to **holistically provide** for the protection of the witnesses, which will go a long way in **eliminating secondary victimization**. The witnesses, being **eyes and ears of justice**, play an important role in **bringing perpetrators of crime to justice**. This scheme attempts to ensure that witnesses receive **appropriate and adequate protection**. This will go a long way in strengthening the country's Criminal Justice System and consequently enhance the National Security Scenario.

Bilkis Bano case

News Excerpt:

The Supreme Court (SC) quashed the order of *en masse* remission granted by the State of Gujarat in August 2022 to 11 men sentenced to life imprisonment for the gangrape of

Bilkis Bano and the murder of her family, including a two-month-old infant during the 2002 riots.

On what grounds did the Supreme Court strike down the remission given by the Gujarat government in 2022?

- Since the trial in the case was transferred from Gujarat — where the crime was committed — to Mumbai, Maharashtra, the Supreme Court held that the Government of the State of Gujarat had no jurisdiction to entertain the prayers seeking remission of the 11 convicts as it was not the appropriate Government within the meaning of Section 432 (7) read with Section 432 (1) and (2) of the Code of Criminal Procedure (CrPC) which designates the appropriate Government with authority to grant remission.
  - The **State of Gujarat had "usurped the powers of the state of Maharashtra,** which only could have considered the applications seeking remission".
  - The Gujarat government had no jurisdiction to entertain the remission applications or pass orders granting remission as the trial took place in Maharashtra, making the Maharashtra government the "appropriate" one to decide on the remission.
- The court also said that the **convicts had not fulfilled the condition of paying a fine ordered by the trial court to be considered for remission.**

What is remission?

- Remission refers to the reduction or mitigation of the punishment imposed by the court.
- It can involve the suspension, remission, or commutation of the sentence, providing an opportunity for convicts to have their sentences lessened.
- The remission policy, as outlined in legal frameworks such as the Code of Criminal Procedure (CrPC), grants the Government (both State and central) the authority to suspend, remit, or commute sentences.
- This power is exercised based on certain considerations, such as the nature of the offence, the character of the offender, and the circumstances of the case.

Can the convicts apply for remission again?

- The criminal justice system has provisions like remission or reduction of sentence, considering that a person can reform and be set free as a better citizen.
- The SC said that there are **competing interests** — that of the **rights of the victim or her family to justice and that of a convict's claim to a second chance.** The court also said this is not an **"indefeasible"** (incapable of being annulled or voided) right of a convict.
- The convicts **can approach the Maharashtra government for remission in the future.** Whether remission is granted will, however, depend on various aspects, including the remission policy of the State.
- Ordering *status quo ante*, SC reasoned that for the **convicts to apply for remission again, they had to be back in prison first.**

Issues involved: The Gujarat government's premature release of the 11 convicts raised serious **legal and moral questions**.

- **Criminal Procedure Code (CrPC):**
  - It stipulates that the State Government, when **considering remission** applications, should be **Maharashtra,** where the **sentencing occurred,** not Gujarat, where the offence occurred, or jail term was served.
  - It also requires the **presiding judge's opinion** to be obtained before considering the remission petition, which was not followed in this case.
- **Laxman Naskar vs Union of India (2000):** The SC had laid down **five grounds** on which remission is to be considered.
  - Whether the offence is an individual act of crime without **affecting society** at large;
    - It would be preposterous to surmise that such a heinous crime does not impact the conscience of a civilized society.
  - Whether there is any chance of **future recurrence** of committing a crime;
  - Whether the **convict has lost his potential** to commit a crime;
  - Whether there is any **fruitful purpose of confining** the convict any more;
  - **Socio-economic condition** of the convict's family.
- **Sangeet vs the State of Haryana (2012):**
  - The SC held that a **convict** serving life imprisonment has **no right** to be **prematurely released after 14 years** in jail and that remission should be considered only on a **case-by-case basis.**
    - The **Union Home Ministry** issued an **advisory** in 2013 prescribing that remission should not be granted in a **"wholesale manner".**

All India Judicial Services

News Excerpt:

During an event celebrating **Constitution Day** at the Supreme Court, the **President** of India **suggested** the establishment of an All-India Judicial Service **(AIJS)**.

Need for AIJS:

- **1st Law Commission in 1958** recommended the creation of an AIJS for efficiency in the subordinate judiciary, addressing structural issues and ensuring standard training nationwide.
- **8th Law Commission 1978** also recommended it for delays and arrears in trial courts.

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Challenges of AIJS

Challenge	Description
Against Federalism	The creation of AIJS could further **diminish the powers of States**, which currently have limited powers.
Inadequate knowledge of the regional language	It would corrode judicial efficiency by disregarding the local laws, languages, and customs of the different states.
42nd Amendment Act to the Constitution	It has adversely affected states' powers, would diminish them further by **transferring the power** of selection from the High Courts to a central body.
Career	• Article 312 of the Constitution states that no post inferior to that of a "district judge" should be included in the service. • District judges handle serious criminal cases, and also civil matters. • It is questioned whether these young recruits aged 24-30, posted as district judges soon after selection and training, should be given such vast powers or not.
Current Recruitment System	It recruits district judges through the respective High Courts and other subordinate judicial officers through public service commissions, is more conducive to ensuring diversity, as there is scope for both reservation and a clear understanding of local practices and conditions.
Central recruitment	It would give the executive more influence over the appointment of district judges, and reduce the role of High Courts which is against Article 50. The government is the biggest litigant before the courts. It is problematic if the litigant were to decide who is to be appointed as a judge and for what considerations.

- **Chief Justice Conferences** in 1961, 1963, and 1965 supported AIJS.
- **National Judicial Pay Commission** supported AIJS in 1999.
- **In 1992, the Supreme Court**'s observation in the **All India Judges case** suggested examining the feasibility of implementing Law Commission recommendations expeditiously for the health of the judiciary.
- **Fill vacancy of Judges:** India faces a **shortage of judges** in its subordinate courts, with around 35% of vacant posts. This has led to a poor judge-to-population ratio, with only 17 judges per million people.
- Since the inception of the Supreme Court, only 11 women have been appointed as judges, and none as Chief Justices.
    - India Justice Report (IJR) 2022 shows that only 35% of subordinate court judges are women.
    - No State has been able to meet the quotas for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC) categories in the subordinate judiciary.
- **Ensure independence and accountability:** The appointment and transfer of judges in India is carried out through the **collegium system**, which has been criticized for its **opaque functioning. AIJS would reduce the scope for judicial or executive interference and the subjectivity in the recruitment process.**
- **Pending cases** are moving towards the 5-crore mark.
    - According to the **Law Minister, as of December 31, 2022, the total number of** pending cases in district and subordinate courts was pegged at over 4.32 crore.
    - Over **69,000 cases** are **pending** in the Supreme Court, while there is a **backlog** of more than **59 lakh cases** in the country's 25 high courts.

Current status:

- A comprehensive proposal was formulated for the Constitution of an All India Judicial Service (AIJS), and the Committee of Secretaries approved the same in 2012.
- The creation of AIJS was discussed among State Governments and High Courts, but there was a significant divide in their Opinions.
- As a result, there is currently no consensus on the proposal among major stakeholders, and the issue needs further deliberation and consideration.

Constitutional Provision:

- **Article 312** of the Constitution provides for establishing All India Judicial Service (AIJS) upon a **resolution by the Rajya Sabha** supported by at least two-thirds of its members.
- AIJS shall **not include any post inferior to that of a District Judge**, i.e., it enables the creation of the AIJS at the District Judge level.
- **Article 233**- appointment of District Judges by the Governor in consultation with High Court judges.
- **Article 234**- recruitment of persons other than district judges.

Significance of AIJS:

- **Increase Judge-to-population ratio:** AIJS is crucial for **strengthening** India's **justice delivery** system and making justice **accessible to all**.
- **Merit-based,** competitive, and **transparent system:** It will allow for the induction of qualified legal talent**,** addressing **social inclusion** and attracting **competent individuals**.
- **Inclusive representation of India's unique diversity:** AIJS will facilitate the inclusion of competent persons from **marginalized**, **deprived** sections and **women** in the judiciary.

Way Forward:

- The **National Judicial Pay Commission** has **recommended** that the AIJS should be constituted only in the cadre of District Judges, following **Article 312 (3)** of the Constitution.
  - The **selection process** for direct recruitment should be conducted by the **National Judicial Commission / UPSC** and the promotees by the respective High Courts.
  - The **qualification** for direct recruitment should conform to **Article 233(2)** of the Constitution.
  - **Service Judges** should also be **allowed** to compete for **AIJS recruitment.**
  - **Not exceeding 25% of posts** in every state cadre of District Judges should be **earmarked** for direct recruitment.
- **Niti Aayog's 'Strategy for New India @75' report** recommends AIJS exam to maintain high standards and the AIJS cadre should report to the Chief Justice in each High Court to preserve judicial independence.
- AIJS should first be **implemented on a Pilot basis.**

Regional Languages in Court

News Excerpt

Recently the Supreme Court of India constituted justice A. Oak committee for translation of SC judgements in regional languages.

As per Article 348 of constitution, until parliament changes, all proceedings in Supreme court and high courts shall be in English language.

- **Article 348(2)** says that governor, with consent of president, can permit use of Hindi or official language of the state in the proceedings of High court of that state.
- However, the judgements, orders of such high court must be in English.

Other provisions regarding the language in higher judiciary:

- **As per official language act**, the Governor, with consent of president can provide for use of Hindi or the official language of the state, in addition to English, for judgements, orders of the high court
- 1965, the Cabinet Committee decided that the Chief Justice of India's consent must be taken on any proposal on the use of any language besides English in the High Courts. **Thereafter, the use of Hindi was authorised in the High Courts of Uttar Pradesh (1969), Madhya Pradesh (1971), and Bihar (1972) in consultation with the CJI,**

Benefits of promoting regional language in judiciary

- To make justice meaningful for every citizen.
- Presently English language is barrier as many people are not proficient in English. Further even those who are good in English struggle to comprehend the legal language with complex phrases, obsolete words, jargons, excessively long sentences.
- With judgements available in regional language people will have better understanding of functioning of judiciary, creating trust and confidence in judiciary.
- Citizen will have a better understanding and awareness of their fundamental rights and their enforcement.
- It will also promote the development of regional languages which are fading in the era of globalisation.

Challenges in promoting regional languages in judiciary

- **Lack proficiency in regional language:** Many judges lack in proficiency in regional language as they come from all over India.
- **Shortage of manpower-** There is acute shortage of translators in India.
- **Technical glitches in AI based translation-** The AI systems for translating the judgements are evolving and errors are common in them.
- **Lack of infrastructure**- Such as internet connectivity, computers in judiciary. This is more prominent at the level of district courts and other subordinate courts.
- **Legal terms of English language**- Many legal terms of English don't find their mention in regional languages. Many new legal terms need to be added to regional languages.
- **Illiteracy rate**-Illiteracy rate is high in country. Besides many school pass outs are not proficient in regional languages.

Initiatives to promote regional language in judiciary

- SC constituted **justice A. Oak committee for translation of SC judgements** in regional languages
- SC will be tapping into the talent of retired judicial officers to verify if these translations are done correctly.
- The Kerala High Court published two of its recent judgments in Malayalam, becoming the first HC in the country to publish judgments in the regional language.
- Supreme Court formed an Artificial Intelligence committee to develop judicial domain language

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translation tool called **SUVAS (Supreme Court Vidhik Anuwad Software)** to translate judgments from English to vernacular languages.

- Under the aegis of the Ministry of Law and Justice, the Bar Council of India has constituted '**Bharatiya Bhasha Samiti**' led by former Chief Justice of India. The committee is developing a Common Core Vocabulary close to all Indian languages for the purpose of translating legal material into regional languages.

Relevance of English in judiciary

- In SC and HC, judges come from all over India. Same is true for lawyers and litigants. They cannot be expected to know all regional languages. If AIJS (all India judicial service) reform comes into force even district judges will come from all over India. Hence its nearly impossible for higher judiciary to function without English.
- Judgements of one court are precedents and are referred by other courts in India
- For all these above-mentioned reasons a common language is needed. English is that language.

Conclusion

Preamble promises justice for all citizens. To fulfil this vision and create trust and confidence of citizens in judiciary the regional languages must be promoted in judiciary. For the justice must not only be done but also seen to be done.

Default Bail

News Excerpt

The Supreme Court has directed lower courts to independently grant default bail in criminal cases if the charge sheet is not filed within the prescribed time limits of 60 or 90 days.

- The Ritu Chhabaria judgment recognized the right to default bail as a fundamental right under Article 21 of the Constitution, safeguarding accused individuals from the unchecked power of the State.

Different types of bails

- **Regular Bail:** It refers to the court's order to release an arrested person from police custody. To obtain regular bail, an individual can file an application under Sections 437 and 439 of the Code of Criminal Procedure (CrPC).
- **Interim Bail:** It is a temporary bail granted by the court while the application for anticipatory bail or regular bail is pending. It serves as a temporary release until a final decision is made by the court.
- **Anticipatory Bail:** It is a bail granted to a person even before their arrest. It is sought when there is a fear of arrest, and the person is not yet apprehended. To apply for anticipatory bail, an individual can file an application under Section 438 of the CrPC. This type of bail is issued by the Sessions Court and High Court.

Constitutional Provisions Related to Arrest

- Article 22 provides safeguards for individuals who have been arrested or detained. Detention can be either punitive or preventive in nature.
- Punitive detention is imposed as a punishment after a person has been tried and convicted in court for committing an offense.
- On the other hand, preventive detention involves the detention of a person without trial or conviction by a court.
- Article 22 consists of two parts: the first part pertains to ordinary law cases, while the second part pertains to cases related to preventive detention laws.

Rights Given Under Punitive Detention	• Right to receive information about the reasons for the arrest. • Right to seek advice and be represented by a legal professional. • Right to appear before a magistrate within 24 hours, excluding travel time. • Right to be released within 24 hours, unless authorized for further detention by the magistrate. • These protections are not applicable to an enemy alien.
Rights Given Under Preventive Detention	• The maximum duration of detention is three months, but it can be extended if the advisory board, comprised of high court judges, finds sufficient cause. • The grounds of detention must be conveyed to the detainee, except for facts deemed against public interest. • The detainee has the right to present their case and make a representation against the detention order. • These protections apply to both citizens and aliens.

About Default Bail or Statutory Bail

Statutory Bail is the right to bail that arises when the police fail to complete an investigation within a specified period for a person in judicial custody.

Judgements Related to Default Bail

CBI vs Anupam J. Kulkarni (1992):

- **Maximum Police Custody Period:**
  - The Supreme Court (SC) ruled that a magistrate can authorize police custody for a maximum of 15 days after the arrest of the accused.
  - After this period, any further detention must be in judicial custody, unless the accused is implicated in a separate case arising from a different incident or transaction.
- **Exception for Separate Cases:** In situations where the same accused is involved in a different case stemming

from a separate incident or transaction, the magistrate may consider granting police custody again.

Uday Mohanlal Acharya vs. State of Maharashtra (2001):

- **Right to Default Bail:** The SC, referring to the judgment in the case of Sanjay Dutt vs State, clarified that the accused can avail themselves of the right to default bail by filing an application for it, not when they are released on default bail.
- **Extinguishment of Default Bail:** If an order of default bail is granted to the accused but they fail to furnish bail and a charge sheet is filed during that time, the right to default bail will be extinguished.

District Judiciary

News Excerpt

Supreme Court in a recent judgment specified that the independence of the district judiciary is also a part of the **basic structure of the Constitution**, underlining that the access to justice would remain illusory without impartial and independent judges at the grassroots level.

- The judgment also held that the judicial independence from the executive and the legislature requires the judiciary to have a say in matters of finances.

More on the News

- District judiciary is the backbone of the judicial system. Vital to the judicial system is the independence of the judicial officers serving in the district judiciary. To secure their impartiality, it is important to ensure their financial security and economic independence.
- The judgment also gave a series of directions to amend the service rules of the district judiciary and for payment of arrears of pension, additional pension, gratuity and other retiral benefits.
- The directions were based on the recommendations made in the report of the court-appointed Second National Judicial Pay Commission report of 2020 headed by **Justice P.V. Reddi** (retired).

Importance of District Judiciary

- District judiciary is, in most cases, also the court which is most accessible to the litigant and handles 1.13 million cases every day making it most accessible court.
- They hear the cases at first unless the person is going through writ jurisdiction of SC or HCs and play an important role in the application and interpretation of laws.
- They ensure that the decisions or orders given are properly enforced. On failure, a case of contempt of court can be filed.
- They also appoint the lower-level officers like clerks etc. and ensure that the institution works smoothly.

What Constitutes District Judiciary?

- Hierarchy of district courts along with High court constitutes the state judiciary which along with supreme court forms the integrated judicial system of India.
- Part VI from article 233 to 237 of Indian constitution specifies the provisions to regulate the organization and structure of lower courts in India which is also termed as subordinate courts.
- However, it should be noted that judiciary in various judgments has also specified that the term subordinate courts should not be used. Not only is this a misnomer because the district judge is not per se subordinate to any other person in the exercise of her jurisdiction but also is disrespectful to the constitutional position of a district judge.
- **Appointment of District Judges (Article 233)**: 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. A person to be appointed as a district judge should have the following qualifications
  - Should not be in the service of union or state
  - Not less than seven years as an advocate or a pleader
  - Should be recommended by the High Court for appointment
- **Recruitment of persons other than district judges to the judicial service of a state (Article 234):** They shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.
  - In practice, the State Public Service Commission conducts a competitive examination for recruitment to the judicial service of the state.
- **Control over subordinate courts (Article 235):** The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.
  - This is in pursuance of the separation of powers doctrine, as it placed the civil judicial mechanism of a state under the control of the High Court rather than the executive.
- Article 236:
  - The expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

- The expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

- Article 237: The Governor may direct that the provisions relating to persons in the state judicial service would apply to any class or classes of magistrates in the state.

Challenges Faced by Lower Judiciary

- **Judicial Appointments and Vacancies**: To admit civil judges (Junior division), there is a exam popularly known as PCS-J. In Malik Mazhar Sultan VS UPPSC the SC held that a two-tier process of examination should take 153 days and a three-tier examination procedure should take around 273 days. But most of the time, the governments are unable to complete the process on time. As of sept 2020, there is approximately 21% vacancy in the lower judiciary (5146 out of 24018).
- **Poor Infrastructure:** The facilities at a district-level court are not adequate. In case of infrastructure, lower courts are far behind the higher level courts.
- **Digitalisation:** It has not been implemented properly and even several advocates and other officials lack digital knowledge. According to a report, there is a dearth of courtrooms at the district level.
- **Inadequate support staff:** There is an inadequacy of support staff like clerks, scribes and other officials. Due to this, the office work cannot be conducted adequately and there is a pendency of cases.
- **Lack of training and legal awareness:** There should be proper training and workshop.
- **Role of Women (Lack of gender sensitization):** Around 27 percent of the judges at the lower level are women. However, it is more than what is there in the HCs and Supreme Court but in reality absence of female judges affects the administration of justice.
- **Pendency of Cases:** Even after hearing more than 11 lakh cases daily, out of around 4.5cr pending cases, 87.6 percent of cases were pending in subordinate courts and 12.3% in High Courts.

Conclusion

It performs an important role in upholding the rule of law. The independence of the district judiciary must also be equally a part of the basic structure of the Constitution. Without impartial and independent judges in the district judiciary, 'Justice', a preambular goal, would remain illusory.

ELECTIONS

Delimitation Exercise

News Excerpt:

The delimitation of constituencies for the **Lok Sabha** and **State Legislative Assemblies** is to be carried out on the basis of the **first Census after 2026.**

What is Delimitation?

- It is the **process** of **determining** the **number of seats and boundaries** of **territorial constituencies** in each State for the Lok Sabha and Legislative assemblies, including determining seats for **Scheduled Castes** and **Scheduled Tribes**.
- It also aims at a **fair division** of **geographical areas** into seats to guard against allegations of **gerrymandering**, which means redrawing seat boundaries in a way that no political party has an **unfair advantage** over another.
- In India, such Delimitation Commissions have been constituted **4 times** – in 1952 under the **Delimitation Commission Act, 1952**, in 1963 under **Delimitation Commission Act, 1962**, in 1973 under **Delimitation Act, 1972** and in 2002 under **Delimitation Act, 2002**.

Delimitation Commission:

- The **President** of India appoints it and works in **collaboration** with the **Election Commission of India.**
- It is comprised of a **retired or serving Supreme Court judge**, **Chief Election Commissioner,** and respective **State Election Commissioners.**
- The Delimitation Commission in India is a **quasi-judicial body** whose orders have the force of law and cannot be questioned before any court.
- These orders **come into force on a date** to be specified by the **President** of India.
- The **copies** of its orders are laid before the **House of the People** and the **State Legislative Assembly** concerned, but **no modifications** are permissible therein by them.

What is the Constitutional requirement?

- **Democracy** refers to the rule or government by the people, elected by a majority with the principle of **'one citizen-one vote-one value'.**
- The **number of seats** in the **Lok Sabha** was fixed at 494, 522, and 543 based on the 1951, 1961, and 1971 Census,

Constitutional Provisions

Article 82:
It mandates the **"readjustment"** in the allocation of seats to every state in **Lok Sabha** and the division of every state into constituencies **"upon completion of each Census".**

Article 327:
Parliament may from time to time, **by law,** make provision with respect to all matters in connection with the elections including delimitation of constituencies.

Article 329:
It **bars a challenge** to the validity of such a **law** before any court.

with an average population of 7.3, 8.4, and 10.1 lakh per seat.

- However, the number of seats was **frozen as per the 1971 Census** to encourage population control measures so that States with higher population growth do not have higher seats, which was done through the **42nd Amendment Act until 2000** and extended by the **84th Amendment Act until 2026.**
  - The year 2026 was chosen because the **assumption** was that if the **National Population Policy** worked as planned, **by 2026**, there would be a roughly **equal number of births and deaths in India.**
- As per the current provisions in the Constitution, the **next delimitation exercise** should occur based on the first Census carried out after 2026, 25 years after the 84th Amendment.
- In a **normal course**, this would have meant that delimitation would have happened after the **2031 Census**. However, the **Census of 2021** could **not** be **carried out** due to the Covid-19 pandemic.

Challenges regarding delimitation:

- The **population explosion** in the last five decades has been **uneven**, with some states like **Uttar Pradesh, Bihar**, **Madhya Pradesh** and **Rajasthan** experiencing greater increases than States like **Kerala, Tamil Nadu**, **Karnataka** and **Andhra Pradesh.**
- An estimate by **political scientists** says that if **Lok Sabha seats** were to be **redistributed** according to the current distribution of the population, the **northern states** might have as many as **32 seats more**, while the **southern states** might have up to **24 seats fewer**.
  - For instance - **Kerala** could lose six of its current 20 Lok Sabha seats and **Tamil Nadu** 11 of its 39.
  - This **political marginalisation of the South** for demographic reasons could **create tensions.**
- When the **15th Finance Commission** decided to use the **2011 Census** as a basis for the **devolution of taxes** from the central government to the states, the southern governments expressed concern about this move — the **South's share** in the devolution of taxes has **come down** from 17.98% (14th Finance Commission) to **15.8%** (15th Finance Commission).

Current options under discussion:

- **Two options** are being discussed for the revised delimitation exercise based on the projected population as of 2026:
  - **Continuing** with the existing 543 seats and **redistributing** them among states or
  - **Increasing** the number to 848 with a proportionate increase among states.
- **Concerns:**
  - Both scenarios would **disadvantage southern states**, **smaller northern states** like Punjab, Himachal Pradesh, and Uttarakhand, and **northeastern states** compared to northern states like Uttar Pradesh, Bihar, Madhya Pradesh, and Rajasthan.
  - This may go **against federal principles** and **lead to disenchantment** in the population of states that stand to **lose representation.**
  - It also goes **against the philosophy** of freezing seats as per the 1971 Census, with states that have been better at **controlling the population** losing their political significance.

What can be an ideal solution?

- The delimitation exercise in India faces challenges due to the **conflict** between **democratic and federal principles.** To reconcile these, equal importance should be given to both.
  - A **Member of Parliament** legislates on **Union List** matters like Defence, External Affairs, Railways, Telecommunication, Taxation, etc. and holds the Central government accountable.

Global practices regarding delimitation:

- The **U.S. House of Representatives** (the equivalent of our Lok Sabha) has had a cap of 435 seats since 1913, and the country's population has increased almost four times from 9.4 crore in 1911 to 33.4 crore in 2023.
  - The seats among the States are redistributed after every Census using the **'method of equal proportion',** resulting in no significant gains or losses for any state.
  - **For example**, based on the 2020 Census, the reapportionment has resulted in no change in the number of seats for 37 States. **Texas** gained two seats, five other States gained one seat each and seven States lost one seat each.
- The **European Union (EU) Parliament** divides seats between 27 member countries based on the principle of **'degressive proportionality'**, increasing the ratio of population to seats as the population increases.
  - **For example**, **Denmark** has 15 seats with an average population of 4 lakh per member, while **Germany** has 96 seats with an average population of 8.6 lakh per member.

  - Most **Central government schemes** are implemented **only** by State governments.
  - Hence, to maintain federal principles, the **number of MPs** in Lok Sabha **should be capped at 543**, while the **number of MLAs** in each State **should be increased** in line with the current population (without changing the number of Rajya Sabha seats).
- Meanwhile, the representation must be proportionate to the population — **one person, one vote, one value.** Parliament has the leeway to **fine-tune** the principle to ensure that, in some cases, relatively fewer people will continue to elect a Parliament member.

- For instance, in Tripura or Manipur, they gave two seats even though the population was not enough.
    - **Lakshadweep** has one seat for just about 68,000 people.
    - Parliament can always make such **exceptional arrangements.** It can specify that no state will lose the number of seats that it currently has.
- The most crucial reform for strengthening democracy is **empowering local bodies** of **Panchayats** and **municipalities**, who engage with citizens daily.
    - The devolution of powers and finances to these bodies should be significantly increased.

Proportional Representation

News Excerpt:

The results of the Lok Sabha elections show that the ruling **National Democratic Alliance (NDA)** has won **293** seats with a **43.3%** vote share, while the Opposition bloc **INDIA (including Trinamool Congress)** has secured **234** seats with a **41.6%** vote share.

What is proportional representation?

- This system ensures that all parties are represented **based on their share of votes received**.
- The most commonly used form of **PR is the party list system**, where voters cast their vote for a party rather than an individual candidate, and parties are allocated seats in proportion to their overall vote share.
- There is usually a **minimum threshold of 3-5% of the total votes for a party to be eligible to secure a seat under the PR system.**
- The PR system could have resulted in better representation of parties according to their **vote share.**

Criticism of Proportional Representation

- **The main criticism against the PR system** is that it could potentially result in instability as no party/coalition may obtain a majority to form the government in our **parliamentary democracy**.
- The PR System may also result in the proliferation of political parties based on **regional, caste, religious, and linguistic considerations**, which may promote casteist or communal voting patterns.
- However, the **second criticism** is not well founded since the present FPTP system has also not **inhibited the formation of parties based on caste or communal considerations.**

What is the First Past the Post System (FPTP)?

- We follow the **FPTP system for elections to the Lok Sabha and Legislative Assemblies** in India.
- Under FPTP, the candidate **who polls more votes than any other in a constituency is declared elected.**
- This system is followed in democracies like the **U.S., U.K., and Canada.**
- **Advantages of the FPTP system:**
    - The **primary advantage of FPTP** is that it is simple and the most feasible method in a large country like India.
    - **Secondly, FPTP provides greater stability** to the executive in our parliamentary democracy because the ruling party/coalition can enjoy a majority in the Lok Sabha/Legislative Assembly without obtaining a majority of the votes (more than 50%) across constituencies.
- **Issues with the FPTP system:**
    - The issue with **FPTP** is that it may result in over or under representation of political parties when compared to their vote share.
    - In the first three elections after independence, the Congress party won close to 75% of seats in the then Lok Sabha with a 45-47% vote share.

Solution for the Criticism:

- To address the **potential proliferation of caste—or communal-based parties under the Proportional Representation (PR) system,** a **minimum threshold for votes** polled can be specified to make a party eligible for seats in legislative houses.
- By setting a **minimum vote share requirement, such as 3-5%** of the total votes, parties with narrow caste or communal agendas that fail to garner substantial support from the broader electorate would not be able to secure representation in the legislative bodies.
- The system of mixed member proportional representation **(MMPR) can be considered to address potential instability while maintaining proportional representation**.
- Under the MMPR system, one candidate is elected through the **FPTP system** from each territorial constituency, while additional seats are allocated to parties based on their overall percentage of votes received.

Way Forward:

- The **Law Commission, in its 170th report (1999**), recommended introducing the **Mixed Member Proportional Representation (MMPR)** system on an experimental basis.
    - It suggested **filling 25%** of seats through a **PR system** by increasing the strength of the Lok Sabha.
- While it is recommended **that the entire nation be considered as one unit for PR based on vote share,** the appropriate approach would be to consider it at every state/UT level, given **India's federal policy.**

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- The **delimitation exercise** for increasing the number of seats is due based on the **first Census after 2026.**
- The population explosion has been uneven among various regions, and determining Lok Sabha seats solely based on population may go against **federal principles** and lead to disenchantment in certain states.
- In the event of increasing seats **during the delimitation exercise, the MMPR system may be considered** for incremental seats or at least 25% of the total seats to be filled from each State/UT.
- This could assuage the **apprehension of southern, northeastern, and smaller northern states** by limiting the domination of larger states with increased seats solely through the FPTP system.

VVPAT-based audit of EVMs

News Excerpt:

The **Election Commission of India (ECI)** has been **criticised for limiting the Voter Verified Paper Audit Trail (VVPAT)-based audit of Electronic Voting Machines (EVMs) to a token exercise** and for a lack of transparency in the matter.

WHAT IS AN ELECTRONIC VOTING MACHINE? IN WHAT WAY ITS FUNCTIONING IS DIFFERENT FROM THE CONVENTIONAL SYSTEM OF VOTING?

- An Electronic Voting Machine (EVM) is an electronic device for recording votes. An Electronic Voting Machine consists of two Units – a *Control Unit* and a *Balloting Unit* – joined by a five-meter cable.
- The Control Unit is placed with the Presiding Officer or a Polling Officer and the Balloting Unit is placed inside the voting compartment.
- Instead of issuing a ballot paper, the Polling Officer in charge of the Control Unit will release a ballot by pressing the Ballot Button on the Control Unit.
- This will enable the voter to cast his vote by pressing the blue button.

EVM

ABOUT VVPAT:

- VVPAT is only an augmented feature of the EVMs. The Voter Verified Paper Audit Trail can give feedback to electors casting their votes.
- We can say it is a kind of independently working printer machine that enables the voters to check if the vote they cast had gone to the intended contester.

VVPAT

THE WORKING OF VVPATS:

- After casting their votes in the EVM, the voter can press a button in the EVM machine and it prints a paper slip that will reveal the symbol and name of the candidate for whom they have voted. Hence the voters can verify their choice.
- The ballot slip thus printed will be visible to the voter for about seven seconds through a glass case in the VVPAT.
- After that, the ballot paper will be cut letting it fall inside the drop box accompanied by a beep sound. Only the polling officers can access the VVPAT machine.

