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1. CONSTITUTIONAL VALUES AND MORALITY

1. The need of the Constitution: In the modern world, the government is having a lot of power. The possibilities of State encroaching into the life of individuals cannot be completely denied. The magnitude of the power enjoyed by the State can be imagined from the statement made by the CJI while hearing the RG Kar Case where he remarked "The power of the state government should not be unleashed on the peaceful protestors". Here, we observe that some organ (**Judiciary in this case) is there to check the unlimited power of the state**. These organs, Legislature, Executive and Judiciary are established by the constitution. Not only the establishment but also their powers and functions along with their relationship with each other is determined by the Constitution. Moreover, the **constitution establishes a relationship between the State and the citizen** too. Thus, we see that **the constitution is the supreme law of the land which establishes the different organs of the state and sets a limit on their power.** Therefore, we can say that **the chief purpose of the constitution is to limit the powers of the government.**

2. Concept of Constitutionalism: The Concept of constitutionalism is that of a political system governed by or under a constitution that **essentially mandates limited government** and **rule of law** as opposed to arbitrary, despotic, totalitarian or authoritarian rule. **The constitutional Government therefore, should necessarily be a democratic government** because in Democracy, there is a limitation imposed on the powers of the various organs of the government and there also exists a system of checks and balances. Generally speaking, a **written constitution ensures a constitutional government** but there are instances where there is **no written constitution but democracy and constitutionalism prevails. U.K. and Israe**l are some examples. The reverse is also true i.e. **A country may have a written constitution but not the constitutionalism.** Therefore, the essential condition for constitutionalism is that the powers of the government should be limited by the constitution. **Thus, a constitutional government essentially means a limited government.**

3. The difference between a Nation and a State: A nation is **a group of people who see themselves as a cohesive and coherent unit based on shared cultural or historical criteria**. Nations are socially constructed units, not given by nature. Their existence, definition, and members can change dramatically based on circumstances. Nations in some ways can be thought of as **"imagined communities" that are bound together by notions of unity that can pivot around religion, ethnic identity, language, cultural practice and so forth.** Some states may contain all or parts of multiple nations.
A **State is an independent, sovereign government exercising control over a certain spatially defined and bounded area, whose borders are usually clearly defined and internationally recognized by other states**.

1. States are **tied to territory**
   - Sovereign or state as absolute ruler over territory
   - Have clear borders
   - Defends and controls its territory within those borders
   - Is recognized by other countries (diplomatic recognition, passports, treaties, etc.)
2. **States have bureaucracies staffed by state's own personnel**
   - Has a national bureaucracy staffed by government personnel (legal system, educational system, hierarchical governmental units, etc.)

3. **States monopolize certain functions within its territory (sovereign)**
   - Controls legitimate use of force within its territory
   - Controls money at national scale (prints currency; collects taxes)
   - Makes rules within its territory (law, regulations, taxes, citizenship, etc.)
   - Controls much information within its territory

The **four essential components** of a State are: **Population, A Geographical Territory, A Form of Government and Sovereignty.**

4. Rule of Law: Rule of Law includes the concepts of **natural justice, equity**, individual honor and fair play. **Nearest equivalent of Rule of Law is the ancient Indian secular concept of Dharma.** Rule of Law is to be understood as opposed to arbitrary rule of a person or party. Thus, **Rule of Law is an essential prerequisite for democracy.**

Dicey held that the 'rule of law' embraces four separate features:
1. First, no one should be punished except for breaches of law.
2. Second, there should be **equal subjection to the law or 'equality before law,'**
3. Third, when law is broken, there must be a certainty of punishment.
4. Finally, the **rights and liberties of the individual should be embodied in the 'ordinary law' of the land**. This would ensure that when individual rights are violated citizens can seek redressal through the courts.

In its broad sense, the **Rule of law is a core western liberal- democratic principle, embodying ideas such as constitutionalism and limited government to which most modern States aspire.** According to some scholars, **the essential characteristics of Rule of law are:**
a. The **supremacy of law**, which means that all persons (individuals and governments) are subject to law.
b. A concept of justice which emphasizes **interpersonal adjudication, law based on standards and the importance of procedures.**
c. Restrictions on the exercise of discretionary power.
d. The **doctrine of judicial precedent.**
e. The **common law methodology**.
f. Legislation should be prospective and not retrospective.
g. An independent judiciary.
h. The exercise by parliament of the legislative power and restrictions on exercise of legislative powers by the executive
i. An underlying moral basis for all law.

5. Secularism: In the absence of any precise or formal definition of 'secularism' in the Indian context, several different interpretations were possible. The perceptions of the apex court also have varied from case to case depending upon the constitution of each Bench. **Unlike the West, in India, secularism was never borne out of the conflict between the Church and the State.** It was perhaps rooted in India's own past history and culture, a very likely response to her pluralism or the desire of the founding fathers to be just and fair to all communities irrespective of their numbers. Very often, in our common parlance, the term secularism therefore used merely as an opposite of 'communalism'. The original text of the preamble as adopted by the Constituent Assembly did not contain the word 'secular'. **Like the word 'socialist', it was also inserted as an additional adjective before 'republic' by the Forty-second Constitutional Amendment Act** during the Emergency.

The meaning sought to be given to the term has been that of **Sarva Dharm Sambhava i.e. treating all religions alike or giving equal respect to all religions, instead of Dharm Nirpeksh or Panth Nirpeksh i.e. State neutrality in matters of religion.** This, however does not mean that the State has no say whatsoever in matters of religion. **Laws can be made for regulating the secular affairs of temples, mosques and other places of worship and maths.** Even acquisition by the state of a place of worship-temple, mosque or church cannot be said to be against secularism. This was the natural and the only possible interpretation because the hard facts of the Indian situation made the Western concept of secularism entirely inapplicable. **Secularism in our context only means that ours was a non theocratic state**, that the state as such does not have its own religion, that in its eyes all religions are equal and that it would make no distinction between citizens on grounds of religion. **Before the Forty-second Amendment, the only mention of the word 'secular' in the Constitution was in article 25(2) wherein State had been empowered to regulate or restrict any 'secular activity' associated with religious practice.** Obviously, here the connotation of 'secular' was 'non- religious' or pertaining to matters other than purely religious. The Forty-second Constitutional Amendment Act which added the word 'secular' to the Preamble did not attempt to define it. It was, however, felt that the addition had the effect only of affirming and clarifying what was believed to be already present as a basic feature of the Constitution.

6. Constitutional Morality: Constitutional morality refers to the **principles and values that underlie the constitution and guide the actions of government and citizens.**

- It encompasses the idea that the **constitution is not just a legal document but also a moral one** that reflects the shared values and aspirations of a society.
- It also encompasses the idea that the constitution should be interpreted and implemented consistently with these fundamental principles and values rather than simply as a technical document to be followed literally.
- The **term Constitutional Morality is not mentioned anywhere in the constitution**.

Significant Supreme Court judgments relating to Constitutional Morality:

- **SP Gupta Case/First Judge Case (1982)**: The Supreme Court described constitutional violation as 'a serious breach of constitutional morality'.
- **Naz Foundation vs. Government of NCT of Delhi (2010)**: The Supreme Court took into cognizance the idea of upholding the constitutional principles rather than society's perception with regard to the legitimacy of same-sex relationships.
- **Manoj Narula vs. Union of India (2014)**: Chief Justice of India (CJI) described **constitutional morality as a means to bow down to the norms of the Constitution** and not to act in a manner that would become violative of the rule of law or reflectible of action in an arbitrary manner.
- **NCT of Delhi vs. Union of India (2018)**: The Supreme Court equated constitutional morality with the spirit of the Constitution itself.
  - It held that Constitutional morality, in its strictest sense, **implies a strict and complete adherence to the constitutional principles** as enshrined in the various segments of the document.
- **Navtej Singh Johar vs. Union of India (2018)**: The Supreme Court made a distinction between constitutional and public morality.
  - It held that **constitutional morality reflects the ideal of justice** as an overriding factor in the struggle for existence over any notion of social acceptance.
  - The court thus struck down section 377 of IPC, which made homosexuality a criminal offense.
- **Joseph Shine vs. Union of India (2019)**: Upholding the right of gender equality and right to equality, the Supreme court struck down Section 497 of IPC, which made adultery a crime.

- The Supreme Court noted that constitutional morality must guide the law and not the common morality of the State at any time in history.

- **Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors., (2019) (Sabarimala Case):** The Supreme Court ruled that the exclusion of women between the ages of 10-50 years from the Sabarimala temple violates four key principles of constitutional morality: Justice, Liberty, Equality, and Fraternity.
  - The court observed that the term "morality" in **Articles 25 & 26** of the Constitution refers to constitutional morality rather than popular morality.

Significance of Constitutional Morality:

- **Protects rights of citizens**: It helps to protect the rights and freedoms of citizens by ensuring that the government is held accountable to the rule of law and the principles of **democracy, justice, liberty, and equality.**
- **Promoting Democratic ideals**: It helps to maintain the **integrity of democratic institutions** by ensuring that the government is constrained by the will of the people and the principles of the constitution.
- **Bring positive change in society**: It can be used to interpret laws or statutes no longer consistent with recent times, thus bringing positive societal change.
- **Creates Inclusive Society**: It helps to **promote social cohesion and respect for diversity** by recognizing and protecting the rights of all citizens, regardless of their background or identity.

Issues pertaining to Constitutional Morality in India:

- **Lack of clarity**: Some argue that the concept of constitutional morality is not clearly defined and that it can be used to justify a wide range of actions and decisions, which undermines the principle of predictability and the rule of law.
- **Can lead to judicial overreach:** If this doctrine is used without limits or restrictions, it could amount to judicial overreach. This can lead to a violation of the separation of powers.
- **Subjectivity**: Some argue that the concept of constitutional morality is highly subjective and that it can be used to justify different actions and decisions depending on the perspective of the person or institution interpreting it.
- **Lack of popular legitimacy:** Some argue that constitutional morality is not based on popular consent and is imposed on society in opposition to public morality.
- **Selective application**: There have been instances where constitutional morality has been selectively applied to certain groups or issues, undermining the principle of impartiality and the rule of law.

What steps can guide towards the effective realization of Constitutional morality?
Some of the steps that can be taken are:

- **Providing holistic definition:** Defining the meaning of 'constitutional morality' could make this a standard, especially in cases where the rights and liberties of individuals are pitted against religious or cultural practices.
- **Increasing Objectivity:** By setting certain objective standards, the **principle of constitutional morality could develop into a more holistic doctrine, such as the 'Basic Structure Doctrine'.**
- **Balanced Application:** Constitutional morality should be applied in a manner that is consistent with the principles and values of the constitution and that takes into account the specific context and circumstances of a particular situation.

- **Active citizenry:** Citizens should be encouraged to actively participate in the political process and hold their elected officials accountable.
- **Strong oversight institutions:** Strong and independent institutions, such as the judiciary and the press, play a vital role in upholding constitutional morality.

7. Constitution as a Living Document: This constitution was designed according to the time period of society, but now there is a drastic change in Indian society, economy, and thinking. After listening to the topic "Constitution as a Living Document," the first question that strikes our mind is how a constitution can be a living document. The reasoning behind this question is hidden in the word "living", which means something that evolves over time to adapt to new surroundings, much like other living organisms do.
Similarly, **the Constitution is also an evolving document. Our Indian constitution evolves from time to time in order to improve it and benefit society**. Now another question arises: how did the constitution evolve? The evolution of the constitution takes place by amendment, and this power of amendment is under Article 368 of the Indian Constitution, which helps us to add new laws or change existing ones.
The Constitution also evolves in the way we interpret the meaning of the text present in our Constitution. Even without amending it, the **Constitution can be evolved as the Constitution has a dynamic meaning that evolves and adapts to new circumstances.** For example: In the **Puttaswamy Judgement, Right to Privacy was recognised as a fundamental right under right to life and personal Liberty.**

2. FUNDAMENTAL RIGHTS & ASSOCIATED DUTIES

2.1. Definition Of State (Article 12): The use of the term **Other authorities in Article 12** posed some difficulties in determining whether any institution comes under the definition of the state or not. So, the Supreme Court has depended on the **concept of instrumentality and agency to recognize any institution as state.** The Supreme Court has held that **even a private body may be "state" covered by the term "other authorities" if it is entrusted with some public service responsibility as an agency or instrumentality of the state.** To determine the characteristics of a 'state' the Supreme Court has laid down the following principles as important in the case of **Ajay Hasia vs. Sehravardi**,

1. If the entire share capital is held by the government,
2. Where the financial assistance of the State is great;
3. If the corporation enjoys a monopoly status conferred by the State;
4. Existence of deep and pervasive State control;
5. If the functions of State government are closely related to that of government and
6. If a department of Government is transferred to the corporation

2.2. Right To Equality (Article 14): Article 14 rejects any type of discrimination based on caste, race, and religion, place of birth or sex. This Article is having a wide ambit and applicability to safeguard the rights of people residing in India.

This article is divided into two parts:

Equality before the Law: This part of the article indicates that **all are to be treated equally in the eyes of the law.** This is a **negative concept** as it **implies the absence of any privilege in favor of any person**. This is a substantive part of the article.

Equal protection of the Laws: This part means that the **same law will be applied to all the people equally across the society**. This is a **positive concept** as it expects a positive action from the state. This is a **procedural part of article 14.**

In the Maneka Gandhi v. Union of India, 1978, Justice Bhagwati said that **Equality is against the arbitrariness of State action**. So this doctrine ensures equality of treatment. "The seven-Judge Bench held that a trinity exists between Article 14, Article 19 and Article 21. All these articles have to be read together.

Further expansion of Article 14 was done in the case of Visakha v State of Rajasthan, 1997

"The judgment sought to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. **Sexual Harassment violates the fundamental right of the women of gender equality which is codified under Article 14** of Indian Constitution and also the fundamental right to life and to live a dignified life. The Court held that even though there is no express provision for sexual harassment at workplace under Indian Constitution, it is implicit through these fundamental rights."

Expansion of Article 14 in terms of defining Gender: In the case of National Legal Service Authority [NALSA] v UOI, 2014.

"This case was filed by the **National Legal Services Authority of India (NALSA) to legally recognize persons who fall outside the male/female gender binary, including persons who identify as "third gender".** While drawing attention to the fact that transgender persons were subject to "extreme discrimination in all spheres of society", the Court held that the right to equality (Article 14 of the Constitution) was framed in gender-neutral terms ("all persons"). Consequently, the right to equality would extend to transgender persons also."

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Further in Shayara Bano v UOI, 2016 "the 5 Judge Bench of the Supreme Court pronounced its decision in the **Triple Talaq Case, declaring that the practice of instantaneous triple talaq [Talaq-ul-biddat] was unconstitutional**. The Bench observed that the fundamental right to equality guaranteed under Article 14 of the Constitution, manifested within its fold, equality of status. Gender equality, gender equity and gender justice are values intrinsically entwined in the guarantee of equality, under Article 14."
These above discussed landmark cases and many more have contributed to expand the ambit and scope of Article 14 of the Constitution of India, to strive for a more equal and fair society.

2.3. Affirmative action: "Affirmative Action" is a phrase that **refers to attempts to bring members of underrepresented groups, usually groups that have suffered discrimination, into a higher degree of participation in some beneficial programme**. Affirmative action includes some kind of **preferential treatment**. Another term often associated with affirmative action is **"reverse discrimination"** which means "a difference in treatment that reverses the pattern of earlier discrimination".
The **principle of affirmative action, also called reverse discrimination**, was established and general guidance is provided in **Article 46 of the Indian Constitution under Chapter IV (Directive Principles of State Policy)**. Article 46 directs the State to promote the educational and economic interests of the weaker section of the people with special care, in particular the SC and ST. Moreover, it directs the state to protect them from social injustice and all kinds of exploitation.
The ruling of the Hon'ble Supreme Court in the **Champakam Dorairajan case** was reversed by the Constitutional First Amendment of 1951. Regarding 'affirmative action', it was held in the case of **Indira Sawhney v. Union of India (1992)** that, among others, the concept of equality before the law contemplates minimizing inequalities in income, status, facilities and opportunities, not only amongst individuals but also amongst groups of people, securing adequate means of livelihood for its citizens and ensuring the constitutional direction as given in Article 46. **Thus, to bring about equality among the unequal, it is necessary to adopt positive measures to abolish inequality.** The equalising measures will have to be the same tools by which inequality was introduced and perpetuated. Otherwise, equalisation will not be for the unequal. It was further held that the **very concept of equality implies recourse to valid classification for preferences in favour of the disadvantaged classes of citizens to improve their condition**, so as to enable them to raise themselves to positions of equality with the more fortunate classes of citizens.

