



INSIGHTSIAS

SIMPLIFYING IAS EXAM PREPARATION

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POLITY

MARCH 2020 – AUGUST 2020

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Constitutional / Non-Constitutional / Statutory / Regulatory / Various Quasi-Judicial Bodies

1. State Election Commission

- The **Constitution of India** vests in the State Election Commission, consisting of a State Election Commissioner, the **superintendence, direction and control of the preparation of electoral rolls** for, and the conduct of all elections to the Panchayats and the Municipalities (**Articles 243K, 243ZA**).
- The **State Election Commissioner is appointed by the Governor**.
- As per **article 243(C3) the Governor**, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the SEC by clause (1).

What was the need for State Election Commissions?

- Under the Constitution, **establishment of local self-government institutions is the responsibility of the states** (entry 5, List II, Seventh Schedule).
- The Constitution was **amended in 1992 to define the term (five years) for these institutions**. Simultaneously, another provision was made for setting up a constitutional authority, the SEC, on the lines of the EC to conduct regular panchayat elections.

The ECI and SECs have a similar mandate; do they also have similar powers?

- The provisions of **Article 243K** of the Constitution, which provides for setting up of SECs, are almost identical to those of **Article 324** related to the EC. In other words, the SECs enjoy the same status as the EC.
- In 2006, **the Supreme Court emphasised the two constitutional authorities enjoy the same powers**. In **Kishan Singh Tomar vs Municipal Corporation of the City of Ahmedabad**, the Supreme Court directed that **state governments should abide by orders of the SECs during the conduct of the panchayat and municipal elections, just like they follow the instructions of the EC during Assembly and Parliament polls**.

How far can courts intervene?

- Courts cannot interfere in the conduct of polls to local bodies and self-government institutions once the electoral process has been set in motion.
- **Article 243-O** of the Constitution bars interference in poll matters set in motion by the SECs; **Article 329** bars interference in such matters set in motion by the EC.
- Only after the polls are over can the SECs' decisions or conduct be questioned through an election petition.
- These powers enjoyed by the SECs are the same as those by the EC.

Are the SECs as independent as the EC?

Although state election commissioners are appointed by the state governors and **can only be removed by impeachment**, in the last two decades many have struggled to assert their independence.

2. National Interlinking of Rivers Authority (NIRA)

The Central government is working on the establishment of an exclusive body to implement projects for linking rivers- To be called **the National Interlinking of Rivers Authority (NIRA)**.

Functions of NIRA:

- It is expected to take up both inter-State and intra-State projects.
- It will also make arrangements for generating funds, internally and externally.

About National River Linking Project (NRLP):

- The NRLP formally known as the **National Perspective Plan**, envisages the transfer of water from water 'surplus' basins to water 'deficit' basins, through inter-basin water transfer projects.
- **Significance:** It is designed to ease water shortages in western and southern India while mitigating the impacts of recurrent floods in the eastern parts of the Ganga basin.

ILR Projects in India:

- As of now, six ILR projects — the Ken-Betwa, Damanganga- Pinjal, Par-Tapi-Narmada, Manas-Sankosh-Teesta-Ganga, Mahanadi-Godavari and Godavari-Cauvery (Grand Anicut) — have been under examination of the authorities.
- With regard to the peninsular rivers, the Centre has chosen to focus on the **Godavari-Cauvery link than the earlier proposal to link the Mahanadi-Godavari-Krishna-Pennar-Cauvery rivers.**

3. Commission to Examine Sub Categorization of other Backward Classes

Cabinet approves Extension of term of the commission constituted under **Article 340** of the constitution to examine the issue of **Sub-categorization within other Backward Classes in the Central List.**

What is Article 340?

- **Article 340 of the Indian Constitution** lays down conditions for the appointment of a Commission to investigate the conditions of the backward classes.
- The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India.

Constitutional basis:

- **Article 14 of the Constitution guarantees equality before the law.** That means **un-equals cannot be treated equally.** Measures are required to be taken for the upliftment of un-equals to bring them on par with the advanced classes.
- **Article 16 (4)** provides that the State can make any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services under the State.

Sub- categorisation:

- **National Commission for Backward Classes (NCBC)** proposed the sub-categorisation of Other Backward Classes (OBCs) back in 2015.
- In October 2017, **President Ram Nath Kovind**, in exercise of the powers conferred by Article 340 of the Constitution, **appointed a commission to examine the issue of sub-categorisation of OBCs**, chaired by **retired Justice G. Rohini**, to ensure social justice in an efficient manner by prioritising the Extremely Backward Classes (EBCs).

4. National Crisis Management Committee (NCMC)

For effective implementation of relief measures in the wake of natural calamities, the Government of India has set up a Standing National Crisis Management Committee with **Cabinet Secretary as Chairman.**

Key functions:

- Oversee the Command, Control and Coordination of the disaster response.
- Give direction to the Crisis Management Group (CMG) as deemed necessary.

5. National Intelligence Grid (NATGRID)

The **National Intelligence Grid (NATGRID)** has signed a memorandum of understanding with the **National Crime Records Bureau (NCRB)** to access the centralised online database on FIRs and stolen vehicles.

What is NATGRID?

First **conceptualised in 2009**, NATGRID seeks to become the one-stop destination for security and intelligence agencies to access database related to immigration entry and exit, banking and telephone details of a suspect on a “secured platform”.

NATGRID came into existence after the 2008 Mumbai attacks.
NATGRID is usually headed by an Indian Police Service (IPS) officer.

Who can access the data?

It will be a medium for at least 10 Central agencies such as the Intelligence Bureau (IB) and the Research and Analysis Wing (R&AW) to access data on a secured platform.
The data will be procured by NATGRID from 21 providing organisations such as the telecom, tax records, bank, immigration etc.

6. Delhi Urban Art Commission (DUAC)

- DUAC is a **statutory body** formed by an Act of Parliament in 1973.
- DUAC is meant to advise the Centre on matters of preservation, development and maintenance of the aesthetic quality of the capital’s urban and environmental design.
- It also provides advice and guidance to any local body.
- **DUAC plays a three fold role** – a policy advisor to the Government of India, a regulatory body and a think tank.

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Executive

1. Role of LG of Puducherry

The **Government of Union Territories Act, 1963** provides for a **Legislative Assembly of Pondicherry (as Puducherry was then called)**, with a **Council of Ministers to govern the “Union Territory of Pondicherry”**.

The same Act says that **the UT will be administered by the President of India through an Administrator (LG)**.

- **Section 44 of the Act**, says **the Council of Ministers headed by a Chief Minister will “aid and advise the Administrator in the exercise of his functions** in relation to matters with respect to which the Legislative Assembly of the Union Territory has power to make laws”.
- The same clause also allows **the LG to “act in his discretion” in the matter of lawmaking**, even though the Council of Ministers has the task of aiding and advising him.

What happens when there is a difference of opinion?

- **In case of a difference of opinion between the LG and his Ministers on any matter**, the Administrator is **bound to refer it to the President** for a decision and **act according to the decision given by the President**.
- However, the Administrator can also claim that **the matter is urgent, and take immediate action as he deems necessary**.

When prior sanction of the Administrator is required?

- Under **Section 22 of the Act**, prior sanction of the Administrator is required for certain legislative proposals.
- These include Bills or amendments that the Council of Ministers intends to move in the Legislative Assembly, and which deal with the **“constitution and organisation of the court of the Judicial Commissioner”, and “jurisdiction and powers of the court of the Judicial Commissioner with respect to any of the matters in the State List or the Concurrent List”**.
- It is also obligatory on the part of the UT government to seek the “recommendation” of the LG before moving a **Bill or an amendment to provide for “the imposition, abolition, remission, alteration or regulation of any tax”, “the amendment of the law with respect to any financial obligations undertaken or to be undertaken”, and anything that has to do with the Consolidated Fund of the UT**.

Assent of LG?

