VISION IAS

UPDATED VALUE ADDITION POLITY PART-2 2020

RS/140

1) **FUNDAMENTAL DUTIES**

2) **FUNDAMENTAL RIGHTS**

3) **INDIAN CONSTITUTION, HISTORICAL UNDERPINNINGS, EVOLUTION, FEATURES,AMENDMENTS, SIGNIFICANT PREVISIONS AND BASIC STRUCTURE**

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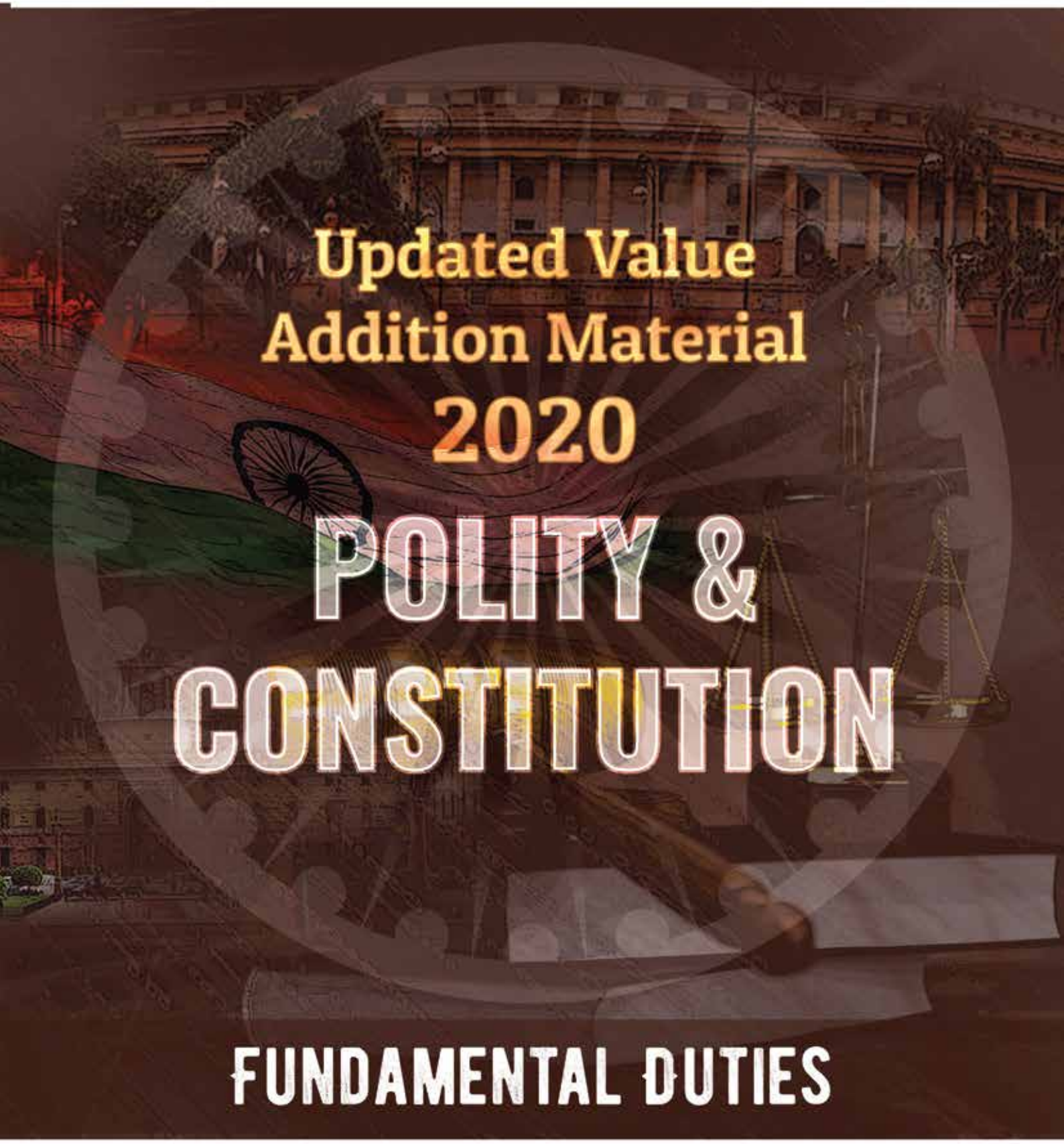

Updated Value Addition Material 2020

POLITY & CONSTITUTION

FUNDAMENTAL DUTIES

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FUNDAMENTAL DUTIES

Student Notes:

Contents

Student Notes:

1. Genesis of Fundamental Duties in India

For any polity, its people are the ultimate custodians of its Constitution. It is in these citizens that sovereignty vests and specifically for India, it is in their name that the Constitution was adopted. Therefore, the Constitution seeks to empower the citizen. However, it is a reciprocal relationship, in the sense, that the citizen also empowers the Constitution. They do it by following it in letter and spirit, by adhering to it, by protecting it, and by persevering to make it more meaningful with words and deeds.

Recommendations of Swaran Singh Committee that were not accepted

(a) The Parliament may provide for the imposition of such penalty or punishment as may be considered appropriate for any non-compliance with or refusal to observe any of the duties;

(b) No law imposing such penalty or punishment shall be called in question in any court on the ground of infringement of any of Fundamental Rights or on the ground of repugnancy to any other provision of the Constitution;

(c) Duty to pay taxes should also be a Fundamental Duty of the citizens.

The Constitution of India envisaged a holistic approach towards civic life in a democratic polity. It guaranteed certain rights to the citizen as Fundamental Rights. Since human conduct cannot be confined to the realm of Fundamental Rights, the Constitution also envisaged certain duties, which are correlated to the rights, and those duties have been described as Fundamental Duties.

It is to be borne in mind that the framers of the Constitution did not deem it appropriate to incorporate those duties in the text of the Constitution when it was originally promulgated. There may be myriad reasons for such omission:

- Firstly, the concept of *Dharma* is deeply rooted in the Indian society. Citizens practice certain duties as basic values irrespective of a threat of penalty.
- Secondly, the preamble to the Constitution itself encapsulates the duties of citizensby including not only the aspirations of the people i.e. the goals of the nation, but also the assurances of the Constitution. Hence, it is implied that whatever is required for the fulfillment of these goals be undertaken by every citizen as his duty.
- Additionally, the Fundamental Rights enlisted in the Constitution logically bring in an inference of a set of duties which are essential for their realization. If these rights are to be available to people, they are obligated to perform their corresponding duties.

However, after around a quarter century in the history of independent India, it was thought fit to have a framework of duties in the Constitution itself. **Sardar Swaran Singh committee** was constituted by Indira Gandhi soon after emergency was imposed in the country. The objective of this committee was to study the question of amending the constitution in the light of past experiences and recommend amendments.

Consequently, the 42nd Amendment Act, also called the "Mini Constitution", added added a new part in the Constitution, Part IVA. It incorporated ten (now eleven) Fundamental Duties by inserting a new article 51A below article 51. The objective of incorporating the fundamental duties is to place before the country a code of conduct, which the citizens are expected to follow.

2. List of Fundamental Duties

The eleven Fundamental Duties incorporated in Article 51A, by the 42nd and 86th Amendment of the Indian Constitution are as under:

a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

Student Notes:

c) to uphold and protect the sovereignty, unity and integrity of India;
d) to defend the country and render national service when called upon to do so;
e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
f) to value and preserve the rich heritage of our composite culture;
g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
i) to safeguard public property and to abjure violence;
j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
k) who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

The NCRWC recommended that following new fundamental duties should be included in Article 51-A:

- *Duty to vote at elections, actively participate in the democratic process of governance and to pay taxes;*
- *To foster a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children;*
- *Duty of industrial organizations to provide education to children of their employees.*

3. Nature of Fundamental Duties

A. As the Directive Principles are addressed to the state, the fundamental duties are addressed to the citizens. The citizens enjoying the fundamental rights must respect the ideals of the constitution, to promote harmony and spirit of the brotherhood.
B. Fundamental Duties are non-justiciable. It means the citizens cannot be forced to observe them. Some of them, are however part of the enforceable law. For example, Prevention of Insults to National Honor Act, 1971, and so on. However, if a citizen violates Fundamental Duties, his Fundamental Rights may not be restored when he approaches courts.
C. While some of the fundamental duties are moral duties e.g. to promote a spirit of patriotism and to uphold the unity of India; cherishing the noble ideals of freedom struggle etc, there are others that are civic duties, for instance, respecting the National Flag and National Anthem.
D. Fundamental Duties consist of tasks essential to the Indian way of life by incorporating precepts reflecting the values of the Indian tradition.
E. Fundamental duties are extended only to Indian citizens and not foreigners, in a stark contrast with certain Fundamental Rights.

4. Enforcement of Fundamental Duties

There is no provision in the Indian Constitution for the direct enforcement of Fundamental Duties and also, no sanction to prevent their violation. However, for the purpose of ascertaining the constitutionality of any law, if a Court finds that the law seeks to give effect to any of these Fundamental Duties, it may consider the law 'reasonable' in relation to Article 14 or 19. Fundamental Duties also serve as a warning to erring citizens as a guard against preventing anti-social activities like burning of the Constitution, destroying public property etc.

The Supreme Court of India may issue suitable guidelines along these matters in appropriate cases. For instance, the Supreme Court adopted the principle of "sustainable development" to give effect to fundamental duties enshrined under Article 51-A(g) read with Article 21, 47 and 48 A. It also held that "precautionary principle" and "polluter pays principle" are acceptable as part of the law of the country.

In effect, one must understand that Parts III, IV and IV-A have a common thread flowing through them. While one enumerates the Fundamental Rights and another declares principles

fundamental to governance, the part IV-A lays down Fundamental Duties of the citizen. Hence, while interpreting any of these provisions; it is advisable to examine the scope and impact of such interpretation on all the three Constitutional aspects emerging from these parts.

Hence, even as Fundamental duties have not been made enforceable by a writ issued by the Court, one must not lose sight of the fact that the duty of every citizen is the collective duty of the State.

Student Notes:

4.1. Available Legal Provisions for Enforcement of Fundamental Duties

Any non-operationalization of Fundamental Duties is not necessarily because of the lack of concern or non-availability of legal and other enforceable provisions; but it is more a case of lacuna in the strategy of implementation. Some of the legal provisions available in regard to enforcement of Fundamental Duties are as under:

- In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.
- The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence, inter alia, to prevent improper use of the National Flag and the National Anthem.
- In order to ensure that the correct usage regarding the display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in Flag Code of India, which has been made available to all the State Governments, and Union territory Administration (UTs).
- There are a number of provisions in the existing criminal laws to ensure that the activities which encourage enmity between different groups of people on grounds of religion, race, place of birth, residence, language, etc. are adequately punished. Writings, speeches, gestures, activities, exercise, drills, etc. aimed at creating a feeling of insecurity or ill-will among the members of other communities, etc. have been prohibited under Section 153A of the Indian Penal Code (IPC).
- Imputations and assertions prejudicial to the national integration constitute a punishable offence under Section 153 B of the IPC.
- A Communal organization can be declared unlawful association under the provisions of Unlawful Activities (Prevention) Act 1967.
- Offences related to religion are covered in Sections 295-298 of the IPC (Chapter XV).
- Provisions of the Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act 1955) "provide for punishments for offences related to caste and religion."
- Sections 123(3) and 123(3A) of the Representation of People Act, 1951 declares that soliciting of vote on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language is a corrupt practice. A person indulging in a corrupt practice can be disqualified for being a Member of Parliament or a State Legislature under Section 8A of the Representation of People Act, 1951.

5. Committees and Judicial Pronouncements

5.1. Justice Verma Committee Report

In 1998, the Government of India set up a Committee under the Chairpersonship of Justice J.S Verma to work out a strategy as well as methodology of operationalizing a countrywide programme for teaching fundamental Duties in every educational institution as a measure of inservice training. The Committee made the following recommendations:

Student Notes:

A. It sought to **optimize benefits from the existing schemes/programmes on national integration and communal harmony, culture and values, and environment**, by further activating and monitoring the work of the institutions and NGOs who are sanctioned these schemes by the concerned ministries of Home, Human Resource Development and Environment and Forests.
B. **Towards protection and improvement of environment**, it recommended coordination between all the law enforcement agencies, enforcing strict compliance of the various legal provisions and filling legislative vacuum, if any.
C. **Towards reorienting approaches to school curriculum**, the Committee reiterated the need for a fundamental transformation in the direction and approach to curricula for teaching Fundamental Duties in school and teacher education institutions.
D. **In order to ensure dignity of women**, it recommended that gender biases and sex-stereotyping must be eliminated from all school and colleges textbooks and this should be given as a mandate to all curriculum development agencies, both at national and state levels.
E. **Towards reorienting teacher education**, it recommended a sensitization module based on Fundamental Duties to be made an integral part of all teacher education programmes, organised by National, State and District level institutions and planning large scale teacher orientation programmes on this theme.
F. **Towards incorporating Fundamental Duties in the courses and programmes of higher and professional education**, it suggested that the Human Rights Education Initiative of the UGC should be referred to as 'Human Rights and Fundamental Duties Education Initiative' and the UGC may advise on incorporating Fundamental Duties as an essential component of their respective proposals while giving grants to Universities.
G. **Towards the responsibilities of people's representative**, the Committee recommended that special efforts should be made to ensure that our legislators are aware of the Fundamental Duties as the same are also their duties as citizens by organizing special programmes at the parliamentary and state assembly levels and involving the Corporation, Town Area Committees and the Panchayati Raj institutions in this effort.
H. **Towards the obligation of public administration and civil servants**, the Committee recommended that a module on Fundamental Duties should be adopted for inclusion in the Courses of different Training Institutions connected with the training of civil servants. It also recommended fixing responsibility of the senior public servants to project the image of administration as people-friendly and responsive to the problems and sufferings of the citizens and giving greater access to information and promoting transparency on part of the Government.
I. **Towards the administration of justice**, the Committee recommended that a Judicial Academy should be set up to provide facilities for continuing education of Judges, to focus their attention on Constitutional Values and Fundamental Duties, to foster constructive interaction between the Bar and the Bench and to facilitate application of modern techniques of management to the transaction of judicial business in the Court.
J. **Towards the role of business and industry**, the Committee recommended vigorous formulation and pursuit of ethical conduct for business dealings.
K. **Towards the role of Media**, the Committee recommended that media should constantly educate people about Constitution and the symbols of sovereignty; harness its potential for rural development, empowerment of women, distance education, environmental protection, civic consciousness and human rights awareness; formulating a comprehensive media policy.

In 2003, the Supreme Court has directed the center to enact a law for the enforcement of fundamental duties by citizens as suggested by the Justice Verma Committee (2000).

The former Chief Justice of India, Ranganath Mishra, in a letter to the Chief Justice of India, requested the apex court to issue necessary directions to the State to educate its citizens in the

matter of fundamental duties so that a right balance emerged between rights and duties. The letter was treated as a writ petition.

National Commission to Review the Working of the Constitution (NCRWC) Report in 2002 recommended the implementation of the Justice Verma Committee recommendations. It recommended that the first and foremost step that was required to be taken by the Union and State governments was to sensitize the people and create a general awareness of the provisions of fundamental duties amongst citizens.

Student Notes:

5.2. Important Judicial Pronouncements

- **Mohan Kumar Singhania & Ors. Vs. Union of India & Ors., (1992):** The officers in All-India Services (Administrative, Forest, Police, etc.) were not taking the training seriously resulting in deterioration of the services. Service Rules were amended so as to give weightage to the training and penalize failure. On a challenge being laid to the constitutionality of the amendment in the Rules in Mohan Kumar Singhania & Ors. Vs. Union of India & Ors., (1992), in order to uphold the validity of the amendment, Ratnavel Pandian, J. drew strength from article 51A.

  Referring to clause (j), which commands every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement, it was held that the effort taken by the Government in giving utmost importance to the training programme of the selectees so that this higher civil service being the topmost service of the country is not wasted and does not become fruitless during the training period is in consonance with the provisions of article 51A (j). The constitutionality of the amendment was, thus, upheld.

- **Rural Litigation and Entitlement Kendra & Ors. Vs. A State of Uttar Pradesh & Ors., (1985):** In Rural Litigation and Entitlement Kendra, Dehradun & Ors. Vs. State of U.P. & AIR 1985 SC, in order to prevent imbalance to ecology and hazard of healthy environment being created due to working of lime-stone quarries, the Supreme Court directed the quarries lessees being cancelled and lime-stone quarries being closed down permanently. The directions were issued in face of fundamental right to trade and business and the right to earn livelihood.

  Assigning paramount significance to Fundamental Duties and rather placing the Fundamental Duties owing to people at large above the fundamental right of a few individuals the court held that such closure would undoubtedly cause hardship, “but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment”.

- **M.C.Mehta (II) Vs. Union of India & Ors., (1998):** In this case, article 51A containing Fundamental Duties of citizens was read casting duties on the government and for issuing certain directions consistently with article 51A. Directions were:
  - the Central Government shall direct to the educational institutions throughout India to teach at least for one hour in a week, lessons relating to protection and the improvement of the natural environment including forests, lakes, rivers and wild life in the first ten classes;
  - the Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost;
  - the children shall be taught about the need for maintaining cleanliness and with the cleanliness of the house, both inside and outside and the street in which they live;
  - the Central Government shall consider training of teachers who teach this subject by the introduction of short-term courses for such training;

- the Central Government, the Government of the States and all the Union Territories shall consider desirability of organizing "Keep the city/town/village clean" week;
- to create a national awareness of the problems faced by the people by the appalling all round deterioration of the environment.

- **Vellore Citizens' Welfare Forum Vs. Union of India, (1996):** In Vellore Citizens' Welfare Forum Vs. Union of India, (1996) 5 SCC 647 and Bandkhal and Surajkund Lakes matter, the Supreme Court recognized 'The Precautionary Principle' and the 'The Polluter pays' principle as essential features of 'Sustainable Development' and part of the environment law of the country. Article 21, Directive Principles and Fundamental Duty clause (g) of article 51A were relied on by the Supreme Court for spelling out a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. The court held it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation.
- **Bijoe Emmanuel vs State of Kerala, AIR 1987:** In this case, it has been held that there is no provision of law which obliges anyone to sing the National Anthem nor is it disrespectful to the National Anthem if a person who stands up respectfully when the National Anthem is sung does not join the singing.
  Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing. It was observed that there was no law enacted by Parliament making it obligatory to comply with article 51A(a). The Supreme Court allowed the petition filed by the children and directed the authorities to re-admit the children into the school.

5.3. Recent Developments

- A plea was filed before SC to direct the Central government to frame a national policy under Article 51A to promote and propagate the National Anthem, the National Flag and a 'national song'. However, the court did not accept the plea. It said that Article 51A only mentions National Flag and National Anthem and does not refer to a national song.

  Moreover, **Prevention of Insults to National Honour Act, 1971** (amended in 2005) prohibiting the desecration of or insult to the country's national symbols, including the National Flag, The Constitution and the National Anthem is already in place.

- Recently, the State of Karnataka proposed a new flag of the State. Apart from the contentions raised regarding unity and federalism, several quarters voiced their opposition to the move on the premise that it is disrespectful to national flag and hence undermines Fundamental Duty.

  However, SC in S.R. Bommai v/s Union of India case had stated that federalism is a basic feature of the Constitution and States are supreme in their sphere. So, State flag is not unauthorized. However, the manner in which State flag is hoisted should not dishonor the national flag. Thus, demands to withdraw the state flag do not hold merit on the ground of fundamental duty.

6. Criticism of Fundamental Duties

The Fundamental Duties mentioned in Part IVA of the Constitution have been subjected to criticism on the basis of the following:

a) The list of duties is not exhaustive since some key duties are found amiss like casting vote, family planning etc.
b) Duties as enshrined in the Constitution represent no consistent underlying theme.
c) They have been criticized as being vague, ambiguous and mere moral percepts having little practical value due to their non-enforceable character. For instance, following the noble ideals of the freedom struggle, the phrase 'composite culture' etc.

Student Notes:

d) Some critics feel that it would have been more appropriate to include duties alongside FRs since adding Fundamental Duties in a separate part of the Constitution has reduced their value.

7. Significance of Fundamental Duties

Fundamental Duties were incorporated in the constitution through 42nd Amendment Act, 1976 with the purpose to:

- Promote patriotism in citizens
- Help them to follow a code of conduct that would strengthen the nation
- Protects its sovereignty and integrity
- Help the State in performing its diverse duties
- Promote ideas of harmony
- To ensure citizens commitments towards the State
- And to check indiscipline prevailing at that time

Despite the criticism from various corners, these fundamental duties have also proved significant on the following counts:

a) They remind citizens of their duties to the country, the society and fellow citizens while enjoying their rights.
b) They are an important warning against anti-social activities.
c) They are a formidable source of inspiration to the citizens and promote a sense of discipline and commitment amongst them.
d) The Supreme Court has variously used these duties to assess the constitutionality of laws enacted by the legislature.
e) Violation of fundamental duties is punishable since there are legal provisions available for their enforcement.

8. UPSC Prelims Questions

2010

1. Which reference to the Constitution of India, consider the following:
1. Fundamental Rights
2. Fundamental Duties
3. Directive Principles of State Policy
Which of the above provisions of the Constitution of India is/are fulfilled by the National Social Assistance Programme launched by the Government of India?
(a) 1 only
(b) 3 only
(c) 1 and 3 only
(d) 1, 2 and 3

Ans: (b)

2012

2. Which of the following is/are among the Fundamental Duties of citizens laid down in the Indian Constitution?
1. To preserve the rich heritage of our composite culture.
2. To protect the weaker sections from social injustice.
3. To develop the scientific temper and spirit of inquiry.
4. To strive towards excellence n all spheres of individual and collective activity.
Select the correct answer using the codes given below:
(a) 1 and 2 only
(b) 2 only

(c) 1, 3 and 4 only
(b) 1, 2, 3 and 4

Ans: **(c)**

2013

3. According to the Constitution of India, which of the following are fundamental for the governance of the country?
(a) Fundamental Rights
(b) Fundamental Duties
(c) Directive Principles of State Policy
(d) Fundamental Rights and Fundamental Duties

Ans: **(b)**

2014

4. In the Constitution of India, promotion of international peace and security is included in the
(a) Preamble to the constitution
(b) Directive Principles of State Policy
(c) Fundamental Duties
(d) Ninth Schedule

Ans: **(b)**

2015

5. 'To uphold and protect the Sovereignty, Unity and Integrity of India' is a provision made in the
(a) Preamble of the Constitution
(b) Directive Principles of State Policy
(c) Fundamental Rights
(d) Fundamental Duties

Ans: **(d)**

2017

6. Which of the following statements is/are true of the Fundamental Duties of an Indian citizen?
1. A legislative process has been provided to enforce these duties.
2. They are correlative to legal duties.
Select the correct answer using the code given below:
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2

Ans: **(d)**

7. The mind of the markers of the Constitution of India is reflected in which of the following?
(a) The Preamble
(b) The Fundamental Rights
(c) The Directive Principles of State Policy
(d) The Fundamental Duties

Ans: **(a)**

Student Notes:

2020

8. Other than the Fundamental Rights, which of the following parts of the Constitution of India reflect/reflects the principles and provisions of the Universal Declaration of Human Rights (1948)?

1. Preamble
2. Directive Principles of State Policy
3. Fundamental Duties

Select the correct answer using the code given below:

(a) 1 and 2 only
(b) 2 only
(c) 1 and 3 only
(d) 1, 2 and 3

Ans: (d)

9. UPSC Previous Years' Questions

1. Identify the major Fundamental Duties. (in about 150 words) (03/I/8b/15)
2. Enumerate the Fundamental Duties incorporated in the Constitution after the 42nd Amendment. (08/I/6a/15)

10. Vision IAS GS Mains Test Series Questions

1. Critically appraise the utility of fundamental duties in the Constitution of India.

Approach:

Identify the important issues surrounding the utility of Fundamental Duties (FDs) in the Constitution of India.

Answer:

Fundamental Duties were inserted in Article 51A through the 42nd Amendment Act. The legal utility of these duties is similar to that of the DPSP. DPSP are addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.

What is right in regard to one's self is a duty in regard to others. This way Fundamental Rights are strengthened by the Fundamental Duties.

However, this part of the constitution contains certain weaknesses, which harm its utilities. The duties enumerated are so vague that a number of interpretations are available for them. For example, cherishing the ideals of freedom movement, irrespective of the fact that the freedom movement had a number of contradictory ideals, like revolutionary terrorism and non-violence. This raises questions on which ones are to be cherished.

Some scholars questioned the utility of FD in a law abiding society. How can the state ask citizens to perform some duties until the state thinks that they are not following the law of the land?

In such a scenario, it is best that their utility be enhanced by generating awareness in the society, as NCRCW has recommended.

Student Notes:

2. While Fundamental Rights are crucial to the survival of a vibrant democracy, Fundamental Duties are equally important. While enumerating the Fundamental Duties, discuss the statement.

Approach:

- Enumerate fundamental duties summarily.
- Briefly make a comparison of Fundamental Rights and Fundamental Duties.
- Discuss the importance of Fundamental Duties for a vibrant democracy.

Answer:

Based on the suggestions of Swaran Singh Committee, 42nd Constitutional Amendment Act (1976) included ten Fundamental Duties in the constitution.

According to Article 51 A, it shall be the duty of every citizen of India to: abide by the Constitution and respect its ideals and institutions, National Flag and Anthem, cherish and follow the noble ideals that inspired the national struggle for freedom, uphold and protect the sovereignty, unity and integrity of India, defend the country and render national service when called upon to do so, promote harmony and the spirit of common brotherhood amongst the people of India, respect women, value the rich heritage and culture, protect and improve natural environment, develop scientific temper, humanism and the spirit of inquiry and reform, safeguard public property and abjure violence, strive towards excellence, provide opportunities for education to children.

Rights and duties of the citizens are correlative and inseparable. Fundamental Rights are meant for promoting the ideal of political democracy and prevent an authoritarian and despotic rule. It protects the liberties and freedoms of the people against the invasion by the State. They further limit the arbitrary powers of state, and ensure some basic inalienable rights for the development of the people. While Fundamental duties act as reminder to citizens that while enjoying their rights, they should also be conscious of duties towards their country, society and fellow citizens. Thus, they instill democratic ethos by invoking duty based approach.

They serve as a warning against the anti-national and antisocial activities and serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are not mere spectators but active participants in the realisation of national goals.

In 1992, Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such law to be reasonable in relation to Article 14 or Article 19 and save such law from unconstitutionality.

Thus, they are equally important, if not less than fundamental rights in sustaining democracy. They invoke and stir conscience and thus build a proactive value system in the people unlike the reactive nature of fundamental rights.

3. Fundamental Duties, though significant, have certain limitations. Examine.

Approach:

- The first part of the answer, after briefly introducing fundamental duties, should focus on its importance.
- The second part should contain the primary drawbacks which hinder its unanimous acceptance.

Answer:

Student Notes:

The fundamental duties were enshrined in the constitution via the 42nd amendment (1976). They aim at presenting a set of obligations for every citizen of India.

Its continuance since decades speaks of its relevance. Its serves as a reminder to the citizens that while enjoying their rights, they must be aware of their duties.

The fundamental duties have underpinned various legislative developments.

The judiciary has also several times, found consolations in the projections of the FDs.

Additionally the way of natural justice is propagated amongst the citizens.

The anti-national &anti-social activities are restrained under the umbrella of fundamental duties.

However, there are certain inhibitions which affect its universal acceptability. They are

- Primarily non justiciable, flouting of the fundamental duties doesn't draw legal action.
- The exact nature of the fundamental duties seems to be lost amongst the vague descriptions, hence its impact is narrow
- As not many initiatives are available for creating awareness regarding its importance, conscious realisation of fundamental duties is absent amongst the citizens.
- Being part of the appendage to part IV of the constitution, diminishes the merit of the FDs as it lacks the importance ordained upon the FRs.

Inspite of the restrictions which mellow down the true essence of FDs, a developing nation like India requires a consolidated effort to balance the rights and duties of a citizen.

4. The value of fundamental duties lies in establishing a democratic balance by making the people conscious of their duties equally as they are conscious of their rights. Analyze.

Approach:

- Briefly describe fundamental duties and their broad features.
- Highlight the significance of fundamental duties in establishing a democratic balance.
- Discuss the critique of the fundamental duties.
- Conclude by suggesting a few more duties to add.

Answer:

The Fundamental Duties (FDs) were added in Part IV A of the Constitution of India by the 42nd Amendment on the recommendations of the Swaran Singh Committee. Their inclusion is inspired by the erstwhile USSR Constitution and the rule of jurisprudence i.e. where there is a right there must be a corresponding duty. .

Salient features of FDs

- A mixture of moral liabilities (that cherish ideals of freedom struggle) and civic duties (that respect the Constitution).
- Codification of tasks, which have historically been integral to the Indian way of life.
- Applicable for citizens only.

Student Notes:

- Non-justiciable.

The Fundamental Duties maintain a democratic balance, as they are complementary to Fundamental Rights which guarantee **constitutional** rights of the citizens against the State and the DPSPs that impose **moral** duties upon the State. Fundamental Duties gain significance, as they:

- Remind citizens of their duties while enjoying rights – therefore help strengthen democracy.
- Serve as a warning against anti-national and anti-social elements.
- Become source of inspiration for citizens, making them active participants in realization of national goals.
- Can be used by the courts to determine the Constitutional validity of a law.
- Can be enforced by law of the Parliament – e.g. the Prevention of Insults to National Honor Act, 1971.

However, their balancing role is questioned due to following reasons:

- The list of duties is not exhaustive – important duties such as paying taxes, casting vote etc. are not included.
- Being non-justiciable, they are reduced to a code of moral precepts.
- Some duties are vague, ambitious and difficult for the common man to understand – e.g. promote scientific temper.
- FDs should have been added after part III to keep them at par with Fundamental Rights.

Though introduced by an amendment in the wake of emergency, the subsequent government did not undo this change. The 86th Constitutional Amendment further added an 11th duty. This strengthens the societal and political acceptance and approval of having a set of duties enshrined in the Constitution. The Parliament should timely review the scope of duties to retain their essence.

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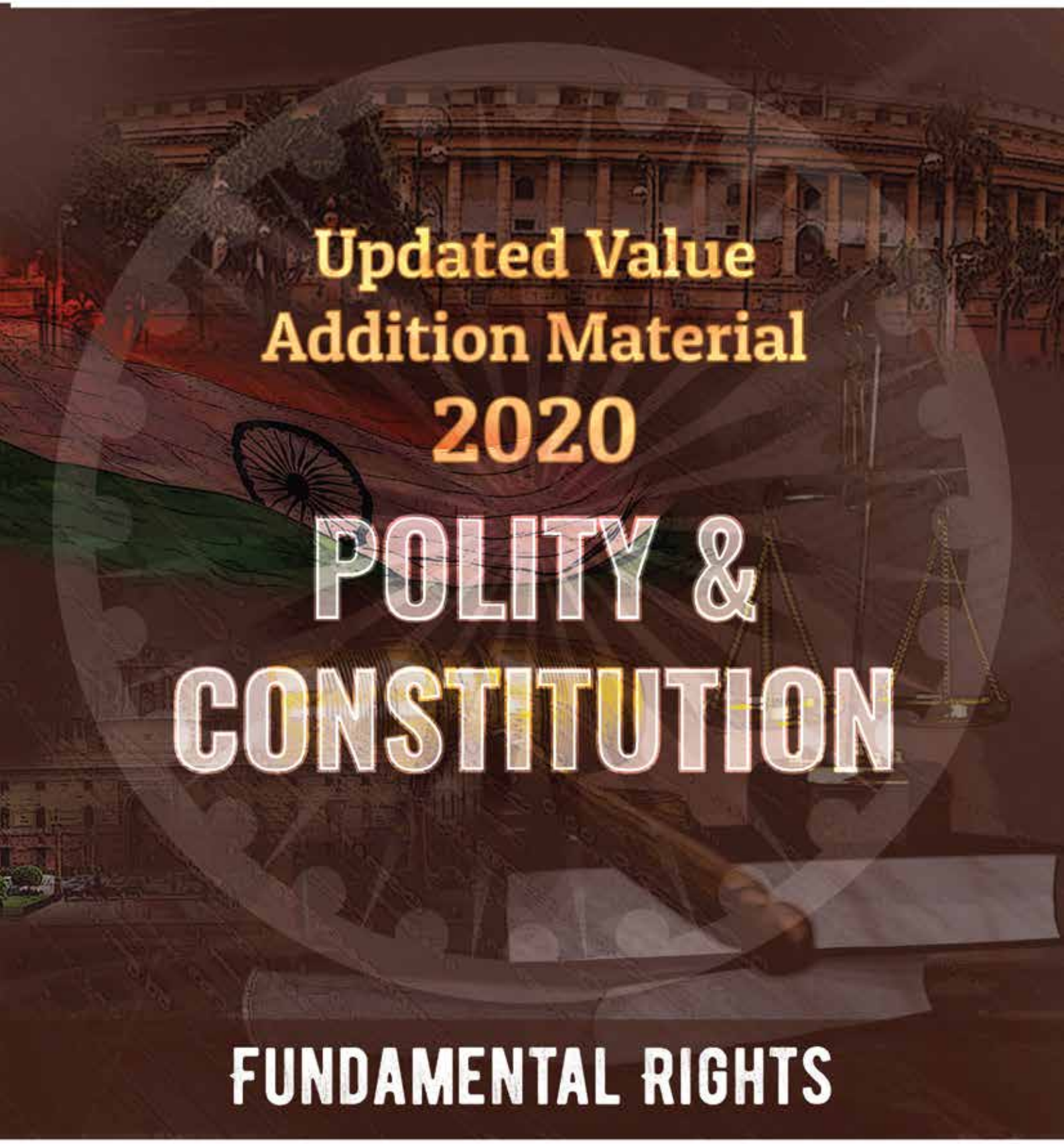
INSPIRING INNOVATION



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POLITY & CONSTITUTION

FUNDAMENTAL RIGHTS

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FUNDAMENTAL RIGHTS

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1. Concept of Rights

Rights are entitlements to perform or not to perform certain actions, OR to be or not to be in certain states; OR entitlements that others perform or not perform certain actions OR to be or not to be in certain states.

The modern understanding of what actions are permissible and which institutions are just, are dominated by the discourse on rights. Rights structure the form of governments, the content of laws, and the shape of morality. By accepting a set of rights, one approves a distribution of freedom and authority, and also endorses a certain view around what may, must, and must not be done.

Rights acquire meaning only in context of a society. Each society makes certain rules to regulate the conduct of its constituents. These rules inform its constituents about what is right and what is not. The things that are recognized by the society as rightful become the basis of rights. This is why the notion of rights changes over a period of time and varies from one society to another.

It is only when the socially recognized claims are written into a law, that they acquire real force. In absence of this, they merely remain what are called natural or moral rights. When laws recognize some claim, they become enforceable and their enforcement can then be demanded. When fellow citizens, institutions or the government do not respect these rights, it is referred to as the violation or infringement of our rights. In such circumstances, citizens can approach courts to protect their rights. Thus, rights can be defined as the **reasonable claims of persons recognized by society and sanctioned by law**.

2. Categories of Rights

CATEGORIES OF RIGHTS

Rights are commonly classified together on the basis of common attributes. For instance, they can be compartmentalized according to:

- ***Who*** is alleged to have the right: For example, Children's rights, animal rights, workers' rights, states' rights, the rights of peoples etc.
- ***What actions or states or objects*** the asserted right pertains to: Rights of free expression, to pass judgment; rights of privacy, to remain silent; property rights, bodily rights etc.
- ***Why*** the right-holder (allegedly) has the right: For instance, Moral rights are grounded in moral reasons, legal rights derive from the laws of the society, customary rights exist by local convention.
- ***How the asserted right can be affected*** by the right-holder's actions: The inalienable right to life, the forfeitable right to liberty, and the waivable right that a promise be kept.

Sometimes, these categories have sub-categories. For instance, natural rights are the sub-class of moral rights that humans have because of their nature. It is therefore important to highlight a few key rights available to right-holders.

Student Notes:

2.1. Natural Rights

These are status-based rights that become available to the individuals by virtue of their birth as human beings. They are supposed to be given by nature or GOD to human beings and thereby, are intrinsic to human lives. They are not conferred by law but only enforced by law. For example, Right to Life and Liberty.

2.2. Human Rights

Human rights are those rights which are considered so fundamental to human dignity and well-being that every person should possess these rights. These are plural, universal and high-priority rights that aspire to protect all people everywhere from severe political, legal, and social abuses. Examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, and the right to education.

It is a common assumption that natural rights theory underlines the contemporary human rights doctrine. Consequently, many scholars tend to conflate Human Rights with Natural Rights. Additionally, the formulation of 'rights of man' creates further confusion. However, there are subtle differences between the three.

Natural rights stress upon a grounding in only human nature and lay emphasis on the endowment of humans with rights by nature. The 'rights of man' suggests man as the source of rights and hence, views man not only as merely natural but also rational and moral.

In contrast, Human Rights like 'rights of man' suggest derivation of rights from the complex moral notion of humanity, but not as explicitly. The normative justification of human rights is rather more complex in the sense that these rights are thought to be grounded in multiple aspects like prudential reasons, practical reasons, morality, human well-being, fundamental interests, human needs, agency and autonomy, dignity, fairness, equality and positive freedom.

2.3. Legal rights

Legal rights are rights that exist under the rules of legal systems or by virtue of decisions of suitably authoritative bodies within them. To put simply, legal rights are those rights, which are conferred by the statutes enacted by the legislature.

2.4. Constitutional Rights

These are the rights enshrined in the constitution. Some are given special status like Fundamental Rights, while others enjoy ordinary status only. For instance, at present, right to property is merely a constitutional right under the Indian Constitution.

2.5. Civil and Political Rights

These rights are the cornerstones of modern liberal constitutions across the world. Those rights concerned with the structures of government and the institutions of public power are labelled political rights. While the ones inherently connected to the concept of real citizenship and participation in the political process are called as civil rights.

Civil rights are the basic legal rights a person must possess in order to ensure equal citizenship for all citizenry. They are the rights that constitute free and equal citizenship and include personal, political, and economic rights. These are those rights, which are available to the citizens of a country and are conferred to them either by law of the land or the constitution itself. For example, Right to Freedom.

Until the middle of the 20th century, civil rights were usually distinguished from 'political rights'. The former included the rights to own property, make and enforce contracts, receive due process of law, and worship one's religion; freedom of speech and the press. But they did not include the right to vote or to hold public office. These were thought to be political rights, reserved to adult males.

The civil-political distinction was used to classify citizens into different categories. However, the ideology that a certain segment of the adult citizenry could legitimately possess one bundle of rights, while another segment would have to make do with an inferior bundle, became increasingly implausible. In the end, the civil-political distinction has not withstood the test of time.

Student Notes:

2.6. Negative and Positive Rights

The conceptual understanding of positive and negative rights revolves around their application. The holder of a negative right is entitled to non-interference, while the holder of a positive right is entitled to provision of some good or service. A right against assault is a classic example of a negative right, while a right to welfare assistance is a positive right.

Negative rights protect us from against something and are hence, easier to enforce, because it simply requires striking down the action that violated them. In contrast, positive rights are difficult to implement since it may be difficult or even impossible to fulfill everyone's positive rights if the sum of people's claims outstrips the resources available.

3. Understanding Fundamental Rights

Some rights, which are **fundamental to our life**, are given a **special status**. They are not only listed in a constitution, but also specially protected. Such rights are called **Fundamental Rights**. They are called "fundamental" because they are essential for the all-round development of an individual and also because they are guaranteed by the fundamental law of the land i.e. the constitution itself.

In the Constitution of India, Fundamental Rights are enshrined in Part III, from Articles 12 to 35. These not only guarantee political freedom in the country, but are also a check against arbitrary actions of the state. Further, they help in establishing the Rule of Law instead of Rule of Men, which means that the state cannot act in an arbitrary manner.

In fact, Fundamental Rights serve as the foundation of the Rule of Law by acting as a check on the arbitrary action of the state. Further, an independent judiciary, with the power of judicial review, acts as a protector of the Fundamental Rights as well as a guardian and guarantor of the Rule of Law.

4. Evolution of Fundamental Rights

The inspiration for incorporating fundamental rights into the Constitution was the result of a long struggle for freedom and learning from the experiences of world's leading democracies particularly from the Constitution of USA i.e. the Bill of Rights.

In 1928, a series of All Party Conferences headed by Motilal Nehru drafted a constitutional scheme, called the Nehru Report. It called for establishing India into a Parliamentary democracy and giving protection to minorities.

The famous resolution of 1931 Karachi Session further committed itself to issues of individual rights and liberties. This included fundamental civil rights, socio-economic rights like ensuring minimum wages and abolition of untouchability and serfdom.

However, the Simon Commission and the Joint Parliamentary Committee, which were responsible for the Government of India Act, 1935, had rejected the idea of enacting declarations of fundamental rights on the ground that "abstract declarations are useless, unless there exist the will and the means to make them effective". But nationalist opinion, since the time of the Nehru Report, was in favour of a Bill of Rights because the experience gathered from the British regime was that a subservient Legislature might serve as a handmaid to the Executive in committing inroads upon individual liberty.

