



**INSIGHTSIAS**

SIMPLIFYING IAS EXAM PREPARATION

**INSTA PT 2021  
EXCLUSIVE PART-2**

**POLITY**

**APRIL 2021 – JULY 2021**

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

### 1. Director of Inquiry for Lokpal

More than two years after the Lokpal came into being, the Centre is yet to appoint a **director of inquiry**.

#### Who is a director of inquiry?

According to [the Lokpal and Lokayuktas Act, 2013](#):

- There shall be a director of inquiry, not below the rank of Joint Secretary to the Government of India.
- He/she shall be appointed by the Central government for conducting preliminary inquiries referred to [the Central Vigilance Commission \(CVC\)](#) by the Lokpal.

#### What's the issue?

- Though Director of Inquiry has not been appointed by Govt. of India, cases are being received in the commission for conducting preliminary inquiries.

**About Lokpal Act of 2013 is already covered in previous Polity module.**

### 2. Solicitor General

- Solicitor General is the second highest law officer in the country.
- He is subordinate to the Attorney General of India, the highest law officer and works under him.
- He also advises the government in legal matters.
- Solicitor general is appointed for period of three years by Appointment Committee of Cabinet chaired by Prime Minister.

#### Duties:

1. To give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government of India.
2. To appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested.
3. To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.

### 3. Election Commissioner

The constitution under [article 324](#) provides for an Election Commission for the superintendence, direction and control of the preparation of the electoral rolls **for the conduct of elections to parliament, state legislatures and to the offices of president and vice president.**

- It was **established in accordance with the Constitution on 25th January 1950 (celebrated as national voters' day).**

#### Composition Election commission of India:

The constitution provides for the following provisions in relation to the composition of the election commission:

1. The election commission shall consist of the Chief Election Commissioner and a such number of other election commissioners, if any, **as the president may from time to time fix.**
2. The appointment of the chief election commissioner and other election commissioners shall be made by the president.

3. When any other election commissioner is so appointed the chief election commissioner shall act as the chairman of the election commission.
4. The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
5. The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be such as the President may by rule determine.

**CEC vs ECs:**

Though the Chief Election Commissioner is the chairman of the election commission, however, his powers are equal to the other election commissioners. **All the matters in the commission are decided by the majority amongst its members.** The Chief Election Commissioner and the two other election commissioners **receive equal salary, allowances and other benefits.**

**Tenure:**

The Chief Election Commissioner and other election commissioners hold office for **6 years or till they attain the age of 65 years**, whichever is earlier.

**Removal:**

They can resign anytime or can also be removed before the expiry of their term.

The Chief Election Commissioner can be removed from his office **in the same manner and on same grounds as a judge of the Supreme Court.**

**Limitations:**

1. The Constitution has **not prescribed the qualifications** (legal, educational, administrative or judicial) of the members of the Election Commission.
2. The Constitution has **not debarred the retiring election commissioners from any further appointment by the government.**

**4. Enforcement Directorate**

The **Enforcement Directorate** has transferred assets worth ₹8,441.50 crore to public sector banks due to frauds committed allegedly by Vijay Mallya, Nirav Modi and Mehul Choksi.

**What's the issue?**

ED had taken up a money laundering probe which helped unearth a complex web of domestic and international transactions and stashing of assets abroad by the accused persons and their associates.

**About Enforcement Directorate:**

1. The origin of this Directorate goes back to 1st May, 1956, when an **'Enforcement Unit'** was formed, in the Department of Economic Affairs, for handling Exchange Control Laws violations under **Foreign Exchange Regulation Act, 1947 (FERA '47).**
2. In the year 1957, this Unit was renamed as **'Enforcement Directorate'.**
3. Presently, it is part of **the Department of Revenue, Ministry of Finance.**
4. The Organization is mandated with the task of enforcing the provisions of two special fiscal laws – **Foreign Exchange Management Act, 1999 (FEMA) and Prevention of Money Laundering Act, 2002 (PMLA).**

**Composition:**

Besides directly recruiting personnel, the Directorate also draws officers from different Investigating Agencies, viz., Customs & Central Excise, Income Tax, Police, etc. on deputation.

**Other functions:**

1. Processing cases of fugitive/s from India under **Fugitive Economic Offenders Act, 2018.**

- Sponsor cases of preventive detention under **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974(COFEPOSA)** in regard to contraventions of FEMA.

#### Special courts:

For the trial of an offence punishable under **section 4 of PMLA, the Central Government (in consultation with the Chief Justice of the High Court), designates** one or more Sessions Court as Special Court(s). The court is also called "PMLA Court".

- Any appeal against any order passed by PMLA court** can directly be filed in the High Court for that jurisdiction.

### 5. Tribunals

**Tribunal is a quasi-judicial institution** that is set up to deal with problems such as resolving administrative or tax-related disputes. It performs a number of functions like adjudicating disputes, determining rights between contesting parties, making an administrative decision, reviewing an existing administrative decision and so forth.

#### Constitutional provisions:

They were not originally a part of the Constitution.

The **42nd Amendment Act** introduced these provisions in accordance with the recommendations of the Swaran Singh Committee.

The Amendment introduced **Part XIV-A** to the Constitution, which deals with 'Tribunals' and contains two articles:

- Article 323A** deals with Administrative Tribunals. These are quasi-judicial institutions that resolve disputes related to the recruitment and service conditions of persons engaged in public service.
- Article 323B** deals with tribunals for other subjects such as Taxation, Industrial and labour, Foreign exchange, import and export, Land reforms, Food, Ceiling on urban property, Elections to Parliament and state legislatures, Rent and tenancy rights.

No.	Court of Law	Tribunal
1.	A court of law is a part of the <b>traditional judicial system</b> whereby judicial powers are derived from the state.	An Administrative Tribunal is an <b>agency created by the statute</b> and invested with judicial power.
2.	The Civil Courts have judicial power to try all <b>suits of a civil nature</b> unless the cognizance is expressly or impliedly barred.	Tribunal is also known as the Quasi-judicial body. Tribunals have the power to try cases of <b>special matter which are conferred on them by statutes</b>
3.	Judges of the ordinary courts of law are independent of the executive in respect of their tenure, terms and conditions of service etc. <b>Judiciary is independent of Executive</b>	Tenure, terms and conditions of the services of the members of <b>Administrative Tribunal are entirely in the hands of Executive</b> (government).
4.	The presiding officer of the <b>court of law is trained in law.</b>	The president or a member of the Tribunal may not be trained as well in law. He may be an <b>expert in the field of Administrative matters.</b>

While tribunals under Article 323 A can be established only by Parliament, tribunals under Article 323 B (e.g. food stuffs, tenancy etc) can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.