2.4. Reservation: Reservation in India is a **system of affirmative action that provides certain groups of people with preferential treatment in education, employment, and other areas**. Here are some of the reasons why reservation is necessary for India.

- **Historical injustice:** Reservation is a way to **redress historical injustices** and provide opportunities for marginalized communities such as Dalits and Adivasis.
- **Caste system:** The Caste system, which has long been a part of Indian society, has traditionally relegated certain groups to lower social and economic positions.
- **Social and economic Disparity:** Reservation **aims to promote social and economic equality** by providing opportunities for the underprivileged sections of society.
- **Inadequate representation:** Reservation ensures the adequate representation of depressed communities in education and employment.
- **Prejudice and discrimination:** Reservation provides protection against discrimination and ensures that marginalized communities are not denied opportunities based on their caste, religion, or gender.

What is the historical background of reservation policies in India?
Reservation policies in India have a complex historical background, with several factors contributing to their development.

Pre-Independence

- **1882:** The concept of reservation based on caste was first proposed by **William Hunter and Jyoti Rao Phule** in 1882.
- **1909:** The British Raj introduced elements of reservation in the Government of India Act of 1909 by giving **separate electorates** to certain communities.
- **1902:** Rajarshi Shahu, the Maharaja of **Kolhapur**, introduced reservation in favour of non-Brahmin and backward classes in 1902.
- **1921: Mysore** initiates reservation for backward castes after a decade-long social justice movement against the repression of non-Brahmin castes.
- **1927:** Madras presidency provided 44% reservation to Non-Brahmin Hindus, 16% to Brahmins, Muslims, Christians, and Anglo-Indians, and 8% to Scheduled Castes.
- **1932:** MacDonald/**Communal Award** provided for **separate electorates for depressed classes**, including the Dalits. However, later, Poona Pact abandoned separate electorates for depressed classes in favour of increased reserved seats for depressed classes.
- **1935:** The Government of India Act of 1935 extended the communal representation by giving separate electorates to depressed classes, women and labour.

Post-Independence

- **1951:** First Constitutional Amendment in Constitution to legalize caste-based reservation in India.
- **1990:** The Mandal Commission (1979) recommendation of 27% reservation for OBCs was implemented.
- **1992: Indra Sawhney Case Judgement**
  - Reservation shall not exceed 50 percent.
  - Reservation in promotions shall not be allowed.
  - The **concept of a 'creamy layer' was introduced,** and it was directed that such a creamy layer be excluded while identifying backward classes.
  - The '**carry forward rule' in case of unfilled (backlog) vacancies is valid**. But the criteria of the 50% rule should not be violated in any case.
  - It struck down the move to reserve 10% government jobs for the poor among upper castes
- **2006: Nagaraj Case Judgement**
  - The Supreme Court ruled that the state was not bound to provide reservation in promotions to SCs/STs.
  - But if any state wished to make such a provision, it needs to:
    - Collect quantifiable data on the backwardness of the class
    - Prove its inadequate representation in public employment
    - Show no compromise on efficiency of administration
- **2006:** The **Central Educational Institutions Act, 2006** provides for the reservation of students belonging to the Scheduled Castes/ Scheduled Tribes and Other Backward Classes to the extent of **15%, 7.5%, and 27%, respectively, in Central Educational Institutions**.
- **2018: Jarnail Singh vs Lachhmi Narain Gupta Case Judgement**
  - The Supreme Court held that **reservation in promotions does not require the state to collect quantifiable data on the backwardness of the SCs and the STs.**

- The Court also held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in promoting SC/ST individuals who belong to the creamy layer of their community.

- **2019:** The Government of India has **provided 10% reservation to economically weaker sections (EWS) through the 103rd Constitutional Amendment**. This is the first time reservation has been extended on the basis of economic criteria.
- **2019:** Reservation in favour of SCs and STs in Lok Sabha and the state legislature was only till 1960, but it has been extended every 10 years. **The latest extension was made in 2019 and is valid up to 2030.**
- **2021:** 102nd amendment to allow states and Union Territories to prepare their own Socially and Economically Backward Classes (SEBCs) list.
- **2022: Janhit Abhiyan v Union of India**
  - The Supreme Court upheld the 103rd Constitutional Amendment providing reservation for economically weaker sections (EWS). Thus, the **apex court validated reservations based on economic backwardness.**

What are the different types of reservations in India?

- **Vertical reservation:** It refers to the **reservation of seats in educational institutions and jobs in government services** for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBCs).
  - This reservation is **based on the proportion of the population** of these groups in the country or a specific state.
- **Horizontal reservation:** It refers to the **reservation of seats for specific categories of people within the reserved categories.** For example, within the SC category reservation, there can be reservations for differently-abled people.
- **Caste-based reservation:** Caste-based reservation is a system that provides **opportunities and access to education and employment to people belonging to historically marginalized castes** in India, such as Scheduled Castes (SC) and Scheduled Tribes (ST).
- **Gender-based reservation:** Gender-based reservation is based on the principle of gender equality. In India, the Constitution has provided **one-third reservation to women in local bodies under Articles 243D and 243T.**
- **Income-based reservation:** It is a system that **provides opportunities and access to education and employment to poor sections of socie**ty. For example, reservation to the economically weaker sections (EWS) of society.
- **Reservation for differently-abled:** It is based on **the principle of inclusivity, which aims to create an equal and accessible society for people with disabilities**. For example, 4% reservation is provided to disabled persons in government jobs.

Why is there a rise in demand for reservations in India?

The demand for reservation by **dominant castes,** such as Jats in Haryana, Patidars in Gujarat, Kapus in Andhra Pradesh, and Marathas in Maharashtra, has been increasing in recent years**. This is due to a number of factors, including**

- **Lack of employment opportunities in the private sector:** The private sector is not able to provide enough jobs for the increasing population, and as a result, many people are turning to government jobs as a means of livelihood.
- **Slow growth of agriculture and rural economy:** Agriculture and rural economy have not been growing at a fast pace in recent years, and this has led to a lack of opportunities for people living in these areas.

- **Droughts:** Droughts have also had a negative impact on agriculture and the rural economy, leading to a lack of opportunities for people in these areas.
- **Increasing pressure on educational institutions:** With the increasing population and limited seats in educational institutions, it has become increasingly difficult for people to access quality education.
- **Limited seat expansion:** The government has been unable to increase the number of seats in educational institutions and government jobs to accommodate the increasing population, leading to increased competition for limited resources.

What are the recent debates around reservations in India?

Domicile-based reservation

- The Haryana State Employment of Local Candidates Act 2020 mandated 75 percent reservation in the private sector for people domiciled in the state of Haryana. However, this is not the first time a state has provided domicile-based reservations to its residents.
- Some other states have also enacted such laws to provide reservations for their local citizens in the private sector. These include **Maharashtra** (up to 80 percent), **Karnataka** (75 percent), **Andhra Pradesh** (75 percent), and **Madhya Pradesh** (70 percent).
- Telangana had also allowed **tax concessions** to industries that reserved jobs for locals in the state.
- Similarly, in Madhya Pradesh, the government declared that it would **reserve all government jobs in the state for students of the state** who have cleared Class 10 and 12 examinations from a school in the state.

Sub-categorisation of caste

Recently, the Union Cabinet set **up Justice Rohini Commission(2017) to examine the sub-categorization of Other Backward Classes (OBCs):**

- The commission was set up under **Article 340** of the Constitution. It was tasked with sub-categorizing the Other Backward Classes (OBCs) and equitable distribution of benefits reserved for them.
- In 2015, the **National Commission for Backward Classes (NCBC)** also recommended that OBCs should be categorized into extremely backward classes, more backward classes, and backward classes.
- **Terms of reference of the Rohini commission are:**
  - **To examine the uneven distribution** of reservation benefits among different castes in the central OBC list.
  - **To work out the mechanism, criteria**, norms, and parameters in a scientific approach for sub-categorization within OBCs.
  - To take up the exercise of **identifying the respective castes/communities/sub-castes** for comprehensive data coverage.
  - To study and **recommend correction of any repetitions**, ambiguities, inconsistencies, and errors of spelling or transcription.

Creamy layer for SC and ST

The Supreme Court in **Jarnail Singh vs Lachhmi Narain Gupta case (2018)** calls for an extension of the creamy layer principle for reservation in promotions for Scheduled Castes and Scheduled Tribes.

- The bench noted that adhering to the letter and spirit of principles of equality and social justice, it is crucial to **exclude the "advanced" sections** of the community from the benefits of reservations.
- The demand for applying the creamy layer principle to SC and ST reservations rests seemingly on two pillars.

- **The first approach** is led by **the social justice theory**, wherein it is believed that the "poorest of the poor" have been denied the said benefits, and the more affluent sections have successfully cornered them in a somewhat zero-sum game.
- **The second approach** argues that those SCs and STs who have gained sufficient money and power should instead be treated at par with the general "forward" sections of society.

Triple test in reservation

A Supreme Court established a three-fold test criterion in **Vikas Kishanrao Gawali vs The State of Maharashtra (2021).** It involves the government implementing three tasks to finalize the reservation to the OBCs in the local bodies. **The criteria include:**

- Setting up a dedicated commission to conduct an empirical inquiry into the nature and implications of backwardness in local bodies of the state.
- Specifying the proportion of reservation required to be provisioned local body-wise in the light of recommendations of the Commission.
- Total reservation for **SCs/STs/OBCs shall not exceed 50 percent.**

Reservations in judiciary

Currently, there is no reservation policy in place for the appointment of judges to the Supreme Court and High Courts of India.

- In the **present system of appointment** of Judges to the constitutional courts through the Collegium system, the onus to provide social diversity and representation to all sections of the society, including SC/ST/OBC/Women/Minorities, primarily falls on the Judiciary.
- Government cannot appoint any person as a Supreme Court or High Court Judge not recommended by the Collegium.
- However, the **Government asks chief justices of Supreme Court and High Courts for due consideration** to be given to suitable candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities, and Women.

What are some of the arguments against reservation policy in India?

Reservation is similar to internal partition because it creates barriers to inter-caste and inter-faith marriages, in addition to being a form of ethnic discrimination.

- **Against merit system:** Reservations are **viewed as detrimental to a merit-based education system,** as they allow for relaxed entry criteria that inflate moderate credentials instead of promoting merit-based opportunities.
- **Caste consciousness:** Caste-based reservation **perpetuates the notion of caste in society rather than weakening it as intended by the Constitution**. It is also seen as a tool for political gain by invoking class loyalties and primordial identities.
- **Reservation as an improper yardstick for affirmative action:** A comprehensive scheme of affirmative action, taking into account factors such as economic conditions, gender, and schooling, would be more effective in addressing social justice concerns than reservations.
- **Elite culture within caste:** The benefits of reservation policies are often disproportionately allocated to the dominant class within backward castes, leaving the most marginalized members of those castes still marginalized.
- **Divisions among employees:** Reserving seats in government jobs resulted in division and animosity among government employees, causing a toxic work environment.

What is the future of reservation policies in India?

- **De-reservation:** The reservation policy should benefit the **majority of underprivileged children from deprived castes rather than a few privileged children with a caste tag**. Families of public officials, high-income professionals, and others above a certain income should be removed from the reservation system.
- **Focus on education:** Rather than expanding reservations, there should be **revolutionary changes in the education system at the grassroots level.** If proper education is not provided to children in these categories during the primary stage, then reservations at a later stage serve no purpose.
- **Change of yardsticks:** Reservations should be based on conditions other than caste, such as **poverty and lack of basic necessities.**
- **Preventing discrimination:** Reservation is fair when it **provides positive discrimination for the benefit of the downtrodden and economically backward sections of society**, but when it harms society and ensures privileges for some at the cost of others for political gain, it loses its purpose.
- **Political will:** A strong political will is necessary to find a balance between justice for the backward, equity for the forward, and efficiency for the entire system.
- **Caste-based census:** A socio-economic caste-based census becomes a necessary precondition to initiate any policy reforms in the reservation in India.

2.5. Right to Freedom (Article 19- 22): The **Right to Freedom** is a fundamental human right that encompasses various dimensions of individual liberty and autonomy. It is recognized and protected by numerous international human rights instruments, such as the **Universal Declaration of Human Rights (UDHR)**, as well as national constitutions around the world, including the Constitution of India. **The essence of this right is to develop an independent, free, and expressive society.**

Right to Freedom in India

The **Right to Freedom** is a Fundamental Right enshrined in the Constitution of India. The detailed provisions related to the Right to Freedom contained in **Articles 14 to 18** of the Constitution form the cornerstone of liberal society. Together they ensure that the citizens can voice their opinions freely and engage in various pursuits without undue restrictions.

- The following points are to be noted w.r.t. the **rights provided by Article 19 of Indian Constitution:**
  - These six rights are **protected only against the actions of the state and not private individuals.**
  - These rights are **available only to the citizens and shareholders of a company**. They are not available to foreigners or legal entities like corporations, companies, etc.
  - **'Reasonable' restrictions can be imposed by the state** on these six rights only on the grounds mentioned in Article 19 itself and not on any other grounds.

Freedom of Speech and Expression [Article 19(1)(a)]

- It guarantees every citizen **the right to express one's views, opinions, beliefs, and convictions freely** by word of mouth, writing, printing, picturing, or in any other manner.
- As per the rulings of the Supreme Court, the 'Freedom of Speech and Expression' as contained in **Article 19(1)(a)** includes the following:
  - Right to propagate one's own as well as others' views.
  - Freedom of silence.
  - Freedom of the press.

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- Right **against the imposition of pre-censorship** on a newspaper.
- Freedom of commercial advertisements.
- **Right against tapping of telephonic conversation**.
- Right to telecast.
- Right to know about government activities.
- Right to demonstration or picketing but not right to strike.
- **Right against 'bundh'** called by a political party or organization.

Freedom of Assembly [Article 19(1)(b)]

- It guarantees every citizen **the right to assemble peacefully (without arms)**, including the right to hold public meetings, demonstrations, and take-out processions.
- **The following points are to be noted w.r.t. this right:**
  - This freedom can be **exercised only on public land**, and not on private land.
  - The assembly must be **peaceful and unarmed.**
  - Thus, this provision does not protect disorderly, violent, riotous assemblies, one that causes a breach of public peace or one that involves arms.
  - This right **does not include the right to strike.**

Freedom of Association [Article 19(1)(c)]

- All citizens have **the right to form associations, unions, cooperative societies**, or any other body of persons such as political parties, companies, partnership firms, societies, clubs, organizations, trade unions, etc.
- The following points are to be noted w.r.t. **Article 19(1)(c)**:
  - **This right includes the following:**
    a. the right to start an association or union
    b. the right to continue with the association or union.
    c. the negative right of not to form or join an association or union
  - The **right to obtain recognition** of an association formed is **not a fundamental right.**
  - As held by the Supreme Court, the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lock-out.

Freedom of Movement [Article 19(1)(d)]

- This freedom grants **every citizen the right to move freely throughout the territory of the country.** One can move freely between the states or within a state.
- **The freedom of movement has two dimensions:**
  - **Internal** – right to move inside the country
  - **External** – right to move out of the country and right to come back to the country.

It is to be noted that **Article 19 protects only the first dimension of the freedom of movement**. Its second dimension is dealt with by **Article 21 (The Right to Life and Personal Liberty).**

- **Restrictions**: The state can impose reasonable restrictions on this freedom on the following two grounds:
  - The **interests of the general public**. For example, the Supreme Court has ruled that the freedom of movement of prostitutes can be restricted on the grounds of public health and public morals.

- The **protection of the interests of any scheduled tribe**. For example, the government restricts the entry of outsiders into tribal areas to protect the di**stinctive culture, language, customs, and manners of scheduled tribe**s and to safeguard their **traditional vocation** and properties against exploitation.

