INSTA PT 2021 EXCLUSIVE

POLITY

JUNE 2020 – MARCH 2021

INSIGHTSIAS

NOTES

Table of Contents

Constitutional / Non-Constitutional / Statutory / Regulatory / Various Quasi-Judicial Bodies 4
1. STATE ELECTION COMMISSIONERS 4
2. J&K DELIMITATION COMMISSION 5
3. NATIONAL COMMISSION FOR SCS 5
4. LOKPAL 6
5. ATTORNEY GENERAL 7
6. CENTRAL BUREAU OF INVESTIGATION (CBI) 7
7. COMPETITION COMMISSION OF INDIA 8
8. CENTRAL VIGILANCE COMMISSION (CVC) 9
9. NATIONAL HUMAN RIGHTS COMMISSION (NHRC) 10
10. DISTRICT DEVELOPMENT COUNCILS (DDC) 11
11. NATIONAL INVESTIGATION AGENCY (NIA) 11

Executive 13
1. CHIEF MINISTER 13
2. GOVERNOR'S POWERS AND ROLE IN THE STATE LEGISLATURE'S AFFAIRS 13
3. STRENGTH OF THE STATE LEGISLATIVE ASSEMBLY 14
4. LIEUTENANT GOVERNOR OF PUDUCHERRY 14
5. PARDONING POWERS OF PRESIDENT 15
6. DOCTRINE OF SEPARATION OF POWERS 16
7. GOVERNOR'S POWER TO RESERVE BILLS FOR CONSIDERATION OF THE PRESIDENT 16
8. OFFICE OF PROFIT 17

Parliament / State Legislatures / Union Territories / Local Self-Government 19
1. NO-CONFIDENCE MOTION 19
2. APPLICABILITY OF ANTI-DEFECTION LAW FOR NOMINATED MPS 19
3. JUDICIAL REVIEW CAN'T BE AVAILABLE PRIOR TO SPEAKER'S DECISION 21
4. APPROPRIATION BILL 21
5. FINANCE BILL 22
6. SUPPLEMENTARY DEMAND FOR GRANTS 23
7. TERMINATION OF SESSION 23
8. MOTION OF THANKS TO PRESIDENT'S ADDRESS 24
9. FLOOR TEST 25
10. SPEAKER OF THE LOK SABHA 26
11. DEPUTY SPEAKER OF LOK SABHA 27
12. DEPUTY CHAIRMAN OF RAJYA SABHA 27
13. BREACH OF PRIVILEGE 28
14. QUESTION HOUR 29
15. ZERO HOUR 29
16. LEADER OF THE OPPOSITION 29
17. JOINT PARLIAMENTARY COMMITTEE (JPC) 29
18. SELECT COMMITTEES 30
19. SUSPENSION OF MPS 31
20. URBAN LOCAL BODIES (ULB) REFORMS 32
21. WINTER SESSION OF PARLIAMENT 32

INSIGHTSIAS

NOTES

Judiciary........ 33
1. CONTEMPT OF COURTS 33
2. AMICUS CURIAE 34
3. CHIEF JUSTICE OF INDIA 34
4. RETIRED JUDGES 35
5. JUDICIAL REVIEW 35
6. REVIEW PETITION 36
7. RECUSAL OF JUDGES 36
8. LOK ADALAT 37
9. NATIONAL LEGAL SERVICES AUTHORITY (NALSA) 39
10. PUBLIC INTEREST LITIGATION (PIL) 40
11. IN-HOUSE PROCEDURE 40
12. KESAVANANDA BHARATI CASE 41
13. VIRTUAL COURTS 41
14. WHAT IS ARTICLE 142 42
15. NO 100% QUOTA FOR TRIBAL TEACHERS: SC 42
16. DEATH PENALTY SENTENCING IN TRIAL COURTS 43

Centre –State Relations 44
1. PRESIDENT'S RULE 44
2. CAN STATES REFUSE TO IMPLEMENT CENTRAL LAWS? 44

Inter –State Relations 46
1. INTERSTATE RIVER WATER DISPUTES 46

Electoral Issues / Electoral Reforms 47
1. HOW ELECTION COMMISSION DECIDES ON PARTY SYMBOLS? 47
2. ELECTORAL BONDS 47
3. REGISTRATION OF POLITICAL PARTIES 47
4. NOTA (NONE OF THE ABOVE) 48
5. POSTAL BALLOTS 49
6. VOTER VERIFIABLE PAPER AUDIT TRAIL (VVPAT) 50
7. MODEL CODE OF CONDUCT 50
8. 'CONVICTED LEGISLATORS CAN'T BE BARRED FOR LIFE FROM POLLS' 51
9. ONE NATION, ONE ELECTION 51
10. STAR CAMPAIGNER 52

Citizenship 53
1. OVERSEAS CITIZENS OF INDIA (OCI) 53
2. NATIONAL POPULATION REGISTER 54
3. NATIONAL REGISTER OF CITIZENS (NRC) 54
4. CITIZENSHIP (AMENDMENT) ACT, 2019 (CAA) 54

Important Statutory / Constitutional Provisions 55
1. RIGHT TO COUNSEL IN CUSTODY 55
2. FREEDOM OF RELIGION 55
3. SIXTH SCHEDULE AREAS 56
4. UNIFORM CIVIL CODE 56

NOTES

5. SC DIRECTIVE ON QUOTA IN PROMOTIONS 57
6. SEVENTH SCHEDULE 57
7. J&K INTERNET BAN 58
8. ARTICLE 32 OF THE CONSTITUTION 58
9. RIGHT TO PROTEST PEACEFULLY 59
10. PLEA BARGAINING 59
11. DEFAMATION 60

Important Acts / Bills 61

1. RIGHT TO INFORMATION (RTI) ACT, 2005 61
2. UNLAWFUL ACTIVITIES (PREVENTION) ACT 62
3. ROSHNI ACT (JAMMU AND KASHMIR STATE LAND (VESTING OF OWNERSHIP TO OCCUPANTS) ACT, 2001) 63
4. GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ACT, 2021 63
5. RIGHT TO EDUCATION (RTE) ACT, 2009 64
6. NATIONAL SECURITY ACT, 1980 64
7. OFFICIAL SECRETS ACT 66

Miscellaneous 67

1. 3-LANGUAGE POLICY IS NOT APPLICABLE TO CENTRAL GOVT. OFFICES 67
2. CENTRAL DEPUTATION OF IPS OFFICERS 67
3. INNER-LINE PERMIT 67
4. SEPARATE RELIGIOUS CODE FOR SARNA TRIBALS 68
5. INTER PARLIAMENTARY UNION 68
6. CHAPTER PROCEEDINGS 68
7. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 69
8. LEGAL ENTITY STATUS 69
9. NATIONAL LIST OF ESSENTIAL MEDICINES (NLEM) 70
10. MISSION KARMAYOGI 70
11. ENEMY PROPERTIES 70
12. SPECIAL FRONTIER FORCE 71
13. ASSAM RIFLES 71

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Yashaswini B
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Nidhin K Biju
Rank 89
Core Batch + Mains Test Series

M V Satya Sai Karthik
Rank 103
OGP 2018

Kumar Shivashish
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Keerthana H S
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NOTES

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

1. State Election Commissioners

The Supreme Court has held that **independent persons and not bureaucrats should be appointed State Election Commissioners.**

Supreme Court's observations/judgement on independence of the state election commissioners:

- Independent persons and not bureaucrats should be appointed State Election Commissioners. This is necessary because giving government employees the additional charge of State Election Commissioners is **a "mockery of the Constitution".**
- The States should appoint independent persons as Election Commissioners all along the length and breadth of the country.

About the 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.**

The State Election Commissioners work independently of the Election Commission of India and each has its own sphere of operation.
Only the State Election Commission may take necessary actions for the successful conduct of these elections.

- As per **article 243** 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.
- Under the Constitution, **establishment of local self-government institutions is the responsibility of the states (entry 5, List II, Seventh Schedule).**

Powers and removal of state election commissioner:

The State Election Commissioner has **the status, salary and allowance of a Judge of a High Court and cannot be removed from office except in like manner and on the like grounds as a Judge of a High Court.**

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.

In practice, 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.

How far can courts intervene?

NOTES

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.

2. J&K Delimitation Commission

The **Delimitation Commission for Jammu and Kashmir was constituted by the Centre** on March 6, 2020 to redraw Lok Sabha and assembly constituencies of the union territory in accordance with the provisions of **the Jammu and Kashmir Reorganisation Act, 2019,** which bifurcated the state into union territories of J&K and Ladakh.

What is Delimitation?
Delimitation literally means the process of fixing limits or boundaries of territorial constituencies in a state that has a legislative body.

- The 84th Amendment to the Constitution in 2002 had put a freeze on the delimitation of Lok Sabha and State Assembly constituencies till the first Census after 2026.
- While the current boundaries were drawn on the basis of the 2001 Census, the number of Lok Sabha seats and State Assembly seats remained frozen on the basis of the 1971 Census.

Who carries out the exercise?

- Delimitation is undertaken by a highly powerful commission. They are formally known as Delimitation Commission or Boundary Commission.
- These bodies are so powerful that its orders have the force of law and they cannot be challenged before any court.
- Such commissions have been constituted at least four times in India — in 1952 under the Delimitation Commission Act, 1952; in 1963 under Delimitation Commission Act, 1962; in 1973 under Delimitation Act, 1972 and last in 2002 under Delimitation Act, 2002.
- The commissions' orders are enforced as per the date specified by the President of India. Copies of these orders are laid before the Lok Sabha or the concerned Legislative Assembly. No modifications are permitted.

Composition of the Commission:
According to the Delimitation Commission Act, 2002, **the Delimitation Commission will have three members:** a serving or retired judge of the Supreme Court as the chairperson, and the Chief Election Commissioner or Election Commissioner nominated by the CEC and the State Election Commissioner as ex-officio members.

Constitutional Provisions:

1. Under **Article 82,** the Parliament enacts a Delimitation Act after every Census.
2. Under **Article 170,** States also get divided into territorial constituencies as per Delimitation Act after every Census.

3. National Commission for SCs

- In order to provide the Scheduled Castes of Indian society safeguards against exploitation and to promote their social, economic, educational and cultural development, the Commission was set up by the Government of India.
- **The National Commission for Scheduled Tribes (NCST)** was established by amending **Article 338 and inserting a new Article 338A in the Constitution through the Constitution (89th Amendment) Act, 2003.**

NOTES

- By this amendment, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two separate Commissions namely- the National Commission for Scheduled Castes (NCSC), and the National Commission for Scheduled Tribes (NCST) from February, 2004.
- It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal.

The functions, duties and power of the commission

- to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
- to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;
- to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and
- to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament.

4. Lokpal

Highlights of the Lokpal Act of 2013:

1. The Act allows setting up of anti-corruption ombudsman called Lokpal at the Centre and Lokayukta at the State-level.
2. The Lokpal will consist of a chairperson and a maximum of eight members.
3. The Lokpal will cover all categories of public servants, including the Prime Minister. But the armed forces do not come under the ambit of Lokpal.
4. The Act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while the prosecution is pending.
5. The States will have to institute Lokayukta within one year of the commencement of the Act.
6. The Act also ensures that public servants who act as whistleblowers are protected.

Powers:

1. The Lokpal will have the power of superintendence and direction over any investigation agency including CBI for cases referred to them by the ombudsman.
2. As per the Act, the Lokpal can summon or question any public servant if there exists a prima facie case against the person, even before an investigation agency (such as vigilance or CBI) has begun the probe. Any officer of the CBI investigating a case referred to it by the Lokpal, shall not be transferred without the approval of the Lokpal.
3. An investigation must be completed within six months. However, the Lokpal or Lokayukta may allow extensions of six months at a time provided the reasons for the need of such extensions are given in writing.
4. Special courts will be instituted to conduct trials on cases referred by Lokpal.

Selection Committee:

The members are appointed by the president on the recommendation of a Selection Committee. The selection committee is composed of

- the Prime Minister who is the Chairperson;

NOTES

- Speaker of Lok Sabha,
- Leader of Opposition in Lok Sabha,
- Chief Justice of India or a Judge nominated by him/her and
- One eminent jurist

The 2016 amendment enables **the leader of the single largest opposition party in the Lok Sabha** to be a member of the selection committee in the absence of a recognized Leader of Opposition.

5. Attorney General

The Attorney General for India is the central government's **chief legal advisor, and its primary lawyer in the Supreme Court of India.**
He is **a part of the Union Executive.**

Appointment and eligibility:
He is **appointed by the President of India under Article 76(1) of the Constitution** and **holds office during the pleasure of the President.**

- He must be a person qualified to be appointed as a Judge of the Supreme Court.
- He should be an Indian Citizen.
- He must have either completed 5 years in High Court of any Indian state as a judge or 10 years in High Court as an advocate.
- He may be an eminent jurist too, in the eye of the President.

Powers and Functions:

1. The Attorney General is necessary for giving advice to the Government of India in legal matters referred to him. He also performs other legal duties assigned to him by the President.
2. The Attorney General has **the right of audience in all Courts in India as well as the right to participate in the proceedings of the Parliament, though not to vote.**
3. The Attorney General **appears on behalf of Government of India in all cases** (including suits, appeals and other proceedings) in the Supreme Court in which Government of India is concerned.
4. He also **represents the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.**
5. The Attorney General **can accept briefs but cannot appear against the Government.**
6. He **cannot defend an accused in the criminal proceedings and accept the directorship of a company without the permission of the Government.**
7. The Attorney General is **assisted by two Solicitor General and four Additional Solicitor Generals.**

6. Central Bureau of Investigation (CBI)

1. The Central Bureau of Investigation (CBI) is the premier investigating agency of India.
2. Operating under **the jurisdiction of the Ministry of Personnel, Public Grievances and Pensions, the CBI is headed by the Director.**
3. CBI, India's first agency to investigate corruption, the Special Police Establishment, was **set up in 1941,** six years before independence from British rule to probe bribery and corruption in the country during World War II.
4. In 1946, it was brought under the Home Department and its remit was expanded to investigate corruption in central and state governments under **the Delhi Special Police Establishment Act.**
5. The DSPE acquired its popular current name, Central Bureau of Investigation (CBI), through a Home Ministry resolution in 1963.
6. The Act to set up CBI was not passed by Parliament. It was created by an executive order of the government. In that sense, the CBI is not a statutory body.
7. CBI is **exempted from the purview of the Right to Information (RTI) Act.**
8. **CBI is India's officially designated single point of contact for liaison with the Interpol.**

INSIGHTSIAS

NOTES

The CBI investigates three types of cases through three specialised wings.

- The **Anti-Corruption Division** that probes cases of corruption against public servants.
- The **Economic Offences Division** probes crimes of financial malfeasance, bank frauds, money laundering, black money operations, and the like. However, the CBI usually transfers cases of money laundering to the Enforcement Directorate (ED).
- There is a **Special Crimes Division** to investigate cases of violence such as murder, crimes related to internal security such as espionage, narcotics and banned substances, and cheating. It is this division of the CBI that generally handles cases that get wide media coverage, for example, actor Sushant Singh Rajput's death case.

The CBI manual says, "The central government can authorize CBI to investigate such a crime in a state but only with the **consent of the concerned state government.** The Supreme Court and High Courts, however, can order CBI to investigate such a crime anywhere in the country without the consent of the state."

The Maharashtra government has withdrawn **"general consent"** given to the Central Bureau of Investigation (CBI) to probe cases in the state. Other states that have also withdrawn include Kerala, West Bengal, Andhra Pradesh and Rajasthan.

What consent is necessary?
The CBI is governed by **the Delhi Special Police Establishment Act** that makes **consent of a state government mandatory for conducting investigation in that state.**

There are two kinds of consent:
Case-specific and general– Given that the CBI has jurisdiction only over central government departments and employees, it **can investigate a case involving state government employees or a violent crime in a given state only after that state government gives its consent.**

- **"General consent"** is normally given to help the CBI seamlessly conduct its investigation into cases of corruption against central government employees in the concerned state.

What does withdrawal mean?
It simply means that CBI officers will lose all powers of a police officer as soon as they enter the state unless the state government has allowed them.

- The decision means **the CBI will now have to get consent from the state government for every case it registers in Maharashtra.**

Under what provision can general consent been withdrawn?
In exercise of power conferred by **Section 6 of the Delhi Special Police Establishment Act, 1946,** the state governments can withdraw the general consent accorded.

Can withdrawal mean that the CBI can no longer probe any case?
No. The CBI would still have the power to investigate old cases registered when general consent existed. Also, cases registered anywhere else in the country, but involving people stationed in states which have withdrawn general consent, would allow CBI's jurisdiction to extend to these states.

7. Competition Commission of India

Competition Commission of India is **a statutory body** of the Government of India, responsible for enforcing the Competition Act, 2002 throughout India and to prevent activities that have an adverse effect on competition.

Functions of the commission:

INSIGHTSIAS

NOTES

1. It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India.
2. The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

The Competition Act:

- The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, prohibits anti- competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or likely to cause an appreciable adverse effect on competition within India.

8. Central Vigilance Commission (CVC)

CVC is the apex vigilance institution **created via executive resolution** (based on the recommendations of **Santhanam committee**) in **1964** but was **conferred with statutory status in 2003.**

- It **submits its report to the President of India.**
- The CVC is **not controlled by any Ministry/Department.** It is an independent body which is only responsible to the Parliament.

Composition:
Consists of central vigilance commissioner along with 2 vigilance commissioners.

Appointment:
They are appointed by the President of India on the recommendations of a committee consisting of Prime Minister, Union Home Minister and Leader of the Opposition in Lok Sabha (if there is no LoP then the leader of the single largest Opposition party in the Lok Sabha).

Term:
Their term is 4 years or 65 years, whichever is earlier.