Regardless of the British opinion, therefore, the makers of our Constitution adopted Fundamental Rights to safeguard individual liberty and also for ensuring (together with the Directive Principles) social, economic and political justice for every member of the community. The Constituent Assembly was also inspired by the Bill of Rights of USA and UK as well as France's Declaration of the Rights of Man.

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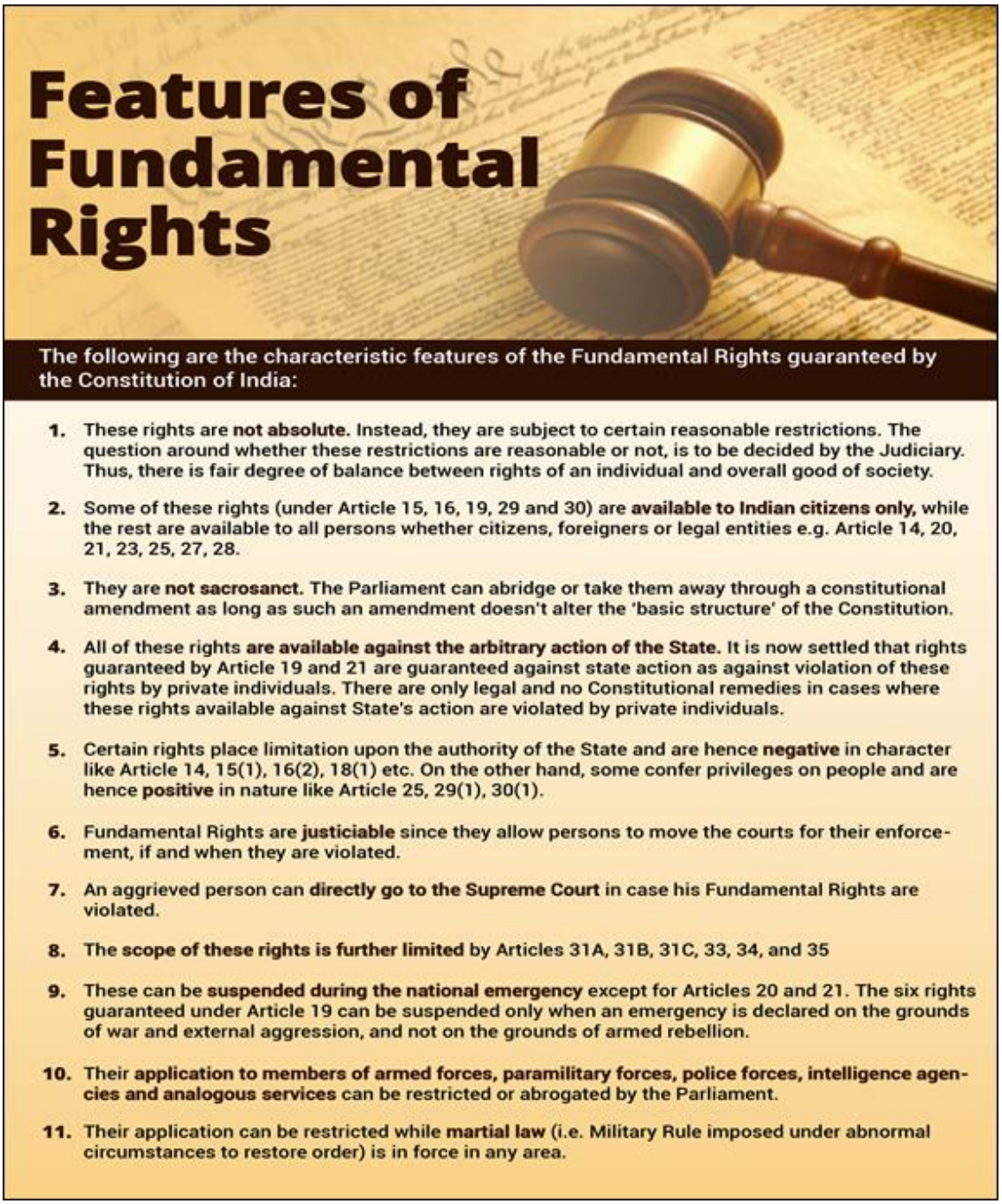

5. Classes of Fundamental Rights

The fundamental rights as enshrined in part III are generally categorized into following six classes:

- Right to Equality (Art. 14-18)
- Right to Freedom (Art. 19-22)
- Right against Exploitation (Art. 23-24)
- Right to Freedom of Religion (Art. 25-28)

- Cultural and Educational Rights (Art. 29-30)
- Right to Constitutional Remedies (Art. 32)

Student Notes:

6. Details of Fundamental Rights

6.1. Article 12 – Definition of State

6.1.1. Text

In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

6.1.2. Description

Article 12 seeks to define the scope of "State" for the purpose of Part III of the Constitution. A citizen can approach the Supreme Court on violation of Fundamental Rights by any of the bodies included within the definition of the State. In other words, for the purposes of Part III of the constitution, the state comprises of the following:

1. Government and Parliament of India i.e the Executive and Legislature of the Union
2. Government and Legislature of each State i.e the Executive and Legislature of the various States of India
3. All local or other authorities within the territory of India
4. All local and other authorities who are under the control of the Government of India

It includes the Parliament, Union Government, State legislature, State Executive, Local Authorities etc.

Local Authority: The term Local authority includes the following:

- **Local government:** According to Entry 5 of the List II of VII Schedule 'local government' includes a municipal corporation, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
- **Village Panchayat:** In the case of Ajit Singh v. State of Punjab, it was held that within the meaning of the term local authority, village panchayat is also included.

In *Mohammad Yasin v. Town Area Committee*, the Supreme Court held that to be characterized as a 'local authority' the authority concerned must;

1. Have a separate legal existence as a corporate body
2. Not be a mere government agency but must be legally an independent entity
3. Function in a defined area
4. Be wholly or partly, directly or indirectly, elected by the inhabitants of the area
5. Enjoy a certain degree of autonomy (complete or partial)
6. Be entrusted by statute with such governmental functions and duties as are usually entrusted to locally (like health, education, water, town planning, markets, transportation, etc.)
7. Have the power to raise funds for the furtherance of its activities and fulfilment of its objectives by levying taxes, rates, charges or fees

Other Authorities: The term 'other authorities' in Article 12 has not been defined either in the Constitution or in the general clauses Act, 1897 or in any other statute of India. Therefore, its interpretation has caused a good deal of difficulty, and judicial opinion has undergone changes over time. Judicial pronouncements have given a wide scope to the expression "other authorities" but still the list is not exhaustive.

The functions of a government can be performed either by the governmental departments and officials or through autonomous bodies which exist outside the departmental structure. Such autonomous bodies may include companies, corporations etc.

Student Notes:

DOES STATE INCLUDE PRIVATE BODIES ALSO?

Increasing delegation of public functions to the private bodies including management of public resources has led to a persistent question whether private companies, corporations, cooperatives etc., performing such functions are included under the definition of state under Article 12. Such questions have come up before the courts, which have been decided on a case by case basis whether a body is to be included under the definition of state.

The judgment that comes closest to touching upon this question is where both Delhi HC and Indian Supreme Court ruled that CAG can audit private telecom firms that share their revenues with government. As per the courts, such a scrutiny is crucial for ensuring that government got its "legitimate share" for allowing private telecom operators to use valuable natural resources.

The Court observed that while dealing with a natural resource belonging to people, it has to give a purposive interpretation to Article 149, which deals with duties and powers of CAG. The ruling has extended the reach of CAG from government and public sector companies to any entity that may be using a public resource in its business and sharing revenue with government.

However, it has not commented upon whether and under what conditions a private entity will be considered as state. Unfortunately, a conclusive answer is yet to be decided.

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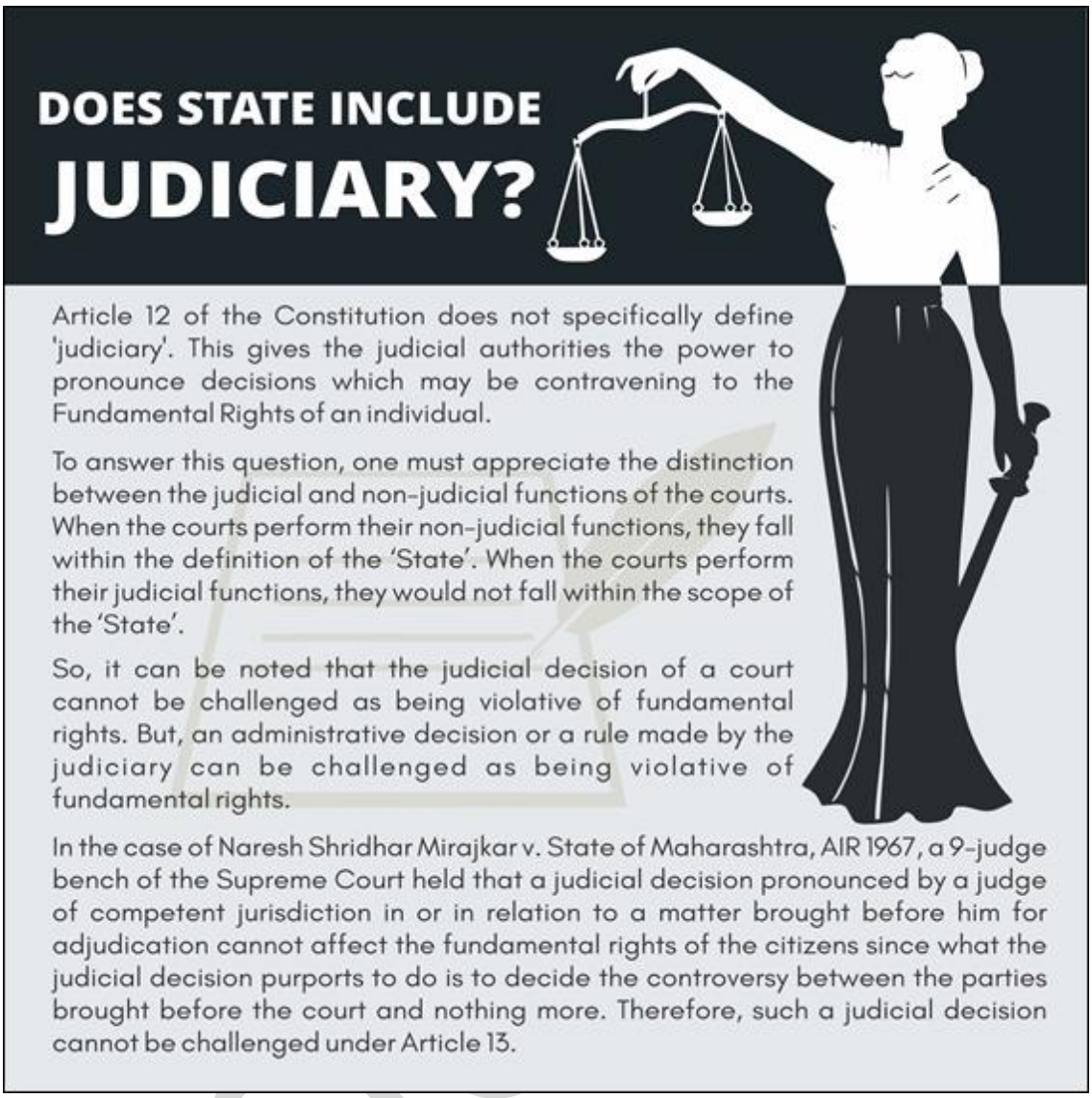


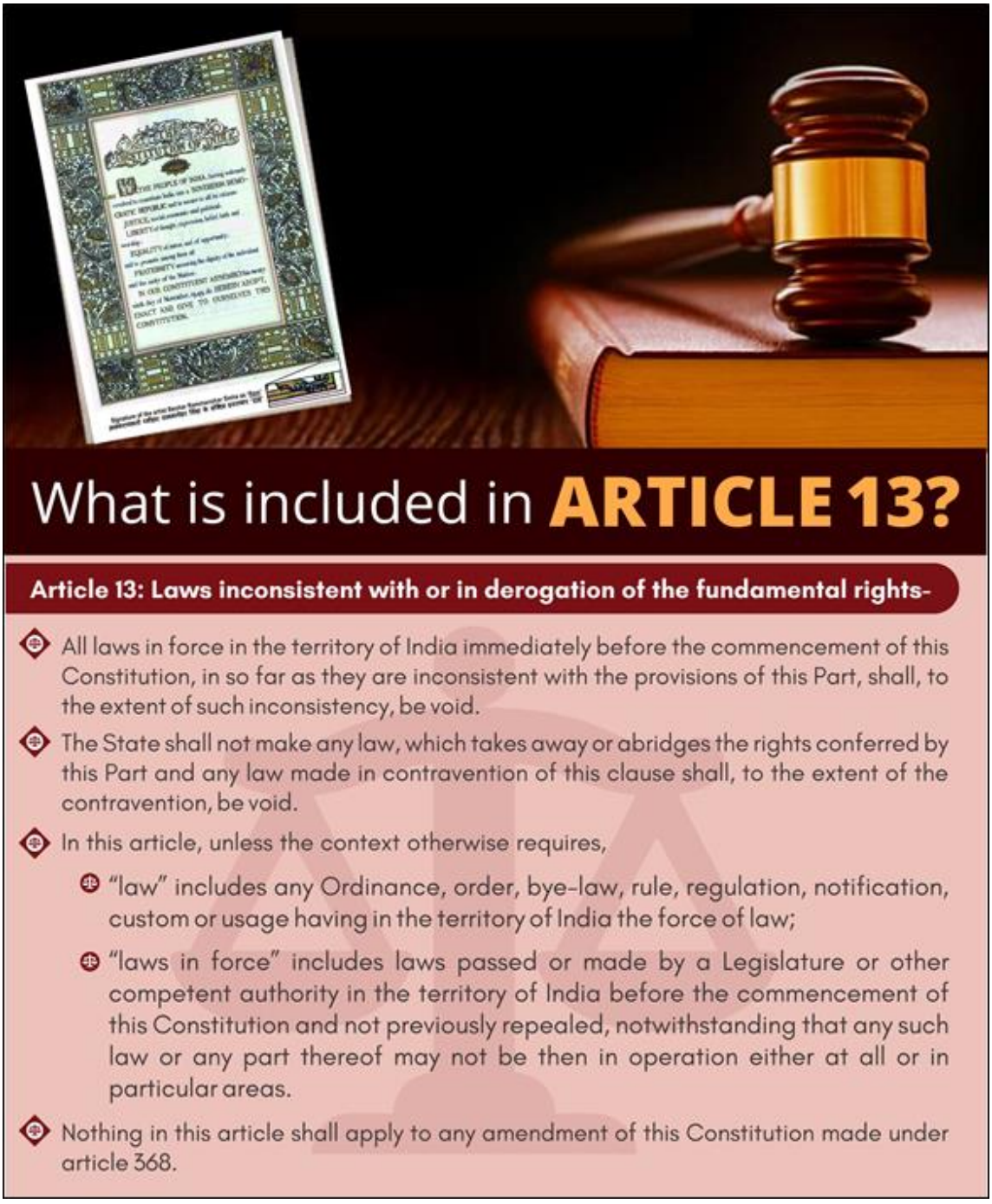
Hence, for the purpose of determining what 'other authorities' fall under the scope of State, the judiciary has given several judgements as per the facts and circumstances of different cases:

- In the **University of Madras v. Shanta Bai**, the Madras High Court evolved the principle of 'ejusdem generis' i.e. of the like nature. It means that only those authorities are covered under the expression 'other authorities' which perform governmental or sovereign functions. Further, it cannot include persons, natural or juristic, for example, Unaided universities.
- In the case of **Ujjammabai v. the State of U.P.**, the court rejected the above restrictive scope and held that the 'ejusdem generis' rule could not be resorted to the in interpreting 'other authorities'. The bodies named under Article 12 have no common genus running through them and they cannot be placed in one single category on any rational basis.
- In **Rajasthan Electricity Board v. Mohan Lal**, the Supreme Court held that 'other authorities' would include all authorities created by the constitution or statute on whom powers are conferred by law. Such statutory authority need not be engaged in performing government or sovereign functions. The court emphasized that it is immaterial that the power conferred on the body is of a commercial nature or not.
- In the case of **R. D. Shetty v/s International Airport Authority**, the Court laid down five tests for a body to be considered "other authority":
  - Entire share capital is owned or managed by State.
  - It enjoys monopoly status.

- Department of Government is transferred to Corporation.
- Functional character is governmental in essence.
- Deep and pervasive State control.

Student Notes:

6.2. Article 13



6.2.1. Description

Article 13 deals with powers of judicial review. It makes the judiciary the guardian of Fundamental Rights in the country. It aims to secure the paramount status of the Constitution in case of Fundamental Rights. Judicial review is the power of the judiciary to declare any act of legislature as ultra vires (beyond the competence of the legislature to make the law) or null and void (illegal).

Student Notes:

6.2.2. Judicial Review

It is the power of the judiciary to declare any act of Parliament and State Legislature as "null & void" (particular law or a part of it not valid) or "ultra-vires" (doesn't have authority).

It emerged in USA as an implied power of judiciary in Marbury v/s Madison case, 1803.

Indian Constitution grants the power of judicial review against executive as well as legislative explicitly to protect the fundamental rights.

6.2.2.1. Provisions

Pre-constitution laws and Fundamental Rights: The pre-constitution laws are not declared invalid ab-initio (from the start). They are invalid only when they are inconsistent with any of the fundamental rights.

6.2.3. Doctrine of Eclipse

Article 13(1) states that pre-constitutional laws will be void if they are inconsistent with any Fundamental Right. However, if such a Fundamental Right, which 'eclipses' the pre-constitutional law, is amended to the extent that the pre-constitutional law is no more inconsistent with the amended Fundamental Right, then such a law becomes valid again. Such a law is said to have come out of the eclipse caused by the Fundamental Rights. This judgment was given in Bhikhaji Narayan case(1955).

In the State of Gujarat vs Ambika Mills (1974) case and in Dulare Lodh vs ADJ Kanpur (1984) case, the Supreme Court opined that the Doctrine of Eclipse is applicable to both pre and post-constitutional laws.

However, this stance was reversed in the K.K. Poonacha vs State Of Karnataka & Others (2010) case, wherein the Supreme Court observed that the doctrine of eclipse will apply to only pre-Constitution laws which are governed by Article 13(1) and would not apply to post-Constitution laws which are governed by Article 13(2).

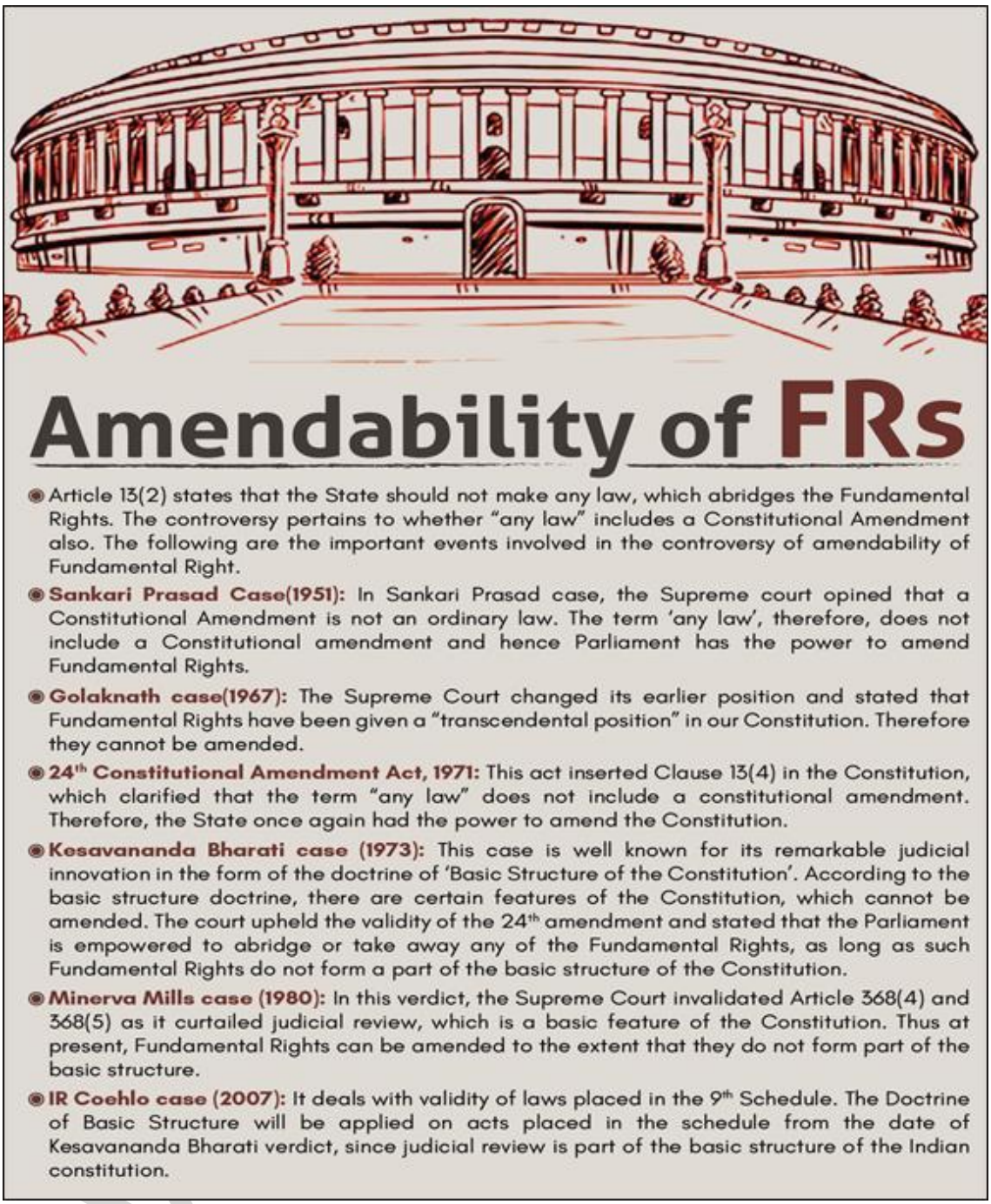
6.2.4. Doctrine of Severability

If any legislature passes a law that violates any provision of the Constitution, then such a law is declared void by the Court "to the extent of such inconsistency". Instead of declaring the entire law as illegal, only that portion of the law may be removed, which is inconsistent. This is the doctrine of severability.

In Minerva Mills Case (1980), the Supreme Court invalidated clause 4 and 5 of Article 368, which were added by 42nd Amendment Act in 1976.

6.2.4.1. Motor General Trades v/s State of A.P. 1984

- If a valid section of a law can be separated from the invalid section and the valid section can be considered to form an independent statute, then this section remains valid.
- If the valid and invalid sections are so mixed up that they cannot be separated then the whole is declared void.
- After omitting the invalid part, if what remains is very thin and what emerges out is something different, then the entire law is invalid.



6.2.5. Doctrine of Waiver

Doctrine of waiver means voluntary relinquishment of a known right. It is when a person intentionally and with full knowledge, gives away his right to exercise or chooses not to exercise that right which the person would otherwise possess. By waiving a right, a person no longer gets to assert that right and is precluded from challenging the constitutionality of that law for the benefit of which, the right is waived.

This doctrine is based on the principle that a person is the best judge of his own interest and when given full knowledge, the person should be allowed to decide for himself. In India, a person can waive rights conferred by a statute or rights arising out of a contract, but cannot waive constitutional rights or rights guaranteed by the constitution itself.

Student Notes:

6.2.6. Doctrine of Basic Structure

According to this doctrine there are certain basic structures or basic features of the Constitution, which can't be abridged or taken away by the Parliament by way of constitutional amendment.

Through various verdicts the judiciary has enunciated the following, among others, as basic features of the Constitution:

- Supremacy of the Constitution
- Republican and Democratic form of government
- Secular character
- Separation of Powers
- Judicial Review
- Sovereignty
- Rule of Law
- Principle of Equality

6.2.7. Doctrine of Prospective Over-Ruling

An innovation of the United States of America, this was first pronounced by the Supreme Court in the Golaknath case, 1967. The SC can overrule its earlier judgment, but the impact will apply from the prospective effect and not retrospectively.

6.3. Article 14 – Right to Equality

6.3.1. Text

The State shall not deny to **any person** Equality before Law or Equal Protection of Law within the territory of India.

The concept of equality before law is an element of Rule of Law given by A.V. Dicey. It consists of the following three elements:

(1) **Absence of arbitrary power,** that is, no man can be punished except for a breach of law.
(2) **Equality before law,** that is, subjecting all citizens to the law equally.
(3) **Constitution is not the source,** but the consequence of rights of the individual as individual rights are enjoyed even before the emergence of the Constitution.

The first and the second notion apply in India but not the third. In the Indian system, the Constitution is the source of individual rights. The Supreme Court has stated that Rule of Law is a basic feature of our Constitution.

Student Notes:

6.3.2. Description

6.3.2.1. Equality before Law

- This implies that all citizens are equal in the eyes of law. It means that-
  - There will be **absence of any special privileges** in favour of any person,
  - There will be **equal subjection of all persons** to the ordinary law of the land administered by ordinary law courts,
  - There will be **no person above the law,** whether rich or poor, high or low, official or non-official.
- It has been borrowed from the **British tradition**.
- It is negative in its orientation as the State is **restricted from making any discrimination between two citizens**.

6.3.2.2. Equal Protection of Law

- It implies that the State should ensure that every citizen gets equal protection of law and no one should be deprived of justice because of poverty or any other reason. It means that-
  - There will be **equality of treatment under equal circumstances**, both in the privileges conferred and liabilities imposed by the laws.
  - The **like shall be treated alike** without any discrimination. As per the Supreme Court, where equals and unequals are treated differently, Article 14 does not apply.
- It is borrowed from the **American Constitution**.
- It is a positive concept as it implies that people **who are in similar circumstances will be treated similarly**, but differently from people in different circumstances.

6.3.3 Applicability

Art. 14 grants Right to Equality to all persons whether Indian citizens, foreigners, or even legal entities such as a Company. This right is available against state action only.

6.3.4. Exceptions

- Under **Article 31-C,** the laws made by the state for implementing **DPSPs** contained in **Article 39 (b)** and **Article 39 (c)** cannot be challenged on the ground that they are violative of Article 14.
- The **President of India** and **Governors of States** enjoy immunity from prosecution under **Article 361**.
- Under **Article 361-A**, no person shall be punished for publishing a substantially true report of any proceedings of any legislature in any media (newspaper/ radio/ television).
- The **MPs** and **MLAs** enjoy privileges in the legislature (**Article 105** and **194**).
- The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
- The **UNO and its agencies** enjoy the diplomatic immunity.

6.4. Article 15 – Right against Discrimination on Certain Grounds

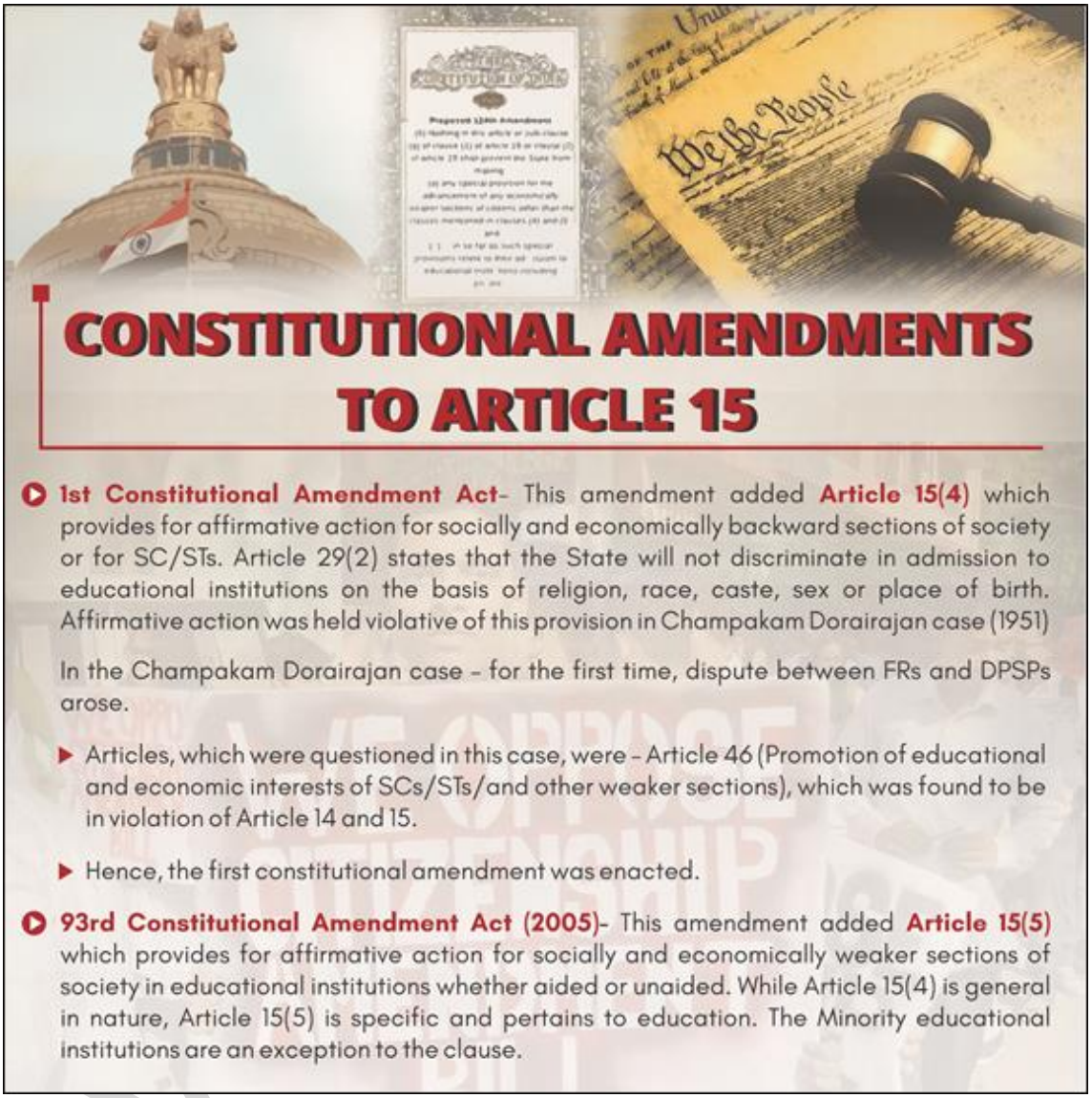
6.4.1. Text

- The State **shall not discriminate** against any citizen on **grounds only of religion, race, caste, sex, place of birth or any of them**
- No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, **be subject to any disability**, liability, restriction or condition with regard to—
  a) access to shops, public restaurants, hotels and places of public entertainment; or
  b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Student Notes:

6.4.2. Applicability

This right is available to Indian citizens only. Hence foreign nationals can be discriminated against vis-à-vis Indian citizens by the Indian state. Similarly, legal entities can also be discriminated against. Further while Art. 15(1) is a direction only to the State, Art. 15(2) is available against private individuals as well.



6.4.3. Exceptions

- The state can make any **special provision for women and children**. E.g. reservation of seats for women in local bodies or provision of free education for children.
- The State from making any special provision for the **advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes**. E.g. reservation of seats in legislatures and public educational institutions.
    - The State can make any special provision for them in so far as such special provisions relate to their **admission to educational institutions including private educational institutions**, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.
- The State can make special provisions for the **advancement of any economically weaker section of citizens**, including reservations in educational institutions.

Student Notes:

6.4.4. Reservation Policy

It is a form of affirmative action whereby a percentage of seats are reserved in the government service and educational institutions for the socially and educationally backward communities and the Scheduled Castes and Tribes who are inadequately represented in these services and institutions.

- Reservation is provided to **Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs**) at the rate of **15%, 7.5% and 27%** respectively in case of direct recruitment on all India basis by open competition.
- **Persons with Disability Act, 1995** provides for reservation for persons with disabilities in India. Under the Act, persons with disabilities got 3% reservation in both government jobs and higher educational institutions.
- **10% Reservation t**o Economically Weaker Sections (EWS) was recently provided by 103rd Constitutional Amendment Act, 2018. It amended Articles 15 and 16 to provide reservation to economically weaker section in admission to educational institutions and government posts.

Judicial pronouncements regarding Reservation

- **State of Madras vs Champakam Dorairajan (1951)**
  - The Supreme Court upheld decision of Madras High Court, which struck down a Government Order of 1927 regarding caste-based reservation in government jobs and educational institutions.
    - This judgement also made basis of of adding Article 15(4) by the First Constitutional Amendment Act, 1951.
- **Indra Sawhney vs. Union of India (1992)**
  - The Judge Constitution Bench of the Supreme Court by 6:3 majority held that the decision of the Union Government to reserve 27% Government jobs for backward classes – with elimination of Creamy Layer- is constitutionally valid.
  - The reservation of seats shall only confine to initial appointments and not to promotions, and the total reservations shall not exceed 50 per cent.
- **M. Nagaraj vs. Union of India (2006)**
  - A five-judge constitution bench of the Supreme Court validated parliament's decision to extend reservations for SCs and STs to include promotions with three conditions:
    - State has to provide proof for the backwardness of the class benefitting from the reservation.
    - State has to collect quantifiable data showing inadequacy of representation of that class in public employment.
    - State has to show how reservations in promotions would further administrative efficiency.
- **Jarnail Singh v. Lachhmi Narain Gupta (2018)**
  - The Supreme Court held that the government **need not collect quantifiable data to demonstrate backwardness** of public employees belonging to the Scheduled Castes and the Scheduled Tribes (SC/STs) to provide reservations for them in promotions.
- Recently the Supreme Court upheld **Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018**. The enactment provides for **consequential seniority** to SCs and STs with restrospective effect from 1978.
  - Consequential seniority allows reserved category candidates to retain seniority over general category peers. If a reserved category candidate is promoted before a general category candidate because of reservation in promotion, then for subsequent promotion the reserved candidate retains seniority. In effect, consequential seniority

undoes the 'catch-up rule' that allowed general category candidates to catch-up to reserved category candidates.

6.4.4.1 Controversy related to reservation in Private Educational Institutions

- **Inamdar vs. State of Maharashtra** and **TMA Pai Foundation vs. State of Karnataka**: The Supreme Court opined that government can not introduce quota in private unaided educational institutions as it was violative of Fundamental Rights under Article 19(1)(g), that is, freedom of profession.
  - The 93rd amendment was enacted to override this verdict.
  - Supreme Court upheld the validity of the above constitutional amendment.
  - The central government then passed Central Educational Institutions Act, 2006 to give effect to the provisions of the Constitution.
- **Ashok Kumar Thakur vs. Union of India case**: upheld the validity of 93rd amendment and Central Educational Institutions Act, 2006. The status of quota in private unaided institutions was left open to be decided in the future.
- **Society for unaided private schools for Rajasthan vs. Union of India case 2013**—upheld the validity of introduction to quota under Right to Education Act, 2009 even in private unaided institutions. Arguments given by Supreme Court:
  - Education cannot be treated as a purely commercial enterprise.
  - Article 21A is an obligation on the State.
  - Right to Education is a child-centered act rather than an institution-centered act.

6.4.4.2 Controversy related to reservation for Economically Weaker Sections

As per the amendment, up to 10% of seats may be reserved for such sections for admission in educational institutions. Such reservation will not apply to minority educational institutions. The reservation of up to 10% for the EWS will be in addition to the existing reservation cap of 50% reservation for SC, ST and OBCs. The central government will notify the "economically weaker sections" of citizens on the basis of family income and other indicators of economic disadvantage.

For the very first time, economic class is constitutionally recognized as vulnerable section & would form the basis of affirmative action programme. It is a departure from traditional centrality of caste in deciding affirmative action.

Arguments in favour of reservation based on economic status

- **Need for new deprivation assessment criteria**: Caste, while prominent cause of injustice in India, should not be the sole determinant of the backwardness of a class. This is because of the weakening links between the caste and class in changing circumstances.
- In **Ram Singh v. Union of India** (2015), SC asserted that social deficiencies may exist beyond the concept of caste (e.g. economic status / gender identity as in transgenders). Hence, there is a need to evolve new yardsticks to move away from caste-centric definition of backwardness, so that the list remains dynamic and most distressed can get benefit of affirmative action.
- **Increasing dissatisfaction among various sections**: Politically, the class issues have been overpowered by caste issues. This has created a sense of dissatisfaction amongst communities with similar or poorer economic status but excluded from caste-based reservation.

Arguments against extending reservations on economic basis:

- **Against equality norm**: To balance the equality of opportunity of backward classes 'against' the right to equality of everyone else, a cap of 50% was put on the reserved seats. When the quota exceeds 50% limit, it breaches the equality norm.
    - In **M. Nagaraj v. Union of India** (2006), a Constitution Bench ruled that equality is part of the basic structure of the Constitution. The 50% ceiling is a constitutional requirement without which the structure of equality of opportunity would collapse.
- **No under-representation**: The upper caste is adequately represented in public employment. It is not clear if the government has quantifiable data to show that people from lower income groups are under-represented in its service.
- **Problem with the ceiling**: By fixing income ceiling for eligibility at ₹8 lakh a year — same as the 'creamy layer' limit above which OBC candidates become ineligible for reservations — a parity has been created between socially & economically backward classes with limited means.
- **Definition of EWS and allotment of quota**: The issue with current definition of EWS is that it is too broad and would include large sections of population. Further, it also puts families below poverty line and the ones with income of 8 lakh/annum in the same category.
    - Reservation for SCs/STs and non-creamy layer amongst OBCs has correlation with their respective populations. While there is no such clarity on arriving at the 10% EWS quota.
- **Challenges in the identification of beneficiaries**: In a country where taxable population is still very low due to misrepresentation of income, implementing economic eligibility criteria would be a bureaucratic nightmare.
- **'Pandora's box' of demands**: There may be demand from sections of the SCs/STs and OBCs to introduce similar sub-categorization, based on economic criteria, within their respective quotas. It might also fuel demands for new caste-based censuses to expand quota limits based on SC/ST or OBC proportions in the population, or to extend the reservations to private sector jobs. Quota in promotions may also gain widespread acceptability, both among the public and the judiciary.
- **Shrinking public sector**: With steadily shrinking jobs pool in the Central Government, Central Public Sector Enterprises (CPSEs) and even banks, 10% reservation will not fulfill expectations.
- **Anti-Merit**: In common perception, reservation has also become synonymous with anti-merit. With extension of reservation, this opinion might get further ingrained in public psyche. • Tool of populism: Offering reservations has increasingly become tool for political gains in politics. This affects their credibility as a tool for social justice.
- **Passage of the Bill**: The Bill was not circulated ahead of being introduced, it was not examined by a parliamentary committee & there was hardly any time between its introduction and final discussion.
- Also, the **Sinho Commission report of 2010**, which the Centre has been citing as the basis for its legislation to grant 10 % reservation to the EWS, never explicitly recommended a reservation for EWS but was only emphatic about ensuring that the EWS get access to all welfare schemes.

Pending Bills

The Women's Reservation Bill that is being nationally debated since 1996 is also based on the protective provisions of the Article 15. Constitution (108) Amendment Bill, which was introduced in the Rajya Sabha in 2008 was also an attempt to empower woman.

