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MAINSTORMING 2018

POLITY & GOVERNANCE I

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POLITY AND GOVERNANCE – I

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1. POLITY

1.1 Ratification of Child Labor conventions

Why in news?

- India ratified two key global conventions on combating child labor.

What are the conventions?

- India ratified Conventions 138 and Convention 182.
- Convention 138 calls for the minimum age for employment not to be less than the age of completion of compulsory schooling.
- It is 14 years of age in case of India.
- Convention 182 calls for elimination of the worst forms of child labor.

What is the significance?

- India has ratified six out of eight core ILO conventions.
- Four other conventions were related to abolition of forced labor, equal remuneration and no discrimination between men and women in employment and occupation.
- Countries which ratify any of the ILO conventions have to go through a periodical reporting system every four years.
- So the government has to prove they are making progress.
- Conventions 138 and 182 of the United Nations body leave it to the member-states to determine what constitutes acceptable or unacceptable work for children at different ages.
- It will also ensure compliance of the government's n2016 legislation
- What are the provisions of the act?
- The Central government had Child labor (Prohibition and Prevention) amendment Act, 2016.
- It banned the employment of child labor below 14 years of age in all occupations and processes.
- It linked the age of employment for children to the age of compulsory education under Right to Education Act (RTE), 2009.
- It prohibited employment of adolescents (14-18 years of age) in hazardous occupations.
- But children were allowed to "help" families in running their domestic enterprises after school hours.
- Given the sensitivities involved in monitoring activities within traditional households, effective enforcement will pose a challenge.
- Several industries were also declassified from being hazardous occupations.
- Rescue of vulnerable children is still uncertain.

1.2 CBFC culls Documentary

- Why in news?
- Central Board of Film Certification (CBFC) has refused to clear a documentary on AmartyaSen called 'The Argumentative Indian' until words such as "Cow", "Gujarat", "Hindutva" and "Hindu Rashtra" are either removed or beeped out.

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What is the reason behind?

- CBFC is upset over Sen's views on cow vigilantism and associated lynchings, the Gujarat riots and the project to spread Hindutva ideology.
- It feels that the documentary mightjeaopardize the security in Gujarat.
- Apart from "Gujarat", CBFC earlier issued a list of banned terms which included "Bombay".
- What does it imply?
- The arbitrariness of this list had caused the CBFC much embarrassment.
- The organisation is set up to protect the public from the excesses of cinema, now presumes to cull the thoughts of one of India's foremost public intellectuals.
- It is showing an unhealthy enthusiasm for censoring rather than certifying, which is the statutorily defined purpose.
- This government has been seen to be impatient with its critics.
- It curbs or trashes alternative opinions.
- It is having a stifling effect on creative expression in cinema, reflecting the attenuation of the public discourse.

CBFC

- It is a statutory body under Ministry of Information and Broadcasting, regulating the public exhibition of films under the provisions of the Cinematograph Act 1952.
- Films can be publicly exhibited in India only after they have been certified by the Central Board of Film Certification.
- The Board consists of non-official members and a Chairman (all of whom are appointed by Central Government).
- It functions with headquarters at Mumbai and has nine Regional offices.

1.3 NGT ban on Jantar Mantar Protests

Why in news?

National Green Tribunal (NGT) has recently banned protests at Jantar mantar, Delhi.

What is the significance of Jantar Mantar?

- Jantar Mantar is easily accessible to citizens while being close to Parliament.
- It is the place where many defining moments of citizens' actions like the Anna Hazare fast against corruption, rallies and meetings demanding justice for Rohith Vemula, Indian farmers protest and sit-ins against lynching and in defence of free speech have taken place.
- These have underlined India's democratic culture, reminding institutions and legislators of the anxieties and rights of the citizens they are supposed to address and serve.

What is NGT's justification?

- Some permanent residents of this part of central Delhi had pleaded to the NGT that the protests cause noise pollution and inconvenience to the residents.
- The NGT ban has come primarily on three grounds:
  1. Jantar Mantar is not an authorised site for protests. There is no executive order that demarcates it as such.
  2. Jantar Mantar Road is marked as a residential area in the Delhi Master Plan and hence cannot be allowed to be used for other purposes.
  3. The protestors and agitators cause pollution, particularly noise pollution, because of unregulated use of loudspeakers and amplifiers, public address systems, etc.

- Issues of littering, sanitation, and even of cow protection groups bringing cows and carts to the area have been mentioned in the NGT order as justification for the ban.

What is the way forward?

- NGT has clearly ignored in its passion to sanitise the area is that master plans and zoning laws are open-ended documents.
- They must necessarily incorporate room for changes that urban areas undergo over time.
- If NGT says that no protests should be allowed at Jantar Mantar because it is noisy, then every part of India should have a right to noise protection.
- Also, it is outside the tribunal's scope to have a determinative say in how public spaces are to be used for non-violent dissent.
- Thus NGT ban must be urgently reconsidered as democracy and protest is also important in a society.

2. PARLIAMENT, STATE LEGISLATURE, CENTRE AND STATE RELATIONSHIP

2.1 Neutrality of the Speaker

What is the issue?

- There are numerous instances in our polity where the Speaker of the Assembly has precipitated a political crisis by seemingly political decisions.
- There is a need for building up systematic neutrality to the position.

What are the ways by which a Speaker compromises neutrality?

- **Election -** The position of the Indian Speaker is paradoxical.
- They contest the election for the post on a party ticket.
- Yet they are expected to conduct themselves in a non-partisan manner, while being beholden to the party for a ticket for the next election.
- **Political Aspirations -** The position is often used to woo the political parties by favouring them to harbour political ambitions.
- The need for re-election also skews incentives for the Speaker.
- The fear of losing the position in case of not favouring their political parties also pushes them to compromise neutrality.
- **Anti-Defection Law -** The determination of whether a representative has become subject to disqualification, post their defection, is made by the Speaker.
- The absoluteness of the Speaker's decisions can also be an incentive for potential abuse.

What are some International practises?

- Ireland has a parliamentary system close to India.
- There the position of Speaker is given to someone who has built up credibility by giving up his /her political ambitions.
- The Westminster system considers it a taboo to induct a Speaker into the cabinet.
- There is also a convention of not fielding candidates in the Speaker's constituency.
- In comparison, in India, there are many Speakers who have lost their seats in general elections.
- Also, Indian Speakers are not made members of the Rajya Sabha after they demit office.
- But the British Parliament automatically elevates the Speaker to the House of Lords.
- Only the U.S. allows the Speaker to openly engage in active politics.
- But this is compensated to an extent by their rigorous separation of powers between the judiciary, executive and legislature.

What should be done?

- Some of the above mentioned international practises should be adopted.

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- The Committee, headed by V.S. Page, suggested that if the Speaker had conducted himself in an impartial and efficient manner during the tenure, he should be allowed to continue in the next Parliament.
- Anyone seeking the office of the Speaker might be asked to run for election on an independent ticket.
- Any Speaker should be barred from future political office, except for the post of President, while being given a pension for life.

2.2 Concerns with Parliamentary Sessions

What is the issue?

- Parliamentary sessions are measures for scrutinizing the government.
- But there are various concerns with the commencement of parliamentary sessions in India.

What is a parliamentary session?

- The period during which the House meets to conduct its business is called a session.
- In India, the parliament conducts three sessions in a year -
    1. Budget session - February to May
    2. Monsoon session - July to September
    3. Winter session - November to December
- The Constitution empowers the President to summon each House at such intervals that there should not be more than a six-month gap between two following sessions.
- Since the President acts on the aid and advice of the Council of Ministers, the duration and the time of summoning of the session is decided by the Government.
- Similar provisions exist for the State legislatures as well, in reference to the Governor of the State.

What are the concerns in this regard?

- **Power** - In a parliamentary democracy, the executive is accountable to the Parliament.
- Making the Government decide itself the time and duration of the Parliamentary sessions, goes against this very principle of accountability.
- **Sittings** - Lok Sabha met for an average of 130 days in a year during the 1950s; but these sittings have come down to 70 days in the 2000s.
- Notably, the parliamentary sessions are being shortened or even merged.
- **Functioning** - Reduced sessions lead to less scrutiny of the government's actions, and even that of bills and budgets.
- There is an overall reduced parliamentary business transactions, than in the last couple of decades.
- There is also a lower rate of functioning of the Question Hour due to disruptions, which reduce the number of questions that may be answered orally.
- While Parliament may sit for extra hours to transact other business, time lost during Question Hour is not made up at all.

Role of Parliament

- The Constitution provides for the **legislature**
    i. to make laws
    ii. to scrutinise the functioning of the executive
    iii. to hold the executive accountable for its decisions
- The **Members** of Parliament are tasked to
    i. raise issues of public importance in the Parliament
    ii. examine the Government's response to problems being faced by the citizens

  This is executed largely through the **instruments** of -
    1. Debate - which entails a reply by the concerned minister
    2. Motion - which entails a vote of the members
- **Motions** are intended for purposes like -
    i. discussing important issues such as inflation, corruption, drought, etc
    ii. adjourning the business in the house
    iii. expressing no confidence in the Government
- The Parliament may use various methods including debates on Bills and issues, questioning ministers during Question Hour or in parliamentary committees meetings.
- Notably, the Question Hour is one of the effective means of holding the Government accountable for its actions, wherein MPs pose questions to the ministers regarding the implementation of laws and policies.
- The Government, in all, is collectively responsible to the Parliament for its actions.

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What measures need to be taken?

- The structural issue of the government deciding when to summon the legislature and its ability to adjust the dates in response to emerging circumstances needs to be addressed.
- A calendar of sittings could be announced at the beginning of each year, for a largely pre-planned undertaking of the functions.
- In addition, if there is an urgent need for parliamentary approval, additional sittings could be held.
- The National Commission to Review the Working of the Constitution has earlier recommended that the Lok Sabha and Rajya Sabha should have at least 120 and 100 sittings in a year respectively.
- There can be a mechanism which scrutinizes and answers the questions asked in the Question Hour with required inter-ministerial expertise.
- Notable practices in other countries in relation to these concerns include:
  1. British Parliament -
     - ✓ It has year-long sessions. Thus, the five-year term of Parliament consists of five sessions of a year each.
     - ✓ UK has the Prime Minister's Question Time on weekly basis to address the questions posed by MPs. Such measures can be adopted.
  2. Pakistan's constitution -
     - ✓ It requires a session of parliament within 14 days if one-fourth of its membership demands one. It also states that the Parliament should meet at least 130 days a year and there should be at least three sessions.

2.3 Lack of Economic Oversight in the Parliament

What is the issue?

- Indian Parliament has only limited options to oversee Macroeconomic issues.
- So the Parliament requires a specialised committee concentrating on the broader economic issues.

How parliament controls finance?

- **Union Budget -** Annual financial statement, presented by means of the Finance bill and the Appropriation bill has to be passed by both the Houses before it can come into effect from the financial year (Article 112).
- **Imposition of tax -** Any imposition of tax or collection of revenue should be done only by the authority of law (Article 265).
- Revenue collected without the authority of law will be seen as forcible exaction.
- **Consolidated Fund of India (CFI) -** All revenues received or loans raised by the government are deposited in the CFI.
- Parliamentary sanction is necessary for any expenditure made from the CFI (Article 66).
- **Financial Emergency** - President can declare financial emergency only under the approval by the Parliament (Article 360).

What are the issues with parliamentary mechanisms?

- Parliament uses two mechanisms for monitoring the national economy.
- **Debate in the House -** This is the most common way of highlighting issues.
- But there is hardly ever a focussed debate on macroeconomic and monetary policy issues.
- The last time a discussion reviewed the economic situation was in 2008.
- Over the years the duration of budget discussions has been steadily decreasing.
- During Parliament's first decade, the debate on the budget lasted for an average of 123 hours.
- Now this number has come down to 40 hours.
- The other occasion when economic issues come up for discussion is when MPs debating rising prices in the country.
- Usually such debates remain inconclusive and follow a pattern of blame games and political rhetoric.
- **Parliamentary committees -**Parliament has three finance committees namely Public Accounts, Estimates, and Public Undertakings committee.
- These committees focus on holding specific government ministries accountable.
- They scrutinise the finances, legislation, and working of ministries.

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- But their mandate does not extend to scrutinising cross-cutting macroeconomic issues.
- The committee mostly examines policy issues and legislation being dealt with by the finance ministry.
- So India needs a Nodal Standing Committee on National Economy.

What will be its role?

- The committee would help both government and parliament in orchestrating opinion on important policy issues for building a national consensus.
- It could invite the RBI Governor and other government functionaries like the chief economic adviser to testify and enrich its proceedings.

2.4 Parliamentary Salaries

What is the issue?

- The Tamil Nadu Assembly has recently voted to double the salaries of its legislators.
- This has raised a debate on rationalizing the salaries of members of legislatures.

What are the issues with the demand?

- Tamil Nadu legislators' demand comes at a time of farmers demanding drought relief package and loan waiver.
- Recently, parliamentary representatives also have demanded an increase of their own fiscal compensation by 1,250% over the last two decades.
- But the Parliament has seen less than 50% of Bills being scrutinized by parliamentary committees, defeating the very purpose of a deliberative Parliament.
- Ideally, remunerations granted should be in proportion to the services that they have rendered to the nation.
- The rush to pass Bills has also been inspired by a priority for politics rather than for policy.
- What is to be done?
- Instead of seeking pay in line with the private sector, India's public representatives should be paid a reasonable wage, in proportion to their service.
- An external independent body should determine that parliamentary salaries are fairly set.
- Salary reviews should be conducted through an institutionalized process to ensure that increments are provided through a transparent and accountable process.
- The receipts record of parliamentarians should be made public.
- Salaries should also be linked to their performance and to a minimum attendance of parliamentary sessions.

2.5 Breach of Privilege Offence

What is the issue?

- There is no codified laws for what constitutes a breach of privilege offence or prescriptions for punishment,
- This makes it largely a grey area in legal terms.

What happened recently?

- On June 21 2017, the Karnataka assembly Speaker ordered the imprisonment of two journalists for a year.
- It was based on recommendations in two separate reports of its privilege committees.
- It is seen as an effort to throttle the media.
- In Karnataka, over the years, prominent journalists have been summoned by privileges committees of the legislature.

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- These motions have mostly ended with journalists apologizing or clearing their stand and the committees have dropped proceedings after a few hearings.

What provisions protect the privileges of the legislature?

- Article 105 pertains to the powers, privileges, etc, of Parliament, its members and committees while Article 194, protects the privileges and powers of the houses of legislature, their members and committees in the states.
- These sections protect the freedom of speech of parliamentarians and legislators, insulate them against litigation over matters that occur in these houses, and give powers to define the powers, privileges and immunities of a house, its members and committees

What constitutes a breach of privilege?

- There are no clearly laid out rules on what constitutes breach of privilege and what punishment it entails.
- In other words, these powers and privileges are not codified.
- In Karnataka, privileges panels often refer to 'Practice and Procedure of Parliament' by M N Kaul to define breach of privilege.
- The book states speeches and writing about the House or its committees or members can be punished as contempt on the principle that these actions "tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them'".
- This 'breach of privilege laws' are often criticized for allowing politicians to become judges in their own cause, raising concerns of conflict of interest and violating basic fair trial guarantees.

2.6 Disqualification of Rajya Sabha Members

Why in news?

- Two members of the Rajya Sabha belonging to JD(U) party were disqualified.

What are the grounds for disqualification?

- According to Tenth Schedule introduced by 52nd Constitutional Amendment 1985, the grounds are-
- If a **Member of a Political Party** voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote or when does not vote / abstains as per party's whip.
- If a Independent Member joined a political party.
- If a Nominated members join a party after six months.

What was the reason for such a decision?

- The party accused the two members of indulging in anti-party activities, including attending rallies of other parties.
- On the grounds, the party filed a petition seeking the members' expulsion from Rajya Sabha.
- The decision was taken by The Chairman of the Rajya Sabha under the Tenth Schedule of the Constitution.
- It was justified on the basis of the argument that the members voluntarily gave up the membership of their party when they attended political rallies organised by rival parties.

Why are the shortcomings in the decision?

- The disqualification of dissident was done in needless haste.
- The Chairman justified that all such cases should be disposed of within 3 months as any delay would be equivalent to violating the anti-defection law.
- But neither Mr. Yadav nor Mr. Anwar had disobeyed a whip or posed a danger to the stability of any government.
- So there was no need for fast-tracking of the disqualification process.
- The fact that the Chairman did not exhaust all the procedural avenues questions the ruling of political shade.

What should be done?

- The Chairman could have taken the assistance of the privileges committee before deciding the case.

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- The Tenth Schedule is meant to curb opportunistic party-hopping.
- The law works best as an insurance against violation of the people's mandate for a party.
- It should not be used to suppress dissent, whether inside or outside the House.

2.7 Disqualification of MLAs

Why in news?

- 18 MLAs in Tamil Nadu were disqualified by the Tamil Nadu Assembly Speaker.

What was the reason?

- The disqualified legislators belong to a faction of the AIADMK that opposes to the ruling dispensation.
- They gave a memorandum to the Governor expressing lack of confidence in the present Chief Minister.
- The Speaker interpreted it as amounting to "voluntarily giving up" their party membership.
- What was the hidden agenda?
- It is seen as a partisan decision aimed at securing a majority, after a rebellion within its party reduced it to a minority.
- It reduced the total membership of the House from 233 to 215 and, thereby, the majority threshold from 117 to 108.
- The Speaker's ruling comes at a time when there is an increasingly indefensible reluctance on the part of the Governor to order a floor test.

Can there be a judicial review?

- Tenth Schedule of the Constitution prescribes two conditions under which a member of a political party may be disqualified –voluntarily giving up their membership when a whip is disobeyed.
- The Speaker's decision under the Tenth Schedule of the Constitution is subject to judicial review.
- If it is challenged, the courts will have to decide whether legislators withdrawing support to their own party's government amounts to voluntarily giving up their membership.
- In Balchandra L. Jarkiholi & Others v. B.S. Yeddyurappa (2011), the Supreme Court, in similar circumstances, quashed the disqualification of 11 MLAs in Karnataka.
- While such legal and constitutional questions may be decided judicially, political morality has suffered a blow in the State.

What should be done?

- The constitution holds floor test as a significant means to ascertaining the confidence and majority of the elected government.
- The partisan element in anti-defection law and the adjudicatory power of the Speaker seem to be defeating this purpose.
- This creates the need for transferring the power to an independent body such as the Election Commission.
- Also, the Speaker's role should be reassessed and a law should be put in place to prevent manipulation while conducting a floor test.

Paradiplomacy

- Paradiplomacy is international relations conducted by sub-national on their own
- It outlines a foreign policy role for local and regional governments within a democratic federal system.
- Economic paradiplomacy related to trade and investment in particular has become an institutionalized practice across the world.
- Most of these states are successful at FDI promotion.
- In India, traditionally foreign affairs are in the exclusive domain of the Union government.
- However, in recent times "competitive federalism" is being increasingly stressed in matters of foreign affairs.