Removal:
The Central Vigilance Commissioner or any Vigilance Commissioner **can be removed from his office only by order of the President on the ground of proved misbehavior or incapacity** after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought to be removed.

The **Central Vigilance Commission** has amended the Standard Operating Procedure (SOP) on adoption of **"Integrity Pact"** in government organisations for procurement activities.

- This order **revises the SOP issued in January 2017.**

As per the amended SOP:

- **For appointment as Integrity External Monitors (IEMs),** the Ministry, department or organisation concerned has to forward a panel of suitable persons to the CVC, of those persons who are in the panel maintained by the Commission.
- **Maximum tenure of IEMs:** 3 years in an organisation.

What is an integrity pact?
The pact is **to ensure transparency, equity and competitiveness in public procurement.**
They were developed as **a tool for preventing corruption in public contracting.**

INSIGHTSIAS

NOTES

- It is a vigilance tool that envisages an agreement between the prospective vendors/bidders and the buyer, committing both the parties not to exercise any corrupt influence on any aspect of the contract.
- It is a tool developed by **Transparency International.**

Who are IEMs?
The Integrity Pact envisages a panel of **Independent External Monitors (IEMs)** for each organisation.

- IEM reviews independently and objectively, whether and to what extent parties have complied with their obligations under the pact.
- They may submit a report to the chief executive of the organisation concerned or directly to the CVO and the CVC, if they find serious irregularities attracting the Prevention of Corruption Act provisions.

9. National Human Rights Commission (NHRC)

NHRC had **ordered the Assam government to pay ₹1 lakh** to a 48-year-old man who was thrashed more than a year ago in Biswanath district for selling cooked beef at his tea stall at a weekly market. (NHRC has powers to recommend payment of compensation.)

National Human Rights Commission (NHRC):
It is **a statutory body** established on 12th October, 1993 under **the Protection of Human Rights Act (PHRA), 1993.**
The Act also provides for the creation of **the State Human Rights Commission** as well.

THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

	The Protection of Human Rights Act, 1993	The Protection of Human Rights (Amendment) Bill 2019
Chairperson	The Commission shall consist of a Chairperson who has been a Chief Justice of the Supreme Court.	The Bill amends this to provide that a person who has been Chief Justice of the Supreme Court or a Judge of the Supreme Court will be the chairperson of the NHRC.
Other Members	The Act provides that NHRC must consist of two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.	The Bill amends this to allow three members to be appointed, of which at least one will be a woman.
Ex-officio members	The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission.	The Bill provides for including the chairpersons of the National Commission for Backward Classes, the National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities as members of the NHRC.
Term	The Act states that the chairperson and members of the NHRC will hold office for five years or till the age of seventy years, whichever is earlier.	The Bill reduces the term of office to three years or till the age of seventy years, whichever is earlier.
Reappointment	The Act allows for the reappointment of members of the NHRC for a period of five years.	The Bill removes the five-year limit for reappointment.
Powers of Secretary-General	The Act provides for a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise powers as may be delegated to them.	The Bill amends this and allows the Secretary-General to exercise all administrative and financial powers (except judicial functions), subject to the chairperson's control.

Composition:
The chairperson is **a retired chief justice of India or a judge of the Supreme Court.**
They are **appointed by the President** on the recommendations of a six-member committee consisting of:

1. Prime Minister (head)
2. Speaker of the Lok Sabha
3. Deputy Chairman of the Rajya Sabha
4. Leaders of the Opposition in both the Houses of Parliament
5. Union Home Minister.

Term and removal:
They hold office for a term of five years or until they attain the age of 70 years, whichever is earlier.
The President can remove them from the office under specific circumstances.

NOTES

10. District Development Councils (DDC)

The Centre amended **the Jammu and Kashmir Panchayati Raj Act, 1989,** to facilitate the setting up of **District Development Councils (DDC)**.

- A legislation to this effect was brought in by **the Ministry of Home Affairs.**

What are DDCs? What are their functions?

This system effectively **replaces the District Planning and Development Boards** in all districts.

- They will **prepare and approve district plans and capital expenditure.**
- The term of the DDC will be five years.

The council will hold **at least four "general meetings"** in a year, one in each quarter.

Structure:

- Their number has been specified at 14 elected members per district representing its rural areas, alongside the Members of Legislative Assembly chairpersons of all Block Development Councils within the district.
- The electoral process will allow for **reservations for Scheduled Castes, Scheduled Tribes and women.**
- The Additional District Development Commissioner (or the Additional DC) of the district shall be **the Chief Executive Officer of the District Development Council.**

Who will elect the members of DDC?

They will be directly elected by voters in the Union Territory.

11. National Investigation Agency (NIA)

The government has empowered **the National Investigation Agency (NIA) to investigate offences** under **the Narcotic Drugs and Psychotropic Substances (NDPS) Act** so that the agency need not rely on local police to unravel drug trade ties that emerge during counter-terrorism operations.

National Investigation Agency (NIA):

It is a central agency to investigate and prosecute offences:

1. affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States.
2. against atomic and nuclear facilities.
3. smuggling in High-Quality Counterfeit Indian Currency.

It is also the **Central Counter Terrorism Law Enforcement Agency.**

- It is empowered to deal with terror related crimes across states **without special permission from the states.**
- Established under the **National Investigation Agency Act 2008.**
- Works under the **Ministry of Home Affairs.**

Jurisdiction:

- A State Government may request the Central Government to hand over the investigation of a case to the NIA, provided the case has been registered for the offences as contained in the schedule to the NIA Act.
- Central Government can also order NIA to take over investigation of any scheduled offense anywhere in the India.

Composition:

Officers of the NIA are drawn from the **Indian Police Service and Indian Revenue Service.**

Special NIA Courts:

Various Special Courts have been notified by the Central Government of India.

- Any question as to the jurisdiction of these courts is decided by the Central Government.

INSIGHTSIAS

NOTES

- These are presided over by a **judge appointed by the Central Government on the recommendation of the Chief Justice of the High Court with jurisdiction in that region.**
- **Supreme Court of India has also been empowered** to transfer the cases from one special court to any other special court within or outside the state.

Powers:

The NIA Special Courts are empowered with all powers of the court of sessions under Code of Criminal Procedure, 1973 for trial of any offense.

Appeals:

An appeal from any judgement, sentence or order, not being an interlocutory order, of a Special Court lies to the High Court both on facts and on law. State Governments have also been empowered to appoint one or more such special courts in their states.

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NOTES

Executive

1. Chief Minister

The Chief Minister is **appointed by the governor.**

- **Art. 163 of the Constitution** provides that there shall be a Council of Ministers with the Chief Minister at its hand to aid and advise the governor.

Who can be a Chief Minister?

After general election to the State Legislative Assembly, the party or coalition group which secures majority in this House, elects its leader and communicates his name to the Governor. The Governor then formally appoints him as the Chief Minister and asks him to form his Council of Ministers.

- When no party gets a clear majority in the State Legislative Assembly, the Governor normally asks the leader of the single largest party to form the government.

Tenure:

Theoretically, the Chief Minister holds office during the pleasure of the Governor. However, in actual practice the Chief Minister remains in office so long as he continues to be the leader of the majority in the State Legislative Assembly.

- The Governor can dismiss him in case he loses his majority support.
- The State Legislative Assembly can also remove him by passing a vote of no-confidence against him.

Powers and Functions of the Chief Minister:

- To Aid and Advice the Governor.
- The Chief Minister is at the Head of the Council of Ministers.
- He is the Leader of the House.
- He has to communicate to the Governor all the decisions of the council of ministers relating to the administration of the states.
- All the policies are announced by him on the floor of the house.
- He recommends dissolution of legislative assembly to the Governor.
- He advises the Governor regarding summoning, proroguing the sessions of State Legislative Assembly from time to time.

2. 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.**

NOTES

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.

3. 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.

4. Lieutenant Governor 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).**

The Government of Union Territories Act, 1963 specifies that the Puducherry legislature will have 30 elected MLAs, and a maximum of three MLAs nominated by the central government. The law also specifies that the nominated persons should not be government employees.

- **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.**

NOTES

- 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.**

5. Pardoning powers of President

Clemency powers of the President under article 72:
It says that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

1. **Pardon–** A pardon completely absolves the offender from all sentences and punishment and disqualifications and places him in the same position as if he had never committed the offence.
2. **Commutation–** Commutation means exchange of one thing for another. In simple words to replace the punishment with less severe punishment. For example for Rigorous imprisonment-simple imprisonment.
3. **Reprieve–** Reprieve means temporary suspension of death sentence. For example- pending a proceeding for pardon or commutation.
4. **Respite–** Respite means awarding a lesser punishment on some special grounds. For example- the Pregnancy of women offender.
5. **Remissions–** Remission means the reduction of the amount of sentence without changing its character, for example, a sentence of 1 year may be remitted to 6 months.

The pardoning power of President is wider than the governor and it differs in the following two ways:
- The power of the President to grant pardon extends in cases where the punishment or sentence is by a Court Martial but **Article 161** does not provide any such power to the Governor.
- The **President can grant pardon in all cases where the sentence given is sentence of death but pardoning power of Governor does not extend to death sentence cases.**

Exercise of these powers:
1. This power of pardon shall be exercised by the President on the advice of Council of Ministers.
2. The constitution does not provide for any mechanism to question the legality of decisions of President or governors exercising mercy jurisdiction.
3. But the SC in **Epuru Sudhakar case** has given a small window for judicial review of the pardon powers of President and governors for the purpose of ruling out any arbitrariness.

INSIGHTSIAS

NOTES

Pardoning Powers of Governor:
Article 161 deals with the Pardoning Power of the Governor.

- The Governor can grant pardons, reprieves, respites and remissions of punishments or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
- **The Governor cannot Pardon a Death Sentence.** (The President has the power of Pardon a death Sentence).
- **The Governor cannot grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial.** However, the President can do so.

6. Doctrine of Separation of powers

- The doctrine of separation of power is **a part of the basic structure of the Indian Constitution,** even though it is not specifically mentioned in its text.
- It implies that **the three pillars of democracy, namely the executive, judiciary and legislature,** perform separate functions and act as separate entities.
- One of the features of the doctrine is that one arm of the state should not interfere in the functioning of the other organs or exercise a function of another organ.

Articles in the Constitution facilitating Separation of Powers are as follows:

1. **Article 50:** State shall take steps to separate the judiciary from the executive. This is for the purpose of ensuring the independence of the judiciary.
2. **Article 121 and 211** forbid the legislature from discussing the conduct of any judge in the discharge of his duties.
3. **Article 105(2) and 194(2)** protect the legislators from the interference of the Courts with regards to his/her freedom of speech and freedom to vote.
4. **Article 122 and 212:** Validity of proceedings in Parliament and the Legislatures cannot be called into question in any Court. Also, Legislators enjoy certain privileges with regard to speech and anything said in the Parliament cannot be used against them.
5. **Judicial conduct of a Judge of the Supreme Court and the High Court cannot be discussed in the Parliament and the State Legislature,** according to Article 121 and 211 of the Constitution.
6. **Articles 53 and 154** respectively, provide that the executive power of the Union and the State shall be vested with the President and the Governor and they enjoy immunity from civil and criminal liability.
7. **Article 361:** The President or the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

7. Governor's power to reserve bills for consideration of the President

Article 200 of the Indian Constitution deals with the powers of the Governor with regard to assent given to bills passed by the State legislature and other powers of the Governor such as reserving the bill for the President's consideration.

According to Article 200, when a Bill, passed by the Legislature of a State, is presented to the Governor, he has four options:

1. He assents to the Bill
2. He withholds assent
3. He reserves the Bill for the consideration of the President
4. He returns the Bill to the Legislature for reconsideration.

Options before the President:

NOTES

When a Bill is reserved by a Governor for the consideration of the President, **the President shall declare either that he assents to the Bill or that he withholds assent therefrom** Provided that:

1. Where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200.
2. When a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.
3. It is not mentioned in the constitution whether it is obligatory on the part of the President to give his assent to such a bill or not.

8. Office of Profit

Under Article 102 (1) and Article 191 (1) of the Constitution, **an MP or an MLA (or an MLC) is barred from holding any office of profit under the Central or State government.**

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.

What are the basic criteria to disqualify an MP or MLA?

Basic disqualification criteria for an MP are laid down in **Article 102 of the Constitution,** and for an MLA in **Article 191.**

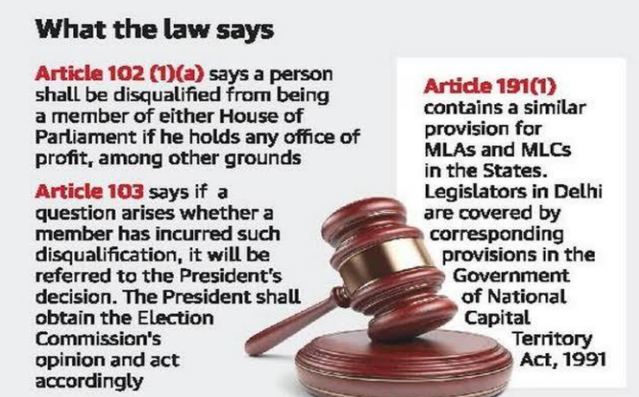
- **They can be disqualified for:** a) Holding an office of profit under government of India or state government; b) Being of unsound mind; c) Being an undischarged insolvent; d) Not being an Indian citizen or for acquiring citizenship of another country.

What is the underlying principle for including 'office of profit' as criterion for disqualification?

1. 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.
2. In other words, an MP or MLA should be free to carry out her duties without any kind of governmental pressure. The intent is that there should be no conflict between the duties and interests of an elected member.
3. The office of profit law simply seeks to enforce a basic feature of the Constitution- the principle of separation of power between the legislature and the executive.

Reasons for controversies:

- The expression "office of profit" has **not been defined in the Constitution or in the Representation of the People Act, 1951.**
- **It is for the courts to explain the significance and meaning of this concept.** Over the years, courts have decided this issue in the context of specific factual situations.



Role of Judiciary in defining the 'office of profit:

The Supreme Court in **Pradyut Bordoloi vs Swapan Roy (2001)** outlined the four broad principles for determining whether an office attracts the constitutional disqualification.

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- First, whether the government exercises control over appointment, removal and performance of the functions of the office
- Second, whether the office has any remuneration attached to it
- Third, whether the body in which the office is held has government powers (releasing money, allotment of land, granting licenses etc.).
- Fourth, whether the office enables the holder to influence by way of patronage.

NOTES

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

1. No-Confidence Motion

A Council of Ministers is collectively responsible to the Legislative Assembly and it remains in office till it enjoys the confidence of majority.

- Therefore, a motion of no-confidence is moved to remove the council of ministers and to remove the government from the office.

Constitutional provisions:

According to the **Article 75** of the Indian Constitution, council of ministers shall be collectively responsible to the Lok Sabha and as per **Article 164,** the council of ministers shall be collectively responsible to the Legislative Assembly of the State.

- Lok Sabha/Legislative Assembly can remove the ministry from the office by passing **a no-confidence motion.**
- Lok Sabha **Rule 198 specifies the procedure for a motion of no-confidence.**

What is the procedure to move a No-Confidence Motion?

Against the Government, **a motion of No-Confidence Motion can be introduced only in the Lok Sabha** under rule 198.

There should be a minimum of 50 members to accept the motion. If not, then the motion fails.

Before 10 am, any member may provide written notice.

- The motion of no-confidence is read by the Speaker within the House and asks all those favouring the motion to rise.
- If 50 MPS are there in favour then the Speaker could allot a date for discussing the motion. But this has to be done within 10 days.
- Then, the motion is put to vote and can be conducted through Voice Vote, Division of Votes or other means.
- If the government loses a confidence motion or if the no-confidence motion is accepted by the majority then the government has to resign.

What are the conditions related to no-confidence motion?

- It can be moved only in the Lok Sabha or state assembly as the case may be. It cannot be moved in the Rajya Sabha or state legislative council.
- The no-confidence motion is moved against the entire Council of Ministers and not individual ministers or private members.

2. Applicability of Anti-defection law for nominated MPs

Who are Nominated members?

- The Rajya Sabha has 12 nominated members from different walks of life.
- The broad **criterion for their nomination is that they should have distinguished themselves in fields like literature, science, art, and social service.**
- The **President nominates such individuals** as recommended by the Centre.
- Nominated members have the same rights and privileges as elected members, with one notable difference — **they cannot vote in the election of the President.**

What is the anti-defection law?

The Tenth Schedule was inserted in the Constitution in 1985 by the 52nd Amendment Act.

- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.
- The decision on question as to disqualification on ground of defection is referred to the Chairman or the Speaker of such House, and his decision is final.

NOTES

Disqualification:
If a member of a house belonging to a political party:
1. Voluntarily gives up the membership of his political party, or
2. Votes, or does not vote in the legislature, contrary to the directions of his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.
3. If an independent candidate joins a political party after the election.
4. If a nominated member joins a party six months after he becomes a member of the legislature.

Article 361B- Disqualification for appointment on remunerative political post:
A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of **the Tenth Schedule** shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Exceptions under the law:
Legislators may change their party without the risk of disqualification in certain circumstances.
1. The law allows a party to merge with or into another party provided that at least two-thirds of its legislators are in favour of the merger.
2. In such a scenario, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.

Article 164(1B):
It states that a member of Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, belonging to any political party, if disqualified as a member of the Assembly, shall also be disqualified to be appointed as a Minister for the period of their disqualification.

Decision of the Presiding Officer is subject to judicial review:
The law initially stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in 1992, thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court. However, it held that there may not be any judicial intervention until the Presiding Officer gives his order.

Various Recommendations to overcome the challenges posed by the law:
Dinesh Goswami Committee on electoral reforms:
Disqualification should be limited to following 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. Political parties could issue whips only when the government was in danger.

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
- 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.

NOTES

3. 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.

