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MAINSTORMING 2019

POLITY & GOVERNANCE II

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MAINSTORMING 2019

POLITY & GOVERNANCE II (MARCH 2019 TO JULY 2019)

POLITY

1. SUPREME COURT/HIGH COURT JUDGMENTS

1.1 Death Penalty in India

Why in news?

The Supreme Court has recalled its own 2009 order sentencing 6 convicts to death, and acquitted them.

What is the case on?

- The case involved the murder of five persons.
- Between 2003 and 2009, three courts - the Nashik Sessions Court, the Bombay High Court and the Supreme Court - had found them guilty and sentenced them to death.
- However, now in 2019, the SC has taken a closer look at the evidence and set them free.
- It also ordered an inquiry against the investigating officer for framing the six men.
- After having spent most of their 16 years of incarceration, the convicts were acquitted and ordered to be released.

How has death penalty been viewed in India?

- India has the death penalty in 46 provisions under various laws.
- Worryingly, it is marked by the possibility of judicial error.
- B R Ambedkar argued for abolition of the death penalty but the Constituent Assembly left the issue to the Supreme Court and Parliament.
- Eventually, Parliament and the judiciary could not abolish the death penalty that is in existence since colonial times.
- The 35th report of the Law Commission (1967) recommended retention of the provision.
- The new Code of Criminal Procedure (1973) required “special reasons” to be given if death was preferred over a life sentence.
- Under the old CrPC (1898), reasons were to be given if the death penalty was not imposed. This requirement was removed in 1955.
- The 187th report of the Law Commission (2003) recommended use of a lethal injection in addition of hanging.

How has the court's stance evolved?

- In 1972, the Supreme Court upheld the constitutionality of the death penalty.
- It stated that Article 14 on Right to Equality was not violated by the wide judicial discretion given to judges.
- But in another case in 1974, the court said the question of life and death cannot be left to “ad hoc mood or individual predilection”.
- In 1979, the court rejected retribution (revenge, vengeance) as the purpose of punishment.
- It said that the “special reasons” for award of death penalty should relate to the criminal, and not the crime.
- In Bachan Singh (1980), the matter was referred to a Constitution Bench that upheld the constitutionality by a 4-1 majority.
- It said "special reasons" should relate to exceptional circumstances of a case in terms of both “crime” and “criminal”.
- The court did not agree that wide discretion given to judges is arbitrary, but said that death penalty should be given only in “rarest of rare” cases when there is no alternative option.

- Justice P Bhagwati, in a minority opinion, observed that death penalty being arbitrary and discriminatory is unconstitutional.
- In 1983, the court upheld death by hanging as constitutional as it did not involve humiliation or torture.
- But in a case in 1995, the court held hanging beyond the point of death by half an hour, as per the Punjab Jail Manual, to be unconstitutional.
- Nevertheless, the court itself has also observed that the death penalty is imposed "arbitrarily or freakishly".
- There is no uniformity of precedents in terms of awarding death penalty and also, the death sentencing has become "judge-centric".

What are the established standards?

- In Machi Singh (1983), a three-judge Bench listed some parameters to decide whether a case falls within "rarest of rare".
- They include the manner of commission of crime (brutality, motive, antisocial or abhorrent nature) and magnitude of crime and personality of victim (child, woman or popular leader), etc.
- These categories put much emphasis on the "crime" and ignored the "criminal" and the "mitigating factors".
- However, in later cases the court equally emphasised the latter two aspects and said the circumstance of the crime should also be considered.
- Moreover, the ruling in Bachan Singh case (1980) denied judges the role of being spokespersons for public opinion demanding death penalty in certain cases.
- It said a "conscience of society" test undermines the judicial discretion and this is irrelevant for the "rarest of rare" doctrine.
- Now, modern jurisprudence acknowledges that prolonged delay in executing a death sentence can make the eventual punishment inhuman and demeaning.

What does the recent case imply?

- In the present case, all the 3 courts were unable to spot the illegalities perpetrated by the investigating authorities in framing six innocent men.
- So there is clearly no reasonable way to hold that India has a criminal justice system capable of having the death penalty.
- As, it is terrible if a person has been hanged for a crime which s/he has not committed.
- No criminal justice system can maintain its integrity if the rights of the accused are determined and influenced by the brutality of the crime.
- Certainly, the rights of the victims cannot be secured by sacrificing the rights of the accused.

1.2 SC Order on Compensation to BilkisBano

Why in news?

The Supreme Court ordered the Gujarat government to pay Rs. 50 lakh compensation to BilkisBano, a 2002 communal riots and gang-rape victim.

What is the case about?

- During the 2002 Gujarat riots, a pregnant BilkisBano was gang-raped.
- Seven of her family members were killed and her daughter was smashed against a wall by a mob, at Randhikpur village.
- Criminal prosecution resulted in conviction and life sentences to 11 persons, and the sentences were upheld by the Bombay High Court.
- But there had been deliberate inaction on the part of some police officers and autopsies were done carelessly and manipulated.
- In short, this is a concrete instance of state inaction and negligence.

- For the past nearly two decades, Ms. Bano had taken up the matter with the local police, an NGO, the CBI and the courts to get justice for herself.

What is the Supreme Court's order?

- The court said Ms. Bano was a witness of the "devastation" of her own family.
- It thus stressed upon the need to rehabilitate the victim who is living a nomadic hand-to-mouth existence, having lost all.
- The Gujarat government was thus ordered to pay Ms. Bano Rs. 50 lakh as compensation, a government job and housing in the area of her choice.
- The court also ordered the Gujarat government to withdraw the pension benefits of three police officers involved in the case.

Why is it welcome?

- Compensation to victims is a relatively less recognised component of the criminal justice system which focusses mainly on the accused.
- So an order of compensation is a recognition of the state's obligation to victims of crime, especially horrific acts.
- The court has asked the government to compensate the victim from its own coffers, achieving restitutive justice.

What are the legal mechanisms in this regard?

- The Code of Criminal Procedure was amended in 2008 to insert Section 357A.
- Under this, every State government has to prepare a scheme to set up a fund from which compensation can be paid.
- This applies to victims of crime and their dependants who have suffered loss and injury and who may require rehabilitation.
- The Centre has a similar Central Victim Compensation Fund.
- On Supreme Court directions, the National Legal Services Authority has prepared a compensation scheme for women victims and survivors of sexual assault and other crimes.
- Many States have notified schemes on these lines and there are mechanisms to assess rehabilitation needs and pay compensation.
- But they largely remain on paper.
- There is thus a need to streamline the schemes and ensure that the compensation process is not done in an ad hoc manner.
- More policy thinking is needed to implement them based on sound principles.

1.3 Madras High Court on POCSO Act

Why in news?

The Madras High Court suggested changes in provisions regarding the age of consent and the age gap in the POCSO Act.

What are the suggestions made?

- The Madras HC recently acquitted a young accused of sexual assault charges under the Protection of Children from Sexual Offences (POCSO) Act, 2012.
- It also made two significant suggestions:

i. the age for the definition of a "child" under Section 2(d) of the POCSO Act be taken as 16 rather than 18

ii. the POCSO Act account for the difference in age between the offender and the girl involved in consensual sex

- This means that any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the purview of POCSO Act and the rigorous provisions therein.

- Such sexual assault, if it is so defined, can be tried under more liberal provision.
- This is to distinguish the cases of teenage relationship after 16 years, from the cases of sexual assault on children below 16 years.
- It also suggested that the Act be amended such that the age gap is not more than 5 years or so in consensual sex where one is aged 16 and above.
- This is to ensure that the vulnerable age of the girl is not taken advantage of by a person who is much older.

Why is the 'age of consent' change welcome?

- The POCSO Act denies consensual sexual agency for young persons falling in the 16 to 18 years age bracket.
- It entails a long 7 to 10 years of rigorous imprisonment for the offender.
- But a lot of experimental consensual sexual acts take place in the age group between 16 and 18.
- However, on coming to parents' knowledge, in most cases, the parents of the girl lodge a complaint that it was non-consensual and the boy is punished.
- Decriminalisation of consensual sex between those aged 16 and 18 will help address such false complaints.
- Physical relationships between such teenagers due to infatuation/innocence could be insulated from rigorous provisions.
- It also acknowledges that consensual sex cannot be criminalised at an age when sexual exploration is common.

What is the contention with the age gap?

- An older man using his power and position to exploit a younger woman could be subjected to criminalisation.
- But just because there is more age gap between the alleged offender and the victim, a consensual act cannot be criminalised.
- Nevertheless, it could prevent a much older person from exploiting a minor and her innocence.
- Age difference not being more than 4-5 years is followed in the UK.
- In the US also there are close-in-age exemptions, also called Romeo and Juliet laws.

What lies ahead?

- The government will have to take steps to eliminate the unwarranted criminalisation of consensual or romantic sexual relations.
- Any relaxation of stringent punishments entailed in the Act may also be misused.
- So the most critical thing here is to distinguish between the consensual sex between adolescents and abuse or exploitation.
- The onus is on investigating officers to differentiate between the two.
- But Inspectors and SIs are often driven by their moral compass around sex and sexual acts.
- They should be sensitised and imparted with intelligence and self awareness for nuanced reading and application of the law.

1.4 Delhi High Court Judgement on Slum Dwellers

Why in news?

The Delhi High Court recently held that slum dwellers are not secondary citizens but citizens with equal rights.

What is the case about?

- The court's order came on a 2015 plea by senior Congress leader Ajay Maken.
- He had sought that the Railway Ministry and Delhi Police be restrained from carrying out furtherdemolition drive in Shakur Basti (slum) in Delhi.
- It allegedly left around 5,000 people homeless in chilly winter conditions and caused the death of a six-month-old girl.

- Two dwellers of the JJ Basti were also impleaded as petitioners in the petition later.
- The demolition had taken place in violation of the law explained in various judgments of the Supreme Court and the Delhi High Court.
- As per the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015, the JJ clusters shall not be removed without providing them alternative housing.

What is the court's present directive?

- The court said that "forced" and "unannounced" eviction of slum dwellers without following proper guidelines is contrary to the law.
- The court held that authorities can evict slum dwellers only when their occupation of the land is illegal.
- Any unannounced eviction without a resettlement and rehabilitation plan is also not permitted.
- Before carrying out an eviction drive, the authorities will have to conduct detailed survey.
- They have to draw up a rehabilitation plan in consultation with the dwellers in the JJ bastis and jhuggis.
- It is also to be ensured that after eviction they are immediately rehabilitated.

What had been the popular view?

- Slum dwellers have often been characterised as encroachers by government agencies, mainstream media, and even courts.
- In popular understanding, urban slums and their residents have been seen as the antithesis to what is planned and what is legal.
- Political support for the rights of slum dwellers to receive adequate notice before eviction and rehabilitation has not been very frequent.
- Earlier judgements too have not gone far enough to protect substantive rights of slum dwellers.
- The Supreme Court earlier had held that the right to life includes the right to livelihood but did not indicate specific reliefs.
- The Delhi High Court laid down safeguards and procedures to be followed by government agencies before proceeding to remove jhuggis/slums.
- But confusion remained as to whether central agencies would be bound to follow the same procedures or not.

What is the court's present view and rationale?

- **Citizens** - The judgement stated that persons complaining of forced eviction would not be viewed as "encroachers" but as citizens.
- The judgment mandates equal rights for slum dwellers and access to the principles of natural justice for slum dwellers.
- **Right to housing** - The bench observed that the right to housing is a bundle of rights and not just limited to a bare shelter over one's head.
- It includes the rights to livelihood, health, education and food, including right to clean drinking water, sewerage and transport facilities.
- **Legal doctrine** - The judgement asserts that slum dwellers' rights (to rehabilitation or to prior notice) have to be determined as per the law of the land.
- Constitutional provisions make it obligatory for government agencies to ensure that there are no arbitrary and illegal evictions.
- The Constitution envisages cities as a "commons good" to which everyone has a right.
- This view acknowledges that those living in slums contribute to a city's social and economic life.
- In the context of Delhi, sanitation workers, garbage collectors, and domestic helpers provide a wide range of indispensable services to healthy urban life.
- Prioritising the housing needs of this section of the public is not only a moral imperative but now also a legal one.

- **Right to** - The Court discussed the concept of 'Right To The City' in its judgement.**city**
- The foundation of this concept was laid in the Istanbul Declaration on Human Settlements made at Istanbul, Turkey in 1996.
- There were 2 major themes at the conference - adequate shelter for all, and sustainable human settlement development in an urbanising unit.
- Right to city thus refers to the right of all inhabitants to occupy, use and produce just, inclusive and sustainable cities which are common good essential to the quality of life.
- The right to the city further implies responsibilities on governments and people to claim, defend, and promote this right.

1.5 Shakti Mills rape case verdict

What is the issue?

- A photojournalist was gang raped in Shakti Mills, Mumbai in 2013.
- This rape case's verdict ignores the proportionality principle of Judicial Review.

What is the story behind?

- A 23-year-old photojournalist was raped by 3 men in Shakti Mills, Mumbai in August 2013.
- The trio had been already **sentenced to life** by the Mumbai sessions court in an earlier gangrape of a telephone operator in July 2013.
- In 2014, the same court **awarded the death penalty** to 3 repeat offenders in the case under Section 376E of the Indian Penal Code (IPC).
- **Section 376E of IPC -** Authorises the award of either a **life sentence or death penalty** to perpetrators upon a second rape conviction.
- The Bombay High Court in June 2019 handed down a judgment upholding the **validity of Section 376E** of the Indian Penal Code.

What is proportionality principle?

- Proportionality is a ground for judicial review.
- In the context of criminal law and sentencing, proportionality asks whether a particular punishment strikes an adequate balance between the gravity of the crime, the interests of the victim and of society, and the purposes of criminal law.
- The principle of proportionality calls for striking down of laws that are excessively harsh or disproportionate.

Why Section 376E was challenged by the accused?

- It is among the recent laws that have expanded the scope of death penalty to beyond cases of homicide and primarily to incidents of rape.
- Its constitutionality has been challenged on multiple grounds, primarily due to disproportionality of the punishment.
- The constitutional standard that courts must apply when testing laws on the touchstone of Articles 14 (right to equality) and 21 (right to life) of the Constitution is that of "proportionality".

What are some previous examples?

- Vikram Singh case (2015) - The Supreme Court (SC) limited the application of the proportionality standard to situations where the punishment was outrageously barbaric.
- Modern Dental College case and the Aadhaar case — SC have made it clear that where the question of rights violations is concerned.

How is the proportionality test done?

- There must be a legitimate state aim being pursued by the provision.
- There needs to be a rational nexus between the impugned provision and the aim.

- The impugned measure must be the least restrictive method of achieving the aim.
- There must be a balance between the extent to which rights are infringed, and public benefit to be attained from the legislation.

What is the fundamental question in this case?

- It is the permanent and irrevocable **nature of the death penalty**.
- The Court **did not scrutinise the reasons** that would have potentially justified the state's decision to go for death penalty in the case of a non-homicidal crime.
- Another striking aspect of the judgment is the Court's discussion of the **severe effect of rape on women and society**.
- The court declaimed that rape is far worse than murder, and used that notion to hold that the death penalty was proportionate.

In what aspects does the judgment fall short of?

- The judgment engages in excessive deference to the 'will' of the state.
- The court did **not enter into any judicial analysis** of whether the death penalty in these circumstances was justified under proportionality doctrine, and whether lesser form of punishment would have sufficed.
- It repeats **gendered stereotypes** about the nature of rape to substantiate the Court's conclusions.
- It dismisses without any engagement, insights from other courts grappling with similar issues.

What is the change of view?

- As courts around the world including the Indian Supreme Court, have **recognised death penalty** is a form of punishment **qualitatively different** from any other.
- It is **permanent and irrevocable**, rules out any possibility of correcting an error if found later and also denies the possibility of reform and rehabilitation.
- It is for this reason that the Supreme Court has repeated many times that the death penalty must only be imposed in the "rarest of rare" cases.
- This is also why the recent proliferation of statutes expanding the scope of the death penalty, often as knee-jerk responses to public outrage, is a cause for concern.

1.6 Kathua Rape Case Verdict

Why in news?

6 of the 7 men accused in the 2018 rape and murder of an 8-year-old girl in Kathua, J&K were convicted by a special court in Pathankot, Punjab.

What is the case about?

- The case involves an 8-year-old girl from Kathua, J&K who was abducted, drugged, raped and killed.
- Notably, the deceased is a Muslim girl and the accused are Hindus, which has made it an issue of communal politics.
- The formation of a group called the Hindu Ekta Manch in support of those arrested added to this.
- Also, the role played by members of the Bharatiya Janata Party, including two Ministers in the then J&K government, had added to the communal politics.
- The case was thus transferred from J&K to Punjab by the Supreme Court for a fair trial.
- The apex court had taken note of the hindrances to a fair trial in the jurisdictional court, especially the hostile atmosphere against the prosecution.

What is the recent verdict?

- Six of the seven men accused in the case were convicted.
- Three of the men got life term, and the other three got five-year imprisonment.

- The court sentenced to life imprisonment -
  i. the mastermind, Sanji Ram, a retired government official and priest of the temple where the crime took place
  ii. special police officer Deepak Khajuria
  iii. Ram's nephew Parvesh Kumar
- Special Police Officer (SPO) Surender Verma, head constable Tilak Raj, and sub-inspector Anand Dutta were awarded 5 years in prison for destroying evidence.
- The court acquitted the seventh accused, Vishal Jangotra, son of Sanji Ram, giving him the "benefit of doubt".
- The crime branch filed the charge sheet against 8 persons, including a 'juvenile'.
- The trial against the 'juvenile' is yet to begin, as his petition on determining his age is yet to be heard by the J&K High Court.

Why is the judgement significant?

- The Kathua case represents a triumph of justice over communal propaganda.
- The verdict and due process failed the sectarian intruders' efforts who sought to derail the investigation and trial.
- They tried projecting the heinous crime against a girl belonging to the nomadic Bakerwal tribe as a plot to implicate Hindus.
- It is also a triumph for the justice system, as the Pathankot district and sessions court has lived up to the faith reposed in it by the apex court.
- The investigation had been fairly quick, and the charge-sheet was prepared in 2 months.
- The trial lasted a year, and the verdict has been delivered within 17 months of the occurrence.
- The larger takeaway is that efficient investigation, diligent prosecution and judicial sensitivity can ensure speedy justice in all cases.

2. LEGISLATIONS

2.1 Lokpal and Lokayuktas

What is the issue?

- Former Supreme Court judge Justice Pinaki Chandra Ghose was finalised by a selection panel as the first head of the Lokpal.
- It is imperative, in this context, to understand the various provisions and features of the Lokpal and Lokayuktas Act, 2013.

What is the composition?

- The first head has been selected 5 years after the President had given assent to the Lokpal and Lokayuktas Act, 2013.
- Lokpal is the national anti-corruption ombudsman.
- Under the 2013 Act, the Lokpal should consist of a chairperson and such number of members, not exceeding 8.
- Of the members, 50% should be judicial members.
- Also, not less than 50% of the members should be from among persons belonging to the SCs, the STs, OBCs, minorities and women.
- The same rules apply for members of the search committee.

How is the selection done?

- The selection procedures for the members and the chairperson are the same.
- A search committee will prepare a panel of candidates, and a selection committee will recommend names from among this panel.

- The President will finally appoint these as members.
- Salaries, allowances and service conditions of the Lokpal chairperson will be the same as that for the Chief Justice of India.
- For other members, these will be the same as that for a judge of the Supreme Court.

What after the selection process?

- After the selection of members, the Lokpal will set about creating its various wings.
- It will have an Inquiry Wing, headed by the Director of Inquiry.
- This conducts preliminary inquiry into any offence allegedly committed by a public servant punishable under the Prevention of Corruption Act, 1988.
- It will also have a "Prosecution Wing, headed by the Director of Prosecution.
- This is to prosecute public servants in relation to any complaint by the Lokpal under this Act.
- So once the members are appointed, the process for more appointments will start.
- These may include that for Secretary, Director of Inquiry and Director of Prosecution and other officers and staff of the Lokpal.

Who all does the Act cover?

- The Act covers a wide range of public servants with various rules for each.
- These ranges from the Prime Minister, ministers and MPs, to groups A, B, C and D employees of the central government.
- It shall apply to public servants in and outside India.
- The Act also includes the Lokpal"s own members under the definition of "public servant".
- The Chairperson, Members, officers and other employees of the Lokpal, while functioning under the provisions of the Act, shall be deemed to be public servants.
- A complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

How does an inquiry proceed?

- The Lokpal may, after receiving a complaint against any public servant, order a preliminary inquiry which has to be completed within 90 days.
- After receiving the report of the preliminary inquiry, the Lokpal may order an investigation by any agency or departmental proceedings.
- S/he may also take any other appropriate action by the competent authority, or it can order closure of the proceedings.

What are the limitations?

- If a complaint is filed against the PM, the Lokpal shall inquire or cause an inquiry to be conducted into the allegation of corruption.
- However, the Act does not allow a Lokpal inquiry if the allegation against the Prime Minister relates to
    1. international relations
    2. external and internal security
    3. public order
    4. atomic energy
    5. space
- Also, complaints against the PM are not to be probed unless the full Lokpal bench considers the initiation of an inquiry and at least 2/3rds of the members approve it.
- Such an inquiry against the PM (if conducted) is to be held in camera.

- If the Lokpal concludes that the complaint deserves to be dismissed, the records of the inquiry are not to be published or made available to anyone.

What are the Lokayuktas?

- The Lokayuktas are the state equivalents of the central Lokpal.
- States have to establish the Lokayukta to deal with complaints on corruption against certain public functionaries in the states.
- In some states, Lokayuktas were already functioning when the 2013 Act was passed.
- Most states, however, are without a Lokayukta even after the 2013 Act.
- The Supreme Court recently directed these states to take steps for appointment of Lokayukta.

2.2 Assessing AFSPA, Sedition & Defamation Laws

What is the issue?

- Recent happenings across the country against individual rights and free speech have questioned the relevance and validity of certain laws.
- In this backdrop, here is a look at three significant and controversial ones - the sedition law, the defamation law and the AFSPA.

What is the contention with sedition law?

- **Meaning** - Sedition is dealt in Section 124A of the Indian Penal Code.
- Sedition refers to anything written, spoken or done that brings hatred or contempt against the Government established by law in India.
- It is a cognisable, non-compoundable, and non-bailable offence.
- Under it, sentencing can be between 3 years to imprisonment for life, along with a fine.
- **Concern** - Since its introduction in 1870, meaning of the term, as well as its ambit, has changed significantly.
- Previously, it was used by the British to target and suppress the nationalist leaders.
- Mahatma Gandhi famously called the defamation law the “prince” among criminal laws which thwarted free speech in the country.
- After Independence, there were discussions in the Constituent Assembly around the subject.
- Yet, the section continued to remain in force.
- Successive governments have been accused of misuse of the provisions in sedition law.
- **Revision** - In 1962, the Supreme Court, while curtailing the extent of its application, upheld its constitutionality.
- The objective was to punish those who jeopardise the safety and stability of the state and create public disorder.
- But since then, the courts in the country have repeatedly observed that the section cannot be used to curb criticism of the government.
- It can only be used as a measure for maintaining public order.
- Given its misuse, there are proposals to revise Section 124A. Click here to know more.

How is the defamation law handled?

- **Provisions** - It is dealt in Section 499 of the Indian Penal Code.
- Anything written, spoken or done intending to harm the reputation of a person is said to defame that person.
- India is one of the few countries where defamation is both a civil and a criminal offence.
- As a criminal offence, it is bailable, non-cognisable and compoundable.
- It is punishable with imprisonment up to 2 years, or with fine, or with both.

- Once charged in a criminal trial, the accused may prove that they are covered under any of the 10 exceptions to the section.
- This range from an imputation which is truthful, to one which is made in good faith; otherwise s/he stands accused.
- **Elsewhere** - The English common law has different punishments for libel (written) and slander (spoken).
- India does not make this distinction, and both are being covered under the meaning of Section 499 itself.
- In the US, a distinction has been made between private and political defamation.
- More burden of proof is placed on the prosecution if it is political defamation.
- **Changes** - Like sedition, many governments have been accused of misusing the criminal law of defamation for suppressing legitimate criticism.
- There are thus proposals for a revision of the law, especially following some recent defamation cases.
- If removed from the IPC, defamation would no longer remain a criminal offence.
- It would then continue as a civil wrong, which in India is not stipulated by legislation and is guided by judge-made law.

What is the case with the AFSPA?

- **Purpose** - Armed Forces Special Powers Act (AFSPA) was passed in 1958 for the North-East and in 1990 for Jammu & Kashmir.
- The law gives armed forces special powers to control "disturbed areas".
- The government designates this when a region is in a disturbed condition necessitating the use of armed forces in aid of civil power.
- **Provisions** - Under its provisions, the armed forces are empowered to
  i. open fire
  ii. enter and search without warrant
  iii. arrest any person who has committed a cognisable offence
- Notably, the armed forces have immunity from being prosecuted for these acts.
- **Currently**, AFSPA is implemented in Jammu & Kashmir, Assam, Nagaland, and parts of Arunachal Pradesh and Manipur.
- The law has been repealed where insurgencies have subsided, and when governments have gained confidence of managing the region using the police force.
- Tripura became AFSPA-free in 2015, and in 2018 the Centre also removed Meghalaya from the list.
- It also restricted AFSPA's use in Arunachal Pradesh.
- **Contention** - Critics both in India and abroad have criticised government agencies for acting with impunity under AFSPA.
- Manipuri activist Irom Sharmila had been on a 16-year hunger strike in protest against AFSPA.
- The Jeevan Reddy Committee formed in 2004 has recommended a complete repeal of the law.
- There is a need to strike a balance between the powers of security forces and the human rights of citizens.
- It would thus be fair to remove immunity to armed forces for enforced disappearances, sexual violence, and torture.

3. THE UNION

3.1 Lapsing of Bills - Waste of Lok Sabha Time

Why in news?

Vice President suggests to rethink the lapse procedure to avoid wastages of time.

What are the key things suggested by Vice President?

- Following the provisions of Article 107 of the Constitution, 22 Bills passed by the 16th Lok Sabha now stand lapsed.
- The Lok Sabha would now have to take up these 22 Bills again for consideration and passing which is the wastage of time.
- So the Vice President called for a debate on a Constitutional provision that provides for automatic lapsing of any Bill passed by Lok Sabha.
- He also suggested, a Bill which is not taken up for consideration and passage within five years of introduction should automatically be treated as lapsed.
- Since Rajya Sabha is a permanent House, Bills introduced there do not lapse, and remain pending, sometimes for decades.

When a bill gets lapsed in Indian Parliament?

- **Article 107 -** Provison as to introduction and passing of bills.
- According to this article, **Cases when a bill lapses are**,

1. A bill originated in the Lok Sabha but pending in the Lok Sabha – **lapses**.
2. A bill originated and passed by the Rajya Sabha but pending in Lok Sabha – **lapses**.
3. A bill originated and passed by the Lok Sabha but pending in the Rajya Sabha – **lapses**.
4. A bill originated in the Rajya Sabha and returned to that House by the Lok Sabha with amendments and still pending in the Rajaya Sabha on the date of the dissolution of Lok Sabha- **lapses**.

