MAINSTORMING 2019

POLITY & GOVERNANCE I

Shankar IAS Academy™

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1. SUPREME COURT JUDGMENTS

1.1 Section 377

Why in news?
A Constitution Bench of the Supreme Court has unanimously decriminalised homosexuality.

What were the concerns with Section 377?
- Section 377 creates a class of criminals, consisting of individuals who engage in consensual sexual activity.
- It typecasts Lesbian, Gay, Bisexual, and Transgender, Queer (LGBTQ) individuals as sex-offenders.
- It categorised their consensual conduct on par with sexual offences like rape and child molestation.
- This has led to stigmatisation, condemnation and even ineffective HIV prevention and treatment among LGBTQ individuals.

What was the judgment?
- The Bench unanimously held that criminalisation of private consensual sexual conduct between adults of the same sex was clearly unconstitutional.
- The court, however, held that the Section 377 would apply to “unnatural” sexual acts like bestiality.
- Sexual act without consent would also continue to be a crime under Section 377.
- The Centre was urged to take all measures to ensure that the judgment is given wide publicity.

What was SC’s rationale?
- **Individual** - Bodily autonomy is individualistic as it is a matter of choice and is part of dignity.
- **Sexual orientation** is biological and innate, as an individual has no control over who they get attracted to.
- Any repression of this by the state will be a violation of free expression.
- **Rights** – Homosexuals have a fundamental right to live with dignity and possess full range of constitutional rights including sexual orientation, partner choice, equal citizenship and equal protection of laws.
- The State cannot decide the boundaries between what is permissible and not.
- **Society** - Section 377 is based on deep-rooted gender stereotypes and a majoritarian impulse to subjugate a sexual minority.
- But the societal morality cannot override constitutional morality and fundamental rights.
- **Nature** - Homosexuality was documented in 1,500 species and was not unique to humans.
- This firmly dispels the prejudice that homosexuality is "against the order of nature".
- **Right to Love** - Section 377 speaks not just about non-procreative sex but also about forms of intimacy i.e the 'right to love'.
- But the social order finds some of these ‘disturbing’.
- It is the result of limits imposed by structures such as gender, caste, class, religion and community.
- These limits affect the “right to love” of not just the LGBTQ individuals, but of couples who make relationships across caste and community lines.
- **Perception** - The recent parliamentary re-enactment of the Mental Healthcare Act, 2017 makes it clear that homosexuality is not considered to be a mental illness.
• It is reaffirmed that mental illness shall not be determined on the basis of non-conformity with moral, social, cultural, religious beliefs.

What are the shortcomings?

• How the judgment operates on the ground is yet to be seen as recent orders on triple divorce and lynching have not had visible impact.
• The judgment has opened up grey areas, and new guidelines will be needed.
• e.g Say, a gay individual withdraws “consent” and lodges a complaint against their partner.
• India’s laws on sexual assault do not recognise men as victims of rape. Police will now have to establish the principle of consent.

1.2 Aadhaar

Why in news?

The Supreme Court recently upheld the constitutionality of the Aadhaar in its majority verdict (4 out of 5 judges).

What are the highlights of the majority verdict?

• The majority ruling called Aadhar “a document of empowerment”.

Right to privacy - Not all matters pertaining to an individual were an inherent part of the right to privacy.

• Only those matters in which there was a reasonable expectation of privacy were protected by Article 21 of the Constitution.

• In this context, the Aadhaar scheme passed the triple test laid down in the Puttaswamy (Privacy) judgment to check if it invades privacy viz.
  1. **existence of a law** - backed by the statute i.e. the Aadhaar Act
  2. **a legitimate state interest** - to ensure that social benefit schemes reach the deserving community
  3. **test of proportionality** - balances the professed benefits of Aadhaar and the potential threat it carries to the fundamental right to privacy

Money Bill - Section 7 of the Aadhaar Act mandates that individuals should produce Aadhaar to access social services, subsidy, benefits, etc. and clearly declares that expenditure incurred would be from the Consolidated Fund of India.

• Since Section 7 is the main provision of the Act, the validity of the Aadhaar Act being passed as a Money Bill is upheld.

Surveillance state - During the enrolment process, “minimal biometric data in the form of iris and fingerprints is collected”. 

![Diagram showing the Aadhaar scheme]

Inclusions, Exclusions

- Aadhaar not mandatory for school admissions
- Aadhaar not necessary for NEET, JEE, UGC, CBSE
- Aadhaar not required for bank accounts
- Aadhaar not linked for PAN card

Subsidies or benefits

- Aadhaar has to be linked
- Aadhaar is necessary
- Aadhaar not required

Majority Judgment Says

- Aadhaar is neither a service nor a subsidy
- It is a unique identifier
- The problem of bogus or duplicate PANs can be dealt with in a more systematic and foolproof manner
Also, UIDAI “does not collect purpose, location or details of the transaction”.

Hence the manner of operation of Aadhaar, "do not tend to create a surveillance state".

Security of biometric data - UIDAI has mandated only registered devices to conduct biometric-based authentication transactions.

With these registered devices, the biometric data is encrypted within the device using a key.

This creates a unidirectional relationship between the host application and the UIDAI.

This also rules out any possibility of the use of stored biometric, or the replay of biometrics captured from another source.

Further, as per the regulations, authentication agencies are not allowed to store the biometrics captured for Aadhaar authentication.

Telecons - Aadhaar-based re-verification of mobile numbers has been held illegal and unconstitutional as it was not backed by any law.

As a result-

1. telecom cannot insist on customers to furnish Aadhaar details
2. the provision that allowed private entities to conduct authentications has been held illegal.
3. corporate bodies including banks, mobile wallets, etc also cannot ask for Aadhaar number.

PAN - Section 139AA of IT Act makes Aadhaar mandatory for filing IT returns and applying for PAN.

Since it stood the triple test and did not violate the right to privacy, linking of PAN with Aadhaar will be mandatory.

But there was no deadline mentioned by the court.

It is also said that if in the regulations, a provision was made that impinged upon the right to privacy, it could be challenged.

Linking of bank accounts - Linking of bank accounts and other financial instruments with Aadhaar were made mandatory by 2017 amendment to Prevention of Money Laundering Act Rules, 2005.

It does not stand the proportionality test because just for preventing money laundering, there cannot be such a provision targeting every resident as a suspicious person, which is seen as disproportionate.

Therefore the amendment is declared unconstitutional.

Details already given - The judgment does not clearly state if banks/mobile companies that have already collected Aadhar data will have to delete the collected information.

But the court has upheld the validity of all Aadhaar enrolment done prior to the enactment of the Aadhaar Act.

It has also said that since enrolment was voluntary, those who refuse to give consent would be allowed to exit.

Aadhaar for education - Statutory bodies like CBSE and UGC cannot ask students to produce their Aadhaar cards for examinations like NEET and JEE.

Aadhaar would also not be compulsory for school admissions as “it is neither a service nor subsidy” but a fundamental right for children between 6 and 14.

Aadhaar for children - The consent of parents/guardians will be essential for the enrolment of children under the Aadhaar Act.

On attaining the age of majority, such children shall have the option to exit.

Section 33(1), Aadhaar Act - It prohibits disclosure of information (identity and authentication), except when it is by an order of a district judge or higher court.
• The judgment enabled individuals to have a right to challenge such an order by approaching the higher court.

• **Section 33(2), Aadhaar Act** - It provides for disclosure of information in the interest of national security when directed by an officer of Joint Secretary or higher rank.
  
  The court **struck down** this provision in the present form.

• **Section 47, Aadhaar Act** - It provides for cognisance of offence only on complaint by UIDAI (or any person authorised by it).
  
  The court ruled that this needed suitable **amendment** to provide for filing of complaints also by an individual whose right was violated.

• **Section 57, Aadhaar Act** - It provides for use of Aadhaar number for establishing the identity of an individual for any purpose, by the state or any corporate or person.
  
  The court has said that the section would impinge upon the right to privacy of the individual and enable commercial exploitation of biometric and demographic information.

• The court thus **read down** (providing narrow interpretation) this provision as susceptible to misuse.

• **Regulation 26(c), Aadhaar Regulations** - It allowed UIDAI to store metadata relating to transactions.
  
  The court **struck down** this regulation in its present form.

• **Regulation 27** - It allowed archiving transaction data for 5 years, which is now reduced only upto 6 months.

**What are the highlights of the minority judgment?**

• Justice D Y Chandrachud gave the dissenting minority judgment in which he observed the following.

• **Surveillance** - The architecture of Aadhaar poses a risk of potential surveillance activities through the Aadhaar database.
  
  From the verification log, it is possible to locate the places of transactions carried out by an individual over the past five years (now made six months).

• **Money Bill** - Passing of a Bill as a Money Bill, when it does not qualify for it, damages the delicate balance of bicameralism.
  
  Notably, bicameralism is part of the basic structure of the Constitution.

• The ruling party in power may not command a majority in the Rajya Sabha.
  
  But the legislative role of that legislative body cannot be obviated and passing it as money bill was “a fraud on the Constitution,”

• **Shortfalls** - The biometric authentication failures that have led to denial of rights and legal entitlements were violative of human dignity and impermissible under the constitutional scheme.

**What was the Court's rationale?**

• The failure to establish the identity of an individual is a major hindrance to the successful implementation of welfare programmes.

• Absence of a credible system to authenticate identity made it difficult for benefits to reach the intended beneficiaries.

• The Aadhaar project thus ensures dignity for marginalised sections by leveraging the power of technology.

• The enrolment reached 1.2 billion people, and the programme had acquired a scale and momentum that is irreversible.

• Necessary measures were also taken to ensure security of information provided by individuals while enrolling.

• So, the Court upheld the constitutional validity of Aadhaar and clarified areas in which it cannot be made mandatory.

• The judgement has thus plugged the loopholes rather than strike down the project altogether.
1.3 Promotions in SC/ST

Why in news?
SC has recently invalidated the conclusions arrived in M Nagaraj case.

What was the Nagaraj verdict?
- The Supreme Court had held that the state was not bound to provide reservation in promotions to SCs/STs.
- But in case any state wished to make such a provision, it was required to –
  1. Collect quantifiable data on backwardness of the class
  2. Prove its inadequate representation in public employment
  3. Show no compromise on efficiency of administration
- Additionally, the state was also required to ensure that the reservation does not breach the 50% ceiling.
- The ruling also said that the ‘creamy layer’ concept applies to SCs and STs for promotions in government jobs. (Contradicting the viewpoint made in Indra Sawhney judgment)

What was the government’s reaction?
- The Centre and various state governments had sought reconsideration of the verdict.
- They argued that members of the SC/ST communities were presumed to be backward and considering the stigma attached to their caste, they should be given reservation even in job promotions.

What is the present ruling?
- SC had reversed the earlier judgment on collecting quantifiable data to prove backwardness.
- It said that it was contrary to the decision in Indira Sawhney case, where it was held that once SCs and STs were part of the Presidential List under Articles 341 and 342 of the Constitution, and there was no need to prove backwardness.
- Hence, SC ruled that States need not collect quantifiable data on the backwardness of SC/ST for giving quota in job promotion to SC/ST employees.
- At the same time, the apex court says that the inadequacy of representation of SC/ST needs to be demonstrated and data must be relatable to the concerned cadre.
- The data must be collected by the states and SC/ST population as a whole should not be taken into account, while calculating inadequacy.
- The collected data can also be tested by the courts.
- When it comes to promotion of SC/ST employees, the court held that the creamy layer concept does apply.
- So now, only in direct recruitment of the SC/STs, the creamy layer concept does not apply.
- However, the state governments have the discretion to invoke Articles 16 (4A) and 16 (4B).
- This is to provide for reservations in promotions for Scheduled Castes and Scheduled Tribes with consequential seniority.
- "Consequential seniority" refers to promotions made purely on reservation basis despite another person waiting for promotion being actually senior to him/her.
- The court also said that "efficiency of administration" has to be looked at every time promotions are made.

1.4 SC/ST Reservation - Home State

Why in news?
A Supreme Court bench has held that scheduled castes or tribes can avail benefit of reservation in government jobs only in their home states.

What is SC’s rationale?
- A particular community is notified as SC/ST in relation to a state.
- They do not necessarily carry the same status in another state or UT.
• So the concept would become invalid if migrants from other states are automatically within its ambit.
• The Court has thus upheld the “son of the soil” principle.
• Accordingly, if a person’s status migrates with him/her it will amount to depriving the rights of SC/STs of the host state.
• For the purpose of Articles 341 and 342 in Constitution, the reservation benefits would be within the geographical territories of a state or UT.
• Also, Presidential Orders issued under Article 341 and 342 cannot be varied or altered.
• (Article 341 is in regard to scheduled castes and Article 342 is in regard to scheduled tribes.)
• So the state could not alter the list of SCs or STs by including other castes or tribes.
• This can be done only by Parliament, and states doing so will lead to constitutional anarchy.

What are the concerns?
• The ruling strikes a blow at the idea of a single citizenship for all Indians.
• It makes only the upper castes to enjoy the rights of mobility across India without paying a cost.
• This makes reservations subjective if granted by the state, and not the Centre.
• The idea implicit in the judgment is that state reservations are for state ‘citizens’ and not ‘outsiders’.
• With long-run consequences, this could change the nature of the Indian Union.

1.5 Delhi CM vs LG

Why in news?
The Supreme Court has held that the Lieutenant-Governor is bound by the “aid and advice” of the Government in Delhi.

What is the case on?
• The judgment comes on appeals filed by the NCT government.
• The appeal was against a 2016 verdict of the Delhi High Court, which declared that the L-G has complete control of all matters regarding the NCT of Delhi.
• It said that nothing would happen without the concurrence of the L-G.

Why is Delhi a special case?
• Though seen as a Union Territory, Delhi was created as a separate category.
• It had an elected Assembly with powers to enact laws.
• It could legislate on matters falling under the State and Concurrent lists.
• However, public order, police and land were exceptions to the above.
• The provisions gave Delhi a status higher than other UTs.
• The demand for full statehood has been around for many years now.

What is the present ruling?
• Conflict - In case of any dispute, the L-G should straightaway refer it to the President.
• Clearly, L-G cannot delay, sitting over the dispute, for a final decision.
• Also, it cannot be a reason to hamper the governance.
• L-G - L-G has not been entrusted with any independent decision-making power.
• The L-G must work harmoniously with the Ministers.
• She/he has to act on the ‘aid and advice’ of the Council of Ministers.
• Otherwise, s/he he is bound to implement the decision taken by the President.
• **Reference** - SC cautioned the L-G against sending every “trivial” dispute to the President.
  • The power to refer “any matter” to the President no longer means “every matter”.
  • It has indicated that it could encompass substantial issues of finance and policy.
  • Notably, this should have an impact upon the status of the national capital or implicate vital interests of the Union.

**What is the rationale?**

• SC followed the 1987 Balakrishnan Committee report to conclude that Delhi is not a State.
  • The report said that Delhi as the national capital belonged to the nation as a whole.
  • Delhi could not have a situation of having two Governments run by different political parties.
  • Such conflicts may, at times, prejudice the national interest.
  • The report said the control of the Union over Delhi was vital in the national interest.
  • It said the ‘aid and advice’ concept cannot apply to any judicial or quasi judicial functions.
  • It would apply only in matters where the Legislative Assembly has the powers to make laws.
  • The L-G has a more active part in the administration than the Governor of any State.
  • However, differences of opinion would be decided by the President.

1.6 **Delhi - UT vs Centre**

**Why in news?**

A two-judge bench of the Supreme Court gave its verdict on the power tussle issue between the Delhi government and the Centre.

**What are the highlights?**

• The dispute on exercise of power was primarily over two issues -
  
  i. on Services i.e. the power to appoint, post and transfer officials in Delhi administration
  ii. on control over the Anti-Corruption Branch in Delhi

• The two judges were divided on the services issue and so it has been sent to a larger bench.
  • But they unanimously agreed that the Centre had absolute power in control over the Anti-Corruption Branch (ACB) in Delhi and the power to institute commission of enquiry.
  • [The ACB is to investigate offences under the Prevention of Corruption Act.]

• The following would come under the Delhi government -
  
  i. electricity and revenue departments (fixing of circle rates)
  ii. posting and transfer of Grade 3 and Grade 4 officers
  iii. appointing special public prosecutor
  iv. appointment of directors in discoms

• **LG** - On the rates for agricultural land, the Lieutenant Governor (LG) can form an opinion but not on each and every matter.
  • LG is not expected to differ routinely but only in convincing cases.
  • The court held that the LG is expected to honour the wisdom of the ministers and not sit over their decisions.
  • On issues where LG and ministers differ, the LG is supposed to refer the difference to the President.
  • The decision taken henceforth cannot be implemented without referring to LG.
  • The court had earlier ordered that the LG did not have independent decision-making powers and the real power had to lie with the elected government (Click [here](https://www.shankariasacademy.com) to read more).
What is the significance?

- Administrative control and governance of the national capital has long been a contentious one as Delhi, a Union Territory, is not a full state.
- The appeals before the court and the judgment are part of the long, ongoing tussle between the Delhi government and the Centre.
- The Aam Aadmi Party (AAP) government in Delhi has consistently invoked the “rights” of the elected government to act in the interests of the people of Delhi.
- The split verdict by the Supreme Court Bench now is a setback to the Delhi government.
- The AAP is uncertain of performing its duties when it did not even have the powers to choose its officials for the jobs.

What is the constitutional provision in this regard?

- Article 239AA of the Constitution, enacted as per 69th Amendment Act of 1991, deals with the governance of Delhi.
- Accordingly, there shall be a council of ministers (CoM) consisting of not more than 10% of the total number of members in the Legislative Assembly.
- With the Chief Minister as the head, the CoM aids and advises the Lieutenant Governor.
- This is in terms of LG’s functions on issues where the Legislative Assembly has power to make laws, except when LG is required to act in his discretion.
- The Delhi government does not have control over land, appointment of senior officers and the police force, which are controlled by the LG.
- In case of difference of opinion between the LG and the ministers on any matter, the LG shall refer it to the President and act according to the President’s decision. Pending such decision, the LG (in urgent matters) will take action or give direction in the matter as s/he deems necessary.

1.7 Criminalisation of Politics

Why in news?

A five-judge Bench of the Supreme Court led by the CJI recently gave its judgement on criminalisation of politics.

What are the highlights of the verdict?

- **Parties** - The Supreme Court directed political parties to publish online the pending criminal cases of their candidates.
- Rapid criminalisation of politics cannot be arrested by merely disqualifying tainted legislators.
- Cleansing politics from criminal elements begins only with purifying political parties itself.
- As, political parties are the central institution of India’s democracy.
- They play a central role in the interface between private citizens and public life.
- They act as a channel through which interests and issues of the people are represented in Parliament.
- **Parliament** - It urged the Parliament to bring a “strong law” to cleanse political parties of leaders facing trial for serious crimes.
- Parliament should frame a law that makes it obligatory for political parties to remove leaders charged with “heinous and grievous” crimes.
- Parties must refuse ticket to offenders in both parliamentary and Assembly polls.
- The Bench made it clear that the court cannot legislate for Parliament by introducing disqualification to ban such candidates from contesting elections.
- **Candidates** - The court directed that candidates should disclose their criminal past to the Election Commission in “block letters.”
• Candidates should make a full disclosure of the criminal cases pending against them to their political parties as well.
• The parties, in turn, should put up the complete details of their candidates on their websites for public view.

What are the references made?
• The verdict referred to the views of various other bodies and provisions in current legislations, as follows:
  • **Law Commission** - The commission had pointed out that political parties have been chiefly responsible for criminalisation of politics.
  • Instead of politicians having links to criminal networks, as earlier, persons with extensive criminal backgrounds are now entering politics.
  • In the 10 years since 2004, 18% of candidates contesting either national or State elections had criminal cases against them.
  • **CIC** - The judgement quoted the earlier efforts to bring political parties under the Right to Information regime.
  • It also referred to observations made by the Central Information Commission (CIC) to describe political parties' position in democracy.
  • CIC noted that it is the political parties that form the government, man the parliament and run the governance of the country.
  • A political party, not respecting democratic principles in its internal working, is less likely to respect governance principles of the country.
  • It is therefore necessary to introduce internal democracy, financial transparency and accountability in the working of political parties.
  • **N.N. Vohra Committee** - The Court mentioned the 1993 Mumbai bomb blasts.
  • The N.N. Vohra Committee, set up after the blasts, studied the problem of criminalisation of politics.
  • The report said that the blast was a result of the nexus among criminal gangs, police, politicians and bureaucrats.
  • It mentioned how money power was first acquired through real estate.
  • It was then used to develop a network of muscle power by building up contacts with bureaucrats and politicians.
  • The criminal network was virtually running a parallel government.
  • **RPA** - The Representation of the People Act does disqualify a sitting legislator or a candidate on certain grounds.
  • However, there are no provisions regulating the appointments to offices within the party.
  • A politician may be disqualified from being a legislator, but may continue to hold high positions within the party.
  • He/she can thus continue to play an important public role which he/she has been deemed unfit for by the law.
  • Convicted politicians may continue to influence law-making by controlling the party and fielding proxy candidates in legislature.

