INDIAN POLITY

GENERAL STUDIES - 2

Class Notes

UPSC / MPSC MAINS

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Indian Constitution, Polity and Governance

Syllabus Topic - Indian Constitution: Historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Let us see the past year questions pertaining to the above topic.

Question	Keywords/Demand	Theme
'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions. (2021) 10	Constitutional Morality.	Contemporary Current Affairs.
Did the Government of India Act, 1935 lay down a federal constitution? Discuss. (2016) 12.5	GOI Act 1935	Static.
Examine the scope of Fundamental Rights in the light of the latest judgment of the Supreme Court on Right to Privacy. (2017)15	Right to Privacy.	Current Affairs.
Discuss the possible factors that inhibit India from enacting for its citizen a uniform civil code as provided for in the Directive Principles of State Policy. (2015) 12.5	Uniform Civil Code - Issues and Challenges.	Contemporary Current Affairs.
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. (2014) 12.5	Scope of Article 19.	Contemporary Current Affairs.
"The most significant achievement of modern law in India is the constitutionalization of environmental problems by the Supreme Court." Discuss this statement with the help of relevant case laws. (2022) 10	Concept of Constitutionalization.	Contemporary Current Affairs.
Discuss Section 66A of IT Act, with reference to its alleged violation of Art 19.	Article 19.	Current Affairs.

“Right of movement and residence throughout the territory of India are freely available to the Indian citizens, but these rights are not absolute. “ Comment. (2022) 10	Limitations and Conditions on Right to Movement.	Static.

Here the questions which are asked are mostly Current Affairs Based with necessary basic understanding. Here we will understand basic things and in subsequent sections we will discuss important issues.

CONSTITUTION -

The basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it.

Functions and Significance of the Constitution -

1. It specifies who has the power to decide who will form the government. The Indian Constitution clearly specifies that India will have a democratic form of government indicating that the people of the country will choose the Government.
2 To provide a set of basic rules that allow for minimal coordination amongst members of a society.
3. To specify who has the power to make decisions in a society. It decides how the government will be constituted.
4. To set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that the government may never trespass them.
5. To enable the government to fulfill the aspirations of a society and create conditions for a just society.

Historical Underpinnings -

The Indian Constitution isn't formed by the mere deliberation between the members of the Constituent Assembly. Number of earlier Legislations played a key role. Here, we are giving features and analysis of some of the most important Legislations. Features of remaining Legislations you can cover from the Laxmikant Book.

Charter Act of 1833

This Act was the final step towards centralisation in British India.

The features of this Act were as follows:

1. It made the Governor-General of Bengal as the Governor- General of India and vested in him all civil and military powers.
2. The act created, for the first time, Government of India having authority over the entire territorial area possessed by the British in India. Lord William Bentick was the first Governor-General of India.
3. It deprived the Governor of Bombay and Madras of their legislative powers. The Governor-General

of India was given exclusive legislative powers for the entire British India. The laws made under the previous acts were called as Regulations, while laws made under this act were called as Acts.

4. It ended the activities of the East India Company as a commercial body, which became a purely administrative body. It provided that the Company's territories in India were held by it 'in trust for His Majesty, His heirs and successors'.
5. The Charter Act of 1833 attempted to introduce a system of open competition for selection of civil servants and stated that the Indians should not be debarred from holding any place, office and employment under the Company. However, this provision was negated after opposition from the Court of Directors.

Indian Councils Act of 1861

The Indian Councils Act of 1861 is an important landmark in the constitutional and political history of India.

The features of this Act were as follows:

1. It made a beginning of representative institutions by associating Indians with the law-making process. It, thus, provided that the Viceroy should nominate some Indians as non-official members of his expanded council.
2. It initiated the process of decentralization by restoring the legislative powers to the Bombay and Madras Presidencies. This policy of legislative devolution resulted in the grant of almost complete internal autonomy to the provinces in 1937.
3. It also provided for the establishment of new legislative councils for Bengal, North-Western Provinces and Punjab, which were established in 1862, 1886 and 1897, respectively.
4. It empowered the Viceroy to make rules and orders for the more convenient transaction of business in the council. It also gave recognition to the 'portfolio' system, introduced by Lord Canning in 1859.
5. It empowered the Viceroy to issue ordinances, without the concurrence of the legislative council, during an emergency.

Indian Councils Act of 1909

This Act is also known as Morley-Minto Reforms (Lord Morley was the then Secretary of State for India and Lord Minto was the then Viceroy of India).

The features of this Act were as follows:

1. It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central legislative council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.
2. It retained an official majority in the Central legislative council, but allowed the provincial legislative councils to have non- official majority.
3. It enlarged the deliberative functions of the legislative councils at both the levels. For example, members were allowed to ask supplementary questions, move resolutions on the budget and so on.
4. It provided (for the first time) for the association of Indians with the executive councils of the Viceroy and Governors. Satyendra Prasad Sinha became the first Indian to join the Viceroy's executive council. He was appointed as the Law Member.
5. It introduced a system of communal representation for Muslims by accepting the concept of

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'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Thus, the Act 'legalized communalism' and Lord Minto came to be known as the Father of Communal Electorate.

6. It also provided for the separate representation of presidency corporations, chambers of commerce, universities and zamindars.

Government of India Act of 1919

On August 20, 1917, the British Government declared, for the first time, that its objective was the gradual introduction of responsible Government in India.

The Government of India Act of 1919 was thus enacted, which came into force in 1921. This Act is also known as Montagu- Chelmsford Reforms (Montagu was the Secretary of State for India and Lord Chelmsford was the Viceroy of India).

The features of this Act were as follows:

1. The central and provincial legislatures were authorized to make laws on their respective list of subjects. However, the structure of government continued to be centralized and unitary.
2. It further divided the provincial subjects into two parts– transferred and reserved. The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to the legislative council. The reserved subjects, on the other hand, were to be administered by the Governor and his executive council without being responsible to the legislative council. This dual scheme of governance was known as 'dyarchy'–a term derived from the Greek word di- arche which means double rule. However, this experiment was largely unsuccessful.
3. It introduced, for the first time, bicameralism and direct elections in the country. Thus, the Indian legislative council was replaced by a bicameral legislature consisting of an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.
4. It required that the three of the six members of the Viceroy's executive Council (other than the Commander-in-Chief) were to be Indian.
5. It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
6. It granted franchise to a limited number of people on the basis of property, tax or education.
7. It created a new office of the High Commissioner for India in London and transferred to him some of the functions hitherto performed by the Secretary of State for India.
8. It provided for the establishment of a public service commission. Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants .
9. It separated, for the first time, provincial budgets from the Central budget and authorized the provincial legislatures to enact their budgets.
10. It provided for the appointment of a statutory commission to inquire into and report on its working after ten years of its coming into force.

Government of India Act of 1935

The Act marked a second milestone towards a completely responsible government in India. It was a lengthy and detailed document having 321 Sections and 10 Schedules.

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The features of this Act were as follows:

1. It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and units in terms of three lists–Federal List (for Centre, with 59 items), Provincial List (for provinces, with 54 items) and the Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy. However, the federation never came into being as the princely states did not join it.
2. It abolished dyarchy in the provinces and introduced 'provincial autonomy' in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres. Moreover, the Act introduced responsible Governments in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislature. This came into effect in 1937 and was discontinued in 1939.
3. It provided for the adoption of dyarchy at the Centre. Consequently, the federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.
4. It introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.
5. It further extended the principle of communal representation by providing separate electorates for depressed classes (Scheduled Castes), women and labor (workers).
6. It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.
7. It extended the franchise. About 10 percent of the total population got the voting right.
8. It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.
9. It provided for the establishment of not only a Federal Public Service Commission, but also a Provincial Public Service.

Making of the Indian Constitution -

Formally, the Constitution was made by the Constituent Assembly which had been elected for undivided India. It held its first sitting on 9 December1946 and reassembled as Constituent Assembly for divided

India on 14 August 1947. Its members were chosen by indirect election 15 by the members of the Provincial Legislative Assemblies that had been established under the Government of India Act, 1935. The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission. According to this plan:

- Each Province and each Princely State or group of States were allotted seats proportional to their respective population roughly in the ratio of 1:10,00,000. As a result the Provinces (that were under direct British rule) were to elect 292 members while the Princely States were allotted a minimum of 93 seats.
- The seats in each Province were distributed among the three main communities, Muslims, Sikhs and general, in proportion to their respective populations.
- Members of each community in the Provincial Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote.

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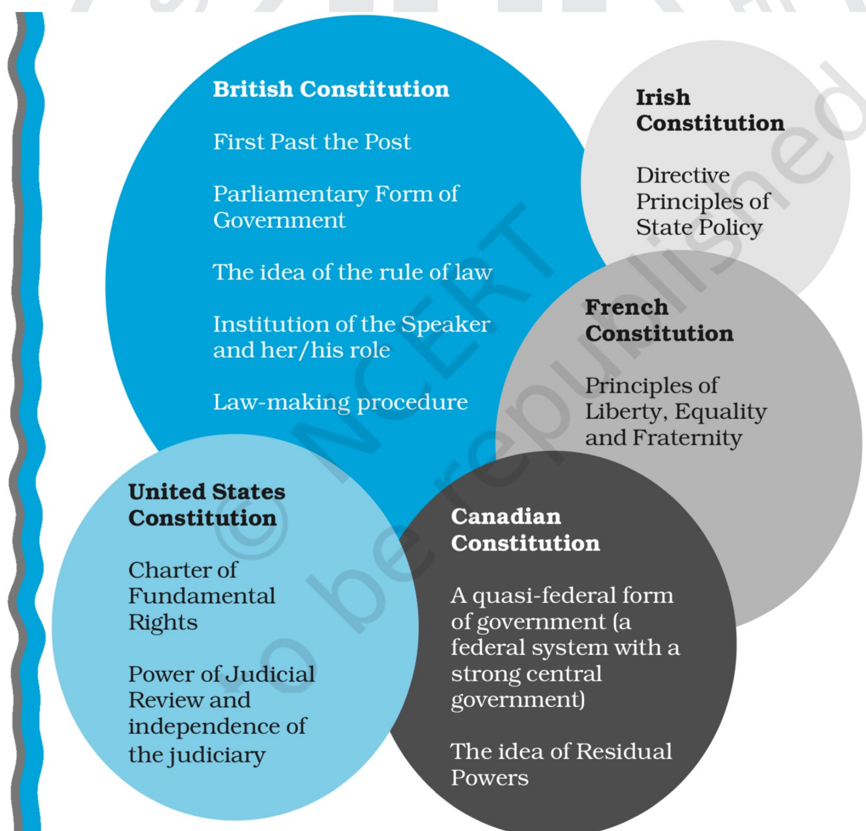
- The method of selection in the case of representatives of Princely States was to be determined by consultation.

Constituent Assembly -

As a consequence of the Partition under the plan of 3 June 1947 those members who were elected from territories which fell under Pakistan ceased to be members of the Constituent Assembly. The number of members in the Assembly was reduced to 299. The Constitution was adopted on 26 November 1949. 284 members were actually present on 24 January 1950 and appended their signature to the Constitution as finally passed. The Constitution came into force on 26 January 1950.

Although the members of the Assembly were not elected by universal suffrage, there was a serious attempt to make the Assembly a representative body. Members of all religions were given representation under the scheme described above; in addition, the Assembly had twenty- eight members from the Scheduled Castes. In terms of political parties, the Congress dominated the Assembly occupying as many as eighty-two per cent of the seats in the Assembly after the Partition. The Congress itself was such a diverse party that it managed to accommodate almost all shades of opinion within it.

Various Sources of the Constitution -



Source - Class XI NCERT

Evolution of the Constitution through various interpretations -

Salient Features of the Constitution -

1. Lengthiest written Constitution.
2. Federal Structure with strong centric tendency.
3. Blend of flexibility and rigidity.
4. Parliamentary form of Government.
5. Independent and Integrated Judiciary.
6. Supremacy of the Constitution.
7. Fundamental Rights.
8. Fundamental Duties.
9. Directive Principles for State Policy.
10. Single Citizenship.
11. Emergency Provisions.

Schedules of the Indian Constitution -

Schedule	Provision
1. First	List of states and union territories and their territories.
2. Second	Emoluments.
3. Third	Affirmations and oaths.
4. Fourth	Allocation of Rajya Sabha seats.
5. Fifth	Administration and Control of Scheduled Area.
6. Sixth	Administration and Special Provision for tribal areas in the states of Assam, Tripura, Meghalaya and Mizoram.
7. Seventh	Division of powers between Union and States.
8. Eighth	Official languages.
9. Ninth	Provisions as to validation of certain acts and regulations.
10. Tenth	Anti- defection law provisions.
11. Eleventh	Panchayat Raj Institutions.
12. Twelfth	Urban Local Bodies.

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Criticism of the Constitution

The critics have criticized the Constituent Assembly on various grounds. These are as follows:

1. Not a Representative Body: The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
2. Not a Sovereign Body: The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.
3. Time Consuming: According to the critics, the Constituent Assembly took an unduly long time to make the Constitution.
4. Dominated by Congress: The critics charged that the Constituent Assembly was dominated by the Congress party. Granville Austin, an American Constitutional expert, remarked: 'The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India' .
5. Lawyer-Politician Domination: It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.
6. Dominated by Hindus: According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus'.

CONSTITUTIONALISM

Concept and Philosophy -

Constitutionalism means limited government or limitation on government. It is the antithesis of arbitrary powers. Constitutionalism recognizes the need for a government with powers but at the same time insists that limitation be placed on those powers. The antithesis of constitutionalism is despotism. A government which goes beyond its limits loses its authority and legitimacy. Therefore, to preserve the basic freedoms of the individual, and to maintain his dignity and personality, the Constitution should be permeated with 'Constitutionalism'; it should have some inbuilt restrictions on the powers conferred by it on governmental organs.

Constitutionalism and Democracy -

Authoritarian governments are by their very nature unconstitutional. Such governments think of themselves as above the law, and therefore see no necessity for the separation of powers or representative governance. Constitutionalism however, is primarily based on the notion of people's sovereignty, which is to be exercised--in a limited manner--by a representative government. The only consensual and representative form of governance in existence today, is democratic government.

Components of Constitutionalism -

1. Government according to the constitution;
2. Separation of power
3. Sovereignty of the people and democratic government
4. Constitutional review

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5. Independent judiciary
6. Limited government subject to a bill of individual rights
7. Controlling the police
8. Civilian control of the military
9. No state power, or very limited and strictly circumscribed state power, to suspend the operation of some parts of, or the entire, constitution.

Supreme Court Judgement -

In I.R. Coelho (Dead) By LRs. vs. State of Tamil Nadu and Ors. view taken by the Supreme Court - The principle of constitutionalism is now a legal principle which requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of the separation of powers, it requires a diffusion of powers, necessitating different independent centers of decision making.

CONSTITUTIONAL MORALITY

Constitutional Morality means relying on the core values / spirit of the constitution to protect the constitution.

- Strict adherence to the core values of the Indian Constitution.
- Looking not only at the literal interpretation of the text but the spirit behind it.

The doctrine of Constitutional morality hasn't been formally recognised by the Court but has been invoked multiple times in various judgements.

Supreme Court Case	Manifestation of the doctrine of Constitutional Morality
1. Kesavananda Bharati Case	Limitations on the power of the Parliament to amend the constitution. Nowhere in the Constitution, it has been written that the power of the Parliament to amend the constitution is limited. But the Court delivered judgment by taking into account the spirit.
2. Sabarimala Case	In the 2018 Judgement, SC stated that the word morality in Article 25 refers to Constitutional Morality.
3. Navtej Johar Case	SC held that constitutional morality will prevail over public morality while decriminalizing Section 377 of IPC.
4. Lily Thomas Vs UOI	SC struck down Section 8(4) of the RPA 1951.

"constitutional morality is not a natural sentiment. It has to be cultivated"

- Dr. B.R. Ambedkar

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Indian Constitution, Polity and Governance

Syllabus Topic - Significant provisions of the Indian Constitution.

Let's see the past year questions on the above topic.

PREAMBLE

Significance of the Preamble -

1. It embodies the source of the Constitution i.e., the people of India.
2. The terms sovereign, socialist, secular, democratic, republic in the Preamble suggests the nature of the state.
3. The ideals of justice, liberty, equality, fraternity reflects the objectives of the Constitution. It also contains November 26, 1949 as the date of adoption of the Indian Constitution.
4. The philosophy of the Indian Constitution is reflected in the Preamble through various key words.

Keywords of the Preamble -

Keyword	Meaning/Implication
1. Sovereign	One that exercises supreme authority within a limited sphere.
2. Socialist	Socialism is based on the idea that common or public ownership of resources and means of production leads to a more equal society. Preamble depicts the Indian brand of socialism - Democratic Socialism.
3. Secular	Equal status to all religions (Positive Secularism)
4. Democratic	Regular transfer of power in a peaceful manner through periodic elections.
5. Republic	The head of the state is directly or indirectly elected.
6. Justice	Social, Economic and Political Justice.
7. Liberty	It’s a situation where an individual has full opportunity to develop oneself.
8. Equality	Equality before law and equality of opportunity through affirmative actions.
9. Fraternity	Brotherhood (Borrowed from the French Revolution)

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1. Berubari Union Case 1960 - The Supreme Court held that the Preamble is not part of the Constitution, hence cannot be amended.
2. Kesavananda Bharati Case - The Supreme Court has stated that the Preamble is the part of the Indian constitution and it can be amended.

42nd Constitutional Amendment of the Constitution -

Added words - Socialist, Secular and Integrity.

Reorganization of States

On the "appointed day", as Independence Day was referred to in the Indian Independence Act, 1947, British paramountcy lapsed in India, leading to the formation of two independent dominions- India and Pakistan. Pre-independence India consisted of state units, provinces and more than 550 scattered princely states. Nearly 114 of these, through the Instrument of Accession, had already joined India before August 15. The rest had the choice of joining either India or Pakistan, with most deciding to accede to the former.

From then to now, as India completes 75 years of independence and has 28 States and eight Union Territories, the internal boundaries of the country have undergone several changes with States being reorganized in multiple phases, with different factors behind the redrawing of the map.

As per the First Schedule of the Constitution in 1949, integrated territories were grouped into 27 States, divided into Part A, B, C, and D categories.

1. Part A states were erstwhile Governors' provinces
2. Part B were former Princely States or clusters of Princely States
3. Part C were states run by commissioners appointed by the President
4. Part D consisted solely of the Andaman and Nicobar Islands, then run by a Centre-appointed Lieutenant Governor.

Reorganization on linguistic basis -

As the grouping of states in 1950 was done based on forms of governance, calls for redrawing the map on a linguistic basis grew stronger.

In 1948, the government appointed the S.K. Dhar commission on linguistic provinces, which recommended that until nationalistic feelings strengthened in the country, States should function solely as administrative units under the Centre. Following this, the JVP committee headed by former Prime Minister Jawaharlal Nehru, Mr. Patel, and Pattabhi Sitaramayya was formed but their report too rejected linguistic reorganization.

The government eventually yielded and created the first linguistic state — Andhra Pradesh for Telugu-speaking people— in 1953, carving it out of the Madras after Potti Sriramulu fasted to the death protesting for the creation of the State. Following this, other linguistic demands got an impetus and the States Reorganisation Commission (SRC) was formed by the government in 1953. It submitted its report in 1955 suggesting the creation of 16 states and three Union Territories. The government instead created 14 States and six Union Territories under the States Reorganisation Act passed in 1956-

States- Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras (renamed Tamil Nadu in 1969), Mysore (renamed as Karnataka in 1973), Orissa, Punjab, Rajasthan, Uttar Pradesh, and West Bengal.

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Union Territories- Manipur, Tripura, Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amindivi Islands.

Fig. 5 (b) – *Indian States before 1 November 1956*

This is not where linguistic reformation ended. In 1956, the map of Bombaywas redrawn to include Marathi-speaking as well as Gujarati-speaking regions. This led to two separate agitations-the Samyukta Maharashtra movement and the Mahagujarat movement for the creation of Maharashtra and Gujarat respectively. This materialized on May 1, 1960 through the Bombay Reorganisation Act, and the two separate states were formed.

Further, the demands for a Punjabi Suba, or a separate state for Punjabi-speaking people, excluding the Hindi-speaking areas and including Chandigarh, had started as early as the year of independence. The Punjabi Suba movement, led by the Akali Dal, gained momentum in phases and

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finally, in 1966, led to the carving out of Punjab for Sikhs and Punjabi-speakers, Haryana for Hindi-speakers, with the hilly areas of Punjab becoming Himachal Pradesh. This was done through the Punjab Reorganisation Act which came into force on November 1, 1966. The demand that Chandigarh to be given to Punjab, however, was not met as the former was made a Union Territory.

Besides the States created from linguistic reorganization, Goa, Daman, and Diu were still in possession of the Portuguese 14 years into Independence. Nationalistic movements began to spring up in Goa in the 1950s and India too made multiple attempts to integrate it into the country, building pressure on the Portuguese. In late 1961, Indian troops captured Goa and Daman and Diu, making the regions a part of India. Goa was given statehood in 1987 and D&D became a Union Territory.

At the turn of the millennium in 2000, three states- Jharkhand, Chhattisgarh, and Uttarakhand were carved out of Bihar, Madhya Pradesh, and Uttar Pradesh, respectively. These states were formed over issues of underdevelopment of the regions in the bigger States they were a part of and some cultural differences. It was believed that if carved into smaller States they would achieve the required administrative attention and development.

The most recent redrawing of the map took place in 2019 with the revocation of Jammu and Kashmir's special status and the creation of the Union Territories of J&K and Ladakh.

Arguments in favor of the small states -

1. Smaller assemblies will lead to faster decision making.
2. Preserves cultural diversity - When several states with different culture were carved out of Assam, the identities of Nagas, Mizos, etc. became increasingly well-known all over the country.
3. More decentralized policies can be formed.
4. Creation of new cities - When Telangana was carved out of Andhra Pradesh, Amaravathi was being developed. Obscure cities like Ranchi, Dehradun, Raipur, etc. came on everyone's tongue when they became the capitals of new states.
5. Getting granular state level data - Currently, most data published by NITI Aayog is state wise. Although the HDI of Maharashtra is 0.695, it may vary from as high as close to 0.8 in Konkan to as low as 0.5 in Marathwada.
6. This will also help granting state wise aid through the Finance Commission more accurately, based on the needs of these smaller states.

Argument against creation of small states -

1. May increasing regionalist tendencies.
2. Inter-State water disputes may get aggravated more.
3. Huge infrastructure would be required to build new assemblies, Raj Bhavans, etc. in new states and this is a costly affair.
4. Huge infrastructure would be required to build new assemblies, Raj Bhavans, etc. in new states and this is a costly affair.
5. Dependency on the central government will be increased.

Citizenship

Basic provisions regarding Citizenship you can read from the Laxmikant book. Here, we are covering a few important issues pertaining to Citizenship.

Citizenship Amendment Act

The Act amends the Citizenship Act, 1955, and seeks to make foreign illegal migrants of certain religious communities coming from Afghanistan, Bangladesh, and Pakistan eligible for Indian citizenship.

How is citizenship acquired in India?

In India, citizenship is regulated by the Citizenship Act, 1955. The Act specifies that citizenship may be acquired in India through five methods – by birth in India, by descent, through registration, by naturalization (extended residence in India), and by incorporation of territory into India.

Who is an illegal migrant ?

An illegal migrant is prohibited from acquiring Indian citizenship. An illegal immigrant is a foreigner who either enters India illegally, i.e., without valid travel documents, like a visa and passport, or enters India legally, but stays beyond the time period permitted in their travel documents. An illegal migrant can be prosecuted in India, and deported or imprisoned.

What changes are brought by the CAA ?

1. The CAA specified class of illegal migrants from the three countries will not be treated as illegal migrants, making them eligible for citizenship. On acquiring citizenship, such migrants shall be deemed to be Indian citizens from the date of their entry into India and all legal proceedings regarding their status as illegal migrants or their citizenship will be closed.
2. The Act allows a person to apply for citizenship by naturalization, if the person meets certain qualifications. One of the qualifications is that the person must have resided in India or been in central government service for the last 12 months and at least 11 years of the preceding 14 years. For the specified class of illegal migrants, the number of years of residency has been relaxed from 11 years to 5 years.

Areas exempted from the applicability of CAA -

- The tribal areas of Assam, Meghalaya, Mizoram, and Tripura, as included in the Sixth Schedule to the Constitution
- The states regulated by the "Inner Line" permit under the Bengal Eastern Frontier Regulation 1873.
- These Sixth Schedule tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District. Further, the Inner Line Permit regulates visit of all persons, including Indian citizens, to Arunachal Pradesh, Mizoram, and Nagaland.

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Government Stand -

1. Classification on the basis of religion is not per se unconstitutional – it is worth reminding ourselves that our Constitution confers special rights upon members of minority religious communities in India.
2. The principle of equality does not mean that every law must have universal application.
3. The principle of equality does not take away from the state the power of making classifications.
4. According to the government the legislation is "compassionate and ameliorative" and does not deprive any Indian of citizenship.
5. The CAA does not affect the protection granted by the Constitution to indigenous population of northeastern states.

Critical Analysis of the Citizenship Amendment Act -

1. Critics argue that it is violative of Article 14 of the Constitution, which guarantees the right to equality.
2. Citizenship based on religion violates the principle of Secularism.
3. It violates the Assam Accord.
4. The act may worsen our bilateral ties with neighboring countries where religious oppression has happened.
5. Critics question the government, Why other neighboring countries are excluded.

Overseas Citizen of India -

The Ministry of Home Affairs defines an OCI as a person who was a citizen of India on or after January 26, 1950; or was eligible to become a citizen of India on that date; or who is a child or grandchild of such a person, among other eligibility criteria. According to Section 7A of the OCI card rules, an applicant is not eligible for the OCI card if he, his parents or grandparents have ever been a citizen of Pakistan or Bangladesh.

OCI cardholders can enter India multiple times, get a multipurpose lifelong visa to visit India, and are exempt from registering with Foreigners Regional Registration Office (FRRO) no matter how long their stay.

Non-Resident Indians -

Non Resident Indian is a person who is not a resident of India. An individual is deemed to be a resident, if (A) Individual has resided in India in that year for 182 days or more or (B) Having within the 4 years preceding that year been in India for 365 days or more and is in India for 60 days or more in that year.

Fundamental Rights

Features -

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus, they

strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.

3. All of them are available against the arbitrary action of the state. However, some of them are also against the actions of private individuals.
4. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
5. They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
6. They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgment of the high courts.
7. Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of a national emergency.
8. Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

Here, we are going to cover some important issues regarding the FRs which are in the news.

Reservation for Economically Weaker Sections

On January 9th 2019, the Parliament of India enacted the Constitution (One Hundred and Third Amendment) Act, 2019 which enabled the State to make reservations in higher education and matters of public employment on the basis of economic criteria alone. The Act amended Articles 15 and 16 of the Constitution by inserting 15(6) and 16(6). It received presidential assent on January 12th 2019 and was published in the Gazette on the same day.

1. The Amendment under Article 15(6) enables the State to make special provisions for the advancement of any economically weaker section of citizens, including reservations in educational institutions.
2. It states that such reservations can be made in any educational institution, including both aided and unaided private institutions, except minority educational institutions covered under Article 30(1).
3. It further states that the upper limit of EWS reservations will be 10% (meaning up to 10% of seats can be reserved for citizens falling in the EWS category). This 10% ceiling is independent of ceilings on existing reservations.
4. Article 16(6) enables the State to make provisions for reservation in appointments. Again, these provisions will be subject to a 10% ceiling, in addition to the existing reservations.

Arguments against EWS Quota -

The violation occurred

1. By the introduction of economic criterion when reservation was only meant for groups that were socially and educationally backward due to historical disadvantages and not due to individual lack of means, and by converting a scheme to overcome structural barriers for the advancement of social groups into an anti-poverty measure

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2. By excluding OBC/SC/ST candidates from the EWS category and
3. By breaching the 50% ceiling on total reservation, without which reservations will become the norm, and the principle of non-discrimination and equal treatment will become the exception.
4. Imposing reservations on educational institutions that do not receive State aid violates the fundamental right to equality.

Arguments in favor -

1. Economic reservation finds its ground in terms of equality. It is difficult to see how economic reservation damages or destroys the concept of equality, and consequently Basic Structure.
2. The act enables inclusion of those who are left behind because of economic disabilities. Thus brings economic welfare of the society.
3. There are many people or classes other than backward classes who are living under hunger and poverty-stricken conditions.
4. The proposed reservation through a constitutional amendment would give constitutional recognition to the poor from the upper castes.

The Supreme Court has upheld the constitutional validity of the reservation for Economically Weaker Sections.

SEDITION

The Supreme Court has suspended pending criminal trials and court proceedings under Section 124A (Sedition) of the Indian Penal Code, while allowing the Union of India to reconsider the British-era law. Three Judge Bench held that all pending trials, appeals and proceedings with respect to the charge framed under Section 124A of the IPC to be kept in abeyance.

1. The Sedition charge, which was included in Section 124 A of the Indian penal code in 1870, was imposed by the British Colonial government to primarily suppress the writings and speeches of prominent Indian freedom fighters. Writings of leaders like Mahatma Gandhi, Lokmanya Tilak, and Jogendra Chandra Bose were suppressed and they were tried under sedition law for their comments on British rule.

2. As per section 124A, sedition is a non-bailable offense, punishable with imprisonment from three years up to life, along with a fine. The person charged under this law is also barred from a government job and their passport is seized by the government. Incidentally, the sedition charge was abolished by the United Kingdom in 2010.

Kedarnath Judgement -

The Kedar Nath judgment upheld the constitutional validity of sedition as defined in Section 124A of the Indian Penal Code.