Emergence of EVMs and VVPAT:

- The EVM was introduced on a **trial basis in 1982** in the assembly constituency of Paravur in **Kerala.** They were deployed in all booths during the assembly elections of **Tamil Nadu, Kerala, Puducherry and West Bengal** in 2001.
- In the **2004 general elections** to the Lok Sabha, EVMs were used in all 543 constituencies.
- In **Subramanian Swamy versus Election Commission of India (2013)**, the SC ruled that a **paper trail** is an indispensable requirement for free and fair elections.
- The **2019** elections had **EVMs** backed with **100% VVPAT** in all constituencies.

What is a VVPAT machine?

- The VVPAT machine is attached to the ballot unit of the EVM and **provides visual verification for the vote cast** by a voter by printing a slip of paper with the voter's choice on it.
- This slip of paper, containing the candidate's serial number, name, and party symbol, is displayed in the machine behind a glass window. The **voter has seven seconds to verify her vote**, after which the slip falls into a compartment underneath.
- **No voter can take the VVPAT slip back home**, as it is later used to verify votes cast in five randomly selected polling booths.

Doubts and concerns raised about the functioning of EVMs:

- The critics argue that the EVMs are **susceptible to hacking** as they are electronic devices. However, the ECI has repeatedly clarified that it is a standalone device like a **calculator with no connectivity to any external device** and, hence, free from any kind of external hack.
- The **sample size for matching** the **EVM count with VVPAT slips** is five per assembly constituency/segment. This is **not based on any scientific criteria** and may fail to detect defective EVMs during counting.
- The present process also allows various parties to identify **booth-wise polling behaviour**, which can result in **profiling and intimidation**.

VVPAT-based audit of EVMs:

- The VVPAT-based audit of EVMs is a simple problem of **statistical quality control.**
- It is very similar to the **"lot acceptance sampling technique**" that is widely used in industry and trade.
  - Suppose the number of defectives found in a randomly drawn statistical sample is less than or equal to a specified acceptance number, the lot (or 'population') is accepted. In that case, otherwise, the lot is rejected.
- Here, a **'defective EVM' is defined as one with a mismatch between the EVM count and the VVPAT's**

manual count of voter slips due to EVM malfunction or EVM manipulation.

- The **acceptance number** will have to be **'zero defective EVM' in the context of elections.**

Even if there is a single instance of mismatch between the EVM count and VVPAT manual count in the randomly drawn sample of EVMs, the 'population' of EVMs from which the sample was drawn should be 'rejected'.

  - **'Rejection' here means non-acceptance of the EVM counts for that 'population'** and doing manual counting of VVPAT slips for all the remaining EVMs of that 'population'.
  - In such a scenario, the **election result should be declared only based on the VVPAT count.**

- Thus, the **VVPAT-based audit of EVMs** involves **three essential elements** —
  - A **clear definition of the 'population' of EVMs** from which the statistical sample **would be drawn.**
    - It could be all the EVMs deployed in an Assembly constituency, a Parliamentary constituency, a State as a whole, India as a whole, a region (or group of districts) within a State, or any other.
    - The population size (N) could vary widely depending on how we define the 'population'.
  - Determination of **statistically correct and administratively viable sample size** (n) of EVMs whose VVPAT slips will be hand-counted.
  - **Application of the 'decision rule',** viz., in the event of a mismatch between the EVM count and the VVPAT count in the chosen sample of 'n' EVMs, the **hand counting of VVPAT slips will have to be done for all the remaining** (N-n) EVMs forming part of that 'population'.

Way Forward:

- The **100% use of VVPAT** has enabled the voters to verify that their votes are **'recorded as cast'.** However, a few **additional steps** must be adopted to make the entire process **more robust** and ensure that the votes are **'counted as recorded'.**
- A **100% match of EVM count with VVPAT slips** would be **unscientific and cumbersome**.
- The **sample for matching** EVM count and VVPAT slips should be decided scientifically by **dividing each State into large regions.**
- In case of even a single error, the **VVPAT slips** should be **counted fully** for the concerned region and form the basis for results. This would instil statistically significant **confidence** in the **counting process. Also, cross-verification should be done.**
- Further, in order to provide a degree of cover for voters at the **booth level**, **'totalizer' machines** can be introduced that would **aggregate votes in 15-20 EVMs** before revealing the candidate-wise count.
- Over the years, the SC has been indulgent towards the ECI due to its role in the conduct of elections under Article 324.

However, SC must compel the ECI to make public how it has defined the population, arrived at its sample size, and, most importantly, its decision rule in the event of a mismatch. Only then will the SC's order of 2013 on VVPAT be faithfully implemented in letter and spirit.

Related News:

The **Central Information Commission (CIC)** has expressed **"severe displeasure"** over the **ECI not furnishing a reply to an RTI plea** raising questions on the credibility of EVMs and VVPAT machines**.**

Background of the case:

- Noted technical professionals and academicians, including retired IAS, IPS, and IFS officers, had written to the ECI, posing serious questions about the **credibility** of **EVMs** and **VVPAT machines.**
- An **RTI** was also filed that asked the ECI about the **action taken** on a **"representation"** given to it by eminent citizens.
  - The representative raised similar questions on the credibility of EVMs and VVPAT machines.
  - Through the **RTI application** filed in **November 2022**, the applicant wanted to know about the **persons** and **public authorities** to whom the representation was forwarded, details of any meetings held on the issue and all relevant file notings.

EC's response to the Right to Information (**RTI):**

- The **ECI did not give any response** to the applicant within the **mandatory 30-day period.**
  - The applicant's **first appeal** to senior officials was also not heard.

Central Information Commission's directions:

- The CIC termed the **ECI's non-response** as a **"gross violation" of the law** and directed it to furnish a **written explanation for the violation**.
- The ECI has also been asked to provide a **point-wise response** to the original RTI query **within 30 days.**

Exit Polls

News Excerpt:

India's **wildly inaccurate exit polls** predicted a landslide Lok Sabha election victory for the ruling party sparked dramatic public apologies from polling companies following the result.

More about the news:

- Almost all of the exit polls released on June 1, forecasted the BJP and its allies would win more than 350 seats in the Lower House of the Parliament. The final results put the **coalition's tally at just 293 seats**.

- This is **not the first time exit polls have gotten it wrong**. In 2014 and 2016, they underestimated NDA's numbers.
- Experts have raised questions about the inaccuracy of exit polls, suggesting that either the voters lied to the pollsters or the polls employed flawed methodologies.

What are exit polls?

- Exit polls are surveys **conducted immediately after voters leave the polling stations**. Pollsters use probability and statistics to forecast election results based on the exit poll data.
- Exit polls can **provide insights into voter behavior and early projections of election outcomes**. It also analyzes how different socio-economic groups voted by providing demographic breakdowns.
- This is to make sure that the **polls do not influence people while they are still voting,** but also still allows for immediate analysis and discussion once the process is complete.

Parameter	Opinion Poll	Exit Poll
Timing	Conducted before the actual voting day	Conducted on the same day as voting or after.
Respondents	Survey respondents are potential voters.	Survey respondents are actual voters.
Methodology	Conducted through phone, online, or in-person interviews.	Conducted through in-person interviews at polling stations.
Objective	Predicts voter preferences before elections	Predicts election outcomes immediately after voting.
Margin of Error	Generally higher due to uncertainty of voter turnout and last-minute changes.	Lower, as it involves actual voter behaviour.
Reliability	Prone to changes in voter preferences leading up to election day.	More reliable in predicting actual election outcomes.
Purpose	Provides insights into public opinion and potential voting trends.	Offers immediate indications of election results.

Exit poll regulations in India

- **Section 126A of the Representation of the People Act, 1951** states unequivocally, "prohibits conduct of Exit poll and dissemination of their results by means of print or electronic media during the period mentioned therein, i.e. between the hour fixed for commencement of poll in the first phase and half an hour after the time fixed for close of poll for the last phase in all the States."
- The **Election Commission is responsible for regulating the use of exit polls**. According to the ECI, exit polls can only be conducted during a specific period. **This period starts from the time when the polling booths close and ends 30 minutes after the last booth has closed.** Exit polls cannot be conducted during the voting period or on polling day.

Factors Contributing to the Rise of Exit Polls in India:

- The unpredictability of Indian elections increased in the 1980s, along with the **rise of regional politics**.
- Despite Congress's historic win in 1984, their mandate was reversed by 1989. **This unpredictability made exit polls more popular,** as the Indian voter became a mystery to the political class.
- The **proliferation of electronic media** in the 1990s further popularized election surveys and exit polls in India.
- Exit polls are **primarily for public consumption and media interest,** with minimal direct impact on the election process itself.

Model Code of Conduct

News Excerpt:

The model code of conduct is a set of conventions agreed upon by all stakeholders and imposed during elections.

What is the Model Code of Conduct?

- The MCC is a **set of guidelines** issued by the **ECI.**
  - MCC aims to establish **standards of conduct** for **political parties** and **candidates** during **election campaigns and polling.**
  - It maintains the **integrity of the electoral process** and promote**s free and fair elections.**
  - Compliance with the MCC is **mandatory** for all parties and candidates participating in elections in India.
- The **code comes into force when the EC announces the poll schedule and remains operational until the re**sult is announced.

Origin of Model Code of Conduct:

- In **1960, Kerala** was the **first state** to adopt a draft code of conduct for assembly elections.
- Later, the EC decided to emulate Kerala's example and circulate the draft among all recognised parties and state governments for the **1962 Lok Sabha elections.**
- However, the EC released a formal MCC only in **1974**, just before the **mid-term general elections.**

Is the MCC a law?

- The MCC is **not a statutory document.**

- The MCC has evolved as part of the ECI's drive to ensure **free and fair elections** and was the result of a consensus among major political parties.
- This means anybody breaching the MCC **can't be prosecuted** under any clause of the Code. Everything is **voluntary.**
- The EC uses **moral sanction** or **censure** for its enforcement.

- In 1990, the **Goswami Committee on Electoral Reforms** made significant recommendations for reforms in MCC.
  - It is recommended that the MCC's weaknesses be overcome by giving it statutory backing and making it enforceable through law.

Who is bound by MCC?

- The MCC applies to all elections to the **Lok Sabha** and **State Assemblies**.
  - It is also applicable for **State Legislative Council** elections from **Local Bodies and Graduates' and Teachers' Constituencies.**
- It is **enforced throughout India in case of General elections** and the **State up for polls** in case of Legislative Assembly elections.
- All organizations, committees, corporations, and commissions (e.g., Transport authorities, Jal boards) **funded wholly or partially by** the **Centre or State** are bound by the MCC.
- While listed political parties and candidates are bound to follow the MCC, even **non-political organizations that hold campaigns favouring a political party** or candidate are bound to follow specific guidelines mentioned by the EC.

Guidelines for parties and candidates:

- Political parties and candidates are advised to **avoid discussing the personal lives** of leaders and workers from opposing parties.
  - Criticisms should be confined to the **opposition's policies, programs, past records,** and accomplishments.
  - Social media content should refrain from insulting opponents.
  - The emphasis should be on **constructive debate** focused on **substantive issues** rather than personal attacks.
- Appeals to **caste, communal** or **linguistic feelings** for securing votes are also **prohibited.**
- Restrictive or prohibitory orders in force at any public place where meetings are held must be adhered to.
  - **Permission to use public spaces** and **loudspeakers** must be obtained from **local police.**
  - In the case of **the public procession,** details of the time and place of the start and end point and the route to be followed must be informed and cleared by the police.
- All **political workers** engaged in electioneering must display **badges or identity** cards and **leave the constituency after the campaign period** if they are not a voter, candidate, or candidate's election agent from that constituency.
- No political party can pay over **₹10,000 in cash in a day** to any person/company/entity.
- Parties must also not resort to **bribing/intimidating/impersonating voters.**
  - They **must also not transport voters** to and from polling stations or **serve/distribute liquor.**
- **Canvassing within 100 metres** of **polling booths** is **not allowed.**
- Displaying **posters, flags, symbols, or any propaganda material** is prohibited at **polling places.**
- **Loudspeakers are restricted** between **10 p.m. and 6 a.m.**, except with written permission from local authorities.
- **No election campaigning** is allowed within the constituency **48 hours before** the close of polls.

Guidelines for governments:

- Union Ministries must obtain **prior approval** from the Election Commission for **policy announcements, fiscal measures, taxation issues, and financial reliefs** during the MCC period.
  - **Communication** with the Election Commission should be channelled through the **Cabinet Secretariat** rather than directly contacting the EC.
- Similarly, **State governments** are subject to similar guidelines, requiring proposals to be referred to a **screening committee.**
  - The screenin**g committee will then forward the proposals to the Chief Electoral Officers, who will only escalate them to the EC if the applicable instructions are unclear.**
- Ministers and authorities shall **not announce financial grants** or lay foundation stones of projects or schemes when MCC is in force.
  - They must also **not make promises of construction of roads**, provision of **drinking water** facilities, etc., to influence voters in favour of the Party in power.
  - They **cannot sanction grants/payments out of discretionary funds** – funds sanctioned in the budget in a generic manner prior to MCC's enforcement.
  - **Official visits cannot be combined with electioneering work**, and no official machinery, vehicles, guest houses, or personnel can be used for campaigning.

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- State and Union governments must keep public places like **maidans** and **helipads available impartially** for all parties and candidates to ensure a level playing field.
- During an election year, the Union government **cannot present** a **complete Budget** due to the potential change in the ruling government post-election.
  - Under the MCC, the government is not allowed to announce any **major scheme** that could influence voters or present an **Economic Survey** in the **interim budget.**
  - However, it is **allowed to revise tax rates.**
- Instead, the government may opt to seek a **vote on account** which includes presenting its **fund requirement for salaries**, **ongoing projects** and **other expenditure for the transitional period.**
  - The vote on account is passed via the Lok Sabha.
- **Ex-gratia payments**, **release of PM/CM's relief funds for medical treatments, emergency relief work**, and new works to mitigate natural disasters **are allowed by the EC.**
  - However, the EC's approval is required for the declaration of an area as **drought/flood affected** or affected **by any such calamity.**
- Fresh release of **funds** from Members of Parliament Local Area Development **(MPLAD)** schemes is **prohibited.**
- **Writing off loans** by state governments for any individual, company, firm, etc., during the period when MCC is in force without EC's approval is **not allowed.**
- **Ad-hoc appointments** of officers are **prohibited** during MCC.
- The issue of **advertisements** and **hoardings** at the cost of public exchequer in **electronic or print media** highlighting the achievements of the government is **not allowed** when MCC is in force.
  - Such advertisements **cannot be published in non-polling states, either.**
  - Photographs of the **Prime Minister, Chief Ministers, Ministers** and other **political functionaries** highlighting government work **should not be displayed** when MCC is in force.

Poll manifestos:

- In **2019**, an **amendment** concerning **election manifestos** was introduced in MCC, directing parties to refrain from making promises "**repugnant to the ideals of the Constitution.**"
  - They must reflect the rationale for **welfare scheme** promises and indicate ways to meet the financial requirements for it.
  - The manifesto documents **must not be released during the prohibitory period (when MCC kicks in).**

How are violations dealt with?

- Any complaint regarding elections should be brought to **EC observers, Returning Officer, local magistrate, Chief Electoral Officer or the Election Commission itself.**
- In response, any directions issued by the EC, Returning Officer, or District Election Officer shall be strictly complied with.

Way Forward:

- To provide **statutory backing** and enhance its enforceability, MCC should be made legally binding by being incorporated into the RPA, 1951.
- **Expand MCC's coverage** to address emerging issues such as digital campaigning and electoral funding transparency.
- **Monitor and prevent violations of the MCC by leveraging technology**, such as AI-based systems, particularly on social media platforms where misinformation and propaganda may be disseminated.
- **Grant greater independence to the ECI,** similar to the Comptroller and Auditor General (CAG), to empower it to take more stringent actions for the implementation of the MCC.
- ECI has not been consistent in applying MCC lately. It must be **implemented in the right spirit and even-handedly**.

Electoral Bond Scheme struck down

News Excerpt:

A **five-judge Constitution Bench** of the **Supreme Court** unanimously **struck down** the **Electoral Bond Scheme (EBS)**, which facilitates anonymous political donations for being **unconstitutional.**

Failure of test of Proportionality:

- The Court's reasoning is unexceptionable, as it found that the **primary justification** for the EBS — **curbing the use of 'black money'** for political or electoral funding by allowing donations through banking channels — **failed** the **test of Proportionality**, as it was not the least restrictive measure to abridge the voters' right to know.

Violation of Right to Information:

- The Court found that the Electoral Bond Scheme (EBS) violated the Constitution, particularly voters' **right to information.**
  - The judgment is a natural follow-up to a principle laid down years ago that voters' freedom of expression under **Article 19(1)(a)** will be **incomplete** without **access to information** on a candidate's background.
  - The principle has now been extended to removing the veil on **corporate donors** who may have funded ruling parties in **exchange for favours.**

- It has also mandated **disclosure** of donation details **since 2019.**

Connection between Corporate Donations and Policy Decisions:

- The Court found the **amendment** to the **Companies Act** manifestly **arbitrary**, as it removed the **cap of 7.5%** of a **company's profit** that can be donated to political parties without any requirement to disclose details of the recipient parties in its profit and loss accounts.
  - It has made the **logical connection** between unidentified **corporate donations** and the likelihood of **tailored policy decisions** to suit the donors.

Key concerns:

- A question arises whether the scheme's validity could have been **decided earlier** or whether the issuance of bonds on a regular basis **stayed**.
  - This was a **fit case** for the grant of an interim stay.
- How much of the thousands of crores of rupees given to parties under this scheme resulted in **policy measures favourable to the donors** or helped fund the deployment of additional campaign resources will **never be known.**

About Electoral Bond:

- It is a **financial tool** used to make donations to political parties. Bonds are available only at specific branches of the **State Bank of India**. One can purchase them digitally, by demand draft, or by cheque. The bonds are issued in **multiples** of Rs 1,000, Rs 10000, Rs 1,00,000, and Rs 1 crore.
- A donor with a KYC (Know Your Customer) compliant account can purchase the bonds and donate to a political party. The political Party can encash the bonds **within fifteen days**.
- These are available for **ten days** at the **beginning of every quarter,** viz, January, April, July, and October.
- Any party registered under **section 29A** of the Representation of the Peoples Act, 1951, and has secured **at least 1%** of the **votes** polled in the most recent **general** or **assembly elections** is entitled to receive electoral bonds.

Way Forward:

The verdict will help **ease donors' hold** on governance through **money power.**

- We need **public disclosure of funding** because political parties are the pillars of representative democracy, and transparent accounts are the key to preserving citizens' trust in parties and politicians.
- The public disclosure of political funding would also help **maintain the rule of law and remove corruption in the electoral and political process.**
  - The outcome of elections should not depend on which Party has more money to campaign and woo or buy voters.
  - The **separation of wealth from power** is a basic condition of a democratic system.
- We need to make our democracy healthy by enacting legislation that regulates political party funding and mandates public disclosure.

Related News:

According to a report by the **Association for Democratic Reforms (ADR),** almost 60% of the funds received by political parties in 2022 cannot be traced and came from "unknown" sources.

- ADR was established in 1999 by a group of professors from the Indian Institute of Management (IIM) Ahmedabad **to improve governance and strengthen democracy** through continuous work in the area of Electoral and Political Reforms.

Key Observations from the report:

- National parties declared ₹3,076.88 crore as income in 2022-23.
  - ₹1,832.87 crore — or **more than 59%** of this money came from **unknown sources.**
  - Of total unknown sources, the **share of income** from **electoral bonds** was ₹1,510.61 crore, or **82.42%.**
- The **vast majority** of these funds went to the **BJP**. During 2022-23, the ruling Party declared ₹1,400.23 crore as its income from unknown sources.
- The **Congress came a distant second**, claiming 17.19% of the money and declaring ₹315.11 crore as its income from unknown sources.

Impact of unknown political donations:

- Anonymous donations of high value tend to **undermine electoral democracy** and **governance** as they facilitate a **quid pro quo culture** involving donors and beneficiaries.
- The ADR has suggested stringent measures to enhance **transparency and accountability** in political funding:
- All donors should be **fully disclosed** under the **Right to Information (RTI) Act.**
- The EC's recommendation to grant **tax exemption** only to parties contesting and winning seats in elections should be implemented.
- There should be a provision for disclosure of donor's names contributing above Rs 2,000.

Cross voting in Rajya Sabha elections

News Excerpt:

The Rajya Sabha (RS) elections in the States of Uttar Pradesh, Himachal Pradesh and Karnataka witnessed cross-

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voting by MLAs belonging to different parties, raising concerns about the sanctity of the election process.

How are RS elections held?

- As per **Article 80** of the Constitution, representatives of each State to the RS are elected **indirectly** by the **elected members of their Legislative Assembly.**
  - The polls for RS will be required only if the number of candidates exceeds the number of vacancies.
- Till 1998, the outcome of the RS elections was usually a foregone conclusion.
  - The candidates nominated by various parties, according to their strength in the Assembly, used to be elected unopposed.
  - However, the June 1998 RS elections in Maharashtra witnessed cross-voting that resulted in the loss of a Congress party candidate.

Open ballot system of election:

- An amendment to the **Representation of the People Act of 1951** was carried out in **2003 to rein in the MLAs from such cross-voting.**
  - **Section 59** of the Act was amended to provide that **elections to RS shall be conducted by open ballot.**
  - The MLAs of political parties are required to **show their ballot paper** to the **authorized agent of their Party.**
    - **Not showing the ballot paper to the authorised agent or showing it to anyone else will disqualify the vote.**
  - **Independent MLAs are barred from showing their ballots to anyone.**

What does the Tenth Schedule state?

- The **52nd constitutional amendment** introduced the '**anti-defection' law** through the **Tenth Schedule in 1985.**
  - This Schedule provides that a member of a House of Parliament or State legislature who **voluntarily gives up the membership** of their political Party or votes against the instructions of their Party in a House is liable for disqualification from such House.
  - This instruction with respect to voting is issued by the **'whip'** of a party.
- However, the elections to RS are **not treated** as a proceeding within the Legislative Assembly.
  - **The Election Commission**, drawing reference to Supreme Court judgments, issued a clarification in **July 2017**.
    - **It specified that the provisions of the Tenth Schedule, with respect to voting against the party's instruction, will not apply to an RS election.**
    - Furthermore, political parties **cannot issue any 'whip**' to their members **for RS elections.**
    - This voting is not inside the House but is conducted by the Election Commission.

What have the courts ruled?

- The Supreme Court in **Kuldip Nayar v. Union of India (2006) upheld the system of open ballots** for **RS elections**.
  - It reasoned that if **secrecy becomes a source of corruption**, then **transparency can remove it.**
  - However, in the same case, the Court held that an elected MLA of a political party **would not face disqualification** under the Tenth Schedule **for voting against their party candidate.**
  - He/she may, at the most, attract disciplinary action from their political Party.
- The Supreme Court has also held in **Ravi S. Naik and Sanjay Bandekar vs Union of India (1994)** that voluntarily giving up membership under the Tenth Schedule is not synonymous with only formally resigning from the Party to which the member belongs.
  - The **conduct of a member both inside and outside the House** can be looked into to infer if **it qualifies as voluntarily giving up membership.**

Way Forward:

- It is necessary to uphold the higher principle of **free and fair elections** and its purity.
  - It would be wishful thinking to expect any further amendments to strengthen the laws against such voting practices since political parties benefit from such unprincipled tactics.
- The Supreme Court observed in the case relating to the **Chandigarh Mayoral election** that **it would not allow democracy to be murdered as cross-voting** in RS elections is a **serious threat to democracy.**

Simultaneous Elections

News Excerpt:

Recently, the Union Government formed a committee under former **President Ram Nath Kovind** to look into the feasibility of simultaneous elections to State Assemblies and the Lok Sabha.

Meaning of Simultaneous Election:

- The **Simultaneous election or One Nation, One Election** in India aims to synchronize elections for the Lok Sabha and all state assemblies. The idea is to hold these elections simultaneously, on a single day or within a specific time frame.
- In India, the general elections to elect the members of Parliament and state assembly polls are held separately when the incumbent Government's tenure ends or it gets dissolved for some reason.

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Arguments in favour of Simultaneous Elections	Arguments against Simultaneous Elections
1. **Reduced public expenses**: Holding simultaneous elections would reduce the massive expenditure incurred for conducting separate elections every year. Presently, the cost of holding elections for Lok Sabha and Legislative Assemblies of States and UTs has been pegged at Rs. 4500 crores by the Election Commission of India. 2. **Improving governance**: Elections lead to the imposition of a **Model Code of Conduct (MCC)** in the poll-bound State/area, and as a result, the entire development programme and activities of the Union and State Governments in that State come to a standstill. Frequent elections lead to the imposition of MCC over prolonged periods, which affects normal governance. This could be prevented through simultaneous elections. 3. **Preventing the disruptions of normal lives:** Frequent elections lead to disruption of normal public life and impact the functioning of essential services. If simultaneous elections are held, this period of disruption would be limited to a certain predetermined period. 4. **Lesser deployment of manpower**: It would free the manpower such as officials, teachers, armed forces, etc., which are often deployed for prolonged periods on election duties. **For example**, the 2014 Lok Sabha elections, which were held along with State Assembly Elections in Odisha, Andhra Pradesh, Sikkim, and Arunachal Pradesh, were spread over ten phases, and 1077 in situ companies and 1349 mobile companies of the Central Armed Police Force (CAPF) were deployed. 5. **To prevent populist measures**: Due to frequent elections, the political parties in power generally adopt populist measures instead of nationalist ones. This could create a situation akin to a **"roving bandit"** state. 6. **Curbing wastage of resources:** During elections, extensive use of non-renewable resources like fuel and excessive pamphlet printing contribute to environmental problems. Holding elections less frequently (once in five years) could curb these issues and promote sustainable development. 7. **Reduced voter fatigue:** Governments are **forever in campaign mode** because of frequent elections. Simultaneous elections can reduce voter fatigue. **8. Reduced parties' expenses**: An enormous amount of money has to be raised at every election. Election expenses of political parties can be reduced drastically if elections are held simultaneously. There would be **no duplication of fundraising**. This would save the public and business community multiple times from pressure for election donations.	1. **Issue of syncing the terms of Legislative assemblies and Lok Sabha:** The biggest challenge in the way of the 'One Nation One election' is to sync the terms of the various state legislative assemblies with those of Lok Sabha. 2. **No clarity on midterm poll/President rule:** There is also no clarity on dealing with situations like midterm polls or the President's rule in case any party fails to get the majority. Moreover, some states may get dissolved after sync, again breaking the sync. 3. **Expenditure:** Simultaneous conduct of elections would require large-scale purchase of **Electronic Voting Machines** and **Voter Verifiable Paper Audit Trail (VVPAT) machines.** For simultaneous elections, Rupees 9284.15 crore will be needed to procure EVMs and VVPATs. Further, storing these machines would increase the warehousing cost 4. **Concerns of regional political parties:** Regional political parties argue that having the two elections simultaneously would **hamper their prospects** because they won't be able to highlight local issues prominently. Furthermore, they fear they **cannot compete with national parties** in money and election strategies. 5. **Concerns of regional issues get overshadowed by national issues**: There is a worry that regional issues might get overshadowed by national issues, affecting the electoral outcome at the state level as people vote in State influenced by national issues. 6. **Anti-incumbency factor**: There is apprehension that whenever there is a majoritarian government at the Centre, any **anti-incumbency in the States is likely to get neutralized** if simultaneous elections are held. 7. **Autonomy of state government and Special provisions:** Simultaneous elections attack the autonomy and independence of state governments. This can weaken the federal structure and increase the conflict of interest between the Centre and states. Moreover, the terms of state governments vary, and some states are given special provisions under Article 371 of the Constitution. 8. **Elections as festivals of democracy**: In our country, with a population of almost 150 crores, it is a logistical challenge. In India, elections are festivals of democracy. This requires careful planning and coordination, which can be difficult if simultaneous elections are to be held. 9. **Information overload for voters**: Potential information overload for voters, given that they have to **pick their leaders simultaneously at multiple levels of Government**. Every voter has different considerations and, consequently, other voting preferences. This can poorly impact voters' decision-making abilities while picking candidates — due to confusion or overwhelm.

Constitutional provisions for holding simultaneous elections:

- In the 2018 report, the **Law Commission** headed by Justice B S Chauhan held that simultaneous elections could not be held within the existing framework of the Constitution.
- These could be held together "through appropriate amendments to the Constitution, the **Representation of the People Act 1951**, and **the Rules of Procedure of Lok Sabha and State Assemblies.**

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The articles that would require Amendment are:

- **Article 83 (2):** The Lok Sabha's term should not exceed five years but may be dissolved sooner.
- **Article 85 (2) (B):** A dissolution ends the very life of the existing House and a new House is constituted after general elections.
- **Article 172 (1):** A state assembly, unless sooner dissolved, shall continue for five years.
- **Article 174 (2) (B)** - The Governor has the power to dissolve the assembly on the aid and advice of the cabinet. The governor can apply his mind when the advice comes from a Chief Minister whose majority is in doubt.
- **Article 356** - Imposition of President's Rule in states.

Views on Simultaneous Election:

1. The Election Commission of India:

In 1983, in its Annual Report, the Election Commission of India recommended holding simultaneous elections for the Lok Sabha and State Legislative Assemblies. This recommendation stemmed from several compelling reasons:

- Significant **cost savings** by avoiding the substantial administrative expenses incurred during separate Lok Sabha and State Legislative Assembly elections.
- The **entire administrative set-up throughout the country slows down** considerably during the Lok Sabha or the Assemblies elections, and all other normal functions and activities of the Government, including developmental work, are pushed to the background.

2. Standing Committee on Personnel, Public Grievances, Law and Justice:

The standing committee submitted a report on the feasibility of holding simultaneous elections in 2015. Its recommendations are as follows:

- **Holding of elections in two phases:** The elections could be held in **two phases**. The elections to some assemblies could be held during the **midterm of Lok Sabha.** The polls to the remaining legislative assemblies could be held at the end of Lok Sabha's term. The term of some assemblies would have to be shortened, while the remaining could be extended to hold simultaneous elections.
- **Schedule of next cycle of elections:** The elections to all state assemblies, whose terms end within **six months to one year** before or after the appointed election date, can be **clubbed together**.
- **Schedule of Bye-elections:** The committee recommended that by-elections to all seats that become vacant during a year may be conducted together during a predetermined time.

Splits in Political Parties

News Excerpt

A recent split **in the Nationalist Congress Party (NCP)** has again raised the issue of splits in Political Parties.

Elections Symbol

- An election symbol is **a standardised identification** associated with the candidate which helps voters to identify which political party candidate belongs.
- The **regulation, reservation and allotment** of electoral symbols is entrusted with Election commission of India (ECI) and done in accordance with **Election Symbols (Reservation and Allotment) Order, 1968.**
- Rules **classify Election symbols** as reserved and free.
  - **Reserved**: Symbol reserved for a recognised political party for exclusive allotment to contesting candidates set up by that party.
  - **Free**: Symbol other than a reserved symbol.
- The Election Symbols Order **empowers ECI to decide disputes** among rival groups or sections of political parties who stake claim over the party name and symbol.
- The idea behind these symbols is to **facilitate voters** in voting even if they are illiterate.

