PM IAS ACADEMY

CREATIVE THOUGHT AND ACTION

MASTER CHECKUP

GS 2 – POLITY & CONSTITUTION

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STILL NO RECOGNITION OF THE THIRD TIER

Context:

Unlike the previous Finance Commissions, the Fifteenth Finance Commission was in the background of the COVID-19 pandemic which reinforced the significance of local governments, gram sabha and other participatory institutions in containing the crisis and delivering social protection in India.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Structure of Government, Fiscal federalism), GS-III: Indian Economy (Economic Development and Growth, Fiscal policy, Devolution and Appropriation of taxes)

Mains Questions:

In the Context of the 15th Finance Commissions recommendations, to what extent does it address the goal of fiscally empowering local governments to deliver territorial equity? (10 marks)

Dimensions of the Article:

1. What is fiscal federalism?
2. Recent development related to fiscal federalism?
3. Challenges to fiscal federalism in India:
4. About Finance Commission of India
5. Fifteenth Finance Commission
6. Positive Aspects of the XVFC's recommendations w.r.t. LSGs
7. Lacunae in the XVFC's recommendations w.r.t. LSGs and the trends

What is fiscal federalism?

Fiscal federalism is financial relationship between centre and states, it deals with the division of governmental functions and financial relations among levels of government.

Structure of fiscal federalism in India:

The Seventh Schedule to the constitution of India defines and specifies allocation of powers and functions between Union & States. It contains three lists; i.e., 1) Union List, 2) State List and 3) Concurrent List.

1. Union list: The Union Government or Parliament of India has exclusive power to legislate on matters relating to these items.
2. State list: The respective state governments have exclusive power to legislate on matters relating to these items.
3. Concurrent list: This includes items which are under joint domain of the Union as well as the respective States
4. Article 268 to 293 in Part XII deal with the financial relations.

Recent development related to fiscal federalism?

Three landmark changes in union-state fiscal relations since 2015-16 have been:

1. The abolition of the Planning Commission in January 2015 and the subsequent creation of the NITI Aayog.
2. Fundamental changes in the system of revenue transfers from the centre to the states by providing higher tax devolution to the states from the fiscal year 2015-16 onwards based on the recommendations of the Fourteenth Finance Commission (14th FC).
3. The Constitutional amendment to introduce the Goods and Services Tax (GST) and the establishment of the GST Council for the central and state governments to deliberate and jointly take decisions.

Finance commission of India: The Finance Commission is a Constitutionally mandated body that is at the centre of fiscal federalism. Set up under Article 280 of the Constitution, its core responsibility is to evaluate the state of finances of the Union and State Governments, recommend the sharing of taxes between them, lay down the principles determining the distribution of these taxes among States.

Challenges to fiscal federalism in India:

Horizontal imbalances

- The horizontal imbalances arise because of differing levels of attainment by the states due to differential growth rates and their developmental status in terms of the state of social or infrastructure capital. However, Replacing the Planning Commission with NITI Aayog has reduced the policy outreach of government by relying only on single instrument of fiscal federalism i.e. Finance commission. This approach if not reviewed can lead to a serious problem of increasing regional and sub regional inequalities.

Vertical Imbalances

- Vertical imbalance arises due to the fiscal asymmetry in powers of taxation vested with the different levels of government in relation to their expenditure responsibilities prescribed by the constitution.
- Central Government collects around 60% of the total taxes, while its expenditure responsibility (for carrying out its constitutionally mandated responsibility such as defence, etc.) is only 40% of the total public expenditure.
- Such vertical imbalances are even sharper in the case of the third tier consisting of elected local bodies and panchayats.
- Vertical imbalances can adversely affect India's urbanization, the quality of local public goods and thus further aggravating the negative externalities for the environment and climate change.

Restructuring the fiscal federalism

India's Fiscal Federalism needs to be restructured around the four pillars namely Finance Commission, NITI Aayog, GST and decentralization in order to eliminate the inadequacies of vertical and horizontal imbalances.

1. **Finance commission:** it should be relieved from the dual task of dealing with provision of basic public goods and services and capital deficits. It should be confined to focussing on removal of basic public goods imbalance
2. **NITI Aayog:** it should deal with infrastructure and capital deficit.
3. **Decentralisation** can serve as the third pillars of the new fiscal federalism by strengthening local finances and state finance commission.
4. **GST** should be simplified in its structure and can serve as the fourth pillar of our fiscal federalism, by ensuring.

About Finance Commission of India

- The Finance Commission (FC) is constituted by the President of India every fifth year under Article 280 of the Constitution.
- Finance Commission is a constitutional body.
- It was formed to define the financial relations between the central government of India and the individual state governments.
- FC determines the method and formula for distributing the tax proceeds between the Centre and states, and among the states.
- The Finance Commission also decides the share of taxes and grants to be given to the local bodies in states. This part of tax proceeds is called Finance Commission Grants, which is a part of the Union budget.
- The Finance Commission (Miscellaneous Provisions) Act, 1951 additionally defines the terms of qualification, appointment and disqualification, the term, eligibility and powers of the Finance Commission.
- The Finance Commission consists of a chairman and four other members, who are appointed by the President of India.
- There have been fifteen commissions to date, the most recent was constituted in 2017.

Fifteenth Finance Commission

- The Fifteenth Finance Commission (XV-FC or 15-FC) is an Indian Finance Commission constituted in November 2017 and is to give recommendations for devolution of taxes and other fiscal matters for five fiscal years, commencing 2020-04-01.
- The main tasks of the commission were to "strengthen cooperative federalism, improve the quality of public spending and help protect fiscal stability".

Positive Aspects of the XVFC's recommendations w.r.t. LSGs

Higher vertical devolution

- The vertical devolution recommended to local governments is raised remarkably high.
- From a measly share of 0.78% of the divisible pool with an absolute sum of Rs. 10,000 crores by the Eleventh Commission, the Fifteenth Finance Commission raised it to 4.23% with a reasonably estimated amount of Rs. 4.3 lakh Crores.
- Compared with the Fourteenth Finance Commission there is a 52% increase in the vertical share.
- All the Commissions since the Eleventh Commission have tied specific items of expenditure to local grants and the Fifteenth Finance Commission has raised this share to 60% and linked them to drinking water, rainwater harvesting, sanitation and other national priorities in the spirit of cooperative federalism.

Entry-level criterion

- An important recommendation of the Fifteenth Finance Commission is the entry-level criterion to avail the union local grant (except health grant) by local governments (strictly speaking, it is performance-linked).
- For panchayats, the condition is online submission of annual accounts for the previous year and audited accounts for the year before. For urban local governments, two more conditions are specified.
- Although Finance Commissions, from the Eleventh to the Fourteenth, have recommended measures to standardise the accounting system and update the auditing of accounts, the progress made has been halting. Therefore, the entry-level criteria of the Fifteenth Finance Commission are timely.

Lacunae in the XVFC's recommendations w.r.t. LSGs and the trends

Vertical devolution

- It reduced the performance-based grant to just ₹8,000 crore — and that too for building new cities, leaving out the Panchayati Raj Institutions (PRIs) altogether.
- The performance-linked grants thoughtfully introduced by the Thirteenth Finance Commission earmarked 35% of local grants specifying six conditions for panchayats and nine for urban local governments and covered a wide range of reforms.
- The Fourteenth Finance Commission, however, cut the performance grant share to 10% for gram panchayats and 20% to municipalities with the conditionality that all local governments will have to show improvements in own source revenue.
- Municipalities are additionally required to publish service level benchmarks for basic services. The transformative potential in designing performance-linked conditionalities for improving the quality of decentralised governance in the context of indifferent states is missed.

Entry-level criterion

- Although the XVFC recommended entry-level criterion to avail the union local grant (except health grant) for panchayats and urban local governments, it is not clear why gram panchayats (especially the affluent and semi-urban categories) are left out from this.

Lack of reliable data

- The Twelfth Finance Commission did not publish any local fiscal data.
- The Thirteenth Finance Commission published data online and some researchers did use them. Unlike the previous Commissions, the Fourteenth Finance Commission conducted a sample survey covering (15%) gram panchayats, (30%) block panchayats and all district panchayats besides (30%) municipalities, presumably to ensure quality in canvassing data.
- The results too were not published. Interestingly, neither the Fifteenth Finance Commission nor the earlier counterparts took pains to examine how and where the financial reporting system has failed.

Equalization principle

- The Fifteenth Finance Commission claims that it seeks to achieve the "desirable objective of evenly balancing the union and the states". It is not clear why there is no recognition of the third tier in this balancing act.
- Although the Fifteenth Finance Commission outlines nine guiding principles as the basis of its recommendation to local governments, there is no integrated approach (in contrast to the recommendations of the Thirteenth Finance Commission).
- That the tasks of the Union Finance Commission were broadened as part of the decentralisation reforms (280(3) (bb) and (c)) is a firm recognition of the organic link of public finance with the development process at all tiers of government. Although the Fifteenth Finance Commission stresses the need to implement the equalisation principle, it is virtually silent when it comes to the local governments.

Criteria used

- It is equally important to note that in the criteria used by the Fifteenth Finance Commission for determining the distribution of grant to States for local governments, it employed population (2011 Census) with 90% and area 10% weightage the same criteria followed by the Fourteenth Finance Commission.

- While this ensures continuity, equity and efficiency criteria are sidelined. Equity is the foundational rationale of a federation.
- Abandoning tax effort criterion incentivises dependency, inefficiency and non-accountability.

ARTICLE 244 (A): ITS RELEVANCE FOR ASSAM HILL TRIBES

Context:

As the hill districts of Dima Hasao, Karbi Anglong and West Karbi Anglong go to polls, the demand for an autonomous state within Assam has been raised by some of the sections of the society under the provisions of Article 244A of the Constitution.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions), GS-I: Issues related to SCs and STs)

Dimensions of the Article:

1. What is Article 244(A) of the Constitution?
2. Special Status of Sixth Schedule Areas
3. About Autonomous District Councils (ADCs)
4. How is 244A different from the Sixth Schedule of the Constitution?
5. Background to the current demand for autonomous state:

What is Article 244(A) of the Constitution?

- The **22nd Amendment of the Constitution of India, 1969**, inserted new article 244A in the Constitution to empower Parliament to enact a law for constituting an autonomous State within the State of Assam.
- The parliament can also provide the autonomous State with Legislature or a Council of Ministers or both with such powers and functions as may be defined by that law, under Article 244A.

Other provisions of the 22nd Amendment

- The 22nd Amendment amended article 275 in regard to sums and grants payable to the autonomous State on and from its formation under article 244A.
- It also inserted new article 371B which provided for constitution and functions of a committee of the Legislative Assembly of the State of Assam consisting of members of that Assembly elected from the tribal areas specified in the **Sixth Schedule.**

Special Status of Sixth Schedule Areas

- The Sixth Schedule was originally intended for the predominantly tribal areas (tribal population over 90%) of undivided Assam, which was categorised as "excluded areas" under the Government of India Act, 1935 and was under the direct control of the Governor.
- The Sixth Schedule of the Constitution provides for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram to safeguard the rights of the tribal population in these states.
- In Assam, the hill districts of Dima Hasao, Karbi Anglong and West Karbi and the Bodo Territorial Region are under this provision.

- The Sixth Schedule provides for autonomy in the administration of these areas through Autonomous District Councils (ADCs) and the special provision is provided under Article 244(2) and Article 275(1) of the Constitution.
- The Governor is empowered to increase or decrease the areas or change the names of the autonomous districts. While executive powers of the Union extend in Scheduled areas with respect to their administration in fifth schedule, the sixth schedule areas remain within executive authority of the state.

About Autonomous District Councils (ADCs)

- The Autonomous districts and regional councils (ADCs) are empowered with civil and judicial powers can constitute village courts within their jurisdiction to hear the trial of cases involving the tribes.
- Governors of states that fall under the Sixth Schedule specify the jurisdiction of high courts for each of these cases.
- Along with ADCs, the Sixth Schedule also provides for separate Regional Councils for each area constituted as an autonomous region.
- In all, there are 10 areas in the Northeast that are registered as autonomous districts – three in Assam, Meghalaya and Mizoram and one in Tripura.
- These regions are named as district council of (name of district) and regional council of (name of region).
- Each autonomous district and regional council consist of not more than 30 members, of which four are nominated by the governor and the rest via elections, all of whom remain in power for a term of five years.

How is 244A different from the Sixth Schedule of the Constitution?

- The Sixth Schedule of the Constitution — Articles 244(2) and 275(1) — is a special provision that allows for greater political autonomy and decentralized governance in certain tribal areas of the Northeast through autonomous councils that are administered by elected representatives. In Assam, the hill districts of Dima Hasao, Karbi Anglong and West Karbi and the Bodo Territorial Region are under this provision.
- Article 244(A) accounts for more autonomous powers to tribal areas. According to Uttam Bathari, who teaches history at Gauhati University, among these the most important power is the control over law and order.

Background to the current demand for autonomous state:

- In the 1950s, a demand for a separate hill state arose around certain sections of the tribal population of undivided Assam. In 1960, various political parties of the hill areas merged to form the All Party Hill Leaders Conference, demanding a separate state. **After prolonged agitations, Meghalaya gained statehood in 1972.**
- The leaders of the Karbi Anglong and North Cachar Hills were also part of this movement and they were given the option to stay in Assam or join Meghalaya. The chose to stay in Assam as the then government promised more powers, including Article 244 (A) and since then, there has been a demand for Autonomous state.
- 2021, 1,040 militants of five militant groups of Karbi Anglong district ceremonially laid down arms at an event in Guwahati in the presence of Chief Minister Sarbananda Sonowal, the entire political discourse here still revolves around the demand for grant of 'autonomous state' status to the region.

GOVT ISSUES TRIBUNALS REFORMS ORDINANCE

Context:

The government has issued an ordinance which does away with certain appellate tribunals and transfers their functions to other existing judicial bodies.

Recently, the government also introduced a bill in the Lok Sabha to abolish some tribunals where the public at large is not litigant. However, since the bill could not get parliamentary nod, an ordinance was issued.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Quasi-Judicial Bodies, Government Policies and Interventions)

Dimensions of the Article:

1. Constitutional provisions and mandates regarding Tribunals
2. Issues with tribunalization:
3. Provisions of the Tribunals Reforms Ordinance, 2021
4. Need for the Ordinance 2021

Constitutional provisions and mandates regarding Tribunals

The provision for Tribunals was added by the 42nd Constitutional amendment act which added two new articles to the constitution.

Article 323-A: of the constitution which empowers the parliament to provide for the establishment of administrative tribunals for adjudicating the disputes relating to recruitment and conditions of service of a person appointed to public service of centre, states, local bodies, public corporations and other public authority.

Accordingly, the Parliament has enacted Administrative Tribunals Act,1985 which authorizes parliament to establish Centre and state Administrative tribunals (CAT & SATs).

1. **Central Administrative Tribunal (CAT):**
   - It was set up in 1985 with the principal bench at Delhi and additional benches in other states (It now has 17 benches, 15 operating at seats of HC's and 2 in Lucknow and Jaipur.
   - It has original jurisdiction in matters related to recruitment and service of public servants (All India services, central services etc).
   - Its members have a status of High Court judges and are appointed by president.
   - Appeals against the order of CAT lie before the division of High Court after Supreme Court's Chandra Kumar Judgement.

1. **State administrative tribunals**
   - Central government can establish state administrative tribunals on request of the state according to Administrative tribunals act of 1985
   - SAT's enjoy original jurisdiction in relation to the matters of state government employees.
   - Chairman and members are appointed by President in consultation with the governor.

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Article 323-B: which empowers the parliament and the state legislatures to establish tribunals for adjudication of disputes related to following matters:

1. Taxation
2. Foreign exchange, Imports and Exports
3. Industry and Labour
4. Land reforms
5. Ceiling on Urban Property
6. Elections to parliament and state legislature
7. Food stuffs
8. Rent and Tenancy Rights

Issues with tribunalization:

1. **Appeal:** Administrative tribunals were originally set up to provide specialized justice delivery and to reduce the burden of caseloads on regular courts. However, appeals from tribunals have inevitably managed to enter the mainstream judicial system.
2. **High Pendency:** Many tribunals also do not have adequate infrastructure to work smoothly and perform the functions originally envisioned leading to high pendency rates thus proving unfruitful to deliver quick justice.
3. **Appointments:** Appointments to tribunals are usually under the control of the executive. Not only does the government identify and appoint the members of the tribunals, but it also determines and makes appropriate staffing hires. This is problematic because often there is a lack of understanding of the staffing requirements in tribunals.
4. There is a **lack of information** available on the functioning of tribunals. Websites are routinely non-existent, unresponsive or not updated.
5. **Accessibility is low** due to scant geographic availability therefore justice becomes expensive and difficult.
6. **Against the separation of powers:** Tribunalisation is seen as encroachment of judicial branch by the government.

Provisions of the Tribunals Reforms Ordinance, 2021

The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, issued by the Ministry of Law and Justice made amendments to the

1. Cinematograph Act,
2. Copyright Act,
3. Customs Act,
4. Patents Act,
5. Airports Authority of India Act,
6. Trade Marks Act,
7. Geographical Indications of Goods (registration and protection) Act,
8. Protection of Plant Varieties and Farmers Rights Act,
9. Control of National Highways (land and traffic) Act, and
10. Finance Act.

In the Cinematograph Act, the appellate body will now be the high court.

The FCAT was a statutory body constituted to hear appeals of filmmakers aggrieved by Central Board of Film Certification (CBFC).

- The Ordinance has amended the Finance Act 2017 to include provisions related to the composition of search-cum-selection committees, and term of office of members in the Act itself.

Need for the Ordinance 2021

- There has been incessant litigation since 1985 by advocate bar associations against the tribunals over serious questions of their independence from the executive.
- The quality of adjudication has been underwhelming in most cases, the delays have been substantial because the government has struggled to find competent persons willing to accept positions on these tribunals, and litigation has actually become more expensive, as these tribunals added another layer to it.

- The Government of India began the process of rationalisation of tribunals in 2015.
- By the Finance Act, 2017, seven tribunals were abolished or merged based on functional similarity and their total number was reduced to 19 from 26.

PRESIDENT APPOINTS N.V. RAMANA AS CJI

Context:

Indian President Ram Nath Kovind appointed Justice N.V. Ramana as Chief Justice of India with effect from April 24.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Judiciary, Appointment of Supreme Court Judges and CJI)

Dimensions of the Article:

- Qualifications for Appointment as Judge of the Supreme Court
- Appointment of Judge of the Supreme Court
- Controversy over Consultation and Evolution of Collegium system
- Working of Collegium System and NJAC

Qualifications for Appointment as Judge of the Supreme Court

1. Be a citizen of India, and
2. Have been the judge of a high court for a period of 5 years, or
3. Have been an advocate of the High Court for at least 10 Years, or
4. Be in the view of the President "a distinct Jurist of the country".

Thus, there is nothing which can prevent the direct appointment of the Judges of the Supreme Court from the Bar, yet. So far, the appointments have been made from the Judges of High Courts only.

In the recent appointment of Justice N.V. Ramana as Chief Justice of India, both the Supreme Court and the government have followed the seniority norm in the appointment of CJIs.

Appointment of Judge of the Supreme Court

- Every Judge of the Supreme Court is appointed by the President after consultation with the Judges of the Supreme Court and High Courts in states, the President may deem necessary for the purpose.
- President if thinks necessary, can consult the Judges of the High Courts of States to appoint a Supreme Court Judge, as per Article 124. However, in the appointment of the other judges, the President shall always seek consultation from the Chief Justice of India.
- Till 1993, the Judges of the Supreme Court were appointed by the President on the recommendation of the CJI.

- When the CJI is absent any other Judge of the Supreme Court is appointed by the President as Acting Chief justice as per the provisions of Article 126.

Controversy over Consultation and Evolution of Collegium system

- In the First Judges case (1982), the Court held that consultation does not mean concurrence and it only implies an exchange of views.
- In the Second Judges case (1993), the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence.

Third Judges Case, 1998:

- In the Third Judges case (1998), the Court opined that the consultation process to be adopted by the Chief Justice of India requires "consultation of a plurality of judges".
- The sole opinion of the CJI does not constitute the consultation process. He should consult a collegium of four senior-most judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government.
- The court held that the recommendation made by the Chief Justice of India (CJI) without complying with the norms and requirements of the consultation process is not binding on the government.
- The Collegium system was born through the "Third Judges case" and it is in practice since 1998. It is used for appointments and transfers of judges in High courts and Supreme Courts.
- There is no mention of the Collegium either in the original Constitution of India or in successive amendments.

Working of Collegium System and NJAC

- The collegium recommends the names of lawyers or judges to the Central Government. Similarly, the Central Government also sends some of its proposed names to the Collegium.
- Collegium considers the names or suggestions made by the Central Government and resends the file to the government for final approval.
- If the Collegium resends the same name again then the government has to give its assent to the names. But the time limit is not fixed to reply. This is the reason that appointment of judges takes a long time.
- Through the 99th Constitutional Amendment Act, 2014 the National Judicial Commission Act (NJAC) was established to replace the collegium system for the appointment of judges.
- However, the Supreme Court upheld the collegium system and struck down the NJAC as unconstitutional on the grounds that the involvement of Political Executive in judicial appointment was against the "Principles of Basic Structure". i.e., the "Independence of Judiciary".

CVC OFFICERS TO BE TRANSFERRED EVERY 3 YEARS

Context:

- The Central Vigilance Commission (CVC) has modified the guidelines pertaining to the transfer and posting of officials in the vigilance units of government organisations, restricting their tenure to three years at one place.
- The tenure may be extended to three more years, albeit at a different place of posting.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Constitutional and Non-Constitutional Bodies, Policies and Interventions on Transparency and Accountability in governance)

Dimensions of the Article:

1. About the recent CVC order
2. Central Vigilance Commission (CVC)
3. Functions of CVC
4. Composition of Central Vigilance Commission
5. Removal of members (according to CVC Act)

About the recent CVC order

- The CVC, in its order, said undue long stay of an official in a vigilance department had the potential of developing vested interests, apart from giving rise to unnecessary complaints or allegations.
- Personnel can have two continuous postings in vigilance units, at different places of posting, each running into a maximum of three years.
- Personnel who have worked for over three years at one place should be transferred in phases, with priority given to those who have served for the maximum period, the order said.
- Those having completed over five years at one place should be shifted on top priority basis.

Central Vigilance Commission (CVC)

- Central Vigilance Commission (CVC) is an apex Indian governmental body created in 1964 to address governmental corruption.
- The CVC was set up by the Government in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by Shri K. Santhanam- The parliament enacted the CVC Act 2003 and set up the CVC. Hence, the CVC is a **Statutory Body.**
- In 2003, the Parliament enacted a law conferring statutory status on the CVC.
- It has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under the Central Government of India, advising various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work.
- The CVC is an **independent body, free of control from any executive authority** (CVC is NOT controlled by any Ministry or Department).
- **The CVC is responsible only to the Parliament.**
- The CVC is **NOT an investigating agency.** The CVC may have the investigation done through the CBI or Chief Vigilance Officers (CVO) in government offices.

Functions of CVC

The CVC receives complaints on corruption or misuse of office and to recommend appropriate action. Following institutions, bodies, or a person can approach to CVC:

1. Central government
2. Lokpal
3. Whistle blowers

- It is not an investigating agency. The CVC either gets the investigation done through the CBI or through chief vigilance officers (CVO) in government offices.

- It is empowered to inquire into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants.
- Its annual report gives the details of the work done by the commission and points to systemic failures which lead to corruption in government departments. Improvements and preventive measures are also suggested in the report.

Composition of Central Vigilance Commission

The CVC is comprised of 3 members:

1. A Central Vigilance Commissioner (Chairperson)
2. Up to Two Vigilance Commissioners (Members)

- President of India appoints CVC members by warrant under his hand and seal.
- The Oath of office is administered by the President.
- A three-member committee made of – The Prime Minister, The Home Minister and The Leader of Opposition in Lok Sabha – Makes the Recommendation for appointment of Vigilance Commissioners.
- The Vigilance Commissioners are appointed for a term of Four years OR until they attain 65 years of age (whichever is earlier).
- On retirement – they are NOT eligible for reappointment in any central or state government agency.

Removal of members (according to CVC Act)

The Central Vigilance Commissioner or any Vigilance Commissioner can be removed from his office only by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court reports that the officer ought to be removed after inquiry, on a reference made to it by the President.

Also, a member can be removed if the member:

1. Is Adjudged as an insolvent
2. Is convicted of an offence that involves moral turpitude according to Central Government
3. Engages in Office of profit outside the duties of his office
4. Is declared unfit by reason of infirmity of mind or body, by the President
5. Participates / Concerned / Interested to Participate – in any way in the profit / in any benefit – in any contract or agreement made by or on behalf of the Government of India

SC ON APPOINTMENT OF AD HOC JUDGES

Context:

The Supreme Court agreed that a plan to appoint retired judges on an ad hoc basis to shear pendency in High Courts should not become an excuse to stop or further delay the appointment process of regular judges.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Indian Judiciary)

Dimensions of the Article:

1. About the Supreme Court Judgement on Ad Hoc judges
2. About the pending recommendations
3. Regarding appointment of Retired judges to fill the vacancies
4. Ad-hoc Judges

About the Supreme Court Judgement on Ad Hoc judges

- Chief Justices of State High Courts should only opt for ad hoc judges if their efforts to fill the judicial vacancies in their respective High Courts have hit a wall even as pendency has reached the red zone.
- The CJI said that the court would draw up a procedure and circumstances for appointment of ad hoc judges. The CJI said the central reason or principle for appointment of ad hoc judges in High Courts should be pendency.

Draft plan

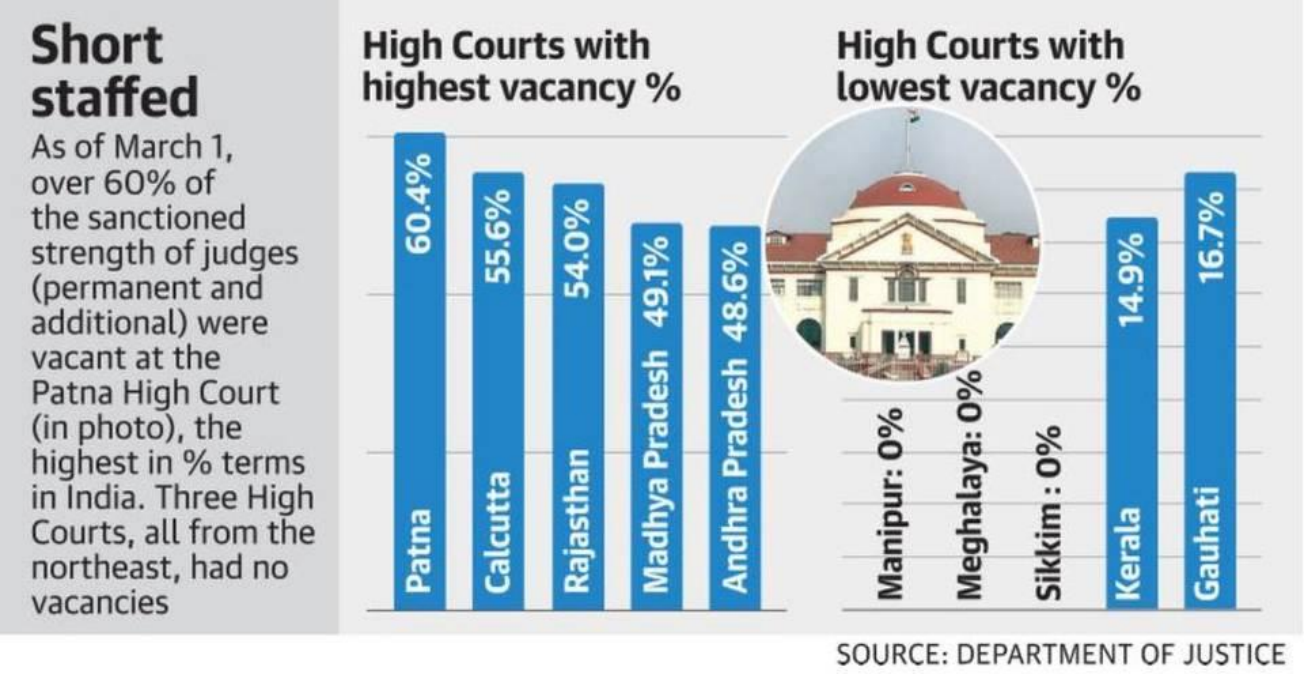
- The remuneration of the ad hoc judges could be drawn from the Consolidated Fund of India, avoiding burden to the State exchequer.
- The Bench noted its appreciation of the government's clearance of Collegium recommendations to the High Courts which have been pending for over six months.

About the pending recommendations

- The Supreme Court asked the Attorney General of India to enquire with the Union Ministry of Law and Justice and make a statement on the decision regarding the appointment of judges recommended by the collegium as the delay was a matter of grave concern.
- The Supreme Court Bar Association said that there was a need to institutionalise a process for considering advocates practising in the top courts to judgeships in the High Courts.
- The total sanctioned judicial strength in the 25 High Courts is 1,080. However, the present working strength is 661 with 419 vacancies as on March 1 2021.

Regarding appointment of Retired judges to fill the vacancies

- The SC bench said that retired judges could be chosen on the basis of their expertise in a particular field of dispute and allowed to retire once the pendency in that zone of law was over.
- The Bench said retired judges who had handled certain disputes and fields of law for over 15 years could deal with them faster if brought back into harness as ad-hoc judges.
- The court said the appointment of ad-hoc judges would not be a threat to the services of other judges, as Ad-hoc judges will be treated as the junior most.



Ad-hoc Judges

- The appointment of ad-hoc judges was provided for in the Constitution under Article 224A (appointment of retired judges at sittings of High Courts).
- Ad hoc judges can be appointed in the Supreme Court by "Chief Justice of India" with the prior consent of the President if there is no quorum of judges available to hold and continue the session of the court.
- Only the persons who are qualified to be appointed as Judge of the Supreme Court can be appointed as ad hoc judge of the Supreme Court (Article 127).
- Further, as per provisions of Article 128, Chief Justice of India, with the previous consent of the President, request a retired Judge of the Supreme Court High Court, who is duly qualified for appointment as a Judge of the Supreme Court, to sit and act as a Judge of the Supreme Court.
- The salary and allowances of such a judge are decided by the president.
- The retired Judge who sits in such a session of the Supreme Court has all the jurisdiction, powers and privileges of the Judges, but are NOT deemed to be a Judge.

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CIVIL DEFENCE VOLUNTEERS

Context:

From being lauded for their work during the pandemic to facing allegations of high-handedness, the role of the civil defence volunteers in the national capital has come under intense scrutiny in the recent past.

Due to their identical khaki uniform, it often becomes difficult for people to distinguish between police and civil defence personnel, leading to arguments.

Relevance:

GS-II: Indian Polity (Government Policies and Schemes, Issues arising out of the design and implementation of policies and schemes)

Mains Questions:

The role of the civil defence volunteers in the national capital has come under intense scrutiny during the pandemic. Why? (10 Marks)

Dimensions of the Article:

1. Who are civil defence volunteers?
2. What is the primary role of civil defence volunteers?
3. How are civil defence volunteers recruited?
4. The role of DCDs

Who are civil defence volunteers?

- In Delhi, these are men and women who work under the command of the district magistrates.
- The overall command lies with the divisional commissioner, to which the DMs report.
- These volunteers are governed by the Civil Defence Act, 1968 which has undergone multiple amendments, with the latest being in 2010, when disaster management was added as one of their roles.
- With the Centre invoking the Disaster Management Act in the wake of the Covid-19 outbreak in 2020, the role of these volunteers came under the spotlight.

What is the primary role of civil defence volunteers?

- According to the Civil Defence Act, 1968, civil defence is defined as any measure "not amounting to actual combat, that protects persons, property and places in India from hostile attack". The 2010 amendment expanded the definition by including disaster management as one of the responsibilities.
- The basic role of the volunteers is to assist the local administration. During the pandemic, the volunteers assumed the role of frontline workers by way of participating in screening hotspots and distributing food for the needy.
- Before the Covid outbreak, a large number of DCD personnel were deployed as marshals in public buses to ensure safety of women.

How are civil defence volunteers recruited?

- Recruitment drives are carried out from time to time by the Delhi government. Anyone aged above 18 years with primary level educational qualification can apply.
- The candidates found eligible are made to undergo a week-long basic training course. At later stages, specialised training is also imparted.
- A person who intends to apply must also be a citizen of India or a "subject of Sikkim or Bhutan or Nepal", according to the Act.

The role of DCDs

- The role of DCDs overlap with that of home guards in some ways, however, in Delhi, Directorate of Civil Defence was carved out of the Directorate of Home Guards through a 2009 notification issued by the then Lieutenant Governor.
- DCDs are not authorised to issue challans for violations of Covid-19 norms. DMs and SDMs are authorised to issue such challans, and in many cases they get the DCD personnel to prosecute people.

PEOPLE ARE FREE TO CHOOSE RELIGION: SUPREME COURT

Context:

The Supreme Court said people are free to choose their own religion, even as it lashed out at a "very, very harmful kind" of "public interest" petition claiming there is mass religious conversion happening "by hook or by crook" across the country.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Fundamental Rights)

Dimensions of the Article:

1. Highlights of the Recent Supreme Court Judgement
2. What is Religious Conversion?
3. Reasons for Religious Conversions
4. What is "Love jihad"?
5. Why do the state governments want to enact the law to curb it?
6. Freedom of Religion in our Constitution
7. Views of the Supreme Court on Marriage and Conversion

Highlights of the Recent Supreme Court Judgement

- A person above 18 years can choose his/her religion as Article 25 of the Constitution provides for the right to freely profess, practise and propagate religion, subject to public order, morality and health.
- Courts cannot sit in judgment of a person's choice of religion or life partner.
- Religious faith is a part of the fundamental right to privacy.

What is Religious Conversion?

- Religious conversion has always been a very sensitive social issue not only because of the reasons that it has psychological concerns of religious faith but also because it has wider socio-legal and socio-political implications.
- Religious conversion means adopting a new religion, a religion that is different from his previous religion or religion by his birth.

There are various reasons for which people convert to different religion:

1. Conversion by free will or free choice
2. Conversion due to change of beliefs
3. Conversion for convenience
4. Conversion due to marriage
5. Conversion by force

Reasons for Religious Conversions

Religious Conversion is a multifaceted and multi-dimensional phenomenon. Indian society is a pluralist and heterogeneous society with the multiplicity of races, religions, cultures, castes and languages etc. Religious Conversion has always been a problematic issue in India.

The reasons for religious conversions in India can be–

1. Rigid Hindu caste system
2. Polygamy prevailing in Islam
3. To get rid of matrimonial ties.
4. To get reservation benefits.

What is "Love jihad"?

- The term "love jihad" was first mentioned in around 2007 in Kerala and neighbouring Karnataka state, but it became part of the public discourse in 2009.
- Love Jihad is an unsubstantiated campaign defined as an activity under which Muslim men target women belonging to non-Muslim communities for conversion to Islam by feigning love.

Why do the state governments want to enact the law to curb it?

- The state governments have argued that it is the duty of the state to protect the dignity of women from the men, by concealing their identities and operating secretly.
- The UP government referred to a recent order of the Allahabad High Court which said religious conversion for the sake of marriage is unacceptable.
- The Allahabad court in its order in the Salamat Ansari-Priyanka Kharwar case (Allahabad HC) 2020, observed that conversion "just for the purpose of marriage", and where the religious belief of the party involved is not a factor, is unacceptable.
- The Allahabad High Court also ruled that the freedom to live with a person of one's choice is intrinsic to the fundamental right to life and personal liberty under Article 21. Hence, the order recognised that our society rested on the foundations of individual dignity, that a person's freedom is not conditional on the caste, creed or religion that her partner might claim to profess, and that every person had an equal dominion over their own senses of conscience.

Freedom of Religion in our Constitution

Right to freedom of faith is not a conferred right but a natural entitlement of every human being. In fact, the law does not assign it but it asserts, protect and insurers its entitlement. Indian Society has nourished and nurtured almost all the established religion of the world like Hinduism, Islam, Christianity, Buddhism, Jainism, Sikhism etc. from its time immemorial.

1. Article 25: All persons are equally entitled to "freedom of conscience and the right freely to profess, practise and propagate religion." subject to public order, morality and health, and to the other fundamental rights guaranteed in the Constitution.
2. Article 26: gives every religious group a right to establish and maintain institutions for religious and charitable purposes, manage its affairs, properties as per the law. This guarantee is available to only Citizens of India and not to aliens.
3. Article 27: This Article mandates that no citizen would be compelled by the state to pay any taxes for promotion or maintenance of particular religion or religious denomination.
4. Article 28: This Article mandates that No religious instruction would be imparted in the state-funded educational institutions.

Views of the Supreme Court on Marriage and Conversion

- According to the Supreme Court – the choice of a life partner, whether by marriage or outside it, is part of an individual's "personhood and identity".
- India is a "free and democratic country" and any interference by the State in an adult's right to love and marry has a "chilling effect" on freedoms.
- The absolute right of an individual to choose a life partner is not in the least affected by matters of faith.

NAGALAND FORMS PANEL ON LISTING INDIGENOUS INHABITANTS

Context:

The Nagaland government has decided to form a joint consultative committee (JCC) involving all traditional tribal bodies and, civil society organisations for taking an exercise to register the State's indigenous inhabitants.

Recently, an apex body of Naga tribes, Naga Hoho had cautioned the Nagaland Government with respect to preparation of the Register of Indigenous Inhabitants of Nagaland (RIIN), seen as a variant of Assam's National Register of Citizens.

Relevance:

GS-II: Polity and Governance (Governance and Government Policies, Issues Arising Out of Design & Implementation of Policies, Issues Related to Population)

Dimensions of the Article:

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1. What is the Register of Indigenous Inhabitants of Nagaland (RIIN)?
2. Who are the Nagas?
3. Concern of the Nagas

What is the Register of Indigenous Inhabitants of Nagaland (RIIN)?

- The Register of Indigenous Inhabitants of Nagaland (RIIN) is a register that aims to prepare a master list of all indigenous peoples and check the issuance of fake indigenous inhabitant certificates.
- **The RIIN exercise was launched in 2019 with the objective of preventing outsiders from obtaining fake indigenous certificates for seeking jobs and benefits of government schemes, however, the exercise was**

suspended following protests from community-based and extremist organizations. Since then, the Nagaland government has been trying to revive the RIIN exercise.

- The RIIN will be prepared after an extensive survey with the help of a village-wise and ward-wise list of indigenous inhabitants based on official records.
- No fresh indigenous inhabitant certificate will be issued after the RIIN is completed except for children born to the State's indigenous inhabitants who will be issued indigenous certificates along with birth certificates.
- The RIIN will also be integrated with the online system for Inner-Line Permit – ILP (the ILP is a temporary document that non-inhabitants are required to possess for entry into and travel in Nagaland).
- The entire exercise will be monitored by the Commissioner of Nagaland. In addition, the state government will designate nodal officers of the rank of a Secretary to the state government.

Who are the Nagas?

- The Nagas are not a single tribe, but an ethnic community, belonging to Indo-Mongoloid Family, that comprises several tribes who live in the state of Nagaland and its neighbourhood. There are also Naga groups in Myanmar.
- There are nineteen major Naga tribes, namely, Aos, Angamis, Changs, Chakesang, Kabuis, Kacharis, Khain-Mangas, Konyaks, Kukis, Lothas (Lothas), Maos, Mikirs, Phoms, Rengmas, Sangtams, Semas, Tankhuls, Yamchumgar and Zeeliang.

Concern of the Nagas

- If RIIN implemented the identification process with 1st December, 1963 (the day Nagaland attained statehood) as the cut-off date for determining the permanent residents of the State, it is likely to exclude Nagas who have come from beyond the boundaries of Nagaland.
- Naga tribes living in Assam, Manipur and Arunachal Pradesh in India and in Myanmar have a legitimate claim to their ancestral homeland.
- There are thousands of Nagas who have bought lands, built houses and settled down in Nagaland for several decades.
- In the absence of records such as land pattas, house taxes paid or enrolment in electoral rolls prior to 1st December, 1963 many procedural anomalies will crop up even within the so-called pure Nagas of Nagaland.
- The non-indigenous Nagas could be treated as "illegal immigrants" and their lands and property confiscated. The idea of the Nagas as a people to live together and their aspiration to live with self-determination will be irreparably damaged.

ECI CANNOT BE A SUPER GOVERNMENT

Context:

Elections bring the Election Commission of India (ECI) into sharp focus as this constitutional body superintends, directs and controls the conduct of elections.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Constitutional Bodies)

Mains Questions:

Is the Election Commission of India (ECI) free enough to play fair? To what extent does the Model Code of Conduct empower the ECI to enable fair elections? (15 marks)

Dimensions of the Article:

1. About Election Commission of India
2. Structure of the Election Commission
3. Recent Supreme Court Judgement on ECI
4. Model Code of Conduct
5. Transfer of officials
6. Where the Model code and Article 324 lacks?
7. Administrative moves of Governments before the Elections

About Election Commission of India

- The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India.
- The body administers elections to the Lok Sabha, Rajya Sabha, and State Legislative Assemblies in India, and the offices of the President and Vice President in the country.
- Part XV of the Indian constitution deals with elections, and establishes a commission for these matters.
- The Election Commission was established in accordance with the Constitution on 25th January 1950.
- Article 324 to 329 of the constitution deals with powers, function, tenure, eligibility, etc., of the commission and the member.

Structure of the Election Commission

- Originally the commission had only one election commissioner but after the Election Commissioner Amendment Act 1989, it has been made a multi-member body.
- The commission consists of one Chief Election Commissioner and two Election Commissioners.
- The secretariat of the commission is located in New Delhi.
- At the state level election commission is helped by Chief Electoral Officer who is an IAS rank Officer.
- The President appoints Chief Election Commissioner and Election Commissioners.
- They have a fixed tenure of six years, or up to the age of 65 years, whichever is earlier.
- They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.
- The Chief Election Commissioner can be removed from office only through a process of removal similar to that of a Supreme Court judge for by Parliament.

Recent Supreme Court Judgement on ECI

- The Supreme Court said that entrusting additional charge of State Election Commissioner to a government official resulted in mockery of the Constitution, and ordered the Goa government to appoint an independent election commissioner.
- The Bench held that people holding public office could not be appointed Election Commissioners and directed States to comply with the constitutional scheme of independent and fair functioning of election commissions. It said the independence of the panels could not be compromised.

Supreme Court on the Powers of the ECI

- The Supreme Court held in Mohinder Singh Gill vs Chief Election Commissioner (AIR 1978 SC 851) that Article 324 contains plenary powers to ensure free and fair elections and these are vested in the ECI which can take all necessary steps to achieve this constitutional object.
- All subsequent decisions of the Supreme Court reaffirmed the decision in the Mohinder Singh Gill case and thus the ECI was fortified by these court decisions in taking tough measures.

Model Code of Conduct

- The Model Code of Conduct (MCC) issued by the ECI is a set of guidelines meant for political parties, candidates and governments to adhere to during an election. This code is based on consensus among political parties.
- There is absolutely no doubt that elections need to be properly and effectively regulated. The Constitution has clothed the ECI with enough powers to do that. Thus, the code has been issued in exercise of its powers under Article 324.
- Besides the code, the ECI issues from time-to-time directions, instructions and clarifications on a host of issues which crop up in the course of an election.
- The model code is observed by all stakeholders for fear of action by the ECI.
- However, there exists a considerable amount of confusion about the extent and nature of the powers which are available to the ECI in enforcing the code as well as its other decisions in relation to an election.

Evolution of the MCC

- The origins of the MCC lie in the Assembly elections of Kerala in 1960, when the State administration prepared a 'Code of Conduct' for political actors.
- Subsequently, in the Lok Sabha elections in 1962, the ECI circulated the code to all recognised political parties and State governments and it was wholeheartedly followed.
- It was in 1991 after repeated flouting of the election norms and continued corruption, the EC decided to enforce the MCC more strictly.

Is the model code of conduct legal in nature?

- **Since it is a code of conduct framed on the basis of a consensus among political parties, it has not been given any legal backing.**
- Certain provisions of the MCC may be enforced through invoking corresponding provisions in other statutes such as the Indian Penal Code 1860, Code of Criminal Procedure 1973, and Representation of the People Act 1951.
- Although a committee of Parliament recommended that the code should be made a part of the Representation of the People Act 1951, the ECI did not agree to it on the ground that once it becomes a part of law, all matters connected with the enforcement of the code will be taken to court, which would delay elections.
- The position taken by the ECI is sound from a practical point of view. But then the question about the enforceability of the code remains unresolved.
- The main issue is that, when the code is legally not enforceable, how can the ECI resort to a punitive action such as withdrawal of recognition?

Transfer of officials

- One issue relates to the abrupt transfer of senior officials working under State governments by an order of the commission.

- The ECI apparently acts on such reports and orders the transfer on the assumption that the presence of those officials will adversely affect the free and fair election in that State. Transfer of an official is within the exclusive jurisdiction of the government.
- It is actually not clear whether the ECI can transfer a State government official in exercise of the general powers under Article 324 or under the model code.

Where the Model code and Article 324 lacks?

- The code does not say what the ECI can do; it contains only guidelines for the candidates, political parties and the governments.
- Further, Article 324 does not confer untrammelled powers on the ECI to do anything in connection with the elections.
- If transfer of officials is a power which the ECI can exercise without the concurrence of the State governments, the whole State administration could come to a grinding halt.
- The ECI may transfer even the Chief Secretary or the head of the police force in the State abruptly.
- In Mohinder Singh Gill's case (supra), the Court had made it abundantly clear that the ECI can draw power from Article 324 only when no law exists which governs a particular matter. It means that the ECI is bound to act in accordance with the law in force.
- Transfer of officials, etc is governed by rules made under Article 309 of the Constitution which cannot be bypassed by the ECI under the purported exercise of power conferred by Article 324.
- Further, to assume that a police officer or a civil servant will be able to swing the election in favour of the ruling party is extremely unrealistic and naive. It reflects in a way the ECI's lack of confidence in the efficacy of politicians' campaigns.

Administrative moves of Governments before the Elections

- Another issue relates to the ECI's intervention in the administrative decisions of a State government or even the union government.
- According to the model code, Ministers cannot announce any financial grants in any form, make any promise of construction of roads, provision of drinking water facilities, etc or make any ad hoc appointments in the government. departments or public undertakings.
- These are the core guidelines relating to the government. But in reality, no government is allowed by the ECI to take any action, administrative or otherwise, if the ECI believes that such actions or decisions will affect free and fair elections.
- The Supreme Court had in S. Subramaniam Balaji vs Govt. of T. Nadu & Ors (2013) held that the distribution of colour TVs, computers, cycles, goats, cows, etc, done or promised by the government is in the nature of welfare measures and is in accordance with the directive principles of state policy, and therefore it is permissible during an election.
- Representation of the People Act, 1951 says that declaration of a public policy or the exercise of a legal right will not be regarded as interfering with the free exercise of the electoral right.

AN OBITUARY FOR THE IP APPELLATE BOARD

Context:

- The government has issued an ordinance which does away with certain appellate tribunals and transfers their functions to other existing judicial bodies.

- The Intellectual Property Appellate Board (IPAB), India's specialist tribunal for determining disputes relating to intellectual property (IP) rights, is one of the tribunals abolished by the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021.
- Recently, the government also introduced a bill in the Lok Sabha to abolish some tribunals where the public at large is not litigant. However, since the bill could not get parliamentary nod, an ordinance was issued.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Quasi-Judicial Bodies, Government Policies and Interventions)

Mains Questions:

Where does India stand on protection of Intellectual Property? The abolition of Intellectual Property Appellate Board (IPAB) signals a missed opportunity to develop the home-grown jurisprudence on patent laws. Discuss. (15 Marks)

Dimensions of the Article:

1. What are Intellectual property rights (IPR)?
2. India and IPR
3. National IPR Policy
4. About the IPAB
5. Troubled life of the IPAB
6. Trade-Related Aspects of the Intellectual Property Rights (TRIPS)
7. Conclusion: Missed opportunity

What are Intellectual property rights (IPR)?

- Intellectual property rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.
- These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.
- The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

Intellectual property rights are customarily divided into two main areas:

1. Copyright and rights related to copyright:
   - The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author.
2. Industrial property:
   - Industrial property can be divided into two main areas:
     1. **Protection of distinctive signs:** In particular trademarks and geographical indications.

- Trademarks distinguish the goods or services of one undertaking from those of other undertakings.
- Geographical Indications (GIs) identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin.
- The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services.
- The protection may last indefinitely, provided the sign in question continues to be distinctive.

2. **Industrial designs and trade secrets:** Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets.

India and IPR

- India is a member of the World Trade Organisation and committed to the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement).
- India is also a member of World Intellectual Property Organization, a body responsible for the promotion of the protection of intellectual property rights throughout the world.
- India is also a member of the following important WIPO-administered International Treaties and Conventions relating to IPRs.

National IPR Policy

- The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the country.
- Its clarion call is "Creative India; Innovative India".
- It encompasses and brings to a single platform all IPRs, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies.
- It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.
- Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce, Government of India, has been appointed as the nodal department to coordinate, guide and oversee the implementation and future development of IPRs in India.

About the IPAB

- The Trade Marks Act, 1999(Act), provides for the establishment of an Appellate Board to be known as the Intellectual Property Appellate Board (IPAB).
- IPAB was constituted by a Gazette notification of the Ministry of Commerce and Industry to hear appeals against the decisions of the Registrar under the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999. (Its jurisdiction was later extended to hear patent cases after the Patents (Amendment) Act of 2002.)

Significance of the IPAB

- The functioning of the IPAB is critical for the innovation ecosystem.
- Every patent granted by the Patent Office is a potential subject matter in appeal before the IPAB.
- An unjustified patent grant at the Patent Office, by error or oversight, can only be corrected in appeal.

- While we know the number of cases filed and disposed, we will never know the number of unjustified patents that went unquestioned for lack of an effective appellate mechanism.

Troubled life of the IPAB

- Ever since the Intellectual Property Appellate Board (IPAB) was established under the Trade Marks Act of 1999, it looked like an incomplete quick-fix for the problems in the innovation system.
- Historically, appeals from the Intellectual Property Office (IPO), rectification and revocation applications were heard by the various High Courts. However, the Patents (Amendment) Act of 2002 divested these powers from the High Courts and extended it to the IPAB.
- Since its inception, the IPAB has been involved in controversies and has been the subject matter of judicial review before the various High Courts.
- After remaining headless for almost two years, in 2018, the IPAB was given a chairperson and yet, there was a substantial delay in the start of hearing of patent cases due to a technical reason.
- One of the former chairpersons had publicly raised concerns regarding the judicial and institutional independence of the IPAB, and called for closing it.
- Not only was the IPAB understaffed, with its administrative staff often being on deputation, it was also underpowered, at times quite literally.
- The IPAB's jurisdiction of cases was split between trademarks, patents, copyright, and geographical indication, where the predominant business pertained to trademarks. Thus, the workload of the IPAB was typically split between trademarks and patents with the former consuming much of the time.
- Not only did the IPAB juggle its time with the different forms of IP, but it also had sittings in five different cities, with just one chairperson who had to fly between them at times.

Trade-Related Aspects of the Intellectual Property Rights (TRIPS)

- The Trade-Related Aspects of the Intellectual Property Rights (TRIPS) is an international agreement on intellectual property rights.
- It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions and impediments to international trade.
- The obligations under the TRIPS Agreement relate to provision of minimum standard of protection within the member countries legal systems and practices.

The Agreement covers most forms of intellectual property including

1. patents,
2. copyright,
3. trademarks,
4. geographical indications,
5. industrial designs,
6. trade secrets, &
7. exclusionary rights over new plant varieties.

It came into force in 1995 & is binding on all members of the World Trade Organization (WTO).

The basic obligation in the area of patents is that, the invention in all branches of technology whether products or processes shall be patentable if they meet the three tests of being new involving an inventive step and being capable of industrial application.

Conclusion: Missed opportunity

The tenure of the IPAB will be remembered as a missed opportunity to develop the home-grown jurisprudence on patent law that is much lacking in India.

India stands as a shining example for what it has done legislatively in patent law offering the world a host of 'TRIPS-compliant' flexibilities in its statute- Example:

1. the retraction of product patents for pharmaceuticals and chemicals between 1970 and 2005, the anti-evergreening provisions; or
2. the robust compulsory licensing regime.

However, when it comes to developing a jurisprudence around these provisions it has failed. – Barring a few bright spots, there has been a reluctance to extend the flexibilities in the Patents Act through judicial interpretation that expands the law.

ORDINANCE ROUTE IS BAD, REPROMULGATION WORSE

Context:

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

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Governance and Government Policies, Issues Arising Out of Design & Implementation of Policies)

Mains Questions:

Critically analyse the practice of issuing ordinances to make law and then re-issuing ordinances without getting them ratified by Parliament. (10 Marks)

Dimensions of the Article:

1. Law Making Power under Indian Constitution
2. Limitations on the power of making Ordinance
3. Ordinances issued since the 1950s
4. Cooper's case (1970)
5. Repromulgation of ordinances
6. 2017 judgement

Law Making Power under Indian Constitution

- The constitution provides legislative powers to the Parliament and the State legislatures.
- It provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule.
- However, the constitution vests law-making powers in the executive that can be exercised in exceptional circumstances.
- Accordingly, Ordinance making power has been provided to both the President and the Governors of the states.

Ordinance making power of the President

- Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament.
- Ordinances have the same force and effect as an act of the Parliament but are in the nature of temporary laws.

The History behind it

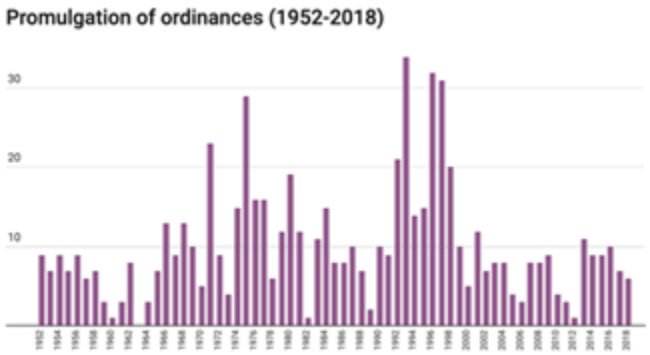
- This power was first provided for in the Government of India Act, 1935 to allow the then governor-general of India to promulgate ordinances in such circumstances that made it necessary for him to take immediate action.
- Constituent Assembly debates –
- whether the executive should have the power to promulgate ordinances that would have the force of law.
- Some argued that ordinances should be used only in the case of emergencies.
- Others argued that law-making powers should rest only with the legislature, and not the executive.
- As a middle ground limits have been provided in the constitution on the ordinance making powers of the President and the Governor.

Limitations on the power of making Ordinance

- It is not a parallel power of legislation.
- It can only be promulgated when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session.
- ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament.
- The constitution provides that ordinances are required to be approved by parliament within six weeks of the commencement of the next session of parliament. If they are not passed within this time frame, they cease to be in force.
- Further, the constitution also states that there should not be a gap of more than six months between two sessions of parliament.
- The President can also withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power.
- The constitution cannot be amended by issuing an ordinance.

Ordinances issued since the 1950s

In the 1950s, central ordinances were issued at an average of 7.1 per year. The number peaked in the 1990s at 19.6 per year and declined to 7.9 per year in the 2010s. The last couple of years has seen a spike, 16 in 2019, 15 in 2020, and four till now this year.



Cooper's case (1970)

- President can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- In this case, the Supreme Court ruled that the President's satisfaction can be questioned in a court on the ground of malafide.
- Thus, the intent of proroguing the house should not be to bypass the parliamentary decision and thereby circumventing the authority of the Parliament.
- Thus, the President's satisfaction was made justiciable by the 44th constitutional amendment act of 1978.

Repromulgation of ordinances

- In D.C. Wadhwa case Supreme court highlighted that between 1967– 1981 the Governor of Bihar promulgated 256 ordinances and all these were kept in force for periods ranging from one to fourteen years by repromulgation from time to time.
- The court ruled that successive repromulgation of ordinances with the same text without any attempt to get the bills passed by the assembly would amount to the violation of the Constitution and the ordinance so promulgated is liable to be struck down.
- It held that the exceptional power of law-making through ordinance cannot be used as a substitute for the legislative power of the state legislature.
- A five-judge Constitution Bench of the Supreme Court, in 1986, ruled that repromulgation of ordinances was contrary to the Constitutional scheme.
- Further, the court held that the strategy of repromulgation would be repugnant to the constitutional scheme as it would enable the Executive to transgress its constitutional limitation in the matter of lawmaking.
- However, despite the judgement repromulgation route was resorted to by the governments.
- For example, in 2013 and 2014, the Securities Laws (Amendment) Ordinance was promulgated three times. Similarly, an ordinance to amend the Land Acquisition Act was issued in December 2014 and repromulgated twice – in April and May 2015.

2017 judgement

- A seven-judge Constitution Bench declared this practice to be unconstitutional.
- The judgment concluded that "Re-promulgation of ordinances is a fraud on the Constitution and a subversion of democratic legislative processes.

- Ignoring this judgement, the central government has promulgated the ordinance that establishes a commission for air quality management in the National Capital Region, or the Commission for Air Quality Management in National Capital Region and Adjoining Areas Ordinance, 2020.

WORLD PRESS FREEDOM INDEX 2021: INDIA 142ND

Context:

The World Press Freedom Index 2021 placed India at 142nd rank yet again out of 180 nations, same as the ranking in 2020.

Relevance:

GS-II: International Relations (Important International Institutions and their reports), GS-II: Polity and Governance (Freedom of Speech)

Dimensions of the Article:

1. What is the World Press Freedom Index?
2. Highlights of the Report
3. Highlights of the report specific to India
4. Freedom of Press in India

What is the World Press Freedom Index?

- World Press Freedom Index is an index published each year by the international journalism (non-profit body), Reporters Without Borders [also called Reporters Sans Frontieres (RSF)].
- RSF is an independent NGO with consultative status with the United Nations, UNESCO, the Council of Europe and the International Organization of the Francophonie (OIF).
- The World Press Freedom Index ranks countries and regions according to the level of freedom available to journalists.
- It is NOT an indicator on the quality of journalism.
- The parameters used in the World Press Freedom Index include pluralism, media independence, media environment and self-censorship, legislative framework, transparency, and the quality of the infrastructure that supports the production of news and information.

Highlights of the Report

- Journalism is completely or partly blocked in 73% of the 180 countries.
- Only 12, i.e., 7% of the Indexed 180 countries can claim to offer a favorable environment for journalism.
- The Report has raised concern about the larger Asia-Pacific region as several nations in an attempt to curb freedom of press have in place draconian laws on 'sedition,' 'state secrets' and 'national security'.
- Norway is Ranked 1st for the fifth year in the row, followed by Finland and Denmark.
- China is ranked 177th and hence is just above the bottom 3 – Turkmenistan at 178, North Korea at 179 and Eritrea at the bottom.

Highlights of the report specific to India

- India was ranked 142 in the year 2020 as well, thus showing no improvement in the environment it provides to its journalists.
- India has fared poorly amongst its neighbours with Nepal at 106, Sri Lanka at 127 and Bhutan at 65. Pakistan is a close follower at 145th spot.
- India is among the countries classified "bad" for journalism and is termed as one of the most dangerous countries for journalists trying to do their jobs properly.
- The report has blamed an environment of intimidation created by the nationalist government for any critical journalist often brandishing them as anti-state or anti national.
- The situation is worrying in Kashmir, where incidents of harassment of reporters by police and paramilitaries have surfaced.

Reasons Behind India's Poor Performance

- Journalists are exposed to every kind of attack, including police violence against reporters, ambushes by political activists, and reprisals instigated by criminal groups or corrupt local officials.
- The journalists have often been subjected to coordinated hate campaigns on social networks. Such campaigns are particularly violent when the targets are women.

Freedom of Press in India

- Article 19, said to be the foundation of Democratic rule in India, guarantees freedom of speech and expression to Indian citizens only.
- These freedoms are not absolute and they can all be curtailed by imposing some reasonable restriction.
- Reasonable restrictions can be imposed (imposed only on the grounds mentioned in the constitution) only by authority of law and NOT by executive action alone.

Freedom of Speech and Expression actually covers:

1. Right to Information
2. Freedom of press
3. Right to privacy
4. Right to hoist the national flag
5. Right to demonstration or picketing, but not right to strike
6. Rights to Not Speak

Status of Freedom of Press

- Unlike several countries such as USA, there is no separate provision guaranteeing the freedom of press, but the Supreme Court in Sakaal paper vs. Union of India case, has held that the freedom of press is included in the "freedom of expression" under Article 19(1) (a).
- In Brij Bhushan case, SC clarified that there is no prior censorship on the media, i.e., no prior permission is needed.
- 44th amendment, 1976 introduced Article 361A that provides protection to a person publishing proceeding of the Parliament and State Legislatures.

In the Indian Express case, it was clarified that the Freedom of Press includes:

1. Right to Information
2. Right to Publish

3. Right to Circulate

- In 1997, the Prasar Bharti Act grants autonomy to Doordarshan and All India Radio (which means it can criticize the state policies and actions).
- In 1966, Press Council of India was created to regulate the print media.
- The National Commission to Review the Working of Constitution (NCRWC) recommended that Freedom of Press be explicitly granted and not be left implied in the Freedom of Speech.

GREEN AND RAW: ON 'TRIBUNALISATION' OF JUSTICE

Context:

Recently the appointment of former IAS officer, Girija Vaidyanathan, as Expert Member in the Southern Bench of the NGT, was challenged in the Madras High Court. Even though the court initially granted an interim stay on her appointment, it ruled that she was indeed eligible going by the criteria in the NGT Act.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Quasi-Judicial Bodies, Government Policies and Interventions)

Dimensions of the Article:

1. National Green Tribunal (NGT)
2. Structure of National Green Tribunal
3. Powers of NGT
4. Challenges related to the NGT
5. What the NGT mandates as criteria for appointment?
6. Need for Tribunals
7. Issues with tribunalization

National Green Tribunal (NGT)

- The NGT was established on October 18, 2010 under the National Green Tribunal Act 2010, passed by the Central Government.
- National Green Tribunal Act, 2010 is an Act of the Parliament of India which enables creation of a special tribunal to handle the expeditious disposal of the cases pertaining to environmental issues.
- NGT Act draws inspiration from the India's constitutional provision of (Constitution of India/Part III) Article 21 Protection of life and personal liberty, which assures the citizens of India the right to a healthy environment.
- The stated objective of the Central Government was to provide a specialized forum for effective and speedy disposal of cases pertaining to environment protection, conservation of forests and for seeking compensation for damages caused to people or property due to violation of environmental laws or conditions specified while granting permissions.