Issues associated with the Sedition (IPC Section 124) -

- The section does not get protection under Article 19(2) on the ground of reasonable restriction.
- Sedition as a reasonable restriction, though included in the draft Article 19 was deleted when that Article was finally adopted by the Constituent Assembly.
- It clearly shows that the Constitution makers did not consider sedition as a reasonable restriction.
- However, the Supreme Court was not swayed by the decision of the Constituent Assembly.
- The Supreme court interpreted the words 'in the interest ... of public order' used in Article 19(2) and held that the offense of sedition arises when seditious utterances can lead to disorder or violence.
- This act of reading down Section 124A brought it clearly under Article 19(2) and saved the law of sedition. Otherwise, sedition would have had to be struck down as unconstitutional.
- Thus, it continues to remain on the statute book and citizens continue to go to jail not because their writings led to any disorder but because they made critical comments against the authorities.

Stance of Law Commission -

1. According to Law Commission of India's 2018 report, while framing the Constitution, the Constituent Assembly had opposed inclusion of sedition as a restriction on freedom of speech and expression under the then-Article 13. It saw the provision as a shadow of colonial times that should not see the light of the day in free India. However, the offense remained under section 124A of the IPC.
2. The Commission suggests that section 124A of IPC (sedition) must remain; however, it should be scrutinized whether the word 'sedition' could be substituted suitably with another. Moreover, whether 'right to offend' qualifies as hate speech must also be scrutinized, says the report. It also urges striking a balance between sedition and the right to freedom of speech, and installing safeguards against misuse of the sedition charge.

Anti-Conversion Laws

States like UP, MP and Himachal Pradesh have passed anti-conversion laws that prohibit religious conversion specially for the purpose of marriage.

Constitution and Religion -

1. Article 25 - Under Article 25(1) - all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. But the state can regulate such practice on grounds of public order, morality and health.
2. Under Article 25 (2)(a) - state can regulate or restrict any economic, financial, political or other secular activity which may be associated with the religious practice.
3. The Supreme Court held that the 'right to propagate' under Article 25 was limited to "transmit or spread one's religion by an exposition of its tenets", but that does not include the right to convert another person.
4. The Court held that states are competent to legislate on religious conversion on the grounds of 'Public Order' provided under State List.
5. Fundamental right to propagate religion does not include the right to convert a person to another religion.

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Issues associated with the laws -

1. Challenge to Secularism - State can interfere in citizens' personal lives including freedom of conscience and free profession of religion as per Article 25.
2. Such anti-conversion laws goes against Right to Privacy Judgment thereby against Article 21 as right to privacy also include sanctity of family life, marriage, procreation, home and sexual orientation.
3. Informing the District Magistrate about such inter- religious marriages goes against Article 21 as it allows the state to interfere with a person's right to life and personal liberty.
4. Such laws subvert the basic principles of a constitutional democracy that grants individuals freedom of choice and religion. It undermines the free choice of adult women by referring to terms like "allurement".
5. It reverses criminal jurisprudence regarding burden of proof - as the person who has converted must prove that the conversion was not done by coercion, force or illegally.

OBC Reservation in Local Bodies

Recent Developments -

Allahabad High Court quashed the OBC Quota in the Uttar Pradesh Local Body Elections and directed the State Government to conduct the elections without OBC Quota. Further the State Government got a stay on this decision through the Supreme Court.

Constitutional Provisions regarding Reservation in Local Bodies -

1. The 73rd & 74th Constitutional Amendment Act of 1992 provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat/municipality (i.e., at all three levels) in the proportion of their population to the total population in the panchayat area/municipal area.
2. The same amendments also provide at least 33% reservation to the women.
3. The act also authorizes the legislature of a state to make any provision for reservation of seats in any panchayat / municipality or offices of chairperson in the panchayat / municipalities at any level in favor of backward classes.

The Supreme Court interpreted that the barriers to political participation are not the same as that of the barriers that limit access to education and employment. The SC laid down triple test criterion as follows -

1. To set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies, within the State;
2. To specify the proportion of reservation required to be provisioned local body-wise in light of recommendations of the Commission, so as not to fall foul of overbreadth;
3. In any case such reservation shall not exceed an aggregate of 50% of the total seats reserved in favor of SCs/STs/OBCs taken together." The 50% ceiling specifically relied on the ratio of the historic Indra Sawhney judgment (1992).

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Important Points from various Supreme Court Judgements -

1. The apex court's latest order in Rahul Ramesh Wagh v. State of Maharashtra &Ors. makes it mandatory that the principles laid down by the Supreme Court for providing reservation to OBCs in local bodies shall be followed across the country.
2. A five-judge Constitution Bench in the K. Krishnamurthy (Dr.) v. Union of India (2010) judgment said that barriers to political participation are not the same as barriers to education and employment. Though reservation to local bodies is permissible, the top court declared that the same is subject to three conditions: 1) to set up a dedicated Commission to conduct empirical inquiry into the nature of the backwardness in local bodies, 2) to specify the proportion of reservation required to be provisioned local body-wise 3) such reservation shall not exceed aggregate of 50% of the total seats reserved for SCs/STs/OBCs taken together.
3. The court observed that the reservation for OBCs was just a "statutory dispensation to be provided by the State legislations" and is different from the "constitutional" provisions which mandate reservation to the Scheduled Castes and Tribes (SC/ST).

Right to Privacy

The Supreme Court in Justice Puttaswamy Case has ruled Right to Privacy as an integral part of Right to Life and Personal Liberty as guaranteed under Article 21 of Constitution. Right to Privacy are recognised by the Constitution as inheriting in each individual as an intrinsic and inseparable part of the human element which dwells within. However, the right to privacy is not absolute and states can make laws to restrict the right to privacy. A law on invasion of life or personal liberty must meet the three- fold requirement of -

1. Legality: Existence of law i.e. state action must have a legislative mandate.
2. Need: A legitimate state aim i.e., there must be a legitimate state purpose.
3. Proportionality: Ensures a rational nexus between objects and the means adopted to achieve them.

Right to privacy is not an absolute right

The right to privacy is guaranteed by our constitution in Article 21. However fundamental rights are subject to some limitations in order to maintain social order in the country. In order to prevent the terrorism, crime, disorder and related activities many countries tend to curb this trend.

Privacy Technology has invaded our daily life in every aspect whether such invasion is desired or not. We have come to a phase where knowingly or unknowingly we are authorizing third parties to use our personal information. Keeping mandatory providing any personal information by various companies and organizations or even by the authorities without proper legislation is the absolute abuse of the right to privacy.

Criticism of the Fundamental Rights -

1. Excessive Limitations - They are subjected to innumerable exceptions, restrictions, qualifications and explanations. Hence, the critics remarked that the Constitution grants Fundamental Rights with one hand and takes them away with the other.
2. The list is not comprehensive as it mainly consists of political rights. It makes no provision for important social and economic rights like right to social security, right to work, right to employment, right to rest and leisure and so on.

3. They are stated in a vague, indefinite and ambiguous manner. The various phrases and words used in the chapter like 'public order', 'minorities', 'reasonable restriction', 'public interest' and so on are not clearly defined.
4. They are not sacrosanct or immutable as the Parliament can curtail or abolish them, as for example, the abolition of the fundamental right to property in 1978.
5. The suspension of their enforcement during the operation of National Emergency (except Articles 20 and 21) is another blot on the efficacy of these rights.
6. The critics assert that the provision for preventive detention (Article 22) takes away the spirit and substance of the chapter on fundamental rights. It confers arbitrary powers on the State and negates individual liberty.

Directive Principles of State Policy

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51. The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution. Dr. B.R. Ambedkar described these principles as 'novel features' of the Indian Constitution. The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution. Granville Austin has described the Directive Principles and the Fundamental Rights as the 'Conscience of the Constitution .

Features -

1. The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws.
2. The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935.
3. The Directive Principles constitute a very comprehensive economic, social and political programme for a modern democratic State. They aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution.
4. The Directive Principles are non-justiciable in nature, that is, they are not legally enforceable by the courts for their violation.
5. The Directive Principles, though non-justiciable in nature,
6. Help the courts in examining and determining the constitutional validity of a law.

Uniform Civil Code

Uniform Civil Code refers to the common set of laws governing personal matters such as marriage, divorce ,adoption etc.

Article 44 - State shall endeavor to secure for citizens a Uniform Civil Code throughout the territory.

Arguments in favor of UCC -

1. Uniformity and reduced discord.
2. UCC would help to end gender discrimination based upon religious grounds.
3. Secular fabric would be strengthened.

4. A step towards modernity.
5. Easy to administer the huge population of India.

Arguments against UCC -

1. UCC hampers diversity and multiculturalism by bringing everyone under the same umbrella.
2. Some critics argue that it violates Article 25 of the Indian Constitution.
3. Laws pertaining to marriage and succession were part of religion for ages.
4. May lead to communal unrest.

Way Forward -

1. Hasty implementation of UCC may be counterproductive.
2. There is a need to bring gradual progressive change.
3. Good customs and traditions need to be protected.
4. There is a need to bring consensus among all the stakeholders.

Fundamental Duties

According to Article 51A, it shall be the duty of every citizen of India:

(a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) To cherish and follow the noble ideals that inspired the national struggle for freedom;

(c) To uphold and protect the sovereignty, unity and integrity of India;

(d) To defend the country and render national service when called upon to do so;

(e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;

(f) To value and preserve the rich heritage of the country's composite culture;

(g) To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;

(h) To develop scientific temper, humanism and the spirit of inquiry and reform;

(i) To safeguard public property and to abjure violence;

(j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement; and

(k) To provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Legal Provisions available for enforcing the Fundamental Duties -

1. To ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.
2. The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence to prevent improper use of the National Flag and the National Anthem.

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3. Flag Code of India – embodies correct usage and display of National Flag
4. Section 153A of the Indian Penal Code - Promoting enmity between different groups on grounds of religion, race, place of birth, residence. language, etc., and doing acts prejudicial to maintenance of harmony.
5. Section 153 B of the IPC - Imputations and assertions prejudicial to the national integration constitute a punishable offense
6. Unlawful Activities (Prevention) Act 1967 - Communal organization can be declared unlawful association
7. Sections 295-298 of the IPC - Offenses related to religion
8. Provisions of the Protection of Civil Rights Act, 1955 – punishes untouchability

Syllabus Topic - Basic Structure, amendments.

Let us see the past year questions pertaining to the above topic.

Question	Keyword/ Demand	Theme
"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? (2019) 15	Limitations of the Parliament in amending the Constitution.	Static.
'The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically. (2013) 10	Limitations of the Parliament in amending the Constitution.	Static.
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. (2014) 12.5		Contemporary Current Affairs.

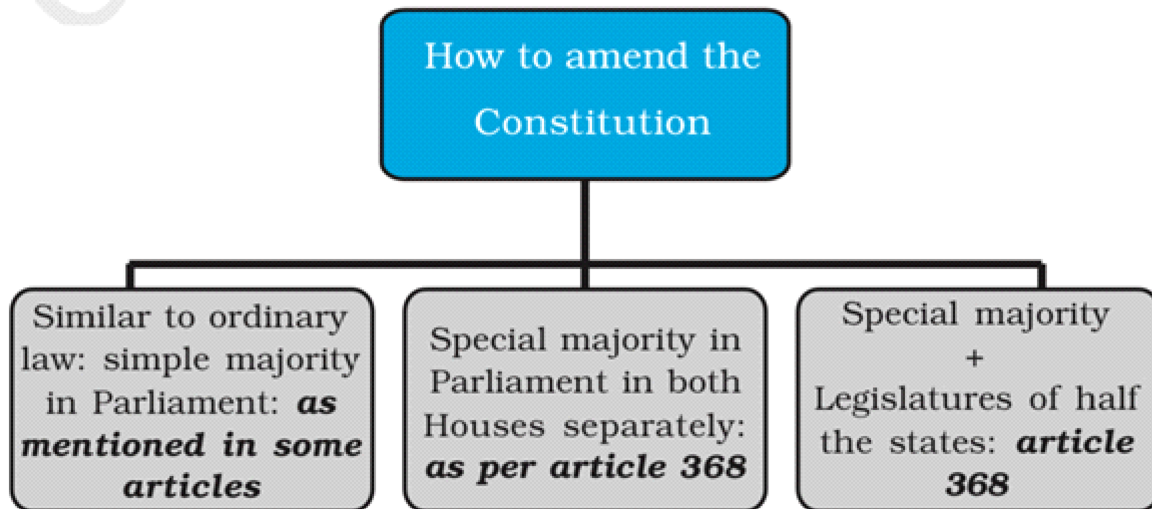
Need for Amending the Constitution -

We have inherited a very robust Constitution. The basic framework of the Constitution is very much suited to our country. It is also true that the Constitution makers were very farsighted and provided for many solutions for future situations. But no constitution can provide for all eventualities. No document can be such that it needs no change.

The makers of the Indian Constitution placed the Constitution above ordinary law and expected that the future generations will respect this document. At the same time, they recognised that in the future, this document may require 199 modifications. Even at the time of writing the Constitution, they were aware that on many matters there were differences of opinion. Whenever society would veer toward any particular opinion, a change in the constitutional provisions would be required.

Thus, the Indian Constitution is a combination of both the approaches mentioned above: that the constitution is a sacred document and that it is an instrument that may require changes from time to time. In other words, our Constitution is not a static document, it is not the final word about everything; it is not unalterable.

Procedure -



1. The bill can be introduced in one of the houses of the Parliament either by a minister or by a private member and does not require prior permission of the president.
2. The bill must be passed in each House by a special majority, that is, a majority of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
3. Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
4. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
5. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
6. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.
7. After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

Criticism -

1. States cannot initiate amendment procedures on their own even on federal aspects of the constitution.

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2. Majority of the amendments can be solely done by the Parliament on its own with simple or special majority.
3. The provisions relating to the amendment procedure are too sketchy. Hence, they leave a wide scope for taking the matters to the judiciary.
4. No time frame specified within which the State Governments have to ratify the amendments.
5. No special body for amending the Constitution like the USA.
6. No provision of joint sitting over the deadlock.

Significant Amendments -

Amendment	Content
1st Constitutional Amendment Act - 1951	Passed under India's first Prime Minister Jawaharlal Nehru in 1951, the first amendment to the Constitution altered articles 15, 15 (3), 46, 341, 342, 372 and 376, empowering States to 'make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes'. Post the Amendment, the state is prevented from enacting laws curbing citizens' rights to freedom of expression and to practice any trade, occupation or business. It also prevents States from making laws permitting them to acquire any citizen's estate. The amendment also added a ninth schedule to the Constitution, listing a number of State laws which cannot be challenged in courts.
4th Constitutional Amendment - 1955	Passed by the Nehru government in 1955, the fourth amendment alters articles 31, 31A, 305 and the ninth schedule of the Constitution, ratifying citizens' right to property. It states that no property shall be compulsorily acquired by the state or a state-owned corporation unless it is for a public purpose and by authority of a law which provides for compensation.
7th Constitutional Amendment - 1956	In 1956, the Nehru government passed the seventh amendment which abolished the distribution of States into classes A, B, C and D, and introduced the Union territories of India.
24th Constitutional Amendment Act - 1971	The Twenty-fourth Amendment of the Constitution of India, officially known as The Constitution Act, 1971, enables Parliament to dilute Fundamental Rights through Amendments of the Constitution. It also amended article 368 to provide expressly that Parliament has power to amend any provision of the Constitution.

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25th Constitutional Amendment Act - 1975	Adds several caveats to the fourth amendment restricting land acquisition. It allows the state to compulsorily acquire land of an educational institution administered by a minority if a proper amount of compensation is fixed.
39th Constitutional Amendment Act - 1975	The Thirty-ninth Amendment of the Constitution of India, enacted on 10 August 1975, placed the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of the Indian courts. It was passed during the Emergency of 1975–1977.
42nd Constitutional Amendment Act - 1976	1. Added three new words (i.e., socialist, secular and integrity) in the Preamble. 2. Added Fundamental Duties by the citizens (new Part IV A). 3. Made the president bound by the advice of the cabinet. 4. Provided for administrative tribunals and tribunals for other matters (Added Part XIV A). 5. Froze the seats in the Lok Sabha and state legislative assemblies on the basis of 1971 census till 2001. 5. Added three new Directive Principles viz., equal justice and free-legal aid, participation of workers in the management of industries and protection of environment, forests and wild life. 6. Facilitated the proclamation of national emergency in a part of the territory of India. 7. Shifted five subjects from the state list to the concurrent list, viz., education, forests, protection of wild animals and birds, weights and measures and administration of justice, constitution and organization of all courts except the Supreme Court and the high courts.
44th Constitutional Amendment Act - 1978	1. Empowered the president to send back once the advice of the cabinet for reconsideration. But, their considered advice is to be binding on the president. 2. Replaced the term ‘internal disturbance’ by ‘armed rebellion’ in respect of national emergency. 3. Made the President declare a national emergency only on the written recommendation of the cabinet. 4. Deleted the right to property from the list of Fundamental Rights and made it only a legal right. 5. Provided that the fundamental rights guaranteed by Articles 20 and 21 cannot be suspended during a national emergency.
52nd Constitutional Amendment Act - 1985	Cracking down on political defections, the Rajiv Gandhi government passed the fifty-second amendment in 1985, which disqualified a member of either House of Parliament, Legislative Assembly or Legislative Council of a State under provisions of the Tenth Schedule.

61st Constitutional Amendment Act - 1988	Passed by the Rajiv Gandhi government in 1988, the sixty-first amendment reduced the voting age from 21 years to 18 years, making the right to vote a constitutional right.
84th Constitutional Amendment Act - 2001	According to the 84th Amendment Act of 2001, the constituency boundaries were frozen until the first census after 2026 or at least after 2031. The 1971 census served as the foundation for the seat allocation of the present Lok Sabha.
87th Constitutional Amendment Act - 2003	The Constitution (87th Amendment) Act, 2003.Provided for readjustment and rationalization of territorial constituencies in the states on the basis of the population figures of the 2001 census and not the 1991 census as provided earlier by the 84th Amendment Act of 2001.
91st Constitutional Amendment Act - 2003	1. The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha 2. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. 3. The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15% of the total strength of the legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12 4. A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister 6. The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.
100th Constitutional Amendment Act - 2015	Exchange of some enclave territories with Bangladesh Conferment of citizenship rights to citizens of enclave's resulting to signing of Land Boundary Agreement (LBA) Treaty between India and Bangladesh.
101st Constitutional Amendment Act - 2016	Altering article 246 to empower the Parliament to make laws with respect to goods and services tax (GST) in inter-State trade or commerce, while State legislatures can make laws with respect to goods and services tax imposed by the Union or any State.

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102nd Constitutional Amendment Act - 2018	Constitutional Status to the National Commission for Backward Classes.
103rd Constitutional Amendment Act - 2019	Allotting a maximum of 10 per cent reservation for Economically Weaker Sections (EWS) of citizens who do not fall under clauses (4) and (5) of Article 15 i.e - socially and educationally backward classes (SEBC), Scheduled Castes (SC) and Scheduled Tribes (ST). This definition for EWS quota has been challenged in the Supreme Court which is set to hear the pleas soon.
105th Constitutional Amendment Act - 2021	The 105 Constitutional Amendment Act restored state governments' power to prepare the Socially and Educationally Backward Classes (SEBC) list. As per the Supreme Court, the 102 Constitutional Amendment Act implied that the state governments did not have the authority to identify the SEBC.

DOCTRINE OF BASIC STRUCTURE

One thing that has had a long lasting effect on the evolution of the Indian Constitution is the theory of the basic structure of the Constitution. Judiciary advanced this theory in the famous case of Kesavananda Bharati. This ruling has contributed to the evolution of the Constitution in the following ways:

- It has set specific limits to Parliament' power to amend the Constitution. It says that no amendment can violate the basic structure of the Constitution
- It allows Parliament to amend any and all partsof the Constitution (within this limitation)and
- It places the Judiciary as the final authority in deciding if an amendment violates basic structure and what constitutes the basic structure.

Rationale -

There in lies the distinction between letter and spirit. The Court came to the conclusion that in reading a text or document, we must respect the intent behind that document. A mere text of the law is less important than the social circumstances and aspiraons that have produced that law or document. The Court was looking at the basic structure as something without which the Constitution cannot be imagined at all. This is an instance of trying to balance the letter and the spirit of the Constitution.

Evoltion of the Basic Structure Doctrine -

1. Shankari Prasad Case 1951 - The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.
2. Golaknath Case 1967 - The Supreme ourt ruled that the Fundamental Rights are given a 'transcendental and immutable' position and hence, the Parliament cannot abridge or take away any of these rights.
3. 4th Constitutional Amendment Act - It declared that the Parliament has the power to abrige or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13.
4. Kesavananda Bharati Case 1973 - The Supreme Court upheld the 24th Constitutional Amendment

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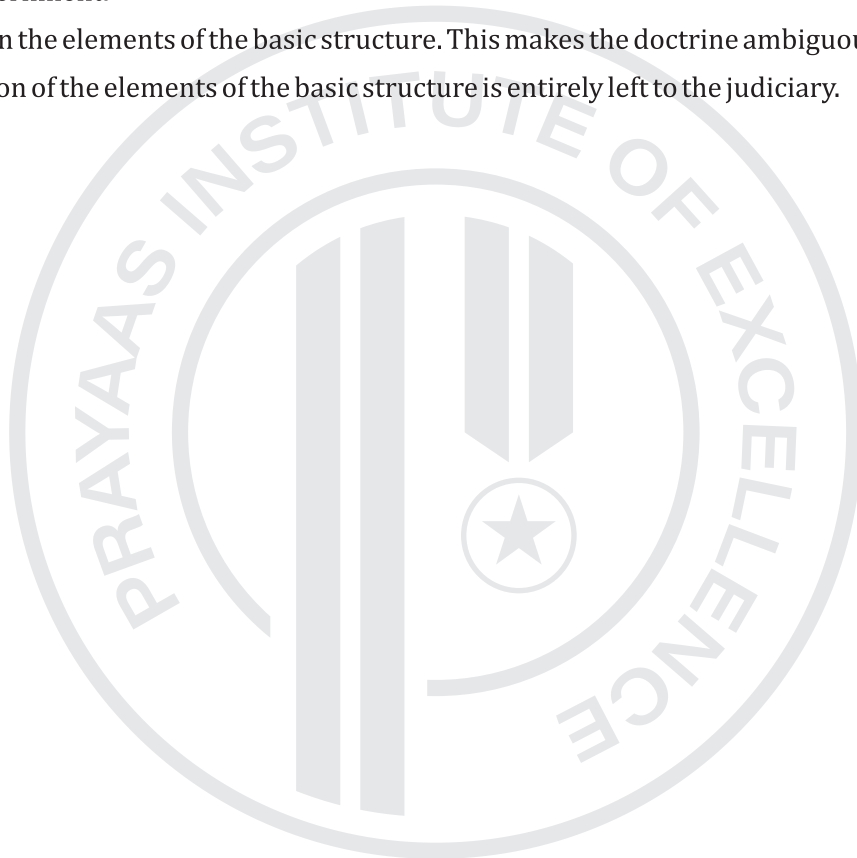
and stated that the Parliament ca amend the fundamental rights without violating the basic structure.

5. 2nd Constitutional Amendment Act 1976 - This Act amended Article 368 and declared that there is no limitation on the constituent power of Parliament and no amendment can be questioned i any court on any ground including that of the contravention of any of the Fundamental Rights.
6. Minerva Mills Case 1980 - The Supreme Court invalidated the provision of the 42nd Constitutional Amendment which excludes the Judicial Review as the basic feature of the Constitution.

Criticism of the Basic Structure Doctrine -

- It lacks a constitutional basis.
- Critics argue that the doctrine imposes the view/ interpretation of the Judiciary on democratically elected government.
- No clarity on the elements of the basic structure. This makes the doctrine ambiguous.
- Identification of the elements of the basic structure is entirely left to the judiciary.


PRAYAAS INSTITUTE OF EXCELLENCE

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Indian Constitution, Polity and Governance

Syllabus Topic - Issues and challenges pertaining to the federal structure.

Let us see the past year questions pertaining to the above topic.

Question	Keyword/Demand	Theme
The jurisdiction of the Central Bureau of Investigation (CBI) regarding lodging an FIR and conducting a probe within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India. (2021) 15	Issues pertaining to the division of powers between Center and States.	Current Affairs.
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 (2020) 15	Trends in federalism.	Contemporary Current Affairs.
The Indian constitution exhibits centralizing 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. (2020) 15	Centralizing tendency of the Indian Constitution.	Contemporary Current Affairs.
From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain. (2019) 10	Principle of Federal Supremacy, Harmonious Construction.	Contemporary Current Affairs.

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Explain the salient features of the constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough ‘to remove cascading effect of taxes and provide for common national market for goods and services’? (2017) 15	Fiscal Federalism.	Current Affairs.
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. (2016) 12.5	Article 370.	Contemporary Current Affairs.
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. (2015) 12.5	issues pertaining to federalism and the role of Cooperative federalism to resolve it.	Contemporary Current Affairs.
Though the federal principle is dominant in our Constitution and that principle is one of its basic features, it is equally true that federalism under the Indian Constitution leans in favor of a strong Centre, a feature that militates against the concept of strong federalism. Discuss. (2014) 12.5	Centric tendencies of Indian federalism.	Static.
While the national political parties in India favor centralisation, the regional parties are in favor of State autonomy.” Comment. (2022) 15	Centre-State tussle.	Contemporary Current Affairs.

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So the core themes around which questions asked are - Centric tendencies of the Indian Constitution, Centre-State tussle, Cooperative federalism. Let us discuss them one by one.

FEDERALISM -

It's a system of Government in which power is divided between the Central Government and multiple Regional Governments.

Features of Indian Federalism -

1. Written Constitution.
2. Constitutional Supremacy.
3. Bicameralism.
4. Independent Judiciary.
5. Accommodate two sets of polities.
6. Residuals power with the center.
7. Centrally appointed State Governor.
8. Integrated Judiciary for Central and State laws.
9. Unequal representation of states in Rajya Sabha.

Centric Tendencies of Indian Federalism -

1. Article 248	Residuary power of legislation with the Center.
2. Article 249	Special power of the Rajya Sabha to legislate on matters of State List in national interest.
3. Article 250	Power of the Parliament to legislate on any state matter during an emergency.
4. Article 251	In case of inconsistency, the law of Parliament will prevail over the state law.
5. Article 253	Power of the Parliament to legislate on any matter to give effect to an international agreement.
6. Article 256	States to make compliance with the laws made by the Parliament.
7. Article 352	National Emergency
8. Article 356	Power of Center to dismiss the State Government and impose President Rule on account of collapse of Constitutional Machinery in the State.
9. Article 360	Financial Emergency.

Issues pertaining to Indian Federalism -

1. Limits on borrowing power of States - Article 293 - As per RBI Report, States incur 2/3rd of Capital Expenditure. So the limiting borrowing power restricts state expenditure.
2. States are forced to pay differential interest — about 10% against 7% — by the Union for market borrowings.
3. Increasing use of Concurrent List - Issue of NEET between Tamilnadu and Central Government.
4. Higher Share of Cess and Surcharge (2.3% in 1980, 15% in 2020) Power to levy Cess and Surcharges lies with the Center which don't form the part of the Central Divisible Pool.
5. Dismantling of the Planning Commission has ended discretionary grants to states under Article 282.
6. Centrally Sponsored Schemes - Affects functional and operational autonomy of the States as the Central Government has the power to frame rules and specify terms for which funds to be used.
7. Increasing boundary and river disputes among the states. Ex.Maharashtra-Karnataka over Belgaum.
8. Growing regionalism - Demand for new states - Vidarbha, Gorkhaland.

Examples of increasing Central Interference -

1. Health - Epidemic Disease Act 1897 - Lacks clear guidelines and specifications due to which the Central Government got unlimited power on Public Health which is a state issue - Announcement of National Lockdown during the first wave without consultation with the States.
2. Education - Central Quota in State Funded Colleges.
3. Disaster Management Act 2005 - Top Down Approach - Enacted under Article 248 (Provision of Residuary Powers to the Center) - Section 72 of the DMA 2005 significantly curtails power of States and gives overriding power to the Central Government.

Other Miscellaneous issues and recommendations of Punchhi Commission

Issue	Recommendation of Punchhi Commission
1. Legislative Powers - Residuary Power, Concurrent List, Reservation of Bills by Governor.	Center and State should evolve a broad agreement on concurrent list. Center should follow extreme restraint on Residuary subjects.
2. Article 356 - Arbitrary imposition of President Rule	Complete implementation of SR Bommai case guidelines. No dismissal without a floor test.
3. Council of States - Unequal representation	Make it equal through the Constitutional Amendment.
4. Role of Governor	Specify guidelines of qualification, Fixed tenure, time limit of 6 months to decide upon the bills.

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Important Recommendations of Sarkaria Commission(Way Forward) -

1. Except taxation remaining Residuary powers to be placed in concurrent list.
2. Center should comprehensively consult with states prio legislating upon the matters in concurrent list.
3. Ordinarily, the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and details for state action.
4. Strengthen the Inter-State councils - Platform for holding debates and discussions.
5. On Article 356, it was recommended that it be used "very sparingly, in extreme cases, as a measure of last resort, when all other alternatives fail to prevent or rectify a breakdown of constitutional machinery in the state.

Other Miscellaneous Suggestions -

1. Financial rationalization of CSS in consultation with the State Governments.
2. Reforming the functioning of the State Finance Commision.
3. Amending 7th Schedule and devolving more power to states.
4. Providing more financial autonomy to states to raise funds by amending Article 293.
5. Minimizing discretionary transfers, particularly those channeled through CSS.
6. Expenditure liabilities on States for implementation of Central legislation should be fully borne by the Central Government.
7. State-specific targets of fiscal deficit in the FRBM legislation of States.