Freedom of Residence [Article 19(1)(e)]

- Every citizen has the **right to reside and settle** in any part of the territory of India.
- **This right has two parts:**
  - the **right to temporarily stay in any part of the country**, i.e. staying at any place temporarily
  - **the right to settle in any part of the country** i.e. setting up a home or domicile at any place permanently
- **Restrictions**: Reasonable restrictions can be imposed by the State on the exercise of this right on the following two grounds:
  - In the **interest of the general public.**
    For example, the Supreme Court has held that certain kinds of persons such as prostitutes and habitual offenders etc can be banned from entering and residing in certain areas.
  - The **protection of the interests of any scheduled tribes.**
    For example, the government has restricted the right of outsiders to reside and settle in tribal areas to protect the distinctive culture, language, customs, and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

Freedom of Profession, etc [Article 19(1)(f)]

- All citizens are given **the right to practice any profession or pursue any occupation, trade, or business of their choice.**
- **The following points are to be noted w.r.t. this right:**
  - This right does not include the right to carry on a profession, business, trade, or occupation that is immoral or dangerous.
    Thus, activities like **trafficking in children or dealing with harmful drugs** are not allowed under this right.
  - **In relation to this right, the State is empowered to:**
    1. Prescribe that a technical or professional qualification is necessary for practicing any profession or carrying on any occupation, trade, or business; and
    2. Carry on by itself any trade, business, industry, or service without taking into consideration either complete or partial exclusion of citizens. This means that no objection can be made when the State carries on a trade, business, industry, or service either as a complete or partial monopoly to the exclusion of citizens or in competition with any citizen.
- **Restrictions**: The State can impose reasonable restrictions on this right on the grounds of the interest of the general public.

Protection in Respect of Conviction for Offences (Article 20)

- This right **protects against arbitrary and excessive punishment of an accused person**, whether a citizen, a foreigner, or a legal person like a company or a corporation, etc.
- **It contains three provisions in this regard:**
  - **No ex-post-facto law** – This provision prohibits incrimination under an ex-post-facto law i.e. **that imposes penalties retrospectively or which increases the penalties for such acts**. Accordingly, no person shall be:

A. Convicted of any offense except for violating a law in force at the time of the commission of the act
B. Subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act

The following points are to be noted w.r.t. this provision:

- This **limitation of ex-post-facto law is imposed only on criminal laws, not on civil laws or tax laws**. Thus, a civil liability or a tax can be imposed retrospectively.
- This provision prohibits only conviction or sentence under an ex-post-facto criminal law and not the trial thereof.
- Protection under this provision cannot be claimed in case of preventive detention or demanding security from a person.

- **No double jeopardy – No person shall be prosecuted and punished for the same offense more than once.** The protection is available only in proceedings before a court of law or a judicial tribunal, and not in proceedings before departmental or administrative authorities.
- **No self-incrimination** – No person accused of any offense shall be compelled to be a witness against himself.

The following points are to be noted w.r.t. this provision:

- This protection extends to **both oral evidence and documentary evidence.**
- **This protection does not extend to the following:**
  (a) Compulsory production of material objects
  (b) Compulsion to give thumb impression, specimen signature, blood specimen
  (c) Compulsory exhibition of the body
  - This protection **extends only to criminal proceedings and not to civil proceedings** or other proceedings which are not of criminal nature.

Protection of Life and Personal Liberty (Article 21)

- This right declares that **no person shall be deprived of his life or personal liberty** except according to the procedure established by law.
- This right is **available to both citizens and non-citizens.**

Evolution of Rights under Article 21 (Protection of Life and Personal Liberty)

The Supreme Court, through its judgments in different cases, has led to the evolution of the scope of rights included under Article 21. This evolution can be seen as follows:

- **Gopalan Case, 1950**: The Supreme Court took a narrow interpretation of Article 21 and held that:
  - **Protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action**. Thus, the state can deprive the right to life and personal liberty of a person based on a law.
    1. The reasoning given by the Supreme Court was that the expression **'procedure established by law'** used in Article 21 is different from the expression **'due process of law'.** This means that the validity of a law that has prescribed a procedure cannot be questioned on the ground that the law is unreasonable, unfair, or unjust.
    - **Personal liberty means only liberty relating to the person or body of the individual.**

- **Maneka Gandhi Case, 1978**: The Supreme Court took a wider interpretation of Article 21, overruling its judgment in the Gopalan Case. It held that:
  - The **right to life and personal liberty of a person** can be deprived by a law provided the procedure prescribed by that law is reasonable, fair, and just.
    Effectively, it **introduced the concept of 'due process of law'**. Thus, **now protection under Article 21 is available not only against arbitrary executive action but also against arbitrary legislative action.**
  - The right to life is not merely confined to animal existence or survival but **includes the right to live with human dignity.**
  - Personal liberty is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of a man.

Right to Education (Article 21A)

- This article declares that **the State shall provide free and compulsory education to all children of the age of six to fourteen years** in such a manner as determined by the State.
- It is to be noted that **this provision makes only elementary education a Fundamental Right**, and not higher or professional education.
- This provision was added by the **86th CA Act, of 2002**, which made the following changes to the Constitution:
  - Added this new Fundamental Right in **Article 21A**, which earlier was a DPSP under Article 45.
  - Changed the subject matter of **Article 45** to direct that the state shall endeavor to provide **early childhood care and education for all children until they complete the age of 6 years.**
  - Added a new Fundamental Duty under **Article 51A**, which says that – it shall be the duty of every citizen to provide opportunity for **education to his child/ward between the ages of 6-14 years.**
- To implement the provision under Article 21A, the Parliament has enacted the **Right of Children to Free and Compulsory Education (RTE) Act, 2009.** It seeks to ensure that every child has a right to be provided with full-time elementary education.

Protection Against Arrest and Detention (Article 22)

- Article 22 provides safeguards for persons **who are arrested or detained.**
- **Detention is of 2 types:**
  - **Punitive Detention-** to punish a person for an offense committed by him after trial and conviction in a court.
  - **Preventive Detention- detention of a person without trial and conviction by a court.** Its purpose is not to punish a person for a past offense, but to **prevent him from committing an offense in the near future.**
- **Article 22 provides safeguards against both types of detention, and hence contains the following two provisions:**
  - **First Part**: Deals with the cases of ordinary law and provides the following rights to a person who is arrested or detained under an ordinary law:
    (a) Right to be informed of the grounds of arrest
    (b) Right to be produced **before a magistrate within 24 hours**, excluding the journey time
    (c) Right to be released after 24 hours unless the magistrate authorizes further detention
    (d) **Right to consult and be defended by a legal practitioner**

The following points are to be noted w.r.t. these safeguards:

- These safeguards **apply only to an act of a criminal or quasi-criminal nature** or some activity prejudicial to the public interest.
- These safeguards are **not available to an enemy alien** or a person arrested or detained under a preventive detention law.
- These safeguards are available in case of arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien.
    - **Second Part**: Grants protection to persons who are arrested or detained under a preventive detention law, and includes the following:

      a. **Grounds of detention should be communicated to the detenu**. However, facts considered to be against the public interest need not be disclosed.

      b. Detention of a person **cannot exceed 3 months** unless an advisory board reports sufficient cause for extended detention. The **board is to consist of judges of a High Court.**

      c. The detenu should be allowed to make a representation against the detention order.

The following points are to be noted w.r.t. these safeguards:

- This safeguard is **available to both citizens as well as aliens.**
- **It authorizes Parliament to prescribe:**
    - Circumstances and the classes of cases in which a person can be detained for more than 3 months under a preventive detention law without obtaining the opinion of an advisory board
    - The maximum period for which a person can be detained in any class of cases under a preventive detention law
    - Procedure to be followed by an advisory board in inquiry
- The Constitution has divided the legislative power w.r.t. **preventive detention between Parliament and State Legislatures as follows:**
    - **Parliament** has exclusive authority to make a law of preventive detention for reasons connected with the **Defense, Foreign Affairs, and Security of India.**
    - **Both Parliament and State Legislatures** can concurrently make a law of preventive detention for reasons connected with the security of a state, maintenance of public order, and maintenance of supplies and services essential to the community.

- Some of the preventive detention laws made by the Parliament are
    - **National Security Act (NASA) 1980,**
    - **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) 1974, etc.**

Significance of Right to Freedom

- **Cornerstone of Democracy** – It forms the bedrock of democracy by **empowering citizens to express their views and participate in the governance process**. It ensures that individuals have a voice in shaping the policies and decisions that affect their lives.
- **Individual Empowerment** – These rights empower individuals to **exercise autonomy** and pursue their interests without undue interference from the state or other entities.
- **Promotion of Pluralism and Diversity** – It fosters a **culture of pluralism and diversity** where different viewpoints, beliefs, and perspectives can coexist. It **encourages dialogue, debate, and the exchange of ideas**, leading to intellectual enrichment and societal progress.

- **Protection Against Tyranny** – The **right to freedom serves as a bulwark against authoritarianism** and tyranny by limiting the government's power to infringe upon individual liberties.
- **Safeguarding Human Dignity** – Fundamental freedoms such as the **right to life, personal liberty, and protection against arbitrary detention uphold the inherent dignity of every individual**. They ensure that people are treated with respect and fairness, irrespective of their background, beliefs, or status.
- **Facilitation of Socio-Economic Development** – Freedom of movement, residence, and profession enables individuals to seek opportunities, pursue livelihoods, and contribute to the economic development of the nation.
- **Promotion of Social Justice** – It includes provisions for education, legal aid, protection against exploitation, and other social welfare measures aimed at promoting equity and social justice.

In conclusion, the **right to freedom** serves as a cornerstone of individual liberty and societal progress and is vital for a vibrant democracy. The Constitution's provisions for the protection of life, personal liberty, and education further underscore its commitment to ensuring the dignity and welfare of all citizens. As India continues its journey towards progress and inclusivity, the principles of freedom embodied in these articles remain essential guides for shaping a **fair, democratic, and compassionate society.**

2.6. Essential Practices Doctrine:

Origin and Early Application

- The doctrine was first articulated in the landmark case of The **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954).**
- The **Supreme Court of India held that Article 25 protects not only religious beliefs but also the outward expressions** of those beliefs through rituals and ceremonies.
- The **Court stated that what constitutes an essential part of religion should be determined with reference** to the doctrines of that religion itself.
- This **case set a precedent for future determinations** of essential religious practices.
- **Despite the clear principles laid out in the** Shirur Mutt **case, subsequent judgments have often deviated** from this standard, leading to inconsistent applications of the Essential Practices Doctrine.

- **The Durgah Committee, Ajmer v. Syed Hussain Ali (1961)**
  - In this case, **the Supreme Court took a more restrictive approach** and the Court ruled that only those practices which are essential and integral to the religion are protected under Article 25, and not every practice that claims religious significance.
  - **The Court differentiated between practices that are superstitious and those that are essential,** marking a shift from a broad to a narrower interpretation of protected religious practices.
- **Gramsabha of Village Battis Shirala (2014)**
  - In Gramsabha of Village Battis Shirala, **a sect claimed that capturing and worshipping a live cobra during the festival of Nag Panchami was an essential religious practice.**
  - The Court, however, relied on more general texts of the Dharmashastra, which did not mention such a practice, and ruled that it was not an essential practice.
  - This **decision demonstrated the Court's willingness to interpret religious texts broadly** rather than deferring to specific sectarian claims.
- **Mohammed Fasi v. State of Kerala (1985)**
  - The **Kerala High Court in** Mohammed Fasi **faced the question of whether a Muslim policeman could grow a beard as part of his religious practice.**

- The **Court dismissed the claim, noting that some Muslim dignitaries do not sport beards**, and the petitioner himself had not always worn a beard.
- The **Court did not examine Islamic texts in depth to determine the essentiality of the practice,** relying instead on empirical observations.
- This **case highlighted the Court's reliance on practical considerations** over religious doctrines.

- **Acharya Jagdishwarananda Avadhuta v. Commissioner of Police, Calcutta (2004)**
  - In this case, the **Calcutta High Court initially ruled that the tandava dance was an essential practice of the Ananda Margi faith.**
  - The **Supreme Court, however, overruled this decision**, noting that the dance was adopted into the faith only in 1966, despite the faith itself being established in 1955.
  - The **Court's reasoning suggested that a practice could not be considered essential if it was not part of the religion from its inception**, thus freezing religious practices in time and ignoring their evolutionary nature.
- **Ismail Faruqui v. Union of India (1995)**
  - The Faruqui **case dealt with the acquisition of land where the Babri Masjid once stood.**
  - The **Supreme Court held that while offering prayers is an essential Islamic practice, doing so in a mosque is not,** unless the mosque holds specific religious significance.
  - **This judgment overlooked the central role of congregational prayers in Islam and the significance of mosques in facilitating these prayers**, showcasing the Court's inconsistent application of the essential practices test.

Way Forward: The Need for a Coherent Approach

- **Avoid Theological Judgments:** The court **should focus on legal and constitutional principles** rather than delving into theological interpretations, thus maintaining judicial impartiality and respect for religious autonomy.
- **Consider Evolution of Practices:** Judges **should recognise that religious practices can evolve over time and that contemporary practices may hold significance** even if they were not present at the religion's inception.
- **Uphold Constitutional Values:** The **court should ensure that all religious practices, even those deemed essential, conform to constitutional values** such as public order, health, and morality, balancing religious freedom with other fundamental rights.

Conclusion

- **The Essential Practises Doctrine remains a crucial yet contentious aspect of judicial adjudication in India** and a balance is essential for maintaining the secular and pluralistic fabric of Indian society.
- **While it aims to protect genuine religious practices, its inconsistent application has led to confusion** and controversy.

A more coherent and principled approach is needed to ensure that religious freedoms are protected without compromising constitutional values.

3. CENTRE STATE RELATIONS & CURRENT CHALLENGES

How are the powers and functions divided in the Indian federal setup?
In the Indian federal setup, the Constitution divides the legislative, executive, and financial functions between the Centre and the states. The Constitution established an **integrated judicial system** to uphold federal and state laws.

The Centre-state relations cut across the following three subject matters
- Legislative relations
- Administrative relations
- Financial relations

What are the Centre-state relations on legislative matters?
Part XI of the Constitution deals with the legislative relations between the Centre and the states in **Articles 245 to 255.** Different aspects in the Centre-state relations are as follow:

Territorial Extent of Central and State Legislation	
State legislature	Can enact laws that apply to the whole or any part of the state.
Parliament	Authority to enact laws for whole or any part of the territory of India **Extra-territorial legislation**
Distribution of legislative subjects	
Union List	The Union Parliament has exclusive powers to make legislation on the matters included in the Union List.
State List	The State Legislatures have exclusive powers to make legislation on the matters incorporated in the State List.
Concurrent List	Both the Centre and states can make laws on the subjects included in the Concurrent list.
Article 248	The **Residuary powers are given to the Centre**, and the Parliament of India alone can make legislation on the subjects not included in any of the above three lists.
Parliamentary Legislation in the State Field	
Article 249	If the Rajya Sabha passes a resolution by a majority of **two-thirds** of its members requesting Parliament to make law on a subject of State List.
Article 250	Parliament to make laws on any State List subjects during a **national emergency**. However, the Parliament's laws under this provision will cease to operate on the expiration of six months of the emergency.
Article 252	If **two or more States' legislatures request** Union Parliament through a resolution to make a law on a particular subject mentioned in the State List.
Article 253	Parliament to make law for the whole or any part of India's territory for implementing any treaty, international agreement or convention with any other country.
Article 356	During the **proclamation of President's Rule** in a State, the Union Parliament makes the laws over the subjects included in the State List.
Centre's Control Over State Legislation	

Article 200	The Governor can reserve specific bills passed by the state legislature for the consideration of the President of India.

What are the Centre-state relations on administrative matters?

Articles 256 to 263, Part XI of the Constitution, deal with administrative relations between the Centre and the States.