How EC decides on splits within parties

- The Election Commission of India (ECI) fundamentally draws its power of superintendence, direction and control of elections from **Article 324 of the Constitution**.
- Parliament has accorded specific powers and duties to the ECI through the **Representation of People Act, 1951**. The Act, through Section 29A, gives ECI the power to register political parties.
- Splits in India's political parties, over issues of leadership, are not uncommon.
- In case of a split in a political party outside the legislature, the **Symbols Order 1968,** states:
  - Commission is satisfied that there are **rival sections or groups** of a recognised political party each of whom claims to be that party.
  - Commission should take into **account all the available facts** and circumstances of the case and hear their representatives.
  - Then **it may decide** that one such rival section or group or none of such rival sections or groups is that recognised political party.
  - The decision of the Commission **shall be binding** on all such rival sections or groups.
- This applies to disputes in recognised national and state parties (like the Shiv Sena).
- For splits in **registered but unrecognised parties**, the ECI usually advises the warring factions to resolve their differences internally or to approach the court.

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- The **first case** to be decided under the 1968 Order was the first **split in the Indian National Congress in 1969**.

Methods of Dealing with Party Splits and Defections

- The **Tenth Schedule** to the Constitution does **not allow a legislator to switch party** loyalties through voting against party direction on the floor of the House or through actions outside the House.
  - **Immunity** is available to defectors when **two-thirds or more legislators** in that House merge with any other party.
- After a close reading of the provisions of the Tenth Schedule, the Supreme Court in **Subhash Desai vs. Principal Secretary, Governor of Maharashtra (2023) states that:**
  - Only the political party can appoint the leader of the legislature group and the whip.
  - Drew a distinction between a political party and a legislature party.
- Before 1968, the EC issued notifications and executive orders under the **Conduct of Election Rules, 1961.**
  - The most high-profile split of a party before 1968 was that of the Communist Party of India (CPI) in 1964.
  - The ECI recognised the faction as CPI(M) after it found that the votes secured by the MPs and MLAs supporting the breakaway group added up to a significant amount in states.
- The ECI felt that merely having MPs and MLAs is **not enough to claim political party**, as the elected representatives had fought and won polls on tickets of their parent (undivided) parties.
  - It **introduced a new rule** under which the splinter group (other than the group that got the symbol) had to register itself as a separate party, and could lay claim to national or state party status only on the basis of its performance in the state or the central elections after registration.

Contemporary Issue

- The **novel method in the case of Shiv Sena** was the defectors claiming that they were the party and hence, there was no question of defection.
- According to the Supreme Court in **Sadiq Ali v Election Commission of India** (1971), in such cases the test of majority, test of party constitution, and the test of aims and objectives can be used.
- In Shiv Sena's case, the **ECI rejected the latter two tests**, because both factions were claiming to act in furtherance of the aims and objectives of the party, and the **party constitution** did not promote intra-party democracy.
- The **NCP's case is a curious one**, according to reports, both factions have passed resolutions expelling or suspending members of the other faction, and claiming to be the party.

Case Study: Shiv Sena Split

- The **Shiv Sena split** after Eknath Shinde led a rebellion by a group of legislators against Thackeray's leadership.
- It lead to the collapse of the previous Maharashtra government that was run in **coalition by the Shiv Sena, the NCP and the Congress**.
- Both factions, claiming to be the **real Shiv Sena,** had approached the Election Commission seeking the party's name and the electoral symbol.
- The poll panel **recognised the Shinde faction as the real Shiv Sena** and allocated the party name and the bow and arrow symbol to his group.
- Thackeray's faction was allocated a symbol of a flaming torch and named the Shiv Sena (**Uddhav Balasaheb Thackeray**).

Need for Inner-Party Democracy

- **Fair and transparent internal functioning** of parties ensures that democracy functions with the people too, since Indians' perception of politics is so closely tied to one's perception of party politics.
- **Bridge Trust deficit and prevent Hero Worship**: Inner-party democracy enhances the fair and transparent procedures in selecting leaders within political parties which counters a general trust deficit amongst the public. In absence of such provisions, a culture of Hero Worship gets promoted in a political party. **Dr. B.R. Ambedkar** considers such a situation as a sure road to degradation and eventual dictatorship.
- **Promotes Inclusive Representation**: Opaque nature of selecting party candidates also runs the risk of excluding marginalized groups. It leads to a denial of equality of status and opportunity, which is entrenched in India's Constitutional scheme.
- **The criminalization of Politics**: The transparency deficit in selecting candidates within political parties becomes a breeding ground for criminalization in Indian politics. With candidatures based on the whims of certain political heads, mere winnability becomes the sole criterion for fielding certain candidates, as those with significant money and muscle power can easily indulge in gerrymandering of the voter base.
- **Safeguard against dynastic politics**: It is integral for promoting freedom of speech and dissent within the political parties. It prevents the breeding of dynastic politics and political nepotism.
- **Counters factionalism**: Democratizing political parties can also work as a safety valve against factionalism and split into parties. Various incidents of internal party rivalry have culminated in splits.

Way Forward

- This **conundrum can be solved** by tweaking the law in two ways:

- A **party constitution should be mandatory** that lays down procedures beyond the existing requirement at the time of registration under Section 29A outlining the role of the political party in relation to the legislature party, removal and suspension of members, leadership challenges, and involvement of members in questions of leadership.
- The ECI must be empowered to suspend registration or **deregister a party on non-compliance** with basic requirements.

- **Settle disputes within factions**, including questions of leadership as seen often in the UK within a political party.
- Providing **ways of expression of dissent** and potential change of guard would protect a political party from breaking apart through subterfuge.
- An **empowered ECI** can ensure the enforcement of the rules to promote internal party democracy.
- The **170th Law Commission Report** had recommended the addition of a **Part IVC to the Representation of People Act** to regulate the internal functioning of parties.

GOVERNANCE

Sports Governance in India

News Excerpt

A recent protest by Wrestlers across India against the Wrestling Federation of India's (WFI) President on the allegation of sexual harassment raises serious issues over the issue of sports governance in India.

Evolution of Sports Governance in India

- In 1950, the Government of India established the All India Council of Sports for addressing sports standards in the country.
- In 1982, the Government of India established the Department of Youth Affairs and Sports and subsequently National Sports Policy was initiated in 1984.
- In 2000, the Department of Youth Affairs and Sports was into a Ministry of Youth Affairs and Sports (MYAS).
- In 2011, Ministry notified the National Sports Development Code of India 2011.

The present model of Sports Governance

- The present model of sports governance is divided into two wings:
    - Ministry of Youth Affairs and Sports- Under its aegis Sports Authority of India (SAI) along with other bodies works towards the promotion of sports training.
    - Other wings include associations like Indian Olympic Association (IOA), along with other State Olympic Associations and national and state sports federations.
- Sports federations get financial and infrastructural support from the Ministry which also controls these federations through political representations.
- All sports federations and State Olympic Association organise events under the IOA.

Good Governance in Sports in India

Sports Code 2011
- It aims to bring good governance in National Sports Federation.
- It provides for basic universal principles of good governance, ethics and fair play.
- It places age and tenure restrictions on the office-bearers of federations and provide provision for free and fair elections.

Draft National Code for Good Governance
- Proposed in 2017, set of guidelines for the management and administration of sports bodies in India.
- It provides measures like:
    - Age and Tenure restrictions for office-bearers
    - Independent directors on the governing board
    - Transparent and fair elections
    - Improving transparency and accountability in sports bodies.

Issues with Sports Governance in India

- **Division Issue**:
    - There is no division between management and governance as a result executive committees often end up doing management work than focusing on governance.
    - It also results in a lack of oversight and accountability.
- **Infrastructure problem**:
    - Sports is a State Subject and therefore a uniform approach towards the development of infrastructure throughout the country is missing.
    - Without such infrastructure, it becomes difficult to create a culture of sports in the country.
- **Accountability Factor**:
    - Accountability and lack of transparency in decision-making have emerged as serious issues with irregular revenue management.
    - There are several examples of the commonwealth scams and spot-fixing scandals.
- **Professionalism issues**:
    - The majority of governing bodies of sports lack professionalism in their work, they rely on volunteers instead of skilled professionals.
- **Sexual harassment**:

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  - Malpractices of Sexual harassment have marred the functioning of sports organisations. Cases like Ruchika Girhotra shows the response from sports organizations has been slow and inadequate.
  - This happens as Many sports organizations do not have a formal policy in place for dealing with such complaints, and there is often no clear chain of command for reporting incidents.

Way-Forward- Addressing the situation

There are several ways through which sports governance can be improved in India:

- **Athletes Participation**:
  - Athletes are the centre of the sports and hence there must be mechanisms which allow for their representation at all levels of sports governance.
  - This will also bring accountability and transparency to the sports organisations.
  - The Olympic charter also calls for the election of athlete representatives as members of countries' National Olympic Committee
- **Sports Federations Reforms**:
  - Sports federations need reforms especially when it comes to autonomy.
  - There is also a need to develop democratic structures which work free from governmental and external influence.
  - Sports Federations should work towards reducing corruption and nepotism and autonomy paves the way for the same.
- **Sports Awareness:**
  - There is a need to build a strong sporting culture in the country, for this education system needs to give equal importance to sports rather than treating it as extra-curricular activities.
  - Sports helps in improving a child's confidence, and self-image among other skill set.
- **Bottom-Up Reforms:**
  - Reforms should begin at the bottom, and hence there is a need to reconstitute district and state bodies that feed into national sports governance, on the lines which ensure accountability and transparency are built into the system.
- **Greater Representation of Women:**
  - Greater representation of women in sports governance positions can help in ensuring that the rights of women are preserved and for this several measures ranging from gender quotas to gender-sensitive policies must be implemented.

Local Governance Issues

News Excerpt:

An **Annual Survey of Indian Cities** shows that most local governments depend financially on the State governments.

Evolution of Local Self-government in India:

- The **first Municipal Corporation** was set up in the former Presidency Town of Madras in 1688, followed by similar corporations in Bombay and Calcutta in 1726.
- Elected local self-government bodies came into existence after 1882, when **Lord Rippon**, took the initiative to create these **local boards.**
- Over a period of time, these village bodies were converted to form Panchayats.
- After the **Government of India Act in 1919**, village panchayats were firmly established in several provinces.
- While **Lord Rippon** is widely known as the **father of local self-government**, **Mahatma Gandhi** is also regarded as a key player in decentralizing political and economic power at the grassroots levels.
  - Gandhi supported the strengthening of village panchayats and **ensured the involvement of local self-governments in all developmental initiatives.**
  - **Panchayats, or Panchayati Raj,** is one of India's oldest local self-government systems. The word 'Panchayat' means an assembly (ayat) or five (panch) people who rule (raj).
- The **73rd and 74th Constitutional amendments**, made it mandatory for every state to have rural and urban local self-governments in place and the mechanisms to fund these bodies and also to carry out elections every five years.
- This ensured that rural and urban local bodies were given **Constitutional status** with uniformity in their functioning and structure across India.
- At present, there are over 250,000 local self-government bodies across the country, with over 3.1 million elected representatives. Out of this, 1.3 million representatives are women.

Key Findings from the Report:

- The Local government has limited control over the hiring process and distribution of work responsibilities.
  - However, only **Assam** empowered its city governments to collect all key taxes. Except for five states - **Bihar, Jharkhand, Odisha, Meghalaya, and Rajasthan** - all the others have to get approval from the State before borrowing money.
- **Asymmetry of power:** There is asymmetry of power across four city categories – megacities (>4 million (mn) population), large cities (1-4 mn), medium cities (0.5 mn-1 mn), small cities (<0.5 mn).

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- While megacities have more say over their finances, their mayors do not have five-year tenure and are not directly elected.
- More mayors in smaller cities have five-year tenure and are directly elected, but they lack a say in the city's finances.
- Hence, it prevents innovative solutions towards limited resources available in the Indian Economy.

- **Limited Power:** Mayors and councils have limited powers in staff appointments and promotions.
  - No city has complete power over its staff. Cities especially lack control over their senior management teams deputed directly by State governments.
  - This makes it tough to initiate disciplinary proceedings against them and also prevents building a "**strong organization or exact accountability**" from the workers.
  - Due to poor control over the appointment of staff, the local governments suffer from high levels of unfilled posts.
- **Lack of Transparency:** There exist flaws in publishing city-wise information that citizens can access easily. Only 11 out of 35 States/UT have enacted the Public Disclosure Law that mandates the publishing of key civic data.
  - **Financial Transparency**: The City has to make available its overall budget, budget for each ward, and financial statements every quarter and annually. According to the current data available, no city publishes quarterly financial audited statements and only 28% of them disseminate their annual audited financial statements.
- **Comparison with foreign cities:** If calculating the number of city staff per one lakh population, there are 5,906 city workers in **New York** and 2,936 in **London** compared to just 317 in Bangalore, 586 in Hyderabad, and 938 in Mumbai. Cities such as New York have also been empowered to impose taxes, approve their own budget, invest, and borrow without approval.

Significance of Local Self-Governance:

- **Addressing grassroots problems:** Public issues are majorly solved at the ground level by local governance only where the local self-government is responsible for various necessities such as infrastructure and maintenance, water availability, educational demands, hospitality, etc.
- **People's say is a priority:** The people have more decision-making power over their problems. The representatives are directly elected from among the same community, thus knowing the issues for that particular region.
- **Efficient provision of public goods:** Governments with smaller jurisdictions can provide services as per the preferences of their residents.
- **Promotes deeper democracy:** Governments closer to the people allow citizens to engage with public affairs more easily.

Way Forward:

- **Maintain a balance between Decentralization and Centralization:** Governments that work harder to achieve more efficient management **need to involve their citizens and other stakeholders** in their good governance.
- **Enhancing Transparency**: The local government should therefore pay attention to the **preparation, presentation, and dissemination of quality financial information** to the citizens in a timely and engaging manner.
- **Need to hire skilled human resources**: Strategic HR practices enable further insights into the linkage of institutional pressures, **training, and development programs at regular intervals**.
- **Need for local capacity instead of concentrated authority**: Gram Panchayat Acts in many States have empowered district-level bureaucrats, to act against local representatives for official misconduct. This kind of power leaves **political interference** against the development of the particular region.
- **Reduce Asymmetry in decision-making:** Asymmetric power relations among local officers within a participatory development space have better results if undertaken as dynamic and not static. Hence, the **reform process** should include the local government and its officers in the power-sharing process.

There is a need for larger discussions about power division and sharing between governments at the Union, State, and local levels. The role and responsibilities of local governments should be foregrounded by normative values that have found expression in the Constitution.4

Panchayati Raj Institutions

News Excerpt:

30 years after the 73rd Constitutional Amendment, Panchayati Raj institutions still leave a lot to be desired.

About Panchayati Raj Institutions (PRIs):

- The **73rd Constitutional Amendment** granted PRIs a Constitutional status, aiming to fulfil **Article 40** of the Constitution.

> **Article 40** is part of the **Directive Principles of State Policy**- It calls for the organization of village Panchayats and the delegation of necessary powers for them to function as self-governing units.

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- Panchayats were established as the **third tier of decentralized governance** in India, with a focus on **local economic planning** and **social justice**.
- The Amendment introduced **uniform provisions** for **elections, composition, tenure, and financial status** across the country, with **some exceptions,** such as **tribal areas under Schedule V**, as well as states like **Nagaland, Meghalaya, and Mizoram**.
- The Amendment **mandated certain provisions**:
    - **Three-tier PRI system** at village, block, and district levels;
    - **Direct elections** for a **five-year term**;
    - **30% reservation for women** and proportionate **reservation for Scheduled Castes and Tribes**;
    - Establishment of **State Finance Commissions** and independent **state election commissions**.
- Prior to this Amendment, PRIs had varied legal statuses across different states.

Current Status of PRIs:

- Three decades after this significant change, the devolution of the **three Fs — Functions, Functionaries, and Finances** — remains uneven across Indian states.
- Despite a constitutional mandate, the **actual implementation** has been inconsistent.

Devolution Index of PRI:

- The **Union Ministry of Panchayati Raj** launched the **Panchayat Empowerment & Accountability Incentive Scheme (PEAIS)** in **2006-07** to assess the performance of states in empowering PRIs, developing a **Devolution Index (DI)** to measure progress.
- The **objective of PEAIS** was to arrive at a **DI** to assess the extent **to which 29 subjects** on framework, functions, finances, and functionaries were devolved to PRIs.
- The assessment under this scheme was carried out by independent organizations, such as the **National Council for Applied Economic Research (NCAER)** from **2006-07 to 2008-09** and the **Indian Institute of Public Administration (IIPA)** from **2009-10 to 2012-13**.
- However, the results have been **largely disappointing**.
    - A **2015-16 Devolution Report** by the **Tata Institute of Social Sciences** highlighted the gap between policy devolution and actual practice.
    - **Himachal Pradesh ranked 17th among 26 states** in the **Aggregate Index** of Policy adjusted against practice, indicating limited practical devolution despite policy changes.
    - Only a few states, such as **Kerala, Karnataka, Maharashtra, Tamil Nadu, and Gujarat**, have made notable progress.

Provisions at the discretion of the states:

- Matters related to **Functions, Functionaries, and Finances**—detailed from **Article 243A to Article 243G** of the Constitution—are entrusted to the **discretion of the states**.
- The **powers and functions of the Gram Sabha** (GS), which is crucial for grassroots democracy, as well as the **composition of Panchayats** and the **election of their chairpersons**, are **determined by state discretion**.
- State laws also define the **powers, authority, and responsibilities of Panchayats**, enabling them to operate as institutions of local self-government.
- These laws empower Panchayats to prepare plans for **economic development and social justice** and to carry out various **mandatory and discretionary functions** within their jurisdiction.
- Additionally, **state laws** are expected **to grant Panchayats the authority to implement schemes** related to **economic development and social justice**, particularly in relation to the **29 subjects listed in Schedule XI** of the Constitution, which cover matters of local concern affecting people's lives.

Financial Dependency

- PRIs typically implement central or state government schemes in a limited capacity, **reliant on grants from the Central Finance Commission (CFC)**, **State Finance Commission (SFC)**, their own revenue sources, and other funding avenues.
- However, their **financial independence is minimal**, as their own source revenue is low.
- The **15th CFC provided untied grants to PRIs**, but even these are often restricted by state-imposed conditions.
- **Most funds are earmarked for specific tasks** without considering local contexts, such as the **Swachh Bharat Mission** grant for toilets, which is insufficient in remote areas due to high transportation costs.

Lack of Awareness:

- Despite training programs, many **PRI representatives** lack awareness of their powers and functions. The **Institute of Chartered Accountants of India** and the **Comptroller and Auditor General of India** have developed **training courses for PRI accountants**, yet the **Skill India program** has not capitalized on this to create quality accountants for PRIs.

Way Forward:

- There is a pressing **need to sensitize all stakeholders**, including **elected representatives**, **line departments**, and **village residents**, about the role of PRIs as local self-government institutions, in line with the 73rd Constitutional Amendment.
- Currently, **PRIs are subordinate to state bureaucracy and politicians**, hindering the realization of **participatory governance, decentralized planning,** and **grassroots democracy**. This issue **needs to be fixed** in order to properly implement PRI.

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Alderman

News Excerpt

During the review of the Delhi government's petition against the appointment of Aldermen by the Lieutenant-Governor (LG), the Supreme Court expressed concern over the potential destabilization of the Elected Civic Body if the LG were given the power to nominate members of the Municipal Corporation of Delhi (MCD).

About Alderman:

Etymology and Early Usage:

- The word "alderman" is derived from the combination of "old" and "man," originally referring to an older or experienced person.
- Initially, it denoted the elders of a clan or tribe, but later it became a term for the king's viceroys, irrespective of age.
- Over time, it acquired a more specific meaning as the "chief magistrate of a county," with both civil and military responsibilities.

Association with Municipal Governments:

- In the 12th century CE, with the increasing association of guilds with municipal governments, "alderman" came to be used for officers of municipal bodies.
- This usage of the term persists to the present day.

The Case of Delhi:

- According to the Delhi Municipal Corporation Act of 1957, the administrator (the Lieutenant Governor) has the authority to nominate ten individuals, aged 25 or above, to the municipal corporation.
- These nominees are expected to possess special knowledge or experience in municipal administration.
- Their role is to assist the house in making decisions of public importance.

Issues Associated with the Appointment of Aldermen

Suitability of Nominated Individuals:

- The first issue pertains to the suitability of the individuals nominated for the position.
- Upon submission of the recommendations to the LG, it was discovered that two out of the ten nominees were deemed technically unqualified for the role.
- This raises doubts about the comprehensiveness and transparency of the nomination process, as it is crucial to appoint only qualified and suitable individuals for the position.

Maintenance of Control and Influence:

- The second concern revolves around the perception that the LG's appointment of aldermen aims to retain control and influence within the Municipal Corporation of Delhi (MCD), despite their electoral defeat.
- This raises questions about democratic principles of representation and raises concerns about the fairness of power dynamics within the MCD.

Supreme Court Observations

- The Additional Solicitor General, representing the Lieutenant Governor (L-G), argued that there is a clear distinction between the L-G's powers under Article 239AA of the Constitution and their role as the Administrator of the national capital.
- It was claimed that the L-G has an active role in the nomination of aldermen based on the existing law.
- However, the Supreme Court (SC) expressed concerns that granting such power to the L-G could potentially destabilize the democratically elected Municipal Corporation of Delhi (MCD). This is because the aldermen, if nominated by the L-G, would have voting power and could impact the functioning of the MCD.
- The SC clarified that the L-G does not possess extensive executive powers in the national capital, which operates under a unique "Asymmetric Federal Model" of governance.
- In this model, different regions or components within a federation have varying degrees of autonomy and powers.
- The court specified that the L-G can exercise executive power at their discretion only in three specific areas, as stated in Article 239AA(3)(a):
  - Public order
  - Police
  - Land in Delhi
- The court also stated that if the L-G disagrees with the Council of Ministers of the Government of the National Capital Territory of Delhi, they should follow the procedure outlined in the Transaction of Business (ToB) Rules 1961.
  - These ToB rules derive from Article 77(3) of the Constitution, which provides a framework for the allocation of work and responsibilities among various government departments and ministries.
  - The ToB rules outline the procedures for formulating, approving, and implementing government policies, decisions, and actions.

Demand for 'Bhil Pradesh'

News Excerpt:

A large number of people from the Bhil tribe recently gathered at a rally in **Rajasthan's Mangarh Dham**, where **Banswara's** Member of Parliament again raised the "long due" demand for an independent **'Bhil state'.**

More details about the news:

- After the mega rally, a delegation will meet the President and the Prime Minister with the proposal.
- **Monument at Mangarh Dham in Rajasthan's Banswara**: A massacre of the Bhil tribe here during

colonial rule led to one of the earliest calls for a separate tribal state.

- The idea of a tribal state, comprising parts of **Rajasthan, Madhya Pradesh, Gujarat and Maharashtra**, has been discussed earlier, too.

About 'Bhil Pradesh':

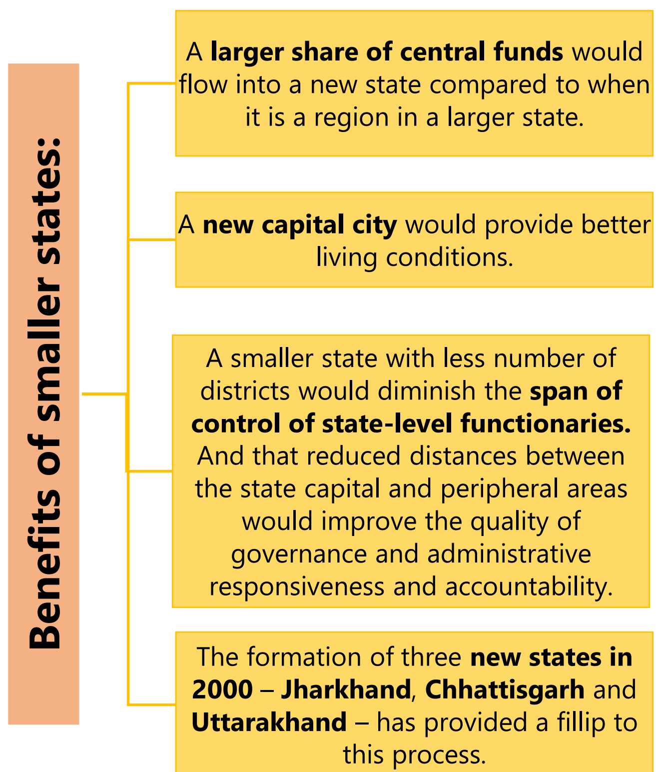
- The demand for a **separate tribal state in western India** was previously put forward by regional parties such as the **Bharatiya Tribal Party (BTP)**.
- The **Bhil community** has been demanding that **49 districts** be carved out of the **four states** to establish Bhil Pradesh.
- Bhil social reformer and spiritual leader **Govind Guru** first raised the demand for a separate state for tribals back in **1913**.
- This was after the **Mangarh massacre**, which took place **six years before Jallianwalla Bagh** and is sometimes referred to as the **"Adivasi Jallianwala"**. It saw hundreds of Bhil tribals being killed by **British forces** on November 17, 1913, in the **hills of Mangarh** on the Rajasthan-Gujarat border.
- Post-Independence, the demand for Bhil Pradesh was raised repeatedly.

Reasons for demand for the separate state:

- Earlier, the **Dungarpur, Banswara, and Udaipur** regions in Rajasthan and Gujarat, MP, etc., were part of a single entity. However, post-independence, the tribal majority regions were divided by the political parties, so the tribals didn't organize and unite.
- Several Union governments brought various "**laws, benefits, schemes, and committee reports**" on tribals over time, but their execution and implementation went slow. **For example:**
  - The Provisions of the **Panchayats (Extension to Scheduled Areas) Act, 1996**, a law meant to decentralize governance and empower Gram Sabhas in tribal areas. The law was enacted in **1996**. The Rajasthan government adopted the law in **1999**, and came out with its Rules in **2011**.
- Many tribal parties in the region have emerged over the years on the **planks of empowering** their community.
- Economic backwardness of sub-regions within large states has also emerged as an important ground on which demands for smaller states are being made. This is evident from the **immediate demands** for the formation of **Vidarbha, Bodoland and Saurashtra**, among other states.

Challenges:

- Every person has a right to demand, and there should be smaller states as it is good for development. However, **creating a state based on caste is not appropriate.** If it is Adivasis today, tomorrow you will have other communities demanding the same on the **basis of their caste**, which is not good for the society and the country.
- A small state is likely to **face limitations in terms of the natural** (physical) and human resources available to it.
- It will lack the kind of **agro-climatic diversity** required for economic and developmental activities.
- It would also be **restricted in its capability** to raise resources internally.
- A new small state may find itself lacking in **infrastructure (administrative and industrial), which requires time, money and effort to build.** Experience shows that it takes about a decade for a new state and its government and administrative institutions to become stable, for various issues of division of assets, **funds and the state civil service(s) to get fully resolved**, and for links to the new state capital to stabilize. The cost of this transition is not low, and the state's performance may suffer during this interim period.



Way Forward:

- We cannot fix a state's optimum size on a whim. It calls for a thorough evaluation of **physical features** like land quality and topography, agro-climatic conditions, socio-cultural factors, natural and human resource availability, density of population, means of communication, existing administrative culture and effectiveness of its district and regional administrative units and so on.
- Much more than the size of a state, it is the **quality of governance and administration**, the diverse talent available within the state's population, and the leadership's drive and vision that determine whether a particular state performs better than the others.

Supreme Court Ruling: States Can Tax Mining Activities

News Excerpt:

The Supreme Court has clarified that **royalties** are not considered a **tax**, affirming that **states possess the authority to tax mining activities** independently.

Tax:

- Taxes are **compulsory payments** imposed on **individuals or businesses** by **government authorities** at the local, regional, or national level.
- These tax revenues fund **government operations**, including **infrastructure projects** like roads and schools, as well as **programs** such as Social Security and Medicare.

Royalty:

- A royalty is a payment given to an **individual or company** for the continuous **use of their property**, which can include **copyrighted works, franchises,** and **natural resources**.
- Royalties can be earned from both **tangible and intangible assets**.
- They serve as **compensation to owners** when they license their assets for use by another party.

More details about the news:

- The case, **Mineral Area Development Authority v M/s Steel Authority of India**, had been pending for over 25 years.
- This historic verdict was delivered by a **Constitution Bench** of **nine judges** with a **majority of 8-1**.
- It enables states to **impose taxes on mining operations** and the land utilized for such activities.

About the Controversy

- **Section 9 of Mines and Minerals (Development and Regulation) Act (MMDRA), 1957**
  - The controversy originated from **Section 9** of the **MMDRA 1957**, which mandates leaseholders to pay royalties for minerals extracted from leased land.
  - The **key issue** was whether royalties, when paid to state governments leasing the land, constituted a tax.
- **India Cement Ltd v State of Tamil Nadu**
  - This issue was first addressed by the **Supreme Court** in this **1989** case, where a **seven-judge Bench** ruled that **states could collect royalties** but **not impose taxes on mining activities**, as the Centre had overarching authority under **Entry 54** of the **Union List**.
- **State of West Bengal v Kesoram Industries Ltd**
  - However, in 2004, in State of West Bengal v Kesoram Industries Ltd, a **five-judge Bench** suggested a typographical error in the India Cements decision, asserting that the phrase "royalty is a tax" should be "**cess on royalty is a tax**."
  - The **smaller bench size** couldn't **overrule the previous decision.**
- **Mineral Area Development Authority case**
  - By 2011, the Mineral Area Development Authority case concerning a **Bihar law imposing a cess on mineral-bearing land** further highlighted the conflict between the Kesoram Industries and India Cement decisions, prompting a referral to a nine-judge Bench.

Reasons for the Majority Ruling:

- The majority held that **royalties are not taxes** due to a **fundamental conceptual difference**.
- **Royalties** are **payments** based on **contracts between the mining leaseholder and the lessor**, often a private party.
- In contrast, **taxes fund public welfare and infrastructure**.
- The court emphasized that **royalties are compensation for exclusive mineral rights**, not public revenue.

States' Power to Tax Mineral Development:

- The court also examined whether states could tax Mineral Development activities or if this was solely under the Centre's jurisdiction per the MMDRA.
- The **Seventh Schedule** of the Constitution divides **powers between states and the Centre.**

Seventh Schedule:

- The **Seventh Schedule is one of the 12 schedules** of the Indian Constitution.
- It is an important provision that regulates the relationship between the Centre and the State.
- The **7th schedule** of the Indian Constitution deals with the division of powers between the Union and State Governments.
- The Legislative subjects in the 7th schedule of the Indian Constitution are divided **between the Center and the State.**
- The division is done under three lists – the **Union list (List I), the State list (List II), and the Concurrent list (List III)**.

- **Entry 50 of the State List** grants states the authority to legislate on "**Taxes on mineral rights** subject to any limitations imposed by **Parliament** by law relating to **mineral development**."
- **Entry 54 of the Union List** gives the Centre control over the "Regulation of mines and mineral development to the extent to which... is declared by Parliament by law to be expedient in the public interest."
- The ruling clarified that **since royalties are not taxes**, the state's power to impose taxes on mineral rights remains intact under Entry 50.
- The **MMDRA provides** states with a revenue stream through **royalties but does not restrict their taxation powers.**
- This landmark decision reinforces **states' rights** to **independently tax mining activities**, distinguishing royalties from taxes and clarifying the **Constitutional**

powers of states and the Centre regarding mineral development.

Why did Justice Nagarathna dissent?

- **She disagreed** with the majority opinion on **both key issues** in the case.
  - She argued that **royalties under the MMDRA** should be regarded as a tax to **promote mineral development**. Allowing states to impose additional levies and cesses (various types of taxes) on top of the royalties would undermine this objective.
  - She contended that the **states' authority to levy taxes** was effectively **nullified** after the **MMDRA was enacted** because it permits states to collect taxes in the form of royalties. While the Central Government retains full control over mineral development.
- She asserted that **Entry 49 of the State List does not grant states** the authority to tax land containing minerals.

