GS 2 POLITY MAINS BOOKLET

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HISTORICAL BACKGROUND OF THE DEVELOPMENT OF THE CONSTITUTION

Dr. B.R. Ambedkar: "A Constitution is not a mere lawyer's document; it is a vehicle of life, and its spirit is always the spirit of the age."
Jawaharlal Nehru (Objective Resolution Speech, 1946): "The first task of this Assembly is to free India through a new Constitution, to feed the starving people, and to clothe the naked masses.

Introduction

The Constitution of India is the cornerstone of the world's largest democracy, providing a framework for governance, rights, and justice. It reflects a complex evolution shaped by India's historical experiences, socio-political aspirations, and a commitment to building an inclusive, democratic society.

Idea of a Constitution

- **Definition:** A Constitution is a set of fundamental principles or established precedents according to which a state is governed.
- **Historical Roots:** Ancient texts like Manusmriti and Arthashastra in India, and the Magna Carta (1215) in England, reflected early ideas of governance under rule-bound frameworks.
- **Inspirations:** Contemporary constitutions have drawn from democratic movements like the American Revolution, the French Revolution, and the evolution of parliamentary democracy in Britain.
- **Social Contract:** The idea of a constitution also stems from social contract theories (e.g., John Locke, Rousseau), where the government's authority is based on the consent of the governed.

Need for a Constitution

- **Establishment of Rule of Law:** To ensure power is exercised within a legal framework, preventing arbitrariness.
- **Protection of Rights:** To guarantee fundamental freedoms and equality to all citizens.
- **Organising Governance:** To distribute powers among various branches of government and clarify their roles.
- **Nation-building:** Post-colonial societies like India needed a unifying document to forge national identity amid diversity.
- **Social Justice:** To address historical injustices, including caste-based discrimination and economic inequality.
- **Popular Sovereignty:** Modern constitutions embody the principle that ultimate authority rests with the people.

Evolution of the Indian Constitution

a) Regulating Act, 1773

- First British attempt to regulate East India Company's political functions.
- Created the office of the **Governor-General of Bengal** (Warren Hastings).
- Established a **Supreme Court at Calcutta**, marking the origin of constitutional adjudication in India.

b) Pitt's India Act, 1784

- Introduced **dual control**: Company retained commercial functions, but political control was transferred to the **Board of Control** under the British government.
- Set the precedent for **centralization of power**, which would later influence centre-state dynamics.

c) Charter Acts (1813, 1833, 1853)

- **1813**: Ended Company's trade monopoly; permitted missionaries and promoted education.
- **1833**: Centralised legislative power; made Governor-General the legislative head for all India.

- **1853**: Introduced **open competitive exams** for civil services.
- These acts laid the foundation for **merit-based bureaucracy**, **central legislature**, and **welfare orientation**.

d) Government of India Act, 1858

- Post-1857 Revolt: Crown assumed direct control over India.
- Abolished the East India Company; created **Secretary of State for India**.
- Introduced **imperial accountability** and direct governance by the British Parliament.
- Impa
- Strengthened the bureaucratic structure that survives in the Indian administrative framework.

e) Indian Councils Act, 1909 (Morley-Minto Reforms)

Key Features:

- Enlarged **legislative councils** at both central and provincial levels.
- Introduced **Indian representation** in legislative councils, including the **Imperial Legislative Council**.
- Allowed Indians to **discuss budgets** and introduce resolutions.
- Most controversially, it introduced **Separate Electorates for Muslims**, allowing them to elect their own representatives.

Significance:

- **First formal inclusion of Indians** in law-making at the central level.
- Created a **"token representation"** but without real power - Indians could debate but not decide.
- Institutionalised **communal divisions**, laying the foundation for **identity-based politics**.
- Later, the Indian Constitution consciously rejected **separate electorates** to promote national unity.

Legacy:

- Initiated the process of **Indian political awakening within colonial institutions**.
- However, the communal electorates introduced here created deep divisions, which would later be challenged and reversed in independent India.

f) Government of India Act, 1919 (Montagu-Chelmsford Reforms).

Key Features:

- Introduced **Dyarchy** in provinces:
  - **Reserved subjects**: Administered by British officials (e.g., police, finance).
  - **Transferred subjects**: Administered by Indian ministers (e.g., education, health).
- Enlarged **provincial legislative councils** with elected Indian majorities.
- Introduced **direct elections** for the first time (limited franchise).
- Established a **bicameral legislature** at the Centre: Council of State and Legislative Assembly.
- Established a **Public Service Commission** in 1926.

Significance:

- Expanded **provincial autonomy**, giving Indians administrative experience.
- Initiated the idea of **division of subjects** between Centre and Provinces, influencing the present **Union-State List structure**.
- Introduction of **direct elections** laid the groundwork for representative democracy.

Criticism:

- Real power still rested with the Governor and the British executives.
- Diarchy proved unworkable; Indian ministers lacked control over budgets and subordinates.

Legacy:

- Despite limitations, it marked the **transition from colonial administration to representative governance**.
- Several **constitutional concepts (division of powers, PSC, bicameralism)** used today can trace their roots to this Act.

g) Government of India Act, 1935

Most comprehensive colonial constitutional framework; served as the blueprint for the Indian Constitution.

Key Features:

- Introduced an **All-India Federation** comprising Provinces and Princely States (not implemented fully).
- **Abolished Dyarchy in Provinces** and introduced **full provincial autonomy**.
- **Introduced Dyarchy at the Centre** (never implemented).
- Created **Federal, Provincial, and Concurrent lists** of legislative subjects.
- Established **Reserve Bank of India**, **Federal Court**, and **Public Service Commissions**.
- Provided for **instrument of instructions** to Governors - precursor to constitutional conventions.

Significance:

- First structured attempt at **federalism** in India.
- The **division of powers** in the Indian Constitution (Schedule 7) is based directly on the 1935 Act.
- Introduced the idea of **Fundamental Rights** and **Directive Principles** (though not enforceable), which would later be codified in Part III and Part IV.

Criticism:

- It introduced federalism without truly transferring power, as the Governor-General retained overriding authority.
- Provincial autonomy was undermined by the Governor's discretionary powers and lack of responsible governance.

Legacy:

- Major parts of the Indian Constitution, including **centre-state relations**, **legislative powers**, **emergency provisions**, **Governor's powers**, **civil services**, and **judiciary structure**, were influenced by this Act.
- Yet, the Indian Constitution went much further by making provisions **democratic, sovereign, and rights-based**, unlike the British-imposed 1935 Act.

h) Indian National Movement and Constitutional Ideals

The struggle for independence wasn't just political; it was deeply **constitutional and philosophical**, shaping the **values and structure** of the Constitution.

1) Nehru Report (1928)

- Drafted by Motilal Nehru; first Indian attempt at framing a Constitution.
- Demanded:
  - **Fundamental Rights**
  - **Universal Adult Franchise**
  - **Federal System with residual powers to the Centre**
  - **Secularism and minority protection**

2) Karachi Resolution (1931)

- Passed under the leadership of Jawaharlal Nehru at the INC session.
- Emphasised:
  - Civil liberties and economic justice
  - Minimum wage, universal education, and protection of women and children

Legacy:

- These documents laid the **value foundation** for the Constitution - liberty, equality, secularism, and social justice.

i) Cabinet Mission Plan (1946)

Key Contributions:

- Proposed the establishment of a **Constituent Assembly** to draft the Constitution of India.
- Advocated a **federal structure**, though later rejected due to Partition.
- Recommended grouping of provinces and **autonomy of constituent units**.

Legacy:

- Led to the **formation of the Constituent Assembly**, which adopted the Constitution on 26 November 1949.
- Established the principle of **constitution-making through elected Indian representatives**, marking a decisive shift from imposed legal orders.

Underlying Major Ideas of the Indian Constitution

"However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot."- B.R. Ambedkar
"Whatever the Constitution may or may not provide, the welfare of the country will depend upon how the country is administered."- Dr. Rajendra Prasad

Concept	Meaning	Relevant Articles (Expanded)	Illustrative Examples / Judgments
Sovereignty	India is supreme in making internal laws and conducting external affairs without interference.	- Article 1: Declares India as a "Union of States", affirming internal sovereignty. - Article 51: Promotes international peace, non-intervention, and respect for sovereign equality.	India's decision to remain non-aligned; 1998 Pokhran-II nuclear test; Berubari Case (1960).
Democracy	Governance by elected representatives based on popular will.	- Article 326: Provides for universal adult suffrage for elections to Lok Sabha and State Assemblies. - Articles 324–329: Deals with the Election Commission, electoral rolls, conduct of elections, and disputes. - Article 19(1)(a): Freedom of speech- essential for democratic participation.	PUCL v. Union of India (2003): Recognised the right to vote as expression; use of NOTA; electoral reforms.
Republicanism	No hereditary monarchy; all public offices are open and elected.	- Articles 52–54: Establish the President as the elected head of the Indian Republic. - Articles 74–75: Create a responsible parliamentary executive, with the PM and ministers accountable to the legislature.	Regular Presidential elections; any citizen can become head of state

Justice (Social, Economic, Political)	A just society where opportunities and rights are fairly distributed.	- Articles 14–18: Right to equality and abolition of untouchability/titles (social justice). - Article 39(b–c): Prevents concentration of wealth and promotes equal access to resources (economic justice). - Article 41: Right to work, education, and public assistance (economic justice). - Article 326: Political justice through right to vote.	Indira Sawhney v. Union of India (1992): Upheld OBC reservations; MGNREGA for right to work; anti-corruption laws ensure political justice.
Liberty	Freedom of individual action, belief, expression, and choice.	- Article 19(1) (a–g): Six fundamental freedoms (speech, assembly, association, movement, residence, profession). - Article 21: Right to life and personal liberty interpreted to include dignity, privacy, education, etc.	Maneka Gandhi v. Union of India (1978): Liberty includes due process; K.S. Puttaswamy (2017): Right to privacy.
Equality	All citizens are treated equally under law and given equal opportunity.	- Article 14: Equality before the law and equal protection of the laws. - Article 15: Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. - Article 16: Equality in public employment. - Articles 29–30: Rights of minorities to protect their culture and education.	Navtej Singh Johar v. Union of India (2018): Decriminalised homosexuality for equality and dignity; Sabarimala Case (2018).
Secularism	No state religion; all religions treated equally and protected.	-Article 14 & 15: Reinforce religious non-discrimination Articles 25–28: Guarantees freedom of conscience and right to freely profess, practice, and propagate religion. - 42nd Amendment (1976): Inserted “Secular” into the Preamble.	S.R. Bommai v. Union of India (1994): Secularism is part of the Basic Structure; Aruna Roy v. Union of India (2002): Religious teaching vs religious instruction.

Federalism with Strong Centre	Distribution of powers between Centre and States, but Centre is dominant.	- Articles 245–255: Deal with legislative powers of Centre and States. - Schedule 7: Union, State, and Concurrent Lists (97, 66, and 47 subjects respectively). - Article 356: President's Rule in case of breakdown of constitutional machinery in a State.	GST Council functioning; State of West Bengal v. Union of India (1962); President's Rule in Arunachal Pradesh (2016).
Socio-Economic Transformation	Constitutional commitment to uplift the poor and marginalised.	- Articles 36–51 (DPSPs): Non-justiciable guidelines for a welfare state. - Article 38: State to strive to reduce inequality. - Article 43: Ensure living wage and humane conditions of work. - Article 39A: Free legal aid and access to justice.	Right to Education Act (2009), Food Security Act, Midday Meal Scheme, D.S. Nakara v. Union of India (1983).

Issues Faced While Making the Constitution

a) Partition and Communal Violence

- The sudden Partition (1947) triggered unprecedented communal riots - nearly 1 million killed, ~15 million displaced.
- The refugee crisis put enormous strain on administration - created demands for rehabilitation, security, and citizenship laws.
- Communal polarisation threatened secular foundations being drafted - framers had to strongly embed secularism and minority rights.
- Example: Citizenship debates in Assembly - "jus soli" adopted, not religious identity-based citizenship.

b) Integration of Princely States

- ~565 princely states had the option to accede to India or Pakistan or remain independent - major challenge to territorial unity.
- Led to uncertainty about the political map of India while the Constitution was being framed.
- Negotiations & coercive diplomacy (Patel + VP Menon) required to integrate - Hyderabad, Junagadh, Kashmir particularly complex.
- Framers had to ensure that the Constitution accommodated this diversity through special provisions (Art 370, 371), asymmetric federalism.

c) Diversity (Linguistic, Cultural, Religious)

- India had 22 major languages, hundreds of dialects, deep religious pluralism, caste divisions, ethnic regionalism.
- Created debates in Assembly:
  - Should India adopt one national language?
  - How to structure federalism to give space to regional identities?
- The solution: multilingual policy, three-language formula, strong but flexible federalism.
- Example: Language issue delayed official language decisions (Art 343, Hindi-English compromise).

d) Socio-Economic Inequalities

- India in 1947 - 80% rural, high poverty, caste oppression, regional disparity.
- Assembly debates showed concern: “Political democracy without social and economic democracy would be hollow” (Ambedkar).
- Framing Fundamental Rights + Directive Principles was a balancing act: how much socio-economic rights to make enforceable?
- Example: No Fundamental Right to property after amendments - socio-economic justice pursued via DPSPs

e) External Pressures

- The Cold War had begun - US-Soviet competition.
- India wanted non-alignment, but needed economic & military aid - had to be diplomatically neutral.
- Fear that foreign blocs might influence drafting - framers emphasized sovereignty, non-alignment, strategic autonomy (reflected in Preamble: "sovereign").
- Example: Article 51 - commitment to international peace, non-intervention.

Evaluating the Structure and Vision of the Constituent Assembly

a) Background

- Constituent Assembly formed under **Cabinet Mission Plan (1946)**.
- **Not a directly elected body** - members elected by **Provincial Legislative Assemblies**.

b) Nature of Representation

- **Indirect election** - members elected by **MLAs** using **Single Transferable Vote (STV)** + **Proportional Representation**.
- Seats allocated based on:
  - **Communal representation** (Hindus, Muslims, Sikhs, Christians, Scheduled Castes, Anglo-Indians, Parsis, etc.).
  - **Geographical representation** - from Provinces + Princely States.

Criticism vs Defence of the Constituent Assembly

Criticism	Defence / Counterpoint
Not directly elected	Indirect election was necessitated by Partition and lack of universal franchise at that time.
Limited franchise	Still widest possible representation under prevailing conditions.
Dominance of Congress Party	Congress was the broadest mass movement party; accommodated multiple ideological streams.
Under-representation of Women, Dalits, Tribals	Key leaders like Ambedkar, Dakshayani Velayudhan, Hansa Mehta ensured progressive voice.
Delay in framing the Constitution (3 years)	Complex challenges (Partition, integration of princely states, refugee crisis) justified the time taken.
Borrowing from GOI Act 1935	Pragmatic use of tested administrative structures while infusing new democratic & rights-based provisions.
Excessive Centralisation	Unity was priority post-Partition; federal flexibility built-in (e.g. asymmetric federalism, DPSPs).
Emergency powers too broad (Article 356)	Safeguards were debated; judiciary later evolved checks (S.R. Bommai judgment).

Language controversy	Compromise via three-language formula, gradual development of Indian languages policy.

Idea of Making the Indian Constitution a Living Document

a) Need for Flexibility in a Dynamic Society

- India is a **vast and diverse country** - social, economic, political conditions are constantly evolving.
- The framers envisioned that the Constitution should **adapt to future needs**, not remain frozen.

b) Socio-Economic Transformation

- The Constitution was meant to bring about a social **revolution** (Granville Austin).
- Progressive realization of **justice, liberty, equality, fraternity** -may require **new rights, policies, structures**.
- E.g. later amendments: **Panchayati Raj (73rd, 74th)**, **Right to Education (86th)**, **GST (101st)**.

c) Balancing Rigidity with Flexibility

- Framers carefully designed **Article 368**:
  - Some features are rigid (require state ratification, 2/3 majority).
  - Others are flexible (simple Parliamentary majority).
- Idea - **preserve core values**, while allowing necessary evolution.

d) Federal Considerations

- India's federalism - **balance between Centre and States** may need periodic recalibration.
- Example: **Goods and Services Tax (GST)** -required constitutional amendment.

e) Unforeseen Circumstances

- The Constitution was drafted in **post-colonial, partitioned, developing India**.
- The constitution makers knew that **new challenges, technologies, and global trends** would emerge.
- Flexibility essential to remain **relevant and effective**.

Vision Behind Keeping it Open to Amendments

- To make the Constitution a **living, dynamic document** -not static.
- To achieve **transformative constitutionalism** (Upendra Baxi's idea) - empowering people & deepening democracy.
- To enable **peaceful, legal change** through constitutional means -avoiding extra-constitutional revolutions.
- To reflect the will **of the people** as society progresses.

Criticism of the Indian Constitution

1) Excessive Centralisation

- **Criticism:** Strong tilt in favour of the **Centre** - weakens true federalism. **Emergency provisions (Art. 356)** can lead to **Centre's interference in State matters**.

Example:

- Repeated misuse of **President's Rule** in States in the past (e.g. **Punjab (1953), Kerala (1959), Arunachal Pradesh (2016)**).

2) Too Lengthy and Complex

- **Criticism:** Indian Constitution is the **longest written constitution** in the world - **too detailed**. Contains **too many provisions** which could have been left to ordinary law.

Example:

- Originally **395 Articles + 8 Schedules** - now **470+ Articles, 12 Schedules** after 100+ amendments.

3) Excessive Borrowing / Lack of Originality

- **Criticism: Heavily borrowed** from various foreign constitutions (GOI Act 1935, UK, US, Canada, Ireland, USSR). Lacks **indigenous political philosophy**.

Example:

- **Parliamentary system** from UK; **Fundamental Rights** from US; **DPSPs** from Ireland.
- Some argue not enough reflection of **Gandhian political ideas (Gram Swaraj)**.

4) Limited scope of non-justiciable rights

- **Criticism:** Socio-economic rights placed in **DPSPs** - no enforceability.

Example:

- **Right to work, housing, healthcare** - not fully enforceable.
- Despite schemes like **MGNREGA, RTE**, there is still a gap.

5) Too Much Scope for Restrictions on Rights

- **Criticism: Reasonable restrictions** on Fundamental Rights are sometimes broad and vague - can be **misused**.

Example:

- **Article 19(2)**- restrictions on freedom of speech - used to curb dissent (sedition cases, UAPA).
- Recent cases: **Bhima Koregaon activists under UAPA**; **journalists charged with sedition**.

6) Emergency Provisions - Threat to Democracy

- **Criticism:** Emergency provisions (Article 352, 356, 360) - can be used to **suspend democratic rights**.

Example:

- **Internal Emergency (1975-77)** - censorship, mass detentions, civil liberties suspended.

7) Judicial Overreach / Judicial Vagueness

- **Criticism: Doctrine of Basic Structure** (while important) is sometimes criticised as **judicially created, vague**. Critics argue it gives the judiciary **too much discretion**.

Example:

- Kesavananda Bharati case (1973) - doctrine evolved.
- Recent debates around **Judicial Activism vs Separation of Powers**.

Do we need a constitution 2.0?

1. **Arguments in Favour**
   - **Changing Socio-Economic Context:**
     The original Constitution was drafted in a post-colonial era with limited experience in democratic governance. Today, the needs of a digitized, urbanized, and aspirational society demand updated frameworks.
   - **Weaknesses in Federal Design:**
     Critics argue the Centre is disproportionately powerful.
     Example: Article 356 used over 100 times, often for political reasons.
   - **Ambiguity in Roles and Institutions:**
     Office of the Governor, Anti-defection law, and Ordinance-making powers have often undermined democratic norms.
     Example: Speaker's partisan role in disqualification cases (Manipur, 2020).
   - **Overburdened Judiciary:**
     The Constitution envisioned a limited judiciary, but today the Supreme Court handles everything from bail to constitutional interpretation. Structural reforms may need constitutional recalibration.
2. **Arguments Against**
   - **Flexibility Through Amendments:**
     India's Constitution is not rigid. Over 100 amendments (e.g., 73rd and 74th for local governance, 42nd for fundamental duties) show it adapts with time.
   - **Preserving Constitutional Morality:**
     The Constitution is more than a legal document- it reflects the spirit of justice, liberty, and equality. A rewrite risks politicizing and diluting core values.

- **Judicial Creativity and Interpretation:**
  SC judgments like **Kesavananda Bharati (1973)** and **Navtej Singh Johar (2018)** have expanded rights without rewriting the Constitution.
- **Political Risks and Consensus Deficit:**
  In a polarized environment, drafting a new Constitution may erode more than it builds. Consensus among diverse groups is harder today than in the Constituent Assembly era.
  Perhaps what we need is not a new Constitution, but a renewed commitment to uphold the spirit of the one we already have.

3. **Major Recommendations by National Commission to Review the Working of the Constitution**
   a. **Anti-Defection Law:**
      Disqualification decisions should be made by an **independent tribunal** (e.g., Election Commission), not the Speaker.
   b. **Parliamentary Reforms:**
      Suggests stricter rules for legislative conduct, curbing disruptions, and reducing ordinance misuse.
   c. **Judicial Reforms:**
      Establish a **National Judicial Commission** to appoint judges and bring transparency in judicial appointments.
   d. **Centre-State Relations:**
      Greater autonomy to states; reform Article 356 to prevent its misuse.
   e. **Fundamental Duties:**
      Recommended promoting awareness and enforcement through legislation.
   f. **Electoral Reforms:**
      Called for state funding of elections in kind, transparency in campaign finance, and auditing of political parties.
   g. **Local Self-Government:**
      Strengthening 73rd and 74th Amendments to ensure real devolution of powers and finances.

CONCLUSION

From colonial charters to constituent debates, from ancient ideas to modern aspirations, the Indian Constitution stands as both memory and promise: crafted by history, guided by vision, and sustained by the will of the people.

ESTABLISHING INDIA AS A DEMOCRACY

Introduction

At the time of its independence in 1947, India made an audacious choice to adopt democracy- a system rooted in the people's will- despite immense poverty, illiteracy, and societal divisions. Today, India is the world's largest democracy, demonstrating that democratic values can thrive outside the Western world, provided they are adapted to local contexts.

"Government of the people, by the people, for the people."- **Abraham Lincoln**

"Political democracy cannot last unless there lies at the base of it social democracy."- **Dr B.R. Ambedkar**

Idea of a Democracy

- **Definition:** Democracy is a system of government where political power resides with the people, exercised either directly or through elected representatives.
- **Key Principles:** Popular sovereignty, political equality, rule of law, protection of fundamental rights, free and fair elections, and accountable governance.
- **Classical Roots:** Derives from the Greek word dēmokratia (dēmos = people; kratia = power or rule). The **earliest known form of democracy** was practiced in **ancient Athens (5th century BCE)**. Athenian democracy was a **direct democracy**, where **citizens participated personally** in decision-making rather than through elected representatives.
- **Modern Interpretation:** Democracy today extends beyond periodic elections to include participation, transparency, civil liberties, and inclusive governance.

Features of Indian Democracy

- **Sovereign, Socialist, Secular, Democratic, Republic:** As enshrined in the Preamble of the Constitution.
- **Universal Adult Franchise:** Every citizen above 18 years of age has the right to vote without discrimination.
- **Parliamentary System:** Executive is accountable to the legislature; collective responsibility of the Council of Ministers.
- **Fundamental Rights:** Guarantees equality, freedom, religion, cultural rights, constitutional remedies (Articles 12–35).
- **Independent Judiciary:** Guardian of the Constitution and protector of rights.
- **Federalism:** Division of powers between Centre and States, with a strong Centre.
- **Pluralism and Diversity:** Recognition of multiple languages, religions, and cultures within a unified framework.
- **Free Press and Civil Society:** Acting as watchdogs to hold power accountable.
- **Periodic Elections:** Regular, competitive elections supervised by an autonomous Election Commission.
- **Decentralisation:** 73rd and 74th Constitutional Amendments institutionalised local self-governance through Panchayati Raj and Municipalities.

Initial Challenges to India as a Democracy

- **Partition and Communal Violence:**
  - The Partition of India led to large-scale riots, mass migration, and around one million deaths.
- **Poverty and Illiteracy:**
  - Over 80% of India's population lived in poverty, with literacy rates below 20% in 1951.

- **Caste and Social Hierarchies:**
  - Deep-rooted caste inequalities threatened the idea of political and social equality.
- **Regionalism and Linguistic Diversity:**
  - Linguistic demands for statehood caused friction.
- **Centre-State Relations:** Communist government (1957) in Kerala led to the dismissal of the state government under Article 356, raising concerns over the Centre's dominance.
  - Maintaining the delicate balance of federalism amidst diverse regional aspirations was challenging.
- **Economic Backwardness:**
  - The economy was largely agrarian with low industrialisation and weak infrastructure.
- **Communist Insurgency (Internal Security Threats):**
  - The Telangana Rebellion (1946–51) against feudal landlords and state authority, inspired by communist ideology, posed a serious internal security challenge.

Evolution of India as a Democracy

1) 1950s–1960s: Consolidation of Democratic Institutions & Linguistic Reorganisation
- Core democratic institutions were established - **Parliament, EC, Supreme Court, Civil Service**.
- **First general election (1951–52)** - major success under universal franchise, despite low literacy.
- Period strengthened **democratic legitimacy** through responsive governance

2) 1960s–1975: Strains on Democracy & Increasing Centralisation
- **Wars and National Security Pressures-** Indo-China war (1962) and Indo-Pak wars (1965, 1971) led to multiple **national emergencies** under Article 352.
- **Executive Dominance Increased-** Prime Minister's Office (especially under Indira Gandhi) began to dominate Parliament and party institutions.
- **Judiciary vs Executive Conflict-** Land reform and reservation policies led to clashes.
  Example: Golaknath v. State of Punjab (1967) and Kesavananda Bharati case (1973) asserted **Basic Structure Doctrine**.

3) 1975–77: The Emergency - Democratic Backslide
- **Emergency (1975)** under **Article 352** - **civil liberties suspended**, opposition jailed, press censored.
- Judiciary weakened (**ADM Jabalpur case, 1976**)..

4) 1977: Post-Emergency Democratic Revival
- **1977 elections** - first peaceful **overthrow of authoritarian regime**.
- Demonstrated power of **electoral accountability**.
- **44th Amendment (1978)** - curbed future **emergency misuse** (protected Articles 20 & 21).

5) 1990s: Economic Reforms & Political Federalisation
- **1991 LPG reforms** - redefined the state's economic role.
- Rise of **coalition politics**, decline of one-party dominance.
- Regional parties (e.g. **TDP, DMK, SP, BSP**) strengthened federalism

6) 73rd & 74th Amendments (1992): Grassroots Democracy
- Institutionalised **PRIs & ULBs** - gave them **constitutional status**.
- Enhanced **direct participation**, improved **local accountability**.
- Shifted power from **state capitals** to **local bodies** (horizontal federalism).

7) 2000s: Rights Expansion & Participatory Governance
- **RTI Act (2005)** - institutionalised **transparency & citizen oversight** (linked to Art. 19(1)(a)).
- Shift towards **rights-based, citizen-centric democracy**.

8) Judicial Activism & Expansion of Rights via PILs
- Since the 1980s, **PILs** expanded **justice access** for the poor.
- **Article 21** broadened to include:

- **Right to environment** (MC Mehta).
- **Right to shelter** (Olga Tellis, 1985).
- **Right to privacy** (K.S. Puttaswamy, 2017).

Recent Developments in Indian Democracy

1. Electoral Democracy and Representation

- **Increased Voter Participation**
  - Voter turnout has consistently increased in Lok Sabha and Assembly elections.
  - Example: Over 67% turnout in 2019 Lok Sabha elections- the highest ever in Indian general elections.
- **Growing Role of Money and Muscle Power**
  - Use of opaque electoral bonds and rise in candidates with criminal backgrounds.
  - Example: ADR (2024) report: 40% of Lok Sabha MPs have declared criminal cases.
- **One Nation, One Election Debate**
  - Revived through a committee headed by former President Ram Nath Kovind (2023), raising federal and logistical concerns.

2. Judiciary and Democratic Safeguards

- **Judicial Activism and Accountability**
  - Increased use of PILs for environmental, civil, and social justice causes.
  - Example: SC's 2023 intervention in the Manipur violence for humanitarian monitoring.
- **Concerns Over Judicial Independence**
  - Government seeking role in judicial appointments.
  - Example: Ongoing Centre-SC tension over the Collegium system and calls for a National Judicial Appointments Commission (NJAC)-like framework.

3. Federalism and Centre-State Relations

- **Rise of Cooperative vs Competitive Federalism**
  - Push for schemes like NITI Aayog's Aspirational Districts Programme (cooperative) vs. disputes over tax devolution and centralization (competitive).
  - Example: West Bengal and Tamil Nadu have opposed central schemes like NEP, CAA implementation.

4. Civil Liberties and Democratic Backsliding Concerns

- **Shrinking Space for Dissent**
  - Laws like UAPA, sedition, and IT Rules aim to protect national security but raise concerns over their **broad scope and potential impact** on free expression.
- **Digital Surveillance and Privacy Debates**
  - Introduction of laws like the **Digital Personal Data Protection Act, 2023** raised privacy and surveillance concerns.

5. Social Inclusion and Political Participation

- **Rise in Women's Political Participation**
  - **Women's Reservation Bill (2023)** passed to reserve 33% seats in Lok Sabha and State Assemblies (implementation pending after delimitation).
- **Increased SC/ST/OBC Representation in Bureaucracy and Politics**
  - Expansion of EWS quota and continued political mobilization of marginalized communities.
- **Emerging Role of Youth and Digital Campaigning**
  - Example: Use of AI, social media campaigns, and youth influencers in 2024 General Election campaigning.

Way forward

1. Electoral Reforms

- **Ensure transparency in political funding**
  - Law Commission (1999) and ECI (2021) have recommended robust audits of party finances.
- **Decriminalise politic**
  - Fast-track courts for candidates with serious criminal charges.
  - SC in Public Interest Foundation v. Union of India (2018) directed political parties to disclose candidate records.
- **State funding of elections in kind**
  - Recommended by Indrajit Gupta Committee (1998) to level the playing field.

2. Strengthening Institutions and Checks & Balances

- **Reform Anti-Defection Law**
  - Transfer disqualification powers from the Speaker to an independent tribunal or ECI.
  - Recommended by NCRWC (2002), Law Commission (170th Report).
- **Judicial Reforms**
  - Establish National Judicial Appointments Commission with adequate safeguards.
  - Digitize courts to reduce pendency and improve access.
- **Strengthen the role of Parliament and Assemblies**
  - Increase the number of sittings, improve the quality of debates, and empower committees.

3. Federalism and Decentralisation

- **Strengthen Cooperative Federalism**
  - Clear demarcation of fiscal and functional powers (e.g. GST dispute mechanism).
  - Respect for state autonomy in subjects like education, policing, and health.
- **Revive the Inter-State Council**
  - As recommended by Punchhi Commission (2010), to resolve Centre-State issues amicably.
- **Empower local self-government**
  - 2nd ARC recommends timely elections, capacity building, and financial autonomy for PRIs and ULBs.

4. Protecting Civil Liberties and Media Freedom

- **Repeal or reform regressive laws**
  - Sedition (Section 124A IPC), UAPA, and vague IT Rules need review to avoid misuse.
  - SC has questioned the continued validity of Sedition law in 2022.
- **Protect digital privacy and autonomy**
  - Ensure a strong data protection regime with minimal state overreach under the Digital Personal Data Protection Act, 2023.

5. Promoting Inclusive and Participatory Governance

- **Strengthen role of civil society and citizens**
  - Expand platforms for participatory governance like Gram Sabhas, Jan Sunwais, and social audits.
- **Education for democratic values**
  - Integrate constitutional literacy and civic education in curricula at all levels.

CONCLUSION

India's Constitution is a product of its rich historical journey, blending colonial legacies, freedom movement ideals, and global best practices and continues to evolve as a dynamic document, adapting to the nation's changing socio-political needs.

SALIENT FEATURES OF THE INDIAN CONSTITUTION

Introduction

The Constitution of India is a unique blend of rigidity and flexibility, borrowing best practices from across the world while addressing India's historical and socio-political realities. It lays down the fundamental philosophy and institutional structure needed for democratic governance, rights protection, and social justice, serving as the supreme law of the land.

Philosophy of the Constitution

- **Sovereignty:** India is a free nation, not subject to any external power.
- **Socialism:** Aspires towards reducing inequalities and achieving social and economic justice.
- **Secularism:** The State maintains an equidistant relationship from all religions, guaranteeing freedom of faith.
- **Democracy:** Ensures people's participation in governance through free and fair elections.
- **Republicanism:** The head of the state (President) is elected, not hereditary.
- **Justice, Liberty, Equality, and Fraternity:** As embodied in the Preamble, these principles seek to achieve both political and socio-economic democracy.
- **Constitutionalism:** Establishes that power must be exercised within legal limits, ensuring rule of law.

Salient Features

- **Written Constitution**
  Its detailed and codified nature ensures **clarity, predictability, and legal certainty**, essential for governing a diverse and populous nation like India.
- **Drawn from Multiple Sources**
  By adopting tested elements from various constitutions, India created a **hybrid framework suited to its unique historical, social, and political context**.
- **Federal System with Unitary Bias**
  Balances the need for **regional autonomy** with **national unity**, crucial in a multi-ethnic, multilingual country facing internal and external challenges.
- **Parliamentary System of Government**
  Promotes **executive accountability and collective responsibility**, ensuring that the government remains responsive to the legislature and, by extension, to the people.
- **Fundamental Rights and Duties**
  Enshrines a framework for **individual freedoms** and **civic responsibilities**, safeguarding democratic values while encouraging participatory citizenship.
- **Directive Principles of State Policy (DPSPs)**
  Provides **socio-economic direction to governance**, aiming to build a welfare state and promote inclusive development, even if not legally enforceable.
- **Independent Judiciary with Judicial Review**
  Ensures that **constitutional supremacy** is upheld and that the rights of citizens are protected against arbitrary state action.
- **Secular State**
  Maintains **equal respect for all religions** while preventing the state from promoting or discriminating against any faith - vital for India’s religious pluralism.

- **Single Citizenship**
  Strengthens the **idea of national unity and equal rights** across states, avoiding legal fragmentation seen in dual-citizenship federations.
- **Universal Adult Franchise**
  Reflects India's commitment to **political equality and inclusive democracy**, allowing all citizens above 18 to participate in the electoral process regardless of caste, class, or gender.

Evolution of the Features

Positive Developments:

- **Expansion of Fundamental Rights:**
  - Interpretation of Article 21 to include Right to Life with dignity, Right to Privacy (K.S. Puttaswamy v. Union of India, 2017), Right to Clean Environment (M.C. Mehta cases).
  - Example: The Vishakha Guidelines (1997) laid down protection against sexual harassment at workplaces, expanding Article 21 and 14 protections.
- **Strengthening of Grassroots Democracy:**
  - The 73rd and 74th Amendments (1992) gave constitutional status to Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs).
  - Example: Kerala's "People's Plan Campaign" (1996) empowered local bodies for participatory planning and development.
- **Expansion of Social Justice:**
  - Reservation policies for SCs, STs, and OBCs institutionalised social justice.
  - Example: Mandal Commission Implementation (1990) extended reservations to OBCs, following Supreme Court approval in Indra Sawhney v. Union of India (1992).
- **Judicial Innovations:**
  - The Supreme Court introduced doctrines like the Basic Structure, Progressive Interpretation, PIL (Public Interest Litigation), and Continuing Mandamus.
  - Example: PILs allowed environmental activism, as in Ganga Pollution Case (M.C. Mehta v. Union of India 1987).

Negative Developments:

- **Emergency (1975–77):**
  - Fundamental Rights suspended, press censorship imposed, and preventive detentions carried out.
  - Example: ADM Jabalpur v. Shivkant Shukla (1976), where the Supreme Court ruled that the right to life could be suspended during Emergency- a decision later regretted by the Court itself.
- **Over-Centralisation and Misuse of Article 356:**
  - Frequent imposition of President's Rule weakened federalism in the early decades.
  - Example: Andhra Pradesh (1954), highlighted misuse of Article 356 in states like Kerala (1959), Punjab (1966), and the Sarkaria Commission Report (1988).
- **Erosion of Institutional Independence:**
  - Concerns over the independence of Election Commission, CBI, and the appointment processes in Judiciary (e.g., debates around the National Judicial Appointments Commission [NJAC]).
  - Example: Supreme Court in Supreme Court Advocates-on-Record Association v. Union of India (2015) struck down NJAC Act to preserve judicial independence.

Key Features of the Indian Parliamentary System

India adopted the Parliamentary System to ensure **collective responsibility**, **accountable governance**, and a **harmonious relationship between the legislature and executive**. Drawing from the British model, it was seen as better suited for India's **diverse, multi-party democracy**.

Features of Indian Parliamentary System

Feature	Explanation	Example
Nominal and Real Executive	The President is the constitutional (nominal) head, while the Prime Minister and Council of Ministers exercise real power.	The President acts on the aid and advice of the Council of Ministers (Article 74).
Collective Responsibility	The Council of Ministers is collectively responsible to the Lok Sabha. If the Lok Sabha passes a no-confidence motion, the entire cabinet must resign.	Morarji Desai Government (1979) resigned after losing a confidence vote.
Fusion of Powers	The executive (PM and Ministers) are drawn from the legislature and remain part of it.	The PM and ministers must be members of Parliament, or get elected within six months.
Double Membership	Ministers are members of both executive and legislature.	The Finance Minister presents the budget and also frames policies.
Leadership of Prime Minister	The PM is the head of government and leader of the majority party in the Lok Sabha.	The PM leads the cabinet, represents India abroad, and chairs inter-governmental bodies.
Responsible Government	Ministers are accountable to Parliament, especially the Lok Sabha, and can be questioned, censured, or removed.	Regular Question Hour, No-Confidence Motions, and CAG reports enhance accountability.
Bicameral Legislature	Parliament consists of Lok Sabha and Rajya Sabha.	In 2023, during the passage of the Women's Reservation Bill, both houses had to approve it, showing how bicameralism ensures checks and wider consensus.
Dissolution of Lower House	The Lok Sabha can be dissolved before the completion of its term, leading to early elections.	The 1999 Lok Sabha was dissolved after the Vajpayee government lost a trust vote.

Comparison with Other Systems of Government

Feature	Parliamentary System (India/UK)	Presidential System (USA)	Semi-Presidential System (France/Russia)
Separation of Powers	Fused (Executive part of Legislature)	Strict separation	Partial separation
Executive Authority	Dual: Nominal (President), Real (PM)	Single: President is both head of state and government	Dual: President + PM share executive power

Selection of Executive	PM chosen by majority in legislature	President elected independently by people	President elected by people, PM appointed by President
Accountability	Executive accountable to Parliament	Not accountable; fixed term	PM accountable to legislature, President less so
Dissolution of Legislature	Allowed (Lok Sabha can be dissolved)	Not allowed (Congress cannot be dissolved by President)	Allowed in some cases
Speed of Decision-Making	Faster due to coordination between legislature and executive	Slower due to checks and balances	Balanced - depends on majority support
Possibility of Gridlock	Less likely (same party in executive and legislature)	Common if legislature and President are from different parties	Possible during cohabitation (different parties control President and PM)

Supremacy of Constitution and Judiciary as the Guardian

- **Constitutional Supremacy:**
  - The Constitution is the supreme law; all organs of state derive their powers from it.
  - Any law inconsistent with the Constitution can be struck down (Article 13).
- **Role of Judiciary:**
  - The Supreme Court is the guardian of the Constitution (Article 32 – right to constitutional remedies).
  - Judicial review empowers courts to ensure that executive and legislative actions conform to constitutional mandates.

Examples:

- Minerva Mills v. Union of India (1980): Reaffirmed that harmony between Fundamental Rights and Directive Principles is essential.

Division of Powers (Federal Features)

- **Union List (Centre)** - subjects of national importance (e.g. defence, foreign affairs, atomic energy).
- **State List (States)** - subjects of local/state importance (e.g. police, public order, public health).
- **Concurrent List (Both)** - subjects where both Centre and States can legislate (e.g. education, forest, marriage, adoption).
- **Residuary Powers** - lie with Centre (Article 248).

Why Division is Done

- To balance national unity with regional autonomy - prevents over-centralisation.
- To manage India's diversity - linguistic, cultural, social, regional.
- To bring governance closer to people - localised decision-making on state subjects.
- To ensure efficient administration - clear demarcation avoids jurisdictional confusion.

Issues in Division of Powers

- Dominance of Centre in practice - through:
  - Use of residuary powers.
  - Frequent use of Concurrent List.
  - Financial dominance (GST, centrally sponsored schemes).
- Overreach via Article 356 (President's Rule).
- Central laws overriding State laws on Concurrent List.

- Politicisation of inter-state disputes (water, boundaries).
- Weak Inter-State Council and limited cooperative federalism.

Way Forward

- Strengthen Inter-State Council as an effective cooperative federal body.
- Limit misuse of Article 356 - follow SC guidelines (SR Bommai case).
- Clarify Concurrent List entries to reduce Centre-State conflicts.
- Provide more united financial resources to States - true fiscal federalism.
- Promote dialogue-based federalism - Centre and States as equal partners.
- Encourage inter-state cooperation - shared subjects like environment, migration, disaster management.

Judicial Independence

- Ensured through **security of tenure**, **fixed salaries**, and **protection from arbitrary removal**.
- The **Collegium system** limits executive influence in appointments.
- Courts enjoy **judicial review powers**, reinforcing autonomy in decision-making.

CONCLUSION

The Indian Constitution is the supreme law of the land, ensuring that no institution, be it Parliament, Executive, or Judiciary, acts beyond its defined limits. By upholding the principles of rule of law, fundamental rights, and constitutional morality, it serves as the bedrock of India's democratic governance.

PREAMBLE OF THE INDIAN CONSTITUTION

Discuss each adjective attached to the word 'Republic' in the preamble. Are they defendable in the present circumstances? (CSE 2016, 12.5M)

"The Preamble is the horoscope of our sovereign democratic republic." – K.M. Munshi

Introduction

The Preamble of the Indian Constitution serves as its introductory statement, capturing the essence, philosophy, and guiding values upon which the Constitution rests. It reflects the aspirations and ideals of the people of India and provides a moral and political framework for interpreting the provisions of the Constitution.

Idea of Preamble

- **Historical Inspirations:**
  - The idea of a Preamble draws inspiration from documents like the Preamble to the United States Constitution, which sets the goals of governance and justice.
  - The French Declaration of the Rights of Man (1789) also influenced the emphasis on liberty, equality, and fraternity.
- **Indian Context:**
  The Preamble of India was primarily based on the Objective Resolution moved by Jawaharlal Nehru in the Constituent Assembly on 13 December 1946, which was adopted on 22 January 1947.

Indian Preamble (Vision, Ideas, Importance)

Vision and Ideas:

- **Sovereign:**
  India is independent, free from external control, and supreme in its internal affairs.
- **Socialist:**
  Commitment to reduce inequalities in income and status and promote social welfare (added by the 42nd Amendment, 1976).
- **Secular:**
  Equal respect and protection to all religions; the state has no official religion (added by the 42nd Amendment, 1976).
- **Democratic:**
  Governance by the people, through universal adult suffrage and periodic elections.
- **Republic:**
  No hereditary ruler; the head of state (President) is elected.

Preamble Goals and Relevant Provisions

Preamble Goal	Meaning	Relevant Constitutional Provisions
Justice (Social, Economic, Political)	A fair order where individuals have access to resources, participation, and dignity	• Article 14: Equality before law • Article 15–17: Anti-discrimination, abolition of untouchability • Article 21: Life and liberty • Article 39(a)(b)(c), 41 (DPSPs) • Article 326: Universal adult franchise
Liberty (of thought, expression, belief, faith, worship)	Ensuring individual autonomy and freedoms within constitutional limits	• Article 19(1)(a–g): Freedoms • Article 21: Due process • Article 25–28: Religious freedom • Article 51A(b): Sovereignty, unity, integrity
Equality (of status and opportunity)	Equal treatment and affirmative action for disadvantaged groups	• Article 14–16: Equality, reservations • Article 39(d): Equal pay • Articles 330–342: Political reservations • Article 46, 51A(j)
Fraternity (Brotherhood, dignity, unity and integrity)	Solidarity, mutual respect, and national integration	• Article 21: Dignity • Article 19(1)(a): Free expression • Article 25–28: Religious freedom • Article 51A(e)(f)(i) • Article 1 & 3: Territorial integrity

Preamble goals and key judgments

Preamble Goal	Supreme Court Judgment	Key Takeaways
Justice (Social, Economic, Political)	Minerva Mills v. Union of India (1980)	Harmony between Rights & DPSPs. Social justice is Basic Structure.
	Indira Sawhney v. Union of India (1992)	Upheld OBC reservations. Reservations enable social & educational justice.
	State of Kerala v. N.M. Thomas (1976)	Affirmative action essential to substantive equality.
	K.S. Puttaswamy v. Union of India (2017)	Privacy linked to dignity & socio-economic justice.
Liberty (of thought, expression, belief, faith, worship)	Maneka Gandhi v. Union of India (1978)	Broadened Article 21. Due process must be just, fair, reasonable.
	Shreya Singhal v. Union of India (2015)	Struck down Section 66A IT Act. Strengthened free speech.
	Bijoe Emmanuel v. State of Kerala (1986)	Protected freedom of conscience (anthem case).
Equality (of status and opportunity)	Navtej Singh Johar v. Union of India (2018)	Decriminalized homosexuality. Affirmed equality, dignity for LGBTQ+.
	Sabarimala (2018)	Lifted temple ban. Upheld gender equality under Articles 14 & 15.
Fraternity (Dignity, unity, integrity)	Naz Foundation v. NCT Delhi (2009)	Decriminalized Section 377. Based on dignity, privacy, fraternity.

	NALSA v. Union of India (2014)	Recognized transgender as 3rd gender. Emphasized dignity & inclusion.

Importance:

1. Interpretative Guide

The Preamble functions as a **beacon for constitutional interpretation**, especially when provisions are ambiguous or contested.

- **Judicial Recognition**:
  In Kesavananda Bharati v. State of Kerala (1973), the Supreme Court declared that the **Preamble is part of the Constitution** and can be used to **interpret the scope and limits** of constitutional amendments.
  Examples:
  - In Indra Sawhney (1992), the Court interpreted "**equality**" to mean not just formal equality but also **substantive social justice**, in line with the Preamble's reference to "equality of status and opportunity."

2. Reflects Core Values

The Preamble is a **concise moral and ideological summary** of the Constitution - capturing its **goals, principles, and ethical foundations**.

- It embodies the essence of **constitutionalism**: limited government, rule of law, and protection of individual rights.
- Each word - "justice," "liberty," "equality," "fraternity," "sovereign," "secular," "democratic," "republic" - reflects a **normative value** that the Constitution seeks to secure.
- **Examples**:
  - The emphasis on **"fraternity"** guided rulings like NALSA v. Union of India (2014), which sought dignity and inclusion for transgenders.

3. Source of Constitutional Spirit

Beyond legal interpretation, the Preamble provides the **moral compass and constitutional ethos** - often referred to as **constitutional morality**.

- **National Identity and Aspirations**:
  "We, the people of India…" captures the **sovereign will** and shared aspirations of a diverse population. It unites citizens under a **shared constitutional identity** that transcends religion, caste, language, and region.
- **Examples**:
  - Indian Young Lawyers Association v. State of Kerala (2018 – Sabarimala case): The Court invoked **dignity and equality** from the Preamble to strike down exclusionary religious practices.
- **Fundamental Duties** (Article 51A) also reflect the moral aspirations embedded in the Preamble, reinforcing **fraternity**, **unity**, and **responsible citizenship**.

Relevant Case Studies

- **Berubari Union Case (1960):**
  - The Supreme Court initially opined that the Preamble is not a part of the Constitution and cannot confer powers or be enforceable in a court of law.
- **Kesavananda Bharati v. State of Kerala (1973):**
  - Landmark judgement where the Supreme Court reversed its earlier view and held that the Preamble is a part of the Constitution.
  - It also laid down the Basic Structure Doctrine, affirming that the Preamble's values cannot be abrogated.

- **Minerva Mills Ltd. v. Union of India (1980):**
  - Reinforced that the Preamble is integral to the Constitution and that liberty, equality, and justice are part of the basic structure, thus cannot be amended beyond recognition.
- **LIC of India v. Consumer Education & Research Centre (1995):**
  - The Court reaffirmed that the Preamble is a guiding light for interpreting the Directive Principles and Fundamental Rights.

CONCLUSION

The Preamble of the Indian Constitution is not merely a ceremonial preface but a substantive part that captures the nation's aspirations, values, and collective vision. It stands as a beacon guiding constitutional interpretation, law-making, and governance.

FUNDAMENTAL RIGHTS

Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution. (CSE 2013, 10M)
What do you understand about the concept “freedom of speech and expression”? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss. (CSE 2014, 12.5M)
Does the right to clean environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and Judgement(s) of the Apex Court in this regard. (CSE 2015, 12.5M)
Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (CSE 2017, 15M)
“Right of movement and residence throughout the territory of India are freely available to the Indian citizens, but these rights are not absolute. “ Comment (CSE 2022, 10M)
"The Constitution of India is a living instrument with capabilities of enormous dynamism.It is a constitution made for a progressive society." Illustrate with special reference to the expanding horizons of the right to life and personal liberty. (CSE 2023, 15M)
Explain the constitutional perspectives of Gender Justice with the help of relevant Constitutional Provisions and case laws. (CSE 2023, 15M)
The right to privacy is intrinsic to life and personal liberty and is inherently protected under Article 21 of the constitution. Explain. In this reference discuss the law relating to D.N.A. testing of a child in the womb to establish its paternity. (CSE 2024, 15M)

"Fundamental Rights are the conscience of the Constitution." – Granville Austin

Introduction Fundamental Rights form the bedrock of India's democratic edifice. Guaranteed by the Constitution and enforceable by courts, they aim to protect individual liberties against state action, ensure equality, and promote human dignity.

Idea and Philosophy Behind Fundamental Rights

1. Protection Against State Power

Fundamental Rights are constitutional limitations placed on the power of the State to prevent arbitrariness and uphold the rule of law.

- Article references: Article 13(2) prohibits the State from making any law that abridged Fundamental Rights; Article 32 allows individuals to directly approach the Supreme Court for their enforcement.
- Example: In Shreya Singhal v. Union of India (2015), the Supreme Court struck down Section 66A of the IT Act for violating the right to free speech, emphasizing protection from excessive state control.

2. Human Dignity and Liberty

These rights are rooted in natural law theories that regard certain freedoms (e.g., life, liberty, equality) as inalienable and essential to a dignified human existence.

- Article references: Article 21 guarantees the right to life and personal liberty; Article 17 abolishes untouchability to protect dignity.
- Example: In Justice K.S. Puttaswamy v. Union of India (2017), the right to privacy was recognized as intrinsic to dignity under Article 21.

3. Democratic Participation

Fundamental Rights ensure citizens' freedom to express opinions, protest peacefully, and engage in public life - essential for a participatory democracy.

- Article references: Article 19(1)(a–c) provides the freedoms of speech, assembly, and association.
- Example: In People's Union for Civil Liberties v. Union of India (2003), the Court ruled that voters have a right to know candidates' backgrounds as part of their freedom of expression.

4. Global Inspirations

The Fundamental Rights in the Indian Constitution drew heavily from global charters on human rights and democratic governance.

- Key influences: American Bill of Rights (1791), French Declaration of the Rights of Man and of the Citizen (1789), and the Universal Declaration of Human Rights (1948).

5. Vision of the Framers

The framers envisioned a transformative Constitution aimed at building a just, egalitarian, and inclusive society by guaranteeing civil, political, and socio-economic rights.

Indian Fundamental Rights

Basic Features of Indian fundamental rights:

- **Guaranteed by the Constitution**:
- **Justiciable**
- **Available against the State**
- **Not Absolute**: Subject to reasonable restrictions (especially Article 19).
- **Can be suspended**: Except Article 20 and 21, all rights can be suspended during a National Emergency (Article 359).
- **Negative and Positive Rights**: Some prohibit state action (e.g., no discrimination), others require state action (e.g., right to education).
- **Evolving through Judicial Interpretation**: SC has expanded their scope through liberal interpretation (e.g., privacy, environment under Article 21).

Right To Equality(Article 14-18)

a) Equality Before Law

- A **negative concept** borrowed from British common law.
- Implies absence of special privilege in favour of any person and equal subjection of all before the ordinary law of the land.
- Ensures rule of law, meaning no one is above the law - not even state officials.
- **Example- Supreme Court's order in the Unnao rape case (2019):** Transferred trial outside Uttar Pradesh and monitored proceedings against a sitting MLA - showing law applies equally to powerful individuals.

b) Equal Protection of Laws

- A positive concept derived from the American Constitution.
- Requires the state to treat all individuals equally in similar circumstances, allowing for reasonable classification.
- Recognizes that equality is not uniformity, and differential treatment is valid if it meets the twin tests of:
    - Intelligible differentia, and
    - Rational nexus with the objective.

- **Example- Navtej Singh Johar v. Union of India (2018):** Decriminalised consensual same-sex relations under Section 377 IPC, reinforcing that **equal protection must extend to all sexual minorities**

c) RESERVATION AND AFFIRMATIVE ACTION IN INDIA

1. Need for Reservation in India

- **Historical Injustice and Social Discrimination:**
  Caste-based and social hierarchies in India led to centuries of **exclusion, untouchability, and limited access to education and jobs** for SCs, STs, and OBCs..
- **Ensuring Inclusive Development:**
  Reservation fosters **representation of all communities** in state institutions and decision-making bodies, preventing **elite capture** and promoting democratic participation.
- **Addressing Economic Backwardness:**
  With the introduction of **EWS reservation (103rd Amendment, 2019)**, the policy now also covers **economically disadvantaged sections** from non-reserved categories, widening the scope of social justice.
- **Constitutional Mandate:**
  Articles **15(4), 16(4), 330–342** of the Indian Constitution empower the state to implement **affirmative action** for socially and educationally backward classes.

2. Issues with Reservation Policy in India

- **Unequal Distribution of Benefits:**
  A few dominant groups within reserved categories (e.g., OBCs) disproportionately benefit, while many **marginal subgroups remain excluded**.
  Example: **Rohini Commission** found 97% of OBC benefits went to just 25% of OBC communities.
- **Perceived Merit vs. Inclusion Conflict:**
  Critics argue that reservation may **compromise meritocracy** in higher education and jobs, impacting institutional efficiency.
- **Social Resentment and Division:**
  Expanded quotas can trigger **resentment among unreserved groups**, leading to social tensions and challenges to national cohesion.
- **Stigma and Stereotyping:**
  Reserved category candidates often face **bias and prejudice**, which affects self-esteem and workplace dynamics.
- **Brain Drain:**
  Some students and professionals from unreserved categories opt to **study or work abroad**, citing reduced opportunities.
- **Political Exploitation:**
  Reservation is sometimes used as a **vote-bank strategy**, which undermines the long-term goal of equitable development.

3. Issues in the Implementation of Reservation Policies

- **Poor Targeting:**
  Broad reservation categories lack **internal differentiation**, causing benefits to bypass the truly disadvantaged.
- **Vacant Reserved Posts:**
  A large proportion of SC, ST, and OBC vacancies in **central government jobs remain unfilled**, defeating the purpose.
  Example: **DoPT reports** show 40–50% reserved posts remain vacant.
- **Certificate Misuse and Fraud:**
  Widespread **manipulation of caste, EWS, and disability certificates** undermines the integrity of the system.
  Example: **Maharashtra 2023**: Fake OBC/EWS documents detected in medical admissions.

- **Lack of Monitoring and Data:**
  Weak oversight makes it hard to assess how effectively reservation policies **reach the intended beneficiaries**.
- **Delays in Sub-Categorization:**
  Despite recommendations like those of the **Rohini Commission**, OBC sub-classification has seen **no concrete implementation** yet.

4. Way Forward

- **Sub-categorize OBC Quotas:**
  Implement the **Rohini Commission** recommendation to ensure fairer distribution.
- **Tighten Verification:**
  Digitize and cross-check **caste, EWS, and disability certifications** to curb fraud. Expand **Aadhaar-enabled DBT** to better target welfare and cut waste.
- **Fill Backlogs Efficiently:**
  Ensure ministries **identify and fill reserved vacancies** in a time-bound manner.
- **Debate Creamy Layer for SC/ST:**
  Consider **excluding children of Group A officials** from SC/ST quotas after broad consultations.
- **Promote Inclusive Dialogue:**
  Involve **all stakeholders** to fine-tune reservation policy for **better reach and fairness**. Focus on education and employability.
- **Merit + Justice:** Balance **affirmative action with performance-based incentives** for long-term inclusion.

Private Sector Reservation

1. Need

- Shrinking public sector jobs increase reliance on private employment.
- Ensures marginalized communities benefit from growing private sector opportunities.
- Aligns with constitutional values of social justice and equality.

2. Concerns and Challenges

- May impact efficiency, meritocracy, and autonomy of private enterprises.
- No uniform recruitment process in private firms, complicating implementation.
- Risk of tokenism or circumvention without robust monitoring.

1. Recent Developments

3. Haryana's 2020 Law: Mandated 75% reservation for locals in private jobs under ₹30,000/month salary.

- Law stayed by the **Punjab & Haryana High Court** in 2022 after constitutional and practical concerns were raised.
- The central government has not supported mandatory private sector quotas.

4. Way Forward

- Encourage **voluntary diversity and inclusion charters** in private firms
- Provide **incentives** (e.g., tax breaks) for socially inclusive hiring.
- Strengthen **skill training and job readiness** programs for SC/ST/OBC candidates.

Sub-classification of Scheduled Castes

In a 2024, 6:1 majority verdict, the Supreme Court ruled that sub-categorisation within a larger backward class, such as the Scheduled Castes, is constitutionally valid and, in fact, essential for ensuring substantive equality

- **Sub-Classification Allowed**: States can divide SCs/STs within their quota to ensure more targeted support for the most backward, based on data.
- **Not for Political Gains**: The Court cautioned that such classifications must not serve political appeasement, but should address real disadvantage.
- **Judicial Oversight Retained**: Sub-classification decisions remain **subject to judicial review** to prevent misuse.

- **No 100% Reservation for Any Sub-Group**: Complete reservation for any sub-category is not permissible.
- **Creamy Layer Exclusion Extended**: The **'creamy layer' rule**, earlier applied to OBCs, must now be applied to SCs/STs to exclude the relatively advanced.
- **First Generation Limit**: Reservation benefits should ideally apply only to the **first generation beneficiaries** to prevent accumulation of advantage.
- **Constitutional Backing**: The Court upheld this approach as aligned with **Article 14**, ensuring equality through differentiated treatment where needed.

Arguments for

- **Varying Levels of Backwardness**: Different Dalit sub-groups have faced distinct forms and intensities of exclusion and marginalisation.
- **Prioritising the Poorest**: Focusing on the most oppressed first promotes deeper social justice and bridges intra-group inequalities.
- **Improved Policy Delivery**: Dividing benefits proportionally among sub-groups can lead to more balanced and effective implementation.
- **Law-Making Powers Post-Notification**: Once recognition is granted, state legislatures can act under Article 246 to design targeted schemes.
- **Support from Affirmative Provisions**: Constitutional clauses like 15(4) and 16(4) empower the state to take special measures for the educational and job-related upliftment of backward communities.

Arguments against

- **Foundational Aim of Quotas**: Reservations were designed as corrective justice for centuries of caste-based exclusion, not merely as poverty alleviation tools.
- **Ongoing Social Prejudice**: Economic progress doesn't erase social bias.
- **Information Gaps**: Absence of reliable community-wise data hampers fair policy-making; the **SECC 2011** was dismissed as methodologically flawed and kept confidential.
- **Electoral Motivations**: There is a risk that categorisation efforts may be driven by vote-bank politics rather than genuine welfare concerns.
- **Disruption of Cohesion**: Segmenting communities could erode shared identity and weaken their collective representation.

While sub-classification within Scheduled Castes can help address internal disparities and ensure targeted benefits for the most marginalised, it must be approached with caution. Safeguards are essential to prevent political misuse, protect community unity, and uphold the broader constitutional vision of justice, equality, and social cohesion.

Caste Census

A caste census in India involves officially recording the caste identities of citizens to reflect current social and economic realities. It is seen as essential for framing equitable policies and addressing intra-group disparities among marginalised communities.

Arguments For and Against Caste Census in India

Aspect	Arguments For Caste Census	Arguments Against Caste Census
Equity & Justice	Helps identify the most backward among SCs, STs, and OBCs for better-targeted policies.	May lead to internal divisions within broader caste categories, weakening unity and collective bargaining power.
Data-Driven Policy	Enables evidence-based planning for welfare, reservations, and development schemes by updating outdated caste data.	Critics argue it may complicate governance by increasing demand for caste-based entitlements without clear policy frameworks.
Substantive Equality	Aligns with the Supreme Court's emphasis on sub-categorisation to ensure that the most marginalised benefit from affirmative action.	Opponents fear it could lead to further fragmentation and competition among sub-castes, undermining the idea of caste as a unifying category for justice.
Transparency & Accountability	Makes welfare allocation more transparent and helps monitor implementation gaps.	Risk of data manipulation or selective release by political actors for vote-bank politics.

Electoral Representation	Ensures fair political representation by assessing real demographic strength of caste groups, informing seat reservations and delimitation.	May further politicise caste identities during elections, deepening social divisions.
Historical Correction	Rectifies the continued reliance on outdated data from the 1931 Census and the flawed 2011 SECC.	Concerns over accuracy and methodology; SECC 2011 faced reliability issues and was never released.
Political Empowerment	Empowers neglected or undercounted groups who are currently overshadowed by dominant sub-castes within categories like OBC or SC.	Could trigger demands for further reservations or inclusion in categories, putting pressure on constitutional limits (like the 50% cap).
National Integration	Supports inclusive growth and balanced development by recognising diversity within communities.	Risk of reinforcing caste identities rather than moving towards a casteless society as envisioned in the Constitution.

A caste census, while essential for designing **inclusive and evidence-based policies**, must be carried out with caution and integrity. It can help correct historical imbalances and ensure fair distribution of benefits, but it also risks deepening social divisions and politicisation if misused. Striking a balance between **data-driven justice and social cohesio**n is key to realising the constitutional vision of equality.

Right To Freedom (Article 19-22)

1. Right to Freedom of Speech and Expression (Article 19(1)(a))

Scope

- Includes freedom of speech, press, artistic expression, symbolic speech, and the right to silence.
- Interpreted to include **freedom of the press, right to know**, and even **right to internet access**.

Key Judgments

- **Romesh Thappar v. State of Madras (1950)** – Free speech is the foundation of democracy.
- **Shreya Singhal v. Union of India (2015)** – Struck down Section 66A of IT Act as vague and unconstitutional.
- **Anuradha Bhasin v. Union of India (2020)** – Internet access is part of free speech.