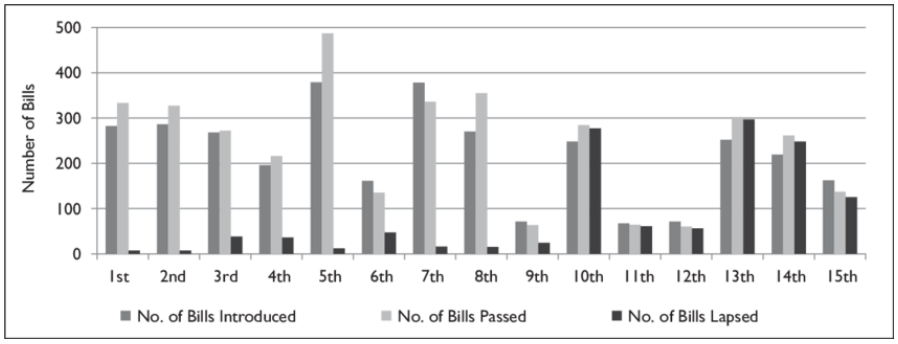
- **Cases when a bill does not lapse -**

1. A bill pending in the Rajya Sabha but not passed by the Lok Sabha **does not lapse**.
2. If the president has notified the holding of a joint sitting before the dissolution of Lok Sabha, **does not lapse**.
3. A bill passed by both Houses but pending assent of the president **does not lapse**.
4. A bill passed by both Houses but returned by the president for reconsideration of Rajya Sabha **doesnot lapse**.

What is the Status of Legislations in the parliament?

- India's first Lok Sabha (1952-1957) passed a total of **333 Bills** in its five year tenure.
- Since then, every Lok Sabha which has completed over three years of its full term has passed an **average of 317 Bills**.
- Where a Lok Sabha has lasted for less than 3 years, it has passed an **average of 77 Bills.** This includes the 6th, 9th, 11th and 12th Lok Sabhas.
- Both houses spent nearly half their time on transacting legislative business. So lapse of bill affects the productive time spend on legislative business.
- Number of bills lapsed at the end of every Lok Sabha is increasing,
- **22 Bills lapsed** after the dissolution of the **16th Lok Sabha**.
- **Pendency of Bills in Rajya Sabha (as of 2019)**:

1. 3 bills are pending for more than 20 years,
2. 6 bills are pending between 10-20 years,
3. 14 bills are pending between 5-10 years and
4. 10 bills are pending for less than 5 years.



- The lapsed Bills include

important bills like

1. The Land Acquisition Bills passed by Lok Sabha in 2015,
2. The Motor Vehicles (Amendment) Bill, 2017,
3. The Banning of Unregulated Deposit schemes Bill, 2019,
4. The Aadhar and Other Laws (Amendment) Bill, 2019,
5. Triple Talaq Bills of 2017 and 2018, etc.

- It takes considerable time and energy to get a Bill passed in either of the Houses of Parliament.
- The efforts of Lok Sabha for passing these 22 Bills have been rendered waste and again it has to be taken up for consideration and to be passed in the parliament.
- Lok Sabha spent a larger share of its work hours on legislative business, 21% in the 15th Lok Sabha and 19% in the 14th Lok Sabha.
- 59% of the bills in the Lok Sabha were discussed for more than two hours in 16th Lok Sabha.
- So on lapsing of bills at the end of the term of Lok Sabha leads to wastage of time, as the new Lok Sabha has to take up the bills again.
- It would take a minimum of two sessions to do so there is a need to rethink the provision regarding the lapsing of Bills in the Parliament and also to increase the productivity.

3.2 Permanent Status to Finance Commission

What is the issue?

- RBI Governor Shaktikanta Das recently emphasized on the need for giving permanent status to Finance Commission.
- In this backdrop, here is an overview on the significance of the Finance Commissions and the present shortfalls in the institution.

What is the need for a permanent status?

- In the past, different Finance Commissions (FCs) had adopted different approaches on tax devolution and making grants to states.
- This is problematic because more certainty in the flow of funds, especially to the states, is desired.
- Mr. Das thus made a case for a permanent Finance Commission as opposed to the current system of reconstituting it every 5 years.
- This is necessary now as the goods and services tax (GST) had come into operation.
- While the GST Council could focus on the need for improving tax collections, the FC should be able to manage other reforms.

Is this a valid argument?

- Despite Mr.Das's rationale, there is a continuing need for renewal in the recommendations of the Finance Commissions.
- Finance Commissions survey the current fiscal landscape as well as the state of federalism in making recommendations.
- Despite the different approaches, there is a broad trend in recent Commissions to increase devolution towards states.
- This has been established, and future Commissions are certainly expected to take this forward.

What are the real concerns?

- The real problem is that such recommendations have not been followed up on in the right spirit by successive governments.
- E.g. the current government did not properly act on the 14th FC's decision to raise the states' proportion of tax pool from 32 to 42%

- Much of the increased allotment was absorbed back through various types of cess.
- There is also a sharp reduction in the Union's outlay on centrally-sponsored schemes.

Why are Finance Commissions significant?

- The Union has exerted undue influence on the 15th FC through a controversial set of additions to the Terms of Reference.
- So states, particularly in the south, are already concerned about this and are keenly following the developments in the discourse on FCs.
- In this context, the Finance Commissions are a crucial part of India's constitutional set-up.
- They allow for constant renewal in how the Union of India approaches federal questions.
- So creating a permanent Finance Commission with a particular set of rules may hamper this effort.
- It could severely undermine the federal structure of India.

3.3 Cabinet Committees - Two New Committees

Why in news?

The Union government recently released the composition of 8 Cabinet Committees, including two new ones (Investment and Employment).

What are Cabinet Committees for?

- The Cabinet Committee are institutional arrangements to reduce the workload of the Cabinet.
- These committees are extra-constitutional in nature and are nowhere mentioned in the Constitution.
- The executive works under the Government of India Transaction of Business Rules, 1961.
- These Rules emerge out of Article 77(3) of the Constitution.
- Accordingly, the President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.
- The Rules mandate the minister-in-charge of a department (ministry) to dispose of all business allotted to a department under him or her.
- However, on subjects involving more than one department, decision will have to be taken on concurrence.
- On failing such concurrence, decision will have to be taken by or under the authority of the Cabinet.

How are they formed?

- The Prime Minister constitutes Standing Committees of the Cabinet and sets out the specific functions assigned to them.
- S/he can add or reduce the number of committees.
- Ad hoc committees of ministers, including Groups of Ministers, may be appointed by the Cabinet or by the Prime Minister for specific matters.
- The strength of each committee varies from three to eight members.
- It usually includes cabinet ministers but non-cabinet members are not debarred.

What are the key Cabinet Committees?

- **Cabinet Committee on Appointments** - This panel makes appointments to posts of three service chiefs, Director General of Military Operations, chiefs of all Air and Army Commands.
- It also makes appointments to the posts of -
  i. Director General of Defence Intelligence Agency
  ii. Scientific Advisor to the Defence Minister
  iii. Director General of Armed Forces Medical Services
  iv. Director General of Ordnance Factories

v. Director General of Defence Estates
vi. Controller General of Defence Accounts
vii. Director of Institute for Defence Studies and Analyses
viii. Solicitor-General
ix. Governor of the Reserve Bank of India
x. Chairman and Members of the Railway Board
xi. Chief Vigilance Officers in Public Sector Undertakings
xii. Secretariat posts of and above the rank of Joint Secretary in the Central Government

- It also decides on all important empanelments and shift of officers serving on Central deputation.
- **Cabinet Committee on Accommodation** - This determines the guidelines or rules with regard to the allotment of government accommodation.
- It also takes a call on the allotment of government accommodation to non-eligible persons and organisations, and decides the rent to be charged from them.
- It can consider the allotment of accommodation from the General Pool to Members of Parliament.
- It can consider proposals for shifting existing Central Government Offices to locations outside the capital.
- **Cabinet Committee on Economic Affairs** - This panel is supposed to review economic trends, problems and prospects.
- The objective is to evolve a consistent and integrated economic policy.
- It also does the following:
  i. coordinates all activities requiring policy decisions at the highest level
  ii. deal with fixation of prices of agricultural produce and prices of essential commodities
  iii. considers proposals for investment of more than Rs 1,000 crore
  iv. deal with industrial licensing policies
  v. review rural development and the Public Distribution System
- **Cabinet Committee on Parliamentary Affairs** - This draws the schedule for Parliament sessions and monitors the progress of government business in Parliament.
- It scrutinises non-government business and decides which official Bills and resolutions are to be presented.
- **Cabinet Committee on Political Affairs** - The committee addresses problems related to Centre-state relations.
- It also examines economic and political issues that require a wider perspective but have no internal or external security implications.
- **Cabinet Committee on Security** - It deals with issues relating to law and order and internal security.
- It also deals with policy matters concerning foreign affairs with internal or external security implications.
- It also goes into economic and political issues related to national security.
- It considers all cases involving capital defence expenditure of more than Rs 1,000 crore.
- It also considers issues related to the -
  i. Department of Defence Production
  ii. the Department of Defence Research and Development
  iii. Services Capital Acquisition plans
  iv. schemes for procurement of security-related equipment

What are the two new panels?

- **Cabinet Committee on Investment** - This Committee will identify key projects required to be implemented on a time-bound basis.
- This applies to projects involving investments of Rs 1,000 crore or more, or any other critical projects, as may be specified by it, with regard to infrastructure and manufacturing.
- It will prescribe time limits for giving requisite approvals and clearances by the ministries concerned in identified sectors.
- It will also monitor the progress of such projects.
- **Cabinet Committee on Employment and Skill Development** - This is supposed to provide direction to all policies, programmes, schemes and initiatives for skill development.
- The objective is increasing the employability of the workforce for effectively meeting the emerging requirements of the economy.
- It facilitates mapping the benefits of demographic dividend.
- The committee is required to enhance workforce participation, foster employment growth and identification.
- It will work towards removal of gaps between requirement and availability of skills in various sectors.
- The panel will set targets for expeditious implementation of all skill development initiatives and to periodically review the progress in this regard.
- The addition of the two committees is indicative of the new focus areas for the government. The goal of both is new jobs.

3.4 Understanding Vote-Bank Politics

What is the issue?

Despite the negative connotations, vote banks are favourable in terms of raising the bargaining power of individuals and groups.

What does 'vote-bank' mean?

- The term 'vote-bank politics' was first used in a research paper in 1955 by noted sociologist MN Srinivas.
- He used it in a very specific context to showcase the political influence exerted by a patron over a client.
- Today, the term denotes voting on the basis of, among other things, caste, sect, language and religion.

What is the present understanding?

- Almost all commentators, journalists, political parties, and columnists use the term 'vote bank' to showcase a type of politics.
- It generally connotes a politics of appeasement and the term is usually used negatively.
- Just as a market treats a person as a consumer, a political party or leader sees the masses merely as voters.
- The discourse on the subject reduces the identity of a citizen to a vote-bank and thereby it has come to assume a negative connotation.

What are the favourable aspects?

- A positive aspect is that vote bank politics increases the individual and collective bargaining power of the people vis-a-vis those in power.
- In vote-bank politics, a particular group is aligned on the basis of caste, sect, religion, or language.
- Significantly, this is recognised by the political parties.
- In effect, the chances of demands and aspirations getting fulfilled are much higher for a group that is recognised as a vote bank.
- For instance, persons with disabilities are not considered as a vote bank despite being 40-60 million in number.

- So, mere numerical strength does not matter as much as the recognition of the group as a vote bank by political parties.
- Similarly, women, despite accounting for almost half of the total population, are not considered as a separate vote bank.
- This is because, over the years, political parties have realised that women do not vote as a group or community for one single party.
- During elections, their identity as women takes a back seat while their identities of caste, religion and sect gain prominence.

Should vote banks be promoted then?

- It is argued that political parties often try and 'cultivate' vote banks in order to secure more votes. However, this is not always the case.
- Once a group or community starts feeling that it can be recognised as a vote bank, their collective strength increases manifold.
- Consequently, all political parties keep appeasing these groups to gain support and votes.
- In this way, vote banks serve the purpose of both the voters as well as political parties.
- Nevertheless, vote-bank politics is criticisable when it is misused to manipulate the demands of one group/s to polarise the society.
- Given its potential for misuse, vote-bank politics should be seen as an instrument to be deployed by citizens, and not by the political class for dissecting the society.

3.5 Privilege Motion

Why in news?

Breach of privilege motion was moved against PM and Defence Minister, claiming that they had misled Parliament on the Rafale fighter jet deal issue.

What is a privilege motion?

- The Congress alleged that FM's statement that a secrecy pact between India and France was preventing the government from sharing the cost of each Rafale aircraft was "totally wrong".
- Congress claimed that the 2008 pact on the protection of classified information and material in the field of defence does not mention that commercial cost of procurement cannot be revealed

What is a privilege motion?

- Parliamentary privileges are certain rights and immunities enjoyed by members of Parliament, individually and collectively.
- This enables them to "effectively discharge their functions".
- When any of these rights and immunities are disregarded, the offence is called a breach of privilege.
- It is punishable under law of Parliament.
- A notice is moved in the form of a motion by any member of either House against those being held guilty of breach of privilege.
- Each House also claims the right to punish as contempt actions which are offences against its authority and dignity.

What are the rules governing it?

- Lok Sabha Rule Book and correspondingly Rajya Sabha rulebook governs privilege.
- It says that a member may, with the consent of the Speaker or the Chairperson, raise a question involving a breach of privilege.
- The rules however mandate that any notice should be relating to an incident of recent occurrence
- Notices also have to be given before 10 am to the Speaker or the Chairperson.

- The Speaker/Chair can decide on the privilege motion himself or refer it to the privileges committee of Parliament.
- In the Lok Sabha, the Speaker nominates a committee of privileges consisting of 15 members as per respective party strengths.
- A report is then presented to the House for its consideration.
- The Speaker may then pass final orders or direct that the report be tabled before the House. A resolution may then be moved relating to the breach of privilege that has to be unanimously passed.
- In the Rajya Sabha, the deputy chairperson heads the committee of privileges, that consists of 10 members.

4. THE STATES

4.1 Presidential Order amending Constitution (Application to Jammu and Kashmir) Order, 1954

What is the issue?

- The Centre's executive order amending the Constitution (Application to Jammu and Kashmir) Order, 1954 is challenged in the J&K high court.
- Here is a brief look on the evolution and purpose of the 1954 Order and the disputes related to it.

What is the executive order for?

- The Union Cabinet recently approved the proposal of the J&K Governor‟s administration to amend the Constitution (Application to Jammu and Kashmir) Order, 1954.
- Following this, President Ram Nath Kovind issued an executive order amending the 1954 Order.
- The objective was to extend the provisions of the 77th and 103rd Constitutional Amendments to the state.
- The Centre said that the amendment would give benefit of promotion in service to the Scheduled Castes, and Scheduled Tribes.
- It would also extend the 10% reservation for economically weaker sections in educational institutions and public employment.
- The Centre‟s move has now been challenged in the Jammu & Kashmir High Court.

Why is it being challenged?

- Major J&K parties said the order violated Article 370 which regulates J&K‟s relationship with the Union.
- The power of the Governor to make the recommendation without the concurrence of the state government has been challenged.
- The petition pleaded the court to struck down -
  i. The Constitution (Application to Jammu & Kashmir) Amendment Order, 2019
  ii. The Jammu and Kashmir Reservation (Amendment) Ordinance, 2019
- In 1986 too, an amendment to the 1954 Order was issued just with the concurrence of Governor's administration.
- It extended to J&K, Article 249 of the Indian Constitution, which describes the power of Parliament to legislate, in the national interest, even on matters in the State List.
- The petition challenging this is still pending.

What were the terms of J&K's entry into Indian Union?

- Maharaja Hari Singh, who was ruling J&K, signed the Instrument of Accession (IoA) in October, 1947.
- J&K then gave up control over only 3 subjects which are Defence, Foreign Affairs, and Communications.
- A separate Constituent Assembly of J&K was planned to frame the J&K Constitution, and to work out J&K‟s constitutional relationship with New Delhi.
- Under Article 370 of the Indian Constitution, only two articles of the Constitution apply to J&K.

- One is Article 1 which defines India, and the other is Article 370 itself.
- Article 370 provides that other provisions of the Indian Constitution can apply to J&K "subject to such exceptions and modifications as the President may by order specify".
- Notably, this is done only with the concurrence of the state government.

What was the 1954 Presidential Order for?

- The decisions to extend the provisions of the Indian Constitution other than those specified in the IoA had to be ratified by the J&K Constituent Assembly.
- The J&K Constituent Assembly was yet to be set up then.
- But the Centre wanted to extend a few provisions of the Constitution to streamline J&K‟s relationship with the Union.
- Thus, a Presidential Order was issued on January 26, 1950 itself, with the state government‟s concurrence.
- On November 5, 1951, J&K‟s Constituent Assembly was convened.
- Soon, the 1950 Order was replaced by The Constitution (Application to Jammu and Kashmir) Order, 1954.
- This Order applied to J&K the provisions of Part-III of the Indian Constitution that relates to fundamental rights.
- Besides, it introduced Article 35A which protected laws passed by the state legislature of J&K in respect of permanent residents.
- Any protections offered to its residents cannot be challenged on the ground that they violated any of the fundamental rights.
- This order was ratified by the Constituent Assembly that also framed the J&K Constitution, before dispersing in November, 1956.

What is the contention thereafter?

- The 1954 Order had the requisite concurrence of both the state government and the J&K Constituent Assembly.
- But subsequently, 42 Presidential orders have been issued, all of which were amendments to the 1954 mother order.
- Through these orders, successive central governments have extended 94 out of the 97 entries in the Union List, and 26 out of the 47 in the Concurrent List to J&K.
- They have also made 260 out of the 395 Articles of the Indian Constitution applicable to J&K.
- This list does not include The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002, and the GST Acts.

Constitution (77th Amendment) Act

- SCs and STs have been provided reservation in promotions since 1955.
- This was discontinued following the judgement in the case of Indra Sawhney wherein it was held that it is beyond the mandate of Article 16(4) of the Constitution.
- Subsequently, the Constitution was amended by the Constitution (77th Amendment) Act, 1995.
- It inserted a new clause in Article 16 to enable the government to provide reservation to SCs and STs in promotion.

Constitution (103rd Amendment) Act

- The Act aims to provide reservation of up to 10% in public employment and higher education for economically weaker sections.

- But notably, none of these amendments to the 1954 Order have fulfilled the requirement of ratification by the J&K Constituent Assembly.
- To this, the Centre has argued that an elected state government‟s consent is enough.
- In 1959, the Supreme Court too observed that the Constitution-makers were anxious that the said relationship should be finally determined by the State's Constituent Assembly itself.
- A decade later, the court ruled that Presidential orders could still be made through Article 370.
- Also, in 1972, the court said the Governor is the head of government aided by a council of ministers.

Is the present order justified?

- The latest order only has the consent of the Governor without the requisite aid and advice of the Council of Ministers.
- Understandably, the Governor acts only as a nominee of the Union government.
- S/he does not meet the definition of state government as laid down by Article 370 and the Supreme Court.
- Major J&K parties have also always opposed the amendments to the 1954 Order without ratification by the Constituent Assembly of the state.

4.2 Jammu and Kashmir Reservation Bill

Why in news?

Parliament has passed the Jammu and Kashmir Reservation Bill. This partially amends a Presidential Order of 1954 in order to amend the state's Reservation Act.

What is Article 370 and the Presidential order, 1954?

- **Article 370** – Provides temporary, transitional and special status to Jammu and Kashmir.
- It states that all the different provisions of the constitution that are applicable to other states of India are not applicable to J&K.
- **The Presidential order of 1954** – An **executive order** issued by the President under Article 370 to extend provisions of an Act of Parliament to J&K State.
- This can be done only with the concurrence of the state government.

What are the provisions of the bill?

- **Extension of reservation –** Extension of the reservation benefits available to the residents along the Line of Actual Control (LAC) to the International Border (IB).
- The reservation in appointment and promotions in certain state government posts is provided to persons belonging to socially and educationally backward classes.
- **Exclusion from reservation:** The Act states that any person, whose annual income exceeds Rs.3 lakh or other amount as notified by the state government, would not be included within socially and educationally backward classes.
- However, this exclusion does not apply to persons living in areas adjoining the LAC as well as International Border.

What is the controversy?

- **No opposition** – To the decision to provide benefits to SCs, STs and EWS in J&K.
- **Opposition** – To the route taken by the Centre and its nominee the J&K Governor, on the ground that they **breached Article 370** while issuing the amendment to the 1954 Presidential Order.
- **Centre of the controversy** – The question **whether the Governor**, in the absence of an elected government, has the authority to **give consent to extend a Parliamentary law** and change the constitutional arrangement between J&K and the Union.

What regional parties in J&K say?

- They have termed the amendments "unconstitutional"
- They contend that "concurrence" means the **concurrence of an elected government** and not that of a nominated government, a must for any amendment to the Presidential Order of 1954.
- They say this is in contravention of Article 370.
- They contend that the **President cannot seek the concurrence of the Governor** because "the Governor is a representative of the President".

4.3 Anti-defection law

What is the issue?

- 10 of 15 Congress MLAs in Goa joined the ruling BJP a month ago.
- 12 of 16 Congress MLAs in Telangana had merged with TRS.
- These issues are dealt with under India's anti-defection law (ADL).

Why was the anti-defection law instituted?

- The anti-defection law is contained in the **10th Schedule** of the Constitution. It was enacted by Parliament and came into effect in **1985**.
- **Purpose** - To curb political defection by the legislators.
- As in the Indian political scene for a long time, the legislators used to change parties frequently, the governments to fall due to the chaos.
- They often brought about political instability. This caused serious concerns to the right-thinking political leaders of the country and at last, the ADL was enacted.

What are the efforts made before the ADL?

- Several bills were brought in by the government at different times. But nothing could be passed.
- The most important reason why the bills couldn't be passed was that there was no consensus on the basic provisions of the anti-defection law.
- The legislators feared that law too stringent on defection would likely curb their freedom of speech (a constitutional right) in legislatures.
- A lot of time was taken before a consensus could be reached on this issue.
- Finally, in 1985, the government brought a bill to curb defection by amending the Constitution to add 10th Schedule to it.

What are the grounds of disqualification under ADL?

- If the member voluntarily gives up the membership of the party, he shall be disqualified. **Voluntarily giving up the membership is not the same as resigning from a party.** Even without resigning, a legislator can be disqualified if by his conduct the Speaker/Chairman of the concerned House draws a reasonable inference that the member has voluntarily given up the membership of his party.
- If a **legislator votes in the House against the direction of his party** and his action is not condoned by his party, he can be disqualified.

What is an exception in ADL?

- If there is a merger between two political parties and 2/3rd of the members of a legislature party agree to the merger, they will not be disqualified.

When and why the law was amended?

- The above-mentioned exception resulted in large scale defections and the lawmakers were convinced that the provision of a split in the party was being misused.
- Therefore, the law was amended in 2003 and this provision was deleted.
- Now, the only provision which can be invoked for protection from disqualification is the provision relating to the merger.

Is the law open to interpretation?

- The ground for disqualifying a legislator for defecting from a party is his **voluntarily giving up the membership** of his party, which is susceptible to interpretation.
- As has been explained earlier, voluntarily giving up the membership is not the same as resigning from a party.
- The Supreme Court has said that the presiding officer, who acts as a tribunal, has to draw a reasonable inference from the conduct of the legislator.

- So, there won't be much problem in how can one decide that a member of a legislature has voluntarily given up the membership of his party.

How far has the law succeeded in achieving its goal?

- The law has been able to curb the evil of defection to a great extent.
- But lately, an alarming trend of legislators defecting in groups to another party in search of greener pastures is visible.
- This only shows that the law needs a relook in order to plug the loopholes.
- But it must be said that this law has served the interest of the society.
- Political instability caused by a frequent and unholy change of allegiance by the legislators of our country has been contained to a very great extent.

4.4 SC Order on Karnataka Reservation

Why in news?

The order by a two-Judge bench of the Supreme Court upheld a Karnataka statute, allowing for reservations in promotion.

What is the Karnataka statute about?

- The Karnataka law preserves the consequential seniority of Scheduled Caste/Scheduled Tribe candidates promoted on the basis of reservation.
- [Consequential seniority refers to promotions made purely on reservation basis despite another person waiting for promotion being senior.]
- A similar 2002 law was struck down on the ground that there was no data, as required by the judgment in Nagaraj (2006).
- So the Karnataka government appointed a committee to collect data, to validate -
    i. the backwardness of SC/ST communities
    ii. the inadequacy of their representation in the services
    iii. the overall impact of reservation on the efficiency of the administration
- [These are, notably, the parameters laid down in the 2006 Nagaraj verdict as constitutional limitations on the power to extend reservation in employment.]
- Based on the report, the State enacted a fresh law, which has now been upheld on being compliant with the Nagaraj formulation.
- However, in a 2018 judgement, the Supreme Court ruled out the need for data to justify the 'backwardness' of SC/ST communities..

What are the court's observations now?

- Article 335 of the Constitution states that the claims of the members of the SCs and STs shall be taken into consideration, with the maintenance of efficiency of administration.
- However, the Constitution does not define what the framers meant by the phrase efficiency of administration.
- If the benchmark of efficiency is grounded in exclusion, the pattern of governance will be skewed against the marginalised.
- If this benchmark is grounded in equal access, it will reflect the commitment of the Constitution on a just social order.
- In this context, merit lies not only in performance but also in achieving goals such as promotion and achievement of substantive equality.
- Since inclusion is inseparable from a well-governed society, there is no antithesis between administrative efficiency and the claims of the SCs and STs.
- Inclusion along with the recognition of the nation's plurality and diversity constitutes a valid constitutional basis for defining efficiency.

- The court thus held that a 'meritorious' candidate is not merely one who is 'talented' or 'successful'.
- S/he is also one whose appointment fulfils the constitutional goals of uplifting members of the SCs and STs, and ensures a diverse and representative administration.

Why is it welcome?

- The order validating the Karnataka law is a significant step in the long debate between 'merit' and 'social justice'.
- The Supreme Court's decision rightly rejects the notion that quotas affect efficiency.
- The order is also notable for being the first instance of quantifiable data being used to justify reservation.
- A key principle in this decision is that where reservation for SC/ST candidates is concerned, there is no need to demonstrate the 'backwardness' of the community.
- The other pre-requisites of a valid system remain valid, which are:
    i. quantifiable data on the 'inadequacy of representation' for classes of people identified for reservation
    ii. an assessment of the impact of such quota on the "efficiency of administration"
- The judgment, in all, places in perspective the historical and social justification for according reservation.

4.5 Implications of Final List of Assam's NRC

What is the issue?

- The final list of the National Register of Citizens (NRC) for Assam will be released on July 31, 2019.
- With the final list, the state is more likely to face a humanitarian crisis, the impact of which is more likely to be felt by the poorest.

What is the impending crisis?