Once the Assembly has passed a Bill, the LG can either **grant or withhold his assent; or reserve it for the consideration of the President**. He can also send it back to the Assembly for **reconsideration**.

2. Delhi’s decision to limit health services

Delhi Lt Governor Anil Baijal had issued **two orders that struck down key announcements made by the Delhi government**. These include:

1. To reserve beds in private and Delhi government hospitals for residents of Delhi.
2. To limit the scope of Covid-19 testing.

Powers of Lt. Governor to issue such orders:

He is empowered to issue such orders in his capacity as **chairperson of the Delhi Disaster Management Authority (DDMA)**.

These powers have been conferred under **Section 18(3) read with Section 18(2)(d) of the Disaster Management Act, 2005**.

3. Governor's powers and role in the state legislature's affairs

The Constitution's **Articles 163 and 174** are relevant in the context of the governor's powers to convene the state assembly.

1. **Article 163** says there shall be a CM-led council of ministers to aid and advise the governor except when he is required, under the Constitution, to exercise functions in his/her discretion.
2. **Article 174** says the governor "shall from time to time summon the House of the state...as he thinks fit but six months shall not intervene between its last sitting in one session and the date appointed for first sitting in the next session".

What has the Supreme Court said in this regard?

The **2016 Supreme Court judgment in the Nabam Rebia v Deputy Speaker** held that the governor's power to summon, prorogue and dissolve the House **should be only on the advice of the council of ministers**. And not at his own.

- The judgment, however, also held that **if the governor has reasons to believe the council of ministers has lost the confidence of the House, he can ask the chief minister to prove the majority**.

Conclusion:

The **Governor has no discretionary powers in summoning a session of the Assembly**, and he or she is bound to **act according to the aid and advice of the CM and the Council of Ministers**. But, the Governor **can require the CM and the Council of Ministers to seek a trust vote** if he or she has reasons to believe that they have lost the confidence of the Assembly.



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Parliament / State Legislatures / Union Territories / Local Self-Government

1. How an MP is suspended from Lok Sabha by the Speaker?

It is the role and duty of the Speaker of Lok Sabha to maintain order so that the House can function smoothly.

The Speaker is empowered to force a Member to withdraw from the House (for the remaining part of the day), or to place him/her under suspension.

What are the rules under which the Speaker acts?

Rule Number 373 of the Rules of Procedure and Conduct of Business says: “The Speaker, if in the opinion that the **conduct of any Member is grossly disorderly**, may **direct such Member to withdraw immediately from the House**, and any Member so ordered to withdraw shall do so forthwith and shall remain absent during the remainder of the day’s sitting.”

To deal with more recalcitrant Members, the Speaker may take recourse to **Rules 374 and 374A**.

Rule 374 says:

“(1) The Speaker may, if deems it necessary, name a Member who disregards the authority of the Chair or abuses the rules of the House by persistently and wilfully obstructing the business thereof.

“(2) If a Member is so named by the Speaker, the Speaker shall, on a motion being made forthwith put the question that the Member (naming such Member) be suspended from the service of the House for a period not exceeding the remainder of the session: Provided that the House may, at any time, on a motion being made, resolve that such suspension be terminated.

“(3) A member suspended under this rule shall forthwith withdraw from the precincts of the House.”

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What is the procedure for revocation of a Member’s suspension?

While the Speaker is empowered to place a Member under suspension, **the authority for revocation of this order is not vested in her. It is for the House, if it so desires, to resolve on a motion to revoke the suspension.**

What happens in Rajya Sabha?

Like the Speaker in Lok Sabha, the **Chairman of the Rajya Sabha** is empowered under **Rule Number 255 of its Rule Book** to “direct any Member whose conduct is in his opinion grossly disorderly to withdraw immediately” from the House.

1. “Any Member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day’s meeting.”
2. The Chairman may “name a Member who disregards the authority of the Chair or abuses the rules of the Council by persistently and wilfully obstructing” business.
3. In such a situation, the House may adopt a motion suspending the Member from the service of the House for a period not exceeding the remainder of the session.
4. The House may, however, by another motion, terminate the suspension.
5. Unlike the Speaker, however, the Rajya Sabha Chairman does not have the power to suspend a Member.

2. Appropriation Bill

- The Lok Sabha had passed **the Appropriation Bill 2020-21** that empowers the government to draw over ₹110 lakh crore from **the Consolidated Fund of India**.
- The Appropriation Bill was passed by a **voice vote**.
- Following this, Speaker Om Birla applied “**guillotine**” — the Parliamentary tool to club all other pending subjects for discussion.

What is Appropriation Bill?

Appropriation Bill is a **money bill** that allows the government to withdraw funds from the Consolidated Fund of India to meet its expenses during the course of a financial year.

- As per **article 114 of the Constitution**, the government can withdraw money from the Consolidated Fund only after receiving approval from Parliament.

Procedure followed:

1. The government introduces **the Appropriation Bill in the lower house of Parliament** after discussions on Budget proposals and Voting on Demand for Grants.
2. The Appropriation Bill is **first passed by the Lok Sabha and then sent to the Rajya Sabha**.
3. The **Rajya Sabha has the power to recommend any amendments in this Bill**. However, it is **the prerogative of the Lok Sabha to either accept or reject** the recommendations made by the upper house of Parliament.
4. The unique feature of the Appropriation Bill is **its automatic repeal clause**, whereby the Act gets repealed by itself after it meets its statutory purpose.

What happens when the bill is defeated?

The defeat of an Appropriation Bill (and also the Finance Bill) in a parliamentary vote would necessitate resignation of a government or a general election. This has never happened in India till date, though.

Scope of discussion:

- The scope of discussion is limited to **matters of public importance or administrative policy implied in the grants covered by the Bill** and which have not already been raised during the discussion on demands for grants.
- The Speaker may require members desiring to take part in the discussion to give advance intimation of the specific points they intend to raise and may withhold permission for raising such of the points as in his opinion appear to be repetition of the matters discussed on a demand for grant.

Amendments:

- No amendment can be proposed to an Appropriation Bill which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the Speaker as to whether such an amendment is admissible is final.
- An amendment to an Appropriation Bill for omission of a demand voted by the House is out of order.
- In other respects, **the procedure in respect of an Appropriation Bill is the same as in respect of other Money Bills**.

3. Finance Bill

As per **Article 110 of the Constitution of India**, the **Finance Bill is a Money Bill**.

- This Bill **encompasses all amendments required in various laws pertaining to tax**, in accordance with the tax proposals made in the Union Budget.
- The **Finance Bill, as a Money Bill, needs to be passed by the Lok Sabha** — the lower house of the Parliament.
- Post the Lok Sabha's approval, the Finance Bill becomes **Finance Act**.

Difference between a Money Bill and the Finance Bill:

1. A Money Bill has to be introduced in the Lok Sabha as per Section 110 of the Constitution. Then, it is transmitted to the Rajya Sabha for its recommendations. The Rajya Sabha has to

return the Bill with recommendations in 14 days. However, the Lok Sabha can reject all or some of the recommendations.

- In the case of a Finance Bill, Article 117 of the Constitution categorically lays down that a Bill pertaining to sub-clauses (a) to (f) of clause (1) shall not be introduced or moved except with the President's recommendation. Also, a Bill that makes such provisions shall not be introduced in the Rajya Sabha.

Who decides the Bill is a Finance Bill?

The Speaker of the Lok Sabha is authorised to decide whether the Bill is a Money Bill or not. Also, the Speaker's decision shall be deemed to be final.

Why Finance Bill is needed?

The Union Budget proposes many tax changes for the upcoming financial year. These proposed changes pertain to several existing laws dealing with various taxes in the country.

- The Finance Bill seeks to insert amendments into all those laws concerned, without having to bring out a separate amendment law for each of those Acts.
- For instance, a Union Budget's proposed tax changes may require amending the various sections of the Income Tax law, Stamp Act, Money Laundering law, etc. The Finance Bill overrides and makes changes in the existing laws wherever required.