Issues in the Exercise of the Right to Freedom of Speech and Expression

1. Overuse of "Reasonable Restrictions"

- Though Article 19(2) allows reasonable restrictions, the **frequent invocation** of terms like “public order” or “morality” has made them vague tools for repression.
- **Example**: Bans on books, films, or comedians’ shows citing public sentiment (e.g., shows by Munawar Faruqui being cancelled in 2021) reflect how **public morality and law enforcement** are increasingly used to curb speech

2. Threats to Press Freedom

- The media plays a vital role in holding power accountable. Targeting journalists with laws like **UAPA, PMLA, or income tax provisions** can create a chilling effect.
- **Example**: **Rana Ayyub**, a critical investigative journalist, was subject to repeated ED notices and travel bans, raising concerns about selective enforcement of law.

3. Government Control over Digital Expression

- The increasing use of executive power to block or censor digital content threatens transparency and due process.
- **Example**: The **IT Rules, 2021** gave the government broad powers to remove online content, including that of independent news outlets.

4. Internet Shutdowns and Freedom of Information

- Denial of internet access directly affects the right to free speech, information, education, and economic activity. Blanket shutdowns undermine fundamental rights.
- In Anuradha Bhasin v. Union of India (2020), the Supreme Court held that internet access is protected under Article 19 and restrictions must be necessary and proportionate.

5. Right to Freedom of Press in India

Scope of the Right

- Right to publish news, opinion, and criticism freely.
- Right to access information and report on public affairs.
- Right to investigate and expose corruption or wrongdoing.
- Right to protect sources of information (though not yet legally codified in India).
- Includes **freedom from pre-censorship**, unreasonable taxes, and indirect state pressure.

Challenges to Press Freedom in India

1. Censorship and Content Regulation

- Arbitrary use of **Section 69A of the IT Act** to block digital content (e.g., BBC documentary ban, 2023).
- Ambiguity in **IT Rules, 2021** grants government wide powers to regulate online media.

2. Declining Press Freedom Ranking

- India ranks **159 out of 180** in the **2024 World Press Freedom Index** (Reporters Without Borders).
- Points to systemic threats, including **concentration of media ownership**, self-censorship, and surveillance.

Need for Reform and Protection

- Codify **legal protection for journalistic sources**.
- Ensure **judicial oversight** of content takedown orders.
- Establish a **Media Freedom Commission** to investigate attacks and protect press independence.

3. Right to Privacy in India

Constitutional Status

- The **Right to Privacy** is not explicitly mentioned in the Constitution.
- It was declared a **fundamental right** by the **Supreme Court in Justice K.S. Puttaswamy v. Union of India (2017)**.
- It is derived from **Article 21**: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Reasonable Restrictions on Privacy

As per Puttaswamy Judgement (2017), any restriction on privacy must pass a **threefold test**:

1. **Legality** – must be backed by a valid law
2. **Necessity** – justified for a legitimate state aim
3. **Proportionality** – least restrictive means must be used

Privacy in the Digital Age

- **Concerns**:
  - Data harvesting by tech companies
  - State surveillance programs
  - Weak data protection laws
- **Aadhaar Judgment (Puttaswamy-II, 2018)**:
  - Upheld Aadhaar's constitutionality for welfare schemes

- Struck down its mandatory use by private companies as **violative of privacy**

- **Digital Personal Data Protection Act, 2023**:
  - Seeks to regulate processing of personal data.
  - Criticized for **broad exemptions to government**, **lack of independent regulator**, and **weak grievance redressal**.

Way Forward

- **Enact Robust Data Protection Law:** Ensure strong safeguards under the **Digital Personal Data Protection Act, 2023**, with clear limits on state surveillance.
- **Strengthen Oversight Mechanisms:** Establish an **independent data protection authority** to monitor and regulate privacy violations.
- **Judicial Vigilance:** Continue proactive judicial interpretation to balance privacy with public interest and national security.
- **Promote Digital Literacy:** Empower citizens with awareness about their privacy rights and responsible digital behavior.

4. Right to Internet Access in India

Recognition by the Judiciary: Anuradha Bhasin v. Union of India (2020)

- Landmark Supreme Court judgment in the context of the **Kashmir internet shutdown (2019)**.
- Held that:
  - **Access to the internet is integral to the right to freedom of speech and expression.**
  - Restrictions must be **reasonable, proportionate, and subject to judicial review**.
  - Indefinite suspension of internet services is **unconstitutional**.
- In **2016**, the **UN Human Rights Council** declared that **internet access is a basic human right**, affirming that digital rights are central to freedom of expression.

Challenges in India

- **Frequent Internet Shutdowns**:
  - India has been the **global leader in internet shutdowns** for several years (especially in Jammu & Kashmir, Rajasthan, Manipur).
  - Blanket shutdowns often imposed without adequate safeguards or sunset clauses.
- **Digital Divide**:
  - Rural-urban and gender gaps in access.
  - Marginalised communities face systemic barriers to meaningful use of the internet.
- **Weak Data Protections**:
  - Absence of strong legal safeguards raises concerns over **digital surveillance** and misuse of data.

Way Forward

- **Bridge the Digital Divide**
  Expand affordable high-speed internet infrastructure in **rural, tribal, and remote regions** under BharatNet and PM-WANI.
- **Promote Digital Literacy**
  Integrate digital skills in school curricula and adult literacy programs to ensure meaningful and secure usage.
- **Ensure Data Privacy & Security**
  Implement robust data protection laws and promote safe internet practices to build user trust.
- **Limit Arbitrary Internet Shutdowns**
  Amend existing laws like the Telegraph Act and adhere to **proportionality and necessity** principles laid out in Anuradha Bhasin v. Union of India (2020).
- **Encourage Public-Private Collaboration**
  Incentivize tech companies and ISPs to expand digital infrastructure and offer affordable access models.

- **Inclusive Governance & Services**
  Ensure all government welfare schemes, portals, and services are **mobile-friendly, multilingual, and accessible** to persons with disabilities.

5. Hate Speech

Legal Provisions Related to Hate Speech in India

- **No Statutory Definition:** Hate speech is not explicitly defined under any Indian law.
- **Legal Limitations:** Various laws prohibit select types of speech that qualify as exceptions to Article 19(1)(a).
- **IPC Section 153A:** Criminalizes promotion of enmity between groups based on religion, race, place of birth, etc.
- **IPC Section 505:** Penalizes statements intended to incite public mischief or disturb peace.
- **RPA 1951, Section 8:** Disqualified individuals convicted for misusing free speech during elections.
- **Protection of Civil Rights Act, 1955 – Section 7:** Punishes speech inciting untouchability through words, signs, or symbols.

Recent Hate Speech cases in India

Yati Narsinghanand and Haridwar Dharm Sansad (2021):

Religious leaders made open **calls for violence against minorities**; multiple FIRs filed, raising questions on **police inaction and state accountability**.

Sudarshan TV Case (2020):

The Supreme Court questioned a show titled *'UPSC Jihad'* for communal profiling; called for **guidelines to regulate electronic media content**.

Important Judgments on Hate Speech

- **Pravasi Bhalai Sangathan v. Union of India (2014):** SC held that proper **implementation of existing laws** is key to addressing hate speech.
- **Jafar Imam Naqvi v. Election Commission of India:** Petition sought SC direction to ECI to act against **communal election speeches** under its powers.

Challenges in Tackling Hate Speech in India

- **Lack of Legal Definition:** Hate speech is **not explicitly defined** in Indian law, creating ambiguity in enforcement and adjudication.
- **Overlapping Provisions:** Existing sections like **IPC 153A and 505** are broad and often misused, leading to **selective application**.
- **Weak Implementation:** Despite legal provisions, there is **poor enforcement** due to police inaction, political pressure, or lack of clarity.
- **Free Speech vs Regulation Dilemma:** Balancing **Article 19(1)(a)** with **Article 19(2)** restrictions leads to **judicial inconsistency** and normative uncertainty.
- **Election-time Misuse:** Hate speech during elections is often **politically incentivized**, with delayed or minimal action from enforcement agencies.
- **Digital Amplification: Social media platforms** amplify hate content rapidly, but laws and moderation practices lag behind tech realities.
- **Low Conviction Rates:** Hate speech cases rarely result in convictions, eroding **deterrence and public trust** in legal remedies.

Way Forward

- **Codify Hate Speech Offences Separately:** Enact dedicated IPC provisions to criminalize hate speech distinctly, as recommended by the **Law Commission**.
- **Incorporate Expert Panel Inputs:** Implement the proposals of the **Bezbaruah Committee** and **T.K. Viswanathan Committee**, which advocated targeted laws against racial and communal hate speech.

- **Link with Criminal Law Reform:** Integrate hate speech regulation into the ongoing review by the **Committee for Reforms in Criminal Laws**, ensuring a consistent and rights-respecting framework.
- **Strengthen Election Oversight Mechanisms:** Empower the **Election Commission** with statutory tools to curb hate-based campaigning during polls.
- **Balance Free Speech with Accountability:** Ensure that reforms comply with **Article 19(2)** limits while safeguarding democratic dissent and pluralism.

6. Due process and procedure established by law

- **Procedure Established by Law-** A law is valid as long as it is **duly enacted** by the legislature and **proper procedure** is followed, **regardless of its fairness or justice**. The focus is on **legality**, not **morality**.
- **Due Process of Law-** Goes **beyond legality** and examines whether the law itself is **fair, just, and reasonable**. Protects against **arbitrary laws**, not just arbitrary actions. Includes **substantive fairness** along with procedural correctness.

Key Case Laws
1. A.K. Gopalan v. State of Madras (1950)- Narrow interpretation – upheld that any procedure laid down by law was valid.
2. Maneka Gandhi v. Union of India (1978)- Expanded Article 21 – procedure must be just, fair, and reasonable. Introduced the essence of due process.

Practical Application

1. Preventive Detention Laws

- **Law**: National Security Act (NSA), Unlawful Activities (Prevention) Act (UAPA).
- **Application**:
  - These laws allow detention without trial for extended periods.
  - Under **procedure established by law**, such detention is valid if law is duly enacted.
  - However, courts have used the **"due process" doctrine** to assess whether the detention is **arbitrary or excessive**, especially in the Tripura journalist Kanchan Bala case and NSA detentions in Uttar Pradesh.

2. Right to Privacy

- SC in K.S. Puttaswamy v. Union of India (2017) held that **right to privacy is part of Article 21**, and any intrusion must pass the **due process test** - legality, necessity, and proportionality.

3. Internet Shutdowns

- SC in Anuradha Bhasin v. Union of India (2020) held that **indefinite suspension of internet** violates Article 19 and must be reviewed under **"just, fair, and reasonable"** standards - a hallmark of **due process**.

4. Solitary Confinement and Prisoner Rights

- SC in Sunil Batra v. Delhi Administration (1978) ruled such treatment **violated Article 21** as it lacked **procedural fairness** and dignity. Reinforced **substantive due process**.

5. Death Penalty and Fair Trial

- Despite the gravity, SC in Mohd. Ajmal Kasab v. State of Maharashtra (2012) emphasized **due process of law**, ensuring **legal aid**, translation services, and a fair appeal process - showing that **even the most despised individual deserves procedural fairness**.

6. Demolition and Evictions

- In several **encroachment drives** (e.g., in Delhi, Madhya Pradesh), courts have intervened when demolitions were carried out **without notice**, **violating Article 21**.
- SC has insisted on **due process** - proper notice, hearing, and alternatives - before evictions.

Encounter Killings and Extrajudicial Executions

- **Context**: Increasing incidents of police encounters (e.g., **Hyderabad rape accused encounter 2019**, **Vikas Dubey case (UP, 2020)**).
- **Legal Concern**: Such killings bypass the **judicial process**, raising serious questions under **Article 21**.
- **Judicial Stand**:
  - n People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014), the Supreme Court laid down **16-point guidelines** to investigate encounter deaths.
  - It emphasized that **"right to life cannot be denied even to the worst criminal without fair trial"** – reflecting **due process of law**.
- **Application**:
  - These guidelines insist on **independent investigation**, **FIR registration**, **judicial oversight**, and **magisterial inquiry**, reinforcing that the **state cannot be the judge, jury, and executioner**.
- **Relevance**:
  - Encounter killings may follow "procedure" in terms of administrative protocol, but they **violate the principle of due process**, as the accused is denied legal remedy and trial.

7. Preventive Detention

- **Purpose:** Detain a person **in advance** to prevent them from committing a future offence harmful to public order or national security.
- **No Trial Needed:** Unlike punitive detention, it **does not require a formal charge or trial**..
- **Scope:** Used in matters of **national security, public order, foreign affairs, or prevention of smuggling**.

Supreme Court's Landmark Rulings on Preventive Detention

- **Harikisan v. State of Maharashtra (1962)**: The ruling emphasized that detention orders must be **clearly communicated in a language the detainee understands**, ensuring meaningful representation.
- **Anukul Chandra Pradhan Case (1997)**: It clarified that the objective of preventive detention is to **avert future threats**, not to penalize individuals for past actions.
- **Ameena Begum Case (2023)**: The Court reiterated that preventive detention is meant for exceptional circumstances and should never become a routine administrative tool.

Preventive Detention in India: Recent Trends & Issues

1. Widespread Detentions under Anti-Terror Laws.

- According to **NCRB 2022**, the **conviction rate under UAPA was around 29%**, and reports indicate **low bail success**, especially because of the stringent bail conditions under **Section 43D(5)** of UAPA.

2. Regional Special Laws

- In **J&K**, the **PSA** remains active post-2019 reorganisation, with over **16,000 detentions since 1988**
- Courts have flagged it as a **"lawless law"**, yet it's still used to detain political activists without trial.

3. Procedural Concerns and Judicial Pushback

- The SC has described preventive detention as **"draconian"** and quashed cryptic orders lacking due procedural rationale.
- Emphasises the need for **clarity, judicial oversight**, and **proof of genuine threat or intent**.

4. Executive Overreach vs. Civil Liberties

- Detaining activists, journalists, and undertrials under **UAPA, NSA, PSA** often **bypasses due process**, reflecting growing executive overreach.

Way Forward

- **NCRWC Recommendation:** The commission proposed capping preventive detention at 6 months and ensuring advisory boards are composed of serving High Court judges for greater accountability.
- **Supreme Court (2022) View:** The Court stressed that preventive detention is an **exceptional tool** and must not be misused to address routine law and order issues.

Freedom of Religion in India (Articles 25–28)

Scope & Significance

- Protects **individual conscience** and religious choice.
- Balances **group rights** (denominational autonomy) with **state neutrality**.
- Ensures religious liberty while allowing **reasonable restrictions** under social interest and law.

Key Issues and Contemporary Debates

- **Uniform Civil Code**: Article 44 envisages UCC to replace personal laws; opponents cite threats to religious freedom.
- **State-aided Shramik/institution control**: Disputes over entry to places of worship (entry bans on women, entry for LGBTQ+) pit religious freedom against equality and anti-discrimination.
- **Conflicts between religious laws vs. constitutional morality**- especially regards, and minority rights.

IN NEWS:PLACES OF WORSHIP ACT, 1991

1. What is the Places of Worship Act, 1991?

- Enacted to **prohibit conversion** of any place of worship and ensure **status quo as of 15 August 1947**.
- Exception: **Babri Masjid–Ram Janmabhoomi** case was explicitly exempted from this Act.

2022 Supreme Court Observations

- The Supreme Court stated that conducting a survey of a place of worship does not by itself violate the Places of Worship Act, 1991. (By three-judge bench led by then CJI DY Chandrachud).
- It acknowledged the existence of hybrid religious sites, where multiple religious symbols historically coexisted.
- This interpretation has created space for **district courts to admit suits** seeking to determine historical religious identity, even though **conversion of religious status remains barred** by the 1991 law.

December 2024 Supreme Court Ruling

Through its order dated **December 12, 2024**, the Supreme Court put a **temporary stay on proceedings in 18 suits** filed by Hindu groups demanding surveys of **10 mosques**, including prominent sites like **Gyanvapi**, **Shahi Idgah Masjid**, and **Shahi Jama Masjid in Sambhal**, where **four deaths had occurred due to related violence**.

- The Court allowed new suits but ordered that **no proceedings should continue or begin** until further directions are issued.
- The **Union Government was directed to clarify** its stand on the constitutional validity of the Places of Worship Act within four weeks.
- It noted that the **validity and scope of the Act need detailed judicial review** and cannot be decided hastily.
- Lower courts were told to **adhere to the principles of the Ayodhya judgment**, and not act independently on such sensitive matters.
- The Court observed that **constitutional principles may still prevent suits** altering religious character, even without the 1991 Act.
- It also took note of challenges arguing that the Act **may limit judicial review**, raising deeper constitutional questions.

Way Forward

- **Clarify the Law's Scope**: The Supreme Court should issue a clear interpretation of the Places of Worship Act to resolve ambiguity and ensure consistent application across courts.
- **Check Lower Court Overreach**: Rising interference by local courts in delicate religious disputes necessitates stricter boundaries on their jurisdiction to avoid legal overreach.
- **Strengthen Supreme Court Oversight**: Matters with broad societal or political consequences should be heard directly by the apex court to ensure balanced and informed adjudication.
- **Keep Religion Cases Apolitical**: Disputes over places of worship must be handled legally, not politically, to preserve judicial impartiality and protect sacred spaces from being exploited for electoral gains.
- **Promote Social Harmony**: Political actors and civil society must focus on fostering unity, emphasizing India's shared civilizational heritage that transcends religious divisions.

Cultural and Educational Rights (Article 29-30)

Need for Cultural and Educational Rights

- **Preserve Diversity:** These rights help protect the distinct language, traditions, and identity of minority communities, ensuring India's pluralistic society remains vibrant.
- **Promote Equal Opportunity:** By guaranteeing access to education, especially for children from marginalized groups, these rights help bridge gaps in opportunity and empower future generations.
- **Enable Social Inclusion:** Without cultural and educational rights, minority groups may face systemic disadvantages in employment, governance, and social participation.
- **Uphold Constitutional Morality:** These rights affirm the constitutional promise of equality and dignity, allowing every individual to thrive regardless of cultural background.
- **Empower Minorities:** Education and cultural autonomy equip minorities with the tools to assert their rights and contribute meaningfully to national development.
- **Autonomy with Accountability:** Supreme Court judgments affirm that minority-run institutions enjoy autonomy but must still maintain national educational standards.
- **Protection of Cultural Identity:** These rights empower religious and linguistic communities to preserve their traditions, languages, and collective heritage.
- **Fair Access to Education:** Minorities can set up their own institutions while ensuring that the state provides equal, non-discriminatory educational opportunities to all.

Key cases

- **Ahmedabad St. Xavier's College v. State of Gujarat (1974):** The Court clarified that **Article 29** protections apply to all communities, not just minorities, despite the provision's title.
- **Joynal Abunil v. State (1990):** The Court affirmed that **Article 30** grants minorities both the right to establish and to manage educational institutions of their choice.

In News- Uttar Pradesh Madrasa Education Board Act, 2004

The **Supreme Court upheld the constitutional validity** of the Uttar Pradesh Madrasa Education Board Act, 2004, partially overturning the **Allahabad High Court's March 2024 decision**, which had declared it unconstitutional.

Key Judicial Findings

- **Legislative Competence**: The Act falls under **Entry 25, List III** (Concurrent List), and thus lies within the state's authority to regulate education.
- **UGC Conflict (Partial Invalidation)**: Provisions related to **higher education (Kamil and Fazil)** were struck down for conflicting with the **UGC Act, 1956**, which falls under **Entry 66, List I**.

- **Secularism and Article 28**: The Court clarified that **religious education** (which promotes values or harmony) is distinct from **religious instruction** (like rituals), and the former does **not violate Article 28**
- **State Oversight**: The Court allowed the **State to frame rules** to ensure madrasas provide **secular education alongside religious teachings**.

Significance

- **Minority Rights Protected**: Reaffirms **Article 30** rights of religious minorities to run their own educational institutions.
- **Quality and Inclusivity**: Urges the state to ensure **madrasa students receive quality education** comparable to mainstream schools.

Issues and Challenges

- **Funding Gaps:** NITI Aayog (2018) noted minority schools get lower per-student funding than regular government schools.
- **Curriculum Bias:** Minority groups often face bias in curriculum content, lack of cultural representation, or limited access to quality education
- **Poor Oversight in Minority Schools:** Policies often focus on dominant minorities, while smaller linguistic or tribal groups remain underrepresented.
- **Language Barriers:** Lack of instruction in mother tongues impedes early education and marginalizes linguistic communities.
- **Token Implementation:** While rights exist on paper, many minority institutions struggle due to **lack of funding**, administrative hurdles, or political interference.

Way Forward

- **Clarify Minority Status Framework:** Implement clear, uniform guidelines- based on T.M.A. Pai (2002)- for identifying religious and linguistic minorities at the state level to avoid arbitrary recognition.
- **Enhance Financial and Academic Support:** Allocate targeted funding and academic resources to minority institutions to raise education quality while preserving cultural autonomy.
- **Promote Mother-Tongue and Heritage Education:** Encourage vernacular education through NEP 2020 provisions and support preservation of endangered tribal and regional languages via digitized curriculum and local teacher recruitment.
- **Strengthen Oversight without Eroding Autonomy:** Establish independent academic audit mechanisms for minority institutions that respect their cultural objectives while ensuring adherence to national standards.
- **Legal Safeguards Against Misuse:** Introduce mechanisms to prevent misuse of minority institution status, while ensuring that deserving communities are not excluded due to bureaucratic hurdles.

Right to Constitutional Remedies (Article 32)

Article 32: Right to approach Supreme Court for enforcement of rights

- Called the **"heart and soul"** of the Constitution (Dr. Ambedkar).

Nature and Importance

- Article 32 acts as a **remedy against State action or inaction** that violates Fundamental Rights.
- It is itself a Fundamental Right and is **justiciable** - meaning it can be directly enforced through the courts.
- The power under Article 32 is exclusive to the **Supreme Court**, but similar writ powers are available to **High Courts under Article 226** (which includes broader remedies beyond FRs).

Types of Writs under Article 32

- **Habeas Corpus** ("to have the body"):
  - Purpose: To protect individual liberty against illegal detention.
  - Example: Used in cases of unlawful police detention or enforced disappearances.
- **Mandamus** ("we command"):
  - Purpose: To compel public officials or bodies to perform a duty imposed by law.
  - Example: Directing a municipal body to discharge its statutory obligations like garbage clearance.
- **Prohibition**:
  - Purpose: To stop a **lower court or tribunal** from acting beyond its jurisdiction.
  - Issued before the action is completed.
  - Example: Preventing a tribunal from hearing a matter it has no authority over.
- **Certiorari** ("to be informed"):
  - Purpose: To **quash** orders of lower courts or tribunals for legal errors.
  - Issued after the decision has been made.
  - Example: Used when a court issues an order violating natural justice (e.g., no hearing given).
- **Quo Warranto** ("by what authority"):
  - Purpose: To question the legality of a person's claim to a public office.
  - Example: Challenging the appointment of an individual lacking statutory qualifications.

Issues with respect to the exercise of constitutional remedies

1. **Judicial Backlog and Delay-** High pendency of cases in courts delays justice under constitutional remedies.
   - Example: Over 70,000 cases pending in the Supreme Court (as of 2024).
2. **Limited Access to Justice-** High legal costs and complex procedures deter marginalized groups from approaching higher judiciary.
   - Poor awareness among rural or illiterate populations about their rights under Article 32 and 226.
3. **Misuse and Frivolous Petitions-** Frequent filing of Public Interest Litigations (PILs) for publicity or private interest burdens the judiciary.
   - Example: SC has cautioned against "publicity interest litigations" (Subramanian Swamy v. Union of India, 2014).
4. **Judicial Overreach Concerns-** Critics argue courts sometimes encroach into legislative or executive domains while enforcing remedies.
   - Example: Supreme Court's ban on firecrackers, liquor sale along highways seen as policy decisions.
5. **Varying Scope of Article 32 vs. Article 226-** High Courts under Article 226 can address not only FRs but also legal rights- yet there's inconsistency in interpretation and reach.
6. **Delay in Enforcement of Judgments-** Even after a favorable court verdict, actual implementation of constitutional remedies can be delayed or diluted.
7. **Executive Non-Compliance-** Instances of governments ignoring or delaying compliance with court directions hamper the effectiveness of remedies.
   - Example: Delay in implementing SC orders on police reforms (Prakash Singh case, 2006).
8. **Underutilisation of Legal Aid Services-** Lack of awareness and reach of National Legal Services Authority (NALSA) schemes inhibits effective exercise of rights

Exceptions to Fundamental Rights

- **Reasonable Restrictions:**
  Rights like freedom of speech (Article 19(2)) can be curtailed for reasons of sovereignty, public order, morality, and national security.
- **Preventive Detention:**
  Permitted under Article 22; allows detention without trial under laws like National Security Act (NSA) and Unlawful Activities (Prevention) Act (UAPA).
- **Armed Forces Special Powers Act (AFSPA):**
  Allows armed forces sweeping powers in disturbed areas, leading to human rights concerns.
- **Suspension during Emergencies:**
  Under Article 359, rights except those under Articles 20 and 21 can be suspended.

Judiciary as Protector of Fundamental Rights

- **Article 32 – Right to Constitutional Remedies:**
  Called the "heart and soul" of the Constitution by Dr B.R. Ambedkar.
- **Instruments of Protection:**
  Writs such as Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo Warranto.
- **Public Interest Litigation (PIL):**
  Expanded access to justice, especially for disadvantaged groups.
- **Judicial Activism:**
  Courts have proactively interpreted rights in a progressive manner- e.g., environment protection as part of the Right to Life.
  Example: Hussainara Khatoon v. State of Bihar (1979): Recognised the right to speedy trial as part of Article 21.

Major Debates and Important SC judgements

1. Gender Equality

- **Sabarimala Case** (Indian Young Lawyers Association v. State of Kerala, 2018)
  - The Supreme Court held that banning women of menstruating age from entering the Sabarimala temple violated Article 14 (equality) and Article 25 (freedom of religion)..
- **Triple Talaq Case** (Shayara Bano v. Union of India, 2017)
  - Declared instant triple talaq unconstitutional and violative of Articles 14 and 21.
  - Led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019.
- **Uniform Civil Code (UCC)**
  - In Jose Paulo Coutinho v. Union of India (2019), SC lamented delays in implementing UCC.
  - Uttarakhand passed the first state-level UCC Bill in 2024.

2. Reservation and Affirmative Action

- **M. Nagaraj v. Union of India (2006)**
  - Upheld reservation in promotions for SCs/STs with conditions- quantifiable data, backwardness, and efficiency.
- **Jarnail Singh v. Lachhmi Narain Gupta (2018)**
  - Removed the need to prove backwardness for SCs/STs in promotions.
- **103rd Constitutional Amendment (2019)**
  - Introduced 10% reservation for EWS in education and public jobs.
  - Upheld in Janhit Abhiyan v. Union of India (2022), allowing breach of the 50% reservation cap set in Indra Sawhney (1992).

3. Data Privacy and Surveillance

- **Justice K.S. Puttaswamy v. Union of India (2017)**
  - Recognized Right to Privacy as a fundamental right under Article 21.
  - Placed limits on state surveillance and arbitrary data collection.

- **Aadhaar Verdict (2018)** (Puttaswamy-II)
    - Upheld Aadhaar for welfare but restricted its use by private entities.
    - Affirmed the need for proportional and minimal data use.

CONCLUSION

Fundamental Rights form the core of India's constitutional and democratic framework, ensuring individual liberties while promoting collective welfare.

"Fundamental Rights are the soul of the Constitution and the very foundation of our democracy."
- Justice P.N. Bhagwati, former Chief Justice of India

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

PYQs

Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. (CSE 2015, 12.5M)

Introduction

Directive Principles of State Policy (DPSP) form an integral part of the Indian Constitution, aiming to establish a welfare state by setting social, economic, and political goals for the government.
"While Fundamental Rights establish political democracy, Directive Principles aim at economic and social democracy." – Dr B.R. Ambedkar

Idea and Philosophy Behind DPSP

- **Inspirations:**
  DPSPs are inspired by the Irish Constitution and reflect Gandhian principles, socialist thought, and liberal humanism.
- **Purpose:**
  To provide a blueprint for socio-economic transformation and bridge inequalities in society.
- **Nature:**
  Non-justiciable in nature but fundamental to governance, requiring the State to apply them in making laws.
- **Philosophy:**
  - Establishment of social and economic democracy.
  - Promotion of justice- social, economic, and political.
  - Achievement of a welfare state ensuring dignity, equality, and fraternity.

1. Socialist Principles

These directives aim to promote social and economic equality by reducing disparities and ensuring a just order.

- **Article 38:**
  The State shall strive to promote the welfare of the people by securing a social order based on justice - social, economic, and political.
  Example: Various poverty alleviation programmes such as the **Pradhan Mantri Awas Yojana (PMAY)** and the **National Social Assistance Programme (NSAP)** work towards this goal.
- **Article 39:**
  Mandates securing adequate means of livelihood, equitable distribution of material resources, and prevention of concentration of wealth. It also ensures equal pay for equal work and protects children from exploitation.
  Example: The **Equal Remuneration Act, 1976** implements equal pay; schemes like the **Skill India Mission** promote livelihood generation; and the **Child Labour (Prohibition and Regulation) Act, 1986** prohibits child exploitation.
- **Article 41:**
  The State shall make effective provision for securing the right to work, education, and public assistance in cases of unemployment and disability.
  Example: The **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005** provides the statutory guarantee for wage employment.

- **Article 42:**
  Provides for just and humane conditions of work and maternity relief.
  Example: The **Maternity Benefit (Amendment) Act, 2017** extended paid maternity leave to 26 weeks.
- **Article 43:**
  Directs the State to secure living wages and promote cottage industries.
  Example: The **Khadi and Village Industries Commission (KVIC)** supports rural employment and self-reliance through promotion of local industries.
- **Article 43A (Inserted by 42nd Amendment):**
  Secures the participation of workers in the management of industries.
  Example: Workers' participation in management is encouraged through legal frameworks like the **Industrial Disputes Act, 1947**.

2. Gandhian Principles

These principles aim to reconstruct India based on the ideals espoused by Mahatma Gandhi, focusing on rural upliftment and social harmony.

- **Article 40:**
  Provides for the organisation of village panchayats as units of self-government.
  Example: The **73rd Constitutional Amendment Act, 1992** institutionalised Panchayati Raj Institutions (PRIs) across the country.
- **Article 43:**
  Promotes cottage industries in rural areas.
  Example: Government initiatives like the **Prime Minister's Employment Generation Programme (PMEGP)** encourage micro-industries in villages.
- **Article 46:**
  Protects the educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections.
  Example: Policies like **reservations in education and employment**, and **scholarships for SC/ST students** advance this directive.
- **Article 47:**
  Duty of the State to raise the level of nutrition and standard of living and to improve public health.
  Example: The **Poshan Abhiyaan (National Nutrition Mission)** and the **National Health Mission** work towards improving health outcomes.
- **Article 48:**
  Calls for the prohibition of cow slaughter and scientific improvement of agriculture and animal husbandry.
  Example: Many states have enacted legislation prohibiting cow slaughter, reflecting compliance with this principle.

3. Liberal-Intellectual Principles

These principles promote values of liberalism, rule of law, internationalism, and human rights.

- **Article 44:**
  Urges the State to strive for a Uniform Civil Code (UCC) across India.
  Example: The **Goa Civil Code** is cited as a functional example of a UCC in India.
- **Article 45 (Modified by 86th Amendment):**
  Mandates provision for early childhood care and education for all children below six years of age.
  Example: The **Integrated Child Development Services (ICDS)** scheme and the **Right to Education Act, 2009** help fulfil this mandate.
- **Article 48A (Inserted by 42nd Amendment):**
  Protects and improves the environment and safeguards forests and wildlife.

Example: Enactments like the **Environment Protection Act, 1986**, and conservation initiatives like **Project Tiger** are directed towards this.

- **Article 49:**
  Protects monuments and places of national importance.
  Example: Implementation of the **Ancient Monuments and Archaeological Sites and Remains Act, 1958** reflects this directive.
- **Article 50:**
  Mandates separation of the judiciary from the executive.
  Example: This separation has been largely achieved in the criminal judiciary at the district level post-reforms in the **Criminal Procedure Code**.
- **Article 51:**
  Encourages promotion of international peace and cooperation.
  Example: India's active participation in **United Nations Peacekeeping Operations** and adherence to principles of peaceful coexistence in foreign policy embody this directive.

Relationship between DPSP and FR:

- **Complementary:**
  FR ensures civil and political liberties; DPSP aims at socio-economic justice.
- **Mutual Reinforcement:**
  Together, they create a comprehensive framework for individual and collective rights.
- **Conflict:**
  Occasionally, State measures to implement DPSPs may conflict with Fundamental Rights (e.g., property rights, freedom of trade).

Evolution of the relationship between FR and DPSP through Judicial Decisions

- Initial years saw Fundamental Rights prevailing over DPSPs.
- Over time, the judiciary evolved to harmonise both, treating them as complementary.
  Example- **Champakam Dorairajan v. State of Madras (1951):** Held that DPSPs cannot override Fundamental Rights.
- **Golaknath v. State of Punjab (1967):** Reiterated the supremacy of Fundamental Rights over DPSPs.
- **Kesavananda Bharati v. State of Kerala (1973):** Established the Basic Structure Doctrine, holding that harmony between FRs and DPSPs is essential.
- **Minerva Mills v. Union of India (1980):** Declared that FRs and DPSPs are complementary and that balance between them is part of the basic structure.
- **Unni Krishnan v. State of Andhra Pradesh (1993):** Interpreted right to education (a DPSP) as part of the right to life under Article 21.
- **Ashoka Kumar Thakur v. Union of India (2008):** Affirmed that FRs and DPSPs must be harmonized to achieve constitutional goals.

Example of Harmonisation:
The Right to Education Act, 2009 operationalises both Article 21A (Fundamental Right) and Article 45 (Directive Principle).

d) Challenges in Implementing DPSPs

- **Non-Justiciability:**
  DPSPs are non-enforceable, relying on political will rather than legal compulsion.
- **Resource Constraints:**
  Implementation of socio-economic rights like health, education, and housing requires significant financial resources.

- **Political Apathy:**
  DPSPs often receive less attention than immediate political issues, leading to neglect.
- **Conflicts with Economic Liberalisation:**
  Policies prioritising market efficiency may sometimes neglect welfare goals.
- **Societal Inequalities:**
  Deep-rooted caste, class, and gender inequalities hinder realisation of DPSPs' objectives.
- **Federal Challenges:**
  Some directives require cooperation between Centre and States, complicating implementation.

Example:
Despite being a Directive Principle, the Uniform Civil Code (Article 44) remains largely unimplemented due to political sensitivity and societal resistance.

Way Forward

Way Forward to Challenges in Implementing DPSPs

- **Make DPSPs Justiciable Gradually**
  Introduce legislation or constitutional amendments (where feasible) to give enforceability to select socio-economic rights like health and education (as done with Right to Education via Article 21A).
- **Harmonize FRs and DPSPs**
  Adopt a **balanced interpretation** (as evolved in Minerva Mills and Kesavananda Bharati cases) where both Fundamental Rights and DPSPs are treated as complementary, not contradictory.
- **Incentivise State Implementation**
  Provide **performance-based grants** and special funds to states effectively implementing welfare policies based on DPSPs (e.g., sanitation, nutrition, equal pay).
- **Strengthen Policy Evaluation**
  Institutionalize **social audits and independent monitoring** for schemes like MGNREGA, Mid-Day Meal, etc., to ensure alignment with DPSP ideals.
- **Promote Constitutional Literacy**
  Create awareness campaigns to popularize the significance of DPSPs so that **public opinion becomes a pressure point** for their implementation.
- **Judicial Proactivity Through PILs**
  Encourage courts to interpret DPSPs through **Public Interest Litigations** (PILs), thereby nudging the executive towards policy formulation.

CONCLUSION
DPSPs are the Constitution’s moral compass, non-justiciable yet indispensable. They transform political democracy into socio-economic justice, guiding the state toward a welfare vision.

FUNDAMENTAL DUTIES

Introduction

Fundamental Duties were incorporated into the Constitution of India to remind citizens that while enjoying rights, they must also perform certain obligations towards the nation. They embody the expectation that citizens will uphold constitutional values and contribute to strengthening Indian democracy.

Idea and Philosophy Behind Fundamental Duties

- **Moral Foundation**: Fundamental Duties draw from ancient Indian traditions (e.g., the concept of Dharma) where duties were prioritized over rights.
- **Gandhian Philosophy**: Mahatma Gandhi emphasized duties such as non-violence, truthfulness, and service to society as intrinsic to individual conduct.
- **Social Contract Theory**: Philosophers like Rousseau and Locke advocated that individuals owe duties to the society for the preservation of rights.
- **Democratic Citizenship**: In a vibrant democracy, duties encourage responsible behavior, tolerance, and respect for pluralism.

Comparison Table: Rights vs Duties

Aspect	Rights	Duties
Purpose	Protect individual freedom	Promote social cohesion and responsibility
Absence Scenario	Rights without duties - selfishness, erosion of public morality	Duties without rights - authoritarianism
Nature	Justiciable and legally enforceable	Non-justiciable; promoted through legislation
Judicial Role	Courts can enforce Fundamental Rights	Courts may interpret Duties to guide governance, but not directly enforce
Balance	Guarantee liberty and dignity of individuals	Encourage citizens to act in the interest of the nation and fellow citizens

Indian Fundamental Duties

Background

- **Historical Context**: The absence of fundamental duties was felt during the **Internal Emergency (1975-77)**, when democratic values were undermined.
- **Swaran Singh Committee (1976)**: Set up by the Indira Gandhi government to recommend constitutional amendments; recommended the inclusion of a list of duties.
- **42nd Constitutional Amendment Act, 1976**: Introduced **10 Fundamental Duties** as Part IV-A (Article 51A).
- **86th Amendment Act, 2002**: Added the **11th duty** - obligation of parents/guardians to provide education to children aged 6-14 years.

Need for Fundamental Duties

1. To balance Rights with Responsibilities

- Rights and Duties are **two sides of the same coin**.
- Duties remind citizens to **exercise rights responsibly**.
- **Example**: **Right to Free Speech (Art. 19)** - Duty **not to promote hate speech** (**Art. 51A(e)**).

- **Judicial reference**: Bijoe Emmanuel v. State of Kerala (1986) - Court upheld **freedom of conscience** but reminded about **respect for national symbols** (Duty under Art. 51A(a)).

2. To foster civic consciousness and national spirit

- Duties promote **patriotism, harmony, and civic sense**.
- **Example**: **Duty to respect the National Flag & Anthem (Art. 51A(a))** - fosters **national unity**.
- **Judicial reference**: Aruna Roy v. Union of India (2002) - Court upheld **teaching of civic values in schools** as promoting Duties.

3. To curb misuse of Fundamental Rights

- **Prevents abuse of rights** and promotes **responsible exercise** of freedoms.
- **Example**: **Religious freedom** balanced by **Duty to promote harmony** (Art. 51A(e)).
- **Judicial reference**: Noise Pollution case (In Re, 2005) - SC linked **freedom of religion** with Duty to **respect rights of others** (public order, harmony).

4. To promote discipline and commitment

- Encourages **discipline, public order, national duty**.
- **Example**: **Safeguard public property** (Art. 51A(i)) - prevents vandalism in protests.
- **Judicial reference** AIIMS Students Union v. AIIMS (2001) - SC emphasised that **citizen Duties help maintain public order**.

5. To promote participatory citizenship

- Citizens are **co-creators of national progress** - not passive beneficiaries.
- **Example**: **Develop scientific temper (Art. 51A(h))** - promotes **rational thinking, education reforms**.
- **Judicial reference**: MC Mehta v. Union of India (1988) - Duty to **protect the environment** (Art. 51A(g)) forms the basis of **Environmental Jurisprudence**.

6. To supplement legal obligations

- **Provides moral basis for legislation** - Parliament can enact laws to promote Duties.
- **Example**: **Environment Protection Act (1986)** - linked to **Duty to protect environment** (Art. 51A(g)).
- **Judicial reference**: MC Mehta v. Kamal Nath (1997) - SC linked Duties with **public trust doctrine**.

Features of Fundamental Duties

1. Moral Obligations, Non-Justiciable in Nature

- Fundamental Duties are **primarily ethical and moral in character**, intended to instill a sense of responsibility among citizens.
- **They are not enforceable by courts** - a citizen cannot be penalized directly for failure to perform them unless Parliament makes specific laws.
- **Example**: Respecting the national anthem (Article 51A(a)) is morally expected but not punishable unless a specific law, like the Prevention of Insults to National Honour Act, 1971, is invoked.

2. Applicable Only to Citizens, Not Foreigners

- Fundamental Duties are binding **only on Indian citizens**, unlike certain Fundamental Rights (e.g., Article 21) that extend to all persons, including foreigners.

3. Serve as a Reminder and Benchmark for Lawmaking

- Fundamental Duties **remind citizens** that while they enjoy Fundamental Rights, these come with corresponding responsibilities.
- They also **act as a guide and benchmark** for the legislature while framing laws - legislation can be justified as necessary to enforce or promote duties.
- **Example**:
    - Right to Education Act, 2009 promotes the duty of parents to educate children (Article 51A(k)).

4. Broad and Inclusive Scope

- The Fundamental Duties encompass a wide variety of **social, cultural, environmental, and scientific** responsibilities:
    - **Nationalism**: Respect for the Constitution, national flag, and anthem (Article 51A(a)).
    - **Environmental Responsibility**: Duty to protect and improve the natural environment (Article 51A(g)).
    - **Scientific Temper**: Duty to develop scientific temper, humanism, and the spirit of inquiry and reform (Article 51A(h)).
    - **Social Harmony**: Duty to promote harmony and renounce practices derogatory to the dignity of women (Article 51A(e) and (j)).

5. Reflect Core Constitutional Values

- The Duties reinforce the ideals and goals embodied in the **Preamble** - particularly justice, liberty, equality, and fraternity.
- They operationalize several parts of the Constitution, especially the **Directive Principles of State Policy** (Part IV) and the **Fundamental Rights** (Part III), creating a more **holistic constitutional philosophy**.

6. Indirectly Enforceable Through Laws

- While Fundamental Duties are non-justiciable on their own, Parliament has the **power to make laws** to enforce them.
- Failure to perform certain duties may invite **indirect legal consequences**.
- **Examples**:
    - Environmental degradation is punishable under environmental laws framed partly to realize the duty under Article 51A(g).

Criticism of Fundamental Duties

- **Non-Justiciability**:
    - Fundamental Duties cannot be enforced by courts.
    - Unlike Directive Principles, no clear mechanism exists even for indirect enforcement unless Parliament makes specific laws.
- **Vague and Broad Wording**:
    - Duty to "develop scientific temper" (Article 51A(h)) is subjective - how to measure compliance?
    - Duty to "strive towards excellence" (Article 51A(j)) is open-ended.
- **Political Motivation**:
    - Inserted during the Emergency when democratic rights were curtailed; critics see it as an attempt to impose discipline rather than foster genuine patriotism.
    - **Example**: Opposition leaders like Atal Bihari Vajpayee argued that the government sought to lecture citizens rather than empower them.
- **Selective Inclusion**:
    - Important civic duties like paying taxes, voting responsibly, performing jury service (common in other democracies) are missing.
- **Duplication**:
    - Some duties overlap with already existing legal obligations (e.g., respect for the Constitution is implicit in taking any public office).

Judiciary's View on Fundamental Duties

- **Enforceability Through Indirect Means**:
  - **MC Mehta v. Union of India (1988)**: The Court linked the duty to protect the environment (Article 51A(g)) with the right to life under Article 21.
  - **AIIMS Students Union v. AIIMS (2001)**: Supreme Court emphasized that Fundamental Duties must be respected by all citizens and can guide judicial interpretation.
  - **Aruna Roy v. Union of India (2002)**: The Supreme Court upheld the right of the State to include moral education based on Fundamental Duties in school syllabi.
- **Use in PILs**:
  - Courts often cite duties when deciding environmental and heritage protection cases.
  - **Example**: In noise pollution cases, the duty to respect others' rights (peaceful enjoyment of environment) was highlighted.

Way Forward

- **Legislative Backing**: Parliament can enact laws that operationalize certain duties, such as civic education, environmental conservation, respect for national symbols.
- **Civic Education**: Include awareness about duties in school curricula, government campaigns, and public service advertisements.
- **Social Movements**: NGOs and civil society organizations can champion civic responsibility drives.
- **Positive Incentives**: Recognition for exemplary civic behavior could create role models for society.
- **Constitutional Reforms**: A review could be considered to add practical duties like tax payment, responsible voting, and adherence to the rule of law.

CONSTITUTIONAL AMENDMENTS

Introduction

The Constitution of India, adopted in 1950, was designed to be a living document. Constitutional amendments enable India to adjust its constitutional structure and content in response to new social, political, and economic demands while maintaining constitutional continuity.

Procedure for Constitutional Amendment

Basic Procedure (Article 368)
The Indian Constitution provides a **detailed and codified procedure** for amendment under Article 368, divided into **three types**:

1. **By Simple Majority of Parliament**:
   - Amendments that do not affect the basic framework (e.g., formation of new states, changes in Second Schedule) are made by a simple majority of members present and voting.
2. **By Special Majority of Parliament**:
   - Most constitutional amendments require a **special majority** -
     (i) a majority (50%+1) of the total membership of each House, and
     (ii) a 2/3rd majority of members present and voting.
3. **By Special Majority + Ratification by Half of State Legislatures**:
   - Amendments affecting federal provisions (like representation of states in Parliament, powers of the President, changes in Union-State relations) require:
     - Special majority in Parliament, **and**
     - Ratification by **at least half of the state legislatures**.

Comparison with Other Countries

Country	Amendment Procedure
USA	Very rigid; requires 2/3rd majority in Congress + ratification by 3/4th of state legislatures
UK	Very flexible; Parliament can amend by a simple majority like an ordinary law
South Africa	Mixed rigidity; simple, special, or provincial majority depending on the matter

Observation: India's procedure is **neither too rigid like the USA** nor **too flexible like the UK**. It strikes a **middle ground** between constitutional stability and adaptability.

Need for Constitutional Amendments

- **Dynamic Society**: To address changing social, economic, and political conditions (e.g., 73rd and 74th Amendments for local self-government).
- **Correcting Initial Gaps**: Early experiences showed certain inadequacies (e.g., abolition of privy purses by 26th Amendment, 1971).
- **Strengthening Democracy**: To safeguard rights (e.g., 61st Amendment lowering voting age to 18 years).
- **Federal Adjustments**: Managing Union-State relations and new demands of federalism (e.g., creation of new states).
- **Global Trends and Obligations**: To meet international commitments (e.g., 86th Amendment making education a fundamental right under Article 21A).

Major Landmark Amendments

Amendment	Key Changes
1st Amendment (1951)	Curbed freedom of speech; introduced reasonable restrictions; protected agrarian reforms
7th Amendment (1956)	Reorganization of states on linguistic basis
24th Amendment (1971)	Affirmed Parliament's power to amend Fundamental Rights
42nd Amendment (1976)	Known as 'Mini-Constitution'; curtailed judiciary powers, strengthened centralization
44th Amendment (1978)	Restored key rights curtailed by the 42nd Amendment; safeguarded Fundamental Rights
73rd and 74th Amendments (1992)	Introduced Panchayati Raj and Urban Local Bodies
86th Amendment (2002)	Made education a fundamental right for children aged 6–14
101st Amendment (2016)	Introduced Goods and Services Tax (GST), a major economic reform
103rd Amendment (2019)	Introduced 10% reservation for EWS (Economically Weaker Sections) in education and employment
104th Amendment (2020)	Abolished reserved seats for Anglo-Indians in Lok Sabha and State Assemblies; extended SC/ST reservation by 10 years
105th Amendment (2021)	Restored states' power to identify and notify socially and educationally backward classes (SEBCs)
106th Amendment (2023)	Reserved one-third of seats for women in the Lok Sabha and State Assemblies (Nari Shakti Vandan Adhiniyam)

Criticism of Constitutional Amendments in India

- **Overuse of Amending Power**:
  - Over 100 amendments in 75 years have raised concerns about **stability** and the original **spirit** of the Constitution.
  - Example: Frequent amendments post-emergency (e.g., 42nd Amendment, 1976) led to charges of political misuse.
- **Partisan Amendments**:
  - Some amendments served ruling party interests rather than national needs.
  - Example: 39th Amendment (1975) placed election of Prime Minister beyond judicial scrutiny during Emergency.
- **Weakening of Federalism**:
  - Centralizing tendencies in amendments (e.g., 42nd Amendment) have often diluted the federal spirit.
- **Judicial Criticism**:
  - Courts have warned against the "casual" approach to constitutional amendments and emphasized the inviolability of basic features.
- **Amendment Procedure**
  - **Lack of Referendum or Popular Involvement:** Entirely **parliamentary**, with **no provision for public participation** or referendum, unlike some democracies (e.g., Switzerland).
  - **Rigid Yet Centralised:** Constitution is said to be a blend of rigidity and flexibility, **most amendments can be passed without the consent of states**, leading to concerns about

unitary bias.

- **No Special Role for Judiciary:** While courts can review the content after passage, they have **no role in the amendment process**, allowing **potential misuse of legislative majority**.
- **Easier for Ruling Majorities to Alter Core Provisions: Sensitive areas like federal structure or electoral processes** may be altered without adequate opposition or debate.

View of Judiciary

Basic Structure Doctrine(Kesavananda Bharati v. State of Kerala (1973).

- **Essence**: Parliament can amend any part of the Constitution, but **cannot alter its "basic structure"** - which includes democracy, secularism, federalism, separation of powers, independence of judiciary, and Fundamental Rights.

Other Key Cases:

- **Indira Nehru Gandhi v. Raj Narain (1975)**: Struck down part of the 39th Amendment.
- **Minerva Mills v. Union of India (1980)**: Reaffirmed that limited amending power is itself a part of the basic structure.
- **I.R. Coelho v. State of Tamil Nadu (2007)**: Laws placed under the Ninth Schedule post-Kesavananda are open to judicial review if they violate the basic structure.

Effects of Constitutional Amendments on Federalism

1. Centralization Trends

Certain amendments have tilted the balance **in favour of the Union**, leading to **increased centralization**:

- **3rd and 7th Amendments (1954, 1956)**
  - Restructured state boundaries without needing consent from the affected states.
  - **Effect**: Although promoting linguistic reorganization, it established the Centre's dominance in altering state territories.
- **42nd Amendment Act 1976** ("Mini-Constitution")
  - Strengthened the Centre vis-à-vis the States:
    - Shifted more subjects from the State List to the Concurrent List.
    - Increased the powers of the Union regarding the deployment of armed forces in states (Article 355 obligations).
    - Made it harder for states to challenge parliamentary legislation.
  - **Effect**: Eroded the autonomous sphere of states; led to accusations of quasi-federalism
- **GST Constitutional Amendment (101st Amendment, 2016)**
  - Unified indirect taxation; curtailed states independent fiscal powers over indirect taxes.
  - Set up the **GST Council**, where the Centre has a weighted vote.
  - **Effect**: States partially ceded financial autonomy, although in exchange for a unified market.

2. Strengthening Federalism

Other amendments have **enhanced decentralization** and **empowered states and local governments**:

- **73rd and 74th Amendments (1992)**
  - Gave constitutional status to Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs).
  - Mandated regular elections, devolution of powers, and creation of State Finance Commissions.
  - **Effect**: Fostered **grassroots federalism**, empowering local self-government units across rural and urban India.

- **Articles 371 to 371J**
  - Provided special provisions for certain states (e.g., Nagaland, Mizoram, Sikkim, Karnataka's Hyderabad-Karnataka region) to address unique regional demands.
  - **Effect**: Recognized and preserved India's asymmetric federalism.

3. Judiciary's Protection of Federalism Against Amendment Excesses

The **Supreme Court** has consistently held **federalism** as part of the **Basic Structure** of the Constitution:

- **Kesavananda Bharati Case (1973)**:
  - Federalism is recognized as a part of the unamendable basic structure.
  - Parliament cannot amend the Constitution to destroy the federal character.
- **S.R. Bommai v. Union of India (1994)**:
  - Imposed strict judicial review on the President's rule under Article 356.
  - Asserted that federalism, though not absolute, is a core feature of the Constitution.
- **Kuldip Nayar v. Union of India (2006)**:
  - While allowing changes in Rajya Sabha election rules, upheld that India's federalism is "not a traditional federal structure" but "a unique federation with strong Union bias."

4. Recent Concerns and Challenges

- **GST Disputes**: COVID-19 highlighted tensions when states demanded greater fiscal autonomy over compensation cess dues.
- **Reorganization without Consent**:
  - **Jammu and Kashmir Reorganization Act, 2019**:
    - The bifurcation of J&K into two Union Territories without full-fledged state legislature consultation raised federalism concerns.
  - It bypassed the elected state assembly (as President's Rule was in force).

Way Forward

- **Self-Restraint by Parliament**: Amendments should be based on broad consensus, not political majoritarianism.
- **Public Consultation**: Wider engagement with stakeholders to ensure participatory constitution-making.
- **Protect Basic Values**: Every amendment must be tested against the touchstone of constitutional morality and basic structure.
- **Strengthening Federalism**: Future amendments must promote cooperative federalism rather than centralization.
- **Periodic Review**: Setting up a constitutional review commission every few decades could help examine the relevance and effectiveness of amendments.

BASIC STRUCTURE DOCTRINE

PYQs

"Parliament's power to amend the Constitution is a limited power and it cannot be enlarged into absolute power." In the light of this statement explain whether Parliament under Article 368 of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power? (CSE 2019, 15M)

Introduction

The **Basic Structure Doctrine** embodies the principle that the Constitution is not merely a legal document but a living commitment to fundamental values like democracy, federalism, secularism, and the rule of law.

Basic Idea of the Basic Structure Doctrine

- Asserting **certain fundamental features of the Constitution are so essential that they cannot be altered or destroyed** even by Parliament through the constitutional amendment process under Article 368.
- Ensures that constitutional amendment powers are not misused to **subvert the core identity** of the Constitution.
- Draws a **line between permissible constitutional evolution and impermissible constitutional destruction**.

Key features commonly regarded as part of the **basic structure** include (along with important judgements):

Principle	Key Judgments
Supremacy of the Constitution	Kesavananda Bharati v. State of Kerala (1973) – Constitution is supreme; Parliament cannot override its basic structure.
Rule of Law	Indira Nehru Gandhi v. Raj Narain (1975) – Struck down 39th Amendment for violating rule of law and free & fair elections.
Separation of Powers	Kesavananda Bharati (1973); Indira Gandhi case – Legislature cannot exercise judicial functions and vice versa.
Judicial Review	Minerva Mills v. Union of India (1980) – Judicial review is part of the basic structure; Parliament cannot take it away.
Federal Character	S.R. Bommai v. Union of India (1994) – Federalism is a basic feature; misuse of President's Rule is justiciable.
Secularism	S.R. Bommai v. Union of India (1994) – Secularism is a basic structure element; states cannot promote religion.
Democracy	Indira Nehru Gandhi v. Raj Narain (1975) – Free and fair elections are part of democratic structure.
Independence of Judiciary	Supreme Court Advocates-on-Record Assn. v. Union of India (1993) – Judicial appointments must be free from executive control.

Fundamental Rights	Kesavananda Bharati (1973); Minerva Mills (1980) – Fundamental rights cannot be abrogated; part of basic structure.

Philosophical Tenets Behind the Basic Structure Doctrine

The Basic Structure Doctrine is grounded in several theoretical and philosophical ideas:

1. Limited Government:

- A central tenet of constitutionalism is that government power must be limited by fundamental rules.
- The amending power is itself derived from the Constitution, and cannot logically be used to destroy its foundational limitations.

2. Doctrine of Constitutional Identity:

- A Constitution has a continuing identity - it cannot be so amended as to become unrecognizable from its original form.
- The Basic Structure Doctrine preserves this continuity while allowing necessary adaptations.

3. Higher Law Theory:

- Certain principles like human dignity, democracy, justice, and freedom are considered part of a higher moral law.
- The Constitution must honor these transcendent principles beyond ordinary political majorities.

4. Supremacy of the Constitution:

- Parliament is a creature of the Constitution, not its master.
- The ultimate sovereignty rests with the Constitution itself, and Parliament's actions, including amendments, must conform to it.

Evolution of the Basic Structure Doctrine

1. Shankari Prasad v. Union of India (1951)

- The Supreme Court upheld Parliament's unrestricted power to amend any part of the Constitution, including Fundamental Rights.
- Held that constitutional amendments are not "law" under Article 13.

2. Sajjan Singh v. State of Rajasthan (1965)

- Upheld Parliament's power to amend any part of the Constitution (including Fundamental Rights) under Article 368, validating the 17th Amendment (1964) that placed 44 laws in the 9th Schedule beyond judicial review.

3. Golak Nath v. State of Punjab (1967)

- A dramatic shift: the Court ruled that **Fundamental Rights are beyond the amending power** of Parliament.
- Amendment treated as "law" under Article 13(2).

4. Kesavananda Bharati v. State of Kerala (1973)

- Landmark judgment.
- Held that:
  - Parliament has wide powers to amend the Constitution,
  - **But cannot alter or destroy the basic structure**.
- Formally laid down the Basic Structure Doctrine.

Other Major Judgments Shaping the Basic Structure Doctrine

Case	Contribution
Indira Nehru Gandhi v. Raj Narain (1975)	Struck down provisions placing the PM's election beyond judicial review.
Minerva Mills v. Union of India (1980)	Reaffirmed that limited amending power is part of the basic structure.
Waman Rao v. Union of India (1981)	Declared that amendments after Kesavananda must respect basic structure.
I.R. Coelho v. State of Tamil Nadu (2007)	Held that even laws under Ninth Schedule are subject to basic structure review if inserted post-Kesavananda.
S.R. Bommai v. Union of India (1994)	Asserted **federalism, secularism, and democracy** as basic structure elements.

Case of Judicial Overreach

While the Basic Structure Doctrine strengthens constitutionalism, critics argue that it **risks judicial overreach**:

- **Lack of Explicit Constitutional Basis**:
  The doctrine is a judicial innovation; the Constitution does not explicitly mention a "basic structure."
- **Subjectivity**:
  What constitutes the "basic structure" is not definitively listed; it is determined case-by-case, leading to uncertainty.
  Example- Kesavananda Bharati verdict was only passed by a 7:6 majority. Also, declaring even welfare measures void (e.g., land reforms placed under Ninth Schedule), judiciary may hinder social justice.
- **Superseding Parliament**: Judiciary, an unelected body, becomes the final arbiter over constitutional amendments made by elected representatives, raising democratic legitimacy concerns.
  Example**- Striking down the 99th Constitutional Amendment** establishing the **NJAC** (National Judicial Appointments Commission) in 2015 was criticized as the judiciary protecting its own turf.

Should the Basic Structure Doctrine Be Followed Indefinitely?

1. In Favor

- **Safeguard Against Authoritarianism**:
  Protects democracy from reckless majoritarian amendments.
- **Flexibility With Caution**:
  Allows necessary constitutional evolution while preserving foundational values.
- **Global Standing**:
  India's doctrine is admired worldwide for balancing constitutional rigidity with adaptability.
- **Protection of Citizens' Rights**:
  Without it, Fundamental Rights could be eroded at the whims of temporary political majorities.

2. Against

- **Lack of Democratic Accountability**:
  Judiciary, an unelected body, permanently restrains elected legislature.
- **Vagueness**:
  Unclear definition of basic structure can lead to ad hoc judicial decisions.
- **Evolution of Society**:
  Future generations may wish to reorganize constitutional values; rigid adherence could stifle necessary reforms.

- **Global Experience**:
  Most constitutions globally (e.g., US, UK) trust future generations without such judicially imposed basic structure restrictions.

3. Way Forward

- **Clearer Constitutional Interpretation Guidelines**
  Establish judicial or expert-led frameworks to consistently determine what qualifies as the "basic structure," reducing ambiguity in future cases.
- **Strengthen Judicial Review While Ensuring Accountability**
  Judicial review must remain a vital constitutional safeguard. However, mechanisms such as larger constitutional benches, public reasoning in judgments, and timely adjudication should ensure transparency and consistency.
  (Upheld in: Minerva Mills v. Union of India, 1980)
- **Promote Cooperative Federalism**
  Institutionalise Centre–State dialogue mechanisms (like the Inter-State Council), ensure consultation with States on constitutional amendments affecting State List subjects, and decentralised decision-making.
  (Recommended by: Sarkaria Commission, 1983–88)
- **Enhance Parliamentary Awareness and Deliberation**
  Strengthen pre-legislative scrutiny, ensure robust debates on constitutional amendments, and promote parliamentary sensitivity to basic structure limitations.
- **Public Awareness and Civil Society Engagement**
  Spread public education on the doctrine's relevance through curriculum reforms, law schools, public discourse, and civil society initiatives to defend constitutional values.
- **Codification or Clarificatory Amendment (with Caution)**
  A non-binding, declaratory amendment to Article 368 may be considered to acknowledge the doctrine without limiting future judicial innovation or institutional independence.
- **Safeguard Federal and Democratic Norms**
  Protect the democratic structure by defining strict conditions for the imposition of President's Rule (Article 356) and prescribing fixed, impartial tenures for Governors.
  (Recommended by: Punchhi Commission, 2007–10)
  (Upheld in: S.R. Bommai v. Union of India, 1994)
- **Institutional Reforms for Judicial Independence**
  Ensure that judicial appointments and functioning remain insulated from executive overreach. Promote structural reforms to preserve the judiciary's autonomy.
  (Recommended by: NCRWC, 2000)
  (Upheld in: Supreme Court Advocates-on-Record Association v. Union of India, 1993)

Conclusion

The **Basic Structure Doctrine** remains essential for protecting the spirit of the Indian Constitution against the vicissitudes of political change. However, courts must exercise this power with **utmost restraint and transparency**, respecting the will of the people expressed through Parliament.

FEDERALISM IN INDIA

PYQs

Though the federal principle is dominant in our Constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. Discuss. (CSE 2014, 12.5M)
The concept of cooperative federalism has been increasingly emphasized in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings. (CSE 2015, 12.5M)
Did the Government of India Act, 1935 lay down a federal constitution? Discuss. (CSE 2016, 12.5)
Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian federal Politics? (CSE 2016, 12.5M)
To what extent is Article 370 of the Indian Constitution, bearing marginal note “Temporary provision with respect to the State of Jammu and Kashmir”, temporary? Discuss the future prospects of this provision in the context of Indian polity. (CSE 2016, 12.5)
How far do you think cooperation, competition and confrontation have shaped the nature of federation in India? Cite some recent examples to validate your answer. (CSE 2020, 10M)
The Indian Constitution exhibits centralising tendencies to maintain unity and integrity of the nation. Elucidate in the perspective of the Epidemic Diseases Act, 1897; The Disaster Management Act, 2005 and recently passed Farm Acts. (CSE 2020, 15M)
While the national political parties in India favour centralisation, the regional parties are in favour of State autonomy.” Comment. (CSE 2022, 15M)
Explain the significance of the 101st Constitutional Amendment Act. To what extent does it reflect the accommodative spirit of federalism (CSE 2023, 15M)

Introduction

Federalism is a constitutional symphony orchestrating shared sovereignty between center and states. Originating from the Latin term "foedus" (meaning treaty/covenant), it was first practically adopted by the United States (1787) as a model to unite sovereign states under a shared framework.

