INSIGHTSIAS

SIMPLIFYING IAS EXAM PREPARATION

INSTA PT 2022 EXCLUSIVE

POLITY

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

1. National Commission for Protection of Child Rights (NCPCR)

The National Commission for Protection of Child Rights (NCPCR) has asked the West Bengal chief secretary to get all **children care institutions (CCIs)** registered under **the Juvenile Justice Act 2015.**

- Citing that **it was mandatory for all CCIs to comply with the JJ Act**.

About NCPCR:

Set up in March 2007 under **the Commission for Protection of Child Rights Act, 2005.**
It works under the administrative control of **the Ministry of Women & Child Development.**
Definition: The Child is defined as a person in the 0 to 18 years age group.

- **The Commission's Mandate is** to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child.

Under the RTE Act, 2009, the NCPCR can:

- inquire into complaints about violation of the law.
- summon an individual and demand evidence.
- seek a magisterial enquiry.
- file a writ petition in the High Court or Supreme Court.
- approach the government concerned for prosecution of the offender.
- recommend interim relief to those affected.

Composition:

This commission has a chairperson and six members of which at least two should be women.

- All of them are appointed by Central Government for three years.
- The maximum age to serve in commission is 65 years for Chairman and 60 years for members.

About Child Welfare Committees:

As per **the Section 27(1) of Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act),** Child Welfare Committees (CWCs) are **to be constituted by State Government** for every district, for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under JJ Act, 2015.

Composition of the committees:

The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom atleast one shall be a woman and another, an expert on the matters concerning children.

Eligibility conditions:

Chairperson and the members shall be above the age of thirty-five years and shall have a minimum of seven years of experience of working with children in the field of education, health, or welfare activities, or should be a practicing professional with a degree in child psychology or psychiatry or social work or sociology or human development or in the field of law or a retired judicial officer.

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2. Jammu and Kashmir Delimitation Commission

The **Jammu and Kashmir Delimitation Commission**, has made the following recommendations:

1. Increase six seats for the Jammu division and one for the Kashmir division.
2. Reserve 16 seats for the Scheduled Caste (SC) and Schedule Tribe (ST) communities.

Implications:

J&K will have a 90-member Legislative Assembly now, up from 87 prior to the Centre's decision to end J&K's special constitutional position.

Basis of these recommendations:

The **Jammu and Kashmir Delimitation Commission** has said that it will base its final report on **the 2011 Census** and will also take into account the topography, difficult terrain, means of communication and convenience available for the ongoing delimitation exercise.

Delimitation exercise in J&K- a timeline:

1. The **first delimitation exercise,** carving out 25 assembly constituencies in the then state, was carried out by a Delimitation Committee in 1951.
2. **The first full-fledged Delimitation Commission** was formed in 1981 and it submitted its recommendations in 1995 on the basis of 1981 Census. Since then, there has been no delimitation.
3. In 2020, the Delimitation Commission was constituted to carry out the exercise on the basis of 2011 Census, with a mandate to add seven more seats to the Union Territory' and grant reservations to SC and ST communities.

What is delimitation and why is it needed?

The **Delimitation Commission for Jammu and Kashmir was constituted by the Centre** on March 6 last year to redraw Lok Sabha and assembly constituencies of the union territory in accordance with the provisions of **the Jammu and Kashmir Reorganisation Act, 2019** and Delimitation Act, 2002, passed by the Centre in August 2019 along with other J&K-specific Bills.

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

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.**

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.

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3. Election Commission of India

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 of 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.**

Communication between EC and the Government:

- The EC's communication with the Government on election matters is **through the bureaucracy —** either with its administrative ministry — the Law Ministry or the Home Ministry for the deployment of security forces during elections.
- In such cases, **the Home Secretary is often invited in front of a full commission** where the three commissioners are also present.
- The Law Ministry spells out the fine print on law for the country and is expected not to breach the constitutional safeguard provided to the commission to ensure its autonomy.

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4. 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?

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.

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- 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.

5. Law Commission of India

The Government has informed the Supreme Court that appointment of the Chairperson and Members of **the 22nd Law Commission of India** is under consideration.

During the hearing, the Government invoked the 'doctrine of separation of power', which says that one arm of governance should not encroach into that of another.

About the law commission of India:

It is **an executive body established by an order of the Government of India.**

- **Originally formed in 1955,** the commission is reconstituted every three years and so far, 277 reports have been submitted to the government.
- The last Law Commission, under **Justice B.S. Chauhan (retd.),** had submitted reports and working papers on key issues such as **simultaneous elections to the Lok Sabha and the Assemblies and a uniform civil code.**

Composition:

- Apart from having a full-time chairperson, the commission will have four full-time members, including a member-secretary.
- Law and Legislative Secretaries in the Law Ministry will be the ex-officio members of the commission.
- It will also have not more than five part-time members.
- A retired Supreme Court judge or Chief Justice of a High Court will head the Commission.

Roles and functions:

- The Law Commission shall, on a reference made to it by the Central Government or suo motu, undertake research in law and review of existing laws in India for making reforms and enacting new legislation.
- It shall also undertake studies and research for bringing reforms in the justice delivery systems for elimination of delay in procedures, speedy disposal of cases, reduction in cost of litigation, etc.

What is the doctrine of Separation of Power?

- It refers to the model of governance where the executive, legislative and judicial powers are not concentrated in one body but instead divided into different branches.
- It is not explicitly mentioned in the constitution.

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

- **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.
- **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.
- **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.
- **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.
- **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.

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6. Lokur Commission

The West Bengal government had, in July 2021, 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.

7. Extending the tenures of the directors of CBI and ED

Parliament has passed a Bill to extend the tenure of director of the Central Bureau of Investigation to a maximum of five years from the present two years.

Laws amended:

1. The change in tenure of the CBI Director was done by amending **the Delhi Special Police Establishment Act, 1946.**
2. On the other hand, the changes to the tenure of the ED Director was brought in by amending **the Central Vigilance Commission Act, 2003.**

About the CBI Director and his appointment:

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- The Director of the CBI is appointed as per **section 4A of the Delhi Special Police Establishment Act of 1946.**
- **The Lokpal and Lokayuktas Act (2013)** says that **the Central Government shall appoint the Director of CBI on the recommendation of a three-member committee** consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and the Chief Justice of India or Judge of the Supreme Court nominated by him.
- Further, **the Delhi Special Police Establishment (Amendment) Act, 2014** made **a change in the composition of the committee related to the appointment of the Director of C.B.I.** It states that **where there is no recognized leader of opposition in the Lok Sabha, then the leader of the single largest opposition party in the Lok Sabha would be a member of that committee.**

About 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.**
2. 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.

8. General consent to CBI

A suit was filed by the West Bengal Government against the Union of India under **Article 131 of the Constitution.**

- The State has challenged **the CBI's jurisdiction to register FIRs and conduct investigations in the State** in myriad cases.
- West Bengal said it had withdrawn **"general consent" to the CBI** way back in 2018.

The Supreme Court has expressed concern over a submission by the CBI that since 2018, around 150 requests for sanction to investigate have been pending with eight state governments that have withdrawn general consent to the agency.

Centre's response:

- State governments do not have any "absolute" power to keep **the Central Bureau of Investigation (CBI)** from investigating crimes inside the State.

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- Not even the Union government", has the authority to rattle the autonomy of the premier agency to conduct investigations.
- Also, withdrawal of general consent would not stand in the way of constitutional courts entrusting the CBI with the cases "where it is found that the State Police would not effectively conduct a fair and impartial investigation".
- Besides, the CBI was empowered to probe cases concerning any of the Central subjects enumerated in the Union List in the Seventh Schedule of the Constitution.

Why is consent 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.

- CBI operates under **the Delhi Special Police Establishment Act (DSPE),** and it also derives its authority to register cases under the same law. The Union of India has nothing to do with it.
- It is **the central vigilance commission (CVC)** which has been tasked with superintendence over CBI, and the CVC Act makes it clear that there cannot be any interference with the investigations conducted by the agency.

Challenges associated with the autonomy of CBI:

1. The agency is **dependent on the home ministry** for staffing, since many of its investigators come from the Indian Police Service.
2. The agency **depends on the law ministry** for lawyers and also lacks functional autonomy to some extent.
3. The CBI, run by IPS officers on deputation, is also **susceptible to the government's ability to manipulate the senior officers,** because they are dependent on the Central government for future postings.
4. **Dependence on State governments** for invoking its authority to investigate cases in a State, even when such investigation targets a Central government employee.
5. Since **police is a State subject** under the Constitution, and the CBI acts as per the procedure prescribed by **the Code of Criminal Procedure (CrPC),** which makes it a police agency, the CBI needs the **consent of the State government** in question before it can make its presence in that State. This is a cumbersome procedure and has led to some ridiculous situations.

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 the state.**

Under what provision can general consent be 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 consent, would allow CBI's jurisdiction to extend to these states.

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9. Comptroller and Auditor General of India (CAG)

1st Audit Diwas was celebrated on November 16. Audit Diwas is being celebrated to mark the historic origin of the institution of CAG and the contribution it has made to the governance, transparency and accountability over the past several years.

About CAG:

- The Constitution of India provides for an independent office of the Comptroller and Auditor General of India (CAG) in **chapter V under Part V.**
- The CAG is mentioned in the Constitution of India under **Article 148 – 151.**
- He is **the head of the Indian Audit and Accounts Department.**
- He is **the guardian of the public purse and controls the entire financial system of the country** at both the levels- the centre and state.
- His duty is **to uphold the Constitution of India and the laws of Parliament in the field of financial administration.**

Appointment and Term to Constitutionals Posts:

- The CAG is **appointed by the President of India** by **a warrant under his hand and seal.**
- He holds office for a period of six years or upto the age of 65 years, whichever is earlier.

Duties:

1. CAG audits the accounts related to all expenditure from **the Consolidated Fund of India, Consolidated Fund of each state and UT** having a legislative assembly.
2. CAG audits all expenditure from **the Contingency Fund of India and the Public Account of India** as well as the Contingency Fund and Public Account of each state.
3. CAG audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and the state governments.
4. CAG audits the receipts and expenditure of all bodies and authorities substantially financed from the Central or State revenues; government companies; other corporations and bodies, when so required by related laws.
5. He ascertains and certifies the net proceeds of any tax or duty and his certificate is final on the matter.

He acts as **a guide, friend and philosopher of the Public Accounts Committee of the Parliament.**

Reports:

- He submits his audit reports relating to the accounts of the Centre and State to the President and Governor, who shall, in turn, place them before both the houses of Parliament and the state legislature respectively.
- He submits 3 audit reports to the President: audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.

10.Competition Commission of India

The Competition Commission of India (CCI) was established under **the Competition Act, 2002** for the administration, implementation and enforcement of the Act, and was duly constituted in March 2009. Chairman and members are appointed by the central government.

Functions of the commission:

1. It is the duty of the Commission to eliminate practices having adverse effects on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India.

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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 **Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act)** was repealed and replaced by **the Competition Act, 2002,** on the recommendations of the Raghavan **committee.**

- 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.

Cartelisation:

According to CCI, a "Cartel **includes an association of producers, sellers, distributors, traders or service providers** who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services".

The three common components of a cartel are:

1. An agreement.
2. Between competitors.
3. To restrict competition.

Features of a cartel:

- The agreement that forms a cartel need not be formal or written.
- Cartels almost invariably involve secret conspiracies.
- Here, competitors refers to companies at the same level of the economy (manufacturers, distributors, or retailers) in direct competition with each other to sell goods or provide services.

What do these cartels do?

1. Price-fixing.
2. Output restrictions.
3. Market allocation.
4. Bid-rigging.

In simple terms, "participants in hard-core cartels agree to insulate themselves from the rigours of a competitive marketplace, substituting cooperation for competition".

Challenges posed by cartels:

1. Hurt not only the consumers but also, indirectly, undermine overall economic efficiency and innovations.
2. By artificially holding back the supply or raising prices in a coordinated manner, companies either force some consumers out of the market by making the commodity (say, beer) more scarce or by earning profits that free competition would not have allowed.
3. A cartel shelters its members from full exposure to market forces, reducing pressures on them to control costs and to innovate.

Why do companies resort to Cartelisation?

The companies blamed government rules, which require them to seek approvals from state authorities for any price revisions, as the main reason for forming a cartel.

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11.National Financial Reporting Authority (NFRA)

Coming out strongly against certain recommendations made by **NFRA,** chartered accountants' apex body **ICAI** has said **the watchdog does not have jurisdiction over micro, small and medium companies**.

About NFRA:
National Financial Reporting Authority (NFRA) was constituted on 1st October, 2018 under section 132 (1) of **the Companies Act, 2013.**

Why was it needed?
In the wake of accounting scams, a need was felt to establish an independent regulator for enforcement of auditing standards and ensuring the quality of audits so as to enhance investor and public confidence in financial disclosures of companies.

Composition:
The **Companies Act** requires the NFRA to have a chairperson who will be appointed by the Central Government and a maximum of 15 members.

Functions and Duties:
1. Recommend accounting and auditing policies and standards to be adopted by companies for approval by the Central Government;
2. Monitor and enforce compliance with accounting standards and auditing standards;
3. Oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;
4. Perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

Powers:
1. It can probe listed companies and those unlisted public companies having paid-up capital of no less than Rs 500 crore or annual turnover of no less than Rs 1,000 crore.
2. It can investigate professional misconduct committed by members of **the Institute of Chartered Accountants of India (ICAI)** for prescribed class of body corporate or persons.

12.National Commission for Minorities

- National Commission for Minorities (NCM) was set up under the **National Commission for Minorities Act, 1992.**
- It Monitor the **working of the safeguards for minorities** provided in the Constitution and in laws enacted by Parliament and the state legislatures.

Please note, Six religious communities, viz; Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains have been notified in Gazette of India as minority communities by the Union Government all over India.

