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1. CONSTITUTION: EVOLUTION, BASIC STRUCTURE, IMPORTANT PROVISIONS

1. CHECKS AND BALANCES

Context: Recently, the Supreme Court said that collegium system has Checks & Balances while disapproving Centre delaying judicial appointments.

What is the principle of checks and balances?

- It is principle of government under which separate branches are empowered to prevent actions by other branches and are induced to share power.
- Checks and balances are applied primarily in constitutional governments.

Checks and balances in Indian Constitution:

- Principle forms the core principle of the constitution, which is also integral part of basic structure of constitution.
- **Article 75:** Executive is collectively responsible to Lok Sabha in particular, Parliament in general.
- Executive has the authority to call, prorogue sessions of Parliament.
- Legislature allows checks the functioning of executive through various tools like question hour, zero hour, parliamentary standing committees etc. This secures accountability of the Executive.
- Legislature is also empowered to impeach judges of SC and HCs.
- Judiciary puts a check on functioning of legislature and executive through judicial review (Article 13 and 226).

Weakness of the system:

- **Low accountability of Executive:** According to data by PRS Legislative Research, while 60% of the Bills in the 14th Lok Sabha and 71% in the 15th Lok Sabha were referred to **Department related Standing Committees (DRSCs)** concerned, this proportion came down to 27% in the 16th Lok Sabha.
- **Judicial Activism:** In many recent judgments, the Supreme Court has become hyper-activist in making judgements that are deemed as laws and rules. This transgresses the domain of legislature and executive.
- **Executive Excesses:** Executive in India is alleged of over-centralisation of power, weakening of public institutions like CIC & RTI.
- **Weakened role of opposition:** Democracy works on the principle of checks and balances. It is these checks and balances that prevent democracy from turning into majoritarianism.

Suggested measures:

- **Strengthen the Role of the Opposition:** In order to strengthen the role of the opposition, the institution of shadow cabinet can be formed in India.
- **Strengthening accountability of the executive:** Parliament should be able to convene itself. Question hours, debates, deliberations etc. should be given higher weight.

Practice Question:

Q. Although the Constitution of India provides for the three organs of the government with well-defined functions, it does not advocate a rigid separation of powers unlike American Constitution. Discuss. How do check and balances prevent a misuse of power?

2. CONSTITUTIONALITY OF THE FIRST AMENDMENT ACT, 1951

- **Context:** Recently, the Supreme Court (SC) has agreed to view the plea challenging the 'Constitutionality' of the **First Amendment Act, 1951** which had put the reasonable restrictions under **Clause(2) of Article 19 (a) of Freedom of Speech and Expression**.

Background:

- The First Amendment Act was enacted to remove certain practical difficulties created by the court's decision in several cases such as **Kameshwar Singh Case, Romesh Thapar Case**, etc.
- **Issues involved** in the cases included freedom of speech, acquisition of the Zamindari land, State monopoly of trade, etc.

The 1st Amendment Act, 1951:

- Empowered the state to make special provisions for the advancement of **socially and economically backward classes (SECBs)**.
- It provided for the saving of laws providing for the acquisition of estates, etc.
- It added **Ninth Schedule** to protect the land reforms and other laws included in it from judicial review. After Article 31, **Articles 31A and 31B** were inserted in the Constitution.
- **Three more grounds for restrictions on freedom of speech and expression:** public order, friendly relations with foreign states, and incitement to an offense were added. Also, it made the restrictions 'reasonable' and thus, justiciable in nature.
- The Act provided that state trading and **nationalization** of any trade or business by the state is not to be invalid on the ground of violation of the right to trade or business.

What are the arguments against this Amendment?

- **Objectionable insertions:** According to the petitioners the Amendment allows restrictions also "in the interest of public order" and "in relation to incitement to an offense". The new Clause (2) also omitted the expression "tends to overthrow the State" as appeared in the original Clause (2).
- **Neglects national security:** By dropping the expression 'tends to overthrow the State' which raises grave concern in the context of the dangers posed to the concept of a secular democratic republic by radicalism, terrorism, and religious fundamentalism.

Practice question

Q. Bringing out the features of First Constitutional Amendment, discuss its impact on the fundamental rights of citizens.

3. SEDITION

Context: Recently, Central Government told the Supreme Court that consultations for re-examining **IPC Section 124A**, which deals with sedition, are at a substantially advanced stage.

Background: About the sedition law

- The sedition law is enshrined in **Section 124A of the Indian Penal Code (IPC)**.
- Prominent examples of the application of the law include the trials of **Tilak (1897) and Gandhi (1922)**.
- **Jawaharlal Nehru, Vinayak Damodar Savarkar, and Abul Kalam Azad** were also charged with sedition.

Judicial views on the Section 124 A:

- **Romesh Thapar v State of Madras Case:** The Supreme Court held that **criticism of the government exciting disaffection or bad feelings towards it**, is not to be regarded as a justifying ground for restricting the freedom of expression and of the press.
- In **Kedar Nath Singh versus State of Bihar (1962)**, the Supreme Court had made it clear that 'strong words used to express disapprobation of the measures of the Government with a view to their improvement or alteration by lawful means' did not amount to sedition.

Interpretations other than judiciary:

- In August 2018, the **Law Commission of India** published a consultation paper recommending that it is time to re-think or repeal the Section 124A of the Indian Penal Code that deals with sedition.
- In its **39th Report (1968)**, the Law Commission had rejected the idea of repealing the section.
- In its **42nd Report (1971)**, the panel wanted the scope of the section to be expanded to cover the Constitution, the legislature and the judiciary, in addition to the government to be established by law, as institutions against which 'disaffection' should not be tolerated.
- In the recent consultation paper on the sedition, the Law Commission has suggested invoking 124A to only criminalize acts committed with the intention to disrupt public order or to overthrow the Government with violence and illegal means.

Criticism of Sedition law:

- **Archaic law: The law remains a colonial legacy as Thomas Macaulay**, who drafted the Indian Penal Code, had included the law on sedition. The first application of the law was the trial of newspaper editor **Jogendra Chandra Bose in 1891**.
- **Prone to misuse:** The government of the day can invoke the section arbitrarily to quell genuine criticism. The ambiguity in the definition makes the situation worse.
- **Against democratic ideals:** The existence of the law creates a deterrent to open and robust democratic discourse.

Practice Question:

Q. Discuss the negative impacts of the Sedition Act on the functioning of Indian democracy. Do you think its high time that this act should be done away with? Provide arguments to justify your answer.

4. RISE OF PROTESTS

Context: The recent proliferation of protests and grassroots movements points to increased public discourse on politics and human rights. The recent farmers protest is one example of an energized population eager to invoke change in the country.

Is protest a core political rights of democracy?

- The right of every citizen to freely elect their government and when dissatisfied with its performance, to vote it out of power in a legitimately held election (**Article 326**).
- This remains the only proper constitutional procedure to get rid of a government and rightly so. Indeed, peaceful transfer of power is one of the great strengths of democracies.
- But short of displacing it, and as long as it is done peacefully, any form of public action to challenge the government's proposals or decisions is also constitutionally legitimate, forming the second core political right: to politically participate not only during but between elections.
- The right to protest, to publicly question and force the government to answer, is a fundamental political right of the people that flows directly from a democratic reading of Article 19.

Are Protests legal?

- All protests are legal only if they are non-violent and carried out with appropriate permissions.
- **Fundamental duties** that are enshrined in the constitution require that the **rule of law** is followed and that **public property is not destroyed**.
- The right to protest peacefully is enshrined in the Indian Constitution under Article 19.

Article 19 (1)(a) & 19(1)(b)

Article 19(1)(a) guarantees the freedom of speech and expression

Article 19(1)(b) assures citizens the right to assemble peaceably and without arms.

(But under) Article 19(2) & 19(3)

This right is subject to “**reasonable restrictions**” in the interest of public order- If the security of the state is in jeopardy If the friendly relationship we share with a neighbouring country is at stake

- If public order is disturbed
- If there is contempt of court
- If the sovereignty and integrity of India are Threatened

SC's decision on Right to Protest

- In the case of **Ramlila Maidan Incident v. Home Secretary, Union Of India & Ors.**, the Supreme Court had stated, “Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action.”
- In **Maneka Gandhi vs. Union of India** that Justice Bhagwati had said, “If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential.”

Right to protest in Public Places

- In **Shaheen Bagh verdict**, the top court has held that the right to protest in public places is not absolute in law. **Public places cannot be occupied indefinitely.**
- Such kind of occupation of public ways (protests), at the site of question or anywhere else for protests “is not acceptable and the administration ought to take action to keep the areas clear of encroachment or obstructions”.

What's behind the protests?

- **Fractured growth discredited State:** These protests draw their legitimacy from the lived experience of fractured growth driven by oligarchic capitalism and a discredited State.
- **System failure and injustice:** Conflict is expected and when judicial and state processes fail, people often take to the streets to administer some form of vigilante justice and retribution.
- **Threat:** This is also happening in a context where civil liberties are being eroded and dissenting views are under attack.

How protests are 'strong tools' for change?

- **Contagious:** Of late, protest has emerged more contagious than any other political tool. The spread and degree of these protests are unbelievably massive and without identified leaders.
- **Bringing core issues in light:** In democracies, protests are for more about rights and also to question democratic institutions. In many non-democracies, protests are over economic hardship and for bringing in democracy.
- **Grievance redressal:** In the absence of other avenues, protests have become a means of grievance redressal, a way of legitimising the demands, a function of multi-cultural democracy and a form of freedom of speech and expression.
- **Collective conscience:** Protests can be seen as the articulation of the collective conscience of the nation.
- **Building community:** Protests not only build communities of like-minded people, but they also increase civic engagement in general.
- **Bring change:** Protests create an important avenue to bring about the much desired change in the society. This also helps in improving the status of affairs in the country.
- **Strengthening democracy:** Protests are a means of ensuring that democracy thrives. It helps a people express their views without the interference of others who have a contrary opinion.

Practice question:

Q. Analyze the reasons for the rise of protest in India in the last few years. Do you think the trend strengthens the democracy in India?

5. RIGHTS AND DUTIES

Context: Recently, the Union Law Minister advocated the need to find a balance between the fundamental rights and duties for the country's progress.

Background

- The Constitution of India provides Fundamental Rights to each and every individual which are essential to his or her existence and development.
- These rights include the economic, social, and political rights recognized by the State. Similarly, Constitution also vests every individual with certain duties towards other individuals, society, nation, or humanity as part of society and its norms.

Relation between rights and duties:

- **Complementing nature:** Citizens have right to freedom of speech (Article 19) but at the same time it is the duty that this freedom does not disturb the brotherhood and social harmony.
- **Promote cooperation together:** Duties taken together with rights help administration in constructive engagement with people. Together they preserve the vibrancy and pluralistic nature of society.
- **Accountability of the government:** Together they increase citizens' participation in the democracy. A dutiful citizen also demands the same from the government. Thus accountability of the government increases.

Issues in perceiving Rights and Duties together

- **Difference of nature:** Certain rights are acquired by every human being from the moment of birth, but duties need capable individuals to perform. Rights are precursors to Duties
- **Enforceability:** The rights are enforceable in a court of law while the duties are not.
- **Vague and subjective nature of duties:** Rights have elaborately covered by the Constitution and the various courts' judgments have enlarged the scope of them, while duties have been vaguely worded.
- **Way forward:**
- **Focus on individual rights:** Government should aspire to fulfill the rights of each citizen to ensure an adequate standard of living before any duties.
- **Flourishing democracy:** Deepening the roots of democracy to address the fundamental issues of inequality, intolerance etc. based on caste, creed, religion, region etc. and maximizing the fulfillment of duties.

Practice Question:

Q. Analyze the co-relation between the Fundamental Rights and Fundamental Duties. Also explain, why despite their non-enforceability, Fundamental Duties are more essential for a democratic state like India.

6. POSITIVE SECULARISM IN INDIA

Context: Argument made in the Supreme Court of India by Senior Advocate Devdatt Kamat stating that India's secularism is 'positive' in nature.

What is secularism?

- The definition of secularism that came up after the **French revolution** essentially meant that the State (politics) will maintain distance from religion.
- This was the result of people of Europe and more specifically the people of France not wanting to be governed by the dictates of the Church in all aspects of life including politics.

- In the western societies therefore religion is an 'independent aspect' of life which is considered to be outside the influence of politics.
- This idea of secularism is termed as negative secularism.

India's version of secularism:

- Indian version of secularism believes in the **Vedic concept** called **Sarva Dharma Samubhav**.
- The above concept literally means that the state will be at equidistance from religion.
- It also means that Indian state is not atheists and believes in existence of religion though it does not favor any particular religion.
- Indian Constitution, following to the concept of **Sarva Dharma Samubhav**, places the responsibility of defending the religious rights of the citizens of India on the Indian State.
- The above is termed as positive version of secularism.

Is the concept 'static' in nature?

- The concepts of secularism are not static; it is elastic in connotation.
- In this area, flexibility is most desirable as there cannot be any fixed views in this concept for all time to come.
- The courts decide from time to time the contours of the concepts of secularism and enforce it in practice.
- **How is the above debate relevant to the current petition?**
- In the current petition, revocation of order banning Hizab is colleges is sought.
- According to petitioners, wearing hizab is an essential religious practice whose defense falls upon the Indian State including the Supreme Court.

Practice Question:

Q. The Indian secularism is designed to keep religion out of politics, but in practice, religion plays a significant role in Indian politics. Comment.

7. DEFAMATION

Context: Recently, the Congress leader Rahul Gandhi was held guilty and sentenced to two years in jail by a Surat court in a 2019 **defamation case**.

What is defamation?

- A publication of false and defamatory statement, either written or oral, which tends to harm a person's reputation, decreases the respect, regard or confidence, in which a person is held, without any lawful justification, is known as defamation.
- In India, the criminal offence of defamation is contained under **Section 499 of the Indian Penal Code (IPC)**, 1860 and the civil law that provides for damages and injunctive relief.

Supreme Court judgement related to Defamation:

- **Mahendra Ram vs. Harnandan Prasad (1958):** A letter written in Urdu was sent to the plaintiff. Therefore, he needed another person to read it to him. It was held that since the defendant knew the plaintiff does not know Urdu and he needs assistance, the act of the defendant amounted to defamation.
- **Ram Jethmalani Vs. Subramanian Swamy (2006):** The High Court of Delhi held Dr. Swamy for defaming Ram Jetmalani by saying that he received money from a banned organization to protect the then Chief Minister of Tamil Nadu from the case of assassination of Rajiv Gandhi.
- **Shreya Singhal vs. Union of India (2015):** It is a landmark judgment regarding internet defamation. It held unconstitutional Section 66A of the Information Technology Act, 2000 which punishes for sending offensive messages through communication services.

Defamation laws acting as a challenge to freedom of speech:

- **Defamation laws go against the Article 19:** The existence of defamation laws violate the Fundamental Rights guaranteed under **Article 19** of the constitution.
- **Suppression of freedom of speech:** A recent report by **Common Cause and Lokniti-CSDS** reveals that nearly two out of three respondents are scared to post their political or social opinions for fear of legal action.

Practice Questions:

Q. Analyze the concerns associated with the weaponization of defamation laws in India in the recent times.

8. FEDERALISM**Fiscal federalism**

Context: Recently, Governor of Kerala flagged the challenges associated with fiscal federalism in the country vis-a-vis state's borrowing limits among other issues.

What is Fiscal Federalism?

- Fiscal Federalism refers to the division of responsibilities with regards to public expenditure and taxation between the different levels of the government.
- It is the economic counterpart to political federalism.

Constitutional provisions related to fiscal federalism:

- **Art 268:** Art 293 in Part XII of the constitution deal with centre-states financial relations.
- **Art 268:** Taxes levied by the Centre but collected and kept by the States.
- **Art 269:** Taxes levied and collected by the Centre but assigned to the States.
- **Art 270:** collected by both and distributed between both.
- **Art 275:** grants in aid, charged on CFI.
- **Art 282** -Discretionary grants by the Centre to states.
- **Art 280:** Finance Commission.
- **Art 292:** Borrowing by Centre.
- **Art 293:** Borrowing by States.

Constitutionally, states need prior approval of the Centre for undertaking market borrowings.

Issues in the fiscal federalism:

- **Fiscal imbalance:** Central government has a far greater domain of taxation. It collects around 60% of the total taxes, while its expenditure responsibility (for carrying out its constitutionally mandated responsibility such as defense, etc.) is only 40% of the total public expenditure.
- **Disparity in contribution in the share of taxes:** Maharashtra, Delhi, Karnataka, Tamilnadu, Gujarat contribute 72% of tax revenue. Uttar Pradesh, the most populated state contributes around 3% but get about 17% of the total tax distributed by the government.
- **14th FC recommendations implementation:** Recommendations of the 14th FC has not been fully realized. Devolution has not reached 42%.
- **Grants in aid:** Relatively better of states demand that it should be performance based while the poor performing states see this at a necessity.
- **Division of fiscal powers given by the 7th schedule:** Overuse of cesses and surcharge by the Union which is not shared by the states.
- **Misuse of the Art 282:** Union or States can make any grant for any purpose irrespective of their legislative competency under 7th Schedule.

Voting rights in the GST Council: Centre has one third votes while all the states together have two third with equal right each regardless of their size.

Recent trends in the fi scal federalism:

- In the wake of Covid, Centre increased the borrowing limits of the states from 3% to 5% of the state GDP.
- Corpus of 1 lakh crore interest free loans to the states in the Budget 22- 23.
- Abolition of the Planning Commission and the subsequent creation of the NITI Aayog with greater involving of the states in development planning.
- Recommendations of the 14th FC. Higher tax devolution to the states. Abolition of plan and nonplan expenditure.
- Moving away from the idea of Special Category Status that will help remove political considerations
- Introduction of the GST and the establishment of the GST Council.

Suggested Measures:

- **Decentralization:** Steps should be taken to strengthen local fi nances and state fi nance commission.
- State FC should be accorded the same status as the Union FC and the 3Fs of democratic decentralization (funds, functions, and functionaries should be implemented properly.
- **Simplifi cation of GST:** GST should be simplifi ed in its structure and by ensuring a single Rate GST with suitable surcharges on sin goods, zero ratings of exports and reforming the Integrated Goods and Services Tax (IGST) and the e-way bill.
- **Local public fi nance:** The creation of an urban local body or the PRI consolidated fund should be taken up to streamline the local body fi nance.

Previous Year Question

Q. How have the recommendations of the 14th France Commission of India enabled the States to improve their fi scal position? (2021)

Practice Question:

Q. Discuss the challenges created by the asymmetric fi nancial relations between the states and Union for the federalism in India.

9. NEED OF COOPERATIVE FEDERALISM TO TACKLE CLIMATE

CHANGE

Context: Rapid electrifi cation is a key pillar of India’s public transportation. This pillar has the potential to reduce India’s pollution and its import bill. **E-mobility- ‘Grand Challenge 1’** in this context is an innovative model for India and the world.

Issue: (Status of State-owned Buses)

- **Sputtering engines:** Most of the registered public buses on India’s roads have ineffi cient engines emitting planet-warming fumes into the atmosphere.
- **Old Vehicles:** At least one-third of these buses are at the end of their lifespan and must be taken off the roads immediately.
- **States in poor fi nancial health:** It is disheartening to see that because of the poor fi nancial health of states in addition to the responsibility of providing subsidized fares, it is a herculean task to overhaul the entire fl eet of buses.
- **Higher cost for buying buses:** Due to fragmented demand the state transport undertaking often faces problems of higher prices while buying buses.
- **Limitations on nationwide action:** As state governments control issues such as transit, urban governance, and pollution control, it becomes diffi cult to fi nd a unifi ed solution.

- India cannot address climate change without re-imagining Indian federalism as the division of powers in the Indian Constitution gives states a crucial role in several arenas of climate action.
- This spans water, agriculture, cities, and transport – solely the responsibility of the states – and crucial levers in mitigation like forests and electricity, that are the joint responsibility of the federal government (hereafter referred to as ‘the Centre’) and the states.

Cooperative Federalism: A Success Story

- Unified Tender: Grand Challenge 1 is a great example of cooperative federalism. Under Grand Challenge 1, a unified tender for 5,450 buses across five major Indian cities was issued. This is for the 1st time that a unified tender to address the challenging issue of climate change has been issued.
- Coordination among states: The respective expertise, strengths, and needs of Union Ministries and States informed the process and the successful outcomes which need to be appreciated.
- Coordination with the center: Convergence Energy Services Limited (CESL), a nodal agency of the Union government, acted as the programme manager in this effort at centralized procurement in concert, with State-led demand and customization.
- This coordination among central and state governments led to the discovery of the low price required to operate the buses.
- On a cost-per-kilometer basis, the prices discovered were 40% lower than diesel and 34% less than CNG (without factoring in the subsidy through FAME-II).

The success of Unified Tender

- This change in the unified tender was enabled by three key factors collaboration, pace, and transparency.
- Consultative process: The tender itself was a fully consultative process. The different contributions by participants helped in influencing the design of future tenders also.
- Pace: There was a sense of climate urgency that shaped this collaboration.
- Transparency: Transparency was the strongest aspect of this tender. There was clarity about the intention to build trust and build a publicly available process that invited bids from automakers and operators.

Merits of decentralization decision in improving the climate conditions:

- Different state has different levels of vulnerability: India’s States and districts vary vastly in their vulnerability to climate impacts, and decentralized decision-making and locally-led adaptation will help reduce potential damage to the environment.
- The role of urban local bodies and gram panchayats can be instrumental in the efforts towards climate action.
- Need for Balance: Excessive centralization has limitations and contradicts the federal principles enshrined in the Constitution. However, in cases such as, where States lack size and financial clouts, such as the electrification of mass mobility, centralized procurement, and programme management can deliver architectural transformations rather than just incremental transitions.

