IAS PARLIAMENT

Information is a Blessing

A Shankar IAS Academy Initiative

MAINSTORMING 2020

POLITY & GOVERNANCE I

SHANKAR IAS ACADEMY

18, Old Plot No 109, New Plot No 259, AL Block, 4th Avenue, Shanthi Colony, Anna Nagar, Chennai - 600040.

Chennai | Bengaluru | Trivandrum | Madurai | Trichy | Coimbatore | New Delhi

www.shankariasacademy.com | www.iasparliament.com

IAS PARLIAMENT
Information is a Blessing
A Shankar IAS Academy Initiative

MAINSTORMING 2020

POLITY & GOVERNANCE I

(JANUARY 2020 TO AUGUST 2020)

MAINSTORMING 2020

POLITY & GOVERNANCE I

POLITY

1. RIGHTS ISSUES

1.1 Misuse of Disaster Management Act

What is the issue?

- Dhaval Patel, editor of a news portal in Gujarat, was arrested on the charge of allegedly spreading panic.
- The frequency with which journalists have been arrested since the outbreak of the COVID-19 pandemic demands attention.

What is the case about?

- It involved an article speculating that the CM Vijay Rupani may be replaced by his party.
- The said reason was his alleged inept handling of efforts to combat the pandemic.
- The report had even named a possible successor.
- It is contentious how such a report could amount to sedition, regardless of whether the speculation is true.
- In any case, it is excessive to punish 'reportage with inadequate verification' with arrest and prosecution for sedition.
- Mr. Patel has also been charged under Section 54 of the Disaster Management Act.
- This was for allegedly spreading panic through a false alarm concerning a disaster.

What is the larger concern?

- Special provisions are in place to prevent the spread of rumour during disasters.
- But these are being used to suppress reporting on political developments and possible governmental corruption.
- The Editors Guild of India has seen a “growing pattern” in the misuse of criminal laws to intimidate journalists and suppress dissent.
- The use of sedition law to fight fake news is an attempt to suppress inconvenient reports.

What does this call for?

- Section 54 of the Disaster Management Act only penalises the spreading of panic relating to the severity or magnitude of a disaster.
- It does not extend to mere incorrect reporting.
- There ought to be greater restraint while invoking special provisions relating to handling disasters and epidemics.

1.2 Sedition Law - Section 124A of the IPC

What is the issue?

- The Section 124A (Sedition) of the Indian Penal Code (IPC) is being used more often recently.

- So, it is important to have a look at what courts and the Maharashtra government have said about the Section 124A IPC.

What is its validity?

- Section 124A has been challenged in various courts in specific cases.
- The validity of the provision itself was upheld by a Constitution Bench of the Supreme Court (SC) in 1962, in Kedarnath Singh vs State of Bihar.
- That judgment went into the issue of whether the law on sedition is consistent with the fundamental right under Article 19 (1) (a).
- [Article 19(1)(a) guarantees freedom of speech and expression].
- The SC laid down that every citizen has a right to say or write about the government by way of criticism or comment.

Section 124A

- Section 124A IPC states that whoever brings or attempts to bring hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India shall be punished.
- The punishment may involve imprisonment of 3 years to life term, to which a fine may be added; or, with fine.

- It also added that this comment shouldn't incite people to violence against the government established by law or with the intention of creating public disorder.
- The SC ruled that casual raising of slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection by the government.

What is the Maharashtra circular?

- In a 2015 circular, the Maharashtra government laid down the preconditions to its police personnel before invoking sedition.
- The circular came during the hearing of a public interest litigation (PIL) in the Bombay High Court, after a cartoonist was booked for sedition.
- The sedition charge was subsequently dropped by the police; a PIL was filed in 2015 on the alleged arbitrary application of the charge.

What the High Court (HC) said?

- In 2015, the HC referred to the Kedarnath judgment and said there was a need to lay down parameters for the invocation of Section 124A.
- Otherwise a situation would result in which an unrestricted recourse to Section 124A resulting in a serious encroachment of guarantee of personal liberty conferred upon every citizen of a free society.
- However, the court said it did not feel the need to dwell on the subject further.
- It said so due to the fact that the then state government had proposed that it would issue guidelines in the form of a circular to all its police personnel for the invocation of Section 124A.

What are the state guidelines?

- The circular was issued, and its guidelines included preconditions to be kept in mind while invocation of 124A.
- The preconditions were that the words, signs or representations must,
    1. Bring the government into hatred or contempt or
    2. Cause or attempt to cause disaffection, enmity or disloyalty to the government.
- Along with these, it must also inciting violence or tend to create public disorder or a reasonable apprehension of public disorder.
- The comments expressing criticism of the government with a view to change the government by lawful means without any of the above are not seditious under Section 124A.

- To ensure that the section is used arbitrarily, the circular directed that a legal opinion from the district law officer should be taken by the public prosecutor addressing fulfilment of these conditions.

1.3 Quashing Defamation Proceedings

Why in news?

Multiple defamation proceedings initiated against media houses by the erstwhile Jayalalithaa government in TN were quashed by the Madras High Court.

What is the significance?

- Indiscriminate institution of criminal defamation proceedings against Opposition leaders and the media has become a feature of public life in Tamil Nadu in the last three decades.
- Justice Abdul Quddhose quashed a series of defamation complaints filed since 2011-12.
- It is a landmark judgement, also for applying a set of principles.
- These principles would firmly deter the hasty and ill-advised resort to State-funded prosecution on behalf of public servants.

What were the observations made?

- The State should not impulsively invoke CrPC provisions to get its public prosecutor to file defamation complaints in response to every report that contains criticism.
- Public servants and constitutional functionaries must be able to face criticism since they owed a solemn duty to the people.
- The State cannot use criminal defamation cases to throttle democracy.
- The Court advises the government to have a higher threshold for invoking defamation provisions.
- Each time a public servant feels defamed by a press report, it does not automatically give rise to a cause for the public prosecutor to initiate proceedings on her behalf.
- The court also found fault with the government for according sanction to the initiation of cases without explaining how the State has been defamed.
- The statutory distinction between defaming a public servant as a person and as the State itself being defamed has to be maintained.
- It cautioned prosecutors against acting like a post office, noting that their role is to -
    a) scrutinise the material independently to see if the offence has been made out
    b) if so, whether it relates to a public servant's conduct in the course of discharging official functions or not
- With this, the court found that many were cases in which public servants ought to have filed individual cases.

What are the other essential criteria?

- An accusation should have been actuated by malice, or with reckless disregard for the truth.
- This was noted as an essential ingredient of criminal defamation in an earlier Madras HC ruling.
- A recent judgment by Justice G.R. Swaminathan enunciated what is known in the U.S. as the 'Sullivan' rule of 'actual malice'.
- The Judge made this while quashing a private complaint against a journalist and a newspaper.
- It was noted that two of the exceptions to defamation given in Section 499 pertained to -
    i. 'public conduct of public servants'

ii. 'conduct of any person on any public question'

- Thus, the legislature itself clarifies that it should have been demonstrated that reporting on the above two cases were vitiated by malice.
- Otherwise, the question of defamation does not arise.
- Also, even inaccuracies in reporting need not amount to a prosecution for defamation.

1.4 Committee for Reform of Criminal Laws

Why in news?

The Ministry of Home Affairs (MHA) has constituted a national level 'Committee for the Reform of Criminal Laws'.

What is the committee for?

- The criminal law in India comprises -
  1. The Indian Penal Code Of 1860
  2. The Code Of Criminal Procedure That Was Rewritten In 1973
  3. The Indian Evidence Act that dates back to 1872
- The idea that the current laws governing crime, investigation and trial require meaningful reform has long been in place.
- There have been several attempts in recent decades to overhaul the body of criminal law.
- Given this, the committee's mandate now is to recommend reforms in the criminal laws in a principled, effective, and efficient manner.
- The reforms should ensure the safety and security of the individual, the community and the nation.
- It should prioritise the constitutional values of justice, dignity and the inherent worth of the individual.

How does it work?

- The committee has several leading legal academicians on board.
- It would be gathering opinions online, consulting with experts and collating material for their report to the government.
- Questionnaires have been posted online on the possible reforms.
- The committee has invited experts in the field of criminal law to participate in the exercise through an online consultation mechanism.
- The consultation exercise would go on for 3 months (starting on 4 July 2020).

What are the concerns?

- **Timeframe** - Comprehensive legal reform requires careful consideration and a good deal of deliberation.
- An apparently short timeframe and limited scope for public consultation has thus been raised as concerns.
- This has caused considerable disquiet among jurists, lawyers and those concerned with the state of criminal justice in the country.
- **Timing** - The Committee has begun its work in the midst of a pandemic.
- This may not be the ideal time for wide consultations.
- Activists and lawyers functioning in the hinterland may be at a particular disadvantage in formulating their opinions.
- **Mandate** - The panel's mandate is also vague and open to multiple interpretations.

- It is also not clear why the Law Commission has not been vested with this task.
- **Members** - The committee being an all-male, Delhi-based one has led to concerns of lack of diversity.

1.5 Tulu in VIII Schedule

What is the issue?

- There is a strong case for adding Tulu, among other languages in the Eighth Schedule of the Indian Constitution.
- Placing all deserving languages in the Constitution on an equal footing will promote social inclusion and national solidarity.

What is the current situation?

- According to the 2001 Census, India has 30 languages that are spoken by more than a million people each.
- Additionally, it has 122 languages that are spoken by at least 10,000 people each.
- It also has 1,599 languages, most of which are dialects.
- These are restricted to specific regions and many of them are on the verge of extinction.
- India must accommodate this plethora of languages in its cultural discourse and administrative apparatus.

What are the Constitutional provisions?

- **Article 29** of the Constitution provides that a section of citizens having a distinct language, script or culture have the right to conserve the same.
- Both the state and the citizens have an equal responsibility to conserve the distinct language, script and culture of a people.
- Among the legion of languages in India, the Constitution has 22 languages. They are protected in Schedule VIII of the Constitution.

What about the languages that aren't protected?

- Many languages that are kept out of this favoured position are in some ways more deserving to be included in the Eighth Schedule.
- For example, Sanskrit, an Eighth Schedule language, has only 24,821 speakers (2011 Census).
- Manipuri, another scheduled language, has only 17,61,079 speakers.
- However, many unscheduled languages have a sizeable number of speakers: Bhili/Bhilodi has 1,04,13,637 speakers; Gondi has 29,84,453 speakers; Ho, 14,21,418; Khandeshi, 18,60,236; Khasi, 14,31,344, etc.

What is the status of Tulu?

- Tulu is a Dravidian language whose speakers are concentrated in two coastal districts of Karnataka and in Kasaragod district of Kerala.
- The Census reports 18,46,427 native speakers of Tulu in India.
- The Tulu-speaking people are larger in number than speakers of Manipuri and Sanskrit, which have the Eighth Schedule status.
- Robert Caldwell, in his book, called Tulu as one of the most highly developed languages of the Dravidian family.
- The cities of Mangaluru, Udupi and Kasaragod are the epicentres of Tulu culture.
- At present, Tulu is not an official language in India or any other country.
- Efforts are being made to include Tulu in the Eighth Schedule of the Constitution.

What does the Yuelu Proclamation say?

- The Yuelu Proclamation, made by the UNESCO in 2018, says that the protection and promotion of linguistic diversity,
    1. Helps to improve social inclusion and partnerships,
    2. Helps to reduce the gender and social inequality between different native speakers,
    3. Guarantee the rights for speakers of endangered, minority, indigenous, non-official languages and dialects to receive education,
    4. Enhance the social inclusion level and social decision-making ability.

What would be the advantages?

- If Tulu is included in the Eighth Schedule, it would get recognition from the Sahitya Akademi.
- Tulu books would be translated into other recognised Indian languages.
- Members of Parliament (MPs) and Members of State Assemblies (MLAs) could speak in Tulu in Parliament and State Assemblies, respectively.
- Candidates could write all-India competitive examinations like the Civil Services exam in Tulu.
- Placing of all the deserving languages on equal footing will promote social inclusion and national solidarity.
- It will reduce the inequalities within the country to a great extent.

1.6 Technology & Privacy Rights - COVID-19

What is the issue?

- Given the grave public health crisis of COVID-19, there is little doubt that the government is best placed to tackle it.
- However, there is a concern that the government's technology solutions in fighting this fall short of meeting the minimum legal requirements.

What are the contentious measures?

- The state's most significant responses to the pandemic have been based on an invasive use of technology to utilise people's personal health data.
- Broadly, technology has been invoked at three levels:
    1. in creating a list of persons suspected to be infected with COVID-19
    2. in deploying geo-fencing and drone imagery to monitor compliance by quarantined individuals
    3. through the use of contact-tracing smartphone applications, such as AarogyaSetu
- The measures deployed sound reasonable.
- But the mediums for implementation overlook important concerns relating to the rights to human dignity and privacy.

What are the concerns?

- **List of infected persons** - In creating a list of infected persons, State governments have channelled the Epidemic Diseases Act of 1897.
- But this law scarcely accords the state the power to publicise this information.
- These lists have also generated substantial second-order harms as the stigma attached has led to an increase in morbidity and mortality rates.
- This is because many with COVID-19 or flu-like symptoms have refused to go to hospitals.

- **Geo-fencing and drone imagery** - The use of geo-fencing and drone technologies is unsanctioned.
- Cell-phone based surveillance might be possible under the Telegraph Act of 1885.
- But until now, the 'orders authorising surveillance' have not been published.
- Moreover, the modified surveillance drones used are equipped with -
    i. the ability to conduct thermal imaging
    ii. night-time reconnaissance
    iii. the ability to integrate facial recognition into existing databases such as Aadhaar (a feature claimed by some private vendors)
- The drones deployed also do not appear to possess any visible registration/licensing contrary to the Aircraft Act of 1934 regulations.
- Indeed, many of the models deployed are simply not permitted for use in India.
- **Contact-tracing applications** - The Union government has made **AarogyaSetu**, its contact-tracing application, its signal response to the pandemic.
- Such applications promise to provide users a deep insight into the movements of a COVID-19 carrier.
- The purported aim here is to ensure that a person who comes into contact with a carrier can quarantine herself.
- Notably, the efficacy of such applications have been questioned by early adopters, such as Singapore.
- Thus far, details of the application's technical architecture and its source code have not been made public.
- The programme also shares the concerns with the Aadhaar project in that its institution is not backed by legislation.
- Like Aadhaar it increasingly seems that the application will be used as an object of coercion.
- There have already been reports of employees of both private and public institutions being compelled to download the application.
- Also, much like Aadhaar, AarogyaSetu is framed as a necessary technological invasion into personal privacy, in a bid to achieve a larger social purpose.
- But without a statutory framework, and in the absence of a data protection law, the application's reach is boundless.

What are the conflicting arguments in this regard?

- The pandemic is becoming an existential threat and so the paramount need to save lives is said to take precedence over all other interests.
- This supports the idea that if the government chooses, fundamental rights can be suspended at will.
- The judgement given by Justice H.R. Khanna at the height of Indira Gandhi's Emergency holds much relevance in this context.
- Justice Khanna was not speaking about the crushing of freedom at the point of a weapon.
- He was concerned, rather, about situations where the government used the excuse of a catastrophe to ignore the rule of law.

Why is overreach dangerous?

- When faced with crises, governments, acting for all the right reasons, are invariably prone to overreach.
- But, any temporary measures they impose have a disturbing habit of entrenching themselves into the existing system.

- Over the time, this may get to be the 'new normal' well after the crisis has passed.
- Paying close attention to civil rights, therefore, becomes critical as rights are particularly vulnerable in a crisis situation.

What caution should the government take?

- The Supreme Court's judgment in K.S. Puttaswamy v. Union of India (2017) spelt out on the guarantee of a fundamental right to privacy.
- But the Court also recognised that the Constitution is not the sole repository of this right, or indeed of the right to personal liberty.
- To be sure, the right to privacy is not absolute.
- There exist circumstances in which the right can be legitimately curtailed.
- However, any such restriction must be tested against the requirements of legality, necessity and the doctrine of proportionality.
- This will require the government to show that -
    1. the restriction is sanctioned by legislation
    2. the restriction made is in pursuance of a legitimate state aim
    3. there exists a rational relationship between the purpose and the restriction made
    4. the State has chosen the "least restrictive" measure available to achieve its objective
- In the present case, the government's technological solutions are unfounded in legislation.
- Also, there is little to suggest that they represent the least restrictive measures available.
- A pandemic cannot thus be a pretext to renounce the Constitution.

2. THE STATES

2.1 Karnataka MLAs Defection

What is the issue?

- The Karnataka MLAs defected, re-contested, and became members again, all in six months.
- The by-election results have widely put to display the ineffectiveness of the Anti-Defection Law (ADL).

What is the story behind?

- Of the 17 defecting Congress-Janata Dal (Secular) MLAs, 11 were re-elected on a BJP ticket.
- These events lay down a well-structured framework to sidestep the law.
- It also set a dangerous precedent for neutralising the consequences of the law altogether.

Is defection new in Indian politics?

- No. The phenomenon of defections has been plaguing the Indian political landscape for over five decades.
- As in the Indian political scene for a long time, the legislators used to change parties frequently which often brought about political instability.
- The recurrence of this evil phenomenon led to the Anti-Defection Law, which defined three grounds of disqualification of MLAs.

What is Anti-Defection Law?

- The ADL is contained in the **10th Schedule** of the Constitution.

- It was enacted by Parliament and came into effect in 1985.
- Its purpose is to **curb political defection** by the legislators.
- It has defined three grounds of disqualification of MLAs,
    1. Giving up party membership;
    2. Going against party whip; and
    3. Abstaining from voting.

Why resignation not being considered as a condition, a concern?

- Resignation as MLA was not one of the conditions of disqualification.
- Exploiting this loophole, the 17 Karnataka MLAs resigned, their act aimed at ending the majority of the ruling coalition and, at the same time, avoiding disqualification.
- However, the Speaker (presiding officer of the Assembly) refused to accept the resignations and declared them disqualified.
- This was possible as the legislation empowers the presiding officer of the House to decide on complaints of defection under no time constraint.

What this legislation was constrained?

- **1985** - The law originally protected the Speaker's decision from judicial review.
- **1992** - This safeguard was struck down in Kihoto Hollohan case 1992.
- While the SC upheld the Speaker's discretionary power, it underscored that the Speaker functioned as a tribunal under the ADL, thereby making her/his decisions subject to judicial review.
- This judgment enabled judiciary to become the watchdog of the ADL, instead of the Speaker, who increasingly had become a political character contrary to the expected neutral constitutional role.
- **2019** - The same could be witnessed in Shrimanth Patel & Ors vs Speaker Karnataka Legislative Assembly, where the SC bench upheld the then Karnataka Speaker's decision of disqualification of the 17 MLAs.
- However, it struck down his ban on the MLAs from contesting elections till 2023, negating the only possible permanent solution to the problem.

What are the safeguards in ADL?

- The ADL provided a safeguard for defections made on genuine ideological differences.
- It allowed the formation of a new party or "**merger**" with other political party if not less than two-thirds of the party's members commit to it.
- The 91st Constitutional Amendment of 2003 barred the appointment of defectors as Ministers until their disqualification period is over or they are re-elected, whichever is earlier.
- But, obviously, such laws have not put to rest the trend of defections.