4. Appropriation Bill

The Lok Sabha has cleared **the Appropriation Bill,** allowing the Central government to draw funds from **the Consolidated Fund of India** for its operational requirements and implementation of various programmes.

- The Bill was passed after Speaker Om Birla put it through **guillotine,** a legislative mechanism to approve the fast-tracking of the passage of outstanding demands for grants without 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.
- To put it simply, the Finance Bill contains provisions on financing the expenditure of the government, and **Appropriation Bill specifies the quantum and purpose for withdrawing money.**

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?

Since India subscribes to the Westminster system of parliamentary democracy, 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.

NOTES

5. 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:

CRITERIA FOR BEING A MONEY BILL

Article 110 of the Constitution defines the Money Bill

Money Bills are those Bills which contain "only" provisions dealing with all or any of the matters specified in **Article 110 sub-clauses:**

- Imposition, abolition, remission, alteration, regulation of any tax
- Regulation of borrowing of money or the giving of any guarantee by govt
- Custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund
- Appropriation of moneys out of Consolidated Fund of India
- Declaring of any expense to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure
- Receipt of money on account of Consolidated Fund of India or Public Account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State

A Bill which has any provision other than money provision (as mentioned in sub-clauses) is not a Money Bill

Constitution gives power to the Lok Sabha Speaker to take a final call if any question arises whether a Bill is a Money Bill or not

Speaker's decision is final and cannot be challenged in any court of law

RS has limited powers with respect to Money Bills

Lok Sabha has supreme power in terms of Money Bills

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.
2. 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.

The Supreme Court, in a majority view, has dismissed a series of petitions seeking a review of its **2018 judgment** upholding the Lok Sabha Speaker's certification of Aadhaar law as a Money Bill and its subsequent passage in Parliament.

Following the Supreme Court judgement, petitions were filed on two issues. These include:

1. Whether the **Speaker's decision to declare a proposed law as Money Bill was "final" and cannot be challenged in court.**
2. Whether the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 was correctly certified as a 'Money Bill' under **Article 110 (1) of the Constitution.**

NOTES

What has the Court said?
1. Speaker's decision could be challenged in court only under "certain circumstances".
2. The Aadhaar Act was rightly called a Money Bill.

6. Supplementary demand for grants

The supplementary demand for grants is needed for government expenditure over and above the amount for which Parliamentary approval was already obtained during the Budget session.

Constitutional provisions:
Supplementary, additional or excess grants and Votes on account, votes of credit and exceptional grants are mentioned in the Constitution of India 1949.
- **Article 115:** Supplementary, additional or excess grants.
- **Article 116:** Votes on account, votes of credit and exceptional grants.

Procedure to be followed:
1. When grants, authorised by the Parliament, fall short of the required expenditure, an estimate is presented before the Parliament for Supplementary or Additional grants.
2. These grants are presented and passed by the Parliament before the end of the financial year.
3. When actual expenditure incurred exceeds the approved grants of the Parliament, the Ministry of Finance presents a Demand for Excess Grant.
4. The Comptroller and Auditor General of India bring such excesses to the notice of the Parliament.
5. The Public Accounts Committee examines these excesses and gives recommendations to the Parliament.
6. The Demand for Excess Grants is made after the actual expenditure is incurred and is presented to the Parliament after the end of the financial year in which the expenses were made.

Other grants:
Additional Grant: It is granted when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the Budget for that year.
Excess Grant: It is granted when money has been spent on any service during a financial year in excess of the amount granted for that year. The demands for excess grants are made after the expenditure has actually been incurred and after the financial year to which it relates, has expired.
Exceptional Grants: It is granted for an exceptional purpose which forms no part of the current service of any financial year.
Token Grant: It is granted when funds to meet proposed expenditure on a new service can be made available by re-appropriation, a demand for the grant of a token sum may be submitted to the vote of the House and, if the House assents to the demand, funds may be so made available.

7. Termination of Session

A sitting of Parliament can be **terminated by adjournment or adjournment sine die or prorogation or dissolution** (in the case of the Lok Sabha).

Adjournment: It suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment sine die: It means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly.
- **The power of adjournment as well as adjournment sine die** lies with **the presiding officer (Speaker or Chairman) of the House.**

INSIGHTSIAS

NOTES

Prorogation: The President issues a notification for prorogation of the session after the business of a session is completed and the presiding officer declares the House adjourned sine die. **The President can also prorogue the House while in session.**

Dissolution: **Only the Lok Sabha is subject to dissolution**. Rajya Sabha, being a permanent House, is not subject to dissolution.

- A dissolution ends the life of the existing House, and a new House is constituted after general elections are held.
- The **President is empowered to dissolve the Lok Sabha.**

8. Motion of thanks to President's Address

Article 87(1) says: "At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons."

The address is followed by **a motion of thanks moved in each House by ruling party MPs.** During the session, political parties discuss the motion of thanks also suggesting amendments.

What procedures follow the address?
After the President or Governor delivers the address, a debate takes place not only on the contents of the address but also the broad issues of governance in the country. This then paves the way for discussion on the Budget.

First Constitutional Amendment:
Originally, the Constitution required the President to address both Houses of Parliament at the commencement of "every session". This requirement was changed by the First Amendment to the Constitution.

What is in President's address?
The President's speech essentially highlights the government's policy priorities and plans for the upcoming year. It is drafted by the Cabinet, and provides a broad framework of the government's agenda and direction.

Amendments to the "Motion of Thanks":

- Notices of amendments to Motion of Thanks on the President's Address can be tabled after the President has delivered his Address.
- Amendments may refer to matters contained in the Address as well as to matters, in the opinion of the member, the Address has failed to mention.
- Amendments can be moved to the Motion of Thanks in such form as may be considered appropriate by the Speaker.

Limitations:
The only limitations are that members cannot refer to matters which are not the direct responsibility of the Central Government and that the name of the President cannot be brought in during the debate since the Government and not the President is responsible for the contents of the Address.

Provisions governing them:
President's Address and Motion of Thanks are governed by **Articles 86 (1) and 87 (1)** of the Constitution and **Rules 16 to 24 of the Rules of Procedure and Conduct of Business in Lok Sabha.**

Its passage:

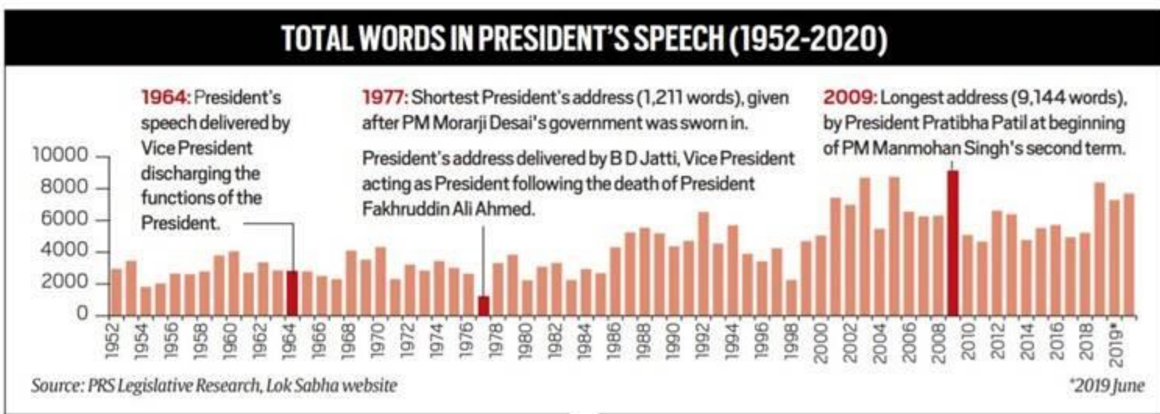
- Members of Parliament vote on this motion of thanks. This motion must be passed in both of the houses.

NOTES

- A failure to get motion of thanks passed amounts to defeat of government and leads to collapse of government. This is why the Motion of Thanks is deemed to be a no-confidence motion.

If the President disagrees with the text of the speech, are they still bound to read it?

- The President or a Governor cannot refuse to perform the constitutional duty of delivering an address to the legislature. But there can be situations when they deviate from the text of the speech prepared by the government.
- So far, there have been no instances of President doing so. But there has been an occasion when a Governor skipped a portion of the address to the Assembly.
- In 1969, the Governor of West Bengal, Dharma Vira, skipped two paragraphs of the address prepared by the United Front government. The skipped portion described as unconstitutional the dismissal of the first United Front government by the Congress-ruled central government.



Are there parallels in other countries?

Similar provisions exist in other democracies.

1. **In the United States, it is referred to as the "State of the Union".** The phrase comes from an article in the US Constitution which specifies that the President, "from time to time give to Congress information of the State of the Union and recommend to their Consideration such measures as he shall judge necessary and expedient."
2. In the United Kingdom, it is referred to as **the Queen's Speech** and is part of the ceremony to mark the formal start of the parliamentary year.

9. 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.

Constitutional provisions:

According to **Article 75 (3) and Article 164** of the Constitution, the Council of Ministers are collectively responsible to the House of the People.

NOTES

10.Speaker of the Lok Sabha

The **chairman or the Presiding Officer of Lok Sabha is called Speaker.**

- **Elected from all other members by simple majority.**

Functions and Powers of Lok Sabha Speakers:

1. Speaker of Lok Sabha is basically the **head of the house and presides over the sittings** and controls its working.
2. The constitution has tried to ensure the independence of Speaker by charging his **salary on the consolidated Fund of India** and the same is not subject to vote of Parliament.
3. While debating or during general discussion on a bill, the members of the parliament have to address only to the Speaker.
4. Whenever there is a **joint sitting of both Houses of Parliament** (Lok Sabha & Rajya Sabha) the Speaker of the Lok Sabha **presides** over this meeting.
5. The Speaker of Lok Sabha comes at **sixth position in the Order of Precedence** of Government of India.
6. In the normal circumstances the Speaker does not casts his vote over any matter in Lok Sabha. But when ever there is a tie on votes between the ruling party and opposition, the Speaker at that time can exercise his vote.
7. It is the Speaker who **decides the agenda of various discussions**.
8. The speaker has the power to adjourn or suspend the house/meetings if the quorum is not met.
9. The Speaker **ensures the discipline and decorum of the house**. If the speaker finds the behaviour of a member is not good, he/she can punish the unruly members by suspending.
10. The Speaker decides weather a bill brought to the house is a money bill or not. In the case Speaker decides some bill as a money bill, this decision can not be challenged.
11. Speaker is the final and sole authority to allow different types of motions and resolutions such as No Confidence Motion, Motion of Adjournment, Censure Motion etc.
12. **The Speaker of Lok Sabha does not leave the office just after dissolution of the assembly.** He continues to be in the office till the newly formed assembly takes its first meeting and elects the new Speaker.

The Speaker of Lok Sabha automatically disqualifies from his post if:

1. he is no longer the Member of Parliament.
2. if he tenders his resignation to the Deputy Speaker.
3. if he holds the office of profit under central government or any state government.
4. if he is of unsound mind and that too declared by the court of law.
5. if he is declared undischarged insolvent.
6. if he is no longer the citizen of India or voluntarily accepts the citizenship of any other country.
7. if he is removed from the post of Speaker by passing a resolution by majority of the members of Lok Sabha. This is to note that during resolution for removal of Speaker, the Speaker is not in position to cast his vote even if there is tie.

Speaker and the Committees:

1. The Committees of the House function under the overall direction of the Speaker. All such Committees are constituted by her or by the House.
2. The Chairmen of all Parliamentary Committees are nominated by her.
3. Any procedural problems in the functioning of the Committees are referred to her for directions.
4. Committees like the **Business Advisory Committee, the General Purposes Committee and the Rules Committee work directly under her Chairmanship.**

NOTES

11. Deputy Speaker of Lok Sabha

Article 93 of the Constitution provides for **the election of both the Speaker and the Deputy Speaker.**

- The constitutional office of the Deputy Speaker of the Lok Sabha is **more symbolic of parliamentary democracy than some real authority.**
- There is **no need to resign from their original party though as a Deputy Speaker,** they have to remain impartial.
- The **Deputy Speaker of the Lok Sabha** is not subordinate to the speaker of lok sabha, He is responsible to the Lok sabha and the second highest ranking legislative officer of the Lok Sabha.

A striking feature of the current Lok Sabha is the absence of a Deputy Speaker.
Usually, the Deputy Speaker is elected within a couple of months of the formation of a new Lok Sabha, with the exception in the 1998-99 period, when it took 269 days to do so.

Roles and functions:
They act as the presiding officer in case of leave or absence caused by death or illness of the Speaker of the Lok Sabha.

Election:
Usually, the Deputy Speaker is **elected in the first meeting of the Lok Sabha after the General elections** from amongst the members of the Lok Sabha.

- It is by convention that **position of Deputy Speaker is offered to opposition party in India.**

Tenure and removal:

- They hold office until either **they cease to be a member of the Lok Sabha or they resign.**
- They can be **removed from office by a resolution passed in the Lok Sabha by an effective majority of its members.**

InstaFact:
There is **a constitution-mandated panel of 10 members to preside over the proceedings of the Lok Sabha in the absence of Speaker.**

12. Deputy Chairman of Rajya Sabha

It is **a constitutional position created under Article 89 of the Constitution,** which specifies that **Rajya Sabha shall choose one of its MPs to be the Deputy Chairman as often as the position becomes vacant.**

Who can be a deputy chairman?
The Deputy Chairman is elected by the Rajya Sabha itself **from amongst its members.**
Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.

The Deputy Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the Rajya Sabha;
2. if he resigns by writing to the Chairman;
3. if he is removed by a resolution passed by a majority of all the members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days’ advance notice.

Functions:

1. The Deputy Chairman performs the duties of the Chairman’s office when it is vacant or when the Vice-President acts as President or discharges the functions of the President.

INSIGHTSIAS

NOTES

2. He also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he has all the powers of the Chairman.
3. The Deputy Chairman also plays a critical role in ensuring the smooth running of the House.

Powers:
- The Deputy Chairman is **not subordinate to the Chairman. He is directly responsible to the Rajya Sabha.**
- The Deputy Chairman is entitled to a regular salary and allowance which are fixed by Parliament and are charged on the Consolidated Fund of India.

Election Procedure:
1. For electing the Deputy Chair any Rajya Sabha MP can submit a motion proposing the name of a colleague for this constitutional position. The motion has to be seconded by another MP.
2. Additionally, the member moving the motion has to submit a declaration signed by the MP whose name s/he is proposing stating that the MP is willing to serve as the Deputy Chairperson if elected. Each MP is allowed to move or second only one motion.
3. Then the majority of the House decides who gets elected as the Deputy Chairperson.
4. However, if the political parties arrive at a consensus candidate, then that MP will be unanimously elected as the Deputy Chair.

Panel of Vice-Chairmen:
- The **Chairman shall, from time to time, nominate from amongst the members of the Council a panel of not more than six Vice-Chairmen,** any one of whom may preside over the Council in the absence of the Chairman and the Deputy Chairman when so requested by the Chairman, or in his absence, by the Deputy Chairman.
- A **Vice-Chairman nominated under sub-rule (1) shall hold office until a new panel of Vice-Chairmen is nominated.**

13. Breach of Privilege

Parliamentary privilege refers to the right and immunity enjoyed by legislatures, in which legislators are granted protection against civil or criminal liability for actions done or statements made in the course of their legislative duties.

Which provisions of the Constitution protect the privileges of the legislature?
The powers, privileges and immunities of either House of the Indian Parliament and of its Members and committees are laid down in **Article 105 of the Constitution.**
- **Similarly, Article 194** deals with the powers, privileges and immunities of the State Legislatures, their Members and their committees.

What constitutes a breach of this privilege?
There are no clear, notified rules to decide what constitutes a breach of privilege, and the punishment it attracts.
- Generally, any act that obstructs or impedes either House of the state legislature in performing its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or has a tendency, directly or indirectly, to produce such results is treated as breach of privilege.
- It is also a breach of privilege and contempt of the House to make speeches or to print or publish libel reflecting on the character or proceedings of the House, or its Committees, or on any member of the House for or relating to his character or conduct as a legislator.

What is the procedure to be followed in cases of alleged breach of the legislature's privilege?
- The Legislative Assembly Speaker or Legislative Council Chairman constitutes a Privileges Committee.

NOTES

- The members to the committee are nominated based on the party strength in the Houses.
- Speaker or Chairman first decides on the motions.
- If the privilege and contempt are found prima facie, then the Speaker or Chairman will forward it to the Privileges Committee by following the due procedure.
- The Committee will examine whether statements made by him had insulted the state legislature and its Members, and whether their image was maligned before the public.
- The Committee, which has **quasi-judicial powers,** will seek an explanation from all the concerned, will conduct an inquiry and will make a recommendation based on the findings to the state legislature for its consideration.

14. Question Hour

- The first hour of every parliamentary sitting is termed as Question hour.
- It is mentioned in the Rules of Procedure of the House.
- During this time, the members ask questions and the ministers usually give answers.
- The questions can also be asked to the private members (MPs who are not ministers).

Question Hour in both Houses is held on all days of the session. But there are two days when an exception is made:

1. There is no Question Hour on the day the President addresses MPs from both Houses in the Central Hall.
2. Question Hour is not scheduled on the day the Finance Minister presents the Budget.

Key facts:

The presiding officers of the both Houses (Rajya Sabha and Lok Sabha) are the final authority with respect to the conduct of Question Hour.

15. Zero Hour

Zero Hour is **an Indian parliamentary innovation.** It is **not mentioned in the parliamentary rules book.**

- Under this, MPs can raise matters without any prior notice.
- It starts immediately after the question hour and lasts until the agenda for the day (i.e. regular business of the House) is taken up.

16. Leader of the Opposition

Who is the Leader of Opposition?

- The LOP is leader of the largest party that has not less than one-tenth of the total strength of the house.
- It is **a statutory post** defined in the Salaries and Allowances of Leaders of Opposition in Parliament Act, 1977.