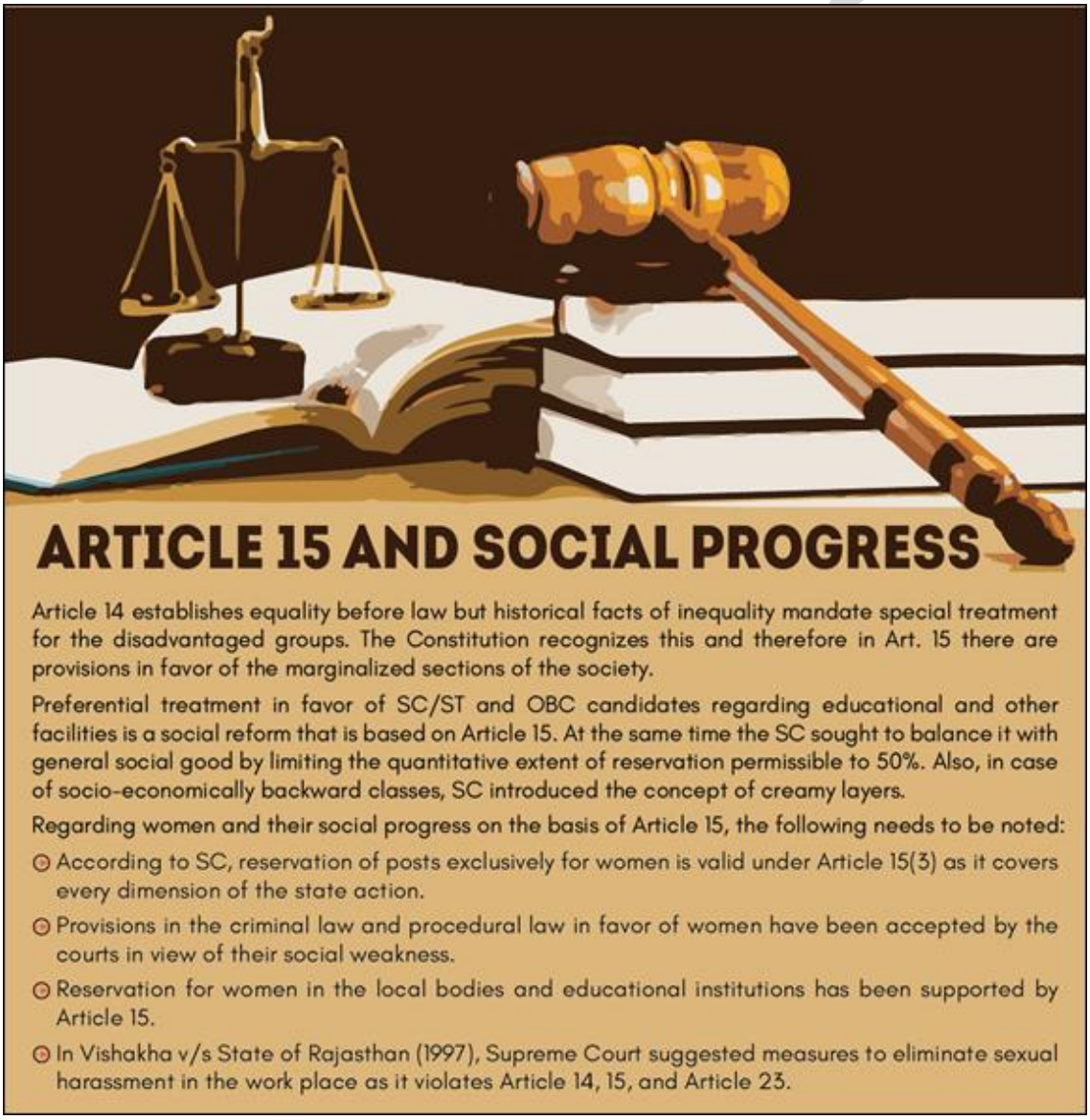
Way Forward

A 9-judge bench of Supreme Court in Indira Sawhney case (1992) had struck down a provision that earmarked 10% for the economically backward on the grounds that Constitution only provides for addressing social backwardness. However, any such step should carefully be preceded by following considerations-

Student Notes:

Student Notes:

- 50% ceiling was put in place to **check populism in granting quotas** by the political class. There must be an institutional mechanism that recommends classes for reservation.
- Based on the affidavits furnished by the candidates, **independent, transparent and non-intrusive verification methods** have to be devised so that reservation provisions cannot be misused easily.
- The logic of providing reservation to economically backward people can further be carefully extended to **exclude the creamy layers among SC/ST groups**.
- The demand for reservation must be seen in light of the quality of private sector jobs and wages available to aspirational India. The only way out of the quota quagmire is to create an enabling environment for the **formalization and creation of more and better jobs in the private sector.**
- For a long-term solution, it is important to address the major issues like caste divisions majorly in rural areas, job creation in private sector, skill creation and education.



6.5. Article 16- Right to Equality of Opportunities in Matters of Public Employment

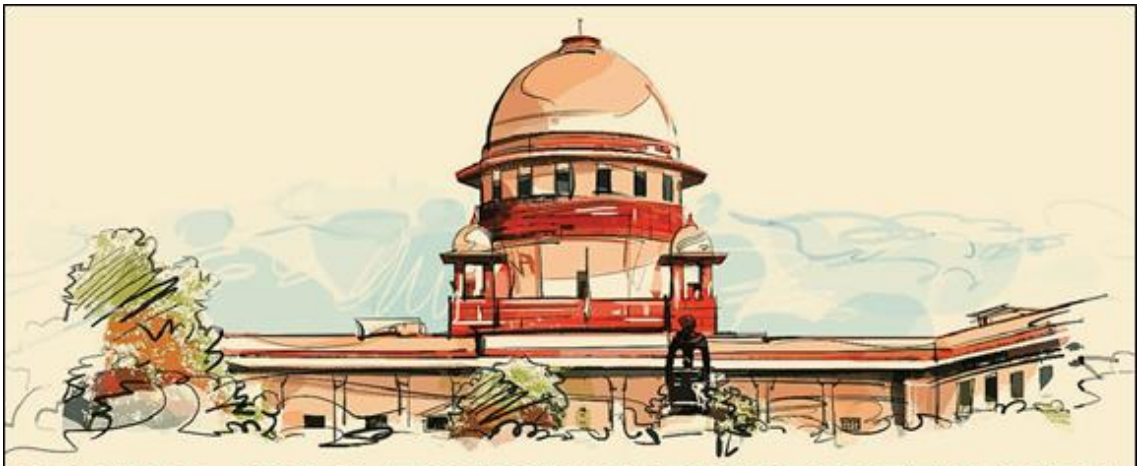
6.5.1. Text

- There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

- No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

6.5.2. Applicability

Right to equality of opportunity in matters of public employment is available only to Indian citizens.



MANDAL COMMISSION AND ITS AFTERMATH

The Mandal Commission was appointed in 1979 under Article 340 to investigate the conditions of socially and educationally backward sections of population and to suggest measures for their advancement. The Commission identified nearly 52% of the population as backward. In 1990, the V.P. Singh government gave 27% reservation in government jobs to OBCs.
In 1991, the Narsimha Rao government introduced the concept of most backward classes within the backward classes. Also, 10% reservation was provided to poorer sections of upper castes.

Indira Sawhney vs. Union of India—in this verdict, SC upheld the government's policy of providing reservation for backward classes. It is popularly known as the Mandal case.

- In this, the Court overruled its earlier judgment in Balaji v/s State of Mysore case, 1963 in which it held that caste can't be the main criteria. Instead, poverty should be treated as the main criteria.
- Caste was considered as the sole criteria for reservation because in India, caste is intricately related to class. It also introduced the **creamy layer concept.**
- Reservation of **upper castes on the basis of economic backwardness** was rejected because they do not suffer from social backwardness despite being poor.
- Reservation would be given only at entry level and **not at promotion level.**
- There are certain jobs where **merit alone** is the sole criteria.
- In one year, reservation shall not be more than 50%.

It directed the government to constitute a statutory body (National Commission for Backward Classes) to decide on the criteria of inclusion and exclusion of a caste from reservation.

6.5.3. Exceptions

- The State can make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- The State can make any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

Student Notes:

- The State can consider any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.
- The State can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.
- The State can provide that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

6.5.4. Issue of reservation in promotions

Although, the SC in **Indira Sawhney Case** had held that the reservation policy cannot be extended to promotions, but it was overruled by the **77th Constitutional Amendment Act, 1995.** This amendment introduced **Article 16(4A)**, which provided reservation in promotion to SC/STs.

- In **Ajit Singh vs. State of Punjab**, the Supreme Court upheld the validity of 77th amendment act and directed to introduce "**catch up rule**"**.** The court restored their seniority once promoted at par with the SC/ST candidates who got quick promotions ahead of their batch mates.
- The Parliament again amended the Constitution through the **85th Amendment Act, 2001,** to negate the catch up rule directed by Supreme Court. It introduced **promotion with consequential seniority.** This act was brought with retrospective effect from 1995.
    - **Consequential Seniority** means elevation to a senior position consequential to circumstances, and not through normal rules. Illustrating it, suppose there are 100 sanctioned posts in a department, out of which 30 are occupied by unreserved candidates, 15 are occupied by reserved candidates and 55 remain 'vacant'. The reservation is 30%, which implies that 30 posts must be manned by reserved category employees. So, if a reserved category employee is junior to a general category employee, but there is vacancy for reserved category at a senior position, so reserved category employee will be considered senior and promoted above the general category employee.
- In 2002, Karnataka had brought a similar law, but was struck down by the Supreme Court in 2006 in **M. Nagaraj vs. Union of India Case**. The Supreme Court validated the state's decision to extend reservation in promotion for SCs and STs, but gave direction that the state should provide proof on the following three parameters to it-
    - **Empirical Data on Backwardness**- of the class benefitting from the reservation.
    - **Empirical Data on Inadequate Representation**- in the position/service for which reservation in promotion is to be granted.
    - **Impact on efficiency**- how reservations in promotions would further administrative efficiency.
- Many stakeholders and petitioners were not satisfied with these criteria and various review petitions were filed on this judgment. It was again taken up in **Jarnail Singh Case** which upheld the 2nd and 3rd criteria of Nagaraj Case. But observed that there is no longer need to collect quantifiable data on the backwardness of SCs and STs. Although it stated that the **exclusion of creamy layer** while applying the principle of reservation is justified, even in the case of SCs and STs.
- **Faculty Association of AIIMS vs. Union of India, July 2013**- In this case, a five judge bench of the Supreme Court ruled that there are certain jobs for which merit alone should be the sole criteria.
    - The Union Government appealed against this judgment and in the review petition a five-judge bench in January 2014, threw the ball back into the Central Government's

court saying that the Government was free to amend the Constitution to provide reservation in faculty for superspeciality posts and that the previous judgment did not place any restriction on the Government to decide whether or not there should be reservation in superspeciality posts.

- In 2019, the Supreme Court had permitted the Central government for reservation in promotion to SC/ST employees working in the public sector in "accordance with law".
- The Karnataka government set up the Ratna Prabha Committee to submit a report on the three criteria and based on its report had come up with the revised bill. This time, the court has upheld it constitutionally.

Way Forward

- Caste is not a matter of identity or right, when it comes to administrative policy. At difference levels, studies and empirical data should to be collected to decide the level of promotions needed.
- The Constitution envisages not just a formal equality of opportunity but also the achievement of substantive equality. Currently, there is ambiguity in promotion process. Thus, there is a need for a new, comprehensive law to be enacted.

6.5.5 Issue of Local Reservation in Private Sector Jobs

Recently, Haryana Cabinet cleared a draft ordinance that seeks to reserve 75% of the jobs in private enterprises for local residents to address the aspect of unemployment of the local population on a priority basis.

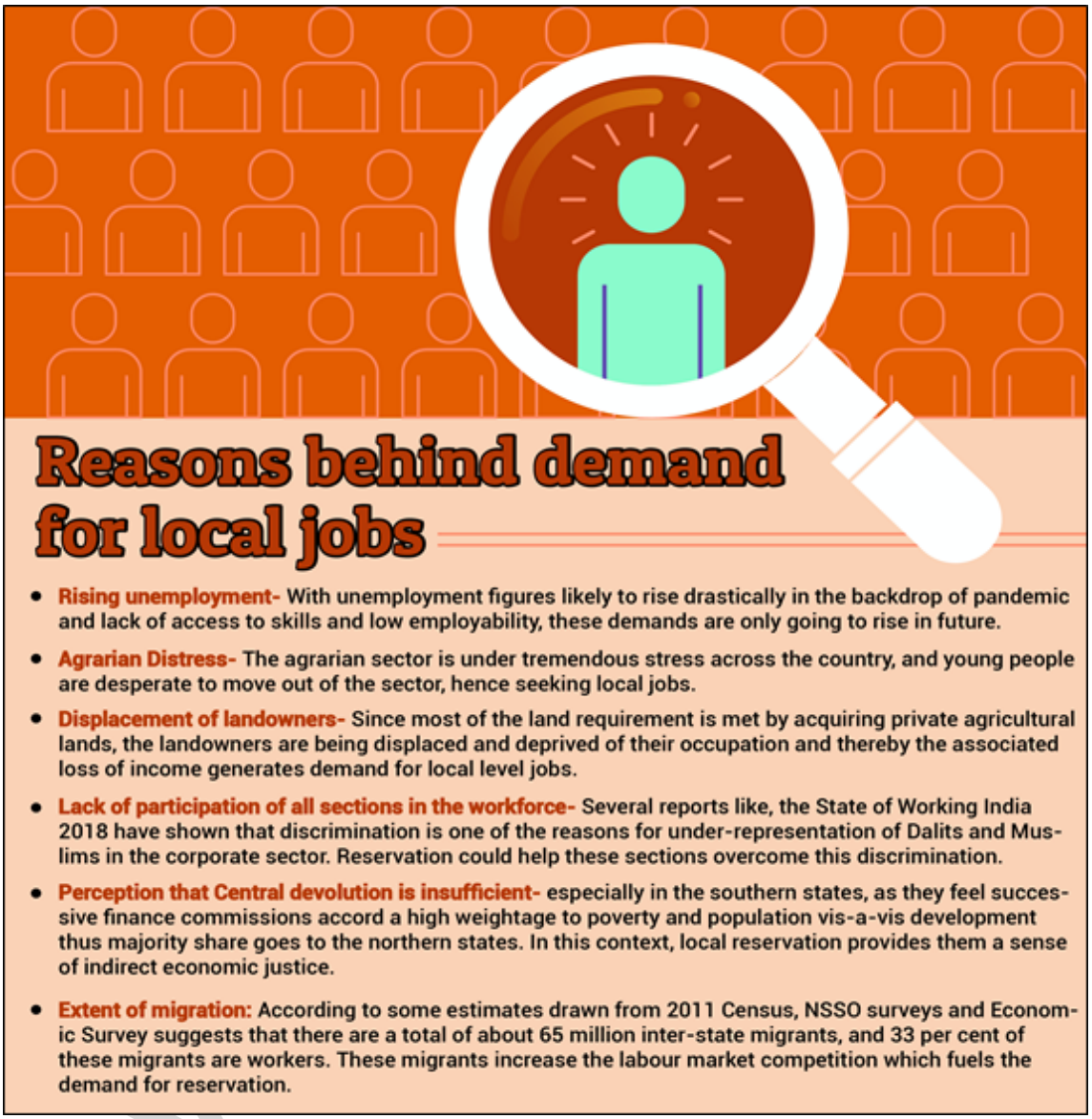
Background

- A survey done by the Centre for the Study of Developing Societies (CSDS) in 2016 showed that nearly two- third of respondents were in favour that people from the state should be given priority vis-à-vis employment opportunities.
- Similar demands are being raised in other states like Andhra Pradesh, Madhya Pradesh, Karnataka, Gujarat, Maharashtra etc. o Last year similar 75% job reservation to locals was

Student Notes:

given in Andhra Pradesh but the matter is sub judice and AP High Court has indicated that it may be unconstitutional.

- Such moves are considered mainly to promote Inclusive Development. For example, in Germany, every village has a factory. India could also have industries in villages and provide jobs to the local people for an all-round development. However, there should be an overarching framework at the Union level to promote such development.



Issues with implementation of the ordinance

- **May not pass the legal scrutiny-** It is violative of Article 14 (Right to equality) and Art 16 (Right to equal opportunity). Moreover, Article 16 does not empower the state government but rather the Parliament to provide reservation in jobs on the basis of residence but that too is limited to public sector.
- **Dangerous for unity of the country**- Such moves could lead to a Pandora's box where other states start implementing such policies, which result in fractures in the unity of India.
- **Concerns of the Industry**- Although, most of the units employ locals only, however, there are certain sectors like chemical technology, textile and biotechnology, where it may be difficult to find locals for the jobs and the units are forced to search outside.
    - It will likely facilitate corruption and create another barrier to ease of doing business.

Student Notes:

Student Notes:

- **Difficult to attract investments**- Such a decision may lead to relocation of industries elsewhere and also alienate the potential investors. Lack of investments could further drop the job creation.
- Plan may not impact micro or smaller units as they can still engage localites. However, medium and large- scale companies and MNCs like Auto industry which contributes more than 25% of the state GDP of Haryana will be adversely impacted.
- Since these industrial units cannot 'import' labourers from elsewhere; the burden of imparting the requisite skills to, and of employing, locals will fall on the units.

Way Forward

- **Need to tackle the core issues**- of unemployment by more job creation and industrialisation rather than such moves.
  - Governments should provide incentives to industries for more investments and create an enabling environment for it. The Economic Survey 2018-19 also alerts the policy makers against such policy uncertainties for the industries, which may rather impact economic development.
  - Government should focus on making the youth of a state employable with proper investments in education, health and skill development.
- **Need to promote labour intensive industries-** to make use of the labour surplus in the country, rather than simply forcing any industry for the locals.
- **Need to promote entrepreneurship**- where people are themselves motivated to create livelihood for them. State can provide incentives and help here such as done for Dalit entrepreneurs in Maharashtra.
- **Need to move towards economy-based reservation**- rather than further expansion of reservation policies using unproductive rationales.

Conclusion

Job reservation for locals may not enhance their economic opportunities in the long run. Only, raising the standard of education and skilling youth alongside the necessary structural reforms is the only way to increase the size of the economic pie in the absolute sense.

6.5.6 Job Reservations, Promotion Quotas Not A Fundamental Right

Recently, the Supreme Court take a case pertaining to decision by the Uttarakhand government in 2012. Back then, the government had decided to fill up posts in public services without providing reservation to members of the Scheduled Caste (SC) and Scheduled Tribe (ST) communities. The Uttarakhand High Court directed the state government in 2019 to implement reservations in promotion by promoting only SCs and STs to maintain the quota earmarked for the said categories.

The Court held that Article 16 (4) and 16 (4-A) are in the **nature of enabling provisions**, vesting a **discretion on the State Government** to consider providing reservations, if the circumstances so warrant. It is settled law that the state cannot be directed to give reservations for appointment in public posts. The order further adds that the state is not bound to make a reservation for SCs and STs in matters of promotions. The court said that no mandamus can be issued by the court directing state governments to provide reservations.

However, if the state wishes to exercise its discretion and make such provision, it has to collect quantifiable data showing 'inadequacy of representation of that class in public services. If the decision of the state government to provide reservations in promotion is challenged then the state concerned will have to place before the court the quantifiable data that reservations became necessary on account of inadequacy of representation of SCs and STs without affecting general efficiency of administration as mandated by Article 335.

Analysis of Judgement

Student Notes:

- The fact that reservation cannot be claimed as a fundamental right is a settled position under the law and has been pointed out by several judgments in the past.
  - In 1967, a five-judge bench in **C.A. Rajendran v. Union of India** held that the government is under no constitutional duty to provide reservations for SCs and STs, either at the initial stage of recruitment or at the stage of promotion.
  - The position went on to be **reiterated in several other decisions**, including the nine-judge bench ruling in **Indra Sawhney v. Union of India** (1992) and the five-judge bench decision in **M Nagaraj v. Union of India** (2006).
- Although this position of law is a settled one, it is nonetheless **at odds with certain other principles** at the heart of the **constitutional vision of equality**.
  - In **NM Thomas judgement** (1976), the Supreme Court held that the Constitution was committed to an idea of substantive equality, i.e. it had to take the **actual circumstances of people** into account when determining what constituted "equal treatment".
  - The **principled reason for this position** was that groups of people who face structural and institutional barriers towards being able to compete on "equal terms" with others in society — for reasons that are historical, but whose effects are enduring — must be treated in a way that mitigates those existing conditions of inequality.
  - **Reservations** — under this understanding — were a means to bring about genuine and true equality, and not a set of privileges or gifts.
- To interpret the obligations of the state purely from the textual foundations of Article 16 is not an appropriate approach. Fundamental rights are not isolated provisions and ought to be looked into as an interconnected whole.
- As there are **less avenues for the direct appointment in higher posts**, reservations play a major role for the representation of backward classes in higher posts.
  - According to a Parliament reply last year, only one of the 89 secretaries posted at the Centre belonged to the SC, while three belong to the ST. The court order may go against the substantive equality in higher posts.
- The Supreme Court is **not wrong** in saying that a **writ of mandamus cannot be granted** by any court in order to enforce an enabling provision. The writ of mandamus is issued only to compel an authority to discharge a binding duty.

Conclusion

It is a settled principle of law that a **discretionary power cannot be exercised in a fickle manner**. Simply because the exercise of a power is optional for the government does not mean that it can be exercised in a whimsical manner. Article 14 of the Indian Constitution has been interpreted to prohibit all kinds of arbitrary decisions by the government. Thus, the **courts are entitled to examine if a discretionary power has been exercised in a judicious manner**.

6.6. Article 17 – Abolition of Untouchability

6.6.1. Text

The Constitution abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

6.6.2. Description

Untouchability is banned in any form in our country. Under **Article 3**5, the Parliament has made **2 enabling Acts** to enforce this provision. Notably, the Constitution has not defined the term "untouchability". However, the Mysore High Court held that the subject matter of Article 17 is not untouchability in its literal or grammatical sense but the 'practice as it had developed

historically in the country'. It refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes. Hence, it does not cover social boycott of a few individuals or their exclusion from religious services, etc.

Student Notes:

6.6.3. The Protection of Civil Rights Act, 1955

Initially named as **Untouchabilities (Offences) Act, 1955**, it was amended in 1976 and renamed as The Protection of Civil Rights Act. It makes provisions against untouchability stronger. Further, a person convicted of the offence of untouchability is disqualified as a candidate for elections to the Parliament and State Legislature.

Untouchability is a cognizable offence (police officer can arrest the accused without a magisterial warrant) and a non-compoundable offence (cases which cannot be withdrawn even if a compromise is reached between disputing parties; the State becomes a party). It provides for a special court for speedy trial. The act declares the **following acts as offences**:

- Preventing any person from entering any place of public worship or from worshipping therein;
- Justifying untouchability on traditional, religious, philosophical or other grounds;
- Denying access to any shop, hotel or places of public entertainment;
- Insulting a person belonging to scheduled caste on the ground of untouchability;
- Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit;
- Preaching untouchability directly or indirectly; and (g) refusing to sell goods or render services to any person.

The Supreme Court held that the right under Article 17 is available against private individuals and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated.

6.6.4. The Schedule Caste and Schedule Tribe Prevention of Atrocities Act, 1989

- Its main objective is prevention of atrocities by increased surveillance, collecting licenses of upper castes etc.
- Provides relief and rehabilitation measures for the victims.
- Provides for special court and special police.
- In some situations, police can even provide arms to members of SC and ST community for self-defence.

Recent Developments

To curb the misuse of Scheduled Castes and Tribes (Prevention of Atrocities POA) Act, 1989, Supreme Court in March 2018 diluted the Act in **Subhash Kashinath Mahajan vs State of Maharashtra case.**

- **Anticipatory Bail**: Supreme Court laid down safeguards, including provisions for anticipatory bail and a "preliminary enquiry" on whether complaint under the 1989 law is "frivolous or motivated" before registering a case.
- **FIR**: Neither is an FIR to be immediately registered nor are arrests to be made without a preliminary inquiry. An arrest could only be made if there is "credible" information and police officer has "reason to believe" that an offence was committed.
- **Permission**: Even if a preliminary inquiry was held and a case registered, arrest is not necessary, and that no public servant is to be arrested without the written permission of the appointing authority.

This judgment had triggered widespread protests and violence and the **government had to amend the Act** to negate the effect of the apex court ruling. In August 2018, amendment **restored the bar against anticipatory bail and nullifying the apex court verdict.**

- A new section 18A was inserted in the Act of 1989, which does away with the **court-imposed requirements of undertaking preliminary inquiry and of procuring approval prior to making an arrest.**

- It also asserted that in cases under the Atrocities Act, **no procedure other than that specified under the Act and Cr. P. C. shall apply.**

Later on, Supreme court reserved its verdict on the petitions challenging the validity of 2018 amendments to The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. It **restored the earlier position of the law by recalling two directions in the March, 2018 verdict**, which provided no absolute bar on grant of anticipatory bail and prior inquiry before effecting arrest of public servant and private individual under the Act.

Student Notes:

6.7. Article 18

6.7.1. Text

Abolition of titles.

1) No title, not being a military or academic distinction, shall be conferred by the State.
2) No citizen of India shall accept any title from any foreign State.
3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

6.7.2. Description

- It is a restriction on the powers of the State, citizens and non-citizens.
- The State must not give any titles except a military or an academic one.
- No citizen of India is allowed to accept any title from a foreign state.
- A foreign citizen holding any office of profit or office of trust under the Indian State is not allowed to accept any title, present, emolument, or office of any kind from a foreign state without the permission of the President of India.

6.7.3. Case of Bharat Ratna and Padma Awards

In **Balaji Raghavan case**, the SC allowed the State to give Bharat Ratna and Padma awards but made it clear that these couldn't be used as a title. These National Awards were instituted in 1954. The Janata Party government headed by Morarji Desai discontinued them in 1977. But they were again revived in 1980 by the Indira Gandhi government.

6.8. Article 19 – Right to Freedom

6.8.1. Text

All citizens shall have the right—

a) to freedom of speech and expression;
b) to assemble peaceably and without arms;
c) to form associations or unions;
d) to move freely throughout the territory of India;
e) to reside and settle in any part of the territory of India; and
f) to practise any profession, or to carry on any occupation, trade or business.

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

6.8.2. Applicability

Rights under Article 19 are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc. The State can impose

'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any other grounds.

Article 19 is suspended automatically if proclamation is on ground of external aggression, and remains so, as long as emergency is in operation. However, after the 44th Amendment, it cannot be suspended if the emergency is declared on the grounds armed rebellion.

6.8.3 Freedom of Speech and Expression

Under this article, every citizen has the right to express his v**iews, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.** The Supreme Court held that the freedom of speech and expression includes the following:

- Right to propagate one's views as well as views of others.
- Freedom of the press.
- Freedom of commercial advertisements.
- Right against tapping of telephonic conversation.
- Right to telecast, that is, government has no monopoly on electronic media.
- Right against bundh called by a political party or organisation.
- Right to know about government activities.
- Freedom of silence.
- Right against imposition of pre-censorship on a newspaper
- Right to demonstration or picketing but not right to strike

The State can **impose reasonable restrictions** on the exercise of the freedom of speech and expression **on the grounds of** sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

6.8.4. Freedom of Assembly

Under this article, every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms. This right does not include the right to strike.

The State can impose **reasonable restrictions** on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

- Under **Section 144 of Criminal Procedure Code (1973),** a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any affray.
- Under **Section 141 of the Indian Penal Code**, as assembly of five or more persons becomes unlawful if the object is-
  - to resist the execution of any law or legal process;
  - to forcibly occupy the property of some person;
  - to commit any mischief or criminal trespass;
  - to force some person to do an illegal act; and
  - to threaten the government or its officials on exercising lawful powers.

6.8.5. Freedom of Association

Under this, all citizens have the right to form associations or unions or **co-operatives (**97th Amendment Act**)** has been added. It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations or any body of persons. It not only includes the right to start an association or union but also to continue with the association or union as such.

Student Notes:

Further, it covers the negative right of not to form or join an association or union.

Reasonable restrictions can be imposed on the exercise of this right by the State on the grounds of **sovereignty and integrity of India, public order and morality.** The Supreme Court held that the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lock-out. The right to strike can be controlled by an appropriate industrial law.

6.8.6. Freedom of Movement

Under this, every citizen can move freely from one state to another or from one place to another within a state. This right underline the idea that India is one unit so far as the citizens are concerned. Thus, the purpose is to promote national feeling and not parochialism.

Reasonable restrictions on this freedom are two, namely, the interests of general public and the protection of interests of any scheduled tribe. The entry of outsiders in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

The Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the interest of public morals. The Bombay High Court validated the restrictions on the movement of persons affected by AIDS.

The freedom of movement has two dimensions, viz, **internal** (right to move inside the country) and **external** (right to move out of the country and right to come back to the country). **Article 19** protects only the first dimension. The second dimension is dealt by **Article 21** (right to life and personal liberty).

6.8.7. Freedom of Residence

Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts:

- The right to reside in any part of the country, which means to stay at any place temporarily, and
- The right to settle in any part of the country, which means to set up a home or domicile at any place permanently.

This right is intended to remove internal barriers within the country or between any of its parts. This promotes nationalism and avoids narrow mindedness. The State can impose **reasonable restrictions on the exercise of this right on two grounds,** namely, the **interest of general public and the protection of interests of any scheduled tribes**.

The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation. In many parts of the country, the tribals have been permitted to regulate their property rights in accordance with their customary rules and laws.

The Supreme Court held that certain areas can be banned for certain kinds of persons like prostitutes and habitual offenders.

6.8.8. Freedom of Profession

Under this, all citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood. The State can impose reasonable restrictions on the exercise of this right in the interest of the general public. Further, the State is empowered to:

- Prescribe professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; and
- Carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise

Thus, no objection can be made when the State carries on a trade, business, industry or service either as a monopoly (complete or partial) to the exclusion of citizens (all or some only) or in competition with any citizen. The State is not required to justify its monopoly. This right does not include the right to carry on a profession or business or trade or occupation that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc,). The State can absolutely prohibit these or regulate them through licencing.

Student Notes:

6.8.9. Issues related to Rights under Article 19

6.8.9.1 Status of Freedom of Press

Unlike several countries such as USA, there is no separate provision guaranteeing the freedom of press, but the Supreme Court in Sakaal paper v/s Union of India case, has held that the freedom of press is included in the "freedom of expression" under Article 19(1) (a). In Brij Bhushan case, SC clarified that there is no prior censorship on the media, i.e., no prior permission is needed.

44th amendment, 1976 introduced Article 361A that provides protection to a person publishing proceedings of the Parliament and State Legislatures.

In Indian Express case, it was clarified that the Freedom of Press includes:

- Right to Information
- Right to Publish
- Right to Circulate

In 1997, **the Prasar Bharti Act** granted autonomy to Doordarshan and All India Radio (which means it can criticize the state policies and actions).

In 1966, **Press Council of India** was created to regulate the print media. PCI has a retired SC judge as its chairperson (by convention) and 28 other members.

- 20 members are the representatives from the media
- 5 members are nominated by Parliament
- 3 members – one each come from UGC, Sahitya Kala Academy and Bar Council of India

The National Commission to Review the Working of Constitution (NCRWC) recommended that Freedom of Press be explicitly granted and not be left implied in the Freedom of Speech.

6.8.9.2 Control of Social and Broadcast Media

Media in India is against external regulation. But it is realized that self-regulation may turn out to be no regulation at all. Hence PCI sought to bring electronic and social media under its ambit.

According to PCI chairperson, there is difference between regulation and control.

There are two rights on which media claims independence –

- Article 19(1) (a) – Under freedom of speech expression
- Article 19(1) (g) – Freedom to practice any profession, occupation, trade or business

Neither of these rights is absolute. Moreover, media cannot claim to be a purely commercial venture.

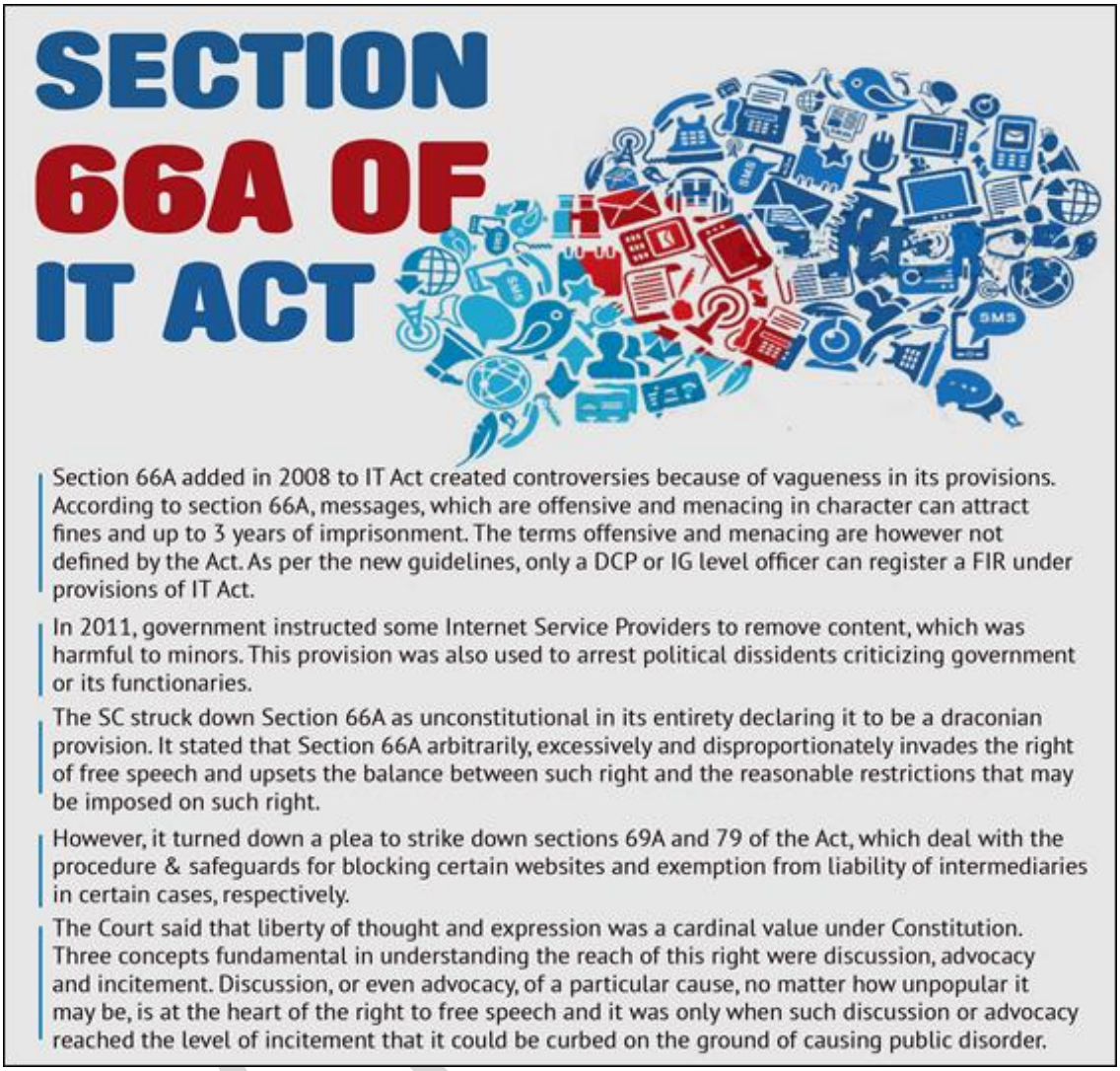
Levenson Report on Media in Britain – also calls for regulation of media.

6.8.9.3. Freedom of Speech and Civil Servants

According to the Supreme Court, freedom of speech for civil servants can be curtailed in the interests of discipline even though such a restriction is not mentioned in Article 19 (2). Service rules are essential for discipline within services. The objective here is not to curb the freedom of speech of civil servants but to ensure that they are able to effectively discharge their duties. Hence, there is balance to be maintained between organizational functioning and freedom of

speech. Such restrictions, however, do not apply to an elected representative in an organization as he represents people.

Student Notes:



6.8.9.4. Sedition

As per Section 124A of IPC, Sedition is an act that brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India by words, either spoken or written, or by signs, or by visible representation, or otherwise. As per this Section, a person is liable to be punished with imprisonment for life or imprisonment up to three years with fine.

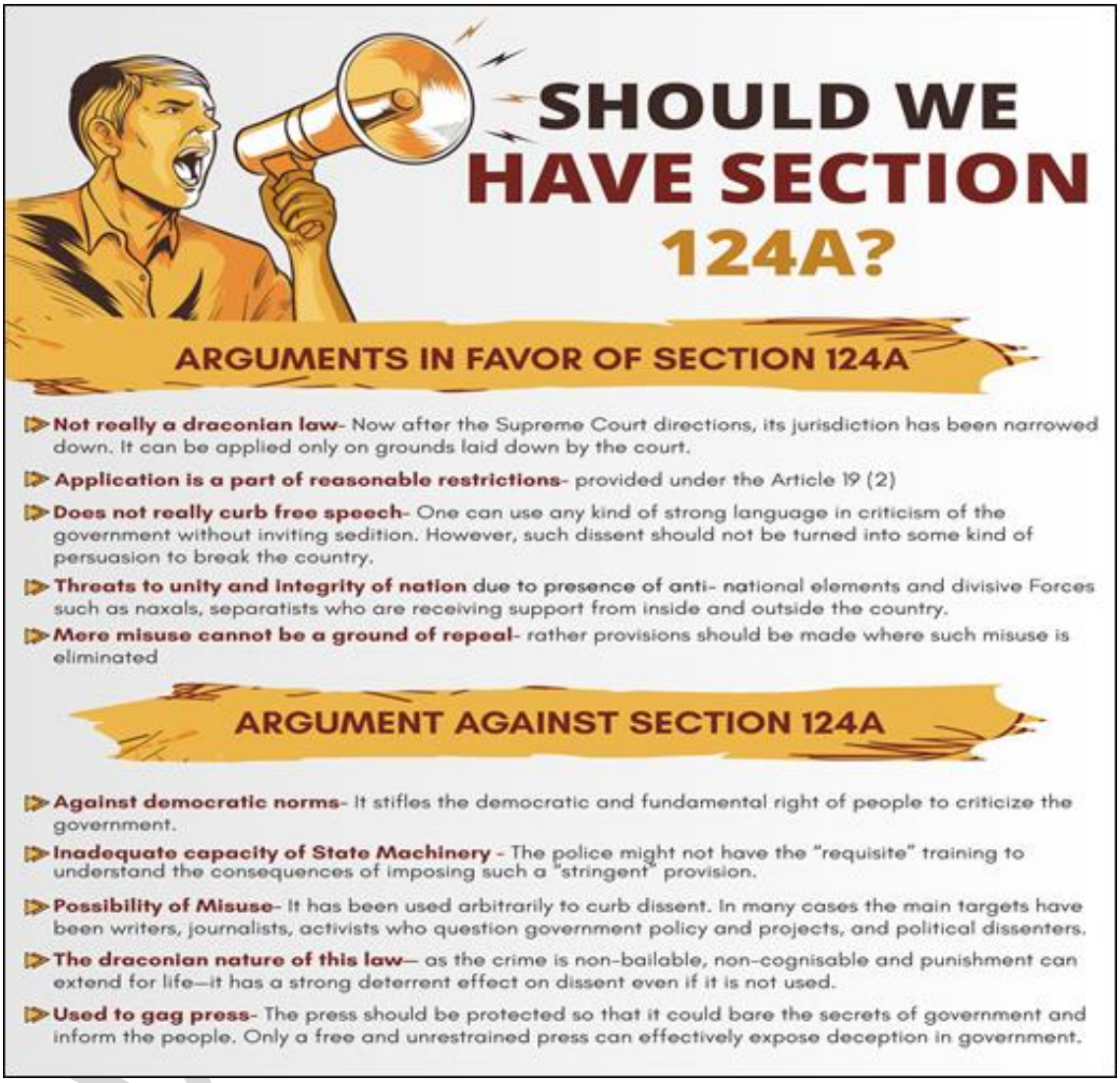
The section 124A of Indian Penal Code is a pre- independence provision, which covers sedition charges against government. Various verdicts by Indian Judiciary have led to re-interpretation and re-examination of 'sedition' in light of Article 19 of the Constitution. There has been an effort to strike a balance between right to free speech and expression and power of State to impose reasonable restrictions (Article 19(2)).

Views of the Supreme Court

- In 1962, the Supreme Court in **Kedar Nath Singh vs. State of Bihar** upheld Section 124A and held that it struck a "correct balance" between fundamental rights and the need for public order.
- The court had significantly reduced the scope of Sedition law to only those cases where there is incitement to imminent violence towards overthrow of the state.

Student Notes:

- Further, the Court held that it is not mere against government of the day but the institutions as symbol of state.
- Various verdicts in Romesh Thappar, Kanahiya Kumar case re- defined a seditious act only if it had essential ingredients as:
  - Disruption of public order,
  - Attempt to violently overthrow a lawful government,
  - Threatening the security of State or of public



Views of the Law Commission

- While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy.
- Hence, Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the government with violence and illegal means.

Way Forward

- The guidelines of the SC must be incorporated in Section 124A as well by amendment to IPC so that any ambiguity must be removed. A private member bill was introduced in 2015 to amend this section. The Bill suggested that only those actions/words that directly result in the use of violence or incitement to violence should be termed seditious.
- The state police must be sufficiently guided as to where the section must be imposed and where not.

Student Notes:

- Need to include provisions where the government can be penalized, if it misuses the section. This will ensure that section 124 A of IPC strikes a balance between security and smooth functioning of state with the fundamental right of freedom of speech and expression.

6.8.9.5. Hate Speech

Hate speech poses complex challenge to freedom of speech and expression. However, the question is what should be considered as a hate speech without curbing the freedom of speech and expression. In this regard, Law Commission has defined it as "incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like". Thus, "hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence."

T.K. Viswanathan committee, constituted by the Centre, has recommended introducing stringent provisions for hate speech.

Observations of the Committee

- It was of the opinion that it was more effective to insert the substantive provisions in the IPC instead of the IT Act, since the IT Act was primarily concerned with e-commerce regulation.
- **Section 78 of the IT Act** primarily 'dealt with capacity building' and needs to be relooked to sensitize the officers and give them support with electronic expertise, computer- forensics and digital-forensics.
- It has **recommended amendments in CrPC** to enable each state to have a **State Cyber Crime Coordinator** (Sec 25B) and a **District Cyber Crime Cell** (Sec 25C).
- The offensive speech should be "highly disparaging, abusive or inflammatory against any person or group of persons", and should be uttered with the intention to cause "fear of injury or alarm".
- The committee also expressed the desirability of having **guidelines in place to prevent the abuse of provisions by investigation agencies** and to safeguard innocent users of social media.
- Many recommendations were taken from the Law Commission report, which are-
    - Insertion of Section 153C to prohibit incitement of hatred through online speech on grounds of religion, caste, community, gender, sexual orientation, tribe, language, place of birth etc.
    - Section 505A was proposed to be inserted by the Law Commission to prevent causing of alarm, fear, provocation of violence etc. on grounds of identity.
    - It was clarified that the need for intent has to be established.