Structure of National Green Tribunal

- Following the enactment of the said law, the Principal Bench of the NGT has been established in the National Capital – New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone

Bench), Chennai (Southern Bench) and Kolkata (Eastern Bench). Each Bench has a specified geographical jurisdiction covering several States in a region.

- The Chairperson of the NGT is a retired Judge of the Supreme Court, Head Quartered in Delhi.
- Other Judicial members are retired Judges of High Courts. Each bench of the NGT will comprise of at least one Judicial Member and one Expert Member.
- Expert members should have a professional qualification and a minimum of 15 years' experience in the field of environment/forest conservation and related subjects.

Powers of NGT

The NGT has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act. These include the following:

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The Biological Diversity Act, 2002.

This means that any violations pertaining ONLY to these laws, or any order / decision taken by the Government under these laws can be challenged before the NGT.

Importantly, the NGT has NOT been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation etc.

Challenges related to the NGT:

- Two important acts – Wildlife (Protection) Act, 1972 and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been kept out of NGT's jurisdiction. This restricts the jurisdiction area of NGT and at times hampers its functioning as crucial forest rights issue is linked directly to environment.
- Decisions of NGT have also been criticised and challenged due to their repercussions on economic growth and development.
- The absence of a formula-based mechanism in determining the compensation has also brought criticism to the tribunal.
- The lack of human and financial resources has led to high pendency of cases – which undermines NGT's very objective of disposal of appeals within 6 months.

What the NGT mandates as criteria for appointment?

The Act spells out two kinds of criteria — and a candidate has to fulfil only one of them.

1. One based on qualifications and practical experience: A masters' or a doctorate in science, engineering or technology, with 15 years' experience in the relevant field, including five in environment and forests in a national level institution, is needed. The fields include pollution control, hazardous substance management and forest conservation.

2. Second one based upon the administrative experience in the field: The administrative experience criterion is shorn of detail, and merely stipulates 15 years' experience, of which five should have been in "dealing with environmental matters" in either the Centre or the State or any reputed institution.

Need for Tribunals

Flexibility:

Administrative adjudication has brought about flexibility and adaptability in the judicial as they are not restrained by rigid rules of procedure and can remain in tune with the varying phases of social and economic life.

Less Expensive:

They are set up to be less formal, less expensive, and a faster way to resolve disputes than by using the traditional court system.

Relief to Courts:

The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with numerous suits. Expert knowledge on a specialized subject through specialism, which reduces the time needed and thus costs

- So, we can say that the 'tribunalisation' of justice is driven by the recognition that it would be cost-effective, accessible and give scope for utilising expertise in the respective fields.
- Tribunals were not part of the original constitution, it was incorporated in the Indian Constitution by 42nd Amendment Act, 1976.
  1. Article 323-A deals with Administrative Tribunals.
  2. Article 323-B deals with tribunals for other matters.

Issues with tribunalization:

1. **Appeal:** Administrative tribunals were originally set up to provide specialized justice delivery and to reduce the burden of caseloads on regular courts. However, appeals from tribunals have inevitably managed to enter the mainstream judicial system.
2. **High Pendency:** Many tribunals also do not have adequate infrastructure to work smoothly and perform the functions originally envisioned leading to high pendency rates thus proving unfruitful to deliver quick justice.
3. **Appointments:** Appointments to tribunals are usually under the control of the executive. Not only does the government identify and appoint the members of the tribunals, but it also determines and makes appropriate staffing hires. This is problematic because often there is a lack of understanding of the staffing requirements in tribunals.
4. There is a **lack of information** available on the functioning of tribunals. Websites are routinely non-existent, unresponsive or not updated.
5. **Accessibility is low** due to scant geographic availability therefore justice becomes expensive and difficult.
6. **Against the principle of separation of powers:** Tribunalisation is seen as encroachment of judicial branch by the government.

INDIA RANKED 49TH IN CGGI

Context:

India has been ranked 49th in the Chandler Good Government Index (CGGI), which classifies 104 countries in terms of government capabilities and outcomes.

Relevance:

GS-II: Polity and Governance (Government Policies and Interventions for Transparency and Good governance)

Dimensions of the Article:

1. What is Governance?
2. Understanding Good Governance
3. Strategies for good governance
4. What is the Chandler Good Government Index (CGGI)
5. Highlights of the CGGI

What is Governance?

In 1993, the World Bank defined governance as the method through which power is exercised in the management of a country's political, economic and social resources for development.

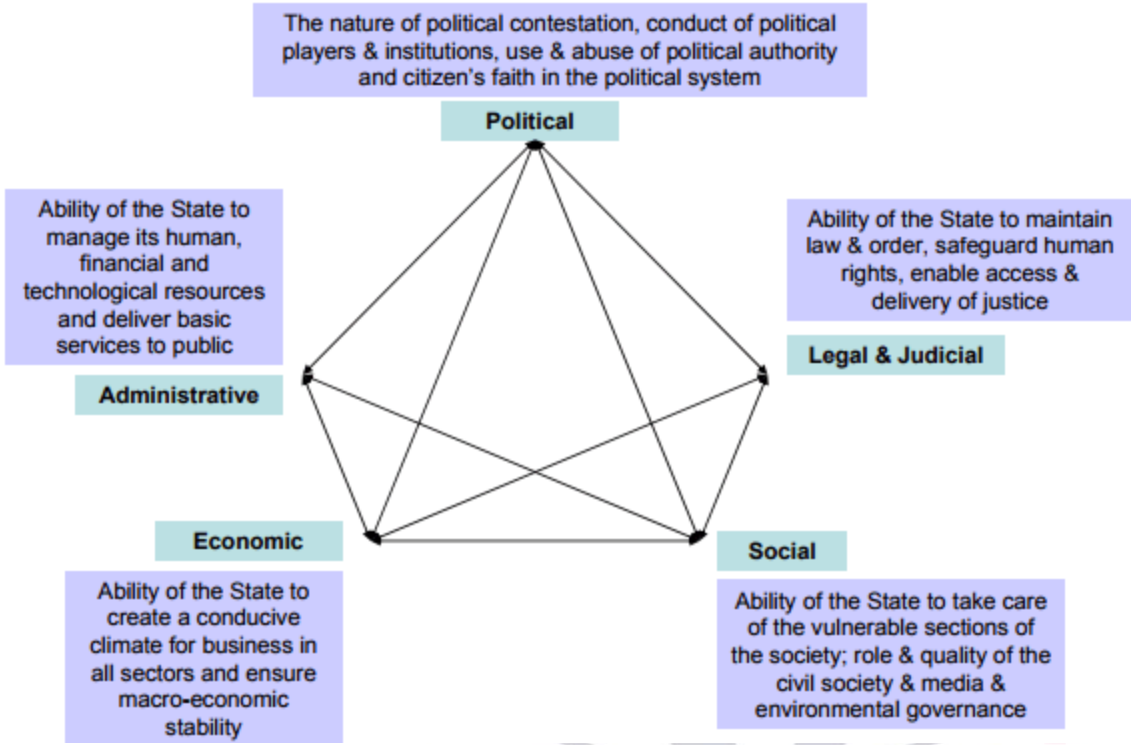
In simple words, **Governance is the process and institutions through which decisions are made and authority in a country is exercised.**

- Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance.
- Thus, governance focuses on the formal and informal actors and institutions involved in decision-making and implementing those decisions.

Government is one of the key actors in governance. Other actors may include political actors and institutions, interest groups, civil society, media, non-governmental and transnational organizations. The other actors involved in governance vary depending on the level of government.

Typically, the stakeholders of governance at national level can be categorised into three broad categories –

1. **State –** includes the different organs of then government (Legislature, Judiciary and Executive) and their instrumentalities, independent accountability mechanisms etc. It also consists of different segments of actors (elected representatives, political executive, bureaucracy/civil servants at different levels etc.)
2. **Market –** includes the private sector – organised as well as unorganised – that includes business firms ranging from large corporate houses to small scale industries/ establishments.
3. **Civil Society –** is the most diverse and typically includes all groups not included in (a) or (b). It includes Non-Governmental Organizations (NGOs), Voluntary Organizations (VOs), media organisations/ associations, trade unions, religious groups, pressure groups etc.



Understanding Good Governance

Governance' by itself is a neutral term while `Good Governance' implies positive attributes and values associated with the quality of governance. Good governance is a dynamic concept and there is much subjectivity involved in defining the aspects of good governance.

United Nations Development Programme (UNDP) recognizes eight core characteristics of good governance:

1	Participation:	Participation of all section of society is cornerstone of good governance. Participatory governance provides opportunities for citizens to take part in decision making, implementation and monitoring of government activities.
2	Consensus oriented	Good governance requires mediation of the different interests in society to reach a broad consensus on o what is in the best interest of the whole community and o how this can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development.
3	Rule of Law	Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities and vulnerable sections of the society.
4	Transparent	Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available in easily understandable forms and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms and media. For example, in India the

		Right to Information (RTI) Act has been a powerful instrument in the hands of people to ensure transparency in the decision-making process of executive.
5	Accountable	Accountability is the acknowledgment and assumption of responsibility for actions, products, decisions, and policies. The components of accountability are answerability, sanction, redress and system improvement. Accountability cannot be enforced without transparency and the rule of law.
6	Responsive	Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe. Redressal of citizen grievance, citizen orientation, citizen friendliness and timely delivery of services are key component of responsive governance.
7	Effective and Efficient	Good governance means that processes and institutions produce results into the optimum use of resources at their disposal. Thus it also covers the sustainable use of natural resources and the protection of the environment.
8	Equitable and Inclusive	A society's wellbeing depends on ensuring that all its members feel they have a stake in it and do not feel excluded from the mainstream of society. This requires all groups, particularly the most vulnerable, have opportunities to improve or maintain their well-being.

Strategies for good governance

1. Reorienting priorities of the state through appropriate investment in human needs
2. Provision of social safety nets for the poor and marginalized
3. Strengthening state institutions
4. Introducing appropriate reforms in the functioning of Parliament and increasing its effectiveness
5. Enhancing Civil Services capacity through appropriate reform measures
6. Forging new alliances with civil society
7. Evolving a new framework for government-business cooperation

What is the Chandler Good Government Index (CGGI)

- The Chandler Good Government (CGGI) Index measures 104 governments' effectiveness and capabilities in almost 90 per cent of the world's population.
- The index uses 34 indicators, which are organised into seven pillars: leadership and foresight; robust laws and policies; strong institutions; financial stewardship; attractive marketplace; global influence and reputation; and helping people rise.
- It taps over 50 publicly available global data sources such as the World Trade Organisation, United Nations and World Bank.

Highlights of the CGGI

- India has been ranked 49th amongst the 104 countries indexed.
- Finland came tops with 0.848 points ahead of Switzerland and Singapore.
- Venezuela was at the bottom of the log at 104, followed by Zimbabwe at 103 followed by Nigeria at 102.
- The report noted that countries that have done well under this pillar are all market economies with sound property rights and stable business regulations.

- It added that the ability to effectively tackle corruption is the indicator with the strongest correlation with overall good government rankings.

DELHI HC: FILL UP VACANT POST OF NCM CHAIRPERSON

Context:

- The Delhi High Court has directed the Centre to fill up the vacant posts of chairperson and five other members of the National Commission for Minorities (NCM) by July 31.
- The National Commission for Minorities (NCM) is now down to just one member. There is only one vice-chairperson, who is currently functioning in the Commission.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Statutory Bodies, Government Policies and Interventions), GS-II: Social Justice

Dimensions of the Article:

1. About National Commission for Minorities (NCM)
2. Formation of the National Commission for Minorities (NCM)
3. Functions of the NCM
4. Composition of the NCM
5. Constitutional Provisions

About National Commission for Minorities (NCM)

- The Union Government set up the National Commission for Minorities (NCM) under the National Commission for Minorities Act, 1992. Hence, the NCM is a **Statutory Body.**
- Six religious communities, viz; Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains have been notified in Gazette of India as minority communities by the Union Government all over India.
- The term "minority" is not defined in the Indian Constitution. However, the Constitution recognises religious and linguistic minorities – The NCM Act defines a minority as "a community notified as such by the Central government."
- The NCM adheres to the United Nations Declaration of 18 December 1992 which states that "States shall protect the existence of the National or Ethnic, Cultural, Religious and Linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity."

Formation of the National Commission for Minorities (NCM)

- In 1978, setting up of the Minorities Commission (MC) was envisaged in the Ministry of Home Affairs Resolution.
- In 1984, the MC was detached from the Ministry of Home Affairs and placed under the newly created Ministry of Welfare, which excluded linguistic minorities from the Commission's jurisdiction in 1988.
- In 1992, with the enactment of the NCM Act, 1992, the MC became a statutory body and was renamed as the NCM.
- In 1993, the first Statutory National Commission was set up and five religious communities viz the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities.
- In 2014, Jains were also notified as a minority community.

Functions of the NCM

1. Evaluate the progress of the development of Minorities under the Union and States.
2. Monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures.
3. Make recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments.
4. Look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities.
5. Cause studies to be undertaken into problems arising out of any discrimination against Minorities and recommend measures for their removal.
6. Conduct studies, research and analysis on the issues relating to socio-economic and educational development of Minorities.
7. Suggest appropriate measures in respect of any Minority to be undertaken by the Central Government or the State Governments.
8. Make periodical or special reports to the Central Government on any matter pertaining to Minorities and in particular the difficulties confronted by them.
9. Any other matter which may be referred to it by the Central Government.

Composition of the NCM

- The NCM is mandated to have seven members, including a chairperson and vice-chairperson, with a member each from the Muslim, Christian, Sikh, Buddhist, Parsi and Jain communities.
- Total of 7 persons to be nominated by the Central Government should be from amongst persons of eminence, ability and integrity. The Ministry for Minority Affairs recommends the names to the Prime Minister's Office.
- Each Member holds office for a period of three years from the date of assumption of office.

Constitutional Provisions

1. **Article 15 and 16:** Prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth. Citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the State, and prohibition in this regard of any discrimination on grounds of religion, race, caste, sex or place of birth.
2. **Article 25 (1), 26 and 28:** People's freedom of conscience and right to freely profess, practise and propagate religion. Right of every religious denomination or any section to establish and maintain institutions for religious and charitable purposes, manage its own religious affairs, and own and acquire property and administer it. People's freedom as to attendance at religious instruction or religious worship in educational institutions wholly maintained, recognized, or aided by the State.
3. **Article 29:** It provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. It grants protection to both religious minorities as well as linguistic minorities. However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as use of the word 'section of citizens' in the Article includes minorities as well as the majority.
4. **Article 30:** All minorities shall have the right to establish and administer educational institutions of their choice. The protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29).
5. **Article 350-B:** The 7th Constitutional (Amendment) Act 1956 inserted this article which provides for a Special Officer for Linguistic Minorities appointed by the President of India. It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.

PANCHAYATI RAJ: ARISE AND REJUVENATE THE THIRD LAYER OF GOVERNANCE

Context:

India commemorates the 12th National Panchayati Raj day on 24th April 2021

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Government Policies and Interventions for Transparency and Good Governance)

Mains Questions:

How did the Panchayati Raj come into existence? To what extent does an empowered Panchayati Raj institution facilitate good governance? (15 marks)

Dimensions of the Article:

1. History of the Panchayati Raj system / Local Governance
2. Various Committees regarding Panchayati Raj
3. Amendments that "made" the Local Government level
4. PESA Act of 1996
5. Issues and Challenges faced by the Panchayati Raj
6. Conclusion

History of the Panchayati Raj system / Local Governance

In Ancient History

- In the old Sanskrit scriptures, word 'Panchayatan' has been mentioned which means a group of five persons, including a spiritual man. Gradually the concept of the inclusion of a spiritual man in such groups vanished.
- In the Rigveda, there is a mention of Sabha, Samiti and Vidatha as local self-units. These were the democratic bodies at the local level. The king used to get the approval of these bodies regarding certain functions and decisions.
- There is a mention of village panchayats in Kautilya's Arthashastra. The town was referred to as Pur and its chief was the Nagarik. Local bodies were free from any royal interference.
- During the Mauryan and Post-Mauryan periods too, the headman, assisted by a council of elders, continued to play a prominent role in the village life.
- The system continued through the Gupta period, though there were certain changes in the nomenclature, as the district official was known as the vishya pati and the village headman was referred to as the grampati.

However, it is significant to note that there is no reference of women heading the panchayat or even participating as a member in the panchayat.

In Medieval History

- During the Sultanate period, the Sultans of Delhi divided their kingdom into provinces called 'Vilayat'.
- For the governance of a village, there were three important officials – Mukkaddam for administration, Patwari for collection of revenues, and Choudhrie for settling disputes with the help of the Panch.
- Casteism and feudalistic system of governance under the Mughal rule in the medieval period slowly eroded the self-government in villages. It is again noteworthy to note that even in the medieval period there is no mention of women participation in the local village administration.

In Modern History

- The famous Mayo's resolution of 1870 gave impetus to the development of local institutions by enlarging their powers and responsibilities. The revolt of 1857 had put the imperial finances under considerable strain and it was found necessary to finance local service out of local taxation. Therefore, it was out of fiscal compulsion that Lord Mayo's resolution on decentralization came to be adopted.
- Realising that seamless administration is impossible without power sharing, the British, in 1884, passed the Madras Local Boards Act. Following the footsteps of Mayo, Lord Rippon in 1882 provided the much-needed democratic framework to these institutions.
- The Madras Local Boards Act of 1884 is considered to be the Magna Carta of local democracy in India. All boards (then existing) were mandated to have a two-thirds majority of non-officials who had to be elected and the chairman of these bodies had to be from among the elected non-officials.
- With this, the British formed unions in both small towns and big cities and began to appoint members to ensure better administration.
- Local self-government institutions received a boost with the appointment of the Royal Commission on centralisation in 1907 under the Chairmanship of C.E.H. Hobhouse.
- It is in this backdrop that the Montagu Chelmsford reforms of 1919 transferred the subject of local government to the domain of the provinces. The reform also recommended that as far as possible there should be a complete control in local bodies and complete possible independence for them from external control.
- However, by 1925, eight provinces had passed the Panchayat Acts and by 1926, six native States had also passed panchayat laws. Local bodies were given more powers and functions to impose taxes were reduced. But, the position of the local self-government institutions remained unaffected.

In Post-Independent Indian History

- After the Constitution came into force, Article 40 made a mention of panchayats and Article 246 empowers the state legislature to legislate with respect to any subject relating to local self-government.
- However, this inclusion of panchayats into the Constitution was not unanimously agreed upon by the then decision-makers, with the major opposition having come from the framer of the Constitution himself i.e., Dr. B. R. Ambedkar. It was after much discussion among the supporters and opponents of the village panchayat that the panchayats finally got a place for themselves in the Constitution as Article 40 of the Directive Principles of State Policy.
- Since the Directive Principles are not binding principles, the result was the absence of a uniform structure of these bodies throughout the country.
- After independence, as a development initiative, India had implemented the Community Development Programmes (CDP) on the eve of Gandhi Jayanti, the 2nd October, 1952 under the major influence of the Etawah Project undertaken by the American expert, Albert Mayer. It encompassed almost all activities of rural development which were to be implemented with the help of village panchayats along with the participation of people.
- There were various reasons for the failure of CDP like bureaucracy and excessive politics, lack of people participation, lack of trained and qualified staff, and lack of local bodies interest in implementing the CDP especially the village panchayats.

- In 1957, the National Development Council constituted a committee headed by Balwant Rai Mehta to look into the working of community development programme.

Various Committees regarding Panchayati Raj

Balwant Rai Mehta Committee & Panchayati Raj

The committee was appointed in 1957, to examine and suggest measures for better working of the Community Development Programme and the National Extension Service. The committee suggested the establishment of a democratic decentralised local government which came to be known as the Panchayati Raj.

Recommendations by the Committee:

1. Three-tier Panchayati Raj system: Gram Panchayat, Panchayat Samiti and Zila Parishad.
2. Directly elected representatives to constitute the gram panchayat and indirectly elected representatives to constitute the Panchayat Samiti and Zila Parishad.
3. Planning and development are the primary objectives of the Panchayati Raj system.
4. Panchayat Samiti should be the executive body and Zila Parishad will act as the advisory and supervisory body.
5. District Collector to be made the chairman of the Zila Parishad.
6. It also requested for provisioning resources so as to help them discharge their duties and responsibilities.

The Balwant Rai Mehta Committee further revitalised the development of panchayats in the country, the report recommended that the Panchayati Raj institutions can play a substantial role in community development programmes throughout the country.

- As a result of this scheme of democratic decentralization was launched in Rajasthan on October 2nd, 1959.
- In Andhra Pradesh, the scheme was introduced on 1st November, 1959. The necessary legislation had also been passed and implemented in Assam, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa, and Punjab etc.

Ashok Mehta Committee & Panchayati Raj

The committee was appointed in 1977 to suggest measures to revive and strengthen the declining Panchayati Raj system in India.

The key recommendations of the Ashok Mehta Committee are:

1. The three-tier system should be replaced with a two-tier system: Zila Parishad (district level) and the Mandal Panchayat (a group of villages).
2. District level as the first level of supervision after the state level.
3. Zila Parishad should be the executive body and responsible for planning at the district level.
4. The institutions (Zila Parishad and the Mandal Panchayat) to have compulsory taxation powers to mobilise their own financial resources.

In order to use planning expertise and to secure administrative support, the district was suggested as the first point of decentralization below the state level.

Based on its recommendation, some of the states like Karnataka incorporated them effectively.

Other Committees: In subsequent years in order to revive and give a new lease of life to the panchayats, the Government of India had appointed various committees. The most important among them are the Hanumantha Rao Committee (1983), G.V.K. Rao Committee (1985), L.M.Singhvi Committee (1986) and the Sarkaria Commission on Centre-State relations (1988), P.K. Thungan Committee (1989) and Harlal Singh Kharra Committee (1990).

G V K Rao Committee & Panchayati Raj

The committee was appointed by the planning commission in 1985. It recognised that development was not seen at the grassroot level due to bureaucratisation resulting in Panchayat Raj institutions being addressed as 'grass without roots'. Hence, it made some key recommendations which are as follows:

1. Zila Parishad to be the most important body in the scheme of democratic decentralisation. Zila Parishad to be the principal body to manage the developmental programmes at the district level.
2. The district and the lower levels of the Panchayati Raj system to be assigned with specific planning, implementation and monitoring of the rural developmental programmes.
3. Post of District Development Commissioner to be created. He will be the chief executive officer of the Zila Parishad.
4. Elections to the levels of Panchayati Raj systems should be held regularly.

L M Singhvi Committee & Panchayati Raj

The committee was appointed by the Government of India in 1986 with the main objective to recommend steps to revitalise the Panchayati Raj systems for democracy and development. The following recommendations were made by the committee:

1. The committee recommended that the Panchayati Raj systems should be constitutionally recognised. It also recommended constitutional provisions to recognise free and fair elections for the Panchayati Raj systems.
2. The committee recommended reorganisation of villages to make the gram panchayat more viable.
3. It recommended that village panchayats should have more finances for their activities.
4. Judicial tribunals to be set up in each state to adjudicate matters relating to the elections to the Panchayati Raj institutions and other matters relating to their functioning.

Amendments that "made" the Local Government level

- The Amendment phase began with the 64th Amendment Bill (1989) which was introduced by Rajiv Gandhi seeking to strengthen the PRIs but the Bill was not passed in the Rajya Sabha.
- The Constitution (74th Amendment) Bill (a combined bill for the PRIs and municipalities) was introduced in 1990, but was never taken up for discussion.
- It was during the Prime Ministership of P.V.Narasimha Rao that a comprehensive amendment was introduced in the form of the Constitution 72nd Amendment Bill in September 1991.
- 73rd and 74th Constitutional Amendments were passed by Parliament in December, 1992. Through these amendments local self-governance was introduced in rural and urban India.
- The Acts came into force as the Constitution (73rd Amendment) Act, 1992 on April 24, 1993 and the Constitution (74th Amendment) Act, 1992 on June 1, 1993.

Salient Features of the Constitution 73rd and 74th Amendments

- These amendments added two new parts to the Constitution, namely, added Part IX titled "The Panchayats" (added by 73rd Amendment) and Part IXA titled "The Municipalities" (added by 74th Amendment).
- Basic units of democratic system-Gram Sabhas (villages) and Ward Committees (Municipalities) comprising all the adult members registered as voters.
- Three-tier system of panchayats at village, intermediate block/taluk/mandal and district levels except in States with population is below 20 lakhs (Article 243B).
- Seats at all levels to be filled by direct elections Article 243C (2).
- Seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and the chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
- One-third of the total number of seats to be reserved for women.
- One third of the seats reserved for SCs and STs also reserved for women.
- One-third offices of chairpersons at all levels reserved for women (Article 243D).
- Uniform five year term and elections to constitute new bodies to be completed before the expiry of the term.
- In the event of dissolution, elections compulsorily within six months (Article 243E).
- Independent Election Commission in each State for superintendence, direction and control of the electoral rolls (Article 243K).
- Panchayats to prepare plans for economic development and social justice in respect of subjects as devolved by law to the various levels of Panchayats including the subjects as illustrated in Eleventh Schedule (Article 243G).
- 74th Amendment provides for a District Planning Committee to consolidate the plans prepared by Panchayats and Municipalities (Article 243ZD).
- Budgetary allocation from State Governments, share of revenue of certain taxes, collection and retention of the revenue it raises, Central Government programmes and grants, Union Finance Commission grants (Article 243H).
- Establish a Finance Commission in each State to determine the principles on the basis of which adequate financial resources would be ensured for panchayats and municipalities (Article 243I).
- The Eleventh Scheduled of the Constitution places as many as 29 functions within the purview of the Panchayati Raj bodies.

The following areas have been exempted from the operation of the Act because of the socio-cultural and administrative considerations:

1. Scheduled areas listed under the V Schedule in the states of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.
2. The states of Nagaland, Meghalaya and Mizoram.
3. The hill areas of district of Darjeeling in the state of West Bengal for which Darjeeling Gorkha Hill Council exists.

be inspired

In conformity with provisions in the Constitution Amendment Act, an Act called the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 passed by the Government of India.

PESA Act of 1996

The provisions of Part IX are not applicable to the Fifth Schedule areas. The Parliament can extend this Part to such areas with modifications and exceptions as it may specify. Under these provisions, Parliament enacted Provisions of the Panchayats (Extension to the Scheduled Areas) Act, popularly known as PESA Act or the extension act.

Objectives of the PESA Act:

1. To extend the provisions of Part IX to the scheduled areas.
2. To provide self-rule for the tribal population.
3. To have village governance with participatory democracy.
4. To evolve participatory governance consistent with the traditional practices.
5. To preserve and safeguard traditions and customs of tribal population.
6. To empower panchayats with powers conducive to tribal requirements.
7. To prevent panchayats at a higher level from assuming powers and authority of panchayats at a lower level.

Issues and Challenges faced by the Panchayati Raj

1. **Lack of Funds:** Third-tier governments are not fiscally empowered. The collection of property tax, a major source of revenue for third-tier governments, is under 0.2% of GDP in India, compared to 3% of GDP in some other nations. Additionally, the posts of the heads of various local bodies are politicised. This hampers devolution of funds and letting the various tiers work independently.
2. **Lack of Autonomy:** The interference of area MPs and MLAs in the functioning of panchayats also adversely affected their performance. The 73rd amendment only mandated the creation of local self-governing bodies, and left the decision to delegate powers, functions, and finances to the state legislatures, therein lies the failure of PRIs.
3. **Lack of Devolution of Powers:** The transfer of various governance functions—like the provision of education, health, sanitation, and water was not mandated. Instead, the amendment listed the functions that could be transferred, and left it to the state legislature to actually devolve functions. Because these functions were never devolved, state executive authorities have proliferated to carry out these functions. The most common example is the terrible state water boards.
4. **Structural deficiencies:** PRIs also suffer from structural deficiencies i.e., no secretarial support and lower levels of technical knowledge which restricted the aggregation of bottom-up planning. There is a presence of adhocism i.e., lack of clear setting of agenda in gram sabha, gram samiti meetings and no proper structure.
5. **Lack of representation of Women:** Though women and SC/STs has got representation in PRIs through reservation mandated by 73rd amendment but there is a presence of Panch-Pati and Proxy representation in case of women and SC/STs representatives respectively.

Conclusion

- The need of the hour is to bring about a holistic change in the lives of beneficiaries among the villagers by uplifting their socioeconomic and health status through effective linkages through community, governmental and other developmental agencies.
- Government should take remedial action in the interest of democracy, social inclusion and cooperative federalism.
- People's demands for the sustainable decentralisation and advocacy should focus on a decentralisation agenda. The framework needs to be evolved to accommodate the demand for decentralisation.
- It is important to have clarity in the assignment of functions and the local governments should have clear and independent sources of finance.

CENTRE RELEASES FIRST INSTALMENT OF SDRF

Context:

Even though usually the first instalment of the State Disaster Response Fund (SDRF) is released in June as per the recommendations of the Finance Commission – the Centre has released the first instalment to States earlier this time, in the wake of the second wave of COVID-19 that has claimed thousands of lives since April 2021.

Relevance:

GS-III: Disaster Management, GS-II: Polity and Governance (Centre-State Financial Relations)

Dimensions of the Article:

1. About State Disaster Response Fund (SDRF)
2. National Disaster Response Fund (NDRF)

About State Disaster Response Fund (SDRF)

- The State Disaster Response Fund (SDRF) is constituted under the **Disaster Management Act, 2005.**
- It is the primary fund available with State Governments for responses to notified disasters.
- **The Central Government contributes 75% of SDRF allocation for general category States/UTs and 90% for special category States/UTs (NE States, Sikkim, Uttarakhand, Himachal Pradesh, Jammu and Kashmir).**
- The annual Central contribution is released in two equal installments as per the recommendation of the Finance Commission.
- SDRF shall be used only for meeting the expenditure for providing immediate relief to the victims.
- Disasters covered under SDRF are – Cyclone, drought, earthquake, fire, flood, tsunami, hailstorm, landslide, avalanche, cloudburst, pest attack, frost and cold waves.
- **Local Disaster:** A State Government may use up to 10 percent of the funds available under the SDRF for providing immediate relief to the victims of natural disasters that they consider to be 'disasters' within the local context in the State and which are not included in the notified list of disasters of the Ministry of Home Affairs subject to the condition that the State Government has listed the State specific natural disasters and notified clear and transparent norms and guidelines for such disasters with the approval of the State Authority, i.e., the State Executive Authority (SEC).

National Disaster Response Fund (NDRF)

- The National Disaster Response Fund (NDRF), constituted under the Disaster Management Act, 2005, supplements SDRF of a State, in case of a disaster of severe nature, provided adequate funds are not available in SDRF.
- NDRF is defined in the Disaster Management Act, as a fund managed by the Central Government for meeting the expenses for emergency response, relief and rehabilitation due to any threatening disaster situation or disaster.
- NDRF is constituted to supplement the funds of the State Disaster Response Funds (SDRF) of the states to facilitate immediate relief in case of calamities of a severe nature.
- The financial assistance from SDRF/NDRF is for providing immediate relief and is not compensation for loss/damage to properties /crops.
- In fact, the hitherto existing National Calamity Contingency Fund (NCCF) was renamed as National Disaster Response Fund (NDRF) on 28 September 2010 with the enactment of the Disaster Management Act in 2005 and consequent changes in the design and structure of disaster management in India.
- The National Executive Committee (NEC) of the National Disaster Management Authority takes decisions on the expenses from National Disaster Response Fund.

JUSTICE PANT APPOINTED NHRC ACTING CHAIRPERSON

Context:

The National Human Rights Commission said NHRC member Justice (retired) Prafulla Chandra Pant had been appointed as the acting chairperson of the Commission.

The post of chairperson has been vacant since Justice H.L. Dattu, a former Chief Justice of India, completed his tenure on December 2, 2020.

Relevance:

GS-II: Polity and Governance (Statutory Bodies)

Dimensions of the Article:

1. National Human Rights Commission (NHRC)
2. Powers conferred to the NHRC in inquiries
3. Composition of NHRC
4. How are the Chairperson and Members of NHRC appointed?

National Human Rights Commission (NHRC)

- The National Human Rights Commission is an Independent Statutory Body constituted on 12 October 1993, by the Protection of Human Rights Act, 1993.
- The NHRC is responsible for the protection and promotion of human rights.
- NHRC deals with the rights related to life, liberty, equality and dignity of the individual guaranteed by Indian Constitution or embodied in the international covenants and enforceable by courts in India.
- On an international level, the NHRC is established in conformity with the Paris Principles, adopted for the promotion and protection of human rights in Paris (October, 1991). It was also endorsed by the General Assembly of the United Nations on 20 December, 1993.

Powers conferred to the NHRC in inquiries

While inquiring into complaints under the Act, the Commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular the following, namely;

1. Summoning and enforcing the attendance of witnesses and examining them on oath;
2. discovery and production of any document;
3. receiving evidence on affidavits;
4. requisitioning any public record or copy thereof from any court or office;
5. issuing commissions for the examination of witnesses or documents;
6. any other matter which may be prescribed.

Composition of NHRC

- A Chairperson, who has been a Chief Justice of India or a Judge of the Supreme Court
- One member who is, or has been, a Judge of the Supreme Court of India
- One member who is, or has been, the Chief Justice of a High Court
- Three Members, out of which at least one shall be a woman to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights

- In addition, the Chairpersons of National Commissions (Scheduled Castes, Scheduled Tribes, Women, Minorities, Backward Classes, Protection of Child Rights) and Chief Commissioner for Persons with Disabilities serve as ex officio members.
- The sitting Judge of the Supreme Court or sitting Chief Justice of any High Court can be appointed only after the consultation with the Chief Justice of Supreme Court.

How are the Chairperson and Members of NHRC appointed?

The Chairperson and members of the NHRC are appointed by the President of India, on the recommendation of a committee consisting of:

1. The Prime Minister (Chairperson)
2. The Home Minister
3. The Leader of the Opposition in the Lok Sabha (Lower House)
4. The Leader of the Opposition in the Rajya Sabha (Upper House)
5. The Speaker of the Lok Sabha (Lower House)
6. The Deputy Chairman of the Rajya Sabha (Upper House)

SC DECLARES MARATHA QUOTA LAW UNCONSTITUTIONAL

Context:

- A five-judge Constitution Bench of the Supreme Court unanimously declared a Maharashtra law which provides reservation benefits to the Maratha community, taking the quota limit in the State in excess of 50%, as unconstitutional.
- The SC said: The Centre alone is empowered to identify socially and educationally backward classes (SEBC) and include them in the Central List for claiming reservation benefits.

Relevance:

GS-II: Polity and Governance (Judgements & Cases, Judiciary, Government Policies & Interventions), GS-II: Social Justice (Welfare Schemes, Issues Relating to Development, Education related issues)

Dimensions of the Article:

1. Who are the Marathas?
2. The 2018 Legislation
3. The 2019 Judgement
4. Recent Supreme Court Judgement
5. Indra Sawhney Case Regarding cap on reservation quota

Who are the Marathas?

- The Marathas are a group of castes comprising peasants, landowners among others.
- Not all Marathi-speaking persons belong to Maratha community.
- A politically dominant community in Maharashtra, it comprises nearly one-third of the population of the state.
- Historically, Marathas have been identified as a 'warrior' caste with large land-holdings.

Situation of Marathas

- The Marathas are a politically dominant community who make up 32% of Maharashtra's population.
- They have historically been identified as a 'warrior' caste with large landholdings.
- Eleven of the state's 19 chief ministers so far have been Marathas.
- While division of land and agrarian problems over the years have led to a decline of prosperity among middle- and lower middle-class Marathas, the community still plays an important role in the rural economy.

Why do the politically, socially and economically dominant Marathas want reservation?

- In 2016 Marathas under the banner of Maratha Kranti Morcha came together at Aurangabad to protest the rape and killing of a 15-year-old girl in Kopardi village of Ahmednagar district in Maharashtra.
- Although Kopardi was the trigger, the Maratha consolidation, leading to 58 silent, but massive, rallies across the state between 2016-17, was centred on reservation for the community in government jobs and educational institutions.
- At the end of every rally, a ten-point charter of demands was presented to the district collector. High on the agenda was Maratha reservation.
- In the second phase of agitation between 2017-18, street protests took a violent turn and even led to some suicides.

The 2018 Legislation

- In 2018, the Maratha community was given the reservation under the Maharashtra State Socially and Educational Backward Act.
- The special act was sanctioned by Maharashtra State Backward Class Commission and approved in both the assembly and council.
- The emphasis on legislation was to give reservation under Socially and Educationally Backward Classes (SEBC), a legal and constitutional validity.

The 2019 Judgement

- In 2019, a division bench commenced hearing of petitions against the Maharashtra State Socially and Educational Backward Act and the Bombay HC held that the limit of reservation should not exceed 50%.
- It ruled that the 16% quota granted by the state was not 'justifiable'.
- It reduced the quota to 12% in education and 13% in government jobs.
- For this, the court relied on findings of the 11-member Maharashtra State Backward Class Commission (MSBCC).
- It also said that in exceptional circumstances and extraordinary situations, this 50% limit can be crossed.
- This limit should be subject to availability of contemporaneous data reflecting backwardness, inadequacy of representation and without affecting the efficiency in administration.
- The Court had said that while the backwardness of the community was not comparable with SCs and STs.
- It was comparable with several other backward classes (OBCs), which find place in the list of OBCs pursuant to the Mandal Commission.

What is the existing reservation in Maharashtra post HC verdict?

- In Mandal Commission case 1993, the SC had ruled that total reservation for backward classes cannot go beyond the 50%-mark.

- Maharashtra is one of the few states that are an exception to this.
- Following the 2001 State Reservation Act, the total reservation in the state was 52%.
- Along with the 12-13% Maratha quota, the total reservation is 64-65%.
- The 10 % Economically Weaker Sections (EWS) quota announced by the Centre is also effective in the state.

Recent Supreme Court Judgement

- The Supreme Court bench found there was no "exceptional circumstances" or "extraordinary situation" in Maharashtra which required the Maharashtra government to break the 50% ceiling limit to bestow quota benefits on the Maratha community.
- The Supreme Court struck down the findings of the Justice N.G. Gaikwad Commission which led to the enactment of Maratha quota law and set aside the Bombay High Court judgment which validated the Maharashtra State Reservation for Socially and Educationally Backward Classes (SEBC) Act of 2018.
- In fact, the Supreme Court held that a separate reservation for the Maratha community violates Articles 14 (right to equality) and 21 (due process of law).
- Most importantly, the Supreme Court declined to re-visit the its 1992 Indira Sawhney judgment, which fixed the reservation limit at 50%.
- The Supreme Court also said that the President (that is the Central government) alone, to the exclusion of all other authorities, is empowered to identify SEBCs and include them in a list to be published under Article 342A (1), which shall be deemed to include SEBCs in relation to each State and Union Territory for the purposes of the Constitution. **[Article 338B deals with the structure, duties and powers of the Commission while 342-A speaks about the power of the President to notify a class as Socially and Educationally Backward (SEBC) and the power of Parliament to alter the central SEBC list.]**
- If the commission prepares a report concerning matters of identification, such a report has to be shared with the State government, which is bound to deal with it, in accordance with provisions of Article 338B. However, the final determination culminates in the exercise undertaken by the President (i.e., the Central Government, under Article 342A (1).
- However, the President's prerogative as far as the identification and inclusion of SEBCs in the List would not affect the States' power to make reservations in favour of particular communities or castes, the quantum of reservations, the nature of benefits and the kind of reservations, and all other matters falling within the ambit of Articles 15 and 16.

Indra Sawhney Case Regarding cap on reservation quota

- The Supreme Court in the Indra Sawhney vs Union of India had ruled that the total number of reserved seats/places/positions cannot exceed 50% of what is available, and that under the constitutional scheme of reservation, economic backwardness alone could not be a criterion.
- While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people.
- It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main stream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative.
- In doing so, extreme caution is to be exercised and a special case made out.

WHAT IS FACEBOOK'S OVERSIGHT BOARD?

Context:

Trump had been banned indefinitely by Facebook from posting or accessing his page on January 2021 following the chaotic situation of US Capitol Hill Siege.

Facebook's Oversight Board upheld the social media network's decision to indefinitely block Mr. Trump for using the platform to "incite violent insurrection against a democratically elected government."

Recently the Oversight Board overturned Facebook's decision to remove a post that had alleged that the RSS and Prime Minister Narendra Modi were threatening to kill Sikhs in India.

Relevance:

GS-III: Internal Security Challenges (Challenges to Internal Security Through Communication Networks, Role of Media & Social Networking Sites in Internal Security Challenges), GS-II: Polity and Governance (Government Policies & Interventions)

Dimensions of the Article:

1. What is Facebook's Oversight Board?
2. What are recommendations of the Oversight Board?
3. Law Related to Blocking of Internet Services/Content in India
4. Obligations of Intermediaries under the IT Act

What is Facebook's Oversight Board?

- The Oversight Board has been set up as an independent body that will help Facebook figure out what content can be allowed on the platform and what ought to be removed.
- It was said to have emerged out of the tensions around the often-conflicting goals of maintaining Facebook as a platform for free speech and effectively filtering out problematic speech.
- The members who make the Oversight Board came on board very recently, in 2020 and the board consists of 20 members.

What are recommendations of the Oversight Board?

- The Board wants Facebook to act quickly when it comes to content of a political nature coming from influential users.
- Its idea is to escalate such content to specialised staff as also assess potential harms from such accounts.
- It also wants Facebook to be more transparent about its policies regarding assistance to investigations as well as its penalty rules.
- It also wants Facebook to comprehensively review its "potential contribution to the narrative of electoral fraud and the exacerbated tensions that culminated in the violence in the United States on January 6. This should be an open reflection on the design and policy choices that Facebook has made that may allow its platform to be abused."

Law Related to Blocking of Internet Services/Content in India

- In India, the **Information Technology (IT) Act, 2000**, as amended from time to time, governs all activities related to the use of computer resources and covers all 'intermediaries' who play a role in the use of computer resources and electronic records. The role of the intermediaries has been spelt out in separate rules framed for the purpose in 2011- The **Information Technology (Intermediaries Guidelines) Rules, 2011**.

- **Section 69 of the IT Act** confers on the Central and State governments the power to issue directions "to intercept, monitor or decrypt any information generated, transmitted, received or stored in any computer resource".

The grounds on which these powers may be exercised are:

1. In the interest of the sovereignty or integrity of India, defence of India, the security of the state.
2. Friendly relations with foreign states.
3. Public order, or for preventing incitement to the commission of any cognizable offence relating to these.
4. For investigating any offence.

Section 69A of the IT Act enables the Centre to ask any agency of the government, or any intermediary, to block access to the public of any information generated, transmitted, received or stored or hosted on any computer resource.

Obligations of Intermediaries under the IT Act

- The term 'intermediaries' includes providers of telecom service, network service, Internet service and web hosting, besides search engines, online payment and auction sites, online marketplaces and cyber cafes.
- It includes any person who, on behalf of another, "receives, stores or transmits" any electronic record. Social media platforms would fall under this definition.
- Intermediaries are required to preserve and retain specified information in a manner and format prescribed by the Centre for a specified duration.
- When a direction is given for monitoring, the intermediary and any person in charge of a computer resource should extend technical assistance in the form of giving access or securing access to the resource involved.
- **Section 79 of the IT Act 2000** makes it clear that "an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him". This protects intermediaries such as Internet and data service providers and those hosting websites from being made liable for content that users may post or generate.

SC DECLINES ECI PLEA TO RESTRAIN MEDIA

Context:

- The Election Commission of India (ECI) complained against the Madras High Court's observation that the ECI was singularly responsible for the rise in Covid-19 cases.

- The media cannot be stopped from reporting any court hearing, the Supreme Court said.

Relevance:

GS-II: Polity and Governance (Statutory Bodies, Fundamental Rights, Judgements & Cases, Government Policies & Interventions, Issues arising out of the design and implementation of policies)

Dimensions of the Article:

1. Freedom of Press in India

2. Status of Freedom of Press
3. About the ECI tussle with reporting HC comments
4. About the Supreme Court Judgement

Freedom of Press in India

- Article 19, said to be the foundation of Democratic rule in India, guarantees freedom of speech and expression to Indian citizens only.
- These freedoms are not absolute and they can all be curtailed by imposing some reasonable restriction.
- Reasonable restrictions can be imposed (imposed only on the grounds mentioned in the constitution) only by authority of law and NOT by executive action alone.

Freedom of Speech and Expression actually covers:

1. Right to Information
2. Freedom of press
3. Right to privacy
4. Right to hoist the national flag
5. Right to demonstration or picketing, but not right to strike
6. Rights to Not Speak

Status of Freedom of Press

- Unlike several countries such as USA, there is no separate provision guaranteeing the freedom of press, but the Supreme Court in Sakaal paper vs. Union of India case, has held that the freedom of press is included in the "freedom of expression" under Article 19(1) (a).
- In Brij Bhushan case, SC clarified that there is no prior censorship on the media, i.e., no prior permission is needed.
- 44th amendment, 1976 introduced Article 361A that provides protection to a person publishing proceeding of the Parliament and State Legislatures.

In the Indian Express case, it was clarified that the Freedom of Press includes:

1. Right to Information
2. Right to Publish
3. Right to Circulate

- In 1997, the Prasar Bharti Act grants autonomy to Doordarshan and All India Radio (which means it can criticize the state policies and actions).
- In 1966, Press Council of India was created to regulate the print media.
- The National Commission to Review the Working of Constitution (NCRWC) recommended that Freedom of Press be explicitly granted and not be left implied in the Freedom of Speech.

About the ECI tussle with reporting HC comments

- Recently, the Madras HC judges had accused the ECI of being solely responsible for the super-spread of COVID infection through uncontrolled election rallies, campaigning, etc.
- The HC judges had even said the ECI should be charged with "murder".

- Soon after, a troubled ECI had approached the HC to take back its words and restrain the media from reporting the comments as FIRs for murder were registered against the poll body officials.
- The Madras HC said that it cannot expect the media not to report dialogues and that Oral observations are as important as orders.
- Following this the ECI had complained to the Supreme Court about the oral comments made by the Division Bench of the Madras High Court.

About the Supreme Court Judgement

- The Supreme agreed with the Madras High Court on the matter of media reporting and said: Media cannot be stopped from reporting oral remarks made by judges during a court hearing.
- The SC bench also described the "media as a powerful watchdog".
- Public interest is not limited to judgments, but also the raising of questions in a court hearing, the dialogue between the Bar and the Bench. All of these show the public whether there was a genuine application of mind by judges.
- However, the SC consoled and said the comments were not to belittle the ECI because ultimately democracy survives on the faith in the institutions.
- The bench pacified the ECI saying the apex court would write a "balanced order".

ON JUDICIAL INTERVENTION DURING COVID-19 CRISIS

Context:

Judicial intervention in response to the Union government's flailing response to the health crisis has reached its apotheosis with the Supreme Court order forming a 12-member national task force for the effective and transparent allocation of medical oxygen to the States and Union Territories "on a scientific, rational and equitable basis".

Relevance:

GS-II: Polity and Governance (Separation of Powers, Judiciary, Judgements & Cases)

Mains Questions:

What do you understand by "Separation of Powers"? In the light of intervention of the Judiciary during the Covid-19 Crisis, to what extent is the principle of Separation of Powers followed in India? (10 Marks)

Dimensions of the Article:

1. Recent events bringing Separation of Powers into question
2. What is the separation of power?
3. Functional Overlapping amongst the organs of Government
4. Concerns regarding overlapping of powers
5. When is overlapping of powers beneficial?

Recent events bringing Separation of Powers into question

- The Court has also mandated it to review and suggest measures for ensuring the availability of essential drugs and remedial measures to meet future emergencies during the pandemic. In other words, the national task force has become a judicially empowered group that may significantly guide the handling of the health crisis set off by the second pandemic wave.
- When the Karnataka High Court ordered last week that the Centre should supply 1,200 tonnes of medical oxygen daily to the State, the Centre rushed with a challenge to the apex court. The Supreme Court declined to stay the order, describing it as a careful and calibrated one. Several High Courts and the Supreme Court are examining different aspects of the pandemic response, including availability of beds and oxygen.
- **The trend did raise concerns about the judiciary encroaching on the executive domain.** There is some merit in the argument that allocation of resources based on a formula related to the present and projected requirements of each State is indeed an executive function.
- Justice D.Y. Chandrachud, who heads the Bench hearing the suo motu proceedings, has clarified that the Court was not usurping the executive's role, but only wanted to facilitate a dialogue among stakeholders.

What is the separation of power?

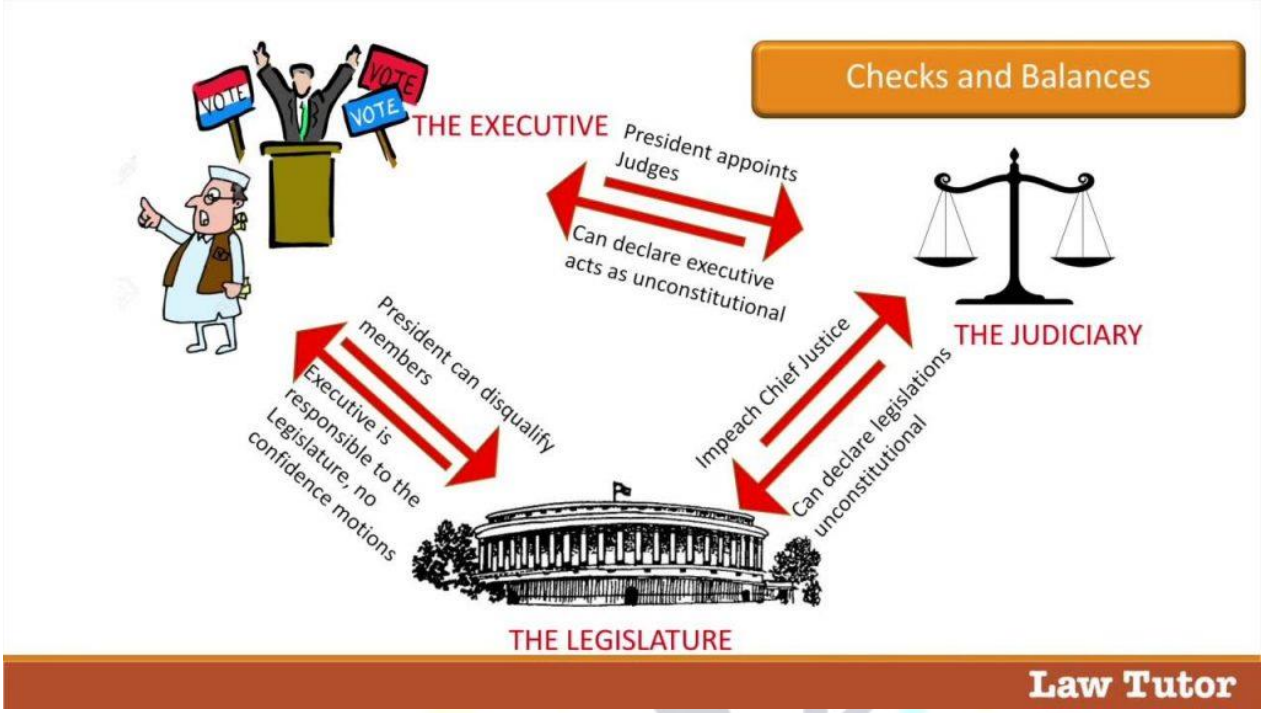
- The separation of power is part of governing of a state in which the components of state like legislative, executive and judiciary remain independent with each other so that the powers of one branch are not in conflict with those of the other branches. It is also a part of independent of judiciary.
- Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

Although the Constitution of India does not provide strictly for the separation of powers, these articles provide a general guideline:

1. **Article 50:** This states that the State or the Government concerned will take appropriate steps to ensure that the judicial branch is separated from the functioning and working of the executive branch.
2. **Article 121 & 211:** It, in a way, provides for the separation of the legislature and the judiciary. This article states that the conduct of justice or the way a judge discharges his duties of any Court cannot be discussed in the legislature (state or union).
3. **Article 122 & 212:** This article is aimed at keeping the judiciary (the law interpreting body) and the legislature (the law-making body) separated. It does so by stripping the judiciary of any power to review and question the validity of proceedings that take in a legislature or the Parliament.
4. **Article 361:** This article separates the judiciary and the executive. It states that the President or any governor of any state is not answerable to any court in the country for actions and activities are taken in performance/exercise of the powers and duties of their office.

What is check and balance?

Checks and balances, 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.



Functional Overlapping amongst the organs of Government

- While separation of powers is key to the workings of Indian Government, no democratic system exists with an absolute separation of powers or an absolute lack of separation of powers.
- Every organ is, in a way, overlapped in its practical functioning with the other two organs of the Government. This overlapping enables the organs to act as a check on each other without too much interference.

Overlapping Powers of Legislature

With Judiciary	With executive	
Impeachment and the removal of the judges. Power to amend laws declared ultra vires by the Court and revalidating it. In case of breach of its privilege and it can punish the person concerned.	The heads of each governmental ministries are members of the legislature. Through a no-confidence vote, it can dissolve the Government. Power to assess the works of the executive. Impeachment of the President. The council of ministers on whose advice the President and the Governor acts are elected members of the legislature.	

Overlapping Powers of The Executive

With Judiciary	With Legislature
Making appointments to the office of Chief Justice and other judges. Powers to grant pardons, reprieve, respite or remission of punishments or sentence of any person convicted of any offence. The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions.	Power to promulgate ordinance which has the same force of the Act made by the Parliament or the State legislature. Authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution. Powers under delegated legislation.

Overlapping Powers of The Judiciary

With Executive	With Legislative
Under Article 142, the Supreme Court functions as an Executive in order to bring about the complete justice.	Judicial review, i.e., the power to review executive action to determine if it violates the Constitution. Rigidity / Non-Amendability of the Constitution under basic structure.

Hence, we can see that although the Constitution mentions a certain amount of separation of powers, it does not do so strictly to keep every organ in check and ensure that it is not entirely free in exercising powers vested in it without any restraint or ulterior motive that will not be in the public interest. In addition to functional overlapping, there is a lack of administrative distinction between the three divisions of the Indian system.

Concerns regarding overlapping of powers

1. The biggest issue of overlap might be that a particular organ cannot be held accountable for its decision, for example, Judicial Decision in 2G case, Coal Block case. (Unaccountability)
2. The faith of the public in the institutions of the Government plays a very crucial role in such a complex and vest democracy. The organs repeated interventions into others' decisions leads to the diminishing of the faith of the people in the quality, efficiency and integrity of them. (Erosion of faith)
3. It undermines the spirit of democracy as too much accumulation of powers in organs of Government undermines the principle of check and balance. (Accumulation of power)
4. Excessive infringement on each other jurisdiction may impede the smooth functioning of Government and hinder public service and overall development (Adverse effect on development)

When is overlapping of powers beneficial?

1. Rule of Law: The accountability and equality in governance are enhanced by enabling power-sharing laws.
2. Check and Balance: The overlap prevents arbitrary actions by the other two organs of the Government; an example is the power of judicial review of the Apex Court of India.
3. Check arbitrariness: Constitutional demarcations of overriding powers decrease the scope of conflict among the government organs.
4. Cooperation: The overlapping functions induce power-sharing and also provides power decentralisation, thus ensuring that the three organs can work hand-in-hand to solve problems faster.

FCRA REGULATION ISSUE: MOST NGOS DON'T HAVE SBI ACCOUNT

Context:

- An Assam-based NGO has moved the Gauhati High Court against another amended provision of the Foreign Contribution (Regulation) Act (FCRA) that makes Aadhaar mandatory for opening and operating the account in Delhi.
- Only 16% registered NGOs have active bank accounts with the State Bank of India's main branch in Delhi, a compulsory requirement to receive foreign funds from April 2021.

Relevance:

GS-II: Polity and Governance (Government Policies & Interventions, Non-Governmental Organisations -NGOs), GS-III: Indian Economy (External Sector, Mobilization of Resources)

Dimensions of the Article:

1. Foreign Contribution (Regulation) Act, 2010
2. Foreign Contribution (Regulation) Amendment Act, 2020
3. Non-Governmental Organisations (NGOs) in India
4. Why have NGOs been controversial recently?
5. About the recent MHA guidelines regarding FCRA and NGOs
6. About the recent case in Gauhati HC regarding NGOs

Foreign Contribution (Regulation) Act, 2010

The Foreign Contribution (regulation) Act, 2010 is a consolidating act whose scope is to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Key Points regarding FCRA

- Foreign funding of voluntary organizations in India is regulated under FCRA act and is **implemented by the Ministry of Home Affairs.**
- The FCRA regulates the receipt of funding from sources outside of India to NGOs working in India.
- It prohibits the receipt of foreign contribution "for any activities detrimental to the national interest".
- The Act held that the government can refuse permission if it believes that the donation to the NGO will adversely affect "public interest" or the "economic interest of the state". However, there is no clear guidance on what constitutes "public interest".
- The Acts ensures that the recipients of foreign contributions adhere to the stated purpose for which such contribution has been obtained.
- Under the Act, organisations require to register themselves every five years.

Foreign Contribution (Regulation) Amendment Act, 2020

- The Act bars public servants from receiving foreign contributions. Public servant includes any person who is in service or pay of the government, or remunerated by the government for the performance of any public duty.
- The Act prohibits the transfer of foreign contribution to any other person not registered to accept foreign contributions.
- The Act makes Aadhaar number mandatory for all office bearers, directors or key functionaries of a person receiving foreign contribution, as an identification document.
- The Act states that foreign contribution must be received only in an account designated by the bank as FCRA account in such branches of the State Bank of India, New Delhi.
- The Act proposes that not more than 20% of the total foreign funds received could be defrayed for administrative expenses. In FCRA 2010 the limit was 50%.
- The Act allows the central government to permit a person to surrender their registration certificate.

Non-Governmental Organisations (NGOs) in India

- Worldwide, the term 'NGO' is used to describe a body that is neither part of a government nor a conventional for-profit business organisation.
- NGOs are groups of ordinary citizens that are involved in a wide range of activities that may have charitable, social, political, religious or other interests.
- In India, NGOs can be registered under a plethora of Acts such as the Indian Societies Registration Act, 1860, Religious Endowments Act,1863, Indian Trusts Act, etc.
- India has possibly the largest number of active NGOs in the world.
- Ministries such as Health and Family Welfare, Human Resource Department, etc., provide funding to NGOs, but only a handful of NGOs get hefty government funds.
- NGOs also receive funds from abroad, if they are registered with the Home Ministry under the Foreign Contribution (Regulation) Act (FCRA). There are more than 22,500 FCRA-registered NGOs.
- **Registered NGOs can receive foreign contribution under five purposes — social, educational, religious, economic and cultural.**

Why have NGOs been controversial recently?

- An Intelligence Bureau (IB) report, submitted to the PMO and National Security Adviser in 2019, alleged that several foreign-funded NGOs were stalling India's economic growth by their obstructionist activism.
- In 2015, the Home Ministry had cancelled the FCRA licences of 10,000 organisations.
- The annual inflow of foreign contribution has almost doubled between the years 2010 and 2019, but many recipients of foreign contribution are being not utilised the same for the purpose for which they were registered or granted prior permission under amended provisions of the FCRA 2010.
- Recently, the Union Home Ministry has suspended licenses of the six (NGOs) who were alleged to have used foreign contributions for religious conversion.
- Recently the National Investigation Agency (NIA) registered a case against a foreign based group that provides funds for secessionist and pro-Khalistani activities in India.

About the recent MHA guidelines regarding FCRA and NGOs

- The Ministry of Home Affairs (MHA) issued new regulating guidelines to banks under Foreign Contribution (Regulation) Act, 2010. It states that the donations received in Indian rupees by non-governmental organisations (NGOs) and associations from any foreign source (even if that source is located in India at the time of such donation) should be treated as foreign contribution.

- Under the issued regulations, donations given in Indian rupees (INR) by any foreigner/foreign source including foreigners of Indian origin like Overseas Citizen of India (OCI) or Person of India Origin (PIO) cardholders should also be treated as foreign contribution.
- The guidelines mandate that good practices should be followed by NGOs in accordance with standards of global financial watchdog- Financial Action Task Force (FATF).
- MHA asked NGOs to inform the Ministry about "suspicious activities" of any donor or recipient and "take due diligence of its employees at the time of recruitment."

About the recent case in Gauhati HC regarding NGOs

- The Gauhati High Court sent a notice to the SBI asking it to explain why Aadhaar was necessary to open a bank account, when in 2018, the Supreme Court in the K.S. Puttaswamy (Aadhaar) case had ruled that mandatorily linking Aadhaar to a bank account "does not satisfy the test of proportionality".
- According to the amended provisions of the FCRA enacted in September 2020, the NGOs registered under the Act were asked to open a designated bank account at the SBI, Delhi and compulsorily register the Aadhaar details of the chief functionaries, trustees and office-bearers.
- The amendment stated that all the existing FCRA accounts of the NGOs will be linked to the SBI account in Delhi, and while they may not be able to receive fresh foreign funds from April 1 in the existing accounts, they could utilise the money that already exists in the old account.
- Due to the COVID-19 pandemic, many NGOs could not complete the stringent paper work, making it impossible for foreign donors to send help during the second wave that has now spread to rural areas. Many said that they did not fulfil the eligibility criteria as they did not possess an Aadhaar card as a "matter of principle".

OCI HOLDERS STUNG BY MHA NOTIFICATION

Context:

The Home Ministry passed an order recently that required professional Overseas Citizens of India (OCIs), such as journalists, engineers and researchers, to notify the Ministry about their activities in India.

Relevance:

GS-II: Polity and Governance (Citizenship)

Dimensions of the Article:

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1. Overseas Citizen of India (OCI)
2. Benefits to OCI Card Holders
3. Limitations on OCI Card Holders
4. Recently in news: NRI quota seats for OCI

Overseas Citizen of India (OCI)

- An Overseas Citizen of India (OCI) is a person who is technically a citizen of another country having an Indian origin.
- They are defined as a person who: Was a citizen of India on or after 26th January 1950; or Was eligible to become a citizen of India on 26th January 1950; or Is a child or grandchild of such a person, among other eligibility criteria.

- According to Section 7A of the OCI card rules, an applicant is not eligible for the OCI card if he, his parents or grandparents have ever been a citizen of Pakistan or Bangladesh.
- The Overseas Citizenship of India (OCI) Scheme was introduced by amending the Citizenship Act, 1955 in August 2005 in response to demands for dual citizenship by the Indian diaspora, particularly in developed countries.
- Multi-purpose and life-long visa are provided to the registered Overseas Citizen of India for visiting India and are also exempted from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India.