What could be done?

- As witnessed in Karnataka, the main problem is that the defectors treat disqualification as a mere detour, before they return to the House or government by re-contesting.
- This can only be stopped by **extending the disqualification period** from re-contesting and appointment to Chairmanships/Ministries to at least 6 years.
- The minimum period limit of 6 years is needed to ensure that the defectors are not allowed to enter the election fray for least one election cycle, which is 5 years.
- MLAs can still be bought from the ruling dispensation to bring it to a minority by being paid hefty sums, simply to stay at home for 6 years.

- Almost every political outfit has been party to such devious games, with hardly any political will to find a solution.

2.2 Bru Agreement

Why in news?

An agreement was signed recently among the Bru leaders and the Governments of India, Tripura, and Mizoram.

What is in the Bru agreement?

- This agreement gives the Bru community their choice of living in either the state of Tripura or Mizoram.
- All Bru currently living in temporary relief camps in Tripura will be settled in the state, if they want to stay on.
- The Bru who returned to Mizoram in the eight phases of repatriation since 2009, cannot, however, come back to Tripura.
- To ascertain the numbers of those who will be settled, a fresh survey and physical verification of Bru families living in relief camps will be carried out.
- The Centre will implement a special development project for the resettled Bru; this will be in addition to the Rs 600 crore fund announced for the process, including benefits for the migrants.

What benefits will the Bru community get?

- Each resettled family will get 0.03 acre of land for building a home, Rs 1.5 lakh as housing assistance, and Rs 4 lakh as a one-time cash benefit for sustenance.
- They will also receive a monthly allowance of Rs 5,000, and free rations for 2 years from the date of resettlement.
- All cash assistance will be through Direct Benefit Transfer (DBT).
- The state government will expedite the opening of bank accounts and the issuance of Aadhaar, permanent residence certificates, ST certificates, and voter identity cards to the beneficiaries.
- All dwelling houses will be constructed and payments completed within 270 days of the signing of the agreement.

Where will the Bru be resettled?

- Revenue experts reckon 162 acres will be required. Tripura Chief Minister (CM) has said that the effort will be to choose government land.
- But since Tripura is a small state, this government would explore the possibility of diverting forest lands, even reserve forest areas if necessary, to grant the new entitlements.
- However, diverting forest land for human settlements will need clearance from the Union Ministry of Environment and Forests, which is likely to take at least 3 months.

What is the condition of the migrants now?

- The Bru or Reang are a community indigenous to Northeast India, living mostly in Tripura, Mizoram, and Assam.
- In Tripura, they are recognised as a Particularly Vulnerable Tribal Group (PVTG).
- In October 1997, following ethnic clashes, nearly 37,000 Bru fled Mizoram to Tripura, where they were sheltered in relief camps. Of this,
    1. 5,000 people have returned to Mizoram in 9 phases of repatriation,
    2. 32,000 people still live in 6 relief camps in North Tripura.

- Under a relief package announced by the Centre, a daily ration of 600 g rice was provided to every adult Bru migrant and 300 g to every minor.
- They depended on the wild for vegetables, and some of them have been practising slash-and-burn (jhum) cultivation in the forests.
- They live in makeshift bamboo thatched huts, without permanent power supply and safe drinking water, with no access to proper healthcare services or schools.

How did the agreement come about?

- **June 2018** - Bru leaders signed an agreement with the Centre and the two state governments, providing for repatriation to Mizoram.
- However, most residents of the camps rejected the insufficient terms of the agreement.
- The camp residents said the package did not guarantee their safety in Mizoram, and that they feared a repeat of the violence that had forced them to flee.
- **November 2019** - A scion of Tripura's erstwhile royal family, wrote to Home Minister seeking the resettlement of the Bru in the state.
- After that, Tripura CM too, asked the Centre for permanent settlement of the Bru in Tripura.

2.3 Nomination to State Legislative Council

Why in news?

Maharashtra Governor Bhagat Singh Koshyari is yet to act on Maharashtra Cabinet's recommendations.

What did the Cabinet recommend?

- It recommended the Governor to nominate Chief Minister Uddhav Thackeray to a seat in the state Legislative Council.
- This nomination is to be made for one of the seats reserved for the Governor's nominee.
- Even as the Chief Minister's current term in office approaches its end, the Governor is yet to act.

What is the need for nomination?

- Thackeray took oath as Chief Minister (CM) on November, 2019.
- **Article 164(4)** - A Minister who for any period of 6 consecutive months is not a member of the State Legislature shall cease to be a Minister.
- It follows that Thackeray must become part of the Maharashtra legislature before May 27.
- With the pandemic raging, a by-election cannot be held.
- Therefore, the only way to fulfil the requirement is for Thackeray to be nominated to the Upper House by the Governor.
- If that does not happen, he will have to make way for someone else.

What is the nomination route?

- A situation in which an individual who is not a member of the legislature becomes CM is in itself fairly common.
- The nomination route for non-member Ministers is less common - but not unconstitutional.
- **Article 171(5)** - Governor can nominate persons with special knowledge in literature, science, art, co-operative movement and social service.
- Thackeray can be said to have a stronger claim in this regard, he is an ace wildlife photographer.

- As per the Allahabad High Court in Har Sharan Varma vs Chandra Bhan Gupta and Ors (1961), politics can be seen as 'social service'.

What is the role of the Governor?

- **Vacancy** - Two Legislative Council seats in the Governor's quota are currently vacant.
- However, the terms of these vacancies end on June 6, 2020.
- A fresh appointment can be made only for the remainder of the term.
- Representation of the People Act, 1951, prohibits the filling of a vacancy if the remainder of the term of a member in relation to a vacancy is less than a year.
- This bar is in respect of by-election to fill a vacancy, not nomination.
- So, the Governor cannot use this as a reason to refuse nomination.
- **Noobligation** - Of course, Governor is not obligated under the Constitution to act swiftly on the advice of the Council of Ministers.
- But, Maharashtra has the highest coronavirus caseload and death toll by far in the country.
- Political uncertainty is the last thing that Maharashtra needs now.

What are the limits to the Governor's discretion?

- **Article 163(1)** - The Governor must follow the recommendations of the Council of Ministers in all situations except in so far as he is by this Constitution must exercise his functions in his discretion.
- The Governor is bound by the advice of the Council of Ministers only in executive matters as defined in Article 162.
- The **nomination** of members is **not an executive power**.
- Therefore, the Governor can act in his discretion here.
- Also, the Constitution specifically mentions the situations in which the Governor can act in his discretion.
- The Governor has a general discretion in appointing the Chief Minister.
- But there are well established conventions governing the exercise of such discretion.

2.4 Inner Line Permit & CAA

Why in news?

Supreme Court declined the petition to stay the operation of a Presidential order pertaining to Inner Line Permit (ILP) in Assam.

What is a Inner Line Permit?

- A concept drawn by colonial rulers, the Inner Line separated the tribal-populated hill areas in the Northeast from the plains.
- To enter and stay for any period in these areas, Indian citizens from other areas need an Inner Line Permit (ILP).
- The Inner Line protects Arunachal Pradesh, Nagaland and Mizoram, and Manipur was added lately.

Where is the origin?

- The concept originates from the Bengal Eastern Frontier Regulation Act (BEFR), 1873.
- The policy of exclusion first came about as a response to the reckless expansion of British entrepreneurs into new lands, which threatened British political relations with the hill tribes.

- The BEFR prohibits the entry of an outsider (British subject or foreign citizen) into the area beyond the Inner Line without a pass and his purchase of land there.
- The Inner Line also protects the commercial interests of the British from the tribal communities.

What is the change made?

- After Independence, the Indian government replaced "British subjects" with "Citizen of India".
- In 2013, the Home Ministry told that the main aim of ILP system is to prevent settlement of other Indian nationals in the States where ILP regime is prevalent.
- It said that settlement is prevented in order to protect the indigenous/tribal population.

How is it connected to the Citizenship Amendment Act?

- The CAA relaxes eligibility criteria for certain categories of migrants from three countries seeking Indian citizenship.
- But, it exempts certain categories of areas, including those protected by the Inner Line system.
- Amid protests against the Act, the Adaptation of Laws (Amendment) Order, 2019, issued by the President, amended the BEFR, 1873.
- This amendment extended the ILP to Manipur and parts of Nagaland that were not earlier protected by ILP.

What is the petition?

- Asom Jatiyatabadi Yuba Chatra Parishad (AJYCP) and All Tai Ahom Students' Union (ATASU) petitioned the Supreme Court against the Presidential order.
- They claimed that the order deprived Assam of the powers to implement the Inner Line system in its districts and limit the applicability of CAA.
- The original BEFR included the then Assam districts of Kamrup, Darrang, Nagaon, Sibsagar, Lakhimpur, and Cachar.
- Noting this, the petition said that the order took away the Assam government's permissive power to implement the ILP.
- This could have made the CAA inapplicable in these areas, the petition said.
- Groups such as the AJYCP have long been campaigning for long for implementation of the ILP in Assam.
- The CAA has given fresh legs to the demand.

What does the SC order imply?

- The petition had sought a stay on the Presidential order, which the Supreme Court did not grant.
- The court said it will have to hear what the other side (government) has to say on the matter.
- It will hear the matter again in two weeks.

2.5 Speaker's Powers to Disqualify (Manipur)

What is the issue?

- Manipur Speaker Y Khemchand disqualified 3 Congress MLAs and the state's lone TMC MLA, ahead of the Rajya Sabha election.
- The decision has brought to the fore the concerns with Speaker's powers to disqualify under the Constitution.

How did the case evolve?

- In 2017, seven legislators who won on a Congress ticket switched sides.
- With this, the BJP formed the government in Manipur.

- The Congress party asked the Speaker to disqualify these seven MLAs under the Tenth Schedule of the Constitution.
- [The Schedule provides for disqualifying members who win the election as a candidate of one party and then join another.]
- Since no action was taken by the Speaker, a writ petition was filed before the High Court of Manipur in Imphal.
- The case sought directions for the Speaker to decide on the petition within a reasonable time.
- However, the larger issue of whether a HC can direct a Speaker to decide on a disqualification petition within a certain timeframe was pending before a Constitution Bench of the Supreme Court.
- So, the High Court did not pass an order, citing this.
- The parties were left with the option to move the apex court or wait for the outcome of the cases pending before it.

What was the pending case in the Supreme Court?

- It is the 2016 SA Sampath Kumar vs Kale Yadaiah and Others case.
- It was in relation to the disqualification of a Telangana MLA.
- A two-judge bench of the Supreme Court had asked a larger bench to clarify the legal position on -
    i. the Speaker's powers to disqualify
    ii. the extent to which such decisions of the Speaker can be reviewed by the courts

How then did the High Court hear the case in 2018?

- In 2018, the High Courtof Manipur, refusing the preliminary objections of the Speaker, decided to hear the case on merits.
- It reasoned that the remedy under the Tenth Schedule is an alternative to moving courts.
- It thus said that if the remedy were found to be ineffective due to deliberate inaction or indecision on the part of the Speaker, the court would have jurisdiction.
- However, the High Court again did not pass orders since the larger issue was pending before the Supreme Court.
- Meanwhile, the Manipur case reached the Supreme Court.

What was the Supreme Court ruling?

- In January 2020, a three-judge bench of the SC expressed its displeasure with the Speaker's lack of urgency in deciding the disqualification petitions.
- It ruled that Speakers of assemblies and the Parliament must decide disqualification pleas within a period of 3 months.
- Extraordinary circumstances are exceptions to this.
- The ruling settled the law for situations where the timing of the disqualification is misused to manipulate floor tests.
- The court also recommended the Parliament to consider taking a relook at the powers of the Speakers, citing instances of partisanship.
- The court also suggested independent tribunals to decide on disqualifications.
- In the context of Manipur, this ruling meant that Speaker Khemchand had to rule on the disqualification within 3 months since.

- Importantly, this three-judge bench also ruled that the 2016 reference to a larger bench by a two-judge bench was not needed.
- [Decisions of a larger bench are precedents, and binding on smaller benches.]

Why did the Court intervene again and what was the ruling?

- Even 3 months after the Supreme Court order, the Speaker did not take a call on the disqualifications.
- On 18 March 2020, in an extraordinary move, the Supreme Court removed Manipur Minister Thounaojam Shyamkumar Singh from the state cabinet.
- It was against him that disqualification petition was also pending before the Speaker since 2017.
- The Court also restrained him "from entering the Legislative Assembly till further orders".
- Relying on this SC verdict, on 8 June 2020, the Manipur High Court also passed similar orders in the case of the 7 Congress MLAs.

What is the recent happening?

- On 17 June 2020, 3 BJP MLAs resigned.
- Also, 4 ministers in N Biren Singh's government, all MLAs of NPP (National People's Party), switched camps.
- They offered support to the Congress.
- So, of the 7 MLAs who had in 2017 jumped to BJP, 4 MLAs once again pledged their votes to the Congress.
- One of those four and one among the seven facing disqualification, Congress MLA Paonam Brojen Singh, approached the HC against Khemchand's conduct a day before the RS election.
- As he had filed a petition, Brojen Singh received protection from the HC and was allowed to vote in the RS election.
- Meanwhile, the HC also instructed the Speaker to announce the disqualifications only after 19 June 2020, the day of RS election.
- But, despite the HC's instructions, Khemchand disqualified three Congress MLAs and one TMC MLA on the day of RS election.

What is the political agenda here?

- The three other Congress MLAs (who had jumped to BJP in 2017) allowed to vote, went in favour of BJP.
- With the disqualifications, the Congress, which earlier had the numbers to send its candidate to the Upper House, could secure only 24 votes.
- On the other hand, erstwhile royal Leisemba Sanajaoba, the BJP's Rajya Sabha candidate, was elected, securing 28 votes.
- [The 60-member Assembly has a current strength of 59 MLAs.]
- In essence, the disqualification decision by the Speaker worked in favour of the BJP.

Can the EC interfere?

- The Congress complained to the Election Commission that one of its MLAs voted for the BJP.
- It thus sought cancellation of that vote.
- The EC, however, said that no interference from the Commission was warranted in the matter.
- The EC could not interfere or interject as far as the Speaker's power under the Tenth Schedule of the Constitution is concerned.

2.6 Definition of Assamese people

Why in news?

A report by a government-appointed committee has proposed a definition for "Assamese people".

What is the debate?

- The Assam Accord was signed at the end of a six-year Assam agitation (1979-85) against illegal migration from Bangladesh.
- In the context of the Accord, the question of who is Assamese stems from the language of Clause 6.
- Clause 6 says that certain safeguards shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.
- This gives rise to a question of who these "Assamese people" are.

Isn't any resident of Assam, Assamese?

- The definition of "Assamese" cannot be so narrow as to mean only those who speak Assamese as their first language.
- Assam has many indigenous tribal and ethnic communities with their own ancestral languages.
- For Clause 6, it was necessary to expand the definition of "Assamese" beyond the Assamese-speaking population.
- Those not eligible for the safeguards under Clause 6 would clearly be from among the migrant populations.
- But there is a debate on whether the entire migrant populations would be excluded, or would some of them be eligible for Clause 6 benefits.

Who is a migrant?

- In popular conversation, the idea of "indigenous" is taken to mean communities who trace their histories in Assam before 1826.
- This was the year when the erstwhile kingdom of Assam was annexed to British India.
- Large-scale migration from East Bengal took place during British rule, followed by further waves after Independence.
- The Assam agitation was triggered by fears that the Bengali Muslim and Bengali Hindu migrants may overrun the indigenous population, and dominate them.
- During the agitation, the demand was for the detection and deportation of those who had migrated after 1951.

Was this demand accepted?

- Not 1951. The Assam Accord was settled at a cut-off of March 24, 1971.
- Anyone who arrived in Assam before that cut-off would be considered a citizen of India.
- This date was also the basis of the National Register of Citizens (NRC), published in 2019.
- As the Accord legalised additional migrants (1951-71), Clause 6 was added as a safeguard for the indigenous people.

How has Clause 6 been taken up since?

- Because of the complexities involved, previous efforts to work out a framework made little headway.
- The matter got urgency last year amid protests by the Assamese against the Citizenship Amendment Bill (now an Act).
- This Act makes it easier for certain categories of migrants to get Indian citizenship — the key here being Hindus from Bangladesh.

- The Home Ministry set up a new committee, which submitted its report in February 2020, and its contents were made public.

What are the recommendations?

- The proposed definition of the Committee is limited to the purpose of implementing the Clause 6 of the 1985 Assam Accord.
- This definition includes indigenous tribals, other indigenous communities, all other citizens of India residing in Assam on or before January 1, 1951 and indigenous Assamese, and their descendants.
- As for safeguards, the committee has recommended reservations in legislature and jobs for "Assamese people".
- It also recommended that land rights to be confined to them.

What are implications of the definition?

- Migrants who entered Assam after 1951 but before March 24, 1971 are not Assamese but are Indian citizens who can vote.
- Not just indigenous groups, but East Bengal migrants who entered Assam before 1951, too, would be considered Assamese.

What issues does this raise?

- Some find it too **inclusive**.
- The committee had received some suggestions that had proposed a base year of 1826 for anyone being considered Assamese.
- Those who speak for indigenous Assamese Muslims told that there should not be a base year for identifying the indigenous people.
- Some say that only communities living in Assam during Ahom rule (pre-1826) be included in the definition.
- Others find it **exclusionary**.
- Those who speak for Bengali Muslims had been demanding that the 1971 cut-off be used for deciding Clause 6 eligibility too.
- As 1951 NRC is unavailable in many parts of Assam, there is a question on how could one prove that a person has been in Assam prior to 1951.

What is the judicial constraint?

- Several issues come up for both the state and central government.
- The key issue is whether it will stand the test of judicial scrutiny because it is bound to be challenged in the courts.
- There is a doubt whether it will stand the test of constitutional validity.

3. ISSUES IN FEDERALISM

3.1 Governors Vs State Governments

What is the issue?

- The endless squabbles between the Governors and respective State governments in Kerala and West Bengal are alarming.
- These Governors have arrogated to themselves an activist role, which is at the heart of the tensions.

What did the Governors do?

- **Kerala Governor** Arif Mohammad Khan has made repeated public statements on controversial questions such as the Citizenship (Amendment) Act, 2019.
- He has said that it was his duty to defend the laws made by the Centre.
- He must be mindful that the Constitution envisages the execution of popular will through an elected government.
- **West Bengal Governor** Jagdeep Dhankhar often appears eager for the next spectacular showdown with the State government.
- The parties barring the central ruling party in both States are agitated over the proactive and provocative roles of their respective Governors.
- The active profiles of these Governors are symptomatic of a larger malaise of degrading relations between the Centre and States ruled by parties opposed to the central ruling party.

What is the Constitutional role of the Governor?

- The Constitution seeks to bolster centripetal forces in this vast and diverse country, and the Centre's power to appoint Governors is one such.
- The Governor's constitutional role has been debated and interpreted through several cases.
- But ingenious occupants of the office have managed to push the boundaries with unprecedented moves.

How is this office being used?

- Sagacious occupants have used the Governor's office to promote national integration.
- Many others have merely acted as agents of the ruling party at the Centre.
- Using a pliant Governor to undermine a State government or engineer a legislative majority is an old and secular trick used by all parties at the Centre.