Practice question:

Q. The “new climate federalism” model proposes a framework for the federal, state and local governments to work together to address climate change. Elaborate.

10. PUBLIC SERVICE DELIVERY CHALLENGE BECAUSE OF LEGISLATIVE DIVISION OF POWER

Context: In general terms, the public good is something that must be delivered by the government.

Article 246 of the Constitution mentions three lists in the Seventh Schedule — union, state, and concurrent lists thereby affecting the delivery of public goods.

Genesis of division of power:

- The provisions relating to power-sharing can be linked to historical antecedents, colonial legislation as well as the socio-political context at the time of the drafting of the Indian Constitution.
- The measures were undertaken by the British Crown after it took over from the East India Company post-1857, formally institutionalizing many aspects of the federal principle.
- Constitutional backing: The Constitution provides a scheme for demarcation of powers through three 'lists' in the Seventh Schedule under Article 246.
- The gist: The Seventh Schedule is thus indicative of the spirit of cooperation between the Union and the States. Also, it represents a limitation to the powers of both centers and States. Such a limitation is essential to ensure that the different institutional layers in a federation can function autonomously in their respective spheres of influence.

Rationale behind the list system contained in the Seventh Schedule:

- The **Joint Committee Report of 1934 ('JCR')** that preceded the enactment of the 1935 Act explains the rationale for the distribution of legislative powers as "an essential feature of Provincial Autonomy and as being itself the means of defining its ambit".
- For this purpose, an unprecedented, exhaustive statutory allocation was considered necessary.
- Further, it was also felt that such a scheme would reduce disputes over the scope of Centre-State jurisdiction. However, the distribution of legislative powers reflects the dominance of the Parliament over the State Legislatures.

How is it affecting the delivery of public goods?

- Items have moved from the state list to the concurrent list and from the concurrent list to the union list.
- Rather than progressing towards decentralization of power.
- Every public good is optimally delivered at a certain level of government. Delivery becomes suboptimal both above that level and below that level. Most public goods people will think of are efficiently delivered at the local government level, not Union or state level. Most public goods are efficiently delivered at the local government level, not Union or state level.
- Citizens increasingly demand efficient delivery of such public goods. But without delegation of funds, functions, and functionaries, presently left to the discretion of state governments, local governments are unable to respond.

Efforts are taken to reform the 7th schedule

- **The Rajamannar Committee** — formally known as **Centre-State Relations Inquiry Committee** suggested the constitution of a High Power Commission to examine the entries of **Lists I and III** in the Seventh Schedule to the Constitution and suggest a redistribution of the entries.
- **B Das** (former chief minister of Odisha) stated the need for having general principles involved in the selection of Items under Union, Concurrent, and State lists. Such principles will help us to understand the lists much better. However, it was not accepted.
- However, the **1983 Sarkaria Commission** and the **2002 National Commission** to Review the Working of the Constitution avoided this issue.
- Such limited movements have reflected greater centralization, such as in 1976.
- **N K Singh**, Chairman of **15th Finance Commission** has also often made this point, in addition to scrutiny of Article 282.

Previous Year Question:

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

Practice Question:

Q. Discuss the need to reform the 'division of power' in the List system to tackle the challenges created in the recent times.

11. INTER-STATE BORDER DISPUTES

Context: Recently, Assam and Arunachal Pradesh signed an agreement for the settlement of an inter-state boundary dispute between the two states.

Background:

There are at least half a dozen inter-state border disputes in India that are awaiting resolution from many decades.

Occasionally, the disputes take form of violence like the recent clashes between along the Assam- Mizoram border in July 2022.

Reasons for Intra-state border disputes:

- **Historical reasons:** British Raj carved the states on the basis of its commercial, military/administrative interests with disregard to the local communities or ethnicities. **Ex.** In Northeast India.
- **Lack of implementation of recommendation on border disputes:** Example- Nagaland rejected Sundaram Commission report on its dispute with Assam.
- **Failure of constitutional mechanisms:** Assam-Arunachal Pradesh dispute has been before the Supreme Court since 1989 (under Article 131). Similarly Inter-States Council (Article 263) has failed to solve the disputes amicably.
- **Political opportunism:** Many local political parties want to keep the issues raging for vote bank politics.
- **Major border disputes at a glance:**
- **Assam-Nagaland dispute** over Naga Hills and all Naga-dominated area.
- **Assam-Mizoram dispute** over boundaries in southern Assam's Barak Valley and the Lushai Hills.
- **Karnataka-Maharashtra dispute** with the district of Belagavi at the center.
- **Haryana-Himachal Pradesh** at Parwanoo.

Consequences:

- **Threat to unity of the nation:** Inter-state border disputes affect the cooperative spirit among the units of federation which can threaten the unity of nation if they go unchecked.
- **Rise of violence:** Disputes create deep division among the population of the states which can threaten social harmony and stoke violence.
- **Internal security challenge:** Disputes among states can create deep instability within the region that can become an internal security challenge.
- **Negative impact on growth and development:** Due to decline of cooperative spirit among the states and additional challenges development takes a back seat.
- **Domino effect:** More state can follow the suit giving rise to a chain reaction at other disputed but peaceful borders.

Suggested Measures:

- **Maintenance of peace:** Until the dispute is settled along the disputed areas the population on the both sides should maintain peace and tranquility.
- **'Give and take' approach:** States should be ready to make some concessions to settle the border amicably. Recently Assam and Meghalaya signed an agreement to settle their dispute on this basis.
- More states should follow.
- **Temporary solutions:** Like creating no man land in the disputed areas until the disputes are resolved.
- **Utilization of institutional mechanism:** Frequent meetings of Inter-State Councils and Zonal Councils to arrive at consensus.

- Border disputes are threat to peace and security and development as well. They also impact the federal spirit of the nation. Urgent steps should be taken to resolve them.

Practice question:

Q. Discuss the impact of inter-state border disputes on the peace and security of India. Suggest some effective measures to overcome them.

12. INTER-STATE RIVER WATER DISPUTES

Context: Recently, the **Mahanadi Water Disputes Tribunal** completed an extensive tour of the **Mahanadi basin area** in Chhattisgarh, during which it inspected a network of dams, barrages and tanks.

- **Mahanadi water dispute** is just one of the many disputes **between Chattisgarh and Odisha** is just one of many disputes in the country lingering from decades.

Constitutional framework related to water:

- Water is a **State subject** as per entry 17 of State List. It deals with water i.e. water supply, irrigation, canal, drainage, embankments, water storage and water power.
- **Entry 56** of the **Union List** gives power to the Union Government for the regulation and development of **inter-state rivers and river valleys** to the extent declared by Parliament to be expedient in the public interest.
- **Article 262** in the constitution which empowers the President to establish the Inter-State water Disputes Tribunal being and also states. Under this provision an **Inter-State Water Dispute Act, 1956 and River Boards Act, 1956** was created.
- **Reasons behind persistent water disputes Legal ambiguities:** The existing framework has not been able to deal with the emerging challenges related to inter-state water disputes.
- **Affected interests:** Water disputes arise when the action of one state affects the interests of one or more other states.
- **Unsustainable use of water:** Economic factors like underpricing of irrigation waters, promotion of water-consuming crops through support pricing, etc., often lead to unsustainable use of water during lean seasons thereby escalating conflicts.
- **Increasing demand, pollution and decreasing availability:** Water sharing disputes across the country (and even beyond) are only going to escalate with increasing demands, and also with increasing pollution & losses reducing the available water.
- Climate change is likely to worsen the situation.
- **Politicization of the issue:** Antagonistic politics – a making of the nexus of water politics and democratic politics has helped keep the issues alive.

Required measures:

- **Coordinated approach between the states:** With adequate involvement of the Centre, is necessary for the preservation, equitable distribution and sustainable utilisation of river water.
- **Utilization of Inter-state Council:** The strategy has to be multi-pronged, and legal approaches have to be supplemented with institutional and political solutions.

Practice question:

Q. Discuss the reasons for failure of the legal mechanisms to resolve the recurring issue of water disputes between the states. Suggest some measures to overcome the challenges.

13. RISE OF COMBATIVE FEDERALISM

Context: Recently, there have been several instances triggering conflicts between Centre and states going against the spirit of federalism envisaged in the Constitution.

Background:

- Indian federalism is a model of **'cooperative federalism'** where Centre is strong but the states are not weak in their fields.
- In Cooperative federalism the Centre and states share a horizontal relationship, where they "cooperate" in the larger public interest.
- But in the last few years there has been a rise of combative tendency.

Recent trends in cooperative federalism:

- **GST Council:** It helped dismantling inter-state trade barriers.
- **NITI Aayog:** Enhanced role of states in development planning.
- **14th FC recommendations:** Enhanced devolution to the states (42% from divisible pool), Restructuring of the Centrally Sponsored Schemes.
- Public Human Resource Council under **Mission Karmayogi** consists PM, CMs, other ministers and experts.
- **One Nation, One Ration Card:** Interoperability in availing the benefits.
- Cooperation between states during the pandemic.

Factors contributing the rise of conflicts:

- **Proposed amendments to IAS Cadre Rules 1954:** Taking away liberty of states to deny consent for handing over civil servants to central deputation. Many States have objected to the amendments.
- **Dismissal of State governments under Article 356:** In 2016, when the Governor of **Arunachal Pradesh** decided to advance the Assembly elections, which led to political crisis in the State and then President's Rule, the Supreme Court had to intervene later.
- **Governor's discretion in a partial way:** Interference in day to day functioning, denying consent to summon the assembly on the Council of Ministers advice Ex in Rajasthan. Not following the established conventions in the event of hung assembly.
- **Arbitrary use of Central agencies:** The deployment of central investigative agencies in the States, much to the displeasure of the States, has caused trouble for the federal principles. Example, CBI's attempted arrest of Kolkata Commissioner of Police without a warrant in early 2019.

Suggested Measures:

- **Sarkaria Commission recommendations:** Centre should not treat states as 'mere appendages of the Centre'.
- **Utilization of institutional mechanism:** Inter-states Council should be strengthened, permanent secretariat should be established as recommended by the **2nd ARC**.
- **Deliberation in the legislative matters:** Centre should avoid unilateral legislation consult with all the states before legislating on the Concurrent List items.
- Combative federalism is an anathema to the constitution which provides for cooperation between Centre and the States. SC in the NCT case 2021 recommended Centre and the State to walk hand in hand or at least walk side by side for better governance. This should be the way forward.

Previous Year Question:

Q. How far do you think cooperation, competition and confrontation have shaped the nature of federation in India? Cite some recent examples to validate your answer. (2020)

Practice question:

Q. Analyze the reasons behind the increased confrontation between the Centre on one hand and states on the other. Suggest some measures to promote the spirit for cooperative federalism in the country.

14. ANTI-CONVERSION LAWS

Context: Recently states like UP, Gujarat, MP etc. have enacted anti-conversion laws.

Rationale behind the Acts:

- **End to conversion by unlawful means:** Some of these laws specifically prohibit any conversion for marriage, unless consent given by the states.
- **Public order:** The Supreme Court in **Stanislaus vs State of MP & Ors (1977)** clarified that the anti-conversion Acts fall within the purview of Entry I i.e. Public Order of List II of the State List as they are meant to avoid disturbances to the public order.
- **Issues with the Acts:**
- **Interference of state:** These acts go against the individual's agency to marry a partner from a different faith which is provided under the **Article 21**. They also go against the **Article 25**, Freedom of religion.
- **Challenge in implementation:** The anti-conversion laws shift the burden of proof of a lawful religious conversion from the converted to his/her partner.
- **Issues in the Acts:** Most of these acts contain vague definition of "allurement" for religious conversion. The acts can also lead to harassment of inter-faith couples.

Practice question:

Q. Do you think anti-conversion laws in India serve their purpose well? Substantiate your answer with adequate examples.

15. UNIFORM CIVIL CODE

Context: Many states in India like Assam, Uttarakhand etc. are currently on different stages of finalization of a Uniform Civil Code.

About

- A Uniform Civil Code (UCC) refers to a single law, applicable to all citizens of India in their personal matters such as marriage, divorce, custody, adoption and inheritance.
- **Article 44** of the Constitution lays down that the 'State shall endeavor to secure a Uniform Civil Code for the citizens throughout the territory of India.'
- **Supreme Court rulings on UCC:**
- Supreme Court first directed the Parliament to frame a UCC in the year 1985 in the case of **Mohammad Ahmed Khan v. Shah Bano Begum**.
- The second instance in which the Supreme Court again directed the government of Article 44 was in the case of **Sarla Mudgal v. Union of India**.
- Again in 2003 Supreme Court opined that it is a matter of great regrets that Article 44 of the Constitution has not been given effect to.

Need of the Uniform Civil Code:

- **Simplification of laws:** UCC will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all.
- **Gender justice:** Most of the religious or customary personal laws are patriarchal in nature, a gender neutral UCC will promote gender justice.
- **Promote national integration:** It will uphold the spirit of secularism and fulfill one of the directives provided in the Constitution.

Challenges of UCC:

- **Parliament does not have exclusive jurisdiction over personal laws:** "Personal laws" are mentioned in the Concurrent List, thus states have equal say in the matter.

- **State's interference on personal matters:** India is a secular state and a secular state should not interfere with the personal laws. In **S.R. Bommai v. Union of India**, it was held that religion is the matter of individual faith and cannot be mixed with secular **Against the diversity of the country:** Example- a UCC will go against the safeguard provided to the tribal people of the country.
- **Political challenges:** Parties in power are wary of political fallout of the UCC. There is also a lack of national consensus. All India Muslim Personal Law Board and All India United Democratic Front have termed it an unconstitutional and anti-minorities move.

Previous Year Question:

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

Practice question:

Q. Aim of Uniform Civil Code is to establish a level playing field with respect to personal law in India but it also has the potential to create social disharmony. Critically examine.

16. HATE SPEECH

Context: Recently, the Supreme Court iterated that hate speech was a serious offence that is capable of affecting the secular fabric of country. It also directed states and the UTs to file case in every hate speech.

Background:

- According to the **Law Commission of India (LCI)**, hate speech is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation religious belief etc.
- According to the **National Crime Records Bureau (NCRB)** data, there has been a huge increase in cases related to hate speech in the last few years.

Negative impacts of hate speech:

- **Threat to public order:** Hate speech can lead to communal disharmony, communal violence disturbing internal security of nation.
- **Marginalization of individuals:** Distress to individual group members against which the hate speech is directed. Eventually it can lead to discrimination, ostracism and segregation.
- **Polarization:** Hate speech has the potential pit one community against other creating deep division which goes against the fabric of the nation.
- **Deepening vote bank politics:** Politicians often exploit hate speech for enlarging their vote banks which can affect the development of the country and the community as well.
- **Framework related to hate speech in India:**
- Currently, there is **no separate law** dealing with the hate speech in India. But there are some sections of Indian Penal Code (IPC) which touch upon the issue.
- **Sections 153A and 153B** of the IPC punish acts that cause enmity and hatred between two groups.
- **Section 295A of the IPC** deal with punishing acts which deliberately or with malicious intention outrage the religious feelings of a class of persons.
- **Supreme Court observation:** Supreme Court in **Pravasi Bhalai Sangathan v. Union of India 2014**, stated that hate speech must be viewed through the lens of the right to equality

Suggested Measures:

- **Law Commission recommendation:** Insertion of a section in the IPC to prohibit incitement of hatred through online speech on grounds of religion, caste, community, gender, sexual orientation, tribe, language, place of birth etc.

- **Better implementing mechanism:** The Supreme Court has also pointed out lack of effective implementation of existing laws.
- **Stringent provision:** Various committees including T.K. Viswanathan committee has recommended introducing stringent provisions for hate speech.

Practice question:

Q. Abjuring hate speech is the fundamental requisite for maintenance of communal harmony. In the light of the statement, analyze the growing challenge of hate speech in India

17. PREVENTIVE DETENTION

Context: Recently, while setting aside a preventive detention order, the Supreme Court noted that preventive detention laws in India are a colonial legacy with a high potential for abuse and misuse.

The Court emphasised that these laws allowing the state with arbitrary powers must be scrutinized and used only in the rarest of the rare cases.

Difference between preventive detention and an arrest

- An 'arrest' is done when a person is charged with a crime. An arrested person is produced before a magistrate within the next 24 hours.
- In case of preventive detention, a person is detained as he/she is simply restricted from doing something that might deteriorate the public order.
- In the case of *Union of India v. Paul Nanickan and Anr*, the Supreme Court stated that the purpose of the preventive detention isn't to punish any person for doing something but to obstruct him before he does it and deter him from doing so.
- The reasoning for such detention is based on suspicion or reasonable possibility and not a criminal conviction, which can be justified only by valid proof.

Observation of judiciary related to the preventive detention cases:

- *Prem Narayan v. Union of India:* Allahabad High Court stated that preventive detention is an infringement upon the personal freedom of an individual and it can't be infringed in an easy-going way
- In *Haradhan Saha* case: Supreme Court held that if a person is liable to be tried for a criminal offence, but the ordinary criminal laws are not able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.
- *Banka Sneha v. State of Telangana*, the Supreme Court held that Preventive Detention Order can only be passed against a Detenu if his activities adversely affect or are likely to adversely affect the maintenance of public order.
- *Rekha v. State of Tamil Nadu:* Supreme Court stated that Prevention detention is, ordinarily, repugnant to democratic ideas and abhorrent to the rule of law.

Challenges associated with the preventive detention laws:

- **Arbitrariness:** There have been different circumstances of abuse of Preventive Detention powers for political advantages or to control free discourse and articulation.
- **Abuse of power:** Unreasonable capacity to detain an individual without much checks and balances and the least legal impedance expands the chance of conceivable abuse of power to detain an individual.
- **A blot on Indian democracy:** India is the only democracy to have preventive laws in the statute books.
- No such law exists in the USA and in England (with the exception during wartime).

What needs to be done?

- **Critical evaluation:** It now requires an evaluation of the laws and their regulation. The state must take the responsibility to compensate the acquitted detenu in the place of damages caused relating to life,

- health, income, etc.
- **Ensuring human rights:** A proper system should be made which will make sure that the rights are being made available to the detenu during the detention period.
- **Ensuring safeguards:** If any accusations for coercive actions are made, it should be taken in a serious way and should be followed by a proper investigation by an appropriate authority.

Practice Question:

Q. Do you agree with the view that the existence of laws related to preventive detention is necessary for the functioning of democracy of they act as a blot? Justify your answer.

18. RIGHT TO BE FORGOTTEN

- **Context:** Recently, a doctor filed a plea in the Delhi High Court for enforcement of his '**Right to be Forgotten**', which includes the removal of news articles and other incriminating content related to his "wrongful arrest" in response to a "fabricated FIR against him" which he claims is causing detriment to his life and personal liberty.
- **The Right**
- The "Right to be Forgotten" is the right to remove or erase content so that it's not accessible to the public at large.
- It empowers an individual to have information in the form of news, video, or photographs deleted from internet records so it doesn't show up through search engines, like Google in the present case.

Current framework related to right to be forgotten:

The right is **not recognized** by a law or a statute in India expressly.

- **Section 43A of the IT Act, 2000** says that organizations that possess sensitive personal data and fails to maintain appropriate security to safeguard such data, resulting in wrongful loss or wrongful gain to anyone, may be obligated to pay damages to the affected person.
- While, the IT Rules, 2021 do not include this right, they do however lay down the procedure for filing complaints with the designated Grievance Officer so as to have content exposing personal information about a complainant removed from the internet.
- Also, courts have repeatedly held it to be endemic to an individual's **Right to Privacy** under Article 21 since the Apex Court's 2017 ruling in "**K.S. Puttaswamy vs Union of India**".

Origin of the Right:

- The Right to be Forgotten originates from the **2014 European Court of Justice ruling** in the case of "Google Spain SL, Google Inc v Agencia Española de Protección de Datos, Mario Costeja González".
- In this case, it was codified for the first time following a Spanish man's quest to make the world forget a 1998 advertisement saying "his home was being repossessed to pay off debts."

Challenges related with the Right:

- **Privacy vs. Information:** There is need for balancing the right with other conflicting rights such as the right to free expression or other publication rights.
- **Challenge of enforcement:** In majority of the cases the right is to be claimed against a private party raising the question of whether fundamental rights can be enforced against the private individual, which is generally enforceable against the state.
- **Lack of codification:** Currently, there is no comprehensive law dealing with the right in India.
- In this digital era, data is a valuable resource that should not be left unregulated. In this context, the India needs to have a robust data protection regime containing right to be forgotten as well.

Practice question:

Q. Analyze the position of India vis-à-vis right to be forgotten. Mention the challenges associated with enforcement of the right.

2. PARLIAMENT & STATE LEGISLATURE

1. PARLIAMENTARY OVERSIGHT

Context: Recently, some experts voiced their concerns about the declining oversight of Parliament as it was evident in the Budget Session which witnessed the passing of the Union Budget without any discussion.

Background:

- This decline in the parliamentary oversight is a cause of concern as the public has the right to know how their money is going to be utilized and parliamentary oversight is essential for securing accountability of the government.

Mechanism to perform oversight function/securing accountability of government:

- Question and debates on the floor of the House.
- Committee system
- Examine bills, budget of department and policies of the govt.
- Allow more informed debates.
- Vote of confidence, censure motion, no confidence motion.
- Scrutiny of delegated legislation.

Challenges to the role of Parliament as the scrutinizer of the executive

- **More in theory:** Control of the government to convene Parliament. It goes against the principle of accountability of the Executive to the Parliament.
- **Number of sittings coming down:** During 1950s - avg 130 days, 2000s - avg 70 days. Question Hour is functioning way lower than the scheduled time.
- **Declining productivity:** Because of frequent disruptions and adjournments in the functioning of the Houses. Committee system is not very effective as it lacks expertise. In the last few years, many important bills have been passed even without discussion.
- **Declining scrutiny of the bills:** According to the PRS Legislative Research, only 25% of the Bills introduced were referred to committees in the 16th Lok Sabha, as compared to 71% and 60% in the 15th and 14th Lok Sabha respectively.
- **Frequent use of ordinance:** In the last few years, government has taken the ordinance route many times which makes parliament redundant. Example the now repealed Farms Acts.
- **Issues in Anti-defection law:** Individual legislators can't express their opinion freely which suppresses deliberation.
- **Criminalization of politics:** This reduces the quality of debates on the floor of the House.