DNA Profiling in Courts

News Excerpt:

A recent ruling by the Madras High Court highlights the complexities surrounding the use of DNA evidence in legal proceedings.

More About the case:

- In mid-June, the Madras High Court overturned the conviction of a man accused of rape under the Protection of Children from Sexual Offences (POCSO) Act.
- The court found that the conviction was primarily based on a DNA test that established the appellant's paternity despite other evidence suggesting that the victim had falsely accused him of concealing a love affair.
- The court ruled that the prosecution failed to prove the case beyond a reasonable doubt, emphasizing that DNA evidence alone should not determine guilt.

What is DNA Profiling?

- DNA, or deoxyribonucleic acid, is the genetic material found in the cells of all living organisms.
- It is composed of 23 pairs of chromosomes inherited from both parents, encoding information that dictates an individual's physical and physiological traits.
- Because the **same DNA sequence is present** in almost every cell of the body, DNA can be extracted from various biological materials, such as **saliva, blood, and hair.**
- **Forensic DNA profiling** typically focuses on specific locations in the DNA called **Short Tandem Repeats (STRs),** which **vary among individuals and are used to create a DNA profile.**
- **DNA fingerprinting** was an earlier method that analyzed **Variable Number Tandem Repeats (VNTRs)**, which **are longer and more complex sequences.**
- While both DNA fingerprinting and DNA profiling aim to identify individuals based on their genetic makeup, **DNA profiling is more precise,** faster, and widely used today, whereas DNA fingerprinting has largely been replaced in forensic applications.

Challenges Associated with DNA profiling as Evidence

DNA profiling is a powerful tool in forensic science, but it is not infallible.

The process involves **multiple steps, including DNA isolation, amplification of genetic markers, and statistical analysis.**

Challenges such as **sample contamination, degradation, or misidentification** can compromise the reliability of DNA evidence.

Experts caution that **DNA analysis is based on probability, not certainty, and should be corroborated with other evidence.**

What are the Legal Provisions Regarding DNA Profiling in India?

- **Indian Constitution: Article 20(3)** protects individuals from being forced to testify against themselves, ensuring **protection against self-incrimination.**
  - **Article 21** safeguards the right to life and personal liberty, prohibiting unauthorized interference.
- **Code of Criminal Procedure, 1973 (CrPC):** Section 53 authorizes DNA profiling of suspects at the investigation agency's request. **Section 53A specifically allows DNA profiling for rape suspects.**
  - The **Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023** replaced the Code of Criminal Procedure (CrPC) of 1973.
- **Indian Evidence Act, 1872: S**ections 45-51 pertain to the admissibility of expert testimony, including DNA evidence, in court.

Indian Courts Rulings:

- The Madras High Court highlights the **importance of corroborative evidence, stating that DNA evidence should not be the sole basis for conviction.**
- The court outlined three possible outcomes of DNA profile comparisons:
  - A **match** indicates a strong probability that the samples came from the same source.
  - **Exclusion** indicating the samples came from different sources and
  - **Inconclusive** where the data does not support a definitive conclusion.
- The court also referred to the Law Commission of India's 2003 report, which highlighted the limitations of DNA evidence in conclusively proving identity.

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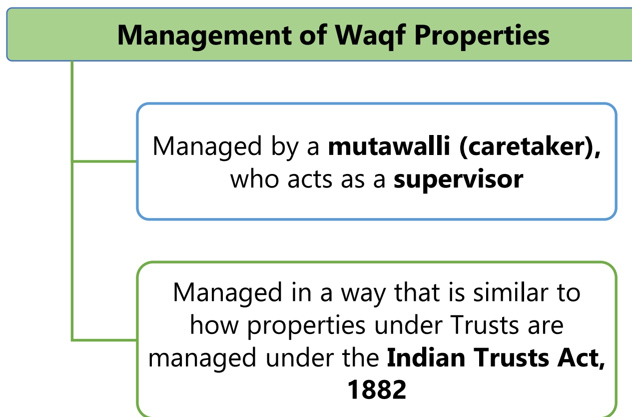
- The report emphasized that DNA profiling is more valuable for investigation purposes rather than as conclusive evidence in court.
- For example, a DNA profile match might occur in **1 out of 100,000 people**, illustrating the need for **additional evidence to establish guilt or innocence.**

- The **"random occurrence ratio"** indicates how frequently a particular DNA profile might appear in the population, which may not be sufficient to establish guilt beyond a reasonable doubt.
- In the 2019 case of **Pattu Rajan v. State of Tamil Nadu**, the Supreme Court reiterated that while DNA evidence is becoming more reliable with advances in science, it is not infallible.
- The **probative value of DNA evidence varies depending on the case** and must be weighed alongside other evidence.



Way Forward:

The justice system must continue to rely on a holistic assessment of all available evidence to ensure accurate outcomes.

- Invest in research and development to improve DNA profiling techniques and address issues related to sample degradation and contamination. Standardized procedures and ensured quality control in forensic labs.
- Develop guidelines for the admissibility and weight of DNA evidence in court to ensure fair outcomes.
- The DNA Technology Bill 2019, which aims to **ensure DNA profiling is used appropriately**, needs to be revisited and potentially revised to address privacy concerns and ensure robust safeguards.
- Ensure transparency in how DNA evidence is collected, analyzed, and presented in court.

ACTS AND LEGISLATIONS

Special Marriage Act

News Excerpt:

An estranged **Parsi wife** of a prominent **Hindu** industrialist is seeking legal advice on her **alimony rights**, their marriage was solemnised under the **Special Marriage Act (SMA)** and not the Hindu Marriage Act (HMA).

Key Features of the Act:

1. Enacted in 1872 and later re-enacted in 1954 to solemnise and recognise marriages between individuals from different faiths, communities, or religions (Hindus, Muslims, Christians, Sikhs, Jains, and Buddhists) and to regulate inter-faith marriage, separation, and other related issues.
2. Marriages solemnised under the SMA 1954 are entirely legal and binding.
3. The minimum age to get married under the SMA is 21 years for males and 18 years for females.
4. Marriages under this act are solemnised in the presence of a Marriage Officer, without any religious ceremonies or rituals. The Marriage Officer is responsible for maintaining marriage records.
5. Registration of marriages is mandatory if conducted under the SMA.

Key issues related to SMA:

- **Alimony and maintenance: Right to Equality**
  - **Section 36** deals with interim support, while **Section 37** addresses permanent alimony and maintenance.
    - Under **Section 37** of SMA, **only the wife** can claim permanent **alimony** and **maintenance** from the husband, whereas according to **Section 25** of **HMA**, **either party**, i.e., the husband or the wife, can claim permanent alimony and maintenance.
    - The condition that **only women** are **eligible** for alimony under SMA violates the **Right to Equality**.
- **Notice period: Right to Privacy**
  - Under **Section 7 (Objection to marriage)**, any person can object to the marriage before thirty days from the date of the notice's publication.
  - This provision is often used to **harass** consenting **inter-religious couples** and has been challenged several times for endangering the lives of such couples.
    - In **2009**, the **Delhi High Court,** underlining the right to privacy, **struck** down the **practice of posting the notice** of intended marriage under the SMA to the residential addresses of both parties through the police station of the concerned jurisdiction to verify their addresses.
    - In **2021**, the **Allahabad High Court** ruled that couples seeking to solemnise their marriage

under the SMA, 1954 can choose **not to publish** the **30-day notice** of their intention to marry.

- **Property and Inheritance:**
  - **Section 26,** which deals with **succession** under the SMA, recognises the validity of children born to people married under the SMA.
    - The offspring of such marriages are **not entitled** to **ancestral property**.
    - They can only obtain a share of their parents' self-owned or inherited property.

Positive aspects of SMA:

- **No need for conversion:**
  - Laws, such as the **Muslim Marriage Act 1954**, and the **Hindu Marriage Act (HMA) 1955**, require either spouse to **convert** to the religion of the other before marriage.
  - SMA allows individuals from different religions to marry without the need to convert.
- **Succession rights under SMA:**
  - Rights about the succession of property of a person married under this Act, or that of their children, are governed by the **Indian Succession Act 1925.**
  - **Children** born under the SMA have **equal rights** over both parents' properties, as opposed to unequal rights of sons and daughters under religious laws.

Way Forward:

- **Awareness campaigns** and **initiatives** should be started to **inform** people about the **legal provisions** and **procedures** followed in the Special Marriage Act.
  - Thus helping individuals make **informed decisions** when opting for such marriages.
  - It would bring more **inclusivity** and **diversity** to the institution of marriage.
- Authorities should look towards **providing security** to the couples opting for marriages under the act.
  - This would **negate** the chances of **honour killings,** which are quite **prevalent**.
- The government could strive to **speed up** and **improve** the **procedure** to make marriages easier under the SMA.
  - The **30-day notice rule** has been a **contentious** subject. This requirement could be **done away** with or made **optional** by the government.

Epidemic Diseases Act, 1987

News Excerpt:

The 22nd Law Commission of India has submitted its Report No. 286, titled "**A Comprehensive Review of the Epidemic Diseases Act, 1897",** to the Government of India.

Law Commission of India:

- The Law Commission of India is a **non-statutory body** constituted by a notification from the Government of India.
- It **carries out research** in the field of law, and the Commission makes recommendations to the Government (in the form of Reports) as per its terms of reference.
  - It provides an excellent, thought-provoking, and vital **review of the laws in India.**
- The Law Commission has taken up various **subjects on references made** by the **Department of Legal Affairs**, **Supreme Court** and **High Courts** and submitted more than 250 reports.

Epidemic Diseases Act, 1897:

- The **colonial government** introduced the Act to tackle the epidemic of **bubonic plague** that had spread in the erstwhile **Bombay Presidency** in the 1890s.
- Using powers conferred by the Act, colony authorities would search **suspected plague cases** in homes and among passengers, with forcible **segregations**, **evacuations**, and **demolitions** of infected places.
- The Act has been regularly used to treat various diseases in India, such as **swine flu, cholera, malaria, and dengue**.
  - In 2018, the Act was enforced as cholera began to spread in a region of Gujarat.

Limitations of the Epidemic Diseases Act, 1897:

- **Undefined Criteria for "Dangerous Epidemic Disease":** The Act lacks clarity on defining a "dangerous epidemic disease," with no specified criteria for declaring a disease as such.
- **Limited Provisions for Disease Management**: The Act does not include provisions for disseminating drugs/vaccines or quarantine measures during an epidemic, reflecting its failure to adapt to modern healthcare needs.
- **Neglect of Fundamental Rights and Human Rights**: Formulated in an era predating constitutional principles, the Act focuses on government powers during an epidemic but neglects citizens' rights and fails to establish fundamental human rights standards during emergency measures.

Epidemic Diseases (Amendment) Ordinance, 2020:

- The Epidemic Diseases (Amendment) Ordinance 2020 modifies the Epidemic Diseases Act of 1897, **enhancing**

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protections for **healthcare personnel** during epidemics.

- It **defines healthcare service personnel**, **outlines acts of violence** against them, and **grants expanded powers** to the union government for regulating transportation during outbreaks.
- The ordinance **criminalizes violence** and damage during epidemics, prescribing **imprisonment and fines**.
  - Offenders must **compensate victims**, and non-payment leads to **recovery** as arrears of **land revenue.**
  - Cases are investigated by an **Inspector-ranked police officer,** with trials mandated to conclude within a year and a presumption of guilt for causing grievous harm.

Summary of the report:

- **Outdated Legislation**: The report notes that the Epidemic Diseases Act of 1897 (EDA) was not designed to combat **modern issues** with the **spread of infectious diseases**.
- **Globalization Challenges:** Globalisation and increased connectivity, it states, can rapidly result in infectious diseases becoming **epidemics** or **pandemics.**
- **Potential for abuse**: The report claims that as a **colonial-era legislation**, the EDA has great potential for abuse**.**
- **Addressing Legal Gaps**: Coupled with the lack of guidelines on important subjects, the report seeks to make comprehensive recommendations for the **amendment of the EDA** or the introduction of a **new law** altogether.
- **Epidemic Plan**: The most dramatic change suggested is the creation of an **Epidemic Plan** and a **Standard Operating Procedure** to address the spread of infectious diseases. This, the report states, would make sure the **powers and obligations** of **different levels** of government are clearly **demarcated** so that there is a coordinated response to any public health emergency.
- **Government Collaboration**: The duty to create this Epidemic Plan falls on the **Central government** in collaboration with **state governments** and after consulting the ministries concerned, private health institutions, expert bodies and other stakeholders.
- **Stricter Enforcement:** The report recommends stricter punishment for **disobedience** of guidelines and regulations made by the government during any health emergency.

Conclusion:

In light of the Law Commission's insightful review, India must **promptly enact** a contemporary and **rights-based public health law**, replacing the outdated Epidemic Diseases Act of 1897. This shift will ensure a **more ethical** and **effective response** to pandemics, fostering public cooperation and **upholding fundamental rights**. It's a crucial step toward resilient and responsive public health governance.

The Public Examinations (Prevention of Unfair Means) Act, 2024

News Excerpt:

The Public Examinations (Prevention of Unfair Means) Act, 2024 received the assent of the President on February 12, 2024 and published in gazette by the Ministry of Law and Justice.

Need of the Act:

- **Instances of Question Paper Leaks:** Many cases of question paper leaks in recruitment exams nationwide have occurred in recent years.
  - There have been at least 48 paper leaks in 16 states over the last five years, disrupting the hiring process for government jobs.
  - **For e.g.,** In March last year, the Delhi Police arrested five men who had allegedly leaked the National Technical Research Organisation's (NTRO) recruitment exam.
- **Malpractices Lead to Delay and cancellation of examinations:** This adversely impacts the prospects of millions of youths.
  - There is no specific substantive law to deal with unfair means adopted or offences committed.
  - Elements that exploit vulnerabilities of the examination system must be identified and effectively dealt with by comprehensive Central legislation.
  - **For e.g.**, The move came against the backdrop of the cancellation of a series of competitive tests such as the teacher recruitment exam in Rajasthan, the Common Eligibility Test (CET) for Group-D posts in Haryana, the recruitment exam for junior clerks in Gujarat and constable recruitment examination in Bihar following question paper leak.
- **To Bring Greater Transparency:** The objective of the Act is to bring greater transparency, fairness, and credibility to the public examination systems and to reassure the youth that their sincere and genuine efforts will be fairly rewarded and that their future is safe.

Key Provision of the Act:

- The Act aims to effectively and legally deter persons, organised groups or institutions that indulge in various unfair means and adversely impact the public examination systems for monetary or wrongful gains.
- A **"candidate"** means a person who has been granted permission by the public examination authority to appear in a public examination and includes a person

State Governments discretion:
This act serves as a model for states to stop such malpractices but the discretion given to state governments may lead to differences in implementation processes and methods across different states. It will potentially weaken the effectiveness of the law in preventing unfair means in public examinations.

Lack of Clarity about National Technical Committee:
This Act proposes the formation of a High-Level National Technical Committee on Public Examinations but there is a lack of clarity regarding the committee's composition, qualifications, and mandate. It will lead to improper implementation of the act.

Legal difficulties may arise due to the Act's requirements on cognizability, non-bailability, and non-compoundability of offences. There may be arguments over whether such punitive punishments are appropriate to the nature of the offenses and follow natural justice principles.

ISSUES WITH THE ACT

authorised to act as a scribe on his behalf in the public examination;

- **The Act seeks to prevent the use of unfair means in public examinations:**
  - **Section 2(k):** Public examinations refer to examinations conducted by authorities specified under the Schedule to the Act or any other authority notified by the central government.
  - These authorities include:
    - **Union Public Service Commission (UPSC)**
    - **Staff Selection Commission (SSC)**
    - **Railway Recruitment Board (RRB)**
    - **National Testing Agency (NTA)**
    - **Institute of Banking Personnel Selection (IBPS)**
    - **Departments of the central government and their attached offices for recruitment.**
- **Offences in relation to public examinations:**
  - It prohibits collusion or conspiracy to facilitate indulgence in any unfair means.
  - **Section 3: It specifies unfair means to include:**
    - **Unauthorised access** or leakage of question paper or answer key.
    - **Assisting** a candidate during a public examination.
    - **Tampering with answer sheets, including optical mark recognition (OMR) response sheets.**
    - **Tampering** with computer networks or resources.
    - Tampering with **documents** for shortlisting or finalising of merit list or rank.
    - Conducting **fake examinations**, issuing fake admit cards or offering letters to cheat for monetary gain.
  - **It also prohibits:**
    - **Disclosing** exam-related confidential information before time.
    - Unauthorised people from **entering exam centres to create disruptions.**
  - **Section 10 (1): The above offences will be punishable with imprisonment between three and five years and a fine up to Rs 10 lakh.**
  - **If the convict fails to pay the fine,** "an additional punishment of imprisonment shall be imposed, as per the **Bharatiya Nyaya Sanhita, 2023 provisions.**
- **Responsibilities of service providers:**
  - A service provider is an organisation that provides computer resources or any other support to a **public examination authority.** Failure to report such incidents will be an offence.
    - In the event of a violation of provisions of the Act, **service providers** must report to the police and the concerned examination authority.
    - The Act prohibits **service providers** from shifting the exam centre without permission from the examination authority.
    - An offence by a service provider will be punishable with a fine of up to one crore rupees. **The proportionate cost** of examination will also be recovered from such a service provider.
    - Further, they will also be barred from **conducting public examinations** for four years.
- **Organised crimes and Punishment:**
  - An organised crime is defined as an **unlawful** act committed by a person or a group of persons to further a shared interest for **wrongful** gain in relation to public examinations.
    - Persons committing an organised crime will be imprison**ed for five years and 10 years** and a fine of at least one crore rupee.
    - Suppose an institution is held guilty of committing an organised crime. In that case, **its property will be attached and forfeited,** and

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a proportionate cost of the examination will also be recovered from it.

- **Inquiry and investigation:**
  - **Section 9:** All offences under the Act will be **cognizable** (i.e., no warrant would be required prior to arrest), **non-bailable** (i.e., bail would not be a matter of right)**, and non-compoundable** (i.e., cases would not be open to settlement).
  - An officer not below the rank **of Deputy Superintendent or Assistant Commissioner of Police** will investigate the offences under the Act.
  - The central government may transfer the investigation to any **central investigating agency.**

Way Forward:

- Since technical education is on the concurrent list, central legislation on the subject would mean that states have to adopt the legislation.
- The Act will also serve the important function of being "a model draft for States to adopt at their discretion". This would aid States in preventing criminal elements from disrupting the conduct of their State-level public examinations.
- The government should clarify about the National Technical Committee's composition, qualification and mandate for better implementation of the act so that instances of paper leaks can be reduced.
- Legal difficulties and unclear provisions should be cleared by the government.
- The central government and state government both should work together to tackle such paper leak issues and to catch exam mafias.

Guidelines for Registration and Regulation of Coaching Center 2024

News Excerpt:

The Ministry of Education has issued guidelines for registering and regulating coaching centres.

Objective of the Guidelines:

- To provide guidelines for the regulation of the coaching centre for **better guidance** and **assistance** to the **students** in any study programme, competitive examinations, or academic support.

Definitions:

- **'Coaching'** means **tuition**, instructions, or guidance in any branch of learning imparted to **more than 50 students** but does not include counselling, sports, dance, theatre, or other creative activities.
- **A coaching centre'** includes a centre established, run, or administered by any person to provide coaching for any **study programme**, **competitive examinations**, or **academic support** to students at school, college, and university levels of **more than 50 students.**
- **'Tutor'** means **someone** who **guides or trains** students in any coaching centre, including a tutor giving specialized tuition.
- **'Proprietor'** means a coaching centre's owner seeking Registration or Registration and includes the joint owner.
- **'Appellate authority'** means an officer notified by the appropriate Government.

Background:

- The number of **unregulated private coaching centres** in the country continues to grow without any policy or regulation.
- Instances of such centres charging **exorbitant fees** from students, **undue stress** on students resulting in **students committing suicides**, loss of precious lives due to fire and other accidents, **lack of facilities** as well as **teaching methodologies,** and many **other malpractices** being adopted by these centres are widely **reported in the media and** have been attracting the Government's attention**.**
- One of the **fundamental principles** of National Education Policy **(NEP) 2020** is to **'focus on regular formative assessment for learning rather than the summative assessment that encourages today's 'coaching culture'.**
  - It suggests reforming the existing Board and entrance examination system to **eliminate** the need to **undertake coaching classes.**

Registration of the Coaching Centres:

- **Coaching centres** existing on the date of **implementation of the guidelines** shall apply for Registration within a period of **three months** from the date of implementation of the guidelines.

Conditions for Registration of the Coaching Centres:

- **No coaching centre shall**-
  - Engage tutors having **qualifications** less than **graduation**.
  - Make **misleading promises** or **guarantees of rank** or good marks to parents/students for enrolling them in the coaching centre.
  - Enrol students **below 16 years of age**, or enrolment should only be **after the secondary school examination.**
- The coaching centre shall have a **website** with updated **details** of the qualification of **tutors, courses/curriculum, duration of completion, hostel facilities** (if any), the **fees** being charged, **easy exit policy**, **fee refund policy**, **number of students undertaken coaching** from the centre and **number of students finally succeeded** in getting admission in Higher Education Institutions etc.

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Fees:

- The coaching centre shall supply the **prospectus**, **notes**, and other material to their enrolled students **without separate fees**.
- Suppose the student has paid for the course in full and is **leaving the course in the middle** of the prescribed period. In that case, the student will be **refunded** the fees deposited earlier for the remaining period on a **pro-rata basis within 10 days**.
- Under **no circumstances** shall the **fee** on which enrolment has been made for a particular course and duration shall be **increased during the course.**

Curriculum:

- To keep students **"connected with family"** and receive **"emotional boosting",** coaching centres, as suggested by the guidelines, will have to customize leaves.
- Co-curricular activities, life skills, counselling from a **psychologist**, emotional bonding and mental well-being will have to be prioritized in coaching centres.

Infrastructure Requirements:

- Within the basic structure of the coaching centre, a **minimum of one square meter area** may be **allocated** for **each student** during a class/batch.
- The coaching centre building shall adhere to **fire safety codes**, **building safety codes** and other standards.
- A **complaint box or register** may be placed at the coaching centre for the students to raise a complaint.
- The coaching centre shall have a **committee** for the **redressal** of students' **complaints/grievances**.
- Safe and potable drinking water shall be available for all students and staff of the Center.
- Separate toilets for males and females shall be provided within the coaching centre building premises.

Code of Conduct by the Coaching Center:

- In no case, the **number of students** to be enrolled in each class/ batch shall be **increased** in class/batch **during the course.**
- The number of students admitted may align with the requirements of maintaining a **healthy teacher-student ratio** in each class.
- The coaching centre shall **not enrol students below 16 years of age**, or the student enrolment should be **only after** the **secondary school examination.**

Counsellors and Psychologists Support:

- Coaching centres are encouraged to **involve counsellors** and experienced **psychologists** to counsel and provide **psychotherapeutic services to students** to resolve mental **stress and depression**.
- **Framework for Mental Health Promotion -**

Level of Problems	Stakeholders to be involved	Level of Intervention
Mental Well-being	Entire Institutional Community	Mental Well-being Integrated in Institutional Curriculum
Mental Health Knowledge Attitudes & Behavior	All Students and Tutors	Mental Well-being – Part of General Health Curriculum
Psychosocial Problems	Counsellors, Tutors, Peer Mentors, Wardens and Citizens	Extending Additional Help to Students in Need
Severe Problems/ Disorders	Counsellors, Institutional Doctors and Other Experts	Professional Management

Inclusivity and Accessibility:

- The coaching centre may make special provisions to encourage greater representation of students from **vulnerable communities,** such as **female students**, students with **disabilities**, and students from **marginalized groups**.
- The coaching centre premises shall be **Divyang-friendly** and **in compliance** with the provisions of the **Rights of Persons with Disabilities Act, 2016.**
    - Divyang-friendly provisions such as **braille**, **e-readers**, **toilets,** etc. may be made wherever possible.

Restriction on shifting of Coaching centre:

- The coaching centre shall conduct coaching **only at the place indicated** in the **registration certificate** and shall **not be shifted** to any place other than its registered place without the **prior written approval** of the competent authority on that behalf.

Disposal of complaints:

- A complaint may be filed **before the competent authority** against the coaching centres by the **student**, **parent** or **tutor/employee** of the coaching centre and against the students/parents by the coaching centres.
    - The complaints shall be **disposed** of **within thirty days** by the competent authority.

Penalties:

- In case of **violation** of any of the **terms and conditions** of Registration or general conditions, the coaching centre shall be liable for penalties as follows:
    - **Rs 25,000/-** for first offence
    - **Rs. 1,00,000/-** for the second offence
    - **Revocation of Registration** for subsequent offence

Way Forward:

The guidelines released are **comprehensive** and have **adequate** safety measures for **students** as well as **parents**. It should be ensured that guidelines are **followed in practice**. Education is on the **concurrent list**, and the **State and UT Governments** also need to take **proactive action** on the matter. The state government should **monitor** the activities of the **coaching centre** and enquire about any coaching centre regarding the fulfilment of the required **registration eligibility.**

The New Telecom Act 2023

News Excerpt:

Recently, Lok Sabha and Rajya Sabha have passed **The Telecommunications Bill, 2023**, as a **money bill** to reform and consolidate laws governing the telecommunications sector. It received the **President's assent** and will be called The Telecommunications Act 2023.

Legislative History of Communication in India:

- Three key laws have governed **the telecom sector in India**:
    - **Indian Telegraph Act of 1885**, focusing on licensing and communication interception,
    - **Indian Wireless Telegraphy Act of 1933** regulates the possession of wireless telegraph apparatus and
    - **Telegraph Wires (Unlawful Possession) Act of 1950** for regulating the possession of telegraph wires.
        - It was recently repealed by the **Repealing and Amending Act of 2023**, effective December 17, 2023.
        - Additionally, the **Telecom Regulatory Authority of India (TRAI) Act of 1997** established TRAI as the regulator responsible for tariff regulations in the telecom sector.
    - The TRAI Act established the **Telecom Disputes Settlement and Appellate Tribunal (TDSAT)** to address disputes and appeals in the sector.
- Notably, the **authority to issue licenses** remains vested with the **Central Government.**
- The **Department of Telecommunications** recognizes the need to restructure the telecom sector's legal and regulatory framework.

Key Features of the Telecommunications Act 2023:

- **Authorization and Licensing:**
    - Central Government authorization is required for telecommunication services, network establishment, operation, or expansion, and possession of radio equipment.
    - Existing licenses remain valid for their grant period or five years if unspecified.
- **Spectrum Assignment:**
    - Spectrum allocation via auction, except for specified purposes allocated administratively (e.g., national security, disaster management).
    - The Government is empowered to re-purpose or re-assign frequency ranges. Sharing, trading, leasing, and surrender of spectrum permitted.
    - It introduced provisions for allocating spectrum to **satellite internet providers** like OneWeb and SpaceX's Starlink, with active authorizations already granted to **OneWeb and Jio** for satellite-based internet services.
- **Interception, Search, and Suspension Powers:**
    - Communication interception, monitoring, or suspension of services and temporary possession of infrastructure permitted in the interest of public safety, emergencies, or specific grounds (security of the State, offence prevention).
- **User Protection Measures:**
    - The Central Government is empowered to regulate specific messages through prior consent requirements, create 'Do Not Disturb' registers, and establish mechanisms for users to report malware or specified messages.
    - Entities providing telecom services must establish an online mechanism for Registration and redressal of grievances.
- **Right of Way for Telecom Infrastructure:** Entities laying telecom infrastructure are entitled to seek right of way over public or private property on a non-discriminatory and non-exclusive basis.
- **Digital Bharat Nidhi & OTT**:
    - Renaming and expansion of the **Universal Service Obligation Fund** as **Digital Bharat Nidhi,** permitting its use for telecom research and development.
    - **OTT (over-the-top)** services are excluded from the Act, and their regulation falls under the Digital India Act, 2023
- **TRAI Appointments:** Amendments in the TRAI Act allow individuals with significant professional experience to serve as Chairperson or members and may even be from the private sector.
    - The Chairperson must have **at least thirty years of professional experience**, and a **member must have at least twenty-five years of professional experience**, and both must have served as a member of the Board of Directors or chief executive of a company.
- **Offences and Penalties:** Specification of criminal and civil offences with penalties such as imprisonment, fines, or both for providing unauthorized telecom services, network access, or breaches of authorization terms.

- **National Security measures:** The Central Government may, if satisfied that it is necessary or expedient to do so, in the **interest of national security, friendly relations with foreign States, or in the event of war,** by notification, take measures to prevent the importation of telecom equipment from potentially adversarial nations.
- **Adjudication Process:** Appointment of adjudicating officers by the Central Government for inquiries and orders against civil offences.
- Establishment of a **Designated Appeals Committee** and provisions for **appeals to TDSAT** against committee decisions related to terms and conditions breaches.

Criticisms of the Act

- **Independent Oversight Mechanism:** It primarily involves senior Government officials. However, this may raise concerns regarding potential biases or lack of checks and balances.
- **Judicial Oversight for Interception:** The absence of judicial scrutiny in the interception process could raise concerns about its legitimacy.
- **Potential for Mass Surveillance:** The broad language used in the Act **allows for the interception or monitoring of any communication based on specific grounds.** This could potentially lead to mass surveillance, compromising the fundamental right to privacy.
- A significant concern is the **absence of specified procedures and safeguards for search and seizure actions**.
- **Scope of Telecommunication Services:** The expansive definition of telecommunication services encompasses internet-based services, indicating a shift from the narrower scope under the Indian Telegraph Act of 1885.
    - This broader scope may have **implications for regulation, oversight, and potential encroachment into digital spaces**, necessitating careful consideration of its implications.
- **Centralized Regulatory Functions:** This centralized approach to control over telecom services during perceived threats to public safety might impact regulatory autonomy and face industry disapproval.
- **Issues with Citizen's Privacy:**
    - The Act's section on **Powers of Authorization and Assignment** rightly provides for technology neutrality of spectrum use but does not reflect the same in the delivery of communication services.
    - **Biometric Verification:** Requiring biometric-based identification for telecom service users to reduce spam raises **questions about the proportionality** of such measures. The **fundamental right to privacy protects the collection and use of biometric data**.
- **Worldwide Regulatory experience:**
    - **Functional separation** has been used as a regulatory remedy by many countries like **Sweden, the UK, Australia, Ireland and Poland** to address market concentration.
    - When disproportionate, the remedies can lead to counterproductive outcomes, including lower investments and innovation.

Potential benefits of the Act

- The structural reforms envisaged under the 2023 Act aim to streamline what has so far been a complex licensing system in the telecom sector and instead usher in a simple authorization mechanism.
- **Clarity on Spectrum Assignment:** While auctions remain the primary method, they allow administrative allocation of spectrum for specific sectors like metro rails, defence, community radio, etc.
    - This clarity can help **telecom companies plan and utilize spectrum resources** better.
- **Facilitation of Satellite Internet Services:** The satellite internet industry will not need to bid for spectrum, aligning India's approach with global standards.
    - This provision could encourage the growth of satellite-based internet services, offering telecom companies new opportunities for service expansion, especially in remote or underserved areas.
- **Permits entities to share, trade, and lease spectrum:**
    - This flexibility in spectrum utilization could benefit telecom companies by allowing them to **optimize their spectrum resources and potentially reduce operational costs.**
- **Right of Way** provision would benefit industry stakeholders as it ensures fair access, specifies the responsibilities and facilitates the advancement of digital connectivity.