Benefits to OCI Card Holders

- OCI cardholders can enter India multiple times, get a multipurpose lifelong visa to visit India, and are exempt from registering with Foreigners Regional Registration Office (FRRO).
- If an individual is registered as an OCI for a period of five years, he/she is eligible to apply for Indian citizenship.
- At all Indian international airports, OCI cardholders are provided with special immigration counters.
- OCI cardholders can open special bank accounts in India, buy the non-farm property and exercise ownership rights and can also apply for a Permanent Account Number (PAN) card.

Limitations on OCI Card Holders

- OCI card holders are not covered by Right to equality of opportunity under article 16 of the Constitution with regard to public employment.
- They lack the benefit of Right for election as President and Vice-President under article 58 and article 66 respectively.
- They are not entitled to the rights under article 124 and article 217 of the Constitution.
- They are not given Right to register as a voter under section 16 of the Representation of the People Act, 1950(43 of 1950).
- They Lack Rights with regard to the eligibility for being a member of the State Council/Legislative Assembly/Legislative Council.
- They are not eligible for appointment to the posts of Public Services and Union Affairs of any State.
- They cannot purchase agricultural or farmland.
- They cannot travel to restricted areas without government permission.

Recently in news: NRI quota seats for OCI

- Recently, the Ministry issued a gazette notification that OCI cardholders could claim "only NRI (Non-Resident Indian) quota seats" in educational institutions based on all-India entrance tests such as National Eligibility cum Entrance Test (NEET), Joint Entrance Examination (Mains), Joint Entrance Examination (Advanced) or other such all-India professional tests. – **The OCI cardholder shall not be eligible for admission against any seat reserved exclusively for Indian citizens.**
- The order specified that OCIs could only pursue the following professions — doctors, dentists, nurses and pharmacists, advocates, architects and chartered accountants, and the rest would require "special permission".
- The gazette notification imposing restrictions on Overseas Citizens of India (OCI) from practising journalism or research, and engaging in Tabligh or missionary activities, has effectively granted legal sanction to what was earlier only a set of guidelines in an official brochure.
- OCI cardholders will enjoy parity with NRIs in adoption of children, appearing in competitive exams, purchase or sale of immovable property barring agricultural land and farmhouses, and pursuing professions such as doctors, lawyers, architects, and chartered accountants.

- OCI cardholders will be entitled to get multiple entry lifelong visas for visiting India for any purpose. They are exempted from registration with the Foreigners' Regional Registration Officer (FRRO) for any length of stay in India.

Issues highlighted due to this change

- Even if an OCI student has secured a high rank in an exam like NEET, several institutions of repute do not have NRI seats.
- The notification seemingly equates India-domiciled OCIs with a foreigner.
- The exorbitantly high fees under the NRI quota cannot be afforded by many OCIs as they live and work in India.

ASSAM NRC AUTHORITY SEEKS RE-VERIFICATION OF CITIZENS' LIST

Context:

The Assam National Register of Citizens (NRC) authority has approached the Supreme Court seeking a comprehensive and time-bound re-verification of the citizens' list, highlighting "major irregularities" in the process.

Relevance:

GS-II: Polity and Governance (Citizenship, Government Initiatives and Schemes)

Dimensions of the Article:

1. What is National Register of Citizens (NRC)?
2. NRC in Assam
3. About the recent developments in implementation of NRC in Assam

What is National Register of Citizens (NRC)?

- National Register of Citizens, 1951 is a register prepared after the conduct of the Census of 1951 in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein.
- The NRC was published only once in 1951.

NRC in Assam

- The issue of its update assumed importance as Assam witnessed large-scale illegal migration from erstwhile East Pakistan and, after 1971, from present-day Bangladesh.
- This led to the six-year-long Assam movement from 1979 to 1985, for deporting illegal migrants.
- The All Assam Students' Union (AASU) led the movement that demanded the updating of the NRC and the deportation of all illegal migrants who had entered Assam after 1951.
- The movement culminated in the signing of the Assam Accord in 1985.
- It set March 25, 1971, as the cut-off date for the deportation of illegal migrants.
- Since the cut-off date prescribed under articles 5 and 6 of the Constitution was July 19, 1949 – to give force to the new date, an amendment was made to the Citizenship Act, 1955, and a new section was introduced.

- It was made applicable only to Assam.
- There had been intermittent demands from AASU and other organisations in Assam for updating the NRC, an Assam based NGO filed a petition at the Supreme Court.
- In December 2014, a division bench of the apex court ordered that the NRC be updated in a time-bound manner.
- The NRC of 1951 and the Electoral Roll of 1971 (up to midnight of 24 March 1971) are together called Legacy Data. Persons and their descendants whose names appeared in these documents are certified as Indian citizens.

About the recent developments in implementation of NRC in Assam

- The exercise was a culmination of the Assam Accord of 1985 signed between the Centre and the All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) for detection, disenfranchisement and deportation of foreigners.
- In the letter, the joint director asked the Assam government to assess the software used for managing the register and discontinue the ones not required.
- The Assam government has rejected the NRC in its current form and demanded re-verification of 30% names included in the NRC in areas bordering Bangladesh and 10% in remaining State.

CREATION OF A NEW DISTRICT OF MALERKOTLA IN PUNJAB

Context:

Punjab Chief Minister declared Malerkotla the 23rd district of the State by provisions in the Punjab Land Revenue Act, 1887.

Relevance:

GS-II: Polity and Governance (Federalism, Government Interventions, Territory of India)

Dimensions of the Article:

1. How are new districts carved?
2. What is the objective of creating new districts?
3. Understanding the Districts in India and the trends

How are new districts carved?

- **The power to create new districts or alter or abolish existing districts rests with the State governments.**
- This can either be done through an executive order or by passing a law in the State Assembly.
- Many States prefer the executive route by simply issuing a notification in the official gazette.

Does the Central government have a role to play here?

- **The Centre has NO role to play in the alteration of districts or creation of new districts.** States are free to decide.
- The **Union Home Ministry comes into the picture when a State wants to change the name of a district or a railway station.** The State government's request is sent to other departments and agencies such as the Ministry of Earth Sciences, Intelligence Bureau, Department of Posts, Geographical Survey of India Sciences and the Railway Ministry seeking clearance. A no-objection certificate may be issued after examining their replies.

What is the objective of creating new districts?

- States argue that smaller districts lead to better administration and governance.
- If the area of administration is vast, it will cause delays in implementing welfare schemes and projects.
- The population, human settlements, commercial establishments and industries continue to grow in modern times – hence public offices will stop being able to cater to the increasing population effectively and the people may not get the benefits of the welfare schemes etc., in time.
- **The purpose of delimitation of districts is ensuring that the people have easy access to the administration and enjoy the benefits of government schemes.**
- A new district will have a new Collectorate and will encourage employment opportunities and the creation of new commercial establishments and industries.

Understanding the Districts in India and the trends

- The larger states predicatbly have a higher number of districts, with Uttar Pradesh (75) leading the count, followed by Madhya Pradesh (52), while the smallest state, Goa (2), has the lowest number.
- However, the number of districts in a state is not always a function of the area of the state, or of its population. For example, Andhra Pradesh is the seventh largest state by area but has among the smallest counts of districts at 13. Another example: Tripura being a small state, has 8 districts which gives it a very high number of districts per unit area (An average Andhra Pradesh district is more than nine times the size of an average Tripura district).

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STATES WITH LARGER DISTRICTS

State	Districts	Area (sq km)		Population (lakh)	
		State	Avg/district	State	Avg/district
Andhra	13	1,60,205	12,323	496	38
Rajasthan	33	3,42,239	10,371	685	21
Maharashtra	36	3,07,713	8,548	1,123	31
Karnataka	30	1,91,796	6,393	611	20
MP	52	3,08,252	6,044	726	14
Gujarat	33	1,96,024	5,940	604	18

STATES WITH SMALLER DISTRICTS

State	Districts	Area (sq km)		Population (lakh)	
		State	Avg/district	State	Avg/district
Tripura	8	10,492	1,311	36	4.5
Manipur	16	22,327	1,395	28	1.8
Nagaland	11	16,579	1,507	20	1.8
Sikkim	4	7,096	1,774	6	1.5
Goa	2	3,702	1,851	14.5	7.3
Haryana	22	44,212	2,010	253	11.5

- According to the 2011 Census, there were 593 districts in the country. The Census results showed that between 2001-2011, as many as 46 districts were created by States.
- Though the 2021 Census is yet to happen, Know India, a website run by the Government of India, says currently there are **718 districts in the country.**
- The surge in number is also due to bifurcation of Andhra Pradesh into A.P and Telangana in 2014. Telangana at present has 33 districts and A.P has 13 districts.

WEST BENGAL TO SET UP A LEGISLATIVE COUNCIL

Context:

The West Bengal government will set up a Legislative Council (Vidhan Parishad), as per a decision taken up at the Cabinet meeting.

Relevance:

GS-II: Polity and Governance (Legislature, Bicameralism)

Dimensions of the Article:

1. What is Bicameral Legislature?
2. Advantages of having the Upper House (Benefits of Bicameralism)
3. Disadvantages of having a second house (Advantages of Unicameral Legislature)
4. About State Legislative Council – Vidhan Parishad
5. Election to the Legislative Council
6. Creation of a Legislative Council for a State
7. Who can abolish a legislative council?

What is Bicameral Legislature?

When the legislative body consists of two separate houses – it is called Bicameral Legislature. In a bicameral legislature, the function to administer and implement the laws are shared between the two houses.

India is one such example where there are two houses of legislature both at the Union and also in some states.

At the central level, the Indian Parliament has two houses:

1. Lok Sabha (Lower House)
2. Rajya Sabha (Upper House)

At the state level, currently 6 of the 28 state legislatures have two houses:

1. Legislative Assembly (Vidhan Sabha – similar to Lower House)
2. Legislative Council (Vidhan Parishad – similar to Upper House)

STATES WITH TWO HOUSES

State	MLA seats*	MLC seats
Andhra	176	58
Bihar	243	58
Karnataka	225	75
Maharashtra	289	78
Telangana	119	40
UP	404	100

** Including nominated members*

Advantages of having the Upper House (Benefits of Bicameralism)

1. The Rajya Sabha at the Centre helps to **better represent the States**. In general, legislature with 2 houses can better represent sub-national / sub-state governments.
2. The Second house (Upper House/Legislative Council) can **act as a body of expert scrutiny and review.**

3. The Upper House/Legislative Council provides a further **democratic check** on the power of the Lower House/Legislative Assembly
4. The Second House helps provide better **representation for various ethno-cultural minorities** or socio-economic interests.

Disadvantages of having a second house (Advantages of Unicameral Legislature)

1. A single chamber can be cheaper, simpler and more efficient
2. A single house avoids duplication and deadlock,
3. Unicameral legislature helps in concentrating democratic responsibility in one elected assembly.
4. The checks and balances of bicameralism can also be provided by other institutions, without the need for a second legislative chamber. Hence, it may be argued that a second house is redundant for the purpose of providing a democratic check.

About State Legislative Council – Vidhan Parishad

- Legislative Council or Vidhan Parishad is the upper house in bicameral legislatures in some states of India.
- While most states have a unicameral legislature with only legislative assembly, currently, six states viz. Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana, and Uttar Pradesh have legislative councils.

Strength of the Legislative Council: The total number of the Legislative Council should not exceed 1/3rd of the total number of members of the Legislative assembly, but it should not be less than 40 (Article 171).

Election to the Legislative Council

In the Legislative Council, there are 5 different categories of representation:

1. 1/3rd of the total membership is elected by the electorates consisting of the members of the self-Governing bodies in the state such as Municipalities, District Boards etc.
2. 1/3rd members are elected by the members of the Legislative assembly of the State
3. 1/12th members are elected by an electorate of University Graduates.
4. 1/12th members are elected by the electorate consisting of the secondary school teachers (3-years' experience)
5. 1/6th members nominated by the Governor on the basis of their special knowledge / practical experience in literature, art, science, cooperative movement or social service.

The election is held in accordance with the system of **proportional representation by means of a single transferable vote and secret ballot method for the first 4 categories of representation (i.e., except for nomination by the governor).**

Qualifications for election as MLC

1. Must be a citizen of India
2. Must have completed the age of 30 years
3. Must possess such other qualifications as prescribed by the Parliament by law.
4. The member should not hold the office of the profit.
5. Should not be of unsound mind; and
6. Should not be an undischarged insolvent.

Term of Legislative Councils

- The legislative council is a permanent body but 1/3rd of its members retire every 2 years.
- The members of the council elect a chairman which is called "presiding officer".
- The council also elects the Deputy chairman.

Creation of a Legislative Council for a State

- Article 168 of the Constitution of India provides for a Legislature in every state of the country. The same Article mentions that there are some states where there is a legislative council as well. Thus, the Indian Constitution does not adhere to the principle of bicameralism in the case of every legislature.
- The framers of the Constitution as well as members of the Constituent Assembly had in mind that it may not be possible for all the states to support two houses, financially as well as for other reasons. For example, some of the members of the Constituent assembly criticized the idea of a bicameral legislature in the states as a superfluous idea and a body that is unrepresentative of the population, a burden on the state budget and causing delays in passing legislation.
- That is why, whether there should be a legislative council in the state or not, is decided by the Legislative Assembly of the state itself.
- But it does not mean that the Legislative Assembly can itself create a legislative council. The Constitution of India has full provisions about the creation of a Legislative Council and its abolishment.

Who can abolish a legislative council?

- The power of abolition and creation of the State legislative council is vested in the Parliament of India as per Article 169.
- But again, to create or to abolish a state legislative council, the state legislative assembly must pass a resolution, which must be supported by 50% majority of the total strength of the house and 2/3rd majority of the members present and voting (Absolute + Special Majority).
- When a legislative council is created or abolished, the Constitution of India is also changed.
- However, still, such type of law is not considered a Constitution Amendment Bill. (Article 169).
- The resolution to create and abolish a state legislative council is to be given assent by the President as well.

PLEA FOR INDEPENDENT PANEL TO APPOINT EC MEMBERS

Context:

A petition was filed in the Supreme Court seeking the constitution of an independent collegium to appoint members of the Election Commission.

Relevance:

GS-II: Polity and Governance (Constitutional Bodies, Government Interventions for Transparency and Accountability in governance)

Dimensions of the Article:

1. About the Election Commission of India
2. Structure of the Election Commission

3. Present system of Appointment to the Election Commission
4. Recommendations in the past for collegium to appoint EC and CEC
5. The need for having a collegium for appointment of EC and CEC

About the Election Commission of India

- The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India.
- **The body administers elections to the Lok Sabha, Rajya Sabha, and State Legislative Assemblies in India, and the offices of the President and Vice President in the country.**
- Part XV of the Indian constitution deals with elections, and establishes a commission for these matters.
- The Election Commission was established in accordance with the Constitution on 25th January 1950.
- Article 324 to 329 of the constitution deals with powers, function, tenure, eligibility, etc., of the commission and the member.

Structure of the Election Commission

- Originally the commission had only one election commissioner but after the Election Commissioner Amendment Act 1989, it has been made a multi-member body.
- The commission consists of one Chief Election Commissioner and two Election Commissioners.
- The secretariat of the commission is located in New Delhi.
- At the state level election commission is helped by Chief Electoral Officer who is an IAS rank Officer.
- The President appoints Chief Election Commissioner and Election Commissioners.
- They have a fixed tenure of six years, or up to the age of 65 years, whichever is earlier.
- They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.
- The Chief Election Commissioner can be removed from office only through a process of removal similar to that of a Supreme Court judge for by Parliament.

Present system of Appointment to the Election Commission

- The Constitution of India does NOT prescribe any procedure for appointment of the CEC and EC. However, the Parliament has the power to regulate the terms of conditions of service and tenure of ECs according to Article 324(5) in the Constitution.
- According to this provision in Article 324 – to determine the conditions of service of the CEC and other ECs and to provide for the procedure for transaction of business by the ECI – Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 was passed.
- The appointment of CEC and EC is dealt with in the **Transaction of Business rules 1961** – according to which the President shall appoint the CEC and EC based on the recommendations made by the Prime Minister. **(Therefore, it is the executive power of the President to appoint CEC and ECs.)**
- There is also the Article 324(2), which states that the President shall, with aid and advice of the Council of Ministers, appoint CEC and ECs, till Parliament enacts a law fixing the criteria for selection, conditions of service and tenure.

Recommendations in the past for collegium to appoint EC and CEC

- According to the plea filed in the SC, recommendations to have a neutral collegium to fill up vacancies in the Election Commission have been given by several expert committees, commissions from 1975.
- The recommendation to have a neutral collegium to appoint EC and CEC was also part of the Law Commission's 255th report in March 2015.

- In 2009, the Second Administrative Reforms Commission in its fourth report suggested a collegium system for appointment CEC and ECs.
- In 1990, the Dinesh Goswami Committee recommended effective consultation with neutral authorities like the Chief Justice of India and the Leader of the Opposition for the appointment in the Election Commission.
- In 1975, the Justice Tarkunde Committee recommended that the members of the Election Commission should be appointed by the President on the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India.

The need for having a collegium for appointment of EC and CEC

- The appointment of members of the Election Commission on the whims and fancies of the Executive violates the very foundation on which it was created, thus, making the Commission a branch of the Executive.
- The Election Commission is not only responsible for conducting free and fair elections, but it also renders a quasi-judicial function between the various political parties including the ruling government and other parties.
- In such circumstances, the Executive cannot be the sole participant in the appointment of members of the Election Commission as it gives unfettered discretion to the ruling party to choose someone whose loyalty to it is ensured and thereby renders the selection process vulnerable to manipulation.

Main hurdle in setting up such a collegium

For other constitutional positions, similar demands can be raised where it is the imperative of the executive to make such appointments like for Attorney General or Comptroller & Auditor-General. For the appointment of Central Bureau of Investigation (CBI) director and the Central Vigilance Commissioner, committees are constituted. But these are statutory positions. As of now, there is no committee for constitutional appointments.

AVOIDING BREAKDOWN: ON GST COUNCIL MEETING

Context:

After a gap of over seven months, the GST Council will meet in May 2021 as announced by the Union Finance Minister. The GST Council has taken possibly the longest pause in its functioning and since it is expected to meet every quarter, this does not set a good precedent.

Relevance:

GS-II: Polity and Governance (Constitutional Bodies, Government Interventions for Transparency and Accountability in governance)

Dimensions of the Article:

What is GST?

GST Council

Matters on which GST Council makes recommendations

Issues with GST Council through the Pandemic

What is GST?

GST is a destination-based indirect tax and is levied at the final consumption point. Under it, the final consumer of the goods and services bear the tax charged in the supply chain. GST is a transparent and fair system that prevents black money and corruption and promotes new governance culture.

GST Act

- Goods and Services Tax (GST) Act came into effect in 2017.
- Goods and Services Tax (GST) was introduced by the Government of India to boost the economic growth of India. GST is considered to be the biggest taxation reform in the history of the Indian economy.
- The power to make any changes in the GST law is in the hands of the GST Council. GST Council is headed by the Finance Minister. One hundred and first amendment act, 2016 introduced the GST in India in July 2017.

GST Council

- Goods & Services Tax Council is a constitutional body for making recommendations to the Union and State Government on issues related to Goods and Service Tax.
- As per Article 279A (1) of the amended Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A.
- The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2016, for the introduction of Goods and Services Tax in the country was introduced in the Parliament and passed by Rajya Sabha on 3rd August 2016 and by Lok Sabha on 8th August 2016.
- GST Council is an apex member committee to modify, reconcile or procure any law or regulation based on the context of goods and services tax in India.
- The GST council is responsible for any revision or enactment of rule or any rate changes of the goods and services in India.

- The council contains the following members:
  1. Union Finance Minister (as chairperson)
  2. Union Minister of States in charge of revenue or finance (as members)
  3. The ministers of states in charge of finance or taxation or other ministers as nominated by each state's government (as members).

Matters on which GST Council makes recommendations

- Taxes, cesses, and surcharges levied by the Centre, States and local bodies which may be subsumed in the GST;
- Goods and services which may be subjected to or exempted from GST;
- Model GST laws, principles of levy, apportionment of IGST and principles that govern the place of supply;
- Threshold limit of turnover below which goods and services may be exempted from GST;
- Rates including floor rates with bands of GST;
- Special rates to raise additional resources during any natural calamity;
- Special provision with respect to Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- Any other matter relating to the goods and services tax, as the Council may decide.

Issues with GST Council through the Pandemic

Delay in meeting

- According to the Procedure and Conduct of Business Regulations of the GST council, the council shall meet at least once in every quarter of the financial year. But the gap between the 42nd and 43rd meeting of the council is over 7 months.

Refusing Demands from states to drop GST on COVID supplies

- States are demanding to drop the 12% tax on oxygen concentrators & 5% on vaccines that are being levied. The Centre is refusing this.
- The Centre's argument for not dropping GST is that if full exemption from GST is given, vaccine manufacturers would not be able to offset their input taxes and would pass them on to the end consumer/ citizen by increasing the price.
- According to the Centre, a 5% GST rate ensures that the manufacturer can utilise ITC (input tax credit) and claim a refund. Hence, an exemption to the vaccines from GST would be counterproductive without benefiting the consumer
- However, experts argue that Zero-rating (instead of exemption) makes the entire value chain of the supply exempt from tax. Not only is the output exempt from tax, but there is also no bar on availing credit of taxes paid on the input side for providing the output supply

Revenue Shortfall and GST compensation

- States are seeking higher compensation fearing revenue shortfall due to COVID 2nd wave.
- In the last meeting of the GST Council, the compensation formula was the main topic of discussion and it created strains in the centre-state fiscal relations. Later Centre borrowed around ₹1.1 lakh crore and passed it as a back-to-back loan to States for GST Compensation shortfall.

- In the 43rd meeting on May 2021, the council should arrive at a proper formula to share GST compensation (keeping in view of the revenue shortfall due to the 2nd wave of Covid-19) to avoid any further strains in the centre-state fiscal relations.

Dispute Resolution Mechanism

- The Constitution says GST Council can set up a mechanism to adjudicate any dispute between the Centre and states or between states on issues arising from the Council's decisions. Such an adjudication/dispute resolution mechanism is yet to be set up.
- A dispute resolution mechanism can help to solve the differences between centre & states and strengthens fiscal federalism.

THE OUTDATED NATURE OF BUREAUCRACY

Context:

Despite its efforts, bureaucracy has emerged as a major concern for the ineffective response to the COVID-19 crisis.

In the 21st century, democratic countries are still relying on traditional bureaucracies to perform public policy formulation and implementation roles.

Relevance:

GS-II: Polity and Governance (Role of Civil Services in a Democracy, Government Interventions for Transparency and Accountability in governance)

Mains Questions:

Can it be said that the traditional bureaucracy in India is obsolete in present day public services? Critically examine the Weberian model of bureaucracy. (15 Marks)

Dimensions of the Article:

1. History of the Civil Services in India
2. Weberian bureaucracy
3. Issues with Weberian bureaucracy
4. Limitations of outright privatization
5. Way Forward: Collaborative governance

History of the Civil Services in India

- According to Kautilya's Arthasastra – The higher bureaucracy consisted of the mantrins and the amatyas. While the mantrins were the highest advisors to the King, the amatyas were the civil servants. The Arthasastra stipulates seven basic elements – Swamin (the ruler), Amatya (the bureaucracy), Janapada (territory), Durga (the fortified capital), Kosa (the treasury), Danda (the army), and Mitra (the ally) – of the administrative apparatus.

- During Mughal era, the bureaucracy was primarily based on the mansabdari system, which was essentially a pool of civil servants available for civil or military deployment.
- The big changes in the civil services in British India came with the implementation of Macaulay's Report 1835 during the British rule which recommended that only the best and brightest would do for the Indian Civil Service, so as to serve the interest of British empire.
- After independence Indian civil services system retained the elements of the British structure like a unified administrative system such as an open-entry system based on academic achievements, permanency of tenure.

Weberian bureaucracy

- Traditional bureaucracy is still stuck with the leadership of position over leadership of function.
- Leadership of function is when a person has expert knowledge of a particular responsibility in a particular situation. The role of the leader is to explain the situation instead of issuing orders.
- **Weberian bureaucracy prefers leadership based on position.**

Extras: Follett's Three types of Leadership

1. **Leadership of Position:** is almost an automatic means of becoming a leader, position can provide power, with which the leader can produce results. Power may be official (the Mikado, an emperor) or delegated (Poo-Bah, a bureaucrat).
2. **Leadership of Function:** sets people apart by some performing activities which distinguish them from others. Police, judges, magistrates, barristers and solicitors perform justice functions, doctors and others function in the medical profession.
3. **Leadership of Personality:** can provide backing for a leader, particularly if the leader has the extreme form of personality, we term charisma, taken up for general use to explain why and how some people seem to be set apart from the mob by those around experiencing a near-divine attraction to the leader.

Issues with Weberian bureaucracy

Generalists over Specialists

- A generalist officer (IAS and State civil service officials) is deemed an expert and as a result, superior, even though the officer can be (and is often) shifted between different departments or ministries reducing experience.
- Specialists in every government department have to remain subordinate to the generalist officers. The COVID-19 pandemic has exposed this weakness. Healthcare professionals who are specialists have been made to work under generalist officers and the policy options have been left to the generalists when they should be in the hands of the specialists.

Leadership of Function

- Since Weberian Bureaucracy is stuck with "Leadership of Position" wherein a large amount of power is granted to the leader based on their title alone rather than experience/knowledge – this acts as a major limitation for decentralized governance which is more effective.
- This has resulted in a situation where the bureaucracy has become an end in itself rather than a means to an end, which is, improved governance and socio-economic development of the society.

Rigid Adherence to Rules

- The rigid adherence to rules in the traditional bureaucratic structure has been an area of major concern.
- The strict adherence to process and rules has resulted in COVID-19 aid getting stuck in cumbersome clearance processes even during the pandemic.
- The rigid emphasis on the following of rules and regulations and the fear of official sanctions have resulted in the rejection of innovation from public officials.

Limitations of outright privatization

- In the light of the lacunae in the existent bureaucratic structure, there have been growing calls for a new public management in India, which promotes privatisation and managerial techniques of the private sector as an effective tool to seek improvements in public service delivery and governance.
- However, it should be noted that outright privatization may not be a viable solution in India where there is social inequality and regional variations in development.
- The private sector is driven by the motive of profits and hence would cater only to people and areas where their operations are financially viable. They would not be able to serve the poor due to his/her inability to pay for the private sector's work.
- Such an approach renders the state as a mere bystander among the multiple market players with accountability being constantly shifted, especially during a crisis. The COVID-19 crisis has shown that the private sector has failed in public service delivery.

Way Forward: Collaborative governance

- The most appropriate administrative reform to ensure more effective public governance is aiming for collaborative governance in which the public sector, private players and civil society, especially public service organisations (NGOs), work together for effective public service delivery.
- Such a system would ensure that there is no domination of public bureaucracy in policy formulation and implementation. This can help change the behaviour of bureaucracy towards governance and also help initiate public service reforms – relook at the generalist versus specialist debate, openness to reforms such as lateral entry and collaboration with a network of social actors.
- In such a system the existing network of social actors and private players would take responsibility in various aspects of governance with public bureaucracy coordinating the efforts. Such a structure would allow the institutionalization of the critical role being played by civil society. This will help in scaling the impact of effective civil societies.
- The collaboration of public bureaucracy with the private and social society has had a profound impact on public service delivery as seen in Green Revolution (M.S. Swaminathan), the White Revolution (Verghese Kurien), Aadhaar-enabled services (Nandan Nilekani) and the IT revolution (Sam Pitroda).

SLEW OF BAD LAW PROPOSALS IN LAKSHADWEEP, RESENTMENT

Context:

Discontent is simmering beneath the calm, verdant environs of the Lakshadweep group of islands over a slew of regulations introduced by the new administrator, Praful Khoda Patel in the last five months of his rule.

Relevance:

GS-II: Polity and Governance (Government Interventions and Policies, Issues arising out of the Design and Implementation of such policies)

Dimensions of the Article:

1. Draft Lakshadweep Development Authority Regulation, 2021 (LDAR 2021)
2. COVID surge in Lakshadweep and relaxation of protocols
3. New rules: Ban on contesting panchayat polls, Beef ban, Goonda Act
4. Administration of Union Territories
5. Power of parliament to make laws in UTs
6. About Lakshadweep

Draft Lakshadweep Development Authority Regulation, 2021 (LDAR 2021)

- The Draft Lakshadweep Development Authority Regulation, 2021 (LDAR 2021), notified on the administration's website, proposes to change the existing land ownership and usage in Lakshadweep by giving sweeping, arbitrary, **unchecked powers to the government (and all its bodies) to directly interfere with an islander's right to possess and retain their property.**
- It empowers the government to pick any land for "development" activities provided under its regulation. Once picked, the land can be used as per the government sees fit, i.e., with no regards for the owner of the land.
- The draft report raises concerns as it refers to "development" as activities including "building, engineering, mining, quarrying or other operations in, on, over or under, land, the cutting of a hill or any portion or the making of any material change in any building or land, or in the use of any building or land, and includes sub-division of any land."
- It also adds that "a development plan shall not, either before or after it has been approved, be questioned in any manner, in any legal proceedings whatsoever".
- **The proposed developmental activities at such scale also threatens the fragile ecosystem of the coral islands.**

COVID surge in Lakshadweep and relaxation of protocols

- Reforms under the new administrator, Praful Khoda Patel saw the Lakshadweep archipelago descend from being a 'COVID-free region' for nearly a year into one with almost 7000 cases in May 2021.
- The new administrator has been accused of diluting the standard operating procedure (SOP) which was in force on the island for preventing the spread of the pandemic.

New rules: Ban on contesting panchayat polls, Beef ban, Goonda Act

- Another controversy is around the proposed ban under the Draft Lakshadweep Panchayat Regulation, 2021 for individuals to contest panchayat polls if a resident has more than two kids.
- The administrator has also been accused of trying to interfere in the traditional life of the people of Lakshadweep by the proposed "animal preservation" rules that seek to ban slaughter, transportation, selling or buying of beef products.
- The introduction of a Goonda Act in the island that has close to nil crime rate and revoking of restrictions on alcohol in the name of tourism also have attracted criticism from the islanders.
- Further, the sheds where fishermen used to keep their nets and other equipment were demolished by the new administration on the grounds that they violated the Coast Guard Act.

Administration of Union Territories

Articles 239 to 241 in Part VIII of the Constitution deal with the union territories and there is no uniformity in their administrative system.

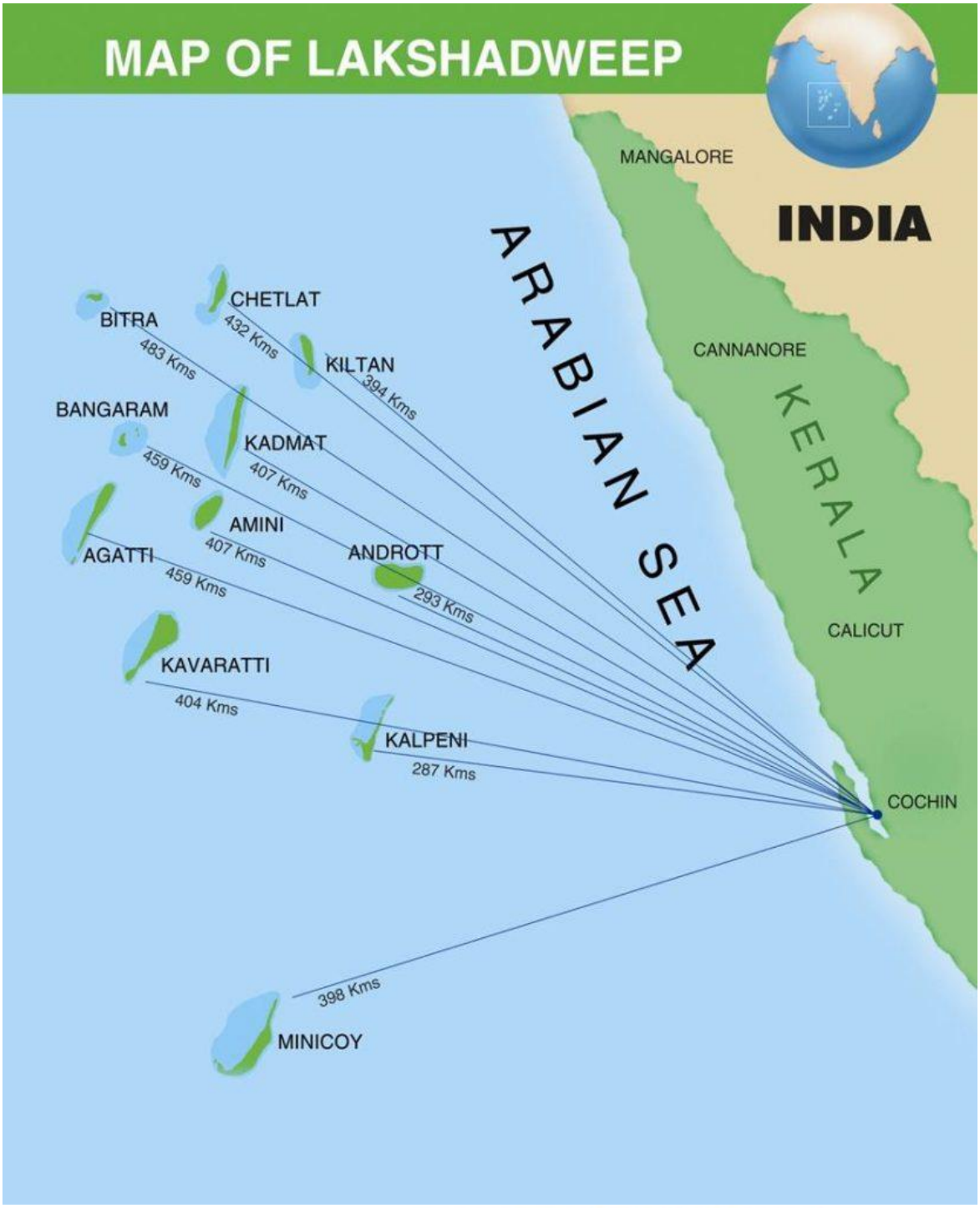
- Every union territory is administered by the President through an administrator appointed by him.
- Administrator of a union territory is an agent of the Central government and is not the head of state like a governor.
- The President can also appoint the governor of a state as the administrator of an adjoining union territory.
- Not all the UT's have an administrator, some are directly governed by president.

Power of parliament to make laws in UTs

- The Parliament can make laws on any subject of the three lists (including the State List) for the union territories.
- The President can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Daman and Diu.
- A regulation made by the President has the same force and effect as an act of Parliament
- The Parliament can establish a high court for a union territory

About Lakshadweep

- India's smallest Union Territory, Lakshadweep is an archipelago consisting of 36 islands with an area of 32 sq km.
- There are three main group of islands: Amindivi Islands, Laccadive Islands, Minicoy Island.
- All are tiny islands of coral origin (Atoll) and are surrounded by fringing reefs.
- The Capital is Kavaratti and it is also the principal town of the UT.
- These islands are a part of Reunion Hotspot volcanism.
- The entire Lakshadweep islands group is made up of coral deposits.
- Fishing is the main occupation on which livelihoods of many people depend.
- The Lakshadweep islands have storm beaches consisting of unconsolidated pebbles, shingles, cobbles, and boulders.
- Minicoy Island, located to the south of the nine-degree channel is the largest island among the Lakshadweep group.
- 8 Degree Channel (8 degrees north latitude) separates islands of Minicoy and Maldives.
- 9 Degree Channel (9 degrees north latitude) separates the island of Minicoy from the main Lakshadweep archipelago.
- In the Lakshadweep region, there is an absence of forests.
- Pitti Island is an important breeding place for sea turtles and for a number of pelagic birds such as the brown noddy, lesser crested tern and greater crested tern. The Pitti island has been declared a bird sanctuary.



INDIA'S NEW IT RULES FOR INTERMEDIARIES: INFORMATION TECHNOLOGY RULES, 2021

Context:

Social media giant Facebook said it aimed to comply with the provisions of India's new IT rules of intermediaries, which come into effect on 26th May 2021.

The Ministry of Electronics and Information Technology has notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in February 2021.

Relevance:

GS-II: Polity and Governance (Government Policies & Interventions, Issues arising out of the design and implementation of such policies)

Dimensions of the Article:

1. Salient Features of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021
2. Digital Media Ethics Code Relating to Digital Media and OTT Platforms to be Administered by Ministry of Information and Broadcasting:
3. Background to the Genesis of these new rules
4. Rationale and Justification for New Guidelines
5. Issues with the New Rules

Salient Features of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

1. **Due Diligence to Be Followed by Intermediaries:** The Rules prescribe due diligence that must be followed by intermediaries, including social media intermediaries. In case, due diligence is not followed by the intermediary, safe harbour provisions will not apply to them.
2. **Grievance Redressal Mechanism: The** Rules seek to empower the users by mandating the intermediaries, including social media intermediaries, to establish a grievance redressal mechanism for receiving resolving complaints from the users or victims. Intermediaries shall appoint a Grievance Officer to deal with such complaints and share the name and contact details of such officer. Grievance Officer shall acknowledge the complaint within 24 hours and resolve it within fifteen days from its receipt.
3. **Ensuring Online Safety and Dignity of Users, Especially Women Users:** Intermediaries shall remove or disable access withing 24 hours of receipt of complaints of contents that exposes the private areas of individuals, show such individuals in full or partial nudity or in sexual act or is in the nature of impersonation including morphed images etc. Such a complaint can be filed either by the individual or by any other person on his/her behalf.
4. **Two Categories of Social Media Intermediaries:** To encourage innovations and enable growth of new social media intermediaries without subjecting smaller platforms to significant compliance requirement, the Rules make a distinction between **1: Social Media Intermediaries and 2: Significant Social Media Intermediaries.** This distinction is based on the number of users on the social media platform. Government is empowered to notify the threshold of user base that will distinguish between social media intermediaries and significant social media intermediaries. The Rules require the
5. **Significant Social Media Intermediaries To follow certain additional due diligence.** This Additional Due Diligence to be Followed by Significant Social Media Intermediary are to:
    1. Appoint a Chief Compliance Officer who shall be responsible for ensuring compliance with the Act and Rules,
    2. Appoint a Nodal Contact Person for 24×7 coordination with law enforcement agencies,
    3. Appoint a Resident Grievance Officer who shall perform the functions mentioned under Grievance Redressal Mechanism.
    4. Publish a monthly compliance report mentioning the details of complaints received and action taken on the complaints as well as details of contents removed proactively by the significant social media intermediary.

5. Significant social media intermediaries providing services primarily in the nature of messaging shall enable identification of the first originator of the information that is required only for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material punishable with imprisonment for a term of not less than five years.
6. **Significant social media intermediary shall have a physical contact address in India published on its website or mobile app or both.**

6. **Voluntary User Verification Mechanism:** Users who wish to verify their accounts voluntarily shall be provided an appropriate mechanism to verify their accounts and provided with demonstrable and visible mark of verification.
7. **Giving Users an Opportunity to be Heard:** In cases where the significant social media intermediaries removes or disables access to any information on their own accord, then a prior intimation for the same shall be communicated to the user who has shared that information with a notice explaining the grounds and reasons for such action. Users must be provided an adequate and reasonable opportunity to dispute the action taken by the intermediary.
8. **Removal of Unlawful Information:** An intermediary upon receiving actual knowledge in the form of an order by a court or being notified by the Appropriate Govt. or its agencies through authorized officer should not host or publish any information which is prohibited under any law in relation to the interest of the sovereignty and integrity of India, public order, friendly relations with foreign countries etc.

Digital Media Ethics Code Relating to Digital Media and OTT Platforms to be Administered by Ministry of Information and Broadcasting:

- There have been widespread concerns about issues relating to digital contents both on digital media and OTT platforms. Civil Society, film makers, political leaders including Chief Minister, trade organizations and associations have all voiced their concerns and highlighted the imperative need for an appropriate institutional mechanism.
- The Government also received many complaints from civil society and parents requesting interventions. There were many court proceedings in the Supreme Court and High Courts, where courts also urged the Government to take suitable measures.
- Since the matter relates to digital platforms, therefore, a conscious decision was taken that issues relating to digital media and OTT and other creative programmes on Internet shall be administered by the Ministry of Information and Broadcasting but the overall architecture shall be under the Information Technology Act, which governs digital platforms.
- The Rules establish a soft-touch self-regulatory architecture and a Code of Ethics and three tier grievance redressal mechanism for news publishers and OTT Platforms and digital media.

Notified the Information Technology Act, these Rules empower the Ministry of Information and Broadcasting to implement the following:

1. **Code of Ethics for online news, OTT platforms and digital media:** This Code of Ethics prescribe the guidelines to be followed by OTT platforms and online news and digital media entities.
2. **Self-Classification of Content:** The OTT platforms, called as the publishers of online curated content in the rules, would self-classify the content into five age-based categories- U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult). Platforms would be required to implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as "A".
3. Publishers of news on digital media would be required to observe **Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act** thereby providing a level playing field between the offline (Print, TV) and digital media.

4. A three-level grievance redressal mechanism has been established under the rules with different levels of self-regulation.
    1. Level-I: Self-regulation by the publishers;
    2. Level-II: Self-regulation by the self-regulating bodies of the publishers;
    3. Level-III: Oversight mechanism.
5. **Self-regulation by the Publisher:** Publisher shall appoint a Grievance Redressal Officer based in India who shall be responsible for the redressal of grievances received by it. The officer shall take decision on every grievance received by it within 15 days.
6. **Self-Regulatory Body:** There may be one or more self-regulatory bodies of publishers. Such a body shall be headed by a retired judge of the Supreme Court, a High Court or independent eminent person and have not more than six members. Such a body will have to register with the Ministry of Information and Broadcasting. This body will oversee the adherence by the publisher to the Code of Ethics and address grievances that have not be been resolved by the publisher within 15 days.
7. **Oversight Mechanism:** Ministry of Information and Broadcasting shall formulate an oversight mechanism. It shall publish a charter for self-regulating bodies, including Codes of Practices. It shall establish an Inter-Departmental Committee for hearing grievances.

Background to the Genesis of these new rules

- Amidst growing concerns around lack of transparency, accountability and rights of users related to digital media and after elaborate consultation with the public and stakeholders, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 has been framed in exercise of powers under section 87 (2) of the Information Technology Act, 2000 and in supersession of the earlier Information Technology (Intermediary Guidelines) Rules 2011.
- While finalizing these Rules, both the Ministries of Electronics and Information Technology and Ministry of Information and Broadcasting undertook elaborate consultations among themselves in order to have a harmonious, soft-touch oversight mechanism in relation to social media platform as well as digital media and OTT platforms etc.

The need for these new rules

- The Digital India programme has now become a movement which is empowering common Indians with the power of technology. The extensive spread of mobile phones, Internet etc. has also enabled many social media platforms to expand their footprints in India. Common people are also using these platforms in a very significant way.
- Social media intermediaries are no longer limited to playing the role of pure intermediary and often they become publishers.
- Some portals, which publish analysis about social media platforms and which have not been disputed, have reported the following numbers as user base of major social media platforms in India:
    - WhatsApp users: more than 50 Crore
    - YouTube users: almost 45 Crore
    - Facebook users: more than 40 Crore
    - Instagram users: more than 20 Crore
    - Twitter users: 1.75 Crore
- These social platforms have enabled common Indians to show their creativity, ask questions, be informed and freely share their views, including criticism of the Government and its functionaries.
- Proliferation of social media,on one hand empowers the citizens then on the other hand gives rise to some serious concerns and consequences which have grown manifold in recent years.
- These concerns have been raised from time to time in various forums including in the Parliament and its committees, judicial orders and in civil society deliberations in different parts of country. Such concerns are also raised all over the world and it is becoming an international issue.

- Persistent spread of fake news has compelled many media platforms to create fact-check mechanisms. Rampant abuse of social media to share morphed images of women and contents related to revenge porn have often threatened the dignity of women.
- Lack of transparency and absence of robust grievance redressal mechanism highlights the need for the new rules.

Rationale and Justification for New Guidelines

- The following developments are noteworthy in justifying the new rules:
- The Supreme Court in the Prajjawala case, 2018, had observed that the Government of India may frame necessary guidelines to eliminate child pornography, rape and gangrape imageries, videos and sites in content hosting platforms and other applications.
- The Supreme Court had passed an order in 2019, directing the Ministry of Electronics and Information Technology to apprise the timeline in respect of completing the process of notifying the new rules.
- There was a Calling Attention Motion on the misuse of social media and spread of fake news in the Rajya Sabha in 2018.
- The Ad-hoc committee of the Rajya Sabha laid its report in 2020 after studying the alarming issue of pornography on social media and its effect on children and society as a whole and recommended for enabling identification of the first originator of such contents.

Issues with the New Rules

1. **Distortion of the Idea of Self-regulation:** For digital publishers of news and current affairs as well as video streaming services, a three-tier structure for grievance redressal has been mandated. With an inter-ministerial committee of government officials in effect becoming an appellate authority over the self-regulatory exercise. This would be self-regulation by the media organization and the industry at the government's pleasure.
2. **Compliance Burden:** The sheer process of such grievance handling can impede the operations of a relatively smaller digital venture in the news and current affairs space. A measure like this, moreover, jeopardizes the very sustenance of the already financially straitened and functionally beleaguered digital news media.
3. **Potential Misuse:** Apart from imposing a compliance burden on digital publishers, this also opens the floodgates for all kinds of interventions. Any criticism of the ruling party or government could trigger an orchestrated avalanche of grievances. This is more worrisome in the already vitiated climate of political and religious majoritarianism.
4. **Arbitrary Powers:** The notification gives the Secretary, Ministry of Information and Broadcasting, ad hoc emergency powers to block any content the government considers problematic even without such token procedure. Also, a negative list of content that shall not be published would be encountered under law as reasonable restrictions to free speech.
5. **Problems in Tracking the First Originator:** The rules require messaging apps such as WhatsApp and Signal to trace problematic messages to the originator. However, it raises uneasy questions about how such apps will be able to adhere to such orders, as their messages are encrypted end-to-end.

PANEL TO DEFINE OFFENCES OF SPEECH, EXPRESSION

Context:

A panel constituted by the Union Home Ministry to suggest reforms to the British-era Indian Penal Code (IPC) is likely to propose a separate Section on "offences relating to speech and expression."

Relevance:

GS-II: Polity and Governance (Freedom of Speech, Government Policies & Interventions, Issues arising out of the design and implementation of such policies)

Dimensions of the Article:

1. What is "Hate Speech"?
2. Events that lead to the Formation of the Committee
3. Existing legislations to control freedom of speech
4. Recommendations of T. K. Viswanathan committee

What is "Hate Speech"?

- In general, "Hate Speech" refers to words whose intent is to create hatred towards a particular group, that group may be a community, religion or race.This speech may or may not have meaning, but is likely to result in violence.
- **BPRD Definition:**
- The Bureau of Police Research and Development recently published a manual for investigating agencies on cyber harassment cases that defined hate speech as a **"language that denigrates, insults, threatens or targets an individual based on their identity and other traits (such as sexual orientation or disability or religion etc.)."**
- In one of the Law Commission of India's reports – hate speech is stated as an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like.

Events that lead to the Formation of the Committee

- Earlier in 2018, the Home Ministry had written to the Law Commission to prepare a distinct law for online "hate speech" acting on a report by a committee headed by former Lok Sabha Secretary General who recommended stricter laws.
- The committee was formed in the wake of Section 66A of the Information Technology Act, 2000, that provided punishment for sending offensive messages through communication services being scrapped by the Supreme Court in 2015.
- In 2019, however, the Ministry decided to overhaul the IPC, framed in 1860 and the Code of Criminal Procedure (CrPC) after seeking suggestions from States, the Supreme Court, High Courts, the Bar Council of India, Bar Councils of States, universities and law institutes on comprehensive amendments to criminal laws.
- As there is no clear definition of what constitutes a "hate speech" in the IPC, the Committee for Reforms in Criminal Laws is attempting for the first time to define such speech.

Existing legislations to control freedom of speech

Under the Constitution (Fundamental Rights)

Article 19 of the Constitution– Freedom of Speech and Expression is guaranteed to all the citizens of India. However, the right is subjected to reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Under Indian Penal Code

- Sections 153A and 153B of the IPC: Punishes acts that cause enmity and hatred between two groups.
- Section 295A of the IPC: Deals with punishing acts which deliberately or with malicious intention outrage the religious feelings of a class of persons.
- Sections 505(1) and 505(2): Make the publication and circulation of content which may cause ill-will or hatred between different groups an offence.

Under Representation of People's Act

- Section 8 of the Representation of People's Act, 1951 (RPA): Prevents a person convicted of the illegal use of the freedom of speech from contesting an election.
- Sections 123(3A) and 125 of the RPA: Bars the promotion of animosity on the grounds of race, religion, community, caste, or language in reference to elections and include it under corrupt electoral practices.

Recommendations of T. K. Viswanathan committee

The T. K. Viswanathan committee, constituted by the Centre, has recommended introducing stringent provisions for hate speech:

- It was of the opinion that it was more effective to insert the substantive provisions in the IPC instead of the IT Act, since the IT Act was primarily concerned with e-commerce regulation.
- It has recommended amendments in CrPC to enable each state to have a State Cyber Crime Coordinator (Sec 25B) and a District Cyber Crime Cell (Sec 25C).
- The offensive speech should be "highly disparaging, abusive or inflammatory against any person or group of persons", and should be uttered with the intention to cause "fear of injury or alarm".
- The committee also expressed the desirability of having guidelines in place to prevent the abuse of provisions by investigation agencies and to safeguard innocent users of social media.
- Insertion of Section 153C to prohibit incitement of hatred through online speech on grounds of religion, caste, community, gender, sexual orientation, tribe, language, place of birth etc.
- Section 505A was proposed to be inserted by the Law Commission to prevent causing of alarm, fear, provocation of violence etc. on grounds of identity.
- It was clarified that the need for intent has to be established.

DEFLATING INDIA'S COVID BLACK MARKET BOOM

Context:

With the second wave of infections and the rise in COVID-19 positive cases in India, the necessity for integral medicines, hospital beds and oxygen supplies has gone up incrementally. In such a situation, the boom in black-market sale of essential needs such as medicines and oxygen tanks has emerged as most reprehensible is the brazen attempt by profiteers in filling the supply gap following the desperation of many patients and families.

Relevance:

GS-III: Indian Economy (Mobilization of Resources), GS-II: Polity and Governance (Important aspects of governance, Issues with transparency and accountability)

Mains Questions:

In the context of flourishing black markets during the Covid-19 pandemic, what are the existing provisions related to the control of such black-market networks? Suggest measures to handle black-market issues during such circumstances. (15 marks)

Dimensions of the Article:

1. What is a Black Market?
2. Flourishing black market during the Covid-19 pandemic
3. Reason: The Pressure
4. Legal regime in India to tackle Black Market (especially in wake of Covid-19)
5. Administrative Shortfall or Exceptional Circumstances?
6. Way Forward

What is a Black Market?

- A black market is an economic activity that takes place outside government-sanctioned channels. Black market transactions usually occur "under the table" to let participants avoid government price controls or taxes.
- The goods and services offered in a black market can be illegal, meaning their purchase and sale are prohibited by law, or they can be legal but transacted to avoid taxes.
- Traditionally, black market activity was conducted in cash, one of its defining aspects. This was done in order to avoid creating any paper trail. With the rise of the Internet, many black market transactions are now done online, such as on the dark web, and often conducted with digital currencies.
- Black markets can have a negative impact on the economy because the activity is not reported and taxes are not collected on the transactions.
- The black market's many drawbacks include the risk of fraud, the possibility of violence, and being saddled with counterfeit goods or adulterated products, which is especially dangerous in the case of medications.
- Black markets do provide some benefits, such as creating jobs for those who may not be able to find employment in traditional markets and allowing access to medicine and healthcare to those individuals that might not have had access otherwise.
- Sometimes, a black market is the only choice for procuring goods in certain situations for certain people.

Flourishing black market during the Covid-19 pandemic

- The desperate need for vital medical supplies has forced many hapless citizens to pay more than the market price to procure these medicines.
- There are reports of many having been tricked into believing fire extinguishers to be oxygen cylinders and saline water bottles to be remdesivir vials after parting with huge sums of money.
- However, clamping down on these cases and the culprits is dependent on having an efficient multi-dimensional preventive model rather than a control mechanism that functions much after the damage has been already done.
- In India, the distribution of remdesivir in the States is mostly controlled by the local governments, while decisions about oxygen supplies to the States are predominantly decided by Union bodies. Yet, citizens have been approaching alien sources to procure medical supplies.

Examples

- In 2020 a racket of selling fake and spurious tocilizumab injections in Surat and Ahmedabad was unearthed by the Gujarat Food and Drugs Control Administration. Things do not seem to have improved even after a year in 2021.
- Recently, the police in Ahmedabad arrested a few people for preparing fake remdesivir vials for sale using a mixture of glucose and salt and affixing them with fake brand labels.
- In Mumbai's drug black market, citizens have had to pay huge amounts ranging from 35,000 and 50,000 rupees for remdesivir vials.
- In Kanpur, Uttar Pradesh, a racket to market oxygen cylinders in the black market was uncovered after raids on a godown.

Reason: The Pressure

- A major reason behind why many are in the situation they are facing is because administrative organisations are being overwhelmed and helpline numbers inundated with calls and difficult to connect to.
- Even if citizens are fortunate enough to have their requests entered in records, they may not be able to procure the products they need due to the inadequacy of resources or probably not receiving a closure communication from helplines, which keeps them at a loose end without knowing where else to go and what else to do.
- This inaccessibility, a redundant and long communication process flow, and a delay in rendering responses are what have affected the reliability of these helplines as far as people are concerned.
- Any market, black or otherwise, is a dynamic hemisphere which is consumer-driven. There is public demand for what the products these black markets or rackets have to offer and which is why they thrive.
- Alleged hospital bed-booking scams, the unnecessary hoarding of COVID-19 essentials by the elite, and possible VIP culture practices have contributed to the erosion of trust.
- These elements have all combined to force the public to look elsewhere for sources beyond the probability of the government rendering them assistance.

Legal regime in India to tackle Black Market (especially in wake of Covid-19)

1. The **Essential Commodities Act of 1955,** is for the control of production, supply, and distribution of certain commodities. The Act does not deal with the term "black marketing" but section 7 prescribes for penalty on violation of government notification issued under section 3. Schedule to the Act includes "drugs" as essential commodity.
2. **Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980**, was enacted but did not provide for definition of black marketing. Section 3(1) provides that authorities have power to detain a person "with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained".
3. **The National Security Act of 1980** under Section 3(2) gives similar power to the Central Government or the State Government, if the act is in any manner prejudicial to the security of the State, apart from being prejudicial to the maintenance of Public order or to the maintenance of supplies and services essential to the community. The phrase "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" has been addressed by the Supreme Court in several cases while deciding on the validity of detention orders passed under the Act.
4. In order to more effectively deal with persons indulging in hoarding and black-marketing and profiteering in essential commodities, the Central Government enacted the **Essential Commodities (Special Provisions) Act, 1981.** Special provisions by way of amendment to the principal Act were made for a temporary period providing summary trial of offences under the Essential Commodities Act, constitution of special courts, enhancement of sentence and making the offences as cognizable and non bailable and providing for stricter provisions for grant of bail.

Administrative Shortfall or Exceptional Circumstances?

- Despite a robust legal regime on paper, the Indian administration has struggled with the issue of "Hoarding" and "Black Marketing" since the pandemic has started, be it manufacture and sale of fake sanitizers and masks or scarce Medicines and Oxygen supplies.
- According to reports, over 300 FIRs have been registered alleging hoarding and black-marketing.
- While some gain traction in public discourse, other instances get lost in the myriad. However, it is a folly to think such instances are limited to India.
- As reported on Interpol's website, under Operation Pangea XIII in March of 2020, counterfeit facemasks, substandard hand sanitizers and unauthorized antiviral medication were all seized, by the police, customs, and health regulatory authorities from 90 countries in a collective action against the illicit online sale of medicines and medical products. This exercise has resulted in over 120 arrests worldwide.

Way Forward

- Court directions such as the ones regarding the supply of Oxygen and more stringent laws and proactive approach at the central level towards curbing such unethical and illegal activities, is need of the hour.
- Appropriate orders/directions should be issued limiting MRP of all necessary medicines and equipment at the earliest possible.
- What is required is, for the government to deal with each of the issues at an individual level by issuing orders, circulars or notifications, even if time bound, to ensure that the prevalent law is appropriately enforced and wherever there exists a void in the price control mechanism, the same should be taken care of at the earliest.
- Apart from increasing the gulf between have and have nots, black marketing and hoarding are directly proportional to social loss and at a time of global pandemic it indirectly adds to emotional loss too.

HOW VEHICLE TRACKING COULD CURB TAX EVASION?

Context:

In a move that is expected to help curb tax evasion, Goods and Services Tax (GST) authorities will now be able to track real-time data of commercial vehicle (CV) movement on highways by integration of the e-way bill (EWB) system with FASTag and RFID.

Relevance:

GS-II: Polity and Governance (Transparency & Accountability Measures, Government Policies & Interventions), GS-III: Indian Economy

Dimensions of the Article:

1. What are e-way bills?
2. About FASTag
3. About RFID Technology
4. What is the new system involving GST, EWB, FASTag and RFID?

What are e-way bills?

- Under the indirect tax regime, e-way bills have been made mandatory for inter-state transportation of goods valued over Rs 50,000 from April 2018, with exemption to precious item such as gold. On an average, 25 lakh goods vehicle movements from more than 800 tolls are reported on a daily basis to the e-way bill system.
- About 180 crore e-way bills were generated in three years from 2018 to 2021. Of this, only 7 crore bills were verified by tax officers. In the 2020-21 fiscal, 61.68 crore e-way bills were generated, of which 2.27 crore were picked up for verification.
- The top five states which generated the maximum number of e-way bills for inter-state movement of goods are Gujarat, Maharashtra, Haryana, Tamil Nadu and Karnataka.

About FASTag

- FASTag is an electronic toll collection system in India, operated by the National Highway Authority of India (NHAI).
- It employs Radio Frequency Identification (RFID) technology for making toll payments directly from the prepaid or savings account linked to it or directly toll owner.
- As per NHAI, FASTag has unlimited validity. 7.5% cashback offers were also provided to promote the use of FASTag.
- Dedicated Lanes at some Toll plazas have been built for FASTag.

Advantages of Using FASTag

- Digital transaction makes it easier to collect toll fees.
- Congestion in Toll plazas will reduce.
- Non-stop movement at the highways will reduce Fuel consumption and even pollution.
- The Effort in Managing toll gates is reduced as the system is more automated.
- There will also be reduced paper wastage (in the form of tokens/receipts)
- This will be a unifying system as FASTags are not specific to the state or region and work all over India.

Problems with FASTag

- Technical issues and glitches are possible which makes the system susceptible to false charges or other such issues.
- All the toll booths are yet to be made FASTag compatible and this has not necessarily reduced the congestion issue yet.
- The RFID technology is not failproof and can be misused by duplication or other “hacks”.
- The FASTags sold by banks have to be recharged from the same bank, as they are not Bank Neutral (unless you buy it directly from NHAI).

About RFID Technology

- Radio Frequency Identification (RFID) uses radio waves to communicate between two objects: a reader and a tag. RFID communication is the same as two-way radio communication in the sense that information is transmitted or received via a radio wave at a specific frequency.
- Passive tags collect energy from a nearby RFID reader’s interrogating radio waves. Active tags have a local power source such as a battery and may operate at hundreds of meters from the RFID reader.

RFID applications apart from usage in Toll collection:

- Self-checkins at Libraries / rental services as well as retail premises.
- Livestock Management and pet identification.
- Building Security – secure access controls, documentation and passports.
- Airports – for baggage tracking and tracing/locating.
- SMART home controls – systems to manage home/business energy consumption/production.
- Seismic Sensing – such as locating gas lines and temperature sensing (geophysical).
- Environmental – Energy, Ozone & Pollution measuring equipment.

What is the new system involving GST, EWB, FASTag and RFID?

- **The integration of e-way bill, RFID and FASTag will enable tax officers to undertake live vigilance in respect of EWB compliances by businesses and will aid in preventing revenue leakage by real-time identification of cases of recycling and/or non-generation of EWBs.**
- Tax officers can now access reports about vehicles that have passed the selected tolls without e-way bills in the past few minutes. They can also view details of vehicles carrying critical commodities specific to the state that have passed the selected toll.
- Further, tax authorities can view details of any suspicious vehicles and vehicles of e-way bills generated by suspicious taxpayer GST identification numbers (GSTINs) that have passed the selected toll on a near real-time basis.
- Officers can use these reports while conducting vigilance and make the vigilance activity more effective. Moreover, officers of the audit and enforcement wing can use these reports to identify fraudulent transactions like bill trading, recycling of e-way bills.
- From 2021, RFID/FASTag has been integrated with the e-way bill system and a transporter is required to have a radio-frequency identification (RFID) tag in his vehicle and details of the e-way bill generated for goods being carried by the vehicles are uploaded into the RFID system.
- When a vehicle passes the RFID tag reader on the highway, the details fed into the device get uploaded on the government portal. The information is later used by revenue authorities to validate the supplies made by a GST registered person.

NGT FORMS PANEL TO PROBE CONSTRUCTION IN MEKEDATU

Context:

The National Green Tribunal (NGT), Southern Zone has appointed a joint committee to look into allegations of unauthorised construction activity taking place in Mekedatu, where the Karnataka government had proposed to construct a dam across the Cauvery River.