Background:
Setting up of the Minorities Commission (MC) was envisaged in the **Ministry of Home Affairs** Resolution In 1978.
- In 1984, the 'Minorities Commission' was **detached from the Ministry of Home Affairs** and **placed under the newly created Ministry of Welfare.**
- In 1992, with the enactment of the **'National Commission for Minorities Act (NCM Act), 1992**', the MC became a **statutory body** and was renamed as the 'National Commission for Minorities' (NCM).
- **In 1993**, **five religious communities** viz. The Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities.
- **In 2014, Jains were also notified** as a minority community.

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- **At present National Commission for Minorities functions under the jurisdiction of Ministry of Minority Affairs.**

Composition:
- NCM consists of a **Chairperson, a Vice-Chairperson and five members** and all of them shall be from amongst the minority communities.
- **Total of 7 persons to be nominated by the Central Government** should be from amongst persons of eminence, ability and integrity.
- Each Member holds **office for a period of three years** from the date of assumption of office.

Other constitutional provisions to safeguard the Minorities:
- **Article 15 and 16.**
- **Article 25.**
- **Article 26.**
- **Article 28.**
- **Article 29.**
- **Article 30.**
- **Article 350-B:** The 7th Constitutional (Amendment) Act 1956 inserted this article which provides for a Special Officer for **Linguistic Minorities** appointed by the President of India.

13.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.

14.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:
1. **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.

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2. **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 **traditional judicial system** whereby judicial powers are derived from the state.	An Administrative Tribunal is an **agency created by the statute** and invested with judicial power.
2.	The Civil Courts have judicial power to try all **suits of a civil nature** 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 **special matter which are conferred on them by statutes**
3.	Judges of the ordinary courts of law are independent of the executive in respect of their tenure, terms and conditions of service etc. **Judiciary is independent of Executive**	Tenure, terms and conditions of the services of the members of **Administrative Tribunal are entirely in the hands of Executive** (government).
4.	The presiding officer of the **court of law is trained in law.**	The president or a member of the Tribunal may not be trained as well in law. He may be an **expert in the field of Administrative matters.**

- **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.**

15.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.**
- 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;

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- 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.

16.Lokpal and Lokayukta

The Kerala governor has signed **the ordinance proposing amendments to the Kerala Lok Ayukta Act, 1999,** that makes the agency's orders not binding on the government.

Who is a Lokayukta?

The central Lokpal and Lokayuktas Act, 2013 was **notified on January 1, 2014.**

Lokayuktas are the state equivalents of the central Lokpal.

- Originally, the central legislation was envisaged to make a Lokayukta in each state mandatory.
- However, after opposition, the law then created a mere framework, leaving it **to the states to decide the specifics.**

Given that **states have autonomy to frame their own laws,** the Lokayukta's powers vary from state to state on various aspects, such as tenure, and need of sanction to prosecute officials.

Who is a Lokpal?

The Act provides for establishing a Lokpal headed by **a Chairperson** (who is or has been a Chief Justice of India, or is or has been a judge of the Supreme Court, or an eminent person who fulfils eligibility criteria as specified).

Members: Of its other members, not exceeding eight, 50% are to be judicial members, provided that not less than 50% belong to the SCs, STs, OBCs, minorities, or are women.

Roles and functions: The Lokpal and Lokayukta are to deal with complaints against public servants, a definition that includes the Lokpal chairperson and members.

- The Lokpal was appointed in March 2019 and it started functioning since March 2020 when its rules were framed.

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

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- the Prime Minister who is the Chairperson;
- 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.

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.

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Executive

1. Ordinance

- The ordinance making power is the most important **legislative power of the President and the Governor.** It has been vested in them to deal with unforeseen or urgent situations.
- **Article 123 of the Constitution** grants the President certain law-making powers to promulgate ordinances during the recess of Parliament.
- These **ordinances have the same force and effect as an Act of Parliament** but are in the nature of **temporary laws**.
- Likewise, the Governor of a state can issue ordinances under **Article 213 of the Constitution,** when the state legislative assembly (or either of the two Houses in states with bicameral legislatures) is not in session.
- The Constitution permits the central and State governments to make laws when Parliament (or the State Legislature) is **not in session.**

How long will it be in force?

The Constitution states that the ordinance will lapse at the end of six weeks from the time Parliament (or the State Legislature) next meets.

Concerns associated with the ordinance route:

- Whereas **an ordinance was originally conceived as an emergency provision, it was used fairly regularly.** In the 1950s, central ordinances were issued at an average of 7.1 per year. The last couple of years has seen a spike, 16 in 2019 and 15 in 2020.
- **Repromulgation:** A five-judge Constitution Bench of the Supreme Court, in 1986, ruled that **repromulgation of ordinances was contrary to the Constitutional scheme.**

Judicial Safeguards to avoid re-promulgation of ordinances:

- The Supreme Court in **RC Cooper vs. Union of India (1970)** held that the President's decision to promulgate ordinance could be challenged on the grounds that 'immediate action' was not required, and the ordinance had been issued primarily to bypass debate and discussion in the legislature.
- It was argued in **DC Wadhwa vs. the State of Bihar (1987)** that the legislative power of the executive to promulgate ordinances is to be used in exceptional circumstances and not as a substitute for the law-making power of the legislature.
- The Supreme Court in **Krishna Kumar Singh v. the State of Bihar** held that the authority to issue ordinances is not an absolute entrustment, but is "conditional upon satisfaction that circumstances exist rendering it necessary to take immediate action".

2. 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.

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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.

3. 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.

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4. Governor's pardon power overrides 433A: SC

The Supreme Court has observed that the power of the Governor under **Article 161 of the Constitution** to commute sentence or to pardon will override the restrictions imposed under **Section 433-A of the Criminal Procedure Code**.

What's the case?

The Court was considering the feasibility of remission policies in Haryana. It was considering **whether a state can frame policy to release a life-term convict prematurely before completing at least 14 years in jail or the government has to strictly go by Section 433 A of CrPC** which specifies that remission cannot be granted till he/she has served at least 14 years in jail?

Observations made by the Court:

1. **Even if the prisoner has not undergone 14 years or more of actual imprisonment,** the Governor has a power to grant pardons, reprieves, respites and remissions of punishment or to suspend, remit or commute the sentence of any person.
2. However, the power conferred on the Governor should be exercised on the aid and advice of the State. **The advice of the appropriate Government binds the Head of the State.**
3. The action of commutation and release can thus be pursuant to a governmental decision and **the order may be issued even without the Governor's approval.** However, under **the Rules of Business and as a matter of constitutional courtesy,** it may seek approval of the Governor, if such release is under Article 161 of the Constitution.

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.

Difference Between Pardoning Powers of President and Governor:

The scope of the pardoning power of the President under **Article 72** is wider than the pardoning power of the Governor under **Article 161** which differs in the following two ways:

1. **Court Martial:** 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.
2. **Death sentence:** The President can grant pardon in all cases where the sentence given is the sentence of death but the pardoning power of the Governor does not extend to death sentence cases.

CrPC Section 433A:

It deals with a restriction on powers of remission or Commutation in certain cases.

- It says "Notwithstanding anything contained in **section 432,** where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, **such person shall not be released from prison unless he had served at least fourteen years of imprisonment".**

5. 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?

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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.

6. 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 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.

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

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

What happens when there is a difference of opinion?

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

When prior sanction of the Administrator is required?

- Under **Section 22 of the Act,** prior sanction of the Administrator is required for certain legislative proposals.

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- 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.**

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

1. Anti-defection law

The Tenth Schedule of the Indian Constitution:
Popularly known as **the anti-defection law.**

- It specifies the circumstances under which changing of political parties by legislators invites action under the law.
- It was added to the Constitution by **the 52nd Amendment Act.**
- It includes **situations in which an independent MLA, too, joins a party after the election.**

The law covers three scenarios with respect to shifting of political parties by an MP or an MLA. These include:

1. When a member elected on the ticket of a political party "voluntarily gives up" membership of such a party or votes in the House against the wishes of the party.
2. When a legislator who has won his or her seat as an independent candidate joins a political party after the election.

In the above two cases, **the legislator loses the seat in the legislature on changing (or joining) a party.**

3. Relates to nominated MPs. In their case, the law gives them six months to join a political party, after being nominated. If they join a party after such time, they stand to lose their seat in the House.

Matters related to disqualification:

- Under the anti-defection law, **the power to decide the disqualification of an MP or MLA rests with the presiding officer of the legislature.**
- **The law does not specify a time frame** in which such a decision has to be made.
- Last year, the Supreme Court observed that **anti-defection cases should be decided by Speakers in three months' time.**

However, **Legislators may change their party without the risk of disqualification in certain circumstances. Exceptions:**

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. On being elected as the presiding officer of the House, if a member, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office, he won't be disqualified.

Can the courts intervene?
Courts have, in certain cases, intervened in the workings of a legislature.

1. In 1992, a five-judge constitutional bench of the Supreme Court held that the anti-defection law proceedings before the Speaker are akin to a tribunal and, thus, can be placed under judicial review.
2. In January 2020, the Supreme Court asked Parliament to amend the Constitution to strip legislative assembly speakers of their exclusive power to decide whether legislators should be disqualified or not under the anti-defection law.
3. In March 2020, the Supreme Court removed Manipur minister against whom disqualification petitions were pending before the speaker since 2017, from the state cabinet and restrained him "from entering the legislative assembly till further orders".

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2. 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."

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.

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 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.

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.

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.
- 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.

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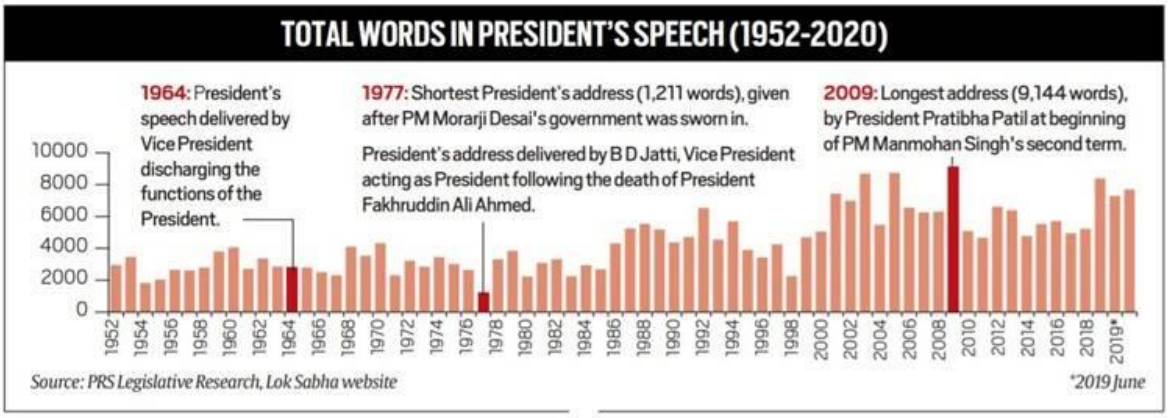
- In 1969, the Governor of West Bengal, Dharma Vira, skipped two paragraphs of the address prepared by the United Front government. The skipped portion described as unconstitutional the dismissal of the first United Front government by the Congress-ruled central government.



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.

3. MPs' questions

Congress Whip had raised the issue of **Cabinet ministers not responding to questions** in the Rajya Sabha.

MPs' right to question:
In both Houses, elected members enjoy the right to seek information from various ministries and departments in the form of starred questions, unstarred questions, short notice questions and questions to private members.

How are questions admitted?

- Usually, MPs' questions form a long list, which then go through a rigorous process of clearance.
- The admissibility of questions in Rajya Sabha is governed by Rules 47-50 of the Rules of Procedure and Conduct of Business in the Council of States.
- Once a question that fulfils the conditions of admissibility is received, the Secretariat sends it to the ministry concerned. Once the facts are received from the ministry, the question is further examined for admissibility.
- A final list of questions is circulated to ministers, on the basis of which they frame their answers.

What are starred, unstarred and other categories of questions?
STARRED QUESTION: The member desires an oral answer from the minister. Such a question is distinguished by the MP with an asterisk. The answer can also be followed by supplementary questions from members.
UNSTARRED QUESTION: The MP seeks a written answer, which is deemed to be laid on the table of the House by the concerned minister.

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SHORT NOTICE QUESTION: These are on an urgent matter of public importance, and an oral answer is sought. A notice of less than 10 days is prescribed as the minimum period for asking such a question.
QUESTION TO PRIVATE MEMBER: A question can be addressed to a private member under Rule 40 of Lok Sabha's Rules of Procedure, or under Rule 48 of Rajya Sabha's Rules, provided that the question deals with a subject relating to some Bill, resolution or other matter for which that member is responsible.

What kind of questions can be asked?

- **In Rajya Sabha,** among various norms, the question "shall be pointed, specific and confined to one issue only; it shall not bring in any name or statement not strictly necessary to make the question intelligible; if it contains a statement the member shall make himself responsible for the accuracy of the statement; it shall not contain arguments, inferences, ironical expressions, imputations, epithets or defamatory statements".
- **In Lok Sabha,** questions that are not admitted include: those that are repetitive or have been answered previously; and matters that are pending for judgment before any court of law or under consideration before a Parliamentary Committee.

4. 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.

5. 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.

6. Privilege Motion

Four Telangana Rashtra Samithi (TRS) members in the Rajya Sabha had submitted **a Privilege Motion** against Prime Minister Narendra Modi regarding his February 8 remarks in the Upper House about **the Andhra Pradesh Reorganisation Bill.**

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".

According to the rules, a member should attend at least one day during the session and if not, the member should apply for leave which has to be sanctioned by the House.

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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.

