



INSIGHTSIAS

SIMPLIFYING IAS EXAM PREPARATION

Insights Mains 2018 Exclusive

Polity

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Issues Related to Executive

NOTES

1. Supreme Court verdict on Delhi CM vs Lieutenant Governor

- The Supreme Court said the Delhi Lieutenant Governor cannot act independently and must take the aid and advice of the Council of Ministers.
- The LG has no independent authority to take decisions except in matters under **Article 239** or matters outside the purview of the government.
- The court said, L-G cannot act as an obstructionist and can refer issues to the President only in exceptional matters and not as a general rule.
- The national capital enjoys special status and is not a full state. Hence, the role of the L-G is different than that of a Governor.
- The **69th Amendment to the Constitution** created the Legislative Assembly of Delhi.
- **Why Delhi cannot be a full- fledged state?**
 - The Supreme Court followed the **1987 Balakrishnan Committee report** to conclude that Delhi is not a State.
 - The report said “**Delhi as the national capital belongs to the nation as a whole.**”
 - If Delhi becomes a full-fledged State, there will be a constitutional division of sovereign, legislative and executive powers between the Union and the State of Delhi.
 - The report said the control of the Union over Delhi was vital in the **national interest.**
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/07/Supreme-Court-verdict-on-Delhi-CM-vs-Lieutenant-Governor.pdf>

2. Governor

- The role of governor came under question in recent Karnataka legislative assembly elections.
- Whether Governor should call single largest party to form the government and prove its majority in the House or a post-poll alliance that overcomes the single largest party.
- In case of Goa and Manipur, the single largest party was not given preference to form the government unlike in Karnataka.
- **Article 164(1)** provides for the appointment of chief minister by the governor.
- Supreme court clarified that there is no qualification mentioned in article 164(1) and reading it with collective responsibility in **164(2)**, the only condition chief ministerial candidate needs to satisfy is that he/she should be the commanding majority in the house.
- The Constitution of India does not mandate any procedure to be followed by the Governor, in case of hung assembly.
- The convention of inviting the single largest party in such a case has been outlined by the **Sarkaria Commission**, which studied Centre-state relations in the 1980s.
- Post-poll alliance/coalition is the last option.
- The **Bommai judgment** endorses the Sarkaria Commission report.

- According to Bommai judgment, such a CM must prove the majority on the floor of the assembly.
- The **Rameshwar Prasad judgment** in 2006 by a five-judge apex court Bench endorses the Sarkaria Commission and Bommai judgment.
- The Justice M.M. **Punchhi Commission** on Centre-State Relations in 2010 laid down some guidelines to be followed in the appointment of a chief minister by a governor.
- It also said the governor should invite the leader of “a pre-poll alliance commanding the largest number” or the “largest single party” to form the government in case no party or pre-poll coalition has a clear majority.
- This Rameshwar Prasad judgment even quoted how post-poll alliances were a source of instability in government. It further to observation made by the **National Commission to Review the Working of the Constitution** that “changing alignment of the members of political parties so openly really makes a mockery of our democracy”.
- **Dr. B.R. Ambedkar** described how a Governor should use his discretion not as “representative of a party” but as “the representative of the people as a whole of the State”.

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Issues Related to Legislature

NOTES

1. MPs and MLAs practising Law

- The **Bar Council of India** had constituted an expert committee to look into an application to debar MPs and MLAs from practising as lawyers on the grounds that it is against the spirit of **Articles 14 and 15** of the Constitution.
- A PIL was also filed in the Supreme Court to ban public servants, elected representatives and members of judiciary from simultaneously practicing other professions and declare it as criminal misconduct.
- **Rule 49 of the Bar Council of India** states that any full-time salaried employee cannot practise as a lawyer before a court of law.
- A five-judge Bench in **M. Karunanidhi v. Union of India (1979)** stated that MPs and MLAs are public servants.
- Supreme Court in **Haniraj Chulani vs. Bar Council of Maharashtra** said – Legal profession requires full time attention.
- MPs receive several facilities and salary out of the **Consolidated Fund of India** and by practicing law it lead to professional misconduct as they enjoy the benefits of both.
- When we bar public servants from engaging in other professional services, and allowing them to practice law is a violation of **Articles 14, 15, and 21**.
- Need for a **uniform policy relating to conflict of interest** for public servants and members of judiciary in spirit of Article 14 of the Constitution.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/01/MPs-and-MLAs-practising-Law.pdf>

2. Anti-defection Law

- The Anti-Defection Law was passed in 1985 through the **52nd Amendment** to the Constitution, which added the **Tenth Schedule** to the Constitution.
- The objective was to **enhance the credibility of the country's polity** by addressing rampant party hopping by elected representatives.
- **Issues:**
 - The **Supreme Court in 1992 (Kihoto Hollohan vs Zachilhu and others)** held that the law does not violate any rights or freedoms, or the basic structure of parliamentary democracy.
 - The law states that the decision of the presiding officer of the house is final and not subject to judicial review. The Supreme Court struck down part of this condition and held that the final decision is subject to appeal in the High Courts and Supreme Court.
- **Recommendations:**
 - The **Goswami Committee**, the **Election Commission** and the **Venkatachaliah Commission to Review the Constitution (2002)** have recommended that the decision should be made by the president or the governor on the advice of the Election Commission.
 - The **Venkatachaliah Commission** recommended that defectors should be barred from holding any ministerial or remunerative political office for the remaining term of the House. It also said that the vote of any defector should not be counted in a confidence or no-confidence

motion.

- **Dinesh Goswami Committee** - Disqualification should be limited to cases:
 - A member voluntarily gives up the membership of his political party.
 - A member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.
- **Law Commission (170th Report):**
 - Provisions which exempt splits and mergers from disqualification to be deleted.
 - Pre-poll electoral fronts should be treated as political parties under anti-defection law.
 - Political parties should limit issuance of whips to instances only when the government is in danger.
- **Election Commission:**
 - Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/12/Anti-defection-Law.pdf>
- <http://www.insightsonindia.com/2017/12/14/insights-editorial-disqualification-moves/>

3. Sessions of Parliament

- The **Parliament of India** is the supreme legislative body of the Republic of India.
- The period during which the House meets to conduct its business is called a session.
- **Article 85** of the Indian constitution says that the gap between two sessions of parliament should not be six months.
- After amendment in 1951, three sessions of parliament in a year have become the pattern.
- The Constitution does not specify when or for how many days Parliament should meet.
- **International Practice:**
 - In UK, the US and some other democratic countries – parliament meets at a fixed time.
 - They sit throughout the year with breaks in between.
 - It allows them to plan their agenda well in advance and electoral cycles, or other political compulsions, do not disrupt the legislature's calendar.
- Recent trend of **declining number of sitting days** - Parliament in the last ten years has met for average 70 sittings a year.
- The data shows that the state assemblies in the last five years have met for 29 days a year on average.
- In comparison, UK's House of Commons met for an average of 150 days a year over the last 15 years.

- The United States House of Representatives met for an average of 140 days a year over the same period.
- Over the years, the time spent on discussing the Budget has reduced from an average of 123 hours in the 1950s to 39 hours in the last decade.
- Between 2012-2016, disruptions took away 30% of the time in the Lok Sabha and 35% of the time in the Rajya Sabha.
- According to government's estimates, each minute of the Parliament costs Rs 2.5 lakh and with both the houses of the Parliament losing 49 hours in total in the 2017 Winter Session, the loss was Rs 73.5 crore.
- The **National Commission to Review the Working of the Constitution** recommended that the Lok Sabha and Rajya Sabha should meet at least 120 and 100 days a year respectively.
- Odisha has already shown the way, mandating a minimum of 60 days for the State Assembly to sit.
- Reference: <http://www.insightsonindia.com/wp-content/uploads/2017/12/Sessions-of-Parliament.pdf>

4. Times when the Parliament convened for a session at midnight

- The midnight session of Parliament to **launch the goods and services tax (GST)** marked a first in India's history.
- It's the first time that a session was convened to mark the implementation of a government policy.
- **Midnight sessions in the past:**
 - August 14-15, 1947: The Constituent Assembly of India met in the Constitution Hall (now the Central Hall of Parliament) on the eve of the country's Independence.
 - August 14-15, 1972: To celebrate the silver jubilee of India's Independence.
 - August 9, 1992: To mark 50th anniversary of Quit India Movement.
 - August 14-15, 1997: To celebrate the golden jubilee of India's Independence.

5. Parliamentary Budget Office (PBO)

- Parliamentary Budget Office (PBO) is an independent and impartial body linked directly to Parliament.
- It provides **technical and objective analysis of Budgets** and public finance to the House and its committees.
- A PBO is comprised of independent and specialised staff, such as Budget analysts, economists, and public finance experts.
- There is a legitimate **democratic need** in the country to strengthen the capacity of Parliament and its members.
- As representatives of the people, they can help **improve Budget policies** by providing inputs on public needs and priorities.
- **Need for PBO:**
 - Parliamentary scrutiny of public finance is an important aspect of **governmental accountability**.
 - As **'the guardian of the public purse'**, Parliament must play a greater role in budgetary governance.

- Multiple indicators suggest that executive-led budgetary governance has not been successful in India.
- The role of Parliament and State legislatures in budgetary decision-making and oversight is far from satisfactory.
- It is meaningful to have a **legislative-executive balance of power in budgetary governance**.
- Parliamentary scrutiny of public finance is a very important aspect for holding the **government(s) accountable to the people**.
- **International Practice:**
 - There is growing trend among **OECD countries** to establish specialised Budget research units.
 - Traditionally, independent budgetary units are **more common in developed countries**, but many developing countries are now establishing such entities.
 - For example: Benin, Ghana, Kenya, South Africa, Morocco, the Philippines, Uganda, Nigeria, Liberia, Thailand, Afghanistan, and Vietnam.
 - The other functioning PBOs are in U.S., Canada, Australia, Austria, South Korea, Italy, and Mexico.
 - There are PBOs established in subnational legislatures. New York City has a well-functioning Independent Budget Office (IBO).
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/08/Parliamentary-Budget-Office-PBO-2.pdf>

6. Parliamentary Reforms

- The Parliament is the central institution of our democracy that makes laws, holds the central government accountable and allocates financial resources through the budgetary process.
- In recent years there has been debate about decline of Parliament, falling standards of debate, deterioration in the conduct and quality of Members, poor levels of participation etc.
- Till date, **only 15 private members' bills** have ever been passed by the Indian Parliament.
- **Parliament's Library and reference, research, documentation and information service (LARRDIS)** is understaffed and no funds are allocated for parliamentarians to hire necessary research support.
- Political power continues to be a **male dominated**. The Lok Sabha and the Rajya Sabha have not seen women MPs cross the 12% mark.
- In 2012, India ranked 20th from the bottom in terms of representation of women in Parliament.
- Need for Passage of the **Women's Reservation Bill (108th amendment)** reserving 33% of all seats in Parliament and State legislatures for women.
- The **Anti-Defection Law** needs to be recast, and used only in the most exceptional circumstances, while allowing MPs free rein on their self-expression.
- The U.K., for example, has the concept of a free vote allowing MPs to vote as they wish on particular legislative items.
- India needs a **parliamentary budget office**, akin to the **U.S. Congressional**

Budget Office, which can be an independent and impartial institution devoted to conducting a technical and objective analysis of any Bill.