How is the current conflict different?

- State government-Governor conflicts have hence not been rare, but what makes the current situation extraordinary is the political context.
- No other government in the past has sought to construct a centralising narrative for the nation as the current one at the Centre.
- No government in the past has been as intolerant as the current one is towards its diversity.
- In this schema, the Governor appears to have a critical, instrumental role.
- In 2019, the ignominious role played by the then Governor of Jammu and Kashmir in ending its special constitutional status is instructive.

How the Governor's office should be?

- The Governor's role as a link between the State and the Centre shall not be an imperial one.
- The office of the Governor must be a dialogic and consultative one.
- The combative posturing in Kerala and West Bengal will bring more disarray, no unity.
- The Centre must treat State governments with the respect that democratically elected governments deserve.

3.2 CWMA under Jal Shakti Ministry

What is the issue?

- The Centre, by way of a notification, officially brought the Cauvery Water Management Authority (CWMA) under the Jal Shakti Ministry.
- Several political parties, especially the Opposition, and some farmers' associations in Tamil Nadu have expressed concerns over this.

What is the Jal Shakti Ministry?

- It was formed at the Union in May 2019, by merging the Ministry of Water Resources and the Ministry of Drinking Water and Sanitation.
- It was to deal with all water, sanitation and irrigation-related issues.
- With this, the erstwhile water resources ministry has been brought under Jal Shakti ministry as a department.
- The management boards of all rivers like Godavari, Krishna and Narmada, were functioning under the erstwhile water resources ministry.
- With a notification on April 24, 2020, the following were brought under the Jal Shakti Ministry:
    i. National Water Informatics Centre
    ii. North Eastern Regional Institute of Water and Land Management
    iii. Krishna River Management Board
    iv. Godavari River Management Board
    v. Cauvery Water Management Authority (CWMA)

What is the Cauvery Water Management Authority?

- The CWMA was formed following the instructions of the Supreme Court in February 2018.
- The Court had instructed the then water resources ministry to frame a scheme under section 6A of the Inter-State Water Disputes Act, 1956.
- The court insisted that a water sharing scheme be framed by the Centre and its order implemented through the authority.
- [The court's order rejected outrightly the discretionary powers of the Centre that argued that framing of a scheme was not mandatory.]
- Accordingly, the Central government notified the Cauvery Water Management Scheme on June 1, 2018.
- The CWMA was formed as a quasi-judicial authority by the Centre, with its own powers like an independent body.
- This was to implement the water-sharing award of the Cauvery Water Dispute Tribunal.
- The water sharing was to be carried out as modified by the Supreme Court earlier in 2018.
- [CWMA comprises of a Chairman, a secretary and eight members.
- The salary of the Chairman and others is divided among the basin states - 40% each for Karnataka and Tamil Nadu, 15% for Kerala, and 5% for Puducherry]

Why is the Centre's move opposed?

- While the other inter-state river dispute boards (Narmada, Krishna, Godavari) were directly set up by the ministry, the CWMA was set up with the instructions of the Supreme Court.
- Also, between June 2018-May 2019, there was no public notification on the CWMA being designated as an organisation under the Union Ministry of Water Resources.

- The Centre's present move will erode the autonomy and dilute the powers of the authority, and reduce it to a "puppet" of the Centre.
- The whole idea of being an independent body will be sidelined.
- The member states, particularly Tamil Nadu, being a lower riparian state, might not be able to represent their rights.
- The move is also seen as yet another assault on the federal structure.

What are the counter-arguments?

- The CWMA, a body corporate, has been working all along under the Water Resources Ministry.
- Even in the case of its predecessor, the Cauvery River Authority (1998-2013), the Water Resources Ministry had the administrative control.
- [It has the Prime Minister as the Chairman and Chief Ministers of the basin States as Members.]
- In fact, the CWMA has had only a part-time head, the Chairman of the Central Water Commission (CWC), attached to the Ministry.
- Besides, there are eight inter-State river water boards under the Jal Shakti Ministry.
- The formalisation of the CWMA's status corrects an apparent lapse on the Ministry's part and addresses administrative issues.
- Apart from meeting the procedural requirement, the notification does not, in any way, alter the character, functions or powers of the CWMA.

What are the other long-felt concerns?

- Successive governments at the Centre have been wary of acting decisively on this dispute, other than under the orders of the Supreme Court.
- This is due to the fear of alienating voters in one of the States involved.
- If there is anything the Centre can be blamed for, it is the way the CWMA functions.
- Even 2 years after its formation, the Authority does not have a full-fledged Chairman.
- The Centre would do well to act, at least now, in making the CWMA fully operational, when the southwest monsoon is about to set in.

3.3 Centre-States Role - Pandemic Times

What is the issue?

- The Central government has so far followed mostly a top-down approach in tackling the COVID-19 pandemic.
- Guidelines issued by the Centre to the States under the Disaster Management Act are said to be unconstitutional. Here is why.

What has the Centre's role been?

- During lockdowns 1.0, 2.0 and 3.0, the Centre has issued guidelines from time to time.
- These were issued under the Disaster Management Act of 2005.
- They contained varying restrictions on public activity and commerce, which the States are expected to enforce meticulously.
- In this, the States are only being allowed to increase and not dilute the restrictions.
- The centralised approach has put the federal structure of India under strain and this has turned out counterproductive.

- **E.g.** The Central government, in its latest guidelines, has classified all districts in the country as red, orange or green zones.
- But at instances were cases are only from a small portion of a district, keeping economic activity on hold in the entire district is undesirable.
- Another instance is in regards with Kerala, probably the best-performing State in terms of COVID-19 response.
- The Kerala government had issued revised guidelines in mid-April 2020.
- This was after a near-perfect recovery rate and a steep fall in the number of cases.
- But it was sent a communication by the Central government to refrain from relaxing restrictions in the State.

How does the federal scheme work?

- Under the federal scheme, Parliament and Stage legislatures can legislate on matters under the Union List (List I) and State List (List II) respectively.
- Both Parliament and State legislatures can legislate on matters under the Concurrent List (List III).
- The residuary power to legislate on matters that are not mentioned in either List II or List III vests with Parliament.
- The Supreme Court too has held at various points that the entries in the legislative lists must be interpreted harmoniously.
- Finally, as per Articles 73 and 162, the executive power of the Centre and the States is co-extensive with their respective legislative powers.

What is the case with disaster management?

- Disaster management as a field of legislation does not find mention in either List II or List III.
- Nor does any particular entry in List I specifically deal with this.
- Thus, the Disaster Management Act could only have been enacted by Parliament in exercise of its residuary powers of legislation.
- [This is as per Article 248 read with Entry 97 of List I.]
- Can the Act be applied at all for dealing with a pandemic is the question now.
- The Disaster Management Act allows the Centre to issue guidelines, directions or orders to the States for mitigating the effects of any disaster.
- The definition of 'disaster' under the Act is quite broad and, literally speaking, would include a pandemic too.
- However, 'public health and sanitation' is a specific and exclusive field of legislation under Entry 6 of List II.
- This would imply that States have the exclusive right to legislate and act on matters concerning public health.
- Thus, the Centre's guidelines and directions to the States for dealing with the pandemic become contentious.

What does the Constitution specify?

- The Supreme Court has held repeatedly that federalism is a basic feature of the Constitution.
- Although the Union enjoys many more powers than States, the States are sovereign.
- Under Entry 29 of List III, both Parliament and State legislatures can legislate on matters of inter-State spread of contagious diseases.
- So, Parliament would be competent to pass a law that allows the Central government to issue directions to the States to prevent COVID-19.

- But that law is not the Disaster Management Act, which is concerned with disasters in general, and not pandemics in particular.
- In other words, 'Prevention of inter-State spread of contagious and infectious diseases' is a specific legislative head provided in List III.
- So, it should have been excluded from Parliament's residuary legislative powers.
- Clearly, the Disaster Management Act (enacted under Parliament's residuary legislative powers) cannot be applied in this case.

Is there a specific law already in place?

- The Epidemic Diseases Act, 1897 has the objective of preventing the spread of dangerous epidemic diseases.
- However, under this Act, it is the State governments which have the prerogative to take appropriate measures.
- The Central government's powers are limited to taking measures for inspecting and detaining persons travelling out of or into the country.
- Even if it were amended, it would not empower the Central government to issue directions to the States to contain the pandemic within the State.
- It can only deal with inter-State spread of the disease.
- So by the present means, the States are not legally bound to observe the directions/guidelines issued by the Centre on the pandemic.
- It would be well within their rights to challenge them before the apex court.

4. JUDICIARY

4.1 Appointments to Judicial Tribunals

Why in news?

Ministry of Finance has framed new rules prescribing uniform norms for the appointment and service conditions of members to various Tribunals.

What were the rules about?

- It was called Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017.
- It was framed by the government under Section 184 of the Finance Act of 2017, which empowers the Centre to frame rules relating to the appointment and service conditions of members of various tribunals.
- Through Part XIV of the Finance Act, 2017, around 26 Central statutes were amended.
- The power to prescribe eligibility criteria, selection process, removal, salaries, tenure and other service conditions pertaining to various members of 19 tribunals were sub-delegated to the rule-making powers of the Central government.

What happened to the rules?

- A Constitution Bench has struck down the Rules in November 2019.
- The court held that Section 184 does not suffer from excessive delegation of legislative functions as there are adequate principles to guide its framing.
- However, the court struck those rules as a whole, as they suffered from "various infirmities".
- It described the search-cum-selection-committee as an attempt to keep the judiciary away from the process of selection and appointment of members, vice-chairman and chairman of tribunals.

- The Court held that the executive is a litigating party in most of the litigation and hence cannot be allowed to be a dominant participant in tribunal appointments.
- These Rules were contrary to the parent enactment and the principles envisaged in the Constitution as interpreted by the Court.
- The court ordered the Centre to re-formulate the Rules within six months strictly in conformity with the principles delineated by the Supreme Court.
- The court further ordered the Union Ministry of Law and Justice to conduct a 'Judicial Impact Assessment' of tribunals to analyse the ramifications of the changes caused by the Finance Act, 2017.
- For now, as an interim measure, the Bench directed that the terms and conditions of appointment to the tribunals would be in accordance with the respective statutes which were in place before the enactment of the Finance Bill, 2017.
- The majority opinion referred the issue to a larger Bench and also the question whether the 2017 Act could have been passed as a money bill.
- The court said a seven-judge Bench should also decide the question whether the Lok Sabha Speaker acted in the right by certifying it as money bill, thus allowing it to circumvent Rajya Sabha.

How has the new rules fared?

- **Membership -** In the 2017 rules, except for NCLAT selection committee, all other committees comprised only one judge and three secretaries.
- To deny the executive an upper hand in appointing members to tribunals, the court ordered to have two judges of the Supreme Court to be a part of the four-member selection committee.
- Now, in the 2020 rules, by default, all committees consist of a judge, the president/chairman/chairperson of the tribunal concerned and two secretaries to the Government of India.
- A non-judicial member can become the president/chairman/chairperson.
- Therefore, when a non-judicial member becomes a member in the selection committee, the Supreme Court judge will be in minority, giving primacy to the executive, which is impermissible.
- **Tenure -** The Court held that the term of 3 years in 2017 rues is too short, and by the time members achieve a refined knowledge, expertise and efficiency, one term will be over.
- It advised that the term of office "shall be changed to a term of 5 or 7 years".
- Now, in the 2020 rules, the tenure of members has been increased from three years to four years, thereby blatantly violating the directions of the Supreme Court.

4.2 Judge's Recusal

Why in News?

A Supreme Court judge recused from hearing a petition against the government's move under the Public Safety Act.

What is the story so far?

- The petition was against the government's move to charge former Jammu and Kashmir CM Omar Abdullah under the Public Safety Act.
- The petition was filed for issuance of habeas corpus writ for authorities to produce Mr. Omar Abdullah before the SC and set him at liberty.
- After the SC judge recused, the case was finally heard by another bench.

What is Recusal?

- Recusal is the withdrawal of a judge, prosecutor, or juror from a case.

- It usually takes place when a judge has,
    1. A possible conflict of interest or
    2. A prior association with the parties in the case which may lead to lack of impartiality.

What are the rules on recusals?

- There are **no written rules** on the recusal of judges from hearing cases listed before them in constitutional courts.
- It is left to the **discretion of a judge**.
- The reasons for recusal are not disclosed in an order of the court.
- The decision to convey the reasons rests on the conscience of the judge.
- At times, parties involved raise apprehensions about a possible conflict of interest.
- A recusal inevitably leads to delay. The **case goes back to the Chief Justice**, who has to constitute a fresh Bench.

Should the reasons be put on record?

- Justice (now retd.) Kurian Joseph talked about this in his opinion in the National Judicial Appointments Commission judgment, 2015.
- He highlighted the need for judges to give reasons for recusal as a measure to build transparency.
- He wrote that it is the constitutional duty of a Judge, as reflected in one's oath, to be transparent and accountable.
- Another judge, Justice (retd) Madan B. Lokur agreed that specific rules require to be framed on recusal.

What happened in recent cases?

- **Judge Loya case** - In 2018, petitioners in the Judge Loya case sought the recusal of SC judges from the Bench.
- The court refused the request and observed that recusal would mean abdication of duty.
- **Assam's detention centres case** - In 2019, the then-Chief Justice Ranjan Gogoi was asked to recuse himself in the middle of a hearing of a PIL filed about the plight of inmates in Assam's detention centres.
- Justice Gogoi said that a litigant cannot seek recusal of the judge.
- The court observed that the judicial functions may involve performance of unpleasant and difficult tasks, which require asking questions and soliciting answers to arrive at a just and fair decision.
- If the assertions of bias as stated are to be accepted, it would become impossible for a judge to seek clarifications and answers.

Why did Justice Arun Mishra argue against recusal?

- He refused to recuse himself from the Constitution Bench hearing a question of law on the Indore Development Authority v. Manohar Lal.
- The issues involved in the case were related to a reading of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
- The petitioners had objected to Justice Mishra leading the Constitution Bench which was hearing a question of law challenging his own earlier judgment in the case.
- Justice Mishra said accepting reluctantly the wishes of parties to recuse himself would sound the death-knell for judicial independence.

4.3 Nomination of Ex-CJI to Rajya Sabha

Why in news?

Within five months of his retirement as Chief Justice of India, Justice Ranjan Gogoi has been nominated to the Rajya Sabha by the President of India.

What were the key judgments handled?

- During his tenure, Justice Gogoi presided over and pushed through the exercise of the National Register of Citizens (**NRC**) in Assam.
- Then, there is the **Sabarimala temple review case** in which the Supreme Court (SC) held that excluding menstruating women from entering the temple against constitutional morality.
- He **dismissed review of the Rafale aircraftdeal** without dealing with the grounds on which the original judgment had been challenged.
- Shortly before his retirement, he delivered several important verdicts including the **Ayodhya judgment**.
- His judgments left the government pleased, with scarcely any politically-sensitive case being decided against the government's wishes.

What is a forgotten code?

- The **16-point code of conduct** for judges, also called the "Restatement of Values of Judicial Life" is a forgotten code.
- This code was adopted at a Chief Justices Conference in May 1997.
- It states that a judge should practice a degree of aloofness consistent with the dignity of his office.
- It also says that a judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

What is the significance of aloofness?

- It is the most essential trait needed from politicians or functionaries of the government.
- Unfortunately, these values seem to have been forgotten by judges who invite politicians to their personal functions.
- It is incumbent on such judges not to hear and decide cases of those politicians who are their personal friends.
- Judges can also interact with functionaries of the government in their official capacity for official work.

What is the concern?

- This code of conduct also lays the basis of how post-retirement conduct ought to be.
- A judge after a deciding politically sensitive case, soon after retirement gets a plum post such as a Rajya Sabha nomination.
- It would obviously raise serious questions about his or her independence as a judge when he or she had decided those cases.
- Nomination of Justice Gogoi to a Rajya Sabha seat by the government raise serious doubts about the fairness of many critical judgments.

4.4 Moving Towards Virtual Courts

What is the issue?

- Amidst the national lockdown, the Supreme Court and several other courts have been holding virtual proceedings.

- This has triggered a rethink on the nature of judicial processes and judicial administration.

What are the concerns raised by the Bar Association?

- The Supreme Court Bar Association (SCBA) has written to the CJI and other judges.
- They called for earliest restoration of the open court hearings, subject of course to the lockdown ending.
- They cited the earlier judgments on the importance of open court hearings.
- The SCBA has requested that the use of video conferencing should be limited to the duration of the current crisis.
- They spelt that this should not become the "new normal" or go on to replace open court hearings.
- The SCBA also has a specific request that proceedings held virtually may also be streamed live.
- This will ensure that access is not just limited to the lawyers concerned, but is also available to the litigants and the public.

How would live streaming help?

- Advocates appearing in a particular case are now barred from sharing the passwords given to them to join the proceedings through video conference.
- It is theoretically possible for the parties to join their lawyers during the hearing.
- But in practice, they may be unable to travel to their offices.
- Media access is also limited.These issues can be resolved through live-streaming.

What is the higher judiciary's opinion?

- A three-judge Bench headed by the CJI, in a recent order, laid down broad norms for courts using video-conferencing.
- It also ratified the validity of virtual judicial proceedings.
- Present Chief Justice of India S.A. Bobde emphasised that virtual courts are open courts too.
- So, one cannot describe them as closed or in camera proceedings.
- He said that the correct way of framing the difference was to call them virtual courts as distinct from "courts in congregation".

4.5 Contempt of Court

Why in news?

The Supreme Court found that the two tweets by lawyer Prashant Bhushan amounts to serious contempt of court.

What were his tweets?

- One tweet was about the role of the last four Chief Justices of India.
- The other one was about the current CJI riding an expensive motorcycle while the court was in "lockdown".

How did the court respond to the first tweet?

- The court held the tweet tends to give an impression that the SC has in the last six years played a role in the destruction of Indian democracy.
- It said that the tweet tends to shake the public confidence in the institution of judiciary.
- It said that the tweet undermines the dignity and authority of the institution of the SC and the CJI and directly affronts the majesty of law.

How did the court respond to the second tweet?

- The Bench held that this tweet was not against the CJI in his individual capacity but as the head of the judiciary.
- It took exception to the "lockdown" remark and said that from March 23 to August 4, its various Benches had 879 sittings.
- It noted that Bhushan himself not only appeared as a lawyer during this period but also challenged the FIR against him.
- The court refused to accept his tweet as written out of anguish.
- It said magnanimity cannot be stretched to such an extent that may amount to weakness in dealing with an attack on the very foundation of the institution of judiciary.

What is so worrying about this SC response?

- The court rejected the argument that the tweet was only a matter of opinion, although experts like former SC judges have said or written similar things.
- In 2018, the then senior-most SC judges had held a press conference to say that the credibility of the highest judiciary is at stake.
- They asserted that democracy would not survive as an independent judiciary is the hallmark of successful democracy.
- The SC had tolerated such a strong indictment of itself, and then CJI Justice Dipak Mishra.
- Now, it has chosen not to ignore tweets by a lawyer-activist.

What is Criminal contempt?

- Criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971 means any publication which
    1. Scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
    2. Prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings, or
    3. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

What were the court's key arguments?

- **Actual Interference**: It rejected the argument that the tweet has not really interfered with administration of justice.
- It relied on Brahma Prakash Sharma (1953) verdict.
- This verdict had held that it is enough if a statement is likely, or tends in any way, to interfere with the proper administration of justice.
- The Bench also relied on C K Daphtary (1971) verdict.
- In this, the SC held that an attack on a judge in respect of a judgment or past conduct has adverse effect on the due administration of justice.
- It also said that this sort of attack has an inevitable effect of undermining the confidence of the public in the judiciary.
- **Scandalising Of Court**: The SC Bench cited Baradakanta Mishra (1974) verdict.
- In this verdict, the SC had held that scandalising of the court is a species of contempt, and a common form is vilification of the judge.
- The question the court has to ask is whether the vilification is of the judge as a judge, or as an individual.
- If the latter, the judge is left to his private remedies, and the court has no power to commit for contempt.

- The Bench held that fair criticism of judges, if made in good faith in public interest, is not contempt.
- But, how to ascertain the good faith is the million-dollar question.

How good faith could be ascertained?

- The Bench said that for ascertaining good faith and the public interest, the courts have to see all the surrounding circumstances.
- These circumstances should include the person responsible for comments, his knowledge in the field, and the intended purpose.

Is it different from previous rulings on contempt?

- There is nothing new in the judgment compared to earlier ones on the contempt law, several of which the Bench quoted.
- In a case involving Bhushan himself (**2001**), the SC had held that personal criticism of a judge does not amount to fair criticism.
- In **2006**, government brought in an amendment, which provides "truth" as defence provided it is bona fide and in public interest.
- The expression "scandalising the court" has not been defined.
- In **1988**, the SC held that a criticism of the court that doesn't hamper the administration of justice cannot be punished as contempt.
- This raises the question whether a mere tweet can really obstruct the administration of justice.
- It also raises a question whether judicial dignity is so fragile that it would get lowered in mature Indian people's eyes because of a lawyer's opinion.

Why is the contempt law seen as problematic?

- The judge himself acts as prosecutor and victim, and starts with the presumption of guilt rather than innocence.
- Contempt proceedings are quasi-criminal and summary in nature.

5. JUDGMENTS

5.1 SC Ruling against Judicial Transparency

Why in news?

Supreme Court has barred citizens from securing access to court records under the Right to Information (RTI) Act.

What is the SC ruling?

- The SC held that these records could be accessed only through the rules laid down by each High Court under **Article 225** of the Constitution.
- It ruled so in the Chief Information Commissioner (CIC) v. High Court (HC) of Gujarat case.
- This ruling does not preclude the application of the RTI Act to the administrative side of the court.
- But it firmly denies access to the court records filed on the judicial side under the RTI Act.
- The SC's verdict in this case is based on **Section 22** of the RTI Act.

What is the Section 22 of the RTI Act?

- The Section 22 states that the **RTI Act shall override any other law** to the extent that the latter is inconsistent with the former.

- It is **non-obstante clause** which means that it can be used as a common drafting device by legislatures to permit certain actions regardless of what is mentioned in existing legislation.
- Despite this, the SC and, High Courts on previous occasions have concluded exactly the opposite.

Why records should be shared?

- A significant number of decisions taken by the courts influence a person's daily life.
- Every prosecution before a criminal court is essentially an opportunity to hold the police accountable.
- The pleadings filed by parties contain information that are useful to citizens, journalists, shareholders, etc., who can better inform the public discourse on the ramifications of these decisions.

What reasoning did the court give?

- The court concludes that there is **no inconsistency** between the RTI Act and the court rules.
- It is factually incorrect as the Gujarat HC Rules require the submission of an affidavit stating the purpose of seeking copies of the pleadings.
- But, the RTI Act requires no reasons to be provided while seeking information.
- The court argues that an enactment can't be overridden by a later general enactment simply because the latter opens up with a **non-obstante clause**, unless there is clear inconsistency between the two legislations.
- But that is exactly the point of a non-obstante clause.
- The court concludes that the **Section 22** could not be read in a manner to imply repeal of other laws, such as the Gujarat High Court Rules.
- The court states that if the intention was to repeal another law, the legislature would have specifically stated so in the RTI Act.
- This reasoning is bewildering because it would render non-obstante clauses entirely useless.

Why it's a problematic decision from citizen's perspective?

- **Administrativediscretion** - Some HCs allow only parties to a legal proceeding to access the records of a case and some allow third parties to access court records if they can justify their request.
- This is entirely unlike the RTI Act, where no reasons are required to be provided thereby reducing the possibility of administrative discretion.
- **Logistical difficulties** -An application under the RTI Act can simply be made by post, with the fee being deposited through a postal order.
- Most HCs and the SC require physical filing of an application with the Registry, and a hearing to determine whether records should be given.

5.2 Human Rights Commissions

Why in news?

Madras HC is to decide on if the recommendations made by Human Rights Commissions are binding upon the state.

Why these commissions were established?

- The Protection of Human Rights Act of 1993 created,
    1. National Human Rights Commission at the national level and
    2. Human Rights Commissions at the levels of the various States.
- These commissions were established to protect, promote and fulfil the fundamental rights guaranteed by the Indian Constitution.

What is the criticism?

- The complexity of governance and administration has necessitated the existence of a set of independent bodies with vital functions of oversight.
- However, for all intents and purposes, the Human Rights Commissions are toothless: at the highest, they play an **advisory role**.
- The government is free to disobey or even disregard their findings.

What are their powers?

- Under the 1993 Act, these commissions are empowered to inquire into the violations of human rights committed by state authorities.
- They can take action either upon petitions presented to them, or upon their own initiative.
- While conducting these inquiries, the Commissions are granted identical powers to that of civil courts, such as the examining witnesses, etc.
- These proceedings are deemed to be judicial, and they require that any person has a right to be heard.
- After concluding a violation, the Section 18 of the Act empowers this Commission to "**recommend**" to the concerned government to,
    1. Grant compensation to the victim,
    2. Initiate prosecution against the erring state authorities,
    3. Grant interim relief and take various other steps.
- Furthermore, the Section 18 of the Act obligates the concerned government to forward its comments on the report, including the action taken or proposed to be taken, to the Commission within a month.

What is the pending case?

- The Madras High Court (HC) will be deciding upon a case whether "recommendations" made by the Human Rights Commissions are
    1. Binding upon their respective State (or Central) governments, or
    2. The government is entitled to reject or take no action upon them.
- The Full Bench of the Madras HC is hearing the case as to bring a common conclusion to the **meaning of the word "recommend"** in the context of the Protection of Human Rights Act, 1993.
- The argument is that the only obligation upon the government is that it needs to report to the Commission under the Section 18.

What is the view that needs to be rejected?

- If the Act intended to make the recommendations of the Commission binding upon the government, it would have said so.
- It would not simply have required the government to report what action it intended to take to the Commission ("no action" also as a category).
- This is a view that needs to be rejected due to many reasons.

Why this view needs to be rejected?

- Ordinarily, a mere "suggestion" is not binding.
- There is often a gap between the ordinary meanings of words and the meanings that they have within legal frameworks.
- Legal meaning is a function of context, and the purpose of the statute within which a word occurs has influence on how it is to be understood.

What is the constitutional commitment?

- The task of Human Rights Commissions is to ensure the adequate realisation of constitutional commitment to protecting human rights.
- If the state was left free to disobey the findings of the Commission, this constitutional role would be effectively pointless.
- If this is the case, whatever the Human Rights Commission did, the final call on whether or not to comply with its commitments under the Constitution would be left to the state authorities.
- This, it is clear, would defeat the entire purpose of the Act.

What should the courts do?

- In the past, the courts have invoked constitutional purpose to determine the powers of various institutions, like CBI, Election Commission, etc., in cases of ambiguity.
- Therefore, it should also determine the powers of the Human Rights Commission, as their role in the constitutional scheme is significant.
- As the Human Rights Commission has the powers of a civil court, its findings should be treated as quasi-judicial.
- Its findings should be made binding upon the state (unless challenged).

5.3 Karnataka HC on Right of an Accused

Why in news?

Karnataka HC observed that it is unethical & illegal for lawyers to pass resolutions against representing accused in court.

What is the story behind?

- The Hubli Bar Association passed a resolution that objected to defend students arrested for sedition in court.
- So, the HC has asked the association to place on record a resolution withdrawing this resolution.
- This isn't the first time that bar associations has passed such resolutions.
- The Supreme Court (SC) has ruled that these are against all norms of the Constitution, the statute and professional ethics.

What does the Constitution say about the right of an accused?

- Article 22(1) gives the fundamental right to every person not to be denied the right to be defended by a legal practitioner of his or her choice.
- Article 14, also a fundamental right, provides for equality before the law and equal protection of the laws within the territory of India.
- Article 39A, part of the Directive Principles of state policy, states that equal opportunity to secure justice mustn't be denied to any citizen by reason of economic or other disabilities, and provides for free legal aid.

What has the SC said about such resolutions?

- **Case** - In 2010, a SC Bench dealt with the illegality of such resolutions under the A S Mohammed Rafi vs State of Tamil Nadu case.
- This case arose from a confrontation between a lawyer and policemen.
- So, the lawyers passed a resolution to not allow any lawyer to represent the police personnel.
- The Madras HC ruled this "unprofessional", after which lawyers appealed in the SC.

- **SC ruling** - The SC ruled that such resolutions are wholly illegal, against all traditions of the bar and against professional ethics.
- Every person, however may be, has a right to be defended in a court of law and correspondingly, it is the duty of the lawyer to defend him.
- It said such resolutions were against all norms of the Constitution, the statute and professional ethics, and declared them null and void.

How are professional ethics of lawyers defined?

- The Bar Council of India has **Rules on Professional Standards**, part of the Standards of Professional Conduct and Etiquette to be followed by lawyers under the Advocates Act.
- An advocate is bound to accept any brief in the courts or tribunals, at a fee consistent with his standing at the Bar and the nature of the case.
- The Rules provide for a lawyer refusing to accept a particular brief in "special circumstances".
- In 2019, the Uttarakhand HC clarified that these special circumstances refer to an advocate who may choose not to appear in a particular case.
- But it says that he cannot be prohibited from defending an accused by any threat of removal of his membership of the bar association.

5.4 Quashing AP's 100% Quota Order

Why in news?

- The Supreme Court (SC) has quashed a January 2000 order of the erstwhile state of Andhra Pradesh.
- [The order provided 100% reservation to ST candidates for the post of teachers in schools in the scheduled areas.]

What was the State's rationale?

- There was chronic absenteeism among teachers who did not belong to those remote scheduled areas where the schools were located.
- The State government's original orders of 1986, and the subsequent order in 2000, were an attempt to address this.
- The Governor of then undivided Andhra Pradesh had cited Schedule V of the Constitution to pass the order.
- It provides for administration of Scheduled Areas in states other than Assam, Meghalaya, Tripura and Mizoram.

What are the SC's arguments now?

- **Equality** - The scheme was not against affirmative programmes as such, but the implementation manner was detrimental to the rest of society.
- Andhra Pradesh has a local area system of recruitment to public services.
- The President, under Article 371D, has issued orders that a resident of a district/zone cannot apply to another district/zone for appointment.
- The 100% reservation thus adversely affected the interests of other candidates.
- These include not only Scheduled Castes and other backward communities but also other ST communities not native to those areas.
- The court thus concluded that the reservation violated Articles 14 (equality before law), 15(1) (discrimination against citizens) and 16 (equal opportunity) of the Constitution.

- SC ruling stresses that overzealous reservation tends to affect rights of other communities.
- **Schedule V** - The court held that creation of 100% reservation through the government order was akin to making a new law.
- But the Schedule V only allows the Governor to not apply or apply a law to a scheduled area with modifications.
- It does not allow the Governor to make a new law altogether.
- **Suggestions** - The court noted the move of drafting only members of the local tribes was not a viable solution to teachers' absenteeism.
- It noted that the government could have come up with other incentives to ensure the attendance of teachers.
- The court however agreed to not quash the appointments to the posts made since 1986.
- This was done on the condition that the states of Andhra Pradesh and Telangana would not attempt to bring in a similar quota in the future.

What are the larger concerns in this regard?

- **Reservation ceiling** - Dr. B.R. Ambedkar had observed that any reservation normally ought to be for a "minority of seats".
- This is one of the points often urged in favour of the 50% cap imposed by the Court on total reservation (although with exceptions in special circumstances).
- If at all the cap be breached, a special case must be made for it.
- However, it must also be noted that there is a continuing need for a significant quota for STs, especially those living in Fifth Schedule areas.
- **Revision of list** - In this backdrop, courts tend to emphasise on revision of the list of SCs and STs.
- The power to amend the lists notified by the President is not in dispute.
- However, it is not totally acceptable to say that the advanced and "affluent" sections within SCs and STs are cornering all benefits.
- The SCs and STs thus need due representation for their rightful empowerment.

5.5 Restoring 4G Internet in J&K

Why in news?

The Supreme Court directed that a special committee led by the Ministry of Home Affairs secretary should be constituted to look into restoration of 4G internet services in the UT of Jammu and Kashmir.

What is the case about?

- The central government had imposed a complete internet shutdown in the erstwhile state of Jammu and Kashmir in August 2019.
- This was after scrapping Article 370 which gave J&K its special status.
- Later in March 2020, it restored internet services partially, to allow 2G speed for mobile users.
- After this, several orders were passed from time to time, retaining speed restrictions.

What is the Court's direction?

- The committee suggested by the Centre will also include the -
  i. Department of Communications Secretary of the Union Ministry of Communications
  ii. the Chief Secretary of the Union Territory of Jammu and Kashmir

- This committee has been asked to look into the petitioners' contention.
- It will examine the alternatives suggested by them, on allowing faster internet on a trial basis in areas wherever possible.
- The Court emphasized on ensuring the balance between national security and human rights.
- The bench referred to the judgment in the Anuradha Bhasin case (January 2020).

What were the observations of the Anuradha Bhasin case?

- It was popularly known as the Kashmir internet shutdown case.
- The Supreme Court emphasized back then that Article 19 of the constitution guarantees the freedom of speech.
- The freedom to practice any profession or carry on any trade, business or occupation over the medium of Internet also enjoys constitutional protection.
- The Anuradha Bhasin case had also advocated for adequate procedural safeguards while implementing internet shutdowns.
- The Court refrained from taking any view on the legality of the government's imposition of a blanket communication lockdown in J&K.
- However, it held that repeated resort to Section 144 of the CrPC to impose wide restrictions without territorial or temporal limits was unacceptable.
- It directed the authorities to review each one of them from time to time.

What is the contention now?

- It is now desirable to have better internet when there is a worldwide pandemic and a national lockdown.
- But there is also the concern of outside forces trying to infiltrate the borders and destabilize the integrity of the nation.
- The government's rationale is that the limitation on internet speed was to "restrict the flow of information".
- This is to prevent misuse of data by terrorists and their supporters to disturb the peace and tranquillity of the UT of Jammu and Kashmir.
- Notably, there has been a spike in incidents of terrorism in the area; roughly 108 incidents between August 2019 and April 2020.

What are the concerns with the Court's decision?

- The Court failed to ask how those incidents could be linked to Internet speed when all of them took place while severe restrictions were in place.
- The Court has directed a review of the matter by the very authorities who imposed the restriction in the first place.
- This suggests abdication of responsibility by the Court, of discharging a judicial duty it was called upon to perform.
- The mandate that the Court enjoys under Article 32 of the Constitution (enforcing fundamental rights) cannot be transferred to the executive.
- The judgment is in consonance with a judicial trend that seeks 'balance' between rights and 'national security'.
- But in the J&K context, this approach would work in favour of the claims made by the executive on national security concerns.
- The Court has not even pursued the attempt it made in Anuradha Bhasin case.

- It has not lain down any set of rules by which authorities seeking to impose restrictions must adhere to the doctrine of proportionality.
- So, without any judicial standard to scrutinise the claims made, it would be unfair to dislodge fundamental rights.

5.6 SC Order in TN Liquor Case

Why in news?

Supreme Court ordered a stay on Madras HC's order 'barring the sale of liquor through retail stores and mandating online sales alone', in a case by Tamil Nadu.

What was the case about?

- The Madras High Court initially allowed the State government to open its vast network of liquor shops amidst lockdown.
- Outlets of the State-run TASMAC were permitted to open, subject to several conditions for maintaining physical distancing.
- However, the State witnessed scenes of unmanageable crowds and long queues when shops re-opened.
- As there was overwhelming evidence that physical distancing had been compromised, the HC banned across-the-counter sales.
- It directed that only online sale be permitted.

What does the SC order indicate?

- States' revenues are dwindling due to the stagnation in economic activity since the national lockdown began.
- States are desperate to raise money to combat disease spread and to keep their public health services going.
- It is this desperation that led Tamil Nadu to rush to the Supreme Court to obtain a stay on a Madras High Court order.
- The conflict between fiscal health and public health is quite real for the States.
- Notably, the number of people testing positive for the novel coronavirus is increasing in TN.
- But the top court seems to be mindful of the need to preserve the policy space of States.

Is the State's argument valid?

- The State government's argument that the HC ought not to have interfered in a policy matter may be sound.
- And this had logically impressed the Supreme Court.
- However, the state's claim that online sale was not possible in a State like Tamil Nadu raises doubts.
- The reality is that selling liquor online would cut into the unaccounted extra fee that TASMAC staff charge for every purchase.
- At Rs. 5 to Rs. 10 for each sale, this amount runs into crores of rupees annually and is believed to be shared among vested interests.

What lies ahead?

- The possibility that reopening TASMAC outlets may lead to another infection spiral is high.
- Tamil Nadu has fought bitterly, even at the cost of making a highly contentious decision, to get liquor sales going.
- So it now has to live up to its promise of preventing overcrowding in the vicinity of its outlets.

5.7 Padmanabhaswamy Temple Case

Why in news?

Supreme Court upheld the right of the Travancore royal family to manage the property of deity at Padmanabha Swamy Temple.

What is the case about?

- The central legal question was whether Marthanda Varma could claim to be the "Ruler of Travancore".
- [Marthanda Varma is the younger brother of Balarama Varma, the last Ruler of Travancore who died in 1991.]
- The court examined this claim within the meaning of that term as per the Travancore-Cochin Hindu Religious Institutions Act, 1950.
- This claim also includes the ownership, control and management of the temple, Thiruvananthapuram.
- The court said that the **shebait rights survive with the family members** even after the death of the last ruler.
- [Shebait rights - Right to manage the financial affairs of the deity.]
- This SC decision has reversed the 2011 Kerala High Court decision.

Who had these claims of the temple before 1991?

- Before 1947, the Travancore Devaswom Board controlled the temple that was under the control of the former Princely State of Travancore.
- The Instrument of Accession was signed between the princely state of Travancore and the Government of India in 1949.
- Since then, the administration of the Padmanabhaswamy Temple was "vested in trust" in the Ruler of Travancore.
- In 1971, privy purses to the former royals were abolished through a constitutional amendment stripping their entitlements and privileges.
- The move was upheld in the court in 1993.
- The last ruler of Travancore who died during the pendency of this case continued to manage the affairs of the temple till then.