Relevance:

GS-II: Polity and Governance (Intra-State Relations, Functions & responsibilities of the Union and the States, Issues and challenges of federal structure)

Dimensions of the Article:

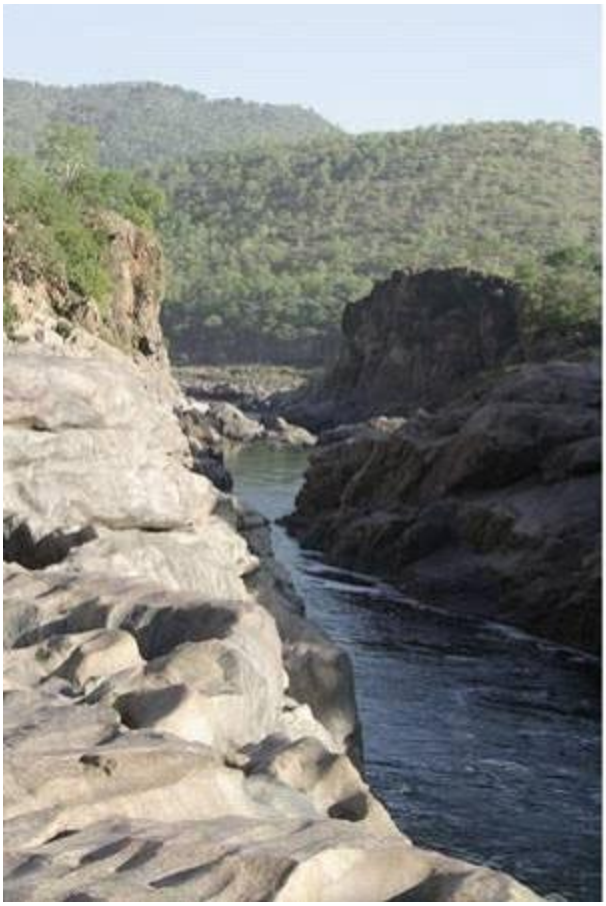
1. About the Cauvery River
2. Mekedatu
3. About the proposed Mekedatu Project
4. Cauvery Water Management Authority (CWMA)
5. Cauvery Water Regulation Committee (CWRC)

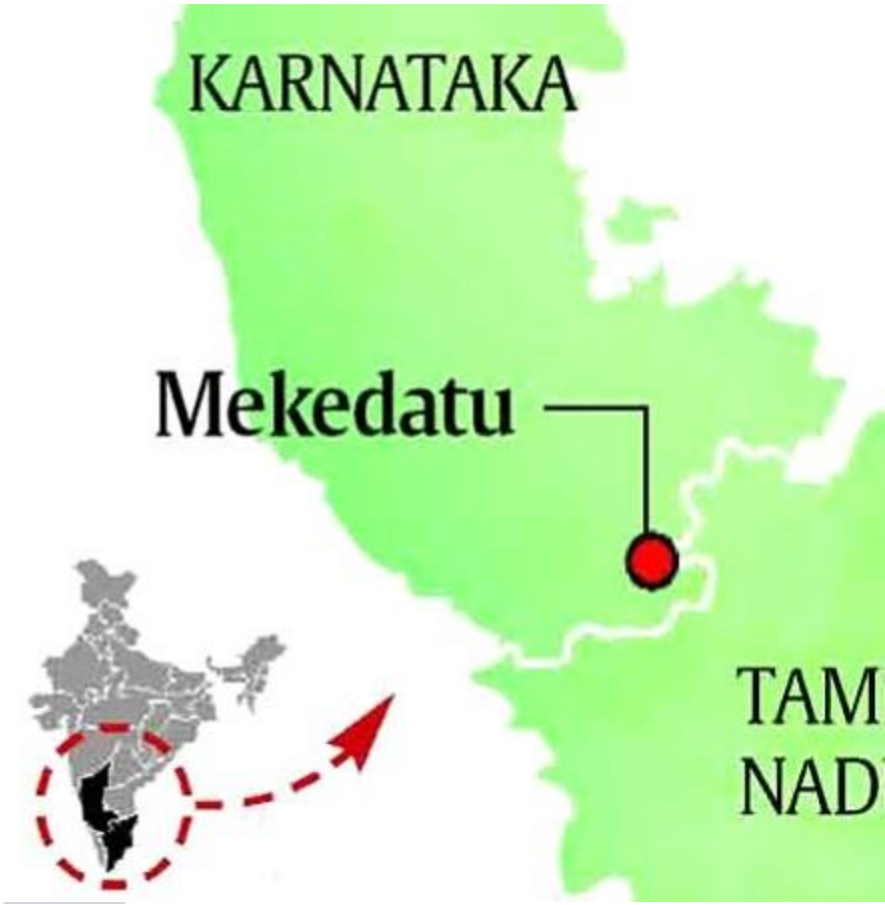
About the Cauvery River

- The Cauvery River (Kaveri), flows in a southeasterly direction through the states of Karnataka and Tamil Nadu and descends the Eastern Ghats in a series of great falls.
- Before emptying into the Bay of Bengal south of Cuddalore, Tamil Nadu the river breaks into a large number of distributaries forming a wide delta called the "Garden of Southern India"
- The Cauvery basin extends over states of Tamil Nadu, Karnataka, Kerala, and Union Territory of Puducherry draining an area of 81 thousand Sq.km.
- It is bounded by the Western Ghats on the west, by the Eastern Ghats on the east and the south, and by the ridges separating it from the Krishna basin and Pennar basin on the north.
- The Nilgiris, an offshore of Western ghats, extend Eastwards to the Eastern ghats and divide the basin into two natural and political regions i.e., Karnataka plateau in the North and the Tamil Nadu plateau in the South.
- Physiographically, the basin can be divided into three parts – the Westen Ghats, the Plateau of Mysore, and the Delta.
- The delta area is the most fertile tract in the basin. The principal soil types found in the basin are black soils, red soils, laterites, alluvial soils, forest soils, and mixed soils. Red soils occupy large areas in the basin. Alluvial soils are found in the delta areas.
- It is almost a perennial river with comparatively fewer fluctuations in flow and is very useful for irrigation and hydroelectric power generation because its upper catchment area receives rainfall during summer by the south-west monsoon and the lower catchment area during the winter season by the retreating north-east monsoon.
- **Harangi, Hemavati, Shimsha, and Arkavati are the tributaries on the left bank (north) and Lakshmantirtha, Kabbani, Suvarnavati, Bhavani, Noyil, and Amaravati are the tributaries on the right bank (south).**

Mekedatu

- Mekedatu is a location along Kaveri in the border of Chamarajanagar and Ramanagara Districts. Sangama is the place where Arkavati merges with Kaveri.
- At Mekedaatu, the Kaveri runs through a deep, narrow ravine of hard granite rock.
- The water flows very fast through the gorge, gouging pits in the rocky riverbed.





About the proposed Mekedatu Project

PMIAS
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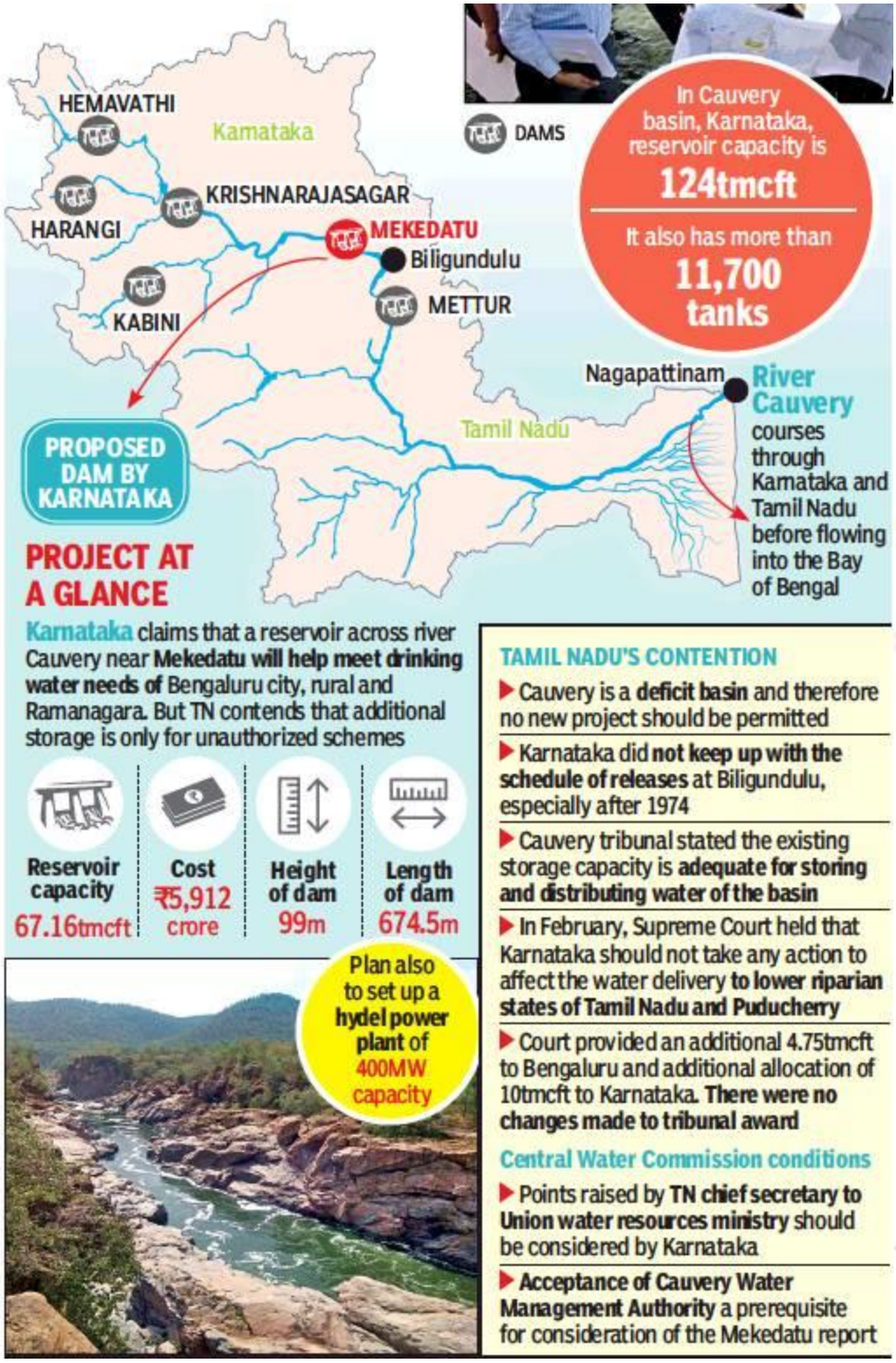


- Ontigondlu is the proposed reservoir site, situated at Ramanagara district in Karnataka about 100 km away from Bengaluru. It is the midst of the Cauvery Wildlife Sanctuary.
- The Rs. 9,000 crore project aims to store and supply water for drinking purposes for the Bengaluru city. Around 400 megawatts (MW) of power is also proposed to be generated through the project.
- The project was first approved by the Karnataka state government in 2017.

- It received approval from the erstwhile Ministry of Water Resources for the detailed project report and is awaiting approval from the Ministry of Environment, Forest and Climate Change (MoEFCC).
- Tamil Nadu had approached the Supreme Court (SC) against the project even if Karnataka has held that it would not affect the flow of water to Tamil Nadu. In 2020, during the Cauvery Water Management Authority's meeting, Tamil Nadu reiterated its opposition to the project.

Cauvery Water Management Authority (CWMA)

- CWMA has been created as per the Cauvery Management Scheme framed by Centre and approved by Supreme Court.
- The Cauvery Management Scheme deals with release of water from Karnataka to Tamil Nadu, Kerala and Puducherry.
- It will be implemented by Cauvery Management Authority (CMA).
- CMA will be sole body to implement CWDT award as modified by Supreme Court.
- The Central Government will have no say in implementing of the scheme except for issuing administrative advisories to it.
- The authority will comprise a chairman, a secretary and eight members.
- Out of the eight members, two will be full time, while two will be part time members from centre's side. Rest four will be part time members from states.
- The main mandate of the CMA will be to secure implementation and compliance of the Supreme Court's order in relation to "storage, apportionment, regulation and control of Cauvery waters".
- CMA will also advise the states to take suitable measures to improve water use efficiency.
- It will do so by promoting use of micro-irrigation, change in cropping patterns, improved farm practices and development of command areas.
- The CMA will also prepare an annual report covering its activities during the preceding year.

Cauvery Water Regulation Committee (CWRC)

- The Central government constituted the Cauvery Water Regulation Committee (CWRC) as per the provisions in the Kaveri Management Scheme laid down by the Supreme Court.
- While the CWMA is an umbrella body, the CWRC will monitor water management on a day-to-day basis, including the water level and inflow and outflow of reservoirs in all the basin states.

CBI DIRECTOR SELECTION: CJI MADE 'STATEMENT OF LAW'

Context:

- A high-powered committee, headed by Prime Minister Narendra Modi and comprising Chief Justice of India Justice N.V. Ramana and Leader of the Congress in the Lok Sabha Adhir Ranjan Chowdhary, met to finalise the choice of the next director of the Central Bureau of Investigation (CBI).
- The government appointed Maharashtra cadre IPS officer, Subodh Kumar Jaiswal, currently Director General of the Central Industrial Security Force (CISF), as CBI Director for two years.
- Chief Justice of India N.V. Ramana's opinion in the high-level committee to avoid officers with less than six months left to retire for appointment as CBI Director is a simple "statement of law". It was not a comment on the professional prowess of those who now find themselves outside the zone of consideration.

Relevance:

GS-II: Polity and Governance (Statutory Bodies, Government Policies & Interventions, Important Judgments)

Dimensions of the Article:

1. Central Bureau of Investigation (CBI)
2. Functions of CBI
3. How is the Director of the CBI appointed?
4. About Supreme Court Judgements regarding Director of the CBI

Central Bureau of Investigation (CBI)

- The Central Bureau of Investigation (CBI) was set up in 1963 after the recommendation of Santhanam committee under Ministry of Home affairs and was later transferred to the Ministry of Personnel and now it enjoys the status of an attached office.
- Now, the CBI comes under the administrative control of the Department of Personnel and Training (DoPT) of the Ministry of Personnel, Public Grievances and Pensions.
- The CBI derives its powers from the Delhi Special Police Establishment Act, 1946, however, it is NOT a Statutory Body.
- CBI is the apex anti-corruption body in the country – Along with being the main investigating agency of the Central Government it also provides assistance to the Central Vigilance Commission and Lokpal.
- The CBI is required to obtain the prior approval of the Central Government before conducting any inquiry or investigation.
- The CBI is also the nodal police agency in India which coordinates investigations on behalf of Interpol Member countries.
- The CBI's conviction rate is as high as 65 to 70% and it is comparable to the best investigation agencies in the world.
- The CBI is headed by a Director and he is assisted by a special director or an additional director. It has joint directors, deputy inspector generals, superintendents of police.
- CBI has following divisions
    1. Anti-Corruption Division
    2. Economic Offences Division
    3. Special Crimes Division
    4. Policy and International Police Cooperation Division
    5. Administration Division
    6. Directorate of Prosecution
    7. Central Forensic Science Laboratory

Functions of CBI

1. Investigating cases of corruption, bribery and misconduct of Central government employees
2. Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.
3. Investigating serious crimes, having national and international ramifications, committed by organized gangs of professional criminals.
4. Coordinating the activities of the anti-corruption agencies and the various state police forces.
5. Taking up, on the request of a state government, any case of public importance for investigation.
6. Maintaining crime statistics and disseminating criminal information.
7. The CBI acts as the "National Central Bureau" of Interpol in India.

How is the Director of the CBI appointed?

- The Central Government shall appoint the Director of CBI on the recommendation of a three-member committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and the Chief Justice of India or Judge of the Supreme Court (SC) nominated by him.
- The Delhi Special Police Establishment (Amendment) Act, 2014 made a change in the composition of the committee related to the appointment of the Director of CBI. It states that **where there is no recognized leader of opposition in the Lok Sabha, then the leader of the single largest opposition party in the Lok Sabha would be a member of that committee.**

About Supreme Court Judgements regarding Director of the CBI

- In a **March 2019 order**, the Supreme Court introduced **a six-month minimum residual tenure** – i.e., officers with less than six months left to retire should be avoided from being appointed as the director of CBI.
- In the **Prakash Singh case, 2006** the SC had stressed the point that appointment of DGPs "should be purely on the basis of merit and to insulate the office from all kinds of influences and pressures". Though the order in the Prakash Singh case pertained to the appointment of DGPs, it was extended to CBI Director too.
- In the **Vineet Narain judgment of 1998** it was held by the Supreme Court that the Director of CBI is to hold the post for not less than two years. The director may not be transferred except with the previous consent of the high-level committee.
- In the **Union of India versus C. Dinakar, 2001 case,** the Supreme Court held that "ordinarily IPS officers of the senior most four batches in service on the date of retirement of CBI Director, irrespective of their empanelment, shall be eligible for consideration for appointment to the post of CBI Director".

WHATSAPP AGAINST TRACEABILITY CLAUSE IN IT RULES 2021

Context:

- WhatsApp's lawsuit taking the Indian government to court over the traceability clause in the new IT Rules 2021 has been filed in the Delhi High Court.
- The new IT rules include a traceability clause that requires social media platforms to locate "the first originator of the information" if required by authorities.

Relevance:

GS-II: Polity and Governance (Government Policies & Interventions, Issues arising out of the design and implementation of such policies)

Dimensions of the Article:

1. Traceability Clause in the new IT Rules
2. What does WhatsApp's lawsuit state?
3. What has WhatsApp said about 'traceability'?
4. Why can't WhatsApp impose traceability?
5. Justice K. S. Puttaswamy (Retd.) vs Union of India Case

Traceability Clause in the new IT Rules

- The new IT rules include a traceability clause that requires social media platforms to locate "the first originator of the information" if required by authorities.
- It should be noted that this rule will impact most messaging apps such as Signal, Telegram, Snapchat, Wire and others.

What does WhatsApp's lawsuit state?

- WhatsApp is invoking the 2017 Justice K S Puttaswamy vs Union Of India case to argue that the traceability provision is unconstitutional and against people's fundamental right to privacy as underlined by the Supreme Court decision.
- The plea states that the court should declare the traceability clause as "unconstitutional" and should not allow it to come into force.
- It is also challenging the clause which puts "criminal liability" on its employees for noncompliance, it is learnt.

What has WhatsApp said about 'traceability'?

- WhatsApp said that the requirement to 'trace' chats would be the "equivalent of asking WhatsApp to keep a fingerprint of every single message sent on WhatsApp." This would mean that the platform will have to break end-to-end encryption, which is turned on by default for all messages. (End-to-end encryption ensures that no third-party, not even the messaging app itself can track or read messages.)
- WhatsApp says it is all for "reasonable and proportionate regulations", but cannot support "eroding privacy for everyone, violating human rights, and putting innocent people at risk."

Why is WhatsApp against finding the originator of a message?

- End-to-end encryption ensures that no one can read the message, except for the sender and the receiver. This includes WhatsApp itself. Nor does the app keep a log of who is sending what message and to whom.
- And given it cannot read the contents of a message, finding the originator is even harder. Further many of the messages are just copied or forwarded by users.
- WhatsApp says that if it had to trace an originator, then it would have to "store information". The argument is tracing even one message means tracing every single message on the platform.
- In order to trace messages, WhatsApp will have to add some sort of "permanent identity stamp" or effectively 'fingerprint' each message, which it says will be like a mass surveillance program.

Why can't WhatsApp impose traceability?

- WhatsApp's argument is that traceability, even if enforced, is not foolproof and could lead to human rights violations.
- Further, they will have to "turn over the names of people who shared something even if they did not create it, shared it out of concern, or sent it to check its accuracy."
- In its blog post, it notes that "innocent people could get caught up in investigations, or even go to jail, for sharing content that later becomes problematic in the eyes of a government." It also adds that such an approach will violate "recognised principles of free expression and human rights."
- Internet experts have also argued against digital fingerprinting techniques to achieve traceability, cautioning these can be easily impersonated.
- Experts are clear that fingerprinting techniques are open to abuse, and in the end will undermine encryption entirely. Apps would have to remove encryption in order to implement such digital signatures on messages.

- WhatsApp says in order "to trace even one message, services would have to trace every message", because "there is no way to predict which message a government would want to investigate in the future". "In doing so, a government that chooses to mandate traceability is effectively mandating a new form of mass surveillance."

WhatsApp's argument on why traceability won't work

- WhatsApp too states that tracing messages will be "ineffective and highly susceptible to abuse."
- If a user simply downloaded an image and shared it, took a screenshot and resent it, or sent an article on WhatsApp that someone emailed, then regardless of not being the original creator – the user who shared it on WhatsApp would be determined to be the originator of that content.
- WhatsApp states that "traceability" goes against the basic principles of how law enforcement and investigations work. In a typical law enforcement request, a government requests technology companies provide account information about a known individual's account. With traceability, a government would provide a technology company a piece of content and ask who sent it first.

Justice K. S. Puttaswamy (Retd.) vs Union of India Case

- The right to privacy of an individual was brought to the fore by the issuance of Aadhar Cards – Retired Justice Puttaswamy challenged the constitutionality of Aadhar before the Supreme Court by filing a writ petition and contended that with regard to all the previous apex court judgements, the Right to Privacy is a fundamental right and the Aadhar procedure violated this right.
- The Supreme Court in its judgement pronounced by a 9-judge bench stressed upon the following points:
- It was held that privacy concerns in this day and age of technology can arise from both the state as well as non-state entities and as such, a claim of violation of privacy lies against both of them.
- The Court also held that informational privacy in the age of the internet is not an absolute right and when an individual exercises his right to control over his data, it may lead to the violation of his privacy to a considerable extent.
- It was also laid down that the ambit of Article 21 is ever-expanding due to the agreement over the years among the Supreme Court judges as a result of which a plethora of rights has been included within Article 21.
- The court stated that Right to Privacy is an inherent and integral part of Part III of the Constitution that guarantees fundamental rights. The conflict in this area mainly arises between an individual's right to privacy and the legitimate aim of the government to implement its policies and a balance needs to be maintained while doing the same.
- The SC also declared that the right to privacy is not an absolute right and any incursion of privacy by state or non-state actors must satisfy the following triple test:
  1. Legitimate Aim
  2. Proportionality
  3. Legality

Impact of the Judgement

- The decision given in M.P. Sharma v Satish Chandra, which held that the Right to Privacy is not protected by the Constitution of India, stands over-ruled.
- The decision in Kharak Singh, to the degree it holds that Right to Privacy is not guaranteed by Part III, also stands over-ruled.
- The right to privacy of an individual is not only protected by the Constitution under Article 21 but is also an intrinsic part of the scheme of Part III which guarantees fundamental rights.

MORE COLLECTORS CAN GRANT CITIZENSHIP UNDER CAA

Context:

The Home Ministry empowered 13 more District Collectors in five States to grant citizenship certificates to applicants belonging to six minority communities from Pakistan, Bangladesh and Afghanistan.

Relevance:

GS-II: Polity and Governance (Citizenship, Government Policies and Interventions, Issues arising out of the design and implementation of these policies)

Dimensions of the Article:

1. About the latest notification regarding the granting of Citizenship
2. Latest notification and the CAA
3. Citizenship (Amendment) Act, 2019 (CAA)
4. Criticisms of the CAA

About the latest notification regarding the granting of Citizenship

- The Home Ministry empowered 13 more District Collectors in the States of: Gujarat, Chhattisgarh, Rajasthan, Haryana and Punjab – to grant citizenship certificates to applicants belonging to six minority communities from Pakistan, Bangladesh and Afghanistan.
- This notification intends to benefit legal migrants (who entered on passport/visa) from the Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from Pakistan, Bangladesh and Afghanistan who have already applied for Citizenship under Section 5 (by registration) and Section 6 (naturalisation) of the Citizenship Act, 1955.
- The fresh notification grants the power to Collectors of Morbi, Rajkot, Patan and Vadodara in Gujarat; Durg and Balodabazar in Chhattisgarh; Jalore, Udaipur, Pali, Barmer and Sirohi in Rajasthan; Faridabad in Haryana and Jalandhar in Punjab. These are the areas where the population of such migrants are concentrated.
- Though there have been no exact numbers of such migrants who came to India on LTV or any other type of visa but officials estimate the number to be around two lakhs. There are around 400 Pakistani Hindu refugee settlements in Jodhpur, Jaisalmer, Bikaner and Jaipur.
- In 2015, the ministry amended the citizenship rules and legalised the stay of such foreign migrants belonging to the six communities who entered India on or before December 2014 due to persecution on grounds of religion by exempting them from provisions of the Passport Act and Foreigners Act. It also allowed them to take up employment opportunities in non-government sectors and empowered District Magistrates in select States to allow purchase of property and issue of driving licence.
- The Home Secretaries of Punjab (except Jalandhar) and Haryana (except Faridabad) have also been given such powers.

Latest notification and the CAA

- Under the existing system, minority communities from the three countries who entered India before December 31, 2009, may or may not choose to provide a copy of their passports but they have to provide the date of the visa and may upload the visa document in place of the passport while applying for citizenship.

- The latest notification is a reiteration of similar orders issued in 2016 and 2018 and is not related to the contentious Citizenship (Amendment) Act (CAA) that is yet to come into effect.
- Since the rules for CAA are yet to be framed and a minority applicant from the three countries, even if he or she came in 2014 becomes eligible for citizenship in the year 2025, but many have been residing in India for more than 20 years on long-term visas (LTV). An LTV is a precursor to Citizenship.

Citizenship as a Central Subject discussion

- Citizenship is a Central subject and the Home Ministry periodically delegates powers to States through gazette notification under Section 16 of the Citizenship Act, 1955.
- Indian citizenship can be acquired on eight grounds – based on registration made by a person of Indian origin, by a person married to an Indian, minor child, whose parents are registered as citizens of India, by a person whose either parent was a citizen of Independent India, overseas citizens of India, by naturalisation and registration of a child at an Indian consulate.

Citizenship (Amendment) Act, 2019 (CAA)

- The Citizenship (Amendment) Act, 2019 (CAA) was notified in December 2019 and came into force from January 2020, amending the Citizenship Act, 1955.
- The Citizenship Act,1955 provides various ways in which citizenship may be acquired: providing for citizenship by birth, descent, registration, naturalisation and by incorporation of the territory into India.
- The objective of the CAA is to grant Indian citizenship to persecuted minorities — Hindu, Sikh, Jain, Buddhist, Parsi and Christian — from Pakistan, Bangladesh and Afghanistan.
- Those from these communities who had come to India till December 31, 2014, facing religious persecution in their respective countries, will not be treated as illegal immigrants but given Indian citizenship.
- The Act provides that the central government may cancel the registration of OCIs on certain grounds.
- The Act does not apply to tribal areas of Tripura, Mizoram, Assam and Meghalaya because of being included in the 6th Schedule of the Constitution.
- Also, areas that fall under the Inner Limit notified under the Bengal Eastern Frontier Regulation, 1873, will also be outside the Act's purview.

Criticisms of the CAA

- It violates the basic tenets of the Constitution. Illegal immigrants are distinguished on the basis of religion.
- It is perceived to be a demographic threat to indigenous communities.
- It makes illegal migrants eligible for citizenship on the basis of religion. This may violate Article 14 of the Constitution which guarantees the right to equality.
- It attempts to naturalise the citizenship of illegal immigrants in the region.
- It allows cancellation of OCI registration for violation of any law. This is a wide ground that may cover a range of violations, including minor offences.

CENTRE VS STATES: IAS OFFICERS PUT ON CENTRAL DEPUTATION

Context:

Recently the West Bengal Chief Secretary an IAS officer of the 1987 batch, was due to begin an extension of three months after retiring. Instead, the Centre has asked him to report and join the Government of India.

Relevance:

GS-II: Polity and Governance (Government Policies and Interventions, All India Services)

Dimensions of the Article:

1. How officers get an extension?
2. Central deputation
3. Earlier showdowns
4. What next?

How officers get an extension?

The DCRB (Death-cum-Retirement Benefit) Rules says that "a member of the Service dealing with budget work or working as a full-time member of a Committee which is to be wound up within a short period may be given extension of service for a period not exceeding three months in public interest, with the prior approval of the Central Government". For an officer posted as Chief Secretary of a state, this extension can be for six months.

Central deputation

- In normal practice, the Centre asks every year for an "offer list" of officers of the All India Services (IAS, IPS and Indian Forest Service) willing to go on central deputation, after which it selects officers from that list.
- The IAS Cadre Rules says an 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 also says that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government.

Recent Plea:

- In a PIL in the Supreme Court in January 2021, it was requested that the Rule 6(1) of the IAS Cadre Rules be struck down because states have to bear the brunt of arbitrary actions taken by the Centre, while the Rule makes it difficult for the Centre to enforce its will on a state that refuses to back down.

Earlier showdowns

- **West Bengal, 2019:** In 2019, the Home Ministry had written to then West Bengal Chief Secretary calling for action against five IPS officers for allegedly taking part in a dharna against CBI raids. The state government said no officer had taken part in the dharna.
- **West Bengal, 2020:** In December 2020, the Centre asked that three IPS officers who were in charge of security when BJP president J P Nadda's motorcade was attacked outside Kolkata be sent on deputation with the Centre. The state government refused, citing a shortage of IPS officers. The officers concerned were not relieved from the state and the Centre did not insist either.
- **Tamil Nadu, 2001:** A month after J Jayalalithaa took oath as Chief Minister in 2001, Tamil Nadu police's CB-CID raided former Chief Minister M Karunanidhi's home and arrested him along with his DMK colleagues. The following month, the Centre asked the state government to send three IPS officers on central deputation. But Jayalalithaa refused, and wrote to other Chief Ministers for their support to protect the rights of the states. The incident resulted in the removal of Governor.
- **Tamil Nadu, 2014:** IPS officer Archana Ramasundaram was deputed to the CBI in 2014, but the Tamil Nadu government refused to release her, and suspended her when she defied the state's order. However, the suspension did not apply because she had by that time already joined the CBI.

What next?

- The Centre can take no action against civil service officials who are posted under the state government.
- The All India Services (Discipline and Appeal) Rules, 1969, states that the "authority to institute proceedings and to impose penalty" will be the state government if the officer is "serving in connection with the affairs of a state."
- For any action to be taken against an officer of the All India Services, the state and the Centre both need to agree.

NCPCR TRACKS DATA ON ORPHANS

Context:

Bal Swaraj, an online tracking portal of a national child rights body National Commission for Protection of Child Rights (NCPCR), shows details of nearly 10,000 children in the country in immediate need of care and protection.

Relevance:

GS-II: Social Justice (Issues Related to Children, Government Policies and Interventions), GS-II: Polity (Statutory Bodies)

Dimensions of the Article:

1. National Commission for Protection of Child Rights (NCPCR)
2. The functions of NCPCR
3. About the Recent updated given by the NCPCR
4. NCPCR's online portal 'Bal Swaraj'

National Commission for Protection of Child Rights (NCPCR)

- The National Commission for Protection of Child Rights (NCPCR) is an Indian **Statutory Body** established by an Act of Parliament, the Commission for Protection of Child Rights (CPCR) Act, 2005.
- The Commission works under the aegis of Ministry of Women and Child Development, GoI.
- The Commission is mandated under section 13 of CPCR Act, 2005 "to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child."
- As defined by the commission, child includes person up to the age of 18 years.
- Also, NCPCR cannot enquire into any matter which is pending before a State Commission or any other Commission duly constituted.
- The commission consist of the following members:
    1. A chairperson who, is a person of eminence and has done a outstanding work for promoting the welfare of children; and
    2. Six members, out of which at least two are woman, from the following fields, is appointed by the Central Government from amongst person of eminence, ability, integrity, standing and experience in:
        - Education,
        - Child health, care, welfare or child development,
        - Juvenile justice or care of neglected or marginalized children or children with disabilities,
        - Elimination of child labour or children in distress
        - Child psychology or sociology

- Laws relating to children

The functions of NCPCR

- Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures
- Present to the Central Government – reports upon working of those safeguards
- Inquire into violation of child rights and recommend initiation of proceedings in such cases
- Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots etc., and recommend appropriate remedial measures
- Look into the matters relating to the children in need of special care and protection including children in distress, marginalized and disadvantaged children
- Study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations
- Undertake and promote research in the field of child rights
- Spread child rights literacy among various section of society and promote awareness
- Inspect or cause to be inspected any juveniles custodial home, or any other place of residence or institution meant for children
- Inquire into complaints and take suo motu notice of matter relating to:
  1. Deprivation and violation of child rights;
  2. Non implementation of laws providing for protection and development of children;
  3. Noncompliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and provide relief to such children;
  4. Or take up the issues arising out of such matters with appropriate authorities.
- Such other functions as it may consider necessary for the promotion of Child Rights
- Undertake formal investigation where concern has been expressed either by children themselves or by concerned person on their behalf
- Promote the incorporation of child rights into the school curriculum, training of teachers or personnel dealing with children

About the Recent updated given by the NCPCR

- The cataclysmic COVID-19 pandemic devastated the vulnerable sections of society and there are a number of children who have become orphans due to the demise of either the breadwinner of the family or of both their parents.
- The National Commission for Protection of Child Rights (NCPCR) informed the Supreme Court that these children ran a high risk of being pushed into trafficking and flesh trade.
- The Commission said it had already received several complaints of government authorities illegally transferring details of children to private entities and NGOs.

NCPCR's online portal 'Bal Swaraj'

- In view of the growing problem related to children affected by COVID-19, the National Commission for Protection of Child Rights (NCPCR) has devised an online tracking portal "Bal Swaraj (COVID-Care link)" for children in need of care and protection.
- The portal has been created with the purpose of tracking and monitoring children who need care and protection in real-time, digitally.
- The portal will also be used to track children who have lost both their parents during COVID-19.
- The "COVID-Care" link on the portal has been provided for the concerned officer or department to upload the data of such children.

- The "Bal Swaraj-COVID-Care" aims at tracking the children affected by COVID-19 right from their production before the Child Welfare Committee (CWC), to the restoration of the children to their parent, guardian, or relative, and its subsequent follow-up.
- The Commission will be able to get information about whether the child is getting his/her entitlements, benefits, and entitled monetary gains, through the data filled in the portal by the District officers and State officers for each child.

INVOKING DM ACT IN NOTICE FOR WB CHIEF SECRETARY

Context:

Before he retired, former Chief Secretary of West Bengal Alapan Bandyopadhyay was served a show cause notice by the Union Home Ministry under the Disaster Management Act, 2005.

Relevance:

GS-III: Disaster Management (Government Policies & Interventions)

Dimensions of the Article:

1. About the recent notice served to the WB Chief Secretary
2. Disaster Management Act, 2005
3. What is Section 51 (b) of DM Act?

About the recent notice served to the WB Chief Secretary

- Former Chief Secretary of West Bengal Alapan Bandyopadhyay was served a show cause notice under the section of DM Act which pertains to "punishment for obstruction" for refusal to comply with a direction given by the Central government.
- The notice was served because he had refused a three-month extension sanctioned to him by the State and Central government.
- The Department of Personnel and Training (DoPT) also shot off a letter asking him to comply with its order to report to the Central government's office in Delhi.

What does the notice say?

The notice said that the officer, by abstaining himself from the review meeting taken by Prime Minister is in way like acting in a manner tantamount to refusing to comply with lawful directions of the Central Government and is thus violative of the Disaster Management Act, 2005.

Disaster Management Act, 2005

- The Disaster Management Act, 2005, received the assent of The President of India in 2006.
- The Act extends to the whole of India.

- The Act provides for "the effective management of disasters and for matters connected there with or incidental thereto."
- The Act calls for the establishment of National Disaster Management Authority (NDMA).
- The Act under Section 8 enjoins the Central Government to Constitute a National Executive Committee (NEC).
- All State Governments are mandated under Section 14 of the act to establish a State Disaster Management Authority (SDMA).
- The Chairperson of District Disaster Management Authority (DDMA) will be the Collector or District Magistrate or Deputy Commissioner of the district.
- The Section 44–45 of the Act provides for constituting a National Disaster Response Force "for the purpose of specialist response to a threatening disaster situation or disaster" under a Director General to be appointed by the Central Government.

What is Section 51 (b) of DM Act?

- The section prescribes "punishment for obstruction" for refusal to comply with any direction given by or on behalf of the Central government or the State government or the National Executive Committee or the State Executive Committee or the District Authority under the Act.
- It says that violation shall be punishable with imprisonment for a term that may extend to one year or with a fine or both upon conviction. It adds that if "such refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years."

Section 51 of the DM Act has two important caveats

Under the Act, the action on the part of the person has to be

1. 'Without reasonable cause' and
2. 'Failure of an officer to perform the duty without due permission or lawful excuse.'

If the Chief Secretary had 'reasonable cause' and 'lawful excuse' for not attending the meeting then he can highlight them in his reply.

TENSION RETURNS TO ASSAM-MIZORAM BORDER

Context:

The police in southern Assam's Hailakandi district have increased vigil along the interstate boundary following alleged incursion by miscreants from Mizoram.

Relevance:

GS-II: Polity and Governance (Inter-State Relations)

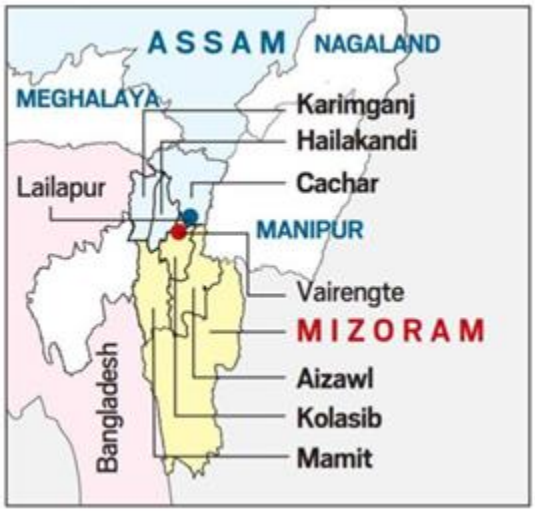
Dimensions of the Article:

1. Background to the Assam – Mizoram Border Dispute

2. Other Boundary Issues in Northeast

Background to the Assam – Mizoram Border Dispute

- Mizoram borders Assam's Barak Valley and the boundary between present-day Assam and Mizoram is 165 km long. Both states border Bangladesh.
- The boundary issue between present-day Assam and Mizoram dates back to the colonial era when inner lines were demarcated according to the administrative needs of British Raj.
- Assam became a constituent state of India in 1950 and lost much of its territory to new states that emerged from within its borders between the early 1960s and the early 1970s.
- Mizoram was granted statehood in 1987 by the State of Mizoram Act, 1986.
- The Assam-Mizoram dispute stems from a notification of 1875 that differentiated Lushai Hills (During colonial times, Mizoram was known as Lushai Hills) from the plains of Cachar, and another of 1933 that demarcates a boundary between Lushai Hills and Manipur.
- Mizoram believes the boundary should be demarcated on the basis of the 1875 notification, which is derived from the Bengal Eastern Frontier Regulation (BEFR) Act, 1873.
- According to an agreement between the governments of Assam and Mizoram, the status quo should be maintained in no man's land in the border area.
- In the Northeast's complex boundary equations, clashes between Assam and Mizoram residents are less frequent than they are between other neighbouring states of Assam, like with Nagaland.



Other Boundary Issues in Northeast

During British rule, Assam included present-day Nagaland, Arunachal Pradesh and Meghalaya besides Mizoram, which became separate states one by one.

1. **Assam-Nagaland:** Nagaland shares a 500-km boundary with Assam and achieved statehood in December 1963 and was formed out of the Naga Hills district of Assam and Arunachal Pradesh (then North-East Frontier Agency). Violent clashes and armed conflicts, marked by killings, have occurred on the Assam-Nagaland border since 1965.
2. **Assam-Arunachal Pradesh:** Arunachal Pradesh shares a 800-km boundary with Assam and was granted statehood by the State of Arunachal Pradesh Act, 1986 in 1987. Clashes were first reported in 1992 and since then, there have been several accusations of illegal encroachment from both sides, and intermittent clashes.

3. **Assam-Meghalaya:** Meghalaya shares a 884-km boundary with Assam and came into existence as an autonomous state within the state of Assam in April 1970 comprising the United Khasi and Jaintia Hills and the Garo Hills districts. In 1972, it got statehood. As per Meghalaya government statements, today there are 12 areas of dispute between the two states.

MHA: NPR SLIPS VALID FOR LONG-TERM VISAS

Context:

Migrants belonging to the six non-Muslim minority communities from Afghanistan, Pakistan and Bangladesh, while applying for long-term visas (LTVs), can also produce National Population Register (NPR) enrolment slips as proof of duration of their stay in India, according to a Union Home Ministry manual.

Relevance:

Dimensions of the Article:

1. What is the National Population Register (NPR)?
2. Citizenship (Amendment) Act, 2019 (CAA)
3. Criticisms of the CAA
4. Recent Home Ministry notification regarding NPR slips

What is the National Population Register (NPR)?

- The NPR is a database of usual residents in the country who have stayed in a local area for the past six months or more and who intend to remain in the same place for the next six months or more.
- The NPR is individual and identity specific unlike the Census which only provides information on the status of the residents of India and population swings.
- The NPR database was first created in 2010.
- The data collection is done under the aegis of the Office of the Registrar General and Census Commissioner of India.
- The NPR is undertaken under the provisions of The Citizenship Act, 1955 and The Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003.
- The NPR was last updated, except in Assam and Meghalaya, in 2015-16.

Citizenship (Amendment) Act, 2019 (CAA)

- The Citizenship (Amendment) Act, 2019 (CAA) was notified in December 2019 and came into force from January 2020, amending the Citizenship Act, 1955.
- The Citizenship Act,1955 provides various ways in which citizenship may be acquired: providing for citizenship by birth, descent, registration, naturalisation and by incorporation of the territory into India.
- The objective of the CAA is to grant Indian citizenship to persecuted minorities — Hindu, Sikh, Jain, Buddhist, Parsi and Christian — from Pakistan, Bangladesh and Afghanistan.
- Those from these communities who had come to India till December 31, 2014, facing religious persecution in their respective countries, will not be treated as illegal immigrants but given Indian citizenship.
- The Act provides that the central government may cancel the registration of OCIs on certain grounds.
- The Act does not apply to tribal areas of Tripura, Mizoram, Assam and Meghalaya because of being included in the 6th Schedule of the Constitution.
- Also, areas that fall under the Inner Limit notified under the Bengal Eastern Frontier Regulation, 1873, will also be outside the Act's purview.

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Criticisms of the CAA

- It violates the basic tenets of the Constitution. Illegal immigrants are distinguished on the basis of religion.
- It is perceived to be a demographic threat to indigenous communities.
- It makes illegal migrants eligible for citizenship on the basis of religion. This may violate Article 14 of the Constitution which guarantees the right to equality.
- It attempts to naturalise the citizenship of illegal immigrants in the region.
- It allows cancellation of OCI registration for violation of any law. This is a wide ground that may cover a range of violations, including minor offences.

Recent Home Ministry notification regarding NPR slips

- The NPR number is part of an illustrative list of more than ten documents that could be provided to apply for a LTV, which is a precursor to acquiring Indian citizenship either by naturalisation or registration under Section 5 and 6 of the Citizenship Act, 1955 for the six communities — Hindus, Sikhs, Jains, Parsis, Christians and Buddhists — from the three countries.
- The special provision of LTVs for Hindus and Sikhs from Pakistan and Afghanistan was first made in 2011.
- The Citizenship Rules framed in 2003 says that NPR is the first step towards compilation of National Register of Indian Citizens (NRIC) or NRC.
- The next phase of the NPR, expected to include contentious questions on date and place of birth of father and mother, last place of residence and mother tongue was to be simultaneously updated with the 2021 House Listing and Housing Census that has been indefinitely postponed due to COVID-19.
- According to detailed guidelines issued by the Home Ministry on documents that can be produced to prove the date of entry of the minority community migrants currently in India, the "slip issued by the Census enumerators" while conducting survey for preparation of the NPR prior to December 31, 2014 can be provided.
- The migrants who can apply for LTVs will have to produce any document issued by the governments of Afghanistan, Bangladesh and Pakistan "clearly showing the religion of the applicant like school certificate etc. to establish that the applicant is from a minority community," the guidelines said.

RENGMA NAGAS DEMAND ADC

Context:

The Rengma Nagas in Assam have written to Union Home Minister Amit Shah demanding an autonomous district council amid a decision by the Central and the State governments to upgrade the Karbi Anglong Autonomous Council (KAAC) into a territorial council.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Constitutional Bodies), GS-I: Indian Society

Dimensions of the Article:

1. Rengma Naga
2. About Autonomous District Councils (ADCs)
3. Connection between the 6th Schedule and ADCs
4. About the recent demand of Rengma Nagas

Rengma Naga

- Rengma is a Naga tribe found in Nagaland and Assam states of India. According to the 2011 Population Census of India, Rengma population stands at just over 60 thousand.
- The headquarter of the Rengmas in Nagaland is at Tseminyu, and the headquarter of the Rengmas in Assam is located at Phentsero/Karenga Village.
- Like other Naga tribes, there are few written historical records of Rengmas.
- The Rengmas are experts in terrace cultivation. The harvest festival of the Rengmas is called Ngada.
- In Assam, the Rengma tribals are found in the Karbi-Anglong, the then Mikir Hills. The Rengmas migrated to the then Mikir Hills in the early part of 1800.

About Autonomous District Councils (ADCs)

- The Autonomous districts and regional councils (ADCs) are empowered with civil and judicial powers can constitute village courts within their jurisdiction to hear the trial of cases involving the tribes.
- Governors of states that fall under the Sixth Schedule specify the jurisdiction of high courts for each of these cases.
- Along with ADCs, the Sixth Schedule also provides for separate Regional Councils for each area constituted as an autonomous region.
- In all, there are 10 areas in the Northeast that are registered as autonomous districts – three in Assam, Meghalaya and Mizoram and one in Tripura.
- These regions are named as district council of (name of district) and regional council of (name of region).
- Each autonomous district and regional council consist of not more than 30 members, of which four are nominated by the governor and the rest via elections, all of whom remain in power for a term of five years.

Connection between the 6th Schedule and ADCs

- The Sixth Schedule of the Constitution deals with the administration of the tribal areas in the four northeastern states of Assam, Meghalaya, Tripura and Mizoram as per Article 244.
- The Governor is empowered to increase or decrease the areas or change the names of the autonomous districts. While executive powers of the Union extend in Scheduled areas with respect to their administration in Vth schedule, the VIth schedule areas remain within executive authority of the state.
- The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.
- The Councils have also been endowed with wide civil and criminal judicial powers, for example establishing village courts etc. However, the jurisdiction of these councils is subject to the jurisdiction of the concerned High Court.
- The sixth schedule to the Constitution includes 10 autonomous district councils in 4 states. These are:
- Assam: Bodoland Territorial Council, Karbi Anglong Autonomous Council and Dima Hasao Autonomous District Council.
- Meghalaya:Garo Hills Autonomous District Council, Jaintia Hills Autonomous District Council and Khasi Hills Autonomous District Council.
- Tripura: Tripura Tribal Areas Autonomous District Council.
- Mizoram: Chakma Autonomous District Council, Lai Autonomous District Council, Mara Autonomous District Council.

About the recent demand of Rengma Nagas

The History

- The Rengma Naga Peoples' Council (RNPC), a registered body, said in the memorandum that the Rengmas were the first tribal people in Assam to have encountered the British in 1839, but the existing Rengma Hills was eliminated from the political map of the State and replaced with that of Mikir Hills (now Karbi Anglong) in 1951.
- Narrating its history, the council said that during the Burmese invasions of Assam in 1816 and 1819, it was the Rengmas who gave shelter to the Ahom refugees.
- The petition said that the Rengma Hills was partitioned in 1963 between Assam and Nagaland at the time of creation of Nagaland State and the Karbis, who were known as Mikirs till 1976, were the indigeneous tribal people of Mikir Hills.
- RNPC president said that the government was on the verge of taking a decision without taking them on board and thus they had written to the MHA and the Chief Minister.

NSCN (I-M) stand

- The National Socialist Council of Nagaland or NSCN (Isak-Muivah), which is in talks with the Centre for a peace deal, said that the Rengma issue was one of the important agendas of the "Indo-Naga political talks" and no authority should go far enough to override their interests.
- More than 3,000 Rengma Nagas were forced to relocate to relief camps in 2013 after several people were killed in a series of attacks following a call given by a Karbi insurgent group.
- The Centre is likely to finalise a peace pact with the six Karbi insurgent groups and one of them- the KLNLF signed a suspension of operation in 2009 with the Assam government.

NAGALAND TO FORM PANEL TO PURSUE NAGA ISSUE

Context:

The Nagaland government has decided to institute a committee comprising Opposition leaders to pursue the lingering Naga peace agreement and the Naga political issue with the Centre.

Relevance:

GS-II: Polity and Governance (Centre-State Relations), GS-I: Indian Society

Dimensions of the Article:

1. Who are the Nagas?
2. What is Naga Issue?
3. Peace Initiatives with the Naga
4. NSCN-IM
5. NSCN-IM stand and the deadlock

Who are the Nagas?

- The Nagas are not a single tribe, but an ethnic community, belonging to Indo-Mongoloid Family, that comprises several tribes who live in the state of Nagaland and its neighbourhood.
- There are nineteen major Naga tribes, namely, Aos, Angamis, Changs, Chakesang, Kabuis, Kacharis, Khain-Mangas, Konyaks, Kukis, Lothas (Lothas), Maos, Mikirs, Phoms, Rengmas, Sangtams, Semas, Tankhuls, Yamchumgar and Zeeliang.

What is Naga Issue?

- The key demand of Naga groups has been a Greater Nagalim (sovereign statehood) i.e., redrawing of boundaries to bring all Naga-inhabited areas in the Northeast under one administrative umbrella.
- The Naga inhabited areas include various parts of Arunachal Pradesh, Manipur, Assam and Myanmar.
- The demand also includes the separate Naga Yezabo (Constitution) and Naga national flag.

Peace Initiatives with the Naga

1. **Shillong Accord (1975):** A peace accord was signed in Shillong in which the NNC leadership agreed to give up arms. However, several leaders refused to accept the agreement, which led to the split of NNC.

2. **Ceasefire Agreement (1997):** The NSCN-IM signed a ceasefire agreement with the government to stop attacks on Indian armed forces. In return, the government would stop all counter-insurgency offensive operations.
3. **Framework Agreement (2015):** In this agreement, the Government of India recognised the unique history, culture and position of the Nagas and their sentiments and aspirations. The NSCN also appreciated the Indian political system and governance. However, the details of the agreement are yet to be released by the government.
4. Recently, the State government decided to prepare the Register of Indigenous Inhabitants of Nagaland but later due to pressure from various fractions, the decision was put on hold.

NSCN-IM

- The Isaak Muivah faction of the National Socialist Council of Nagaland (IM), one of the largest Naga groups fighting for an independent Naga homeland.
- They have been engaged in guerrilla warfare against successive Indian administrations since the 1950s.
- One of the main demands of NSCN-IM has been the creation of a sovereign Naga territory that includes Naga-inhabited parts of neighbouring states like Manipur, Assam and Arunachal Pradesh as well as a portion of Burma across the international border, and leaders from those states have long been wary of any accord that would allow the annexation of parts of their land.
- Lack of infrastructure development in the region is one of the perceived reasons for the decades' long insurgency.
- In 2015, NSCN-IM had entered into an historic Peace Accord (Framework Agreement) with Union government to bring lasting peace in Nagaland.

NSCN-IM stand and the deadlock

- The Naga talks have hit the deadlock since early 2020 as the National Socialist Council of Nagaland-(Isak Muivah) (NSCN-IM) leader has refused to hold any dialogue with interlocutor and Nagaland Governor R.N Ravi.
- The Governor's letter to the Nagaland Chief Minister saying "over half a dozen organized armed gangs were brazenly running their respective 'so called governments' challenging the legitimacy of the State government" had caused the situation to worsen.
- There was also an order asking government officials to declare if their family members or relatives are members of any "underground organisation."
- NSCN-IM signed a ceasefire agreement with the Centre in 2001, hence they took offense with the "organized armed gangs" view.
- And also given that in a tribal set-up most people are related to each other, asking government officials to declare regarding their family members was seen as insensitive.
- Following the failure of the breakdown of communication between the NSCN-IM and the Nagaland Governor, the Union Home Minister deputed a team of Intelligence Bureau officials to continue the discussions with the NSCN-IM.

RETIRED OFFICIALS BARRED FROM DISCLOSING INFORMATION

Context:

- Recently, the Government of India prohibited retired officials of security and intelligence organisations from publishing anything about their work or organisation without prior clearance from the head of the organisation.

- Serving civil servants are barred from expressing their personal opinion on policy matters and criticising the government. But once they retire, many of them take part in public debates and enrich our conversations.

Relevance:

GS-II: Polity and Governance

Dimensions of the Article:

1. Official Secrets Act 1923
2. Blindfolding The Democracy
3. Between the RTI Act and OSA
4. Changing the provisions of OSA
5. Need for Transparency: Step Towards Good Governance

Official Secrets Act 1923

- The Official Secrets Act 1923 is India's anti-espionage act held over from the British colonial period.
- It states clearly that actions which involve helping an enemy state against India are strongly condemned.
- It also states that one cannot approach, inspect, or even pass over a prohibited government site or area like an electrical substation.
- According to this Act, helping the enemy state can be in the form of communicating a sketch, plan, model of an official secret, or of official codes or passwords, to the enemy.
- A person prosecuted under this Act can be charged with the crime even if the action was unintentional and not intended to endanger the security of the state.
- The Act only empowers persons in positions of authority to handle official secrets, and others who handle it in prohibited areas or outside them are liable for punishment.
- Under the Act, search warrants may be issued at any time if the magistrate determines that based on the evidence there is enough danger to the security of the state.
- Uninterested members of the public may be excluded from court proceedings if the prosecution feels that any information which is going to be passed on during the proceedings is sensitive. This also includes media.
- Journalists have to help members of the police forces above the rank of the sub-Inspector and members of the military with investigation regarding an offense, up to and including revealing his sources of information.
- When a company is seen as the offender under this Act, everyone involved with the management of the company, including the board of directors, can be liable for punishment.

Blindfolding The Democracy

- The Official Secrets Act which was intended to protect the British Empire from its enemies has been used as a way for silencing questioning citizens.
- The law continues to remain in the statute book and finds inroads in every government irrespective of the political party in power, reinforcing the parent-child relationship between the state and its subjects.
- The idea that every information needs to flow from government to public with government getting to keep certain information away from the public domain in the name of national security, finds contradiction in the very idea of democracy where a true democracy stands to work for the people.
- The law also finds itself in the crossroads of Article 19 (1) which gives every citizen the fundamental right of freedom of speech and expression.

- The act does not clearly gives definition of "secret" documents or information, thus the Act can be misused with government authorities branding information or documents as official secrets as the government deems fit.
- The OSA has often been arbitrarily used against media houses and journalist who are found opposing the action of the government and questioning its policies.
- The law contradicts the Right to Information (RTI) Act that came into effect in 2005 and creates ample ground for corruption.

Between the RTI Act and OSA

- In the Official Secrets Act (OSA) clause 6, information from any governmental office is considered official information, hence it can be used to override Right to Information Act 2005 requests. This has drawn harsh criticism.
- The Supreme Court of India has also held that the RTI overrides OSA.
- Section 22 of the RTI Act provides for its primacy vis-a-vis provisions of other laws, including OSA. This gives the RTI Act an overriding effect, notwithstanding anything inconsistent with the provisions of OSA. So if there is any inconsistency in OSA with regard to furnishing of information, it will be superseded by the RTI Act.
- However, under Sections 8 and 9 of the RTI Act, the government can refuse information. Effectively, if the government classifies a document as "secret" under OSA Clause 6, that document can be kept outside the ambit of the RTI Act, and the government can invoke Sections 8 or 9. Legal experts see this as a loophole.

Changing the provisions of OSA

- In 1971, the Law Commission became the first official body to make an observation regarding OSA – observing that "it agrees with the contention" that "merely because a circular is marked secret or confidential, it should not attract the provisions of the Act if the publication thereof is in the interest of the public and no question of national emergency and interest of the State as such arises". **The Law Commission, however, did not recommend any changes to the Act.**
- In 2006, the Second Administrative Reforms Commission (ARC) recommended that OSA be repealed, and replaced with a chapter in the National Security Act containing provisions relating to official secrets.
- The ARC referred to the 1971 Law Commission report that had called for an "umbrella Act" to be passed to bring together all laws relating to national security.
- In 2015, the government had set up a committee to look into provisions of the OSA in light of the RTI Act. It submitted its report to the Cabinet Secretariat in 2017, recommending that OSA be made more transparent and in line with the RTI Act.

Need for Transparency: Step Towards Good Governance

- Transparency and accountability are essential tools at the disposal of public opinion in order to ensure that the requirements of secrecy are not over-stated and people are not misled.
- Public welfare can best be served through the ability of the citizens to regularly question the policy and the intent behind its formulation.
- Questions of Economic welfare, social reform, public justice and individual liberty cannot be solely left to the state whose foremost goal is the consolidation of power.
- The media in today's time acts as the champion of freedom and it is important that it remains independent from any type of coercion and must serve the governed, not those who govern.
- Information availability is not only a right of the people but an obligation on the part of the government to keep the people well informed.

DELHI HC CALLS OUT MISUSE OF UAPA

Context:

By ruling that "terrorist activity" cannot be broadly defined to include ordinary penal offences, the three Delhi High Court orders granting bail to three student-activists marks a crucial moment.

Relevance:

GS-II: Polity and Governance (Government Policies and Interventions, Issues arising out of the design and implementation of policies, Important Judgements)

Dimensions of the Article:

1. The Unlawful Activities (Prevention) Act (UAPA), 1967
2. Unlawful Activities Prevention Amendment Bill, 2019
3. Some Concerning Points about designation of someone as terrorist
4. Issues with UAPA
5. About the Increasing UAPA cases
6. About the recent Delhi HC judgement

The Unlawful Activities (Prevention) Act (UAPA), 1967

- The Unlawful Activities (Prevention) Act (UAPA) of 1967 is an upgrade on the Terrorist and Disruptive Activities (Prevention) Act TADA (which lapsed in 1995) and the Prevention of Terrorism Act – POTA (which was repealed in 2004).
- Its main objective was to make powers available for dealing with activities directed against the integrity and sovereignty of India.
- The National Integration Council appointed a Committee on National Integration and Regionalisation to look into, the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India.
- The agenda of the NIC limited itself to communalism, casteism and regionalism and not terrorism.
- However, the provisions of the UAPA Act contravenes the requirements of the International Covenant on Civil and Political Rights.

Unlawful Activities Prevention Amendment Bill, 2019

- The original Unlawful Activities Prevention Act, 1967, dealt with "unlawful" acts related to secession; anti-terror provisions were introduced in 2004.
- It provides special procedures to deal with terrorist activities, among other things.

Key Provisions of the Amendment

- The Bill amends the Unlawful Activities (Prevention) Act, 1967 (UAPA) and additionally empowers the government to designate individuals as terrorists on the same grounds.
- Under the Act, the central government may designate an organisation as a terrorist organisation if it:
  1. commits or participates in acts of terrorism
  2. prepares for terrorism

3. promotes terrorism
4. is otherwise involved in terrorism

- **The word "terror" or "terrorist" is not defined.**
- However, a "terrorist act" is defined as any act committed with the intent –
  1. to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India
  2. to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country
- The central government may designate an individual as a terrorist through a notification in the official gazette.
- The Bill empowers the officers of the National Investigation Agency (NIA), of the rank of Inspector or above, to investigate cases.
- Under the Act, an investigating officer can seize properties that may be connected with terrorism with prior approval of the Director General of Police.

Some Concerning Points about designation of someone as terrorist

- **The government is NOT required to give an individual an opportunity to be heard before such a designation.**
- At present, legally, a person is presumed to be innocent until proven guilty.
- In this line, an individual who is convicted in a terror case is legally referred to as a 'terrorist'.
- And those suspected of being involved in terrorist activities are referred to as 'terror accused'.
- **The Bill does NOT clarify the standard of proof required to establish that an individual is involved or is likely to be involved in terrorist activities.**
- The Bill also does not require the filing of cases or arresting individuals while designating them as terrorists.

Issues with UAPA

- UAPA gives the state authority vague powers to detain and arrest individuals who it believes to be indulged in terrorist activities. Thus, the state gives itself more powers vis-a-vis individual liberty guaranteed under Article 21 of the Constitution.
- UAPA empowers the ruling government, under the garb of curbing terrorism, to impose indirect restriction on right of dissent which is detrimental for a developing democratic society. The right of dissent is a part and parcel of fundamental right to free speech and expression and therefore, cannot be abridged in any circumstances except for mentioned in Article 19 (2).
- UAPA can also be thought of to go against the federal structure since it neglects the authority of state police in terrorism cases, given that 'Police' is a state subject under 7th schedule of Indian Constitution.

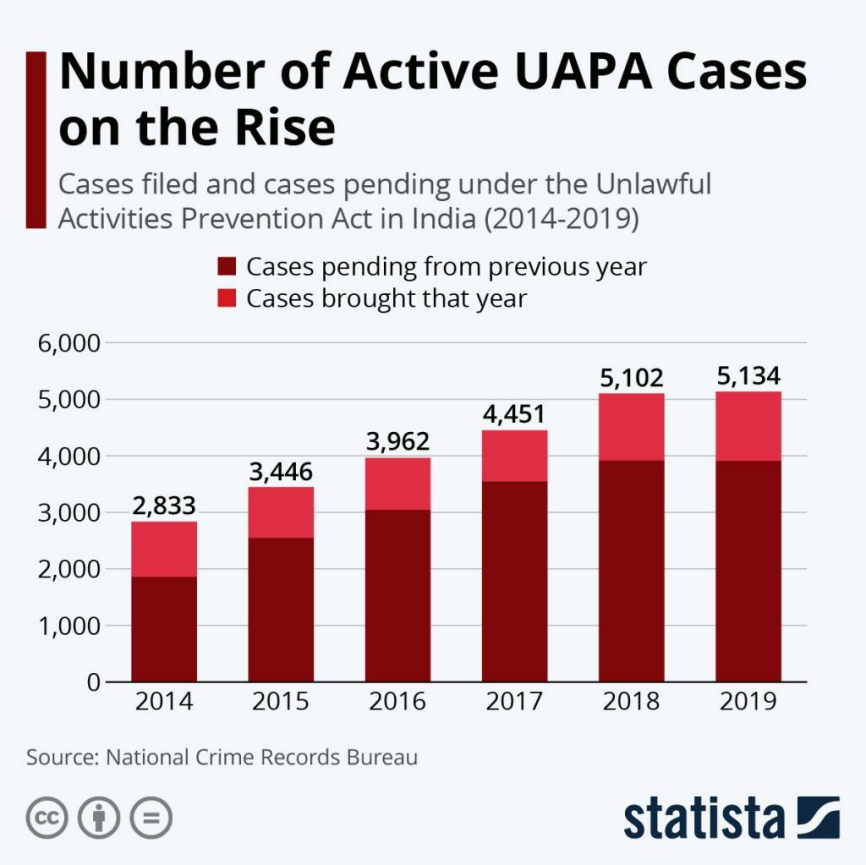
How can the names be removed?