Under Article 323A, only one tribunal for the Centre and one for each state or two or more states may be established.

There is no hierarchy of tribunals under 323A, whereas under Article 323B a hierarchy of tribunals may be created.

The Central Administrative Tribunal (CAT) was set up in 1985 with the principal bench at Delhi and additional benches in different states.

**The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it.** Its jurisdiction extends to the all-India services, the Central civil services,

civil posts under the Centre and civilian employees of defence services. However, **the members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.**



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## Executive

### 1. Governors of States

#### Governors of States in India (Article 152-162):

- A governor is a **nominal head of a state**, unlike the Chief Minister who is the real head of a state in India.
- According to the **7th Constitutional Amendment Act 1956**, the same person can be the Governor of two or more states.
- The Governor of a State shall be **appointed by the President by warrant under his hand and seal**.

#### Removal:

The Governor shall hold office during the pleasure of the President.

- Can be terminated earlier by: Dismissal by the president, at whose pleasure the governor holds office or Resignation by the governor.
- There is **no provision of impeachment**, as it happens for the president.

#### Some discretionary powers are as follows:

1. Can dissolve the legislative assembly if the chief minister advises him to do following a vote of no confidence. Following which, it is up to the Governor what he/ she would like to do.
2. Can recommend the president about the failure of the constitutional machinery in the state.
3. Can reserve a bill passed by the state legislature for the president's assent.
4. Can appoint anybody as chief minister if there is no political party with a clear-cut majority in the assembly.
5. Determines the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.
6. Can seek information from the chief minister with regard to the administrative and legislative matters of the state.

#### Problems with constitutional design:

1. The governor is merely appointed by the president on the advice of the Central government.
2. Unlike the president, a governor does not have a fixed term. He/she holds office at the pleasure of the ruling party in the centre.
3. Both the manner of the appointment and the uncertainty of tenure conspire to make the incumbent an object of the Central government in politically charged circumstances.

### 2. What the Constitution says on Dismissal of govt employees?

Lt Governor had dismissed 11 Jammu and Kashmir government employees for alleged terror links under provisions of **Article 311(2)(c)** of the Constitution.

#### Constitutional provision:

**Article 311** of the Constitution deals with 'Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State'.

- **Article 311(1)**: It says that a civil servant cannot be dismissed or removed by any authority subordinate to the authority by which he was appointed.
- **Article 311(2)**: no civil servant can be "dismissed or removed or reduced in rank **except after an inquiry** in which he has been informed of the charges and given a reasonable opportunity of being heard in respect of those charges".
- **Article 311(2)(a)**: The safeguard of an inquiry also does not apply in cases of conviction on a criminal charge.

- **Article 311(2)(b):** The safeguard of an inquiry also does not apply “where the authority is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry”.
- **Article 311(2)(c):** It also shall not apply “where **the President or the Governor, as the case may be**, is satisfied that **in the interest of the security of the State it is not expedient to hold such inquiry**”.

#### **Is suspension or compulsory retirement a form of punishment?**

- The Supreme court in case of **Bansh Singh Vs State of Punjab** clearly held that suspension from service is neither dismissal nor removal nor reduction in rank, therefore, if a Government servant is suspended he cannot claim the constitutional guarantee of Article 311.
- In **Shyam Lal Vs State of U.P** Supreme Court held that compulsory retirement differ from dismissal and removal as it involves no penal consequences and also a government servant who is compulsory retired does not loose any part of benefit earned during the service so it doesn't attract the provisions of Article 311.

#### **Safeguards under Art. 311:**

Article 311 is meant to act as a safeguard for civil servants that give them a chance to respond to the charges in an enquiry so that he/she is not arbitrarily dismissed from service.

The article also provides exceptions to these safeguards under **subclause 2 provision b**.

- It states “when an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry”.

#### **Can the dismissal under section 311 (2) be challenged by the government employee?**

Yes, the government employee dismissed under these provisions can approach either tribunal like the state administrative tribunal or the Central Administrative Tribunal (CAT) or the Courts.

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

### 1. Adjournment motion

Adjournment motion is **introduced only in the Lok Sabha** to draw the attention of the House to a definite matter of urgent public importance.

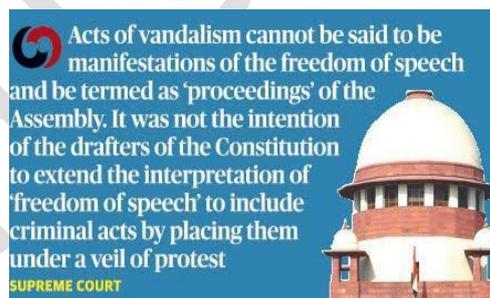
- It **involves an element of censure against the government**, therefore Rajya Sabha is not permitted to make use of this device.
- It is regarded as **an extraordinary device** as it interrupts the normal business of the House. It **needs the support of 50 members to be admitted**.
- The discussion on this motion should last for not less than two hours and thirty minutes.

However, right to move a motion for an adjournment of the business of the House is subject to the following restrictions. i.e. It should:

1. Raise a matter which is definite, factual, urgent and of public importance.
2. Not cover more than one matter.
3. Be restricted to a specific matter of recent occurrence.
4. Not raise a question of privilege.
5. Not revive discussion on a matter that has been discussed in the same session.
6. Not deal with any matter that is under adjudication of court.
7. Not raise any question that can be raised on a distinct motion.

### 2. Parliamentary Privileges

The Supreme Court has held that lawmakers cannot indulge in criminal acts on the Parliament or Assembly floors and then take cover behind the **right to free speech**.