### 1.8 Puri Jagannath Temple

**What is the issue?**
• Only people of the Hindu faith are currently being allowed into his shrine in Puri.
• SC suggested that the temple management should give every visitor access to the deity

**What is the unique case of Puri Jagannath?**
• **History** - The famed Puri “Jagannath Temple” attracts large crowds from all over India and its annual rathyathra is also very popular.
Most theories have it that the main deity at Puri is a “SabaraDebata” (Adivasi god) who was named Jagannath (Lord of the Universe) by early Buddhists.

Notably, Jagannath was established in Puri in the 9th century AD, and was usurped into the Brahminical fold after the decline of Buddhism.

Some Hindutva ideologues decry this, but there is clear evidence that temple entry restrictions based on caste and religion was only after 16th century.

Presently - Considering the tribal (non-brahminical) origin of the Jagannath Cult, many scholars have vouched for making the deity accessible to all faiths.

There is currently a ban on non-Hindus to enter the Puri Shrine, and hence a case had been filed in the Supreme Court (SC) to break the same.

In this context, SC suggested that the temple management should give every visitor access to the deity and also allow them to make offerings and prayers.

What was SC’s rationale in the pronouncement?

Generally, religion can be defined as a body of particular belief(s) that a group of people subscribes to and organise themselves for fulfilling the same.

Interestingly, Hinduism is a conglomerate faith that incorporates all forms of belief(s) without specifically mandating the selection or elimination of anything in particular.

Notably, “Adi Saiva SivachariyargalNala Sangam vs State of Tamil Nadu” case in 2015, stressed the inclusiveness that is naturally inherent in Hinduism.

That judgment had declared Hinduism as “Sanatan Dharma’ (or eternal faith), which is the “dynamic collective wisdom” of the centuries.

1.9 Rohingyas Deportation

What is the issue?

Seven Rohingya men were recently deported to Myanmar for being “illegal immigrants”.

The Supreme Court dismissed an application to restrain the government from taking steps for deportation.

What is the deportation case?

The men had entered Assam in 2012 without documentation and were prosecuted for illegal entry under the Foreigners Act.

A case challenging the government’s move to carry out en masse deportation of Rohingya refugees is still pending before the Supreme Court.

Given this, the deportation of seven Rohingya men was unexpected and contentious.

The government says that the detainees had consented to return and the Myanmar Embassy had confirmed they were “citizens”.

An intervention application was filed before the SC, seeking a stay order.

The petition says the detainees were “refugees” as they were at the risk of persecution.

But the matter was dismissed by the Bench noting that they were “illegal immigrants”.

Why is the court's decision disputable?

Constitution - In NHRC v. State of Arunachal, the Court extended protection under Article 14 and 21 to refugees.

Given the circumstances, refugees often cross borders without prior planning or valid documentation.
• If not for anything, this should reinforce their status as “refugees” and not “illegal immigrants”.
• Here, evidently, the Rohingya deported to Myanmar are at the risk of being tortured, indefinitely detained and even killed.
• **International law** - Further, various high courts have upheld the customary international law principle of non-refoulement.
• It is the practice of not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution.
• In view of these principles, the deportation potentially violates Article 21, and India’s international obligations.
• **Citizens** - The argument that the men are “citizens” and therefore not in need of protection is without legal basis.
• Refugees frequently, though not always, are citizens of the state they are fleeing from.
• Government’s claim that the men have been accepted as “citizens” by Myanmar is disputable as the root of the plight of the Rohingya is the denial of citizenship.
• In Myanmar, they are being issued the controversial National Verification Card.
• This does not recognise their religion or ethnicity and definitely does not confer citizenship.
• **Judiciary** - In the absence of a domestic refugee protection law, it is for the judiciary to extend minimum constitutional protection to refugees.
• By allowing this deportation, the SC has set a new precedent that is contrary to India’s core constitutional tenets.
• However, it is important to not overstate the implications, as the order was based on the notion that the men had consented to return.
• So in cases where there is no consent, this cannot apply as a precedent.

1.10 Striking Down of Beggary Act

**Why in news?**
Delhi High Court has struck down as unconstitutional, certain sections of Bombay Prevention of Beggary Act, 1959, as extended to Delhi.

**What is the Act about?**
• There is no any central Act in India on beggary.
• Hence many states and Union Territories have used the Bombay Prevention of Beggary Act, 1959 as the basis for their own laws.
• The objective was to keep the streets of then Bombay clear of the destitute, leprosy patients or the mentally ill.
• It was formulated with the hope that they could be sent into institutions.

**What are the contentious provisions?**
• The Act, essentially, criminalises begging.
• It gives police the power to arrest individuals without a warrant.
• It gives magistrates the power to commit them to a “certified institution” (a detention centre).
• Detention could be up to 3 years on the commission of the first “offence”, and up to 10 years upon the second “offence”.
• Their privacy and dignity is ignored by compelling them to allow themselves to be fingerprinted.
• It authorises the detention of people “dependant” upon the “beggar” (read as family) and separation of children over the age of 5.
• Certified institutions have absolute power over detainees.
• This includes the power of punishment, and the power to exact “manual work”.
• Disobeying the rules of the institution can land an individual in jail.
• There were concerns that the Act was violating the fundamental rights of the citizen.
• The Delhi HC order is the first in the country to strike down provisions of the 1959 Act.

What is the Court’s order and observations?
• It essentially decriminalised begging.
• Among the 25 provisions struck down are those:
  i. permitting the arrest, without a warrant, any person found begging
  ii. taking the person to court
  iii. conducting a summary inquiry
  iv. detaining the person for up to 10 years
• The court has not struck down provisions that do not treat begging per se as an offence.
• It has also not struck down a Section that deals with penalty for employing or causing persons to beg.
• This addresses forced begging or “begging rackets”, which are used to justify retaining the Act.
• Activists advocating repeal of the Act, however, say that these can be dealt with existing provisions in the Indian Penal Code.
• Observations - The Bench held that the Begging Act violated Article 14 and Article 21 of the Constitution.
• The government argued that it did not intend to criminalise “involuntary” begging.
• Court, however, noted that the definition of begging under the Act made no such distinction and therefore entirely arbitrary.
• It also held that under Art 21, it was the State’s responsibility to provide the basic necessities for survival to all its citizens.
• It stressed that poverty was the result of the state’s inability or unwillingness to discharge these obligations.
• Therefore, the state could not criminalise the most visible and public manifestation of its own failures.

What are the alternatives?
• Bill - The Centre made an attempt at repealing the Act through the Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016.
• It had provisions including doing away with the Beggary Act and some provisions also allowed detention.
• It also proposes rehabilitation centres for the destitute in each district.
• But the discussion on the Bill was halted in 2016.
• Bihar model - Bihar government has the MukhyamantriBhikshavritiNivaran Yojana in place.
• Under this, instead of detaining persons under the Act, open homes were set up.
• Through this, community outreach for destitute persons was put in place.
• Now, rehabilitation centres have been set up, with facilities for treatment, family reintegration and vocational training.

2. LEGISLATIONS

2.1 Reservation for the ‘Poor Forward’

Why in news?
The Union Cabinet has cleared a Bill seeking to provide 10% reservation to the economically backward among the ‘general category’.
What does the Bill propose?

- It seeks to provide 10% reservation in government higher education institutions and government jobs to the **economically weaker sections among the upper castes**.
- This refers to non-Dalits, non-Other Backward Classes (OBCs) and non-tribals - essentially, the upper castes or so-called ‘forwards’.
- It will apply for general category individuals -
  1. whose family together earn less than Rs.8 lakh per annum
  2. who have less than 5 acres of agricultural land
- It also excludes those individuals whose families own or possess -
  1. a residential flat of area 1,000 sq ft or larger
  2. a residential plot of area 100 yards or more in notified municipalities
  3. a residential plot of area 200 yards or more in areas other than notified municipalities.
- The proposals in the Bill, to become a reality, will need an amendment of -
  1. Articles 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) of the Constitution
  2. Article 16 (equality of opportunity in matters of public employment) of the Constitution
- The amendment will have to be ratified in both Lok Sabha and Rajya Sabha, by at least two thirds of members present and voting.
- It also has to be passed by the legislatures of not less than half the states.

What are the contentions with the present Bill?

- Violation of Constitution - Articles 330-342 under Part 16 of the Constitution outline special provisions for certain classes.
- The Constitution identifies only four such classes - SCs, STs, Backward Classes and Anglo Indians.
- The Constitutional promise is explicitly for social exclusion and discrimination.
- Notably, the “socially and educationally backward classes” was the target group in quotas for OBCs.
- So the quota for the poor among the upper castes has been seen essentially as a poverty alleviation move dressed up as reservation.
- Ambiguity - There have been disagreements as to the proportion of population living in poverty in the country.
- The Arjun Sengupta Committee (April 2009) estimated that 77% of India’s population were surviving on less than Rs 20 per day.
- In November 2009, Suresh Tendulkar Committee estimated India’s combined rural-urban poverty headcount ratio in 2004-05 at 37.2%
- Given this, the Rs 8 lakh per annum limit in the Bill clashes with the poverty line concepts and seems arbitrarily set up to cover a wider proportion.

How does it violate the Constitution?

- Definition of backward class - A nine-judge Constitution Bench of the Supreme Court reiterated this view point in the Indira Sawhney case of 1992.
- It categorically held that “a backward class cannot be determined only and exclusively with reference to economic criterion.”
- “It may be a consideration or basis along with, and in addition to, social backwardness, but it can never be the sole criterion”.
- Sacrifice of Merit - A total 59% (49%+10%) quota would leave other candidates with just 41% government jobs or seats. This may amount to “sacrifice of merit” and violate Article 14.
- Basic Structure - If the government proposes to bring a constitutional amendment to include the 10% quota KesavanandaBharatijudgment may stand in the way, as it violates Article 14.
The judgment held that constitutional amendments which offended the basic structure of the Constitution would be ultra vires.

This proposed Bill finds an echo in an ordinance promulgated in Gujarat in 2016, which provided 10% quota to upper castes there.

But the Gujarat High Court in the DayaramKhemkaranVerma Vs State of Gujarat quashed the ordinance in August 2016.

What were the earlier committee recommendations?

- The first Backward Classes Commission was appointed under Article 340(1) in 1953 under the Chairmanship of Kaka Saheb Kalelkar.
- It was to determine the criteria to identify people as socially and educationally Backward Classes.
- It was also tasked to recommend steps to ameliorate their condition.
- The Commission interpreted 'socially and educationally backward classes' as relating primarily to social hierarchy based on caste.
- The second Backward Classes Commission was appointed in 1978 under B P Mandal to review the state of the Backward Classes.
- It submitted its report in 1980, but no measure was taken on it until the V P Singh government in 1990.
- It recommended 27.5% reservations in government jobs for OBCs.

What are the other state proposals?

- In 2008, Kerala decided to make reservations for economically backward among the forwards.
- It proposed to reserve 10% seats in graduation and PG courses in government colleges and 7.5% seats in universities.
- An appeal is pending in the Supreme Court in this regard.
- In 2011, UP CM wrote to the central government asking for reservation for upper-caste poor.
- In 2008 and 2015, the Rajasthan Assembly passed Bills to provide a 14% quota to the economically backward classes (EBCs) among the forward castes.

2.2 Restoration of SC/ST (PoA) Act Provisions

Why in news?
Centre has decided to restore the original provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as a response to an earlier verdict of Supreme Court on the Act.

What was the court's verdict?

- The Supreme Court in a recent verdict had struck down some original provisions of the Act. Click [here](#) to know more
- It issued some guidelines to protect people against arbitrary arrests under the Act.
- It directed that public servants could be arrested only with the written permission of their appointing authority.
- In the case of private employees, the Senior Superintendent of Police concerned should allow it.
- A preliminary inquiry should be conducted before the First Information Report (FIR) was registered.
- This was to check if the case fell within the ambit of the Act, and whether it was frivolous or motivated.

What was the response?

- The verdict faced sharp criticism from Dalit leaders across the country and political parties.
- Dalit groups claimed that the court's order diluted the true spirit of the law.
- Despite widespread opposition, the court refused to stay its ruling.
- So dalit groups demanded an ordinance or an Amendment Bill to restore the provisions.
Following widespread protest, the Union Cabinet had given its nod to the Amendment Bill.

What does the Bill aim for?

The Amendment Bill seeks to insert three new clauses after Section 18 of the original Act.

1. preliminary enquiry shall not be required for registration of an FIR against any person
2. arrest of a person accused of having committed an offence under the Act would not require any approval
3. provisions of Code of Criminal Procedure on anticipatory bail shall not apply to a case under this Act, “notwithstanding any judgment or order of any Court”

The Centre’s decision to amend the provisions of the Act appears both reasonable and unavoidable at this juncture.

2.3 Amendments to RTE Act

Why in news?

Lok Sabha has approved an amendment to the Right to Education (RTE) Act.

What is the amendment?

- The amendment has essentially scrapped the “no detention” policy.
- The provision ensured that no student could be held back/failed in a class until the end of elementary education i.e Standard 8th.
- The amendment calls for regular examination in classes V and VIII.
- If a child fails, there is a provision to give her/him additional opportunity to take a re-examination within 2 months.
- The amendment leaves it to states to decide whether to continue the no-detention policy.

What was the rationale?

- The government sees this as a move to rebuild our education system.
- It feels that even though the dropout rates under the existing system fell, no detention has led to falling standards of educational achievement.
- e.g Students in the age group of 14 to 18 struggled with foundational skills such as reading a text in their own language or solving a simple arithmetic division.
- It feels that this move would bring accountability among teachers in elementary education system and “real motivation” to students.

What are the limitations to this move?

- Any dilution of the RTE Act without sufficient thought will erode a major constitutional achievement.
- The Act guarantees and provides for the continued presence of the child in school during the formative learning phase.
- Thus, detention would weaken this significant, progressive feature of the RTE Act.
- NITI Aayog had also found that bringing back detention in elementary schooling would increase the dropout rate.
- This would impact the poor and Dalits the most, as they depend on government institutions.
- The concerns on learning outcomes are not just determined by a student’s effort.
- They are also dependent on the number and quality of teachers, processes for continuous assessment and active engagement of parents and the community in encouraging excellence.
Other long-standing systemic limitations include poor teaching standards, inadequate infrastructure facilities, lack of monitoring mechanisms, skewed pupil-teacher ratio, etc.

2.4 Personal Laws (Amendment) Bill, 2018 - Leprosy

Why in news?
- The Personal Laws (Amendment) Bill, 2018 was recently introduced in the Lok Sabha.
- Also, Supreme Court has been hearing a petition to uphold the rights of people with leprosy and the repeal of discriminatory laws.

What are the concerns?
- Over 110 Central and State laws discriminate against leprosy patients.
- Some of these colonial laws predate leprosy eradication programmes and medical advancements.
- These laws stigmatise and isolate leprosy patients and are coupled with age-old beliefs about leprosy.
- Now, modern medicine, especially multi-drug therapy, completely cures the disease.
- In independent India, the law has been an instrument for social change.
- Nevertheless, the process of removing the discrimination has been worryingly slow.
- Recent developments signals hope at removing discrimination in law and society against the leprosy-affected.
- One of them is the introduction of the Personal Laws (Amendment) Bill, 2018 in Parliament.

What is the Personal Laws (Amendment) Bill, 2018?
- The Personal Laws (Amendment) Bill, 2018, seeks to make a start in amending the outdated statutes.
- It attempts to end the discrimination against leprosy persons in various central laws:
  i. the Divorce Act, 1869
  ii. the Dissolution of Muslim Marriages Act, 1939
  iii. the Special Marriage Act, 1954
  iv. the Hindu Marriage Act, 1955
  v. the Hindu Adoptions and Maintenance Act, 1956
- The Bill eliminates leprosy as a ground for dissolution of marriage or divorce.
- The amendments omit the provisions which stigmatise and discriminate against leprosy-affected persons.
- The Bill is meant to provide for the integration of leprosy patients into the mainstream.
- It was introduced keeping in view the UN General Assembly Resolution of 2010.
- It talks on elimination of discrimination against leprosy-affected persons and their family members.
- India has signed and ratified the Resolution.
- However, the Bill is only a small step in addressing the issues.

What are the other measures?
- The Lepers Act of 1898 was repealed only two years ago.
- Recently, the Supreme Court asked the Centre about bringing in a positive law.
- It relates to conferring rights and benefits on persons with leprosy.
- It also intends at deeming as repealed, all Acts and rules that perpetuate social stigma.
- An affirmative action law recognising their rights and benefits can serve a larger purpose.
- It may help remove misconceptions about the disease such as physical segregation of patients is necessary.
- Besides, the 256th Report of the Law Commission came up with a number of suggestions.
• It included the repeal of discriminatory legal provisions.
• It listed for abolition of personal laws and Acts on beggary.
• While governments may have to handle the legislative part, society has an even larger role to play.
• The 2017 amendment had just made an enabling legislative provision for the disposal of enemy property.
• With the approval, now, of the procedure and mechanism for sale of enemy shares an enabling framework has been institutionalized for their sale.

2.5 Assessing Defamation Law

What is the issue?
The response to the #MeToo movement in the form of defamation cases calls for a relook at the relevance and validity of the Indian defamation law.

How is defamation dealt in India?
• No legal system can allow false and slanderous statements to be made publicly, with impunity.
• In this line, the defamation law is certainly the balancing tool.
• But there is a concern that in the guise of protecting reputation, the freedom of speech and expression are often silenced.
• Unlike many other countries, defamation in India is both civil and criminal offence.
• Under the civil law, the person defamed can move either the high court or trial court.
• The complainant can seek damages in the form of monetary compensation from the accused.
• On the other hand, the Indian Penal Code also gives an opportunity to the defamed individual to move a criminal court.
• It is a bailable, non-cognizable and compoundable offence i.e. no police can register a case and start investigation without the court’s permission.
• Under sections 499 and 500 of the IPC, a person found guilty can be sent to jail for two years.
• Since the law is compoundable, a criminal court can drop the charges if the victim and accused enter into a compromise (even without the permission of the court).

What are the concerns with defamation law?
• Relevance - India’s criminal defamation law largely falls in the category of silencing the freedom of speech and expression.
• Section 499 of the Indian Penal Code provides an ideal weapon for powerful individuals to silence critical or inconvenient speech.
• It is a colonial relic that was introduced by the British regime to suffocate political criticism.
• Conviction - Unlike many other countries, defamation in India is a criminal offence (and not just a civil wrong).
• So it is a conviction that entails both social stigma and potential jail time.
• Process - There is a very low threshold for a prima facie case of defamation to be established by a complainant.
• S/he must only show that an “imputation” has been made that could reasonably be interpreted as harming reputation.
• On the other hand, an accused has multiple defences open, but they are effectively available only after the trial commences.
• So an accused individual would have to undergo the long-drawn-out trial process, where the procedure in itself is punishment.
• Disproportionality - Even the defences open to an accused are insufficient to protect free speech.
• In a civil defamation case, a defendant need to only show that her statement was true in order to escape liability.
• But in a criminal defamation proceeding, an accused must show that her statement was true and in the public interest.
• This is paradoxical as the legal system is more advantageous towards those at the receiving end of civil defamation proceedings.
• On the other hand, it is harsher towards those who have to go through the criminal process.
• Court - In 2016, the constitutionality of criminal defamation was challenged in the Supreme Court.
• But it was largely ignored by the court and was held that Sec 499 was constitutional as it protected individual reputation.
• The disproportionality of criminalising what is essentially a civil wrong was not considered by the court.

What is the new challenge?
• Much has changed in the last two years and the most significant change has been brought by the #MeToo movement.
• The #MeToo movement has brought submerged experiences to the surface and given a fresh vocabulary to express what, for years, seemed simply inexpressible.
• But powerful men filing criminal defamation cases to silence this new mode of public expression remains a concern.
• It has the threat of preserving and perpetuating the old hierarchies that the #MeToo movement has now challenged.