- Out of the 32.9 million who have applied to be listed as "genuine" Indian citizens in the NRC, roughly 29 million have been accepted.
- The uncertainty over the future of the close to 4 million people who will be left out in the final list might lead to a humanitarian crisis in Assam.
- Even if half of this number is excluded in the final list, the future of 2 million stateless people might get to be a crisis.
- This is because, the majority left out of the NRC so far is absolutely poor, and many are illiterate.
- Poor people travel long distances to appear before these tribunals, and their cases stretch out over months.
- They cannot understand the legal complications of the process, nor do they have the money to hire legal help.
- As a result, thousands stand in danger of being declared "foreigners" even though they could be "genuine" Indian citizens.
- Their status and the issues over deportation, if any, remain unanswered.

Who are the people affected in this?

- The people affected by this process of verification of citizenship fall into three different categories.
- **'D Voters'** - Those labelled as 'D voters' (doubtful voters) were categorised so when the electoral rolls were revised in 1997 and thereafter.
- Their names are excluded from the NRC unless they can establish their credentials before a Foreigner's Tribunal.
- [Foreigner's Tribunal is a quasi-judicial body meant to decide whether a person is a foreigner or not within the meaning of Foreigners Act, 1946.]
- There are currently just under 100 such tribunals in Assam.
- The opacity that surrounds the way decisions are made in these quasi-judicial courtrooms is a part of the larger crisis.

- Only the litigants and their lawyers know what happens inside the tribunals; neither the public nor the media are permitted there.
- **Illegal immigrants** - The second category are people who have been picked up by the police on suspicion of being illegal immigrants.
- The border police, present in every police station, picks up these people, often poor workers in cities.
- It then fingerprints them, and then informs them in writing that they must appear before a Foreigner's Tribunal.
- **Discrepancy in documents** - The third are those who have registered with the NRC, but have been excluded due to discrepancy in the submitted documents.
- In addition to these, there are people who have already been declared "foreigners" by the tribunals.
- In February 2019, the government informed the Supreme Court that of the 938 people in 6 detention centres, 823 had been declared foreigners.
- More than half of those excluded from the NRC are women who have been excluded due to change of details post marriage.
- There are other cases in which some members of the family are excluded and others remain citizens.

4.6 Assam NRC - Sanaullah's Case

What is the issue?

Upon the orders of the Gauhati High Court, Mohammad Sanaullah was recently released on bail from a detention camp in Assam.

What is the case about?

- According to the Assam Accord, individuals who entered Assam after March 24, 1971 are illegal immigrants.
- There are two parallel processes to establish citizenship:
  i. the Foreigners Tribunals operating under the Foreigners Act
  ii. the National Register of Citizens (NRC), which is under preparation
- These two processes are nominally and formally independent. But in practice, these two systems influence each other.
- People who have been declared as foreigners by the Foreigners Tribunals, and even their families, were dropped from the draft NRC.
- Mohammad Sanaullahhad been detained few days back after a Foreigners Tribunal had declared him an illegal immigrant.
- It was learnt that Mr. Sanaullah had served for three decades in the Indian Army.
- Following this, after a week of sustained public pressure, the Gauhati High Court's bail order has come.

What are the procedural contentions?

- In the intervening period of Sanaullah's release, a shocking number of irregularities surfaced.
- In its inquiry report, the Assam border police had written that Mr. Sanaullah was a 'labourer'.
- The three men who signed the case report claimed that the investigating officer had fabricated their signatures.
- The investigating officer himself admitted that it might have been an "administrative mix-up".
- Yet, it was on the basis of such disputable material that the Foreigners Tribunal concluded that Mr. Sanaullah was a "foreigner"and sent him off to a detention camp.
- [The Foreigners Tribunal is a quasi-judicial body expected to follow the rule of law.]

What is the larger issue?

- Investigative journalists have revealed over the last few years that 'administrative errors' of this kind are the rule rather than the exception.
- Sometimes, such disputable materials lead to people being detained for 10 years or more.
- For these individuals, without the benefit of media scrutiny, there may be no bail; in other words, an endless detention.
- In most cases, the legally mandated initial inquiry before an individual is brought before a tribunal as a suspected "foreigner" does not happen; it did not happen for Mr. Sanaullah.
- **Foreigners Tribunals** themselves are only constrained by a very limited number of procedural safeguards.
- This has led to situations where Tribunals have issued notices to entire families, instead of just the suspected "foreigner".
- Additionally, reports show that Foreigners Tribunals habitually declare individuals to be "foreigners" on the basis of clerical errors in documents.
- These may include as small things as a spelling mistake, an inconsistency in age, and so on.
- The hardest hit by such irregularities are the vulnerable and the marginalised, who have limited documentation at the best of time.
- They are rarely in a position to correct errors across documents.
- On occasion, orders determining citizenship have been passed by tribunals without even assigning reasons, a basic element of the rule of law.
- In addition, a substantial number of individuals are sent to detention camps without being heard.
- In detention centres families are separated, and people are not allowed to move beyond narrow confined spaces for years on end.
- **NRC and Judiciary** - Driven by the Supreme Court, the NRC process has been defined by sealed covers and opaque proceedings.
- The Supreme Court developed a new method of ascertaining citizenship known as the "family tree method".
- This method was not debated or scrutinised publicly, and it is found that people from the hinterland were unaware of the method.
- Also, those who were aware had particular difficulties in putting together "family trees" of the kind that were required; the burden fell disproportionately upon women.
- Recently, a process allowed for individuals to file "objections" against people whose names had appeared in the draft NRC.
- On the basis of this, such people would be forced to once again prove their citizenship.
- This had resulted in thousands of indiscriminate objections being filed, on a seemingly random basis, causing significant hardship and trauma to countless individuals.

What is the significance of Sanuallah's case?

- Citizenship issues are very elemental and important demanding careful implementation and necessary procedural safeguards.
- This is especially true as the consequences of being declared a non-citizen are grave.
- These may include disenfranchisement, exclusion from public services, incarceration in detention camps, statelessness, and deportation.
- Ensuring rule of law in such cases is of utmost importance.
- Given this, Mr. Sanuallah's case has brought the citizenship issue in Assam to the centre stage.
- It can prompt some urgent national introspection about a situation in which thousands of people languish in detention camps for years.
- It must serve as an urgent call for rethinking the National Register of Citizens.

What lies before the judiciary?

- In a process with such flaws, and where the consequences are so drastic, judiciary intervention is crucial.
- It is expected to fulfil its role of being the guardian of fundamental rights and the guarantor of the rule of law.
- In cases where the cost of error is so high, the supreme court should realize that it is not "speed" that matters, but the protection of rights.

4.7 OBC Groups to SC List - U.P Government Move

Why in news?

The BJP government in U.P. is making a move to include 17 OBC groups among Scheduled Castes.

What is the proposal?

- The UP Social Welfare Department recently sent a letter to all divisional commissioners and district magistrates.
- It refers to an order of the Allahabad High Court (dated March 29, 2017).
- It directs district authorities to issue caste certificates as per that order after scrutiny of documents.
- The court order was in regards with 17 OBC castes — Kahaar, Kashyap, Kevat, Mallah, Nishad, Kumhar, Prajapati, Dhivar, Bind, Bhar, Rajbhar, Dhimar, Batham, Turha, Godia, Maajhi and Machhua.

What were the earlier attempts?

- The Samajwadi Party (SP) regimes of Mulayam Singh Yadav (2003-07) and Akhilesh Yadav (2012-17) had initiated the attempt before.
- [When these 17 groups are out of the OBC list, it opens up more opportunities for the SP's core vote base within the 27% OBC quota.
- This refers to the Yadavs who comprise around 10% of the state population.
- While this can upset SCs, they are not seen as traditional SP voters.]
- The Allahabad High Court quashed the Mulayam government's amendment to the Uttar Pradesh Public Services Act, 1994 in 2005.
- It termed the amendment unconstitutional, since only Parliament has the power to make such an inclusion.
- Mulayam had also directed district authorities to issue SC certificates to these 17 OBC castes, after the move was cleared by the state cabinet.
- The Centre, however, did not clear his proposal.
- In 2013, the Akhilesh cabinet cleared the same proposal, but the Centre once again rejected it.
- Further attempts made also did not give any substantial results.

What is the present government's rationale?

- The noted 17 castes make up around 15% of the state's population.
- A caste in the SC list gets more government benefits than one in the OBC list.
- Also, since the OBC population is large, there is close competition among OBC groups for reservation benefits.
- If these 17 castes are moved to the SC list, they will face less competition because the SC population is smaller in U.P.
- The latest move comes with the risk of turning the SC voters away from the ruling BJP and towards the BSP.
- However, the BJP can hope to make gains within the 17 newly notified SC groups as it banks on non-Yadav OBC votes.
- [These 17 castes are socially most backward, and many survive on small occupations in rural areas.
- E.g. Nishads earn from fishing, Kumhars earn from making earthen pots]

What is the distinction between an OBC and an SC?

- The criteria for recognising specific castes as SC and OBC are distinct.
- Extreme social, educational and economic backwardness are common qualifications for both groups.
- However, in particular, SCs draw such backwardness from untouchability.
- For OBCs, apart from social, educational and economic backwardness, lack of adequate representation in government posts and services is a criterion.
- The positive rights guaranteed under the Constitution to SCs are to correct the historical wrongs of untouchability.
- So, there is now a concern that addition of other castes in the group would dilute this guarantee.

How is a caste listed as a Scheduled Caste?

- Between 1950 and 1978, 6 Presidential Orders were issued recognising specific caste groups as SCs.
- The name 'Scheduled Caste' derives from the fact that this is annexed as a Schedule to the Constitution.
- Article 341(1) of the Constitution prescribes the procedure for recognising castes as "Scheduled Castes".
- To make additions or deletions to the Schedule by amending the concerned Presidential Order, state governments should first propose to modify the Schedule.
- Only proposals agreed by both the Registrar General of India and the National Commission for Scheduled Castes are introduced as a Bill in the Parliament.
- This procedure was adopted by the Ministry of Social Justice and Empowerment in 1999 and was amended in 2002.
- [A similar provision exists for Scheduled Tribes under Article 342.]

4.8 Nagaland's RIIN Initiative

Why in news?

The Nagaland government has initiated a move to implement its own version of the citizenship register.

What is Nagaland's initiative?

- The Government of Nagaland has decided to set up a Register of Indigenous Inhabitants of Nagaland (RIIN).This comes 4 years after Assam started revising its National Register of Citizens (NRC).
- The aim is to prevent fake 'indigenous inhabitants' certificates.
- The RIIN will be the master list of all indigenous inhabitants of the state.
- The process will be conducted across Nagaland and will be done as part of the online system of *Inner Line Permit* (ILP), which is already in force in Nagaland.
- The entire exercise will be monitored by the Commissioner of Nagaland.
- In addition, the state government will designate nodal officers of the rank of a Secretary to the state government.
- Their role will be to monitor the implementation, and will have no say in the adjudication process.

How does it work?

- **Survey** - The RIIN list will be based on "an extensive survey".
- The preparation of the list will start from July 10, 2019, and the whole survey process will be completed within 60 days from the start.
- The list would be prepared under the supervision of the district administration.
- It will involve official records of indigenous residents from rural and (urban) wards.
- **Provisional list** - The database will note each family's original residence, current residence as well as the concerned Aadhaar numbers.

- This provisional list will then be published in all villages, wards and on government websites.
- **Review procedure** - Over the next 30 days (from provisional list), claims and objections can be made.
- Respondents will be given an opportunity to make their case before the authorities.
- Eventually, respective Deputy Commissioners will adjudicate on the claims and objections based on official records and the evidence produced.
- This process will be completed before December 10, 2019.
- **RIIN** - Based on the adjudication and verification, a list of indigenous inhabitants will be finalised.
- The final list or the RIIN will be created and its copies will be placed in all villages and ward.
- Electronic copies of the list will also be stored in the State Data Centre.
- A mechanism or electronic and SMS-based authentication will be put in place.
- Each person will be given a unique ID.
- All indigenous inhabitants of the state would be issued a bar-coded and numbered Indigenous Inhabitant Certificate.
- **Updation** - Once the RIIN is finalised, no fresh indigenous inhabitant certificates will be issued.
- The only exception is newborn babies of the indigenous inhabitants of Nagaland.
- Those left out of the RIIN will have to file an application before Home Commissioner.
- S/he will get the matter verified and take necessary action for updating the RIIN if needed.

Inner Line Permit (ILP)

- ILP is an official travel document required by Indian citizens residing outside certain "protected" states while entering them.
- The ILP is issued by the Government of India.
- With the ILP, the government aims to regulate movement to certain areas located near the international border of India.
- ILP's origin dates back to the Bengal Eastern Frontier Regulations, 1873, which protected the British Crown's interest in tea, oil and elephant trade.
- It prohibited "British subjects" or Indians from entering into these protected areas.
- After Independence, in 1950, the word "British subjects" was replaced by Citizens of India.
- Also, the focus of the ban on free movement was explained as a bid to protect tribal cultures in northeastern India.

What are the likely challenges?

- **Naga peace talks** - The negotiators engaged in the ongoing Naga peace talks could now articulate new and hardened positions.
- The talks on the contentious issue of integration of contiguous Naga-inhabited areas (of Assam, Nagaland, Manipur, Arunachal Pradesh) could take pace now.
- **NSCN(I-M)** - The National Socialist Council of Nagalim (Isak-Muivah) is engaged in peace talks with the government of India since 1997.
- The self-styled government of the People's Republic of Nagalim is the parallel government run by the NSCN(I-M).
- This has opposed the compilation of RIIN, saying that all Nagas, wherever they are, were indigenous in their land by virtue of their common history.
- So it sees the RIIN process as being contradictory to the inherent rights of the Nagas.
- **Cut-off date** - Since 1977, to be eligible to obtain a certificate of indigenous inhabitants of Nagaland, a person has to fulfil either of the below conditions:
    i. the person must be settled permanently in Nagaland prior to December 1, 1963
    ii. his or her parents or legitimate guardians were paying house tax prior to the cut-off date (December 1, 1963)
    iii. the applicant, or his/her parents or legitimate guardians, acquired property and a patta (land certificate) prior to this cut-off date

- The compilation of RIIN involves the complexities of deciding on the claims of the children of non-Naga fathers as well as non-Naga children adopted by Naga parents.
- In this regard, the Nagaland government may choose to go ahead with the above cut-off date.
- In such case, all Naga people who have migrated to the State after this day will have to be excluded.
- These include migrants from the neighbouring Assam, Manipur and Arunachal Pradesh and elsewhere in India.
- The public opinion is still divided on compiling RIIN without a consensus on the cut-off date.
- **ILP** - There is a proposal to link RIIN with the ILP (Inner Line Permit) system.
- [The ILP is a travel document issued by the government of India to allow a 'domestic tourist' to enter Nagaland, and is valid for 30 days.]
- The complexity is that unless otherwise officially clarified, the RIIN proposal may require large numbers of non-indigenous inhabitants to obtain an ILP to carry out day-to-day activities.
- Notably, most of them are migrated ones from other States and have been carrying out trade, business and other activities for decades, especially in the Dimapur district.
- **Certificates** - There is the limitation of non-issuance of domicile certificates or permanent residence certificates to a large number of non-Naga, non-indigenous inhabitants.
- This could also make the RIIN task even more difficult for the Nagaland government.

4.9 Amendments to Punjab Land Preservation Act

Why in news?

The Supreme Court has ordered the Haryana government to not implement the amendments it made to the Punjab Land Preservation Act (PLPA).

What is the PLP Act?

- All non-forest activities in and along the Aravali hills have, for long, been prohibited, to preserve the ecology of these mountains.
- The British had enacted a special law, the Punjab Land Preservation Act (PLPA), for this purpose way back in 1900.
- PLPA has now been diluted by the Haryana government.
- The amendments took away the forest status of large chunks of these hills and threw open them for commercial activities.
- These are areas under master plans of cities such as Gurugram, Faridabad, Nuh, Mahendragarh and Rewari.
- The move would take away the protection offered to them under the PLP Act.

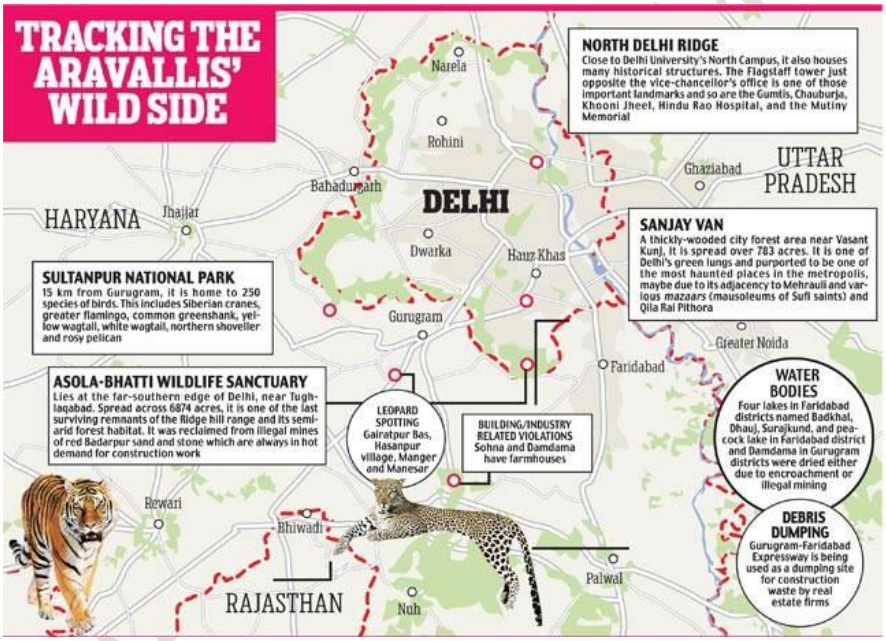
How significant are the Aravallis?

- The Aravallis is one of the world"s oldest mountain chains, and its ecological worth is immense.
- The 692-km Aravali range spans parts of Delhi, Haryana, Rajasthan and Gujarat.
- The Aravallis serve as the lungs for the highly polluted National Capital Region (NCR).
- It hinders the dust-laden winds from Rajasthan to enter the NCR where the air quality is already fatally poor.
- It also plays a critical role in recharging the groundwater of the region around it.
- The mountains also act as a natural shield against the spread of the Thar Desert.
- Moreover, it is the source of origin of several rivers and rivulets, including Sabarmati, Luni, Chambal and Krishnavati.
- Besides, it is the catchment of lakes like Damdama, Dhauj, Badkhal and Surajkund.
- More importantly, it harbours rich biodiversity, hosting numerous species of plants, birds and animals.

- It is the corridor between Asola Bhatti sanctuary in Delhi and Sariska in Rajasthan for leopards, hyenas, jackals, mongoose and most other animals.

What are the concerns in the use?

- Large scale illegal encroachments and misuse of the Aravali forests for realty, mining and other commercial purposes are going on since the 1970s.
- The urbanisation has gradually encroached agricultural and forest lands as newer living and working spaces were developed.
- Lakhs of dwelling units, commercial buildings and industries have already come up in this fragile mountainous track.
- Around 30% of the Aravali area falling in the Faridabad and Gurugram districts which are notified as protected forests under the PLPA now stands privatised.
- The Haryana portion of the Aravali range remains the country"s most degraded forest, as per a Wildlife Institute of India study.
- The rapid and unabated deforestation and development activities are further damaging this unique landscape.
- As many as 31 out of the 128 hills in the Rajasthan portion of the Aravallis have totally disappeared, flattened by the land and mining mafias.



What lies ahead?

- The obvious motive behind the amendment of the statute is to legitimise the illegal encroachments and misuse of the Aravalli forests.
- Haryana has the lowest forest cover in the country, barely 3.59%.
- So any action that would further curtail the forested land is inadvisable.
- Haryana government should comply with the apex court's order and withdraw the amendment to the PLPA.
- It would go a long way if it takes positive action to protect and rejuvenate the forest cover of the Aravalli hills.

4.10 Punjab's new Blasphemy Bill

What is the issue?

- Punjab Cabinet recently decided to amend the law to make acts of "sacrilege against the religious books" punishable with life imprisonment.
- This move is regressive, excessive, and fraught with undesirable consequences.

What is the context?

- The Punjab assembly had passed a bill in 2016 for protecting the "Guru Granth Sahib" (holy book of the Sikhs) against sacrilege acts.
- The Centre had then returned the Bills, saying that protecting the holy book of only one religion would make it discriminatory and anti-secular.
- Notably, prior permission of the Central or State government is needed to prosecute someone under such sections.

- Hence, currently, the same bill has been cleared with slight amendments to cover other religious books like the "Bible, Koran and Bhagvad Gita".
- The bill, if passed, will strengthen the existing 'blasphemy law' which criminalises acts that outrage religious feeling.

What are the problems with the bill?

- **Populism -** The 2016 bill was piloted by the Shiromani Akali Dal government following allegations of desecration of the holy book.
- Back then, opposition to the Bill was then limited to the question whether holy books of other religions did not warrant the same protection.
- The bill was a clear case of pandering to religious sentiments for political populism, and there was little concern for the long term implications.
- Considering the tenets of the bill, it may also set off a needless flurry of legislation in the rest of India to pander to different groups.
- Notably, existing provisions under the "Indian Penal Code" itself is sufficiently strong to protect the sanctity of religious symbols and sentiments.
- **Disproportionate –** Present Blasphemy Laws (to protect religious faith) already provide for a 3 year jail term for disrespecting religious symbols.
- But the current bill's proposal for enhancing the punishment to a "life term" is a little excessive and problematic.
- **Intention -** Blasphemy laws are largely aimed at preserving public order that might get disturbed by actions that flare up religious sentiments.
- While the sanctity of the religion is indeed important, a secular state works not to preserve religion but to preserve law and individual freedoms.
- In this context, actions perpetrated with the deliberate and malicious intention of outraging religious feelings and stir passions is to be curtailed.
- Hence, while laws need to be a minimum safeguard and limited in scope, the current proposal seeks to appease religious groups disproportionately.

4.11 NSA for Cattle Offences - Madhya Pradesh Case

What is the issue?

- The Madhya Pradesh government recently detained five people under the National Security Act (NSA) for allegedly committing offences related to cattle laws.
- The use of the National Security Act for cattle offences seems contentious, given its purpose and intent.

What are the recent cases?

- In one case in Khandwa district, the police, who recovered a cow carcass, traced three men who had allegedly killed the animal.
- In another case, authorities in Agar Malwa district claim there was some disturbance due to two men who were allegedly transporting cows.
- The stated reason to book them under the NSA is that they were likely to cause disruption of peace.

Why is it contentious?

- The police could have prosecuted them under laws that ban cow slaughter.
- The NSA provides for a maximum of one year in prison through an executive order without trial or bail.
- The recent case is possibly the first time when this law is being used against those suspected of offences against cows.
- The act amounts to gross misuse of a law meant solely to prevent activities that endanger the country's security or public order.

- There was no evidence of security or order being under grave threat, in this case.

What are the larger concerns?

- India has become habituated to the abuse of preventive detention laws.
- In recent times, they have been wrongly invoked against political dissenters and vocal critics, with total disregard for constitutional freedoms.
- The present move would imply a breach of limits by the law-enforcers to demonstrate ideological adherence to majoritarian beliefs.
- It is a threat to the freedom of movement and vocation, and the dietary choices, of those who do not share the majority community's reverence for cow.
- The Supreme Court too had earlier warned against the dangers of a socio-political framework based on disrespect for an inclusive social order.
- It issued some guidelines and wanted the states to take preventive and remedial measures against mob violence and public lynching.

4.12 Demand for Gorkhaland

Why in news?

Gorkha JanmuktiMorcha (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 andordering closure of all government offices.
- Last year, 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.

5. JUDICIARY

5.1 SC Order on 'RBI and RTI'

Why in news?

The Supreme Court has directed the RBI to disclose certain information under the Right to Information (RTI) Act unless they are exempted under law.

What is the case on?

- In a 2015 judgment, the Supreme Court had rejected the RBI's argument that it could refuse information sought under the RTI.
- RBI said this on the grounds of economic interest, commercial confidence, fiduciary (/trustee) relationship or public interest.
- But the court had observed that there was "no fiduciary relationship between the RBI and the financial institutions".
- It emphasized that RBI had the statutory duty to uphold the interests of the public at large, the depositors, the economy and the banking sector.
- The court thus held that the Reserve Bank could not withhold information sought under the RTI Act.
- But RBI's November 2016 Disclosure Policy was found to be directly contrary to the court's judgment of 2015.
- In this regard, the Bench was hearing contempt petitions filed against the RBI for not complying with the 2015 judgment.

What was the information sought?

- The petitioners had sought details pertaining to the RBI's annual inspection reports of certain banks.
- These include that of ICICI, AXIS, and HDFC Banks and State Bank of India, from 01.04.2011 to the date of filing of the RTI application.
- Information relating to the Sahara Group of Companies and Bank of Rajasthan was also sought from the RBI.

- The RBI did not provide information in view of the exemption from disclosure under Section 8(1)(a) and (b) of the RTI Act.
- It said the disclosure was not in economic interest of the State and would also adversely affect the competitive position of the third party.
- Separately, details of showcause notices and fines imposed by the RBI on various banks were also sought.

What is the current order?

- The court has now given RBI a last opportunity to withdraw the disclosure policy.
- This is in relation to the exemptions in the policy which are contrary to the directions issued by the court.
- These include the list of wilful defaulters and annual inspection reports.
- The court held that the RBI is duty-bound to comply with the provisions of the RTI Act and disclose the information.
- The court however acknowledged that some matters of national economic interest could harm the national economy, particularly, if released prematurely.
- E.g. information about currency or exchange rates, interest rates, taxes, proposals for expenditure or borrowing, foreign investments, etc

What is the implication?

- The RBI will be required to provide annual inspection reports and other material (such as details of penalties) unless it is exempted under law.
- This will provide greater transparency about the affairs of banks.
- Greater bank disclosures do help investors and depositors, but it can have unintended consequences as well.
- Information contained in RBI annual inspection reports relating to banks is highly sensitive.
- The central bank through these efforts tries to ensure that the banking system remains smooth with minimum disruptions.
- So the court order has the potential to affect the regulatory process of the RBI.

5.2 RTI and Right to Privacy - Judiciary Case

Why in news?

A Constitution Bench of the Supreme Court has concluded hearing a crucial appeal under the Right to Information Act (RTI), 2005.

What were the three RTI cases on question?

- **Appointment** - An RTI applicant filed a request to the Supreme Court in 2009.
- It sought a copy of the complete correspondence exchanged between the CJI and other concerned constitutional authorities relating to appointment of some judges.
- It related to appointment of Justices H.L. Dattu, A.K. Ganguly and R.M. Lodha as Supreme Court judges, suppressing the seniority of Justices A.P. Shah, A.K. Patnaik and V.K. Gupta.
- The information sought was denied.
- But the *Central Information Commission* (CIC) directed that the information be furnished.
- The information officer of the apex court appealed directly to the Supreme Court against the order.
- **Assets declaration** - The Supreme Court's 1997 resolution requires judges to declare to the CJI the assets held by them - own name, spouse's name and in any person dependent on them.
- An RTI application in 2007 asked if any declaration of assets was ever filed by the Supreme Court or high courts judges to the respective CJIs in compliance with the above.
- The Public Information Officer (PIO) of the Supreme Court invoked Section 8(1)(j) of the RTI Act to deny this information.