Concept of Federalism

- **Federalism** is a system of governance in which **two or more levels of government share authority over the same territory and people**.
- It is characterised by:
    - **Division of powers** between the Centre and states.
    - **Autonomy** in legislative, administrative, and financial spheres.
    - **Written Constitution** acting as the supreme legal framework.

- **Independent judiciary** to resolve disputes between levels of government.

Theoretical Framework & Evolution

Theoretical Models of Federalism

Model	Definition	Key Features	Examples	Criticism
Dual Federalism ("Layer Cake")	Centre and states operate in separate, clearly defined spheres of authority.	• Vertical division of powers • States have sovereign domains • Constitution as a contract between equals	USA • Courts protect state autonomy • Exclusive state/federal jurisdictions	Inflexible; lacks adaptability during national crises (e.g., pandemics, economic shocks)
Cooperative Federalism ("Marble Cake")	Centre and states share responsibilities to achieve common goals.	• Functional overlap • Joint programs (health, education • Fiscal and administrative coordination	Canada, Germany India (post-1991): GST Council, NITI Aayog	Risk of over-centralisation; Centre may dominate agenda-setting
Quasi-Federalism	Federal structure with dominant Centre and limited state autonomy.	• Unequal partners • Centre alters state boundaries (Art. 3) • Emergency powers centralise authority	India (as per K.C. Wheare): • Centre legislates on state matters in crises • State consent not required for territorial changes	Erodes federal values; weakens state autonomy during political/constitutional crises
Asymmetrical Federalism	Certain states enjoy differential autonomy based on cultural or historical factors.	• Special constitutional provisions • Ethnic/regional accommodation • Unequal federal units	India: Article 370 (J&K), Article 371 (NE states) Canada: Quebec's linguistic/cultural rights	May create resentment or demands for parity; can fuel secessionist sentiments

2. Indian Context

- India is described as a **Union of States** (Article 1), not a federation formed by agreement.
- The framers, influenced by **British parliamentary traditions**, **U.S. federal structure**, and the **Government of India Act, 1935**, created a model with **strong central bias** to ensure **national unity**, especially in a diverse and newly independent country.

Basic Features of Indian Federalism

Feature	Explanation
Dual Government System	Clear distinction between Union and State governments.
Written Constitution	Provides detailed demarcation of powers and functions.
Division of Powers (7th Schedule)	Union List (97 items), State List (66), Concurrent List (47).
Supremacy of the Constitution	Both Union and State governments derive powers from the Constitution.
Independent Judiciary	The Supreme Court settles Centre–State disputes (Articles 131, 136).
Rigid yet Flexible Constitution	Formal amendment required for structural changes (Article 368), but Centre can alter state boundaries (Article 3).
Unequal Representation in Upper House	Rajya Sabha does not follow strict federal equality like the U.S. Senate.
Centralised Emergency Powers	During national or constitutional emergencies, powers shift to the Union.

Unitary Features of Indian Constitution

Feature	Explanation	Example
Strong Centre	More powers and financial resources with the Union	Union List > State List (97 vs. 66 items originally)
Single Constitution	Unlike USA, India has only one Constitution for Union and States	No separate state constitutions (except J&K pre-2019)
Single Citizenship	Indian citizens are only citizens of India, not of any state	No dual citizenship like in the USA
Article 3 – State Reorganisation	Parliament can alter boundaries or names of states without state consent	Formation of Telangana in 2014
Emergency Provisions	During emergencies, powers gets concentrated with the Union	President's Rule (Article 356); National Emergency (Article 352)
All-India Services	Common services controlled by the Centre but working in States	IAS, IPS officers posted in States but recruited centrally
Governor's Role	Appointed by the Centre, can override state executive in some cases	Governor of West Bengal–Centre conflict (frequent example)

Indian vs Western Federalism

Aspect	Indian Model	Western Model (e.g., USA)
Nature of Federalism	Quasi-federal or cooperative federalism with a strong Centre	Dual federalism with clearly demarcated powers for Centre and States
Formation	Not formed by agreement among states; Union is indestructible (Article 1)	Formed by a compact among independent states that ceded powers to the Centre
Constitution	Single Constitution for Union and States	Dual Constitution: Federal and State Constitutions
Citizenship	Single citizenship for all Indians	Dual citizenship: of the United States and of the individual state
Judiciary	Integrated judiciary headed by Supreme Court	Dual judiciary: Federal and state courts operate independently
Amendment Process	Flexibly unitary: Centre can amend most provisions with or without states' consent	Strictly federal: Certain amendments require ratification by 3/4th of states
Interstate Relations	Regulated mostly by the Union Parliament	States have more autonomy to engage in compacts with each other
Financial Autonomy	Centre has greater financial control; vertical fiscal imbalance	States enjoy greater financial independence
Emergency Powers	Centre can assume full control during emergencies (Articles 352–360)	No such overarching emergency powers; states retain sovereignty
Language & Diversity	Accommodates linguistic, ethnic, and cultural diversity with special provisions	Relatively homogeneous federation in structure and identity

Rationale for Strong Unitary Bias in Indian Federalism

Though the Indian Constitution incorporates several federal features, it also embeds a **clear unitary tilt**, often described as **quasi-federal** (K.C. Wheare).

1. Post-Independence Nation-Building

- India emerged as a **newly independent state** in 1947, facing **Partition**, **communal violence**, and **princely state integration**.
- A strong Centre was needed to **preserve national unity**, integrate diverse regions, and **prevent secessionist tendencies**.

2. Social and Cultural Diversity

- India is a **plural society** with vast linguistic, ethnic, and religious diversity.
- The unitary bias allows the Union to **safeguard the integrity of the state**, ensuring no region becomes a threat to national cohesion.

3. Economic Planning and Uniform Development

- Post-independence, India adopted a **centrally planned economy** requiring strong coordination.
- The Planning Commission (now NITI Aayog), central taxation, and centrally sponsored schemes reflect the need for **national economic direction**.

4. Emergency Management

- India's volatile security landscape (e.g., wars, internal insurgencies, communal riots) necessitated **centralised emergency powers** (Articles 352–360).
- The Centre's overriding authority ensures **swift and uniform response** in crises.

5. Avoiding Balkanisation

- Drawing from the **failure of the proposed federal structure** in the pre-partition times, the framers of the constitution were cautious about giving **excessive autonomy** to states.
- Dr. B.R. Ambedkar noted: "The federation is a union because it is indestructible. The States have no right to secede."

6. Uneven Political and Administrative Capacities

- At the time of independence, many states lacked **experienced leadership and administrative strength**.
- A strong Centre could provide **governance continuity**, stability, and uniformity in laws and administration.

7. Single Citizenship and Integrated Judiciary

- To promote **national identity** and consistent legal interpretation, the Constitution adopted **single citizenship** and an **integrated judiciary**.

Recent Developments and Concerns

1. Governor–State Government Conflicts

Context: The role of Governors has increasingly come under scrutiny for acting in a **partisan manner**, often accused of working as agents of the Centre rather than constitutional authorities.

Key Issues:

- **Withholding or delaying assent to state legislation**, violating Article 200's intent.
- **Interfering in university appointments**, as seen in Kerala and West Bengal.
- **Refusal to follow aid and advice** of elected governments in matters of protocol and administration.
- Examples: In **Tamil Nadu**, Governor R.N. Ravi delayed assent to multiple bills passed by the Assembly, leading to public rebukes by the state government.
- In **Kerala**, the state accused the Governor of acting as an "agent of the Centre" by interfering in university appointments.

2. Central Agencies and Political Misuse Allegations

- Use of **Enforcement Directorate (ED)** and **Central Bureau of Investigation (CBI)** in opposition-ruled states like **West Bengal** and **Maharashtra** has been criticised as politically motivated.
- Example: Lack of **state consent** for CBI investigations post withdrawal of "general consent" by several states (under Delhi Special Police Establishment Act, 1946).

Examples:

- **West Bengal**: Arrest of TMC leaders in the Narada and coal smuggling cases.
- **Delhi**: ED actions against AAP ministers in the liquor policy case.
- **Jharkhand & Chhattisgarh**: Frequent ED raids on political functionaries ahead of elections.

3. GNCTD (Amendment) Act, 2021

Context: The Government of National Capital Territory of Delhi (Amendment) Act, 2021 altered the balance of power between the **Delhi government and the Lieutenant Governor (LG)**.

Key Provisions:

- Redefines "Government" in Delhi to mean the **Lieutenant Governor**.
- Makes it **mandatory for the elected government to seek LG's opinion** before taking any executive action.
- Undermines the **Supreme Court's 2018 judgment** which held that the LG is bound by the "aid and advice" of the Council of Ministers.

Criticism:

- Reduces the **democratic mandate** of the Delhi Assembly.
- Reinforces a **unitary bias**, especially in union territories with legislatures.
- Seen as **violating the federal spirit** enshrined in the Constitution.

Counterargument:

- The Centre justifies it on the grounds of Delhi being the **national capital**, requiring a unique governance structure.

4. GST Compensation Disputes

- Several states (e.g., **Punjab, Chhattisgarh**) complained of **delayed GST compensation** during and after the COVID-19 pandemic, leading to demands for review of the GST compensation mechanism.

5. NITI Aayog and Federal Planning

- **Punjab and West Bengal CM boycotting NITI Aayog meetings**, citing lack of genuine federal dialogue and excessive centralisation of decision-making.

6. One Nation, One Election Proposal

- The Centre's push for **simultaneous elections** has been criticised by states like **Tamil Nadu** and **Kerala** as undermining state autonomy and **distorting the federal cycle of accountability**.

7. Legislative Overreach in State Matters

- The now-repealed **Farm Laws (2020)** were enacted by Parliament despite agriculture being a **State List subject**, sparking massive protests and resistance from states like **Punjab**, **Chhattisgarh**, and **Rajasthan**.

8. Language and Cultural Autonomy

- Opposition from **southern states to the imposition of Hindi**, especially Tamil Nadu, citing it as a threat to federal and cultural pluralism.

9. Central Schemes with Shared Funding Burdens

- States have expressed dissatisfaction over schemes like **PM-POSHAN (Mid-Day Meal Scheme)** and **PM-Awas Yojana**, where **Centre's funding share has reduced**, increasing fiscal pressure on states.

Criticism of Indian Federal model

1. Strong Central Bias (Quasi-Federalism)

- Excessive concentration of powers in the Centre, especially during emergencies (Articles 352–360).
- Centre can unilaterally alter **state boundaries (Article 3)**, unlike classical federations.

2. Misuse of Article 356 (President's Rule)

- Historically used as a political tool to **dismiss opposition-ruled state governments**.
- Though limited after S.R. Bommai v. Union of India (1994), concerns remain over **partisan misuse**.

  Example: Frequent use of Article 356 during the 1970s and 1980s, including Andhra Pradesh (1984), Karnataka (1989).

3. Weak Role of Rajya Sabha

- Unlike the U.S. Senate, **states do not have equal representation** in the Rajya Sabha.
- The Upper House functions more as a **party-based chamber** than a federal counterbalance.

4. Governor's Role as Centre's Agent

- Governors often act **without the confidence of the elected state government**.
- Allegations of **partisanship and delay in assenting bills** have eroded the credibility of the office.
- **Example**: Tamil Nadu Governor's inaction on the NEET exemption bill disrupted the legislative process and delayed state policy implementation.

5. Central Control over Finance

- States depend heavily on the Centre for **grants and devolution**.
- Central schemes dominate welfare funding, often with **reduced state aid**.

- **Example**: Concerns raised during the implementation of GST and delays in compensation to states post-COVID-19.

6. Undermining State Autonomy via Concurrent List

- Centre can legislate even on **Concurrent List subjects**, and its law prevails in case of conflict.
- Increasing **encroachment into state domains** such as agriculture, education, and policing.
- **Example**: The now-repealed **Farm Laws (2020)** were criticised as overreach into a State List subject.

7. Ineffective Institutional Mechanisms

- Institutions like the **Inter-State Council** and **Zonal Councils** remain underutilised.
- **NITI Aayog** lacks statutory powers to enforce cooperative decision-making.

8. One-Size-Fits-All Approach

- The current model often ignores **regional diversity and special needs**.
- **Asymmetrical federalism** is shrinking post-abrogation of Article 370.

Key Committees on Centre–State Relations – Recommendations

1. Sarkaria Commission (1983–1988)

Purpose: To examine the working of Centre–State relations and suggest improvements.

Key Recommendations:

- **Article 356 (President's Rule)** should be used only in rare cases and as a last resort.
- **Inter-State Council** (Article 263) should be activated and made a permanent forum for dialogue.
- **The governor** should be politically neutral and appointed after consulting the concerned state.
- Centre should **not encroach on State List subjects**.
- **All-India Services** should continue, but with greater state consultation in appointments.

2. Punchhi Commission (2007–2010)

Purpose: To revisit Centre–State relations in a changing polity and economy.

Key Recommendations:

- Clear guidelines to be laid down for invoking **Article 356**.
- **Fixed tenure of Governors** (five years); **post-retirement cooling-off period** to avoid misuse.
- Strengthening the **Inter-State Council** by giving it statutory status.
- The Centre should **consult states** before legislating on matters in the **Concurrent List**.
- Formation of an **Inter-State Trade and Commerce Commission** to handle economic disputes.

3. National Commission to Review the Working of the Constitution (NCRWC, 2000–2002)

Key Recommendations:

- Centre and states should **work as equal partners** in cooperative federalism.
- **Strengthen local bodies** (Panchayats and Municipalities) as a third tier of governance.
- Better fiscal devolution to states.
- **Reinforce the federal spirit** in planning and policy execution (relevant post-Planning Commission era).

4. Finance Commissions

- **14th Finance Commission**: Recommended **42% devolution** of divisible taxes to states (increased from 32%).
- **15th Finance Commission**: Balanced **fiscal needs and performance-based incentives**, but also drew criticism for using **2011 population data**, which penalised population-stabilising states.

Way Forward

1. Strengthen Cooperative Federalism

- Promote meaningful consultations with States on national policies and legislative proposals.
- Institutionalise regular meetings of the **Inter-State Council** under Article 263 to resolve disputes and build consensus.

- **Judgment**: In S.R. Bommai v. Union of India (1994), the Supreme Court held that federalism is part of the basic structure and emphasised cooperation, not central dominance.

2. Reform Financial Federalism

- Enhance States' financial autonomy by reviewing vertical and horizontal devolution.
- Strengthen the GST Council's role as a federal fiscal institution.

3. Clarify Use of Article 356 (President's Rule)

- Use Article 356 only in exceptional cases, with detailed reasons recorded in writing.
- **Judgment**: S.R. Bommai case laid down strict conditions and judicial review for imposing President's Rule.

4. Define Role and Tenure of Governors

- Governors must act impartially, with well-defined roles and fixed tenures.
- Their appointment should be based on merit, not political considerations.
  Judgment: In BP Singhal v. Union of India (2010), SC held that while the President can remove Governors without reasons, such removal cannot be arbitrary.

5. Decentralise Administrative Functions

- Transfer more administrative and planning powers to States, especially in health, education, and agriculture.
- Strengthen the **Zonal Councils** and enable collaborative planning at regional levels.

6. Ensure Clarity in Concurrent List Legislation

- Avoid legislative overlaps through better drafting and clarity on the responsibilities of Union and States.
- Use residuary powers (Article 248) cautiously and only in national interest.

Conclusion

Indian federalism is not a static structure but a dynamic partnership, constantly balancing unity with diversity, central strength with state autonomy, and constitutional design with evolving political realities.

CENTRE-STATE RELATIONS

PYQs

Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss. (CSE 2013, 10M)
What changes has the Union Government recently introduced in the domain of Centre-State relations? Suggest measures to be adopted to build the trust between the Centre and the States and for strengthening federalism. (CSE 2024, 15M)

Introduction

Centre-State relations are the pulse of India's federal heartbeat- balanced in design, but often tilted in power. They mirror a union that debates, cooperates, and occasionally collides.

Basic tenets of centre-state relations

- **Cooperative Governance**: Enables smooth coordination in policy making, implementation, and managing national challenges like pandemics or disasters.
- **Balanced Development**: Ensures equitable resource distribution and reduces regional disparities.
- **Political Stability**: Minimizes friction between the Centre and states, fostering stable intergovernmental relations.
- **Efficient Service Delivery**: Improves administrative effectiveness in executing welfare schemes and public services.
- **Strengthening Federalism**: Upholds the spirit of federalism while preserving national unity.
- **Responsive Policy Innovation**: Allows states to act as laboratories for reform while aligning with national objectives.
- **Effective Dispute Resolution**: Encourages institutional and judicial mechanisms to resolve intergovernmental disputes constructively.

Trends in Centre–State Relations in India

India's federal design, while centrally tilted, has witnessed evolving dynamics in Centre–State relations. These trends reflect shifting political contexts, economic reforms, judicial pronouncements, and institutional innovations.

Phases of Evolution

1. 1950s–1960s: Centralisation & Congress Dominance

- One-party dominance led to a **unitary tilt in governance**.
- State autonomy was minimal; **Article 356 (President's Rule)** used liberally.
- Planning and development were **Centre-led via the Planning Commission**.

2. 1967–1989: Rise of Regionalism and Political Federalism

- Emergence of **non-Congress state governments** post-1967 weakened central dominance.
- **Tensions increased** due to ideological differences between Centre and States.
- States began asserting their autonomy, leading to **demand for restructuring federal relations**.

3. 1990s: Coalition Era and Cooperative Federalism

- Coalition governments led to a **negotiated federalism**, giving states more bargaining power.
- **The Finance Commission and Inter-State Councils** became more active.
- Economic liberalisation gave states **greater responsibility in investment and reforms**.

4. 2014 onwards: Strong-Centre and Competitive Federalism

- With a majority government at the Centre, there has been **recentralisation** of power.
- Introduction of **GST** and dismantling of Planning Commission (replaced by NITI Aayog) have shifted fiscal relations.
- **Competitive federalism** has emerged as states compete for investment and rankings.

Contemporary Trends Across Key Dimensions

Dimension	Recent Trends
Legislative Relations	Increased use of ordinances and central laws even in areas of Concurrent or State List (e.g., farm laws).
Administrative Relations	Central agencies (ED, CBI) increasingly involved in state-level investigations, causing friction.
Financial Relations	GST Council promotes joint decision-making, but states complain of delayed compensation and fiscal squeeze.
Political Relations	Frequent Centre–state confrontations, especially in opposition-ruled states (e.g., Tamil Nadu, Kerala, West Bengal).
Judicial Interventions	Judiciary acts as an arbiter in Centre–state conflicts (e.g., S.R. Bommai case on misuse of Article 356).
Cooperative Institutions	NITI Aayog, Inter-State Council, Zonal Councils promote consultative federalism, though with varying success.

Types of Jurisdiction

1. Parliament's Power to Legislate on State Subjects

Under certain **extraordinary or cooperative circumstances**, Parliament may legislate on subjects in the **State List**:

Article	Provision	Associated Issues	Examples
Art. 249	Rajya Sabha (2/3 majority) passes a resolution in national interest	States may feel their autonomy is bypassed through Rajya Sabha where they lack equal representation.	Push for national environmental laws overriding local concerns in smaller states.
Art. 250	During a national emergency, Parliament can legislate on State List subjects	Can lead to central overreach and misuse of emergency powers to dominate State subjects.	Emergency provisions invoked in the past to suppress opposition states' autonomy (e.g., 1975–77).
Art. 252	Two or more states request Parliament to legislate	States lose permanent control over such subjects; dissenting states cannot reverse the law.	Wildlife rules continue to apply uniformly even when states like Tamil Nadu object to conservation zones.

Art. 253	To implement international agreements, including treaties	Centre can use treaties to legislate even on State matters without consulting States.	Central forest and coastal regulations under global pacts affect local livelihoods- opposed by states like Goa and Kerala.
Art. 356	During President's Rule, Parliament legislates for the state	Risk of politicised use of President's Rule; undermines the federal structure.	In J&K (2018–19), land laws and domicile rules changed without an elected assembly.

2. Doctrine of Repugnancy – Article 254

- If a **State law conflicts with a Central law** on a **Concurrent List subject**, the Central law **prevails**.
- However, if the **State law has received the President's assent**, it may prevail in that state- **unless Parliament later overrides it**.
- **Example**: Maharashtra's law on **banning bar dancers** was initially upheld as it had Presidential assent, despite overlap with central labour laws.

Administrative Relations in Centre–State Relations

Administrative relations pertain to how **executive authority is exercised, delegated, or supervised** between the Union and the States. While the Constitution establishes a framework of cooperative governance, it also vests **overriding administrative powers in the Centre**, making Indian federalism **executively centralised**.

I. Constitutional Framework (Articles 256–263)

Article 256 – Directions by the Union

- The Centre can direct states to implement laws made by Parliament.
- **Example**: Implementation of the **Right to Education Act (2009)**; Centre pushing states to adopt **Ayushman Bharat** under NHM.
- **Issues**: Seen as **interference in state autonomy**, especially in **health and education**, which are state subjects. States like **Tamil Nadu and West Bengal** resisted Ayushman Bharat, citing existing schemes and funding concerns.

Article 257 – States Not to Impede Union Executive Power

- States must not hinder the Union's executive functions; the Centre can issue directions.
- **Example**: Centre's role during **natural disasters**, **anti-terror operations**, or securing **national highways and airports**.
- **Issues**: Tensions during **central force deployment** (e.g., farm protests in Punjab, internal law and order situations). Seen as undermining the **state's control over law and order** (a state list subject).

Article 258 – Delegation of Union Functions to States

- The President can delegate Union functions to states.
- **Example**: State officers implement central schemes like **PM-KISAN, Swachh Bharat, PMAY, Ujjwala**.
- **Issues**: **Execution burden** lies with states, but **credit often claimed by the Centre**.
  States face **funding and administrative strain** in implementing wide-reaching central schemes.

Article 258A – Delegation of State Functions to the Union

- States can entrust their functions to the Union (through the Governor).
- **Example**: Conduct of **NEET, UPSC exams**, police training, and **border area administration**.
- **Issues**: Viewed as **dilution of federal control** over vital social sectors.
  Controversy over **NEET in Tamil Nadu**, where states argue that local students are disadvantaged by centralised exams.

Article 261 – Full Faith and Credit Clause

- Public acts, records, and judicial proceedings of one state are valid in others.
- **Example**: **Vehicle registration, court decrees, marriage certificates** are valid nationwide.
- **Issues**: Practical **conflicts in enforcement**, e.g., **interfaith/inter-caste marriages** face resistance in other states. **Vehicle road tax enforcement** issues between states like **Tamil Nadu and Karnataka** over cross-border vehicle use.

Key Administrative Instruments of Coordination

Instrument	Description	Issues
Inter-State Council	Constitutional body for consultation & coordination (Article 263)	Lacks binding powers; meets infrequently
Zonal Councils	Statutory bodies under States Reorganisation Act, 1956	Good for regional coordination but little follow-up
NITI Aayog	Replaced Planning Commission to promote cooperative federalism	No financial control, hence limited coercive power
All India Services	Common administrative cadre (IAS, IPS, IFoS) shared between Centre and States	Dual control often causes Centre–State friction. Examples: In **West Bengal (2021)**, a senior IAS officer was recalled by the Centre during post-cyclone relief, triggering political controversy.

Contemporary Challenges in Administrative Relations

1. Politicisation of the Governor's Office

- Governors, appointed by the Centre, often **delay assent to state bills**, interfere in university appointments, or withhold legislative proposals.

2. Central Agencies vs State Autonomy

- CBI and ED operate under central jurisdiction but need **general consent** from states.
- Several states have **withdrawn consent**, citing political misuse.
- ED raids before state elections (e.g., in Delhi, Jharkhand) viewed as attempts to intimidate.

3. Over-Centralisation in Scheme Implementation

- Centrally sponsored schemes (CSS) often have **preset templates** without accounting for regional variation.
- Example: Ayushman Bharat's uniform model not compatible with **state-run health schemes** (e.g., Kerala's Karunya).
- States demand more say in **design and fund sharing** of schemes like PMGSY and PMAY.

4. Irregular Use of Inter-State Council and Zonal Councils

- Intended to be the **platforms for cooperative federalism**, but remain largely ceremonial.

Observation: Sarkaria and Punchhi Commissions recommended regular meetings and statutory backing- **yet to be implemented** effectively.

Centre–State Executive Relations During Emergencies

1. Emergency (Article 352)

- A **National Emergency** can be proclaimed in case of **war, external aggression, or armed rebellion**, turning the federal setup into a **highly centralised system**.
- During the emergency, the **Union can legislate on State List subjects** and **issue directions to state governments** on any matter.
- **Parliament's legislative scope expands**, and the **President can modify Centre–State financial relations**.

- Although temporary, this shift **significantly curtails state autonomy** and strengthens the Union's control.

2. President's Rule (Article 356)

- **President's Rule** can be imposed when the **constitutional machinery in a state breaks down**, usually based on the **Governor's report**.
- The president assumes the state's executive authority, and the legislature may be dissolved or suspended.
- Parliament takes over legislative powers, and the Governor administers the state on behalf of the Union.
- Though historically **misused for political ends**, the **S.R Bommai judgment set constitutional safeguards** against its arbitrary use.

3. Financial Emergency (Article 360)

- A **Financial Emergency** can be declared if the **financial stability or credit of India or any part is under threat**.
- **The Centre can direct states to reduce expenditures**, including **salaries of government employees and judges**.
- **State legislatures may need Presidential assent** before passing **Money Bills**, limiting their fiscal autonomy.
- Though **never invoked**, this provision enables **complete Union control over state finances**, representing **maximum fiscal centralisation**.

Centre–State Financial Relations in India

Grants-in-Aid (Articles 275 and 282)

- Under **Article 275**, the Centre gives statutory grants to states in need of assistance, especially for special needs or tribal welfare.
- Under **Article 282**, the Union and states may make discretionary grants for any public purpose, which often includes Centrally Sponsored Schemes (CSS).
- States have argued that **discretionary grants reduce their autonomy**, as they are tied to Union priorities.

GST and Fiscal Federalism

- The **Goods and Services Tax (GST)** introduced in 2017 unified indirect taxes into a single national tax, requiring Centre–State coordination.
- **Article 279A** established the **GST Council**, comprising Union and state finance ministers, as a cooperative body to make decisions on tax rates, exemptions, and structure.
- Though seen as a step towards **cooperative federalism**, states have raised concerns about **limited fiscal flexibility** and **Centre's dominance** in decision-making

GST Compensation Delay and Controversy- The **GST Compensation Act, 2017** guaranteed states compensation for any loss of revenue due to the implementation of GST, for **five years** (till June 2022).

- The Centre promised to compensate states if their GST revenue grew at less than **14% per annum**, using the **GST Compensation Cess**.

Issue: From 2020 onwards (especially during COVID-19), the Centre **delayed releasing compensation** due to insufficient cess collections.

- The Centre suggested states should **borrow funds** to bridge the shortfall- this was strongly opposed.

State Responses: **Punjab**, **Chhattisgarh**, **Kerala**, and **Delhi** expressed concern over fiscal strain and called the Centre's move **a breach of trust and cooperative federalism**.

- Undermined trust in the **GST Council**, which is supposed to function by consensus. Pushed demand for **reconsidering the structure and powers of the GST Council**.

Finance Commission Recommendations

- The **14th Finance Commission (2015–20)** increased states' share in the divisible pool from **32% to 42%**, strengthening state autonomy.
- The **15th Finance Commission (2021–26)** recommended **41%** devolution, citing increased expenditure responsibilities at the Centre due to Jammu & Kashmir's reorganisation.
- States have criticised the use of **2011 population data** for horizontal devolution, claiming it **punishes states with better population control** (e.g., Kerala, Tamil Nadu).

Issues and Concerns

- **Vertical imbalance**: The Centre controls most high-yield taxes, while states have greater expenditure responsibilities.
- **Delay in transfers**: GST compensation has often been delayed, creating cash-flow crises for states (especially post-COVID). States like Punjab and Chhattisgarh protested non-payment of GST dues during 2020–22.
- **Centrally Sponsored Schemes (CSS)**: States complain of **excessive conditionality and low flexibility** in CSS spending. Example: Several states like **Odisha**, **Bihar**, and **Tamil Nadu** flagged fiscal strain and data privacy issues, despite central incentives.
- **Politicisation of grants**: Allegations persist that central discretionary grants favour politically aligned states..

Way Forward

1. Strengthen Cooperative Federalism

- Institutionalise regular meetings of the **Inter-State Council** and **Zonal Councils**.
- Promote **consultation with States** before enacting central laws on concurrent or state subjects

2. Revamp Fiscal Federalism

- Redesign **Centrally Sponsored Schemes (CSS)** to offer more flexibility and reduce state burden.
- Ensure **timely release of GST compensation** and Finance Commission grants.
- Introduce **performance-linked, untied grants** to reward efficiency and innovation.

3. Reform Role of the Governor

- Follow **Sarkaria and Punchhi Commission** guidelines for appointing non-partisan Governors.
- Clearly define limits on the **Governor's discretionary powers**.
- Ensure Governors act **only on the advice of elected State governments**.

4. Define Limits of Central Agencies' Jurisdiction

- Establish legal clarity on the powers of agencies like **CBI, ED, NIA** in states.
- Mandate **prior state consultation or consent** for deploying such agencies in state matters.

5. Curb Misuse of Article 356 (President's Rule)

- Follow **S.R. Bommai case (1994)** safeguards to prevent arbitrary dismissal of state governments.
- Require **parliamentary and judicial oversight** over proclamations of President's Rule.

6. Harmonise Legislation in the Concurrent List

- Promote **model laws** and encourage coordination between Centre and States.
- Allow **context-specific adaptations** of laws by states to suit local needs.

7. Accommodate Asymmetrical Federalism

- Provide **greater functional autonomy** to special category or culturally distinct states.
- Respect **regional diversity and developmental needs** in central policymaking.

8. Build Collaborative Governance Culture

- Strengthen forums like **NITI Aayog** with greater state representation and consensus-building powers.
- Encourage **institutional trust and cooperative mechanisms** for resolving Centre–State disputes.

CONCLUSION

Centre–State relations reflect the tension and balance between **unity and autonomy**. While the Constitution empowers the Centre, a healthy federation depends on **cooperation, trust, and respect for constitutional boundaries**.

REGIONAL PARTIES AND STATEHOOD DEMANDS IN INDIA

PYQs

> The Indian party system is passing through a phase of transition which looks to be full of contradictions and paradoxes." Discuss. (CSE 2016, 12.5M)

Introduction

Regional parties emerge from the principle of **political pluralism in a federal democracy**, representing **territorial, linguistic, ethnic, or cultural subnational interests** within the national political framework. They are expressions of **decentralised political mobilisation**, often rooted in demands for **greater autonomy, representation, and identity assertion**.

Evolution of Regional Parties in Federal Politics

- **1950s–1960s**: Congress-dominated era; little space for regional voices.
- **1967 Onwards**: First real challenge to Congress at state level (e.g., DMK in Tamil Nadu); marked the beginning of **multi-party federalism**.
- **1990s–2000s**: Decline of single-party majority at the Centre led to **coalition governments**, giving regional parties **significant bargaining power** (e.g., TDP, SP, DMK, AIADMK).
- **Post-2014**: Emergence of a strong central government again **reduced their influence at the national level**, but they remain powerful in many states.

Factors Responsible for the Rise of Regional Parties in India

1. Linguistic and Cultural Diversity
- India's vast socio-cultural diversity has led to **region-specific aspirations**.
- Creation of **linguistic states (post-1956)** strengthened local identity politics.
- Example: DMK emerged in Tamil Nadu on an anti-Hindi and Tamil pride platform.

2. Decline of Congress Dominance
- The **Congress system's breakdown in 1967** opened up political space for new regional alternatives.
- States like **Punjab, West Bengal, and Tamil Nadu** witnessed early assertion by regional parties.

3. Coalition Era at the Centre
- Since the 1990s, **no single party could secure an absolute majority**, making **regional parties coalition kingmakers**.
- Enabled parties like TDP, DMK, and SP to gain national relevance and bargaining power.

4. Neglect of Regional Development
- Perceived or real **regional disparities in resource allocation and development** led to political mobilisation.
- Example: Telangana movement against domination by Andhra-centric policies.

5. Assertion of Sub-Nationalism
- Rise of **ethnic, linguistic, and regional pride** created fertile ground for regional mobilisation.
- Example: Shiv Sena in Maharashtra emerged on the platform of Marathi pride.

6. Failure of Centralised Policies
- Uniform policies often failed to accommodate **local variations and needs**, leading to resentment.
- Opposition to **NEET**, **farm laws**, and **Hindi imposition** have sparked regional party activism.

7. Role of Regional Leaders

- Charismatic regional leaders like **MGR, N.T. Rama Rao, Mamata Banerjee, KCR** used cultural icons and mass appeal to build strong local support bases.

Contributions of Regional Parties to Federalism

1. Strengthening State Autonomy

- Regional parties advocate for greater devolution of powers and fiscal autonomy.
- They resist central overreach through tools like Article 356 or the misuse of the Governor's office.
- Example: Regional parties across the political spectrum opposed the Centre's **One Nation, One Election** proposal, citing federal imbalance.

2. Promoting Political Pluralism

- Regional parties ensure representation of linguistic, cultural, and ethnic identities in national politics.
- They make Indian federalism more inclusive by voicing state-specific concerns.
- Example: **DMK's opposition to Hindi imposition**, **TMC's assertion of Bengali identity**, and **AAP's focus on Punjab-specific governance** reflect pluralist federalism.

3. Decentralised Governance

- Regional parties promote localised policy-making and challenge uniform central prescriptions.
- Example: **AAP's mohalla clinics** and **free utility schemes** in Delhi respond to urban-specific needs.

4. Policy Innovation

- Several regional parties pioneered welfare schemes later adopted or replicated nationally.
- Example: **Tamil Nadu's Mid-Day Meal Scheme** became a national template under the Sarva Shiksha Abhiyan.
- Example: **Odisha's KALIA** scheme and **BSKY health insurance** reflect innovation rooted in local needs.

5. Institutional Development

- Regional party participation has strengthened federal institutions like the GST Council and Inter-State Council.
- Example: Finance Ministers from **Kerala, West Bengal, and Tamil Nadu** voiced concerns over **delayed GST compensation** and centralisation of decision-making.

Challenges Posed by Regional Parties

1. Fragmented Mandates

- Excessive regionalisation can lead to **hung parliaments** and difficulty in forming stable national coalitions.
- It weakens **national consensus** on crucial reforms like the **Uniform Civil Code** or **education policy**.
- Example: Parties like **DMK** and **TMC** oppose central education mandates such as **NEET**, arguing it undermines local autonomy.

2. Parochialism

- Some regional parties promote **narrow linguistic or ethnic identities**, which may strain national cohesion.
- Example: **DMK's strong resistance to Hindi imposition** and **TMC's emphasis on Bengali sub-nationalism** have, at times, raised concerns about fostering identity-based politics over integration.
- While such stances protect cultural rights, they can also deepen **regional divides** if not balanced with national interests.

3. Policy Gridlock

- In coalition eras, dominant regional parties can **stall national legislation** to protect regional interests or extract political concessions.
- Example: During the **UPA era**, regional allies blocked key reforms like **FDI in retail** and **land acquisition bills**.

4. Tensions with the Centre

- Regional governments frequently clash with the Centre over **central agency interventions (CBI, ED)**, **funding issues**, and **Governor's interference**.
- Example: **TMC in West Bengal** criticised CBI raids on state officials as political vendetta.

Conclusion

Regional parties play a crucial role in deepening Indian democracy by representing local aspirations, promoting federalism, and ensuring that diverse voices find space in national policy making.

Major Statehood Demands in India

- **Gorkhaland** – from West Bengal
  - Demand by Nepali-speaking Gorkha population.
  - Rooted in ethnic identity, language, and perceived cultural marginalisation by the Bengali-majority state.
- **Vidarbha** – from Maharashtra
  - It comprises eastern Maharashtra districts like Nagpur and Amravati.
  - Long-standing demand due to economic backwardness, poor irrigation, and underdevelopment compared to western Maharashtra.
- **Bodoland** – from Assam
  - Sought by the Bodo tribal population in the north bank of the Brahmaputra.
  - Linked to ethnic assertion, underrepresentation, and historical neglect.
  - Multiple Bodo Accords have addressed autonomy demands; some now seek full statehood.
- **Nagalim – Across North-East India**
  - Proposed by **Naga nationalist groups**, primarily the **NSCN-IM**, seeking a unified homeland for all Naga-inhabited areas across **Nagaland, Manipur, Arunachal Pradesh, and Assam**.
  - Rooted in a vision of **ethno-political unification** and **historical claims of Naga sovereignty**.
  - A major sticking point in peace negotiations with the Government of India, as neighbouring states **strongly oppose any redrawing of their boundaries**.
  - The issue remains unresolved despite ongoing talks since the **2015 Framework Agreement**.

Reasons for demand of statehood

1. Cultural and Linguistic Identity

- Many regions feel their **language, customs, or ethnic identity** is diluted or ignored in larger states.
- Example: Gorkhaland (Nepali-speaking), Tulu Nadu (Tulu-speaking), and Coorg (Kodava-speaking).

2. Perceived Economic Neglect

- Regions often believe they are **economically underfunded or underdeveloped**, despite contributing significantly to the parent state.
- Example: Vidarbha (high revenue from Nagpur but low investment), Bundelkhand (severe agrarian distress).

3. Regional Disparity and Developmental Imbalance

- Demand arises when **intra-state inequality** becomes politically salient.

- Example: Western UP (Harit Pradesh) vs. Eastern UP (Purvanchal) – huge contrast in development indicators.

4. Administrative Inefficiency and Governance Challenges

- Large states with diverse regions find it hard to address **region-specific governance needs**.
- Splitting states is seen as a way to improve **decentralisation, governance efficiency, and local representation**.

5. Historical Grievances and Movements

- Several regions have had **long-standing movements or autonomy arrangements** (e.g., Bodoland, Telangana) that evolve into full-fledged statehood demands.

6. Political Marginalisation

- Minority ethnic groups often feel **dominated by politically powerful majority groups** within states.
- They seek **separate statehood for political self-determination**.

7. Strategic or Security Considerations

- In some tribal or border regions, **security concerns** or the need for **responsive local governance** add weight to statehood demands.
- Example: Tipraland in Tripura and past demands in Ladakh.

Challenges and Concerns Associated with Statehood Demands

1. Political Opposition from Parent States

- Existing states often **oppose bifurcation**, fearing:
  - **Loss of revenue** (e.g., Andhra Pradesh post-Telangana).
  - **Diminished political clout** in Parliament.
  - **Weakened administrative coherence**.

2. Risk of a Domino Effect

- Approving one demand may **trigger similar movements** in other regions, leading to a **proliferation of demands**.
- Over 20 regions in India have made statehood demands at various points.

3. Economic Viability and Fiscal Burden

- New states may **lack the economic base, infrastructure, or revenue-generating capacity** to sustain themselves.
- Some demands emerge from emotionally-driven movements rather than **realistic assessments** of viability.
- Example: Coorg or Tulu Nadu may struggle to function independently due to small size and limited resources.

4. Administrative and Logistical Complexity

- State reorganisation involves:
  - **Redrawing boundaries**.
  - **Reallocating assets, liabilities, and civil services**.
  - **Setting up capitals, High Courts, legislatures**, and administrative machinery.
- These tasks are often time-consuming, expensive, and politically contentious.
- Example: Even years after Telangana's creation, **disputes over water sharing and employment** persist.

5. National Unity and Integration Concerns

- Excessive fragmentation may lead to **weakened national cohesion**, especially if driven by **ethnic or linguistic nationalism**.
- There's a risk that **parochial identities** may overshadow the idea of **Indian citizenship**.
- Example: Demands in the North-East have sometimes been linked with **secessionist tendencies** or **identity-based violence**.

6. Security and Law-and-Order Issues

- Statehood demands in **insurgency-prone** or **ethnically sensitive regions** (e.g., Bodoland, Tipraland) can exacerbate tensions and lead to unrest.
- Counter-insurgency operations may be disrupted during transitional phases.

7. Disruption of Federal Balance

- A large number of small states may create **governance and coordination issues** in federal institutions (e.g., GST Council, Rajya Sabha).
- Representation in Parliament may become skewed, impacting **Centre–State relations and resource distribution**.

8. Judicial and Constitutional Complications

- The Constitution allows Parliament to alter state boundaries **without requiring state consent (Article 3)**, which raises issues of **democratic legitimacy and federal spirit**.
- The lack of a **permanent State Reorganisation Commission** makes the process politically driven rather than institutionally guided.

Way Forward

1. Balanced Assessment of Demands

- Evaluate each demand based on **administrative efficiency, historical identity, and economic viability**.
- Example: **Telangana's formation in 2014** was supported due to sustained mass mobilisation, cultural distinctiveness, and perceived development neglect.
- Contrast: **Vidarbha** has similar economic grievances but lacks mass political mobilisation, making the case less urgent.

2. Strengthen Autonomy Within Existing Framework

- Use constitutional tools like the **Sixth Schedule**, **Article 371 provisions**, and **autonomous councils**.
- Example: The **Bodoland Territorial Region (BTR)** under the 2020 Bodo Accord granted greater self-governance without full statehood.

3. Establish a Permanent Institutional Mechanism

- Set up a **National Commission on State Reorganisation** to assess demands objectively and transparently.
- Example: India's last comprehensive state reorganisation was in **1956**; a modern review is overdue given the rise of **new regional aspirations** (e.g., **Harit Pradesh**, **Saurashtra**, **Coorg**).

4. Safeguard Territorial Integrity and Federal Balance

- Avoid redrawing boundaries without broad **political and inter-state consensus**.
- Example: The **Nagalim demand** faces stiff opposition from **Manipur, Assam, and Arunachal Pradesh**, who fear territorial fragmentation.

5. Promote Regional Development and Decentralisation

- Address core issues- **infrastructure gaps, economic disparity, and poor governance**- that fuel statehood movements.
- Example: Special packages to **Bundelkhand** and **Marathwada** can address underdevelopment without bifurcation.

6. Legal and Constitutional Clarity

- Ensure any new state is created under **Article 3** with due **consultation with the concerned state legislature** and debate in Parliament.
- Example: The creation of **Telangana** followed the constitutional procedure, but also drew criticism for **limited debate and hasty execution**, highlighting the need for better guidelines.

Conclusion

Statehood demands are not merely calls for new boundaries, they are expressions of identity, equity, and governance. India’s challenge lies in turning these demands from fault lines into frontiers of cooperative federalism.

THE EXECUTIVE IN INDIA

PYQs

To what extent, in your view, the Parliament is able to ensure accountability of the executive in India? (CSE 2021, 10M)

Introduction

The Executive in India is the engine room of governance- powering policy into action within the bounds of constitutional accountability. It blends ceremonial authority with real political power, anchored in democratic legitimacy.

The Indian Executive comprises two broad components:

- The **Nominal Executive**: The President (at the Centre) and Governors (in States), who act on the aid and advice of the Council of Ministers.
- The **Real Executive**: The Prime Minister, Chief Ministers, and their respective Councils of Ministers who wield actual decision-making power.
- This system ensures a blend of **ceremonial authority and practical accountability**, aligning with the principle of **constitutional supremacy and democratic responsibility**.

Basic Idea

- The **Executive** is the organ of the state responsible for the **implementation of laws, day-to-day governance, and public administration**.
- In a **parliamentary system** like India's, the executive is **politically accountable to the legislature** and derives its legitimacy from the majority in the elected House.

Need for an Executive

1. Implementation of Laws

- Legislatures make laws, but the **executive ensures they are implemented effectively**, through administrative machinery at all levels.

2. Continuity and Stability

- The executive provides **day-to-day governance**, even when legislatures are not in session, ensuring **administrative continuity**.

3. Policy Formulation and Execution

- While Parliament debates laws, the executive **formulates and executes policies** in areas like health, education, defence, and economy.

4. Crisis and Emergency Management

- The executive takes **swift decisions during emergencies** (natural disasters, war, pandemics), when legislative processes may be too slow.

5. Link Between Citizens and Government

- The executive acts as the **visible face of the government**, directly interacting with citizens through public services, law enforcement, and welfare delivery.

6. Administrative Coordination

- Ensures **inter-ministerial, inter-state, and Centre–State coordination** in governance through bureaucratic and political leadership.

Basic Features of the Indian Executive

- **Parliamentary in Nature**: India follows the **Westminster model**- the executive is drawn from and accountable to the legislature.
- **Collective Responsibility**: The Council of Ministers is **collectively responsible** to the elected House (Article 75[3] at the Centre; Article 164[2] in States).
- **Constitutionally Limited**: The executive functions within the framework of the **Constitution** and is subject to **judicial review**.
- **Bureaucratic Machinery**: The executive includes the **permanent civil services** which assist ministers in administration and policy implementation.
- **Federal Setup**: The executive exists at **two levels- Union and State**, with a clear division of powers (Seventh Schedule).

Components of the Indian Executive

The main components of the Indian Executive (Union Executive) are:

- **President:** The constitutional head of the state and the Union Executive.
- **Vice-President**: The second highest constitutional office, acts as President in their absence and is also the ex-officio Chairman of the Rajya Sabha.
- **Prime Minister:** The head of government and leader of the Council of Ministers, holds real executive power.
- **Council of Ministers:** Headed by the Prime Minister, this body aids and advises the President in the exercise of executive functions.
- **Attorney General of India:** The chief legal advisor to the government (included in some descriptions as part of the Union Executive)

These components of the Union Executive are discussed in detail in the subsequent chapters of this book.

PRESIDENT

PYQs

Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyse. (CSE 2014, 12.5M)
Under what circumstances can the Financial Emergency be proclaimed by the President of India? What consequences follow when such a declaration remains in force? (CSE 2019, 10M)

Introduction

Though the President is a **nominal executive** (acts on the advice of the Council of Ministers as per **Article 74**), the office plays a vital role in upholding the Constitution and democratic functioning.

Indian President vs US US President: A Comparative Analysis

Aspect	Indian President	US President
System of Government	Parliamentary system (Westminster model)	Presidential system (separation of powers)
Position	Nominal/ceremonial head (de jure executive)	Real executive head (de jure and de facto head)
Election Process	Indirectly elected by Electoral College (MPs + MLAs)	Directly elected by Electoral College based on popular vote
Tenure	5 years; eligible for re-election	4 years; maximum two terms
Executive Powers	Exercises powers on aid and advice of Council of Ministers	Exercises powers independently as head of executive
Head of Government	Prime Minister is the real head of government	US President is both Head of State and Government
Legislative Role	Summons Parliament, gives assent, can return bills (once)	Can veto bills; State of the Union address
Ordinance/Veto Powers	Can issue ordinances (Article 123); suspensive and pocket veto	Has absolute veto and pocket veto
Emergency Powers	Can proclaim emergencies under Articles 352, 356, 360	Can declare national emergency with Congressional approval
Impeachment	On grounds of violation of the Constitution (Art. 61)	On grounds of treason, bribery, or high crimes and misdemeanors
Accountability	Not directly accountable; acts on advice	Directly accountable; checks by Congress and Judiciary
Discretionary Powers	Limited discretionary powers (e.g., hung Parliament)	Broad discretionary powers; appoints officials, judges
Cabinet Formation	President must appoint PM with majority support	US President chooses Cabinet, not from Legislature

Powers Of President Of India

Legislative Powers (Articles 79–123)

- **Summons, prorogues, and dissolves Parliament** on advice of the Council of Ministers. (Article 85)
- **Addresses both Houses** at the start of the first session each year and after general elections. (Article 87)
- **Gives, withholds, or returns assent** to bills; may also exercise a pocket veto. (Article 111)
- **Promulgates ordinances** when Parliament is not in session. (Article 123)
- **Lays key reports** before Parliament, including Budget, CAG, Finance Commission, UPSC, and others.
- **Nominates members** to Rajya Sabha for special contributions; Anglo-Indian provision now repealed. (Article 80)
- **Recommends Money Bills** and presents the Annual Financial Statement in Parliament. (Article 110)

Legislative Role During Emergencies

- During a **National Emergency** (Article 352), the Parliament can **legislate on State List subjects**.
- The President may **authorize expenditure from the Consolidated Fund of India** when the Budget is not yet passed (Article 116)

Financial Powers of the President of India (Articles 112–117, 265, 280)

I. Constitutional Role in Financial Matters

- Though the President does not have direct control over finances, all financial business of the Union must be transacted **in their name**. Their role includes **recommendations, approvals, and constitutional oversight**.

II. Key Financial Powers

- **Presents the Union Budget** (Annual Financial Statement) before Parliament. (Article 112)
- **Recommends introduction of Money Bills** and financial legislation. (Articles 110 & 117)
- **Approves Supplementary Grants**, Vote on Account, and Vote of Credit in Lok Sabha.
- **Accesses the Contingency Fund** for urgent, unforeseen expenditure. (Article 267)
- **Constitutes the Finance Commission** every five years to recommend tax devolution. (Article 280)
- **Receives CAG audit reports** and lays them before Parliament for financial accountability. (Article 151)
- **Authorises expenditure** if the Budget isn't passed before the financial year begins. (Article 116)

Role During Emergency

- During a **Financial Emergency (Article 360)**, the President gains extensive fiscal powers:
  - Can **direct states** to reserve money bills for presidential assent.
  - Can reduce salaries of central/state employees, including judges.

Judicial Powers of the President of India

I. Clemency Powers (Article 72)

Under **Article 72**, the President has the power to grant **pardons and other forms of clemency** in specific cases.

Types of Clemency Powers:

1. **Pardon**: Complete absolution from punishment.
2. **Reprieve**: Temporary suspension of sentence.
3. **Respite**: Lesser punishment due to special circumstances (e.g., pregnancy, illness).
4. **Remission**: Reduction of sentence without changing its nature.
5. **Commutation**: Substitution of a lesser form of punishment (e.g., death to life imprisonment).

Applicable In:

- Cases involving offences against **Union laws**.
- **Court-martial cases**.
- **Death sentence** (even under state law).

Example: The President has exercised this power in notable mercy petitions, such as in the **Kehar Singh** and **Yakub Memon** cases.

Why Does the President Have These Powers?

1. **Principle of Mercy in Justice:** Article 72 allows the President to grant pardons, reprieves, respites, or remissions of punishment. This power exists to correct judicial errors, address exceptional humanitarian situations, or temper justice with mercy.
2. **Safeguard Against Judicial Fallibility:** The judicial process, though rigorous, can still lead to unjust outcomes. The President's power acts as a **constitutional safety valve** for exceptional cases, especially in **death penalty or life imprisonment** cases.
3. **Reflection of Sovereign Authority:** The power is a **symbol of the sovereign's grace**, derived from constitutional traditions where the Head of State retains ultimate authority to correct legal outcomes.
4. **Humanitarian & Political Considerations:** It allows the executive to consider **rehabilitation, age, illness, or diplomatic concerns** (e.g., foreign nationals, political prisoners) beyond the narrow lens of law.
5. **Checks and Balances:** It provides a **counterbalance to the judiciary**, allowing the executive to intervene where the courts may have no room for discretion.

Issues Associated with Article 72 Powers

1. **Lack of Defined Guidelines:** The Constitution does not lay down any **procedure or criteria** for exercising mercy powers, leading to concerns of **arbitrariness** or **inconsistency** in decisions.
2. **Delays in Decision-Making:** In many death row cases, mercy petitions remain **pending for years**, which itself has been deemed **mental torture** by courts (Shatrughan Chauhan v. Union of India, 2014).
3. **Executive Discretion vs Judicial Review:** While courts have held that mercy powers are subject to **judicial review in cases of mala fide or procedural lapses** (e.g., Kehar Singh v. Union of India, 1989), this creates **tension between judiciary and executive**.
4. **Political Considerations:** There have been allegations of **misuse or selective use** of pardons- based on political expediency or vote-bank pressures rather than justice (e.g.,

remission of sentences in controversial cases like Bilkis Bano).

5. **No Transparency or Public Accountability:** Decisions on mercy petitions are often taken **behind closed doors**, with no obligation to disclose the reasoning, leading to **lack of public trust**.

II. Judicial Appointments (Articles 124, 217)

- The President **appoints the Chief Justice of India** and other judges of the **Supreme Court and High Courts**, based on the **recommendation of the Collegium** system (established through SC rulings).
- Also has the power to **transfer High Court judges** under Article 222) on recommendation of the Chief Justice of India.

III. Seeking Supreme Court's Advice (Article 143)

- The President may refer:
  - Any question of **public importance or constitutional interpretation** to the **Supreme Court** for its advisory opinion.
- The **SC's opinion is not binding**, but carries persuasive authority.

Example: Presidential reference was made in the **Babri Masjid case (1993)** and the **2G Spectrum allocation case (2012)**.

IV. Limitations and Checks

- Clemency powers are **not subject to judicial review on merits**, but can be reviewed if exercised:
  - **Malafide**, **arbitrary**, or **without application of mind** (as per Epuru Sudhakar v. Govt. of A.P., 2006).
- The President **exercises powers on the advice of the Council of Ministers** (as clarified in Kehar Singh v. Union of India, 1989).

Emergency Powers

The President assumes a **central role during emergencies**:

- **National Emergency (Article 352)**: Can declare emergency if there is war, external aggression, or armed rebellion.
- **President's Rule (Article 356)**: Can take over a state's administration if constitutional machinery fails.
- **Financial Emergency (Article 360)**: Can impose fiscal control over states during a financial crisis.

Diplomatic Powers

1. Chief Representative of India in International Affairs

- The President is the **ceremonial head of state** and represents India **in international diplomacy**.
- Functions as the **symbol of Indian sovereignty** in external relations.

2. Treaty and Agreement Powers

- All **international treaties and agreements** are **negotiated and signed** in the name of the President.
- However, these become **binding only after ratification by Parliament**, as per constitutional practice.

Military Powers

1. Supreme Commander of the Defence Forces (Article 53)

- The President is the **ceremonial head of India's Armed Forces**: Army, Navy, and Air Force.
- All **military operations are conducted in their name**.

2. Appointment of Defence Chiefs

- Appoints the **Chiefs of Army, Navy, and Air Force**, based on Cabinet recommendation.
- Also appoints key commanders in the armed services.

3. Declaration of War and Peace

- Can **declare war or conclude peace**:
  - **Only with the approval of Parliament**.
  - Done formally in the name of the President.

Issues In Powers Bestowed

1. Lack of Real Power

- The President is often criticised as a **"rubber stamp"**, with no real executive authority.
- Under **Article 74(1)**, the President is bound to act on the **aid and advice of the Council of Ministers**.
- Even critical decisions like ordinances, bill assent, and emergency proclamations are executive-driven.

2. Discretion is Minimal and Unclear

- Limited occasions where the President can act independently (e.g., hung Parliament, dismissal of government).
- However, even these **discretionary powers are politically sensitive and ill-defined**, leading to ambiguity and criticism.

3. Indirect Election Undermines Democratic Legitimacy

- The President is not elected by the people but by an **Electoral College**, making it a post **distant from public mandate**.
- The value of votes and weightage is skewed by outdated population figures (1971 Census), raising fairness concerns.

4. Influence of Ruling Party in Appointments

- The process of Presidential elections is **heavily influenced by the ruling party's arithmetic**, raising doubts about impartiality.
- This compromises the President's perceived independence, especially in matters involving Centre–State tensions.

5. Opaque Role in Emergency Provisions

- Past misuse of **Article 356 (President's Rule)**, where the President mechanically approved dismissals of state governments.
- Even though S.R. Bommai v. Union of India imposed judicial checks, the President still signs off on contentious central decisions.

Critical analysis of the post of President

A. Ordinance Issuance Without Urgency

- The office has signed off on **ordinances issued frequently** by the government without parliamentary debate.
- Critics argue that the **ordinance route is being misused** to bypass legislative scrutiny (e.g., Farm Laws in 2020).

B. Delay or Withholding of Assent

- Though the President can return a bill once (except Money Bills), concerns have been raised about **undue delays**.

C. Allegations of Bias in Federal Disputes

- During **Centre–State tensions**, especially with opposition-ruled states, the President's role in approving contentious laws or central ordinances (e.g., on Delhi services control) has been questioned.

- Critics claim that the office has **not acted as a neutral constitutional guardian**, but followed political executive lines.

D. Use of Veto Powers

- Though rarely used, the **pocket veto** (withholding assent without time limit) remains constitutionally permissible and was famously used by President Zail Singh in 1986 on the **Postal Bill**.
- In recent years, no such assertive use has occurred, prompting calls for a **more engaged and assertive Presidency**.

E. Emergency Proclamation Powers

- While no new national emergency has been declared post-1975, the **President's role in approving state emergencies (Article 356)** remains vulnerable to executive misuse.

Broader Institutional Concerns

- **Ceremonial vs Moral Authority:** There is a mismatch between the symbolic status of the President and the lack of actual moral intervention during constitutional crises.
- **Visibility and Accountability**: The President is rarely in public view or active discourse, leading to questions about relevance beyond protocol.
- **Underutilisation of Advisory Role:** The President can warn or advise the Council of Ministers (Article 74), but this remains largely unused.

Should India Adopt a Presidential System?

Arguments in Favour

- **Stability of Tenure-** The executive does not depend on legislative majority, avoiding frequent government collapses. Example: Presidential systems like the U.S. offer fixed tenure and avoid the instability of coalition politics.
- **Separation of Powers-** Clear distinction between executive, legislature, and judiciary enhances accountability. Reduces the executive's control over the legislature, which is often seen in India's parliamentary system.
- **Efficiency in Decision-Making-** A directly elected President can act decisively without being constrained by party politics or legislative gridlock. Useful during national emergencies or when fast, unified action is needed.
- **End of Legislative Paralysis-** Reduces disruptions, walkouts, and logjams, as the executive is not dependent on legislative functioning for survival.

Arguments Against

- **Contradicts Indian Political Culture-** India's diversity and coalition politics require **consensual governance**, not centralised authority. A presidential system may encourage authoritarianism in a highly centralised executive.
- **Weakens Federalism-** Strong national executive may further marginalise states already complaining of **central overreach**. Example: Regional parties fear dilution of state autonomy in a centralised framework.
- **Threat to Parliamentary Democracy-** Goes against the **"basic structure"** doctrine of the Constitution, which includes parliamentary form of government (as upheld in Keshavananda Bharati case).
- **Risk of Personality Cults-** A directly elected President in a populous country may concentrate power excessively and encourage populism over institutional governance.

Thus, India should **not shift to a presidential system**, as it may weaken the principles of **collective responsibility and federal balance** vital to its plural democracy. The **parliamentary framework ensures accountability** and accommodates India's social and regional diversity more effectively.

Conclusion

The President of India, though a ceremonial head, embodies the constitutional conscience of the Republic, where dignity of office ensures that the spirit of democracy prevails over the mechanics of power.

GOVERNOR

Discuss the essential conditions for the exercise of the legislative powers by the Governor. Discuss the legality of the re-promulgation of ordinances by the Governor without placing them before the Legislature (CSE 2022, 15M)

Introduction

The office of the Governor, envisaged as a constitutional link between the Centre and states, has increasingly come under scrutiny. Several issues, including partisanship and legislative delays, have raised concerns about its neutrality and federal integrity.

Powers and Roles

1. Executive Powers
- Appoints CM and other ministers (Article 164), Advocate General, and State Election Commission members.

2. Legislative Powers
- Summons, prorogues, and dissolves the state legislature.
- Can withhold, give, or reserve assent to bills (Article 200).
- Example: In **Tamil Nadu (2023)**, Governor R.N. Ravi delayed assent to multiple bills, triggering assembly resolutions and public debate.

3. Discretionary Powers
- Appoints CM when no party has a clear majority.
- Sends a report recommending President's Rule (Article 356).
- Example: In **Arunachal Pradesh (2016)**, the Governor's early summoning of the Assembly led to President's Rule and was criticized by the Supreme Court.

4. Judicial Powers
- Can grant pardons, reprieves, respites, or remissions under Article 161 (for state laws).
- Example: In the Perarivalan **case (Rajiv Gandhi assassination convict)**, the Tamil Nadu Cabinet recommended his release; the Governor delayed the decision, leading to Supreme Court intervention in 2022.

Issues in the Powers Bestowed to the Governor

1. Vague Discretionary Powers (Article 163)
- The **scope of discretion** is not clearly defined in the Constitution, leaving it open to subjective interpretation.
- Example: In **Arunachal Pradesh (2016)**, the Governor advanced the Assembly session without cabinet advice- struck down by SC in Nabam Rebia v. Deputy Speaker.

2. Assent to Bills (Article 200)
- No time limit is prescribed for the Governor to act on state legislature bills, allowing indefinite delays.
- Example: In **Tamil Nadu (2023)**, Governor R.N. Ravi delayed assent to over 10 bills, prompting the Assembly to pass a resolution against him.

3. Imposition of President's Rule (Article 356)
- The Governor's report forms the basis of President's Rule, giving them disproportionate power to **topple elected governments**.
- Example: In **SR Bommai case (1994)**, the SC ruled that the Governor's report is subject to **judicial review** due to past misuse.

4. Appointment of Chief Minister (Hung Assembly)

- In the absence of a clear majority, the Governor's discretion to invite a party can be **politically biased**.
- Example: **Maharashtra (2019)** saw an early morning swearing-in of Fadnavis–Ajit Pawar before majority proof- later declared unconstitutional.

5. Delay or Inaction on Mercy Petitions (Article 161)

- Governors have **indefinitely withheld decisions** on mercy pleas, often ignoring state cabinet advice.
- Example: In the **Perarivalan case (2022)**, SC released the convict after the Governor sat on the cabinet's advice for over 2 years.

6. Ordinance Promulgation (Article 213)

- Though to be used in **exceptional situations**, some Governors have overused ordinance powers without necessity.
- This is against the spirit of constitution

7. Role in University Administration

- In several states, Governors act as **Chancellors of state universities**, leading to frequent conflicts with elected governments.
- Example: In **Kerala and West Bengal**, Governors have clashed with state governments over university appointments and autonomy.

Way Forward

1. Codify the Limits of Discretionary Powers

- Narrow the interpretation of discretionary powers to prevent misuse.
- SC in Nabam Rebia v. Deputy Speaker (2016): Governor cannot summon or dissolve the assembly without the aid and advice of the Council of Ministers.

2. Mandate Time-Bound Assent to Bills

- Amend Article 200 to ensure that the Governor must act on bills within a reasonable time (e.g., 30 days).
- Sarkaria Commission (1988): Recommended returning bills within 4–6 weeks to avoid constitutional deadlock.