How was it dealt in the U.S.?
• The U.S. Supreme Court, in 1960s, made substantial modifications to defamation law.
• It was to ensure that it could no longer be used as a tool of harassment and blackmail.
• Articulating a very high threshold of “actual malice”, the court ensured that journalists and others could go about their job without fear.
• But this is as long as they did not intentionally or recklessly make outright false statements.

2.6 Impact Assessments of Legislations

What is the issue?
Demands have been increasing for an impact assessment framework before passing legislation in India.

What are the issues in law making?
• A legislation seeks to create a framework that helps coordinate certain governance processes or to resolve certain identified problems.
• It also articulates a standard of morality and an ethical approach that a society and government deems appropriate.
• However, Legislation and policies in India are often passed with inadequate scrutiny and assessment.
• The rush towards law results in policies and legal frameworks that are mostly reactive and seek to offer quick-fix solutions to complex problems.
• As a result, both law-makers and citizens are frequently blindsided by the unanticipated impact of these moves and the laws often run aground on issues of implementation.
• Also, the time and effort it takes to undo and resolve the issues caused by such hasty law-making compounds the problem that the law was intended to resolve, making the entire exercise of ‘fixing’ the issue futile.
• Also, law-making in India suffers from lack of consciousness on potential impact on the economy, ecology, development and society in ways that might be wholly unintended by their framers.
• This lack of consciousness stems from multiple causes –
1. The nature of political economy in India
2. The lack of a formal assessment structure for these laws and rules
3. The increasing complexity of law-making in today’s diverse and interconnected societies.
   - For example, the implementation of Biological Diversity Act, 2002 (BDA) shows that awareness of the BDA’s provisions is extremely limited among the judiciary and the executive.
   - It also reveals that the provisions of the act are so contradictory that conservation, use and development action have almost come to a standstill.
   - This creates the need for legislative impact assessments, which is slowly getting traction around the world.

What is the importance of Impact assessment?
   - There is widespread acceptance of the idea that laws and rules need to be comprehensively analysed prior to their enactment.
   - This is mainly done to identify the possible negative externalities from the legislation and to minimise them.
   - Countries like Kenya and Finland have mechanisms in place for the assessment of regulatory and legislative proposals as an essential part of their legislative process.
   - Thus there is a need for a policy and legislative impact assessment (PLIA) framework for India which should –
     1. Identify the policy problem, its root cause and the need for action
     2. Benchmark it against available alternatives
     3. Conduct stakeholder meetings and identify potential impact
     4. Pre-empt possible conflicts by identifying and planning for the mitigation of all negative effects of taking such an action.
   - Such a framework should be submitted and released to the public along with every proposed bill.
   - A PLIA should be a fundamentally iterative process that seeks to methodically apply a framework that assesses policies and laws at a granular level before they are put into place.
   - Costs and benefits of proposed legislation and policies should also be identified since laws have persistently sought to undervalue ecosystem services as well as indigenous peoples’ rights.

2.7 Unconstitutional laws in India

What is the issue?
Indian laws continue to be implemented in the country despite being declared unconstitutional by the judiciary.

What are such legal pronouncements?
   - **Section 66A** provides punishment for sending offensive messages through communication services.
   - These messages may be any information created, transmitted or received on a computer system, resource or device including attachments in the form of text, images, audio and video.
   - In 2015, the Supreme Court struck down Section 66A of the Information Technology (IT) Act, 2000, as unconstitutional.
   - This decision under the Shreya Singhal v. Union of India judgement was heaped with praise by domestic and foreign media alike.
   - However, even after the judgement, the Muzaffarnagar police in Uttar Pradesh arrested and detained a person for allegedly committing a crime under Section 66A for posting some comments on Facebook last year.
   - Media outlets have also reported other instances where Section 66A has been invoked by the police.
   - This points to a serious concern on the implementation of the verdict, if the police still jail persons under unconstitutional laws.
   - This also shows a tendency of some laws to inhabit the Indian legal system even after their legal deaths.
   - Media reports on the continued application of Section 66A lend themselves to a narrative that the police are abusing their power in hamlets to commit the most obvious wrongs.
• But the facts show that this is far from the truth.
• From police stations, to trial courts, and all the way up to the High Courts, we found Section 66A was still in
vogue throughout the legal system.
• Also, the Supreme Court in Mithu vs. State of Punjab struck down Section 303 of the Indian Penal Code as
unconstitutional.
• Section 303 provided for a mandatory death sentence for offenders serving a life sentence.
• In 2012, years after Section 303 had been struck down, the Rajasthan High Court intervened to save a person
from being hanged for being convicted under that offence.
• Thus the issue of applying unconstitutional penal laws long preceded Shreya Singhal and Section 66A in the
Indian justice system.

What are the reasons?
• The primary reason for poor enforcement of judicial declarations of unconstitutionality is signal failures
between different branches of government.
• Today, the work of the Supreme Court has firmly placed it within the public consciousness in India.
• It is common to read reports about the court asking States and other litigants for updates about compliance
with its orders (an example being orders in mob lynching petitions).
• While this monitoring function is one that the court can perform while a litigation is pending, it cannot do so
after finally deciding a case, even after directions for compliance are issued.
• Instead, it needs help from the legislature and executive to ensure its final decisions are enforced.
• Commonly, in this context one thinks of active non-compliance that can undermine the work of courts as
in the aftermath of the Sabarimala verdict.
• But these publicised acts of defiance have hidden what is a systemic problem within the Indian legal system.
• There exists no official method for sharing information about such decisions, even those of constitutional
import such as Shreya Singhal case.
• For any bureaucratic structure to survive, it needs working communication channels for sharing information.
• The probability of decisions taken at the highest echelons of a system being faithfully applied at the lowest
rungs greatly depends on how efficiently word gets to the ground.
• At present, even getting information across about court decisions is an area where the judiciary needs help.
• So, unless Parliament amends a statute to remove the provision declared unconstitutional, that provision
continues to remain on the statute book.
• This is why both Sections 66A and 303 are still a part of both the official version of statutes published on India
Code and commercially published copies.
• And while the commercially published versions at least mention the court decision, no such information is
provided in the official India Code version.
• Besides reading statutes, the government officials should consult notifications and circulars issued by relevant
Ministries.
• These notifications are another official method to share information about judgments declaring a provision
unconstitutional.
• Since the issuance of these notifications is not mandatory, there is no means to ensure that they are issued.
• Also, there is no formal system on information sharing in the hierarchical set-up of the Indian judiciary.
• There are few exceptions in some High Courts and district courts who did issue circulars bringing important
decisions to the notice of other members in the judiciary.

What should be done?
• The lack of authority to enforce its own decisions made the judiciary to be labelled as the least dangerous
branch.
• There is a need to avoid human error in enforcing judicial decisions to the greatest possible extent.

• The urgency cannot be overstated since enforcing unconstitutional laws is sheer wastage of public money.

• It will also make certain persons remain exposed to denial of their right to life and personal liberty in the worst possible way imaginable.

• They will suffer the indignity of lawless arrest and detention, for no reason other than their poverty and ignorance, and inability to demand their rights.

• Thus there is a pressing need to move from a system where communication about judicial decisions is at the mercy of initiatives by scrupulous officers.

3. THE UNION

3.1 Code of Conduct for Members of Legislature

Why in news?
Rajya Sabha Chairman has urged political parties to evolve a consensus on the code of conduct for members of legislatures.

What is the present state of Code of Conducts?

• A Code of Conduct for members of Rajya Sabha has been in force since 2005.

• However, there is no such code for the Lok Sabha.

• A code for Union ministers was adopted in 1964, and state governments were advised to adopt it as well.

• A conference of Chief Justices in 1999 resolved to adopt a code of conduct for judges of the Supreme Court and High Courts.

• The 15-point 'Re-instatement of Values in Judicial Life' was adopted.

• It recommended that serving judges should maintain an air of "aloofness" in their official and personal lives.

What is the case with Rajya Sabha?

• The first step was the constitution of Parliamentary Standing Committees on Ethics in both Houses.

• The Committee came into place in Rajya Sabha in 1997.

• It was to oversee the moral and ethical conduct of the Members.

• It was also tasked to examine the cases referred to it with reference to ethical and other misconduct of Members.

• The First Report of the Ethics Committee was adopted in 1999 and its framework was reiterated in subsequent reports.

• The Fourth Report was adopted by Rajya Sabha in 2005.

• A 14-point Code of Conduct for members of the House has been in force since then.

• These include the following:

  1. In case of conflict between personal interests and public trust, members should resolve it, with private interests subordinated to the duty of public office.

  2. Members should ensure that their and members of their immediate family's private financial interests do not come in conflict with the public interest.

  3. In case of any such conflict, it must be resolved without compromising the public interest.

  4. Members should never expect or accept any fee, remuneration or benefit for a vote given or not given by them on the floor of the House. This would apply to

    i. introducing a Bill

    ii. moving a resolution or desisting from moving a resolution

    iii. putting a question or abstaining from asking a question
iv. participating in the deliberations of the House or a Parliamentary Committee

- Besides, the Rules of Procedure and Conduct of Business in the Council of States specifies some provisions.
- It mandates maintaining a ‘Register of Member’s Interests’ in such form as may be determined by the Ethics Committee.
- This shall be available to members for inspection on request.
- This is also accessible to ordinary citizens under the RTI Act.

**What is the Code in Lok Sabha?**

- The first Ethics Committee in Lok Sabha was constituted only in 2000.
- The issue has been raised in every Lok Sabha since then, but has not been taken to its conclusion.
- The Report of the Ethics Committee was presented to the Speaker in 2014.
- It related to the amendments to the Rules of Procedure and Conduct of Business in Lok Sabha.
- Its recommendations were included in the report of the Rules Committee of Lok Sabha.
- It said that the Ethics Committee shall formulate a Code of Conduct for Members.
- Also, the committee shall suggest amendments or additions to the Code of Conduct from time to time.
- The matter has since been pending with the Ethics Committee.
- The Rules Committee report also recommended that the Ethics Committee make suggestions on
  1. the nature of Members’ interests to be declared
  2. the form of Register of Members’ interest to be maintained for Members of Lok Sabha
- This matter, too, is under consideration of the Ethics Committee.

**3.2 Sale of Enemy Property**

**Why in news?**

The Cabinet approved the sale of ‘enemy shares’ that are in the custody of the Ministry of Home Affairs or the Custodian of Enemy Property of India recently.

**What is an enemy property?**

- As per the Enemy Property Act, 1968, ‘enemy property’ refers to any property that was belonging to a person who migrated from India to an enemy country when a war broke out.
- During World War II, the US and the UK took over the properties of people who fled their shores to settle in ‘enemy’ countries such as Germany and Japan.
- This was touted as a move to protect their turf from hostile forces in enemy States who might take control of such assets and use it to their advantage.
- Similarly, in India too, after the war with China and Pakistan in 1962 and 1965, the government took over the properties, under the Defence of India Act, from persons who migrated to these countries.
- The confiscated property included both movable and immovable properties such as securities, jewellery, land, and buildings.
- Later in 1968, a law called the Enemy Property Act was enacted to regulate such properties and entrusted with the Custodian of Enemy Property(CEPI).
- Now, for the first time, the government has decided to sell off the property held in the form of shares (‘enemy shares’) which are lying with the custodian.
- The sale is expected to fetch about Rs 3,000 crore and will be counted as disinvestment.
- It expects to use these proceeds from sale for development and social welfare programmes.
- With the Cabinet approval, the disposal of other properties such as land and building could also likely to happen.
Why is it important?

• The property now approved for sale consists of about 6.5 crore shares which are under the custody of CEPI belonging to 20,323 shareholders in 996 companies.

• Of these, 588 companies are currently functional and 139 are listed on stock exchanges.

• Hence, selling these shares will lead to monetisation of assets that have been lying dormant for decades.

• The government also made amendments to The Enemy Property Act, 1968 recently.

• It has made even the property lawfully transferred by the ‘enemy’ (the fleeing citizen) to his/her legal heir or successor before migrating to Pakistan or China, to come under enemy property.

• To illustrate, say a person ‘A’ transferred his property to his son in 1963 and migrated to Pakistan during the war in 1965.

• After the amendment to the Act, the property transferred by A before migrating, now owned by his son, also falls under the definition of ‘enemy property’ and can be confiscated.

• Thus inheritance law will not be applicable on Enemy Property.

• The government introduced this amendment to put an end to the long-lasting disputes on claims made by the legal heirs.

• Thus these measures come at a time when the government facing the concerns with the twin deficits and hence it can pave the way to balance its budget.

What is the ongoing process?

• The process for selling these shares is to be approved by the Alternative Mechanism (AM) under the chairmanship of finance minister.

• The other members of the committee will include Minister of Road Transport and Highways and Home Minister.

• The AM will be supported by a high-level committee (HLC) of officers co-chaired by the secretaries of the department of investment and public asset management (DIPAM) and the ministry of home affairs (MHA).

• It would give its recommendations with regard to quantum, price and principles, as well as mechanism for sale of shares.

• The government has so far raised Rs 10,028 crore as disinvestment proceeds this fiscal against the target of Rs 80,000 crore.

3.3 Usage of Private Member Bill

What is the issue?

Demands for a private legislation to construct Ram temple in Ayodhya lead to the analysis of private member bill’s usage in parliament so far.

What is a private member bill?

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

• The key role of the parliament is to debate and make laws and both Ministers and private members contribute to the law making process.

• Bills introduced by Ministers are referred to as government bills.

• They are backed by the government, and reflect its legislative agenda.

• However, Private member's bills are piloted by non-Minister MPs.

• Their purpose is to draw the government's attention to what individual MPs see as issues and gaps in the existing legal framework, which require legislative intervention.

What is its mode of introduction in the House?

• The admissibility of a private member’s Bill is decided by the Rajya Sabha Chairman in the case of Rajya sabha.
• In the case of Lok Sabha, it is the Speaker, while the procedure is roughly the same for both Houses.
• The Member must give at least a month’s notice before the Bill can be listed for introduction.
• The House secretariat examines it for compliance with constitutional provisions and rules on legislation before listing.
• Up to 1997, private members could introduce up to three Bills in a week.
• This led to a piling up of Bills that were introduced but never discussed.
• Therefore, the number of private member’s Bills was later capped to three per session.
• While government Bills can be introduced and discussed on any day, private member’s Bills can be introduced and discussed only on Fridays.
• Private member’s Bills have been introduced and discussed in Rajya Sabha on 20 days in the last three years.

What is the procedure for its introduction?
• On the scheduled Friday, the private member moves a motion for introduction of the Bill, which is usually not opposed.
• Two recent exceptions to this convention were in 2004, when a bill seeking to amend the Preamble of the Constitution was opposed.
• Also in 2015, a Bill to decriminalise homosexuality was not introduced in Lok Sabha after the motion being defeated.
• However, the Supreme Court struck down IPC Section 377 recently.
• Only a fraction of private member's bills that are introduced, are taken up for discussion.
• Rajya Sabha draws a ballot to decide the sequence of discussion of Bills.
• If a Bill is successful in the ballot, it has to wait for the discussion to conclude on a Bill currently being debated by the House.
• For example, a Bill related to sittings of Parliament introduced in March 2017 was taken up for discussion only in August 2018.
• The discussion of this bill will resume when private member business is taken up in the upcoming Winter Session, and other private member’s bills will have to wait for the debate to conclude.
• Over the last three years, Rajya Sabha saw the introduction of 165 private member’s Bills and the discussion was concluded on only 18.
• A private member’s Bill that is introduced but not discussed in Rajya Sabha, lapses when Member retires.

What happens after the discussion?
• Upon conclusion of the discussion, the Member piloting the Bill can either withdraw it on the request of the Minister concerned, or he may choose to press ahead with its passage.
• In the latter case, the Bill is put to vote and, if the private member gets the support of the House, it is passed.
• In 1977, Rajya Sabha passed a private member’s Bill to amend the Aligarh Muslim University Act.
• The Bill then went to the sixth Lok Sabha, where it lapsed with the dissolution of the House in 1979.
• A bill pending in the loksabha lapses, whether it originates in the loksabha or transmitted to it by the rajyasabha.
• In 2015, Rajya Sabha passed The Rights of Transgender Persons Bill, 2014 as a private member’s Bill.
• The Bill is now pending before Lok Sabha.
• The last time a private member’s Bill was passed by both Houses was in 1970, which was the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Bill, 1968.
• Fourteen private member’s Bills, five of which were introduced in Rajya Sabha, have become law so far.
• Some of the important legislations among them include 26th amendment, which related to abolition of privy purses and 61st amendment, which reduced the voting age from 21 to 18.
4. THE STATES

4.1 Removal of J&K DGP

Why in news?
J&K Governor recently approached the SC seeking “modification” of its order regarding the appointment and removal of DGP by the states.

What happened in J&K?
- State Assembly of J&K was suspended in June 2018 and subsequently Governor’s rule was imposed.
- The Governor administration in J&K recently removed Director General of J&K Police (Law & Order) and posted him as Transport Commissioner.
- The administration says this was done due to certain emergent circumstances.
- Also, DGP-Prisons of the state was made to hold the charge as acting DGP till regular arrangement is made.

What does the recent SC ruling imply?
The SC recently passed an order on appointment and removal of DGP in accordance with its 2006 judgment in Prakash Singh vs Union of India which reads as follows.

- **Appointment** - All the States should send their proposals to the UPSC in anticipation of the vacancies to the post of DGP.
  - This has to be done at least 3 months prior to the date of retirement of the incumbent DGP.
  - The UPSC will prepare the panel, wherein merit and seniority should be given due weightage.
  - States should immediately appoint one of the persons from the panel prepared by the UPSC.
  - However, no states should appoint any person on the post of DGP on acting basis, as there is no concept as such as per the decision in Prakash Singh’s case.
- **Tenure** - It has to be ensured that the person who was selected and appointed as the DGP continues despite his date of superannuation (retirement).
  - However, some states have adopted a practice to appoint the DGP on the last date of retirement as a consequence of which the person continues for two years after his date of superannuation.

Governor’s rule in J&K
- Normally, President’s Rule is imposed after collapse of the state government under Article 356 of the Constitution.
- But J&K has its own separate Constitution that provides for an intermediary statutory layer in the state.
- As per Article 92 of the Jammu and Kashmir Constitution, Governor's Rule is imposed in the state for a period of 6 months.
- The assembly remains under suspended animation during this period.
- It means the elected MLAs remain in office and legislative assembly continues to exist without the power of legislation.
- The governor assumes the power of legislation during this period.
- Meanwhile, the governor has the power to dissolve the assembly.
- Only if the assembly hasn’t been revoked even after 6 months, J&K comes under the President's Rule as per Article 356.

- Hence, the extended term beyond the date of superannuation should be a reasonable period.
- Also, UPSC could consider people who have got clear two years of service left in the office.
- **Removal** - The State government should consult with the State Security Commission and the removal can be done under –
  1. the All India Services (Discipline and Appeal) Rules
  2. conviction in a court of law in a criminal offence
  3. a case of corruption
  4. incapacitation from discharging his duties”.

What are the concerns in J&K?
- The government did not explain the “pressing urgency” and the “emergent circumstances” that led to its move.
• It also has not registered any case that could have been cited as a reason for the removal.
• Yet, it has submitted a panel of five officers to UPSC, since the removal.

4.2 Dissolution of J&K Assembly

What is the issue?
• Jammu and Kashmir Governor Satya Pal Malik recently dissolved the State Assembly, amidst tussle in forming government.
• The Governor’s decision seems to lack proper constitutional and legal rationality.

What was going on in J&K?
• The Jammu and Kashmir State has been under Governor’s rule since June.
• It was the time when BJP withdrew from the coalition and Chief Minister Mehbooba Mufti, of Peoples Democratic Party, resigned.
• The PDP and the National Conference had not initiated any move to form a popular government for months.
• They had been idle for long, favouring fresh elections.
• The Governor’s move came soon after PDP leader Mehbooba Mufti staked claim to form government.
• She cited a collective strength of 56 MLAs in the 87-member House, with the support of the National Conference and Congress.
• A separate claim to form a government was made by SajadGani Lone of the two-member People’s Conference.
• He claimed support of the BJP and 18 MLAs from other parties.

What is the governor's rationale?
• Mr. Malik’s stated reasons for his action are
  i. extensive horse trading (vote trading)
  ii. the possibility that a government formed by parties with “opposing political ideologies” would not be stable
• He also mentioned the fragile security scenario in the state, which calls for a stable and supportive environment for security forces.