- Other countries have led the way with such entities established in Kenya, South Africa, Morocco, the Philippines, Ghana and Thailand.
- **Parliament should be a space for policy and not for politics.** We need to undertake reforms to ensure that it is recast as such.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/07/Parliamentary-Reforms.pdf>

7. Constitutional provisions for women in Political Participation

- The Constitution of India guaranteed **justice-social, economic and political, liberty of thought, and equality** to all citizens.
- Constitution provided for **equality of women** and called State to take measures to **neutralize the socio-economic, educational and political disadvantage faced by women.**
- **Article 14:** It guarantees equality before law and equal protection of law with in the territory of India.
- **Article 15:** It prohibits discrimination on the basis of religion, race, caste, sex, place of birth. According to **article 15(3)**, State can make special provisions for the benefit women and children.
- **Article 16:** Equality of opportunity for all citizens in matter relating to employment. No citizen can be denied employment on grounds of religion, race, cast, sex, decent, place of birth residence or any of them.
- **Article 39:** Article 39(a) provides for an adequate means of livelihood for all citizens.
- **Article 39 (b)** has provisions for equal pay for equal work for both men and women.
- **Article 39 (c)** has provisions for securing the health and strength of workers, men and women, and not to abuse the tender age of children.
- **Article 42:** It guarantees just and humane condition of work and maternity relief. Article 42 is in accordance with **Article 23 and 25 of Universal Declaration of Human Rights.**
- **Article 325 and 326:** They guarantee political equality, equal right to participate in political activity and right to vote, respectively.
- **Article 243 (D):** It provides for the political reservation to women in every panchayat elections. It has extended this reservation to elected office as well.
- **Reference:** <http://www.insightsonindia.com/2018/06/26/insights-into-editorial-cost-of-the-missing-women-in-indian-politics/>

8. Office of Profit

- President Ram Nath Kovind on the recommendation of Election Commission of India (ECI) had disqualified 20 Aam Aadmi Party (AAP) MLAs from Delhi, citing that they held offices of profit.
- **What is an office of profit?**
 - If an MLA or an MP holds a government office and receives benefits from it, then that office is termed as an “office of profit”.
 - A person will be disqualified if he holds an office of profit under the central or state government, other than an office declared not to

- disqualify its holder by a law passed by Parliament or state legislature.
- The origin of this term can be found in the **English Act of Settlement, 1701**.
 - According to **Articles 102(1)(a)** and **191(1)(a)** of the Constitution, an MP or MLA is barred from holding an office of profit as it can put them in a position to gain a financial benefit.
 - Under the **Representation of People Act** too, holding an office of profit is grounds for disqualification.
 - In **Pradyut Bordoloi vs Swapan Roy (2001)**, the Supreme Court outlined the following questions for the test for office of profit:
 - Whether the government makes the appointment;
 - Whether the government has the right to remove or dismiss the holder;
 - Whether the government pays the remuneration;
 - What are the functions of the holder; does he perform them for the government; and
 - Does the government exercise any control over the performance of those functions?
 - **What is the underlying principle for including 'office of profit' as criterion for disqualification?**
 - Makers of the Constitution wanted that legislators should not feel obligated to the Executive in any way, which could influence them while discharging legislative functions.
 - In other words, an **MP or MLA should be free to carry out her duties without any kind of governmental pressure**.
 - The constitutions of almost all democracies bar legislators from holding executive offices other than as Ministers in a parliamentary system.
 - The **American Constitution** has an "**ineligibility clause**" which imposes an absolute bar: "no person holding any office under the United States shall be a member of either House during his continuance in office."
 - In the **United Kingdom**, The **House of Commons (Disqualification) Act of 1975** lists a large number of public offices, judicial and executive, whose holders would be disqualified from membership.
 - Recommendations given by **Second Administrative Reforms Commission** as part of its report on Ethics in Governance:
 - The law should clearly define Office of Profit based on three principles:
 - Exempt all offices in purely advisory bodies.
 - Include all offices which involve executive decision making and control of public funds.
 - If, by virtue of being a Minister, somebody is also a member of an organisation which is vital for day-to-day functioning of the government, it shall not be considered as office of profit.

Issues Related to Judiciary

NOTES

1. Improving Judicial Efficiency

- The Indian judicial system has a **pendency problem**. Chief Justice of India Dipak Misra had flagged rising pendency in appeals lying with High Courts.
- **Recommendations by 230th report of Law Commission:**
 - Providing strict guidelines for the grant of adjournments.
 - Curtailing vacation time in the higher judiciary.
 - Reducing the time for oral arguments unless the case involves a complicated question of law.
 - Framing clear and decisive judgements to avoid further litigation.
 - Incorporating technology into the system.
 - Just like automation powered by Artificial Intelligence is already helping doctors, it can also be leveraged to assist judges and lawyers.
- **NITI Aayog Recommendations:**
 - NITI Aayog suggested establishment of a **judicial performance index (JPI)** to check delay in finalisation of cases in lower judiciary.
 - JPI will help the high courts and its chief justices to keep track of performance and process improvement at district courts and subordinate levels for reducing delay.
 - Establishing **separate administrative cadre in judicial system** to reduce workload on judges.
 - **Automation in courts** and use of information and communication technology for **e-court** and case management.
 - Establishing **online real time judicial statistics** for determining the adequacy of judicial manpower and infrastructure to deal with work load of cases.
 - Adopt internationally developed measures such as '**global measures of court performance**'.

2. Judicial Accountability

- It is argued that the Indian judiciary has become all powerful, mostly by taking on enormous authority in policy areas that are technically beyond its ambit.
- The use of **Article 142** has become a sign of immense judicial indiscipline.
- Article 142 provides that "the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it..."
- In the early years of the evolution of Article 142, Supreme Court used Article 142 to bring complete justice to various deprived sections of society or to protect the environment.
- For example, the cleansing of the Taj Mahal, release of under trials and in the Union Carbide case bringing relief to the thousands of persons affected by the gas leak.
- In recent years, one has come across several judgments of the Supreme Court wherein it has been foraying into areas which had long been forbidden to the judiciary by reason of the doctrine of 'separation of powers'.
- **For example:**
 - **Allocation of coal blocks granted from 1993 onwards was cancelled**

in 2014 without even a single finding that the grantees were guilty of any wrongdoing.

- **The ban on the sale of alcohol along national and State highways:** As a result of the order, thousands of hotels, restaurants, bars and liquor stores were forced to close down or discontinue the sale of liquor, resulting in lakhs of employees being thrown out of employment. The Supreme Court had itself held that the right to employment is a basic right traceable to Article 21.
- **Reforms for effective Judicial Accountability:**
 - **Referral to Constitution Bench:**
 - All cases invoking Article 142 should be referred to a Constitution Bench of at least five judges.
 - In all cases where the court invokes Article 142, the government must bring out a white paper to study the beneficial as well as the negative effects of the judgment after a period of six months or so from its date.
 - Reintroducing a modified **Judicial Standards and Accountability Bill** to inculcate independence, impartiality and accountability among judges.
 - **Live streaming** of proceedings in cases of public importance.
 - Widen the scope of judicial accountability and bring in the issues of **“efficiency and transparency”** in the country’s legal processes.
 - A mechanism to take action against those found guilty after investigation.
 - Judges must declare their assets and liabilities.
 - **National Judicial Oversight Committee** for Judicial Accountability could be set up comprising the Chief Justice of India, representing the Judiciary, the Law Minister and an eminent person, representing the Legislature and the civil society respectively.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/12/Judicial-Accountability-and-Judicial-Reforms.pdf>
- <http://www.insightsonindia.com/2018/05/25/insights-into-editorial-steering-reform-in-clogged-courts/>

3. Judicial Reforms

- The justice system is the principal instrumentality in satisfying the undertakings in the Constitution.
- **Speedy justice** is a prerequisite for maintaining the **rule of law and delivering good governance**.
- Therefore, judicial reforms should be made the prime development agenda.
- On the last day before breaking for the summer vacation, **Justice Shahrugh J. Kathawalla of the Bombay High Court** was hearing matters beyond 3 a.m.
 - The HC witnessed lawyers, court staff and a judge sitting in court room way past midnight to complete his work on more than 130 matters.
 - This was a rare occasion in the court’s 156-year history, the incident highlights the **systemic issues common to courts in India**.
- The **National Judicial Data Grid** shows there are 2.54 crore cases pending in subordinate courts.
- **Gender gap in Judiciary - Only 28% of lower judiciary judges** in the country

are women, a first-of-its-kind study by Delhi-based Vidhi Centre for Legal Policy has revealed.

- Barring the metros and state capitals, most of the subordinate courts lack basic infrastructure for judges, court staff and litigants.
- A **2016 report published by the Supreme Court** showed that existing infrastructure could accommodate only 15,540 judicial officers against the all-India sanctioned strength of 20,558.
- Supreme Court had quashed the government's attempt to form **National Judicial Appointments Commission (NJAC)** to expedite the appointment process.
- The **logjam between Judiciary and Executive** can only result in distress for the public.
- Thus reforms both at

INDIAN JUDICIARY - POINTS TO PONDER

- Increased pendency of cases and delay in justice delivery.
- Complex procedures, Inaccessibility and high costs.
- Loss of faith in judiciary.
- Marginalization of poor and illiterate.
- Need for speedy justice in cases related to ill-treatment of women and others.
- Increased violence against women in urban areas.
- Decline in the quality of judicial officers in subordinate judiciary

lower and higher levels of judiciary are urgently required to keep the pillars of democracy stronger and powerful.

- Time limits for taking decision are to be prescribed like Slovak republic where disposal of cases in less than 60 days.
- Constitute a **Performance Commission** with powers to take consequential action. Many U.S. States have such commissions, which examine complaints about the conduct of judges.
- Creation of a transparent, full-time independent **judicial complaints commission** to investigate complaints against judges.
- **Alternative Dispute Resolution** mechanism, Lok Adalats etc should be explored on greater scale to reduce the burden of the judiciary at all levels.
- **Law Commission Recommendations:**
 - Equal role for judiciary, executive in appointment of judges.
 - Post of Chief Justice should not be transferable.
 - Judges must deliver judgments within a reasonable time.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/10/Judicial-Reforms-in-India.pdf>

4. Live Streaming of Supreme Court's Proceedings

- A PIL was sought in the Supreme Court for live streaming and/or video recording of Supreme Court cases of national importance that impact the public at large.
- This petition, filed under **Article 32** of the Constitution aims to further the principle of access to courts, and particularly in advancement of right to information and expression guaranteed under **Article 19(1) (a)** of the Constitution of India.