7. Budget Session of Parliament

- The Budget Session of Parliament begins.
- **President Ram Nath Kovind will address both Houses in the Central Hall.**
- The Economic Survey 2021-22 was laid by Finance Minister Nirmala Sitaraman in Lok Sabha.
- There will be **no Zero Hour and Question Hour in both Houses of Parliament during the first two days** of the Budget Session.
- During the First Part of the Session after the presentation of the Budget (February 2-11), 40 hours of normal time will be available for various Businesses such as **Question, Private Members' Business, Discussion on Motion of Thanks, General Discussion on Union Budget, etc.**

Sessions of parliament- Constitutional Provisions:

- **Article 85** requires that there should not be a gap of more than six months between two sessions of Parliament.
- The **Constitution does not specify when or for how many days Parliament should meet.**

Budgeting process in India:
The procedure for presentation of the Budget in and its passing by Lok Sabha is as laid down in **articles 112—117 of the Constitution** of India, **Rules 204—221 and 331-E of the Rules of Procedure and Conduct of Business in Lok Sabha** and Direction 19-B of **Directions by the Speaker.**

The Budget goes through six stages:
1. Presentation of Budget.
2. General discussion.
3. Scrutiny by Departmental Committees.

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4. Voting on Demands for Grants.
5. Passing of Appropriation Bill.
6. Passing of Finance Bill.

Presentation:
The Budget is presented to Lok Sabha on such day **as the President may direct.**
Immediately after the presentation of the Budget, **the following three statements under the Fiscal Responsibility and Budget Management Act, 2003** are also laid on the Table of Lok Sabha:
(i) The Medium-Term Fiscal Policy Statement;
(ii) The Fiscal Policy Strategy Statement; and
(iii) The Macro Economic Framework Statement.

8. Suspension of MPs

When can the presiding officer invoke suspension?
Rule 255 of the General Rules of Procedure of the Rajya Sabha.

- Under **Rule 255 ('Withdrawal of member') of the General Rules of Procedure of the Rajya Sabha,** "The Chairman may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the Council and any member so ordered to withdraw shall do so forthwith and **shall absent himself during the remainder of the day's meeting."**

Rule 256 of the Rajya Sabha's Rules of Procedure:
Specifies the acts of misconduct:

- Under this, an MP can be suspended for disregarding the authority of the Chair or wilfully abusing the rules or obstructing the business of the house.
- However, **the power to suspend an MP is vested in the house, not the chairman.** The chairman only names the member, while the Parliamentary Affairs minister or any other minister moves the motion for suspending the member.

How is suspension under Rule 255 different from Suspension under Rule 256?
Rule 256 provides for 'Suspension of Member'; whereas Rule 255 provides for lesser punishment.

- Under **Rule 256,** "the Chairman may, if he deems it necessary, suspend a member from the service of the Council for a period not exceeding the remainder of the Session.

The Rules of the House do not empower Parliament to inflict any punishment on its members other than suspension for creating disorder in the House.

Rules of parliamentary etiquette:
MPs are required to adhere to certain rules of parliamentary etiquette.

- For example, the Lok Sabha rulebook specifies that MPs are not to interrupt the speech of others, maintain silence and not obstruct proceedings by hissing or making running commentaries during debates.

Newer forms of protest led to these rules being updated in 1989.

- Now, members should not shout slogans, display placards, tear up documents in protest, and play a cassette or a tape recorder in the House.

Rajya Sabha has similar rules. To conduct the proceedings smoothly, the rulebook also gives certain, similar powers to the presiding officers of both Houses.

Differences in powers of Speaker and Chairman of Rajya Sabha:

- Like the Speaker in Lok Sabha, **the Chairman of 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.

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

Procedure to be followed for suspension of Rajya Sabha MPs:

1. 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.
2. 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.
3. The House may, however, by another motion, terminate the suspension.

Terms of suspension:

1. The maximum period of suspension is for the remainder of the session.
2. Suspended members cannot enter the chamber or attend the meetings of the committees.
3. He will not be eligible to give notice for discussion or submission.
4. He loses the right to get a reply to his questions.

Appointment of the special committee:

- These ad-hoc committees are appointed only to investigate serious misconduct by MPs outside the house.
- These are usually appointed when the misconduct is very severe and the house is deciding to expel the member.

No special committee is required to go into what happens before the eyes of the presiding officer in the House. As per the rules of the House, they need to be dealt with then and there.

9. Suspension of MLAs

Procedure to be followed for suspension of MLAs:

Under **Rule 53 of the Maharashtra Legislative Assembly Rules,** the power to suspend can only be exercised by the Speaker, and it cannot be put to vote in a resolution.

- **Rule 53** states that the "Speaker may direct any member who refuses to obey his decision, or whose conduct is, in his opinion, grossly disorderly, to withdraw immediately from the Assembly".
- The member must "absent himself during the remainder of the day's meeting".
- Should any member be ordered to withdraw for a second time in the same session, **the Speaker may direct the member to absent himself "for any period not longer than the remainder of the Session"**.

How does the state government defend its move?

Under **Article 212,** courts do not have jurisdiction to inquire into the proceedings of the legislature.

- Article 212 (1) states that "The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure".

Under **Article 194**, any member who transgresses the privileges can be suspended through the inherent powers of the House.

Thus, the state government has denied that **the power to suspend a member can be exercised only through Rule 53 of the Assembly**.

Concern expressed by the Supreme Court over the length of the suspension:

The **basic structure** of the Constitution would be hit if the constituencies of the suspended MLAs remained unrepresented in the Assembly for a full year.

- **Article 190 (4) of the Constitution** says, "If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant."

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- **Under Section 151 (A) of The Representation of the People Act, 1951,** "a bye-election for filling any vacancy shall be held within a period of six months from the date of the occurrence of the vacancy". This means that barring exceptions specified under this section, no constituency can remain without a representative for more than six months.

Therefore, **the one-year suspension was prima facie unconstitutional** as it went beyond the six-month limit, and amounted to "not punishing the member but punishing the constituency as a whole".

10.Private members' Bills

Who is a Private Member?

Any MP who is not a Minister is referred to as a private member.

- The purpose of private member's bill is to draw the government's attention to what individual MPs see as issues and gaps in the existing legal framework, which require legislative intervention.

Admissibility of a private member's Bill:

The admissibility is decided by the Chairman for Rajya Sabha and Speaker in the case of Lok Sabha.

- Its rejection by the House has no implication on the parliamentary confidence in the government or its resignation.

The procedure is roughly the same for both Houses:

- The Member must give at least a month's notice before the Bill can be listed for introduction.
- The House secretariat examines it for compliance with constitutional provisions and rules on legislation before listing.

Is there any exception?

While government Bills can be introduced and discussed on any day, private member's Bills can be introduced and discussed only on Fridays.

Has a private member's bill ever become a law?

As per PRS Legislative, no private member's Bill has been passed by Parliament since 1970. To date, Parliament has passed 14 such Bills, six of them in 1956. In the 14th Lok Sabha, of the over 300 private member's Bills introduced, roughly four per cent were discussed, the remaining 96 per cent lapsed without a single dialogue.

11.Parliamentary Committees

A parliamentary committee is a "committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat".

- Parliamentary Committees are of two kinds - **Standing Committees and ad hoc Committees.** The former is elected or appointed every year or periodically and their work goes on, more or less, on a continuous basis. The latter are appointed on an ad hoc basis as need arises and they cease to exist as soon as they complete the task assigned to them.

Constitutional Provisions:

Parliamentary committees draw their authority from **Article 105** (on privileges of Parliament members) and **Article 118** (on Parliament's authority to make rules for regulating its procedure and conduct of business).

Composition of Departmentally-related standing committees (DRSCs):

- Until the 13th Lok Sabha, each DRSC comprised 45 members — 30 nominated from Lok Sabha and 15 from the Rajya Sabha.

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- However, with their restructuring in July 2004, each DRSC now has 31 members — 21 from Lok Sabha and 10 from Rajya Sabha, to be nominated by Lok Sabha Speaker and Rajya Sabha chairman, respectively.
- They are appointed for a maximum period of one year and the committees are reconstituted every year cutting across party lines.

Significance of Parliamentary Committee System:

1. Inter-Ministerial Coordination.
2. Instrument For Detailed Scrutiny.
3. Acting As Mini-Parliament.

12.Public Accounts Committee

The centennial celebrations of Parliament's **Public Accounts Committee** was recently held.

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.

13.Sessions of Parliament

What the Constitution says on Parliamentary Sessions?

- **Article 85** requires that there should not be a gap of more than six months between two sessions of Parliament.
- Please note, **the Constitution does not specify when or for how many days Parliament should meet.**
- The maximum gap between two sessions of Parliament cannot be more than six months. That means **the Parliament should meet at least twice a year.**
- A 'session' of Parliament is the period between the first sitting of a House and its prorogation.

Who shall convene a session?

- In practice, the Cabinet Committee on Parliamentary Affairs, comprising senior ministers, decides on the dates for parliament's sitting and it is then conveyed to the president.
- So, the executive, headed by the prime minister, which steers the business to be taken up by parliament will have the power to advise the president to summon the legislature.

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14.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.**

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.**

15.Repealing a law

- Repealing a law is one of the ways to **nullify a law**. A law is reversed when **Parliament thinks there is no longer a need for the law** to exist.
- Legislation can **also have a "sunset" clause**, a particular date after which they cease to exist.

How can the government repeal a law?

The government can **repeal the laws in two ways** -- it can either **bring a Bill to repeal the three laws** or **promulgate an ordinance** that will have to be subsequently replaced with a Bill within six months.

- For repeal, the **power of Parliament is the same as enacting a law** under the Constitution.
- **Article 245 of the Constitution** which gives Parliament the power to make laws also gives the legislative body the power to repeal them through the Repealing and Amending Act.
- The Act was first passed in 1950 when 72 Acts were repealed.
- A **law can be repealed either in its entirety**, **in part, or even just to the extent** that it is in contravention of other laws.

What is the process for repealing a law?

Laws can be repealed in two ways — either through an ordinance, or through legislation.

- **In case an ordinance is used**, it would need to be replaced by a law passed by Parliament within six months.
- If the ordinance lapses because it is not approved by Parliament, the repealed law can be revived.

16.Election of Speaker and Deputy Speaker

How are they 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.

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- 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.

Is it mandatory under the Constitution to have a Deputy Speaker?

Post of Deputy-speaker in Lok Sabha (LS) still remains vacant

Constitutional experts point out that both Articles 93 and 178 use the words "shall" and "as soon as may be" — indicating that not only is the election of Speaker and Deputy Speaker mandatory, it must be held at the earliest.

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.

Tenure:

- Once elected, the Deputy Speaker usually continues in office until the dissolution of the House.
- Under Article 94 (Article 179 for state legislatures), the Speaker or Deputy Speaker "shall vacate his office if he ceases to be a member of the House of the People".
- They may also resign (to each other), or "may be removed from office by a resolution of the House of the People passed by a majority of all the then members of the House".

Powers of deputy speaker:

The Deputy Speaker has the same powers as the Speaker when presiding over a sitting of the House. All references to the Speaker in the Rules are deemed to be references to the Deputy Speaker when he presides.

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.

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17.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.

18.Legislative Council

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.

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19.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.

20.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:

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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.

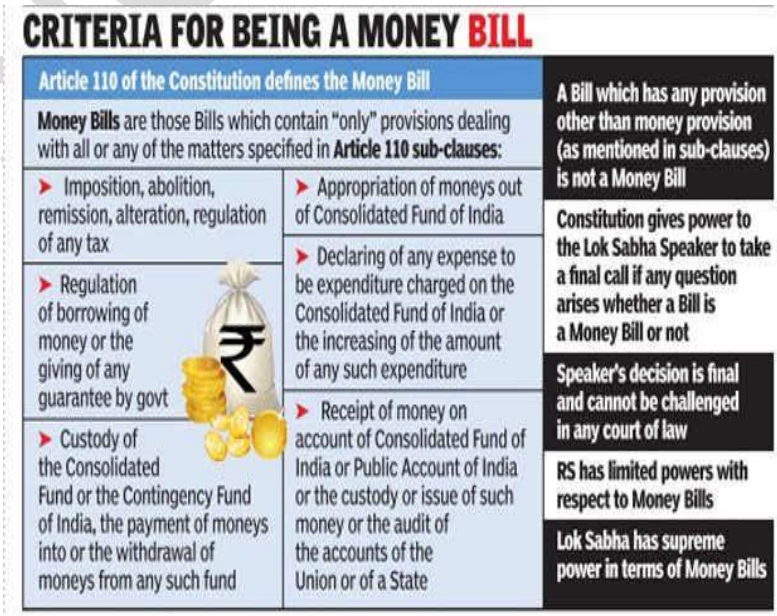
21.Finance Bill

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

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

Difference between a Money Bill and the Finance Bill:

1. A Money Bill has to be introduced in the Lok Sabha as per Section 110 of the Constitution. Then, it is transmitted to the Rajya Sabha for its recommendations. The Rajya Sabha has to return the Bill with recommendations in 14 days. However, the Lok Sabha can reject all or some of the recommendations.
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.



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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.**

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.

22.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:

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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.

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Judiciary

1. Contempt of Court

What is Contempt?

While the basic idea of a contempt law is to punish those who do not respect the orders of the courts, in the Indian context, contempt is also used to punish speech that lowers the dignity of the court and interferes with the administration of justice.

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:

1. **Civil**, that is the willful disobedience of a court order or judgment or willful breach of an undertaking given to a court.
2. **Criminal**, that is written or spoken words or any act that scandalises the court or lowers its authority or prejudices or interferes with the due course of a judicial proceeding or interferes/obstructs the administration of justice.

Relevant provisions:

- **Article 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.

2. Consent of AG to initiate contempt proceedings

As per **Section 15 of the Contempt of Courts Act,** the nod of the Attorney General or the Solicitor General is a condition precedent to set the criminal contempt proceedings in motion before the apex court.

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.**

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

3. Judicial Review

The question whether the state can use 'national security' as a ground to limit judicial scrutiny has come up for scrutiny in **the MediaOne TV channel case.**
The government has cited **national security reasons** in the Kerala High Court for canceling telecast permission to the Malayalam news channel.