Significance of the office:

- LoP is referred to as the 'shadow Prime Minister'.
- She/he is expected to be ready to take over if the government falls.
- The LoP also plays an important role in bringing cohesiveness and effectiveness to the opposition's functioning in policy and legislative work.
- LoP plays a crucial role in bringing bipartisanship and neutrality to the appointments in institutions of accountability and transparency – CVC, CBI, CIC, Lokpal etc.

17. Joint Parliamentary Committee (JPC)

A Joint Parliamentary Committee (JPC) is set up **to examine a particular bill presented before the Parliament, or for the purpose of investigating cases of financial irregularities in any government activity.**

INSIGHTSIAS

NOTES

- The JPC is **an ad-hoc body**.
- It is **set up for a given period of time and is aimed at addressing a specific issue.**

Composition:
- In order to set up a JPC, **a motion is passed in one House and supported by the other House.**
- The committee's **members are decided by Parliament.**
- The number of members can vary. **There are twice as many Lok Sabha members as the Rajya Sabha.**

Powers and Functions:
- A JPC is **authorised to collect evidence in oral or written form or demand documents in connection with the matter.**
- The proceedings and findings of the committee are **confidential**, except in matters of public interest.
- **The government can take the decision to withhold a document** if it is considered prejudicial to the safety or interest of the State.
- The **Speaker has the final word in case of a dispute over calling for evidence.**
- The **committee can invite interested parties for inquiry and summon people to appear before it.**
- The **committee gets disbanded following the submission of its report to Parliament.**

18.Select Committees

This is formed **for examining a particular Bill** and its membership is **limited to MPs from one House.**
- They are **chaired by MPs from the ruling party.**
- Since Select Committees are constituted for a specific purpose, **they are disbanded after their report.**

Background:
Parliament scrutinises legislative proposals (Bills) in two ways:
By discussing it on the floor of the two Houses:
- This is a legislative requirement; all Bills have to be taken up for debate.

By referring a Bill to a parliamentary committee:
- But, since Parliament meets for 70 to 80 days in a year, there is not enough time to discuss every Bill in detail on the floor of the House. In such scenarios, the bill are referred to a parliamentary committee.
- Referring of Bills to parliamentary committees is **not mandatory.**

Any member of the Parliament can oppose the introduction of a bill by stating that it initiates legislation outside the legislative competence of the Parliament.
The real opportunity for probing a bill's constitutionality arises when a parliamentary committee is examining it.
Government bills do not automatically go to committees for examination.
Ministers get an option to refer their bill to a select committee. They often don't exercise this option and request the presiding officers to not send the bill to a ministry specific departmentally related committee.

When does a committee examine a Bill?
Bills are **not automatically sent to committees for examination.**
There are three broad paths by which a Bill can reach a committee. They are:
1. When the minister piloting the Bill recommends to the House that his Bill be examined by a Select Committee of the House or a joint committee of both Houses.
2. If the minister makes no such motion, it is up to the presiding officer of the House to decide whether to send a Bill to a departmentally related Standing Committee.
3. Also, a Bill passed by one House can be sent by the other House to its Select Committee.

NOTES

What happens after the the bill is referred to a committee?

1. The committee undertakes a detailed examination of the Bill.
2. It invites comments and suggestions from experts, stakeholders and citizens.
3. The government also appears before the committee to present its viewpoint.
4. All this results in a report that makes suggestions for strengthening the Bill.
5. The report of the committee is of a recommendatory nature.

Time taken to submit reports:

The Bill can only progress in Parliament after the committee has submitted its report. Usually, parliamentary committees are supposed to submit their reports in three months, but sometimes it can take longer.

19. Suspension of MPs

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 is of the opinion that the **conduct of any Member is grossly disorderly**, may **direct such Member to withdraw immediately from the House**, and any Member so ordered to withdraw shall do so forthwith and shall remain absent during the remainder of the day's sitting."

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."

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.

NOTES

5. Unlike the Speaker, however, the Rajya Sabha Chairman does not have the power to suspend a Member.

20. Urban Local Bodies (ULB) reforms

- Goa has become the 6th State in the country to successfully undertake Urban Local Bodies (ULB) reforms stipulated by the **Department of Expenditure, Ministry of Finance.**
- Thus, the State has become eligible to mobilise additional financial resources of Rs. 223 crore through Open Market Borrowings. Permission for the same was issued by the Department of Expenditure.
- Goa has joined five other States namely, Andhra Pradesh, Madhya Pradesh, Manipur, Rajasthan and Telangana, who have completed ULB reforms.
- Reforms in ULBs and the urban utilities reforms are aimed at financial strenghtening of ULBs in the States and to enable them to provide better public health and sanitation services to citizens.

The set of reforms stipulated by the Department of Expenditure to achieve these objectives are:

(i) The State will notify:

a. Floor rates of property tax in ULBs which are in consonance with the prevailing circle rates (i.e. guideline rates for property transactions) and;

b. Floor rates of user charges in respect of the provision of water-supply, drainage and sewerage which reflect current costs/past inflation.

(ii) The State will put in place a system of periodic increase in floor rates of property tax/ user charges in line with price increases.

The four citizen centric areas for reforms identified by the Department of Expenditure were

(a) Implementation of One Nation One Ration Card System,

(b) Ease of doing business reform,

(c) Urban Local body/ utility reforms and

(d) Power Sector reforms.

21. Winter session of Parliament

The winter session of Parliament that usually commences by last week of November was cancelled due to the high number of COVID-19 cases.

Background:

Article 85 says **the President can summon a session of Parliament** "at such time and place as he thinks fit". Thus, a session can be called on the **recommendation of the government,** which decides its date and duration.

Have there been any such instances in the past?

As per parliamentary records, there have only been three instances in the past of the winter session not being held — in 1975, 1979 and 1984.

What the Constitution says?

Article 85 requires that **there should not be a gap of more than six months between two sessions of Parliament.**

- Therefore, with the monsoon session of Parliament held in September, the government has no constitutional compulsion to hold a winter session.

Besides, **the Constitution does not specify when or for how many days Parliament should meet.**

NOTES

Judiciary

1. Contempt of courts

The **Contempt of Courts Act 1971** defines **civil and criminal contempt,** and lays down the powers and procedures by which courts can penalise contempt, as well as the penalties that can be given for the offence of contempt.

- **Contempt of court** is **the offense of being disobedient to or disrespectful toward a court of law and its officers** in the form of behavior that opposes or defies the authority, justice and dignity of the court.

Contempt of court can be of two kinds:

Civil contempt means wilful disobedience of any judgment, decree, direction, order, writ or other process of a court, or wilful breach of an undertaking given to a court.

Criminal contempt is attracted by the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which:

1. Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
2. Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
3. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Relevant provisions:

- **Articles 129 and 215** of the Constitution of India empowers the Supreme Court and High Court respectively to punish people for their respective contempt.
- **Section 10 of The Contempt of Courts Act of 1971** defines the power of the High Court to punish contempts of its subordinate courts.
- The Constitution also includes contempt of court as **a reasonable restriction to the freedom of speech and expression under Article 19,** along with elements like public order and defamation.

There is no requirement for the Supreme Court to take Attorney General's consent in initiating a criminal contempt proceeding on its own as it exercises "inherent power" under the Constitution in issuing the show cause notice.

- The Contempt of Courts Act, 1971, lays down the law on contempt of court. Section 15 of the legislation describes the procedure on how a case for contempt of court can be initiated.
- In the case of the Supreme Court, the Attorney General or the Solicitor General, and in the case of High Courts, the Advocate General, may bring in a motion before the court for initiating a case of criminal contempt.
- However, if the motion is brought by any other person, the consent in writing of the Attorney General or the Advocate General is required.

Why is the consent of the Attorney General required to initiate contempt proceedings?

The objective behind requiring the consent of the Attorney General **before taking cognizance of a complaint** is **to save the time of the court.**

- This is necessary because **judicial time is squandered** if frivolous petitions are made and the court is the first forum for bringing them in.
- The AG's consent is meant to be **a safeguard against frivolous petitions,** as it is deemed that the AG, as an officer of the court, will **independently ascertain whether the complaint is indeed valid.**

Under what circumstances is the AG's consent not needed?

INSIGHTSIAS

NOTES

The AG's consent is **mandatory when a private citizen wants to initiate a case of contempt of court against a person.**
However, when **the court itself initiates a contempt of court case the AG's consent is not required.**

- This is because the court is exercising its inherent powers under the Constitution to punish for contempt and such Constitutional powers cannot be restricted because the AG declined to grant consent.

What happens if the AG denies consent?
If the AG denies consent, the matter all but ends.
The **complainant can, however, separately bring the issue to the notice of the court** and urge the court to **take suo motu cognizance.**

- **Article 129 of the Constitution** gives the Supreme Court the power to initiate contempt cases on its own, independent of the motion brought before it by the AG or with the consent of the AG.

2. Amicus Curiae

Amicus Curiae, which literally translates as friend of the court, is a neutral lawyer appointed by the court to assist it in cases which require specific expertise.

- They are advocates appointed to assist the court in adjudication of important cases.

Roles and functions:

- India, thus, if a petition is received from the jail or in any other criminal matter if the accused is unrepresented, then, an Advocate is appointed as amicus curiae by the Court to defend and argue the case of the accused.
- In civil matters also the Court can appoint an Advocate as amicus curiae if it thinks it necessary in case of an unrepresented party.
- The Court can also appoint amicus curiae in any matter of general public importance or in which the interest of the public at large is involved.

3. Chief Justice of India

Justice N.V. Ramana was sworn in as the 48th Chief Justice of India (CJI) by President Ram Nath Kovind.

Appointment of CJI:

- The Chief Justice of India is traditionally appointed by the outgoing Chief Justice of India on the day of his (or her) retirement.
- By convention, the outgoing Chief Justice of India selects the most senior then-sitting Supreme Court judge.

Seniority at the apex court is determined not by age, but by:

1. The date a judge was appointed to the Supreme Court.
2. If two judges are elevated to the Supreme Court on the same day:
3. The one who was sworn in first as a judge would trump another.
4. If both were sworn in as judges on the same day, the one with more years of high court service would 'win' in the seniority stakes.
5. An appointment from the bench would 'trump' in seniority an appointee from the bar.

Is it a part of the Constitution?
The Constitution of India does not have any provision for criteria and procedure for appointing the CJI. **Article 124(1) of the Indian Constitution** says there "shall be a Supreme Court of India consisting of a Chief Justice of India".

- The closest mention is in **Article 126**, which deals with the appointment of an acting CJI.

NOTES

- In the absence of a constitutional provision, the procedure relies on custom and convention.

What is the procedure?
The procedure to appoint the next CJI is laid out in the Memorandum of Procedure (MoP) between the government and the judiciary:

1. The procedure is initiated by the Law Minister seeking the recommendation of the outgoing CJI at the 'appropriate time', which is near to the date of retirement of the incumbent CJI.
2. The CJI sends his recommendation to the Law Ministry; and in the case of any qualms, the CJI can consult the collegium regarding the fitness of an SC judge to be elevated to the post.
3. After receiving recommendation from the CJI, the law minister forwards it to the Prime Minister who then advises the President on the same.
4. The President administers the oath of office to the new CJI.

Appointment of the CJI and the appointment of SC judges- key difference:
In the former, the government cannot send the recommendation of the CJI (or the collegium) back to them for reconsideration; while in the latter, the government can do so. However, if the collegium reiterates those names, then the government cannot object any further.

4. Retired judges

The Supreme Court has pushed for the appointment of retired judges to battle pendency of cases in High Courts.

Constitutional Provisions in this regard:
The appointment of ad-hoc judges was provided for in the Constitution under **Article 224A.**

Procedure to be followed:

- Under the Article, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of judge of that court or of any other High Court to sit and act as a judge of the High Court for that State.
- Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

5. Judicial review

Judicial review is the power of Judiciary to review any act or order of Legislative and Executive wings and to pronounce upon the constitutional validity when challenged by the affected person.

Judicial Restraint vs. Judicial Activism

Restraint	Activism
Judges should:	*Judges should:*
✓look to the original Intent of the Constitution	✓Look beyond the original intent of the Framers
✓Look at the intent of the legislators that wrote the law	✓"Living Constitution" (changes over time)
✓Respectful of precedents	✓Active action is necessary and appropriate at times
✓Argue that changes to the Constitution can only be made thru the Amendment process	✓Can be involved in interpreting and enlarging laws

Judicial review present in India:

1. The power of Judicial Review comes from the Constitution of India itself (Articles 13, 32, 136, 142 and 147 of the Constitution).
2. The power of judicial review is evoked to protect and enforce the fundamental rights guaranteed in Part III of the Constitution.
3. Article 13 of the Constitution prohibits the Parliament and the state legislatures from making laws that "may take away or abridge the fundamental rights" guaranteed to the citizens of the country.

INSIGHTSIAS

NOTES

4. The provisions of Article 13 ensure the protection of the fundamental rights and consider any law "inconsistent with or in derogation of the fundamental rights" as void.

The Supreme Court on various instances, ruled that "**the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights".**

6. Review petition

A judgment of the Supreme Court becomes the law of the land, according to the Constitution. It is final because it provides certainty for deciding future cases.

However, **the Constitution itself gives, under Article 137, the Supreme Court the power to review any of its judgments or orders.** This departure from the Supreme Court's final authority is entertained under specific, narrow grounds.

- So, when a review takes place, the law is that it is allowed not to take fresh stock of the case but to correct grave errors that have resulted in the miscarriage of justice.

When can a review petition be accepted?

In a 1975 ruling, Justice Krishna Iyer said **a review can be accepted "only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility".**

- A **review is by no means an appeal in disguise.** That means the Court is allowed not to take fresh stock of the case but to correct grave errors that have resulted in the miscarriage of justice.

Filing Review Petition:

- As per the Civil Procedure Code and the Supreme Court Rules, any person aggrieved by a ruling can seek a review. This implies that it is not necessary that only parties to a case can seek a review of the judgment.
- A Review Petition has to be filed within 30 days of the date of judgment or order.
- In certain circumstances, the court can condone the delay in filing the review petition if the petitioner can establish strong reasons that justify the delay.

Option after Review Petition Fails:

In **Roopa Hurra v Ashok Hurra case (2002),** the Court evolved the concept of a curative petition, which can be heard after a review petition is dismissed.

  - A **curative petition** is also entertained on very narrow grounds like a review petition and is generally not granted an oral hearing.

7. Recusal of Judges

Judicial disqualification, referred to as recusal, is the act of abstaining from participation in an official action such as a legal proceeding due to a conflict of interest of the presiding court official or administrative officer.

NOTES

Grounds for Recusal:

1. The judge is biased in favour of one party, or against another, or that a reasonable objective observer would think he might be.
2. Interest in the subject matter, or relationship with someone who is interested in it.
3. Background or experience, such as the judge's prior work as a lawyer.
4. Personal knowledge about the parties or the facts of the case.
5. Ex parte communications with lawyers or non-lawyers.
6. Rulings, comments or conduct.

Recusal of Judges in Past SC cases:

INSTANCE OF RECUSAL OF SC JUDGES

March 8, 2016: Justice J Chelameswar recused from a case pertaining to Bangalore blasts accused Abdul Nazir Maudany

March 9, 2016: Justice AR Dave's bench said it was unable to hear activist Teesta's anticipatory bail plea and referred it to CJI for listing it before another bench

March 10, 2016: Justice VG Gowda recused from hearing CBI's plea challenging May 2010 Allahabad HC verdict dropping criminal conspiracy charge against BJP leaders LK Advani in Babri Masjid case

April 28, 2011: Justices DK Jain and HL Dattu recused from hearing then Sikkim HC Chief Justice PD Dinakaran's petition seeking a stay on Rajya Sabha-appointed inquiry panel against him

March 2, 2012: Bench of justices HL Dattu and CK Prasad chose not to hear a petition challenging validity of the USD 8.5 million Cairn Energy-Vedanta deal.

Are there any laws in this regard?

There are no definite rules on recusals by Judges.

- However, In taking oath of office, judges, both of the Supreme Court and of the high courts, promise to perform their duties, to deliver justice, "without fear or favour, affection or ill-will".

What has the Supreme Court said on this?

Justice J. Chelameswar in his opinion in **Supreme Court Advocates-on-Record Association v. Union of India (2015)** held that "Where a judge has a pecuniary interest, no further inquiry as to whether there was a 'real danger' or 'reasonable suspicion' of bias is required to be undertaken".

8. Lok Adalat

Access to justice for the poor is a constitutional mandate to ensure fair treatment under our legal system. Hence, Lok Adalats (literally, 'People's Court') were established to make justice accessible and affordable to all. It was a forum to address the problems of crowded case dockets outside the formal adjudicatory system.

- **The first Lok Adalat camp was organised in Gujarat in 1982 as a voluntary and conciliatory agency without any statutory backing for its decisions.**
- The term 'Lok Adalat' means 'People's Court' and is based on **Gandhian principles.**

Lok Adalat is one of **the alternative dispute redressal mechanisms,** it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably.

- The Lok Adalats are formed to fulfil the promise given by **the preamble of the Indian Constitution–** securing Justice – social, economic and political of every citizen of India.

Constitutional basis:

- **The Constitution (42nd Amendment) Act, 1976, inserted Article 39A to ensure "equal justice and free legal aid".**
- **Articles 14 and 22(1)** of the Constitution also make it compulsory for the State to guarantee equality before the law.

Statutory provisions:

Under **the Legal Services Authorities Act, 1987** Lok Adalats have been given statutory status.

NOTES

Final award:
The decision made by the Lok Adalats is considered to be a verdict of a civil court and is ultimate and binding on all parties.

No appeal:
- There is no provision for an appeal against the verdict made by Lok Adalat.
- But, they are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure, in exercise of their right to litigate.

Court fee:
There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties.