4. Adjournment, Prorogation and Dissolution of the Lok Sabha

- An **adjournment** terminates the sitting of the House which meets again at the time appointed for the next sitting. An adjournment also signifies brief break of the sitting of the House which re-assembles at the appointed time on the same day.
- Prorogation** means the termination of a session of the House by an order made by the President under article 85(2)(a) of the Constitution. Usually, prorogation follows the adjournment of the sitting of the House sine die.
- Dissolution** of the House means the end of the life of the Lok Sabha either by an order made by the President under article 85 (2) (b) of the Constitution or on the expiration of the period of five years from the date appointed for its first meeting.

5. Cantonment Board

A Cantonment Board is a **body corporate under the Cantonments Act, 2006** having perpetual succession.

As per **Section 10(2) of the Act**, every Cantonment Board is deemed to be a municipality under clause (e) of article 243P of the Constitution for the purpose of:

- Receiving grants and allocations; or
- Implementing the Central Government schemes of social sector, public health, hygiene, safety, water supply, sanitation, urban renewal and education.

How are they administered?

The overall municipal administration of the Cantt areas comes under Cantonment Boards which are democratic bodies.

Difference between Cantonments and Military Stations:

Cantonments are different from the Military Stations in that the Military Stations are purely meant for the use and accommodation of the armed forces and these are established under an executive order whereas the Cantonments are areas which comprise of both military and civil population.

6. e-GramSwaraj Portal and Mobile App

Launched by the **Ministry of Panchayati Raj**.

It will provide the Gram Panchayats with a **single interface to prepare and implement their Gram Panchayat Development Plan (GPDP)**.

The portal will ensure real time monitoring and accountability.

7. Strength of the State Legislative Assembly

Article 164 (1A) of the Constitution prescribed that the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State **shall not exceed 15% of the total number of members of the Legislative Assembly of that State**.

- This provision was introduced through **the 91st Constitution (Amendment) Act, 2003**.

Exceptions: Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve.

Article 163: Council of Ministers to aid and advise Governor:

1. There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.
2. If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
3. The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164 (2) provides that the Council of Ministers shall be collectively responsible to the State Legislative Assembly.

Article 164 (4) provides that a person can remain as Minister without being a member of the state legislature for a period of six consecutive months.

8. MPs facing criminal cases

Efforts by Supreme Court in this regard:

1. **Public Interest Foundation v. Union of India (2018):** mandatory for political parties to declare and publish all criminal cases pending against their candidates.
2. **Association for Democratic Reforms (ADR) v. Union of Indian (2002):** Obligatory for all candidates to file an affidavit before the returning officer, disclosing criminal cases pending against them.
3. **PUCL v. Union of India (2013):** Upheld the constitutional right of citizens to cast a negative vote in elections.
4. **Lily Thomas v. Union of India (2013):** Struck down as unconstitutional **Section 8(4)** of the Representation of the People Act that allowed convicted lawmakers a three-month period for filing appeals to the higher court and to get a stay on the conviction and sentence.
5. **Public Interest Foundation and Ors. v Union of India (2014):** Directed all subordinate courts to decide on cases involving legislators within a year, or give reasons for not doing so to the chief justice of the high court.
6. In **February 2020**, the court had asked the political parties to state “The reasons for such selection, as also as to why other individuals without criminal antecedents could not be selected as candidates.” If a political party fails to comply, it would be in contempt of this court’s orders.

9. Vote of confidence, or a trust vote

Trust vote:

A **confidence motion, or a vote of confidence, or a trust vote**, is sought by the government in power on the floor of the House.

- It enables the elected representatives to determine if the Council of Ministers commanded the confidence of the House.

Floor test:

Floor test is a term used for the test of the majority.

- If there are doubts against the chief minister, the governor can ask him to prove his majority in the House.
- In case of a coalition government, the chief minister may be asked to move a vote of confidence and win a majority.

What happens in the absence of majority?

In the absence of a clear majority, when there is more than one individual staking claim to form the government, the governor may call for a special session to see who has the majority to form the government.

Some legislators may be absent or choose not to vote. The numbers are then considered based only on those MLAs who were present to vote.

10. No-confidence motion

A no-confidence motion, or vote of no-confidence, or a no-trust vote, can be sought by any House member to express that they no longer have confidence in the government.

A no-confidence motion is a parliamentary motion which is moved in the Lok Sabha against the entire council of ministers, stating that **they are no longer deemed fit to hold positions of responsibility** due to their inadequacy in some respect or their failure to carry out their obligations. **No prior reason needs to be stated for its adoption in the Lok Sabha.**

Procedure to move a “No Confidence Motion”:

A motion of “No Confidence Motion” against the Government **can be introduced only in the Lok Sabha under rule 198.**

The **Constitution of India does not mention** about either a Confidence or a No Confidence Motion. Although, **Article 75** does specify that the Council of Ministers shall be collectively responsible to the Lok Sabha.

- A motion of No Confidence **can be admitted when a minimum of 50 members, support the motion in the house.**
- The Speaker then, once satisfied that the motion is in order, will ask the House if the motion can be adopted.
- If the motion is passed in the house, **the Government is bound to vacate the office.**

A no-confidence motion **needs a majority vote to pass the House.**

- If individuals or parties abstain from voting, those numbers will be removed from the overall strength of the House and then the majority will be taken into account.

Judiciary / Important Observations made by the Judiciary

1. The right of an accused to be defended

- Recently, the Karnataka High Court observed that it is **unethical and illegal for lawyers to pass resolutions against representing accused in court**. This was after local bar associations had objected to four students arrested for sedition being defended in court.
- Various bar associations across the country have passed such resolutions over the years.
- There is **Supreme Court ruling that these are “against all norms of the Constitution, the statute and professional ethics”**.

What does the Constitution say about the right of an accused to be defended?

- **Article 22(1)** gives the fundamental right to every person not to be denied the right to be defended by a legal practitioner of his or her choice.
- **Article 14** provides for equality before the law and equal protection of the laws within the territory of India.
- **Article 39A**, part of the Directive Principles of state policy, states that equal opportunity to secure justice must not be denied to any citizen by reason of economic or other disabilities, and provides for free legal aid.

What has the Supreme Court said about such resolutions by bar associations?

Supreme Court observations in **2010 A S Mohammed Rafi vs State of Tamil Nadu** case:

1. Such resolutions are wholly illegal, against all traditions of the bar and against professional ethics.
2. Every person, however wicked, depraved, vile, degenerate, perverted, loathsome, execrable, vicious or repulsive he may be regarded by society has a **right to be defended in a court of law and correspondingly, it is the duty of the lawyer to defend him.**
3. Such resolutions were **“against all norms of the Constitution, the statute and professional ethics”, called these “a disgrace to the legal community”, and declared them null and void.**

2. What is Article 142

- Article 142 “provide(s) a unique power to the Supreme Court, **to do “complete justice” between the parties**, i.e., where at times law or statute may not provide a remedy, the Court can extend itself to put a quietus to a dispute in a manner which would befit the facts of the case.
- **Article 142(1) states 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, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe”.

The **Epidemic Diseases Act, 1897** lays down punishment as per **Section 188 of the Indian Penal Code, 1860**, for flouting orders issued by various state governments to contain the spread of COVID-19.

In the past, the Act has been routinely enforced across the country for dealing with outbreaks of diseases such as swine flu, dengue, and cholera. Its penal provisions are currently being invoked by states to contain the COVID-19 pandemic.

So, What is Section 188 of the Indian Penal Code?

Section 188 relates to **Disobedience to order duly promulgated by public servant**.

- It says violators can be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

- and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

3. Allahabad High Court orders removal of controversial ‘name and shame’ hoardings

Allahabad High Court had directed the Lucknow administration to remove forthwith the controversial ‘**name and shame**’ hoardings of those arrested during protests against the **Citizenship (Amendment) Act**.