Is the Governor’s decision justified?
• The Governor ought to have known that the Supreme Court has earlier disapproved these kinds of reasoning.
• In Rameshwar Prasad (2006) case, the then Bihar Governor Buta Singh’s decision to dissolve the Assembly was held to be illegal and mala fide.
• In Bihar, the Assembly was then in suspended animation as no party or combination had the requisite majority.
• Alliances - With the BJP backing Sajjad Lone, the PDP may have sensed a danger to the unity of its 29-member legislature party.
• It thus agreed to an unusual alliance with its political adversaries.
• Describing such an alliance as opportunistic is fine as a political opinion; but it cannot be the basis for constitutional action.
• As held by the Court, a Governor cannot shut out post-poll alliances altogether as one of the ways in which a popular government may be formed.
• Horse trading - The court had said unsubstantiated claims of horse-trading or corruption for government formation cannot be cited as reasons to dissolve the Assembly.
• Delay in forming government cannot be the reason for the Governor to dissolve the 87-member House.
• Notably, the parties were just about to come together to form a likely 56-member bloc (more than required).
- But the Governor has dissolved the Assembly without giving any claimant an opportunity to form the government.
- Clearly, the J&K Governor's reasoning is irrelevant and the decision is violative of constitutional law and convention.

**What should have been done?**

- The court has said it was the Governor's duty to explore the possibility of forming a popular government.
- He could not dissolve the House solely to prevent a combination from staking its claim.
- Mr. Malik's remarks that the PDP and the NC did not show proof of majority or parade MLAs indicate a disregard for the primacy accorded to a floor test.
- In the interest of political stability in this sensitive State, it is essential that democratic processes are strengthened.

### 4.3 Second Chamber in States

**Why in news?**

Odisha’s plan calls for a national policy on the utility of a second chamber in States.

**What is Odisha's proposal?**

- Odisha now wants to join the group of States that have an Upper House.
- The State Cabinet has approved a 49-member Legislative Council.
- It has accepted the report of a committee set up in 2015.
- The committee studied the functioning of the second chamber in other States and made recommendations.

**What is the Parliament's stance?**

- The State Assembly has to pass a resolution for the creation of the Council, by a majority of its total membership.
- Thereafter, Parliament has to enact a law to create it.
- Notably, two Bills introduced in the Rajya Sabha in 2013 for establishing Legislative Councils in Assam and Rajasthan are still pending.
- It apparently indicates the lack of support for such a move.
- A parliamentary committee that went into these Bills cleared the proposals, but struck a cautionary note.
- It wanted a national policy on having an Upper House in State legislatures to be framed by the Union government.
- This is to ensure that a subsequent government in the State does not abolish it.
- It also favoured a review of the provision in the law for Councils to have seats for graduates and teachers.

**What are the benefits of a second chamber?**

- The advantages of having a bicameral legislature are well-known.
- An Upper House provides a forum for academicians and intellectuals.
- They are arguably not suited for the nature of electoral politics.
- In essence, it provides a mechanism for a more serious appraisal of legislation.

**What are the concerns?**

- If there was any real benefit, all States in the country should have a second chamber.
- The fact that there are only seven such Councils suggests the lack of any real advantage.
- Also, there is, clearly, the absence of a broad political consensus on the issue.
- **Concerns** - The forum is likely to be used to accommodate party functionaries who fail to get elected.
• This may defeat the objective of getting intellectuals into the legislature.
• There is also a question of giving graduates the privilege of being people’s representatives in a democracy.
• Today, legislatures draw their talent both from the grassroots level and the higher echelons of learning.
• There are enough numbers of doctors, teachers and other professionals in most political parties today.
• Besides, the second chamber is also an unnecessary drain on the exchequer of the state.
• It is also a restraining force against the dominance of elected majorities in legislative matters.
• Given these, Odisha’s proposal may give the country an opportunity to evolve a national consensus on Legislative Councils.

4.4 Verdict on TN MLAs Disqualification

What is the issue?
• 18 MLAs in Tamil Nadu were disqualified by the Assembly Speaker earlier.
• A split verdict has been given, regarding the disqualifications, by a two-member Bench of the Madras HC.

What is the case on?
• The case relates to a memorandum given by Mr. Dhinakaran’s loyalists to the Governor earlier in 2017.
• They belong to the Amma MakkalMunnetraKazhagam, a split party of the ruling ADMK.
• The memorandum expressed lack of confidence in the Chief Minister.
• It requested the Governor to set in motion a “constitutional process” against him.
• Following thus, on party’s Chief Whip’s complaint, the Speaker ruled that the MLAs had incurred disqualification.
• This was on the ground that their action amounted to voluntarily giving up party membership.
• It thus eventually invited provisions of the anti-defection law.

What is the rationale for upholding the disqualification?
• Both judges are cognisant of the limits of judicial review on the matter.
• But the Chief Justice Indira Banerjee upheld the earlier order of disqualification.
• She has declined to interfere on the matter.
• This was on the ground that it was proper to examine only the decision-making process, and not its merits.
• Mere criticism of the CM or withdrawal of support, by itself, would not attract disqualification.
• However, if the MLAs’ action results in the fall of their party’s government, it is “tantamount to implied relinquishment” of their membership.
• Going by this, there seems to be no perversity or mala fide in the Speaker’s action.

What is the rationale for striking down the disqualification?
• The other judge, Justice M. Sundar has noted that the Speaker’s order is invalid.
• He terms as mala fide the Speaker’s decision not to apply the disqualification rule.
• This is based on all the four grounds on which judicial review in such cases is permitted.
• These are perversity, mala fide, violation of natural justice and the constitutional mandate.
• The Speaker’s order was aimed at creating an “artificial majority”.
• The question of voluntarily giving up membership would not arise in this case.
• This is because the party itself was embroiled in a factional tussle before the Election Commission.

What are the implications?
• The matter will now be referred to a third judge.
• The option would be to choose between the limited view of the decision-making process or the other more expansive view.
• The issue leaves as many as 18 Assembly constituencies unrepresented.
• A unanimous judgment would have adversely impacted the government, regardless of the decision.
• The split judgment on the MLAs’ case gives a further lease of life to the TN Chief Minister.
• But it prolongs the political uncertainty in Tamil Nadu.

4.5 Jammu & Kashmir Resettlement Law

Why in news?
The “Jammu & Kashmir resettlement law” was challenged and the Supreme Court is soon to hear it.

What is the law about?
• It is known as the J&K Grant of Permit for Resettlement in (or Permanent Return to) the State Act, 1982.
• It was passed by the Assembly to provide for regulation of procedure for grant of permit for resettlement.
• Mass killing of Muslims in Jammu in 1947 and its ramifications are the main reason why the law was introduced.
• Muslims were said to have been systematically exterminated unless they escaped to Pakistan along the border.
• The State Government thus passed the Bill under the terms of Section 6 of the J&K Constitution.
• This has a provision for those who were stuck in areas that became Pakistan in 1947.
• Under the provision, these people can return and the Indian Constitution’s Articles 5 and 7 too permit it.

What is the controversy?
• The Bill was introduced in March, 1980 by National Conference (NC) leader Abdul Rahim Rather and became law in October, 1982.
• Both Houses of the state legislature passed the Bill in April 1982 but Governor B K Nehru returned it for reconsideration.
• Amid the Congress’s opposition, the Bill was again passed by both Houses, and this time the Governor gave assent.
• But then President GianiZail Singh had already sent a presidential reference to the Supreme Court seeking its opinion on the law’s constitutional validity (Article 142).
• The case remained pending for almost two decades until November, 2001.
• After this, a five-member Constitution Bench returned it unanswered.
• Later, Jammu-based Panthers Party challenged the law in the SC.

Why was it challenged?
• The party highlighted a security threat the state would face if the Bill is cleared.
• It noted that in Pakistan, it was mandatory for everybody to undergo two months’ military training before taking up any job.
• So through this law, Jammu would be inviting trained Pakistani soldiers.
• Apart from this, those people on return will reclaim property including agricultural land allotted to refugees

![Image](www.shankariasacademy.com) || [www.iasparliament.com]
from Pakistan-occupied Kashmir.

- This is more likely to lead to law and order problems in the State.

5. **JUDICIARY**

5.1 **Decision on Appointment of SC Judge**

**Why in news?**

Union government has cleared the elevation of Justice K.M. Joseph to the Supreme Court. Click [here](#) to know more on the issue.

**How is a Supreme Court judge appointed?**

- The Chief Justice of India and the Judges of the Supreme Court are appointed by the President under clause (2) of Article 124 of the Constitution.
- Whenever a vacancy is expected to arise in the office of a Judge of the Supreme Court, the Chief Justice of India will initiate proposal.
- The recommendation will be forwarded to the Union Minister of Law, Justice and Company Affairs to fill up the vacancy.
- The opinion of the Chief Justice of India for appointment of a Judge of the Supreme Court should be formed in consultation with a collegium of the four senior-most Judges of the Supreme Court.

**What happened in the appointment of K.M Joseph?**

- K.M Joseph was the chief justice of Uttarakhand high court.
- The five member collegium earlier recommended K.M Joseph for elevation to the SC, and it was reiterated again.
- Union government has made unusual delay in first responding to the Collegium’s recommendation, and later it took more time for reconsideration of the proposal.
- This had created stand-offs between judiciary and executive, and within the judiciary.

**What were the concerns with Government’s move?**

- Union government explained the delay was due to invocation of the seniority or diversity norms in appointments to the higher judiciary.
- It made an issue of K.M. Joseph’s relative lack of seniority among the Chief Justices of the various high courts.
- It also said that his elevation would give excessive representation to Kerala, as he belongs to the state.
- Union government has been splitting recommended lists and selectively approving proposals from the collegium, while holding back or returning some names.
- Even in its adherence to the norm that reiteration of a recommendation is binding, the government has not been consistent.

**What is the way forward?**

- The Centre had no option but to elevate the Uttarakhand High Court Chief Justice once the collegium reiterated its original recommendation after the Law Ministry returned his name.
- But it will require more outreach by the government to assuage the anxieties expressed by senior judges in letters written to the CJI.
- Given this past turbulence, the government will be watched carefully for the role it plays or doesn’t play in the future in the next big transition in the Supreme Court.

5.2 **Post-retirement Appointment of Judges**

**What is the issue?**

- Controversies around appointments of judges post-retirement have been a recurring one.
• The judiciary needs a firm mechanism to regulate the issue of post-retirement government appointments.

What are the notable instances?
• Recently, Justice A.K. Sikri, a well-regarded judge of the Supreme Court of India, accepted a post offered by the government while being a judge of the court.
• But controversy erupted over it and so he turned down the offer.
• Many judges and Law Commission members have for long denounced the act of judges accepting post-retirement jobs sponsored by governments and have called for an end to it.
• But unfortunately, Justice M.C. Chagla, who advocated this, violated the very same.
• After retirement, he accepted a government appointment to serve as Indian Ambassador to the U.S. (1958-61) and later as Indian High Commissioner to the U.K (1962-1963).
• He also served as Education Minister (1963-66) and then as Minister for External Affairs (1966-67).

What are the observations in this regard?
• Law Commission had consistently maintained that judges accepting employment under the government after retirement was undesirable.
• It had felt that this could affect the independence of the judiciary.
• A Vidhi Centre for Legal Policy's study pointed out that as many as 70 out of 100 Supreme Court retired judges have taken up some or the other assignments.
• These include those in National Human Rights Commission, National Consumer Disputes Redressal Commission, Armed Forces Tribunal, and the Law Commission of India, etc.
• It is largely observed that tribunals are getting to be havens for retired judicial persons.
• This could result in decisions being influenced if the Government itself is a litigant and appointment authority at the same time.

What is the complexity?
• Unlike abroad, a judge of the higher judiciary in India retires at a comparatively young age.
• So s/he is capable of many more years of productive work.
• The valuable experience and insights that competent and honest judges acquire during their service period cannot be wasted after retirement.
• But government-sponsored post-retirement appointments are likely to be looked upon with suspicion.
• As the saying goes, in law, justice must not only be done but also be seen to be done.

What should be done?
• The viable option is to expeditiously establish a commission, through a properly enacted statute.
• It should be made up of a majority, if not exclusively, of retired judges to make appointments of competent retired judges to tribunals and judicial bodies.
• But for the time being, the Supreme Court can invoke its power to provide an interim solution till a legislation is passed in this regard.
• It should put in place a process to regulate post-retirement appointments for judges, which ensures judiciary’s independence.

5.3 Issues with Judges’ Recusal

What is the issue?
Judges must give their reasons in writing for recusing themselves from specific cases.

What are the recent cases of recusal?
• Recusal is the process of a judge stepping down from presiding over a particular case in which the judge may have a conflict of interest.
In a recent case, challenging the appointment of M. Nageswara Rao as interim director of the CBI, three judges have recused themselves. Click [here](http://www.shankariasacademy.com) to know more on the issue.

First Chief Justice Ranjan Gogoi disqualified himself, purportedly because he was set to be a part of the selection committee tasked with choosing a new CBI Director.

He then assigned a bench presided by Justice A.K. Sikri to hear the case.

But Justice Sikri too recused, on grounds that he was part of a panel that removed the previous CBI Director Alok Verma from his post.

Next, Justice N.V. Ramana recused himself for apparently personal reasons.

However, none of these orders of recusals was made in writing.

Apart from the CBI case, recently Justice U.U. Lalit recused himself from hearing the dispute over land in Ayodhya.

This is because the judge had appeared for former Uttar Pradesh Chief Minister Kalyan Singh in a related contest.

Hence, the judge expressed his disinclination to participate in the hearing any further.

Even in this case, there is no written order specifically justifying the recusal.

Hence, it’s difficult to tell whether the disqualification was really required.

**What are the concerns?**

- **Undermining judicial independence** - In taking oath of office, judges of both the Supreme Court and the high courts, promise to perform their duties, to deliver justice, “without fear or favour, affection or ill-will”.

- However, there are many cases where the litigants suggest that the judge should recuse himself from the particular case.

- But this will allow litigants to cherry-pick a bench of their choice, which **impairs judicial fairness**.

- Also, the purpose of recusal in these cases undermines both independence and impartiality of the judges.

- **Difference interpretations** - There is a rule that no person should be a judge in her own cause.

- But there are cases where somebody else’s cause becomes the judge’s own as case proceeds.

- Also, there are some cases where judge has appeared for one of the litigants at some stage in the same dispute.

- Even then, as there are no rules to determine when the judges could recuse himself in these cases, different interpretations remain.

- **Absence of rules** - In disputes where a judge has a financial interest in the litigation, where a judge owns shares in a company which is party to the case, the fact of owning shares is considered a disqualification.

- However, when a judge owns shares in one of the litigants, he should be allowed to disclose the fact before the litigants.

- If neither party objects, the judge should be allowed to hear the case.

- But in the absence of a well-defined rule that helps establish a basic standard, a decision of this kind can prove troubling somewhere down the line.

- Also, when judges choose without a rational motive, without expressing their decisions in writing, they hurt the very idea of judicial rectitude.

- Along with that, a judge refusing the recusal in a case, despite the existence of bias in his/her judgement, is equally destructive.

**What should be done?**

- Recusals should not be used as a tool to manoeuvre justice, as a means to picking benches of a party’s choice, and as an instrument to evade judicial work.

- Judicial officers must resist all manner of pressure, regardless of where it comes from.

- This is the constitutional duty common to all judicial officers.
• If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself.
• Hence, a rule that determines the procedure for recusal on part of judges should be made at the earliest.

5.4 Concerns with Collegium system

Why in news?
SC collegium scrapped its own decision it took previously to appoint two judges and has made fresh appointments.

What is the background?
• The apex court is presently functioning with 26 judges as against the sanctioned strength of 31, leaving five clear vacancies.
• Last month, the Supreme Court had recommended the elevation of Justice Pradeep Nandrajog, the Chief Justice of Rajasthan High Court and Justice Rajendra Menon, the Chief Justice of Delhi High Court.
• However, a new collegium on January 10, which was formed after Justice Madan Lokur retired, decided to elevate Justice Maheshwari and Justice Khanna as SC judges.
• Thus, the collegium revisited its decision made at an earlier meeting.
• The elevation was made questionable, since it was criticised that the elevation has been done ignoring 32 more senior judges.
• The allegation is not merely one concerning the seniority of the two appointees.
• Rather, it is the much graver charge of arbitrarily revoking a decision that was made last month.

What are the reasons?
• The official reasons are in the public domain in the form of a resolution.
• It claims that even though some decisions were made last month, the required consultations could not be undertaken and completed in view of the winter vacation.
• When the collegium met again this month, its composition had changed following the retirement of Justice Madan B. Lokur.
• Hence, it was decided that it would be appropriate to have a fresh look at the matter, as well as the additional material.
• Also, the collegium made a claim that new material had surfaced on the process which has made the names of the two persons to be left out from the current list.
• However, it is not clear what the material is and how it affected their suitability.
• This lack of clarity shines a spotlight on the opaque collegium system of appointments in the higher judiciary.

What are the concerns?
• It is not clear whether the retirement of one judge shall be a ground to withdraw a considered decision, even if some consultations were incomplete.
• It is now widely accepted that seniority cannot be the sole criterion for elevation to the Supreme Court.
• However, the fact that there are three other judges senior to Justice Khanna in the Delhi High Court itself, two of them serving elsewhere as chief justices, is bound to cause some misgivings.
• Hence, the credibility of the collegium system has once again been called into question.
• Also, the Collegium system is still not accountable to any other authority.

What should be done?
• The process for the appointment of judges lies at the heart of an independent judiciary.
• The Second Judges’ case of 1993 led to the formation of a collegium of high-ranking judges which has since then identifying persons for appointment to the SC and high courts.
• While the collegium began with a desire for judicial independence, the recent collegium appointments show that it is not transparent.
• The lack of a written manual for functioning, the absence of selection criteria, the arbitrary reversal of decisions already taken and the selective publication of records of meetings shows that the Collegium is getting opaque.

• Also, the higher judiciary has exempted itself from the Right to Information Act.

• Thus, India needs to restore the credibility of the higher judiciary by making the process of the appointing judges transparent and the collegium must also open its proceedings to the public.

5.5 Misuse of Section 124

Why in news?
A Tamil magazine editor was recently arrested under Section 124 of the IPC.

What is Section 124?
• It applies to assaulting high constitutional functionaries such as the President and the Governor with “an intent to compel or restrain the use of any lawful power”.

• It was intended to cover cases where these functionaries are prevented from exercising their power through criminal force, attempts to overawe, or wrongful restraint.

• The offence shall be punished with 7 years imprisonment and shall also be liable to fine.

• It is a Non-Bailable, Cognizable offence and not compoundable.

What was the controversy?
• The arrest was based on a published report about Governor and his Secretary holding several meetings with an arrested assistant professor few months ago.

• The magazine based its report, not on a sting operation, but on police evidence.

• However, the TN Governor’s office had complained to the police, seeking to book the editor under Section 124.

• They cited that the offending articles express an “intention of inducing or compelling the Governor to refrain from exercising his lawful powers”.

• However, the Metropolitan Magistrate in Chennai realising the absurdity of the prosecution’s case, declined to jail the accused editor.

What was the wrongdoing here?
• The Governor had also invoked Section 124 previously when a state party staged black flag demonstrations at sites where he held meetings with district-level officials.

• It is unlikely that a black flag demonstration can attempt to “overawe” the Governor in a manner that restrains his office from exercising power.

• "Overawe" would suggest the commission of an offence that poses a real danger to the exercise of authority.

• Similarly, to extend the meaning of “overawe” to a mere protest or a work of journalism amounts to misuse of the intended provisions.

What are the precedences in this regard?
• A well-defined law has been laid down by the Supreme Court’s 1994 judgement in R Rajagopal vs State of Tamil Nadu, popularly known as the Auto Shankar case.

• According to that, public figures have to satisfy a very high threshold to claim privacy and the right to reputation for demanding prior restraint of a publication.

Categories of Offences
• If an offence is cognizable, police has the authority to arrest the accused without a warrant and to start an investigation with or without the permission of a court.

• Otherwise police does not have the authority to arrest the accused without a warrant and an investigation cannot be initiated without a court order.

• If an offence is bailable, police has the authority to release the accused on bail on getting the defined surety amount along with a duly filled bail bond at the concerned police station.

• Otherwise arrested person has to apply for bail before a magistrate or court.

• If an offence is compoundable, a compromise can be done between the accused and the victim, and a trial can be avoided.