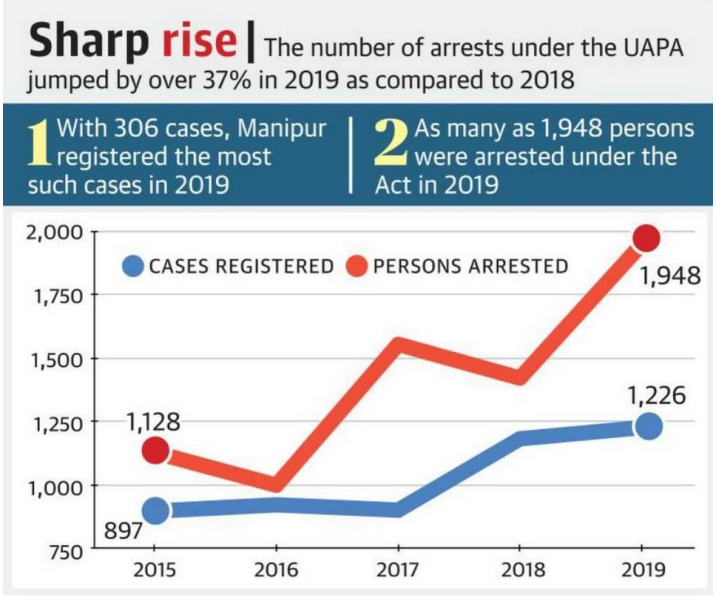
- Application – The Bill seeks to give the central government the power to remove a name from the schedule when an individual makes an application.
- The procedure for such an application and the process of decision-making will also be decided by the central government.
- If an application filed is rejected by the government, the Bill gives the person the right to seek a review within one month of rejection.
- Review committee – Under the amendment Bill, the central government will set up a review committee.
- It will consist of a chairperson (a retired or sitting judge of a High Court) and 3 other members.
- It will be empowered to order the government to delete the name of an individual from the schedule that lists "terrorists", if it considers the order to be flawed.

- Apart from these two avenues, the individual can also move the courts challenging the government's order.

About the Increasing UAPA cases

- According to data provided by the Ministry of Home Affairs in Parliament in March, a total of 1126 cases were registered under UAPA in 2019, a sharp rise from 897 in 2015.
- UAPA, in relaxing timelines for the state to file chargesheets and its stringent conditions for bail, gives the state more powers compared to the Indian Penal Code.
- Union Home Ministry presented data in the Rajya Sabha, based on the 2019 Crime in India Report compiled by the National Crime Records Bureau (NCRB), which showed that only 2.2 % of cases registered under the Unlawful Activities (Prevention) Act between the years 2016-2019 ended in convictions by court.
- As many as 1948 persons were arrested under the UAPA in 1226 cases registered across the country in 2019. Such cases registered in 2015-2018 stood at 897, 922, 901 and 1182 and the number of those arrested was 1128, 999, 1554 and 1421 respectively.



- 

About the recent Delhi HC judgement

- This is perhaps the first instance of a court calling out alleged misuse of the UAPA against individuals in cases that do not necessarily fall in the category of "terrorism" cases.
- Quoting sections of the Unlawful Activities Prevention Act, 1967, and a string of key Supreme Court rulings on terrorism and terror laws, the court reasoned that "the more stringent a penal provision, the more strictly it must be construed". By doing so, it raised the bar for the State to book an individual for terrorism under the UAPA.
- This caution is significant given the sharp surge in the state's use of this provision in a sweeping range of alleged offences — against tribals in Chhattisgarh, those using social media through proxy servers in Jammu and Kashmir; and journalists in Manipur among others.
- The bail orders also refer to how the Supreme Court itself, in the 1994 case of Kartar Singh v State of Punjab, flagged similar concerns against the misuse of another anti-terror law, the Terrorists and Disruptive Activities (Prevention) Act, 1987.

Interpretation argument

- The Delhi Police argued that the terror clause in UAPA can be invoked, not just for the "intent to threaten the unity and integrity but the likelihood to threaten the unity and integrity", or "the intent to strike terror but the likelihood to strike terror, not just the use of firearms" but also for "causing or likely to cause not just death but injuries to any person or persons or loss orRejecting this interpretation, the court said that it is a "sacrosanct principle of interpretation of penal provisions" that these must be construed strictly and narrowly. This is key to ensuring that a person who was not covered by the legislative ambit does not get roped into a penal provision. damage or destruction of property."
- "The extent and reach of terrorist activity must travel beyond the effect of an ordinary crime and must not arise merely by causing disturbance of law and order or even public order; and must be such that it travels beyond the capacity of the ordinary law enforcement agencies to deal with it under the ordinary penal law," the court said, citing a 1992 SC ruling in the case of Hitendra Vishnu Thakur v State of Maharashtra.

CABINET NOD FOR INLAND VESSELS BILL, 2021

Context:

The Union Cabinet gave the nod to the Inland Vessels Bill, 2021, which will replace the Inland Vessels Act, 1917.

Relevance:

GS-II: Polity and Governance (Government Policies and Initiatives), GS-III: Industry and Infrastructure

Dimensions of the Article:

1. Inland Canals and Waterways in India
2. Inland Waterways Authority of India (IWAI)
3. Legislations regarding Inland Waterways in India
4. Inland Vessels Bill, 2021

Inland Canals and Waterways in India

- India has an extensive network of inland waterways in the form of rivers, canals, backwaters and creeks. The total navigable length is 14,500 km (9,000 mi), out of which about 5,200 km (3,200 mi) of river and 4,000 km (2,500 mi) of canal can be used by mechanized crafts. About 44 million tonnes (49,000,000 short tons) of cargo are moved annually through these waterways using mechanized vessels and country boats.
- Cargo transported in an organized manner is confined to a few waterways in Goa, West Bengal, Assam and Kerala. Inland waterways consist of the Ganges-Bhagirathi-Hooghly rivers, the Brahmaputra, the Barak river, the rivers in Goa, the backwaters in Kerala, inland waters in Mumbai and the deltaic regions of the Godavari-Krishna rivers.
- As per the National Waterways Act, 2016, 111 water ways have been declared as National Waterways (NW) and these National Waterways pass through 24 states and two union territories, with an approximate total length of 20274 km.

Inland Waterways Authority of India (IWAI)

- Inland Waterways Authority of India (IWAI) is the statutory authority in charge of the waterways in India, constituted under IWAI Act-1985 and headquartered in Noida, UP.
- It does the function of building the necessary infrastructure in these waterways, surveying the economic feasibility of new projects and also administration.
- The Authority primarily undertakes projects for development and maintenance of Inland Waterway Terminal infrastructure on National Waterways through grant received from Ministry of Ports, Shipping and Waterways, Road Transport and Highways.

Legislations regarding Inland Waterways in India

1. **The Inland Waterways Authority of India Act, 1985:** The Act provides for the constitution of an Authority for the regulation and development of inland waterways for purposes of shipping and navigation and for matters related to it (IWAI). The Inland Waterways Authority of India was formed in 1986.

2. **Indian Vessels Act of 1917 (amended in 2007):** It deals with the survey and registration of inland vessels, removal of obstructions in navigation, carriage of goods and passengers, prevention and control of pollution etc.
3. **Inland Water Transport Policy 2001:** Policy talks about IWT being economic, fuel-efficient and environment friendly mode of transport. It advocates large-scale private sector participation both for creation of infrastructure and for fleet operations.
4. **National Waterways Act 2016:** The Act declared 111 rivers or river stretches, creeks, estuaries as National (inland) Waterways. It enables the Central Government to regulate these waterways for development with regard to shipping, navigation and transport through mechanically propelled vessels.

Inland Vessels Bill, 2021

- A key feature of the Bill is a unified law for the entire country, instead of separate rules framed by the States.
- The certificate of registration granted under the proposed law will be deemed to be valid in all States and Union Territories, and there will be no need to seek separate permissions from the States
- The Bill provides for a central data base for recording the details of vessel, vessel registration, crew on an electronic portal. It requires all mechanically propelled vessels to be mandatorily registered. All non-mechanically propelled vessels will also have to be enrolled at district, taluk or panchayat or village level.

LOOKING BEYOND THE BINARY TO A SPECTRUM ON SAME SEX MARRIAGE

Context:

- Recently, when the cases surrounding the question of same-sex marriages came up before the High Court of Delhi, the Union Government had the matter adjourned and overlooked the basic notion that the plight of persons in same-sex and queer relationships looking after each other — without the legal protection of marital relationships — was exacerbated by the pandemic.
- Nevertheless, given the march of law — both international and domestic — in the direction of expanding human rights, jurisprudence necessarily means that the provision of marriage rights to same-sex and queer couples is only a matter of time.

Relevance:

GS-II: Polity and Governance (Judiciary and Important Judgements), GS-I: Indian Society, GS-II: Social Justice (Government Interventions and Policies, Issues arising out of the design and implementation of Government Policies)

Mains Questions:

A delay in the provision of marriage rights to same-sex couples would fall foul of constitutional guarantees, judgments. Discuss. (10 marks)

Dimensions of the Article:

1. Courts and civil rights regarding same-sex marriage
2. Recently in news: Government opposed same-sex marriage in HC
3. Examples of International jurisprudence
4. Important Supreme Court Decisions in India regarding same-sex marriage

5. Expanding scope of marriage
6. Way Forward

Courts and civil rights regarding same-sex marriage

- In India, marriages solemnised under personal laws such as the Hindu Marriage Act, 1955, Indian Christian Marriage Act, 1872, Muslim Personal Law (Shariat) Application Act, 1937 and so on.
- At present, though same-sex and queer marriages are not clearly recognised in India, we are not bereft of judicial guidance.
- In the case of Arunkumarand Sreeja vs The Inspector General of Registration and Ors. [W.P.(MD)No. 4125 of 2019 & W.P.(MD)No. 3220 of 2019], the Madurai Bench of the High Court of Madras employed a beneficial and purposive interpretation holding that the term 'bride' under the Hindu Marriage Act, 1955 includes transwomen and intersex persons identifying as women.
- Therefore, a marriage solemnised between a male and a transwoman, both professing the Hindu religion, is deemed to be a valid marriage under the Act. The import of this judgment cannot be overstated as it expands the scope of a term used in the Hindu Marriage Act, 1955 in a progressive manner and sets the stage for re-imagining marriage rights of the LGBTQIA+ community.

Legality of same-sex marriages in India

- The right to marry is not expressly recognized either as a fundamental or constitutional right under the Indian Constitution.
- Though marriage is regulated through various statutory enactments, its recognition as a fundamental right has only developed through judicial decisions of India's Supreme Court.
- Such declaration of law is binding on all courts throughout India under Article 141 of the Constitution.

Recently in news: Government opposed same-sex marriage in HC

- Petitions, seeking recognition of same sex marriages under the Hindu Marriage Act (HMA), 1955 and the Special Marriage Act (SMA), 1954, were filed in 2020 and in the hearing, the Central Government opposed same-sex marriage in Delhi High Court stating that a marriage in India can be recognised only if it is between a "biological man" and a "biological woman" capable of producing children.
- The Central Government said that fundamental right under Article 21 is subject to the procedure established by law and it cannot be expanded to include the fundamental right for same sex marriage to be recognised under the laws which in fact mandate the contrary.
- The Government also argued that there exists a "legitimate State interest" in limiting the recognition of marriage to persons of opposite sex. The considerations of "societal morality" are relevant in considering the validity of a law and it is for the Legislature to enforce such societal morality and public acceptance based upon Indian ethos.
- The primary line of argument was that interference with the existing marriage laws would cause complete havoc with the delicate balance of personal laws in the country.
- One of the Government's arguments was also that living together as partners or in a relationship with a same-sex individual is "not comparable" with the "Indian family unit concept" of a husband, wife and children, arguing that the institution of marriage has a "sanctity".

Examples of International jurisprudence

- In 2005, the Constitutional Court of South Africa unanimously held that the common law definition of marriage i.e., "a union of one man with one woman" was inconsistent with the Constitution of the Republic

of South Africa, 1996. As a result of the verdict, the Civil Union Act, 2006 was enacted, enabling the voluntary union of two persons above 18 years of age, by way of marriage.

- In 2007 in Australia, the reforms to civil rights of queer community were prompted by then judge of the High Court of Australia asking for the judicial pension scheme to be extended to his gay partner. After initial opposition from the Federal Government, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008 came to be enacted to provide provide equal entitlements for same-sex couples in matters of, inter alia, social security, employment and taxation.
- Similarly, in England and Wales, the Marriage (Same Sex Couples) Act 2013 enabled same-sex couples to marry in civil ceremonies or with religious rites.
- More recently, in 2015, the Supreme Court of the United States decided that the fundamental right to marry is guaranteed to same-sex couples. While doing so, the Supreme Court of the United States held the denial of marriage rights to same-sex couples to be a "grave and continuing harm, serving to disrespect and subordinate gays and lesbians".
- Across the world, the recognition of the unequal laws discriminating against the LGBTQIA+ community has acted as a trigger to reform and modernise legal architecture to become more inclusive and equal.

Important Supreme Court Decisions in India regarding same-sex marriage

Shafin Jahan v. Asokan K.M. and others 2018

- While referring to Article 16 of Universal Declaration of Human Rights and the Puttaswamy case, the SC held that the right to marry a person of one's choice is integral to Article 21 of the Constitution.
- The Judgement held that the right to marry is intrinsic to the liberty which the Constitution guarantees as a fundamental right, is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty.

Navjet Singh Johar and others v. Union of India 2018

- The SC held that members of the LGBTQ community "are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution" and are entitled to equal citizenship and "equal protection of law".

Expanding scope of marriage

- The domain of marriages, including religious marriages, cannot be immune to reform and review. Self-respect marriages were legalised in Tamil Nadu (and subsequently, in Puducherry) through amendments to the Hindu Marriage Act, 1955.
- Self-respect marriages, commonly conducted among those who are part of the Dravidian Movement, have done away with priests and religious symbols such as fire or saptapadi. Instead, solemnisation of self-respect marriages only requires an exchange of rings or garlands or tying of the mangalsutra. Such reform of the Hindu Marriage Act, 1955 to bring self-respect marriages under its very umbrella, is seen as a strong move towards breaking caste-based practices within the institution of marriage.
- Similarly, understanding the needs of the LGBTQIA+ community today, the law must now expand the institution of marriage to include all gender and sexual identities. At least 29 countries in the world have legalised same-sex marriage. It is time that India thinks beyond the binary and reviews its existing legal architecture in order to legalise marriages irrespective of gender identity and sexual orientation.

Way Forward

- The LGTBQ community needs an anti-discrimination law that empowers them to build productive lives and relationships irrespective of gender identity or sexual orientation and place the onus to change on state and society and not the individual.
- Once members of the LGBTQ community "are entitled to the full range of constitutional rights", it is beyond doubt that the fundamental right to marry a person of one's own choice has to be conferred on same sex couples intending to marry. More than two dozen countries have legalized same-sex marriage.

DELIMITATION EXERCISE KICKS OFF IN JAMMU & KASHMIR

Context:

The delimitation commission for the Union Territory of Jammu and Kashmir has kicked off the exercise by writing to all 20 District Commissioners (DC), seeking basic demographic, topographic information as well as the local administration's impressions of political aspirations of the district.

Relevance:

GS-II: Polity and Governance (Government Initiatives and Policies)

Dimensions of the Article:

1. What is Delimitation?
2. How delimitation is carried out?
3. Delimitation Commission
4. Delimitation Commission Act, 2002
5. Jammu & Kashmir Reorganisation Act, 2019
6. About the current Delimitation exercise in Jammu & Kashmir

What is Delimitation?

- Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country to represent changes in population.
- Delimitation is done in order
  - to provide equal representation to equal segments of a population,
  - to facilitate Fair division of geographical areas so that one political party doesn't have an advantage over others in an election.
  - To follow the principle of "One Vote One Value".

How delimitation is carried out?

- Under Article 82, the Parliament enacts a Delimitation Act after every Census.
- Under Article 170, States also get divided into territorial constituencies as per Delimitation Act after every Census.
- Once the Act is in force, the Union government sets up a Delimitation Commission.
- The first delimitation exercise was carried out by the President (with the help of the Election Commission) in 1950-51.
- The Delimitation Commission Act was enacted in 1952.
- Delimitation Commissions have been set up four times — 1952, 1963, 1973 and 2002 under the Acts of 1952, 1962, 1972 and 2002.

- There was no delimitation after the 1981 and 1991 Censuses.

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.
- Hence, Delimitation Commission is a Statutory Body, based on Delimitation Commission Act was enacted in 1952.
- Delimitation Commissions have been set up four times — 1952, 1963, 1973 and 2002 under the Acts of 1952, 1962, 1972 and 2002.

Important Points about the Delimitation Commission:

- The Delimitation Commission is appointed by the President of India and works in collaboration with the Election Commission of India.
- 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 is a powerful and independent body whose orders cannot be challenged in any court of law.
- The orders are laid before the Lok Sabha and the respective State Legislative Assemblies. However, modifications are NOT permitted.

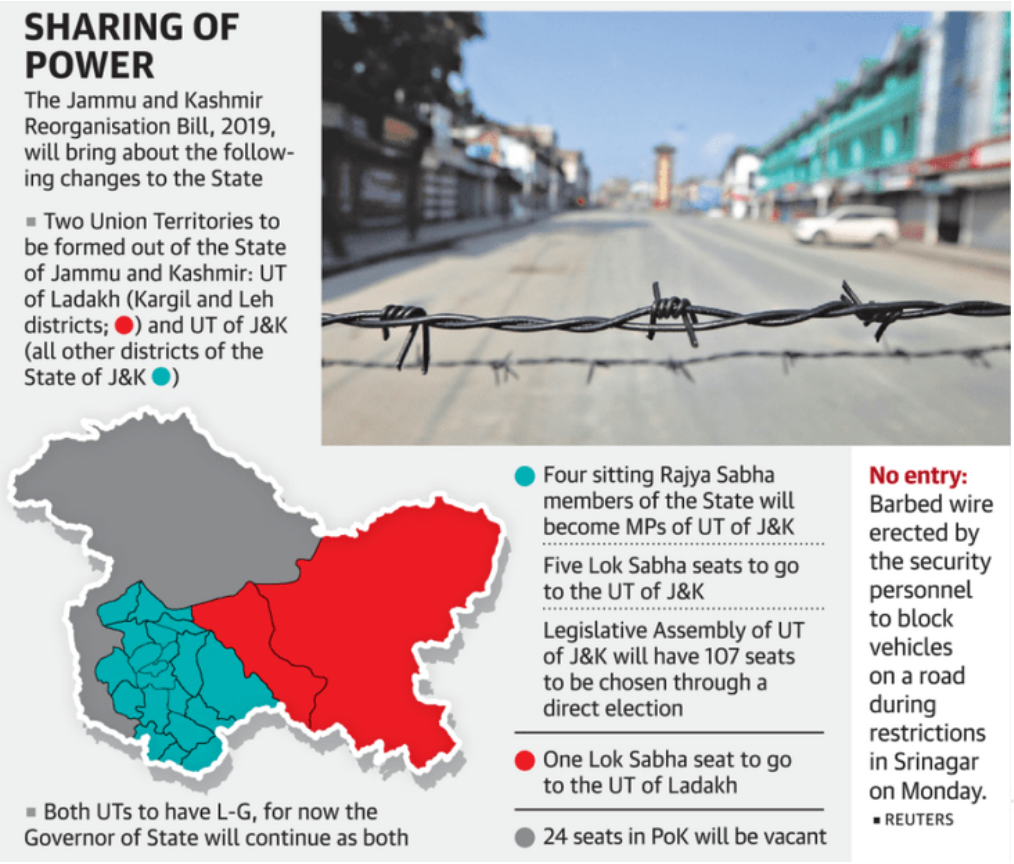
Delimitation Commission Act, 2002

- An Act to provide for the readjustment of:
  - The allocation of seats in the House of the People to the States
  - The total number of seats in the Legislative Assembly of each State
  - The division of each State and each Union territory having a Legislative Assembly into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and Union territories and for matters connected therewith.
- Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country to represent changes in population.

Jammu & Kashmir Reorganisation Act, 2019

- The Jammu and Kashmir Reorganisation Bill, 2019 was introduced in Rajya Sabha on August 5, 2019 by the Minister of Home Affairs, Mr. Amit Shah.
- The Bill provides for reorganisation of the state of Jammu and Kashmir into the Union Territory of Jammu and Kashmir and Union Territory of Ladakh.
- The Bill reorganises the state of Jammu and Kashmir into: (i) the Union Territory of Jammu and Kashmir with a legislature, and (ii) the Union Territory of Ladakh without a legislature.
- The Union Territory of Ladakh will comprise Kargil and Leh districts, and the Union Territory of Jammu and Kashmir will comprise the remaining territories of the existing state of Jammu and Kashmir.

- The Union Territory of Jammu and Kashmir will be administered by the President, through an administrator appointed by him known as the Lieutenant Governor.
- The Union Territory of Ladakh will be administered by the President, through a Lieutenant Governor appointed by him.
- The High Court of Jammu and Kashmir will be the common High Court for the Union Territories of Ladakh, and Jammu and Kashmir. Further, the Union Territory of Jammu and Kashmir will have an Advocate General to provide legal advice to the government of the Union Territory.
- The Legislative Council of the state of Jammu and Kashmir will be abolished. Upon dissolution, all Bills pending in the Council will lapse.



About the current Delimitation exercise in Jammu & Kashmir

- The commission for delimitation in Jammu Kashmir was set up in February-March 2020 to delineate Assembly and parliamentary constituencies and given a year's extension in March 2020.
- It is only after the completion of the delimitation exercise that elections for the Assembly can be held, although District Development Council (DDC) polls were held in 2020 on earlier patterns and based on the 2011 census.
- The renewed push by the Central government for talks has raised hopes not only of early Assembly elections in Jammu and Kashmir but also of an eventual restoration of statehood, which was taken away under the Jammu and Kashmir Reorganisation Act, 2019, a reading down of Article 370 of the Constitution. For all this, the delimitation exercise, a laborious and sensitive process of carving out parliamentary and Assembly seats, has to be done.

The 2002-2008 exercise

- The then State of Jammu and Kashmir (before reorganization) was kept out of the delimitation exercise when it was carried out in the rest of country (between 2002-2008), as delimitation of Assembly seats was under the Jammu and Kashmir Constitution and its separate Representation of People Act. After becoming a Union Territory, the delimitation commission was constituted and asked to mark out Assembly and Parliament seats.

PLAN TO PUT LAKSHADWEEP UNDER KARNATAKA HIGH COURT

Context:

The Lakshadweep administration, which has been facing widespread protests over its policies, has mooted a proposal to shift its legal jurisdiction from the Kerala High Court to the Karnataka High Court.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Judiciary)

Dimensions of the Article:

1. Why change Lakshadweep HC jurisdiction now?
2. High Courts for Union Territories

Why change Lakshadweep HC jurisdiction now?

- The proposal was initiated by the administration after several litigations were moved before the Kerala High Court against the decisions taken by the islands' new Administrator.
- These decisions included revising standard operating procedures for COVID- appropriate behaviour, introduction of the "goonda Act" and demolishing hutments of fishermen for widening of roads.
- As many as 23 applications, including 11 writ petitions, have been filed against the Administrator and also against the alleged high-handedness of either the police or the local government of the islands. The proposal for shifting its legal jurisdiction from the High Court of Kerala to Karnataka comes amid these developments.

High Courts for Union Territories

- Article 241 talks about "High Courts for Union territories". It says: "Parliament may by law constitute a High Court for a Union territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution".
- As per the Constitution of India, "When a common High Court is established for more than one State, administrative expenses have to be paid only from the consolidated fund of the 'State' in which the principal seat of the High Court is situated".
- The High Court is the supreme judicial body in a state and according to Article 214, each state of India shall have a High Court.
- However, Article 231 also mentions that there can be a common High Court for two or more States or for two or more states and a union territory.
- There are 25 High Courts in India, six having control over more than one State/UT. Delhi has a High Court of its own among the Union Territories.

TOWARDS A MORE FEDERAL STRUCTURE

Context:

India's hard-won independence and unity needs to be preserved as there are threats from China and there may be threats from Afghanistan after the U.S. withdraws its troops. A transition to a more federal structure will allow the Centre to focus on external threats instead of internal dissensions.

Relevance:

GS-II: Polity and Governance (Centre-State Relations)

Mains Questions:

Will allowing the states to directly collect more tax make them less dependent on the Central government? To what extent will such a move solve the issues with fiscal federalism in India? (10 marks)

Dimensions of the Article:

1. What is fiscal federalism?
2. Structure of fiscal federalism in India:
3. Recent development related to fiscal federalism?
4. Understanding Revenue distribution
5. Challenges to fiscal federalism in India:

What is fiscal federalism?

Fiscal federalism is financial relationship between centre and states, it deals with the division of governmental functions and financial relations among levels of government.

Structure of fiscal federalism in India:

The Seventh Schedule to the constitution of India defines and specifies allocation of powers and functions between Union & States. It contains three lists; i.e., 1) Union List, 2) State List and 3) Concurrent List.

be inspired

- Union list: The Union Government or Parliament of India has exclusive power to legislate on matters relating to these items.
- State list: The respective state governments have exclusive power to legislate on matters relating to these items.
- Concurrent list: This includes items which are under joint domain of the Union as well as the respective States
- Article 268 to 293 in Part XII deal with the financial relations.

Recent development related to fiscal federalism?

Three landmark changes in union-state fiscal relations since 2015-16 have been:

1. The abolition of the Planning Commission in January 2015 and the subsequent creation of the NITI Aayog.
2. Fundamental changes in the system of revenue transfers from the centre to the states by providing higher tax devolution to the states from the fiscal year 2015-16 onwards based on the recommendations of the Fourteenth Finance Commission (14th FC).
3. The Constitutional amendment to introduce the Goods and Services Tax (GST) and the establishment of the GST Council for the central and state governments to deliberate and jointly take decisions.

Finance commission of India: The Finance Commission is a Constitutionally mandated body that is at the centre of fiscal federalism. Set up under Article 280 of the Constitution, its core responsibility is to evaluate the state of finances of the Union and State Governments, recommend the sharing of taxes between them, lay down the principles determining the distribution of these taxes among States.

Understanding Revenue distribution

- Direct taxes are income tax and corporate tax. In the U.S., both the federal and State governments collect such taxes from individuals and corporations. This is true in Switzerland and some other countries as well.
- However, in India, direct taxes go entirely to the Central government. The Central government is supposed to distribute 41% of its gross tax revenues (reduced from 42% after the formation of new Union Territories in Jammu and Kashmir) to the State governments. In the U.S., the federal government distributes about 15% of its revenues.

Issue: Dependency of the States

- State governments get funds from the Central government according to the Finance Commission's recommendations.
- Usually, the Central government does not meet the 41% target. We see various States either petitioning or coming into conflict with the Central government on this issue.
- State governments also raise their own funds largely through taxes on liquor, property, road and vehicles. At an all-India level, the States get 26% of their total revenue from the Central government.
- Some of the so-called poorer States get up to 50% of their total revenue from the Central government, making them even more dependent. This gives more economic power to the Central government and allows ruling parties at the Centre to use these funds to their advantage.

Issue: Regional disparity

- Maharashtra, Delhi and Karnataka contribute the lion's share of taxes to the government. These three regions along with Tamil Nadu and Gujarat contribute 72% of the tax revenue.
- Uttar Pradesh, which has the largest population in India, contributes only 3.12% but gets over 17% of the revenue distributed by the Central government.
- Revenue distribution is based on complex considerations including population and poverty levels. For every ₹100 contributed, southern States get about 51% from the Central government, whereas Bihar gets about 200%.
- The population growth rates in the south have come down to near zero, whereas the population in central and north India continues to grow. The cross subsidy from the south to the north will therefore grow. Meanwhile, job seekers and those looking for higher quality education are flocking to the south.
- On the other hand, political power is concentrated in the north because there are more Lok Sabha seats. The number of seats in each State will be revised in 2026 perhaps based on population and other factors. This has already created apprehension in the southern States that they will be further politically marginalised.

Challenges to fiscal federalism in India:

Horizontal imbalances

- The horizontal imbalances arise because of differing levels of attainment by the states due to differential growth rates and their developmental status in terms of the state of social or infrastructure capital.
- However, Replacing the Planning Commission with NITI Aayog has reduced the policy outreach of government by relying only on single instrument of fiscal federalism i.e., Finance commission.
- This approach if not reviewed can lead to a serious problem of increasing regional and sub regional inequalities.

Vertical Imbalances

- Vertical imbalance arises due to the fiscal asymmetry in powers of taxation vested with the different levels of government in relation to their expenditure responsibilities prescribed by the constitution.
- Central Government collects around 60% of the total taxes, while its expenditure responsibility (for carrying out its constitutionally mandated responsibility such as defence, etc.) is only 40% of the total public expenditure.
- Such vertical imbalances are even sharper in the case of the third tier consisting of elected local bodies and panchayats.
- Vertical imbalances can adversely affect India's urbanization, the quality of local public goods and thus further aggravating the negative externalities for the environment and climate change.

Way forward

Treating the new fiscal federal architecture based on the effective decentralization, transparent GST regime, independent Finance commission and effective NITI Aayog can strengthen India's unique cooperative federalism.

THE 'UNION GOVERNMENT' HAS A UNIFYING EFFECT

Context:

The Tamil Nadu government's decision to shun the usage of the term 'Central government' in its official communications and replace it with 'Union government' is a major step towards regaining the consciousness of our Constitution.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Basic structure of the Constitution, Federal Structure), GS-I: History

Dimensions of the Article:

1. Understanding Unitary System and Federal System
2. India's system of Federalism with Unitary Bias
3. Missing words: "Centre" or "Central Government"

Understanding Unitary System and Federal System

Federalism (Example: U.S.A.)

- Federalism is a system of government in which powers have been divided between the center and its constituent parts such as states or provinces.
- In a federation system, there are two seats of power that are autonomous in their own spheres.
- A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.
- State Government has powers of its own for which it is not answerable to the central government.

Unitary System (Example: Britain)

- In a Unitary Form of Government there is only one level of government or the sub-units are subordinate to the Central Government.
- The Central Government is supreme, and the administrative divisions exercise only powers that the central government has delegated to them.
- The powers of the sub-ordinate governments like 'State Government' may be broadened and narrowed by the central government.

India's system of Federalism with Unitary Bias

- India is a federal system with a tilt towards unitary form of government.
- It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system.
- Article 1 of the Indian Constitution states, 'India, that is Bharat, shall be a union of States'.
- **The word federation is not mentioned in the constitution.**
- **The Drafting Committee chose the word "Union" instead of "Federation" due to various reasons:**
  1. The Union of India is not the outcome of an agreement among the old provinces (like in the American Federation).
  2. It is not up to the States to secede from the union or alter their boundaries on their own free will.
- The Indian Federation is a Union because it is indestructible. Ambedkar justified the usage of 'Union of States' saying that the Drafting Committee wanted to make it clear that though India was to be a federation, it was not the result of an agreement and that therefore, no State has the right to secede from it. "The federation is a Union because it is indestructible," Ambedkar said.
- Though the country and the people can be divided into different States for convenience of administration, the country is one integral whole, its people living under a single imperium derived from a single source.

Missing words: "Centre" or "Central Government"

- The Constituent Assembly did not use the term 'Centre' or 'Central government' in all of its 395 Articles in 22 Parts and eight Schedules in the original Constitution.
- Even though we have no reference to the 'Central government' in the Constitution, the General Clauses Act, 1897 gives a definition for it. The 'Central government' for all practical purposes is the President after the commencement of the Constitution.

History of choosing the term

- In 1946, Jawaharlal Nehru introduced the aims and objects of the Assembly by resolving that India shall be a Union of territories willing to join the "Independent Sovereign Republic".

- Many members of the Constituent Assembly were of the opinion that the principles of the British Cabinet Mission Plan (1946) be adopted, which contemplated a Central government with very limited powers whereas the provinces had substantial autonomy; however, the Partition and the violence of 1947 in Kashmir forced the Constituent Assembly to revise its approach and it resolved in favour of a strong Centre.

The Intention behind not used "Centre"

- The members of the Constituent Assembly were very cautious of not using the word 'Centre' or 'Central government' in the Constitution as they intended to keep away the tendency of centralising of powers in one unit.
- The 'Union government' or the 'Government of India' has a unifying effect as the message sought to be given is that the government is of all.
- Even though the federal nature of the Constitution is its basic feature and cannot be altered, what remains to be seen is whether the actors wielding power intend to protect the federal feature of our Constitution.

ASSAM'S TWO-CHILD POLICY WILL STALL DEVELOPMENT GOALS

Context:

A coalition of civil society groups engaged in reproductive health has said Assam's move to adopt a two-child policy for availing benefits under government schemes will hurt the poorest besides hindering the development goals of the State.

Relevance:

GS-I: Indian Society (Population and Associated Issues), GS-II: Polity and Governance (Government Policies and Interventions, Issues arising out of the design and implementation of policies)

Dimensions of the Article:

1. What is the Two-Child Policy?
2. Present status of two-child policies in India
3. About Assam's Policy
4. About the ARC's views on Assam's Policies
5. Two-Child Policy in Indian States
6. Pointers from the NFHS-5 regarding population control
7. Criticisms related to two- child policy:

What is the Two-Child Policy?

- The two-child policy is a state-imposed limit of two children allowed per family or the payment of government subsidies only to the first two children.
- A two-child policy has previously been used in several countries including Iran, Singapore, and Vietnam.
- In British Hong Kong in the 1970s, citizens were also highly encouraged to have two children as a limit (although it was not mandated by law), and it was used as part of the region's family planning strategies.
- Since 2016, it has been re-implemented in China replacing the country's previous one-child policy.

Present status of two-child policies in India

- There is no national policy mandating two children per family.
- A parliamentarian had tabled a Bill in the Rajya Sabha in 2019 on the matter, proposing incentives for smaller families.
- PM in 2019 had appealed to the country that population control was a form of patriotism.
- Months later, the NITI Aayog called various stakeholders for a national-level consultation on the issue, which was subsequently cancelled following media glare on it.
- In 2020, the PM spoke about a likely decision on revising the age of marriage for women, which many stakeholders view as an indirect attempt at controlling the population size.

About Assam's Policy

- Assam Chief Minister said that barring the tea plantation workers, Scheduled Castes and Scheduled Tribes, people with more than two children would gradually not be able to avail benefits under specific schemes funded by the State.
- This will be in addition to the amendment made in 2018 to the Assam Panchayat Act, 1994, which requires a two-child norm along with minimum educational qualifications and functional sanitary toilets for contesting the rural polls.
- It was critical that policy objectives catered to population stabilisation, enabling families, especially women, to exercise choices about having children.

About Assam's Population

- Total Fertility Rate (TFR) in Assam is 1.9, which is less than the national average of 2.2. Data from the NFHS-5 shows that 77% of the currently married women and 63% of men aged 15-49 years in Assam want no more children, are already sterilised or have a spouse who is already sterilized.
- More than 82% of women and 79% of men consider the ideal family size to be two or fewer children and 11% of currently married women in Assam have an unmet need for family planning.

About the ARC's views on Assam's Policies

- Recently, the ARC said that instead of imposing stringent population control measures, it would be far more effective for Assam to focus on delaying the age of marriage, improving spacing between children, and ensuring girls stay in schools.
- The State also needed to invest in improving access to family planning services and expand the basket of contraceptive choices, especially long-acting reversible contraceptives, which were critical in view of the large population of adolescents and youth, the coalition advised.

Two-Child Policy in Indian States

- **Maharashtra:** Maharashtra is one of the few states in the country that have a 'two children' policy for appointment in government jobs or even for the elections of some local government bodies. The Maharashtra Zilla Parishads And Panchayat Samitis Act disqualifies people who have more than two children from contesting local body elections (gram panchayats to municipal corporations). The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 states that a person having more than two children is disqualified from holding a post in the state government. Women with more than two children are also not allowed to benefit from the Public Distribution System.
- **Rajasthan:** For government jobs, candidates who have more than two children are not eligible for appointment. The Rajasthan Panchayati Raj Act 1994 says that if a person has more than two children, he will be disqualified from contesting election as a panch or a member. However, the previous BJP government relaxed the two-child norm in case of a disabled child.

- **Madhya Pradesh:** The state follows the two-child norm since 2001. Under Madhya Pradesh Civil Services (General Condition of Services) Rules, if the third child was born on or after January 26, 2001, one becomes ineligible for government service. The rule also applies to higher judicial services.
- **Telangana and Andhra Pradesh:** Under Section 19 (3) read with Sections 156 (2) and 184 (2) of Telangana Panchayat Raj Act, 1994, a person with more than two children shall be disqualified from contesting election. However, if a person had more than two children before May 30, 1994, he or she will not be disqualified.
- **Gujarat:** In 2005, the government amended the Gujarat Local Authorities Act. The amendment disqualifies anyone with more than two children from contesting elections for bodies of local self-governance — panchayats, municipalities and municipal corporations.
- **Uttarakhand:** The state government had decided to bar people with more than two children from contesting panchayat elections and had passed a Bill in Vidhan Sabha in this regard. But the decision was challenged in the High Court by those preparing for village pradhan and gram panchayat ward member elections, and they got relief from the court. Hence, the condition of two-child norm was applied to only those who contested the elections of zila panchayat and blocks development committee membership.
- **Karnataka:** The Karnataka (Gram Swaraj and Panchayat Raj) Act, 1993 does not bar individuals with more than two children from contesting elections to local bodies like the gram panchayat. The law, however, says that a person is ineligible to contest "if he does not have a sanitary latrine for the use of the members of his family".
- **Odisha:** The Odisha Zilla Parishad Act bars those individuals with more than two children from contesting.
- **Assam:** The Assam government announced in 2019 that people who have more than two children will not be eligible for government jobs, with effect from 1 January 2021.

Pointers from the NFHS-5 regarding population control

- The latest data from the National Family Health Survey-5 (NFHS-5) provides evidences of:
  1. An uptake in the use of modern contraceptives in rural and urban areas
  2. An improvement in family planning demands being met
  3. A decline in the average number of children borne by a woman
- The analysis of the data by the international non-profit Population Council (PC) shows that the Total Fertility Rate (number of children born per woman) has decreased across 14 out of 17 States and is either at 2.1 children per woman or less.
- This also implies that most States have attained replacement level fertility, i.e., the average number of children born per woman at which a population exactly replaces itself from one generation to the next.
- While during NFHS-3 and NFHS-4, conducted between 2005 and 2016, there was a decline in the use of modern methods of contraception (oral pills, condoms, intra-uterine device) across 12 of 22 States and UTs, in NFHS-5 as many as 11 out of 12 States where there was a slump have witnessed an increase in their use.
- The indicator to gauge the demand met for contraception has also increased — only five States had more than 75% demand being met in NFHS-4, but now 10 States are able to cater to the demand for family planning by up to 75%.
- The top performers here are Andhra Pradesh, Karnataka and Telangana.

Criticisms related to two- child policy:

- Critics argue that the population growth of India will slow down naturally as the country grows richer and becomes more educated.
- There are already well-documented problems with China's one-child policy, namely the gender imbalance resulting from a strong preference for boys and millions of undocumented children who were born to parents that already had their one child.

- By interfering with the birth rate, India faces a future with severe negative population growth, a serious problem that most developed countries are trying to reverse. With negative population growth, the number of old people receiving social services is larger than the young tax base that is paying for the social services.
- The law related may also be anti-women. Human rights activists argue that the law discriminate against women right from birth (through abortion or infanticide of female fetuses and babies).
- A legal restriction to two children could force couples to go for sex-selective abortions as there are only two 'attempts'.

FIRST TIME: AN ELECTORAL TRUST DECLARES DONATION

Context:

In what is probably the first instance of an electoral trust donating money through electoral bonds, an electoral trust funded by the MP Birla Group has declared a donation of Rs 3 crore through electoral bonds in 2019-20.

The Trust hasn't revealed the names of the political parties that received this money, citing anonymity guaranteed under the electoral bond scheme.

Relevance:

GS-II: Polity and Governance (Government Policies and Interventions for Good Governance, Initiatives for Transparency and Accountability in Governance)

Dimensions of the Article:

1. ADR's arguments against non-disclosure of names of political parties
2. About the Electoral Trust Scheme
3. What are Electoral Bonds?
4. Issues with electoral funding
5. Need for electoral bonds:

ADR's arguments against non-disclosure of names of political parties

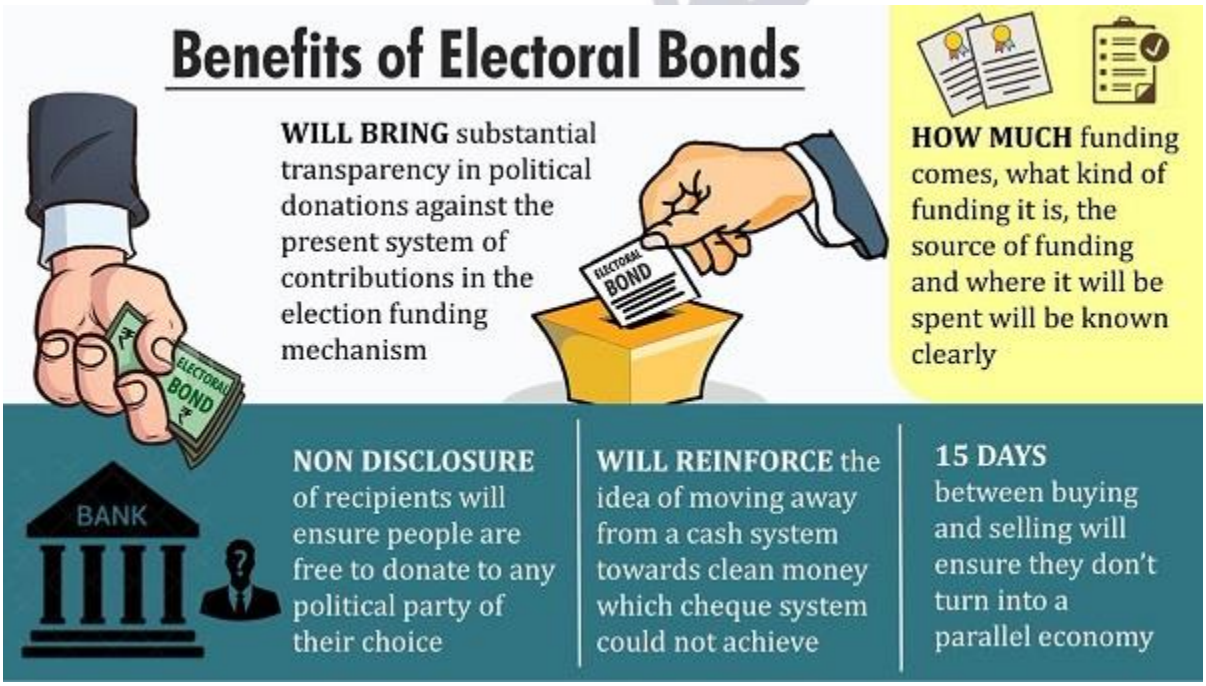
- According to the Association of Democratic Reforms (ADR), this "practice is against the spirit of the Electoral Trusts Scheme, 2013 and Rule 17CA of the Income Tax Rules, 1962 which make it mandatory for trusts to furnish each and every detail about the donor contributing to the trust".
- Therefore, if Electoral trusts start adopting this precedent of donating through bonds, which do not permit disclosure norms and discourage transparency rules/laws then it is like going back in time before the Electoral Trusts Scheme, 2013 was incorporated.
- In such a scenario, it will be a complete mayhem of unfair practices i.e., total anonymity, unchecked and unlimited funding, free flow of black money circulation, corruption, foreign funding, corporate donations and related conflict of interest etc.
- Such a practice completely negates the very purpose behind the inception of the Electoral Trusts Scheme, 2013 and Rule 17CA of the I.T Rules, 1962.

About the Electoral Trust Scheme

- Electoral Trust is a non-profit organization formed in India for orderly receiving of the contributions from any person.
- Electoral Trusts are relatively new in India and are part of the ever-growing electoral restructurings in the country.
- Electoral Trusts Scheme, 2013 was notified by the Central Board of Direct Taxes (CBDT) and the provisions related to the electoral trust are under Income-tax Act, 1961 and Income tax rules-1962.
- It lays down a procedure for grant of approval to an electoral trust which will receive voluntary contributions and distribute the same to the political parties.
- A political party registered under section 29A of the Representation of the People Act, 1951 shall be an eligible political party and an electoral trust shall distribute funds only to the eligible political parties.
- Electoral Trusts are designed to bring in more transparency in the funds provided by corporate entities to the political parties for their election related expenses.
- The Election Commission had also circulated guidelines for submission of contribution reports of electoral trusts to submit an annual report containing details of contributions received by the electoral trusts and disbursed by them to political parties in the interest of transparency.

What are Electoral Bonds?

- An electoral bond is like a promissory note that can be bought by any Indian citizen or company incorporated in India from select branches of State Bank of India.
- The citizen or corporate can then donate the same to any eligible political party of his/her choice.
- The bonds are similar to bank notes that are payable to the bearer on demand and are free of interest.
- An individual or party will be allowed to purchase these bonds digitally or through cheque.



Issues with electoral funding

- Opacity in donations: Political parties receive majority of their funds through anonymous donations (approximately 70%) through cash. Also, parties are exempted from income tax, which provides a channel for black money hoarders.
- Lack of action against bribes: The EC sought insertion of a new section, 58B, to RPA, 1951 to enable it to take action if parties bribe voters of a constituency, which has not come to light.

- Allowing foreign funding: Amendment of the Foreign Contribution (Regulation) Act (FCRA) has opened the floodgates of foreign funding to political parties, which can lead to eventual interference in governance.
- Lack of transparency: Despite provisions under section 29 of RPA, 1951, parties do not submit their annual audit reports to the Election Commission. Parties have also defied that they come under the ambit of RTI act.

Need for electoral bonds:

- Electoral Bonds limit the use of cash in political funding.
- It also reduces using illicit means of funding and the 'system' was wholly opaque and ensured complete anonymity.
- To curb black money – payments made for the issuance of the electoral bonds are accepted only by means of a demand draft, cheque or through the Electronic Clearing System or direct debit to the buyers' account".
- Limiting the time for which the bond is valid ensures that the bonds do not become a parallel currency.
- Eliminate fraudulent political parties that were formed on pretext of tax evasion, as there is a stringent clause of eligibility for the political parties in the scheme.
- Electoral Bonds protect donors from political victimization- as non-disclosure of the identity of the donor is the core objective of the scheme.

SURVEY ON RELIGIOUS TOLERANCE AND FREEDOM IN INDIA

Context:

Recently a nation-wide survey on religious attitudes, behaviours and beliefs in India was conducted by Pew Research Center, a non-profit based in Washington DC.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Fundamental Rights), GS-I: Indian Society

Dimensions of the Article:

1. Fundamental Right to Freedom of Religion in India
2. Secularism in India
3. Religious Diversity in India
4. Highlights of the survey on Religious Tolerance and Freedom in India

Fundamental Right to Freedom of Religion in India

Freedom of religion in India is a fundamental right guaranteed by Article 25-28 of the Constitution of India.

Article 25: Freedom of conscience and free profession, practice and propagation of religion

- Article 25 is the bedrock of secularism in India and it states that people have the freedom to
  1. Conscience (inner freedom of thought),
  2. Profess (declare one's religious beliefs openly),
  3. Practice (perform religious worship), and
  4. Propagate (dissemination of one's religious beliefs) their religion.

- The Right to Propagate religion does NOT include the right to convert another person to a particular religion.
- Thus, Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals).
- However, the rights guaranteed under Article 25 are subject to reasonable restrictions to maintain public order, morality and health.
- Religious rights under Article 25 are available to both citizens and non-citizens.

Article 26: Freedom to manage religious affairs

- Article 25 gives freedom to an individual, while Article 26 deals with an entire religious denomination or any of its section.
- Under Article 26, every religious denomination or any section thereof shall have the right to:
  1. establish and maintain institutions for religious and charitable purposes;
  2. manage its own affairs in matters of religion;
  3. own and acquire movable and immovable property; and
  4. administer such property in accordance with law
- The rights guaranteed under Article 26 are also subject to reasonable restrictions to maintain public order, morality and health.

Article 27: Freedom as to payment of taxes for promotion of any particular religion

- Article 27 prohibits the State from spending any public money collected by way of tax for the promotion of any religion.
- In other words, the state should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion.
- This provision prohibits the state from favouring, patronizing and supporting one religion over the other.
- This also means that taxes can be used for the promotion or maintenance of all religions.
- Article 27 prohibits only the levying of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain a religion. Thus, a fee can be levied on pilgrims to provide them with some special service or safety measures.

Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

- Article 28 prohibits religious instruction (religious teachings) from being provided in educational institutions that are Wholly Maintained by State funds.
- Article 28 distinguishes between 4 types of religious institutions and has different restrictions on providing religious instructions for different types:

	Type of Educational Institution	Status of Religious Instruction
1.	Wholly Maintained by State	Completely Prohibited
2.	Administered by the State, but established under some trust or endowment	Permitted – no conditions
3.	Just Recognized by State	Permitted – but only with consent (or Guardian's consent in case of a minor)

4.	Just Receiving Aid from State	Permitted – but only with consent (or Guardian's consent in case of a minor)

Secularism in India

- Secularism is a principle that advocates separation of religion from civic affairs and the state.
- The term means that all the religions in India get equal respect protection and support from the state.

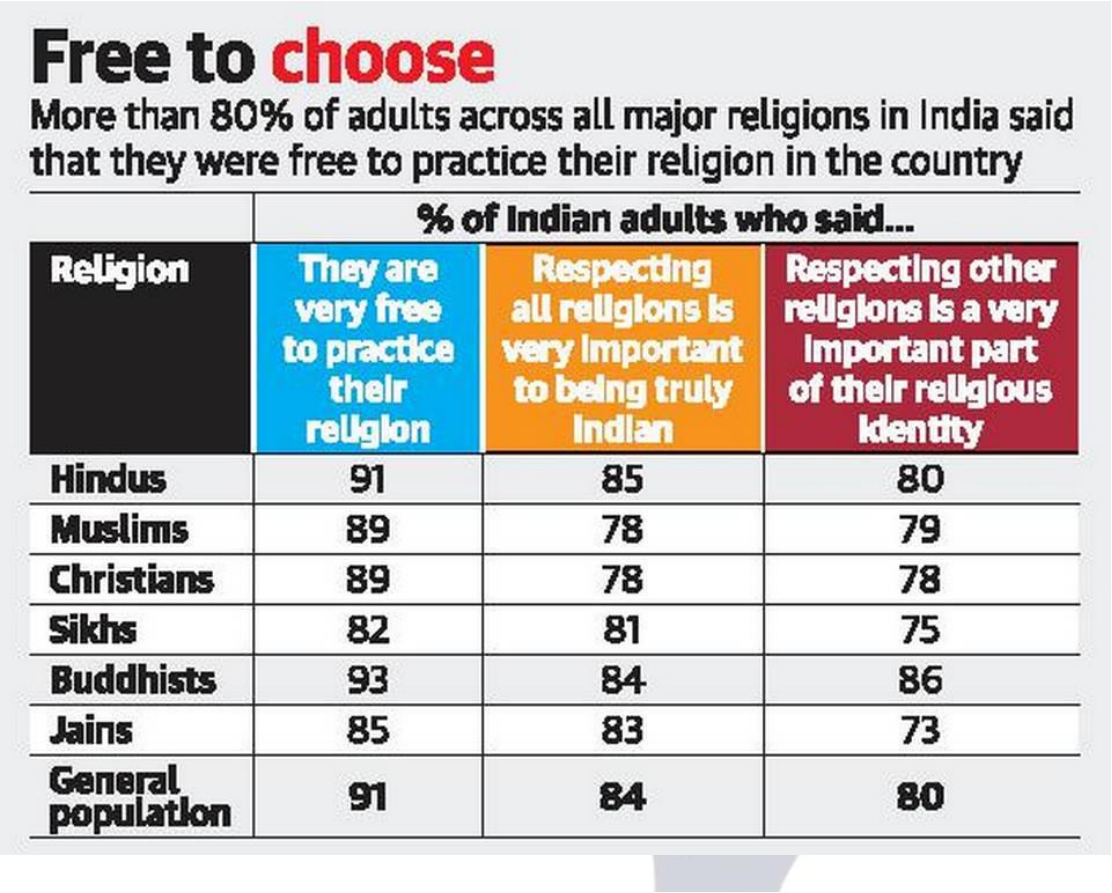
INDIAN SECULARISM	WESTERN SECULARISM
Equal protection by the state to all religions. It reflects certain meanings. First secular state to be one that protects all religions, but does not favour one at the cost of others and does not adopt any religion as the state religion.	Separation of state and religion as mutual exclusion means both are mutually exclusive in their own spheres of operation.
In the Indian context, secularism has been interpreted as the state maintaining an "arm's length distance" from ALL religions.	Western secularism can be seen as the state refusing to interact with any form of religious affairs.

Religious Diversity in India

- India is one of the most diverse nations in terms of religion, it being the **birthplace of four major world religions: Jainism, Hinduism, Buddhism and Sikhism.**
- Even though Hindus form close to 80 percent of the population, India also has region-specific religious practices: for instance, Jammu and Kashmir has a Muslim majority, Punjab has a Sikh majority, Nagaland, Meghalaya and Mizoram have Christian majorities and the Indian Himalayan States such as Sikkim and Ladakh, Arunachal Pradesh and the state of Maharashtra and the Darjeeling District of West Bengal have large concentrations of Buddhist population.
- The country has significant Muslim, Sikh, Christian, Buddhist, Jain and Zoroastrian populations.
- Islam is the largest minority religion in India, and the Indian Muslims form the third largest Muslim population in the world, accounting for over 14 percent of the nation's population.

Highlights of the survey on Religious Tolerance and Freedom in India

PMIAS
be inspired



Free to choose

More than 80% of adults across all major religions in India said that they were free to practice their religion in the country

Religion	% of Indian adults who said... They are very free to practice their religion	Respecting all religions is very important to being truly Indian	Respecting other religions is a very important part of their religious identity
Hindus	91	85	80
Muslims	89	78	79
Christians	89	78	78
Sikhs	82	81	75
Buddhists	93	84	86
Jains	85	83	73
General population	91	84	80

- The report found that 91% of Hindus felt they have religious freedom, while 85% of them believed that respecting all religions was very important 'to being truly Indian'.
- Also, for most Hindus, religious tolerance was not just a civic virtue but also a religious value, with 80% of them stating that respecting other religions was an integral aspect of 'being Hindu'.
- Other religions showed similar numbers for freedom of religion and religious tolerance. While 89% of Muslims and Christians said they felt free to practice their religion, the comparative figures for Sikhs, Buddhists and Jains were 82%, 93%, and 85% respectively.
- On the question of religious tolerance, 78% of Muslims felt it was an essential aspect of being Indian, while 79% deemed it a part of their religious identity as Muslims. Other religious denominations scored similarly high on religious tolerance.
- The survey also revealed a number of shared beliefs that cut across religious barriers. For example, while 77% of Hindus said they believed in karma, an identical percentage of Muslims said so as well.

Sad news regarding religious segregation

- Despite shared values and a high regard for religious tolerance, the majority in all the faiths scored poorly on the metrics for religious segregation: composition of friends' circle, views on stopping inter-religious marriage, and willingness to accept people of other religions as neighbors.
- Relatively few Indians (13%) had a mixed friends circle – people belonging to smaller religious groups were less likely than Hindus and Muslims to say that all their friends were of the same religion.
- On the question of inter-religious marriage, most Hindus (67%), Muslims (80%), Sikhs (59%), and Jains (66%) felt it was 'very important' to stop the women in their community from marrying outside their religion (similar rates of opposition to men marrying outside religion). But considerably fewer Christians (37%) and Buddhists (46%) felt this way.
- The majorities in all the religious groups were, hypothetically, willing to accept members of other religious groups as neighbours, but a significant number had reservations. About 78% of Muslims said they would be

willing to have a Hindu as a neighbour. Buddhists were most likely to voice acceptance of other religious groups as neighbours, with roughly 80% of them wiling to accept a Muslim, Christian, Sikh or Jain as a neighbour, and even more (89%) ready to accept a Hindu neighbour.

Political Factor

- Interestingly, the survey found that Hindus who voted for the BJP in the 2019 elections tended to be less accepting of religious minorities in their neighbourhood.
- Only about half of the Hindus who voted for the BJP said they would accept a Muslim (51%) or a Christian (53%) as neighbours, compared with higher shares of those who voted for other parties (64% and 67% respectively).
- About 60% of Hindu voters who linked Indian identity to being Hindu and speaking in Hindi voted for the BJP, compared with only a third among Hindu voters for whom these aspects did not matter for national identity.

Geographical Factor

- Geography was a key factor in determining attitudes, with people in the south of India more religiously integrated and less opposed to inter-religious marriages.
- People in the South "are less likely than those in other regions to say all their close friends share their religion (29%)," noted the report.
- Also, Hindu nationalist sentiments were less prevalent in the South. Among Hindus, those in the South (42%) were far less likely than those in Central states (83%) or the North (69%) to say that being Hindu was very important to being truly Indian.
- Also, people in the South were somewhat less religious than those in other regions: 69% said religion was very important to their lives, while 92% in Central India held the same view.

Religious identity and nationalism

- The survey also found that Hindus tend to see their religious identity and Indian national identity as closely intertwined, with 64% saying that it was 'very important' to be Hindu to be "truly" Indian.
- Most Hindus (59%) also linked Indian identity with being able to speak Hindi. And among Hindus who believed it was very important to be Hindu in order to be truly Indian, a full 80% also believed it was very important to speak Hindi to be truly Indian.

MÉNDEZ'S ANTI-TORTURE VISION AND INDIA

Context:

Launched in June 2020, the 'Principles on Effective Interviewing for Investigations and Information Gathering', dubbed the 'Méndez Principles', were developed through a comprehensive, expert-driven consultative process.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions and Historical Underpinnings, Government Policies and Interventions), GS-II: International Relations (Important International Treaties and Agreements)

Dimensions of the Article:

1. About Méndez Principles
2. Benefits and the need to change the way Investigation works
3. Torture as a part of Indian Police culture
4. Report on Torture in India
5. Supreme Court on torture
6. Legislations related to Torture
7. United Nations Convention against Torture
8. Way Forward

About Méndez Principles

- The Méndez Principles aim to provide a cohesive blueprint of practical measures to replace torture and coercive interrogation with "rapport-based" interviews, reinforced through legal and procedural safeguards at every step.
- They offer practical guidance for non-coercive interrogations; address heightened vulnerabilities in custody; and provide specific guidance on training, accountability and implementation.
- They are to apply to all authorities who have the power to detain and question people, including the police, military, and intelligence.
- At their core, the Mendez Principles seek to prevent coercive techniques and torture by introducing a paradigm shift away from "confession" based information gathering.
- The primary innovation of the Méndez Principles is to present positive, normative guidance for what police should do in effective and ethical investigations, rather than simply restating the absolute prohibitions against torture and ill-treatment. Telling police what they can't do doesn't work.
- Crucially, they are grounded in scientific empirical studies across disciplines — psychology, criminology, sociology, neuroscience — which establish that coercive interrogation is counterproductive.

Proved disadvantages of torture tactics

- Extreme torture tactics, such as forced stress positions or waterboarding, have been shown to significantly damage the affected person's memory and recollection of information.
- Aggressive questioning is more likely to make the interviewee resistant, or 'say anything' just for the threat of violence to stop.
- Coercive interviewing leads to unreliable information and false confessions.
- These studies provide scientific evidence to reject the widely-held misconception that a certain degree of 'pressure', or physical pain, will yield accurate information.

Benefits and the need to change the way Investigation works

- It may seem counterintuitive that the integration of human rights safeguards and rapport-based interviewing produces better investigative outcomes, but that is exactly what the body of scientific evidence on interviewing shows.
- When police act in an ethical and trustworthy manner, and when the rights and dignity of people being interviewed are respected, investigative results are more accurate and more comprehensive.
- Experts point to public trust and cooperation of witnesses as one of the most important factors in solving crime.
- Abusive practices do not keep the public safe and do not help police solve crimes.

- However, murder clearance rates are consistently higher in countries where investigative interviewing consistent with the Méndez Principles is used, and where safeguards like the presence of a lawyer during interrogation are implemented.

Torture as a part of Indian Police culture

- Torture is, in fact, an integral part of police culture all over the country and it would not be amiss to argue that this culture in India today is reminiscent of the brutality of the colonial police forces that we are so keen to forget.
- Official data also accept that police torture is a reality, but the quality of such data is always suspect.
- The data on torture show that it is not only an integral part of India's policing culture; in some investigations (such as terror cases), it is treated as the centrepiece.
- The fact is that the current laws facilitate such torture, such as through the admissibility of confessions as evidence under the Terrorist and Disruptive Activities (Prevention) Act and the Prevention of Terrorism Act, which continues refurbished as the Maharashtra Control of Organised Crime Act.
- Unfortunately, policing has also not mainstreamed the upgrade to newer technologies, like DNA analysis, which can directly impact law enforcement practices.

Tacit acceptance by law

- Additionally, Indian law creates conditions which further permit torture through the "back door". While confessions before a police officer are not admissible evidence, to prevent the police from resorting to torture, other legal provisions have the effect of indirectly accommodating the use of torture in investigative practice.
- Section 27 of the Indian Evidence Act permits the admissibility of statements before the police to the extent that they relate to the recovery of material objects, often called 'recovery evidence'.
- Thus, investigators still have incentive to seek "disclosures", and information implicit in a confession, as central to their investigation. Torture and falsification, by forcing an accused to sign on blank papers, are known abuses in the use of this provision.

Report on Torture in India

- Every day, an average of five people die in custody in India, with some of them succumbing to torture in police or judicial custody.
- 2019 was no better, as 117 people died in police custody while 1,606 deaths were recorded in judicial custody.
- And yet, there has not been a single conviction in the deaths of 500 persons allegedly due to torture in police custody between 2005 and 2018.
- The belief that a certain degree of fear and pressure is necessary to compel a suspect to cough up the "truth" is widely held by police officers. This emerged strongly in a 2019 survey of about 12,000 police personnel across India.

A report by the National Campaign Against Torture in 2019

- In 2019, the National Human Rights Commission (NHRC) recorded 1,723 cases of death in custody.
- It noted that "most deaths in police custody occur primarily as a result of torture".
- Of the 125 deaths in police custody, 93 (74.4%) were due to alleged torture or foul play while 24 people (19.2%) died under suspicious circumstances – such as suspected suicide (16 persons), illness (7 persons) and slipping in bathroom (1 person).

- Uttar Pradesh had the highest incidence of such deaths with 14 cases, followed by Tamil Nadu and Punjab with 11 cases each.
- The report also highlighted how while probing non-heinous crimes, police personnel in several states went to the extent of torturing the suspects to death.