Important observations made by the Court:

- The action of the State is nothing but an **unwarranted interference in privacy of people**. It is violation of **Article 21 of the Constitution of India**.
- No power is available in **the Code of Criminal Procedure, 1973** to police or the Executive to display personal records of a person to public at large.

4. Supreme Court dismisses pleas against post-based reservation in Karnataka

The Supreme Court had rejected a bunch of pleas seeking exclusion of **creamy layer or better-off individuals** among Scheduled Castes (SC) and Scheduled Tribes (ST) communities at the entry-level when it comes to **the reservation in promotions**.

Background:

- The applications were filed in **the BK Pavitra case** in which the top court had, in 2019, upheld the constitutional validity of **the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservations (to the Posts in the Civil Services of the State) Act**.
- The Supreme Court in its 2019 judgment had held that the Act was a valid exercise of power by the government under **Article 16 (4A)** which empowers the state to provide reservations to SC/STs in matters of promotion.

What did the Karnataka law say?

- The Act enacted by the Karnataka government provides for **consequential seniority to persons belonging to SC and ST categories** promoted under the reservation policy of Karnataka.
- **Consequential seniority** enables reserved category candidates to retain their seniority for subsequent promotions. That is, if an SC/ST candidate is promoted ahead of a general category candidate by reason of reservation in promotion, then the promoted SC/ST candidate will retain that seniority for subsequent promotions and will thus be considered senior to general category candidate who was promoted later.

What is the creamy layer concept?

- The ‘means-test and creamy layer’ first finds expression in the Supreme Court’s landmark judgment in **Indra Sawhney versus Union of India**, delivered by a nine-judge Bench on November 16, 1992.
- **‘Creamy layer’** are “some members of a backward class who are highly advanced socially as well as economically and educationally.

5. Contempt of Court

The Supreme Court has held that **courts are empowered to order parties in a contempt case to surrender their passport in order to ensure their presence in the proceedings**.

About Contempt of Court is already covered in previous Polity module

6. Forcible dispossession of a person's property is a human rights violation

The Supreme Court has reiterated that **forcible dispossession of a person of his private property without due process of law is a violation of human rights.**

In a recent judgment, the court stressed that **right to property is both a human right and a constitutional right — the latter under Article 300A of the Constitution.**

7. Basic structure and the Kesavananda Bharati case

- The **case of Kesavananda Bharati v State of Kerala** ended on March 23, 1973.
- By a 7-6 verdict, a 13-judge Constitution Bench ruled that **the 'basic structure' of the Constitution is inviolable, and could not be amended by Parliament.** The basic structure doctrine has since been regarded as **a tenet of Indian constitutional law.**

Background of the case:

All this was to answer just one main question: **was the power of Parliament to amend the Constitution unlimited?**

- In the early 1970s, the government of then Prime Minister Indira Gandhi had enacted **major amendments to the Constitution (the 24th, 25th, 26th and 29th) to get over the judgments of the Supreme Court in RC Cooper (1970), Madhavrao Scindia (1970) and the earlier mentioned Golaknath.**
- In RC Cooper, the court had struck down Indira Gandhi's **bank nationalisation policy, and in Madhavrao Scindia it had annulled the abolition of privy purses of former rulers.**
- All the four amendments, as well as the Golaknath judgment, came under challenge in the Kesavananda Bharati case.

What constitutes the basic structure?

- The Constitutional Bench ruled by a 7-6 verdict that **Parliament should be restrained from altering the 'basic structure' of the Constitution.**
- The court held that under **Article 368**, which provides Parliament amending powers, **something must remain of the original Constitution that the new amendment would change.**
- **The court did not define the 'basic structure'**, and only listed a few principles — federalism, secularism, democracy — as being its part. Since then, the court has been adding new features to this concept.

'Basic structure' since Kesavananda:

The 'basic structure' doctrine has since been interpreted to include **the supremacy of the Constitution, the rule of law, Independence of the judiciary, doctrine of separation of powers, federalism, secularism, sovereign democratic republic, the parliamentary system of government, the principle of free and fair elections, welfare state, etc.**

Outcomes and implications of the judgment:

- **The 39th Amendment** prohibited any challenge to the election of the President, Vice-President, Speaker and Prime Minister, irrespective of the electoral malpractice. This was a clear attempt to nullify the adverse Allahabad High Court ruling against Indira Gandhi.
- **The 41st Amendment** prohibited any case, civil or criminal, being filed against the President, Vice-President, Prime Minister or the Governors, not only during their term of office but forever. Thus, if a person was a governor for just one day, he acquired immunity from any legal proceedings for life.

8. No 100% quota for tribal teachers: SC

The Constitution Bench of the Supreme Court has held it **unconstitutional to provide 100% reservation for tribal teachers in schools located in Scheduled Areas across the country.**

What has the Court said?

1. 100% reservation is not permissible under the Constitution as the outer limit is 50% as specified in **Indra Sawhney case, 1992.**
2. The citizens have equal rights and the total exclusion of others by creating an opportunity for one class is not contemplated by the Constitution.
3. It also deprives SCs and OBCs of their due representation.
4. **The opportunity of public employment cannot be denied unjustly to the incumbents and it is not the prerogative of few.**

Which rights are affected?

1. Equality of opportunity and pursuit of choice under **Article 51A cannot be deprived of unjustly and arbitrarily.**
2. It is arbitrary and violative of provisions of **Articles 14 (equality before law), 15(1) (discrimination against citizens) and 16 (equal opportunity) of the Constitution.**
3. It also impinges upon **the right of open category** because only STs will fill all the vacant posts leaving SCs and OBCs far behind.

9. Co-Op banks come under Sarfaesi Act: Supreme Court

The **Supreme Court** has held that the cooperative banks involved in the activities related to banking are covered within the meaning of **'banking company'** and Parliament has legislative competence to provide for procedure for recovery of loan under **the Sarfaesi Act.**

A **five-judge Constitution bench** said,

1. The meaning of 'banking' cannot be confined to a particular definition, as given in **the Banking Regulation (BR) Act, 1949.** The word 'banking' has been incorporated in **Entry 45 of List I.**
2. The decision in **Rustom Cavasjee Cooper (1970 verdict)** vividly leaves no room for doubt that **banking done by the cooperative bank is covered within the ambit of Entry 45 of List I.**
3. Therefore, **cooperative banks come under the category of banks as defined under Section 2(1)(c) of the Sarfaesi Act,** and the recovery procedures mentioned under that law apply to cooperative banks as well.

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002:

1. It allows banks and financial institutions **to auction properties (residential and commercial)** when borrowers fail to repay their loans.
2. It enables banks to **reduce their non-performing assets by adopting measures for recovery or reconstruction.**
3. It is **effective only against secured loans** where banks can enforce the underlying security.
4. It promotes the setting up of **asset reconstruction companies (ARCs) and asset securitization companies (SCs)** to deal with NPAs accumulated with the banks and financial institutions.

10. Anuradha Bhasin case (2020)

- The Supreme Court declared that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of Internet **enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g) respectively.**

- While such freedom is not absolute, the restrictions **imposed on it should be in consonance with the mandate under Article 19(2) and Article 19(6) of the Constitution**, inclusive of the **test of proportionality**.

11. Death Penalty Sentencing in Trial Courts

A study revealed non-compliance by the trial courts with the sentencing framework laid down by the Supreme Court in its 1980 judgment in **Bachan Singh v. State of Punjab**, where a Constitution bench of the Supreme Court was called upon to decide the constitutional validity of the capital punishment.

Out of the 43 cases in Delhi in which death sentence was handed down between 2000 and 2015, trial courts invoked the impact of the crime on society's **collective conscience** in 31 cases (72%) as grounds to send convicts to death row.

What is collective conscience?