Three broad stages of evolution of Indian Federalism -

1. Per-1967 - No Confrontation
2. 1967-1990 - Confrontations - Dismissal of State Governments, President Rule..
3. 1990 Onwards - Cooperation due to electoral politics (Coalition Governments)

COOPERATIVE FEDERALISM	COMPETITIVE FEDERALISM
1. The concept of cooperative federalism professes a horizontal relationship between the Central as well as the State governments. This essentially means that the legislature at the Union as well as the State levels cooperate to serve the larger public interest. 2. Central and State Governments are guided by the common national interest. 3. Ensures minimum bundle of essential services and nationally acceptable standard of living to all individuals. 4. Co-operative federalism makes it possible to raise all the available resources by the Government at different levels in a coordinated way. 5. Resource Channelization is smooth in cooperative federalism.	1. In competitive federalism, the States share a vertical relationship with the Central government while competing amongst themselves. Essentially, States individually work towards attracting funds and investment to aid their developmental activities. 2. It instills a spirit of positive competition and helps utilization of successful models of development across many states. 3. It helps in reducing inter-states and intra-states inequalities through development. 4. The policy of one-size-fit-all is replaced with different policies of various states based on their own priorities within the state. 5. Each state will design their own policies for development of the cities with self-fund. The concept also promotes discipline among the states.

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It is undeniable that cooperation is key to the smooth functioning of federal design. However, if it is coupled with positive competition among the states, then the overall result would be large-scale economic development across the country.

Inter-State Relations

Inter-State Water Disputes -

India has 25 major river basins, with most rivers flowing across states.[1] As river basins are shared resources, a coordinated approach between the states, with adequate involvement of the Centre, is necessary for the preservation, equitable distribution and sustainable utilization of river water. Within India's federal political structure, inter-state disputes require the involvement of the Union government for a federal solution at two levels: between the states involved, and between the Centre and the states.

One of the major water-related issues tasked to the Centre, inter-State river disputes in India are governed by the Inter-State River Water Dispute Act, 1956. An amendment to the Act was passed by the Lok Sabha in 2019 but is yet to get the Upper House's nod.

Some examples of the River Water Disputes in India -

Rives Dispute	States Involved
1. Cauvery River	Karnataka and Tamilnadu.
2. Satluj-Yamuna Link Canal	Punjab and Haryana
3. Krishna River	Karnataka, Andhra Pradesh, Maharashtra, Telangana
4. Mahanadi River	Karnataka, Andhra Pradesh, Maharashtra, Telangana

How are river disputes resolved?

1. Under the Act, any State may request the Centre to refer an inter-State river dispute to a tribunal for adjudication.
2. If the Centre feels that negotiations cannot settle the dispute, it may set up such a Water Disputes Tribunal within one year of the complaint.
3. The tribunal must decide on the dispute within three years, which may be extended by two years.
4. However, if the matter is again referred to the Tribunal for further consideration, it must submit a report to the Centre within one year, which may be extended if deemed necessary.
5. All decisions of the Tribunal are final and binding . After its publication in the Official Gazette, a decision has the same force as an order of the Supreme Court.
6. The Centre may create a scheme to give effect to the decision of such a tribunal. It is also tasked with maintaining a data bank of each river basin in the country.

The Inter-State River Water Disputes (Amendment) Bill, 2019, however, streamlines this mechanism by dissolving all existing Tribunals and transferring ongoing disputes to the Inter-State River Water Disputes Tribunal which may have multiple benches. It also constitutes a Disputes Resolution Committee for any river dispute with Central government members, experts, and members of each party State to resolve the issue within one year, which may be extended by six months.

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Disputes unresolved by the committee will be sent to the Tribunal which comprises Central government ministers or nominees and a Supreme Court Judge. The Tribunal must decide on any dispute within one year and its decision will be final and binding on the parties involved. Also, the Centre is mandated to create a scheme to implement the Tribunal's decision.

Inter-State Councils -

The Inter-State Council is a constitutional body that has representatives of the Union government as well as chief ministers of states. The council is chaired by the prime minister, and it also has a few Union ministers as permanent invitees. The Inter-State Council is thus quite different from the new GST council, whose members are the finance ministers of states rather than their elected political heads. It is also different from the Finance Commission, whose members are technocrats tasked with providing a framework for the distribution of taxes.

Article 263 of the Constitution promulgates provisions with respect to the ISC and its establishment by the President of India. The ISC has the duties of "inquiring into and advising upon disputes between the states, discussing subject matters having common interest among states, or the Union and states, and recommending upon any subject for better coordination policy and action".

Issues associated with the functioning of ISC -

1. No periodic meetings - Inter-State Council has had just 12 meetings since it was set up in 1990. There was a gap of a decade between the 10th meeting in 2006 and the 11th meeting in 2016, and the council met again in November 2017.
2. No permanent secretariat.
3. No specific powers - Merely a discussion group.
4. Lack of political consensus.

International Examples -

1. A supranational federation such as the European Union has the economic and financial affairs council to coordinate tax policies.
2. The Australian states came together in 2005 to set up the council for the Australian federation to jointly represent their interests in Canberra.
3. The premiers of Canada's 13 provinces and territories meet as part of the council of the federation.
4. The German federation operates with a strong second house that represents the interests of the states.

Way Forward -

1. The council is as yet just a discussion group, but it should have a greater say in federal coordination in the future.
2. The GST council has an innovative voting structure, with the Union government having a third of the vote while the states share the rest equally, irrespective of the size of their population or economy.
3. That is one option for a more empowered Inter-State Council.
4. If the Inter-State Council is to emerge as the key institution to manage inter-state frictions, it first

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needs to have a regular meeting schedule.

5. The council also has to have a permanent secretariat which will ensure that the periodic meetings are more fruitful.

   There is an institutional gap in the Indian union right now—and it needs to be filled before inter-state frictions get out of control.

Emergency Provisions

The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively. The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.

1. National Emergency

Grounds for Declaration	Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion. It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
Approval Method	The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months, but was reduced by the 44th Amendment Act of 1978. However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

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Effects	1. During a national emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised. 2. During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List. 3. Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. 4. Similarly, the Parliament may extend the normal tenure of a state legislative assembly (five years) by one year each time (for any length of time) during a national emergency, subject to a maximum period of six months after the Emergency has ceased to operate. 5. Suspension of Fundamental Rights under Article 19.

2. Financial Emergency

Grounds of Declaration	Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
Approval method	A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

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Effects	1.The executive authority of the Centre extends to the giving of (a) directions to any state to observe such canons of financial propriety as may be specified in the directions; and (b) such other directions to any state as the President may deem necessary and adequate for the purpose. 2. Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state. 3. The President may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court.

3. President's Rule -

Grounds for Declaration	1. Article 356 empowers the President to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. Notably, the president can act either on a report of the governor of the state or otherwise too (ie, even without the governor's report). 2. Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.

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Approval Method	A proclamation imposing President’s Rule must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of President’s Rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the meantime. If approved by both the Houses of Parliament, the President’s Rule continues for six months6. It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
Effects	The President acquires the following extraordinary powers when the President’s Rule is imposed in a state: 1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state. 2. He can declare that the powers of the state legislature are to be exercised by the Parliament. 1. He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state. When the state legislature is thus suspended or dissolved: 1. the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him in this regard, 2. the Parliament or in case of delegation, the President or any other specified authority can make laws conferring powers and imposing duties on the Centre or its officers and authorities, 3. the President can authorize, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament, and 4. the President can promulgate, when the Parliament is not in session, ordinances for

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Proper and Improper Use -

Based on the report of the Sarkaria Commission on Centre-state Relations (1988), the Supreme Court in Bommai case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper13 .

Imposition of President's Rule in a state would be proper in the following situations:

1. Where after general elections to the assembly, no party secures a majority, that is, 'Hung Assembly'.
2. Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly.
3. Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly.
4. Where the constitutional direction of the Central government is disregarded by the state government.
5. Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
6. Physical breakdown where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

The imposition of President's Rule in a state would be improper under the following situations:

1. Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President's Rule without probing the possibility of forming an alternative ministry.
2. Where the governor makes his own assessment of the support of a ministry in the assembly and recommends imposition of President's Rule without allowing the ministry to prove its majority on the floor of the Assembly.
3. Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.
4. Internal disturbances not amounting to internal subversion or physical breakdown.
5. Maladministration in the state or allegations of corruption against the minis-tryor stringent financial exigencies of the state.
6. Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.
7. Where the power is used to sort out intraparty problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.

Indian Constitution, Polity and Governance

Syllabus Topic - Parliament and State Legislatures – structure, functioning, conduct of business, powers & privileges and issues arising out of these.

Let's see the past year questions on the above topic.

Question	keyword/Demand	Theme
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. (2021) 15	Parliamentary Committees and their hold on the executives.	Contemporary Current Affairs.
Explain the constitutional provisions under which Legislative Councils are established. Review the working and current status of Legislative Councils with suitable illustrations. (2021) 15	Legislative Councils. Analysis of their functioning.	Contemporary Current Affairs.
To what extent, in your view, the Parliament is able to ensure accountability of the executive in India? (2021) 10	Analyzing Parliament's performance in holding the executive accountable.	Contemporary Current Affairs.
"Once a speaker, Always a speaker'! Do you think the 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. (2020) 10	Role of Speaker and associated issues.	Current Affairs.
Rajya Sabha has been transformed from a 'useless stepney tyre' to the most useful supporting organ in the past few decades. Highlight the factors as well as the areas in which this transformation could be visible. (2020) 15	Relevance of the Rajya Sabha.	Contemporary Current Affairs.

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. (2019) 15	Quality of Parliamentarians.	Contemporary Current Affairs.
Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee. (2018) 10	Parliamentary Committees and their analysis (Estimates Committee)	Static.
The Indian Constitution has provisions for holding a joint session 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. (2017) 15	Joint Session of the Parliament.	Static.
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 un-enumerated privileges to continue. Assess the reasons for the absence of legal codification of the 'parliamentary privileges'. How can this problem be addressed? (2014) 12.5	Codification of the Parliamentary privileges.	Contemporary Current Affairs.
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? (2013) 10	Role of the individual legislators. Analysis of Anti-Defection Law.	Contemporary Current Affairs.

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Discuss the role of the Vice – Presidents of India as the chairman of the Rajya Sabha.(2022) 10	Role of Vice-President.	Static.

PARLIAMENT

The Legislature of the Union, which is called Parliament, consists of the President and two Houses, known as Council of States (Rajya Sabha) and House of the People (Lok Sabha). Each House has to meet within six months of its previous sitting.

Role And Functions of the Parliament -

Apart from law making, the Parliament is engaged in many other functions.

1. Legislative Function: The Parliament enacts legislation for the country.
2. Control of Executive and ensuring its accountability: Perhaps the most vital function of the Parliament is to ensure that the executive does not overstep its authority and remains responsible to the people who have elected them.
3. Financial Function: The financial powers of the Parliament involve grant of resources to the government to implement its programmes. The government has to give an account to the legislature about the money it has spent and resources that it wishes to raise. The legislature also ensures that the government does not misspend or overspend. This is done through the budget and annual financial statements.
4. Representation: Parliament represents the divergent views of members from different regional, social, economic, religious groups of different parts of the country.
5. Debating Function: The Parliament is the highest forum of debate in the country. There is no limitation on its power of discussion. Members are free to speak on any matter without fear. This makes it possible for the Parliament to analyze any or every issue that faces the nation. These discussions constitute the heart of democratic decision making.
6. Constituent Function: The Parliament has the power of discussing and enacting changes to the Constitution. The constituent powers 109 of both the houses are similar. All constitutional amendments have to be approved by a special majority of both Houses.
7. Electoral functions: The Parliament also performs some electoral functions. It elects the President and Vice President of India.
8. Judicial functions: The judicial functions of the Parliament include considering the proposals for removal of President, Vice-President and Judges of High Courts and Supreme Court.

Rajya Sabha -

Rajya Sabha or the Upper House of the Parliament is a permanent body as it cannot be dissolved. The membership of the Rajya Sabha cannot exceed 250. Out of these, the President nominates 12 members on the basis of their excellence in literature, science, art and social service and the rest are elected. At present its total membership is 245.

Rajya Sabha is the body representing States in the Indian Union. The elected members of the States' Legislative Assemblies elect the members of the Rajya Sabha on the basis of proportional representation through the single transferable vote system. But all the States do not send an equal

number of members to the Rajya Sabha. Their representation is decided on the basis of the population of respective States. Thus the bigger State gets bigger representation and the smaller ones have lesser representation. While the big State like UP has been assigned 31 seats, the smaller states like Sikkim and Tripura send only one member each. Delhi Assembly elects three members of Rajya Sabha and Pondicherry sends one member. Other Union Territories are not represented in the Rajya Sabha.

Lok Sabha -

Unlike Rajya Sabha, Lok Sabha is not a permanent body. It is elected directly by the people on the basis of universal adult franchise. It is also called the popular House or lower House. The maximum permissible membership of Lok Sabha is 550 out of which 530 are directly elected from the States while 20 members are elected from the Union Territories.

Certain number of seats have been reserved for Scheduled Castes and Scheduled Tribes in the Lok Sabha. Initially this provision was made for ten years from the commencement of the Constitution, which has been extended time and again for further ten years by various constitutional amendments.

Argument for the Bicameralism -

Countries with large size and much diversity usually prefer to have two houses of the national legislature to give representation to all sections in the society and to give representation to all geographical regions or parts of the country. A bicameral legislature has one more advantage. A bicameral legislature makes it possible to have every decision reconsidered. Every decision taken by one house goes to the other house for its decision. This means that every bill and policy would be discussed twice. This ensures a double check on every matter. Even if one house takes a decision in haste, that decision will come for discussion in the other house and reconsideration will be possible.

Sovereignty of Parliament -

Parliamentary sovereignty, also called parliamentary supremacy or legislative supremacy, is a concept in the constitutional law of some parliamentary democracies. It holds that the legislative body has absolute sovereignty and is supreme over all other government institutions, including executive or judicial bodies. It also holds that the legislative body may change or repeal any previous legislation and so it is not bound by written law (in some cases, not even a constitution) or by precedent.

The United Kingdom has Parliamentary Supremacy. In India we have Supremacy of the Constitution due to the following factors.

1. Written Constitution.
2. Federal System of the Government.
3. Judicial Review.
4. Fundamental Rights.

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Officials of the Lok Sabha -

The presiding officer of Lok Sabha is known as Speaker. The members of the House elect him. He/she remains the Speaker even after Lok Sabha is dissolved till the next House elects a new Speaker in his place. In her absence, a Deputy Speaker who is also elected by the House presides over the meetings. Both the Speaker as well as the Deputy Speaker can be removed from office by a resolution of Lok Sabha passed by a majority of all the then members of the House.

Some of the powers and functions of the speaker are given below :

1. The basic function of the Speaker is to preside over the house and conduct the meetings of the House in an orderly manner. No member can speak in the House without her permission. He/she may ask a member to finish his speech and in case the member does not obey he/she may order that the speech should not be recorded.
2. All the Bills, reports, motions and resolutions are introduced with the Speaker's permission. He/she puts the motion or bill to vote. He/she does not participate in the voting but when there is a tie i.e. equal number of votes on both sides, he/she can use his casting vote. But he/she is expected to cast her vote in a manner so that her impartiality and independence is retained.
3. His/her decisions in all parliamentary matters are final. She also rules on points of order raised by the members and her decision is final.
4. He/she is the custodian of rights and privileges of the members.
5. He/she disqualifies a member of his/her membership in case of defection. He/she also accepts the resignation of members and decides about the genuineness of the resignation.
6. In case of joint sitting of Lok Sabha and Rajya Sabha, the Speaker presides over the meeting.

Officials of the Rajya Sabha -

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. He/she presides over the meetings of Rajya Sabha. In his absence the Deputy Chairman, who is elected by its members from amongst themselves, presides over the meeting of the House. The Deputy Chairman can be removed by a majority of all the then members of Rajya Sabha. But the Chairman (Vice-President) can only be removed from his office by a resolution passed by a majority of all the then members of Rajya Sabha and agreed to by the Lok Sabha.

As the Vice -

President is an ex-officio Chairman and not a member of Rajya Sabha, he/ she is normally not entitled to vote. He/she can vote only in case of a tie.

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice president who also acts as the Chairman of the Senate–the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, impeachment, death or otherwise.7 He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

Comparing Powers of Rajya Sabha viz-a-viz Lok Sabha -

Rajya Sabha has similar powers like Lok Sabha in most of the matters. However there are certain special powers for the Rajya Sabha and some exceptions.

Unequal status with Lok Sabha -

1. Rajya Sabha has limited power with respect to budget and money bill.
2. Resolution for the discontinuance of the national emergency can only be passed by the Lok Sabha.
3. The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
4. The Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion. This is because the Council of ministers is collectively responsible only to the Lok Sabha. But, the Rajya Sabha can discuss and criticise the policies and activities of the government.

Special Powers of Rajya Sabha -

The Rajya Sabha has been given four exclusive or special powers that are not enjoyed by the Lok Sabha:

1. It can authorise the Parliament to make a law on a subject enumerated in the State List (Article 249).
2. It can authorise the Parliament to create new All-India Services common to both the Centre and states (Article 312).
3. It alone can initiate a move for the removal of the vice- president. In other words, a resolution for the removal of the vice-president can be introduced only in the Rajya Sabha and not in the Lok Sabha (Article 67).
4. If a proclamation is issued by the President for imposing national emergency or president's rule or financial emergency at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place within the period allowed for its approval, then the proclamation can remain effective even if it is approved by the Rajya Sabha alone (Articles 352, 356 and 360).

Leaders in the Parliament -

1. Leader of the House - Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House. There is also a 'Leader of the House' in the Rajya Sabha. He is a minister and a member of the Rajya Sabha and is nominated by the prime minister to function as such. The leader of the house in either House is an important functionary and exercises direct influence on the conduct of business. He can also nominate a deputy leader of the House.
2. Leader of the Opposition - In each House of Parliament, there is the 'Leader of the Opposition'. The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognised as the leader of the Opposition in that House. In a parliamentary system of government, the leader of the opposition has a significant role to play. His main functions are to provide constructive criticism of the policies of the government and to provide an alternative government. Therefore, the leader of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977. They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister. It was in 1969 that an official leader of the opposition was recognised for the first time.

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Significance of the LoP -

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

3. Whip - Though the offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively. The office of 'whip', on the other hand, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government. Every political party, whether ruling or Opposition has its own whip in the Parliament. He is appointed by the political party to serve as an assistant floor leader. He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favor of or against a particular issue. He regulates and monitors their behavior in the Parliament. The members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

Sessions of Parliament -

The president from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year, viz,

1. The Budget Session (February to May);
2. The Monsoon Session (July to September); and
3. The Winter Session (November to December).

A 'session' of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in the case of the Lok Sabha). During a session, the House meets everyday to transact business. The period spanning between the prorogation of a House and its reassembly in a new session is called 'recess'.

Office of Profit -

According to Articles 102(1)(a) and 191(1)(a) of the Constitution, an MP or MLA is barred from holding an office of profit as it can put them in a position to gain a financial benefit. "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament, (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder," .

The term isn't well defined in the Constitution.

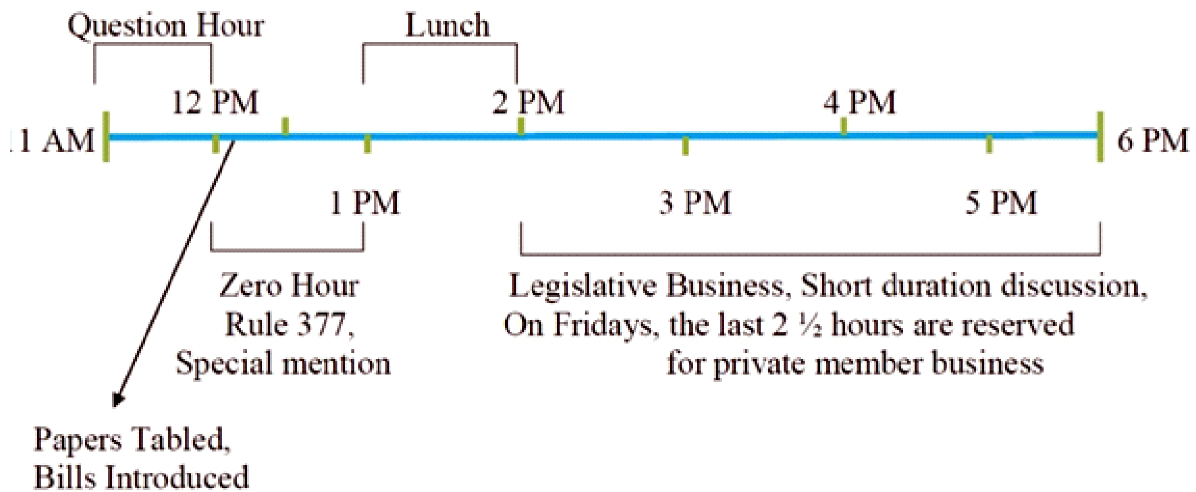
Under the Representation of People Act too, holding an office of profit is grounds for disqualification.

Tests to determine 'office of profit'

The ECI examined the rich jurisprudence of office of profit and disqualification of a Member of Legislative Assembly and enlisted three determinative tests — test of pecuniary gain, executive nature of office, test of exercise of constitutional/ executive powers while functioning as parliamentary secretary. The poll panel placed much reliance of the third test as under

Devices of Parliamentary Proceedings -

In a Parliamentary democracy, the government is collectively responsible to the Parliament for its actions. Therefore, MPs have several devices at their disposal to scrutinize the work of the government. These include asking questions on the government's policies and debating on national issues.



Question Hour -

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The questions are of three kinds, namely, starred, unstarred and short notice.

1. A starred question (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.
2. An unstarred question, on the other hand, requires a written answer and hence, supplementary questions cannot follow.
3. A short notice question is one that is asked by giving a notice of less than ten days. It is answered orally.

In addition to the ministers, the questions can also be asked to the private members. Thus, a question may be addressed to a private member if the subject matter of the question relates to some Bill, resolution or other matter connected with the business of the House for which that member is responsible. The procedure in regard to such a question is the same as that followed in the case of questions addressed to a minister.

- Zero Hour - Unlike the question hour, the zero hour is not mentioned in the Rules of Procedure. Thus it is an informal device available to the members of the Parliament to raise matters without any prior notice. The zero hour starts immediately after the question hour and lasts until the agenda for the day (ie, regular business of the House) is taken up. In other words, the time gap between the question hour and the agenda is known as zero hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

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- Motions - No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members.
- Closure Motion - It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote.
- No-Confidence Motion - Article 75 of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys the confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha can remove the ministry from office by passing a no- confidence motion. The motion needs the support of 50 members to be admitted.
- Confidence Motion - The motion of confidence has come up as a new procedural device to cope with the emerging situations of fractured mandates resulting in hung parliament, minority governments and coalition governments. The governments formed with wafer-thin majority have been called upon by the President to prove their majority on the floor of the House. The government of the day, sometimes, on its own, seeks to prove its majority by moving a motion of confidence and winning the confidence of the House. If the confidence motion is negative, it results in the fall of the government.
- Censure Motion - A censure motion is different from a no-confidence motion against an individual Minister.
- Motion of Thanks - The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year.
- Point of Order- A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker. It is usually raised by an opposition member in order to control the government.
- Resolutions - The members can move resolutions to draw the attention of the House or the government to matters of general public interest. The discussion on a resolution is strictly relevant to and within the scope of the resolution. A member who has moved a resolution or amendment to a resolution cannot withdraw the same except by leave of the House.

Legislative Procedure in Parliament -

A bill is a draft of the proposed law. There can be different types of bills. When a non-minister proposes a bill, it is called a private member's Bill. A bill proposed by a minister is described as a Government Bill. Let us now see the different stages in the life of a bill.

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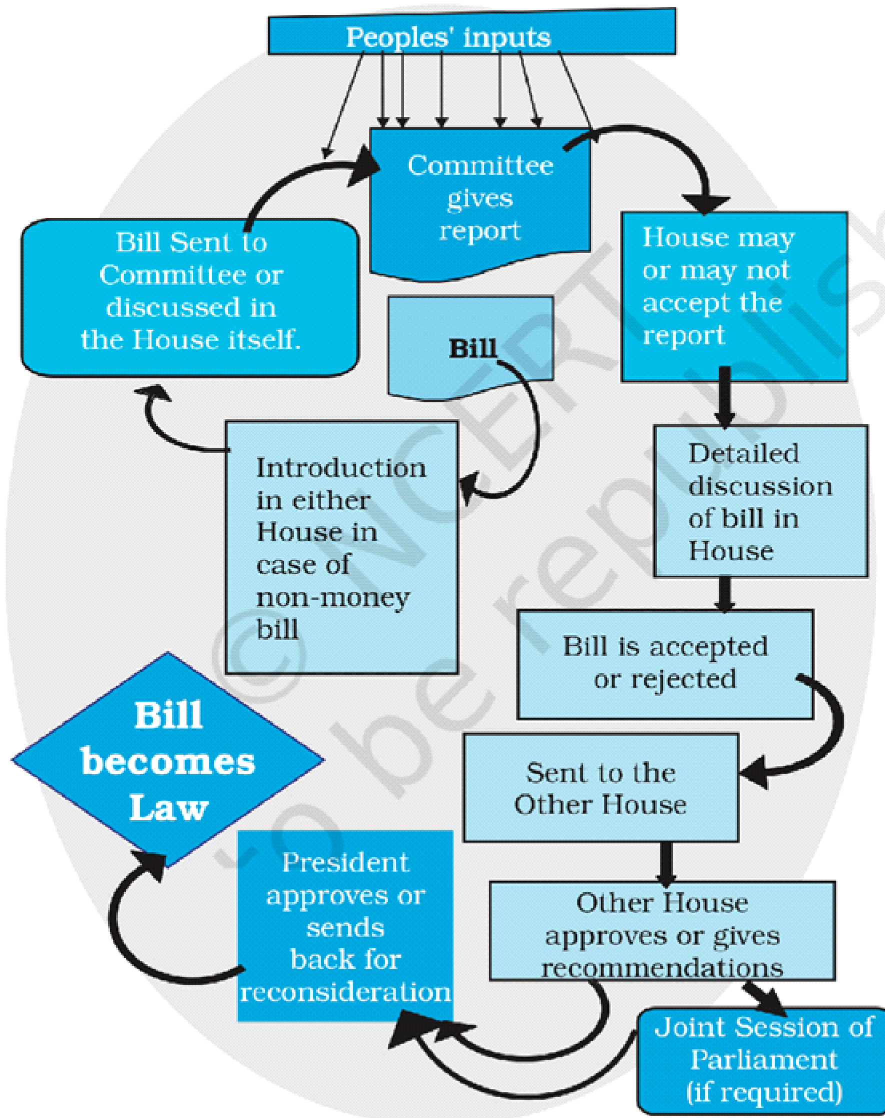

Law Making Procedure -

1. Circulation: A Bill is circulated at least two days before its introduction in the House. However, the Speaker has the discretion to waive this requirement. For example, the 2019 Bill to provide for reservation to the economically weaker sections was circulated, discussed, and passed on the same day.
2. Introduction: The Minister moves a motion to introduce a Bill in the House. He has to give seven days' notice before moving this motion. The Speaker may allow the motion to be moved at a shorter notice. The introduction of a Bill in Parliament is called the "First Reading". If the motion to introduce the Bill is defeated, the Bill cannot be introduced.
3. Reference of Bills to Committee: Once a Bill has been introduced, it may either be taken up for discussion in the House or may be referred to a Parliamentary Committee for scrutiny. A Bill may be referred to a Standing Committee by the Speaker, or either House may form a Select Committee or Joint Parliamentary Committee (JPC) to examine the Bill in detail. For instance, the Insolvency and Bankruptcy Code, 2016 was referred to a JPC for scrutiny, based on demands by several MPs. In the 16th Lok Sabha,

4. Discussion or Second Reading: Once the report of the Standing or Select Committee has been received by the House, the concerned Ministry may examine the report for suitable amendments to the Bill. In some cases, the Bill may be withdrawn by the Ministry, as happened in the case of the Financial Resolution and Deposit Insurance Bill, 2017, or there may be instances where the Bill is replaced by an entirely new legislation. The Bill is taken up for discussion. The time allocated for the debate is given to different parties based on their strength in the House.
5. Clause-by-clause Discussion: Once a general discussion on the Bill has taken place, it is discussed clause-by-clause. A motion is then raised to adopt the Bill into consideration. At this stage, both MPs and the Minister-in-charge can move amendments to the Bill. For this, a notice of one day needs to be given before the Bill is listed for consideration. An MP who has moved an amendment has to explain the reasons for moving the specific amendment. An amendment can become part of the Bill if it is accepted by a majority of MPs. This is known as the "Second Reading".
6. Final Vleoavtien:g TenhoeugMh filenxiisbtileityr fcoar nthethReunlesm?ove that the Bill be passed. At this stage the debate is confined to arguments either in support or against the Bill, as amended. A simple majority of members present and voting is needed for an Ordinary or Money Bill to become a law. This is known as the "Third Reading".
7. Other House: Once a Bill is passed by the first House, it is sent to the other House for consideration and passing, where it follows the same process.
8. Presidential Assent: Once a Bill has been passed by both Houses of Parliament, it is presented to the President for his assent. Once the President gives his assent, the Bill becomes an Act.