- Indian legal system is built on the **concept of open courts**, which means the proceedings are open to all members of the public. But in reality only a handful of people can be physically present and are allowed in the courtroom.
- It promotes **transparency** as live-streaming is allowed for both Lok Sabha and Rajya Sabha proceedings since 2004.
- **Right to receive information under Article 19(1)(a)** and the principle of open courts and access to justice as protected under **Article 21**.
- It is practiced in highest courts in **UK, Canada, New Zealand, and Australia**, as well as in some international courts, most notably in the **International Court of Justice**.
- The Supreme Court had already passed an order in **Pradyuman Bisht v. Union of India (2017)** directing all High Courts to ensure CCTVs and audio and video recordings in subordinate courts.
- Reference: <http://www.insightsonindia.com/wp-content/uploads/2018/02/Live-Streaming-of-Supreme-Courts-Proceedings.pdf>
- <http://www.insightsonindia.com/2018/02/23/insights-editorial-supreme-court-proceedings-live-streamed/>

5. Sharia Courts

- **Darul Qaza (sharia courts)** are not courts in the strictest sense of the term but a counselling or arbitration centres.
- They are **accessible, informal and voluntary institutions** that provide speedy and inexpensive justice to the poor.
- These courts will deliver justice in family and property matters under Islamic law.
- The apex court in **Vishnu Lochan Madan case (2014)** stated that sharia courts are not courts because the Indian legal system does not recognise a parallel judicial system.
- The **All India Muslim Personal Law Board (AIMPLB)** proposed to establish sharia courts all over the country.
- Sharia Courts were established in the second decade of 20th century in Bihar.
- In Bihar, more than 60,000 cases have been amicably resolved by these courts.
- Such courts were subsequently established in West Bengal and Orissa.
- Maharashtra has the highest number of such courts followed by UP.
- **International Practice:**
 - In 2008, the **UK** set up five sharia courts whose rulings are enforceable with the full power of the English judicial system.
 - **Israel** too enforces the orders of sharia courts as decrees of the state's civil courts.
- **Alternative dispute resolution in India**
 - **Section 89 of the Civil Procedure Code** talks of arbitration, mediation and conciliation.
 - The mediation settlement will have the same effect as an arbitral award under the **Arbitration and Conciliation Act, 1996**.

- The **Consumer Protection Bill, 2018** also talks of mediation.
- The mechanism finds its basis in the Article 14 (Equality before Law), Article 21 (Right to life and personal liberty) and under Article 32 (Right to Constitutional remedies) which provides for the **right of people to seek justice**.
- The report of **Justice Malimath Committee** also suggested the need for establishing ADR mechanism as a viable alternative.
- To strengthen ADR in India, the **Arbitration and Conciliation (Amendment) Bill, 2018** needs to be enacted to fill the legislative lacunae.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/07/Sharia-Courts.pdf>

6. India's Criminal Justice System

- **Criminal Justice** refers to the agencies of government charged with enforcing law, adjudicating crime, and correcting criminal conduct.
- It also includes the rehabilitation of offenders, preventing other crimes, and moral support for victims.
- The **primary institutions of the criminal justice system** are the Police, Prosecution and defense lawyers, the courts and prisons.
- The Indian Penal Code (IPC) 1860, the Code of Criminal Procedure (CrPC) 1973, and parts of the Indian Evidence Act 1872, constitute **Indian criminal law**.
- India has many crimes but very few criminals, according to crime statistics.
- The criminal justice system in place is unable to apprehend them, put them on trial with proper evidence and get them convicted.
- According to **National Crime Records Bureau (NCRB)** data, there is high level of backlog or the 'pendency rate' with India's courts and police.
- Crimes against women, such as rapes and dowry deaths, continue to see a low conviction rate, of around 20%.
- Enormous shortfalls in the number of police chowkis, weapons, and forensic science laboratories (FSLs).
- India faces an acute shortage of policemen, judges, prosecutors and inadequate judicial infrastructure.
- As of 1 January 2017, the vacancy rate among police officers across the country (civil and armed) was 22%.
- Uttar Pradesh has the highest vacancy rate, with more than half of sanctioned posts vacant.
- The number of police personnel and judges (per capita) in India is lower than most other G-20 countries.
- The **judge-population ratio** in India is 19.66 per million people as of 2017 as against 50 judges per million population in many parts of the world.
- **239th Report of the Law Commission of India** noted delays in the investigation and prosecution of criminal cases erodes faith in the rule of law and the criminal justice system.
- key reforms suggested by **Malimath Committee report:**
 - **Malimath Committee in 2003** recommended incorporation of some

aspects of an inquisitorial system to make the system more efficient. (Inquisitorial system is a **legal system** where the court or a part of the court is actively involved in investigating the facts of the case).

- Inquisitorial system of investigation is practised in countries such as **Germany and France**, where a judicial magistrate supervises the investigation.
- **Right to silence** - modification to Article 20 (3) of the Constitution that protects the accused from being compelled to be a witness against himself/herself.
- **Justice to victims of crime**
 - The victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation.
 - A **Victim Compensation Fund** can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund.
- **Police investigation**
 - The Committee suggested hiving off the investigation wing from Law and Order.
 - It also recommended setting up of a **National Security Commission and State Security Commissions**.
- **Public prosecution** - a new post, **Director of Prosecution**, be created in every State to facilitate effective coordination between the investigating and prosecuting officers under the guidance of the Advocate General.
- **Courts and judges** - The higher courts, including the Supreme Court, should have a separate criminal division consisting of judges who have specialised in criminal law.
- **Vacations for the courts** - reducing the period of vacation by 21 days, keeping in mind the long pendency of cases.
- **Arrears Eradication Scheme**
 - 'Arrears Eradication Scheme' to tackle cases that are pending for more than two years.
 - Such cases will be settled through Lok Adalats on a priority basis.
- **Organised crime and terrorism**
 - Though crime is a State subject, a central law must be enacted to deal with organised crime, federal crimes, and terrorism.
 - Possession of prohibited automatic or semi-automatic weapons and lethal explosives be made punishable with up to 10 years jail.
- **Periodic review** - providing for a **Presidential Commission** for a periodical review of the functioning of the Criminal Justice System.

- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/01/India%E2%80%99s-Criminal-Justice-System.pdf>

7. Internal Rift in the Judiciary

- Four senior-most judges of the Supreme Court had held a press conference and raised a banner of revolt against the Chief Justice of India (CJI).

- The 4 judges alleged that the CJI has been assigning cases selectively to benches of his preference, which have far-reaching consequences to the nation.
- The **CJI is first among equals, not superior to his colleagues.**
- The **CJI is the master of the roster**, but that does not mean that he can act arbitrarily in exercising his powers.
- In US Supreme court the Chief justice has no choice in the question of which judges to hear the case because all the 9 judges sit together to hear cases.
- In UK 12 judges often sit in the panels of five (or more) so chief justice choice is constrained.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/01/Internal-Rift-in-the-Judiciary.pdf>

8. RTI and Judiciary

- Supreme Court rejects RTI requests related to judicial functions, and insists that applicants must request information under **Supreme Court Rules (SCR)**.
- Recently Delhi High Court upheld this stand of Supreme Court. The High Court also concluded that there is no inconsistency between SCR and RTI Act.
- SCR have been framed under **Article 145** of the Constitution and they provide for regulating the practice and procedure of the Court and have the effect of law.
- The SCR allowed the judiciary to provide information at its discretion, violating the text and spirit of the RTI.
- The Supreme Court in 1974 in the land mark judgment of **Raj Narain V. Indira Nehru Gandhi** laid down the foundation of Right to Information. It held that the people of this country have a right to know every public Act, everything that is done in public way, by their public functionaries.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/12/RTI-and-Judiciary.pdf>

9. Transparency in Judicial Appointments

- The Supreme Court collegium has begun posting all decisions on judicial appointments and transfers on its website to ensure transparency.
- All information will be available under the new tab **“Collegium Resolutions”** on the official portal of the top court.
- Details posted will also indicate the reasons for the recommendation or rejection of a name for appointment, transfer or elevation.
- The “resolution seeks to ensure transparency and yet maintain confidentiality in the Collegium system.”
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/10/Transparency-in-Judicial-Appointments.pdf>

10. In need of a practical plan: on judicial appointments

- Recruitment to the lower judiciary has been under **public scrutiny** due to its **failure to fill almost a quarter (23%) of vacancies** that persist.
- The recruitment process of **district judges** is now the subject matter of a public interest litigation filed in the Supreme Court.
- This is not the first time that the Supreme Court has tried to streamline the

examination process for the lower judiciary.

- In **Malik Mazhar v. U.P. Public Service Commission (2008)**, it highlighted the importance of a prescribed **time-schedule for judicial service examinations** and laid down stage-wise time lines for lower judicial appointments — for **civil judges** (junior division) and **district judges** (direct recruitment) in **321 days and 183 days**, respectively.
- The **120th Law Commission of India report** on Manpower Planning in Judiciary, 1987, contained significant suggestions for reducing pendency and, for the first time, suggested a **judge strength fixation formula**.
 - It suggested that the judge-population ratio in India be increased immediately to **50 judges per million**.
- **Nearly 2.8 crore cases** are pending in the district and subordinate courts across the country and there are **only 16,874 judges to try them** — that's around 1,540 cases per judge.
- Another issue is **Gender gap in Judiciary, only 28% of lower judiciary judges** in the country are women, a first-of-its-kind study by Delhi-based Vidhi Centre for Legal Policy has revealed.
- The **lack of gender diversity** is not limited to the lower judiciary. The Supreme Court has only seen 8 women judges in its six decades of existence, and currently has **three woman judges out of 25 judges**.
- In the 24 High Courts across the country, just **over 10% judges are women**.
- **Reference:** <http://www.insightsonindia.com/2018/07/13/insights-into-editorial-in-need-of-a-practical-plan-on-judicial-appointments/>

11. The art of writing a judgment

- The judgement on the demarcation of powers between the Lieutenant Governor and the elected government in Delhi had **over 500 pages**.
- It was yet another reminder about the **need for crisp and on-message judgments**.
- **Lacunas in present Judgement system:**
 - **Erroneously drafted judgments** that run into pages and which state the same point repeatedly.
 - For example, the Chief Justice of India, in a 2016 judgment — in *Subramanian Swamy v. Union of India & Ors*, the second sentence ran into 228 words separated by over six commas and 17 “ands”.
 - **Insensitive comments** made in judgments can tarnish the quality of pronouncements.
 - For example, unnecessary remarks have been made on the **‘promiscuous attitude’** and **‘voyeuristic mindset’** of a woman in a bail order of a rape case.
 - There are numerous instances of judgments with similar **gender-insensitive remarks**.
 - A **uniform structure** (recording of facts, issues, submissions and then reaching the decision) **is lacking**.
- **Simple, clear and crisp judgments are vital.**
- **Reference:** <http://www.insightsonindia.com/2018/07/25/insights-into-editorial-the-art-of-writing-a-judgment/>

12. Other Judicial Initiatives

- **E-Courts Project:**
 - The eCourts Mission Mode Project (Phase I 2010-15; Phase II 2015-19) is a **national eGovernance project** for ICT enablement of district and subordinate courts of the country.
 - The objective is **to make whole judicial system ICT enabled.**
- **Nyaya Gram project:**
 - President of India, Ram Nath Kovind, recently laid the foundation stone of the **Nyaya Gram project of the High Court of Allahabad.**
 - It is a **model township** of High Court in Allahabad. The township includes a judicial academy, an auditorium and residences for judges and staff.
- **Commercial Courts:**
 - The Union government has proposed to establish **commercial courts** in districts to further improve the ease of doing business parameters.