#### Observations made by the Court:

1. Acts of vandalism cannot be said to be manifestations of **freedom of speech** and be termed as 'proceedings' of the Assembly.
2. It was not the intention of the drafters of the Constitution to extend the interpretation of **'freedom of speech' to include criminal acts by placing them under a veil of protest**.
3. Legislators cannot unleash violence, run riot in Parliament or a Legislative Assembly and then claim **parliamentary privilege and immunity** from criminal prosecution.
4. Boundaries of lawful behaviour apply to all, including MLAs who hold responsible elected office in the Legislative Assembly.

#### True essence of Privileges as per the court:

1. The purpose of bestowing privileges and immunities to elected members of the legislature was **to enable them to perform their "essential functions" without hindrance, fear or favour**.
2. The 'essential' function of the House is **collective deliberation and decision-making**.
3. These privileges are **not a mark of status which makes legislators stand on an unequal pedestal**.

#### What are Parliamentary Privileges?

Parliamentary Privileges are certain rights and immunities enjoyed by members of Parliament, **individually and collectively**, so that they can "effectively discharge their functions".

1. **Article 105** of the Constitution expressly mentions two privileges, that is, freedom of speech in Parliament and right of publication of its proceedings.

2. **Apart from the privileges as specified in the Constitution**, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.

#### **Motion against breaches:**

When any of these rights and immunities are disregarded, the offence is called a breach of privilege and is punishable under law of Parliament.

- **A notice is moved in the form of a motion by any member of either House** against those being held guilty of breach of privilege.

#### **Role of the Speaker/Rajya Sabha (RS) Chairperson:**

**The Speaker/RS chairperson** is the first level of scrutiny of a privilege motion.

The Speaker/Chair can decide on the privilege motion himself or herself or refer it to the privileges committee of Parliament.

- If the Speaker/Chair gives consent under relevant rules, the member concerned is given an opportunity to make a short statement.

#### **Applicability:**

1. The **Constitution also extends the parliamentary privileges to those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees**. These include the **Attorney General of India**.
2. The parliamentary privileges **do not extend to the President who is also an integral part of the Parliament**. Article 361 of the Constitution provides for privileges for the President.

### **3. Electing a Speaker, Deputy Speaker**

Maharashtra has been without a Speaker since February. The sessions are now presided by Deputy Speaker.

- Even Lok Sabha and several state Assemblies are without a Deputy Speaker.

#### **How they are elected?**

**Article 93 for Lok Sabha and Article 178** for state Assemblies state that these Houses “shall, as soon as may be”, choose two of its members to be Speaker and Deputy Speaker.

- **In Lok Sabha and state legislatures**, the President/Governor sets a date for the election of the Speaker, and it is the Speaker who decides the date for the election of the Deputy Speaker.
- The legislators of the respective Houses vote to elect one among themselves to these offices.

#### **Their roles and functions:**

1. The Speaker is “the principal spokesman of the House, he represents its collective voice and is its sole representative to the outside world”.
2. The Speaker presides over the House proceedings and joint sittings of the two Houses of Parliament.
3. It is the Speaker’s decision that determines whether a Bill is a Money Bill and therefore outside of the purview of the other House.
4. Usually, the Speaker comes from the ruling party. In the case of the Deputy Speaker of Lok Sabha, the position has varied over the years.
5. 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.
6. While debating or during general discussion on a bill, the members of the parliament have to address only to the Speaker.

#### **States which have specified time-frame for holding the election:**

The Constitution neither sets a time limit nor specifies the process for these elections. **It leaves it to the legislatures to decide how to hold these elections.**

**For example, Haryana and Uttar Pradesh** specify a time-frame.

**In Haryana:**

1. The election of the Speaker has to take place as soon as possible after the election. And then the Deputy Speaker is to be elected within seven more days.
2. The rules also specify that if a vacancy in these offices happens subsequently, then the election for these should occur within seven days of the legislature's next session.

**In Uttar Pradesh:**

1. There is a 15-day limit for an election to the Speaker's post if it falls vacant during the term of the Assembly.
2. In the case of the Deputy Speaker, the date for the first election is to be decided by the Speaker, and 30 days is given for filling subsequent vacancies.

#### 4. Public Accounts Committee (PAC)

The Public Accounts Committee (PAC) of Parliament has decided its agenda for the following year. Because a consensus could not be built, the subject of **vaccine production and distribution** was not accepted as one of the agendas of the PAC for this year.

- As per the panel's rules, **no subject can be deliberated upon till there is a consensus among all members.**

**About PAC:**

1. The PAC is **formed every year** with a **strength of not more than 22 members of which 15 are from Lok Sabha and 7 from Rajya Sabha.**
2. The **term of office of the members is one year.**
3. The **Chairman is appointed by the Speaker of Lok Sabha.** Since 1967, the chairman of the committee is selected from the opposition.
4. Its chief function is **to examine the audit report of Comptroller and Auditor General (CAG)** after it is laid in the Parliament.

**Historical Background:**

It is the oldest of all House panels. The Committee on Public Accounts was **first set up in 1921 in the wake of the Montague-Chelmsford Reforms.**

**Limitations of the Public Accounts Committee:**

1. Broadly, it cannot intervene in the questions of policy.
2. It can keep a tab on the expenses only after they are incurred. It has no power to limit expenses.
3. It cannot intervene in matters of day-to-day administration.
4. Any recommendation that the committee makes is only advisory. They can be ignored by the ministries.
5. It is not vested with the power of disallowance of expenditures by the departments.
6. Being only an executive body; it cannot issue an order. Only the Parliament can take a final decision on its findings.

#### 5. Legislative Council

Recently, the **West Bengal** government has decided to set up a **Legislative Council (Vidhan Parishad).**

For setting up the Council, a Bill has to be introduced in the Assembly and then a nod from the Governor is required. The **Legislative Council in the state** existed till 1969.

**What are the Legislative Councils, and why are they important?**

India has a **bicameral system** i.e., two Houses of Parliament. At the state level, the equivalent of the Lok Sabha is the Vidhan Sabha or Legislative Assembly; that of the Rajya Sabha is the Vidhan Parishad or Legislative Council.

#### How is a legislative council created?

Under **Article 169 of the constitution, Parliament may by law create or abolish the second chamber in a state** if the Legislative Assembly of that state passes a resolution to that effect by a special majority.