Various types of Bills -

1. Public Bill vs Private Bill -

Public Bill	Private Bill
1. It is introduced in the Parliament by a minister.	1. It is introduced by any member of Parliament other than a minister.
2. It reflects of the policies of the government (ruling party).	2. It reflects the stand of opposition party on public matter.
3. It has greater chance to be approved by the Parliament.	3. It has lesser chance to be approved by the Parliament.
4. Its rejection by the House amounts to the expression of want of parliamentary confidence in the government and may lead to its resignation.	4. Its rejection by the House has no implication on the parliamentary confidence in the government or its resignation.
5. Its introduction in the House requires seven days' notice.	5. Its introduction in the House requires one month's notice.
6. It is drafted by the concerned department in consultation with the law department.	6. Its drafting is the responsibility of the member concerned.

2. Ordinary Bills - As per Articles 107 and 108 of the Indian Constitution, an ordinary bill is concerned with any matter other than financial subjects. An ordinary bill is introduced in either House of the Parliament. This bill is introduced by a Minister or a Private member. There is no recommendation of the President in the case of ordinary bills. Ordinary bill can be amended/rejected by Rajya Sabha and it can be detained by Rajya Sabha for a period of six months. After being passed by both the houses of Parliament, it is presented to the President for his approval or assent under Article 111 of the Indian Constitution. There is a provision of joint sitting in case of ordinary bill.

3. Money bills - Money bills are those bills which are concerned with financial matters like taxation, public expenditure, etc. These are those bills that contain provisions that deal with all or any of the matters specified in Article 110 of the Indian Constitution. This bill is presented only in Lok Sabha. It is introduced only by the Minister. Money bill is introduced only after the President's recommendation. This bill cannot be amended or rejected by Rajya Sabha. It can be detained by Rajya Sabha for the maximum period of 14 days. Money bill is then sent to the President for his approval only after being passed by the Lok Sabha. There is no provision of joint sitting in case of money bill.

4. Financial bill - As per Article 117 of the Indian Constitution, financial bills are those bills which are concerned with financial matters but are different from money bills. Financial bills are further classified as Financial bills Categories A and B. Category A Bills contain provisions dealing with any of the matters specified in sub- clause a to f of clause 1 of Article 110 Indian Constitution and Category B Bills involve expenditure from the Consolidated Fund of India.

5. Constitutional Amendment Bill - Article 368 of the Indian Constitution is concerned with the provisions of amendment of the Constitution.

6. Ordinance Replacing Bill - This bill is brought before Parliament to replace an ordinance with or without modifications promulgated by the President under Article 123 of the Indian Constitution.

Joint Sitting of the Parliament -

Joint sitting is an extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:

1. If the bill is rejected by the other House;
2. If the Houses have finally disagreed as to the amendments to be made in the bill; or
3. If more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it.

In the above three situations, the president can summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the bill. It must be noted here that the provision of joint sitting is applicable to ordinary bills or financial bills only and not to money bills or Constitutional amendment bills. In the case of a money bill, the Lok Sabha has overriding powers, while a Constitutional amendment bill must be passed by each House separately.

Government Budget -

The Constitution refers to the budget as the 'annual financial statement'. In other words, the term 'budget' has nowhere been used in the Constitution. It is the popular name for the 'annual financial statement' that has been dealt with in Article 112 of the Constitution.

The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

In addition to the estimates of receipts and expenditure, the budget contains certain other elements. Overall, the budget contains the following:

1. The Annual Financial Statement: Summarizes the expenditure and receipts of the government.
2. Budget at a Glance: Brief overview of the budget.
3. Expenditure Budget: Details the expenditure of various ministries and departments including the Demands for Grants for each ministry.
4. Receipts Budget: Details the tax and non-tax funding plan for the government.
5. Finance Bill: Details any changes to the existing tax laws in the country.
6. Medium Term Fiscal Strategy Document: Sets three-year rolling targets for select fiscal indicators as per the Fiscal Responsibility and Budget Management Act, 2003.

Stages in the enactment of Budget -

1. Presentation of Budget - Conventionally, the budget is presented to the Lok Sabha by the finance minister. The finance minister presents the budget with a speech known as the 'budget speech'. At the end of the speech in the Lok Sabha, the budget is laid before the Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.
2. General Reading - The general discussion on budget begins a few days after its presentation. It takes place in both the Houses of Parliament and lasts usually for three to four days. During this stage, the Lok Sabha can discuss the budget as a whole or on any question of principle involved therein but no cut motion can be moved nor can the budget be submitted to the vote of the House. The finance minister has a general right of reply at the end of the discussion.
3. Scrutiny and Departmental Committees - After the general discussion on the budget is over, the Houses are adjourned for about three to four weeks. During this gap period, the 24 departmental standing committees of Parliament examine and discuss in detail the demands for grants of the concerned ministers and prepare reports on them. These reports are submitted to both the Houses of Parliament for consideration.
4. Voting for Demands for Grants - In the light of the reports of the departmental standing committees, the Lok Sabha takes up voting of demands for grants. The demands are presented ministry wise. A demand becomes a grant after it has been duly voted.
5. Passing of Appropriation Bill - The Constitution states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'. Accordingly, an appropriation bill is introduced to provide for the appropriation, out of the Consolidated Fund of India, all money required to meet:

   (a) The grants voted by the Lok Sabha.

   (b) The expenditure charged on the Consolidated Fund of India.

   No such amendment can be proposed to the appropriation bill in either house of the Parliament that will have the effect of varying the amount or altering the destination of any grant voted, or of varying the amount of any expenditure charged on the Consolidated Fund of India.
6. Passing of Finance Bill - The Finance Bill is introduced to give effect to the financial proposals of the Government of India for the following year. It is subjected to all the conditions applicable to a Money Bill. Unlike the Appropriation Bill, the amendments (seeking to reject or reduce a tax) can be

moved in the case of a finance bill. According to the Provisional Collection of Taxes Act of 1931, the Finance Bill must be enacted (i.e., passed by the Parliament and assented to by the president) within 75 days. The Finance Act legalizes the income side of the budget and completes the process of the enactment of the budget.

Funds -

1. Consolidated Fund of India - It is a fund to which all receipts are credited and all payments are debited. In other words, (a) all revenues received by the Government of India; (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and (c) all money received by the government in repayment of loans forms the Consolidated Fund of India. All the legally authorized payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.
2. Public Account of India - All other public money (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India shall be credited to the Public Account of India. This includes provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances and so on. This account is operated by executive action, that is, the payments from this account can by made without parliamentary appropriation. Such payments are mostly in the nature of banking transactions.
3. Contingency Fund of India - The Constitution authorized the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time. Accordingly, the Parliament enacted the contingency fund of India Act in 1950. This fund is placed at the disposal of the president, and he can make advances out of it to meet unforeseen expenditure pending its authorisation by the Parliament. The fund is held by the finance secretary on behalf of the president. Like the public account of India, it is also operated by executive action.

Issues associated with the functioning of the Parliament -

1. Continuous disruptions and washout of sessions.
2. Taking ordinance route for Legislations. Ex. Farm laws.
3. Decrees in the number of bills sent to committees for scrutiny - In 16th Lok Sabha only 33% of bills were referred to committees. In the UK every bill is sent to the committee for scrutiny.
4. Introduction of bill without pre-legislative scrutiny.
5. No mechanism for answering the questions which require inter-ministerial expertise or relate to broader government policy.
6. In the 16th Lok Sabha, question hour has functioned in Lok Sabha for 82% of the scheduled time, while in Rajya Sabha it has functioned for 43%. A lower rate of functioning may reflect time lost due to disruptions which reduces the number of questions that may be answered orally.
7. Increasing criminalisation of politics - In 17th Lok Sabha 43% of MPs face criminal charges, the figure for the 16th was 34%.

Impacts of Disruption -

1. Decline in overall productivity of the Parliament.
2. Bills are passed hurriedly without much debate.
3. Disregards Parliamentary practices and democratic norms.

Parliamentary Reforms -

1. Need for pre and post Legislative Impact Assessment to improve the quality of legislation.
2. Compulsory presence of PM during the question hour.
3. Ensuring effective functioning of DSRCs through longer tenures and promoting specialization based on academic backgrounds.
4. Womens' reservation in the Parliament.
5. Setting up special tribunals for cases against MPs.
6. Mandating attendance of Ministers before committees.
7. Parliamentary oversight of regulators.
8. Review of Whip System and Anti-Defection Law. Whip should be applicable only when the Government is in danger.

PARLIAMENTARY COMMITTEES

A Parliamentary Committee means a Committee which is appointed or elected by the House or nominated by the Speaker/Chairman and which works under the direction of the Speaker/Chairman and presents its report to the House or to the Speaker/Chairman and the Secretariat for which is provided by the Lok Sabha/Rajya Sabha Secretariat.

Origin -

As is the case with several other practices of Indian parliamentary democracy, the institution of Parliamentary Committees also has its origins in the British Parliament. The first Parliamentary Committee was constituted in 1571 in Britain. The Public Accounts Committee was established in 1861. In India, the first Public Accounts Committee was constituted in April 1950. According to P.D.T. Achary, former Secretary General of the Lok Sabha, "The practice of regularly referring bills to committees began in 1989 after government departments started forming their own standing committees. Prior to that, select committees or joint committees of the houses were only set up to scrutinize in detail some very important bills, but this was few and far between."

Need of Parliamentary Committees -

Given the complex nature of Parliamentary work and limited time available during Parliamentary sessions, MPs are unable to scrutinize issues in detail on the floor of the House. Therefore, a major part of Parliament's work is done through the Parliamentary Committees. In these Committees, parties are usually allocated seats in proportion to their strength in the House.

Committees take up a range of matters for close examination.

1. They review proposed laws, oversee activities of the government, and scrutinize government expenditure.
2. The reports submitted by Committees allow for informed debate in Parliament, and therefore increase the efficiency and expertise of Parliament.
3. They also provide a forum to build consensus across party lines and enable consultations with independent experts and stakeholders.

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Types of Committee

Parliament has a few Standing Committees which are permanent in nature. It may also set up Ad Hoc Committees.

Ad hoc Committees are constituted for a specific purpose. For example, a Joint Committee of the two Houses was set up to examine pricing of telecom licenses and spectrum.

There are four types of Standing Committees,

(i) Departmentally Related Standing Committees,

(ii) Financial Committees,

(iii) Other Standing Committees, and

(iv) Administrative Committees.

- Departmentally Related Standing Committees (DRSC): There are 24 DRSCs, each overseeing a set of Ministries. Their primary functions are-

(i) To examine Bills referred to them,

(ii) To scrutinize Demand for Grants, and

(iii) To examine issues selected by them.

In the course of such examinations, DRSCs may interact with government officials, consult key stakeholders, or invite comments from experts.

DRSCs perform following functions -

1. Examining Bills - Once a Bill has been introduced, it may be referred to the relevant DRSC for detailed scrutiny. After concluding its examination, the DRSC lays its report in Parliament.
2. Examining Demand for Grants: After the Budget is presented, the House adjourns for a recess. During this period, the DRSCs examine the Demand for Grants of all Ministries under its purview. They examine the funds allocated to various schemes and programmes under each Ministry, and also look at the trends of utilization of these funds.
3. Examination of Issues: Every year, DRSCs select subjects for detailed examination. After the DRSC submits its report to Parliament, the Ministry responds to its recommendations. Subsequently, the DRSC submits an Action Taken Report to the House. For example, in 2016, the Standing Committee on Power submitted its report on Energy Access in India.

Financial Committees -

There are three types of Financial Committees. These Committees facilitate Parliamentary scrutiny over government expenditure. Similar to DRSCs, Financial Committees may also meet government officials, and consult key stakeholders and experts while examining the issues.

1. Public Accounts Committee - This committee was set up first in 1921 under the provisions of the Government of India Act of 1919 and has since been in existence. At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha).

Functions of Public Account Committee -

- To examine the audit reports of CAG tabled in Parliament.
- To examine the appropriation accounts and the finance accounts of the Union government and any other accounts laid before the Lok Sabha.
- To examine the money spent on any service during a financial year in excess of the amount granted by the Lok Sabha for that purpose.
- In scrutinizing the appropriation accounts and the audit report of CAG on it, the committee has to satisfy itself that (a) The money that has been disbursed was legally available for the applied service or purpose (b) The expenditure conforms to the authority that governs it (c) Every re-appropriation has been made in accordance with the related rules

Limitations of Public Account Committee -

(a) It is not concerned with the questions of policy in a broader sense.

(b) It conducts a post-mortem examination of accounts (showing the expenditure already incurred).

(c) It cannot intervene in the matters of day-to-day administration.

(d) Its recommendations are advisory and not binding on the ministries.

(e) It is not vested with the power of disallowance of expenditures by the departments.

(f) It is not an executive body and hence, cannot issue an order. Only the Parliament can take a final decision on its findings.

2. Estimates Committee - The origin of this committee can be traced to the standing financial committee set up in 1921. The first Estimates Committee in the post-independence era was constituted in 1950 on the recommendation of John Mathai, the then finance minister. Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The Rajya Sabha has no representation in this committee.

Functions of Estimates Committee -

- To report what economies, improvements in organization, efficiency and administrative reform consistent with the policy underlying the estimates, can be affected
- To suggest alternative policies in order to bring about efficiency and economy in administration
- To examine whether the money is well laid out within the limits of the policy implied in the estimates
- To suggest the form in which the estimates are to be presented to Parliament.

Limitations of Estimates Committee -

(a) It examines the budget estimates only after they have been voted by the Parliament, and not before that.

(b) It cannot question the policy laid down by the Parliament.

(c) Its recommendations are advisory and not binding on the ministries.

(d) It examines every year only certain selected ministries and departments. Thus, by rotation, it would cover all of them over a number of years.

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(e) It lacks the expert assistance of the CAG which is available to the Public Accounts Committee.

(f) Its work is in the nature of a postmortem.

Broad Issues associated with the Parliamentary Committees -

- Short Tenure - The committees have short tenure of only 1 year. Due to this MPs fail to develop specialization.
- Decreasing number of bills being sent to the Committees - In the 16th Lok Sabha, only 27% of the Legislations were being sent to the respective committees.
- Discussions on the reports of Committees like Estimates Committee, Public Account Committee aren't held regularly.
- There have been instances when reports by parliamentary committees are presented either after the demands have been discussed, or on the day of discussion. This provides very less time to consider the report.
- DRSCs examine a range of subjects related to their department or ministry. While some invite suggestions from the public on these issues, there is no consistency in the manner of public participation across these committees and on issues.
- No mechanism to regularly assess the performance and functioning of the committees.
- Lack of adequate expert support.
- No proper rule or mechanism regarding which bills to be sent to committees.

Way Forward -

1. It may be useful to make the process of reference of Bills to these committees compulsory/an automatic process. An exemption could be made with the specific approval of the Speaker/Chairman after detailed reasons for the same.
2. The committees can be given a fixed timeline to come up with the recommendation and present its report which can be decided by the Speaker/Chairman.
3. To ensure quality work in the committees, experts in the field may be invited who could bring with them the necessary domain knowledge and also help introduce the latest developments and trends in that field from worldwide.
4. The committees should not limit themselves to discussing just the budget proposals and endorsing them with a few qualifications here or amendments there. They should also come up with suggestions for the Ministry to take up new initiatives and people-friendly measures.
5. Mandatory discussion of the committee reports.
6. All discussions in the Parliamentary Standing Committee should be frank and free. For this, it may be provided that during the discussions of the committee meetings, no whip of the party would apply to them.
7. Provide proper technical support to the committees like its provided in the United Kingdom.

PARLIAMENTARY PRIVILEGES

Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members. The Constitution has also extended the parliamentary privileges to those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees. These include the attorney general of India and Union ministers.

It must be clarified here that the parliamentary privileges do not extend to the president who is also an integral part of the Parliament.

Need of Parliamentary Privileges -

They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honor nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities.

Source of Parliamentary Privileges -

The Indian Constitution specifies the powers and privileges of Parliament in Article 105 and those of State legislatures in Article 194. In brief, they (a) provide freedom of speech in Parliament subject to other provisions of the Constitution and standing orders of the House; (b) give immunity for all speeches and votes in Parliament from judicial scrutiny; and (c) allow Parliament (and State legislatures) to codify the privileges, and until then, have the same privileges as the British Parliament had in 1950. Till now, Parliament and State legislatures have not passed any law to codify their privileges. There are few Important sources of the privileges of the MPs.

1. Constitution.
2. Rules of both houses.
3. Parliamentary Conventions.
4. Judicial Interpretations.
5. Various laws made by the Parliament.

Parliamentary privileges can be classified into two broad categories:

1. Those that are enjoyed by each House of Parliament collectively, and
2. Those that are enjoyed by the members individually.

Collective Privileges	Individual Privileges
1. Right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. 2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters. 3. It can punish members as well as outsiders for breach of its 4. privileges or its contempt by reprimand, admonition or imprisonment. 5. The courts are prohibited to inquire into the proceedings of a House or its committees. 6. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.	1. They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases. 2. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament. 3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.

Breach of Privileges and Contempt of House -

1. When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the member individually or of the House in its collective capacity, the offense is termed as breach of privilege and is punishable by the House."
2. Any act or omission which obstructs a House of Parliament, its member or its officer in the performance of their functions or which has a tendency, directly or indirectly to produce results against the dignity, authority and honor of the House is treated as a contempt of the House.

Issues associated with the Parliamentary Privileges-

1. Since the privileges aren't codified yet, the legislators aren't subject to judicial scrutiny.
2. Too wide power - Legislators have the power to be the sole judges to decide what their privileges are, what constitutes their breach, and what punishment is to be awarded in case of breach.
3. Against the principle of 'Limited Power' as the Parliament solely decides everything.
4. Articles 105 and 194 clearly lay down that the "power, privileges and immunities of the legislature shall be as may from time to time be defined by the legislature, and until so defined, shall be those of the House of Commons". The expression "until so defined" does not mean an absolute power not to define privileges at all.
5. Misuse of the privileges - Often it has been observed that the privileges are misused by the legislators. Ex. In 2017, The Karnataka Legislative Assembly found two journalists guilty of breach of its privilege and sentenced them to jail. This followed certain articles written by the journalists which were alleged to defame some legislators. This case once again raises the question of what should constitute privilege of the legislative bodies.
6. India follows the system of privileges enjoyed by the British Parliament. But point to note is that the British Parliament is sovereign unlike the Indian Parliament.

   Hence there is urgent need to codify the Parliamentary Privileges as this will subject them to the Fundamental Rights and Judicial Scrutiny which will strengthen the Indian democracy.

   The Constitution Review Commission headed by Justice M.N. Venkatachaliah had recommended that privileges should be defined and delimited for the free and independent functioning of the legislatures.

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Indian Constitution, Polity and Governance

Syllabus Topic - Structure, Organization and Functioning of the Executive and the Judiciary.

THE PRESIDENT OF INDIA -

The Union executive consists of the President, the Vice- President, the Prime Minister, the council of ministers and the attorney general of India. The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION -

The President is elected not directly by the people but by members of electoral college consisting of:

1. The elected members of both the Houses of Parliament;
2. The elected members of the legislative assemblies of the states; and
3. The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.

Thus, the nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. When an assembly is dissolved, the members cease to be qualified to vote in the presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.

POWERS AND FUNCTIONS OF THE PRESIDENT -

We have already seen that the President is the formal head of the government. In this formal sense, the President has 85 wide ranging executive, legislative, judicial and emergency powers. In a parliamentary system, these powers are in reality used by the President only on the advice of the Council of Ministers. The Prime Minister and the Council of Ministers have support of the majority in the Lok Sabha and they are the real executive. In most cases, the President has to follow the advice of the Council of Ministers. Constitutionally, the President has a right to be informed of all important matters and deliberations of the Council of Ministers. The Prime Minister is obliged to furnish all the information that the President may call for. The President often writes to the Prime Minister and expresses his views on matters confronting the country.

Discretionary Powers of the President -

1. The President can send back the advice given by the Council of Ministers and ask the Council to reconsider the decision. In doing this, the President acts on his (or her) own discretion. When the President thinks that the advice has certain flaws or legal lacunae, or that it is not in the best interests of the country, the President can ask the Council to reconsider the decision. Although the Council can still send back the same advice and the President would then be bound by that advice, such a request by the President to reconsider the decision would naturally carry a lot of weight. So, this is one way in which the president can act at his own discretion.
2. The President also has veto power by which he can withhold or refuse to give assent to Bills (other than Money Bill) passed by the Parliament. The President can send the bill back to the Parliament asking it to reconsider the bill. If the Parliament passes the same bill again and sends it back to the

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President, then, the President has to give assent to that bill. However, there is no mention in the Constitution about the time limit within which the President must send the bill back for reconsideration. This means that the President can just keep the bill pending with him without any time limit. This gives the President an informal power to use the veto in a very effective manner. This is sometimes referred to as 'pocket veto'.

3. When after an election no party got a majority to form a government, the President uses his discretionary powers to choose the Prime Minister.

Analysis of the President's position in the Indian Polity -

In a parliamentary system, the Council of Ministers is dependent on the support of the majority in the legislature. This also means that the Council of Ministers may be removed at any time and a new Council of Ministers will have to be put in place. Such a situation requires a Head of the state who has a fixed term, who may be empowered to appoint the Prime Minister and who may symbolically represent the entire country. This is exactly the role of the President in ordinary circumstances. Besides, when no party has a clear majority, the President has the additional responsibility of making a choice and appointing the Prime Minister to run the government of the country.

Is the President merely a Rubber Stamp ?

Article 53 of the Constitution says that "the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution." It means the President exercises these powers only on the aid and the advice of the Council of Ministers.

1. The Indian President is not and cannot be a mere rubber stamp. He does not directly exercise the executive authority of the Union, but he can disagree with the decision of the Council of Ministers, caution them, counsel them, and so on.
2. The President can ask the Cabinet to reconsider its decisions. It is another matter that if the Cabinet, after such reconsideration, sends the same proposal back without any change, the President will have to sign it. That is because under the Cabinet system of government, it is the Cabinet which is responsible for the government's decisions.
3. The President is in no way personally responsible for those decisions which he or she approves.
4. The Constitution of India wants the President to be vigilant and responsive, and gives the freedom to him or her to take a broader view of things Un-influenced by the narrow political view of the executive.
5. When no party gets a majority after an election, the President plays a crucial role in whom to invite to form the government.

Governor

Historical Background -

1. Since 1858, when India was administered by the British Crown, provincial Governors were agents of the Crown, functioning under the supervision of the Governor-General.
2. Over the following decades, the Indian nationalist movement sought various reforms from British rule, aiming for better governanceThese efforts culminated in the Government of India Act, 1935, which came into force in 1937, bringing provincial autonomy. Post this, the Indian National Congress commanded a majority in six provinces.

3. With the 1935 law, the Governor was now to act in accordance with the advice of Ministers of a province's legislature, but retained special responsibilities and discretionary power.
4. Upon Independence, when the Provisional Constitution of 1947 was adapted from the 1935 Act, the post of Governor was retained but the phrases 'in his discretion, 'acting in his discretion, and 'exercising his individual judgment', were omitted.

Important Constitutional Provisions -

1. Article 163(1) - There shall be a council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion
2. Article 163(2) - If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion

Discretionary Powers of the Governor -

- Reserve any Bill for the consideration of the President under Article 200
- To appoint the Chief Minister of State under Article 164(1) including inviting the leader of the single largest party in case of a hung verdict to prove majority on the floor of the House.
- To dismiss the ministry as the Chief Minister and other Ministers shall hold office during the pleasure of the Governor under Article 164(1)
- Governor's report under Article 356 in case of failure of Constitutional machinery in States.
- Governor's responsibility for certain regions such as the Tribal Areas in Assam and responsibilities placed on the Governor under Article 371A (Nagaland), 371C (Manipur), 371H (Arunachal Pradesh).

Tussle between various State Governments and the Governor -

1. In Maharashtra the Governor refused to accept the date of election of the Speaker recommended by the State government. Whereas in the other states mentioned above, there is a constant tussle on Governors acting as ex-officio Chancellors of State Universities.
2. Kerala State Government Vs Governor over the Vice Chancellor Issue.
3. Non-acceptance of the advice of the Council of Ministers was witnessed regarding summoning of the State Assembly under Article 174 in the state of Rajasthan.

Issues associated with the office of Governor -

1. Appointment based on affiliations - Mostly retired politicians and bureaucrats are appointed.
2. Critics argue that the Governor's recommendation for President's Rule in a state has not always been based on 'objective material', but on political whim or fancy.
3. Removal - No established process for removal. Many times governors are removed arbitrarily.
4. The constitutional mandate to act on advice of the council of ministers is not clearly distinguished from the statutory authority as chancellor, resulting in many conflicts between the governor and the state government.

You can also cite the points that we discussed earlier.

Important Supreme Court Judgements -

1. Nabam Felix judgment

- The Supreme Court decided that the Governor can summon, prorogue and dissolve the House, only on the aid and advice of the Council of Ministers with the Chief Minister as the head and not at his own.
- The Court gave its decision based on discussion in Constituent Assembly debates whereby it was finalized not to give discretionary power to the Governor under Article 174.

2. Shamsher Singh v. State of Punjab (1974) - Supreme Court said: "The Governor has no right to refuse to act on the advice of the Council of Ministries. Such a position is antithetical to the concept of 'responsible government'."

3. BP Singhal Vs UOI 2010 - The Supreme Court held that the Governor has dual role - a) Agent of the Center, b) Head of the State.

4. S.R. Bommai v Union of India (1994) - SC held explicitly that in situations where there is a hung assembly (where no political party has obtained a clear majority of seats), the final decision rests not with the various feuding parties but with the concerned legislature through a "floor" test. This case allowed the Supreme Court to investigate the reasons which formed the basis of a Governor's report.

Recommendations -

1. Sarkaria Commission has recommended the following criteria which must be considered while appointing Governors of state:

- He should be eminent in some walk of life.
- He should be a person from outside the State.
- He should be a detached figure and not too intimately connected with the local politics of the State; and
- He should be a person who has not taken too great a part in politics generally and particularly in the recent past.
- In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance.

2. 2nd Administrative Reforms Commission: The Inter-State Council should formulate guidelines on how governors should exercise discretionary power.
3. Venkatachaliah Commission: It recommended allowing Governors to complete their five-year terms ordinarily.
4. There is a need to devise a 'Code of Conduct' that should define certain 'norms and principles' that should guide the governor's discretion and constitutional mandate.

Indian Constitution, Polity and Governance

Syllabus Topic - Structure, Organization and Functioning of the executive and the judiciary - Ministries and Departments of the government.

Prime Minister

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority and Prime Minister is the real executive authority (de facto executive). In other words, the president is the head of the State while the Prime Minister is the head of the government.

Appointment -

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the president. However, this does not imply that the president is free to appoint anyone as the Prime Minister. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.

Powers and Functions -

In relation to the Council of Ministers	1. He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister. 2. He allocates and reshuffles various portfolios among the ministers. 3. He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
In relation to the President	(a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation; (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and (c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

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In relation to the Parliament	1. He advises the President with regard to summoning and proroguing of the sessions of the Parliament. 2. He can recommend dissolution of the Lok Sabha to the President at any time. 3. He announces government policies on the floor of the House.
Other Powers and Functions	1. He is the chairman of the NITI Ayog (which succeeded the planning commission), National Integration Council, InterState Council, National Water Resources Council and some other bodies. 2. He plays a significant role in shaping the foreign policy of the country. 3. He is the chief spokesman of the Union government.

Coalition Government -

When several political parties join hands to form a government and exercise political power on the basis of a common agreed programme/agenda, we can describe the system as coalition politics or coalition government.

Benefits and Drawbacks of Coalition Government -

Benefits	Drawbacks
• Accommodates diverse interests. • More representative in nature. • Consensus based policy making. • Reduces tyranny of the government or any singly political party. • Strengthens the federal fabric of Indian polity.	• Unstable in nature. • Undermines the role of cabinet as the coordination committee of the coalition gains importance. • Affects the pace of decision making. • Coalition partners often play blame games and thereby escape from both collective responsibility as well as individual responsibility.

Central Council of Ministers

As the Constitution of India provides for a parliamentary system of government modeled on the British pattern, the council of ministers headed by the prime minister is the real executive authority of our politico-administrative system.

Constitutional Provisions -

1. Article 74—Council of Ministers to aid and advise the President.
2. Article 75–Other Provisions as to Ministers.
3. Article 77–Conduct of Business of the Government of India - The President shall make rules for the

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more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Nature of Advice by Ministers -

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President.1 Further, the nature of advice tendered by ministers to the President cannot be enquired by any court. This provision emphasizes the intimate and the confidential relationship between the President and the ministers.

Collective Responsibility of the Council of Ministers -

Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of omission and commission. They work as a team and swim or sink together. Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.

Individual Responsibility of Minister -

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister.

Comparison between Council of Ministers and Cabinet

Council of Ministers	Cabinet
It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
It is a wider body consisting of 60 to 70 ministers.	It is a smaller body consisting of 15 to 20 ministers.
Its functions are determined by the cabinet.	It directs the council of ministers by taking policy decisions which are binding on all ministers.
It is collectively responsible to the Lower House of the Parliament.	It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.
It is vested with all powers but in theory.	It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.

Role of Cabinet -

1. It is the highest decision-making authority in our politico- administrative system.
2. It is the chief policy formulating body of the Central government.
3. It is the supreme executive authority of the Central government.
4. It is the chief coordinator of Central administration.
5. It is an advisory body to the president and its advice is binding on him.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.
9. It deals with all foreign policies and foreign affairs.

Kitchen Cabinet - The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the 'Inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power. This informal body consists of the Prime Minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem. It advises the prime minister on important political and administrative issues and assists him in making crucial decisions. It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister.