- Recently, in **its Pegasus snooping case order,** the Supreme Court observed that **the Centre cannot expect a 'free pass' from the courts as soon as it raises the 'spectre of national security'.**

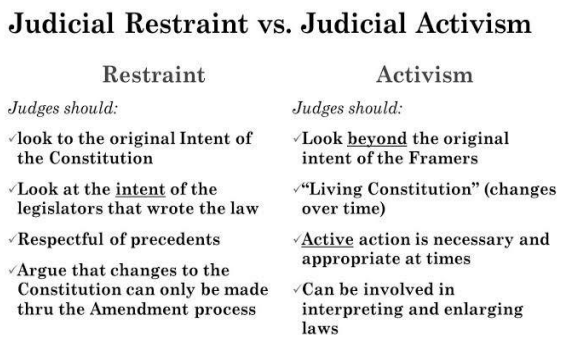
Observations made by the supreme court on this matter:
Scope of judicial review is limited in matters involving national security. However, this does not mean that the state gets a free pass every time the spectre of 'national security' is raised.

What has the Supreme Court said in the Anuradha Basin case?
Anuradha Bhasin case concerned **Internet restrictions in Jammu and Kashmir in the backdrop of the abrogation of Article 370.**

- The court had ruled that any order of the state which restricts the fundamental rights of speech or expression should be backed by reasons.
- The courts should be convinced that the state acted in a responsible manner and did not take away rights in an "implied fashion or a casual or cavalier man.

Other related cases:
In **Government of India v. Cricket Association of Bengal and Shreya Singhal v. The Union of India cases,** the court has observed that there is no dispute that freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial.

What is Judicial Review?
Judicial review is the power of Judiciary to review any act or order of Legislative and



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Executive wings and to pronounce upon the constitutional validity when challenged by the affected person.

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.
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.

4. Collective conscience

In a recent judgment the Supreme Court referred to **the evolution of the principles of penology.** Though capital punishment serves as a deterrent and a "response to the society's call for appropriate punishment in appropriate cases", the principles of penology have "evolved to balance the other obligations of the society, i.e., of preserving the human life, be it of accused, unless termination thereof is inevitable and is to serve the other societal causes and **collective conscience of society".**

How should the Courts decide on capital punishment impositions?

In **the case of Bachan Singh (1980),** 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.

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.**

5. Article 348 (1)

A Division Bench of the Gujarat High Court recently asked a journalist facing contempt of court proceedings to speak only in English as that was the language in the higher judiciary.

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

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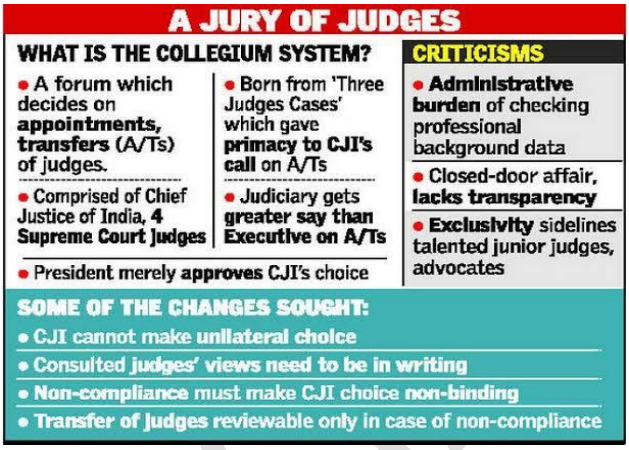
- Under **Article 348 (2),** the Governor of the State may, with the previous consent of the President, authorize the use of the Hindi language or any other language used for any official purpose of the State, in the proceedings of the High Court having its principal seat in that State provided that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

6. Collegium System

Who appoints judges to the SC?

In exercise of the powers conferred by clause (2) of **Article 124 of the Constitution of India,** the appointments are made by the President of India.

- The names are recommended by **the Collegium.**



Eligibility to become a Supreme Court judge:

The norms relating to the eligibility has been envisaged in the **Article 124 of the Indian Constitution.**

1. To become a judge of the Supreme court, an individual should be an Indian citizen.
2. In terms of age, a person should not exceed 65 years of age.
3. The person should serve as a judge of one high court or more (continuously), for at least five years or the person should be an advocate in the High court for at least 10 years or a distinguished jurist.

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.

- The salary payable to a Supreme Court Judge was previously, specified in the Constitution in **Article 125(1) and the Second Schedule.**
- However, through **the 54th Constitutional-Amendment,** Parliament has gained the power to determine the salaries of Supreme Court Judges by law.
- Parliament also has the authority to determine questions relating to the privileges, allowances, etc., for these Judges.
- None of these can, however, be varied by Parliament to the disadvantage of a Judge after his appointment to the Court.
- These matters are now regulated by **the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958.**

Related Constitutional Provisions:

- **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.
- **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.

Evolution of the Collegium System in Judiciary:

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First Judges Case (1981): It declared that the "primacy" of the Chief Justice of India (CJI)s recommendation on judicial appointments and transfers can be refused for "cogent reasons." The ruling gave the Executive primacy over the Judiciary in judicial appointments for the next 12 years.
Second Judges Case (1993): Supreme Court introduced the Collegium system, holding that "consultation" really meant "concurrence".
It added that it was not the CJI's individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the SC.
Third Judges Case (1998): Supreme Court on President's reference expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.

Is the collegium's recommendation final and binding?
The collegium sends its final recommendation to the President of India for approval. The President can either accept it or reject it. In the case it is rejected, the recommendation comes back to the collegium. If the collegium reiterates its recommendation to the President, then he/she is bound by that recommendation.

7. Chief Justice of India

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.
- 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:

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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.

8. 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.

9. Centrally Sponsored Scheme (CSS) for Development of Infrastructure Facilities for Judiciary

The Union Government has approved continuation of **the Centrally Sponsored Scheme (CSS)** for **Development of Infrastructure Facilities for Judiciary** for further five years to 2026.
- The centre will contribute for the implementation of **the Gram Nyayalayas Scheme** as a part of **the National Mission for Justice Delivery and Legal Reforms.**

About the CSS for Development of Infrastructure Facilities for Judiciary:
- It has been in operation since 1993-94.
- The Central Government through this scheme augments the resources of the State Governments for construction of court buildings and residential quarters for Judicial Officers (JO) in all the States / UTs.

Significance/benefits of the scheme:
- This will help in improving the overall functioning and performance of the Judiciary.
- Continued assistance to the Gram Nyayalayas will also give impetus to providing speedy, substantial and affordable justice to the common man at his door step.

What are Gram Nyayalayas?
Gram Nyayalayas or village courts are established under **the Gram Nyayalayas Act, 2008** for speedy and easy access to the justice system in the rural areas of India.
- The Act came into force from 2nd October 2009.

Jurisdiction:
- A Gram Nyayalaya has jurisdiction over an area specified by a notification by the State Government in consultation with the respective High Court.
- The Court can function as a mobile court at any place within the jurisdiction of such Gram Nyayalaya, after giving wide publicity to that regard.
- They have both civil and criminal jurisdiction over the offences.
- Gram Nyayalayas has been given power to accept certain evidences which would otherwise not be acceptable under Indian Evidence Act.

Composition:

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The Gram Nyayalayas are presided over by **a Nyayadhikari,** who will have the same power, enjoy same salary and benefits of a Judicial Magistrate of First Class. Such Nyayadhikari are to be appointed by the State Government in consultation with the respective High Court.

10.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.**

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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.**

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Electoral Issues / Electoral Reforms

1. Election 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.

What are the Election Commission's powers in a dispute over the election symbol when a party splits?

On the question of a **split in a political party outside the legislature,** Para 15 of the Symbols Order, 1968, states: "When the Commission is satisfied that there are rival sections or groups of a recognised political party each of whom claims to be that party the Commission may decide that one such rival section or group or none of such rival sections or groups is that recognised political party and **the decision of the Commission shall be binding on all such rival sections or groups."**

- **This applies to disputes in recognised national and state parties** (like the LJP, in this case). For splits in registered but unrecognised parties, the EC usually advises the warring factions to resolve their differences internally or to approach the court.

Please note that before 1968, the EC issued notifications and executive orders under the Conduct of Election Rules, 1961.

2. Simultaneous Elections

The Centre has clarified that it is not planning on amending **the Representation of the People Act, 1951** to enable **a common electoral roll** and **simultaneous elections** to all electoral bodies in the country.

What is '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.

Benefits of Simultaneous Elections:

- **Governance and consistency:** The ruling parties will be able to focus on legislation and governance rather than having to be in campaign mode forever.

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- **Reduced Expenditure of Money and Administration.**
- **Continuity** in policies and programmes.
- **Efficiency of Governance:** Populist measures by governments will reduce.
- The **impact of black money on the voters** will be reduced as all elections are held at a time.

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.

What is the Common Electoral Roll?

Under the Common Electoral Roll, only one voter list will be used for Lok Sabha, Vidhan Sabha and other elections.

How many types of electoral rolls do we have in our country and why the distinction?

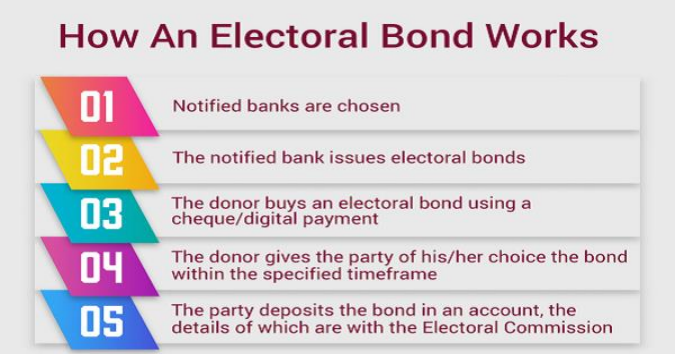
In many states, the voters' list for the panchayat and municipality elections is different from the one used for Parliament and Assembly elections.

- **The distinction stems from the fact that the supervision and conduct of elections in our country are entrusted with two constitutional authorities —** the Election Commission (EC) of India and the State Election Commissions (SECs).

Significance:

- The preparation of a separate voters list causes duplication of the effort and the expenditure.
- Therefore, a common electoral roll and simultaneous elections as a way to save an enormous amount of effort and expenditure.

3. Electoral bonds



- Electoral Bond is a financial instrument for making donations to political parties.
- The bonds are issued in multiples of Rs. 1,000, Rs. 10,000, Rs. 1 lakh, Rs. 10 lakh and Rs. 1 crore **without any maximum limit.**
- **State Bank of India** is authorised to issue and encash these bonds, which are valid for fifteen days from the date of issuance.
- These bonds are redeemable in the designated account of a registered political party.
- The bonds are available for purchase by any person (who is a citizen of India or incorporated or established in India) for a period of ten days each in the months of January, April, July and October as may be specified by the Central Government.
- A person being an individual can buy bonds, either singly or jointly with other individuals.
- Donor's name is not mentioned on the bond.

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4. Gujarat HC's digital initiatives

Two digital services for Gujarat High court — a 'Justice Clock', and electronic payment of court fee, were recently inaugurated.

What is the 'Justice Clock'?

- It is an LED display of 7 feet by 10 feet, placed at a height of 17 feet from the ground.
- Placed in high court premises.
- This 'Justice Clock' will exhibit vital statistics of the justice delivery system in Gujarat, to "maximise outreach and visibility" of the work done by the state judiciary.

What is e-court fee and how will it help?

The online e-Courts fee system allows advocate and parties to procure judicial stamps online through electronic payment and upon submission of a PDF receipt.

Judiciary's Efforts During Pandemic:

1. In the wake of the pandemic, courts began using facilities like **e-filing** in true earnest.
2. In May 2020, the Supreme Court also introduced another innovation: a new system of e-filing and **artificial intelligence-enabled referencing.**
3. The latest Vision Document for Phase III of **the e-Courts Project** seeks to address the judiciary's digital deprivation. It envisages an infrastructure for the judicial system that is 'natively digital' and reflects the effect that the pandemic has had on India's judicial timeline and thinking.

5. Election Expenditure Limit

The Election Commission of India has raised **the expenditure limit for candidates contesting elections**.

The following changes have been made:

- The expenditure limit for candidates for Lok Sabha constituencies was increased from Rs 54 lakh-Rs 70 lakh (depending on states) to Rs 70 lakh-Rs 95 lakh.
- The spending limit for Assembly constituencies was hiked from Rs 20 lakh-Rs 28 lakh to Rs 28 lakh- Rs 40 lakh (depending on states).
- The enhanced amount of Rs 40 lakh would apply in Uttar Pradesh, Uttarakhand and Punjab and ₹28 lakh in Goa and Manipur.

Election Expenditure Limit:

Under **Section 77 of the Representation of the People Act (RPA), 1951,** every candidate shall keep a separate and correct account of all expenditure incurred between the date on which they have been nominated and the date of declaration of the result.

- All candidates are required to submit their expenditure statement to the ECI within 30 days of the completion of the elections.
- An incorrect account or expenditure beyond the cap can lead to disqualification of the candidate by the ECI for up to three years, under **Section 10A of RPA, 1951.**

Background:

The last major revision in the election expenditure limit for candidates was carried out in 2014, which was further increased by 10 per cent in 2020.

- The same year, ECI also formed to study the cost factors and other related issues, and make suitable recommendations.

Further reforms:

Cap on party spends:

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The EC has asked the government to amend **the R P Act and Rule 90 of The Conduct of Elections Rules, 1961,** to introduce a ceiling on campaign expenditure by political parties in the Lok Sabha and Assembly polls.

Supreme Court observations:
Supreme Court of India has said that **money is bound to play an important part in the successful pursuit of an election campaign** in **Kanwar Lal Gupta Vs Amarnath Chawla case.**

Various Committees and Commissions in this regard:
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.