Concerns associated with Committee's recommendations –

- The Law Commission identifies the status of the author of the speech, the status of victims of the speech, the potential impact of the speech, in order to qualify something as **Hate Speech**. However, these concerns are apparently **not well reflected in the committee report.**
- Besides, **extremely broad** terms like, highly disparaging, indecent, abusive, inflammatory, false or grossly offensive information, etc., have been used by the report which takes us back to the ambiguity that the section 66A held.

Conclusion

- It is vital to examine the **context in which speech is made** in order to properly determine the motivation behind it – and the effect it is likely to have. The dangerousness of speech

cannot be estimated outside the context in which it was made or disseminated, and its original message can become lost in translation.

- Supreme Court in **Pravasi Bhalai Sangathan v. Union of India in 2014**, states that hate speech must be viewed through the lens of the right to equality. However, few loopholes need to be plugged when it comes to regulation of hate speeches, so as to transform our country from being a procedural democracy to also a substantive one.

Student Notes:

6.8.9.6 Defamation

In 2016, Supreme Court upheld the constitutional validity of the country's colonial-era criminal defamation laws, ruling that they are not in conflict with the right to free speech. Under sections 499 and 500 of the Indian Penal Code, defamation is a criminal offence. Defamatory acts can include "words either spoken or intended to be read", signs or visible representations, which are published or put up in the public domain. The offence is punishable with up to two years imprisonment, a fine or both.

Why it should be retained?

- **Reputation** of an individual, constituent in **Article 21** is an equally important right as free speech.
- Criminalization of defamation to protect individual dignity and reputation is a "**reasonable restriction**"
- Editors have to take the responsibility of everything they publish as it has far-reaching consequences in an individual and country's life
- The acts of expression should be looked at both from the perspective of the speaker and the place at which he speaks, the audience etc.
- It has been part of statutory law for over 70 years. It has neither diluted our vibrant democracy nor abridged free speech
- Protection for "legitimate criticism" on a question of public interest is available in the
  - Civil law of defamation &
  - Under exceptions of Section 499 IPC
- Mere misuse or abuse of law can never be a reason to render a provision unconstitutional rather lower judiciary must be sensitized to prevent misuse
- Monetary compensation in civil defamation is not proportional to the excessive harm done to the reputation

Significance of this judgement

- The judgement raises reputation to the level of "shared value of the collective" and elevates it to the status of a fundamental right under Article 21 of the Constitution.
- According to the judgement, the theory of balancing of rights dictates that along with the right to freedom of speech and expression, there is a correlative duty on citizens not to interfere with the liberty of others, as everyone is entitled to the dignity of person and of reputation.

Why it should be retained?

- Freedom of speech and expression of media is important for a vibrant democracy and the threat of prosecution alone is enough to suppress the truth. Many times the influential people misuse this provision to suppress any voices against them.
- Considering anecdotal evidence, every dissent may be taken as unpalatable criticism.
- The right to reputation cannot be extended to collectives such as the government, which has the resources to set right damage to their reputations.
- The process in the criminal cases itself becomes a punishment for the accused as it requires him to be personally present along with a lawyer on each date of hearing.

Student Notes:

- Given that a civil remedy to defamation already exists, no purpose is served by retaining the criminal remedy except to coerce, harass and threaten.
- It goes against the global trend of decriminalizing defamation
  - Many countries, including neighbouring Sri Lanka, have decriminalized defamation.
  - In 2011, the Human Rights Committee of the International Covenant on Civil and Political Rights called upon states to abolish criminal defamation, noting that it intimidates citizens and makes them shy away from exposing wrongdoing.

6.8.9.7 Banning of films and books

In India, there have been regular protests and violence over the publication of a book, cartoon or release of a movie which certain sections claim as to be offensive to them. They resort to violence, protests and shutdowns resulting in damage to life and property. As a result, governments often ban such expression of arts citing law and order problem. This directly surmounts to curbing the freedom of speech and expression of the artists and stifling the free speech in the country. In this context, SC in several judgments has held such bans to be illegal. It has opined that once an expert body has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the government to see that law and order is maintained. In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view and choose to express their views by unlawful means can be no ground for such bans. It is the duty of the government to ensure law and order.

6.8.9.8. Right to access internet

Recently, Supreme Court has delivered verdict on a bunch of petitions challenging the restrictions imposed on internet services and movement of people in Jammu and Kashmir.

Internet shutdowns

- India **tops the list** of Internet shutdowns globally. According to Software Freedom Law Center's tracker, there have been 381 shutdowns since 2012, 106 of which were in 2019.
- The ongoing **shutdown in Kashmir is the longest ever** in any democratic country.
- **Legislative provisions**:
  - Suspension of Internet services are dealt with under the Information Technology Act, 2000, the Criminal Procedure Code (CrPC), 1973 and the Telegraph Act, 1885.
  - **Before 2017**, Internet suspension orders were issued underSection 144 of the CrPC. But, in 2017, the central government notified the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules under the Telegraph Act to govern suspension of Internet.
    - Despite the 2017 rules, the government has often used the broad powers under Section 144 CrPC.
- **Economic cost**: India lost over $1.3 billion in internet shutdowns across the country in 2019 — making it the third-most economically affected country after Iraq and Sudan.
- **Justifications for shutdowns**: o The shutdown is based on analysis of intelligence inputs. This is a preventive measure used by the law & order administration as a last resort to address mass protests, civil unrest, so as to ensure peace. o In certain extreme situations where rumours through WhatsApp and other social media start playing a disruptive role, it may become necessary to have internet shutdowns**.**

Arguments against

- Internet activists, law experts, and human rights agencies suggest that there **is no real evidence of Internet shutdown actually helping in preventing mass protests** or civil unrest.
- Internet shutdowns make **human rights a hostage to the whims of the executive**: the fundamental rights to speech, conduct business, access healthcare, express dissent, and movement of the people in a state, are compromised.

Student Notes:

- Shutting the internet results is an information blackout that **can also create hysteria, panic** and can result in even more discord.

Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017 (Suspension Rules)

- These Rules were **framed by ministry of communications and derive their powers from Section 5(2) of the Indian Telegraph Act**, which talks about interception of messages in the "interests of the sovereignty and integrity of India".
- It **empowers the government to block transmission of messages** in case of a public emergency or for public safety in any part of the country.
- Any order suspending internet under the Rules, **can be only for a temporary duration** and not for an indefinite period.
- Directions to suspend the telecom services shall not be issued except **by Home Secretary of the country and a secretary of a state's home department** and that order should be taken up by a review committee within five days.

UN Resolution on Internet Shutdown

- In 2016, the United Nations Human Rights Council released a non-binding resolution condemning intentional disruption of internet access by governments.
- The resolution reaffirmed that "the same rights people have offline must also be protected online".

Supreme Court's observation On Internet shutdown

- Freedom of speech and expression through the medium of internet is a fundamental right under Article 19(1)(a) of the Constitution.
- The restrictions on internet have to follow the principles of proportionality under Article 19(2).
    - Doctrine of proportionality is a principle that is prominently used as a ground for judicial review in cases of administrative action.
    - The doctrine essentially signifies that the punishment should not be disproportionate to the offence committed or the nature and extent of the State's interference with the exercise of a right must be proportionate to the goal it seeks to achieve.
- Freedom of trade and commerce through internet is also a constitutionally protected right under Article 19(1)(g).
- Suspension of internet for indefinite period not permissible. It can only be for a reasonable duration and periodic review should be done. Government should publish all orders of prohibition to enable affected persons to challenge the same.

On Section 144 of CrPC:

- The power under Section 144, cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights
- When Sec 144 is imposed for reasons of apprehended danger, that danger must be an "emergency".
- The imposition of Sec 144 must strike a balance between the rights of the individual and the concerns of the state.
- Powers under Sec 144 should be exercised in a reasonable and bona fide manner, and the order must state material facts in order to enable judicial review.

Conclusion

- Expression through the Internet has gained contemporary relevance and is one of the major means of information diffusion. **Before completing blocking the Internet, it is essential to conduct a proportionality and necessity test**. It is crucial to consider whether the same objective can be achieved by a less intrusive and more effective solution such as deployment of the police force and running advisories on media.
- At the same time, **in the interest of transparency, government should document the reasons, time, alternatives considered, decision-making authorities and the rules** under which the shutdowns were imposed and release the documents for public scrutiny.

6.8.9.9. Caste Rallies

19 (1)(b) itself mentions the restriction, that is, Freedom to assemble peacefully without arms. Other restrictions are found in 19(3), which are as follows:

- Sovereignty and integrity of India
- Public Order

Lucknow bench of Allahabad HC in 2013 has banned caste rallies on the ground that they disturb public order and creates animosity between castes. This order is being contested as it seems to violate Art. 19(1)(b).

6.8.9.10. Right to strike in case of Govt. Officials

Trade Unions have the right to strike under certain circumstances in Industrial Disputes Act.

However, for the government officials, SC has held that right to strike is available only as a last resort, when all other channels of communication have failed. However, it can not be deemed to be coming under the cover of Fundamental Rights. Hence, the government can invoke Essential Services Maintenance Act in such situations and force to call off the strike.

SC in T.K. Rangarajan vs. State of Tamil Nadu held that govt. officials don't have the fundamental right to strike.

6.9. Article 20- Protection in respect of Conviction for Offences

6.9.1. Text

Protection in respect of conviction for offences.

1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
2) No person shall be prosecuted and punished for the same offence more than once.
3) No person accused of any offence shall be compelled to be a witness against himself.

6.9.2. Description

Article 20(1) guarantees rights against ex-post facto laws. Only a law in force at the time of commission of the said offence can be used to punish an accused. However, such a protection is available only in case of criminal laws and not civil laws.

Article 20(2) provides protection from double jeopardy. It states that an individual can be punished for an offence only once. Departmental inquiries are however not treated as violation of this principle.

Article 20(3) protects an individual from self-incrimination. Every person has the right to defend himself. In Selvi vs. State of Karnataka SC has put restrictions on narco analysis and brain mapping. However, DNA testing and other samples can be taken.

6.9.3. Controversies

6.9.3.1. Vodafone case

In 2012, the Government of India made budgetary proposal to amend the Income Tax Act with retrospective effect from 1962 to assert the government's right to levy tax on merger and acquisition (M&A) deals involving overseas companies with business assets in India. It was partly to override the Supreme Courts' ruling favoring Vodafone in a tax dispute. Notably, the government could bring in such an amendment because it was a tax law, not a criminal law. However, the Parthasarathi Shome committee later recommended that either the

restrospective tax amendment be withdrawn or penalty/interest, if covered under taxes, be waived off.

Student Notes:

6.9.3.2. Aftermath of 16th December 2012, Nirbhaya incident

After the notorious gang rape incident in Delhi, even though public sentiment favored harsher punishment for all the six accused in the Nirbhaya gang rape case — one of them being a minor — any revision in the juvenile age would not help the case as the amendment shall not apply with retrospective effect.

6.9.4. Applicability

Applies to all – individuals whether Indian citizens or foreigners.

6.10. Article 21 – Right to Life and Liberty

6.10.1. Text

Protection of life and personal liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law.

6.10.2. Description

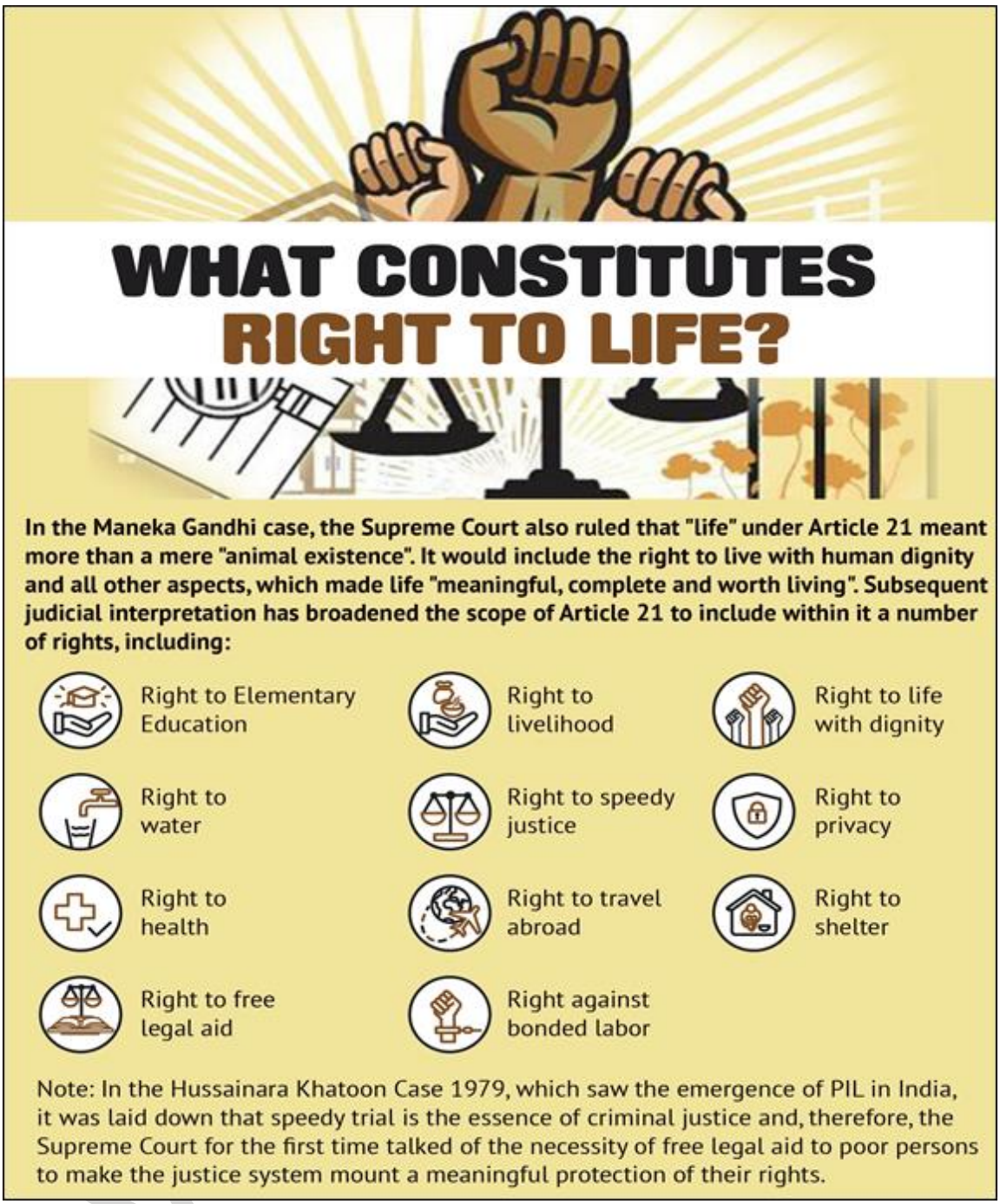
This article is a check on arbitrary powers of the State. The State must act according to a procedure while depriving an individual of his liberty.

Procedure established by law has been borrowed from the British tradition. It checks whether the law is procedurally correct. However, judiciary is not allowed to challenge the intentions of the law.

Due process of law is a facet of American judiciary. Judiciary can challenge the law not only on procedural grounds but also on the basis of its reasonableness.

6.10.3. Due Process of Law

It implies that law has to be fair and reasonable. If it is not, then it is liable to be struck down even if the prescribed procedure is followed. It is also known as Principle of Natural justice. The constitutional guarantee of due process of law, found in fifth and fourteenth amendment to the US Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty and property. It is because of this principle that the Supreme Court of USA has acquired more powers than Apex Courts in other countries, including India.



6.10.4. Status in India

6.10.4.1. Maneka Gandhi case (1978)

Supreme Court accepted that due process is inherent in procedure established by law. SC in this case applied the American principle of “due process of law” for the first time. It applied the following arguments:

- Article 19 and 21 can’t be understood as watertight compartments and the same criteria of reasonableness must be applied for Article 21 too.
- Merely following the procedure established by law is not enough. The courts have the right to review and question the reasonableness of the law itself.
- Restrictions must be reasonable, just and fair and shouldn’t be arbitrary.

In India, traditionally we followed the principle of “procedure established by law”, as it prevailed in Britain. However since 1978, we have followed both in India.

Student Notes:

6.10.4.2. A.K. Gopalan Case (1950)

The Supreme Court held that due process of law is not available in India. Hence, it implied that the right only protects life and liberty of an individual from arbitrary executive action, and not from legislative action. Further, it was enough if the procedure was followed and the courts could not inquire into the reasonableness of the procedure.

6.10.5. Impact of National Emergency and Applicability

Rights under Article 20 and 21 are never suspended and both are available to all individuals whether Indian citizens or foreigners.

6.10.6. Right to Death/Suicide

In Gyan Pal case, SC has settled the controversy by clearly establishing that there is no right to suicide and death. Thus section 309 of IPC, which criminalizes attempt to suicide doesn't violate Article 21.

6.10.7. Death Penalty/Capital Punishment

While global trend is in favor of abolishment of death penalty, India continues to find itself in mix of countries such as China, Iran, Pakistan, USA where it has not been completely abolished.

The proponents of death penalty hail it for its deterrent capacity. Further, there are some crimes, which are so heinous that nothing short of death penalty meets the ends of justice. In cases like terrorism, if terrorists are not executed then they continue to pose a grave threat to national security.

However following arguments are made in favor of abolishing death penalty.

- No sufficient data to support the deterrent logic.
- Study conducted in USA shows that the state abolishing death penalty had witnessed the fall in murders.
- The principle of revenge (eye for an eye) cannot be the basis of justice in any civilized society
- The purpose of punishment should be to reform rather than to punish
- In Bachan Singh case, the Supreme Court sought to strike a balance. It proclaimed that death penalty is an exception not a rule. It proclaimed the doctrine of "rarest of the rare".
- There is also possibility of error in judgment as admitted by the SC in 2009 in "Santosh Kumar v/s State of Maharastra case". It admitted that there are at least 13 cases in which death penalty was awarded, the doctrine of "rarest of the rare" was not applied. Out of these, 2 persons have already been executed.
- United Nation's Declaration on Human Rights also expects the state to abolish torturous punishments and death penalty.

It is argued that for heinous crimes such as rape and murder, life imprisonment can be a better option.

6.10.8. Right to Privacy

In Justice K. S. Puttaswamy (retd.) vs Union of India (2017), a nine-judge Constitution Bench of the Supreme Court ruled that right to privacy is an intrinsic part of life and liberty under Article 21. However, the court held that privacy is not an absolute right.

The government can introduce a law which "intrudes" into privacy for public and legitimate state reasons. Legitimate aims of the state would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge and preventing the dissipation of social welfare benefits. But a person can challenge this law in country's constitutional courts for violation of his fundamental right to privacy.

6.10.9. Euthanasia/Mercy killing

Aruna Shaunbag case, SC permitted passive euthanasia but not active euthanasia.

Student Notes:

6.10.9.1. Active Euthanasia

Means ending the life of a person by giving him active means like lethal injections, drugs etc.

6.10.9.2. Passive Euthanasia

Means taking out the life support systems. It is allowed by SC to be done under guarded circumstances only.

In March, 2018, Supreme Court ruled that the **right to die with dignity** is a fundamental right, saying that an individual could make an advance "living will" that would authorize passive euthanasia under certain circumstances. The Court held that passive euthanasia and living will were legally valid.

6.10.9.3. Living Will

Living will is a written document that allows a patient to give explicit instructions in advance about the medical treatment to be administered when he or she is terminally-ill or no longer able to express informed consent.

6.10.9.4. Guarded Circumstances

Once request for mercy killing is made by the patient or close relatives, the case is considered by a committee of HC judges of at least two members. This committee will make recommendation on the basis of opinion of three-member committee of doctors.

6.10.10. Right to choose

Right to Choose guarantees individuals the right to personal autonomy, which means that a person's decisions regarding his or her personal life are respected so long as he/she is not a nuisance to society. However, higher judiciary has taken differing opinions on this right.

- Supreme Court in ***Hadiya Case*** *in 2018* held that a person's right to choose a religion and marry is an intrinsic part of a person's meaningful existence. Neither the State nor "patriarchal supremacy" can interfere in his/her decision. Freedom of faith is essential to his/her autonomy; choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow, The Constitution guarantees to each individual the right freely to practise, profess and propagate religion. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme.
- Patna High Court in *the* ***Confederation of Indian Alcoholic Beverage Companies v State of Bihar (2016)*** held the imposition of "prohibition" in Bihar as unconstitutional. It addressed the question of imposition of prohibition in terms of its impact on the right to life and liberty of a citizen. Supreme Court, however, has stayed the operation of the Patna High Court judgment.
- Bombay High Court in ***High Court on Its Own Motion v State of Maharashtra*** **(2016),** read in "choice" as a ground on which a woman may lawfully seek an abortion, even though the Medical Termination of Pregnancy Act, 1971 only permits abortions on the ground that the pregnancy might affect the mental health of the woman.
- Bombay High Court, in **Shaikh Zahid Mukhtiar v State of Maharashtra (2016),** struck down the sections of Maharashtra Animal Preservation Act, 1976, on the grounds that it is a breach of Article 21, specifically the right to consume food of one's choice in private.
- Supreme Court overturned Delhi High Court's judgment decriminalizing voluntary homosexual acts on the premise (among other things) that it was a violation of the right to privacy of the individual, which is part of the right to life of a person (***Suresh Kumar Koushal v Naz Foundation*** **(2014)**). It refused to even engage in the argument that LGBTQ persons may have rights.

Student Notes:

6.11. Article 21A

6.11.1. Text of Right to education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

6.11.2. Description/Historical Evolution

In 1992, the Supreme Court held in Mohini Jain case that the "right to education" is part of "right to life" and hence is a fundamental right under Part III of the Constitution.

The Supreme Court Judgment in Unni Krishnan case further reinforced the same when it affirmed that right to education flows from the right to life guaranteed under Article 21 and draws its support from the Directive Principles of the Constitution, Article 41 and 45.

Article 41 provides for right to education. Article 45 originally required the State to make provisions within 10 years for free and compulsory education for all children until they achieved the age of 14 years. It has been replaced by 86th Amendment Act.

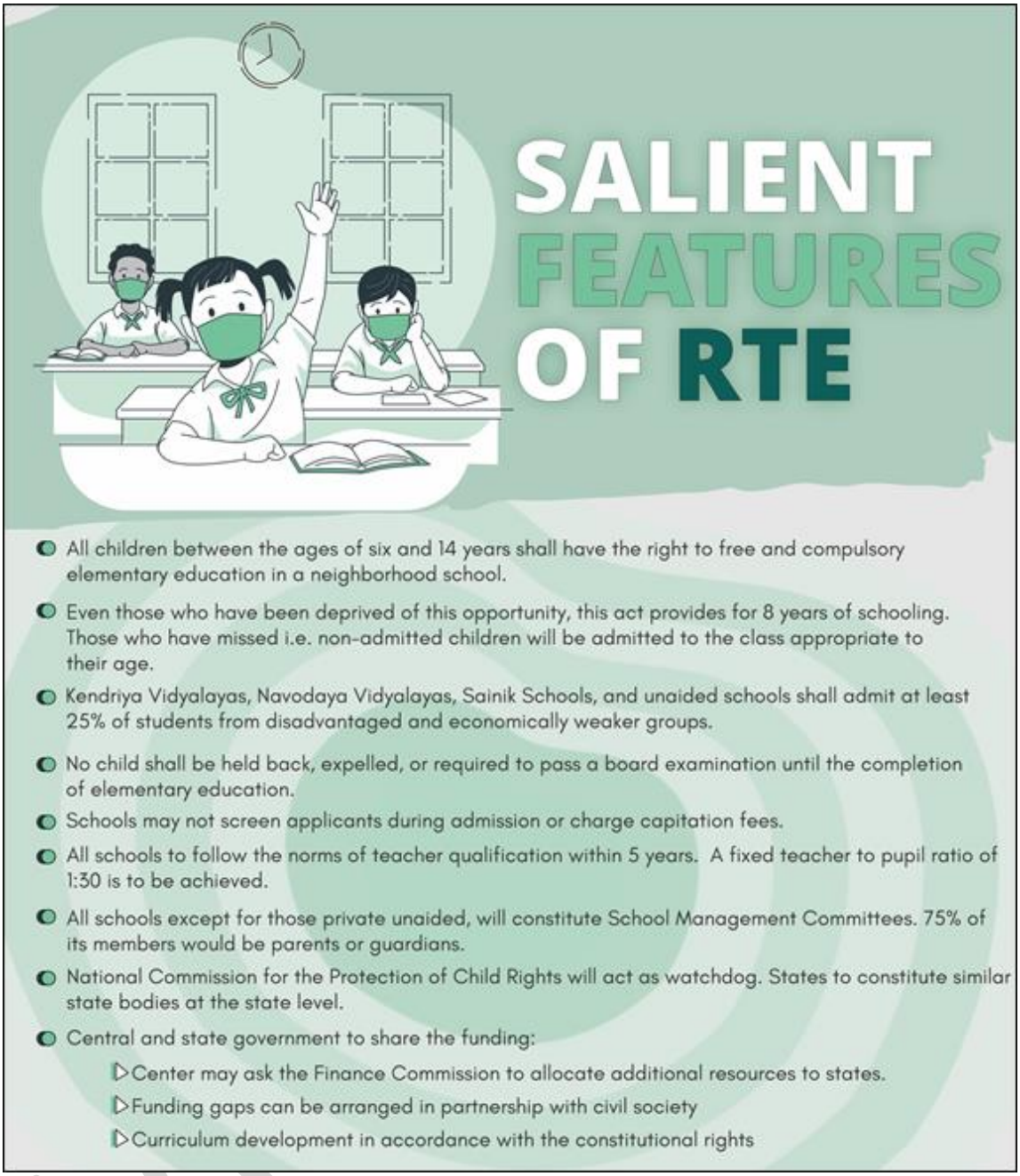
Notably, SC held that this too is not an absolute right. It shall depend on the state to determine the manner in which it shall implement the right.

The demand for RTE was first made by Gopal Krishna Gokhale during British times. After 100 years of this, RTE came into existence.

6.11.3. 86th Amendment Act

The 86th Amendment Act brought about the following changes to the Constitution:

- Under Article 21A, every child between the age of 6-14 has a fundamental right to education, which the State shall provide "in such a manner the State may, by law, determine"
- Early childhood care and protection (for children in the age group of 0-6) is provided for as a directive principle of State Policy under Article 45 of the Constitution.
- Article 51 (K) provides a duty on those who are parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age 8-14.



6.11.4. Evaluation of RTE

- There are no specific penalties if the authorities fail to provide the right to elementary education.
- Both the state government and the local authority have the duty to provide free and compulsory elementary education. Sharing of this duty may lead to neither government being held accountable.
- The Bill provides for the right to schooling and physical infrastructure but does not guarantee that children learn. It exempts government schools from any consequences if they do not meet the specified norms.
- The Bill legitimizes the practice of multi-grade teaching. The number of teachers shall be based on the number of students rather than by grade.
- Enrolment has reached universal levels but the problem of dropouts and absenteeism continues
- Also, the act doesn't provide for those who cannot go to school
- Hence, it is said that it is a right to schooling instead of the right to education

- Bulk of the schools fail to meet the targets of improving infrastructure
- There is a big deficit in the country with respect to the availability of untrained teachers
- Some people believe that not failing a child is not a good option as it relieves the teachers from responsibility.

6.11.5. Applicability

Applies to all children in the relevant age group whether Indian citizens or not.

6.12. Article 22- Protection against Arrest and Detention in Certain Cases

6.12.1. Text

Protection against arrest and detention in certain cases.

1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
3) Nothing in clauses (1) and (2) shall apply—
   a) to any person who for the time being is an enemy alien; or
   b) to any person who is arrested or detained under any law providing for preventive detention.
4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—
   a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or
   b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a (b) to any person who is arrested or detained under any law providing for preventive detention.
6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

6.12.2. Description

Article 22 provides for 2 kinds of detentions-

- Preventive detention; and
- Punitive detention

Protection in case of punitive detention is available to citizens and no-citizens but not to enemy aliens. A person must be informed of the grounds of his arrest so that he can prepare for his defense. The person also has the right to consult and be defended by the legal practitioner of his choice. Such an individual must be presented before a magistrate within 24 hours so that any wrong action of the executive can be corrected.

Student Notes:

Student Notes:

The objective of preventive detention is to prevent a person from committing a crime. Certain rights are available to such a person as well. He must be informed of the grounds of his arrest. Police cannot detain a person beyond 3 months unless it has permission from an advisory board. Such an advisor board will consist of 3 judges of SC. Parliament can also prescribe a law providing for detention beyond 3 months.

6.12.2.1. Criticism of Preventive Detention

In India, there has been a misuse of such laws and so it has become a human rights concern. It represents the police power of the State. No other democratic country mentions preventive detention in its constitution and such laws come into effect only under emergency conditions.

6.12.2.2. Arguments given in favor of Preventive detention

Areas in context of which preventive laws can be made are laid down in the Constitution itself in Union List entry 9 related to defense, foreign affairs and security of the country and Concurrent List entry 3 for maintenance of public order, security of state and maintaining essential supply and services. Thus, it checks the arbitrary action by the State.

6.12.3. Legislations

The below mentioned acts have a provision to detain beyond three months:

- National Security Act,
- Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA); and
- Prevention of Terrorism Act (POTA)Likewise, many states have come up with similar acts. Both at the central and state level, there are around forty laws in the statute book of India authorizing preventive detention.

6.12.4. Court Judgments

- In case of arrest of Anna Hazare in 2011, SC held that preventive detention law can be invoked only if there is "imminent danger to peace" and a person sought to be arrested is likely to commit a cognisable offence. Otherwise it would violate the victim's fundamental right.
- In another judgment, SC held that rhetorical incantation of word “goonda” or “prejudicial to maintenance of public order” cannot be sufficient justification to invoke the draconian powers of preventive detention. It quashed preventive detention of a man who was accused of selling spurious chilli seeds to farmers. It observed that when sufficient remedies for offence were available under ordinary laws, preventive detention must not be invoked. It cannot be an alternative to normal legal process. Order of preventive detention affects the life and liberty of citizen under Articles 14, 19, 21 and 22 and hence should be used cautiously. It came down heavily on the practice of states to use preventive detention laws to avoid efforts in investigation and prosecution.

6.13. Article 23 – Prohibition of Traffic in Humans and Forced Labor

6.13.1. Text

Prohibition of traffic in human beings and forced labor.

1) Traffic in human beings and begar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Student Notes:

6.13.2. Description

Article 23(1) abolishes any form of bonded labor, forced labor and trafficking in human beings. It has special significance for SC/STs and women. "Begar" is described as labor or service, which a person is forced to give without receiving any remuneration for it. It is also known as "debt bondage".

Article 23(2) states that State can impose compulsory service if there is a need for the same.

Notably, Devadasi system has been abolished because of the prohibition of above article.

6.13.3. Legislations

To check human trafficking, following legislations have been made:

- Immoral Traffic Prevention Act (ITPA), 1956
- Bonded Labor System (Abolition) Act, 1976
- Juvenile Justice (Care and Protection) Act, 2000

6.13.4. Applicability

It is available both to citizens and non-citizens.

6.14. Article 24 – Prohibition of employment of children

6.14.1. Text

Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

6.14.2. Description

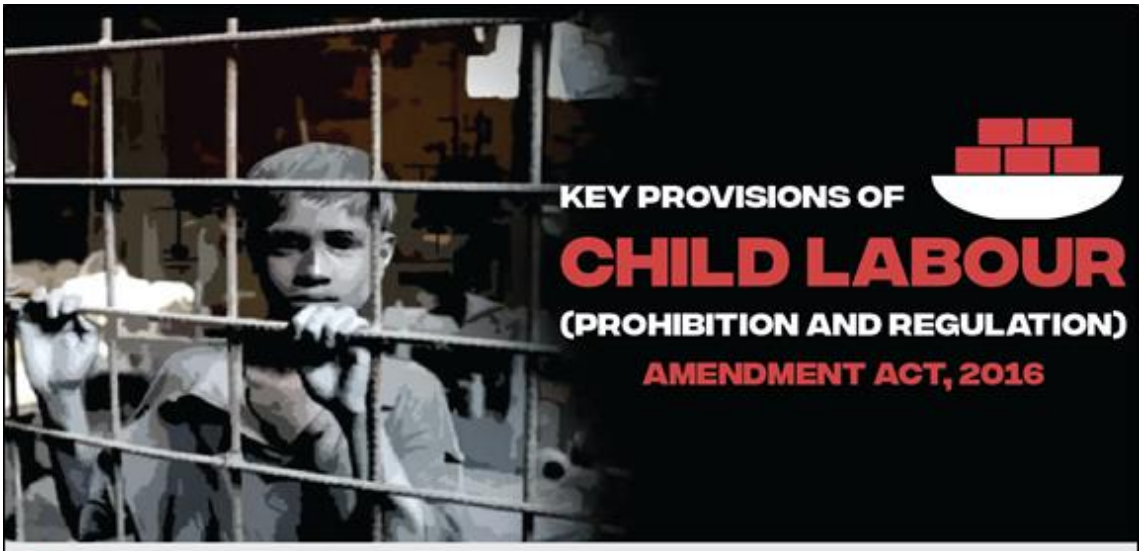
Article 24 prohibits the employment of children in hazardous occupations. However, it does not prohibit their employment in harmless work.

Note: Article 23 and 24 are complemented by Article 39(e) and 39(f).

6.14.3. Legislations

Child Labor (Prohibition and Regulation) Act, 1986 is the legislation to check child labor. The Act prohibits employment of children below 14 years in certain occupations such as automobile workshops, bidi-making, carpet weaving, handloom and power loom industry, mines and domestic work.

In 2016, Parliament passed **Child Labour (Prohibition and Regulation) Amendment Act, 2016.** It amends 1986 Act to widen its scope against child labour and stricter punishments for violation.



- It prohibits employment of children below 14 years in certain occupations such as automobile workshops, bidi-making, carpet weaving, handloom and power loom industry, mines and domestic work.
- In light of the Right of Children to Free and Compulsory Education Act, 2009, the Act seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours or is working in entertainment industry.
- It bans employing anybody below 18 years in hazardous occupation.
- Adds a new category of persons called "adolescent". An adolescent means a person between 14 and 18 years of age. The Act prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous processes).
- Central government may add or omit any hazardous occupation from the list included in the Act.
- Enhances the punishment for employing any child in an occupation. It also includes penalty for employing an adolescent in a hazardous occupation.
- Penalty for employing a child was increased to imprisonment between 6 months and two years (from 3 months-one year) or a fine of Rs 20,000 to Rs 50,000 (from Rs 10,000-20,000) or both.
- Penalty for employing an adolescent in hazardous occupation is imprisonment between 6 months and two years or a fine of Rs 20,000 to Rs 50,000 or both.
- Government may confer powers on a District Magistrate to ensure that the provisions of the law are properly carried out.
- It empowers government to make periodic inspection of places at which employment of children and adolescents are prohibited.

The Commission for Protection of Child Rights Act, 2005 was enacted to provide for speedy trials of offences committed against children and violation of child rights.

In 2006, government banned the employment of children as domestic servants or working establishments like hotels. It warned that anyone employing children below the age of 14 years is liable for penal action.

6.14.4. Applicability

It is available to all children regardless of citizenship status.

6.15. Article 25

Freedom of conscience and free profession, practice and propagation of religion.

1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Student Notes:

6.15.1. Description

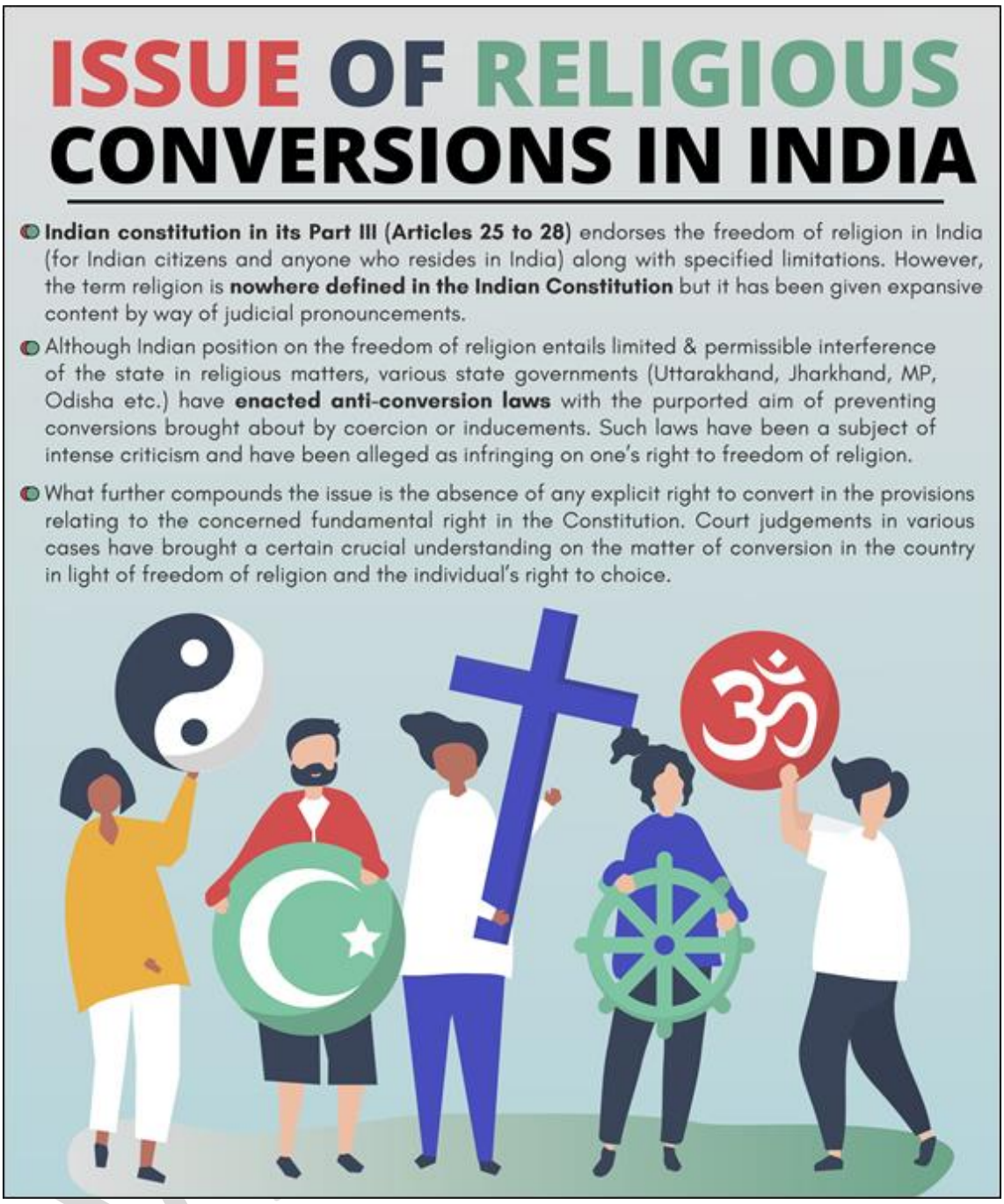
Explanation I. The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II. In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

6.15.2. Applicability

Also, these rights are **available to all persons**—citizens as well as non-citizens.

Student Notes:



6.15.3. Important Judgments

6.15.3.1. Jagadishwaranand case, 1984

The Supreme Court held that the Anand Margi practice of dancing with skulls is not essential to its religion and could be reasonably restricted. Similarly, cow slaughter is not considered essential to Islam on Bakrid Day. Thus, the state can regulate what constitutes the essential religious practices and what does not and outlaw the latter if it is anti-social.

6.15.3.2. Stainislau v/s State of MP, 1977

Constitution bench of the Supreme Court ruled that Article 25(1) doesn't give the right to convert but only the right to spread tenets of one's own religion.

Thus, only voluntary conversions are valid in India. In fact, some states have passed anti-conversion laws prohibiting forced conversions.

Student Notes:

6.16. Article 26

6.16.1. Text

Freedom to manage religious affairs—subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

a) to establish and maintain institutions for religious and charitable purposes;
b) to manage its own affairs in matters of religion;
c) to own and acquire movable and immovable property; and
d) to administer such property in accordance with law.

6.16.2. Description

Article 26 states that a religion has a right to

- Establish and maintain its institutions for religious and charitable purposes,
- Manage its own affairs and
- Acquire property for the same.
- The State can make laws to regulate the administration of such property, but it cannot take away the right to administration altogether.

This freedom is, however, subject to **public order, morality** and **health**.