3. Reform Appointment Process

- Ensure the Governor is a **non-political person**, not recently involved in active politics.
- Punchhi Commission (2010): Suggested a selection panel comprising PM, Home Minister, CM, and Speaker to appoint Governors.
- Sarkaria Commission: Recommended that the appointee be **from outside the state** and acceptable to the CM.

4. Strengthen Federal Neutrality

- Discourage the use of the Governor as a political instrument by the Union.
- S.R. Bommai Case (1994): SC ruled that **Governor's reports under Article 356 are subject to judicial review** to prevent misuse of President's Rule.

5. Institutionalize Governor's Code of Conduct

- Formulate a clear **Code of Conduct** governing the ethical and constitutional responsibilities of the Governor.
- NCRWC (2002): Called for a Code of Conduct to ensure political neutrality and dignity of the post.

6. Discourage Day-to-Day Interference

- Governors must avoid interfering in state administration and legislative matters.
- 2nd ARC (2007): Urged that Governors act as **constitutional sentinels**, not political actors.

7. Promote Cooperative Federalism

- Encourage structured **Union–State dialogue** and Governor–CM coordination.

- Platforms like the **Inter-State Council** and **Zonal Councils** can facilitate dispute resolution.

8. Enhance Transparency and Accountability

- Allow limited **judicial review** or **legislative oversight** of Governor's discretionary actions.
- Explore the feasibility of RTI disclosures and time-stamped public dashboards for pending files (e.g., bills, mercy petitions).

Conclusion

Unchecked discretion risks turning the Governor into an agent of disruption. Institutional reforms, guided by past judicial verdicts and commissions, can restore its intended purpose.

VICE-PRESIDENT

PYQs

> Discuss the role of the Vice –Presidents of India as the chairman of the Rajya Sabha? (CSE 2022, 10M)

Introduction

The Vice-President is India's **second highest constitutional office**, serving as the **ex-officio Chairperson of the Rajya Sabha** and acting as the **President's constitutional deputy**, ensuring continuity and legislative stability.

Powers and Functions

A. As Vice-President (Constitutional Role)

- **Largely ceremonial**; no executive functions.
- Stands first in the line of succession to the Presidency.

B. As Chairperson of the Rajya Sabha (Article 64)

- Presides over the **Upper House of Parliament**.
- Maintains decorum and order during debates.
- Can **suspend members**, **decide on points of order**, and **allow/disallow motions**.
- **Cannot vote** in Rajya Sabha except in the case of a **tie**.
- Not a member of any House; acts in a **non-partisan manner**.
- Plays a key role in **legislative discipline and productivity**.

> - As Chairperson of the Rajya Sabha, the Vice-President is **constitutionally mandated to act in a non-partisan manner**, ensuring fair conduct of debates, safeguarding opposition rights, and upholding parliamentary decorum. Since the Vice-President is not a member of either House, this institutional distance is intended to promote **neutrality and procedural fairness**.
> - However, in practice, this **non-partisan role is often contested**, especially when the Vice-President has held prior political affiliations or is perceived to favour the government during contentious proceedings.
> - Example: In 2023, **Vice-President Jagdeep Dhankhar** was criticised for **frequent expunging of opposition remarks**, including those made during the debate on the **Delhi Services Bill**, and for allowing extended disruptions by treasury benches while swiftly disciplining opposition MPs.
> - Example: Similar concerns were raised during **Venkaiah Naidu's tenure**, when opposition parties accused him of **curbing dissent** during debates on farm laws and the Pegasus surveillance issue.
>
> These cases reflect the growing tension between the **institutional expectation of neutrality** and the **perceived partisanship** in a highly polarised political environment.

C. As Acting President

- Discharges the functions of the President:
  - During **vacancy** due to death, resignation, impeachment.
  - When the President is unable to discharge duties due to **absence, illness, or other reasons**.

Comparison with US Vice-President

Aspect	India	USA
Election	By MPs of Parliament	By national Electoral College
Role in Legislature	Presiding officer of Rajya Sabha	Presides over Senate
Succession	Acts as President temporarily	Becomes President on death/removal of POTUS
Political Status	Generally non-partisan	Usually elected as a running mate of POTUS

Criticism of the Office of the Vice-President of India

1. Limited Executive Role

- The Vice-President **does not perform any day-to-day executive function** unless the office of the President falls vacant.
- As a result, the position is often viewed as **ceremonial and dormant**, lacking independent powers or influence over governance.

2. Merely a Standby to the President

- The Vice-President's **constitutional significance arises only in rare circumstances**- death, resignation, impeachment, or incapacity of the President.
- This **standby nature** reduces the functional relevance of the office in regular constitutional operations.

3. Politicisation of the Rajya Sabha Chair

- As **Chairperson of the Rajya Sabha**, the Vice-President is expected to maintain **neutrality and impartiality**.
- However, several Vice-Presidents have been **accused of partisan conduct**, especially during contentious debates or when deciding on:
    - Suspension of MPs.
    - Admissibility of motions.
    - Expunction of remarks.

Example: Recent Vice-Presidents faced criticism during debates on CAA, Farm Bills, and opposition walkouts- raising concerns over **erosion of non-partisan conduct**.

4. Limited Role in Legislative Deliberation

- Unlike the Speaker of Lok Sabha, the **Vice-President is not a member of the House** and **does not vote**, except in case of a tie.
- This limits the **participatory and deliberative influence** of the Vice-President in shaping legislation.

5. Overlap and Ambiguity

- The Vice-President is not part of the **Cabinet or legislative policymaking** and does not have a consultative role in governance.
- This creates a **perception of redundancy**, especially as the **Speaker of Lok Sabha** exercises more visible and influential legislative leadership.

6. Indirect Election and Democratic Disconnect

- The Vice-President is elected by an **Electoral College of only Members of Parliament**, unlike the President who represents both Parliament and state legislatures.
- This limited electorate raises concerns about **democratic legitimacy**, particularly when the VP assumes the role of **acting President**.

7. Inadequate Accountability

- There is **no formal mechanism to question or review the Vice-President's conduct** in the Rajya Sabha unless through a formal resolution.
- The procedure for **removal is political**, but **grounds are not clearly defined**, which may shield misconduct from institutional checks.

Way forward

Clarify Constitutional Role Beyond Chairpersonship

- Punchhi Commission recommended exploring the **functional expansion** of the Vice-President's role- possibly involving ceremonial, advisory, or coordination duties- without breaching the principle of parliamentary democracy.

Ensure Political Neutrality Post-Election

- The Vice-President should **formally resign from all party positions** upon election to uphold the dignity and non-partisan nature of the office.
- Sarkaria Commission stressed the need for maintaining **institutional impartiality** in high constitutional offices to preserve public trust.

Institutionalise Code of Conduct and Expectations

- A publicly notified **code of conduct for the Vice-President** can help reinforce expectations regarding neutrality, restraint, and constitutional ethics.
- Encourages dignified conduct during politically sensitive situations like joint sessions, presidential succession, or parliamentary impasse.

Transparent and Depoliticised Election Process

- Promote **consensus-based selection** of the Vice-President, particularly in tightly contested political climates.
- While the current electoral system is constitutionally valid, committees have noted that the **perception of neutrality** begins with the nature of election and nomination.

CONCLUSION

Though limited in executive power, the Vice-President plays a vital role in **upholding parliamentary decorum and constitutional continuity**, making the office an essential pillar of **legislative balance and succession readiness** in Indian democracy.

PRIME MINISTER

Introduction

The Prime Minister is the **linchpin of India's parliamentary democracy**, wielding immense formal and informal influence. Though the office derives its authority **from convention, support in the Lok Sabha, and party strength**, it plays the **central role in India's governance and political stability**.
"As the head of the Government, he (prime minister) is 'primus inter pares'. But, it is today too modest an appreciation of the Prime Minister's position". - **Herbert Marrison**
He called the Prime Minister "the captain of the ship of the state". - **Munro**

Constitutional Status

- Though the **Constitution of India** (Part V) **does not detail the powers** of the Prime Minister exhaustively, the post is **central to India's parliamentary system**.
- **Article 74(1)**: There shall be a Council of Ministers with the **Prime Minister at the head**, to aid and advise the President.
- The Prime Minister is the **de facto executive head** of India and the **chief architect of national policy**.

Role in Governance

- Acts as the **chief spokesperson and coordinator** of the Union Government.
- Leads the **Council of Ministers**, determines policy direction, and allocates portfolios.
- Represents India **at home and abroad**, and acts as a key link between the **President, Parliament, and the people**.

Powers Of Prime Minister Of India

I. Executive Powers

1. Head of the Government

- The Prime Minister is the **chief executive authority** of the country, exercising real power in contrast to the nominal authority of the President.
- All ministries, departments, and secretaries report to the Prime Minister, who provides **policy direction and oversight**.

2. Allocation of Portfolios

- The PM **assigns and reshuffles ministerial portfolios**, combining or dividing departments to ensure efficient administration.
- In case of conflict between ministers or overlap of duties, the PM's decision is final.

3. Chairperson of the Council of Ministers

- Leads **Cabinet meetings** and decides the meeting agenda.
- Coordinates activities of various ministries and ensures **collective responsibility**.

4. Link Between President and Council of Ministers (Article 78)

- The PM is constitutionally obligated to:
  - **Communicate all decisions** of the Cabinet to the President.
  - **Furnish information** the President may require.
  - Submit for reconsideration any decision if the President desires, though the final decision rests with the Cabinet.

II. Legislative Powers

1. Leader of the House

- If the PM is a member of Lok Sabha, he/she becomes the **leader of the House**.
- Guides the **government's legislative strategy**, introduces bills, and ensures smooth functioning of the House.

2. Control Over Legislative Agenda

- Plays a crucial role in formulating and driving the **government's legislative agenda**.
- Influences prioritisation of bills, responses to opposition motions, and discussions.

3. Advisory Role to the President

- Advises the President to:
  - **Summon and prorogue Parliament sessions**.
  - **Dissolve the Lok Sabha** before completion of its term (often during hung House scenarios or early elections).

III. Financial Powers

1. Policy Leadership in Budgeting

- Guides the **Finance Minister and Cabinet** in formulating the Union Budget.
- Decides on political priorities- such as welfare schemes, taxation policy, and spending on infrastructure.

2. Cabinet's Approval for Financial Legislation

- All **Money Bills** and key financial proposals are introduced only after Cabinet approval led by the PM.
- The PM ensures that such bills conform to the overall **economic policy** of the government.

IV. Foreign Policy and Defence

1. India's Global Face

- Represents India in **bilateral and multilateral meetings**, foreign state visits, and strategic summits like G20, BRICS, SCO.
- Engages with foreign heads of state and government, and articulates India's **strategic vision**.

2. Role in Defence and Security

- Chairs high-level defence policy bodies like the **Cabinet Committee on Security (CCS)**.
- Oversees functioning of the **National Security Council (NSC)** and intelligence coordination.
- Influences decisions regarding **defence purchases**, border management, and military operations (in consultation with Defence Minister and CDS).

V. Crisis Management and Coordination

1. Leadership During National Crises

- Central to India's response during emergencies like:
  - **Natural disasters** (cyclones, floods, earthquakes),
  - **Security crises** (Uri or Pulwama attacks),
  - **Health crises** (COVID-19 pandemic).

2. Inter-Governmental Coordination

- Mediates between Union and States during federal disputes.
- Holds meetings with Chief Ministers and State leaders to **address cooperative federalism** issues (e.g., GST, One Nation One Ration Card).

VI. Party Leadership Role

1. Leader of Majority Party or Coalition

- The PM is typically the **face of the ruling party**, commanding a parliamentary majority.
- Responsible for **maintaining party unity**, discipline, and handling internal dissent.

2. Electoral Leadership

- Leads the election campaign for the ruling party or alliance.
- Frames the **political and ideological agenda** that resonates with the electorate (e.g., PM Modi's emphasis on 'Viksit Bharat', Ujjwala Yojana, Digital India).

Evolution of the Role of Prime Minister in India Since Independence

Period	Phase	Role of Prime Minister	Key Features
1947–1964	Nehruvian Phase	Visionary Institution-Builder	Strong ideological leadership, emphasis on planning, foreign policy autonomy, cabinet system dominant
1966–1977 & 1980–1984	Indira Gandhi Era	Centralised & Authoritarian	Emergency, committed bureaucracy, weakening of checks and balances, dominance of PMO
1977–1998	Coalition & Institutional Revival	Constrained Leadership	Coalition compulsions, rise of federalism, assertion of judiciary and Election Commission
1998–2004	Vajpayee Era	Coalition Manager & Statesman	Balanced leadership, policy continuity, infrastructure focus, nuclear diplomacy
2004–2014	Manmohan Singh Era	Technocratic with Limited Political Power	Policy expansion (RTI, MNREGA), dual power centres, allegations of policy paralysis
2014–Present	Modi Era	Centralised & Presidential-style	PMO-driven governance, strong foreign policy role, personalised leadership, weakening of consensus politics

Critical Analysis of the Post of Prime Minister of India

Strengths and Evolutionary Role

1. Anchor of Parliamentary Democracy

- As the chief architect of government policy, the PM provides **leadership, direction, and cohesion** to the Council of Ministers.
- Example: PM **Narendra Modi** has driven large-scale programmes like **Digital India**, **PM Gati Shakti**, and the **COVID-19 vaccination campaign**, reflecting strong executive coordination.
- Example: **Jawaharlal Nehru** laid the foundation of India's institutional and economic architecture through **Five-Year Plans**, the **Non-Aligned Movement**, and **scientific temper** promotion.

2. National and Global Leadership

- The PM is the **chief spokesperson** and **face of India** on global and domestic platforms.
- Example: Modi's active diplomacy through **G20 presidency (2023)**, **QUAD summits**, and **Neighborhood First** policy has enhanced India's strategic image.
- Example: **Indira Gandhi** projected assertive leadership during the **1971 Bangladesh Liberation War**, enhancing India's regional dominance and geopolitical standing.

3. Crisis Management

- In times of crisis, the PM assumes a **central command role**- mobilising state machinery and shaping public perception.
- Example: **Manmohan Singh's leadership during the 2008 global financial crisis**, including stimulus policies and economic stabilisation, underscored calm, technocratic crisis management.
- **Concerns and Criticisms**

4. Excessive Centralisation of Power

- The PM has increasingly absorbed authority, often at the **expense of collective cabinet decision-making**..
- Example: **Indira Gandhi's Emergency-era rule (1975–77)** reflected a similar centralisation, where the PMO dominated all other constitutional bodies.

5. Marginalisation of Institutions

- Parliament, Cabinet Committees, and regulatory bodies often appear **bypassed** or **undermined** in critical decision-making.
- Example: **Rajiv Gandhi's handling of the Bofors scandal** raised concerns about executive opacity and Parliament being reduced to a formality.

6. Rise of Personality-Centric Politics

- The PM's office is increasingly personalised, with **policy and party narratives revolving around one leader**, reducing space for internal debate.
- Example: The **2024 election campaigns** prominently featured **Modi's image and leadership**, sidelining Cabinet or party identity.
- Example: **Nehru's and Indira Gandhi's towering presence** in the Congress often overshadowed collective cabinet visibility, though balanced by internal party debates in their early years.

7. Weakening of Federalism

- States, especially those ruled by opposition parties, report **limited consultation** and **unilateral imposition** of central schemes.
- Example: **Kerala, West Bengal, and Punjab** have objected to schemes like **Ayushman Bharat** and **PM Kisan** being implemented without state-specific adaptation or credit-sharing.
- Example: Tensions between the **Centre and DMK government in Tamil Nadu during the 1970s** revealed long-standing federal strains.

8. Undermining the Role of the Opposition

- A strong PM must enable dissent, yet **opposition voices are frequently sidelined or delegitimised**.
- Example: During **Indira Gandhi's Emergency**, opposition leaders were jailed, and Parliament was reduced to a rubber stamp, marking the nadir of dissent suppression.

Prime Minister's Office (PMO): Overview

The PMO is the **central executive office** that directly assists the **Prime Minister of India** in discharging their constitutional, political, and administrative responsibilities. It acts as the **nerve centre of governance and decision-making**, ensuring coordination across ministries and aligning national priorities.

Organisational Structure of the PMO

- **Principal Secretary to the PM** (usually a senior IAS officer)
- **National Security Advisor (NSA)**
- **Additional/Joint/Special Secretaries**
- **Private Secretary to PM**
- Media Advisors, Communications Staff, and Office Support Personnel

Importance of the PMO

- Centralises decision-making and accelerates governance.
- Enhances policy coherence and execution speed.
- Acts as the strategic, political, and administrative engine room of the Union Government.

Key Roles and Functions of the PMO

1. Policy Coordination and Monitoring

- Coordinates between ministries to ensure effective policy implementation.
- Monitors flagship schemes, strategic initiatives (e.g., Gati Shakti, Digital India).
- Resolves inter-ministerial conflicts or overlaps in policy domains.

2. Administrative Oversight

- Reviews performance of ministries, departments, and public-sector undertakings (PSUs).
- Handles sensitive files and appointments requiring PM's approval.

3. Appointments and Personnel Management

- Assists in key appointments under the PM's discretion: Governors, Ambassadors, Chiefs of Armed Forces, heads of regulatory bodies, etc.
- Coordinates with the Cabinet Secretariat and Department of Personnel and Training (DoPT).

4. Crisis and Strategic Management

- Acts as the central command during emergencies, national security issues, and strategic decisions.
- Plays an important role in intelligence coordination and internal security matters.

5. Public Communication and Image Management

- Drafts PM's speeches, statements, press releases, and social media communication.
- Manages the public image and outreach of the Prime Minister, including Mann Ki Baat and international engagements.

Concerns and Criticisms

- **Over-Centralisation of Power**
  - The PMO has become excessively powerful, sometimes **overshadowing individual ministries and cabinet collectivity**, undermining the spirit of parliamentary democracy.
- **Erosion of Institutional Autonomy**
  - PMO's direct influence on regulatory institutions, investigation agencies, and appointments raises concerns about independence and democratic checks and balances.
- **Lack of Transparency**
  - Despite RTI mechanisms, the PMO is **less transparent** in decision-making processes, often invoking confidentiality on national interest grounds.
- **Weakening of Cabinet System**
  - The trend toward **"presidential-style" leadership** within a parliamentary system has diluted collective decision-making and parliamentary accountability.
- **Politicisation of the Bureaucracy**
  - Critics argue that the PMO is increasingly **staffed with ideologically aligned personnel**, blurring the line between neutral governance and partisan priorities.

Conclusion

The Prime Minister is not just the first among equals but increasingly the face of the state and the voice of the nation. As the office evolves from consensus-builder to command centre, its challenge lies in balancing **decisive leadership with democratic deliberation**.

CENTRAL COUNCIL OF MINISTERS

Introduction

Headed by the **Prime Minister**, it embodies the principle of **collective responsibility** and forms the backbone of policy formulation and governance in India's parliamentary system.

Basic idea

- The **Central Council of Ministers (CoM)** is the cornerstone of India's **Parliamentary executive system**, drawing legitimacy from Articles **74 and 75** of the Constitution..
- The CoM ensures **collective responsibility to the Lok Sabha**, a hallmark of **Westminster-style democracy**.

Powers and Functions

1. Policy Formulation
- Frame domestic and foreign policy in sectors like health, defence, economy, etc.
- Decisions taken in **Cabinet meetings** or **Cabinet Committees** (like CCS, CCEA).
- Example: Cabinet approval for the Agnipath recruitment scheme in defence forces (2022).

2. Administrative Functions
- Supervise ministries and ensure implementation of laws and schemes.
- Allocate business rules under **Transaction of Business Rules, 1961**.
- Example: Ministry of Jal Shakti's execution of Jal Jeevan Mission under CoM supervision.

3. Legislative Functions
- Introduce government bills in Parliament.
- Frame legislative agenda and respond to debates and questions.
- Example: Introduction of the Women's Reservation Bill in 2023 by the CoM.

4. Financial Responsibilities
- Prepares the **Union Budget**, monitors fiscal discipline, and decides on resource allocation.
- Example: Budget 2024 introduced schemes like rooftop solar subsidy under direct CoM planning.

5. Crisis Management and Security
- Respond to internal and external crises – natural disasters, pandemics, security threats.
- Example: Decision-making during COVID-19, such as lockdowns and vaccine procurement, driven by CoM.

6. Appointments and Executive Decisions
- Recommends appointments to constitutional posts, heads of PSUs, governors, etc.
- Example: CoM recommends names for Governors and Election Commissioners to the President.

7. Foreign Policy Execution
- Finalise treaties, manage diplomatic relations, approve international agreements.
- Example: Cabinet approval for India's trade agreement with EFTA countries in 2024.

Cabinet vs Council of Ministers

Aspect	Cabinet	Council of Ministers
Composition	Senior-most ministers	All categories of ministers
Function	Core decision-making	Advisory & broader implementation
Meetings	Regular and structured	Rare or symbolic
Constitutional Status	Not explicitly mentioned	Explicitly mentioned (Art. 74–75)

Collective and Individual Responsibility

- **Collective Responsibility** – Entire CoM is accountable to Lok Sabha; failure of one is failure of all. Example: Fall of the Morarji Desai government (1979) after losing Lok Sabha support.
- **Individual Responsibility** – Ministers are responsible to the President for their acts and advice. Example: Railway Minister Ashwini Vaishnaw faced demands for resignation over the December 2023 Parliament security breach, where intruders entered the Lok Sabha chamber. He faced a privilege motion for alleged lapses, embodying the convention of individual responsibility under Article 75(3).

Important Judgments Related to the Central Council of Ministers

1. Shamsher Singh v. State of Punjab (1974)

- **Key Principle**: Reaffirmed that the **President is a constitutional head** who must act on the aid and advice of the **Council of Ministers**.
- **Quote**: "The President and the Governors are only formal or constitutional heads, and the real executive powers rest with the Council of Ministers."

2. R. K. Jain v. Union of India (1993)

- **Concern**: Appointment of ministers not elected to Parliament.
- **Held**: A non-MP can be appointed as a minister but must **get elected within 6 months** (as per Article 75(5)).

Issues and Criticism

1. **Centralisation of Power in the PMO-** The PMO often bypasses full cabinet consultation. Example: Demonetisation (2016) was decided by a small group without wider cabinet deliberation.
2. **Cabinet as a Rubber Stamp-** Cabinet meetings often become symbolic; decisions getting pre-decided by PM and close advisors.
3. **Weak Role of Ministers of State-** MoS often lack independent authority and are overshadowed by Cabinet Ministers. Example: MoS may not be allowed to answer questions or make key decisions in Parliament.
4. **Political Patronage Over Expertise-** Ministers are appointed for political reasons rather than expertise. Example: Complex portfolios like Health or Education sometimes go to generalist politicians.
5. **Non-transparency-** Cabinet decisions lack transparency and records are not available for public scrutiny.
6. **Frequent Use of Ordinances-** Increased reliance on ordinances may reduce the scope for legislative scrutiny and debate. Example: Three **farm laws in 2020** were initially brought via ordinances.
7. **Lack of Gender and Social Diversity-** Women and marginalised communities underrepresented. Example: Out of 78 ministers in 2021, only 11 were women.

Reforms and Suggestions

1. **Strengthen Cabinet Committees-** Empower **Cabinet Committees** (e.g., CCEA, CCS, GoMs) for more democratic decision-making.
2. **Clearer Role for MoS-** Define independent functions and responsibilities for MoS to improve efficiency.
3. **Reduce Over-centralisation-** Ensure regular and inclusive Cabinet meetings; reduce over-reliance on PMO.
4. **Ensure Merit-based Appointments-** Appoint ministers with relevant domain expertise. Example: Inclusion of technocrats like Rajeev Chandrasekhar (IT) improved policy clarity.

5. **Promote Gender and Caste Inclusion-** Implement internal party reforms to increase women and SC/ST ministers.
6. **Enhance Legislative Scrutiny-** Strengthen parliamentary committees to question ministers' performance and policy impact.
7. **Transparency in Decision-Making-** Maintain written records of cabinet discussions and publish redacted summaries for public trust.
8. **Encourage Performance Review-** Institutionalise yearly performance audits of ministries, tied to measurable outcomes.
9. **Curtail Ordinance Misuse-** Enforce stricter rules under Article 123; ensure ordinances are placed before Parliament within set timelines.

CONCLUSION

The Council of Ministers is the nerve centre of India's executive power, translating political will into governance. Its effectiveness hinges on collective decision-making, transparency, and inclusiveness.

CABINET SYSTEM

PYQs

Introduction

The size of the cabinet should be as big as governmental work justifies and as big as the Prime Minister can manage as a team. How far the efficacy of a government then is inversely related to the size of the cabinet? Discuss. (CSE 2014, 12.5M)
"Thegrowthofthecabinetsystemhaspracticallyresultedinthemarginalisationofparliamentary supremacy." Elucidate. (CSE 2024, 10M)

The Cabinet is the brain and nerve centre of the parliamentary executive- a small yet powerful group that steers the ship of governance. Far more than a cluster of ministers, the Cabinet reflects the collective will of the political leadership, translating electoral mandates into policy actions.

Idea of Cabinet

- A small and cohesive group of senior ministers selected by the Prime Minister.
  It includes the heads of major ministries such as Home, Finance, Defence, and External Affairs.
- It is the highest decision-making body in the executive branch of government.
- The 44th Constitutional Amendment Act of 1978 added the term 'Cabinet' to Article 352, making it mandatory that a National Emergency can be proclaimed only on the basis of a written recommendation by the Cabinet.

Roles and Responsibilities

- **Formulates national policy** and ensures its implementation.
- Approves **major bills, ordinances, and budget proposals** before they are presented in Parliament.
- Coordinates activities across ministries and **resolves inter-ministerial conflicts.**
- **Advises** the President on key appointments and emergency actions.
- Handles matters of **national importance** such as security, diplomacy, and disaster response.
  Example: The Cabinet Committee on Security approved the Balakot airstrike decision in 2019.

Recommendations by Committees and Commissions

- **Sarkaria Commission (1983)**: Emphasized that the Cabinet should meet regularly and be the principal decision-making body.
- **Punchhi Commission (2007)**: Recommended better documentation of Cabinet decisions and institutionalised inter-state coordination.
- **Second ARC (2005)**: Advocated transparent functioning and better Cabinet Secretariat support for efficient decision-making.

Indian vs UK Cabinet System

- **Head of State**: India has an elected President; UK has a hereditary monarch.
- **Codification**: Indian Cabinet is backed by a written Constitution; UK's Cabinet system is based on conventions.

- **Collective Responsibility**: Both follow this principle, but UK conventions are more strictly observed.
- **Parliamentary Sovereignty**: UK Parliament is supreme; in India, constitutional supremacy limits Parliament.
- **Cabinet Secrecy**: Similar secrecy norms are followed, but the UK's Privy Council tradition differs from India's cabinet note system.
- **Example:** In the UK, Cabinet reshuffles are routine and reflect intra-party dynamics; in India, reshuffles are more centralised under PMO.

Is the Efficacy of Government Inversely Related to Cabinet Size?

Why Larger Cabinets May Reduce Efficacy

- **Coordination Issues**: More ministers = more turf conflicts.
  UPA-II faced policy paralysis due to poor coordination (e.g., Coal, Power, Environment ministries).
- **Political Overload**: Size often driven by coalition demands, not governance needs.
  Karnataka 2019: BJP expanded cabinet to 34 for political balancing.
- **Weak Oversight**: PM/CM can't monitor performance effectively in a bloated setup.
  In Bihar (2021), after a major cabinet expansion, multiple reports emerged of underperformance and duplication in portfolios.
- **Ministry Redundancy**: Fragmented ministries create inefficiencies.
  Pre-2019: Water ministries were split, merged into **Jal Shakti** for coherence.

Why Bigger Cabinet Isn't Always Bad

- **Diverse Representation**: India's diversity needs inclusion.
  2021 Union Cabinet: Added women, SC/ST leaders, and NE ministers.
- **Functional Needs**: Expanding governance needs sector-specific ministries.
  MeitY, Skill Development Ministry created for digital economy and youth skilling.
- **Coalition Management**: Larger cabinets ensure political stability.
  UPA-I/II: Included DMK, NCP, TMC to hold coalition together.

The efficiency of a government is determined more by the quality of leadership and clarity of roles than by the sheer size of its cabinet. A balanced approach ensures both administrative effectiveness and democratic representation.

Cabinet Committees

Cabinet Committees are smaller groups of ministers formed within the Cabinet to streamline governance by enabling detailed examination of specific policy areas. While not mentioned in the Constitution, they are an essential component of India's **executive efficiency architecture**.

Role of Cabinet Committees

1. **Economic Governance-** Clears policies on industry, FDI, subsidies, and economic packages. Example: Cabinet Committee on Economic Affairs (CCEA) approved 100% FDI in the coal sector in 2020.
2. **National Security-** Makes decisions on defence strategy, internal security, and nuclear policy. Example: Cabinet Committee on Security (CCS) approved the Balakot airstrike in 2019 after the Pulwama attack.
3. **Appointments and Service Matters-** Selects top bureaucrats, heads of PSUs, regulatory bodies, and intelligence agencies. Example: Appointments Committee of the Cabinet (ACC) appointed chiefs of CBI and RAW.

4. **Investment and Infrastructure-** Monitors large-scale projects, resolves inter-ministerial issues, and clears major investments. Example: Cabinet Committee on Investment and Growth fast-tracked the Bharatmala project and cleared BPCL disinvestment.
5. **Employment and Skill Development-** Oversees job creation schemes and vocational training programs. Example: Cabinet Committee on Employment reviewed and scaled up PM Kaushal Vikas Yojana.
6. **Political and Administrative Oversight-** Coordinates political strategy, handles socio-political issues, and arbitrates Centre-State disputes. Example: Cabinet Committee on Political Affairs played a mediatory role during the farmers' protest of 2020–21.
7. **Crisis Response and Special Situations-** Ad hoc committees may be formed to deal with extraordinary events and emergencies. Example: Special Cabinet Committee coordinated COVID-19 response including lockdown strategy and vaccine logistics.

Rationale Behind Cabinet Committees

- **Division of Work**
  Allows the full Cabinet to focus on broader governance while subject-specific matters are delegated.
  Example: **Cabinet Committee on Economic Affairs (CCEA)** handles detailed economic proposals such as changes to MSP (Minimum Support Price), allowing the full Cabinet to focus on strategic policy.
- **Need for Specialisation**
  Brings subject expertise into decision-making.
  Example: **Cabinet Committee on Investment and Growth** includes finance, commerce, and infrastructure ministers to fast-track economic reforms.
- **Confidentiality in Sensitive Matters**
  Allows discreet deliberation on defence, foreign policy, and internal security.
  Example: **Cabinet Committee on Security (CCS)** took the decision for the 2019 Balakot airstrike post-Pulwama attack.
- **Timely Decision-Making in Emergencies**
  Ensures rapid responses in crisis situations without waiting for full Cabinet consensus.
  Example: In 2020, during COVID-19, an **empowered ad-hoc committee** helped coordinate lockdown policy and procurement of medical equipment.
- **Resolving Inter-Ministerial Conflicts**
  Brings relevant ministers together to settle jurisdictional disputes.
  Example: **Cabinet Committee on Political Affairs** often mediates disputes between Agriculture and Environment Ministries on land-use conflicts.

Criticism of the Cabinet System

- **Centralisation of Power**: Real decision-making lies with the PMO, marginalising collective Cabinet functioning.
- **Reduced Accountability**: Cabinet decisions are often opaque, limiting public scrutiny.
- **Rubber Stamp**: Cabinet may merely endorse decisions already taken by the Prime Minister or inner circle.
- **Irregular Meetings**: Full Cabinet meetings are infrequent; committees often take key decisions.
- **Lack of Diversity**: Often lacks representation from marginalised communities or regions.
- **Example:** The Demonetisation decision in 2016 was allegedly not discussed in the full Cabinet before implementation, raising concerns about transparency.

Conclusion

The Cabinet System remains the cornerstone of parliamentary governance, ensuring collective deliberation and responsibility. However, to safeguard democratic values, there is a need to strengthen internal democracy, increase transparency, and uphold constitutional norms within Cabinet functioning.

CHIEF MINISTER

Introduction

Positioned at the intersection of political leadership and constitutional authority, the CM plays a pivotal role in translating legislative intent into governance in a state.

Roles and responsibilities

1. Executive Leadership
- Heads the **Council of Ministers** and exercises **real executive authority** at the state level.
- Leads policy implementation, governance delivery, and administrative coordination.
- Allots portfolios to ministers and ensures cabinet discipline and cohesion.

2. Policy Formulation and Financial Management
- Plays a key role in formulating state policies.
- Leads the **state budget preparation**, expenditure planning, and economic reviews.
- Coordinates with the Centre for **Finance Commission grants** and **centrally sponsored schemes (CSS)**.

3. Legislative Responsibilities
- Advises the **Governor** on summoning, proroguing, or dissolving the **State Legislative Assembly**.
- Introduces **government bills**, answers questions, and steers debates in the House.
- Recommends the **Governor's address**, prepares legislative responses, and ensures majority support.

4. Constitutional Functions
- Advises the Governor on the **appointment of ministers** and composition of the Cabinet.
- Communicates all legislative proposals and administrative decisions to the Governor. (Article 167)
- Can recommend **dissolution of the Assembly** when necessary.

5. Administrative Oversight
- Supervises the functioning of state departments, bureaucrats, and **district administration**.
- Reviews the performance of **state PSUs**, flagship schemes, and welfare initiatives.
- Exercises discretion in appointments and transfers of senior officers.

6. Crisis and Disaster Management
- Leads the state's response during **natural disasters, law and order breakdowns, or pandemics**.
- Coordinates with **central agencies**, disaster relief forces, and local administration.

7. Inter-Governmental Coordination
- Represents the state in forums like **NITI Aayog, Inter-State Council**, and **Zonal Councils**.
- Liaises with the **Central Government** on finance, infrastructure, security, and development programs.
- Engages in negotiation and consultation on federal issues and disputes.

Issues

1. Centralisation of Power
- The CM's office increasingly dominates decision-making, reducing the role of ministers and bureaucrats.
- In **West Bengal**, key policies like the "Duare Sarkar" welfare outreach were driven entirely by the CMO with little decentralisation.

2. Politicisation of Bureaucracy

- Frequent transfers, politically motivated postings, and interference undermine bureaucratic professionalism.
- Example: In **Punjab**, over 50 senior officers were reshuffled in just 18 months, disrupting administrative continuity.

3. Tensions with Governors

- Political differences between the CM and Governor have led to legislative delays and administrative stand-offs.
- Example: In **Tamil Nadu**, the Governor delayed assent to key bills, including university appointments, creating governance bottlenecks.

4. Crisis of Accountability

- CMs face limited scrutiny due to weak opposition, centralised legislative control, and lack of committee oversight.
- In **Bihar**, major decisions on liquor prohibition and caste surveys were executed with limited floor debate.

5. Gender and Social Representation Gaps

- Women, SC/ST, and minorities are underrepresented in cabinets, despite electoral promises.
- Example: As of 2024, **less than 10%** of cabinet ministers in most Indian states are women, including in states like Gujarat and Karnataka.

6. Neglect of Local Bodies

- CMs often bypass panchayats and urban local bodies, violating the spirit of decentralisation.
- Example: In **Jharkhand**, panchayat elections were delayed for over two years, restricting local governance.

Way forward

1. Promote Collective Cabinet Functioning

- Encourage real delegation of authority to ministers.
- Institutionalise mechanisms for internal policy consultation within the cabinet.

2. Strengthen Bureaucratic Stability

- Implement fixed tenures for key administrative positions.
- Adopt transparent criteria for postings and promotions.

3. Clarify Governor–CM Relations

- Establish conventions for time-bound assent to bills.
- Use the Inter-State Council and constitutional reforms to reduce friction.

4. Deepen Intra-Party Democracy

- Encourage bottom-up emergence of leadership to increase legitimacy.

5. Institutionalise Accountability

- Empower legislative committees to regularly review CM-led policies.
- Use digital dashboards and public audits to ensure transparency.

6. Empower Local Governments

- Transfer funds, functions, and functionaries (3Fs) to Panchayati Raj Institutions and Urban Local Bodies.
- Make DPCs (District Planning Committees) functional under CM oversight.

State Council of Ministers

a. Powers and Functions

- Aid and advise the Governor in state matters.
- Frame and implement state policies in areas like agriculture, health, and education.
- Prepare the State Budget and allocate resources.

- Introduce bills and guide them through the State Assembly.
- Manage crises and maintain law and order.
  Example: During the COVID-19 pandemic, Kerala's SCM was key in coordinating testing, healthcare infrastructure, and lockdown protocols.

b. Issues/Concerns

- **Delays in Cabinet Formation and Portfolio Allocation-** In several states, newly elected governments have **delayed cabinet expansion**, leading to administrative bottlenecks.
- **Violation of 91st Amendment – Size of Ministry-** The Constitution limits the size of the Council of Ministers to **15% of the strength of the legislative assembly**, but **some states maintain minimal-sized cabinets**, affecting governance delivery.
  Example: **Delhi** and **Goa** have had extended periods with only a few ministers, overburdening them with multiple portfolios.
- **Use of Ministers Without Portfolio as Political Placements-** Some states appoint **ministers without specific portfolios**, often seen as a **political accommodation strategy** rather than a governance necessity.
- **Allegations of Corruption and Misgovernance-** Several state ministers have faced charges of **corruption, nepotism, or misuse of office**, denting public trust.
  Example: In **Maharashtra**, multiple former ministers have been under ED/CBI scanner post-regime changes.
- **Cabinet Reshuffles Driven by Political Expediency-** Frequent reshuffles and sackings are often based on **political loyalty** rather than performance.
- **Inadequate Diversity in Council Composition-** Criticism persists regarding **under-representation of women, SC/ST, and minority communities** in state cabinets.

Important Judgments Related to the State Council of Ministers

1. S.R. Bommai v. Union of India (1994)

- **Majority support must be tested on the floor** of the Assembly- not decided by the Governor.
- **President's Rule cannot be imposed arbitrarily**.
- **Federalism is part of the basic structure** of the Constitution.

2. Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Assembly (2016)

- **Issue**: Role of Governor in summoning/dissolving the Assembly.
- **Ruling**: Governor **cannot act independently** and must act on **aid and advice** of the **Council of Ministers** in most matters.
- **Impact**: Curbed **Governor's discretionary powers** and protected the autonomy of the State Council.

3. Rameshwar Prasad v. Union of India (2006)

- **Context**: Dissolution of Bihar Assembly without giving chance to prove majority.
- **Ruling**: Declared the **Governor's recommendation unconstitutional**; emphasized the importance of **floor test** and **collective responsibility**.

4. B.R. Kapur v. State of Tamil Nadu (2001)

- **Issue**: Jayalalithaa's appointment as CM despite being disqualified.
- **Ruling**: A person **disqualified under law cannot be appointed CM**.
- **Principle**: Integrity of **constitutional offices and rule of law** upheld.

Conclusion

The Chief Minister today stands at a crossroads between populism and performance. The direction chosen will shape not just the state's future, but the stability of Indian federalism.

PARLIAMENT

PYQs

The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the anti-defection law, which was legislated but with a different intention? (CSE 2013, 10M)

Introduction

The Indian Parliament is not just a building of brick and stone- it is the beating heart of the world's largest democracy. It is where **laws are crafted, power is questioned, and the voice of a billion people finds expression**.

Basic Idea

- It is the **law-making organ** of the government and plays a central role in shaping public policy, representing the will of the people, and upholding constitutional values.
- At its core, the legislature is the **embodiment of popular sovereignty**- it reflects the collective voice of the citizens through their elected representatives.

Historical Background

Legislative development in India began under colonial rule, with incremental reforms introducing representative elements:

- **Indian Councils Act (1861)**: First time, Indians were nominated to legislative councils.
- **Indian Councils Act (1909)**: Introduced indirect elections (Morley-Minto Reforms).
- **Government of India Act (1919)**: Established a bicameral legislature at the Centre.
- **Government of India Act (1935)**: Laid the foundation for federal legislative structures, many features of which were retained in the Constitution.

Composition Of The Indian Parliament

The Indian Constitution has provisions for holding joint sessions of the two houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reasons thereof. (CSE 2017, 15M)
Individual Parliamentarian's role as the national lawmaker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss. (CSE 2019, 15M)
Rajya Sabha has been transformed from a 'useless stepney tyre' to the most useful supporting organ in the past in the past few decades. Highlight the factors as well as the areas in which this transformation could be visible. (CSE 2020, 15M)

As per **Article 79**, the Parliament of India comprises three components:

- **The President of India**
- **The Rajya Sabha** (Council of States)
- **The Lok Sabha** (House of the People)

1. **Role of the President in Parliament**

Although not a member of either House, the President is an essential part of Parliament with following functions and powers:

- **Assent to Bills** (Article 111) (But, can return **ordinary bills once**, must assent if re-passed).
- **Ordinance-making power** (Article 123) subject to **Parliamentary approval** (6 weeks).
- **Summoning and Dissolution** (Articles 85 & 86).
- **Addressing the Houses** at the beginning of the first session after each general election and at the start of each year (Article 87).

Although there are certain limitations to these powers-

- **Bounded by the aid and advice of the Council of Ministers** under Article 74, restricting independent discretion.(Shamsher Singh v. State of Punjab (1974)).
- "The President of India is not a ruler but a constitutional figurehead functioning on the advice of the Cabinet."
- **Cannot introduce or draft legislation**; only ministers or private members in Parliament can do so.
- **Cannot withhold or return Constitutional Amendment Bills** - under Article 368, they **must give assent once passed by Parliament**.

2. Rajya Sabha (Upper House)

- Governed by **Article 80**, it represents the **states and union territories** in India's federal system.
- The Rajya Sabha represents the **federal character** of the Indian polity by including members elected by **state legislative assemblies**.
- It provides a platform for states to **safeguard their interests** and participate in national legislation, especially on matters affecting state autonomy.
- Its **permanent nature** ensures legislative continuity, even when the Lok Sabha is dissolved.

3. **Lok Sabha (Lower House)**

- Governed by **Article 81**, it represents the **people of India** through **direct elections**.
- Holds **supremacy over money matters** and the **executive is accountable to it** under Article 75(3).
- Composed of members **directly elected by the citizens**, the Lok Sabha represents the **will of the majority** and serves as the **primary legislative body**.
- It reflects **popular sovereignty**, as its members are chosen on the basis of **universal adult suffrage**.
- It holds **greater financial power** and plays a crucial role in determining the **tenure of the executive**.

Extra Powers of Lok Sabha (Not Enjoyed by Rajya Sabha)

1. **Exclusive Control over Money Bills**

- **Article 110** of the Constitution defining a **Money Bill,** can **only be introduced in the Lok Sabha**.
- The **Rajya Sabha has no power to amend** a Money Bill; it can only offer recommendations, which the Lok Sabha may accept or reject.
- If the Rajya Sabha does not return the bill within **14 days**, it is **deemed passed**.
- **Significance**: Gives the Lok Sabha **final say in financial legislation**, including taxation, borrowing, and expenditure.

2. **Final Authority on Demands for Grants and Budget**

- The **Union Budget** is presented in the Lok Sabha.
- Only the **Lok Sabha has the power to vote on Demands for Grants**; the Rajya Sabha **can discuss but not vote**.
- **Appropriation and Finance Bills**, essential for withdrawing money from the Consolidated Fund of India, must be passed by the Lok Sabha.

- **Significance**: This gives the Lok Sabha **complete control over the government's finances** and public spending.

3. **Power to Make or Break Governments**
   - The **Council of Ministers is collectively responsible only to the Lok Sabha** (Article 75(3)).
   - A **No-Confidence Motion** or **Confidence Vote** can only be introduced and passed in the Lok Sabha.
   - If the Lok Sabha passes a **No-Confidence Motion**, the government must **resign**.
   - **Significance**: Only the Lok Sabha can **form or topple the Union government**, not the Rajya Sabha.

4. Greater Role in Financial Control and Oversight
   - **Cut Motions** (Policy, Economy, Token Cuts) on the Demands for Grants can only be moved in the Lok Sabha.
   - Important financial oversight takes place through **Lok Sabha debates, discussions, and questions**.
   - Most key parliamentary financial committees (e.g., Public Accounts Committee) have **Lok Sabha members as chairpersons**.
   - **Significance**: Establishes the Lok Sabha as the **primary forum for fiscal accountability**.

5. Precedence in Joint Sessions
   - In a **joint sitting of Parliament** (Article 108), convened to resolve a deadlock on ordinary legislation, the **Lok Sabha has numerical superiority**.
   - Since it has more members, the outcome typically favours the Lok Sabha's position.
   - **Example**: The **Prevention of Terrorism Act (POTA), 2002**, was passed in a joint sitting despite opposition from the Rajya Sabha.

Relevance of the Rajya Sabha in Indian Democracy:

Although the **Lok Sabha** holds greater **financial and executive powers**, the **Rajya Sabha is not merely a secondary chamber** - it performs **unique constitutional, federal, and deliberative functions** that help balance haste with wisdom, and populism with prudence.

1. **Federal Character and Representation of States**
   - The Rajya Sabha provides **representation to the states** and union territories in the Union legislature, ensuring that **India's quasi-federal structure** is reflected at the Centre.
   - Members are **elected by the elected members of State Legislative Assemblies** through proportional representation.
   - Smaller states receive a voice in national policymaking that they may not enjoy in the numerically-dominant Lok Sabha.
   - **Why it matters**: Prevents **centralisation of power** and promotes **cooperative federalism**.

2. Continuity in the Parliamentary System
   - Unlike the Lok Sabha, the Rajya Sabha is a **permanent body** and **cannot be dissolved**.
   - This ensures **institutional stability** and **continuity in governance**, especially during political transitions or Lok Sabha dissolutions.
   - **Why it matters**: Acts as a **buffer against sudden political upheavals**.

3. Check on Hasty Legislations
   - Rajya Sabha acts as a **deliberative house**, reviewing and refining laws passed by the Lok Sabha.
   - It provides an **opportunity to pause, reflect, and reconsider**, helping avoid impulsive or poorly drafted laws.
   - Several legislations have been **amended or delayed** after informed debate in the Rajya Sabha.
   - Example- The Rajya Sabha initially stalled the Triple Talaq Bill (2017–2019), citing concerns over criminalization and misuse, which led to key revisions like requiring a magistrate's approval for bail before its eventual passage.

- **Why it matters**: Protects against the **"tyranny of the majority"** and ensures laws are **well-considered**.

4. Special Powers Under Article 249

- **Unique power** to authorise Parliament to **make laws on subjects in the State List**, if it is deemed necessary in the **national interest**.
- **Why it matters**: Shows that Rajya Sabha is **not just a reviewing chamber**, but also a **policy enabler** in federal matters.

5. Platform for Expertise and Non-Electoral Voices

- Rajya Sabha includes **nominated members (Article 80)** - individuals with **distinguished contributions in literature, science, art, and social service**.
- It allows for **non-political experts and states persons** to participate in national policy debates.
- Eminent personalities like **Dr. B.R. Ambedkar, Rukmini Devi Arundale, and M.S. Swaminathan** has enriched legislative discourse through Rajya Sabha.
- **Why it matters**: Enhances **quality of debate** with **expert insights** often missing in electoral politics.

6. Voice of the Opposition and Balance to Populism

- In times when the ruling party has a **majority in Lok Sabha**, the Rajya Sabha often becomes a **forum for stronger opposition** and **institutional scrutiny**.
- It provides space for **policy resistance**, **ethical interventions**, and **minority rights advocacy**.
- It can delay legislation and demand **broader consensus** on controversial bills.
- **Why it matters**: Acts as a **safeguard against majoritarianism** and excessive executive dominance.

Importance of Bicameralism

- **Ensures Broader Representation:** Lok Sabha represents the people, while Rajya Sabha gives voice to the states.
- **Acts as a Check on Hasty Legislation:** Rajya Sabha revises or delays bills, preventing impulsive law-making.
- **Provides Federal Safeguards:** It protects state interests against central dominance.
- **Encourages Informed and Mature Debate:** With experienced and nominated members, it enables issue-based discussions.
  Example: Technocrats, lawyers, and economists like Manmohan Singh and Arun Jaitley have contributed to nuanced debates.
- **Exclusive Constitutional Functions:** Rajya Sabha can empower Parliament to legislate on State List (Article 249) and approve creation of All India Services (Article 312).

Functions Of The Indian Parliament

1. **LEGISLATIVE FUNCTIONS**

- A **significant deviation from classical federal models** (like in the U.S.), where residuary powers lie with the states. In India, these powers have been **deliberately vested in the Centre** to ensure **national integration, coordination, and adaptability** in the face of emerging challenges**.**
- For concurrent list subjects, if the **state law has received the President's assent**, it can prevail in that state - but Parliament still retains the power to override it later by enacting a new law.

Power to Legislate on State List in Special Circumstances

Although normally restricted to the Union and Concurrent Lists, the Parliament can legislate on subjects in the **State List** under the following **exceptional conditions**:

- **When the Rajya Sabha passes a resolution** (by a two-thirds majority of members present and voting) stating that it is necessary in the national interest (Article 249).

- **During a National Emergency**, Parliament can legislate on all subjects, including those in the State List (Article 250).
- **When two or more States pass a resolution** requesting Parliament to legislate on a specific State subject (Article 252).
- **To implement international agreements, conventions, or treaties**, Parliament can make laws irrespective of the list (Article 253).
- **When President's Rule is in operation** in a state, Parliament assumes the legislative power of the concerned State Legislature (Article 356).

Ordinance-Making and Parliamentary Approval

- An **ordinance** is a **temporary law** issued by the **President of India** (or a **Governor** at the state level) when the **legislature is not in session** and **immediate action is necessary**.
- The **President may issue ordinances** under **Article 123** when Parliament is not in session, allowing for urgent legislative action.
- However, every ordinance must be **laid before Parliament** and **approved within six weeks** of reassembly, failing which it **ceases to operate**.

Trend of Ordinance Usage

- **Initially meant for emergencies, ordinances were regularly issued- 7.1/year in the 1950s.**
- **Usage peaked in the 1990s at 19.6/year, then declined to 7.9/year in the 2010s.**
- **Recent years show a fresh spike- 16 in 2019, 15 in 2020.**

Impact of Increasing Use of Ordinances on Democracy and Governance

- **Bypasses Legislature**: Ordinances are misused as a regular law-making tool, bypassing Parliament and undermining its constitutional role.
- **Weakens Separation of Powers**: Overuse of ordinances disrupts the balance between executive, legislature, and judiciary, violating the doctrine of checks and balances.
- **Reduces Government Accountability**: Laws passed without parliamentary debate escape scrutiny from elected representatives, weakening democratic oversight.
- **Temporary Becomes Permanent**: Despite being meant as emergency tools, ordinances are often used to introduce long-term legal changes.
- **Erodes Public Trust**: When laws are passed without debate, it undermines people's faith in representative democracy and institutional transparency.

Judicial Judgements on Re-promulgation

- RC Cooper vs. Union of India (1970): The Supreme Court ruled that an ordinance can be challenged if it bypasses legislative debate without genuine urgency.
- DC Wadhwa vs. State of Bihar (1987): The Court emphasised that ordinance-making is an emergency tool, not a replacement for regular lawmaking.
- Krishna Kumar Singh vs. State of Bihar: The Court clarified that the power to issue ordinances is conditional and must be justified by immediate necessity.

Role in Delegated Legislation

- Parliament often passes laws in a broad form and lets the executive frame detailed rules - this is called **delegated** or **subordinate legislation**.
- It helps **save legislative time**, especially for technical or administrative issues.
- It allows for **quick and flexible responses** to changing needs without new laws.
- It enables the inclusion of **expert input** in complex areas like health, environment, and taxation.
- Though the executive frames the rules, **Parliament exercises oversight**.
- These rules must be **laid before Parliament** and can be **approved, amended, or annulled**.
- Example: The **Environmental Protection Act, 1986** lets the Centre make rules on pollution control and emissions.

2. EXECUTIVE FUNCTIONS

Parliamentary scrutiny is the **process through which the legislature monitors, examines, and holds the executive accountable** for its actions, policies, and expenditure. It lies at the heart of a **responsible government**, ensuring that power is exercised **transparently, lawfully, and in the public interest**.

a. Question Hour

- **Example**: Questions have been raised on topics like COVID-19 vaccine distribution, defence procurement, unemployment rates, and farmer suicides.

b. Zero Hour

- **Example**: Raising concerns about railway accidents, custodial deaths, or sudden inflation during Zero Hour has led to ministerial responses and even policy action.

c. Calling Attention Motion

- Allows a member to **draw the attention of a minister** to a matter of **urgent public importance**, followed by a brief statement from the minister and discussion.

d. Adjournment Motion

- **Example**: Adjournment motions have been used to debate issues like major scams (e.g., Bofors), internal security lapses, and natural disasters.

e. No-Confidence Motion

- **Example**: The Vajpayee-led NDA government lost a no-confidence motion by **one vote** in 1999.

f. Censure Motion

- To express **parliamentary disapproval** of executive decisions and seek corrective measures.

e. Parliamentary Committees

- Committees provide **detailed, bipartisan scrutiny** of executive actions beyond what is possible in the full House.
- **Example**: The PAC's scrutiny of defence procurement and vaccine expenditure during the pandemic added transparency to executive action.

g. Discussions and Short Duration Debates

- Allows MPs to engage the government on **specific issues** without moving a formal motion.

h. Control Over Ordinances and Executive Law-Making

- Parliament has the power to **approve or reject ordinances** issued by the President under **Article 123**, ensuring that the **executive cannot bypass legislative scrutiny** for long.

3. FINANCIAL FUNCTIONS

a. Presentation and Approval of the Union Budget

- The Lok Sabha **votes on the Demands for Grants** (Article 113), while the **Rajya Sabha can only discuss** them.

b. Enactment of Financial Legislation

- **Appropriation Bill (Article 114)** – to authorise the withdrawal of funds from the **Consolidated Fund of India**.
- **Finance Bill** – to implement the financial proposals of the government.
- **Money Bills** (Article 110) deal with taxation, borrowing, or withdrawal from the Consolidated Fund and must be introduced only in the Lok Sabha.

c. Power Over Taxation

- As per **Article 265**, **no tax can be levied or collected without a law passed by Parliament**.
- Parliament enacts both **direct taxes** (e.g., income tax, corporate tax) and **indirect taxes** (e.g., customs, GST through enabling constitutional amendments).

d. Instruments of Financial Oversight

Parliament holds the executive accountable for financial conduct through various tools:

- **Question Hour and Budget Discussions**
- **Cut Motions**
  - **Policy Cut**: Disapproval of entire policy.

- **Economy Cut**: Suggests reduced allocation.
- **Token Cut**: Symbolic opposition to policy.

- **Votes on Account and Supplementary Grants- Vote on Account (Article 116)**: Allows the government to withdraw funds temporarily before the full budget is passed.
- **Supplementary/Excess Grants (Article 115)**: Seek Parliament's approval for unanticipated expenditures.
- **Financial Committees**
- **Public Accounts Committee (PAC)**: Audits executive spending based on **CAG reports**.
- **Estimates Committee**: Suggests reforms to improve expenditure efficiency.
- **Committee on Public Undertakings (COPU)**: Reviews the performance of public sector enterprises.

4. AMENDMENT MAKING FUNCTIONS

- The power to amend the Constitution is derived from **Article 368** of the Indian Constitution.
- It provides the **procedure** and **categories** of constitutional amendments and specifies the extent of **Parliament's authority** in altering the Constitution.
- **Types of Constitutional Amendments**
  1. **By a Simple Majority of Parliament**
  2. **By Special Majority of Parliament**
  3. **By Special Majority + Ratification by Half of the States**

5. CONSTITUENT FUNCTIONS

- **Sovereign Amending Power**: Authority to **restructure, revise, or update** constitutional provisions based on evolving socio-political needs.
- **Not Absolute**: Amending power is **limited by the "Basic Structure Doctrine"** propounded in **Kesavananda Bharati v. State of Kerala (1973)**.
- **Institutional Dialogue**: Reflects a **deliberation between Parliament and the judiciary**, particularly on the boundaries of constitutional change

6. JUDICIAL FUNCTIONS

a. Impeachment of the President (Article 61)

- Parliament has the exclusive authority to **impeach the President** for "**violation of the Constitution**."
- It is a **quasi-judicial process** requiring the House to act in an **adjudicatory capacity.**

b. Removal of Judges (Articles 124(4), 217)

- Parliament can initiate and pass a motion for the **removal of judges** of the **Supreme Court and High Courts** on grounds of **proved misbehaviour or incapacity.**
- **Example**: In 2011, Rajya Sabha initiated proceedings against Justice Soumitra Sen of the Calcutta High Court, who resigned before the Lok Sabha could act.

c. Impeachment of Other Constitutional Authorities

- Parliament also plays a judicial role in the **removal of other high officials**, such as:
  1. **Comptroller and Auditor General (CAG)** – Article 148(1)
  2. **Chief Election Commissioner (CEC)** and **Election Commissioners** – Article 324(5)
- The process of removal is similar to that of a Supreme Court judge.

d. **Punishment for Breach of Privilege (Article 105)**

- Parliament has the power to **punish individuals (including MPs) for breach of its privileges**, which may include:
  1. Contempt of the House
  2. Misconduct during proceedings
  3. Publishing false reports of debates

Example: Parliament has reprimanded journalists and expelled members for **cash-for-query scams** (e.g., 2005 expulsion of 11 MPs).

e. Adjudication in Cases of Disqualification (Articles 101–104)

- In certain situations, Parliament acts upon reports from the **Presiding Officers or the President**, especially in:
    1. **Resignation disputes**
    2. **Disqualification for office of profit**
    3. **Defections (based on Tenth Schedule, decided by Speaker)**

Although the Speaker/Chairman is the final authority under the Anti-Defection Law, Parliament exercises **regulatory control** over these mechanisms.

Note: While Parliament exercises limited judicial functions, **Article 122** protects parliamentary procedures from direct judicial intervention- **except on constitutional grounds**.

f. ELECTORAL FUNCTIONS

1. Election of the President of India (Article 54)

- The President is elected by an **electoral college** comprising elected members of **both Houses of Parliament** and the elected members of **State Legislative Assemblies** (including Delhi and Puducherry).
- The election is conducted by **proportional representation** with a **single transferable vote**, and voting is by secret ballot
- **Significance**: Parliament plays a crucial role in choosing the **constitutional head of the state**, ensuring the post reflects the federal character of the polity.

2. Election of the Vice-President (Article 66)

- The Vice-President is elected by an **electoral college consisting solely of members of both Houses of Parliament**.
- The election also follows **proportional representation** and **secret ballot**.
- **Significance**: Since the Vice-President is also the **ex-officio Chairman of the Rajya Sabha**, this vote has direct implications for legislative functioning.

3. Election of the Speaker and Deputy Speaker (Article 93)

- The **Lok Sabha elects the Speaker and Deputy Speaker** from among its members.
- These elections are presided over by the Pro Tem Speaker and decided by a **simple majority**.
- **Significance**: These officers are crucial for maintaining order and neutrality in House proceedings, and the election ensures **democratic internal functioning**.

4. Elections to Rajya Sabha (Article 80)

- Members of the **Rajya Sabha** are elected by the **elected members of State Legislative Assemblies** through **proportional representation**.
- However, Parliament decides the **allocation of seats** and the **representation of Union Territories** in the Rajya Sabha.

g. OTHER SPECIALISED ROLES

1. Forum for National & International Deliberation

- Parliament functions as a **national forum** to deliberate upon issues of **domestic and global significance.**
- While not all debates result in legislation, they shape **public discourse**, prompt **executive responsiveness**, and influence **policy formulation**.
- Example: Discussions on India-China border tensions, the Russia-Ukraine war, or farm protests reflected democratic responsiveness.

2. Control Over Emergency Powers

- The President's power to declare emergencies is subject to **Parliamentary approval**.
- This ensures **legislative oversight** over exceptional powers and guards against **executive misuse**.

3. Restructuring of States and Union

- Under **Articles 2, 3, and 4**, Parliament can:
  - Create new states or abolish existing ones
  - Alter boundaries or names of states
  - Merge territories or convert Union Territories into states
- Examples: Creation of **Telangana (2014)**, **Jharkhand (2000)**, and the **bifurcation of Jammu & Kashmir** into UTs in **2019**.
- This power places Parliament at the heart of **India's territorial and federal reorganisation**.

1. Regulation of the Judiciary

- Under **Articles 138 and 230**, Parliament can:
  - Extend **Supreme Court's jurisdiction** to Union Territories
  - Alter **territorial jurisdiction** of High Courts
  - Establish **common High Courts** for multiple states
- It also passes laws relating to judges' **qualifications, tenure, and service conditions**, ensuring a uniform and integrated judiciary..

2. Creation or Abolition of State Legislative Councils

- Under **Article 169**, Parliament may create or dissolve **State Legislative Councils (Vidhan Parishads)**, based on a **special resolution passed by the State Assembly**.
- This gives flexibility to adapt the **legislative structure of states** to changing political needs.

3. Other Institutional and Federal Responsibilities

- Approves **international treaties and agreements** that impact sovereignty (Article 253)
- Enacts laws to **implement intergovernmental agreements** or **ensure uniformity** in critical sectors like environment or taxation.
- Example: Parliament enacted laws under Article 253 to fulfil India's obligations under the **Paris Climate Agreement**.

Summarising the above discussion, Parliament turns out to be an important institution in functioning of the Indian democracy because it:

a. **Functions as a Law-Making Authority**
b. **Ensures Executive Accountability**
c. **Holds responsibility of Financial Control and Budgetary Oversight**
d. **Essentializes representative democracy**
e. **Provides a forum for Debate and Deliberation**
f. **Makes Constitutional Amendments to evolve as per the changing political, social and economic situations of the country**.
g. **Responsible for Public Grievance Redressal**

Productivity of the Indian Parliament

Parliamentary productivity is calculated as the **ratio of actual working hours to scheduled hours**, reflecting how effectively the houses conduct legislative business. This includes debating bills, asking questions, and committee work

Key factors in the Productivity of the Parliament

- **Productivity Collapse**: The 17th Lok Sabha recorded only 47% productivity; Monsoon Session 2023 saw Lok Sabha at 18% and Rajya Sabha at 28%.
- **Debate Deficit**: 42% of bills passed with under 30 minutes of discussion; the 2020 Farm Bills were cleared in just 7 minutes.
- **Reduced Working Days**: Parliament now meets ~70 days/year, down from 120–140 in the 1950s, far below the UK (150+) and US (260+).
- **Ordinance Overuse**: Over 76 ordinances issued since 2014, bypassing legislative scrutiny- e.g., the 2020 farm ordinances.