6. Recognition/derecognition of political parties

According to the Election Commission, any party seeking registration under the Election Commission has to submit an application to it within a period of 30 days following the date of its formation.
This is in keeping with the guidelines prescribed by the Commission in exercise of the powers conferred by **Article 324 of the Constitution and Section 29A of the Representation of the People Act, 1951.**

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 a period of 30 days 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.**

Guidelines:
1. As per the existing guidelines, the applicant is asked to publish the proposed name of the party in two national newspapers and two local dailies.
2. It should also provide two days for submitting objections, if any, with regard to the proposed registration of the party before the Commission within 30 days from the publication.
3. The notice for publication is also displayed on the website of the Election Commission.

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.
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.

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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.

7. 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.

8. Returning officer

The Election Commission of India recently took cognisance of media reports on **recounting at an assembly constituency**, 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.**

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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.

9. 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 electrical 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"**.

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.

10.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:

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- 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.
- 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?

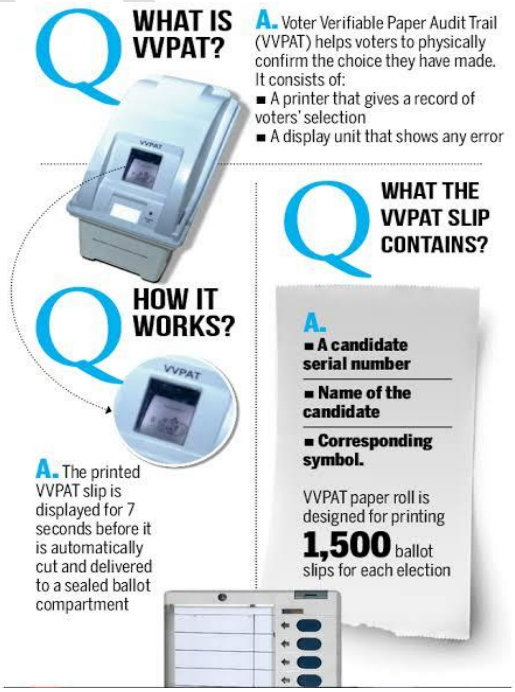
The EVMs have the NOTA option at the end of the candidates' list. Earlier, in order to cast a negative ballot, a voter had to inform the presiding officer at the polling booth. A NOTA vote doesn't require the involvement of the presiding officer.

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.**

11.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.

12.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.

NOTES

The **Election Commission of India** has allowed **journalists to cast their votes through postal ballot facility**.

Procedure to be followed:
Any absentee voter wishing to vote by postal ballot has to make an application to the returning officer in **Form-12D,** giving all requisite particulars and get the application verified by the nodal officer appointed by the organisation concerned.

- **Any voter opting for postal ballot facility would not be able to cast a vote at the polling station**.

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.**

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.

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.

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

13.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?

NOTES

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 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.

NOTES

Citizenship

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

The Citizenship (Amendment) Act, 2019 (CAA) was passed by Parliament on December 11, 2019 and the Act was notified within 24 hours on December 12. In January 2020, the Ministry notified that the Act will come into force from January 10, 2020.
It 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.

2. Renunciation of Indian citizenship

More than six lakh Indians renounced citizenship in the past five years, the Ministry of Home Affairs (MHA) informed the Lok Sabha.

- The reason for a large number of Indians surrendering their citizenship was not stated in the reply.

The citizenship act, 1955 prescribes three ways of losing citizenship:

1. **By renunciation:**

Any citizen of India of full age and capacity can make a declaration renouncing Indian citizenship

- Such a declaration may not be accepted during war.
- Even the minor children of the person who renounces citizenship stands to lose their Indian citizenship. However, when their children attain the age of eighteen, he may resume Indian citizenship.

2. **By termination:**

If a citizen of India voluntarily acquires the citizenship of another country, then he loses the citizenship of India However, this provision does not apply during times of war.

3. **By deprivation:**

Compulsory termination of Indian citizenship by the Central government, in the following conditions:

- Obtained the citizenship by fraud.
- Citizen has shown disloyalty to the Constitution of India.
- Citizen has unlawfully traded or communicated during the times of war.
- Within 5 years of naturalization, the said citizen is imprisoned for a term of two years.

NOTES

- Citizen has been ordinarily resident out of India for a period of 7 years.

3. 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.

NOTES

- 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.

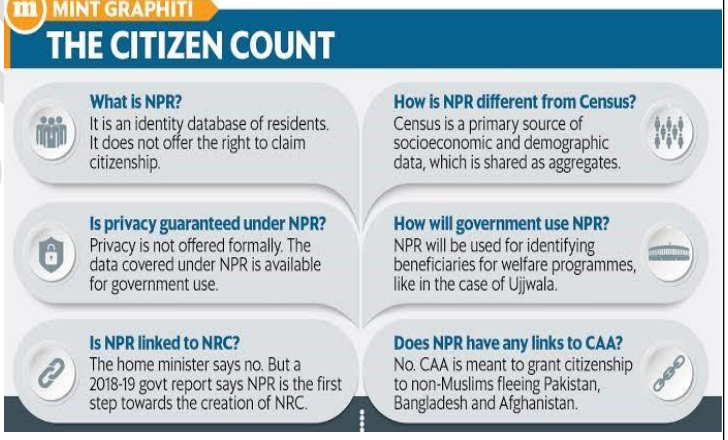
There are certain restrictions placed on OCI card holders:

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.

4. 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.

NOTES

Important Statutory / Constitutional Provisions

1. Freedom of religion and attire

How is religious freedom protected under the Constitution?

Article 25(1) of the Constitution guarantees the freedom of conscience and the right freely to profess, practise and propagate religion. It is a right that guarantees negative liberty — which means that the state shall ensure that there is no interference or obstacle to exercising this freedom.

Limitations: Like all fundamental rights, the state can restrict the right for grounds of public order, decency, morality, health and other state interests.

Observations made by the Supreme Court in this matter:

- People have a right under the Constitution to profess, practise and propagate religion (Article 25).
- Every person is the final judge of his/her choice of religion or who their life partner should be. Courts cannot sit in judgment of a person's choice of religion or life partner.
- Religious faith is a part of the fundamental right to privacy.

Shirur Mutt case in 1954: The doctrine of "essentiality" was invented by the Supreme Court. The court held that the term "religion" will cover all rituals and practices "integral" to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.

What are the court's rulings on Hijab?

In Amna Bint Basheer v Central Board of Secondary Education (2016), the Kerala High Court held that the practice of wearing a hijab constitutes an essential religious practise but did not quash the dress code prescribed by CBSE. It rather provided additional safeguards, such as examining students wearing full sleeves when needed.

In Fathima Tasneem v State of Kerala (2018), Kerala HC held that collective rights of an institution would be given primacy over the individual rights of the petitioner. The case involved two girls who wanted to wear the headscarf. The school refused to allow the headscarf. However, the court dismissed the appeal as students were no more in the rolls of the respondent-School.

2. Uniform Civil Code

The founders of the Constitution in **Article 44 in Part IV** dealing with the Directive Principles of State Policy had hoped and expected that the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India, till date no action has been taken in this regard.

What is the 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.

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.

NOTES

3. Public Order

What is Public Order?

Article 25 of the Constitution guarantees to all persons the right to freedom and conscience and the right freely to profess, practise and propagate religion **subject to public order, morality and health.**

- So, **public order is one of the three grounds on which the state can restrict freedom of religion.** It is **also one of the grounds to restrict free speech and other fundamental rights.**

Who has the power to legislate on aspects of public order?

Public order is normally equated with **public peace and safety.** According to **List 2 of the Seventh Schedule of the Constitution,** the power to legislate on aspects of public order rests with the states.

How does it relate to the hijab ban?

The state government has issued an order under **the Karnataka Education Act, 1983.**

- As per this, "public order" is one of the reasons for not allowing students to wear a headscarf in educational institutions along with "unity" and "integrity."

How has public order been interpreted by courts?

Courts have broadly interpreted it **to mean something that affects the community at large and not a few individuals.**

- In **Ram Manohar Lohia vs State of Bihar (1965),** the Supreme Court held that in the case of 'public order', the community or the public at large have to be affected by a particular action.

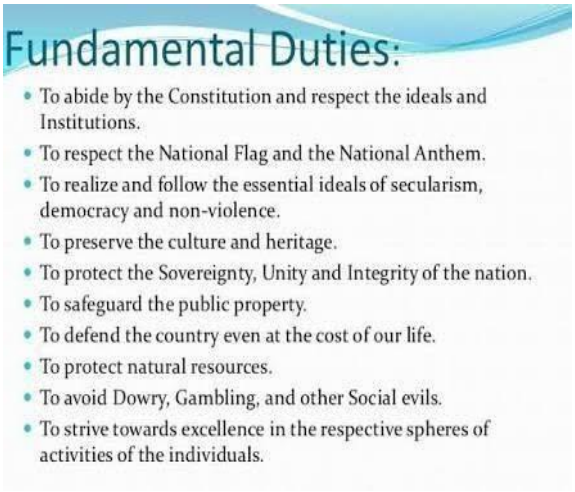
4. Fundamental duties must be enforced, says plea in Supreme Court

A petition has been filed in the Supreme Court seeking **the enforcement of Fundamental Duties** under the Indian constitution through comprehensive and well-defined laws.

Supreme Court's judgment in the Ranganath Mishra case: The Court observed that fundamental duties should not only be enforced by legal sanctions but also by social sanctions. After all, **rights and duties were co-relative.**

Impacts:

- Enforcement of Fundamental Duties upholds and protects sovereignty, unity and integrity of India.
- It also prepares citizens to defend the country and render national service when called upon to do so.
- It seeks to disseminate a sense of nationalism and to promote the spirit of patriotism to uphold the unity of India after the emergence of China as a superpower.



Fundamental Duties:

Original constitution did not contain any provisions related to Fundamental Duties (FD).

- This section was **added through 42nd amendment act** to the constitution of India based on the recommendations of **Swaran Singh Committee.** In 2002, another Fundamental duty was added to this list.
- The idea of this section was borrowed from USSR constitution.

NOTES

- Japanese constitution is one of the other democratic nations which have a provision dealing with the duties of its citizens.
- Fundamental duties like DPSP are **non-justiciable.**

Criticism of FD:
- They are made non-justiciable in nature.
- Important duties such tax-paying, family planning etc are not covered.
- Vague and ambiguous provisions which are difficult to be understood by a common man.
- Superfluous provisions since they would generally be followed even if they were not included.
- Inclusion as an appendage to the constitution reduces the value and intent behind FD.

5. Supreme court refuses plea for including madrasas, Vedic schools under RTE

The **Supreme Court** has refused to intervene in a petition challenging sections of **the Right to Education Act of 2009** which exclude vedic **pathsalas , madrasas and institutions imparting religious education** from its ambit.
- The Court observed that **the exclusion of these institutions was specifically inserted into the 2009 Act by an amendment of August 2012** and since then there has never been any controversy in the past decade.

What's the issue?
The petitioner said, **Right of a child** should **not be restricted only to free education,** but must be extended to have **equal quality education** without discrimination on the ground of child's social economic and cultural background. Therefore, the court may declare **Sections 1(4) and 1(5) of the 2009 Act** arbitrary and irrational.

Sections 1(4) and 1(5) of the 2009 Act:
Section 1(5) of the Act states, "Nothing contained in this Act shall apply to madrasas, Vedic pathshalas and educational institutions primarily imparting religious instruction".
Section 1(4) says, "Subject to the provisions of **Articles 29 and 30 of the Constitution,** the provisions of this Act shall apply to conferment of rights on children to free and compulsory education.
- **Article 29 and 30** contain provisions securing rights of minorities and minority-run institutions.

Constitutional Provisions regarding Minority Educational Institutions:
Article 30(1) recognizes linguistic and religious minorities but not those based on race, ethnicity.
- It recognizes the right of religious and linguistic minorities to establish and administer educational institutions, in effect recognizing the role educational institutions play in preserving distinct culture.
- A majority community can also establish and administer educational institutions but they will not enjoy special rights under Article 30(1)(a).

Special rights enjoyed by religious minority institutions are:
1. Under Art 30(1)(a), MEI enjoy right to education as a Fundamental Right. In case the property is taken over by state, due compensation to be provided to establish institutions elsewhere
2. Under Article 15(5), MEIs are not considered for reservation
3. Under Right to Education Act, MEI not required to provide admission to children in the age group of 6-14 years upto 25% of enrolment reserved for economically backward section of society
4. In St Stephens vs Delhi University case, 1992, SC ruled that MEIs can have 50% seats reserved for minorities

NOTES

5. In TMA Pai & others vs State of Karnataka & others 2002 case, SC ruled that MEIs can have separate admission process which is fair, transparent and merit based. They can also separate fee structure but should not charge capitation fee.

6. 50% Reservation Limit

Indra Sawhney & Others vs Union of India, 1992:

A **nine-judge bench** in **the Indra Sawhney case** (famously known as **the Mandal Commission case**) imposed the ceiling of 50% on total reservation.

- The Supreme Court while upholding the 27% quota for backward classes, struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes.
- SC in the same case also upheld the principle that the combined reservation beneficiaries should not exceed 50% of India's population.
- **The concept of 'creamy layer'** also gained currency through this judgment and provision that reservation for backward classes should be confined to initial appointments only and not extend to promotions.

Why 50%?

The Other Backward Classes, as identified by **the Mandal Commission,** make up about 52% of India's population according to the 1931 Census. The court, however, did not deal with the question of population while ruling that although reservation was fine, it must be capped.

Tamilnadu's case:

The state's Assembly passed the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Services under the State) Act, 1993 to keep its reservation limit intact at 69%.

- The law was subsequently included into **the Ninth Schedule of the Constitution through the 76th Constitution Amendment passed by Parliament in 1994.**

Constitution and Reservation:

77th Constitutional Amendment Act, 1995: The Indra Sawhney verdict had held there would be reservation only in initial appointments and not promotions.

- However, addition of the **article 16(4A)** to the Constitution, empowered the state to make provisions for reservation in matters of promotion to SC/ST employees, if the state feels they are not adequately represented.