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2.8 Involving States in Foreign Policy

What is the issue?

- The ruler of Sharjah recently visited Kerala, who agreed to release 149 Indian prisoners on request by the Kerala CM.
- This has highlighted the need for an increased role of states in India's foreign policy.

How have regional parties influenced foreign policy?

- West Bengal CM stopped then PM Manmohan Singh from signing Teesta water sharing agreement with Bangladesh.
- Kerala insisted on trying and punishing in India, the Italian marines who killed two fishermen, leading to a rift in India's relations with the EU.
- Tamil Nadu had insisted that India should support the U.S. resolution against Sri Lanka in the UNHRC.

What are the recent changes made?

- The Ministry of External Affairs now has a new States division.
- This keeps in touch with the states and assists them in their ties with countries in which they have a special interest.
- The special linkage could be on account of proximity or the presence of diasporas from that state.
- Besides, IFS officers have been asked to choose a State each to understand its special requirements and to advise them.
- In this emerging scenario, the diplomats are expected to bring their regional expertise to take the correct decisions on neighbours.

What lies ahead?

- There is a need for a new structure in MEA in which the states are fully represented.
- Also, Ministry of External Affairs should have offices in key states.
- Think tanks should be established in states to facilitate policy options and to provide inputs to the states and the Centre.
- States should also be encouraged to secure best deals for themselves within the overall policy of the Central government.

2.9 Conflicts between Delhi Government and LG

What is the issue?

SC is looking into the problem of jurisdictional conflicts between Delhi's elected government and the lieutenant governor (LG).

What is Article 239AA?

- Delhi, although a union territory, is not administered by the president acting through the LG under Article 239.
- It is administered under Article 239 AA.
- Article 239 AA was incorporated in the Constitution in 1992.
- It creates a "special" constitutional set up for Delhi.
- It has provisions for popularly elected assembly, a council of ministers responsible to the assembly and a certain demarcation of responsibilities between the LG and the council of ministers.
- As per Article 239 AA (3) (a), the Delhi assembly can legislate on all those matters listed in the State List and Concurrent List as are applicable to union territories.
- The public order, police and land are reserved for the LG.

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What is the problem?

- This special set up worked well mainly because the same party held office at the Centre as well as in Delhi for much of the time.
- Things changed when different government ruled the city and the centre.
- This was complicated when the Delhi High Court judgment declared that the LG is the only decision-making authority in the NCT.
- Presently, SC is looking into two main issues:
    1. Whether the elected government is the final authority in respect of matters assigned to it by the constitution &
    2. Whether the LG has primacy when a difference of opinion arises between him and his council of ministers on matters of governance.

Why should Council of Ministers be given more power?

- **Final Authority -** Under Article 239 AA (4), the council of ministers has the executive power to execute all matters in respect of which the assembly has the power to make laws.
- Article 239 AB (a) says "if the administration of the NCT cannot be carried on in accordance with the provisions of Article 239 AA," the president can dismiss the council of ministers.
- Further, Article 239 AA (b) says that the council of ministers shall be collectively responsible to the assembly.
- So, the council of ministers is responsible for Delhi's administration and if it fails in its functions, it will be removed by the president.
- But the council of ministers cannot be removed for the breakdown of the constitutional machinery unless they are vested with the power to take final decisions on matters of administration.
- It is also absurd to think that the council of ministers will be removed for the failure of the LG.
- So vesting of all powers in the LG in respect of matters which come within the jurisdiction of the assembly is not in conformity with the scheme of Article 239 AA.
- **Primacy -** A LG, motivated by political considerations, could disagree with many decisions of elected government and refer them to the president.
- So such a provision in the proviso to Clause (4) of Article 239 AA virtually nullifies the executive power vested in the council of ministers.
- After all, the purpose of the constitutional amendment was to provide a democratic government for Delhi and not to enhance the powers of the LG.
- So in regard to matters of governance other than that in the discretionary list, the council of ministers should be left free to exercise the executive power.

2.10 LG of Pondicherry & Delhi

Why in news?

Lt Governor (LG) of Pondicherry, Kiran Bedi, claimed that she has powers to overlook the Legislature based on circumstances and can correct mistakes in the Budget.

What are the powers of LG of Pondicherry?

- **Government of Union Territories Act, 1963** provides for a Legislative Assembly of Pondicherry, with a Council of Ministers to govern the Union Territory of Pondicherry.
- It states that the UT will be administered by the President of India through an Administrator (LG). It also has following provisions.
- **Extent of legislative power** - MLAs "may make laws for the whole or any part of the Union Territory with respect to any of the matters enumerated in the State List or the Concurrent List".

- **Council of Ministers** – The CoM headed by a CM will aid and advise the Administrator in the exercise of his functions.
- **LG** –It also allows the LG to "act in his discretion" in the matter of lawmaking, even though the CoM has the task of aiding and advising him.
- In case of a difference of opinion the Administrator is bound to refer it to the President for a decision and act accordingly.
- However, the Administrator can also claim that the matter is urgent, and take immediate action as he deems necessary.
- **Prior permission -** A prior sanction of the Administrator is required for certain legislative proposals. They include Bills or amendments that deal with the "constitution, jurisdiction, powers and organisation of the court of the Judicial Commissioner".
- Once the Assembly has passed a Bill, the LG can either grant or withhold his assent; or reserve it for the consideration of the President. He can also send it back to the Assembly for reconsideration.
- The manner in which the LG functions vis-à-vis the elected government (Council of Ministers) is also spelt out in the Rules of Business of the Government of Pondicherry, 1963.
- The Administrator exercises powers regulating the conditions of service of persons serving in the UT government, in consultation with the CM.

How it is different from Delhi?

- Both Delhi and Pondicherry has an elected legislature and government but the powers of the LG of Pondicherry are different from the ones of the LG of Delhi.
- The LG of Delhi has "**Executive Functions**" that allow him to exercise his powers in matters connected to public order, police and land "in consultation with the Chief Minister, if it is so provided under any order issued by the President under Article 239 of the Constitution".
- LG of Delhi is also guided by the Government of **NCT of Delhi Act**, 1991 and the Transaction of Business of the Government of NCT of Delhi Rules, 1993.
- But the LG of Pondicherry is guided mostly by the **Government of Union Territories Act, 1963**.
- Under the constitutional scheme, the Delhi Assembly does not have the power to legislate on law and order and land.
- However, the Puducherry Assembly can legislate on any issue under the Concurrent and State Lists.
- Simply put, the LG of Delhi enjoys greater powers than the LG of Pondicherry.

2.11 Language Politics in West Bengal

Why in news?

- Gorkha Janmukti Morcha (GJM) renewed its demand for a separate Gorkhaland state.
- What is the reason?
- GJM is a political party which campaigns for the creation of a separate state Gorkhaland within India, out of districts in the north of West Bengal.
- The recent protests started with the suspicion that Bengali would be made mandatory in the hills.
- Later it spiraled into a broad-based 'indefinite' agitation with the GJM targeting symbols of the state and ordering closure of all government offices.
- In May, Chief Minister of West Bengal had announced that all students would have to study Bengali from Class I.
- She later clarified that it would not be compulsory in the hill district of Darjeeling.

What should have been done?

- Language has been a fraught issue in the Darjeeling hills for more than a century.
- So the chief minister should have made the announcement without consulting the Gorkhaland Territorial Administration (GTA), the semi-autonomous body that runs the affairs of the hill town.
- Though later it was clarified that her government has no intention of making Bengali compulsory in schools in Darjeeling, the damage was done.

What is need for addressing the Gorkhaland?

- The Nepalese and Lepchas living in Darjeeling and the adjoining areas have a more distinct culture and history than the Bengalis in rest of the state.
- But since 1835 Darjeeling has been administered by the authorities in Kolkata.
- The agitations are also becoming costly for West Bengal and the country, economically and for other reasons.

How this conflict can be solved without bifurcation?

- Article 244 A provides for an autonomous state for certain tribal areas in Assam with its own legislature and council of ministers.
- By a small constitutional amendment, the applicability of this article can be extended to West Bengal even other states.
- This will enable the establishment of an Autonomous State of Gorkhaland, with a legislature and council of ministers within the existing state of West Bengal without bifurcating it.

What will be advantages of such decision?

- This solution will enable West Bengal to return to the path of development and welfare.
- The Autonomous State can concentrate on the aspirations and welfare of the people of the region.
- It can be an opportunity to secure all-round advancement of the STs, Scheduled Castes (SCs), and Socially and Educationally Backward Classes and the poor.
- This solution can be extended to other states where there is a demand for the formation of new states.
- But a massive drive to build public opinion, both among Nepali-speaking and Bengali-speaking people, has to be undertaken.

- The Nepali-speaking people must be told that an autonomous state will enable them to assume control over their future and development.
- Similarly, Bengalis should be assured that they will not lose Darjeeling, which will continue to be part of West Bengal while being the capital of the Autonomous State of Gorkhaland.

2.12 End to Darjeeling Blockade

Why in news?

- Gorkha Janmukti Morcha (GJM), which has been leading the separate statehood movement, has called off the indefinite strike in Darjeeling.

What led to this blockade?

- The people of the Darjeeling Hills and the people of Indian Gorkhas in the Northern part of West Bengal have long been demanding a separate state of Gorkhaland.
- The GTA (Gorkhaland Territorial Administration) was set up in 2012 as a semi-autonomous body to devolve some powers.
- However, substantial administrative and fiscal authority remained with the state government's district heads.
- There is a long pending standoff in Darjeeling as a result of failure of devolution of power to the GTA as promised.
- The immediate cause for the recent blockade is West Bengal CM's statement to make Bengali a compulsory language of study in the State.
- The stir started off with this and led to a revival of the demand for statehood.
- On an appeal from the Union Home Minister and his tentative offer of talks on the issue, the strike was called off.

What lies ahead?

- The tourism sector and the tea industry faced huge losses following the unrest in the region.
- The end to the blockade comes as a relief to the stalled economy of the region.
- Now that the strike has been called off, the Union and West Bengal governments and the GJM must urgently begin tripartite talks.
- An agreement on the empowerment of the GTA can only address the grievances of the residents of Darjeeling and prove to be a sustainable resolution of the issue.

2.13 Special Status to J&K

Why in news?

- PIL plea was filed contending 35A.
- The Supreme Court Bench agreed to schedule the case before a three-judge Bench.

What is the view of J&K HC?

- J&K High Court earlier ruled that Article 370 assumed a place of permanence in the Constitution and the feature was beyond amendment, repeal or abrogation.
- It also observed that the President under Article 370 (1) was conferred with power to extend any provision of the Constitution to the State with such "exceptions and modifications" as may be deemed fit subject to consultation or concurrence with the State government.
- It said that J&K, while acceding to the Dominion of India, retained limited sovereignty and did not merge with it.
- It also clarified that Article 35A gave "protection" to existing laws in force in the State.

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- Article 35A of the Indian Constitution empowers the J&K state's legislature to define "permanent residents" of the state and provide special rights and privileges to those permanent residents.

Why Special Status has been conferred to J&K?

- In 1947, after independence, the State of J&K decided not to join either Pakistan or India.
- India welcomed this decision, but Pakistan attempted to annex the State militarily.
- So the Maharaja of J&K sought Indian help to save his territory and people who were being killed and looted by the Pakistani militants.
- Subsequently an "Instrument of Accession" was signed which provided certain concessions for the autonomy of the State.
- This special status of the State is enshrined in Article 370 of the Indian Constitution. This Article cannot be amended.
- What are the provisions in 'Special Status'?
- The State of J&K has its own Constitution apart from Indian constitution.
- This state follows 'dual citizenship'- Citizenship of J&K and India.
- The residuary power of the state lies with the Legislature of the J&K and not the Parliament of India.
- Except for defense, foreign affair, finance and communications, the Parliament needs the state government's concurrence for applying all other laws.
- The national emergency proclaimed on the grounds of armed rebellion, shall not have an automatic extension to J&K.
- The Governor of the State is to be appointed only after consultation with the Chief Minister of that State.
- Financial Emergency under Article 360 of Indian constitution cannot be imposed on the State.
- DPSP and Fundamental duties enshrined in the Indian constitution are not applicable to J&K.
- Apart from the President's rule, the Governor's rule can also be imposed on the State for a maximum period of six months.
- The preventive detention laws as mentioned in Article 22 of Indian constitution do not have an automatic extension to the State.
- The name, boundary or territory of the State of J&K cannot be changed by the Parliament without the concurrence of the State Legislature.
- 'Right to property is fundamental right - Article 19(i) (f) and 31 (2) of Indian constitution have not been abolished for this State.

2.14 Controversy around Art 35A

Why in news?

- The Supreme Court is hearing a PIL petition challenging the constitutional validity of Article 35A.

What is the controversy in Art 35A?

- Article 35A allows the Jammu and Kashmir legislature to define the list of 'permanent residents' of the state, who-are eligible to vote, can work for the state government, can own land, buy property, can secure public employment and college admissions, etc.
- Non-permanent residents are denied all these rights.
- This article is being challenged on the ground of gender discrimination.
- This is because a male resident will not lose the right of being a permanent resident even after marriage to a woman from outside.

- A woman from outside the state shall become a permanent resident on marrying a male permanent resident of the state.
- However, a daughter who is born as state subject of J&K will lose the right of being a permanent resident on marrying an outsider.
- It discriminates against women who marry outside the State from applying for jobs or buying property.
- This is said to be against the spirit of Article 14 of the Constitution which provides for equality before the law and the equal protection of the laws.

Why is the case significant?

- Art 35A was added to the constitution through the **Constitution (Application to Jammu and Kashmir) Order, 1954,** a presidential order not yet ratified by the Parliament.
- It is being challenged that the provision was "unconstitutional" and approved without any debate in the parliament.
- The J&K government sees Art 35Aas offering the state a special position.
- On the other hand, the Centre differs on the grounds that it discriminates against women and is calling for a larger debate.
- The issue is now getting -a political tone leading to tensions between the state and the central government.
- There are also apprehensions that any adverse order against the provision could give the state's separatists a chance to stir up violence in the state.
- It is high time that the governments place the rights and privileges of the people of the state above political motives and deal it accordingly.

2.15 Demand for a separate State Flag

Why in news?

- Kannada and Culture Department of the state government recently notified the setting up of a committee to examine the feasibility and legal issues around the demand.
- What is the Karnataka government's stand?
- The government has constituted a committee to look at the issues in the creation of a state flag.
- It stated that Karnataka already has an official state song and it feels that there is nothing wrong in having a state flag.
- It was also ensured that the national flag will always fly higher that the state flag.
- Karnataka has had an unofficial state flag since the mid-1960s when pro-Kannada groups were agitating against the screening of non-Kannada films in the state.
- The unofficial flag is flown every year on November 1, Karnataka's foundation day, and is a common sight at public places.

What is the centre's view?

- There is no provision in the Constitution for a state flag.
- Home Ministry stated that legally, there is no provision either for providing or prohibiting a separate flag for any state.
- It also said that if such a flag is created it would only represent the people and not the state.

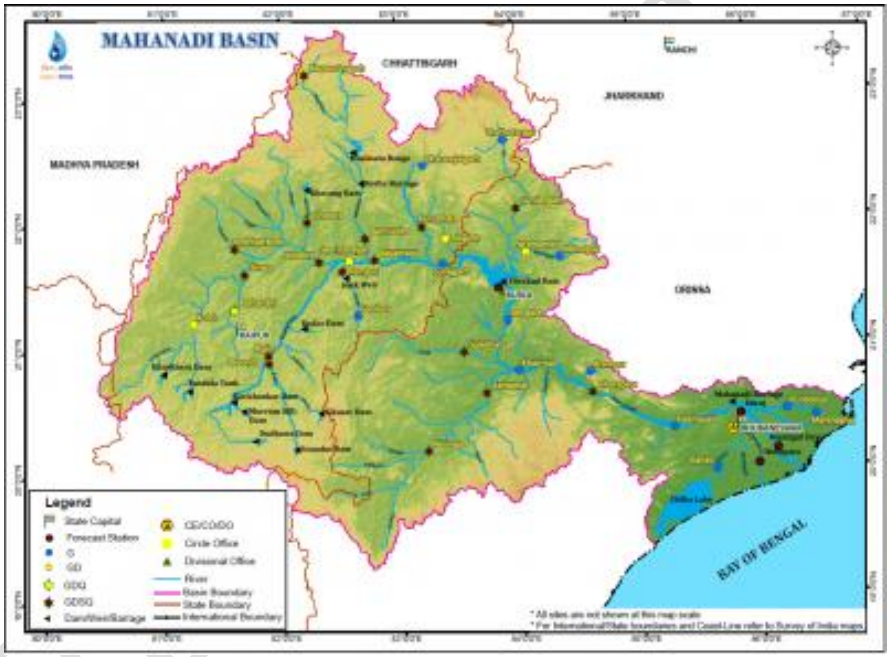
2.16 Mahanadi River Water Dispute

What is the issue?

- Sharing of Mahanadi river water has been a bone of contention between the states of Odisha and Chhattisgarh.
- Odisha is now increasingly showing its resentment to the centre for not intervening and resolving the water dispute.

What are Odisha's concerns?

- Odisha is arguing that Chhattisgarh has been constructing dams and weirs (small dams) upstream the Mahanadi River.
- This is being allegedly carried on by the Chhattisgarh government without consulting Odisha.
- Odisha says this would affect the flow of the river downstream and affect drinking water supply.
- Also, it would impact the irrigation facilities in Odisha and adversely affect the interests of the farmers.
- It is also alleged that Chhattisgarh would utilise water far in excess of the equitable share of the waters of Mahanadi.
- Moreover, the weirs and other projects would impact the flow of water in the Hirakud reservoir, a multipurpose river valley project, which is a lifeline for many in the state.



What is the way forward?

- Under the Inter-State River Water Disputes Act, 1956 a tribunal can be formed to resolve water disputes.
- A tribunal could be formed if a state government requests the Centre and the Centre is convinced of the need to form the tribunal.
- Odisha has long been demanding the formation of a tribunal for resolving the Mahanadi river water dispute.
- However, notably only three out of the eight existing tribunals have given awards accepted by the states concerned.
- The Centre has recently put forward the idea of a permanent tribunal to adjudicate all inter-state river water disputes for speedy resolution.
- Materializing this idea could be a solution to the Mahanadi River Water Dispute and many such water disputes among different states.

2.17 Over-reach of the TN Governor

What is the issue?

- Tamil Nadu Governor recently met with government officials in Coimbatore to review directly the various government programmes.
- This is perceived to be an interventionist over-reach.

What are the conventional provisions?