Cabinet Committees

They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.

Benefits of Cabinet Committees -

1. Cabinet Committees help in scrutinizing the issue in depth.
2. Saves valuable time.
3. Improved coordination - In majority of the cases, the members of a committee are known to each other. This familiarity ensures greater coordination in the functioning of the committee.
4. The recommendation of a committee is much more acceptable than an individual's recommendations. It is also easier for implementation.
5. Facilitates better coordination among various departments.

Drawbacks -

1. Membership depends upon political considerations.
2. Meetings aren't held regularly.
3. Junior ministers are rarely appointed.
4. Involvement of PM in every committee.

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Structure, Organization & Functions of the Executive and The Judiciary

The Supreme Court of India

Unlike the American Constitution, the Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws.

At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges). In 2019, the center notified an increase in the number of Supreme Court judges from thirty-one to thirty-four, including the Chief Justice of India. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2019.

Appointment -

The judges of the Supreme Court are appointed by the President of India. As far as the appointment of the Chief Justice of India (CJI) is concerned, over the years, a convention had developed whereby the senior-most judge of the Supreme Court was appointed as the Chief Justice of India.

Remaining judges of the Supreme Court are appointed by the President based upon recommendation of the Collegium. The Collegium consists of the Chief Justice of India and other four senior most judges of the Supreme Court.

Qualification -

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president.

Removal -

A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal. The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment.

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/ Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/ Chairman is to constitute a three-member committee to investigate the charges.

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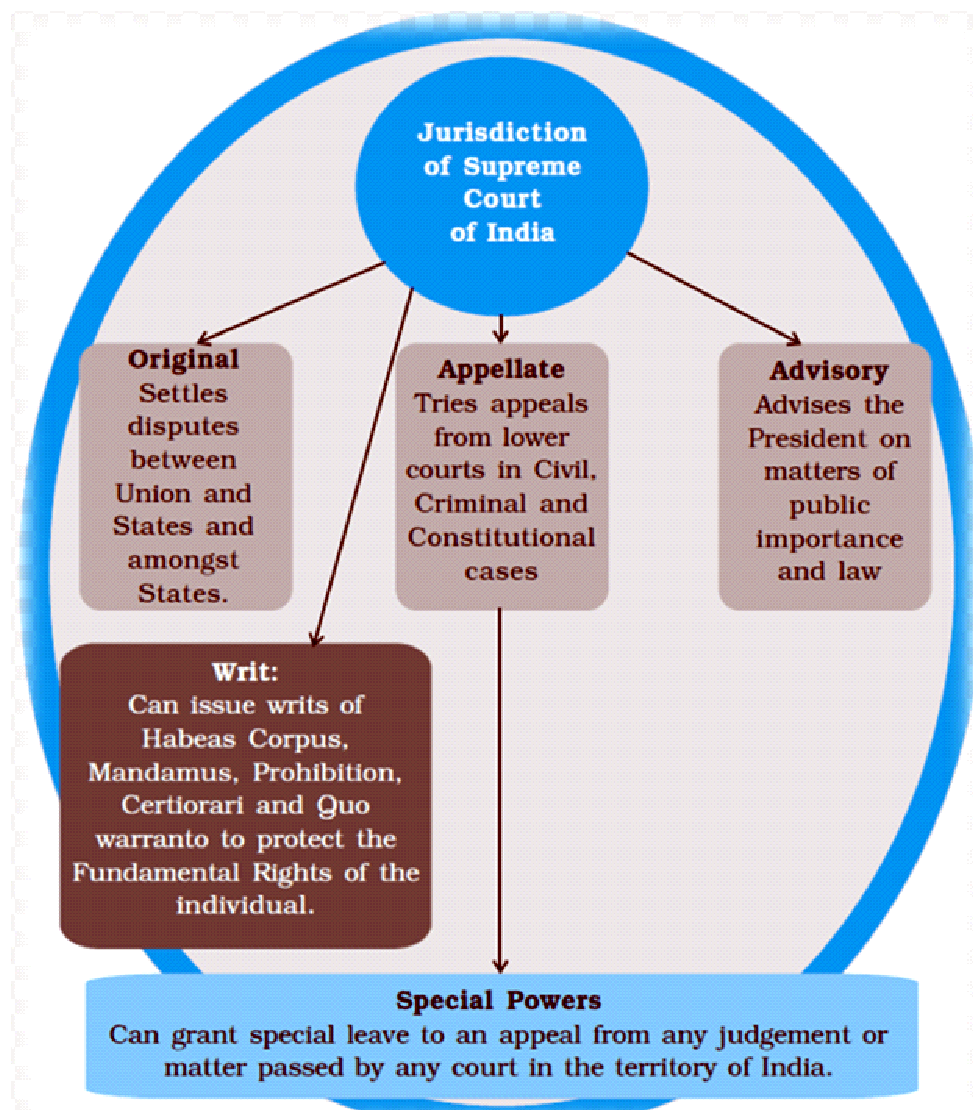
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of misbehavior or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.

   No judge of the Supreme Court has been impeached so far.

Jurisdiction and Power -



- As a Court of Record, the Supreme Court has two powers:

(a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.

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(b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to ? 2,000 or with both.

Contempt of court may be civil or criminal. Civil contempt means wilful disobedience to any judgment, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which–(i) scandalizes or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

- Also, The Supreme Court has the power of Judicial Review through which it can examine the legislative and executive actions.
- The Supreme Court is the final interpreter of the Constitution.

High Court

In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts. The judiciary in the state consists of a high court and a hierarchy of subordinate courts. The high court occupies the top position in the judicial administration of a state.

Appointment -

The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

Other judges of the High Court are appointed by the President based upon the recommendations of the Collegium.

Qualifications of Judges

A person to be appointed as a judge of a high court, should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have held a judicial office in the territory of India for ten years; or

   (b) He should have been an advocate of a high court (or high courts in succession) for ten years.

Transfer of Judges

The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.

Removal of the High Court Judge - Same as per the removal of the Supreme Court Judge as discussed above.

Jurisdiction and Powers -

Like the Supreme Court, the high court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state. It is the protector of the Fundamental Rights of the citizens. It is vested with the power to interpret the Constitution. Besides, it has supervisory and consultative roles.

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1. Original Jurisdiction It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:

(a) Matters of admiralty and contempt of court.

(b) Disputes relating to the election of members of Parliament and state legislatures.

(c) Regarding revenue matter or an act ordered or done in revenue collection.

(d) Enforcement of fundamental rights of citizens.

(e) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

(f) The four high courts (i.eCalcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

2. Writ Jurisdiction

Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase 'for any other purpose' refers to the enforcement of an ordinary legal right. The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction

3. Appellate Jurisdiction

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

4. Supervisory Jurisdiction

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may–

(a) Call for returns from them;

(b) Make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;

(c) Prescribe forms in which books, entries and accounts are to be kept by them; and

(d) Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

The High Courts also have power of Judicial Review and Contempt of Court like the Supreme Court of India.

INDEPENDENCE OF JUDICIARY

Judicial independence is the concept that the judiciary should be independent from the other branches of government. That is, courts should not be subject to improper influence from the other branches of government or from private or partisan interests.

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Provisions for securing the independence of the Judiciary -

- Properly written qualification criteria for the Supreme Court and High Court Judges under Article 124 and 217 respectively.
- The salaries and allowances of the judges is also a factor which makes the judges independent as their salaries and allowances are fixed and are not subject to a vote of the legislature.
- Tough process for the removal of the Supreme Court and High Court Judges.
- Tenure Security.
- Power to punish for the contempt.

Importance of the Judicial Independence -

Judicial independence ensures, in particular, that judges are free to conclude that actions taken, or decisions made by the Government (or even by others) are in breach of the law, and that they are in particular in breach of individual's rights, including of course their fundamental, or human, rights - and to decide on the appropriate remedy.

Judicial Accountability

Judicial Accountability means being responsible for decisions and actions. Transparency in the functioning and decision making process is one of the most crucial aspects that ensures accountability.

Current Mechanism -

1. Article 124 and 217 - Impeachment of Judges for proved misbehavior and incapacity.
2. In house disciplinary procedures.

Need for Judicial Accountability -

1. This will improve efficiency and quality of the judgements delivered.
2. Public trust in the Judiciary will be boosted.
3. Process of appointment of Judges lacks transparency.
4. Pendency of cases has reached an unprecedented level.
5. Unlike the Executive and Legislature, the Judiciary isn't under any legal obligation to prepare annual reports.

Challenge -

The principle of Judicial Independence may come in the way of Judicial Accountability.

Way Forward -

1. The Parliament should enact a law that mandates the Judiciary to publish annual reports.
2. Setting up a Permanent Disciplinary Committee to deal against complaints regarding judges.
3. Regular performance and evaluation system.
4. Clarifying the extent and scope of RTI.

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Maintaining equilibrium between Judicial Independence and Accountability is the need of hour.

1. In SP Gupta Vs UOI Case, Supreme Court agreed that the Judiciary is accountable to the public.
2. High Court of Odisha has published an Annual Performance Report in 2021 -
   - Explained the reasons for delays and backlogs.
   - Introspected the challenges.

JUDICIAL REVIEW

The Indian Constitution, unlike the Constitution of USA, expressly conferred power of judicial review by Article 32 on the Supreme Court of India and Article 226 and 227 by the State High Courts. The judiciary is the protector of the Constitution and guardian of the rights of the citizens. Therefore, it may even strike down the Executive, Administrative actions or Legislative Acts as unconstitutional. For rule of law to prevail judicial independence is of absolute necessity.

Constitutional Provisions -

1. Article 372 (1) establishes the judicial review of the pre-constitution legislation.
2. Article 13 declares that any law which contravenes any of the provisions of the part of Fundamental Rights shall be void.
3. Articles 32 and 226 entrusts the roles of the protector and guarantor of fundamental rights to the Supreme and High Courts.

IX Schedule and Judicial Review -

The Schedule contains a list of central and state laws which cannot be challenged in courts and was added by the Constitution (First Amendment) Act, 1951.

IR Coelho Case -

The Supreme Court of India passed a judgment on the 11th of January, 2007 in which it upheld the basic structure of the constitution laid down in the Kesavananda Bharati case, the court also declared that the laws inserted in the Ninth Schedule are not free from Judicial Review. This was seen in the case of I.R. Coelho (Dead) By Lrs vs State Of Tamil Nadu & Ors.

JUDICIAL ACTIVISM

It is the assertive role played by the judiciary to force the other organs to discharge their constitutional duties effectively. Judicial activism has primarily arisen due to the failure of the executive and legislatures to act. As a result of that, judicial activism is triggered when the courts become activists and compel the relevant authority to act. This has led lawmaking in India to assume new dimensions.

Examples of the Judicial Activism -

1. Supreme Court institutionalizing the PIL mechanism.
2. NGT order regarding the implementation of Plastic Ban.

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Benefits -

- Judicial Activism plays a significant role in providing justice to the underprivileged sections of the society.
- Courts indulging in Judicial Activism are far more efficient than the conservative courts.
- Checks the tyranny of the executive.
- Provides speedy solutions to the issues.

Drawbacks -

- Violates the principle of separation of power.
- Repeated interference of courts dilutes the faith of people in the existing government machinery.
- Undermines the authority of the democratically elected legislature.
- There may be involvement of personal bias and prejudices.

Judicial activism may be good as a rare exception but an activist judiciary is neither good for the country nor for the judiciary itself as it would encourage the government to appoint committed judges.

"Judicial activism should not become judicial authoritarianism" - Soli Sorabjee.

Judicial Overreach

Judicial Overreach is the situation when the Judiciary assumes the power of Legislature or Executive. Judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative and executive, thereby encroaching upon the legislature and executive's domains.

Examples of Judicial Overreach -

1. The Supreme Court banned the firecrackers citing the rising air pollution - Arun Gopal vs UOI case 2017.
2. Judicial legislation in the Vishakha Cases for preventing the sexual harassment of women at the workplace.
3. Denying the executive any role in the appointment of judges by instituting a collegium which is said to be an extra-constitutional body.
4. SC directed the Central Government to conduct the NEET exam.

Critical Analysis of Judicial Overreach -

- Judicial Overreach has played a positive role in certain aspects. For many years Vishakha Guidelines were enforced due to lack of legislation.
- It has played a crucial role in environmental protection. Ex. Banning old diesel cars over a certain period.
- The Supreme Court has played a crucial role in maintaining the federal nature of Indian Polity by bringing down Article 356 under Judicial Review in the SR Bommai Case.
- However the Judicial Overreach violates the principle of Separation of Powers.

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- Since the Judiciary is a non-elected body, it undermines the people's mandate.
- Leads to uncertainty in the law making and increases the burden of the judiciary.

Unlike the other two branches of the constitution, the judiciary as an institution is not directly accountable to people. This very lack of accountability requires the judiciary to practice self-restraint, act responsibly within the ambit of its constitutional powers.

Judicial Restraint

The philosophy behind the doctrine of judicial restraint is that there is broad separation of powers under the Constitution, and the three organs of the State, the legislature, the executive, and the judiciary, must respect each other, and must not ordinarily encroach into each other's domain, otherwise the system cannot function properly. Also, the judiciary must realize that the legislature is a democratically elected body, which expresses the will of the people (however imperfectly) and in a democracy this will is not to be lightly frustrated or thwarted.

Examples -

S.R. Bommai v Union of India (1994) is a famous example often stated to show restraint practiced by Judiciary. The judgement stated that in certain cases the judicial review is not possible as the matter is political. According to the court, the power of article 356 was a political question, thus refusing judicial review. The court stated that if norms of judiciary are applied on matters of politics, then it would be entering the political domain and the court shall avoid it.

Importance of Judicial Restraint for the Judiciary -

1. Of the three organs of the state, only one, the judiciary, is empowered to declare the limits of jurisdiction of all three organs. This great power must therefore be exercised by the judiciary with the utmost humility and self restraint.
2. The errors of the lower courts can be corrected by the higher courts, but there is none above the Supreme Court to correct its errors.
3. If the judiciary does not maintain restraint and crosses its limits there will be a reaction which may do great damage to the judiciary, its independence, and its respect in society.

Some people justify judicial activism by saying that the legislature and executive are not properly performing their functions. The reply to this argument is that the same charge is often levelled against the judiciary. Should the legislature or the executive then take over judicial functions? If the legislature and the executive do not perform their functions properly, it is for the people to correct them by exercising their franchise properly, or by peaceful and lawful public meetings and demonstrations, and/or by public criticism through the media and by other lawful means. The remedy is not in the judiciary taking over these functions, because the judiciary has neither the expertise nor the resources to perform these functions.

PUBLIC INTEREST LITIGATION

Public interest litigation (PIL) refers to litigation undertaken to secure public interest and demonstrates the availability of justice to socially-disadvantaged parties and was introduced by Justice P. N. Bhagwati. It is a relaxation of the traditional rule of locus standi.

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Public Interest Litigation (PIL) emerged in the 1970s as a legal innovation by academics, social activists and activist lawyers, ably supported by judges of the Supreme Court. In Hussainara Khatoon and Sunil Batra , the court developed a new approach to secure access by the poor and the marginalized to justice — by relaxing the strict rules of standing to allow representative standing and modifying the rules of judicial notice to allow the court to take suo motu notice of public events and transform them into litigation. However, the "public interest litigation" doctrine was shaped and developed in three key cases: Fertilizer Corporation Kamgar Union, S.P. Gupta and People's Union for Democratic Rights . Here, the court articulated a constitutional and political justification for this radical innovation in Indian constitutional adjudication — it allows politically and legally marginalized constituencies (that have no effective representation in the political or administrative state and no regular access to the courts) a special dispensation to approach the High Court and Supreme Court to redress their grievances either directly or through representatives. The special constitutional role of the higher courts to respond to these specific political failures of the state justifies the modification of procedures and remedies that override conventional norms of the separation of powers.

Merits and Success Stories -

1. Vigilant citizens can find an inexpensive remedy because there is only a nominal rate of court fees.
2. Litigants can focus attention on and achieve results pertaining to larger public issues especially in the field of human rights, consumer welfare and the environment.
3. Benefitted Socially disadvantaged groups who lack sufficient legal knowledge.
4. There are a lot of other cases which involve public participation or Public Interest Litigation as one of the main causes for the case and its judgment.

- In the case of Sheela Barse v. State of Maharashtra, the case dealt with a historical judgment on the issue of custodial violence against women. The Court held that there must be separate police lockups for women convicts to protect them from further trauma and brutality.
- In the case of M.C. Mehta v. Union of India[9], it led to the landmark judgment which lashed out at the civic authorities allowing untreated sewage from Kanpur tanneries making its way into the Ganges.
- The court in Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan had emphasized how such petitions "bring justice to people who are handicapped by ignorance, indigence, illiteracy"

Demerits -

1. Many people started handling PIL as a tool for harassment because frivolous cases can be filed without heavy court fee as compared to private litigations.
2. Due to the flexibility of character of the PIL, the opposite party gets an opportunity to ascertain the precise allegation and respond to specific issues.
3. The judiciary has been criticized due to the overstepping of its jurisdiction and that it is unable to implement its orders effectively.
4. PIL is being misused by the public agitating for private grievances in the grab of public interest by seeking publicity rather than supporting the public cause.
5. Frivolous PILs can affect the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention.

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Way Forward -

1. The Supreme Court had also issued eight directions in its Balwant Singh Chaufal judgment to help constitutional courts separate genuine PIL petitions from the barmy ones.
2. SC had asked every High Court to frame its own rules to encourage bona fide PIL petitions and curb motivated ones.

Some of these directions included verifying the credentials of the petitioner before entertaining the plea; checking the correctness of the contents; ensuring the petition involves issues of "larger public interest, gravity and urgency" which requires priority; ensuring there is no personal gain, private motive or oblique motive behind the PIL petition; ensuring that it is aimed at redressal of genuine public harm or public injury.

Collegium System and NJAC

Before going through NJAC Case, Let us first discuss the procedure of appointment of Judges in higher Judiciary (Evolution of Collegium system)

Constitutional Provision -

1. The Chief Justice of India and the other judges of the Supreme Court are appointed by the President under clause (2) of Article 124 of the Indian Constitution. It is mentioned in Article 124 that appointment by the President is to be done "after consultation" with judges of the Supreme Court, as the President may "deem necessary".
2. Article 217, which deals with the appointment of High Court judges, says the President should consult the CJI, Governor, and Chief Justice of the High Court concerned. Further, the tenure of a CJI is until they attain the age of 65 years, while High Court judges retire at 62 years.

Collegium System -

1. Under the system, the Chief Justice of India along with four senior-most Supreme Court judges recommend appointments and transfers of judges.
2. A High Court Collegium, meanwhile, is led by the incumbent Chief Justice and the two senior most judges of that court.
3. The Collegium system is not rooted in the Constitution. Instead, it has evolved through judgments of the Supreme Court.
4. In this system, the government's role is limited to getting an inquiry conducted by the Intelligence Bureau (IB) if a lawyer is to be elevated as a judge in a High Court or the Supreme Court.
5. The government can also raise objections and seek clarifications regarding the Collegium's choices, but, if the Collegium reiterates the same names, the government is bound, under Constitution Bench judgments, to appoint them to the post.

Appointment of Judges of Higher Judiciary -

1. Chief Justice of India - As per the Conventions, the outgoing CJI recommends his successor. The President appoints the recommended Judge as new CJI.
2. Other Judges of Supreme Court - President appoints based upon the recommendations of the Collegium (CJI and four senior most Judges of SC).

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3. Chief Justice of High Court - Appointed by the President as per the recommendation of Collegium.
4. High Court Judges - High Court judges are recommended by a Collegium comprising the CJI and two senior-most judges. The proposal, however, is initiated by the outgoing Chief Justice of the High Court concerned in consultation with two senior-most colleagues.

Evolution of Collegium System -

Given the ambiguity of the word "consult", this method of appointment has often been challenged in the courts, leading to cases.

1. First Judges Case (1981) - It was held that recommendation made by the CJI to the President can be refused for "cogent reasons". This meant the President or the executive would be in a more influential position in deciding appointments.
2. The Second Judges Case (1993) - Introduced the Collegium system, holding that "consultation" really meant "concurrence". It added that it was not the CJI's individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the Supreme Court.
3. Third Judges Case (1998) - SC on President's reference expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues.

Criticism -

1. Critics have pointed out that the system is non-transparent, since it does not involve any official mechanism or secretariat.
2. It is seen as a closed-door affair with no prescribed norms regarding eligibility criteria, or even the selection procedure.
3. There is no public knowledge of how and when a collegium meets, and how it takes its decisions.
4. There are no official minutes of collegium proceedings.
5. The 230th report of the Law Commission of India submitted in 2009, pointed to the possibility of nepotism prevailing.

National Judicial Appointment Commission

In August 2014, Parliament passed the Constitution (99th Amendment) Act, 2014 along with the National Judicial Appointments Commission (NJAC) Act, 2014, providing for the creation of an independent commission to appoint judges to the Supreme Court and high courts to replace the collegium system. The two Bills were ratified by the required number of State Legislatures and got the President's assent on December 31, 2014.

In order to replace the system, which received criticism over the years for its lack of transparency, the Constitution (99th Amendment) Act, introduced three key Articles- 124 A, B, and C and amended clause 2 of Article 124. Article 124A created the National Judicial Appointments Commission (NJAC), a constitutional body to replace the collegium system, Article 124B vested in this NJAC the power to make appointments to both the Supreme Court and the various high courts, and Article 124C accorded express authority to Parliament to make laws regulating the the NJAC's functioning.

Composition of NJAC -

1. The Chief Justice of India as the ex officio Chairperson
2. Two senior-most Supreme Court Judges as ex officio members
3. The Union Minister of Law and Justice as ex officio member
4. Two eminent persons from civil society (to be nominated by a committee consisting of the Chief Justice of India, Prime Minister of India and the Leader of Opposition in the Lok Sabha; one of the eminent persons to be nominated from SC/ST/OBC/minorities or women)

The NJAC Act, meanwhile, prescribed the procedure to be followed by the Commission to appoint judges. The Chief Justice of India and Chief Justices of the high courts were to be recommended by the NJAC based on seniority while SC and HC judges were to be recommended on the basis of ability, merit, and "other criteria specified in the regulations". The Act empowered any two members of the NJAC to veto a recommendation if they did not agree with it.

Criticism of National Judicial Appointment Commission -

1. Focused on 'Who' rather than 'How'.
2. Didn't focus upon what merits the nomination decisions would be based upon.
3. Breaches Judicial Independence - NJAC took away the "primacy of the collective opinion of the Chief Justice of India and the two senior-most Judges of the Supreme Court of India" as their collective recommendation could be vetoed or "suspended by majority of three non-Judge members".

Independence of Judiciary and the "basic structure" doctrine

→ The principle of the independence of the judiciary was derived from the theory of separation of powers, enshrined in Article 50. Dr. B.R. Ambedkar, the Chairman of the drafting committee, said in the Constituent Assembly: "There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. "

→ The "basic structure" doctrine meanwhile is a product of the *Kesavananda Bharati* judgement (1973). Article 368 grants Parliament a virtual plenary power to amend the Constitution but the Bench had held that Constitution could not be read in a manner that destroyed or infracted the document's basic structure.

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On October 16, 2015, the five-judge bench ruled with a 4:1 majority, that the NJAC was "unconstitutional" and violated the "basic structure of the constitution".

"It is difficult to hold that the wisdom of appointment of judges can be shared with the political-executive. In India, the organic development of civil society has not as yet sufficiently evolved. The expectation from the judiciary, to safeguard the rights of the citizens of this country, can only be ensured, by keeping it absolutely insulated and independent, from the other organs of governance," Justice J.S. Khehar had said.

Justice Chelameshwar, meanwhile, pointed out in his dissent that "transparency" was a vital factor in "constitutional governance" and the collegium proceedings were "absolutely opaque" and "inaccessible" to the public and history. He wrote that the "assumption" that the primacy of the judiciary in the appointment of judges was a basic feature of the Constitution was "flawed" and supported Mr. Rohatgi's submission that the absolute exclusion of the executive was violative of the basic feature of "checks and balances''.

Significantly, the Bench also admitted that all was not well even with the collegium system of "judges appointing judges", and that the time was ripe to improve the system of judicial appointments, inviting the government to work on improving the collegium system.

Judicial Reforms

Important Data -

1. Overall Pending Cases in Judiciary - 3.6 Crore (As per Economic Survey 2018-19).
   - Supreme Court - 60,000
   - High Courts - 38 Lac.
   - Subordinate Courts - 3 Crore
2. Low Judge to Population Ratio - 20 Per Million.
3. Pending Appointment of High Court Judges - More than 400 (All over India)
4. Average Number of Sittings - Supreme Court - 193 Days, High Courts - 210 Days.

Issues associated with the Indian Judicial System -

1. Lack of Transparency in appointment process - Opaque Collegium System.
2. High Pendency of cases.
3. Shortage of Judicial infrastructure - Of a total of ₹ 981.98 crore sanctioned in 2019-20 under the Centrally Sponsored Scheme (CSS) to the States and Union Territories for development of infrastructure in the courts, only ₹ 84.9 crore was utilized by a combined five States, rendering the remaining 91.36% funds unused.
4. Planning and budgetary exercises undertaken without consulting Judiciary.
5. Shortage of Staff - More than 400 posts of HC Judges are vacant across the country.
6. Nepotism in the appointment process - 230th Law Commission Report.
7. Complex language of law and overlapping of various laws.
8. Procedurally Delays.

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Way Forward -

1. Creation of a National Judicial Infrastructure Authority of India (NJIAI), which will take control of the budgeting and infrastructure development of subordinate courts in the country - CJI NV Ramana.
2. Enhancing ICT capabilities of the existing courts.
3. Strengthening 'Alternative Dispute Resolution' mechanisms such as Lok Adalat, Gram Nyayalaya etc.
4. Cooling off period for judges before taking any new government assignment post retirement.
5. Adopting uniform methodology to collect judicial data and streamlining the court procedures.
6. Encouraging out of court amicable settlements.
7. Promoting use of local languages in the High Courts.
8. Creation of All India Judicial Services.

Law Commission Report on reforms in Judiciary -

1. Eliminating Uncle Judges - Judges whose Kith and Kin are practicing in the HC shouldn't be posted in the same HC.
2. Enhancing the retirement age of SC and HC judges by 3 years.
3. Decentralization of the High Court work - More benches in State.
4. Reserved Judgements on the Constitutional matters should be delivered within a reasonable period of time.

PRAYAAS INSTITUTE OF EXCELLENCE

Indian Constitution, Polity and Governance

Syllabus Topic - Separation of powers between various organs, dispute redressal mechanisms and institutions.

Let us see the past year questions pertaining to the above topic.

Question	Keyword/ Demand	Theme
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. (2020) 15	Judicial Legislation	Contemporary Current Affairs.
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 (2019) 10	Principle of Checks and Balance in the Indian Constitution.	Static.
Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine. (2018) 15	Issue between Lt. Governor and democratically elected legislature.	Current Affairs.
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 institution of 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? (2016) 12.5	Executive vs Legislature.	Current Affairs.

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Doctrine of Separation of Powers -

Separation of powers refers to the division of a state's government into branches, each with separate, independent powers and responsibilities, so that the powers of one branch are not in conflict with those of the other branches. The typical division is into three branches: a legislature, an executive, and a judiciary, which is sometimes called the trias politica model. It can be contrasted with the fusion of powers in parliamentary and semi-presidential systems where there can be overlap in membership and functions between different branches, especially the executive and legislative, although in most non-authoritarian jurisdictions, the judiciary almost never overlaps with the other branches, whether powers in the jurisdiction are separated or fused.

- The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.
- The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.
- The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

Objective -

Division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. Separation of power prevents misuse of power or accumulation of power in a few hands, separation of power safeguards the society from arbitrary and irrational power of the state.

Benefits of Separation of Powers -

Concentration of power in one center/authority, can lead to maladministration, corruption, nepotism and abuse of power.

Separation of powers helps in-

1. Preventing autocracy
2. Create efficient administration
3. Independency of power is maintained
4. Prevents the legislature from enacting arbitrary or unconstitutional laws

Constitutional Provisions regarding Separation of Powers -

1. Article 50: This article puts an obligation over the State to separate the judiciary from the executive. But, since this falls under the Directive Principles of State Policy, it is not enforceable.
2. Articles 53 and 154: It provides that the executive power of the Union and the State shall be vested with the President and the Governor and they enjoy immunity from civil and criminal liability.
3. Articles 121 and 211: These provide that the legislatures cannot discuss the conduct of a judge of the Supreme Court or High Court. They can do so only in case of impeachment.
4. Article 123: The President, being the executive head of the country, is empowered to exercise legislative powers (Promulgate ordinances) in certain conditions.

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5. Article 361: The President and Governors enjoy immunity from court proceedings., they shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

System of Checks and Balance -

- The judiciary has the power of judicial review over the actions of the executive and the legislature
- The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per Article 13 (if it violates Fundamental Rights).
- It can also declare unconstitutional executive actions as void.
- The legislature also reviews the functioning of the executive through various parliamentary procedures.
- Although the judiciary is independent, the judges are appointed by the executive.
- The legislature can also alter the basis of the judgment while adhering to the constitutional limitation.

Exceptions -

1. While discharging the function of disqualifying its members and impeachment of the judges, the legislature discharges the functions of the judiciary.
2. The legislature besides exercising law-making powers exercises judicial powers in cases of breach of its privilege.
3. Impeachment of higher judiciary judges and the President by legislature.
4. The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions. Administrative tribunals which are a part of the executive also discharge judicial functions.
5. Judicial Legislations through various Supreme Court Orders.
6. The Executive sometimes exercises law making power under delegated legislation.