Examples of Torture incidents

- The report said from acts like slapping, kicking with boots, beating with sticks, pulling hair, torture also includes barbaric methods like hammering iron nails in the body (as in the case of Gufran Alam and Taslim Ansari of Bihar), applying roller on legs and burning (as happened to Rizwan Asad Pandit of Jammu & Kashmir), and 'falanga' or beating with sticks on the soles (as with Rajkumar of Kerala).
- Sometimes, the police and jail staff even go to the extent of stabbing people with a screwdriver (as Pradeep Tomar of Uttar Pradesh was subjected to) or giving electric shock (as with Yadav Lal Prasad of Punjab and Monu of Uttar Pradesh). Often, private parts are also targeted. There have been instances of cops pouring petrol on private parts (as in the case of Monu of Uttar Pradesh) or applying chilly powder to them (in the case of Raj Kumar of Kerala)
- As part of torture, the report pointed to cases where the victims were forced to perform oral sex (as in the case of Hira Bajania and 12 others of Gujarat). Also, it said women continue to be tortured or targeted for sexual violence in custody.
- **The report said most victims were from poor and marginalised sections and were targeted because of their socio-economic status.**

Supreme Court on torture

- Even before India signed the UNCAT, our Supreme Court had brought about glorious jurisprudence highlighting the many problems with the country's torture culture.
- In Raghbir Singh v. State of Haryana (1980), the Court was "deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death."
- These sentiments were revisited in Francis Coralie Mullin v. Union Territory of Delhi (1981) and Sheela Barse v. State of Maharashtra (1987), where the Court condemned cruelty and torture as violative of Article 21.
- This interpretation of Article 21 is consistent with the principles contained in the UNCAT. The UNCAT aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. Although India signed the UNCAT in 1997, it is yet to ratify it.

Legislations related to Torture

- In 2010, Prevention of Torture Bill was passed by the Lok Sabha, and the Rajya Sabha later sent it to a Select Committee for review in alignment with the UNCAT, but the Committee's recommended law, submitted in 2012, never fructified.
- By 2017, the Law Commission had submitted its 273rd report and an accompanying draft torture law. But the Supreme Court dismissed the petition on grounds that the government cannot be compelled to make a law by mandamus; treaty ratification was a political decision; and that it was a policy matter.
- Such reluctance is arguably because all governments appear to collectively agree that police brutality is a necessary evil to maintain law and order.
- There have been opportunities for 23 years to enact a law on torture, but they have been studiously avoided. State consultation also has no meaning.

United Nations Convention against Torture

- The United Nations Convention against Torture (UNCAT) is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.
- The Convention requires states to take effective measures to prevent torture in any territory under their jurisdiction, and forbids states to transport people to any country where there is reason to believe they will be tortured.
- Since the convention's entry into force, the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment has become accepted as a principle of customary international law.
- The Convention prohibits torture, and requires parties to take effective measures to prevent it in any territory under their jurisdiction. This prohibition is absolute and non-derogable.
- The Convention defines "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

Way Forward

- What we really need is a recognition that torture is endemic and a systemic problem, and the only answer lies in stringent legal framework that is aligned with and committed to the principles of international law under the UN Convention Against Torture (UNCAT) to which India has been a signatory since 1997, and a watertight enforcement mechanism that deters such practices.
- The introduction of so-called scientific techniques of interrogation, such as lie detectors and narco-analysis, are often presented as the solutions to end physical torture. While the scientific validity of these techniques in determining the "truth" is held suspect, Indian law allows evidence voluntarily given by an accused through these techniques to be used as corroborative evidence. Hence, introduction of these techniques should be done only with addressing the existing conditions which perpetuate torture.

Applying Mendez's principles in Indian Context

- With their emergence as a new set of aspirational standards, it is tempting to assess whether the Méndez Principles can readily apply to the Indian context.
- There would need to be a fundamental shift in police thinking before the goal set by the Méndez Principles of moving from coercive practices to "rapport-based interrogation" can be realised.

SC ON PROMOTION OF PWDS

Context:

The Supreme Court said that a disabled person can avail the benefit of reservation for promotion even if he or she was recruited in the regular category or developed the disability after gaining employment.

Relevance:

GS-II: Social Justice (Welfare Schemes, Government Policies and Interventions, Social Empowerment, Issues Relating to Development), GS-II: Polity and Governance, International Relations

Dimensions of the Article:

1. About the SC's recent Judgement on promotion of PwDs
2. About the Rights of Persons with Disabilities Act, 2016
3. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

About the SC's recent Judgement on promotion of PwDs

- The important thing is the employee should be a 'person with disability' (PwD) at the time of the promotion to avail of the disabled quota.
- The SC said that the Persons with Disabilities Act of 1995 [which has been replaced with the Rights of Persons with Disabilities Act 2016] does not make a distinction between a person who may have entered service on account of disability and a person who may have acquired disability after having entered the service.
- Similarly, the same position would be with the person who may have entered service on a claim of a compassionate appointment. The mode of entry in service cannot be a ground to make out a case of discriminatory promotion.
- The court said the responsibility to provide equal opportunities to disabled persons does not end with giving them reservation at the time of recruitment.
- Legislative mandate provides for equal opportunity for career progression, including promotion. Thus, it would be negation of the legislative mandate if promotion is denied to PwD and such reservation is confined to the initial stage of induction in service.

About the Rights of Persons with Disabilities Act, 2016

- The Rights of Persons with Disabilities Act, 2016 replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- It fulfills the obligations to the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory.

Key Changes brought in the by the 2016 act

- Disability has been defined based on an evolving and dynamic concept.
- The types of disabilities have been increased from 7 to 21.
- The act added mental illness, autism, spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, speech and language disability, thalassemia, hemophilia, sickle cell disease, multiple disabilities including deaf blindness, acid attack victims and Parkinson's disease which were largely ignored in earlier act.
- It increases the quantum of reservation for people suffering from disabilities from 3% to 4% in government jobs and from 3% to 5% in higher education institutes.
- Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education (Government funded educational institutions as well as the government recognized institutions).
- Stress has been given to ensure accessibility in public buildings in a prescribed time frame along with Accessible India Campaign.
- The Chief Commissioner for Persons with Disabilities and the State Commissioners will act as regulatory bodies and Grievance Redressal agencies, monitoring implementation of the Act.
- A separate National and State Fund be created to provide financial support to the persons with disabilities.
- The Government has been authorized to notify any other category of specified disability.

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

- The Convention on the Rights of Persons with Disabilities is an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities.
- Parties to the Convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that persons with disabilities enjoy full equality under the law.
- The Convention was adopted by the General Assembly in 2006 and came into force in 2008.
- The convention seeks to engage member countries in developing and carrying out policies, laws and administrative measures for securing the rights recognized in the Convention and abolish laws, regulations, customs and practices that constitute discrimination.
- It requires countries to identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies.
- It asks member countries to recognize the right to an adequate standard of living and social protection which includes public housing, services and assistance for disability-related needs, as well as assistance with disability-related expenses in case of poverty.

SC: CANNOT FIX TIME LIMIT IN DEFECTION PLEAS

Context:

The Supreme Court put on hold a petition to frame guidelines for fixing time limits by which the Speakers of Parliament and the Assemblies should decide defection petitions against MLAs.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Legislature and Elections, Executive, Separation of Powers)

Dimensions of the Article:

1. What is Defection (Aaya Ram Gaya Ram)?
2. 10th Schedule of the Indian Constitution (Anti-Defection Law)
3. When do the Legislators face risk of disqualification?
4. Issues with having an Anti-defection law
5. Recommendations regarding Anti-Defection law
6. Contention regarding the time-limit for Defection decision

What is Defection (Aaya Ram Gaya Ram)?

- 'Defection' has been defined as, "To abandon a position or association, often to join an opposing group".
- Aaya Ram Gaya Ram (English: Ram has come, Ram has gone) expression in politics of India means the frequent floor-crossing, turncoating, switching parties and political horse trading in the legislature by the elected politicians and political parties.
- A legislator is deemed to have defected if he either voluntarily gives up the membership of his party or disobeys the directives of the party leadership on a vote. This implies that a legislator defying (abstaining or voting against) the party whip on any issue can lose his membership of the House.
- The law applies to both Parliament and state assemblies.
- The anti-defection law sought to prevent such political defections which may be due to reward of office or other similar considerations.

10th Schedule of the Indian Constitution (Anti-Defection Law)

- The Tenth Schedule was inserted in the Constitution in 1985 by the 52nd Amendment Act and technically the Tenth Schedule to the Indian Constitution is the anti-defection law in India.
- It is designed to prevent political defections prompted by the lure of office or material benefits or other like considerations.
- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.
- **The law applies to both Parliament and State Assemblies.**

When do the Legislators face risk of disqualification?

Disqualification of a legislator (member of the parliament or legislative assemblies) is possible when the member:

1. Gives up his membership of a political party voluntarily
2. Votes or abstains from voting in the House, contrary to any direction issued by his political party (Party Whip is an official of a political party who acts as the party's 'enforcer' inside the legislative assembly or house of parliament.)
3. Joins any party after being elected as independent candidate
4. Joins any political party after 6 months of being nominated as a legislative member

The Supreme Court mandated that in the absence of a formal resignation, the giving up of membership can be determined by the conduct of a legislator, such as publicly expressing opposition to their party or support for another party, engaging in anti-party activities, criticizing the party on public forums on multiple occasions, and attending rallies organised by opposition parties.

Exceptions:

- Legislators can change their party without the risk of disqualification to merge with or into another party provided that at least two-thirds of the legislators are in favour of the merger, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.
- Earlier, the law allowed parties to be split (this used to allow for legislators to hold their position while actually "defecting" to either of the split parties), but at present, this has been outlawed.
- Any person elected as chairman or speaker can resign from his party, and rejoin the party if he demits that post.

Who takes the decision on Defection?

- The decision on disqualification questions on the ground of defection is referred to the Speaker or the Chairman of the House, and his/her decision is final.
- The Presiding Officer has NO time limit to make his decision
- All proceedings in relation to disqualification under this Schedule are considered to be proceedings in Parliament or the Legislature of a state as is the case.
- The law initially stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in 1992, thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court.
- There is no time limit as per the law within which the Presiding Officers should decide on disqualification for defection.

Issues with having an Anti-defection law

- The principle of the Anti-defection law basically forces members vote based on the decisions taken by the party leadership, and not based on what their constituents would like them to vote for – can be considered as a **hindrance to the "functioning of the legislature"** in the true sense of the word. It limits a legislator from voting according to his/her own conscience, judgement and electorate's interests.
- The core role of an MP to examine and decide on a policy, bills, and budgets is side-lined. Instead, the MP becomes just another number to be tallied by the party on any vote that it supports or opposes.
- It can also be said that this provision goes **against the concept of representative democracy.**
- In the parliamentary form, the government is accountable daily through questions and motions and can be removed any time it loses the support of the majority of members of the Lok Sabha. In India, this chain of accountability has been broken by making legislators accountable primarily to the political party. Thus, anti-defection law is acting **against the concept of parliamentary democracy.**

Recommendations regarding Anti-Defection law

- Dinesh Goswami Committee on electoral reforms recommended that Disqualification should be limited to a member voluntarily gives up the membership of his political party and a member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.
- The Law Commission in its 170th Report recommended that provisions which exempt splits and mergers from disqualification to be deleted and also Pre-poll electoral fronts should be treated as political parties under anti-defection. It also recommended that Political parties should limit issuance of whips to instances only when the government is in danger.

Contention regarding the time-limit for Defection decision

- There is no time limit as per the law within which the Presiding Officers should decide on a plea for disqualification. The courts also can intervene only after the officer has made a decision, and so the only option for the petitioner is to wait until the decision is made.
- There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions.
- In a few cases, there have been situations where members who had defected from their political parties continued to be House members, because of the delay in decision-making by the Speaker or Chairman.
- There have also been instances where opposition members have been appointed ministers in the government while still being members of their original political parties in the state legislature.
- The court had urged Parliament to "re-consider strengthening certain aspects of the Tenth Schedule [anti-defection law], so that such undemocratic practices are discouraged". The Karnataka judgment of 2019 said Speakers who cannot veer away from their constitutional duty to remain neutral do not deserve the chair.
- However, the Supreme Court still holds that it cannot legislate and hence cannot frame guidelines for fixing time limits within which presiding officers should decide defection petitions against legislators.

BEGGARS SHOULD ALSO WORK FOR COUNTRY: BOMBAY HC

Context:

The Bombay High Court said that homeless people and beggars should also work for the country as everything cannot be provided to them by the state.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Government Policies and Interventions, Issues arising out of the design and implementation of the policies)

Dimensions of the Article:

1. Criminalization of Beggary in India
    1. Beggary Laws in India
    2. Definition of Beggary
2. Criticism: Violation of Fundamental Rights

Criminalization of Beggary in India

- Beggary laws in India is a relic of the old colonial legacy- e.g., according to the Criminal Tribes Act (1871), indigenous peoples were deemed criminals by birth and herded into concentration camps, where families were separated and forced labour was the norm. (These criminal tribes are now called denotified tribes after independence, which forms a major section of people engaged in beggary.)

Beggary Laws in India

- There is no central Act on beggary, however, many States and Union Territories have used certain sections of the Bombay Prevention of Beggary Act, 1959, (Which criminalises beggary) as the basis for their own laws.
- Through these legislations, the governments try to maintain public order, addresses forced begging or "begging rackets", prevent annoyance to tourists.
- In India, begging was first criminalised in the 1920s, as part of a colonial logic that sought to subjugate certain communities by imputing criminality to them.
- Railway Act, 1989: says that if any person begs in any railway carriage or upon a railway station, he shall be liable for punishment as provided under sub-section (1), which prescribes imprisonment for a term that may extend to one year, or with fine that may extend to Rs. 2,000, or with both. The railways had also proposed to amend the Section stating that "No person shall be permitted to beg in any railway carriage or upon any part of the Railway".

Definition of Beggary

- The Act defines beggary as an activity of having no visible means of subsistence, and wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms.
- However, the provisions of legislation aim to effectively "cleanse" these spaces of individuals who appear poor or destitute.

Criticism: Unjust Process

- People found "begging" can be arrested without a warrant, and after a summary procedure, thrown into "Beggars Homes" for anything between a year and three years.
- Also, many of these beggars homes are poorly regulated without superintendents, probation officers or doctors.

Criticism: Violation of Fundamental Rights

- Begging and homelessness are indicators of chronic poverty, therefore, criminalising poverty violates basic human dignity.
- This coupled with the draconian processes under the Act, violated the right to life and personal liberty under Article 21 of the Constitution.
- Some argue that – Begging is a peaceful method by which a person sought to communicate their situation to another, and solicit their assistance.
- Beggary is a manifestation of the fact that the person has fallen through the socially created net.
- The government has the mandate to provide social security for everyone, to ensure that all citizens have basic facilities, and the presence of beggars is evidence that the state has not managed to provide these to all its citizens.

Past Judgement by Delhi HC

- "Criminalising begging is a wrong approach to deal with the underlying causes of the problem."
- "The State simply cannot fail to do its duty to provide a decent life to its citizens and add insult to injury by arresting, detaining and, if necessary, imprisoning persons who beg in search for essentials of bare survival".

DRAFT ANTI-TRAFFICKING BILL

Context:

The Ministry of Women and Child Welfare invited suggestions and comments for its Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

Relevance:

GS-II: Polity and Governance (Government Policies and Initiatives, Issues arising out of the design and implementation of schemes)

Dimensions of the Article:

1. Constitutional & legislative provisions related to Trafficking in India
2. Prevalence of Human Trafficking problem in India
3. About Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021
4. International Conventions, Protocols and Campaigns

About Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

Provisions of the law

- Defines 'Exploitation' as: The exploitation of the prostitution of others or other forms of sexual exploitation including pornography, any act of physical exploitation, forced labour or services, slavery or practices similar to slavery, servitude or forced removal of organs, illegal clinical drug trials or illegal bio-medical research.
- Offenders will also include defence personnel and government servants, doctors and paramedical staff or anyone in a position of authority.

- A minimum of seven years which can go up to an imprisonment of 10 years and a fine of Rs 5 lakh in most cases of child trafficking.
- Property bought via such income as well as used for trafficking can now be forfeited with provisions set in place, similar to that of the money laundering Act.
- The National Investigation Agency (NIA) shall act as the national investigating and coordinating agency responsible for prevention and combating of trafficking in persons.
- Once the law is enacted, the Centre will notify and establish a National Anti-Human Trafficking Committee, for ensuring overall effective implementation of the provisions of this law.

Where would the law apply?

- The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 extends to all citizens inside as well as outside India. It also applies to:
- Persons on any ship or aircraft registered in India,
- A foreign national or a stateless person who has his or her residence in India.
- The law will apply to every offence of trafficking in persons with cross-border implications.
- It extends beyond the protection of women and children as victims to now include transgenders as well as any person who may be a victim of trafficking.

International Conventions, Protocols and Campaigns

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2000 as a part of the **UN Convention Against Transnational Organised Crime.**
- **The United Nations Office on Drugs and Crime (UNODC)** offers practical help to states with drafting laws, creating comprehensive national anti-trafficking strategies, and assisting with resources to implement the UN Convention Against Transnational Organised Crime. **The Blue Heart** Campaign is an international anti-trafficking program started by the UNODC.
- **Protocol against the Smuggling of Migrants by Land, Sea and Air** supplements the UN Convention Against Transnational Organised Crime and is aimed at the protection of rights of migrants and the reduction of the power and influence of organized criminal groups that abuse migrants.
- **Universal Declaration of Human Rights (1948)** is a non-binding declaration that establishes the right of every human to live with dignity and prohibits slavery.

WB RESOLUTION TO SET UP LEGISLATIVE COUNCIL

Context:

The West Bengal Assembly passed a resolution to set up Legislative Council with a two-thirds majority.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Legislature, Bicameralism)

Dimensions of the Article:

1. About State Legislative Council – Vidhan Parishad
2. Creation of a Legislative Council for a State
3. Who can abolish a legislative council?

About State Legislative Council – Vidhan Parishad

- Legislative Council or Vidhan Parishad is the upper house in bicameral legislatures in some states of India.
- While most states have a unicameral legislature with only legislative assembly, currently, six states viz. Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana, and Uttar Pradesh have legislative councils.
- Strength of the Legislative Council: The total number of the Legislative Council should not exceed 1/3rd of the total number of members of the Legislative assembly, but it should not be less than 40 (Article 171).

Creation of a Legislative Council for a State

- Article 168 of the Constitution of India provides for a Legislature in every state of the country. The same Article mentions that there are some states where there is a legislative council as well. Thus, the Indian Constitution does not adhere to the principle of bicameralism in the case of every legislature.
- The framers of the Constitution as well as members of the Constituent Assembly had in mind that it may not be possible for all the states to support two houses, financially as well as for other reasons. For example, some of the members of the Constituent assembly criticized the idea of a bicameral legislature in the states as a superfluous idea and a body that is unrepresentative of the population, a burden on the state budget and causing delays in passing legislation.
- That is why, whether there should be a legislative council in the state or not, is decided by the Legislative Assembly of the state itself.
- But it does not mean that the Legislative Assembly can itself create a legislative council. The Constitution of India has full provisions about the creation of a Legislative Council and its abolishment.

Who can abolish a legislative council?

- The power of abolition and creation of the State legislative council is vested in the Parliament of India as per Article 169.
- But again, to create or to abolish a state legislative council, the state legislative assembly must pass a resolution, which must be supported by 50% majority of the total strength of the house and 2/3rd majority of the members present and voting (Absolute + Special Majority).
- When a legislative council is created or abolished, the Constitution of India is also changed.
- However, still, such type of law is not considered a Constitution Amendment Bill. (Article 169).
- The resolution to create and abolish a state legislative council is to be given assent by the President as well.

FRESH STIRRINGS ON FEDERALISM AS A NEW POLITICS

Context:

Between vaccine wars, heated debates over the Goods and Services Tax (GST), personnel battles like the fracas over West Bengal's Chief Secretary, and the pushback against controversial regulations in Lakshadweep there is an increased focus on federal structure in India.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Basic structure of the Constitution, Federal Structure)

Dimensions of the Article:

1. Understanding Unitary System and Federal System
2. India's system of Federalism with Unitary Bias
3. Driving forces of federalism in India
4. Issues with Indian Federalism

Understanding Unitary System and Federal System

- Nations are described as 'federal' or 'unitary', depending on the way in which governance is organised.
- In a unitary set-up, the Centre has plenary powers of administration and legislation, with its constituent units having little autonomy.
- In a federal arrangement, the constituent units are identified on the basis of region or ethnicity, and conferred varying forms of autonomy or some level of administrative and legislative powers.
- In Federal governments such as India, powers are vividly divided between central and regional governments as enshrined in Article 246 & Schedule 7 of the Indian Constitution.

Federalism (Example: U.S.A.)

- Federalism is a system of government in which powers have been divided between the center and its constituent parts such as states or provinces.
- In a federation system, there are two seats of power that are autonomous in their own spheres.
- A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.
- State Government has powers of its own for which it is not answerable to the central government.

Unitary System (Example: Britain)

- In a Unitary Form of Government there is only one level of government or the sub-units are subordinate to the Central Government.
- The Central Government is supreme, and the administrative divisions exercise only powers that the central government has delegated to them.
- The powers of the sub-ordinate governments like 'State Government' may be broadened and narrowed by the central government.

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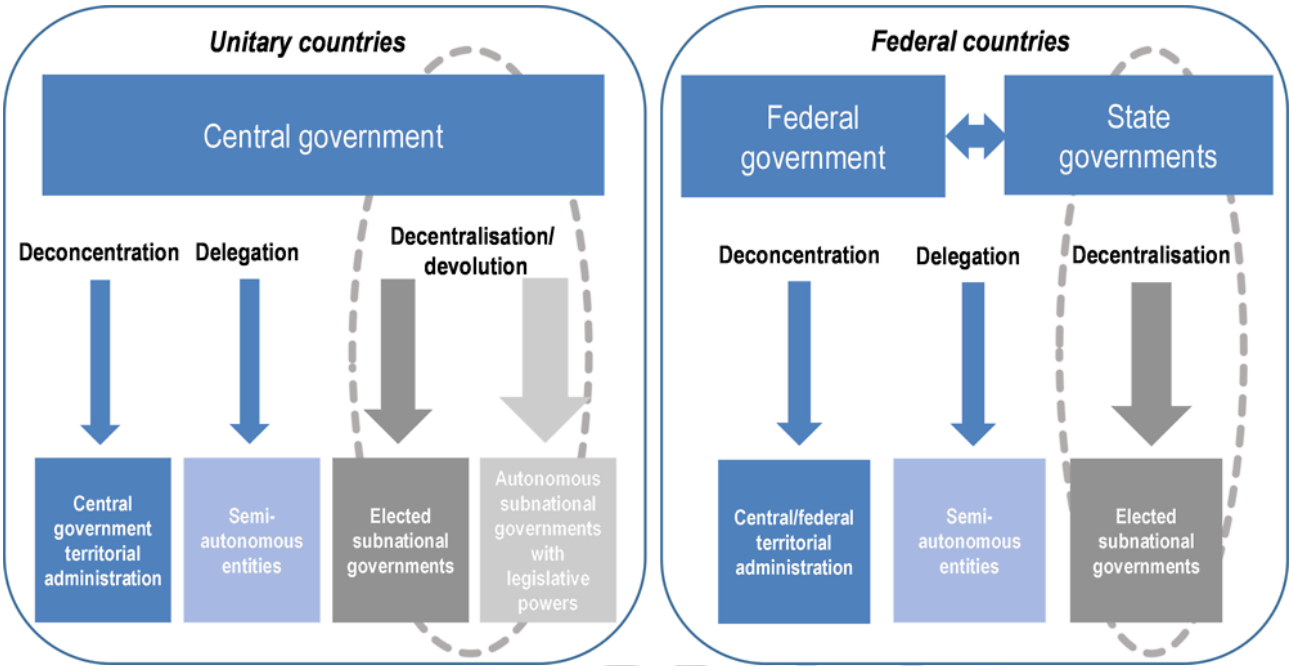


India's system of Federalism with Unitary Bias

- India is a federal system with a tilt towards unitary form of government.
- It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system.
- Article 1 of the Indian Constitution states, 'India, that is Bharat, shall be a union of States'.
- The word federation is not mentioned in the constitution.
- The Drafting Committee chose the word "Union" instead of "Federation" due to various reasons:
  1. The Union of India is not the outcome of an agreement among the old provinces (like in the American Federation).
  2. It is not up to the States to secede from the union or alter their boundaries on their own free will.
- The Indian Federation is a Union because it is indestructible. Ambedkar justified the usage of 'Union of States' saying that the Drafting Committee wanted to make it clear that though India was to be a federation, it was not the result of an agreement and that therefore, no State has the right to secede from it. "The federation is a Union because it is indestructible," Ambedkar said.
- Though the country and the people can be divided into different States for convenience of administration, the country is one integral whole, its people living under a single imperium derived from a single source.

Driving forces of federalism in India

- As BR Ambedkar had put it, "India's Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances."
- The imperatives of security, state building, and economic development are always allowed to trump federal pieties. Following Four things sustain federalism:
- The first was a genuine concern about whether a centralised state could accommodate India's linguistic and cultural diversity. The States Reorganisation Act and the compromises on the issue of languages was a victory for federalism. It allowed India to use federalism to accommodate linguistic diversity.
- The second underpinning of federalism is actual distribution of political power. The rise of coalition governments, economic liberalisation, regional parties, seemed to provide propitious ground for political federalism. Political federalism is quite compatible with financial, and administrative centralisation.
- The third thing that sustains federalism is the political and institutional culture. Because of the increasing presidentialisation of national politics, a single-party dominance with powerful messaging power, and

change in forms of communication, the attribution of policy successes or failures might change, diminishing the stature of chief ministers considerably.
- The fourth thing that sustained federalism was what Louise Tillin has brilliantly analysed as "asymmetrical federalism" — special exemptions given to various states. But asymmetrical federalism has always been subject to three pressures. For Kashmir, asymmetrical federalism came to be seen as the source, not the resolution, of the security threat. Even in the North-east, local conflicts within the scheme of asymmetrical federalism and a discourse of security allowed the Centre to step in.

Issues with Indian Federalism

- **Coalition Politics yielded little results for federalism:** Fiscal and administrative centralisation persisted despite nearly two decades of coalition governments. Ex: Aadhar, NFSA, GST, MGNREGA.
- **Electoral Pragmatism undermining Federalism:** The contingencies of electoral politics have created significant impediments to creating a political consensus for genuine federalism. Ex: Toppling coalition government by misusing Governor & Central agencies
- **Federalism diluted under garb of Nationalism:** Union governments have diluted with federalism in the grammar of development and nationalism. Ex: One nation – one market, one ration card, one grid'.
- **Misreading Federalism:** In present context, federalism risks being equated with regionalism and a narrow parochialism that is anti-development and anti-national.
- **Centralisation at State Level:** Also, most regional parties have failed to uphold principles of decentralisation in their own backyard. This shows that States themselves are not following the spirit of Federalism.
- **Silence of States on other State's Federal issues:** For ex: downgrading J&K status, NCT of Delhi (Amendment) Act, 2021 that undermined Federalism hardly witnessed protest by parties that were not directly affected by these.
- **Divergence among States:** Growing divergence between richer (Southern & Western) and poorer States (Northern & Eastern), remains an important source of tension in inter-State relations that has become a real impediment to collective action amongst States.
- **Dilution of Fiscal Federalism:** The Union's response, in the wake of fiscal crisis unleased by Pandemic, has been to squeeze revenue from States by increasing cesses (not shareable with States) that is against federal spirit.

SHOULD ONLY ELECTED LEGISLATORS BE ELIGIBLE FOR CM POST?

Context:

The sudden exit of Tirath Singh Rawat as Chief Minister of Uttarakhand because he was not elected as a legislator within six months, has led to thickening speculation about the fate of West Bengal's CM Mamata Banerjee who is another unelected Chief Minister.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Union and State Executive)

Dimensions of the Article:

1. Understanding the position of the Chief Minister
2. What was the problem in getting elected within 6 months for the Uttarakhand CM?
3. Constitution assumes CM as a legislator

Understanding the position of the Chief Minister

- The position of the Chief Minister at the state level is analogous to the position of the Prime Minister at the Centre and the governor is the nominal executive authority (de jure executive) and the Chief Minister is the real executive authority (de facto executive).
- Article 163 of the Constitution says that there shall be a Council of Ministers in the states with the Chief Minister at the head to aid and advise the Governor in exercise his functions, except those which are required to be done by the Governor on his/her discretion.
- The council of Ministers formulates the policy of the Government and implements it practically.

Regarding Appointment of the Chief Minister

- Article 164 only says that the Chief Minister shall be appointed by the governor. However, the Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister and Article 164 does NOT imply that the governor is free to appoint anyone as the Chief Minister.
- **A Minister who for any period of six consecutive months is not a member of the Legislature of the State, at the expiration of that period ceases to be a Minister. (Article 164)**
- A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.

What was the problem in getting elected within 6 months for the Uttarakhand CM?

The Representation of the People Act, 1951, mandates that a byelection for any vacancy should be held within six months of that vacancy arising, provided the remainder of the term is not less than one year or the EC and the Centre do not certify that holding the bypoll in that time frame is difficult.

Constitution assumes CM as a legislator

- We have a parliamentary democracy, which essentially means that whoever has the confidence of the majority of the members of the Lok Sabha, in the case of the Centre, will be the Prime Minister.
- Article 164 (2): The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.
- It also requires that all Ministers should be a Member of Parliament (MP) or get elected within six months. Anybody who is a Minister and is not an MP for six months automatically stands to be disqualified from the administration.
- Article 164 (4): A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.
- Hence, the Constitution visualises the Chief Minister as being elected by the members of the House of their own free will and it assumes that the Chief Minister is a member. However, there is a party high command, especially in the case of national parties, which decides who will become the Chief Minister.

IN DEFENCE OF INDIA'S NOISY DEMOCRACY

Context:

China's developmental pathway over the last century has been spectacular and this has lead to a rise in the comparison with India and questioning the need to bring a change in India's democratic system.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions)

Mains Questions:

Comparisons of India's system of democracy with China is not only specious but also dangerous. Discuss. (10 marks)

Dimensions of the Article:

1. What is Democracy?
2. Understanding Constitutional Democracy
3. Opposite of Democracy – Autocracy
4. Comparisons between Indian Democracy and Chinese Regime
5. Why is Democracy better than other regimes?

What is Democracy?

- Democracy is a form of government in which the people have the authority to choose their governing legislation.
- The word democratic refers not only to political democracy but also to social and economic democracy.
- The two current types of democracy are:
  1. Direct democracy: The people directly deliberate and decide on legislation.
  2. Indirect / Representative democracy: The people elect representatives to deliberate and decide on legislation (such as in parliamentary or presidential democracy.)
- The people of India elect their governments by a system of universal adult franchise, popularly known as "one person one vote".

Understanding Constitutional Democracy

- The basic difference between a democracy and a constitutional democracy is that while democracy can only guarantee that the power is vested with the people (the majority, in fact), the constitution preserves the rights of the minority and prevents them from unwelcome contingencies of the majority will.
- The constitution also acts as a bridge between the people and the state, a bridge that was curated with a vision to put a check on state power. It also protects the pluralistic fabric of the society from the succumbing to the waves of temperamental shift in public mood.
- The constitutional morality balances popular morality and acts as a threshold against an upsurge in mob rule.

Opposite of Democracy – Autocracy

- Autocracy is a system of government in which supreme power over a state is concentrated in the hands of one person (commonly referred to as a dictator), whose decisions are subject to neither external legal restraints nor regularized mechanisms of popular control (except perhaps for the implicit threat of coup d'état or other forms of rebellion).
- Both totalitarian and military dictatorship are often identified with, but need not be, an autocracy.
- Totalitarianism is a system where the state strives to control every aspect of life and civil society. It can be headed by a supreme leader, making it autocratic, but it can also have a collective leadership such as a commune, military junta, or a single political party as in the case of a one-party state.

Comparisons between Indian Democracy and Chinese Regime

- China's development over the last century has been impressive as hundreds of millions have been lifted out of poverty and also social indicators have improved dramatically. On the other hand, India's developmental record has been much more mixed with the Indian economy far behind China in its global competitiveness even with the impressive growth since 1990s.
- Moreover, improvements in basic social development indicators have lagged. Recently, Jean Drèze and Amartya Sen have pointed out that India has actually fallen behind Bangladesh and Pakistan.
- Many educated Indians think India's problem is that it is just too democratic. Unlike China, making and implementing key decisions about public investment and various reforms is problematic and challenging in a democratic setup.
- However, the claim that less democracy is good for development does not stand up to comparative, theoretical, and ethical scrutiny.

Why is Democracy better than other regimes?

Evidence

- Except China – Authoritarian states have not performed better than democracies. E.g., Africa and West Asia, where authoritarian governments have dominated, remain world economic laggards.
- In Taiwan and South Korea, their transitions to democracy saw their economies moving up to the next level and become much more inclusive.
- Similarly, the Latin American military dictatorships of the 1960s and 1970s had a terrible economic and social record and with the return of democracy and the "pink wave" of Left populist parties that prosperity and social progress were ushered in.

Evidence from Inclusive states in India

- Kerala and Tamil Nadu have done more to improve the lives of all their citizens across castes and classes than any other State in India and both states have also had the longest and most sustained popular democratic movements and intense party competition in the country.
- In contrast, in Gujarat, where a single-party rule has been in place for nearly a quarter century, growth has been solid. But it is accompanied by increased social exclusion and stagnation in educational achievement and poverty reduction.

Myths around authoritarian model of decision-making

- The assumption that the authoritarianism model of decision-making can rise above the challenges in a democratic setup is false.
- Democracies are in fact more likely to meet the necessary conditions for successful decision-making as elected representatives are answerable to a broad electorate if they want to win elections.
- Democracy allows for forms of negotiation and compromise that can bridge across interests and even balance otherwise conflicting imperatives for growth, justice, sustainability, and social inclusion.
- Democracy's conflicts and noise may make things more difficult, but having to respond to a wide range of interests and identities not only protects against disastrous decisions, but also allows for forms of negotiation and compromise that can bridge interests and even balance otherwise conflicting imperatives for growth, justice, sustainability, and social inclusion.

Equality and Freedom

- Democracy promotes equality by endowing all citizens with the same civic, political and social rights even as it protects and nurtures individuality and difference.
- Whereas in China (authoritarian state) the cost of development is huge – e.g., Cultural Revolution has made enemies out of neighbors and the One child policy has devastated families and erased a generation. Ongoing violent, systematic repression of the Uyghur Muslim and Tibetan minorities is also a case in point against Authoritarian decision making.
- Conversely, India's democracy has opened social and political spaces for subordinate groups and has built a sense of shared identity and belonging in the world's largest and most diverse society. Individual liberties, community identities, religion and thought freedoms, all of which confer recognition on human beings, have all been protected in India.

SC: FILE STATUS REPORT ON VACANCIES AT CIC, SICS

Context:

The Supreme Court sought status reports from the Centre and states on vacancies and pendency in the Central Information Commission and State Information Commissions.

Relevance:

GS-II: Polity and Governance (Statutory, regulatory and various quasi-judicial bodies)

Dimensions of the Article:

1. Central Information Commission (CIC)
2. Functions of CIC
3. State Information Commission
4. Issues Highlighted by the SC
5. Way Forward

Central Information Commission (CIC)

- The Central Information Commission has been constituted with effect from 12-10-2005 under the Right to Information Act, 2005. Hence, CIC is a **Statutory Body.**
- The jurisdiction of the Commission extends over all Central Public Authorities.

- It was constituted to act upon complaints from those individuals who have not been able to submit information requests to a Central Public Information Officer or State Public Information Officer due to either the officer not have been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information under the Right to Information Act.

Functions of CIC

1. Order enquiry into any matter on reasonable grounds only.
2. Secure compliance of its decisions from any public authority.
3. Receive and inquire into a complaint from any person:
    1. Who has not received any response to his request for information within a specified time.
    2. Who deems the information given to him/her incomplete, false or misleading, and any other matter related to securing the information.
    3. Who has been unable to submit a request for information due to the non-appointment of an officer.
    4. Who considers the fees so charged unreasonable.
    5. Who was refused the information requested.

1. The commission has the power to examine any record under the control of the public authority. All such records have to be given to the Commission during examination and nothing shall be withheld.
2. During inquiries, the CIC has the powers of a civil court, such as the powers to:
    1. Summon and enforce the attendance of persons, and compel them to give oral or written evidence on oath and produce documents or things
    2. Require the discovery and inspection of documents
    3. Receive evidence on affidavit
    4. Requisition public records or copies from any office or court
    5. Issue summons for the examination of documents or witnesses
    6. Any other matter that may be prescribed
3. The CIC also submits an annual report to the GOI on the implementations of the provisions of the Act. This report is then placed before both the Houses of Parliament.

State Information Commission

- State Information Commissions (SIC) are constituted by the State Government.
- It has one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC) to be appointed by the Governor on the recommendation of the Appointments Committee headed by the Chief Minister.

Issues Highlighted by the SC

1. **Delays and Backlogs:** On average, the CIC takes 388 days (more than one year) to dispose of an appeal/complaint from the date it was filed before the commission. A report released last year has pointed out that more than 2.2 lakh Right to information cases are pending at the Central and State Information Commissions (ICs).
2. **No Penalties:** The report found that the Government officials hardly face any punishment for violating the law. Penalties were imposed in only 2.2% of cases that were disposed of, despite previous analysis showing a rate of about 59% violations which should have triggered the process of penalty imposition
3. **Vacancy:** Despite repeated directions from the court, there are still three vacancies in the CIC.
4. **Lack of Transparency:** The criteria of selection, etc., nothing has been placed on record.

Way Forward

- Democracy is all about the governance of the people, by the people and for the people. In order to achieve the third paradigm, the state needs to start acknowledging the importance of an informed public and the role that it plays in the country's development as a nation. In this context, underlying issues related to RTI Act should be resolved, so that it can serve the information needs of society.
- The role of information commissions is crucial especially during Covid-19 to ensure that people can obtain information on healthcare facilities, social security programs and delivery of essential goods and services meant for those in distress.
- By its 2019 order, the apex court had passed a slew of directions to the Central and State governments to fill vacancies across Central and State Information Commissions in a transparent and timely manner.
- Urgent digitization of records and proper record management is important as lack of remote access to records in the lockdown has been widely cited as the reason for not being able to conduct hearings of appeals and complaints by commissions.

ELECTING A SPEAKER AND DEPUTY SPEAKER

Context:

Maharashtra has been without a Speaker since February, 2021 while Lok Sabha and several State Assemblies are without a Deputy Speaker.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Legislature)

Dimensions of the Article:

1. Speaker of Lok Sabha
2. Election and Term of Office of the Speaker of Lok Sabha
3. Vacancy of office

Speaker of Lok Sabha

- The Speaker is the head of the Lok Sabha (Or the Legislative Assemblies of the States), and its representative and his/her decision in any Parliamentary matter is final.
- He is the guardian of powers and privileges of the members, apart from being the principal spokesman of the House.
- The Speaker of the Lok Sabha derives his powers and duties from three sources: Usually, a member belonging to the ruling party is elected Speaker. The process has evolved over the years where the ruling party nominates its candidate after informal consultations with leaders of other parties and groups in the House.
- This convention ensures that once elected, the Speaker enjoys the respect of all sections of the House.
    - The Constitution of India,
    - The Rules of Procedure and Conduct of Business of Lok Sabha, and
    - Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules).

Election and Term of Office of the Speaker of Lok Sabha

- The Speaker of the LS is chosen by the members of LS from among themselves, after the first meeting of the Lok Sabha.
- The Speaker (along with the Deputy Speaker) is elected from among the Lok Sabha members by a simple majority of members present and voting in the House.
- Although there are no specific qualifications prescribed for being elected the Speaker, an understanding of the Constitution and the laws of the country is considered a major asset for the holder of the Office of the Speaker.
- The Speaker of LS generally remains in office during the life of Lok Sabha. However, to remain in office, he needs to remain a member of the Lok Sabha. Whenever the Lok Sabha is dissolved, its Speaker continues to remain in office until immediately before the first meeting of Lok Sabha after it is reconstituted.

Vacancy of office

- If a Speaker is disqualified to be a member of Lok Sabha due to any reason, he/she also ceases to be a Speaker.
- The Speaker can also vacate his office by addressing a resignation letter to Deputy Speaker.
- He can also be removed by the members of Lok Sabha by a resolution (with the support of at least 50 members) passed by an absolute majority of the LS (50% of the total membership of the House).
- When such resolution is under consideration of the house, Speaker cannot preside the meeting of the house but can participate and vote (except the casting vote in case of an equality of votes.)
- When the Speaker's seat falls vacant, the members elect another speaker on a date fixed by the President.

Removal of Speaker

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

U.P.'S NEW POPULATION POLICY

Context:

Uttar Pradesh (UP) unveiled its New Population Policy 2021-30, on the occasion of World Population Day (11th July).

Relevance:

GS-I: Indian Society (Population and Associated Issues), GS-II: Polity and Governance (Government Policies and Interventions, Issues arising out of the design and implementation of policies)

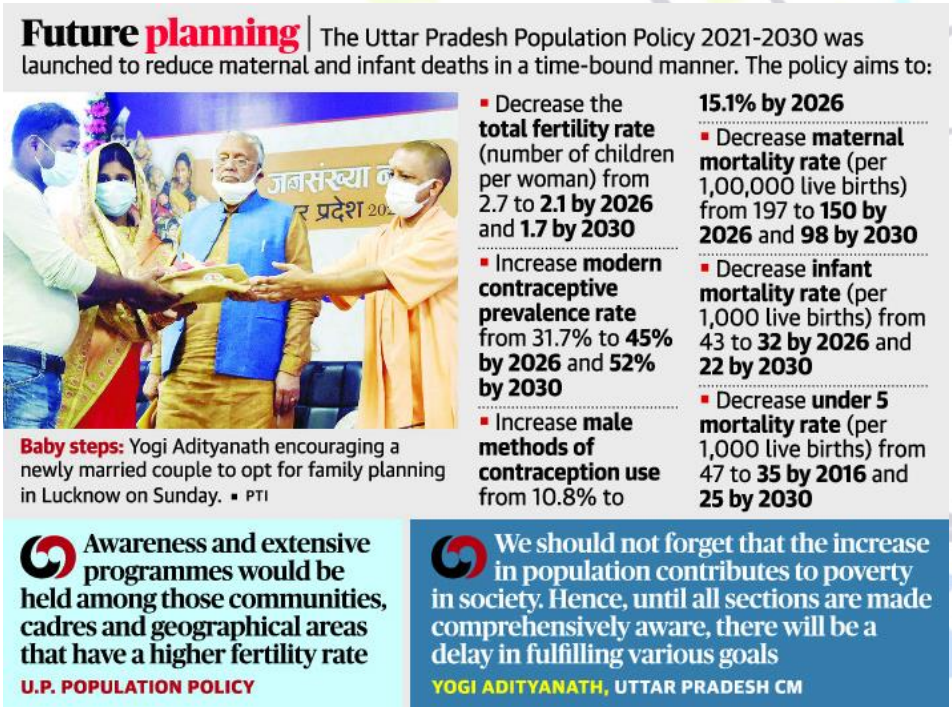
Dimensions of the Article:

1. About U.P.'s New Population Policy
2. What is Two-Child Policy?

3. Criticisms related to two- child policy:
4. Two-Child Policy in Indian States

About U.P.'s New Population Policy

- The U.P. government's law commission has also prepared a population control bill, under which **a two-child norm will be implemented and promoted.**
- As per the draft, violation of the policy is penalised with measures such as barring for elections and abidance is rewarded with measures such as promotion in jobs, subsidy etc.
- The new policy aims to
  1. Decrease the Total Fertility Rate
  2. Increase Modern Contraceptive Prevalence Rate
  3. Increase male methods of contraception use
  4. Decrease Maternal Mortality Rate, Infant Mortality Rate and Under 5 Infant Mortality Rate.
- Targeting population stabilization, the draft of the policy also said the state would attempt to maintain a balance of population among the various communities.



What is Two-Child Policy?

- The two-child policy is a state-imposed limit of two children allowed per family or the payment of government subsidies only to the first two children.
- A two-child policy has previously been used in several countries including Iran, Singapore, and Vietnam.
- In British Hong Kong in the 1970s, citizens were also highly encouraged to have two children as a limit (although it was not mandated by law), and it was used as part of the region's family planning strategies.
- Since 2016, it has been re-implemented in China replacing the country's previous one-child policy.

Criticisms related to two- child policy:

- Critics argue that the population growth of India will slow down naturally as the country grows richer and becomes more educated.

- There are already well-documented problems with China's one-child policy, namely the gender imbalance resulting from a strong preference for boys and millions of undocumented children who were born to parents that already had their one child.
- By interfering with the birth rate, India faces a future with severe negative population growth, a serious problem that most developed countries are trying to reverse. With negative population growth, the number of old people receiving social services is larger than the young tax base that is paying for the social services.
- The law related may also be anti-women. Human rights activists argue that the law discriminate against women right from birth (through abortion or infanticide of female fetuses and babies).
- A legal restriction to two children could force couples to go for sex-selective abortions as there are only two 'attempts'.

Two-Child Policy in Indian States

- Maharashtra: Maharashtra is one of the few states in the country that have a 'two children' policy for appointment in government jobs or even for the elections of some local government bodies. The Maharashtra Zilla Parishads And Panchayat Samitis Act disqualifies people who have more than two children from contesting local body elections (gram panchayats to municipal corporations). The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 states that a person having more than two children is disqualified from holding a post in the state government. Women with more than two children are also not allowed to benefit from the Public Distribution System.
- Rajasthan: For government jobs, candidates who have more than two children are not eligible for appointment. The Rajasthan Panchayati Raj Act 1994 says that if a person has more than two children, he will be disqualified from contesting election as a panch or a member. However, the previous BJP government relaxed the two-child norm in case of a disabled child.
- Madhya Pradesh: The state follows the two-child norm since 2001. Under Madhya Pradesh Civil Services (General Condition of Services) Rules, if the third child was born on or after January 26, 2001, one becomes ineligible for government service. The rule also applies to higher judicial services.
- Telangana and Andhra Pradesh: Under Section 19 (3) read with Sections 156 (2) and 184 (2) of Telangana Panchayat Raj Act, 1994, a person with more than two children shall be disqualified from contesting election. However, if a person had more than two children before May 30, 1994, he or she will not be disqualified.
- Gujarat: In 2005, the government amended the Gujarat Local Authorities Act. The amendment disqualifies anyone with more than two children from contesting elections for bodies of local self-governance — panchayats, municipalities and municipal corporations.
- Uttarakhand: The state government had decided to bar people with more than two children from contesting panchayat elections and had passed a Bill in Vidhan Sabha in this regard. But the decision was challenged in the High Court by those preparing for village pradhan and gram panchayat ward member elections, and they got relief from the court. Hence, the condition of two-child norm was applied to only those who contested the elections of zila panchayat and blocks development committee membership.
- Karnataka: The Karnataka (Gram Swaraj and Panchayat Raj) Act, 1993 does not bar individuals with more than two children from contesting elections to local bodies like the gram panchayat. The law, however, says that a person is ineligible to contest "if he does not have a sanitary latrine for the use of the members of his family".
- Odisha: The Odisha Zilla Parishad Act bars those individuals with more than two children from contesting.
- Assam: The Assam government announced in 2019 that people who have more than two children will not be eligible for government jobs, with effect from 1 January 2021.

SET ASIDE PRECONDITIONS FOR PEACE PROCESS: NAGALAND PANEL

Context:

A panel of Nagaland's lawmakers asked the negotiating parties of the "Indo-Naga" political dialogue to resume the peace talks with a positive approach, setting aside the preconditions in the "greater interest of the people's cry for long-term peace".

Relevance:

GS-II: Polity and Governance (Centre-State Relations), GS-I: Indian Society

Dimensions of the Article:

1. Who are the Nagas and what is the Naga Issue?
2. Peace Initiatives with the Naga
3. NSCN-IM
4. NSCN-IM stand and the deadlock

Who are the Nagas and what is the Naga Issue?

- The Nagas are not a single tribe, but an ethnic community, belonging to Indo-Mongoloid Family, that comprises several tribes who live in the state of Nagaland and its neighbourhood.
- There are nineteen major Naga tribes, namely, Aos, Angamis, Changs, Chakesang, Kabuis, Kacharis, Khain-Mangas, Konyaks, Kukis, Lothas (Lothas), Maos, Mikirs, Phoms, Rengmas, Sangtams, Semas, Tankhuls, Yamchumgar and Zeeliang.
- The key demand of Naga groups has been a Greater Nagalim (sovereign statehood) i.e., redrawing of boundaries to bring all Naga-inhabited areas in the Northeast under one administrative umbrella.
- The Naga inhabited areas include various parts of Arunachal Pradesh, Manipur, Assam and Myanmar.
- The demand also includes the separate Naga Yezabo (Constitution) and Naga national flag.

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Peace Initiatives with the Naga

- Shillong Accord (1975): A peace accord was signed in Shillong in which the NNC leadership agreed to give up arms. However, several leaders refused to accept the agreement, which led to the split of NNC.
- Ceasefire Agreement (1997): The NSCN-IM signed a ceasefire agreement with the government to stop attacks on Indian armed forces. In return, the government would stop all counter-insurgency offensive operations.
- Framework Agreement (2015): In this agreement, the Government of India recognised the unique history, culture and position of the Nagas and their sentiments and aspirations. The NSCN also appreciated the Indian political system and governance. However, the details of the agreement are yet to be released by the government.
- Recently, the State government decided to prepare the Register of Indigenous Inhabitants of Nagaland but later due to pressure from various fractions, the decision was put on hold.

Issues:

- The 2015 agreement apparently made the peace process inclusive but it created suspicion about the central government exploiting divisions within the Nagas on tribal and geopolitical lines.

- The issue of integration of contiguous Naga-inhabited areas of Manipur, Assam and Arunachal Pradesh in view of the demand for territorial unification of 'Greater Nagalim' will trigger violent clashes in the different affected states.
- Another major hindrance to the peace process in Nagaland is the existence of more than one organisation, each claiming to be representative of the Nagas.

NSCN-IM

- The Isaak Muivah faction of the National Socialist Council of Nagaland (IM), one of the largest Naga groups fighting for an independent Naga homeland.
- They have been engaged in guerrilla warfare against successive Indian administrations since the 1950s.
- One of the main demands of NSCN-IM has been the creation of a sovereign Naga territory that includes Naga-inhabited parts of neighbouring states like Manipur, Assam and Arunachal Pradesh as well as a portion of Burma across the international border, and leaders from those states have long been wary of any accord that would allow the annexation of parts of their land.
- Lack of infrastructure development in the region is one of the perceived reasons for the decades' long insurgency.
- In 2015, NSCN-IM had entered into an historic Peace Accord (Framework Agreement) with Union government to bring lasting peace in Nagaland.

NSCN-IM stand and the deadlock

- The Naga talks have hit the deadlock since early 2020 as the National Socialist Council of Nagaland-(Isak Muivah) (NSCN-IM) leader has refused to hold any dialogue with interlocutor and Nagaland Governor R.N Ravi.
- The Governor's letter to the Nagaland Chief Minister saying "over half a dozen organized armed gangs were brazenly running their respective 'so called governments' challenging the legitimacy of the State government" had caused the situation to worsen.
- There was also an order asking government officials to declare if their family members or relatives are members of any "underground organisation."
- NSCN-IM signed a ceasefire agreement with the Centre in 2001, hence they took offense with the "organized armed gangs" view.
- And also given that in a tribal set-up most people are related to each other, asking government officials to declare regarding their family members was seen as insensitive.
- Following the failure of the breakdown of communication between the NSCN-IM and the Nagaland Governor, the Union Home Minister deputed a team of Intelligence Bureau officials to continue the discussions with the NSCN-IM.

A KERALA MODEL FOR AN ANTI-DISCRIMINATION LAW

Context:

Shashi Tharoor, MP, has urged the Kerala State government to enact an anti-discrimination law. Mr. Tharoor has written to the Minister for Law in this regard with a draft Bill, saying that a State legislation will help plug gaps in the legal framework on discrimination.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Fundamental Rights, Government Interventions and Policies, Issues arising out of the design and implementation of Government Policies)

Dimensions of the Article:

1. Introduction to prevalence of discrimination in India
2. Article 15 Protection against discrimination
3. Lacunae in the existing Article 15
4. How is Discrimination practiced in the Society?
5. Way Forwards

Introduction to prevalence of discrimination in India

- Incidents of discrimination against individuals based on religion, caste, ethnicity, marital status, gender, sexual orientation and even eating preferences have become common in society.
- This manifests itself in various forms including housing discrimination, discrimination in employment, etc.
- The absence of proper legal recourse for those who suffer from discrimination only makes matters worse for the victim.
- Despite some existing laws and judicial precedents, the existing social stigmas act as a hurdle in countering the existing discriminational attitude in Indian society.

Article 15 Protection against discrimination

- According to Article 15, Discrimination is prohibited on the basis of: Religion, Race, Caste, Sex, Place of Birth or any of them (Mnemonic: RRCSP) ONLY and hence, the State can discriminate on the basis of other grounds.
- Also, Discrimination on either of the above (RRCSP) grounds in combination with some other grounds is allowed. For example – No discrimination only on the grounds of caste but discrimination based on caste and backwardness is permitted.
- Discrimination against a person is not allowed however positive discrimination or affirmative action is allowed.
- While 15(1) is a direction only to the state, 15(2) is available against private individuals as well.
- This right is available to INDIAN CITIZENS ONLY. Hence foreign nationals can be discriminated against vis-à-vis Indian citizens by the Indian state. Similarly, legal entities can also be discriminated against.

Lacunae in the existing Article 15

- While Article 15(1) of the Constitution of India prohibits the state from discriminating against individuals on the basis of characteristics such as religion, race, caste, sex and place of birth, it does not bar private individuals or institutions from doing so.
- Also, it does not expressly list ethnicity, linguistic identity, nationality, marital status, sexual orientation, disability, physical appearance and other personal characteristics as prohibited grounds of discrimination.

How is Discrimination practiced in the Society?

Discrimination practiced in India operates on various levels and can be categorised as direct discrimination, indirect discrimination or intersectional discrimination.

- Direct Discrimination – is characterised by the intent to treat less favourably a person or a group.

    - Examples: An employer refuses to interview a candidate because he belongs to a scheduled caste. This is direct discrimination in relation to caste. An employer fires a female employee after her marriage because he makes a stereotypical assumption that married women do not make efficient workers. This is prima facie direct discrimination in relation to gender.
- Indirect Discrimination – Discriminatory practices may also be indirect in nature, whereby policies that seem neutral and not expressly targeted at a particular group, still cause a disproportional adverse impact on disadvantaged sections of society.
    - Example: An employer pays part-time workers at a lower hourly rate than full-time workers, for doing the same work. A majority of part-time workers in his establishment are women but a majority of full-time workers are men. This is prima facie indirect discrimination in relation to gender.
- Intersectional Discrimination – was highlighted by Supreme Court in Patan Jamal Vali vs State of Andhra Pradesh. Intersectional Discrimination happens when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination.
    - Example: Discrimination on the basis of the intersection of personal characteristics, such as that faced by Dalit women as Dalits, as women and in the unique category of Dalit women.

Way Forwards

- **Anti-discrimination law:** A comprehensive anti-discrimination legal framework is required to fill the existing legal lacunae.
    - It should bring within its mandates both private and public entities. All forms of discrimination should be acknowledged and dealt with in the law.
    - Such a bill must balance the anti-discrimination mandate with other rights guaranteed by the Constitution and it could be restricted in pursuance of a legitimate objective.
    - The article suggests that the States should lead the way, by enacting anti-discrimination laws in their respective jurisdictions. The anti-discrimination law should prescribe civil penalties for those who engage in discriminatory practices.
- **Institutional set up:** There should be appropriate institutions outside the judiciary to adjudicate complaints of discrimination and to provide policy recommendations to the State government.
- **Affirmative action:** The anti-discrimination efforts should be complemented via affirmative action to empower the historically marginalised sections of society.

ASSAM'S COW PROTECTION BILL

Context:

Assam's Assembly said its primary objective was to check the smuggling of cows to Bangladesh and tabled the Assam Cattle Preservation Bill, 2021.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Government Interventions and Policies, Issues arising out of the design and implementation of policies)

Dimensions of the Article:

1. Cattle slaughter in India
2. What is in the Constitution Regarding Cow-Slaughter
3. Legislations against Cow-Slaughter in India

4. What about India's Export and Import of Beef?
5. About the Assam Cattle Preservation Bill, 2021

Cattle slaughter in India

- Cattle slaughter, especially cow slaughter is a controversial topic in India because of the cattle's traditional status as an endeared and respected living being to some sects of Hinduism, Sikhism, Jainism, and Buddhism while being considered an acceptable source of meat by Muslims as well as adherents of other non-Dharmic Religions in India, such as Zoroastrianism (although some Zoroastrians do not eat beef), and the Animistic and Abrahamic religions etc.
- More specifically, the cow's slaughter has been shunned because of a number of reasons such as being associated with god Krishna in Hinduism, cattle being respected as an integral part of rural livelihoods and an economic necessity.
- **Legislation against cattle slaughter is in place throughout most states of India except Kerala, Goa, West Bengal, and states of Northeast India.**

What is in the Constitution Regarding Cow-Slaughter

- States can make laws on the matters regarding "Preservation, protection and improvement of stock and prevention of animal diseases, veterinary training and practice" which is in the State List in the Seventh Schedule of the Constitution – meaning that State legislatures have exclusive powers to legislate the prevention of slaughter and preservation of cattle.
- The prohibition of cow slaughter is also one of the Directive Principles of State Policy contained in Article 48 of the Constitution. It reads, "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle."

Legislations against Cow-Slaughter in India

- In 2005, the Supreme Court of India, in a landmark judgement upheld the constitutional validity of anti-cow slaughter laws enacted by different state governments in India.
- 20 out of 28 states in India currently have various laws regulating act of slaughtered cow, prohibiting the slaughter or sale of cows.
- The laws governing cattle slaughter in India vary greatly from state to state.
- Some States allow the slaughter of cattle with restrictions like a "fit-for-slaughter" certificate which may be issued depending on factors like age and sex of cattle, continued economic viability etc.
- Others completely ban cattle slaughter, while there is no restriction in a few states.

The 2017 Ban by Central Government and Suspension of that ban by SC

- In 2017, the Ministry of Environment of the Government of India led by Bharatiya Janata Party imposed a ban on the sale and purchase of cattle for slaughter at animal markets across India, under Prevention of Cruelty to Animals statutes.
- The Supreme Court of India suspended the ban on sale of cattle in its judgement in July 2017, giving relief to beef and leather industries.
- In several cases, such as Mohd. Hanif Qureshi v. State of Bihar (AIR 1959 SCR 629), Hashumatullah v. State of Madhya Pradesh, Abdul Hakim and others v. State of Bihar (AIR 1961 SC 448) and Mohd. Faruk v. State of Madhya Pradesh, the Supreme Court has held that, "A total ban [on cattle slaughter] was not permissible if, under economic conditions, keeping useless bull or bullock be a burden on the society and therefore not in the public interest."

What about India's Export and Import of Beef?

- India has rapidly grown to become the world's largest beef exporter, accounting for 20% of world's beef trade based on its large water buffalo meat processing industry.
- As per existing meat export policy in India, the export and import of beef (meat of cow, oxen and calf) is prohibited.
- Bone in meat, carcass, half carcass of buffalo is also prohibited and is not permitted to be exported.
- Only the boneless meat of buffalo, meat of goat and sheep and birds are permitted for export.

About the Assam Cattle Preservation Bill, 2021

- The Bill seeks to replace the Assam Cattle Preservation Act, 1950, that allows the slaughter of cattle above 14 years of age or those that have become permanently incapacitated due to work, breeding, accident or deformity after local veterinary officers certify that they are fit for slaughter. The Bill retains this provision while intending to regulate the slaughter, consumption and illegal transportation of cattle across Assam. It says the certified cattle can be slaughtered only in licensed and recognised slaughterhouses.
- It also seeks to restrict the sale of beef in areas dominated by non-beef consuming communities and within a 5-km radius of temples and 'satras' (Vaishnav monasteries) formed by the 15-16th century saint-reformer Srimanta Sankaradeva.
- The State government may exempt certain places of worship, or certain occasions from the slaughter of cattle other than cow, heifer or calf, for religious purposes according to the bill.
- The Bill says no one will be allowed to sell beef or beef products in any form except at places permitted by the government.
- The Bill seeks to regulate the sale of cattle in the recognised animal markets.
- The Bill seeks to ban the transportation of cattle to and from Assam as well as within the State unless competent authorities issue permits for movement of the animal.

DROP CASES FILED UNDER SECTION 66A: CENTRE

Context:

The Ministry of Home Affairs (MHA) asked the States and Union Territories to immediately withdraw the cases registered under the repealed-Section 66A of the Information Technology Act, days after the Supreme Court expressed shock that it was being invoked even six years after the apex court had struck it down.

Relevance:

GS-II: Polity and Governance (Judiciary, Important Judgements & Cases Judiciary, Fundamental Rights)

Dimensions of the Article:

1. What is the Information Technology (IT) Act?
2. Section 66A of IT Act – Struck down

What is the Information Technology (IT) Act?

- The Information Technology Act, 2000 is the primary law in India dealing with cybercrime and electronic commerce.
- The laws apply to the whole of India. If a crime involves a computer or network located in India, persons of other nationalities can also be indicted under the law.
- The Aim of the Act was to provide legal infrastructure for e-commerce in India.
- The Information Technology Act, 2000 also aims to provide for the legal framework so that legal sanctity is accorded to all electronic records and other activities carried out by electronic means.
- It also defines cyber-crimes and prescribes penalties for them.

Section 66A of IT Act – Struck down

- Section 66A of the IT Act has been enacted to regulate the social media law India and assumes importance as it controls and regulates all the legal issues related to social media law India.
- This section clearly restricts the transmission, posting of messages, mails, comments which can be offensive or unwarranted.
- The offending message can be in form of text, image, audio, video or any other electronic record which is capable of being transmitted.
- In the current scenarios such sweeping powers under the IT Act provides a tool in the hands of the Government to curb the misuse of the Social Media Law India in any form.
- However, in 2015, in a landmark judgment upholding the right to free speech in recent times, the Supreme Court in Shreya Singhal and Ors. Vs Union of India, struck down Section 66A of the Information & Technology Act, 2000.
- The judgment had found that Section 66A was contrary to both Articles 19 (free speech) and 21 (right to life) of the Constitution.
- The repeal of 66A does not however result in an unrestricted right to free speech since analogous provisions of the Indian Penal Code (IPC) will continue to apply to social media online.

HC ON COMPASSIONATE APPOINTMENT AND PERSONAL LAWS

Context:

Children born from all void or voidable marriages, irrespective of the personal laws applicable to their parents, are eligible for compassionate appointments in government service, said the High Court of Karnataka.

Relevance:

GS-II: Social Justice (Welfare Schemes), GS-II: Polity and Governance (Constitutional Provisions)

Dimensions of the Article:

1. About the Karnataka HC Judgement
2. What is Compassionate Appointment?
3. Legislation regarding Marriage – HMA and SMA
4. What is Uniform Civil Code (UCC)?