When did the legal issue begin?

- In 1991, when the last ruler's brother took over the temple management, it created a furore among the devotees.
- They moved to the courts leading to a long-drawn legal battle.
- The government joined in; supporting the claims of the petitioner that Marthanda Varma had no legal right to claim the control of the temple.

Is the temple the property of the royal family?

- The character of the temple was always recognised as a **public institution** governed by a statute.
- The argument of the royal family is that, as per custom, the temple management would vest with them for perpetuity.
- The last ruler had not included the Sree Padmanabhaswamy Temple as his personal property or dealt with it in his will.

What about the temple's property, including the riches in the vaults?

- A consequence of who has administrative rights over the temple is whether the vaults of the temple will be opened.
- In 2007, Marthanda Varma claimed that the treasures of the temple were the family property of the royals.
- Several suits were filed objecting to this claim.
- A lower court in Kerala passed an injunction against the vaults' opening.
- In 2011, the Kerala High Court ordered that a board be constituted to manage the affairs of the temple, ruling against the royal family.
- The royal family filed the appeal in the SC against this verdict immediately.

What did the SC rule?

- The SC had stayed the HC verdict.
- It also appointed two amicus curiae to prepare an inventory of items in the six vaults.
- While five vaults were opened, vault B was not.
- Since 2011, the process of opening the vaults has led to the discovery of treasures within the Padmanabhaswamy temple.
- This prompted a debate on who owns temple property and how it should be regulated.

How temples are controlled?

- India is a secular country that separates religion from the state affairs.
- However, Hindu temples and its assets are governed through statutory laws and boards heavily controlled by state governments.
- This system came into being through the development of a legal framework to outlaw untouchability by treating temples as public land.It has resulted in many legal battles.

6. ELECTIONS

6.1 Electoral Reforms

What is the issue?

The Election Commission of India (ECI) has plans to strengthen the electoral process, but some require scrutiny.

What is an unhealthy pattern?

- Even as electoral democracy has taken strong root in India, some unhealthy patterns have emerged.
- The voter electoral participation has remained robust with the poor voting in large numbers.
- But, the candidates and winners in Assembly and Lok Sabha polls have largely been from affluent sections.
- With elections becoming expensive, most parties have sought to field richer candidates irrespective of their merit to represent public interest.

What are the current regulations?

- Current campaign finance regulations by the ECI **seek transparency on expenses** by party and candidate.
- The ECI **prescribes limits on a candidate's expenditure** have not been sufficient deterrents.
- Poll results have tended to be a function of either party or leader preference by the voter rather than a statement on the capability of the candidate.

- In many cases, capable candidates stand no chance against the money power of more affluent candidates.

What does the ECI seek to do now?

- The ECI is considering tightening ways to cap the expenditure of parties.
- It is welcomed as it should provide a more level playing field.
- But even this can be meaningful only if there is **more transparency in campaign finance.**
- The ECI has also suggested bringing social media and print **media under the silent period** ambit after campaigning ends.
- Regulating social media will be difficult and it remains to be seen how the ECI will implement this.

What does the ECI's plan need?

- The ECI's plans to introduce new safe and secure voting methods, however, this needs a **thorough scrutiny**.
- The EVM used now as a standalone, one-time programmable chip-based system, along with administrative safeguards is a safe mechanism.
- But any other online form of voting that is based on networked systems should be avoided.
- The idea of an Aadhaar-linked remote voting system that is sought to be built as a prototype could be problematic.
- This may be problematic because the unique identity card has excluded genuine beneficiaries when used in welfare schemes.

In what areas do the ECI needs concentration?

- The measures missing from the recommendations are the need for more teeth for the ECI in its fight against **votebuying** and **hatespeech**.
- **Vote buying** - Increasingly, parties have resorted to bribing voters in the form of money and other commodities in return for votes.
- While the ECI has tried to warn outfits or in some cases postponed polls, these have not deterred them.
- **Hatespeech** - In times when hate speech is used during elections, the ECI has only managed to rap the offending candidates or party spokespersons on the knuckles.
- But stricter norms including disqualification of the candidate would be needed for true deterrence.

6.2 One Nation One Voter ID

What is the issue?

- Migrant workers have, for long, been forgotten voters, given their conditions of work.
- Given this, there must be the political will to usher in a 'One Nation One Voter ID' to ensure ballot portability.

What are the recent changes made by the ECI?

- In response to the pandemic, the Election Commission of India (ECI) has made it possible for senior citizens above the age of 65 to vote by postal ballot.
- This is given the fact that they are at greater risk from exposure to the novel coronavirus.
- [Until now, this option was available only to disabled citizens and those above 80 years.]
- The same empowering approach could be extended to the migrants who evidently face difficulties in exercising their franchise.

How significant are the migrant workers?

- Internal migrant workers constitute about 13.9 crore as in the Economic Survey of 2017.

- This is nearly a third of India's labour force.
- They travel across India in search of an economic livelihood.
- They engage in the construction sector, as domestic work, in brick kilns, mines, transportation, security, agriculture, etc.

What is the present scenario?

- With COVID-19 pandemic and the lockdown, the country witnessed the magnitude of internal migration.
- The hardships that migrant workers endured in their quest for livelihoods were also apparent.
- The humiliation they faced showed how politically powerless they were perceived to be.

Why are they called the forgotten voters?

- Most of the migrant workers never intend to settle down in their locations of work.
- They only wish to return to their native villages and towns once their work is completed or the working season ends.
- Often they toil in exploitative low-wage jobs, lacking identity and proper living conditions.
- So, they often go without access to welfare.
- Internal migrant workers do not enrol as voters in their place of employment.
- This is because they find it hard to provide proof of residence.
- They also cannot afford to return home on election day to vote.
- Thus, migrant workers become quasi-disenfranchised, and forgotten voters.
- It is perhaps this group does not constitute a vote bank worthy of attention.
- Also, since they do not have a vote where they work, their concerns are easy to ignore in their host State.
- Sometimes, they are targeted for allegedly taking jobs away from the local population.

What do the voters turn out show?

- It is indeed a matter of pride that India currently has over 91.05 crore registered voters.
- In the 2019 general election, a record 67.4% cast their vote.
- The ECI would do well to focus attention on the one-third, a substantial 29.68 crore, who did not cast their vote.
- National Election Study surveys have shown that about 10% of registered voters refrain from voting due to a lack of interest in politics.
- That leaves approximately 20 crore voters who want to vote but are unable to do so.
- Of these there are about 3 crore Non Resident Indians (NRIs).
- Only about 1 lakh NRIs have registered to vote, presumably because voting requires their physical presence in India.
- Of them, about 25,000 voted in the 2019 elections.
- To enable NRIs to exercise their franchise, the government brought in legislation in the previous Lok Sabha to enable voting through authorised proxies.
- The legislation lapsed.
- However, it is interesting to contrast the concern for NRIs with the lack thereof for poor migrant workers.

What are the models in place for voter portability?

- Service voters (government employees) posted away from home can vote through the Electronically Transmitted Postal Ballot System (ETPBS).
- Classified service voters (e.g., military personnel) can do so through their proxies.
- The ECI has said that it is testing an Aadhaar-linked voter-ID based solution.
- This is to enable electors to cast their votes digitally from anywhere in the country.
- It will be some time in the future before this becomes a functional reality.

What should be done?

- Ensuring that every Indian who is eligible to vote can do so must be a central mission for the ECI.
- Voting must be viewed not just as a civic duty but also as a civic right.
- In developing the Aadhaar-linked voter-ID based solution, it must be ensured that the linkage does not result in the exclusion of eligible individuals.
- Meanwhile, the existing forms of voter portability can be utilised for re-enfranchising migrant workers as well.
- To facilitate migrant workers voting, the ECI could undertake substantial outreach measures using the network of District Collectorates.
- Migrants should be able to physically vote in their city of work, based on the address on their existing voter IDs and duration of their temporary stay.
- The COVID-19 crisis has mobilised governments and NGOs to set up registers and portals to reach out to migrant workers.
- So, in the lines of the 'One Nation One Ration Card', a 'One Nation One Voter ID' will ensure native ballot portability and empower the forgotten migrant voters.
- Ensuring that every Indian voter can participate in elections is imperative to ensure a democratically inclusive India.

6.3 Common Electoral Roll

Why in news?

The Prime Minister's Office (PMO) has pitched for a common electoral roll.

Where was this pitch made?

- This pitch was made by the PMO in its meeting with representatives of the Election Commission and the Law Ministry.
- The PMO discussed the possibility of having a single voters' list to the panchayat, municipality, state assembly and the Lok Sabha elections.

How many types of electoral rolls does India have?

- In many states, the voters' list for the panchayat and municipality elections is different from the one used for Parliament and Assembly elections.
- The distinction stems from the fact that the supervision and conduct of elections are entrusted with two constitutional authorities,
    1. The Election Commission (EC) of India and
    2. The State Election Commissions (SECs).
- **EC** - The EC is responsible for conducting polls to the offices of the President and Vice-President of India, and to Parliament, the state assemblies and the legislative councils.

- **SEC** - The SECs supervise municipal and panchayat elections.
- They are free to prepare their own electoral rolls for local body elections.
- This exercise does not have to be coordinated with the EC.

Do all states have a separate list for their local body elections?

- No, each SEC is governed by a separate state Act.
- Some state laws allow the SEC to borrow and use the EC's voter's rolls in toto for the local body elections.
- In others, the SEC uses the EC's rolls as the basis for the preparation and revision of rolls for municipality and panchayat elections.
- All states, except Uttar Pradesh, Uttarakhand, Odisha, Assam, Madhya Pradesh, Kerala, Odisha, Assam, Arunachal Pradesh, and Nagaland, adopt EC's rolls for local body polls.
- The Union Territory of Jammu and Kashmir didn't adopt EC's rolls for local body polls.

Why is the Union government working on a common electoral roll?

- The common electoral roll is among the promises made by the present government in its manifesto for the Lok Sabha elections in 2019.
- It ties in with the government's commitment to hold elections simultaneously to the Lok Sabha, state assemblies and local bodies.
- The government has pitched a common electoral roll and simultaneous elections as a way to **save effort and expenditure**.
- It has argued that preparing a separate voters list causes duplication of essentially the same task between two different agencies.
- This, thereby, duplicates the effort and the expenditure.

Is the pitch for a common electoral list new?

- No. The Law Commission recommended it in its 255th report in 2015.
- The EC too adopted a similar stance in 1999 and 2004.

How does the government intend to implement it?

- In the meeting called by the PMO, two options were discussed.
- **Amendment** - The first one is a constitutional amendment to Articles 243K and 243ZA.
- These articles give the power of superintendence, direction and control of preparation of electoral rolls and the conduct of local body elections to the SECs.
- The amendment would make it mandatory to have a single electoral roll for all elections in the country.
- **Persuade** - The state governments could be persuaded to tweak their respective laws and adopt the EC's voters list for municipal and panchayat polls.

7. LEGISLATIONS

7.1 Mining laws (Amendment) Ordinance 2020

Why in News?

The Union Cabinet approved the promulgation of Mineral Laws (Amendment) Ordinance 2020.

What are the decisions taken?

- The Centre has decided to,
    1. Liberalise norms for entry into coal mining and
    2. Relax regulations on mining and selling coal in the country.
- The Union Cabinet approved promulgation of Mineral Laws Ordinance 2020 to amend,
    1. The Coal Mines (Special Provisions) Act, 2015, and
    2. The Mines and Minerals (Development and Regulation) Act, 1957.
- Amendments to these two Acts cleared by the Cabinet will **free the sector from restrictions** that were inhibiting its development.
- This will open up the coal mining sector completely, enabling anyone with finances and expertise to bid for blocks and sell the coal freely to any buyer of their choice.

What was the case till now?

- Until now there were restrictions on who could bid for coal mines.
- Only those in power, iron and steel, and coal washery business could bid for mines and the bidders needed prior experience of mining in India.
- This effectively limited the potential bidders to a select circle of players and thus limited the value that the government could extract from the bidding.
- The end-use restrictions inhibited the development of a domestic market for coal.

What will the ordinance do?

- The ordinance **democratises the coal industry** and makes it attractive for merchant mining companies, including multinationals to look at India.
- The move was behind the schedule considering that the country spent ₹ 1,71,000 crore in coal imports last year to buy 235 million tonnes, of this,
    1. 100 million tonnes was not substitutable, as the grade was not available in India,
    2. 135 million tonnes could have been substituted by domestic production had it been available.

What will be the ordinance's impact?

- Large investment in mining will **create jobs** and **set off demand** in critical sectors such as mining equipment and heavy commercial vehicles.
- The country may **benefit from infusion of sophisticated mining technology**, especially for underground mines, if multinationals decide to invest.
- However, for that to happen, the government needs to do more such as,
    1. Shaping the time taken for approvals of mining leases and
    2. Easing the procedures for clearances.
- The test would come when 46 producing mines, whose leases expire in March 2020, come up for bidding shortly.

What does the ordinance mean to CIL?

- Coal India Limited (CIL) is a Maharatna PSU and tremendous public resources have been invested in the company over the years.
- The company employs about 3 lakh people and is a national asset.
- Opening up of coal mining effectively **ends CIL's monopoly status**.

- It is the responsibility of the government to ensure that CIL is not compromised the way BSNL has been by the opening up to private players.
- Coal Minister emphasised that the CIL has been and will be allotted adequate blocks and that it will be supported and the interests of labourers will be taken care of.
- **CIL has to be nurtured** even as private players are welcomed.

7.2 Medical Termination of Pregnancy Bill, 2020

Why in news?

The Union Cabinet has approved the Medical Termination of Pregnancy (Amendment) Bill, 2020 to amend the Medical Termination of Pregnancy Act, 1971.

What are the proposed amendments?

- It has proposed a requirement for opinion of one provider for termination of pregnancy, up to 20 weeks of gestation.
- It has also introduced the requirement of opinion of two providers for termination of pregnancy of 20-24 weeks of gestation.
- It enhanced the upper gestation limit from 20 to 24 weeks for special categories of women which will be defined in the amendments to the MTP Rules which would include vulnerable women.
- The upper gestation limit would not apply in cases of substantial foetal abnormalities diagnosed by Medical Board.
- The name and other particulars of a woman whose pregnancy has been terminated shall not be revealed except to a person authorised in any law for the time being in force.

What is the significance of increasing the gestation limit?

- The government reasoned that the extension is significant because some women realise the need for an abortion after the first 20 weeks of pregnancy.
- Usually, the foetal anomaly scan is done during the 20th-21st week of pregnancy.
- If there is a delay in doing this scan, and it reveals a lethal anomaly in the foetus, 20 weeks is limiting.
- The extension of limit would ease the process for the distressed pregnant women, allowing the mainstream system itself to take care of them, delivering quality medical attention.

How the decision to abort should be taken?

- The question of abortion needs to be decided on the basis of human rights, the principles of solid science, and in step with advancements in technology.
- A key aspect of the legality governing abortions has always been the 'viability' of the foetus.
- In human gestation, 'viability' indicates the period from which a foetus is capable of living outside the womb.
- There is no uniform gestational viability for abortion. It's usually placed at about 28 weeks but may occur earlier, even at 24 weeks.
- As technology improves, with infrastructure upgradation, and with skilful professionals driving medical care, this 'viability' naturally improves.

7.3 Assisted Reproductive Technology Regulation Bill, 2020

Why in news?

The Cabinet cleared the Assisted Reproductive Technology (ART) Regulation Bill, 2020 that aims to regulate assisted reproductive technology services.

What are the provisions of the Bill?

- **National Board** - This will be constituted to lay down a code of conduct to be observed by persons working at clinics.
- It will set minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by clinics and banks.
- States and Union Territories shall constitute State Boards and State Authorities after the notification of the Central government.
- **National Registry and Registration Authority** will be formed to maintain a central database through which details of all clinics and banks will be obtained on a regular basis
- It will also assist the National Board in its functioning.
- **Punishment** - The Bill proposes stringent punishment for sex selection, sale of human gametes, and agencies behind such unlawful practices.
- In the first instance, the person will be fined Rs 10 lakh and in second instance, the person shall be imprisoned for up to 12 years.
- **Confidentiality** - The Bill will also ensure confidentiality of intending couples and protect the rights of the child.

What are the concerns?

- The ART Bill came after the Surrogacy Bill that it should have preceded.
- A market projection said the size of the ART market is expected to reach $45 billion by 2026.
- A lack of regulation and the consequent laxity in operations was the concern which drove a lot of traffic from other nations to India.
- This, in turn, along with the relatively low costs, led to the mushrooming of unethical ART clinics across the country.

7.4 Pesticides Management Bill, 2020

Why in news?

The Union Cabinet has approved the Pesticides Management Bill, 2020 that seeks to replace the existing Insecticides Act of 1968.

What are the provisions of the Bill?

- **Compensation** - If there is any loss because of the fake or low quality of pesticides then there is a provision for compensations.
- To ensure speedier compensation for these losses, the Bill moots setting up a dedicated fund of Rs 50,000 crore.
- This will be raised from the fines charged from the defaulting pesticides companies and contributions from the Central and state governments.
- **Central Pesticides Board** - This board will regulate the production, trade, and use of pesticides.
- It will comprise representatives from the Centre, states and farmers.

- **Promotion** of environment- and health-friendly organic pesticides is among the other notable features of this Bill.
- **Penalty** - A key proposal was to raise penalties on the sale of prohibited or spurious pesticides to ₹50 lakh and up to 5 years' imprisonment.
- This penalty was raised from the current ₹2,000 and up to 3 years' imprisonment.

Why such a Bill is needed?

- The pesticides industry has grown haphazardly, resulting in the emergence of many **fake** and **poor-quality chemicals**.
- Only around 300 pesticides have been formally registered for production and use in the country.
- But the number of chemical formulations in circulation is far larger because of the production and sale of **unregistered molecules**.
- Several **pesticides banned abroad are continuedto beused** in India, causing deaths and grievous injuries to the farm workers.
- The injudicious and **indiscriminate use of pesticides** is causing widespread air, soil and water pollution.

What are the criticisms?

- By removing the applicability of the Code of Criminal Procedure, 1973, the Bill has favoured decriminalisation of agro-input manufacturing.
- The existing draft provides inadequate representation to States in both pesticide board and the registration committee.
- As States have the best understanding on the agro-ecological climate, environment and soil conditions, they should have a say in the final decision making on pesticide.
- Many of these misgivings could have been avoided by seeking public comments on the final draft of the Bill.

7.5 Draft Competition (Amendment) Bill, 2020

Why in news?

The Ministry of Corporate Affairs (MCA) has put the draft Competition (Amendment) Bill, 2020, in the public domain to seek feedback.

What is the current legislation?

- The Competition Commission of India (CCI) imposes penalties on companies on the basis of their turnover if they flout competition rules.
- When it comes to directors of companies or proprietorship firms, penalties are imposed on the basis of their income.
- However, the law does not have any provision to empower the CCI to impose penalties on the income of individuals.

What does the draft Bill say?

- The draft Competition Bill, 2020 seeks to amend the Competition Act.
- If the changes proposed by the MCA to the Competition Act are enacted, buyers forming a cartel may be penalised.
- It has sought to give monetary and penal powers to the director general for investigation under the CCI.
- It also seek to empower the director general for investigation to send a person to prison for up to 6 months or impose a fine of Rs 1 crore if the latter refuses to produce any document the former has asked for.