Note- *The "**religious denomination**" must satisfy three conditions. It must be a collection of individuals who has a system of beliefs or doctrine which they regard as conducive to their spiritual well-being. These include a **common faith, common organisation** and **designation by a distinctive name.***

Note *– while right to property of an individual is not a Fundamental Right anymore, for religious denomination it continues to be a Fundamental Right.*

Note*: In a January 2014 verdict the Supreme Court quashed the Tamil Nadu government's order appointing executive officer to manage the affairs and properties of the ancient Sri Sabhanayagar Temple, better known as Nataraja temple, in Chidambaram in Tamil Nadu. The SC Bench held that the temple will be managed by priests and cannot be taken over by the state government over allegations of mismanagement of temple properties.*

6.16.3. Relation with Article 25

Article 25 gives freedom to an individual, while Article 26 deals with an entire religious denomination or any of its section.

6.16.4. Sabarimala Temple Issue

Recently, the Supreme Court has deferred its decision on review of "2018 Sabarimala verdict" until a Seven Judges' Bench examines broader issues such as essentiality of religious practices and constitutional morality.

Background of the issue

- Sabarimala temple's age-old practice **barred** women in their reproductive phases (when they were at the menstruating phase) from entering the temple on the ground that the **presiding deity** was a complete celibate.
- In the "**Indian Young Lawyers Association & Others vs The State of Kerala & Others"** case, 2018, a five- judge bench had delivered a landmark 4:1 ruling setting aside the decades-old restrictions on the entry of women of reproductive age inside Sabarimala Temple.
    - The judgment remarked that ban on the entry of women in Sabarimala is **a kind of untouchability**, and thus violative of Article 17.

Student Notes:

- However, **Sabrimala Temple Board h**ad argued that these were matters of "faith", "belief" and cannot be termed as regressive, anti-women and had therefore urged the court not to interfere with the practice
- **Justice Indu Malhotra also had dissented against the majority verdict** on the ground that courts should not sit on judgement over harmless religious beliefs unless they were pernicious practices such as sati.

- Recently, review pleas were filed against above order. The petitioners contended that the 2018 judgments suffered from an error apparent since **constitutional morality is a vague concept** which cannot be utilised to undermine belief and faith.
- However, the court did not stay its earlier verdict which allowed women between the ages of 10 and 50 to visit Sabarimala temple.
- Now, the larger Bench would also consider the entry of women into mosques and the practice of female genital mutilation, prevalent among the Dawoodi Bohras Sect.

Implications of the Supreme Court's fresh examination of the Sabarimala Case

- **Will raise various key Constitutional questions**: The seven-judges' Bench will examine:
  - Question of balancing the freedom of religion under Articles 25 and 26 of the Constitution with other fundamental rights, particularly the Right to equality (Article 14).
  - Should "**essential religious practices**" or the "doctrine of essentiality" be accorded constitutional protection under Article 26 (freedom to manage religious affairs)?
  - What is the "permissible extent" of judicial recognition a court should give to PILs filed by people who do not belong to the religion of which practices are under the scanner?
  - Whether a court can probe whether a practice is essential to a religion or should the question be left to the respective religious head?
- The **constitutional debate on gender equality** will be reopened with the larger issue of whether any religion can bar women from entering places of worship.

Constitutional Morality

- The term 'morality' or 'constitutional morality' has not been defined in the Constitution.
- As per the Supreme Court, the **magnitude and sweep** of **constitutional morality** is not confined to the provisions and literal text which a Constitution contains, rather it embraces within itself virtues of a **wide magnitude** such as that of ushering a pluralistic and inclusive society, while adhering to the other principles of constitutionalism.
- In the 2018 Sabarimala verdict, the majority opinion defined '**morality'** in **Article 25** to mean **constitutional morality**.
  - Article 25 reads, "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion".
- As per the Supreme Court, "when there is a violation of the fundamental rights, the term '**morality'** naturally implies **constitutional morality** and any view taken by the courts, must be in conformity with the principles and basic tenets of the concept of Constitutional morality."

Understanding Doctrine of Essentiality and related debates

- **Doctrine of essentiality:** The doctrine of "essentiality" was invented by a seven-judge Bench of the Supreme Court in the 'Shirur Mutt' case in 1954 in which the court held that the term "religion" will cover all rituals and practices "integral" to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.
- **Surrounding debates**:
  - **Essentiality vs right to freedom of religion**: The Supreme Court in 'Ratilal Gandhi vs the State of Bombay' (1954) acknowledged that "every person has a fundamental right to

entertain such religious beliefs as may be approved by his judgment or conscience". However, the Essentiality test impinges on this autonomy.
    - The apex court has itself emphasised autonomy and choice in its Privacy (2017), 377 (2018), and Adultery (2018) judgments.
  - **Issue of Judicial overreach:** The doctrine has been criticised by several constitutional experts as it has tended to lead the court into an area that is beyond its competence, and given judges the power to decide purely religious questions which should be decided by the theologians.
- **Issues with the conception**: The concept of providing constitutional protection only to those elements of religion, which courts consider "essential" is problematic. Such an approach assumes that one element or practice of religion is independent of the others.
- **Arbitrariness in its application**: Over the years, courts have been inconsistent on this question — in some cases they have relied on religious texts to determine essentiality, in others on the empirical behaviour of followers, and in yet others, based on whether the practice existed at the time the religion originated.
- **Group rights vs Individual Rights:** The Supreme Court has itself acknowledged that "every individual has a fundamental right to entertain such religious beliefs". However, the essential practices test is antithetical to the individualistic conception of rights. Under the test, the court privileges certain religious practices over others, thus protecting the group's rights.

Thus, there should be a balance in terms of determining religious freedom as well as constitutional morality while dealing under Article 26.

6.17. Article 27

6.17.1. Text

Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

6.17.2. Description

Article 27 prohibits the State from spending any public money collected by way of tax for promotion of any religion. It is one of the essential consequences of secularism. The State cannot patronize any particular religion or religious denomination. In other words, the state should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits the state from favoring, patronizing and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

Note: In 2012, the Supreme Court directed the Union government to gradually reduce and abolish Haj subsidy in 10 years and invest the amount in education and other measures for social development of the minority community.

6.18. Article 28

6.18.1. Text

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Student Notes:

1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

6.18.2. Description

According to Article 28,

- No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- However, this provision does not apply to institutions administered by the state but established under any endowment or trust, which requires imparting religious instructions.
- Further, in an educational institution recognized by the State, religious instructions can be provided to a person but only with his consent. In case he is a minor, his guardian's consent is required.

6.19. Article 29

6.19.1. Text

Protection of interests of minorities.

1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

6.19.2. Description

Article 29(1) recognizes the right of an individual to preserve his culture, his language and script. Article 29(2) prohibits the State from making discrimination while granting access to educational institutions.

Note: Article 15 doesn't mention language as a ground of discrimination, but it is included in Article 29.

Article 29 grants protection to both linguistic and religious minorities. SC has held that the scope of this article is not restricted to minorities only and is available to "all sections" of the population, including majority.

In Champakam Dorairajan case (1951) the reservation provided to backward sections was challenged on the ground that it violated Article 29(2). The 1st Amendment Act was then enacted, inserting Article 15(4) for providing reservation.

6.19.3. Applicability

Both article 29 and 30 are available to Indian citizens only.

6.20. Article 30

6.20.1. Text

Right of minorities to establish and administer educational institutions.

Student Notes:

1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
   a) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

6.20.2. Description

Under Article 30, minorities (linguistic or religious) have the right to establish and administer educational institutions of their choice. The State cannot impose any restrictions on the right of the minorities except for making regulations, which promote excellence in education.

In case a minority's property is acquired by the State, it shall be provided adequate compensation for the same.

The State cannot discriminate while providing aid to such institutions.

The term minority has not been defined by the Constitution but literally it means a non-dominant group.

In Presidential reference to Kerala Education Bill, and later on Guru Nanak Dev University, the judiciary has established parameters to determine the minority status. At union level, it means those groups, which have less than 50% population at all India level. At state level, it means groups forming less than 50% population within the state.

6.20.3. Relation between Article 29 and 30

While Article 29 is a general protection available to all sections of the population, Article 30 is protection available only to the linguistic or religious minorities.

6.20.4. Applicability

Articles 29 and 30, both, are available to Indian citizens only.

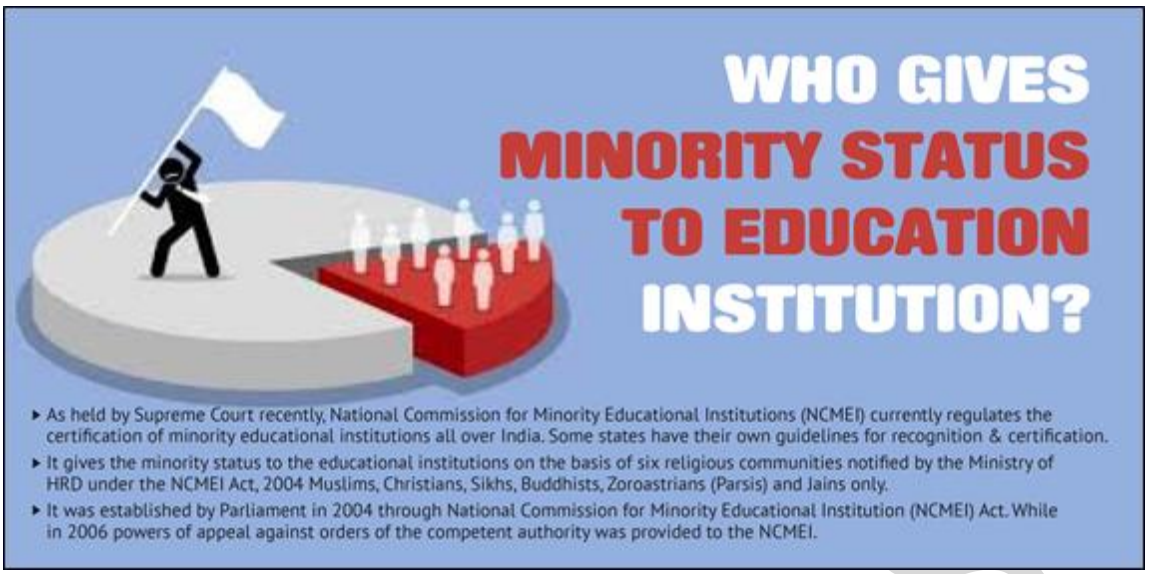
6.20.5. Minority Educational Institutions

What are minority educational institutions (MEIs)?

These are the institutions established to protect and promote the unique culture and traditions of minority groups. The minority groups can either be linguistic or religious.

What are the criteria?

- The NCMEI has issued a set of guidelines for the determination of minority status of educational institutions under Article 30.
- Effectively, there are two conditions that a school must fulfill in order to obtain minority status:
  - Most of Board or trust members must belong to the minority community.
  - It must declare explicitly that it has been established for the benefit of the minority community.
- The state authorities have prescribed similar criteria.

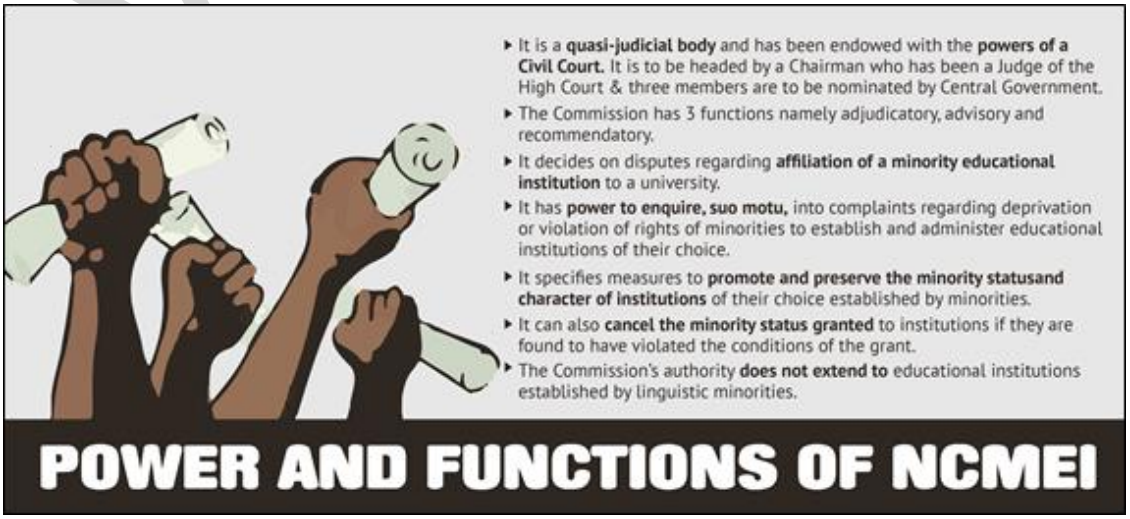


Recent controversies

- In 2016 the Central government has filed a fresh affidavit in SC saying a Central University, cannot be granted minority status.
- SC was hearing an appeal against Allahabad high court Judgement 2006 in which the minority status accorded to Aligarh Muslim University (AMU) was revoked.
- The Law Ministry has recommended revoking the 2011 order of NCMEI declaring Jamia Millia Islamia as a religious minority institution on the same ground.

Why Provision of minority status should be retained?

- Art 26(a) states that religious denominations can establish institutions for religious and charitable purposes. AMU and JMIU has been instrumental in bringing social change in minority community by providing education to Muslim youth which can be considered as charitable work under art 26 (a).
- Art 38 mandates the state to reduce inequalities among different section of society and such MEIs AMU and JMIU act as an agent of change among minority in providing quality and formal education
- InAzeez Basha case, 1967SC ruled that universities come under the definition of "educational institution" in Article 30(1). Thus, in a way, it also made obligatory on government to recognize such MEIs through statute.
- In Kerala Education bill case SC restricted the power of state in revoking minority status and depriving the minority from establishing and managing such institutions.



Student Notes:

Why it should be revoked?

- A university cannot be conferred Minority status because it can be incorporated only by act of Parliament. Since AMU and JMIU are established through a statute, these institutions cannot be considered as MEIs
- Universities receiving direct funding from states cannot be accorded minority status as this is in direct conflict with Art 27 which says that no proceeds of any taxes shall be utilized for promotion or maintenance of any particular religion or religious denomination.
- Universities established under parliament act has to follow the reservation policy of central government but AMU and JMIU do not provide any reservation to Scheduled Castes, Scheduled Tribes and Other Backward Classes. Hence the minority tag provided to such institutions is unconstitutional and illegal.
- Article 15 of the Constitution prohibits discrimination by state on grounds of religion and conferring minority status to any institution set up by a parliament or state would be in contravention.
- In Azeez Basha case, 1967 case, the SC upheld that AMU was not a minority educational institution as it was set up by British legislature, and not by Muslims.
- The right under Article 30(1) is not an absolute right and it seems to be in contradiction to Article 29(2), which prohibits denial of admission to any citizen into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

Privileges accorded under Minority status

- Article 30 provides that in case of compulsory takeover of property by state, due compensation must be provided to institution.
- MEIs are out of purview of reservation policy under Art 15. Recently, Bombay High Court came to the aid of MEIs and held that they need not reserve seats for backward class students.
- Sect 12 of Right to Education Act (RTE) 2009, which mandates 25% reservation for children belonging to economically weaker section (EWS), is also not applicable on MEI.
- In TMA Pai vs State of Karnataka 2002 case
    - SC allowed MEIs to have separate, fair, and transparent and merit-based admission process.
    - They can also have separate fee structure but not allowed to charge capitation fee.

Challenges faced by MEIs

- MEIs hardly have any substantial autonomy asthey receive funds from the government. For e.g. while the president of India can nullify any decision of these universities, he has no such power in respect of private universities.
- The real issue is the maladministration of minority institutions. Many private unaided minority institutions are in a mess and suffering from mismanagement, corruption etc. For e.g. selling minority seats to non- minority candidates.
- Exemption from RTE act obligations has led to rent-seeking behaviour among schools. Poorer sections among minority groups are not able to take admission in such institutions which render the purpose of establishing such institutions defeated.
- National level Entrance exams like National Eligibility and Entrance Test (NEET) and common counselling have now virtually taken away the minority institutions' right to admit students of their choice.
- Many Schools have resorted to acquire fake minority certificate to avoid obligations under RTE act 2009.

Student Notes:

Way forward

- The minority status should not be revoked due to mere technical lacunae. After all Minorities invest their resources, properties and time and also educate 50% non-minorities in their institutions.
- The ambiguities and gaps in the current administrative setup must be removed so that minority status' is not hijacked for private interests at the expense of minority welfare and equitable education
- More autonomy must be given to such universities in curriculum design and operation.
- The court has consistently maintained that the receipt of governmental aid does not mean the surrender of minority character. Hence Government may provide funding to MEIs in tune with other universities.
- The Supreme Court's decision to exempt all minority schools from the RTE need to be reviewed.
- The separate criteria for linguistic minorities must be evolved as criteria formulated by the NCMEI for religious minorities cannot be applied indiscriminately on linguistic minorities. For e.g. the medium of instruction in the linguistic minority institution must be in its language. At present, only Maharashtra has such a requirement.

6.20.6. Important judgments

6.20.6.1. St. Stephens v/s University of Delhi, 1992

The Supreme Court ruled that minority institutions should make available at least 50% of their annual admission intake for other communities. The admission of other communities should be done purely on the basis of merit.

6.20.6.2. Unnikrishnan v/s State of Andhra Pradesh, 1993

Supreme Court ordered for the introduction of three types of seats:

- 15% seats are management seats and fee is not limited.
- 35% seats, wherein State government fixed fees
- 50% are free seats based on merit established by a common entrance examination

6.20.6.3. TMA Pai Foundation and others v/s State of Karnataka, 2002

Following are the essential features of the landmark judgment:

- All citizens have the rights to establish and administer educational institutions
- The right to administer MEI (Minority Educational Institution) is not absolute
- The State can apply regulations to unaided MEIs also to achieve educational excellence
- Percentage of non-minority students to be admitted to an aided MEI to be decided by the state or university.
- Fees to be charged by unaided MEIs can't be regulated, but no institution can charge capitation fee.

6.20.6.4. Islamic Academy of education v/s State of Karnataka, 2003

In this case, the Supreme Court clarified its judgment in TMA Pai case. The ruling says that Article 30 confers on linguistic and religious minorities the unqualified right to establish educational institutions, but the government could exercise control and regulation on them for maintaining good standards.

6.20.6.5. St. Joseph College Case, 2018

Supreme Court in April, 2018 ruled that the National Commission for Minority Educational Institutions (NCMEI) has the power to grant an academic organisation the "valid" and binding status of a minority institute. Section 11(f) (of the NCMEI Act) confers jurisdiction on the NCMEI

to issue a certificate regarding the status of the minority educational institution.

Student Notes:

6.20.7. The Lacuna

The issue acquires importance because the Constitution doesn't define the words "majority" and "minority" – a lacuna that has induced many Hindu sects like Arya Samajists, and Ramkrishnaites to acquire the status of a minority. It is notable that Hindus are minority in five states –Jammu and Kashmir, Punjab, Nagaland, Mizoram, Meghalaya.

6.21. Article 31

It was originally the right to property but **was repealed in 1978** by the 44th Amendment Act and made into an ordinary right under Article 300A.

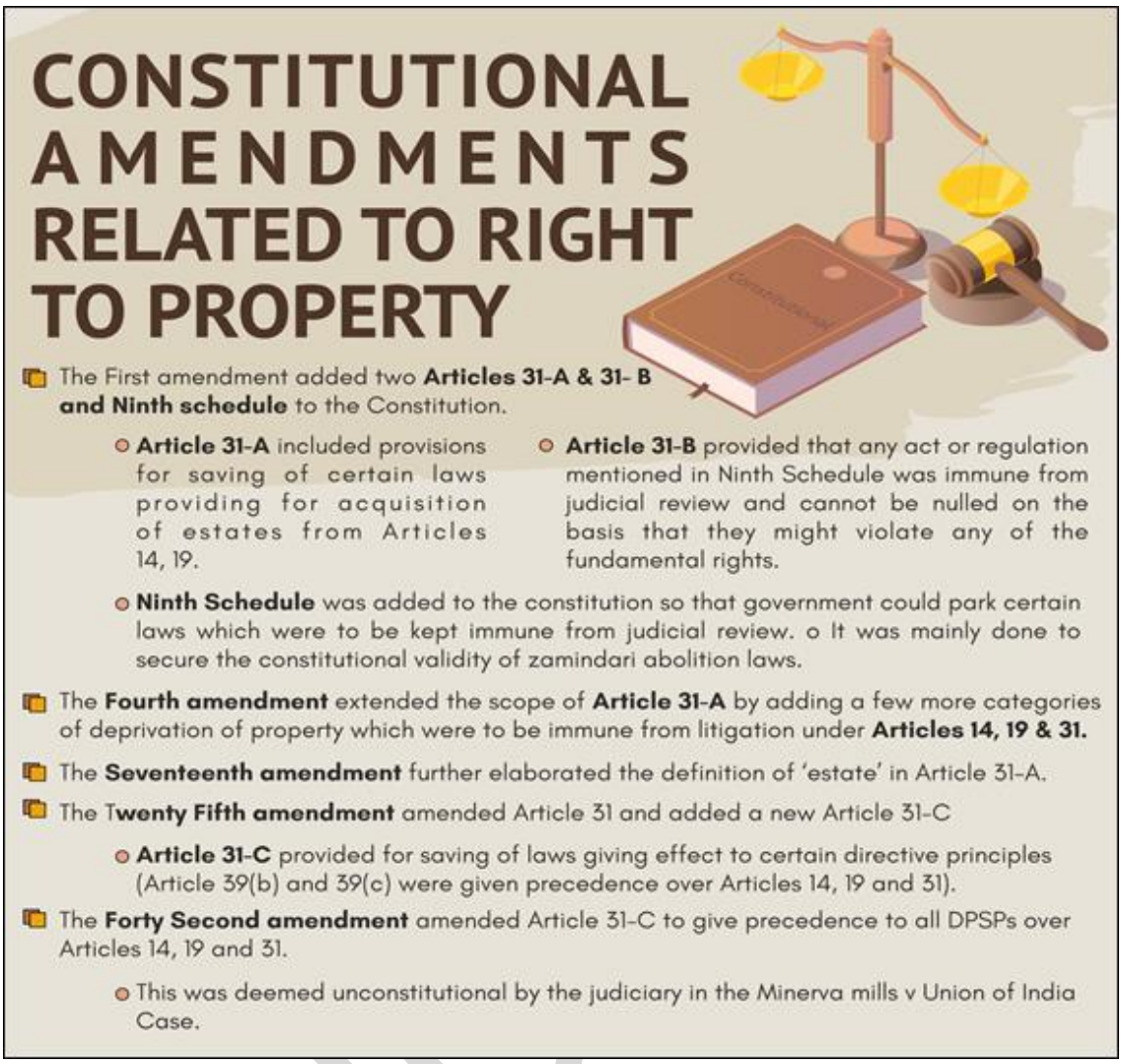
Background

- The Constitution originally provided for the **Right to Property** as a fundamental right (F.R.) under Articles 19 and 31.
  - **Article 19(1) (f)** guaranteed to the Indian citizens a right to acquire, hold and dispose of property.
  - **Article 31** of Indian Constitution stated that no person can be deprived of his property without the consent of a proper authority.
  - Also, **Article 31(2**) had put two limitations on State power of acquisition of land viz.
    - Firstly, the compulsory acquisition or requisitioning of land should be for public purpose.
    - Secondly, the law enacted in that behalf should provide for compensation.
  - However, after independence, it resulted in numerous litigations between the government and citizens. Major contentious issues were:
    - Laws enacted by government in relation to land reform measures to provide housing to the people in the urban area
    - Regulation of private enterprises
    - Nationalization of some commercial undertakings.
  - To narrow its scope it was modified several times by the constitutional amendments namely **1st, 4th, 17th, 25th and 42nd Constitutional Amendment Acts**.
  - However, it was continued to be seen as a roadblock in socio-economic development of the country.
  - Finally, **44th Constitutional Amendment Act** repealed the entire Article 31 and Article 19(1)(f) & inserted Article 300A.

Right to Property under Article 300A

- **Article 300-A** states that no person shall be deprived of his property save by authority of law. This means that-
  - Property is no longer a Fundamental Right, i.e. the aggrieved individual would not be competent to move to Supreme Court under Article 32, for any violation of Art 300A.
  - Also, a law will be necessary to deprive a person of his property.
- One can't move to the Supreme Court or High Court in case this right is violated.
- Further, it protects individuals from arbitrary executive action only, not from arbitrary legislative action.
- The state is not constitutionally bound to pay any compensation in case of acquisition.

Student Notes:



Arguments in favour of Right to property to be reinstated as Fundamental Right

- It **would protect citizens from unwarranted state action in the name of acquisition**: Compulsory land acquisition and mass displacement in the name of development have given rise to certain socio-economic issues. Thus, there is a need of stronger checks on the government.
- It **will provide support to the judiciary**: As of now the development of the Supreme Court's doctrinal jurisprudence is only safeguard against the fear of arbitrariness of State action. For example- **The Fair Balance test**.
  - The elevated status of Right to Property will aid Judiciary for effective delivery of justice.
- **Tackling manipulative practices in calculating fair compensation**: Land owners are at times deprived of a fair compensation due to vagueness in laws relating to land acquisitions.
- **Insecure Titles and Poor Land Records and Administration**: Many citizens lack a clear title to their land and it is accompanied by poor maintenance of land records by state organizations. For instance, the land rights of indigenous tribes were not recognized by the state, despite these people living in the land for generations.

Arguments in favour of Right to property remaining a legal right

- **It leads to smoother Land Acquisition**: India is developing country and for this purpose land acquisition should become swifter which is facilitated by Article 300A.
- It has **eased up judicial burden**: Previously, the judiciary was burdened with litigations related to property rights. However, it has come down significantly.

- It **aids government in its welfare objectives**: Given the government provides a fair compensation, land acquisition is necessary for fulfilling welfare purposes such as ensuring road connectivity, making electricity accessible to all etc.

Right to Property as a Human Right

- In several cases, the Supreme Court of India has held that the right to property is not just a statutory right but is also a human right.
- **Universal Declaration of Human Rights 1948** under Section 17(i) and (ii) also recognizes right to property. It states that-
  - Everyone has the right to own property alone as well as in association with others,
  - No-one shall be arbitrarily deprived of his property.
- **Significance**:
  - provides safeguards against arbitrariness of state
  - gives due importance to property as a tool of self- protection
  - allows people to be entrepreneurial

Fair Balance Test

According to it taking of property without payment of an amount reasonably related its value would normally constitute a disproportionate interference which could not be considered as justiciable.

Recent Developments-

Recently, the Supreme Court has reiterated that forcible dispossession of a person of his private property without due process of law is a human right violation.

Conclusion

There is a need to balance the right to property with the development of the society and the country as a whole. **Few steps that can be taken in this regard are**:

- Land records should be computerized.
- There is a need to develop institutions and processes that are easily accessible and provide mechanisms to the people to definitely establish their land titles.
- Government must follow guidelines prescribed by the Supreme Court whilst calculating fair compensation. LARR Act can be reformed in this regard.
- Large scale displacements must be avoided. But if necessary, then appropriate rehabilitation must be provided and the compensation should cover the social cost of displacement as well.

6.22. Article 31A

Article 31A saves 5 categories of laws from being challenged and invalidated on the ground of contravention of Fundamental Rights conferred by Article 14 and Article 19. They are related to agricultural land reforms, industry and commerce.

Added by 1st Amendment Act, it allows the State to nationalize private property. The idea was to give effect to land reforms.

Both Parliament and State Legislatures can make laws. This article, however doesn't immunize a state law unless it has been reserved for the consideration of the President and has received his assent.

This article also provides for payment of compensation at market value when the state acquires a land held by a person for cultivation below the statutory ceiling limit.

6.23. Article 31B – Validation of Certain Acts and Regulations

Article 31B protects the laws in the ninth schedule from invalidation on the ground of contravention of rights under Article 14 and 19.

Student Notes:

6.23.1. Controversy with respect to IX Schedule

The Ninth Schedule was created by a Constitution Amendment in 1951 by former Prime Minister Jawaharlal Nehru to push land reforms. The basic purpose of the Schedule was to abolish zamindari system. However, in recent times it has been misused. Not just land reforms laws, the Ninth Schedule today includes several controversial legislation like the 69 per cent reservation law of Tamil Nadu, which violates the Apex Court's 50 per cent ceiling on quotas.

Article 31B, which gives blanket protection to all items in the 9th Schedule, is also retrospective in nature. So, even if a statute, which has already been declared unconstitutional by a court of law is included within the schedule, it is deemed to be constitutional from the date of its inception.

However, in IR Coehlo case (2007), the Apex Court ruled that laws placed under Ninth Schedule after April 24, 1973 (the date of Kesavananda Bharati verdict) shall be open to challenge in court if they violated fundamental rights guaranteed under Articles 14, 19, 20 and 21 of the Constitution. The apex court also said that if the law put in the Ninth Schedule abridges or abrogates fundamental rights resulting in the violation of the basic structure of the Constitution, such laws have to be invalidated.

6.24. Article 31C- Saving of laws giving effect to directive principles

Article 31C was inserted by the 25th Amendment Act in 1971 and protects laws implementing Directive Principles under 39(b), 39(c) from invalidation on the ground of violation of Article 14, 19 and 31.

Article 31-C had two parts. The first part protected a law giving effect to the policy of the state towards securing the principles specified in Articles 39 (b) and (c) from being challenged on the ground of infringement of the Fundamental Rights under Article 14, 19 and 31. The second part of Article 31 C originally sought to oust the jurisdiction of the courts to find out whether the law in question gave effect to the principles of Articles 39 (b) and 39 (c).

The second part was struck down in the Kesavananda Bharati case 1973, as it took away the powers of judicial review, which was held to be a basic feature of the constitution by the Supreme Court.

The scope of this Article was further extended through 42nd Amendment Act, in which the immunity was provided in favor of all the DPSPs against any of the fundamental rights. It provided that no law which gives effect to any of the directive principles (not just 39(b) and 39(C)) can be invalidated on the ground of violation of the Article 14 and 19.

However, the Apex Court in the Minerva Mill case, 1980 struck down the above provision and thereby restored the balance between fundamental rights and directive principles.

6.25. Article 32

6.25.1. Text

Remedies for enforcement of rights conferred by this Part.

1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

Student Notes:

4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

6.25.2. Description

Article 32(1) gives the right to move the SC for the enforcement of Fundamental Rights. However, it mentions the right to move by appropriate proceedings.

It is the duty of SC and right of persons.

SC can determine what appropriate proceedings are. The traditional approach is that the person moving the courts should have a locus standi. However, the SC has liberalized this approach and admits:

6.25.2.1. Public Interest Litigation

- Adopted from the USA social interest litigation.
- It's not private interest litigation, nor a political interest litigation
- It is not a fundamental right

(Please *refer to PIL portion in the document on Supreme Court for more information*)

6.25.2.2. Epistolary jurisdiction

- Taking action on the basis of post card, letter.

6.25.2.3. Suo moto

- SC can take action on its own

6.25.3. Doctrine of Laches

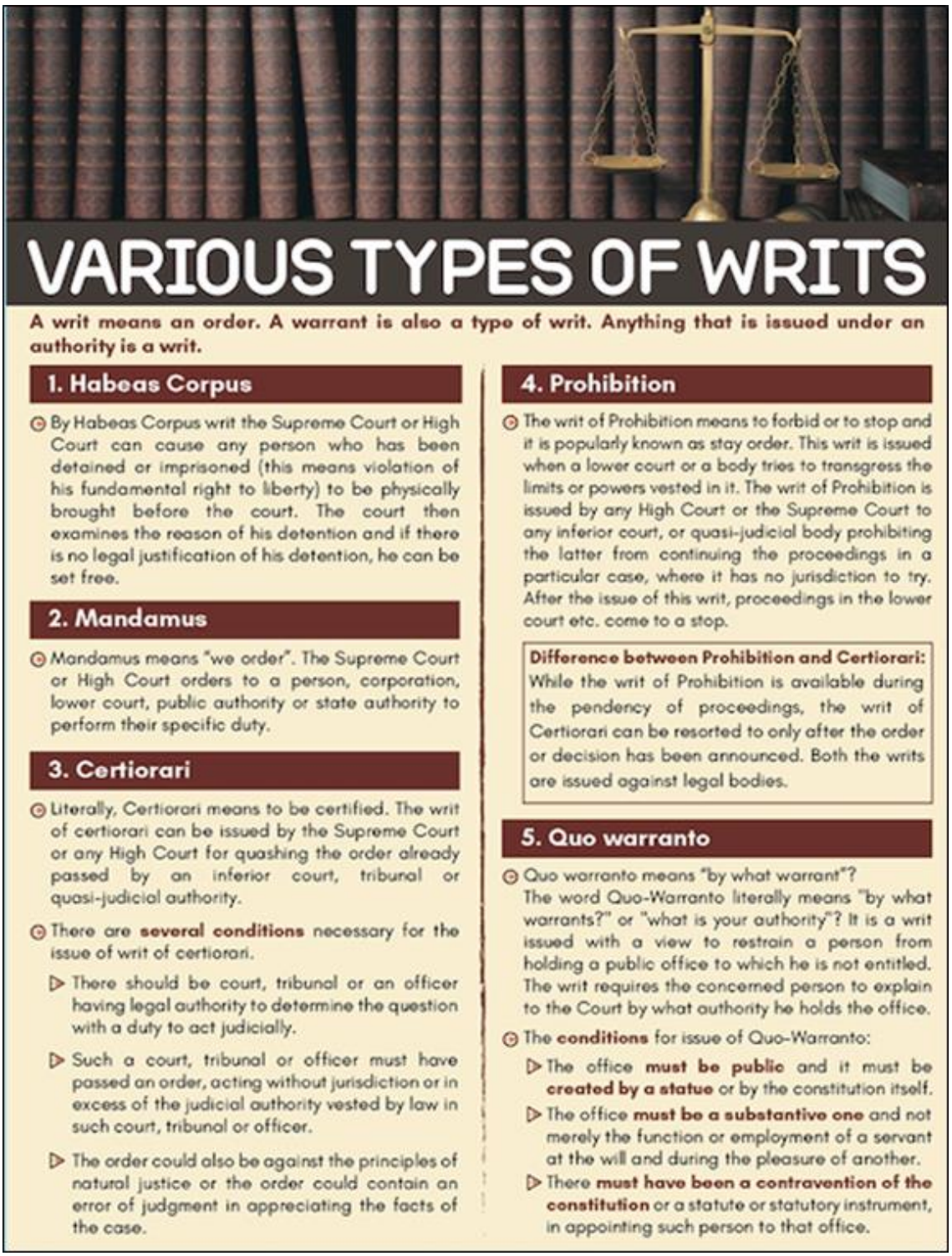
- SC protects the rights of those who are vigilant about their rights.
- In case of unnecessary delay in approaching the courts for enforcing the rights, SC may deny the issue of writs.

6.25.4. Doctrine of Res Judicata

- According to the dictionary meaning, 'res judicata' means a case or suit involving a particular issue between two or more parties already decided by a court. Thereafter, if either of the parties approaches the same court for the adjudication of the same issue, the suit will be struck by the law of 'res judicata'.
- If a person goes first to a High Court under Article 226 and his petition is dismissed on merits, he cannot approach the SC under Article 32 because of 'res judicata'. He can reach the SC only by way of appeal. If, however, high court dismisses his or her writ petition not on merits, then 'res judicata' does not apply and petitioner can move the SC
- This doctrine is applied to give recognition to the decision of courts of competent jurisdiction.
- Same person however, can approach the SC on the same cases, if some new facts have emerged which have not been examined by HC.

6.25.5. Writs

Student Notes:



The Constitution allows the Parliament to empower any other court to issue these writs. However, the no such provision has been made so far. Thus, the **Supreme Court** (under Article 32) and the H**igh** C**ourts** (under Article 226) can issue **all** the **above** writs, and not any other court.

Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs. Article 226 now empowers all the high courts to issue the writs.

Student Notes:

6.25.5.1 Difference between writ jurisdiction of SC and HC

The Supreme Court can issue writs **only for the enforcement of fundamental rights** whereas a high court can issue writs not only for the enforcement of Fundamental Rights **but also for any other purpose.** The expression 'for any other purpose' refers to the enforcement of an ordinary legal right. Thus, the writ **jurisdiction of the High Court is wider than that of Supreme court.**

Also, the Supreme Court can issue writs **against a person or government throughout the territory of India** whereas a high court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction, only if the cause of action arises within its territorial jurisdiction.

Further, a remedy under Article 32 is in itself a Fundamental Right and hence, the **Supreme Court may not refuse to exercise its writ jurisdiction**. On the other hand, a remedy under Article 226 is discretionary and hence, a **high court may refuse to exercise its writ jurisdiction**. Hence, the Supreme Court is constituted as a defender and guarantor of the fundamental rights.

6.25.6. Importance of Article 32

Mere declaration of the fundamental right is meaningless until and unless there is an effective machinery for enforcement of the fundamental rights. So, a right without a remedy is a worthless declaration. The framers of our constitution adopted the special provisions in the article 32 which provide remedies to the violated fundamental rights of a citizen. SC in IR Coehlo case (2007), mentioned that Article 32 is integral part of the basic structure. This article also established SC as the guardian of Fundamental Rights. It also shows the SC's powers of judicial review. According to Dr. Ambedkar, this Article is the soul of part-III.

6.25.7. Article 32(3)

Parliament can authorize any other court also to enforce Fundamental Rights.

Conditions:

- Without negatively effecting the powers of SC
- The other court which has been authorized to issue writs; its powers are limited within the local limits of its jurisdiction.

6.25.8. Article 32(4)

It provides for the suspension of Article 32, in special manner as prescribed in Article 359.

6.25.7.1.Article 359-Suspension of FRs during the proclamation of national emergency

Except rights given under Article 19, whose enforcement is automatically suspended with the proclamation of national emergency on grounds of external aggression or war; the suspension of other rights doesn't happen automatically.

Rights under Article 20 and 21 are never suspended. Rest of the rights can be suspended only when the President issues an order to suspend a right. In his order, the President has to specify which rights, for what period and for what geographical limits.

6.26. Article 33

6.26.1. Text

Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

a) the members of the Armed Forces; or
b) the members of the Forces charged with the maintenance of public order; or

c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

6.26.2. Description

Article 33 empowers the Parliament to restrict or abrogate the application of the fundamental rights in relation to the armed forces, paramilitary forces, police etc. But it does not mean that the article itself would abrogate any rights. The operation of this article depends upon the parliamentary legislation, though these legislations don't need to refer this article. Such legislation by parliament of India may restrict the operation of any fundamental rights such as Equality, Freedom of Expression, Freedom of association, Personal Liberty etc. One such article is Police Forces (Restriction of Rights) Act, 1966. This act was challenged in Supreme Court but was held valid.

6.27. Article 34

6.27.1. Text

Restriction on rights conferred by this Part while martial law is in force in any area.—Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

6.27.2. Description

Article 34 pertains to the restrictions on the fundamental rights while martial law is in force in any area. (Martial law means law made by military authorities. Such a law is imposed by the President, since he is the supreme commander of armed forces). The article gives indemnity by law in respect to acts done during operations of martial law. Here we have to note that the Constitution does not have a provision of authorizing the proclamation of martial law. The article simply means that if there is a Government servant on duty, then he/ she is indemnified for the acts done by him or her in connection with maintenance of law and order in the area where martial law is in force. This act of indemnity cannot be challenged in any court on the ground of contravention with any of the fundamental rights.

MARTIAL LAW VS NATIONAL EMERGENCY

Martial Law	National Emergency
It affects only Fundamental Rights.	It affects not only Fundamental Rights but also Centre-State relations, distribution of revenues and legislative powers between Centre and States and may extend the tenure of the Parliament.
It suspends the government and ordinary law courts.	It continues the government and ordinary law courts.
It is imposed to restore the breakdown of law and order due to any reason.	It can be imposed only on three grounds - war, external aggression or armed rebellion.
It is imposed in some specific area of the country.	It is imposed either in the whole country or in any part of it.
It has no specific provision in the Constitution. It is implicit.	It has specific and detailed provision in the Constitution. It is explicit.

Student Notes:

6.28. Article 35

6.28.1. Text

Legislation to give effect to the provisions of this Part.