Distribution of Executive Powers	
Union Government	Executive power extends to all the subjects on which Parliament can make laws
State Government	Executive power shall be exercised in conformity with the laws made by the Union Parliament.
Centre's directions to the States	
Article 256	Every state's executive power is to be exercised in such a manner as to ensure compliance with the laws made by the Union Parliament.
Article 257	Control of the Union over States in certain cases.
Relation during emergencies	
National emergency	The Centre has the executive power to direct any state regarding the manner in which the executive power is to be exercised.
President's rule	The Union Government can take direct control over State machinery. The President (that means the central government) takes over any of the State Government's functions.
Public service commission	
State public service commission	The Governor appoints the state public service commission's chairman and members, but only the president has the authority to remove them.
All Indian Services	
Control of Centre and state control	The Centre has ultimate control over these services, whereas states exercise immediate and relatively less control.
Other Provisions	
Article 355	It shall be the duty of the Union to protect every State against external aggression and internal disturbance.
Appointment of Governor	The Governor of a State shall be appointed by the President by warrant under his hand and seal. He holds office during the pleasure of the President.
Appointment of State Election Commissioner	The state election commissioner is appointed by the Governor but removed only by the President.

What are the Centre-state relations on financial matters?

Articles 268 to 293 contained in Part XII of the constitution deal with **Centre-state financial relations.**

Allocation of Taxing Powers	
Parliament and State legislature	The Parliament and State legislature have exclusive power to levy taxes on subjects incorporated in the Union list and state list, respectively.
Residuary powers	The **residuary power of taxation lies with Parliament only.**
Grants-in-aid	

Article 275(1)	The Parliament can issue grant-in-aid of the revenues to such States as Parliament may determine, and different sums may be fixed for different States.
Article 282	The Union or a State may make any grants for any public purpose.
Goods and Services Taxes	
The Constitution (One Hundred and First Amendment) Act 2016	To change the tax structure and introduce GST. Such an amendment can empower the Centre and the States to levy and collect GST.
Finance Commission	
Article 280	It provides for a Finance Commission as a **quasi-judicial body**. Its responsibility is to recommend the sharing of taxes between them.

What are the issues pertaining to Centre-state relations in India?

These are issues pertaining to Centre-state relations:

- **Allocation of resources:** There is often a dispute between the Centre and the states over the allocation of resources, including **funds, taxes, and other benefits.**
  - With the introduction of the GST, revenue collection and sharing have been streamlined. Yet, there are concerns relating to the revenue-sharing criteria used by the Finance Commission.
- **Challenging Centre law:** Kerala has filed a suit in the Supreme Court of India seeking to declare the CAA as unconstitutional. Chhattisgarh has also filed a similar suit, challenging the constitutional validity of the National Investigation Agency Act.
- **Misuse of article 356:** It is said that Article 356 was nearly always employed for **political purposes rather than a real breakdown of the constitutional machinery**. Different cases have been seen in Arunachal Pradesh and then in Uttarakhand.
- **Office of Governor:** The initial point of tension is that the Centre appoints the Governor as if he/she is a representative of the Centre, and the Centre government has found in the office of the Governor an effective instrument to recapture power for itself.

What measures can ensure harmonious Centre-state relations?

Sarkaria Commission, 1983

- The institution of All-India Services should be strengthened, and more such services should be created.
- The Union should occupy only that much field of a concurrent subject on which uniformity of policy is needed and leave the rest for state action.

MM Punchhi Commission, 2007

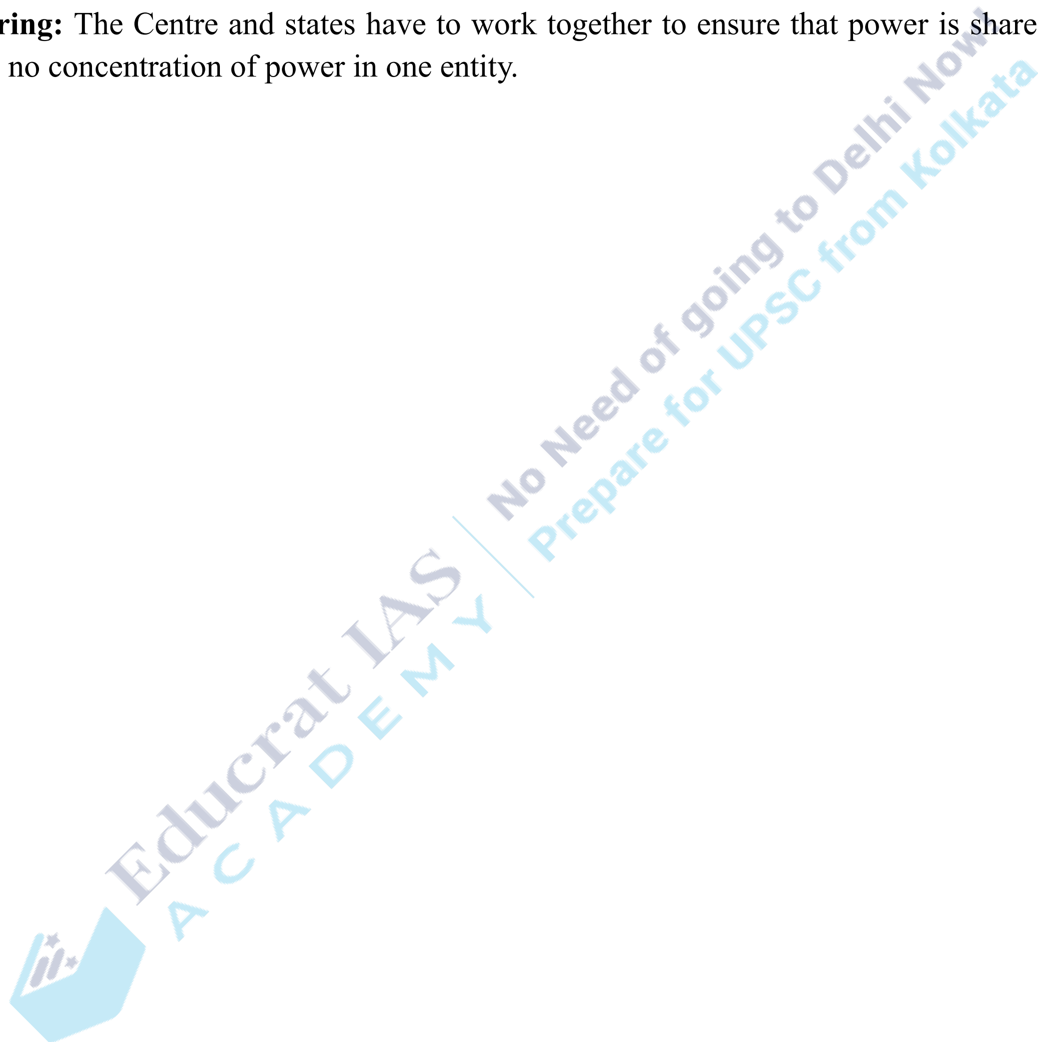
- The scope of **devolution of powers to local bodies** to act as **institutions of self-government should be constitutionally defined** through appropriate amendments.
- The Commission has recommended a fixed five-year tenure for Governors and their removal only through impeachment by the state Assembly along the same lines as that of the President by the Parliament.

National Commission to Review the Workings of the Constitution (NCRWC), 2000

- In accordance with **Article 307**, the **Inter-State Trade and Commerce Commission** should be established as a legislative body.
- **Emergency and disaster management** should be **covered in the Concurrent List of the Seventh Schedule**.

Other measures

- **Centre-state institutions:** Institutions such as the **Inter-State Council, Finance Commission, and Niti Aayog** need to be strengthened to ensure a smooth relationship between the Centre and states.
- **Fiscal Federalism:** Fiscal federalism ensures the distribution of resources between the Centre and states in a fair and transparent manner. The Centre and states should work towards promoting fiscal federalism to **ensure equitable distribution of resources.**
- **Revisit the seventh schedule:** Some scholars have advocated further decentralization of the Schedule by introducing a **local government list.**
- **Innovations at the state level:** States are important repositories of innovation and change. Hence, States should be encouraged to introduce such innovation.
- **Power-sharing:** The Centre and states have to work together to ensure that power is shared effectively and there is no concentration of power in one entity.



4. THE UNION & STATE EXECUTIVE

4.1. Election of President of India:

Why is President indirectly elected?

- If Presidents were to be elected directly, it would become very complicated.
- It would, in fact, be a disaster because the public doesn't have absolute clarity of how the President-ship runs or if the candidate fits the profile of a President.
- Another reason why the direct election system isn't favourable is that the candidate running for the President's profile will have to campaign around the country with the aid of a political party.
- And, this will result in a massive political instability.
- Moreover, it would be difficult and impossible for the government to hand out election machinery (given the vast population of India).
- This will cost the government financially, and may end up affecting the economy as well.
- The **indirect election system is a respectable system for the First Man of India** (rightly deserving).
- The system/method of indirect electing of the President also allows the states to **maintain neutrality and minimize hostility.**

Significance of inclusion of Elected MLAs in the Electoral college: The significance of an electoral college composed of not only the members of both Houses of Parliament but also those of various State Assemblies needs emphasis. In an election where the head of the nation is chosen, if the members of Parliament alone participate it is possible that a party that has a clear majority in Parliament can easily see its candidate elected. But when the members of the State Assemblies also participate in the election, the picture is likely to undergo a substantial change. For, **it is quite possible that the Party which has won a majority in Parliament may be a minority in many State Assemblies or even in most of them.** Under such conditions, a Party supported by a majority of members in Parliament will not by itself be able to elect its candidate to the office of President.

Significance of Proportional Representation System: The use of the term 'proportional representation' was objected to in the Assembly because only one person was to be elected as President. Critics asked, "What significance has it in the absence of a multi-member constituency? It is significant because, first **it ensures an absolute majority of the total number of votes polled for a candidate to be elected, instead of a simple majority or a plurality of votes as in the elections to Parliament and the State Legislative Assemblies**. Since the President is the head of the State and represents the nation which includes all parties and groups, and since he should stand above party considerations, it is desirable that he is elected with as large majority as possible. But under the simple majority system there is no guarantee for this. The present system ensures his election with at least an absolute majority. **Secondly, it often helps the smaller parties in Parliament or regional parties who are strong only in some State Assemblies to have some voice in the election of the President.** If no party can claim an absolute majority of the total votes of the electoral college, a candidate, to win the election, has to seek the support of two or more parties. This gives an opportunity to smaller parties to influence the election.

4.2. Evaluation of the Ordinance making Power:

Utilities of Ordinances

- **Emergency Measure**: It is a **much-needed emergency measure** in the hands of the executive to meet **any unforeseen situation or an urgent matter**. It allows the executive to respond promptly to such matters without waiting for the regular legislative process.
- **Unobstructed Governance**: There may be instances where certain bills have been adequately deliberated upon in the Legislature, but could not be passed due to the obstructionist approach of the opposition. **Promulgation of the ordinance ensures unobstructed governance in such cases.**

Limitations of Ordinance Making Power

- **Violates Separation of Powers**: As per the scheme of powers envisaged in the Indian Constitution, the law-making lies in the domain of the Legislature. By allowing the Executive to enter into the Legislature's domain, the provisions for the ordinance **violate the principle of separation of powers.**
- **Undermines Democratic Principles**: At times, the executive takes the ordinance route to avoid debate and deliberations in the legislature on contentious legislative proposals. This undermines the democratic principles.
- **Misuse**: There have been instances of **successive re-promulgation** of ordinances, without making any effort to table the corresponding bill in the Legislature.
  - As observed by the **Supreme Court in the D.C. Wadhwa Case,** during the period of 1967-98, **some ordinances in Bihar** were **kept in force for 14 years** by successive re-promulgation.
- **Fear of Ordinance Raj**: Frequent issuance and re-issuance of ordinances create an atmosphere of 'Ordinance Raj', where the **executive relies on ordinances rather than engaging in meaningful legislative processes.**
- **Vague Provisions**: As per the constitutional provisions, the **President or the Governors can issue an ordinance only when he is satisfied that circumstances exist which render it necessary for him to take immediate action**. However, with no clear demarcation of urgent circumstances, the Executive has been taking regular reliance on this power instead of treating it as a last resort**. Such examples are:-**
  - **Securities Laws (Amendment) Ordinance, 2014**: This ordinance was re-promulgated for the **third time during the term of the 15th Lok Sabha** which raised concerns about the **circumvention of the legislative process and the lack of parliamentary scrutiny.**
  - **Indian Medical Council (Amendment) Ordinance, 2010**: This ordinance was re-promulgated four times, indicating a persistent disregard for judicial pronouncements and democratic norms.

Views of Supreme Court on Repromulgation of Ordinances

The Supreme Court has expressed its stance on the promulgation and re-promulgation of ordinances in various cases. Some of the prominent such cases are:

- **RC Cooper vs. Union of India Case (1970)**: In this case, the Supreme Court held that the **President's satisfaction** regarding the 'existence of a circumstance that renders it necessary to promulgate an ordinance' **can be challenged in a court of law.** Thus, the President's satisfaction is **not immune from judicial review.**
- **DC Wadhwa vs. State of Bihar Case (1987)**: In this case, the court condemned the practice of **re-promulgating ordinances,** labelling it as a **'fraud' on the Constitution**. It rules that the Executive's power to promulgate ordinances is **to be used sparingly only in exceptional circumstances**. It is **not a substitute for the legislative power** of the legislature.
- **Krishna Kumar Singh vs. State of Bihar Case (2017):** In this case, the Supreme Court **reiterated** that the **authority to issue ordinances is not absolute** but **conditional** upon the satisfaction that **circumstances necessitate immediate action**. The court emphasized that the re-promulgation of

ordinances is unconstitutional and undermines the democratic process, highlighting the need for adherence to constitutional principles and norms.

In conclusion, while the **Ordinance Making Power is a desirable tool in the hands of the government**, it must be used with caution. Balancing the need for **addressing urgent matters with the imperatives of the doctrine of separation of powers is crucial**. Only through such a balance can the Ordinance Making Power serve its intended purpose without undermining the democratic foundations it seeks to protect.

The Doctrine of Colorable Legislation
This doctrine means that if a **legislature lacks the jurisdiction to enact laws on a specific subject directly, it cannot make laws on it indirectly**. This doctrine came into existence to check the transgression of legislative authorities.

4.3. Office of Governor- Issues and Suggested Reforms

- **Appointment of Governors:**
  - The post has been reduced to becoming **a retirement package for politicians for being politically faithful to the government** of the day.
  - In several cases, politicians and former bureaucrats identifying with the ruling party have been appointed as the Governors by the Governments.
  - **This has led to questioning the impartiality and non-partisanship of the post**
  - In many cases, the convention of consulting the Chief Minister while appointing the Governor is not followed.
- **Tenure of office is under the discretion of Union Government:**
  - The Governor **will hold office during the pleasure of the President for five years**. President works on aid and advice of the Council of Ministers. **In effect, despite being an independent constitutional body, the office of Governor is under the control of the ruling government** at the center.
  - This becomes problematic when the Governor loses favor of the ruling party at the center.
- **Removal of Governors:**
  - There are **no written grounds or procedures regarding the removal of Governors**. Hence in several cases, the governors were removed on whimsical grounds.
  - **Example:** In **1977** when the **Janata Party** formed government at the center, it **dismissed 15 governors** appointed during by the previous government on grounds that they did not represent the will of the people.
- **Misuse of discretionary powers:**
  - The Governor also makes appointments to several posts in consultation with the executive. However, **on several occasions the Governor has been criticized for making appointing without consulting the state government**.
  - **Example:** In 2018, the Tamil Nadu Governor has been criticized for appointing vice-chancellors without consulting the state government.
  - Governor's discretionary powers to invite the leader of the largest party/alliance, post-election, to form the government has often been misused to favor a particular political party.
  - **For ex:** in case of the 2017 Goa and Manipur elections and in the 2018 Karnataka elections.
- **Interferences in day to day administration**
  - In certain cases, if a political party ruling in a state is not in liaison with the party at the centre, the central government may try to interfere in the state's administration through the post of Governor.