#### Strength of the house:

As per **article 171 clause (1) of the Indian Constitution**, the total number of members in the legislative council of a state **shall not exceed one third of the total number of the members in the legislative Assembly** of that state and **the total number of members in the legislative council of a state shall in no case be less than 40.**

#### How are members of the Council elected?

1. 1/3rd of members are elected by members of the Assembly.
2. 1/3rd by electorates consisting of members of municipalities, district boards and other local authorities in the state.
3. 1/12th by an electorate consisting of teachers.
4. 1/12th by registered graduates.
5. The remaining members are nominated by the Governor from among those who have distinguished themselves in literature, science, art, the cooperative movement, and social service.

**Six States having a Legislative Council:** Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, Karnataka.

In **2019**, the **Jammu & Kashmir Legislative Council** was **abolished** through the J&K Reorganisation Bill, 2019.

## Judiciary

### 1. Independence of the Judiciary

#### How the Constitution of India ensures the independence of the Judiciary?

1. **Security of Tenure:** Once appointed, the judges cannot be removed from the office except by an order of the President and that too on the ground of proven misbehavior and incapacity (Articles 124 and 217).
2. **The salaries and allowances of the judges** are fixed and are not subject to a vote of the legislature.
3. **Powers and Jurisdiction of Supreme Court:** Parliament can only add to the powers and jurisdiction of the Supreme Court but cannot curtail them.
4. **No discussion in the legislature of the state with respect to the conduct of any judge of the Supreme Court or of a High Court** in the discharge of his duties.

Both the Supreme Court and the High Court have **the power to punish any person for their contempt**.

### 2. Conjugal rights before Supreme Court

The Supreme Court took up a fresh challenge to the provision allowing restitution of **conjugal rights** under **Hindu personal laws**.

#### What are conjugal rights?

**Section 9 of the Hindu Marriage Act, 1955** deals with restitution of conjugal rights.

- Conjugal rights are rights created by marriage, i.e. right of the husband or the wife to the society of the other spouse.
- The law recognises these rights— both in personal laws dealing with marriage, divorce etc, and in criminal law requiring payment of maintenance and alimony to a spouse.

**Section 9 of the Hindu Marriage Act** recognises one aspect of conjugal rights — the right to consortium and protects it by allowing a spouse to move court to enforce the right.

#### How can these rights be enforced?

- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court.
- And the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.
- Also, if a spouse refuses cohabitation, the other spouse can move the family court seeking a decree for cohabitation. If the order of the court is not complied with, the court can attach property. However, the decision can be appealed before a High Court and the Supreme Court.

#### Why has the law been challenged?

1. Main ground is that it is violative of the fundamental right to privacy.
2. It amounted to a “coercive act” on the part of the state, which violates one’s sexual and decisional autonomy, and right to privacy and dignity.
3. The provision disproportionately affects women. Women are often called back to marital homes under the provision, and given that marital rape is not a crime, leaves them susceptible to such coerced cohabitation.
4. Also in question is whether the state can have such a compelling interest in protecting the institution of marriage that it allows a legislation to enforce cohabitation of spouses.

### 3. Shifting of jurisdiction of a High Court

The Lakshadweep administration has mooted a proposal **to shift its legal jurisdiction from the Kerala High Court to the Karnataka High Court**.

**What is the procedure to shift jurisdiction of a High Court?**

The jurisdiction of a High Court can be shifted only through an Act of Parliament.

- **Article 241** states that Parliament may by law constitute a high court for a Union Territory or declare any court in any such territory to be a high court for all or any of the purposes of this Constitution.
- Section 4 of the same article mentions that “nothing in this Article derogates from the power of Parliament to extend or exclude the jurisdiction of a high court for a State to, or from, any Union Territory or part thereof”.

**4. Anticipatory bail**

The **Supreme Court** has resolved a dichotomy in approach of high courts and ruled that **Courts in “extraordinary circumstances” have the discretion to grant protection from arrest to accused even while denying them anticipatory bail**, but the power cannot be exercised in an untrammelled manner, and the order will have to be a reasoned one.

**What has the Supreme Court ruled?**

1. HCs and SC are given powers to grant anticipatory bail to the accused because of the premium that the Constitution places on **the right to liberty guaranteed under Article 21**.
2. The grant or rejection of an application under CrPC has a direct bearing on **the right to life and liberty of an individual**. Therefore, the provision needs to be read liberally, and considering its beneficial nature. The courts must not read in restrictions that the legislature have not explicitly provided for.
3. In doing so, the court may also exercise its powers under **Article 142 of the Constitution** to pass such an order.

**Need for such protection:**

An accused, besides being an accused, may also be **the primary caregiver or sole breadwinner of the family**. His arrest may leave his loved ones in a state of starvation and neglect.

- In **the 1980 Gurbaksh Singh Sibbia vs State of Punjab case**, a five-judge Supreme Court bench led by then Chief Justice Y V Chandrachud ruled that **S. 438 (1) is to be interpreted in the light of Article 21 of the Constitution (protection of life and personal liberty)**.

**The concept of anticipatory bail:**

- The provision of anticipatory bail under **Section 438** was introduced when CrPC was amended in 1973.
- **As opposed to ordinary bail**, which is granted to a person who is under arrest, in anticipatory bail, a person is directed to be released on bail even before arrest made.
- **Time limit:** The Supreme Court (SC) in **Sushila Aggarwal v. State of NCT of Delhi (2020)** case delivered a significant verdict, ruling that no time limit can be set while granting anticipatory Bail and it can continue even until the end of the trial.
- It is **issued only by the Sessions Court and High Court**.

**5. Article 217 of the Constitution of India****Overview of Article 217 (1):**

Appointment and conditions of the office of a Judge of a High Court:

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the chief Justice, the chief Justice of the High court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty two years Provided that:

- (a) a Judge may, by writing under his hand addressed to the President, resign his office.
- (b) a Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court.

(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

## 6. Collegium System

The Union government has offered to decide on **the Supreme Court Collegium recommendations for appointment of judges in the High Courts.**

**Does the Constitution of India specify any deadline for the appointment of judges?**

No. The **Memorandum of Procedure** guides the government and the judiciary through the appointment process. The procedure **does not insist on a deadline but only loosely says the process should be completed within a reasonable time.**

### Collegium System:

It is the system of appointment and transfer of judges that has **evolved through judgments of the SC, and not by an Act of Parliament or by a provision of the Constitution.**

- The SC collegium is headed by the CJI and comprises four other senior most judges of the court.
- A HC collegium is led by its Chief Justice and four other senior most judges of that court.