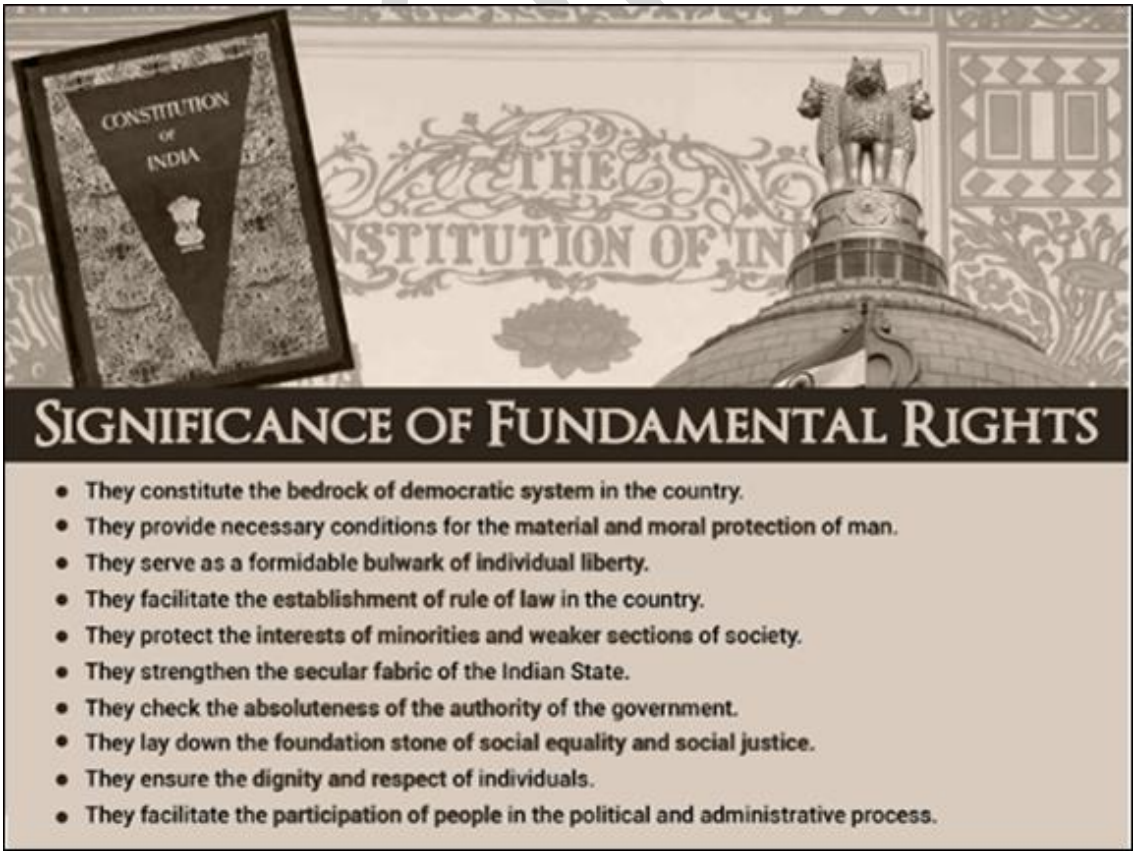
Notwithstanding anything in this Constitution,

a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—
   i. with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and
   ii. for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);
b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation—In this article, the expression "law in force'' has the same meaning as in article 372.

6.28.2. Description

Article 35 states that power to make laws to give effect to FR shall vest only in the Parliament and not State Legislatures. This would ensure that there is uniformity throughout the territory of India in both the laws made and the punishments prescribed for offences against Fundamental Rights.



Student Notes:

7. Are Fundamental Rights Absolute

Fundamental Rights don't give absolute powers to an individual. They are restricted rights. In Gopalan case, 1950, SC held that there cannot be any such thing as absolute or unmonitored liberty, for that would lead to anarchy. On other hand, if the state has absolute powers, then that would lead to tyranny. The purpose of Fundamental Rights is to establish rule of law and hence there should be a balance between individual rights and social needs. That's why constitution empowers the Parliament to provide reasonable and fair restrictions on the Fundamental Rights.

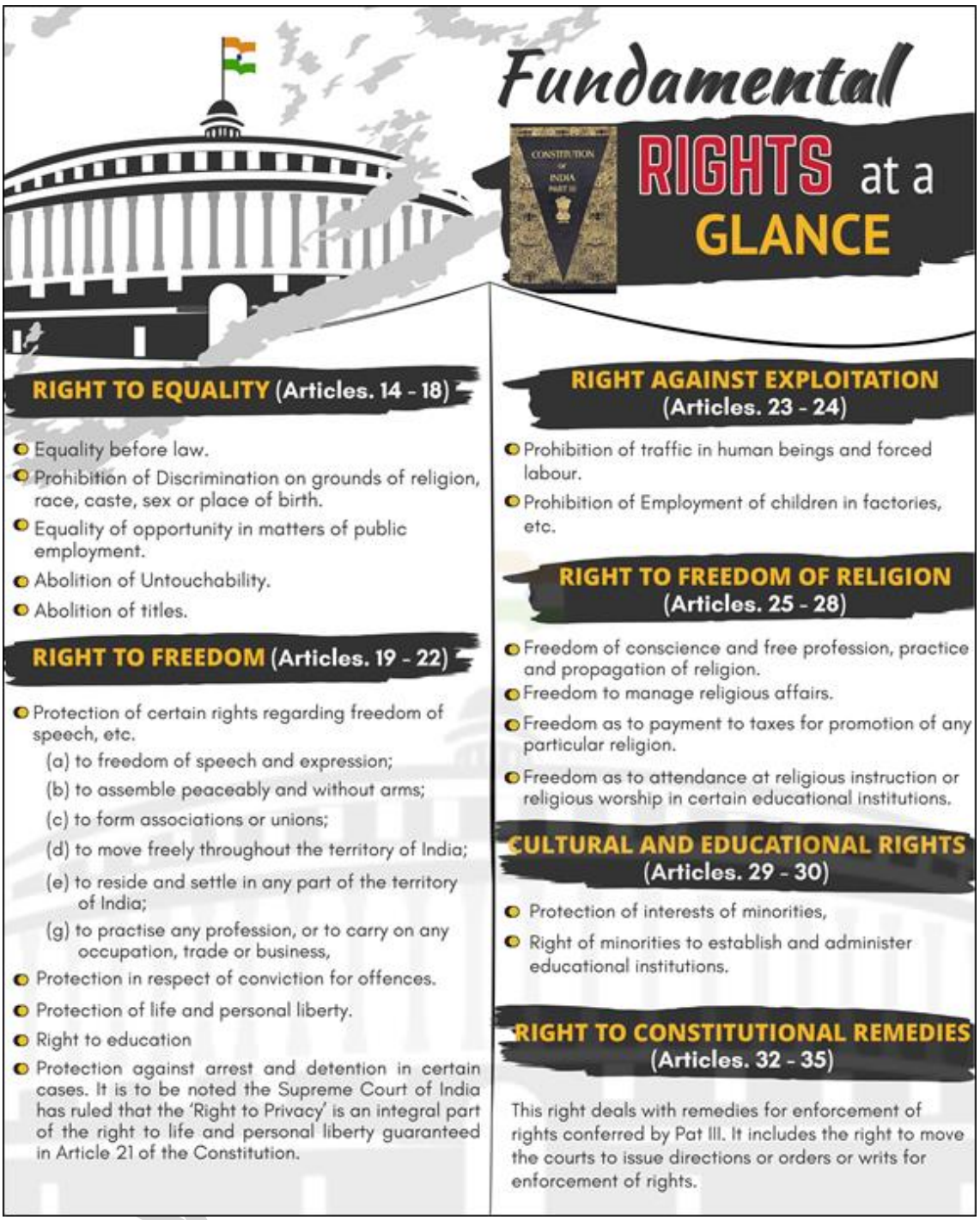
Grounds of reasonable restrictions are as follows:

- The grounds mentioned in article 19(2).
- Advancement of SC, ST, OBC and other weaker sections of society including women and children.
- In the interest of general public, public order, decency and morality
- Sovereignty and integrity of India
- Security of the state
- Friendly relation with foreign state

8. Criticism of Fundamental Rights

- Although called fundamental rights, these are subject to lot of restrictions. Further what constitutes "reasonableness" is subject to differing interpretations by courts.
- These rights provide only political rights. However political freedom is meaningless unless there is social and freedom also.
- These rights are not sacrosanct. They can be abridged by the Parliament. Most of these get suspended during the operation of national emergency.
- The remedy in case Fundamental Rights are violated, is costly, time consuming and in practice inaccessible to vast majority of the population.

Student Notes:



9. Previous year UPSC GS Mains Questions

1. In many democratic countries radio and television are not under the control of the state. Do you think that the same policy should be adopted in India? Mention briefly the points in favour of and against such a step. (Not more than 200 words) (80/I/14/25)
2. The Press in India is free to publish any news and views except those, which are objectionable from the point of view of the security of state, friendly relations with Foreign States etc. What steps have been taken recently by Government to prevent monopoly of the management of the newspaper, to encourage the growth of small newspapers and to prevent the exploitation of working journalists and other employees of Indian newspapers? (Not more than 150 words) (81/I/6/25)

Student Notes:

3. Bring out the significance of the Fundamental rights provided in the Constitution of India. The right to acquire, hold and dispose of property has ceased to be a fundamental right. Examine the purpose of the change involved. (in about 150 words) (81/II/4a/20)
4. Why has there been reservation of seats for Scheduled Castes and Tribes in the legislatures and in public services? Has the purpose been achieved? Indicate recent developments. (in about 150 words) (81/II/4b/20)
5. Differentiate between Fundamental Rights and Directive Principles of State Policy. Do you think that the latter have been adequately implemented? Give reasons for your views (in about 150 words) (82/II/5c/20)
6. Consider the recommendations of the Mandal Commission and offer your comments, referring to the situations obtaining in the country. (in about 150 words). (83/II/4c/20)
7. What is meant by Habeas Corpus? What is the purpose of a writ of Habeas Corpus? (83/II/8a(B)/2)
8. What is the present status of the Right to Property? (84/II/8a(B)/3)
9. What is dealt with in Articles 25 of Indian Constitution? What was the controversy about it recently? (Not more than 100 words) (84/I/9a/20)
10. What are the main causes of anti-reservation stir in Gujarat? What are the provisions in our Constitution regarding reservation? Do your consider the policy of reservation justified? (About 200 words) (85/I/11/35)
11. What to you understand by "preventive detention"? (86/II/8f(B)/3)
12. Discuss the importance of Article 32 of the Indian Constitution. (in about 150 words) (87/II/4c/20)
13. Define the writ of Certiorari. (87/II/8a(B)/3)
14. What to you understand by 'positive discrimination'? (87/II/8b(B)/3)
15. Explain the concept of Minorities in the India Constitution and mention the safeguards provided therein for their protection. (150 words) (88/II/4b/20)
16. What the "reasonable restrictions" mentioned in the Indian Constitution accompanying the fundamental rights? (in about 150 words) (90/II/4d/20)
17. Explain the significance of Prasar Bharati Corporation in the context of Modern mass media. (90/II/8a(B)/3)
18. Define writ of Mandamus. Explain its importance. (90/II/8e(B)/3)
19. Discuss the secular nature of Indian polity and the position of minorities in India. (in 150 words) (91/II/4c/20)
20. The writ of Mandamus will not be granted against certain persons. Who are they? (92/II/4c/20)
21. Distinguish between preventive detention and punitive detention. (93/II/8a(B)/3)
22. When and why was the National Literacy Mission founded? (93/II/8c(B)/3)
23. What is meant by 'equal protection of law'? (93/II/8d(B)/3)
24. What is the purpose of Article 24 of the Constitution of India? (93/II/8f(B)/3)
25. Difference between the 'due process of law' and 'the procedure established by law' in the context of deprivation of personal liberty in India. (94/II/8a(B)/3)
26. Explain the meaning of ex post-facto legislation (94/II/8b(B)/3)
27. Indicate the provisions of Indian Constitution relating to Secularism. (94/II/8e(B)/3)
28. What are the constitutional rights of the citizens of India? What do you think about the demand of the NRI's for dual citizenship? (150 words) (95/II/4c/20)
29. What is the present status of the right to property as a Fundamental Right? (95/II/8b(B)/3)
30. Why is Article 32 considered as the cornerstone of the Constitution? (95/II/8c(B)/3)
31. The writ of Mandamus cannot be granted against certain persons. Who are they? (96/II/8c(B)/3)
32. What are the provisions regarding the protection of Linguistic minorities in the Constitution? (in about 75 words) (97/I/3d/10)
33. What is Social Justice? How can reservation of seats for women in Parliament contribute to the establishment of a socially just society in India? (97/II/1b/40)

Student Notes:

34. What, according to the Supreme Court, Constituted 'The Basic Features' which is upheld in case known as
- Keshavanand Bharati v/s. State of Kerala (1990)
- Minerva Mills v/s. Union of India (1990)? (in about 150 words) (97/II/4c/20)

35. What specific provisions exist in the Constitution of India about child labour? (97/II/8e(B)/3)
36. What are the circumstances leading to the promulgation of Prasar Bharti Ordinance in August 1998? (in about 50 words) (98/I/7a/6)
37. State the amplitude of Article 21 of the Constitution. (98/II/8c(B)/3)
38. On what grounds does Article 15 of the Indian Constitution prohibit discrimination? Indicate the way the concept of 'Special protection' has qualified this prohibition, and contributed to social change. (in about 250 words) (99/II/1b/40)
39. What is the status of the right to Property in the Indian Constitution? (in about 25 words) (99/II/9e/3)
40. Discuss the constitutional provisions regarding the rights of children. (in about 150 words) (01/I/8c/15)
41. Discuss how the Constitution of India provides equal rights. (in about 250 words) (04/I/7a/30)
42. What is Habeas Corpus? (20 words) (04/I/9a/2)
43. What is the special facility provided to the linguistic minorities under Article 350 A? (04/I/9c/10)
44. Give your views on the right to freedom of religion as enshrined in the Indian Constitution. Do they make India a secular State (250 words) (05/I/7b/30)
45. What are the constitutional limitations on the free movements of Indians throughout the country? (150 words) (05/I/8a/15)
46. What is the meant by 'double jeopardy'? (20 words) (05/I/9a/2)
47. What is right to life and personal liberty? How have the courts expanded its meaning in recent years ? (in 250 words) (06/I/6a/30)
48. Bring out the difference between the Fundamental Rights and the Directive Principles of State Policy. Discuss some of the measures taken by the Union and State Governments for the implementation of the Directive Principles of State Policy. (250 words) (07/I/6b/30)
49. What is the importance of Right to Constitutional Remedies? (07/I/9e/2)
50. 'As we live in a plural society we need the greatest freedom to express our opinions even if others find it offensive' – Do you agree? Discuss with reference to some recent incidents in the Indian context. (09/I/9c/15)
51. Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution. (2013)
52. What do you understand by the concept “freedom of speech and expression”? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss. (2014)
53. Khap Panchayats have been in the news for functioning as extra-constitutional authorities, often delivering pronouncements amounting to human rights violations. Discuss critically the actions taken by the legislative, executive and the judiciary to set the things right in this regard. (2015)Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (2017)

10. Previous year UPSC Prelims Questions

2015

1. In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to?
1. It can establish and administer exclusive educational institutions.
2. The President of India automatically nominates a representative of the community to Lok Sabha.

Student Notes:

3. It can derive benefits from the Prime Minister's 15-Point Programme.
Which of the statements given above is/are correct?
(a) 1 only
(b) 2 and 3 only
(c) 1 and 3 only
(d) 1, 2 and 3

Ans (c)

2017

1. Right to vote and to be elected in India is a
(a) Fundamental Right
(b) Natural Right
(c) Constitutional Right
(d) Legal Right

Ans (c)

2. Which of the following are envisaged by the Right against Exploitation in the Constitution of India?
1. Prohibition of traffic in human beings and forced labour
2. Abolition of untouchability
3. Protection of the interests of minorities
4. Prohibition of employment of children in factories and mines
Select the correct answer using the code given below:
(a) 1, 2 and 4 only
(b) 2, 3 and 4 only
(c) 1 and 4 only
(d) 1, 2, 3 and 4

Ans (c)

3. In the context of India, which one of the following is the correct relationship between Rights and Duties?
(a) Rights are correlative with Duties.
(b) Rights are personal and hence independent of society and Duties.
(c) Rights, not Duties, are important for the advancement of the personality of the citizen.
(d) Duties, not Rights, are important for the stability of the State.

Ans (a)

4. One of the implications of equality in society is the absence of
(a) Privileges
(b) Restraints
(c) Competition
(d) Ideology

Ans (a)

5. Which one of the following statements is correct?
(a) Rights are claims of the State against the citizens.
(b) Rights are privileges which are incorporated in the Constitution of a State.
(c) Rights are claims of the citizens against the State.
(d) Rights are privileges of a few citizens against the many.

Ans (c)

2018

1. Which of the following are regarded as the main features of the "Rule of Law"?
1. Limitation of Powers
2. Equality before law
3. People's responsibility to the Government
4. Liberty and civil rights
Select the correct answer using the code given below:

Student Notes:

(a) 1 and 3 only
(b) 2 and 4 only
(c) 1, 2 and 4 only
(d) 1, 2, 3 and 4

Ans (c)

2. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement?
(a) Article 14 and the provisions under the 42nd Amendment to the Constitution
(b) Article 17 and the Directive Principles of State Policy in Part IV
(c) Article 21 and the freedoms guaranteed in Part III
(d) Article 24 and the provisions under the 44th Amendment to the Constitution

Ans (c)

2019

1. Which Article of the Constitution of safeguards one's right to marry the person of one's choice?
(a) Article 19
(b) Article 21
(c) Article 25
(d) Article 29

Ans (b)

2020

1. Which one of the following categories of Fundamental Rights incorporate protection against untouchability as a form of discrimination?
(a) Right against Exploitation
(b) Right to Freedom
(c) Right to Constitutional Remedies
(d) Right to Equality

Ans (d)

2. Other than the Fundamental Rights, which of the following parts of the Constitution of India reflect/reflects the principles and provisions of the Universal Declaration of Human Rights (1948)?
1. Preamble
2. Directive Principles of State Policy
3. Fundamental Duties
Select the correct answer using the code given below:
(a) 1 and 2 only
(b) 2 only
(c) 1 and 3 only
(d) 1, 2 and 3

Ans (d)

11. Previous Year Vision IAS GS Mains Test Series Questions

1. ***'It is not necessary that everyone receives equal treatment, but everyone must be treated as equal'. Explain Article 14 of the Indian Constitution in light of the above statement.***

Approach:

- There should be clear understanding of the distinction between equality before the law and equal protection of the laws.

Student Notes:

- Also a clear understanding of what kind of classification is allowed by the constitution while making laws. Quoting some examples will make answer more relevant.
- No general discussion on equality before the law or rule of law and its importance as the question specifically asks about its application.

Answer:

- Article 14 is a declaration of equality of all persons within the territory of India, implying thereby the absence of any privilege in favor of any individual. It means that no man is above the law of the land and that every person irrespective of his rank or status is subject to the ordinary law.
- But the concept of equality before law does not involve the idea of absolute equality amongst all. This article includes the phrase 'equal protection of the laws' which means right to equal treatment in similar circumstances.
- What Article 14 prohibits is 'class legislation' and not classification for the purpose of legislation. But the classification should not be arbitrary. It should be reasonable and be based on qualities and characteristics that have relation to the object of legislation. So Article 14 does not mean that every person shall be taxed equally, but that persons under the same character should be taxed by the same standard.
- In order to be reasonable and not arbitrary, a classification must satisfy two conditions. First the classification should be found on an intelligible difference which distinguishes those that are grouped together from others. Second the difference must have a rational relation to the object sought to be achieved by the act.
- Also the guarantee of equal protection is applicable not only in the making of laws but also their administration and implementation. So a procedure different from that laid down by the ordinary law can be prescribed for a particular class of persons if the discrimination is based on a reasonable classification.

2. The government cannot condition receipt of public benefits on waiver of fundamental rights. Discuss this statement in context of the recent issues raised in the Aadhaar petitions.

Approach:

This question is based on Supreme Court's examination of Aadhaar Card implementation by Government of India. So the answer should consist of these points:

- Briefly discuss past directives of Supreme Court regarding Aadhar Card.
- Examine the current controversy surrounding this matter.
- Also, discuss the benefits of Aadhaar
- In conclusion discuss the way ahead.

Answer:

In the context of the use of Aadhar card for welfare schemes, there is an ongoing debate in the country between the privacy rights of citizens and their protection for rich and poor alike.

In 2013, Supreme Court had directed that no person should suffer for not getting Aadhaar. The present government requested the Supreme Court to revoke its order as it intends to use Aadhaar for various services.

Supreme Court stated that Aadhaar will not be used for any other purposes except PDS, kerosene and LPG distribution system and made it clear that even for availing these facilities Aadhaar card will not be mandatory.

Student Notes:

Issues with Aadhar:

- As gleaned from various SC judgements Right to Privacy is an integral aspect of the Right to Life and Liberty. In this context, the Supreme Court restrained the central government and the UIDAI from sharing data with any third party without the consent of the Aadhaar-holder in writing.
- Government's argument that poor must be prepared to surrender their right of privacy to continue receiving the subsidy payments and other benefits was rejected by the SC.
- These is no comprehensive legislation on privacy issues raised by Aadhar.
- Every government's most basic obligation is to protect its citizens' rights — both their right to sustenance and their right to the privacy that enables freedom equally.

On the other hand, Aadhar has a huge potential in redrawing the public service delivery mechanism. It carries with it a large group of advantages including better targeting, plugging leakages etc. Aadhar is the central plank of a plethora of ambitious projects mooted by government like Digi locker, e-sign etc.

The need of the hour is to address the privacy concerns of citizens by incorporating adequate and necessary safeguards. Without parliamentary sanction and legislative backing, the process is legally untenable and unacceptable.

3. Reservation policy is a logical and useful strategy for ensuring justice and providing equal opportunity to the socially oppressed groups. Discuss.

Approach:

- Explain how it ensures justice and equal opportunity.
- Flip side of current reservation policy.
- Conclusion based on your analysis.

Answer:

The reservation policy was a corrective step towards the castes that were subjugated and marginalized since centuries. Since, they were not in position to compete openly for the employment and education opportunities, reservation came as a great equalizer.

It has been useful in ensuring justice and equal opportunity to the socially oppressed groups due to following reasons:

- **Increase opportunities** – It provides greater opportunities for the backward classes to break the shackles of oppression in a society where still caste plays a dominant role.
- **Equitable distribution of benefits of development –** It increases the possibility of distributing the benefits of development equally and reduce inequality in the society.
- **New social order –** It helps in securing a just position to the underprivileged in the society and an opportunity to rise on social scale.
- **Political and economic power-** It has led to emergence of political and economic leaders among the lower castes giving them confidence that had been missing for centuries.

However, reservation has been a matter of continuous debate in Indian polity. It is opposed due to following reasons:

- Hardening caste identities and promoting caste based politics.
- Replacing of merit by mediocrity especially in cases of promotion.
- Political attempts to include more and more castes in the reserved list for votes

Student Notes:

- Reservation and anti-reservation agitations triggering violence like that in Haryana and Gujarat.
- Increasing discontent among advanced castes due to misuse of this policy.
- Concentration of reservation of benefits by the well to do segments of the lower castes rather than benefitting the needy amongst them.

Thus, without doubt the policy has been proved to be a great equalizer, but it is also true that it has been misused. Moreover, it leaves out the poor and marginalized of other sections that need a push. Hence, it would be judicious to review the policy by improving its accessibility to every stratum of the lower castes. A gradual movement towards reservation based on economic criteria is now a feasible idea with the advent of ICT tools like ADHAAR.

4. Discuss the issue of reservation in promotions for SCs and STs in public employment in the light of various judicial pronouncements and constitutional amendments.

Approach:

- Introduce by briefly touching upon reservation as a policy for upgrading the depressed classes in India.
- Highlight the introduction of reservation in promotions in India in the aftermath of the Indira Sawhney judgement.
- Discuss the progress on the matter of promotions in public employment by highlighting the subsequent legislations and judicial interventions around the same.
- Conclude with a brief remark on the latest judicial explanation on the matter.

Answer:

Reservation in India is part of the world's largest affirmative action programme for the depressed classes. However, it has always remained a contentious issue especially in the matter of promotions in public employment.

In the **Indira Sawhney & Others vs Union of India, 1992** case, the Supreme Court held that the reservation in appointments, under Article 16(4) of the Constitution, do not apply to promotions. However, subsequent to this judgement, a series of constitutional amendments and judicial pronouncements were made, which negated this judgement:

- **The 77th Constitution Amendment Act, 1995** inserted Article **16(4A)**, which enabled the state to make any law regarding reservation in promotions for the SCs and STs. Also, **Article 16(4B)** provided that reserved promotion posts for SCs and STs that remain unfilled can be carried forward to the subsequent year.
- In the **M Nagaraj case**, the Supreme Court also upheld the validity of the Parliament's decision to extend reservations in promotions. However, it introduced three conditions, essentially necessitating the state to:
  - Provide **proof for the backwardness** of the class benefitting from the reservation,
  - Provide **proof for its inadequate representation** in the position/service; and
  - Show how reservations in promotions would further the **administrative efficiency** as mandated by Article 335.

  However, the first condition was rejected in Jarnail Singh vs Lachhmi Narain Gupta case.

- The Nagaraj judgement was further used in **BK Pavitra vs Union of India-I** case to strike down the legislation passed subsequent to the 85th Constitution Amendment Act, 2001 by the Karnataka assembly in 2002 that provided for **consequential seniority**.

Student Notes:

- The court held that the government had not collected quantifiable data on the three parameters – inadequacy of representation, backwardness and the impact on overall administrative efficiency – before extending reservations in promotions.

- However, in the recent Supreme Court judgement in **BK Pavitra vs Union of India-II,** it upheld the validity of the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation Act, 2018. The Act gives a one-time promotion to SC/ST employees, and is referred to as a "catch-up" clause.
  - The court held that Article 16 (4A) enables the state to provide for reservation in matters of promotion to SC/ST. Further, the opinion regarding the adequacy of representation of the SCs and STs in the state public services is a matter which forms a part of the subjective satisfaction of the state.

The latest 2018 judgement has also examined various associated issues related to reservation in promotion debate such as -

- **Issue of merit and efficiency:** The court held that the efficiency of administration must be defined in an inclusive sense, where a **'meritorious' candidate** is not merely one who is 'talented' or 'successful' but also one whose appointment fulfills the constitutional goals of uplifting members of the SCs and STs and ensuring a diverse and representative administration.
- **Notion of substantive equality**: It also held that Indian Constitution envisages not just a formal equality of opportunity but the achievement of substantive equality.
- **Issue of creamy layer:** It held that progression in a cadre based on promotion cannot be treated as the acquisition of creamy layer status.

Overall, the judgment asserts that the policy of reservations is a tool to achieve substantive equality and due representation in public services.

5. Freedom of expression is a right, however, it does not grant the right to defame any person. Discuss the statement in the light of various Supreme Court judgments.

Approach:

- Discuss freedom of expression as right and the reasonable restriction on it.
- Justify right to defame is not included in freedom of expression with the help of various Supreme Court's judgements.

Answer:

The freedom of expression is guaranteed as fundamental right by the Indian Constitution under Article 19(1) (a). It implies that every citizen has right to express his views, opinions, belief and convictions freely.

However, this right is not absolute. The Constitution (Article 19(2)) has imposed certain reasonable restrictions on the exercise of the freedom of expression including defamation.

Defamation refers to the act of publication of defamatory content that lowers the reputation of an individual or an entity when observed through the perspective of an ordinary man. It can be done by words, spoken or written or visual representation.

Defamation in India is both a civil and a criminal offence. Defamation as a criminal offence is listed under section 499 of the Indian Penal Code.

Recently, the Supreme Court, in **Subramanian Swamy vs Union of India** case upheld the constitutionality of criminal defamation. As per SC, the right to free speech does not

mean that a citizen can defame the other. The judgement has underlined individual's fundamental right to live with dignity and reputation.

- Protection of reputation is a fundamental right under Art-21, right to life with dignity and also a human right.
- Criminalization of defamation to protect individual dignity and reputation is a "reasonable restriction"

In another case, **R. Rajagopal versus State of Tamil Nadu,** famously known as the Auto Shankar Case, Supreme Court said that the newspaper could publish the life story or autobiographies of people so far as it appears from the public records even without the consent or authority. But if they go beyond the public record and publish, they may be invading the privacy and causing defamation of the officials named in the publication which is unacceptable.

According to these judgments, the theory of balancing of rights dictates that along with the right to freedom of speech and expression, there is a correlative duty on citizens not to interfere with the liberty of others, as everyone is entitled to the dignity of person and of reputation.

Student Notes:

6. Criticism about the judiciary should be welcomed, so long as criticisms do not hamper the "administration of justice". In this context discuss whether the power of contempt of court given to the higher judiciary limits the freedom granted by Article 19(1)(a) and whether these two can be reconciled.

Approach:

- In the introduction briefly address the key concern of the statement and link it to the argument on power of contempt and freedom of speech and expression.
- Discuss the need of contempt powers with judiciary.
- Discuss the implications of contempt powers on freedom of speech.
- Discuss how these two can be reconciled.

Answer:

Administration of justice requires strong safeguards for the judiciary. Thus:

- Article 129 and 215 of the Constitution of India empower the Supreme Court and High Court respectively to punish people for their contempt.

The Contempt of Court Act, 1971 delineate contempt powers of judiciary to:

- Prevent scandalisation or lowering the authority of any court.
- Prevent interference with the due course of any judicial proceedings.
- Strengthen court's image as legal authority and that no one is above the law.
- Ensure one could not defy court orders according to one's own free will.

In the context freedom of speech and expression, a right underpinned by article 19 1(a), contempt of court is considered a reasonable restriction under Article 19 (2), which empowers contempt laws.

Critics observe that:

- Judiciary has routinely invoked its contempt powers to punish expressions of dissent on grounds of such speech undermining or scandalising the judiciary's authority.
- Acts of speech and expression that do not necessarily impede with the actual administration of justice have been punished invoking the idea of reputation of judiciary in the eyes of the public.

Student Notes:

Rights under article 19 (1) (a) are important as they:

- Empower citizens to express their opinion which is necessary for good public policies.
- Are important in themselves for ensuring a good life, also enshrined under Article 21 of the constitution.

Thus, it becomes imperative to reconcile the freedom of speech and the contempt power of the courts. It can be ensured by taking the following into consideration:

- Judiciary itself underlined guidelines that envisage economic use of the jurisdiction on the one hand and harmonization between free criticism and the judiciary, e.g. Mulgaonkar case 1978. Also, of note are observations in cases such as Ram Dayal Markarha v. state of Madhya Pradesh 1978; Conscientious Group v. Mohammed Yunus 1987; P.N. Duda b. P. Shiv Shankar 1988; Sanjay Narayan, Hindustan Times v. High Court of Allahabad 2011.
- The 2006 amendment in the Contempt of Courts Act, 1971 states that "court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide".

International standards and laws of other democracies would be informative and enable us to arrive at the right standards. e.g. in European democracies such as Germany, France, Belgium, Austria, Italy, there is no power to commit for contempt for scandalising the court. In the U.K., the offence of scandalising the court has become obsolete. In the United States, contempt power is used against the press and publication only if there is a clear imminent and present danger to the disposal of a pending case.

7. The Supreme Court in its judgment on 26/11 slammed the media for its lust for TRPs, which jeopardized the security of the nation. Can the actions of media be justified in the context of right to freedom and speech? Discuss the principles and concerns that the media should keep in mind while covering such incidents.

Approach:

In introduction some background about the role of electronic media during 26/11 attack and Supreme Court's observation should be provided. Then discuss the rightness or wrongness of media actions in context balancing freedom of speech with national security and right to life. Then outline few principles, which should be adhered to by media while covering such sensitive incidents.

Answer:

In hunger of TRP and in a blind rush to present the news before any other news channel the media during the 26/11 attack on Mumbai worked utterly irresponsibly. They kept providing instant news update which kept the terrorist and their cross border handlers informed and updated about the security operation and put many lives at risk.

About the role of media Supreme Court observed that it is not possible to find out whether the security forces actually suffered any casualty or injuries on account of the way their operations were being displayed on the TV screen. But it is beyond doubt that the way their operations were freely shown made the task of the security forces not only exceedingly difficult but also dangerous and risky.

Any attempt to justify the conduct of the TV channels by citing the right to freedom of speech and expression would be totally wrong and unacceptable in such a situation as national security when many lives are at risk cannot be hold hostage to the claim of a

right which is being misused. The visuals that were shown live by the TV channels could have also been shown after all the terrorists were neutralized. But, in that case the TV programmes would not have had the same shrill, scintillating and chilling effect and would not have shot up the TRP ratings of the channels. It must, therefore, be held that by covering live the terrorists attack on Mumbai in the way it was done, the Indian TV channels were not serving any national interest or social cause. On the contrary they were acting in their own commercial interests putting the national security in jeopardy.

Student Notes:

There are still no regulations in place by the government regarding coverage of news live which could compromise national interest. But then, do we need to wait for a regulation? When it comes to national interest, you don't wait for a regulation, you just act responsibly.

Principles: There can be some principles which media should keep in mind while covering an incident which affects national security or can result in loss of life; such as:

- Human life must be given utmost importance, media should over look TRP and commercial interest when human life is at stake.
- National security must never be compromised in name of freedom of speech and expression. Media must act sensibly and responsibly.
- Live telecast of such incident can wait for some time, if it can help in saving life or serving justice.
- Sensationalisation of security issue should never be done.

Concerns:

This irresponsible behaviour can do much harm to the argument that any regulatory mechanism for the media must only come from within. And it can hamper freedom of speech and expression. This kind of behaviour may also dilute the role of media as fourth pillar of democracy. Therefore, media must keep the safety of security agency as well as secrecy of intelligence agencies at work while reporting such incidences.

8. The principle of accountability is an essential part of the rule of law. In this context, discuss the lacunae in government's approach and judiciary's response to the phenomenon of extrajudicial killings in India.

Approach:

- Explain the meaning of the given statement and establish a link between accountability and Rule of Law.
- In the context of extra-judicial killings, discuss the lacunae in the government's approach.
- Mention correctives suggested and taken by the Judiciary to rectify the situation.

Answer:

Rule of Law is a principle of governance in which entities, including the state itself is accountable to laws that are publicly promulgated, equally enforced and independently adjudicated. Accountability is an essential part of Rule of Law.

Extra judicial killings

An extrajudicial killing is the killing of a person by governmental authorities without the sanction of law. There have been allegations and instances of judicial killings by the police and the armed forces in India.

This has raised serious concerns in handling extrajudicial killings in India, which include lacunae in government's approach:

Student Notes:

- Inadequate investigation of extrajudicial killing due to absence of an independent body to investigate such complaints.
- Limited success of NHRC as guidelines outlined by NHRC are often not implemented by the government.
- Doctrines of sovereign and official immunity which protect officials: Legal barriers for the prosecution of public servants, including the requirement for 'prior sanction' from the government.
- Failure of government to ratify UN Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearances.
- Lack of adequate compensation system for the families of victims of extrajudicial killings.
- Low conviction rates and lack of transparency regarding internal disciplinary hearings in armed forces. Judicial delays also make conviction difficult at times.
- AFSPA takes away some accountability on part of public officials in the national interest.

Judiciary's response:

- R.S. Sodhi vs State of U.P. 1992: In this judgement, the Supreme Court held that every police encounter must be investigated.
- In 2014, the SC provided detailed guidelines to check extra judicial killings.
    - Independent investigation into encounters, by the CID or police team of another police station under the supervision of a senior officer.
    - Probe report shall be forwarded to the court concerned so that a magisterial inquiry is carried out and a final report submitted.
    - No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence.
    - If an incriminating chargesheet is filed against the police officers, the trial must be concluded expeditiously, apart from initiating disciplinary action against such officers and placing them under suspension.
    - The relatives of a victim can also approach a Sessions Court if the authorities fail to comply with the Supreme Court directives

Recently, the Supreme Court ordered a CBI investigation into cases of suspected extra-judicial killings in Manipur based on a PIL. Similarly, the court had last year ruled that the armed forces cannot escape investigation for excesses even in places where they enjoy special powers under AFSPA. The court also addressed the Centre to take note of the NHRC's concerns and remedy the situation. By doing so, the court has reiterated that the principle of accountability is an essential part of the rule of law.

9. Highlight the importance of Right to Education. Also, discuss the issues linked with the 'No detention' policy.

Approach:

- Giving a brief background of the RTE Act, discuss its significance.
- Analyze the no-detention policy under this act and highlight the issues involved with this policy.
- Give some suggestions to resolve the issues relating to the no detention policy.

Answer:

The Right of Children to Free and Compulsory Education Act, 2009 is a Central legislation that details the aspects of the right of children within the age group of six to fourteen years i.e. to free and compulsory elementary education, under Article 21-A inserted by the 86th Amendment Act, 2002.

Student Notes:

This Act serves as a building block to ensure that every child has his or her right (as an entitlement) to get a quality elementary education. In fact, it also mandates private schools to admit at least 25% of the children without any fee. The Act seeks to promote child-friendly school through measures such as compliance with infrastructure and teacher norms for an effective learning environment.

Section 30(1) of the Act introduced that a child cannot be detained in any class till the completion of elementary education to prevent damage to their self-esteem, increased dropouts and increased social problems like begging and petty crimes. It was aimed at increasing Gross Enrolment Ratio.

However, recently, the Lok Sabha has passed an amendment bill to abolish the No-Detention policy. Two committees of Geeta Bhukkal and TSR Subramaniam also recommended it to be removed in a phased manner. Issues with this policy are:

- It leads to a situation where there remain **no incentives for children to learn and for teachers to teach**. This leads to students lacking required educational competence, knowledge and skills relevant to higher classes. For e.g. the number of students failing in class 9 examination has been on an increase in many States.
- It **affects the quality of classroom teaching** as well because at higher levels, teacher is unable to teach the curriculum at an expected pace due to promotion of all students with difference in capabilities and understanding.
- It also affects teachers' ability to control students as teacher loses leverage over students and many government schools turn into mere "mid-day meal" providers.
- Fall in learning outcomes and automatic promotion of children **only rolls over and postpones the problem of dropouts** as seen from shoot up of dropouts in class 8 at the end of elementary stage.

In this context, the no-detention policy is being scrapped. At the same time, there are equally strong arguments against the scrapping of the no-detention policy:

- This will mean that the State is blaming students (many of whom are first-generation learners) for their failure to learn in class.
- The RTE Act made a range of other promises such as upgrading quality of teaching, regular assessment through Continous and Comprehensive Evaluation (CCE). All these along with no-detention policy had to go hand in hand. No-detention policy does not mean no evaluation.
- Further, bringing back the old pass-fail system without making proper course correction in other areas may undermine the egalitarian promise of the RTE.

To conclude, detention should be resorted to only after giving the child remedial coaching and extra chances to prove his capability. Education should be inclusive and should have a common curriculum, so that all children become familiar with the basic concepts, tenets, principles and ethos of the Indian education.

10. The right to live with dignity under Article 21 includes the right to die with dignity. Discuss in light of various judicial pronouncements by the Apex Court on this matter. Also, critically examine the various issues associated with the Medical Treatment of Terminally Ill Patients Bill 2016.

Approach:

The student has to understand what is being asked here specifically, especially because Euthanasia has been in the news in recent months.

- Introduce the debate on Euthanasia. Mention the provisions of Article 21 of the constitution.

- Give the arguments for or against along with some contemporary examples.

Student Notes:

Answer:

Article 21 gives people the right to lead a meaningful, complete and dignified life. In case of terminally ill patients though, this right cannot be justly exercised. Thus, it has been argued that in consonance with right to live with dignity, a person who cannot do so, must have a right to die with dignity at least. **Euthanasia** or assisted suicide has been argued as a means to put the 'patients out of their misery'. In the 2011 **Aruna Shaunbaug** judgement, the Supreme Court allowed passive euthanasia, subject to safeguards and fair procedure requiring mandatory approval of a High Court bench in every case based on consultation with a panel of experts. Passive euthanasia refers to withholding or withdrawing treatment necessary to maintain life.

As per the ruling in **Gian Kaur v. State of Punjab, 1996**, true meaning of the word 'life' in Article 21 means life with human dignity. The 'Right to Die' if any, is inherently inconsistent with the "Right to Life" as is "death" with "Life".

The **196th report of the Law Commission of India** spoke in favour of passive euthanasia.

- Arguments for euthanasia:
  - it is a civil right
  - it is a question of personal autonomy
  - it is necessary to ensure that no one dies in painful agony
  - Protective guidelines can be made to prevent misuse of such a law
- Arguments against:
  - Assisted dying nay be used illegally for personal gains
  - It may be promoted as a cheaper alternative to medicinal care
  - Hospital care and proper treatment provide morally acceptable answers
- Both euthanasia and assisted suicide are legal in Netherlands, Belgium and Luxembourg, while euthanasia is legalised in Columbia.

The **Medical Treatment of Terminally Ill Patients Bill 2016** seeks to codify the framework decided in the Aruna Shaunbaug judgement. Some concerns are:

- It does not employ enough safeguards for proper execution of advance directives
- It allows a child to take a decision on the matter of life and death
- The framework of obtaining permission from a High Court can delay the cases
- The classification of patients may not pass the test of judicial scrutiny.

11. Despite the phrase 'due process of law' not being included in Article 21, the Supreme Court, over the years, has adopted the doctrines of 'procedural due process' and 'substantive due process' into Indian constitutional law. Comment.

Approach:

- Giving a brief account of Article 21, bring out the difference between the procedure established by law and due process of law.
- Then give reasons due to which due process was not incorporated into the Indian Constitution.
- Bring out various judgements to establish the facts that India judiciary over the time has established its conformity towards the principle of due process over procedure established by law.

Answer:

Article 21, of Indian Constitution provides that "No person shall be deprived of his life or personal liberty except according to the procedure established by law". Procedure established by law, a positive law concept means that a law that is duly enacted by the legislature is valid if correct procedure has been followed.

Student Notes:

As incorporated in the US Constitution, due process checks if a law is fair, just and not arbitrary, thus ensuring a fair treatment.