Litigants are forced to approach Lok Adalats mainly because it is a party-driven process, allowing them to reach an amicable settlement. Lok Adalats offer parties **speed of settlement**, as cases are disposed of in a single day; **procedural flexibility**, as there is no strict application of procedural laws such as the Code of Civil Procedure, 1908, and the Indian Evidence Act, 1872; **economic affordability**, as there are no court fees for placing matters before the Lok Adalat; **finality of awards**, as no further appeal is allowed. This prevents delays in settlement of disputes. More importantly, the award issued by a Lok Adalat, after the filing of a joint compromise petition, has the status of a civil court decree.

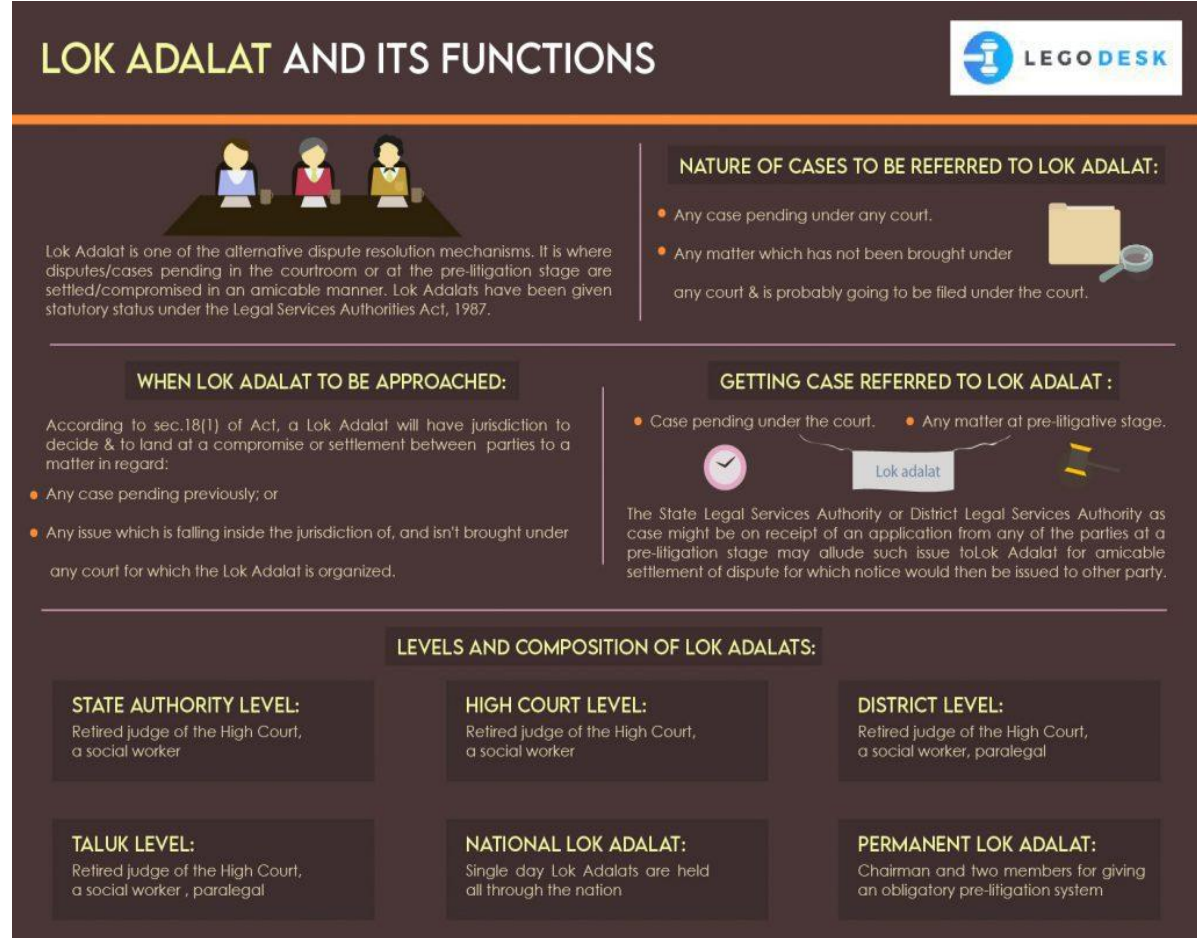
Nature of Cases to be Referred to Lok Adalat:
- Any case pending before any court.
- Any dispute which has not been brought before any court and is likely to be filed before the court.

Provided that any matter relating to an offence not compoundable under the law shall not be settled in Lok Adalat.

Motor-accident claims, disputes related to public-utility services, cases related to dishonour of cheques, and land, labour and **matrimonial disputes (except divorce)** are usually taken up by Lok Adalats.

INSIGHTS

NOTES



9. National Legal Services Authority (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.

NOTES

- **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.**

10. Public Interest litigation (PIL)

Public Interest litigation (PIL), as the name suggests, is litigation for any public interest. As the word 'litigation' means 'legal action', PIL stands for a legal action taken by a public spirited person in order to protect public interest (any act for the benefit of public).

- A Public Interest Litigation **can be filed against a State/ Central Govt., Municipal Authorities, and not any private party.**
- According to the Constitution of India, **the petition can be filed under Article 226 before a High Court or under Article 32 before the Supreme Court of India.**

Background:

Justice Bhagwati and Justice V R Krishna Iyer were among the first judges in the country to admit PILs.

11. In-house procedure

How are allegations of misconduct against judges dealt with?

There are two broad alternatives when it comes to complaints against sitting judges:

1. Impeachment.
2. In-house procedure.

(Note: For details on impeachment process, go through the relevant chapters from Laxmikant text book).

Let's see what an in-house procedure means?

Since 1997, judges have adopted an 'in-house procedure' for inquiring into charges.

Under this, when a complaint is received against a High Court judge:

1. The CJI should decide on the authenticity of the complaint and decide whether it is frivolous or it involves serious misconduct and impropriety.
2. The CJI would ask for the concerned judge's response if he feels the complaint is serious, The CJI may close the matter if he is satisfied with the response.

Suppose, If the CJI feels that a deeper probe is necessary:

- He forms **a three-member committee** consisting of only the judiciary members.
- The composition of this three-member committee depends on the position of the judge against whom the complaint has been filed.
- The inquiry it holds is of the nature of a fact-finding mission and is not a formal judicial inquiry involving examination of witnesses.
- **The committee can give two kinds of recommendations,** one where it deems the misconduct as serious enough to require removal from office, or that it is not serious enough to warrant removal.

Actions taken on the recommendations of the committee:

- If the committee deems the charges against the judge as genuine, the concerned judge will be urged to resign or seek voluntary retirement.
- If the judge is unwilling to quit, the Chief Justice of the High Court concerned would be asked to withdraw judicial work from him.
- The executive i.e, the President and the Prime Minister are informed of the situation and are expected to begin the process of impeachment.
- If the misconduct does not warrant removal, the judge would be advised accordingly.

INSIGHTSIAS

NOTES

Constitutional provisions in this regard:

- **Article 121 and Article 211** of the Indian Constitution expressly bar Parliament and the state legislatures to discuss the conduct of any judge.

Besides, the SC in **the Ravichandran Iyer v. Justice A.M. Bhattacharjee (1995) case** has held that complaints against sitting judges should be kept confidential.

12. Kesavananda Bharati Case

The case was primarily about **the extent of Parliament's power to amend the Constitution.**

1. First, the court was reviewing a 1967 decision in **Golaknath v State of Punjab** which, reversing earlier verdicts, had ruled that **Parliament cannot amend fundamental rights.**
2. Second, the court was deciding **the constitutional validity of several other amendments.** Notably, **the right to property** had been removed as a fundamental right, and Parliament had also given itself the power to amend any part of the Constitution and passed a law that it cannot be reviewed by the courts.

What happened then?

A **13-judge Bench was set up by the Supreme Court**, and the case was heard over 68 working days spread over six months. The **basic structure doctrine** was evolved in the majority judgment.

What did the court decide?

- While the court said that Parliament had vast powers to amend the Constitution, it drew the line by observing that certain parts are so inherent and intrinsic to the Constitution that even Parliament cannot touch it.
- However, despite the ruling that Parliament cannot breach fundamental rights, **the court upheld the amendment that removed the fundamental right to property.** The court ruled that in spirit, the amendment would not violate the "basic structure" of the Constitution.

Essentially, Kesavananda Bharati, lost the case. But as many legal scholars point out, the government did not win the case either.

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.

- However, **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.

13. Virtual courts

Virtual Court is a concept aimed at eliminating presence of litigant or lawyer in the court and adjudication of the case online.

- **An e-court or Electronic Court** means a location in which matters of law are adjudicated upon, in the presence of qualified Judge(s) and which has a well-developed technical infrastructure.

The eCourts Project:

INSIGHTSIAS

NOTES

It was conceptualized on the basis of **the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005"** submitted by eCommittee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.
The eCourts Mission Mode Project, is a Pan-India Project, **monitored and funded by Department of Justice,** Ministry of Law and Justice, Government of India **for the District Courts across the country.**

The project envisages:
1. To provide efficient & time-bound citizen centric services delivery as detailed in eCourt Project Litigant's Charter.
2. To develop, install & implement decision support systems in courts.
3. To automate the processes to provide transparency in accessibility of information to its stakeholders.
4. To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

14. 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".

15. 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.

NOTES

16. 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.

NOTES

Centre –State Relations

1. President's Rule

The **Supreme Court** had stayed an **Andhra Pradesh High Court order intending to embark on a judicial enquiry into whether there is a constitutional breakdown in the State machinery.**

What has the Supreme Court said?

- It was **not up to the High Court to enquire and recommend President's rule in a State.**
- It is **Article 356** that deals with failure of constitutional machinery in a State. This is a power [to impose President's rule] exclusively vests in the Executive.

Article 356 of the Constitution of India gives President of India **the power to suspend state government and impose President's rule of any state in the country** if "he is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution".
It is also known as **'State Emergency' or 'Constitutional Emergency'.**

Implications:
Upon the imposition of this rule, **there would be no Council of Ministers.**

- The state will fall under the direct control of the Union government, and **the Governor will continue to head the proceedings, representing the President of India.**

Parliamentary Approval and Duration:

- A proclamation imposing President's Rule **must be approved by both the Houses of Parliament within two months** from the date of its issue.
- The approval takes place through **simple majority in either House,** that is, a majority of the members of the House present and voting.
- **Initially valid for six months,** the President's Rule **can be extended for a maximum period of three years with the approval of the Parliament, every six months.**

Report of the Governor:
Under Article 356, President's Rule is imposed if the President, **upon receipt of the report from the Governor of the State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.**

Revocation:

- A proclamation of President's Rule may be **revoked by the President at any time by a subsequent proclamation.**
- Such a proclamation **does not require parliamentary approval.**

2. Can states refuse to implement Central laws?

Delhi Assembly had passed resolution rejecting agricultural laws.

Experts argue, the **three agriculture laws are a clear infringement on the states' right to legislate.**

- The main subjects of the three acts are **agriculture and market** that are essentially **state subjects as per the Seventh Schedule of the Constitution.**
- However, the Central government finagled its way into the legislation by misconstruing its authority on **food items, a subject in the Concurrent List,** as authority over the subject agriculture.

INSIGHTSIAS

NOTES

- However, food items and agricultural products are distinct categories as many agricultural products in their raw forms are not food items and vice versa.

What does the Constitution say on this?
Agriculture is in the state list under the Constitution.
But, Entry 33 of the Concurrent List provides Centre and the states powers to control production, supply and distribution of products of any industry, including agriculture.

- Usually, **when a state wants to amend a Central law made under one of the items in the concurrent list,** it **needs the clearance of the Centre.**
- When **a state law contradicts a Central law** on the same subject, **the law passed by Parliament prevails.**

Why the Constitution envisaged such an arrangement?
This is an arrangement envisaged as most Parliament laws apply to the whole of India and states amending the Central laws indiscriminately could lead to **inconsistencies in different regions on the application of the same law.** In matters of trade and commerce, this could especially pose serious problems.

The other option available with the states is:
To take Centre to the Supreme Court over the validity of these laws.

- **Article 131** of the Constitution provides exclusive jurisdiction to the Supreme Court to adjudicate matters between the states and the Centre.
- **Article 254 (2)** of the Constitution empowers state governments to pass legislations which negate the Central acts in the matters enumerated under the Concurrent List.
    - A state legislation passed under Article 254 (2) **requires the assent of the President of India.**

INSIGHTSIAS

NOTES

Inter –State Relations

1. Interstate River Water Disputes

The Parliament has enacted the two laws:

1. The River Boards Act (1956).
2. The Inter-State Water Disputes Act (1956).

1. The River Boards Act:

It provides for the establishment of river boards by the Central government for the regulation and development of inter-state river and river valleys.

A River Board is established on the request of state governments concerned to advise them.

2. The Inter-State Water Disputes Act:

It empowers the Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley.

- The decision of the tribunal is final and binding on the parties to the dispute.
- Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act.

Provisions related to interstate river water disputes:

Entry 17 of State List deals with water i.e. water supply, irrigation, canal, drainage, embankments, water storage and water power.

Entry 56 of Union List empowers the Union Government for the regulation and development of inter-state rivers and river valleys to the extent declared by Parliament to be expedient in the public interest.

Article 262: In the case of disputes relating to waters, it provides

1. Clause 1: Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
2. Clause 2: Parliament may, by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as mentioned above.

INSIGHTSIAS

NOTES

Electoral Issues / Electoral Reforms

1. How Election Commission decides on party symbols?

How are symbols allotted to political parties?

As per the guidelines, to get a symbol allotted:

1. A party/candidate has to provide a list of three symbols from the EC's free symbols list at the time of filing nomination papers.
2. Among them, one symbol is allotted to the party/candidate on a first-come-first-serve basis.
3. When a recognised political party splits, the Election Commission takes the decision on assigning the symbol.

Powers of Election Commission:

The **Election Symbols (Reservation and Allotment) Order, 1968** empowers the EC to recognise political parties and allot symbols.

- Under Paragraph 15 of the Order, it can decide disputes among rival groups or sections of a recognised political party staking claim to its name and symbol.
- The EC is also the only authority to decide issues on a dispute or a merger. The Supreme Court upheld its validity in Sadiq Ali and another vs. ECI in 1971.

How many types of symbols are there?

As per **the Election Symbols (Reservation and Allotment) (Amendment) Order, 2017,** party symbols are either:

1. **Reserved:** Eight national parties and 64 state parties across the country have "reserved" symbols.
2. **Free:** The Election Commission also has a pool of nearly 200 "free" symbols that are allotted to the thousands of unrecognised regional parties that pop up before elections.

2. Electoral bonds

- Announced in the 2017 Union Budget, electoral bonds are **interest-free bearer instruments used to donate money anonymously to political parties.**
- A bearer instrument **does not carry any information about the buyer or payee.**
- **The holder of the instrument** (which is the political party) is presumed to be its owner.
- The bonds are sold in multiples of Rs 1,000, Rs 10,000, Rs 1 lakh, Rs 10 lakh, and Rs 1 crore, and State Bank of India is the only bank authorised to sell them.
- Donors can buy and subsequently donate bonds to a political party, which can encash the bonds through its verified account within 15 days.
- There is **no limit on the number of bonds an individual or company can purchase.**
- If a party hasn't enchased any bonds within 15 days, SBI deposits these into **the Prime Minister's Relief Fund.**

3. Registration of political parties

Registration of Political parties is governed by the provisions of **Section 29A of the Representation of the People Act, 1951.**

- A party seeking registration under the said Section with the Election Commission has to submit an application to the Commission within the said period following the date of its formation as per guidelines prescribed by the Election Commission of India in exercise of the powers conferred by **Article 324 of the Commission of India and Section 29A of the Representation of the People Act, 1951.**

To be eligible for a 'National Political Party of India:

1. It secures at least six percent of the valid votes polled in any four or more states, at a general election to the House of the People or, to the State Legislative Assembly.

INSIGHTSIAS

NOTES

2. In addition, it wins at least four seats in the House of the People from any State or States.
3. It wins at least two percent seats in the House of the People (i.e., 11 seats in the existing House having 543 members), and these members are elected from at least three different States.

To be eligible for a 'State Political Party:

1. It secures at least six percent of the valid votes polled in the State at a general election, either to the House of the People or to the Legislative Assembly of the State concerned
2. In addition, it wins at least two seats in the Legislative Assembly of the State concerned.
3. It wins at least three percent (3%) of the total number of seats in the Legislative Assembly of the State, or at least three seats in the Assembly, whichever is more.

Benefits:

1. If a party is recognised as a State Party', it is **entitled for exclusive allotment of its reserved symbol** to the candidates set up by it in the State in which it is so recognised, and if a party is recognised as a `National Party' it is entitled for exclusive **allotment of its reserved symbol** to the candidates set up by it throughout India.
2. Recognised `State' and `National' parties need **only one proposer for filing the nomination** and are also **entitled for two sets of electoral rolls** free of cost at the time of revision of rolls and their candidates get one copy of electoral roll free of cost during General Elections.
3. They also **get broadcast/telecast facilities** over Akashvani/Doordarshan during general elections.
4. The **travel expenses of star campaigners are not to be accounted** for in the election expense accounts of candidates of their party.

Various Committees regarding Election expenses:

1. Law Commission of India- 170th Report on "Reform of the Electoral Laws" in 1999.
2. Election Commission of India- Report in 2004 on "Proposed Electoral Reforms".
3. Goswami Committee on Electoral Reforms in 1990.
4. Vohra Committee Report in 1993.
5. Indrajeet Gupta Committee on State Funding of Elections in 1998.
6. National Commission to Review the Working of the Constitution in 2001.
7. Second Administrative Reforms Commission in 2008.

What are unrecognised political parties?