- The Governor of a State is not expected to review the work of government officials personally, when an elected regime is in place.
- But Mr. Purohit, the TN Governor justified his action saying that he was seeking to familiarise himself with the administration.
- Article 167 of the Constitution says that the CM has to keep the Governor updated on all major government decisions in both the executive and legislative domains.
- Additionally, the CM is also required to furnish any specific administration related information if the Governor demands.
- There may even be occasions when the Governor asks a top bureaucrat or a police officer for a report.
- But such an action too should be rarely resorted to and be for some specific purpose of importance.
- Presently, the TN government's majority status in the Assembly is doubtful, after the disqualification of 18 dissident MLAs.
- Given this, the governor's move adds to the apprehension that the state government was being arm twisted by the Centre.

What is the way forward?

- Governors of the States can indeed work independently as per the constitutional mandate.
- However, they should also ensure that their functioning is within the bounds of established norms and conventions.

3. RIGHTS AND RELATED ISSUES

3.1 Euthanasia and Living Will

Why in news?

- A Constitution Bench is hearing a petition filed by NGO Common Cause on the issue of living wills.
- The centre has told the Supreme Court that it was evaluating a draft law on passive euthanasia and is against allowing living will.

What is the case?

- **Passive euthanasia** - It refers to the withdrawal of medical treatment with the deliberate intention to hasten a terminally ill-patient's death.
- The Supreme Court, in a landmark verdict in 2011, ruled out active euthanasia.
- The centre has informed that the 'Management of Patients With Terminal Illness — Withdrawal of Medical Life Support Bill' was ready and it has provisions allowing passive euthanasia.
- It has provisions allowing passive euthanasia as recommended by the law commission which specifies certain categories of people.
- These include those in persistent vegetative state (PVS), in irreversible coma, or of unsound mind, who lack the mental faculties to take decisions.
- **Living Will** - It refers to an advance written directive of the concerned person to physicians for end-of-life medical care i.e. not to provide life support.
- The court has indicated that it may lay down comprehensive guidelines on operationalising the idea of living wills.

Aruna Shanbaug case

- Aruna Shanbaug is an Indian nurse who spent around 40 years in a vegetative state as a result of a sexual assault.
- The Supreme Court responded to the plea for euthanasia filed by a journalist, by setting up a medical panel to examine her.
- In 2011, the Supreme Court, in a landmark judgement, issued a set of broad guidelines legalizing passive euthanasia in India.
- However, given the social, legal, medical and constitutional complexities involved, it becomes essential to have a clear enunciation of law.

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- However, the government has opposed the concept of an advance directive and opposes permitting people to make a 'living will'.

What are the complications with 'living will'?

- Deciding on the question of living comes with all the legal, moral and philosophical implications.
- **Legal** - An earlier verdict from the judiciary has noted that right to life under Article 21 does not include the right to die.
- Permitting living will would contravene this legal stand.
- **Rights** - Allowing it would also acknowledge the patient's autonomy and self-determination to the point of legalising a wish to die.
- **Social** -There are chances of misusing the provision and leading to the abuse and neglect of the elderly.
- On the other hand, allowing it would relieve the close family members, of a terminally ill patient, of the moral burden of making a life-ending decision.
- A living will would also rule out the possibility of doubting the life terminating decision as a murder.

What could be done?

- Given the mixed benefits, living will could be provided for with the necessary safeguards.
- The guidelines should ensure that it was really the will of the concerned person.
- Also, an independent medical board can examine the health of the person to establish the validity of the decision.

3.2 Ban on Free Expression

Why in news?

Supreme Court recently upheld the ban on "Basava Vachana Deepthi".

How did the issue evolve?

- Maate Mahadevi's book "Basava Vachana Deepthi", was banned by the Karnataka government in 1998 as the contents were thought to hurt religious sentiments of 'Veera Shaivas'.
- The government had then invoked **Section 95 of CrPC** – that allows for **the suspension of publications on certain grounds.**
- The book had allegedly changed the original words in Lord Basaveshwara's "Vachanas" to suit the author's world view.

Section 95 and 96 of CrPC

- This provision that has its roots in colonial law.
- It authorises state governments to ban and forfeit books if it "appears" that they might violate certain provisions of the Indian Penal Code (such as sedition, hurting of religious sentiments etc.)
- Section 96 of the CrPC allows persons aggrieved by the State government order to approach the High Court for relief.

What are its implications?

- The current verdict is a victory for intolerant attitudes.
- This also implies that freedom of expression deserves protection only when it raises no opposition.
- Religious passion has effectively been exempted from the regular mandates of democracy.
- It also highlights the fact that governments in India can ban books with ease as once CrPC Section 95 is invoked - the onus is on the author to disprove it in courts.

What is needed?

- For a book to be banned, it should be established beyond doubt that – "book attempts to insult religious beliefs with definitive hateful intentions".
- In a just & tolerant society, the courts are expected to take the narrowest possible reading into laws seeking an outright ban.
- The preservation of individual autonomy is an essential requirement of a legitimate government.

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- The court must therefore recognise that the right to freedom of speech is a liberty central to achieving an equal society.

3.3 Need to Scrap Sedition Law

What is the issue?

The sedition law has been misused in recent times to suppress even minor dissent.

What is Sedition law?

- It was introduced in the 1870s, originally to deal with increasing Wahabi activities that posed a challenge to the colonial government.
- **Section 124 A in the Indian Penal Code** made words or any visible representation that brings hatred or contempt, or excite disaffection towards the government punishable by law.
- Most of the penal code was retained intact after 1947.
- Despite demands to scrap it, the law of sedition remains enshrined in our statute book till today.

What is the need to scrap this law?

- Figures of the National Crime Records Bureau reveal that in the two years preceding the JNU case, there were a total of 77 sedition cases, of which only one resulted in conviction.
- But it is not rates of conviction but **the criminalisation of dissent** that makes the law draconian.
- **Legal process itself becomes the punishment.**
- So the slapping of sedition charges can be considered as an attempt to strong arm the protesters into submission e.g An entire village in Kudankulam had sedition cases slapped against it for resisting a nuclear power project.
- It leads way to a totalitarian regime.
- It only serve to give a legal facade to the government's persecution of voices.
- It casts many legitimate protesters as anti-national.

3.4 Right to Privacy

What is the issue?

- Supreme Court (SC) is hearing a case to decide whether right to privacy is a fundamental right.

What is the present status of right to privacy?

- Right to Privacy does not find any mention in the Constitution.
- This right has been picked from Article 19 and 21 which deals with right to life and liberty.
- In the absence of clarity, it has been defined only by a string of judgments.

What were the landmark judgements in this regard?

- **Kharak Singh vs. State of UP** - Extending the dimension of 'personal liberty,' the apex court declared right to privacy to fall under the purview of Article 21.
- The court defined the right of personal liberty in Art. 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures.
- **Govind vs. State of MP** - Right to privacy cannot be made an absolute right.
- Subject to reasonable restrictions, the right to privacy could be made valid.
- The right to privacy will have to go through a process of case by case development.
- **Rajagopal vs. State of T.N** - The court defined privacy as part of Article 21 and as a right to be let alone.
- A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters.

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- None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical.
- An exception in this case is, where a person voluntarily involves himself into a controversy or invites one.
- Naz Foundation vs. Govt. of NCT Delhi - The court cited Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights which define privacy as no arbitrary interference with home, family or honor and reputation.

What is Supreme Court rationale?

- The apex court laid down three categories under which the term privacy must fall for an individual to avail the said right.
- Any law interfering with personal liberty of a person must satisfy a triple test.
- It must prescribe a procedure;
- The procedure must withstand a test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation;
- It must also be liable to be tested with reference to Article 14.

Will SC's judgement stop Aadhaar?

- The heart of discussion should be on whether Aadhaar and the 'data' that it collects is an invasion of that right to privacy.
- Even if the right to privacy is judged as a fundamental right, it has to be proved that the UIDAI data actually invades privacy.

3.5 The Fundamental Right to Privacy

Why in news?

- The Supreme Court recently pronounced its verdict upholding right to privacy as a fundamental right.

What are the main aspects of the verdict?

- In a unanimous verdict, a nine member Constitution Bench of the Supreme Court declared that privacy is intrinsic to life and liberty and thereby a part of the Art-21 of the fundamental rights.
- It held that privacy is a natural & inherent right available to all humans and the constitutional recognition is only to make it explicit.
- But the court also clarified that it is not an absolute right.

What are the larger implications?

- **Right to life & personal liberty** – This bench has become the 1st to explicitly overrule the Emergency era judgment in ADM Jabalpur v Shukla case, that had ruled that fundamental right to life & personal liberty could be suspended during Emergency.
- **Homosexuality** – The judgment also implicitly overrules the 2013 judgment of the Supreme Court that upheld the validity of IPC Section 377, which criminalizes homosexuality.
- The verdict held that the sexual identity of the LGBT community is inherent in the right to life.
- Currently, Section 377 is pending before a Bench of five judges and in this backdrop, its striking down is the most likely outcome.

IPC - Section 377

- Section 377 of the Indian Penal Code dating back to 1860, criminalises sexual activities "against the order of nature".
- This arguably included homosexual sexual activities but wasn't restricted to it.
- The section was decriminalized with respect to sex between consenting adults by the High Court of Delhi in 2009.
- That judgement was overturned by the Supreme Court of India in 2013, with the Court holding that amending or repealing Section 377 should be a matter left to Parliament, not the judiciary.

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- **Right to die** - As an individual's rights to refuse life prolonging medical treatment is another aspect that falls within the zone of the right of privacy, this revives the question of passive-euthanasia.
- This was originally dealt in Aruna Shanbaug's case were it was then held that no violation of fundamental rights had been established.
- The matter is now pending re-consideration before a Bench of five judges and this verdict is bound to influence that case.
- **Beef & Alcohol** - While Bombay High Court held that consumption of beef is a part of the right to be left alone, the Patna High Court struck down the total ban on alcohol in Bihar.
- While both these judgments is now being challenged before the Supreme Court, the current judgment has held that the right to food of one's choice is part of the right to privacy.
- It is therefore clear that the 'privacy judgment' will have a bearing on matters like consumption of beef and alcohol.
- **Data Protection** - As India has no statute regarding privacy or data protection, concerns were raised by the court.
- It expressed hope that the government would undertake this exercise after a careful balancing of privacy concerns and legitimate state interests.
- The court had previously been informed that the Ministry of Information Technology has constituted a Committee of Experts to deliberate on a data protection framework.
- **Whatsapp & Facebook case** - The verdict has recognized the threat of Big Data in private hands and the need to establish a statutory framework to safeguard them.
- It was observed that information, when shared voluntarily, may be said to be in confidence, and any breach of confidentiality is a breach of trust.
- This assumes great significance, given that privacy concerns over WhatsApp and Facebook are pending adjudication before another Bench of five judges.
- **Future of Aadhar** - The immediate trigger for the privacy case being taken up was Aadhar & hence the judgment's impact will also be felt the most there.
- Attorney Genreal's argument regarding Aadhar, that the right to privacy is not fundamental in a developing country where people do not have access to food & shelter was severely rebuked by the SC bench.
- This will significantly limits the stand that the union government will be able to take before the bench that finally hears the validity of the Aadhaar Act.

How does the future look?

- Reasonable Restrictions - It is pertinent at this juncture to note that the judges have referred to the reasonable restrictions and limitations that privacy would be subject to.
- The verdict also elaborated that such restriction should be based on compelling state interest and on a fair procedure that is free from arbitrariness, selective targeting or profiling.
- The verdict also made a note for future courts that would exercise writ jurisdiction to be cautious about the nature of the relief they grant based on wide and open-ended claims of breach of privacy.
- State Surveillance – Privacy as a value finds itself at loggerheads with notions of national security, the needs of a knowledge society and even socio-economic policy.
- While surveillance of the state for security & administrative reasons would help better governance, the tendency to slip into an era totalitarian control is very much real.

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- Hopefully, this judgment will put such concerns to rest and bring about a more equitable relationship between citizens and the state.

3.6 Right against Torture

Why in news?

- The Law Commission, as part of its 273rd Report, submitted a draft Prevention of Torture Bill, 2017 for the consideration of the government.

What are the major recommendations?

- **Ratifying the 'UN Convention** against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment'
- Defining 'torture' in a broader way to include any **physical, mental or psychological injury**
- Considering as torture an injury that is either inflicted intentionally or involuntarily, or even an attempt to cause such an injury
- Inserting a new section in the Indian Evidence Act to ensure that in case a person in police custody sustains injuries, it is presumed that those injuries have been inflicted by the police
- Placing the **burden of proof** on the authority concerned to explain such injury
- Authorising the courts to decide upon a "**justifiable compensation**" to victims after considering the socio-economic background of the victim
- Taking into account the nature, purpose, extent and manner of injury, including mental agony caused to the victim for compensations
- Amending the Criminal Procedure Code, 1973, and the Indian Evidence Act, 1872, to accommodate provisions regarding compensation and burden of proof respectively
- Curbing the menace of torture and having a deterrent effect on such acts through imposing **fine and stringent punishment** like life imprisonment
- Putting in place an effective **mechanism to protect victims** of torture, complainants and witnesses against possible threats or ill-treatment
- Making State own the responsibility for injuries caused by its agents on citizens as per the idea of **'liability follows negligence'**
- Acknowledging the principle that **sovereign immunity could not override the rights** assured by the Constitution to an individual

What is the significance?

- **Extradition request** - India has made many requests for extradition of offenders from other countries.
- However, conditions in India's prisons, especially over-crowding and torture, are a reason for India's extradition requests failing.
- E.g. extradition courts in the UK refused to send two persons to India to face trial, on the ground of ineffective system of protection from torture.
- Having an anti-torture legislation in place is thus a practical necessity in India's interest to make countries accede to extradition requests.
- **Moral Commitment** - Custodial violence continues to be prevalent in the country.
- Suspects being forced to confess for undone wrongs is a continuing practice against individual right; the most recent instance is the faulty accusation in Ryan school murder case.
- Enacting a law to eliminate all forms of torture and other cruel, inhuman and degrading forms of treatment is thus a moral liability for India.

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- Ratifying the UN Convention and following it up with a domestic law against torture can give shape to these moral and legal commitments.

3.7 Right to Water and Information

Why in news?

- Chief Information Commission (CIC) has denied information on J&K hydel projects' negotiations.

What is the recent tussle about?

- In 2006, the Rangarajan Committee recommended the transfer of two hydel projects that was transferred to NHPC back to J&K.
- The three Interlocutors appointed by the UPA government recommended the return of all Central sector power projects to J&K as a confidence-building measure.
- The NHPC is not publicising details of negotiations.
- It argues that the issue has not been resolved yet and publicising would lead to speculation and confusion.
- The Chief Information Commission also ruled that that it would not disclose details of the negotiations.

Problems with the power projects

- In 2000, the J&K government signed MoUs with the Central government transferring seven hydro power projects to NHPC for funding, execution and operation.
- The MoUs covered Kishanganga, Uri-II, Bursar, Sewa-II, Pakal Dul, Nimmo Bazgo, and Chutak projects for a period of ten years.
- Currently, NHPC generates close to 30% of its national total annual output from the hydel projects located at Salal, Uri, Dulhasti, Sewa, Nimmo Bazgo and Chutak in J&K, earning it about Rs.200 billion annually.
- Under the terms of the MoUs, 12% of the electricity generated is supplied free of cost to J&K.

What was CIC's justification?

- The CIC's interpretation of RTI Act was invoked to prevent disclosure on NHPC.
- By RTI law, the protection for commercially confidential information is available only to "third parties" and not to a public authority that holds the requested information.
- While deciding the appeal against the NHPC, the CIC treated itself as a "third party".
- In a ruling, the Delhi High Court had clearly held that a public authority could not become both the "second party" and the "third party" in relation to one RTI application.
- CIC had ignored this principle laid in the court judgment.
- The CIC also denied information in the lines with protecting the investor interests; but the fact is that the government is 90% shareholder of the NHPC.

What should be done?

- India ratified the **International Covenant on Economic, Social and Cultural Rights** in 1979, which recognises every human being's right to water.
- In 2002, the Covenant's monitoring body declared that the right to water includes people's **right to access information about water.**
- Both water and information controlled by the governments and their agencies are **public goods**.
- Thus, both must be readily accessible to the people on demand, and nobody should be allowed to claim proprietorial rights over either of them.
- Publicising details of government's negotiations is the first step towards ensuring to the people of Jammu & Kashmir the control over their natural resources.

3.8 Right to Language

What is the issue?

- The language data of the census are not made public by the government since 1961 census.

How is the language data handled in India?

- During the colonial times, language was treated as a 'sensitive' subject and was seen as a cause for breakdown of law and order.
- The information related to language data is handled by the Home Ministry.
- In 1961, a complete list of languages claimed during the Census as 'mother tongues' was disclosed as 1652.
- From 1971 onwards, the Census decided to disclose names only of those languages which had more than 10,000 speakers.
- The rationale behind this move was not specified.
- As a result, the list of 1971 had only 108 language names.
- 2001 language data put together several languages under a single category, undermining their diversity.
- The 2011 language data has not been released yet.

How significant is the 'right to language'?

- UNESCO has been promoting the idea of language as an inalienable cultural right.
- It has already built it into the charter of sustainable development goals.
- India is a formal signatory to the charter.
- The community's right to its language becomes a non-negotiable right to cultural possession.
- Similarly, the state's obligation to secure and protect this right too becomes a non-negotiable duty.

Why is it important to release the data?

- It is important for those who belong to the linguistically minority communities.
- It helps them to take necessary action to preserve their language.
- Longevity of multiple language is essential for maintaining the cultural diversity of the country.
- Imparting education to children through their mother tongue is scientifically considered to aid full development of their cognitive and emotive faculties.
- So the data will help the government to identify the needs of various regions so that it can provide supportive materials in their mother tongue.
- The neglect of a community's language and its language loss are among the most important reasons for induced migration.
- So the data will help in understanding the demographic transitions like language induced migration to avoid urban sprawl.
- Hence, the disclosure of data related to languages should be made as a primary obligation of the state.

3.9 Death by Hanging

Why in news?

The Centre had told the Supreme Court that executing a death row convict by hanging was the most viable method.

What was the petition?

- A PIL had sought quashing of section 354(5) of the Criminal Procedure Code which specifies execution by hanging.
- The plea had referred to a Report of the Law Commission advocating removal of the present mode of execution from the statute.

- It has also referred to Article 21 and stressed that it included the right of a condemned prisoner to have a dignified mode of execution so that death becomes less painful.
- This means the right to a dignified life up to the point of death including a dignified procedure of death.
- The PIL had also listed intravenous lethal injection, shooting, electrocution or gas chamber as other viable options in which death is just a matter of minutes.
- It noted that the present practice of executing a death row convict by hanging involves prolonged pain and suffering.
- Notably, in hanging, the entire execution process takes over 40 minutes to declare a prisoner dead.

What was the SC's directive?

- The Supreme Court had earlier adjourned the plea seeking abolition of executing a death row convict by hanging.
- The SC had further urged the parliament to consider amending the Criminal Procedure Code to change the mode of execution to make death less painful.
- It also asked the Centre to appraise it about the various modes of executing death row prisoners prevalent in other countries.
- The court also made it clear that it is not questioning the constitutionality of death penalty but only the mode of execution.