Recommendations to strengthen Parliamentary oversight:

- **Allowing Parliament to convene itself:** Currently the power to convene parliament is with the govt., this dilutes the parliamentary control over the government. Countries such as the UK and Australia release an annual calendar with the sitting dates at the beginning of the year, and this should be followed.
- **Increasing number of sittings:** NCRWC recommended at least 100 days for the RS and 120 days for the LS.

- **Strengthening the role of opposition:** Opposition parties can play greater role by deciding daily agenda of parliament. UK has the system where opposition decides the agenda for 20 days in every session.
- **Reforms in framework:** Revising certain rules of procedures of Parliament related to debates increasing the accountability in question hour. Ex. UK has Prime Ministers question time, where PM answers questions about broad government policies.

Practice Question:

Q. Analyze the challenges associated with the decline of productivity of parliament vis-à-vis accountability of the executive. What are the steps that can be taken to tackle the situation?

2. DELEGATED LEGISLATION

Context: Recently, the Supreme Court examined the validity of the delegated legislation vis-à-vis demonetization of 2016.

While the majority ruling upheld the validity of the delegated legislation, the dissenting verdict noted that excessive delegation of power is arbitrary.

Delegated Legislation

- In simple terms, when Parliament confers the law making power to the executive, it is called delegated legislation.
- Parliament makes the law only in a broad skeletal form, then executive (union/state Government and its bureaucrats) fill up the minor technical details.
- Ex - legislature enacts a law regarding the registration of Moto Vehicles. Then executive makes provisions regarding who will get the license and how? (Bring proof of residence, Passport size photos etc.)

Need of delegated legislation:

Reduce the burden on Parliament: Due to rising legislative burden, Parliament does not have enough time to discuss the minute details of the acts.

Provide expertise: The executive can provide expertise vis-à-vis specific details necessary for the acts.

Challenges associated delegated legislation:

- **Against separation of power:** The legislature is entrusted with the power to legislate.
- **Low accountability:** There is a lack of clear mechanism to hold the executive accountable.
- **Safeguards:**
- **Parliamentary oversight:** Parliamentary, through various committees like Committee on Subordinate legislation, DSRCs. They carry out detailed scrutiny of all the rules framed by the executives.
- **Judicial review:** Judiciary can declare a delegated legislative acts as “invalid” if The parent act (enabling act) itself is ultra vires (against the Constitution).
- The provisions of subordinate legislation violates the Constitution Subordinate legislation is moving in a different direction than the parent act (enabling act).
- **Other mechanism:** Public scrutiny, PIL mechanism.

Practice Question:

Q. What is delegated legislation? Do you agree with the view that delegated legislation disturbs the principle of ‘separation of power’?

3. PARLIAMENTARY COMMITTEES

Context: Some experts have suggested strengthening the role of Parliamentary committees because of lowering of the overall time spent in conducting legislative business, the deteriorating ability of **Question Hour** to hold the government accountable, increasing disruptions on the floor of the Houses among other factors.

Background: Parliamentary Committees

- A Parliamentary Committee is a panel of MPs that is appointed or elected by the House or nominated by the Speaker.
- The functions of Parliament are **varied, complex and voluminous**. It has neither the adequate time or nor necessary expertise to make detailed scrutiny of all legislative measures.
- Parliamentary Committees act as mini parliaments and assist the Parliament in discharge of duties.

Types of Parliamentary Committees:

The Parliamentary committees are of two kinds – standing or permanent committees and ad hoc committees.

Standing committees are of the following kinds :

- Financial committees
- Department related standing committees (DRSC)
- Other standing committees

Types of Financial Committees:

- Public Account Committee
- Estimate Committee
- Committee on Public Undertakings

Benefits of the committees:

- **Extension of the Parliament:** The Parliamentary committees perform a good deal of legislative business. Recently in IBC and Motor Vehicle Amendment Act, many recommendations of the committees were incorporated.
- **Accountability:** The committees secure more accountability of the Executive to the Parliament particularly **financial accountability** through discussions, reports etc. Recently a DRSC pointed out underutilization of funds under Beti Bachao, Beti Padhao.
- **Effective debate on the budget:** They facilitate the **in-depth examination** of budget clause by clause.
- They also release reports periodically on various matters, provide recommendations.
- **Supplement the Parliament:** Committees examine bills with detailed scrutiny and also invite expert for discussion so they improve quality of the legislation. Ex **recommendations** provided in the Data Protection Bill.
- **Members not bound by the party whip:** So they can voice their opinion freely on important matters.
- The committees also invite multiple **stakeholders** enriching the discussion.

Shortcomings of the committees:

- **Constitution of DRSCs for a year:** This leaves very little time for specialization. There are also issues of low attendance of MPs and too many members in the committees.
- **Low weight given to the reports:** Less than 10% of the budget is discussed; reports given by Estimate Committee/PAC are rarely discussed in Parliament.
- **Bypassing:** According to the **PRS Legislative Research**, only 25% of the Bills introduced were referred to committees in the **16th Lok Sabha**. Important bills like the RTI amendment Bill 2019, UAPA bill 2019 etc. were passed without their scrutiny by the Standing Committees.
- **Other issues:** Confidentiality in the proceedings/functioning. Politicization of the proceedings. Lack of technical expertise.

Way forward:

- **Longer tenure for its members:** This will provide stability and more time for specialization for members.
- **Mandatory referring of the Bill:** In UK Bills are mandatorily referred to the committees of both House. This should be followed in India.
- **Institutionalization:** Major reports of all the committees should be discussed in the House.
- Recommendations of PAC should be accorded greater weight.
- **Other recommendations:** Proceedings of the committees should be opened to public scrutiny.
- Adequate research support. DRSCs should be **periodically reviewed** as recommended by the NCRCW.

Previous Year Question:

Q. Why do you think the committees are considered to be useful for parliamentary work?

Discuss, in this context, the role of the Estimates Committee. (2018)

Practice question:

Q. Discuss the utility of parliamentary committees in strengthening the spirit of debate and deliberation in the Indian democracy.

4. SPEAKER

Context: Recent verdict of Supreme Court regarding the **political crisis of Maharashtra** has highlighted the issue of partial role of speaker once again.

In the last few years, Speakers' partial role favoring the political parties they belong to has come under criticism.

Background:

- **Article 93** of the Constitution deals with the offices of Speaker and Deputy Speaker of the Lok Sabha. While **Article 178** is related to Speaker and deputy speaker of State Legislative Assemblies.
- Deciding on disqualification petitions filed under the **Tenth Schedule** is the sole prerogative of the Speaker and in many instances the Speaker is found to act according to the wishes of their party.
- In state assemblies too, blatant, partisan conduct of speakers has come to light in the last few years.

Role of Speaker in India:

- Ultimate Sovereign in the House.
- Interpreter of the Constitution and the rules of procedure in the House.
- Position equivalent to CJI in the order of precedence.
- Speaker presides over the joint sitting of the two Houses of Parliament.
- Final decision on the Money Bill.
- Maintains discipline and decorum in the House and punishes members for unruly behaviour.
- Decides on the disqualification of member on grounds of defection.

Issues with the Office of Speaker:

- **Arbitrary role in the Anti-defection Act:** Misuse of disqualification power under the Anti-defection Act. Speaker has found to be working according to the wishes of the party they belong. Ex. In Manipur case in 2020, the Supreme Court had to invoke its special power under Article 142 due to delay in decision of Speaker.
- **Partisan role in disciplinary actions:** Recently the role of speaker has come into question for taking actions in an arbitrary manner against the opposition members. Ex. In case of Karnataka, the Speaker barred the resigning MLA for the life of assembly, which has later held void by the Supreme Court. This also endangers **separation of powers**.
- **Other issues:** Decision on the Money Bill for example, controversy regarding **Aadhar Bill 2016**, failure

- in effectively conducting the proceedings of the House.

Recommendations:

- **Making Speaker truly independent:** The office of Speaker in India can follow the **UK convention** where once elected, Speaker resigns from the membership of the party. This will help enable the Speaker
- to perform the constitutional functions well.
- **Following the practice of once a speaker, always a speaker:** The constituency of the Speaker should

go uncontested in the next general elections

Previous Year Question (PYQ):

Q. "Once a speaker, Always a speaker"! Do you think the practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India? (2020).

Practice question:

Q. Once a person is elected Speaker, he is expected to be above parties, above politics. In the light of the above statement, discuss the challenges associated with the functioning of the Speaker in India.

5. RAJYA SABHA

Context: In the last few years there have a decline in the productivity of the Rajya Sabha, which has impacted its core function of representation of interests of states.

Background:

- Known as the federal or second chamber of Parliament, the genesis of the Rajya Sabha can be traced to the **Montague-Chelmsford** report of 1918 and, consequently, the Government of India Act, 1919, which provided for a second federal chamber or the "**Council of States**".

Need of Rajya Sabha:

- **Establishing federalism:** Bicameralism is necessary for a federal constitution to give representation to the units of the federation. **Thus**, the House represents the interests of the States as a federal chamber.
- **Better deliberation on the laws and policies:** Acts as a revisionary house to keep a check on the hasty legislation that could be passed by the lower house under populist pressures.
- **Prevents authoritarianism in the event of government having brute majority in the LS.**

Special powers given to the Rajya Sabha under the Constitution

- **Article 249:** Power to transfer a subject from the State List to Union List for a specified period.
- **Article 312:** To create additional All-India Services (AIS).
- **Article 352:** To endorse Emergency for a limited period when the Lok Sabha remains dissolved.

Issues with Rajya Sabha:

- **No equal Representation of states:** Federal countries like US, Australia, institutionalize the principle of federalism more strongly than India, by providing equal representation to all states in their upper houses. In that sense our Upper House does not promote true federalism.
- **RS can be bypassed in many important matters:** RS does not have equal powers as given to the Lok Sabha in many aspects. With respect to the Money Bills, Rajya Sabha can not vote to pass it and can just send recommendations.

- **Representation of People (Amendment) Act, 2003: Parliament** has removed the word 'domicile' from Section 3 i.e. any person not belonging to the state to contest for the RS seat. This has encouraged members to toe the party line instead of promoting the states' interest.
- **Stalling chamber:** Sometimes it is alleged that RS only plays the role of stalling chamber. Its members are not directly elected and hence are not accountable to the people.
- **Falling productivity:** Between 2014 and 2019 around 40% time was lost due to disruptions.

Suggested measures:

- **Minimum days of sitting:** NCRWC recommended the minimum 100 working days for the RS.
- **Reforming rules of the House:** Stricter Rules of Procedure and conduct of business to deal with the unruly behavior.
- **Reviewing the Anti-Defection Law:** Having fixed number of seats for each state in Rajya Sabha, like the U.S. Senate, could be considered.
- **Domicile requirement:** NCRWC suggested keeping the domicile requirement for eligibility to contest elections to Rajya Sabha from the concerned state.
- **Equal representation:** Punchhi Commission recommended equal representation irrespective of the population of the state.

Previous Year Question (PYQ):

Q. Rajya Sabha has been transformed from a 'useless stepney tyre' to the most useful supporting organ in past few decades. Highlight the factors as well as the areas in which this transformation could be visible. (2021)

Practice question:

Q. Discuss the role of Rajya Sabha in strengthening the federalism in India. Do you think it has been successful in upholding the vision laid by the Constitution?

6. PARLIAMENTARY PRIVILEGES

Context: Recently, **Rajya Sabha Chairman Jagdeep Dhankhar** directed a parliamentary committee to probe the alleged breach of privilege by 12 Opposition MPs for their "disorderly conduct".

Parliamentary privileges in India remain **uncodified** and thus undefined which create arbitrariness in the enforcement of the privileges.

Background:

- Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, State Legislative Assemblies, their committees and their members.
- They are provided to secure independence and effectiveness of their actions and are exception to the 'equality before law'.
- **Article 105** deals with privileges for the MPs while **Article 194** deals with privileges for the MLAs.
- **Article 361A:** No person shall be liable for civil and criminal proceedings in any court in respect of publication of substantially true report of proceedings of Parliament of SLAs.

Parliamentary privileges at a glance:

- Freedom of speech in parliament and right to publish its proceedings.
- Right to exclude strangers from proceedings.
- Punishment of members and outsiders for breach of privileges.
- Prohibition on courts to inquire into proceedings of the House and its committees.

Issues with the absence of codified provisions:

- **Misuse:** Many times assemblies have imposed fine and imprisonment on journalists for writing something against the speaker. Legislators have used the privileges many times to cover up corruption.
- **Against constitutionalism:** Lack of codification gives unbridled power to house to decide when and how breach of privilege occurs.
- **Against freedom of speech and expression:** The Constitution does not restrict any fair criticism, so punishment is direct violation of **Article 19**.
- **Disturbance of separation of powers:** As the Speaker acts as complainant, advocate and the judge in the case involving breach of privilege.
- **Against equality before law:** 'Sovereign people of India' have a restricted right to free speech but their representatives have an absolute freedom of speech in the House.

Suggested measures:

- **Urgent codification:** The Constitution Review Commission (**NCRCW**) headed by the Justice M Venkatchaliah has recommended that privileges should be codified. **2nd ARC** also endorsed the recommendations of NCRWC.
- **Balance between Fundamental rights and privileges:** Any Publications with fair criticism should not be punished, balance between Fundamental Rights and parliamentary privileges must be reexamined. Until the privileges are codified they must be invoked rarely.

Practice Question:

Q. How does Article 105 of the Constitution protect MPs? What are reasons behind the rising cases of breach of privileges by the parliamentarians?

7. DEFECTION

Context: In the last few years, there have been some instances where the political parties have exploited the loopholes of the Anti-defection Act defeating the original purpose of the Act.

Background:

- The Tenth Schedule - popularly known as the Anti-Defection Act - was included in the Constitution via the **52nd Amendment Act, 1985**.
- It sets the provisions for disqualification of elected members on the grounds of defection to another political party.
- It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.

Success of the Act:

- The Act provides stability to the government by preventing shifts of party allegiance.
- It also ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party policies. Also promotes party discipline.

Shortcomings of the Anti-defection law:

- **Limits on legislators:** It curtails the freedom of the legislator to take a principled position on a policy matter and makes them obey the whims of party bosses legitimate dissent curtailed.
- **By-passing the Anti-Defection law:** In the last few years the act has failed to curtail 'horse trading', destabilization of the government.
- **Arbitrariness:** The Act does not set any time limit to decide on the disqualification, due to this Speakers are seen to act according to the wishes of the party he/she belongs. There is also a lack of clear definition
- of 'voluntary giving up of membership'.

Suggestions

- **Dinesh Goswami Committee** on electoral reforms (1990) suggested that the issue of disqualification should be decided by the President/ Governor on the advice of the Election Commission.
- **Law Commission** (170th Report, 1999) suggested that the Political parties should limit issuance of whips to instances only when the government is in danger.
- **Election Commission** suggested that decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.
- **Constitution Review Commission (2002)** suggested that the vote cast by a defector to topple a government should be treated as invalid and that the defectors should be barred from holding public office for the duration of the remaining term.

Previous Year Question (PYQ):

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

Practice Question:

Q. Discuss the flaws in the current anti-defection law in India. Do you think the Anti-defection Act restricts the freedom of speech of the lawmakers?

3. EXECUTIVE

1. DOCTRINE OF NEUTRALITY

Context: In the last few years, the conflicts between governors and the state governments have impacted the doctrine of neutrality.

Some other constitutional bodies like the **Election Commission of India (ECI)** too have been alleged to move away from the doctrine and act in a partial manner.

Background:

The doctrine of neutrality implies that the holder of a public office should behave with the attitude of formalistic impartiality and without malice to anyone. E.g. A judge should remain oblivious to his kinship ties in pronouncing a judgement.

Key tenets of doctrine of neutrality:

- Impartiality – no favouritism
- Transparency and data-led decision making
- Intellectual honesty
- No preconceived notions
- Accountability to the general public
- Rule-based governance and no arbitrary decision making

Significance of doctrine of neutrality:

- **Constitutional trust:** The doctrine helps upholding the constitutional trust bestowed on the Constitutional offices. It also ensures political fairness.
- **Accountability of the government:** The doctrine helps keep a check on the executive thus ensuring accountability and reducing discourages corruption, crony capitalism etc.
- **Strengthens federalism:** For example, if Governor of a state acts partially like in the event of hung assembly, federalism is disturbed (which is a part of basic structure).
- **Strong, neutral judiciary:** This helps strengthen the rights of citizens against any arbitrariness, unfairness.

Recent incidents of the violation of the Doctrine:

- Governors seen to be acting on behalf of the ruling party at the Centre in the event of hung assembly, recommendation of **President's Rule** (Article 356) Example in Maharashtra, Goa.
- Election Commission of India has faced allegations of being partial in its conduct in the recent years.
- **Questionable role of Speakers** in the **Anti-defection Act** and in disciplinary against the MPs.
- Speakers of Lok Sabha and State Legislative Assemblies have been found in an arbitrary manner in the decision of disqualification in defection

Practice question:

Q. What do you understand by constitutional morality? Discuss the significance of doctrine of neutrality for upholding the constitutional morality in India.

2. ROLE OF GOVERNOR AND RECURRING CONTROVERSY

Context: In the recent years, there have been rise in friction between the state and Governor mainly on issues around selection of the party to form a government, deadline for proving majority, sitting on Bills, and passing negative remarks on the state administration.

Background:

The Constitution provides Governors with discretionary powers the exercise of which in an arbitrary manner has become the sources of bitterness between the states and the Governor.

Other than Constitutional discretion, Governor also has discretionary powers during some specific situations.

Discretionary powers of the Governor:

- Reservation of a bill for the consideration of the President
- Recommendation for the imposition of the President's Rule in the state (**Art 356**).
- Exercising his functions as the administrator of an adjoining union territory (in case of additional charge).
- Special responsibility in **5th and 6th schedule areas**.
- Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

Situational discretion:

- Appointment of chief minister when no party has a clear-cut majority.
- **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.

Recurring issues with the office of Governor:

- **Governor's position reduced to mere agent of the Centre:** There is increasing collision in the states that are ruled by parties different than the ruling party in the Centre. Ex. there has been friction in Maharashtra, Rajasthan etc. recently.
- **Partial use of discretionary power:** Recently there are many instances where Governors are found to break with the convention in the event of hung assembly often at the behest of the ruling party at the Centre. Ex Goa, Maharashtra the Governor did not follow the established convention.
- **Arbitrary time limit for the floor test:** This promotes horse trading in Indian politics. There have been instances of '**resort politics**' in the last few years.

- **Interference in day to day functioning:** Governors have been found to act acting against the advice of Council of Ministers. Ex. In Maharashtra, the Governor refused to accept the date to elect the Speaker suggested by the state government.
- **Recommendation of President's Rule (Art 356):** In many instances Governors have acted in questionable manner.

Recommendations to avoid the situation:

- **Nabam Rebia judgment (2016):** The exercise of Governor's discretion under Article 163 is limited and his choice of action should not be arbitrary. It should be followed.
- **M M Punchhi Commission:** Governor should follow constitutional convention in a case of a hung Assembly. Provision of 'localized Emergency' by which the Central government can tackle issue at town/ district level without dissolving the state legislative assembly.
- **Sarkaria Commission:** It provided recommendations on the appointment/removal process.
- Consultation with the Chief Minister should be done for the appointment of the Governor. As far as possible, the governor should enjoy the term of fi ve years.

Previous Year Question (PYQ):

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

Practice Question:

Q. Explaining the relevance of 'principle of neutrality' in the offi ce of Governor in India, highlight the concerns that have affected the principle in the last few years.

4. JUDICIARY

1. JUDICIAL ACCOUNTABILITY

Context: In the last few years, there have been some instances like opaque judicial appointments, judicial corruption etc. which has dented the judicial accountability in India.

Need of judicial accountability

Judicial accountability refers to the idea that judges are accountable for the judgments they render.

It is a corollary fact of the independence of the judiciary.

Current status of judicial accountability in India

- When it comes to accountability, the Constitution puts Judiciary on different pedestal vis-avis other organs of the state.
- Executive of responsible to the Legislature, while the Legislature is responsible to the people (Election every fi ve years).
- Constitution does not impose the same burden of accountability in the Judiciary.
- The mandate given to the Judiciary is to do complete justice (Article 142), that's why answerable to neither Executive nor Legislature.

Areas where judicial accountability is lacking:

- **Judicial Appointments by collegium:** There is a lack of clear benchmarks for names to be proposed for consideration of appointments because of this the Supreme Court has been criticized for promoting mediocrity and nepotism.
- **Arbitrary transfers in HCs:** There have been some instances where the transfer of a judge from one High to another has been done as punitive measure. This creates opacity in the operations of Judiciary.
- **In-house mechanism:** Sexual harassment charges against the former CJI were swept away under the carpet which shows a lack of accountability in the in-house mechanism of the higher judiciary. There is also a lack of clarity on rules which came to light after four senior most judges had to do unprecedented press conference against the then CJI in 2018.
- **Arbitrary slapping of contempt:** Sometimes the judiciary has slapped contempt charges even in the case of fair criticism.
- **Judicial corruption and misconduct:** There is no provision on discussion on conduct of judges except for impeachment proceedings. Impeachment process itself is very difficult and not a single judge has been impeached yet despite some facing corruption charges.

Steps to be taken:

- **Judicial standards and accountability bill:** The bill should incorporate legally enforceable standards to improve the functioning of judiciary.