Either newly registered parties or those which have not secured enough percentage of votes in Assembly or General Elections to become a State party or those which have never contested in elections since being registered are considered unrecognised parties. Such parties don't enjoy all the benefits extended to the recognised parties.

4. NOTA (None Of The Above)

The option of NOTA for Lok Sabha and assembly elections was prescribed by the SC in 2013. Thus, India became the 14th country to institute negative voting.

Why have NOTA if there's 'no electoral value'?

- NOTA gives people dissatisfied with contesting candidates an opportunity to express their disapproval.
- This, in turn, increases the chances of more people turning up to cast their votes, even if they do not support any candidate, and decreases the count of bogus votes.

NOTA in Rajya Sabha:

- The Supreme Court, in 2018, held that the NOTA option is meant only for universal adult suffrage and direct elections and not for polls held by the system of proportional representation by means of the single transferable vote as done in the Rajya Sabha.

NOTES

- The court held that making NOTA applicable in Rajya Sabha elections is contrary to **Article 80(4) of the constitution** and the Supreme Court's judgment in PUCL v Union of India (2013).
- It is because **NOTA defeats the fairness in indirect elections, it ignores the role of an elector in such an election and destroys democratic values and encourages malpractices like defection and corruption.**

How is a NOTA vote cast?
The EVMs have the NOTA option at the end of the candidates' list. Earlier, in order to cast a negative ballot, a voter had to inform the presiding officer at the polling booth. A NOTA vote doesn't require the involvement of the presiding officer.

Right to reject:
- The 'right to reject' was **first proposed by the Law Commission in 1999.**
- Similarly, the Election Commission endorsed 'Right to Reject', first in 2001, under **James Lyngdoh [the then CEC],** and then in 2004 under **T.S. Krishnamurthy** [the then CEC], in its Proposed Electoral Reforms.
- Besides, **the 'Background Paper on Electoral Reforms',** prepared by the Ministry of Law in 2010, had proposed that **if certain percentage of the vote was negative, then election result should be nullified and new election held.**

5. Postal ballots

For the first time in Tamil Nadu and Puducherry, the Election Commission of India allowed the casting of postal votes for elderly voters aged over 80, the differently-abled, and those who have tested positive for COVID-19.

What is postal voting?
A restricted set of voters can exercise postal voting. Through this facility, a voter can cast her vote remotely by recording her preference on the ballot paper and sending it back to the election officer before counting.

Who else can avail this facility?
Members of the armed forces like the Army, Navy and Air Force, members of the armed police force of a state (serving outside the state), government employees posted outside India and their spouses are entitled to vote only by post.
- The exception to the above-mentioned category of voters is provided under **Section 60 of the Representation of the People Act, 1951.**

Amendments:
To extend the voting facility to overseas voters, Government needs to only amend **the Conduct of Election Rules 1961,** and doesn't require Parliament's nod.

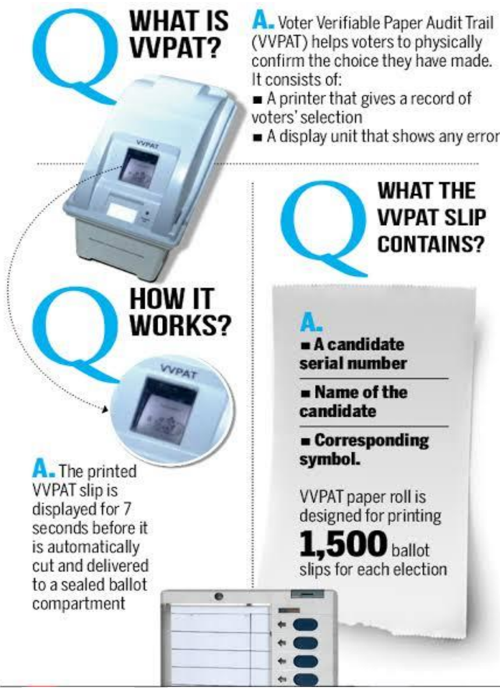
What is the current process of voting for Indian citizens living abroad?
Voting rights for NRIs were introduced only in 2011, through an amendment to **the Representation of the People Act 1950.**
- An NRI can vote in the constituency in which her place of residence, as mentioned in the passport, is located.
- She **can only vote in person** and will have to produce her passport in original at the polling station for establishing identity.

Representation of the People Act, 1951:
This act provides for the actual conduct of elections in India. It deals with the following matters:
1. Details like Qualification and Disqualification of members of both the Houses of Parliament and the State Legislatures,
2. Administrative machinery for conducting elections,
3. Registration of Political parties,
4. Conduct of Elections,

NOTES

5. Election Disputes,
6. Corrupt practices & Electoral offences, &
7. By-elections.

6. Voter Verifiable Paper Audit Trail (VVPAT)



- Voter verifiable paper audit trail (VVPAT) is a method of providing feedback to voters using EVMs.
- A VVPAT is intended as **an independent verification system** for voting machines designed to allow voters to verify that their vote was cast correctly, and to provide a means to audit the stored electronic results.
- It contains the name of the candidate for whom vote has been cast and symbol of the party/individual candidate.

Significance and the need for VVPATs:

- The VVPAT helps to detect potential election fraud or malfunction in the Electronic Voting Machine.
- It provides a means to audit the stored electronic results. It serves as an additional barrier to change or destroy votes.
- The EVMs with VVPAT system ensure the accuracy of the voting system with fullest transparency and restores the confidence of the voters.
- EVMs and VVPATs also speed up the election process as counting votes on EVMs takes much lesser time than counting paper ballots.

7. Model code of conduct

These are the guidelines **issued by the Election Commission of India** for conduct of political parties and candidates during elections mainly with respect to speeches, polling day, polling booths, election manifestos, processions and general conduct.

- This is in keeping with **Article 324** of the Constitution, which mandates EC to conduct free and fair elections to the Parliament and State Legislatures.

Aim: To ensure free and fair elections.

When it comes into force?
So far, the Model Code of Conduct came into force immediately on announcement of the election schedule by the commission. The Code remains in force till the end of the electoral process.

Status:
The need for such code is in the interest of free and fair elections. However, the code does not have any specific statutory basis. It has only a persuasive effect. It contains what is known as **"rules of electoral morality".** But this lack of statutory backing does not prevent the Commission from enforcing it.

Evolution:
The Commission issued the code for the first time in 1971 (5th Election) and revised it from time to time. This set of norms has been evolved with the consensus of political parties who have

NOTES

consented to abide by the principles embodied in the said code and also binds them to respect and observe it in its letter and spirit.

What it contains?

The salient features of the Model Code of Conduct lay down how political parties, contesting candidates and party(s) in power should conduct themselves during the process of elections i.e. on their general conduct during electioneering, holding meetings and processions, poll day activities and functioning of the party in power etc.

Enforcement:

The EC has devised several mechanisms to take note of the violation of the code, which include joint task forces of enforcement agencies and flying squads. The latest is the introduction of the cVIGIL mobile app through which audio-visual evidence of malpractices can be reported.

8. 'Convicted legislators can't be barred for life from polls'

The Central government has told the Supreme Court that it rejected the idea of **barring convicted legislators for life from contesting elections, forming or becoming an office-bearer of a political party.**

What has the Union Ministry of Law and Justice said?

- An elected representative of the people cannot be equated with public servants who are banned for a lifetime on conviction.
- Disqualification under **the Representation of the People Act of 1951** for the period of the prison sentence and six years thereafter was enough for legislators.

Election Commission's observations:

The Centre's stand differs from that taken by the Election Commission, which endorsed **a life ban as necessary to "champion the cause of decriminalisation of politics".**

Rationale behind these arguments:

While **a public servant or a government employee is debarred for life on conviction for offences under the Indian Penal Code, money laundering law, foreign exchange violation, UAPA or cheque cases,** among other laws, a legislator is "only disqualified for the same offences for a specified period".

- However, the counter view is that **legislators are not bound by specific "service conditions".**

9. One Nation, One Election

It refers to holding elections to Lok Sabha, State Legislative Assemblies, Panchayats and Urban local bodies simultaneously, once in five year.

For simultaneous elections to be implemented, Changes to be made in Constitution and Legislations:

1. Article 83 which deals with the duration of Houses of Parliament need an amendment.
2. Article 85 (on dissolution of Lok Sabha by the president).
3. Article 172 (relating to the duration of state legislatures).

The Representation of People Act, 1951 Act would have to be amended to build in provisions for stability of tenure for both parliament and assemblies. This should include the following crucial elements:

1. Restructuring the powers and functions of the ECI to facilitate procedures required for simultaneous elections
2. A definition of simultaneous election can be added to section 2 of the 1951 act.

INSIGHTSIAS

NOTES

10.Star campaigner

They can be described as persons who are nominated by parties to campaign in a given set of Constituencies. These persons are, in almost all cases, prominent and popular faces within the Party. However, there are **no specific definitions according to law or the Election Commission of India.**

Benefits:
The **expenditure incurred on campaigning by such campaigners is exempt from being added to the election expenditure** of a candidate. However, this only applies when a star campaigner limits herself to a general campaign for the political party she represents.

What if a star campaigner campaigns specifically for one candidate?
If a candidate or her election agent shares the stage with a star campaigner at a rally, then the entire expenditure on that rally, other than the travel expenses of the star campaigner, is added to the candidate's expenses.

- Even if the candidate is not present at the star campaigner's rally, but there are posters with her photographs or her name on display, the entire expenditure will be added to the candidate's account.
- This applies even if the star campaigner mentions the candidate's name during the event. When more than one candidate shares the stage, or there are posters with their photographs, then the expenses of such rally/meeting are equally divided between all such candidates.

INSIGHTSIAS

NOTES

Citizenship

1. Overseas Citizens of India (OCI)

People of Indian origin and the Indian diaspora having Overseas Citizens of India (OCI) cards will not have to carry their old, expired passports for travel to India, as was required earlier, according to a government notification.

Eligible categories to apply for OCI Card	
	Is a Citizen of India at time of or after the Constitution came into effect i.e. 26 January 1950.
	Eligible to become citizin of India on 26 January 1950
	Belonged to a territory that became part of India after 15 August 1947
	Child or descendent of a person from any of the above mentioned categories
	A minor child of the persons belonging to any of the above.
	A minor child of whom either or both the parents are citizens of India.
	Foreign origin spouse of Citizen of India or of a person holding OCI status . - Marriage needs to be registered. - They are married for more than two years continuously beore the date of application.

Who are OCI cardholders?

- Government of India launched the **'Overseas Citizenship of India (OCI) Scheme' by making amendments to Citizenship Act, 1955 in 2005.**
- On 09 January 2015, the Government of India discontinued the PIO card and merged it with OCI card.

Eligibility:

Government of India allows the following categories of foreign nationals to apply for OCI Card.

Exceptions:

Anyone who is applying for OCI card should hold a valid Passport of another country.

- Individuals who do not have citizenship of any other country are not eligible to gain an OCI status.
- Individuals whose parents or grandparents hold citizenship of Pakistan and Bangladesh are not eligible to apply.

Benefits for OCI cardholders:

1. Lifelong Visa to visit India multiple times. (special permission needed for research work in India).
2. No need to register with Foreigners Regional Registration Officer (FRRO) or Foreigners Registration Officer (FRO) for any length of stay.
3. Except for acquisition of agricultural and plantation properties, OCI card holders have similar facilities that are extended to NRIs in economic, financial and educational fields.
4. Same treatment as of NRIs in respect to Inter-country adoption of Indian children.
5. Also treated at par with NRIs regarding – entry fees for national monuments, practice of professions like doctors, dentists, nurses, advocates, architects, Chartered Accountants & Pharmacists.
6. At par with NRIs to participate in All India Pre-medical tests and such.
7. Treated at par with Indian citizens in matters of traffic in airfares in Indian domestic sectors.
8. Same entry fee as for Indians for entry into India's national parks and wildlife sanctuaries.
9. OCI booklet can be used as identification to avail services. An affidavit can be attached with local address as residential proof.

There are certain restrictions placed on OCI card holders:

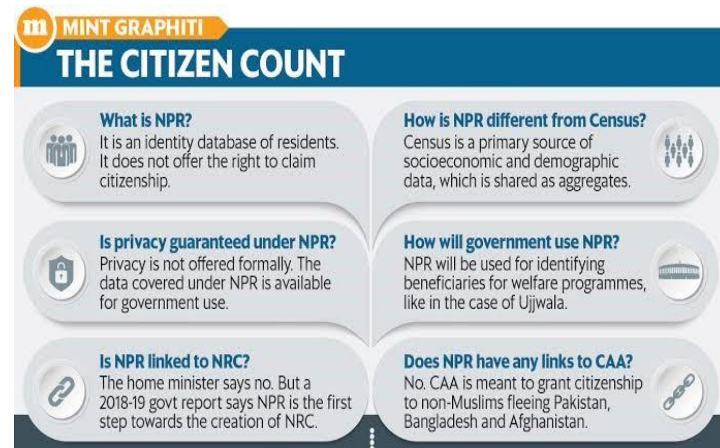
1. Do not have right to vote.
2. Do not have right to any public service/government jobs
3. Cannot hold offices of – Prime Minister, President, Vice -President, Judge of Supreme Court and High Court, member of Parliament or Member of state legislative assembly or council.
4. Cannot own agricultural property.

NOTES

2. National Population Register

It is **a Register of usual residents** of the country.

- It is being prepared at the local (Village/sub-Town), sub-District, District, State and National level under provisions of **the Citizenship Act 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003.**
- It is **mandatory for every usual resident of India to register in the NPR.**



Objective: To create a comprehensive identity database of every usual resident in the country. The NPR was **first collected in 2010 and then updated in 2015.**

Who is a usual resident?

A usual resident is defined for the purposes of NPR as a person who has resided in a local area for the past 6 months or more or a person who intends to reside in that area for the next 6 months or more.

3. National Register of Citizens (NRC)

- The NRC was **created in 1951** to determine who was born in Assam and is therefore Indian, and who might be a migrant from erstwhile East Pakistan, now Bangladesh.
- The demand for updating the NRC was first raised in 1980 during the anti-foreigners Assam agitation spearheaded by the All Assam Students' Union.
- So far, **such a database has only been maintained for the state of Assam.**

Why was NRC updated for Assam?

In 2014, the SC ordered the updation of the NRC, in accordance with Citizenship Act, 1955 and Citizenship Rules, 2003 in all parts of Assam. The process officially started in 2015.

4. Citizenship (Amendment) Act, 2019 (CAA)

The Citizenship (Amendment) Act, 2019 seeks to amend the Citizenship Act, 1955.

- The Citizenship Act,1955 provides various ways in which citizenship may be acquired.
- It provides for citizenship by birth, descent, registration, naturalisation and by incorporation of the territory into India.

About CAA:

- The objective of the CAA is to grant Indian citizenship to persecuted minorities -- Hindu, Sikh, Jain, Buddhist, Parsi and Christian -- from Pakistan, Bangladesh and Afghanistan.
- Those from these communities who had come to India till December 31, 2014, facing religious persecution in their respective countries, will not be treated as illegal immigrants but given Indian citizenship.
- The Act provides that the central government may cancel the registration of OCIs on certain grounds.

Exceptions:

- The Act does not apply to tribal areas of Tripura, Mizoram, Assam and Meghalaya because of being included in the 6th Schedule of the Constitution.
- Also areas that fall under the Inner Limit notified under the Bengal Eastern Frontier Regulation, 1873, will also be outside the Act's purview.

INSIGHTSIAS

NOTES

Important Statutory / Constitutional Provisions

1. Right to counsel in custody

Is access to a lawyer the right of an accused?

In India, the safeguards available to a person in such circumstances are enshrined in the Constitution.

- **Article 20 (3)** states: "No person accused of any offence shall be compelled to be a witness against himself".
- **Article 22** states that a person cannot be denied the right to consult and to be defended by a legal practitioner of his choice. This **includes provisions that grant an accused the "right to consult" a lawyer.**
- **Section 41D of the Criminal Procedure Code (CrPC)** states that an accused is entitled to "meet an advocate of his choice during interrogation, though not throughout interrogation".

Supreme Court judgments:

In the D K Basu case of 1997:

The Court considered the guiding principles to be followed by investigating agencies in cases of arrest or detention.

- The judgment states that "an arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation".
- The Supreme Court stressed the safeguards for accused, but also spoke of "difficulties in detection of crimes", especially in cases of "hardcore criminals", and ruled that a lawyer cannot be permitted to remain present throughout the interrogation.

In Senior Intelligence Officer vs Jugal Kishore Sharma (2011):

It allowed the accused's lawyer to "watch the proceedings from a distance or from beyond a glass partition", but said "he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in course of the interrogation".

However, in many criminal cases, **it is left to the discretion of the court that has remanded an accused to the custody of the police, to decide on whether the lawyer can be permitted to meet the person** for a stipulated time in private when interrogation is not in progress.

2. Freedom of Religion

A public interest litigation was filed in the Supreme Court seeking declaration of 26 verses of the Quran as **unconstitutional, non-effective and non- functional** on the ground that these **promote extremism and terrorism and pose a serious threat to the sovereignty, unity and integrity of the country.**

Can such a belief be protected under freedom of religion?

Certainly not, as freedom of religion under **Article 25** is subject to public order, health, morality and other fundamental rights.

No one can take away anybody's life as it would be contrary to **Article 21,** which guarantees right to life and personal liberty to everyone.

What's the issue?

1. The petitioner had named three secretaries of the Centre as respondents. But, in purely legal terms, **the writ jurisdiction lies against the "state'"** and all these persons named as respondents are certainly not 'state' within the meaning of **Article 12** of the Constitution.
2. Also, Under Indian law, **only a "law" can be challenged as unconstitutional** (Defined under **Article 13(3)**). Any religious scripture including the Quran is not considered a law. The divine books can be sources of law but not law in themselves.