NOTES

Centre – State Relations

NOTES

1. Article 35A and its Significance

- Article 35A of the constitution empowers J&K legislature to define state's "**permanent residents**" and their special rights and privileges.
- Special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare.
- No act of the State legislature can be challenged for violating the Constitution or any other law of the land.
- It was added to the constitution through a **1954 presidential order** under **Article 370 (1) (d)** of the Constitution.
- **Why is Article 35A Debated?**
 - An **NGO, We the Citizens**, challenged 35A in SC in 2014 on grounds that it was not added to the Constitution through amendment under Article 368.
 - It was never presented before Parliament, and the **parliamentary route of lawmaking was bypassed**.
 - Article 370 was only a 'temporary provision' to bring normality in Jammu and Kashmir and strengthen democracy in the State.
 - Article 35 A is against the "very spirit of oneness of India" as it creates a "class within a class of Indian citizens".
 - Restricting citizens from other States from getting employment or buying property within Jammu and Kashmir is a **violation of fundamental rights under Articles 14, 19 and 21** of the Constitution.
 - In another case in SC, Article 35A restricts the basic **right to property** if a native woman marries a man not holding a permanent resident certificate.
 - Her children are denied a permanent resident certificate, thereby considering them illegitimate.
- **Article 370 and its Provisions:**
 - The Article 370 deals with certain **special powers** provided to the state of Jammu and Kashmir.
 - It grants a 'temporary' autonomous status to the state of Jammu & Kashmir.
 - Except for Defense, Foreign Affairs, Finance and Communications, the Indian Government needs the State Government's nod to apply all other laws.
 - The central government has no power to impose financial emergency in the state.
 - Emergency can be imposed only on the grounds of internal disturbances and imminent danger from a foreign enemy.
 - The state government has the control on how it needs to govern the state.
 - Indian nationals belonging to other states cannot buy land or property in the state of J&K.
 - Woman who marries a person belonging to any other state loses her right to ownership.

- Reference: <http://www.insightsonindia.com/wp-content/uploads/2017/09/Article-35A-and-its-Significance.pdf>

2. Inter-state river water sharing

- More than 80 per cent of Indian rivers are inter-state rivers.
- According to the **Central Water Commission**, there are **125 inter-state water agreements** in India.
- Many of these agreements are more than 100 years old and had been executed without seriously considering **socio-economic, political and geographical factors**.
- River waters use is included in states jurisdiction (**entry 17 of state list**).
- However, **union government** can make laws on regulation and development of **inter-State rivers and river valleys** when expedient in the public interest. (**Entry 56 in the Union List**)
- Whenever the riparian states are not able to reach amicable agreements on their own in sharing of an interstate river waters, **section 4 of The Interstate River Water Disputes Act, 1956 (IRWD Act) provides dispute resolution process in the form of Tribunal**.
- In case the constitutional rights of states are ingressed upon by the tribunal award in any manner, central government, for extending purview of its enactment to implement the tribunal order, **is obliged to take the consent of all riparian states under Article 252 of the constitution** before publishing the tribunal awards in the official gazette.
- **Article 262** of the Indian Constitution provides a role for the Central government in adjudicating conflicts surrounding inter-state rivers that arise among the state/regional governments.
- Recently the apex court directed the Karnataka government to release 177.25 TMC of water to Tamil Nadu, 14.75 TMC lesser than what was allotted by the tribunal in 2007.
 - A certain quantity of water was reduced from the quantum allocated to Tamil Nadu, because of **availability of groundwater in the state**.
 - **Drinking water requirement** was placed on a higher pedestal.
 - Other water tribunals had not considered groundwater to be a factor while apportioning water.
- **Inter State Water Disputes Act, 1956:**
 - IRWD Act was **enacted by the parliament** of India under **Article 262** of Constitution to resolve the water disputes that would arise in the use, control and distribution of an interstate river or river valley.
 - Article 262 also says that the parliament can also provide that **neither the Supreme Court nor any other court shall exercise jurisdiction in respect of inter-state water disputes**.
 - Scope of the IRWD Act is **applicable only to interstate rivers / river valleys**.
- **Major Inter-state water dispute:**
 - **Cauvery water Dispute** - Initially, the dispute was between Karnataka and TN but later Kerala and Puducherry also entered the fray.
 - **Krishna Water Dispute** – Between Telangan, Andhra Pradesh, Maharashtra and Karnataka.

- **Mahanadi Water Dispute** – Between Chhattisgarh and Odisha.
- **Vamsadhara Water Dispute** - Andhra Pradesh and Odisha.
- The **Indo-Bangladesh treaty** can be the **model for the resolution** of the Cauvery dispute.
- **International treaties:**
 - The **US-Mexico International Boundary and Water Commission** has been successfully implemented since 1884 with the changing course of the rivers, the **Rio Grande and Colorado**.
 - This treaty has been amended more than seven times since its inception, based on the changes in irrigation uses, river boundaries, flood control, population growth, urbanisation, etc.
- **Inter-State River Water Disputes (Amendment) Bill, 2017**
 - The Bill seeks to amend the Inter-State River Water Disputes Act, 1956.
 - **Disputes Resolution Committee:** the central government to set up a Disputes Resolution Committee (DRC), for resolving any inter-state water dispute amicably.
 - **Tribunal:** All existing tribunals will be dissolved and the water disputes pending adjudication before such existing tribunals will be transferred to this newly formed tribunal.
 - **Time allotted to Tribunal to take its decision:** the proposed tribunal has to give its decision on a dispute within a period of two years. This period is extendable by a maximum of one year.
 - **Data bank and information:** the central government maintains a data bank and information system at the national level for each river basin.
 - **Additional rule -making powers:** The Bill gives the central government powers to make rules in which water will be distributed during stress situations arising from shortage in the availability of water.
- **Bringing water into concurrent list**
 - The **Planning Commission** had also suggested water law on the lines of the European Union where water is under one directive.
 - The **Public Accounts Committee (PAC)** has also recommended bringing water in the concurrent list of the Constitution.
 - The **Parliamentary Standing Committee on Water Resources** too had urged the Centre to initiate “earnest” efforts to build a national consensus for bringing water into the Concurrent List
- **Reference:** <http://www.insightsonindia.com/2018/06/04/insights-into-editorial-on-the-cauvery-issue/>

Issues Related to Local Governance

NOTES

1. Urban Local Governance

- The local government in the urban areas is referred to as the **Nagar Panchayats and the Municipalities**.
- **Background:**
 - Municipal governance in India has existed since the year 1666, with the formation of Madras Municipal Corporation, and then Calcutta and Bombay Municipal Corporation in 1726.
 - In 1882 the then Viceroy of India, Lord Ripon's resolution of local self-government laid the democratic forms of municipal governance in India.
 - In 1919, a Government of India act incorporated the need of the resolution and the powers of democratically elected government were formulated.
 - In 1935 another Government of India act brought local government under the purview of the state or provincial government and specific powers were given.
- Twenty-five years ago, the Constitution underwent a significant transformation with the passage of 74th Constitutional Amendment.
- **74th Constitutional Amendment act** added a new **part IX-A** to the Constitution entitled as '**The Municipalities**' and a new **Twelfth Schedule** containing 18 functional items for municipalities.
- A **2010 McKinsey report** estimates that India will need to spend \$1.2 trillion on cities by 2030.
- But as of now, India's annual per capita spending on cities stands at a measly \$50.
- The revenue generated by urban local government accounts for less than 0.9% of the total GDP despite cities contributing almost 60% towards GDP.
- Normally, the world over, the size of the local governments taken together is to the tune of around six percent of the national GDP. In case of India, it is less than one percent.
- On average only about 82% of the legislative devolution has taken place until now.
- Data highlights that only 12 states have completely devolved all the functions to their respective ULBs.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/06/Urban-Local-Governance.pdf>

2. Empowering Local Bodies

- **Mahatma Gandhi**, once stated, "Independence must begin at the bottom ... it follows, therefore, that every village has to be self-sustained and capable of managing its affairs..."
- 73rd and 74th Constitutional amendments were made to energise the local bodies in rural and urban areas to make them the institutions of self-government.
- Empowering local bodies key to better urbanisation: **World Economic Forum**.