### Related Constitutional Provisions:

1. **Article 124(2)** of the Indian Constitution provides that the Judges of the Supreme Court are appointed by the President after consultation with such a number of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.
2. **Article 217** of the Indian Constitution states that the Judge of a High Court shall be appointed by the President consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

A JURY OF JUDGES		
<b>WHAT IS THE COLLEGIUM SYSTEM?</b> <ul style="list-style-type: none"> <li>• A forum which decides on appointments, transfers (A/Ts) of judges.</li> <li>• Comprised of Chief Justice of India, 4 Supreme Court Judges</li> <li>• President merely approves CJI's choice</li> </ul>	<ul style="list-style-type: none"> <li>• Born from 'Three Judges Cases' which gave primacy to CJI's call on A/Ts</li> <li>• Judiciary gets greater say than Executive on A/Ts</li> </ul>	<b>CRITICISMS</b> <ul style="list-style-type: none"> <li>• Administrative burden of checking professional background data</li> <li>• Closed-door affair, lacks transparency</li> <li>• Exclusivity sidelines talented junior judges, advocates</li> </ul>
<b>SOME OF THE CHANGES SOUGHT:</b> <ul style="list-style-type: none"> <li>• CJI cannot make unilateral choice</li> <li>• Consulted judges' views need to be in writing</li> <li>• Non-compliance must make CJI choice non-binding</li> <li>• Transfer of Judges reviewable only in case of non-compliance</li> </ul>		

### Article 223 of the Indian Constitution: "Appointment of acting Chief Justice"

When the office of Chief Justice of High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purposes.

**Article 224A** of the Constitution deals with appointment of ad-hoc judges in High Courts.

- It says "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 a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State".

## Centre –State Relations

### 1. Supreme Court strikes down W.B. law on regulating real estate

The Supreme Court has struck down **West Bengal’s law on regulating the real estate sector in the State**, and said it was “**unconstitutional**” as the statute encroached upon **the Centre’s Real Estate (Regulation and Development) Act**.

- Also, in exercise of the jurisdiction under **Article 142**, the Court directed that the striking down of the law will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment.

#### Why the court struck it down?

- The top court said that by enacting **West Bengal Housing Industry Regulation Act (WB-HIRA), 2017**, what the legislature of the State has attempted to achieve is to set up its **parallel legislation involving a “parallel regime’**.
- It said that **the State legislature has encroached upon the legislative authority of Parliament** which has **supremacy within the ambit of the subjects falling within the Concurrent List of the Seventh Schedule**.

#### What the Constitution says?

##### Article 254(1) in The Constitution Of India 1949:

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause ( 2 ), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

## Inter –State Relations

### 1. Krishna & Godavari River Management Boards

Government Issues two Gazette Notifications for **Jurisdiction of Krishna & Godavari River Management Boards**.

- The notifications provide the required authority and power to the two Boards in terms of administration, regulation, operation and maintenance of listed projects in **Godavari and Krishna rivers** in the two States.

#### **Background:**

The Constitution of **the Godavari and Krishna River Management Boards** and the constitution of **an Apex Council** for the supervision of the functioning of these Boards, is laid down in **the Andhra Pradesh Reorganization Act 2014 (APRA)**.

- The two River Management Boards were constituted by the central government under the provisions of this act.

#### **Inter-State River Water Disputes:**

**Article 262 of the Constitution** provides for the adjudication of inter-state water disputes.

- Under this, **Parliament may by law provide for the adjudication of any dispute or complaint** with respect to the use, distribution and control of waters of any inter-state river and river valley.
- Parliament may also provide that **neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.**

The Parliament has enacted the two laws:

#### **1. The River Boards Act (1956):**

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 (1956):**

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.

## Electoral Issues / Electoral Reforms

### 1. Election in Pakistan Occupied Kashmir

Elections were held in Pakistan Occupied Kashmir (PoK).

#### Present position of PoK:

- PoK is called “Azad Jammu & Kashmir” (“AJK” in short).
- It came into being after the **1949 ceasefire between India and Pakistan**.
- It comprises the parts of the erstwhile state of Jammu and Kashmir that were occupied by the Pakistani forces.
- **Pakistan’s constitutional position on PoK** is that it is not a part of the country, but the “liberated” part of Kashmir.

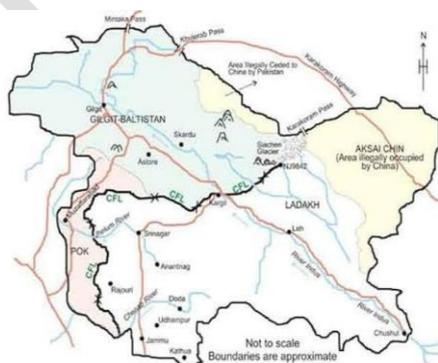
However, **Article 257 of Pakistan's Constitution** says: “When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State.”

#### Political structure and how is it administered?

- The constitution of Pakistan lists **the country’s four provinces** — Punjab, Sind, Balochistan, and Khyber Pakhtunkhwa.
- For all practical purposes, **PoK is run by the Pakistan government through the all-powerful Kashmir Council**, a nominated 14-member body headed by the Prime Minister of Pakistan.
- The Assembly has a five-year term. The legislators elect a “**prime minister**” and a “**president**” for the territory.
- While PoK is ostensibly an **autonomous, self-governing territory**, the **Pakistan Army is the final arbiter on all matters Kashmir**.

#### India's stand on PoK:

- The fact that PoK is an integral part of India has been our consistent policy ever since 1947.
- India has also made clear to the world that any issue related to PoK is the internal matter of India.
- Please note that Pakistan-occupied Kashmir (PoK) is part of the newly created Union Territory of Jammu and Kashmir, while Gilgit-Baltistan is in the UT of Ladakh in the fresh maps released by the government.



### 2. Election petition

Post results, an election petition is **the only legal remedy available to a voter or a candidate who believes there has been malpractice in an election**.

An election petition submitted to the High Court of the state in which the constituency is located. Such a petition **has to be filed within 45 days from the date of the poll results**; nothing is entertained by courts after that.