• Otherwise, no compromise is allowed between the accused and the victim except under certain situations, where the High Court or the Supreme Court have the authority for quashing a matter.
• Therefore, it would be very difficult for the governor in this case to demand prior restraint of the news article.
• Also, prior restraint has a chilling effect on press freedom, violating Articles 19(1) & 361A.
• In contrast, in the Subramanian Swamy case, the apex court stated that a person’s right to reputation takes precedence over the media’s right to report.
• Countries like US have recognised that the complainant of prior restraint must prove the presence of actual malice in order to proceed with a defamation suit against a media house.
• But Indian courts are yet to adopt this standard.

6.  ISSUES IN FEDERALISM

6.1  All India Judicial Service

Why in news?
The NITI Aayog recently mooted the creation of an All India Judicial Service (AIJS).

What are the underlying constitutional provisions?
• Articles 233 and 234 of the Constitution vested all powers of recruitment and appointment (of judicial services of the state) with the State Public Service Commission and High Courts.
• Article 312 of the Constitution allows the Rajya Sabha to pass a resolution, by two-thirds majority, in order to kick-start the process of creating an all India service.
• Once the resolution is passed, Parliament can amend Articles 233 and 234 through a simple law (passed by a simple majority), which will strip States of their appointment powers.
• This is unlike a constitutional amendment under Article 368 that would have required ratification by State legislatures.

Can AIJS resolve the problem of judicial vacancies?
• The idea was mooted on the argument that a centralised judicial recruitment process will help the lower judiciary on timely recruitment and clearing vacancies.
• But the Supreme Court recently noted that many States are doing a very efficient job when it comes to recruiting lower court judges.
• In Maharashtra, of the 2,280 sanctioned posts, only 64 were vacant and in West Bengal, only 80 were vacant of the 1,013 sanctioned posts.
• Only in certain States such as Uttar Pradesh, the vacancies stand at 42%.
• Thus the solution is to pressure poorly performing States into performing more efficiently.
• Further, the argument that the centralisation of recruitment processes through the UPSC automatically leads to a more efficient recruitment process is flawed and not a guarantee of a solution.

Will it lead to more representation from marginalised communities and women?
• Several States already provide for reservations in their lower judicial service.
• e.g At least 12 States, which include Madhya Pradesh, Chhattisgarh, Uttar Pradesh, Rajasthan and Kerala, provide for caste-based reservation in the direct recruitment examination for district judges from the bar.
• In addition, U.P., Karnataka, Rajasthan and Chhattisgarh provide women with special reservations.
• Karnataka also recognises two additional categories of reservation within caste-based reservation — for those from a rural background and those from Kannada medium backgrounds.
• Karnataka serves as an example of how States are best suited to assess the level of intersectional disadvantage of various communities residing in the State.
• Unlike States, the Centre almost never provides reservation for women in the all India services.
• On the issue of caste, an AIJS may provide for SC/ST reservation along with reservation for the Other Backward Classes (OBC).
However, the Supreme Court recently held that SC/STs can avail the benefit of reservation in State government jobs only in their home States (domicile) and not when they have migrated.

The same principle is usually followed even for OBC reservations.

Thus, instituting an AIJS would mean that nationally dominant SC, ST and OBC groups would be at an advantage as they can compete for judicial posts across the country.

### 6.2 Significance of Art 35A and Art 370

#### What is the issue?
- The Supreme Court is hearing petitions challenging the validity of Art 35A.
- The provisions need an understanding in the context of the solemn promises at the heart of the Indian federation.

#### What is Art 35A?
- Art 35A was inserted as part of the amendments made through a 1954 presidential order, imposed under Article 370.
- It empowers J&K to define a class of persons as constituting “permanent residents” of the State.
- Also, it allows the government to confer on these persons, special rights and privileges.
- These relate to matters of
  - public employment
  - acquisition of immovable property in the State
  - settlement in different parts of the State
  - access to scholarships
  - other such aids that the State government might provide
- It exempts such legislation from being annulled on the ground that they infringe on any of the fundamental rights.

#### What is the case?
- The petition considers this immunity granted to J&K's laws as discriminatory.
- It also claims that Art 35A could not have been introduced outside the ordinary amending procedure prescribed under Article 368.
- It thus calls for declaring Art 35A unconstitutional.
- A three-judge Bench of the court intends to consider if Article 35A infringes the Constitution’s basic structure.
- Based on this, it would decide if the case has to be referred to a larger bench for further examination.

#### How are Art 35A and Art 370 justified?
- The law on the subject is well settled as previous Benches have already shown approval for the 1954 presidential order.
- Even otherwise, Art 35A is not amenable to a conventional basic structure challenge.
- This is because India’s Constitution establishes a form of asymmetric federalism.
- Clearly, some States enjoy greater autonomy over governance than others.
- This asymmetry is typified by Article 370.
- In its original form, Article 370 accorded to J&K a set of special privileges.
- This includes an exemption from constitutional provisions governing other States.
- Also, under J&K’s Instrument of Accession, it restricted Parliament’s powers to legislate over the State to three core subjects.
- These are defence, foreign affairs and communications.
• Parliament could legislate on other areas only through an express presidential order.
• This should be made with the prior concurrence of the State government.
• For subjects beyond the Instrument of Accession, the further sanction of the State’s Constituent Assembly was also mandated.
• Finally, the Art 370 also granted the President the power to make orders declaring the provision inoperative.
• But this authority could be exercised only on the prior recommendation of the State’s Constituent Assembly.
• Even changes made to the Constitution under Article 368 will not mechanically apply to J&K.
• For such amendments to apply to the State, specific orders must be made under Article 370.
• This is only after securing the J&K government’s prior assent.
• Moreover, such amendments will also need to be ratified by the State’s Constituent Assembly.
• So evidently, Art 370 represents the only way of taking the Indian Constitution into J&K.
• Also, Article 370 is as much a part of the Constitution as Article 368, thereby to justify the validity of Art 35A.

7. ELECTIONS

7.1 Representation of the People (Amendment) Bill, 2017 - Proxy Voting

Why in news?
Lok Sabha recently passed the Representation of the People (Amendment) Bill, 2017, to allow NRIs to use proxies to cast votes on their behalf.

What does the Bill aim for?
• The Representation of the People (Amendment) Bill, 2017 proposes to amend the Registration of Electors Rules, 1960.
• It stipulates the physical presence of the overseas electors in the respective polling station.
• This is a limitation for overseas electors in exercising their franchise.
• Notably, India’s diaspora population, being 16 million, is the largest in the world.
• But the registration of NRI voters has been relatively lower than this.
• The Bill thus aims at extending the facility of proxy voting to Indian voters living abroad.

What is proxy voting?
• Voting in an Indian election can be done in three ways - in person, by post or through a proxy.
• Under proxy voting, a registered elector can delegate his/her voting power to a representative.
• This was introduced in 2003 for Lok Sabha and Assemblies elections, but on a limited scale.
• Only a “classified service voter” is allowed to nominate a proxy to cast vote on his/her behalf.
• The definition includes members of the armed forces, BSF, CRPF, CISF, General Engineering Reserve Force and Border Road Organisation.
• A classified service voter can also vote by postal ballot.

How does proxy voting work?
• Once passed by both houses, Election Commission will amend the Conduct of Election Rules, 1961.
• This will lay down the procedure by which NRIs could nominate their proxies.
• Currently, the classified service voters’ proxy has to be a registered voter in the same constituency.
• The proxy is appointed through Form 13F, signed by the voter and the appointed proxy.
• This is done before a first class magistrate or notary or the commanding officer of the service voter.
• The form has to be submitted to the returning officer of the seat before the nomination of candidates closes.
• The proxy will continue to represent the service voter for all polls until the service or the appointment is revoked.

What are the practices elsewhere?

• UK - A British citizen living abroad can either travel back to vote in person or vote by post.
  • He/she can also nominate a proxy but this is subject to eligibility rules.
  • This accounts the expatriate’s period of stay abroad and the period for which the voter was registered in the UK.
  • Those who were minors at the time of leaving the country can also vote.
  • But this is only as long as their parent or guardian was registered to vote in the UK.
• US - Expatriates can vote for federal office candidates in primary and general elections.
  • This is, notably, irrespective of how long they have been living abroad.
  • Once registered, an overseas American voter will receive a ballot paper by email, fax, or download, depending on the US state.
  • This has to be returned the same way as received.

7.2 Usage of Preferential voting system

What is the issue?
The preferential voting system ensures a truly representative winner and it can be considered as an alternative to FPTP in India.

What is a preferential voting system?

• Preferential voting is a system of voting in which voters indicate their first, second, and lower choices of several candidates for a single office.
• Under this, a voter can choose just one candidate, but also rank candidates in an order of preference.
• If a candidate wins 50% of the mandate plus one vote, he/she is declared the winner.
• But if the candidate falls short of this threshold, the candidates are ranked again based on the second choice of a voter.
• And if this still falls below the threshold, the contest moves on to the third round, and so on.
• This system of voting is used for elections to the House of Representatives in Australia and to elect some mayors in New Zealand, along with some other countries.
• Nobel laureate Amartya Sen had lauded the preferential voting system, as the ordered voting allows for a true majority choice to emerge, both in the form of the candidate chosen as well as the reflection of the views of the majority, unlike the simple first-past-the-post (FPTP) system.

What is the case with India?

• India follows a first-past-the-post (FPTP) system.
• In the FPTP system, the leading candidate can win an election despite winning a minority of the votes.
• The candidate with the highest number of votes, irrespective of the margin of victory or percentage of votes polled, is declared the winner.
• The FPTP has several advantages due to which it is considered to be the simplest electoral system.
• It is an easy system to understand, wherein the choices for the voters are clear and the counting is also simple and straightforward.
• The system also guarantees one representative for each constituency who is accountable to his electorate, which is not necessarily the case in other voting systems.
• Also, candidates get to know their relative support in the constituency, unlike other systems where electors vote for a party, and not for individual candidates.

• In a country such as India, with near one billion voters, the ease of administering voting in this system almost makes it the most viable model to follow.

• However, in states like U.P. and Bihar, parties which secure less than 50% of the vote tend to win substantive majorities.

• The FPTP system rewards parties who target and treat preferentially specific segments of the electorate, or “vote banks,” rather than the majority of electors.

• It thus rewards divisive electoral strategies and encourages parties to field tainted candidates.

• In the past, this was mitigated at the Central level by the need for coalitions.

• Even if the leading party in the election fell short in vote share terms, it had to get the support of regional parties to go past the halfway mark in seat terms.

• This rendered the system a truly representative one.

• However, in the 2014 general elections, the ruling government won the majority of seats despite a vote share of only 38.5% and little accretion of outside support after the election.

• Thus, even if the preferential voting system is more complicated than the FPTP system, it is worth considering as a just alternative in the longer term.

### 7.3 Appointment of Election Commissioners

**Why in news?**

The Supreme Court is hearing a PIL on the appointment of Chief Election Commissioner and Election Commissioners.

**What is the reason behind?**

• Article 324(2) of Constitution states that the President shall, with aid and advice of Council of Ministers, appoint CEC and ECs, till Parliament enacts a law fixing the criteria for selection, conditions of service and tenure.

• But a law has not been enacted for the purpose so far.

• Hence a PIL was filed in the Supreme Court seeking a fair and transparent procedure for appointment of CEC and ECs.

• It has pointed out that the process for appointment of the CEC and ECs was different from those for other top constitutional positions.

• The Supreme Court, earlier, acknowledged that till now good persons have been appointed in the poll panel.

• Yet, it has questioned the mandate of the parliament to frame a law for this purpose and has recently referred the matter to the Constitution Bench.

**How does the electoral system evolve in India?**

• Electoral democracy in India owes a great deal to the foresight of the Constituent Assembly.

• When the Constituent Assembly debated how free and fair elections should be ensured, three important questions arose.

  1. **Whether free and fair elections should be made a part of fundamental rights or an independent institution, outside the executive, should be established to conduct the elections?**

  • The Assembly opted for the latter and created the Election Commission of India.

  2. **Whether to have a single, centralised body for elections to the Lok Sabha and State legislatures or not?**

• One proposal was that the ECI be confined to federal elections, and separate institutions be set up to conduct elections to State legislatures.

• However, with increasing tension among communities, the Assembly feared partisan action in the States and opted for a single national institution, the ECI.

• Originally, the Constitution had provided for tribunals set up by the ECI to hear election petitions.
• But aggrieved parties approached the courts, and the courts decided to hear election petitions.
• Then the ECI itself recommended that election petitions be heard by the judiciary, and in 1966, the law was changed accordingly.

3. **How to ensure the independence of the ECI?**
• The Assembly provided simply for the CEC to be appointed by the President, leaving it to the legislature to enact a suitable law, which never happened.
• Also on removal, though the CEC is provided with a security of tenure and could only be removed through impeachment, other EC’s can be removed on the recommendations of CEC.
• Hence for the ECs, even the safeguard of removal was not provided, which is also a subject matter of the above-mentioned PIL.

**What has this resulted in?**
• From 1967 to 1991, the one-party dominance in the national politics was getting faded, political competition intensified.
• The political actors stepped up violence and electoral malpractices.
• The ECI could not arrest this deterioration.
• Several State governments made large-scale transfers on the eve of elections and posted pliable officials in key positions, who sometimes flouted the ECI’s orders.
• However, during the 1996 general election, the ECI restored the credibility of the election process.
• It publicly reprimanded politicians for violating the Model Code of Conduct, postponed/cancelled elections if their credibility was compromised, intensified supervision of elections, and insisted on action against errant officials.
• The ECI has since become an institution of some authority, but still controversies over appointments of ECs, allegations of partisanship, voter bribery and paid news prevail.

**What should be done?**
• A selection committee for appointment (CEC and EC) should be made which could involve –
  1. The prime minister
  2. The leader of opposition
  3. The speaker (presiding officer of the Lok Sabha)
• Thus, though there can be no perfect process, any process involving greater inclusion, representativeness and diversity would be superior to the government of the day making the selection.

### 7.4 Finance Commission Formula for NE States

**Why in news?**
The 15th FC is planning a fair formula for the distribution of tax proceeds between the Union and the States.

**What the formula of 14th Finance Commission?**
• The 14th FC had adopted a formula-based tax devolution approach, apart from grants-in-aid for local bodies, disaster relief, and post-devolution revenue deficit grants.
• The share of devolution to the States was enhanced to 42% from 32%, which gave the States considerable flexibility.
• However, it dispensed with sectoral grants for elementary education, the forest sector and renewable energy sector, among others. No State-specific grants were recommended.
• The assumption was that a higher level of devolution would offset other requirements.
• The devolution formula, therefore, is central to the approach of resource transfers.
• The 14th FC accorded 27.5% weight to the population (of which 17.5% was of the 1971 population), 15% to area, 7.5% to forest cover and 50% to income distance.
By this Larger States with larger populations have a greater requirement of resources.

Income distance was adopted as a proxy for fiscal capacity, and forest cover was given weightage for the first time, underscoring ecological benefits.

What are the concerns with the 14th FC formula for N.E states?

- The Northeast represents a distinct entity for developmental planning and has a special category status.
- Low levels of human development indices, a low resource base, and poor connectivity and infrastructure pose a different challenge which must be taken into account in the devolution formula.
- Central Ministries earmark 10% of their allocations for the Northeast, by the same logic, 10% of tax proceeds could be earmarked for vertical devolution to the region.
- A number of centrally sponsored schemes have been rolled out where the obligation of State share is huge, adding to revenue expenditure.
- Sometimes the real burden is far more than the mandated 10%. Many centrally sponsored schemes are discontinued midway, and the burden of employee salaries falls on the States.
- The Northeast also bears a disproportionate burden of natural disasters every year on account of rainfall.
- The 14th FC disaster relief grants bore no correlation with vulnerability but were ad hoc extrapolations of previous allocations.

How 13th Finance commission approached N.E states?

- The 13th FC acknowledged the different position of the Northeast while arriving at the formula for horizontal devolution. Its twin guiding principles were equity and efficiency.
- It accorded 47.5% weight to fiscal capacity distance. Per capita GSDP was taken as a proxy for fiscal capacity.
- But States were divided into two groups, general and special category States, given that the average tax to GSDP ratio was higher for the former.
- Three-year per capita GSDP was computed separately in these two groups, weighted means of tax to GSDP ratio obtained, and per capita tax revenue was assessed for each State.
- Fiscal distance was thereafter calculated on estimated per capita revenue with reference to the highest State, which was then multiplied by the 1971 populations to arrive at the share of each State.

What factors needs to be considered?

- The disaster vulnerability index is highest for the Northeast, this needs to be factored in while allocating grants.
- The region also has the highest forest cover and represents the largest carbon sink nationally.
- Allocating 10% for forest cover would encourage States to preserve the forests.
- The Terms of Reference of the 15th FC also mention performance-based incentives based on improvements in GST collection, Direct Benefit Transfer rollout, etc, This would definitely infuse a spirit of competition.
- Thus the performance of the Northeastern States must be benchmarked with other North-eastern States and not with other states.

7.5 Re-election on Maximum NOTA Votes

Why in news?
Maharashtra State Election Commission (MSEC) recently ruled if NOTA gets the maximum votes in an election, re-elections will be held.

What is the decision?

- The MSEC supervises elections to panchayats and municipalities in the state.
- For local body polls in Maharashtra, the NOTA will now be treated as a “fictional electoral candidate”.
- None of the contesting candidates will be declared as elected and fresh elections would be held, if NOTA gets maximum votes.
• The order will be applicable to polls and bypolls to all municipal corporations, municipal councils and nagar panchayats.
• It comes five years after the Supreme Court ordered the Election Commission to introduce a ‘None of the Above’ (NOTA) button on all electronic voting machines (EVMs).
• But earlier, irrespective of the NOTA votes, the contesting candidate with the highest number of votes was declared a winner.
• This was the case even if NOTA has polled more votes than the candidate with the highest votes.

Why is it significant?
• This is perhaps the first time that the option was being introduced anywhere in the country.
• The SC had wished that the introduction of NOTA will -
  i. improve the electoral process through increased voter participation
  ii. compulsion on political parties to field good candidates
  iii. reflection of negative votes in an election result
• Giving effect to all these, the MSEC's decision would now honour and respect the majority will and opinion of the people.
• The MSEC's move also speaks for the true spirit of decentralization of power down to the third tier.

What are the other initiatives of MSEC?
• The SEC of Maharashtra has brought in some key electoral reforms in the last few years.
• It is the first one to go fully digital in the filing of nomination papers and affidavits of all candidates.
• This has eliminated most errors and enabled instant dissemination of information to the voters.
• It is the first SEC in the country to cancel registration of more than 250 political parties for failure to submit audited accounts in time.
• It is also the first one to disqualify an elected representative for failure to comply with expense disclosure rules.

7.6 Usage of VVPATs in Elections
Why in news?
The Election Commission has recently announced that there will be 100% use of VVPATs during the upcoming Lok Sabha elections.

What is a VVPAT system?
• Voter verifiable paper audit trial (VVPAT) is an independent system attached to an EVM that allows the voters to verify that their votes are cast as intended.
• When a vote is cast, a slip is printed on the VVPAT printer containing the serial number, name and symbol of the candidate voted.
• This remains visible to you through a transparent window for seven seconds.
• Thereafter, this printed slip automatically gets cut and falls into a sealed drop box.
• If there is a need, these printouts can later be counted.

How did the VVPAT system evolve in India?
• Many political parties expressed their satisfaction with EVMs initially.
• But some parties requested the Commission to consider introducing VVPATs for further transparency and verifiability of the votes cast.
• The Commission referred the matter to its technical committee on EVMs to examine and make a recommendation to the Commission.
• The committee first met with the manufacturers and then with political parties and other civil society members to explore the design requirements of the VVPAT system.
• In 2011, BEL and ECIL made a prototype of the VVPAT and demonstrated it to the technical committee and the Election Commission.
• In the same year the Commission conducted simulated elections for the field trial of the VVPAT system in various places including Thiruvananthapuram, Ladakh, Cherrapunji and Jaisalmer.
• Two years later, the government amended the Conduct of Elections Rules, 1961 allowing the Commission to use VVPATs along with EVMs.
• These were first used in the bye-election for the Noksen Assembly seat in Nagaland in 2013.
• Thereafter VVPATs have been used in select constituencies in every election to the State Assemblies.
• They were deployed in eight Parliamentary constituencies during the 2014 Lok Sabha elections.
• In the 2019 Lok Sabha elections, VVPATs will be used in all the constituencies.

Why is it important?
• In the world’s largest democracy, every vote counts and the EVMs and VVPATs try and ensure that the massive election process is in tune with the latest technological advancements.
• The Election Commission has never doubted the workings of EVMs and their utility in a free and fair electoral process.
• However, VVPATs add another layer of transparency and reliability to convince voters about the sanctity of EVMs.
• EVMs and VVPATs also quicken the election process as counting votes on EVMs takes much lesser time than counting paper ballots.
• The EVMs and VVPATs are also environment-friendly as they use very little paper compared to paper ballots.