- **Weak Budget Oversight**: In 2023, over 75% of Demand for Grants were passed without debate; only 11% got detailed scrutiny.
- **Opposition Silenced**: 146 MPs suspended in 2023 for demanding a security discussion, weakening parliamentary checks.
- **Declining Legislative Output**: Only 17 bills passed in the 17th Lok Sabha, down from 205 in the 16th.
- **Question Hour Undermined**: Nearly half the time lost in disruptions, curbing ministerial accountability.
- **Private Members' Bills Ignored**: Just 2 passed in the 16th Lok Sabha vs. 14 in the 15th- indicating sidelining of non-government voices.

Suggestions for Enhancement

- **Ensure Minimum Session Durations and Reduce Disruptions**
  - The **National Commission to Review the Working of the Constitution (NCRWC, 2002)** recommended that **Parliament should meet for at least 100 days a year** and disruptions should be penalized through disincentives like loss of allowances or recognition in the House.
  - The **Rajya Sabha Committee on Rules** also urged for a code of conduct for MPs to reduce disorderly behaviour.
- **Mandate Parliamentary Committee Review for All Bills**
  - The **Second Administrative Reforms Commission (2nd ARC)** strongly advocated **compulsory referral of all bills to department-related standing committees (DRSCs)** to improve legislative scrutiny.
- **Enhance Transparency by Publishing Real-Time Productivity Metrics**
  - **Lok Sabha and Rajya Sabha Secretariats** have initiated partial efforts to publish daily productivity, but real-time, publicly accessible dashboards were proposed by **PRS Legislative Research** and **civil society groups**.
  - The **Ethics Committee of Parliament** also supported greater digital accountability and live data on sittings, member attendance, and bill status.
- **Strengthen Role and Resources of Parliamentary Committees**
  - The **2nd ARC** recommended that committee reports should be given more weight in law-making and ministries must mandatorily respond within a fixed timeline.

Other Major Issues In functioning of the Indian Parliament

1. Executive Dominance and Party Control

- Fusion of powers weakens Parliament's scrutiny role, as the executive originates from the legislature.
- The Council of Ministers, backed by a majority in Lok Sabha, dominates proceedings.
- Anti-defection law and strict party whips limit MPs' independence and discourage dissent.

2. Procedural Constraints in Financial Oversight

- Budget documents and demands for grants are often highly technical and hard to understand.
- Guillotine practice leads to clubbing and passing multiple grants without discussion.
- Financial committees like PAC and Estimates Committee perform post-expenditure review, not preventive scrutiny.

3. Growth of Delegated and Executive Legislation

- Parliament passes framework laws and delegates detailed rule-making to the executive.
- This increases bureaucratic discretion and reduces legislative input in policymaking.
- Ordinances under Article 123 are frequently used, bypassing regular legislative scrutiny.

4. Structural and Functional Limitations of Parliament

- **Large membership and lack of experience** of MPs hamper quality debate. (Over **60% of MPs** in recent Lok Sabhas were first-timers, often lacking policy or parliamentary experience)

- **Parliamentary sessions are short, with limited time for policy and administrative review.** (Lok Sabha averaged just 55 sitting days/year (2019-2023) that is, down 59% from the First Lok Sabha (135 days/year), with only 15% of allocated time spent on law-making and over 40% of Budget Session 2023 lost to disruptions, severely constraining policy scrutiny.)
- **Frequent walkouts, disruptions, and absenteeism reduce effective functioning.** (Winter Session 2023: Lok Sabha functioned for just 21% of scheduled hours; Rajya Sabha for 28%.)

5. Weak Opposition and Declining Deliberative Quality

- Overwhelming majorities in the House often marginalise opposition voices.
- Debates are increasingly replaced by protests, sloganeering, and personal attacks.
- Substantive policy discussions have declined in favour of political posturing.

6. Sporadic and Reactive Oversight

- Oversight is often triggered by public or media pressure rather than institutional consistency.
- Discussions remain episodic and politically charged, lacking sustained follow-up.

Prospective reforms for better functioning of the Parliament

1. Strengthening the Committee System

- **Expand subject-specific standing committees (e.g. on Finance, Defence, Health, Education)** and make their recommendations **binding or more influential** in shaping laws.
- Ensure that all bills (except urgent ones) are **mandatorily referred to parliamentary committees** for detailed scrutiny..

2. Curbing Disruptions and Enhancing Discipline

- Introduce stricter rules for **punishing repeated disruption**, including salary cuts or suspension for non-serious behaviour.
- Set a **minimum number of sitting days per year** (e.g., 100 for Lok Sabha, 90 for Rajya Sabha), as recommended by various parliamentary committees.
- Encourage **constructive opposition** by providing adequate time and space for their voices in debates.

3. Reclaiming Financial Oversight

- Increase **time allotted for budget discussions** and **demands for grants**, which are currently passed in haste through guillotine procedures.
- Enhance the powers and visibility of the Public **Accounts Committee (PAC)** and **Estimates Committee**.
- Involve MPs in **pre-budget consultations**, especially for socio-economic sectors like education, health, and agriculture.

4. Limiting Executive Dominance

- Enforce **greater transparency in the ordinance-making process**, and reduce over-reliance on ordinances (Article 123).
- Review and restrict the **use of delegated legislation** to prevent the executive from bypassing Parliament through excessive rule-making powers.
- Allow **more Private Members' Bills** to be debated and voted upon. (Recently, Vice President and Rajya Sabha Chairman Jagdeep Dhankhar emphasised that PMBs are "forward-looking" and a "gold mine" for legislative progress.)

5. Improving Quality of Debate and Attendance

- Make **attendance mandatory** for committee and House sittings, with public disclosure.
- Use **technology tools** like dashboards, AI-based analysis, and legislative digests to support MPs' preparation and productivity.
- Promote **cross-party issue-based caucuses** to improve collaboration on policy matters beyond partisan lines.

6. Reforming Anti-Defection Law

- Amend the Tenth Schedule to **limit the whip only to confidence motions and money bills**.
- Allow MPs to vote independently on **ordinary legislation**, enhancing accountability to voters rather than party leadership.
- Important judgments: **Kihoto Hollohan v. Zachillhu (1992):** Upheld the anti-defection law but made the Speaker's disqualification decisions subject to judicial review. **Nabam Rebia v.Deputy Speaker (2016):** Held that the Speaker cannot decide disqualification cases while a motion for their own removal is pending.

7. Reforming the Role of the Rajya Sabha

- Consider a **uniform method of election** to reduce influence of money power and political manipulation in Rajya Sabha entries.
- Increase its role in reviewing **federal legislation and state-related laws**.

8. Digitisation and Citizen Engagement

- Make **parliamentary proceedings more accessible** through real-time transcripts, summaries, and translation in regional languages.
- Encourage **public consultations and feedback** on key bills via digital platforms.
- Strengthen platforms like **PRS Legislative Research** and make their inputs officially integrated into legislative processes.

Conclusion

As the institutional embodiment of popular sovereignty, Parliament serves as the central arena for democratic deliberation, accountability, and articulation of the general will. Its continued vitality is essential to deepening constitutional democracy.

PARLIAMENTARY PRIVILEGES

PYQs

The 'Powers, Privileges and Immunities of Parliament and its Members' as envisaged in Article 105 of the Constitution leave room for a large number of un-codified and unenumerated privileges to continue. Assess the reasons for the absence of legal codification of the 'parliamentary privileges'. How can this problem be addressed? (CSE 2014, 12.5M).

Introduction

Parliamentary privileges are the constitutional armour that shield legislators from external interference, allowing them to speak, act, and decide freely within the house. Rooted in British parliamentary tradition, they uphold the autonomy, dignity, and authority of the legislature in a democratic setup.

Basic Idea

- **Special rights and immunities** granted to Members of Parliament (MPs) and State Legislatures.
- Include both **individual privileges** (for members) and **collective privileges** (for the House).
- Derived from **Article 105 (Parliament)** and **Article 194 (State Legislatures)** of the Constitution.
- Privileges are **not unlimited**; they are subject to **constitutional morality and judicial review**.
- Cover areas such as **freedom of speech in the House**, **exemption from court proceedings**, and **non-disclosure of sources or debates**.
- Example: **Keshav Singh Case (1965)** – Asserted that legislative privileges are **subject to constitutional limits and judicial review**.
- Present privileges are partly **codified** and partly based on **British precedents** and **judicial interpretation**. In 2008, the Lok Sabha Committee of Privileges recommended against codification, arguing it would reduce the necessary flexibility for Parliament to function effectively.)

Need for Parliamentary Privileges

- Ensure **free and fearless functioning** of the legislature without external interference. (Eg: **Searchlight Case (1959)** – Legislatures can **restrict press freedom** to protect the **dignity of House proceedings**.)
- Protect members from **legal intimidation**, especially during debates, speeches, and voting.
- Enable effective **scrutiny of the executive** through questions, motions, and inquiries.
- Maintain the **autonomy and dignity** of the legislature as an institution.
- Essential for preserving the **separation of powers** and **legislative supremacy** in a parliamentary democracy.

Difference Between Individual and Collective Parliamentary Privileges

Category	Individual Privileges	Collective Privileges
Meaning	Rights enjoyed by individual members of the legislature	Rights enjoyed by each House as an institution
Purpose	To enable members to function independently and fearlessly	To protect the integrity and autonomy of the House

Examples	- Freedom of speech in the House (Article 105/194) - Immunity from arrest in civil cases during session - Exemption from jury duty or attendance in court when in session	- Right to regulate internal proceedings - Power to punish for contempt or breach of privilege - Right to publish proceedings and prohibit external interference
Applicability	Applies to MPs/MLAs individually	Applies to the entire House collectively
Limitations	Cannot be used for personal benefit or immunity from crimes	Cannot override fundamental rights or judicial scrutiny

Breach of Privilege

- A **breach of privilege** occurs when any **individual or authority violates the special rights or immunities** enjoyed by members or the House collectively.
- It **obstructs or hampers** a legislator's ability to perform their duties or **undermines the dignity or authority** of the House.

Examples: Publishing false reports of proceedings, summoning an MP for court proceedings during a session without permission, preventing an MP from attending the House, etc.

Contempt of the House

- Contempt of the House refers to **any act that lowers the authority or dignity of the legislature**, even if it doesn't directly breach a specific privilege.
- It is a **broader concept** than breach of privilege and can apply to non-members as well.

Examples: Disrupting House proceedings, disrespectful conduct or abusive language towards the Speaker or MPs, refusing to appear when summoned by a parliamentary committee.

Instances of Misuse of privileges

- **Arbitrary use** of privilege motions to settle political scores rather than uphold institutional dignity.
- Attempts to **shield members from criminal accountability** under the guise of privilege (e.g., **PV Narasimha Rao Case (1998)** – MPs enjoy **immunity for votes in Parliament**, but **not for accepting bribes outside**).
- Using privilege to **suppress media reporting** or criticism (e.g., **Searchlight Case**).
- **Excessive secrecy** and lack of transparency in breach of privilege proceedings.
- **Disproportionate punishments** without proper inquiry or natural justice (e.g., threats of suspension/expulsion).

Do we need codification of Parliamentary Privileges?

Arguments in Favour of Codification

- **Ensures clarity and transparency-** Codification will clearly define the scope of privileges, preventing arbitrary interpretations.
- **Prevents misuse-** In Raja Ram Pal v. Lok Sabha (2007), SC warned against arbitrary expulsion of MPs under privilege claims.
- **Enables judicial review-** Defined limits allow courts to assess if privileges are being misused without interfering in legislative procedure.
- **Aligns with constitutional morality-** Codification would help privileges serve public interest, not shield misconduct.

- **Recommended by expert bodies-** Both the NCRWC (2000) and 2nd ARC supported codification to strengthen accountability.

Arguments Against Codification

- **Reduces flexibility-** Legislatures may need discretion in unforeseen or evolving situations.
- **May lead to judicial overreach-** Courts might interfere excessively if privileges are narrowly defined.
- **Conventions have worked so far-** Like the UK, India has largely managed with convention-based privileges.
- **Political challenges-** Codification through lawmaking may be politically sensitive and divisive.

Way Forward

- **Balance with Fundamental Rights-** Ensure privileges do not override citizens' rights like **freedom of speech, media freedom, and access to justice**.
- **Judicially Reviewable Framework-** While respecting legislative autonomy, allow **judicial scrutiny in cases of abuse**, as upheld in Raja Ram Pal case.
- **Transparency in Privilege Proceedings-** Make privilege motions **subject to public reasoning**, with clear grounds, and avoid politically motivated usage.
- **Reform in Procedure-** Establish a **standardised process** for initiating, investigating, and disposing privilege cases in both Houses.
- **Training and Awareness for Legislators-** Conduct **regular workshops** on the constitutional limits of privilege and ethical legislative conduct.
- **Stronger Ethical Standards-** Promote a **code of conduct** for members to prevent privilege from becoming a shield against accountability.

CONCLUSION

Parliamentary privileges are vital for the **functional independence of legislatures**, but unchecked use can erode **democratic transparency**. A balanced, codified framework is essential to prevent misuse while preserving their **constitutional necessity**.

SPEAKER OF LEGISLATURE

PYQS

'Once a Speaker, Always a Speaker'! Do you think this practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India? (CSE 2020, 10M)

Introduction

As the guardian of parliamentary procedure and discipline, the Speaker ensures the smooth functioning of legislative democracy

Roles and Functions of the Speaker

1. **Presiding Over House Proceedings**
   - The Speaker conducts the business of the House, maintains order, and ensures decorum during debates.
   - Has the authority to suspend members for unruly behavior (Rules of Procedure and Conduct of Business).
2. **Guardian of Parliamentary Privileges**
   - Protects the collective and individual privileges of members of the House.
   - Decides on breaches of privilege and refers such matters to the Privileges Committee.
3. **Certification of Money Bills**
   - Under **Article 110(3)**, the Speaker's decision on whether a bill is a Money Bill is final and binding.
   - This role has significant implications for the Rajya Sabha's powers (e.g., Aadhaar Act controversy).
4. **Deciding on Disqualification under Anti-Defection Law**
   - As per the **Tenth Schedule**, the Speaker has the authority to disqualify members for defection.
   - This quasi-judicial role has been controversial due to perceived bias.
5. **Referring Bills to Parliamentary Committees**
   - The Speaker can refer legislative proposals to standing or ad hoc committees for detailed scrutiny.
   - Ensures efficiency and expertise in legislative oversight.
6. **Administrative Head of the Lok Sabha Secretariat**
   - Oversees the functioning of the Lok Sabha Secretariat and its officers.
   - All communications from the President to the House are addressed to the Speaker.
7. **Casting Vote in Case of Tie**
   - In the event of a tie during voting in the House, the Speaker exercises a **casting vote** (as per parliamentary convention, usually to maintain status quo).
8. **Role in Joint Sessions**
   - Presides over joint sittings of both Houses of Parliament under **Article 108**, when convened.
9. **Disciplinary Role**
   - Can suspend or warn members for disruptions or violation of rules.
   - Ensures that parliamentary democracy functions in a disciplined manner.
10. **Neutral Arbiter and Symbol of Impartiality**
    - Expected to function above party lines, ensuring fairness and impartiality.

- Despite being a member of a political party, must shed partisan identity after election

Comparison between Indian and British Speaker

Aspect	Indian Speaker	British Speaker
Tenure	Till the life of the Lok Sabha (5 years)	Serves until retirement or resignation
Role	Presiding officer, decides on Money Bills and defection	Presiding officer, neutral arbiter of debates
Political Affiliation	Usually a member of ruling party	Resigns from party upon election to maintain neutrality
Re-election	Can contest elections again on party ticket	Generally re-elected unopposed across parties
Anti-Defection Powers	Decides disqualification under Tenth Schedule	No such role in UK Parliament
Post-retirement Role	Can be given political or constitutional positions	Usually retires from politics

Once a Speaker, Always a Speaker: Key Debate

1. Arguments in Favour

- **Ensures Neutrality**: Freeing the Speaker from political pressures helps uphold fairness during debates, especially during contentious votes like no-confidence motions.
- **Strengthens Parliamentary Democracy**: A non-partisan Speaker can enforce decorum, allow balanced discussion, and prevent ruling party dominance in the House.
- **Restores Public Trust**: The perception of neutrality enhances citizen confidence in parliamentary processes.

2. Arguments Against

- **Lack of Political Will**: Indian politics is deeply adversarial, and such conventions may not be respected without legal backing.
- **Party-based System**: Indian elections and nominations are heavily party-centric; insulating one post may not change the larger political culture.
- **Voter Choice Affected**: If other parties don't contest against a Speaker, it may limit democratic choice for constituents.
- **No Guarantee of Objectivity**: Even without contesting re-election, a Speaker may still act politically during their term due to ideological biases or party pressure.

Adopting the “Once a Speaker, Always a Speaker” convention can strengthen the Speaker’s neutrality, but its success depends on political maturity, adherence to conventions, and institutional safeguards.

Issues in the Institution of the Speaker

- **Partisan conduct:** Often accused of favoring the ruling party in matters of debate and motions (e.g., 2020 Farm Bills passed without proper division).
- **Delays in anti-defection rulings:** Example: In Manipur (2020), disqualification of MLAs was delayed, prompting SC intervention.
- **Leader of Opposition issue:** In 2014, Congress was denied LoP status despite having the largest opposition presence (44 MPs), citing a non-statutory 10% rule.
- **Lack of transparency:** No codified rules guide Speaker's decisions on critical issues like scheduling, recognition of parties, and defection matters.

Way Forward

- **Sarkaria Commission (1988):** Recommended that the Speaker resign from the parent political party to uphold impartiality.
- **National Commission to Review the Working of the Constitution (2002):** Advocated for an independent tribunal for deciding disqualification cases.
- **2nd ARC (2007):** Suggested that decisions under the Tenth Schedule should be made by an external judicial body, not the Speaker.
- **SC in Keisham Meghachandra Singh v. Speaker (2020):** Ruled that disqualification petitions must be decided within 3 months.
- **Codification of conventions:** Need for legal clarity and institutional norms to enhance credibility, neutrality, and procedural fairness.

Conclusion

The Speaker is the moral compass of Parliament, if it wavers, democratic discourse derails. A code-bound, nonpartisan role is long overdue.

SPEAKER OF A STATE LEGISLATIVE ASSEMBLY

PYQs

> Discuss the role of Presiding Officers of state legislatures in maintaining order and impartiality in conducting legislative work and in facilitating best democratic practices. (CSE 2023, 10M)

Introduction

The Speaker of a State Legislative Assembly is the constitutional head of the House and presides over its proceedings. Entrusted with maintaining decorum and ensuring impartial conduct, the Speaker plays a critical role in upholding legislative integrity at the state level.

Roles and Functions of the Speaker

- **Presides over proceedings** and maintains order and decorum in the Assembly.
- **Certifies Money Bills** under Article 199; Speaker's decision is final.
- **Decides disqualification** under the Anti-Defection Law (Tenth Schedule).
- **Refers bills and issues** to relevant committees.
- **Votes only in the case of a tie** to break deadlock (casting vote).
- **Controls legislative business**, including the listing of questions and motions.
- **Interprets House rules** and ensures their effective implementation.
- **Receives resignation** of MLAs and decides on its voluntariness and genuineness.
- **Acts as administrative head** of the Assembly Secretariat.

Issues in the Functioning of State Assembly Speakers

1. **Partisanship in anti-defection rulings**
   Example: In **Maharashtra (2022)**, disqualification pleas against Shinde faction MLAs were delayed amid political crisis.
   Example: In **Manipur (2020)**, SC criticized the Speaker for delaying disqualification of defected MLAs.
2. **Delays in certifying bills or actions**
   Example: Delays in certifying Money Bills can stall legislative processes or benefit ruling parties politically.
3. **Political interference in resignation decisions**
   Example: Karnataka (2019) saw delays in accepting rebel MLAs' resignations during a trust vote.
4. **Lack of clear timelines**
   The Constitution does not prescribe a time frame for the Speaker to decide on defection or resignations, leading to misuse.

Way Forward

- **SC in Keisham Meghachandra Singh (2020):** Directed Speakers to decide disqualification petitions within 3 months to curb partisan delays.
- **Sarkaria Commission (1988):** Recommended the Speaker should resign from the political party post-election to maintain impartiality.
- **National Commission to Review the Working of the Constitution (NCRWC, 2002):** Advocated for an independent authority to decide disqualification under the Tenth Schedule.
- **2nd ARC (2007):** Suggested judicial body or tribunal to ensure neutrality in defection matters.

- **Codification of conventions and setting strict procedural timelines** to minimize discretion-based misuse.

Conclusion

A Speaker who tilts the scales of power erodes the House's credibility. To protect the spirit of democracy, neutrality must be institutionalized, not assumed.

ROLE OF OPPOSITION IN PARLIAMENTARY DEMOCRACY

Introduction

“In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable.” - Walter Whipmann

The Opposition in Parliament serves as the **constitutional counterbalance** to the ruling party. In a healthy democracy, the opposition is not just a critic but a **watchdog and policy challenger**, essential for informed and balanced governance.

Constitutional and Statutory Status

- The **Indian Constitution does not explicitly mention the post of Leader of Opposition**.
- The **Salaries and Allowances of Leaders of Opposition in Parliament Act, 1977** accords **statutory recognition** to the LoP in both Houses.

Historical Evolution of Opposition in India

1950s–60s: Marginal Presence

- The early years of Indian democracy were marked by the **dominance of the Indian National Congress**, leaving Opposition parties **numerically weak**.
- Rajni Kothari conceptualised the opposition in India’s dominant party system as a **peripheral yet functional pressure mechanism**. Rather than acting as a competitive alternative for power, opposition parties served to **channel discontent and influence public discourse.**

1969: Institutional Recognition Begins

- The position of **Leader of the Opposition was officially recognised** in the Lok Sabha for the first time in **1969**.
- This marked the beginning of institutional acceptance of Opposition as a **necessary democratic force**.

1970s: Role Solidifies

- The **Emergency period (1975–77)** highlighted the **critical role of the Opposition** in defending democracy.
- The **Janata Party's victory in 1977** ended Congress's uninterrupted rule and demonstrated the **power of a united opposition**.

1980s–90s: Fragmentation and Emergence of Regional Forces

- The Opposition became more **diverse and decentralised**, with **regional parties** like DMK, TDP, and SP gaining national influence.
- The **1989 elections** and rise of **coalition politics** gave the Opposition greater leverage in parliamentary functioning.

Post-2000s: Increasing Assertiveness

- The Opposition played a vital role in **UPA-era accountability**, exposing major issues like the **2G scam**, **Commonwealth Games corruption**, and **coal allocations**.
- **Parliamentary committees** led by opposition members grew more influential in scrutinising executive actions.

Post-2014: Challenges and Resistance

- A **strong majority government** led by the BJP in 2014 and 2019 weakened the Opposition’s numerical strength.
- Despite not qualifying for LoP status in the Lok Sabha, the Opposition continued to raise critical issues like **farm laws**, **Pegasus surveillance**, and **constitutional changes (CAA, Article 370)** through **debates, protests, and civil society mobilisation**.

Present Status

- The post of LoP remained vacant in the 16th and 17th Lok Sabhas due to Congress not meeting the 10% seat threshold. It was restored in the 18th Lok Sabha with Rahul Gandhi's appointment after Congress won 99 seats.
- In contrast, the **Rajya Sabha continues to have a functioning LoP (Mallikarjun Kharge)**, where the 10% rule is not strictly enforced in practice.

Need Of A Strong Opposition

1. Holding the Government Accountable

- The Opposition plays a critical role in questioning government actions, especially through **Question Hour**, **Zero Hour**, and **parliamentary motions**.

2. Providing Alternative Policy Perspectives

- The Opposition is not merely obstructionist; it also contributes to policy by presenting **alternative solutions** and critiques.
- **Example**: During the **COVID-19 pandemic**, Opposition parties advocated for **universal free vaccination, enhanced MGNREGA allocation, and decentralised health management**, which influenced certain government responses.

3. Voice of the People and the Marginalised

- Opposition MPs bring attention to **grassroots-level issues** that may not be prioritised by the ruling government.

4. Protecting Constitutional Values

- The Opposition acts as a **constitutional guardian**, resisting moves that may undermine **secularism, federalism, and civil liberties**.
- **Example**: Pegasus Snooping Allegations (2021)- Rahul Gandhi, Priyanka Chaturvedi (Shiv Sena), and others demanded a judicial inquiry.

5. Leadership in Parliamentary Committees

- Opposition members chair and participate in **key committees** that scrutinise legislation and public expenditure.
- **Example**: The **Public Accounts Committee (PAC)**, chaired by an Opposition MP, reviews CAG reports on schemes, ensuring financial transparency.

6. Shaping Public Discourse

- The Opposition uses **media, civil society, and protests** to keep issues alive beyond the House.
- **Example**: Issues like **Pegasus spyware**, **price rise**, and **youth unemployment** gained public attention largely due to persistent Opposition campaigning and discourse framing.

7. Ensuring Legislative Balance in Bicameralism

- When the ruling party dominates the Lok Sabha, the Rajya Sabha becomes a crucial site for Opposition resistance.
- **Example**: The Opposition initially **blocked the Triple Talaq Bill (2018)** in the Rajya Sabha, forcing the government to redraft it, demonstrating how it can temper majoritarianism through institutional checks.

Issues And Concerns

1. Lack of Numerical Strength

- No Opposition party crossed the **10% threshold in the 17th Lok Sabha (2019)**, resulting in **no recognised Leader of Opposition**.
- This limited participation in key institutional appointments (e.g., **selection of the CBI Director**, where LoP is a statutory member).

2. Fragmentation and Lack of Unity

- Despite common causes (e.g., **farm law protests**, **CAA-NRC opposition**), parties like **Congress, TMC, AAP, and SP** often pursued **independent protest strategies**, weakening collective impact.
- The **INDIA alliance (2023)** is an attempt to address this but has struggled with cohesion and leadership clarity.

3. Reduced Space in Parliamentary Functioning

- Multiple bills have been **passed without meaningful debate or committee referral**.
- In **15th Lok Sabha (2009–14)** - **71%** of Bills were referred to **departmentally related standing committees (DRSCs)**.
  In the 16th **Lok Sabha (2014–19)** - dropped to **27%**.
  In **17th Lok Sabha (2019–23)** - about **13–15%**
- The Opposition has repeatedly **boycotted or walked out** in protest, further limiting deliberation.

4. Frequent Disruptions over Debate

- The **2021 Monsoon Session** witnessed repeated disruptions over the **Pegasus spyware issue**, with minimal debate on bills passed.
- These disruptions led to criticism that the Opposition is **more performative than participatory**, weakening its role in law-making.

5. Media Marginalisation and Narrative Control

- **Mainstream media often gives disproportionate space to ruling party narratives**, sidelining Opposition voices.

6. Erosion of Ethical Standards

- Incidents like **MLA poaching in Madhya Pradesh (2020)** and **Maharashtra (2022)** expose internal fragility and opportunism in Opposition ranks.
- **Frequent defections** dilute ideological clarity and damage public trust in the Opposition's integrity.

Way Forward for Empowering the Opposition

1. State Funding of Elections

- **Rationale**: Smaller and regional parties often face **severe financial constraints**, limiting their reach and competitiveness.
- **Way Forward**: Implement **partial state funding** of elections (as recommended by the **Indrajit Gupta Committee, 1998**) to level the playing field.
- **Impact**: Encourages **issue-based politics**, reduces dependence on corporate donations, and enhances the **electoral viability of opposition parties**.

2. Guaranteed Media Access

- **Rationale**: Unequal media access has created an **information asymmetry**, heavily skewed towards the ruling party.
- **Way Forward**: Mandate **equitable media time on public broadcasters (like Doordarshan and AIR)** during elections and parliamentary sessions.
- **Impact**: Ensures **visibility for alternative narratives**, enabling the Opposition to **connect with the electorate** more effectively.

3. Internal Democracy in Political Parties

- **Rationale**: Many Opposition parties suffer from **dynastic leadership and weak cadre structures**, hampering responsiveness and reform.
- **Way Forward**: Enforce **intra-party elections**, transparent candidate selection, and **term limits** for leadership positions.
- **Impact**: Results in **more credible leadership**, **grassroots empowerment**, and enhanced **public trust** in opposition forces.

4. Engagement with Civil Society and Citizens

- **Rationale**: A disconnected Opposition loses **relevance in public perception**.

- **Way Forward**: Establish **regular consultative mechanisms** with civil society groups, activists, academics, and voters through **public hearings, policy roundtables, and constituency outreach**.
- **Impact**: Improves **policy responsiveness**, enhances **citizen mobilisation**, and reinforces the Opposition's **democratic legitimacy**.

Conclusion

The Opposition is not an adversary of the state but a **protector of democracy, dissent, and deliberation**. In a time of growing executive centralisation, a **principled, participatory, and policy-oriented Opposition** is essential to preserve **constitutional morality and the spirit of representative governance**.

PARLIAMENTARY COMMITTEES

PYQs

Discuss the role of the Public Accounts Committee in establishing accountability of the government to the people. (CSE 2017, 10M)
Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee. (CSE 2018, 10M)
Do Department-related Parliamentary Standing Committees keep the administration on its toes and inspire reverence for parliamentary control? Evaluate the working of such committees with suitable examples. (CSE 2021, 15M)
Explain the structure of the Parliamentary Committee system. How far have the financial committees helped in the institutionalization of Indian Parliament? (CSE 2023, 15M)

Introduction

Parliamentary Committees are smaller groups of MPs that assist Parliament in performing detailed scrutiny of laws, budgets, and policies. Functioning away from the glare of the full House, they ensure **in-depth examination, expert input, and executive accountability**- making them the backbone of legislative efficiency.

Basic Idea

- **Sub-groups of MPs** formed to handle detailed work that cannot be effectively discussed in full parliamentary sittings.
- Aim to ensure **scrutiny, accountability, and efficiency** in legislative and financial processes.
- Function as **'mini-Parliaments'**, enabling in-depth analysis of bills, policies, and budgets.
- Help overcome **time constraints**, ensure **technical expertise**, and allow for **non-partisan discussions**.
- Operates under the **Rules of Procedure and Conduct of Business** of both Lok Sabha and Rajya Sabha.
- Classified into **Standing Committees (permanent)** and **Ad Hoc Committees (temporary/specific purpose)**.

Historical Emergence

- The **first major standing committee- Public Accounts Committee (PAC)** was established in 1921**.** Later, **the Estimates Committee was established in 1950.**
- Over time, especially post-1990s, the system expanded with the creation of **Department-Related Standing Committees (DRSCs)** in **1993**, allowing for **systematic and ministry-specific scrutiny**.
- Investigative bodies like **Joint Parliamentary Committees (JPCs)** have also gained prominence in addressing national-level controversies (e.g., Bofors, 2G, coal scam).

Constitutional Status

- **Parliamentary Committees are not explicitly mentioned in the Constitution**, but their existence is supported indirectly by **Article 118**.

- Article 118 empowers **each House of Parliament to make rules** for regulating its procedure and conduct of business, under which **Rules of Procedure** provide for the constitution and functioning of various committees.
- Thus, their status is **conventional and statutory, not constitutional**, though they are integral to democratic governance.
- Their **authority and functions are derived from parliamentary rules**, and they operate under the supervision of the **Speaker (Lok Sabha)** and **Chairman (Rajya Sabha)**.

Significance

1. In-Depth Examination of Bills
- Committees study draft legislation more closely than is feasible in the full House.
- They assess each clause, consult stakeholders, and may recommend changes.
- This helps improve the **technical and practical quality** of laws before they are passed.

2. Oversight of Public Spending
- Financial committees like the **Public Accounts Committee (PAC)** and **Estimates Committee** check how government money is used.
- They examine audit reports and assess whether funds were spent efficiently and legally.
- This ensures **accountability in public financial management**.

3. Review of Government Policies
- Standing Committees assigned to specific ministries monitor their schemes, policies, and budgets.
- They evaluate outcomes, seek explanations from officials, and recommend improvements.
- This strengthens **executive accountability and policy effectiveness**.

4. Monitoring of Executive Rule-Making
- Committees on **Subordinate Legislation** keep a check on the rules, by-laws, and regulations made by ministries under delegated authority.
- They ensure that these rules stay within legal bounds and are in line with legislative intent.

5. Addressing Public Concerns
- **Petitions Committees** look into grievances submitted by citizens regarding governance and administration.
- This offers a way for **public participation** in legislative processes.

6. Safeguarding Parliamentary Dignity
- The **Privileges Committee** handles cases where MPs or the House may have been disrespected or obstructed.
- **The Ethics Committee** examines the behaviour of members and uphold standards of conduct in public life.

7. Conducting Investigations
- Parliament can form temporary or Joint Committees to look into specific issues or controversies.
- These committees can summon individuals, gather evidence, and present findings to Parliament.
- Examples include committees set up to examine corruption, scams, or major policy lapses.

8. Encouraging Meaningful Dialogue
- Committees offer a platform for MPs from different parties to work together away from political heat.
- They often consult independent experts and allow for **non-partisan, well-informed decision-making**.

Types Of Parliamentary Committees

Standing Committees
- Permanent in nature; reconstituted annually.
- Deal with **regular matters** like bills, budgets, and ministry oversight.
- Examples: **Public Accounts Committee, Estimates Committee, DRSCs**.

- Tenure is usually **one year**, but the structure continues.
- Formed under the **Rules of Procedure** of Parliament.
- Chairpersons are **nominated or elected** as per House rules.

Ad Hoc Committees

- **Temporary** committees formed for a specific purpose.
- Handle **specific legislation, incidents, or issues**.
- Examples: **JPC on 2G Scam**, **Select Committee on Data Protection Bill**.
- **Dissolved after completing** the assigned task.
- Formed through **parliamentary motion or resolution**.
- The chairperson is appointed for that particular task.

I. Standing Committees

These are **regularly constituted committees** that work continuously across sessions to aid Parliament in its legislative, financial, and oversight functions

Name of Committee	No. of Members	Selection Mode	Function
Public Accounts Committee (PAC)	22 (15 LS + 7 RS)	Elected by PR (proportional representation) system	Examines government audit reports submitted by CAG.
Estimates Committee	30 (Only Lok Sabha)	Elected by Lok Sabha	Examines how funds are allocated and suggests economy in expenditure.
Committee on Public Undertakings	22 (15 LS + 7 RS)	Elected by PR system	Reviews functioning of public sector undertakings.
Department-related Standing Committees (DRSCs)	31 (21 LS + 10 RS) x 24	Nominated by Speaker/Chairman	Scrutinises bills, budgets, and policies of ministries.
Committee on Subordinate Legislation	15 (each House)	Nominated	Examines rules/regulations made by executive under delegated legislation.
Committee on Petitions	15 (LS); 10 (RS)	Nominated	It considers the petitions submitted by the public to Parliament.
Committee on Privileges	15 (LS); varies (RS)	Nominated	Investigates breaches of parliamentary privileges.
Business Advisory Committee	15 (LS); 11 (RS)	Nominated	Allocates time for discussion on legislative business.
Rules Committee	15 (LS); 16 (RS)	Nominated	Considers matters of procedure and conduct of business.
Ethics Committee	15 (LS); 10 (RS)	Nominated	Deals with misconduct and ethical norms of members.

II. Ad Hoc Committees (Temporary/Special Purpose)
These committees are constituted for a specific task or objective and are dissolved after completion of the assigned work.

Type/Name	No. of Members	Selection Mode	Function/Example
Select Committee (on a Bill)	Varies (usually 15–30)	Nominated by House	Examines a particular bill clause-by-clause (e.g., Select Committee on Data Protection Bill).
Joint Parliamentary Committee (JPC)	Varies (e.g., 30–50)	Motion in Parliament	Investigates specific issues (e.g., JPC on 2G Scam, Stock Market Scam).
Enquiry Committees	Varies	Nominated	Probes allegations or incidents involving MPs or institutions.
Advisory/Consultative Committees	Varies	Minister-led (informal)	Discusses ministry-specific issues; not formally part of the committee system.

Concerns With Respect To Parliamentary Committees

1. Recommendations Not Binding- Committee suggestions are **not legally enforceable** and often disregarded by the executive.

- **Example**: The **DRSC on Environment** recommended stronger regulatory oversight for thermal power plants, but the Environment Ministry ignored key suggestions.

2. Lack of Public and Media Attention- Committee work remains **largely invisible to the public** as proceedings are held in private.

- This limits **transparency, citizen awareness**, and **pressure on the executive** to comply.
- **Example**: The important **Parliamentary Ethics Committee's findings** rarely make it to headlines, even when dealing with serious conduct breaches.

3. Low Attendance and Limited Preparation by MPs- Some members show **poor attendance** or participate without adequate preparation.

- **Example**: Media reports have highlighted **sub-50% attendance** in key committees, including the Committee on Finance and Defence, during several sessions.

4. Inadequate Research and Technical Support- Committees often work **without full-time subject experts** or support staff.

- **Example**: The **Joint Committee on Data Protection Bill (2019)** lacked sufficient technical and legal support for its deliberations on a highly complex issue.

5. Politicisation and Partisan Behaviour- Committee work, meant to be non-partisan, sometimes mirrors **party divisions**.

- **Example**: The **Parliamentary Committee on Information Technology**, chaired by Shashi Tharoor, faced boycott by ruling party MPs during sessions on Pegasus spyware, undermining bipartisan scrutiny.

6. Irregular Meetings and Compressed Timelines- Committees are sometimes given **only a few weeks** to examine legislation or budgets.

- **Example**: The **Standing Committee on Defence Budget** was given just 2–3 weeks in some sessions to examine detailed expenditure documents.

7. Bypassing of Standing Committees- Critical bills are sometimes introduced and passed **without committee referral**.

- **Example**: The **Farm Laws (2020)** were passed without being referred to the Standing Committee on Agriculture, sparking wide criticism over lack of scrutiny.

8. No Follow-Up on Implementation- Ministries are not bound to **report action taken** on committee recommendations.

- Many reports of the **Committee on Estimates** lack documented follow-up, weakening their long-term impact.

Reforms Needed in Parliamentary Committees

Greater Transparency

- Committee meetings are held behind closed doors; proceedings are not made public.
- **Reform**: Allow live telecasts or publish edited transcripts to enhance public trust and engagement.

Strengthened Research Support

- Committees often lack dedicated expert staff and rely on generalist support.
- **Reform**: Create a dedicated research wing and institutional support akin to the Congressional Research Service (USA).

Mandatory Time-bound Reports

- Many committees delay reports or do not submit them.
- **Reform**: Fix clear deadlines for submission and periodic review of report status.

Follow-up Mechanism

- Recommendations are not binding, and follow-up is weak.
- **Reform**: Establish a statutory mechanism to review the implementation status of committee recommendations.

Independent Secretariat

- Currently it depends on the Lok Sabha/Rajya Sabha Secretariat.
- **Reform**: Create an autonomous secretariat for parliamentary committees to ensure functional independence.

More Subject-Specific Committees

- Some sectors like environment, digital governance, and disaster management are inadequately covered.
- **Reform**: Introduce new Standing Committees to address emerging and cross-cutting issues.

Better Member Participation

- Attendance and engagement of MPs is often low due to multiple commitments.
- **Reform**: Incentivise attendance, improve scheduling, and reduce overlaps in committee membership.

Training and Capacity Building

- Members often lack subject expertise, especially in technical matters.
- **Reform**: Conduct regular workshops and provide access to policy experts and domain literature.

Conclusion

Though often working behind the scenes, Parliamentary Committees are the **engine rooms of legislative scrutiny**. Strengthening their independence, transparency, and resources is essential to ensure that Indian democracy remains **deliberative, accountable, and responsive**.

106TH Constitutional Amendment Act, 2023 – Women's Reservation

Introduction

The 106th Constitutional Amendment Act operationalises the principle of substantive equality in political representation by reserving one-third of legislative seats for women. Anchored in the logic of affirmative action, the amendment reconfigures democratic inclusion within India's parliamentary framework.

Key Features

- **Reserves one-third (33%) of seats** for women in:
  - **Lok Sabha**
  - **State Legislative Assemblies**
  - **Legislative Assembly of the National Capital Territory of Delhi**
- The reservation **includes seats already reserved for SCs and STs**.
- It will come into effect **after the next delimitation**, likely post-2026, when the population data from the next census is available.

Arguments in Favour

1. **Corrects Historical Underrepresentation**
   - Women comprise nearly 50% of the population but have consistently held only ~10–14% of seats in legislatures.
   - This reservation ensures **minimum guaranteed representation**.
2. **Strengthens Democracy**
   - Leads to a **more inclusive and participatory democracy** by ensuring women's voices are part of the law-making process.
3. **Builds on Panchayat Success**
   - Follows the success of **33% reservation in Panchayati Raj Institutions** (via the 73rd and 74th Amendments), which brought lakhs of women into governance roles.
4. **Improves Quality of Governance**
   - Empirical studies show that **women leaders tend to focus more on welfare**, education, health, and grassroots issues.
5. **Creates Leadership Pipeline**
   - Enables more women to gain **legislative experience**, building a cadre of future national leaders.
6. **Fulfills Global Commitments**
   - Aligns India with international norms (e.g., CEDAW) and practices in countries like **Rwanda, Sweden, and Mexico**.
7. **Political Consensus Achieved**
   - The bill was passed almost unanimously, indicating **strong cross-party support**, a rarity in Indian politics.

Critical analysis

1. **Delayed Implementation**
   - The law links implementation to **delimitation and census**, likely pushing enforcement to **after 2029**, weakening its immediate impact.
2. **Lack of Sub-Quota for OBC Women**
   - Critics argue the bill **does not provide for reservation within reservation** for OBC women, thus not addressing intersectional inequality.
3. **Tokenism Without Structural Reform**
   - Critics see it as **symbolic without enabling women politically** (e.g., funding support, intra-party democracy, leadership roles).

4. **No Upper House or Rajya Sabha Provision**
    - The bill does not extend reservation to **Rajya Sabha or Legislative Councils**, limiting its scope.
5. **Possibility of Proxy Politics**
    - As seen in Panchayats (Sarpach Pati), concerns remain over women being **used as proxies** for male family members or political dynasties.
6. **Legal Uncertainty on Delimitation Link**
    - Linking implementation to future delimitation has raised **legal and constitutional concerns** over enforceability

Why Are Women Members Needed in Legislatures?

1. Democratic Legitimacy and Equality
- **Democracy derives legitimacy** from inclusive representation. Women constitute nearly **50% of the population**, yet remain underrepresented in decision-making bodies.
- Inclusion aligns with **Article 14 (equality before law)** and **Article 15 (non-discrimination on grounds of sex)** of the Indian Constitution.

2. Substantive Representation and Policy Outcomes
- Women legislators bring **distinct priorities** to governance- focusing more on **health, education, sanitation, social justice, and child welfare**.
- Studies (e.g., World Bank and PRS India) show that constituencies with women leaders see **better public goods delivery** and **reduced corruption**.

3. Breaking Patriarchy and Role Modelling
- Women's presence **challenges patriarchal norms** in politics and society.
- Acts as a **symbol of empowerment**, inspiring future generations to participate in governance and public life.

4. Diverse Perspectives for Inclusive Lawmaking
- Governance becomes more **balanced and reflective of society** when women contribute to legislative debates and policy frameworks.
- Ensures that **laws account for gendered experiences**, especially in areas like labour, safety, reproductive rights, and family law.

5. Building Social Justice and Intersectional Inclusion
- Supports the goals of **social justice and affirmative action**.
- Enables **marginalised women (SC/ST/OBC/minority)** to articulate community-specific concerns.

Conclusion

Women are not just stakeholders- they are **equal claimants of democratic power**. Their presence enriches the legislative process, strengthens accountability, and fosters **inclusive, just, and responsive governance**. True democracy is impossible without **gender-balanced representation** in its institutions.

STATE LEGISLATURE

Explain the constitutional provisions under which Legislative Councils are established. Review the working and current status of Legislative Councils with suitable illustrations. (CSE 2021, 15M)

Introduction

In an era of deepening cooperative federalism, State Legislatures are increasingly vital platforms for responsive governance, regional innovation, and participatory democracy within India's constitutional framework

Comparison between Parliament and State Legislature

Aspect	Parliament	State Legislature
Structure	Bicameral – Lok Sabha and Rajya Sabha (with President)	Unicameral in most states; Bicameral in only 6 states
Head of Legislature	President – part of the Union legislature (Article 79)	Governor – not a member but summons, prorogues, and dissolves House
Law-Making Powers	Can legislate on Union, Concurrent, and under Article 249, even State List subjects	Can legislate only on State and Concurrent Lists; limited under emergency or central override
Constitutional Amendments	Can amend the Constitution (Article 368)	No power to amend the Constitution
Union Override	Under Articles 249, 250, 252, and 356, Parliament can make laws on State List subjects	No reciprocal provision; states cannot legislate on Union List
Jurisdiction	Extra-territorial legislation allowed (Article 245)	Limited to state territory only
Representation of UTs	UTs like Delhi, Puducherry, and J&K are represented in Parliament	UTs with Assemblies have limited legislative autonomy
Judicial Oversight	Subject to Supreme Court review only	Subject to review by both High Courts and Supreme Court
Amendments to Central Laws	Can modify or repeal all central laws	Cannot amend central laws (e.g., IPC, Evidence Act) even if applied in state context
Emergency Powers	Can legislate across states during national emergency	Legislature may be suspended under President's Rule (Article 356)
Money Bills	Only Lok Sabha can introduce; Rajya Sabha has limited powers	Only Legislative Assembly can introduce; Council (if present) is mostly advisory

Comparison: Legislative Assembly vs Legislative Council

Aspect	Vidhan Sabha (Legislative Assembly)	Vidhan Parishad (Legislative Council)
Method of Election	Direct election by people	Indirect election: teachers, graduates, MLAs, local bodies, and nomination by Governor
Powers over Money Bills	Exclusive power: can introduce and pass Money Bills	Can only make recommendations within 14 days (Article 198)
Role in Budget	Passes the State Budget	Can discuss, but not vote on demands for grants
Control Over Executive	Has real control through no-confidence motion, questions, debates	No such power; functions as a revising chamber
Amendment of Bills	Can introduce and amend ordinary and financial bills	Can delay and suggest changes (except in Money Bills)
Dissolution	Can be dissolved by Governor (on advice of CM)	Cannot be dissolved; continuous body
Existence	Mandatory in all states	Optional – only 6 states have it: Uttar Pradesh, Maharashtra, Karnataka, Andhra Pradesh, Telangana, Bihar
Final Say in Case of Disagreement	Assembly's decision prevails after a delay period	Can delay ordinary bills for 4 months in total (2 attempts of 1 month each)

Creation of State Legislative Council

Article 169 of the Constitution empowers **Parliament** to create or abolish a **State Legislative Council** by a simple majority, provided the **concerned State Legislative Assembly passes a resolution** by a special majority (i.e., majority of the total membership and two-thirds of members present and voting).

Key Features of the Provision

- States cannot **unilaterally create or abolish** a Legislative Council.
- Final authority rests with the **Union Parliament**, not the State.
- The resolution passed by the Assembly is **recommendatory**, not binding on Parliament.

Impact on Federalism

1. Asymmetrical Federalism

- All states are not treated equally- some have a bicameral legislature while others are unicameral.
- This reflects **asymmetrical federalism**, where states can have different institutional structures based on political and regional needs.
- Example: Maharashtra and Karnataka have Legislative Councils, while Kerala and Tamil Nadu do not.

2. Central Dominance in State Matters

- Parliament has the final say in creating or abolishing the Council, even after a state has expressed its will.
- Shows **unitary bias** in the Indian federation.
- Example: Andhra Pradesh passed a resolution to abolish its Council in 2020, but Parliament has not acted yet.

3. Weakening State Autonomy

- Since the state's recommendation is not binding, it can lead to a **stalemate** or **denial of state aspirations**.
- A state's legislative intent can be overridden or indefinitely delayed by Parliament.

4. Political Considerations

- The decision to create or abolish a Council may be influenced by **political arithmetic at the Centre**, affecting the federal balance.
- Example: Councils have been criticised as rehabilitation grounds for unelected politicians, and some ruling parties have sought their abolition after electoral losses in the upper house.

5. Legislative Diversity

- This provision allows for **flexibility** and state-specific arrangements, aligning with **cooperative federalism** when used responsibly.
- Councils can function as revisory chambers, improving the quality of law-making.
- Example: Uttar Pradesh and Bihar have historically used their Councils for in-depth scrutiny of education and land reform bills.

Way forward wrt State Legislatures

1. Institutional Capacity Building

- Establish independent research wings to aid MLAs in legislative work (on lines of PRS for Parliament).
- Conduct regular training and orientation programs for new and existing legislators.

2. Revitalisation of Legislative Committees

- Make department-related committees active and mandatory in all states.
- Ensure regular sittings, timely reports, and compulsory ministerial appearances for accountability.

3. Minimum Number of Assembly Sittings

- Set a legal minimum (e.g., 90 days/year) to ensure regular and meaningful legislative engagement.
- Example: States like Rajasthan and Punjab have had less than 25 sittings in some years.

4. Strengthening Opposition and Intra-Party Democracy

- Increase time for private member bills and motions by opposition parties.
- Recognise and empower the **Leader of Opposition** in committee appointments and discussions.

5. Ensuring Decorum and Discipline

- Enforce a robust code of conduct for MLAs with deterrents against frequent disruptions.
- Use biometric attendance and real-time documentation of member participation.

6. Digital Transformation of Assemblies

- Digitise legislative records and make proceedings publicly accessible in regional languages.
- Develop e-Assembly platforms with live updates, bill tracking, and citizen feedback options.

7. Enhanced Financial Oversight

- Strengthen financial scrutiny of budget allocations and Centrally Sponsored Schemes (CSS).
- Train MLAs to analyse outcome budgets and monitor district-level implementation.

8. Reforming Legislative Councils (where applicable)

- Revisit composition to reduce political patronage; ensure professionals and academics are nominated.
- Define clearer roles to make the Council a forum for serious legislative review.

Conclusion

If Parliament is the voice of the nation, state legislatures are its ears on the ground. Strengthening them bridges the gap between policy and people.

JUDICIARY

'There is no better test of the excellence of a government, than the efficiency of the judicial system' - **Lord Bryce**

PYQs

The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution. Discuss critically. (CSE 2013, 10M)
Starting from inventing the 'basic structure' doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by judicial activism in achieving the ideals of democracy. (CSE 2014, 12.5M)
What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution? (CSE 2016, 12.5M)
Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India. (CSE 2017, 10M)
Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine. (CSE 2018, 15M)
Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of a large number of public interest petitions praying for issuing guidelines to executive authorities. (CSE 2020, 15M)
Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness. (CSE 2021, 10M)
Constitutionally guaranteed judicial independence is a prerequisite of democracy. Comment. (CSE 2023, 10M)
Explain the reasons for the growth of public interest litigation in India. As a result of it, has the Indian Supreme Court emerged as the world's most powerful judiciary? (CSE 2024, 15M)

Introduction

The Indian judiciary is more than a guardian of laws- it is the conscience-keeper of the Constitution. In a democracy built on debate and dissent, the judiciary stands as the final voice of reason and justice.
"The Supreme Court has been doing chemotherapy on the carcinogenic politics of India". - **Upendra Baxi**

Idea and Role of Judiciary

- The judiciary is the **guardian of the Constitution** and the **protector of our fundamental rights.**
- It ensures the **rule of law by interpreting laws** and preventing abuse of power by the executive and legislature.
- **Upholds federal equilibrium** and institutional accountability.

Features of Indian Judiciary

- Single integrated judiciary with the **Supreme Court** at the apex, followed by **High Courts** and **subordinate courts**.
- Independent judiciary ensured through:
  - Security of tenure for judges
  - Salaries charged on the Consolidated Fund
  - Powers of contempt
- The Supreme Court is the **guardian of the Constitution** and **final court of appeal**.
- High Courts act as constitutional courts and supervise lower courts.
- Judicial review available under **Articles 13, 32, and 226**.
- Separation of powers is maintained, though the judiciary plays an active role in governance through **judicial activism and PILs**.

Evolution and Phases of Indian Judiciary

1. Early Independence Phase

- The Constitution established an **independent and integrated judicial system** in 1950.
- Early years marked by judicial restraint and deference to legislative wisdom. (Example- **Sajjan Singh (1965):** Court reaffirmed Parliament's unlimited power to amend the Constitution.
- Gradual evolution of the judiciary into an assertive constitutional authority.
- Emergence of doctrines like:
  - **Basic structure doctrine** (Kesavanana Bharati, 1973)
  - **Doctrine of harmonious construction (**When two provisions conflict, courts interpret them to coexist without invalidating either. Used in cases like Golaknath v. State of Punjab (1967) to resolve fundamental rights vs amendment powers.)
  - **Severability and eclipse**

2. Activist Phase (1970s–1990s)

- Marked by transformation in judicial approach post-Emergency.
- The birth of **Public Interest Litigation (PIL)** made justice more accessible to the poor and marginalised.
- Landmark judgments:
  - **Maneka Gandhi v. Union of India (1978)** expanded Article 21.
  - **Minerva Mills v. Union of India (1980)** reaffirmed limitations on Parliament's power to amend the Constitution.

3. Contemporary Phase (2000s Onward)

- Judiciary intervenes in key policy areas: environment, gender rights, electoral reforms, civil liberties.
- Greater use of **Suo motu cognizance** by courts.
- Example- **Manipur Violence (2023):** SC registered a suo motu case on ethnic violence and sexual assault after a video of women being paraded naked surfaced. **Pollution in Delhi-NCR:** Court regularly took suo motu notice of rising air pollution and directed strict implementation of anti-pollution norms.
- Increasing digitisation and emphasis on transparency (e.g., live-streaming of proceedings).

Major Judicial Doctrines Upholding Indian Democracy

1. Basic Structure Doctrine

- Kesavananda **Bharati v. State of Kerala (1973)**.
- Held that Parliament can amend the Constitution under Article 368, but **cannot alter its basic structure**.

- Ensures that core democratic values- like secularism, rule of law, judicial independence, and free elections- remain intact.
- Reaffirmed in cases like **Indira Gandhi v. Raj Narain (1975)** and **Minerva Mills v. Union of India (1980)**.

2. Doctrine of Judicial Review

- Allows courts to examine the **constitutionality of legislative and executive actions**.
- Rooted in **Articles 13, 32 (Supreme Court), and 226 (High Courts)**.
- Protects **fundamental rights** and ensures laws comply with the Constitution.
- Applied in cases like **Golaknath v. State of Punjab (1967)** and **I.R. Coelho v. State of Tamil Nadu (2007)**.

3. Doctrine of Separation of Powers

- Ensures that the **legislature, executive, and judiciary function independently**.
- Judiciary uses this to resist encroachments into its domain.
- Affirmed in **Indira Nehru Gandhi v. Raj Narain (1975)** and **State of Bihar v. Bal Mukund Shah (2000)**.

4. Doctrine of Pith and Substance

- Used to determine **legislative competence** when two laws appear to encroach on each other's domains.
- Focuses on the **true nature of legislation**, not its incidental effects.
- Protects **federal balance** between Centre and States.
- Applied in **State of Bombay v. F.N. Balsara (1951)**.

5. Doctrine of Colourable Legislation

- Prevents the legislature from **doing indirectly what it cannot do directly**.
- Ensures that law-making **remains honest and within constitutional limits**.

6. Doctrine of Eclipse

- A law inconsistent with fundamental rights becomes **inoperative (eclipsed)** but **not void**.
- If the conflicting fundamental right is later amended, the law **revives automatically**.

7. Doctrine of Severability

- If an unconstitutional part of a law can be **separated from the rest**, only the offending part is struck down.
- Ensures that **entire statutes are not invalidated** unnecessarily.

8. Doctrine of Proportionality

- Measures taken by the State must be **reasonable and not excessive** in relation to the objective.
- Strengthens **due process** and limits **arbitrary state actions**.
- Applied in **Puttaswamy v. Union of India (2017)** (Right to Privacy).

9. Doctrine of Public Interest Litigation (PIL)

- Not a constitutional doctrine, but a **judicial innovation**.
- Expands access to justice to the **poor, marginalised, and voiceless**.
- Empowers any citizen to approach the court for **public causes**.
- Pioneered in **S.P. Gupta v. Union of India (1981)** and expanded in **People's Union for Democratic Rights v. Union of India (1982)**.

Appointment Procedure in Higher Judiciary (Supreme Court and High Courts)

1. Constitutional Provisions

- **Supreme Court (Article 124):** Judges are appointed by the President after consultation with judges of the Supreme Court and High Courts.
- **High Courts (Article 217):** Judges are appointed by the President in consultation with the Chief Justice of India, the Governor, and the Chief Justice of the concerned High Court.

2. The Collegium System – Evolution and Structure

- The Collegium system is a **judicial innovation** that governs the appointment and transfer of judges to the Supreme Court and High Courts.
- It is not mentioned in the Constitution but evolved through Supreme Court judgments in the **Three Judges Cases**:
  - **First Judges Case (1981):** Held that consultation with the Chief Justice of India (CJI) does not mean concurrence- gave primacy to the executive.
  - **Second Judges Case (1993):** Overruled the first case; CJI's recommendation (based on a collegium of senior judges) would have primacy.
  - **Third Judges Case (1998):** Formally institutionalised the **Collegium**:
    - For **Supreme Court**: CJI + 4 senior-most judges of the SC.
    - For **High Court appointments**: Chief Justice of the HC + 2 senior-most HC judges + inputs from the SC Collegium.

3. Why the Collegium System is needed in India:

- **Ensures Judicial Independence:** Keeps judicial appointments free from executive or legislative interference.
- **Safeguards Rule of Law:** Prevents politicisation of the judiciary, ensuring decisions are based on law, not loyalty.
- **Improved Transparency:** Collegium now publishes appointment decisions, enhancing accountability.
- **Promotes Continuity and Stability:** Ensures seniority and institutional knowledge guide judicial elevation.
- **Judiciary's Rights-Based Record:** An independent judiciary has expanded rights through landmark verdicts (e.g., privacy, LGBTQ+).

Criticism and Structural Issues

- **Opacity and secrecy**: No written guidelines, reasons for selection or rejection not made public.
- **Lack of accountability**: Not answerable to Parliament or public scrutiny.
- **Neglect of diversity**: Underrepresentation of women, SC/ST/OBC, minorities, and first-generation lawyers. As per the State of the Judiciary report (2023), women constitute roughly **14% of judges in High Courts** and just **9.3% in the Supreme Court**
- **Delayed appointments**: Over 30% of sanctioned judicial positions remain vacant due to delay by executive or collegium gridlock.
- **No performance benchmarks**: Collegium members are not bound by performance indicators or systematic vetting.

Recent Developments (2020–2024)

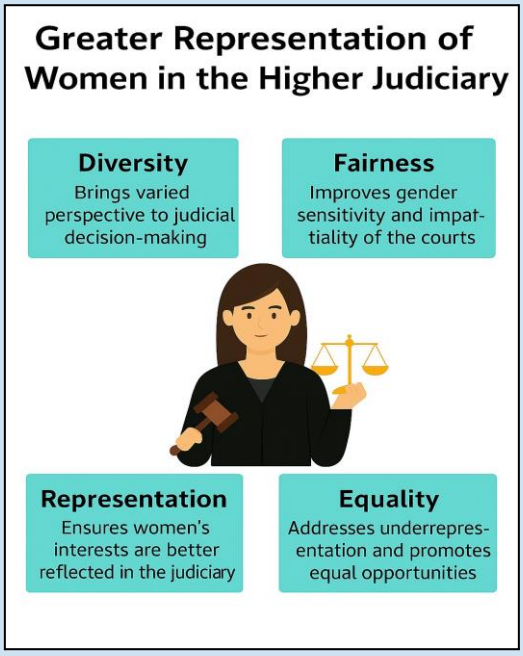
- **Supreme Court's push for transparency**:
  - In 2021 and 2023, the Collegium **published names and reasons** for recommendations on the SC website.
  - Introduced a practice of **disclosing dissenting views** among collegium members (e.g., Justice K.M. Joseph's dissent).
- **Executive-Judiciary friction**:
  - The government **returned or delayed** several recommendations (e.g., Justice Kureshi's elevation, transfer delays).
  - Union Law Minister and Vice President have criticised the Collegium for being **opaque and undemocratic**.
  - In multiple speeches, the government has called for **reconsideration of the NJAC model**.

- **Gender representation**:
  - In 2021, 3 women were recommended for appointment to the SC, including **Justice B.V. Nagarathna**, set to become India's first woman CJI in 2027.
  - Still, **women make up less than 14%** of judges in High Courts.
- **Use of digital vetting**:
  - The Collegium has started **online consultations and background verification** of candidates in coordination with IB and state governments.

Way Forward

- **Ensure Greater Transparency**
  Make Collegium decisions publicly accessible with clear reasoning for appointments, rejections, and transfers.Since 2017, some resolutions have been published online, but this needs to be institutionalised.
- **Institutionalise Social Diversity Criteria**
  Mandate representation of women, SC/ST/OBC, minorities, and first-generation lawyers in appointments to ensure inclusiveness.
- **Include an Independent Secretariat**
  Establish a permanent secretariat to manage logistics, maintain records, and provide research inputs to the Collegium. (Recommended by the Law Commission (214th Report).)
- **Create a Screening and Evaluation Mechanism**
  Set up a structured, merit-based evaluation system involving annual judicial performance reviews for elevation decisions. (How U.K. Judicial Appointments Commission uses defined criteria and panels.)
- **Codify Guidelines for Selection**
  Lay down statutory or constitutional norms for selection, prioritising integrity, merit, diversity, and regional balance.
- **Strengthen Lower Judiciary Pipeline**
  Encourage promotion of meritorious district judges to High Courts to diversify the talent pool beyond elite legal circles.

Rationale for Greater Representation of Women in Judiciary



1. Enhances Judicial Diversity
In the Sabarimala judgment (2018), Justice Indu Malhotra's dissent underscored the need for respecting religious diversity while balancing gender rights- a nuanced perspective grounded in both constitutional law and social context.

2. Strengthens Public Confidence
The appointment of Justice Leila Seth as the first woman Chief Justice of a High Court (Himachal Pradesh, 1991) was widely celebrated, enhancing faith in judicial inclusion and fairness.

3. **Promotes Gender Justice**
Justice Hima Kohli (Delhi HC) delivered landmark rulings on workplace sexual harassment and women's reproductive rights, demonstrating sensitivity and depth on gender issues.

4. **Encourages Role Modelling**
The elevation of Justice BV Nagarathna to the Supreme Court

in 2021- set to become India's first woman CJI in 2027- inspired a generation of women lawyers.
5. **Upholds Constitutional and Global Mandates**
The Supreme Court in Charu Khurana v. Union of India (2014) upheld women's right to be makeup artists in the film industry, reinforcing constitutional equality under Article 15.

Issues in the Indian Judiciary

1. Huge Pendency of Cases
- Over **5 crore cases** are pending across courts (as of 2024). (National Judicial Data Grid)
- The Supreme Court alone has **70,000+ pending cases**; High Courts over **60 lakh**.
- Delays lead to **denial of timely justice**, erosion of public trust, and overcrowded jails.
- Example: Undertrial prisoners constitute ~75% of India's prison population. (**Prison Statistics India** report 2023.)