NOTES

3. Sixth Schedule areas

The Union Ministry of Home Affairs (MHA) has informed the Lok Sabha that "presently, **there is no proposal to implement panchayat system in Sixth Schedule areas of Assam".**

About the Sixth Schedule:

- It protects tribal populations and provides autonomy to the communities through creation of autonomous development councils that can frame laws on land, public health, agriculture and others.
- As of now, 10 autonomous councils exist in **Assam, Meghalaya, Tripura and Mizoram.**
- This special provision is provided under **Article 244(2) and Article 275(1) of the Constitution.**

Key provisions:

1. The governor is empowered to organise and re-organise the autonomous districts.
2. If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions.
3. **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.
4. **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.
5. Each autonomous region also has a separate regional council.
6. **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.
7. **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.

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.

4. Uniform Civil Code

What is uniform civil code?
A generic set of governing laws for every citizen without taking into consideration the religion.

What the constitution says?
Article 44 of the Constitution says that there should be a Uniform Civil Code. According to this article, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India". Since the Directive Principles are only guidelines, it is not mandatory to use them.

India needs a Uniform Civil Code for the following reasons:

- A **secular republic needs a common law** for all citizens rather than differentiated rules based on religious practices.
- **Gender justice:** The rights of women are usually limited under religious law, be it Hindu or Muslim. Many practices governed by religious tradition are at odds with the fundamental rights guaranteed in the Indian Constitution.

NOTES

- Courts have also often said in their judgements that the government should move towards a uniform civil code including the judgement in **the Shah Bano case.**

Does India not already have a uniform code in civil matters?
Indian laws do follow a uniform code in most civil matters – Indian Contract Act, Civil Procedure Code, Sale of Goods Act, Transfer of Property Act, Partnership Act, Evidence Act etc. States, however, have made hundreds of amendments and therefore in certain matters, there is diversity even under these secular civil laws.

5. SC directive on quota in promotions

M. Nagaraj Case:
On June 17, 1995, Parliament, acting in its constituent capacity, adopted **the seventy-seventh amendment by which clause (4A)** was inserted into **Article 16 to enable reservation to be made in promotion for SCs and STs.**

- The validity of the seventy-seventh and eighty-fifth amendments to the Constitution and of the legislation enacted in pursuance of those amendments was challenged before the Supreme Court in **the Nagaraj case.**
- Upholding the validity of **Article 16 (4A),** the court then said that it is an enabling provision. “The State is not bound to make reservation for the SCs and STs in promotions. But, if it seeks to do so, **it must collect quantifiable data on three facets** — the backwardness of the class; the inadequacy of the representation of that class in public employment; and the general efficiency of service as mandated by Article 335 would not be affected”.
- The court ruled that the constitutional amendments do not abrogate the fundamentals of equality.

Constitutional basis- Article 335:
Article 335 recognises that special measures need to be adopted for considering the claims of SCs and STs in order to bring them to a level-playing field.

6. Seventh Schedule

The Confederation of Indian Industry (CII) has sought **the inclusion of tourism in the concurrent list** to enable the Centre and States to effectively regulate the sector as well as frame policies for growth.

Seventh Schedule:
The seventh schedule under **Article 246** of the constitution deals with the division of powers between the union and the states. It contains three lists- **Union List, State List and Concurrent List.**

- The **union list** details the subjects on which Parliament may make laws while the **state list** details those under the purview of state legislatures.
- The **concurrent list** on the other hand has subjects in which both Parliament and state legislatures have jurisdiction. However **the Constitution provides federal supremacy to Parliament on concurrent list items in case of a conflict.**

Constitution of India

Union List
Includes subjects like.
- Defense
- Atomic Energy
- Foreign Affairs
- War and Peace
- Banking
- Railways
- Post and Telegraph
- Airways
- Ports
- Foreign Trade
- Currency & Coinage

Union Legislature alone can make laws on these matters.

State List
Includes subjects like
- Agriculture
- Police
- Prison
- Local Government
- Public Heath
- Land
- Liquor
- Trade and Commerce
- Livestock and Animal Husbandry
- State Public Services

Normally only the State Legislature can make laws on these matters

Concurrent List
Includes subjects like.
- Education
- Transfer of Property other than Agricultural land
- Forests
- Trade Unions
- Adulteration
- Adoption and Succession

Both Union and State Legislature alone can make laws on these matters.

Residuary Powers
Include all other matters not mentioned in any of the Lists.
- Cyber Laws

Union Legislature alone has the power to legislate on such matters

NOTES

7. J&K Internet ban

Observations made by the Supreme Court:

On internet restrictions:

1. **Access to internet is a fundamental right** (subject to reasonable restrictions) included in the freedom of expression under **Article 19 of the Indian Constitution.**
2. **Restrictions on fundamental rights could not be in exercise of arbitrary powers.** These freedoms could only be restricted as a last resort if "relevant factors" have been considered and no other options are there.
3. Any order passed to restrict or suspend judicial scrutiny will be subject to **judicial scrutiny.**
4. Suspension of internet services indefinitely is also **a violation of telecom rules.**

What procedure does the government follow to suspend Internet services?

The **Information Technology Act, 2000**, **the Criminal Procedure Code (CrPC), 1973 and the Telegraph Act, 1885** are the three laws that deal with suspension of Internet services.

But before 2017, Internet suspension orders were issued under **section 144 of the CrPC.**

- In 2017, the central government notified **the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules under the Telegraph Act** to govern suspension of Internet.
- These Rules derive their powers from **Section 5(2) of the Indian Telegraph Act,** which talks about interception of messages in the "interests of the sovereignty and integrity of India".

8. Article 32 of the Constitution

Article 32 deals with **the 'Right to Constitutional Remedies',** or affirms the right to **move the Supreme Court** by appropriate proceedings **for the enforcement of the rights conferred in Part III of the Constitution.**

- It states that **the Supreme Court "shall have power to issue directions or orders or writs,** including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, **for the enforcement of any of the rights conferred by this Part".**

Key Points:

- The right guaranteed by this Article **"shall not be suspended except as otherwise provided for by this Constitution".**
- Only if any of these fundamental rights is violated can a person can approach the Supreme Court directly under Article 32.

B.R. Ambedkar who asserted, inter alia, that Article 32 is the very soul of the Constitution and the most important Article in the Constitution.

Can High Courts be approached in cases of violation of fundamental rights?

In civil or criminal matters, the first remedy available to an aggrieved person is that of trial courts, followed by an appeal in the High Court and then the Supreme Court.

When it comes to **violation of fundamental rights,** an individual can approach **the High Court under Article 226 or the Supreme Court directly under Article 32.**

- Article 226, however, is not a fundamental right like Article 32.

INSIGHTSIAS

NOTES

What have been the Supreme Court's recent observations on Article 32?

In **Romesh Thappar vs State of Madras (1950),** the Supreme Court observed that Article 32 provides a "guaranteed" remedy for the enforcement of fundamental rights.

- This Court is thus constituted the protector and guarantor of fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights," the court observed.

Type of Writ	Meaning of the word	Purpose of issue
Habeas Corpus	You may have the body	To release a person who has been detained unlawfully whether in prison or in private custody.
Mandamus	We Command	To secure the performance of public duties by lower court, tribunal or public authority.
Certiorari	To be certified	To quash the order already passed by an inferior court, tribunal or quasi judicial authority.
Prohibition	-	To prohibit an inferior court from continuing the proceedings in a particular case where it has no jurisdiction to try.
Quo Warranto	What is your authority?	To restrain a person from holding a public office which he is not entitled.

During **the Emergency, in Additional District Magistrate, Jabalpur vs S S Shukla (1976), the** Supreme Court had said that the citizen loses his right to approach the court under Article 32.

Finally, Constitutional experts say that **it is eventually at the discretion of the Supreme Court and each individual judge to decide whether an intervention is warranted in a case,** which could also be heard by the High Court first.

9. Right to Protest peacefully

The right to protest peacefully is **guaranteed by the Constitution of India.**

Articles 19(1)(a) and 19(1)(b) give to all citizens the right to freedom of speech and expression, and to assemble peaceably and without arms.

However, under **Articles 19(2) and 19(3),** the right to freedom of speech is subject to "reasonable restrictions".

- These include the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Powers of state:

The legal provisions and avenue available to police for handling agitations, protests, and unlawful assemblies are covered by the Code of Criminal Procedure (CrPC), 1973, the Indian Penal Code (IPC), 1860, and The Police Act, 1861.

What has the Supreme Court ruled?

1. The judgment upheld **the right to peaceful protest** against a law but made it unequivocally clear that **public ways and public spaces cannot be occupied, and that too indefinitely.**
2. It is the duty of the administration to remove such road blockades.
3. Dissent and democracy go hand in hand but protests must be carried out in designated area.

Restrictions on Fundamental Rights:

Fundamental rights do not live in isolation. These rights are subject to reasonable restrictions imposed in the interest of sovereignty, integrity and public order.

10. 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.

NOTES

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.

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".

INSIGHTSIAS

NOTES

Important Acts / Bills

1. Right to Information (RTI) Act, 2005

It sets out the rules and procedures regarding citizens' right to information.
It replaced the former **Freedom of Information Act, 2002.**

- This act was enacted in order to consolidate **the fundamental right in the Indian constitution 'freedom of speech'.** Since **RTI is implicit in the Right to Freedom of Speech and Expression under Article 19** of the Indian Constitution, it is an implied fundamental right.

Key Provisions:

- **Section 4 of the RTI Act** requires suo motu disclosure of information by each public authority.
- **Section 24of the RTI Act 2005** lays down that this law is not applicable to the intelligence and security organisations specified in the Second Schedule. However, the only exception these organisations have is for information on allegations of corruption and human rights violations.
- **Second Schedule:** It includes 26 intelligence and security agencies under its ambit. Some of them are (i) Intelligence Bureau (IB), (ii) Research and Analysis Wing (RAW) of the Cabinet Secretariat (iii) Directorate of Revenue Intelligence (DRI), (iv) Special Frontier Force (SFF), (v) Border Security Force (BSF) (vi) National Security Guards (NSG) and (Vii) Assam Rifles.
- **Section 8 of the RTI:** It deals with exemption from disclosure of information under this legislation. As per this section there shall be no obligation on Government to provide any citizen information, disclosure which will affect (i) India's sovereignty and integrity, (ii) security, (iii) strategic, scientific or economic interests of the state and (iv) relations with foreign States or (v) will lead to incitement of an offence.
- **Section 8 (2)** provides for disclosure of information exempted under Official Secrets Act, 1923 if larger public interest is served.

Information Commissioners and PIOs:

- The Act also provides for appointment of Information Commissioners at Central and State level.
- Public authorities have designated some of its officers as Public Information Officer. They are responsible to give information to a person who seeks information under the RTI Act.

Time period:

In normal course, information to an applicant is to be supplied within 30 days from the receipt of application by the public authority.

- If information sought concerns the life or liberty of a person, it shall be supplied within 48 hours.
- In case the application is sent through the Assistant Public Information Officer or it is sent to a wrong public authority, five days shall be added to the period of thirty days or 48 hours, as the case may be.

About Central Information Commission:
CIC was **established in 2005** by the Central Government under **the provisions of Right to Information (RTI) Act, 2005.**

- The Chief Information Commissioner heads the Central Information Commission.
- It hears appeals from information-seekers who have not been satisfied by the public authority and also addresses major issues concerning the RTI Act.
- CIC **submits an annual report to the Union government on the implementation of the provisions of RTI Act.**

Applicability of RTI to:
Private bodies:
Private bodies are not within the Act's ambit directly.

- In a decision of **Sarbjit roy vs Delhi Electricity Regulatory Commission,** the Central Information Commission also reaffirmed that **privatised public utility companies fall within the purview of RTI.**

NOTES

Political parties:

The Central Information Commission (CIC) had held that **the political parties are public authorities and are answerable to citizens under the RTI Act.**

But in August 2013 the government introduced a Right To Information (Amendment) Bill which would remove political parties from the scope of the law.

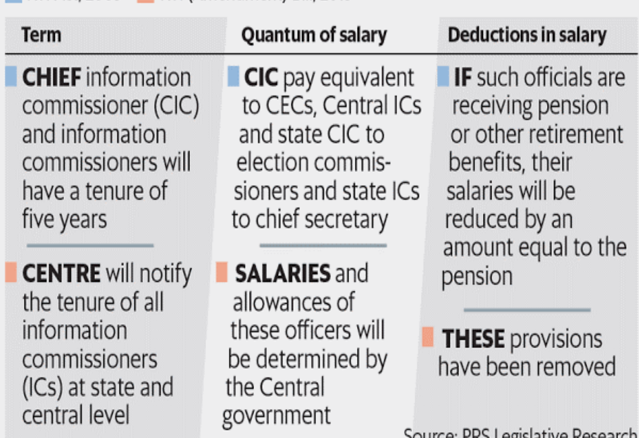
- Currently no parties are under the RTI Act and a case has been filed for bringing all political parties under it.

Chief Justice of India:

Supreme Court of India on 13 November 2019, upheld the decision of Delhi High Court bringing the office of Chief Justice of India under the purview of Right to Information (RTI) Act.

Right to Information (Amendment) Act 2019:

1. The Centre shall have the powers to set the salaries and service conditions of Information Commissioners at central as well as state levels.
2. Term of the central Chief Information Commissioner and Information Commissioners: appointment will be "for such term as may be prescribed by the Central Government".
3. While the original Act prescribes salaries, allowances and other terms of service of the state Chief Information Commissioner as "the same as that of an Election Commissioner", and the salaries and other terms of service of the State Information Commissioners as "the same as that of the Chief Secretary to the State Government", **the amendment proposes that these "shall be such as may be prescribed by the Central Government".**



KEY POINTS OF DIFFERENCE

The bill seeks to empower the central govt on deciding salaries, and other terms of service of information commissioners.

RTI Act, 2005 | RTI (Amendment) Bill, 2019

	Term	Quantum of salary	Deductions in salary
RTI Act, 2005	CHIEF information commissioner (CIC) and information commissioners will have a tenure of five years	CIC pay equivalent to CECs, Central ICs and state CIC to election commissioners and state ICs to chief secretary	IF such officials are receiving pension or other retirement benefits, their salaries will be reduced by an amount equal to the pension
RTI (Amendment) Bill, 2019	CENTRE will notify the tenure of all information commissioners (ICs) at state and central level	SALARIES and allowances of these officers will be determined by the Central government	THESE provisions have been removed

Source: PRS Legislative Research

2. Unlawful Activities (Prevention) Act

Passed in 1967, the law aims at **effective prevention of unlawful activities associations in India.**

The Act assigns **absolute power to the central government,** by way of which if the Centre deems an activity as unlawful then it may, by way of an Official Gazette, declare it so.

- It has death penalty and life imprisonment as highest punishments.

Key points:

Under UAPA, **both Indian and foreign nationals can be charged.**

- It will be **applicable to the offenders in the same manner, even if crime is committed on a foreign land, outside India.**
- Under the UAPA, **the investigating agency can file a charge sheet in maximum 180 days after the arrests and the duration can be extended further after intimating the court.**

As per amendments of 2019:

- The Act empowers the Director General of National Investigation Agency (NIA) to grant approval of seizure or attachment of property when the case is investigated by the said agency.

NOTES

- The Act empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases of terrorism in addition to those conducted by the DSP or ACP or above rank officer in the state.
- It also has the provision of **designating an individual as a terrorist.** Prior to this amendment, only organizations could be designated as terrorist organizations.

3. Roshni Act (Jammu and Kashmir State Land (Vesting of Ownership to Occupants) Act, 2001)

- Enacted in 2001, the law sought to regularise unauthorised land.
- The Act envisaged the transfer of ownership rights of state land to its occupants, subject to the payment of a cost, as determined by the government.
- The government said the revenue generated would be spent on commissioning hydroelectric power projects, hence the name "Roshni".
- Further, through amendments, the government also gave ownership rights of agricultural land to farmers occupying it for free, charging them only Rs 100 per kanal as documentation fee.

Why it was scrapped?

1. In 2009, the State Vigilance Organisation registered an FIR against several government officials for alleged criminal conspiracy to illegally possess and vest ownership of state land to occupants who did not satisfy criteria under the Roshni Act.
2. In 2014, a report by the Comptroller and Auditor General (CAG) estimated that against the targeted Rs 25,000 crore, only Rs 76 crore had been realised from the transfer of encroached land between 2007 and 2013, thus defeating the purpose of the legislation.
3. The report blamed irregularities including arbitrary reduction in prices fixed by a standing committee, and said this was done to benefit politicians and affluent people.

4. Government of National Capital Territory of Delhi (Amendment) Act, 2021

- Government of National Capital Territory of Delhi (Amendment) Act, 2021 amends the Government of National Capital Territory of Delhi Act, 1991 to give **primacy to the Lieutenant Governor of Delhi**. The elected government will now have to seek the opinion of the Lieutenant Governor for any executive action.

The **69th Amendment of the Constitution** in 1992 gave the National Capital of Delhi special status with its own democratically elected government and legislative assembly.

- The 2021 Amendment provides that the term "government" referred to in any law made by the Legislative Assembly will imply Lieutenant Governor (LG).
- The **Amendment allows the Legislative Assembly to make Rules to regulate the procedure and conduct of business in the Assembly**. The Amendment provides that such Rules must be consistent with the Rules of Procedure and Conduct of Business in the Lok Sabha.
- It prohibits the Legislative Assembly from making any rule to enable itself or its Committees to:
    - consider the matters of day-to-day administration of the NCT of Delhi and
    - conduct any inquiry in relation to administrative decisions.
- The Amendment requires the **LG to reserve certain Bills passed by the Legislative Assembly for the consideration of the President**. These Bills are those:
    - which may diminish the powers of the High Court of Delhi,
    - which the President may direct to be reserved,
    - dealing with the salaries and allowances of the Speaker, Deputy Speaker, and members of the Assembly and the Ministers, or
    - relating to official languages of the Assembly or the NCT of Delhi.