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Way Forward:

- **Balancing National Security and Privacy Concerns:** Review and refine the provisions related to interception and surveillance to strike a balance between national security imperatives and safeguarding individual privacy rights.
  - Establish clear guidelines and oversight mechanisms to prevent potential misuse of interception powers.
- **Clarity on Regulatory Scope:** Clarify and define the scope of the Act, especially concerning the regulation of internet-based communication services.
  - Ensure that the legislation clearly outlines the limitations and boundaries of regulatory authority to avoid ambiguity and prevent overreach.
- **Need for a Unified Vision**:
  - The Government should bring synergies in licensing, standards, skilling and governance across different departments.
  - Besides creating an enabling business Environment that lowers costs for business, investing in fibre infrastructure will require a significant amount of resource generation for both urban and rural areas.
- **Technology type:** A combination of technologies can be used to deliver voice and data services.
- **The sustained growth of India's telecom industry**: The Telecommunications Act of 2023 sits at the centre of India's digital revolution by **unleashing competition in services, facilitating the transition to fibre-based networks and promoting technology dynamism.**

The Chief Election Commissioner and Other Election Commissioners Act, 2023

News Excerpt:

The **President** gave her **assent** to the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill 2023, which seeks to establish a mechanism to appoint the top election officials in the country.

Issues with the Act:

- **Independence of the ECI:** The selection process of the ECI may be **dominated** by the **Government**, which has implications for its independence.
  - The **Constitution** envisages the **ECI** as an **independent body** that is responsible for conducting free and fair elections.
  - Members of the **Constituent Assembly** had also noted that the responsibility of conducting elections should be entrusted to people who are **free from political influences** and local pressures.
  - **Dr. B.R. Ambedkar** had stated that for **elections to be free** in the real sense of the word, they should be taken out of the hands of the Government of the day.
  - The **Supreme Court (2023)** has also stated that **any action of the ECI** that treats political parties unevenly or arbitrarily could **breach** the **right to equality.**

Key highlights of the Act

- It replaces the **Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act 1991.**
- It outlines the **appointment, salary, and removal** of the Chief Election Commissioner (CEC) and Election Commissioners (ECS).
- The CEC and ECs will **be appointed by the President** based on a Selection Committee.
- **The Selection Committee** will consist of the Prime Minister. a Union Cabinet Minister, and the leader of the largest opposition party in Lok Sabha.
  - The Selection Committee's recommendations will be valid even when there is a vacancy in this Committee.
- **A Search Committee** headed by the Cabinet Secretary will propose a panel of names to the Selection Committee.
  - **Eligibility** for the posts includes holding (or having held) a post equivalent to the Secretary to the central government.
  - **The salary and conditions of service** for the CEC and ECs will be equivalent to that of the Cabinet Secretary.
- Under the 1991 Act, it was equivalent to the salary of a Supreme Court Judge

- **The Government dominates the Selection Committee**:
  - The **Supreme Court** ruled that until Parliament made a law for the appointment of the CEC and ECs, they would be appointed on the **recommendation** of a **Selection Committee.**
    - This Committee will comprise the **Prime Minister**, the **Chief Justice of India**, and the **Leader of the Opposition in Lok Sabha** (or Leader of the largest opposition party).
- **Selection Committee's recommendations to be valid despite vacancy or defect in the Constitution:**
  - Despite a vacancy in its constitution, accepting the Selection Committee's recommendations **may effectively lead to a monopoly of government members in selecting candidates.**
- **Salaries to be decided by the Government:**

- Under the **1991 Act,** the salaries of CECs and ECs are **equivalent** to the salaries of a **Supreme Court Judge (Under Article 125- fixed by an Act of Parliament).**
- The **Act** equates the salary of the CEC and ECs to that of the **Cabinet Secretary** of the Government.
- This step **may lead to government influence as the** Government fixes the Cabinet Secretary's salary **upon the recommendation of the Central Pay Commission.**

- **Eligibility Criteria:**
  - Under the **Act**, **only** a person who is or has been at a **rank equivalent to Secretary** to the Government will be **eligible** to be the **CEC** or **EC**.
  - CECs and ECs also perform **quasi-judicial functions**. Thus, limiting these posts to senior bureaucrats may exclude other suitable candidates.

Global Practices: Selection Process of the Election Commission in other countries

Country	Appointing Authority	Selection Committee/Process
South Africa	**President**	President of the Constitutional Court (Chairperson), representative of the Human Rights Court, representative of the Commission on Gender Equality, and the public prosecutor.
United Kingdom	**The monarch, upon approval by the House.**	The Speaker's Committee on the Electoral Commission with MPs as members, oversees the recruitment of electoral commissioners. The candidates for these posts are then approved by the House of Commons and appointed by the British monarch. The Speaker asks the Leader of the House to table a motion for an address to appoint the recommended candidates.
United States	**President**	The Commission is appointed by the President and confirmed by the Senate.
Canada	-	Appointed by a resolution of the House of Commons

Suggestions made by various Commissions/Courts for the composition of the Selection Committee:

Body	Members
Goswami Committee (1990)	**For CEC:** Appointed by the President in consultation with the Chief Justice + Leader of Opposition of Lok Sabha (or leader of the largest party in Lok Sabha). **For EC:** Appointed by the President in consultation with the Chief Justice + Leader of Opposition of Lok Sabha (or leader of the largest party in Lok Sabha) + CEC.
National Commission to Review the Working of the Constitution Report (2002)	Prime Minister + Leader of the Opposition in Lok Sabha + the Leader of the Opposition in Rajya Sabha + the Speaker of Lok Sabha + the Deputy Chairman of Rajya Sabha.
Law Commission (2015)	Prime Minister + the Leader of Opposition of Lok Sabha (or the leader of the largest opposition party in Lok Sabha) + the Chief Justice.
Supreme Court (2023)	Prime Minister + Leader of Opposition in Lok Sabha (or leader of single largest opposition party in Lok Sabha) + Chief Justice.

Way Forward:

- In order to obtain a variety of viewpoints and guarantee that concerns are sufficiently addressed, the administration should **consult with stakeholders**, **legal professionals**, and opposition parties.
- The Government should assess the Selection Committee's composition and consider **improving its balance**.
  - The Government should include impartial **specialists**, **lawyers**, and **civil society representatives** either as **observers** on the Selection Committee or as **members** of the Search Committee to increase the legitimacy of the process.

The Bharatiya Nyaya (Second) Sanhita, 2023

News Excerpt:

The Bhartiya Nyaya (Second) Sanhita 2023 (BNS2) came into force on July, 1st 2024.

- It has replaced the **Indian Penal Code 1860**, introducing new offences, eliminating court-struck-down offences, incorporating 358 sections, monitoring most of the IPC provisions, and enhancing penalties for various offences.

Context of the Act:

- The **Indian Penal Code (IPC), 1860,** is India's principal law on criminal offences. Offences covered include those affecting:
  - (i) Human body such as assault and murder;
  - (ii) Property such as extortion and theft;
  - (iii) Public order such as unlawful assembly and rioting;
  - (iv) Public health, safety, decency, morality, and religion;
  - (iv) Defamation, and
  - (v) Offences against the State.

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- The **Bharatiya Nyaya Sanhita (BNS)** was introduced on August 11, 2023 to replace the IPC. The Standing Committee on Home Affairs examined it.
- The **Bharatiya Nyaya (Second) Sanhita, 2023 (BNS2)** was introduced on December 12, 2023, after the earlier Bill was withdrawn.

Key Features of BNS2:

- **Offences against the body:** The IPC criminalizes acts such as murder, abetment of suicide, assault and causing grievous hurt. The BNS2 retains these provisions. It adds new offences such as organized crime, terrorism, and murder or grievous hurt by a group on certain grounds.
- **Sexual offences against women:** The IPC criminalizes acts such as rape, voyeurism, stalking and insulting the modesty of a woman. The BNS2 retains these provisions. It increases the threshold for the victim to be classified as a major, in the case of gang rape, from 16 to 18 years of age.
  - The BNS2 omits **Section 377 of IPC**, which the Supreme Court read down. This removes rape of men and bestiality as offences.
  - It also criminalizes sexual intercourse with a woman by **deceitful means or making false promises.**
- It adds **community service** as a form of punishment.
- **Sedition:** The BNS2 removes the offence of sedition. It instead penalizes the following:
  - Exciting or attempting to excite secession, armed rebellion, or subversive activities,
  - Encouraging feelings of separatist activities, or
  - Endangering the sovereignty or unity and integrity of India. These offences may involve exchanging words or signs, electronic communication, or using financial means.
- **Terrorism:** Terrorism includes an act that intends to:
  - Threaten the unity, integrity, security or economic security of the country or
  - Strike terror in the people or any section of people in India.
  - Punishment for attempting or committing terrorism includes:
    - Death or life imprisonment, and a fine if it results in death of a person or
    - Imprisonment between five years and life, and a fine.
- **Organized crime:** It includes crimes such as kidnapping, extortion and cyber-crime committed on behalf of a crime syndicate**. Petty organized crime** is also an offence now.
- Attempting or committing organized crime will be punishable with:
  - Death or life imprisonment and a fine of Rs 10 lakh if it results in the death of a person or
  - Imprisonment between 5 years and life, and a fine of at least Rs 5 lakh rupees.
- **Mob lynching:** The BNS2 adds murder or grievous hurt by five or more people on specified grounds as an offence. These grounds include race, caste, sex, language, or personal belief. The punishment for such murder is life imprisonment or death.
- **Rulings of the Supreme Court:** The BNS2 conforms to some Supreme Court decisions. These include omitting adultery as an offence and adding life imprisonment as one of the penalties (in addition to the death penalty) for murder or attempt to murder by a life convict.

Key Issues and Analysis:

1) Minimum age of criminal responsibility higher than several other jurisdictions:

- Advances in understanding how brain biology affects adolescent behaviour have raised questions about how responsible children should be for their actions.
- Under IPC, nothing is considered an offence if committed by a child below the age of seven years. The age of criminal responsibility increases to 12 years if the child is found to not have attained the ability to understand the nature and consequences of his conduct.
- The BNS2 retains these provisions. This age is lower than the age of criminal responsibility in other countries. In 2007, a UN Committee recommended that states set the age of criminal responsibility to above 12 years. The age of criminal responsibility varies across countries.

2) The age threshold of the victim for similar offences against children varies:

- The BNS2 provides for higher penalties in case of offences against children. In most cases, it provides that a victim below the **age of 18 years** be treated as a child.
- The penalty for **rape and gang rape of women and children** is different. However, the threshold for a minority of the victim for different offences of rape and, consequently, the penalty varies.
- For gang rape, the penalty differs based on whether the victim is above or below 18 years of age. However, for rape, the penalty is different based on whether the victim's age is below 12 years, between 12 and 16 years, or above. This is inconsistent with the **Protection of Children from Sexual Offences Act, 2012**, which classifies all individuals below the age of 18 as minors.
- Further, the BNS2 retains from the IPC the age of **21 years** for the offence of **importing a foreign woman** from another country. However, for **boys**, it adds the age threshold of **18 years**. The **Standing Committee on Home Affairs (2023)** has recommended defining a child as someone below 18.

What are the present issues?

1. **Overlap between the BNS2 and special laws**

Illustrative list of overlap between and IPC, BNS2 and Special Laws	
BNS2	**Special Law**
Adulteration of food or drink for sale	
• Imprisonment up to 6 months, fine up to Rs 5,000, or both. • Non-Cognizable, bailable. (IPC Sec. 272, 273; BNS2 Clause 274,275)	• The Food Safety and Security Act, 2006: Imprisonment up to life, and a fine up to Rs 10 lakh for manufacture, storage, sale of unsafe food. Sentence proportionate to damage caused. (Sec. 59)
Adulteration of drugs, and sale of adulterated drugs	
• Adulteration penalised with imprisonment up to a year, fine up to Rs 5,000, or both. • Sale of adulterated drugs penalised with imprisonment up to 6 months, fine • up to Rs 5,000 or both. Non-Cognizable, bailable. (IPC Sec. 274, 275; BNS2 Clause 276, 277)	• The Drugs and Cosmetics Act, 1940: Consumption of adulterated drugs causing death or grievous hurt penalised with imprisonment between 10 years and life. and fine of at least Rs 10 lakh or 3 times the value of the seized drugs, whichever is higher. • In other cases, penalty is imprisonment of 3- 5 years, and fine of at least Rs 1 lakh, or 3 times the value of the seized drugs, whichever is more. (Sec. 27)
Unlawful compulsory labour	
• Imprisonment up to one year, fine, or both. Cognizable, Bailable. (IPC Sec. 374: BNS2 • Clause 146)	• The Bonded Labour System (Abolition) Act, 1976: Imprisonment up to 3 years and fine up to Rs 2.000. (Sec. 16, 17, 18)
Abandoning a child	
• Parent or guardian abandoning a child below the age of 12 is punishable with imprisonment up to 7 years, fine, or both. • Cognizable, bailable. (IPC Sec. 317; BNS2 Clause 93)	• The Juvenile Justice Act, 2015: Abandoning or procuring a child for abandonment is punishable with imprisonment up to 3 years, fine up to Rs 1 lakh, or both. • Biological parents abandoning a child due to circumstances beyond their control are exempt. (Sec. 75)
Rash driving	
Punishable with imprisonment up to 6 months, fine up to Rs 1,000 or both. Cognizable, bailable, non- compoundable. (IPC Sec 279; BNS2 Clause 281)	• The Motor Vehicles Act, 1988: Punishment for the first offense: imprisonment up to 6 • months, and/or fine up to Rs 5.000. Subsequent offence within three years: imprisonment up to 2 years and/or a fine up to Rs 10,000. Cognizable, bailable. compoundable. (Sec. 184)

- When the IPC was enacted, it encompassed all criminal offences. Over time, special laws have been enacted to address specific subjects and related offences. Some of these offences have been removed from the BNS2.
    - **For example,** offences related to weights and measures were incorporated in the **Legal Metrology Act of 2009** and have been removed from the BNS2.
- The BNS2 also adds certain new offences, such as organized crime and terrorism, which are already covered under special laws. Such overlapping in-laws **may cause additional compliance burdens and costs.**
- It may also lead to multiple laws providing varying penalties for the same offences. Deleting such offences could remove duplication, possible inconsistencies, and multiple regulatory regimes.

2. Aspects of sedition retained:

- The IPC defines sedition as bringing or attempting to bring hatred, contempt, or exciting disaffection towards the Government. The Supreme Court has put the offence of sedition on hold until a Constitution bench examines it.
- The BNS2 removes this offence. Instead, it adds a provision that penalizes:
    i. Exciting or attempting to excite secession, armed rebellion, or subversive activities,
    ii. Encouraging feelings of separatist activities, or
    iii. Endangering the sovereignty or unity and integrity of India.
- These offences may involve exchanging words or signs, electronic communication, or using financial means. It may be argued that the new provision retains certain aspects of the offence of sedition and broadens the range of acts that could threaten India's unity and integrity.
- Terms like '**subversive activities**' are also not defined, and what activities will meet this qualification is unclear.

- In 1962, the Supreme Court limited the application of sedition to acts that carry the intention or tendency to create public disorder or incite violence. Note that the BNSS2 refers to '**seditious matters'** in BNS2, despite the word sedition not appearing in BNS2.

Solitary confinement may violate fundamental rights:

- The **Prisons Act of 1894**, which also permits solitary confinement, has been adopted by many state laws. Provisions on solitary confinement are not in line with Court rulings and expert recommendations.
- The **Supreme Court (1979)** has held that a measure such as pushing prisoners into solitary cells deprives them of their **right to life and liberty** under **Article 21**.
- **The scope of community service needs to be clarified**: The BNS2 adds community service as a punishment. However, the BNS2 does not define what community service will entail and how it will be administered. The **Standing Committee on Home Affairs (2023)** recommended defining the term and nature of **'community service'.**

Way Forward

- **Ensure laws are clear, concise, and easily understandable by both legal professionals and the general public.**
- **Strengthen provisions that protect victims' rights and ensure their access to justice.**
- **Emphasize rehabilitative justice and ensure reintegration of offenders into society alongside punitive measures.**
- **Incorporate technology to streamline legal processes, improve investigation techniques, and enhance evidence collection.**
- **Public awareness campaigns and educational programs should inform citizens about their rights and responsibilities within the criminal justice system.**
- **Active participation from various stakeholders, including legal professionals, law enforcement agencies, NGOs, and affected communities, in the reform process will ensure inclusivity and diverse perspectives.**

Women Reservation Act (Nari Shakti Vandan Adhiniyam) 2023

News Excerpt:

The President of India has given assent to the **Constitution (106th Amendment) Act, 2023**, also known as **Nari Shakti Vandan Adhiniyam 2023**, which provides **1/3rd reservation for women** in Lok Sabha, State Legislative Assemblies, and the Legislative Assembly of the National Capital Territory of Delhi.

Key highlights of the Act:

- The **33% reservation for women** in **Lok Sabha** and **Assemblies of State** and **National Capital Territory** of Delhi. Similar reservations are to be provided within the seats reserved for SC and ST.
- The Act states that the reservation will continue for **15 years**. However, it shall continue till such date as determined by a law made by Parliament.
- It **amends Article 239AA** (Special provisions with respect to Delhi) and also **inserts** three new articles.
    - **Articles 330A** and **332A**- These introduce 33% in Lok Sabha and the state legislative assemblies, respectively.
    - **New Article – 334A**: Reservations shall come into effect once the delimitation is undertaken after the relevant figures for the first Census have been published. The rotation of seats for women shall take effect after each subsequent **delimitation exercise** as determined by a law made by Parliament.
- The Act does **not** require **ratification by the states** since it does not change the actual number of seats that the states have in Parliament. So, state representation in Parliament remains unaffected.
- The Act calls for **3 steps**: Census > Delimitation > Quota.

Constitutional amendments needed to operationalize women's reservation:

- Article 82 provides for the **readjustment** of constituencies (number and boundaries) of both Lok Sabha and state Assemblies after every Census.
- Article 170(3) deals with the **composition** of the Legislative Assemblies.

Evolution of political representation of women:

- In 1971, the **National Action Committee on the Status of Women in India,** in its report **"Towards Equality",** discussed the receding political representation of women in India.
- In 1987, the **National Perspective Plan for Women** recommended reserving seats for women in elected bodies.
- In 1993, the Constitution's **73rd** and **74th Amendment Acts** mandated the reservation of 1/3rd of seats for women in **Panchayati Raj Institutions** and **Urban Local Bodies**.
    - States such as **Bihar**, **Jharkhand**, **Maharashtra**, **Andhra Pradesh**, **Kerala**, and **Chhattisgarh** have made provisions to ensure **50% reservation** for women in local bodies.

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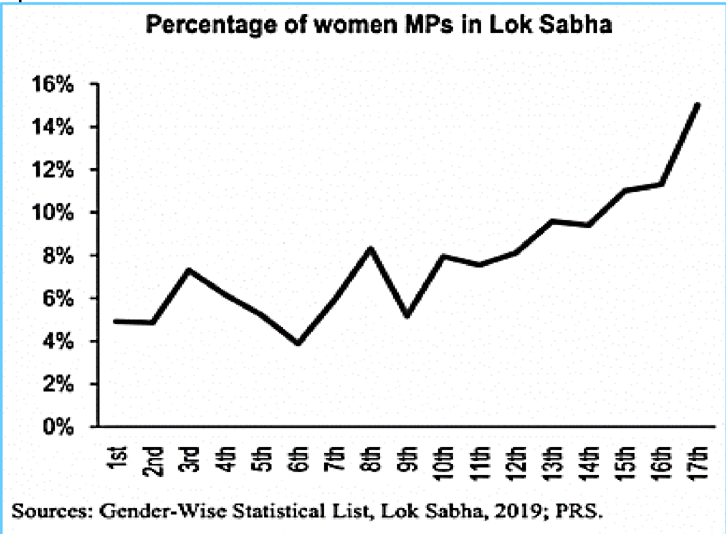
- **National Policy for the Empowerment of Women (2001)**- reservation to be considered in higher legislative bodies.
- **Bills** for reservation of **women** have been introduced in **1996**, **1998, 1999**, and **2008**.
  - The **first three** Bills **lapsed,** and the Rajya Sabha passed the 2008 Bill but **lapsed** due to the dissolution of the 14th Lok Sabha.
- **Report on the Status of Women in India, 2015:**
  - There is negligible representation of women in Parliament and state assemblies and in decision-making positions of political parties.
  - This report recommended reserving at least 50% of seats for women in local bodies, state legislative assemblies, Parliament, ministerial levels, and all government decision-making bodies.

- **Central level:**
  - Currently, **15%** of **Lok Sabha MPs** (Members of Parliament) and **13%** of **Rajya Sabha MPs** are women.
  - India has had just **one** female **Prime Minister** and **two** female **Presidents** since its independence.
- **State level:**
  - No state has more than 20% women MLAs (Member of Legislative Assembly).
  - **Chhattisgarh**- highest with 18% women MLAs.
  - **Himachal Pradesh**- just one MLA, **Mizoram**- none.
  - So far, only **15** women have served as **Chief Ministers**.
- **International level:**
  - **Global Gender Gap Report:** In the 2023 edition**,** India ranks 127th out of 146 countries.
  - **Sweden**, **Norway**, and **South Africa** have more than **45%** women representation in their national legislatures.
  - According to UN Women, as of September 2023, 28 women were serving as elected heads of State and/or of Government in 26 countries (out of a total of 193 UN member states).

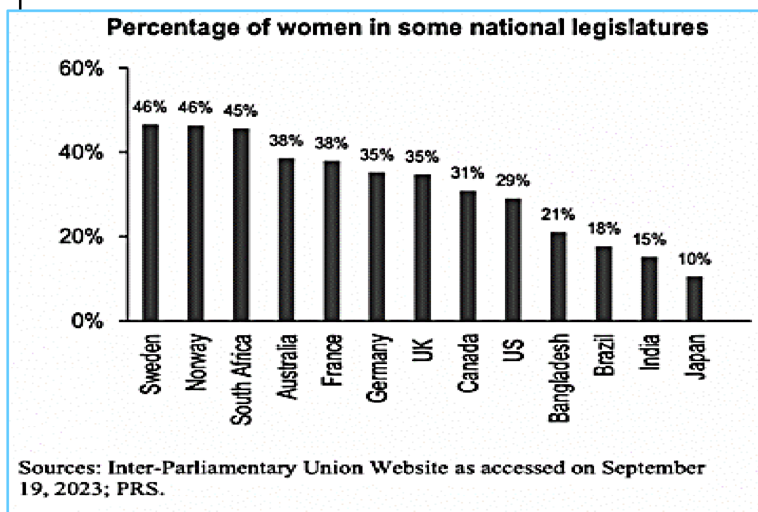
Purpose of Reservation:

- **The Convention on the Elimination of All Forms of Discrimination Against Women** provides for eliminating discrimination against women in political and public life.
  - While India is a signatory to the Convention, discrimination in matters of representation of women in decision-making bodies has continued.
- **Under-representation:** If a group is not represented proportionately in the political system, its ability to influence policy-making is limited.
  - The number of women MPs has increased from 5% in the first LS to 15% in the 17th LS, but the number continues to be quite low.



Sources: Gender-Wise Statistical List, Lok Sabha, 2019; PRS.

- A 2003 study about the **effect of reservation on women in panchayats** showed that women elected under the reservation policy invest more in the public goods closely linked to women's concerns.
- **The Standing Committee on Personnel, Public Grievances, Law, and Justice (2009**) noted that the reservation of seats for women in local bodies has enabled them to make meaningful contributions. **E.g., Sampatiya Uikey belonging to the Gond tribe, a former Sarpanch from Tikarwara Gram Panchayat of Mandala district, a Zila Panchayat President and presently a member of Rajya Sabha, is an exemplary role model of PRI Women in a leadership role.**
- **The Inter-Parliamentary Union (2022)** has noted that legislated quotas have been a decisive factor in women's representation.



Sources: Inter-Parliamentary Union Website as accessed on September 19, 2023; PRS.

Arguments in favour of Women's Reservation	Arguments against Women's Reservation

• **Gender inequality and discrimination:** The political empowerment of women is rightly perceived as a **tool** for eliminating **gender inequality, discrimination**, **crimes against women**, low participation of women in the **workforce**, low **nutrition** levels, and a skewed **sex ratio**.
• **Expanding economic opportunities:** More women must be drawn into **decision-making processes** to enable them to explore **new work opportunities** in a **fast-growing economy**, going beyond traditional stereotypes of women's work and roles. A **2003 study** about the effect of women's reservation in panchayats showed that women elected under the reservation policy **invested more** in the **public goods** concerning **women**.
• **Youth aspirations:** The reservation shall **catalyze** a **social dynamic** that would address the **aspirational effervescence** of young women.
• **Countering fundamentalism:** Women's reservation would also entail confronting **fundamentalist** and **divisive agendas** and ensuring that women get an opportunity to form a strong **lobby** in the Parliament.
	• **Perpetuate inequality:** Separate constituencies for women might narrow their outlook and perpetuate unequal status as they will not be seen as competing on merit.
	  ○ For instance, in the Constituent Assembly, Renuka Ray argued that when seats are reserved for women, their consideration for general seats does not usually happen, however competent they may be.
	• **Sideline electoral reforms:** Reservation would not lead to political empowerment of women unless larger issues of electoral reforms, such as criminalization of politics, internal democracy in political parties, etc. will be addressed.
	• **Ineffectiveness of local body reservation:** Providing reservations to women in local bodies may not always prove beneficial as **proxies and "panchayat patis"** (husbands of elected leaders) hold power and do the work.
	• **Cultural and customary concerns:** It will **interfere** with the customary laws and ideal family setup, especially concerning **Scheduled Tribes**.
	  ○ **E.g.-** Women's reservations in Urban Local Bodies faced many hues and cries in Nagaland.

Way Forward:

- **Timely implementation:** Women's Reservations should be **delinked** from the next population **census** and **delimitation** exercise and implemented immediately to represent an adequate number of women in Parliament.
- **Training and support programs:** The Government's tailored training and support programs will **help** women elected representatives from lower castes and class **overcome their disadvantages**.
- **Strengthening democracy and society:** The Women's Reservation Act should not only focus on the reservation but also address **gender equality** in politics and **historical injustices**, empower women and ensure their **voices** are **heard**.
- Incorporate the **Standing Committee on Personnel, Public Grievances, Law, and Justice recommendations**:
  - Reservation for women belonging to Other Backward Classes (OBCs) at an appropriate time.
  - Working out the modalities to reserve seats for women in Rajya Sabha and State Legislative Councils.

Merely Liking a Post is not an Offence under the IT Act

News Excerpt:

According to a recent judgement of Allahabad High Court, liking a post on social media platforms like Facebook or X (formerly Twitter) cannot be punishable under Section 67 of the Information Technology (IT) Act.

Background:

- The **Single Judge Bench of Justice Arun Kumar Singh Deshwal** was hearing an application to quash charges filed against a person, who had been accused by Agra police in 2019 of making posts that led to the assembly of 600-700 people for a procession without a permit, thereby threatening peace and security.
- During the hearing, the Investigating Officer of the case relied on the fact that the accused had liked a post on social media, calling for the assembly - despite being unable to provide evidence of himself having posted the content or shared it.

Issues related to Social Media:

- It has transformed how individuals communicate and receive information.
- **Regulating social media** has become important to alleviate the challenges associated with its use.
  - **Privacy** is another area where social media regulation is required. Social media platforms amass large amounts of user data, utilized for targeted advertising and other purposes.
- Social media platforms are vulnerable to the **spread of fake news and disinformation,** which can have major consequences such as inciting violence, instilling fear, and destroying public trust.

- Individuals have suffered substantial psychological and emotional suffering as a result of an **increase in hate speech, cyberbullying, and internet harassment** on social media.

Regulation of Social Media in India:

- **Information Technology (IT) Act, 2000:** Social media platforms are generally considered as intermediaries.
  - Any intermediaries, irrespective of their country of origin, rendering their online services in India need to follow the IT Act, 2000 and other applicable laws.
  - It establishes a legal foundation for electronic governance and governs all areas of electronic communication, including social media.
  - The **Cyber Appellate Tribunal** and the **Cyber Regulations Advisory Committee** are established by the Act.
- **Information Technology (Intermediary Guidelines and Digital Media Ethics Codes) Rules, 2021** (IT Rules, 2021): They make intermediaries including social media platforms accountable to their users and enhance user safety online.
- **India's Digital Personal Data Protection Act, 2023:** The DPDP Act applies to all data, whether originally online or offline and later digitized, in India. It also applies to the processing of digital personal data beyond India's borders, particularly when it encompasses the provision of goods or services to individuals within the Indian territory.

Problems In Regulating Social Media

- **Conflict between the necessity for control and the freedom of expression:** Social media platforms act as means for free speech, especially in nations where traditional media channels are regulated or limited.
- **Difficulty in controlling:** With millions of users and interactions every day, social media networks are extremely complicated.
- **Constantly changing social media algorithms:** Complex algorithms determine what content users see on their platforms, and these algorithms are updated regularly to increase engagement and advertising revenue.
- **Data privacy:** Large amounts of personal data, such as their location, browsing history, and online behaviour is routinely used to target advertisements and deliver personalized content. It can also be abused or stolen by third parties.
- **Worldwide reach:** Because social media sites traverse national borders, it is difficult to implement restrictions. This has sparked questions about the role of international law in regulating social media, as well as the necessity for increased intergovernmental collaboration.

Way Forward:

- **Collaborative regulation:** Social media platforms may collaborate with governments, civil society groups and other stakeholders to create a set of best practices and rules to control harmful content on these platforms. This will create more effective and nuanced solutions that take into account the complexities of social media.
- **Transparency:** Promotion of transparency and increased openness about the working of social media firms can create confidence among users and authorities, as well as highlight the areas where further regulation is needed.
- **Algorithmic accountability:** Algorithms mould the material that people view on social media, more algorithmic responsibility is required. This may provide a guarantee that their platforms are more equitable and inclusive by making their algorithms more open and responsible.
- **Multi-stakeholder governance:** This can help make social media regulation more inclusive and representative of diverse perspectives and demands.
- **International collaboration:** Given the worldwide character of social media, further international cooperation on regulation is required to find more effective answers to the issues of regulating social media.
- **Education and media literacy:** There is a need for more social media education and media literacy. Through this, we can assist people in becoming more educated and responsible online participants by enhancing their media literacy.

Surrogacy laws

News Excerpt:

There is a rise in the number of privileged Indians travelling abroad for surrogacy due to changes in surrogacy rules.

More about the News:

- This decision has once again sparked the **debate of Choice vs. Right.**
  - The distinction between a **"choice" and a "right"** in family-making reflects patriarchal notions of bloodline purity.
  - While both surrogacy and adoption should be considered equal choices, there shouldn't be an implied disparity in their status or recognition.

What is surrogacy?