81st Constitutional Amendment Act, 2000: It introduced Article 16(4B), which says unfilled SC/ST quota of a particular year, when carried forward to the next year, will be treated separately and not clubbed with the regular vacancies of that year.

85th Constitutional Amendment Act, 2001: It provided for the reservation in promotion can be applied with 'consequential seniority' for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

103rd amendment to the Constitution (2019): 10% reservation for EWS (Economically Weaker Section).

Article 335: It says that the claims of SCs and STs shall be taken into consideration constituently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

7. Quota in promotions

The **Supreme Court** has turned down the Union government's **plea to do away with the requirement of collecting quantifiable data by the Centre and states** to determine the representation of people belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs) while **implementing reservation in promotion.**

NOTES

Observations made by the supreme court:

- State is obligated to collect quantifiable data as per the court's judgment in **M Nagaraj (2006) and Jarnail Singh (2018).**
- Collection of data has to be for each category of posts for the entire service.
- **The Central government must determine a time period to revisit the reservation policy** after ascertaining the percentage of posts occupied by SCs/STs.
- **Assessment on the inadequacy of representation** of the reserved categories in promotional posts should be left to the states.

Pavitra case:

With the recognition of **'cadre' as the unit for collection of quantifiable data,** the court has also set aside its earlier judgment in **the B.K. Pavithra case.**

- The 2019 judgment by the Supreme Court in BK Pavitra–II upheld the validity of the 2018 Reservation Act that introduced **consequential seniority for SC/STs in Karnataka public employment.**
- The top court held that **Pavitra-II was decided in breach of the constitution bench judgment** in Nagaraj's case in affirming the state's policy on consequential seniority on the basis of cadre strength.

What constitutes a cadre?

Explaining why 'cadre' should be the unit for the purpose of collection of quantifiable data in relation to promotional posts, the court said otherwise the entire exercise of reservation in promotions would be rendered meaningless if data pertaining to the representation of SCs and STs is done with reference to the entire service.

- The term 'cadre' means the strength of a service or part of a service sanctioned as a separate unit. It is the choice of a State to constitute cadres.
- The entire service cannot be considered to be a cadre for the purpose of promotion from one post to a higher post in a different grade.
- Promotion is made from one grade to the next higher grade, in relation to which cadres are constituted.

M Nagaraj case:

In 2006, a Constitution bench's ruling in the M Nagaraj case made it incumbent upon the **state to collect quantifiable data showing inadequacy of representation of a section of people in public employment** in addition to maintaining overall administrative efficiency.

- The aspect of quantifiable data was endorsed by another Constitution bench by its 2018 ruling in the Jarnail Singh case which also **mandated the exclusion of the "creamy layer"** before providing for reservation in promotions.

What are the arguments by the union Government?

The Union government pressed for **reservation in promotion** proportionate to the population of SCs and STs as per **a 1995 judgment by the top court in the RK Sabharwal case.** It should be left to the Centre and states to decide on promotional avenues for SCs and STs.

Present scenario:

At present, there is a **roster system** in place in every cadre of the government departments to ascertain the posts required to be filled up by SCs/STs.

- The roster system was based on the proportionate population of SCs/STs.

Articles 16 (4) and 16 (4-A) of the Constitution does not confer individuals with a fundamental right to claim reservation in promotion.

- It only empowers the State to make a reservation in matters of appointment and promotion in favour of the Scheduled Castes and the Scheduled Tribes, only if in the opinion of the State they are not adequately represented in the services of the State.

NOTES

- A position in the roster for any reserved group is reached by dividing 100 by the percentage of the quota that the group is entitled to.

Constitutional basis for reservation- 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.

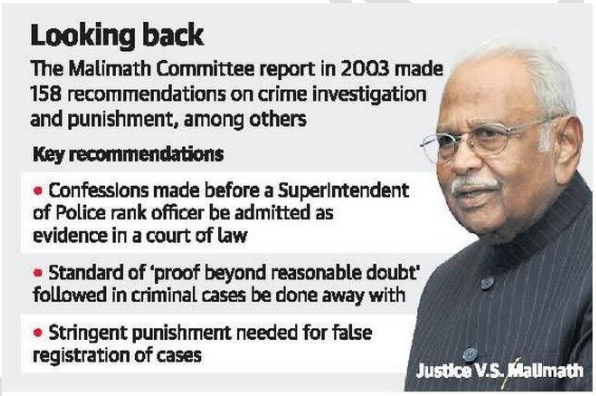
8. Criminal law in India

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

- Criminal Justice System can impose penalties on those who violate the established laws.
- The criminal law and criminal procedure are in **the concurrent list of the seventh schedule of the constitution.**
- **Lord Thomas Babington Macaulay** is said to be the chief architect of codifications of criminal laws in India.

Committee For Reform In Criminal Law:

- **The Ministry of Home Affairs (MHA)** has constituted a national level committee for reform in criminal law.
- The committee has been constituted under **Ranbir Singh** and several other members.
- The committee would be gathering opinions online by consulting with experts and collating material for their report to the government.



Previous committees:
Madhav Menon Committee: It submitted its report in 2007, suggesting various recommendations on reforms in the Criminal Justice System of India (CJSI).
Malimath Committee Report: It submitted its report in 2003 on the Criminal Justice System of India (CJSI).

9. Sedition law

- **Section 124A of the IPC** states, "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the government established by law in shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."

Issues surrounding its misuse:
The sedition law has been in controversy for far too long. Often **the governments are criticized for using the law — Section 124-A of the Indian Penal Code (IPC) — against vocal critics of their policies.**

- **Therefore, this Section is seen as a restriction of individuals' freedom of expression** and falls short of the provisions of reasonable restrictions on freedom of speech under **Article 19 of the Constitution.**

The law has been in debate ever since it was brought into force by the colonial British rulers in 1860s. Several top freedom movement leaders including **Mahatma Gandhi and Jawaharlal Nehru were booked under the sedition law.**

Relevant Supreme Court judgements:

NOTES

1. **The Kedar Nath Singh vs State of Bihar case (1962):**

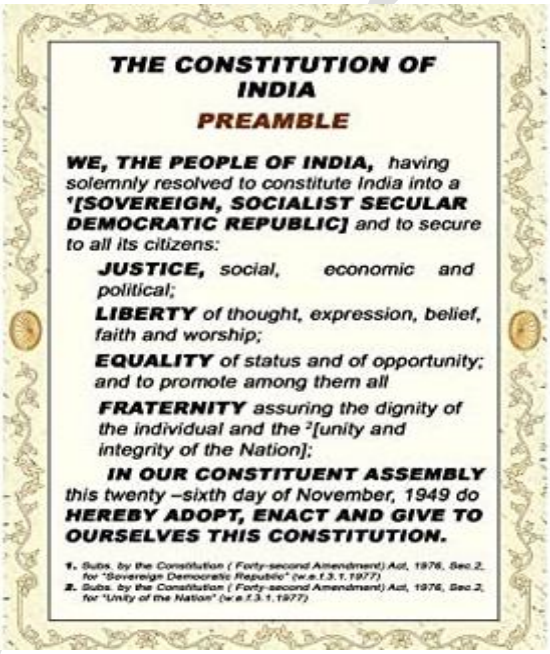
While dealing with offences under Section 124A of the IPC, **a five-judge Supreme Court constitutional bench** had, in **the Kedar Nath Singh vs State of Bihar case (1962),** laid down some guiding principles.

- The court ruled that comments-however strongly worded-expressing disapprobation of the actions of the government without causing public disorder by acts of violence would not be penal.

2. **The Balwant Singh vs State of Punjab (1995) case:**

In this case, the Supreme Court had clarified that merely shouting slogans, in this case Khalistan Zindabad, does not amount to sedition. Evidently, the sedition law is being both misunderstood and misused to muzzle dissent.

10.Preamble


THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a *[SOVEREIGN, SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the [2][unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty –sixth day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Sovereign Democratic Republic" (w.e.f.3.1.1977)
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Unity of the Nation" (w.e.f.3.1.1977)

Four important aspects that can be ascertained from the text of the preamble:

- **Source of authority of the constitution:** It derives its authority from the people of India.
- **Nature of Indian state:** It declares India to be a sovereign, socialistic, secular democratic and republican polity.
- **Objectives of the constitution:** It specifies justice, liberty, equality and fraternity as the objectives.
- **Date of adoption:** Nov 26th, 1949.

Preamble as part of the constitution:

- In **the Berubari Union Case (1960),** the Supreme Court opined that the Preamble was not part of the constitution.
- The above opinion was reversed in **Keshavananda Bharati case in 1973;** the SC held that Preamble is part of the constitution. This opinion was further clarified by the SC in **LIC of India case (1995).**

Though preamble is part of the constitution;

- It is a neither a source of power to legislature nor a prohibition upon the powers of legislature.
- It is a non-justiciable, that is, its provisions are not enforceable in any courts of law.

Preamble and its amendability:

- In Keshavananda Bharati case, the court held that the basic elements or the fundamental features of the constitution as contained in the preamble cannot be altered by an amendment under **article 368.**
- The preamble has been amended only once. That is- **42nd constitutional amendment act, 1976** when three new terms were added- Socialist, secular and integrity.

11.6th Schedule of the Indian Constitution

Various civil society groups in Ladakh have been demanding inclusion of Ladakh under **the Sixth Schedule of the Constitution.**

- The demand for Sixth Schedule started after they felt that **the Ladakh Autonomous Hill Development Council (LAHDC)** in current form can no longer protect the interest of tribal as it did not have power to legislate or frame rules on subjects like land, jobs, and cultures.

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Need for:

- It is estimated that more than **90% of Ladakh's population is tribal.** The primary Scheduled Tribes (STs) in Ladakh are Balti Beda, Bot (or Boto), Brokpa (or Drokpa, Dard, Shin), Changpa, Garra, Mon and Purigpa.
- Thereby several distinct cultural heritages of these communities in Ladakh region needs to be preserved and promoted.

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.

Each autonomous region also has a separate **regional council**.

5. **Powers of councils:** The district and regional councils administer the areas under their jurisdiction. They can make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
6. **Village councils:** The district and regional councils within their territorial jurisdictions can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the governor.

12.Right to be Forgotten

Recently the Centre told the Delhi High Court that **the "right to be forgotten" is part of the fundamental right to privacy.**
Petitions across courts have been seeking enforcement of this "right" — a legal principle that is not yet backed by statute in India.

What is the right to be forgotten?
It allows a person to seek deletion of private information from the Internet. The concept has found recognition in some jurisdictions abroad, particularly the European Union.

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

- The Right to be Forgotten falls under the purview of an individual's right to privacy, which is governed by **the Personal Data Protection Bill** that is yet to be passed by Parliament.
- In 2017, **the Right to Privacy was declared a fundamental right (under Article 21)** by the Supreme Court in its landmark verdict **(Puttaswamy case)**.
- The court said at the time that "the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution".

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Which countries have such laws?

- European Union's General Data Protection Regulation (GDPR).
- Russia in 2015 enacted a law that allows users to force a search engine to remove links to personal information on grounds of irrelevancy, inaccuracy and violation of law.
- The right to be forgotten is also recognised to some extent in Turkey and Siberia, while courts in Spain and England have ruled on the subject.

13.Defamation case

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 an 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".
2. In August 2016, the court also passed strictures on the then Tamil Nadu Chief Minister J Jayalalithaa for misusing the criminal defamation law to "suffocate democracy" and, the court said, "public figures must face criticism".

14.Article 31D

The Government has clarified that the word 'anti-national' has not been defined in statutes. 'Anti-national activity' was **inserted in the Constitution during the Emergency in 1976 but was removed later.**

- **The Constitution (Forty–Second Amendment) Act, 1976** inserted in the Constitution Article 31D (during Emergency) which defined 'anti-national activity' and this **Article 31D** was, subsequently, omitted by **the Constitution (Forty-third Amendment) Act, 1977.**

15.Article 32

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.**

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- 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.

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.

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.

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.

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.

16.Right To Get Aid From Govt Not Fundamental Right

The Supreme Court has held that **the government aid to an institution is a matter of policy and it is not a fundamental right.**

Important observations made by the Court:

1. Grant of aid brings with it conditions which the institution receiving it is bound to comply with. If an institution does not want to accept the conditions, it can decline the grant but cannot say that the grant must be on its own terms.
2. A decision to grant aid is by way of policy. While doing so, the government is not only concerned with the interest of the institutions but the ability to undertake such an exercise.
3. As regards aided institutions, there cannot be any difference between a minority and non-minority one. **Article 30 of the Constitution of India** is subject to its own restrictions being reasonable.

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Constitutional Provisions regarding Minority Educational Institutions:

Article 30(1) recognizes linguistic and religious minorities but not those based on race, ethnicity.

- It recognizes the right of religious and linguistic minorities to establish and administer educational institutions, in effect recognizing the role educational institutions play in preserving distinct culture.
- A majority community can also establish and administer educational institutions but they will not enjoy special rights under Article 30(1)(a).

Special rights enjoyed by religious minority institutions are:

1. Under Art 30(1)(a), MEI enjoy right to education as a Fundamental Right. In case the property is taken over by state, due compensation to be provided to establish institutions elsewhere
2. Under Article 15(5), MEIs are not considered for reservation
3. Under Right to Education Act, MEI not required to provide admission to children in the age group of 6-14 years upto 25% of enrolment reserved for economically backward section of society
4. In St Stephens vs Delhi University case, 1992, SC ruled that MEIs can have 50% seats reserved for minorities
5. In TMA Pai & others vs State of Karnataka & others 2002 case, SC ruled that MEIs can have separate admission process which is fair, transparent and merit based. They can also separate fee structure but should not charge capitation fee.

17.Scheduled Tribes list

The Constitution empowers **the President to specify the Scheduled Tribes (STs) in** various states and union territories. Further, it permits Parliament to modify this list of notified STs.

Definition of STs:

The Constitution does not define the criteria for recognition of Scheduled Tribes.