- Top down approach to planning and implementation of policies since independence has not yielded any significant result. So local bodies can solve the problems at their roots.
- The famous **Chipako movement** in Himalayan states and **Appiko Movement** in Karnataka are legendary examples of local communities' engagements with environment protection.
- Irrigation through the centralized planning of the dams and canal for agriculture has failed to serve needs of the farmers. The local ponds, kunds, ground tanks etc. need to be restored.
- World Economic Forum advocates **reforms in land acquisition and dispute resolution** will help attract private participation in government schemes like Smart Cities and AMRUT.
- Local bodies that are entrusted with responsibilities, empowered with resources and encumbered by accountability can become effective vehicles for **competitive federalism**.
- Reference: <http://www.insightsonindia.com/wp-content/uploads/2017/07/Empowering-Local-Bodies.pdf>

3. Local democracy in disarray

- It's been 25 years since **decentralised democratic governance** was introduced in India by the **73rd and 74th Constitution Amendments**.
- Even after 25 years, local government expenditure as a **percentage of total public sector expenditure** comprising Union, State and local governments is **only around 7%** as compared to 24% in Europe, 27% in North America and 55% in Denmark.
- **Local expenditure as a percentage of GDP is only 2 per cent** compared with the OECD (14 per cent), China (11 per cent), and Brazil (7 per cent).
- The own source revenue of local governments as a share of total public sector own source revenue is only a little over 2% and if disaggregated, the Panchayat share is a negligible 0.3% (several States like Rajasthan, Punjab and Haryana have abolished property taxes and others do not collect taxes). This speaks of the **fiscal weakness of village panchayats**.
- Reference: <http://www.insightsonindia.com/2018/05/04/insights-into-editorial-local-democracy-in-disarray/>

Issues Related to Elections in India

1. One Constituency One Candidate

- **Section 33(7) of the Representation of the People Act, 1951**, allows a person to contest a general election or a group of bye-elections or biennial elections from two constituencies.
- **Section 70 of the RPA**, specifies that a person who wins on both seats can hold on to one seat only.
- Prior to insertion of clause 7 in Section 33 in 1996 it was possible for candidates to contest from several seats and later one person could contest only from two seats.
- The Government of India has opposed Election Commission's proposal to bar a candidate from contesting from two assembly or Parliamentary constituencies during elections.
- Many leaders, including Indira Gandhi, Atal Bihari Vajpayee, Narendra Modi and Sonia Gandhi had contested from two constituencies in the past.
- **Election Commission of India Recommendations:**
 - The candidate contesting from two seats should bear the cost of the bye-election to the seat that the contestant decides to vacate.
 - The **Law Commission** had also recommended the same change. It had cited expenditure, time, election fatigue and harassment caused to voters as reasons behind the recommendation.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/07/One-Constituency-One-Candidate.pdf>

2. Voter Verifiable Paper Audit Trail (VVPAT)

- **Supreme Court of India** has for long held a supportive and extra cautious stand when it comes to voting.
- It had directed the EC in 2013 to introduce VVPAT in Lok Sabha Elections 2014 to **improve voter confidence and ensuring transparency of voting**.
- In 2013, **conduct of Election Rules, 1961** was amended to facilitate the introduction of VVPAT units.
- **In the case of Subramanian Swamy vs Election Commission of India (ECI)**, the Supreme Court held that VVPAT is “indispensable for free and fair elections” and directed the ECI to equip EVMs with VVPAT systems.
- **Close to 4.2% of the VVPAT machines** deployed in the Karnataka Assembly elections **developed glitches** during the testing as well as polling processes.
- The overall **fault rate was as high as 11.6%** in the by-elections held in four parliamentary and nine Assembly constituencies.
- The ECI has suggested that these machines were **more prone to malfunctioning** due to their sensitivity to **extreme weather conditions** and **exposure to light**.
- It also blamed the **relative inexperience of polling officers** handling them, compared to the ballot and control units for the electronic voting machines (EVMs).
- **Reference:** <http://www.insightsonindia.com/2018/06/05/insights-into-editorial-paper-chase-the-need-to-review-use-of-vvpats/>

3. Simultaneous Elections

- Simultaneous elections refer to holding elections to Lok Sabha and State Legislative Assemblies simultaneously, once in five year.
- Simultaneous elections were held in the country during the first two decades after Independence **up to 1967**.
- Dissolution of certain Assemblies in 1968 and 1969 followed by the dissolution of the Lok Sabha led to the “disruption of the conduct of simultaneous elections.”
- An analysis by **IDFC institute** shows that on average, there is a 77% chance that the Indian voter will vote for the same party for both the State and Centre when elections are held simultaneously.
- **British Parliament** enacted ‘**Fixed Term Parliaments Act, 2011**’, by which elections have been fixed for every five years.
- **Evidence from countries** like Brazil, Argentina, Canada, Germany, the US and Europe supports the idea that elections that are held simultaneously **produce greater alignment** between national and regional election outcome.
- **Recommendations:**
 - **Law Commission of India** in its 170th report recommended simultaneous elections to Lok Sabha and State Legislative.
 - **79th report of the parliamentary standing committee on Law and Justice** recommended a two-phase election schedule – one concurrent with Lok Sabha elections, the second in the mid-term of the Lok Sabha.
 - The **Election Commission** has also extended its in-principle support for the simultaneous elections.
 - **Niti Aayog** has also favoured conducting synchronised two-phase Lok Sabha and assembly elections from 2024 in “national interest”.
- **Law Commission Recommendations:**
 - Law Commission of India recommends holding of simultaneous elections to the Lok Sabha and the Assemblies, possibly in 2019.
 - It suggests **amending the Constitution, Representation of the People Act of 1951** and the **Rules of Procedure of the Lok Sabha and Assemblies** to realise this objective.
 - In 2019, the election could be held in phases.
 - In the first phase, elections to the legislatures which are scheduled to go for polls synchronous with the Lok Sabha in 2019 could be held together.
 - The rest of the States could go to elections in proximity with the Lok Sabha elections of 2024.
 - Parties which introduce the no-confidence motion should simultaneously give a suggestion for an alternative government.
 - Relaxation of the anti-defection law in the Tenth Schedule to prevent a stalemate in the Lok Sabha or Assemblies in case of a hung Parliament or Assembly.
 - In case of mid-term elections, the new Lok Sabha or Assembly would only serve the remainder of the term of the previous Lok Sabha/Assembly and not a fresh term of five years.

- Prime Minister/Chief Minister should be “elected” to lead by the full House like the Lok Sabha Speaker.
- **Election Commission (EC):**
 - Recently, the **Election Commission (EC)** has suggested “**one year one election**” as an alternative to “one nation one election”.
 - **Accomplishing “one year one election”** will be easier as it doesn’t require as many legal amendments as simultaneous polls for which the Centre will have to make five amendments to the Constitution.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/07/Simultaneous-Elections.pdf>
- <http://www.insightsonindia.com/2018/05/29/insights-into-editorial-ec-has-a-plan-b-for-simultaneous-polls-one-year-one-election/>

4. Political Funding in India

- The **Centre for Media Studies** estimated that an amount of Rs. 30,000 crore was spent by the government, political parties and candidates in the 2014 Lok Sabha elections.
- The **255th Law Commission Report on Electoral Reforms** observed that opacity in political funding results in “lobbying and capture” of the government by big donors.
- 69% of the income of all political parties between 2004-05 and 2014-15 was from unknown sources, according to an analysis done by the **Association for Democratic Reforms (ADR)**.
- The income of national parties from unknown sources increased by 313% during the decade; for the regional parties, it went up by 652%.
- **Recent Changes:**
 - Through the Finance Act, 2016, **FCRA rules were amended** to allow political parties to accept donations from foreign companies.
 - A foreign company can anonymously donate unlimited sums to an Indian political party without the EC or the IT department ever getting to know.
 - RBI Act was also amended for the issuance of **Electoral Bonds**.
 - Reducing the ceiling of cash donation from Rs. 20,000 to Rs. 2,000 under Section 29C(1)(a) of the Representation of the People Act, 1951.
 - Disclosure of IT returns of political parties to public under RTI.
- Former Chief Election Commissioner S.Y. Quraishi has suggested a **National Electoral Fund** to which all donors can contribute.
- The funds would be allocated to political parties in proportion to the votes they get.
- **State funding of political parties as proposed by Indrajit Gupta Committee, Law Commission of India, 2nd ARC, National Commission to Review the Working of the Constitution** will ensure a level playing field for all the parties.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/11/Electoral-Bonds-in-India.pdf>

5. National Voters Day

- National Voters’ Day or **Rashtriya Matdata Diwas** is celebrated by Election Commission of India on **January 25** every year with an aim to **encourage**

youngsters, who have reached the age of 18, to participate in the electoral process.

- **8th National Voters Day Theme: 'Accessible Elections'**, which expressed ECI's pursuit of working towards making the electoral process more inclusive and friendly for Persons with Disabilities (PwDs).

NOTES

Governance

NOTES

1. Open-data Policy and Data- driven Governance

- **Open government data (OGD)** means publishing information collected by the government in its entirety, such as government budgets, spending records, health-care measures, climate records, and farming and agricultural produce statistics.
- Over 100 governments have already signed a charter to proactively share data collected by various government departments, for public consumption.
- OGD can be seen as a step in delivering the promises of the **Right to Information Act**.
- Research by PwC in Australia estimated that open data can **add an additional 1.5% to the country's GDP**. In the Indian context, this could conservatively translate to about \$22 billion.
- **Measures taken:**
 - Government of India is working towards an **Open Data Policy**, under the Department of Information and Technology (DIT) to encourage sharing information between departments and across ministries.
 - India was one of the first to set up the OGD platform at data.gov.in to provide access to data sets published by Government departments.
 - India currently houses more than 1.6 lakh data resources and has published over 4,015 application programme interfaces (APIs) from across 100-plus departments. As a result, India's global ranking by the **Global Open Data Barometer** has improved.
 - City Data for India Initiative was launched by Tata Trusts in association with World Council on City Data (WCCD) and Pricewaterhouse Coopers(PwC), India in 2016 with an objective of creating a culture of **data driven decision making in Indian cities**.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/06/Open-Data-Open-Government.pdf>
- <http://www.insightsonindia.com/2018/06/13/insights-into-editorial-open-data-open-government/>

2. Tackling Government Litigation

- The government is the biggest litigant in India, which has been acknowledged by the Prime Minister and the Chief Justice of India in the recent past.
- The **Supreme Court** had imposed costs of Rs. 1 lakh on Central government for filing an appeal when similar appeals had already been dismissed earlier by the Court.
- According to the **Ministry of Law and Justice**, government departments are a party to around "46 percent" of court cases.
- The **law commission** said the bureaucracy over the years has failed to contain the volume of litigation originating from government ministries and departments.
- Seven years after creation of the first **draft national litigation policy**, it still remains a work in progress.
- **Implications:**

- **Economic Survey 2017-18** - economic activity is being affected by the realities and long shadow of delays and pendency across the legal landscape.
- Delays in power, roads, and railways projects led to an increase in almost 60% of the project costs.
- **Affects ease of doing business.**
- Hamper dispute resolution, contract enforcement, discourage investment, stall projects, hamper tax collection, stress tax payers and escalate legal costs.
- **Economic Survey 2017-18 Recommendations:**
 - **Coordinated action between the government and the judiciary** to reduce the pendency of commercial litigation.
 - Effective, efficient and expeditious **contract enforcement regime** for economic growth and development.
 - **Expanding judicial capacity** in the lower courts and reducing the existing burden on High Courts and the Supreme Court.
 - Tax department could exercise greater self-restraint by limiting appeals.
 - Substantially **increasing state expenditure on the judiciary**, particularly on modernisation and digitisation.
 - The courts could consider **prioritising stayed cases**, and impose stricter timelines within which cases with temporary injunctions may be decided, especially when involving government infrastructure projects.
- **Law Commission Recommendations:**
 - The **100th Law Commission of India (LCI) report** recommended setting up a '**litigation ombudsman**' in each state to manage and handle government litigation.
 - The **126th LCI report recommended** the creation of a grievance redressal system within departments, specifically to manage disputes between the government-employer and its employees.
- **Recommendations:** <http://www.insightsonindia.com/wp-content/uploads/2018/01/Tackling-Government-Litigation.pdf>

3. Legal Information Management and Briefing System (LIMBS)

- Legal Information Management and Briefing System (LIMBS) is a **web based application** created by the Department of Legal Affairs under the Ministry of Law and Justice.
- The idea is to make the legal data available at one single point and streamline the procedure of litigation matters conducted on behalf of Union of India.
- LIMBS being a repository of data gather information relating to various departments, tribunals and categorize them into groups of customized Management Information System (MIS) reports that can be accessed through a user-friendly drop down menu.
- It is in line with Digital India to digitalise the details of court cases and bring various stakeholders on a single platform.
- Centre and the States were responsible for over 46% of the 3 crore plus cases pending before the Courts across the country.