- But the CIC ordered that the information sought by the applicant be provided.
- The CIC order was challenged by the Supreme Court in the Delhi high court. The Delhi high court upheld the CIC order.
- The judgment also held that the information of judges' assets does not qualify as "personal information" exempt under Section 8(1)(j).
- So information on judges' assets could be requested by the public through an RTI application.
- It was widely welcomed as a right step in the direction to enhance transparency in judiciary.
- But the Supreme Court challenged the single judge's judgment of the Delhi High Court by filing appeal before the Division Bench.
- **Influence on judgement** - Quoting a media report, an RTI application was filed with the Supreme Court.
- It sought copies of correspondence between the then CJI and a Madras high court judge.
- It was regarding the attempt of a union minister to influence judicial decisions of the Madras high court.
- It also sought information on the name of the concerned minister.
- The public information officer (PIO) denied the information sought but the CIC, in its order, overturned the decision.
- The PIO of the Supreme Court directly moved a petition before the SC challenging the CIC order.

What is the present case mainly about?

- While hearing the case related to the RTI on appointments, the Supreme Court clubbed the other two cases and moved it to a constitutional bench.
- A key question pertains to whether judges are required to publicly disclose their assets under the RTI Act in light of Section 8(1)(j).
- The provisions of the Section prohibit the sharing of personal information that has no nexus to public activity.
- It also prohibits that which amounts to an unwarranted invasion of privacy unless the larger public interest justifies such a disclosure.

What is the complexity involved?

- In landmark judgments in PUCL (2003) and Lok Prahari v. Union of India (2018), smaller benches of the court set aside the privacy claims of the political class.
- It forced them to publicly disclose not just their assets but also the sources of their income.
- So any attempt now to assert the fundamental right to privacy as the basis for not disclosing information would overrule the above.
- Also, the final ruling of the Constitution Bench will impact the contentious Section 44 of the Lokpal Act, 2013.
- This requires all public servants (includes judges) to disclose their assets.
- But it is silent on whether the disclosure should be to the competent authority or the general public.
- Most likely, the Constitution Bench will now be viewing the privacy right enshrined in Section 8(1)(j) of the RTI Act through the lens of the recent Aadhaar judgment.
- In all, the final judgment on the judiciary's right to privacy could have a bearing on other categories of people as well.

5.3 RTI and Collegium System

What is the issue?

- A Constitution Bench of the Supreme Court has recently concluded hearing a crucial appeal under the Right to Information Act (RTI), 2005.
- In this context, the proceedings over making collegium transparent to RTI provisions need a closer look.

What is a collegium?

- A collegium collectively constitutes the selection panel for judicial appointments to the Supreme Court.
- The Collegium includes the five senior-most judges of the Supreme Court.
- When it comes to the High Courts, it constitutes the three senior-most judges.
- The Collegium itself is not mentioned in the text of the Constitution as it arose out of a judgment of the Supreme Court.

Why is collegium significant?

- India is one of the few countries where judges have the last word on judicial appointments, through the mechanism of the Collegium.
- It came as a response to increased executive interference in judicial appointments, particularly during Indira Gandhi's regime.
- The Collegium, therefore, was a tool to secure and guarantee the independence of the judiciary.
- In 2015 too, the Court struck down a constitutional amendment to replace Collegium with a National Judicial Appointments Commission (NJAC).
- It was firmly held that judicial primacy in appointments was the only constitutionally-authorised way of securing judicial independence.

What is the point of contention though?

- The Collegium had come under increasing criticism for its opacity as it has immunised itself from any form of public scrutiny.
- The nomination process, the deliberations and the reasons for elevation or non-elevation of judges, all are secret.
- This leaves way for the possibility of executive interference in judicial appointments.
- Also, it was increasingly being perceived that judicial appointments were too often made in an ad hoc and arbitrary manner.
- [E.g. former SC Justice MarkandeyKatju admitted that, as the CJ of the Allahabad HC, he had refused to recommend a lawyer for judgeship as the lawyer was in a live-in relationship without being married.]
- The Supreme Court's own NJAC judgment acknowledged all these concerns.
- It vowed to evolve a system where concerns of transparency were addressed.
- A small step towards this was made during Dipak Misra's tenure as CJI, when the resolutions of the Collegium began to be published online.

What is the current dispute?

- The question of whether the correspondence of the Collegium was subject to the RTI was looked into by the Supreme Court.
- The Attorney-General of India, representing the Supreme Court, argued that disclosing the Collegium's correspondence would "destroy" judicial independence.
- The CJI seemed to agree, noting that disclosing the reasons for rejection of a judge would "destroy" his or her life or career.
- However, this view is disputed, given the very purpose of the Collegium system being to guarantee judicial independence.

Why is transparency crucial to collegium's functioning?

- The Supreme Court has instituted a process of appointment that makes itself the final arbiter of judicial appointments.
- But then, it must at least ensure that the same process meets the standards of accountability in a democratic republic.
- E.g. in the U.S., candidates for judicial appointments in the federal judiciary are subjected to public confirmation hearings by the Senate

- In Kenya and South Africa, the interviews of candidates taken by judicial appointments commissions are broadcast live.
- The public, thus, is in a position to judge for itself the selection process.
- This is crucial to maintaining public faith in the impartiality of judiciary as an institution.
- A way out of this dilemma is to open up the court, as the cleansing value of transparency by public scrutiny on judicial appointments is worth it.

5.4 Judicial Appointments System

What is the issue?

The recent developments and concerns with regards to appointment of judges make it essential to understand the system of judicial appointments in India.

How has the system evolved?

- **Constitution** - The Constituent Assembly adopted a consultative process of appointing judges to ensure that judges remain insulated from political influence.
- It avoided legislative interference and also the undemocratic provision of a veto to the Chief Justice.
- Instead it vested in the President the power to both make appointments and transfer judges between high courts.
- The President (to act on the advice of the council of ministers) was however required to consult certain authorities such as the CJI or chief justice of the high court appropriately.
- **'Consultation'** - The Supreme Court earlier ruled that the word "consultation" could not be interpreted to mean "concurrence".
- Accordingly the CJI's opinion was not binding on the executive.
- Nevertheless, the executive could depart from the opinion only in exceptional circumstances and any such decision could be subject to judicial review.
- The system was thus fairly balanced and in the First Judges Case, 1981 the court once again endorsed this interpretation.
- **Second Judges Case** - In the famous Second Judges Case, 1993 the court however overruled its earlier decisions.
- It now held that "consultation" meant "concurrence", and that the CJI's view enjoys primacy.
- This is with the rationale that CJI could be best equipped to know and assess the "worth" of candidates.
- But, the CJI was to formulate the opinion only through a body of senior judges that the court described as the 'collegium'.
- **Collegium** - In the Third Judges Case, 1998 the court clarified that the collegium would comprise CJI and four senior-most colleagues, in appointments to the Supreme Court.
- And, the CJI and two senior-most colleagues in the case of appointments to the high courts.
- Additionally, for HCs, the collegium would consult other senior judges in the SC who had previously served in the HC concerned.
- On whether these views of the consultee-judges are binding on the collegium or not, the judgments are silent.
- **NJAC** - The government, through 99th constitutional amendment, sought to replace the collegium with the National Judicial Appointments Commission.
- The Supreme Court however struck NJAC down.
- The court's rationale was that the NJAC law gave politicians an equal say in judicial appointments to constitutional courts.
- **Change** - In what might now be called the Fourth Judges Case (2015), the court upheld the primacy of the collegium.

- More importantly it declared collegium as part of the Constitution's basic structure.
- And so its power could not be removed even through a constitutional amendment.
- But given the criticisms against the system, the judgment promised to consider appropriate measures to improve the collegium system.

What are the recent developments?

- The Supreme Court recently questioned the centre on the delay in finalising a Memorandum of Procedure (MoP) for judicial appointments as per its earlier order.
- Importantly, the apex court recently declared that it would make public, on the court's website, its various decisions.
- The information to be made public include:

i. its verdicts on persons nominated for elevation as judges to the high courts.
ii. its choices of candidates for elevation to the Supreme Court.
iii. its decisions on transfer of judges between different high courts.
iv. these will be accompanied by the reasons underpinning the collegium's choices.

What are the shortfalls?

- The move is essential in terms of bringing transparency into a system that has been long been criticised for its opacity.
- However, the recently released first set of publications implies that the actual functioning is far from its proposed objective.
- Notably, the details on the valid reasons behind the selection or rejection still lack clarity.
- Also details on which of the judges reject the candidature is unrevealed.
- In case of lack of consensus, at times the majority views are being over-ridden even by decision one of the judges in the collegium.
- These shortfalls seem to go against the objective of transparency and impartiality, and thus the system needs further assessment.
- Meanwhile the centre should hasten its process of finalising the MoP on judicial appointments.

Three Judges Cases

- First Judges Case-1981, Second Judges Case-1993 and Third Judges Case-1998 are three of the own judgments of the Supreme Court, collectively known as the Three Judges Cases.
- Over the course of these three cases, the court evolved the principle of judicial independence.
- This meant that no other branch of the state i.e. the legislature and the executive would have any say in the appointment of judges.
- It is with this principle in mind that the SC brought in the collegium system.

5.5 Concerns over Judicial Appointments

What is the issue?

The government and the Supreme Court collegium seem to consistently disagree on recommendations for judicial appointments.

What is the recent happening?

- The latest development concerns Jharkhand High Court Chief Justice Aniruddha Bose and Gauhati High Court Chief Justice A.S. Bopanna.
- Both of them were recommended for elevation to the Supreme Court.
- But the government had sought a reconsideration of the two names.
- The collegium has now repeated its recommendations.
- It has emphasised that there is nothing adverse against the two judges in terms of their "conduct, competence and integrity".
- It has also asserted that there was no reason to agree with the government.

- Under the present procedure, the government is now bound to accept the recommendation.

What is the concern?

- Routinely, some recommendations for High Court appointments, as well as elevation to the Supreme Court, have met with disapproval from the government.
- In such instances, it requires reiteration by the collegium for the names to be cleared.
- This is not always a cause for concern if it is a sign of some serious consultation on the suitability of those recommended.
- However, it becomes a concern when government's objections suggest an indirect motive to delay the appointment of particular nominees.
- In all, the advisability of retaining the collegium system of appointments is a major issue.
- In terms of process, the huge number of vacancies in the various High Courts and lower courts is another concern.
- As on May 1, 2019 the total number of vacancies in all the High Courts is 396.
- Now, the Supreme Court is keen to fill up the current vacancies.
- It has also recommended two more judges.
- If all these four recommendations go through, the court will have its full complement of 31 judges.

What is the way forward?

- Filling up of the vacancies is a continuous and collaborative process involving the executive and the judiciary.
- The process depends on the relative speed with which the collegium initiates proposals and makes recommendations after internal deliberations.
- The time the government takes to process the names is another determinant factor.
- So there cannot practically be a fixed time frame for this process.
- However, it is time to think of a permanent, independent body to institutionalise the process.
- The proposal for a constitutionally empowered council to make judicial appointments ought to be revived, with adequate safeguards for judiciary's independence.
- In all, it is high time for a systemic and processual overhaul in regards with judicial appointments.

5.6 Vacancies in Subordinate courts

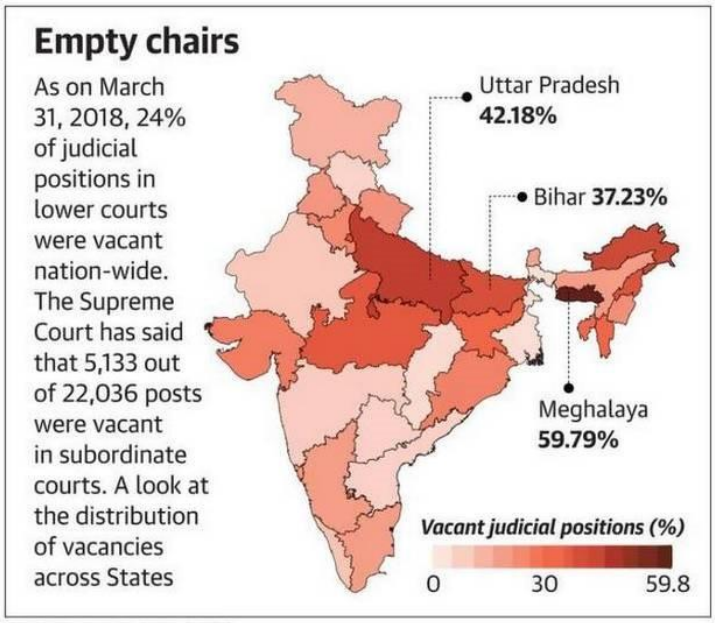
Why in news?

SC has pulled up various State governments and the administrative side of the High Courts for delay in filling vacancies in subordinate judicial services.

What does the court find?

- The SC Bench had taken suomotu cognisance of more than 5,000 vacancies for subordinate judicial posts, despite more than 3 crore cases are pending in the lower courts.
- There were a total of 22,036 posts in the district and subordinate judiciary, ranging from district judges to junior civil judges, across the States and 5,133 out of the 22,036 posts were vacant.
- The source of the problem lay in poor infrastructure, from courtrooms to residences for judges, and a sheer lackadaisical approach to conducting the appointment process on time.
- The court, in its previous hearing on October, wanted to know if the time being taken for appointments was beyond the seven-month schedule formulated by the top court in the **Malik Mazhar Sultan case**.
- Under the schedule, the process for recruitment has to commence on March 31 and be completed by October 31 of the calendar year.
- However, the time limit fixed by it from the initiation of the recruitment process till its completion was the "outer limit" and not the "minimum period of completion."

- Hence, if the time taken has exceeded the schedule fixed by this Court, the reasons thereof be furnished by the Registries of such High Courts/concerned authorities of the State where the recruitment is done through the Public Service Commission.
- But the SC noted that there was a mismatch in the number of vacancies, the number of posts for which recruitment process is underway and those still pending,
- Hence it also sought details of the vacancies that have occurred since the current recruitment process commenced.
- The court also sought information on whether infrastructure and manpower available in the different states is adequate if all the posts that are borne in the cadre are to be filled up.
- This was done because there were more than 1,000 vacancies in Uttar Pradesh alone.
- It also discovered that a lack of infrastructure and staff plagued the West Bengal judicial services.



SOURCE: RAJYA SABHA Q&A

- The Bench found that the recruitment process was under way for only 100 vacancies in Delhi, which has over 200 vacancies.
- It had warned of centralising appointments to the subordinate judiciary as a reason for the delay in filling these vacancies.

How does the appointment happen?

- According to the Constitution, district judges are appointed by the Governor in consultation with the High Court.
- Other subordinate judicial officers are appointed as per rules framed by the Governor in consultation with the High Court and the State Public Service Commission.
- This shows that the High Courts have a significant role to play in lower level judicial appointments.
- A smooth and time-bound process of making appointments would, therefore, require close coordination between the High Courts and the State Public Service Commissions.

What are the concerns?

- Subordinate courts are plaguing with the problem of chronic shortage of judges and severe understaffing of the courts.
- The Supreme Court laid down guidelines in 2007 for making appointments in the lower judiciary within a set time frame.
- Despite that, there is existence of more than 5,000 vacancies in the subordinate courts.
- The SC has pulled up State governments and the administration of various High Courts for the delay in filling these vacancies.
- Answers provided in the Rajya Sabha reveal that as on March 31, 2018, nearly a quarter of the total number of posts in the subordinate courts remained vacant.
- The State-wise figures are also quite alarming, with Uttar Pradesh having a vacancy percentage of 42.18 and Bihar 37.23.
- Among the smaller States, Meghalaya has a vacancy level of 59.79%.
- The possible reasons are –

1. Utter tardiness in the process of calling for applications
2. Holding recruitment examinations and declaring the results

3. Finding the funds to pay and accommodate the newly appointed judges and magistrates.

- Along with that, Public Service Commissions should recruit the staff to assist these judges, while State governments build courts or identify space for them.
- A study released last year by the Vidhi Centre for Legal Policy revealed that the recruitment cycle in most States far exceeded the time limit prescribed by the Supreme Court.
- This time limit is 153 days for a two-tier recruitment process and 273 days for a three-tier process.
- Most States took longer to appoint junior civil judges as well as district judges by direct recruitment.
- This situation demands a massive infusion of both manpower and resources.

What should be done?

- Subordinate courts perform the most critical judicial functions that affect the life of the common man such as conducting trials, settling civil disputes, and implementing the bare bones of the law.
- Any failure to allocate the required human and financial resources may lead to the crippling of judicial work in the subordinate courts.
- It will also amount to letting down poor litigants and under trials, who stand to suffer the most due to judicial delay.
- Thus the issue should be looked up beyond mere vacancies and the concerned states should take necessary measures to ensure a smooth and time-bound recruitment process for the lower judiciary.

5.7 Concerns with Foreigners Tribunal

What is the issue?

- The Supreme Court recently decided on a batch of 15 petitions, regarding the National Register of Citizens (NRC) in Assam, under the title Abdul Kuddus v Union of India.
- The judgement, strengthening the Foreigners Tribunal, seems contentious on human rights grounds, and thus need a relook.

What are the concerns in citizenship registration process?

- In the State of Assam, there are two ongoing processes concerning the question of citizenship -
  i. proceedings before the Foreigners Tribunals, which have been established under an executive order of the Central government
  ii. the NRC, a process overseen and driven by the Supreme Court
- [Foreigner's Tribunal is a quasi-judicial body meant to decide whether a person is a foreigner or not within the meaning of Foreigners Act, 1946.]
- While nominally independent, both processes nonetheless influence one another.
- This has caused significant chaos and confusion for individuals who have found themselves on the wrong side of one or both.
- Evidently, citizenship proceedings were mixed with administrative (and other kinds of) errors.
- However, this often came to light much later, and often by chance; but the implications were serious.

What is the petition?

- The petition was to resolve a "perceived conflict" in the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
- It involved the status of an "opinion" rendered by a Foreigners Tribunal, as to the citizenship (or the lack thereof) of any individual.
- The petitioners argued that an opinion rendered by the Foreigners Tribunal had no greater sanctity than an executive order.
- Under the existing rules, this meant that an adverse finding against an individual would not automatically result in their name being struck off the NRC.

- Furthermore, the Tribunal's opinion could be subsequently reviewed, if fresh materials come to light.
- The petitioners called for challenging the decision of the Foreigners Tribunal if it is used to justify keeping an individual out of the NRC.
- This would then have to be decided independently of the decision arrived at by the Tribunal.
- In short, the petitioners' case was that the processes of the Foreigners Tribunal and of the NRC should be kept entirely independent of each other.
- Also, primacy should not be given to one over the other.

What is the Court's judgement?

- The Supreme Court rejected the petitioners' arguments.
- It held that the "opinion" of the Foreigners Tribunal was to be treated as a "quasi-judicial order".
- It was, therefore, final and binding on all parties including upon the preparation of the NRC.
- The Supreme Court's judgement might severely affect the rights of millions of individuals, as there are serious shortfalls with the Foreigners Tribunal's functioning.

What are the concerns with Foreigners' Tribunals?

- Essentially, Foreigners Tribunals were established by a simple executive order.
- **Officials** - The qualifications to serve on the Tribunals have been progressively loosened.
- Notably, the vague requirement of "judicial experience" has now been expanded to include bureaucrats.
- **Functioning** - The Foreigners' Tribunals are far from the normal understandings of 'courts', both in its form and functioning.
- Under the current rules, Tribunals are -
    i. given sweeping powers to refuse examination of witnesses if in their opinion it is for unworthy/unjustified purposes
    ii. bound to accept evidence produced by the police
    iii. not required to provide reasons for their findings
- [As it is not a judgment, a concise statement of the facts and the conclusion would suffice unlike courts that add "reasons" to "facts" and "conclusions".]
- **Flaws** - In effect, Tribunals are left free to regulate their own procedure for disposal of cases.
- Consequently, over the last few months, glaring flaws in the working of the Foreigners Tribunals have come to light.
- As many as 64,000 people have been declared non-citizens in ex-parte proceedings, i.e., without being heard.
- People are often not even served notices telling them that they have been summoned to appear.

Why is the judgement contentious?

- The Court says that fixing time limits and recording of an order rather than a judgment is to ensure that these cases are disposed of expeditiously and in a time bound manner.
- However, rejecting a person's citizenship could have drastic and severe result of rendering a human being stateless.
- So, when adjudicating upon a person's citizenship, only the highest standards of adjudication can ever be morally or ethically justifiable.
- The Foreigners Tribunal, however, is by design and practice manifestly the exact opposite of this principle.
- So, in further strengthening the Tribunal, the Supreme Court has fallen short of being the last protector of human rights under the Constitution.
- It seems to be a departure from the most basic principles of the rule of law.
- Given this, if Article 21 (right to life) of the Constitution is to be meaningful, this entire jurisprudence must be reconsidered.

5.8 Resolving Mob Violence

What is the issue?

- Mere anti-lynching laws are less likely to be enough to curtail the menace effectively.
- Battling the mob phenomenon needs conscious political campaigning against discriminatory and xenophobic attitudes.

What are the recent developments regarding mob violence?

- **SC Verdict -** The Supreme Court (SC) has expressed shock over the spree of mob violence incidents that have occurred in various regions.
- The SC observed that it is the responsibility of the States to prevent untoward incidents and issued certain guidelines to be implemented.
- Further, the court noted that what may have started out as isolated acts by fundamentalist right-wing groups has now become a widespread malaise.
- **Guidelines -** The preventive guidelines of the SC require every State to designate a senior police officer as the Nodal Officer in each district.
- This officer has to collect intelligence regarding the spread of hateful provocative ideas and fake news and also stop their dissemination.
- Additionally, governments have been directed to carry out publicity campaigns against mob vigilantism and violence through media channels.
- The guidelines have also made an effort to streamline and fast-track investigations into future incidences and to support the family of the victims.

What is way ahead?

- Most cases of lynching seem to be premeditated acts attempting to change the social and cultural narrative in India on polarising lines.
- Lack of employment opportunities is helping deep-seated insecurities to take root among young people, aiding the spread of a fundamentalist agenda.
- Considering the context, there is a need to comprehensively deal with the deep-rooted hate which appears to have set in with an innovative approach.
- This malicious phenomenon cannot be fought merely through court directives or laws.
- Nurturing an inclusive political agenda is the need of the hour.

5.9 Court-Supervised Mediation in Ayodhya Dispute

Why in news?

The Supreme Court ordered a court-supervised mediation to resolve the Ram Janmabhoomi-Babri Masjid land dispute in 8 weeks.

What is the core dispute?

- The dispute over the site at Ayodhya has been continuing since 1949.
- A 16th century mosque stood at Ayodhya until it was torn down by Hindutva fanatics in December 1992.
- After the demolition of the Babri Masjid, the President referred the matter to the Supreme Court.
- The court was to look into the question of whether there was a temple to Lord Ram before the mosque was built at the site.
- The court, in a landmark decision in 1994, declined to go into that question.
- However, it revived the title suits to decide on the ownership of the site and, thereby, restored due process and the rule of law.
- The Supreme Court recently took up appeals against the 2010 verdict of the Allahabad High Court which ordered a three-way division of the disputed site.

What is the court's order now?

- The Court sought the views of the parties on invoking Section 89 of the Code of Civil Procedure (CPC) which deals with mediation.
- [Under Section 89 the court can order for a settlement among the parties.
- The court may reformulate the terms of a possible settlement and refer the same for -
    i. arbitration
    ii. conciliation
    iii. judicial settlement including settlement through Lok Adalat
    iv. mediation
- A five-judge constitution bench finally went for mediation and appointed former Supreme Court judge justice (retd) F.M.I. Kalifulla as the chairperson of the panel of mediators.
- The other two members are spiritual guru Sri Sri Ravi Shankar and senior advocate Sriram Panchu.
- The mediation proceedings will be held in-camera in Faizabad which adjoins Ayodhya in Uttar Pradesh.
- To ensure the success of the mediation process, the apex court directed that “utmost confidentiality" be maintained.
- It also barred both print and electronic media from reporting the proceedings.
- Hindu bodies, except the Nirmohi Akhara, have opposed mediation, while Muslim bodies have supported it.

How effective will mediation be?

- Mediation is a welcome option for those involved in prolonged civil disputes.
- However, it is questionable whether this principle can be applied to all disputes and in all situations.
- Mediation in Ram Janmabhoomi-Babri Masjid dispute is quite strange and incongruous.
- This is because a number of attempts at mediation have been made in the past and all such previous attempts have ended in failure.
- Further, the case is ripe for final hearing, and not all parties favoured mediation.
- Moreover, the inclusion of Sri Sri Ravi Shankar as one of the mediators is controversial.
- In the past, he has made remarks to the effect that Muslims ought to give up their claim and that the failure to find a negotiated settlement will result in “civil war”.

Why is the order welcome still?

- The apex court itself is not very keen on pronouncing a judgement on the issue.
- It's because it is less of a legal issue and more a matter of sentiments and faith.
- A compromise among both will indeed be preferable to a court order that may leave one side aggrieved.
- An appreciable feature of the court-mandated mediation attempt is that it will not consume much time.
- The same eight weeks are needed for preparation for the final hearing.
- Moreover, the confidentiality rule will be helpful in avoiding any unrest with premature disclosures, especially during election times.

5.10 Tracking the Babri Masjid Controversy

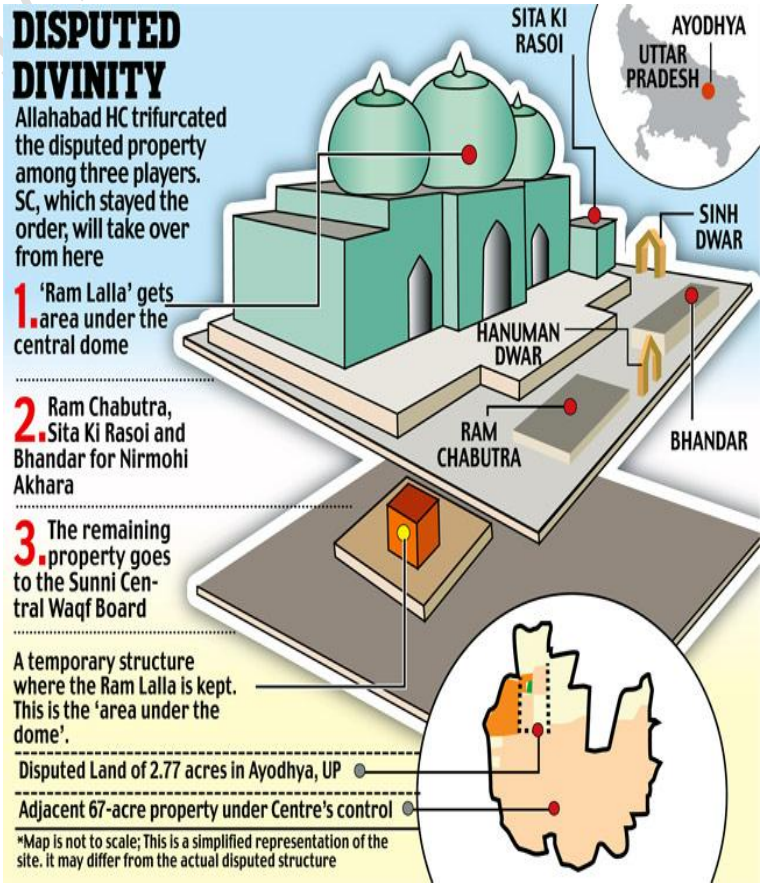
What is the issue?