- However, **Article 366(25) of the Constitution only provides process to define Scheduled Tribes:** "Scheduled Tribes means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution."
- **Article 342(1):** The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor, by a public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory.

Constitutional Safeguards for STs:

I. **Educational & Cultural Safeguards:**

1. Art. 15(4):- Special provisions for advancement of other backward classes(which includes STs);
2. Art. 29:- Protection of Interests of Minorities (which includes STs);
3. Art. 46:- The State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
4. Art. 350:- Right to conserve distinct Language, Script or Culture;
5. Art. 350:- Instruction in Mother Tongue.

II.Social Safeguard:

1. Art. 23:- Prohibition of traffic in human beings and beggar and other similar form of forced labour;
2. Art. 24:- Forbidding Child Labour.

III. **Economic Safeguards:**

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1. Art.244:- Clause(1) Provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.
2. Art. 275:- Grants in-Aid to specified States (STs&SAs) covered under Fifth and Sixth Schedules of the Constitution.

IV. **Political Safeguards:**

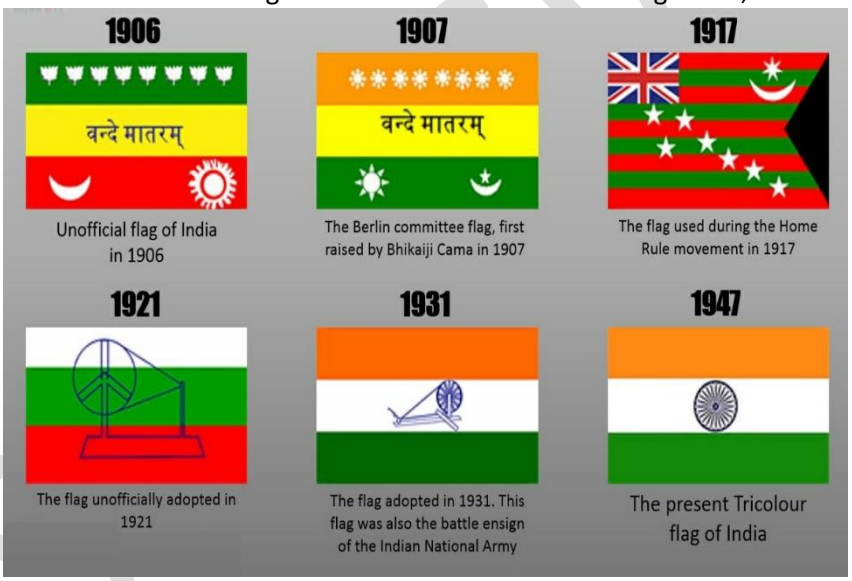
1. Art.164(1):- Provides for Tribal Affairs Ministers in Bihar, MP and Odisha;
2. Art. 330:- Reservation of seats for STs in Lok Sabha;
3. Art. 337- Reservation of seats for STs in State Legislatures;
4. Art. 334:- 10 years period for reservation (Amended several times to extend the period);
5. Art. 243:- Reservation of seats in Panchayats.
6. Art. 371:- Special provisions in respect of NE States and Sikkim.

18.Flag Code of India

On July 22, 1947, **the National flag of India** was adopted in its present form (horizontal rectangular tricolour) during a meeting of the Constituent Assembly, 23 days before India's Independence, and became the official national flag of the Dominion of India on August 15, 1947.

Evolution of National flag:

- Present flag is based on **the Swaraj flag,** a flag of the Indian National Congress designed by **Pingali Venkayya**.
- After undergoing several changes, the Tricolour was adopted as our national flag at a Congress Committee meeting in Karachi in 1931.



Constitutional & Statutory Provisions regarding National Flag of India:

Art 51A(a) - To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

Statutes Governing Use of Flag:

- Emblems and Names (Prevention of Improper Use) Act, 1950.
- Prevention of Insults to National Honor Act, 1971.

Rules governing the display of the Tricolour:

The Flag Code of 2002 is divided into three parts:

1-a general description of the tricolour

2-rules for display of the flag by governments and government bodies.

3-rules on display of the flag by public and private bodies and educational institutions.

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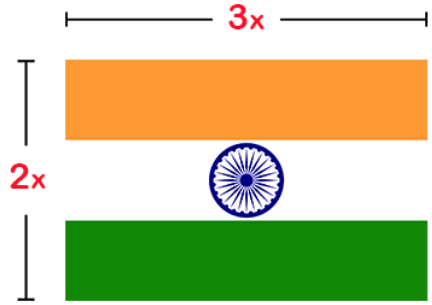
Notable facts:



- The National Flag of India shall be made of hand spun and hand woven wool/cotton/silk khadi bunting.
- The National Flag shall be rectangular in shape. The ratio of the length to the height (width) of the Flag shall be 3:2.
- The Flag shall not be flown at half-mast except on occasions on which the Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government.
- The Flag shall not be used as a drapery in any form whatsoever, including private funerals except in State funerals or armed forces or other paramilitary forces funerals".
- The Flag shall not be used as a portion of costume or uniform of any description nor shall it be embroidered or printed upon cushions, handkerchiefs, napkins or any dress material.

Sarvepalli Radhakrishnan narrated significance of National flag as:

1. The "Ashoka Chakra" is the wheel of the law of dharma. Chakra intends to show that there is LIFE IN MOVEMENT and death in stagnation.
2. The saffron color denotes renunciation of disinterestedness.
3. The white in the center is light, the path of truth to guide our conduct.
4. The green shows our relation to the soil, our relation to the plant life here, on which all other life depends.

19.Right to "move freely throughout the territory of India"

What is an externment order?

- Externment orders **prevent the movement of a person in certain areas.**
- **Grounds for issuing such an order:** The top court said that the drastic action of externment should only be taken in **exceptional cases to maintain law and order.**

About Right to "move freely throughout the territory of India"

- The above right is guaranteed by **Article 19 (1) (d) of the Indian constitution.** This right is available only to citizens.
- This right is not unfettered or unrestricted but are subject to **"interests of the general public or for the protection of the interests of any Scheduled Tribe"**
- The provisions for providing the power of externment to the concerned executive authorities can be found in many statutes such as **The Maharashtra Police Act (MP 1951), Punjab Security of State Act 1953, and Assam Maintenance of Public Order Act 1947, Karnataka Police Act.**

20.Preventive Detention

The Supreme Court has passed an order on the use and applicability of **Prevention Detention** in the Country.

Important observations made by the Court:

1. Preventive detention **could be used only to prevent public disorder.**
2. **The State should not arbitrarily resort to "preventive detention" to deal with all and sundry "law and order" problems,** which could be dealt with by the ordinary laws of the country.
3. The court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large.
4. Preventive detention must fall within the four corners of **Article 21** (due process of law) read with **Article 22** (safeguards against arbitrary arrest and detention) and the statute in question.

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What is Preventive Detention?
It involves the detainment (containment) of a person in order to keep him/her from committing future crimes and/or from escaping future prosecution.

- **Article 22 (3) (b) of the Constitution** allows for preventive detention and restriction on personal liberty for reasons of state security and public order.

Article 22(4) states that:
No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless: **An Advisory Board** reports sufficient cause for extended detention.

- **The 44th Amendment Act of 1978** has reduced the period of detention without obtaining the opinion of an advisory board from three to two months. However, this provision has not yet been brought into force, hence, the original period of three months still continues.

Purpose of the Preventive detention:

1. In the case of **Mariappan v. The District Collector and Others**, the Court held that the aim of detention and its laws is not to punish anyone but to stop certain crimes from being committed.
2. In the case of **Union of India v. Paul Nanickan and Anr,** the Supreme Court said that the reasoning for such detention is based on suspicion or reasonable possibility and not a criminal conviction, which can be justified only by valid proof.

21. Why has NCPCR recommended minority schools be brought under RTE?

The **National Commission for Protection of Child Rights (NCPCR)** has released a report that has analysed the impact of exemptions provided to Minority institutions under **Article 15(5).**

What is Article 15(5)?
It empowers the country to make reservations with regard to admissions into educational institutions both privately run and those that are aided or not aided by the government. From this rule only the minority run institutions such as the Madarsas are exempted.

Background:
Minority schools are exempted from implementing **The Right to Education policy** and do not fall under the government's **Sarva Shiksha Abhiyan.**

How are minority schools exempt from RTE and SSA?

1. In 2002, **the 86th Amendment to the Constitution** provided **the Right to Education as a fundamental right.**
2. The same amendment inserted Article 21A, which made the RTE a fundamental right for children aged between six and 14 years.
3. The passage of the amendment was followed by the launch of **the Sarva Shiksha Abhiyan (SSA)** that aimed to provide "useful and relevant, elementary education'' to all children between six and 14 years.
4. In 2006, **the 93rd Constitution Amendment Act inserted Clause (5) in Article 15** which enabled the State to create special provisions, such as reservations for advancement of any backward classes of citizens like Scheduled Castes and Scheduled Tribes, in all aided or unaided educational institutes, **except minority educational institutes.**

Why bring them under RTE now?
The Commission is of the view that the two different sets of rules **Article 21A** that guarantees **fundamental right of education to all children,** and **Article 30** which allows minorities to set up

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their own institutions with their own rules and **Article 15 (5)** which exempts minority schools from RTE creating a **conflicting picture between fundamental right of children and right of minority communities.**

22.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.

23.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

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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.

24.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.

25.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.

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Important Acts / Bills

1. Armed Forces (Special Powers) Act (AFSPA)

- Armed Forces (Special Powers) Act (AFSPA), 1958 is an act of the Parliament of India that grants special powers to the Indian Armed Forces to maintain public order in "disturbed areas".
- AFSPA gives **armed forces the power to maintain public order in "disturbed areas".**
- Currently, AFSPA is in effect in Jammu and Kashmir, Nagaland, Assam**,** Manipur (excluding some parts of Imphal) and parts of Arunachal Pradesh.

Powers given to armed forces:

1. They have the authority to prohibit a gathering of five or more persons in an area, can use force or even open fire after giving due warning if they feel a person is in contravention of the law.
2. If reasonable suspicion exists, the army can also arrest a person without a warrant; enter or search premises without a warrant; and ban the possession of firearms.
3. Any person arrested or taken into custody may be handed over to the officer in charge of the nearest police station along with a report detailing the circumstances that led to the arrest.

What is a "disturbed area" and who has the power to declare it?

A disturbed area is one which is declared by notification under **Section 3 of the AFSPA.** An area can be disturbed due to differences or disputes between members of different religious, racial, language or regional groups or castes or communities.

- **The Central Government, or the Governor of the State or administrator of the Union Territory can declare the whole or part of the State or Union Territory as a disturbed area.**

Has there been any review of the Act?

On November 19, 2004, the Central government appointed a five-member committee headed by **Justice B P Jeevan Reddy** to review the provisions of the act in the north eastern states.

- The committee submitted its report in 2005, which included **the following recommendations:** (a) AFSPA should be repealed and appropriate provisions should be inserted in the Unlawful Activities (Prevention) Act, 1967; (b) The Unlawful Activities Act should be modified to clearly specify the powers of the armed forces and paramilitary forces and (c) grievance cells should be set up in each district where the armed forces are deployed.

The **5th report of the Second Administrative Reforms Commission** on public order has also recommended the repeal of the AFSPA.

2. Inter-State River Water Disputes Act, 1956

Art 262 provides for the adjudication of inter-state water disputes. It has two following provisions:

1. 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**.
2. 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**.

Under the provisions of the act, the central government has enacted, **River boards act (1956) and Inter-state water disputes act (1956).**

1. The river board act provides for the establishment of river boards for the regulation and development of the Inter-state River and river valleys. Such a river board is established on the request of the state governments concerned.
2. The inter-state water dispute act empowers the central government to set up an ad hoc tribunal for the adjudication of a dispute between the two or more states in relation to the

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water of an inter-state river. The decision of the tribunal would be final and binding. Furthermore, the act bars the SC and any other court to have jurisdiction in this matter.

Issues surrounding the interstate Water Dispute Act, 1956:

- **The Inter State Water Dispute Act, 1956** which provides the legal framework to address such disputes suffers from many drawbacks as it does not fix any time limit for resolving river water disputes.
- **Delays** are on account of no time limit for adjudication by a Tribunal, no upper age limit for the Chairman or the Members, work getting stalled due to occurrence of any vacancy and no time limit for publishing the report of the Tribunal.
- **The River Boards Act 1956,** which is supposed to facilitate inter-state collaboration over water resource development, remained a 'dead letter' since its enactment.
- **Surface water is controlled by Central Water Commission (CWC) and ground water by Central Ground Water Board of India (CGWB).** Both bodies work independently and there is no common forum for common discussion with state governments on water management.

3. Special Marriage Act of 1954

The law that governs inter-faith marriages in the country, **the Special Marriage Act (SMA), 1954,** is being challenged for endangering the lives of young couples who seek refuge under it.

What's the issue?

The petition has sought to quash **section 6 and 7 of SMA,** which mandates publication of the public notice, on the ground that it is unreasonable and arbitrary.

- The petitioner argues that the 30-day period **offers an opportunity to kin of the couple to discourage an inter-caste or inter-religion marriage.**

What is Special Marriage Act of 1954?

The SMA is a law which **allows solemnization of marriages without going through any religious customs or rituals.**

- People from different castes or religions or states get married under SMA in which marriage is solemnized by way of registration.
- The prime purpose of the Act was to address Inter-religious marriages and to establish marriage as a secular institution bereft of all religious formalities, which required registration alone.

The SMA prescribes an elaborate procedure to get the marriage registered. It includes:

1. One of the parties to the marriage has to give a notice of the intended marriage to the marriage officer of the district where at least one of the parties to the marriage has resided for at least 30 days immediately prior to the date on which such notice is given.
2. Such notice is then entered in the marriage notice book and the marriage officer publishes a notice of marriage at some conspicuous place in his office.
3. The notice of marriage published by the marriage officer includes details of the parties like names, date of birth, age, occupation, parents' names and details, address, pin code, identity information, phone number etc.
4. Anybody can then raise objections to the marriage on various grounds provided under the Act. If no objection is raised within the 30 day period, then marriage can be solemnized. If objections are raised, then the marriage officer has to inquire into the objections after which he will decide whether or not to solemnize the marriage.