- This was revealed through statistics provided by the Legal Information Management and Briefing System (LIMBS).
- About 46% of the cases pending in various courts across the country are those in which the Government is a litigant.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/06/Legal-Information-Management-and-Briefing-System-LIMBS.pdf>
- <http://www.insightsonindia.com/2018/06/18/secure-synopsis-15-june-2018/>

4. Eliminating torture

- Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person
- The Supreme Court had described torture as an instrument of “**human degradation**”.
- The **United Nations Convention Against Torture (CAT)** came into force in 1987 and India signed it in 1997.
- In recent years, there have been widespread appeals from civil society groups and international organisations for India to ratify the convention.
- **273rd Report of the Law Commission** has also recommended ratification and drafting a comprehensive legislation.
- **National Human Rights Commission (NHRC)** has strongly urged the government to recognise torture as a separate crime and codify the punishment in a separate penal law.
- **NHRC** had reported a significant number of torture cases involving police and security organisations.
- In **Raghubir Singh v. State of Haryana (1980)**, the Supreme Court said it was “deeply disturbed by the recurrence of police torture.”
- The recent example of a bus conductor being forced to confess to murdering a school child in Delhi is a pointer to the use of torture as an investigative tool among policemen.
- Constitutional protections under **Article 21 (right to life and liberty)** and **Article 20 (3) (right against self-incrimination)**.
- Recently United Kingdom refused to send a person to India to face trial, on the ground that there was “no effective system of protection from torture”.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/12/Eliminating-torture.pdf>

5. Freedom of press

- **Mahatma Gandhi** said that “The press is called the Fourth Estate. It is definitely a power but a misuse of power is criminal.”
- Pandit Jawaharlal Nehru called media ‘**the watchdog of our democracy**’. A free press is the cornerstone of a vibrant democracy.
- “*If it were left on me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.*” – **Thomas Jefferson**.
- According to the first **Press Commission** in India freedom of the Press refers

to hold opinions, to receive and to impart information through the printed word without any interference from any public authority.

- Freedom of the press has been treated as part of the **freedom of speech and expression** guaranteed by **Article 19(1)(a)** of the Constitution.
- Hence the expression 'freedom of the press' means the right to print and publish without any interference from the state or any public authority.
- Freedom of speech is not only guaranteed by the constitution but also by various international conventions such as **Universal Declaration of Human Rights, European Convention on Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights** etc.
- Every citizen of this country therefore has the right to air his or their views through the printing and or the electronic media subject to permissible restrictions imposed under **Article 19(2)** of the constitution.
- **Implementing the recommendations of TRAI** with regard to media ownership and investment disclosure norms would help in maintaining transparency.
- Need for **political will** in improving India's ranking on the Press Freedom Index as they do towards the World Bank's Doing Business Rankings.
- **Issues:**
 - The Press Council of India's report on "**Safety of Journalists**" states that 80 journalists have been killed in India since 1990, with conviction in only one case so far.
 - Intimidation from the state like in the case of NDTV shutdown for reporting during Pathankot attack, weak whistle-blower protection act, defamation suits, etc. have restricted the freedom of press.
 - **Corruption** – Paid news, advertorials and fake news.
 - **Competition for instant and quick news** and reporting without first checking the facts. For example: Reporting of GPS nano-chips in new 500 and 2000 notes.
- **Press freedom rankings:**
 - India slipped three places in the **2017 World Press Freedom Index** by Reporters without Borders at 136 out of 180 countries.
 - **Important findings:**
 - The report cites the **rise of Hindu nationalism** as a reason for the drop.
 - **Self-censorship** is growing in the mainstream media.
 - Journalists were increasingly targets of online smear campaigns and threats.
 - In the absence of any protective mechanism, coverage of sensitive regions continued to be "very difficult".
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/11/Challenges-to-Freedom-of-press.pdf>
- <http://www.insightsonindia.com/wp-content/uploads/2017/09/Issues-Plaguing-Press-in-India.pdf>
- <http://www.insightsonindia.com/wp-content/uploads/2017/07/Paid-News-in-India.pdf>

6. Special Courts to try Politicians in Criminal Cases

- The Supreme Court had asked the Centre to frame a scheme to set up 'special

courts' for the speedy trial of cases against MPs and MLAs.

- The cases must be decided within a year, to put an end to the inordinate delay in the prosecution of politicians.
- The **Election Commission** had told the SC that MPs and MLAs convicted in criminal cases must be banned from contesting elections for life.
- Regular courts were overburdened and it was not possible for them to fast-track cases against politicians.
- Special courts exist at present to try various offences including corruption, terrorism, sexual offences against children and drug trafficking.
- A disturbing 33 per cent of our nearly 4,860 MPs and MLAs have declared criminal cases against them.
- Twenty per cent of them, an analysis by the **Association for Democratic Reforms** shows, are serious criminal cases.
- However, creating a court for a class of people such as politicians is discriminatory as it **violates Right to Equality**.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/11/Special-Courts-to-try-Politicians-in-Criminal-Cases.pdf>

7. Criminalization of Politics

- Criminalization of politics means people with criminal backgrounds becoming politicians and elected representatives.
- Every third MP in the 16th Lok Sabha has criminal charges.
- **Vohra Committee** in 1993 and the **second ARC report**, 2008 recommend cleansing politics.
- **Reasons:**
 - The influence of **muscle power** in Indian politics has been a fact of life for a long time.
 - The elections to Parliament and State Legislatures are very expensive and it is a widely accepted fact that huge election expenditure is the root cause for **corruption** in India. Criminal activity can generate such large sums of untaxed funds.
 - **Weak Judicial System and Denial of Justice:** Legal delays make the accused die of old age before being convicted.
 - **Vote Bank.**
 - **Loop Holes in the functioning of Election.**
 - **Lack of governance.**
 - **Scarcity of state capacity.**
- **Judgements by Supreme Court:**
 - **Section 8 of the Representation of Peoples' Act, 1951** disqualifies a person convicted with a sentence of 2 or more years from contesting elections. But those under trial continued to be legible to contest elections. **Lily Thomas case (2013)** ended this advantage to criminals
 - In **Ramesh Dalal Vs Uoi 2005**, held that members of legislature shall also subject to disqualification if on the day of filling his nomination paper he stands convicted in the court of law.
 - Introduction of NOTA in PUCL vs Union of India, 2014.
 - In **Uoi vs ADR 2002** the Supreme court directed that all the contesting

candidates at the time of filling the nomination papers shall disclose their assets and liabilities, criminal conviction if any and pending cases in court of law so that voters can reject candidate with such background.

- In **Public Interest Foundation Vs Uoi 2014**, the Supreme Court directed the trial courts to complete the trial of cases involving the legislators within one year.

8. NITI Aayog's Three Year Action Agenda

- NITI Aayog's Three Year Action Agenda document is a comprehensive framework for policy changes to be implemented in the short term in India.
- Three Year Action Agenda forms part of a larger vision document which spans a seven-year strategy and a 15-year vision document.
- The action agenda has replaced the five-year plans of the erstwhile Planning Commission.
- It is the move from **plan to strategy**. Allocating a larger proportion of additional revenues to high-priority sectors.
- **Key Suggestions:**
 - Government needs to create **20 world-class universities**.
 - Provide **autonomy** for top colleges and universities.
 - Reform the regulatory system.
 - Establish system of **project-/researcher-specific grants**.
 - Increase focus on **vocational and profession-led education**.
 - The **National Skill Development Corporation (NSDC)** should target a placement rate of 80 per cent or more by 2020.
 - Modify the RTE Act to make it a '**right to learning**', instead of 'right to go to school'.
 - The **UGC Act, 1956** is in need of reform.
 - A national-level **Overseas Employment Promotion Agency** should be set up under the Ministry of External Affairs to consolidate all the promotional initiatives of the government.
 - **Quality improvement in school education** through improved governance.
 - To deal with small and fragmented landholdings, use **modern land-leasing law** that balances and protects the rights of the tenant and landowners.
 - Create **Coastal Employment Zones** to boost exports and generate high-productivity jobs.
- Reference: <http://www.insightsonindia.com/wp-content/uploads/2017/09/NITI-Aayog%E2%80%99s-Three-Year-Action-Agenda.pdf>

9. Governance and public service delivery in India

- Reference: <http://www.insightsonindia.com/wp-content/uploads/2017/08/Governance-and-public-service-delivery-in-India.pdf>

Issues Related to Civil Services

NOTES

1. Reforms in the civil services

- Off late, there have been several attempts by the government and Niti Ayog to bring about reforms in the civil service structure, design and recruitment process.
- The **second ARC** has recognised that inefficiency, corruption and delays have become, in public perception, the hallmarks of public administration in India.
- A **Hong Kong-based organisation** in its study in 2012, rated Indian bureaucrats high on the index of red tape among other bureaucracies of Asian countries (9.21 points out of 10). It revealed that working with the civil servants in India is a slow and painful process.
- Major reason for the dilution of bureaucratic excellence is the **poor encouragement the system provides for meritocracy.**
- **Baswan committee:**
 - The suggestion to remove the optional paper is being considered a major reform for which the Baswan Committee depended on the feedback from aspirants.
 - Most aspirants feel it would be a game-changer as there is a huge difference in the award of marks in the optionals, while some subjects have innate advantages.
- **Second ARC recommendations:**
 - Every government servant should undergo a mandatory training at the induction stage and also periodically during his/her career.
 - The composition of governing bodies of the national training institutions such as the LBSNAA, SVPNPA, IGNFA and also the State Administrative Training Institutes should be broadened by inducting eminent experts.
- **Yugandhar Committee, 2003** recommended the need for three mid-career training programmes in the 12th, 20th and 28th years of service.
- The **Committee on Civil Services Reforms Hota Committee, 2004** emphasised the use of information and communication technologies (ICT) to transform Government by making it more accessible, effective and accountable.