With the Supreme Court beginning the final hearings in the Babri-Masjid Case, it is vital to understand the progress of events.

How did the controversy evolve?

- **Chabutra** - Chabutra was an uncovered open platform adjoining the Babri Masjid, in Ayodhya, UP.

- Hindu priests wanted a temple constructed on the Chabutra to be able to conduct their worship without vagaries of weather.
- In 1885, a civil suit was filed, seeking permission to construct a temple over the Ram Chabutara spot.
- The Chabutara and Sita Rasoi, worshipped by the Hindus, fall within the 'outer courtyard' in a disputed 2.77 acres.
- This was separated from the inner courtyard, where the Babri Masjid stood, by a brick wall with iron grills.
- This apparent territorial confusions led to the Hindu-Muslim tensions escalating.
- The Faizabad sub-judge dismissed the suit on the grounds that granting permission to construct a temple would lead to riots.
- **Idols** - Despite intermediate riots in Ayodhya, the status quo largely continued till December, 1949.
- But in December, 1949 a group installed idols inside what they claimed was the disputed structure, and puja was started.
- The state government wanted the idols removed.
- But the Faizabad district administration felt that doing so would lead to communal violence.
- **Litigations** - Resultantly, the next round of litigations began in 1950.
- A resident of Ayodhya filed a title suit before the Civil Judge in Faizabad.
- It claimed that the right to worship was being impeded by the state government.
- The suit also sought a permanent restriction to prohibit the removal of the idols.
- Various other suits were also filed by Muslim boards and individuals claiming that the Babri Masjid was built by Mughal emperor Babur.
- **To the High Court** - Countering the claims were those of the Hindu religious groups, stating that Babur had destroyed the Janmasthan temple in 1528 and built a mosque in its place.
- Thus the site became a source of claims and counterclaims on the ownership of the disputed area.
- Subsequent to the dispute, the cases were transferred to the Allahabad High Court.
- Meanwhile, the Civil Judge, in January, 1950, passed an interim order restraining the removal of the idols.
- Thus the puja continued and the public allowed for darshan from beyond the brick-grill wall.
- Following appeals, an order was passed to open the locks on the brick-grill wall and allow darshan from inside.
- **Ram temple** - Following the order, the Babri Masjid Action Committee (BMAC) sought the restoration of the disputed structure to the Muslims.
- As the BMAC launched a protest movement, Hindu organisations also began to mobilise public opinion.
- They were in favour of constructing a Ram temple at the disputed site.
- The order thus triggered a chain reaction, leading to the demolition of the structure on December 6, 1992.



- **Acquisition** - Meanwhile in 1991, the Uttar Pradesh government acquired 2.77 acres of land, including the premises in dispute.
- This, it said, is for the "development of tourism and providing amenities to pilgrims in Ayodhya".
- However, five days after the demolition in 1992, the High Court quashed this order.
- Subsequently, in 1993, the central government acquired 67.7 acres under the 'Acquisition of Certain Area at Ayodhya Ordinance, 1993, later replaced by an Act.
- Later, the Supreme Court, examining the validity of the acquisition Act, struck it down as unconstitutional.
- **Survey** - Oral evidence was recorded and various reference books were presented between 1996 to 2007.
- The Allahabad HC, in 2003, directed the Archaeological Survey of India to excavate the area.
- In its report, the ASI described "remains which are distinctive features found associated with the temples of north India".
- **Allahabad HC verdict** - In September, 2010 the Allahabad HC ordered a three-way division of the disputed 2.77 acres.
- It gave a third each to the Nirmohi Akhara sect, the Sunni Central Wakf Board, UP, and RamlallaVirajman (infant Lord Ram, the presiding deity in the temple).
- It was however, a 2-1 majority judgement.
- The majority judges held that the disputed structure was raised on an existing structure, the remains of which were used in constructing the new structure.
- It was also mentioned that the erstwhile structure was a Hindu temple and it was demolished whereafter the disputed structure was raised.
- The minority judge held that that no temple was demolished but the mosque was constructed over the ruins of temples.
- **Riots and thereafter** - After the demolition in 1992, the CBI lodged two FIRs on charges of promoting enmity between groups.
- Charges were also filed against some politicians, charging them with criminal conspiracy and acting deliberately to outrage religious feelings.
- Later in 2011, the Supreme Court ordered status quo on the disputed site and adjoining 67.7 acres of land acquired by the Centre.
- Recently, in August, 2017 the court gave the parties 12 weeks to translate all oral evidence and exhibited documents in various languages.
- The process is now complete and the Supreme Court will start final hearings on cross-appeals against the HC order.

5.11 SC Order - Bail to Journalist Prashant Kanojia

Why in news?

The Supreme Court ordered granting immediate bail to journalist Prashant Kanojia, arrested by the Uttar Pradesh Police.

What are the incongruities in the arrest?

- Journalist Prashant Kanojia was arrested for sharing on Twitter a video pertaining to Chief Minister Yogi Adityanath.
- **Rationale** - This is a period when social media networks are full of rampant abuse and distasteful material.
- Given this, the police choosing one or two that appear to target political functionaries is disputable.
- It is obvious that the arrest was arbitrary and unwarranted, and reflects disregard for law and liberty.
- **Procedural** - There has been a clear disregard for well-established norms for arrest and remand.

- In Mr. Kanojia's case, defamation, a non-cognisable offence, and Section 66 of the Information Technology Act were cited initially.
- The latter relates to damaging computer systems, and is inapplicable to a social media post.
- It was quite clear that there was no case for remand.
- Also, Kanojia was taken out of Delhi without a transit remand from a local magistrate, mandatory when an accused is taken from one State to another.
- **Legal** - Given the above, the U.P. Police faced lot of criticisms.
- It thus added a section dealing with the offence of causing public mischief and disturbing public tranquillity.
- Besides, Section 67 of the IT Act which relates to sharing of obscene or prurient material was used, with the motive of obtaining a remand order.
- Clearly, the arrest took place first and justifications for arrest were made up in the course of time.

What was the court's observation?

- The Bench did not consider the controversial tweets as sufficient grounds for abridging personal liberty.
- It clearly ignored the technical objections by the counsel for the State government.
- [It was argued by the state that the apex court should not intervene as only a regular bail petition could secure relief to someone remanded by the jurisdictional magistrate.]

What should be done?

- Given the legal and procedural incongruities, it is high time to ensure that magistrates do not pass mechanical orders without application of mind.
- Also, officers who carry out illegal instructions from the political leadership should be made to face exemplary disciplinary action.

5.12 Supreme Court on Rohingya issue

Why in News?

The Supreme Court has decided to examine whether illegal immigrants are entitled to refugee status in the context of the Rohingya Muslims of Myanmar.

What is the debate?

- There is an opinion that they breach the lawbecause they are **undocumented.**
- Obviously, those escaping persecution in their home country are invariably undocumented.
- There is another opinion that those fleeing conditions of war or conflict should be **treated as refugees first** before their cases can be examined in detail, and deemed fit for deportation as illegal entrants.

What is the definition?

- The **Government of India** defines **illegal immigrant** as any foreigner,
    1. Entering India without valid travel documents, or
    2. Overstays a permitted period of stay.

What do the court's decision mean?

- The court's decision to go into the issue, offers an opportunity to clarify India's approach to the refugee question.
- It will be strange if any court holds that no illegal immigrant is entitled to refugee status, as it would amount to a denial of the very existence of refugees as a class.

Why a positive ruling is needed?

- The Centre is taking a stand against treating the Rohingya as refugees.

- So, a positive ruling is needed from the apex court to prevent their forcible deportation.

Principle of non-refoulement

- Non-refoulement is a fundamental principle of international law.
- It **prohibits states from forcibly returning refugees** to conditions that caused them to flee their homes in the first place, where they would be likely in **danger of persecution** based on race, religion, nationality, membership of a particular social group or political opinion.

What is India's position?

- India is not a signatory to the UN Convention on the Status of Refugees, 1951.
- It has also not signed a Protocol adopted in 1967 on the subject.
- However, since Independence it has by and large adhered to the larger humanitarian principles underlying these instruments.
- India's approach has generally been favourable to vulnerable entrants, but is stridently hostile to the Rohingya.

What is the concern?

- The present regime is determined to deport the Rohingya,
    1. In utter disregard of the danger to their lives in Myanmar, and
    2. In violation of the principle of non-refoulement.
- It will be amoral and unjust if this most vulnerable group from Myanmar's Rakhine stateis denied refugee status.

Why is the government keen to deport?

- Its keenness is rooted in the technicalities of its **citizenship law**.
- It rules out giving citizenship by registration to such illegal immigrants.
- The amendments it proposes to the Citizenship **Act do not cover Muslim immigrants** and are limited to persecuted Afghan, Bangladeshi and Pakistani minorities.

Why the government shouldn't deport?

- India should not besmirch its fine record of humane treatment of refugees by pursuing the deportation option without relent.
- India should work with the world community on the voluntary repatriation of the Rohingya.

5.13 Witness Protection Scheme, 2018

Why in news?

The Supreme Court has approved India's first Witness Protection Scheme.

What is the Witness Protection Scheme, 2018?

- The scheme was drawn up by
    i. the central government with inputs from 8 states/Union Territories
    ii. legal services authorities of five states
    iii. open sources including civil society, three high courts as well as from police personnel
- The scheme was finalised in consultation with the National Legal Services Authority (NALSA).
- **Features** - The important features include identifying categories of threat perceptions and preparation of a 'Threat Analysis Report' by the head of the police.
- Besides, other protective measures include -
    i. ensuring that the witness and accused do not come face to face during probe
    ii. protection of identity
    iii. change of identity
    iv. relocation of witness

v. witnesses to be apprised of the scheme
vi. confidentiality and preservation of records
vii. recovery of expenses, etc

- Other features include in-camera trial, proximate physical protection and anonymising of testimony and references to witnesses in the records.
- **Threat perception** - The programme identifies "three categories of witnesses as per threat perception" as follows:
- Category A - cases where threat extends to life of witness or family members during investigation, trial or even thereafter
- Category B - cases where threat extends to safety, reputation or property of the witness or family members during the investigation or trial
- Category C - cases where threat is moderate and extends to harassment or intimidation of the witness or family members, reputation or property during the investigation, trial or thereafter
- **Procedure** - The application for protection will have to be filed before the "Competent Authority" along with supporting documents.
- The Authority will in turn seek a "Threat Analysis Report" from the ACP/DCP in charge of the police station.
- The Authority will be required to dispose an application within five days from the date of receipt of Threat Analysis Report.
- In its report, the police officer must categorise the threat perception and suggest protective measures.
- The Authority shall interact with the witness and other relevant persons (in person or through electronic means).
- Proceedings of the Authority will be held in-camera.
- The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the state or UT.
- The "overall responsibility" for implementing the order lies with the head of the police of the state and Union Territory.
- If the order is for change of identity or relocation, it shall be implemented by the Home department concerned.
- The Witness Protection Cell will file a monthly follow-up report to the Authority.
- It also empowers the Authority to call for a fresh Threat Analysis Report if it feels the need to revise its order.
- **Fund** - The expenses for the programme will be met from a Witness Protection Fund to be established by the states and UTs.
- They should make annual budgetary allocation for the fund which will also be free to accept donations.
- Donations could be from national and international philanthropic organisations and amounts contributed as part of Corporate Social Responsibility.

What is the Court's order?

- The court noted that one of the main reasons for witnesses turning hostile is the lack of appropriate protection by the State.
- Being unable to testify in courts due to threats or other pressures is a clear violation of Article 21 of the Constitution.
- The Court thus asked the Centre, states and Union Territories to "enforce" the scheme "in letter and spirit".
- It asked all states and UTs to set up vulnerable witness deposition complexes, as required by the Scheme, by the end of 2019.
- These rooms will be equipped with facilities to prevent the accused and witness coming face to face.

- The court said, "it shall be the 'law' under Article 141/142 of the Constitution, until the enactment of suitable Parliamentary and/or State Legislations on the subject".

How does it hep?

- Witnesses turning hostile is a major reason for most acquittals.
- In the current system, there is little incentive for witnesses to turn up in court and testify against criminals.
- Besides threats to their lives, they experience hostility and harassment while attending courts.
- The judicial process seldom takes into account the distance they have travelled or the time they have lost in attending court.
- Thus, the need to protect witnesses has been emphasised by Law Commission reports and court judgments for years.
- A robust witness protection scheme will bring in efficiency in the criminal justice system, given the abysmal rate of convictions in the country.

6. ISSUES IN FEDERALISM

6.1 L-G Role in Puducherry Administration

Why in news?

The Madras High Court ruled that the Lieutenant Governor of Puducherry should not interfere in the day-to-day administration of the Union Territory.

What is the recent tussle?

- The ruling comes as a serious setback to the incumbent Lieutenant Governor (L-G) of Puducherry, Kiran Bedi.
- She has been locked in a prolonged dispute, over the extent of her powers, with Chief Minister V. Narayanasamy.
- The CM has been reporting that the LG was disregarding the elected regime and seeking to run the Union Territory on her own.

What is the High Court's ruling?

- The constant interference from the L-G would amount to running a "parallel government," when an elected government was in place.
- The Administrator is bound by the 'aid and advice' clause in matters over which the Assembly is competent to enact laws.
- The government secretaries are bound to take instructions from and report to the Council of Ministers, headed by the Chief Minister.
- The secretaries are not empowered to issue orders on their own or upon the instructions of the Administrator (L-G).
- The Court also disapproved of the alleged practice of government officials being part of social media groups.
- Through these, the L-G was issuing instructions to them for redress of public grievances.
- The court reminded that they were bound to use only authorised medium of communication for purposes of administration.
- The L-G's power to refer any matter to the President to resolve differences should not mean "every matter".
- The High Court has reminded the Centre and the Administrator that they should be true to the concept of democratic principles.
- This is essential to uphold the constitutional scheme based on democracy and republicanism.
- The HC's ruling is inspired by the Supreme Court's earlier appeal to constitutional morality and trust among high dignitaries.

What was SC's earlier ruling in this regard?

- An earlier SC judgement came in relation to the conflict between the elected regime in the National Capital Territory (NCT) of Delhi and its Lt.Governor.
- It ruled that the L-G has to act on the 'aid and advice' of the Council of Ministers.
- It has to refer to the President for a decision on any matter where there is a difference with the Ministry.
- But, clearly, the Lt.Governor has no independent decision-making powers.

What is the HC's rationale now?

- The apex court has clearly held that there is a distinction between the National Capital Territory of Delhi and Puducherry.
- The Puducherry legislature was created through a parliamentary law, based on an enabling provision in Article 239A of the Constitution.
- On the other hand, the NCT legislature has been created by the Constitution itself under Article 239AA.
- At the same time, the NCT Assembly is limited in the extent of its legislative powers.
- It is barred from dealing with the subjects of public order, police and land.
- There are no such restrictions imposed explicitly in the case of Puducherry under Article 239A.
- The Article symbolises the supremacy of the Legislature above the Administrator in case of the Union Territory of Puducherry.
- Given the Business Rules and other statutory provisions, Puducherry deserves a greater credence to the concept of a representative government.
- With this explanation, the Court has set aside two clarifications issued by the Centre in 2017.
- They had stated that the L-G enjoyed more power than the Governor of a State and could act without aid and advice.

7. ELECTIONS

7.1 Model Code of Conduct for Elections

What is the issue?

With general elections approaching, here is a look on the Model Code of Conduct (MCC) that the Election Commission of India enforces

What is a Model Code of Conduct?

- The Model Code of Conduct (MCC) is a document from the Election Commission of India.
- It lays down the minimum standards of behaviour for political parties and their candidates contesting elections.
- The MCC comes into effect as soon as the EC announces the election schedule.

When did it come about?

- The MCC was first proposed by Kerala in its 1960 assembly elections.
- It was later adopted by the Election Commission of India (EC) during mid-term elections in 1968 and 1969.
- It has since been updated many times based on cases fought in courts.
- The Code has evolved over the years to include behaviour norms for the party in power and the public servants who report to it.

What are the key features?

- The MCC lays down good behaviour norms covering 8 areas of electioneering including, among many, -

  i. general conduct of candidates

ii. candidates' meetings/processions

iii. appointment of observers

iv. maintenance of polling booths on D-Day

v. contents in election manifestos

- **Under 'general conduct'**, the Code mainly regulates the candidates who -

  i. incite communal tensions

  ii. use caste or religion to appeal for votes

  iii. canvass within 100 metres of polling stations and in the 48 hours preceding the polls

- For meetings and processions, parties are required to obtain advance permissions from local authorities and seek police help to contain unruly elements.
- Effigy burning is expressly prohibited.
- **On the day of election**, political parties are expected to -

  i. identify their party workers with badges

  ii. stay off the polling booths

  iii. keep their camps near the booths free of propaganda material

  iv. refrain from distributing goodies or liquor to voters

- **Election manifestos** of political parties should not contain any unreasonable and impractical promises.
- EC directs parties to stick only to those promises that are financially feasible.
- **Ruling party** - There are elaborate rules to ensure that the party in power plays fair and the Code has the longest list of don"ts for the ruling party.
- The Code ensures that the -

  i. party in power does not gain an unfair advantage in campaigning

  ii. ministers are barred from mixing their official visits with political rallies

  iii. ruling party does not use government vehicles, aircraft or machinery

  iv. ruling party does not issue public advertisements promoting the party or its leaders at the cost of the exchequer

- The party in power is also directed not to „monopolise" public places or government rest houses and bungalows for political rallies.
- Once elections are announced, ministers cannot announce financial grants or large projects or make ad-hoc government appointments in a way that could influence voter behaviour.

Is it legally binding?

- The Model Code of Conduct does not have any statutory backing.
- But the Code has come to acquire significance in the past decade, because of its strict enforcement by the EC.
- Some of the more serious offences listed in the Code have also found their way into the statute books.
- So for some of the offences mentioned, candidates can be tried under the Indian Penal Code or the Representation of the People Act 1951.

7.2 Credibility Concerns with Election Commission

What is the issue?

- The EC has come under the scanner like never before, with increasing incidents of breach of the Model Code of Conduct in the 2019 general elections.
- While nothing bars the EC from asserting its authority, there is a dire need for some institutional safeguards to protect its autonomy.

What is the recent happening?

- The Election Commission of India (EC) is a formidable institution which has led the world in electoral efficiency since its inception.
- But recent incidents involving breach of the Model Code of Conduct, particularly those by the ruling party, have raised serious credibility concerns.
- A group of retired bureaucrats and diplomats recently raised certain issues in this regard in a letter to the President of India.
- They expressed concern over the EC's "weak kneed conduct" and the institution "suffering from a crisis of credibility today".

What are the concerns highlighted?

- **Mission shakti speech** - The letter mentioned the PM's recent announcement of India's first anti-satellite (ASAT) test.
- They described it as a serious breach of propriety amounting to giving unfair publicity to the party in power.
- **Media** - Questions were also raised over the launch of NaMo TV without licence.
- The biopic on the life of PM Modi, which was scheduled for release when elections had commenced, was also questioned.
- The group also requested the EC to issue directions to withhold the release of biopics/documentaries on any political personages until the conclusion of the electoral process.
- They asserted that the release of such propaganda amounted to free publicity.
- Hence, they also called for debiting the expenses as election expenditure in the name of the candidate in question.
- The same standards should also apply to other such propaganda, an example being a web series titled "Modi: A Common Man's Journey".
- **Other concerns** - Other important issues highlighted in the letter included -

i. transfers of top officials
ii. voter verifiable paper audit trail (VVPAT) audits
iii. violations of the MCC by Rajasthan Governor Kalyan Singh; requesting his removal on account of "grave misdemeanour"
iv. UP CM Yogi Adityanath (in his speech he referred to the armed forces as the army of Narendra Modi)
v. corrosion of the political discourse in general

What are the drawbacks in EC's structure and functioning?

- **Appointment** - The genesis of the problem lies in the flawed system of appointment of election commissioners.
- It is currently done unilaterally by the government of the day.
- **Protection** - Now, only the Chief Election Commissioner (CEC), and not the other two commissioners, is protected from being removed except through impeachment.
- The other two commissioners having equal voting power in the functioning of the EC can outvote the CEC 10 times a day.
- Here, the uncertainty of elevation by seniority makes them vulnerable to government pressure.
- By this way, the government can control a defiant CEC through the majority voting power of the other two commissioners.
- It is to be noted that the Constitution enabled protection to the CEC as it was a one-man commission initially.
- **Authority** - The EC's reputation also suffers when it is unable to bring to control the unruly political parties, especially the ruling party.

- This is because the EC only has the registering authority under Section 29A of the Representation of the People Act, 1951.
- It does not have the power to de-register parties even for the gravest of violations.

What are the called-for changes?

- **Appointment** - In its 255th report, the Law Commission recommended a collegium, consisting of the PM, the Leader of the Opposition and the CJI, to select election commissioners.
- But successive ruling dispensations have not given any legal form to this recommendation, fearing of losing their power.
- It is obvious here that political and electoral interests take precedence over the national interest.
- A public interest litigation was also filed in the Supreme Court in late 2018.
- It called for a fair, just and transparent process of selection by constituting a neutral and independent Collegium/selection committee.
- The matter has been referred to a constitution bench.
- **Powers** - The EC itself has been seeking the power to de-register political parties, among many other reforms.
- The reform was first suggested by the CEC in 1998 and reiterated several times.
- The EC also very recently submitted an affidavit to the Supreme Court on this demand.

7.3 Simultaneous Election

Why in news?

The Centre has decided to form a committee to examine the issue of conducting the simultaneous elections.

What is Simultaneous election?

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

What is the current scenario?

- Currently, elections to the state assemblies and the Lok Sabha are held separately that is whenever the incumbent government's five-year term ends or whenever it is dissolved due to various reasons.
- This applies to both the state legislatures and the Lok Sabha.
- The terms of Legislative Assemblies and the Lok Sabha may not synchronise with one another.

What is the history behind?

- Simultaneous elections were the norm until 1967.
- But following dissolution of some Legislative Assemblies in 1968 and 1969 and that of the Lok Sabha in December 1970, elections to State Assemblies and Parliament have been held separately.
- The idea of reverting to simultaneous polls was mooted in the annual report of the **Election Commission in 1983** and also in the report of **Law Commission** in the year **1999**.
- The recent push came ahead of the 2014 Lok Sabha polls in the Bhartiya Janata Party (BJP) manifesto.
- NITI Aayog prepared a working paper on the subject in January 2017.
- In the Law Commission's working paper that was brought out in April 2018, it said that at least "five Constitutional recommendations" would be required to get this off the ground.

What are the pros?

- It will reduce enormous **costs** involved in separate elections.

- It will reduce the burden on the **manpower** deployed.
- The system will help ruling parties **focus on governance**, instead of being constantly in election mode.
- It reduces the distractions from long-term planning and policy goals.
- It will boost **voter turnout**, according to the Law Commission.

What are the cons?

- Holding simultaneous elections is likely to affect the judgment of voters as the national and state issues are different.
- It will **reduce the accountability** of the government to the people as the elections will be held once in five years.
- But repeated elections keep legislators on their toes and increases accountability.
- It may **curtail or extend the tenure** of State legislatures to bring their elections in line with the Lok Sabha poll dates.
- There is a serious question of what happens if the government at the Centre falls.
- There will be a blow to democracy and federalism when **President's rule** will have to be imposed in the interim period in a state. This may be due to the postponement of election in a State until the synchronised phase arrives.
- It will, in all probability, benefit the dominant national party or the incumbent at the Centre while **disadvantaging the smaller regional party** and issue.
- In a parliamentary democracy, the legitimacy of executive is responsible to the legislature would be undermined by taking away the legislature's power to bring down a minority regime by mandating a fixed tenure.

7.4 Role of EC in Party Disputes - TN 'Two Leaves' Symbol Case

Why in news?

The Delhi High Court verdict upheld the allotment of the „Two Leaves" symbol to the AIADMK.

What was the tussle?

- The leadership of the AIADMK party was in dispute after the death of its leader and former Tamil Nadu Chief Minster Ms. Jayalalithaa.
- The AIADMK is now jointly led by the present Tamil Nadu Chief Minister Edappadi K. Palaniswami and Deputy CM O. Panneerselvam.
- Another rival faction was soon formed, headed by V.K. Sasikala, a confidante of the late Jayalalithaa, and her nephew, T.T.V. Dhinakaran.
- The two factions had conflicts in regards with claims to the party"s name and the „Two Leaves" symbol.

What is the court's verdict?

- The Delhi High Court upheld the Election Commission"sNovember, 2017 order that had ruled in AIADMK's favour.
- EC's decision was based on the group"s majority in its organisational and legislative wings.
- The court has ruled that the EC was well within its powers to apply the majority test.
- It thus allotted the symbol to the faction that had more members in the general council and in its complement of MLAs and MPs.

What is the rival faction's stance?

- Dhinakaran's party maintained that the EC should have ruled against the Panneerselvam-Palaniswami faction.
- This is because it had changed the party"s basic structure by abolishing the post of general secretary.
- The Dhinakaran faction has now decided to appeal in the Supreme Court against the order.

- Earlier, however, Dhinakaran formed his party named the Amma MakkalMunnetraKazhagam (AMMK).

What is the EC's role in this regard?

- The Election Symbols (Reservation and Allotment) Order, 1968 empowers the EC to recognise political parties and allot symbols.
- Under Paragraph 15 of the Order, the EC is the only authority to decide issues on a dispute or a merger.
- EC can decide disputes among rival groups or sections of a recognised political party staking claim to its name and symbol.
- The Supreme Court upheld its validity in Sadiq Ali and another vs. ECI in 1971.
- This applies to disputes in recognised national and state parties.
- For splits in registered but unrecognised parties, the EC usually advises the warring factions to resolve their differences internally or to approach the court.

How does EC decide on the dispute?

- **Support** - The Commission examines the party‟s constitution and its list of office-bearers submitted when the party was united.
- It identifies the apex committee(s) in the organisation and finds out how many office-bearers, members or delegates support the rival claimants.
- For the legislative wing, the EC goes by the number of MPs and MLAs in the rival camps.
- It may consider affidavits filed by these members to ascertain where they stand.
- The ECI may then decide in favour of the faction having enough support in its organisational and legislative wings to be entitled to the name and symbol.
- It may permit the other group to register itself as a separate political party.
- **Uncertainty** - If the party is either vertically divided or if there is uncertainty over a clear majority, the EC may freeze the party‟s symbol.
- It may then allow the groups to register themselves with new names or add prefixes or suffixes to the party‟s existing names.
- **Election times** - The EC may take time to gather enough material to decide on the dispute.
- But for immediate electoral purposes, it may freeze the party‟s symbol and advise the groups to fight the elections in different names and on temporary symbols.
- **Reunion** - If reunited in future, the claimants may approach the EC again and seek to be recognised as a unified party.
- The EC is also empowered to recognise mergers of groups into one entity, when it may restore the symbol and name of the original party.