What is the Centre's response?

- The Centre has said that there is no viable method at present other than hanging to execute condemned prisoners.
- It noted that they had tested lethal injections, but it was not workable as there are instances of it failing.

4. JUDICARY AND ISSUES REALTED TO JUDICIAL VERDICTS

4.1 Internal Rift in Judiciary

Why in news?

- Four senior judges of the Supreme Court held a press conference and publicly accused the Chief Justice of India for his biased decisions.

What is the convention?

- The Chief Justice is indeed the master of the roster, a well-settled law reflected in a Constitution Bench judgment in 1998.
- The convention of the court demands that important cases of public interest or sensitive matters should be first heard by the CJI.
- If the CJI is not willing for some reason to hear the case, it should be assigned to the next senior-most judge in the Supreme Court.
- Instead of that, such cases were assigned to certain Benches and eventually given a quiet burial.

What is the present allegation?

- The four senior-most judges after the CJI have alleged that the administration of the Supreme Court was not in order.
- Certain Supreme Court judges arrogated to themselves the “authority to deal with and pronounce upon” cases, over the past months.
- They also alleged the CJI, Dipak Misra of misusing administrative powers to selectively assign cases to judges of his choice.

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- Notably, certain cases of far-reaching consequences to the nation have been assigned without any rational basis.
- The senior judges now only question the 'how' and not the 'who' in regards with the administrative power of assigning the cases.

How did the dissent erupt?

- **Judges Bribery Case** - The germ that led to the current conflict could be the controversial medical college bribery caseThe case raised charges of judicial corruption and possible conflict of interest if Justice Misra were to hear it.
- **Fake encounter case** - B.H. Loya was the CBI judge hearing the Sohrabuddin Sheikh encounter case.
- The senior judges had held a meeting with the CJI expressing their reservations about assignation of a related petition to a particular Bench.
- The petition was in regard with seeking an independent probe into the mysterious death of CBI judge Loya.
- The 'fake encounter' case involves the BJP president Amit Shah who was an accused but later discharged.
- The political sensitivity of the matter lead to doubts that judicial allocations could be influenced by external political hand.
- **Internal efforts for redressal** - The senior judges have earlier collectively addressed their concerns to the CJI through a letter.
- They have tried the procedural means to persuade the Chief Justice to take remedial measures.
- **Media** - Having exhausted of the internal options, the judges have now circulated the letter at the press meet and made it public.

Is it a breach?

- The judges have transcended the judicial protocol that sitting judges should not interact with the media.
- However, this comes as an effort to protect the democracy and the independence of judiciary which are allegedly at stake.
- The internal rift poses the risk of diminishing the image of the judiciary and thus needs unconventional remedies.

Sohrabuddin Sheikh Encounter Case

- Sohrabuddin Sheikh is a petty criminal who was killed near Gujarat's Gandhinagar area in November 2005.
- He is suspected to have been involved in smuggling and a couple of murders as well.
- The suspected backing of political masters behind the crimes, lead to claims that the encounter was for political reasons.
- The case is going on.

What is the way forward?

- The government must stay away from the internal conflict in the judiciary.
- However, it could disclose its position on the Memorandum of Procedure for judicial appointments and communicate it to the Supreme CourtThe Chief Justice could convene a meeting of the full court and pay heed to the concerns to try internally resolving the conflict.
- The unprecedented internal dissension in judiciary is a moment for collective introspection for the nation on democratic institutions.

4.2 Judges Bribery Case

Why in news?

A five-judge Constitution Bench of the Supreme Court led by the CJI has recently said the Chief Justice has the sole prerogative to determine which Bench of judges hears which cases.

What is the case about?

- The case essentially involves settling a matter relating to a medical college that was barred from admitting new students for particular courses.

- The allegations are that some people had taken bribes by using the names of senior judges for securing a favourable judgement.
- Notably, there were allegations against the Chief Justice of India as well.
- In an SC hearing, a two judge bench ordered that the case be heard by a 5 judge Constitution bench of the senior-most judges of the SC.
- However, the following day, a 5 judge constitution bench headed by the CJI over ruled this order.
- It also ruled that "no judge can take up a matter on his/her own, unless allocated by the CJI, as CJI is the master of the roster (the registry of judges and the cases handled).
- This has indeed highlighted the administrative impropriety and a tussle within the top judiciary on the authority of constituting a bench.

What is the concern?

- **Authority** - The Chief Justice, reasserting his own administrative powers of allocating Benches largely undermines the moral authority of the position.
- The CJI being part of the hearing (where the scandal allegedly implicates a judgment the CJI wrote, even though he has not been named in the FIR) is contentious.
- This possible conflict of interest certainly leaves scope for doubting the process of justice delivery itself in the case.
- Also, making the CJI the master of the roster certainly weakens the larger public significance of the role.
- **Corruption** - The judiciary has failed to find a mechanism to deal with allegations of corruption within its ranks.
- The challenge lies in ensuring that the anti-corruption measures taken do not undermine the independence of the judiciary.

What is the way forward?

- An independent investigation is necessary into this case where the personal probity of individuals in the judiciary is in doubt.
- But besides, the Court cannot stand on formality and sacrifice substantive justice for a mere conception of prerogative power.
- The convention based cardinal principle that the Chief Justice of India is the master of the roster must be re-examined.
- Balancing the task with another judge would not undermine the CJI's role but would only be mindful of the changing demands of accountability.

4.3 Independence of Judiciary

What is the issue?

- With the recent judges bribery case, it becomes imperative to understand the various provisions in place for protecting the independence of judiciary.

What are the legal protections available for Judges?

- **FIR** - A five-judge Constitution Bench of the Supreme Court had earlier made clear the procedure in registering FIR.
- Unless the government first “consults” the CJI, no criminal case shall be registered under Section 154 of the CrPC (FIR) against a judge or Chief Justice of the HC, or a judge of the SC.
- CJI’s assent is imperative as he/she is a “participatory functionary” in the appointment of judges.
- If the Chief Justice is of the opinion that it is not a fit case for proceeding under the Act, the case shall not be registered.
- If the CJI allows registration of FIR, the government shall, for the second time, consult the CJI on the question of granting sanction for prosecution.
- If the CJI himself/herself is the person against whom the allegations are received, the government shall consult any other judge or judges of the Supreme Court.

- Notably, the majority in the Constitution Bench classified a judge as a "public servant".
- **Arrest** - The Supreme Court has also laid down guidelines for the arrest of a judicial officer of the subordinate judiciary.
- The court has held that a judicial officer should be arrested for any offence only under intimation to the District Judge or the High Court.
- The immediate arrest shall only be a "technical or formal arrest".
- After that, it should be immediately communicated to the District and Sessions Judges of the district concerned and the Chief Justice of the concerned HC.
- The arrested judicial officer shall not be taken to a police station without the prior orders of the District Judge.
- And no statements shall be recorded from him/her except in the presence of a counsel. He/she will also be not handcuffed.
- **Proceedings** - Provisions in Judges (Protection) Act, 1985 protects judges and former judges of the SC and HCs from any civil or criminal proceedings.
- This applies for any act, thing or word committed, done or spoken by him/her in the course of their judicial duty or function.
- No court shall entertain such complaints.
- Section 77 of the Indian Penal Code also exempts judges from criminal proceedings for something said or done during judicial duties.
- The government can however initiate criminal proceedings against a sitting or former judge of a superior court if it can produce material evidence to show that a judgment was passed after taking a bribe.

4.4 Transparency in Conferring 'Senior Advocate' Designation

Why in news?

Supreme Court has laid down guidelines for designating lawyers in the Supreme Court and High Courts as senior advocates.

What is the new process?

- Previously, the judges of the SC and HC had the sole discretion of according this status to advocates.
- Now, applications will be vetted by a permanent committee known as the Committee for Designation of Senior Advocates.
- **Members -** It will have 5 members and a permanent secretariat.
- The committee will consist of the Cheif Justice of India, two senior-most judges of the SC/HC, 'Attorney General of India' or 'Advocate General of State'.
- Additionally a person from the Bar will be nominated by the above mentioned members as a 5th member.
- **Assessment -** The committee will compile all the relevant candidate information and examine his case.
- It with regard to the reputation, conduct, integrity, free legal work, judgments in cases for which the advocate has appeared etc...
- The committee will examine each candidate's case, interview the candidate, and make its evaluation.
- This system is transparent and objective, and provides equal opportunity to all candidates.

Current Procedure of Judicial Appointments

- Political interference in the selection of judges in the 1970s, forced the evolution of collegiums system.
- However, the opaqueness and unsatisfactory selection transfer, and elevation of judges to the Supreme Court caused friction.
- This led to the passing of the Constitution (99th Amendment) Act, 2014 that called for the establishment of National Judicial Appointments Commission - NJAC.
- NJAC sought to give politicians and civil society a final say in the appointment of judges to the highest courts.
- In 2015, a Constitution Bench of the SC declared NJAC unconstitutional on the ground that it interfered with judicial independence.

- **Cons -** There is a proposal to publish names online for inviting complaints & suggestions ensuring better transparency.
- This may find some opposition with regard to privacy.
- There have also been reports of motivated complaints & objections.
- The secretariat might be dragged into the dilemma of investigating frivolous complaints or objections.

Can this be considered for Judicial Appointments?

- Currently appointments to the higher judiciary are through a non-transparent collegium system.
- The institutional mechanism for conferring senior Advocate status also seems suited to substitute the existing collegium system.
- Hence, the sooner the judiciary adopts such a mechanism for judges too, the better it is for the institution.

4.5 Uploading the Collegiums' Decisions

Why in news?

Supreme Court collegium has recently decided to upload its decisions on website.

What are the highlights of the move?

- Decisions taken by SC including elevation, transfer and confirmation of judges will be uploaded.
- The resolution is passed to ensure transparency and yet maintain confidentiality in the Collegium system.
- The information posted online will also "indicate" reasons for the recommendation or rejection of a name for judicial appointment, transfer and elevation to High Courts and the Supreme Court.
- As a start, the Supreme Court has posted online detailed reasons for judicial appointments to the Madras High Court and the Kerala High Court.

What is the reason behind this move?

- The Collegium has been criticised for its opaque mode of functioning while recommending judicial appointments.
- Many senior lawyers of the Supreme Court Bar Association criticised the closed-door decisions of the Collegium.
- The mode of functioning of the Collegium had seen criticism, even within the Collegium itself.
- This paradigm shift is after the resignation of Karnataka High Court judge shortly after his transfer to the Allahabad High Court.

What is the way forward?

- The proposal to upload the Collegium recommendations faced strong objections within the judicial community itself.
- Posting such information online would cause judicial candidates, including senior advocates, sitting judges and judicial officers, acute embarrassment.

4.6 Special Courts for Trying Politicians

Why in news?

- SC has recently asked the Centre to set up special courts for trying criminal cases involving 'political persons'.

What is the need?

- Criminalisation of politics is an issue that worries the country's administration for long.
- The political class manages to escape the serious criminal cases because of a delayed and repeatedly postponed trial.
- The criminal tendencies of these politicians get carried on to the bureaucracy and the police and more importantly into law making.

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What are the court's directives?

- The Centre should frame a central scheme for setting up of **special criminal courts** exclusively to deal with criminal cases involving political persons.
- These courts would function on the lines of the fast track courts.
- The directive for a **common central scheme** comes with the Centre's argument that setting up such courts would depend on the availability of funds with the States.
- The court also said that the scheme should provide **details of the funds** required to set up such courts.
- The Centre should also submit a report card on the **status of around 1500 criminal cases pending** against MPs and MLAs at the time of the 2014 elections.
- It is also required to report if the **court's earlier order** to complete the trial in all these cases within a year's time had been complied with or not.
- Besides, the SC said that it would **directly interact with the state governments** on issues like appointment of judicial officers, public prosecutors, court staff and other requirements.

Is the differential treatment justified?

- Special courts exist at present to try various classes of offences including corruption, terrorism, sexual offences against children and drug trafficking.
- However, creating special courts for a particular class of people such as politicians violates Right to Equality.

What are the challenges and possible solutions?

- **Shortage of judges** - Bringing in place the additional special courts would create the demand for more judges.
- **Prosecutors** - Appointing prosecutors who are not attached to any political party is another challenge in the working of the special courts.
- A directorate of prosecution headed by a retired senior judge could be created.
- **Delay** - Another threat is that the main trial could be obstructed by interim orders.
- Political leaders finding legal counsel and filing multifarious interim applications could delay the process, defeating the whole purpose.
- **Besides** all these, the concern with ensuring availability of funds, especially from the States has to be addressed by a central scheme.

4.7 Concerns with Tribunals

Why in news?

The Law Commission of India, in its recent report, has highlighted the issues with tribunals in India and has made recommendations in this regard.

What are the notable concerns?

- **INDEPENDENCE** - Presently, the government makes **appointments** to the tribunals which form a pillar of the country's justice delivery system.
- The tribunals functioning under the very government department which may be a litigant before them, makes the tribunals subservient to the executive.
- There is an apprehension that this could disturb the independent functioning of the tribunals.
- Also, the provisions relating to the qualifications, appointment, tenure, etc do not conform to the standards laid down by the Supreme Court in its various decisions.
- The Law Commission has thus suggested that a **Committee led by the CJI** should be in charge of the appointments to important posts.
- These include the Chairman, Vice-Chairman and Judicial Members of the various central tribunals.

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- It has also suggested that tribunals be monitored by a **single nodal agency** under the aegis of the Ministry of Law and Justice to ensure uniformity in affairs.
- **FUNCTIONING** - The **disposal rates** of tribunals in comparison to filing of cases per year is a welcoming 94%.
- However, the tribunals are still burdened with **high pendency** of cases.
- Also, the official data in respect of the working of some of the tribunals do not depict a satisfactory picture.
- Lack of infrastructure, unsatisfactory service conditions, delays engineered by lawyers and parties before the forums have been persistent problems.
- **VACANCY** - Another serious problem affecting the efficacy of tribunals is the large number of vacancies that are not filled for long periods.
- The commission recommends that the **procedure** for filling up vacancies **start six months before** the seats fall vacant.

What lies ahead?

- The concept of tribunals was developed to overcome the crisis of delays and backlogs in courts.
- However, over the years, the number of tribunals has increased and is estimated to be more than 30.
- The government recently reduced this number, by merging some tribunals with overlapping functions and is also working on further mergers.
- But before trimming the number of tribunals, there should be earnest efforts to **strengthen the high courts**.
- Also, the existing tribunals should be validated with proper measures to ensure their independence.

4.8 Issues with Finance bill 2017

What is the issue?

- The cut down of tribunal autonomy by the finance bill 2017 has been a controversy.

What are the features of the bill?

- It was passed as a money bill and Raja Sabha cannot make any decisions on the bill.
- It is a bulk bill of 40 amendments to different laws, such as variety of existing taxation laws, use of Aadhaar, income tax returns and raids, caps in cash transaction.
- It laid the foundations for of the merger of several tribunals.
- The Bill included amendments to legislation on multiple subjects, in an attempt to rationalise the functioning of multiple tribunals.
- There used to be 26 tribunals but now they are down to 19.
- The Competition Appellate Tribunal will be merged with the National Company Law Tribunal.
- The Telecom Dispute Appellate Tribunal will also do the work of the Cyber Law Appellate Tribunal.
- The Airports Economic Regulatory Authority Appellate Tribunal.
- The tribunal relating to the Employees' Provident Fund will be subsumed in the Industrial Tribunal.
- The qualifications, tenure, conditions of service, removal and emoluments of the chairpersons and members of these tribunals will all be under the control of the Centre.

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Tribunals proposed to be merged by amendments to the Finance Bill, 2017

Act	Tribunal being replaced	Tribunal to take over functions
Competition Act, 2002	Competition Appellate Tribunal	National Company Law Appellate Tribunal (under Companies Act, 2013)
Airports Economic Regulatory Authority of India Act, 2008	Airports Economic Regulatory Authority Appellate Tribunal	Telecom Disputes Settlement and Appellate Tribunal (under the TRAI Act, 1997)
Information Technology Act, 2000	Cyber Appellate Tribunal	
Control of National Highways (Land and Traffic) Act, 2002	National Highways Tribunal	Airport Appellate Tribunal (under the Airport Authority of India Act, 1994)
Employees Provident Funds and Miscellaneous Provisions Act, 1952	Employees Provident Fund Appellate Tribunal	Industrial Tribunal (under the Industrial Disputes Act, 1947)
Copyright Act, 1957	Copyright Board	Intellectual Property Appellate Board (under the Trade Marks Act, 1999)
Railways Act, 1989	Railways Rates Tribunal	Railway Claims Tribunal (under the Railways Claims Tribunal Act, 1987)
Foreign Exchange Management Act, 1999	Appellate Tribunal for Foreign Exchange	Appellate Tribunal (under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976)

What are the issues with the decisions on tribunals?

- There's no clear rationale behind this replacement, and seems to be rather arbitrary.
- The amendments make the independence of the tribunals questionable.
- Adjudicatory bodies under different laws cannot be abolished by a money bill.
- The reconstitution of the tribunals will be determined by the outcome of the legal challenge.
- The doctrine of separation of powers has been violated and the independence of judicial bodies compromised by the Finance Act.

4.9 End of COMPAT

What is the issue?

- The government of India recently initiated the process of implementing its budgetary announcement of merging eight autonomous regulatory tribunals.
- As a part of the process Competition Appellate Tribunal (COMPAT) is now merged with the National Company Law Appellate Tribunal (NCLAT).
- It is done with the pretext that it would reduce cost and improve the efficiency and working of the quasi-judicial agencies.
- But there is little which suggests a consultation had taken place with the stakeholders before reaching this decision.

What are the concerns?

- There is a difference between how most of the sectoral regulators and their respective appellate authorities divide functions & responsibilities.
- The institutional capacity of COMPACT which was built in the last 8 years will be lost as all the pending cases will be transferred to NLCAT.
- It may need time to recoup the jurisprudence developed by its predecessor.

What should be done?

- Regulatory reform should be a top priority of any governance mechanism but it should be more than a mere inter se transfer of regulatory responsibilities of one agency to another incongruous one.

- Companies making investment decisions in India seek clear, predictable rules on how the country's antitrust regime shall function.
- Therefore, inconsistencies and frequent amendments in the Regulations can have major negative ramifications for the Indian economy.
- A regulatory assessment to determine the feasibility of merging non-congruous regulatory tribunals is essential.
- It should be done to ensure there is no detraction from the quality of the existing judicial decision-making functions of the replaced tribunals.

4.10 Paradigm Shift in SC's stand on section 377

Why in news?

- Supreme Court is likely to re-examine the Section 377 of IPC.

What is Section 377?

- Section 377 under Indian Penal Code (IPC) of colonial era criminalises homosexuality.
- It is an archaic law that was introduced during the British era in 1860s and makes gay sex a crime for which the punishment can be a life term.
- Under this section whoever voluntarily has carnal intercourse against the order of nature with any man, woman shall be punished with imprisonment for life, and shall also be liable to fine.