2. Lateral Entry into Civil Service

- The 21st century economy needs specialized skills and knowledge for policy-making and administration. The **first ARC had pointed out the need for specialization.**
- Lateral entry into finance ministry produced illustrious public servants like **Manmohan Singh, Montek Singh Ahluwalia and Vijay Kelkar.**
- NITI Ayog's experience with lateral entry has been extremely good.
- **Recommendations:**
 - In 2005, the **second Administrative Reforms Commission (ARC)** recommended lateral entry at both the Central and state levels.
 - **Surinder Nath Committee** in 2003 and **Hota Committee** in 2004.
 - The ARC highlights that **performance appraisals** may be adopted

from the armed forces, which could aid in weeding out non-performers.

- In the armed forces, only 3 per cent of officers make it to the grade of brigadier and above — and promotions are based entirely on merit, which fuels excellence.
- The **2016 BS Baswan committee report** pointed out that many large states suffer from a pronounced deficit of IAS officers, leading to their reluctance to depute officers for central posting.
- **International examples:**
 - Lateral entry has been adopted by Australia, Belgium, New Zealand, the UK, the Netherlands and the US.
 - In the **United States** for instance, presidents have appointed people to their cabinet who have vast private sector experience along with government service.
 - The quality and content of decision making in **China** has been upgraded substantially by bringing in higher levels of specialised expertise for different sectors of the economy
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/06/Lateral-Entry-into-Civil-Service.pdf>
- <http://www.insightsonindia.com/2018/06/16/secure-synopsis-13-june-2018/>
- <http://www.insightsonindia.com/2018/06/14/insights-into-editorial-government-opens-doors-to-lateral-entry/>

3. Police Reforms

- Under the Constitution, police is a subject governed by states.
- **Supreme Court directions on DGPs appointment:**
 - The Supreme Court ordered all states and Union territories to not appoint any police officer as acting Director General of Police (DGP).
 - The court directed all the states to send names of senior police officers to the UPSC for being considered as probable candidates to be appointed as DGPs.
 - The UPSC will prepare a list of three most suitable officers and the states will be free to appoint one of them as police chief.
- **Madras HC ruling on police weakly off:**
 - The Madras High Court has said that the state government should contemplate giving policemen a day off in a week like other government officials in order to spend time with their families.
 - The court suggested introducing an 8-hour, three-shift system for police personnel.
- **Concerns / Challenges:**
 - **Justice Thomas Committee (2010)** expressed its dismay over the total indifference to the issue of reforms in the functioning of police being exhibited by the states.
 - Crime, terrorism and external threats take a huge toll on economic growth and that these cost India 9 per cent of its GDP. (China lost only 4 per cent, Japan 3 per cent).
- **Way Forward:**

- Police should be a **SMART Police** - a police which should be strict and sensitive, modern and mobile, alert and accountable, reliable and responsible, tech-savvy and trained.
- **Evidence based policing** is gaining credibility day by day – Indian police force must be exposed to it.
- **Second ARC recommended** that the government should declare certain crimes as “federal” and entrust their investigation to a Central agency.

- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/07/Police-Reforms.pdf>

4. Separate All India Services Cadres for North-Eastern States

- The Arunachal Pradesh assembly had adopted a resolution to urge the Centre to form a separate cadre of All India Services for the north-eastern state, like most other states.
- Presently, Arunachal Pradesh comes under the All India Services (AIS) grouping of Arunachal, Goa, Mizoram and other union territories (AGMUT).
- Mizoram and Goa has time and again demanded a separate cadre.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/11/Separate-All-India-Services-Cadres-for-NorthEastern-States.pdf>

Constitutional / Statutory and other Regulatory Bodies

NOTES

1. Working of NHRC

- National Human Rights Commission of India (NHRC), is a statutory body established in 1993, under the provisions of **The Protection of Human Rights Act, 1993**.
- It is responsible for the protection and promotion of “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants”.
- **Problems with the Protection of Human Rights Act, 1993:**
 - NHRC cannot penalise authorities which do not implement its orders.
 - The Act does not extend to Jammu and Kashmir.
 - NHRC cannot investigate an event if the complaint was made more than one year after the incident.
 - Does not empower the NHRC to act when human rights violations through private parties take place.
 - Does not specify whether judges (members for the NHRC) should have a proven record of human rights activism or expertise or qualifications in the area.
 - There is no statutory requirement to include academics, representatives of NGOs or members of civil society that have contributed towards enhancement of human rights.
- In a recent case in the Supreme Court, the NHRC referred to itself as “**a toothless tiger**”.
- In most cases, it issues notices to the authorities and there is no record of follow-up.
- As non-judicial member positions are being filled by ex-bureaucrats, it is said that NHRC is more an extension of the government.
- The NHRC does not have fair and equal means of representation in terms of gender, religious minority groups and disabled populations.
- If the people of our country are deprived of human rights or cannot have them enforced, democracy itself would be in peril.
- Many social and human rights activists have the practical experience in human rights movement and can greatly contribute towards the working of the Commission.
- It is a good time to examine the functioning and effectiveness of the NHRC and identify the challenges relating to human rights and work towards tackling them.
- It is important that NHRC succeed in their efforts to promote and protect human rights.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/11/Working-of-NHRC.pdf>

2. National Commission for Minorities (NCM)

- **Facts for Mains:**
 - The Union Government set up the National Commission for Minorities (NCM) under the **National Commission for Minorities Act, 1992**.

- **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 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.”
- A **Parliamentary panel had recommended constitutional status** for the National Commission for Minorities (NCM), observing that the statutory body is almost ineffective to deal with cases of atrocities against minority communities.

3. National Commission for Backward Classes (NCBC)

- Parliament has passed **Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017** that seeks to provide **constitutional status to the National Commission for Backward Classes (NCBC)**.
- The Bill provides for granting of constitutional status to NCBC on par with National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCSTs).
- It empowers President to specify socially and educationally backward classes in various states and union territories in consultation with Governor of concerned state.
- The bill provides duties of NCBC to investigate and monitor safeguards provided to socially and educationally backward classes backward classes under Constitution and other laws.
- It also provides NCBC with **powers of civil court** while probing any complaint against notified socially and educationally backward classes.
- It would help the backward classes people fight atrocities against them and ensure quick justice to them.
- There was demand for a constitutional status to OBC Commission from the 1980s and Parliament had held discussions several times. It has been discussed by the Standing Committee Constitutional Provisions.

Constitutional Provisions

1. Secularism in India

- Our Constitution acquire its secular character from the words in the Preamble, collective reading of many of its provisions, particularly the various fundamental rights.
- India does not have an official state religion.
- **Constitutional Precepts:**
 - **Article 14**--equality before law;
 - **Article 15**--prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
 - Discrimination in public employment on grounds of religion is prohibited by **Article 16**.
 - The provisions relating to “Right of Freedom of Religion” of the **Articles 25 to 28** make India a secular state.
 - The **42nd amendment** of the constitution inserted the term “secular” in the preamble of the constitution.
 - The constitution, in the preamble professes to secure to all its citizen’s liberty of belief, faith and worship.
 - **Article 29** of the Indian constitution assures that the state shall not impose on a minority community any culture other than its own.
 - **Article 30** grants the minority community, the right to establish and administer their own educational institution.
 - **Article 44:** Uniform civil code for the citizens.
- In **S.R.Bommai case**, Supreme Court has ruled that secularism forms the **basic structure of the Indian Constitution**.
- **Views of our founding fathers of our constitution:**
 - **Gandhiji’s views-**
 - “Religion is a personal matter which should have no place in politics“- in 1942.
 - “Religion is the personal affair of each individual. It must not be mixed up with politics or national affairs” – in 1947
 - “I do not except of any dreams to develop one religion i.e. to be wholly Hindu or wholly Christian or wholly Mussalman, but I want it to be wholly tolerant, with its religions working side by side with one another”
 - **Dr. B.R Ambedkar’s view-**
 - His main concern was to bring heterogeneous communities under one roof, in a nation divided on caste lines.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2018/06/Secularism-in-India.pdf>

2. Expanding the scope of Fundamental Rights

- Since independence, the scope of Fundamental Rights has expanded greatly to include several other rights from time to time.
- **Right to life:**
 - The Supreme Court of India has included ‘**right to food**’ in the ‘right to life’ section (i.e. Article 21).

- Supreme Court has made a signal contribution by using article 21 towards the improvement of the **environment**.
- In the case of **Maneka Gandhi vs. Union of India** the court held that right to life embodied in Article 21 of the Indian Constitution, is not merely a physical right but it also includes within its ambit, the right to live with human dignity.
- **Right to privacy :- Puttuswamy judgment:**
 - **Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors** judgement, the Supreme Court held that the **right to privacy** is protected as a fundamental constitutional right under Articles 14, 19 and 21 of the Constitution of India.
- **Article 19:**
 - In **Romesh Thappar v State of Madras (AIR 1950 SC 124)**, the Supreme Court held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication.
 - The Supreme Court that the **right of a citizen to exhibit films** is a part of the fundamental right of speech and expression guaranteed by **Article 19(1)(a)** of the Constitution.
- **Article 23:**
 - **Giving a very expansive interpretation to article 23**, the Supreme Court has ruled that payment of wages less than the minimum wages amounts to forced labour.
- **Gender rights:**
 - **Vishaka v State of Rajasthan** the Supreme Court declared sexual harassment of a working woman at her place of work as amounting to violation of rights of gender equality and right to life and liberty, which is a clear violation of articles 14, 15 and 21.

3. Negative and Positive Rights

- Rights incorporated in the Indian Constitution are of two types:- Negative and Positive.
- **Negative rights:**
 - **Negative rights** involve freedom from governmental (or private) *coercion* that would prevent an individual from doing what she is otherwise minded to do.
 - They are limitations on the action of the state, the occurrence of which would have curbed the freedom that an individual/community enjoys.
 - For example: Article 14 states that State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. In this article constitution has put an obligation over state to ensure equality before law and equal protection of law. Thus, it is negative in nature.
 - Likewise **Article 17 abolishing untouchability, removes a social evil**. It hardly bestows a special privilege on the untouchables.
- **Positive rights:**
 - **Positive rights** requires the government to take action in order to

provide an individual something she cannot get for herself.

- Positive rights are direct action by the state which improves the ability of the individual/community to live the life they desire.
- For example, **Right to religious freedom (Article 25)** and **cultural and educational right (Article 28–30)**. As these rights confer certain special provision for protection and uplift of minorities. Thus, positive rights.
- Article 21 of the Indian constitution in its grammatical form, appears to be negative, but, in reality, **it has been given a positive effect by judicial interpretation**. The right is a fundamental right, enforceable against the state with several positive obligations.