Substantive due process prohibits the government from infringing on fundamental constitutional liberties. By contrast, procedural due process refers to the procedural limitations placed on the manner in which a law is administered, applied, or enforced. Thus, procedural due process prohibits the government from arbitrarily depriving individuals of legally protected interests without first giving them notice and the opportunity to be heard.

The Indian Constitution by incorporating 'procedure established by law' adopts a healthy synthesis of Parliamentary Sovereignty and Judicial Supremacy. However despite the textual choices of the framers of Indian Constitution, t "due process" found a back door entry into Indian Constitutional interpretation in late 1970s through the right to equality.

Until the decision in Maneka Gandhi case, the view which prevailed in the Supreme Court was that there was no guarantee in the Constitution against arbitrary legislation encroaching upon personal liberty. This case overturned the majority in A.K. Gopalan vs State of Madras where the majority decision adopted a narrow interpretation of 'procedure established by law.' .

Contrastingly the Maneka Gandhi Case took the view that:

- A law coming under Art. 21 must also satisfy the requirements of Art 19.
- Once the test of reasonableness is imported to determine the validity of law depriving a person of his liberty, it follows that such laws shall be invalid if it violates the principles of natural justice.

Over a course of judgments, the Courts indicated that "due process" has firmly become a part of the Indian Constitutional law recently reflected in Judgements such as Selvi vs State of Karnataka, where constitutionality of investigative narco-analysis was challenged , held it to be permissible only with the consent of the 'subject'. .

Under a wide construction of Article 21, Judiciary's view on issues such as Khap Panchayat, Custodial death, Right to die, Right to education etc. gave supremacy to 'due process' over 'procedure established by law.

12. Article 22 of the Indian Constitution is a necessary evil. Discuss.

Approach:

- Briefly state the provision of Article 22 in the Indian Constitution.
- Give arguments related to contentious provisions in the Article 22.
- Explain why these provisions are necessary
- Conclude based on the aforesaid points.

Answer:

Article 22 of the Indian Constitution provides that no person who is arrested shall be detained in custody without being informed about the grounds of the same. It further contains**:**

- **Article 22 (1)** which says that the person detained has the right to be informed about the grounds of his/her arrest, along with the right to consult/defended by a legal practitioner.
- **Article 22 (2)** which provides other safeguards such as the detained person should be produced before the nearest magistrate within 24 hours of the arrest.

Student Notes:

However, there are contentious provisions in the Article, which include:

- The Article 22 (3) denies the rights provided in Article 22 (1) and Article 22 (2) to the person who is an 'enemy alien' or if a person is arrested or detained under a law providing for preventive detention.
- It bases the formulation of preventive detention laws in the name of **'national security' and 'maintenance of public order',** which are **not clearly defined** in the Constitution.
- It **undermines the principle of 'innocent until proven guilty'** by sanctioning the use of past criminality as a basis for imposing coercive force on citizens (by externing them) without them actually being adjudged guilty of committing a criminal act.

However, under certain circumstances the freedom of the individual needs to be superseded in the interests of the state. Its necessity can be understood from the following:

- In the Constituent Assembly debates, Dr B.R. Ambedkar argued that the government shall have to detain a person **endangering the security of the nation and public services.**
- **Secessionist movements,** which threaten national security and integrity require a strict law to enable the state to counter them.
- The Supreme Court has held that in the matter of preventive detention, once the **detaining authority is subjectively satisfied** about the various offences labelled against the detenu, habituality in continuing the same, difficulty in controlling him under normal circumstances, **he/she is free to pass appropriate order to detain him/her.**

Further, safeguards have been provided in the Article 22 itself in case of preventive detention such as limit on the duration of detention, communication of grounds of detention, affording him the earliest opportunity of making a representation against the order etc.

In a diverse country like India where a lot of subversive activities are carried out within the country and there is a threat from other non-state actors, the idealism needs to be balanced by the adoption of realism. Also, timely judicial intervention and further strengthening of procedural safeguards would prevent the space for misuse.

13. Is the freedom to profess, practice and propagate religion, provided under article 25 of the Indian constitution a historical mistake committed by constituent assembly, discuss in view of the recent controversy on religious conversions?

Approach:

Discuss briefly the socio-political context of constituent assembly debates. Discuss Article 25 in context of spate of recent religious conversions and debates it ignited.

Answer:

Historically, the defining characteristic of Indian society has been that it remained accommodative of variety of religious views and practice. Unfortunately it created the condition during freedom struggle of religion being used as potent political tool leading to communalization of politics and partition of nation. However, makers of constitution took the liberal view of religion considering it as the matter of individual conscience in which state has no role to play. This secular stand is reflected in article 25 of the constitution.

Student Notes:

The Article 25 of the constitution guarantees the freedom of religion as fundamental right. It consists of two parts, freedom of conscience with respect to religion and free profession, practice and propagation of religion. However, enjoyment of these rights is subjected to public order, morality and health. The recent debates on religious conversions have brought the two provisions of the article into conflict. The right to freely profess, practice and propagate their religion has been used as by some religious organizations belonging to majoritarian religion to manufacture conversions by using external means of force or allurement. It impinges on freedom of conscience with respect to religious beliefs and practice. Further right to freely profess, practice and propagate their religion was conceived to give space to minority religions to exist in hindu majoritarian society. The constitutional makers were apprehensive of minority religions might lose its identity under influence of majority religion which goes against spirit of unity and diversity. Supreme Court also dismissed many anti-conversion laws in MP and Odisha as unconstitutional. Hence our constitutional makers have very broad vision and subtle understanding of how power operates in the deeply religious society like India.

14. Right to freedom of religion cannot be allowed to deny right to equality and individual dignity. Discuss in the light of constitutional provisions and recent judicial pronouncements.

Approach:

- In introduction, mention the provisions of the Constitution that deal with religious freedoms.
- Mention the recent judgments that deal with balancing religious rights with other fundamental rights of the Constitution.
- Analyze their impact.

Answer:

The Constitution of India under Article 25 read with the preamble gives **equal entitlement to all persons** regarding freedom of conscience and freely professing, practicing and propagating religion. However, the Article itself subjects this freedom **to other provisions of fundamental right**.

Similarly, Articles 26-28 deal with the matters of religion. Article 26 allows religious denominations to determine for itself the manner in which it manages its religious affairs provided that it follows three criterion – system of belief conducive to their spiritual well-being, common organization and distinctive name. Article 15 also bars discrimination on the grounds of religion.

Thus, right to freedom of religion has to be balanced with other rights such as equality and non-discrimination prescribed under Articles 14, 15 read with Article 21 of the Constitution.

In this light, various judicial pronouncements in recent times have provided further impetus to the argument:

- Mumbai HC judgment removed the ban on the entry of women in **Shani Shingnapur temple and Haji Ali Darga**.
- Supreme Court 4:1 verdict, in *Indian Young Lawyers Association* v. State *of Kerala*, opened the doors of the Sabarimala temple to women of all ages who were hitherto banned from entering the temple.
- The Supreme Court struck down Triple Talaq on the grounds of violating right to equality and discrimination between women belonging to different communities.

Student Notes:

- The Supreme Court has further ruled that the Muslim women have a right to legally adopt children, even though their personal law do not give them that right.

In these verdicts Supreme Court have stood by the women and enabled gender justice. Also, in the context of mob lynching and cow vigilantism, the apex Court observed that the State has a positive obligation to protect the fundamental rights and freedoms of all individuals irrespective of race, caste, class or religion.

15. Special rights are not privileges but they are granted to make it possible for minorities to preserve their identity, culture and traditions. Elaborate in the context of India with examples.

Approach:

- Bring out the need for extending special rights to minorities.
- Discuss these special rights in the context of India (viz. constitutional protection to minorities).
- Give examples of government policies/institutions contributing to preservation of minorities in India.

Answer:

In a democratic setup, there is always a tendency of majoritarian domination. In a polity based on rule of law, this means that every group of citizens must be given sufficient protections, especially with regard to preserving their identity and culture. Special rights granted to minorities ensure these. Also, idea of rights of minorities does not include any special political privileges. The idea is not to treat minorities as privileged section of the population but to give them a sense of security. These rights are universally accepted and are laid down in United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In India, the safeguards for minorities under the constitution of India are in the form of fundamental rights:

- Article 14 provides for equality before the law and equal protection of law. Thus minorities cannot be put to any legal disability vis- a-vis the majority.
- Articles 15 and 16 prohibit discrimination ONLY on certain grounds (religion, race, caste, sex or place of birth).
- Article 29 explicitly provides the right to every section of citizens having distinct language, script or culture to conserve the same.
- Article 30 accords the rights to religious/linguistic minorities to establish and administer educational institutions.

Further, following articles deal exclusively with linguistic minorities:

- Art. 347- Power of President to direct a language to be included as an official language of a state if a substantial proportion of the state population desires
- Art. 350- Representation of a grievance to a Union/State authority in any of the languages used in the Union/State as the case may be.
- Art. 350A- Facilities for instruction in mother-tongue at primary stage
- Art. 350 B- Provision of special Officer for Linguistic Minorities

Examples of protection of minority rights:

- Provision of National Commission for Minorities, National Commission for Minority Educational Institutions and National Minorities Development Finance Corporation (NMDFC)
- Instruction through mother tongues at the Primary stage of education

Student Notes:

- Implementation of Three-language Formula.
- Prime Minister's New 15 Point Programme for Welfare of Minorities
- Developmental schemes like Nai Manzil, USTAAD, Humari Darohar,Jiyo Parsi , Maulana Azad National Fellowship For Minority Students , Nalanda Project etc.
- Dissemination of information in vernacular languages.

These provisions do not give any privilege to minorities. They ensure that their progress is not stalled because of ideology of the government in power. These rights recognize their special conditions as well as possible challenges of a democracy. Their implementation is the constitutional/statutory responsibility of the State to ensure inclusive growth and development.

16. Where there is a right, there is a remedy. In this context, discuss the nature and significance of writs in India with adequate examples.

Approach:

- In introduction briefly highlight the significance of the above statement in the context of various kinds of writs in Indian Constitution.
- Mention the various kinds of writs and their usage.
- Cite relevant case laws.

Answer:

Article 32 and 226 of the Indian Constitution provide for Right to Constitutional Remedies, for the enforcement of fundamental rights, which has been regarded as "Heart and Soul" of Indian Constitution by Dr. B.R. Ambedkar. It is done by the higher judiciary through five kinds of writs.

The nature of these writs:

- **Habeas Corpus:** Literally meaning to have the body, this writ is considered to be the 'bulwark of individual liberty' against illegal and unjustifiable detention. It can be filed by any person on behalf of the other person and can be issued against both public authorities and private individuals..
- **Certiorari:** It means to 'to certify or to inform' and is enforced against the decision of a sub-ordinate authority exercising judicial or quasi judicial powers, improperly. For example, the Supreme Court exercised Certiorari in *A.K Kraipak v. U.O.I*, in which selection process was quashed on the ground of bias.
- **Prohibition:** It is issued by the court prohibiting the authority from continuing the proceedings if such authority has no power or jurisdiction to decide the case. It is an extraordinary prerogative writ of a preventive nature.
- **Mandamus:** it is a judicial remedy which is in the form of an order from a superior court to any governmental agency, court or public authority to do or forbear from doing any specific act which that body is obliged to do under the law.
- **Quo Warranto:** It literally means 'by what authority' and is issued against the person who occupies a public seat without any qualification for appointment.

Significance of these writs

- Writs are crucial in the defence of fundamental rights; without them, Part III would be meaningless, because they give teeth to the rights.
- They are powerful checks against the excesses committed by the state as under article 12.
- Using them, judiciary has interpreted many other rights as inseparable adjuncts to other fundamental rights. For example, right to dignified life in Maneka Gandhi Case 1978.

- Powers of the Supreme Court under Article 32 of the constitution are limited only to the enforcement of fundamental rights, whereas under article 226 High Court can exercise such powers for any other purpose also apart from the enforcement of fundamental rights

The importance of writs lies in creating permissible areas of exercise of power, authority and jurisdiction over administrative actions enforced by any State. Thus writs as constitutional remedies operate as a check and keeps the administration of government within the bounds of law.

Student Notes:

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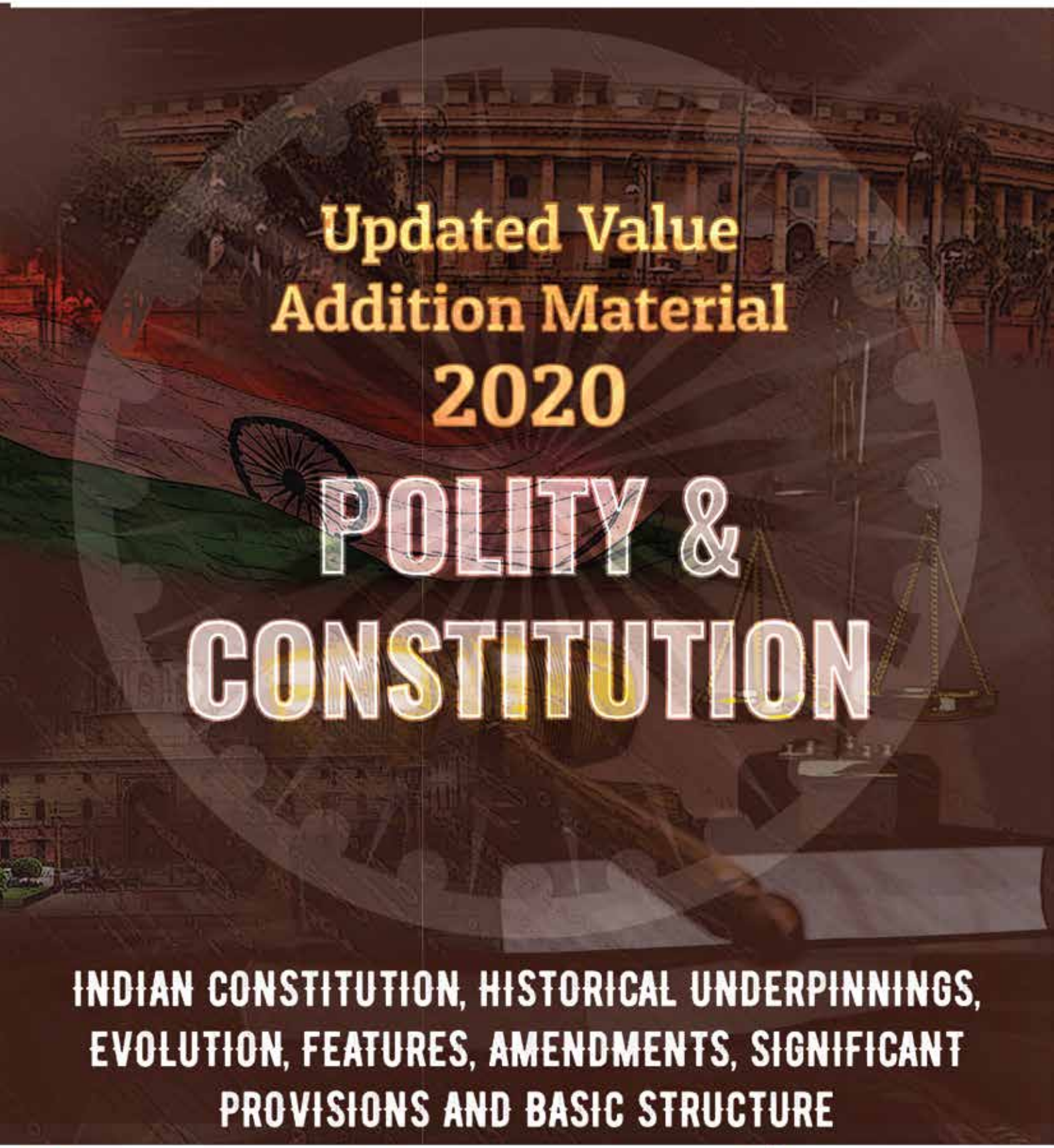

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POLITY & CONSTITUTION

INDIAN CONSTITUTION, HISTORICAL UNDERPINNINGS, EVOLUTION, FEATURES, AMENDMENTS, SIGNIFICANT PROVISIONS AND BASIC STRUCTURE

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Student Notes:

INDIAN CONSTITUTION: HISTORICAL UNDERPINNINGS, EVOLUTION, FEATURES, AMENDMENTS, SIGNIFICANT PROVISIONS AND BASIC STRUCTURE

Contents

Student Notes:

1. Introduction

1.1. Definition

A Constitution is a document of people's faith and aspirations possessing a special legal sanctity. A Constitution is the fundamental law of a country. It is the rulebook of a nation, which regulates the society and its laws.

There are various forms of government prevalent across the world. It is the philosophy embodied in a nation's constitution which determines the kind of government present there.

1.2. Functions of the Constitution

A Constitution, whether it is written or unwritten, always has several functions, some of which are as follows:

a) **Expression of Ideology:** It reflects the ideology and philosophy of a nation state.
b) **Expression of Basic Law:** A Constitution presents basic laws, which can usually be modified or replaced through a process of amendment. Generally, there are special laws too, which focus upon the rights of the citizens; for instance, rights concerning freedom of speech, religion, assembly, press etc.
c) **Organizational framework:** It provides an organizational framework for the government. It defines the functions of legislature, executive and judiciary, their inter-relationship, restrictions on their authority etc.
d) **Levels of Government:** A Constitution generally explains the levels of different organs of the Government. Whether it is federal, confederation or unitary, is usually described by the Constitution. It may also delineate the powers of national and provincial governments.
e) **Provisions for amendment:** As it would not be possible to foretell all possibilities in future with great degree of accuracy, there must be sufficient provisions for amendment of the Constitution. So, it should contain a set of directions for its own modifications. Inherent capacity to change according to changing times and needs help any system to survive and improve.

Example:

The Soviet Constitution was mostly an expression of ideology and was less an expression of organizational set up. The American Constitution is more an expression of governmental organization and a guideline for the power relationship of the regime than an expression of the philosophy of the government of the day.

1.3. Understanding the Constitutionalism

The unrestrained/unchecked state power may be exercised arbitrarily by the rulers. A Constitution is created as a defence mechanism over and above the state power. This arrangement, which forces the rulers to stay within the jurisdiction by means of a (generally) written or even unwritten Constitution, is called Constitutionalism.

Constitutionalism implies that the exercise of political power shall be bound by limitations, checks, controls and rules. The concept of Constitutionalism incorporates the principles of 'limited government' and 'rule of law', as against arbitrary and authoritarian discharge of power.

A **limited government** is a political system in which legalized governmental power is restricted by law, usually the constitution. Countries with limited governments have laws about what government can and can't do. Any country that has a democratic governmental system is an example of one that is a limited government. Many countries throughout the world have a limited government, and a few examples are United States, England, Australia, Japan etc. In India, it is constitutionally-limited government, bound to specific principles and actions by the constitution.

Student Notes:

According to K C Wheare and W G Andrews, Constitutionalism implies:

- Division of powers
- Acceptance of plurality of interests in society
- No authoritative or dictatorial leadership
- Minimum constraints on individual freedom

According to Carl J Friedrich, the division of powers is the most important basis of Constitutionalism. Constitutionalism may exist in a monarchy or republic, aristocracy or democracy, if there is division of power.

1.3.1. Constitutionalism in India

Constitutionalism in India is an amalgamation of the following underlying principles:

- Written Constitution,
- Responsible Government,
- Parliamentary Democracy,
- Rule of Law,
- Fundamental Rights,
- Separation of Powers and Checks and Balances,
- Flexibility of Constitution and its Basic Structure,
- A Federal Form of Government,
- Independent Judiciary and Judicial Review etc.

The concept of Constitutionalism has been recognised by the Supreme Court in **Rameshwar Prasad v. Union of India.** The Court stated, "The constitutionalism or constitutional system of Government abhors absolutism-it is premised on the Rule of Law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself."

In **IR Coehlo v. State of Tamil Nadu**, the Court held that Constitutionalism is a legal principle that requires control over the exercise of governmental power to ensure that the democratic principles on which the government is formed shall not be destroyed.

2. Historical Underpinnings

2.1. Role of Developments under the British rule

These events can be summarized under two heads:

- Under the British East India Company (1773 – 1858)
- Under the British Crown (1858 – 1947)

2.2. Analysis

We can study the historical developments from two perspectives:

- General features, and
- Features related in some form with current scheme of the Constitution (marked with '*')

2.2.1. Developments under the Company Rule (1773-1858)

The British government passed many laws and acts in India which elicited different reactions from different parts of the Indian society and played a pivotal role in the modeling of either the Indian polity or the Society. Some of the most important and consequential acts are listed below:

Student Notes:

1. **Regulating Act of 1773**
   - It designated the Governor of Bengal as Governor General of Bengal. It created an executive council of four members to assist him. Lord Warren Hastings became the first Governor General of Bengal.
   - The governors of Bombay and Madras were made subordinate to the Governor-General of Bengal. This started a tendency towards 'centralization' of power, which continued up till the Charter Act, 1833.*
   - A Supreme Court was established as the Apex Court at Calcutta in 1774, comprising one Chief Justice and three other judges*.
   - It strengthened the control of British government over the Company by requiring the Court of Directors (governing body of the Company) to report on its revenue, civil and military affairs in India. It prohibited company officials from engaging in private trade and from accepting gifts from Indians.
   - It has constitutional importance as it laid the principles of central administration in India.*
2. **Pitt's India Act of 1784**
   - Commercial and political functions of the company were separated. The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
   - The Board of Control in England was mandated to supervise the East India Company's affairs. It consisted of six members, which included one Secretary of State from the British cabinet, as well as the Chancellor of the Exchequer.
   - The Act reduced the number of members of the Executive Council to three, of whom the Commander-in-Chief was to be one. It also modified the Councils of Madras and Bombay on the pattern of that of Bengal.
   - It empowered the Board of Control to supervise and direct all operations of civil and military revenues of the British possessions. Thus, it paved the way for evolution of dual government.
   - The Company's territories were for the first time called 'British possession in India'.

   Analysis of the Act

   As pointed above (through formation of Board of Control), it introduced the Dual System of government: by the Company and by a Parliamentary Board, which lasted till 1858.
   - The Board of Control had no independent executive power.
   - It had no patronage. Its powers were veiled.
   - It had access to all the Company's papers and its approval was necessary for all dispatches that were not purely commercial. Also, in case of emergency the Board could send its own draft to the Secret Committee of the Directors to be signed and sent out in its name.

   Thus, the Act placed the civil and military government of the Company in due subordination to the Government in England.
3. **Charter Act, 1813**
   - This act did not bring about any significant changes in the administration of India.
   - Continental System introduced by Napoleon led to restriction on British's European trade. It forced British companies and merchants to diversify their trade away from Europe. Hence, they wanted end of East India Company's monopoly over Indian trade. In this context, Charter Act ended Company's monopoly in trade with India.
   - However, trade in tea and trade with China remained exclusively with Company.
   - It had a provision that Company should invest Rs. 1 Lakh every year on the education of Indians. However, this was not implemented in effect.
   - It empowered local governments to impose taxes and punish for their non-payment subject to the jurisdiction of Supreme Court.

Student Notes:

4. **Charter Act, 1833**
   - Also known as **'Saint Helena Act'**, it brought about the final step of 'centralization', as mentioned earlier.
     - It made the Governor-General of Bengal as the Governor-General of India and vested in him all the military and civil powers. Lord William Bentinck was the first Governor-General of India.
     - All law-making powers were conferred on the Governor-General and his Council.
     - Thus, the Act created for the first time, a government of India having authority over the entire territorial area possessed by the British in India.*
   - Laws under previous acts were called as ***'Regulations'***, while those under Charter Act, 1833 were called as ***'Acts'***.
   - The Act ended the East India Company's monopoly over trade with India. It became a purely administrative body. Trade with India was open to all British subjects.
   - It attempted to codify all the Indian Laws. In this regard, it directed the government to set up an Indian Law Commission. Hence, India's first law commission was set up with Lord Macaulay as its Chairman.
   - It ***tried*** to bring about a system of open competition for selection of Civil Servants. *
     - The above provision was however ***negated*** by opposition of the Court of Directors of Company.
5. **Charter Act, 1853**

   It's considered as a significant constitutional landmark:
   - For the first time, legislative and executive functions (of the Governor General's Council) were clearly demarcated.
     - It provided for addition of six new members under a body called 'Indian Legislative Council' or 'Central Legislative Council'. Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.
     - Thus, it marked the beginning of Parliamentary system in India.
   - It introduced an open competition system for selection and recruitment of civil servants.*
     - It implied that the 'covenanted' civil services were now open for Indians too.
     - Macaulay Committee was set up to recommend for enforcing the same in 1854.
   - It introduced for the first time, local (provincial) representation to Indian Legislative Council. Four members were appointed by the local governments of Madras, Bombay, Bengal and Agra.
   - It extended Company's rule and allowed it to retain the possession of Indian territories on trust for British Crown. But, it did not specify any particular period, unlike previous Charters. This was an indication that the Company's rule could be terminated at any time the Parliament liked.

2.2.2. Developments under the British Crown's Rule

1. **Government of India Act, 1858**

   The Act is also known as the **'Act for the Good Government of India'**. After the 1857 revolt, the rule of the company was ended and transferred the powers of government, territories and revenues to the British crown.

   The Act was largely confined to improvement of the administrative machinery. It did not alter significantly the system of government that prevailed in India.

   Few other important features were:

   - It ended the system of double government by abolishing the Board of Control and Court of Directors.
   - It established a new office of Secretary of State for complete authority and control over Indian administration.

Student Notes:

- The Secretary of State would be a member of the British Cabinet and was responsible to the British Parliament.
- He was assisted by a 15-member Council in India.
  - The Council was an advisory body.
  - The Secretary of State was its chairperson.
- Thus, it established control of British Parliament over Indian affairs. Administration of the country was now highly centralized.

2. **Indian Councils Acts**: They were total 3 in number: 1861, 1892 and 1909.

- **Act of 1861**
  - Indians were, for the first time, made a part of the law making process.
    - The Viceroy could now nominate a few Indians as non-official members.
  - It initiated the process of decentralization by restoring powers to Bombay and Madras Presidency.*
  - It provided for establishment of new legislative councils for Bengal, North-Western Frontier Province (NWFP) and Punjab, which were established in 1862, 1866 and 1897 respectively.
  - It also gave recognition to the **'portfolio' system**, introduced by Lord Canning in 1859.*
  - It empowered the Viceroy to issue ordinances.*
- **Act of 1892**
  - It increased the number of non-official members in the Central and provincial legislative councils, but maintained official majority in them.
  - The Act made a limited and indirect provision for the use of election in filling up some of the non-official seats in both, Central, as well as, Provincial Legislative Councils*. Thus, the element of election was introduced for the first time. However, the word 'nomination' was used instead of 'elections'.
  - It increased the functions of legislative councils:
    - Power of discussing budget was granted.
    - Questions could now be addressed to the Executive.
- **Act of 1909 (Morley-Minto Reforms)**
  - It increased the number of seats of legislative councils, both at central and provincial levels. The number of members of the Central legislative council was increased from 16 to 60.
  - It retained official majority in Central Legislative Council but allowed the provincial legislative councils to have non-official majority.
  - Members of legislative councils were given wider deliberative powers. They could now ask supplementary questions, move resolutions on budget et al.*
  - It provided for a provision for Indians to participate in executive councils. Satyendra Prasad Sinha became the first Indian to become listed on the Viceroy's Executive Council. He was appointed as the law member of the British ministry.
  - It introduced the system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by the Muslim voters. Thus, the Act 'legalized communalism' and Lord Minto came to be known as **Father of Communal Electorate**.

3. **The Government of India Act, 1919 (Montagu-Chelmsford Reforms)**

In 1917, the British Government declared, for the first time, that its objective was the gradual introduction of responsible government in India (Secretary of state Montagu's declaration). The Government of India Act, of 1919 was thus enacted, though not completely in line with the above stand.

Following are its important features:

- Relaxation of central control over the provinces by demarcating the central and provincial subjects. Respective legislatures at centre and provinces were authorized to make laws on their respective subjects.*
    - However, the basic government structure was largely centralized and unitary.*
- Dyarchy was introduced at the level of provinces.
    - Dyarchy implies division of governance subjects into two parts.
    - These two parts were namely: transferred subjects(to be administered by the Governor with the aid of ministers) and reserved subjects (to be administered by the Governor and his Executive Council without being responsible to the legislature)
- Bicameralism was introduced for the first time. It was introduced at the Centre.
- Direct elections were introduced for the first time.*
    - Franchise was granted to some limited people on foundation of property, tax and education.
- Separation of central budget from provincial budget.*
- It provided for the establishment of a Public Service Commission. Hence, a Central Public Service Commission was set up in 1926 (on recommendation of Lee Commission, 1923-24).*
- It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
- It provided for the appointment of a statutory commission to inquire into and report on its working after ten years of its coming into force.

4. Government of India Act, 1935

In line with the 1919 Act, the British Government announced the appointment of a seven-member statutory commission under the chairmanship of Sir John Simon to report on the condition of India under its new Constitution. All members of the commission were British and, hence, all parties boycotted the commission. To consider the proposals of commission, the British Government convened three round table conferences of the representatives of the British Government, British India and Indian princely states. On the basis of these discussions, a 'White Paper on Constitutional Reforms' was prepared and submitted for consideration of a British Parliamentary Committee. Recommendations of this committee were incorporated (with certain changes) in Government of India Act of 1935. This Act has a singularly important role to play in framing of the Constitution in its current form, purely owing to the fact that several features of this Act have been incorporated, one way or the other, by our Constitution makers. Also, the Act endeavoured to give a written Constitution to the country. Further, after centuries, Indians got an opportunity to assume responsibility of running the administration of their country.

Some of its prominent features were:

- It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and units in terms of three lists - Federal List, Provincial List and Concurrent List. Residuary powers were given to the Viceroy. However, the federation never came into being as princely states did not join it.
- It abolished dyarchy introduced in the provinces by the GOI Act, 1919 and introduced 'provincial autonomy' in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres. Moreover, the Act introduced responsible governments in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislature. This came into effect in 1937 and was discontinued in 1939.

Student Notes:

Student Notes:

- It provided for adoption of dyarchy at the Centre. Consequently, federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.
- Bicameralism was introduced in six out of eleven provinces. Thus, the legislatures of U.P., Bihar, Assam, Bengal, Madras and Bombay came to consist of two houses - the Legislative Assembly and the Legislative Council, whereas other provinces consisted of one House i.e. Legislative Assembly. The membership criteria of these houses varied from province to province. At the centre, the federal legislature consisted of two houses, the Council of States and Federal Assembly consisting of 260 and 375 members respectively. The Council of States (Upper House) was a permanent body, one-third of whose members were to retire every three years.
- A Federal Court was established at the Centre.

Besides the above, it also contained the following provisions:

- Formation of the provinces of Sindh and Orissa.
- It further extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women, and labour (workers).
- Separation of Burma and Aden from India.
- The Indian Council was abolished and a few advisers, varying from 3 to 6, were appointed to advise the Secretary of States in his policy formulation towards India.
- The Secretary was normally not expected to interfere in the Indian affairs, which were to be carried out by Governors.
- With respect to the changes brought in the Federal Government, the Viceroy remained its head. He exercised a wide range of powers concerning administration, legislation and finance.
- The Act created provisions for reserved subjects, to be looked after by the Viceroy through Executive Councilors. Similarly, the transferred subjects were also to be under the Viceroy, aided by Indian ministers, not more than 10 in number, selected from the legislature.
- In case of the provincial government, the Governor carried on the administration with the help of a council of ministers selected by him from among the members of the provincial legislature. The composition of the provincial legislature also varied from one province to the other.
- It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.
- It extended the franchise and about 10 per cent of the total population got the voting right.

Critical Analysis of the Act

It is said that the act was nothing but **'sugar-coated quinine':**

- The proposed scheme for establishing a Federation proved to be a non-starter, as the princely states did not join it.
- Though it introduced Dyarchy in the Centre and autonomy in Provinces, but the powers of the elected or nominated members were limited. The Act had retained control of the Central Government over the Provinces in a certain sphere – by requiring the Governor to act 'in his discretion' or in the exercise of his 'individual judgment' in certain matters. In such matters the Governor was to act without ministerial advice and under the control and directions of the Viceroy, and, through him, of the Secretary of State.
- The legislative powers of both the Central and Provincial Legislatures were subject to various limitations and neither could be said to have possessed the features of a sovereign Legislature. Consider, for instance, the following:

- Apart from the Viceroy's power of veto, a Bill passed by the Central Legislature was also subject to veto by the Crown.
- The Viceroy might prevent discussion in the Legislature and suspend the proceedings in regard to any Bill if he was satisfied that it would affect the discharge of his 'special responsibilities'.
- Apart from the power to promulgate Ordinances during the recess of the Legislature, the Viceroy had independent powers of legislation, concurrently with those of the Legislature. Thus, he had the power to make temporary Ordinances as well as permanent Acts at any time for the discharge of his special responsibilities.
- No bill or amendment could be introduced in the Legislature without the Viceroy's previous sanction, with respect to certain matters, e.g., if the Bill or amendment sought to repeal or amend or was repugnant to any law of the British Parliament extending to India or any Viceroy's or Governor's Act, or if it sought to affect matters as respects which the Viceroy was required to act in his discretion.

There were similar restraints on the Provincial Legislature.

The Instruments of Instructions issued under the Act further required that Bills relating to a number of subjects, such as those derogating from the powers of a High Court or affecting the Permanent Settlement, when presented to the Viceroy or a Governor for his assent, were to be reserved for the consideration of the Crown or the Viceroy, as the case might be.

2.2.3. Other Intermediate Developments

1. **Communal Award**
   - After the Second Round Table Conference, in August 1932, the British PM, Ramsay Macdonald gave his 'Communal Award'. According to it, separate representation was to be provided to the forward castes, lower castes, Muslims, Buddhists, Sikhs, Indian Christians, Anglo-Indians, Europeans and Dalits. The Dalits were assigned a number of seats to be filled by election from special constituencies in which voters belonging to the Dalit community only could vote.
   - The award was opposed by Mahatma Gandhi, who fasted in protest against it. After lengthy negotiations, Gandhi reached an agreement - called the Poona Pact - with Dr. Ambedkar to have a single Hindu electorate, with Dalits having seats reserved within it.
2. **Cripps Mission**
   - In March 1942, Sir Stafford Cripps, a member of the British cabinet came with a draft declaration on the proposals of the British Government. These proposals were to be adopted at the end of the Second World War, provided the Congress and Muslim League could accept them.
   - According to the proposals:
     - The Constitution of India was to be framed by a Constituent Assembly elected for the purpose by the Indian people.
     - The Constitution should provide India, a dominion status.
     - There should be one Indian Union comprising all the provinces and Indian states.
     - Any province (or Indian state) not accepting the Constitution would be free to retain its constitutional position existing at that time, and with such a non-acceding province, British Government could enter into separate constitutional arrangements.
3. **Cabinet Mission**

   In March 1946, Lord Clement Atlee sent a Cabinet Mission to India consisting of three Cabinet Ministers, namely Lord Pethick Lawrence, Sir Stafford Cripps and Mr. A.V. Alexander.

   The object of Cabinet Mission was to help India achieve its independence as early as possible, and to set up a Constitutional Assembly. According to the Cabinet Mission Plan,

there was to be a Union of India, comprising both British India and the States, having jurisdiction over the subjects of foreign affairs, defence and communication. All residuary powers were to be vested in the provinces and the states.

The Union was to have an executive and a legislature consisting of representatives of the provinces and the states. The provinces could form groups with executives and legislatures, and each group could be competent to determine the provincial subjects.

Student Notes:

4. The Mountbatten Plan

The plan for transfer of power to the Indians and partition of the country was laid down in the Mountbatten Plan. It was given a formal shape by a statement made by the British Government on June 3, 1947.

5. Indian Independence Act, 1947

On February 20, 1947, the then British Prime Minister, Clement Atlee, declared that the British rule in India would end by June 30, 1948. Other provisions of the Indian Independence Act, 1947 were:

- End of British rule in India was declared independent and sovereign.
- Partition of India and Pakistan.
- Abolition of the post of Viceroy and appointment of a Governor-General for both India and Pakistan.
- Empowering the Constituent Assemblies of both the dominions of India and Pakistan with legislative and executive powers to frame and adopt a Constitution for their respective nations.

3. Evolution

3.1. Two Dimensions

1. Evolution prior to the adoption of the Constitution (pre 1950 era), and
2. Evolution as an ongoing process (1950 onwards).

3.1.1. Evolution Prior to the Adoption of the Constitution

The Constituent Assembly: The task of framing the Constitution of a sovereign democratic nation is performed by a representative body of its people. Such a body elected by the people for the purpose of considering and adopting a Constitution is called a Constituent Assembly**.**

- Genesis of the idea:
  - The idea of Constituent Assembly was implicit in the demand for Swaraj made by the Indian National Congress as early as 1906.
  - In 1936, the Congress resolved, "The Congress stands for a genuine democratic State in India, where power has been transferred to the people as a whole and the government is under their effective control. Such a State can only come into existence through a Constituent Assembly having the power to finally determine the Constitution of the country.
  - On March 15, 1946 Clement Atlee, the Labour Party's Prime Minister categorically admitted the right of Indians to frame their own Constitution.
  - The British Parliament passed the Indian Independence Act, 1947 in July of the same year. As per the Independence Act, the two independent dominions were created w.e.f. August 15, 1947.
  - The Constituent Assembly, which had already been formed, went into action as per the Cabinet Mission plan. Its total membership for entire India was 389, out of which 93 members were from the princely states and 296 were elected from the British Indian provinces.

Student Notes:

The Constituent Assembly, when it met for the first time on December 9, 1946 was not a sovereign body. It had to follow the prescribed procedure set up by the Cabinet Mission of the British Parliament.

On December 11, 1946, the Indian National Congress elected Dr. Rajendra Prasad as the permanent Chairman of the Constituent Assembly.

1. Composition

The Constituent Assembly was a partly elected and a partly nominated body. The members were elected indirectly by people in the provincial assemblies, who in turn had been elected on the basis of a limited franchise (on the basis of tax, property and education).

Although, it was an indirectly elected body, yet it comprised of representatives of all sections of Indian society - Hindus, Muslims, Sikhs, Parsis and Anglo-Indians.

Further, the Constituent Assembly included all leading personalities of India of the time, with the exception of Gandhi and Jinnah.

2. Committees

The Constituent Assembly appointed numerous committees, which were divided as: major and minor committees.

Major Committees:

1	Union Powers Committee	Jawaharlal Nehru
2	Union Constitution Committee	Jawaharlal Nehru
3	Provincial Constitution Committee	Sardar Vallabhbhai Patel
4	Drafting Committee	Dr. B. R. Ambedkar
5	Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Sardar Vallabhbhai Patel
6	Rules of Procedure Committee	Dr. Rajendra Prasad
7	States Committee (Committee for Negotiating with States)	Jawaharlal Nehru
8	Steering Committee	Dr. Rajendra Prasad

Minor Committees:

1	Committee on the Functions of the Constituent Assembly	G.V. Mavalankar
2	Order of Business Committee	Dr. K.M. Munshi
3	House Committee	B. Pattabhi Sitaramayya
4	Ad-hoc Committee on the National Flag	Dr. Rajendra Prasad
5	Special Committee to Examine the Draft Constitution	Alladi Krishnaswamy Ayyar
6	Credentials Committee	Alladi Krishnaswamy Ayyar
7	Finance and Staff Committee	Dr. Rajendra Prasad.
8	Hindi Translation Committee	
9	Urdu Translation Committee	
10	Press Gallery Committee	
11	Committee to Examine the Effect of Indian Independence Act of 1947	
12	Committee on Chief Commissioners' Provinces	B. Pattabhi Sitaramayya.
13	Commission on Linguistic Provinces	
14	Expert Committee on Financial Provisions	
15	*Ad-hoc* Committee on the Supreme Court	S. Varadachariar.

Student Notes:

3. **Working of the Constituent Assembly:**
The Constituent Assembly held its first meeting on December 9, 1946 that was boycotted by the Muslim League, which insisted on a separate state of Pakistan.
   - **Objective Resolutions**
     J L Nehru moved the historic 'Objectives Resolutions' within the Assembly. The basic idea of the 'Objective Resolutions' was to lay down the fundamentals and philosophy of the constitutional structure. Its prominent excerpts were:
     - The Constituent Assembly declares its firm and solemn resolve to proclaim India being an independent sovereign republic.
     - All the power and also the authority of independent sovereign India, its constituent parts and organs of presidency shall be derived from its people. (Advocating Democracy)
     - People shall be guaranteed justice and secured social, economic and political equality of status of opportunity and before law, freedom of thought, expression, belief, faith, worship, vocation, association, action and public morality. (Fundamental Rights)
     - Adequate safeguards will be provided for minorities, backward and tribal areas and depressed classes, and other backward classes. (Part X, Part XVI)
     - Government at the centre shall maintain the integrity of the territory of the republic of India and its sovereign rights on land, sea and air based on laws of civilized nations of the world.
     - India as an ancient land attains its rightful and honoured place in the world and shall make its full contribution to the promotion of world peace and the welfare of mankind.

     The 'Objectives Resolutions' later became the basis of the Preamble of the Constitution.