- According to The Surrogacy (Regulation) Act, **Surrogacy** is defined as a practice where a woman gives birth to a child for an intending couple with the intention to hand it over to them after the birth.
- It is permitted only for **altruistic purposes** or **for couples who suffer from proven infertility or disease.**

- Surrogacy is **prohibited for commercial purposes,** including for sale, prostitution, or any other forms of exploitation.
- There are two main types of surrogacy:
  - **Traditional surrogacy** is where the **surrogate mother is biologically related to the child.**
  - **Gestational surrogacy,** where the **child is not biologically related to the surrogate.**

Latest change to the Surrogacy (Regulation) Act, 2021
Married couples can now use donor eggs or sperm if they suffer from a medical condition necessitating the use of donor gametes.
What about "single" women?
However, these changes are not applicable to "single" women widows or divorcees. - The Act allows "single" women between the age of 35 to 45 years access to surrogacy, provided they use their own eggs.

Who can avail of surrogacy?

- Under the Surrogacy (Regulation) Act, surrogacy is permissible for couples with **proven infertility or disease or for altruistic purposes.**
- The eligibility criteria for couples **include being married for at least five years, meeting age requirements, and not having any living child (biological, adopted, or surrogate), except in specific cases such as children with disabilities or life-threatening disorders.**

Who can be a surrogate?

- A surrogate mother must be a **close relative of the intended couple,** a married woman with at least one child of her own, aged between 25-35 years, and has been a surrogate **only once in her life.**
- She must also possess a certificate of medical and psychological fitness for surrogacy.
- Single Persons, live-in couples, LGBTQ couples, and couples older than 45 years cannot access surrogacy in India.

Who regulates surrogacy?

- **The Surrogacy (Regulation) Act** regulates surrogacy in India.
- The Act provides for the constitution of **National Surrogacy Boards (NSB) and State Surrogacy Boards (SSB),** tasked with enforcing standards for surrogacy clinics, investigating breaches, and recommending modifications.
- **Surrogacy clinics** must apply for registration and adhere to regulations set forth by these boards.

Why are couples going overseas?

- **The law is compelling couples to go overseas:**
  - The Surrogacy (Regulation) Act of 2021 in India prohibits commercial surrogacy and only allows altruistic arrangements under strict eligibility criteria, such as married couples or ever-married single women (widowed or divorced).
  - The law mandates that the intending parents must use their own gametes for gestational surrogacy, excluding the possibility of using donor gametes.
  - These stringent regulations make it challenging for many couples to pursue surrogacy within India, leading them to seek options abroad where surrogacy laws may be more permissive or where commercial surrogacy is legal.
- **Where are surrogacy providers:**
  - Surrogacy providers are often located in countries where surrogacy laws are more flexible or where commercial surrogacy is permitted.
  - Popular destinations include the **United States, Canada, Ukraine, Russia, and some Southeast Asian countries.**
- **The citizenship status of the child:**
  - It varies depending on the country where the surrogacy takes place and the citizenship laws of the intended parents' home country.
  - For example, In the **United States,** if a child is born to surrogate parents who are citizens or legal residents, then the child typically receives U.S. citizenship automatically.
  - Similarly, in other countries, the child's citizenship status may be determined by factors such as the **nationality of the intended parents, the surrogate mother's citizenship, and the laws governing surrogacy in that country.**
- **Benefits of US Surrogacy:**
  - Despite the high cost, many Indian couples choose the US for surrogacy due to well-defined laws, **options for genetic parentage, gender selection, and the possibility of the child obtaining US citizenship, which can be advantageous for education and other opportunities.**

Criticisms:

- **Exploitation of Surrogate Mothers**, particularly those from economically disadvantaged backgrounds:
  - Women may be **coerced or financially incentivized to become surrogates,** often without fully understanding the risks or implications involved.
  - They may lack adequate legal protections and access to healthcare, leading to concerns about their well-being during and after pregnancy.
- **Commercialization and Commodification:** Despite regulations prohibiting commercial surrogacy, concerns persist about the **commodification of women's bodies and reproductive capacities.**
  - The profit-driven nature of surrogacy arrangements may **prioritize financial gain over the welfare of surrogate mothers and children.**

Social Challenges:

- The deeply entrenched socio-cultural norms and perceptions surrounding family, parenthood, and reproductive rights.
  - **Traditional notions of kinship and bloodline purity** clash with modern conceptions of family diversity and reproductive autonomy.
  - **Cultural stigmas and biases against infertility** can further exacerbate the challenges.
  - **May challenge existing social hierarchies and gender roles**, prompting broader debates.

Legal Restrictions on Surrogacy:

- The Surrogacy (Regulation) Act of 2021 in **India permits surrogacy only for married couples, widows, or divorcees aged 35 to 45.**
- **Single women, including those never married, are excluded from this legal framework** reflecting discrimination and societal biases against single women.

Contested Eligibility Criteria:

- The focus on marital status as a determining factor for eligibility in surrogacy is an exclusionary approach. It **fails to address the reproductive rights of single individuals, same-sex couples, and non-married couples.**

Barriers to Safe Abortions:

- The **Medical Termination of Pregnancy Act**, even after amendment, **does not explicitly address the needs of single women seeking abortions**.
- This lack of clarity leads to obstacles in accessing reproductive healthcare services, including safe abortion services.

Stigma and Traditional Notions:

- The stigma against single motherhood is rooted in traditional ideas about the family structure and the perceived need for children to have fathers.
- However, these notions **overlook the capabilities of single women and queer couples to provide a nurturing environment for children.**

Advocacy for Inclusive Policies:

- There's a call for a shift in the assessment of the welfare of the child, moving away from the traditional emphasis on the presence of a father to a **focus on supported parenting.**
- This would benefit not only single women but also queer couples and non-traditional families, aligning with the evolving understanding of family dynamics and parental responsibilities.

Figure: Legal & Social Challenges

- **Ethical Considerations & Dilemmas** regarding the rights of all parties involved:
  - The **autonomy and agency** of surrogate mothers, the **genetic connections between intended parents and children,** and the **psychological impact on all individuals** within the surrogacy arrangement.
  - Issues of **genetic selection, ownership of embryos**, and the long-term implications for children born through surrogacy.
- **Regulatory Challenges:** The legal framework remains **fragmented and inconsistent.**
  - The existing regulations may be **inadequate to address the evolving complexities of surrogacy practices**, leading to loopholes and ambiguities that can be exploited.
- **Globalization and Transnational Surrogacy:** Raised concerns about legal jurisdiction, cross-border exploitation, and disparities in regulatory standards.
  - The **outsourcing of surrogacy to countries with lax regulations** may exacerbate inequalities and ethical dilemmas.
  - Transnational surrogacy arrangements may also pose challenges related to **citizenship, nationality, and the legal recognition of parental rights, particularly for children born through international surrogacy.**

Way Forward:

- It is imperative for policymakers, healthcare professionals, and civil society to **collaborate in shaping a more inclusive and ethically responsible approach to surrogacy** that respects the rights and dignity of all individuals involved.
- Statutory reforms should cater to the **rights of the oocyte donors.**
- The **revealing of donors' identities should be voluntarily permissible**, and the rights to equality and parenthood of members of the LGBTQIA+ community who wish to engage in surrogacy should be considered.
- Finally, it is critical that the **provision for awarding compensation to surrogates be made in order to protect those vulnerable to exploitation.**

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Does India Have Adequate Laws to Combat Superstition?

News Excerpt:

The recent **stampede** at a religious gathering in **Hathras, Uttar Pradesh**, resulting in over 120 deaths, has reignited the debate on whether India has sufficient legislation to tackle exploitative **religious and superstitious practices**.

What is Superstition?

A belief that is **not based on reason or scientific thinking** and that explains the causes for events in ways that are **connected to magic.**

India's Battle Against Superstition:

- According to the **2021** report of **the National Crime Records Bureau (NCRB)**, **six deaths** were attributed to **human sacrifices**, and **witchcraft** was the motive for **68 killings**.
  - **Chhattisgarh** reported the **highest number of witchcraft** cases (20), followed by **Madhya Pradesh** (18) and **Telangana** (11). **Kerala** witnessed two cases of human sacrifice.
- **In 2020**, there were **88 deaths due to witchcraft** and 11 from human sacrifices, as per the NCRB report.

Problem of Witch-hunting

- It is a serious problem in **tribal districts**, where women from **disadvantaged communities** are often targeted.
- Despite tribal communities constituting about **8% of India's population**, dedicated **welfare schemes for witch-hunting victims** are absent.
- It's also crucial to ensure these **laws are not weaponized** against Adivasi communities.
- State authorities must abide by their **constitutional duty to promote rational thinking** and **scientific practices**.
- **Property disputes** often underlie witch-hunting issues, with a prevalent fear that women inheriting property may contravene community norms.
- Comprehensive **training programs for key stakeholders** and a **victim compensation fund** are essential to support victims.

Absence of a Central Law

- India lacks a central law exclusively addressing crimes related to **witchcraft, superstition, or occult activities**.
- Experts argue for a **National law similar to those in Maharashtra and Karnataka** to address issues like superstition, black magic, witch-hunting, and other inhuman practices.
- Section 302 (punishment for murder) of the **Indian Penal Code (IPC)** prescribes punishment for related crimes like **abduction and murder** but does not cover harming others through superstitious and outdated beliefs. It takes cognizance of human sacrifice, but **only after the murder is committed,** likewise, Section 295A works to discourage such practices.
- **Provisions under the Drugs and Magic Remedies Act of 1954** also aim to tackle the debilitating impact of various superstitious activities prevalent in India.
- In the absence of nationwide legislation, a **few states have enacted laws** to counter witchcraft and protect women from deadly witch-hunting.

Concerns About State Laws

- **Defining superstition is complex**. State laws often use **expansive and vague definitions**, giving enforcing authorities subjective and potentially discriminatory powers.
- After national legislation is enacted, individual states can introduce amendments to address local concerns, enhancing the law's effectiveness and refining definitions.

Implementation Challenges

- **Law enforcement agencies** often lack sensitization.
- Police officers' **cultural sensibilities** and **biases** prevent them from addressing these issues scientifically.
- Significant effort is required to persuade the police to **file FIRs**, and **political influence** often compromises investigations, **leading to low conviction rates**.
- **Caste discrimination** related to superstitious beliefs often goes unnoticed.
- **Training programs** for all **police officers** are essential since they are typically the first responders.

Religious Freedom and Public Interest

- **Article 25** of the Constitution provides freedom of religion and also permits **reasonable restrictions** on **public order, morality, and health grounds.**
- Practices that are inherently exploitative will also violate other fundamental rights, including the **right to life and protection against untouchability**.

STATE GOVERNMENT'S EFFORTS TO STOP SUPERSTITIONS:

Bihar (1999)

- **First state to enact a law** to prevent witchcraft and the identification of women as witches.

- The **Prevention of Witch (Daain) Practices Act** came into force in **1999**.
- The Act defines a witch as a woman identified by someone else as having harmful powers through black magic, evil eyes, or mantras. Anyone who identifies a person as a witch can **face up to three months in jail or fined.**
- All offences under the Act are **cognizable and non-bailable.**

Jharkhand (2001)

- Jharkhand enacted the **Prevention of Witch (Daain) Practices Act in 2001.** However, **it has not been effective.**
- A document on the Jharkhand Police website notes that the Act has not adequately prevented the identification and murder of women labelled as witches.

Chhattisgarh (2005)

- **Chhattisgarh Tonahi Pratadna Nivaran Act was enacted in 2005.**
- A person convicted for identifying someone as a witch can be sentenced upto 3 years of rigorous imprisonment & fined.

Odisha (2013)

- Following the Odisha High Court's directions to frame a law to address rising cases of witch-hunting, the Odisha Prevention of Witch-Hunting Bill was passed in 2013.
- The law includes provisions for imprisonment up to seven years and penalties for offenders.

Maharashtra (2013)

- The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil, and Aghori Practices and Black Magic Act was enacted in 2013 after the murder of an anti-superstition activist.
- The Act aims to bring social awakening and protect people from evil and sinister practices, with punishments ranging from six months to seven years of imprisonment and fine.

Rajasthan (2015)

- Rajasthan Prevention of Witch-Hunting Act, 2015, enacted to tackle the menace of witch-hunting and witchcraft.
- Punishments include imprisonment of one to seven years and fines.

Assam (2015)

- The Assam Witch Hunting (Prohibition, Prevention, and Protection) Act, 2015, received the President's assent in 2018, completely prohibits witch-hunting.
- Punishments can go up to seven years of imprisonment and fines.

Karnataka (2020)

- The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, came into effect in January 2020. It bans several practices related to black magic and superstition.
- Punishments range from up to seven years of imprisonment and fines.

Kerala's Efforts

- Kerala has seen multiple attempts to frame an anti-superstition law, but none have been enacted.

Way Forward:

- India's **battle against superstition** and related crimes is ongoing, with **state-specific laws** addressing the issue to varying degrees of success.
  - However, **State-specific laws** should better accommodate **local practices and realities**.
- **Central law** may be necessary to provide **uniform protection and deterrence**, but the challenges of **cultural sensibilities** and **diverse practices** remain significant hurdles.
  - The **need for awareness**, **sensitization**, and **robust enforcement** is critical to eradicating these harmful practices and protecting vulnerable communities.
- To address this disparity, **comprehensive training programmes are essential for key stakeholders** such as public health workers, schoolteachers, and district magistrates. This would enable them to effectively support and provide redress for victims seeking assistance.
- Many people believe that such superstitious beliefs are for their own good. There is a widespread tendency to seek solace in spirituality at the cost of rationality.
  - It is crucial to move beyond this mindset and **embrace scientific temperament in our daily lives.**
  - Article 51A (h) of Indian Constitution makes it a fundamental duty for Indian citizens to develop the scientific temper, humanism and the spirit of inquiry and reform.

The proposed changes to the Waqf Act

News Excerpt:

The Union Government has referred the **Waqf (Amendment) Bill, 2024**, to a Joint Committee of Parliament.

What is a Waqf property?

- A Waqf is **a personal property given by Muslims for a specific purpose — religious, charitable, or private purposes.**
- While the beneficiaries of the property can be different, the **ownership** of the property is **implied to be with God.**
- A Waqf can be **formed through a deed or instrument or orally,** or a **property can be deemed to be Waqf if it has been used for religious or charitable purposes for a long period of time.**
- Once a property is declared as Waqf, its **character changes forever and cannot be reversed.**

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Waqf (Amendment) Bill, 2024

The Bill seeks to amend the **1995 Waqf Act and** proposes sweeping changes to how Waqfs are governed and regulated

The tabling of the Bill was met with **strong criticism** from the Opposition parties who said the proposed law was **"unconstitutional"**, "**anti-minority"**, and **"divisive".**

Laws governing Waqf in India:

- Waqf properties in India are governed by the **Waqf Act, 1995.**
    - However, India has had a legal regime for the governance of **Waqfs since 1913,** when the **Muslim Waqf Validating Act** came into force.
    - The **Mussalman Wakf Act, 1923** followed. After Independence, the **Central Waqf Act, 1954,** was enacted, which was ultimately **replaced by the Waqf Act, 1995.**
- In **2013, the law was amended to prescribe imprisonment of up to two years** for **encroachment on Waqf property** and to explicitly prohibit the sale, gift, exchange, mortgage, or transfer of Waqf property.
- The Waqf Act provides for the appointment of a **survey commissioner** who maintains a list of all Waqf properties by making local investigations, summoning witnesses, and requisitioning public documents.

Major changes proposed to the Waqf Act

- The Bill seeks to substantially alter the existing framework of Waqf law
- The proposed amendment **shifts the power of governing Waqfs from the Boards and Tribunals,** which are largely run by the Muslim community, **to the state governments**

Waqf Tribunal:

- The Waqf Act states that any **dispute related to Waqf properties** will be decided by a **Waqf Tribunal.**
- The Tribunal is **constituted by the State Government** and comprises **three members** —
    - a chairperson who is a **state judicial officer** not below the rank of a **District, Sessions or Civil Judge, Class I;**
    - an officer from the state civil services;
    - a person with knowledge of Muslim law and jurisprudence.
- The law also has provisions for the Constitution and appointment of Waqf Boards, Waqf Councils, Chief Executive Officers for Waqf Boards in the states.
- The CEOs and parliamentarians who are part of the Waqf Boards **must be from the Muslim community.**

What are the functions of the Waqf Boards?

- A Waqf Board is a **body under the state government,** which works as a **custodian for Waqf properties across the state.**
- In most states, there are **separate Waqf Boards** for the **Shia** and **Sunni** communities.
- Almost **all prominent mosques** in the country are Waqf properties and are under the Waqf Board of the state.
- A Waqf Board is **headed by a chairperson and** has **one or two nominees** from the **state government, Muslim legislators** and **parliamentarians, Muslim members of the State Bar Council,** recognized scholars of Islamic theology, and mutawallis of Waqfs with an annual income of Rs 1 lakh and above.
- A Waqf Board has **powers under the law to administer the property** and take measures for the **recovery of lost properties of any Waqf** and to **sanction any transfer of immovable property of a Waqf by way of sale, gift, mortgage, exchange, or lease.**
    - However, the sanction shall not be given unless at least two thirds of the members of the Waqf Board vote in favour of such a transaction.

Among the key changes in the bill:

- The bill seeks to change the name of the Parent Act from the Waqf Act, 1995 to the **Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995.**
- It seeks to introduce three new provisions in the Act:
    - Section 3A states that **no person shall create a Waqf unless he is the lawful owner of the property** and **competent to transfer** or dedicate such property. This provision appears to address the assumption that **land that does not belong to an individual is not given as Waqf.**
    - Section 3C (1) states that **"government property identified or declared as Waqf property,** before or after the commencement of this Act, shall not be deemed to be a Waqf property".
    - Section 3C (2) empowers the government to decide if a property given as Waqf is government land. **"If any question arises as to whether any such property is a Government property, the same shall be referred to the Collector having jurisdiction who shall make such inquiry as he deems fit and** determine whether such property is a Government property or not and submit his report to the State Government,".
        - This provision essentially means that the Collector — and not the Waqf Tribunal — will make this determination in case of a dispute.
        - Such property **"shall not be treated as Waqf property till the Collector submits his report".**
        - Until the government decides the issue, Waqf cannot be in control of the disputed land.

Way Forward:

Streamlining the legislation will help **reduce the disputes** surrounding the Waqf properties and **give legitimacy to the claims** made by Waqf on these properties.

MISCELLANEOUS

Personality Rights

News Excerpt:

OpenAI launched its latest AI model called **GPT-4o ("o" for "omni")** which introduced voice mode, letting the users have voice conversation with the AI chatbot. It includes choosing voices from five different kinds.

What are personality rights?

- Personality rights or publicity rights are a subset of **"celebrity rights"** claimed by celebrities.
- The **name, voice, signature, images,** or any other **feature easily identified by the public as markers of a celebrity's personality** lie at the heart of personality rights. These could include poses, mannerisms, or any other distinct aspect of their public persona.
- Celebrities sometimes register aspects of their personalities as trademarks to use them commercially. **For example**, footballer **Gareth Bale** trademarked the heart sign he made with his hands while celebrating a goal.
- The idea behind such rights is that **only the creator or owner of the unique features can gain commercial benefit from them.**

Cases of Personality Rights in India:

- The Delhi High Court, while relying on its judgment **D.M. Entertainment Pvt. Ltd. v. Baby Gift House,** protected the personality and publicity rights of **Jackie Shroff** while restraining various e-commerce stores, AI chatbots, etc. from misusing the actor's name, image, voice, and likeness without his consent.
- In a case involving **Anil Kapoor**, the Delhi HC **granted an ex parte**, **omnibus injunction** restraining 16 entities from using the **actor's name, likeness, and image** using technological tools like **AI, face morphing, and GIFs** for commercial purposes.
  - An **omnibus injunction** is granted against any unauthorized use, including against persons not mentioned in the plea.

Way Forward:

- **Enact Specific Legislation:** India should develop dedicated legislation that explicitly addresses personality rights, covering aspects such as name, voice, image, and likeness.
- **Regular Review and Updates:** The legislation should be subject to regular review and updates to ensure it remains effective and relevant in the face of evolving technologies and societal changes.
- **Enforcement Mechanisms:** Implement effective enforcement mechanisms to ensure compliance with the new legislation and provide recourse for individuals whose personality rights have been violated.

The Arbitration and Conciliation (Amendment) Act, 2021:

- It amended the **Arbitration and Conciliation Act of 1996**.
- **Provisions:**
  - The amendment allows an **automatic stay on enforcement of any arbitral awards if the courts find any clear evidence that the award is influenced by fraud or corruption**. This change has been incorporated under Section 36 of this Act using Section 2 of the Principal Act.
  - Secondly, it **omitted the Eighth Schedule** from the principal Act and states that the **qualifications, experience, and norms for accreditation of arbitrations** will be specified under the regulations.
  - The Act contains provisions **to deal with domestic and international arbitration** and defines the law for conducting conciliation proceedings.

Whither Arbitration?

News Excerpt:

According to WIPO (World Intellectual Property Organisation), **Arbitration** is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute

Need for Efficient Arbitration in India:

- **Speedy Justice Delivery System:**
  - The increasing burden of over **4.9 crore pending cases** in Indian courts prompted policymakers to consider strengthening ADR mechanisms.
  - The **number of judges in India is comparatively low**, considering the population ratio in India.
- **MSMEs sector**: Micro, Small, and Medium Enterprises (MSMEs) are eagerly awaiting the establishment of arbitration institutions in the country.
  - Under **Section 18(3) of the MSME Act 2006**, when a dispute of MSMEs fails to settle through conciliation, the MSME Council shall either take up the dispute itself for arbitration or refer it to an arbitration institution for settlement.
  - The institution then conducts arbitral proceedings and passes an award that is binding on the disputing parties and equivalent to a court's decree.
- **Institutionally stable**: Arbitrations, if conducted in a tight environment, under the institution's rules, and if

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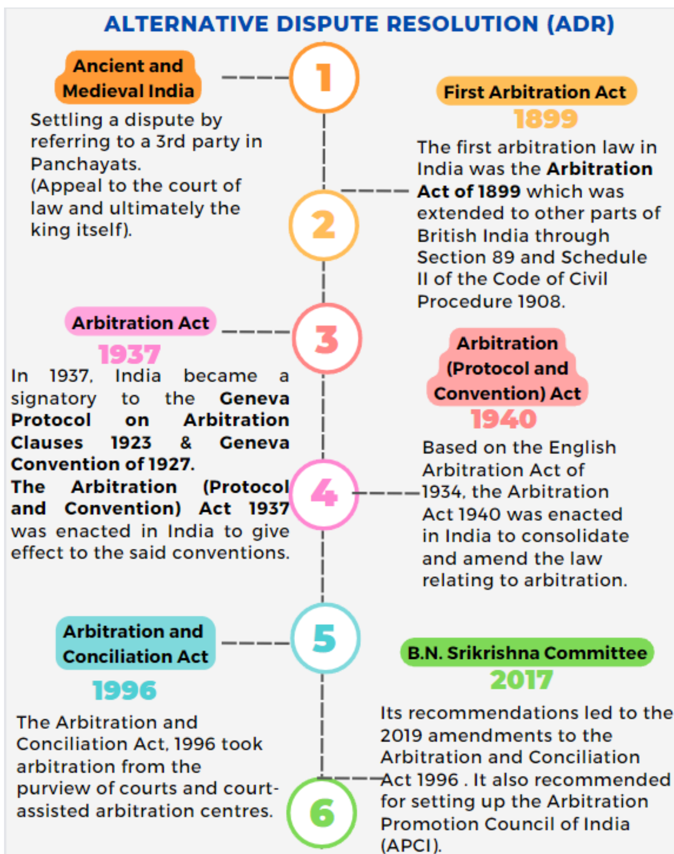
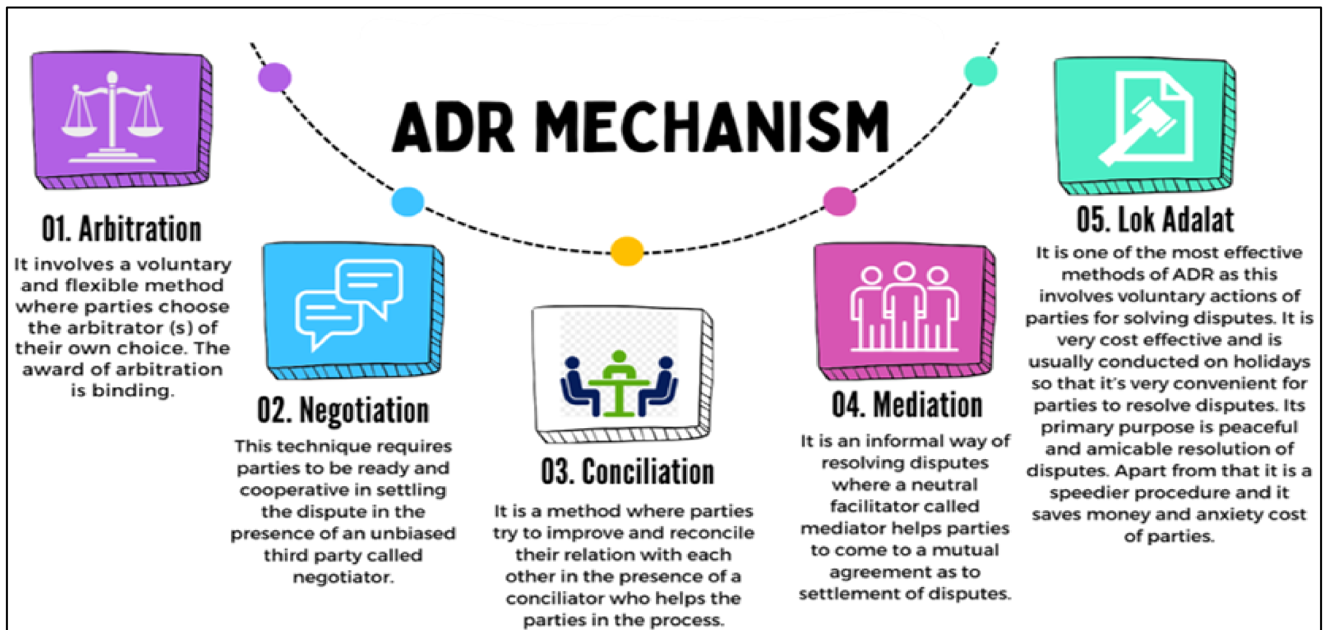


supervised, are responsible for various aspects relating to arbitration tribunal and ensuring the quality of an award passed by their panel arbitrator.

- **A rights-based approach to justice delivery:** The complex nature of the laws and rigidity of courts further amplify the need for an alternate mechanism to settle disputes.
  - In the **Food Corporation of India (FCI) Vs Joginderpal case**, the Supreme Court observed that "the law of arbitration must be 'simple, less technical and more responsible to the actual reality of the situations', 'responsive to the canons of justice and fair play'.
  - The absence of procedure and unnecessary formalities makes the **judicial process of arbitration hassle-free.** Further, at present, there is no fixed time given in the law for the speedy disposal of cases.
  - +The parties dissatisfied with an arbitrator's award may petition a court under **section 34** of the Arbitration Act within **90 days** to set aside the award.

Major Institutional Challenges in India:

- **Unawareness in Public:** The lack of legal education in the larger strata of our society is one of the greatest hindrances to the growth of ADR in India.
- **Execution Issues:**
  - **Ignorance:** Certain government officials and bankers are ignorant that an arbitration award by a party-appointed Arbitrator is equivalent to a court decree.
    - The **Arbitration Council of India** to authorize and regulate Arbitration Institutions (passed in 2021) has yet to be established.
  - **Non-clarity of proceedings and dearth of Data:** In the present ADR mechanism, there is no established method for execution. The parties are now again in the same litigation process, which was meant to be bypassed by ADR. Several arbitral institutions do not have websites.
- **Lack of professionals and skilled lawyers:** Due to the generalized theoretical system of Judicial education present in India, we lack skilled arbitrators and legal professionals.



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Way Forward:

- **Need to Democratize Judiciary**: There is an urgent need for the Centre and all the High Courts in the country to take note of the institutions operating in each State and designate them as arbitration institutions to alleviate the much-discussed burden on courts.
    - There is a huge need to build ADR tribunals in every district of the states to make it more accessible to every citizen of India.
- **Bringing Behavioural changes**: Legally educating the lower strata of society needs to be a part of school and college curriculums.
    - Further, legal professionals must be upskilled and provided with further career opportunities in ADR solutions to enhance the execution mechanism.

Lok Adalat

News Excerpt:

The Legal Aid System in India is in an alarming situation.

Constitutional Provisions:

A citizen of a nation is obligated to face justice when his or her personal conduct or commercial activities are deemed to be in opposition to domestic legislation or the rights of another individual. A citizen in such a circumstance is free to pursue justice through administrative and judicial institutions:

- **Article 14- Access to Justice to the impoverished**: "Within the territory of India, the State shall not deny equality before the law and equal protection of the laws to any person."
- **Article 39A- Obligation on the State to offer free legal aid to all citizens:** It is the State's responsibility to ensure that the functioning of the legal system advances justice on an equal opportunity basis.

What is Lok Adalat?

- Lok Adalat is one of the forums for **alternative dispute redressal mechanisms** where disputes/cases pending in the Court of law or at the pre-litigation stage are settled.
- Lok Adalats has been given **statutory status** under the **Legal Services Authorities Act of 1987**.
    - Under the Act, the decisions made by the Lok Adalats are deemed to be a decree of a civil court and are final and binding on all parties, and **no appeal against such an award** lies before any court of law**.**
- If the parties are not satisfied with the award of the Lok Adalat, they are **free to initiate litigation** by approaching the Court of **appropriate jurisdiction** and filing a case by following the **required procedure** in the exercise of their right to litigate.

Legal Aid System and National Legal Aid Service Authority (NALSA):

- Established under the **Legal Services Authority Act of 1987**, NALSA endeavours to ensure that the letter and spirit of the Constitution are upheld and that the poor, disadvantaged, and weaker members of society have access to equal justice.
- NALSA operates at both the **national and sub-national levels** using institutional arrangements that are explicitly designated, intending to ensure access to justice is affordable for those in need as follows:
- NALSA obtains its jurisdiction not solely from the **Legal Services Authority Act of 1987** but also from **Articles 14 and 22(1**), which mandate the State to guarantee equal treatment under the law and a legal system that advances justice by providing equal opportunities to all.

Current Situation of Legal Aid in India:

- According to Indian Justice Report (2022), the quantity of legal services clinics experienced a decline, decreasing from 14,159 in 2020 to 4,742 in 2022.
- Between 2021 and 2022, the National Lok Adalats resolved matters for a meagre Rs. 7,322 crore in total value. Over 60% of the inmates in prisons in 32 states are undertrials.
- Vocational education was made available to less than 5% of inmates in 24 states and Union Territories. 5 states have not furnished their inmates with vocational instruction.

Issues with the Legal Aid system in India:

- **Accessibility of Justice:** Despite exerting considerable effort, legal aid systems could only reach a fraction of their prospective clientele.
- **Rising Prison and Pre-trial Offenders:** According to the India Justice Report, 2022, prison overcrowding experienced a notable increase, surging from 120% to 130%. An unprecedented 77% of the inmate population consists of pre-trial offenders, who spend an average of more time incarcerated than at any other time in history.
- **Issue of Pending Cases:** The alarming number of pending cases, nearly 5 crores (50 million) below the staggering figure, is the distressing record of the escalating duration required to achieve a resolution.
    - **National Judicial Data Grid** indicates that of the 4,450,075 pending cases in various courts across the nation that have been unresolved for one to thirty years, more than seventy-five percent are criminal in nature.
- **Low Clearance of Cases:** According to the report, the only courts that operate with an entire complement of justices are the High Court of Sikkim and the district courts in Chandigarh.