- The Bill has a provision of income, on which penalty could be imposed under Section 27 of the Competition Act.
- It has the word 'income' included in the Act, which may provide a legal basis to the CCI to impose penalties on individuals.

What are the clauses introduced?

- The draft amendments also call for introducing a "commitment and settlement" clause in the Competition Act.
- The enabling clause will allow those found in contravention of the competition law to commit to correct their ways to avoid action even before investigation is completed.
- Even in cases where investigation is over, evidence has been found, and the adjudicating process has started, the companies can still enter a settlement.
- The companies will have to pay fine and avoid legal proceedings after ensuring that any anti-competitive practice will be corrected.

What does the Bill have to say about hub-and-spoke cartel?

- The proposed amendment seeks to provide clarity to these cartels.
- The MCA suggested hubs also be covered under Section 3(3), which deals with cartels that hinder competition.
- A hub-and-spoke cartel is basically an arrangement between companies where a dominant player (hub) is wooed by other firms (spoke), to destroy competition by, say, increasing or lowering prices.
- The hub-and-spoke agreements were not specifically covered under the Competition Act.

Competition Commission of India (CCI)

- The CCI is the competition regulator of India.
- In accordance with the provisions of the Competition (Amendment) Act, 2007, the CCI and the Competition Appellate Tribunal have been established.
- It is the duty of the Commission to -
  1. eliminate practices having adverse effect on competition
  2. promote and sustain competition
  3. protect the interests of consumers
  4. ensure freedom of trade in the markets of India

How do these amendments impact the CCI's powers?

- The CCI has imposed penalties by independently invoking Section 3(1) of the Competition Act.
- However, the CCI's powers to invoke Section 3(1) independently are pending adjudication before the Supreme Court.
- The proposed amendments also seek to expand the composition of the CCI by including part-time members in the Commission.
- The Commission is currently a 4-member body, including the chairman.

7.6 Major Port Authority Bill, 2020

Why in news?

The Union Cabinet has cleared the Major Port Authority Bill, 2020.

What is the government trying to do?

- The Union government's Sagarmala project (2015) was aimed at modernising major port infrastructure.
- Having invested in port infrastructure, the Cabinet has taken the next critical step to enable ports to control that new infrastructure - **operating policy reform**.
- So, it approved the Major Ports Authority Bill, 2020 to comprehensively overhaul the governance structure of major ports.

- This Bill seeks to replace a 1963 Act and it will be sunset time for the **Tariff Authority for Major Ports** (TAMP).

Why such regulation is needed?

- Indian state-owned ports or major ports (12 in number) account for around 55% of maritime cargo traffic in the country.
- But, they still have to adhere to a tariff and policy regime that has its roots in the 1960s.
- The TAMP is the central authority that sets tariffs for the ports.
- It also holds the master key for many other operational and commercial matters. This is just a lot for it to deal.
- As a consequence, a substantial chunk of trade has shifted to the "non-major" or "private" ports.

What are the benefits of shifting to private ports?

- These ports operate under a much more **liberal regime** and are under the control of state governments.
- They are **operationally more efficient** and are crucially developed better linkages to the hinterland to enable smooth traffic flows.
- Currently, the private sector is involved in major ports in areas like cargo handling.
- Much more is needed by way of investment in areas such as dredging and adding new terminals.
- [Dredging - Done to increase the depth of the port to accommodate larger ships.]

What is the 2016 version?

- The latest Bill approved by the Cabinet is expected to be along the lines similar to the 2016 version of the Bill.
- The 2016 Bill granted major ports greater autonomy, including the ability to set tariffs on their own.
- It also enabled the board of an individual **port to raise funds** from banks and financial institutions without taking the permission of the central government.
- It provided for the setting up of a **centralised adjudication board** to resolve disputes in PPP projects between the port and private sector concessionaires.

What is the importance of the Bill?

- These measures could lead to major ports becoming more attractive to the private sector, both in terms of investment and as service providers.
- These reforms are critical if the investments made in the last few years are to pay off.
- The recent measures like the Sagarmala project, developing port-based SEZs, etc., gave a boost to the shipping sector.
- With the approval of the Port Authority Bill by the Parliament, a critical missing link will finally be in place.

7.7 The Competition Amendment Bill, 2020

Why in news?

The Competition Amendment Bill, 2020 has proposed some key changes to the Competition Act, 2002.

What are the proposed changes?

- The key changes that are proposed include organisational structure, investigation procedure and combination laws.
- The two proposed amendments that would significantly alter the enforcement of competition law in India are,

1. The hub-and-spoke arrangement which is welcomed,
2. The res judicata proposal that needs to be reconsidered.

Why is the Hub-and-spoke arrangement welcomed?

- Currently, the agreements amongst players operating in the same market (horizontal level) with respect to price fixing, customer/territory allocation, etc., were included under the definition of cartels.
- The Bill proposes to increase the scope of agreement by including enterprises that act in furtherance of any anticompetitive agreement.
- This proposed amendment would cover enterprises facilitating the operation of cartels, too.
- By way of this proposed amendment, the jurisdiction of the CCI would extend to hub-and-spoke arrangement.
- A participant who was not in the horizontal level but acts in furtherance of the said arrangement by virtue of the hub-and-spoke model may be caught as being a participant in anticompetitive agreement.

What does the Bill say about penalty?

- Earlier, if the hub-and-spoke arrangement was covered, the penalty would have been limited to cases of non-cartel offences.
- With this proposed amendment, the penalty would be applicable for cartel offences too.
- By virtue of the Bill, such arrangements that are adopted in furtherance of a cartel by upstream players may also be caught in this Bill's proviso.

What are the provisions about channel partners?

- Companies would have to ensure that not only their employees, but also the channel partners are well-trained on competition law principles.
- Any agreement with channel partners must contain a clause to mandate the adoption of competition law compliance manual by such partners.
- This said clause should be scrupulously followed to avoid the liability under the Act.
- This assumes significance as the Bill provides for settlement and commitment option, which is not available for cartel offences.
- The proposed amendment, if incorporated, would be a great step forward in terms of enforcement.

What is the res judicata provision?

- [Res judicata - A matter that has been adjudicated by a competent court and therefore may not be pursued further by the same parties.]
- The Bill proposes that the CCI would not inquire into information, if substantially same facts have been decided by the CCI in previous orders.
- But, this provision fails to take into account that market dynamics and state of competition keep on evolving.

Why this provision needs to be reconsidered?

- A classic example of why this provision needs to be relooked is the entire e-commerce analysis.
- In 2014, the CCI took the view that online and offline are not two different markets.
- Conversely, in 2019-20, it took a view that online is a different market.
- Thus, the CCI, based on the market dynamics and evidence on record, has flexibly adopted a different approach than earlier.
- Since the principle of res judicata may be counter-intuitive, it must need a relook to adopt flexibility.

7.8 Laws during Lockdown

Why in News?

During the Covid-19 led national lockdown, many laws like the Disaster Management Act 2005, Section 188 of IPC, etc., comes into play.

What is the law for disobedience?

- **Section 188 IPC** deals with those disobeying an order passed by a public servant and provides for about 1 to 6 months of imprisonment.
- For those violating orders passed under the Epidemic Diseases Act, Section 188 IPC is the provision under which punishment is awarded.
- **Section51** of the Disaster Management Act (DMA), 2005 provides for punishment for two kinds of offences:
    1. Obstructing any government employee or person authorised by any disaster management authority for discharge of a function; and
    2. Refusing to comply with any direction given by the authorities under the Act.
- Punishment can extend to one year on conviction, or two years if the refusal leads to loss of lives or any imminent danger.

What is the law for spreading fear?

- **Section 505 IPC** provides for imprisonment of 3 years or fine, or both, for those who circulate anything which is likely to cause fear or alarm.
- **Section 54DMA** provides for imprisonment, extending to one year, of those who make or circulate a false alarm or warning regarding a disaster or its severity or magnitude.

What is the law for false claim to aid?

- Those who makes a false claim for obtaining "any relief, assistance, repair, reconstruction or other benefits" from any official authority can be punished under **Section 52DMA.**
- They will be sentenced to a maximum of 2 years imprisonment and a fine will be imposed on the person.

What is the law for those refusing to do duties?

- In case of refusal or withdrawal of any officer who has been tasked with any duty under the Act, the officer can be sentenced to imprisonment extending to one year.
- However, those who have written permission of the superior or any lawful ground are exempt from such punishment.
- A case cannot be initiated without the explicit sanction from the state or central government.

What is the law for refusing to help?

- Any authorised authority under the Act can request resources like persons and material resources, premises like land or building or sheds and vehicles for rescue operations.
- Though there is a provision for compensation under the Act, any person who disobeys such order can be sentenced to imprisonment up to 1 year.

What is the legal shield?

- For any offence under the DMA, a court will take cognisance only if the complaint is filed by the national or state or district authority, or the central or state government.
- However, if a person has given notice of 30 days or more about an alleged offence, and about his/her intention to file a complaint, s/he can approach the court which can then take cognisance.

- The Act protects government officers and employees from any legal process for actions they took "in good faith".
- Under the Epidemic Diseases Act too, no suit or other legal proceedings can lie against any person for anything done or intended to be done under good faith.

8. GOVERNANCE

8.1 RTI on PM CARES Fund

Why in news?

Right to Information (RTI) applications seeking information pertaining to the PM CARES Fund have been stonewalled.

What is the concern?

- This violation of peoples' RTI is particularly concerning given the unprecedented crisis gripping the nation.
- Relief and welfare programmes funded through public money are the lifeline of people who lost income-earning opportunities during the lockdown.
- The poor and marginalised affected by the public health emergency are to have any hope of obtaining the benefits of government schemes.
- So, they must have access to relevant information.

What is a worrying narrative?

- A narrative seems to have emerged that public scrutiny of actions of the government is undesirable during the crisis and citizens must unquestioningly trust the state.
- This undermines the basic democratic tenet that citizens' oversight is necessary to ensure they are able to access their rights.
- Without information, peoples' ability to perform that role is eviscerated and corruption thrives.
- The RTI Act, 2005, has empowered citizens to access information from public authorities and hold them accountable.

Why openness is crucial?

- During the Covid-19 crisis, proper implementation of the law has assumed greater significance than ever before.
- Information related to implementation of relief measures announced by governments should be widely disseminated.
- Greater openness would prevent controversies of the kind exemplified by faulty testing kits and fake ventilators.
- It is a time when incentives for secrecy are great, and the scope for discretionary actions are wide.
- During this time, a culture of openness needs to be created to empower people to participate in the decisions that have profound effects on their lives and livelihoods.

How accessibility can be ensured?

- Numerous instances have been reported of Covid-19 patients requiring treatment in ICUs being shunted from one hospital to another.
- This could be prevented if hospitals and health centres publicly provide real-time information about availability of facilities.

- To ensure accessibility to those who need it the most, relevant information must be made available in local languages and widely disseminated.
- In fact, this is a statutory obligation of public authorities under Section 4 of the RTI Act.

8.2 Role of Independent Directors - Corporate Governance

What is the issue?

- Despite strong legal framework, corporate frauds and mis-governance continue to happen - the recent ones being the PNB banking fraud case, IL&FS, DHFL, PMC Bank, CG power, and sudden collapse of Jet Airways.
- In this context, here is an overview on the current mechanisms and the reforms needed, especially as to the role of independent directors.

What is the 'independent directors' provision?

- World over, several corporate frauds and mis-governance issues are being witnessed.
- Following this, an important reform, among many, was giving statutory recognition to the position of independent directors in the overall governance framework.
- An Independent director is a non-executive director who does not have any kind of relationship, material or financial, with the company.
- Independent directors are to ensure the independence of decisions taken in matters related with the board.
- A larger say for independent directors was believed to have an effective deterrent to fraud, mismanagement, and mis-governance.

What is the case with India?

- In India, the Companies Act, 2013 defines 'independent directors' and codifies their duties and responsibilities.
- Schedule IV of the Act lays down the guidelines for professional conduct, role, functions, and duties of independent directors.
- The Directors' Responsibility Statement under Section 135 requires an affirmation by directors on the adherence to -
    i. accounting standards, accounting policies
    ii. maintenance of adequate accounting records for safeguarding of a company's assets and prevention of frauds
    iii. adequacy of internal financial controls, and their effectiveness and compliance with applicable laws
- The Listing Regulations exhaustively list out the specific responsibilities of the directors.

What does this demand from the independent directors?

- The law casts onerous duties, obligations, and responsibilities on directors and collectively on the board.
- So, a thorough understanding of the legal provisions and the various regulations is crucial to ensure compliance and discharge the responsibilities.
- These can be acquired only by a combination of formal training, experience, and knowledge sharing.

What are the common challenges?

- Directors face difficulty when a company has conflicts with society or the public at large.
- This happens when their working or the company's products/services create an issue with the interests of the public.
- Promoter-shareholders have a strong say on the selection of independent directors.

- So, it is challenging for the independent directors to function with independence and effectiveness at the board.
- Access to information remains in the hands of the promoters and the KMP (Key Managerial Personnel) reporting to them.
- This again makes it hard for independent directors to exercise independent judgment.

What are the key problems?

- Despite the exhaustive duties and regulations, the difficulties in implementation, adoption and compliance have led to many gaps.
- The evident factors across these cases are lack of integrity and fraudulent practices.
- Again, majority of the cases are in the financial sector.
- These are, in fact, regulated and classified as systemically important companies.
- Naturally, the question arises as how they escape the several layers of checks and balances some of which include
    i. the professionals or the management running the company independent of the promoters
    ii. the audit and risk committees
    iii. the internal auditors
    iv. the statutory auditors
    v. the board
    vi. the regulators wherever applicable
- Certainly, there have been shortfalls in terms of regulations and supervision.

What are the possible measures at this end?

- The recent regulation calling for mandatory registration of independent directors and prescribing a qualifying examination for them are in the right direction.
- Besides this, meanwhile, many other things may have to be put in place.
- If audit committee, risk committee and the nomination and remuneration committee are to be strengthened, the independent directors chairing/manning them have to be strengthened.
- The eligibility, role responsibility, and the authority of the independent director need to be reformed/ strengthened.
- There need to be separate regulations governing the entire functioning of independent director.
- Currently, the rules/regulations relating to the eligibility and appointment of independent director are the same for all applicable companies. This will have to change.
- Companies in the financial sector need to have a stronger criterion.
- Systemically important companies need to have a different set of independent directors.
- Also, larger companies in terms of size, complexities need to have different criteria for choosing and appointing independent directors.
- These will have to cover key managerial personnel as well.
- Independent directors, to be effective, should possess knowledge of the regulations, working of the company and the ability to speak out.
- Training to acquire the skills shall be made compulsory.
- The remuneration structure for independent director needs to be overhauled.

- It should provide for differential remuneration as per grade in the regulations.
- Remuneration shall be commensurate with the responsibility and liability to which independent director are exposed.
- A separate body needs to be constituted under the Ministry of Corporate Affairs to oversee the functioning of independent directors.
- The funding required can be collected as an annual cess and subscription from the corporate sector.
- Notably, there might be a need for a large number of competent independent directors to meet the demand of the next decade.
- They will have to take up several positions from companies to trusts, NGOs, and organisations where public interest is involved.
- So, at least till the system gets fully established and starts functioning as intended, micromanagement appears to be the need of the hour.

8.3 Unification of Railway Management Services

Why in news?

The PMO wants the process of amalgamating the railway services to be completed by November 2020.

What is the story behind?

- In 2019, the Cabinet decided to integrate the Railways' eight Group 'A' services into a single Indian Railways Management Service (IRMS).
- It wanted to downsize the Railway Board, re-designating its members on functional basis instead of departments.
- The government directed the whole process of amalgamating the services to be finalised within a year by a Home Minister-led group of ministers.

Why an enduring format needs to be devised?

- A successful transition to a new integrated cadre will depend on devising an enduring format for **future recruitment**.
- A **fairreadjustment** of existing 8,400 Group A officers to have their legitimate career progression should be done.
- Those existing officers who are unwilling to opt for merger with IRMS may be allowed to continue, seeking their prospects in their cadres.
- But, those who are opting for merger must be prepared for a fresh selection by the UPSC to determine inter-se seniority, done on basis of genuine suitability.
- Age and seniority based on rank in UPSC test years back alone cannot be a fair measure of suitability.

What is the anomalies with regard to the top GM posts?

- The other major concern is of increasing anomalies and distortions with regard to top general management (GM) posts.
- There is an issue that these top posts are being occupied by officers from certain departments.
- In government, career prospects mostly depend on **date of birth**, and **rank** in UPSC results.
- The administration remains purblind to disadvantage of age encountered by officers through civil services stream, against those from the engineering services examination.

- The former generally join the service when they are 25-27 years old, while the latter join technical cadres at 21-24.
- There's a similar age anomaly in the case of Special Class Apprentices.
- This affects the morale of the staff.
- The organisation is the major loser, as it fails to optimally utilise its trained and experienced human capital.

How did the selection procedure of the top managers evolve?

- **1947** - The Railway Board had a Chief Commissioner (in 1951, re-designated as Chairman), a Financial Commissioner, and three Members (Transportation, Staff and Engineering).
- **1954** - A Member Mechanical was added.
- **1987** - A Member Electrical was added.
- Soon clamour set in for the remaining two cadres (Signalling and Stores) also to have their representation on the Board.
- **2015** - The government initiated a halfway measure to merge two verticals of Electrical and Mechanical branches on 'functional lines'.
- But, the Railway Board was expanded to make it a nine-Member body, with two new Members, one for Signalling, and one for Stores.
- Meanwhile, since 1980s, precepts for selection of GMs and Board Members for railways were altered.
- Thereby, this eroded the effectiveness of the system.
- A mechanism should have been devised first for the selection of suitable officers with requisite experience from different disciplines.

How should the Railways' top posts be manned?

- The primary task of the Railways is production and marketing transport efficiently and economically.
- So, its top management posts must be manned only by those who are appropriately trained and exposed to the market vagaries and rigours of field operations.
- Those others who provide vital support for railways' primary business would naturally be enabled to rise in their specialised domains.
- That is how the Tandon Committee (1994) advised for suitable selection of officers.

What are the other anomalies?

- Anomalies and distortions have been creeping in through subtle ploys.
- **Departmental posts** are ring-fenced.
- Some departments particularly compete to inflate the numbers to secure senior positions proportionate to the respective cadre strengths.
- Little has ever been attempted to determine cadre-wise optimal strength.
- It currently varies widely: Civil engineering commands the largest chunk, followed by Mechanical Engineering, Traffic, etc.,
- **Work charged posts** - Departments engaged in executing projects kept widening their bases through "work charged" posts.
- The Debroy Committee found that these posts were surreptitiously continued for years well after the projects were completed.

8.4 Central Consumer Protection Authority

Why in News?

Union Ministry of Consumer Affairs, Food and Public Distribution announced that a Central Consumer Protection Authority (CCPA) will be established soon.

Under which Act, the CCPA will be constituted?