Collective consciousness (sometimes collective conscience or conscious) is a fundamental sociological concept that refers to the **set of shared beliefs, ideas, attitudes, and knowledge that are common to a social group or society**.

Evolution of collective conscience:

- 'Collective conscience of society' as a ground to justify death penalty was first used by the Supreme Court in **the 1983 judgment of Machhi Singh v. State of Punjab**. In that case, the court held that when "collective conscience of society is shocked, it will expect the holders of the judicial power centre to inflict death penalty".
- It was, however, most famously used by the top court in **its 2005 judgment in the Parliament attack case in which it awarded capital punishment to convict, Afzal Guru**.
- Collective conscience found its most recent endorsement in **the 2017 judgment of the Supreme Court in the December 2012 Delhi gang rape case of Mukesh v. State of NCT of Delhi**.

How should the Courts decide on capital punishment impositions?

In **the case of Bachan Singh**, the Supreme Court formulated a sentencing framework to be followed for imposing death penalty.

- It required the weighing of aggravating and mitigating circumstances relating to both the circumstances of the offence and the offender, to decide whether a person should be sentenced to death or given life imprisonment.
- According to the Bachan Singh judgment, for a case to be eligible for the death sentence, the aggravating circumstances must outweigh the mitigating circumstances.

12. National Judicial Appointments Commission (NJAC)

On 16 October 2015, in a 4-1 majority verdict, the Supreme Court held that both **the Constitution (Ninety-ninth Amendment) Act, 2014, and the National Judicial Appointments Commission (NJAC) Act, 2014**, were unconstitutional as it would undermine the independence of the judiciary.

The court held that the appointment of judges, coupled with primacy of judiciary and the CJI, was part of the basic structure of the Constitution and that the parliament, through NJAC act, violated this basic structure.

About NJAC and the Act:

- NJAC is a body responsible for the appointment and transfer of judges to the higher judiciary in India.

- NJAC Bill sought to replace the collegium system of appointing the judges of Supreme Court and High Courts with judicial appointments commission wherein the executive will have a say in appointing the judges.
- **A new article, Article 124A**, (which provides for the composition of the NJAC) was to be inserted into the Constitution.
- The Bill provided for **the procedure to be followed by the NJAC for recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court (SC), and Chief Justice and other Judges of High Courts (HC).**

According to the bill the commission will consist of the following members:

1. Chief Justice of India (Chairperson, ex officio)
2. Two other senior judges of the Supreme Court next to the Chief Justice of India – ex officio
3. The Union Minister of Law and Justice, ex-officio
4. Two eminent persons (to be nominated by a committee consisting of the Chief Justice of India, Prime Minister of India and the Leader of opposition in the Lok Sabha or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in Lok Sabha), provided that of the two eminent persons, one person would be from the Scheduled Castes or Scheduled Tribes or OBC or minority communities or a woman. The eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

13. Official language in High Courts

Lawyers had challenged in the Supreme Court a law which makes **Hindi the official language in courts in Haryana.**

The petition contends that **the Haryana Official Language (Amendment) Act of 2020** has imposed **Hindi as the sole official language to be used in lower courts across the State.**

What the Constitution says?

Article 348 (1) of the Constitution of India provides that **all proceedings in the Supreme Court and in every High court shall be in English Language until Parliament by law otherwise provides.**

- Under **Article 348 (2)**, the Governor of the State may, with the previous **consent of the President, authorize the use of the Hindi language or any other language** used for any official purpose of the State, in the proceedings of the High Court having its principal seat in that State provided that decrees, judgments or orders passed by such High Courts shall be in English.

Section 7 of the Official Languages Act, 1963, provides that the use of Hindi or official language of a State in addition to the English language may be authorized, with the consent of the President of India, by the Governor of the State for purpose of judgments etc. made by the High Court for that State.

The provision of optional use of Hindi in proceedings has already been made in the High Courts of Rajasthan, Uttar Pradesh, Madhya Pradesh and Bihar.

14. Petition on nation's name

The Supreme Court had ordered that **a plea to change India's name exclusively to 'Bharat'** be converted into a **representation and forwarded to the Union government for an appropriate decision.**

The Court said, **"Bharat and India are both names given in the Constitution. India is already called 'Bharat' in the Constitution".**

How constituent assembly dealt with this?

The constituent assembly debated **Article 1 of the then draft constitution** prepared under the **chairmanship of BR Ambedkar.**

HV Kamath objected to the Ambedkar committee's draft that had two names - India and Bharat.

- He proposed **amendments to Article 1** putting **Bharat or alternatively Hind as the primary name** for the country and **pronouncing India only as the name in the English language**.

Seth Govind Das said, "India, that is, Bharat" are not beautiful words for the name of a country. We should have put the words "**Bharat known as India also in foreign countries.**"

- Das cited the Vedas, **the Mahabharat, couple of Puranas and the writings of Chinese traveller Hiuen-Tsang** to say that **Bharat** was the original name of the country, hence India should not be put as the primary name in the constitution post-independence.
- He also invoked Mahatma Gandhi saying that **the country fought the battle of freedom raising the slogan of "Bharat Mata Ki Jai"** asserting that Bharat could be the only plausible name for the country.

Among others who supported India being named only as Bharat included **KV Rao from Andhra Pradesh**.

MA Ayyangar of Madras province proposed names of **Bharat, Bharat Varsha and Hindustan as substitutes for India in Article 1**.

At the end, when Rajendra Prasad put the amendments to vote, all fell. **Article 1 remained intact as "India, that is Bharat"**. However, the debate has continued.

What the constitution says?

- As per **Article 1 in the Constitution**, the territory of India shall consist of: **The territories of the states, The Union territories and Any territory that may be acquired**.
- The **names of the States and the Unions have been described in the First Schedule**. This schedule also held that **there were four Categories of State and territories - Part A, Part B, Part C and Part D**.
- In **the seventh amendment of the Constitution in 1956** the distinction between the Part A and Part B states was abolished. Subsequently states were reorganized on linguistic basis.

15. Central Administrative Tribunal (CAT)

- The **Central Administrative Tribunal** was established by an Act of Parliament namely **Administrative Tribunals Act, 1985** as sequel to **the 42nd amendment of the Constitution of India inserting Article 323 A**.
- **Functions:** The tribunal adjudicates disputes and complaints with respect to Recruitment and Conditions of Service of the persons appointed to the Public Services and Posts in connection with the affairs of the Union or any State or of any other Local Authorities within the territory of India or under the control of the Government of India.
- **Composition:** The Tribunal is headed by the Chairman and 65 Members, 33 from Judicial (including Chairman) and 33 from the Administrative stream. The Chairman is normally a retired Chief Justice of a High Court.

Why in News?

18th Bench of Central Administrative Tribunal (CAT) for the Union Territories of Jammu and Kashmir and Ladakh inaugurated recently.

16. Padmanabhaswamy temple case

Reversing **the 2011 Kerala High Court** decision, the Supreme Court has upheld the right of the Travancore royal family to manage the property of deity at **Sree Padmanabha Swamy Temple in Thiruvananthapuram**.

The judgment:

- The Supreme Court (SC) has reversed **the 2011 Kerala High Court decision**, which had directed the Kerala government to set up a trust to control the management and assets of the temple.
- The court said that, as per customary law, **the shebait rights** (right to manage the financial affairs of the deity) survive with the members of the family even after the death of the last ruler.
- **The court defined 'shebait'** as the “custodian of the idol, its earthly spokesman, its authorised representative entitled to deal with all its temporal affairs and to manage its property”.

Why Article 366 is in News?

The **High Court (HC)** had ruled that the successor to the erstwhile royals could not claim to be in control of the Sree Padmanabhaswamy Temple after **the amendment of definition of 'Ruler' in Article 366 (22) of the Constitution of India**.

- The definition of Ruler was amended by **the Twenty Sixth (Constitutional) Amendment Act, 1971, which abolished the privy purses**.