What are the earlier stands of SC on this issue?

- In 2009 Delhi high court gave a historic and globally accepted verdict by decriminalised gay sex, but this order was kept aside by the SC in 2013.
- In December 2013 Supreme Court dismissed the LGBT community as a negligible part of the population while virtually denying them the right of choice and sexual orientation.
- A Review Bench of the Supreme Court, in January 2014, had also refused to strike down Section 377 IPC.

What is recent stand of the Supreme Court?

- Recently SC clearly stated that the determination of order of nature is not a common phenomenon.
- Individual autonomy and individual natural inclination cannot be atrophied unless the restrictions are determined as reasonable.
- The court observed that what is natural for one may not be natural for the other, but the confines of law cannot trample on or curtail the inherent rights embedded with an individual under Article 21 (right to life) of the Constitution.
- A right to sexuality, sexual autonomy and freedom to choose a sexual partner forms the cornerstone of human dignity which is protected under Article 21.
- It also proposed that societal morality changes with time and law should change pace with life.
- Thus the order reveals a paradigm shift in the apex court's views.

4.11 SC's caution against use of 'Goondas Act'

Why in news?

- Supreme Court had recently struck down the detention of a man who had allegedly sold spurious chili seeds in Telangana.

What are preventive detention laws?

- Preventive detention laws confer extraordinary discretionary powers on the executive to detain persons without bail.

- The period may extend to one year and courts tend to review them if the prescribed procedure was strictly followed.
- Several States have a law popularly known as the 'Goondas Act' aimed at preventing the dangerous activities of specified kinds of offenders.

What was the case about?

- The Telengana government invoked the stringent provisions of the Goondas Act against a district distributor of Genetic Seeds.
- The authorities had said the trader was harming poor, small farmers and jeopardising their safety and financial well-being.
- It stated that recourse to normal legal procedure would be time-consuming and would not be an effective deterrent against the sale of spurious seeds.
- The detention of Thirumurugan Gandhi, leader of the 'May 17 Movement', a pro-Tamil Eelam group, under the Goondas Act is also a brazen violation of their fundamental rights and another instance of abuse of the law.

What the Court's stand?

- The court termed this as a gross abuse of statutory powers.
- It has set aside the Telangana authorities' decision, calling it 'unsustainable'.
- It also said that the order was affecting the life and liberty of citizens.
- It also questioned the use of words such as "goonda" and "prejudicial to the maintenance of public order" as a "rhetorical incantation" solely to justify an arbitrary detention order.
- The Goondas Act is meant to be invoked against habitual offenders, but in practice it is often used for a various reasons.

4.12 Compensation for Damage of Religious Shrines

Why in news?

- The Supreme Court has set aside a Gujarat HC order on repair of shrines damaged in Gujarat riots.

What was the case about?

- A PIL filed by the Islamic Relief Committee of Gujarat (IRCG), demanded a survey on and compensation for the religious places damaged in 2002 post-Godhra communal riots.
- The Gujarat High Court ordered the state government to give monetary compensation to all religious places damaged in favour of persons in charge of the religious places..
- It did not set any limit on the compensation amount.
- It also appointed principal district judges as special officers to decide the amount required for.
- SC has reversed this order.

What is the rationale behind the SC's reversal?

- SC has accepted the state's argument that using "substantial part" of the tax-payers' money for paying damages to destroyed religious structures would violate Article 27 of the Constitution.
- Article 27 forbids the state from compelling a person to pay taxes for promotion or maintenance of any particular religion or religious denomination.
- The HC's order was challenged by the state government which came up with a new compensation scheme.
- The scheme places the riot-affected religious structures on par with "houses destroyed or damaged" in the violence.
- It agrees to pay a maximum of Rs 50,000 as compensation to all places of worship damaged in the riots.
- The SC has agreed to this scheme, as the maximum amount as ex-gratia assistance is fixed.

- Also, the power to determine the ownership or administration rights of religious places concerned is conferred on the district collector.
- Moreover, the terms and conditions for claiming the amount are clearly prescribed in the scheme and are reasonable.

What are the drawbacks in this regard?

- Right to life and liberty - The state government had argued that in a secular country it can't spend government money for any religious purposes.
- This protects the freedom of religion guaranteed under Article 27.
- However, this fails to address the fact that if religious places of weaker sections of population are targeted, it essentially has an impact on their rights to equality and personal liberty as well.
- Fundamental rights - SC accepted the state's argument that the writ power of the High Court is limited in terms of awarding compensation.
- This is because, right to property being a constitutional right, do not fall under the writ jurisdiction of the HC under Article 226.
- However, the recent developments, especially the judgment on Right to Privacy, seem to be giving wider scope to the fundamental rights.
- The various fundamental rights are no more compartmentalized and seen in isolation but are rather jointly read and dealt as a broader concept.
- States' role - In this case, the state has fall short of its duty and responsibility in maintenance of law and order.
- Thus it is being argued that the compensation is not being sought for the maintenance of any particular religion but for the failure of the government in fulfilling its basic duty.
- Expenditures on religious activities - The court seems to have missed the fact that governments are routinely spending money on various religious activities.
- This includes the states' funding on devaswoms, expenditure on trips, yatras, and pilgrims of different religious sects, maintenance of temples, etc

4.13 National Anthem in Cinema Halls

Why in news?

- The Supreme Court has modified its earlier order regarding mandatory playing of national anthem in cinema halls.

What is the court's observation?

- In its earlier order, the court ordered all cinema halls to play the anthem before screening a film.
- The Supreme Court has modified this and has now made it optional for cinema halls to play the national anthem before every show.
- The court observed that playing of the anthem was directive, but showing respect was mandatory.
- Accordingly, if the anthem is played, patrons in the hall are bound to show respect by standing up.
- The court clarified that the exception granted to disabled persons from standing up during the anthem shall remain in force on all occasions.

What lies before the Centre?

- The current modification will be in place till the Union government takes a final decision.
- This will be based on the recommendations of a 12-member high-profile inter-ministerial committee.
- The committee was set up, following the court's earlier order.
- It will specify the occasions, circumstances and events for the solemn rendering of the anthem.

- The ministerial panel will also examine whether any amendments are necessary to the Prevention of Insult to National Honour Act of 1971.
- The 1971 Act deals with national anthem, related mandates and punishments thereof for any violations.
- But the petitioner calls for the SC to intervene and interpret the 1971 Act in the light of Article 51A on fundamental duties.
- The Supreme Court disposed of the petitions, and directed to make the representations before the inter-ministerial committee.

Why is the modification so significant?

- Making it mandatory to play national anthem by a judicial rule in the absence of any statutory provision to this effect seemed as a **judicial over-reach.**
- The court's earlier order also had some unintended consequences like reports of **vigilantism**, with people criticized or beaten up for not standing up.
- The need for visibly demonstrating one's patriotism was felt as a case of **moral policing**.
- The rationale behind **singling out cinema houses** leaving out other types of meeting and assemblies was also questionable.
- Above all, the mandatory demonstration of patriotism is not a healthy signature of a **mature democracy** like that India.
- The court's modification to the order has thus removed the coercive element.
- Even if rules are needed for the purpose, it is for the Parliament to prescribe them by law.

4.14 Verdict in the 2G Spectrum Case

Why in news?

- A CBI court recently acquitted all the accused in the 2G spectrum allocation scam case.

How did it all begin?

- In September 2007, the Department of Telecom (DoT) issued just a week's time for companies to apply for mobile phone licences.
- As spectrums were priced artificially low, a mad scramble followed and 575 applications were received, most of which were from little known firms.
- The DoT then issued 122 licences by adopting a controversial 'first-come first-served policy', which privileged those who applied at the earliest.
- A CAG report in 2008 on 2G spectrum allocations, estimated a loss of R1.76 lakh crore to the exchequer.
- Consequently, in 2010, Mr. Raja resigned as telecom minister and he was later arrested in early 2011.
- Notably, the Delhi High Court set up a special court to fast-track the case.

How did the case proceed?

- CBI filed its chargesheet and subsequently DMK MP 'Ms. Kanimozhi' and the MD of "Kalaignar TV" 'Mr. Sharad Kumar' were also arrested in late 2011.
- CBI also filed an FIR against another DMK leader and former telecom minister Dayanidhi Maran and his brother kalanithi Maran.
- Overall, the trial began against 17 people that included the telecom executives of Unitech, Swan Telecom and Reliance Anil Dhirubhai Ambani Group.
- In early 2012, Supreme Court cancelled all the 122 telecom licences allocated to nine companies in 2007, by holding 'first-come, first-served' policy at fault.
- Income-Tax department, in 2013, submitted to the SC, the recordings of 5,800 tapped controversial phone conversations between corporate lobbyist Niira Radia and politicians.
- Enforcement Directorate (ED), in its 2014 chargesheet, accused Mr. Raja, and Ms. Kanimozhi of money laundering.

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- In 2015, CBI records in court that the Mr. Raja "misled" the then PM Manmohan Singh on policy matters pertaining to 2G spectrum allocation.
- Finally, the special court concluded its hearing in April 2017, and it recently pronounced its final order, which aquitted all the people.
- It remains to be seen if the case is proceeded ahead with appeals against the current order in higher courts (HC and SC).

What are the policy spin-offs from the case?

- SC's order that cancelled all the 122 2G licences issued in 2008 was perceieved as a judicial over-reach into the policy domain.
- Hence, it moved a presidential reference with eight questions, that included the rationale of "auction being the only mode for allocation of resources".
- On hearing the presidential reference, by five-judge constitution bench, the SC concluded upholding the primacy of the government in the policy domain.
- It also explicitly stated that auctions is not a must for all resource allocations and that maximisation of revenue cannot be the sole criterion in all situations.

4.15 Analyzing the 2G Case

Why in news?

- While the special sessions court has not convicted anyone for their involved in the alleged 2G scam, multiple questions on policy irregularities remain unanswered.

Was FCFS policy regressive?

- The controversial First-Come-First-Served (FCFS) policy is said to be the crux of the problem that facilitated malpractice.
- While accused argue that it was the norm back then, some cellular licences were actually auctioned as early as 2001.
- Significantly, the Telecom Regulator TRAI's chief Nripendra Misra argued for auctioning some bands of spectrum in 2007, to prevent undue profiteering.
- He attempted to place some safeguards like sale restrictions on licences for at least 3 years after the allocation of the licences.
- Considering that large number of applicants (575) were chasing limited spectrum bands, some voices within the cabinet too vouched against FCFS.
- Mr. Raja seems to have ignored almost all these concerns and proceeded with FCFS to allocate 122 licences, without even revising the old rates.

What were procedural flaws?

- **Immoral Designs -** Even if FCFS was conceptually accepted, the repeated change in deadlines for licence applications in September 2007, spells clear malpractice.
- Extremely short windows were given for submission of various documents, which was clearly intended to eliminate genuine applicants.
- Notably, some applicants seemed to have been aware of the upcoming policy changes in advance, which is vindicated by their pre-dated bank drafts.
- Also, even the FCFS wasn't followed genuinely, as late applicants like 'Swan telecom' were allocated favoured spectrums, whereas early ones like 'Spice' were pushed back in the queue.
- **Fabricating Documents -** Strikingly, as many as 85 of the 122 licences did not qualify even by terms of the outlined FCFS policy.
- Also, for some firms in the auction, their clause of incorporation was altered in the last minute to classify them as telecom companies to enable eligibility.

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- Many also fudged their minimum finances and tampered with their ownership data to become eligible.
- Notably, these companies acquired spectrum bands not to operate telecom but to make a quick buck through an immediate resale after the auction.
- The subsequent spectrum resale deals, like the "Etisalat and Swan" and "Telenor and Unitech" agreements only re-iterated this, which was exactly what the TRAI chief was trying to prevent.

5. CONSTITUTIONAL AND STATUTORY BODIES

5.1 Role of CAG

What is the issue?

- The Corruption Perception Index released by Transparency International ranks India at a lowly 79 out of 176 countries.
- As much of this corruption is linked to public funds, it calls for a relook at the role of the Comptroller and Auditor General (CAG).

What are the drawbacks with the role?

- CAG, over the years, has functioned as a routine auditor and has failed to proactively expand its role to meet the emerging challenges.
- **Control** - Though CAG reports are discussed by the public accounts committees of the respective legislatures, no one evaluates or questions what the CAG does.
- As a result, its functions are largely confined to itself and are not known to meet with experts, professionals or institutions.
- There is no Constitutional authority, including the judiciary, which is so secluded and unapproachable as the CAG is.
- **Precedence** - It does not disseminate its policies or practices for the benefit of public servants and the general public.
- The audit reports of CAG are short of issuing any guidelines, best practices or advisories that would restrict malpractices and set a precedent.
- **Post-Mortem** - CAG could well be called the "Post-Mortem Authority of India as it looks primarily at what is demised.
- Carrying on concurrent audit which is legally permissible could be a preventive and curative measure to at least restrict financial ineffectiveness.
- Scams have been occurring with increasing frequency, but the CAG is able to expose only a few and that too with minimal consequences.
- Ex: There are enormous cost overruns in public projects due to poor contract design coupled with corrupt practices.
- **Limitation** - The growing interventions of the CAG, CBI, CVC and the unpredictability with their actions, at times result in bureaucrats preferring to avoid decision-making.
- CAG reports in recent years seem to be going into sensationalism. Ex: the excessive numbers, of anticipated loss, put out by the CAG in the telecom spectrum and coal mine scams.
- This seems to be distracting the CAG from an objective and judicious examination of matters with the requisite expertise and diligence.
- A reassessment of the role and responsibilities of the CAG towards this end is the need of the hour for India to fare better in global transparency indicators.

5.2 Agenda for 15th Finance Commission

Why in news?

- 15th Finance Commission is about to be formed in the context of a massive change in the indirect tax structure.

What is finance commission?

- The Finance Commission (FC), an autonomous body which is governed by the government of India.
- It was established by the President of India in 1951 under Article 280 of the Indian Constitution.
- It was formed to define the financial relations between the central government of India and the individual state governments.
- As per the Constitution, the Commission is appointed every five years and consists of a chairman and four other members.

What is the scope of the commission?

- Article 280 of the Indian Constitution defines the scope of the Commission:
  1. The President will constitute a Finance Commission within two years from the commencement of the Constitution and thereafter at the end of every fifth year or earlier, as the deemed necessary by him/her, which shall include a chairman and four other members.
  2. Parliament may by law determine the requisite qualifications for appointment as members of the Commission and the procedure of selection.
  3. The Commission is constituted to make recommendations to the president about the distribution of the net proceeds of taxes between the Union and States and also the allocation of the same amongst the States themselves.
  4. It is also under the ambit of the Finance Commission to define the financial relations between the Union and the States. They also deal with devolution of non-plan revenue resources.

What are the recommendations of 14th finance commission?

- The share of states in the net proceeds of the shareable Central taxes should be 42%.
- This is 10 percentage points higher than the recommendation of 13th Finance Commission.
- Revenue deficit to be progressively reduced and eliminated, Fiscal deficit to be reduced to 3% of the GDP by 2017–18.
- A target of 62% of GDP for the combined debt of centre and states.
- The Medium Term Fiscal Plan (MTFP) should be reformed and made the statement of commitment rather than a statement of intent.
- Both centre and states should conclude 'Grand Bargain' to implement the model Goods and Services Act (GST).
- Initiatives to reduce the number of Central Sponsored Schemes (CSS) and to restore the predominance of formula based plan grants.
- States need to address the problem of losses in the power sector in time bound manner.

What are the challenges before 15thFinance commission?

- The task before this FC will be challenging, considering the structural changes the economy has undergone in recent times
- The GST is an unknown quantity that could complicate both vertical and horizontal devolution.
- It would appear that the Centre stands to lose as Central GST is lower than the erstwhile excise duty, and service tax has to be equally shared with states.
- Now the focus has shifted from states of origin to states of destination.
- The Integrated GST (IGST), which supplants the Central Sales Tax (CST) of the past will now go to destination states.
- The problem of devolution becomes even more complicated by the fact that the effective rate of GST is not clear with its multiple rates of tax and presently uncertain tax base.
- Perhaps calculations made by different states of revenue neutral rates during the GST calculations may provide some data.

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What are the options before the FC?

- The foundations of the GST are, however, shaky at present, changes are being made frequently and there is general unease about the multiplicity of rates and the effectiveness of its platform.
- The state of the economy, the changes taking place in the financial sector and the need for more public investment in the context of public debt needs consideration by the next FC.
- It would be desirable for the next Finance Commission to delve a little deeper into the cyclical factors
- This will raise the GDP, the denominator in the equation, leading (in the short term) to automatic adjustment of the ratio.

5.3 Issues with NITI Aayog

What is the issue?

- NITI Aayog has failed to achieve few of its commitments.

What is status of with NITI Aayog?

- National Institution for Transforming India, or NITI Aayog, was created as an alternative to the Planning Commission in 2015.
- It was believed that it would be crisp and original in its ideas and prepare India to sustain growth, jobs and living standards.
- Two-and-a-half years later, it is found that it promises remains largely unfulfilled.
- So far, the NITI Aayog has not come up with very many exciting recommendations.

What are the weak segments of NITI Aayog?

- Disinvestment: The suggestions on privatization of Air India, and on a larger disinvestment plan is less than compelling.
- Agriculture: Its suggestions on agriculture marketing reforms are no different from prescriptions of the past.
- They do not shed any light on managing the transition from an old set of institutions to new ones.
- Trade technology: It had less plans on services and manufacturing powerhouse in a rapidly changing world, where automation is rendering a host of existing skills redundant.
- Management: NITI Aayog was meant to be a lean, efficient alternative to the clumsy Planning Commission.
- It has options of funding sharing mechanisms, but has very less focus decision making with respective to cooperative federalism.

What can be done?

- NITI Aayog needs to recognize that with paradigm shifts taking place with respect to globalisation, immigration, automation and financial sector policies.
- It needs good management skills in handling the cooperative federalism.
- It should rope States into developing a coherent approach in sectors that lie in the latter's domain, such as agriculture, education and job creation.

5.4 Regulating the MCI

What is the issue?

- The regulator of medical education MCI is itself in need of regulation.

What are the issues with MCI?

- Medical education scams continue persistent under the MCI's stewardship.

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- Earlier, a colonel of the Army Medical Corps was arrested for passing on sensitive information about inspections to a medical college in Pondicherry.
- Recently, a former high court judge and his associates was arrested for agreeing to help an under-equipped college make the grade in court.
- The volume of litigation that the MCI faces concerning issues of policy, admission and examination suggest that the regulator is neither in command nor perceived to be so.

What are the recent problems with MCI decisions?

- It has rightly imposed a uniform benchmark for admissions at the undergraduate and postgraduate levels.
- But different syllabi set by states and the diverse languages they are taught in tilt the playing field.
- The MCI is standardising entrance tests, it is spectacularly failing to assure uniform, quality education for entrants who qualify.
- Due to this the implications for the health of the nation are sobering.
- The lucrative promise that India holds as a destination for medical tourism and education stands compromised.