4. J&K's Roshni Act

A year after the High Court struck down the Roshni Act, the Jammu and Kashmir government has now begun an exercise to retrieve the land granted under this Act to beneficiaries.

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About the Roshini Act:
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.

5. Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA)

One Day National Conference was organized on the Provisions of **the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) to celebrate 25th year of PESA Act,** as part of Azadi Ka Amrit Mahotsav.

About the PESA Act, 1996:
The Panchayats (Extension to Scheduled Areas) Act, 1996 or **PESA Act** is a law enacted by the Government of India for ensuring self-governance through traditional Gram Sabhas for people living in the Scheduled Areas of India.

- It was enacted by Parliament in 1996 and came into force on 24th December 1996.
- The PESA is considered to be **the backbone of tribal legislation** in India.
- PESA recognises the traditional system of the decision-making process and stands for the peoples' self-governance.
- **Six States namely Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Rajasthan and Telangana have framed State specific PESA Rules for their respective States to implement PESA.**

Background:
To promote local self-governance in rural India, the **73rd constitutional amendment** **was made in 1992**. Through this amendment, a **three-tier Panchayati Raj Institution** was made into a law.

- However, **its application** to the scheduled and tribal areas under Article 243(M) **was restricted**.
- After the **Bhuria Committee recommendations** in 1995, **Panchayat Extension to Scheduled Areas (PESA) Act 1996 came into existence** for ensuring tribal self-rule for people living in scheduled areas of India.
- The **PESA conferred the absolute powers to Gram Sabha**, whereas state legislature has given an advisory role to ensure the proper functioning of Panchayats and Gram Sabhas.
- The **power delegated to Gram Sabha cannot be curtailed** by a higher level, and there shall be independence throughout.

Powers and functions given to the Gram Sabhas:

- Right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons.
- Protection of traditional belief, the culture of the tribal communities
- Ownership of minor forest products

Important Features of PESA-Act

- Gram Sabha approves the plans, programmes and projects
- Gram Sabha is competent to safeguard and preserve the tradition & customs and cultural identity.
- Gram Sabha identifies the beneficiaries.
- Gram Sabha is endowed with the ownership of MFPs.
- Approval of Utilisation Certificates in Gram Sabhas.
- Reservation of seats.
- Gram Sabha or PAL is consulted for land acquisition, management of minor water bodies, grant of licence or mining lease, prohibition/regulation of the sale & consumption of any intoxicant, power to prevent alienation of land, managing village markets and others.

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- Resolution of the local disputes
- Prevention of land alienation
- Management of village markets
- Right to control production, distillation, and prohibition of liquor
- Exercise of control over money-lending
- Any other rights involving the Scheduled Tribes.

6. 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.
- 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 included the provision of **designating an individual as a terrorist.**

Delhi High Court defines the contours of UAPA:

In June 2021, delivering a judgment defining **the contours of the otherwise "vague" Section 15 of the Unlawful Activities (Prevention) Act,** 1967, (UAPA), the Delhi High Court laid down some important **principles upon the imposition of Section 15, 17 & 18 of the Act.**

Sections 15, 17 and 18 of UAPA:

1. S. 15 **engrafts the offence** of 'terrorist act'.
2. S. 17 lays-down **the punishment** for raising funds for committing a terrorist act.
3. S. 18 engrafts **the offence of 'punishment for conspiracy etc.** to commit a terrorist act or any act preparatory to commit a terrorist act'.

7. Public Safety Act (PSA)

Also called **the Jammu & Kashmir Public Safety Act (PSA), 1978,** it is a preventive detention law.

- Under this law, a person is taken into custody to prevent him or her from acting in any manner that is prejudicial to "the security of the state or the maintenance of the public order".

Applicability:

- The law allowed the government **to detain any person above the age of 16 without trial for a period of two years.**
- It allows for **administrative detention for up to two years** "**in the case of persons acting in any manner prejudicial to the security of the State**", and for administrative detention up to one year where "**any person is acting in any manner prejudicial to the maintenance of public order**".

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How is it enforced?

- It comes into force when administrative orders are passed either by Divisional Commissioner or the District Magistrate.
- The detaining authority need not disclose any facts about the detention "which it considers to be against the public interest to disclose".

Protection to enforcing authorities:

Section 22 of the Act provides protection for any action taken "in good faith" under the Act: "No suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act."

Why is the law controversial?

- It allows for detention without trial.
- No Right to File Bail
- It provides a vast number of reasons for detention.
- No Distinction Between Minor and Major Offences.

Can the Courts intervene?

The only way this administrative preventive detention order can be challenged is through **a habeas corpus petition filed by relatives of the detained person.** The **High Court and the Supreme Court have the jurisdiction to hear such petitions.**

- However, if the order is quashed, there is no bar on the government passing another detention order under the PSA and detaining the person again.

8. Section 66A of the Information Technology Act

The Delhi High Court has asked the Centre to consider as representation a petition seeking to remove provisions from the statute such as Section 66A of the Information and Technology Act, which have already been declared unconstitutional.

What is Section 66A?

- Section 66A defines the punishment for sending "offensive" messages through a computer or any other communication device like a mobile phone or a tablet.
- A conviction can fetch a maximum of three years in jail and a fine.
- It empowered police to make arrests over what policemen, in terms of their subjective discretion, could construe as "offensive" or "menacing" or for the purposes of causing annoyance, inconvenience, etc.

Shreya Singhal case:

The Supreme Court had in its judgment in the Shreya Singhal case struck down Section 66A.

Why did SC strike down section 66A?

The SC had noted that **Section 66A** arbitrarily, excessively and disproportionately invades the right of free speech, under **article 19(1) (a) of the Constitution,** and upsets the balance between such right and the reasonable restrictions that may be imposed on such right and the definition of offences under the provision was open-ended and undefined.

Recent observations made by the Court:

- As of March 2021, a total of 745 cases are still pending and active before the district courts in 11 states, wherein the accused persons are being prosecuted for offences under Section 66A of the IT Act.

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Miscellaneous

1. Detention centres for foreigners

The **Ministry of Home Affairs (MHA)** recently informed the Rajya Sabha that it does not maintain **a centralised data on the total number of detention centres in the country,** as **powers have been delegated to the State governments "to make necessary arrangements for detention centres/camps as per their requirement."**

What are detention centres?

They are places designated to keep illegal migrants (people who have entered a country without necessary documents) once they are detected by the authorities till the time their nationality is confirmed and they are deported to the country of their origin.

- Detention centres were set up in Assam after the Union government authorized the state to do so under the provisions of **the Foreigners' Act, 1946 and the Foreigners Order, 1948.**

Foreigners Act, 1946:

It replaced **the Foreigners Act, 1940** conferring wide powers to deal with all foreigners.
The act **empowered the government to take such steps as are necessary to prevent illegal migrants including the use of force.**
The concept of **'burden of proof'** lies with the person, and not with the authorities.

- The act originally **empowered the government to establish tribunals** which would have powers similar to those of a civil court.
- **Amendments (2019) to the Foreigners (Tribunals) Order, 1964** empowered even district magistrates in all States and Union Territories to set up tribunals to decide whether a person staying illegally in India is a foreigner or not.

Who is a declared foreigner?

A declared foreigner, or DF, is a person marked by **Foreigners' Tribunal (FT)** for allegedly failing to prove their citizenship after the State police's Border wing marks him or her as an illegal immigrant.

- People adjudged non-citizens are sent to **detention centres.**
- Such people are tried after **the Assam police's Border wing** serve them notice on suspicion of being foreigners.

What is a Foreigners tribunal?

Foreigners' Tribunals are **quasi-judicial bodies** established as per the Foreigners' Tribunal Order, 1964 and the Foreigners' Act, 1946.
Composition: Advocates not below the age of 35 years of age with at least 7 years of practice (or) Retired Judicial Officers from the Assam Judicial Service (or) Retired IAS of ACS Officers (not below the rank of Secretary/Addl. Secretary) having experience in quasi-judicial works.

Who can setup these tribunals?

The **Ministry of Home Affairs (MHA)** has amended the Foreigners (Tribunals) Order, 1964, and has empowered **district magistrates in all States and Union Territories to set up tribunals (quasi-judicial bodies)** to decide whether a person staying illegally in India is a foreigner or not.

- Earlier, the powers to constitute tribunals were vested only with the Centre.

Who can approach?

The amended order (Foreigners (Tribunal) Order, 2019) also empowers **individuals to approach the Tribunals.**

- Earlier, only the State administration could move the Tribunal against a suspect.

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2. Inter-Operable Criminal Justice System Project

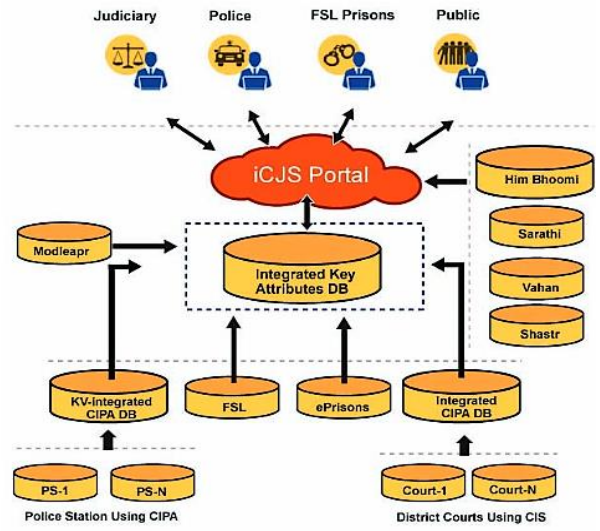
The central government has approved the implementation of Phase II of **the Inter-Operable Criminal Justice System (ICJS) project** by **the Ministry of Home Affairs.**

- It has been approved at a total cost of Rs 3,375 crore during the period from 2022-23 to 2025-26.

What is the Inter-Operable Criminal Justice System Project?

ICJS is **a national platform** which invloves **integration of the main IT system** used for delivery of Criminal Justice in the country. This includes **integration of the five pillars of the system**:

1. Police (through Crime and Criminal Tracking and Network Systems).
2. e-Forensics for Forensic Labs.
3. e-Courts for Courts.
4. e-Prosecution for Public Prosecutors.
5. e-Prisons for Prisons.



Implementation:

National Crime Records Bureau (NCRB) will be responsible for the implementation of the project in association with **the National Informatics Centre (NIC).**

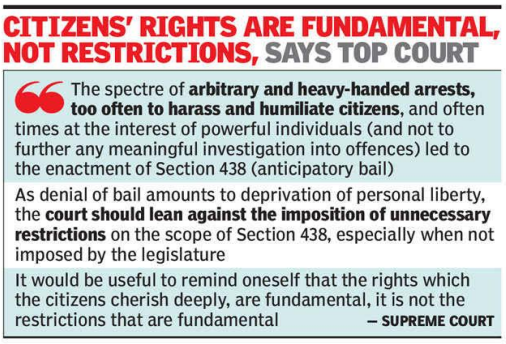
- The project will be implemented in collaboration with the States and Union Territories.

3. Anticipatory bail

The Supreme Court has held that **a superior court can set aside an anticipatory bail order** if there was enough material to suggest that factors like gravity of the offence and the role of the accused in the crime were not considered by the lower court.

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.


CITIZENS' RIGHTS ARE FUNDAMENTAL, NOT RESTRICTIONS, SAYS TOP COURT

The spectre of **arbitrary and heavy-handed arrests, too often to harass and humiliate citizens**, and often times at the interest of powerful individuals (and not to further any meaningful investigation into offences) led to the enactment of Section 438 (anticipatory bail)

As denial of bail amounts to deprivation of personal liberty, the **court should lean against the imposition of unnecessary restrictions** on the scope of Section 438, especially when not imposed by the legislature

It would be useful to remind oneself that the rights which the citizens cherish deeply, are fundamental, it is not the restrictions that are fundamental — **SUPREME COURT**

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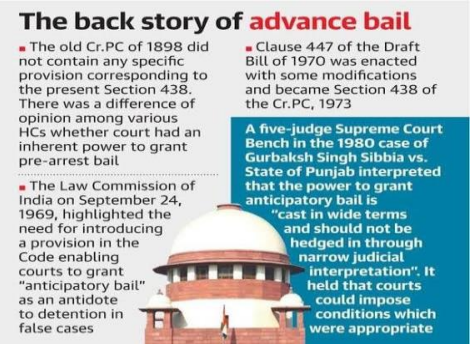
- It is **issued only by the Sessions Court and High Court.**



Significance:

- The reason for enactment of Section 438 in the Code was parliamentary acceptance of the crucial underpinning of **personal liberty in a free and democratic country.**
- Parliament wished to foster **respect for personal liberty and accord primacy to a fundamental tenet of criminal jurisprudence,** that everyone is presumed to be innocent till he or she is found guilty.

4. Territorial Army

- India's first Governor General Shri C Rajagopalachari formally **inaugurated the Indian Territorial Army on October 9 in 1949.**
- It is an organization where **volunteers apply for a short period of training every year,** so as to be ready to tackle any emergent situation or to serve for the defence of India.
- The Territorial Army, also known as the **'Terriers',** is considered **the second line of national defence after the regular Army.**

Eligibility:

Any male Indian citizen between the ages of 18 and 42 can apply and enter into the TA service provided they clear the written test, interview, medical examination and the necessary training.

Roles and responsibilities:

- The Territorial Army is **part of a Regular Army** and its present role is **to relieve the Regular Army from static duties and assist civil administration in dealing with natural calamities and maintenance of essential services** in situations where life of the communities is affected or the security of the country is threatened and to provide units for Regulars Army as and when required.
- Territorial Army comes under the Defence Ministry.