About the Karnataka HC Judgement

- The HC while analysing a verdict of the apex court on the right of a child born out of void and voidable marriages under the Hindu Marriage Act for compassionate job, has found it necessary to examine the right of a child born out of a void marriage irrespective of the personal laws of parents.
- In this exercise, the Bench found that even under the Special Marriage Act, 1954, which is not relatable to any personal law and it is a species of a uniform civil law applicable to marriages of persons irrespective of the religion they may belong to, there are concepts of void and voidable marriages.
- The HC observed that Children born from all void or voidable marriages, irrespective of the personal laws applicable to their parents, are eligible for compassionate appointments in government service- in order "to protect the children born out of void and voidable marriages under any of the personal laws applicable in India or the Special Marriage Act, 1954, irrespective of whether the personal law confers such legitimacy or not".

What is Compassionate Appointment?

- Compassionate Appointment is a social security scheme launched by the Government of India to grant appointment to a dependent family member on a compassionate basis when a government servant dies while in service or retires on medical grounds.
- The Objective of the scheme is to provide immediate financial assistance to the family who is left in poverty and without any means to sustain their livelihood.
- Dependent family members applying for compassionate appointment should be eligible and suitable for the post under the relevant Recruitment Rules.
- In deserving cases with the approval of the Secretary of the Department or the concerned Ministry, a dependent family member can be appraised for a compassionate appointment even if there is an earning member.

Legislation regarding Marriage – HMA and SMA

The Hindu Marriage Act, 1955:

- The Hindu Marriage Act, 1955 deals with marriage registration in case both husband and wife are Hindus, Buddhists, Jains or Sikhs or, where they have converted into any of these religions.
- It is to be noted that Hindu Marriage Act deals with only marriage registration that has already been solemnized.

The Special Marriage Act, 1954:

- The Special Marriage Act, 1954 lay down the procedure for both solemnization and registration of marriage, where either of the husband or wife or both are not Hindus, Buddhists, Jains or Sikhs.
- It is the duty of the judiciary to ensure that the rights of both the husband and wife are protection.
- In case this union between the husband-and-wife breaks, it should be determined that if this break-up was a result of actions of any of the parties or not.

What is Uniform Civil Code (UCC)?

- The Uniform Civil Code (UCC) in India proposes to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen.
- The constitution has a provision for Uniform Civil Code in Article 44 as a Directive Principle of State Policy which states that "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."

- Article 44 is one of the Directive Principles of State Policy. These, as defined in Article 37, are not justiciable (not enforceable by any court) but the principles laid down therein are fundamental in governance.
- Fundamental Rights are enforceable in a court of law. While Article 44 uses the words "state shall endeavour", other Articles in the 'Directive Principles' chapter use words such as "in particular strive"; "shall in particular direct its policy"; "shall be obligation of the state" etc.
- Article 43 mentions "state shall endeavour by suitable legislation", while the phrase "by suitable legislation" is absent in Article 44. All this implies that the duty of the state is greater in other directive principles than in Article 44.

SC TO EXAMINE PLEA CHALLENGING SEDITION LAW

Context:

The Supreme Court agreed to examine a fresh plea by a former army officer challenging the Constitutional validity of the sedition law on the ground that it causes "chilling effect" on speech and is an unreasonable restriction on free expression, a fundamental right.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions – Fundamental Rights, Government Interventions and Policies, Issues arising out of the design and implementation of Government Policies)

Dimensions of the Article:

1. What is Sedition?
2. About Sedition law
3. Criticism of Sedition laws

What is Sedition?

Sedition, which falls under Section 124A of the Indian Penal Code, is defined as any action that brings or attempts to bring hatred or contempt towards the government of India and has been illegal in India since 1870.

Historical background of Sedition laws

- Sedition as a concept comes from Elizabethan England, where if you criticised the king and were fomenting a rebellion, it was a crime against the state.
- When they ruled India, the British feared Wahhabi rebellion. They brought the [sedition] law in, and it was used against our freedom fighters as well.
- We must remember that both Mahatma Gandhi and [Bal Gangadhar] Tilak were tried under this law and sentenced.
- Government didn't remove it because every administrator has this thought that dissent is okay, but beyond a certain point it gets dangerous and an administration must have the means to control it.
- Previously policemen were much more independent. But since Indian independence, the independence of the police has also been severely compromised. So, any local leader can almost bully a policeman into registering a case.

About Sedition law

The law was originally drafted by Thomas Macaulay. Since its introduction in 1870, meaning of the term, as well as its ambit, has changed significantly.

Sedition is a cognisable, non-compoundable, and non-bailable offence, under which sentencing can be between three years to imprisonment for life.

About Section 124A of Indian Penal Code (IPC)

- The Indian Penal Code in Section 124A lays down the offence:
- "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."
- A person charged under this law can't apply for a government job. They have to live without their passport and must present themselves in the court as and when required.

Criticism of Sedition laws

- **Colonial Era law:** It is a colonial relic and a preventive provision that should only be read as an emergency measure.
- **Right to Freedom of expression:** Use of Section 124A by the government might go beyond the reasonable restrictions provided under fundamental right to freedom of speech and expression as per Article 19 of the Constitution.
- **Democratic foundation:** Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy and therefore, should not be constructed as sedition. The sedition law is being misused as a tool to persecute political dissent.
- **Lower Conviction Rate:** Though police are charging more people with sedition, few cases actually result in a conviction. Since 2016, only four sedition cases have seen a conviction in court which indicates that sedition as an offence has no solid legal grounding in India.
- **Vague provision of sedition laws:** The terms used under Section 124A like 'disaffection' are vague and subject to different interpretation to the whims and fancies of the investigating officers.
- **Other legal measure for offences against the state:** Indian Penal Code and Unlawful Activities Prevention Act (1967), have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting the national integrity. o Similarly, the Prevention of Damage to Public Property Act is also there for offences against the state.
- **Perception of law:** Globally, sedition is increasingly viewed as a draconian law and was revoked in the United Kingdom in 2010. In Australia, following the recommendations of the Australian Law Reform Commission (ALRC) the term sedition was removed.

ASSAM-MIZORAM BORDER DISPUTE: BAGGAGE OF THE PAST

Context:

Recently, several IED (Improvised Explosive Device) blasts were carried out inside Cachar district of Assam allegedly by miscreants from Mizoram.

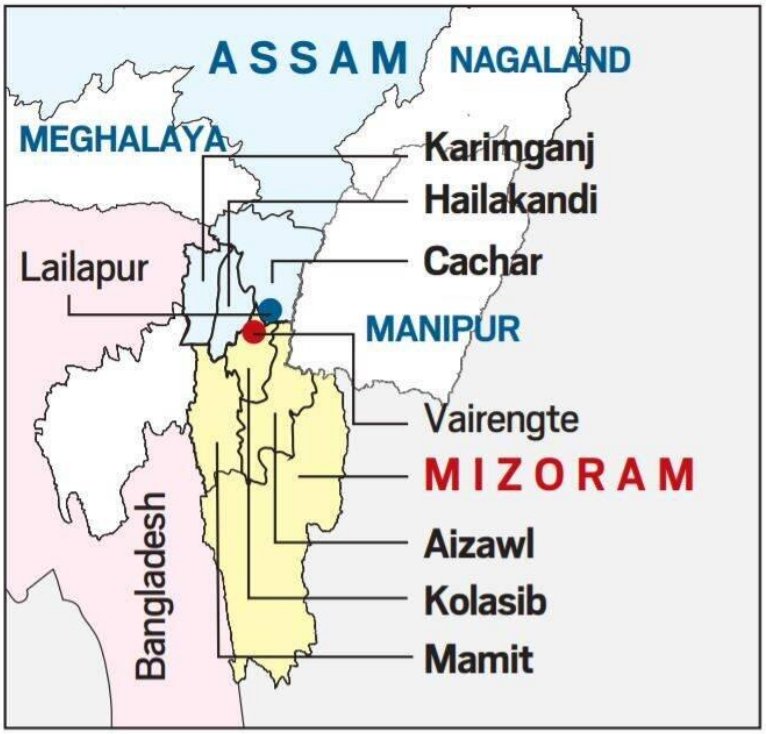
Relevance:

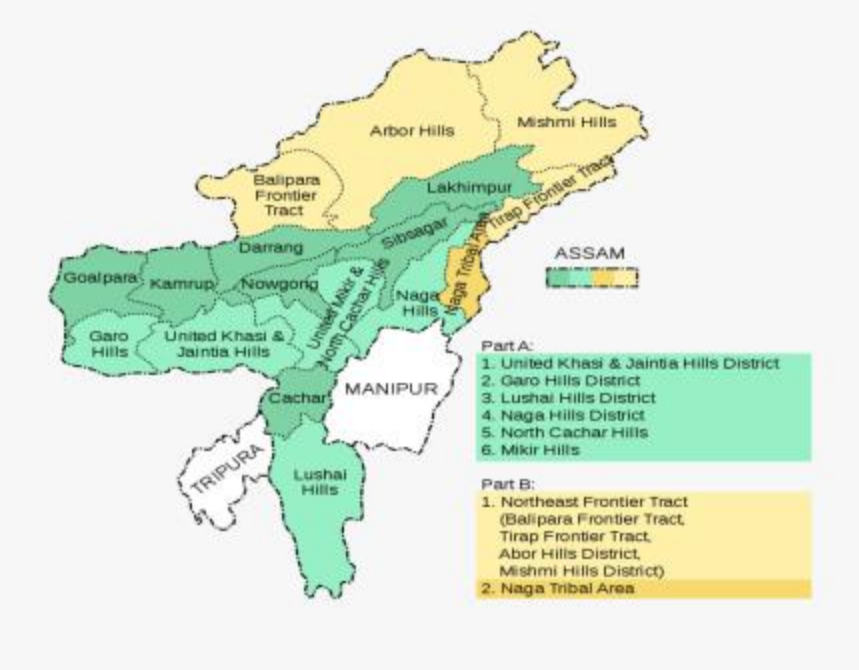
Dimensions of the Article:

1. Background to the Assam – Mizoram Border Dispute
2. Other Boundary Issues in Northeast
3. Way Forward

Background to the Assam – Mizoram Border Dispute

- Mizoram borders Assam's Barak Valley and the boundary between present-day Assam and Mizoram is 165 km long. Both states border Bangladesh.
- The boundary issue between present-day Assam and Mizoram dates back to the colonial era when inner lines were demarcated according to the administrative needs of British Raj.
- Assam became a constituent state of India in 1950 and lost much of its territory to new states that emerged from within its borders between the early 1960s and the early 1970s.
- Mizoram was granted statehood in 1987 by the State of Mizoram Act, 1986.
- The Assam-Mizoram dispute stems from a notification of 1875 that differentiated Lushai Hills (During colonial times, Mizoram was known as Lushai Hills) from the plains of Cachar, and another of 1933 that demarcates a boundary between Lushai Hills and Manipur.
- Mizoram believes the boundary should be demarcated on the basis of the 1875 notification, which is derived from the Bengal Eastern Frontier Regulation (BEFR) Act, 1873.
- According to an agreement between the governments of Assam and Mizoram, the status quo should be maintained in no man's land in the border area.
- In the Northeast's complex boundary equations, clashes between Assam and Mizoram residents are less frequent than they are between other neighbouring states of Assam, like with Nagaland.





Other Boundary Issues in Northeast

During British rule, Assam included present-day Nagaland, Arunachal Pradesh and Meghalaya besides Mizoram, which became separate states one by one.

1. **Assam-Nagaland:** Nagaland shares a 500-km boundary with Assam and achieved statehood in December 1963 and was formed out of the Naga Hills district of Assam and Arunachal Pradesh (then North-East Frontier Agency). Violent clashes and armed conflicts, marked by killings, have occurred on the Assam-Nagaland border since 1965.
2. **Assam-Arunachal Pradesh:** Arunachal Pradesh shares a 800-km boundary with Assam and was granted statehood by the State of Arunachal Pradesh Act, 1986 in 1987. Clashes were first reported in 1992 and since then, there have been several accusations of illegal encroachment from both sides, and intermittent clashes.
3. **Assam-Meghalaya:** Meghalaya shares a 884-km boundary with Assam and came into existence as an autonomous state within the state of Assam in April 1970 comprising the United Khasi and Jaintia Hills and the Garo Hills districts. In 1972, it got statehood. As per Meghalaya government statements, today there are 12 areas of dispute between the two states.

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Way Forward

- Boundary disputes between the states can be settled by using satellite mapping of the actual border locations.
- Reviving the Inter-state council (Article 263) can be an option for resolution of an Inter-state dispute.
- Zonal Councils could also be revived to discuss the matters of common concern to states in each zone—matters relating to social and economic planning, border disputes, inter-state transport, etc.

SEDITION LAW- DEVELOPMENTS IN SC: STRONG MESSAGE TO GOVT.

Context:

The Chief Justice of India indicated that Section 124A (sedition) of the Indian Penal Code may have passed its time asking the government what was the need for the 'colonial law' of sedition after 75 years of Independence.

Relevance:

GS-II: Polity and Governance (Judiciary, Important Judgements, Constitutional Provisions – Fundamental Rights, Government Interventions and Policies, Issues arising out of the design and implementation of Government Policies)

Dimensions of the Article:

1. About the recent judgment on Sedition law

2. Low convictions in Sedition cases
3. Kedar Nath Singh ruling, 1962

About the recent judgment on Sedition law

- Chief Justice of India, in what may be an unprecedented judicial criticism of the way the sedition law is used by the government to crush liberties, asked why a colonial law used against Mahatma Gandhi and Bal Gangadhar Tilak continued to survive in the law book after 75 years of Independence.
- This judgement sends a strong message to the government that the Supreme Court is prima facie convinced that sedition is being misused by the authorities to trample upon citizens' fundamental rights of free speech and liberty.
- The CJI has made it clear that the court is sensitive to the public demand to judicially review the manner in which law enforcement authorities are using the sedition law to control free speech and send journalists, activists and dissenters to jail, and keep them there.
- This is a step away from the court's own Kedar Nath judgment of 1962 which had upheld Section 124A but read it down to mean any subversion of an elected government by violent means.
- The CJI's reference to low conviction rates under the sedition law resonates with a petition highlighting the "dramatic jump in charging a person with the offence of sedition since 2016".

Low convictions in Sedition cases

- In 2019, 93 cases were on the ground of sedition as compared to the 35 cases that were filed in 2016 (a 165% increase).
- Of these 93 cases, chargesheets were filed in a mere 17% of cases and even worse, the conviction rate was an abysmally low 3.3%.
- National Crime Records Bureau reports show that in 2019, 21 cases of sedition were closed on account of no evidence, two were closed being false cases and six cases held to be civil disputes.

Kedar Nath Singh ruling, 1962

- The SC upheld the constitutional validity of the sedition law and also attempted to restrict its scope for misuse in the 1962 Kedar Nath Singh case.
- According to the SC guidelines in the 1962 judgement, unless accompanied by an incitement or call for violence, criticism of the government cannot be labeled 'sedition'.

Key principles of the ruling

- The SC ruled that the expression 'the Government established by law,' in the Sedition law, has to be distinguished from the persons engaged in carrying on the administration for the time being. It said that the 'Government established by law' is the visible symbol of the State.
- Any acts within the meaning of Section 124-A which have the effect of subverting the Government established by law, or creating disaffection against it, would be within the penal statute.
- Comments on Government actions, however strongly worded, would not be penal, without exciting those feelings which generate the inclination to cause public disorder by acts of violence.
- Sedition is limited only to such activities that come within the ambit of the observations of the Federal Court, which also covers "activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace."

AKALIS TO MOVE ADJOURNMENT MOTION IN LS ON FARM LAWS

Context:

Ahead of the Monsoon session of Parliament the Shiromani Akali Dal (SAD) has decided to move an adjournment motion in the Lok Sabha against the government on the three controversial farm laws.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Legislature)

Dimensions of the Article:

1. Adjournment Motion
2. Calling Attention Motion
3. Other Important Motions in the Parliament

Adjournment Motion

- An Adjournment Motion's primary objective is to draw the attention of Lok Sabha to a recent matter of urgent public importance having serious consequences and in regard to which a motion or a resolution with proper notice will be too late.
- Adjournment motion is allowed only in Lok Sabha and in State Legislative Assemblies and NOT in the Rajya Sabha or in State Legislative Councils because it has an element of censure against the Government.
- An Adjournment motion in the LS needs the support of at least 50 members and should be introduced on a matter of definite and urgent public importance (and it should be restricted to that one matter only).
- The subject matter should not be the same which is already being discussed in the same session.
- Questions that can be raised through other distinct motions cannot be raised in an Adjournment motion.
- Adjournment motion disrupts the normal business of the house and is regarded as an extraordinary tool in Parliament.
- Discussions on Adjournment motion matter need to last at least two and a half hours.

Calling Attention Motion

- A calling attention motion is introduced by a member to call the attention of a Minister to a matter of urgent public importance.
- The minister is expected to make an authoritative statement on that matter.
- It can be introduced in both LS and RS.

Calling Attention Motion versus Adjournment Motion

- Since Rajya Sabha is not permitted to make use of Adjournment Motion, there is a similar tool in Rajya Sabha which is the Calling Attention motion.
- The notable difference between the two is that while Adjournment Motion has an element of Censure against the Government, the Calling Attention has NO such Censure element.

Other Important Motions in the Parliament

Closure Motion

- A debate may be brought to an end (and the matter is put to vote) by a majority decision of the House (Even if all Members wishing to speak have not) by a Closure motion.

Privilege Motion

- A Privilege Motion is moved against breach of Parliamentary Privileges which are certain rights and immunities enjoyed by MPs, MLAs and MLCs, individually and collectively, so that they can effectively discharge their functions.
- When any of these rights and immunities is disregarded, the offence is called 'Breach of Privilege' and is punishable under the law of Parliament or the State Legislature.

No-Confidence Motion

- The CoM is collectively responsible to LS and it remains in office till it enjoys the confidence of the majority of the members in Lok Sabha, and a motion of No-Confidence can be moved to remove the CoM and oust the government from office.
- A no-confidence motion can be moved only in the Lok Sabha or State Legislative Assemblies.

Censure Motion

- Censure literally means the expression of strong disapproval or harsh criticism.
- Censure Motion is generally used as a stern rebuke by the legislature against the policies of the Government or an individual minister.

Motion of Thanks

- A Motion of thanks is moved and voted in both LS and RS, after the inaugural speech of the President (President's Address).
- The President's Address is generally drafted by the ruling party and its contents outline the vision of the government.

FAILURE TO ACT AGAINST HATE SPEECH AT CENTRE AND IN STATES IS THE REAL 'DOUBLE ENGINE EFFECT'

Context:

- Following a Supreme Court directive in the case of Pravasi Bhalai Sangathan v. Union of India, the Law Commission, in its 57-page report, made concrete recommendations in 2017 to the government on "prohibiting incitement to hatred" and "causing fear, alarm, or provocation of violence in certain cases."

Relevance:

GS-II: Polity and Governance (Indian Constitution—Historical Underpinnings, Evolution, Features, Amendments, Significant Provisions and Basic Structure)

Mains Questions:

1. Hate speech is a menace to democratic values, social stability and peace. In this context discuss the hate speech in Indian context and also suggest measures to address it. 10 Marks
2. A much more vigorous intervention for prevention of and punishment for hate speech is required from concerned citizens and political parties. Discuss. 15 Marks

Dimensions of the Article:

- What is hate speech?
- Observations of different institutions related to hate speech.
- Laws related to hate speech in India.
- Recommendations of T. K. Viswanathan committee.
- Way forward

What is hate speech?

- Hate speech, **speech or expression** that denigrates a person or persons on the basis of (alleged) membership in a social group identified by attributes such **as race, ethnicity, gender, sexual orientation, religion, age, physical or mental disability, and others.**

Observations of different institutions related to hate speech:

- **The Supreme Court had observed that** "hate speech is an effort **to marginalize individuals** based on their membership in a group. It seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society. It, therefore, rises beyond causing distress to individual group members and lays the groundwork for later, broad attacks on vulnerable…."
- **Law Commission in its 267th report** had observed that "Hate speech generally is **an incitement to hatred** primarily against a group of persons defined in terms of **race, ethnicity, gender, sexual orientation, religious belief**. Thus, hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence."
- **The Human Rights Council's 'Report** of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' expressed that freedom of expression can be restricted on the following grounds:
- **Child pornography** (to protect the rights of children).
- Hate speech (to protect the rights of **affected communities**)
- **Defamation** (to protect the rights and reputation of others against unwarranted attacks)
- **Direct and public incitement** to commit genocide (to protect the rights of others)
- **Advocacy of national**, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others, such as the right to life).

Laws related to hate speech in India

- **Article 19 of the Constitution**– Freedom of Speech and Expression is guaranteed to all the citizens of India. However, the right is subjected **to reasonable restrictions** in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

- **Section 153(a) of Indian Penal Code:** Whoever, by words, signs or otherwise promotes enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., shall be punished with imprisonment which may extend to three years, or with fine, or with both.
- **Section 295(a) Indian Penal Code**: Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, visible representations or otherwise, insults the religion or the religious beliefs of that class, shall be punished.

Recommendations of T. K. Viswanathan committee

- It was of the opinion that it was more effective to insert **the substantive provisions** in the IPC instead of the IT Act, since the IT Act was primarily concerned with e-commerce regulation.
- **The T. K. Viswanathan committee,** constituted by the Centre, has recommended introducing stringent provisions for hate speech:
- It has recommended **amendments in CrPC** to enable each state to have a **State Cyber Crime Coordinator** (Sec 25B) and a District Cyber Crime Cell (Sec 25C).
- The offensive speech should be "**highly disparaging, abusive or inflammatory** against any person or group of persons", and should be uttered with the intention to cause "fear of injury or alarm".
- The committee also expressed the desirability of having guidelines in place to prevent the abuse of provisions by investigation agencies and to safeguard innocent users of social media.
- **Insertion of Section 153C** to prohibit incitement of hatred through online speech on grounds of religion, caste, community, gender, sexual orientation, tribe, language, place of birth etc.
- **Section 505A** was proposed to be inserted by the Law Commission to prevent causing of alarm, fear, provocation of violence etc. on grounds of identity.
- It was clarified that the need for **intent has to be established.**

Law Commission has recommendation for punishment

- **Prohibiting incitement of hatred:** If a person:
  - uses threatening words or signs within the hearing or sight of a person with the intention of causing fear, or
  - advocates hatred by words or signs that incites violence, he will be punishable with imprisonment of up to two years, and fine up to Rs 5,000. However, the incitement of hatred must have been on grounds of religion, caste, community, sex, gender identity, sexual orientation, place of birth, residence, disability, etc. This would be a cognizable and nonbailable offence.
- **Causing fear, alarm or provocation of violence in certain cases:** If a person uses threatening or derogatory words or signs in public on certain grounds (e.g. religion, caste, community, sex, gender identity):
  - within the hearing or sight of a person creating fear.
  - with the intent to provoke violence, it will attract a punishment. The punishment will be imprisonment up to one year, and/or fine up to Rs 5,000. This would be a non-cognizable and bailable offence.

Concerns associated with Committee's recommendations

- **The Law Commission identifies the status of the author of the speech,** the status of victims of the speech, the potential impact of the speech, in order to qualify something as Hate Speech. However, these concerns are apparently not well reflected in the committee report.
- **Besides, extremely broad terms like**, highly disparaging, indecent, abusive, inflammatory, false or grossly offensive information, etc., have been used by the report which takes us back to the ambiguity that the section 66A held.

Way forward

It is vital to examine **the context in which speech is made** in order to properly determine the motivation behind it – and the effect it is likely to have. The dangerousness of speech cannot be estimated outside the context in which it was made or disseminated, and its original message can become lost in translation. **Supreme Court in Pravasi Bhalai Sangathan v. Union of India** in **2014,** states that **hate speech must be viewed through the lens of the right to equality.** However, few loopholes need to be plugged when it comes to regulation of hate speeches, so as to transform our country from being a procedural democracy to also a substantive one.

SUPREME COURT MULLS LIMIT TO ROLE AS POLICY WATCHDOG

Context:

The resolve voiced by a Division Bench of the Supreme Court recently to "examine" the extent to which the judiciary can question the government's COVID-19 policies drifts from the court's three-judge Bench judgment previously in May 2021 which held that courts cannot be "silent spectators when constitutional rights of citizens are infringed by executive policies".

Relevance:

GS-II: Polity and Governance (Separation of Powers, Judiciary, Judgements & Cases)

Dimensions of the Article:

1. About the recent judgement on intervention by Courts
2. What is the separation of power?
3. Functional Overlapping amongst the organs of Government
4. Concerns regarding overlapping of powers
5. When is overlapping of powers beneficial?

About the recent judgement on intervention by Courts

- In July 2021, a Supreme Court Bench said that courts should not undermine the executive at a time when a "collective effort" was required to overcome the public health crisis.
- According to the latest judgement, the Executive has the benefit of experts with their expert knowledge and there are certain norms based on which every institution should function, hence, the courts intervention into matters pertaining to the executive should not be overpowering.

May 2021 Judgement on Separation of Powers

- In May 2021, the SC bench while hearing the suo motu case "Distribution of Essential Supplies and Services During the Pandemic" enunciated that our Constitution does not envisage courts to be silent spectators when constitutional rights of citizens are infringed by executive policies. Judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function, which the courts are entrusted to perform.
- Responding to the government's argument that it should have "room for free play in the joints" while dealing with the pandemic, the SC bench said that the court has no intention to "second-guess the wisdom

of the executive". However, it continues to exercise jurisdiction to determine if the chosen policy measure conforms to the standards of reasonableness, militates against manifest arbitrariness and protects the right to life of all persons.
- The judgment highlighted that courts across the globe have responded to constitutional challenges to executive policies which violate rights and liberties of citizens.

What is the separation of power?

- The separation of power is part of governing of a state in which the components of state like legislative, executive and judiciary remain independent with each other so that the powers of one branch are not in conflict with those of the other branches. It is also a part of independent of judiciary.
- Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

Although the Constitution of India does not provide strictly for the separation of powers, these articles provide a general guideline:

1. Article 50: This states that the State or the Government concerned will take appropriate steps to ensure that the judicial branch is separated from the functioning and working of the executive branch.
2. Article 121 & 211: It, in a way, provides for the separation of the legislature and the judiciary. This article states that the conduct of justice or the way a judge discharges his duties of any Court cannot be discussed in the legislature (state or union).
3. Article 122 & 212: This article is aimed at keeping the judiciary (the law interpreting body) and the legislature (the law-making body) separated. It does so by stripping the judiciary of any power to review and question the validity of proceedings that take in a legislature or the Parliament.
4. Article 361: This article separates the judiciary and the executive. It states that the President or any governor of any state is not answerable to any court in the country for actions and activities are taken in performance/exercise of the powers and duties of their office.

What is check and balance?

Checks and balances, 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.

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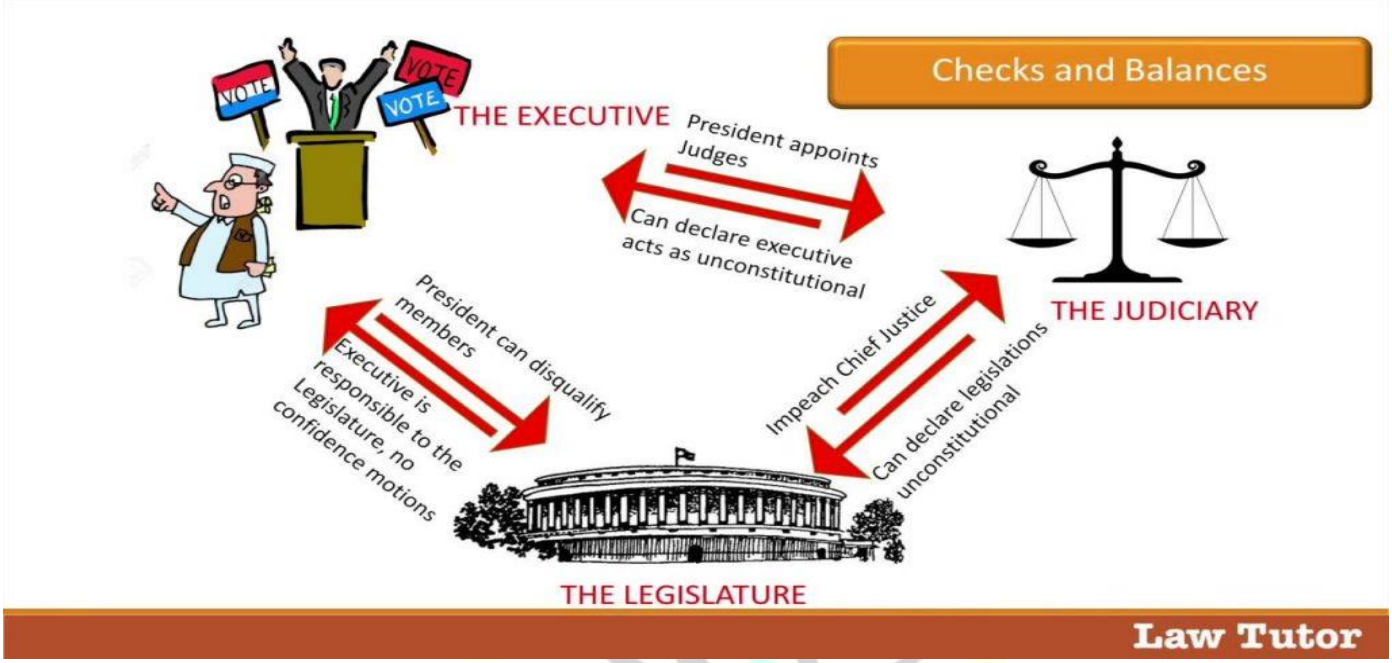


Functional Overlapping amongst the organs of Government

- While separation of powers is key to the workings of Indian Government, no democratic system exists with an absolute separation of powers or an absolute lack of separation of powers.
- Every organ is, in a way, overlapped in its practical functioning with the other two organs of the Government. This overlapping enables the organs to act as a check on each other without too much interference.

Overlapping Powers of Legislature:

With Judiciary	With Executive
Impeachment and the removal of the judges. Power to amend laws declared ultra vires by the Court and revalidating it. In case of breach of its privilege and it can punish the person concerned.	The heads of each governmental ministries are members of the legislature. Through a no-confidence vote, it can dissolve the Government. Power to assess the works of the executive. Impeachment of the President. The council of ministers on whose advice the President and the Governor acts are elected members of the legislature.

Overlapping Powers of The Executive:

With Judiciary	With Legislature
Making appointments to the office of Chief Justice and other judges. Powers to grant pardons, reprieve, respite or remission of punishments or sentence of any person convicted of any offence. The tribunals and other quasi-	Power to promulgate ordinance which has the same force of the Act made by the Parliament or the State legislature. Authority to make rules for regulating their respective procedure and conduct of business subject

judicial bodies which are a part of the executive also discharge judicial functions.	to the provisions of this Constitution. Powers under delegated legislation.

Overlapping Powers of The Judiciary:

With Executive	With Legislative
Under Article 142, the Supreme Court functions as an Executive in order to bring about the complete justice.	Judicial review, i.e., the power to review executive action to determine if it violates the Constitution. Rigidity / Non-Amendability of the Constitution under basic structure.

Hence, we can see that although the Constitution mentions a certain amount of separation of powers, it does not do so strictly to keep every organ in check and ensure that it is not entirely free in exercising powers vested in it without any restraint or ulterior motive that will not be in the public interest. In addition to functional overlapping, there is a lack of administrative distinction between the three divisions of the Indian system.

Concerns regarding overlapping of powers

1. The biggest issue of overlap might be that a particular organ cannot be held accountable for its decision, for example, Judicial Decision in 2G case, Coal Block case. (Unaccountability)
2. The faith of the public in the institutions of the Government plays a very crucial role in such a complex and vest democracy. The organs repeated interventions into others' decisions leads to the diminishing of the faith of the people in the quality, efficiency and integrity of them. (Erosion of faith)
3. It undermines the spirit of democracy as too much accumulation of powers in organs of Government undermines the principle of check and balance. (Accumulation of power)
4. Excessive infringement on each other jurisdiction may impede the smooth functioning of Government and hinder public service and overall development (Adverse effect on development)

When is overlapping of powers beneficial?

1. **Rule of Law:** The accountability and equality in governance are enhanced by enabling power-sharing laws.
2. **Check and Balance:** The overlap prevents arbitrary actions by the other two organs of the Government; an example is the power of judicial review of the Apex Court of India.
3. **Check arbitrariness:** Constitutional demarcations of overriding powers decrease the scope of conflict among the government organs.
4. **Cooperation:** The overlapping functions induce power-sharing and also provides power decentralisation, thus ensuring that the three organs can work hand-in-hand to solve problems faster.

LOKPAL YET TO GET DIRECTOR OF INQUIRY

Context:

More than two years after the Lokpal came into being, the Centre is yet to appoint a director of inquiry for conducting preliminary inquiry into graft complaints sent by the anti-corruption ombudsman, according to a Right to Information reply.

Relevance:

GS-II: Polity and Governance (Constitutional and Non-Constitutional Bodies, Policies and Interventions on Transparency and Accountability in governance)

Dimensions of the Article:

1. About Lokpal
2. Other Important Points regarding the Lokpal
3. Lokpal (Complaint) Rules, 2020
4. Exception for Prime Minister
5. Other Provisions for Fighting Corruption
6. About the Lokpal missing a director of inquiry

About Lokpal

- The Lokpal and Lokayukta Act, 2013 establishes Lokpal for the Union and Lokayukta for States (Statutory Bodies) to inquire into allegations of corruption against certain public functionaries.
- Composition: Lokpal will consist of a chairperson and a maximum of eight members, of which 50% shall be judicial members and 50% shall be from SC/ST/OBCs, minorities and women.
- Appointment process: It is a two-stage process.
    1. A search committee which recommends a panel of names to the high-power selection committee.
    2. The selection committee comprises the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition, the Chief Justice of India (or his nominee) and an eminent jurist (nominated by President based on the recommendation of other members of the panel).
- President will appoint the recommended names.
- The jurisdiction of Lokpal extends to:
    1. Anyone who is or has been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union government under Groups A, B, C and D.
    2. The chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Centre.
    3. Any society or trust or body that receives foreign contribution above Rs. 10 lakhs.

Other Important Points regarding the Lokpal

1. **Salaries, allowances and service conditions:** Salaries, allowances and other perks of the Lokpal chairperson will be the same as those for the Chief Justice of India; those for other members will be the same as those for a judge of the Supreme Court.
2. **Inquiry wing and prosecution wing:** Inquiry Wing for conducting preliminary inquiry and Prosecution Wing for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act.
3. **Power with respect to CBI:** Power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal. Transfer of officers of CBI investigating cases referred by Lokpal would need approval of Lokpal.
4. **Timelines for enquiry, investigation:** Act specifies a time limit of 60 days for completion of inquiry and 6 months for completion of investigation by the CBI. This period of 6 months can be extended by the Lokpal on a written request from CBI.
5. **Suspension, removal of Chairperson and member of Lokpal:** The Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court

report. For that a petition has to be signed by at least one hundred Members of Parliament. Special Court shall be setup to hear and decide the cases referred by the Lokpal.

Lokpal (Complaint) Rules, 2020

- Complaint can be filed with the Lokpal against the sitting Prime Minister, Union Ministers, MPs, bureaucrats, among others.
- A complaint filed against a sitting or former prime minister shall be decided by full bench of Lokpal comprising of its Chairman and all members in admission stage.
- If such complaint is dismissed by the full bench, records of enquiry are not to be published.
- A complaint against Union Minister/ MP is to be looked into by bench of not less than three members.

Exception for Prime Minister

- The Lokpal and Lokayukta Act, 2013 does not allow a Lokpal inquiry if the allegation against the PM relates to international relations, external and internal security, public order, atomic energy and space.
- Complaints against the PM are not to be probed unless the full Lokpal bench considers the initiation of inquiry and at least 2/3rds of the members approve it.
- Such an inquiry against the PM (if conducted) is to be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry are not to be published or made available to anyone.

Other Provisions for Fighting Corruption

1. Prevention of Corruption Act, 1988 provides for penalties in relation to corruption by public servants and also for those who are involved in the abetment of an act of corruption.
2. The Prevention of Money Laundering Act, 2002 aims to prevent instances of money laundering and prohibits use of the 'proceeds of crime' in India.
3. The Companies Act, 2013 provides for corporate governance and prevention of corruption and fraud in the corporate sector.
4. The Foreign Contribution (Regulation) Act, 2010 regulates the acceptance and use of foreign contributions and hospitality by individuals and corporations.

Along with the above legal frameworks, the Indian Penal Code, 1860 sets out provisions which can be interpreted to cover bribery and fraud matters, including offences relating to criminal breach of trust and cheating.

About the Lokpal missing a director of inquiry

- According to the Lokpal and Lokayuktas Act, 2013, there shall be a director of inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central government for conducting preliminary inquiries referred to the Central Vigilance Commission (CVC) by the Lokpal.
- According to provisions contained under the Lokpal and Lokayuktas Act, 2013, complaints in respect of public servants belonging to groups A, B, C or D are referred by the Lokpal to the CVC for a preliminary inquiry.

BOMBAY HC ON SPEEDY TRIAL AS A FUNDAMENTAL RIGHT

Context:

The Bombay High Court observed, "For how many years without trial, can people languish in jail. Speedy trial is a fundamental right."

Relevance:

GS-II: Polity and Governance (Judiciary, Constitutional Provisions, Fundamental Rights)

Dimensions of the Article:

1. Data regarding Delay in Justice
2. Reasons for delay in Justice
3. Way Forwards

Data regarding Delay in Justice

- As per the National Judicial Data Grid:
  - Around 17% of all cases in district and Taluka Courts are three to 5 years old;
  - More than 20% of all cases in High Courts are 5-10 years old, and over 17% are 10-20 years old.
  - Over 66,000 cases are pending before the Supreme Court
  - Over 57 lakh cases are pending before various HCs
  - Over 3.5 crore cases are pending before various District and Subordinate courts – the number could have increased to more than 4 crores due to the pandemic.
- According to the National Crime Record Bureau, lakhs of people who are lodged in jail are waiting for their pleas to be heard. Thousands are in jail for petty crimes and have spent more jail time than are required by law.
- In 2016, there were at least 18,000 women prisoners in central jails across the country and of them, the hearing of cases of 6328 women had not even been started in Courts.

Reasons for delay in Justice

- Across India, there are vacancies against even the sanctioned strengths of courts and in the worst performing states those vacancies exceed 30 per cent. Due to this, the average waiting period for trial in lower courts is around 10 years and 2-5 years in HCs.
- District courts across the country also suffer from inadequate infrastructure and poor working conditions, which need drastic improvement, particularly if they are to meet the digital expectations raised by the higher judiciary.
- Also, there is a yawning digital divide between courts, practitioners and clients in metropolitan cities and those outside. Overcoming the hurdles of decrepit infrastructure and digital illiteracy will take years.
- The budget allocated to the judiciary is between 0.08 and 0.09 per cent of the GDP. Only four countries — Japan, Norway, Australia and Iceland — have a lesser budget allocation and they do not have problems of pendency like India.
- On an average, there is just one judge for 73,000 people in India. In contrast, the US has one judge for every 13,000 people. If better salaries and better perks are provided, then better lawyers would be interested in becoming judges.

Way Forwards

- There should be wide introspection through extensive discussions, debates and consultations to identify the root causes of delays in our justice delivery system and providing meaningful solutions to improve the justice delivery system in India.
- Government rules, orders and regulations should be thorough and comprehensive after wide consultations with stakeholders to avoid unnecessary litigations.
- Speedy Justice is not only a fundamental right but also a prerequisite of maintaining the rule of law and delivering good governance. In its absence, Judicial system ends up serving the interests of the corrupt and the law-breakers.
- One of the solutions is to substantially increase the strength of the judicial services by appointing more judges at the subordinate level — improvements must start from the bottom of the pyramid. Strengthening the subordinate judiciary also means providing it with administrative and technical support and prospects for promotion, development and training.
- The Supreme Court should mandate summary disposal of all 'hibernating' PILs – those pending for more than 10 years before HCs – if they do not concern a question of significant public policy or law.
- Women judges, and judges from historically-marginalised castes and classes must finally be given a fair share of seats at the table.

PEGASUS SPYWARE ISSUE IN INDIA EXPLAINED FOR UPSC

Context:

A number of reports on **Pegasus Spyware in India** indicate that at least 1,000 Indian phone numbers are in a list of potential targets of surveillance using the Pegasus spyware. An Israeli company, the NSO Group, sells the Pegasus spyware to "vetted governments".

The evidence is strong that Indian citizens were indeed targets of a vicious and uncivil surveillance campaign by a government entity, Indian or foreign.

Relevance:

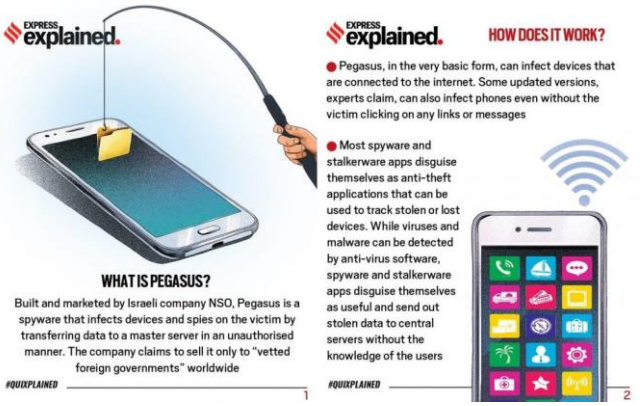
GS-III: Internal Security Challenges (Basics of Cyber Security; Role of media and social networking sites in internal security challenges; Internal security challenges through communication networks), GS-II: Polity and Governance (Constitutional Provisions, Fundamental Rights, Important Judgements)

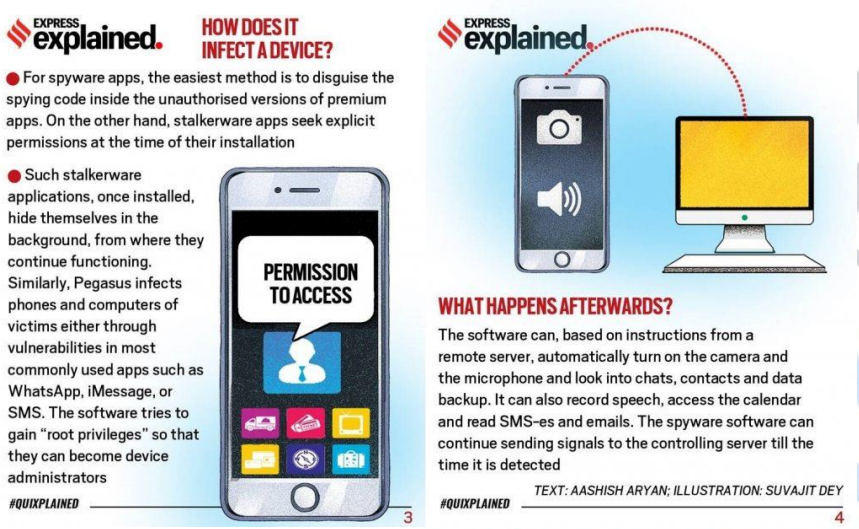
Dimensions of the Article:

1. About the Pegasus Project
2. How dangerously compromising is Pegasus?
3. What is a spyware and what are other similar types of Cyber Attacks?
4. Pegasus in the news in the past
5. About the Pegasus Attacks in India
6. Issues in the past regarding Government's surveillance
7. Legislations on Surveillance
8. K.S. Puttaswamy judgment, 2017 regarding Surveillance
9. Various recommendations in the past regarding Surveillance

About the Pegasus Project

- Pegasus is a type of malware classified as a spyware. Pegasus enables law enforcement and intelligence agencies to remotely and covertly extract" data "from virtually any mobile devices"
- The Spyware Pegasus can gain access to devices without the knowledge of users. After this, it can gather personal information and relay it back to whoever is using the software to spy.
- A zero-click attack helps spyware like Pegasus gain control over a device without human interaction or human error. Pegasus can infect a device without the target's engagement or knowledge. So, all awareness about how to avoid a phishing attack or which links not to click are pointless.
- The Israeli firm NSO Group (set up in 2010) developed the Pegasus spyware. Since then, NSO's attack capabilities have become more advanced.





How dangerously compromising is Pegasus?

- Upon installation, Pegasus contacts the attacker's command and control (C&C) servers to receive and execute instructions and send back the target's private data. This data can include passwords, contact lists, text messages, and live voice calls (even those via end-to-end-encrypted messaging apps).
- The attacker can control the phone's camera and microphone, and use the GPS function to track a target.
- To avoid extensive bandwidth consumption that may alert a target, Pegasus sends only scheduled updates to a C&C server.

- The spyware can evade forensic analysis and avoid detection by anti-virus software. Also, the attacker can remove and deactivate the spyware, when and if necessary.

What is a spyware (Like Pegasus Spyware in India) and what are other similar types of Cyber Attacks?

What is Malware?

- Malware is short for malicious software. Malware is a catch-all term for various softwares including viruses, adware, spyware, browser hijacking software, and fake security software.
- Ransomware, Spyware, Worms, viruses, and Trojans are all varieties of malware.

Types of Malware

- **Viruses** which are the most commonly-known form of malware and potentially the most destructive. They can do anything from erasing the data on your computer to hijacking your computer to attack other systems. Viruses can also send spam, or host and share illegal content.
- **Worm** is a type of malware that spreads copies of itself from computer to computer. Additionally, it can replicate itself without any human interaction. Also, it does not need to attach itself to a software program in order to cause damage.
- **Trojan** is a type of malware that is often disguised as legitimate software to be used by cyber-thieves and hackers trying to gain access to systems.
- **Spyware** collects your personal information and passes it on to interested third parties without your knowledge or consent. Spywares can also install Trojan viruses.
- **Ransomware** is malware that employs encryption to hold a victim's information at ransom.
- **Adware** displays pop-up advertisements when you are online.
- **Fake security software** poses as legitimate software to trick you into opening your system to further infection, providing personal information, or paying for unnecessary or even damaging "clean ups".
- **Browser hijacking software** changes your browser settings (such as your home page and toolbars), displays pop-up ads and creates new desktop shortcuts. Additionally, it can also relay your personal preferences to interested third parties.

Pegasus Spyware in India in the news in the past

- Researchers discovered the earliest version of Pegasus in 2016. This version infected phones through what is called spear-phishing – text messages or emails that trick a target into clicking on a malicious link.
- In 2019, WhatsApp blamed the NSO Group for exploiting a vulnerability in its video-calling feature which secretly transmitted malicious code in an effort to infect the victim's phone with spyware without the person even having to answer the call.
- In 2020, a report showed government operatives used Pegasus to hack phones of employees at Al Jazeera and Al Araby.

About the Recent Pegasus Spyware Attacks in India

- Human Rights activists, journalists and lawyers around the world have been targeted with phone malware sold to authoritarian governments by an Israeli surveillance firm. Indian ministers, government officials and opposition leaders also figure in the list.
- In India, several opposition leaders including Rahul Gandhi were on the leaked potential targets' list.
- Smartphones of Politicians, Journalists were hacked for gathering confidential information.

- This is the first time in the history of this country that all pillars of our democracy — judiciary, parliamentarians, media, executives and ministers — have been spied upon.
- The Indian government has denied any wrong doing or carrying out any unauthorised surveillance. However, the government has not confirmed or denied whether it has purchased or deployed Pegasus spyware.

Issues in the past regarding Government's surveillance

- In 2012 in Himachal Pradesh, the new government raided police agencies and recovered over a lakh phone conversations of over a thousand people, mainly political members, and many senior police officials, including the Director General of Police (DGP), who is legally responsible for conducting phone taps in the State.
- In 2013, India's current Home Minister Amit Shah was embroiled in a controversy dubbed "Snoopgate", with phone recordings alleged to be of him speaking to the head of an anti-terrorism unit to conduct covert surveillance without any legal basis (as there was no order signed by the State's Home Secretary which is a legal necessity for a phone tap).
- The UPA government in 2009 said that the CBDT had placed a PR professional, under surveillance due to fears of her being a foreign spy. Later on, the CBDT did not prosecute the person.

Such examples of unlawful surveillance which seem to be for political and personal gain are antithetical to the basic creed of democracy. Consequently, they also bring up the need for ensuring that the surveillance is necessary and proportionate.

Legislations on Surveillance

- The laws authorising interception and monitoring of communications are:
  1. Section 92 of the Criminal Procedure Code (CrPC)
  2. Rule 419A of the Telegraph Rules, and
  3. The rules under Sections 69 and 69B of the IT Act

Who can conduct Surveillance?

A limited number of agencies are provided powers to intercept and monitor.

- In 2014, the Ministry of Home Affairs told Parliament that nine central agencies and the DGPs of all States and Delhi were empowered to conduct interception under the Indian Telegraph Act.
- In 2018, 9 central agencies and 1 State agency were authorised to conduct intercepts under Section 69 of the IT Act.
- The Intelligence Organisations Act, which restricts the civil liberties of intelligence agency employees, only lists four agencies. However, the RTI Act lists 22 agencies as "intelligence and security organisations established by the central government" that are exempt from the RTI Act.

K.S. Puttaswamy judgment, 2017 regarding Surveillance

- The K.S. Puttaswamy judgment, 2017, made it clear that any invasion of privacy could only be justified if it satisfied three tests:
  1. The restriction must be by law;

2. It must be necessary (only if other means are not available) and proportionate (only as much as needed);
3. It must promote a legitimate state interest (e.g., national security).

- The judgement held that privacy concerns in this day and age of technology can arise from both the state as well as non-state entities. As such, a claim of violation of privacy lies against both of them.
- The Court also held that informational privacy in the age of the internet is not an absolute right and when an individual exercises his right to control over his data, it may lead to the violation of his privacy to a considerable extent.
- It was also laid down that the ambit of Article 21 is ever-expanding due to the agreement over the years among the Supreme Court judges. A plethora of rights have been added to Article 21 as a result.
- The court stated that Right to Privacy is an inherent and integral part of Part III of the Constitution that guarantees fundamental rights. The conflict in this area mainly arises between an individual's right to privacy and the legitimate aim of the government to implement its policies. Thus, we need to maintain a balance while doing the same.

Various recommendations in the past regarding Surveillance

- In 2010, then Vice-President called for a legislative basis for India's agencies and the creation of a standing committee of Parliament on intelligence to ensure that they remain accountable and respectful of civil liberties.
- The Cabinet Secretary in a note on surveillance in 2011 held that the Central Board of Direct Taxes having interception powers was a continuing violation of a 1975 Supreme Court judgment on the Telegraph Act.
- In 2013, the Ministry of Defence-funded think-tank published a report which recommended that the intelligence agencies in India must be provided a legal framework for their existence and functioning; their functioning must be under Parliamentary oversight and scrutiny.
- In 2018, the Srikrishna Committee on data protection noted that post the K.S. Puttaswamy judgment, most of India's intelligence agencies are "potentially unconstitutional". This is because they are not constituted under a statute passed by Parliament — the National Investigation Agency being an exception.

SC QUASHES PARTS OF THE 97TH AMENDMENT

Context:

The Supreme Court in a 2:1 majority verdict upheld the validity of the 97th constitutional amendment that deals with issues related to effective management of cooperative societies but struck down a part inserted by it which relates to the Constitution and working of cooperative societies.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Judiciary, Government policies and interventions, Issues arising out of the design and implementation of these policies)

Dimensions of the Article:

1. What are Cooperative Societies?
2. Cooperative Movement
3. Provisions in the Constitution regarding Cooperative societies
4. 97th Amendment
5. Issue with the 97th Amendment

6. About the Recent Supreme Court Ruling on the 97th Amendment

What are Cooperative Societies?

- The Cooperative Societies can be defined as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise".
- The Cooperative Movement was started by the weaker sections of society for protecting its members from the clutches of large profit hungry businesses.

Cooperative Movement

In pre-Independence era

- The British government came forward and passed three acts- the Deccan Agriculture Relief Act (1879), the Land Improvement Loan Act (1883) and the Agriculturists Loan Act (1884) – when farmers agitated against extortion by money-lenders.
- However, that Cooperative movement was introduced with structure and shape when the British enacted the Cooperative Credit Societies Act, 1904.
- In 1919, Cooperative societies became a provincial subject and the provinces were authorised to make their own cooperative laws under the Montague-Chelmsford Reforms.

After Independence

- After independence cooperatives became an integral part of Five-Year Plans.
- In 1958, the National Development Council (NDC) had recommended a national policy on cooperatives and also for training of personnel's and setting up of Co-operative Marketing Societies.
- In 1984, Parliament of India enacted the Multi-State Cooperative Societies Act to remove the plethora of different laws governing the same types of societies.

Provisions in the Constitution regarding Cooperative societies

- Directive Principles of State Policy enshrines under article 43 that- the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.
- Right to form cooperatives can also be construed as a Fundamental Right, Article 14 – (Right to Equality) and Article 19(1)(c) as 'Right to form Associations or Unions.
- The Constitution (Ninety Seventh Amendment) Act 2011 relating to the co-operatives is aimed to encourage economic activities of cooperatives which in turn help progress of rural India.

97th Amendment

- In Part III of the constitution, after words "or unions" the words "Cooperative Societies" was added. This enables all the citizens to form cooperatives by giving it the status of fundamental right of citizens.
- In Part IV a new Article 43B was inserted, which says: The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies".
- After Part IXA of the constitution, a Part IXB was inserted to accommodate state vs centre roles.

Issue with the 97th Amendment

- The provisions in the Amendment were passed by Parliament without getting them ratified by State legislatures as required by the Constitution.
- It went to the extent of determining the number of directors a society should have or their length of tenure and even the necessary expertise required to become a member of the society.

Central Government's Argument

- It justified that the government was injecting 'professionalism' and autonomy into the functioning of the societies.
- Lack of accountability by the members has led to poor services and low productivity.
- Even elections are not held on time. Co-operatives need to run on well-established democratic principles.

About the Recent Supreme Court Ruling on the 97th Amendment

- The constitution has been described as quasi-federal in that, so far as legislative powers are concerned, though there is a tilt in favour of the Centre vis-à-vis the States given the federal supremacy principle. However, within their own sphere, the States have exclusive power to legislate on topics reserved exclusively to them.
- Part IX B, which consists of Articles 243ZH to 243ZT, has "significantly and substantially impacted" State legislatures' "exclusive legislative power" over its co-operative sector under Entry 32 of the State List.
- The 97th Constitutional Amendment required ratification by at least one-half of the state legislatures as per Article 368(2) of the Constitution, since it dealt with an entry which was an exclusive state subject (co-operative societies). Since such ratification was not done in the case of the 97th amendment, it was liable to be struck down.
- The SC did not strike down the portions of Part IXB of the Amendment concerning 'Multi State Co-operative Societies (MSCS)' due to the lack of ratification. MSCS have objects not confined to one State, the legislative power would be that of the Union of India which is contained in Entry 44 List I (Union List).
- It is declared that Part IXB of the Constitution is operative only insofar as it concerns multi-State cooperative societies both within the various States and in the Union Territories.

SC ON 'PUNISHMENT' FOR POLITICAL PARTIES FACING CONTEMPT

Context:

Political parties facing contempt for defying a Supreme Court judgment to declare or publicise the criminal antecedents of their candidates before elections may run the risk of derecognition or a time-bound forfeiture of their election symbols.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Judiciary)

Dimensions of the Article:

1. Indian Constitution: Regarding Contempt of court
2. What is not contempt of court?

Indian Constitution: Regarding Contempt of court

- Article 129 and 215 of the Constitution of India empowers the Supreme Court and High Court respectively to punish people for their respective contempt.
- The Contempt of Courts Act of 1971 defines the power of the High Court to punish contempts of its subordinate courts. The Supreme Court and High Courts have the power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both.
- Power to punish for contempt of court under Articles 129 and 215 is not subject to Article 19(1)(a).
- According to Lord Hardwick, there is a three-fold classification of Contempt:
  1. Scandalizing the court itself.
  2. Abusing parties who are concerned in the cause, in the presence of court.
  3. Prejudicing the public before the cause is heard.
- However, in India contempt of court is of two types under The Contempt of Court Act, 1971
  1. Civil Contempt: Under the Contempt of Courts Act of 1971, civil contempt has been defined as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.
  2. Criminal Contempt: Under the Contempt of Courts Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:
     - Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or
     - Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
     - Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

What is not contempt of court?

- Fair and accurate reporting of judicial proceedings will not amount to contempt of court.
- Nor is any fair criticism on the merits of a judicial order after a case is heard and disposed of.

Is truth a defence against a contempt charge?

- For many years, truth was seldom considered a defence against a charge of contempt.
- There was an impression that the judiciary tended to hide any misconduct among its individual members in the name of protecting the image of the institution.
- The Act was amended in 2006 to introduce truth as a valid defence, if it was in public interest and was invoked in a bona fide manner.

ON KRISHNA AND GODAVARI RIVER MANAGEMENT BOARDS

Context:

The Union Ministry of Jal Shakti sent a notification on the jurisdiction of the Krishna and Godavari River Management Boards over projects and assets in the fields of irrigation and hydropower.

Relevance:

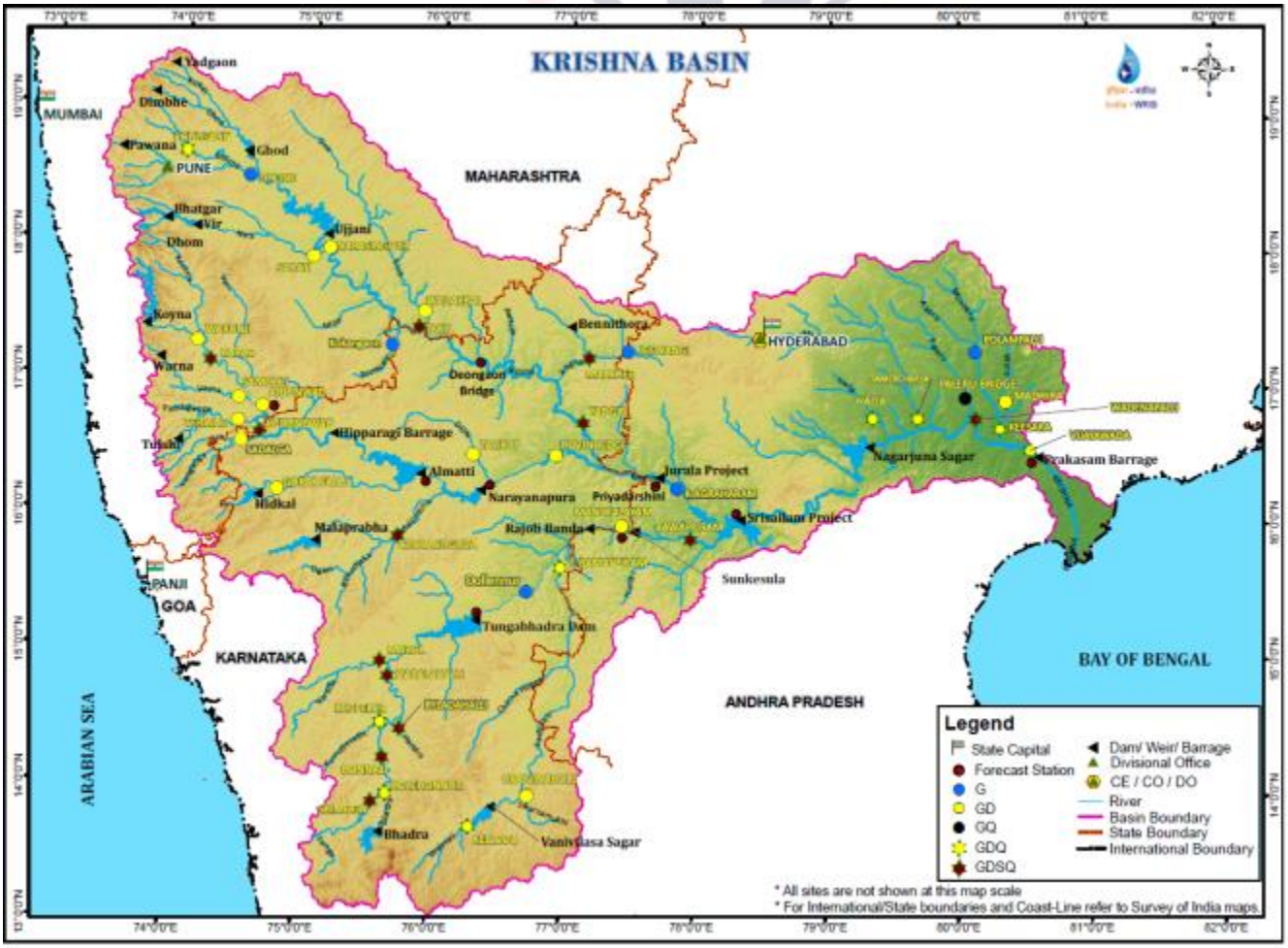
GS-II: Polity and Governance (Constitutional Provisions, Tribunals, Inter-State relations, Functions & responsibilities of the Union and the States, Issues and challenges of federal structure), GS-I: Geography (Water sources)

Dimensions of the Article:

1. About the tussle between Andhra Pradesh and Telangana
2. Major Inter-State River Disputes in India
3. Active River Water Dispute Tribunals in India
4. Constitutional and legal provisions related to water disputes
5. Issues with Interstate Water Dispute Tribunals

About the tussle between Andhra Pradesh and Telangana

- The States of Andhra Pradesh and Telangana have been locked in a battle of sorts over the utilisation of Krishna water, with Andhra Pradesh proposing a few projects and in turn, Telangana coming up with half-a-dozen projects of its own.
- Both States have their own justification to pursue new water and power projects as several areas await economic development.
- Rayalaseema is a dry region and it was grievances over poor utilisation of the two rivers in then undivided Andhra Pradesh that was a factor that led to the bifurcation.
- At the same time, the two States should instead focus on water and energy conservation and improving the efficiency of irrigation schemes and hydel reservoirs.
- Telangana had held the view that the notification should flow from finalisation by a tribunal on Krishna water sharing by the two States that would enlarge the scope of reference of the existing Krishna Water Dispute Tribunal (KWDT)-II. Telangana had even moved the Supreme Court but the Centre said it would consider Telangana's request only if it withdrew its petition which it did.



The latest notification on the matter

- The two river boards can now administer, regulate, operate and maintain 36 projects in the Krishna Basin and 71 in the Godavari to ensure judicious water use in Andhra Pradesh and Telangana.
- The arrangement is expected to leave the working of Water Resources or Irrigation Department in the States intact.
- The Centre must now see to it that the empowered Boards function in a fair manner, as the Union government's decision will be final with regard to matters concerning jurisdiction of the two bodies.