- Although **the Representative of the People Act of 1951** suggests that the High Court should try to conclude the trial within six months, it usually drags on for much longer, even years.

Under Section 100 of the RP Act, an election petition can be filed on the grounds that:

1. **Section 123 of the RP Act** has a detailed list of what amounts to corrupt practice, including bribery, use of force or coercion, appeal to vote or refrain from voting on grounds of religion, race, community, and language.
2. **Improper acceptance** of the nomination of the winning candidate or improper rejection of a nomination.

3. **Malpractice** in the counting process, which includes improper reception, refusal or rejection of any vote, or the reception of any vote which is void.
4. **Non-compliance** with the provisions of the Constitution or the RP Act or any rules or orders made under the RP Act.

#### What happens if the court finds that a contention of malpractice is correct?

The verdict on an election petition, if found in favour of the petitioner, may result in a fresh election or the court announcing a new winner.

#### Famous examples:

- There are many examples, the most famous being the Allahabad High Court verdict of 1975 which set aside Indira Gandhi's election from Rae Bareilly constituency, four years earlier, on grounds of corrupt practice.
- Another high-profile case was that of Congress leader C P Joshi's loss in the Rajasthan Assembly elections in 2008, by one vote.

### 3. Returning officer

The Election Commission of India recently took cognisance of media reports on **recounting at Nandigram assembly constituency** in West Bengal, to clarify that **the returning officer appointed by the poll panel is the final authority under the law to take decision on such matter.**

#### Roles and powers of Returning Officer under the Representation of the People Act, 1951:

- The returning officer of an assembly constituency **performs statutory functions under the Representation of the People Act, 1951 in quasi-judicial capacity** independently.
- Whether it is nomination, polling or counting, the RO acts strictly in accordance with the extant electoral laws, instructions and guidelines of the ECI.
- When an application for recounting of votes is made **the returning officer shall decide the matter and may allow the application in whole or in part or may reject it in its entirety if it appears to him to be frivolous or unreasonable.**

#### What lies ahead?

In such a case, only legal remedy is to file an EP (election petition) before the high court.

- As per provisions of the Representation of the People Act, 1951, the decision of a returning officer can only be challenged through an election petition under section 80 of the Act.

### 4. Electoral Trusts Scheme

Paribartan Electoral Trust has anonymously disbursed Rs 3 crore it received from Birla Corporation in 2019-20 using [electoral bonds](#).

This is **the first time that an electoral trust has taken the bonds route** to disburse corporate donations to unnamed political parties.

- However, Association for Democratic Reforms (ADR), an independent poll watchdog, has alleged that the use of electoral bonds route is "against the spirit" of **the Electoral Trusts Scheme, 2013 and Income Tax Rules, 1962.**

#### What's the issue now?

It is mandatory for trusts to furnish each and every detail about the donor contributing to the trust and to whom the donations have been distributed.

- But, Paribartan Electoral Trust has said that since the donation was made through electoral bonds, in terms of **the electoral bonds scheme, "information with regard to payee is not required to be disclosed"**.

#### The Concern:

So the main concern now is that if Electoral trusts start adopting this precedent of donating through **bonds, which do not permit disclosure norms and discourage transparency rules/laws** then it is like going back in time before the Electoral Trusts Scheme, 2013 was incorporated.

- In such a scenario, it will be a complete mayhem of unfair practices i.e. total anonymity, unchecked and unlimited funding, free flow of black money circulation, corruption, foreign funding, corporate donations and related conflict of interest etc.
- Such a practice completely negates the very purpose behind the inception of the Electoral Trusts Scheme, 2013 and Rule 17CA of the I.T Rules, 1962.

#### About Electoral Trusts Scheme, 2013:

1. Electoral Trust is a **non-profit organization** formed in India for orderly receiving of the contributions from any person.
2. The scheme was notified by [the Central Board of Direct Taxes \(CBDT\)](#).
3. **Objectives of the Scheme:** To lay down a procedure for grant of approval to an electoral trust which will receive voluntary contributions and distribute the same to the political parties.
4. **The sole object of the electoral trust is** to distribute the contributions received by it to the political party, registered under section 29A of [the Representation of the People Act, 1951](#).
5. These Electoral Trust companies are **not allowed to accept contributions from foreign citizens or companies**.
6. The trust **shall also maintain a list of persons from whom contributions have been received and to whom the same have been distributed**.

The electoral trust may receive voluntary contributions from:

1. An individual who is a citizen of India.
2. A company which is registered in India.
3. a firm or Hindu undivided family or an Association of persons or a body of individuals, resident in India.

#### 5. [Ranked choice voting](#)

New York city used **ranked-choice voting** for Mayoral Polls.

##### What is it?

The method allows voters to rank candidates by preference rather than selecting just their top choice. New York City is having voters rank their top five — though voters are not required to choose five.

##### Benefits/rationale behind this process:

Ranking candidates is far more complicated, but advocates believe it is fairer and more accurately reflects the collective will of the majority.

##### How does it work?

1. If someone gets 50% plus one after all the first-choice votes are counted, then the election is over and that candidate wins.
2. But if no one gets 50% plus one, it's on to Round 2.
3. The person with the lowest number of first-place votes is eliminated, and that candidate's voters' second choices get redistributed as votes for other candidates.
4. This reallocation of votes goes on until someone reaches 50% plus one.

##### Where else has this been used?

There are some 20 jurisdictions across the country that use ranked-choice voting.

- It has also been used by **Australia, Ireland and Malta** since the early 20th century. **Northern Ireland, New Zealand and Scotland** have all adopted it as well.

**What are the arguments in favor of it?**

1. **It means the winner gets a majority of the vote.** The usual system of "most votes wins" can mean someone with only a plurality of the overall vote can be elected, not necessarily the person with majority support.
2. **More moderate candidates.** It's less likely that extreme candidates who have a strong base of support but aren't liked more broadly could get through in a crowded primary.
3. **Less negative campaigning.** The argument goes that candidates need a majority of voters to like them.
4. **People can feel good about casting their vote.** Instead of holding their nose for that one choice they get, voters can express at least a first choice for the person they really like.