8. LAW COMMISSION

8.1 Law Commission on Legalising Gambling

Why in news?
Law Commission of India has recommended the government to allow gambling in sports.

What are the recommendations?
• The Law Commission has observed that it is impossible to stop illegal gambling.
• Hence, the only viable option left is to allow gambling in sports and to “regulate” it.
• It recommended “cashless” gambling in sports.
• Linkage - The revenue from gambling should be taxable, which can be used for public welfare measures.
• Transactions between gamblers and operators should be linked to their Aadhaar and PAN cards.
• This will provide for the government to follow and regulate them.
• Classification - Gambling would be classified as ‘proper gambling’ and ‘small gambling’.
• Proper gambling would be for the rich who play for high stakes.
• On the other hand, small gambling would be for the low-income groups.
• **Restrictions** - The number of gambling transactions by each individual should be capped on a monthly, half-yearly and annual basis.
• Restrictions on amount should also be prescribed while using electronic money facilities.
• **Protection** - Regulations should be made to protect vulnerable groups like BPL families and minors.
• It should include those receiving social welfare entitlements, government subsidies and Jan Dhan account holders.
• **Legal** - Foreign Exchange Management and FDI laws and policies should be amended.
• This is to encourage investment in the casino/online gaming industry.
• This would boost tourism as well as employment.

What are the concerns?
• The SC in 2016 had asked the commission to look into legalising betting in cricket.
• It came as part of the judgment in the BCCI case involving illegal betting in IPL cricket matches.
• Clearly, Supreme Court's reference did not specify sports as a whole.
• Given this, the commission is said to have exceeded the brief given to it.
• There are also opinions that a country as poor as India should not allow ‘legalised gambling’.
• It could leave the poor poorer and promote vested interests.

8.2 Law Commission on Personal Laws

Why in news?
In its recent consultation paper, the Law Commission proposed certain reforms in family laws and gave it view on Uniform Civil Code (UCC)

**Mere existence of difference does not imply discrimination, but is indicative of a robust democracy.**

What are the observations made regarding UCC?
• **Uniformity** - Difference does not always imply discrimination in a robust democracy.
• So a unified nation does not necessarily need to have “uniformity.”
• Cultural diversity cannot be compromised to the extent of preserving uniformity.
• As, uniformity itself cannot become a threat to the territorial integrity of the nation.
• **Secularism** - Secularism could not contradict the plurality prevalent in the country.
• The term ‘secularism’ has meaning only if it assures the expression of any form of difference.
• This diversity, both religious and regional, should not get subsumed under the louder voice of the majority.
• However, discriminatory practices within a religion should not hide behind that faith to gain legitimacy.

What is the marriage age proposal?
• The Law Commission has advocated making 18 the marriageable age for all communities and genders.
• The age of majority and the age of voting, among other indicators of adulthood, stand at 18.
• Given this, there is no rationale for differential treatment in the case of marriage age.
• The present age of 21 for men merely affirms the stereotype that the wife should be younger.

What are the other recommendations?
• **Polygamy** - It suggested making polygamy a criminal offence and applying it to all communities.
• This is not recommended owing to merely a moral position on bigamy, or to glorify monogamy.
• It rather emanates from the fact that only a man is permitted multiple wives, which is unfair.
• Some of the other recommendations with regards to personal laws include:
  i. decriminalising adultery
  ii. making adultery a common ground for divorce
  iii. simplifying the ‘no-fault’ divorce procedure
  iv. introducing ‘irretrievable breakdown’ as a ground for dissolving any marriage
• The panel also suggests abolition of the 30-day notice period for civil marriages.
• This is to prevent its misuse by those against inter-caste and inter-religious marriages.
• It also suggests division of property equally after divorce.
• Besides, it recommends removal of illnesses that can be cured or controlled from possible grounds of divorce.

Why is it reasonable?
• Changes have been put forward to give equal treatment to children and parents of any gender.
• As per the juvenile law principle, the child’s best interest is the ‘paramount consideration’.
• This has been taken up by the Law Commission for universal application.
• The Commission’s stand against the Uniform Civil Code is against the Directive Principles of State Policy.
• However, in a world that increasingly emphasizes on cultural diversity, this is justifiable.
• It has upheld equality, non-discrimination, avoidance of taboos and social assumptions.

9. RIGHTS ISSUES

9.1 Women’s Entry into Sabarimala Temple

Why in news?
Supreme Court is hearing petitions challenging the prohibition of women of 10 to 50 years of age to enter the Sabarimala temple.

What is the temple’s legal back up?
• It relates to Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965.
• It states, “Women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship.”
• It is based on this provision that the Sabarimala temple prohibits women aged between 10 and 50 years.
• It claims, through the Travancore Devaswom Board, that its deity, Lord Ayyappa, is a “Naisthik Brahmachari.”
• So allowing young women to enter the temple would affect the idol’s “celibacy” and “austerity”.

What are the court’s observations?
• Tagging a woman’s right to enter a temple with her menstrual cycle is unreasonable.
• Exclusion of menstruating women considered ‘impure’ could amount to the practice of untouchability.
• And notably untouchability is a social evil which is abolished by law.
• The CJI said there is no concept of “private mandirs (temples).”
• Once a temple is opened, everybody can go and offer prayers and nobody can be excluded.
• The Chief Justice noted that the Sabarimala temple drew funds from the Consolidated Fund.
• It had people coming from all over the world and thus, qualified to be called a “public place of worship.”
• So, clearly, in a public place of worship, a woman can enter, where a man can go, and what applies to a man, applies to a woman.
What are the contentions?

- The current ban is based on a biological factor (menstruation) exclusive to females.
- There is thus a contention if the fundamental right of women can be discriminated solely based on such criteria.
- Article 25 mandates freedom of conscience and right to practise religion, to which all persons are entitled.
- There is nothing in *health, morality or public order* that prevents a woman from entering a public place of worship.
- Thus the right as a woman to pray is not even dependent on a legislation as it is a constitutional right.
- However, the religious freedom clauses in the Constitution are possessed of a special complexity.
- Also, the court’s own past jurisprudence seems to put forward contradicting arguments.

9.2 Clause 6 of the Assam Accord

What is the issue?

- Union Cabinet has cleared a proposal to set up a high-level committee to look into the implementation of Clause 6 of the Assam Accord of 1985.
- It is imperative to understand the significance of Clause 6, especially in the context of the National Register of Citizens (NRC) for Assam and the Citizenship (Amendment) Bill, 2016.

What is Clause 6 of the Assam Accord?

- **Purpose** - Assam Accord came at the culmination of a movement against immigration from Bangladesh.
- For recognition as citizens, the Accord sets March 24, 1971 as the cutoff date.
- It was proposed that the immigrants up to the cutoff date would get all rights as Indian citizens.
- So, Clause 6 was inserted to protect, preserve and promote the cultural, social, linguistic identity and heritage of the “Assamese people”.
- It seeks to offer constitutional, legislative and administrative safeguards to the Assamese people.
- "**Assamese people**" - As agreed by most stakeholders, the NRC of 1951 was the basis for defining “Assamese people”.
- The current NRC update is based on March 24, 1971, which defines citizenship.
- On the other hand, Clause 6 relates to “Assamese people”.
- If 1951 is accepted as the cutoff, it would imply that those who migrated between 1951 and 1971 would be Indian citizens.
- However, they would not be eligible for safeguards meant for “Assamese people”.

How has the implementation been?

- AASU (All Assam Students Union) and the Assam government had submitted a number of proposals in furtherance of Clause 6.
- Although some steps have been taken in this regard, the clause remains to be implemented fully.
- The Assam government website, however, describes a number of steps as part of the implementation of Clause 6.
- These include cultural centres and film studios, and financial assistance to historical monuments and xatras (Vaishnavite monasteries).
- In 1998, the Home Ministry set up the sub-committee under G K Pillai.
- In 2006, the state government set up a committee to help define “Assamese”.
- In 2011, it constituted a Cabinet sub-committee to deal with Clause 6.
What are the demands?

- Former CM Prafulla Mahanta was one of the signatories to the 1985 Accord as the then AASU President.
- Mahanta views “safeguards” as reservation of electoral seats, and land and political rights.
- There are also demands that it should include rights over natural resources and protection of culture of the indigenous people.
- It is also demanded that one needed to be a citizen in or prior to 1951 to purchase land, and similar laws for jobs too are called for.
- E.g. Arunachal Pradesh entrusts rights over natural resources on the basis of ethnic community
- Likewise, Manipur passed a Bill, last year, to define “Manipuri people” with 1951 as cutoff.

What will the proposed committee do?

- The committee would examine the effectiveness of actions since 1985 to implement Clause 6.
- It would hold discussions and assess the quantum of reservation of seats in the Assembly and local bodies for Assamese people.
- It will also assess the steps required to protect Assamese and other indigenous languages of Assam.
- Besides, the committee will also look into the issue of reservation in state government jobs and other measures.

What are the challenges?

- The AASU has described it as an effort to mislead people before pushing the Citizenship (Amendment) Bill, 2016.
- The Bill proposes to grant citizenship to non-Muslim immigrants from 3 countries including Bangladesh.
- This has divided residents of Brahmaputra Valley (mostly anti-Bill) and Barak Valley (pro-Bill).
- The government and the committee should thus take into account these concerns too while deciding on the safeguards.

9.3 Protest in Mizoram - Citizenship (Amendment) Bill and the Chakmas

What is the issue?

- Among various Northeastern states protesting against the Citizenship (Amendment) Bill, Mizoram witnessed massive demonstrations. Click here to know more on the Bill.

Why is the protest?

- It relaxes the citizenship eligibility rules for immigrants belonging to six minority (non-Muslim) religions from Afghanistan, Bangladesh or Pakistan.
- Political parties and non-political groups in the Northeast (NE) have protested due to the potential impact on the region’s demography.
- The Bill is also questioned for its constitutionality as it grants citizenship on the basis of religion.

Why is Mizoram’s case different in this regard?

- For protesters in Assam, Meghalaya and Tripura, the concern is about Hindu immigrants from Bangladesh.
- The Assam Accord lays down 1971 as the cutoff for acceptance as citizens.
- The National Register of Citizens is being updated based on this cutoff, which does not differentiate on the basis of religion.
But in Mizoram, the concern is not about Hindu immigrants from Bangladesh but about Chakmas, a tribal and largely Buddhist group.

The Chakmas are present in parts of the Northeast, and the Chittagong Hill Tracts of Bangladesh with which Mizoram shares an international border.

While Christians form 87% of Mizoram’s 11 lakh population (2011), Chakmas number about 1 lakh.

What is the concern with the Chakmas?

Chakmas are clearly identified as ‘non-Mizo’ by the Mizos, and there is no attempt at incorporating them as Mizo.

Notably, the Chakmas do not want to identify themselves as Mizo.

Certain sections in Mizoram blame Chakmas for illegal migration from Bangladesh, which the community denies.

Large-scale migrations are said to have taken place in 1964.

This was caused by inundation of their land due to the damming of the Karnaphuli river for a hydro-electric project in Bangladesh.

1980-4 migrations were caused by insurgency in the Chittagong Hill Tracts led by the Hills Peoples’ Movement of Bangladesh.

In 1901, there were only 198 Chakmas in Mizoram and by 1991 it was over 80,000, as per census data.

The growth rate is far more than normally possible, proving that there has been influx from Bangladesh.

The state has seen ethnic violence, names of Chakmas being struck off voters’ lists, and denial of admission to Chakma students in college.

There are even calls to expel them from Mizoram.

Given these, if the Bill is passed, Chakmas who have illegally migrated from Bangladesh will become legal Indian citizens.

Also, in some time, possibly Mizos could become a minority in their own land.

The protests are serious because protesters, notably, displayed posters that proclaimed “Hello China, bye bye India”.

What is the Chakmas’ stance?

The reliability of the Census figures between 1901 and 1941 cannot be ascertained as they are not available with the Census Directorate, Mizoram.

Chakma activists cite a 2015 report submitted by the government of Mizoram to the NHRC (National Human Rights Commission).

The report cites Census data that puts the Chakma population at around 15,000 in 1951 and 97,000 in 2011.

Reportedly, in the 1960s, Chakmas had migrated from the Chittagong Hill Tracts, but all of those people were settled in Arunachal Pradesh.

Chakmas deny any migrations into Mizoram citing the structural discrimination against them in Mizoram.

9.4 Final Draft of Updated NRC in Assam

Why in news?

The final draft of the updated National Register of Citizens (NRC) in Assam was released recently.

What is the significance?

Assam is the only State that had prepared an NRC in 1951.

It has also now become the first State to get the first draft of its own updated NRC.

The Register is meant to establish the credentials of a bona fide citizen as distinguished from a foreigner.
• This is to detect Bangladeshi migrants who may have illegally entered Assam after the midnight of March 24, 1971.
• This cut-off date was originally agreed to in the 1985 Assam Accord.
• Assam Accord - Assam witnessed a range of law and order problems and political turbulence driven by the anti-foreigners movement, in the early 1980s.
• Responding to this, the Assam Accord (1985) was signed by the Centre and the All Assam Students’ Union (AASU).
• Accordingly, those foreigners who had entered Assam between 1951 and 1961 were to be given full citizenship, including the right to vote.
• The entrants between 1961 and 1971 were to be denied voting rights for ten years but would enjoy all other rights of citizenship.
• Anyone who entered the state without documents after March 24, 1971 will be declared a foreigner and were to be deported.
• Besides, the Accord had a package for the economic development of Assam.
• It also had assurance to provide safeguards to protect the cultural, social, and linguistic identity and heritage of the Assamese people.

What are the highlights?
• The updated National Register of Citizens (NRC) listed 2.89 crore citizens.
• These were out of the 3.29 crore applicants for inclusion.
• So, there are 40 lakh applicants who were not included in the NRC.

What is the status of these 40 lakh?
• Since it’s only a draft, it does not necessarily mean that the excluded 40 lakh are not citizens.
• No one will lose citizenship rights or be sent to a detention camp merely on the basis of the draft NRC.
• They can file claims and objections at various NRC SevaKendras during the specified period.
• The Home Ministry has announced that after these, the final NRC will be published by December 31, 2018.

How were they dealt before?
• Since 1964, the Foreigners Tribunals have identified an estimated 90,000 foreigners in Assam.
• But many of them are dead and many more are “untraced”.
• Until recently, around 900 “declared foreigners” and “D-voters” (doubtful voters who could not establish their citizenship) were in the six detention camps.
• The NRC has put “on hold” 2.48 lakh names in four categories.
• These are “D-voters” and their descendants, and people whose cases are pending in the tribunals and their descendants.
• There have been reports about “D-voters” subsequently being declared Indian citizens by the tribunals.
• But they are being marked “D” all over again in later electoral rolls.
• To resolve such issues, plans are being made for a centralised database.
• This will link to real-time information on the status of “suspected foreigners”.

Who are eligible for further inclusion?
• The draft includes only those who could establish their linkage to March 24, 1971 or earlier (the cut-off date in the Assam Accord).
• The excluded 40 lakh would thus have submitted papers that were not enough to establish this linkage.
• They now have to back up their claims for inclusion with other eligible proofs.
• They will have to prove that they or their ancestors were citizens on or before March 24, 1971.
• Anyone who figured in electoral rolls up to March 24, 1971, or who are descendants of such citizens, are eligible for inclusion.
• Various other documents are admissible such as birth certificates and land records.
• But these are valid only as long as these were issued before the cutoff date.
• The claims-and-objections process will also take into account errors during the update, if any.

**What after the final NRC?**

• Once the final NRC is published, there will still be some out of the register.
• **Appeal** - They can approach any of the state’s 100 Foreigners Tribunals (the quasi-judicial bodies established in 1964).
• They can also approach the Gauhati High Court and then the Supreme Court.
• The Assam Border Police can refer any “suspected foreigner” to these tribunals following an inquiry.
• **Deportation** - If even these legal recourse fails for those excluded, they could be deported.
• Assam also has six detention camps for illegal migrants within existing jails, and proposes to build a seventh.
• These cannot, however, be expected to accommodate all the exclusions, which could finally run into lakhs.
• Also, Bangladesh has never officially acknowledged that any of its citizens migrated illegally to Assam.
• **Stateless** - So if not deported or detained in a camp, they would officially remain to be non-citizens.
• But what happens to these non-citizens remains a grey area as India has no fixed policy for “stateless” persons.
• The only aspect that is more or less clear is that a “stateless” person will not have voting rights.
• The Centre may consider formulating a policy for the “stateless”, after the final NRC.
• He or she may, however, be provided certain facilities on “humanitarian grounds”.
• There have also been suggestions in Assam that they be given work permits.

9.5 **NRC for Tripura**

**Why in news?**
Demand for National Register of Citizens for Tripura, on the lines of the NRC in Assam, has been rising in recent times.

**Who are Tripura’s indigenous people?**

• There are 19 notified Scheduled Tribes in Tripura, among whom the Tripuris are the largest group.
• The Tripuris are also considered the aboriginals as they migrated first.
• The princely state of Tripura was ruled by the Manikya dynasty, belonging to the Tripuri community, from the late 13th century until the signing of Instrument of Accession with the Indian government on October 15, 1949.
• Other important groups that are migrated at various times include Reang and Jamatia (via the Chittagong Hill Tracts from parts of Burma), Bhil, Orang and Santhal (from parts of central India and Bengal).
• The 2011 Census puts the number of Tripuris, who belong to the Indo-Mongoloid family, at 5.92 lakh, followed by Reangs (1.88 lakh) and Jamatias (83,000).
What is the extent of migration by non-tribal groups?
- From 63.77% of Tripura’s population in 1881, tribal population were reduced to 31.80% in 2011.
- This followed the migration of 6.10 lakh Bengalis between 1947 and 1971, displaced from then East Pakistan.
- The migration was also present before 1947, though it became high after Partition.
- The Manikya kings had hired Bengalis from their estate in Bangladesh to work in its administration, and encouraged them to settle in the plains to spread settled cultivation.

How many Bengalis live in Tripura now?
- According to Language Census 2011, Bengali was the mother tongue of 24.14 lakh people in Tripura.
- This represents 2/3rds of the 36.74 lakh population, and almost three times of Kokborok speaking people, which is a language of the Tibeto-Burman family and the mother tongue of the largest tribal groups.
- In 1979, Kokborok was accorded the status of official language, alongside Bengali and English.
- Though it uses the Bengali script, indigenous groups have been demanding recognition of the Roman script for Kokborok.
- The dominance of Bengali in the state, however, cannot be attributed to recent migration alone.
- It was the official court language of princely Tripura at a time when English was the official language of Bengal, while Manikya kings promoted Bengali.
- Thus the current demand stems from the issue of illegal migration after Tripura’s merger with the Indian Union, and not because of an altogether anti-bengali stance of the people.

Has migration not been an issue earlier?
- A first tribal insurgent group was emerged in the 1960s and it reached its peak in 1980, wherein insurgents got involved in mass massacres against Bengalis.
- Though the militant group entered into a peace agreement with New Delhi, the crisis doesn’t end there.
• According to the South Asia Terrorism Portal, 2,509 civilians, 455 security personnel and 519 insurgents were killed between 1992 and 2012.
• Various research identifies “land alienation” as the root cause behind ethnic strife and hence there is a requirement of land reforms and a revisit of political representation.
• This results in the emergence of demand for NRC, particularly after the exercise in Assam, wherein a new forum called “The Tripura People’s Front” suggesting July 19, 1948 as the cut-off date.
• Various groups from Tripura including the Indigenous Nationalist Party of Tripura (INPT) has also raised a similar demand.

What should be done?
• The central government has promised a committee to address the rights of the indigenous population, and strengthening of the TTADC.
• The Tripura Tribal Autonomous District Council (TTADC), covering 2/3rds (7,332 sq. km) of the state’s area, was set up in 1979 and brought under the Sixth Schedule in 1985.
• The Centre has also formed a 13-member committee to address tribal grievances.
• The state had rejected the demand for an NRC but it is open to such an initiative if the NRC exercise in Assam is successful.

10. OTHER ISSUES

10.1 Maratha Reservation Demand

Why in news?
Maratha community in Maharashtra is holding aggressive protests demanding reservation.