2. Shortage of Judges and Vacancies
- Severe shortage in both **higher and subordinate courts**.
- Average judge-to-population ratio: **21 judges per million**, far below the Law Commission's recommendation of 50 per million.
- Example: Nearly 35% of sanctioned posts in High Courts remain vacant as of mid-2024.

3. Lack of Transparency in Judicial Appointments
- **The Collegium system** is criticised for being opaque, non-inclusive, and lacking accountability.
- No formal **criteria or publicly available reasons** for selection, rejection, or elevation.
- Example: Justice Kureshi's non-elevation despite Collegium recommendation sparked public debate.

4. Judicial Overreach and Activism
- Judiciary has often entered into **legislative and executive domains** through expansive interpretation.
- Blurs the **separation of powers**, leading to institutional friction.
- Example: SC directives on banning firecrackers or mandating national anthem in cinemas faced criticism.

5. Lack of Diversity and Representation
- Judiciary dominated by **upper-caste, urban, male judges**.
- Poor representation of **women, SC/ST/OBCs, minorities**, and **first-generation lawyers**.
- Example: As of 2023, only 3 women judges in the Supreme Court; many High Courts have none.

6. Delays in Judicial Reforms
- Key reforms like **All-India Judicial Services (AIJS)**, **court digitisation**, **e-courts**, and **National Court Management Systems** remain partially implemented.
- Resistance from the judiciary and states hampers institutional restructuring.

7. Lack of Judicial Accountability Mechanisms
- No independent body to examine judicial misconduct.
- The in-house mechanism lacks transparency and statutory backing.
- Impeachment is rare, lengthy, and politically unviable.
- Example: No judge has been impeached successfully despite serious allegations in multiple cases.

8. Contempt Powers vs Free Speech
- Contempt jurisdiction often used to suppress criticism and shield judges from scrutiny.
- Balancing **judicial dignity** and **freedom of expression** remains unresolved.
- Example: Prashant Bhushan's 2020 contempt case triggered public debate on judicial tolerance.

9. Infrastructural Deficiencies

- Many courts operate with **poor physical and digital infrastructure**, especially at the lower judiciary level.
- Shortage of courtrooms, staff, digitised records, and e-filing facilities.

10. Fragmented Judicial Data and Lack of Transparency

- No real-time, accessible, and comprehensive data on case status, judge performance, or judicial vacancies.
- National Judicial Data Grid (NJDG) exists but remains underutilised.

Major Reforms taken in the Indian Judiciary

1. Public Interest Litigation (PIL)

- Introduced in the late 1970s to allow **any public-spirited citizen** to approach the court on behalf of the poor or marginalised.
- Expanded **access to justice** and made fundamental rights more meaningful.
- Instrumental in landmark cases like MC Mehta, Vishaka, and Olga Tellis.

2. National Legal Services Authority (NALSA)

- Established under the **Legal Services Authorities Act, 1987** to provide **free legal aid** to the poor and weaker sections.
- Organises **Lok Adalats**, legal awareness camps, and ensures access to justice under **Article 39A**.
- Example: NALSA v. Union of India (2014) recognised transgender rights and mandated legal aid for them.

3. Fast Track Courts (FTCs)

- Introduced in 2000 to **reduce pendency** and ensure **speedy trials**, especially in criminal cases.
- Focused on **sexual offences**, cases against legislators, and vulnerable groups like women and children.
- Example: Delhi gangrape (Nirbhaya) case was tried in a fast-track court.

4. Tribunals and Quasi-Judicial Bodies

- Set up to reduce the burden on regular courts and provide **specialised adjudication**.
- Includes bodies like **National Green Tribunal (NGT)**, **CAT**, **Income Tax Appellate Tribunal**, etc.

5. E-Courts Project

- Launched in 2005 under the National e-Governance Plan to **digitise court records** and improve case management.
- Enables **e-filing, online case status, virtual hearings**, and judgment uploads.
- Boosted during COVID-19, leading to **greater access and transparency**.

6. Alternative Dispute Resolution (ADR) Mechanisms

- Includes **mediation, arbitration, and conciliation** to resolve disputes outside formal courts.
- Reduces litigation burden and promotes **cost-effective and time-saving** justice.
- Institutionalised through laws like the **Arbitration and Conciliation Act, 1996**.

7. National Judicial Data Grid (NJDG)

- Online platform providing **real-time data** on case pendency, disposal rates, and court performance.
- Helps in **judicial planning, transparency**, and citizen access to data.

8. Judicial Training and Capacity Building

- Establishment of **National Judicial Academy (NJA)** and State Judicial Academies for training judges.
- Focus on updating knowledge, ethics, digital literacy, and case management.

Reforms Still Needed

- **Institutionalisation of Collegium:** Codify procedures, timelines, and criteria for appointments.
- **Establishment of an independent secretariat:** To support the Collegium in vetting and background checks.

- **Diversity and inclusivity:** Ensure adequate representation of women, SC/ST/OBC, minorities, and regional balance.
- **Transparency measures:** Publish shortlists, selection criteria, and reasons for rejection/supersession.
- **Revisit NJAC in modified form:** Involve civil society and legal fraternity in a constitutionally valid structure.
- **Strict timelines:** For the government to respond to Collegium recommendations to avoid executive delay.
- **Performance audit:** Introduce post-appointment evaluation of judges on grounds like delay disposal, integrity, etc.

CONCLUSION

While the judiciary has played a transformative role in **protecting rights and upholding accountability**, challenges of **delay, opacity, and overreach** persist. Strengthening judicial capacity, transparency, and institutional balance is essential to ensure it remains the **guardian of constitutional morality and public trust**.

Judicial Accountability

Refers to the **responsibility of judges to uphold constitutional values, deliver justice fairly**, and remain answerable for their conduct.

Importance of Judicial Accountability

- Ensures a balance between **judicial independence and democratic legitimacy**.
- Prevents **judicial arbitrariness, corruption**, and **misuse of power**.
- Judicial accountability operates through:
    - Constitutional provisions
    - Internal checks
    - Ethical codes and precedents
    - Limited scope for public and parliamentary scrutiny

Constitutional Mechanisms for Accountability

- Judges are expected to follow **constitutional morality, judicial ethics**, and **reasoned decisions** subject to:
    - **Review and appeal** by higher courts
    - **Public criticism and academic scrutiny**
    - **Parliamentary impeachment (removal)** in extreme cases

Other Mechanisms of Judicial Accountability

- **Contempt of Court**: Judges can use contempt powers to protect the dignity of the court, but it is also seen as a tool that limits accountability.
- **Declaration of assets**: Judges of the SC and HCs have voluntarily declared assets, but there's no statutory obligation. (In **CIC v. Supreme Court of India (2010),** the **Delhi High Court** ruled that the office of the Chief Justice of India comes under the **Right to Information Act**, requiring disclosure of judges' assets. However, it did **not make asset declaration mandatory by law**)
- **In-house mechanism**: The Supreme Court has an internal procedure to handle complaints against judges, but it lacks transparency or statutory backing.
- **Right to Information (RTI)**: After the **SC's 2019 judgment**, the office of the Chief Justice of India is now under the RTI Act- but with **reasonable restrictions**.

Judicial Review

Concept and Definition

- Judicial Review refers to the power of the judiciary to **examine the constitutionality** of legislative enactments and executive orders.
- If any law or action is found to be **inconsistent with the Constitution**, the courts can **declare it void or unconstitutional**.
- It ensures that **legislative and executive organs** do not transgress constitutional boundaries.

Constitutional Basis

- **Article 13**: Laws inconsistent with or in derogation of fundamental rights are void.
- **Article 32**: Empowers the Supreme Court to enforce fundamental rights.
- **Article 226**: Empowers High Courts to issue writs for enforcement of fundamental and legal rights.
- **Articles 131, 136, 141, and 142**: Provide additional jurisdictional authority to the SC for constitutional interpretation.

Types of Judicial Review

- **Legislative Review**: Examination of laws or amendments passed by the legislature (central or state) for constitutional validity.
    - Example: Kesavananda Bharati v. State of Kerala (1973) – struck down part of the 24th Amendment and gave birth to the **Basic Structure Doctrine**.
- **Executive Review**: Examination of executive actions, policies, ordinances, or administrative decisions.
    - Example: Maneka Gandhi v. Union of India (1978) – struck down arbitrary passport impoundment as violative of Article 21.
- **Judicial Review of Constitutional Amendments**: Supreme Court can review amendments under **Article 368**, provided they do not alter the **Basic Structure**.
    - Example: Minerva Mills v. Union of India (1980) – reaffirmed judicial review as part of the basic structure.

Objectives of Judicial Review

- To uphold the **supremacy of the Constitution**.
- To maintain the **rule of law**.
- To safeguard **fundamental rights** of citizens.
- To prevent **misuse of power** by legislature and executive.
- To act as a check on **arbitrary or ultra vires actions** of government authorities.

Important Examples and Landmark Judgments

- **Golak Nath v. State of Punjab (1967)**
    - SC ruled that Parliament **cannot amend fundamental rights**- a precedent to Kesavananda Bharati.
- **Kesavananda Bharati v. State of Kerala (1973)**
    - Established the **Basic Structure Doctrine**- certain essential features of the Constitution cannot be amended.

- **Indira Nehru Gandhi v. Raj Narain (1975)**
    - Struck down the 39th Constitutional Amendment as it violated separation of powers and judicial review.
- **Minerva Mills v. Union of India (1980)**
    - Reiterated that **judicial review is part of the basic structure**.

- **I.R. Coelho v. State of Tamil Nadu (2007)**
  - Judicial review extended even to **laws placed in the Ninth Schedule** post-Kesavananda.
- **S.R. Bommai v. Union of India (1994)**
  - Judicial review applied to **President's Rule** under Article 356; emphasized **federalism**.

Criticism of Judicial Review

1. Judicial Overreach

- Courts have been criticised for interfering in domains beyond their mandate, such as administrative policy or governance.
- **Example:** The SC's intervention in the **Delhi government's administrative control case (2023)**, where it ruled on bureaucratic control, was seen by some as entering executive turf.

2. Lack of Accountability

- Judges are unelected, enjoy constitutional protections, and are not directly accountable to the public.
- **Example:** The SC collegium system, which controls appointments and transfers, operates with minimal external checks, raising concerns over transparency.

3. Subjectivity in Interpretation

- Constitutional provisions are interpreted differently by different benches, leading to inconsistency.
- **Example: Article 19 and 21** have been variously interpreted on privacy, sedition, and internet shutdowns (e.g., **Anuradha Bhasin case**, 2020 vs. earlier free speech cases).
- Different High Courts gave conflicting rulings on **same-sex marriage** before the SC finally heard the case in 2023.

4. Delays in Governance and Policy Paralysis

- Judicial review can stall major reforms, especially when laws are struck down after significant time and effort.
- **Example: Striking down of the NJAC Act (2015)** delayed reforms in judicial appointments and led to tensions between the judiciary and executive.

5. Supremacy of Unelected Body over Elected Will

- Judicial invalidation of laws passed by elected legislatures can be seen as undemocratic.
- **Example:** The **SC's reading down of Section 377** (2018) and **decriminalisation of adultery** (2018) were progressive, but also drew criticism from some for bypassing parliamentary debate.

Suggested Reforms

- **Codify guidelines** for judicial review to avoid inconsistency.
- **Ensure balance** between activism and restraint by following **institutional boundaries**.
- **Strengthen constitutional literacy** in legislature and executive to avoid unconstitutional enactments.
- **Judicial training and continuous legal education** to enhance constitutional interpretation.
- Establish an **institutional dialogue** mechanism between organs for cooperative constitutionalism.

Judicial Activism and Judicial Overreach

Judicial Activism – Concept and Meaning

"Judiciary in India will not be a silent spectator rather an active participant in India's social revolution."- Pt. Nehru.

- Judicial activism refers to the **proactive role played by the judiciary** in **interpreting laws expansively** and sometimes **filling legislative or executive gaps**.
- It often arises from **Public Interest Litigations (PILs)**, where courts act to protect fundamental rights, public welfare, or environmental justice.
- It reflects the idea that courts are not merely interpreters of law but also **guardians of justice** and **agents of social change**.

Constitutional Basis of Judicial Activism

- Article 32 and Article 226: Writ jurisdiction of Supreme Court and High Courts.
- Article 21: Expansive interpretation of Right to Life and Personal Liberty.
- Article 142: Supreme Court's power to do **complete justice** in any matter.

Forms of Judicial Activism

- **Expanding the scope of Fundamental Rights**
  - Example: Maneka Gandhi v. Union of India (1978) expanded Article 21 to include right to travel, dignity, and due process.
- **Environmental protection**
  - Example: MC Mehta cases (Ganga Pollution, Oleum Gas Leak) laid the foundation of environmental jurisprudence.
- **Good governance and transparency**
  - Example: Vineet Narain case (1997) led to the establishment of the CBI's autonomy and judicial monitoring of corruption investigations.
- **Directive Principles enforced as justiciable rights**
  - Example: Unnikrishnan v. State of Andhra Pradesh (1993) made right to education a fundamental right.
- **Gender justice and minority rights**
  - Example: Vishakha v. State of Rajasthan (1997) established guidelines for preventing workplace sexual harassment.
- **Electoral reform**
  - Example: PUCL v. Union of India (2003) made Right to Know about candidates' criminal records a fundamental right.

Judicial Overreach

- Judicial overreach occurs when the **judiciary crosses the limits** of its jurisdiction and **infringes upon the domains of the legislature or executive**.
- It is a **criticism of judicial activism**, suggesting that courts are assuming **policy-making powers** without democratic legitimacy.

Examples of Judicial Overreach

- **National Anthem Judgment (2016)** – SC made it mandatory to play the national anthem in cinemas, later revised.
- **Ban on firecrackers (2017–2020)** – SC's extensive environmental orders were viewed by critics as bypassing executive responsibilities.
- **Saharas' refund case** – SC created a quasi-administrative mechanism to recover investor money.

- **NEET exemption in Tamil Nadu** – Governor's delay in assent and judicial silence criticized amid executive-legislative deadlock.

Judicial Activism vs Judicial Overreach

Judicial Activism	Judicial Overreach
Proactive judicial role in interpreting laws to uphold justice and constitutional values.	Judiciary exceeding its mandate, encroaching upon legislative or executive functions.
Based on Articles 32, 226, and 142 of the Constitution.	No explicit constitutional backing emerges when the judiciary intrudes into policy-making.
Used to protect fundamental rights, fill legislative gaps, and promote social justice.	May result in policy paralysis, undermines democratic and institutional balance.
Strengthens democratic accountability and expands rights jurisprudence.	Can violate separation of powers and lead to judicial supremacy.

Reasons for the Growth of PIL in India

- **Liberalisation of Locus Standi**
  The Supreme Court in S.P. Gupta v. Union of India (1981) and People's Union for Democratic Rights v. Union of India (1982) expanded standing to allow **any public-spirited individual** to file a case on behalf of the disadvantaged.
- **Judicial Activism and Social Justice**
  Inspired by Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, PIL became a tool to enforce **Fundamental Rights** and **Directive Principles**, especially for the poor, prisoners, bonded labourers, and displaced people.
- **Executive Failure**
  Growing public disillusionment with bureaucratic apathy and corruption led citizens to **turn to the judiciary** for redressal, particularly during the Emergency and post-Emergency period.
- **Media and Civil Society Mobilisation**
  The rise of a vibrant civil society and investigative journalism helped bring social injustices into the public eye, prompting courts to intervene suo motu.
- **Innovative Judicial Remedies**
  PILs enabled the Court to use **continuing mandamus**, expert committees, and monitoring mechanisms- allowing it to **govern policy domains** like environmental protection (MC Mehta cases) and prison reforms (Sunil Batra case).

Criticism of Judicial Overreach

- **Violation of separation of powers** enshrined in the Constitution.
- Undermines the **legitimacy of elected representatives** and policymaking.
- Can cause **administrative delays and confusion**, especially in complex policy matters.
- Risks **judicial populism**, where public sentiment may guide rulings over legal merit.
- Reduces space for **deliberative democratic processes**.

Way Forward: Tackling Judicial Overreach

- **Clearer Separation of Powers:** All three branches- legislature, executive, and judiciary- must respect constitutional boundaries to maintain institutional balance.
- **Judicial Self-Restraint:** Courts should adopt the principle of judicial modesty, especially in matters of policy, administration, and budgetary decisions.

- **Strengthening Legislative Institutions:** Empowering parliamentary committees and ensuring quality debates can reduce judicial intervention.
- **Codified Guidelines:** Developing conventions or principles on justiciability and limits of judicial review (similar to Basic Structure) can serve as soft boundaries.
- **Improved Governance:** Timely and transparent executive actions can reduce the need for courts to step in through PILs or suo motu cases.

Judicial review is vital for upholding constitutional values, but preserving the legitimacy of democracy requires that it be exercised with restraint, respecting the roles and accountability of the elected branches.

All India Judicial Services (AIJS)

- Proposed as a **national-level recruitment mechanism** to ensure merit-based and uniform entry into the subordinate judiciary.
- Faces resistance from states and judiciary due to federal concerns and administrative control.

Constitutional and Legal Basis

- **Article 312(1)** of the Constitution allows the creation of an **All India Service**, including AIJS, if the **Rajya Sabha passes a resolution supported by two-thirds majority**.
- The 42nd Constitutional Amendment (1976) added **"judicial service" to the list of possible All India Services**.
- Despite the constitutional provision, AIJS remains **only a proposal** and has not been implemented.

Objectives of AIJS

- To establish a **merit-based, uniform recruitment mechanism** at the national level for entry into **subordinate judiciary** (District Judges and Civil Judges).
- To reduce vacancies in lower courts and improve **efficiency and quality** of judicial officers.
- To ensure **representation from diverse backgrounds** and states.
- To promote **transparency and objectivity** in recruitment.

Arguments in Favour of AIJS

- **Fills judicial vacancies efficiently**: Over **5,000 vacancies exist in lower judiciary** as of 2025. AIJS can create a time-bound and regular selection mechanism.
- **Brings uniformity and standardisation**: A centralised exam can ensure quality and consistency across states.
- **Reduces corruption and nepotism** in state-level recruitment processes.
- **Promotes diversity**: AIJS could include reservations and quotas for SC/ST/OBC, women, and minorities at a national level.
- **Encourages talent mobility**: Like IAS/IPS, AIJS officers can serve across states and bring broader perspectives.

Arguments Against AIJS

- **Federal concerns**: States fear losing control over **appointment, posting, and promotion** of subordinate judiciary (a power under Article 233–237).
- **Language and local law issues**: Judges from other states may struggle with **regional languages and local customs**.
- **Opposition from High Courts**: High Courts, under Article 235, supervise the subordinate judiciary. AIJS may **undermine their autonomy**.
- **Risk of bureaucratisation**: A centralised judicial service may turn judges into career bureaucrats rather than impartial adjudicators.

- **Dilution of local accountability**: Localised recruitment ensures better understanding of regional socio-legal contexts.

Recent Developments (2020–2025)

- In **2020**, the Centre circulated a **draft proposal** to states seeking their views on AIJS.
- Several states like **Tamil Nadu, Kerala, West Bengal, and Maharashtra** opposed it citing federal and linguistic concerns.
- The Supreme Court has acknowledged the need for reform in recruitment but has **not imposed AIJS**, urging cooperative federal deliberation.
- The **Law Ministry** (as of 2024) has proposed a **hybrid model**- where states can opt in or opt out voluntarily.
- **Judicial Services Reform Committee**, appointed in 2023, recommended a **pilot AIJS exam** in select consenting states.

Conclusion

The Indian judiciary stands as the guardian of the Constitution and the protector of fundamental rights. However, to sustain public trust and democratic legitimacy, it must balance its independence with accountability, activism with restraint, and constitutional fidelity with evolving societal needs.

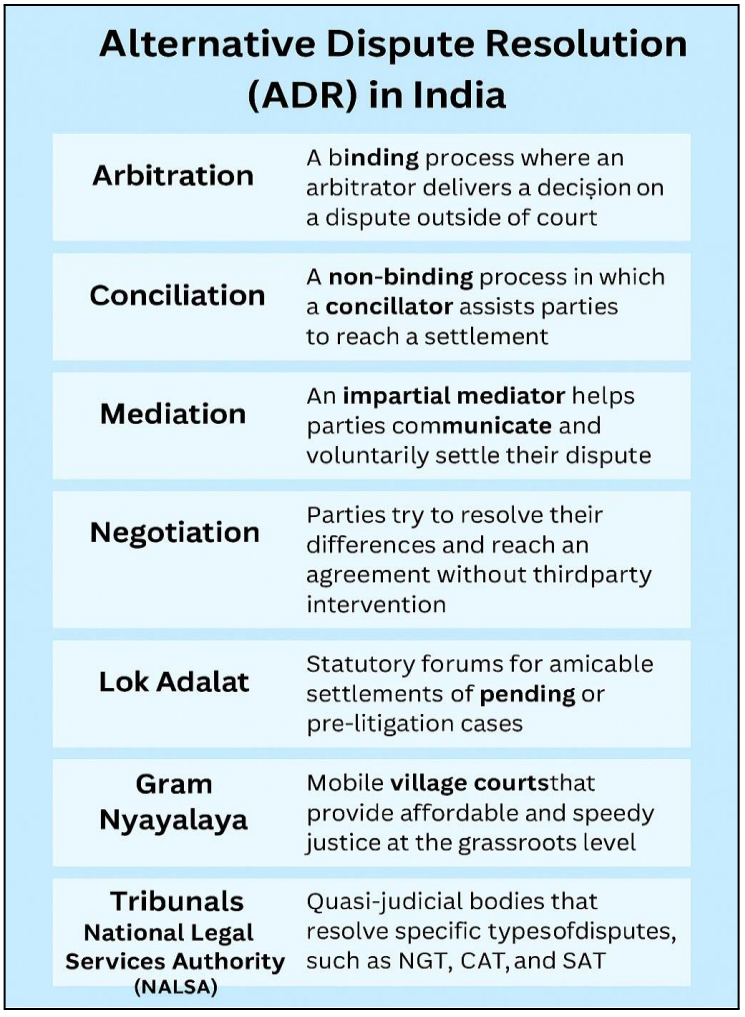
ALTERNATIVE DISPUTE REDRESSAL MECHANISM

PYQs

Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss. (CSE 2013, 10M)
What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss (CSE 2015, 12.5)
Who is entitled to receive free legal aid? Assess the role of the National Legal Services Authority (NALSA) in rendering free legal aid in India. (CSE 2023, 10M)
Explain and distinguish between Lok Adalats and Arbitration Tribunals. Whether they entertain civil as well as criminal cases? (CSE 2024, 10M)

Introduction

Alternative Dispute Resolution (ADR) includes methods like mediation, arbitration, conciliation, and Lok Adalats, aimed at promoting speedy and cost-effective justice. ADR plays a crucial role in reducing court pendency and encouraging amicable settlements.



Gram Nyayalayas

Background and Legal Basis

- Gram Nyayalayas were established under the **Gram Nyayalayas Act, 2008**, to provide **speedy and affordable justice** to people in rural areas.
- Based on the recommendations of the **Law Commission** and the **Justice Malimath Committee**, it aimed to **decentralise judicial access**.
- Came into force on **2 October 2009**, with a vision of bringing justice "to the doorstep" of villagers.

Key Features

- Each Gram Nyayalaya is presided over by a **Nyayadhikari** (Judicial Magistrate First Class), appointed by the state government in consultation with the High Court.
- Has **both civil and criminal jurisdiction**- over specified minor offences and local disputes.
- The Nyayadhikari can **go to the village**, hold mobile courts, and conduct proceedings in the **local language**.
- Procedures are **simple and informal**, based on principles of natural justice, not strict procedural laws.
- Appeals lie with the **Sessions Court or District Court**, depending on case type.

Objectives

- To provide **access to justice at the grassroots**, particularly to the **poor, marginalised, and rural citizens**.
- To reduce **case pendency in regular courts** by offloading minor disputes.
- To promote **informal, participatory, and amicable dispute resolution**.

Challenges and Concerns

- **Poor implementation**: As of 2025, fewer than 500 Gram Nyayalayas are functional across the country, far below the target.
- **Infrastructure and staffing issues**: Lack of basic facilities and trained personnel in rural areas.
- **Reluctance by lawyers and police** to engage with informal procedures.
- **Low awareness** among villagers about their rights and the availability of Gram Nyayalayas.
- **Lack of cooperation** from state governments and judiciary in many cases.

Way forward

- **Ensure Proper Implementation-** States must appoint judges, allocate funds, and notify jurisdiction as per the Gram Nyayalayas Act, 2008.
- **Infrastructure and Mobility Support-** Provide basic court infrastructure, mobile court vans, and digital tools for remote villages.
- **Awareness and Accessibility-** Launch legal literacy campaigns to inform rural citizens about their rights and the availability of local justice.
- **Integration with ADR-** Link Gram Nyayalayas with mediation and Lok Adalat mechanisms for faster, amicable resolution of disputes.

Lok Adalats

Background and Legal Basis

- Lok Adalats (People's Courts) are **statutory forums** for **speedy and amicable settlement of disputes**, especially for those who cannot afford litigation.
- Established under the **Legal Services Authorities Act, 1987**, and operated under the supervision of **NALSA, SLSAs, DLSAs**, etc.
- Based on **Gandhian principles of conciliation** and **Article 39A** of the Constitution (access to justice).

Key Features

- Provide **alternate dispute resolution** outside the formal judicial system.

- Focus on **compromise and mutual settlement** between parties.
- Decisions (awards) of Lok Adalats are **binding, final, and enforceable** like a decree of a civil court.
- No **court fee** is charged; if already paid, it is refunded if settlement is reached.
- Can take up **pre-litigation disputes** as well as **pending court cases**.

Advantages

- **Speedy, inexpensive, and accessible justice**, especially for rural and economically weaker sections.
- Reduces **judicial burden** and pendency of cases in courts.
- Promotes **social harmony** by encouraging compromise over adversarial litigation.

Limitations

- Can only settle cases where **both parties consent** to compromise.
- **No adjudication on merits**- cases with serious legal complexities are not suitable.
- Award is **not appealable**, even if one party later feels disadvantaged.

Recent Developments (2023–2025)

- The **E-Lok Adalat model** has been promoted post-COVID, enabling virtual hearings and settlement.
- **Record disposal** during **National Lok Adalats**: In August 2023, over **1 crore cases** were settled in a single day across India.
- Some states have launched **AI-based case triaging** to identify eligible cases for Lok Adalats.

NALSA – National Legal Services Authority

Background and Legal Basis

- Established under the **Legal Services Authorities Act, 1987**; became functional in **1995**.
- Constituted to **provide free and competent legal services** to the weaker sections of society.
- Operates under the mandate of **Article 39A** of the Constitution, which directs the State to ensure that **justice is not denied due to economic or other disabilities**.

Objectives

- To ensure **equal access to justice** for all, especially the **poor, marginalized, and disadvantaged**.
- To organize **Lok Adalats** for amicable dispute resolution.
- To promote **legal literacy and awareness**, especially in rural and tribal areas.

Key Functions

- Provides **free legal aid** in civil and criminal matters to eligible persons (SC/ST, women, children, differently-abled, victims of trafficking, etc.).
- Supervises the work of **State Legal Services Authorities (SLSAs)**, **District Legal Services Authorities (DLSAs)**, and **Taluk Legal Services Committees (TLSCs)**.
- Conducts **legal awareness campaigns**, training programs, and special drives (e.g., for undertrial prisoners).
- Organises **Lok Adalats and Permanent Lok Adalats (PLAs)** for pre-litigation and pending cases.

Key Initiatives and Cases

- **NALSA v. Union of India (2014)**: Landmark case where the Supreme Court recognised **transgenders as the third gender** and directed NALSA to extend legal aid to them.
- **Legal Aid Clinics**: Set up in law colleges and rural areas to provide free consultation.
- **Awareness drives** for rights of women, domestic workers, senior citizens, and victims of domestic violence.

Challenges

- **Low awareness** among eligible beneficiaries.
- **Lack of trained legal volunteers** in rural and remote areas.
- **Uneven quality of legal aid** provided across regions.
- **Inadequate monitoring and evaluation** of services delivered.

Way forward

- **Expand Digital Legal Services-** Leverage technology to offer **e-Lok Adalats**, online legal counselling, and virtual legal aid in remote areas. Example: NALSA's **Digital Lok Adalats (2023)** resolved over 27 lakh cases using AI-assisted platforms.
- **Enhance Legal Literacy Campaigns-** Intensify awareness drives in schools, panchayats, prisons, and among marginalised communities about free legal aid rights
- **Strengthen Institutional Capacity-** Increase budget allocation, staffing, and infrastructure for Legal Services Authorities at district and taluk levels. Appoint full-time legal aid officers and provide regular training.
- **Focus on Quality of Legal Aid-** Improve performance monitoring of legal aid lawyers and ensure accountability and client satisfaction.
- **Targeted Justice for Vulnerable Groups-** Expand schemes for **women, SC/STs, prisoners, senior citizens**, and disaster-affected individuals. Collaborate with NGOs, SHGs, and civil society for better last-mile delivery.
- **Integrate with ADR Mechanisms-** Use NALSA's network to institutionalise **pre-litigation mediation** and promote ADR as the first step in resolving disputes.

Family Courts in India

Legal Basis and Background

- Established under the **Family Courts Act, 1984** to provide **speedy and amicable resolution** of family disputes.
- Enacted based on the recommendation of the **Law Commission of India (59th Report)** and **Justice Krishna Iyer Committee**.
- Aimed at delivering **sensitive, non-adversarial justice** in matters affecting the family unit.

Key Features

- Deals with **matrimonial and family-related disputes** such as marriage, divorce, maintenance, child custody, guardianship, and property disputes between family members.
- Presided over by **Judges with experience in family law**, often assisted by **counsellors** to promote reconciliation.
- **Procedures are informal**, less technical, and allow for **in-camera proceedings** to preserve privacy.
- Emphasises **conciliation and settlement** over litigation, reducing emotional and social costs.
- Appeals from Family Court decisions lie with the **High Court**.

Objectives

- To promote the **welfare of the family** by encouraging **settlement and reconciliation**.
- To make legal proceedings **less adversarial** and more accessible to women and children.
- To ensure **expeditious disposal** of family law cases.

Examples and Case References

- **Delhi Family Courts** often hold **counselling sessions before hearing divorce petitions**, helping many couples reconcile without litigation.
- In **Andhra Pradesh**, special family courts have resolved several maintenance claims within a span of **2–3 hearings**, showcasing effectiveness.
- The **Bombay High Court** has directed the state government to set up more Family Courts due to rising pendency in urban areas.
- Recent case (2023): A Pune Family Court ruled in favour of a woman seeking shared custody and relocation of her child abroad, showing the evolving nature of family law.

Challenges

- **Shortage of Family Courts**, especially in rural and small towns.
- **Delays in appointments** of judges and counsellors hamper speedy justice.

- Rising case pendency due to increasing family disputes and lack of infrastructure.
- **Stigma and societal pressure** discourage women from approaching courts.

Way forward

- **Increase the Number of Courts-** Establish more family courts in underserved districts to reduce backlog and travel burden for litigants.
- **Strengthen Mediation and Counselling Services-** Appoint trained counsellors, child psychologists, and social workers to aid in non-adversarial dispute resolution.
- **Digital Infrastructure-** Enable e-filing, virtual hearings, and digital record-keeping for faster, transparent processes.
- **Sensitisation of Judges and Staff-** Conduct regular training on gender sensitivity, child rights, and trauma-informed approaches.
- **Time-bound Case Disposal-** Enforce strict timelines under the Family Courts Act to avoid prolonged litigation, especially in custody and maintenance cases.
- **Legal Aid and Support Services-** Ensure free legal aid and mental health support through partnerships with NALSA and NGOs.

Family courts play a pivotal role in protecting vulnerable lives within private spaces. Modernising their structure and approach is essential for delivering both justice and healing.

Tribunals in India

How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India. (CSE 2018, 15M)
The Central Administration Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain. (CSE 2019, 10M)

Background and Constitutional Status

- Tribunals are **quasi-judicial bodies** established to adjudicate **specialised disputes** outside the regular court system.
- Introduced to **reduce burden on the judiciary**, ensure **technical expertise**, and deliver **speedier justice**.
- Constitutionally recognised through the **42nd Constitutional Amendment Act, 1976**, inserting **Articles 323A and 323B**.

Types of Tribunals

- **Administrative Tribunals (Article 323A)**
  - Central Administrative Tribunal (CAT) – for disputes related to **civil services and public employment**.
  - State Administrative Tribunals (SATs) – e.g., Karnataka, Maharashtra.
- **Other Tribunals (Article 323B)**
  - Can be set up by Parliament or state legislatures for matters like **taxation, land reforms, labour, and elections**.
  - Examples:
    - **Income Tax Appellate Tribunal (ITAT)**
    - **National Company Law Tribunal (NCLT)**
    - **National Green Tribunal (NGT)**
    - **Armed Forces Tribunal (AFT)**
    - **Debt Recovery Tribunal (DRT)**

Key Features

- Composed of **judicial and technical members**, unlike traditional courts.
- Not bound by strict **Code of Civil Procedure (CPC)**, but guided by principles of **natural justice**.
- Decisions are **appealable** to higher judicial forums (e.g., High Court or Supreme Court).
- Aim to provide **specialised, time-bound, and cost-effective adjudication**.

Significant Judicial Pronouncements

- L. Chandra Kumar v. Union of India (1997):
  - Held that **tribunals are subject to judicial review** under Articles 226/227 and 32.
  - **Exclusivity clause** (bar on High Court review) declared unconstitutional.
- Madras Bar Association Cases (2020, 2021):
  - Struck down parts of **Tribunal Reforms Ordinance and Act**, emphasizing the need for **judicial independence** in tribunal appointments.

Advantages

- **Reduces judicial burden** and case pendency in regular courts.
- Provides **specialised adjudication** with subject-matter expertise.
- **Faster disposal** of cases in comparison to regular courts.

Challenges

1. Lack of Uniformity in Structure and Tenure- The tenure for members of different tribunals ranges from 3 to 5 years, and some lack security of tenure.

- Data: The 272nd Law Commission Report (2017) recommended uniformity, but many tribunals still operate under separate rules.

2. Executive Dominance Undermining Independence- SC mandated that the search-cum-selection committee should have a judicial majority.

- Example: In **Madras Bar Association v. Union of India (2021)**, the Supreme Court struck down parts of the Tribunals Reforms Ordinance, 2021, for allowing excessive executive control.

3. Understaffing and Poor Infrastructure- As of 2023, over **500+ posts were vacant across major tribunals**, including NCLT, CAT, and DRTs.

- Example: The National Company Law Tribunal (NCLT) faced severe backlogs in insolvency resolution due to lack of members and staff.

4. Overlapping Jurisdiction with Courts- Lack of clarity affects consistency in legal remedies.

- Example: In the case of **Rojer Mathew v. South Indian Bank (2019)**, SC noted the ambiguity in judicial review over tribunal decisions and referred the issue to a larger bench.

Recent Reforms and Developments

- **Tribunals Reforms Act, 2021**:
  - Merged some tribunals, set tenure of members to 4 years, and empowered the Centre to make appointments.
  - Criticised and partially struck down by the **Supreme Court** for violating judicial independence.
- **Finance Act, 2017**:
  - Reorganised tribunals and transferred rule-making powers to the executive- challenged for undermining autonomy

Tribunals and curtailment of the jurisdiction of ordinary courts

1. Arguments Supporting the View

- **Parallel Judicial Structures**: Tribunals often function as alternatives to High Courts (e.g., CAT, NCLAT), thereby **displacing traditional judicial forums**.
- **Limited Judicial Review**: Many tribunal decisions are **appealable only to the Supreme Court**, bypassing High Courts and limiting access to justice at a regional level.

- **Executive Dominance**: Some tribunals are staffed by **members from the executive**, raising doubts over their independence and blurring the line between executive and judiciary.
- **Lack of Procedural Safeguards**: Tribunals may **not follow strict rules of evidence** or civil procedure, possibly compromising the fairness expected from regular courts.
- The **Judicial Reforms Committee (Ranganathan Committee)** recommended that **tribunals should be integrated into the formal judicial system**.

2. Arguments Against the View

- **Specialised Expertise**: Tribunals bring **technical and domain-specific knowledge** (e.g., in tax, environment, company law), which regular courts may lack.
- **Judicial Backlog Relief**: They help reduce the **burden on conventional courts**, ensuring quicker resolution of disputes.
- **Constitutional Sanction**: Articles **323A and 323B** provide for the creation of tribunals, recognising them as a valid part of the judicial framework.
- **Judicial Oversight Maintained**: Following L. Chandra Kumar vs. Union of India, tribunal decisions are **subject to review by High Courts**, preserving the basic structure doctrine and judicial oversight.
- **Accessibility and Speed**: Tribunals often provide **faster and more accessible justice**, especially in service and commercial matters.

While tribunals offer specialised and efficient adjudication, their growing role must be balanced with constitutional safeguards to ensure they do not undermine the authority, independence, or accessibility of ordinary courts. Integrating them within the broader judicial framework, as recommended by expert bodies, can help maintain both efficiency and accountability.

Mediation Act, 2023: A New Framework for Dispute Resolution

Key Provisions

- **Compulsory Pre-litigation Mediation**
  Parties are expected to explore mediation before approaching courts, except in urgent matters (like interim reliefs) or criminal cases. It aims to reduce judicial burden but raises concerns about voluntary consent.
- **Establishment of Institutional Mechanism**
  The Act sets up **Mediation Service Providers** and a **Mediation Council of India** to regulate training, maintain mediator standards, and promote structured mediation culture.
- **Time-bound Dispute Resolution**
  The law mandates mediation to be concluded within **180 days**, extendable by another 180 days, reflecting an intent to deliver swift outcomes unlike conventional litigation delays.
- **Legal Weight to Mediated Settlements**
  Settlements reached through mediation now carry the **same status as a court decree**, ensuring enforceability and formal closure of disputes.
- **Ensuring Confidentiality and Impartiality**
  Mediators must act neutrally, and proceedings are kept confidential - making the process safer and more trustworthy for parties involved.

Challenges Associated with the Mediation Act

- **Questionable Impact of Mandatory Clause**
  Forcing parties to mediate might lead to **non-serious participation**, defeating the purpose of genuine dispute resolution.

- **Concerns Over Access to Justice**
  Critics argue that **mandatory mediation may violate Article 21**, as access to courts is a constitutionally protected right.
- **Central Oversight on Mediation Council**
  The Council can only act after **Centre's approval**, diluting its independence and raising fears of bureaucratic control.
- **Insufficient Pool of Skilled Mediators**
  The availability of **trained and experienced mediators** remains limited, especially in rural areas or specialised disputes like finance or technology.
- **Negative Social Perception**
  Parties may **hesitate to opt for mediation** fearing it may appear as an admission of fault or a weak legal position.

Way Forward

- **Phased Rollout of Mandatory Mediation-** Start with selective areas (e.g. commercial disputes), and expand after building awareness and support infrastructure.
- **Strengthen Mediator Capacity-** Invest in **training modules, certification standards**, and expanding the network of professionals across regions and domains.
- **Embrace Technology for Wider Reach-** Leverage **digital platforms and AI tools** to make mediation accessible, especially in remote areas or for virtual dispute resolution.

Required Reforms in Alternative Dispute Resolution (ADR) Mechanisms

1. Institutionalising and Expanding ADR Infrastructure

- Establish **dedicated ADR centres** in every district court complex with full-time staff and mediators.
- Expand **court-annexed mediation** and arbitration facilities across all High Courts and lower courts.
- Strengthen the role of **Bar Councils and State Legal Services Authorities (SLSAs)** in promoting ADR.

2. Standardised Accreditation and Training

- Create a national-level **regulatory framework for ADR professionals** (mediators, arbitrators, conciliators).
- Introduce **mandatory certification and continuing legal education** for quality and ethical standards.
- Train more women, multilingual, and region-specific professionals to make ADR inclusive and accessible

3. Raising Awareness and Public Trust

- Many citizens are **unaware of ADR options** or distrust them due to informality.
- Run **legal literacy campaigns** in rural areas, courts, and through NGOs to promote voluntary ADR.
- Use **digital platforms** and mobile apps to register disputes and book ADR sessions easily.

4. Improving Legal Frameworks and Enforcement

- Update the **Arbitration and Conciliation Act (1996)** and **Legal Services Authorities Act (1987)** to reflect global best practices.
- Ensure that **awards of arbitration and Lok Adalats are enforced speedily** and not challenged routinely in courts.
- Clarify legal jurisdiction for **pre-litigation settlements** and strengthen safeguards against abuse.

5. Strengthening Lok Adalats and Mobile ADR Services

- Institutionalise **mobile Lok Adalats** for remote, tribal, and underserved areas.
- Use **E-Lok Adalats** more widely to handle bulk settlement of traffic, utility, and petty civil cases.
- Introduce **sector-specific Lok Adalats** (e.g., telecom, insurance, agriculture disputes) for better efficiency.

6. Enhancing Role of Tribunals as Specialised ADR Bodies

- Improve **appointment processes, infrastructure, and independence** of tribunals.
- Tribunals like **NGT, AFT, and DRT** should have **hybrid resolution models** combining legal and conciliatory functions.
- Ensure **time-bound disposal** and **bar on frequent adjournments**.

7. Promoting Online Dispute Resolution (ODR)

- Build a national **Online Dispute Resolution framework** for small-value and contractual disputes.
- Encourage e-commerce, digital payment firms, and public utilities to adopt **ODR platforms**.
- Integrate **AI-powered triaging tools**, virtual conciliation, and e-document exchange systems.

8. Data Collection and Impact Monitoring

- Maintain a **national ADR database** on case disposal, settlement rates, and user satisfaction.
- Use data to refine policy, improve delivery, and **assess cost-benefit** over traditional litigation.
- Involve academic institutions and think tanks in independent **evaluation and feedback** studies.

Conclusion

Alternative Dispute Resolution mechanisms are vital for achieving **affordable, participatory, and timely justice**. However, for ADR to be a true alternative and not a second-rate substitute, it requires **stronger institutional support, better legal safeguards, and proactive public engagement**.

SEPARATION OF POWERS

PYQs

Resorting to ordinances has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyze whether the decisions of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate ordinances be repealed? (CSE 2015, 12.5M)
Do you think that the constitution of India does not accept the principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. (CSE 2019, 10M)
Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of a large number of public interest petitions praying for issuing guidelines to executive authorities. (CSE 2020, 15M)
From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain. (CSE 2019, 10M)

Introduction

Though not explicitly mentioned in the Indian Constitution, separation of powers doctrine underpins the spirit of constitutionalism, rule of law, and checks and balances in India's parliamentary system.

Basic Idea

- The doctrine of separation of powers refers to the division of **governmental authority** among **three distinct organs**: the **Legislature**, **Executive**, and **Judiciary**.
- Each organ is assigned **independent and exclusive powers and functions** to prevent **concentration of power** and ensure **checks and balances**.
- The aim is to establish a system of **limited government**, protecting liberty and promoting institutional integrity.

Origin and Theoretical Foundation

- The theory was first fully articulated by **French philosopher Montesquieu** in his book The Spirit of the Laws (1748).
- Inspired by the **British parliamentary system**, Montesquieu argued that liberty can only be preserved if powers are not concentrated in a single authority.
- The concept also draws from **John Locke's** division between executive and legislative functions.

Key Principles of Separation of Powers

- **Mutual Exclusivity**: Each organ should perform **only its own function** and not encroach upon others.
    - Example: The legislature makes laws, the executive implements them, and the judiciary interprets them.
- **Checks and Balances**: While powers are separate, each organ should have **limited powers to check the other** and prevent abuse.

    - Example: Judicial review of laws, legislative oversight of the executive, etc.
- **Functional Independence**: Each organ must have **autonomy in its domain** to ensure impartiality and efficiency.
    - Example: Judiciary's independence in appointments and tenure under Articles 124 and 50.

Relevance in the Indian Context

- The Indian Constitution does **not follow strict separation**, but adopts a **functional separation** with overlapping areas (e.g., Ordinance-making by executive, judicial law-making).
- Still, the doctrine is considered a **basic feature of the Constitution**, as affirmed in **Indira Gandhi v. Raj Narain (1975)** and **Kesavananda Bharati v. State of Kerala (1973)**.
- **Article 50** (Directive Principle) specifically urges separation of the judiciary from the executive in lower courts.

Separation of Powers in India (Legislature, Executive, and Judiciary)

Constitutional Framework

- The Indian Constitution does **not provide strict separation**, but ensures a **functional division** to uphold checks and balances.
- Rooted in Montesquieu's theory, it is aimed at **preventing concentration of power** and ensuring **institutional autonomy**.

Role and Boundaries

- **Legislature**: Makes laws and holds the executive accountable through tools like debates, motions, and question hour.
    - Example: Parliament's questioning of the Agnipath scheme (2022) reflects legislative oversight.
- **Executive**: Implements laws and policies. Exercises legislative power via **ordinances** (Article 123/213).
    - Example: Multiple ordinances issued during COVID-19 lockdowns to manage labour and health regulations.
- **Judiciary**: Interprets laws and checks executive/legislative overreach through **judicial review**.
    - Example: SC's 2023 verdict in Anuradha Bhasin v. Union of India upheld the right to internet access during lockdowns.

Checks and Balances

- **Judicial Review**: Judiciary can strike down unconstitutional laws (Article 13).
- **Legislative Control**: Parliament can impeach judges (Articles 124(4), 217).
- **Executive Influence**: Executive initiates legislation and appoints judges via the Collegium system (with debate over NJAC).

Recent Examples

- Delhi Services Case (2023): SC ruled that elected governments must control civil servants, limiting Centre's power under Article 239AA.
- Centre vs Governor (Tamil Nadu, 2024): SC held that the Governor **cannot withhold bills indefinitely**, reinforcing legislative supremacy in state matters.
- SC suo motu action on Manipur violence (2023): Highlighted judiciary's expanding activist role in human rights protection.

Comparison: Separation of Powers in the USA and India

Separation of Powers in the USA	Separation of Powers in India
Follows a strict doctrine of separation of powers with clear demarcation.	Follows a functional or flexible separation of powers with overlaps.
The president is not a member of the legislature and is independently elected.	The Prime Minister and ministers are part of the legislature and are collectively responsible to it.
Judges are appointed by the President with Senate confirmation and have lifetime tenure.	Judges are appointed by the President (or Governor for HCs) on the advice of the Collegium; no lifetime tenure.
Congress cannot remove the President except through a rigorous impeachment process.	Lok Sabha can remove the Prime Minister through a no-confidence motion.
Legislature and Executive work independently with checks and balances (e.g., veto power, judicial review).	Significant overlap: Ordinances by executive, judicial law-making, and legislature controlling executive actions.
More institutional independence and less interdependence.	High degree of interdependence and coordination among the three organs.

Functional Overlap Among Organs of Government

Organ of Government	Overlaps With	Substantiated Explanation with Examples
Legislature	Judiciary	Parliament can initiate impeachment of judges for proven misconduct (e.g., attempt to impeach Justice V. Ramaswami in 1993). It also has the power to amend laws invalidated by courts, as seen in the 1st Amendment Act after Shankari Prasad v. Union of India.
Legislature	Executive	The executive is accountable to the legislature, which can dissolve the government through no-confidence motions (e.g., fall of the Morarji Desai government in 1979). Ministers are part of both organs- executive and legislature- creating institutional overlap.
Executive	Judiciary	The President appoints Supreme Court and High Court judges (Articles 124 & 217), affecting judicial composition. The executive's clemency powers under Article 72 can override court-imposed punishments (e.g., Rajiv Gandhi assassination convicts). Tribunals like NGT and CAT, under executive control, exercise adjudicatory powers.
Executive	Legislature	The executive can legislate temporarily via ordinances when Parliament is not in session (e.g., Farm Laws Ordinance, 2020). It also creates rules and regulations under delegated legislation, filling in legislative details.
Judiciary	Executive	Under Article 142, the Supreme Court can issue directives to enforce justice, even filling executive gaps (e.g., SC orders in Vishaka case on sexual harassment). It also monitors implementation of policies, such as in the Manipur crisis (2023).

Judiciary	Legislature	The judiciary reviews laws for constitutional validity (judicial review). In Kesavananda Bharati (1973), SC ruled Parliament cannot amend the Constitution's basic structure. It thus limits legislative authority while acting as a constitutional guardian.

Issues Arising out of Functional Overlap

1. Weak Separation of Powers

- Though **Article 50** recommends judicial independence from the executive, it lacks enforceability.
- **Ministers serving as MPs** concentrates power in the executive, undermining legislative independence.
- **Judicial interventions in administrative or policy domains** further erode institutional boundaries.

2. Expansion of Judicial Role

- Courts often **venture into policymaking and administrative decisions**, especially via PILs or Article 142.
- Examples include **banning firecrackers**, **police reform mandates**, or **framing environmental rules**.
- Raises concerns of **judicial overreach**, bypassing democratic accountability mechanisms.

3. Executive Supremacy Over Legislature

- With majority strength, the executive tends to **bypass legislative debate**, reducing Parliament to a **rubber-stamp body**.
- **Frequent ordinance use under Article 123** allows the executive to enact laws without parliamentary scrutiny.

4. Judicial Pendency Worsened by Role Expansion

- **Engaging in executive functions** diverts judicial focus from adjudication, exacerbating **case backlogs** and delays.
- This undermines access to justice and erodes public faith in the judiciary's core function.

5. Legislative Pushback Against Judicial Independence

- Efforts like the **NJAC (struck down in 2015)** reflect attempts to **curb judicial autonomy** in appointments.
- **Public criticism by legislators of court rulings** weakens the judiciary's credibility and public confidence.

6. Inter-Institutional Conflict

- Tensions over **appointments, investigation orders, and verdict compliance** fuel executive-judiciary clashes.
- Example: The **Collegium vs NJAC** debate over judicial appointments exposes deep institutional distrust.

7. Policy Paralysis and Blurred Accountability

- **Courts staying executive actions**, and **executive ignoring court verdicts**, often create a policy vacuum.
- This leads to **diffused responsibility**, where it's unclear which institution is answerable to the public.

Judicial Pronouncements on the Doctrine of Separation of Powers

1. Ram Jawaya Kapur v. State of Punjab (1955)

- **Doctrine Clarified**: The Court held that India does not follow a **strict separation**, but a **functional separation** where each organ exercises distinct roles while maintaining **coordination and accountability**.
- **Key Takeaway**: Executive can have limited legislative powers (e.g., ordinances), but judiciary retains final interpretive authority.

2. Golaknath v. State of Punjab (1967)

- **Doctrine Strengthened**: Supreme Court ruled that **Parliament cannot amend Fundamental Rights**, asserting limits on legislative power.
- **Later overruled in part** by Kesavananda, but remains key to asserting checks on legislative supremacy.

3. Kesavananda Bharati v. State of Kerala (1973)

- **Doctrine Established**: The Supreme Court laid down the **Basic Structure Doctrine**, identifying separation of powers as an **essential feature** of the Constitution.
- **Key Takeaway**: Parliament cannot alter the Constitution in a way that destroys this balance.

4. Indira Nehru Gandhi v. Raj Narain (1975)

- **Doctrine Applied**: Struck down Clause 4 of Article 329A (inserted via 39th Amendment) as unconstitutional because it **placed the Prime Minister's election beyond judicial review**.
- **Key Takeaway**: **Judicial independence and separation of functions** are part of constitutional morality.

5. I.R. Coelho v. State of Tamil Nadu (2007)

- **Doctrine Reaffirmed**: Any law placed in the Ninth Schedule after **24 April 1973** (Kesavananda date) is subject to **judicial review** if it violates the basic structure.
- **Key Takeaway**: Separation of powers was cited as a non-negotiable part of basic structure.

6. Delhi Judicial Service Association v. State of Gujarat (1991)

- **Doctrine Enforced**: SC reprimanded the executive for **attacking the judiciary**, and emphasized maintaining **respect and independence of the judicial branch**.

Judicial Legislation in India – Key Issues and Observations

- **Judicial legislation** refers to laws created through **court verdicts**, especially by the Supreme Court, in the absence of formal legislation.
- India does **not follow strict separation of powers**, but Constitutionally differentiates the roles of the legislature, executive, and judiciary.
- The **judiciary's role is to interpret** laws, not to make them- but it often steps in to **fill legislative gaps** or resolve legal ambiguities.
- The **Supreme Court in Rattan Chand Hira Chand (1991)** noted that when the legislature fails to address new needs or situations, courts must act to **plug legal loopholes**.
- Courts have justified judicial law-making in cases involving **social justice, human dignity**, and **constitutional voids**.
- **Judicial creativity** is seen as legitimate when addressing **emerging issues** or when **existing laws fall short** of contemporary needs.
- While such rulings bring **progressive reform**, they can also create **confusion**, especially in the **absence of legislative backing**.
- Judge-made law can enhance **credibility and rights protection**, but also risks **blurring institutional boundaries** and sparking **inter-organ tensions**.
- **Frequent reliance on judicial legislation** may erode the **accountability of elected law-makers** and reduce **parliamentary engagement** with pressing issues.

Examples of judicial legislation:

1. **Ban on Liquor Sale Near Highways-** In State of Tamil Nadu v. K. Balu (2017), SC ordered a ban on liquor vends within 500 meters of highways- even without statutory provision.
2. **Guidelines for Police Reforms-** In Prakash Singh v. Union of India (2006), SC directed comprehensive police reform, including fixed tenures and State Security Commissions.

3. **NOTA (None of the Above) Option in Elections-** PUCL v. Union of India (2013): SC ruled that voters have the right to reject all candidates, introducing NOTA in EVMs.
4. **Declaration of Instant Triple Talaq as Unconstitutional-** Shayara Bano v. Union of India (2017): Declared the practice void and arbitrary under Article 14, influencing the Triple Talaq Act, 2019.

Way Forward

- **Restrict Ordinance Misuse**: Define stricter constitutional criteria and judicial oversight to ensure ordinances are issued only in genuine emergencies.
- **Parliamentary Oversight**: Strengthen committee systems to scrutinise executive decisions, especially during inter-session periods.
- **Judicial Vigilance**: Encourage timely judicial review of executive actions that bypass legislative or constitutional norms.
- **Clarify Role Boundaries**: Reinforce constitutional boundaries through legal reforms and conventions to prevent institutional overreach.
- **Regular Dialogue Among Branches**: Institutionalise inter-branch consultation mechanisms to maintain functional harmony and mutual accountability.

Conclusion

Separation of Powers embodies the constitutional vision of limited government, where liberty thrives not in absolute power, but in balanced authority and institutional respect.

LOCAL SELF-GOVERNANCE

PYQs

Many State Governments further bifurcate geographical administrative areas like Districts and Talukas for better governance. In light of the above, can it also be justified that smaller States would bring in effective governance at State level? Discuss. (CSE 2013, 10M)
In absence of a well-educated and organized local level government system, `Panchayats' and 'Samitis' have remained mainly political institutions and not effective instruments of governance. Critically discuss. (CSE 2015, 12.5M)
"The local self-government system in India has not proved to be an effective instrument of governance". Critically examine the statement and give your views to improve the situation. (CSE 2017, 10M)
Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources the Panchayats can look out for financing developmental projects. (CSE 2018, 15M)
"The reservation of seats for women in the institutions of local self- government has had a limited impact on the patriarchal character of the Indian Political Process." Comment. (CSE 2019, 15M)
The strength and sustenance of local institutions in India has shifted from their formative phase of 'Functions, Functionaries and Funds' to the contemporary stage of 'Functionality'. Highlight the critical challenges faced by local institutions in terms of their functionality in recent times. (CSE 2020, 15M)
To what extent, in your opinion, as the decentralisation of power in India changed the governance landscape at the grassroots? (CSE 2022, 10M)
"The states in India seem reluctant to empower urban local bodies both functionally as well as financially." Comment. (CSE 2023, 10M)
Analyse the role of local bodies in providing good governance at local level and bring out the pros and cons of merging the rural local bodies with the urban local bodies. (CSE 2024, 10M)

Introduction

Local self-government is a cornerstone of **democratic deepening and participatory development**, rooted in the principle of **subsidiarity**- that decisions should be made as close to the people as possible.

Philosophy Behind Local Self-Governance

- Based on the principle of **democratic decentralisation**, it transfers decision-making power to the grassroots level for greater public participation.
    - Example: Kerala's People's Plan Campaign (1996) empowered Panchayats to prepare local development plans with community input.
- Reflects **Gandhian concept of Gram Swaraj**, where each village is a self-sufficient republic governing its own affairs.

    - Gandhi advocated village panchayats as the foundation of India's democracy, later reflected in the 73rd Amendment.
- Promotes **subsidiarity**- decisions are best made at the most immediate level to ensure contextual relevance and faster response.
    - Example: In Chhattisgarh, tribal Gram Sabhas play a critical role in deciding forest usage and land rights under PESA Act.
- Encourages **participatory democracy**, moving beyond voting to enable direct involvement in planning and implementation.
    - Example: In Maharashtra, several Gram Sabhas have passed resolutions on local infrastructure priorities under the 14th Finance Commission grants.

Evolution of Local Self-Government in India

1. Ancient Period

- Village councils like **Sabhas** and **Samitis** managed local governance, justice, and revenue collection.
- The **Chola dynasty** is notable for its well-documented **village assemblies (Ur and Sabha)**, which had committees for irrigation, taxation, and dispute resolution.

2. Medieval Period

- The system of **self-governance declined** with the rise of centralised empires like the **Delhi Sultanate** and the **Mughals**.
- Administration became centralised, with local governance carried out by **imperial officers** such as **Amils, Kotwals, and Qazis**.

3. Early Colonial Period

- **Regulation of 1816**: Conferred **judicial authority** to village Panchayats in certain provinces, initiating a formalised local role.
- **Mayo's Resolution (1870)**: Emphasised **development of local institutions** by increasing their powers and financial responsibilities.
- **Lord Ripon's Resolution (1882)**: Regarded as the **"Magna Carta of Local Self-Government"**, advocated for **elected local bodies** and linked them to the **ancient Indian tradition of decentralisation**.

4. Early 20th Century Developments

- **Morley-Minto Reforms (1909)**: Included Commission recommendations and **expanded electoral participation** in local bodies.
- **Montagu-Chelmsford Reforms (1919)**: Introduced **dyarchy**, giving elected ministers control over subjects like local government at the provincial level.
- **The Aundh Experiment (1938):** Initiated in the princely state of Aundh (in present-day Maharashtra), under the guidance of **Mahatma Gandhi**.
- Granted **village-level autonomy** through a constitution, making it one of the earliest practical models of Gram Swaraj.
- Demonstrated the feasibility of **self-rule at the village level**.

5. Post Independence efforts

a. Article 40 – Directive Principles of State Policy (1950)

- Included in the **Constitution of India** as a **Directive Principle**, mandating the State to organise **village Panchayats**.

B. Balwantrai Mehta Committee Report (1957)

- Recommended the establishment of the **three-tier Panchayati Raj System**:
    - **Gram Panchayat** at village level
    - **Panchayat Samiti** at block level
    - **Zila Parishad** at district level

- Advocated for **direct elections** and **decentralised planning and implementation**.

c. G.V.K. Rao Committee (1985)

- Emphasised the importance of **district-level planning and implementation** of development programs.
- Recommended **strengthening of Zila Parishads** and making them the nodal points for rural development.

d. L.M. Singhvi Committee (1986)

- Recommended giving **constitutional status to Panchayati Raj Institutions (PRIs)**.
- Emphasised **Gram Sabha as the foundation** of local democracy.

e. 73rd Constitutional Amendment Act (1992)

- Enacted to give **constitutional status** to Panchayati Raj in India.
- Introduced **three-tier governance**, **mandatory elections every 5 years**, **reservations for SC/ST/women**, and creation of **State Finance Commissions**.
- Brought **11th Schedule** into the Constitution, listing **29 subjects** to be devolved to Panchayats.

Significance of Local Self-Governance

- **Empowers Local Communities**: Residents are involved in governance, improving legitimacy and responsiveness.
  - Example: In Andhra Pradesh, Panchayats play a major role in implementing MGNREGA and selecting job card beneficiaries.
- **Improves Delivery of Services**: Services like sanitation, water supply, primary education are handled locally for better efficiency.
  - Example: The Tamil Nadu Urban Sanitation Support Programme strengthens municipal capacity for managing waste at the ward level.
- **Reduces Burden on Higher Levels**: Decentralised systems allow states and the Centre to focus on macro-policies.
  - Example: Health Sub-Centres run by local bodies in West Bengal handle basic services, reducing pressure on state-run hospitals.
- **Strengthens Accountability and Transparency**: Leaders are locally elected and face immediate public scrutiny.
  - Example: In Karnataka, social audits led by Gram Sabhas have exposed irregularities in welfare scheme implementation.
- **Promotes Inclusive Governance**: Ensures representation of **SCs, STs, and women** via constitutionally mandated reservations.
  - Example: Women sarpanches in Rajasthan have successfully led campaigns on menstrual hygiene and girls' education.
- **Bridges Rural-Urban Policy Gaps**: ULBs and Panchayats act as effective **transmission belts** between national policy and citizen needs.
  - Example: Smart City projects have adopted ward committees for local consultations in cities like Pune and Bhopal.
- **Deepens Democracy**: Encourages grassroots political participation and creates a pipeline of leadership from the bottom.
  - Example: Several state-level ministers and MPs began their careers as Panchayat heads or municipal councillors.

Panchayati Raj Institutions

73rd Constitutional Amendment Act, 1992 – Key Provisions

I. Main Features of the 73rd Amendment

A. Compulsory Provisions (Binding on States)

- **Three-tier structure** of Panchayati Raj in every state (village, intermediate, district level).
- **Direct elections** to all seats in Panchayats.
- **Reservation** of seats for **SCs, STs, and women (not less than one-third)** including chairpersons.
- **Fixed term of 5 years** for Panchayats and **re-election within 6 months** if dissolved prematurely.
- Establishment of **State Election Commissions** (Article 243K) to conduct fair and regular Panchayat elections.
- Creation of **State Finance Commissions** (Article 243-I) every 5 years to recommend financial devolution.
- Empowering **Gram Sabha** (Article 243A) as the foundational body for participatory democracy.

B. Voluntary Provisions (Left to State Discretion)

- **Devolution of powers and responsibilities** to Panchayats (Article 243G) for planning and implementing schemes.
- **Mode of election** of chairpersons at different levels.
- **Powers to collect and levy taxes, fees, or duties**.
- Determining the **role of State Legislature** in defining Panchayat powers and functions.

II. Significance of the 73rd Amendment

- **Democratised rural governance** by institutionalising elected bodies at the grassroots.
- Enabled **inclusive representation** of women and marginalised communities.
- Strengthened **fiscal and administrative decentralisation** in line with the principle of subsidiarity.
- Laid the groundwork for **bottom-up planning and participatory democracy** in rural India.