  - **For ex:** There were allegation of “excessive interference” of West Bengal Governor in parliamentary matters and the functioning of West Bengal Assembly.
- **Governor acting more as an ‘agent of the centre’**
  - Power to submit report to advise the President to proclaim President rule in the state **has been abused by political parties in power at centre to dismiss governments in state governed by parties in opposition.**
- **Functioning as an agent of political party:**
  - Governors are not shy of revealing their partisan preference. For instance, in recent times Governors have exhorted voters to vote for particular party
  - **Recently, the Governor of Rajasthan has been charged with the violation of the model code of conduct.**
- **Reservation of bills:**
  - Governor has discretionary power to reserve any bill for President’s signature.
  - As per Article 201, when president sends back the bill to assembly and assembly passes it again, it will again go to President, but president can still withhold assent.
  - **This can result in keeping the bill in a limbo**. The Governors, and through them the Central Government have used this provision to serve the partisan interests.
- **Recommendation for President’s rule:**
  - The Governor has discretionary powers regarding recommending for President’s rule under Article 356. **However, such powers have led to conflicts from time to time.**
  - **For example:** In 2016, the Governor of Arunachal Pradesh recommended for President’s rule without providing a chance for the ruling party to prove its majority on the floor of the house.
- **Lack of any significant function**
  - Governor’s work is bound by the aid and advice of his council of ministers; this has **brought down the significance of the office to a mere rubber stamp.**

SUGGESTIONS TO IMPROVE THE ROLE

- **Important recommendations made by Sarkaria Commission regarding Governors:**
  - While selecting Governors, the **Central Government should adopt the following strict guidelines:**
    - ✓ He should be eminent in some walk of life
    - ✓ He should be a person from outside the state
    - ✓ He should be a **detached figure** and not connected with the local politics of the states. He should be a person who has not taken too great a part in politics generally and particularly in the recent past
  - **Retiring governors should be debarred from accepting any office of profit.**
  - The Governor’s term of five years in a state should not be disturbed except for some extremely compelling reasons.
  - **Article 356** should be used very sparingly, in extreme cases as a **last resort when all the available alternatives fail.**
  - While sending ad hoc reports to the President, the Governor should take the Chief Minister into confidence unless there are overriding reasons to the contrary.
- **Punchhi Commission**
  - **Fixed tenure**
    - Governors should be **given a fixed tenure of five years** and their removal should not be at the sweet will of the Government at the Centre.

- **Impeachment procedure to be applied to the post of Governor:**
  - The procedure laid down for impeachment of President, can be made suitably applicable for impeachment of Governors as well.
- **Time decision on bills**
  - **In respect of bills passed by the Legislative Assembly of a state, the Governor should take the decision within six months** whether to grant assent or to reserve it for consideration of the President.
- **Streamlining the role of Governor**
  - The convention of Governors acting as Chancellors of Universities and holding other statutory positions should be done away with. His role should be confined to the Constitutional provisions only.
- **Guidelines to be followed by Governor in appointment of Chief Minister in the case of a hung assembly:**
  - The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.
  - If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.

- **Recommendations made by 2nd Administrative Reforms Commission**
  - A person to be appointed as a Governor **should be one who has had a long experience in public life and administration** and can be trusted to rise above party prejudices and predilections.
  - He should **not be eligible for further appointment** as a Governor at after the completion of his term.
  - **Judges, on retirement, should not be appointed as Governors.** However, a judge who enters public life on retirement and becomes a legislator or holds an elective office may not be considered ineligible for appointment as Governor.
  - The **convention of consulting the Chief Minister before appointing a Governor is a healthy trend that may continue.**
  - Guidelines on the manner in which discretionary power should be exercised by the Governors **should be formulated by the Inter-State Council.**
- **Recommendations of National Commission to Review the Workings of the Constitution (NCRWC)**
  - The Commission agreed that **Article 155 regarding appointment of Governors** requires to be amended. It suggested a committee comprising the **Prime Minister of India, Home Minister, Speaker of the Lok Sabha and the Chief Minister of the State concerned to select a Governor**.
  - It recommended that **pre-poll alliance/coalition should be treated as one political party for the purpose of the Tenth Schedule** to the Constitution of India.

- **Judicial Recommendations**
  - **BP Singhal case of 2010**
    - The **Supreme Court laid down some binding principles while hearing the case of removal of the governors** of Uttar Pradesh, Gujarat, Haryana and Goa in July, 2004 following the defeat of the BJP-led NDA government in the Lok Sabha election.
    - Supreme Court said the President's power to remove a governor **could not be exercised in an arbitrary, capricious or unreasonable manner**.

- It was to be **exercised only in rare and exceptional circumstances for valid and compelling reasons.**
- **S.R. Bommai vs. Union of India (1994):**
  - Based on the report of the Sarkaria Commission, the Supreme Court in Bommai case **enlisted the situations where the exercise of power under Article 356 could be proper or improper**.
- **Nabam Rebia judgment (2016):**
  - Supreme Court in this case **ruled that the exercise of Governor's discretion under Article 163** (which speaks about the Governor acting with aid and advice of Council of Ministers headed by CM, except in cases where he has discretion) **is limited.**
  - His choice of action **should not be arbitrary or fanciful**.
  - It must be a choice dictated by reason, actuated by good faith and tempered by caution.

Office of Governor- Issues and Suggested Reforms

Issues With Office of Governor with Examples	Recommendations of the Commissions and Rulings of SC
Affiliation Based Appointment. Ex- Recent appointments belonging to a particular ideological group	1. Sarkaria Commission 1988- The Governor should be eminent person in some walk of life and detached from politics. Appointment must be in consultation with the CM of the state. 2. Venkatachaliah Commission 2002- Appointment by a Committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha, and the Chief Minister of the State concerned.
Arbitrary Removal of Governors, especially after the change of the government at the centre.	1. Sarkaria Commission 1988- Removal before the end of the term (5 years), only on the grounds of morality, dignity, constitutional propriety etc., with consultation of the state government. 2. Punchhi Commission 2010- Removal through impeachment process (similar to that of the President) by the State Legislature. 3. BP Singhal vs Union of India (2010)- Removal of Governor cannot be based on arbitrary, capricious or unreasonable grounds.
Misuse of Article 356 to recommend President's Rule	1. Rameshwar Prasad Case (2006)- Motivated and whimsical conduct of the Governor in recommending president's rule falls under judicial review. 2. Punchhi Commission (2010)- Article 355 and 356 should be amended to bring specific troubled areas instead of the whole state. 3. Sarkaria Commission (1988)- Art 356 should be used very sparingly and as a matter of last resort.
Governor withholding assent to Bills and Serving as Chancellors of Universities	Punchhi Commission (2010)- Prescribed a time limit of 6 months for the governor to take a decision on a Bill. The convention of making the Governors as chancellors of universities should also be done away with.

5. THE UNION AND STATE LEGISLATURE

5.1. The Office of Speaker:

Who is a speaker of the Lok Sabha?

The Speaker of the **Lok Sabha** is the **presiding officer of the Lok Sabha**, the lower house of the **Parliament** of India.

Article 94: The Speaker of the Lok Sabha shall be chosen **from amongst the members of the house** and shall vacate his/her office when he/she ceases to be a member of the house.

What is the role of the Speaker in Parliamentary democracy?

The Speaker of the Lok Sabha is the highest authority in the lower house of the Parliament of India, the Lok Sabha.

Some of the specific roles and responsibilities of the Speaker of the Lok Sabha include

- **Presiding over the proceedings of the Lok Sabha**: The Speaker is responsible for **chairing the sessions** of the Lok Sabha and ensuring that the debates and discussions are conducted in an orderly and respectful manner.
    - The Speaker has the authority to rule on points of order and to **enforce the rules of the parliament**.
- **Acting as a spokesperson for the Lok Sabha**: The Speaker is often called upon to **represent the Lok Sabha** and to speak on behalf of the Lok Sabha in public or at international events.
- **Maintaining the impartiality of the Lok Sabha**: The Speaker is expected to be **neutral and unbiased** in discharging his or her duties, and to ensure that all members of the Lok Sabha are treated fairly and equally.
- **Ensuring the transparency and accountability of the Lok Sabha**: The Speaker is responsible for ensuring that the proceedings of the Lok Sabha are **open and transparent** and that the public has access to information about the work of the Lok Sabha.
- **Playing a key role in the legislative process**: The Speaker has a number of duties related to the passage of legislation, including **assigning bills to committees**, deciding on the order in which bills are considered, and **certifying the final text of bills** before they are presented to the **President** for assent.
- Representing the Lok Sabha in its relations with other parliamentary bodies and institutions.

Overall, the Speaker plays a vital role in the functioning of **parliamentary democracy** by ensuring that the parliament operates in an orderly, transparent, and accountable manner.

What are functions performed by the Speaker?

Some of the major functions performed by the speaker are

Article 95	The Speaker shall preside over the **sittings of the Lok Sabha** and shall maintain **order and decorum** in the house.
Article 96	The Speaker shall have the right to take part in the proceedings of the house and to speak in any sitting of the house or of any committee of the house of which he/she is a member, but shall not have the right to vote in the first instance
Article 97	The Speaker shall be responsible for the **certification of money bills and financial bills**, and shall have the power to direct that any other bill be treated as a money bill or a financial bill.
Article 100	The Speaker shall have the **casting vote** in the event of a tie in the voting in house.

Table- Major functions of the Speaker as given in the Indian Constitution

- **Interpretation of rules**: The Speaker also has the power to **interpret the rules of procedure and conduct of business** in the house and to rule on points of order.
- **Ceremonial Duties**: The Speaker also performs ceremonial duties, such as receiving foreign dignitaries and representing the Lok Sabha at national and international events.
- **Appointing chairperson of committees:** The speaker appoints committees and chairpersons of committees and refers matters to committees for consideration.
- **Other functions:** Performing such other duties and functions as may be prescribed by the rules of procedure of the Lok Sabha or as may be assigned to the Speaker by the President of India or the Parliament.

What are the issues surrounding the office of the Speaker?

While the Speaker is generally expected to be **neutral and unbiased** in the discharge of his or her duties, there have been instances where the office of the Speaker has faced criticism and controversy.

Some of the criticisms that have been raised in relation to the office of the Speaker are

- **Partisanship**: There have been instances where the Speaker has been accused of being partisan or biased towards a particular political party or ideology.
  - This can **compromise the impartiality and neutrality of the office**, and undermine the credibility and integrity of the Speaker.
- **Use of Discretion**: There have been instances where the Speaker has been accused of using his discretion in an arbitrary or biased manner.
  - This can lead to perceptions of unfairness or lack of transparency in the decision-making process.
  - **Example: Kihoto Hollohan v. Zachilhu and Others (1992)**: The Supreme Court held that the Speaker must act impartially and without bias while disqualifying a member. Further, the decision of the Speaker is under judicial review.
- **Handling of disruptions**: The Speaker is responsible for maintaining order and decorum in the Lok Sabha, and there have been instances where the Speaker has faced criticism for his or her handling of disruptions in the Lok Sabha.
- **Relations with the media**: The Speaker is expected to be the **spokesperson of the house**, and there have been instances where the Speaker has faced criticism for his or her relations with the media and for not providing sufficient information to the media about the proceedings of the house.
- **Handling of disqualification cases**: The Speaker is responsible for deciding on cases of **disqualification of members of the house**, and there have been instances where the Speaker has faced criticism for his or her handling of such cases.
  - **Example: Karnataka MLAs disqualification case, 2019**: The Supreme Court recommended the Parliament to amend the Constitution regarding the role of the Speaker as a quasi-judicial authority while dealing with disqualification petitions.

What steps can be taken to make the office of the Speaker more effective?

The **Office of the Speaker in India is a living and dynamic institution** that deals with the actual needs and problems of Parliament in performing its functions.

To make it more effective **following international examples can be looked into:**

- **United Kingdom:** To ensure the office's impartiality, the **Speaker of the House of Commons in the United Kingdom is traditionally required to resign from his or her political part**y upon being elected to the position.

- **Canada**: The Speaker in Canada has the **authority to call ministers to appear before the** house to answer questions and to hold investigations into matters of public concern.
  - This could **expand the Speaker's oversight role over the executive branch** and hold it accountable to parliament.

Overall, while the office of the Speaker of the Lok Sabha is an important and respected constitutional position, it is **not immune to criticism and controversy**, and it is important for the Speaker to ensure that he or she is fair, impartial, and transparent in the discharge of his or her duties.

5.2. Parliamentary debates: Significance, issues and the way forward

What is the significance of Parliamentary debates?

- **Improving the quality of decisions**: Parliamentary debates indirectly contribute to the quality of democratic decisions. Debates involve deliberations over diverse perspectives which enable selection of most widely accepted views. The very existence of debates can be seen as a **system for monitoring elected officials.**
- **Raising issues of public interest**: It allows MPs to voice the concerns and interests of their constituents, and they can also speak about issues brought to their attention by the public.
- **Reduces the burden on Courts**: Parliamentary debates help the courts to **comprehend the intent and object of the laws in a better way**. The burden of the courts while interpreting or implementing the laws is less. They have a clear picture of the purpose behind the making of a particular law and what the legislature thought while making the law.
- **Accountability**: The Opposition performs its duties of holding the government accountable via Parliamentary debates and discussions. These debates help to **implement the accountability process**, forcing ministers to speak, to listen to criticisms and to answer them.

What are the rules and frameworks regarding debates?

Parliament's extensive framework presents many opportunities for robust debate, discussion, and dissent.

- During the **Question Hour**, key data on the operations of the government is up for public scrutiny.
- **Adjournment Motions** allow members to propose urgent topics of national interest which, if admitted by the Speaker, are discussed and debated in lieu of any other agenda of the House.
- The **process of passing a Bill,** is also a powerful tool for MPs to represent diverse interests.
- **Rules**:
  - **Since 1952**, the rules required MPs not to interrupt speeches of others, maintain silence, and not obstruct proceedings during debates.
  - **Newer forms of protest led to the updating of these rules in 1989**. Now members should not shout slogans, display placards, tear away documents in protest, play cassettes, or tape recorders in the House. In practice, all these rules are disobeyed frequently.

What has been the trend with respect to the Parliamentary debates?

- Presently, both Houses sit for an average of **67 days annually**.
- Compare this to the First, Second, and Third Lok Sabha (1952- 1967), when they sat for an average of **120 days annually.**
- As per a **PRS report, the 16th Lok Sabha (2014-19)** lost 16% of its scheduled time to disruptions, better than the 15th Lok Sabha (37%), but worse than the 14th Lok Sabha (13%).

- The National Commission to Review the Working of the Constitution recommended that **Lok Sabha should have at least 120 sittings in a year**. **Rajya Sabha should have 100 sittings.**

What are the issues/challenges hindering the debates?

- **Parliamentary disruption**: Disruption in Parliamentary debates has become a frequent phenomenon these days. The amount of time lost due to disruptions in Parliament has also steadily risen from **5% of working time in the truncated 11th Lok Sabha (1996-97) to 39% in the 15th LS (2009-14).**
- **Disorderly conduct by MPs**: Members of Parliament often indulge in disorderly conduct, disrupting the proceedings due to various reasons like, **1)** dissatisfaction because of inadequate time for airing their grievances, **2)** an **unresponsive attitude of the government** and the retaliatory posture of the treasury benches, **3) political parties not adhering to parliamentary norms** and disciplining their members, **4)** The absence of prompt action against disrupting MPs under the legislature's rules.
- Recently, **12 Opposition members of the Rajya Sabha** were suspended for the entire winter session for their protest on **August 11**, the last day of the previous monsoon session.
- **Politics by parties:** Whenever a controversial issue comes up, the government backs away on debating it, leading to Opposition MPs violating the conduct rules and disrupting the proceedings of Parliament. Since they have the support of their parties in breaking the rules, the threat of suspension from the House does not deter them.

What are the implications of lack of debates in the Parliament?

Lack of Parliamentary debates has the following implications:

- There is **lack of proper clarity in the laws**. Legislations with a lot of gaps and a lot of ambiguities are passed. The purpose of the laws is not clear to the courts, creating a lot of litigation, inconvenience, and loss to the government as well as to the public.
- Shorter Parliamentary sessions due to frequent adjournments and leniency in the scrutiny of the Bills **diminishes Parliament's efficiency.** Without debates, Members of Parliament will not be able to demand answers to critical questions or discuss vital issues with supplementary queries.
- **Disenchantment of the people**: Lack of debate and deliberation on important bills and laws means people have started to get disenchanted with the Parliamentary process as a whole. They are also disappointed in the MPs for their non-performance.
- The absence of the debates **leaves the Government unchecked,** wherein it can pass any legislation as per its desire and without discussion.
- **Impact on the Constitutional Right:** The right to ask questions flows from **Article 75** of Indian Constitution. It says that the Council of Ministers shall be collectively responsible to the House of the People and people of the country in general. So a lack of debate in the Parliament infringes upon this right.

What is the way forward?