What are Maratha protests all about?
• Marathas, a politically influential community, constitutes around 33% of the state’s population.
• They began to agitate demanding mainly reservations for the community in jobs and education.
• According to a study of farmers’ suicides in 2014-16, nearly 78% of suicides had taken place in Marathwada and Vidarbha, and “most” of the victims were Marathas.
• There are also extraordinary circumstances including displacement, high illiteracy faced by the community.
• Maratha leaders demand the government to give them OBC status.
• Apart from this the community also demands for hostels for Maratha students in every district, and interest-free loans for the economically backward members of the community.

What is government’s plan on Maratha reservation?
• The state government responded the protesters that it would provide 16% reservation in government jobs to the Maratha community.
• State administration said a recruitment drive would be taken up once Maratha reservation gets constitutional and legal sanction.
• Apart from this the government is waiting for the consent of the Backward Class Commission which is already considering the proposal to accord OBC status to Marathas.

What are the challenges?
• Delayed Process - It is to be clear that any government do not have any right to declare reservation, it has to be done by the Backward Class Commission, the High Court and the government.
• The Backward Commission was currently going around the state to find out the social and economic status of Marathas.
• Judicial Supremacy - Bombay High Court has twice rejected a proposed quota for Marathas, striking down an ordinance issued by the earlier Congress-NCP government.
10.2  Doctors with Disabilities

Why in news?
Delhi High Court has ordered the formation of a committee of experts, to examine if students with hearing impairment and dyslexia can pursue MBBS/BDS courses.

What is the court’s order on?
- The order came after two cases of students with the said disabilities were denied admission to medical colleges.
- The court’s order has opened up a debate on two important aspects.
- One is the actual inability of those who are physically challenged to perform a task.
- The other is whether those with specific physical and mental disabilities should be allowed to become doctors.
- It is also to do with social attitude towards those with physical and mental disabilities.

What are the concerns in perceptions?
- The claim of inability of those who suffer from physical disabilities is not a well established one.
- There are ample examples from various fields (including medicine) where such people have excelled.
- So clearly, it is not their disability that impedes special people.
- It is rather the inability of society to provide opportunities for accessibility, and acceptance for them.
- Moreover, technological progress has opened new spheres of care, functionality and hence, inclusiveness.
- So evidently, the inability of those with disabilities is nothing more than a non-inclusive thought process.

How is it dealt in the US?
- In the United States, more than 20% of Americans live with a disability.
- But only 2% of practising physicians have disabilities.
- Despite the tiny numbers, they have associations of physicians with disabilities.
- They fight for the rights of their members.
- Also, they conduct studies to evaluate the functionality and patient attitudes towards doctors with disabilities.
- Most of these associations work within the purview of the Americans with Disability Act.
- There is thus a presence of a strong and effective statute in the US.
- It provides the associations the scope to look into issues with the medical curricula.
- They ensure that disabled-friendly curriculum is adopted throughout the country.

What is the case in India?
- In India, despite efforts by governments and activists, disability continues to be a social taboo.
- Doctors with disabilities are a minuscule part of any population.
- In the absence of scientific studies, this figure remains unknown in India.
- India does not have any association or organisation to work for the cause of doctors with disabilities.
- Even the recently formulated Right of Persons with Disabilities Act, 2016, has not dealt on the subject in detail.

10.3  Report on Death Penalty in India

Why in news?
No of death sentences awarded by trial courts saw a sharp rise in 2018, as per a report on death penalty in India.

What are the highlights of the report?
- The report was prepared by the National Law University, Delhi.
• The 162 death sentences by trial courts in 2018 are the highest in a calendar year since 2000.
• In 2017, capital punishment was accorded to 108 persons.
• No death sentences were pronounced in 8 states - Arunachal Pradesh, Goa, J&K, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura.
• SC commuted death sentences to life imprisonment in 11 of the 12 cases it heard.
• It upheld the sentence for 3 persons convicted in the December 16 Delhi gangrape case.
• The number of people on death row in India as of December 2018 stands at 426.

What is the possible reason for the rise?
• The increase in the number of death sentences could be the result of the recent legislative intervention.
• It extended capital punishment to non-homicide crimes (homicide - murder).
• The Parliament amended IPC to provide for death as a possible punishment in cases of rape and gangrape of girls below the age of 12.

What is the case with Madhya Pradesh?
• Among states that invoked the IPC amendment, Madhya Pradesh did so in the highest number of cases involving child sexual assault.
• This resulted in death sentences to 22 people in 2018, of whom 7 were sentenced in cases concerning sexual assault of girls below 12 years not involving murder.
• In contrast, only 6 had been accorded the death penalty by sessions courts in MP in 2017.
• The MP government has also introduced a rewards scheme for public prosecutors who seek the death penalty.

How has judiciary approached death penalty?
• SC upheld the constitutionality of capital punishment in Bachan Singh case (1980).
• But since then, there have been demands for re-examining the need.
• The Court could previously dismiss the Special Leave Petitions (SLPs) without giving any reasons (‘in limine’ dismissals) and not admitting them to be heard as appeals.
• In Babasaheb Kamble v State of Maharashtra 2018, SC finally did away with ‘in limine’ dismissals of SLPs in death penalty cases.
• The Court held that review petitions in death sentence cases will mandatorily be heard in open court.
• The SC also recognised the right of death row prisoners for meeting mental health professionals.

What is the government's stance?
• There is an enthusiasm in the government for legislative expansion of capital punishment.
• Besides legislating for death in child sex assault cases, the POCSO Act was also amended.
• It introduced death penalty for penetrative aggravated sexual assault on children below the age of 18.
• Also, in August 2018, a Bill was introduced, providing for the death penalty or life imprisonment for crimes involving piracy at sea.
• India also voted against the UN General Assembly’s draft resolution proposing a ban on the death penalty.

10.4 Abolishing Capital Punishment in India
What is the issue?
There are increasing views on abolishing capital punishment in India and it requires serious consideration.

How did it evolve?
• Until 1955, death penalty remained as the normal punishment for murder.
• In 1955, discretion was conferred on sessions judges to award capital punishment or life imprisonment for murder.
• In 1973, Cr. P.C. was amended, by which Parliament directed that special reasons should be quoted, if the Sessions Judge imposed death penalty.
• Later on in the Bachan Singh case, SC ruled that death penalty could be imposed only in rarest of rare cases in which the alternative sentence of life is unquestionably foreclosed.
• However, Machhi Singh Vs. State of Punjab case provided exceptions to the rarest of rare rule and death penalty can be invoked when –
  1. Murder is committed in extremely brutal manner so as to arouse extreme indignation of the community
  2. Murder is committed by a motive which evinces total depravity and meanness
  3. The crime is enormous in proportion.

**What are the protections guaranteed under the constitution?**

• The Maneka Gandhi case held that Article 21 affords protection not only against executive actions but also against legislations.
• Thus, a person can be deprived of his life, even under capital punishment, only if there is a law which is just, fair and reasonable.
• Under Article 72 of the constitution, the President can pardon even death sentence, while the governor cannot under Article 161.
• However, even when the pardon was denied to a death row convict, there is scope for judicial review if the presidential decision is arbitrary, irrational and discriminatory.
• Also under Article 134, right of appeal was provided from the High Court verdict to Supreme Court in any case where capital punishment was imposed on an accused in reversal of acquittal order.
• Thus the treatment of death row prisoners has been humanised under the constitution itself.

**Why should it be completely abolished?**

• There are three main objectives for punishment - retribution, deterrence and reformation.
• There is no sufficient proof to show that the death penalty is as a greater deterrent than the life imprisonment.
• It is also unrectifiable if it is discovered later that the judgment was passed by a mistaken conclusion.
• Also, the theory of reformation is based on the obligation of the society to reform a convicted person.
• The object of reformation will be totally defeated if the offender does not continue to live.
• The Law Commission of 2015 said the constitutional regulation of capital punishment has failed to prevent death sentences from being arbitrarily and freakishly imposed.
• The Commission further asserted that there exists no principled method to remove such arbitrariness from capital sentencing.
• Thus, if there still prevails a perception of arbitrariness in the way death sentences are awarded, the only lasting solution is their abolition.

**10.5 Shifting to Register-Based Census**

**What is the issue?**

• Activities for the next decennial Census of India falls due in 2021.
• It is high time that India takes note of the transformation in census methods elsewhere in the world.

**What is the recent development?**

• There has been a remarkable transformation in census methods elsewhere in the world, mostly in Europe, in last two decades or so.
The traditional census approach adopts the questionnaire-based method.

Instead, attempts are being made to use data from various administrative data registers.

Mostly, data from government sources are used, to produce useful statistics.

**What are the noteworthy methods elsewhere?**

- **Austria** - The traditional census involves a high burden for respondents, and a huge cost (€72 million).
- In 2000, the Austrian government decided that the 2001 census would be the last traditional one.
- Consequently, a register-based “test census” was conducted in 2006, successfully testing the methods, data procedures and use of registers.
- The first complete register-based 2011 census had no burden for respondents, and the cost declined to €10 million.
- Most of the data were already available in several registers like the Integrated Data Bases for persons, families, households, buildings and dwellings, and locations of work.
- Data was also available from municipalities, geo-information statistical databases and interactive maps.
- The difficult task of combining all large registers was done by using a special identification number for persons.
- At times, same variables featured in many registers.
- Variables not in any register, such as “language mostly spoken” and “religion”, were collected by suitable sample surveys.

- **Germany** - Germany conducted a nationwide census in 2011 after a 20-year gap.
- This first register-based census was a multiple-source, mixed-mode method to collect data from administrative registers.
- They include population registers, full enumerations and a sample survey.

- **Others** - In Swiss too, since 2010, information is primarily drawn from population registers and supplemented by sample surveys of about 5% of the population.
- **Nordic countries** such as Norway, Finland, Sweden and Denmark have a long tradition of using administrative registers for producing official statistics.
- They now conduct population censuses using administrative data registers rather than through a nationwide survey of households.
- **Netherlands** has held virtual censuses since 1981, using the Population Register and surveys.
- **Estonia**, perhaps the most advanced digital nation in the world, used a combined census methodology using several registers along with an e-census in 2011.
- However, Estonia is now moving towards a completely register-based census for 2021.
- **UK** would replace the decennial census beyond 2021 by statistics produced by more regular and timely administrative data.
- **Greenland** in North America and **Singapore and Bahrain** in Asia are also making effective use of registers for their censuses.

**What lies ahead for India?**

- India should think beyond the traditional questionnaire-based approach.
- While the country’s 2011 Census cost about Rs 22 billion, the 2021 Census could cost about Rs 46 billion.
- Instead, billions of rupees can be saved by making use of the administrative data of several available registers instead.
- Nevertheless, it would be a challenging task for a country like India with 1.3 billion.
- But, India does have the statistical and technological expertise.
• Several government registers can be combined along with tax, hospital and educational records to produce statistics similar to the census.

10.6 Scrapping Educational Qualification

Why in news?
Rajasthan 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, however, 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.
• 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.

What will be the impact?

• This is a progressive move and will restore the right to contest to a large section of the population in the State.
• The state of Haryana also made the minimum education qualification, following Rajasthan, to contest Panchayat poll as Class X for general candidates, Class VIII pass for women and Dalits, Class V for Dalit women.
• The Act was also upheld that year by the Supreme Court in Rajbala v. State of Haryana case in 2015.
• This shows that the temptation to expand educational eligibility requirements remains across the country.
• Hence, the recent decision of the Rajasthan government recast the debate on finding ways and means by which elected bodies are made more representative.

10.7 Issues with Teachers’ quota in Universities

Why in news?
SC recently dismissed a Special Leave Petition filed by the HRD against a 2017 order of Allahabad High Court.

What did the Allahabad High Court rule?

• The matter of Vivekanand Tiwari &Anr v Union of India and Ors dealt with the recruitment of teachers in Banaras Hindu University (BHU), a central educational institution.
• The petitioners sought cancellation of the then recruitment drive in the University.
They demanded a fresh beginning, treating each department as a unit for calculating the number of faculty posts reserved for SCs, STs and OBCs.

At that time, as mandated by the University Grants Commission (UGC), the number of SC, ST, and OBC faculty positions were calculated by treating the university as a “unit”.

All posts of the same grade across departments in a university were grouped together to calculate the quota.

The High court upheld the plea and criticised the UGC for applying reservation in teaching jobs in a “blanket manner”.

It clarified that if the University is taken as a ‘Unit’, it could result in some departments/subjects having all reserved candidates and some having only unreserved candidates which would be discriminatory and unreasonable and is violative of Article 14 & 16.

What was the basis of this judgement?

The posts of Assistant Professor, Reader, Associate Professor and Professor of each subject or the department are placed in the same pay-scale.

But their services are neither transferable nor they are in competition with each other.

It is for this reason that clubbing of the posts for the same level treating the University as a ‘Unit’ would be completely unworkable and impractical.

Thus, the HC quashed Clauses 6(c) and 8(a)(v) of the guidelines framed by the UGC in 2006, and the letter of the UGC dated February 19, 2008, which forbade the practice of creating department-wise cadres.

While in the case of Clause 8(a)(v), the HC cited the interpretation of the Supreme court for implementation of the roster system in R K Sabharwal and Ors vs State of Punjab and Ors case.

The SC had then ruled that reservation rosters in government services should be with reference to posts, and not vacancies.

Also, the roster would be implemented in the form of a running account from year to year.

How did UGC change its formula?

The Allahabad HC decision was upheld by the Supreme Court in June 2017.

Subsequently, the UGC recommended to the HRD Ministry that the High Court’s verdict should be applied to all universities.

The amended Section 6(c) now says that in case of reservation for SC/ST, all the Universities shall prepare the roster system keeping the department/subject as a unit for all levels of teachers as applicable.

The amended Section 8(a)(v) says that the roster shall be applied to the total number of posts in each of the categories [e.g., Professor, Associate Professor, Assistant Professor]within the department/subject.

However, there was widespread controversy following the order of the UGC.

Hence, the HRD Ministry moved a Special Leave Petition before the Supreme Court last year, challenging the Allahabad HC order.

Why did government appealed against?

Since the UGC order of March 2018, of the 706 vacancies advertised by 11 central universities, only 2.5% posts were for SCs, and none for STs.

A projection was presented by Banaras Hindu University to the HRD Ministry to show how the new formula would have impacted.

It showed that the posts reserved for SCs would be reduced by half, those for STs by almost 80%, and those for OBC teachers by 30%.
What are the other shortcomings?

- Reservation based on department as ‘unit’ means the number of reserved posts will be determined separately for each department.
- A department with only one professor cannot have reserved posts.
- This will drastically reduce the number of SC, ST, and OBC teachers in higher education.
- Under the old formula, posts of professors across different departments were clubbed together, and there was a better chance of positions being set aside for SCs, STs, and OBCs.
- Since reservation will only be implemented by rotation, it could take years to ensure proportional representation among teachers in higher education.

10.8 NSA for Cattle Offences

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.
GOVERNANCE

11.1 Threat to RTI

Why in news?
Rajya Sabha deferred the introduction of the bill to amend the Right to Information (RTI) Act, 2005.

What are the proposals?
- **Salary** - The Central government seeks control over the salary and allowances of the functionaries.
- **Tenure** - It also states that the Information Commissioners (ICs) shall hold office for such terms as may be prescribed by the Central government, instead of five years.
- These include Chief and other ICs at Centre, and State Chief Information Commissioners.
- It would eliminate the parity they currently have with the Chief Election Commissioner and Election Commissioners.
- Thus, the equivalence with a Supreme Court judge in matters of pay, allowances and conditions of service would also be disturbed.

Why is it a threat?
- The efficacy of the act hinges on the independence of the commissioners who are the final appellate authority.
- Making the ICs dependent on the government for their tenure strikes at the core mandate of the Act.
- Also, the Supreme Court has held right to information as being integral to the right to free expression under Article 19.
- Thus, weakening the transparency law would go against this guarantee.
- **Citizen** - RTI Act has transformed the citizen-government relationship and invalidated illegitimate concentrations of power.
- It has legitimised people's demands, and changed the feudal and colonial relationships.
- This progress would be threatened with any dilution of the spirit of the RTI Act.
- **Governance** - Under RTI, a public authority is to provide as much information suomotu to the public at regular intervals.
- The spirit of the RTI law thus lies in not just filing and getting an answer.
- It actually mandates the replacement of the prevailing culture of secrecy with a culture of transparency.
- **Ideals** - Government has shown unwillingness to operationalise Lok Pal, Whistleblowers Act and the Grievance Redress law.
- This already has a negative impact on the ideals of transparency and accountability, which would worsen with dilution of RTI.

What are the existing shortcomings?
- **Vacancy** - Central Information Commission has over 23,500 pending appeals and complaints.
- Yet, currently, there are four vacancies in the agency.
- Such is the case with several states like Andhra Pradesh and Maharashtra.
- **Disclosure** - The law envisaged that voluntary disclosure would reduce the need to file an application.
- But many State departments are ignoring the requirement to publish information suomotu.
- **Relevancy** - Fines are rarely imposed for any shortfall in compliance.
- So officers are giving incomplete, vague or unconnected information to applicants with impunity.
- Easier payment of application fee and a reliable online system to apply for information are missing.
11.2 Reinstating CBI Director

Click here to know more on the issue

Why in news?
SC recently reinstated senior IPS officer Alok Verma as CBI Director.

What are the court’s directions?

- The Central Vigilance Commission (CVC) and the Department of Personnel & Training divested the powers, functions, duties, supervisory role, etc. of Verma as CBI Director through an order passed in October 2018.
- Accordingly, it has recommended the government to remove Mr. Verma on allegations of bribery and undue interference in corruption cases.
- The court recently set aside the order and directed that the matter will now be examined by the Committee under Section 4A (1) of the Delhi Special Police Establishment (DSPE) Act, 1946.
- The committee comprises the Prime Minister, the Leader of Opposition and the Chief Justice of India.
- It also directed that the issue of divestment of power and authority of the CBI Director is still open for consideration by the Committee.
- Hence, the selection committee should meet within a week and consider Mr. Verma’s powers and authority.
- Until then, he has been restrained from making any policy decisions and his role will be confined only to the exercise of the ongoing routine functions.

What does the judgement reveal?

- The judgment reveals that neither the CVC nor the DoPT is competent to order Mr Verma’s transfer under the terms of the CVC Act and the Delhi Special Police Establishment Act.
- The government contended that stripping the CBI Director of his duties did not amount to a transfer, but only a measure to deal with an extraordinary situation.
- However, the court has rejected the government’s decision and has strengthened the principle that the head of the agency should be insulated against any form of interference.
- The court upheld the decision in the Vineet Narain case which has ruled that the removal of CBI Director, including sending him on leave, can only be done by the high powered Committee that selects the Director.
- Thus, the judgment makes it clear that Verma will have the power to exercise routine functions.
- This would mean that he can take decisions regarding the important investigations being undertaken by the CBI.
- Also, though the government has accused the court of judicial overreach into its domain, the SC has underlined the Union government’s failure to observe institutional propriety in this case.

What are the concerns with the judgement?

- **Judicial Evasion** - The court avoids deciding a thorny and time-sensitive question, but its very refusal to decide is, effectively, a decision in favor of the government, because it is the government that benefits from the status quo being maintained.
- As a matter of law SC’s decision was strange, Mr. Verma’s challenge, to recall, was that his divestment was procedurally flawed.
- The Supreme Court’s limited remit was to decide that question, It was not for the court to then direct the committee to consider the case against Mr. Verma.
- Still less was it for the court, after holding that Mr. Verma’s divestment was invalid in law, to place fetters on his powers as the Director, thus presumptively placing him under a cloud of suspicion.
- It is not appropriate, however, for a Constitutional Court that is tasked with providing clear answers to the legal questions before it.
- Supreme Court’s Aadhaar judgment, although private parties were banned from accessing the Aadhaar database, the ambiguity in the court’s holding meant that different parties interpreted the judgment differently, lead to an amendment to the Aadhaar Act that attempts to circumvent the judgment by letting in private parties through the backdoor.
This is once again, a reminder that much like judicial evasion ambiguity is not neutral, it primarily benefits the party that has the power to exploit it, and that party is invariably the government.

11.3 CBI vs States – Withdrawal of general consent

Why in news?
The Andhra Pradesh and West Bengal governments recently withdrew general consent to the CBI for investigating cases in their respective states.

What is the reason behind?
- The two state governments said that they had lost faith in the CBI in the backdrop of its internal turmoil marked by the open war among the agency's top officers.
- They have also alleged that the Centre is using the CBI to unfairly target Opposition parties.
- However, the centre argues that there is no sovereignty for any state in the matter of corruption.
- It accuses the states that this was motivated by a general fear of what investigations might reveal rather than by any particular case.