Article 366 (22) reads, “Ruler” means the Prince, Chief or other person who, at any time before the commencement of the Twenty Sixth (Constitutional) Amendment Act, 1971, was recognised as the Ruler of an Indian State or was recognised as the successor of such Ruler.

17. Judicial review can't be available prior to Speaker's decision

Supreme Court's ruling in 'Kihoto Hollohan vs Zachillhu And Others' (1992) case:

- The court upheld the sweeping discretion available to the Speaker in deciding cases of disqualification of MLAs.
- While the Speaker's decisions can be challenged subsequently, the court cannot stay or prevent the process.

Hence, **judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings.**

- Besides, the Court can review only infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice, and perversity.

18. Disabled are entitled to same benefits of SC/ST quota: SC

The **Supreme Court**, in a significant decision, has confirmed that **persons suffering from disabilities are also socially backward and entitled to the same benefits of relaxation as Scheduled Caste/Scheduled Tribe candidates in public employment and education**.

- The Court has upheld a **2012 judgment of the Delhi High Court in Anamol Bhandari (minor) through his father/Natural Guardian v. Delhi Technological University** in a significant decision.

19. Police reforms and the role of Judiciary

Supreme Court has intervened multiple times in the 1990s through cases such as **Joginder Kumar v. State of UP [AIR 1994 SC 1349]** and **D.K. Basu v. State of West Bengal [(1997) 1 SCC 416]**, where guidelines were passed to try and secure two rights in the context of any state action:

1. A right to life.
2. A right to know.

Through the guidelines, the Court sought to curb **the power of arrest, as well as ensure that an accused person is made aware of all critical information** regarding her arrest and also convey this to friends and family immediately in the event of being taken in custody.

- **The Code of Criminal Procedure (Amendment) Act, 2008** gave statutory backing to these judicial guidelines; it remains part of the law today.

Finally, in **Prakash Singh v. Union of India (2006) case**, the Court pushed through new legislation for governing police forces to be passed by States across India. A key component of the new legislation was **a robust setup for accountability that contemplated a grievance redress mechanism.**

Various expert bodies have examined issues with police organisation and functioning over the last few decades. Its chronology as follows:

1. National Police commission 1977-81
2. Rubeiro Committee 1998
3. Padmanabhaiah committee 2000
4. Malimath committee 2002-03
5. Police Act drafting committee 2005
6. Second ARC 2007
7. Police Act drafting committee-II 2015

20. Constitution bench

Article 145(3) says at least five judges need to hear cases that involve "a substantial question of law as to the interpretation" of the Constitution, or any reference under **Article 143**, which deals with the power of the President of India to consult the Supreme Court.

- But this doesn't mean constitution benches can't be larger. For example, nine judges were on the bench that unanimously declared privacy to be a fundamental right in August 2017. There have also been seven and 13-judge benches.



INSIGHTSIAS
SIMPLIFYING IAS EXAM PREPARATION

Dispute Redressal Mechanism

1. National Legal Services Authority (NALSA)

- The **National Legal Services Authority (NALSA)** said that around 11,077 undertrials were released from prisons nationwide as part of the mission to decongest jails following the COVID-19 pandemic.
- NALSA also provided **assistance to prisoners who were eligible to be released on parole or interim bail under the relaxed norms, through its panel lawyers.**

About NALSA:

- NALSA has been constituted under **the Legal Services Authorities Act, 1987**, to provide free legal services to weaker sections of society.
- The aim is **to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities.**
- 'Nyaya Deep' is the official newsletter of NALSA.

Composition:

As per **section 3(2) of Legal Service Authorities Act**, the Chief Justice of India shall be the Patron-in-Chief.

Second senior-most judge of Supreme Court of India is **the Executive-Chairman.**

Important functions performed by NALSA:

- Organise Lok Adalats for amicable settlement of disputes.
- Identify specific categories of the marginalised and excluded groups and formulates various schemes for the implementation of preventive and strategic legal service programmes.
- Provide free legal aid in civil and criminal matters for the poor and marginalised people who cannot afford the services of a lawyer in any court or tribunal.

State and district legal services authorities:

- **In every State, State Legal Services Authority** has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State. **The State Legal Services Authority is headed** by Hon'ble the Chief Justice of the respective High Court who is the Patron-in-Chief of the State Legal Services Authority.
- **In every District**, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. The District Legal Services Authority is situated in the District Courts Complex in every District and **chaired by the District Judge of the respective district.**

Constitutional basis:

- **Article 39A of the Constitution of India** provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.
- **Articles 14 and 22(1)** also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

Centre –State Relations

1. Delhi Assembly passes resolution against NPR, NRC

Delhi Assembly passes resolution **against NPR, NRC**.

As many as 11 Indian States have passed a resolution against the NRC and the NPR.

Can States Refuse To Implement NPR And NRC? What Does The Constitution Say?

Under **Seventh Schedule of the Constitution**, the subject of **citizenship, naturalisation and aliens (foreigners)** finds mention exclusively in **the Union List** which contains a total of 97 subjects.

So, **citizenship and the laws related to it are exclusively in the domain of the central government** and the **refusal by states to implement NRC or NPR has no legal ground**.

What can the states do?

The state governments can move the courts to challenge the central government but a refusal to implement is not within their powers. **Article 365 of the Constitution** makes it mandatory for the state governments to follow and implement the directions of the Central government, failing which the President can hold that the state government cannot carry on.

2. J&K domicile rules

Centre redefines **Jammu and Kashmir domicile rules** opening up various categories of jobs in the region to people from across the country.

The order has been defined under **J&K Civil Services (Decentralisation and Recruitment) Act**.

What is domicile?

In law, domicile is the status or attribution of being a lawful permanent resident in a particular jurisdiction.

As per the Changes, who is now deemed to have domicile?

1. **Anyone "who has resided for a period of fifteen years in the UT of J&K".**
2. **Or has studied for a period of seven years and appeared in class 10th/12th examination in an educational institution located in the UT of J&K.**
3. Or those **registered as migrants and their children**.
4. Or the children of those central government officials, All India service officials, Officials of Public sector undertaking, autonomous body of central government, public sector banks, officials of statutory bodies officials of central universities and recognized research institutes of central government who have served in J&K for **a period of ten years**.
5. Or children of residents of J&K who reside outside the Union Territory in connection with employment or business or for other professional or vocational reasons, but whose parents fulfil any of the conditions provided in the latest gazette notification will also be entitled to domicile status.

What else the order says?

The domiciles will be eligible for the purposes of appointment to any post carrying a pay scale of not more than Level 4.

The Level 4 post comprises positions such as gardeners, barbers, office peons and watermen, and the highest rank in the category is that of a junior assistant.

Who can issue domicile certificates?

The orders also empowers tehsildars to issue domicile certificates. The government has been empowered to notify any other officer as the competent authority to issue the certificate.

Implications:

The order now formally allows people from outside J&K to apply for jobs in the UT. While Level IV jobs have been reserved for people with domicile status – other non-gazetted and gazetted jobs have been opened for people from across the country, including people domiciled in J&K.

NOTES

INSIGHTSIAS
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Events / Celebrations

1. Civil Services Day

- Observed on **21st April every year**.
- **Why 21st April?** On this day in 1947, Sardar Vallabhbhai Patel addressed the first batch of probationers at the All India Administrative Service Training School at Metcalfe House, New Delhi in 1947. In his speech he called **civil servants as the steel frame of India**.
- **Objective:** To make civil servants re-dedicate themselves to the cause of the citizens and renew their commitment to public service.
- On this day, the **'Prime Minister Award for Excellence in Public Administration'** is given. The award is given in three categories, dividing the states and UTs into different categories. The award was instituted in 2006.

2. Panchayati Raj Diwas

National Panchayati Raj Day is the national day of India celebrated by Ministry of Panchayati Raj on **24th April annually**.