There have been many suggestions:

- **Embrace the Shadow Cabinet model,** like in the **UK**. It is for the political parties to ensure responsible behaviour of their members, whether in the opposition or the ruling party.
- The opposition parties should have the opportunity to debate and highlight the significant issues. Currently, government business takes priority, and private members discuss their topics post-lunch on a Friday. The country can **introduce the concept of opposition days, as done in the U.K and Canada.**

- **Parliament Disruption Index**: In 2019, Rajya Sabha Deputy Chairman suggested evolving a **'Parliamentary Disruption Index'** as a measure to monitor disruptions to reduce "incidents of indiscipline".
- A **code of conduct for members** to minimise disruptions, especially relating to suspension for entering and protesting in the well of the House.

Frequent disruptions reflect the nature of Indian democracy as being dysfunctional. Thus, there is a need to **strengthen the working of the Indian parliament.**

Conclusion

Parliamentary debates should not be viewed as a distraction or waste of time. They are a **barometer of public mood** and must be respected as such, by both the ruling side and the Opposition. The essence of democracy is letting others express their opinions, however unacceptable we may find them.

5.3. Delegated Legislation

Delegated legislation refers to the **process of law-making by an executive or administrative authority under the powers conferred upon it by the legislature.**

This **delegation of powers is noted in statutes,** which are commonly referred to as delegated legislation.

A 1973 Supreme Court ruling explains delegated legislation as:

"Empowering the Executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare State"

Delegated legislation in India is carried out through various mechanisms, such as rules, regulations, orders, notifications, and by laws. These mechanisms allow the executive branch of the government to make detailed provisions for the implementation of laws passed by the legislature, without the need for the legislature to pass separate legislation on each issue.

History of Delegated Legislation in India

The **historical backdrop of the delegation of power can be followed from the Charter Act of 183**3 when the East India Company was recapturing political impact in India.

The Act of 1833 vested the administrative powers only in Governor-General – in Council, which was an official body. In **1935 the Government of India Act, 1935 was passed which contained a serious plan of delegation.**

The report of the committee of ministers' powers was submitted and affirmed which completely settled the case for assignment of forces and appointment of enactment was viewed as inescapable in India.

Constitutionality of Delegated Legislations

- Although the concept of delegated legislation was not mentioned specifically in the Indian Constitution it can be understood by interpreting **Article 312** of the given Constitution.
- There are many cases through which delegated legislation under the constitution of India can be understood.
- **Some of such cases are as follows**
  - **DS Grewal vs State of Punjab**: The Court held that delegated legislation must be made for a specific purpose and must not be arbitrary or discriminatory.

- **Indian Express Newspapers (Bombay) Private Ltd. v. Union of India**: This case dealt with the validity of the **Customs Act, 1962**, which gave the government the power to make rules for the assessment and collection of customs duties. The Supreme Court held that the power to make rules was not absolute and was subject to the principles of natural justice, reasonableness, and non-arbitrariness.

Reasons for the Growth of Delegated Legislation

1. **Complexity of modern governance**: With the growth of modern governance, the complexity of the laws and regulations have increased significantly. It is not possible for the legislature to anticipate every situation and provide detailed provisions for all possible contingencies. **Delegated legislation provides the necessary flexibility** to deal with changing circumstances and to implement the legislative intent.
2. **Need for expertise**: In many areas, such as taxation, environment, and healthcare, the subject matter is highly technical and requires specialized knowledge and expertise. Delegated legislation allows the government to consult with experts and to make rules and regulations that are **based on sound technical and scientific principles.**
3. **Expediency**: Delegated legislation allows the government to **act quickly and efficiently to respond to emergencies and changing circumstance**s, or to implement new policies. The legislative process is often slow and cumbersome, and delegated legislation provides a quicker and more efficient way to make necessary changes.
4. **Administrative efficiency**: Delegated legislation allows the government to delegate routine and administrative functions to lower-level officials, freeing up the time of higher-level officials to focus on more important policy matters.
5. **Accountability**: Delegated legislation is subject to **parliamentary scrutiny and oversight**. The Parliament has the power to annul any delegated legislation that it considers to be inconsistent with the provisions of the Parent Act or the Constitution.

Criticism of Delegated Legislation

1. **Lack of democratic accountability**: Since delegated legislation is created by government agencies rather than elected representatives, it can be difficult for citizens to hold those agencies accountable. This can lead to a lack of transparency and the potential for abuse of power.
2. **Potential for misuse**: Delegated legislation can be misused by government agencies to further their own interests or those of special interest groups. This can result in laws that are not in the best interests of the general public.
3. **Limited public input**: Delegated legislation often allows for limited public input and debate, which can result in regulations that do not reflect the needs or desires of the people they affect.
4. **Lack of consistency**: Delegated legislation can result in a lack of consistency in laws and regulations across different areas or industries. This can create confusion and uncertainty for businesses and individuals.

5.4. Parliamentary Committees:

What are the powers and functions of the Parliamentary committees?
Some of the power and functions of the Parliamentary committees:

- **Reviewing and scrutinising the work of the government:** Parliamentary committees **examine the policies and programmes of the government** and make recommendations for improvement.

- **Power to summon ministers and officials:** They have the power to call ministers and officials to testify before them and to ask them questions about their policies and actions.
- **Examination of bills:** Parliamentary committees play a **key role in the legislative process** by examining and reviewing bills before they are passed into law.
- **To make recommendations:** They can make recommendations for changes to the bill and ensure that it is consistent with the constitution and the laws of the land.

What is the significance of the Parliamentary committees?

The significance of the Parliamentary committees:

- **Expertise and specialization:** Parliamentary Committees are made up of members of Parliament who have specific expertise and knowledge in a particular area, such as **finance, foreign affairs, or health**.
  - The committee on **Health and Family Welfare studied the Surrogacy (Regulation) Bill 2016, which prohibited commercial surrogacy**, but allowed altruistic surrogacy.
- **Checks and balances:** These committees act as a check on the power of the executive branch by scrutinizing government policies and holding the government accountable for its actions.
- **Strengthen the laws:** Over the years, the committees have immensely contributed to strengthening the laws passed by Parliament.
  - The **committee on Food and Consumer Affairs** suggested several amendments, such as increasing penalties for misleading advertisements and making certain definitions clearer in **Consumer Protection Act 2019.**
- **Budgetary oversight:** The Departmental related standing committees (DRSCs) also examine the budget. Detailed estimates of the expenditure of all ministries are sent for examination to the DRCSs.
- **Forum for building consensus:** Committees provide a forum for building consensus across political parties. Committees have closed-door meetings, which allows them to discuss issues freely and arrive at a consensus.
- **Public Engagement:** Committees provide an opportunity for members of the public and organizations to engage directly with Parliament and contribute to the legislative process.

What are the issues and challenges pertaining to Parliamentary committees?

There are several issues and challenges that Parliamentary committees in India face. Some of these are as follows:

- **Resource constraints:** The technical support available to Parliamentary committees is limited to a secretariat that helps with matters such as scheduling meetings and note-taking.
  - The **National Commission to Review the Working of the Constitution (2002)** highlighted the lack of research support and specialist advisors with the DRSCs.
- **Lack of independence:** Some committees face pressure from the government or other influential groups, which can compromise their independence and impartiality.
- **Limited powers:** These committees do not have the power to enforce their recommendations or to take disciplinary action against those who do not comply.
- **Limited participation:** Some committees struggle to attract sufficient participation from MPs, which can limit their effectiveness.
  - During **2009–14, only 49% of members were present for meetings** of the departmental-related standing committees.

- **Political influence:** Parliamentary committees can be **subject to political influence and pressure** from party leaders or other powerful groups. This can undermine the committee's independence and ability to carry out its work objectively.
- **Poor number of sitting**: During the **first Session of the 17th Lok Sabha, Parliament sat only for 37 days.** In the last 10 years, Parliament met for 67 days per year, on average.
- **Lack of detailed scrutiny:** Parliamentary committees lack detailed scrutiny, face challenges in conducting thorough and effective scrutiny.
    - Only a limited proportion of the budget is usually discussed on the floor of the House. In the **16th Lok Sabha, only 17% of the budget was discussed in the House.**

What are the suggestive measures to enhance the role of Parliamentary committees?
There are several measures that can be taken to enhance the role of parliamentary committees:

- **Increase resources and time:** To examine and review the policies and actions of the government, committees should be provided more time and resources.
    - The **National Commission to Review the Working of the Constitution (2002)** recommended that funds should be allotted to assist these Committees in conducting inquiries, holding public hearings, and collecting data
- **Enhance independence:** Committees should be independent and not subject to pressure from the government or other influential groups.
- **Increase public visibility:** Make the work of committees more transparent and accessible to the public, such as by holding public hearings or publishing reports.

Increase participation: Encouraging greater participation from MPs in committee work, through measures such as providing additional incentives or resources.

5.5. Legislative Council:

LEGISLATIVE COUNCIL VERSUS RAJYA SABHA

- Position of the council vis-a-vis the assembly is **much weaker than the position of the Rajya Sabha** vis-a-vis the Lok Sabha
- The **Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters** and with regard to the control over the Government.
- On the other hand, the **council is subordinate to the assembly in all respects**. Thus, the predominance of the assembly over the council is fully established.
- Even though both the council and the Rajya Sabha are second chambers, the **Constitution has given the council much lesser importance than the Rajya Sabha due to the following reasons:**
- **Rajya Sabha reflect the federal element of Indian Polity:**
    - The Rajya Sabha consists of the **representatives of the states** and thus **reflect the federal element of the polity.**
    - It **maintains the federal equilibrium** by protecting the interests of the states against the undue interference of the Centre.
    - Therefore, it has to be an **effective revising body and not just an advisory body** or dilatory body like that of the council.
    - On the other hand, the issue of federal significance does not arise in the case of a council.
- **The council is heterogeneously constituted.**

- It represents different interests and consists of differently elected members and also include some nominated members.
- Its very composition makes its position weak and reduces its utility as an effective revising body.
- On the other hand, the **Rajya Sabha is homogeneously constituted.**
- It **represents only the states and consists of mainly elected members** (only 12 out of 250 are nominated).

RELEVANCE OF LEGISLATIVE COUNCILS

- **It can keep an eye on hasty decisions:**
  - It checks the **hasty, defective, careless and ill-considered legislation** made by the assembly by making provision for revision and thought.
- **Ability to bring diverse voices into legislatures:**
  - It **facilitates representation of eminent professionals and experts** who cannot face direct elections ((like artists, scientists).
  - The governor nominates **one-sixth members of the council** to provide representation to such people
- **To formulate better and detailed discussed legislation.**
  - Having a second chamber would allow for more debate and sharing of work between the Houses.
- **Prevent autocracy:**
  - It is argued that second house put a check on **autocratic tendencies of the lower chambers**. To vest the legislative powers with a popularly elected House alone may prove harmful to the people of the state as legislation may be arbitrary.
- **Avoid a constitutional crisis:**
  - If the chief ministerial candidate of a political party lost in assembly election, there exists a constitutional crisis as the party in power finds it difficult to choose the leader. In such situation presence of Legislative Council will
  - **For ex:** Uttarakhand witnessed a similar crisis, which **led to Tirath Singh Rawat stepping-down as the chief minister.**
- **Reduce workload of legislative assembly:**
  - Since the legislative assemblies are generally flooded with work, due to the rapid growth in the functions of a modern welfare state, a unicameral legislature cannot cope with the work and devote fully to the bills brought before it for enactment.
  - **Legislative council lessens the burden of the lower House** and enables assembly to fully concentrate on measures of greater importance

ARGUMENTS AGAINST LEGISLATIVE COUNCIL:

- **It has a weaker position with no significant role:**
  - The ultimate power of passing an ordinary bill is vested in the assembly. **At the most, the council can detain or delay the bill for a period of four months**
  - **In other words, the council is not even a revising body like the Rajya Sabha**; it is only a dilatory chamber or an advisory body
  - Keeping in view the council's **weak, powerless and insignificant position and role**, the critics have described the council as a 'secondary chamber', 'costly ornamental luxury', 'white elephant', etc.
- **A burden on the state budget:**

- **For example:** Opposing the formation of West Bengal legislative council, experts says that the **formation of a legislative council in the state would put a burden of Rs 600-800 crore** on the government exchequer.

- **A back door entry to unpopular politicians:**
  - The critics have opined that the **council has served as a refuge for those who are defeated in the assembly elections.**
  - It enabled the unpopular, rejected and ambitious politicians to occupy the post of a chief minister or a minister or a member of the state legislature.
- **Superfluous and Mischievous:**
  - If a majority of the members in the upper house belong to the same party which holds majority in the lower house, the upper house will become a mere ditto chamber.
  - On the other hand, if two different parties are in majority, the upper house will delay the bills for months unnecessarily. Thus its role may become nasty and obstructive.

5.6. PARLIAMENTARY PRIVILEGES

Meaning of Parliamentary Privileges

Parliamentary privileges refer to the **special rights, immunities, and exemptions enjoyed by the two Houses of Parliament, their committees, their members**, and those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees.

Entitlement of Parliamentary Privileges

The Indian Constitution has extended parliamentary privileges to

- the two Houses as a whole,
- all the Members of Parliament,
- all the committees of Parliament,
- all the Union Ministers, and
- the Attorney General of India,

Note: The **parliamentary privileges are not extended to the President**, although he/she is an integral part of the Parliament.

Need for Parliamentary Privileges

These privileges are **aimed to ensure that the legislative system of the country functions smoothly and effectively, without any undue interference or intimidation**. Their needs can be seen as follows:

- To secure independence and effectiveness of the actions of persons/bodies associated with the parliamentary functions.
- To maintain the **authority, dignity, and honor of the houses of the Parliament**.
- To protect the persons associated with Parliamentary functioning from any obstruction in the discharge of their parliamentary responsibilities.

Classification of Parliamentary Privileges

The **Parliamentary Privileges in India are classified into two categories:**

- **Individual Privileges** – Individual Privileges refer to the rights, immunities, and exemptions **enjoyed by the members of the Parliament individually.**
- **Collective Privileges** – Collective Privileges refer to the rights, immunities, and exemptions **enjoyed by each house of the Parliament collectively.**

• **Individual Parliamentary Privileges**
– They **cannot be arrested during the session of Parliament, 40 days before the beginning and 40 days after the end of a session.** a. This privilege is available **only in civil cases and not in criminal cases or preventive detention cases.** – They have **freedom of speech in Parliament.** No member is liable to any proceedings in any court for anything said or any vote given by him/her in Parliament or its committees. b. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament. – They are **exempted from jury service.** They can refuse to give evidence and appear as a witness in a case pending in a court **when Parliament is in session.**

Collective Parliamentary Privileges
– It has the **right to publish its reports, debates, and proceedings** and also the right to **prohibit others from publishing** the same. a. However, the **44th Amendment Act of 1978 restored the freedom of the press** to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House. – It can **exclude strangers from its proceedings** and hold secret sittings to discuss some important matters. – It can **make rules to regulate its procedure and the conduct of its business** and to adjudicate upon such matters. – It can **punish** members as well as outsiders **for breach of its privileges or its contempt** by reprimand, admonition, or imprisonment (also suspension or expulsion, in the case of members). – It has the right to receive immediate information on the **arrest, detention, conviction, imprisonment, and release of a member.** – It can institute inquiries, order the attendance of witnesses, and send for relevant papers and records. – The **courts are prohibited from inquiring into proceedings** of a house or its committees. – No person, either a member or outsider, can be arrested, and no legal process, civil or criminal, can be served within the precincts of the house, without the permission of the Presiding Officer.

Breach of Privilege and Contempt of the House

Although the phrases "Breach of Privilege" and "Contempt of the House" are often used interchangeably, they differ in their meaning. The difference between these concepts can be seen as follows:

Breach of Privilege	**Contempt of House**
When any **individual or authority disregards or attacks any of the privileges, rights, and immunities**, either of the member individually or of the House in its collective capacity, such	Any act or omission which **obstructs a House of Parliament, its member, or its officer in the performance** of their functions or which has a tendency, directly or indirectly to produce results

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Breach of Privilege	Contempt of House
offense is termed a **Breach of Privilege and is punishable by the House.**	against the dignity, authority, and honor of the House is treated as a **Contempt of the House.**

Thus, the Contempt of the House has wider implications.