Evaluation of the doctrine of Separation of Powers -

The Indian Constitution doesn't follow the principle of Separation of Powers strictly. Instead it has a system of checks and balances. There lies a delicate balance among these three organs which has been maintained most of the time since independence. However there are some instances when this balance is disturbed -

1. NJAC Act was unanimously passed by the Parliament and 14 State Legislatures. Still the Judiciary nullified the Act under the Judicial Review.
2. Andhra Pradesh High Court decision on three capital formula encroached in the executive domain.
3. Excessive use of the ordinance route by the executive even when there is no urgent need.
4. Domination of the executives in the tribunals such as NGT, Foreigners Tribunal.
5. Supreme Court interpreting that the President should deal with the mercy petitions within reasonable time.

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Indian Constitution, Polity and Governance

Syllabus Topic -
Devolution of powers and finances up to local levels and challenges therein.

Let's see the past year questions on the above topic.

Question	Keyword/ Demand	Theme
The strength 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. (2020) 15	Challenges faced by the local institutions.	Contemporary Current Affairs.
"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. (2019) 15	Role/ Condition of the women in the local institutions.	Contemporary Current Affairs.
Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources can the Panchayats look out for financing development projects? (2018) 15	Financial Condition of the local institutions.	Contemporary Current Affairs.
"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. (2017) 10	Analysis of the local self-government system in India.	Contemporary Current Affairs.
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. (2015) 12.5	Politicization of the local self-government institutions.	Contemporary Current Affairs.

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To what extent, in your opinion, has the decentralization of power in India changed the governance landscape at the grassroots? (2022) 10	Performance analysis of the local self-governing bodies.	Contemporary Current Affairs.

So we can conclude that the major focus of the questions has been the challenges faced by the local self-governing institutions.

Basic terms and their meaning -

- Decentralization is referred to as constitutional transfer of powers from central government to lower levels in a political-administrative and territorial hierarchy.
- Delegation: Delegation means grant of authority from a superior to a subordinate, to be enjoyed not as a right but as a derived concession and that also to be exercised at the pleasure of the superior.
- Democratic decentralization: The term 'democratic decentralization' on the other hand means grant of authority by a superior to a subordinate as a right to be enjoyed by the subordinate and not as a concession.
- Devolution usually transfers responsibilities for services to municipalities that elect their own mayors and councils, raise their own revenues, and have independent authority to make investment decisions.

Constitutional Provisions -

1. Article 40: Steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.
2. 73rd Constitutional Amendment.
3. Article 243 to 243O

Issues and Challenges pertaining to the Local Bodies -

- No clear cut bifurcation of matters mentioned in the 11th Schedule from the Jurisdiction of the State Governments.
- Only minor civic functions are exclusively assigned to PRIs. Other functions overlap with the functions of the State Government.
- Low level of revenue generation at the Panchyat level - Mainly due to thin tax domain and low tax collections capacity of PRIs.
- PRIs have limited discretion and independent in expenditure.
- The funds received by PRIs from the State Governmnts are untimely and insufficient.
- Most of the funds from the State Governments come with terms and conditions.
- Considerable command of the State Government nominated functionaries over the functioning of the PRIs.
- Failure of the State Governmebts to setup State Finance Commisiions on timely basis.
- Centrally Sponsored schemes do not clearly state which level of panchayats will have what role.

Other Miscellaneous Issues -

1. Staff Shortage.
2. Low level of skill sets.
3. Poor infrastructure(Physical and ICT)
4. Postponement of local elections.
5. Low level of participation from the people.

Way Forward (Recommendations of 2nd ARC) -

- Application of principle of subsidiarity in decentralization: Principle of subsidiarity means that what can be done at lower levels of government, should not be centralised at higher levels.
- Clear delineation of functions of local governments vis-avis Stte Governments and among different tiers of local governments.
- Effective devolution of functions and resources accompanied by capacity building and accountability.
- Integrated view of local services and development through convergence of programs and agences and above all, 'Citizen-centricity'
- Effective devolution in financial terms and convergence of services for the citizens as well as citizens' centric governance structures.
- States must undertake comprehensive activity mapping about all the matters mentioned in the 11th Schedule based on subsidiarity principle.
- A model law for local governments to be circulated.
- Funds to be devolved for all levels of panchayats.

CASTER STUDIES -

1. Recently, Tamil Nadu government has increased the financial powers of local rural bodies.
2. Gujarat and Rajasthan - Seperate Cadre for Panchayat.
3. Tamil Nadu govenment has sanctioned plan to build 600 Village Secretariat for better coordination among PRIs and the State Government.

URBAN LOCAL BODIES

Important Constitutional Provisions -

1. 74th Constitutional Amendment.
2. 12th Schedule of the Constitution.
3. Article 243P to 243Z-G of the Constitution.

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Important Data -

As per Indian Institute of Human Settlement -

1. Own Source Revenue of ULBs is less than 50% of the total revenue.
2. Property Tax - 0.15% of GDP in India against the global average of 0.6 to 1% of the GDP.

Sources of Revenue for the Urban Local Bodies -

1. Collection from tax and non-tax sources as assigned to them.
2. Devolution of shared taxes and duties as per recommendation of the State Finance Commission.
3. Grants-in-aid from the state government.
4. Grants-in-aid from the Government of India under Centrally Sponsored Schemes.
5. Share of State Govt. against Centrally Sponsored Schemes of Govt. of India.
6. Award of Central Finance Commission Grant.

Issues and Challenges associated with Urban Local Bodies in India -

- Poor state of municipal finances- narrow, inflexible and non-buoyant tax base, broken financial accounting and audit systems, and the inability of municipalities to levy and recover taxes and user charges.
- The absence of a modern spatial planning framework, public utility design standards and land titling in cities takes a huge toll on economic growth and productivity, environmental sustainability and living conditions in cities.
- The municipalities are heavily under-staffed and there are significant gaps in the skills required for urban management.
- Multiple institutions like parastatals, development authorities, public works departments, and ULBs themselves report to different departments of the state government and have been entrusted with overlapping responsibilities.
- The distribution of power between elected officials at the city level (mayors and councilors) and central administrative service cadres at the city / district levels are highly tilted towards the latter.
- Legal boundaries of municipal bodies have not been expanded to include urban sprawl, as a result, many properties fall outside their jurisdiction.
- The 74th Constitutional Amendment (CAA) to decentralize urban governance has not translated into reality, affecting citizen participation in cities.

Other Miscellaneous Issues -

1. Corruption
2. Lack of coordination among various departments (under central & state government) and local bodies leads to haphazard and delayed execution of plans.
3. Untimely elections
4. Unplanned urbanization - Impacting sanitation and waste management.

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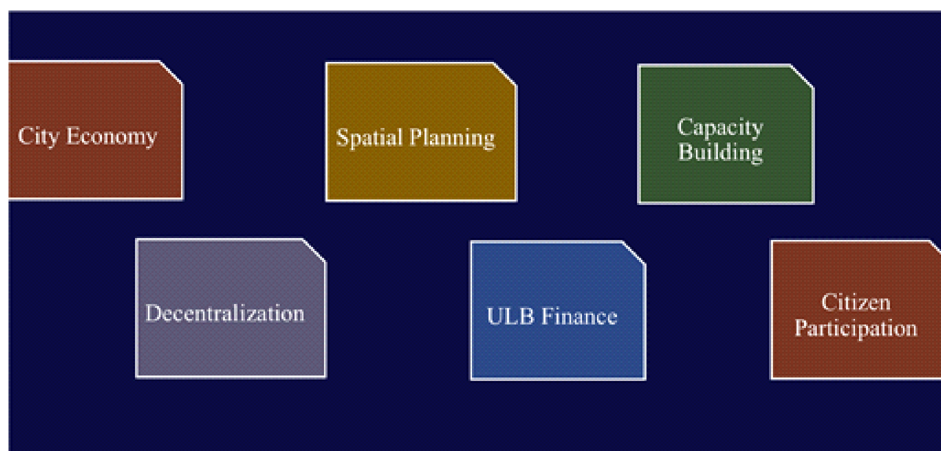
Way Forward (2nd ARC Recommendations) -

- Urban Local Bodies must have a stake in state assembly - Legislative Council can be recast as Council for Local Bodies.
- Chairpersons or members at all levels should be directly elected.
- There should be clear delineation of functions for each level of urban local bodies.
- Carrying activity mapping for ULBs.

Recommendations of NITI Ayog -

Figure 39.1: Key strategies to improve urban governance by 2022-23



- Setting City Economic Councils in larger cities to speed up the Business clearance process. This will improve the ease of doing business.
- A quarterly city dashboard capturing city-level investments, GDP and employment growth, financial position and financial performance, and status of infrastructure projects should be developed for data-driven decisions.
- Metropolitan governance systems are also needed in million-plus cities. There is a strong case for having a two-tier governance structure where all local functions are transferred to the ward committees and citywide services, such as transportation, water supply, sewerage, etc., are vested with the city council or regional authorities.
- There is urgent need for a synchronous and modern national framework for the spatial planning of cities that replaces the current Urban Development Plans Formulation and Implementation (UDPFI) guidelines
- Governance should be devolved to the ward and area levels to enhance downstream accountability mechanisms.
- Ward committees and area sabhas should be activated with a technology- enabled 'Open Cities Framework' and the use of digital tools for feedback and reporting.

Case Studies -

1. Indore Municipal Corporation raises 250 Crore by issuing Green Bonds to fund Solar Projects across the City.
2. The Vadodara Municipal Corporation in Gujarat, which listed a five-year Rs100-crore bond at the stock exchange on March 23 for 14 projects under the Amrut scheme, had received 36 bids on the BSE BOND platform for Rs 1,007 crore.

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Indian Constitution, Polity and Governance

Syllabus Topic - Appointment to various Constitutional Posts, Powers, Functions and Responsibilities of various Constitutional Bodies.

Let's see the past year questions on the above topic.

Question	Keyword/ Demand	Theme
How have the recommendations of the 14th Finance Commission of India enabled the states to improve their fiscal position? (2021) 10	Improving the present fiscal position and role of the 14th FC recommendations in it.	Current Affairs.
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. (2020) 15	Feasibility and expected outcomes by imparting the Constitutional Status.	Static.
In the light of recent controversy regarding the use of the Electronic Voting Machine (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India? (2018) 10	Election Commission of India-Challenges.	Contemporary Current Affairs.
“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. (2018) 10	CAG	Static.
How is the Finance Commission of India constituted? What do you know about the terms of reference of the recently constituted Finance Commission? Discuss. (2018) 15	Finance Commission basics.	Static.

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Whether the National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine. (2018) 10	Powers of NCSC	Current Affairs.
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. (2016) 12.5	Analysis of the Powers of CAG.	Contemporary Current Affairs.
Discuss the role of the National Commission for Backward Classes in the wake of its transformation from a statutory body to a constitutional body. (2022) 10	Role of NCBC after attaining constitutional status.	Current Affairs.

Here the questions are of analytical nature. Hence in this section we will discuss the Important bodies keeping in mind the current context.

Election Commission of India

The Election Commission of India (ECI) is a constitutional body. It was established by the Constitution of India to conduct and regulate elections in the country. Article 324 of the Constitution provides that the power of superintendence, direction, and control of elections to parliament, state legislatures, the office of the president of India, and the office of vice-president of India shall be vested in the election commission. Thus, the Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments.

Issues and Challenges associated with ECI -

1. Complete control of the executive over the appointment of Chief Election Commissioners and other Election Commissioners - Not a sign of a vibrant constitutional democracy
2. Short Tenures - Seven CECs have been appointed during 2015 to 2022.
3. No independent staff and secretariat - This hampers effective and speedy functioning of the ECI.
4. Unequal status of Elections Commissioners as compared to the Chief Election Commissioner in the removal process. This puts limitations on effective functioning of the ECs.

5. Despite being the registering authority under Section 29A of the Representation of the People Act, 1951, it has no power to de-register them even for the gravest of violations.
6. Article 324(2) of the Constitution envisages Parliamentary law for appointment of the Election Commissioners. But no law has been enacted till the date.

Way Forward -

1. There should be a Collegium system for the appointment of CEC and other ECs.
2. Consultation with multiple stakeholders should be done prior to appointment of Commissioners for enhancing the trust.
3. Expenses of the ECI should be Charged upon the Consolidated Fund of India to enhance the financial autonomy of the ECI.
4. ECI should have an independent staff and secretariat for the functioning - This will insulate the personnel from executive interference.
5. ECI should be empowered with power to de-register the Political Parties.

Value Addition Points -

1. Dinesh Goswami Committee 1990 - CEC and ECs be appointed by the President in consultation with the Chief Justice of India and the Leader of the Opposition (and in case the Leader of the Opposition was not available, then consultation be held with the leader of the largest opposition group in the Lok Sabha).
2. National Commission to review Working of the Constitution - CEC and ECs should be appointed on the recommendation of a body comprising the Prime Minister, the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha, the Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha.
3. 'Fourth Branch Institution' - Institutions perceived variously as influencing or acting in addition to the three branches of the democratic government i.e. legislative, executive and judiciary. Healthy constitutional democracies need "Fourth branch institutions" (integrity institutions). ECI is one of the examples of this type.
4. The South African and Kenyan Constitutions have dedicated constitutional provisions for "fourth branch institutions" such as Human Rights Commissions, Election Commissions, and so on, calling these "integrity institutions", and requiring them to be "independent." The appointments process for such bodies normally involves multiple stakeholders from different wings of the state.

   Elections are the bedrock of democracy and the EC's credibility is central to democratic legitimacy. Hence, the guardian of elections itself needs urgent institutional safeguards to protect its autonomy. It is time that action is taken to depoliticise constitutional appointments and the EC empowered to de-register parties for electoral misconduct. It is a step needed towards restoring all-important public faith in the institution.

Comptroller and Auditor General

The Comptroller and Auditor General is the sole authority prescribed in the Constitution entrusted with the responsibility of audit of accounts of the Union and of the States. It is the duty of the Comptroller and Auditor General to audit receipts and expenditure of the Union and each State and the Union Territory Governments. The audit reports of the Comptroller and Auditor General are placed before Parliament or the legislature of the State or the Union Territory, as the case may be.

The duties of the Comptroller and Auditor General also extend to audit of Government companies and corporations and bodies and authorities in accordance with the laws made by the legislature and rules made there under.

Significance of Office of CAG -

At the core of Parliamentary form of Governance is the responsibility of the Executive to the Legislature and the financial control of the executive by the legislature. In order to enable the Legislature to discharge this function properly, it is essential that this Legislature should be aided by an agency, fully independent of the Executive, who would scrutinize the financial transaction of the Government and bring the results of such scrutiny before the Legislature. The office of CAG has been provided for in the Constitution of India for this purpose. Thus, as opined by Dr Ambedkar, the Comptroller and Auditor-General of India is the most important officer under the Constitution of India because he is to be the guardian of the public purse and it is his duty to see that not a rupee is spent out of the Consolidated Fund of India or of a State without the authority of the appropriate Legislature. In short, he shall be the impartial head of the audit and accounts system of India.

Importance given to CAG -

1. An oath identical with that prescribed for the Chief Justice and Judges of the Supreme Court, including the words "I will uphold the Constitution and the laws"
2. Same removal as that of a Supreme Court Judge.

Issues and Challenges associated with CAG -

1. Complete executive control over the appointment process.
2. Overcentralization of the functions of audit of expense and revenue of Union and State Governments - This hampers the quality of the auditing process.
3. Strategies adopted by the executive to avoid auditing - Off-Budget financing.
4. Government funding to NGOs and Public Private Partnerships Projects are outside the ambit of CAG.
5. Most of the time it is observed that there have been delays in providing asked documents to CAG by the government departments. This hampers the effective functioning of CAG.
6. Critics have argued that CAG has often exceeded its jurisdiction while auditing by citing the examples of Coal Block Scam and 2G Scam.
7. Also there has been criticism that CAG doesn't take into account administrative limitations while auditing. This forces bureaucrats to take conservative approach and stops them from out of box thinking.
8. Delay in tabling CAG report in the Parliament. These reports aren't discussed regularly.

Way Forward -

1. There must be a Multi member selection committee while selecting the CAG. The Chairman of the Public Account Committee should be one of its members.
2. The auditing role of the CAG should be expanded - Substantial government funding to NGOs and PPP should be within the ambit of CAG.
3. CAG should be given power to file the RTI to extract information from various government

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departments effectively.

4. Effective use of ICT should be done to streamline the process of auditing.
5. Develop a mechanism to incorporate social auditing in the auditing of the CAG.
6. Important welfare schemes of the Government should be regularly audited by the CAG.

Difference between office of CAG in India and UK -

1. In India, the CAG performs the role of an Auditor General but not of a Comptroller. However, in Britain they have the power of both Comptroller as well as Auditor General.
2. In India, CAG is not a member of the parliament while in Britain, it is quite the contrary. The UK CAG is a member of the House of the Commons.
3. In India the CAG audits the accounts after the expenditure is committed i.e. ex post facto. In the UK no money can be drawn from the public exchequer without the approval of the CAG

   As per the conventions, it's out of the ambit of CAG to question the policy decisions of the Government.

Arguments in favor of questioning the government policies in certain cases are as follows -

(i) The financial implications of a policy were not gone into at all before the decision was made;

(ii) The assessment of financial implications was quite clearly wrong;

(iii) The numbers were correct but the reasoning behind the decision was specious or fallacious; or

(iv) The financial implications in fact turn out to be far higher than the assessment on which the decision was made. "I am of the opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from what has been laid down by Parliament in the Appropriation Act." —Dr. B. R Ambedkar.

Finance Commission

The Finance Commission is a Constitutionally mandated body that is at the center of fiscal federalism. Set up under Article 280 of the Constitution, its core responsibility is to evaluate the state of finances of the Union and State Governments, recommend the sharing of taxes between them, lay down the principles determining the distribution of these taxes among States. Its working is characterized by extensive and intensive consultations with all levels of governments, thus strengthening the principle of cooperative federalism. Its recommendations are also geared towards improving the quality of public spending and promoting fiscal stability.

Devolution Criterion used by the 15th Finance Commission(2021-2026)

Criteria	14th FC 2015-20	15th FC 2020-21	15th FC 2021-26
Income Distance	50.0	45.0	45.0
Area	15.0	15.0	15.0
Population (1971)	17.5	-	-
Population (2011)#	10.0	15.0	15.0
Demographic Performance	-	12.5	12.5
Forest Cover	7.5	-	-
Forest and Ecology	-	10.0	10.0
Tax and fiscal efforts*	-	2.5	2.5
Total	**100**	**100**	**100**

Important recommendations of the 15th Finance Commission -

1. The share of states in the central taxes for the 2021-26 period is recommended to be 41%, same as that for 2020-21. This is less than the 42% share recommended by the 14th Finance Commission for 2015-20 period. The adjustment of 1% is to provide for the newly formed union territories of Jammu and Kashmir, and Ladakh from the resources of the center.
2. Revenue deficit grants: 17 states will receive grants wort Rs 2.9 lakh crore to eliminate revenue deficit.
3. Sector-specific grants: Sector-specific grants of Rs 1.3 lakh crore will be given to states for eight sectors: (i) health, (ii) school education, (iii) higher education, (iv) implementation of agricultural reforms, (v) maintenance of PMGSY roads, (vi) judiciary, (vii) statistics, and (viii) aspirational districts and blocks. A portion of these grants will be performance-linked.
4. State-specific grants: The Commission recommended state-specific grants of Rs 49,599 crore. These will be given in the areas of: (i) social needs, (ii) administrative governance and infrastructure, (iii) water and sanitation, (iv) preservation of culture and historical monuments, (v) high-cost physical infrastructure, and (vi) tourism. The Commission recommended a high-level committee at state-level to review and monitor utilization of state-specific and sector-specific grants.

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5. Grants to local bodies: The total grants to local bodies will be Rs 4.36 lakh crore (a portion of grants to be performance-linked).
6. Disaster risk management: The Commission recommended retaining the existing cost-sharing patterns between the center and states for disaster management funds. The cost-sharing pattern between center and states is: (i) 90:10 for north-eastern and Himalayan states, and (ii) 75:25 for all other states. State disaster management funds will have a corpus of Rs 1.6 lakh crore (center's share is Rs 1.2 lakh crore).
7. Revenue Mobilization - Income and asset based taxation should be strengthened.
8. Stamp duty and registration fees at the state level have large untapped potential. Computerized property records should be integrated with the registration of transactions, and the market value of properties should be captured. State governments should streamline the methodology of property valuation.
9. GST - Rate structure should be rationalized by merging the rates of 12% and 18%. States need to step up field efforts for expanding the GST base and for ensuring compliance.
10. States should amend their fiscal responsibility legislation to ensure consistency with the center's legislation, in particular, with the definition of debt.

National Commission for Backward Classes

The NCBC is tasked with monitoring safeguards provided for socially and educationally backward classes, giving advice to the government on their socio-economic development and evaluating their progress. The panel also presents an annual report to the President on the status of backward classes in the country.

1. 102nd Constitutional Amendment Act - Constitutional Status to National Commission for Backward Classes.
2. 105th Constitutional Amendment Act - Power of the State Governments to decide the State OBC List.

Advantage of having a Constitutional Status -

1. The earlier NCBC can only recommend inclusion and exclusion of castes from the OBC list and the level of income that cuts off the "creamy layer" among these castes from the benefits of reservation.
2. Now after getting the Constitutional status People belonging to the Other Backward Classes can approach a new National Commission for Backward Classes (NCBC) to get their grievances redressed.
3. Till now, it was the National Commission of Scheduled Castes that addressed the grievances of the OBCs.
4. In the case of grievances related to non-implementation of reservations, economic grievances, violence, etc., people from the SEBC category will be able to move the Commission.
5. Constitutional Status gives NCBC power to inquire into complaints of deprivation of rights and safeguards. Clause 3 (8) gives it the powers of a civil court trying a suit and allows it to summon anyone, require documents to be produced, and receive evidence on affidavit.

Case Study -

The National Commission for Minorities (NCM) couldn't act against misbehaving officials without constitutional status. Constitutionality reflecting constructions, practices, principles and values of a 'constitution' makes all governmental action truly answerable.

Role of NCSC in enforcing the Reservation Provision in the Minority Institutions -

The National Commission for Scheduled Castes does not have competent power to direct the minority institution for implementing the SC reservation.

Reasons -

1. Article 30 - Right of minorities to establish and administer educational institutions. - (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
2. 93rd Constitutional Amendment Act 2005 - Empowered the state to make special provisions for the socially and educationally backward classes or the Scheduled Castes or the Scheduled Tribes in educational institutions including private educational institutions (whether aided or unaided by the state), except the minority educational institutions (clause (5) in Article 15).

So the constitutional provisions clearly states that the provision of reservation isn't applicable to the minority institutions.

Common Issues pertaining to the Functioning of the Constitutional Bodies -

1. Inordinate Delays in appointments - NCBC functioning without Vice-Chairperson, members for nearly 10 months(December 2022)
2. Delay in placing the annual reports in the Parliament.
3. The annual reports of the Constitutional Bodies aren't discussed regularly in the Parliament.
4. Complete executive control over the appointment process of the members of the body.
5. No separate secretariat for functioning. Ex. ECI.
6. High dependence on the government machinery for effective functioning.

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Indian Constitution, Polity and Governance

Syllabus Topic - Statutory, regulatory and quasi judicial bodies.
First of all let us see the past year UPSC questions and understand their demand.

Question	Keyword/ Demand/ Context	Theme
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.	Issues and Challenges	Current Affairs
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.	Jurisdiction and issues arising out of it, Constitutional validity of tribunals.	Contemporary Current Affairs.
Is the National Commission for Women able to strategize and tackle the problems that women face at both public and private spheres? Give reasons in support of your answer.	Critical analysis of statutory body meant for protection of vulnerable section	Contemporary Current Affairs.
What is a quasi-judicial body? Explain with the help of concrete examples.	Straightforward Question.	Static.
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.	Current Affair based issue. It was in news in 2015	Current Affairs.
For achieving the desired objectives, it is necessary to ensure that the regulatory institutions remain independent and autonomous." Discuss in the light of the experiences in the recent past.	Importance of regulatory institutions	Static.

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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.	Critical Analysis	Contemporary Current Affairs.
The setting up of a Rail Tariff Authority to regulate fares will subject the cash strapped Indian Railways to demand subsidy for the obligation to operate non-profitable routes and services. Taking into account the experience in the power sector, discuss if the proposed reform is expected to benefit the consumers, the Indian Railways or the private container operators.	Reforms in various regulatory bodies.	Contemporary Current Affairs.

Now you have to do this exercise for CSE Mains 2021 and 2022.

Let us see the basic meaning of each term. A straightforward question on Quasi- Judicial body was asked in Past year, so we can expect same for Statutory and regulatory bodies.

STATUTORY BODY

It is a body which is non-constitutional in nature and established through enactment of act.

Ex. National Green Tribunal under NGT Act 2010, National Human Rights Commission under NHRC Act 1993

REGULATORY BODY

These are bodies setup through a legislation or an executive action to regulate, inspect, set standards for a particular sector.

Ex. Reserve Bank of India established under RBI Act 1934 has primary role of regulating the Banking sector of the country.

QUASI-JUDICIAL BODY

These are the bodies established through a legislation or an executive action which has power to interpret law and adjudicate meant for the particular purpose.

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Ex. NGT adjudicating in Environment domain, Income Tax Appellate Tribunal.

Significance of Regulatory Bodies

Regulatory bodies helps in minimising the risk in the following cases.

- Excessive tariff
- Inadequate service and quality
- Frequent discontent between the parties involved
- Non- compliance of contractual obligation to users
- Maintenance of level playing field

Functions of Regulatory Bodies

- Protection of Public Interest
- Maintaining quality and standards
- Tariff adjustment and periodic review
- Dispute resolution
- Establishing technical safety and quality standards
- Monitoring compliance of contractual obligations
- Facilitating business in the domain

Now your job is to find at least one example for each function. For example, in the category of Technical quality and safety standards we have FSSAI.

Issues and Challenges of Regulatory Bodies

- No proper criterion of selection- NSE Case
- Frequency of monitoring and evaluation is irregular
- Lack of institutional mechanism for review- In USA review of the functioning of the regulatory bodies like FED is televised
- No timely funding and dependence on Ministry for funding hampers their autonomy
- Lack of proper accountability mechanism for the regulatory bodies- Mostly ensured through nodal ministries on ad hoc basis.
- Absence of regulatory bodies in critical sectors like Space and Cyber Security

Way Forward

- Mandating Regulatory bodies to give reasons for their decisions- This will uphold the accountability
- Ensuring funding mechanism which is not dependent on Ministry
- Setting up institutionalise mechanism for review like UK
- Increasing their exposure to public scrutiny

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Now let us move to quasi judicial bodies.

Role and significance of Quasi-Judicial bodies

- Provides for specialisation and technical expertise which a regular court judge may lack- Finance experts adjudicating cases in NCLAT along with judges.
- Can be mandated to deliver judgements in time bound manner- NGT has to decide on matter within 6 Months
- Reduce load of higher judiciary
- More accessible and affordable- NGT benches in Pune and Bhopal which aren't places of HC
- Judgements are delivered on the principle of Natural Justice

Election Commission of India acts as a quasi judicial body while deciding on matters of party symbol. CIC also acts as a quasi judicial authority in cases pertaining to RTI act. Here we are going to focus on quasi judicial bodies through the lenses of tribunals. As you have seen UPSC has frequently asked questions on them.

CONSTITUTIONAL PROVISION FOR TRIBUNALS

42nd Constitutional Amendment has inserted Article 323A and 323B in the Constitution, which have provisions regarding tribunals.

1. Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.(323A)
2. Power of the State Legislature or Parliament to form the tribunal for matters specified in the article. However the Supreme Court has ruled that the list of matters is not exhaustive.(323B)

IMPORTANT SUPREME COURT JUDGEMENTS

The Constitutional Validity of the tribunals have been challenged from time to time. The apex court has confirmed the Constitutional validity of the Tribunals.

1. Sampath Kumar Case- Supreme Court held that creating tribunals as alternate forum which would be as competent as High Court will not violate basic structure of the constitution.
2. L Chandra Kumar Case- Supreme Court overturned Sampath Kumar case and held that the decisions of tribunals are subject to the writ jurisdiction of High Court under article 226 since Judicial Review is the basic feature of the Indian constitution.

Issues and Challenges in the functioning of Tribunals-

1. High Pendency of cases- Income Tax Appellate Tribunal has more than 90000 pending cases.
2. Dominance of executives in the tribunals. This violates the principle of separation of powers.
3. No timely appointments in tribunals- More than 50% vacancy in NGT.
4. Lack of Infrastructure- Recently Karnataka High Court ordered the Government of Karnataka to provide Video Conferencing facilities to the quasi judicial bodies in the state.

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WAY FORWARD- To form National Commission for Tribunals

- It will bring uniformity in the tribunals.
- Financial independence will be ensured.
- A Constitutional or Statutory body managing the Tribunals instead of the executive will increase the public trust.
- Principle of Separation of Power will be upheld.

IMPORTANT STATUTORY BODIES

As you have seen UPSC has asked analytical question on some important statutory bodies. Hence in this section we will cover issues and challenges pertaining to some important statutory bodies. You can read about their basic from any standard polity text book. In the past years UPSC has asked questions on NHRC, CIC.

NATIONAL GREEN TRIBUNAL -

Established under NGT Act 2010. India is one of the countries in the world to have a tribunal for environmental issue after Australia and Newzeland.