**What are the arguments against it?**

1. It's complicated. And complications can lead to errors.
2. Some argue it's less democratic because it eschews the idea of one person, one vote.
3. It could encourage horse-trading. Ranked-choice voting might make for less strategic voting, but it could open the door for candidates to make deals with one another about who their voters should go for as a second choice.

## Important Constitutional / Statutory Provisions

### 1. Accurate term to refer to the government of India

What is the **accurate term to refer to the government of India that sits in New Delhi** and forms, along with the states and local bodies, the Indian state?

- Popularly – and often even in official communication – the institution is called the **“Central government”**. Or even just the **Centre** for short.
- However, Tamil Nadu’s ruling party insists that the correct term is actually the **“Union government”**.

**What does the Constitution of India say?**

The Indian Constitution constantly uses the word **“Union”** to describe the entire country as well as the government that administers it.

For example, [Article 53](#) reads, “the executive power of the Union shall be vested in the President”.

- This follows from [Article 1](#) itself: “India, that is Bharat, shall be a Union of States”.

Please note, **Central government is a term not used in the original Constitution** as passed by the Constituent Assembly.

**Intent of Constituent Assembly:**

Emphasis was on **the consolidation and confluence of various provinces and territories to form a strong united country:**

1. This is why on December 13, 1946, Jawaharlal Nehru introduced [the aims and objects of the Assembly](#) by resolving that India shall be a Union of territories willing to join the “Independent Sovereign Republic”.
2. B.R Ambedkar justified the usage of ‘Union of States’ saying that the Drafting Committee wanted to make it clear that **though India was to be a federation, it was not the result of an agreement and that therefore, no State has the right to secede from it.**

**So why are there two terms at all?**

The term is a carryover from colonial times.

The term was directly and indirectly used in **the 1773 Regulating Act and the 1919 Government of India Act.**

- It was only in **1935, when a new Government of India Act** proposed the term “Federation of India” was first used.
- The modern term **“Union” was first officially used in 1946 by the Cabinet Mission Plan**, a British scheme to keep India united after transfer of power.

### 2. 97th Constitutional Amendment

The Supreme Court in a 2:1 majority verdict **upheld the validity of the 97th constitutional amendment** but struck down **a part inserted by it** which relates to **the Constitution and working of cooperative societies.**

**The 97th constitutional amendment:**

- It dealt with issues related to effective management of co-operative societies in the country.
- It was passed by Parliament in December 2011 and had come into effect from February 15, 2012.
- It amended **Article 19(1)(c)** to give protection to the cooperatives and inserted **Article 43 B and Part IX B**, relating to them.

**Why a part of it has been struck down by the Court?**

Upholding the Gujarat High Court's 2013 decision striking down certain provisions of the 97th constitutional amendment, the Supreme Court held that **the Parliament cannot enact laws with regard to cooperative societies as it is a State subject.**

Several intervenors have contended that the amendment made **a direct in-road into the exclusive domain of states to enact laws with regard to cooperatives.**

- However, the Centre has contended that the provision does not denude states of their power to enact laws with regard to cooperatives.

#### **What was the rationale behind such move by the centre?**

The Centre has stated that the amendment was enacted **to bring uniformity in the management of cooperative societies** and it did not take away the powers of states.

- But, the Supreme Court has now said that if the Centre wanted to achieve uniformity then the only way available was to take the recourse under **Article 252** of the Constitution which deals with the power of Parliament to legislate for two or more states by consent.

#### **What next?**

- The subject of cooperative societies fell in the state list and "belongs wholly and exclusively to the State legislatures to legislate upon" and any change would require the ratification by at least one-half of the state legislatures as per **Article 368(2) of the Constitution.**
- Now, **Part IXB of the Constitution** of India is operative only in so far as it concerns **multi-State co-operative societies** both within the various States and in the Union territories of India.

### **3. Speedy trial a fundamental right: HC**

In **the Bhima Koregaon caste violence case**, highlighting the issue of undertrials, the Bombay High Court has said that "**speedy trial is a fundamental right**".

#### **About the Constitutional Right to Speedy Trial:**

- **The main aim of the Right to Speedy trial** is to inculcate Justice in the society.
- It was **first mentioned in that landmark document of English law, the Magna Carta.**
- In India, it is covered under **Article 21** which declares that "no person shall be deprived of his life or personal liberty except according to the procedure laid by law."

#### **Evolution of the right to speedy trial:**

1. **1978 Babu Singh v. State of UP:** The court remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."
2. **Hussainara Khatoon v. State of Bihar, 1979:** It formed the basis of the concept of the Speedy Trial. It was held that where under trial prisoners have been in jail for duration longer than prescribed, if convicted, their detention in jail is totally unjustified and in violation to fundamental rights under article 21.
3. **Kartar Singh v. State of Punjab 1994:** It was declared that the right to speedy trial is an essential part of fundamental right to life and liberty.

### **4. Right to be Forgotten**

#### **What is the 'Right to be Forgotten' in the Indian context?**

The right to be forgotten is, generally, the **right to have information about a person removed from public access.** The proponents argue that individuals should be able to determine the development of their life in an autonomous way. **Persons cannot be perpetually stigmatised for past conduct.**

- The Right to be Forgotten falls under the purview of **an individual's right to privacy.**

- In 2017, the **Right to Privacy** was declared a **fundamental right (under Article 21)** by the Supreme Court in its landmark verdict (Puttuswamy case).

#### What does the Personal Data Protection Bill say about this?

Right to privacy is also governed by the **Personal Data Protection Bill** that is yet to be passed by Parliament.

The bill exclusively talks about the **“Right to be Forgotten.”**

- Broadly, under the Right to be forgotten, users can de-link, limit, delete or correct the disclosure of their personal information held by data fiduciaries.

#### But, what are the issues associated with this provision in the Bill?

The main issue with the provision is that the sensitivity of the personal data and information cannot be determined independently by the person concerned, but will be overseen by the **Data Protection Authority (DPA)**.

- This means that while the draft bill gives some provisions under which a user can seek that his data be removed, but his or her rights are subject to authorisation by the Adjudicating Officer who works for the DPA.

### 5. Right to Health

A petition filed in the Supreme Court has said **fundamental right to health had taken a back seat as patients were forced to choose between expensive private care and an “inadequate” public health sector**, especially during the COVID-19 pandemic.