How can the issues be addressed?

- The National Medical Commission Bill of 2016, trifurcate the functions of the MCI to reduce opportunities for corruption.
- Transparent accreditation process guided by checks and balances conferring credibility should be its priority.
- Medical education has been handed over to the regulation professionals instead of administrators, but only functional reform can strike at the root corruption.
- Merely replacing the MCI will not suffice; its successor must be armed with rules-based transparency.

5.5 Assessing NCALT

What is the issue?

- The National Company Law Appellate Tribunal seems to be lacking the specifics to ensure the purposeful functioning of the competition adjudications in India.

What are the legal mechanisms in place?

- The Indian competition adjudicatory structure consists of-
    i. Competition Commission of India (CCI)
    ii. National Company Law Appellate Tribunal (NCLAT)
- **CCI** - The Competition Commission of India is a statutory body responsible for enforcing The Competition Act, 2002.
- It is tasked with preventing activities that have an adverse effect on competition among companies in India.
- The commission is entrusted with regulatory powers for effective regulation.
- **NCALT** - NCLAT serves as the appellate authority for hearing appeals against the decisions, directions or orders passed by -
    i. National Company Law Tribunal(s) (NCLT)
    ii. Insolvency and Bankruptcy Board of India
    iii. Competition Commission of India (CCI)

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Are tribunals effective?

- Tribunals were envisioned as ad-hoc mechanisms to address the problem of judicial delays.
- They are a tool to harness cost-effectiveness, accessibility, expedited functioning and expert knowledge.
- Nevertheless, reality with the state of competition appeals in India is not appreciable, with some inherent shortfalls in the system.

What are the concerns?

- **Delays** - The appellate authority is required to dispose of appeals expeditiously; possibly within six months from the date of receipt of appeal.
- However, data suggests that such a deadline is not complied with.
- Resultantly, the average disposal rate per year of competition appeals falls between only 40-50%.
- **Procedure** - In addition to the delay caused at the appellate stage, there lies further scope of appeal at the Supreme Court level.
- The absence of detailed, stage-wise timelines governing the appellate process adds to the problem.
- Resultantly, the numerous layers of judicial procedures largely undermine the very purpose of these adjudicatory mechanisms in place for ensuring fair competition.
- **Capacity** - The maximum permissible strength of the NCLAT is 11 members.
- However, it currently comprises only three, leading to limited capacity at the tribunal.
- **Composition** - NCLAT also does not comprise of any technical members on board.
- There is lack of specific expertise in competition law and policy, for a professional handling of the company cases.

What should be done?

- There is an urgent need to appoint more members in NCALT to ensure that the pending-appeals do not pile up as huge burden.
- In its 272nd Report, the Law Commission of India has recommended that specialised tribunals should comprise of technical persons.
- This may include persons with special knowledge and professional experience or expertise of not less than 15 years in the particular field.
- E.g. in the UK, the Competition Appellate Tribunal (CAT) comprises a combination of industry experts, economists and legal practitioners, etc.
- Case-management techniques such as setting stage-wise timelines, arranging case-management conferences, etc should be adopted.

6. ELECTION AND ELECTORAL REFORMS

6.1 Transparency Issues with Electoral Bonds

What is the issue?

- The union government announced the launch of electoral bonds in FY2017 Budget.
- These bond are expected to curb money-laundering through political funding, but there are transparency issues.

What is an electoral bond?

- Electoral bonds will be issued by a notified bank for specified denominations, which is interest free.

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- Those who want to donate to a political party, can buy these bonds by making payments digitally or through cheque.
- Then they are free to gift the bond to any registered political party.
- The bonds will likely be bearer bonds and the identity of the donor will not be known to the receiver.
- The party can convert these bonds back into money via their bank accounts within 15 days.
- The bank account used must be the one notified to the Election Commission and the bonds may have to be redeemed within a prescribed time period.
- Electoral bonds are essentially like bearer cheques, the issuing bank will remain the custodian of the donor's funds until the political party redeems the bond.

What are the advantages of these bonds?

- Electoral bonds present a leak-proof alternative to anonymous cash donations that used to dominate political funding (cash donations beyond □2,000 were barred in the 2017 Budget).
- Electoral bonds will be available only from one bank (SBI) and buyers will have to meet KYC requirements, ensuring that political parties cannot accept unaccounted money through this route.
- They can be used only to donate to registered political parties, thus curbing the flotation of counterfeit parties with the sole purpose of laundering wealth.
- Their structuring as interest-free bonds with a limited shelf life of 15 days will also ensure that they aren't used as an anonymous currency alternative to store wealth.

What are the concerns with electoral bonds?

- Electoral bonds may curb the rampant funnelling of unaccounted money into Indian politics, but this may be achieved at the cost of lower transparency to the voter.
- Electoral bonds allows donations through this route only to parties that won 1 per cent of the votes in the preceding election, this may pose a formidable entry barrier to new contenders in the political arena.
- Under earlier tax laws, political parties were required to compulsorily disclose to the Election Commission the identity, PAN and other details of all donors who contributed over □20,000 to their coffers.
- But Finance Bill 2017 restricted cash donations and specifically exempted electoral bonds from this requirement.
- It also did away with the statutory limit on corporate donations to parties (7.5% of three years' net profits) and waived the need to disclose the identity of the receiving party.

6.2 Paid News

Why in news?

- The Election Commission disqualified Narottam Mishra, Minister in the Madhya Pradesh government from membership of any State legislature and contesting polls for the next three years for filing wrong accounts of election expenditure.

What happened?

- The EC's order cites the issue of "paid news." Mr. Mishra had paid for favorable coverage in newspapers during the course of the elections but had failed to mention expenses incurred for the same.
- The candidate denies authorizing the publication and takes the plea that he or she could not possibly account for something that was not paid for.
- So, in this case, the EC has taken the view that even if it were true that he made no payment, he should have included a notional amount in his accounts.
- Also, as long as the intention to boost someone's prospects was clear (and there was no objection from the candidate), the EC can rule that there was 'implied authorization'.

What is paid news?

- Paid news or paid content are those articles in newspapers, magazines and the electronic media, which indicate favorable conditions for the institution that has paid for it.
- The news is much like an advertisement but without the ad tag.
- This kind of news has been considered a serious malpractice since it deceives the citizens, not letting them know that the news is, in fact, an advertisement.
- Secondly, the payment modes usually violate tax laws and election spending laws.
- More seriously, it has raised electoral concerns because the media has a direct influence on voters.

Is paid news an electoral offense?

- Paid news is not an electoral offence yet, but there is a case to make it one.
- The EC has recommended that the Representation of the People Act, 1951, be amended to make the publishing or abetting the publishing, of paid news to further a candidate's prospects or prejudicially affect another's an electoral offence.

What should be the way forward?

- Mr. Mishra's case pertains to the 2008 election, and by the time the Commission has given its verdict he is into his next term.
- It is difficult not to notice that the enormous delay and is often created by candidates approaching the courts to stall inquiries.
- A legal framework in which electoral issues are expeditiously adjudicated must also be put in place if election law is to be enforced in both letter and spirit.

6.3 Problems with Delimitation

What is the issue?

- The constitution was amended to freeze the delimitation till 2026.
- This had led to a situation where many states have a representation in the parliament that is disproportionate to their population.
- How did the present problem evolve?
- The government had suspended delimitation in 1976 until 2000.
- This is done for the reason that the states' family planning programs would not affect their political representation in the LokSabha.
- 84th Constitution Amendment), Act 2001 extended the deadline from 2000 to 2026.
- Later, delimitation based on the 2001 census was done.
- However, the total number of seats in the Assemblies and Parliament decided as per the 1971 Census was not changed.
- The constitution has also capped the number of Lok Shaba &Rajya Sabha seats to a maximum of 550 &250 respectively.
- As a result increasing populations are being represented by a single representative.

Delimitation

- Delimitation literally means the act of fixing the boundaries of constituencies.
- Under Article 82 of the Constitution, Parliament enacts a Delimitation Act after every Census which establishes a delimitation commission.
- The main task of the commission is redrawing the boundaries of the various assembly and Lok Sabha constituencies to ensure an equitable population distribution.
- Delimitation commissions have been set up four times in the past under 'Delimitation Commission Acts' of 1952, 1962, 1972 and 2002.

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What will be the consequence?

- If the constitution was to be amended to increase the number of seats in the parliament, then there is a need to work out the modalities to ensure more time deliberations& debate.
- Disruptions will be a bigger challenge in a larger house & needs to be dealt with.
- States whose representation might get diluted will be an aggrieved lot.
- There is also strong element of sub-nationalism prevalent in many states.
- So the move could have huge political ramifications & needs to be treaded cautiously.

6.4 Gujarat Rajya Sabha Election - NOTA

Why in news?

SC allowed the use of NOTA in elections to three Rajya Sabha seats in Gujarat

How Rajya Sabha members are elected?

- General elections to the Lok Sabha are conducted with secret ballots (or votes) and are based on the first-past-the-post principle.
- Unlike this, Rajya Sabha elections uses open ballot system and follow a proportional representation system based on the single transferable vote.
- Open ballot system is when the MLAs have to show their ballot paper to an authorised party agent before putting it in ballot box.

NOTA

- None of the above is a ballot option in some jurisdictions or organizations, designed to allow the voter to indicate disapproval of all of the candidates in a voting system.
- The idea behind the use of NOTA is to allow the voter to register a "protest" vote if none of the candidates is acceptable to her for whatever reason.
- The candidate with the highest number of votes polled is declared elected irrespective of the NOTA total.

What are the issues with NOTA in Rajya Sabha polls?

- NOTA is generally restricted to direct elections.
- In the case of the Rajya Sabha elections, the vote allows for the preferential ordering of candidates.
- If an MLA chooses NOTA, the vote is rendered would be ineffective.
- It is argued that if the NOTA option is allowed, the legislators' votes would be "bought" secretly by other parties.
- It would also become "a tool for corruption"

What are the supporting views on NOTA?

- Anti-defection law provisions do not apply for RS elections, and a defiant MLA is not disqualified from membership of the House.
- The party can take only disciplinary action including expulsion. The defiant voter can continue to be an MLA and his vote can also not be invalidated for defying party directions
- So the presence of the NOTA option allows the possibility of a protest vote against the party high command for choosing candidates who are not agreeable, without having to choose candidates from opposition.
- SC said the use of the NOTA option is a constitutional issue which needs to be debated.

6.5 Gujarat Rajya Sabha Election - Disqualification

Why in news?

Two votes cast in Gujarat Rajya Sabha election were invalidated, when two electors cast their ballots and showed it.

What is the ground for invalidation?

- As per the Conduct of Election Rules 1961 Rajya Sabha elections call for a ballot-in-secret.

- Rule 39A mandates that the elector cannot declare his ballot to anyone with an exception in Rule 39AA.
- Rule 39AA mandates that an elector belonging to a political party must declare his vote only to the party agent, if the political party has issued a whip regarding the vote.
- Any deviation results in the invalidation of the ballot by the presiding officer.

How can secret voting be achieved?

- Secrecy aims to protect the vote as it affords the right to the voter to keep silent over the choice of candidate.
- This is achieved by two means - The duty-based measure and the rights-based measure.
- The rights-based measure provides the voter the right to keep his vote a secret.
- According to this, election authorities should provide voting facilities that do not disclose the vote. But the voter can choose to not opt for secrecy.
- The duty-based measure imposes secrecy as a statutory duty not only on the election authorities but also on the voter.
- The voter even by his consent cannot declare his choice; doing so would invalidate his vote.
- Rule 39A creates secrecy in the nature of a duty-based measure.

What are the flaws in this system?

- It is argued that the voter should not be given an option to declare his vote because the flexibility would allow others to pressure him informally into declaring his choice.
- In reality, Rule 39AA of the Conduct of Election Rules defeats this purpose.
- Refusing to declare to party agent is a violation of the election procedure and the vote stands invalidated.
- It allows for internal voter intimidation by parties.
- Also, Rule 39A applies only while the election process is underway.
- It does not prohibit a voter from declaring his vote after the process is completed.
- It cannot control the behaviour of the elector outside the ballot box.
- Therefore, the scheme of duty-based secrecy fails.

6.6 Delay of Gujarat Assembly Elections

Why in news?

- Assembly elections for the Gujarat and Himachal Pradesh are usually announced simultaneously.
- Currently, Gujarat elections have been suspiciously delayed by almost a month.

What is the reason?

- EC has reasoned that the delay was to facilitate the completion of flood relief programmes in Gujarat.
- But this does not hold ground, as the 'Model Code of Conduct' for elections only prohibits fresh further spending and not work in progress.
- Hence it questions the credibility of the Election Commission (EC) as an independent impartial body.

What are the implications of the delay?

- **Contradiction** - Preference for holding simultaneous elections has been voiced by both the government & EC.
- The current delay is thus a not just against the norm but also contradicts the envisioned election outlook.
- **Misuse -** Gujarat government had announced a variety of sops & concessions in this suspiciously attained grace time.
- In 13 days, the state government has announced projects worth about Rs 11,000 crores and almost 16 populist concessions.
- These include tax rebate for farmers, Salary increases for state government employees and diwali bonuses.
- Other high-profile projects include metro rail project, Dahej Ferry Service and giving the nod for a flyover & bus station.

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- This episode has violated the spirit electioneering and the democracy.
- If left unchecked, it could erode the credibility of our democratic institutions that have been pain-strikingly evolved over the years.

6.7 EC's Disqualification of AAP MLAs

Why in news?

Election Commission (EC) has recommended to the President that 20 of Aam Aadmi Party's (AAP) MLAs be disqualified for holding offices of profit.

How did the issue evolve?

- The Arvind Kejriwal-led Delhi government passed an order back in 2015, **appointing** 21 MLAs as parliamentary secretaries.
- The appointment of MLAs was **challenged** by an advocate arguing that these MLAs were holding 'office of profit'.
- There was also a petition before the then President seeking their disqualification.
- In response, the Delhi Assembly passed the Delhi Member of Legislative Assembly (Removal of Disqualification) (Amendment **Bill**), 2015.
- The bill excluded the parliamentary secretaries from 'Office of Profit' with retrospective effect.
- However, **President declined assent** to the Bill.
- Later on, the Election Commission (EC) held a **personal hearing** for 21 AAP MLAs.
- Subsequently, the Delhi High Court set aside a government order that appointed 21 of the party's MLAs as parliamentary secretaries.
- Very recently, the Election Commission has recommended the President for **disqualification** of the 20 AAP MLAs (one resigned).

Who is a Parliamentary Secretary?

- A Parliament Secretary often holds the rank of Minister of State and has the same entitlements.
- He/she is appointed to assist the ministers and is assigned to a government department.
- Many states in the Indian Union have instituted the post of Parliamentary Secretary and have also appointed MLAs to the post.

What is an 'Office of Profit'?

- 'Office of profit' (OoP) is not clearly defined in the Constitution.
- But deriving from the past judicial pronouncements, five tests have been laid down to check if an office is an OoP or not.
- They are:
    i. whether the government makes the appointment
    ii. whether the government has the right to remove or dismiss the holder
    iii. whether the government pays remuneration
    iv. what the functions of the holder are
    v. does the government exercise any control over the performance of these functions
- In all, the word 'profit' has always been treated equivalent to or a substitute for the term 'pecuniary gain' (financial gain).

What are the legal concerns?

- **Office of Profit** - MPs and MLAs are supposed to hold the government accountable for its work.

- Logically, holding an "Office of Profit" under the government may make them susceptible to government influence.
- They may fall short of discharging their constitutional mandate.
- **Number of members** - Article 164(1A) specifies that the number of ministers including the Chief Minister has to be within 15% of the total strength of the Assembly.
- In the case of Delhi, which is not a 'full' state, the number of Cabinet Ministers cannot exceed 10% of the total 70 seats.
- This is as per Article 239AA of Constitution which deals with Special provisions with respect to Delhi.
- As a Parliament Secretary often holds the rank of Minister of State, their numbers should also be considered in meeting this limitation.
- On violation of this, various High Courts have earlier struck down the appointment of Parliamentary Secretaries as unconstitutional.

What's next?

- The constitutional procedure is that if there is any petition pertaining to an office of profit, it goes to the President.
- She/he checks Article 102 and 91 of the constitution and Section 15 of the National Capital Territory of Delhi Act 1991 and takes the EC's opinion.
- After the presidential sign and seal is placed on the EC's recommendation, the 20 MLAs will stand disqualified.
- Notably, the remedial measures for the AAP in court are limited.
- This is because the Delhi High Court has already heard the matter and quashed the appointments.
- Moreover, the Election Commission, mandated by the Constitution to deal with such matters, has already dealt the issue at length.

6.8 Section 29A of the RPA, 1951

Why in news?

- A recent petition before the Supreme Court sought a direction to declare section 29A of the RPA as "arbitrary, irrational and ultra-vires" to the Constitution.
- **Plea** - The petition sought to restrain convicted persons from forming political parties and becoming their office-bearers for the period they are disqualified under the election law.
- Allowing convicted politicians to run political parties and hold posts in them leave scope for them deciding as to who will become a lawmaker.
- It this sought to authorise the poll panel to register and de-register political.

What are the provisions of Sec 29A of RPA, 1951?

- It deals with the power of the poll panel to register a political party.
- However, the Election Commission has the power to merely register a political party, but not to de-register it.
- Moreover, Section 29A allows a small group of people to form a political party by making a very simple declaration.
- **Deregistering political parties-** Under existing laws, the EC has the authority to register a political party but there is no explicit provision to allow it to deregister any party.

- Cancellation order can be passed under some specific circumstances as elaborated by the Supreme Court in its judgements.
- The grounds are when a party is declared unlawful or is found to have got it registered through fraudulent means.
- EC can use its extraordinary powers under Article 324 of the Constitution to delist such parties.

What are the concerns regarding sec 29A?

The simple procedure under Sec 29A of the RPA, 1951 has led to proliferation of political parties.

- About 20% of registered political parties contest election and remaining 80% parties create excessive load on electoral system and public money.
- Certain political parties exist only on paper to avail the benefit of income tax exemption.

What is the stand of the Court with respect to the particular section?

- The Court observed that it would be against the freedom of speech and expression to debar a convicted person from propagating political views through a party.
- However, it agreed to examine the constitutional validity of section 29A of the 1951 Representation of the People Act (RPA).
- The Supreme Court sought the responses from the Centre and the Election Commission on this.

6.9 Referendum

Why in news?

- Referendums are in the news, with demands over regional votes in Catalonia and Iraqi Kurdistan.
- Both in their own ways are a caution on how such instruments of direct democracy need to be used with care.

What is the problem with referendums?

- It is a powerful tool to deepen participation and reflect public opinion in a democracy.
- At the same time these instruments can reduce complicated issues into a vote on the narrower subject. e.g The Brexit referendum held last year reduced the question of the membership of a single market into a subject of immigration.
- Hence, it calls for an additional stress on mechanisms like questions framed for the vote, legitimacy of the institution calling for the vote and so on.