  - Kerala was the only State among the eighteen large and medium-sized states to attain case clearance rates of one hundred per cent at both the High Court and subordinate court levels.
- **Lack of Policy Implementation:** No state or territory could meet all its Scheduled Castes, Scheduled Tribes, and Other Backward Classes quotas at the District court level.
  - Information regarding SC/ST/OBC justices is not accessible to High Courts.
- **Institutional Lags:**
  - **Police Force:** The police are an integral component of the criminal justice system in India. State statutes mandate employment quotas for SC, ST, and OBC individuals.
    - Every State and territory failed to achieve its designated quota for female police officers, while only the State of Karnataka has met these requirements.
  - **Human Rights Commission:** As of March 2021, the combined count of pending cases among the 25 State Human Rights Commissions stands at 33,312. State Human Rights suffers a shortage of 44% of their sanctioned staff strength.
  - **Loopholes in Law:** An additional malady of the nation's legal aid system is the situation obtained at the police station level in granting bail in petty cases, even though compounding of offences without court permission is permitted under **Section 320(1) of the Code of Criminal Procedure**.
    - Our police personnel are trained to register cases that do not fall under this provision, thereby preventing the station-level compounding of offences.

The Legal-aid Initiatives by the Government:

- **Public Awareness:** NALSA educates the public about their rights and promotes legal aid through institutional arrangements, organizing legal literacy camps, and appointing paralegal volunteers. Since its establishment, it has organized over five lakh awareness-raising programs nationwide.
- **Prompt Resolution:** It is also conducting a permanent Lok Adalat to ensure prompt resolution and training and to facilitate pre-litigation dispute resolution via **Alternative Dispute Resolution (ADR) methods**.
- **Volunteering for weaker sections:** The provision of legal services by national, State, and district authorities is complimentary for the impoverished, including women, the disabled, scheduled castes, and tribes.
- The **India Justice Report 2022 -** State expenditure on police and judiciary has kept pace with overall state expenditure.
  - Prisons, which had earlier seen a dip in allocations, saw an improvement in funds between 2020 and 2021.
  - Legal aid, too, recently saw increased infusions from the Centre and state exchequers.

Structural and Institutional Changes:

- **Commercial Courts Act of 2015:** To facilitate the Ease of Doing Business (EoDB) and further improve India's ranking in the **World Bank Report on EoDB**, the Government amended the Commercial Courts Act, 2015 in 2018.
  - **The salient features of the Commercial Courts Act (2015) are:**
    - Reduction in Specified Commercial Dispute Value.
    - Establishment of Commercial Courts at the district Judge Level and below.
    - Establishment of appellate Court at district judge level.
    - Introduction of the Pre-Institution Mediation and Settlement Process.
- **Recommendations:** A High-Level Committee was set up to review the Institutionalization of Arbitration Mechanisms in India, led by **Justice Sri B N Krishna**. It suggested that arbitration be institutionalized in India as an **Alternative Dispute Resolution (ADR) mechanism**.
  - The Union Government, **committed to speedy resolution of commercial disputes**, decided to look into the recommendations and amended laws accordingly in 2017.
- **Mediation Act of 2023:** An act to promote and facilitate mediation, especially institutional mediation, to resolve disputes, enforce mediated settlement agreements, and provide for a body to register mediators.

Way Forward:

- **Democratizing Justice**: Developing additional legal aid clinics, implementing legal aid at the village level, fortifying the Gram Nyaya Laya framework, and promoting awareness among all stakeholders, including law enforcement, advocates, and the general public.
- **Implementation:** Developing a core team of advocates to work on a monthly salary basis in legal aid centres and bolstering institutional arbitration and mediation with pro bono service quotas.
- **Behavioural change**: Educating magistrates and judges about the importance of exercising their discretion in administering justice and preventing unwarranted delays in case dispensation will help the under-trails and the other needy.

Legal position on live-in relationships

News Excerpt:

The **two-judge Bench** of the **Allahabad High Court (HC)** stated that a **Muslim cannot claim rights in a live-in relationship** when he or she has a **living spouse** and called such a relationship against the tenets of Islam.

Recent orders regarding live-in relationships:

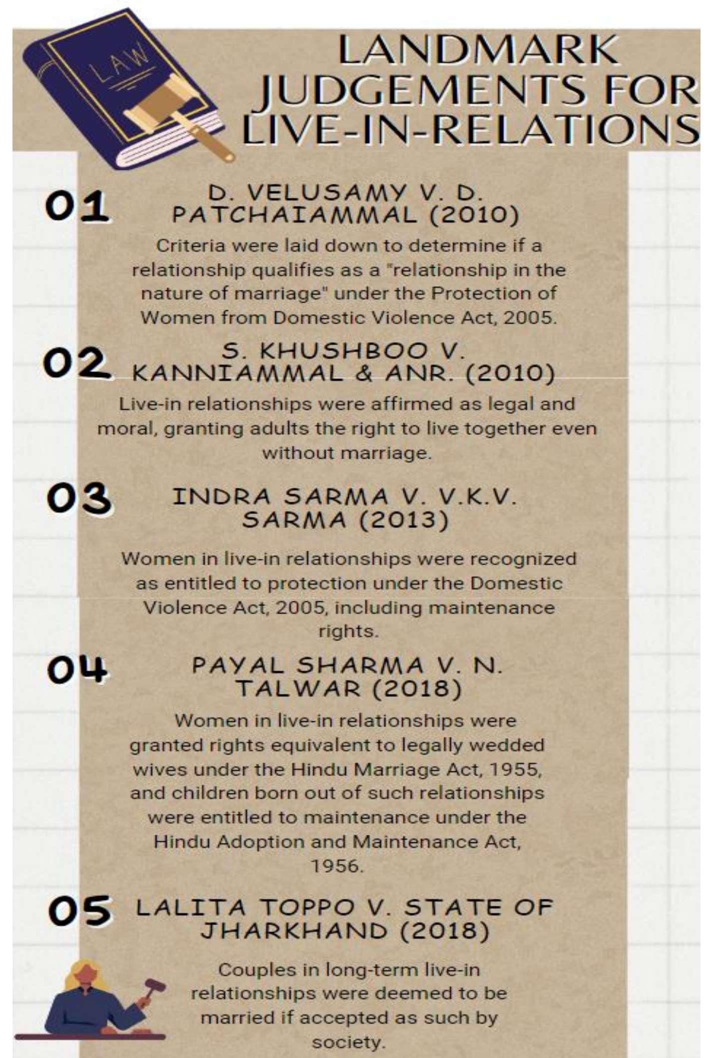
- In November last year, the **Supreme Court (SC) stayed orders** passed by lower courts, and the **Gujarat HC** awarded maintenance to a woman from the man she had been living with.
  - The SC order came after a Surat-based man challenged the HC order, arguing that their relationship could **not be termed a domestic relationship** as they were both married to other people at the time of cohabitation.
- In the same month, the **Punjab and Haryana HC** stated that a couple **living together without obtaining a divorce** from their previous spouse could not be classified as being in a "live-in relationship" or being in a union similar to marriage.
  - The court even felt that such an arrangement would amount to the **offence of bigamy** under **Sections 494/495** of the Indian Penal Code.
- **Uttarakhand's** Uniform Civil Code **(UCC)** requires the **registration** of live-in relationships with the state administration.
  - **Failure or even delay** in initiating the proceedings would invite a **jail term** of a **maximum of six months** as well as a **fine of ₹25,000.**
  - Couples planning to or already in live-in relationships will have to **register with district officials**.

What have the Courts said about live-in relationships?

- As per **SC**, for a man and a woman **to live together is part of 'the right to life'**; therefore**, a live-in relationship is no longer an offence.**
- It has affirmed that live-in relationships are not illegal; however, it may be immoral from a societal perspective. Adults have the right to live together even if they are not married.
- The concept of live-in relationships was recognized in the case of **Payal Sharma versus Nari Niketan by the Allahabad High Court.**

Legal framework for live-in relationship in India:

- While there is no specific law governing live-in relationships in India, certain provisions indirectly relate to them.
  - The **Hindu Marriage Act of 1955** provides for the registration of marriages and recognizes a woman's right to maintenance in case of separation.
  - The **Domestic Violence Act of 2005** and its amendments offer protection to women in domestic relationships, including those in live-in relationships, against violence and abuse.



Way Forward:

- Overall, the **legal framework** for live-in relationships in India is **still evolving**, and more **comprehensive laws and policies** are **needed** to address the various issues and challenges couples face in such relationships.
- **Legal recognition and protection** for live-in relationships remain a topic of debate, and it's essential to stay informed about any developments in this area.

ED's Authority to Arrest PMLA Accused

News Excerpt:

The Supreme Court (SC) has ruled that when an accused responds to a summon and appears before the court, the **Enforcement Directorate (ED) must seek the court's permission to take the accused into custody.**

About the Judgement:

- **Restriction on Arrest Power:**
  - The judgment restricts the ED's power to arrest individuals once a special court has taken cognizance of a case.

   - The ED must separately apply for custody of a person appearing in court, demonstrating specific grounds necessitating custody.
- **Exemption from Personal Appearances:** Accused individuals who appear in a special court following summons may be exempted from future personal appearances, provided they comply with the court's directives.
   - **Procedure for Non-Appearance:** If an accused fails to appear after being summoned, the special court may issue a bailable warrant followed by a non-bailable one.
- **Custodial Interrogation:**
   - The ED must demonstrate specific grounds necessitating custodial interrogation to obtain custody of an individual who appears in response to a summons.
   - Custody will only be granted if the court is satisfied with the necessity for custodial interrogation, thereby protecting the right to liberty.

What is the PMLA?

- The anti-money laundering legislation was passed in 2002 and came into force on July 1, 2005.
- The **PMLA was showcased as India's commitment to the Vienna Convention** on **combating money laundering, drug trafficking, and countering the financing of terror (CFT)**.
- The law aimed to curb the conversion of illegally earned money into legal cash. The Act empowered the ED to control money laundering, confiscate property, and punish offenders.

Rules under PMLA:

1. Stringent Bail Conditions:

- PMLA imposes stringent bail conditions on individuals accused of money laundering offences. A fundamental principle of **Anglo-Saxon jurisprudence** is that **a person is presumed innocent until proven guilty.**
- **However, PMLA inverts this principle.** All levels of courts often deny an accused bail because **Section 45 of the PMLA stipulates that a judge can grant bail only when convinced of the accused's innocence.**

2. Arrest Without Written Grounds:

- **Arrests often occur without written communication** of grounds, **violating Article 22(1) of the Constitution** and **Section 19(1) of PMLA, 2002**.
- **ED officers have repeatedly relied on verbal communication for arrests**, contravening legal requirements.

- **Further Investigation:** If the ED wishes to conduct further investigation into the same offence, it may arrest a person not named as an accused in the complaint under Section 44(1) (b) of the PMLA, provided the requirements of Section 19 (procedures of arrest) under the Act are met.

Further insights of the judgement:

- **Furnishing of Bonds:** The judgment clarifies that the ED must demonstrate specific grounds for custodial interrogation. However, the special court has the authority to direct the accused to furnish bonds under **Section 88 of the Code of Criminal Procedure (CrPC).**
- **Bond as Undertaking:** Bonds furnished under Section 88 of the CrPC are deemed as undertakings and do not constitute bail.
   - Therefore, the conditions outlined in Section 45 of the PMLA pertaining to bail do not apply to them.

Way Forward:

The recent judgment marks a significant step towards safeguarding the right to personal liberty of individuals accused under the Prevention of Money Laundering Act (PMLA), particularly in light of the stringent conditions for bail. Additionally, it will serve to shield individuals from arbitrary arrest.

Universal Basic Income

News Excerpt:

Localized experiments with Universal Basic Income (UBI) have shown mostly positive outcomes across states, strengthening calls in favour of the social policy.

About Universal Basic Income (UBI):

- UBI is a form of **social security** where every citizen, regardless of their employment status or income level, receives a **regular, unconditional cash payment** from the government.
- **Objective:** To provide financial security and reduce poverty, while also enabling individuals to pursue education, entrepreneurship, or other opportunities that contribute to societal well-being.
- In **2016-17, the Economic Survey of India** studied the idea and presented a model for UBI.
   - Accordingly, its basic premise was: "A just society needs to guarantee to each individual a minimum income which they can count on, and which provides the necessary material foundation for a life with access to basic goods and a life of dignity."

Regional successful Case studies related to Universal Basic Income:

- The basic income pilot in **Hyderabad, Work FREE**, has seen increased health insurance coverage among participants.
- The Delhi pilot by the **Self-Employed Women's Association (SEWA)** saw people gaining access to

better quality food and thus improving nutritional outcomes.

The essential difference between UBI and MIG:

Universal Basic Income:	Minimum Income Guarantee:
UBI provides a monthly stipend that would ensure that a person would be above the poverty line without any other source of income. (Thus, the Economic Survey of India suggested a UBI of Rs 7,620 per annum).	MIG, on the other hand, is pretty much at the discretion the of government of the day - it can be equal, more or less than the poverty line expenditure.

Suresh Tendulkar and C Rangarajan headed committees studied poverty in India and arrived at different qualifications of poverty.
According to the **C Rangarajan Committee,** the number of poor was 19% higher in rural areas and 41% more in urban areas than what was estimated using the **Tendulkar Committee** formula.

As a solution to overcome the loopholes present in government services:

- Cash, as a universal medium of exchange, has the unique potential to provide each person with a basic economic floor and empower them to meet their needs as they deem fit.
- India's diversity has **unique governance challenges** like - A tribal woman in Assam, a young jobless graduate in Delhi, a landless labourer in Maharashtra belonging to a marginalized caste and a homemaker in Peri-urban Tamil Nadu all having diverse and distinct needs.
- Distribution of sewing machines to empower women misses the key point that tailoring is the path they want to pursue, or if employment is an even bigger challenge.
- Good quality and accessible government services are essential, but the addition of **cash-based support allows for protecting and enhancing people's capacity to access better services**.
  - Additionally, the universality and unconditionality of the scheme would mean that the government does not need to spend time and resources in assessing the eligibility of the potential beneficiaries, and poor and vulnerable people are freed from the burden of the associated paperwork.

Worldwide Trails on UBI:

- **United States (1968-1980 and ongoing):**
  - The U.S. conducted several income maintenance experiments between the late 1960s and early 1980s in cities like Seattle, Denver, and Gary.
  - The results showed a modest reduction in labour force participation but also highlighted positive effects on education, health, and family stability.

PROS

Stimulating the economy

Regular cash injections into the economy can increase consumer spending, boosting businesses and promoting economic growth.

Poverty reduction

Lift millions of people out of poverty, address income inequality and ensure a safety net for those without access to traditional forms of assistance.

Gender Equality

By providing women with financial independence, the policy could empower them to escape abusive relationships or invest in their own education and personal development.

Reducing bureaucracy

A simplified and streamlined welfare system could lead to cost savings for governments and reduce the stigma associated with receiving assistance.

Growth opportunities

- Provide a foundation for individuals to pursue meaningful work, education, or other opportunities.
- With financial stability ensured, individuals may be more willing to take risks, and pursue creative endeavours, or entrepreneurship

CONS

Addressing diverse problems

Designing a UBI program that effectively addresses the diverse needs of India's population and regional disparities is a significant challenge.

- For e.g. need for reliable data and technology to execute it properly and avoid leakages, corruption, and exclusion errors, Universal Aadhar enrolment for beneficiary identification, etc.

High costs

The costs associated with funding a large-scale UBI program could strain public finances, potentially necessitating tax increases or cuts in other public services.

- Economic Survey 2016-17: UBI of Rs. 7,620 per year for every Indian would cost about 4.9% of GDP, that equals more than the combined annual expenditure on food, fuel, and fertilizer subsidies.

Inflation

A sudden increase in consumer spending could lead to inflation, eroding the value of the basic income payments.

Productivity

It is vital to carefully analyze the long-term fiscal implications of UBI and ensure that it remains sustainable and does not disproportionately burden specific segments of the population or discourage productivity.

Nurturing dependency culture

Unconditional income may discourage individuals from seeking employment, potentially leading to labour shortages and decreased productivity.

- Without any conditions for access to cash support, people may stop working, leading to mindless expenditures and adding to the debt.

FIGURE 1 PROS & CONS OF UBI

- **Iran (2011-present):**
  - Iran launched a nationwide UBI program in 2011 to offset the effects of subsidy reforms.
  - The impact on employment and labour force participation has been mixed.

Way Forward:

- **Need for detailed analysis and diverse mechanism:** Implementing **rent caps and price indexes** might have varying impacts across different regions and market conditions.

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- The conversation about UBI is multifaceted and requires careful analysis and consideration of various factors, including the impact of AI on the job market.
- **Accommodating diverse workforce:** UBI could potentially provide the necessary **support and flexibility for individuals to find suitable work or pursue education and entrepreneurship.**
- **Monitoring:** Ensuring that UBI payments reach the intended beneficiaries without being lost due to corruption or inefficiencies is crucial.

Prison Deaths

News Excerpt:

Recently, the Supreme Court-appointed Committee on Prison Reform, led **by Justice (ret.) Amitava Roy** emphasized that the **major cause of "unnatural death" was suicide.** The committee discovered that 660 of the 817 fatalities that were not natural were suicides.

Key findings of the Supreme Court Committee on Prison Reform Report:

The committee report is based on the data provided by Prison Statistics India (PSI) report from 2017-2021 published by the National Crime Record Bureau (NCRB).

Need for Prison Reforms:

Currently, the prisons in India are facing the following challenges:

- **Overcrowded Prisons:** The national average occupancy rate in prisons across India is 130% (as of 2021). States like Uttar Pradesh and Delhi have a percentage touching almost 200%.
- **Under trials:** According to NCRB, the under-trial occupancy rate is about 76% due to their inability to pay fines.
- **Condition of women:** As per NCRB, women prisoners constitute 4.1% of the total prisoners (approximately 22,000). They encounter difficulties like custodial rape, poor dietary intake, and inadequate hygiene and sanitation.
- **Lack of Staff:** Indian prisons have long suffered severe staff shortages, including medical, correctional, and ministerial personnel. There is a high percentage of vacancies in all categories of jail staff. For instance, in Bihar and Uttar Pradesh, approximately 200 positions are lying vacant.
- **Prison Budget: Prison and its management is a state subject**. The Parliamentary Standing Committee has noted that out of Rs 7,619 crores in 2021-22, only Rs 6,727 crore has been used. The committee also highlighted that 12 States have not disbursed funds to their prison departments. The report further states that only 0.6% of the total prison budget was spent on vocational and educational training. Only 7.09 % of prisoners in the country were receiving skill training.
- **Judicial Pendency:** As of 2022, 4.7 crore pending cases are across all levels. The juridical backlog creates tremendous pressure on Indian prisons.

Government Initiatives:

- **The Government of India set up the National Mission for Justice Delivery and Legal Reforms** to reduce judicial delay and pendency. Also, to enhance accountability in the systems.
- **Fast Track Courts** have been established to address the 4.7 crore pending case and expedite the judicial process.
- **Model Prison Manual (2016) and Mental Healthcare Act (2017)** outline inmates' right to humane conditions, including healthcare facilities and suicide prevention programs.

Way Forward:

The **National Human Rights Commission (NHRC)** has recommended the following measures:

- **Check to attempt suicide**: Regular monitoring of bed sheets and personal articles of inmates to counter suicidal attempts.
- **Mental Health Awareness:** Awareness courses and training camps for the inmates should be held regularly.
- **Prisoner Buddy**: Regular observation and assessment of inmates can be undertaken by a prison buddy, a trained psychologist.
- **Best Practice:** The Gatekeeper Model (by the World Health Organization) includes providing mental health training to the identified prisoners at risk of suicide.
- **Recreational activities**: Activities like yoga, sports, music, dance, spiritual and religious camps should be held timely to channel their energies positively and inculcate a positive mindset.

Right to Repair

News Excerpt:

The Government launched the **Right-to-Repair portal**, where manufacturers share the manual of product details with customers.

About:

- The Right to Repair for consumer goods refers to the concept of **allowing end users**, consumers, as well as businesses to **repair devices** they own or service without any manufacturer or technical restrictions.
- The **objective** of this Right to Repair framework is to empower consumers, harmonise trade between the original equipment manufacturers and third-party buyers and sellers, reduce e-waste and create new jobs.

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- The sectors identified for this framework include Farming equipment, Mobiles/Electronic Displays/Data Storage components, Consumer durables, and Automobile equipment.
- Under this framework, it would be mandatory for manufacturers to share their product details with customers so that they can either repair them by themselves or by third parties, rather than only depending on the original manufacturers.
- The tech companies should provide complete knowledge and access to manuals, schematics, and software updates, and the software license shouldn't limit the transparency of the product on sale. The parts and tools to service devices, including diagnostic tools, should be made available to third parties, including individuals so that the product can be repaired in case of minor glitches.

Significance

- Reduce the vast mountain of electrical waste **(e-waste)** piling up each year.
- **Boost business** for the repair service sector and third-party small repair shops forming part of local economies.
- **Save consumer's money** and contribute to **circular economy** objectives by improving the life span, maintenance, re-use, upgrade, recyclability, and waste handling of appliances.
- Catalyse various Government programs, like **Aatmanirbhar Bharat** and Pradhan Mantri Kaushal Vikas Yojana **(PMKVY).**
- Decrease **import dependency**, to help maintain **foreign exchange reserves.**.

Mission LiFE:

- The idea of LiFE was introduced by the Indian Prime Minister during the 26th United Nations Climate Change Conference of the Parties (**COP26**) in **Glasgow**.
- The idea promotes an environmentally conscious lifestyle that focuses on '**mindful and deliberate utilization'** instead of 'mindless and wasteful consumption'.
- LiFE is a public movement, a **Jan Andolan**, to mobilize individuals to become **'pro-planet people'**. The Mission envisions replacing the prevalent 'use-and-dispose' economy—governed by mindless and destructive consumption—with a **circular economy**, which would be defined by mindful and deliberate utilization.

Need for Right to Repair:

- Right to Choose: Manufacturers retain proprietary control over spare parts, including their design, which creates a kind of monopoly on repair processes and infringes on the customer's "Right to Choose".
- Ownership: The rationale behind the 'Right to Repair' is that when customers buy a product, it is inherent that they must own it completely, for which the consumers should be able to repair and modify the product with ease and at a reasonable cost without being captive to the whims of manufacturers for repairs.
- Planned Obsolescence: Manufacturers are encouraging a culture of 'planned obsolescence'. This is a system whereby the design of any gadget is such that it lasts a particular time only, and after that particular period, it has to be mandatorily replaced. A product that cannot be repaired or falls into planned obsolescence not only becomes e-waste but also forces consumers to buy new products.
- High costs: There is a considerable delay in repair, and at times the products are repaired at an exorbitantly high price.
- Sustainable development: According to the United Nations Environment Programme (UNEP), if one billion people out of the global population of eight billion adopt environment-friendly behaviours in their daily lives, global carbon emissions could drop by approximately.

Challenges:

- Several companies are against the Right to Repair, as repairing holds a significant share of their revenue.
- It will lead to decreased spending on research and development (R&D) by the companies, as they might be reluctant to share their technologies. Also, there are concerns about IPR violations through reverse engineering (the process in which software, machines and electronic products are deconstructed to extract design information from them).
- It has implications for data security, as any local vendor can have access to the data of the repaired product.
- Some companies are in favour of repair done only by authorised technicians. This will defeat the right to repair's purpose, as the third-party small repair shops will be left out.

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- According to a report, only **4.7%** of the **total workforce** in India had undergone **formal skill training** for repair raising a concern about the quality of repair services.

Global Practices:

- In the **US**, the Federal Trade Commission has directed manufacturers to remedy **unfair anti-competitive practices** and asked them to ensure that **consumers can make repairs**, either themselves or by a **third-party agency**.
- Recently, the **U.K.** has also passed a law that includes all electronic appliance manufacturers to provide consumers with **spare parts** for getting the repair done either by themselves or by the **local repair shops**.
- The **European Union** passed legislation that required manufacturers to supply parts of products to professional repairmen for a time of **10 years**.

Way Forward:

- Regulation- The government should consider bringing a **regulation** on the right to repair to improve the **accessibility** of manuals, product details, software and diagnostic tools.
- Building Consensus- There is a need to build consensus towards the right to repair through **awareness drives**, **advocacy campaigns** and **tech literacy programs.**
- **Skill development mission**- It should be aligned with the requirements of the right to repair keeping the main focus on the unorganised sector.
- Tools- The **manuals**, **schematics**, **diagnostic tools** and **software** should be provided to local technicians and repair shops, while the government should also **explore** concerns about the **IPR**.

Bodily Autonomy of Women

News Excerpt

The **Kerala High Court** affirmed women's bodily autonomy by acquitting Rehana Fathima and specified that a naked female body is not inherently obscene or sexually explicit.

- Bodily autonomy can be defined as girls or women making **life's decision** about their **body** and **reproductive functions** themselves without any **external pressure**.
- According to the United Nations Population Fund's **(UNFPA)** Flagship State of World Population Report **2021** titled **'My Body is My Own'**, it was found that nearly half of the women lacked the power to make their own decisions.

Need for Bodily Autonomy

- Bodily autonomy can be deciphered under **Article 14**, **Article 15** and **Article 21**. Article 51A (e) enjoins upon every citizen to renounce practices derogatory to the dignity of women.
- Bodily autonomy is the foundation for **gender equality**. It benefits the **health**, **education**, **income** and **safety** which further extends to the communities, countries and beyond.
- When women **live free** from violence, discrimination or coercion, they can chart their own destiny and realise their **full potential**.
- Some examples of women: **Shakuntala Devi** (Fastest Human Computation), **Mary Kom** (First woman from the country to win a medal in boxing at the Olympics), **Tessy Thomas** - Missile Woman of India (Agni-V missile project)**, Tulsi Gowda** (Padma Shri 2021)- Encyclopaedia of Forest.

Status of women in India

- **Gender Gap**: India ranks **129th** out of **146** countries in the **Gender Gap Report 2024.**
- **Political representation**: 73rd and 74th amendment provides for reservation of women in Panchayats and Municipalities but there is no reservation in parliament and state legislature.
- **Health**: Acc. To **NFHS-5,** Sex Ratio is 1020, Maternal mortality rate **(MMR**) is declining. Total fertility rate **(TFR**) has come down to 2, below the Replacement level of 2.1.
- **Economic**: The DivHERsity Benchmarking Report 2022-2023 by **HerKey** shows data on women's representation and diversity in corporate India. Women now make up nearly 50% of employees in surveyed companies.

Barriers to bodily autonomy

- **Gender stereotypes**: Men as a **provider** and women **taking care** of family is the typical example, which stops women from following their education and careers.
- **Low literacy (Around 65 per cent for females)**: It is still low especially in rural India. Schools are **far** and **infrastructure** is minimal, which hinders education.
- **Safety issues**: Trafficking, Domestic Violence, Rape, forced prostitution, honour killings and sexual harassment at workplace.
- **Health and nutrition issues**: **Medical Termination of Pregnancy Act** allows abortion till 24 weeks. After 24 weeks, permission from a medical board is required. Women are dependent on men regarding their **reproductive rights**. E.g. – when to take contraceptives, abortion, women often go for tubectomy instead of the husband going for vasectomy and practice of female genital mutilation (FGM).
- **Period poverty**: Lack of access to **sanitary products** and **awareness** about menstruation.

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- **Digital Divide:** Lack of digital literacy hinders them from social media, which affects their awareness levels.
- **Double standards**: We often find men walking around without wearing shirts. But these acts are never considered to be **obscene or indecent**. The half-nude body of a man is conceived as normal and not sexualized, a female body is not treated in the same way.
- **Morality:** It depends from **person to person**. The basis of morality when it comes to women's bodies is usually under male control, which sees women's bodies as passive property, to be covered up or revealed as men decide. A **conservative**, **patriarchal society** wants to suppress many such actions.

Way forward

- **Breaking Norms:** A deep shift in **mindsets** and **attitudes** is required. There is a need to break the patriarchal mindset and gender stereotypes. **Sex education** can be included in the curriculum.
- **Regulations**: **Laws** should be in such a way that enable, rather than constrain, the bodily autonomy of women and as well as their human rights. Providing them safety and **empowering** them is the need of the hour.
- **Skilling:** More rigorous steps should be taken to provide market driven skills and creating more **jobs** in public and private sector.

Internet shutdowns in India

News Excerpt

According to a report by **Access Now**, out of 187 internet shutdowns, **84** happened in **India** (the highest number of any country in the world for the fifth consecutive year).

Judicial pronouncements regarding Internet shutdown:

- **Anuradha Bhasin vs. Union of India 2020**: The Supreme Court stated that an **indefinite** suspension of internet services would be **illegal**. The Supreme Court has declared access to internet a **fundamental right**. Also, internet shutdown must satisfy the **tests of necessity** and **proportionality**.
- **Faheema Shirin vs. State of Kerala:** Kerala High Court has declared that the **right to access** the Internet is one of the fundamental rights under **Article 21**.
- The Right to Access the Internet is an integral part of the Right to Education and the Right to Privacy under Article 21A and Article 21 of the Constitution of India respectively.

Rationale behind Internet shutdowns

- **For peace and stability**: As a preventive measure by law & order agencies, to address **protests,** and **unrests.**
- **Curbing misinformation and disinformation**: shutdown can restrict the flow of unwanted information designed to **provoke** peoples and communities.
- **Checking hate speech**: **Xenophobic tendencies** can be effectively tackled and public order can be maintained.
- **National Interest**: Necessary regulation of the internet can be a reasonable choice of **sovereign** countries based on national interests.
- **Miscellaneous**: ensuring peace during **procession**, preventing cheating in **exams**, against rumour mongering, etc.

Instances of Internet shutdown

- India's longest internet shutdown was in Jammu and Kashmir where **4G mobile internet** access was shut for around 550 days, from August 2019 to February 2021.
- **West Bengal** and **Rajasthan** used internet shutdowns to prevent **protests**, **cheating** in exams and also in response to **communal violence**.
- **Punjab** was also recently placed under a **three-day mobile internet blackout** to track down a separatist leader.
- In May, **Manipur** completely blocked the internet on both **mobile and fixed line** services for the **entire month** following ethnic violence.
- In 2022, **nearly 60%** of India's shutdowns occurred in **Jammu and Kashmir U.T** due to **"political instability and violence,"** according to the Access Now's report.

Laws and Provision pertaining to Internet shutdowns

- In India, there is **no particular law** governing internet shutdowns.
- **Temporary Suspension of Telecom Services** (Public Emergency or Public Safety) **Rules**, **2017**, under the Indian Telegraph Act, 1885, provide for a **temporary shutdown** of telecom services in a region on grounds of **public emergency** and give senior **bureaucrats** from the Home Ministry at the central and state levels the power to order shutdowns.
- **Under section 144 CrPC**: Order issued by an officer of the rank of **joint secretary** or above, authorized by the union or state home secretary.
- **Section 69(A) of the IT Act** (2008): To block **particular websites,** but not the whole of the internet.

Importance of Internet Access

- **Digital population**: India has the world's **second largest** digital population. It has more than **800 million internet users**. Internet has become a social and economic **lifeline** of the people.
- **Bridging rural and urban divides**: It connects the country's **isolated rural** pockets, with its developing cities.
- **Employment:** It provides jobs to numerous platform workers, **Food delivery** (Swiggy, Zomato, Dunzo, etc.), **e-commerce**, Ola, Uber, **youtubers** and many others.