7.5 Changes to Form 26 - Making Election Candidates Accountable

Why in news?

The Law Ministry recently amended Form 26 to make election candidates more accountable, after the Election Commission of India wrote to the Ministry.

What is Form 26?

- A candidate in an election is required to file an affidavit called Form 26.
- It furnishes information on candidate's assets, liabilities, educational qualifications, criminal antecedents (convictions and all pending cases) and public dues, if any.
- The affidavit has to be filed along with the nomination papers.
- It should be sworn before an Oath Commissioner or Magistrate of the First Class or before a Notary Public.

What are the changes made now?

- Earlier, an election candidate had to only declare the last I-T return (for self, spouse and dependents).
- The recent changes make it mandatory for candidates to reveal their income-tax returns of the last 5 years (for self, spouse and dependents).
- Also they now have to furnish details of their offshore assets, which were not sought earlier.
- This means "details of all deposits or investments in foreign banks and any other body or institution abroad and details of all assets and liabilities in foreign countries".

What is the objective?

- The objective behind introducing Form 26 was that it would help voters make an informed decision.
- The affidavit would make them aware of the criminal activities of a candidate.
- This could help prevent people with questionable backgrounds from being elected to an Assembly or Parliament.
- With the recent amendment, voters will know the extent to which a serving MP"s income grew during his/her 5 years in power.

How did Form 26 evolve?

- The 170th Report of the Law Commission, submitted in 1999 suggested steps for preventing criminals from entering electoral politics.
- One of the suggestions was to disclose the criminal antecedents as well as the assets of a candidate before accepting her nomination.
- The then government did not act on the recommendation, leading to public interest litigation in Delhi High Court.
- The HC directed the EC to secure -

  i. information on whether a candidate is accused of any offence(s) punishable by imprisonment

  ii. information on her assets as well as those of her spouse and dependents

  iii. any other information the EC considers necessary
- The Union government appealed in the Supreme Court which agreed with the Delhi HC.
- The SC also went a step ahead and directed the EC in its May 2002 order to -

  i. ask candidates if they have been convicted/acquitted/discharged of any criminal offence in the past or accused in any pending cases 6 months before the filing of nomination

  ii. seek details of assets and liabilities of a candidate, her spouse and dependents, and the educational qualifications of the candidate
- The EC soon issued an order to implement the verdict.
- But the Union government promulgated an Ordinance diluting the EC"s order - Representation of the People (Amendment) Ordinance, 2002 (subsequently replaced by an Act in December, 2002).
- Accordingly, a candidate was only expected to disclose -

  i. whether she was accused of any offence punishable with imprisonment for 2 years or more in a pending case in which charges had been framed by a court

  ii. whether she had been convicted of an offence and sentenced to a year"s imprisonment or more
- The government subsequently also amended the Election Conduct Rules of 1961 in September, 2002.
- It prescribed Form 26 in which a candidate had to disclose the above information.
- However, the SC declared the amendment null and void.
- The EC then issued a fresh order in March, 2003, seeking information on all 5 points mentioned in the SC order of May, 2002.

What happens if a candidate lies in an affidavit?

- A candidate is expected to file a complete affidavit; leaving a few columns blank can render the affidavit invalid.
- It is the responsibility of the Returning Officer (RO) to check whether Form 26 has been completed.
- The nomination paper can be rejected if the candidate fails to fill it in full.
- If it is alleged that a candidate has suppressed information or lied in her affidavit, the complainant can seek an inquiry through an election petition.
- If the court finds the affidavit false, the candidate"s election can be declared void.
- E.g. in 2016, Patna High Court annulled the Lok Sabha membership of ChhediPaswan, a BJP member, for not declaring a criminal case pending against him
- The current penalty for lying in an affidavit is imprisonment up to 6 months, or fine, or both.
- The EC had recently asked the government to make the filing of a false affidavit a "corrupt practice" under the election law.
- This would make the candidate liable for disqualification for up to 6 years. But nothing has been done by the government on this front.

7.6 Reflecting upon General Elections 2019

What is the issue?

The general elections for the 17th Lok Sabha saw some serious concerns being raised on the functioning of the Election Commission (EC).

What were the key contentions?

- **Long election** - Questions were raised about the prolonged election of seven phases.
- The EC has always maintained that the most pressing concern is voter security, for which the Central armed police forces are deployed.
- But due to their limited availability, they had to be deployed on rotation, and so is the multi-phase election.
- If the numbers of these forces were adequate, the EC could conduct elections in one day.
- **MCC** - There was an unprecedented attack on the EC for being soft on the top leadership of the BJP for repeated violations of the Model Code of Conduct (MCC).
- The MCC is much more difficult to operationalise in the age of social media and in a prolonged election nature.
- The cost-benefit analysis of multi-phase versus short phase elections in the face of such new challenges should be done afresh.
- **Money power** - It is becoming more and more expensive to contest elections.
- In this backdrop, the role of money power was alarming in this election and the problem of black money was alive.
- Money, drugs/narcotics, liquor, precious metals and freebies worth around Rs. 3,500 crore were seized this time (Rs. 1,200 crore in 2014).
- According to EC, Tamil Nadu, Gujarat, Delhi, Punjab and Andhra Pradesh were the top 5 States/UTs that accounted for the total seizures.
- A cause for worry is that drugs/narcotics formed a large part of the seizures, with Gujarat topping the list in this.
- **VVPAT** - The EC was questioned for its stand on the sample size for Voter-Verified Paper Audit Trail (VVPAT) verification.
- The Supreme Court had advised the EC to increase the mandatory random counting to 5 VVPATs per Assembly segment.

- This laid emphasis on better voter confidence and credibility of electoral process.
- As the election progressed, the Opposition made two more demands:
  i. the 5 machines must be counted in the beginning
  ii. in case of even one mismatch, all machines in the Assembly segment must be counted
- The EC examined these proposals only to reject them as being unfeasible.
- Rather than being on the defensive, the EC should have discussed this issue with political parties, with an open mind.
- **Judiciary** - The Supreme Court's repeated interventions (as many as 6) during the elections have long-term implications.
- Notably, Article 329 of the Constitution bars courts from interfering in electoral matters after the election process has been set in motion.
- But the court had to intervene repeatedly for the much needed course correction.
- The court expressed displeasure over the EC's stand when it submitted that it was "toothless" and "powerless" to act on hate speeches.
- On SC setting EC a deadline to act on this, the EC took strong and unprecedented action against some political leaders.
- It debarred them from campaigning for up to 3 days by invoking Article 324.
- This was laudable, but when it came to acting on complaints against the Prime Minister and the BJP president, it reacted differently.
- **Dissent in EC** - It came to light that at least one Election Commissioner had dissented in 5 out of 11 EC decisions concerning MCC violations.
- Dissent is good news for a constitutional body as it is a healthy sign of objective deliberation and democratic functioning.
- His demand for his dissenting note to be made public was worthy of positive consideration.

7.7 Electoral Bonds Case

What is the issue?

The electoral bonds scheme in its present form fails to recognise the complementary nature of the rights to privacy and information.

What are electoral bonds?

- Electoral bonds are issued by a notified bank for specified denominations.
- 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.

What is the government's rationale?

- Despite massive campaign spending in India, there is barely any public scrutiny of such spending.
- The opaque nature of the transactions makes it hard for scrutiny.
- Electoral bonds were thus introduced in 2017 when the Finance Act amended four different statues:

  1. the Reserve Bank of India Act, 1934

  2. the Representation of Peoples Act, 1951

  3. the Income Tax Act, 1961

  4. the Companies Act, 2013 (Click here to know more on the changes)
- The government argued that the use of bank routes would likely reduce under-the-table cash transactions and thus promote transparency in election funding.

- It said that transactions through banks would incentivise the use of white money.
- Moreover, the KYC requirements of banks would ensure paper trails.
- Recently, the Centre responded to the CPI(M)"s petition challenging the scheme and argued that the scheme has a two-fold purpose:

  i. enhances transparency in political funding

  ii. protects the right to privacy of donors

How does it dilute the earlier regulations?

- Under the scheme, both the purchaser of the bond and the political party receiving the money have a right to not disclose the identity of the donor.
- Also, the policy dismantles several restrictions that previously checked illegal corporate sponsoring. E.g. removing a cap on corporate sponsorship
- Donations can now be made by anyone; even foreign donations are now allowed.
- The requirement that a company has to be in existence for 3 years for it to make political donations has also been removed.
- This ignores all the concerns regarding the use of shell companies to siphon black money into the system.

What are the concerns?

- These changes show that access to the paper trails will be outside the scope of public scrutiny as it will lie exclusively with the banks.
- As bonds can be issued only by public sector banks, the only entity with full knowledge of the transactions will be the Central government.
- In effect, the electoral bonds scheme amplifies the opacity by not disclosing the identity of the donor.
- The scheme thus undermines the complementary nature of the rights to privacy and information in making the state more transparent.
- Moreover, money laundering often takes place through banks.
- So the government"s argument that the use of banks will reduce under-the-table transactions does not hold.

Why should identity be disclosed?

- The Centre informed the Supreme Court that protecting the privacy of electoral bond buyers is vital.
- Certainly, the right to privacy in India safeguards the individual"s autonomy and dignity.
- But it is subject to restriction on the basis of "compelling public interest".
- If the information pertains to matters which affect the lives of others, or is closely linked to a public person, it must be disclosed.
- The same logic can then be extended to the funding of political parties.
- Significantly, the funder"s actions are bound to have an influence on the policy decisions of the party, if the party wins.
- The policy choices and decisions of public officials have to be brought under public scrutiny.
- This is to ensure that they have not acted in a manner that unfairly benefits them or their benefactors.
- A clear conflict of interest would likely arise if important policy decisions are taken that could affect the donors to the party.
- So the policy on electoral bonds should recognise the complementary nature of the rights to privacy and information, which is essential to make the state more accountable.

7.8 Supreme Court Order on Electoral Bonds

Why in news?

The Supreme Court recently ordered the political parties to submit to the Election Commission details of contributions through electoral bonds.

What is the case about?

- During 2017-18, the BJP earned Rs 200 crore from electoral bonds and the Congress Rs 15 crore.
- The Association for Democratic Reforms (ADR) had recently said this based on an analysis of the parties' tax returns and contribution statements submitted with the Election Commission.
- No other national party declared any contributions through electoral bonds, according to details released by ADR.
- Citing lack of transparency, the ADR then challenged the electoral bond scheme in the Supreme Court.
- It was considered that the time available was too limited for an in-depth hearing.
- So in its interim order, the Court asked political parties to disclose to the EC in sealed covers, details of the donations they have received through anonymous electoral bonds.

AS DECLARED BY NATIONAL PARTIES, 2017-18

Party	Known sources	Unknown sources		Total
		Electoral bonds	Other	
BJP	484	200	353	1027
Congress	79	15	105	199
BSP	41	0	10	51
NCP	3	0	5	8
Trinamool	5	0	<1	5
CPI	1	<1	<1	1+
Total	613	215	474	1293

Figures in Rs crore (rounded off); all national parties barring CPM.
Source: Association for Democratic Reforms, January 2019

What are the concerns raised?

- The petitioners, the ADR, questioned the anonymity-based funding scheme on the grounds that it promotes opacity.
- It opens up the possibility of black money being donated to parties through shell companies.
- It empowers the ruling party which alone is in a position to identify the donors and, therefore, well placed to discourage donations to other parties.

How effective will the order be?

- The Supreme Court order will not alter the influence of electoral bonds on the ongoing polls (general elections 2019).
- Hence the order is a belated response to the serious concerns raised about the opaque electoral bonds scheme.
- The order, unfortunately, preserves the status quo, and the possible asymmetry in political funding and its effects would stay as it is.
- The influence such donations would have had on the electoral outcome remain undisturbed.

Why is it welcome though?

- The only positive thing is that the names would now be available with the EC (but in sealed envelopes) until the court decides if they can be made public.
- There is a concern that a disproportionately large segment of the bonds purchased by corporate donors has gone to the BJP.
- This donor anonymity may end if the court decides that the EC should disclose the names at the end of the litigation.
- The court also notes that the case gives rise to weighty issues which have a significant bearing on the sanctity of the electoral process in the country.

7.9 Concerns with Electronic Voting Machines

What is the issue?

Malfunctions in Electronic Voting Machine (EVM) affects the free and fair nature of conducting elections in India.

What is necessary to ensure a free and fair election?

- A democratic nation gives moral legitimacy to the government.
- This legitimacy is ensured through the people's will and this in turn is expressed through the vote.
- Not only must this vote be recorded correctly and counted correctly, it must also be seen to be recorded correctly and counted correctly.
- The recording and counting process must be accessible to, and verifiable by, the public.
- So transparency,verifiability, and secrecy are the three pillars of a free and fair election.
- Paper ballots ensure these, since the voter can visually confirm that her selection has been registered, the voting happens in secret, and the counting happens in front of her representative's eyes.
- But in the case of EVMs, there were many reports of misbehaving EVMs in recent assembly elections, which serves as a cause of concern.

What are the concerns?

- **On transparency** - EVMs are neither transparent nor verifiable.
- Neither can the voter see her vote being recorded, nor can it be verified later whether the vote was recorded correctly.
- What is verifiable is the total number of votes cast andnot the choice expressed in each vote.
- **On verifiability** - An electronic display of the voter's selection may not be the same as the vote stored electronically in the machine's memory.
- To rectify this, the Voter Verifiable Paper Audit Trail (VVPAT) was introduced.
- VVPAT is a method of providing feedback to voters using a ballot less voting system.
- A VVPAT is intended as an independent verification system for voting machines designed to allow voters to verify that their vote was cast correctly.
- It contains the name of the candidate (for whom vote has been cast) and symbol of the party/individual candidate.
- But VVPATs solve only the problems at the voting part and the counting part still remains an opaque operation.
- Also, at present, the EC's VVPAT auditing is restricted to one randomly chosen polling booth per constituency.
- However, this sample size will fail to detect faulty EVMs 98-99% of the time.
- VVPATs can be an effective deterrent to fraud only, when the detection of even one faulty EVM in a constituency is followed by the VVPAT auditing of all the EVMs (at all booths) in that constituency.
- This poses a serious logistical challenge and hence VVPATs are not the answer to counting level failures.
- **On secrecy** - With the paper ballot, the EC could mix ballot papers from different booths before counting, so that voting preferences could not be connected to a given locality.
- However, the votes cast via EVMs are counted on individual booth basis, which allows one to discern voting patterns and renders marginalised communities vulnerable to pressure.
- A totaliser machine was proposed as a remedy to this alternative.
- Totaliser machine allows votes from 14 booths to be counted together so that voters are saved from pre-poll intimidation and post-poll harassment.
- But the EC has shown no intent yet to adopt them at the national level.
- So, on all three counts such as transparency, verifiability and secrecy — EVMs are flawed.
- Also, the recent track record of EVMs indicates that the number of malfunctions in a national election will be high.

What should be done?

- EVMs fail on all three pillars, as established by a definitive judgment of the German constitutional court in 2009.
- The court's ruling forced the country to scrap EVMs and return to paper ballot.
- Other technologically advanced nations such as the Netherlands and Ireland have also abandoned EVMs.
- But in India, EVMs continue to enjoy the confidence of the EC, which insists that Indian EVMs are tamper-proof.
- This confidence is based on a matter of trust.
- But the precondition of this trust is the verifiability of election events, whereas in the case of EVMs, the calculation of the election result cannot be examined from outside.
- Another argument made in favour of the EVM is that it eliminates malpractices such as booth-capturing and ballot-box stuffing.
- In contrast, tampering with EVM could accomplish rigging on a scale unimaginable for booth-capturers.
- Thus, the EC is obliged to provide the people of India a polling process capable of refuting unjustified suspicion, as this is a basic requirement for democratic legitimacy.

7.10 Challenges behind hacking EVM

What is the issue?

The claims of hacking Electronic Voting Machine (EVM) are raising andit is important to look at some of the fundamental technical elements of EVM hacking.

What is the underlying mechanism?

- There are two ways by which an electronic device can be hacked - wired and wireless.
- In order to hack a machine, the best way is to establish a wired link with its control unit and the microprocessor can do basic mathematical operations based on the given input.
- The information fed to the system is processed by the control unit and the output is sent to the memory of the system, which can be read or retrieved at a later stage.
- Hacking a device through a wired connection essentially means designing another electronic device, which is able to send a specific pattern of information to the device's control unit.
- In a demonstration at the University of Michigan, scientists used this kind of hacking in the context of an EVM.
- In that demonstration, they used a specifically designed chip that was physically plugged into its control unit.
- However, in wireless hacking, you do not need a physical connection with the device.
- But a basic understanding of the control unit or the target device and its operational instructions is still needed.

What are the challenges?

- In order to hack a device using a wireless link, the device needs to have a radio receiver which comprises an electronic circuit and an antenna.
- The Election Commission claims that EVMs do not have any such circuit element.
- Even when an electronic circuit (transceiver), which is ultra-small, is designed and is artificially inserted in an EVM, one would need millions of such specifically designed transceiver sets, plugged into the control unit of each EVM.
- Also, such advanced electronic devices are extremely complex and cannot be bought easily.
- There are only around half a dozen companies in the world with the expertise to design and fabricate such a device at the chip level.

- The designers would also need access to the actual circuit board of the EVM in order to design the electronic interface.
- Also, the overall cost of getting such devices in millions for each EVM is very expensive.
- One would also need a specifically designed antenna, which interfaces with the transceiver circuit.
- Though, transceiver circuits can be miniaturised and can remain hidden from our eyes, theantenna would always remain visible due to its size.
- Thus, it is almost impossible to hide the antenna, which will always stick out of the system in order to ensure a seamless wireless link.
- Considering all this, large-scale deployment of such a technology would be a huge project in itself, where the Election Commission, EVM manufacturers as well as chip-making companies would be involved.

Can paper-based voting be an effective alternate?

- Paper-based voting is not a solution for faults in EVMs because it is even more susceptible to being hacked.
- This susceptibility might be through booth capturing, artificial manipulation of ballots, change of ballot paper, and many different ways.
- In the current age, where printers and computers are readily available, it would take a couple of hours to duplicate ballot papers, print them and dispatch them with miscreants to the specific voting booths.
- Western countries that have refused to opt for EVMs are small, have a small number of voters, and have strong policing systems that prevent manual hacking and manipulation of ballots.
- Thus, India should address the defects of EVMs, if at all needed, rather than going back to the previous mode of voting.

7.11 Supreme Court Order on VVPAT Verification

Why in news?

The Supreme Court has recently directed the Election Commission (EC) to increase random checking of VVPAT slips to five per Assembly segment.

What is the SC's order?

- Earlier, VVPAT slips from only one Electronic Voting Machines (EVM) in every Assembly segment/constituency was subjected to physical verification.
- SC has now directed the EC to increase this to five.
- In general elections, VVPAT slips of five EVMs in each Assembly segment of a Parliamentary Constituency would be subjected to physical counting.
- In State Assembly elections, this would extend to five random EVMs in each Assembly constituency.
- The Supreme Court order would be implemented in this Lok Sabha polls (2019).
- Notably, there was a demand from Opposition parties for VVPAT verification in 50% or 125 polling booths in each constituency.

Why not 50%?

- The opposition's idea would be a drain on the ECI's infrastructural resources and manpower.
- VVPAT slip counting takes place in specially erected VVPAT counting booths.
- It takes place under the close monitoring of the returning officer and direct oversight of the observer.
- So a 50% VVPAT verification would require a huge increase in extra personnel in each of the 4,125 polling stations.
- The ECI also said that a 50% random physical verification of VVPATs would delay Lok Sabha poll results of 2019 by six whole days.
- Given these, the court said VVPAT verification of 5 EVMs, rather than in 125 polling booths, is more "viable at this point of time."

Is it a welcome move?

- The higher figure will increase the overall number of EVMs to be counted to close to 20,000 machines.
- This should reasonably address the very remote possibility of 'insider fraud'.
- The court also stated that the aim is to ensure the greatest degree of accuracy and satisfaction in election process.
- However, in effect, the increase to 5 EVMs from 1 would only increase the VVPAT verification percentage from 0.44% to less than 2%.
- Nevertheless, in any case, the VVPAT slip verification is more of a reassurance to voters that the EVM is indeed foolproof.

What is the real problem?

- For the ECI, the key technical issue with EVMs and VVPATs is not really in regard to tampering but to machine glitches.
- The parliamentary by-elections in Uttar Pradesh and Bihar and the Assembly election in Karnataka in 2018 had registered significant machine replacement rates (20% and 4%, respectively).
- But these were brought down to less than 2% in later elections held in the winter months.
- The availability of replacement machines and the ability to deploy them quickly in case of a failure of VVPATs are essential to avoid disruptions in the coming elections.

7.12 Recording Dissenting Opinion in EC

Why in news?

The Election Commission has decided by majority that dissenting opinions in Model Code of Conduct (MCC) disputes will not be made part of any final order.

What was the dispute?

- Election Commissioner Ashok Lavasa had given dissenting opinion in at least four cases.
- These related to cases where the ECI (2:1 majority) did not find any violation in the speeches of PM Narendra Modi and BJP chief Amit Shah.
- Election Commissioner Ashok Lavasa had written thrice to the Chief Election Commissioner Sunil Arora in this regard.
- He had conveyed his decision to stay away from proceedings related to the MCC if the dissenting views were not incorporated in the orders.
- With ECI's recent decision, the dissenting opinions will only be included in internal files, as per previous practice.

What does the law say?

- Article 324 of the Constitution vests the superintendence, direction and control of elections in an Election Commission of India.
- It consists of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix.
- At present the Election Commission is a multi-member body, with a Chief Election Commissioner and two other members.
- The law requires the multi-member EC to transact business unanimously as far as possible.
- All three Commissioners now have equal decision-making powers.

What is the procedure in case of dissent?

- Where there is a difference of opinion, decision is taken by majority.
- All opinions carry equal weight, which means the CEC can be overruled by the two ECs.

- If some difference of opinion persists even after oral deliberations and discussions, such dissent is recorded in the file.
- In normal practice, while communicating the decision of the Commission in executive matters, the majority view is conveyed to the parties concerned.
- The dissent remains recorded in the file.
- In case dissent is to be recorded in a case of judicative nature, the dissenting member may like to record a separate opinion/order.
- However, despite the existence of the provision to take decisions by majority since 1993, very rarely has dissent been recorded.
- When a matter is deliberated upon by the 3 Commissioners, they normally agree to a common course of action.
- This does not, however, mean that there is no disagreement between the Commissioners.

Is the rejection of the demand justified?

- The recent rejection of the demand of Mr. Lavasa on recording dissenting opinions in the orders may be technically and legally right.
- However, there was indeed a strong case for acceding to his demand.
- This is especially true at least in regard to complaints against high functionaries such as the Prime Minister.
- The EC has been widely criticised for giving a series of 'clean chits' to the PM.
- This was despite some questionable remarks that appeared to solicit votes in the name of the armed forces.
- Added to the dispute was the unexplained delay of several weeks in disposing of complaints against Mr. Modi.
- It is in this context that Mr. Lavasa's dissenting opinion may have been relevant enough to merit inclusion in the EC's orders.
- People are entitled to know whether or not the poll panel's key decisions are unanimous.
- In the present case, Mr. Lavasa has taken up the issue through as many as three letters.
- So it is reasonable to infer that there is some basis for his grievance.
- The onus on EC to maintain a level-playing field and enforce the election code is quite high, especially when its credibility is under question.
- It would be unfortunate if the majority in the EC were to be afraid of any public reaction that may result from disclosure of a split opinion.

7.13 Scrapping Minimum educational qualification – Rajasthan

Why in news?

The Rajasthan government recently abolished the condition of a minimum educational qualification to contest local body elections.

What does the 2015 act say?

- The Rajasthan Panchayati Raj (amendment) Bill, 2015, made Class X mandatory for contesting municipal elections and for contesting zila parishad or panchayat samiti elections.
- To contest the sarpanch elections, an aspirant from the general category must have passed Class VIII and a SC/ST aspirant must have passed Class V.
- It has also made a functional toilet mandatory in the house of a contestant.
- By this, Rajasthan became the first State in the country to fix a minimum educational qualification for contesting elections to the Panchayati Raj Institutions.

What were the concerns?

- According to the 2011 Census, the literacy rate was 52% for women and 79% for men in the state of Rajasthan.

- Hence, the move was ill-considered from the very beginning.
- The amendment was made based on the assumption that its voters tended to be younger.
- It was, however, an act of paternalism that militated against the basic assumptions of a liberal democracy.
- It penalised the people for failure to meet certain social indicators, when it is the state's responsibility to provide the infrastructure and incentives for school and adult education.
- It has defeated the very purpose of the panchayati raj institutions, to include citizens in multi-tier local governance from all sections of society.
- Since the requirements had the effect of excluding the marginalised, it had pushed people to adopt unfair means to contest.
- There have been many cases of producing fake mark sheets to fulfil the eligibility criteria by the winners, following the passage of the bill in 2015.
- Also, there was no justification for insisting on educational qualification at the grassroots level when there was no such condition for elections to State Assemblies and Parliament.
- Though making toilets mandatory had given a push to the cleanliness drive, many homes didn't have a functional toilets or were built only at the time of passage of the bill.
- Hence, the Rajasthan government recently abolished the provisions on educational qualifications, since laws should not become hurdles for the masses to exercise their rights.

8. OTHER ISSUES

8.1 Assessing the Need for Reservations - Maratha Case

What is the issue?

- The Bombay High Court (HC) recently upheld the Maharashtra government's law on reservation for Marathas.
- This makes a case for assessing the real rationale behind reservations and reflecting upon the idea of backwardness.

What is the present case?

- The demand for being classified as "backward" by Marathas has been ongoing since the 1990s.
- The Marathas are now included into the Socially and Educationally Backward Communities (SEBC).
- With this, the Maharashtra government has once again yielded to the demands of this powerful caste group.
- This would be the third attempt in the last 5 years to grant this quota, which has been repeatedly struck down by the courts.

What do the quota demands imply?

- Some of the mostly rich, landowning, politically influential communities have been demanding quotas in jobs and higher education.
- E.g. Marathas in Maharashtra, Patidars in Gujarat, Jats in Haryana, Kapus in Andhra Pradesh
- In a way, this indicates that the economic growth in the last two decades did not contribute much to the fortunes of a large proportion of these communities.
- It is also an indication that their traditional sources of livelihoods had become more fragile due to a widespread and multifaceted agrarian crisis.
- Given these, the desire for good jobs and stable sources of livelihood gives way for the increasing quota demands.
- However, public sector jobs have become much more competitive given the limited numbers.
- So, there should be a rational criteria to determine the validity of the demand for quotas.

Is the "backward" argument justifiable?