#### Basis of Right to Health:

1. **Article 21 of the Constitution of India** guarantees a fundamental right to life & personal liberty. The right to health is inherent to a life with dignity.
2. **Directive Principles of State Policy (DPSP):** Articles 38, 39, 42, 43, & 47 put the obligation on the state in order to ensure the effective realization of the right to health.
3. The Supreme Court in **Paschim Bangal Khet Mazdoor Samity case (1996)** held that in a welfare state, the primary duty of the government is to secure the welfare of the people and moreover it is the obligation of the government to provide adequate medical facilities for its people.
4. India is also a signatory to the **Universal Declaration of Human Rights (1948)** by the United Nations that grants **the right to a standard of living adequate for the health and well-being to humans** including food, clothing, housing and medical care and necessary social services.

### 6. Maratha quota unconstitutional, says SC

A five-judge Constitution Bench of the Supreme Court has struck down **the Maharashtra law granting reservation to the Maratha community in admissions and government jobs in the state.**

#### 1992 Indira Sawhney Judgment:

In 1992 landmark ruling in Indra Sawhney v Union of India, in which **the Mandal Commission report** was upheld, the Court laid down two important precedents.

1. First, it said that the criteria for a group to qualify for reservation is “social and educational backwardness”.
2. Second, it reiterated the 50% limit to vertical quotas reasoning that it was needed to ensure “efficiency” in administration. However, the court said that this 50% limit will apply unless in “exceptional circumstances.”

#### What were the issues? Why was the Maratha Quota law it struck down?

- The Maratha quota exceeded the 50% ceiling.

- The Court held that a separate reservation for the Maratha community violated Articles 14 (right to equality) and 21 (due process of law).

#### What has the Court said on revisiting the 1992 judgment?

The court held that there is no need to revisit the case. The court said that the 50% ceiling, although an arbitrary determination by the court in 1992, is now constitutionally recognised.

#### Why this can't be an exceptional case?

The Marathas are dominant forward class and are in the main stream of National life. Hence, the court observed that the above situation is not an extra-ordinary.

#### What has the court said on state's power to identify SEBCs, and 102nd Amendment?

The **Constitution (One Hundred and Second Amendment) Act, 2018** gives constitutional status to **the National Backward Classes Commission**.

The Amendment also gives **the President powers to notify backward classes**.

Several states raised questions on the interpretation of the Amendment and argued that it curtails their powers.

- However, the Bench unanimously upheld the constitutional validity of the 102nd Amendment.
- The majority opinion also said that while the identification of SEBCs will be done centrally, state governments retain power to determine the extent of reservation and make specific policy in the spirit of "cooperative federalism".

### 7. [Article 164 \(3\) of the Constitution](#)

**There is no legal infirmity in a government assuming office through online mode.**

#### What does the Constitution of India say?

The **Article 164 (3) of the Constitution** states that "before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in **the Third Schedule**."

- There is no ban on an online event as the Constitution does not insist on a physical mode.

### 8. [The Commissions of Inquiry Act, 1952](#)

The West Bengal government has set up a **Commission of Inquiry (Lokur Commission)**, under the 1952 Act, to look into the alleged surveillance of phones using the Pegasus spyware developed by the Israeli cyber-intelligence company NSO Group.

#### Who can set up such commissions?

While **both central and state governments can set up such Commissions of Inquiry**, states are restricted by subject matters that they are empowered to legislate upon.

- If the central government set up the commission first, then states cannot set up a parallel commission on the same subject matter without the approval of the Centre.
- But if a state has appointed a Commission, then the Centre can appoint another on the same subject if it is of the opinion that the scope of the inquiry should be extended to two or more states.

#### What are its powers?

Under The Commissions of Inquiry Act, 1952, a Commission set up by the government shall have **the powers of a civil court**, while trying a suit under **the Code of Civil Procedure, 1908**.

- This means that the Commission has powers to summon and enforce the attendance of any person from any part of India and examine her on oath, and receive evidence.
- It can order requisition of any public record or copy from any court or office.

**What kind of subjects can a Commission probe?**

Commissions set up by the central government can make an inquiry into any matter relatable to any of the entries in [List I \(Union List\) or List II \(State List\) or List III \(Concurrent List\)](#) in the Seventh Schedule to the Constitution, while Commissions set up by state governments can look into entries in List II or List III.

**Pegasus inquiry commission matter is related to:**

- The West Bengal government has cited **public order and police entries**. While these subjects are in the State List, an argument could also be made that **the subject matter of the inquiry essentially falls under the Central List**.
- Also, **Entry 31 of the Union List** deals with posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication.

**What value does such a Commission's report have?**

- The findings of such commissions are normally tabled in the Assembly or Parliament, depending on who constituted it.
- However, the government is not bound to make the report public. The findings are not binding on the executive wither, but can be relied upon by courts as evidence.

**9. Panel to define offences of speech, expression**

As there is **no clear definition** of what constitutes a **"hate speech"** in the **Indian Penal Code (IPC)**, the **Committee for Reforms in Criminal Laws** is attempting for the first time **to define such speech**.

- The committee is expected to submit its report soon.

**Has it been defined anywhere else?**

The **Bureau of Police Research and Development** recently published a manual for investigating agencies on **cyber harassment cases** that defined **hate speech** as a "language that denigrates, insults, threatens or targets an individual based on their identity and other traits (such as sexual orientation or disability or religion etc.)."

**About the Committee for Reforms in Criminal Laws:**

In 2019, the Home Ministry decided to overhaul **the IPC, framed in 1860 and the Code of Criminal Procedure (CrPC)** after seeking suggestions from States, the Supreme Court, High Courts, the Bar Council of India, Bar Councils of States, universities and law institutes on comprehensive amendments to criminal laws.

- The committee thus formed is examining a gamut of subjects pertaining to reforms in the IPC.
- The committee has decided that instead of ad hoc changes, all the pending issues such as those on **hate speech as recommended by the Viswanathan committee** can be examined and comprehensive changes are brought in.

**Hate speech threatens two key doctrines of democracy:**

1. The guarantee of equal dignity to all.
2. The public good of inclusiveness.

**The penal provisions which relate to this aspect are as follows:**

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

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

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