What should be done?

- The question of legitimacy of referendums is important.
- It is automatically provided if the Centre concedes this mechanism on such issues.
- This is not the case with the Catalonian and the Kurdish referendums.
- The recent Kurdistan referendum and the Catalonian referendum follow the Quebec model i.e without the approval or an agreement with national government.
- This means that a “yes” outcome would not necessarily push the envelope in the direction of secession in a peaceful manner.
- Catalan referendum only asks participants if they prefer independence through a yes/no vote.
- Choices such as greater federalisation are not provided on the ballot.

7. ASPECTS OF GOVERNANCE, TRANSPARENCY AND ACCOUNTABILITY

7.1 Government e-Marketplace

Why in news?

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Recently 5 States and a Union Territory (UT) formally adopted the Centre's initiative called the Government e-Marketplace (GeM).

What is GeM?

- The Directorate General of Supplies and Disposals (DGS&D) has developed the GeM.
- It is a completely end to end procurement system for purchase of goods and services of common use by the government buyers.
- GeM aims to ensure that public procurement of goods and services in India worth more than Rs. 5 lakh crore annually is carried out through the online platform.
- It promotes transparency eliminates corruption.
- A call centre for GeM has also been set up to help both buyers and sellers in conducting their transactions on GeM.

What are the impacts?

- GeM relieves public offices from tedious and time consuming tendering process and thus cuts down on administrative and transaction costs.
- It will help in online registration of suppliers and government buyers using self certification and authentication through Aadhar, PAN, MCA21 and Biometric Attendance System.
- It will also facilitate seamless process flow and standardised specifications with complete audit trail.
- All transactions in GeM are completely secure.
- It promotes the spirit of cooperative federalism.

7.2 Digital Police Portal

Why in news?

- Minister of Home Affairs has recently launched Digital Police Portal under the CCTNS project.

What is CCTNS?

- The Crime and Criminal Tracking Networks and Systems is an Indian government project for web based policing.
- It was conceived as a response to the Mumbai attacks of 2008 and approved in 2009.
- It aims at creating a comprehensive and integrated system for effective policing through e-Governance.
- The system is already in operation in many states but with a limited coverage.

What are the features of the Portal?

- The portal is part of the Inter-operable Criminal Justice System (ICJS) that aims to integrate the CCTNS project with a larger database.
- It aims at integrating various organs of the criminal justice system with the CCTNS database.
- This includes the police, courts, prisons, forensic laboratories, juvenile homes, etc.
- It facilitates a pan-India search of crime and criminal records of individuals through a national database.
- It offers 11 kinds of search and 44 types of reports.
- Also, it will provide for the citizens to register FIRs online and also to register complaints against erring police officials.
- It gives them access to seven public delivery services which include among many -

    1. Person/address verification of employees, tenants and servants.

2. Permission for hosting public events.
3. reporting lost and found articles and vehicle theft

- The portal has a scope of extending its domain further to the databases like vehicle registrations as well.

What is the way forward?

- Criminal investigations and decisions can now become more informed.
- However the success of this potential game-changer project will depend on data accuracy and its judicious utilisation.
- Government has to ensure this while going ahead with the revolutionary initiative for the justice system**.**

7.3 Panchayat Staffing Rules

Why in news?

- The Centre is expected to release a report, specifying the rules for recruitment of non-elected panchayat staff.

What are the issues in this regard?

- **Recruitment** - The Rajasthan government recently mandated minimum educational qualifications for candidates contesting elections for panchayati raj institutions.
- But no state has clear rules on how the non-elected staff at panchayats should be appointed.
- The system of patronage and nepotism or preferential treatment in recruitment is plaguing the outcomes of rural development initiatives.
- **Training and Performance**- The other problem is the large scale involvement of ill-organised cadres and temporary workers to manage programmes.
- It becomes hard to either monitor their role or make them obey disciplinary steps and this have an impact on services delivery.
- In the context of community workers engaged in rural development programmes, there is no connection between the their performance and the salaries they draw.
- Notably, the variation in their performance is mostly due to lack of trained human resource.
- **States** - Under the Fourteenth Finance Commission award, grants are being allocated to states to meet out Panchayati Raj Institutions' needs.
- However, the states are reluctant to furnish audited reports, statements of account and utilisation certificates in respect of this financial assistance.

What does the report aim for?

- The report primarily aims at putting in a place a well defined Panchayat staffing rules to improve service delivery.
- Some age-old practices that guide selection to posts in panchayats will now be eliminated.
- A regulated staffing in the Panchayats in the country can make them more inclusive.
- It can also ensure that the massive amount of funds that are devolved to them produce uniform and beneficious results.
- The report will also cover the administrative structure of various programmes that have a bearing on rural development.

7.4 Need for directly elected mayors

Why in news?

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Maharashtra cabinet has recently approved a proposal for direct election of the village *sarpanch*, the head of the gram panchayat, who was earlier elected indirectly by elected representatives.

Why direct elections are proposed?

- The 73rd and 74th amendments created Panchayat Village levels and Municipalities and Municipal Corporations in towns and large cities.
- The amendments aimed for division of powers and functions.
- It called for a 3 tier system.
- All the members of these three levels are elected.
- Further, the chairperson of panchayats at the intermediate and district levels are indirectly elected from amongst the elected members.
- However the resources and the powers continue to be vested with the state governments, which are reluctant to delegate them to LSGs.
- So the proposals are made for direct elections of LSG authorities to bring into materialize the vision of the institution.

What are the problems with the office of mayor?

- Head of the municipal corporation, the mayor, functions merely as a ceremonial authority.
- Executive decisions are largely carried out by the municipal commissioner appointed by the state government.
- Short tenure of mayors in many states which is hardly enough to create lasting changes in a large metropolis.
- Sometimes, directly elected mayors run into corporations dominated by members of rival political parties creating difficulty in day to day governance.

What should be done?

- A private member bill suggested a provision for a mayor-in-council that would be nominated by the directly elected mayor.
- Such a council, with an executive role, has existed in Kolkata and has performed reasonably well.
- Direct elections for Mayor will go a long way in accomplishing the goals of democratic decentralisation.

7.5 RTI and Defense ministry

Why in news?

- Defence ministry at various instances failed to address the requests made under RTI act.
- Recently the Central Information Commission (CIC) advised the Ministry of Defence (MoD) to ensure correctness and accountability in defence procurements.

What is the role of RTI in requesting information?

- RTI specifies information is required to be published within 120 days of the notification of the Act in respect of the items listed therein.
- Listed items are like the particulars of the organisation, its function and duties, norms set for discharge of functions, etc.
- The information can be in any form, including records, documents, opinions, press releases, circulars, contracts, etc. or can be data material held in any electronic form.
- RTI Act prescribes a maximum of 30 days for disposal of applications.
- It specifies for one CPIO (Central Public Information officer) for each department, who could forward the RTI applications to the right persons within the department.

What are the issues in acquiring defence information?

- There are plenty of RTI requests which were not addressed effectively by the defence ministry.

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- RTI portals of defence ministry does not provide any meaningful information required to be made public every year.
- CPIOs to turn down the request on the grounds that the information sought by the applicant does not qualify as 'information'.
- The information required by the contractors and vendors itself is not delivered successfully by the department.
- The process is uncommunicative and unresponsive in regard to matters relating to defence acquisitions.
- There are chronic delays at every stage in the procurement process, which distressing aspect of the entire system.

What method is used by CPIO for denial of information?

- Section 8 of the RTI Act, exempts 'information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence'.
- The irony here is, the denied information is found splashed all over the media or is available in the Standing Committee Reports.

How can this issue be addressed?

- Proactive disclosures and Quick response to the stake-holders - queries should be taken care.
- Engaging some experienced consultants as transparency Officers to sift through the applications received under the RTI Act will help.
- Identifying all areas of general interest for making proactive disclosures, related to those areas in a standardised format needs to be done.
- At regular intervals data need to be released through various means of communications, it will reduce the use of the RTI.
- Setting up Research institutions to carry out research based on information released by concern ministries will promote participatory governance.

7.6 RTI and Judiciary

Why in news?

Delhi High Court recently held that RTI Act could not be resorted to in case the information sought for is related to judicial function of the Supreme Court.

What is the case?

- The court's order came on a plea by the Supreme Court of India, through its Registrar.
- It had challenged an earlier order of the Central Information Commission (CIC).
- The CIC order had directed the apex court to answer the queries of a litigant as to why his SLP (Special Leave Petition) was dismissed.
- The SLP was regarding the termination of his services as a teacher, the challenge for which in the Central Administrative Tribunal (CAT) was dismissed.
- His petition in the high court and appeal in the apex court also failed, and the review petitions were also dismissed.
- Thereafter, he sought information under the RTI as to why his SLP was dismissed.
- And contended that the same had been decided against the principles of natural justice.

What is the High Court's rationale?

- Right To Information (RTI) Act would not override the *Supreme Court Rules* (SCR), when it comes to dissemination of information.

- Court emphasized that the judicial functioning of the supreme court of India is separate/ independent from its administrative functioning.
- Consequently, for administrative functioning of the Supreme Court, information can be provided under the RTI Act.
- And for judicial functioning of the Supreme Court, the Supreme Court Rules is the mechanism.
- It includes right of inspection, search of copies and would be applicable for access to the documents filed on the judicial side.
- The court denied the arguments that there was an inherent inconsistency between SCR and RTI Act.
- The high court further said that a Judge speaks only through the judgments or orders passed.
- And cannot be expected to give reasons other than those that have been enumerated in the judgment or order.
- If any party feels aggrieved by the judgment passed, the remedy available is to challenge the same by a legally permissible mode.
- It stressed that the legislature could not make law to deprive the courts of their legitimate judicial functions conferred under the procedure established by law.

What are the defects with SCR?

- The Supreme Court Rules are not as effective a mechanism to access information as the RTI.
- Unlike the RTI Act, the SCR do not provide for:
    i. a time frame for furnishing information
    ii. an appeal mechanism
    iii. penalties for delays or wrongful refusal of information
- The Rules also make disclosures to citizens dependent upon "*good cause* shown".
- In sum, the Rules allowed the Registry to provide information at its unquestionable discretion, violating the text and spirit of the RTI.
- It is thus argued that the Supreme Court Rules are inconsistent with the RTI Act.

What are the implications of the ruling?

- The whole issue is that the Supreme Court Registry wants to provide information at its absolute discretion.
- The high court ruling signifies the continuing trend of disregard for the RTI by the judiciary.
- The judgment thus seems to be strengthening a culture of opacity in the higher judiciary.

Quick Fact

Supreme Court Rules

- Supreme Court Rules (SCR), 1966 have been framed under Article 145 of the Constitution of India.
- They provide for regulating the practice and procedure of the Court, and the rules have the effect of law.
- SCR provide for a mechanism for inspection and search of pleadings on payment of prescribed fees.
- The rules were re-issued with minor changes in 2014.

Good cause

- Good cause is defined in the legal sense as a sufficient reason for a judge to make a ruling.
- It denotes adequate or substantial grounds or reason to take a certain action, or to fail to take an action prescribed by law.
- The term "good cause," however, is a broad one, and what constitutes a good cause is usually determined on a case-by-case basis and is thus relative.

7.7 Amending the RTI Act

What is the issue?

The government has proposed amendments to the RTI Act that would allow the withdrawal of an application in case of the applicant's death.

What has been the spread of RTI related violence?

- The richer states that otherwise have a better track record on crime have seen a larger number of RTI related casualties.
- Maharashtra, Gujarat and Karnataka have recorded the highest number of RTI related crimes.

- Such high number of cases of violence is indicative of the effectiveness of RTI that makes vested interests nervous.

What are its implications?

- The RTI activists are already exposed to violence, all the more so as the Whistle Blowers Protection Act (2011) is not implemented.
- 70 RTI activists have been killed thus far, besides other cases of assault & harassment.
- In most situations, cases aren't even filed and even when filed action has been insignificant.
- This impunity creates conditions conducive for more violence against the RTI activists.
- Allowing the withdrawal of an application in case of the applicant's death makes it even more risky for those who file RTIs.
- It would also send disturbing signals to the defenders of human rights.

What are the other issues plaguing RTI?

- **Pendency** - While it had already reached 7.55 lakh annually in 2015, it rose by 22.67% in 2016.
- The number of RTI applications continues to grow & pendency is increasingly becoming a major issue with UP crossing the 48,000 mark.
- The number of applications filed could easily decrease if the frequently asked questions are identified and other structural reforms taken up.
- Also, the job of Information Commissioner has become a post-retirement sinecure for former bureaucrats who do not necessarily feel the urge of idealism, thereby aggrevating the problem.
- **Opacity** - Some of the government agencies (like the PMO) are repeatedly refusing to disclose the required information.
- The Commission does not have enough power for getting responses to its questions and does not have the mechanisms for following up on whether its orders have been complied with.
- **Augmenting the human resources**- Also, the Information Officers do not necessarily get the right training. This calls for streamlining the process.
- Universities could include the RTI Act in their training for making RTIs more proactive.

7.8 Courts Gagging the Media

Why in news?

- A special CBI Court recently issued a gag order prohibiting the press from reporting on the court proceedings of a fake encounter case.
- In another case, Allahabad High Court gagged the media from reporting on an ongoing case concerning hate speech by the CM of Uttar Pradesh.

What is the justification?

- The orders were enabled by the Supreme Court itself.
- In 2012, the Supreme Court held that in certain circumstances, courts could pass "postponement orders" barring coverage of specific judicial proceedings.
- The court framed the issue as requiring a balancing of two competing rights: the right to free speech, and the right to a fair trial.
- Observing that sometimes excessive publicity could jeopardise a fair trial, the court held that to the extent it was reasonable and proportionate, "prior restraints" on court reporting could be imposed.
- Allahabad High Court cited that the media reports court proceedings inaccurately to justify the gag order.

Is the justification fair?

- In a Jury system, guilt or innocence is decided by a jury of twelve who do not possess specialised legal training

- The idea that "media trials" might distort the outcomes of cases makes sense only in such a system.
- In India we abolished jury trials more than 40 years ago, and it is judges now who decide cases.
- Judges, by definition, are not only supposed to apply the law but also have to have the relevant training and temperament to be regardless of the public.
- The 2012 SC order also failed to adequately limit the kinds of cases in which these exceptional "postponement orders" could be passed.
- It also failed to limit the duration for which they could be passed.
- This has given ample space for abuse as happened in the recent orders.

What should be done?

- Media misreporting of court proceeding can be rectified by making the written transcripts and recordings of court proceedings available to the public.
- In some situations, a temporary halt on reporting could be justifiable.
- But the bar should be limited to a single hearing, and only in the most exceptional of situations.

7.9 Merger of ONGC & HPCL - Corporate Governance

What is the issue?

- The Union Cabinet recently gave go ahead to the purchase of Hindustan Petroleum Corporation Limited by the Oil and Natural Gas Corporation
- The question of corporate governance has arisen with the Centre being the controlling shareholder in the two companies.

What are the drawbacks?

- ONGC does not gain much since the transaction is being structured as an **acquisition**.
- The best way for ONGC to structure the transaction would have been in the form of a **merger** using its own shares as currency.
- A merger could have been used to extract improvements in profitability from cost savings, better operational efficiency and combine both businesses with the full benefits of integration available to claim.
- It helped only the government to help it meet its divestment target.
- ONGC will likely **spend** around ₹20,000 crore to acquire a little over half of HPCL's equity.
- This money that could've been better spent in its core business of exploration and production.

What should be done?

- Any mergers or combinations among PSUs should be based on commercial considerations alone.
- It should also be structured in the best **interests** of not just the two companies but all of its **shareholders**, including the public.
- The government plays various roles likebeing the owner, policy-maker and a law-maker, which should be limited.

7.10 Corporate Governance

Why in news?

The term is often seen in news following the rift between the founders and the management of Infosys.

What is Corporate Governance?

- The term governance refers to the act of managing an entity.
- What makes the governance of a company different is the separation of ownership from management in the corporate structure.

- Public limited companies pool capital from thousands of shareholders.
- But these shareholders/owners effectively play no active role in the day to day running of company.
- They delegate all the 'governance' to a management team.
- Good Corporate Governance is all about ensuring the management team runs the company in the interests of its owners, instead of their vested interests.

Why is it important?

- Most listed companies and large corporate groups in India were born as family-owned businesses.
- Family members used to occupy managerial positions and make all the key business decisions.
- This also meant very little distinction between the company's finances and that of the family owners.
- With the evolution of the equity markets, many of these family-owned businesses listed themselves on the exchanges.
- However, the traditional governance practices continued.
- Though no longer the sole owners, the promoters continued to wield disproportionate influence over decisions.
- Companies Act 1956 tried to fix it by requiring company Boards to seek Central Government permission for certain decisions like loans to directors and shareholder approvals for decisions like appointment of relatives.
- These checks were proved inadequate.
- SEBI constituted a series of committees to come up with more elaborate governance norms for India Inc.
- The present corporate governance norms, enshrined in the Companies Act, SEBI listing regulations and Clause 49 of the listing agreement are the result of deliberations by these committees.
- Yet another committee — the Uday Kotak committee — has recently been tasked with a further review.

What are the present norms for listed companies?

- Governance norms for Indian listed companies are set out in
- The Companies Act, Clause 49 in the listing agreement that companies sign with the exchanges and SEBI's new Listing Obligations and Disclosure Requirement Regulations of 2015.
- They include
- At least one-third of the Board should be independent directors
- All related party deals need to be disclosed.
- Comparative metrics on managerial pay has to be disclosed
- Audit and nomination committees are to be appointed.
- CEO and CFO are required to sign off on the governance norms being met in the financial statements.
- Minority shareholders with 10% voting rights also have the right to drag companies to Court for 'oppression and mismanagement'.

7.11 Kotak Panel - Recommendations

Why in news?

- Uday Kotak committee formed by SEBI has recently released its recommendations addressing issues in corporate governance.

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What are the highlights?

- **Board** - It recommended a minimum of 6 directors and a maximum of 8 to be on the board of listed entities.
- And at least 50% (currently one-third) of the board should have independent directors and compulsorily one woman among them.
- It also called for more transparency on appointment of independent directors and a more enhanced role for them.
- It proposed a mandatory formal induction for every new Independent Director appointed to the board.
- It said that stakeholders should approve the application to fill a casual vacancy of office of any Independent Director.
- It held that no person be appointed as alternate director for an independent director of a listed company.
- **Other Recommendations** - The panel suggested making a distinction between the roles of chairman and MD/CEO of listed companies.
- It emphasized on regular interaction between NEDs (non-executive director) and the senior management.
- It also suggested an Audit Committee review for the use of loans or investment by holding company for over Rs 100 crore.
- It suggested increasing the number of Audit Committee meetings to five every year.
- It also proposed making D&O (Directors and Officers) insurance for independent directors' mandatory, for top 500 companies by market capitalization.