- Marathas, similar toJats and Patels, are more likely to own or cultivate land than all other social groups in their respective States.
- Marathas have a lower per capita consumption expenditure than Maharashtra Brahmins.
- But, it stands at the same level as other forward castes and OBCs, and significantly higher than SC/STs.
- Marathas, on an average, are as 'poor' as Brahmins and other forward castes, but less poor than OBCs and SC-STs.
- In terms of access to electricity, access to a flush toilet, average years of education, Marathas are better off than the OBCs and SC-STs.
- So, in most of the crucial socio-economic indicators, the Marathas are second only to Brahmins in the State, and are significantly better off than all other social groups.
- The main bone of contention and the main motivation for quotas now is access to government jobs.
- However, the access of Marathas to government jobs is already similar to that of Brahmins, and higher than that for other forward castes, OBCs, and SC-STs.

What contributes to the Maratha unrest then?

- There is some evidence of a decline in the probability of owning or cultivating land, which could be the reason for the heightened anxiety.
- The Marathas are a predominantly agricultural community that benefited from the Green and White Revolutions.
- But, these groups are increasingly feeling vulnerable due to the structural transformation of the Indian economy caused by -
    i. the declining importance of agriculture
    ii. growth of corporatised agriculture
    iii. water shortages affecting productivity
- Overall, there is discontent among powerful farming communities.
- This is due to the perception that real economic power lies in the hands of the big corporations, and the state, directly or indirectly, acts in their interest.
- In all, the deteriorating power and the unpreparedness to shift towards urban, formal sector livelihood opportunities make these communities feel vulnerable.
- The IHDS (India Human Development Survey) also shows that forward castes were about 30% more likely to feel that they were worse off in 2011-12 than in 2004-05.
- This sense of deprivation fuels the quota demand.

8.2 Dealing with Hate Crimes

Why in news?

The first week of the second term of the present government has been marked by more hate crimes in Jharkhand, Tripura, Rajasthan, etc.

What is the reaction to the crimes?

- **Domestically** - There have been a number of editorials, OpEds and talk shows calling for action.
- **Internationally** - India has begun to feature prominently on a growing list of countries marked by hate crime.

What do the studies say?

- **Amnesty International India** - Documented 721 hate crime incidents between 2015 and 2018, with 218 incidents last year alone.

- The more common hate crimes were honour killings and then cow-related violence (more frequent over the past five years).
- **Hate Crime Watch** - Says crimes based on religious identity were in single digits until 2014.
- They surged from 9 in 2013 to 92 in 2018.
- **In both studies** - Uttar Pradesh topped the list for the third year, followed by Gujarat, Rajasthan, Tamil Nadu and Bihar.
- Show that they have steadily risen over the past five years.

What do these facts mean?

- These are striking enough to concern any government.
- The Rajasthan administration is introducing a Bill prohibiting cow vigilantism i.e. dealing with only one hate crime.
- An omnibus act against all hate crimes is required across India and should be a priority of the 17th Lok Sabha.

What are legislations in other countries?

- France has a draft Bill to prohibit hate speech.
- Germany amended Section 46 of its Criminal Procedure Code, dealing with sentencing in violent crime (Sentence must be based on consideration of the motives and aims of the offender).

What is the current situation in India?

- We have a number of sections in the IPC that can be used to punish or even prevent hate crime.
- But they are disparate and few policemen are aware of them.
- Those that are, fear to use them in areas whose political leaders mobilise through hate speech.

What is the Court directive?

- **Tehseen S. Poonawalla v. Union of India, 2018** - The Supreme Court (SC) directed Central and State governments to make it widely known that lynching and mob violence would invite serious consequence under the law.
- Then the government had formed a panel to suggest measures to tackle mob violence.
- But, the panel's recommendations are not in the public domain.

What does the Human Rights Watch India's report say?

- Only some States had complied with the SC's orders,
    a. To designate a senior police officer in every district to prevent incidents of mob violence and
    b. To ensure that the police take prompt action,
    c. To set up fast-track courts in such cases and
    d. To take action against policemen or officials who failed to comply.
- Those State governments that did comply did so only partially.
- In several instances, the police obstructed investigations.

What are the concerns?

- Whether it is political hate speech or police bias on the ground, there is little doubt that national bar against hate crime has been lowered.
- The commentary of hate speech and videos of lynching in TV is critical, repeated iterations normalise the hateful.
- The print media too is failing in dealing with these issues.
- Criticism of blatantly communal government actions has grown increasingly muted.

What are the key steps needed?

- The issue of dealing with incitement to violence through social media. But the focus is on hate in relation to terrorism.
- **Parliament -** Could enact an omnibus act against hate crime.
- **Home Minister** - Could set benchmarks for policemen and administrators to deal with hate crime.
- **Legislature and political parties -** Could suspend or dismiss members who are implicated in hate crimes or practise hate speech.
- **Electronic and print media -** Could stop showing or publishing hateful comments and threats.
- **Priests** - Could preach the values of tolerance and respect that are common to all religions.
- **Schools** - Could revitalise courses on the directive principles of our Constitution.

8.3 Section 124A

What is the issue?

- Politician Vaiko from Tamil Nadu has been convicted of sedition .
- With this, the case for scrapping Section 124A of IPC has come to the fore again.

What is the charge against him?

- The sedition charge is based on his pro-LTTE speech that he had made a decade ago.
- Mr. Vaiko had unleashed a verbal attack against the Union government by accusing it of betraying the Sri Lankan Tamil cause.
- He held it responsible for the death of Tamil civilians there.
- However, whether his harshly worded indictment amounts to incitement of violence against the government is debatable.
- The trial court sentenced Mr.Vaiko to one-year jail term.

What is the court verdict?

- The court has held that anyone who heard Mr. Vaiko's speech would develop hatred towards the government.
- It also said that "mere advocacy" is the essence of the crime, and there need not be actual violence as a consequence.
- But, the higher courts will have the final say on whether he was guilty.

What are the matters of concern?

- The political speeches being criminalised to the point of being deemed an offence against the state is the concern.
- Further, the timing of a political leader being found guilty of sedition is quite inopportune.
- This conviction will send out a misleading message that such provisions are necessary to protect the government.

What is the problem with Section 124A?

- Its definition of sedition is too wide.
- In 1962, the Supreme Court limited its scope to acts that show actual intent or a tendency to create disorder or foment violence.
- There is an opinion that it is neither relevant nor needed today.
- Law Commission's consultation paper - Highlights arguments for its reconsideration.
- There is a body of opinion that a modern democracy does not need a free speech restriction based on political concepts towards the state.
- Britain, which introduced the offence of sedition in India in 1870 has abolished it.

8.4 Mob Lynching - Jharkhand's Tabrez Ansari

What is the issue?

The death of a 24-year-old man in Jharkhand by mob lynching calls for an understanding on vigilantism and lynching culture in India.

What happened?

- The 24-year-old Tabrez Ansari was brutally beaten by a mob in Jharkhand for alleged theft, eventually leading to his death.
- He was seen in an alleged video to be forced to chant "Jai Shri Ram" and "Jai Hanuman".
- Eleven people were arrested recently in connection with Ansari's death.

How did the police handle the case?

- Ansari was tied to a tree and beaten for hours before police came to his aid.
- The police took him into custody based on a complaint of theft.
- They neither recorded his injuries nor mentioned in the FIR that he was assaulted.
- It was only after his condition worsened in jail that he was taken to hospital, where he died.
- Following a public outcry, some of the villagers allegedly involved were arrested on suspicion of murder.
- However, the conduct of the police indicates an official apathy and tacit acceptance of mob justice as a way of life.

What are the larger worrying trends?

- **Vigilantism** - The incident has again brought to light the disturbing phenomenon of lynching and vigilantism in India.
- [Vigilantes are those who organize themselves into an unofficial group and take up law enforcement into their hands.]
- **Communalism** - Organised vigilantism by cow protection groups was initially behind a wave of lynchings.
- Rumour-mongering through social media platforms came next as the cause.
- Now, the Ansari incident shows that the problem has moved into a form of enforcing the chanting of Hindu slogans by citizens professing other religions.
- The communal angle was on display, with the crowd forcing Ansari, a Muslim, to shout 'Jai Sri Ram' and 'Jai Hanuman'.
- It reflects an instance of mob mentality combining with a communal motive.
- **Lynching** - Lynching has acquired the status of a predominant social trend.
- It is taking place as a consequence of vigilantism, communal bigotry and dissemination of hate messages and rumours on social media.
- Rising intolerance and growing polarisation expressed through mob violence is becoming a normal way of life or the normal state of law and order.
- The Supreme Court too noted this and condemned it in a judgment last year.

What does this call for?

- As directed by the Supreme Court earlier, the State should take specific preventive, punitive and remedial measures.
- It mooted a special law to deal with lynching and the appointment of a nodal officer in each district to combat the threat.
- While these measures are not yet in place, the latest incident must be thoroughly investigated and the perpetrators be punished.
- Beyond these, the larger issue of organized vigilantism on communal motives has to be addressed by the political leadership.

8.5 Law Commission Report - Wrongful Prosecution

Why in news?

The Law Commission of India submitted its report on 'Wrongful Prosecution (Miscarriage of Justice): Legal Remedies'.

What were the recommendations?

- Miscarriage of justice refers to wrongful or malicious prosecution, i.e malicious prosecution, i.e. where one files a case against the claimant without belief in his guilt and prosecution without good faith, i.e. where one files a case without due care and attention.
- This is regardless of whether it leads to conviction or detention.
- It recommended amendments to CrPC to give compensation in cases of miscarriage of justice resulting in wrongful prosecution of persons.
- A claim for compensation may be sought for harm caused to body, mind, reputation, or property.
- The claims should be settled speedily bt setting up of special courts in each district.
- It recommended amendments to the CrPC to include guiding principles to be followed while deciding the amount.
- These include seriousness of the offence, severity of punishment, length of detention, damage to health, harm to reputation, and loss of opportunities.

8.6 Official Secrets Act - Rafale Deal Case

What is the issue?

With debate over 'stolen documents' in Rafale case, it is imperative to understand the Official Secrets Act (OSA).

What are the key features of OSA?

- The secrecy law broadly deals with two aspects:

1. spying or espionage, which is dealt with in Section 3 of the Act
2. disclosure of other secret information of the government, which is dealt with in Section 5

- The secret information can be any official code, password, sketch, plan, model, article, note, document or information.
- Under Section 5, both the person communicating the information, and the person receiving the information, can be punished by the prosecuting agency.

How did the Act evolve?

- The Official Secrets Act (OSA) has its roots in the British colonial era.
- Its predecessor law, The Indian Official Secrets Act, 1904 was enacted during the time of Lord Curzon, Viceroy of India from 1899 to 1905.
- It was an amended and more stringent version of The Indian Official Secrets Act (Act XIV) of 1889.
- The latter was brought in at a time when a large number of powerful newspapers had emerged in several languages across India, and editors -

i. opposed the British Raj's policies on a daily basis
ii. built political consciousness among the people
iii. faced police crackdowns and prison terms to uphold their mission and convictions

- So one of the main purposes of the Act was to suppress the voice of nationalist publications.
- In 1923, the Indian Official Secrets Act (Act No XIX of 1923) replaced the earlier Act.
- This was extended to all matters of secrecy and confidentiality in governance in the country.

What are the notable convictions so far?

- The most recent conviction under the Official Secrets Act came in 2018.

- The Delhi court held former diplomat Madhuri Gupta, who had served at the Indian High Commission in Islamabad, guilty under the OSA.
- She was sentenced to 3 years in jail for passing on sensitive information to Pakistan's ISI.
- In 2002, the then Kashmir Times journalist Iftikhar Gilani was arrested and charged under the OSA.
- The case was in relation with allegedly possessing secret documents relating to the deployment of troops in the Valley. The state later withdrew the case.
- In 2017, journalist Poonam Agrawal was charged under OSA for conducting a sting operation on an Army official who criticised the sahayak system in the Army.

What had the contention been?

- As the classification of secret information is so broad, it is largely in direct conflict with the Right to Information Act.
- Moreover, examining the process of decision-making in a government involves looking for information, and documents.
- Records which are meant to be confidential are sometimes significant in bringing illegalities to public attention.
- This was true in the 1980s of irregularities in Bofors defence deal.
- More recently, in 2016, the Panama Papers involved the painstaking unveiling of offshore transactions in tax havens.
- This, significantly, resulted in hundreds of crores of undeclared assets being traced by the government.
- But in every other instance, the Official Secrets Act hampers the process.

What is the recent case?

- The recent case is in relation to the alleged irregularities in the Rafale aircraft deal between India and France, which was published in 'The Hindu' Newspaper.
- The Attorney General raised an objection in court seeking dismissal of the review petitions.
- This was on the ground that the reports cited documents "stolen" from the defence ministry.
- In other words, the Official Secrets Act was used as a shield against allegations of wrongdoing in the Rafale deal.

What is the Court's observation?

- The court questioned that if there was a corruption complaint, was it to be protected under national security.
- Certainly, the Court held that the Act did not offer the liberty to commit corruption.
- The Court dismissed targeting the messenger and criminalising the whistleblower under the cover of "national security" or "stability" of government or "official secrecy".
- It called it an attack on the freedom of expression and the people's right to know.
- Undoubtedly, the OSA in a democracy needs constant contest, and the need for official secrecy has to be weighed against the citizen's right to know.
- The right to freedom of speech and expression, and information should be prioritised over the archaic Official Secrets Act.
- Notably, the apex Court has increasingly expanded the protections to whistleblowers, to ensure that those who expose corruption and wrongdoing are not vulnerable to any intimidation.

GOVERNANCE

9.1 Lateral Entry into Government

Why in news?

The DoPT has issued a notification last year inviting lateral entry at joint secretary-level posts.

What is the notification on?

- The government has invited "outstanding individuals" to join the government at the joint secretary level at the Centre.
- The Department of Personnel and Training (DoPT) has invited applications for 10 senior level positions.
- It covers the Departments of Economic Affairs, Revenue, Commerce and Highways among others.
- The intake will be made in 10 departments initially.
- It will expand to other categories in the second phase.

What are the specifications?

- The eligibility criteria includes individuals working at comparable levels in -

i. Private Sector Companies
ii. Consultancy Organisations
iii. International/Multinational Organisations

- They are required to have a minimum of **15 years' experience.**
- Besides, it includes those working in -

i. central public sector undertakings
ii. autonomous bodies
iii. statutory organisations
iv. research bodies
v. universities

- The recruitment will be on contract basis for **3 to 5 years**.
- The notification specifies a **minimum age of 40 years.**
- The minimum qualification is **graduation** from a recognised university or institute.
- Any higher qualification will be an added advantage.

What is the significance?

- Joint secretaries are at a crucial level of senior management in the Government.
- They lead policymaking and implementation of various programmes and schemes of the department.
- They report to the secretary/additional secretary in the ministry or department.
- The idea of lateral entry of private individuals into the administrative framework is not new.
- However, the recent notification is the first move towards its implementation.

What are the benefits?

- A generalist was suited to the times when the state was the nerve centre of the economy.
- But in the course of time, the state started yielding to the market.
- A senior bureaucrat, thus, is expected to regulate the private sector as well.
- Moreover, the increasing complexities of policy-making have started to demand a level of specialisation in the fields.
- The move is thus aimed at bringing in expertise from the private sector individuals.

- It is a measure to infuse talent into the country's bureaucracy.

What is the current practice?

- Joint secretary level positions are normally filled by career bureaucrats.
- These are those who join the service after passing UPSC exam.
- UPSC prepares merit list and allot the different cadres like IAS, IPS, etc.
- The success of the announced lateral entry will greatly depend on transparency.
- Addressing potential conflicts of interest, and ensuring proper terms of engagement are crucial.

What are the concerns?

- **Understanding** - Neither the DoPT nor Ministries concerned cared to define 'domain expertise'.
- Most of the 10 posts open for lateral entry are generalist in nature.
- Therefore, domain expertise is salient only in a very narrow context.
- But clearly, there cannot be joint secretaries in all branches of a given Ministry.
- **Accountability** - Most democracies train their higher civil servants to be accountable rather than efficient.
- A civil servant is cautious of answering to a quo warranto writ against alleged action/inaction.
- In any case, a civil servant is expected to follow the decisions taken by the political executive.
- How far will this be practised by lateral entrants is doubtful.
- **Training** - Private sector experts becoming joint secretaries may be given a training or orientation.
- However, it may not match the 15-20 years of acculturation/on-job training that regular officers receive.

How will it affect the fundamental principles?

- The Constituent Assembly preferred the parliamentary over the presidential system.
- The parliamentary system is more responsible but less stable.
- The presidential system is more stable but less responsible.
- The country thus opted for **responsibility** over stability.
- There are methods at disposal to ensure that the government is responsible:

i. independence of judiciary
ii. subjecting the executive to constant scrutiny of the legislature
iii. maintaining **bureaucratic neutrality**

- **Accountability** is a complementary principle to responsibility.
- But the idea of lateral entry seems to be opting for **efficiency** at the cost of accountability.
- There is no assurance of accountability, bureaucratic neutrality and conformity to due process.

9.2 Significance of and Challenges in Lateral Entry

Why in news?

The Centre has recently appointed 9 non-governmental professionals selected by the UPSC, under the lateral entry scheme.

What is the significance of the move?

- Globalisation has made the business of governance an increasingly complex activity.
- It demands specialist skills and knowledge like never before.
- Given this, the appointments under the lateral entry scheme is a sensible first step towards accessing a wider talent pool.

- The move directly inducts private sector experts into the ranks of the civil service, with specified posts and salary scales and perks.
- The move marks a great leap forward in the institutional outlook of the UPSC.

What are the challenges involved?

- Inducting private sector experts into line functions involves a host of institutional challenges.
- Chief among them is the quality of people who are hired.
- External experts have to meet a specified educational qualification norm.
- Those shortlisted should undergo UPSC interviews before signing on.
- But it is unclear whether this is an optimal way of inducting external experts.
- The second challenge is how far the government can leverage the lateral entrants' expertise.
- This requires the creation of an enabling environment for them to function, who may find it difficult in a bureaucratic environment.
- It's because it demands a high degree of cooperation from the bureaucracy, where exists already the tension between generalists and specialists.
- External experts also discover that the basics such as access to files and to ministerial meetings can become matters of high politics.
- Much, therefore, depends on how far the political executive is willing to facilitate the functioning of these external experts.

9.3 Draft National Education Policy 2019

Why in news?

The draft of New National Education Policy has been recently submitted by the Committee led by the Chairman Dr.Kasturirangan on education policy.

What is the new education policy for?

- The extant National Policy on Education, 1986 modified in 1992 required changes to meet the contemporary and futuristic needs of India's large youth population.
- A New Education Policy is designed to meet the changing dynamics of the requirements in terms of quality education, innovation and research.
- The policy aims at making India a knowledge superpower by equipping students with the necessary skills and knowledge.
- It also focusses on eliminating the shortage of manpower in science, technology, academics and industry.
- The Draft Policy is built on the foundational pillars of Access, Equity, Quality, Affordability and Accountability.

What are the key changes proposed?

- **Ministry** - The committee has proposed to rename the Ministry of Human Resource Development as Ministry of Education (MoE).
- **Curriculum** - In school education, a major reconfiguration of curricular and pedagogical structure was proposed.
- The policy calls for an Early Childhood Care and Education (ECCE) as an integral part of school education.
- A 5+3+3+4 curricular and pedagogical structure based on cognitive and socio-emotional developmental stages of children was proposed.
- It consists of -
    1. Foundational Stage (age 3-8 yrs): 3 years of pre-primary plus Grades 1-2
    2. Preparatory Stage (8-11 years): Grades 3-5
    3. Middle Stage (11-14 years): Grades 6-8

4. Secondary Stage (14-18 years): Grades 9-12

- The policy also seeks to reduce content load in school education curriculum.
- There will be no hard separation of learning areas in terms of curricular, co-curricular or extra- curricular areas.
- All subjects, including arts, music, crafts, sports, yoga, community service, etc will be part of the curricular.
- Thus, schools will be re-organized into school complexes.
- The policy promotes active pedagogy to focus on the development of core capacities and life skills, including 21st century skills.
- **RTE Act** - The committee recommends Extension of Right to Education Act 2009 to cover children of ages 3 to 18 (currently, 6-14).
- **Teacher education** - The committee proposes for massive transformation in teacher education.
- It calls for shutting down sub-standard teacher education institutions.
- It proposes moving all teacher preparation/education programmes into large multidisciplinary universities/colleges.
- The 4-year integrated stage-specific B.Ed. programme will eventually be the minimum degree qualification for teachers.
- **Higher education** - A restructuring of higher education institutions with three types of higher education institutions was proposed -

1. Type 1: Focused on world-class research and high quality teaching
2. Type 2: Focused on high quality teaching across disciplines with significant contribution to research
3. Type 3: High quality teaching focused on undergraduate education

- This will be driven by two Missions -Mission Nalanda & Mission Takshashila.
- There will be re-structuring of Undergraduate programs such as BSc, BA, BCom, BVoc of 3 or 4 years duration and having multiple exit and entry options.
- **Institution** - A new apex body Rashtriya Shiksha Ayog is proposed.
- This is to enable a holistic and integrated implementation of all educational initiatives and programmatic interventions.
- The body will also coordinate efforts between the Centre and states.
- The National Research Foundation, an apex body, is proposed for creating a strong research culture.
- It will help build research capacity across higher education.
- The four functions of Standard Setting, Funding, Accreditation and Regulation will be separated and conducted by independent bodies.
- National Higher Education Regulatory Authority will be the only regulator for all higher education including professional education.
- The policy proposes to create an accreditation eco-system led by a revamped NAAC (National Assessment and Accreditation Council).
- Professional Standard Setting Bodies for each area of professional education was proposed.
- UGC is to be transformed to Higher Education Grants Commission (HEGC).
- The private and public institutions will be treated on par, and education will remain a 'not for profit' activity.
- Besides the above, the committee also recommended several new policy initiatives for -

i. promoting internationalization of higher education
ii. strengthening quality open and distance learning
iii. technology integration at all levels of education

iv. facilitating adult and lifelong learning
v. enhancing participation of under-represented groups
vi. eliminating gender, social category and regional gaps in education outcomes

- **Language** - Promotion of Indian and classical languages and setting up three new National Institutes for Pali, Persian and Prakrit were proposed.
- Indian Institute of Translation and Interpretation (IITI) has been recommended.
- The policy called for the proper implementation of the three-language formula (dating back to 1968) in schools across the country.
- Accordingly, students in Hindi-speaking states should learn a modern Indian language, apart from Hindi and English.
- In non-Hindi-speaking states, students will have to learn Hindi along with the regional language and English.
- The controversial three language provision was, however, dropped after protests against it in many states.
- The draft was revised by the committee making the changes in this regard.

9.4 Concerns with Draft Education Policy

What is the issue?

- The draft of New National Education Policy was recently submitted by the Committee on education policy led by Dr.Kasturirangan.
- In this backdrop, here is an overview of the shortfalls in and concerns with the proposed policy.

What are the concerns and possible measures?

- **Rationale** – Given the diversity of the country, the very rationale for a national education policy is questioned.
    - The country could instead attempt to develop action plans for each state, clearly spelling out the priorities, mechanisms and deadlines.
    - All these should go into providing quality education to every child in the country.
- **Teachers** - The draft highlighted issues relating to pre-service training, selection of teachers and in-service training for skill-upgradation.
- However, all these aspects are already well known and discussed upon in the previous draft policies.
    - The draft should have gone into the reasons for issues like prevalence of poor pre-service training facilities in the country.
- There are numerous virtually non-existent B.Ed (Bachelor of Education) and D.El.Ed (Diploma in Elementary Education) colleges.
- The draft does not suggest anything new to resolve this issue.
- Also, there is lack of appropriate training for teachers before they get down to teaching.
    - Addressing this and a transparent mechanism for teachers' recruitment in government schools are essential in delivering quality education.
- The draft recognizes the role that DIKSHA (a portal already in place for teachers) plays in imparting in-service training.
    - DIKSHA has the potential to resolve a large number of other issues relating to teachers.
    - The draft should have reflected upon this.
- **Examinations** - The draft recommends large-scale changes in the conduct of examinations by boards, and introduction of examinations at various levels.
- However, no mention is made about the practical problems and the cost of conducting such exams.
- A separate regulatory authority for school education has also been suggested.

- However, whether such changes would help in qualitative improvements in learning outcomes is debatable.
- **Finance** - There are other ambitious recommendations, including those relating to 'school complexes'.
- Apart from the issues relating to the utility and efficacy, the question over the source of funds for these remains unanswered.
- When the states are struggling to pay regular salaries of teachers, how will they be able to implement these recommendations is uncertain.
- **NGOs** - Non-governmental organisations (NGOs) are doing significant work to improve the quality of education.
- There is only a passing reference about the role of NGOs in the draft.
    - There is a need for scaling up public-private partnership in this regard.
    - This could prove to be an effective way towards quality education without much infusion of funds from government.
- **Private schools** - A large number of students are migrating from government schools to private schools.
- The draft does not delve into the details on the reasons for such trends.
    - Private schools are, nevertheless, playing an important role in imparting school education, and will continue to do so.
    - The unresolved issues in private schools, such as high cost, reservations, etc should be addressed.
- **RTE Act** - The contentious Section 12(1)(c) of the Right to Education (RTE) Act provides for mandatory schooling of children belonging to weaker sections of the society.
- It is widely known that there is inappropriate implementation of this provision.
- The draft, however, does not suggest any remedy except a 'review' of this.
- Besides these, the draft does not provide for a definitive and time-bound action plan for its implementation.
    - Plans have already been prepared for Uttar Pradesh and Jammu and Kashmir.
    - What is required is to prepare such action plans for each state separately, as each state has a different set of issues.
    - Going forward, there has to be a mechanism to ensure implementation of these plans.

9.5 Draft NEP - Language Controversy

What is the issue?

- Following the submission of the draft National Education Policy 2019, there were protests against the three language formula.
- The controversial provision was thus revised by Dr.Kasturirangan-led committee that submitted it.

What are the old and new proposals?

- **Earlier provision** - Students who wish to change one of the three languages they are studying may do so in Grade 6.
- But this is only as long as the study of 3 languages by students in the Hindi-speaking states would continue to include Hindi and English and one of the modern Indian languages from other parts of India.
- Likewise, study of languages by students in the non-Hindi-speaking states would include the regional language, Hindi and English.
- **New change** - Students who wish to change one or more of the 3 languages they are studying may do so in Grade 6 or Grade 7.
- This is only as long as they are able to still demonstrate proficiency in three languages (one language at the literature level).
- This will be as per their modular Board Examinations held some time during secondary school.

What is the continuing contention?

- As per the earlier version, the committee stipulated the languages that students must choose to study from Grade 6.
- In the revised draft, the committee has merely omitted the references to the language that students may choose.
- However, the broader recommendation regarding the implementation of a three-language formula remains.
- In other words, the revised draft retains the recommendation to introduce a three-language formula from Class 1 onwards.
- It simply removes the clause stipulating the specific languages that students must choose in Grade 6.
- Also, the revision was not done by the Central government but by the committee that drafted the policy.