Issues and Challenges-

- "Lack of environment finesse" of experts. Among the appointed experts, half of them are from Administrative Service and Forest Service.
- Delay in appointment. Since the constitution of NGT, it has never worked with full capacity.
- Administrative apathy- Crucial NGT orders on Ganga river pollution, solid waste management remain unenforced.
- Litigation delay- NGT Act mentions that its order can be challenged in the Supreme Court, but it doesn't specifically mentions that the orders can be challenged **ONLY** in the Supreme Court. Due to this many litigants approaches High Courts under Article 226.
- Non-active benches. Barring Delhi bench other benches of NGT remains closed most of the year.

Way Forward-

- Comprehensively defining the term "Specialist". Technical experts should be from multidisciplinary background.
- Removing the ambiguity regarding the appeal by amending the NGT Act 2010.
- Setting up institutional mechanism to ensure that environment regulatory authorities comply with NGT orders. Ex. Institutional mechanism in Australia and Newzeland.
- Ensuring the full functioning of the inactive benches and setting up more benches in ecologically fragile areas like Chhattisgarh, Uttarakhand, Odisha.
- Case Study- Environment Agency of UK. NGT functioning should be as robust as EA in UK.

CENTRAL BUREAU OF INVESTIGATION-

Established under Delhi Police Special Establishment Act 1946.

Issues and Challenges-

- Political interference. Caged parrot remark by the Supreme Court.
- Restriction on the jurisdiction since the consent of the State is required to investigate the case in the particular case where the case is filed.
- Administrative control of the central government.
- Exemption from the RTI hampers the accountability mechanism.
- Prior permission of the Central Government is required to prosecute central government employee from officer of the rank of Joint Secretary.

Recommendations-

Following are the recommendations of the 24th Report of Department Related Parliamentary Standing Committee on personnel,public grievances, law and justice.

- Strengthening Human Resources by increasing the strength of CBI.
- Better investment in infrastructural facilities.
- Increased financial resources with accountability.
- Delinking CBI from the administrative control of the government.

New law should be enacted to govern CBI instead of DPSE 1946- 2nd ARC.

"There is need for creation of an independent umbrella institution to bring various central agencies under one roof- CJI NV Ramanna."

LOKPAL-

Recent report by the Transparency International which designates India as the most corrupt country in the Asia, seriously questions the effectiveness of the Lokpal.

Issues and Challenges-

- Selection committee of Lokpal is dominated by the political wing.
- Not much protection is being given to the whistleblowers.
- Judiciary is completely excluded.
- Low number of cases registered. One of the members Justice Bhosale resigned by citing lack of work as a reason.
- Such an important institution lacks Constitutional status.
- Lack of adequate provisions for appeal against the Lokpal.

Way Forward-

- Making Lokpal financially and administratively independent of those whom it is supposed to investigate.
- Giving Constitutional backing to the Lokpal.
- Reducing the political weight from the selection committee.
- Clearly demarcating the jurisdiction of Lokpal- Recent judgement from the Delhi High Court on the Jurisdiction of Lokpal in Shibu Sorensen case has created confusion.

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- Timely appointment of Lokpal staff- Even after 3 years of constitution of Lokpal, Centre was yet to appoint Director of Inquiry who conduct preliminary investigation. This hints towards establishing proper institutional mechanism.

GENERIC POINTS WHEN YOU DO NOT HAVE IDEA ABOUT A BODY

In the exam hall, it may be possible that you have no idea about a particular body. Only at such time you can use following generic challenges to get average marks instead of leaving it. It should be done in exceptional cases, otherwise you are supposed to prepare for the important bodies in the news.

1. Lack of infrastructure
2. Sufficient manpower not available
3. Unavailability of modern equipments
4. Officers failing to abide by the rule of book
5. Lack of accountability of officers
6. Absence of institutional mechanism.

FINAL NOTE

With the content given under the syllabus heading, you can get above average marks pertaining to the topics. You should refer to *PRAYAAS PAREEKSHAN MAINS MODULE AND PRAYAAS PRABHAV CURRENT AFFAIR* to cover other important bodies which aren't covered here and which may be in news in the future as covering each and every body isn't possible. With this combination you can get good marks pertaining to this syllabus topic. Now your job is to revise the material and try to attempt the past year questions.

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Syllabus Topic - Indian Constitution, Polity and Governance
Alternate Dispute Redressal Mechanisms

The Courts have a well defined and recognized system of settling the disputes. The Courts have formal rules for settlement of disputes and their decision is binding on the parties. The system is highly technical and formal. But the litigation does not always lead to satisfactory results. It is expensive in terms of money and time. These are the reasons due to which parties look upon an alternate way of resolving their disputes.

Necessity -

It is a well known fact that the present Judicial System is extremely expensive and delaying. The parties to a dispute have to wait for Justice for years. This lengthy and expensive process of litigation has reduced the faith of common people in the Judicial System being followed by the Courts. These weaknesses of the Judicial System have given birth to alternative remedies for the disposition of disputes. Alternative remedies provide cheap and speedy Justice and that is the reason that ADR mechanism is being preferred by the disputing parties for the resolution of their disputes.

What is ADR ?

ADR refers to the methods of resolving a dispute, which are alternatives for litigation in Courts. ADR processes are decision making processes that do not involve litigation or violence. In India, an alternative system is available to the disputing parties including Arbitration, Conciliation, Mediation, Negotiation etc.

The approach of judges, lawyers and parties all over the world is changing in favour of adoption of ADR instead of Court litigation. Arbitral institutions provide ADR services for quicker, less costly and consensual resolution of civil disputes outside the crowded court system. ADR promotes communication between the parties and enables them to solve their actual concerns behind the disputes.

Various Mechanisms of ADR -

1. Lok Adalat -

a. 'Lok Adalat' is yet another form of ADR created as per the requirements of people in particular areas. Camps of Lok Adalat were initially started in Gujarat in 1982 and now they have been extended to all over India.

b. The main purpose of establishment of Lok Adalats is to diminish the heavy burden of pendency of cases in the Courts which were of petty nature.

c. The seekers of justice are in millions and it is becoming rather a heavy burden on the courts to dispose off such matters keeping in view the ever increasing litigation.

d. Lok Adalats are organized with financial assistance from the Government and monitored by the Judiciary. Lok Adalats have set the conciliation process in motion in India.

e. Lok Adalats have assumed statutory recognition under the Legal Services Authority Act, 1987. The Section 19 of Legal Services Authorities provides for the organization of Lok Adalats.

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f. Furthermore, it has the jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute.

g. Every award of the Lok Adalat shall be deemed to be a decree of a civil court, or as the case may be, an order of any other civil court.

h. Where a compromise is or settlement is arrived at, by Lok Adalat, the court fee paid in such cases shall be refunded. Similar is the condition in cases settled in the mediation cell referred through courts.

2. Gram Nyayalaya -

The Law Commission of India, in its 114 th Report, had suggested establishment of Gram Nyayalayas for providing affordable and quick access to justice to the citizens at their doorsteps. The Gram Nyayalayas Bill was passed by the Parliament on 22nd December 2008 and the Gram Nyayalayas Act came into force with effect from 02nd October, 2009. The Act extends to the whole of India, except to the States of Nagaland, Arunachal Pradesh, Sikkim and to the tribal areas specified in Parts I, II, IIA and III of the Table below paragraph 20 of the Sixth Schedule to the Constitution of India within the States of Assam, Meghalaya, Tripura and Mizoram, respectively.

Some of the salient features of the Gram Nyayalayas Act are as follows:

- Gram Nyayalayas are aimed at providing inexpensive justice to people in rural areas at their doorsteps;
- Gram Nyayalayas are to be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level or for a group of contiguous Gram Panchayats;
- The seat of the Gram Nyayalayas shall be located at the headquarters of the intermediate Panchayat. The Nyayadhikari shall periodically visit villages and may hear the parties and dispose of the cases at the place other than its headquarters;
- The Gram Nyayalayas will try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act. They are to follow summary procedure in criminal trial;
- Disputes are to be settled as far as possible by bringing about conciliation between the parties and for this purpose, the Gram Nyayalayas will make use of the conciliators to be appointed for this purpose;
- The Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice subject to any rule made by the High Court.

3. Arbitration -

Where two or more persons agree that a dispute or potential dispute between them shall be decided in a legally binding way by one or more impartial persons in a judicial manner, that is, after recording evidence, the agreement is called an Arbitration Agreement. When, after a dispute has arisen, it is put before such person(s), the procedure is called 'Arbitration', and the decision made is called "award".

Award' of the Arbitrator is binding on the parties and may be enforced by the Courts. There is no appeal against the Award.

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Virtually all the disputes can be resolved by Arbitration unless prohibited by law. The following cases cannot be decided by arbitration:-

a) Matters involving criminal questions, or question of public laws;

b) Matrimonial matters, like divorce, maintenance or custody of child;

c) Insolvency matters, like declaring a person as an insolvent;

d) Dissolution of an incorporated Company; and

e) Disputes relating to age.

4. Mediation -

'Mediation' is a process for resolving the dispute with the aid of an independent third person that assists the parties in dispute to reach a negotiated resolution. 'Mediation' is the acceptable intervention into a dispute of a third party that has no authority to make a decision. The process is carried out in the Mediation Centres.

Advantages of ADR Mechanisms -

1. ADR proceedings are flexible.
2. The parties have the freedom to choose the applicable law.
3. They can be conducted in any manner and in the language to which the parties agree.
4. The matter may be settled in a few meetings thereby reducing expenses.
5. No court fee is payable. No expenses are involved in obtaining copies of proceedings and reports.
6. A neutral third party can offer his/her services to the parties to have the dispute amicably resolved. The parties can choose the date and place where a meeting can be arranged as per their convenience.
7. Parties can choose the fee payable to such a third neutral person. The person is chosen by the consent of the parties.
8. The talks held in the meetings are kept confidential. While in court proceedings one party wins and other loses, but in a successful ADR by Mediation or Conciliation both parties emerge as winners.
9. It improves communication and relationship between the parties.
10. Confidentiality: Alternative processes are typically confidential, meaning the fight is out of the public eye and — more importantly — sensitive documents, trade secrets, etc. are protected from disclosure.

"Mediation and arbitration in today's judicial system help in delivery of speedy and qualitative justice and also aid in finding an amicable solution to long-lasting problems in several areas." - Justice L Nageswara Rao

Issues and Challenges -

1. Power imbalance is a serious concern, especially when mediation may involve traditionally under empowered groups.
2. Lack of awareness among the masses regarding ADR.
3. Insufficient number of trained personnel to carry out the arbitration process.

4. Lack of infrastructure like buildings, office spaces and related equipment
5. Lack of man-power resources, notaries, stamp vendors etc. at sub-district level
6. Inadequate Central assistance.

Way Forward -

1. Parallel ADR institutions must develop largely in all parts of the country. They must be established at remote levels in the same manner the Courts of law have been established.
2. Each Court must have Arbitration and Mediation Centres. This would ensure that the disputes capable of being solved through any of the ADR methods be first taken over by the ADR forum. If parties fail to arrive at settlement, only then the matter be taken to the Courts.
3. The Arbitration and Meditation Centres/Institutions presently existing in India mostly cater to the commercial disputes. The need is to either establish new private bodies for non-commercial disputes (such as family disputes).
4. The establishment, empowerment and legal recognition of ADR bodies in the country would be of no use unless the people are aware as well as keen to choose ADR over the Courts.
5. The knowledge of ADR options can be given to the weaker-poor sections by performing street plays regularly. Such performance has to be made in the local dialect and language of respective areas.
6. Till the time, ADR emerges as parallel mechanism to legal system , measures must be taken to encourage more voluntary use of ADRs.

NALSA

Article 39-A of the Constitution provides that no person shall be devoid of Justice merely due to poverty or any other disqualification. It means that every person has the right to obtain Justice even if he/she is poor by any means. This trending of the Constitution has been engulfed in various legal provisions and Judicial decisions. One of these is — Legal Services Authority Act, 1987 (amended in 1994 and is now Legal Services Authorities (Amendment) Act. 1994.)

This Act lays down detailed provisions for Legal Services. But it could not be implemented due to certain reasons. Later in 1994, various amendments were made in it and were implemented in the amended form.

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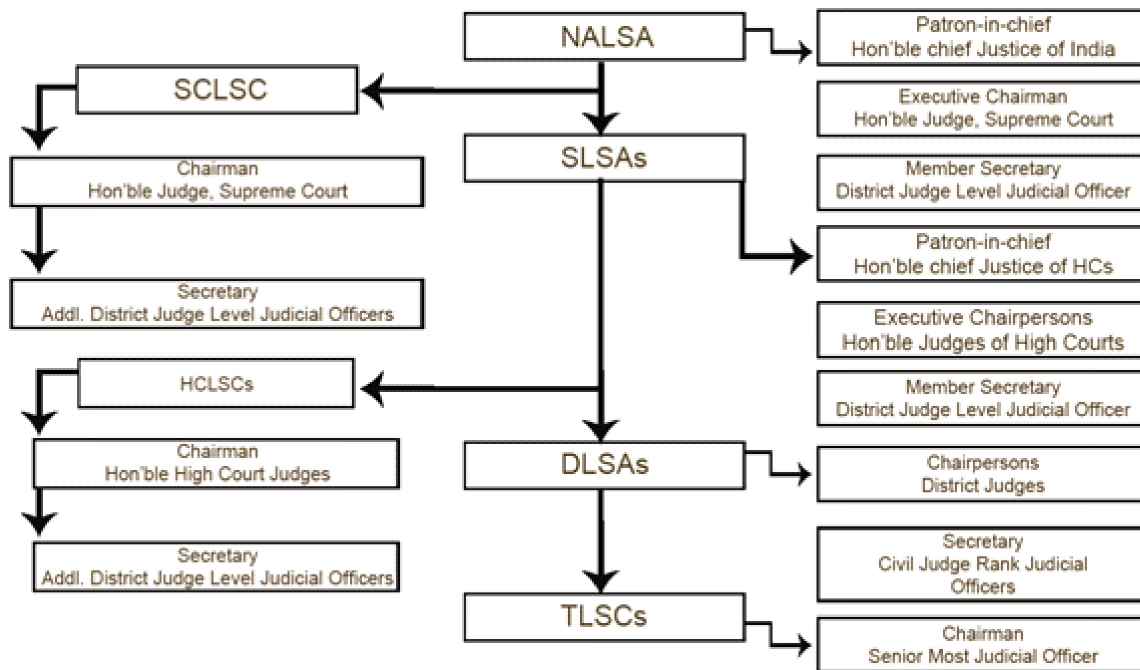
Structure -



Services Provided -

1. Legal Aid - Legal Services includes providing Free Legal Aid to those weaker sections of the society who fall within the purview of Section 12 of the Legal Services Authority Act, 1987.
2. It also entails creating legal awareness by spreading legal literacy through legal awareness camps, print media, digital media and organizing Lok Adalats for the amicable settlement of disputes which are either pending or which are yet to be filed, by way of compromise.
3. Providing compensation to the victims of the sexual assault.

Initiatives by NALSA -

NALSA has taken several steps to provide speedy and cost-effective justice through free legal aid services. They include :-

1. NALSA has created a web portal to file Applications online for getting legal assistance. The applicant may file the applications either directly to the State Legal Services Authority/District Legal Services Authority/High Court Legal Services Committee/Supreme Court Legal Services Committee from where the applicant requires legal assistance. The applicant has the option to file an application directly to NALSA and in that case the said application is transferred to the concerned Legal Services Institutions for appropriate action i.e. to provide legal assistance.
2. NALSA has also launched Legal Services Mobile App for Android and IOS version on 8th August, 2021 and on 09th November, 2021 respectively which will facilitate following functions:-

- Any citizen may apply for seeking legal assistance, legal advice and for redressal of other grievances through Mobile App.
- Any citizen may track his application submitted for legal aid & advice and other grievances.
- Reminders can be sent and clarifications can be sought through Mobile App.
- Any victim of crime or applicant can apply for victim compensation through the Mobile App.
- Application for pre-institution mediation in commercial matters or application for mediation may be filed through this Mobile App.

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Anti-Defection Law

Syllabus Topic - Parliament and State Legislatures - Structure,functioning, conduct of business,powers and privileges, issues arising out of it.

The anti-defection law was passed in 1985 through the 52nd Amendment to the Constitution. The Amendment added the Tenth Schedule to the Indian Constitution, with an intent to curb "the evil of political defections". Under the anti-defection law, legislators may be disqualified from their membership to the House if they resign from their party after being elected, or defy the direction issued by the party leadership during a vote on any issue.

The anti-defection law deals with situations of defection in Parliament or state legislatures by: (i) members of a political party, (ii) independent members, and (iii) nominated members. In limited circumstances, the law allows legislators to change their party without incurring the risk of disqualification.

Provisions regarding Disqualification of the candidates -

Questions	Provisions
1. When can a legislator be disqualified?	a. If a member of a house belonging to a political party: - Voluntarily gives up membership of his political party, or - Votes contrary to a direction issued by his political party, or does not vote in the House at all, when such a direction is issued. However, a member shall not be disqualified if he has taken prior permission of his party, or is condoned by the party within 15 days from such voting or abstention. b. If an independent candidate joins a party after the election. c. If a nominated member joins a party six months after he becomes a member of the legislature.
2. Exceptions	a. A person shall not be disqualified if his original political party merges with another (applicable only if more than two-thirds of the members of the party have agreed to the merger), and: - He and other members of the old political party become members of the new political party, or - He and other members do not accept the merger and opt to function as a separate group.

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3. Authority	a. The Chairman or the Speaker of the House takes the decision to disqualify a member. b. If a complaint is received with respect to the defection of the Chairman or Speaker, a member of the House elected by that House shall take the decision.

Objectives of Anti-Defection Law -To combat the political defections motivated by political corruption and bribery.

Criticism of the Anti-Defection Law -

1. Restrains legislator from effectively carrying out their functions	In a Parliamentary Democracy, legislators are expected to exercise their independent judgment on particular issues. This judgment may be based upon the combination of Public Interest, Constituency Interest and Political Affiliations. This fundamental choice of freedom is undermined by the Anti-Defection Law.
2. Affects the ability of legislator to hold the government accountable	Provisions of the Anti-Defection Law forces the legislator to follow the instructions of the party leadership on almost every decision.
3. Breaks the chain of accountability between elected legislator and public	Anti-Defection law mandates the legislators to strictly follow the mandate of party leaders instead of the citizens of her constituency.
4. Impacts decision making in the house	Anti-Defection law leads to major policy decisions being taken by a few political leaders instead of a larger body of legislators.
5. Debate and deliberations	Anti-Defection Law leads to suppression of healthy intra-party debate.
6. Role of Speaker(Conflict of Interest)	Defections are judged by the Speaker who is usually a member of the ruling party or coalition. No time limit to take the decisions.

Examples of failure of Anti-Defection Law -

1. 26 MLAs defected from opposition parties to Telangana Rashtra Samithi from 2014-18. No action was taken by the speaker against these defectors. Out of these defectors, 12 were made Ministers.
2. 23 YSR Congress Party MLAs defected to the ruling Telugu Desam Party from 2015-18. No action was taken by the Speaker on the petitions seeking their disqualification. Further, four of these legislators were appointed as Ministers in the government.

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Way Forward -

1. Political Parties should be allowed to issue whip only when the Government is in danger.
2. The term "Voluntarily giving up membership" should be comprehensively defined.
3. The issue of defection should be decided by an independent authority like the President/ Governor on the recommendation of the Election Commission of India.
4. Definition of the Political Party should be broadened. Per-poll alliances could be treated as political parties.
5. Defectors should be barred from joining any other political party post defection for the remaining period of his term.
6. Defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term of the legislature.
7. Strengthen intra-party democracy.

Global Scenario -

- Mature democracies like the USA,UK don't have Anti-Defection Law.
- Out of 40 Countries that have Anti-Defection Law, only 6 mandates legislators to vote according to party line. India is amongst them.

Important points from the Supreme Court Judgements on Anti-Defection Law -

1. The provisions do not subvert the democratic rights of elected members or violate their conscience. They do not violate any right or freedom under Articles 105 and 194 of the Constitution.
2. The words "voluntarily giving up membership" have a wider meaning. An inference can also be drawn from the conduct of the member.
3. The Court is competent to issue directions to the Speaker to decide the pending disqualification petitions (within a fixed time period). However, it does not have the competence to disqualify the MLAs in the interim period.
4. Granting finality to the orders of the Speaker is valid. However, courts can exercise judicial review which should not cover any stage prior to the Speaker's decision.

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Indian Constitution, Polity and Governance

Syllabus Topic -
Comparison of the Indian Constitutional Scheme with that of other countries.

Let's see the past year questions on the above topic.

Question	Keyword/Demand	Theme
Analyze the distinguishing features of the notion of Equality in the Constitutions of the USA and India. (2021) 15	Right to Equality	Static.
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. (2020) 10	Comparative analysis of Indian and UK's Judicial System.	Static.
What can France learn from the Indian Constitution's approach to secularism? (2019) 10	Secularism.	Contemporary Current Affairs.
India and the USA are the two large democracies. Examine the basic tenets on which the two political systems are based. (2018) 15	India-USA (Polity)	Static.
Critically examine the procedures through which the Presidents of India and France are elected. (2022) 15	Election Procedure of President (India - France)	Static and Current Affairs.

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Indian Constitution and British Constitution

Differences -

Indian Constitution	British Constitution
1. Republic with the President as a nominal head. 2. Written Constitution. 3. Provisions of DPSPs and Duties. 4. Quasi-Federal Structure. 5. Supremacy of the Constitution. 6. The PM can be a member of any house. 7. Provision of Judicial Review. 8. Single Citizenship. 9. The Speaker can retain the membership of his political party.	1. Constitutional Monarchy with the King as a nominal head. 2. Unwritten Constitution. 3. DPSPs and Duties are absent. 4. Unitary structure. 5. Supremacy of the Parliament. 6. The PM must be from the Lower House of the Parliament. 7. No Judicial Review as the Parliament is Supreme. 8. Provision of Dual Citizenship. 9. The Speaker holds no political membership.

Similarities -

1. Parliamentary form of government.
2. Principle of Rule of Law.
3. Multi-Party System.
4. Cabinet System.
5. Head of the Government is more powerful than the head of the State.
6. Similar impeachment procedure for Judges.

Indian Constitution and Constitution of the USA

Differences -

Indian Constitution	American Constitution
1. Parliamentary form of Government. 2. Quasi-Federal Structure. 3. The President is indirectly elected. 4. Indestructible Union of Destructible States. 5. No strict separation between the executives and legislature. 6. The President don't enjoy Qualified Veto. 7. No role of the Parliament in appointment of Judges. 8. Balance of Rigid and flexible constitution. 9. Residuary power lies with the Union. 10. Single Citizenship. 11. Single Constitution.	1. Presidential form of the Government. 2. Strong federal structure. 3. The President is directly elected. 4. Indestructible Union of indestructible states. 5. Strict separation between the executives and legislature. 6. The President enjoys Qualified Veto. 7. The Senate is involved in the appointment process of Judges. 8. Rigid Constitution. 9. Residuary power lies with the states. 10. Dual Citizenship. 11. Each state has its own constitution.

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Similarities -

1. Written Constitution.
2. Provision of Fundamental Rights.
3. Office of Vice-President.
4. Impeachment of the President.
5. Representation of the States in the Upper House.
6. Supremacy of the Constitution.
7. Judicial Review.

Indian Constitution and French Constitution

Differences-

Indian Constitution	French Constitution
1. Parliamentary form of Government. 2. Tenure of the President is 5 years. 3. The President is less powerful as compared to the Prime Minister. 4. Due process of law. 5. Not complete separation of state from religion. 6. Single Judicial Structure. 7. No role of Judiciary in the election process. 8. Single Constitution since independence.	1. Semi-Presidential form of Government. 2. Tenure of President is 7 years. 3. The President is more powerful than the Prime Minister. 4. Absence of principles such as Due Process of Law and Procedure established by the law. 5. Complete separation of the state from religion. 6. Judicial Courts and Administrative Courts. 7. Judiciary plays an important role in the election. 8. Currently France has its 5th Constitution.

Similarities -

1. Written institution.
2. Elected head of the government.
3. Republics with the head of State.
4. Emergency Provisions.
5. Ideas of Liberty, equality and fraternity.

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Impeachment of the President in India and USA -

Impeachment of the Indian President	Impeachment of the US President
1. Either of the Houses may prefer the impeachment charges provided such charges are signed by at least 1/4th members of the preferring House. 2. The Charges preferred require a special majority to pass and upon such passing of the Charges, they are sent to the other House. 3. The other House investigates upon the charges preferred. Such investigation is headed by the presiding officer of the House, i.e. Speaker of Lok Sabha or Chairman of Rajya Sabha. 4. If a resolution is passed as a result of such investigation by a special majority of at least 2/3rd of the total membership of the investigating House, that results in impeachment and removal of the President from his office. 5. Impeachment itself results in removal of the president from office. 6. The only ground for Impeachment of the President is the violation of the Constitution as per Article 56 (1) (b) of the Constitution.	1. Any member of the House of Representatives can introduce impeachment resolution. The House Judiciary Committee analyzes the resolution, frames charges and passes it upon a simple majority. 2. Articles of Impeachment require a simple majority to pass and upon such passing of the Articles the President stands impeached. 3. The Articles are forwarded to the Senate for trial and the Senate Trials are headed by the Chief Justice of the US Supreme Court. 4. If the Articles pass with a special majority in the Senate Trial, the President stands convicted and removed from the office. 5. Impeachment itself does not result in a removal, but is regarded as indictment. 6. A US President may be impeached for Treason, Bribery, high crimes and other misdemeanors as per Article II, Section 4 of the US Constitution.

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Syllabus Topic - Salient features of the Representation of People Act

Let us see the past year questions asked in the examination.

Question	Keyword/ Demand	Theme
"There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of peoples Act" Comment (2020) 10	Existing lacuna in the REPA 1951	Contemporary Current Affairs.
On what grounds a people's representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such person against his disqualification. (2019) 15	Key Provisions of REPA 1951	Contemporary Current Affairs.
'Simultaneous election 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. (2017) 10	Simultaneous Elections	Contemporary Current Affairs.
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? (2017) 15	Electoral Reforms	Contemporary Current Affairs.
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	Provisions of REPA 1951	Contemporary Current Affairs.

So the questions revolve around two basic themes - Disqualification criterion under Representation of Peoples' Act 1951 and Electoral Reforms.

Articles 324 to 329 of Part XV of the Constitution deal with the electoral system in our country. Constitution allows Parliament to make provisions in all matters relating to elections to the Parliament and State Legislatures. In exercise of this power, the Parliament has enacted laws like Representation of the People Act 1950 (RPA Act 1950), Representation of the People Act 1951 (RPA Act 1951) and Delimitation Commission Act of 2002.

Representation of Peoples' Act 1950 –

- Allocation of seats in the House of the People – First Schedule
- Filling of seats in the House of the People and Parliamentary Constituencies – direct elections
- Total number of seats in Legislative Assemblies Assembly Constituencies Second Schedule
- Qualification of voters.
- Preparation of electoral rolls – Parliamentary, Assembly & Council Constituencies
- Delimitation of constituencies.
- Power of Election Commission to maintain Delimitation Order up-to-date
- Allocation of seats in the Legislative Councils – Third Schedule
- Delimitation of Council Constituencies
- Constitution of electoral colleges for the filling of seats in the Council of States allotted to Union territories.

Representation of Peoples' Act 1951 –

- Qualifications and disqualification for conduct of elections
- Notification of general elections to LS & State Legislative Assemblies
- Administrative machinery for conduct of elections
- Role of election, Returning Observers, important officers
- Filing of nomination papers and scrutiny by Returning Officer
- Election offenses
- Addressing Election disputes
- Conducting Bye- elections
- Registration of political parties.
- Cap on election expenses by individual candidates
- Regulating Election Agents of Political Parties
- Fixing time for poll and cancel poll in case of emergency
- Counting of votes and declaration of results
- Security of EVMs and VVPATs.

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RPA 1951 and Provisions of Disqualification -

1. Section 8 - Disqualification for various criminal offenses Candidate shall be disqualified, where the convicted person is sentenced to

- Only fine - for a period of 6 years from the date of such conviction
- Imprisonment - from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

2. Section 8A - Disqualification on grounds of corrupt practices

- The President will take decision on the disqualification based on the recommendation of ECI.
- Period of disqualification cannot exceed 6 years.
- Corrupt Practices - Bribery, undue influence, vote appealing on the basis of caste, religion, etc., booth capturing, propagation of the practice or the commission of sati or its glorification by a candidate or his agent etc.

3. Section 9 - Disqualification for Corruption or disloyalty

- A person who has held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of 5 years from the date of such dismissal.

4. Section 9A - Disqualification for Government Contracts

- A person shall be disqualified if, and for so long as, there is a contract entered by him during his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

5. Section 10 - Disqualification for the office under Government Company

- A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a cooperative society) in the capital of which the appropriate Government has not less than 25% share.

6. Section 10A - Disqualification for failure to lodge account of election expenses

   If the Election Commission is satisfied that a person –

- Has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and
- Has no good reason or justification for the failure

  The Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of 3 years from the date of the order.

7. Section 11 - The EC may record reasons and either remove, or reduce the period of, a person's disqualification. The EC exercised this power for Sikkim Chief Minister P.S. Tamang, who served a one-year sentence for corruption, and reduced his disqualification.

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Under Section 8(4) of the RPA, legislators could avoid immediate disqualification until 2013. The provision said that with respect to a Member of Parliament or a State legislator the disqualification will not take effect for three months. If within that period, the convicted legislator files an appeal or revision application, it will not take effect until the disposal of the appeal or application. In other words, the mere filing of an appeal against conviction will operate as a stay against disqualification. In Lily Thomas vs. Union of India, the Supreme Court struck down clause (4) as unconstitutional, thus removing the protection enjoyed by lawmakers.