Normally, a **Breach of Privilege may amount to Contempt of the House. Likewise, the Contempt of the House may include a Breach of Privilege also**. However, there may be cases where Contempt of the House is committed without specifically committing a Breach of Privilege. Similarly, there may be actions that are not breaches of any specific privilege but are offenses against the dignity and authority of the House, thus amounting to Contempt of the House. **For example, disobedience to a legitimate order of the House is not a Breach of Privilege but can be punished as Contempt of the House.**

Origin of Parliamentary Privileges in India

The evolution of Parliamentary privileges in India can be seen as follows:

- **Originally, the original Constitution, under Article 105, explicitly mentioned two Parliamentary Privileges:**
  - Freedom of speech in Parliament, and
  - Right of publication of its proceedings.
- With regard to other privileges, **Article 105** provided that they were to be the same as those of the British House of Commons, its committees, and its members on the date of its commencement i.e. **26th January 1950, until defined by Parliament.**
- Later, the **44th Constitutional Amendment Act of 1978** provided that the other privileges of each House of Parliament, its committees, and its members are to be those which they have on the date of its commencement until defined by Parliament.
- Thus, the Amendment has made only verbal changes by dropping a direct reference to the British House of Commons, without making any change in the implication of the provision.
- The Indian Parliament has not yet made any special law to codify all the privileges exhaustively. Thus, as of now, the position with respect to other privileges remains the same as it was on the date of commencement of the Constitution.

Current Sources of Parliamentary Privileges in India

At present, the Parliamentary Privileges in India are based on the following five sources:

- Constitutional provisions,
- Various laws made by Parliament,
- Rules of both the Houses of Parliament,
- Parliamentary conventions, and
- Judicial interpretations etc.

Important Judgments related to Parliamentary Privileges

- **P.V. Narasimha Rao vs State (CBI/SPE) Case, 1998** – In this case, the Supreme Court ruled that the **lawmakers, who accepted bribes, could not be prosecuted for corruption** if they followed through with voting or speaking in the House as agreed.

- **State of Kerala Vs. K. Ajith and Others 2021** – The Supreme Court has observed that parliamentary privileges and immunities are **not gateways to claim exemptions from the general law of the land** which governs the action of every citizen.
- **Sita Soren Vs Union of India Case, 2024** – In this case, the Supreme Court **overturned its judgment in the P.V. Narasimha Rao vs State (CBI/SPE) Case, 1998.** The court said that the parliamentarians **do not enjoy Parliamentary Immunity for acts of bribery.**

What are the constitutional provisions related to parliamentary privileges?
According to the Constitution of India, **Articles 105 and 122** outline the privileges of Parliament, while **Articles 194 and 212** pertain to the privileges of state governments.

- **Article 105:** There shall be freedom of speech in Parliament. **No member of Parliament shall be liable to any proceedings in any court** in respect of anything said or any vote given by him in Parliament or any committee thereof.
- **Article 122:** The validity of any proceedings in Parliament **shall not be called in question in court** on the ground of any alleged irregularity of procedure.
- **Article 194:** There shall be **freedom of speech in the State Legislature**. No member of the State Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the State Legislature or any committee thereof.
- **Article 212:** The validity of any proceedings in the State Legislature shall not be called in question in court on the ground of any alleged irregularity of procedure.

Significance of Parliamentary Privileges
Parliamentary privileges in India are essential for the effective operation and autonomy of the Parliament. **They serve several key purposes:**

- **Ensuring Independence and Autonomy** – Parliamentary privileges are **fundamental to maintaining the independence and autonomy of the legislature from external pressures** and influences from the executive or judiciary. This, in turn, enforces the principles of Separation of Powers.
- **Facilitating Open Debates** – By allowing the Members of Parliament (MPs) to express their views and opinions freely without fear of litigation or prosecution, they play a crucial role in facilitating open and honest debate on matters of public interest.
- **Facilitating Scrutiny of Government** – By protecting MPs from civil or criminal actions for activities conducted within the course of their parliamentary duties, they enable proper scrutiny of the government's actions and initiatives.
- **Maintaining Order and Discipline** – Parliamentary privileges extend to the **enforcement of discipline** within the House.
- **Upholding the Dignity of the Institution** – Parliamentary privileges help in upholding the dignity and respect of the Parliament as an institution.

Criticism of Parliamentary Privileges
Parliamentary privileges in India are criticized on the following grounds:

- **Hinders Public Scrutiny** – Critics argue that parliamentary privileges can sometimes be used to shield proceedings from public scrutiny, potentially hiding misconduct or decisions that should be transparent to the public.

- **Potential for Abuse** – There is concern that the **broad scope of these privileges can lead to abuse**, with members potentially using them to avoid legal accountability or to suppress freedom of speech and press under the guise of protecting parliamentary operations.
- **Scope of Ambiguity** – Most of the privileges being based on **conventions, precedents, and unwritten rules,** results in ambiguity and inconsistencies in how privileges are applied and understood.
- **Impediment to Democratic Accountability** – The broad protection offered to the members can sometimes act as a barrier to holding them accountable for their actions, both within the legislative context and in their interactions with the public.
- **Outdated** – Certain aspects of parliamentary privilege, especially those inherited from historical practices, may no longer be appropriate or necessary in a modern, democratic society where transparency, accountability, and public scrutiny are valued.

International Practices Regarding Parliamentary Privileges

Some of the best practices regarding Parliamentary Privileges adopted by different countries can be seen as follows:

- **United Kingdom**: The **Westminster Parliament possesses privileges such as the freedom of speech within the house, exemption from arrest, and the autonomy to govern its internal affairs.** These privileges are a blend of statutory law, common law traditions, and historical precedents.
- **Canada**: Members of the Canadian Parliament are granted privileges that include the right to speak freely, immunity from arrest in civil cases, and the authority to address violations of these privileges.
- **Australia**: The parliamentary privileges **are constitutionally guaranteed,** affording members the right to free speech, immunity from arrest in civil matters, and the capacity to manage their legislative processes independently.

Arguments for Codifying Parliamentary Privileges

- **Precision and Clarity** – Establishing a codified set of parliamentary privileges would delineate their boundaries clearly, reducing ambiguities and specifying the actions considered violations, alongside predetermined penalties.
- **Accountability and Oversight** – A codified framework would introduce a structured approach to parliamentary privileges, promoting responsible exercise by parliamentarians and facilitating effective oversight mechanisms.
- **Modernization and Relevance** – The codification process would offer an avenue to modernize privileges in alignment with current governance and societal standards, ensuring that parliamentary privileges evolve in response to the changing political and social landscape.
- **Introduction of Checks and Balances** – Codification can provide an opportunity to implement checks and balances to prevent abuse.

Arguments Against Codifying Parliamentary Privileges

- **Potential Threat to Legislative Independence** – Codification might inadvertently constrain parliamentary autonomy by making parliamentary processes more susceptible to external oversight or judicial intervention, potentially undermining the self-regulatory capacity of the legislature.
- **Constitutional Constraints** – The **proposal to codify parliamentary privileges might conflict with constitutional provisions, such as Article 122,** which limits judicial scrutiny over parliamentary procedures and emphasizes the independence of parliamentary proceedings.

- **Loss of Flexibility** – A rigid codified system could limit the parliament's ability to adapt to unique situations or emerging political challenges, as the flexibility inherent in the current system allows for a dynamic response to unforeseen events.
- **Procedural Complexity** – The journey towards codification is fraught with complexities, requiring broad consensus among a diverse set of stakeholders.

Way Forward

- To **address ambiguity and inconsistency**, parliamentary privileges should be clearly defined and codified where possible.
- To exercise greater transparency and accountability on the use of privileges, a **mechanism for independent oversight can be devised.**
- To ensure they remain relevant and effective in a changing political and social landscape, they should be **periodically reviewed and updated.**
- To ensure their effective and reasonable use, both parliamentarians and the public about the importance of parliamentary privileges, their scope, and their limitations.

Conclusion

Parliamentary privileges play a pivotal role in upholding the **integrity, autonomy, and effectiveness of legislative bodies in a democratic system**. While they serve as vital tools for fostering open debate, protecting legislative independence, and ensuring effective governance, they are also subject to some criticisms. **There is a need for reforms in provisions related to parliamentary privileges to address challenges such as ambiguity, misuse, and lack of accountability.**

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6. THE UNION AND STATE JUDICIARY

6.1. Judicial Appointments:

What is the collegium system in the Indian judiciary?

The Collegium system is a system for the appointment and transfer of judges in the **Supreme Court** and **High Court**.

- It is not rooted in the Constitution. Instead, it has **evolved through judgments of the Supreme Court.**
- Under the system, the **Chief Justice of India (CJI), along with four senior-most Supreme Court judges, recommends the appointment and transfer of judges.**
- A High Court Collegium, meanwhile, is led by the incumbent Chief Justice and the two seniormost judges of that court.
- The government can also raise objections and seek clarifications regarding the Collegium's choices, but if the Collegium reiterates the same names, the government is bound to appoint them to the post.

What is the genesis of the collegium system in India?

The collegium system has its genesis in a series of Supreme Court Judgements:

- **S P Gupta Vs Union of India, 1981 (First Judge Case)**: Supreme Court held that consultation in the process of appointing judges does not require concurrence, and instead only involves the exchange of views.
- **Supreme Court Advocates-on-Record Association Vs Union of India, 1993 (Second Judge Case)**: The Supreme Court reversed it's previous and altered the definition of **consultation to mean concurrence**.
    - It was decided that the advice tendered by the CJI in regard to the appointment of judges to the Supreme Court is binding on the President.
    - Further, the CJI is required to consult with two of his most senior colleagues before tendering such advice.
- **Third Judge Case, 1998:** Supreme Court stated that the consultation process to be adopted by the CJI requires **'consultation of plurality judges**'.
    - The CJI should consult a collegium of four senior most judges of the Supreme Court. Even if two judges give an adverse opinion, they should not send the recommendation to the government.
- **National Judicial Appointments Commission (NJAC) Act, 2014:** It was brought to replace the existing collegium system for appointing judges.
    - However, a five-judge Constitution Bench declared it as unconstitutional and nullified it, stating that it posed a threat to the independence of the judiciary.

Why is the collegium system criticized?

Some of the criticism against the collegium system are

- **Lack of transparency:** The collegium system is often criticized for its lack of transparency, as the reasons for the collegium's decisions are not disclosed to the public.
- **Judicial vacancies:** It has struggled to keep up with the stagnant vacancies in the judiciary leading to the pendency of cases.
    - **As of August 2022, there are still 3 vacancies in the Supreme Court and 380 vacancies in the High courts.**
- **Charges of nepotism**: There have been allegations of nepotism and favouritism in the collegium system.

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- The Law Commission in 2009 also noted that **nepotism and political privilege was rife in the workings of the collegium system.**

- **Against the system of checks and balances:** The collegium system violates the principle of checks and balances as it ensures the complete exclusion of the executive from the judicial appointment process, which leads to a lack of accountability.
- **Lack of representation of women**: The collegium system does not ensure adequate representation of women in the judiciary.
    - **Example**: In the Supreme Court, there are **currently four women justices out of the sitting 33.** Whereas in **High Courts, women judges constitute 11.5%.**
- **Transfer of judges**: Currently, the Supreme Court and the government do not disclose the reason for a transfer of judges. There is a possible threat to judicial independence.

What steps have been taken to improve the process of judicial appointments?

- **99th Constitutional Amendment Act, 2014:** It provided for the **National Judicial Commission (NJAC) to replace the collegium system for the appointment of judges.**
    - However, it was struck down by the Constitutional bench for being violative of the independence of the judiciary.
- **Memorandum of Procedure (MoP)**: The MoP is the **list of rules and procedures for the appointment of judges to the Supreme Court and the high cour**ts. It is a document framed by the government and the judiciary together.
    - The Union government framed an MoP on 30 June 1999.
    - The **current MoP gives out the detailed procedure for the appointment of Supreme Court and high court judges.**
    - It states that all appointments of judges to the Supreme Court must be recommended by the Collegium, composed of the Chief Justice of India and the four senior-most judges of the Supreme Court. This recommendation is then sent to the central government. The law minister will forward it to the **prime minister**, who is to advise the President on the appointment.
- **Revised MoP:** In 2015, the Supreme Court instructed the central government to develop a new MoP to ensure transparency in the collegium's proceedings. In 2017, although the MoP was finalized, the government did not adopt it, citing a need to reconsider the matter.

What can be the way forward to streamline judicial appointments in India?

- **Reforming the MoP:** The existing MoP should be reformed. This can include involving representatives from both executive and judiciary in decision-making for judges' appointments to ensure checks and balances.
- **Expanding eligibility criteria**: It should include, apart from the criteria envisaged in Constitution, other criteria for the determination of merit and suitability of candidates
    - There can be an open invitation for all eligible candidates to apply for the vacancy in the judiciary in the prescribed format.
- **Increasing diversity:** Women should be provided adequate representation in judicial appointments.
- **Increasing transparency:** A list of candidates, who had applied, nominated, or considered by the members of the collegium on their own, should be maintained.
    - All opinions of the collegium can be exchanged in writing.
    - Proceedings of the collegium should be documented and recorded in the minutes.
- **Law Commission of India recommendations**:

- There should be an equal role for the judiciary and the executive in the selection and appointments of judges to High Courts and the Supreme Court.
- The **retirement age of the Judges of the High Court should be increased to 65 years, and that of the Judges of the Supreme Court should be increased to 68 years.**
- **Article 124(3)** contemplates the appointment of judges of the Supreme Court from three sources. However, in the last fifty years, not a single distinguished jurist has been appointed. From the Bar also, less than half a dozen judges have been appointed. It recommended that suitably meritorious persons from these sources are appointed.

6.2. Judicial Reforms

Why do we need Judicial Reforms?

- The Judiciary is one of three organs of government, the others being the Executive and Legislature.
- The continuous evolution of society requires these organs to continually reform and adapt to changing needs.
- Hence, the **requirement for judicial reforms is a dynamic and ongoing process.**
- These reforms also help ensure that the Judiciary is equipped to handle new challenges and maintain its effectiveness in promoting equality and justice for all.

What are the current issues in the Indian Judicial System?
Some important issues plaguing the Indian Judicial System are

- **Shortage of Judges:** There is a shortage of judges in subordinate courts in India, with around **35% of posts remaining unfilled**. This results in a poor judge-to-population ratio, as **India has only 17 judges per million.**
- **Appointment of Judges:** The judges in India are appointed and transferred via the **collegium system.** The system has been criticized for being opaque in its functioning.
- **Pendency of Cases:** The problem of pendency is particularly acute at the lower levels of the judiciary, where the majority of cases are filed and where the shortage of judges is most severe.
- **Poor Condition of Infrastructure:** Insufficient budget allocation results in poor infrastructure for the judiciary in India, **spending only 0.09% of its GDP on maintaining the judicial infrastructure**.
  - **Human Resources**: Lack of efficient secretarial and clerical assistance, shortage of Public Prosecutors, etc., also adds to the problem.
- **Lack of gender diversity:** For instance, there have been **only 11 women judges** on the **Supreme Court** since its inception, and no women Chief Justices.
- **Undertrials:** According to the **'Prison Statistics India' report** published by the **National Crime Records Bureau (NCRB) in 2020**, there were as many as **4,88,511 prison inmates, of whom 76% were undertrials.**
- **Procedural issues:** It includes delay in service of summons/notices to accused/defendants/respondents by process servers and police**.**
- **Outdated Procedural laws: The Code of Civil Procedure 1908, Code of Criminal Procedure 1973, and The Evidence Act 1872** are all outdated in relation to the current needs of society.
  - They enable motions for adjournments which are routinely sought and given. As a result, litigation has become a prolonged, costly, uncertain, rigid process.
- **Burden of extrajudicial work:** Burdening of Judges with extra-judicial work (like **Legal Services**) diverts their focus and time from judicial work.

What is the impact of these issues on the overall Justice delivery system?

Issues in the Judicial system negatively impact Justice delivery. Some of these are

- **Delays in the administration of justice**: A large backlog of cases waiting to be heard can result in delays in the resolution of cases, which can take many years or even decades.
- **Negative impact on justice quality**: Judges may not have the time or resources to fully consider the merits of each case due to paucity of time. This can lead to decisions that are not fully informed or that do not adequately address the issues at hand.
- **Financial burden on litigants:** Prolonged litigation can be costly for litigants, as they have to bear the expenses of prolonged court proceedings.
- **Negative impact on the economy**: These issues in the justice system can also have a negative impact on the economy, as businesses may be delayed or prevented from moving forward due to unresolved legal disputes.
- **Loss of faith in the legal system**: Long delays, lack of legal aid, etc., can lead to a loss of faith in the legal system among the general public.