Steps towards judicial accountability:

- Bangalore Principles of Judicial Conduct in 2002.
- National Judicial Data Grid: Contains information related to judiciary.
- Information related to Collegium discussions on recommendations is being put online.
- Live streaming of court proceedings.
- CPIO, Supreme Court of India v. Subhash Chandra Agarwal, 2019, it was held by the Constitution Bench of Supreme Court that Supreme Court comes under the scope of “public authority”. Therefore, it is covered under the RTI Act.
- **Clear criteria for appointment and transfers:** Appointment and transfer process should be clearly, MoP should be finalized at the earliest.
- **Sparse use of contempt:** Contempt of Court Act should be used sparingly only when the functioning of the judiciary actually comes into danger.

Practice Question:

Q. It is a constitutional imperative that an authority must be accountable if it wields power. In the light of the statement examine the status of judicial accountability in India.

2. APPOINTMENT OF JUDGES

Context: The collegium system of appointment in India where sitting judges appoint judges to the constitutional courts has become a major bone of contention between the judiciary and the government.

There have been allegations of favouritism, opaque recommendation which has affected the judicial accountability as well.

Constitutional provisions related to the appointment

- The Judges of the Supreme Court are appointed by the President under clause (2) of Article 124 of the Constitution.
- The President consults with judges of the Supreme Court and High Courts to make informed appointments.

Evolution of collegium system:

First Judges Case (1981): It declared that the “primacy” of the CJI’s (Chief Justice of India) recommendation on judicial appointments and transfers can be refused for “cogent reasons.”

Second Judges Case (1993): SC introduced the Collegium system, holding that “consultation” really meant “concurrence”. It added that it was not the CJI’s individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the SC.

Third Judges Case (1998): SC on the President’s reference (Article 143) expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.

Challenges with the current system:

- **Judges appointing judges:** This affects the separation of power and the system of checks and balances which is the foundation of the Constitution.
- **Opacity:** There is lack of definite criteria for recommendation of names to the President for appointment.
- **Favouritism:** There has been allegation of favouritism which has given rise to ‘Uncle judge syndrome’ in the judiciary. This also goes against merit.

Suggested measures:

- **Earliest finalization of MoP:** The Government and judiciary should work together for the earliest finalization of MoP for the appointment of judges.
- **Ensuring transparency:** The collegium should make the criteria clear for the recommendations of the names till the MoP is finalized.

Previous year question:

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

Practice question:

Q. Tracing the origin and evolution of the Collegium System in India, discuss the challenges associated with the functioning of the Collegium System and suggest measures.

3. POST-RETIREMENT BENEFITS

Context: Few years back retired CJI Ranjan Gogoi was nominated RS MP by the President under the power given to him by Art 80.

Previously too, CJI P Sathasivam was appointed Kerala governor, MC Chagla was appointed as India’s ambassador to US. This pattern has fueled the concern related to the impacts on judiciary because of the post-retirement appointments.

Arguments in the support of the post-retirement appointments:

- **No legal or constitutional bar:** Article 124 of the Constitution only restricts post-retirement appointments in Judiciary itself.
- **Valuable experience and insights:** Thus the retired judges can enhance the quality of debates on the floor of the houses.
- **Legal framework:** These posts are generally constitutional or of quasi-judicial bodies, whose laws more often than not mandate that only retired judges can occupy them.

Concerns associated:

- **Goes against the judicial independence:** As the post-retirement job can influence pre-retirement judgments. It also promotes conflict of interest.
- **Politicization of judiciary:** This can eventually erode the people’s trust in the judiciary.

Suggested Measures:

- **A minimum cooling off period:** This provision can dent the lure of the post-retirement appointments among the judges.
- **Increasing the retirement age:** In India judges retire at comparatively early age (in UK, 70 years), the retirement age could be increased. In UK, a SC judge has the right to sit in the House of Lords for the rest of the life; this could be followed in India.
- **Change in legal framework:** Amend existing laws which mandate the appointment of retired judges in tribunals and other quasi-judicial bodies e.g. NHRC, NGT etc.
- **Transparent process:** Envisioning a transparent process as suggested by ex CJI RM Lodha. A list of judges desiring appointment should be kept and in the event of vacancies in the post name should be recommended according to the list. This will delink judicial verdicts from future prospects.
- Post retirement appointments of judges definitely have some challenges along with some benefits. A solution has to be found with proper analysis of pros and cons involved.

Practice question:

Q. Pre-retirement judgments are influenced by the post-retirement appointment. In this context discuss the need to ban post-retirement appointment of judges in India.

4. JUDICIAL REVIEW

Context: Recently, former Chief Justice of India (CJI) U. U. Lalit said that judicial review by constitutional courts was the basic feature of the Constitution, and, therefore, Parliament could not put in place a mechanism to exclude the jurisdiction of constitutional courts.

Certain provisions of the Constitution are inviolable, and they could not be frittered away or amended or modified or substituted with something else.

Background: Definition of Judicial review:

Judicial Review refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the Constitution of India.

Example of judicial review: SC struck down section 66A of the IT Act on the ground of it being violative of Fundamental Rights.

Basis of Judicial Review:

- The power of JR though **not explicitly mentioned** in Constitution comes from Article 13 read with Article 32 and Article 226.
- **Article 13:** laws that are inconsistent with any of the Fundamental Rights can be declared void.
- **Article 32:** It gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been 'unduly deprived'.
- **Article 226:** It empowers High Courts to issue instructions, orders, and writs to any person or authority, including the government.

Significance of Judicial Review:

- **Maintain supremacy of the Constitution:** Judicial review checks misuse of power by legislature and executive.
- **Maintains federal equilibrium:** It helps protect rights and interests of the states and thus maintain federal balance.
- **Upholding rights of individual:** The mechanism guards the rights of public and implements the fundamental rights.

Challenges:

- **Lack of clarity:** The judicial review can take form of judicial overreach sometimes encroaching upon the powers of the legislature.
- **Judicial legislation:** This is an anathema to the constitutional values.
- Thus, judicial reviews is a necessity for the health and well-functioning of democracy. But a fine equilibrium between government bodies is needed to sustain the constitutional values.

Practice question:

Q. Judicial review provides the remedy to prevent any abuse when harsh measures become necessary to deal with extraordinary situations. Elaborate.

5. PENDENCY OF CASES

Context: According to data shared by the government recently, pending cases across various courts in the country are moving towards the five crore-mark with an over 4.32 crore backlog in subordinate courts.

Challenges created by the pendency:

- **Denial of 'timely justice' amounts to denial of 'justice' itself:** Judiciary is the guardian of the rights and lack of speedy trial amounts to failure of judiciary in protecting the rights.
- **Serious impact on 'rule of law':** Many of the constitutional questions remain in limbo for long time, some of them affecting civil rights.
- **Erosion of trust in judiciary:** damage to the accountability: Supreme Court ruled "Access to justice is and has been recognized as a part and parcel of right to life. The delay affects this right.
- **Increase in the number of under-trials:** Pendency of cases creates the problem of overcrowding of prisons. It increases the cost on poor section of society. Hence, impacting accessibility and affordability of justice.
- **Economic cost:** It was estimated that judicial delays cost India around 1.5% of its GDP annually.

Reasons:

- **Huge vacancy:** In HCs in 2019 37% of the sanctioned strength (according to DRSC report). 455 vacancies as of Aug 1, 2021. In lower judiciary nearly 21% vacancies (Economic Survey 2018-19). Low number of judges,
- **Delays in appointment:** Currently India has 19 judges/mn population, it should be around 50 as suggested by the Law Commission. Centre has told Supreme Court that on avg it takes 337 days for appointment, after a name is recommended.
- **Rising government litigation:** According to Ministry of Law and Justice the government is litigant in 46% of the court cases.
- **Double burden on Supreme Court:** It is acting as a Court of Appeal and Constitutional court at the same time which impacts the efficiency.
- **Infrastructural challenges:** Poor infrastructure and low utilization of technology, especially in district courts, where most of the cases are pending. Low budgetary allocation to the judiciary exacerbates the challenge.
- **Inefficient criminal justice system:** Poor investigative process, gaps in the police etc. further impact the pace of resolution of cases burdening the courts and dragging on of the cases for years.

Recent steps to decrease the backlog:

- e-Court Mission Mode project for the district courts.
- Judicial Service Centre as a single window for filing petitions and applications.
- Gujarat High Court has erected 'justice clock' which exhibits vital statistics of the justice delivery system in Gujarat.
- Legal Information Management & Briefing System (LIMBS).
- Number of judges in SC increased from 31 to 34.

- National Mission for Justice Delivery and Legal Reforms aimed at improving infrastructure in subordinate courts.

Suggested measures:

- **Focus on subordinate courts:** Most of the cases are pending in the subordinate courts (according to DRSC report), so focus should be on increasing their efficiency. Vacancies should be filled and infrastructure in District Courts should be improved.
- **Additional judges should be recruited:** It was suggested by the ES 2018-19. In HCs and SC also the number of judges should be increased and the vacancies should be filled without delays. Time frame should be fixed for appointment after the recommendation is made.
- **Increase the retirement age of judges:** In India judges retire a comparatively early age compared to US, UK, it could be increased. Age of retirement of HC judges should be increased to 65 (same as a SC judge).
- **Procedural laws of the courts should be revamped:** For example, cases should not be listed before the court unless all the documents are filed. Supreme Court Rules could be amended to provide for a structure of pre-hearing of Special Leave Petitions.
- **Adopting All India Judicial Service:** This can help fill the vacancies in the judiciary.
- Judiciary is the protector of the rights of people. All the necessary steps should be taken to strengthen it serve the people efficiently.

Practice Question

Q. What are the cause and consequences of huge backlog of court cases in India? Examine the potential of All India Judicial Service to strengthen the overall justice delivery system in the country

6. ALL-INDIA JUDICIAL SERVICES

- **Context:** Recently, **Union Minister for Law & Justice** informed the Parliament that presently there is no proposal to bring 'All India Judicial Services' due to lack of consensus among various State Governments and High Courts.
- **Background:**
- The judiciary is facing various challenges like pendency of cases and high number of vacancies among others issues due to which the debate around the **All India Judicial Services** has increased in the last few years.
- **Article 312** of the Constitution provides for the establishment of **All India Judicial Service (AIJS)**, which shall not include any post inferior to that of a District Judge. The constitutional provision enables creation of the AIJS at District Judge level.

Recommendations related to the AIJS:

- The idea was first mooted in the **Law Commission's** 1958 'Report on Reforms on Judicial Administration'.
- In 2006, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in backed the idea of a pan-Indian judicial service also recommended for AIJS.
- In 1992, SC in *All India Judges' Assn. (1) v. UoI* directed the Centre to set up an AIJS.
- In a 1993 review of the judgment, however, the court left the Centre at liberty to take the initiative on the issue.
- In 2017, Supreme Court took suo motu cognizance of the issue of appointment of district judges, and mooted a "Central Selection Mechanism".

Potential of AIJS to solve the challenges of Judiciary:

- **Fill up the vacancies:** Currently there are approximately 5,000 vacancies across the District and Subordinate Judiciary in India, AIJS can help fill up the vacancies.

- **Reducing the pendency:** According to recent reports, around 47 million cases are pending in the various courts of the country.
- **Bring efficiency:** The recruitment will be done by a central procedure which will address structural issues such as varying pay and remuneration and training standards across states.
- **Best talent:** As the candidates will be selected through national level exam.
- **Clear career progression:** A study by EPW finds that less than a third of seats in the HCs are filled by the judges of the district cadre i.e. there is no definite criteria of career progression in the subordinate services.

Potential challenges:

- **Impact state judicial services:** AIJS will reduce promotional avenues of the members of the subordinate State Judicial Service.
- **Not a panacea:** AIJS does not guarantee filling up vacancies as the All India Services (AIS) are currently facing the same challenge.
- **Lowering status of the High Courts:** AIJS will result in loss of control and supervision of the District Courts vested with the HCs under Article 235 of the Constitution. AIJS is seen as an encroachment on the powers of states granted by the Constitution.
- **May fail to represent the diversity:** It is also argued that central recruitment would not be able to address the unique concerns that individual states may have.
- **Issue with the local language and the custom:** Ex. Arunachal Pradesh has opposed the idea as it is tribal state with its own peculiar and distinct tribal customs.
- Any change in the judicial set up of the country must be concurred in by the States and the High Courts as also members of the legal fraternity. Vacancies should be filled up at the earliest.

Practice question:

Q. Analyze the potential of All India Judicial Services to overcome the challenges faced by the Judiciary in India.

7. CRIMINAL JUSTICE SYSTEM

Context: Recently, Union Minister of State for Home informed the Parliament that the central government has initiated the process for comprehensive amendment of criminal laws.

Background:

- The legal and institutional framework governing criminal justice in India was inherited from the British era.
- The current legal framework, comprising of Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Indian Evidence Act, 1872 have not been able to catch up with the changing nature and complexities of crimes.

Need for reform:

- **Colonial era relic:** Criminal laws in India like Indian Penal Code 1860, Indian Evidence Act, 1872 are colonial relic which needs to be reformed.
- **Speedy justice:** Prevailing criminal justice system has proved ineffective in reducing crime. Rise in pendency of cases in Indian courts is the classic case of justice delayed is justice denied. Faulty criminal justice system is one of the reasons for the current scenario.
- **Making the system affordable:** Current legal system cost heavy toll on the poor and marginalized population. There is a need to create a people-centric legal structure.
- **Huge number of under-trials:** According to the **NCRB Prison Statistics India**, 77.2% of the total prison population comprises under-trial prisoners as of September 2022.
- **Other issues:** Victimization, lack of witness protection, victim protection, witness anonymity etc. which need to be incorporated in the criminal laws.

Earlier recommendations for criminal law reforms:

- Parliamentary Standing Committee on Home Affairs, in its 146th Report had recommended that there is a need for a comprehensive review of the Criminal Justice System.
- **Madhav Menon Committee, 2007:** It sought to liberalize and rationalize the criminal justice system.
- **Malimath Committee Report, 2003:** The committee made various recommendations relating to rights of the accused, police investigation, court and judges, witness protection etc. the recommendations should be implemented at the earliest.

Suggestion for reforms:

- **Prevention of victimization:** Any revision to the criminal justice system needs to be done with the focus on several principles like reasons for victimization.
- **Holistic coverage:** Addition of new offences and reworking of the existing classification of offences. A comprehensive reclassification of offences may be done urgently to reduce the burden of work for both the Courts and the Police.
- **Focus on reform not retribution:** New types of punishments like community service orders, restitution orders should be added.
- **Concept of federal crime:** As recommended by the 2nd ARC, it should be accepted and offences which have all-India ramifications, like those of terrorism and organized crimes, should be brought within its ambit.

Practice question:

Q. Discuss the challenges associated with the criminal laws in India. Suggest some reforms to make the criminal laws attuned with contemporary challenges.

8. CUSTODIAL VIOLENCE

Context: According to the National Crime Records Bureau (NCRB), a total of 11,419 custodial deaths were reported in India between 2016-17 and 2021-22.

Background:

Custodial violence is physical or mental violence against an individual in the judicial and police custody.

According to the Law Commission of India (LCI), the crime by a public servant against the arrested or the detained person who is in custody amounts to custodial violence.

Reasons behind high rate of custodial violence in India:

- **Lack of training of policemen:** According to the Common Cause and CSDS-Lokniti report, 12% of police personnel never receive human rights training.
- **Misuse of power of arrest:** National Police Commission (3rd Report) had observed that 60% of all arrests were unnecessary. Second Administrative Reforms Commission (2007) also noted the excessive power in the hands of police.
- **Acceptance of the practice as a norm:** The custodial violence is forbidden in law; it is considered a practical tool.
- **Some sort of impunity and low rate of conviction:** Between 2001 and 2018, only 26 policemen were convicted of custodial violence despite 1,727 such deaths being recorded. Also the government's approval is needed to prosecute policemen which acts as a roadblock.
- **Lack of strong legislation against torture:** India does not have an anti-torture legislation and is yet to criminalize custodial violence. U.N. Convention against Torture is yet to be ratified.

Negative impacts of custodial violence:

- Disregard to the Fundamental Rights enshrined in the Constitution and universal human rights.

- It creates a class of criminals with the law enforcement system.
- Weakens the moral foundation of the governance.
- It dents India's image at global level.
- Goes against the **Article 21, Article 22** of the Constitution.

Steps to be taken:

- **Ratification of UN convention Against Torture:** This will give additional push to act in the cases of custodial violence.
- **Ease of prosecution:** The need for government's approval to prosecute the policemen should be done away with.
- **Accountability:** DK Basu judgment, 1997 gave strict direction in relation to arrest and detention, they should be followed. Police Accountability should be ensured both external and internal.

Recent steps taken:

- Kerala Police Act puts the onus on all police officers to report any physical torture.
- Prisons in Telangana don't admit people brought into judicial custody if they appear injured.

Practice question:

Q. Custodial violence raises serious questions about the credibility of the Rule of Law and administration of criminal justice system. In light of the statement explain the reasons for rising cases of custodial deaths in India.

9. UNDER-TRIALS IN INDIA

Context: Deterioration of prison conditions and the prisoners because of the high number of undertrials languishing in the prisons in India.

Reasons for high under-trial population in India's prisons-

- **Delay in conducting trials.** This is despite the fact that Right to Speedy investigation and trial is established to be a fundamental right under Article 21 of the Indian Constitution.
- Inability of many under-trials to furnish the **bail amount or present surety.** The primary reason behind this is the socio-economic condition of the most undertrials.
- Most undertrials in India belong to **socially and economically vulnerable category** and furnishing a bail or surety is beyond their capacity.
- Majority of undertrials in India are **illiterate and hence lack awareness of their rights.** Including the right to legal aid.
- **Lack of police personnel to escort the under-trials to court.** This leads to a situation where the hearing of bail petition of the undertrial gets adjourned for no fault of his.
- The above reasons make difficult for an undertrial even when the Indian Legal System, in letters, has promoted that **"Bail and not Jail is the rule"**.

Statistics of under-trials in India:

- In India, about **70% of prison inmates are under trials.**
- The above number simply means that more than **2/3rd locked of those locked** in the prisons of India **have still not been convicted of the offence** they are accused of.
- The prison statics of 2020 also showed that nearly **70% of this under trials belong to marginalized** caste, class, religions and genders.

Challenges faced by undertrials in prison:

- **Prison violence:** Jails are commonplace for violence between prisoners or gang-wars. Many first time inmates are caught in these violent incidences.
- First time prisoners are also subject to violence by the hardened criminals in prison.

- **Criminalizing effect of a prison:** With hardened criminals being around and in the absence of scientific classification methods to separate them from others, contamination of first time, circumstantial and young offenders into full-fledged criminals occurs very frequently.
- **Health Problems:** Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in safe and health conditions. Most of the prisoners found in prisons come from socio-economically disadvantaged sections of the society where disease, malnutrition and absence of medical services are prevalent.
- When such people are cramped in with each other in unhealthy conditions, **infectious and communicable diseases spread easily.**

Recommendation for overall reforms that would better the situation of undertrials:

- **Undertrial** prisoners should be **lodged in separate institutions** away from convicted prisoners.
- There should be a **proper and scientific classification even amongst the undertrials** to ensure that the first timers and petty offenders do not mix up with full fledged and hardcore criminals.
- Institutions meant for lodging undertrials should be as **close to the courts** as possible.

Practice Question:

Q. Discuss the reasons and the challenges associated with the high number of under-trials languishing in Indian prisons. Suggest some measures to overcome the challenge.

10. INCREASE IN DEATH PENALTY BY TRIAL COURTS

Context: According to the **Annual Death Penalty Report 2022**, Indian courts in 2022 awarded a record 165 death sentences, the highest in over two decades. This is against the pattern of the higher courts in India which are looking for alternative ways of reform death penalty sentencing.

More about the report:

- It is released by 'Project 39A', a criminal reforms advocacy group with the National Law University, Delhi.
- According to NCRB data, 165 death penalties were awarded by trial courts since 2000.
- The corresponding figure for the last five years was; 146 in 2021, 78 in 2020, 104 in 2019, 163 in 2018, and 110 in 2017.
- The report notes that 3% of the death penalty cases were decided by trial courts "without any materials on mitigating circumstances of the accused and without any state-led evidence on the question of reform.

Death penalty in India:

- Capital punishment in India is a legal penalty for some crimes under main substantive penal legislation, the Indian Penal Code, as well as other laws. India has opposed the idea of abolishing capital punishment from statutes.
- In December 2022, at the UN General Assembly, 125 countries voted in favor of a moratorium on the death penalty. India voted against it.
- In 2021, at the **UN Human Rights Council**, India also opposed a draft resolution calling for a moratorium on the death penalty.
- Nevertheless, the actual number of executions in India remains comparatively low. Since 2000, India has carried out **just eight executions** in total.

What are the issues in the current system?

- A Supreme Court Bench led by **Justice U.U. Lalit** made the following observations
- **Quick decision:** In some cases, trial courts sentence a person to death merely hours after conviction.

- **Little effort to unearth the issue:** Little effort is taken to unearth or understand the circumstances which led a person to commit the crime. In short, trial judges hardly know the people they are sending to the gallows.
- **Ignored individual details:** No effort is ever made to dig deeper into a convict's childhood experiences, multi-generational history of physical and mental health issues, exposure to traumatic events and other familial, social and cultural factors crucial in order to undertake an individualized sentencing enquiry.
- **Mitigation expert:** The court said a "mitigation expert", a qualified professional with unhindered access to the convict's past, ought to be at the centre of this change in outlook.

Suggested measures:

- The Supreme Court had laid emphasis on 'reform' as a core concept in the death penalty sentencing framework.
- It had reiterated the duty of the State to present evidence of the 'improbability of reform' before any person can be sentenced to death.
- The guidelines of the apex court should be followed by the subordinate courts.