What is a general consent?
- The CBI is governed by the Delhi Special Police Establishment Act that makes consent of a state government mandatory for conducting investigation in that state.
- There are two kinds of consent in the form of case-specific consent and general consent.
- Central government through notification can ask CBI to investigate against central government employees against Income tax violations, conspiracy against nation, spying etc.,
- As law and order belongs to the states, all states normally gave a general consent to CBI for these investigations.
- “General consent” is normally given to help the CBI seamlessly conduct its investigation into cases of corruption against central government employees in the concerned state.
- For example, if CBI wanted to investigate a bribery charge against a Western Railway clerk in Mumbai, it would have to apply for consent with the Maharashtra government before registering a case against him.
- However, despite central government notification, CBI can't investigate any case registered by state government against state government employees or institutions.
- Thus the modality of CBI investigation into state government matters is that state governments has to request CBI with permission for a particular case.
- This will be followed by a central notification to the CBI for that case.
- Only if High courts or the Supreme court rules that there is a need for CBI investigation, then it is deemed that the consent of state government is there and thus central government notifies.
- Withdrawal of a consent means that the CBI will not be able to register any fresh case involving a central government official or a private person without getting case-specific consent from the states.
- This shows that a general consent is not sufficient enough to investigate and CBI has to get case-specific consent from the states.
- It simply means that CBI officers will lose all powers of a police officer as soon as they enter the state unless the state government has allowed them.
- It also makes them to seek permission of the state government for every case and every search it conducted on central government employees.
- Over the years, several states have withdrawn general consent, including Sikkim, Nagaland, Chhattisgarh and Karnataka, which stands out as an example for the recent move.

Does the CBI can no longer probe any case in the two states?
- The general consent has been withdrawn by the two states under Section 6 of the Delhi Special Police Establishment Act, 1946.
• Section 6 of the Act bars any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, without the consent of the Government of that State.

• This is in stark contrast to Section 5 of the Act gives powers to the CBI over all areas in the country.

• However, the CBI would still have the power to investigate old cases registered when general consent existed.

• Also, cases registered anywhere else in the country, but involving people stationed in Andhra Pradesh and West Bengal, would allow CBI’s jurisdiction to extend to these states.

• There is ambiguity on whether the agency can carry out a search in either of the two states in connection with an old case without the consent of the state government.

• However, there are legal remedies to that as well.

• The CBI can always get a search warrant from a local court in the state and conduct searches.

• In case the search requires a surprise element, Section 166 of CrPC allows a police officer of one jurisdiction to ask an officer of another to carry out searches on his behalf.

• And if the first officer feels that the searches by the latter may lead to loss of evidence, the section allows the first officer to conduct searches himself after giving a notice to the latter.

What happens in fresh cases?

• Withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of Andhra and Bengal.

• The CBI could still file cases in Delhi and continue to probe people inside the two states.

• The Delhi High Court makes it clear recently that the agency can probe anyone in a state that has withdrawn “general consent” if the case is not registered in that state.

• The order was given with regard to a case of corruption in Chhattisgarh, which also gives consent on a case-to-case basis.

• The court ordered that the CBI could probe the case without prior consent of the Chhattisgarh government since it was registered in Delhi.

• Thus, if a state government believes that the ruling party’s ministers or members could be targeted by CBI on orders of the Centre, and that withdrawal of general consent would protect them, it would be a wrong assumption.

• CBI could still register cases in Delhi which would require some part of the offence being connected with Delhi and still arrest and prosecute ministers or MPs.

11.4 CBI - Kolkata Police Stand-Off

What is the issue?

• West Bengal CM Mamata Banerjee went on an indefinite sit-in in front of a Police station in Kolkata, in a stand-off between CBI and Kolkata Police.

• With Supreme Court’s intervention, the stand-off has come to a halt but only leaving way for other institutional concerns.

What is the case about?

• The Central Bureau of Investigation (CBI) was tasked to question Kolkata Police Commissioner Rajeev Kumar.

• It is aimed at locating crucial evidence in connection with the Saradha scam and Rose Valley scam in West Bengal.

• The evidence was collected by the Special Investigation Team (SIT) that was formed by the West Bengal government in 2013 to investigate the chit fund cases.

• Mr. Kumar was the ‘functional head’ of the Special Investigation Team (SIT).

• But the case was transferred to the CBI in 2014 on the Supreme Court’s orders.

• CBI sources claimed that the evidence held the key to connecting the scams to influential persons in West Bengal and outside.
• CBI sources claimed they have been trying to question Kumar for the last few years, but there was no response.

What is the recent tussle?
• The CBI officials tried to enter Kolkata Police Commissioner Rajeev Kumar’s residence.
• [With a notable track record in service, especially in crushing Maoists in Jangalmahal, Mr. Kumar had earned credits from Chief Minister Mamata Banerjee.]
• Ms. Mamata soon remarked that the central government was using the CBI as a political tool.
• She eventually staged a dharna, reportedly, to save democracy and federal forces.
• Moreover, the CBI officers were illegally confined in a police station for hours.
• She ended her nearly 48-hour dharna soon after the Supreme Court order came in regards with the issue.

What has the Supreme Court ruled now?
• The Supreme Court ordered Kolkata Police Commissioner Rajeev Kumar to make himself available to the CBI for questioning.
• The court, however, barred the CBI from taking any coercive steps, including arrest, against Mr. Kumar.
• The court went further and scheduled the meeting between Mr. Kumar and the CBI at ‘neutral’ Shillong in Meghalaya and not anywhere in West Bengal.
• The court, however, issued notice on a contempt petition filed by the CBI against the Chief Secretary and the DGP of the state and Mr. Kumar, asking them to file their replies.
• The Supreme Court’s is certainly an even-handed intervention in the stand-off between the Central and West Bengal governments.
• Nevertheless, the whole episode has raised concerns on the jurisdictions and power of the CBI and the state police.

11.5 Civil Service Lateral Entry

Why in news?
The DoPT has issued a notification 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 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 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 are the views of those who oppose lateral entry?**
- An IAS officer, after years of experience at the field level, does indeed become an expert in public systems on his own right.
- Further, merely being an expert doctor doesn’t equip one enough to advice on how health policy of the nation should be formulated.
- **Alternatives** – Rather than lateral entry, it has been suggested to try short term courses for IAS officers to better their domain knowledge during service.
- Graded training programs could be designed according to governance demands, and the personal interests and aptitude of existing bureaucrats.
- Ideas have also been advanced for IAS officers to gain work experience and knowledge in diverse domains, which are worth considering.
- **Introspection** - The bureaucracy needs to introspect on why some officers have become subservient to the political classes despite their stature.
- Notably, this trend continues even after retirement, as multiple lucrative post retirement options have opened up high profile government officials.

**Is our government machinery bereft of experts presently?**
Specialists like engineers, doctors, agricultural scientists, lawyers have always had a substantial say in the decision-making and implementation.

Besides, Secretaries to the Departments of Atomic Energy, Science & Technology, Scientific and Industrial Research, Health Research, and Agricultural Research have always been scientists of eminence.

Similarly, in departments like the Railways, Posts, etc., all senior positions are manned by Indian Railway or Postal Service officers.

Therefore, there is nothing very original in the new initiative other than the fact that it has been proposed for a Joint Secretary level entry.

11.6 Reforming the Bureaucracy

Why in news?
Union government recently announced lateral entry of joint secretaries as a measure of reform in bureaucracy.

What is the role of IAS officers in governance?

- IAS officers are selected through the Civil Services Examination (CSE) conducted by the UPSC.
- About 200-300 trainee officers are selected from this examination and attend sectoral training after selection.
- The functioning of the state machinery, from the appointment of employees to disbursement of funds, requires the explicit approval of IAS officers.
- The head of the department is the secretary, who is an IAS officer and whose typical term is of three years.
- As per the Constitution, the secretary is responsible for the smooth functioning of the entire department.
- This includes the day-to-day running, effecting improvements in its functioning and outcomes, making suitable suggestions to the minister, etc.

What are the concerns with the role of secretaries?

- In the system of bureaucracy there is no guarantee that the secretary has the required training, background or expertise in enterprise management.
- This means that the entire department must rely on the long experience across departments and the “superior understanding” of the secretary.
- If the state wants to initiate disciplinary action against a particular officer, it requires the permission of the central government.
- Any reform depends on the chance that the secretary is open to inputs from his subordinate senior managers, the outcomes of such a system are obviously patchy.

What is the need for decision on lateral entry of officers?

- The planning, design and test procedures being used by the engineers and geologists in various government department are outdated.
- The antiquated job profiles of government servants and moribund senior administration are important reasons for a creeping privatisation and periodic freezes on state recruitments.
- It is also responsible for the absence of new professions, new research and smart companies in several key sectors such as water, public transport and logistics.
- This called for a drastic change in the structure of the department and the roles and responsibilities of IAS officers.
- The recently proposed lateral entry is one such mechanism at the Union level.

What further measures needs to be taken?

- Every government department should create a new section called “Analysis and Research (AR)”, which is led by an officer at the level of a deputy secretary.
- The section should be adequately staffed at the division and district level and have its own guaranteed funding.
• The main task of the deputy secretary will be to prepare and maintain a detailed documentation of the working procedures within the department.
• Such reports will ensure that the people at large appreciate the scale of the problems and are mobilised to work towards their solution.
• It will also help students, researchers, funding agencies and industry to identify problem areas and come forward with possible approaches to bring improvements in the sector.

11.7 Regulating Lobbying

What is the issue?
• Recently, the CBI alleged that AirAsia tried to influence India’s international flying regulations through lobbyists.
• It is imperative to look at the varied issues in relation with the reality of lobbying.

What is lobbying?
• Lobbying refers to the practice of influencing the policy decisions of the government.
• It refers to the business classes’ efforts to shape the policies to suit its needs.
• The decisions may be benign such as urging subsidies for electric vehicles.
• It could also be harmful like relaxing environment norms for coal-mining or having an impact on the national interest.
• Lobbying is an inescapable characteristic of any economy with a vibrant business ecosystem.
• This is particularly prominent in systems that function in a democratic polity.

How is lobbying in India?
• The secretive habits of the licence raj still linger in terms of opacity in policy-making.
• Amidst this, lobbying remains a grey area, which is neither recognised nor regulated.
• Yet, the irony is that governments are subject to lobbying for sure.
• There is absence of a specific statute or even “guideline” in this regard.
• This is making way for a range of illegal activities which are hard to detect or control.

How have governments handled this?
• Successive Indian governments have had middlemen in the defence business.
• The Bofors scandal of the mid-1980s resulted in a blanket ban on middlemen for defence purchases.
• However, middlemen still perform a service worldwide.
• They enable the governments to evaluate a range of choices and negotiate optimum deals.
• In 2014, the present government allowed middlemen back.
• But it was cautious with their re-entry, by specifying various conditions.
• These included delinking their commissions to the outcome of the negotiations.

How is it in other countries?
• In the US and some western European jurisdictions, lobbying is subject to disclosure statutes.
• They make it mandatory to register, declare their client lists, activities, fees and itemise expenditure.
• These disclosure laws do not eliminate corruption.
• However, they allow for a considerable level of transparency.
• They make it possible for journalists and the general public to access information.
• It provides on which lobbyists had been paid, by whom and for what cause.
• It also allows tracking the outcome in terms of policy-making.
• Evidently, many cases of corruption come to light simply by accessing public records.

What is the way forward?
• India could consider emulating the best practices in other parts of the world.
• This would work better, as against unrealistic restrictions on politicians and bureaucrats under Prevention of Corruption Act.
• A clear lobbying law would introduce transparency at the intersection of business and politics.

11.8 Understanding Corporate Governance

What is the issue?
• In recent times various issues regarding corporate governance are being prevalent in India.
• In this scenario it is important to know about the corporate governance.

What does corporate governance mean?
• The West has associated “governance” with a sense of piloting, steering or directing and oversight and ruled the modern day interpretation of “corporate governance”.
• The Indian Companies Act 2013 does not define this term, though the accoutrements which help establish the standards of corporate governance in a company, are described in full regalia in the Act.
• The Cadbury Committee describes corporate governance as the mechanisms, processes and relations by which corporations are controlled and directed.
• Thus reduced to its bare essentials, corporate governance would mean the governance of companies.

What are the various issues in Corporate governance?
• Getting the Board Right - Board of directors appointments in India are still by way of “word of mouth” or fellow board member recommendations.
• It is common for friends and family of promoters (a uniquely Indian term for founders and controlling shareholders) and management to be appointed as board members.
• Performance Evaluation of Directors - Although performance evaluation of directors has been part of the existing legal framework in India, Evaluation is always a sensitive subject and public disclosures may run counter-productive.
• True Independence of Directors - Independent directors’ appointment is biggest concern in the corporate governance.
• The independence of promoter appointed independent directors is questionable as it is unlikely that they will stand-up for minority interests against the promoter.
• Removal of Independent Directors - In India there are instances of independent directors not siding with promoter decisions have not been taken well and they were removed from their position by promoters.
• Since there is a law that an independent director can be easily removed by promoters or majority shareholders.
• Accountability to Stakeholders - Various general duties have been imposed on all directors, directors including independent directors have been complacent due to lack of enforcement action.
• Executive Compensation - Executive compensation is a contentious issue especially when subject to shareholder accountability.
• Risk Management - Indian companies certainly don’t have a clear idea about the risk management and predictions.
• As a key aspect of risk management, privacy and data protection is an important governance issue, but it has been always neglected.
What measures needs to be taken?

- Innovative solutions such as rating board diversity and governance practices and publishing such results or using performance evaluation as a minimum benchmark for director appointment are the need of the hour.
- In a peer review situation, to avoid public scrutiny, negative feedback may not be shared, to negate this behaviour the role of independent directors in performance evaluation is key.
- To protect independent directors from vendetta action and confer upon them greater freedom of action, it is imperative to provide for additional checks in the process of their removal.
- Companies have to offer competitive compensation to attract talent, such executive compensation needs to stand the test of stakeholders' scrutiny.
- The board must assess the potential risk of handling data and take steps to ensure such data is protected from potential misuse.

11.9 Need for Anti-Surveillance Laws

What is the issue?
A range of measures for surveillance by various government departments suggest a declining nature of privacy.

What are the noteworthy proposals?

- **MHA** - The latest is the home ministry’s (MHA) step to create a centralised database of fingerprints. Click [here](http://www.shankariasacademy.com) to know more
  - It aims at linking all police stations and state fingerprint databases across India to CCTNS.
  - Reportedly, MHA is also repeatedly asking for access to the Unique Identification Authority of India’s (UIDAI) biometric database.
  - It contains the data for over one billion citizens.
- **SEBI** - A panel set up by the Securities and Exchange Board of India has recently recommended some powers for SEBI.
  - It provides for the market regulator to wiretap and record phone calls.
  - This is in order to enhance SEBI’s ability to monitor insider trading.
- **Internet** - The Netra (Network Traffic Analysis) system for internet monitoring has been operational for several years.
  - But its exact capabilities are unknown since it is shielded from the Right to Information Act owing to security implications.
- **Social Media** - The government is considering creating a social media monitoring hub.
  - This is to enable “360-degree monitoring” of the social media activity of netizens.
  - This was put on hold only after the Supreme Court observed that it would be “like creating a surveillance state”.
- **Bill** - The draft legislation of the Personal Data Protection Bill 2018 was recently given by the Srikrishna Committee.
  - It gives wide powers to the government to collect and process data in order to exercise the functions of the state.
  - Notably the powers can be used, without taking the consent of citizens.
  - So there is a concern that it does little to limit the powers of government agencies.

What are the concerns?

- The steps lead to apprehensions of India becoming a surveillance state with unchecked and growing powers to spy on citizens.
- Also, the SC’s judgment recognising the right to privacy as a fundamental right is being undermined in practice.
• There is thus a need for specific laws limiting the surveillance powers of governments.
• The legal checks are more crucial with technological advancements making surveillance systems even more invasive.

11.10 Statutory Recognition of Trade Unions

Why in news?
Union government has proposed to grant statutory recognition to TUs by amending the Trade Unions Act, 1926 (TU Act).

What is the status of Trade unions in India?
• The trade union movement in India, for various reasons, has been characterised by a multiplicity of unions.
• Hence, a tripartite national body determines the membership criteria for designating trade union organisations as central trade union organisations (CTUOs).
• On the basis of this process, certain unions are deemed ‘recognised’.
• Trade unions with a verified membership of five lakh spread over at least four States and four industries as on December 31, 2002 were given the status of CTUOs by the Office of the Chief Labour Commissioner (Central), as per the 2002 exercise, currently there are 13 CTUOs.

What is government’s plan on trade unions?
• The Centre proposes to grant statutory recognition to TUs by amending the Trade Unions Act, 1926 (TU Act), so that other central and state ministries take them seriously.
• The proposed Section 28-A in the TU Act would require the Centre and the States to provide for statutory recognition of trade unions.
• The amendment provides that in the event of any dispute over recognition by the Central or the State governments, it will be decided by an authority, and by means provided by the appropriate government.

What are the concerns with the proposal?
• The TU Act merely provides for voluntary registration of trade unions, and not for their statutory recognition by employers for collective bargaining purposes.
• Despite demands by trade unions and employers, statutory recognition by employers does not exist in the Act.
• In the absence of statutory union recognition and bargaining obligation, any minority union can vitiate industrial relations in a firm either on its own or by connivance with employers.
• The proposal also completely ignores the serious “allegations and complaints” made by various CTUOs that the Labour Ministry has been carrying out several labour reforms without consulting them.

What measures needs to be taken?
• In a pluralistic democracy, various pressure groups of workers and employers’ organisations co-exist.
• The government engages with them to determine policies and laws. As a member of the International Labour Organisation and having ratified Tripartite Consultation (International Labour Standards) Convention, 1976 in 1978, the government is committed to social dialogue.
• Statutory recognition becomes necessary as employers may not wish to negotiate with a trade union of workers’ choice.
• India having ratified the ILO Convention is bound to “recognise” representative trade unions, anyway (determined voluntarily or otherwise).
• In a pluralistic democracy good governance demands consultations with all stakeholders.
• Thus any legal reform to improve representative processes must be backed by genuine socio-economic intent.
11.11 Pitfalls in Navodya Vidyalaya Model

What is the issue?
Navodya Vidyalayas once considered to be a major innovation has now lost its purpose.

What was the significance of NV schools?
- Union government launched the Navodaya Vidyalayas (NVs) in the mid-1980s, they were presented as a major innovation in social policy in that they were intended to serve rural children.
- They are run by Navodaya Vidyalaya Samiti, New Delhi, an autonomous organization under Ministry of Human Resource Development.
- JNVs are fully residential and co-educational schools affiliated to Central Board of Secondary Education (CBSE), New Delhi, with classes from VI to XII standard.
- JNVs are specifically tasked with finding talented children in rural areas of India and providing them with an education equivalent to the best residential school system, without regard to their families’ socio-economic condition.

How NVs revolutionized rural education?
- Enrolment to NV’s Grade 6 was based on an entrance test, with 80 per cent reservation for children belonging to villages located in a district.
- NCERT conveyed its doubts about the reliability and validity of a selection procedure dependent on a test among 11-year olds.
- The government went ahead and started setting up NVs across the country
- NVs were promoted as “pace-setting” schools, implying that they would serve as a model for other schools in the district.
- Soon, coaching centers sprang up in every district to help children succeed in the NV enrollment test.
- NVs offered a congenial institutional ethos where policies could be showcased.

What are critical administrative pitfalls in NV?
- NV’s facilities and funds were way ahead and they were not governed by the state directorate.
- After a few years of inception, the NVs faced a big dilemma, should they serve as models of child-centered education in rural areas or prepare village children for national-level contests for seats in prestigious institutions of medicine and engineering.
- A decade ago, the pressure to follow the latter route began to increase within the bureaucracy.
- Proposals to provide coaching to the senior secondary level students were mooted.
- NGOs like Dakshana were given permission to select children with the best potential and coach them.
- From the beginning, NVs had emulated the urban public school model and there was little concern to develop a new vision for rural children.

What are the consequences of this?
- The one-size fits-all template of secondary education in India has exacerbated the pressures that adolescents routinely face and feel, leading many to feel lonely, depressive and suicidal.
- Suicides before and after higher secondary exams are reported every year across India, coaching institutions have also joined this trend.
- In the NV case, nearly half of the reported 49 cases over the last five years are from marginalized groups.
- The administration places the blame on teachers who are themselves overburdened, the absence of trained counsellors adds to the problem.
- Most schools justify putting children under pressure by referring to parental pressures.
- The recent reports about suicides in NVs demonstrate that they no longer exemplify the search for an alternative.