Why on this day? The **Constitution (73rd Amendment) Act, 1992** came into force with effect from 24th April, 1993. It has institutionalized Panchayati Raj through the village, Intermediate and District level Panchayats.

3. Secrecy of ballot

Supreme Court has delivered its judgment on **Secrecy of Ballot**.

What has the Supreme Court said on Secrecy of Ballot?

- **Secrecy of ballot is the cornerstone of free and fair elections.** The choice of a voter should be free and the secret ballot system in a democracy ensures it.
- It is the policy of law **to protect the right of voters to secrecy of the ballot.**
- Even a remote or distinct possibility that a voter can be forced to disclose for whom she has voted would act as a **positive constraint and a check on the freedom to exercise of franchise**.
- The principle of **secrecy of ballots is an important postulate of constitutional democracy**.
- However, **a voter can also voluntarily waive the privilege of non-disclosure**. No one can prevent a voter from doing. Nor can a complaint be entertained from any, including the person who wants to keep the voter's mouth sealed as to why she disclosed for whom she voted.

What the RPA says?

Section 94 of the Representation of People Act upholds the privilege of the voter to maintain confidentiality about her choice of vote.

Important Statutory / Constitutional Provisions

1. Section 188 IPC

The **Epidemic Diseases Act, 1897** lays down punishment as per **Section 188 of the Indian Penal Code, 1860**, for flouting orders issued by various state governments to contain the spread of COVID-19.

In the past, the Act has been routinely enforced across the country for dealing with outbreaks of diseases such as swine flu, dengue, and cholera. Its penal provisions were invoked by states to contain the COVID-19 pandemic.

So, What is Section 188 of the Indian Penal Code?

Section 188 relates to **Disobedience to order duly promulgated by public servant**.

- It says violators can be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;
- and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

2. Sec 309 IPC

India has the highest suicide rate in the South-East Asian region, according to the World Health Organization report. **Suicide was decriminalised** in India in 2017, but **Section 309 of the Indian Penal Code still stays**.

Who can be booked under Section 309 IPC? What punishment does it carry?

- **Anyone who survives an attempted suicide** can be booked under Section 309 IPC, which deals with **“Attempt to commit suicide”**.
- The law, **brought in by the British in the 19th century**, reflected the thinking of the time, when killing or attempting to kill oneself was **considered a crime against the state, as well as against religion**.

Was it repealed?

No. The section continues to remain in the IPC.

What has happened though, is that **The Mental Healthcare Act (MHCA), 2017**, which came into force in July 2018, has significantly **reduced the scope for the use of Section 309 IPC** — and made **the attempt to commit suicide punishable only as an exception**.

1. **Section 115(1) of The MHCA says:** “Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.”

Role and responsibility of the government:

Section 115(2) says that “The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.”

3. Legal procedure followed in death penalty cases

1. First, a **trial court may pronounce the death sentence only in the “rarest of the rare” cases**.
2. Such a sentence is **automatically referred to the High Court for confirmation**. A **warrant of execution** may only be issued once the sentence has been confirmed by the High Court.
3. Next, the convict has **the option of approaching the Supreme Court against the High Court’s decision**.

4. After the Supreme Court's decision, the convict may file a **review petition**, and a **separate curative petition** before the Supreme Court. Both are standard legal processes, meant to rectify egregious errors in judgments.
5. Thereafter, a **mercy petition before the President may be filed**. Such a petition is disposed of after a process involving a **recommendation from the relevant state government, and sanction from the Home Ministry**.
6. The convict may then approach the Supreme Court again by filing a **petition questioning the legitimacy of the President's decision** in the mercy petition.
7. Finally, the disposal of this petition ends the process, and the death sentence may be executed thereafter.

In conclusion, **four separate petitions are available to a convict even after the Supreme Court has confirmed the conviction**.

4. Article 164 of the Constitution

Article 164 of the Constitution allows a non-legislator to occupy a post in the council of ministers, including the office of the chief minister for **six months**.

Article 171 of the Constitution says the governor can nominate eminent persons from the field for literature, science, art, cooperative movement and social service.

And, if governor nominates somebody to the legislative council, his/her decision cannot be challenged in the court.

Section 151A of Representation of the People Act 1951 puts a bar on the governor's discretionary power to nominate a person to the legislative council.

It says election or nomination to vacant seats in the legislative council cannot be done **"if the remainder of the term of a member in relation to a vacancy is less than one year"**.

5. Water in the Constitution

- Under **Article 246**, the Indian Constitution allocates responsibilities of the States and the Centre into three lists– Union List, State List, and Concurrent List.
- Water is under **Entry 17 of the State List**, which reads: "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of **entry 56 of List I**."

6. PM CARES Fund Not A 'Public Authority' Under RTI Act

Stating that **PM CARES FUNDS is not a 'public authority'** under **Section 2(h) of the Right to Information Act, 2005**, the Prime Minister's Office (PMO) has refused to divulge information sought in an application filed under the RTI Act.

What is 'public authority' under RTI?

As per **Section 2(h) of the RTI Act**, "public authority" is means **any authority or body or institution of self-government established or constituted:**

1. by or under the Constitution;
2. by any other law made by Parliament;
3. by any other law made by State Legislature;
4. by notification issued or order made by the appropriate Government.

The definition of 'public authority' also **includes bodies owned, controlled or substantially financed by the government and non-governmental organizations substantially financed, directly or indirectly by funds provided by the appropriate Government**.

Supreme Court has delivered its judgement on PM CARES funds.

Highlights of the judgment:

1. The Court has “**refused**” to order transfer of funds from the PM CARES Fund to the National Disaster Response Fund (NDRF). They “are two entirely different funds with different object and purpose”.
2. **PM CARES Fund**, being a public charitable trust, “there is no occasion for audit by the Comptroller & Auditor General of India”.
3. The Court also rejected the request for a new National Plan under the National Disaster Management Act, 2005, to deal with Covid-19 situation.
4. The court held that there is “no statutory prohibition on individuals to make voluntary contributions to NDRF” under Section 46(1)(b) of the DM Act.
5. The court also declined to intervene with the “minimum standards of relief” and the necessary guidelines issued by the government under Section 12 of the DM Act.

About PM CARES FUNDS is already covered.

7. Rule 266 and 267 of the Lok Sabha

- Rajya Sabha secretariat had denied permission for members of the standing committee on Home Affairs to join a meeting of the panel through videoconference.
- **Why?** The reason videoconference meetings were not being allowed was because it violated **the principle of confidentiality**, as there was no guarantee of a member sitting alone at such events.
- **What do rules say?**
- **Rule 267** states that committee meetings have to be held in the Parliament building. However, **the Speaker has the powers to change the venue.**
- **Rule 266** mandates that all committee meetings have to be held in private.

8. Criminal law in India

The Criminal law in India is contained in a number of sources – **The Indian Penal Code of 1860, the Protection of Civil Rights Act, 1955, Dowry Prohibition Act, 1961 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.**

Criminal Justice System can impose penalties on those who violate the established laws.

- **The criminal law and criminal procedure are in the concurrent list** of the seventh schedule of the constitution.

Lord Thomas Babington Macaulay is said to be **the chief architect of codifications of criminal laws in India.**

Previous committees:

Madhav Menon Committee: It submitted its report in 2007, suggesting various recommendations on reforms in the Criminal Justice System of India (CJSI).

Malimath Committee Report: It submitted its report in 2003 on the Criminal Justice System of India (CJSI).

9. Plea bargaining

It refers to a **person charged with a criminal offence negotiating with the prosecution for a lesser punishment than what is provided in law by pleading guilty to a less serious offence.**

- It primarily involves **pre-trial negotiations between the accused and the prosecutor.** It may involve bargaining on the charge or in the quantum of sentence.

When was it introduced in India?

Plea bargaining was introduced in 2006 as part of a set of amendments to the CrPC as Chapter XXI-A, containing Sections 265A to 265L.