Lacunae in Panchayati Raj Institutions (PRIs)

1. Limited Financial Autonomy

- PRIs depend heavily on state and central grants with minimal power to raise local revenue.
- Example: As per the RBI (2023), own-source revenue of rural local bodies is less than 5% of their total income in most states.

2. Excessive State Control

- States exercise discretion in devolving powers under the Eleventh Schedule.
- Many functions remain with line departments, reducing PRIs to implementation agents.
- Example: In several states, key sectors like health and education are still centrally administered.

3. Weak Administrative Capacity

- Lack of qualified staff, training, and technical support undermines local governance.
- Many Gram Panchayats function without full-time secretaries or trained accountants.

4. Ineffective Planning and Implementation

- Bottom-up planning is rarely followed; local plans are often overridden by state schemes.
- Example: Gram Sabha recommendations are often not integrated into final plans.

5. Gender and Social Exclusion

- Despite reservations, women and marginalised castes face tokenism, proxy representation, and elite capture.
- Example: Studies in Rajasthan and Bihar show elected women sarpanches often act under pressure from male relatives.

6. Irregular Elections and Delays

- Delays in holding Panchayat elections or superseding elected bodies undermine grassroots democracy.

- Example: As of 2024, some states like Jharkhand and Punjab have faced significant delays in local body polls.

7. Poor Data and Transparency

- Limited digitisation, lack of public access to spending data, and weak audit systems hamper accountability.
- Example: CAG reports have highlighted irregularities and underutilisation of Panchayat funds in multiple states.

State Finance Commission (SFC)

1. Functions

- Recommend principles for:
  - Distribution of **net proceeds of state taxes** between state and Panchayats.
  - Determination of **grants-in-aid** to Panchayats from the Consolidated Fund of the State.
  - Measures to improve the **financial position of PRIs**.
- Review the financial position of local bodies.

2. Significance

- Ensures **fiscal federalism and autonomy** at the third tier of government.
- Enables **need-based, equitable fund allocation**.
- Encourages states to strengthen **own-source revenue mechanisms** of PRIs.
  - Example: Kerala and Karnataka have implemented SFC recommendations more robustly than other states.

3. Challenges

- **Irregular constitution** in many states.
- Recommendations are often **ignored or not fully implemented**.
- **Lack of data** and autonomy hamper effectiveness.

State Election Commission (SEC)

1. Functions

- Conducts **free, fair, and regular elections** to PRIs.
- Prepares and updates electoral rolls.
- Decides on **delimitation of constituencies** for local bodies (in some states).
- Issues **model code of conduct** for Panchayat elections.

2. Significance

- Upholds **grassroots democracy** by ensuring timely and fair elections.
- Provides a **non-partisan mechanism** for local electoral governance.
  - Example: States like Tamil Nadu and Odisha have held timely PRI elections under SEC supervision.

3. Challenges

- **State governments interfere** in the functioning and appointments of SECs.
- **Funding and staffing constraints** reduce operational efficiency.
- **Conflict with Election Commission of India (ECI)** in simultaneous election periods

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

Background and Need

- The **73rd Constitutional Amendment (1992)** gave constitutional status to Panchayati Raj Institutions (PRIs) but **excluded the Fifth Schedule areas** (primarily tribal areas).
- These areas, due to their **unique socio-cultural and administrative features**, required a different legal framework.

- Based on recommendations of the **Bhuria Committee (1995)**, the **Panchayats (Extension to the Scheduled Areas) Act** or **PESA** was enacted in **December 1996** to **extend PRI provisions to Scheduled Areas** under Article 244(1).

Objectives

- To provide **self-governance and autonomy to tribal communities** in Fifth Schedule areas through **custom-compatible Panchayati Raj Institutions**.
- To protect tribal **identity, culture, land, and traditional rights** and promote **inclusive, participatory governance**.

Key Provisions of PESA

- **Gram Sabha Empowerment**:
  - Gram Sabhas have **absolute power** in matters of **customary resources, minor forest produce, minor water bodies, and dispute resolution** using traditional methods.
  - Must be consulted before acquisition of land, resettlement, or rehabilitation of displaced persons.
  - Empowered to manage village markets, regulate liquor, and prevent land alienation.
- **Respect for Customs and Traditions**:
  - The structure of PRIs must be **compatible with traditional tribal practices**.
  - Customary laws, social and religious practices, and community resources are recognised and respected.
- **Control over Natural Resources**:
  - Gram Sabhas have the authority to control **minor forest produce**, enforce **community rights**, and manage local resources.
- **Conflict Resolution**:
  - PESA recognises the role of **traditional tribal councils and customary mechanisms** in dispute settlement.
- **Autonomy from Bureaucratic Interference**:
  - Government officials must function in consultation with Gram Sabhas in Scheduled Areas.

Significance

1. Legislative Embodiment of Tribal Self-Rule

- PESA empowers Gram Sabhas in Scheduled Areas to manage natural resources, resolve disputes, and uphold customary laws.
- **Example:** In **Menda-Lekha village (Gadchiroli, Maharashtra)**, the Gram Sabha has taken control of community forest resources, regulated bamboo harvesting, and reinvested earnings in local development.

2. Protects Tribal Land, Forests, and Culture

- PESA mandates Gram Sabha consent for land acquisition and displacement in tribal areas, providing a legal shield against exploitative development.
- **Example:** In **Koraput and Rayagada (Odisha)**, tribal communities invoked PESA and the Forest Rights Act to stop bauxite mining by Vedanta, preserving sacred hills and habitats.

3. Realises Gandhian Vision of Gram Swaraj

- PESA enables self-reliant village governance in line with Mahatma Gandhi's vision of grassroots democracy and local autonomy.
- **Example: Kudurmal village (Chhattisgarh)** used Gram Sabha powers to regulate liquor shops and reinvigorate traditional dispute resolution, reinforcing cultural norms through democratic means.

4. Facilitates Resource Ownership and Participatory Governance

- PESA gives control over minor forest produce, water bodies, markets, and local institutions, thus promoting economic and political empowerment.
- **Example:** In **Jharkhand's Khunti district**, PESA-aligned Gram Sabhas manage local markets (haats) and water sources, with women participating actively in decisions.

Challenges in Implementation

- **Lack of political will** and **delayed rule-making** in most states.
  - As of 2024, several states have either **not fully notified PESA rules** or have diluted provisions.
- **Conflicts with existing forest, land, and mining laws** often undermine Gram Sabha powers.
  - Example: In Chhattisgarh and Odisha, forest rights claims under PESA often clash with mining leases.
- **Limited awareness** among tribal populations and state officials about PESA provisions.
- **Bureaucratic dominance and top-down development** continue to weaken local autonomy.
- **Gram Sabhas are often bypassed** in project approvals and displacement processes.

Recent Developments

- **Jharkhand (2022)** and **Madhya Pradesh (2021)** notified comprehensive **PESA Rules**, expanding the powers of Gram Sabhas in planning and implementation.
- **Chhattisgarh (2023)** launched training programmes to empower Gram Sabhas under PESA.

Way forward (Xaxa Committee Recommendations on PESA)

- **Protect Gram Sabha Autonomy:** Ensure decisions of Gram Sabhas are binding, especially in matters of land acquisition and resource use.
- **Recognise Hamlet-Level Sabhas:** Allow multiple Gram Sabhas under one Panchayat to reflect tribal habitation and traditions.
- **Integrate with Other Laws:** Align PESA with Forest Rights Act (FRA), MGNREGA, and other welfare schemes to strengthen local governance.
- **Raise Awareness and Build Capacity:** Conduct legal literacy campaigns and train both tribal communities and government officials in local languages.
- **Safeguard Customary Practices:** Legally recognise tribal customs and traditional dispute-resolution methods within the PESA framework.
- **Restrict Bureaucratic Overreach:** Sensitise officials and limit arbitrary interference by police and administrative authorities.
- **Create Monitoring Mechanisms:** Establish a tribal ombudsman or central monitoring body to oversee and audit PESA implementation.

Forest Rights Act, 2006 (Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act)

Background

- Historically, forest-dwelling communities, especially **Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs)**, were **denied legal rights** over their ancestral lands by colonial and post-colonial forest laws.
- The **Forest Rights Act (FRA), 2006** was enacted to address these **"historic injustices"** by recognising their rights over forest land and resources.
- It reflects the spirit of **constitutional justice, inclusive governance, and tribal empowerment**.

Objectives

- To **recognise and vest forest rights** in forest-dwelling Scheduled Tribes and OTFDs.
- To provide for **livelihood security, land tenure, and resource access**.
- To strengthen **conservation through community participation**.

Eligibility

- **Scheduled Tribes (STs)** residing in forests prior to **13 December 2005**.
- **Other Traditional Forest Dwellers (OTFDs)** who have lived in forests for **three generations (75 years)** prior to the cutoff date.
- Must be primarily dependent on forests for **livelihood and residence**.

Key Provisions

- **Title/Ownership Rights**:
  - Legal recognition of land for habitation and cultivation (up to **4 hectares**) under individual or community claims.
- **Use Rights**:
  - Rights to collect and use **minor forest produce (MFP)** like tendu leaves, bamboo, honey, firewood, etc.
- **Relief and Development Rights**:
  - Access to basic services, schools, roads, and rehabilitation in case of illegal evictions.
- **Community Forest Resource (CFR) Rights**:
  - Empower **Gram Sabhas** to manage, conserve, and protect forests collectively.
  - Grants **decision-making authority** to tribal communities over their traditional forest resources.
- **Right to Protect Against Eviction**:
  - No eviction allowed unless the recognition and verification process is completed.
- **Institutional Mechanism**:
  - **Gram Sabha**: The authority to initiate claims, verify, and recommend rights.
  - **Sub-Divisional Level Committee (SDLC)** and **District Level Committee (DLC)**: Validate and finalise rights.

Significance

- Empowers **forest dwellers and tribals** to have a stake in conservation and sustainable use.
- Restores **tenure security** and protects against arbitrary eviction.
- Facilitates **inclusive development**, especially for **remote and tribal regions**.
- Enhances **local democracy and community-led governance**, often overlapping with PESA.
  - Example: In Gadchiroli, Maharashtra, Gram Sabhas under FRA manage bamboo sales worth crores, promoting community revenue.

Challenges

- **Slow implementation** and **low awareness** among beneficiaries.
- **Administrative resistance** and **conflict with forest departments**.
- **Dilution of rights** due to mining, plantation drives, or conservation laws.
  - Example: Eviction threats in Chhattisgarh and Madhya Pradesh due to overlapping tiger reserves and non-settlement of claims.
- **Rejection of claims** without proper Gram Sabha verification.
- **Gender concerns**: Many land titles issued in the name of male members only, despite joint ownership provisions.

Urban Local Bodies

Urban Local Bodies (ULBs) are constitutionally mandated institutions that govern cities and towns, ensuring decentralized administration and delivery of civic services at the urban grassroots level.

Historical Background

1. Pre Independence

1882: **Lord Ripon's Resolution** – milestone in modern municipal governance

- Advocated **elected municipal boards**
- Emphasised **Indian representation** and **decentralised administration**
- Known as the "**Magna Carta** of Local Self-Government in India"

2. Post-Independence (1950):

1992: Passage of **74th Constitutional Amendment Act**

- Gave **constitutional status to ULBs**

- Established **three-tier urban governance**:
  - **Nagar Panchayats** (transitional areas)
  - **Municipal Councils** (smaller urban areas)
  - **Municipal Corporations** (larger urban areas)
- Ensured **regular elections**, **devolution of powers**, and **democratic accountability**

74th Constitutional Amendment Act, 1992 – Key Provisions

Main Features of the 74th Amendment

A. Compulsory Provisions (Binding on States)

- **Three types of Municipal Bodies** (Article 243Q):
  - **Nagar Panchayat**: Transitional area (rural - urban).
  - **Municipal Council**: For smaller urban areas.
  - **Municipal Corporation**: For larger urban areas.
- **Direct elections** to all seats in urban local bodies.
- **Reservation** of seats for **SCs, STs, and women (not less than 1/3rd)** of the total.
- **Fixed tenure of 5 years** for all urban bodies.
- Elections to be held within **6 months** of dissolution.
- Creation of **State Election Commissions** (Article 243ZA) to conduct municipal elections.
- Establishment of **State Finance Commissions** (Article 243Y) every 5 years to recommend financial devolution.

B. Voluntary Provisions (Discretionary for States)

- **Devolution of powers and responsibilities** to Municipalities (Article 243W) to enable them to function as institutions of self-government.
- **Powers to levy, collect, and appropriate taxes, duties, tolls, and fees**.
- **Constitution of Ward Committees** in municipalities with population above 3 lakhs (Article 243S).
- **Manner of election of chairpersons** and composition of committees at various levels.
- **Assignment of functions from the 12th Schedule** is to be legislated by states.

Significance of the 74th Amendment

- **Constitutional Legitimacy to Urban Local Bodies (ULBs):** The 74th Amendment gave them constitutional status, ensuring their continuity and democratic character. (Article 243P to 243ZG)
- **Strengthened Urban Democracy and Accountability:** ULBs now include directly elected representatives, regular elections, and State Finance Commissions (SFCs) for financial devolution. According to MoHUA (2023), over **4,500 municipalities** operate in India with elected councils, enhancing grassroots urban democracy.
- **Decentralised Planning and Service Delivery:** ULBs were entrusted with 18 functional areas (12th Schedule), including water supply, waste management, and urban planning.
  Example: **Thiruvananthapuram Municipal Corporation** won the 2020 SKOCH Award for city-level planning and efficient waste segregation.
- **Citizen Participation and Local Engagement:** The Amendment encourages public involvement through mechanisms like **Ward Committees** and **Area Sabhas** in cities with a population of over 3 lakhs.
  Example: In **Bengaluru**, ward committees under the Bruhat Bengaluru Mahanagara Palike (BBMP) Act enable local residents to raise issues and oversee budgets.
- **Improved Visibility of Local Governance:** Regular elections, reserved seats for women and SC/STs, and media coverage have increased public scrutiny and awareness of local governance.

Challenges Related to Urban Local Governance in India

- **Inadequate Devolution of Functions and Authority**
  Although the 74th Amendment envisioned empowered local governments, most ULBs have limited autonomy in practice. Functions listed in the **12th Schedule** are not fully devolved by states.
  - Example: In most states, city planning is handled by development authorities like the Delhi Development Authority (DDA), not by elected municipal bodies.
- **Severe Financial Constraints**
  ULBs rely heavily on state and central grants, with minimal internal revenue generation. Property tax collection is inefficient and non-buoyant.
  - Example: Out of over 4,000 ULBs in India, only 10 have raised funds through municipal bonds as of 2023.
  - Smart City Mission cities have struggled to mobilise matching funds due to weak revenue bases.
- **Lack of Skilled Personnel and Professional Cadre**
  Urban governance suffers from shortage of trained municipal staff and overdependence on state bureaucrats.
  - Example: As per Ministry of Housing and Urban Affairs (MoHUA), over 30% of engineering and sanitation posts in ULBs are vacant.
- **Delayed Elections and Weak Political Representation**
  Elections to ULBs are often delayed, violating the 5-year mandate under Article 243U. This leaves cities governed by administrators.
  - Example: Tamil Nadu conducted ULB elections in 2022 after a 10-year gap.
- **Overlapping Jurisdictions and Fragmented Governance**
  Multiple agencies operate in urban areas with little coordination, creating confusion and inefficiency.
  - Example: In Delhi, services are divided between MCD, NDMC, Delhi Jal Board, and DDA, often leading to deadlock (e.g., during waste management crises).
- **Minimal Citizen Participation and Institutional Disconnect**
  Mechanisms like **Ward Committees** and **Area Sabhas**, mandated under the 74th Amendment, are mostly non-functional.
- **Urban Poor and Informal Settlements Not Integrated into Planning**
  Nearly **25% of urban residents live in slums**, often lacking legal tenure or access to services. ULBs lack resources and legal tools to address this.
  - Example: Dharavi in Mumbai, Asia's largest slum, still lacks proper sewerage and healthcare coverage despite its economic significance.
- **Weak Urban Planning Capacity**
  Most cities lack in-house town planners and urban professionals to prepare long-term development plans.
  - Example: A 2021 MoHUA survey found that over 60% of cities lack qualified urban planners on their staff.
- **Political and Bureaucratic Interference in Municipal Autonomy**
  The real executive power lies with Municipal Commissioners (state-appointed), not the elected Mayor.
- **Failure to Institutionalise Urban Reforms**
  Key reforms like **land value capture**, **e-governance**, **integrated transport planning**, and **financial decentralisation** have seen uneven implementation.
  - Example: E-governance initiatives under AMRUT and Smart Cities have remained patchy outside Tier-1 cities.

Recommendations to Strengthen Urban Local Governance in India

1. Ensure Genuine Devolution of Functions, Funds, and Functionaries (3Fs)

- States must fully implement the **12th Schedule** by transferring relevant departments (e.g., town planning, water, sanitation) to ULBs.
- Adopt clear activity mapping between state and municipal institutions to avoid overlapping responsibilities.
    - Recommended by: Second Administrative Reforms Commission (ARC), 15th Finance Commission.

2. Empower Mayors and Elected Bodies with Real Authority

- Transition from **ceremonial mayors to empowered executive mayors** directly accountable to citizens.
- Reduce dominance of state-appointed municipal commissioners in day-to-day governance.
    - Recommended by: National Commission on Urbanisation (1988)

3. Establish an All-India Municipal Cadre

- Create a **professional municipal services cadre** akin to IAS for better urban planning, finance, and administration.
- Provide technical staff in ULBs, especially in small and medium towns, through training and lateral recruitment.
    - Recommended by: Second ARC, MoHUA Draft Municipal Cadre Framework.

4. Enhance Municipal Finances

- Strengthen **property tax base**, revise user charges, and tap into **land value capture**, advertisement revenue, and municipal bonds.
- Implement the **Fifteenth Finance Commission**'s recommendation for **performance-linked grants** to ULBs.
    - Example: Ahmedabad and Pune have successfully raised funds via municipal bonds.

5. Promote Citizen Participation and Local Accountability

- Institutionalise **Ward Committees and Area Sabhas** across all cities (as per 74th Amendment and Model Nagar Raj Bill).
- Strengthen **RTI use**, **social audits**, and **public grievance redress mechanisms** at the ward level.

6. Strengthen Urban Planning and Infrastructure Capacity

- Hire professional **urban planners, architects, and engineers** within ULBs.
- Encourage **city-level development plans (CDPs)** and integrated GIS-based urban management.

7. Introduce Institutional Reforms for Coordination

- Integrate **parastatal bodies** (e.g., water, housing, transport) with municipal governance structure.
- Set up **Metropolitan Planning Committees (MPCs)** and **District Planning Committees (DPCs)** as mandated under the Constitution.

8. Promote Digital Governance and Transparency

- Expand e-governance platforms for service delivery, tax payments, grievance redressal, and budgeting.
- Promote **open data portals** to increase transparency and trust.
    - Example: Indore and Surat rank high on citizen satisfaction due to digital grievance redressal systems

9. Legal Reforms and Uniformity Across States

- States should revise **Municipal Acts** in line with the **Model Municipal Law** to ensure consistency and empowerment of ULBs.
- Define clear **tenure, powers, and functions** for urban elected representatives and officials.

10. Capacity Building and Training

- Regular training programs for elected representatives and staff through **National Urban Learning Platforms (NULP)** and **RCUES** (Regional Centres for Urban and Environmental Studies).

- Promote **city-to-city learning exchanges** and best practice sharing.

Pros and Cons of Merging Rural and Urban Local Bodies (2024 PYQ)

Pros	Cons
Integrated Planning: Enables coordinated development in peri-urban and fringe areas.	Loss of Rural Identity: Rural needs risk being overshadowed by urban priorities.
Resource Efficiency: Reduces administrative overhead and encourages shared infrastructure.	Administrative Complexity: Mismatched governance structures can create confusion.
Bridging Rural-Urban Divide: Reduces duplicity of schemes and service disparities.	Erosion of Grassroots Participation: May weaken Gram Sabhas and traditional local governance.
Improved Urbanisation Management: Aids governance of fast-growing urban agglomerations.	Resource Imbalance: Urban areas may absorb a larger share of resources.
Better Financial Pooling: Enhances revenue generation through a unified tax structure.	Legal Challenges: Different constitutional provisions for PRIs and ULBs complicate integration.

Conclusion

Empowered local bodies strengthen India's cooperative federalism- transforming governance from being state-driven to citizen-driven.

CONSTITUTIONAL BODIES

Introduction

Constitutional bodies are the sentinels of India's democracy, empowered by the Constitution to uphold its values through independent and impartial functioning.

Need for Constitutional Bodies

- **Ensure Democratic Integrity**: To conduct free and fair elections, appointments, and audits, protecting the **democratic fabric**.
- **Institutional Checks and Balances**: Act as **guardrails against executive overreach**, ensuring **accountability and transparency**.
- **Promote Impartial Governance**: Ensure **merit-based recruitment**, unbiased financial distribution, and proper use of public funds.
- **Safeguard Federalism and Rights**: Bodies like the **Finance Commission** or **EC** protect the principles of **federal equity** and **citizen participation**.
- **Public Trust**: Their constitutional backing inspires **public confidence** and sustains the **rule of law**.

Quasi-Judicial Bodies in India

PYQs

What is a quasi-judicial body? Explain with the help of concrete examples. (CSE 2016, 12.5M)

Introduction

Created through statutes or constitutional provisions, quasi-judicial bodies resolve specific grievances while following principles of natural justice. They reduce the burden on courts and enable sectoral expertise in decision-making.

1. Basics

- A **quasi-judicial body** is a **non-judicial institution** that performs **judicial functions** like interpreting laws, adjudicating disputes, or imposing penalties.
- It is **not a full-fledged court** but is **vested with legal powers** to decide on specific matters.
- The term "quasi" means **"resembling but not exactly"**, these bodies **mimic the role of courts** in limited domains.

2. Features of Quasi-Judicial Bodies

- **Statutory or constitutional status**
- Power to **summon witnesses**, **demand documents**, conduct hearings
- Decision-making is **binding**, subject to **judicial review**
- Expected to follow **natural justice** (audi alteram partem)
- Cannot create laws or policies, but **interpret and apply existing ones**
- Primarily serve to **reduce burden on regular courts**

3. Constitutional Basis

- While the Constitution doesn't define "quasi-judicial," many Articles imply such bodies:
  - **Article 323A & 323B:** Allow for creation of tribunals
  - **Article 338, 338A, 338B:** Empower **NCSC, NCST, NCBC** with inquiry powers
  - **Article 280:** Finance Commission, which has recommendatory and evaluative functions

4. Why Are Quasi-Judicial Bodies Important?

- **Reduce court burden:** Handle thousands of specialised cases
- **Technical expertise:** Appoint experts from law, environment, economics, etc.
- **Speedy justice:** Faster resolution compared to regular courts
- **Access to justice:** Facilitate easier access for citizens (RTI, consumer rights)
- **Checks and balances:** Many act as oversight bodies (e.g., NHRC, CIC)

5. Limitations / Criticism

- **Lack of independence:** Many depend on the executive for appointments and funding
  Example: CIC appointments delayed for years; Lokpal largely inactive till 2019
- **No enforcement power:** Most can only **recommend**, not implement
  Example: NHRC recommendations often ignored by states
- **Backlog and vacancy issues**
  Example: NGT benches understaffed; SICs operate with single commissioners
- **Overlap of jurisdiction** leads to confusion and forum shopping
  Example: Environmental cases often split between NGT, HC, and SC
- **Not bound by CrPC/CPC**, hence sometimes criticized for **procedural inconsistencies**

Conclusion

Quasi-judicial bodies ensure accessible, specialized, and timely justice. Reforms in autonomy and accountability can further enhance their role in democratic governance.

IMPORTANT CONSTITUTIONAL BODIES

Comptroller and Auditor General (CAG) of India

PYQs

Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether audit of the Government's Policy implementation could amount to overstepping its own (CAG) jurisdiction. (CSE 2016, 12.5M)
"The Comptroller and Auditor General (CAG) has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise. (CSE 2018, 10M)
"The duty of the Comptroller and Auditor General is not merely to ensure the legality of expenditure but also its propriety." Comment. (CSE 2024, 10M)

Basics and Constitutional Status

- The **Comptroller and Auditor General (CAG)** is the **supreme audit authority** in India.
- Established under **Article 148** of the Constitution.
- Described as the **"watchdog of public finance"** and guardian of the **public purse**.
- CAG is appointed by the **President of India** and holds office for **6 years or until 65 years of age**, whichever is earlier.

Duties and Responsibilities (Article 149, DPC Act 1971)

- **Audits all receipts and expenditures** of the Union and State Governments.
- Audits **government companies**, **autonomous bodies**, and **local authorities** supported by public funds.
- Submits audit reports to the **President** (for Union accounts) and **Governors** (for State accounts), which are then laid before Parliament and State Legislatures.
- Conducts **performance audits**, **compliance audits**, and **financial audits**.
    - Example: The CAG performance audit of the Ayushman Bharat Scheme (2024) revealed discrepancies in beneficiary data and delayed reimbursements in several states.
- Also audits **public-private partnerships (PPPs)** where public funds or guarantees are involved.

Independence of CAG

- Constitutionally protected through multiple safeguards:
    - CAG is **appointed by the President**, but **removal is like a Supreme Court judge**- only by impeachment.
    - Salary and service conditions are **charged on the Consolidated Fund of India** and **not subject to vote** of Parliament.
    - CAG is **not eligible for further office** post-retirement, ensuring impartiality.
- CAG's reports are scrutinised by **Public Accounts Committees (PAC)** and **Committee on Public Undertakings (COPU)** for follow-up.

Comparison: Indian CAG vs British CAG

Aspect	CAG of India	CAG of the United Kingdom
Appointment	Appointed by the President of India	Appointed by the Monarch on PM's advice and Public Accounts Commission
Tenure	6 years or until 65 years of age	10-year non-renewable term
Reporting Authority	Reports to President, laid before Parliament	Reports to House of Commons
Removal Process	Same as a SC judge – impeachment by Parliament	Removed only by an address of both Houses of Parliament
Audit Scope	Audits Union & State government departments, PSUs, autonomous bodies	Audits central government departments, public corporations, and certain NGOs
Audit Types	Financial, compliance, and performance audits	Financial and Value for Money (VfM) audits
Post-Retirement Restrictions	Barred from holding any office under government	Cannot be reappointed; no formal restriction on government roles
Independence	Constitutionally guaranteed; no executive interference	Strong legal independence, overseen by Public Accounts Committee
Key Focus	Ensuring accountability and transparency in public finances	Ensuring efficiency, economy, and effectiveness (3 Es)

Recent Developments and News (2023–2024)

- **CAG's 2023 Report on PM-KISAN Scheme** revealed that over **42 lakh ineligible beneficiaries** received ₹3,900 crore due to poor beneficiary validation systems.
- **Audit of Smart Cities Mission (2024)** flagged **under-utilisation of funds**, project delays, and **lack of stakeholder consultation** in implementation.
- CAG began pilot **real-time concurrent audits** of large-scale schemes using **AI and data analytics**, especially in GST and direct benefit transfers (DBTs).
- Discussions are ongoing to enhance CAG's powers to **audit Panchayats and Urban Local Bodies (ULBs)** comprehensively, under the **15th Finance Commission**'s accountability mandate.

Limitations of CAG

- **No power to take action**- CAG is an audit body, not an enforcement agency. Its role is often described as a **"post-mortem examination"** of government expenditure, as audits typically occur **after funds have been spent**, leaving little scope to prevent irregularities in real time.
- **Delay in tabling reports**- By the time reports are presented in Parliament, the relevance of findings may diminish.
- **Limited access to private entities** operating under PPP models unless explicitly funded by public money.
    - Example: CAG was restricted in accessing full financial records of Reliance in KG-D6 gas exploration audits.
- **Backlog of reports and lack of follow-up** weakens the impact of its findings.
- **Capacity constraints** in handling audits of emerging sectors like digital infrastructure and climate finance.

Way Forward

1. Strengthen Follow-Up Mechanisms with PACs and Legislative Committees

- **Ensure tighter coordination** between the CAG and Public Accounts Committees (PACs) at both central and state levels to monitor implementation of audit recommendations.
- SC Support: In **Subhash Chandra Agrawal v. CAG (2018)**, the SC emphasised that **CAG audits must not be reduced to "ritualistic exercises"** and should lead to corrective action.

2. Expand Audit Mandate to PPPs and Private Players Using Public Funds

- Amend the CAG's mandate to allow **comprehensive auditing of PPP projects**, NGOs, and private entities using public funds.
- PAC and CAG Reports: Both have recommended clearer legislative authority for **auditing concessions and public-private contracts**.

3. Enhance Technological and Real-Time Audit Capacity

- Invest in **AI-enabled and digital audit platforms** for real-time expenditure tracking, especially in large schemes like MGNREGA and PMAY.
- CAG's Vision 2030 Report: Stresses the need for **data analytics, blockchain auditing**, and integration with government financial systems.

4. Mandate Timely Departmental Response and Public Disclosure

- Legislate **strict timelines** for departments to respond to audit findings and **make compliance status public** to increase transparency.
- 2nd ARC Recommendation: Called for an **Audit Action Taken Mechanism** to be published regularly and tracked through dashboards.

5. Promote Social Audits and Citizen Participation

- Institutionalise **social audits** and integrate CAG findings with community-level dissemination tools to empower public oversight.

6. Mandatory Parliamentary Debates on Key CAG Findings

- Key CAG reports should be **debated mandatorily in Parliament**, especially those related to defence, natural resources, or welfare schemes.
- PAC Reports: Have flagged poor implementation of CAG findings due to lack of structured discussion in legislatures.

Conclusion

To ensure meaningful accountability, the CAG must move beyond post-facto audits and embrace a proactive, tech-enabled, and participatory oversight role, supported by judicial affirmation and committee-backed reforms.

Election Commission of India (ECI)

PYQs

Discuss the role of the Election Commission of India in light of the evolution of the Model Code of Conduct. (CSE 2022, 15M)

Introduction

As the guardian of electoral democracy, the ECI manages the world's largest voting exercise with constitutional authority. It plays a pivotal role in preserving political equality and public trust in the system.

Basics & Constitutional Status

- Constitutional body under **Article 324**
- Conducts elections: Parliament, State Assemblies, President & Vice-President
- Composition: Chief Election Commissioner (CEC) + 2 Election Commissioners (ECs)
- Appointed by: **President**

- Tenure: **6 years or 65 years** (whichever earlier)
- Initially single-member; became multi-member in **1989**

Duties & Responsibilities

- Conduct & supervise free and fair elections
- Prepare & revise **electoral rolls**
- Recognise political parties, allot election symbols
- Enforce **Model Code of Conduct (MCC)**
- Monitor **election expenditure**
- Organise **voter awareness programs** (e.g., SVEEP)
- Decide disputes on disqualification (advisory to President/Governor)
- Conduct **bypolls, repolls**, and ensure electoral reforms

Independence OF ECI

- Removal of CEC like **SC judge** (impeachment)
- ECs: removable on **CEC's recommendation**
- Salary from **Consolidated Fund of India**
- Not answerable to executive
- Full authority over election machinery

Anoop Baranwal v. Union of India (2023)

Context and Constitutional Background

- **Article 324(2)** of the Constitution mandates that the Chief Election Commissioner (CEC) and Election Commissioners (ECs) are appointed by the President, subject to any law made by Parliament.
- For over 70 years, **no such law existed**, and appointments were made solely on the recommendation of the Prime Minister.
- In **Anoop Baranwal v. Union of India (2023)**, a Constitution Bench of the Supreme Court intervened, directing the formation of a **selection committee** comprising the **PM, Leader of the Opposition, and the Chief Justice of India (CJI)**- to operate until Parliament enacted a formal law.
- The 2023 law was introduced in this context, but **excluded the CJI**, sparking constitutional debate.

Key Features of the 2023 Appointment Act

- **Eligibility**: Only current or former officers holding the rank of Secretary to the Government of India are eligible.
- **Search Committee**: Headed by the Law Minister, it prepares a panel of five names.
- **Selection Committee**:
  - It comprises the Prime Minister, a Cabinet Minister (nominated by the PM), and the Leader of Opposition in the Lok Sabha.
  - Has the flexibility to select from the panel or nominate any suitable candidate.
- **Departure from Tradition**:
  - Breaks the convention of elevating the senior-most EC to CEC.
  - Expands the pool beyond the Election Commission itself, enhancing government discretion.

Implications of the New Law

- **Institutional Impact**: The law ends ad hoc appointments but introduces **formal executive dominance** in the selection process.
- **Broader Selection Pool**: This may bring administrative expertise but risks undermining institutional continuity and non-partisan traditions.
- **Discretion Over Seniority**: Marks a shift toward appointment based on executive preference,

not experience within the Election Commission.

Key Concerns and Criticism

- **Exclusion of CJI**: Violates the spirit of Anoop Baranwal, where judicial presence was intended to act as a check on executive overreach.
- **Threat to Institutional Credibility**: The Election Commission's neutrality may be questioned, especially during politically sensitive elections.
- **Legal Challenges Pending**: Several petitions against the Act are pending before the Supreme Court, which is expected to hear the matter in 2025.

Why It Matters

- The Election Commission is a **constitutional bulwark** for free and fair elections. Any change in its appointment mechanism has deep implications for **democratic legitimacy**.
- With rising political contestation over issues like **electoral rolls**, **model code violations**, and **EVM reliability**, the credibility of EC appointments becomes even more vital.

Limitations

- No statutory backing for powers (except RPA, 1951)
- Can't enforce MCC violations beyond warnings
- Can't **deregister political parties**
- Post-retirement appointments reduces credibility
- Criticised for selective action, **delays in rulings**
- **No real-time power over electoral bonds, criminal candidates**

Way Forward

- **Enact a comprehensive Election Commission Act**
  SC in Anoop Baranwal (2023) urged a statutory framework under Article 324;
  Dinesh Goswami Committee (1990) recommended clarity on EC's powers, functions, and terms.
- **Empower ECI to deregister parties violating laws**
  Voter Alliance Case (2017) underlined need for EC's stronger regulatory authority;
  Law Commission 255th Report proposed legal backing for de-registration.
- **Mandate time-bound disposal of MCC & poll complaints**
  Second ARC and Justice Verma Committee called for deadlines on electoral grievance redressal.
- **Ensure real-time disclosure of political funding**
  CPI v. Union of India (2003) highlighted transparency as essential for free & fair elections;
  ADR PILs continue to push for donor disclosure in electoral bonds.
- **Curtail criminalisation of politics with stricter nomination scrutiny**
  SC in Public Interest Foundation v. Union of India (2018) mandated disclosure of candidate's criminal records;
- **Expand ECI powers for pre-poll regulation & digital oversight**
  ECI White Papers urge power to control fake news, hate speech & social media misuse;
  The Tarkunde Committee advocated a proactive EC role in campaign finance and media regulation.

Conclusion

The Election Commission of India plays a pivotal role in safeguarding the integrity of the electoral process, ensuring that democracy functions not just in form but in substance through impartiality, transparency, and accountability.

Finance Commission

PYQs

Discuss the recommendations of the 13th Finance Commission which have been a departure from the previous commissions for strengthening the local government finances. (CSE 2013, 10M)
How is the Finance Commission of India constituted? What do you understand about the terms of reference of the recently constituted Finance Commission? Discuss. (CSE 2018, 15M)
How have the recommendations of the 14th Finance Commission of India enabled the states to improve their fiscal position? (CSE 2021, 10M)

Introduction

The Finance Commission acts as the fiscal bridge between the Centre and the States, calibrating the delicate balance of India's cooperative federalism. It transforms constitutional intent into financial justice by translating revenues into responsibilities.

Basics

- **Constitutional body** under **Article 280**
- **Constituted in 1951,** the Finance Commission was entrusted with the **mandate of structuring the financial relations between the Union and the States.**
- Reconstituted every **five years** or as deemed necessary
- Acts as a key institution for **fiscal federalism** in India
- **Appointed by the President of India**
- **Tenure**: Generally five years

Composition

- **One Chairman + four other members**
- Members must have expertise in:
  - Public affairs
  - Economics and finance (e.g., N.K. Singh chaired 15th FC)
  - Public administration or law

Duties & Responsibilities

- Recommend:
  - **Vertical devolution**: Division of net proceeds of taxes between Centre and States
    - E.g., **14th FC raised states' share to 42%** of central taxes
  - **Horizontal devolution**: Share of each state based on indicators (population, area, forest cover, etc.)
    - E.g., **15th FC** added **demographic performance** and **tax effort** to the formula.
  - **Grants-in-aid** to states needing assistance
    - E.g., **15th FC provided grants for urban local bodies**, health sector.
  - **Measures to augment state funds for Panchayats/Municipalities**
    - In line with **73rd and 74th Amendments**
  - **Other functions** as referred by the President
    - E.g., **15th FC** given additional terms to recommend grants for **defence and disaster resilience**

Powers

- **Advisory in nature** – Centre may accept/reject recommendations
- Can **summon records/data** from Centre and States
- E.g., **15th FC** used extensive data analysis and consulted with NITI Aayog, RBI, and State Governments for fiscal indicators

Independence

- Constitutional safeguards like **Article 280, fixed tenure, independent composition, and mandatory reporting to the President** ensure the Finance Commission's autonomy and integrity.
- Appointed by the President, no interference from Executive in recommendations
- Members must fulfill **prescribed qualifications** ensuring expertise and neutrality
- **Recommendations tabled in Parliament**, ensuring transparency

Limitations / Criticisms

- **Non-binding recommendations** – Centre can selectively accept/reject
  - E.g., Some grants proposed by **15th FC** were only partially accepted
- **Overlap with GST Council & NITI Aayog** – coordination gaps
- **Lack of enforcement powers**
- **Populist schemes and data manipulation** by states can distort fiscal need assessments, leading to inequitable fund allocation. This challenges the Finance Commission's mandate of ensuring fair and responsible fiscal devolution.

Recent Developments

- **16th Finance Commission** constituted in **2024**, chaired by **Arvind Panagariya**
- Tasked with:
  - Recommending tax devolution and grants for 2026–2031
  - Addressing issues like **climate financing**, **ageing population**, **intra-state inequalities**
- Debates around **incentivising states for population control**, and how to account for **migration and urbanisation**
- Push for aligning with **Sustainable Development Goals (SDGs)** in grant allocations

Should the Finance Commission be made a permanent body?

a. Arguments for

- **Continuity in Fiscal Planning**: Enables ongoing monitoring and mid-course corrections in Centre-State financial relations.
- **Timely Recommendations**: Avoids delays in constituting new commissions every five years.
- **Institutional Expertise**: A permanent body can develop long-term data systems and policy capacity.
- **Greater Responsiveness**: Can respond to dynamic fiscal challenges like pandemics, climate finance, or GST-related shocks.

b. Arguments against

- **Dilution of Constitutional Intent:** Article 280 envisages a periodic, independent body- not a standing institution.
- **Risk of Bureaucratisation:** May become another routine department, reducing its critical and independent role.
- **Overlapping Roles:** Could blur functions with other bodies like the NITI Aayog or GST Council.
- **Less Fresh Perspective:** Periodic reconstitution allows for new ideas and context-sensitive recommendations.

Making the Finance Commission a permanent body could ensure **continuous and timely fiscal coordination** between the Centre and States. However, care must be taken to **preserve its autonomy and prevent bureaucratic overreach**.

Way Forward

- Make recommendations **partially binding** or require formal justifications for rejection
- Enhance **coordination with GST Council and NITI Aayog**
- Address **intra-state equity** and incentivise **local governance reforms**
- Broaden role to cover:
  - **Climate adaptation finance** (e.g., link grants to climate performance indicators)
  - **Performance-based grants** (e.g., forest cover, tax compliance – as done in 14th FC)

- Encourage **data transparency and real-time fiscal dashboards**
- Move toward a **permanent fiscal council** for continuity in federal finance discourse

Conclusion

The Finance Commission remains the cornerstone of India's fiscal federalism, **ensuring equitable resource sharing.** Strengthening its **autonomy and adaptability** is key to meeting evolving economic and political challenges.

Union Public Service Commission (UPSC)

Introduction

UPSC is the gateway to India's steel frame and a constitutional instrument to shape India's governance ethos. Its process blends intellect, integrity, and constitutional responsibility.

1. Basics

- **Constitutional Body:** Article **315 to 323 Composition:** Chairman + other members (number not fixed)
- **Appointment:** Appointed by the **President of India**
- **Tenure:** 6 years or until age 65, whichever is earlier
- **Qualifications:** At least half the members should have held office for 10+ years under govt.
- **Headquarters:** New Delhi
- **Jurisdiction:** All-India services, Central services, and Union territories

2. Duties and Powers

- Conducts exams for:
  - Civil Services (IAS, IPS, IFS, etc.)
  - Engineering Services, Combined Medical Services, etc.
- Advises the President on:
  - Disciplinary matters
  - Promotions and transfers
  - Suitability of officers for appointments
  - Matters relating to recruitment, service conditions
- Role under **Article 320** – assistance to the state on request

3. Independence

- **Fixed tenure;** conditions of service cannot be changed to disadvantage
- **Removal by President** only on grounds of misbehavior after SC inquiry (Article 317)
- Expenditure charged on **Consolidated Fund** of India
- Not answerable in court for functions performed **(except procedural grounds)**
- **Autonomy** in recruitment process and decision-making

4. Limitations / Criticism

- Advisory nature of role – **recommendations are not binding**
- Political interference in appointments has been alleged
- No say in transfers, postings after recruitment
- Lack of transparency in interviews and cut-offs
- Limited role in policy formulation regarding recruitment reforms

5. Major reforms

a. Shift to Digital and Online Processes

- **Online application and admit card system** through the UPSC portal.

b. Increased Transparency in Evaluation

- **Publishing of cut-off marks**, answer keys, and marks of candidates after final results.
- **Disclosure of scores of non-recommended candidates** under NITI Aayog's proposal for a "national recruitment database" to facilitate lateral recruitment.

c. Inclusion and Accessibility Measures

- **Increase in the number of exam centres** for Prelims across rural regions.
- **Relaxations for PwD and transgender candidates**, including assistive devices and extra time.
- **Language inclusivity** by conducting papers in 22 languages (including regional ones) for non-English/Hindi medium aspirants.

d. Interview Process Standardisation

- **Multiple boards conducting interviews to reduce bias.**

a. **Improved Grievance Redressal**

- **Online UPSC Samadhan portal** to register candidate grievances.
- **Faster RTI response times** and disclosure of raw marks to reduce litigation.

e. Collaboration and Lateral Inputs

- Periodic **consultations with ministries and experts** to revise syllabi based on evolving administrative needs.
- **Proposals for lateral entry** at higher levels led UPSC to adapt processes for recruiting Joint Secretaries and Directors from the private sector.

6. Way Forward

- Make UPSC recommendations binding in key cases involving **disciplinary action**, especially for **All India Services officers** (As of now, in Union of India v. T.V. Patel (2007), the Court clarified that **failure to consult UPSC** does **not vitiate** disciplinary proceedings **unless such consultation is expressly mandated by law** (e.g., in service rules or regulations)
- Transparent interview and selection processes; publish evaluation criteria
- Broaden representation in commission appointments
- Modernize recruitment with AI/ML for large-scale exams
- Strengthen grievance redressal mechanisms
- Reduce exam duration and backlog delays
- Separate boards for technical and non-technical recruitment (as suggested by 2nd ARC)
- 2nd ARC Report on Personnel Administration (2008) recommended overhaul of recruitment and training policies, and reduction in political appointments

Conclusion

Through competitive neutrality and legal soundness, the UPSC has maintained public trust in recruitment. Continuous modernisation and improved accessibility will define its legacy in the digital era.

NOTE: TOPIC ON CIVIL SERVICES REFORMS HAS BEEN COVERED UNDER GOVERNANCE SECTION.

State Public Service Commission (SPSC)

1. Appointment & Tenure

- **Appointed by**: Governor of the respective state
- **Tenure**: 6 years or until age **62**, whichever is earlier (UPSC retires at 65)
- Conditions of service cannot be varied to their disadvantage after appointment
- **Removed only by President** on grounds of misbehaviour after SC inquiry (same as UPSC)

2. Duties & Responsibilities

- Conduct examinations for:
  - State Civil Services (e.g., PCS, DSP, Tehsildar, etc.)
  - State Engineering Services, Medical Services, etc.
- Advise on:
  - Recruitment methods
  - Promotions and transfers

    - Disciplinary matters
    - Suitability of officers for appointment and awards

3. Powers

- Only **advisory in nature** – not binding on the state government
- Cannot **enforce compliance** but **recommendations carry moral and administrative weight**
- Required to present **annual report** to the **Governor**, who places it before the **State Legislature**

4. Independence

- **Security of tenure** – removal only by President via SC inquiry
- **Salaries and pensions** charged on **Consolidated Fund of the State** – not subject to vote in Legislature
- **Cannot hold further employment** under government after retirement

5. Limitations / Criticisms

- **Advisory role only** – recommendations may be ignored by State Governments
- **Political appointments** – lacks transparency in member selection in many states
    - E.g., Allegations in **Rajasthan PSC (RPSC)** about politically favoured appointments
- **Corruption scandals** in exams
    - E.g., **Uttarakhand PSC paper leak (2023)** led to cancellation of several recruitment tests
- Lack of uniformity across states in standards, exam patterns
- Overburdened and under-resourced in populous states like **Uttar Pradesh and Bihar**

6. Recent Developments

- **UPPSC** restructured its syllabus (2023–24) to align with UPSC CSE pattern for better standardisation
- **Uttarakhand PSC** under investigation for large-scale recruitment irregularities in 2023
- **Digitalisation push** in PSCs: e.g., **MPSC (Maharashtra)** introduced AI-based screening for objective papers
- Increasing demand for **centralised reforms or guidelines** to ensure exam integrity

Conclusion

SPSCs anchor state-level meritocracy but often lag in consistency, digitalisation, and appeal mechanisms. Focused institutional reform, not just autonomy, will define their future credibility.

National Commission for Scheduled Castes (NCSC)

Introduction

Rooted in the Directive Principles and envisioned as a tool of social justice, the NCSC safeguards the rights of Scheduled Castes through constitutional oversight. It actively evaluates how affirmative action transforms access to dignity, representation, and opportunity.

1. Basics

- **Constitutional body** under **Article 338**
- Safeguards the **rights and welfare of Scheduled Castes (SCs)**
- Originally a part of **National Commission for SCs and STs**; split in **2004** by the **89th Constitutional Amendment**
- Parallel body for STs: **NCST under Article 338A**

2. Composition

- **Chairperson**, **Vice-Chairperson**, and **3 other Members**
- **Appointed by the President** of India
- Should have knowledge and experience in matters relating to the SCs
- **Tenure**: 3 years from assumption of office
- Conditions of service determined by the President
- **Not eligible for further government employment** after tenure, ensuring independence

3. Duties & Responsibilities

As per **Article 338(5)**, the NCSC is tasked to:

- Investigate and monitor all matters related to **safeguards provided to SCs** under the Constitution/laws
- Inquire into **specific complaints** of deprivation of rights
- Participate and advise on **socio-economic development planning for SCs**
- Present **annual or special reports** to the President
- Recommend **protective legal measures** or implementation gaps
- E.g., Took **suo motu cognisance of the Lakhimpur Kheri Dalit girl's death (2022)** and demanded state action
- E.g., Advised affirmative action and scholarship expansion after reviewing implementation of **Pre-Matric Scholarship Scheme** in 2021

5. Powers

- **Civil Court powers** under **Code of Civil Procedure**:
  - Summoning witnesses, examining under oath, requisitioning records
- Can conduct **independent investigations** or summon officials for hearings
- Can issue **recommendatory reports**, but these are not legally binding
- E.g., NCSC summoned **JNU administration in 2022** after Dalit PhD scholar complained of caste discrimination

6. Independence

- **Constitutionally protected** under Article 338
- **Direct reporting** to the **President of India**, bypassing political executives
- Salaries and service conditions are **charged on Consolidated Fund of India** – not subject to Parliament vote

7. Limitations / Criticisms

- **Recommendations are not binding** – often ignored by government bodies
  - E.g., NCSC's call to ban **manual scavenging** in Tamil Nadu (2021) not fully enforced
- **Limited enforcement powers** – cannot penalise violators or directly provide relief
- **Understaffed and underfunded** in many states – delays in grievance redressal
- Often seen as **reactive rather than proactive**, focusing more on inquiries than long-term monitoring
- Political affiliations of members may dilute **neutrality**

8. Recent Developments

- In **2023–24**, NCSC:
  - Took cognisance of reports of **denial of Mid-Day Meals to Dalit children** in Uttar Pradesh
  - Pressured the Centre to **reform the SC Sub-Plan allocation model**, demanding a minimum budget share
  - Highlighted issues with **implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**, calling for stricter enforcement and data transparency
- Active involvement in **manual scavenging deaths** in Gujarat and Maharashtra – called for urgent state-level inquiry and compensation to families (2022–23)

9. Way Forward

- Give **statutory backing to NCSC's recommendations** to enhance enforcement
- Strengthen **institutional capacities** and expand regional offices
- Ensure **non-partisan appointment** of members through independent panels
- Develop a **real-time SC grievance redressal portal** across all states
- Mandate **annual audits of state SC welfare schemes** by third-party evaluators
- Coordinate with NCST and National Commission for Backward Classes (NCBC) for intersectional issues

- E.g., As recommended by **Justice Usha Mehra Commission**, include NCSC in police training reforms to address caste bias in law enforcement

National Commission for Scheduled Tribes (NCST)

Introduction

NCST embodies India's commitment to tribal empowerment through constitutional safeguards and affirmative action. It monitors rights related to land, culture, and development to ensure that progress does not come at the cost of exclusion.

1. Basics

- **Constitutional Body** under **Article 338A**, inserted by the **89th Constitutional Amendment Act, 2003**
- **Separated from the National Commission for Scheduled Castes** (earlier both were a single body under Article 338)
- **Composition:**
  - **Chairperson**
  - **Vice-Chairperson**
  - **3 other Members** (at least one must be a woman)
- **Tenure:** 3 years from date of assumption
- **Appointment:** By the President of India

2. Duties and Functions

Under Article 338A(5), major duties include:

- **Monitoring and evaluating safeguards** provided for STs under the Constitution and laws
- **Inquiring into specific complaints** regarding violation of rights
- **Participating in planning processes** for socio-economic development of STs
- **Advising** on socio-economic development of STs
- **Submitting annual reports** to the President on working of safeguards
- **Example:** In 2019, NCST flagged **serious violations of PESA Act (1996)** in Chhattisgarh and Odisha where tribal consent was bypassed in land acquisition for mining projects.

3. Independence

- **Constitutionally protected tenure and powers**
- Reports directly to the **President**, not through the government
- **Quasi-judicial powers** of a civil court (can summon, requisition documents)
- **Autonomous status** with own secretariat

However, the budget comes from the Consolidated Fund of India, though not **charged**, making it somewhat vulnerable to fund cuts.

4. Limitations / Criticism

- **Lack of enforcement power:** Can only recommend, no power to implement
- **Inadequate budget** and staff to cover widespread tribal regions
- **Weak follow-up mechanism** on its recommendations
- **Political appointments dilutes its credibility**
- **Example:** Despite repeated NCST reports, **Forest Rights Act (2006)** remains poorly implemented in states like Maharashtra and Jharkhand. A 2022 NCST note showed **less than 50% of claims approved** in some states.
- **Delay in appointments**: Between 2016–2019, the commission worked without a full quorum, stalling tribal rights advocacy.

5. Recent Developments

- **Report on displacement due to mining**: In 2021, NCST called for reassessment of land compensation norms for tribals displaced by the **POSCO project in Odisha**

- **Pushback on forest evictions**: NCST advised the Supreme Court and Ministry of Tribal Affairs on halting eviction of tribals whose FRA claims were rejected
- **Collaboration with ILO & UNDP** on tribal data mapping and skill development
- In 2023, NCST recommended greater **tribal participation in Digital India and Skill India missions**, especially in Northeast and Jharkhand

6. Way Forward

- **Make NCST recommendations binding** in key areas like land rights and rehabilitation
- **Timely and full appointments** to ensure functional autonomy
- **Increase budget and field presence** (regional offices)
- **Strengthen legal mandate** to review and halt state actions violating tribal rights
- Use **technology and satellite mapping** to monitor implementation of PESA and FRA
- **Regular audits** of state tribal welfare schemes

- **Xaxa Committee (2014)** on Tribal Welfare recommended NCST be given a stronger role in vetting land acquisition in Scheduled Areas
- **2nd ARC Report** suggested a comprehensive review of the functioning of statutory commissions and better integration into policymaking

Conclusion

The NCSC and NCST act as constitutional sentinels for historically oppressed communities, often intervening where the justice system falls short. To move from symbolic oversight to structural impact, they need sharper mandates, real-time enforcement, and greater grassroots reach.

National Commission for Backward Classes (NCBC)

PYQs

Discuss the role of the National Commission for Backward Classes in the wake of its transformation from a statutory body to a constitutional body. (CSE 2022, 10M)

Introduction

The NCBC, born out of post-Mandal anxieties over backward class inclusion, now serves as a constitutional mechanism to navigate the complex intersection of caste, development, and state benefits.

1. Basics

- **Constitutional Status:** Granted via **102nd Constitutional Amendment Act, 2018**
- Inserted **Article 338B** (Part XVI) – separate from earlier statutory body formed under NCBC Act, 1993
- **Composition:**
  - **Chairperson**
  - **Vice-Chairperson**
  - **3 other Members** (including one woman)
- **Tenure:** 3 years
- **Appointment:** By the President
- **Jurisdiction:** Central List of Other Backward Classes (OBCs)

2. Duties and Functions

As per Article 338B(5), NCBC is mandated to:

- **Monitor and evaluate the implementation** of safeguards for socially and educationally backward classes (SEBCs)
- **Inquire into specific complaints** related to deprivation of rights

- **Advise on socio-economic development policies**
- **Submit annual and special reports** to the President
- **Recommend inclusion/exclusion** of communities in the Central OBC list
- **Example:** In 2021, NCBC **rejected demands** to include certain Maratha castes in the Central OBC list, following the Supreme Court ruling that states cannot unilaterally declare SEBCs post-102nd Amendment.

3. Independence

- Empowered as a **constitutional body** post-2018
- Has **powers of a civil court** for inquiries and investigations
- **Reports directly to the President**
- Autonomous decision-making in data review and recommendations

However:

- **Final decision on inclusion/exclusion still rests with the President**, subject to Parliament's approval
- Requires support of **Ministry of Social Justice and Empowerment** for execution

4. Limitations / Criticism

- **Lacks binding authority**; can only recommend, not enforce
- **Does not handle reservation matters in promotions**, a key demand by OBC communities
- **Centralised focus:** Has **no say in state OBC lists**
- **No data-collection power**; depends on SECC and other administrative sources
- **Delay in caste census** affects evidence-based policymaking
- **Example:** In the **Jat reservation case**, NCBC recommended against inclusion in 2014 citing lack of social and educational backwardness. The UPA government bypassed the recommendation, which was later struck down by the SC in Ram Singh v. Union of India (2015).

5. Recent Developments

- **2021 Supreme Court Judgment**: Upheld 102nd Amendment, stating **only President** (with NCBC consultation) can notify SEBCs for central list – **Maharashtra Maratha quota case**
- NCBC pushed for **OBC reservation in NEET All-India Quota** – government accepted and implemented in 2021
- **Demand for Caste Census**: NCBC supported public demands for full caste enumeration in Census 2021 (postponed)

6. Way Forward

- **Strengthen NCBC's role** in evaluating and updating OBC lists independently
- Empower it to **monitor reservations** in both recruitment and promotions
- **Mandate a caste-based socio-economic survey** to support data-driven recommendations
- Better **coordination with NCST, NCSC, and NITI Aayog** for inclusive development
- Ensure **regular publication** of reports and implementation follow-up

Example Proposals:

- **Rohini Commission (2017–Present)**: Tasked with sub-categorisation of OBCs to ensure more equitable reservation distribution; its findings may reshape NCBC's role
- **Justice Venkatachaliah-led NCRWC (2002)** recommended constitutional status for NCBC, fulfilled by 102nd Amendment

Conclusion

The NCBC's elevation to constitutional status under the 102nd Amendment has strengthened its mandate to protect the rights of OBCs. However, to be truly effective, it needs clearer powers for grievance redressal, data-based recommendations, and coordination with state commissions.

Attorney General of India (AGI)

PYQs

"The Attorney-General is the chief legal adviser and lawyer of the Government of Resor India." Discuss (CSE 2019, 15M)

Introduction

The Attorney General is the Union's chief legal voice in court, shaping narratives in crucial cases. AGI operates at the heart of executive-judicial interface.

1. Basics

- **Highest law officer of India**
- **Constitutional post** under **Article 76** of the Constitution
- **Part of the Union Executive**, but **not a government servant**
- AGI is the **chief legal advisor to the Government of India**
- Also performs legal duties assigned by the President

2. Appointment & Tenure

- **Appointed by the President** of India
- Must be qualified to be appointed a **Judge of the Supreme Court**:
- **No fixed tenure or retirement age**
- **Holds office at the pleasure of the President** – can be removed any time
- E.g., **K.K. Venugopal** served as AGI from 2017 to 2022; given extensions twice before **R. Venkataramani** was appointed in 2022

3. Duties & Responsibilities

- **Legal advisor to the Government of India** on constitutional and legal matters
- Performs functions assigned by the **President** under Article 76(2)
- Appears in **Supreme Court and High Courts** on behalf of the government
- Defends **Union Government** in key cases – constitutional, statutory, and policy-related
- **Represents India in international legal disputes** when required
- E.g., Represented the Centre in:
    - **Article 370 abrogation case**
    - **Sabarimala review petition**
    - **Citizenship Amendment Act (CAA) challenges**
- May also be asked to give **opinions to the President** on legal matters (though not binding)

4. Powers

- **Has the right to speak and take part** in proceedings of Parliament (Lok Sabha and Rajya Sabha), **without voting rights**
- Can be involved in **select parliamentary committees**
- **Not barred from private legal practice**, but:
    - Cannot advise or hold briefs against the Government of India
    - Cannot defend an accused in criminal proceedings without prior permission
    - Cannot accept a position as a company director without government approval

5. Independence & Accountability

- Though a **constitutional office**, AGI is **not independent like judiciary or CAG**
- **Serves at the pleasure of the President**, effectively under the control of the government
- Not bound by the same autonomy safeguards as judges or CAG
- This **dual role** (legal advisor + policy defender) raises concerns of **conflict of interest**
- E.g., **Milon K. Banerji**, during UPA tenure, was criticised for defending politically controversial decisions like the **Ishrat Jahan case**

6. Limitations / Criticisms

- **No fixed tenure** affects continuity and independence
- Can be seen as **politically influenced** due to close government affiliation
- **Lacks prosecutorial independence** unlike AGs in some other countries (e.g., U.S.)
- Cannot **initiate suo motu actions** or direct legal investigations
- Debate over **ethical conflict** due to allowance of **private practice**

7. Way Forward

- Consider **fixed tenure** and post-retirement restrictions to protect independence
- Codify rules on **private practice limitations** and define "conflict of interest"
- Strengthen institutional distinction between **legal advisor** and **policy advocate**
- Create office of a **Solicitor General with statutory autonomy** for prosecution, as in the U.K.
- Encourage **transparent appointment process**, potentially involving judiciary or collegium
- Codify functions and powers of AGI through **Parliamentary statute**, ensuring clarity of role

Conclusion

The Attorney General's opinions often influence constitutional jurisprudence, yet the office lacks institutional autonomy and codified ethical norms. Reforms are needed to balance accountability with independence.

Delimitation Commission of India

Introduction

Formed under the Delimitation Act, the Commission redefines constituency boundaries to reflect demographic shifts. It plays a critical role in maintaining electoral fairness, though its work often intersects with political sensitivities and regional disparities.

1. Basics

- **Statutory body**, **not a permanent commission**
- Set up under the **Delimitation Commission Acts** (1952, 1962, 1972, and 2002)
- Empowered by **Article 82** (after every census, Parliament enacts a Delimitation Act)
- **Objective:** Redraw boundaries of Lok Sabha and State Assembly constituencies based on **population**
- Also guided by **Article 170** (for State Legislative Assemblies)
- **Composition:**
  - **Retired Supreme Court judge** (Chairperson)
  - **Chief Election Commissioner** (Ex-officio member)
  - **State Election Commissioners** (of concerned states)

2. Duties and Powers

- Redefines boundaries of constituencies to ensure **equal representation** based on **latest census data**
- Fixes the number of seats reserved for **Scheduled Castes (SCs)** and **Scheduled Tribes (STs)**
- Ensures **geographical contiguity**, **population equality**, and **administrative convenience**
- Its decisions **cannot be challenged in any court** (Final and binding)
- President **publishes the final orders**, which come into effect immediately
- **Example:** The **2002 Delimitation Commission** used the **2001 Census** and significantly redrew constituencies across several states, increasing SC/ST reserved seats and addressing imbalances caused by urban population growth.

3. Independence

- **Constitutionally backed statutory body**
- Works independently of the government once constituted
- Its decisions are **not subject to judicial review**
- Members include high constitutional functionaries to maintain neutrality

4. Limitations / Criticism

- **Frozen delimitation:** Delimitation of seats is **currently frozen until 2026** (as per 42nd and 84th Constitutional Amendments)
- **Intra-state disparity remains unaddressed** – e.g., urban vs rural representation
- Political **resistance from Southern states**, which have achieved population control and may lose seats in a future delimitation
- **No say in the number of seats in Parliament** – can only redraw boundaries
- **Perceived partisan bias** when new boundaries are seen to favor certain parties
- **Example:** Southern states like **Tamil Nadu and Kerala** have opposed fresh delimitation as it may **penalize them** for effective population control, shifting more seats to populous northern states like **Uttar Pradesh and Bihar**.

5. Recent Developments

- **Upcoming Delimitation after 2026** (based on 2031 census) is under **intense political debate**
- **Delimitation in Jammu and Kashmir (2020–2022):**
  - First post-Article 370 abrogation exercise
  - Increased Assembly seats from 83 to 90 (excluding nominated seats)
  - Controversial: critics argue it disproportionately favored Jammu over Kashmir
  - Delimitation Order published in **May 2022**
- **Calls for delimitation in Assam and other Northeast states** postponed due to concerns over ethnic tensions

Core Issues Involved in Delimitation

- **Population Freeze and Representation Imbalance:**
  The 42nd Amendment (1976) froze delimitation till 2000, later extended till 2026 by the 84th Amendment. This has led to underrepresentation of southern and better-performing states (in terms of population control), while northern states continue to gain greater representation based on population size.
- **North-South Divide:**
  Southern states like Kerala, Tamil Nadu, and Karnataka have successfully implemented family planning and thus face a relative reduction in political weight in the Lok Sabha if delimitation is conducted purely on population. This raises questions of fairness and disincentivizes good governance.
- **Fear of Political Polarisation:**
  Delimitation may aggravate regional imbalances and lead to a majoritarian tilt in national politics, as populous northern states may dominate parliamentary proceedings.
- **Tribal and SC/ST Representation:**
  Delimitation affects reservation of constituencies for SCs and STs. Changes in demographic patterns can alter their political influence and require careful balancing to ensure adequate representation

6. Way Forward

- **Build Political Consensus:** Any future delimitation must be based on broad **national and regional consensus** to avoid fears of regional imbalance, especially among southern states.
- **Use Updated and Transparent Census Data:** Ensure **accurate, inclusive, and updated census data** is used to maintain fairness in representation.
- **Strengthen Delimitation Commission:** Make the body **permanent or semi-permanent**, independent, and adequately resourced to ensure transparency and impartiality.
- **Balance Population with Equity:** While aligning with population growth, consider **human development indices and administrative efficiency** to ensure just representation.