Major Inter-State River Disputes in India

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

Active River Water Dispute Tribunals in India

- Krishna Water Disputes Tribunal II (2004) – Karnataka, Telangana, Andra Pradesh, Maharashtra
- Mahanadi Water Disputes Tribunal (2018) – Odisha & Chattisgarh
- Mahadayi Water Disputes Tribunal (2010) – Goa,Karnataka, Maharashtra
- Ravi & Beas Water Tribunal (1986) – Punjab, Haryana, Rajasthan
- Vansadhara Water Disputes Tribunal (2010) – Andra Pradesh & Odisha.

Constitutional and legal provisions related to water disputes

- Article 262(1) provides that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter State river or river valley.
- Article 262(2) empowers Parliament with the power to provide by law that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint.
- Under Article 262, two acts were enacted:

    - River Boards Act 1956: It was enacted with a declaration that centre should take control of regulation and development of Inter-state rivers and river valleys in public interest. However, not a single river board has been constituted so far.
    - The Interstate River Water Disputes Act, 1956 (IRWD Act) confers a power upon union government to constitute tribunals to resolve such disputes. It also excludes jurisdiction of Supreme Court over such disputes.
- Despite Article 262, the Supreme Court does have jurisdiction to adjudicate water disputes, provided that the parties first go to water tribunal and then if they feel that the order is not satisfactory only then they can approach supreme Court under article 136.
- The article 136 gives discretion to allow leave to appeal against order, decree, judgment passed by any Court or tribunal in India.

Issues with Interstate Water Dispute Tribunals

- Interstate Water Dispute Tribunals are riddled with Protracted proceedings and extreme delays in dispute resolution. For example, the Cauvery Water Disputes Tribunal, constituted in 1990, gave its final award in 2007.
- Interstate Water dispute tribunals also have opacity in the institutional framework and guidelines that define these proceedings and ensure compliance.
- There is no time limit for adjudication. In fact, delay happens at the stage of constitution of tribunals as well.
- Though award is final and beyond the jurisdiction of Courts, either States can approach Supreme Court under Article 136 (Special Leave Petition) under Article 32 linking issue with the violation of Article 21 (Right to Life). In the event the Tribunal holding against any Party, that Party is quick to seek redressal in the Supreme Court. Only three out of eight Tribunals have given awards accepted by the States.
- The composition of the tribunal is not multidisciplinary and it consists of persons only from the judiciary.
- No provision for an adequate machinery to enforce the award of the Tribunal.
- Lack of uniform standards- which could be applied in resolving such disputes.
- Lack of adequate resources- both physical and human, to objectively assess the facts of the case.
- Lack of retirement or term- mentioned for the chairman of the tribunals.
- The absence of authoritative water data that is acceptable to all parties currently makes it difficult to even set up a baseline for adjudication.
- The shift in tribunals' approach, from deliberative to adversarial, aids extended litigation and politicisation of water-sharing disputes.
- The growing nexus between water and politics have transformed the disputes into turfs of vote bank politics.

SC SAYS SECRECY OF VOTE A MUST IN ANY ELECTION

Context:

The Supreme Court held that in any election, be it to Parliament or State legislature, the maintenance of secrecy of voting is "a must".

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Representation of People's Act)

Dimensions of the Article:

1. Recent Supreme Court Judgement on Secret Ballot
2. About Right to Vote in India and the Privilege of Secrecy

Recent Supreme Court Judgement on Secret Ballot

- The Supreme Court held the secrecy is a part of the fundamental right of freedom of expression and the confidentiality of choice strengthens democracy.
- Democracy and free elections are a part of the Basic Structure of the Constitution and an important postulate of constitutional democracy.
- The bench noted that since an election is a mechanism which ultimately represents the will of the people, the essence of the electoral system should be to ensure freedom of voters to exercise their free choice.
- The SC also said that Booth capturing and/or bogus voting should be dealt with iron hands, because it ultimately affects the rule of law and democracy. Nobody can be permitted to dilute the right to free and fair election.
- Even a remote or distinct possibility that a voter can be forced to disclose for whom she has voted would act as a positive constraint and a check on the freedom to exercise of franchise.
- The secret ballot helps protect voters from fear of intimidation or coercion.

About Right to Vote in India and the Privilege of Secrecy

- In India, the right to vote is provided by the Constitution and the Representation of People's Act, 1951, subject to certain disqualifications.
- Article 326 of the Constitution guarantees the right to vote to every citizen above the age of 18.
- Further, Section 62 of the Representation of Peoples Act (RoPA), 1951 states that every person who is in the electoral roll of that constituency will be entitled to vote.
- Section 94 of the Representation of People Act upholds the privilege of the voter to maintain confidentiality about their choice of vote.

Waiving off secrecy

- However, a voter can also voluntarily waive the privilege of non-disclosure and the privilege of confidentiality ends when the voter decides to waive the privilege and instead volunteers to disclose as to whom they had voted.
- No one can prevent a voter from disclosing nor can a complaint be entertained from anybody as to why they disclosed for whom they voted.

NOT all elections in India employ Secret Ballot system

- **Votes are given by open ballot for elections in the Rajya Sabha (Council of States).** The representatives of each State and of the two Union territories in the Rajya Sabha are elected by the elected members of the Legislative Assembly of the State and by the members of the electoral college for that territory, as the case may be, in accordance with the system of proportional representation by means of the single transferable vote which are given by Open Ballot. Source.
- Rule 39AA of the Conduct of Election Rules of 1961 provides for open ballot system of voting for elections in the Rajya Sabha.

- A voter may show his/her marked ballot paper **ONLY** to the authorised representative of his/her political party **(Party Whip)** (and not to be shown to anyone else except the whip, or else that vote will be declared invalid) before dropping it into the ballot box.
- In case of independent MLAs, they do not have to show their votes to "anyone at all".
- The party high command can issue a whip for a Rajya Sabha candidate, but **anti-defection law provisions do not apply**, and a defiant MLA is not disqualified from membership of the House.
- The Supreme Court has in the past held that open ballot votes in Rajya Sabha elections against the whip will not lead to disqualification as the Tenth Schedule, pertaining to anti-defection provisions, has a different purpose.

SC UPHOLDS NGT BAN ON FIRECRACKERS

Context:

The Supreme Court dismissed a challenge to a National Green Tribunal (NGT) ban on the sale and use of firecrackers during the COVID-19 pandemic in the National Capital Region (NCR) and all cities and towns where the ambient air quality is in the poor or above categories.

Relevance:

GS-III: Environment and Ecology (Environmental Pollution, Environmental Degradation, Government Policies and Interventions), GS-II: Polity and Governance (Statutory Bodies and Quasi-Judicial Bodies)

Dimensions of the Article:

1. About the NGT order banning firecrackers
2. Why was the ban on firecrackers needed in 2020?
3. Supreme Court's recent judgement on ban of firecrackers
4. SC on Firecrackers in the past
5. About the National Green Tribunal (NGT)
6. Powers of NGT
7. Structure of National Green Tribunal

About the NGT order banning firecrackers

- The NGT had noted in its December 2020 order that only green crackers would be permitted for Christmas and New Year – between 11:55 pm and 12:30 am – in areas where the ambient air quality was in the moderate or below categories.
- District magistrates were directed to ensure that firecrackers were not sold and violators would have to pay compensation.
- The Tribunal had reasoned that the "right to business is not absolute. There is no right to violate air quality and noise level norms".
- The NGT order of 2020 provided concessions to cities and towns that have moderate air quality, by allowing them to burst green crackers at specified hours.
- The NGT noted that Odisha, Rajasthan, Sikkim, Chandigarh, the Delhi Pollution Control Committee and the Calcutta High Court had already banned firecrackers this year.
- The NGT's reasoning gave primacy to the precautionary principle in sustainable development over employment and revenue losses.

Why was the ban on firecrackers needed in 2020?

- There were fears of a COVID-19 case surge during the winter, so it was incumbent on the Centre to work with States and prevent the burning of farm stubble ahead of Deepavali.
- This annual phenomenon unfailingly pollutes the air across northern and eastern India, and imposes heavy health and productivity costs.
- In the absence of pollution from agricultural residue, there might have been some room for a limited quantity of firecrackers.
- But, climatic conditions of low temperature and atmospheric circulation at this time of year would still leave many in distress.
- Only damage control is possible now, including steps to address the concerns of the fireworks industry.

Supreme Court's recent judgement on ban of firecrackers

- The Supreme Court said that it did not require a report by the Indian Institute of Technology to know that firecrackers were bad for the lungs while hearing a petition from mostly firecracker manufacturers who said the ban was an impediment to their livelihoods.
- The court agreed with the 2020 Tribunal order and said no further clarification was required on the issue.

SC on Firecrackers in the past

- In 2017, the SC had banned the use and sale of toxic crackers on the basis of a petition filed by two infants who pleaded for their right to life.
- The court had said the sale of green and improved crackers would be only through licensed traders. It dismissed arguments that bursting crackers was a fundamental right and an essential practice during religious festivals like Diwali.
- The Court's endeavour was to strive at balancing of two rights, namely, right of the petitioners under Article 21 and right of the manufacturers and traders under Article 19(1)(g) of the Constitution
- The SC said it felt that Article 25 [right to religion] is subject to Article 21 [right to life].
- If a particular religious practice is threatening the health and lives of people, such practice is not to entitled to protection under Article 25.

About the National Green Tribunal (NGT)

- The NGT was established on 2010 under the National Green Tribunal Act 2010, passed by the Central Government.
- National Green Tribunal Act, 2010 is an Act of the Parliament of India which enables creation of a special tribunal to handle the expeditious disposal of the cases pertaining to environmental issues.
- NGT Act draws inspiration from the India's constitutional provision of (Constitution of India/Part III) Article 21 Protection of life and personal liberty, which assures the citizens of India the right to a healthy environment.
- The stated objective of the Central Government was to provide a specialized forum for effective and speedy disposal of cases pertaining to environment protection, conservation of forests and for seeking compensation for damages caused to people or property due to violation of environmental laws or conditions specified while granting permissions.

Powers of NGT

- The NGT has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act. These include the following:
  1. The Water (Prevention and Control of Pollution) Act, 1974;
  2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
  3. The Forest (Conservation) Act, 1980;
  4. The Air (Prevention and Control of Pollution) Act, 1981;
  5. The Environment (Protection) Act, 1986;
  6. The Public Liability Insurance Act, 1991;
  7. The Biological Diversity Act, 2002.
- This means that any violations pertaining ONLY to these laws, or any order / decision taken by the Government under these laws can be challenged before the NGT.
- Importantly, the NGT has NOT been vested with powers to hear any matter relating to the Wildlife (Protection) Act, 1972, the Indian Forest Act, 1927 and various laws enacted by States relating to forests, tree preservation etc.

Structure of National Green Tribunal

- Following the enactment of the said law, the Principal Bench of the NGT has been established in the National Capital – New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (Southern Bench) and Kolkata (Eastern Bench). Each Bench has a specified geographical jurisdiction covering several States in a region.
- The Chairperson of the NGT is a retired Judge of the Supreme Court, Head Quartered in Delhi.
- Other Judicial members are retired Judges of High Courts. Each bench of the NGT will comprise of at least one Judicial Member and one Expert Member.
- Expert members should have a professional qualification and a minimum of 15 years' experience in the field of environment/forest conservation and related subjects.

ESSENTIAL DEFENCE SERVICES BILL, 2021

Context:

Recently, the Minister of State for Defence introduced the Essential Defence Services Bill in the Lok Sabha.

Relevance:

GS-III: Internal Security Challenges, GS-II: Polity and Governance (Government Policies and Interventions)

Dimensions of the Article:

1. What is the Essential Defence Services Bill?
2. Understanding Strikes and the punishments in this context:
3. Industrial Disputes Act 1947

What is the Essential Defence Services Bill?

- Essentially, the Essential Defence Services Bill is aimed at preventing the staff of the government-owned ordnance factories from going on a strike.
- It will amend the Industrial Disputes Act, 1947 to include essential defence services under public utility services.

- The Bill introduced recently, mentioned that that it is meant to "provide for the maintenance of essential defence services so as to secure the security of nation and the life and property of public at large".
- The Government said that since it is "essential that an uninterrupted supply of ordnance items to the armed forces be maintained for the defence preparedness of the country and the ordnance factories continue to function without any disruptions, it was felt necessary that the Government should have power to meet the emergency created by such attempts and ensure the maintenance of essential defence services **in public interest or interest of the sovereignty and integrity of India or security of any State or decency or morality".**

These are the lines along which reasonable restrictions can be imposed by law (imposed only by authority of law and NOT by executive action alone), on the Fundamental Rights Guaranteed under Article 19.

1. On Freedom of Speech and Expression:
   - Sovereignty and integrity of India,
   - The security of the State,
   - Friendly relations with foreign States,
   - Public order,
   - Decency or morality or
   - In relation to Contempt of Court,
   - Defamation or
   - Incitement to an offence.
2. On Freedom to Assemble Peaceably and Without Arms:
   - Sovereignty and integrity of India or
   - Public order
3. On Freedom to Form Associations or Unions:
   - Sovereignty and integrity of India
   - Public order or
   - Morality
4. On Freedom to Move Freely throughout the Territory of India:
   - Interests of the General Public
   - Protection of the Interests of any Scheduled Tribe
5. On Freedom to Reside and Settle in any part of the territory of India:
   - Interests of the General Public
   - Protection of the Interests of any Scheduled Tribe
6. On Freedom to Practice any Profession, or to Carry on any Occupation, Trade or Business:
   - Interests of the general public

What does the new bill allow the government to do?

- The Government can declare any service as an essential defence service if its cessation would affect the:
- Production of defence equipment or goods.
- Operation or maintenance of industrial establishments or units engaged in such production.
- Repair or maintenance of products connected with defence.
- Government may prohibit strikes, lock-outs, and lay-offs in units engaged in essential defence services.
- It may issue such an order, if necessary, in the interest of sovereignty and integrity of India, security of any state, public order, public, decency and morality.

Understanding Strikes and the punishments in this context:

- Strikes are defined as a cessation of work by a body of persons acting together and they may include: Mass leaves, coordinated refusals of any number of persons to work, Refusal to work overtime where it is

absolutely necessary for essential services to continue, or any other such activity that disrupts work in essential services (in this case, defence).
- Employers violating the prohibition order through illegal lock-outs or lay-offs will be punished with up to one year imprisonment or Rs 10,000 fine, or both.
- Persons commencing or participating in illegal strikes – Up to one year imprisonment or Rs 10,000 fine, or both.
- Persons instigating, inciting, or taking actions to continue illegal strikes, or knowingly supplying money for such purposes- Up to two years imprisonment or Rs 15,000 fine, or both.

Do we have a Fundamental Right to Strike in India?

- **Right to strike is not expressly recognized in the Constitution of India.**
- **The Supreme Court settled the case of Kameshwar Prasad v. The State of Bihar 1958 by stating that strike is not a fundamental right. Government employees have no legal or moral rights to go on strikes.**
- **India recognized strike as a statutory right under the Industrial Disputes Act, 1947.**

Industrial Disputes Act 1947

- The Industrial Disputes Act, 1947 (came into effect in April 1947 – before Independence) extends to the whole of India and regulates Indian labour law so far as those that concern trade unions as well as Individual workman employed in any Industry within the territory of Indian mainland.
- The Industrial Disputes Act 1947 defines public utility service and strike and puts certain prohibitions on the right to strike.
- The laws apply only to the organised sector and Every person employed in an establishment for hire or reward including contract labour, apprentices and part-time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act.
- It provides that no person employed in public utility service shall go on strike in breach of contract:
  - Without giving the employer notice of strike within six weeks before striking.
  - Within fourteen days of giving such notice.
  - Before the expiry of the date of strike specified in any such notice as aforesaid.
  - During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- It is to be noted that these provisions do not prohibit the workmen from going on strike but require them to fulfill the condition before going on strike. Further these provisions apply to a public utility service only.
- This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing > 10,000 p.m or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison.

PLEA INVOKES 'RIGHT TO BE FORGOTTEN' IN DELHI HC

Context:

Recently, a person has approached the Delhi High Court with a plea saying that his videos, photographs and articles etc., should be removed from the internet, citing his "Right to be Forgotten".

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Fundamental Rights, Government Policies and Interventions)

Dimensions of the Article:

1. Right to be Forgotten (RTBF)
2. 'Right to be Forgotten' in the Indian context
3. What does the Personal Data Protection Bill say about this?

Right to be Forgotten (RTBF)

- Right to be Forgotten (RTBF) is the right to have publicly available personal information removed from the internet, search, databases, websites or any other public platforms, once the personal information in question is no longer necessary, or relevant.
- This right has been recognised as a statutory right in the European Union under the General Data Protection Regulation (GDPR).

'Right to be Forgotten' in the Indian context

- The Right to be Forgotten falls under the purview of an individual's right to privacy, which is governed by the Personal Data Protection Bill that is yet to be passed by Parliament.
- In 2017, the Right to Privacy was declared a fundamental right by the Supreme Court in its landmark verdict.
- The court said at the time that, "the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution".

What does the Personal Data Protection Bill say about this?

- The Personal Data Protection Bill aims to set out provisions meant for the protection of the personal data of individuals.
- The draft bill mentions the "Right to be Forgotten" and states that the "data principal (the person to whom the data is related) shall have the right to restrict or prevent the continuing disclosure of his personal data by a data fiduciary"
- (A data fiduciary means any person, including the State, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing of personal data.)
- Therefore, broadly, under the Right to be forgotten, users can de-link, limit, delete or correct the disclosure of their personal information held by data fiduciaries.
- Even so, the sensitivity of the personal data and information cannot be determined independently by the person concerned, but will be overseen by the Data Protection Authority (DPA).
- This means that while the draft bill gives some provisions under which a data principal can seek that his data be removed, but his or her rights are subject to authorisation by the Adjudicating Officer who works for the DPA.
- While assessing the data principal's request, this officer will need to examine the sensitivity of the personal data, the scale of disclosure, degree of accessibility sought to be restricted, role of the data principal in public life and the nature of the disclosure among some other variables.

NO PARLIAMENTARY IMMUNITY FOR VANDALISM: SC

Context:

Kerala government had appealed to the Supreme Court to withdraw a criminal case against their leaders who destroyed public property and disrupted a Budget speech on the State Assembly floor in 2015, but, the Supreme Court has rejected Kerala government's plea.

Relevance:

GS-II: Polity and Constitution (Legislature, Constitutional Provisions)

Dimensions of the Article:

1. Arguments put forth by the Kerala Government
2. Introduction to privileges and immunities enjoyed by legislators
3. Individual Rights of Members of the Parliament
4. Privileges enjoyed collectively as part of parliament
5. Highlights of the Judgement on Immunity for Vandalism

Arguments put forth by the Kerala Government

- The Kerala Government had claimed parliamentary privilege, arguing that the incident occurred inside the Assembly Hall, hence, claiming immunity from criminal prosecution.
- They had argued that the prior sanction of the Speaker was necessary before the registration of an FIR by the police.

Introduction to privileges and immunities enjoyed by legislators

- Parliamentary privileges are certain rights and immunities enjoyed by members of Parliament, individually and collectively, so that they can "effectively discharge their functions". When any of these rights and immunities are disregarded, the offence is called a breach of privilege and is punishable under law of Parliament.
- **Article 105 for Parliament and Article 194 for State Assemblies** mention freedom of speech in Parliament and Right of Publication of its proceedings.
- The members of Parliament are exempted from any civil or criminal liability for any statement made or act done in the course of their duties.
- The privileges are claimed only when the person is a member of the house. As soon as he ends to be a member, the privileges are said to be called off.
- The privileges given to the members are necessary for exercising constitutional functions. These privileges are essential so that the proceedings and functions can be made in a disciplined and undisturbed manner.
- Under Article 118 Each House of Parliament has the power to make rules and regulates its proceeding and conduct of its business.
- Both Houses had enacted their rule book which is known as Rules of Procedure and Conduct of business in Lok Sabha and Rules of Procedure and Conduct of Business in the Council of States respectively.

Individual Rights of Members of the Parliament

Freedom of speech in parliament

- The special freedom of speech and expression provided to a member of the parliament has been guaranteed under Article 105(1) of the Indian constitution. But the freedom is subject to rules and orders which regulates the proceedings of the parliament.
- No member can be taken to task anywhere outside the four walls of the House (e.g., court of law) or cannot be discriminated against for expressing his/her views in the House and its Committees.
- This right is given even to non-members who have a right to speak in the house such as Attorney general.
- Freedom of speech should be in accordance with the constitutional provisions and subject to rules and procedures of the parliament, stated under Article 118 of the Constitution.
- Under Article 121 of the Constitution, the members of the parliament are restricted from discussing the conduct of the judges of the Supreme Court and the High Court. But, even if this happens, it is the matter of the parliament and the court cannot interfere.
- No privilege and immunity can be claimed by the member for anything which is said outside the proceedings of the house.
- It is important to note that although a member has the privilege of freedom of speech in Parliament, he/she has no right to publish it outside Parliament.

Freedom from arrest

- The members enjoy freedom from arrest in any civil case 40 days before and after the adjournment of the house and also when the house is in session.
- No member can be arrested from the limits of the parliament without the permission of the house to which he/she belongs so that there is no hindrance in performing their duties.
- If the detention of any members of the parliament is made, the chairman or the speaker should be informed by the concerned authority, the reason for the arrest.
- But, a member can be arrested outside the limits of the house on criminal charges against him under The Preventive Detention act, The Essential Services Maintenance Act (ESMA), The National Security Act (NSA) or any such act.

Freedom from appearing as a witness

- The members of the parliament enjoy special privileges and are exempted from attending court as a witness.
- They are given complete liberty to attend the house and perform their duties without any interference from the court.

Privileges enjoyed collectively as part of parliament

Right of Publication of its proceedings

- No person shall be held liable for publishing any reports, discussions etc., of the house under the authority of the member of the house.
- But, any partial report of detached part of proceedings or any publication made with malice intention is disentitled for the protection. Protection is only granted if it reflects the true proceedings of the house.

Right to exclude strangers

- The members of the house have the power and right to exclude strangers who are not members of the house from the proceedings.
- This right is very essential for securing free and fair discussion in the house.

- If any breach is reported then the punishment in the form of admonition, reprimand, or imprisonment can be given.

Punishing for breach of its privileges

- The Indian Parliament has the power to punish any person whether strangers or any member of the house for any breach or contempt of the house. When any breach is committed by the member of the house, he/she is expelled from the house.
- This right has been defined as 'keystone of parliamentary privilege' because, without this power, the house can suffer contempt and breach and is very necessary to safeguard its authority and discharge its functions.

The right to regulate the internal affairs of the house

- Each house has a right to regulate its proceedings in the way it deems fit and proper. Each house has its own jurisdiction over the house and no authority from the other house can interfere in regulation of its internal proceedings.
- Under Article 118 of the Constitution, the houses have been empowered to conduct the regulation for proceedings and this cannot be challenged in the court of law on the ground that the house is not in accordance with the rules made under Article 118.
- The Supreme Court has also held that this is general provision and the rule is not binding upon the house. They can deviate or change the rule anytime accordingly.

Highlights of the Judgement on Immunity for Vandalism

- The Supreme Court held that Parliamentary Privileges are Not Gateways of Immunity and that the legislators who indulge in vandalism and general mayhem cannot claim parliamentary privilege and immunity from criminal prosecution.
- Lawmakers possess privileges that are essential for exercising public functions – however, Vandalism is Not an Essential Legislative Action and hence cannot be protected.
- Vandalism on the Assembly floor could not be equated with the right to protest by Opposition legislators and Destruction of public property could not be equated with the exercise of freedom of speech.
- No member of an elected legislature can claim either a privilege or immunity to stand above the sanctions of the criminal law (Prevention of Damage to Public Property Act, 1984), which applies equally to all citizens.
- Legislators should act within the parameters of the public trust imposed on them to do their duty and have to uphold the sovereignty and integrity of India and had to perform the duty imposed on them by the people who elected them.

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LAW AND LAWMAKERS

Context

- The LDF government in Kerala has suffered a setback as it strongly favoured the withdrawal of cases against six members sought to be prosecuted for creating a ruckus in the Assembly on March 13, 2015, when they boisterously tried to interrupt the presentation of the Budget presented by the erstwhile UDF regime.

Relevance:

- GS Paper 2: Parliament and State Legislatures—Structure, Functioning, Conduct of Business, Powers & Privileges and Issues Arising out of these.

Mains Questions:

1. Enumerate important privileges enjoyed by each House of Parliament collectively and its members individually and also discuss their significance. 10 Marks
2. Legislative privilege and parliamentary free speech are necessary elements of a lawmaker's freedom to function, but it is difficult to disagree with the Court's conclusion that an alleged act of destroying public property within the House cannot be considered "essential" for their legislative functions. Discuss. 15 Marks

Dimensions of the Article:

- The Supreme Court Observation Regarding Parliamentary Privileges
- Concept of privileges
- Types of Parliamentary Privileges
- Significance of Parliamentary Privileges
- Challenges with respect to privileges
- Way Forward

The Supreme Court Observation Regarding Parliamentary Privileges

The Supreme Court ruling that legislative privilege cannot be extended to provide legal immunity to criminal acts committed by lawmakers ought to be welcomed for two reasons.

1. It lays down that legislators charged with unruly behaviour that results in offences under penal laws cannot be protected either by their privilege or their free speech rights.
2. Second, the decision revivifies the law relating to a prosecutor's role in withdrawing an ongoing criminal case.

Concept of privileges

- The Constitution (under Art. 105 for Parliament, its members & committees /Art. 194 for State Legislature, its members & committees) confers certain privileges on legislative institutions and their members to:
  - Protect freedom of speech and expression in the House and insulates them against litigation over matters that occur in these houses
  - Protect against any libel through speeches, printing or publishing
  - Ensure their functioning without undue influence, pressure or coercion
  - Ensure sovereignty of Parliament
- Currently, there is no law that codifies all the privileges of the legislators in India.
- Privileges are based on five sources:
  - Constitutional provisions
  - Various laws of parliament
  - Rules of both the houses
  - Parliamentary conventions
  - Judicial interpretations
- Whenever any of these rights and immunities is disregarded, the offence is called a breach of privilege and is punishable under law of Parliament.

- However, there are no objective guidelines on what constitutes breach of privilege and what punishment it entails.

Types of Parliamentary Privileges

Privileges of the House collectively:

- **Debates and proceedings:** Right to publish debates and proceedings and the right to restrain publication by others. However true reports of parliamentary proceedings can be published by press.
- **Secret Sitting**: Right to exclude strangers from its proceedings and hold secret sittings.
- **Right to regulate internal affairs of the House and to decide matters arising within its walls:**
  - Regulate its own procedure and conduct of business and to adjudicate upon such matters.
  - No person can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

    - The courts are prohibited to inquire into the proceedings of a House or its committees.
    - House receives immediate information of the arrest, detention, conviction, imprisonment and release of its member.
- **Right to punish members and outsiders** for breach of its privileges by reprimand, admonition or imprisonment (also suspension or expulsion in case of members).

Privileges enjoyed by the members individually:

- **Complete Freedom of speech for anything said or any vote given** by him/her in Parliament or its committees.
- **Freedom from arrest in civil cases** during the session of parliament and 40 days before the beginning and 40 days after the end of a session.
- **Freedom to refuse to provide evidence** or be a witness in a case pending in a court when parliament is in session.

Significance of Parliamentary Privileges

- **Enables free and fair discussion** by enabling the members to speak out their mind and expressing their views in the House without any fear.
- **Prevents willful misrepresentation** of debates or premature publication of proceedings.
- **Internal autonomy** serves as a natural corollary of the immunity from proceedings in a court of law in respect of anything said or done inside the House.
- **Prevents obstruction** to members from attending their parliamentary duty (in case of arrest).
- **Ensures that the attendance** of a member in the House takes precedence over all other obligations such as being a jury/witness to a case.

Challenges with respect to privileges

- **Against 'Constitutionalism' or doctrine of limited powers**: Absence of codified privileges gives unbridled power to house to decide when and how breach of privilege occurs.
- **Discredits separation of powers**, as speaker acts as complainant, advocate and the judge.
- **Penal action in cases of breach of privileges** unwarranted, unless there is an attempt to obstruct the functioning of the house or its members.
- **Must only be invoked by legislature** when there is "real obstruction to its functioning". Breach of privilege invoked for genuine criticism of members of the house or due to political vendetta, reduces accountability of elected representatives.
- **Invoked on grounds of defamation** by individual members, while judicial remedy available under defamation and libel law.

Way Forward

- **Constituent Assembly** envisaged the system of uncodified privileges based on British House of Commons, as only temporary. Therefore, there is a need for proper codification of privileges. E.g. Australia passed Parliamentary Privileges Act in 1987, clearly defining privileges, the conditions of their breach and consequent penalties.
- **Legislative privilege and parliamentary free speech** are necessary elements of a lawmaker's freedom to function, but it is difficult to disagree with the Court's conclusion that an alleged act of destroying public property within the House cannot be considered "essential" for their legislative functions.

SC: PREVENTIVE DETENTION ONLY TO PREVENT PUBLIC DISORDER

Context:

Preventive detention, the dreaded power of the State to restrain a person without trial, could be used only to prevent public disorder, the Supreme Court held in a judgment.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions, Fundamental Rights), GS-II: Governance (Government Policies and Interventions)

Dimensions of the Article:

1. About Preventive Detention in India
2. Criticisms of Preventive detention
3. The argument in favour of Preventive detention
4. Recent SC Judgement on Preventive Detention

About Preventive Detention in India

- As the term suggests – Preventive detention helps to prevent a person from committing a crime.
- Article 22 deals with 2 kinds of detentions: Preventive and Punitive. Article 22 (3) (b) of the Constitution allows for preventive detention and restriction on personal liberty for reasons of state security and public order.
- According to Article 22 (4)- in case of preventive detention as well, the person being detained should be informed of the grounds of arrest, however, in case the authorities consider that it is against the public interest to disclose certain facts, they need not reveal them.
- The person cannot be detained under preventive detention for more than 3 months unless permission to do so has been granted by an advisory board consisting of 3 judges of the Supreme Court.
- The other way by which the period of detention can be extended beyond 3 months is if the Parliament prescribes a law for it.
- Acts by the Parliament which provide for extension of Preventive detention period beyond 3 months: National Security Act (NSA) 1980; Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) 1974; Unlawful Activities Prevention Act (UAPA) 1967, etc.
- Many State legislatures have enacted similar laws that authorize preventive detention.

Criticisms of Preventive detention

- Preventive detention becomes a human rights concern as there have been various incidents of misuse of such laws in India.
- Preventive detention represents the police power of the State.
- No other democratic country mentions preventive detention in its constitution and such laws come into effect only under emergency conditions in democratic countries.

The argument in favour of Preventive detention

- Arbitrary action the State is prevented in India as the areas in the context of which Preventive detention laws can be made are laid down in the 7th Schedule of the Constitution itself.
- In the Union list – laws for Preventive detention can be enacted only for reasons connected with Defence, Foreign Affairs, or the Security of India.
- In the Concurrent list – laws for Preventive detention can be enacted only for reasons connected with Security of a State, the Maintenance of Public Order, or the Maintenance of Essential Supplies and Services.

Recent SC Judgement on Preventive Detention

- The SC said the State should not arbitrarily resort to "preventive detention" to deal with all and sundry "law and order" problems, which could be dealt with by the ordinary laws of the country.
- Preventive detention is a necessary evil only to prevent public disorder. The court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large.
- Whe.never an order under a preventive detention law is challenged, one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal.
- Preventive detention must fall within the four corners of Article 21 (due process of law) read with Article 22 (safeguards against arbitrary arrest and detention) and the statute in question.
- Mere contravention of law, such as indulging in cheating or criminal breach of trust, certainly affects 'law and order', but before it can be said to affect 'public order', it must affect the community or the public at large

SC ON SECTION 433A AND GOVERNOR'S PARDONING POWER

Context:

The Supreme Court held that the Governor of a State can pardon prisoners, including death row ones, even before they have served a minimum 14 years of prison sentence.

Relevance:

GS-II: Polity and Constitution (Constitutional Provisions, Union and State Executive)

Dimensions of the Article:

1. Section 433A in The Code Of Criminal Procedure, 1973
2. President's Pardoning Power: Article 72
3. Governor's Pardoning Power: Article 161
4. Types of Pardoning Powers of a Governor
5. Difference between Pardoning Powers of Governor and the President
6. About the Recent Supreme Court Judgment

Section 433A in The Code Of Criminal Procedure, 1973

Section 433A deals with the restriction on powers of remission or Commutation in certain cases. Section 433A says that where a sentence of imprisonment for life is imposed on conviction of a person for an offence which has death as one of the punishments OR where a sentence of death imposed on a person has been commuted into

imprisonment for life – Then such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

President's Pardoning Power: Article 72

- Under Article 72 of the Constitution, the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence where the sentence is a sentence of death.
- The President cannot exercise his power of pardon independent of the government.
- In several cases, the Supreme Court (SC) has ruled that the President has to act on the advice of the Council of Ministers while deciding mercy pleas. These include Maru Ram vs Union of India in 1980, and Dhananjoy Chatterjee vs State of West Bengal in 1994.
- Although the President is bound by the Cabinet's advice, Article74 (1) empowers him to return it for reconsideration once. If the Council of Ministers decides against any change, the President has no option but to accept it.

Governor's Pardoning Power: Article 161

- Similar to the Pardoning Power of the President, pardoning power of the Governor grants the following:
  - Pardon
  - Respite
  - Remission
  - Reprieve
  - Commute
- Article 161: The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Types of Pardoning Powers of a Governor

Pardon

- When the Governor pardons, both the sentence and the conviction of the convict completely absolve the sentences, punishments and disqualifications.
- The Governor cannot pardon the punishment by court-martial.
- The Governor cannot pardon the death sentence which only the Indian President can do.

Respite

- When the Governor uses his pardoning power of 'Respite', he chooses to award a lesser sentence in place of one originally awarded to the convict.
- For example, due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender, the President can use this power.

Reprieve

- When the Governor chooses the pardoning power of 'Reprieve'; he stays the execution of a sentence (especially that of death) for a temporary period.

- By doing this, he enables the convict to have time to seek pardon or commutation from him.

Remit

- When the President chooses the pardoning power of Remit, he acts to reduce the period of the sentence but the character of the sentence remains the same.
- For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year but the imprisonment remains rigorous.

Commute

- Governor can commute the punishment or sentence of any person convicted of any offence against a state law or he can commute a death sentence.

Difference between Pardoning Powers of Governor and the President

PARDONNING POWER OF THE PRESIDENT	PARDONING POWER OF THE GOVERNOR
He can pardon a sentence of the convict given by the court-martial or the military court	Governor does not have the power to pardon the sentence inflicted by the court-martial on the convict
The President can also pardon the death sentence through commutation or in its entirety.	Governor cannot pardon the death sentence even if the said sentence has been prescribed under the state law. However, he can suspend, remit or commute the death sentence by using these pardoning powers.
His pardoning powers are granted for the cases where the convict has committed an offence against a Union law	His pardoning powers are granted for the cases where the convict has committed an offence against a state law

Hence, the scope of the pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161.

About the Recent Supreme Court Judgment

- The Supreme Court held that a Governor can pardon the prisoners even before they have completed minimum 14 years of prison sentence.
- It was also held that a Governor's power to pardon overrides a provision given under Section 433A of Code of Criminal Procedure.
- Section 433-A of the Criminal Procedure Code *cannot and does not* affect the constitutional power of President or Governor to grant pardon under Articles 72 or 161 of Constitution.
- Since the Governor will have to act on the aid and advice of State Government, it was noted that the sovereign power of Governor to pardon prisoner under Article 161 is exercised by the State government and not the Governor on his own, in reality.

TRIBUNALS REFORMS BILL, 2021

Context:

The Tribunal Reforms Bill, 2021 was passed in Lok Sabha amid opposition demanding further discussion on the Bill.

Relevance:

GS-II: Polity and Constitution (Constitutional Provisions, Quasi-Judicial Bodies), GS-II: Governance (Government Policies and Interventions)

Dimensions of the Article:

1. The Tribunal Reforms Bill, 2021
2. The Need for the Tribunal Reforms bill
3. Key Issues with the Bill
4. Constitutional provisions and mandates regarding Tribunals
5. Issues with tribunalization

The Tribunal Reforms Bill, 2021

- The Tribunal Reforms Bill, 2021 seeks to withdraw and then replace the:
  1. Cinematograph Act,
  2. Copyright Act,
  3. Customs Act,
  4. Patents Act,
  5. Airport Authority of India Act,
  6. Trade Marks Act, and
  7. Geographical Indications of Goods (Registration and Protection) Act.
- The five tribunals which are sought to be abolished by the Bill (and their functions are to be transferred to the existing judicial bodies) are:
  1. Film Certification Appellate Tribunal,
  2. Airports Appellate Tribunal,
  3. Authority for Advanced Rulings,
  4. Intellectual Property Appellate Board and
  5. The Plant Varieties Protection Appellate Tribunal.
- The government said this would reduce another layer of litigation by abolishing tribunals or authorities under various laws.
- The bill provides for a Search-cum Selection Committee based on whose recommendations the Members of the various tribunals are to be appointed.
- The members of the committee are:
  1. Chief Justice of India, or a Supreme Court Judge nominated by him, as the Chairperson (with casting vote),
  2. two Secretaries nominated by the Union government,
  3. the sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court; and
  4. the Secretary of the Ministry under which the Tribunal is constituted (with no voting right).
- For state tribunals, there will be a separate search committee consisting of the following members:

1. the Chief Justice of the High Court of the concerned state, as the Chairman (with a casting vote),
2. the Chief Secretary of the state government and the Chairman of the Public Service Commission of the concerned state,
3. the sitting or outgoing Chairperson, or a retired High Court Judge; and
4. the Secretary or Principal Secretary of the state's general administrative department (with no voting right).

- According to the Bill, the Chairperson of a tribunal shall hold office for a term of four years or till he/ she attains the age of seventy years, whichever is earlier. For the members of the tribunal, the term is four years or till he or she attains the age of sixty-seven years, whichever is earlier

The Need for the Tribunal Reforms bill

- There has been incessant litigation since 1985 by advocate bar associations against the tribunals over serious questions of their independence from the executive.
- The quality of adjudication has been underwhelming in most cases, the delays have been substantial because the government has struggled to find competent persons willing to accept positions on these tribunals, and litigation has actually become more expensive, as these tribunals added another layer to it.
- The Government of India began the process of rationalisation of tribunals in 2015.
- By the Finance Act, 2017, seven tribunals were abolished or merged based on functional similarity and their total number was reduced to 19 from 26.

Key Issues with the Bill

- The Bill suffers from the same flaws of the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 ("Ordinance") promulgated by the President in April 2021 which it sought to replace.
- In July 2021, the Supreme Court in the case of Madras Bar Association v. Union of India had struck down the provisions requiring a minimum age for appointment as chairperson or members as 50 years and prescribing the tenure of four years. It held that such conditions are violative of the principles of separation of powers, independence of judiciary, rule of law and Article 14 of the Constitution of India.
- However, under the proviso to Section 3, the minimum age requirement of 50 years still finds a place in the Bill. Similarly, the tenure for the Chairperson and the members of the tribunal remains four years.
- Furthermore, Section 3(7) also sought to undo the judgment of the Apex Court which held the provisions related to the recommendation of two names for each post by the Search-cum-Selection Committee and requiring the decision to be taken by the government preferably within three months.

Constitutional provisions and mandates regarding Tribunals

- **The provision for Tribunals was added by the 42nd Constitutional amendment act which added two new articles to the constitution.**
- Article 323-A: of the constitution which empowers the parliament to provide for the establishment of administrative tribunals for adjudicating the disputes relating to recruitment and conditions of service of a person appointed to public service of centre, states, local bodies, public corporations and other public authority.
- Accordingly, the Parliament has enacted Administrative Tribunals Act,1985 which authorizes parliament to establish Centre and state Administrative tribunals (CAT & SATs).
  1. Central Administrative Tribunal (CAT):
     - It was set up in 1985 with the principal bench at Delhi and additional benches in other states (It now has 17 benches, 15 operating at seats of HC's and 2 in Lucknow and Jaipur.
     - It has original jurisdiction in matters related to recruitment and service of public servants (All India services, central services etc).

    - Its members have a status of High Court judges and are appointed by president.
    - Appeals against the order of CAT lie before the division of High Court after Supreme Court's Chandra Kumar Judgement.
  2. State administrative tribunals (SAT):
    - Central government can establish state administrative tribunals on request of the state according to Administrative tribunals act of 1985
    - SAT's enjoy original jurisdiction in relation to the matters of state government employees.
    - Chairman and members are appointed by President in consultation with the governor.
- Article 323-B: which empowers the parliament and the state legislatures to establish tribunals for adjudication of disputes related to following matters:
  1. Taxation
  2. Foreign exchange, Imports and Exports
  3. Industry and Labour
  4. Land reforms
  5. Ceiling on Urban Property
  6. Elections to parliament and state legislature
  7. Food stuffs
  8. Rent and Tenancy Rights

Issues with tribunalization

1. **Appeal:** Administrative tribunals were originally set up to provide specialized justice delivery and to reduce the burden of caseloads on regular courts. However, appeals from tribunals have inevitably managed to enter the mainstream judicial system.
2. **High Pendency:** Many tribunals also do not have adequate infrastructure to work smoothly and perform the functions originally envisioned leading to high pendency rates thus proving unfruitful to deliver quick justice.
3. **Appointments:** Appointments to tribunals are usually under the control of the executive. Not only does the government identify and appoint the members of the tribunals, but it also determines and makes appropriate staffing hires. This is problematic because often there is a lack of understanding of the staffing requirements in tribunals.
4. There is a **lack of information** available on the functioning of tribunals. Websites are routinely non-existent, unresponsive or not updated.
5. **Accessibility is low** due to scant geographic availability therefore justice becomes expensive and difficult.
6. **Against the principle of separation of powers:** Tribunalisation is seen as encroachment of judicial branch by the government.

REPORT ON RIGHTS ABUSE IN J&K AND KASHMIR MILITANCY

Context:

In their latest report, former Supreme Court (SC) judge and former Kashmir interlocutor, who head the Forum for Human Rights in J&K, have warned that "human rights abuses will continue unchecked till J&K remains under a Lieutenant-Governor administration and without an elected government".

Relevance:

GS-II: Polity and Constitution (Centre-State relations), GS-II: Governance (Government Policies & Interventions)

Dimensions of the Article:

1. About the latest report of the Forum for Human Rights in J&K
2. About Kashmir militancy as J&K passes 2 years as UT
3. Jammu & Kashmir Reorganisation Act, 2019

About the latest report of the Forum for Human Rights in J&K

- Most of the rights violations, including arbitrary detentions, prohibition on assembly, remain valid still – even as Jammu and Kashmir completes two years as a Union Territory (UT).
- Close to 1,000 people are still in prison, including minors and elected legislators.
- The report says that the J&K administration added a new vigilantism against government employees, whose social media content is now subject to police scrutiny for 'anti-national activities', potentially leading to dismissal. Eighteen government employees have already been dismissed
- The report also pointed out that the ceasefire agreement between Indian and Pakistani Directors-General of Military Operations (DGMOs) "restricted infiltration by armed groups and raised hopes that a wider peace process might follow".
- Notably, the J&K High Court has shown renewed commitment to the rights to bail and fair and speedy trial, coupled with scrutiny of the possible misuse of draconian legislation, such as the Public Safety Act (PSA) and the Unlawful Activities Prevention Act (UAPA). Nevertheless, the J&K administration continues to oppose bail and stifle dissent on increasingly bizarre grounds.
- The report recommended release of all remaining political detainees and repeal of the PSA and other preventive detention legislation.
- The report called for involvement of local communities in facilitating the return of Kashmiri Pandits.

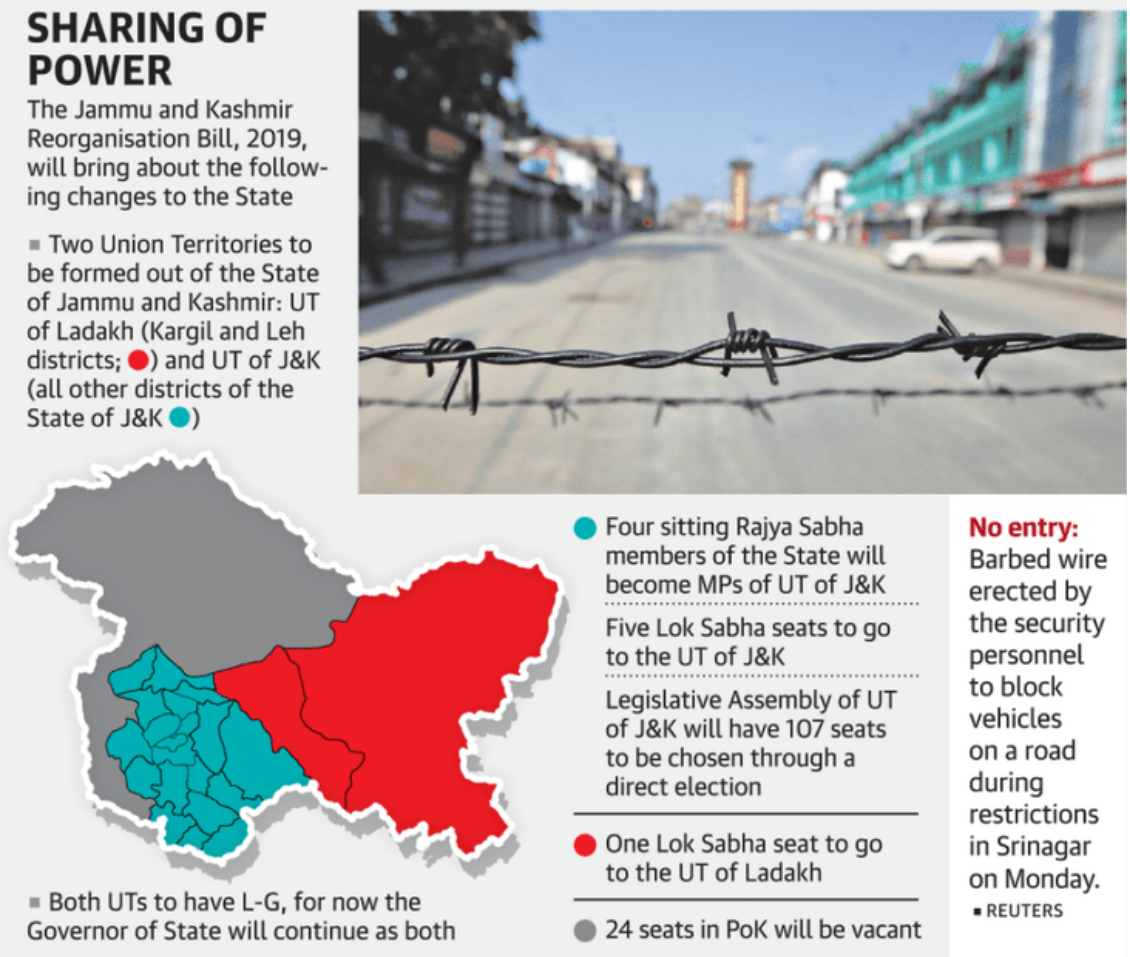
About Kashmir militancy as J&K passes 2 years as UT

- As Jammu and Kashmir completes two years as a Union Territory (UT), militancy remains a major challenge to the security apparatus amid growing fears that the Taliban takeover of Afghanistan is likely to flip the striking capabilities of the militant outfits, especially the Jaish-e-Muhammad (JeM) and the Harkat-ul-Mujahideen (HuM).
- Though more than 60% recruits hail from districts in south Kashmir, there is growing recruitment in capital Srinagar, where frequency of militant attacks saw a major spur in 2021, and in north Kashmir as well.
- In a sustained pressure maintained by the security agencies by launching multiple anti-militancy operations every day, at least 89 militants were killed in J&K so far, including the top brass of most of the militant outfits operating in the Valley.
- However, a fresh list of 10 local militants released by the J&K police again highlighted that local militants continue to command and control the outfits such as the Hizbul Mujahideen, the Lashkar-e-Taiba and the The Resistance Front (TRF) in the Valley.

Jammu & Kashmir Reorganisation Act, 2019

- The Jammu and Kashmir Reorganisation Bill, 2019 was introduced in Rajya Sabha on August 5, 2019 by the Minister of Home Affairs, Mr. Amit Shah.
- The Bill provides for reorganisation of the state of Jammu and Kashmir into the Union Territory of Jammu and Kashmir and Union Territory of Ladakh.
- The Bill reorganises the state of Jammu and Kashmir into: (i) the Union Territory of Jammu and Kashmir with a legislature, and (ii) the Union Territory of Ladakh without a legislature.
- The Union Territory of Ladakh will comprise Kargil and Leh districts, and the Union Territory of Jammu and Kashmir will comprise the remaining territories of the existing state of Jammu and Kashmir.

- The Union Territory of Jammu and Kashmir will be administered by the President, through an administrator appointed by him known as the Lieutenant Governor.
- The Union Territory of Ladakh will be administered by the President, through a Lieutenant Governor appointed by him.
- The High Court of Jammu and Kashmir will be the common High Court for the Union Territories of Ladakh, and Jammu and Kashmir. Further, the Union Territory of Jammu and Kashmir will have an Advocate General to provide legal advice to the government of the Union Territory.
- The Legislative Council of the state of Jammu and Kashmir will be abolished. Upon dissolution, all Bills pending in the Council will lapse.



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CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) BILL

Context:

Rajya Sabha passed The Constitution (Scheduled Tribes) Order (Amendment) Bill, 2021, which seeks to amend the constitutional list of Scheduled Tribes as recommended by Arunachal Pradesh.

Relevance:

GS-II: Polity and Constitution (Constitutional Provisions), GS-II: Social Justice and Governance (Issues related to Minorities, Government Policies and Interventions)

Dimensions of the Article:

1. Definition of STs
2. Constitutional Provisions regarding STs
3. The Constitution (Scheduled Tribes) Order (Amendment) Bill, 2021

Definition of STs

The Constitution does not define the criteria for recognition of Scheduled Tribes.

- However, Article 366(25) of the Constitution only provides process to define Scheduled Tribes: "Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution."
- Article 342(1): The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor, by a public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory.

Constitutional Provisions regarding STs

- Art. 15(4): Special provisions for advancement of other backward classes (which includes STs);
- Art. 23: Prohibition of traffic in human beings and beggar and other similar form of forced labour;
- Art. 24: Forbidding Child Labour.
- Art. 29: Protection of Interests of Minorities (which includes STs);
- Art. 46: The State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- Art.164(1): Provides for Tribal Affairs Ministers in Bihar, MP and Orissa;
- Art. 243: Reservation of seats in Panchayats.
- Art.244: Clause (1) Provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.
- Art. 275: Grants in-Aid to specified States (STs&SAs) covered under Fifth and Sixth Schedules of the Constitution.
- Art. 330: Reservation of seats for STs in Lok Sabha;
- Art. 337- Reservation of seats for STs in State Legislatures;
- Art. 334: 10 years period for reservation (Amended several times to extend the period);
- Art. 350: Right to conserve distinct Language, Script or Culture;
- Art. 350: Instruction in Mother Tongue.
- Art. 371: Special provisions in respect of NE States and Sikkim.

The Constitution (Scheduled Tribes) Order (Amendment) Bill, 2021

- The new bill provides for modifying Part-XVIII of the Schedule to the Constitution (Scheduled Tribes) Order, 1950, relating to state of Arunachal Pradesh.
- The Bill removes the Abor tribe from the list of identified STs in Arunachal Pradesh.

- It replaces certain STs with other tribes. This includes Tai Khamti, Mishmi-Kaman (Miju Mishmi), Idu (Mishmi) and Taraon (Digaru Mishmi).

SC: GOVT. DELAYING COLLEGIUM RECOMMENDATIONS

Context:

The SC Complained that the Centre's delay, for months and years on end, to act on the recommendations of the Collegium and appoint judges to High Courts has affected the early adjudication of important cases, especially high-stake commercial issues

Relevance:

GS-II: Polity and Constitution (Constitutional Provisions, Indian Judiciary)

Dimensions of the Article:

1. What is the Collegium System?
2. Evolution of the Collegium system
3. Working of the Collegium System and NJAC
4. About the pending recommendations

What is the Collegium System?

- The Collegium System is a system under which appointments/elevation of judges/lawyers to Supreme Court and transfers of judges of High Courts and Apex Court are decided by a forum of the Chief Justice of India and the four senior-most judges of the Supreme Court.' There is no mention of the Collegium either in the original Constitution of India or in successive amendments.
- The recommendations of the Collegium are binding on the Central Government; if the Collegium sends the names of the judges/lawyers to the government for the second time.

Evolution of the Collegium system

- In the First Judges case (1982), the Court held that consultation does not mean concurrence and it only implies an exchange of views.
- In the Second Judges case (1993), the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence.

Third Judges Case, 1998:

- In the Third Judges case (1998), the Court opined that the consultation process to be adopted by the Chief Justice of India requires "consultation of a plurality of judges".
- The sole opinion of the CJI does not constitute the consultation process. He should consult a collegium of four senior-most judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government.
- The court held that the recommendation made by the Chief Justice of India (CJI) without complying with the norms and requirements of the consultation process is not binding on the government.

- The Collegium system was born through the "Third Judges case" and it is in practice since 1998. It is used for appointments and transfers of judges in High courts and Supreme Courts.
- There is no mention of the Collegium either in the original Constitution of India or in successive amendments.

Working of the Collegium System and NJAC

- The collegium recommends the names of lawyers or judges to the Central Government. Similarly, the Central Government also sends some of its proposed names to the Collegium.
- Collegium considers the names or suggestions made by the Central Government and resends the file to the government for final approval.
- If the Collegium resends the same name again then the government has to give its assent to the names. But the time limit is not fixed to reply. This is the reason that appointment of judges takes a long time.
- Through the 99th Constitutional Amendment Act, 2014 the National Judicial Commission Act (NJAC) was established to replace the collegium system for the appointment of judges.
- However, the Supreme Court upheld the collegium system and struck down the NJAC as unconstitutional on the grounds that the involvement of Political Executive in judicial appointment was against the "Principles of Basic Structure". i.e., the "Independence of Judiciary".

About the pending recommendations

- The SC noted in August 2021, that in this month the Delhi High Court will be with less than 50% judges the government's "recalcitrant attitude" has left the High Courts with skeletal judicial strength.
- The Supreme Court Bar Association said that there was a need to institutionalise a process for considering advocates practising in the top courts to judgeships in the High Courts.
- The total sanctioned judicial strength in the 25 High Courts is 1,080. However, the present working strength is 661 with 419 vacancies as on March 1 2021.
- The judicial institution of the High Courts is manned by a number of judges where it will become almost impossible to have an early adjudication even on important issues.
- The court said the government "must realise" that adequate number of judges is a 'necessity' for early adjudication of commercial disputes.

SC: POLITICAL PARTIES TO PUBLISH CANDIDATES' CRIMINAL RECORDS

Context:

The Supreme Court warned Parliament that the nation is losing patience with the advent of criminals in politics even as it imposed fines on major political parties for covering up the criminal past of the candidates whom they had fielded in the Bihar Assembly polls in 2020.

Relevance:

GS-II: Polity and Constitution (Representation of People's Act, Legislature, Important Judgements and Cases)

Dimensions of the Article:

1. Criminalization of Politics in India
2. Judgements regarding Criminalization of Politics
3. Why are such tainted candidates inducted by political parties?

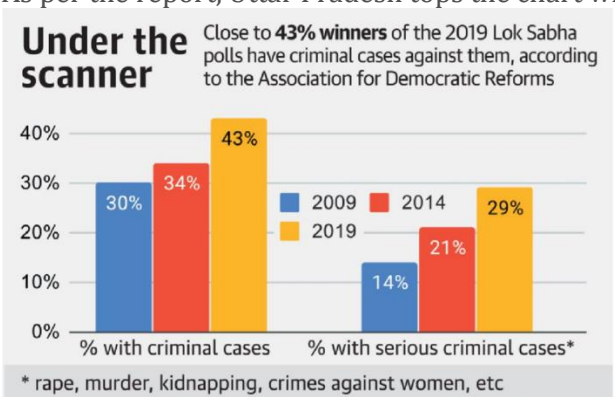
Criminalization of Politics in India

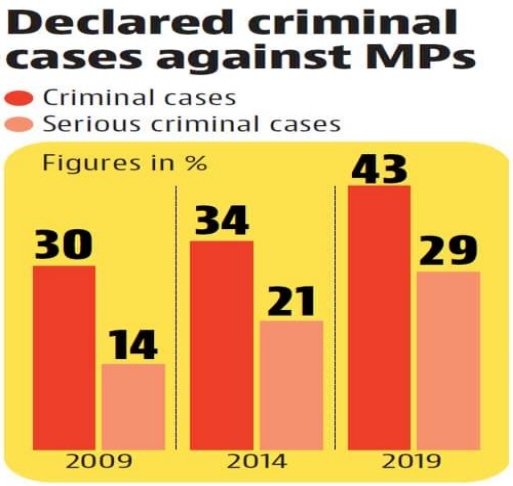
- Criminalization of Politics means the participation of criminals in politics which includes that criminals can contest in the elections and get elected as members of the Parliament and the State legislature.
- Criminalization of politics in India includes political control of the police, state money, corruption, weak laws, lack of ethics, values, vote bank politics and loopholes in the function of the election commission.

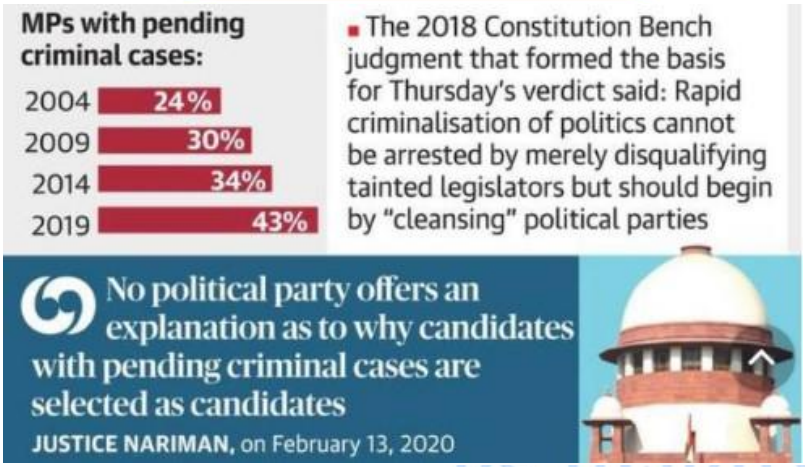
Data regarding Criminalization of Politics in India

- According to a report submitted in the Supreme Court, there are more than 4 thousand cases against the legislators including that of corruption, money laundering, damage to public property, defamation and cheating. The cases were pending in various special courts exclusively set up to try criminal cases registered against politicians.
- Of the massive 4,442 cases pending against legislators – cases against sitting Members of Parliament and members of State legislatures was more than 2,500.
- Roughly 46% of Members of Parliament have criminal records. The number might be inflated as many politicians tend to be charged with relatively minor offences —"unlawful assembly" and "defamation".
- The real worry is that the current cohort of Lok Sabha MPs has the highest (29%) proportion of those with serious declared criminal cases compared to its recent predecessors.
- A large number of cases were for violation of Section 188 IPC for wilful disobedience and obstruction of orders promulgated by public servants.
- There are more than 400 cases in respect of offences, which are punishable with imprisonment for life, out of which in 174 cases sitting MPs/ MLAs are accused.
- The trial of more than 350 cases had been stayed by High Courts and the apex court.
- A large number of cases were pending at the appearance stage and even non-bailable warrants (NBWs) issued by courts have not been executed.

- As per the report, Uttar Pradesh tops the chart when it comes to criminalization of politics.







Judgements regarding Criminalization of Politics

2002 Judgement on disclosure of information relating to criminal antecedents

- In 2002, the Supreme Court, in Association for Democratic Reforms (ADR) v. Union of India, mandated the disclosure of information relating to criminal antecedents, educational qualification, and personal assets of a candidate contesting elections.

2017 Judgement for Fast track courts

- In November 2017, the Supreme Court had ordered setting-up of Special Courts in each state to try the pending cases. Accordingly, 12 such courts were set up across the country.
- It was a move that significantly clips the powers of the state governments at a time when the top court has expressed grave concern over the criminalisation of politics.
- The SC also asked all the high courts to furnish details of posting of judges and the number of pending and disposed cases before them. The SC order said that High court Chief Justices are to constitute Special Benches to monitor the progress of criminal cases against sitting and former legislators.
- However, several states had withdrawn cases against legislators, under Section 321 of the Code of Criminal Procedure, 1973 which allows the public prosecutor or assistant public prosecutor to withdraw from the prosecution of a case at any time before the judgment is pronounced.

2020 Judgement on parties publishing details of criminal cases

- In February 2020, the SC passed a judgement which required political parties to publish details of criminal cases against its candidates on their websites, a local vernacular newspaper, national newspaper and social media accounts.
- The order was a reply to the contempt petition about the general disregard shown by political parties to a 2018 Constitution Bench judgment (Public Interest Foundation v. Union of India) to publish the criminal details of their candidates in their respective websites and print as well as electronic media for public awareness.
- According to the 2020 judgement – the political parties need to additionally offer an explanation as to why candidates with pending criminal cases are selected as candidates in the first place. All this information needs to be published in a local as well as a national newspaper as well as the parties' social media handles.
- The SC said that the information is mandatorily to be published either within 48 hours of the selection of candidates or less than two weeks before the first date for filing of nominations, whichever is earlier.
- Also, the political parties need to submit compliance reports with the Election Commission of India within 72 hours.
- The judgment is applicable to parties both at Central and State levels.

2021, revisiting progress after the 2020 order

- The Supreme Court has warned Parliament that the nation is losing patience with the advent of criminals in politics even as it imposed fines on major political parties for covering up from voters the criminal past of the candidates.
- Cleansing the polluted stream of politics is obviously not one of the immediate pressing concerns of the legislative branch of government.
- The court said it did not take political parties much time to flout its February 2020 judgment, which had directed them to prominently publish the criminal antecedents.

Why are such tainted candidates inducted by political parties?

1. **Popularity:** 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.
2. **Vested interests:** Some voters tend to view such candidates through a narrow prism: of being able to represent their interests by hook or by crook.
3. **Destabilizing other electors:** Others do not seek to punish these candidates in instances where they are in contest with other candidates with similar records.

- The NN Vohra committee's report on the criminalization of politics discussed how criminal gangs flourish under the care and protection of politicians.

- Many times the candidates themselves are the gang leaders.
- This protection is paid back to them during elections through capital investment in election spending and voter support.