Practice question:

Q. What is the 'rarest of rare doctrine' in the criminal justice system in India? Bring out the reasons behind the surge in number of death penalty by the lower courts in the last few years.

11. TRIBUNALS

Context: In the last few years, the Supreme Court has emphasized the concerns related to the functioning of tribunals in India.

Background: What are tribunals?

- Tribunal is a quasi-judicial institution that is set up to deal with problems such as resolving administrative or tax-related disputes.
- They are not part of the original constitution; it was incorporated in the Constitution by 42nd Amendment Act, 1976 after **Swaran Singh Committee** recommendations.
- **Article 323-A:** It deals with the Administrative Tribunals which can be established only by Parliament
- **Article 323-B:** It deals with tribunals for other matters and under Article 323 B a hierarchy of tribunals may be created.

Judgement related to the Tribunals:

- **Roger Mathew 2019 Case:** Tribunal, Appellate Tribunal and other Authorities (Qualification, Experience and other Conditions of Service of Members) Rules, 2017 as unconstitutional for being violative of principles of independency of the judiciary.
- **Madras Bar Association Case:** Fundamental principles related to the Tribunals were laid down in the judgment.

Benefits of the tribunals:

To reduce the workload of courts, expedite decisions.

- **Specialized jurisdiction:** The tribunals perform an important and specialised role in justice mechanism hearing disputes related to the environment, armed forces, tax and administrative issues.
- **Challenges with the tribunals:**
- **Separation of Power:** Tribunals act as judicial bodies but are in the control of the Executive.
- **Short tenure:** Along with provisions of re-appointment increases the control of the Executive over the judiciary SC stated this issue in 2019.

- **Huge vacancies:** Delays in appointments after recommendations, absence of presiding officers. This makes many tribunals totally dysfunctional. Also aids in the high pendency in the tribunals.
- **Undermines the HCs:** As appeals against some tribunals can go directly to the SC, this also increases the burden on the SC.
- **High pendency:** According to the Law Commission, in Central Administrative Tribunal around 44000 cases are pending. It defeats the original purpose of the Tribunals.

Suggested Measures:

Law Commission recommendations:

- Involvement of government agencies should be minimal, since the government is typically a party in every litigation.
- Chairman, vice-chairman, and judicial members of tribunals should be appointed by a selection committee headed by the CJI or a sitting judge of the Supreme Court.
- Currently there is no uniformity in the age of retirement of tribunal members. There should be uniformity in the appointment, tenure, and service conditions for the chairman, vice-chairman, and members of tribunals.

Practice question:

Q. Analyze the challenges associated with the rising ‘tribunalization of justice’ in India. Do you think tribunals have been successful in carrying out their mandate? Justify your answer.

12. PUBLIC INTEREST LITIGATION

Context: There is a rise of frivolous Public Interest Litigation (PIL) which has increased the burden of cases on judiciary.

Background: What is PIL?

- PIL, is a litigation introduced in a court of law not necessarily by the aggrieved party but by the court itself or by any other private party.
- PIL can be filed before the SC under Article 32 or before the High Court under Article 226 under their respective Writ Jurisdictions.
- Also under Article 21 whose scope has been widened by the SC over the years.
- The concept of PIL is in consonance with the principles enshrined in Art 39A of the constitution to protect and deliver ‘social justice’ with the help of law. Ex - PILs related to environment.

Genesis of PIL:

- Seeds of the concept of public interest litigation were initially sown in India by Justice Krishna Iyer, in 1976 in **Mumbai Kamagar Sabha vs. Abdul Thai**.
- First reported case of PIL was Hussainara Khatoon vs. State of Bihar (1979) that focused on the inhuman conditions of prisons and under trial prisoners.
- A new era of the PIL movement was heralded by Justice P.N. Bhagwati in the case of S.P. Gupta vs. Union of India.

Merits of PIL:

- **Democratization of justice:** PILs act as an important instrument of social change, welfare of sections of society.
- **Facilitates the DPSP of Art 39:** The mechanism gives a wider description to the right to equality, life and personality.

- **Promotion of human rights:** Important tool to make human rights reach those who have been denied rights.
- **Challenges associated:**
- **Rise of frivolous cases in courts:** It results in time lost, increased pendency in judiciary. Abuse of PIL has become rampant which affects courts affairs.
- **Judicial Overreach:** Sometimes judiciary is said to have overstepped its jurisdiction because of PIL. The court must be careful to see that the petition must be acting bona-fide and not for personal gain. In shaping the relief the court must take into account the impact on public.

Practice Questions:

Q. 'PIL now being abused by publicity mongers'. In light of the observation, suggest some ways to strengthen the tool for the democratization of justice in India.

13. USE OF TECHNOLOGY IN JUDICIARY

Context: An unstarred question in the Lok Sabha during the first part of the Budget session of Parliament was asked with reference to artificial intelligence and its use in judicial processes to reduce the pendency of cases.

Background: Pendency of Cases in India:

- The High Courts in India have 57.39 lakh cases and the subordinate courts have 1,08,36,087 cases pending.
- **What will be the benefits of integrating AI & ML in Justice Delivery?**
- **While implementing phase two of the eCourts projects,** under operation since 2015, a need was felt to adopt new, cutting edge technologies of Machine Learning (ML) and Artificial Intelligence (AI) to increase the efficiency of the justice delivery system.
- **The Supreme Court of India has constituted an Artificial Intelligence Committee** which has mainly identified application of AI technology in Translation of judicial documents; Legal research assistance and Process automation.
- **ML-based applications in Judiciary:** AI powered tools like **SUPACE** will not only help organise cases, it will also bring references into the judgment at a speed not seen so far.
- **Tools derived from AI** could help expedite the case-flow management which in turn helps in lowering delays and pendency in courts.

What are the issues and Challenges associated with AI in Judiciary?

- **The use of ML in India's legal sphere has so far been restricted to automating back-end work,** and is still a very long way from being used as a decision-making tool for the judiciary.
- **Many of the judgments,** particularly in the lower courts, **are yet to be fully digitized.**
- **Going by global trends,** greater adoption of these tools in the Indian legal system is inevitable.
- AI and ML should assist but **do not replace human decision making.**
- The **ethical and responsible use of AI and ML** for the advancement of efficiency enhancement can be increasingly embedded in legal and judicial processes.

What is the way forward?

- **Automated systems, controversially, were being used to decide bail applications in some parts of the United States, and other countries such as Estonia** have incorporated AI and ML in a major way.
- **But the Indian judicial system is generally "more conservative",** and a lot more work remained in making India's legal data amenable to ML formats.
- **AI and ML can be tried in tribunals** where there is no need for oral evidence and cross examination.
- **Consumer courts are an area where AI can be helpful.**

Practice Question:

Q. In the face of high pendency of court cases, discuss the potential role of technology to make the judiciary in the country more efficient.

14. THE STATE OF JUDICIAL INFRASTRUCTURE

Context: There is a substantial gap in infrastructure and availability of basic amenities in the judiciary. These gaps or deficiencies are there because there is no agency to ensure use of funds allocated to augment judicial infrastructure.

In this scenario, establishing a National Judicial Infrastructure Corporation has been suggested.

Background: What is Judicial Infrastructure?

- Judicial infrastructure includes the physical premises of courts, tribunals, lawyers' chambers, and so on.
- It also involves the digital and human resources infrastructure, including the availability of all the resources that are essential to ensure timely dispensation of justice.
- **Key issues:** Key issues like land allocations, tendering, and award of contract, site inspections require active coordination amongst multiple entities.

Significance of judicial infrastructure:

- **Better productivity:** The positive correlation between adequate judicial infrastructure and productivity in justice delivery are empirically well-established.
- **Efficient performance:** Adequate and quality judicial infrastructure is the basic pre-requisite for judges, lawyers, and judicial officers to efficiently perform their responsibilities while dispensing justice.
- **Reduced delay and backlogs:** Adequacy of judicial infrastructure is a pre-condition for reducing delay and backlogs in cases. There is a direct connection between physical infrastructure, personnel infrastructure, digital infrastructure, and pendency.
- **Essential during difficult times:** Criticality of adequate judicial infrastructure, particularly the digital, was very much felt during the course of the pandemic when courts were forced to opt for virtual mode.

What are the reasons behind infrastructural lag?

- **Lack of funds:** One of the primary reasons for the infrastructural lag in trial courts is the lack of funds.
- **Underutilization of funds:** Not only lack of funds, but underutilization of funds meant for specific judicial infrastructure projects does not help either.
- **Poor budgetary allocations:** Even after more than seven decades of independence, the budgetary allocations, including states, are still below 1 percent of the GDP.

How would National Judicial Infrastructure Corporation resolve the crisis?

The proposed concept

- The proposed NJIAI could work as a central agency with each State having its own State Judicial Infrastructure Authority, much like the National Legal Services Authority (NALSA) model.
- It has also been suggested that the Chief Justice of India could be the patron-in-chief of the NJIAI, like in NALSA, and one of the Supreme Court judges nominated by the Chief Justice could be the executive chairman.
- **Speedy implementation:** The National Judicial Infrastructure Corporation (NJIC) would act as a coordinating agency to speed up the works.
- **End bureaucratic hurdles:** It would include the CJI, judges of the Supreme Court, and high courts, finance secretaries of the Centre and states concern. It can quickly end bureaucratic hurdles and challenges of coordination amongst multiple bodies.
- **Ensuring smooth funding process:** The proposed body is intended to monitor and address the issues of delay in land allotment, funds diversion for non-judicial purposes, evasion of responsibilities by the high courts and trial courts, amongst others.

Criticism of the concept

- There are doubts about NJIC's necessity and the roles it desires to play.
- Centralization of powers under a new body would go against the principles of federalism.
- The NJIC cannot force the states to spend more or concede powers to a new body.
- There is concern regarding priority to be given by judges to infrastructure projects or to mounting backlog of cases.

Practice question:

Q. Discuss the role of National Judicial Infrastructure Corporation in overhauling the judicial infrastructure in India. Suggest some alternative mechanism to solve the problem.

15. RECUSAL IN JUDICIARY

Context: In the last few years, there have been many instances of recusal in the judiciary.

Doctrine of Recusal

Recusal is removal of oneself as a judge or policy maker in a particular matter, especially because of a conflict of interest.

It is a basic precept that no one should be a judge in his or her own case.

Courts must keep the promise of dispensing fair and impartial justice, and must decide controversies without bias.

Need of Recusal in Judiciary

- The requirement is that the judge must be impartial and must decide the case objectively on the basis of the evidence on record.
- A person cannot take an objective decision in a case in which he has interests, for as human psychology tells us, very rarely can people take decisions against their own interests.
- This concept of recusal is applied not only to avoid the possibility of a partial decision but also to ensure public confidence in the impartiality of the adjudicatory process.
- In this manner Impartiality, objectivity and public confidence provide the foundation on which the superstructure of rule against bias is built.

Usual Grounds of Recusal

- **Disqualification by interest:** it is where some direct or indirect interest in the proceedings, whether pecuniary or otherwise, gives rise to a reasonable apprehension of prejudice, partiality or prejudgment.
- **Disqualification by conduct:** it includes 'published statements' and 'consists of cases in which conduct, either in the course of, or outside, the proceedings, gives rise to such an apprehension of bias'.
- **Disqualification by association:** it consists of cases where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings.
- **Disqualification by extraneous information:** overlaps with the third, but commonly 'consists of cases where knowledge of some prejudicial but inadmissible fact or circumstance gives rise to the apprehension of bias.

Practice question:

Q. What do you understand by the 'Doctrine of Recusal'? Discuss its need in judiciary and the reasons behind increased instances of recusal of judges in the last few years.

16. CONTEMPT OF COURT

Context: There have been increased instances of contempt of court cases in the last few years fuelling the debate around the issue.

In cases of **contempt of court**, judges are the prosecutor and they themselves sit and decide cases in which they have felt that contempt of court has been committed. This issue is at the core of the debate.

Background: What is contempt of court?

- Contempt of Court is disobedience to the court whether wilfully or accidentally, by acting in defiance to the authority, justice and dignity.
- The power to punish for Contempt can be duly exercised by the court to uphold the dignity of the court of law and protect its proper functioning whenever an any person or body adversely affects the administration of justice by its act or tends to impede the course of justice, or shake public confidence in a judicial institution.

Genesis of contempt of court

- The law concerning contempt of court in India has its roots in the British Raj. An undelivered judgment of J Wilmot in 1765 led to the genesis of this act, where the judge said the power of court was necessary to maintain the dignity and majesty of judges and vindicate their authority.
- Henceforth, the Contempt of Court Act, 1971 was enacted to bring transparency and more clarity in the concept of contempt of court and the power to punish for the contempt of subordinate courts.
- This Act was replaced by Contempt of Court Act, 1952 which was again replaced by Contempt of Court Act, 1971 the recommendations of **H.N. Sanyal committee**.

Why does the Contempt of Court Act should be retained?

- As per the **Law Commission Report 274**, there were a high number of civil (96,993) and criminal (583) contempt cases pending in various High Courts and the Supreme Court. The Commission observed that such high number of cases vindicates the claim of relevancy of the contempt of court in present scenario.
- Even if the concerned act is repealed but the offence of Scandalising the Court continues to be punishable in UK under other laws Supreme Court and High Courts derive their contempt powers from the Constitution. The procedure in relation to investigation and punishment for contempt are only mentioned in the Contempt of Court Act, 1971. Therefore, repeal of relevant sections of the offence from the Act will not impact the constitutional powers of the constitutional courts to punish anyone for its contempt.
- If the definition of contempt is narrowed, subordinate courts will suffer as there will be no remedy to address cases of their contempt, as they cannot punish for their contempt as per the constitution.
- The Act had passed judicial scrutiny at various levels and hence it is justified to retain the law in the statute books.

Why the provisions regarding contempt of court are unwarranted?

- The Contempt Law in England has now been abolished after the last contempt proceedings occurred in 1930.
- If the courts are to preserve their duty using this archaic law, the dignity of court will not be established and respected if it impedes fundamental rights of the citizens.
- A law for criminal contempt is completely standing apart from our democratic system which recognises freedom of speech and expression as a fundamental right.
- It violates the principle of natural justice, where a party to the case cannot be its adjudicator.
- In the *Namboodiripad's* case, the court observed that the Freedom to Speech and expression should always prevail except where contempt is manifest, mischievous or substantial.
- If citizens are free to voice their opinion, then certain structural inefficiency like the opaque system of appointment of Judges in the Higher Judiciary adds to the argument against retaining this provision of contempt of court.

Practice question:

Q. Explaining the rationale behind the existence of contempt of court framework for the functioning of judiciary, discuss its relevance in contemporary time.

5. ELECTION

1. INDEPENDENCE OF ELECTION COMMISSION

Context: Recently, the Supreme Court of India made strong observation about the independence of the **Election Commission of India (ECI)**.

Successive governments have 'completely destroyed' the independence of the Election Commission of India (ECI) by ensuring no chief election commissioner (CEC) gets the full six-year term to head the poll body since 1996, the Supreme Court said in the observation.

What are the important functions of ECI?

- **Conducting elections-** ECI prepares, maintains and periodically updates the Electoral Rolls, registers political parties, monitors the election campaign, including the funding and expenditure by candidates.
- **Model code of Conduct-** It is a set of guidelines issued by the ECI for conduct of political parties and candidates during elections mainly with respect to speeches, polling day, polling booths, portfolios, election manifestos, processions and general conduct.
- **Advisory role-** To advise the President or the Governor of a State, as the case may be, on the question of disqualification of any Member of Parliament or a member of a State Legislature, respectively.
- **Independence of ECI:**
- **Security of tenure provided to the CEC:** CEC can be removed only in same manner and on the same grounds as a judge of the Supreme Court.
- Service conditions of the CEC cannot be varied to his disadvantage after his appointment. Any other EC can't be removed from the office except on the recommendations of the CEC.
- The Supreme Court, in its 1995 order in the TN Seshan vs Union of India case, had also stressed on the need for the Election Commission to remain independent.

What are the shortcomings in the EC structure?

- **Tenure on the will of Government:** The CEC and ECs are appointed by the President of India and can only be removed by the Parliament with a two-thirds majority in both the Lok Sabha and the Rajya Sabha on the grounds of proved misbehavior or incapacity. Thus, it enjoys its tenure on the will of the Government of the Day.
- **Toothless:** The situation of political competition in India has intensified, and political parties or actors stepped up violence. However, the election commission could not arrest this deterioration.
- **No say to curb political finance:** Election commission remains ineffective to curb the political finance. The politicians during the election violating the model code of conduct and also postponed/canceled elections, if the credibility of the election commission is compromised.
- **Unaddressed issues:** There is a rising concern related to problems like as of voter bribery and paid news, which the ECI has not been able to address so far.
- **Inefficient functioning:** Several critics have raised questions about the inefficiency of the election commission in the case of not to combat black money and other illegal inducement used during the electoral process.

Where does the Constitution lack?

- The Constitution has not prescribed the qualifications of the members of the Election Commission. The term of the members of the Election Commission is also not defined in the constitution.
- The Constitution has not debarred the retiring election commissioners from any further appointment by the government.
- Under Representation of People's act (1951), the Election commission has no powers to deregister the political parties.

Suggestions to strengthen the functioning:

- **Appointment-** Tarkunde Committee (1975) suggested the use of collegium system of appointment for Election commissioners. It will reduce President's and thus, executive choice.
- **T&C:** Parliament should provide for the qualifications and terms of the members of the Election Commission.
- **Model code of conduct (MCC)** - It is voluntary at present and it can be given a legal sanction.
- **Learning from global examples-** In Canada Chief electoral officer directly reports to Parliament and in USA Federal Election Commissioners are appointed by the President with the advice and consent of the Senate.

Practice Question:

Q. The election commission of India has played a considerable role in shaping the Indian democracy. Elaborate. Also, list the instances that have affected the independence of the poll body.

2. SUPREME COURT'S RULING ON APPOINTMENT OF CEC

Context: Recently, the Supreme Court (SC) unanimously ruled that the appointment of the Chief Election Commissioner (CEC) and the Election Commissioners shall be made by the President on the advice of a Committee consisting of the Prime Minister, the LoP of the Lok Sabha and Chief Justice of India (CJI).

Background:

Article 324 of the Constitution deals with the mandate of the Chief Election Commissioner subject to the provisions of any law made in that behalf by Parliament.

Currently, there is no law with regard to the appointment of Election Commission members and it is the Centre's sole prerogative.

Observations of the Supreme Court:

- It clarified that the ruling will be subject to any law to be made by Parliament which means that Parliament can undo the effect of the SC verdict by bringing in a new law on the issue.
- SC also cited the views of the founding fathers of the nation that elections must be conducted by an independent Commission.
- The Court also observed that while legislations have been supplemented for provisions related to NCBC, NCST etc., there is no law on appointment of the CEC even 70 years after independence.

Other challenges faced by the Election Commission:

- **Rise of electoral malpractices:** EC is currently faced with fake news, paid news, hate speech, criminalization, and unaccounted flow of money during elections.
- **Expenditure in election campaigns:** There is a cap on candidate's expenditure but not on party's.
- This makes monitoring of expenditures difficult for the EC.
- **Enhanced use of internet and social media:** This creates issues of regulating, monitoring the content.
- **Lack of power to deregister parties:** EC has the power to register political parties but it cannot deregister them which results in mushrooming of parties.
- **Allegations related to the EVM:** In the last few years EC has come under attack many times by political parties regarding the EVMs.

Recent Electoral reforms at a glance:

- **Limit on spending of candidate:** Conduct of Election Rules, 1961, mandate a candidate contesting Lok Sabha polls can spend up to ₹70 lakh and in an assembly election up to ₹28 lakh.
- **Lily Thomas vs Union of India 2013:** The nature of disqualification for being a member of the House as provided under Article 101(3) & 190(3) is automatic and takes place with immediate effect.
- **People's Union of Civil Liberties vs Union of India 2013:** Voters enjoy "Right to Negative Vote" in the election process and directed the ECI to include the choice of "NOTA" in the ballot paper.
- Introduction of **Voter Verifiable Paper Audit Trail (VVPAT)**.
- Recently, ECI **proposed** implementing electronically-transmitted postal ballots for **overseas Indian voters**.

Suggested measures:

- **Equal protection to all election commissioners:** Law Commission in its Report on Electoral Reforms recommended giving equal constitutional protection to all members of the Commission in matters of removal to strengthen the independence of the commission.
- **Reforms related to political parties:** Political parties need to be brought under the ambit of RTI Act.
- Better monitoring mechanism for the expenditure of political parties.
- **Power to de-register political parties:** There are nearly 2000 parties; most of them are bogus, only for money laundering.
- **Other steps for ensuring independence:** Creating a permanent, independent Secretariat for the ECI, expenditure to be charged on the Consolidated Fund of India, etc.

Previous Year Question:

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

Practice question:

Q. Free and fair elections form the bedrock of a strong democracy and Election Commission remains at the center. In the light of the statement suggest some measures to strengthen the functioning of the EC.

3. ONE NATION ONE ELECTION

Context: Recently, **Law Commission of India (LCI)** invited suggestions from people and parties on holding simultaneous polls.

Since coming into the power, Prime Minister Narendra Modi too has initiated the debate about the simultaneous elections citing many reasons.

Background: Meaning of One nation, One election

- It means structuring the Indian election cycle in a manner that elections to Lok Sabha and State Assemblies are synchronized together under which voters in a particular constituency vote for both on the same day.
- The lives of Lok Sabha and all the Legislative Assemblies terminate simultaneously in the system of simultaneous elections.
- After independence India has had synchronized state and Centre elections for few years.

Benefits of the One Nation One Elections:

- **Less frequent elections:** Syncing the Lok Sabha and state assemblies' elections will mean only one election in five years. Thus, fewer impositions of **Model Code of Conduct (MCC)** and no suspension of development programmes.