- The CCPA is being constituted under Section 10(1) of The Consumer Protection Act, 2019.
- The new Act replaced The Consumer Protection Act, 1986, and seeks to widen its scope in addressing consumer concerns.
- It recognises offences such as providing false information regarding the quality or quantity of a good or service, and misleading advertisements.
- It also specifies action to be taken if goods and services are found "dangerous, hazardous or unsafe".

How the CCPA will function?

- It aims to **protect the rights of the consumer** by cracking down on unfair trade practices, and false and misleading ads that are detrimental to the interests of the public and consumers.
- It will have the powers to **inquire or investigate into matters** relating to violations of consumer rights or unfair trade practices
    1. Suo motu, or on a complaint received, or
    2. On a direction from the central government.
- It will ensure that all **standards on packaged food items** set by regulators such as the Food Safety and Standards Authority of India (FSSAI) are being followed.

What can the possible structure of CCPA be?

- The proposed authority will have a **Chief Commissioner as head**, and only two other commissioners as members.
- One of the members will deal with matters relating to goods while the other will look into cases relating to services.
- It will be headquartered in the National Capital Region of Delhi but the central government may set up regional offices in other regions.
- The CCPA will have an **Investigation Wing** that will be headed by a Director General.
- District Collectors will have the power to investigate complaints of violations of consumer rights, unfair trade practices, and false or misleading ads.

What will the CCPA do if goods or services are not of standard?

- The proposed authority will have powers to recall goods or withdrawal of services that are "dangerous, hazardous or unsafe".
- It can pass an order for refund the prices of goods or services so recalled to purchasers of such goods or services.
- It can also pass an order on discontinuation of practices which are unfair and prejudicial to consumer's interest.
- For manufacture, selling, storage, distribution, or import of adulterated products, the penalties will be given if the consumer is injured or died.

How will it deal with false or misleading advertisements?

- Section 21 of the new Act defines the powers given to the CCPA to crack down on false or misleading ads.

- The CCPA may **issue directions** to the trader, manufacturer, endorser, advertiser, or publisher to discontinue a misleading advertisement, or modify it in a manner specified by the authority, within a given time.
- It may also **impose a penalty** on the manufacturer or endorser of false and misleading advertisements.
- CCPA may ban the endorser of a false or misleading advertisement from making endorsement of any products or services in the future, for a period that may extend to one year.
- Ban may extend up to 3 years in every subsequent violation of the Act.

What other powers will the CCPA have?

- While conducting an investigation after preliminary inquiry, officers of the CCPA's Investigation Wing will have the powers to enter any premise and search for any document or article, and to seize these.
- For **search and seizure**, the CCPA will have similar powers given under the provisions of The Code of Criminal Procedure, 1973.
- The CCPA can **file complaints** of violation of consumer rights or unfair trade practices before the Consumer Disputes Redressal Commission established at the district, state and national levels.
- It will issue **safety notices to alert consumers** against dangerous or hazardous or unsafe goods or services.

8.5 Political Micro-targeting

What is the issue?

- Social media platforms need to be regulated by a holistic data protection law that take issues such as political micro-targeting seriously.
- The Personal Data Protection Bill, 2019 is the draft of the data protection law that was introduced recently.

What does the new draft law say?

- It empowers the Centre to notify social media platforms as significant data fiduciaries if those platforms'
    1. User base crosses a certain threshold and
    2. Actions may have an impact on electoral democracy.
- This provision merits serious discussion to ensure that digital tools are used for enhancing democracy through citizen engagement.
- It will also ensure that these digital tools are not for harvesting personal data for voter targeting.
- In the Internet age, any data protection law must be alive to the potential impact of social media companies in shaping public opinion.

How is today's world of political advertising?

- **Online presence** is a key source of competitive advantage.
- This realisation gave rise to strategic efforts by political parties to tap into the fragmented political discourse by catering to the individual.
- Earlier, the idea was to capture mass issues. But in the present day, the **focus of the campaign is the individual**.
- Over the years, political advertising firms have devised sophisticated tools to gather voter data and made proper campaign products out of it.
- The reason why this issue becomes important is that the passive users are just not aware of what they are being subjected to.

How political parties target individual voters?

- Political parties are increasingly employing data-driven approaches to target individual voters using tailor-made messages.
- Such profiling has raised huge concerns of data privacy for individuals and has become a burning issue for political debate.
- Therefore, the concerns related to regulation of the digital world are being debated in all jurisdictions which have experienced the impact of this technological advancement.
- The reason for these debates is common to all jurisdictions i.e. to arrest any negative externalities emerging out of the Internet.
- **Solution** - Any regulatory framework needs to have both supervisory mechanisms in place and effective law enforcement tools in its quiver.

Is this practice a characteristic of Indian politics?

- Not particularly. The US and European countries are equally affected by the impact of this unregulated practice of micro-targeting.
- This practice has raised some serious concerns with regard to,
    1. The kind of data that is being collected,
    2. The manner in which voters are being profiled,
    3. How transparent the process of profiling and targeting is,
    4. What the nature of functioning of organisations engaged in this business is, and
    5. How neutral globally present intermediaries such as Google are.

Why informational autonomy of the voter is under threat?

- It is under threat because the entire business of collecting personal data continues to remain **unregulated** and is also **proprietary in nature**.
- It is extremely difficult to trace the methods used by such firms to scrutinise the personal life and intimate details of the individual.
- Profiling the potential voter has become a thriving industry. So, there are extremely well-crafted techniques are used in electoral campaigning.

What would be the impact?

- There is serious harm to the country's democratic nature resulting on account of loss of informational autonomy.
- The liberating and anti-establishment potential of the Internet are considered as a promise for the health of a liberal democracy.
- At the same time, it can have serious ramifications if this potential is used by demagogues to spread fake news and propaganda.

What needs to be done?

- While Internet innovators have continued to develop more advanced technologies, the regulators have never been able to catch up with it.
- The scope of a data protection framework needs to be sensitive towards the magnitude of a variety of data usage.
- It is likely that within a few years, Indian political parties may use data effectively to target individual voters.
- It is to be seen how the privacy law responds to the implications of political micro-targeting.

8.6 Amendments to Companies Act

Why in news?

Finance and corporate affairs minister Nirmala Sitharaman announced that the government was moving to decriminalise provisions of the Companies Act.

What are the recent changes?

- The move, which was initially announced on March 4, 2020, is part of a larger effort by the government since 2018.
- A number of offences previously classified as compoundable offences (with imprisonment or fines) have had the imprisonment penalty removed.
- The number of compoundable offences under the Companies Act has come down to 31 from 81 prior to the 2018 amendment to the Act.
- Some of these offences have been omitted altogether.
- Others have been shifted from the purview of the National Company Law Tribunals (NCLT) to being dealt with by Registrar of Companies (RoC).
- The RoC is empowered to decide penalties for these offences.
- The companies can appeal to the Regional Director (RD) of the Ministry of Corporate Affairs (MCA) to appeal or seek modifications.
- The recently decriminalised offences include administrative offences such as -
    i. delays in filing CSR reports (or)
    ii. failure to rectify the register of members in compliance with orders from the NCLT
- The changes also made violations of the Corporate Social Responsibility (CSR) provisions punishable by imprisonment.But it did not operationalise the provision after feedback from industry.
- The Companies Act amendment bill 2020 has also proposed to remove criminal liability from CSR provisions.

What is the rationale?

- With the overhaul of Companies Act in 2014, a lot more regulations were introduced for better corporate compliance.
- So, a number of penal provisions with both civil and criminal penalties were introduced.
- Now, as compliance levels improved and there is also the need to boost ease of doing business, the government is relaxing the criminal provisions.
- The key objective is to remove criminal penalties from all provisions of the Companies Act, except provisions dealing with fraudulent conduct.
- Currently, the changes are aimed at enhancing ease of doing business in the country as part of the government's Covid-19 relief package.

What are the next steps?

- The ministry is expected to make further measures to decriminalise provisions in the companies act particularly those relating to auditors.
- There was an issue with auditors being considered to be colluding with management if any fraud was found.
- The MCA had announced that it would move towards removing criminal liability for issues such as negligence by auditors.
- The easing of provisions of debarment of audit firms is also expected to be taken up in the next phase of decriminalisation of the Companies Act.

- The ministry is however currently in the process of seeking debarment of audit firms Deloitte as well as KPMG affiliate firm BSR & Co. for their alleged role in the IL&FS scam.

8.7 The Companies (Amendment) Bill, 2020

Why in News?

The Companies (Amendment) Bill, 2020 was introduced in the Lok Sabha in March 2020.

Why this Bill was introduced?

- The Ministry of Corporate Affairs (MCA) wanted to facilitate ease of doing business in India.
- It also wanted to decriminalise the Companies Act, 2013.
- Therefore, it introduced the Companies (Amendment) Act, 2019, and the Companies (Amendment) Bill, 2020.

What did the Companies Act, 2019 do?

- It decriminalised 16 sections of Companies Act, 2013 to civil violations.
- It eliminates the criminality of these violations by levying monetary penalties instead of criminal fines.
- Levying these penalties has been shifted from courts to in-house adjudication mechanisms (IAM) under Section 454 of the Act.
- The adjudicating officers who are to be appointed by the Central Government determine the offences.
- These officers also enable companies to promptly communicate, represent, and resolve defaults.

Why was the CLC constituted?

- The Company Law Committee (CLC) was constituted in 2019 to further decriminalise the 2013 Act.
- It decriminalises the technical and minor non-compliance.
- But, it retains the strict criminal enforcement for serious, fraudulent offences that jeopardise and prejudice public interest.
- This decriminalisation will instil confidence in both domestic and global players and boosts foreign investments.

What did the Companies (Amendment) Bill, 2020 propose?

- Based on the recommendations of the report, the Bill proposes to decriminalise the Act under the following frameworks.
- **Re-categorization of 23 compoundable offences to the IAM** -
- Offences that do not involve objective determination and that are easily determined by the MCA21 system may be treated as civil wrongs.
- The IAM framework will determine these offences.
- **Omission of 7 compoundable offences** - These offences proposed to be omitted are those that may be dealt with through other laws.
- **Limiting 11 compoundable offences to criminal fine only** - These are offences that are substantial enough to warrant criminal liability, but don't warrant punishment by incarceration upon conviction.
- **Alternate framework for 5 offences** - This proposal could better achieve the intended aim of certain penal provisions in the Act with the company liquidator.
- For this, the corresponding provisions of the Insolvency and Bankruptcy Code (IBC) may be inserted.

What is the significance?

- **Lesser penalties for certain offences** - For this, the Section 446B is amended.
- Non-compliance by certain type of companies or by any of its default officer are only liable to one-half the penalty specified in the respective provisions.
- **Benefit to IDs** - The amendments are vital for Independent Directors (IDs) to dissociate them from personal liabilities of the operational lapses and violations.
- The Ministry's notification directs that unless there is sufficient evidence, civil or criminal proceedings should not be initiated against the IDs.
- It added that if the proceedings were already initiated, they must be reviewed.
- These recommendations seek to accelerate the processes of rectifying defaults by paying penalties, instead of fighting a criminal trial.

What goals do these amendments seeks to achieve?

- These amendments are admirable steps towards the 3-pronged goal of:
    1. Reducing the burden on company courts,
    2. Ensuring investor interests, and
    3. Facilitating the ease of doing business while collaterally incentivizing senior management to remain invested.
- This could well be the step towards showing intent to incentivize domestic and global investments, especially post COVID-19.

8.8 One Nation, One Ration Card System

Why in news?

Finance Minister recently announced the national rollout of a 'One Nation, One Ration Card' system in all states and UTs by March 2021.

What is the current practice?

- Under the National Food Security Act, 2013, about 81 crore persons are entitled to buy subsidized foodgrains -
    i. rice at Rs 3/kg
    ii. wheat at Rs 2/kg
    iii. coarse grains at Re 1/kg
- This is receivable from their designated Fair Price Shops (FPS) of the Targeted Public Distribution System (TPDS).
- Currently, about 23 crore ration cards have been issued to nearly 80 crore beneficiaries of NFSA in all states and UTs.
- In the present system, a ration cardholder can buy foodgrains only from an FPS that has been assigned to her in the locality in which she lives.

What is the 'One Nation, One Ration Card' system?

- Under this, a beneficiary will be able to buy subsidised foodgrains from any FPS across the country.
- Based on a technological solution, a beneficiary will be identified through biometric authentication.
- This will be done with the electronic Point of Sale (ePoS) devices installed at the FPSs.
- The person can purchase the quantity of foodgrains to which she is entitled under the NFSA.

How will 'ration card portability' work?

- Ration card portability is aimed at providing intra-state as well as inter-state portability of ration cards.
- The Integrated Management of PDS (IM-PDS) portal would provide the technological platform for the inter-state portability of ration cards.
- This would enable a migrant worker to buy foodgrains from any FPS across the country.
- The other portal (annavitran.nic.in) hosts the data of distribution of foodgrains through E-PoS devices within a state.
- The Annavitran portal enables a migrant worker or his family to avail the benefits of PDS outside their district but within their state.
- A person can buy her share of foodgrains as per her entitlement under the NFSA, wherever she is based.
- And, the rest of her family members can purchase subsidised foodgrains from their ration dealer back home.

How did the system evolve?

- The PDS system had some inefficiencies leading to leakages in the system.
- To plug the leakages and make the system better, the government started the reform process.
- For this purpose, it used a technological solution involving the use of Aadhaar to identify beneficiaries.
- Under the scheme, the seeding of ration cards with Aadhaar is being done.
- Simultaneously, PoS machines are being installed at all FPSs across the country.
- Once 100% of Aadhaar seeding and 100% installation of PoS devices is achieved, the national portability of ration cards will become a reality.
- It was initially proposed to nationally rollout the 'One Nation, One Ration Card' scheme by June 1, 2020.

What is the experience so far?

- The facility of inter-state ration card portability is available in 20 states as of now.
- But the number of transactions done through using this facility has been low so far.
- However, the number of transactions in intra-state ration card portability is quite high.

8.9 Universal Public Distribution System

What is the issue?

- With the huge burden of rising COVID-19 cases, certainly, it will take a long time for economy to get back to "normal".
- So, among others interventions, it is essential that food support in the form of free/subsidised grains is made available to all without any disruptions.

Why is food support crucial?

- With, rising COVID-19 cases, the health system is crumbling on the one hand.
- On the other, the economic crisis is continuing.
- Unemployment is high and it will take a while for lost livelihoods to be rebuilt.
- This is especially given the fact that India was already facing an economic slowdown.
- There were high levels of inequality as well.
- So given these, food support becomes absolutely essential.

Are the measures taken so far effective?

- In the last week of March 2020, the government made an announcement in this regard.
- It said it would provide 5kg of foodgrains and 1 kg of pulses for free to all those who are beneficiaries under the National Food Security Act (NFSA) for 3 months.
- This was announced as part of the Rs. 1.70-lakh crore relief package under the Pradhan Mantri Garib Kalyan Yojana (PMGKY).
- Soon, it became obvious that many were not part of the NFSA.
- So, the government, in May 2020, almost 2 months after the lockdown was initiated, announced an expansion move.
- This was to cover an additional 8 crore individuals for 2 months.
- It was to ensure that migrants are included under the Atmanirbhar Bharat Abhiyan package.
- This meant each State being given foodgrains to the tune of 10% more than what they normally get under the NFSA.
- But many States were already covering more beneficiaries than what was allotted to them by the NFSA.
- Also, some States even made additional temporary provisions for these 2 months.
- So, the interventions made by the central government became inadequate in real terms.

What are the demands made?

- A universal Public Distribution System (PDS) will ensure that nobody is excluded.
- Also, the food support announced as part of the PMGKY and Atmanirbhar package should be extended for a longer period.
- Notably, around 10 States have written to the Ministry to extend the time for 3 more months.
- But the government seems to be indicating that all problems of exclusion will be resolved once the One Nation One Ration Card (ONOC) scheme is expanded across the country.
- This is supposed to be achieved by March 2021. It has been announced that ONOC is currently operational in 20 States.

Will ONOC be a true solution?

- Portability across States is an important and valid concern to be addressed.
- This will help migrant workers access their entitlements.
- However, the ONOC has a number of problems in the way it has been conceived, being Aadhaar-based.
- The experience of biometric authentication using electronic point of sale (ePoS) machines so far has not been encouraging.
- The system has resulted in exclusion of some of the most marginalised.
- This is because of multiple reasons including network issues, authentication failure and so on.
- But even besides this, the ONOC may not be a solution to the immediate crisis of hunger that continues in the aftermath of the lockdown.
- Despite ONOC being operational in some states, lakhs of migrants were stranded in different places without access to food following the lockdown.

What is the real problem now?

- The real issue is of growing food stocks along with widespread hunger.

- Including unmilled paddy, foodgrain stock in the Food Corporation of India has now risen to almost 100 million MTs.
- Notably, the buffer stock norms is 41 million MTs.
- This will increase even more as there is another week of procurement open in the rabi marketing season.
- There will be another round of procurement of kharif crop in a few months.
- [Notably, 49.9 million MTs of rice was the procurement during the kharif marketing season in 2019-20.]

What seems to be the government plan?

- The government seems to be hoping to get rid of grain through the Open Market Sale Scheme (OMSS).
- With OMSS, it sells the grains at prices lower than the procurement cost but much higher than the issue prices under PDS.
- By doing so, the fiscal consequences can be contained.
- But earlier experiences with the OMSS do not offer much hope that this plan would be successful.
- In the period 2017-18 to 2020-21 (up to first week of June 2020), only 16.6 million tonnes of rice and wheat have been sold under the OMSS.
- The quantity sold each year was less than the quantity offered.
- Moreover, one-third of all sales was to State governments (almost all the rice) thereby shifting the subsidy burden to State governments.
- If not OMSS to private buyers, the only other options left are to either export them or let the grain go waste.

8.10 National Recruitment Agency

Why in news?

The Union Cabinet has decided to create National Recruitment Agency (NRA).

What is the NRA?

- The NRA would be an independent, professional, specialist organisation.
- It would conduct a screening examination for non-gazetted jobs.
- This will eliminate the need for candidates to take separate examinations of the RRB, SSC and IBPS.
- [RRB - Railway Recruitment Board, SSC - Staff Selection Commission, IBPS - Institute of Banking Personnel Selection.]
- There would also be an emphasis on creating advanced online testing infrastructure in 117 aspirational districts.
- Overall, the posts coming under the ambit of the proposed NRA would cover about 1.25 lakh jobs a year, which attract about 2.5 crore aspirants.

What are the benefits of NRA?

- The single examination may be offered at the district level in the regional language.
- The gains from a single examination, as opposed to a multiplicity of tests in far fewer locations are self-evident.
- Candidates would no longer have to travel to urban centres at considerable expense and hardship to take an employment test.
- Opportunities to improve performance, subject to age limits, and 3-year validity for scores are positive features.

What should the government concentrate on?

- The long-term relevance of such reforms will depend on the governments' commitment to raise the level of public employment and expand services to the public.
- Both of this is low in India. The governments should work on this.

What are the concerns?

- As a share of the organised workforce, the Central government employment appears to be declining.
- New posts are sanctioned periodically, but a large number of vacancies remain unfilled.
- With growing emphasis on transferring core railway services to the private sector, there may be fewer government jobs on offer in the future.
- Moreover, jobs under the Centre, predominantly in the railways and defence sectors, constitute around 14% of public employment.
- The rest of the jobs fall within the purview of States.