What are some of the factors that hinder judicial reforms?

Intrinsic Factors	Extrinsic Factors
• Resistance to change • Corruption within the Judiciary • Insufficient capacity to implement the reforms • Overburdened court system	• Political interference • Insufficient resources and funding to the judiciary • Bureaucratic red-tapism • Lack of public awareness

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What are some of the significant reforms in the Indian Judicial system?

Some of the significant reforms undertaken in the Indian Judicial System are

- **National Mission for Justice Delivery and Legal Reforms (2011):** It was launched with the objectives of increasing access by reducing delays and arrears in the system and enhancing accountability through structural changes.
  - **Development of infrastructure facilities for judiciary (1993-94):** As of July 2022, Rs. 9,13.21 crores have been released since the inception of the Scheme to improve judicial infrastructure.
  - **Filling up vacant positions in judiciary:** From 2014 to 2022, 46 judges were appointed to the Supreme Court, and 769 new judges were appointed to the High Courts.
- **Alternative Dispute Resolution (ADR): Lok Adalats, Gram Nyayalayas, Online Dispute Resolution, etc., are used to ensure timely justice.**
  - **Commercial Courts Act 2015** stipulates mandatory pre-institution mediation and settlement of commercial disputes.
  - A **Gram Nyayalaya online portal** has also been created, wherein the States/High Courts upload data relating to Gram Nyayalayas, including monthly case disposal.
- **Initiatives to Fast Track Special Type of Cases**: Fast track courts are being set up to expedite the justice delivery and reduce the pendency of cases involving heinous crimes, senior citizens, women, children, etc.
- **Leveraging Information and Communication Technology (ICT)**
  - **Virtual court system:** In the virtual court system, regular court proceedings are conducted virtually through videoconferencing.

- e-Sewa Kendras: To provide e-filing services to lawyers and litigants to bridge the digital divide.
- **National Judicial Data Grid (NJDG):** Under NJDG, lawyers and litigants can access status information of cases and orders/judgments.
- **National Service and Tracking of Electronic Processes (NSTEP):** It provides technology-enabled processes for serving and issuing summons.
- **Secure, Scalable & Sugamya Website as a Service (S3WAAS) Website**: A new divyang-friendly website for e-committee, based on the **S3WaaS platform**, is available in 13 regional languages including English & Hindi.
- **Virtual Justice Clock**: It is an initiative to exhibit vital statistics like case details, pendency, case disposed, etc., of the justice delivery system at the Court level

- **Legal Services Authorities** are also part of the campaign to bring justice to the people and ensure that all people have equal access to justice despite various barriers like social and economic backwardness.

What measures can be taken to reform the Judiciary?
Some measures that can be taken to reform the judiciary are

- **Transparency in Appointment: Law Commission of India (LCI) 2009** recommended that the executive and judiciary should function together to find the most suitable (candidates) available for appointment. This can be achieved by combining the legal acumen of the judiciary, and in the area of antecedents, the executive's opinion should be dominant.
- **Reducing pendency**: **LCI (2009)** recommended that:
  - Maximum Strength of the Judges in the Supreme Court should be increased.
  - **The need to divide the Supreme Court into a Constitution Bench at Delhi** and Cassation Benches in four regions at **Delhi, Chennai/Hyderabad, Kolkata, and Mumbai** to ensure timely Justice delivery.
  - Constitutional provisions need a change to enhance the retirement age of **High Court** and Supreme Court Judges by at least three years.
  - Increasing the number of Judges to maintain a healthy Judge-population ratio - 50 per million
- **Optimum time utilization**: LCI (2009) recommended:
  - Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an-hour.
- **Judicial Impact Assessment:** Make judicial impact assessment compulsory whenever new laws are made.
- **Increase the use of the ADR mechanism and Plea Bargaining**: Building awareness among litigants and prospective litigants about ADR processes and encouraging out-of-court settlements.
- **All India Judicial Services (AIJS):** It is a proposed national-level judicial service in India. It **aims to create a unified and centralized system** for the **recruitment and career progression** of judicial officers in the country.
- **Judicial Management cadre:** A Judicial Management Cadre to manage judiciary administration at all levels can be established.
- **National Judicial Infrastructure Authority: Former Chief Justice of India N V Ramanna**, in his remarks, said a National Judicial Infrastructure Authority should be created for the standardization and improvement of judicial infrastructure.
- **Simplifying procedural laws:** Simplifying procedural laws to expedite the hearing and disposal of cases and to improve and bring clarity to substantive laws by repealing/amending outdated/unworkable laws.

- **Improve the functioning of Fast Track Courts**: A two-pronged approach that improves the human capacity of these courts with dedicated judges and competent staff while restructuring processes is needed.
- **Setting up an independent mechanism for legal services:** Legal services can be entrusted to the Executive Wing of the Government for implementation, in consultation with the High Court/other stakeholders, by an appropriate amendment to the **Legal Services Authorities Act, 1976.**
- **Timely Justice to Undertrials:** Undertrials can be provided speedy justice by providing adequate opportunities for bail. The **Supreme Court held that "bail is the norm, whereas jail is an exception".**
- **Increase representation of women in the Judicial System:** Former CJI N V Ramana has voiced support for 50% representation for women in the judiciary. He remarked that "the presence of women as judges and lawyers, will substantially improve the justice delivery system.
- **Legal Education:** Improving Legal Education and providing for compulsory apprenticeship to members of the Bar.
- **Research and Training Centre:** A Research and Training Centre for improving legislative drafting, conducting Judicial Impact Assessments, and training Law Officers of the Government can be established.
- **Prompt Investigation and Prosecution:** The functioning of investigating agencies (Police) and prosecuting agencies (Directorate of Prosecution) should be improved to ensure proper and timely investigation and prosecution.

6.3. Alternative dispute resolution

Alternative Dispute Resolution is the non**- adversarial procedure for settling disputes without litigation**.
Alternate Dispute Resolution (ADR) involves working together co-operatively to reach the best resolution for everyone.
ADR provides diverse choices to resolve disputes through **creative, collaborative bargaining, and fulfil the interests.**

ADR: Types

1. **Arbitration:** Arbitral tribunal which decides an "award" on the dispute that is mostly binding on the parties.
2. **Conciliation:** An impartial third party, called **conciliator** plays active role and assists the parties to reach a **mutually satisfactory agreed settlement** which is non-binding on parties.
3. **Mediation:** Mediator plays **passive role**, acts as communicator and helps the parties try to reach a mutually acceptable resolution of the dispute.
4. **Negotiation:** Discussions between both the parties with an open mind are initiated without the intervention of any third party to arrive a negotiated settlement.

ADR: Provisions

1. **Constitutional provisions:**
   [a] **Art 39A Access to equal justice and free legal aid** is an obligation on government to make various provisions available, to access justice;
   [b] **Art 21 Right to life** also includes right to access for justice.
2. **Legal provisions:**
   [a] The **Legal Services Authority Act,1987**;
   [b] **Arbitration and Conciliation Act, 1996**,
   [c] **Gram Nyayalaya Act 2009;**

[d] Plea-bargaining is a pre-trial negotiation between the accused and prosecution where the accused agrees to plead guilty in exchange for certain concessions by the prosecution under Section 265-265 of CrPC.

3. **Institutional provisions:** Lok Adalat, Nyaya Panchayats, Conciliation and Arbitration centres.

ADR: Advantages

1. Less time consuming and **cost effective method.**
2. ADR is **free from technicalities of courts as informal ways** are applied in resolving dispute.
3. People are free to express themselves without any fear of court /law.
4. ADR **preserves the best interest of parties** prevents and maintains good relationship between parties.
5. Arbitrators are experts in the field of a particular dispute thus increasing the efficiency of the proceedings.

ADR: Disadvantages

1. All cases may not be a fit for ADR mechanism.
2. It can be **used as a tactic to stall case.**
3. Little or no check on power imbalances between parties.
4. Rights of parties may not be legally protected.
5. Non-binding agreements may cause weakness in the system.

ADR: Salient features of Arbitration and Conciliation Amendment Act, 2021

1. Amends the **Arbitration and Conciliation Act, 1996;** it deals with domestic and international arbitration and defines the law for conducting conciliation proceedings.
2. **Automatic stay on awards**: Arbitral award cannot be set aside merely because of an application made by party. A stay can be given by court in case of – the making of the award or if it is effected by fraud or corruption.
3. **Qualifications of arbitrators:** An advocate under the Advocates Act, 1961 and 10 years of experience; an officer of the Indian Legal Service.

6.4. Public Interest Litigation

What is a Public Interest Litigation (PIL)?

According to the **Supreme Court** (in Janata Dal v. H.S.Chaudhary, 1993) Public Interest Litigation (PIL) means a **legal action started in a court of** law for the **enforcement of public/general interest** where the public or a particular class of the public have some interest (including pecuniary interest) that affects their legal rights or liabilities.

- Public Interest is the interest belonging to a particular class of the community that affects their legal rights or liabilities.
- The **concept of PIL has its origin in the USA in the 1960s**.

History of PIL in India

- **Mumbai Kamagar Sabha vs. Abdul Thai (1976):** In this case, **Justice Krishna Iyer** argued that PIL had an important role to play in ensuring that the legal system served the interests of the poor and the oppressed.
    - He emphasized that **PIL was not a substitute for traditional litigation but rather to complement it.**

- **Hussainara Khatoon vs. State of Bihar case(1979):** It was the first reported instance of PIL, which brought attention to the inhuman conditions of prisoners and under-trial prisoners.
    - This case established the right to speedy justice as a basic fundamental right.
- **S.P. Gupta vs. Union of India (1981):** It was **presided over by Justice P.N. Bhagawati**, which led to a new era for PIL.
    - The decision held that any individual member of the public or a social action group can invoke the jurisdiction of the **High Courts (Article 226) or the Supreme Court (Article 32)** and seek remedies for violations of legal or constitutional rights for those who are unable to do so due to social, economic, or other disabilities.

What are the features of PIL in India?

The following are some of the features of Public Interest Litigation (PIL) in India:

- PIL has neither been defined in the Constitution nor in any Indian statute.
- **Constitutional provisions:** The Supreme Court and the High Court under **Articles 32 and 226** (authority to issue writs) of the Constitution, respectively, can hear a PIL petition submitted by any concerned individual.
- **Relaxation of locus standi rule**: PIL in India was made possible by the relaxation of the requirement of "locus standi".
- **Different from traditional litigation:** PIL is different from traditional litigation, which is adversarial in nature and involves disputes between two parties.
- **Proactive role of courts:** In PIL, the role of the court is more proactive than in traditional actions and requires a more positive attitude in determining acts.
- **Flexibility**: While PIL allows for greater flexibility in the procedure, it must still adhere to judicial procedure and principles.

What is the significance of PIL in India?

Some of the key significance of PIL in India are:

- **Widening the scope of Article 32**: PIL has widened the scope of Article 32 of the Constitution (right to constitutional remedies) and has allowed **public-spirited citizens to file litigation** in the interest of the public at large.
- **Access to justice**: PIL has provided access to justice for marginalized or underrepresented communities who might otherwise not have had a voice.
- **Strengthening the judiciary**: PIL has helped to strengthen the Indian judiciary by allowing the court to take suo motu action to address issues of public importance.
- **Social and political change**: PIL has played a critical role in bringing about social and political change in India and has been instrumental in exposing and addressing various issues that affect the public at large.
- **Protecting the rights of the marginalized**: PIL has been used to protect the rights of the marginalized, such as bonded laborers, prisoners, and slum dwellers, and has helped to improve their living conditions.

What are some of the important judgments relating to PIL?

There have been many significant judgments related to Public Interest Litigation (PIL) in India over the years.
Some of the most notable ones include

- **Bandhua Mukti Morcha vs. Union of India (1984)**: This case dealt with the exploitation of bonded laborers and was the **first PIL filed by an NGO.**
    - The Supreme Court ordered the release of all bonded laborers and provided them with compensation.

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- **Rural Litigation and Entitlement Kendra (RLEK) vs. State of Uttar Pradesh (1985)**: It dealt with mining activities that had led to **environmental degradation, deforestation, and displacement** of local communities.
    - The Supreme Court recognized that the **right to a healthy environment** was an integral part of the right to life under **Article 21 of the Constitution.**
- **MC Mehta vs. Union of India (1987):** This case dealt with the issue of environmental pollution in Delhi and was the **first PIL to be filed on an environmental issue.**
    - The Supreme Court replaced the strict liability principle with the absolute liability principle to protect citizens' rights.
- **People's Union for Civil Liberties vs. Union of India (1997)**: This case dealt with the **issue of custodial deaths** and the right to legal aid to these victims.
    - The Supreme Court held that the **right to life under Article 21** of the Constitution included the right to live with **human dignity, free from torture and other forms of cruel, inhuman or degrading treatment**.
- **Vishaka & Others v. State of Rajasthan & Others (1997)**: The Court laid down guidelines and norms to be observed to prevent sexual harassment of working women.
    - The judgment led to the enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013**

What are the factors responsible for the increase in PIL cases in recent times?

There are several factors that have contributed to the increase in Public Interest Litigation (PIL) in India in recent times:

- **Awareness and education**: Increased awareness about the **legal system and human rights**, as well as greater access to education, has led to a rise in the number of people who are able to understand and use the PIL mechanism to bring about social change.
- **Strengthening of the legal system**: The strengthening of the legal system, particularly the judiciary, has made it easier for individuals and groups to access the courts and file PIL cases.
    - The Supreme Court's formulation of guidelines for PIL cases has also made the process more transparent and streamlined.
- **Media coverage**: The growth of the media and the increased coverage of PIL cases has brought public attention to issues that would otherwise have gone unnoticed.
- **Increased activism**: The rise of activism has led to a growing number of individuals and groups taking up public interest issues and using the PIL mechanism to bring about change.
- **Political Support:** The support of political leaders for PIL cases has also helped to increase the number of cases filed.

What are some of the issues pertaining to PIL in India?

There are several issues pertaining to Public Interest Litigation (PIL) in India, including

- **Misuse of PIL**: One of the main criticisms of PIL is that it is often **misused for personal or political gain rather than for the public good.**
- **Delays in the legal system**: A large number of pending cases and vacancies in the judiciary have resulted in long delays in the resolution of PIL cases.
- **Lack of implementation:** The lack of effective implementation of court verdicts is a major issue hindering successful implementation of PIL.

- **Overburdening of the judiciary:** PIL cases can place a significant burden on the Indian judiciary, as they often require extensive research and investigation. This can further lead to a backlog of cases.
- **Judicial Overreach:** The process of resolving socio-economic or environmental issues through PILs can sometimes result in cases of **judicial overreach by the Judiciary.**

What are the Supreme Court guidelines to streamline the PIL petitions?

Supreme Court guidelines on the applicability of PIL petitions

According to **Supreme Court guidelines issues in 1998 and 2003**, only letters or petitions related to the following issues would typically be considered as PIL:

- Bonded labor, neglected children, exploitation of casual workers, atrocities against women, harassment of prisoners, family disputes, atrocities against Scheduled Castes and Scheduled Tribes, etc.

Petitions related to the following issues would not be considered as PIL:

- Landlord-tenant disputes, service matters, and pension and gratuity, Admission to educational institutions, early hearing of cases pending in lower courts, etc

Supreme Court guidelines to prevent the misuse of PIL

Also, the Supreme Court has established the following guidelines to prevent the misuse of PIL:

- The **court must support legitimate PIL** and deter those filed for other reasons.
- Each High Court should establish formal rules for supporting genuine PIL and discouraging those filed for other motives.
- The court should verify the petitioner's credentials before proceeding with the PIL.
- The court should be fully satisfied that the matter of the petition is in the public interest.
- The court should ensure that the PIL addresses real public harm or injury and that the petitioner has no personal, private, or ulterior motives.
- The court should discourage busybodies from filing frivolous petitions by imposing penalties or taking similar measures to curb frivolous PIL filed for extraneous reasons.

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