Independent Directors

- An Independent director is a non-executive director who does not have any kind of relationship, material or financial, with the company.
- At present, the Companies Act, 2013, says that one-third of the directors on board of every public-listed company must be independent directors.
- This is to ensure the independence of his/her decisions in matters related with the board.

D&O insurance

- Directors and officers Insurance is a liability insurance payable to the directors and officers of a company, or to the organization itself.
- It is provided as reimbursement for losses or advancement of defense costs in the event of loss as a result of a legal action brought for alleged wrongful acts in their capacity as directors and officers.

7.12 Review of Kotak Panel Recommendations

What is the issue?

- Uday Kotak Panel, constituted by SEBI, recently released its recommendations focussing on issues with corporate governance.
- The recommendations need a review for it to be effective in implementation.

What are the limitations and challenges?

- **Spirit** - The success of any law on corporate governance largely depends on the intent and spirit than the letter of law.
- E.g. Both the Companies Act, 2013 and the SEBI regulations require a company to have at least one woman director on its board.
- But in reality, the woman director appointed is generally a relative or a family member of the promoter. (recent recommendation - appointment of "independent" woman director)
- Evidently, while the letter of law may have been complied with, the spirit of regulations has not been met.
- **Ease of doing business** - For any regulation aimed to enhance corporate governance, it is equally important that it should not result in difficulties in doing business.
- Ensuring this is essential for developing a true spirit for compliance instead of a forced one.
- **Roles** - Listed entities with more than 40% public shareholding should now separate the roles of a chairperson and MD/CEO.
- Making shareholding the only criteria for separation of roles may not be correct; instead, this should have been left to be decided on a case-by-case basis.

- Certainly, a profitable company would prefer sustaining the growth momentum by avoiding dual centres of power and retaining a single control.
- This proposal could specifically affect the family-promoted companies.
- **Efficacy** - Some of the recommendations, including increasing the minimum of directors from 3 to 6, could be harder for the companies to implement.
- Six being an even number, voting on a resolution and a deadlock, if any, requires a casting vote; this could lead to operational unease.
- **Besides** these, some easy to implement recommendations such as on meetings frequency, directors' attendance, liability insurance, etc, certainly may not have a big impact on corporate governance.

What lies ahead?

- A mere change in regulations or enhancing the punishment for violation is less likely to yield the intended results.
- Thus, change in attitude is a more important precondition for the success of any norm on corporate governance.
- India has significantly improved its ranking on protection of minority shareholders in the recent Ease of Doing Business index.
- It is now for SEBI to take forward this and modify the existing norms, make changes and implement the recommendations.

7.13 Mediations for Settling Corporate Disputes

What is the issue?

- Insolvency proceeding can be tough due to the imminent financial strain involved.
- An inclusive mediation process would help in democratising insolvency proceedings and also create a space that benefits all parties

What is the current case?

- Recently, Supreme Court used its special powers under Article 142, to mediate a conciliatory discourse in a creditor-debtor dispute.
- The case involved filings by some companies before the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code (IBC).
- The collective nature of the impact of insolvency, which looks to settle debts of all the creditors, was what mainly drove the conciliatory approach.
- It is to be noted that only financial creditors are allowed to participation in IBC proceeding and non-financial operating creditors are not allowed.
- Operating creditors include workers, employees, buyers and suppliers who've their money at stake with the liquidating company.
- The only protection for them is the clause that their share of compensation can't be lesser than what financial creditors have got.
- This highlights that despite the IBC's streamlined processes, there is enough room for a mediation and can be done during the initial stages.

Why mediation matters?

- Two things are vital to any insolvency proceedings - the smallest acceptable compensatory amount for the creditor and constrains of the debtor.
- **The Concept -** Mediated discussions with creditors can help put together a resolution plan that is the least resistive for everybody's interests.
- Notably, there are several enactments that safeguard interests of special constituencies of operational creditors that the debtor has to address —
    - Housing allottees under - Real Estate Act, 2016
    - Workers and employees under - Employees Provident Fund Act, 1952

- Startups, Micro and Small Industries under - MSME Act, 2006

- While the formal process of insolvency resolution disregards these special interests, mediation creates the space for discussing these legal obligations.
- Another aspect where mediation is important, is in dealing with receipts from debtors of the company (those who've borrowed from the insolvent company).
- Hence, in the ultimate resolution plan, mediated settlements are also more effective in terms of compliance, since the resolution is consensual.
- **Structural Advantages -** As trained neutral peace brokers are involved, the responsibility of structuring discussions is eased on the contesting parties.
- Also, in direct bilateral negotiation, parties are reluctant to share information and their interests, for fear of being exploited.
- Hence, those discussions are limited to their demands and expectations on how an issue should be resolved.
- Significantly, skilled mediators can potentially take advantage of dissimilar interests and needs amongst groups of creditors to tailor a suitable settlement.

What is the way ahead?

- The IBC gives extensive powers to the committee of creditors in the insolvency resolution process, including veto against resolution plans.
- Mediation should therefore be under the initiative of the committee of creditors and the insolvency resolution professional.
- Notably, mediation can be a time bound process, which fits into the strict timelines for insolvency resolution under the Code.

7.14 Big Data for Better Governance

What is the issue?

- Collaborative federalism with focus on balanced regional development is a prime objective of the Niti Aayog.
- Effective use of big data analytics is called for, for making this developmental objective more meaningful.

What is the need?

- There is a notable information asymmetry at various administrative levels.
- This is evidently hampering the targeting of various government measures and keeps the outcomes largely undermined.
- There are entities that have outlived their utility and others that use outdated systems and processes.
- This has to be eliminated and existing legacy systems need to be analysed with clear data points.
- The UN, by a resolution on official statistics, expects India to produce quality statistics.
- The purpose is to shed enough light on the true picture of material and human resources and the needs and demands of the societies.

What should be done?

- **Data** - Statistics must be offered as a public good for the government, enterprises and the general public.
- The big data analytic centres do have micro data, geo-coded, along with tools for extraction of relevant information.
- There has to be a quantitative analysis on all these.
- There is also the need for devising a formula for aggregation of data to enforce a code of practice.
- **Area of focus** - Health, education and demography are the significant and demanding areas in this regard.
- Web-based reporting for timely collection, collation and dissemination should be taken up.
- Segregating the data under different socio-economic heads would facilitate making appropriate response for concerns in each of them.
- **Localisation** - Data at the district level would enable understanding the true picture at the ground level.

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- The impact of developmental schemes gets captured at the smallest administrative level.
- This would be supportive for better implementation of policy initiatves and making course corrections.
- **Organisation** - Establishing such a massive data pipeline is indeed highly challenging.
- It should thus be ensured that data once captured are handled in an organised fashion.
- These are essential for making the developmental initiatives meaningful.

8. ROLE OF CIVIL SERVICES IN DEMCORACY

8.1 Lateral Entry in Civil Services

Why in news?

Department of Personnel & Training (DoPT) has been asked to prepare a proposition on lateral entries into civil services that deal with economy and infrastructure.

Was the idea mooted before?

- The first Administrative Reforms Commission (ARC) had pointed out the need for specialization as far back as in 1965.
- The **SurinderNath Committee** and the **Hota Committee** followed suit in 2003 and 2004, respectively.
- In 2005, the second ARC recommended an institutionalized, transparent process for lateral entry at both the Central and state levels.
- But pushback from bureaucrats, serving and retired, and the sheer institutional inertia of civil services that have existed largely unchanged for decades have prevented progress.

What is the need for lateral entry?

- The newly independent India had pressing concerns about the need for socioeconomic development, the demands of Central planning and the imperative of holding together a new nation.
- Thus, at that time, the civil services were seen as a tool for achieving these objectives.
- Now those **dynamics have changed.**
- A judicious combination of domain knowledge and relevant expertise is a critical requirement in governance.
- It is felt by many that these attributes are often not present in a cadre of generalists.
- The second ARC also envisaged a **shift from a career-based approach to a postion-based approach** for the top tier of government jobs.
- Also, given the sheer enormity of most government projects, **good managerial talent** is critical.
- ARC felt that civil servants ought to compete with domain experts from outside the regular civil service for senior positions.

What might be the negatives?

- Large-scale lateral induction would amount to a **vote of no-confidence in the government personnel management system.**
- It is also not clear how lateral entrants would be more performance-oriented.
- Lateral entry at senior decision-making levels will increase the disconnect between policymaking and implementation.
- Best talent can be attracted only if there is reasonable assurance of reaching top level managerial positions.
- It **open the gates for a spoils system**, drive talented people away from a civil service career.

8.2 Lateral entry - Not the Right Option

Why in news?

The NITI Aayog has recently recommended that "lateral entry" from the private sector should be introduced in the civil services.

What was the need?

- Independence is an essential condition for effectiveness of bureaucracy.
- Unfortunately, the deteriorating quality of political executive has robbed the bureaucracy of its independence and freedom to "speak out its advice".
- Political governments have used postings, transfers, re-employment, charge sheets, and of late tickets to elections to influence bureaucrats.
- The government, instead of addressing these problems, is opting for a quick fix which will further erode the efficiency of the IAS.
- Notably, the most touted domain knowledge and lateral entry is said to do little to address the present concerns in civil services.

Why should the present system continue?

- A rising complaint is that the IAS is lacking domain knowledge in a fast-evolving, technology-driven world.
- But a deeper look into the demands reveals that domain knowledge may not be the right choice to handle challenges in civil services.
- **Role** - Technology intersects with the development needs of the common people, which can vary from village to village.
- Clearly, there can be no one size fits all solutions, no matter how good the technology is.
- Thus, the civil servants role here is that of a synthesiser i.e. to assimilate a technology or idea, adapt it to the local context, and then implement it.
- One has to be qualified to coordinate the functioning that works through several ministries at the Centre and in the states.
- E.g. construction of a dam - a lateral entrant would regard this job for a domain (engineering) expert.
- On the other hand, a civil servant's role involves in issues with acquisition of land, resettlement and rehabilitation, environmental and social impact assessments, financial planning, negotiating PPPs, etc.
- Starkly, the limited, one-dimensional vision that technocrats have would make them unsuitable for this role.
- **Grass-roots experience** - The first 10 years that an IAS officer spends in "the field", exposes her to the dynamics of the actual workings of the government.
- This is an invaluable input to serve the demands, future in the career at policy-making level.
- An IAS officer is uniquely qualified for this unlike a lateral entry recruit who would completely lack grass root knowledge.
- **Representation** - The "domain knowledge" is understood to be technically qualified people from outside.
- Notably, in recent years there are an increasing percentage of candidates from engineering and medicine backgrounds into the IAS.
- This gives the service, representations from technical backgrounds, to be made use of, if and when required.

What is the way ahead?

- An IAS officer is clearly a domain expert in the most difficult and complex of all domains - the public administration.
- As, this involves policies, demographics, politics, social imperatives, religion, law and order, etc.
- A lateral entrant from the private sector is highly doubtful of getting a balanced role in handling all these.
- Lateral entry would also be a regressive move towards the spoils system, giving the government the freedom to appoint loyalists, favourites and ideological compatibles.

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- The government should thus address the concerns only by vesting more independence with the civil services.

8.3 Addressing Conflict of Interest in Bureaucrats

What is the issue?

The mechanism for addressing conflict of interest needs a revamp to bring down corruption and increase governance efficiency.

What is the current policy?

- India has an official policy regulated by the Ministry of Personnel.
- Accordingly senior bureaucrats have to seek permission for commercial employment after their retirement.
- This is to avoid conflict of interest and is naturally inked with the aim of preventing corruption.
- This is being followed from the British era as a measure of ensuring bureaucratic efficiency, especially in the collection of taxes.

What are the concerns?

- Some bureaucrats mix up the virtues of public service with that of private profit in retirement.
- And naturally end up in exposing themselves to a potential conflict of interest.
- Grants of permission within cooling-off period depend primarily on government discretion, with no codified mechanism.
- If a senior bureaucrat served for decades in the government and wanted to move out towards a corporate role, he/she faces much disapproval without any reason.

What needs to be done?

- A recommendation of the Parliamentary Standing Committee on the DoPT called for early retirement if interested in post-retirement private service.
- A private member's bill, The Prevention and Management of Conflict of Interest Bill was introduced in 2012.
- These recommendations and legislations need to be implemented in true spirit.
- The legislation ought to cover all arms of governance, including the judiciary, the legislature and the executive.
- Mandatory cooling period needs to be increased to five years, so that no undue influence can be exerted by the retired bureaucrat.
- An open, public data platform enlisting all post-retirement appointments of civil servants would increase transparency.
- India needs a legislation to make non-disclosure of a conflict of interest punishable.
- The reasons for declining bureaucrat's requests for joining such firms need to be laid out clearly, to limit political concerns.

8.4 Generalist vs. Specialist

What is the issue?

- The debate on generalists and specialists is kick-started with rising demands for lateral entry into civil services.
- Also, the changing nature of government creates the need for a reassessment of the nature of civil servants involved in administration.

What is the need for specialisation?

- **Changing nature** - The Indian Administrative Service (IAS) was modelled on the colonial era Indian Civil Service as a generalist service.

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- It was conceived primarily to deliver the core functions of the state such as tax collection and maintenance of law and order.
- But with the evolution of public administration and economic reforms changing the State's role, there is a higher demand for domain knowledge at policy level.
- **Drawbacks** - IAS, as generalists, tend to over-weigh their experience of the process and form over understanding of policy content.
- Generalists heading specialised areas seem to be an inefficient arrangement at times.
- There is also a misconception that only generalists who have a breadth of understanding and experience can provide best leadership.
- All these have raised questions about the role and relevance of the generalised IAS.

What could be done?

- The Constitution Review Commission 2002 suggested the "need to specialise some of the generalists and generalise some of the specialists".
- However the task of managing specialisation needs the consideration of many factors:
- **When** - From generalised field postings in the initial decade of service, an IAS gradually moves to policy formulating positions.
- This mid-career level transition provides the ideal marker for beginning to specialise.
- **How** - Possibly, complying to the demands of behavioural attributes and aptitudes, ministries could be broadly categorised into three groups - welfare, regulatory and economic ministries.
- Secondly, specialisation process needs to be flexible according to the preference of IAS officers.
- Given this flexibility, it is also essential that the government make the process more predictable and transparent to avoid favouritism.
- Thirdly, once allocated to specialist positions, officers should be provided study and training for deepening their domain knowledge.
- In addition to these, the specialised lateral entrants should be required to "generalise" through field postings.
- The nature of policy-making at present demands that specialist **expertise** has to go with generalist **experience**.
- Thus, proper cadre management that provides for a right proportion of generalisation and specialisation can improve the efficiency and relevance of civil services.

9. MISCELLANEOUS

9.1 Srikrishna Committee - BIT Disputes Resolution

Why in news?

The Srikrishna committee's report with a focus on recalibration of the Indian BIT regime was released.

What is a BIT?

- It is an agreement establishing the terms and conditions for private investment by nationals and companies of one state in another state.
- Government of India has signed BITs with 83 countries.
- They are based on a model BIT formulated by India in 2016.
- The model BIT provides the framework for new negotiations with its trading partners.
- The distinctive feature of model BIT is that they allow for an alternative dispute resolution mechanism called 'Investor-state dispute settlement'.

What were the key recommendations of the Srikirishna Committee?

- Justice B.N. Srikrishna committee was constituted to prepare a road map to make **India a hub of international arbitration.**
- It recommended the creation of the post of an 'international law adviser' (ILA) to advise the government on international legal disputes, particularly BIT disputes.
- Creation of an inter-ministerial committee (IMC), with officials from the Ministries of Finance, External Affairs and Law for better managing BIT disputes was also called for.
- It also mentioned the possibility of establishing a BIT appellate mechanism and a multilateral investment court.
- It recommended hiring of external lawyers and appointing counsels having expertise in BITs to boost the government's legal expertise.
- It called for the creating of designated fund to fight BIT disputes.

What are the shortcomings?

- **Framework -**The call for appointing an 'Law Adviser' will amount to duplicating the existing arrangement.
- Presently, the Legal and Treaties (L&T) division of the External Affairs Ministry is mandated to offer legal advice to the government on all international law.
- It would be sensible to have the a member from the Commerce Ministry in the proposed IMC as it works for investor protection but it was not recommended.
- **Narrow window-**The report named the investor-state dispute settlement (ISDS) mechanism as robust.
- But it provides for only a narrow 90 day window for filing of BIT arbitration.
- The report is also silent on many other jurisdictional limitations given in Article 13 in the 'Indian model BIT' that also limit the usefulness of ISDS.
- Critical issues such as appointment of arbitrators, transparency provisions, enforcement of awards, standard of review were also overlooked.
- The commission's mandate was to focus on all the three parts of BIT arbitration namely –
- BIT arbitration has three aspects namely:
    1. Jurisdictional (such as definition of investment)
    2. Substantive (such as provision on expropriation)
    3. Procedural (ISDS mechanism).
- But it focussed only on the procedural aspect.

10. QUICK FACTS AND FIGURES

- According to Global Democracy Index, India has moved down from 32nd place last year and remains classified among –flawed democracies.
- According to Human Rights Watch World Report 2018, Activists and human rights defenders faced harassment including under the Foreign Contribution Regulation Act (FCRA), which governs access to foreign funding for NGOs.

10.1 Legislative

- According to Inter Parliamentary Union (IPU) 2017 study, the average percentage of women's representation globally stands at about 22%, whereas in case of India it is a mere 11.8%.
- Particularly in the Rajya Sabha, the representation of women stands at a meager 11.1%.
- Out of 4,128 legislative constituencies in the 29 states of the country, only 364 are represented by women legislators.
- Only 71 MPs (13%) have been elected to the 16th Lok Sabha are under the age of 40.
- Around 75% of the MPs elected in the 2014 general elections have at least a graduate degree.

10.2 Judiciary

- According to the Prison Statistics India 2015 report by the National Crime Records Bureau (NCRB), India's prisons are overcrowded with an occupancy ratio of 14% more than the capacity. More than two-thirds of the inmates are under trials.
- According to Department of Justice, out of 1079 post of judges in high court 411 posts are vacant.
- The all-India vacancy in subordinate judiciary is at 26% of sanctioned strength country, out of which 22.62 lakh cases are pending for more than 10 years.
- There are 2.67 crore cases pending in about 17,000 subordinate courts across th
- According to Daksh India organization, the cost of accessing the justice is as follows,
    1. Civil litigants spend Rs.497/ day on average for court hearings. They incur a loss of Rs.844 / day due to loss of pay.
    2. Criminal litigants spend Rs.542 / day for court hearings on average and incurred a cost of Rs.902 /day due to loss of pay.

10.3 Governance

- According to public affairs index (PAI) in governance in States 2 South Indian States - Kerala and Tamil Nadu - secured first and second rankings which was based on a wide range of themes such as essential infrastructure, support to human development, social protection, women and children, crime, law and order, delivery of justice, environment, transparency and accountability, fiscal management and economic freedom.

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