4. Should States have their own flags?

- The Karnataka government had unveiled the State flag (*nada dhwaja*) for Karnataka. If approved by the Centre, Karnataka will be the second State to have a flag after Jammu and Kashmir.
- Supreme Court said that there is no prohibition in the Constitution for the State to have its own flag. However, the manner in which the state flag is hoisted should not dishonour the national flag.
- Under the Constitution, a flag is not enumerated in the Seventh Schedule. However, **Article 51A** rules that every citizen shall abide by the Constitution and respect its ideals and institutions, the national flag, and the national anthem.
- The **Emblems and Names (Prevention of Improper Use) Act, 1950** and The **Prevention of Insults to National Honour Act, 1971** regulates the hoisting of the national flag.
- Under the 1971 Act, insulting the national flag by burning it, mutilating it, defacing it, is prohibited.
- Even the **Flag Code of India, 2002** does not impose prohibitions on a State flag.
- States in both **Germany and USA** have their own flags without any danger of their imminent disintegration.
- Reference: <http://www.insightsonindia.com/2018/02/09/insights-editorial-states-flags/>

Miscellaneous

NOTES

1. Supreme Court on Khap Panchayats

- Khap panchayats are caste or community organisations in rural parts of western Uttar Pradesh, Haryana, Rajasthan and certain other parts of India.
- A petition was filed in the Supreme Court by NGO Shakti Vahini against khap panchayats, seeking directions to the centre and state governments for preventing honour crimes.
- There were **291 honour killings** in India between 2014 and 2016, as per data from the **National Crime Records Bureau**.
- Sometimes, **forced marriages** are done by pressurizing one of the partners who might be an adult or minor.
- The Supreme Court has ruled that Khap panchayats has no right to interfere in any marriage.
- The Supreme Court declared it was illegal for parents or khap panchayats to interfere in decisions of adult men and women of different castes to marry.
- The SC also mentioned that solution for consanguineous marriages must be derived from counselling such couples rather than encouraging hostility against them.
- **Khap Panchayat And Indian Judiciary:**
 - In *Laxmi Kahhwaha vs. The State of Rajasthan* the Rajasthan High Court held that the Caste Panchayats have no jurisdiction whatsoever and cannot impose fine or social boycott on anyone.
 - In *Armugam Servai vs. State of Tamil Nadu*, Supreme Court said that Khaps are illegal and must be rooted / stamped out.
- **Executive and Legislative Actions**
 - Two bills were suggested and drafted by law commission towards banning / criminalizing *honour killings*.
 - In 2012, the Law Commission had drafted a bill titled "**Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011**".
 - Another such bill drafted by law commission was "**Endangerment of life and Liberty (Protection, Prosecution and other measures) Act, 2011**".
 - The two bills are just proposals and so far no concrete legislative reform has been done to curb the clout of Khaps.
 - **The Prevention of Crimes in the name of Honour and Tradition and Prohibition of Interference with the Freedom of Matrimonial Alliances Bill, 2017** - Private member bill to prevent crimes in name of honour was introduced in Rajya Sabha.
- Reference: <http://www.insightsonindia.com/wp-content/uploads/2018/02/Supreme-Court-on-Khap-Panchayats.pdf>

2. Challenges faced by Indian Democracy

- Reference- <http://www.insightsonindia.com/wp-content/uploads/2018/06/Challenges-faced-by-Indian-Democracy.pdf>

3. Subnationalism

- Subnationalism is the policy of asserting the interest of one's own state/region/province, as separate from the interest of the nation and the common interest of all other states/regions/provinces.
- Along with the nationalism, India is also witnessing the re-emergence of subnationalism.
- Example: a separate State flag for Karnataka, Protest against the imposition of Hindi on the signboards of Metro stations in Bengaluru.
- **Instances and Constitutional Provisions:**
 - Demands for language-based provinces during the freedom movement.
 - **States Reorganisation Act, 1956** providing for linguistic States.
 - The **Official Languages Act, 1963** which provided for the continued use of English for official purposes along with Hindi.
 - The first-past-the-post electoral system tends to favour ethno cultural majorities.
 - There are certain group-based fundamental rights provided in the Constitution, such as in **Articles 29 and 30**.
 - **Part XXI of the Constitution** has a set of special provisions for certain States and sub-State regions
 - **Fifth and Sixth Schedules** give special measures for the administration of areas with high Scheduled Tribe populations.
- **Advantages:**
 - Greater the level of subnational solidarity, higher will be the State's commitment to social welfare. Kerala's success is the most striking example.
 - It gives space for expressing the linguistic and cultural rights in a plural society.
 - In certain cases it may represent one of the most disadvantaged sections of the society and thus opens new avenues for their socio cultural upliftment.
 - Thus, sub-nationalism is nothing but the same old concept of promoting self-identity and solidarity.
 - It also adds to the **competitive federalism** which in a way leads to socio economic development of the states.
- **Issues:**
 - High levels of subnationalism have spawned violent ethnic conflict in many states
 - When Telangana was created in 2014, there were demands raised to bifurcate Maharashtra and Uttar Pradesh.
 - Gujarat and Maharashtra have witnessed ethnic riots unleashed against their religious minorities and immigrants, respectively.
 - Assam has periodic violence targeting alleged Bangladeshi settlers.
 - The 'othering' of those who do not form an integral part of the subnation warn us of the dangers of subnationalism.
 - Sub nationalism may lead to **fragmented political group** that represents particular group rather than overall population which threatens the very basic principles of democracy.

- Reference: <http://www.insightsonindia.com/wp-content/uploads/2017/09/Subnationalism.pdf>

4. Role of Civil Society in a Democracy

- Civil society refers to formal as well as informal entities and includes the private sector, the media, NGOs, professional associations and informal groups of people from different walks of life.
- Civil society forms the backbone of democracy.
- Civil society derives its strength from the **Gandhian tradition of volunteerism**, but today, it expresses itself in many different forms of activism.
- **Article 19** of the constitution provides for the democratic right to protest as part of the freedom of expression
- In India, by the late 1970s, the decline of all institutions gave rise to several mass-based political movements and grassroots activism.
- The anti-caste movement, the struggle for gender justice, the movement for civil liberties, for a sound environment, and against mega development projects that have displaced thousands of poor tribals and hill dwellers, the movement against child labour, for the right to information, for shelter, for primary education, and for food security have mobilised in civil society.
- The filing of Public Interest Litigations and the judicial activism played a role in strengthening of civil society.
- A number of NGO's like Childline India Foundation, World Vision, Arambh India have played important role in raising awareness on child sexual abuse.
- Other areas include awareness about environmental protection, educating citizens about the evils of corruption etc.
- Civil society's functional contribution to good governance:
 - **Watchdog** — against violation of human rights and governing deficiencies.
 - **Advocate** — of the weaker sections' point of view.
 - **Agitator** — on behalf of aggrieved citizens.
 - **Educator** — of citizens on their rights, entitlements and responsibilities and the government about the pulse of the people.
 - **Service provider** — to areas and people not reached by official efforts or as government's agent.
 - **Mobiliser** — of public opinion for or against a programme or policy.
 - The ways include: Right to Information Act, Consumer Protection Act, Citizens Charters, Whistleblower protection, e-governance, Democratic Decentralisation, Public Interest Litigation, etc.
- In November 2016, the Union Ministry of Home Affairs rejected the licence renewal applications of 25 NGO. In many instances, NGOs such as Greenpeace have been projected as being anti-national.
- Legislation on the lines of the US False Claims Act should be enacted, providing for citizens and civil society groups to seek legal relief against fraudulent claims against the government.
- A democratic state needs a democratic civil society and a democratic civil society also needs a democratic state. They mutually reinforce each other.
- Reference: <http://www.insightsonindia.com/wp->

<content/uploads/2017/07/Role-of-Civil-Society-in-a-Democracy.pdf>

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5. Student Activism and Politics

- Student activism is work by students to cause political, environmental, economic, or social change.
- Student Activism is the **bedrock of liberal democracies** and represent the collective interests of various demographics, in this case students.
- There has been a spurt in incidences of violence, strikes, protest movements in our educational institutions like Jawaharlal Nehru University, Film and Television Institute of India, Hyderabad University etc. albeit for different reasons.
- **Article 19** of the Indian Constitution gives all Indian citizens the right to freedom of speech and expression, the right to assemble peacefully and the right to form associations.
- Therefore, as citizens of this country who have full voting rights, students have the right to form associations and unions.
- Student unions have constructively intervened to **resist the privatisation of education**, without which millions of underprivileged young Indians would be in the dark.
- Student activism has kept the **spirit of questioning alive**, and also fights for inclusion.
- **Greek philosopher Plato** emphasised the need for political consciousness among the youth.
- Implementation of the **Lyngdoh committee** recommendations on students' union elections which is accepted by Supreme Court and academic community.
- Democracies need to create an ecosystem where youth can articulate their concerns, fight for their rights, and be groomed as national leaders.
- Only if such advocacy is peaceful and positive, addressing injustices, empowering the disempowered, and contributing to nation building, it be encouraged.
- **Reference:** <http://www.insightsonindia.com/wp-content/uploads/2017/08/Student-Activism-and-Politics-1.pdf>

6. Passive Euthanasia legalised by Supreme Court

- The Supreme Court delivered a landmark judgment allowing **“living will”** where, an adult in his conscious mind is permitted to refuse medical treatment or voluntarily decide not to take medical treatment to embrace death in a natural way.
- In Its judgment, the court laid down a set of guidelines for “living will” and defined passive euthanasia and euthanasia as well.
- Centre opposed to permitting people to make a ‘living will’ as it could be misused.
- **Passive Euthanasia is** When doctors don't provide, or remove life sustaining treatment to **patients in a permanent vegetative state**.
- **Fundamental right to life and dignity** under **Article 21** of Constitution includes right to die with dignity. Dignity is lost if man is allowed or forced to undergo pain and suffering because of unwarranted medical support.

- It distinguished passive euthanasia from suicide and active euthanasia.
- It called passive euthanasia as mere acceleration of inevitable conclusion. It concluded that **Active euthanasia is unlawful**.
- Passive Euthanasia has been advocated by the **Law Commission of India in the 196th Report**.
- In 2011, the Supreme Court in **Aruna Shanbaug case**, issued a set of broad guidelines legalizing passive euthanasia in India.
- The **Law Commission** in its **241st report** came out in favour of allowing withdrawal of life support for certain categories of people — like those in persistent vegetative state (PVS), in irreversible coma, or of unsound mind, who lack the mental faculties to take decisions.

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