NOTES

- The Amendment requires the LG to also reserve those Bills for the President which incidentally cover any of the matters outside the purview of the powers of the Legislative Assembly. This also specifies that all executive action by the government, whether taken on the advice of the Ministers or otherwise, must be taken in the name of the LG.
- The Amendment adds that on certain matters, as specified by the LG, his opinion must be obtained before taking any executive action on the decisions of the Minister/ Council of Ministers.

5. Right to Education (RTE) Act, 2009

- The **Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE)** describes the modalities of the importance of free and compulsory education for children between the age of **6 to 14 years** in India under **Article 21A** of the Indian Constitution.
- The title of the RTE Act incorporates the words **'free and compulsory'.**
    - 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
    - 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group.
- The act **mandates 25% reservation for disadvantaged sections of the society.**
- It also makes **provisions for a non-admitted child to be admitted to an age appropriate class.**
- It also states that **sharing of financial and other responsibilities between the Central and State Governments.**
- It also provides for **prohibition of deployment of teachers for non-educational work,** other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It had a clause for **"No Detention Policy**" which has been removed under **The Right of Children to Free and Compulsory Education (Amendment) Act, 2019.**

It lays down the norms and standards related to:

- Pupil Teacher Ratios (PTRs).
- Buildings and infrastructure.
- School-working days.
- Teacher-working hours.

6. National Security Act, 1980

It is a stringent law that **allows preventive detention for months,** if authorities are satisfied that **a person is a threat to national security or law and order.**

- The **person does not need to be charged during this period of detention.** The goal is to prevent the individual from committing a crime.
- It was **promulgated on September 23, 1980,** during the Indira Gandhi government.

As per the National Security Act, **the grounds for preventive detention of a person include:**

1. acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India.
2. regulating the continued presence of any foreigner in India or with a view to making arrangements for his expulsion from India.
3. preventing them from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do.

INSIGHTSIAS

NOTES

Duration:
Under the National Security Act, **an individual can be detained without a charge for up to 12 months;** the state government needs to be intimated that a person has been detained under the NSA. **No such order shall remain in force for more than 12 days unless approved by the State Government.**

- A person detained under the National Security Act can be held for 10 days without being told the charges against them.

Appeal: The detained person can appeal before a high court advisory board but they are not allowed a lawyer during the trial.

History of preventive detention in India:

- Preventive detention laws in India date back to early days of the colonial era when **the Bengal Regulation III of 1818** was enacted to empower the government to arrest anyone for defence or maintenance of public order without giving the person recourse to judicial proceedings.
- A century later, the British government enacted **the Rowlatt Acts of 1919** that allowed confinement of a suspect without trial.

Constitution of Advisory Boards:

1. The **Central Government and each State Government** shall, whenever necessary, **constitute one or more Advisory Boards for the purposes of this Act.**
2. **Every such Board shall consist of** three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.
    - The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

Reference to Advisory Boards:
As provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within 3 weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it, the grounds on which the order has been made and the representation if any made by the person affected by the order and in case where the order has been made by an officer.

Concerns associated with NSA and how is it different from normal arrests?
In **the normal course,** if a person is arrested, he or she is guaranteed certain basic rights.

- These include **the right to be informed of the reason for the arrest.**
- **Section 50 of the Criminal Procedure Code (Cr.PC)** mandates that the person arrested has to be informed of the grounds of arrest, and **the right to bail.**
- **Sections 56 and 76 of the Cr. PC** also provides that a person has to be produced before a court within 24 hours of arrest.
- Additionally, **Article 22(1) of the Constitution** says an arrested person cannot be denied the right to consult, and to be defended by, a legal practitioner of his choice.

But **none of these rights are available to a person detained under the NSA**.

- A person could be kept in the dark about the reasons for his arrest for up to five days, and in exceptional circumstances not later than 10 days.
- Even when providing the grounds for arrest, the government can withhold information which it considers to be against public interest to disclose.

NOTES

- The arrested person is also not entitled to the aid of any legal practitioner in any matter connected with the proceedings before **an advisory board, which is constituted by the government for dealing with NSA cases.**

7. Official Secrets Act

Originally enacted during the time of Lord Curzon, Viceroy of India from 1899 to 1905.

- One of the main purposes of the Act was to muzzle the voice of nationalist publications.
- The Indian Official Secrets Act (Act No XIX of 1923) replaced the earlier Act, and was extended to all matters of secrecy and confidentiality in governance in the country.

Ambit of the Act:

It broadly deals with two aspects:

1. Spying or espionage, covered under Section 3.
2. Disclosure of other secret information of the government, under Section 5.

Is "secret information" defined?

The Act does not say what a “secret” document is. It is the government’s discretion to decide what falls under the ambit of a “secret” document.

- It has often been argued that the law is in direct conflict with the Right to Information Act, 2005.
- However, please note that if there is any inconsistency in the Official Secret Act with regard to furnishing of information, it will be superseded by the RTI Act.
    - But, under Sections 8 and 9 of the RTI Act, the government can still refuse information.

INSIGHTSIAS

NOTES

Miscellaneous

1. 3-language policy is not applicable to Central govt. offices

- The Union Ministry of Home Affairs has said **the three language policy is not applicable to offices of the Union government.**
- As per the provision of **the Official Language Act, 1963, and the Official Language Rules, 1976, the provision of bilingual policy is applicable in the offices of the Central government.**

2. Central Deputation of IPS Officers

- For the premier civil services — IAS, IPS and Indian Forest Service — officers of the state cadre are allotted by the Centre from a pool of officers.
- From time to time, a certain number of officers are sent on central deputation.
- **The Home Ministry is the authority in control of IPS cadre, the Department of Personnel and Training for the IAS cadre, and the Ministry of Environment, Forest and Climate Change for IFS cadre.**

Who can take action?

The Centre can take no action against civil service officials who are posted under the state government **as per Rule 7 of the All India Services (Discipline and Appeal) Rules, 1969**.

- For any action to be taken on an officer of the All India Services (IAS, IPS, IFS), **the state and the Centre both need to agree.**

Rule 6(1) of the Indian Police Service (Cadre) Rules, 1954 says about deputation: "in case of any disagreement, the matter shall be decided by the central Government and the state government or state governments concerned shall give effect to the decision of the Central Government."

Implications:

Under the Home Ministry's deputation policy for IPS officers, if an officer on offer is selected for a Central posting and does not report either on his own or at the instance of the State Government, he would be debarred for consideration for a post under the Government of India for a period of five years.

- Officers, who have already been debarred, should not be offered before the debarment period is over.
- Being debarred from central deputation, however, hardly bothers an official if they prefer to work in their state.

3. Inner-Line Permit

It is a document required by non- natives to visit or stay in a state that is protected under the ILP system.

At present, four Northeastern states are covered, namely, **Arunachal Pradesh, Mizoram, Manipur and Nagaland.**

- Both the duration of stay and the areas allowed to be accessed for any non native are determined by the ILP.
- The ILP is issued by the concerned state government and can be availed both by applying online or in person.

An ILP is **only valid for domestic tourists.**

Rationale behind:

The Inner Line Permit is an extension of **the Bengal Eastern Frontier Regulation Act 1873.**

After the British occupied the Northeast, the colonisers started exploiting the region and its resources for economic benefits.

- They first started tea plantations and oil industries in Brahmaputra Valley.

NOTES

- The indigenous tribes living in the hill areas would regularly conduct raids into the plains to loot and plunder, marauding the tea gardens, oil rigs and trading posts set up by the British East India Company.
- It was in this context that the BEFR 1873 was promulgated.

4. Separate religious code for Sarna tribals

Jharkhand government had sent a proposal to the Centre to **recognise Sarna religion and include it as a separate code in the Census of 2021.**

What is the Sarna religion?

The holy grail of the faith is **"Jal, Jungle, Zameen"** and its followers **pray to the trees and hills** while believing in **protecting the forest areas.**

- It is believed that 50 lakhs tribal in the entire country put their religion as 'Sarna' in the 2011 census, although it was not a code.

What's the issue now?

Many of the tribals who follow this faith have later **converted to Christianity—**the state has more than 4% Christians most of whom are tribals.

- The issue now is that **the converted tribals are taking the benefits of reservation as a minority as well as the benefits given to Schedule Tribes.**
- So, those who are still following only Sarna faith say that **benefits should be given specifically to them and not those who have converted.**

If the Centre approves **the new Sarna code,** Census 2021 would have to make space for a new religion.

- **Currently, citizens can choose from only six religions:** Hinduism, Islam, Christianity, Sikhism, Buddhism and Jainism.

5. Inter Parliamentary Union

The Comptroller and Auditor General of India, Girish Chandra Murmu, has been elected External Auditor of Inter Parliamentary Union, Geneva, for a three-year term.

- The IPU is **the global organization of national parliaments.**
- **Genesis:** Began in 1889 as a small group of parliamentarians, dedicated to promoting peace through parliamentary diplomacy and dialogue.
- **Composition:** It has 179 Member Parliaments ,13 Associate Members, and increasing numbers of parliamentarians from all over the world involved in our work.
- **Slogan** is "For democracy. For everyone."
- **It seeks to promote** democratic governance, institutions and values, working with parliaments and parliamentarians to articulate and respond to the needs and aspirations of the people.
- **Financed** primarily by Members out of public funds.
- **Headquarters** are in Geneva, Switzerland.

6. Chapter proceedings

Chapter proceedings are preventive actions taken by the police if they fear that a particular person is likely to create trouble and disrupt the peace in society.

- Here, the police can issue notices under sections of the Code of Criminal Procedure to ensure that the person is aware that creating nuisance could result in action against him, which includes paying a fine, in the absence of which, he could be put behind bars.

The procedure (Have a brief overview. No need to mug up):

NOTES

1. A notice is issued to a person under **section 111 of the CrPC** whereby he is asked to present himself before **the Executive Magistrate –** an ACP-rank officer in a commissionerate of a deputy collector in rural areas – who has issued the notice.
2. The person has to explain why he should not be made to **sign a bond of good behaviour.**
3. If the Executive Magistrate is not satisfied with the answer, **the person is asked to sign a bond of good behaviour and produce sureties vouching for his/her good behaviour.**
4. **A fine amount is also decided –** in accordance with the crime and the person's financial capability – which the person would have to pay if he violates the conditions set in the bond.

Legal options to appeal against the notice?
A person can appeal the notice before the courts.

7. International Covenant on Civil and Political Rights

It is a multilateral **treaty adopted by the United Nations General Assembly (UNGA).**
Monitored by **the United Nations Human Rights Committee.**

- The covenant **commits its parties to respect the civil and political rights of individuals,** including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.
- The ICCPR is **part of the International Bill of Human Rights,** along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).
- It became **effective in 1976. Article 49** allowed that the covenant would enter into force three months after the date of the deposit of the thirty-fifth instrument of ratification or accession.
- **India** is a party to this treaty.

What is International Commission of Jurists (ICJ)?
It is **an international human rights non-governmental organization**.
Composition: It is a standing group of 60 **eminent jurists—**including senior judges, attorneys and academics.
Functions: To develop national and international human rights standards through the law.
Headquarters: Geneva, Switzerland.

8. Legal entity status

The Supreme Court has agreed to examine a petition seeking "legal entity" status to the entire animal kingdom.

- This mainly stems from SC's interpretation of **the right to life under Article 21 of the Constitution,** with the effect **the word "life" includes "all forms of life, including animal life, which are necessary for human life."**

What is a legal entity?
A legal entity means entity which acts like a natural person but only through a designated person, whose acts are processed within the ambit of law.

Previous Instances:
1. In 2018, a bench presided over by justice Sharma had accorded the status of "legal person or entity" to animals in Haryana.
2. In Uttarakhand high court, justice Sharma was part of a bench in 2017, which declared the Ganga and Yamuna as living entities, a verdict that was later stayed by the Supreme Court.
3. In 2018, Uttarakhand high court declared the entire animal kingdom, including birds and aquatic animals, as a legal entity.
4. In June 2019, the Punjab and Haryana High Court had ruled that all animals, birds and aquatic life in Haryana would be accorded the status of legal persons or entities.

INSIGHTSIAS

NOTES

9. National List of Essential Medicines (NLEM)

The Ministry of Health & Family Welfare delegated powers under **Section 10(2) (l) of Disaster Management Act, 2005** to National Pharmaceutical Pricing Authority (NPPA) to take all necessary steps to immediately regulate the availability and pricing of liquid medical oxygen (LMO) and medical oxygen cylinders.

- Oxygen Inhalation (Medicinal Gas) is a scheduled formulation, covered under **the National List of Essential Medicines (NLEM).**

About the National List of Essential Medicines (NLEM):

Under the provisions of **Drug Prices Control Order, 2013,** only the prices of drugs that figure in **the National List of Essential Medicines (NLEM)** are monitored and controlled by the regulator, **the National Pharmaceutical Pricing Authority.**

- Essential medicines are those that satisfy the priority healthcare needs of the majority of the population.
- The primary purpose of NLEM is to promote rational use of medicines considering the three important aspects i.e. cost, safety and efficacy.

Paragraph 19 of the DPCO, 2013, deals with increase or decrease in drug prices under extraordinary circumstances. However, there is neither a precedent nor any formula prescribed for upward revision of ceiling prices.

10. Mission Karmayogi

- It is **a New National Architecture for Civil Services Capacity Building.**
- It is also **a Comprehensive reform of the capacity building apparatus at individual, institutional and process levels** for **efficient public service delivery.**
- The Programme will be delivered by setting up an **Integrated Government Online Training-** iGOTKarmayogiPlatform.

11. Enemy properties

Properties that were **left behind by the people who took citizenship of Pakistan and China.**

- There are more than 9000 such properties left behind by Pakistani nationals and 126 by Chinese nationals.

Who oversees these properties?

Under the Defence of India Rules framed under The Defence of India Act, 1962, the Government of India took over the properties and companies of those who took Pakistani nationality.

- These “enemy properties” were vested by the central government in **the Custodian of Enemy Property for India.** The same was done for property left behind by those who went to China after the 1962 Sino-Indian war.
- The **Tashkent Declaration of January 10, 1966** included a clause that said India and Pakistan would discuss the return of the property and assets taken over by either side in connection with the conflict.

However, the Government of Pakistan disposed of all such properties in their country in the year 1971 itself.

How did India deal with enemy property?

The **Enemy Property Act, enacted in 1968,** provided for the continuous vesting of enemy property in the Custodian of Enemy Property for India. Some movable properties too, are categorised as enemy properties.

The Enemy Property (Amendment and Validation) Act, 2017:

The act amended The Enemy Property Act, 1968, and The Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

NOTES

Salient features of the new act:

Expanded the definition of the term enemy subject and enemy firm: To include

1. The legal heir and successor of an enemy, whether a citizen of India or a citizen of a country which is not an enemy and
2. The succeeding firm of an enemy firm, irrespective of the nationality of its members or partners.

The enemy property continues to vest in the Custodian:

Even if the enemy or enemy subject or enemy firm ceases to be an enemy due to death, extinction, winding up of business or change of nationality, or that the legal heir or successor is a citizen of India or a citizen of a country which is not an enemy.

ENEMY PROPERTIES IN INDIA

State	Total no. of properties	Area in sq ft.	Gross total valuation
Uttar Pradesh	4991	386314942.95	824412367556.13
West Bengal	2735	39575670.86	8782575670.00
Delhi	487	1047487.60	8169049858.86
Goa	263	2481280.70	1000995833.25
Andhra Pradesh	159	51168011.20	116411910261.60
Gujarat	146	5171858.83	8445241392.31
Madhya Pradesh	88	4950254.36	17967143231.84
Bihar	79	672347.53	105807000.00
Chhattisgarh	78	564889.47	546248119.42
Maharashtra	48	1743038.67	5712968690.70

Source: Office of the Custodian of Enemy Property for India

Power to dispose these properties:

The Custodian may dispose of enemy properties:

With prior approval of the central government, the Custodian may dispose of enemy properties vested in him in accordance with the provisions of the Act, and the government may issue directions to the Custodian for this purpose.

12. Special Frontier Force

SFF was raised in the immediate aftermath of the 1962 Sino-India war.

It was a covert outfit which recruited Tibetans (now it has a mixture of Tibetans and Gorkhas) and initially went by the name of Establishment 22.

- It falls **under the purview of the Cabinet Secretariat** where it is headed by an Inspector General who is an Army officer of the rank of Major General.
- The units that **comprise the SFF are known as Vikas battalions.**
- Strictly speaking, **the SFF units are not part of the Army but they function under operational control of the Army.**
- **Women soldiers too form a part of SFF units** and perform specialised tasks.

13. Assam Rifles

- Assam Rifles which is also referred to as **the Sentinels of North East is the oldest paramilitary force of India.**
- Assam Rifles is **one of the six central armed police forces (CAPFs)** under the administrative control of Ministry of Home Affairs (MHA).
- The unit can trace its lineage back to a paramilitary police force that was formed under the British in 1835 called **Cachar Levy.**
- It **served in both the World Wars.**
- The noted anthropologist **Verrier Elwin** once described Assam Rifles as **"friends of the hill people".**

Key mandate of Assam Rifles:

1. Internal security under the control of the army through the conduct of counter insurgency and border security operations.
2. Provision of aid to the civilians in times of emergency
3. Provision of communications, medical assistance and education in remote areas.
4. In times of war they can also be used as a combat force to secure rear areas if needed.
5. Since 2002, they are also guarding the 1,643 km long Indo-Myanmar border.

INSIGHTSIAS

NOTES

It is **the only paramilitary force with a dual control structure.**

- While **the administrative control of the force is with the MHA,** its **operational control is with the Indian Army,** which is under the MoD.
- This means that **salaries and infrastructure for the force is provided by the MHA,** but **the deployment, posting, transfer and deputation of the personnel is decided by the Army.**