How should the reform be?

- The reform must have a wider reach to achieve scale.
- It must be marked by well-defined procedures, wide publicity and open competition, besides virtual elimination of discretion.
- The NRA can potentially cut delays, boost transparency and enable wider access.
- The entire process of candidate selection must be a model, raising the bar on speed, efficiency and integrity.

9. CORRUPTION

9.1 Andhra Pradesh Scrapped Buses Scam

Why in news?

The Andhra Pradesh Transport Department has initiated an inquiry into a scrapped buses scam.

What happened?

- Transport officials contacted Ashok Leyland about its sale of scrap buses to two companies based at Tadipatri in Anantapur district.
- Ashok Leyland confirmed that in 2018, it sold 40 scrap buses to C Gopal Reddy and 26 scrap buses to Jatadhara Industries Private Ltd.
- Both these companies are illegally using them in private travels business.

Why is it illegal to use scrapped vehicles?

- In 2017, the Supreme Court had ordered that all vehicles that are not compliant to BS IV emission norms shall not be sold in India by any manufacturer or dealer from April 1, 2017.
- It also said that the registering authorities are prohibited from registering such vehicles from April 1, 2017.
- Plying the scrap and unfit vehicles was in violation of the Supreme Court orders and also put the lives of people at risk.

Who are involved in the scam?

- **Jatadhara Industries** is owned by J C Uma Reddy, wife of former TDP MLA J C Prabhakar Reddy, and their son J S Asmith Reddy.

- **C Gopal Reddy** is a close associate of Prabhakar Reddy.
- Prabhakar Reddy and Gopal Reddy were arrested.

What did the investigation find?

- It found that all the condemned vehicles were first registered with transport registration authority in Nagaland.
- They were brought to Anantapur district with an NOC from Nagaland.
- A team comprising officials of transport department and Anantapur Police went to Nagaland.
- They found that forged documents including Ashok Leyland invoices were used to get the vehicles registered there.
- The buses were shown as latest models and BS IV compliant.
- Though they purchased the vehicles as scrap, they tried to make them fit and road worthy on record for their unlawful gain.

What action was taken by the AP Transport Department?

- It lodged 24 police complaints against Jatadhara Industries and C Gopal Reddy in Anantapur and three FIRs in Kurnool.
- Apart from cases for cheating the government, cases were registered for producing fake insurance policies before RTAs, and endangering the safety of people on the road, and disregarding road safety.

Where are these buses now?

- Some of these vehicles have since been sold on to various others in AP.
- They purchased 154 vehicles (Jatadhara Industries got 50 and C Gopal Reddy 104) of BS III emission standards sold as scrap.
- All these were registered as BS IV vehicles in various parts of the country, including at RTA Ananthapur.
- The AP transport department has blocked and seized these buses.
- About 28 vehicles are in other states and transport authorities there have been informed to block and seize the vehicles.

9.2 Andhra Pradesh ESI Scam

Why in news?

The Andhra Pradesh Anti-Corruption Bureau (ACB) has arrested some big shots in the ESI Scam.

What are ESI hospitals?

- The Government of India enacted ESI Act, 1948 for extending health care to employees who are earning salary less than Rs 21,000 per month in the industrial and service sectors.
- This is known as Employees State Insurance Scheme – ESIS.
- In 1978, the Insurance Medical Services (IMS) was established under the Ministry of Labour, Employment, Training & Factories Department by separating ESI branch from Medical & Health Department.
- The employers and employees of the relevant sectors contribute their share of 3.25% and 0.75% of their salary respectively for ESI Scheme.
- The expenditure ratio between the state government and ESI Corporation is 1:7.
- The entire expenditure is initially be met by the state government and subsequently, the ESIC reimburses its share to the state government.

What is the ESI Scam?

- When Kinjarapu Atchanaidu was labour minister of Andhra Pradesh, there were several irregularities in the purchase of medicines, surgical equipment, and furniture worth Rs 975.79 crore for the
    a) 4 Employees' State Insurance (ESI) hospitals,
    b) 3 ESI Diagnostic Centers and
    c) 78 ESI Dispensaries spread across the state.
- These purchases were in violation of the procedures and guidelines issued by Government of Andhra Pradesh, Ministry of Labour and Employment, Training and Factories, and ESI Corporation.
- The three former directors of Insurance Medical Services (IMS) made purchases from firms, which were not empanelled with the government or Non Rate Contract firms.
- [Insurance Medical Services implements the ESI scheme.]
- They are accused of fabricating quotations from Non Rate Contract firms and paying excess rates, sometimes as high as 36%.

What are the alleged irregularities?

- The **three directors** issued purchase orders without constituting Drug Procurement Committees and without calling for open tenders.
- The total budget allocation for the purchase of drugs during the tenure of the three directors was Rs 93.51 crore.
- But they purchased drugs from Rate and Non-Rate Contract firms worth Rs.698.36 Cr. by violating the procedural guidelines.
- Similarly, excess amount was paid to purchase furniture, establish a sewerage treatment plant, and procurement of bio-metric devices.
- **Atchanaidu** was accused of ordering one of the directors to entrust a tele-calling contract to Hyderabad-based Tele Health Services Pvt. Ltd.
- The director also did not follow the usual process of calling for tenders. The director awarded the contract to Tele Health Services simply based on a letter from Atchannaidu.
- The firm violated several rules and regulations cited in the agreement but was paid Rs 7.96 crore without proper verification.
- **Tele Health Services Pvt Ltd** was hired to provide toll free services and ECG services on nomination basis.

What are the violations by the service provider?

- As per MoU, the service provider has to provide toll free services to patients whenever they call for assistance.
- The director agreed to pay Rs 1.80 per month for each IP irrespective of calls attended. The service provider claimed the bill by submitting call logs of Telangana State IPs.
- The director paid the amount without verifying the genuineness of the call logs.
- The director also entered into MoU with the same service provider to provide ECG services to the patients at Rs 480 per ECG.
- It utilised the services of PG Diploma Clinical Cardiologists instead of qualified DM Cardiologists by violating agreement conditions and claimed the bills.

9.3 Wirecard Scam

Why in news?

Wirecard (German company) collapsed recently, owing creditors more than €3.5 billion (almost $4 billion), after disclosing accounting irregularities.

What is Wirecard all about?

- Founded in 1999, Wirecard is a payment processor and financial services provider.
- It offered electronic payment transaction services, risk management as well as physical and virtual cards.
- At its peak, the company was valued at $28 billion.
- It was among the 30 listed companies on Germany's prestigious DAX stock index.
- It now holds the distinction of being the first DAX listed company to break, barely 2 years after it was first included.

What happened?

- **Reports** - For many years, there had been complaints of accounting irregularities against Wirecard.
- The matters came to light in 2019 after the Financial Times published a series of investigations into those claims.
- Media reports and whistleblowers alleged that the company had faked its sales transactions to inflate revenue and profits.
- Wirecard had then defended itself.
- It also aggressively hit back against critics, even suing the Financial Times.
- **Investigation** - Later in 2019, the accounting firm KPMG was called in as an outside auditor to run an independent probe.
- In April 2020, KPMG revealed that it could not verify cash balances of €1 billion.
- It was also unable to trace vast sums of advances to merchants.
- The findings led to calls for the removal of Wirecard's CEO Markus Braun.
- **Accounting firm** - The accounting firm EY had been Wirecard's auditor for over a decade.
- In June 2020, it refused to sign off on the company's 2019 accounts.
- It said that it had been provided false information about company accounts.
- It also said it could not confirm whether balances worth €1.9 billion existed.
- This is around a quarter of Wirecard's whole balance sheet.
- **Wirecard's claim** - Wirecard insisted that the missing money had been sent to two banks in the Philippines.
- But this is a claim that was refuted by both the banks as well as the country's central bank.
- The central bank said that the money had never entered its monetary system.
- **Recent events** - CEO Markus Braun resigned following the above.
- Three days later, the company admitted of a "prevailing likelihood" that the €1.9 billion did not exist.
- Soon, German authorities arrested Braun.
- Following this, Wirecard filed for insolvency, after talks with creditors failed.
- Following the bankruptcy announcement, EY said there were clear indications of an elaborate and sophisticated global fraud involving multiple parties around the world.

- It added that even the most robust and extended audit procedures might not uncover a collusive fraud.

What are the repercussions?

- Wirecard faked two-thirds of its sales, meaning there would be no way it would be able to repay all its debt.
- It owes its creditors around €3.5 billion, out of which €1.75 billion come from 15 banks plus a €500 million issued in bonds.
- The scandal is arguably Germany's biggest since Volkswagen's 'Dieselgate' crisis of 2015 and the Siemens corruption scandal of the late 2000s.
- It is now being called "Germany's Enron", referring to the 2001 accounting scam by the US energy company Enron.
- The head of Germany's federal financial regulatory authority BaFin has also called the Wirecard debacle a "total disaster".
- BaFin has itself faced criticism for its handling of the case, as well as for filing a criminal complaint against two journalists of the Financial Times.
- The accounting firm EY is also at the receiving end of public anger.
- The scandal has caused significant public outrage, and there have been calls to introduce serious regulatory reforms.

10. PANDEMIC GOVERNANCE

10.1 Government Measures to Tackle COVID

Why in news?

As the nation tackles the COVID-19 pandemic, the government takes some measures to save costs.

What were the measures?

- Parliament has reduced the salary and allowances of Members of Parliament (MPs) and Ministers.
- The Union Cabinet has decided to cancel the Members of Parliament Local Area Development Scheme (MPLADS) for two years.

Will there be any impact due to salary cuts?

- A 30% cut was made in Rs. 1 lakh/month salary of MPs and ministers.
- Rs. 27,000 cut was made in their office and constituency allowances.
- Both these amounts to a savings of about Rs. 5 crore/month.
- These amounts are immaterial for the Central government with an average monthly budget of Rs. 2.5-lakh crore.
- The Parliament has abdicated its constitutional role as the elected body that checks the work of government on behalf of citizens.
- Instead, it gave a symbolic gesture of reductions in pay and allowances.

What should the MPs do?

- During the crisis, MPs should be planning on the actions and policies to be taken to manage the epidemic.
- They should be working on the costs and consequences of various alternatives.
- They should be figuring out ways to have meetings of the committee and of the full House through video-conferencing.

- By doing these, the Parliament can check the work of government.

Why cancelling MPLADS is a welcome move?

- MPLADS creates several issues of accountability and jurisdiction.
- The MPLADS scheme should not be resumed after the crisis because,
    1. In financial terms, there is nearly Rs. 4,000 crore per year savings.
    2. This will help MPs focus on their roles as national legislators.
- It impinges on separation of powers, both horizontally across different organs of state, and vertically across different levels of governance.

What duties of MPs does the MPLADS affect?

- Other than making laws, MPs have two key duties.
    1. They sanction the size and allocation of the government budget.
    2. They also hold the government accountable for its work, including that of spending funds appropriately.
- MPLADS brings in a conflict in both these roles.
- It asks them to identify and get specific projects executed rather than to focus on policy measures to achieve the same results.
- It distracts them from allocating and monitoring the Union Budget of Rs. 30-lakh crore to micro-managing the constituency fund of Rs. 5 crore.

What is the scope for reform that the current crisis provides?

- **Technology** - Technological reform will improve efficiency.
- Much of the daily paper work of the Parliament have been digitised.
- However, protocols and infrastructure may be needed if meetings have to be held through secure video-conferencing.
- **Payandallowances** - The MPs should be provided with office space and research staff.
- They should be compensated in line with their duties as legislators.
- At the same time, hidden perks such as housing must be made transparent.
- **Accountability** - There is a need to hold MPs accountable for their work as national legislators.
- A representative democracy functions only as well as its legislatures do.

10.2 Extending MGNREGS

Why in news?

The government should extend the MGNREGA Scheme further.

What is MGNREGS?

- Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) was enacted in 2005.
- It is the largest work guarantee programme in the world.
- The primary objective of the scheme is that it guarantees 100 days of wage employment per year to rural households.
- It aims at addressing causes of chronic poverty through the projects that are undertaken, and thus ensuring sustainable development.

What are some findings?

- In 2020, around 4.6 crore households have benefited from MGNREGS.
- 8.4-lakh households have completed at least 80 days of the 100-day limit for work under the MGNREGS.
- Among the 8.4-lakh households, 1.4 lakh have completed the full quota.
- Many poor households have nearly completed their full quota of employment under the scheme in the last two months (May-June 2020).
- This reflects the distress that has driven the people to take recourse to MGNREGS.

What is the government's decision?

- The government's decision to extend the scheme into the monsoon season has also benefited households.
- The economy is reeling after extended lockdowns following the Covid-19 pandemic.
- The migrant labourers are losing their jobs in urban areas and returning to their rural homes to avoid hardships.
- During such a time of distress, the extension of the scheme has come as a huge relief to poor families.

What is the issue at the state-level?

- In nearly two-thirds of the States in 2020, demand for MGNREGS work has doubled in a number of districts compared to the previous year.
- Only in States where **kharif crop** was sown, the demand was relatively lower.
- However, some States are resorting to their **own shutdowns** to curtail the spread of Covid-19.
- So, the prospects of a robust economic recovery that would benefit those engaged in casual labour and daily wage-labour remain dim.

Why MGNERGS should be extended further?

- There is a surge in the rate of demand for work under the scheme.
- This suggests that it is time the government thought about extending the 100-day limit under the scheme.
- This extension could be done on a State-by-State basis.
- The swell in agrarian employment in the monsoon season despite the excess supply of labour owing to reverse migration from the cities could depress wages.
- This makes an extension of the limit of workdays under the MGNREGS even more imperative.

10.3 Suspension of MPLAD Scheme

Why in news?

The Centre suspended the Member of Parliament Local Area Development (MPLAD) Scheme to use its funds for COVID-related efforts.

What is the MPLAD Scheme?

- MPLAD is a central government scheme.
- Prime Minister P V Narasimha Rao announced it in Lok Sabha (1993).
- Each MP can recommend development works involving spending of **Rs 5 croreeveryyear** in their constituency.
- MPs from both Lok Sabha and Rajya Sabha can do so.
- Over the years, it was adopted and adapted by state governments.

How does the scheme work?

- MPs and MLAs do not receive any money under these schemes.
- The government transfers it directly to the respective local authorities.
- After the legislators give the list of developmental works, the district authorities as per the government rules execute them.

How can the legislators recommend the works?

- The legislators can recommend works in their constituencies based on a set of guidelines.
- The guidelines focus on the creation of durable community assets like roads, school buildings, etc.
- Recommendations for non-durable assets can be made only under limited circumstances.
- The guidelines for use of MLALAD funds differ across states.

How long are the schemes supposed to continue?

- The central scheme has continued uninterrupted for 27 years.
- It is budgeted through the finances of government.
- It will continue as long as the government is agreeable.
- In 2018, the Cabinet Committee on Economic Affairs approved the scheme until the term of 14th Finance Commission (March 31, 2020).

What has been the impact of the MPLAD scheme?

- Until 2017, nearly 19 lakh projects worth Rs 45,000 crore had been sanctioned under the MPLAD Scheme.
- Creation of durable assets of locally felt needs has positive impact on the local economy, social fabric and feasible environment.
- Further, 82% of the projects have been in rural areas and the remaining in urban/semi-urban areas.

What are the criticisms of the scheme?

- It is **inconsistent with the Constitution** as it co-opts legislators into executive functioning.
- The workload on MPs created by the scheme diverted their attention from holding the government accountable and other legislative work.
- The Second Administrative Reforms Commission (2007) recommended the discontinuation of this scheme.
- There is a claim of **corruption** associated with allocation of works.
- On many occasions, the Comptroller and Auditor General has highlighted gaps in implementation.

10.4 Kasaragod Model

Why in news?

The Centre showcased the contact tracing and containment model of Kerala's Kasaragod as a successful containment exercise.

Why showcase Kasaragod?

- Kasaragod reported the third case of COVID-19 in the country - a student airlifted from Wuhan on February 3.
- The district administration mounted a **massive exercise to trace** the 150-odd contacts of that one student.
- Kasaragod had 169 cases and zero deaths until April 19.
- Of these, 123 people had already **recovered**.

- Most of the cases were of those who had caught the virus during their travelsabroad and those who returned from the Middle East.

What is the Kasaragod model?

- The **district administration** relied on aggressive testing, technology, foolproof contact tracing, etc., to achieve the results it can now show.
- The state government appointed a **special officer** to,
    1. Coordinate functioning of the district administration.
    2. Coordinate between departments at field and secretariat levels.
- **Section 144** was imposed in the entire district, with 7 drones employed for surveillance.
- Under the **Care for Kasaragod** initiative, a common coordinated action plan was drawn up for combating COVID-19.

What was this action plan?

- All quarantined people were tracked using GPS.
- All essentials were home-delivered in the containment zones.
- A campaign on social distancing called "Break the Chain" was carried out to deliver the message of social distancing.
- Core teams were formed with incident commanders to rush to various areas and take quick action.
- The plan was carried out with a very strong social welfare component, which included free food kits for the poor and migrant workers.
- Health checkup was carried out on alternate days for migrants or the destitute. There is a 709-bed COVID-19 care centre.
- ASHAs and health inspectors carried out household surveys.

10.5 Tablighi Jamaat Episode

Why in News?

Many attendees of a big religious congregation organised by the Tablighi Jamaat held in mid-March have been affected by novel coronavirus .

What has happened after this gathering?

- More than 400 people showing symptoms have been hospitalised in Delhi alone and nearly 240 have tested positive.
- The spectre of large-scale community spread by a few hundred attendees from different States cannot be ruled out.
- That the 3-day event began on March 13 when the Health Ministry said that it did not consider the novel coronavirus as a health emergency.
- After all, WHO had called COVID-19 a pandemic on March 11, 2020.

Who is to be blamed?

- The organisers should have been aware that a similar congregation organised by them in Malaysia in end-February led to a spike in cases there and the attendees carried the virus to other countries.
- Community leaders have been irresponsible, but those in the government have been lax too.
- The Delhi government did nothing to stop such a meeting except issuing an order on March 13 prohibiting the assembly of more than 200 people.

- On March 6, the Centre advised the States to avoid or postpone mass gatherings till the pandemic was contained.
- There is a question on what prevented the State government from following this March 6 advice.

Were there such gatherings at national level?

- There have been several such large gatherings, religious and non-religious in the country, even after India reported its first case.
- Until the lockdown began, many places of worship were open and political events held.
- Each such event could have potentially seeded the virus into the population and should have therefore been cancelled or prevented.
- But India failed despite being aware how global congregations had led to an alarming spread of the virus, examples being the large outbreaks in South Korea, Singapore, southern Italy and Spain.

What could be done?

- States that already have cases with a link to the Nizamuddin event should now use the lockdown period effectively.
- They should actively find everyone who had attended the event, trace their contacts, quarantine, test and treat them without losing time.
- Both South Korea and Singapore have demonstrated how meticulous tracing of contacts of a church event, isolation and aggressive testing helped prevent the highly infectious virus from spreading widely.
- The last thing that India can afford in the war against the virus is the disease acquiring a religious or class colour.