- **Decline in expenditure:** Indian national elections are among the **most expensive globally**. Reducing the cycles of elections will reduce the expenditure on election thus saving tax-payers money. This will also help curtailing the black money flow in the system.
- **Limit on the populist measures:** Political parties resort to populist measures to increase their **vote bank** during the elections. Elections once in five years will reduce this and more meaningful issues will come to the fore.
- **Additional benefits:** Boost in voter turnout, freeing up the security forces, less disruption to the public life, etc. are some of the other benefits.

Challenges associated:

- **Operational feasibility:** As various assemblies or the Lok Sabha may end before completing the full term, synchronization is a tough task.
- **Constitutional issues:** Curtailment or extension of terms of the LS/State Legislative Assemblies will require amendment to the constitution.
- **Less frequent elections:** Government's accountability to the people will be reduced as elections are one of the ways to hold governments accountable.
- **Weakened federalism:** National issues may get priority in the elections over the local issues impacting the federalism in the country.

Way forward:

Consensus before taking any decision: Centre should hold consultations with the states as they are equal stakeholders.

Consultation with all the parties: Local and national parties must arrive at consensus before reaching any conclusion.

Thus, idea of One Nation, One Election has several benefits but not free of challenges. Feasibility is the biggest challenge. Cautious approach is needed before realizing the vision of holding simultaneous elections in the country.

Practice Question:

Q. Do you think One Nation One Election is the idea whose time has come? Provide arguments to substantiate your answer.

4. NO BAR ON CONTESTING TWO SEATS IN ONE POLL

Context: The Supreme Court has refused to set aside a provision in the election law which allows candidates to contest polls from two constituencies simultaneously.

Background of the case:

- A petition has argued in the Supreme Court to declare Section 33(7) of the Representation of People Act invalid and ultra vires.
- In response to it, the SC has mentioned that it is a matter of political democracy and it is the authority of Parliament to take a call on the matter.
- Section 33(7) of the Act allows a person to contest a general election or a group of by-elections or biennial elections from two constituencies.

Major provisions of the RPA 1951

- Only a qualified voter is eligible to contest elections to the Lok Sabha and the Rajya Sabha. For seats that are reserved for the Scheduled Caste and Tribe communities, only candidates belonging to those categories can contest the elections.
- The candidate can also be disqualified if he/she has engaged in any corrupt practice or excluded from related government contracts.
- Disqualification can also result if the candidate fails to declare his/her assets. The candidate must declare his/her assets and liabilities within ninety days from his/her oath-taking day.
- The Act requires all political parties to be registered with the Election Commission. Any change in the name and/or address of the party should be intimated to the Commission.
- A party can take donations from any individual or company within India, but not government owned ones. And, contributions from foreign entities are not allowed.
- Every political party must report a donation of over Rs 20,000 received from any person or company.
- A party that gets a minimum of 6 per cent of the valid votes for assembly elections in more than four states or wins at least 2 per cent of seats in Lok Sabha from at least three states is recognized as a National Party.
- A party that gets a minimum of 6 per cent of the votes in the state assembly elections or wins at least 3 per cent of total seats in the state assembly will be a state political party.
- Candidates should deposit Rs.25000 as security for the Lok Sabha elections and Rs.12500 for all other elections. Candidates belonging to the SC/ST communities get a 50% reduction in the security deposit.

Government's stand on the issue:

- In 2018, the government objected to the petition in court.
- It had argued that the law cannot curtail the right of a candidate to contest elections and curtail the polity's choice of candidates.
- The government had further told the Supreme Court that the one-candidate-one-constituency restriction would require a legislative amendment.

Concern associated:

- When a person contests an election from two constituencies and wins from both, then he/she vacates the seat in one of the two constituencies.
- The consequence is that a by-election would be required from one constituency involving avoidable expenditure on the conduct of that by-election.

Suggestions:

- To address the concerns associated with elections from two constituencies, a poll body has given the following suggestions:
- Raising the deposit: The poll body had even suggested that a candidate should deposit an amount of Rs 5 lakh for contesting in two constituencies in an Assembly election or Rs 10 lakh in a general election.
- Cost of the by-elections to be covered from the deposit: The amount would be used to cover the expenses for a by-election in the eventuality that he or she was victorious in both constituencies and had to relinquish one.

Practice question:

Q. Do you think that the Representation of the People Act, 1951, should be amended to provide that a person should be allowed to contest only from one seat? Justify your answer.

5. ELECTORAL BONDS

Context: The electoral bonds scheme, despite its institutional framework aimed at regulating campaign finance, is replete with various inadequacies and vulnerabilities.

The examination of the validity of the scheme is pending in the Supreme Court currently.

Background: What is an electoral bond?

- Electoral bond is an interest free financial instrument to make anonymous donations to political parties. Electoral bond scheme was announced in Union Budget 2017-18 in an attempt to cleanse the system of political funding in the country.

Benefits of the electoral bonds:

Reduction in the flow of cash: Electoral bonds limit the use of cash in the political funding which in turn curb the use of unaccounted/black money in the system.

Increased transparency: The donation is made through banking channels and the KYC is requirements which bring transparency. This also reduces the number of fraudulent parties.

Recent changes in election funding:

- Amendment in Foreign Contribution (Regulation) Act, 1976. Now foreign companies can contribute too.
- Earlier limit of 7.5% in corporate donation done away with through amendments in Companies Act, 2013.
- Introduction of Electoral Bonds scheme through Finance Act 2017 to route the donations through banking channels.
- Capping of anonymous cash donations to political parties at Rs. 2,000 through amendment in Income Tax Act.

Challenges:

- **Still maintains opacity:** The scheme remains outside the purview of section 29 C of the RPA, 1951.
- Who donated how much to which party remains anonymous, but the government of the day can have access to this information as the donations are routed through SBI.
- **Open for foreign funding:** This can promote money laundering, foreign influence in elections in India.
- **Promotes corporate influence:** The scheme allows unlimited donation from the corporate sector, anonymously. Companies don't need to disclose details of their political funding. This can increase lobbying, crony capitalism.
- **Fails to provide level playing field:** According to report by the ADR, the ruling party (BJP) has received 94.6% of all the electoral bonds sold in 2017-18.

Steps to be taken to strengthen electoral funding:

- **Strong disclosure norms needed:** Failing to disclose funding should be made criminal offense.
- Expenditure limit strict statutory limits on election expenses on political parties should be put.
- **Ceiling on corporate donations:** This will limit the corporate influence in the election and politics in India.
- **Creation of a national election fund:** In the fund donation can be made and EC can distribute the funds to political parties based on their performance. Former ECI SY Quraishi has recommended for the same. Public funding of elections should be considered.
- Free and fair elections are sine qua non for healthy functioning of democracy and electoral funding plays an important role in that. All the necessary steps should be taken to strengthening the funding mechanism.

Practice Question:

Q. The present system of electoral bonds is flawed and fails to provide level playing field. In this context, examine the feasibility of national electoral fund to hold free and fair elections in India.

6. FREEBIES

Context: Recently, **Election Commission of India (ECI)** has asked political parties to provide authentic information to the public in order to assess the financial viability of their poll promises.

Earlier, in the last few months, Prime Minister Narendra Modi has slammed the 'culture of freebies' fueling the debate around the issue

Background:

- **Freebies** can be defined as something without charge or cost. It is a very well-known and widespread practice during election.
- Freebies that are usually distributed include goods like bicycles, smart phones, TVs, Laptops and waivers on bills (water, electricity, etc.).
- The freebie culture was started by the Tamil Nadu state government, where the government promised free sarees, pressure cookers, television, washing machines and more.
- The Amma Canteen was also a huge success.
- In the north, it all started from Delhi, where the government promised free electricity, water, bus travel.

Need of freebies:

- **Food security:** To ensure proper Food Security and the Right to Food as a fundamental right under Article 21 of the constitution it becomes mandatory for the government to implement schemes for subsidized food.
- **Better Demography:** Ensuring nutritious food to the citizens can create healthy and productive demography and help in the creation of Human Capital.
- **SDG goals:** Sustainable Development Goals have objectives to **eradicate hunger (SDG-2)** and good health and wellbeing (SDG-3) which can be achieved by the subsidized food schemes in developing nations.
- **Farmers Welfare:** India faces severe cases of farmers' distress; to improve the condition of the rural economy government needs to ensure schemes and freebies.
- **Social Welfare and security:** The welfare principle of the state encourages the states to introduce such schemes to promote social welfare and reduce inequality in society.
- **Reducing social inequality:** Providing food for all can reduce the prevailing social inequalities on various grounds.
- **Gender Equality (SDG-5):** To reduce gender inequality and provide a secure social status and recognize all the gender and their sexual orientation it becomes a compulsory step for the government to take such steps.
- **Induce demand:** During the slowdown and low demand phase these subsidies and freebies can induce demand in the market that can bring up the growth at a certain level.

Merit good vs. public goods

- There is need to distinguish between the concept of merit goods and public goods on which expenditure outlays have overall benefits.
- Public goods are provided to the entire society. Merit goods are provided to targeted individuals.
- Hence in the case of merit goods, there is exclusion. On the other goods, there is no exclusion under public goods.

Challenges created by freebies:

- **Distorted expenditure priorities:** Freebies undercut the basic framework of macroeconomic stability.
- The politics of freebies distorts expenditure priorities.
- **Fiscal deficit:** Freebies accounts for the economic burden on public exchequer and may lead to fiscal deficit.
- **Not 'actually' free:** Freebies are not free i.e. be it today or tomorrow ultimately tax payers have to bear the brunt

- **Tax avoidance:** People are generally become motivated to conceal their income in order to get freebies, also tax avoidance will happen that ultimately lead to revenue loss for the state.
- **Exploitation of resources:** Resources, provided for free are generally not valued as precious and won't be exploited optimally.
- **Inefficiency and corruption:** Freebies are accused of bringing down the productivity of masses and make them inefficient and reduce them to put minimal effort. At times lead to corruption in government offices.

Can the Election Commission regulate freebies?

- Offering freebies either before or after elections is a policy decision of a political party, and it cannot regulate state policies and decisions taken by the parties.

Practice Question:

Q. India has experienced the politics of freebies for a long time. In this context, discuss the pros and cons of Freebies? Do you think criminalization of politics is one of the outcomes of these freebies?

7. CRIMINALIZATION OF POLITICS

Context: Recently a PIL was filed in the Supreme Court in light of the recommendation made by the **Law Commission** in its **244th report** that dealt with the need to curb the trend of criminal politicians in legislature.

Background:

- Criminalization of politics means rising participation of criminals in the electoral process and getting elected as representatives of the people.
- Supreme Court called criminalization of politics an extremely disastrous and lamentable situation, and raised concerns about unsettlingly increasing trend in the country.
- Criminalization of politics in India has become a structural problem, representing the nature of Indian institutions.

Current scenario in India:

- There is an increase of 109% (in 2019) in the number of MPs with declared serious criminal cases since 2009.
- According to the **Association for Democratic Reforms (ADR)**, 233 MPs in the current Lok Sabha are facing criminal charges.
- 29% of those elected to the Lok Sabha in 2019 have declared **serious crimes**.

Rise of criminal lawmakers getting elected:

- 2004 - 24%
- 2009 - 30%
- 2014 - 34%
- 2019 - 43%

According to the ADR, 1/4th of sitting RS MPs have declared criminal cases against them.

Reasons for the scenario:

- **Increasing role of money and muscle power:** It is found that such candidates with serious records seem to do well despite their public image, largely due to their ability to finance their own elections and bring substantive resources to their respective parties.
- **Nexus between politicians and criminals:** 2nd ARC, Ethics in Governance, describes the nexus between corruption and criminalization of politics. Lack on inner party democracy in India also plays a

- role in selection of tainted candidates.
- **Focus on the 'winnability' of the candidate:** Political parties are often reluctant to introduce changes to combat criminalization and give tickets to fair candidates. They have shown contempt to various orders of the Courts.
- **Slow and inefficient criminal justice system in India:** Not more than 6% of the criminal cases against Indian MPs and MLAs ended in a conviction. Currently, under the RPA, lawmakers cannot contest elections only if they are convicted.

Impacts:

- **Violation of Article 14, equality before the law:** Under-trials are languishing in jails with their FRs curbed, while candidates on bail can fight election and even become lawmakers.
- **Undermines the sanctity of the Parliament:** There is rise of unruly behaviours of the members. The quality of debates and deliberations in the Parliament and SLAs also get affected.
- **Poor governance:** Criminalization affects the governance and delivery of public goods. Accountability of the Executive declines which is the core function of the legislature.

Suggested measures:

- **Disqualification of tainted politicians at the stage of framing of charges:** A rule should be framed which bars candidates against whom charges have been framed for serious crimes. Law Commission has also recommended for the same.
- **Enforcement of SC orders:** SC should order the govts to set up a mechanism to monitor compliance of its orders and failure in compliance should debar the candidate before the elections.
- **Formation of special benches:** This will fast-track courts for cases involving tainted lawmakers.
- **Other steps:** Enhanced awareness and increased democratic participation. Life ban for convicted politicians should be considered.
- Criminalization of politics is a serious challenge for Indian democracy. Supreme Court has taken several steps to curb the pattern but to de-criminalize Indian politics, war on many fronts is needed and not only on judicial front.

Practice question:

Q. How do criminals pose threat to the functioning of a democratic system when they turn into elected representative? What are the challenges in dealing with the criminalization of politics in India?

8. INTRA-PARTY DEMOCRACY

Context: The politics in India is faced with several challenges like corruption, criminalization, and low representation of women among others. **Lack of intra-party democracy** has been identified as one of the factors for the current situation.

Intra-party democracy:

- Intra-party democracy can be defined as implementation of a minimum set of norms within the organization of political parties.
- This minimum set of norms should provide a **bottom-up approach** to forming a decision in the party and the internal distribution of power at different levels, bodies, and individuals.
- In India, majority of the political parties lack strong internal democracy norms and revolve around some central figures.

Current provisions in India:

- Unlike some countries like **Germany and Portugal**, India has no legal provision for enforcing internal democracy in a political party.

- There are few related provisions in **section 29A** of Representation of Peoples Act (RPA) and in Election Commission guidelines touch upon the idea but they are not specific to the issue.

Need for Intra-party democracy:

- **Reduction of criminalization:** In the current Lok Sabha, **more than 40% of the MPs** are facing some criminal charges which act as a blot on India's democracy. Fair candidates will be able to come with the help of intra-party democracy.
- **Space for dissent:** It will reduce the centralizing tendency within the party structure that will give space for dissent. It will help in better debates within the party and better policy stand.
- **Reduction of corruption:** 2nd ARC also cited high corruption as a result of high centralization.
- **Dismantling of nepotism:** Intra-party democracy focuses on providing **level-playing field** to the candidates thus it has the potential to dismantle nepotism & dynasty politics which are the biggest challenges in Indian party politics. More deserving leaders will get fair chance.
- **Role of political parties in India:**
 - Represent different sections among the Indian society and regions.
 - Their core values play a major role in the politics.
 - Executive branch and the legislative branch of the government are run by the representatives of the political parties.
 - Role in opposition.

What to do:

- **Comprehensive Act:** There is a need for a comprehensive law that deals specifically with the framework and relevant provisions for inner party democracy.
- Committee headed by M. N. Venkatachaliah, had drafted a bill to regulate the functioning of political parties. This should be passed in Parliament.
- Indian democracy is faced with several challenges and promotion of intra-party democracy can go a long way to overcome some of these challenges.

Previous Year Question:

Q. "The Indian party system is passing through a phase of transition which looks to be full of contradictions and paradoxes." Discuss. 10. (2016)

Practice Question:

Q. Discuss the reasons for poor intra-party democracy in Indian party system. Suggest some measures to overcome the challenge.

9. DELIMITATION COMMISSION

Context: The Jammu & Kashmir Delimitations Commission has finalized its report in which it has recommended increase in the total number of seats in the Legislative Assembly of the Union Territory of Jammu & Kashmir.

What is the Delimitation Commission?

- The **Delimitation commission or Boundary commission** of India is a commission established by the Government of India under the provisions of the Delimitation Commission Act.
- The main task of the commission is redrawing the boundaries of the various assembly and Lok Sabha constituencies based on a recent census.
- The representation from each State is not changed during this exercise. However, the number of SC and ST seats in a state are changed in accordance with the census.

- The present delimitation of constituencies has been done on the basis of 2001 census under the provisions of **Delimitation Act, 2002**.
- The Commission's orders cannot be challenged in any court of law.

About the Jammu & Kashmir Delimitations Commission:

- It is a 3 member Commission headed by retired **Supreme Court Judge Ranjana Desai**.
- Its main function was to look into reorganization of Assembly and Lok Sabha seats in the Union Territory of Jammu & Kashmir in such a way that the people in different parts of the UT get equitable representation.

What are the important take away from the report of Delimitations Commission?

- Increasing the total number of seats in the UT to 90 from 83 earlier.
- This will increase the number of seats in the Jammu Division to 43 from 37 seats earlier, and that in the Kashmir Valley to 47 from 46 earlier.
- Reorganisation of the Parliamentary constituencies such that the five Lok Sabha seats now are made up of exactly 18 Assembly constituencies each, taking the total number to 90,
- Reservation of nine Assembly seats for Scheduled Tribes – six in Jammu and three in Kashmir, and Removal of the regional distinction between Jammu and Kashmir and treating it as one, as is reflected in the combining of Anantnag region in Kashmir with Rajouri and Poonch in Jammu to carve out Anantnag-Rajouri as a Parliamentary constituency.

Why has the Commission's decision received criticism?

- The panel's decisions are politically significant and have met with criticism amongst mainstream parties in the Valley.
- The Jammu region has got more seats relative to its population compared with the Kashmir Valley, and this violates the population criterion, is a key contention of these parties.
- The award of seats based on the 2011 census has meant that Jammu with 44 per cent population will get 48 per cent share in seats, while Kashmir with 56 per cent of population will get only 52 per cent share in seats.
- Earlier, the Kashmir region had 55.4 per cent share in seats and Jammu 44.5 per cent share in seats.
- Further it is also alleged that, the new Assembly seats in the Jammu region have been carved out mostly in Hindu dominated areas; the only seat in the Valley that has been carved out is in frontier Kupwara district.

10. RIGHT TO VOTE FOR UNDER TRIALS AND CIVIL PRISONERS

Context: Recently, the Supreme Court (SC) decided to examine a petition challenging a provision in the election law that imposes a blanket ban on under trials, persons confined in civil prisons, and convicts serving their sentence in jails were deprived of their right to vote.

Background:

- The latest **National Crime Reports Bureau (NCRB)** report of 2021 shows that a total of 5, 54,034 prisoners were confined as on December 31, 2021, in various jails across the country.
- Uttar Pradesh has the maximum number of under trials (21.2%) in the country followed by Bihar (13.9%) and Maharashtra (7.4%) at the end of the year 2021.
- This growing number of under-trials and conviction rates leads to keeping a large section of society away from their right to cast their votes over a longer period of time.

Provisions related to Prisoners' right to cast their vote:

- The right to vote is a constitutional right under **Article 326** of the Constitution.

- Under Section 62(5) of the **Representation of the People Act, 1951**, individuals in the lawful custody of the police and those serving a sentence of imprisonment after conviction cannot vote.
- Undertrial prisoners are also excluded from participating in elections even if their names are on the electoral rolls.
- Only those under **preventive detention can cast** their vote through postal ballots.

SC's ruling on the right of alderman to vote:

- As per the **Delhi Municipal Corporation Act, 1957**, ten people, over the age of 25 can be nominated to the corporation by the Lieutenant Governor.
- These people are expected to have **special knowledge or experience** in municipal administration.
- They are meant to assist the house in taking decisions of public importance.
- In the recent judgement, Supreme Court ordered that **aldermen** would not be allowed to cast votes in Delhi mayoral elections.

Why undertrials should be given voting rights?

- **Illogical classification:** The present voting ban is criticized on the ground that it makes no offense-based or sentence-based classification — that is, prisoners are debarred from voting irrespective of the gravity of the offense they have committed, or the length of their sentence.
- **Same standards for all the prisoners:** There is no distinction between convicted prisoners, undertrials, and those in lawful police custody. Besides, a person is innocent until proven guilty by the law. Despite this, it denies an undertrial the right to vote but allows a detainee the same.
- **Violation of right to equality:** The provision also violates the rights to equality, and votes (Article 326) and is arbitrary. It is not a reasonable restriction.
- **Discrimination:** It has been seen that a convicted person can vote if she is out on bail, whereas the same right is denied to an under trial who is not yet found guilty of a crime by a court of law.

Practice question:

Q. Debate the issue of whether a person confined in prison be given voting rights in India.

6. GOVERNANCE

1. E-GOVERNANCE

Context: Recently, **SWAGAT Initiative** completed 20 years in existence which is a first of its kind tech-based grievance redressal programme in the country.

Background:

- E-governance or 'electronic governance' is using information and communication technologies (ICTs) at various levels of the government for the purpose of enhancing governance.
- The purpose is to transform the efficiency, effectiveness, transparency, and accountability of the exchanges between the government and citizens.

Recent initiatives of e-governance in India:

- **Digital India:** An umbrella program to prepare India for a knowledge-based transformation.
- National e-Governance Plan (NeGP) is also integrated into Digital India Program.
- **PRAGATI (Pro-Active Governance and Timely Implementation):** Existing in the PMO that reviews and monitors various governmental projects across the country.

- **UID/Aadhaar, promotion of JAM trinity:** to give thrust to digital banking, enhancing the reach of governance in cost effective manner.
- **BharatNet:** To provide high speed broadband connectivity to the villages.
- **National Urban Digital Mission (NUDM):** It aims to build the shared digital infrastructure that will strengthen the capacity of the urban ecosystem.