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- **Education**: It acts as provider of education through massive open online courses (MOOC), **ed-tech sector, free content etc.**
- **Health**: There are various health initiatives through internet like **e-Sanjivani**, **ABHA etc**.
- **Technological Revolution**: Artificial intelligence, Quantum tech, Machine Learning are possible because of the internet, leading to **Industrial Revolution 4.0**.

Ethical Dilemma-Rights vs Security

- **Rights issue**: Internet shutdown **violates** the right of individuals like the right to food, work, social security, education, health, etc.
- **Security issue**: Meanwhile states have the **obligation** of providing peace and stability, curbing misinformation and disinformation, checking hate speech and maintaining national interests.
- **Way out**: A **balanced approach** should be followed in this ethical dilemma so that the rights and national security should go **hand in hand**.

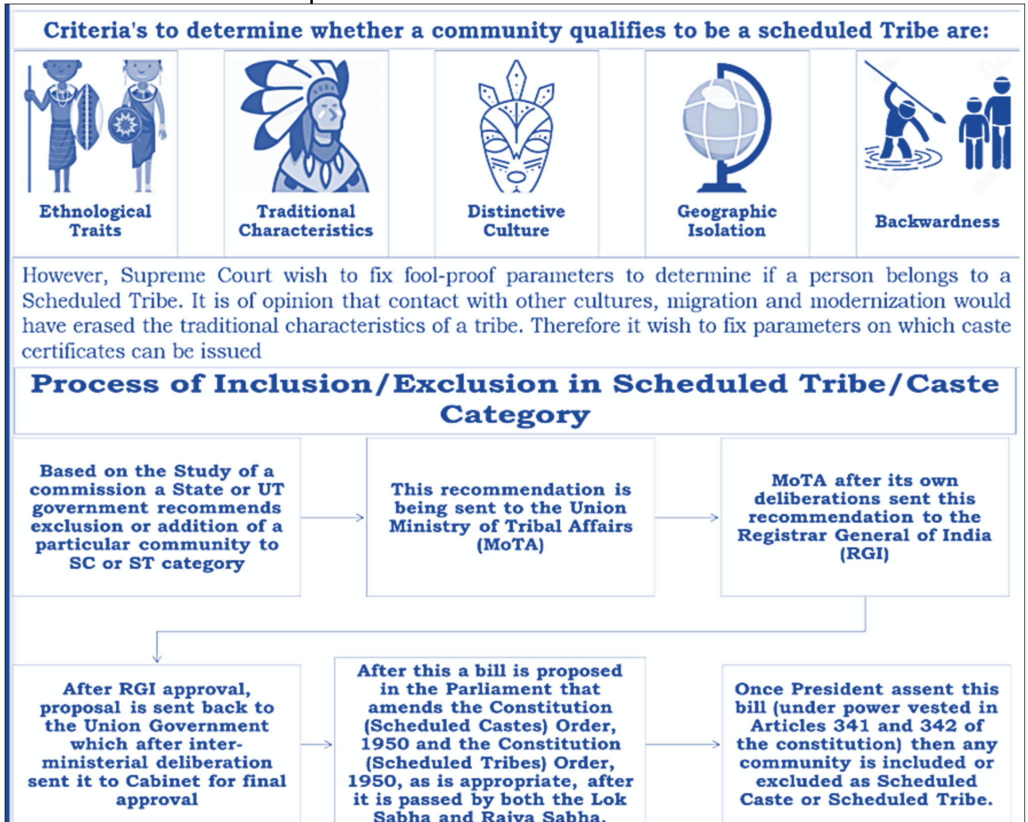
Way Forward

- **Last resort**: Authorities should **refrain** from Internet shutdown. It should only be used as a measure of last resort.
- **SC guidelines**: Supreme Court directions of using the **test of necessity** and **proportionality** should be followed while ordering internet shutdowns.
- **Public scrutiny**: Proper **reasons** for internet shutdown, **time** of internet shutdown and **other viable options** available instead of internet shutdown should be made out by the government for public scrutiny.
- **Regulation**: Proper **law** regulating the internet shutdown should be put in place by the government.

Violence in Manipur

News Excerpt

Manipur High Court verdict directing the State to pursue a 10-year-old recommendation to grant Scheduled Tribe (ST) status to the non-tribal Meitei community has resulted in violent clashes.



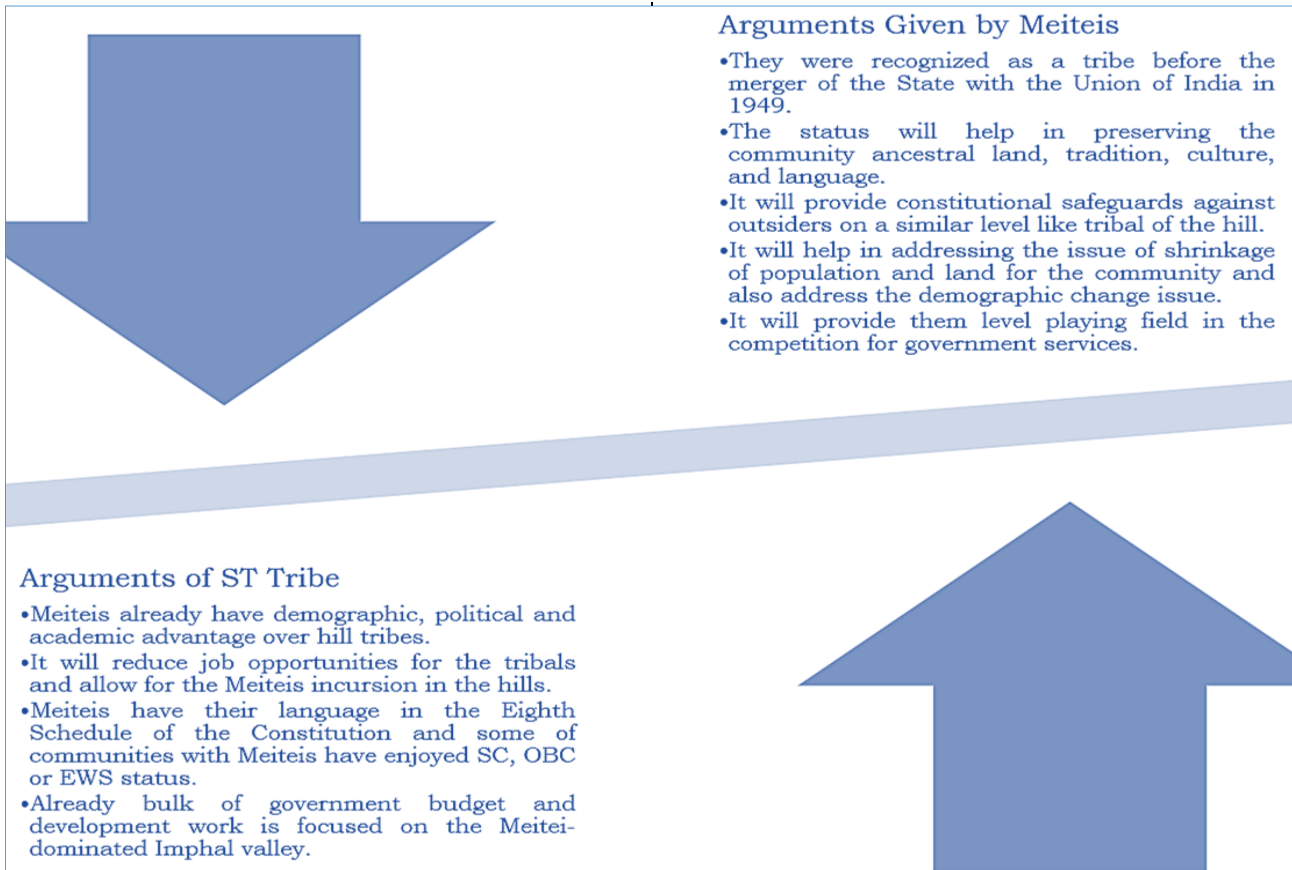
Understanding Manipur Divide

- Manipur as a state is geographically divided into Valley (which comprises about 10% of Manipur's landmass) and Hill districts. Hills are dominated by the tribes such as Kukis and Nagas. Valley is dominated by Meiteis
- The current conflict is the extension of the hill vs plains conflict. Overall, in Manipur Meiteis accounts for 53% of the population while tribal communities account for 40% of the total population (24% Naga and 16% Kuki/Zomi).
- There exist several conflicts between multiple communities which have resulted in massive violence and loss of lives.

Cause of Present Conflict

There are several issues on which there is a divide between the Meiteis and the tribals these include:

- In 2015, Meiteis demanded Inner Line Permit (ILP) system for Imphal city which was protested by tribals because this permit would restrict their entry into the valley.
- The delimitation exercise in 2020 caused discontent among the Meitei community who alleged that the census figures do not reflect the population break-up. While tribal groups were not happy with their underrepresentation in the assembly.
- In 2021, a coup in Myanmar created a refugee crisis in India's Northeast. Meiteis argue that this has created a sudden mushrooming of villages in the Churachandpur district.



Way Forward

- There is a need to re-evaluate the criteria for ST status for which recommendations of various committees can be considered:
- There is a need to address the issue of migration from Myanmar and for this two-pronged strategy needs to be followed:
  - Increased surveillance
  - Enhanced regional stability and security
- Peace with local insurgent groups can help in maintaining the identity of the people along the border areas to identify the residents.
- There is a need to improve the human rights situation in the region and for this, there is a need to reconsider the controversial Armed Forces Special Powers Act. This will prevent the misuse of power by security forces and ensure that there is fair and transparent legal system in place.
- There is a need to foster the participation of the people of the region in the decision-making process to instil a sense of ownership and belonging.

Supreme Court: Same-sex marriage cannot be legalized

News Excerpt:

By majority opinion, the five-judge Constitutional Bench of SC ruled in a 3:2 verdict against giving constitutional validity to same-sex marriages.

Background:

- Legal rights for **LGBTQ** (lesbian, gay, bisexual, transgender, and questioning (or queer) **individuals in India** have grown over the last decade, with most of these developments brought about by the Supreme Court's intervention.
- In a landmark **decision in 2018**, the Supreme Court of India **decriminalized homosexuality** by **striking down Section 377** of the **Indian Penal Code**.
- The Supreme Court of India began hearing petitions seeking the legalization of **same-sex marriage** on April 18, 2023.
- The CJI concludes that the court can neither strike down or read words into the Special Marriage Act (SMA) 1954 to include same-sex members within the ambit of the SMA 1954. **Recognizing LGBTQ marriage is within the scope of the Government.**
- However, at the same time, the SC holds that queer persons have an equal right and freedom to enter into a "union".
- All five judges on the Bench agreed that there is **no fundamental right to marry** under the Constitution.

Other laws/Acts related to LGBTQ:

1. **The Transgender Persons (Protection of Rights) Act, 2019:**
   - **The Act bans discrimination against transgender people in educational establishments and services, employment, healthcare services, and access to the "use of**

Legal arguments in favour of same-sex marriage	Legal arguments against same-sex marriage
• **Citizens with equal rights:** Non-heterosexual couples are also equal citizens of the country and deserve the same rights as cisgender heterosexual people. Queer people demand equal rights for marriage, horizontal reservation, and protection from natal families. • **Right to marry:** India was an original signatory to the Universal Declaration of Human Rights (UDHR). Under the UDHR, the right to marry is a human right. However, the Indian Constitution does not explicitly mention the right to marry. Therefore, the court must address denying the fundamental right to marry a person of one's own choice. • **Marriage laws on 'social' and 'circumstantial' infertility**: The two terms of infertility were coined to describe a woman who did not have children despite no medical complications and are used now in the context of queer people too. If both parties know that anyone of them is impotent, there cannot be a case of taking away their rights merely because they are queer. • **Previous judgment of SC:** During the Sabarimala case, the apex court said that 'religion must give way to Constitutional morality', though a review of the judgment is pending. Secondly, if the court recognized the Right to marry as a fundamental right (like it did in the case of privacy in the 2017 Aadhar ruling), it puts an obligation on the State to protect this right. • **A legitimate legal need:** Legal recognition of queerness and love should be supported by the State and judiciary. Seeing the demand, the notions of conventional family and traditions need to be broadened, and the notion of acceptability and respectability be demolished. • **Global Practice:** It is legally recognized in 34 countries.	• **Against natural law:** Marriage is described as the union of a man and a woman, and changing that would go against natural law and threaten both the institution of marriage and the family's role in keeping society together. Gay people can have civil unions, but marriage is a step too far. • **All rights have limitations:** Arguing for equal rights in this situation makes no sense. If there were no limitations, polygamy and marriages between relatives (especially cousins) would also have to be allowed. • **Will destroy the 'family concept' in society**: Our laws pertain to marriages that necessitate positive procreation. It is observed that children raised by lesbians or homosexual men are more likely to develop gender and sexual abnormalities. Homosexuality could raise a class of children who live apart from their mother or father. • **Legal structure with religious foundation**: Marriages in India are governed under the Hindu Marriage Act of 1955, the Parsi Marriage and Divorce Act of 1936, the Christian Marriage and Divorce Act of 1957, and Muslim Personal Laws, all lacking a rigorous statutory framework. Except for the Special Marriage Act (SMA) of 1954, all marriage laws recognize marriages between a man and a woman. • **Boundaries established by the laws:** The **National Commission for Protection of Child Rights (NCPCR)** stated that same-sex marriage would violate the terms of the Juvenile Justice Act. The **Juvenile Justice Act of 2015** makes it illegal for a single male, let alone two men, to adopt a girl child. • **Adoption:** Some argue that when queer couples adopt children, it can lead to societal stigma, discrimination, and negative impacts on the child's emotional and psychological well-being.

- **any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public".**
- Moreover, it also gives them the right to movement, **"reside, purchase, rent or otherwise occupy any property,"** the opportunity to stand for or hold public or private office, and in Government or private establishments.

Challenges of the Transgender Act, 2019:

- The transgender community has stressed the difficulty of obtaining a certificate and the lack of awareness and sensitivity among local public officials.
- The community also criticized the inequality inherent in the vast differences in punishment for the same crime, such as sexual abuse, committed against a transgender or cisgender individual.

2. **Article 15 of the Constitution of India:**
    - The State shall **not discriminate against any citizen based on religion, race, caste, sex, or place of birth.**
    - No citizen shall, on grounds only of religion, race, caste, sex, place of birth, or any of them, be subject to any disability, liability, restriction, or condition with regard to
        - Access to shops, public restaurants, hotels, and places of public entertainment; or
        - The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
3. **Navtej Singh Johar v. Union of India 2018 Case:** The Supreme Court ruled that **'the Indian Constitution bans discrimination based on sexual orientation via**

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the category of "sex." LGBTQ community **"are entitled, as all other citizens, to the full range of constitutional rights**, equal citizenship, and "equal protection of law."

4. **National Legal Services Authority v. Union of India (2014)**: Similarly, in this case, the Supreme court held that **discrimination based on gender identity is constitutionally prohibited**.

About Special Marriage Act (SMA) 1954:

- Marriages in India can be registered under the respective personal laws: **Hindu Marriage Act, 1955, Muslim Personal Law Application Act, 1937, or the Special Marriage Act, 1954.**
- The Special Marriage Act of 1954 has provisions for **civil marriage for the people of India and all Indian nationals in foreign countries,** irrespective of religion or faith, followed by either party.
- It allows people from two different religious backgrounds to come together in the marriage bond.
- It lays down the procedure for **solemnization and marriage registration**, where the husband or wife or both are not Hindus, Buddhists, Jains, or Sikhs.
- Being a **Secular Act**, it plays a key role in liberating individuals from traditional marriage requirements.

SC: Divorced Muslim women entitled to maintenance

News Excerpt:

In a landmark decision, the **Supreme Court (SC)** ruled that **Muslim women** are entitled to seek **maintenance** from their husbands under **Section 125** of the **Code of Criminal Procedure (CrPC)**. This section applies to **all women, regardless of their religion**.

More About News:

- The judges emphasized that **Section 125 of the CrPC**, which addresses a **wife's legal right to maintenance, includes Muslim women**.
- The bench highlighted that **maintenance is a right of married women**, **not a charity**, and it applies to all married women irrespective of their religion.

Muslim Women (Protection of Rights on Marriage) Act, 2019:

- This act **criminalized** the **practice of triple talaq**, which the SC declared void in 2017.
- In addition to the provisions under this act, which entitles women subjected to **triple talaq to claim subsistence allowance** from their husbands, Muslim women can also seek **maintenance under Section 125 of the CrPC.**

Case Background:

- The **SC** dismissed a petition filed by **Mohd Abdul Samad**, who challenged the **Telangana High Court**'s decision to uphold a family court's maintenance order.
- **Petitioner's Argument**:
  - Samad argued that a divorced Muslim woman is not entitled to maintenance under **Section 125 of the CrPC** and should instead seek relief under the **Muslim Women (Protection of Rights on Divorce) Act, 1986**.
  - In his appeal, he argued that his wife should seek maintenance exclusively under the **Muslim Women (Protection of Rights on Divorce) Act, 1986**, rather than Section 125 of the CrPC.
  - He claimed that the 1986 Act, being a special law, **superseded the CrPC provision**, rendering a divorced Muslim woman's application for maintenance under Section 125 invalid.

SC Ruling:

- The **secular statutory provision** of **Section 125 of the CrPC** cannot be overridden by the personal law remedy provided by the 1986 Act.
- **Muslim Women (Protection of Rights on Divorce) Act, 1986:**
  - **Section 3 of the 1986 Act** requires a man to provide "**reasonable and fair provision of maintenance**" to his **divorced Muslim wife** only during the **Iddat period**. After this period, his obligation under personal law ceases.
  - In contrast, **Section 125 of CrPC mandates monthly maintenance** for a divorced wife, regardless of her faith. Any divorced wife who has not remarried is entitled to maintenance by her ex-husband, who has sufficient means but has neglected or refused to maintain her.
- **Maintenance for Children**
  - Additionally, the **1986 Act** obliges a Muslim man to pay maintenance for his **children for only two years** from their birth dates, while **Section 125** requires support **until the children reach adulthood**.
- **No Upper Limit of Maintenance**
  - **Section 125** does not set an upper limit for maintenance, making it a **more beneficial provision** compared to the 1986 law.
- **Fundamental Right**
  - **Excluding Section 125 for divorced Muslim women would violate Article 15(1) of the Indian Constitution, which prohibits discrimination based on religion, race, caste, sex, or place of birth.**
  - **Section 125** reflects the **constitutional commitment** to ensuring a **dignified life for women of all faiths**.
- **Harmonizing the Laws**

- **Section 125 of CrPC** and the **1986 Act** are not in conflict. The 1986 Act does not negate a divorced Muslim woman's right to seek maintenance under Section 125.
- It leaves the **choice to the woman to apply for maintenance** under either law. If a Muslim woman cannot support herself, she may seek maintenance under Section 125.
- If she can manage financially, she may seek maintenance under the 1986 Act until the iddat period expires. Courts must interpret **both laws harmoniously and purposefully**.
- **Parliament never barred divorced Muslim women** from claiming maintenance under Section 125, forcing them to seek relief only under the 1986 Act. Therefore, a divorced Muslim woman approaching the Magistrate under Section 125 cannot be directed to seek relief solely under the 1986 Act.

Bailment

News Excerpt:

The Supreme Court has affirmed that an accused's right to bail cannot be denied as a form of punishment, regardless of the crime's severity.

More about the News: A Bench of two Judges **emphasized that refusal to grant bail unjustly punishes the accused, leading to their "prisonization," despite their innocence until proven guilty.**

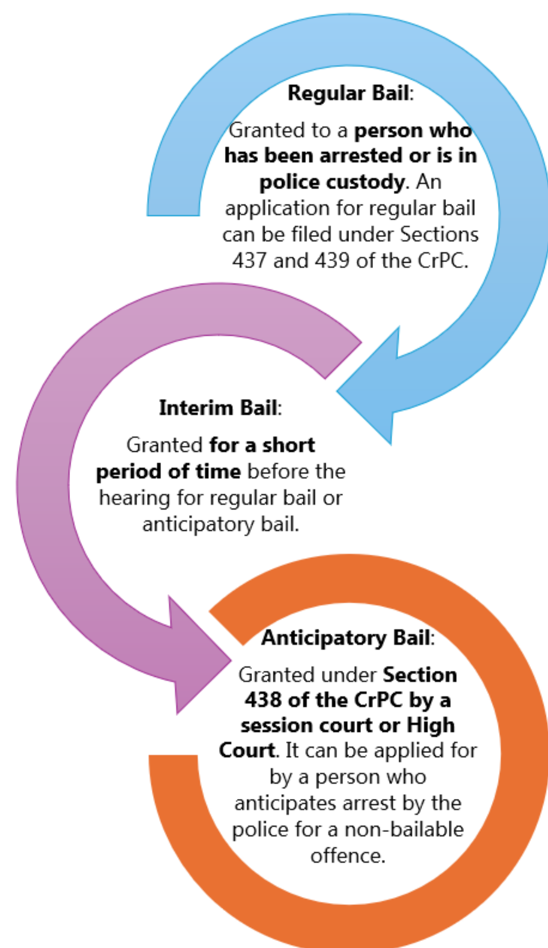
- The court stated that if the state, prosecution agencies, or courts are unable to ensure an accused's right to a speedy trial, they should not oppose bail based on the crime's seriousness.
  - **Article 21** of the Constitution, which guarantees the right to a speedy trial, applies regardless of the crime's nature.
- This order stemmed from an appeal by **Javed Gulam Nabi Shaikh against the Bombay High Court's denial of his bail in a case under the Unlawful Activities (Prevention) Act, 1967 (UAPA).**
  - The Supreme Court **rejected the National Investigation Agency's (NIA) request to adjourn the matter and granted Shaikh his liberty.**

What Is Bail?

The term 'bail' originates from the Old French verb 'bailer,' meaning 'to give' or 'to deliver.' **Bail refers to the provisional release of an accused person in a criminal case before the court has announced its judgment.** It involves depositing a security deposit to ensure the accused's release from custody.

Types of Bail in India

Depending upon the sage of the criminal matter, there are commonly **three types of bail in India:**



Conditions For Grant of Bail In Bailable Offences

Section 436 of the Code of Criminal Procedure, 1973, lays down that a person accused of a bailable offence under IPC can be granted bail under the following circumstances:

- There are **sufficient reasons to believe that the accused has not committed the offence.**
- There is **sufficient reason to conduct further enquiry into the matter.**
- The person is **not accused of any offence punishable by death, life imprisonment, or imprisonment for up to 10 years.**

Conditions For Grant of Bail In Non-Bailable Offenses

Section 437 of the Code of Criminal Procedure,1973 lays down that the accused does not have the right to apply for bail in non-bailable offences. It is the discretion of the court to grant bail in case of non-bailable offences.

- If the accused is a **woman or a child, bail can be granted for a non-bailable offence.**
- **If there is a lack of evidence,** then bail for non-bailable offences can be granted.
- If there is **a delay in lodging an FIR by the complainant**, bail may be granted.
- If the **accused is gravely sick.**

Cancellation of Bail

- The court has the power to cancel the bail even at a later stage.

- This power is laid upon the court under sections 437(5) and 439(2) of the CrPC.
- **The court can cancel the bail granted by it and give directions to the police officer to arrest the person and keep them in police custody.**

Bail Provisions in Bharatiya Nagrik Suraksha Sanhita (BNSS)

- The Bharatiya Nagarik Suraksha Sanhita (BNSS) has introduced **substantive changes to the bail provisions, differing significantly from the existing Code of Criminal Procedure (Cr.P.C.).**
- **While many provisions in BNSS remain identical to those in Cr.P.C.,** notable changes include the introduction of definitions for bail, bail bond, and bond, along with **modifications to the maximum period of detention for undertrial prisoners and anticipatory bail provisions.**
- The BNSS has provided **clear definitions for terms that were previously undefined in the Cr.P.C.:**
  - **Bail**: "Bail means the **release of a person accused** of or suspected of the commission of an offence from the custody of law **upon certain conditions imposed by an officer or Court** on execution by such person of a bond or a bail bond."
  - **Bail Bond**: "Bail bond means an undertaking for **release with surety**."
  - **Bond**: "Bond means a personal bond or an undertaking for **release without surety**."
- **Changes for Undertrial Prisoners:**
  - **Early Release of First-Time Offenders**: Previously, there was no provision for the early release of first-time offenders. **BNSS Allows early release if a first-time offender has spent one-third of the maximum prescribed sentence in detention.**
  - **Multiple Pending Cases**: Earlier, there was **no provision denying bail if multiple cases are pending. Under BNSS**, there is a **provision to deny Bail if the accused has pending investigations, inquiries, or trials in more than one case.**
  - **Superintendent of Jail's Report**: **BNSS** mandates the Superintendent of Jail **to submit a written application for the release of undertrial prisoners who have completed one-third or one-half of the prescribed sentence.**
- **Changes in Regular Bail Provisions**
  - **Police Custody Beyond Fifteen Days**: Earlier accused could not be denied bail solely because they might be needed for witness identification.
    - **BNSS adds that bail cannot be denied if the accused is needed for police custody beyond the first fifteen days.** The Court can decide on the condition of such bail.

Changes in Anticipatory Bail Provisions

- **Broader Restriction on Anticipatory Bail**:
  - **Previously** Anticipatory bail was **disallowed for individuals accused of gang rape on women under sixteen years; BNSS** has extended this **restriction to women under eighteen years** in such cases.

Way Forward:

The Supreme Court order **reinforces that bail should not be used as punishment, emphasizing the right to a speedy trial.** The Bharatiya Nagarik Suraksha Sanhita (BNSS) introduces key reforms, including clearer definitions, early release for first-time offenders, and new conditions for bail in multiple cases. These changes aim to ensure fair treatment of the accused and a more efficient criminal justice system.

Rules for civil servants: Indian Administrative Service (Probation) Rules, 1954/ All India Services (Conduct) Rules, 1968

News Excerpt:

IAS probationer Puja Khedkar is under investigation by the **Department of Personnel and Training** (DoPT).

More about the news:

- The conduct of civil servants is primarily regulated by the **All India Services (AIS) (Conduct) Rules, 1968, and the IAS (Probation) Rules, 1954.** These rules outline the standards and expectations regarding the behaviour and performance of officers serving in the Indian Administrative Service.

Background:

- The Centre established a single-member committee under the **Department of Personnel and Training (DoPT)** to review all documents submitted by probationary IAS officer Puja Khedkar for her civil services candidacy.
- Khedkar achieved a rank of 821 in the 2022 UPSC Civil Services Examination and was appointed to the Indian Administrative Service (IAS) under the Other Backward Classes (OBC) and Physically Handicapped (PH) quotas.
- Concerns have been raised regarding her appointment under these categories. Additionally, Khedkar is facing **multiple allegations of misconduct, including seeking unauthorized privileges not appropriate for a probationer**, allegedly occupying the District Collector's office's antechamber, and using an unauthorized red-blue beacon on her private Audi sedan, which she claims was received as a gift.

Rules on 'integrity' of services:

- The **AIS (Conduct) Rules govern all officers of the IAS, IPS, and Indian Forest Service** from the time they are allocated to their respective services and commence training.
- According to **AIS (Conduct) Rule 3(1),** every member of the service is required to **maintain absolute**

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integrity and dedication to duty at all times, refraining from any conduct unbecoming of a member of the service.

- **Rule 4(1)** further specifies that **officers must not misuse their position** or influence to secure employment for their family members in private enterprises or NGOs.
- In **2014, additional sub-rules were introduced** emphasizing the need for officers to uphold **high ethical standards, integrity, honesty, political neutrality, accountability, transparency, responsiveness to the public, courtesy, and respectful behaviour.**
- The rules also mandate that officers make decisions solely in the public interest, disclose any private interests related to their public duties, **avoid financial or other obligations that may influence their decisions**, refrain from **misusing their position for personal gain**, and avoid decisions that could benefit themselves, their families, or friends financially or materially.
- Under **Rule 11(1), officers are permitted to accept gifts from close relatives or personal friends with whom they have no official dealings** on occasions like weddings, anniversaries, funerals, and religious functions. However, **any gift exceeding Rs 25,000 in value must be reported to the government**, with this threshold last updated in 2015.

Rules for probationers:

- During their **probation period, which extends for at least two years** after selection into the services, officers are governed by specific rules. This period includes their **training at the Lal Bahadur Shastri National Academy of Administration (LBSNAA) in Mussoorie**. At the end of this probationary period, officers undergo an examination, and upon passing it, they are confirmed in their respective services.
- **Probationers receive a fixed salary and travel allowance but do not have automatic entitlement to several benefits granted to confirmed IAS officers**. These include official perks such as an official car with a VIP number plate, official accommodation, an assigned chamber with support staff, and a constable.
- **Rule 12 outlines conditions under which probationers may be discharged.** These conditions include findings by the central government that the probationer is ineligible for recruitment or unsuitable for membership in the service, willful neglect of probationary studies or duties, or lacking the necessary qualities of mind and character required for the service.
- **The Centre conducts a summary inquiry before making decisions under these rules**, similar to the ongoing inquiry initiated against Khedkar by the DoPT. The committee responsible for this inquiry is expected to submit its report within two weeks.

Furnishing false information:

- **Since the batch of 1995,** 27% of seats in the services have been reserved for the OBC category. The reservation for **Physically Handicapped (PH)** candidates was introduced in 2006, allocating 3% of seats in each category (General, OBC, SC, and ST) for differently-abled individuals.
- Despite her low rank, Puja Khedkar was allotted the **prestigious IAS through these quotas based on her OBC and PH certificates**. However, if it is proven that these certificates were falsified, Khedkar could face dismissal from service. Probationers are "**discharged**," while confirmed officers are "**dismissed**."
- According to a **1993 circular from the Department of Personnel and Training (DoPT), any government servant found to have provided false information or produced a false certificate to secure an appointment should not be retained in service.** This rule applies even if the individual has already been confirmed and is not a probationer.
- However, such a dismissal is likely to be contested in court, including appeals to the **Central Administrative Tribunal (CAT) and the National OBC Commission**, processes that could extend over several years. Meanwhile, the officer may remain in service during this period.
- Previously, Puja Khedkar was involved in a **legal dispute** at the **CAT** regarding her **PH status**. According to a CAT order dated February 23, 2023, the UPSC had directed Khedkar to undergo a **medical examination at AIIMS,** New Delhi, in April 2022, but she requested a postponement due to a COVID-19 infection.
- Despite the rescheduling, Khedkar did not attend the examination, although she later submitted an **MRI report from a private facility to support her claims**. The CAT order noted that AIIMS officials were **unable to assess her visual disability percentage due to her non-response** to their attempts to contact her.
- Critics have questioned Khedkar's OBC (non-creamy layer) status, citing her seemingly affluent background. **The OBC category distinguishes between creamy and non-creamy layers**, with only the latter eligible for reservations in government services and institutions. This determination is based on criteria such as **parents' income and occupational background**.

For those with parents in the private sector, eligibility for **non-creamy layer status requires an annual income below Rs 8 lakh.** In contrast, income is not considered for those with parents in the public sector. According to DoPT rules, individuals are classified as a creamy layer if either parent becomes a Group-A official before the age of 40 or both are Group-B officials with similar ranks. Puja Khedkar's father, Dilip, is a **retired officer from the Maharashtra Pollution Control Board** who is currently involved in politics.

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