- **Prevent Political Misuse:** Safeguards must be built to **avoid gerrymandering or partisan bias**, preserving the democratic spirit of equal representation.

Conclusion

The Delimitation Commission plays a crucial role in ensuring equitable representation in India's democracy. As the 2026 deadline nears, balancing population-based representation with federal equity and rewarding governance efficiency will be key to maintaining political stability and trust in the electoral system.

STATUTORY BODIES

Introduction

Statutory bodies are institutions created by an Act of Parliament or state legislature to perform specific functions laid out in the legislation. They are neither constitutional nor purely executive but derive their authority from the statute under which they are established.

Basics

- **Legal Basis:** Created through a statute (e.g., RTI Act, 2005 for CIC; NHRC Act, 1993 for NHRC).
- **Not in the Constitution:** Unlike constitutional bodies, they are not mentioned in the Constitution.
- **Autonomy:** Usually function independently of the executive, but autonomy depends on statute-specific provisions.
- **Purpose:** Designed to carry out regulatory, adjudicatory, advisory, or oversight functions in sectors like rights protection, competition, environment, etc.

National Human Rights Commission (NHRC)

Introduction

With a mandate rooted in the Protection of Human Rights Act, 1993, the NHRC emerged as a response to rising rights violations. It focuses on ensuring state institutions function within constitutional bounds.

PYQs

The National Human Rights Commission (NHRC) in India can be most effective when its tasks are adequately supported by other mechanisms that ensure the accountability of a government. In light of the above observation, assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards. (CSE 2014, 12.5M)
Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analyzing their structural and practical limitations, suggest remedial measures. (CSE 2021, 15M)

1. Basics

- **Statutory body** under the **Protection of Human Rights Act (PHRA), 1993**
- Deals with the **protection and promotion of human rights** (life, liberty, equality, dignity)
- Often referred to as **India's human rights watchdog**

2. Composition and Appointment

- **Chairperson + 4 full-time Members + 4 ex-officio Members**
- Chairperson must be any **retired Supreme Court judge (not just a former CJI. The requirement has changed as per the Protection of Human Rights (Amendment) Act, 2019)**
- Other members:
    - One former SC judge
    - One former HC chief justice
    - Two persons with knowledge of human rights
- Ex-officio: Chairpersons of **NCW, NCPCR, NCSC, NCST**
- **Appointed by**: President on recommendation of a **high-powered committee**:

    - PM (Chairperson), Home Minister, Lok Sabha Speaker, Rajya Sabha Deputy Chairperson, Leaders of Opposition (both Houses), and CJI
- **Tenure**: 3 years or until age **70** (amended from 5 years in 2019)
- **Not eligible for reappointment**

4. Duties & Responsibilities

- Inquire into **human rights violations** or negligence by public servants
- Visit **jails and detention centers** to study conditions of inmates
- Review **constitutional and legal safeguards** for HR protection
- Recommend effective implementation of international treaties (e.g., **UN Convention against Torture**)
- Promote **human rights awareness and literacy**
- Support **NGOs and institutions** working in the field
- E.g., NHRC intervened in:
    - **Manipur ethnic violence (2023)** – issued notices to state government over law-and-order failure
    - **Migrant labourers' plight during COVID-19 lockdown (2020)** – suo motu cognizance and report to Centre

5. Powers

- **Quasi-judicial powers**
- Powers of a **civil court** (summoning, examining witnesses, requisitioning documents)
- Can **recommend interim relief and compensation**
- Can **initiate suo motu cases**
- **Investigative wing** headed by a DGP-level police officer
- E.g., NHRC ordered **compensation of ₹5 lakh** for custodial death of a Dalit youth in Bihar (2022)

6. Independence

- Appointed by an **independent and diverse committee (including the Prime Minister, Home Minister, Leader of Opposition, Speaker of the Lok Sabha, and Deputy Chairman of the Rajya Sabha.)**
- Salaries and pensions drawn from **Consolidated Fund of India**
- Cannot be removed except by **Presidential order** on grounds of proven misbehavior or incapacity
- Restrictions on **post-tenure government employment**
- However, perceived **lack of teeth** in enforcing decisions has weakened its public perception

7. Limitations / Criticisms

- **Recommendations not binding** on the government
    - E.g., NHRC asked for police reforms after **Hyderabad encounter (2019)**; largely ignored
- Cannot act against private actors directly
- Limited jurisdiction over **armed forces** (only recommendatory powers under Section 19)
    - E.g., NHRC's limited role in **AFSPA-related rights violations in Kashmir and Northeast**
- **No power of punishment** or direct relief enforcement
- Appointments sometimes criticised for being **politically influenced**
- **Understaffed** and **underfunded** relative to case load

8. Recent Developments

- NHRC launched **online complaint portal and mobile app (2023)**
- Focused on **rights of digital gig workers, sanitation workers**, and **women in informal sectors**
- Issued notice to **Delhi Government** over repeated **air quality violations**
- Recommended stronger **implementation of POSH Act** across government institutions
- Took note of **alleged extrajudicial killings** in Uttar Pradesh and Assam (2021–23)
- NHRC actively involved in investigating **hate speech complaints** during 2024 Lok Sabha elections

9. Way Forward

- Amend PHRA to make **recommendations legally binding**
- Enhance powers to act against **non-state actors**
- Provide **independent prosecution and enforcement wings**
- Ensure **greater transparency** in member appointments
- Establish **regional NHRC benches** for faster disposal
- Collaborate more with **civil society, UN bodies**, and **academic institutions**
- Implement recommendations from **Justice Verma Committee (2013)** for strengthening institutional safeguards

Conclusion

The NHRC reinforces the democratic promise of rights and justice by addressing systemic gaps in protection. Its effectiveness now depends on timely interventions and institutional independence.

Central Information Commission (CIC)

Introduction

Established under the RTI Act, 2005, the CIC enforces the fundamental right to know, derived from Article 19(1)(a) of the Constitution. It acts as the final appellate authority ensuring transparency in public institutions.

1. Basics

- **Statutory body** under the **Right to Information Act, 2005**
- Ensures the **enforcement of citizens' right to information (RTI)** under **Article 19(1)(a)** of the Constitution
- Final appellate authority for **Central Public Authorities**
- Aim: Promote **transparency, accountability**, and reduce **information asymmetry** in governance

2. Composition

- Consists of:
  - **Chief Information Commissioner**
  - Up to **10 Information Commissioners**
- Appointed by **President of India** on recommendation of a **committee**:
  - Prime Minister (Chairperson)
  - Leader of Opposition in Lok Sabha
  - Union Cabinet Minister nominated by PM

3. Appointment & Tenure

- Initially: **5-year tenure or until 65 years of age**
- Post **2019 RTI Amendment Act**:
  - Tenure, salary, and conditions of service of CIC/ICs to be determined by the **Central Government**, **not fixed in the Act**
- Criticised for reducing CIC's autonomy and aligning it closer to the executive

4. Duties & Responsibilities

- **Adjudicate second appeals** under RTI Act against decisions of CPIOs
- **Inquire into complaints** on refusal to accept RTI applications, no response, incomplete information, etc.
- **Direct public authorities** to disclose information or take corrective action
- Recommend steps for **proactive disclosure** under **Section 4** of the RTI Act
- **Monitor implementation** of the RTI Act
- E.g., CIC directed:
  - **PMO** to disclose details about **PM CARES Fund** (2020) – later challenged
  - **Delhi Police** to reveal information on **Jamia protest crackdowns (2019)**

- **Income Tax Dept** to disclose details of **electoral bond donations** – a landmark move for transparency

5. Powers

- **Civil Court powers**:
  - Summon witnesses, take evidence under oath, order document production
- Can **order penalties** on CPIOs for delay/refusal (₹250 per day up to ₹25,000)
- Can **recommend disciplinary action** against officials for violations
- However, decisions are **not always binding** and implementation depends on respective departments
- E.g., CIC fined **Delhi's Directorate of Education** ₹25,000 in 2023 for repeatedly denying school transfer records

6. Independence

- Created by a **parliamentary law** (RTI Act), not by the Constitution
- **Earlier protected tenure, salaries, and removal process**; weakened by 2019 amendment
- CIC reports to **Parliament** annually – adds a layer of oversight
- Concerns exist over **executive influence**:
  - E.g., Delay in appointments led to **4 CIC vacancies for months (2020–21)**, slowing down RTI disposal
  - **SC in 2019** directed time-bound filling of CIC and IC vacancies citing erosion of citizen's rights

7. Limitations / Criticisms

- **Backlog of cases** – 20,000+ pending appeals as of 2023
- **Declining transparency** – CIC has often refused disclosure on key public matters
  - E.g., Refused to direct RBI to disclose names of loan defaulters post **Vijay Mallya case**
- **Weak enforcement powers** – cannot enforce compliance; relies on moral authority
- **Over-dependence on government for staffing, salaries, and tenure** post-2019 amendments
- **Understaffing** and lack of regional benches hinder reach
- Increasing number of **"information exemptions" under national security or fiduciary grounds**

8. Recent Developments

- **CIC Annual Report 2023–24**:
  - Over **2.8 lakh RTI requests** filed with central authorities
- CIC under scrutiny for:
  - **Refusing appeals related to electoral bonds** citing "information not available"
  - Ignoring RTIs related to **PM CARES Fund**, **Covid-19 relief expenditure**, **vaccination contracts**
- **Supreme Court 2023**: Pulled up Centre for **chronic delay in appointments**, affecting functioning of CIC
- Civil society calls for **restoring CIC autonomy**, introducing **Digital RTI Dashboard** for faster tracking

9. Way Forward

- Repeal or amend **2019 RTI Amendment Act** to **restore independence** of CIC
- Ensure **time-bound appointments** and adequate staffing
- Strengthen **Section 4 proactive disclosures** to reduce dependence on RTI filings
- Digital integration – build **centralised real-time RTI monitoring portal**
- Create **regional CIC benches** to reduce burden and increase access
- Ensure **compliance mechanisms** for CIC's recommendations
- Increase public awareness campaigns and **training of PIOs**
- Link RTI data with **Open Government Data (OGD) platform** for policy synergy

Conclusion

The CIC has exposed major lapses in institutions like the RBI and political parties through landmark rulings. Its impact now hinges on enforcing compliance and curbing delays in information delivery.

National Commission for Women (NCW)

IstheNationalCommissionforWomenabletostrategizeand tackle the problems that women face at both public and private spheres? Give reasons in support of your answer. (CSE 2017, 15M)
Which steps are required for constitutionalization of a Commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons. (CSE 2020, 15M)

Introduction

The NCW was established to give institutional voice to women's issues, bridging the gap between policy and lived realities through legal reviews, complaints redressal, and advocacy.

1. Basics

- **Statutory body** established under the **National Commission for Women Act, 1990**
- Works for the **protection and promotion of women's rights**
- Operates under the **Ministry of Women and Child Development (MoWCD)**
- Often termed the **"watchdog of women's rights"** in India
- Created in response to increasing **gender-based violence**, **workplace harassment**, and lack of institutional grievance redressal

2. Duties & Responsibilities

As per the **NCW Act, 1990, the NCW has following duties**:

- Review **constitutional and legal safeguards** for women
- Recommend **legislative reforms** to remove discrimination
- Take up cases of **violations of women's rights**
- Study and recommend measures on **policy matters affecting women**
- Inspect **jails, remand homes, Nari Niketans** where women are detained
- Fund and support **litigation involving women's rights**
- Promote **awareness on gender equality and women's rights**
- E.g.:
    - **Reviewed implementation of POSH Act** in educational institutions (2023)
    - **Advised amendment to bail laws** in sexual assault cases to ensure victim safety
    - **Campaigns like #ActAgainstAbuse** for domestic violence survivors during COVID-19 lockdown

3. Powers

- **Quasi-judicial powers**:
    - Summon and examine witnesses
    - Requisition public records
    - Investigate complaints
    - Recommend action, compensation, or legal aid
- **Not binding**, but influential in policy advocacy
- E.g.:
    - **Summoned Twitter India** over online harassment of women journalists (2021)
    - Directed **UP Police** to fast-track the **Unnao rape survivor's case** (2019)
    - Took suo motu notice of **Bulli Bai and Sulli Deals** cases targeting Muslim women online (2022)

4. Independence

- **Statutory status**, but not a constitutional body
- Reports submitted to **Central Government**, not Parliament
- Appointment process controlled by Centre – raises questions about independence
- **Limited enforcement powers** – depends on cooperation of police, judiciary
- E.g., Despite multiple interventions in the **Hathras case (2020)**, NCW faced criticism for delayed and weak response

5. Limitations / Criticisms

- **Recommendations not binding** on government
- **Lacks penal powers** – can only recommend action
- **Delays in responding to complaints**
- Accused of **selective intervention and politicisation**
    - E.g., Inaction in cases involving ruling party members (as alleged in 2023 Bengal incident)
- **No state-level equivalents** with uniform structure or effectiveness – inconsistent outreach
- **Under-resourced** and **understaffed** – especially for field investigations
- **Limited representation of diverse women's voices** – marginalised communities often excluded

6. Recent Developments

- In 2023–24:
    - **NCW launched Digital Shakti 4.0** – cybersecurity awareness for women
    - Published report on **women's safety in metro cities** – recommended improved street lighting, CCTVs, women-only buses
    - Played a key role in pushing the **Women's Reservation Bill** (128th Amendment Bill, 2023) – now passed, granting **33% reservation** in Lok Sabha and State Assemblies

7. Way Forward

- **Make recommendations partially binding**, or mandate response timelines
- Ensure **transparent and non-political appointment** of members
- Empower NCW to **file FIRs** or provide legal representation
- Upgrade to a **constitutional body**, like NCSC or NHRC
- Expand and strengthen **State Commissions for Women** (SCWs)
- Improve collaboration with **civil society, media, and academia** for grassroots reach
- Develop a **centralised complaint monitoring app and helpline (like 181)**
- E.g.:
    - Replicate model of **Kerala Women's Commission** which conducts jail visits and street tribunals
    - Adopt **Delhi Commission for Women's Mohalla Clinics for women** to handle
    - local complaints

Conclusion

From monitoring implementation of the POSH Act to addressing digital harassment, the NCW has expanded its scope. However, limited punitive powers and reliance on state machinery dilute its impact.

National Green Tribunal (NGT)

Introduction

Established in 2010 under the National Green Tribunal Act, the NGT is a specialized judicial body aimed at providing speedy and effective resolution of environmental disputes while upholding principles of sustainable development and ecological balance.

1. Basics

- **Statutory body** established under the **National Green Tribunal Act, 2010**
- Enforces the **"Right to a Healthy Environment"** under **Article 21** (Right to Life)
- **Objective:** Provide speedy and effective disposal of cases related to **environmental protection**, conservation of forests and natural resources
- **Members: Chairperson** (retired SC judge or CJ of HC) and at least **10 judicial members** and **10 expert members**
- Appointed by the **Central Government**

2. Jurisdiction and Powers

- Original and appellate jurisdiction over **all civil cases** related to environment under:
  - Water (Prevention and Control of Pollution) Act, 1974
  - Air (Prevention and Control of Pollution) Act, 1981
  - Environment (Protection) Act, 1986
  - Forest (Conservation) Act, 1980
  - Biological Diversity Act, 2002
- Can provide **relief and compensation** to victims of pollution and environmental damage
- Has power to **enforce environmental laws**, impose fines, and **issue binding directions**
- Decisions can be appealed to the **Supreme Court** within **90 days**

3. Independence

- Functions independently of executive interference
- Decisions are **legally binding**
- **Final authority** on environmental litigation unless overturned by SC

However, the **Central Government controls funding and appointments**, which raises concerns about **structural independence**

4. Major Judgments / Examples

- **Art of Living Case (Yamuna Floodplains, 2017):** NGT fined the Art of Living Foundation ₹5 crore for ecological damage due to a cultural event on Yamuna floodplains
- **Sterlite Copper Plant Closure (2018):** Initially cleared by NGT; later reversed by SC. Generated debate on **judicial overreach vs environmental protection**
- **Vizag LG Polymers Gas Leak (2020):** NGT directed company to deposit ₹50 crore, called for strict liability principles
- **Volkswagen Emission Case (2019):** NGT imposed ₹500 crore penalty for violating environmental norms (defeat device scandal)
- **Delhi Air Pollution (Multiple Orders):** NGT has issued several orders banning diesel vehicles over 10 years old, stopping construction during smog, and regulating stubble burning
- **Sand Mining Ban:** In multiple states (e.g., Bihar, Uttar Pradesh), NGT cracked down on **illegal sand mining**

5. Limitations / Criticism

- **Lacks suo motu powers** (unlike High Courts/SC)
- Can't hear matters outside specified environmental laws (no jurisdiction over **Wildlife Protection Act** or **Indian Forest Act**)
- **Limited enforcement powers**: Relies on CPCB, SPCBs, and executive for implementation
- **Understaffed and underfunded** – delays in hearings and compliance
- **Industry pushback**: Seen by some as **anti-development**; companies cite compliance costs and uncertainty
- **Example: Mumbai Coastal Road Project (2019):** NGT refused to intervene; Bombay HC overruled and halted the project. Raised questions about NGT's effectiveness in major infrastructure projects.

6. Way Forward

- **Amend NGT Act** to include more environmental laws (e.g., Wildlife Protection Act)
- **Grant suo motu powers** for proactive action

- Ensure **timely appointment of members** and strengthen benches
- Establish **state-level green tribunals** for greater reach
- Enhance **enforcement capacity** through coordination with local authorities
- Promote **digital access to case filings and judgments** to increase transparency
- Integrate **scientific advisory boards** into NGT decision-making

Suggested Reforms:

- **2nd ARC and Law Commission Reports** have recommended enhancing powers and jurisdiction
- **Parliamentary Standing Committee (2021)** noted that NGT suffers from **"institutional paralysis"** due to vacancies and underfunding

Conclusion

The NGT has significantly shaped environmental accountability through landmark rulings invoking principles like polluter pays and precautionary principle. Strengthening its regional reach and enforcement mechanisms is vital for deepening environmental justice in India.

Competition Commission of India (CCI)

PYQs

Discuss the role of the Competition Commission of India in containing the abuse of dominant position by the Multi-National Corporations in India. Refer to the recent decisions. (CSE 2023, 10M)

Introduction

Established under the Competition Act, 2002, the Competition Commission of India (CCI) is tasked with promoting fair competition, preventing anti-competitive practices, and protecting consumer interests in India's evolving market economy.

1. Basics

- **Statutory body** established under the **Competition Act, 2002**
- Replaced the **Monopolies and Restrictive Trade Practices (MRTP) Commission**
- Aims to **promote healthy competition** in markets and prevent practices having adverse effects on competition
- Tagline: "**Fair Competition for Greater Good**"
- Inspired by global models such as the **US Federal Trade Commission (FTC)** and **EU Competition Commission**

2. Appointment & Tenure

- Appointed by a **Selection Committee** headed by:
  - Chief Justice of India or his nominee (Chair)
  - Secretary of Department of Economic Affairs
  - Secretary of Corporate Affairs
- **Tenure**: 5 years or until age 65, whichever is earlier
- Members eligible for reappointment
- Designed to ensure **functional autonomy** from the executive

3. Duties & Responsibilities

Under **Section 18** of the Competition Act, CCI is mandated to:

- Prevent **anti-competitive agreements** (Section 3)
- Check **abuse of dominant position** (Section 4)
- Regulate **combinations (mergers/acquisitions)** exceeding prescribed thresholds (Section 5 and 6)
- Create awareness about competition laws
- Give **opinion to statutory authorities** and conduct **competition advocacy**

- E.g.:
  - **CCI fined Google ₹936 crore (2022)** for abusing its dominant position in Android mobile ecosystem
  - **CCI blocked Amazon–Future Retail merger**, citing negative impact on market competition and consumer interest
  - Approved **Zee-Sony merger** (2022), subject to voluntary modifications

4. Powers

- Quasi-judicial body with powers of a **civil court**
- Can:
  - **Summon persons**, demand production of documents, examine witnesses under oath
  - **Impose penalties**, issue **cease and desist orders**
  - Order **division of enterprises** if necessary to curb monopoly
- Can **conduct dawn raids** through its investigative wing (Director General of Investigation)
- E.g., In 2021, CCI ordered a probe against **Apple** for alleged anti-competitive practices in its App Store policies

5. Independence

- Statutorily protected under **Competition Act, 2002**
- **Financially autonomous** – funded by **Consolidated Fund of India**
- **Removal of members** only by the President on grounds of proven misbehavior or incapacity, based on inquiry by a Supreme Court judge.
- However, **government interference through delay in appointments** remains a concern
- E.g., In 2023, several key decisions were delayed due to **lack of quorum**- only acting Chair was in office

6. Limitations / Criticisms

- **Slow adjudication process** due to case backlog and staff shortage
- **Lack of digital enforcement tools** to handle Big Tech monopolies
- Difficulty in proving **"dominant position"** or **"appreciable adverse effect on competition (AAEC)"**
- Power imbalance – companies often use high-profile lawyers, delaying proceedings
- **Limited deterrence** – fines may be small compared to global profits of MNCs
- E.g.:
  - Critics argue **Google's ₹1,300 crore fine** is negligible given its Indian market share
  - **MakeMyTrip-OYO collusion case** took nearly 4 years for completion

7. Recent Developments

- **Digital Markets Unit** proposed within CCI to tackle Big Tech dominance (as per 2022 Parliamentary Standing Committee report)
- **Draft Digital Competition Act (2023)**: Recommends ex-ante regulations to prevent Big Tech abuse proactively
- CCI probing:
  - **E-commerce discounting models** (Flipkart, Amazon)
  - **Swiggy and Zomato's restaurant exclusivity agreements**
  - **Apple's App Store commission model**

8. Way Forward

- **Strengthen digital enforcement** capacity through AI-based market surveillance
- Fast-track creation of **Digital Markets Unit** and adopt **ex-ante framework**
- Increase **penalty ceilings** for repeat offenders or Big Tech giants
- Ensure **time-bound decision-making** to enhance investor confidence
- Fill **vacancies promptly** to maintain quorum
- Promote **competition literacy** through schools, media, and civil society
- Coordination with sectoral regulators like **TRAI, SEBI, IRDAI** to address overlap

- Similar to **EU's Digital Markets Act**, India needs a **proactive watchdog** for fair play in the digital ecosystem

Conclusion

The CCI has actively curbed anti-competitive practices in key sectors like e-commerce and telecom, enhancing consumer welfare. Strengthening its digital oversight and ensuring faster adjudication will be crucial for its

Lokpal of India

Introduction

Born out of the 2011 anti-corruption movement led by civil society, the Lokpal was envisioned as an independent institution to investigate complaints against top public officials and restore public trust in governance.

1. Basics

- **Statutory body** established under the **Lokpal and Lokayuktas Act, 2013**
- Objective: Inquire into allegations of **corruption against public functionaries**, including the **Prime Minister**, ministers, MPs, and Group A–B officials.

Composition (as per Act)

- **Chairperson:** A former Chief Justice of India, or a former SC judge, or an eminent person with impeccable integrity and experience
- Up to **8 Members**, half of whom must be judicial members
- **50% members must belong to SC/ST/OBC/women/minority communities**

Appointment Committee:

- Prime Minister (Chairperson)
- Speaker of Lok Sabha
- Leader of Opposition in Lok Sabha
- Chief Justice of India or SC judge nominated by CJI
- Eminent jurist nominated by President

2. Jurisdiction and Powers

- **Can inquire into corruption complaints** against:
  - Prime Minister (with safeguards)
  - Ministers and MPs
  - Group A, B, C, D Central Government officials
  - Employees of NGOs receiving ₹1 crore or more in government aid
- **Power of prosecution** after investigation via CBI or other agencies
- Can direct **CBI** to investigate and monitor its progress
- Has powers of **civil court** during inquiry: summoning, document requisition, examination under oath
- Can **recommend disciplinary actions**, and if satisfied, file **charge sheets**

3. Independence

- Removal only by **President** on recommendation of SC after inquiry
- Salaries and service conditions fixed (not subject to executive control)
- Not under any ministry; functions **autonomously**
- **However,** dependent on executive for **infrastructure, investigation agency cooperation (e.g., CBI), and implementation**

4. Major Examples / Cases

- **2020–2022:** Very few cases registered; only **1065 complaints received** in 2021–22, most dismissed
- **RTI queries (2022)** revealed that Lokpal had **not prosecuted any senior bureaucrat or minister** since inception - raising questions about efficacy

- **NGO accountability:** Few NGOs investigated, despite clear provisions; e.g., allegations on **Gyan Deep NGO in Bihar**, but no clear outcome

5. Limitations / Criticism

- **Delayed establishment**: Law passed in 2013, but appointments delayed until 2019
- **No suo motu powers** (cannot take up cases on its own)
- **Lacks independent investigation wing**; depends on CBI, which is under DoPT
- No control over **prosecution post-investigation**
- **Poor complaint disposal record**: Majority dismissed without detailed hearings
- **Political influence in appointments**: Leader of Opposition often not present (e.g., 2019 appointments without LoP)
- **Low public visibility** and awareness
- **Example:** In **Prashant Bhushan v. Union of India (2014)**, SC criticized the government for **non-appointment of Lokpal** despite the law being in place

6. Recent Developments

- **2023–24 Parliamentary Committee report** flagged Lokpal's **underperformance**, urging more transparency in its complaint disposal mechanism
- **Lokpal website** launched in 2021 to file online complaints
- 2024: **No fresh appointment of chairperson** after Justice Ghose retired in 2022

7. Way Forward

- **Amend the Act** to give **suo motu powers** and **prosecution authority**
- Establish an **independent investigation and prosecution wing**
- Ensure **appointment of Lokpal and members is transparent**
- Strengthen **whistleblower protection** mechanisms (link with Whistleblower Protection Act, 2014)
- Make complaint tracking and status **publicly accessible**
- Regularly **audit performance** and publish **annual action reports**

Suggested Reforms:

- **2nd ARC (2007)** advocated an independent **"Ethics in Public Life" body**
- **Parliamentary Standing Committee (2023)** suggested **amending the Act** to include stricter timelines and increase public interface
- Legal scholars argue for **merging Lokpal with CVC** to create a **unified anti-corruption architecture**

Conclusion

The Lokpal marks a crucial milestone in India's fight against corruption, reflecting public demand for accountability in high offices. With proper implementation, independent functioning, and supportive reforms, it holds the potential to strengthen integrity in governance.

Lokayuktas

1. Basics

- **Statutory authorities** at the **state level** to investigate corruption and mal administration in public offices
- Modeled on the **Ombudsman system** in Scandinavian countries
- Concept evolved from the **Administrative Reforms Commission (ARC) Report of 1966**, chaired by Morarji Desai
- Part of India's **institutional anti-corruption framework**, complementing **Lokpal at the Centre**
- **First Lokayukta Act**: **Maharashtra in 1971**

2. Legal Basis

- **Not a constitutional body**
- Originally **optional for states** – created via state legislation
- After **Lokpal and Lokayuktas Act, 2013**, it became **mandatory** for states to establish Lokayuktas
- However, **no uniform model or structure**- states have discretion in defining powers, jurisdiction, and appointment procedures
- As of 2024, **only 27 states/UTs** have functional Lokayuktas

3. Composition

- Headed by a **Lokayukta (usually a retired Chief Justice or High Court Judge)**
- Supported by:
  - **Upa-Lokayukta(s)** (deputy or subordinate roles)
  - **Investigation officers and support staff**
- Appointment usually made by the **Governor** on the advice of a **committee** including CM, Speaker, LoP, and Chief Justice of the HC (varies across states)

4. Duties & Responsibilities

- **Investigate complaints** of corruption, abuse of office, and maladministration against:
  - State ministers
  - MLAs
  - Bureaucrats
  - Government officials and public servants
- **Recommend prosecution or disciplinary action**
- **Forward findings to the competent authority** (e.g., Governor, State Govt)
- Handle **whistleblower complaints** and sometimes service-related grievances

5. Powers

- Varies significantly across states
- Can:
  - **Summon witnesses**, demand documents
  - **Order preliminary inquiries** and direct police to investigate
  - Recommend **suspension, dismissal, or prosecution**
- However, **recommendations are not binding** in most states
- No power to punish or enforce compliance on its own
- E.g.:
  - In **Kerala**, Lokayukta's verdict is binding unless overturned by the Governor

6. Independence

- Appointment process designed to involve **multi-member committee**
- Lokayuktas often **retired judges** with fixed tenure
- Many states provide **security of tenure and independent investigation staff**
- Yet, autonomy is **limited by dependence on executive** for resources and implementation of recommendations
- E.g., **Uttar Pradesh Lokayukta** appointment was stalled due to political disagreement until **Supreme Court intervened in 2015**

8. Limitations / Criticisms

- **No uniformity** across states in structure or powers
- **Recommendations often ignored** by state governments
- **Political interference in appointments and functioning**
- **Lack of prosecution powers**, unlike Lokpal
- **Understaffed and underfunded** offices
- Delays in investigation and **ineffectiveness in high-profile cases**
- E.g.:
  - **Maharashtra Lokayukta** lacks jurisdiction over CM

- **Delhi and J&K** did not have Lokayuktas till recently

9. Way Forward

- Enact a **Model Lokayukta Bill** via Parliament for uniformity
- Make **recommendations binding**, with accountability mechanisms for non-compliance
- Provide **financial and operational independence**, with budget from Consolidated Fund
- Ensure **time-bound appointment process** (within 6 months of vacancy)
- Grant **suo motu powers** and allow **direct prosecution** under anti-corruption laws
- Integrate with **whistleblower protection mechanisms**
- Encourage regular **annual reports tabled in state legislatures**

Conclusion

Despite their intent to curb corruption, Lokayuktas suffer from inconsistent powers and appointments across states, highlighting the need for uniform legislation and stronger enforcement mechanisms.

SCHEDULED AND TRIBAL AREAS IN INDIA

1. Introduction

- The Indian Constitution recognizes the **historical marginalization, social exclusion, and developmental backwardness** of tribal populations.
- To **safeguard tribal rights**, preserve their culture, and ensure administrative justice, special provisions were incorporated under **Part X** of the Constitution.
- These provisions are embodied through the **Fifth Schedule** (for most tribal areas in India) and the **Sixth Schedule** (for the Northeast).

2. Basic Concepts

- **Scheduled Areas**: Areas identified under the **Fifth Schedule**, predominantly inhabited by Scheduled Tribes (STs), where special governance mechanisms apply.
- **Tribal Areas**: Governed under the **Sixth Schedule**, they enjoy greater **autonomy** through **Autonomous District and Regional Councils**.
- Determined by the **President** after consultation with the Governor (Art. 244(1) and 244(2)).

Fifth Schedule: Provisions for Scheduled Areas (Article 244(1))

Applicable States:
Andhra Pradesh, Telangana, Odisha, Jharkhand, Madhya Pradesh, Chhattisgarh, Himachal Pradesh, Gujarat, Maharashtra, and Rajasthan.

Major Provisions

1. **Governor's Role (Para 5)**:
    - Can **direct that any central or state law will not apply** or apply with modifications in Scheduled Areas.
    - Prepares **annual reports** on tribal administration, sent to the **President**.
2. **Tribes Advisory Council (TAC)**:
    - Mandatory in states with Scheduled Areas.
    - Advises Governor on **welfare and advancement of STs**.
    - Composed of **minimum 20 members**, three-fourths must be STs.
3. **President's Power (Para 6)**:
    - Declares, alters, or rescinds **Scheduled Areas** by notification.
4. **Panchayats (Extension to Scheduled Areas) Act (PESA), 1996**:
    - Empowers **gram sabhas** for self-governance.
    - Ensures tribal consent in land acquisition and development.

Recent Developments

- **2023:** Chhattisgarh TAC opposed Adani mining project in Hasdeo Aranya due to violation of gram sabha consent under PESA.
- **2022:** President Droupadi Murmu became the first **tribal President**, symbolizing greater tribal representation in national governance.
- **Mendha Lekha Village (Maharashtra):** First in India to exercise full rights under PESA and **community forest rights** under Forest Rights Act.

Sixth Schedule: Provisions for Tribal Areas in Northeast (Article 244(2))

Applicable States:
Assam, Meghalaya, Tripura, and Mizoram

Major Provisions

1. **Autonomous District Councils (ADCs)**:
    - Created by the Governor.

    - Can **make laws** on land, forests, water, village administration, etc.
    - Governed by **elected and nominated members**.
    - **District Council courts** can try specified civil/criminal cases involving tribals.
2. **Financial Powers**:
    - Empowered to levy taxes and manage resources.
    - Receive grants-in-aid from the consolidated fund of the state.
3. **Autonomous Regional Councils**:
    - Created within Autonomous Districts for distinct tribal groups.
4. **Legislative Powers**:
    - ADC laws prevail over state laws in case of conflict, unless assented to by the Governor.

Recent Developments

- **Bodoland Territorial Council (BTC), Assam**: An ADC formed under Sixth Schedule; key player in **2020 Bodo Peace Accord**.
- **KHADC and JHADC in Meghalaya**: Resisted application of **CAA 2019**, citing violation of tribal autonomy.

Recommendations and Committees

Dhebar Commission (1961):

- Highlighted that development schemes failed due to **lack of tribal participation**.

Bhuria Committee (1995):

- Recommended PESA to ensure **tribal self-governance**.
- Advocated for **decentralised decision-making**.

Xaxa Committee (2014):

- Emphasised need for:
    - Recognition of **customary tribal laws**
    - Reviewing land acquisition laws
    - **Strengthening TACs**
    - Preventing forced displacement

NITI Aayog Reports (2022):

- Urged digitisation of tribal land records
- Recommended **integrating traditional medicine** and **tribal knowledge** in national frameworks

Critical Analysis

Positives

- **Protects tribal land, culture, and autonomy**: Under the Chhattisgarh Panchayat Laws (Extension to Scheduled Areas) Act, 1999 (in line with PESA), Gram Sabhas in Bastar have successfully opposed land acquisition for mining projects, protecting local land rights and cultural practices.
- **Legalises community governance**: In Odisha's Rayagada district, PESA-enabled Gram Sabhas have regulated local markets, forests, and water bodies autonomously, demonstrating community-led governance in Scheduled Areas.
- **Gives constitutional recognition to tribal distinctiveness**: Article 244 and the Fifth & Sixth Schedules acknowledge the unique socio-political structures of tribal communities, embedding them in governance, seen in the existence of Autonomous District Councils in Northeast India.
- **Sixth Schedule allows legislative autonomy without creating new states**: The Khasi Hills Autonomous District Council (Meghalaya) has enacted its own laws on forest management and village administration, offering autonomy without separate statehood, unlike the Gorkhaland or Vidarbha demands.

Challenges

- **Weak implementation** of PESA in most Fifth Schedule states. Example: Jharkhand has not fully operationalised gram sabha land control
- **Governor's discretionary powers** often go unaccountable (Example: In 2021, the Manipur Governor La. Ganesan failed to act on the Hill Areas Committee's demand to table the Autonomous District Councils Bill, despite widespread tribal protests.)
- **Autonomous Councils in Northeast** face corruption and elite capture
  Example: BTC plagued by political infighting and misuse of funds
- **Gender exclusion** in traditional systems - women often excluded from gram sabhas or ADCs
- **State and central laws** sometimes override local customs
  Example: Mining clearances granted without tribal consent in Odisha, Chhattisgarh

Ladakh's Demand for Sixth Schedule Status

Background

- After the abrogation of Article 370 in August 2019, **Ladakh became a Union Territory (UT) without a legislature**.
- Unlike Jammu & Kashmir, Ladakh was **not given special constitutional safeguards**, raising concerns among its tribal-majority population.

Why the Demand for Sixth Schedule Status?

- **Demographic Concerns**: Over **95% of Ladakh's population belongs to Scheduled Tribes** (e.g., Ladakhi Buddhists, Baltis, Changpas).
- **Cultural and Land Protection**: Sixth Schedule provides constitutional autonomy to tribal areas for preserving **customary laws, land rights, and local governance**.
- **Fear of External Influence**: Locals fear unchecked land acquisition, industrialisation, and demographic change without safeguards.
- **Autonomous Hill Development Councils (LAHDC)**: While existing in Leh and Kargil, they lack the **constitutional status and powers** of Sixth Schedule bodies like ADCs.

Challenges in Granting Sixth Schedule to Ladakh

- **Legal Complexity**: Sixth Schedule is constitutionally applicable only to **Assam, Meghalaya, Tripura, and Mizoram** (per Article 244 and the Sixth Schedule).
- **Political Sensitivities**: Strategic location near China demands tighter central control.
- **Governance Structure**: Being a UT without a legislature complicates implementation of autonomous councils under the Sixth Schedule.

Way Forward

- Strengthen **tribal participation in planning and implementation**
- Ensure **functional independence of ADCs and TACs**
- Operationalise **digitised land records** with tribal consent
- Link **Sixth Schedule bodies with urban governance** in growing townships
- Institutionalise **social audits** and ensure **women's representation**
- Promote **socio-economic rights with cultural safeguards** - education, health, and livelihoods tailored to tribal needs.

Conclusion

Scheduled and Tribal Areas are vital constitutional safeguards to protect India's indigenous communities, ensuring their autonomy, rights, and inclusion in development is key to preserving the nation's democratic and pluralistic fabric.

CITIZENSHIP IN INDIA

Basics

- **Citizenship** denotes **full membership** of a political community, entitling a person to **civil and political rights** and imposing **duties** in return
- Only **citizens** (not aliens or foreigners) enjoy rights like:
  - **Article 15, 16** (equality)
  - **Article 19** (freedom of speech, assembly, etc.)
  - **Article 29, 30** (minority cultural and educational rights)
- The **Constitution of India** originally did not define permanent citizenship; it **empowered Parliament to make laws** (Article 11)

Citizenship Act, 1955 – Major Provisions

Provides **five ways** to acquire Indian citizenship:

1. **By birth** – If born in India (before 2004 with certain conditions)
2. **By descent** – Born abroad to Indian parent
3. **By registration** – For certain categories like PIOs, spouse of Indian citizen
4. **By naturalization** – Resident for 11 years (reduced to 5 in case of CAA for specific communities)
5. **By incorporation of territory** – After merger of territory with India (e.g., Sikkim, Goa)

Loss of Citizenship:

- **Renunciation**, **Termination**, or **Deprivation** (in case of fraud, disloyalty, etc.)

Citizenship Amendment Act (CAA), 2019 – Controversial Provision

- Amends the **Citizenship Act, 1955** to provide **fast-track Indian citizenship** to **non-Muslim migrants** (Hindus, Sikhs, Buddhists, Jains, Parsis, Christians) from **Pakistan, Afghanistan, and Bangladesh** who entered India **on or before 31st Dec 2014**
- **Reduces residency requirement from 11 to 5 years**

Criticisms:

- **Excludes Muslims**, seen as **discriminatory on religious grounds** – violation of **Article 14** (Right to Equality)
- First instance of religion-based citizenship law
- Seen as undermining India's **secular fabric**
- Critics argue it violates **Assam Accord (1985)**, which set **March 24, 1971** as the cut-off date for citizenship in Assam

Government's Argument:

- Targets **persecuted minorities**, not Indian Muslims
- Not about taking citizenship from anyone, only granting it
- **Example**: Over **20,000 applications** for citizenship were processed since 2021 from Hindu/Sikh refugees in Gujarat, Rajasthan, Delhi
- **March 2024**: Centre notified CAA rules, initiating official implementation after a 4-year delay

National Register of Citizens (NRC)

- A registry of **genuine Indian citizens**; aims to **identify illegal migrants**
- Mandated under **Citizenship Rules, 2003**

Assam NRC:

- Unique state-level NRC conducted under **Supreme Court supervision**
- **Final NRC published in 2019**: Out of 3.3 crore applicants, **19 lakh excluded**
- **Problems**:
  - Many genuine citizens (esp. tribals, women, poor) excluded due to **documentation issues**
  - Led to fears of **statelessness** and **detention**
- NRC not yet implemented nationwide but remains a **Union Government proposal**

National Population Register (NPR)

- Database of **"usual residents"** of India. (A "usual resident" refers to a person who has lived in a particular area for at least six months or who plans to live there for the coming six months. Every such individual is required to be registered under the National Population Register (NPR).)
- First prepared in 2010 under **Citizenship Rules, 2003**
- Mandatory for creating **National Register of Indian Citizens (NRIC/NRC)**

Controversy:

- NPR linked to NRC due to common legal framework
- Seen as a **precursor to NRC**
- Opposed by states like **Kerala, West Bengal, Tamil Nadu** citing potential communal profiling
- NPR proposed during **2021 Census** but deferred due to COVID-19

Census of India 2021 – Delayed

- Constitutionally and statutorily required every **10 years**
- Postponed due to COVID and political sensitivity around NPR link
- New features proposed:
  - **Digital self-enumeration**
  - **Caste enumeration** (possibly first since 1931)
- **Latest news**: Scheduled for **2025** as per Union Home Ministry, raising concerns over **policy planning lag** without up-to-date data

Way Forward

- Need for **inclusive and secular citizenship law**
- **Clarify NRC-NPR-CAA linkage** to reduce fear and misinformation
- Ensure no one becomes **stateless** – uphold international commitments (e.g., **UN Refugee Convention**)
- Conduct **Census and NPR** transparently and fairly, with strong data protection laws
- Launch **citizenship literacy campaigns** to promote awareness
- Consider **amending CAA** to include all persecuted groups, regardless of religion (e.g., Rohingyas, Ahmadiyyas)

Conclusion

Citizenship in India forms the core of the individual's legal **identity** and **civic participation** within a constitutional democracy. As evolving laws and debates reshape its contours, preserving its inclusive and secular foundation remains essential.

REPRESENTATION OF THE PEOPLE ACT, 1951

PYQs

To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful? (CSE 2017, 15M)
'Simultaneous elections to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people' Discuss. (CSE 2017, 10M)
In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India. (CSE 2018, 10M)
On what grounds a people's representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such a person against his disqualification. (CSE 2019, 15M)
"There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of Peoples Act". Comment. (CSE 2020, 10M)
Discuss the procedures to decide the disputes arising out of the election of a Member of the Parliament or State Legislature under The Representation of the People Act, 1951. What are the grounds on which the election of any returned candidate may be declared void? What remedy is available to the aggrieved party against the decision? Refer to the case laws. (CSE 2022, 15M)

Basics

- **ROPA, 1951** was enacted to **provide the conduct of elections** to the Houses of Parliament and State Legislatures and to prescribe the **qualifications and disqualifications for membership**
- Passed under the powers granted by **Article 327 & 328** of the Constitution
- Complementary to **Representation of the People Act, 1950**, which deals with delimitation and preparation of electoral rolls

Key Features

- **Conduct of Elections**:
  - Lays down procedures for **election to Lok Sabha, Rajya Sabha, and State Legislatures**
  - Empowers the **Election Commission (ECI)** to supervise, direct, and control elections
- **Nomination of Candidates**:
  - Provides qualifications and requirements for **filing nominations**
  - Specifies **security deposit amounts** and **number of proposers**
- **Election Expenses & Ceiling**:
  - Candidates must maintain accounts of election expenses
  - E.g., As per EC, LS candidates can spend up to ₹95 lakh in large states (2024 limit)
- **Code of Conduct and Election Offences**:
  - Prohibits practices like **booth capturing**, **bribery**, **false statements**, and **appeal on religion/caste**

- **Free Supply of Electoral Rolls and Broadcast Time** to recognized parties during general elections
- **Dispute Resolution**:
  - Provides for **filing election petitions** in High Courts

Disqualification Provisions (Sections 8–10A)

- **Section 8 – Disqualification on Conviction**:
  - Conviction for crimes like **rape, murder, bribery, corruption**, smuggling - **disqualification for 6 years from release**
  - E.g., **Lalu Prasad Yadav** disqualified in 2013 following conviction in fodder scam
- **Section 9 – Disqualification for Corrupt Practices**:
  - Includes misuse of religion, booth capturing, use of government machinery
- **Section 10 – Office of Profit**:
  - Holding government office (not exempted) leads to disqualification
- **Section 10A – Failure to Lodge Election Expenses**
- **Disqualification under Article 102 and 191** for Parliament and State Legislature respectively
- **Election Commission's Role**:
  - President (for MPs) or Governor (for MLAs) takes decision **based on ECI advice**
  - E.g., In 2018, **20 AAP MLAs** were disqualified for holding office of profit; later reversed by Delhi HC

Grounds for Declaring an Election Void (Section 100, RPA 1951)

An election may be declared void on the following grounds:

1. **Candidate not qualified** under the Constitution or the Act.
2. **Corrupt practices**, such as bribery, undue influence, or appeal on religion/caste.
3. **Improper acceptance or rejection of nomination**.
4. **Non-compliance with provisions** of the Constitution or RPA.
5. **Use of government machinery** or official position to influence the election.

Relevant Case Law

- **Rajbala v. State of Haryana (2016):** Upheld disqualification criteria for contesting elections, emphasizing the balance between right to contest and electoral integrity.
- **Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe (1995):** Clarified corrupt practices under Section 123.
- **N. P. Ponnuswami v. Returning Officer (1952):** Held that election disputes can be raised only via election petitions, not writs.

Remedy Against High Court Decision

- If a person is **aggrieved by the High Court's verdict** in an election petition, they can file an **appeal to the Supreme Court** under **Section 116A of the Representation of the People Act, 1951**.
- This appeal must be filed **within 30 days** from the date of the High Court's decision.
- The **Supreme Court's judgment is final and binding**.

Regulation of Political Parties

- **Registration with ECI** under Section 29A of ROPA
  - Must declare **name, symbol, constitution, office-bearers, and financial details**
- **Classification into Recognised Parties**:
  - **National** and **State Parties** determined based on vote share/seats (as per EC criteria)
  - E.g., **Aam Aadmi Party** gained **national party status in 2023**

- **Entitlements**:
  - Recognised parties get **exclusive symbols**, **broadcast time**, and **electoral roll copies**
- **Party Funding and Disclosure**:
  - Must declare **donations above ₹20,000**
  - But **electoral bonds scheme (now scrapped)** was introduced outside this framework, reducing transparency

Loopholes and Criticisms

- **Delay in Disqualification**:
  - ROPA allows **sitting MPs/MLAs to continue until final conviction**
  - Delays in appeals and stay orders create **legal grey areas**
  - E.g., **Rahul Gandhi's disqualification (2023)** post-defamation conviction was reversed after HC stay
- **Lack of Inner-Party Democracy**:
  - ROPA does not **mandate internal elections or transparency in party functioning**
- **Weak Regulation of Criminalization of Politics**:
  - Over **43% of MPs in 2019** had criminal cases- many serious
  - No bar on contesting elections unless convicted
- **Ambiguous Definitions**:
  - "Corrupt practices" and "undue influence" are vaguely defined
- **Electoral Bonds Controversy**:
  - Not directly under ROPA but undermined **donation transparency goals** of the Act
- **No Limit on Party Expenditure**:
  - Cap exists only on **candidate expenditure**, not **political parties**

Relevant Case Laws / Examples

- **Lily Thomas v. Union of India (2013)**:
  - SC ruled MPs/MLAs **disqualified immediately** on conviction (overturned Section 8(4))
- **Association for Democratic Reforms (ADR) Case (2002)**:
  - SC mandated **declaration of criminal records, assets, education** by candidates
- **Jan Chaukidar Case (2013)**:
  - Reinforced automatic disqualification of convicted legislators
- **Rahul Gandhi Case (2023)**:
  - Convicted in a defamation case; disqualified under Section 8(3) of ROPA
- **AAP MLAs Case (2018)**:
  - Delhi High Court set aside disqualification citing denial of natural justice

Way Forward

- **Amend ROPA** to:
  - Set **time-bound trials** for criminal cases against candidates
  - Introduce **lifetime ban** for heinous offences (as recommended by **Law Commission**)
- **Mandate Inner-Party Democracy**:
  - Enforce transparency in **party constitution, funding, and candidate selection**
- **Strengthen ECI Powers**:
  - Allow ECI to **de-register parties**, penalise for non-compliance
- **Fix Election Funding Gaps**:
  - Introduce **state funding of elections** or strict oversight on donations
- **Clarity in Definitions**:

    - Codify what amounts to **corrupt practices**, “undue influence,” and religious appeals
- **Separate Adjudicatory Body**:
    - Independent tribunal for **expediting election disputes**

Conclusion

ROPA is the living charter of India’s electoral democracy. Its constant evolution ensures that the spirit of “free and fair” polls keeps pace with the times.

ELECTORAL REFORMS IN INDIA

PYQs

> Examine the need for electoral reforms as suggested by various committees with particular reference to “one nation – one election” principle. (CSE 2024, 10M)

Current Election Mechanisms

1. Campaigning

- **Digital Oversight Strengthened**: Platforms like Meta began labeling premature victory claims (2024), following EC and Supreme Court guidelines to curb misinformation.
    - Challenge: Despite guidelines, deepfakes and misleading content continue to influence public perception.
- **Party Deregistration Measures**: Maharashtra's SEC now mandates inactive parties to contest civic polls to retain registration.
    - Challenge: At the national level, ECI still lacks statutory power to deregister political parties.

2. Voter Registration

- **Multiple Annual Cut-Off Dates Introduced**: Four roll update dates (Jan 1, Apr 1, Jul 1, Oct 1) allow more voter inclusion.
- **EPIC Delivery Fast-Tracked**: Voter ID cards are now dispatched within 15 days, easing access for first-time and migrating voters.
    - Challenge: Persistent issues include duplicate entries, wrongful deletions, and inclusion of deceased voters. The CAG Report (2021) on electoral rolls found over 2.75 lakh cases of multiple entries in 5 states and recommended Aadhaar-death registry integration.

3. Voting

- **Home Voting Options**: ECI now enables vote-from-home for voters aged 85+ and PwD upon request.
- **VVPAT Use Maintained**: SC has upheld the verification of 5 VVPAT slips per assembly segment, increasing trust in EVM-based voting.
    - Challenge: Public mistrust over EVMs persists. In 2023, the Trinamool Congress raised concerns about malfunctioning machines in Tripura. However, ECI’s post-poll audits showed a 99.99% match rate between EVMs and VVPATs.

4. Counting & Results

- **Enhanced Transparency Measures**: Live demonstrations of EVM-VVPAT setup were held with party agents present before polls.
- **Judicial Endorsement of EVMs**: SC rejected petitions demanding return to paper ballots, stating such decisions must be evidence-based.
    - Challenge: Disinformation campaigns around vote counting persist about vote theft and EVM hacking across WhatsApp and YouTube.

Key Challenges in India’s Electoral System

1. Criminalization of Politics

- A major concern in Indian democracy is the **growing number of legislators with serious criminal charges**.
- According to data from the **Association for Democratic Reforms (ADR)**, out of 514 sitting Lok Sabha MPs, 225 (44%) have self-declared criminal cases in their affidavits.

- This undermines public faith in electoral outcomes and **erodes the legitimacy of elected institutions**.

2. Money Power and Lack of Transparency

- Elections in India are increasingly influenced by **unregulated campaign finance**.
- Despite prescribed spending limits for candidates, **loopholes exist for political parties**, and sources of donations often remain undisclosed.
- Although **Electoral Bonds were introduced to clean up funding**, they were struck down by the **Supreme Court in 2024** for violating transparency and citizens' right to know.

3. Issues in Voter Rolls and Electoral Fraud

- Instances of **duplicate entries, dead voters, and wrongful deletions** compromise the integrity of electoral rolls. (The Special Summary Revision 2024 update led to the removal of **~67.8 lakh deceased names**, **~75.1 lakh relocated voters** and **~22.1 lakh duplicates** from the rolls)
- Migrant voters often find themselves **excluded or misregistered**, weakening inclusive participation.
- Although Aadhaar-linking has been initiated to reduce duplication, **privacy concerns** and voluntary compliance pose implementation hurdles.

4. Technology Concerns: EVMs and VVPAT

- Electronic Voting Machines (EVMs) have improved speed and accuracy, but **allegations of tampering** still persist in public discourse. The **limited scope of VVPAT verification (5 booths per constituency)** has been critiqued for not adequately ensuring transparency and trust.

5. Ethically Questionable Campaign Strategies

- Election campaigns often rely on **polarising narratives, caste-based appeals, and misinformation**, eroding democratic values.
- Though the **Model Code of Conduct** restricts such practices, enforcement remains weak, especially during state and local elections.

6. Structural Issues with Representation

- The **First-Past-The-Post (FPTP)** system often results in **majority governments formed with a minority of vote share**, calling into question representational fairness.
- This raises concerns about the **legitimacy and representativeness** of elected leaders.

7. Delimitation and Regional Imbalance

- The pending **delimitation exercise (post-2026)** raises concerns about **shifting political weight from southern to northern states** due to population-based seat allocation.
- This could penalize states that have successfully implemented population control measures, leading to **federal tensions and demands for structural reforms**.

9. Weakening of the Election Commission's Autonomy

- **Allegations of partisanship** and **delayed action on MCC violations** have raised doubts about ECI's neutrality.
- **Pre-2024 appointment process** lacked transparency, giving the executive undue control; reformed after the **Supreme Court's 2023 ruling**.

10. Challenges Faced by Independent Candidates

- **Lack of Resources and Organisational Support**: Unlike party-backed candidates, independents often lack campaign infrastructure, funding, and visibility.
- **Electoral Performance and Viability**: Most independents struggle to win seats; many are seen as **non-serious candidates**, leading to **vote splitting**.

11. Opinion and Exit Polls

- **Influence on Voter Behaviour**: Opinion and exit polls can **shape public perception**, creating a bandwagon or underdog effect that may influence undecided voters.
- **Accuracy and Methodological Gaps**: Often based on **limited or unrepresentative samples**, leading to **inaccurate or biased predictions**.

- **Regulatory Concerns**: Though the **ECI bans exit polls during polling hours** (as per Section 126A of the RPA, 1951), **opinion polls remain largely unregulated**, raising concerns about manipulation and misuse.

12. Election Funding: State Funding & Electoral Bonds

a. State Funding of Elections

- **Concept**: The idea that the **government funds election expenses** to ensure a level playing field and reduce reliance on private donations.
- **Current Status**: **No system of full state funding** exists in India. The **Indrajit Gupta Committee (1998)** recommended partial state funding, limited to **recognised national and state parties**.
- **Challenges**: Concerns remain over feasibility due to **fiscal burden**, **lack of internal democracy in parties**, and **risks of misuse** without strict oversight.

b. Electoral Bonds (Now Scrapped)

- **What They Were**: Introduced in 2018 as a mechanism for anonymous political donations through **designated banks** (primarily SBI).
- **Criticism**: Allowed **unlimited corporate funding**, with donor identities hidden from the public, raising questions about **transparency and quid pro quo**.
- **Judicial Verdict**: In **Feb 2024**, the **Supreme Court struck down the scheme** as unconstitutional for violating the **Right to Information under Article 19(1)(a)**.

13. Lack of powers with ECI to deregister a Political Party

- The **Election Commission of India (ECI)** does **not have the statutory power to deregister a political party**, even in cases of serious violations like misuse of funds, fake registration, or criminal conduct.

Key Electoral Reform Recommendations

1. State Funding of Elections

- **Indrajit Gupta Committee (1998)** recommended **partial state funding** of elections to reduce money power and ensure fairness.
- It proposed that only parties with a **credible electoral track record** should be eligible and called for **transparency and audit** of party finances.

2. Decriminalization of Politics

- **Law Commission (170th Report, 1999 & 255th Report, 2015)** recommended **disqualification of candidates** facing charges for serious offences (punishable by 5+ years), even before conviction, if charges are framed by a court.
- **Vohra Committee (1993)** highlighted the **criminal-politician nexus** and pushed for legal and administrative reforms.

3. Political Funding Transparency

- **Law Commission (2015)** called for curbing **anonymous donations** and bringing parties under the ambit of **Right to Information** (RTI).
- **Election Commission** has repeatedly recommended capping **party expenditure**, and mandatory **audits of party accounts**.
- The **2nd ARC (2008)** suggested creating a **National Election Fund** for transparent and publicly disclosed donations.

4. Strengthening the Election Commission

- **2nd ARC and Law Commission** called for **collegium-based appointments** (involving PM, LoP, and CJI), implemented partially via **SC judgment in 2023 (Anoop Baranwal case)**.
- Recommended **constitutional protection to all Election Commissioners**, not just the Chief Election Commissioner.

5. Regulation of Campaign Practices

- **Goswami Committee (1990)** and **Law Commission** advocated for strict enforcement of the **Model Code of Conduct**, curb on **paid news**, and **monitoring of hate speech and fake news** during campaigns.
- Called for **prohibition of advertisements in the last 48 hours** and better oversight on **social media**.

6. Electoral Roll and Voting Reforms

- **ECI and Law Commission** suggested **Aadhaar linkage** for de-duplication of voter rolls.
- **255th Report** proposed ensuring **migrant and remote voters** (like defence personnel and workers) can access secure voting options, such as **proxy or postal ballots**.

7. Simultaneous Elections

- **Law Commission (2018)** and **NITI Aayog** recommended **"One Nation, One Election"** to reduce election fatigue, expenditure, and policy paralysis due to frequent model code enforcement.
- Suggested constitutional and legal amendments to align **LS and State Assembly terms**.

One Nation, One Election panel recommendations

- **Institutional Framework:** Recommends forming a dedicated coordination unit and enhancing the Election Commission's logistical preparedness through advance procurement of voting equipment like EVMs and VVPATs.
- **Electoral Cycle Realignment:** Proposes using the date of the first Lok Sabha sitting as the uniform reference point to streamline future elections across all tiers.
- **Legal and Constitutional Backing:** Suggests introducing Article 324A and revising Article 325 to enable a single electoral database and identity system for all elections.
- **Stability Mechanism:** In case of early dissolution or a no-confidence motion, the newly elected body should serve only the remaining term to preserve the common poll schedule.
- **Gradual Rollout:** Recommends synchronising national and state elections first, followed by panchayat and municipal polls within a fixed window of 100 days.

One Nation, One Election – Analysis of Pros and Cons

Benefits	Concerns
Boosts voter participation by limiting the frequency of elections, reducing voter fatigue. For example, Lokniti-CSDS found higher turnout in states with simultaneous polls.	Imposing a uniform election cycle may clash with state autonomy, raising federalism concerns. The Sarkaria Commission warned against centralising tendencies.
Supports policy continuity by giving governments a fixed term to implement long-term agendas.	Holding polls together may blur voter judgment between state and national issues, affecting electoral choices.
Curbs excessive campaign expenditure and reduces burden on the public exchequer- e.g., Rs 60,000 crore reportedly spent in 2019 Lok Sabha polls alone.	Legal and logistical hurdles in aligning midterm elections due to assembly dissolutions or no-confidence motions.
Allows uniform deployment of administrative and security forces, reducing strain on national resources.	The move could marginalise regional parties that rely on state-specific campaigns and local issues.

Reduces disruption in governance and administration caused by repeated enforcement of the Model Code of Conduct.	Reduced frequency of elections could lead to weaker democratic accountability and fewer opportunities for course correction.

The concept of One Nation, One Election offers potential benefits such as reducing election-related expenditure, minimising administrative disruptions, and fostering long-term governance planning. But the success of this reform depends not just on logistical execution but on safeguarding democratic principles through adequate legal safeguards, bipartisan consensus, and respect for India's political and cultural diversity.

INDIAN CONSTITUTION VS OTHER COUNTRIES

PYQs

India and the USA are two large democracies. Examine the basic tenants on which the two political systems are based. (CSE 2018, 15M)
What can France learn from the Indian Constitution's approach to secularism? (CSE 2019, 10M)
The judicial systems in India and the UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices. (CSE 2020, 10M)
Compare and contrast the British and Indian approaches to Parliamentary sovereignty. (CSE 2023, 10M)
Discuss India as a secular state and compare with the secular principles of the US constitution. (CSE 2024, 15M)

Feature	India	France	Germany	USA	China	UK	South Africa
Form	Written, longest constitution	Written, semi-presidential	Written, federal parliamentary republic	Written, federal presidential republic	Written, socialist republic	Unwritten, evolving (based on statutes, conventions, common law)	Written, post-apartheid progressive constitution (1996)
Amendability	Flexible yet rigid (Art. 368)	Rigid, but allowed amendment (recent abortion right)	Rigid, recent judicial independence amendment	Very rigid (27 amendments in 200+ years)	Controlled by Communist Party; amendments as per Party agenda	Flexible, evolves through Parliament acts and conventions	Relatively flexible, allows amendments with supermajority
Recent Major Change	106th Amendment (Women's Reservation)	Right to abortion constitutionalized (2024)	Judicial safeguards to protect court (2024)	Debates on SC politicization, abortion rights reversal	No presidential term limits (2018 amendment)	Ongoing debates on codifying constitutional principles, post-Brexit adjustments	Land reform and expropriation without compensation debates (2023-24), protection of socio-economic rights

Federalism	Federal with strong centre	Unitary with some decentralization	Strong federalism, clear division of powers	Strong federalism, states' rights protected	Unitary, Party dominates center and provinces	Unitary with devolved governments (Scotland, Wales, Northern Ireland)	Unitary with some decentralization to provinces
Judicial Independence	Independent SC, concerns over executive appointments	Independent Constitutional Council	Strengthened via amendment	SC increasingly politicized	Judiciary subservient to Communist Party	Strong, independent judiciary (Supreme Court created in 2009)	Independent Constitutional Court, strong protector of rights
Separation of Powers	Parliamentary system, partial separation	Clear separation (semi-presidential)	Parliamentary system, functional separation	Presidential system, full separation	Party dominates all arms of state	Parliamentary system, fused executive and legislature	Parliamentary system with strong constitutional supremacy
Citizens' Rights - Recent Focus	Gender representation, UCC debate	Abortion rights	Judicial independence	Reproductive rights contested	Political dissent curtailed	Post-Brexit human rights debates, focus on freedom of speech, migration issues	Focus on socio-economic rights (health, housing, education), racial equality, land rights
Democratic Nature	Electoral democracy, vibrant yet challenged	Mature democracy	Mature democracy	Mature democracy with current polarization	One-party authoritarian state	Mature democracy, recent challenges over executive accountability (Brexit era)	Mature democracy with ongoing socio-economic challenges and inequality