In India, a plea bargaining process can be **initiated only by the accused;**

Cases for which the practice is allowed are limited:

- Only someone who has been charge sheeted for an offence that does not attract the death sentence, life sentence or a prison term above seven years can make use of the scheme under Chapter XXI-A.
- It is also applicable to private complaints of which a criminal court has taken cognisance.
- It is not available for those that involve offences affecting the “socio-economic conditions” of the country, or committed against a woman or a child below the age of 14.

The Justice Malimath Committee on reforms of the criminal justice system endorsed the various recommendations of the Law Commission with regard to plea bargaining.

10. Laws Dealing with Encounters

At the outset, **there is no provision in the Indian law which directly authorizes an official to encounter a criminal** irrespective of the grievousness of the crime committed by him/her.

- However, there are some **enabling provisions** that may be construed so as to vest officials with the power to deal with criminals including the power to use force against a criminal.

1. Section 100 of the Indian Penal Code, 1860:

It authorizes any person to exercise his right of private defense which may extend to causing death if there is reasonable apprehension in the mind of the person that there exists a threat to life or limb.

2. Section 46 of the Criminal Procedure Code, 1973:

It permits a police officer to use all means necessary to effect the arrest of the person.

3. Section 300 of the Indian Penal Code:

It provides that culpable homicide is not murder if the offender, being a public servant acting for the advancement of public justice exceeds the power given to him by law and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the discharge of his duty and without ill-will towards the person whose death is caused.

11. Defamation

Defamation is **the communication of a false statement that harms the reputation of an individual person, business, product, group, government, religion, or nation.**

In India, **defamation can both be a civil wrong and a criminal offence.**

The **difference** between the two lies in **the objects they seek to achieve.**

- **A civil wrong** tends to provide for a redressal of wrongs by awarding compensation and a **criminal law** seeks to punish a wrongdoer and send a message to others not to commit such acts.

Legal provisions:

Criminal defamation has been specifically defined as an offence under **section 499 of the Indian Penal Code (IPC).**

Civil defamation is based on **tort law** (an area of law which does not rely on statutes to define wrongs but takes from ever-increasing body of case laws to define what would constitute a wrong).

Section 499 states defamation could be through words, spoken or intended to be read, through signs, and also through visible representations.

- **Section 499 also cites exceptions.** These include “imputation of truth” which is required for the “public good” and thus has to be published, on the public conduct of government officials, the conduct of any person touching any public question and merits of the public performance.

Section 500 of IPC, which is on punishment for defamation, reads, “Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

What has the Supreme Court said?

1. In **Subramanian Swamy vs Union of India case 2014**, the Court **approved the Constitutional validity of sections 499 and 500 (criminal defamation) in the Indian Penal Code**, underlining that an individual’s fundamental right to live with dignity and reputation “cannot be ruined solely because another individual can have his freedom”.

12. Sixth Schedule of the Constitution

The Sixth Schedule currently includes 10 autonomous district councils in four northeastern States — Assam, Meghalaya, Mizoram and Tripura.

Passed by **the Constituent Assembly in 1949**, it seeks to safeguard the rights of tribal population through the formation of **Autonomous District Councils (ADC)**.

This special provision is provided under **Article 244(2) and Article 275(1) of the Constitution**.

- Many political parties have been demanding the inclusion of Arunachal Pradesh in the 6th Schedule **for making the Arunachalees owner of all natural resources instead of being protectors only**.
- Inclusion of the state under the Sixth Schedule would **enable the state to own the legitimate ownership rights over its own natural resources and make it self sufficient** without having to depend too much on central grants.

Key provisions:

The **governor is empowered to organise and re-organise the autonomous districts**.

1. If there are different tribes in an autonomous district, **the governor can divide the district into several autonomous regions**.
2. **Composition:** Each autonomous district has a district council consisting of 30 members, of whom four are nominated by the governor and the remaining 26 are elected on the basis of adult franchise.
3. **Term:** The elected members hold office for a term of five years (unless the council is dissolved earlier) and nominated members hold office during the pleasure of the governor.
4. Each autonomous region also has **a separate regional council**.
5. **Powers of councils:** The district and regional councils administer the areas under their jurisdiction. They can make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
6. **Village councils:** The district and regional councils within their territorial jurisdictions can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the governor.
7. **Powers and functions:** The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But, such regulations require the assent of the governor. The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.

Exceptions: The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.

The governor can appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions. He may dissolve a district or regional council on the recommendation of the commission.

What about Nagaland?

Nagaland is governed by **Article 371 (A)**, which says that no Act of Parliament shall apply in the State in several areas unless the Nagaland Assembly so decides by a resolution.

- These include administration of civil and criminal justice involving decisions according to Naga customary law and ownership and transfer of land and its resources.



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Important Acts / Bills

1. Quota within quota for SCs

The Haryana cabinet had recently approved the draft bill 'The Haryana Scheduled Castes (Reservation in Admission in Educational Institutions) bill, 2020.'

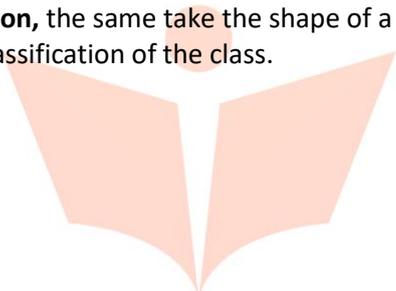
This bill provides **quota within quota for SCs in the state.**

Are states empowered to make such decisions?

Article 15(5) of the Constitution authorises the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for SCs/STs for admission to educational institutions.

What has the Supreme Court said in such matters?

- The Supreme Court of India in **the case of E.V. Chinnaiah Vs. State of Andhra Pradesh (2004(9) SCALE)** has held that the castes etc. specified as Scheduled Castes under **Article 341 of the Constitution** is a homogeneous group for the purpose of the Constitution.
- The court said that the benefits of reservation are available to members of all such castes which have been specified as Scheduled Caste in relation to a State/Union Territory.
- This case deals with the issue that **whether the schedule caste can further be sub-divided so that the benefit of reservation can reach to the outreach.**
- The main part of the judgement of the Court is heavily relied upon the argument that **when the groups are been notified by the President in the list under Article 341 of the Constitution**, the same take the shape of a homogenous class and thus there cannot be any further classification of the class.



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Miscellaneous

1. Parole

Parole is a system of releasing a prisoner with suspension of the sentence. The release is conditional, usually subject to behaviour, and requires periodic reporting to the authorities for a set period of time.

- **How is it different from Furlough?**
 - Furlough is given in case of long-term imprisonment.
 - While furlough is seen as a matter of right, to be granted periodically irrespective of any reason and merely to enable the prisoner to retain family and social ties, parole is not a matter of right and may be denied to a prisoner even when he makes out a sufficient case.
- **Granting authority:**
 - Parole and furlough are covered under the Prison Act of 1894. Since prison is a subject of the state, the Prison Act of the particular state government defines the rules under which parole is granted.
 - Parole is granted by the state executive.
 - If parole is rejected, the convict can move the High Court challenging the order of the competent authority.
 - Also, apart from regular parole, the superintendent of a jail can also grant parole up to a period of seven days in emergent cases.

2. Darbar Move in J&K

Darbar Move is a **century-old practice in which the government functions for six months each in the two capitals of the State, Srinagar and Jammu.**

- The practice was reportedly **started in the late 19th century by Ranbir Singh**, the Maharaja of Jammu and Kashmir, who used to shift his capital between Srinagar in the summer and Jammu in the winter **to escape extreme weather conditions in these places.**
- The government will function in Srinagar, the summer capital of the State, till late October and then move to Jammu, the winter capital, in the first week of November.
- Hundreds of trucks are usually plied to carry furniture, office files, computers, and other records to the capital.
- Regional parties in Jammu and Kashmir advocated the continuation of the practice “to help in the emotional integration between two diverse linguistic and cultural regions of Jammu and Kashmir.”