Benefits:

- **Ease of governance:** Digitization helps in bringing in greater scalability in the operation of government, promotes greater coordination and communication, and simplifies bureaucratic procedures.
- **Greater access to information:** Access to information is vital for the empowerment of citizens.
- With increased digitization, there has been further progress in information sharing.
- **Greater trust between the state and citizens:** With the focus on transparency, citizens get to know about the clear functioning of the government, allocation and utilization of resources, etc.
- which fosters greater trust between citizens and the state.
- **Better service delivery:** Cost-effectiveness, greater efficiency within the government, and leakproof delivery of welfare services can be achieved by digitization thus making the governance service oriented. Ex. discrepancies in wage transfer in **MGNREGA** have been reduced with the help of digitization.
- **Increasing the reach of government:** Digitization helps increase the reach of government, both geographically and demographically by connectivity between the citizens and the government.
- **SWAGAT Initiative:**
- It stands for StateWide Attention on Grievances by Application of Technology aimed at promoting e-governance, transparency, and e-accountability.
- The main purpose of this programme was to act as a bridge between the citizens and the government using technology by solving their day-to-day grievances in a quick, efficient, and time-bound manner.

Challenges associated with realization of full potential of e-governance:

- **Digital divide in accessibility:** There is rural urban divide in access to information which results in uneven benefits of e-governance.
- **Lack of awareness:** Majority of the population is not aware about the benefits, rights, security/safety issues. Poor literacy level adds to the challenge.
- **Concerns related to data breach:** Many breach in Aadhaar data has been reported in the past few years that fuel apprehensions.
- **Capacity deficit:** Inadequate resources, infrastructural issues, connectivity. Language barrier, most the service not in regional languages.

Practice question:

Q. Examine the role of e-governance in facilitating good governance and empowering Indian citizens.

2. NATIONAL DATA GOVERNANCE FRAMEWORK POLICY

Context: In the budget speech, Finance minister mentioned that the government was going to unveil **National Data Governance Framework Policy** to enable access to anonymized data to start-ups in order to boost development.

Background:

- The Ministry of Electronics and Information Technology (MeitY) released a draft of this policy in May 2022 for public consultation.
- An expert committee report submitted to MeitY on whether a company can be classified as a “data business” based on certain parameters, the type and quantity of data collected after which anonymized data from these firms can be obtained by a community.

Objectives:

- It will aim to ensure greater citizen awareness, participation, and engagement with open data, increase the availability of datasets of national importance, and identify datasets suitable for sharing and improve overall compliance to secure data sharing and privacy policies and standards.
- A core component of the data governance framework will be the formation of an **India Data Management Office** (IDMO) under the IT ministry.

Anonymized data:

- Data anonymization is the process of protecting private or sensitive information by erasing or encrypting identifiers that connect an individual to stored data.
- There are various anonymization techniques like **data masking, generalization, data swapping, data perturbation** etc.

Benefits:

- **Improving governance:** The datasets will be provided for governance research, which even the government can use to create better targeted policies, more AI researchers can look at technology solutions.
- **Gauging consumer behavior:** Datasets that represent India's consumers is a huge opportunity for the next generation of artificial intelligence and machine learning algorithms.
- **Benefits to start ups:** For start-ups, ability to have access to anonymised data will be a phenomenal capability that really should help overall AI Machine Learning (AIML) research, outcomes, solutions, companies, everything becomes significantly better.
- **Concerns associated:**
- **Challenge of implementation:** There is a concern related to the policy mandate sharing of anonymised data by government entities only or private entities as well.
- **Threat of data leak:** There have been multiple studies that have found that anonymised data sets can be deanonymised by various means including by layering multiple types of anonymised datasets creating a risk of data leak.

Practice question

Q. Discuss the role of National Data Governance Framework Policy in maximizing data-led governance and catalyzing data-based innovation in India

3. RTI

Context: Recently, Supreme Court gave States, UTs and High Courts three months to set up online RTI portals to ensure transparency in governance.

The apex court noted in its order that even after 17 years in existence, online web portals are still to be operationalized by some of the High Courts.

Background:

Article 19(1)(a) and Article 21, by implication, guarantee to the citizens of India the right to know.

The Right to Information (RTI) Act was enacted in 2005 to fulfill the vision of these articles enshrined in the Constitution.

The Act defines **public authorities** as any body constituted by or under the Constitution, by any other law made by Parliament/State legislatures, by notification issued or order made by the appropriate Government.

Since enactment, the Act has had a mixed record with some hits and some misses. **High exemptions**, delays, pendency, etc. are some of the challenges faced by the Act.

Exempted information under the RTI Act:

- Disclosure of which would prejudicially affect the **sovereignty** and **integrity** of India.
- Expressly forbidden to be published by any court of law or tribunal.
- Disclosure of which would cause a **breach of privilege of Parliament** or the State Legislature.
- Commercial confidence, trade secrets or intellectual property.
- Received in confidence from foreign government
- Disclosure of which would endanger the life or physical safety of any person.
- Impede the process of investigation.
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.

Success of RTI:

- **Empowerment of citizenry:** Due to the enactment of RTI there has been a positive atmosphere of accountability and transparency between the Government officials and the citizens.
- **Uncovering major scams:** The Act has been instrumental in uncovering Adarsh Society scam, 2G scam, Commonwealth Games Scam among others.

Shortcomings:

- **Misuse of RTI Act:** RTI act is misused by the many petitioners due to non-requirement of giving reasons for seeking information. This increases the pendency under the Act.
- **Huge backlog:** Due to high vacancy in Information Commissioners, there is a high backlog and delay in the hearing of the cases. According to a report by Satark Nagrik Sangthan, nearly 3.15 lakh complaints or appeals pending with 26 information commissions across India. This defeats the original purpose of the Act.
- **Exemptions, secrecy:** The free flow of information remains restricted by the legislative framework including several pieces of restrictive legislation, such as **the Official Secrets Act, 1923**. Long list of exemptions dilutes the Act.
- **Dilution of Act through amendment:** By vesting excessive powers with the central government through RTI Act (Amendment) Act, 2019 gives, autonomy of CIC is impacted.
- **Low public awareness:** Especially among women, rural population, disadvantaged communities.
- **Lack of redressal mechanism:** In the absence of redressal mechanism, only obtaining information is not enough. Poor quality of information provided.
- **Other issues:** Inadequate training of officials, Non-friendly attitude of the PIOs.

Suggested measures:

- **Preventing Misuse of RTI:** Frivolous RTIs can be prevented by introducing the reason knowing provision for filing the petition.
- **Balancing with Right to Privacy:** The information should be revealed if there is a public interest associated. This will prevent the breach of privacy of the public officers.
- **Exemption list should be shortened:** This will make the Act more effective and remove arbitrariness of withholding information.
- RTI Act is an essential tool to empower the citizens and enhancing the transparency and accountability in the functioning of the government. Its high time that the Act is strengthened to realize its vision in letter and spirit.

Previous Year Question:

Q. "Recent amendments to the Right to information Act will have profound impact on the autonomy and independence of the Information Commission". Discuss. (2020)

Practice question:

Q. Efficacy of RTI Act is threatened by opacity, opposition from bureaucracy and lawmakers. In this context suggest measures to strengthen the RTI Act.

4. PROPOSED AMENDMENTS TO IAS CADRE RULES

Context: A controversy has raged regarding the proposed amendments to the IAS (cadre) rules by the Central Government.

There have been concerns associated with the issue vis-à-vis the impacts of the federalism in India which is a part of the 'Basic Structure' of the Constitution.

Background: What is the issue?

- There were around 5,200 IAS officers in the country as of January 1, 2021, and 458 were on central deputation.
- The Central Government is concerned because the required numbers of officers are not coming forward for central deputation and the Government of India is facing a shortage of officers.
- Thus, the **Department of Personnel and Training (DoPT)** has sent a list of proposed amendments to the chief secretaries of all states, titled Proposal for Amendments in **IAS (Cadre) Rules, 1954**.

What are the current rules regarding deputation?

- Central deputation in the Indian Administrative Service (IAS) is covered under **Rule 6(1)** of the **IAS cadre rule 1954** inserted in May **1969** which states that "a cadre officer may, with the concurrence of the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government".
- It further states that "provided that in the case of any disagreement, the matter shall be decided by the Central Government and the State Government concerned shall give effect to the decision of the Central Government".

How a central deputation reserve (CDR) is created and what is proposed now?

- Depending upon the strength of the IAS officers in a particular state a **central deputation reserve** is created which indicates the number of officers, at various levels, who are eligible for Government of India deputation.
- Based on this, the Central Government asks for an "offer list" of officers from which it selects the required officers.
- The Government of India has now proposed an additional condition in **6(1)** which states "provided that each government shall make available for deputation to the Central Government such number of eligible officers of various levels to the extent of the central deputation reserve".
- **Deciding authority:** The actual number of officers to be deputed to the Central Government shall be decided by the Central Government in consultation with the State Government concerned.
- **Disagreement:** In the event of any disagreement the State Governments shall give effect to the decision of the Central Government within a specified time.
- In specific situations where services of cadre officers are required by the Central Government in the public interest the Central Government may seek the services of such officers for posting under the Central Government".

What about 'willingness' of Officers?

- It is significant to note that the willingness of the officer concerned to go on deputation to the Government of India is essential as per rule 6(2)
- Rule 6(2) states that “no cadre officer shall be deputed except with his consent”.
- The clause about posting the officers in the Government of India in **public interest** appears to override this crucial requirement of the willingness of the officer concerned.
- In effect, it would mean that any time the Central Government can pull out an officer from the State Government to serve in Government of India irrespective of the willingness of the State Government or the officer concerned.

Practice Question:

Q. Analyse the challenge created by the All-India Services in upsetting the Centre-state relations.

5. MISSION KARMAYOGI

Context: Recently, the government formed a panel led by cabinet secretary to monitor Mission Karmayogi.

Background:

- The **National Programme for Civil Services Capacity Building ('NPCSCB')** – “Mission Karmayogi” has been launched with the objective of enhancing governance by strengthening the policy and monitoring framework.
- The training of Civil Servants at various Academies has been restructured to include optimum use of the digital learning platform of **iGOT**.
- **Integrated Government Online Training** or (iGOT-Karmayogi) digital platform draws content from global best practices aligning them with Indian national ethos.

Pillars of Mission-Karmayogi:

- Policy Framework
- Institutional Framework
- Competency Framework
- Digital Learning Framework (Integrated Government Online Training Karmayogi Platform (iGOTKarmayogi))
- Electronic Human Resource Management System (e-HRMS)
- Monitoring and Evaluation Framework

Need of the Mission:

- **Enhancing domain knowledge:** Currently the civil service in the country is based on ‘generalist’ which affects the specialization.
- **Promotion of rule of law:** Civil service has been accused of carrying on the colonial tradition, remaining aloof of the challenges at the grass root level. The Mission moves away from **‘Rule based to Role based’** approach.
- **Building capacity:** The Mission focuses right at the recruitment level and then invests in building more capacity through the rest of careers of civil servants.
- **Targeted training approach:** There is a need to formalize the recruitment process and match the public service to a bureaucrat’s competence, so as to find the right person for the right job.
- **Compatible with changing needs of governance:** With the growth in Indian economy and rising international profile, the civil service will have to be ready for out the box solution.

Challenges:

- **Breaking the bureaucratic inertia:** Civil service in India is often resistant to any reform and is has the tendency to perpetuate the established procedures and modes.

- **Behavioural change:** The Mission is focusing on bringing radical change in the attitude and behavior of the civil servants which will not be an easy task.
- Mission Karmayogi is one of the most ambitious reforms in the Indian civil service in the past few decades. It focuses on making civil servants more creative, imaginative, and proactive to serve the nation.

Practice question:

Q. Mission Karmayogi is about creating a civil service with domain, technological competencies and empathy. Examine with suitable examples.

6. CIVIL SERVANT'S LIFE AFTER RETIREMENT

Context: The cooling off period before joining post-retirement job is necessary for increasing the accountability and efficiency of the person after years of continuous services.

Background: What is the cooling-off period?

- Cooling-off period is the length of time for which a retired civil servant is prohibited from accepting commercial employment.
- **Post-retirement commercial employment** for the three All India Services (IAS, Indian Police Service, and Indian Forest Service) is covered under the **AIS Death-cum-Benefits Rules**, and for the Central Civil Services under the **CCS (Pension) Rules**.
- **Rule 26 of the AIS Death-cum-Benefits Rules** similarly restricts a pensioner from commercial employment for one year after retirement, except with government sanction.
- The cooling-off period was two years until January 2007, when the government reduced it to one year by an amendment.

What does "post-retirement commercial employment" mean?

The expression covers:

- **Employment in any capacity:** Including that of an agent, under a company, co-operative society, firm or individual engaged in trading or business but this does not include employment under a body corporate, wholly or substantially owned or controlled by the Central Government or a State Government.
- **Setting up practice:** Either independently or as a partner of a firm, as adviser or consultant in certain matters specified under the rules, including matters that are relatable to the pensioner's official knowledge or experience.
- **Rules about government servants joining politics after retirement:**
 - While in service, the Conduct Rules bar government servants from being associated with any political party or organisation, and from taking part in or assisting any political activity.
 - There is no rule, however, to stop government servants from joining politics after retirement.

Practice question:

Q. Discuss the challenges associated with ensuring the accountability of civil servants in India.

7. ASPIRATIONAL BLOCK PROGRAMME

Context: Recently, the Prime Minister launched Aspirational Block Programme (ABP), which is aimed at improving performance of blocks lagging on various development parameters.

Background:

Through the programme, aspirational district model should now be taken up to block level.

Earlier in 2018, the government has launched Aspirational District Programme which covers 112 districts across the country.

Aspirational District Programme (ADP):

- The programme aims to improve India's ranking under the Human Development Index (HDI), raising living standards of its citizens and ensuring inclusive growth of all.
- A total of 112 Aspirational Districts (AD) across 27 states have been identified by NITI AAYOG based upon composite indicators from Health and Nutrition, Education, Agriculture & Water Resources, Financial Inclusion & Skill development and Basic Infrastructure which have an impact on HDI.
- The programme rests on three pillars i.e. **Convergence, Collaboration and Competition.**

Significance of the ABP:

- **Development at the micro level:** Under the programme, the focus area will be more specific thus ensuring greater attention to detail.
- **Decision making closer to the grass root:** Customized approach towards improving socioeconomic indicators based on the context of the region and the most emergent needs.
- **Convergence among existing schemes:** Similar to the approach followed in the Aspirational District Programme (ADP), all social sector schemes will be implemented in an integrated manner to achieve effective outcomes.
- **Moving away from a one-size-fits-all approach:** Tailor-made solutions for each block will be provided according to the requirement. Outcomes have also been clearly defined specific to the requirement of the blocks.
- **Synergy:** The selection of the blocks is based on consultation between inter-ministerial and states and Union territories.
- **Effective monitoring:** The scheme focuses on 15 key socio-economic indicators (KSIs) and these indicators will be tracked on a real-time basis. This will encourage data-driven governance in urban development.
- The Aspirational Block Programme takes development planning one step closer to the population to address regional inequalities in development by improving governance and last-mile service delivery at the block level.

Practice question:

Q. Aspirational Blocks initiative has the potential to take development further closer to the grassroots. Discuss.

8. SOCIAL AUDIT

Context: Recently, Kerala became the first state to complete the social audit of MGNREGS works.

Background:

- Social Audit is the **critical stock taking** of any programme or scheme by the community with active involvement of the primary stakeholders.
- It includes audit of the quality of works being executed at different levels along with the details of disbursements made, the number of labourers employed and materials used.
- The people in coordination with local administration will conduct social audit.

Origin of social audit in India:

In India, social audits originated in the 1990s through a grassroots struggle in the rural Rajasthan.

The workers and peasants from the **Mazdoor Kisan Shakti Sangathan (MKSS)** fought to enforce minimum wages in public works programs which they knew local elites were embezzling from.

This grassroots struggle went on to spearhead the national campaign for Right to Information Act.

In 2005, a decade after MKSS first organized them; social audits and Jan Sunwais became recognized in legislation for India's National Rural Employment Guarantee (NREGA) program.

Benefits of social audit:

- **Scrutiny:** It transfers the power of scrutiny and validation to the people. It focuses on performance audit of a service or programme, from planning, to implementation. Thus facilitates good governance.
- **Citizen empowerment:** The whole mechanism of audit puts information at the core of empowerment.
- **Accountability:** Social audit exposes problems and deters corruptions in projects/schemes thus enhancing accountability of the government and people's trust. Brings transparency and accountability to local bodies as pointed by CAG earlier.
- **Better utilization of the funds:** It is achieved through removal of ghost beneficiaries, ghost projects, fake development works.
- **Grievance redressal:** Redressing individual worker grievances in schemes like MGNREGA.
- **Challenges:**
- **Poor implementation:** The process of social audit is marred by vested interests which results in poor implementation.
- **Capacity deficit:** Illiteracy, lack of awareness about the process and low utilization of technology limits the potential of the process.
- **No legislative backing:** Lack of institutionalized, uniform mechanism promotes impunity of the system in delivery and implementation.
- **Poor government support:** Government indifference, CAG's guidelines have yet to be implemented.

Suggested Measures:

- **Legislative backing:** The social schemes should have inbuilt clause of social audit to promote the transparency in the implementation and outcomes.
- **Uniform approach:** State should implement the guidelines of CAG. Social audit process should be viable, credible and true to principles of social accountability. Specific methods of information sharing should be followed.
- **Other steps:** An independent facilitation structure needs to be set up to act on the findings. States should learn from that experience and also follow the example of Meghalaya which has been successful in implementing it.
- Social audit is an efficient tool to track the outcomes of the schemes and increase social accountability.
- It should be strengthened to realize the true potential.

Practice question:

Q. The objective of social audit is to create awareness among beneficiaries about the scheme, to empower public/beneficiaries to hold the government accountable. In light of the statement examine the success of social audit in India.

9. POLL BODY FOR COOPERATIVE SOCIETIES

Context: Union minister for cooperatives had mentioned to conduct elections for the cooperative societies to be conducted by the Election commission of India.

Need of elections in cooperatives

- **To ensure transparency:** Cooperatives need elections conducted in free and fair manner to ensure transparency in the system.
- **Adequate representatives:** Each community in the region living should get representation in any organisation for equal rights and everybody should be heard.

- **Popular representation:** The elections conducted by the election commission of India by participation of every individual in the region will help to get their popular elected representative amongst themselves for better working of cooperatives.
- **Rural issues to be heard:** The person elected should have local knowledge of the region and culture with agricultural needs of that region. Most of the states like Maharashtra, Orissa, Gujarat, Madhya Pradesh are major states which are benefiting from the cooperatives in rural areas.
- **Financial transparency:** The funds allocated from banks and to individual representatives for distribution will be in the right hands as he/she will be responsible to the people.

Issues faced by cooperatives in India

- **Government Interference:** Co-operative institutions were handled as if they were an integral component of the government's administrative structure.
- **Mismanagement and Manipulation:** The co-operative movement's central idea is that it **elevates farmers to the level of shareholders and provides them with agricultural, educational, and medical services.** Farmers, sometimes, find it difficult to manage the institutions with large shareholder strength.
- **Lack of Awareness:** People are **unaware of the movement's goals**, the contributions it can make to society's reconstruction, and the norms and regulations that govern co-operative institutions.
- Regrettably, **no concerted attempts** have been undertaken in this direction. People regard these institutions as a means of gaining government benefits and concessions.
- **Functional Weakness:** Since its start, the co-operative movement has struggled with a lack of skilled workers. **There** had been a dearth of institutions dedicated to **training workers** also efficient individuals were not drawn to or driven by them.
- **Flaws in operation:** Co-operative societies, too, have several flaws in their operation. They have been unable to progress along healthy lines due to this deficiency.

Recent developments

- In 2013, the **Gujarat High Court** ruled that the amendment was likely to be struck down since it was passed without the assent of one-half of the state legislatures, as required under Article 368(2) of the Constitution.
- **According to Article 368(2)**, ratification of one-half of state legislatures is required for an amendment that makes changes to an entry in the state list.
- The **exclusive legislative power granted to states** in issues covered by the Second List of the Seventh Schedule is a key constitutional concept enshrined in the Constitution's basic framework.

Practice Questions:

Q. What are reasons for the failure of the cooperatives to achieve their full potential in India?

Highlight the recent reforms and their potential impacts on the cooperatives.

7. LOCAL GOVERNANCE

1. CHALLENGES TO ULBs

Context: In India, the "disorganized" nature of urban planning habitually becomes a topic of public debate whenever cities encounter a major crisis (urban flooding in Chennai).

Since urban planning and its enforcement are routinely declared the culprit of India's "dysfunctional" cities, it is important to examine the roots underpinning India's current urban planning regime.

Background: Major challenges faced by ULBs

- **Lack of autonomy in management:** ULBs across the country lack autonomy in city management and several city-level functions are managed by parastatals (managed by and accountable to the state).
- **Lack of fiscal autonomy:** Indian ULBs are amongst the weakest in the world in terms of fiscal autonomy and have limited effective devolution of revenue.
- **Limited source of revenue:** They also have limited capacity to raise resources through their own sources of revenue such as property tax.
- **Dependency:** Lack of finance and other required power lead to a dependence on transfers by the state and central government.
- **Skin-tight control of government:** Government crafts its own schemes for the ULBs run at the local level with financial contribution from the GoI. These schemes run with skin-tight administrative and financial control, asking the ULBs to essentially carry out the will of the GoI.
- **Low encouragement by state government:** Not only the centre, even the states, themselves want to give no elbow room to the ULBs in local governance.

Impact on the governance

- **Poor service delivery:** The above multiple challenges have led to poor service delivery in cities.
- **Administrative and governance challenges:** It has also created administrative and governance challenges at the municipal level.

Why decentralisation is essential?

- **Good governance:** In the democratic world, decentralisation is amongst the most significant instruments for good governance.
- **Greater knowledge and informed decisions:** It brings decision-making closer to the people and allows authorities with greater knowledge of local conditions to make more informed decisions.