Is Centre's rationale justified?

- The draft policy's push for Hindi seems to be based on the premise that 54% of Indians speak Hindi.
- But according to the 2001 Census, 52 crore out of 121 crore people identified Hindi as their language.
- About 32 crore people declared Hindi as their mother tongue.
- This means that Hindi is the language of less than 44% Indians and mother tongue of only little over 25% people in India.
- But there has been greater push for making Hindi a pan-India language, which is seen as imposition of Hindi by many states, especially that of the South.

How has the official position of Hindi evolved?

- **Constituent Assembly** - The debate over Hindi has been raging since Independence.
- The Constituent Assembly witnessed heated exchanges over the use and scope of Hindi.
- The Sub-Committee on Fundamental Rights of the Constituent Assembly recommended the following:
    1. Hindustani, written either in Devanagari or the Persian script at the option of the citizen, shall, as the national language, be the first official language of the Union.
    2. English shall be the second official language for such period as the Union may, by law, determine.
- **Constitution** - Article 343 of the Constitution prescribes Hindi as written in Devanagari script as the official language of the government along with English for 15 years initially [It has however been extended subsequently].
- Clearly, the Constitution did not declare Hindi as the 'national language'.
- It rather accorded Hindi the status of 'official language' along with English.

9.6 Strengthening Civil Societies

What is the issue?

Citizen-led upsurges bring about change, but the gains are lost in sheer organizational dynamics.

What is the efficacy of civil society movements?

- Civil society movements apply considerable pressure on governments to change laws and re-allocate public resources.
- Loose citizens' movements are often more effective as advocates for change.
- History abounds with examples, The mass civil disobedience movement with which Mahatma Gandhi wore down the British Empire in India, and whose methods for changing public attitudes and government policies have been adopted by civil rights movements in the US and elsewhere.
- Recent instances are sighted with the Arab Spring citizens' movements in 2011 which upturned dictatorships.
- The nation-wide anti-corruption movement in India in 2013 which led to the downfall of the Congress-party led government.

- Civil society movements form to advocate for causes and bring about change in established systems.

What are the failings of the civil societies?

- Actions by groups of motivated strikers to disrupt governments, which inconvenience the masses, are not effective in the long run because they diminish public support for the organization and may even harm the cause.
- Such actions have lost public support for labour unions and sadly have dampened societal support for the rights of working people.
- Whereas participative movements can be effective instruments for advocacy for change, they are generally unable to produce the coherence required for implementation, this was the fate of the Arab Spring movements.
- Recognizing the need for stronger organization, the anti-corruption movement in India spawned a political party, the AamAadmi Party (AAP) with a requisite hierarchy.

What is the role of civil societies in governance?

- Governments are expected to perform three roles: provide law, order and stability; deliver public services and relief; and catalyze the development of the society and the economy.
- Juxtaposed with this, civil society organizations perform three roles too.
- And just as political parties and governments need organizational structures to perform effectively, civil society organizations need appropriate organizational strategies too.
- Not-for-profit civil society organizations can provide public services, such as education and healthcare, they may also deliver charitable relief to people in distress.
- In delivering these services they can be effective partners of governments.

How structural changes can strengthen civil societies?

- The governance of catalytic civil society organizations requires power-shifts and mind-shifts that leaders of historically control-oriented and charity-oriented organizations are finding hard, but they must make these shifts if they wish to serve society well.
- Advocacy strategies of the civilian-led movements can be confrontational or persuasive, Confrontational strategies can be sharply disruptive and peacefully persuasive.
- An organization must choose its strategy, and it must develop suitable competencies for execution of its strategy.
- Business management can provide good role models here, and it is not surprising that as civil society organizations 'scale up' to deliver they adopt business-like practices of management and governance.
- Gandhi's insight was that civil disobedience is effective only when it is mass, and the participants are seen to suffer personally, not merely cause pain to others.
- The role, catalyzing development of societies with changes in their social and economic structures, requires very different capabilities as Gandhiji had pointed out.
- In contrast, the approach taken by Japanese unions, where workers worked longer and harder to shame the management, produced more lasting respect for workers' rights.
- Similarly, Gandhiji persuaded Indians to make personal sacrifices to show their support, and not merely demand change from others.
- In the same vein, movements for the care of the environment are more effective when people are persuaded to change their own behaviors and consumption habits, not just demand actions by governments.
- Thus International civil society organizations must introspect on their purpose, the roles they should perform, and the competencies they require.

9.7 Assessment of the Civil Service

What is the issue?

- Senior civil servants assume leadership positions right after they join, but the testing criteria is far from assessing the skill required for the role.
- In this context, here is an assessment of the priorities and challenges in the civil services at the selection and training phases.

What are the present drawbacks?

- There has so far been no concerted or sustained effort to manage senior civil service in a comprehensive manner.
- The steps have been only ad hoc in nature; the lateral recruitment is also one such effort.
- What really needs to be done is to look at -
  i. the manner in which recruitment takes place
  ii. the in-service training, transfers, assessment of officers
  iii. incentives and disincentives

What should the selection priorities be?

- Almost all the IAS officers occupy leadership positions right from the beginning of their careers.
- Even in the Secretariat jobs, each officer has to lead a team.
- Hence, the objective should be to select such persons who have leadership qualities or have the potential to become leaders.
- A leader, in this context, has to be able to build a team and carry it along with her/him by motivating those working with him.
- S/he has to excel in communication skills beyond the written one.
- S/he has to be ethical in behaviour with a positive attitude.

How is the selection at present?

- Most of the above requirements are not tested at the time of recruitment.
- The entrance exams primarily select brilliant individuals by testing written communication skills, some analytical skills and general awareness.
- It tests the examinees capability to "crack" the exam, and various coaching institutes assist them in doing so.
- But a leader requires much more than that.

What is to be done?

- **Recruitment** - The tools to assess the above discussed skills which are in use in the private sector and elsewhere in the world should be adopted.
- **Training** - The officers have knowledge and they are capable of acquiring more of it.
- What is required is the transformation of attitude as an officer, the necessity and utility of ethical behaviour.
- Given the high maximum age of entry into the civil service, this process becomes difficult and challenging.
- In this line, the training should be centered around inculcating leadership skills.
- It has to be focused on imparting skills and attitude that would enable the officer to evolve as a leader.
- Periodic upgradation of skills and learning from each other should be the focus of in-service training.
- This is imperative in the context of a fast-changing world both in terms of technology and management.
- **Certainty** - The inclination and aptitude of the officer needs to be monitored to determine his/her postings and assignments.
- Once assigned a task, he/she should be left to deliver.

- Frequent transfers interrupt the implementation process and leaves way for politicisation of bureaucracy.
- An agency, like the UPSC, can be assigned to prepare a panel from which the government can select an officer.

9.8 Rafale Deal Controversy

Why in news?

The Defence Minister refused to share the price details on Rafale purchase, citing the Security Agreement provisions.

How did the deal evolve?

- Indian Air Force (IAF) raised the requirement for Medium Multi Role Combat Aircraft (MMRCA) in 2007.
- This was to replace the aging fleet of MiG aircratfs.
- **Tender** - Tenders for 126 Medium Multi Role Combat Aircraft (MMRCA) fighters were issued by India in 2007.
- It was an open competition between companies including Dasault Aviation of France.
- Dassault was announced as the lowest bidder in 2012.
- **Earlier Deal** - Of the 126 jets required, 18 fighters were to be imported in a fly-away condition.
- Hindustan Aeronautics Ltd (HAL) would manufacture the remaining 108 jets.
- This was agreed to be with Transfer of Technology (ToT) from Dassault.
- **Stall** - India and France were unable to decide on a price for the jets.
- The workshare agreement between HAL and Dassault Aviation was signed in 2014.
- But with the new NDA government in place, clarity on the progress of the deal remained unclear.
- **New deal** - On PM's visit to France in 2015, India's intention to buy 36 Rafale aircraft in "fly-away" condition was announced.
- Defence Minister announced the previous 126 fighter jet deal to be dead.
- Subsequently, the deal for the acquisition of 36 aircraft was signed by the Defence Ministers of India and France in 2016.
- This was done through a government-to-government deal.

Rafale aircraft

- Rafale is a twin-engine medium multi-role combat aircraft.
- It is manufactured by the French company Dassault Aviation.
- Dassault claims Rafale has 'Omnirole'.
- This is the capability to perform several actions at the same time.
- Rafale can carry out both air-to-ground as well as air-to-air attacks.
- It can also carry out interceptions during the same flight.
- The aircraft is fitted with an on-board oxygen generation system (OBOGS).
- It suppresses the need for liquid oxygen re-filling or ground support for oxygen production.

What are the present concerns?

- **ToT** - The current deal has a 50% offset component.
- Accordingly, Dassault will manufacture items worth 50% of the deal in India.
- However, the absence of transfer of technology (ToT) component is raised as an issue.
- Also, no role is guaranteed for any Indian public sector company, including HAL.
- **Deal** - The present deal as direct government-to-government agreement, as against the earlier open tender, is criticised.
- Also, the 36 fighters are said to be purchased at a much higher price than earlier negotiated.

What is the dispute with sharing price details?

- **Earlier deal** - The previous government's price for 126 aircraft was never finalised, and no contract was signed or executed.

- Hence, no official figure on the price was ever given.
- **New Deal** - Recently, the Defence Minister declined to share the cost of the Rafale fighters under the new deal, with Rajya Sabha.
- It was said that the price details were "**classified information**".
- This was as per the **Inter-Governmental Agreement** (IGA) between the Governments of India and France.
- Accordingly, material exchanged under IGA is governed by the provisions of the **Security Agreement**.
- However, in 2016, Minister of State for Defence had shared the price in the Lok Sabha in a written reply.
- The basic price of each Rafale aircraft was said to be around Rs 670 crore.
- At the time of its signing, the 36-aircraft deal was said to be worth around Rs 59,000 crore.

What is the Security Agreement?

- **Security** - Signed between the two nations in 2008, it has some confidentiality provisions.
- It relates to Protection of Classified Information and Material in the field of Defence.
- For any contract or sub-contracting contract with classified information and material, a security annex shall be drawn up.
- The competent security authority from the information forwarding party shall specify what has to be protected by the receiving party.
- **Renewal** - It was specified that the Agreement shall remain in force for a period of 10 years.
- It shall be renewed by "tacit consent" for new 5-year period.
- Accordingly, the agreement will continue unless one of the Parties notifies its intention to not renew.
- This has to be given in writing 6 months prior to the end of the current period of validity.
- The initial 10-year life of the Agreement signed in 2008, ended on January 24, 2018.
- It is not clear if it has been renewed by tacit consent by the government.

What is the parliamentary procedure?

- It has generally been the practice to share the cost of defence deals with Parliament.
- However, in some cases, the details have been kept secret for reasons of national security.
- Nevertheless, the government is duty-bound to share the pricing details with Comptroller and Auditor General (CAG) and the Public Accounts Committee (PAC) of Parliament.

9.9 CAG Report on Rafale Deal

Why in news?

The report of the Comptroller and Auditor-General of India on acquisition of 36 Rafale fighter jets from France was recently tabled in Parliament.

What is the deal on?

- Rafale is a twin-engine Medium Multi Role Combat Aircraft (MMRCA).
- Tenders for 126 MMRCA fighters were issued by India in 2007.
- It was an open competition between companies, including Dassault Aviation of France.
- Dassault was announced as the lowest bidder in 2012.
- But on Indian PM's visit to France in 2015, India's intention to buy 36 Rafale aircraft in "fly-away" condition was announced.
- The Defence Minister announced the previous 126 fighter jet deal to be dead.

What is the audit report on?

- The CAG report has examined the €7.87-bn deal for 36 Rafale aircraft signed between India and France in 2016.
- The purpose is to assess if the objectives of Indo-French joint statement and the objectives set out for INT (Indian Negotiating Team) by DAC (Defence Acquisition Council) were achieved in the deal.
- The CAG had to compare the latest deal for 36 Rafale with the price bid by Dassault for 126 Rafale jets in 2007.
- It did this by converting the earlier deal into an equivalent cost for 36 aircraft in 2016.
- The question of 50% offsets in the deal, which has been at the centre of a major controversy, has not been dealt by the CAG.
- It will form part of a separate report by the CAG on offsets in all the deals.

What are the report highlights?

- The CAG report concludes that the 2016 agreement is slightly better in terms of both pricing and delivery than the 2007 deal.
- **Price comparison** - The 2016 deal through IGA (Inter-Governmental Agreement) is 2.86% cheaper than the earlier UPA (United Progressive Alliance) regime deal.
- On the Rafale's India Specific Enhancements (ISE), which cost more than €1.3 billion of the €7.87 billion deal, the CAG stated that there was a saving of 17.08%.
- **Delivery schedule** - There was an improvement of one month in the 2016 contract (71 instead of 72 months for the earlier bid).
- **Absence of bank guarantee** - The 2007 offer from Dassault had costs of bank guarantee embedded in its offer.
- But there is no such guarantee in the 2016 contract which is a "saving" for Dassault.
- This sum should have been passed on to the Indian government, the audit observed.
- **126 to 36** - By reducing aircrafts to be bought from 126 to 36, there is a wide gap in the operational preparedness of the IAF.
- But the CAG could not find any proposal with the Defence Ministry for filling this gap.
- Ministry of Defence had reportedly informed CAG that it had issued a fresh Request For Information (RFI) for new fighter aircraft to fill this gap.
- **Government claims** - One of the government's claims was that each basic aircraft (without enhancements) was 9% cheaper in the 2016 deal.
- But the audit concluded that there was no difference between the 2007 and the 2016 offer in this regard.

What are the concerns?

- The report comes amidst varied revelations about possible lapses and deviations in the Rafale deal.
- But the audit report is less likely to bring closure to the controversy over the deal as it does not clarify all the doubts about the deal.
- The original issue of bringing down the total acquisition from 126 to 36 aircraft was not given much attention.
- The CAG's assessment of savings in India Specific Enhancements (ISE) to be around 17% is also not properly documented and needs deeper examinations.
- The report, in all, stresses on the fact that the defence acquisition processes in India require reforms and streamlining.

9.10 Education Ecosystem for the 4th Industrial Revolution

What is the issue?

- The government is putting in place an education ecosystem to boost advanced learning in new-age technologies.
- With the Fourth Industrial Revolution (IR) in the making, it is essential that India's higher education sector capitalise on this.

What is the 4th IR about?

- The Third Industrial Revolution was of personal computers and internet.
- The next wave of global progress and growth is being driven by the Fourth Industrial Revolution.
- This involves the emerging technologies that merge together to change the dynamics of how industries operate.
- These include artificial intelligence, machine learning, Internet of Things (IoT), 3D printing, biotechnology and 5G.

What is the challenge before India?

- India has the world's largest population of young people.
- In any case, India needs more jobs for its 50-crore youth that will be in the labour market by 2030.
- To capitalise on the Fourth Industrial Revolution, India has to align the higher education sector with the demands of the new age.
- But India already faces structural and regulatory challenges in the higher education sector.
- So the path to create a market for higher education in emerging technologies has multiple limitations ahead.
- Some of the biggest obstacles include the inadequacy of curriculum and trained faculty since the technology itself is evolving rapidly.
- So, the only way for students to gain knowledge in emerging technologies is to learn directly from an industry practitioner or join online resources.
- The groundwork to gravitate the youth towards a career in such technologies has already been laid by the government.

What are the government initiatives in this regard?

- There are three pillars that have been created for the needed structural change.
- **Autonomy** - The Graded Autonomy status was granted by the University Grants Commission (UGC).
- This has given the freedom to higher education institutions to launch new courses, off-campus centres, skill development courses, and foster other academic collaborations with industry.
- So new-age courses in emerging technologies can be easily launched by universities without being delayed by the regulator's approval.
- **Ranking** - India's academic institutes largely lack a performance-based public ranking system.
- The gap is set to be filled after the Human Resource Development Ministry launched the Atal Ranking of Institutions on Innovation and Achievements (ARIIA).
- Under this, by April 2019, over 800 higher education institutes will be ranked on parameters related to innovation and entrepreneurship development.
- E.g. universities facilitating students to launch market-ready products, launch start-ups etc., through new courses, will be highly rewarded under the rankings
- **Technical education** - The All India Council for Technical Education (AICTE) has reduced the minimum credits needed for a degree from 180 to 160.
- This effectively reduces a full semester of academic load for students and faculty.
- The AICTE also formulated the National Student Start-up Policy.

- This enables bright students to take up courses in emerging technologies.
- They can learn practical engineering skills by working on prototypes and gain a "minor degree".
- If the student continues to build the prototype into a start-up, the knowledge and experience acquired by the entrepreneur will be recognised as an MBA in Entrepreneurship Programme.
- This is possible under the new AICTE guidelines.

What do these initiatives imply?

- The interlinking of these there pillars will let the institutes adopt new technology courses (elective and minor) with industry partnerships.
- The potential students will gravitate towards these institutions, which have higher flexibility and a modern outlook to the industry.
- These students will acquire better skills and drive up new job openings in emerging technologies.
- They could build up a new generation of products and start-ups from India.

What lies before India?

- The advent of the fourth industrial revolution is already being seen as transforming skill-based sectors in developed countries.
- It is facilitating increased investments in Research and Development (R&D) measures in countries like US, China and Japan.
- In such a scenario, India needs to catch up with the anticipated changes in its own labour market.
- The need of the hour is a plan of action to create a model for higher education that addresses these shifts.

9.11 Transforming Education Outcomes in India

What is the issue?

- Improvement in learning outcomes is an immediate goal for India to fulfil its aspirations of playing a greater role in the global economy.
- It is crucial that the states adopt a systemic approach to transforming education outcomes, drawing lessons from the successful models.

How significant is the education department?

- The education department certainly has the largest share of employees in the State governments in India.
- Besides frontline service providers (teachers), there are a number of other officials and administrators.
- They form an important part of the overall educational set-up.
- So having proper educational reform policies in place is essential to effectively utilise this human resource to achieve higher learning outcomes.

What are the challenges?

- Education transformation programmes by the States are often not designed in a way to be agreed upon by all key actors.
- Any effort at education reforms must ensure that the incentives of all stakeholders are aligned throughout the system to ensure their participation.
- A successful example of implementing such an all encompassing road map can be seen in Haryana.

What is Haryana's model?

- Haryana has created a race among its administrative blocks to be declared as 'Saksham' (Hindi for abled/skilled).
- This means that they should have 80% or more students who are grade level competent i.e. the appropriate level of competence for a particular grade.
- Under this campaign, officials take up remedial programmes, teacher training and internal assessments.

- Consequently, if they are confident that their block has achieved the 80% target, state officials nominate their block for the 'Saksham Ghoshna'.
- This self-nomination is then followed by rigorous rounds of third party assessments to check their claims.
- If a block is found to be 'Saksham', the block officials are recognised and honoured by the State administration.
- Further, when all blocks in a district are declared as 'Saksham', the entire district is also accorded the 'Saksham' status.
- According to the latest third party assessment, 94 blocks out of a total of 119 in Haryana have been declared 'Saksham'.
- The overall grade competence has been assessed at 80%, a giant leap from 40% in 2014.
- Given these early successes, many other States are also embarking on such programmes.

What does this imply?

- Inducing competition among administrative units helps encourage the key stakeholders to work in tandem to achieve the intended outcomes.
- Competition also makes abstract goals such as 'learning outcomes' more real by defining exact 'actionable' metrics of improvement.
- Further, with encouragement from above, such campaigns lead to a shift in the mindset of a State's education administrators.
- Otherwise, generally, there is lack of motivation to believe and work towards the achievement of high learning outcomes.
- So political commitment to improve the education quality along with proper review and monitoring mechanisms can spur meaningful activity in States.

What is NITI Aayog's approach in this regard?

- Since its inception, the NITI Aayog (National Institution for Transforming India) insists on competitive federalism.
- Competitive federalism puts pressure on policymakers across States to perform better on pre-defined goals and metrics.
- **SEQI** - To translate the above into education, NITI Aayog has now developed the State-level 'School Education Quality Index' (SEQI).
- The index gives scores to States based on their educational performance and puts this data out in the public domain.
- SEQI uses 3 data sources, including the National Achievement Survey.
- It comes out with 33 indicators to measure education outcomes, of which the largest weightage (48%) is given to learning outcomes.
- It adopts a two-fold ranking system -

i. an overall performance score recognises well-performing States
ii. a delta ranking that measures the level of improvement made by States from their base year

- In effect, the NITI's Aayog's State ranking encourages competition among States and thus motivates other States to consistently improve.
- **ADP** - The NITI Aayog's Aspirational Districts programme (ADP), launched in early 2018, also draws from the model of competition.
- Here, under-served districts across the country compete with each other in order to achieve targets in 5 crucial sectors.
- These include education, which has among a weightage of 30%.
- These districts are monitored on a real-time basis and ranked on the basis of their progress.

- The follow-up for each indicator is handled by the respective Ministry, while NITI Aayog handles the data compilation and dissemination.
- Significantly, there is a constant focus on recognising and disseminating best practices of select districts to other States.
- This acts as a reward for well-performing local administrations.
- This strategy has already shown success with districts that were ranked low in baseline surveys showing remarkable progress in subsequent rounds of assessment.
- These include Virudhunagar (TN), Nuapada (Odisha), Gumla (Jharkhand), Siddharthnagar (UP), Vizianagaram (Andhra Pradesh).

What lies ahead?

- Evidently, the right incentive structures for stakeholders lead to administrative efficiency, thereby improving the quality of service delivery.
- States therefore need to induce competition and encourage all key actors in education to improve the learning levels.
- This systemic approach can go a long way in transforming education in India.

9.12 State of Democracy in the World in 2018

Why in news?

The "State of Democracy in the World in 2018" index report titled "Me Too? Political participation, protest and democracy" was published recently.

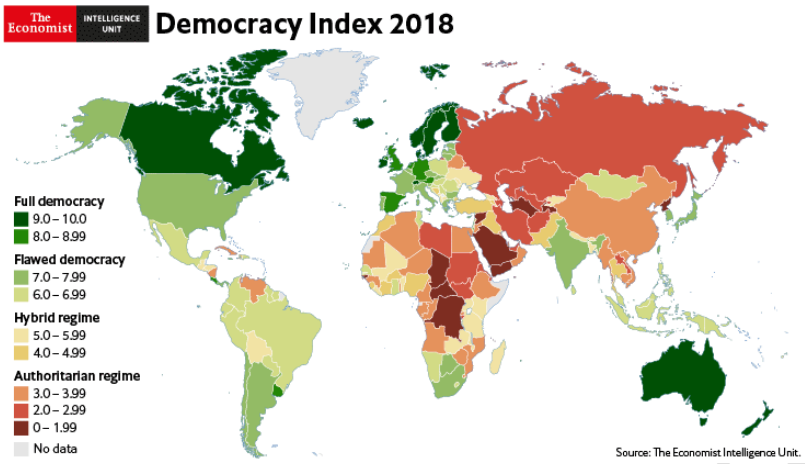
What is the report on?

- The Democracy Index 2018 measures the state of democracy in 167 countries based on 5 parameters which are:
  i. electoral process and pluralism
  ii. civil liberties
  iii. functioning of the government
  iv. political participation
  v. political culture
- It was published by the Economist Intelligence Unit (EIU) which is a global team of economists, industry specialists, policy analysts and consultants.
- It produces data, research and analysis on everything from national elections and international trade, to food security and sustainable cities.

What are the highlights?

- **Classification** - The index classifies countries into 4 types - Full Democracies, Flawed Democracies, Hybrid Democracies and Authoritarian Regimes.
- Only 20 countries (4.5% of the world population) are full democracies, down from around 11% at the start of this decade.
- Most of the shift has taken place into flawed democracies, which constitute the largest group with 43% of the world's population.
- A third of the world lives under authoritarian governments, the majority being in China.
- **Rankings** - The top 5 are Norway (scoring 9.87 out of 10), Iceland, Sweden, New Zealand and Denmark.
- Nordic democracies continue to top the rankings year after year.
- They exhibit high political participation, robust welfare state, progressive workers' rights and environmental standards.
- The bottom five are generally war-ravaged nations with highly authoritarian regimes.

- These include Chad, Central African Republic, Democratic Republic of Congo, Syria and North Korea.
- North Korea is placed at the bottom, scoring an abysmal 1.08 out of 10.



- **SAARC** - Among the SAARC countries, India (41) and Sri Lanka (71) are classified as flawed democracies.
- Bangladesh (88), Bhutan (94) and Nepal (97) are categorised as hybrid regimes (mix of democratic and autocratic traits).
- Pakistan (112) and Afghanistan (143) fall under authoritarian regime.
- The Maldives is not being ranked on the index.
- Sri Lanka registered the worst fall among all countries in South Asia.
- It witnesses deteriorating 'civil liberties' and 'functioning of the government' in the wake of the recent constitutional crisis.
- **Voters' sentiment** - Voter turnout was on the rise in 2018, in expression of dissatisfaction with political parties and "formal political institutions".
- The culture of protest is on the rise, with a number of demonstrations around the world for varied causes.
- The rise of social media has made public outreach quicker and easier, making lawful assembly an increasing trend.
- The report concludes that citizens are “turning anger into action”.
- **Participation of women** - Positive political discrimination and quotas for women candidates have made parliaments more inclusive.
- Japan introduced women’s quota legislation in 2018.
- In the Indian subcontinent, Nepal tops South Asia in women’s representation, with 33% reservation for women in Parliament and a record 40% of women in local bodies.
- Bangladesh has 14% reserved seats and Pakistan also reserves 17% and 15% in the Lower and Upper Houses respectively.
- [The Indian Parliament should also consider passing the Bill on reservation for women.]
- **Individual parameters** - 4 out of 5 attributes of the Democracy Index either showed stagnation or improvement for the whole world.
- This is except for “civil liberties” which is on continuous decline since 2008.
- “Functioning of the government” remains at the bottom of the score card, with hardly any improvement from a high of 5.0 since 2008.
- As a whole, the score for perception of democracy as a sub-attribute suffered its biggest fall in the index since 2010.
- This indicates that people are losing faith in the capability of democracy to deliver basic goods and utilities.

What is the case with India?

- India reached it's highest-ever position of 27 in 2014 (just two ranks away from becoming a full democracy).
- Unfortunately, last year, India had slipped to 42, ranking below Latvia and South Africa.
- India has improved one rank this year to 41, but there has been no improvement in scores, which continued at 7.23 out of 10.
- India is now a mid-range country among flawed democracies.
- It has a high score of 9.17 in electoral process and pluralism but moderate record in rest of the parameters with scores not crossing 7.5.
- This confirms the paradox of India as the world's largest electoral wonder, but a flawed democracy.

What affects India's rankings?

- According to the last two reports, there is a rise of "conservative religious ideologies" in the country.
- Vigilantism, violence, narrowing scope for dissent, threat to minorities and marginalised groups has affected India's ranking.
- Journalists are increasingly under attack, with murders taking place in several areas.
- As a result of limited scope for fair reportage, the Indian media is classified as only "partially free".
- This is a fact which is also supported by the "Freedom in the World Report, 2018".