Filing of an Election Petition

1. Who can file an Election Petition?

   An election petition can be filed either by a candidate or a voter in the concerned constituency of the State. Other than these persons, no one can approach a High Court with an election petition. Voter is a person who was entitled to vote at the election to which the election petition relates. Whether he has voted in such an election or not is immaterial. (Sec 81(1) explanation of RPA)

2. When can an Election Petition be filed?

   An Election Petition has to be filed within 45 days from the declaration of the results of the State Assembly elections.

3. Where can an Election Petition be filed?

   Election petitions can be filed in the High Court of the State to which the State Assembly elections pertain. (80A RPA)

4. What is the ground on which the Election Petition can be filed?

   There are many grounds on which an Election Petition can be filed. One of which is "Corrupt Practices" as defined under section 123 RPA. Under declaration of election expenses is also a corrupt practice and one of the grounds for filing an Election Petition. If it is found or proved that a candidate has filed a false account of his election expenses in which some items of expenditure have been undervalued, an election petition can be filed.

   Need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of peoples Act"

- Section 123 - Defines corrupt practices
- Section 8A - Procedure for disqualification.

Current Procedure -

1. Filing of an election petition in the respective High Court.
2. Hearing of Case.
3. Forwarding the HC decision to the President via Secretary General of Lok Sabha/Rajya Sabha/State Legislature.
4. The President forwards the decision to the Election Commission of India.

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5. The Election Commission of India gives the decision to the President. The President is bound to accept the decision.

Complexities with the Current Procedure -

1. Procedure in the HC is time cumbersome.
2. Inordinate delay in forwarding the HC decision to the President.
3. Petitions can be filed only after the election.

Simplifying the Procedure -

1. Setting up special benches of HC to hear these cases.
2. Sending HC decisions directly to the ECI.

CRIMINALIZATION OF POLITICS

Entry of criminals into politics. There is a symbiotic relationship between criminalization of politics and politicization of crimes.

Important Data -

As per Association for Democratic Reforms -

1. In the 16th Lok Sabha 34% of the total MPs were facing criminal charges.
2. In the 17th Lok Sabha 43% of the total MPs are facing criminal charges.

This indicates that the criminalization of politics is increasing.

Implications of Criminalization of Politics -

1. Results in poor quality of Legislations.
2. Low morale and motivation for the civil servants.
3. Erosion of trust and public confidence.
4. Abuse of money and muscle power.
5. Creates negative perception of politics.

Supreme Court Direction -

The Supreme Court had ordered parties to publish details of candidates with pending criminal cases and reasons why they could not have selected a candidate without such a record. However, according to ADR, the SC's order and the subsequent guidelines issued by the EC have not been followed fully.

RPA 1951 -

Candidates to provide information such as Assets and Liabilities, Education Qualification, Criminal Cases etc.

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Challenges -

1. False Affidavits –
   - Present punishment is only 6 months.
   - Need to be increased to 2 years.

2. Checking the entry of criminals
   - Can enter politics after 6 years of release.
   - Need a permanent ban.

3. Though the Representation of the People Act disqualifies a sitting legislator or a candidate on certain grounds, there is nothing regulating the appointments to offices within the party.
4. A politician may be disqualified from being a legislator, but he may continue to hold high positions within his party, thus also continuing to play an important public role which he has been deemed unfit for by the law.

   Cleansing politics from criminal elements begins with purifying political parties itself, as they are the central institution of India's democracy.

   - CJI Deepak Misra.

Internal Democracy within Political Parties

"No electoral reform can be successful without reforming the political party system in our country."

- National Commission for Reviewing Working of Constitution.

Significance of Intra Party Democracy -

1. This will enhance transparency.
2. More representation to vulnerables.
3. Accountability will be improved due to democratic decision making.
4. This will lead to decentralization in the true sense.
5. Less factionalism.
6. This will have a check on increasing criminalization of politics.

Challenges to Intra Party Democracy -

1. Dynasty politics.
2. Centralizing tendency in the Indian polity.
3. Personality cult.
4. Lack of law - No clear legal provisions.

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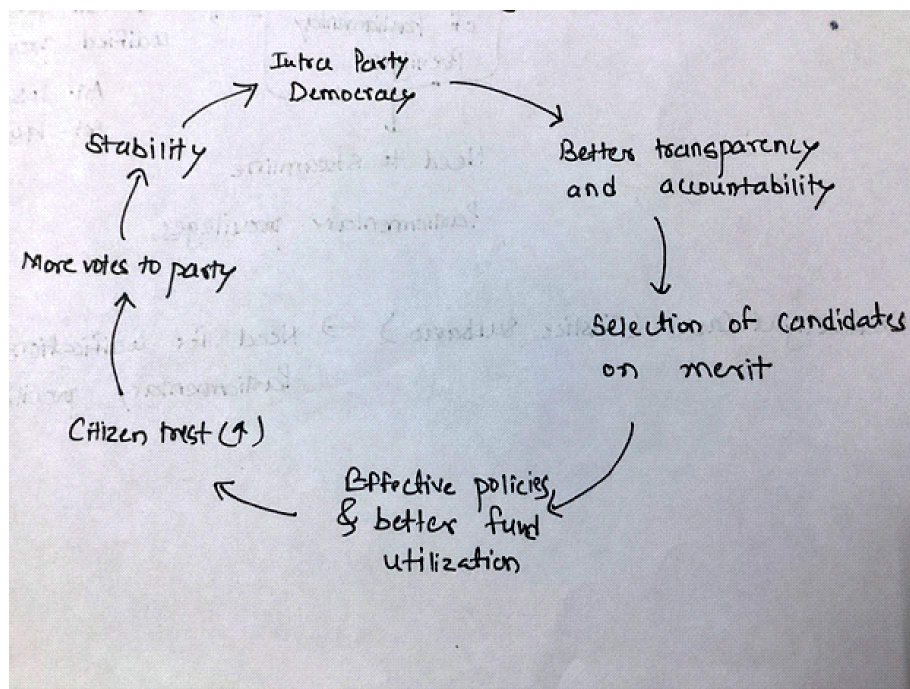
Intra Party Democracy is recommended by -

1. Law Commission 170th Report.
2. 2nd Administrative Reforms Commission.
3. National Commission for Reviewing Working of the Constitution.

Way Forward -

Amend the Representation of Peoples' Act 1951 and add provision for Intra Party Democracy. Also, amend the Anti-Defection law accordingly and empower the Election Commission of India to check the financial transparency of the political parties.

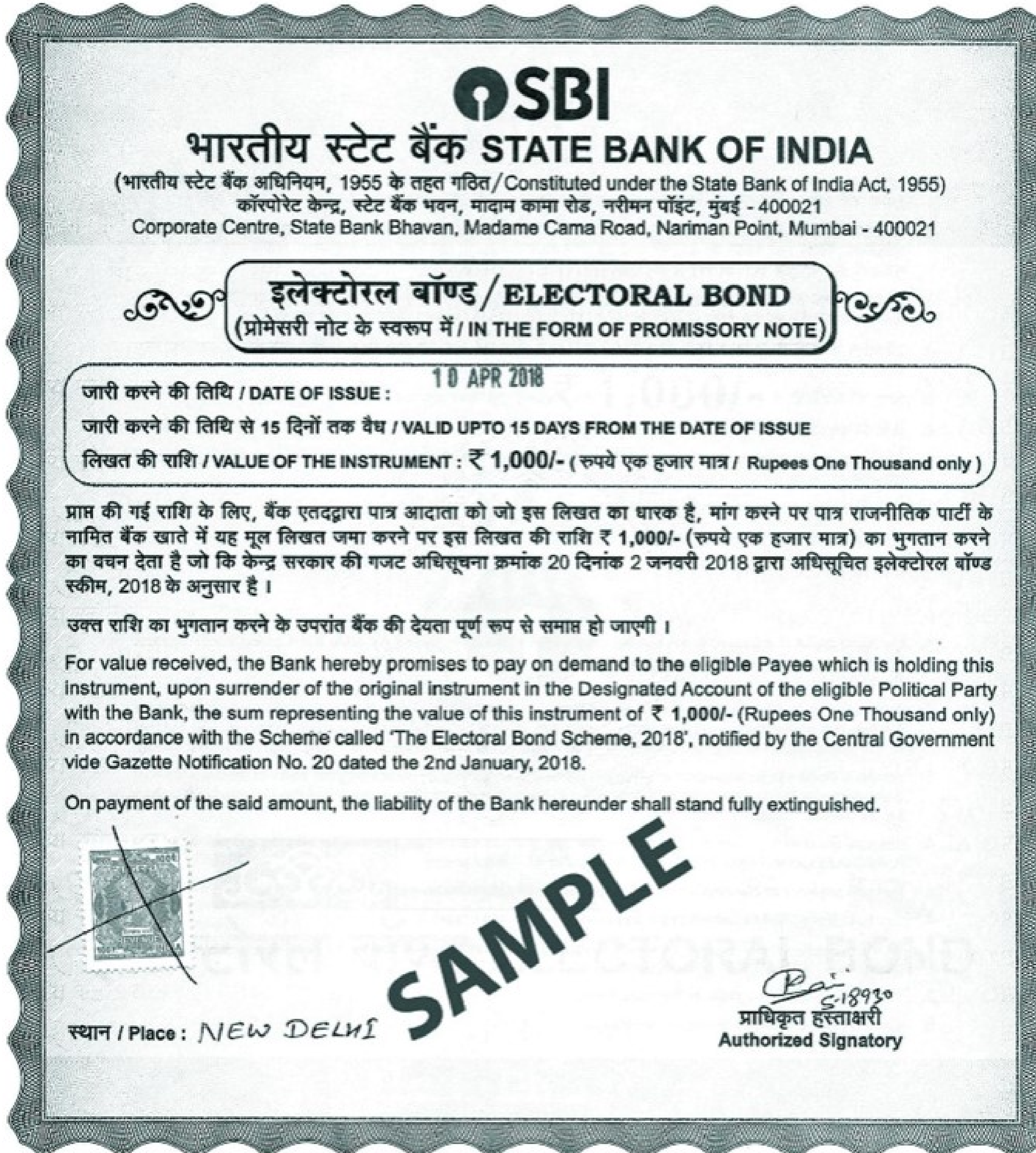


Electoral Bond Scheme

An electoral bond is designed to be a bearer instrument like a Promissory Note — in effect, it will be similar to a bank note that is payable to the bearer on demand and free of interest. It can be purchased by any citizen of India or a body incorporated in India.

How to Use ?

The bonds will be issued in multiples of ? 1,000, ? 10,000, ? 1 lakh, ? 10 lakh and ? 1 crore and will be available at specified branches of State Bank of India. They can be bought by the donor with a KYC-compliant account. Donors can donate the bonds to their party of choice which can then be cashed in via the party's verified account within 15 days.


SBI
भारतीय स्टेट बैंक STATE BANK OF INDIA
(भारतीय स्टेट बैंक अधिनियम, 1955 के तहत गठित/Constituted under the State Bank of India Act, 1955)
कॉरपोरेट केन्द्र, स्टेट बैंक भवन, मादाम कामा रोड, नरीमन पॉइंट, मुंबई - 400021
Corporate Centre, State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai - 400021

इलेक्टोरल बॉण्ड/ELECTORAL BOND
(प्रोमेसरी नोट के स्वरूप में / IN THE FORM OF PROMISSORY NOTE)

जारी करने की तिथि / DATE OF ISSUE : 10 APR 2018
जारी करने की तिथि से 15 दिनों तक वैध / VALID UPTO 15 DAYS FROM THE DATE OF ISSUE
लिखत की राशि / VALUE OF THE INSTRUMENT : ₹ 1,000/- (रुपये एक हजार मात्र / Rupees One Thousand only)

प्राप्त की गई राशि के लिए, बैंक एतदद्वारा पात्र आदाता को जो इस लिखत का धारक है, मांग करने पर पात्र राजनीतिक पार्टी के नामित बैंक खाते में यह मूल लिखत जमा करने पर इस लिखत की राशि ₹ 1,000/- (रुपये एक हजार मात्र) का भुगतान करने का वचन देता है जो कि केन्द्र सरकार की गजट अधिसूचना क्रमांक 20 दिनांक 2 जनवरी 2018 द्वारा अधिसूचित इलेक्टोरल बॉण्ड स्कीम, 2018 के अनुसार है।

उक्त राशि का भुगतान करने के उपरांत बैंक की देयता पूर्ण रूप से समाप्त हो जाएगी।

For value received, the Bank hereby promises to pay on demand to the eligible Payee which is holding this instrument, upon surrender of the original instrument in the Designated Account of the eligible Political Party with the Bank, the sum representing the value of this instrument of ₹ 1,000/- (Rupees One Thousand only) in accordance with the Scheme called 'The Electoral Bond Scheme, 2018', notified by the Central Government vide Gazette Notification No. 20 dated the 2nd January, 2018.

On payment of the said amount, the liability of the Bank hereunder shall stand fully extinguished.

SAMPLE

स्थान / Place : NEW DELHI

S-18930
प्राधिकृत हस्ताक्षरी
Authorized Signatory

Conditions -

1. Every party that is registered under section 29A of the Representation of the Peoples Act, 1951 (43 of 1951) and has secured at least one per cent of the votes polled in the most recent Lok Sabha or State election will be allotted a verified account by the Election Commission of India. Electoral bond transactions can be made only via this account.
2. The bonds will be available for purchase for a period of 10 days each in the beginning of every quarter, i.e. in January, April, July and October as specified by the Central Government. An additional period of 30 days shall be specified by the Central Government in the year of Lok Sabha elections.
3. The electoral bonds will not bear the name of the donor. In essence, the donor and the party details will be available with the bank, but the political party might not be aware of who the donor is. The intention is to ensure that all the donations made to a party will be accounted for in the balance sheets without exposing the donor details to the public.

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- Maximum amount of cash donation that a political party can receive is capped at ? 2,000 and that parties are entitled to receive donations by cheque or digital mode, in addition to electoral bonds.- Donations would be tax deductible. "A donor will get a deduction and the recipient, or the political party, will get tax exemption, provided returns are filed by the political party,"

Concerns associated with Electoral Bonds -

1. In order to bring in the scheme, the Centre had made multiple amendments by way of two Finance Acts— Finance Act, 2017 and Finance Act, 2016, both passed as money bills (not necessitating the oversight of the Rajya Sabha).
2. Affects Transparency - The government amended Section 29C of the Representation of the People Act, 1951, effectively exempting political parties from informing the ECI about the details of contributions made to them through electoral bonds.
3. Opacity of funding will increase - No companies are required to give details of political contributions in their annual profit and loss accounts.
4. Provision of allowing foreign companies with subsidiaries in India to fund Indian political parties, stating that it would expose "Indian politics and democracy to international lobbyists" having their own agendas.
5. Infringes upon the citizen's fundamental 'Right to Know', which various Supreme Court judgements have interpreted as part of the freedom of speech and expression.
6. Derailing of ECI guidelines: The ECI said that the amendments derailed its 2014 guidelines on disclosure of expenditure and contributions received by political parties.
7. The issuance of the bonds in the physical form or as bearer instruments would actually not serve the purpose of transparency as they are transferable, meaning that who finally contributes to the party "may not be known".

Simultaneous Elections

But the idea of "One Nation, One Election" envisages a system where elections to all states and the Lok Sabha will have to be held simultaneously. This will involve the restructuring of the Indian election cycle in a manner that elections to the states and the center synchronize. This would mean that the voters will cast their vote for electing members of the LS and the state assemblies on a single day, at the same time (or in a phased manner as the case may be).

Background -

Simultaneous elections are not new to India. They were the norm until 1967. But following dissolution of some Legislative Assemblies in 1968 and 1969 and that of the Lok Sabha in December 1970, elections to State Assemblies and Parliament have been held separately.

Recommended By -

1. The Election Commission of India in 1983.
2. Law Commission Report in 1999.
3. NITI Ayog in 2017.

Merits of holding simultaneous Elections -

1. This will reduce the expenditure of both the government and political parties.
2. It will ensure consistency, continuity and governance, which are integral to democracy
3. Political parties can work on a long term agenda.
4. Reduced corruption and black money.
5. Reduced public life disruption.
6. Harmony and Peace (Communal and hate speeches during elections).
7. Less MCC imposition - Development work will get pace.

Demerits of holding simultaneous Elections -

1. National and state issues are different, and holding simultaneous elections is likely to affect the judgment of voters.
2. Since elections will be held once every five years, it will reduce the government's accountability to the people. Repeated elections keep legislators on their toes and increase accountability.
3. When an election in a State is postponed until the synchronized phase, President's rule will have to be imposed in the interim period in that state. This will be a blow to democracy and federalism.
4. Lack of political consensus on the issue.
5. If we enforce the system of simultaneous elections, we would need to curtail the legislature's power to unseat a government. It would be mandatory to have a 'constructive vote of no-confidence'. This means that no opposition party would be able to table a no-confidence motion unless it has the capacity to also simultaneously form a new government.

ELECTORAL REFORMS

Need for Electoral Reforms -

1. Rapid changes in the electoral and behavioral dynamics.
2. Electoral reforms generally contribute to better participation by the citizens in electoral practices while reducing the role of corruption and enriching and invigorating the functioning of democracy (in India).
3. A Country beset with a plethora of diversity and its unpleasant manifestations concerning religion, caste, language, customs and beliefs, rich-poor gap, and diverse cognitive perceptions, etc, need electoral reforms periodically.
4. The changing socio-economics dynamics.
5. Increasing criminalization of politics.

Reform is not a single time effort but a continuous process. It would be appropriate if a standing committee, comprising members of parliament and experts in election laws, is constituted to go into the question, as and when it arises, and to suggest changes wherever necessary, in the election law to the government.

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Committees associated with Electoral Reforms -

1. Tarkunde Committee - 1974.
2. Dinesh Goswami Committee - 1990.
3. Law Commission (170th and 255th Report)

Electoral Reforms Before 1996 -

1. Lowering of Voting Age - The 61st Constitutional Amendment Act of 19884 reduced the voting age from 21 years to 18 years for the Lok Sabha as well as the assembly elections.
2. Deputation to Election Commission - In 1988, a provision was made that the officers and the staff engaged in preparation, revision and correction of electoral rolls for elections are deemed to be on deputation to the Election Commission for the period of such employment.
3. Increase in Number of Proposers - In 1988, the number of electors who are required to sign as proposers in nomination papers for elections to the Rajya Sabha and state legislative council has been increased to 10 percent of the electors of the constituency or ten such electors, whichever is less.
4. Electronic Voting Machines - In 1989 , a provision was made to facilitate the use of Electronic Voting Machines (EVMs) in elections. The EVMs were used for the first time in the general elections (entire state) to the Assembly of Goa in 1999.
5. Booth Capturing - In 1989, a provision was made for adjournment of poll or countermanding of elections in case of booth capturing.
6. Elector's Photo Identity Card (EPIC) - A decision was taken by the Election Commission in 1993 to issue photo identity cards to electors throughout the country to check bogus voting and impersonation of electors at elections.

Electoral Reforms of 1996 -

1. Listing of Names of Candidates - The candidates contesting elections are to be classified into three categories for the purpose of listing their names. They are –
   - Candidates of recognised political parties
   - Candidates of registered-unrecognized political parties
   - Other (independent) candidates
2. Disqualification for Insulting the National Honour Act - A person who is convicted for the following offenses under the Prevention of Insults to National Honour Act of 1971 is disqualified to contest in the elections to the Parliament and state legislature for 6 years.
3. Prohibition on sale of liquor during the period of 48 hours ending with the hour fixed for the conclusion of poll.
4. Death of a Candidate - Earlier, in case of death of a contesting candidate before the actual polling, the election used to be countermanded. Consequently, the election process had to start all over again in the concerned constituency. But now, the election would not be countermanded on the death of a contesting candidate before the actual polling. However, if the deceased candidate belonged to a recognised political party, the party concerned would be given an option to propose another candidate within seven days.

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5. Time Limit for By-Elections - Now, by-elections are to be held within six months of occurrence of the vacancy in any House of Parliament or a state legislature.
6. Holiday to Employees on the Polling Day - The registered voters employed in any trade, business, industry or any other establishment are entitled to a paid holiday on the polling day.
7. A candidate would not be eligible to contest from more than two Parliamentary or assembly constituencies at a general election or at the by-elections which are held simultaneously. Similar restrictions are imposed for biennial elections and by-elections to the Rajya Sabha and the state legislative councils.

Electoral Reforms after 1996 -

1. Requisitioning of Staff for Election Duty - In 1998 , a provision was made whereby the employees of local authorities, nationalized banks, universities, LIC, government undertakings and other government-aided institutions can be requisitioned for deployment on election duty.
2. Voting through Postal Ballot - In 1999, a provision was made for voting by certain classes of persons through postal ballot. Thus, any class of persons can be notified by the Election Commission, in consultation with the government, and the persons belonging to such notified class can give their votes by postal ballot, and not in any other manner, at elections in their constituency or constituencies.
3. Facility to Opt to Vote Through Proxy - In 2003, the facility to opt to vote through proxy was provided to the service voters belonging to the Armed Forces and members belonging to a Force to which provisions of the Army Act apply.
4. Declaration of Criminal Antecedents, Assets, etc., by Candidates
5. Changes in Rajya Sabha Elections

- Domicile or residency requirement of a candidate contesting an election to the Rajya Sabha was removed.
- Introducing an open ballot system, instead of a secret ballot system, for elections to the Rajya Sabha.

6. The Government should supply, free of cost, the copies of the electoral rolls and other prescribed material to the candidates of recognised political parties for the Lok Sabha and Assembly elections.
7. Allocation of Time on Electronic Media - Under a 2003 provision, the Election Commission should allocate equitable sharing of time on the cable television network and other electronic media during elections to display or propagate any matter or to address the public.
8. Introduction of Braille Signage Features in EVMs

Proposed Reforms of 2016 -

1. Constitutional Protection to all members of the Election Commission of India.
2. Budget of ECI to be 'Charged'.
3. Independent secretariat for the commission.
4. Use of common electoral rolls for Lok Sabha, State Legislature and Local Bodies.
5. The Commission has proposed that the punishment under section 125A (false affidavit) should be increased to 2 years.

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6. Section 159 of The Representation of the People Act, 1951 should be amended to empower the District Election Officer also, apart from the Chief Election Officer, to requisition of staff for election duties.
7. Persons charged with cognisable offenses shall be debarred from contesting in the elections, at the stage when the charges are framed by the competent court provided the offense is punishable by imprisonment of at least 5 years, and the case is led at least 6 months prior to the election in question.
8. Making bribery in elections a cognizable offense.
9. The Election Commission of India should be given powers to de-register a political party and should be authorized to issue necessary orders regulating registration and de-registration of political parties.
10. Anonymous contributions above or equal to the amount of Rupees two thousand should be prohibited.

Delimitation Act

What is delimitation?

Delimitation is the process of redrawing boundaries of the Lok Sabha or Assembly constituencies, the Election Commission of India states. The process is carried out in accordance with changes in the demographic status of a State or Union Territory. Delimitation is done by a Delimitation Commission or Boundary Commission. The orders of the independent body cannot be questioned before any court. In the past, Delimitation Commissions were set up in 1952, 1963, 1973, and 2002.

Articles 82 and 170 of the Constitution of India provide for readjustment and the division of each State into territorial constituencies (Parliamentary constituencies and Assembly constituencies) on the basis of the 2001 census by such authority and in such manner as Parliament may, by law, determine.

- 84th Constitutional Amendment Act - The constituency boundaries were frozen until the first census after 2026 or at least after 2031. The 1971 census served as the foundation for the seat allocation of the present Lok Sabha.
- 87th Constitutional Amendment Act - The Constitution (87th Amendment) Act, 2003. 1. Provided for readjustment and rationalization of territorial constituencies in the states on the basis of the population figures of the 2001 census and not the 1991 census as provided earlier by the 84th Amendment Act of 2001.

Composition -

The Central Government shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:

1. one member, who shall be a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government who shall be the Chairperson of the Commission;
2. The Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner, ex officio:

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3. The State Election Commissioner of concerned State, ex officio.

The Commission shall determine its own procedure and shall, in the performance of its functions, have all the powers of a civil court under the Code of Civil Procedure.

ROLE PLAYED BY DELIMITATION COMMISSION

- Balance of representation to achieve the ideals of 'One Vote One Value'
- Ensure adequate representation to vulnerable sections including SC/ST.
- Fair division of geographical areas for adequate representation of diverse communities.

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Anti-Defection Law

Syllabus Topic -
Pressure groups & formal/informal associations & their role in Polity.

Let's see the past year questions asked by UPSC on the above topic.

Question	Keywords/ Demand	Theme
"Pressure groups play a vital role in influencing public policy making in India." Explain how the business associations contribute to public policies. (2021) 10	Influence of Pressure Groups on policy making	Contemporary Current Affairs.
What are the methods used by the Farmers organizations to influence the policy-makers in India and how effective are these methods? (2019) 10	Various methods of Pressure Groups.	Contemporary Current Affairs.
How do pressure groups influence the Indian political process? Do you agree with this view that informal pressure groups have emerged as powerful as formal pressure groups in recent years? (2017) 10	Informal Pressure Groups Vs Formal Pressure Groups.	Contemporary Current Affairs.
Pressure group politics is sometimes seen as the informal face of politics. With regards to the above, assess the structure and functioning of pressure groups in India. (2013) 10	Analysis of functioning of the Pressure Groups.	Contemporary Current Affairs.

Pressure Group -

These are forms of organizations which exert pressure on the political or administrative system of the country to extract benefits out of it and promote their own interests.

Types of Pressure Groups-

There are various types of pressure groups based upon the domain in which they are active.

1. Caste Groups - Maratha Kranti Morcha, Harijan Sevak Sangh.
2. Tribal Groups - National Socialist Council of Nagaland
3. Linguistic Groups - Tamil Sangh, Marathi Sahitya Parishad.

4. Agrarian Groups - Sanyukta Kisan Morcha, Shetkari Kamgar Sanghatana.
5. Trade Unions - Rashtriya Mazdoor Sangh, AITUC.
6. Business - FICCI, DICCI.
7. Students Organizations - ABVP, Yuva Sena, NIUS.
8. Religious Groups - Jamaat-e-Islami, Vishwa Hindu Parishad.

Characteristics of Pressure Groups -

1. Based upon certain interests - Each pressure group organizes itself keeping in view certain interests and thus tries to adopt the structure of power in the political systems.
2. Results out of increasing demand and pressure on the resources.
3. Alternative to the inadequacies of the political parties.
4. Represent changing consciousness - Pressure groups are a sign of changing consciousness. The consciousness of different groups go on changing as the result (I) changing material conditions; and (ii) increasing politicization.
5. Use modern as well as traditional means.

Difference between Pressure Groups and Political Parties -

Pressure Groups	Political Parties
1. Don't contest elections. 2. Controls the power indirectly. 3. Pressure groups aren't accountable to the people. 4. Informal in nature. 5. Membership criteria is narrow and limited.	1. Contest elections. 2. Political Parties control the power directly. 3. Accountable to the public. 4. Formal in nature. 5. Membership is broad based.

Difference between Pressure Groups and Interest Groups -

It is important to make a distinction between an interest group and a pressure group. Interest groups may exist without even exerting pressure on the government or the decision-makers. A group that does not exert pressure to influence or pressurize the authorities in order to achieve the desired objectives, is not called a pressure group. An interest group that exerts pressure on the government to achieve its goals is called a pressure group. All pressure groups are interest groups while all interest groups may not be pressure groups. The following differences between the two groups are significant:

Interest Group	Pressure Group
Formally organized	Strictly structured
Interest-oriented	Pressure-focused
May or may not influence the policies of the government	Must influence the policies of the government
Softer in outlook	Harsher in attitude
More or less protective	Protective and promotive

Role and Functions of the Pressure Groups -

1. Helping government in policy formulation - Ex. Pune International Center has developed Green Hydrogen Policy for the Pune City.
2. Educating the Public - Association for Democratic Reforms conducts webinar regarding electoral reforms.
3. Pressurizing the government - Maratha Kranti Morcha exerting pressure on the government for reservation to the Maratha Community.
4. Mobilizing the public for a cause.
5. Asserting pressure on the political parties - Samyukta Kisan Morcha pressurizing the ruling parties for legalizing MSP.
6. Lobbying the government for suitable policy decisions - Ex. FICCI.

Ways in which Pressure Groups influence Public Opinion -

1. Campaigning - Street march, rallies.
2. Social Media - Spamming with their views.
3. Petition signing.
4. Professional lobbying.
5. Propagandizing through paid media houses.
6. Bandhs and hartals.
7. Influencing the elections.
8. Presenting memorandums to legislative committees,

Techniques used by the Pressure Groups -

1. Electioneering - Placing a person in a public office who is Favorable to the pressure group.
2. Propaganda - Influencing public opinion through rallies or electronic media in support of viewpoints of pressure group (This results in partial indirect control over the government)
3. Lobbying - Persuading public officers through various means. FICCI lobbying for tax reforms, American MPs lobbying for waiver for India from the CAATSA sanctions.

Issues and Challenges Associated with Pressure Groups -

1. Instability - Most of the pressure groups aren't stable in nature and their loyalty changes with the political situations.
2. Narrow Interests - In India, pressure groups are mostly based upon narrow interests like caste, regionalism etc. This hampers national interest sometimes.
3. Lack of accountability to the public.
4. It's often observed that the structure of the pressure groups lack democratic organizational setup.
5. Sometimes, the opinion isn't of the public but of the few leaders of the pressure groups.
6. Propagating extremism - Naxal movement of Bengal in 1967.

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