Challenges related to the public participation:

- Indian ULBs have been unwilling to allow any meaningful direct citizen participation in any aspect of civic governance.
- Considerable progress in this area has been achieved in the western world, aided by the march of technology, social media, and the ease of establishing online platforms for citizen interaction.
- Since information flow is rapid and voluminous in the modern world, citizens in many Indian cities have formed groups and associations with a view to press for decision-making space in their own localities.
- Union Government itself initiated the Model Nagar Raj Bill to institutionalise people's participation.
- **Model Nagar Raj Bill (MNRB)**
- The GoI had also drafted a Model Nagar Raj Bill (MNRB) for the consideration of and adoption by the states.
- The MNRB introduced the concept of 'Area Sabha' defined as "the body of all persons registered in the electoral rolls pertaining to every polling booth in the area of a municipality." This initiative, however, fell on deaf ears of the states. Only a dozen states passed the community participation law.

Practice Question:

Q. Discuss the need for more resources, both trained professionals and funds, for urban local bodies for the efficient public service delivery in India.

2. PANCHAYAT AND SERVICE DELIVERY

Context: Participants from 16 States signed the Mysuru Declaration and resolved to roll out the Common Minimum Service delivery by Panchayats across the country.

Mysuru Declaration:

- Mysuru declaration is aimed at recognising Citizen Centric Services as the “Heart of Governance”.
- The declaration also aims to promote inclusive and accountable Local Self Governments in delivery of services in consonance with the priorities and the aspirations of our citizens.

About panchayats:

- Panchayati raj system is a three-tier structure of the Indian administration for rural development.
- Panchayati Raj aims to develop local self-governments in districts, zones and villages.
- The main objectives of Panchayati Raj is rural development and this has been established in all states of India except Nagaland, Meghalaya and Mizoram, in all Union Territories except Delhi, and certain other areas.

These areas include:

- The scheduled areas and the tribal areas in the states,
- The hill area of Manipur for which a district council exists and
- Darjeeling district of West Bengal for which Darjeeling Gorkha Hill Council exists
- There were many committees appointed by the Government of India to study implementation of selfgovernment at the rural level and also recommend steps in achieving this goal.

The committees appointed are as follows:

- Balwant Rai Mehta Committee
- Ashok Mehta Committee
- G V K Rao Committee
- L M Singhvi Committee

Salient features of Panchayat:

- The Gram Sabha is a body consisting of all the people registered in the electoral rolls who belong to a village comprised within the area of the Panchayat at the village level.
- **Permanent:** Gram Sabha is the smallest and the only permanent unit in the Panchayati Raj system. The powers and functions of Gram Sabha are fixed by state legislature according to the law on the subject.
- **Reservation:** Seats are reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and chairpersons of the Panchayats at all levels are reserved for SCs and STs in proportion to their population.
- **Women:** One-third of the total number of seats are to be reserved for women. One-third of the seats reserved for SCs and STs, are also reserved for women. This policy extends to the office of the chairperson at all levels as well (Article 243D). The reserved seats may be allotted by rotation to different constituencies in the Panchayat.
- There is a uniform policy with each term being five years. Fresh elections must be conducted before the expiry of the term. In the event of dissolution, elections compulsorily within six months (**Article 243E**).

Practice question:

Q. Self-reliant Panchayats are fundamental for the self-reliant India. In this context analyse the challenges associated with the functioning of Panchayats in India.

3. PESA ACT

Context: Jharkhand government recently said that it would soon implement the Panchayat (Extension to Scheduled Areas) Act, 1996, in the state.

Background:

As per the Act, nine states, including Jharkhand, with scheduled areas within their geographical boundaries, were mandated to amend their existing Panchayati Raj acts and incorporate provisions of PESA.

However, Jharkhand, where 13 of the 24 districts fall under Schedule V, is yet to frame regulations and implement PESA Act.

PESA Act:

- The PESA Act was enacted in 1996 “to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas”.
- Part IX, comprising Articles 243-243ZT of the Constitution, contains provisions relating to municipalities and cooperative societies.
- The Act aims to ensure self-governance through Gram Sabhas (village assemblies) for people living in the Scheduled Areas.

Significant of the Act:

- **Democratic Decentralization:** PESA empowers Gram Sabhas to play a key role in approving development plans and controlling all social sectors.
- **Preserving Identity:** The powers of Gram Sabhas include maintenance of cultural identity and tradition, control over schemes affecting the tribals, and control over natural resources within the area of a village.
- **Conflict Resolution:** The PESA Act thus enables Gram Sabhas to maintain a safety net over their rights and surroundings against external or internal conflicts.
- **Public Watchdog:** The Gram Sabha would have the powers to monitor and prohibit the manufacturing, transport, sale and consumption of intoxicants within their village limits.

Challenges associated with PESA Act:

- **Partial implementation:** Even after 25 years of existence, many of the states have not notified the regulations related to PESA Act. The partial implementation has worsened self-governance in Adivasi area like in Jharkhand.
- **Administrative hurdles:** Many experts have asserted that PESA did not deliver due to the lack of clarity, legal infirmity, bureaucratic apathy, absence of political will, resistance to change in the hierarchy of power, and so on.
- **Redundancy because of other laws:** The Act has come in conflict with other acts like Forest Rights Act 2005, LARR Act 2013 etc.
- **Other issues:** Dilution of role of Tribal Advisory Council, bureaucratic apathy, absence of political will, resistance to change in the hierarchy of power, and so on.

Suggested measures:

- States should notify the Act as soon as possible.
- **Xaxa Committee** recommendations about the Act should be followed.
- Institutionalized mechanism for conflict resolution.
- The PESA Act was enacted to ensure self-governance through Gram Sabhas (village assemblies) for people living in the Scheduled Areas. But it has been only partially successful in achievement of the vision. Government should take all the necessary steps to realize the vision of the Act.

Practice question:

Q. The PESA Act was enacted to empower local communities in tribal areas, but its implementation on ground has remained questionable. Analyze with adequate examples.

4. SIXTH SCHEDULE

Context: A latest demand has arisen from Ladakh that the region should be included in the **Sixth Schedule** of the Constitution to safeguard land, employment, and cultural identity of the local population.

What is the Sixth Schedule?

- Passed by the Constituent Assembly in 1949, the Sixth Schedule under **Article 244** seeks to safeguard the rights of tribal population through the formation of **Autonomous District Councils (ADC)**.
- ADCs are bodies representing a district to which the Constitution has given varying degrees of autonomy within the state legislature.
- **Autonomous District Councils (ADCs)** are the autonomous administrative divisions that have some legislative, judicial, and administrative autonomy within a state.
- ADCs have up to 30 members with a term of five years.
- It can make laws, rules and regulations with regard to land, forest, water, agriculture, village councils, health, sanitation, village- and town-level policing, inheritance, marriage and divorce, social customs and mining, etc.
- **Powers conferred to Governors**
- The governors of these states are empowered to reorganize boundaries of the tribal areas.
- In simpler terms, she or he can choose to include or exclude any area, increase or decrease the boundaries and unite two or more autonomous districts into one.
- They can also alter or change the names of autonomous regions without a separate legislation.

Understanding the 'crux' of Ladakh's demand?

- At the heart of the UT's demand is power. The UT status came without a legislative Council and instead, even the existing powers of LAHDC got shifted to the Lt Governor.
- The demand now is that the local Councils are empowered with legislative power by bringing them under the ambit of **Sixth Schedule of Article 244(1)** of the Constitution.
- They demand a Bodoland-type power arrangement that protects the rights of indigenous people over their land with legislative subjects that are exclusive to local governments without interference from Central Laws.
- A similar provision under **Article 371 (A)** is given to other areas such as in Nagaland in respect of the religious, social practices, customary law of the Nagas.

Can Ladakhis be described as vulnerable community?

- Ladakh is known as a part of the global Buddhist civilisation or Islamic heritage that cannot be described as a 'primitive' or 'vulnerable' community
- **Diverse and rich cultural setting:** Ladakh is historically perceived as a cosmopolitan region with centuries of multiple cultural settings. It was an Asian pivot – the people here traversed diverse cultural boundaries and engaged with ideas.
- Its Buddhist community resembles nothing like the Chakma tribes in the Northeast.
- The Baltis and Purigs of Kargil cherish their rich Persian Shia and Sufi heritages.
- **High education level:** The region had the highest literacy rate (82 percent) in J&K.
- **Social equality:** A great deal of social equality exists; the women enjoy high status in every aspect of life.
- **Elite population:** It has a highly westernised Buddhist and Balti elite which send children to study in India's top-public schools.

Suggested measures for Ladakh:

- **Heritage protection:** Ladakh was once an ancient Western Himalayan Kingdom with a profound cultural backdrop. Its rich Buddhist, Balti and Dardic cultural heritage requires a much higher degree of protection.
- **Policy measure:** A prudent policy step would be to consider Ladakh under the ambit of protecting the Himalayan heritage – its people, culture, environment and security.
- **National Commission:** A national commission is urgently needed to review the issue as also addressing the Ladakhi demand so as to bring about a necessary law by the Parliament.

Practice question:

Q. Examine the functioning of sixth schedule for ensuring the autonomy of tribal areas in

Indian states.

8. CONSTITUTIONAL, STATUTORY & REGULATORY BODIES

1. CBI

Context: As many as nine states, including Chhattisgarh, Jharkhand and West Bengal, have withdrawn general consent to the Central Bureau of Investigation (CBI) to probe cases.

Background:

- Central Bureau of Investigation (CBI) is the premier investigating police agency in India.
- It functions under the superintendence of the Deptt. Of Personnel, Ministry of Personnel, Pension & Public Grievances, and Government of India which falls under the prime minister's office.
- It provides assistance to the Central Vigilance Commission and Lokpal.
- However for investigations of offences under the Prevention of Corruption Act, its superintendence vests with the Central Vigilance Commission.
- It is also the nodal police agency in India which coordinates investigation on behalf of Interpol Member countries.

What does general consent to CBI mean?

- Under the Section 6 of the **Delhi Special Police Establishment (DSPE) Act, 1946**, the CBI needs consent from the state governments for conducting an investigation in its jurisdiction.
- According to the provision, general consent to the CBI has been granted by state governments for the investigation of a specified class of offences against specified categories of persons enabling the federal agency to register and investigate those specified matters.
- In other words, without the general consent from these states, CBI cannot exercise its power in the respective states.
- This distinguishes the agency from the **National Investigation Agency (NIA)** which has authority across states.

Implications of the move:

No registration of fresh cases: It means the CBI will not be able to register any fresh case involving officials of the central government or a private person in the state without the consent of the state government.

Loss of power: CBI officers will lose all powers of a police officer as soon as they enter the state unless the state government has allowed them.

Other issues related to CBI:

- **Political interference:** The Supreme Court has labeled the CBI a "caged parrot speaking in its master's voice", due to excessive political interference in its functioning. This has hurt the credibility of the investigating body.
- **Shortage of manpower:** This has been caused by a system of inefficient, and inexplicably biased, recruitment policies of the government. This has resulted in enormous delays in concluding investigations.
- **Lack of Accountability:** CBI is exempted from the provisions of the Right to Information Act (RTI), thus, lacking public accountability.

- **Limited Powers:** The powers and jurisdiction of members of the CBI for investigation are subject to the consent of the State Govt., thus limiting the extent of investigation by CBI.
- **Restricted Access:** Prior approval of Central Government to conduct inquiry or investigation on the employees of the Central Government, of the level of Joint Secretary and above is a big obstacle in combating corruption at higher levels of bureaucracy.

Suggested Measures:

- **Statutory status:** Providing statutory status on the lines of NIA and other bodies will help maintain the independence of the institution. Second Administrative Reforms Commission (2007) has also suggested the same.
- **DRSC recommendations:** Strengthening human resources by increasing strength of CBI, better investments in infrastructural facilities, increased financial resource and administrative empowerment with accountability etc. should be followed.
- CBI has been established as the premier investigating police agency in India. Over the years it has failed to live up its expectation. All the steps should be taken by the government to restore its credentials.

Practice Question:

Q. Analyze the reasons for inefficiencies plaguing Indian investigating agencies despite several observations made by the Supreme Court of India (SC) to improve the situation.

2. CALL FOR UNIFIED HUMAN RIGHTS COMMISSION

Context: Recently, Kerala Governor Arif Mohammed Khan, called for the termination of National Commission for Minority and transferring its powers and functions to National Human Rights Commission.

Background: What is National Commission for Minorities?

- It is a **statutory body** established under the provisions of **National Commission for Minorities Act, 1992**.
- **Composition:** The NCM is supposed to have a Chairperson, a Vice-Chairperson, and 7 members, at least 5 of whom should be from minority communities.

Why is the call for abolition of minority commission being made?

- **Creating differences:** Presence of such Commission cultivates an idea within **certain groups** that a community or some communities are **different** than the rest and **hence special provisions or bodies** are required for its or their protection.
- The abovementioned idea has the potential of sowing the **seeds of separatism**.
- **Wastage of resources:** The National Human Rights Commission is adequately empowered to look into the issues relating to infringement of rights of people in India and hence of any other organisation that focusses on the rights on just minorities leads to **waste of both material and human resources**.
- **Political influence:** National Minority Commission may become and in some instances has become place of where appointment for **political appeasement** is made.

Why existence of separate National Minorities Commission is necessary?

- **Attentive protection of minorities:** The Constitution of India guarantees **Secularism** and hence protection of Minorities has to be paid adequate attention.
- **For effective functioning:** National Human Rights Commission is already overburdened with its existing workload and therefore asking it to perform the duties of Minorities also would lead to compromise of the quality of work done by it and also severe backlog effecting many Indians.
- **Lack of expertise with NHRC:** The National Human Rights Commission may not possess the expertise required to tackle the issues impacting rights of Minorities that are guaranteed by the Indian Constitution
- and other statutes of the country.

- **For diversity in unity:** Religious minorities add to the diversity of India and their unique characteristics
- have to be safeguarded if India has to maintain its image of being a plural civilisation. This can be done
- in better way with the National Commission for Minorities being in existence.

Practice question:

Q. Discuss the challenges associated with the multiplicity of the human rights bodies in India.

Do you think creation of single body will solve the challenges? Justify your answer.

3. OTT REGULATION

Context: A survey of Over-The-Top regulation in different countries suggests that most of them are yet to come up with a clear statute-backed framework.

Findings of the report:

The survey highlighted that India's OTT regulations policy needs a clarification and a more transparent framework. There is **no specific body**, to scrutinize the misdeeds and loopholes in policy.

Aside from instituting a statutory framework and promoting industry self-regulation, its approach to media regulation emphasizes on promoting media literacy through public education.

Background:

In India, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, through which the Ministry of Information and Broadcasting (I&B) was given the task of regulating content on OTT and online platforms.

India's approach can be termed as a light-touch 'co-regulation' model where there is 'self-regulation' at the industry level and final 'oversight mechanism' at the Ministry level.

OTT Platforms:

The acronym OTT stands for Over-the-Top. This convenient term explains the new delivery method of film and TV content over the internet whenever we want, across many different devices, without the need for traditional broadcast, cable or satellite pay-TV providers.

In simple terms, OTT streaming means paying an internet provider, like Xfinity, for internet access to watch Netflix, without paying for cable TV.

Challenges of regulating OTTs in India:

Volume of content on OTT platform: Compared to traditional media, volume of content in the OTT platforms is enormous posing a regulatory challenge. Substantial influx of OTT content from foreign countries adds to the complications.

No separate regulatory mechanism: There is no separate legislation or body for regulation of OTT platforms in India. They are only governed by the Ministry of Electronics and Information Technology (MeITy).

Threat of Cybercrime: In the process of subscribing to an OTT platform, people share their confidential information like bank details, credit card access, which has the potential to be misused and lead to cybercrime.

Suggested Measures:

Hybrid model of governance: Independent, self-regulatory body comprising stakeholders from the industry to deal with grievances and complaints relating to the OTT content guided by a certain set of principles.

Appellate body with independent members: Recommendations by the self-regulatory body could be appealed before an appellate committee established by the same body, with independent members on the panel.

Convergence: An effective solution can be reached with convergence between media, public interest, and government policy.

While it is well understood that although the right to freedom of speech and expression is fundamental, is not unfettered and subject to reasonable restrictions. Thus a balanced approach is needed for the regulation of OTT platforms.

Practice Question:

Q. Highlight the challenges associated with the regulation of Over-the-Top platforms in India.

4. DIGITAL SOVEREIGNTY

Context: Various experts have warned that India's push for digital sovereignty will have enormous consequences for country's population with a potential increase in state surveillance and tightening of freedoms in online spaces.

Background: Data Sovereignty

- Data Sovereignty means that data collection and processing is subject to the laws and regulations of the country where data is originated.

Steps taken by government to ensure Data Sovereignty:

- The RBI issued directive to all system providers to ensure that, the entire data relating to payment systems operated by them is stored only in India.
- This covered not only card payment services by Visa and MasterCard but also of companies such as Paytm, WhatsApp and Google which offer electronic or digital payment services.
- Government has introduced personal data protection bill on the lines of EU's General Data Protection Regulation (GDPR).
- It requires all sensitive and critical data to be stored in India.
- Further it requires that a digital company must obtain explicit permission from a user before collecting their personal data.
- India did not sign the **Osaka track**, which is a framework to promote free flow of cross border data.
- Flagship '**Digital India**' programmes is a way forward to make data as the cornerstone of India's socioeconomic future, where the government leverages the Indian citizen's data for the benefit of the people themselves, and not solely for profit-making.

National Digital Communications Policy (NDCP)2018:

Key Strategy of the Policy:

- Establishment of a National Digital Grid by creating a National Fibre Authority.
- Establishing Common Service Ducts and utility corridors in all new city and highway road projects.
- Creating a collaborative institutional mechanism between Centre, States and Local Bodies for Common Rights of Way, standardization of costs and timelines.
- Removal of barriers to approvals.
- Facilitating development of Open Access Next Generation Networks.

Practice question:

Q. Analyze the potential challenges created by the enforcing the digital sovereignty norms in India.

5. PERSONAL DATA PROTECTION BILL

Context: Recently, the latest draft of **Digital Personal Data Protection Bill, 2022** has been made open for public comment and the government is going to introduce the Bill in the budget session of 2023.

Background:

The Union Information Technology Minister announced the withdrawal of The Personal Data Protection Bill, 2019 in the Lok Sabha.

He stated that the government has decided to come up with a fresh bill that fits into the comprehensive legal framework with reference to the suggestions made by the Joint Committee of Parliament (JCP) on the Bill.

Apart from that, the panel, headed by the former Union Minister, had recommended about 97 corrections and improvements to the Bill.

Now, the new bill has come up with a new set of guidelines addressing the loopholes in the previous statement and demarcating more stringent lines for violators.

Key Features of the new Bill:

Regarding Data protection principles: The current draft removes explicit reference to certain data protection principles such as collection limitation.

This would allow a data fiduciary to collect any personal data consented to by the data principal.

Concept of 'Deemed consent': The DPDP Bill, 2022 also introduces the concept of "deemed consent".

Fines and Penalties: For breach of Law; according to the new bill, Companies dealing with the personal data of consumers that fail to take reasonable safeguards to prevent data breaches could end up facing penalties as high as around Rs.200 crore.

Under the previous bill, the penalty proposed on a company for violation of the law was 15 crores or 4 percent of its annual turnover, whichever is higher.

For intimidating: Penalties are expected to vary based on the nature of non-compliance by data fiduciaries — entities that handle and process the personal data of individuals.

Companies failing to notify people impacted by a data breach could be fined around Rs.150 crore, and those failing to safeguard children's data could be fined close to Rs.100 crore.

Administration body: The Data Protection Board, an adjudicating body proposed to enforce the provisions of the Bill, is likely to be empowered to impose the fine after giving the companies an opportunity of being heard.

Scope of Data being protected: The new Bill will only deal with safeguards around personal data and is learned to have excluded non-personal data from its ambit.

Why the bill has been reconsidered many times?

- The current legal framework for privacy enshrined in the (Information Technology Rules, 2011) is wholly inadequate to combat harm to data principals, especially since the right to informational privacy has been upheld as a fundamental right by the Supreme Court (K. Puttaswamy vs. Union of India).
- Therefore the previous bill was inadequate on four levels:
- The extant framework is premised on privacy being a statutory right rather than a fundamental right and does not apply to the processing of personal data by the government;
- It has a limited understanding of the kinds of data to be protected;
- It places scant obligations on the data fiduciaries which, moreover, can be overridden by contract and;
- There are only minimal consequences for the data fiduciaries for the breach of these obligations.

Concerns associated:

- The new bill does not consider the concept of "sensitive personal data". This includes biometric data, health data, genetic data, etc.

- This personal data is afforded a higher degree of protection in terms of requiring explicit consent before processing and mandatory data protection impact assessments.
- The DPDP Bill, 2022 seems to suppose that a notice is only to be provided to take consent of the data principal. This is a limited understanding of the purpose of the notice.
- A notice is also important for the data principal to exercise data protection rights such as the right to know what personal data is being processed by whom, whether that data needs correction or updating, and also to request deletion of data that may not be relevant for processing.

Way forward:

- Data protection laws need to ensure that the compliances for data fiduciaries are not so onerous as to make even legitimate processing impractical.
- The challenge lies in finding an adequate balance between the right to privacy of data principles and reasonable exceptions, especially where government processing of personal data is concerned.
- With technological evolutions, an optimum data protection law design needs to be future-proof — it should not be unduly detailed and centered on providing solutions to contemporary concerns while ignoring problems that may emerge going forward.
- The law needs to be designed for a framework of rights and remedies that is readily exercisable by data principals given their unequal bargaining power concerning data fiduciaries.

Practice question:

Q. Data protection legislation is still missing in India which places the privacy and other digital rights of users at risk. In the light of the statement list the factors inhibiting India to formulate a comprehensive data protection framework.