4. **Enactment and Enforcement**
After two readings of the draft, during which various alterations were accommodated, Dr. B.R. Ambedkar proposed a motion on **26th November, 1949** which has been mentioned as the day 'people of India in the Constituent Assembly adopted, enacted and gave to themselves the Constitution of India'.
January 26, 1950 was chosen as the 'date of commencement' on which the Constitution came into force owing to its historic importance (although some provisions came into force on 26th November, 1949 only).
5. **Criticism of the Constituent Assembly**
   - **Not a Representative Body:** Members of the Constituent Assembly weren't directly elected by people according to universal adult franchise.
   - **Not a Sovereign Body:** It is said that the Constituent Assembly was formed, based on the proposals of the British Government. Further, it held its sessions with permission of British Government.
   - **Domination of Congress members:** Granville Austin, an English constitutional expert, remarked: "The Constituent Assembly was a one-party body in an essentially one-party country. The assembly was the Congress and also the Congress was India."
   - **Lawyer-Politician Domination:** The fact that lawyers and politicians dominated the membership of the assembly is cited as the main reason behind the bulkiness and complicated nature of the Constitution.

3.1.2. Evolution as an Ongoing Process

Mr. Justice H. R. Khanna in his 'Making of Constitution' said: "The framing of a Constitution calls for the highest statecraft. Those entrusted with it have to realize the practical needs of the government and have, at the same time, to keep in view the ideals, which have inspired the nation".

Student Notes:

A Constitution has to be a living thing, living not for one or two generations but for succeeding generations of men and women. It is for this reason that the provisions of the Constitution are couched in general terms, for the great generalities the Constitution have a content and significance that vary from age to age and have, at the same time transcendental continuity about them. A Constitution states, or ought to state, not the rules of the passing hour, but the principles for an expanding future.

A Constitution is lent the vitality of a living organism owing to two given innate features of a Constitution:

1. It is **open to constant changes**. Whether by ratifying the Constitution by a new amendment, or by repealing an existent amendment.

   We will take few examples to ascertain our point:

   a) The 42nd constitutional amendment mentioned explicitly the concepts of secularism and socialism as a part of the Constitution.
   b) Article 15(4) was added by the 1st constitutional amendment act and provides for affirmative action for socially and economically backward sections of society or for SC/STs.
   c) Similarly, Article 15(5) provides for affirmative action for socially and economically weaker sections of society in educational institutions, whether aided or unaided. Article 15(5) was added by the 93rd constitutional amendment act.

2. Additionally, the Constitution is **open to constant interpretation by the Supreme Court**. This feature allows the Supreme Court to accord such interpretations so as to make the Constitution:
   a) Increasingly relevant to the time and tenor of the contemporary reality
   b) Reflect to maximum extent possible, needs and aspirations of the people.

   Again, the **following examples** illustrate how the Constitutional provisions have been added, modified and reinterpreted to fulfil the needs of the time and aspirations of the citizens:

   a) Right to Education (Article 21A)

   The Right to Education was incorporated through the 86th constitutional amendment enacted by the Parliament of India after landmark judgements by the Supreme Court in the Mohini Jain and Unni Krishnan case. This provides one of the many examples where both the above mentioned innate features have worked in tandem to reflect the aspirations of the people, making it 'alive' to the need of the hour

   b) The Supreme Court has taken account of people's aspirations and helped keep the Constitution alive by constantly broadening the span of **Article 21 or the 'Right to Protection of Life and Personal Liberty'.** Starting with its judgment in the Maneka Gandhi vs. Union of India case, 1978, the SC has time and again brought about various judgments so as to tackle various issues crippling normal life of Indian citizens or some other need of the hour. The CNG ruling in Delhi, Ganga river protection, right to adequate shelter, right to privacy as a fundamental right, right to die with dignity as a fundamental right and thus allowing passive euthanasia et al are instances of such rulings.

Thus, in a way the Constitution constantly evolves, just as a living organism would do, learning from its experience and the surrounding environment.

4. Salient Features of the Constitution of India

Student Notes:

1. Lengthiest Written Constitution

The Indian Constitution is the lengthiest written Constitution in the world, among all sovereign countries. In its original form, it consisted of 395 Articles and 8 Schedules, to which changes have been made through subsequent amendments. As of January 2020, the Constitution of India consists of 470 articles in 25 parts, 12 schedules, and 5 appendices. As of January 2020, there have been 126 Amendment Bills and 104 amendments of the Constitution of India.

Written and Unwritten Constitution

Written constitution is one which is found in legal documents duly enacted in the form of laws. It is precise, definite and systematic. It is the result of conscious and deliberate efforts of people. It is framed by a representative body duly elected by people at a particular period in history. It is always promulgated on a specific date in history. A written constitution is generally rigid and a procedure separate from that of enacting ordinary law is provided for its amendment or revision i.e. a distinction between constitutional law and ordinary law is maintained. The first written constitution framed by a representative constituent assembly was that of the United States of America. This example was followed by France. During 19th century a number of states framed their constitutions, all of which were written, with the exception of England. Indian constitution is an example of written constitution.

Unwritten constitution is the one in which no provisions or laws of the constitution are set in writing but they are documented despite not being codified in a structured manner in a single book. It consists of customs, conventions, traditions, and some written laws bearing different dates. It is unsystematic, indefinite and un-precise. Such a constitution is not the result of conscious and deliberate efforts of the people. It is generally the result of historical development. It is not made by a representative constituent assembly at a definite stage of history, nor is it promulgated on a particular date. It is, therefore, sometimes called an evolved or cumulative constitution. The constitution of England is a classic example of an unwritten constitution which is mainly a result of historical growth.

However, **distinction** between written and unwritten constitution is not scientific. There is no constitution which is wholly written. Nor is there any which is completely unwritten. Every written constitution has an unwritten element in it and every unwritten constitution has a written element.

Point to be noted: *Although the last article of the Constitution is Article 395, the total number, as of January, 2020 is 470. New articles added through amendments have been inserted in the relevant location in the original Constitution. In order not to disturb the original numbering, the new articles are inserted with alphanumeric enumerations. For example, Article 21A pertaining to Right to Education was inserted by the 86th Amendment Act.*

There are various factors responsible for the length of the Constitution:

- One of the major factors was that the framers of the Constitution borrowed provisions from several sources and several other constitutions of the world.
- Secondly, it was necessary to make provisions for issues particular to India, like the scheduled castes, scheduled tribes and backward regions.
- Thirdly, provisions were made for elaborate centre-state relations in all aspects of their administrative and other activities.
- Fourthly, since Indian states do not have a separate Constitution, provisions regarding the state administration were also included in the Constitution of India.

- Further, a detailed list of individual rights, directive principles of state policy and the details of administration procedure were laid down to make the Constitution clear and unambiguous for the ordinary citizen.

2. Blend of Rigidity and Flexibility

The Constitution of India is neither purely rigid nor purely flexible. There is a harmonious blend of rigidity and flexibility. Some parts of the Constitution can be amended by the ordinary law-making process of Parliament. However, certain provisions can be amended, only when a Bill for that purpose is passed in each House of Parliament by a majority of the total membership of that house and by a majority of not less than two-third of the members of that house present and voting. Then there are certain other provisions, which can be amended by the second method described above and must be further ratified by the legislatures of not less than one-half of the states before being presented to the President for his assent. It must also be noted that the power to initiate bills for amendment lies with the Parliament alone, and not with the state legislatures.

However, SC has identified the limited power of Parliament to amend the Constitution as part of basic structure. In other words, parliament cannot amend each and every part of the constitution.

In Pandit Nehru's words spoken in the Constituent Assembly: "*While we want the Constitution to be as solid and permanent as we can make it, there is no permanence in Constitution. There should be certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital organic people….*
In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow."

3. A Democratic Republic

India is a democratic republic. It means that sovereignty rests with the people of India. They govern themselves through their representatives, elected on the basis of universal adult franchise. The President of India, the highest official of the state is elected for a fixed term. Although, India is a sovereign republic, yet it continues to be a member of the Commonwealth of Nations with the British Monarch as its head. Her membership of the Commonwealth does not compromise her position as a sovereign republic. The commonwealth is an association of free and independent nations. The British Monarch is only a symbolic head of that association.

Concept of Parliamentary Sovereignty

Parliamentary Sovereignty: It is also known as parliamentary supremacy or legislative supremacy. It makes Parliament the supreme legal authority, which can create or end any law. Also, the judiciary cannot overrule legislation and no Parliament can pass laws that future parliaments cannot change.

Parliamentary sovereignty stands at odds with:

- The doctrine of constitutional supremacy,
- The doctrine of separation of powers (limits the legislature's scope, often to general law-making),
- The doctrine of judicial review (laws passed by the legislature may be declared invalid in certain circumstances).

Parliamentary sovereignty is a principle of the UK Constitution. It makes Parliament the supreme legal authority in the UK.

Student Notes:

Is the Indian Parliament sovereign?

The sovereign status of Indian Parliament is not absolute as in case of UK, because it is subject to the provisions of the Constitution. That is to say, the Indian Parliament derives its authority and power from the Constitution itself.

It has pre-defined limitations as defined below:

1. The Parliament can enact laws with respect to only those matters, which are enumerated either in the Union list or the Concurrent list.
2. The laws made by Parliament are also subject to the power of judicial review of the Supreme Court. That means that if a law made by Parliament goes against the provisions of the Constitution, it can be declared null and void by the concerned court.

Thus, in India, the principle of supremacy of the Constitution has been adopted as against the principle of supremacy of Parliament in UK.

4. Parliamentary Form of Government

India has adopted the Westminster system, a democratic parliamentary system of government modeled after the system followed in the United Kingdom. In this system, the executive is responsible to the legislature, and remains in power only as long as it enjoys the confidence of the legislature. The President of India, who remains in office for five years, is the nominal, titular or constitutional head. The Union Council of Ministers, with the Prime Minister as its head is drawn from the legislature. It is collectively responsible to the House of People (Lok Sabha), and has to resign when it loses the confidence of that house. The President, the nominal executive shall exercise his powers as per the advice of the Union Council of Ministers, the real executive. In the states also, the government is parliamentary in nature.

5. Mixture of Federal and Unitary Features

Article 1 of the Constitution of India says: "India, that is Bharat, shall be a Union of States." Though the word 'federation' is not used, India is a federal republic.

A state is federal when:

b) There are two sets of governments and there is distribution of powers between the two;
c) There is a written Constitution, which is the supreme law of the land; and
d) There is an independent judiciary to interpret the Constitution and settle disputes between the centre and the states.

All these features are present in India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and is the supreme law of the land. At the apex of a single integrated judicial system, stands the Supreme Court, which is independent from the control of the executive and the legislature.

But, in spite of all these essential features of a federation, the Indian Constitution has certain unitary tendencies. While other federations like USA provide for dual citizenship, the India Constitution provides for single citizenship. There is also a single integrated judiciary for the whole country. The provision of All India Services, like the Indian Administrative Service, the Indian Police Service, and Indian Forest Service prove to be another unitary feature. Members of these services are recruited by the Union Public Service Commission on an all-India basis. Since these services are controlled by the Union Government, to some extent this constitutes a constraint on the autonomy of States.

Student Notes:

A significant unitary feature is the emergency provisions in the Indian Constitution. During the time of emergency, the Union Government becomes even more powerful and the Union Parliament acquires the power of making laws for the states. The Governor, placed as the Constitutional head of the State, acts as the agent of the Centre and is intended to safeguard the interests of the Centre. These provisions reveal the centralizing tendency of our federation.

Prof K.C. Wheare has remarked that Indian Constitution provides, "a system of government which is quasi-federal, a unitary state with the subsidiary unitary features".

The framers of the Constitution expressed clearly that there existed a harmony between federalism and unitarism. Dr. Ambedkar said, "The political system adopted in the Constitution could be both unitary as well as federal according to the requirement of time and circumstances".

The Unites States was the first nation to have a truly federal Constitution and its federal structure is still taken as the reference to judge whether any Constitution is federal or not. However, the conditions under which different constitutions, especially the Indian Constitution, were framed were much different from the conditions in America in 1787. India, at the time of independence had already witnessed a messy partition and fissiparous tendencies existed throughout the breadth of the country. Hence, a strong centre was the need of the day to keep the state existing as a single unit and ultimately wield its people together into a nation.

There are some centralising tendencies, but the Indian states also enjoy a fair degree of power and autonomy. The Law Commission of India has also observed that there is no dichotomy between a strong Union and strong states.

In S R *Bommai case* (1994), SC laid down that Constitution is federal and characterised federalism as its 'basic feature'. It observed that conferring greater power upon Centre does not mean that states are mere appendages of Centre. They have an independent constitutional existence. They are not satellites or agents of Centre. Within the sphere allotted to them, the states are supreme. Federalism in the Constitution is not a matter of administrative convenience but a matter of principle.

The above debate is probably best summarized in Prof. Alexanderowicz's words that "India is a federation but a federation sui generis", i.e. a federation in a class of its own or a unique federation.

To conclude, India has "Cooperative federalism" with central guidance and state compliance. In recent times, the concept of "Competitive Federalism" has emerged where the centre competes with states and vice-versa, and states compete with each other in their joint efforts to develop India.

6. Fundamental Rights

"A state is known by the rights it maintains", remarked Prof. H.J. Laski. The Constitution of India affirms the basic principle that every individual is entitled to enjoy certain basic rights and Part III of the Constitution deals with those rights, which are known as Fundamental Rights. Originally there were seven categories of rights, but now they are six in number. They are:

- Right to Equality,
- Right to Freedom,
- Right against Exploitation,
- Right to Freedom of Religion,
- Cultural and Educational rights and
- Right to Constitutional Remedies.

Student Notes:

Right to property (Article-31), originally a Fundamental Right, has been removed by the 44th Amendment Act. 1978. It is now a legal right, but not a fundamental right.

Fundamental rights are described as negative obligations of the state and act as limitations against the power of the state. Hence, they are negatively worded.

These fundamental rights are justiciable and the individual can move the higher judiciary, which is the Supreme Court or the High Courts, if there is an encroachment on any of these rights. The right to move to the Supreme Court directly for the enforcement of Fundamental Rights has been guaranteed under Article 32 (Right to Constitutional Remedies). However, the Fundamental Rights in India are not absolute. Reasonable restrictions can be imposed keeping in view the security and other requirements of the state and society.

7. Directive Principles of State Policy

A novel feature of the Constitution is that it contains a chapter on the Directive Principles of State Policy. These principles are in the nature of directives to the government of the day to implement them for establishing social and economic democracy in the country.

It embodies important principles, like adequate means to livelihood, equal pay for both men and women, distribution of wealth so as to sub serve the common good, free and compulsory primary education, right to work, public assistance in case of old age, unemployment, sickness and disablement, the organisation of Village Panchayats, special care to the economically backward sections of the people etc. Most of these principles could help in making India a welfare state. Though not justiciable, these principles have been stated as **"fundamental in the governance of the country".**

8. Fundamental Duties

A new Part, IV (A), following the Directive Principles of State Policy, was incorporated in the Constitution by the 42nd Amendment Act, 1976 for Fundamental Duties. The purpose of incorporating the Fundamental Duties in the Constitution is to remind the people that while enjoying their right as citizens, they should also perform their duties, since rights and duties are correlated.

9. Secular State

A secular state is neither religious nor irreligious, or anti-religious. Rather it is neutral in matters of religion. India being a land of many religions, the founding fathers of the Constitution thought it proper to make it a secular state. India is a secular state, because it makes no discrimination between individuals on the basis of religion. It neither encourages nor discourages any religion. On the contrary, the Right to Freedom of Religion is ensured in the Constitution and people belonging to any religious group have the right to profess, practice or propagate any religion they like.

10. Independent, Impartial and Integrated Judiciary

The judiciary occupies an important place in our Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the apex of a single integrated judicial system. It acts as a protector of fundamental rights of Indian citizens and guardian of the Constitution. If any law passed by the legislature, or action taken by the executive contravenes the provisions of the Constitution, they can be declared as null and void by the Supreme Court. Thus, it has the power of judicial review.

11. Single Citizenship

The Constitution of India recognizes only single citizenship. In the United States, there is provision of dual citizenship. In India, we are citizens of India only, not of the respective

states to which we belong. This provision helps in promoting unity and integrity of the nation and promotes fraternity among people of different regions.

Student Notes:

12. Universal Adult Franchise

The Article 326 of the Indian Constitution grants Universal Adult Suffrage/ Franchise, according to which, all adult citizens above the age of 18 years, irrespective of their religion, caste, race, colour and sex are entitled to cast vote and participate in the election process.

13. Emergency Powers

The emergency powers are introduced in the Indian Constitution so that the entire nation can tackle any emergency situation, the country may be faced with. The emergency powers are vested in the hands of the President of India. There are three kinds of Emergency powers: National Emergency (Article352); Emergency in a State (Article 356) and Financial Emergency (Article 360).

14. Separation of Powers

The basic assumption behind the concept of separation of powers is that when power is concentrated in the hands of one/few, it/they can subvert the state machinery to favour individual or group interests over the common interest. The separation of powers is a way of reducing the amount of power in any group's hands, making it more difficult to abuse.

This doctrine claims that state power is not a single entity but rather a composite of different governmental functions (i.e. legislative, executive, and judicial) carried out by state bodies independently of each other. The legislature enacts laws; the executive enforces those laws; and the judiciary interprets those laws.

The traditional views on separation of powers are presented by **Montesquieu** who vigorously advocated for a *"strict or pure or total or complete or absolute"* separation of powers and personnel between three organs of the state *i.e.* the Executive, Legislature and Judiciary; power being diffused between three separate bodies exercising separate functions with no overlaps in function or personnel.

However, the Indian state represents a contemporary approach to the doctrine of separation of powers. There is no **strict** separation of powers under our Constitution, both in principle and practice. Since the executive or the council of ministers in parliamentary democracies such as India or UK is also a part of the legislature, a rigid separation of powers cannot exist.

India, in fact, has also adopted the doctrine of checks and balances along with the doctrine of separation of powers. Under this doctrine, separate branches of the government viz. legislature, executive, judiciary are empowered to keep each other in check. Hence in India, each branch of the government, while performing its activities, does not seek to interfere in the sphere of another branch, but at the same time seeks to ensure that the other branch is not misusing its powers or exceeding its mandate. Thus, even when acting in ambit of their own power, overlapping functions tend to appear amongst these organs.

An important question here is the relation among these three organs of the state, i.e. whether there should be a complete separation of powers or should there be co-ordination among them**.**

In the words of Dr. Durga Das Basu,

"So far as the courts are concerned, the application of the doctrine (the theory of separation of powers) may involve two propositions: namely,

Student Notes:

a) That none of the three organs of Government, Legislative Executive and Judicial, can exercise any power which **properly** belongs to either of the other two;
b) That the legislature cannot delegate its powers."

What is significant is the word "**properly**" and therefore conceives of a **broad division of powers** where the **core function** is one, which is exclusively conferred on that particular organ of State, though there may be some overlap in regard to the fringe areas of the topics so entrusted. The pronouncement on this aspect of law by the courts is that under the Indian Constitution there is a **broad** separation of powers.

15. Independent Bodies

Indian Constitution not only provides for legislative, executive and judicial organs of government (Central and state) but also establishes certain independent bodies like the Election Commission, Comptroller and Auditor General of India and Union Public Service Commission. They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India.

16. Three Tiers of Government

Originally, the Indian Constitution, like any other federal constitution, provided for a dual polity and contained provisions with regard to organisation and powers of the Centre and the states. Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government in form of Panchayats and Municipalities *which is not found in any other constitution of the world*.

The above are some the important salient features of the Indian Constitution, which makes it one of the most unique and distinct constitutions in the world.

5. Amendments

5.1. Introduction

The Kesavananda Bharati vs. State of Kerala (1973) case provided the best explanation as to the scope and definition of the word 'amendment'. The court gave a broad definition, where by the word 'amendment' will include any alteration or change.

> *"The word 'amendment' when used in connection with the Constitution may refer to the addition of a provision on a new and independent subject, complete in itself and wholly disconnected from other provisions, or to some particular article or clause, and is then used to indicate an addition to, the striking out, or some change in that particular article or clause".*

5.2. Provision for Amendment

Why is it needed?

It has been provided in line with the basic philosophy that the Constitution needs to be alive to the necessity of adapting itself to realities of contemporary changes. The scope for amendments is a must to allow the Constitution to adjust itself to the changing conditions and needs.

5.3. Types of Amendment

The procedure of amendment makes the Constitution of India neither totally rigid nor totally flexible, rather a curious mixture of both. Some provisions can be easily changed and for some others, special procedures are to be followed. Despite the fact that India is a federal state, the proposal for amending the Constitution can be initiated only in either of the Houses of Parliament, and the state legislatures have no such power.

In case of ordinary legislation, if both the houses of Parliament disagree, a joint session is convened. But, in case of amendment of constitutional articles, unless both the houses separately agree, it cannot materialize, as in such cases there is no provision for convening the joint session of both the Houses of Parliament.
In fact, there are three methods of amending the Constitution. But, Article 368 of the Constitution, which lays down the procedure for amendment, mentions two methods.

Student Notes:

However, the Constitution can be amended in the following three ways:

- **By Simple Majority of Parliament**
  - Those provisions of the Constitution, which are outside the scope of Article 368, can be amended through majority of each House, present and voting.
  - This is quite similar to the ordinary legislative process.
  - Following are few of the provisions amended by the above process:
    a) Formation of new states and alteration of areas, boundaries or names of existing states.
    b) Creation or abolition of legislative councils in the states.
    c) Administration and control of scheduled areas and scheduled tribes.
    d) The salaries and allowances of the Supreme Court and High Court judges.
    e) Laws regarding citizenship.
- **By Special Majority of the Parliament**
  The majority of the provisions of the Constitution need to be amended by a special majority of the Parliament.
  - The method:
    - A majority of the 'total membership' of each house; and
    - A majority of two-third of the members of each House present and voting.

  Note: 'Total Membership' implies the total number of members comprising the house, irrespective of the fact whether there are vacancies or absentees. However, the impeachment of President is the only exception where the resolution should be passed by a majority of not less than two-third of the total membership of each house.

  - The provisions which can be amended by this way include: (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.
- **By Special Majority of the Parliament and consent of States**
  It is employed to amend those provisions, which are related to federal structure
  - The method:
    - Special Majority of the Parliament
    - Consent of half of the State Legislatures by a simple majority.
      - It must be noted that not all the states are to participate. As soon as half of the states give their consent (through above mentioned method), the procedure is completed.
  - There is no time limit within which the states should give their consent.
  - The provisions amended by the above procedure are:
    a) Manner of election of the President.
    b) Matters relating to the executive power of the Union and the states.
    c) Representation of the States in Parliament.
    d) Matters relating to the Supreme Court and High Courts.
    e) Distribution of legislative powers between the union and the states.
    f) Any list in the Seventh Schedule.
    g) Provisions of Article 368 relating to the procedure for amendment of the Constitution.

5.4. Criticism of the Amendment Procedure

Student Notes:

1. There is no special body for amending the Constitution. As compared to the US, which has a special body (Amendments Convention), there is no such provision in the case of India. Hence, the Constitution has often been amended to attain political goals and ends.
2. State legislatures cannot initiate a constitutional amendment bill (unlike the US). This is held as a criticism against federal base of India. Even in the one exception to the above point (state legislatures can introduce a resolution for demand of State Legislative Councils), is subject to whims of the Parliament, which can reject such a resolution or may not take any action at all. Major part of the Constitution can be amended by the Parliament alone either by a special majority or by a simple majority. Only in few cases, the consent of the state legislatures is required.
3. There is no time frame for state legislature's ratification or rejection.
4. There is no provision for joint sitting of houses in case of a deadlock between them on the matter of an amendment bill, which is available in the case of an ordinary bill. This seems ironical considering the importance that the amendment process has been accorded in our Constitution.
5. The procedure for amendment is kept too sketchy, leaving a wide scope for judicial intervention, which as we have seen above, has led to various confrontations between the Parliament and the judiciary, which undermines the balance of the Indian polity.

6. Sources of the Constitution

From U.K.	• Nominal Head – President (like Queen) • Cabinet System of Ministers • Post of PM • Single Citizenship • Parliamentary Type of Government • Bicameral Parliament • Lower House more powerful • Council of Ministers responsible to Lower House • Power of Lok Sabha Speaker • Prerogative writs • Parliamentary privileges
From U.S.A.	• Written Constitution • Executive head of state known as President and his being the Supreme Commander of the Armed Forces • Vice- President as the ex-officio Chairman of Rajya Sabha • Fundamental Rights • Supreme Court • Provision of States • Independence of judiciary and judicial review • Preamble • Removal of Supreme court and High court Judges
From USSR	• Fundamental Duties • The ideal of justice (social, economic and political) in the Preamble
From AUSTRALIA	• Concurrent list • Language of the preamble • Provision regarding trade, commerce and intercourse • The joint sitting of the two Houses of Parliament
From JAPAN	• Law on which the Supreme Court function • Procedure Established by Law

Student Notes:

From WEIMAR CONSTITUTION OF GERMANY	• Suspension of Fundamental Rights during the emergency
From CANADA	• Scheme of federation with a strong centre • Distribution of powers between centre and the states and placing. • Residuary powers with the centre
From IRELAND	• Concept of Directive Principles of States Policy (Ireland borrowed it from SPAIN) • Method of election of President • Nomination of members in the Rajya Sabha by the President
From SOUTHAFRICA	• Procedure of amendment with a two-thirds majority in Parliament • Election of members of Rajya Sabha
From Government of India Act of 1935	• Federal Scheme • Office of governor • Judiciary • Public Service Commissions • Emergency provisions • Administrative details

7. UPSC Previous years Prelims Questions

2005

1. Consider the following statements:
1. The Constitution of India has 20 parts.
2. There are 390 Articles in the Constitution of India in all.
3. Ninth, Tenth, Eleventh and Twelfth Schedules were added to the Constitution of India by the Constitution (Amendment) Acts.
Which of the statements given above is/are correct?
(a) 1 and 2
(b) 2 only
(c) 3 only
(d) 1, 2 and 3
Ans. C

2015

2. Who/Which of the following is the custodian of the Constitution of India?
(a) The President of India
(b) The Prime Minister of India
(c) The Lok Sabha Secretariat
(d) The Supreme Court of India
Ans. D

2017

3. The mind of the markers of the Constitution of India is reflected in which of the following?
(a) The Preamble
(b) The Fundamental Rights
(c) The Directive Principles of State Policy
(d) The Fundamental Duties
Ans. A

Student Notes:

8. UPSC Previous years Mains Questions

1. Describe the emergence of Basic Structure concept in the Indian Constitution. (150 words) 20 marks (1994)
2. What is a Constitution? What are the main sources of the Indian Constitution? (250 words) 30 marks (2007)
3. 'Separation of Powers is essential to ensure individual liberty' Discuss this with regard to the provisions in the Constitution and practices adopted so far.
4. Is the Indian Parliament a "Sovereign" or a "non-Sovereign" legislature or both? 3 marks (1984)
5. Write on Significance of 26th November in the country's polity in about 20 words. 2 marks (2009)
6. Highlight the significance of the Twenty Fourth Amendment to the Constitution of India? 20 marks (1999)
7. What are the main difference between the passage of a Constitution Amendment Bill and other Legislative Bills? 30 marks (2001)
8. How is the Constitution of Indian amended? Do you think that the procedure for amendment makes the Constitution a play-thing in the hands of the Centre? 30 marks (2002)
9. How would you differentiate between the passage of a Constitution Amendment Bill and of an Ordinary Legislative Bill? 15 marks (2006)
10. What is meant by 'Sovereignty of Parliament'? Consider whether the Indian Parliament is a sovereign body. 20 marks (1982)
11. How will you define 'judicial review'? (1982)
12. What constitutes the doctrine of 'basic features' as introduced into the Constitution of India by the Judiciary? 30 marks (2000)
13. Why is the Indian Constitution called quasi-federal? 3 marks (1987)
14. How did the Government of India Act, 1935 mark a point of no return in the history of constitutional development in India? 30 marks (2006)
15. 'The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically. 10 marks (2013)
16. Did the Government of India Act, 1935 lay down a federal constitution? Discuss. 12.5 marks (2016)
17. "Parliament's power to amend the Constitution is a limited power and it cannot be enlarged into absolute power." In the light of this statement explain whether Parliament under Article 368 of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power? 15 marks (2019)

9. Vision IAS GS Mains Test Series

1. **A Constitution should not be amended too frequently, rather only when it becomes inevitable to do so. How far have amendments in the Indian Constitution followed this requirement?**

Approach:

- First discuss the statement of the question. Is it justified? A preferable way of answering would be to consider that the statement holds good. If you negate the statement, the second part of the question will not hold much relevance.
- Also give arguments in support of the stand that you are taking. Here you can also discuss the requirement that a constitution should be dynamic in nature. However, the requirement that changes should not be too frequent, also needs to be discussed.

- Then discuss whether amendments in the Indian Constitution will pass the test of the statement (while discussing this, you have to assume that the statement holds good.)
- Also, provide examples of some constitutional amendments and discuss whether changes have been too frequent, or only when situations arose that made these inevitable.

Student Notes:

Answer:

It is generally accepted that a Constitution should be a dynamic document. It should be able to adapt itself to the changing needs of society. Sometimes under the impact of new powerful social and economic forces, the pattern of government requires major changes. As political practices change over time, adjustments to the constitutional text keep it aligned with current practices and help ensure its continued relevance. Constitutional change also gives the citizenry a say in how they are governed.

However, it must also be realized that the Constitution is not an instrument for the government to restrain the people. Rather it is an instrument for the people to restrain the government. If a Constitution is changed too often, it may lose its importance, since the safeguards present may be gradually undone by amendments. This could make the Constitution seem like any other law, and lead to erosion of its power. Thus, the basic ideas -- separation of powers, checks and balances, limited government etc. must be necessarily preserved.

The system of government we have, has plenty of flaws because it is run by people. But the flaws can also be fixed without changing the Constitution. As Pt. Nehru appropriately said, "The Constitution should not be changed too frequently. It must be changed when the situation requires it to be changed".

Keeping these factors in mind, the draftsmen of the Indian Constitution incorporated Article 368 in the Constitution. This article deals with the procedure of amendment of the Constitution. It is due to Article 368 that the Indian Constitution can neither be called rigid nor flexible, rather partly rigid and partly flexible.

Articles of the Indian Constitution can be amended through:

- a simple majority in the Parliament;
- special majority i.e. majority of the total membership of each house and majority of not less than two thirds of the members of each house present and voting;
- ratification by atleast half the State Legislatures, in addition to special majority.

Examples of a few major amendments, responding to needs of citizen and society:

- The 52nd amendment to the Constitution added the Tenth Schedule, which laid down the process by which legislators may be disqualified on grounds of defection. The main intent of the law was to combat the evil of political defections, which arises due to coalition politics.
- The introduction of the 73rd Constitutional Amendment Act institutionalized the Panchayati Raj System. It unleashed the power of the grassroots, providing representation to voiceless and disadvantaged sections. Thus it initiated India's largest exercise in democratic decentralization.

Some of the amendments have definitely improved the content and quality of the constitutional document in the context of the changed and changing societal, economic or political needs. Others were either inevitable or consequential for implementation of policy decisions. However, there have also been quite a few which were avoidable, unnecessary or motivated by merely political and partisan interest considerations of the ruling majority party (for instance, the 42nd amendment act). In principle, the

Constitution must never be subjected to easy amendments by temporary party majority in legislatures.

It needs to be understood that the growing disenchantment among public, relating to governance, calls for remedies other than constitutional amendments. The most important areas of reforms, in the electoral laws and processes and in political parties, for example, need no constitutional changes. If there is political will legislation can be passed to address the concerns as and when the need arises.

Student Notes:

2. Though the Constitution-makers vested the power to amend the Constitution in the Parliament, since the Kesavananda Bharati case, the Supreme Court has become a decisive co-sharer in this power. Comment.

Approach:

One should clearly bring out the situation pre Kesavananda Bharati case and how the judgment changed the concept of amending the constitution. Brief elaboration of the basic structure of the constitution is also important.

Answer:

Though the Constitution vested the power to amend the Constitution or any of its part (Article 368) to the Parliament, which comprises of the representatives of the people, the court in a landmark judgment adjudged that anything which contravenes the basic structure of the constitution would be declare null and void thereby severely curtailing the powers of the Parliament to amend the Constitution.

Article 368, on a plain reading did not contain any limitation on the power of the Parliament to amend any part of the Constitution. In the Golak Nath Case, Supreme Court was of the opinion that it should be read along with Article 13 of the Constitution but it changed its decision in the Kesavananda Bharati case in 1973.

In Kesavananda Bharati Case, the Judiciary tried to deal with the question that "was the power of the Parliament to amend the constitution unlimited?" Dealing with this question, it came out with the basic structure doctrine through which it was held that Parliament could amend any part of the constitution so along as it did not alter or amend the basic structure of the constitution.

The Supreme Court has not explicitly mentioned what constitutes the 'basic structure', further casting a doubt whether any legislation if challenged will pass the judicial scrutiny or not.

But it could be deciphered from subsequent judgments that Preamble, Federalism, Fundamental Rights, Secularism etc. are some of its basic components.

As one commentator has opined – the reality of constitutionalism has been that the legislature and the judiciary are likely to remain Competitors when it comes to interpreting the Constitution. It is by no means settled who has the final word. The parliament can pass any legislation and the court can determine its constitutionality, the Parliament could try to circumvent the court by amending the constitution, the court can pronounce Parliament has limited powers and so on.

There are examples of enactments, which got nullified for violating the basic structure while others like the abolition of Right to property by 44th AA passed the judicial scrutiny.

In conclusion, it can be said that the decline of the Parliament in relation to other competing institution of government is most empathetically felt on the Parliament's loss to the judiciary as the locus of the **Constituent Power**.

3. Indian constitution is a borrowed constitution. Evaluate.

Student Notes:

Approach:

Give your verdict as to what extent the statement that Indian Constitution is a borrowed constitution, is true and whether you agree with this assertion. Take evidence from sources, which both support and contradict the assertion. Thereafter come to a conclusion, basing your decision on what you consider to be the most important factors and try to justify the stand you have taken.

Answer:

Though the framers of the Constitution of India borrowed many ideas from the then existing Constitution, but this was not a slavish imitation of the west. Rather, each provision of the Constitution had to be logically defended and argued upon to show how it was suited to the problems and aspirations of the citizens of India.

While our constitution has been called as a 'borrowed' Constitution by some, its framers, as a matter of fact, must be credited for gathering the best features of each of the then existing Constitutions and modifying them with a view to avoid the faults that had been disclosed in their working. Moreover, the Constitution was adapted to suit to the existing condition and needs of the country.

Further, the constitution of India is unique in so many ways that it becomes difficult to fit it in any one particular model. For instance, it is a blend of rigidity and flexibility, federal and unitary features, presidential and parliamentary democracy etc.

While the structural part of the constitution, was to a large extent, derived from the Government of India Act, 1935; its philosophical part had many other sources:

U.K.: Nominal Head-President, Cabinet system of ministers, Post of Prime Minister, Parliamentary type of government, Bicameral Parliament, the Lower House being more powerful, Council of Ministers responsible to Lower House, Speaker in Lok Sabha.

USA: Written constitution, Executive head of state, known as President and him being the supreme commander of armed forces, Vice President as the ex- officio chairman of Rajya Sabha, Fundamental Rights, Supreme Court, Provision of States, Preamble, Independence of judiciary and judicial review.

USSR: Fundamental Duties, five year plan.

Australia: Concurrent list, Language of Preamble, Provision regarding trade , commerce and intercourse

Germany: Suspension of fundamental rights during emergency

Canada: Scheme of federation with strong centre, Distribution of powers between centre and the states and placing residuary powers with the centre

Ireland: Concept of Directive Principles of States Policy, Method of election of President.

Despite these, examples of modifications and innovations in Indian constitution abound. Consider, for instance, the following features of the Indian Constitution:

1. The Indian Constitution is a unique blend of rigidity and flexibility: Though Indian constitution is a written constitution, it is not as rigid as the American constitution.
2. Judicial Review: Judiciary in USA has absolute power of judicial review, whereas Britain has Parliamentary supremacy. Indian Constitution effects a compromise between the Doctrines of parliamentary Sovereignty and judicial supremacy.

Student Notes:

3. Fundamental rights though influenced by USA's Bill of Right have certain differences:
   - Unlike fundamental rights mentioned in the Indian Constitution, declarations in the American Bill of Right are absolute
   - There are no unenumerated rights under our constitution. Fundamental Rights under our Constitution are exhaustively enumerated in Part 3 of the constitution
4. Besides these, we have also many indigenous and innovative features like Panchayats, international peace, and security.

Thus, while some ideas may have been borrowed from other constitutions of the world, it may not be correct to call the Indian Constitution as a borrowed constitution per se.

4. Amendment process of the Indian constitution with that of Japan.

Answer:

a) **India:** The constitution is more flexible than rigid. Only the amendment of few of the provisions of the constitution requires ratification by state legislatures and even then legislation by not less than half of the states would suffice. The rest of the constitution could be amended by a special majority by parliament. There is no separate constituent body provided for by our constitution for the amending process.

Japan: Japan's constitution is rigid. Article 96 provides that amendments can be made to any part of the constitution. However, a proposed amendment must first be approved by both houses of the Diet, by at least two-thirds majority of each house. It must then be submitted to a referendum in which it is sufficient for it to be endorsed by a simple majority of votes cast. A successful amendment is finally promulgated by the Emperor, but the monarch cannot veto an amendment.

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POLITY & CONSTITUTION

JUDICIARY HIGH COURT, SUBORDINATE COURTS ISSUES, JUDICIAL REFORMS AND JUDICIAL ACTIVISM

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Student Notes:

JUDICIARY- HIGH COURT, SUBORDINATE COURTS, ISSUES, JUDICIAL REFORMS AND JUDICIAL ACTIVISM

Contents

Student Notes:

Student Notes:

1. High Court

The **Article 214** of the Indian Constitution provides for a High Court for each state, but the Seventh Constitutional Amendment Act of 1956 authorized the Parliament under **Article 231** to establish a common High Court for two or more states and a union territory. Articles 214 to 231 of the Constitution deals with the organization, independence, jurisdiction, powers, procedures and other issues related to the High Courts.

At present, there are **25 High Courts** for the states and union territories in the country. The High Courts of Madras, Bombay, Calcutta and Allahabad were the first four High Courts in India, established by the Indian High Courts Act, 1861. Andhra Pradesh is the recent state to have the High Court which was established in 2019.

- The Bombay High Court's jurisdiction extends over Maharashtra, Goa, Dadra and Nagar Haveli, and Daman and Diu.
- Calcutta High court jurisdiction is over West Bengal and Andaman and Nicobar Islands.
- Gauhati High Court has jurisdiction over Arunachal Pradesh, Assam, Nagaland and Mizoram.
- Kerala High Court covers Kerala and Lakshadweep.
- Madras High Court has jurisdiction over Tamil Nadu and Puducherry.
- Punjab and Haryana High Court has jurisdiction over the states of Punjab and Haryana, along with UT of Chandigarh.
- Delhi is the only UT that has a High Court of its own.

As per **Article 230** of the Indian Constitution, Parliament may by law extend the jurisdiction of a High Court to any union territory or exclude the jurisdiction of a High Court from any union territory.

1.1. Organization of High Court

Every high court (whether exclusive or common) consists of a Chief justice and such other judges as the President may from time to time deem necessary to appoint. The President has the power to determine the strength of a high court from time to time depending on its workload.

1.2. Eligibility Criteria for High Court Judges

A person to be appointed as a High Court Judge must fulfill the following criteria:

a. He should be a citizen of India,
b. He should have held a judicial office in territory of India for 10 years, or
c. He should have been an advocate of High Court for at least 10 years (this is similar to the qualification required in case of SC judges too).

Thus, the Constitution does not prescribe a minimum age for appointment as a judge of a high court. However, there's no provision in the Constitution for appointment of a distinguished jurist as a High Court Judge, unlike that of the Supreme Court.

1.3. Tenure of Judges

The Constitution has not provided a fixed tenure to a judge of a High Court. However, it provides the following provisions:

a) He holds office until he attains the age of 62 years. Any question regarding age should be decided by the President in consultation with the Chief Justice of India and decision of the President shall be final.
b) He can resign from his office by writing to the President.
c) He can be removed from his office by the President on recommendation of the Parliament.

d) He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

Student Notes:

1.4. Appointment of Judges

High Court has the following categories of judges:

Regular Judges (Art. 217(1))

- They are appointed by the President in consultation with the Chief Justice of India and Governor of the state concerned.
- For appointment of other Judges of the high court the chief justice of concerned high court is also consulted.
- In case of common high court of two or more states, Governors of all the states concerned are consulted by the President.
- Following the ruling of *Second Judges case* (1993) and *Third Judges case* (1998), in case of appointment of high court judges the opinion of collegium consisting of Chief justice of India and two senior most judges of Supreme Court judges must be sought.

Acting Chief Justice (Art. 223)

The President can appoint a judge of a High Court as an acting chief justice of High Court when:

- The office of Chief Justice is vacant;
- The Chief Justice of the High Court is temporarily absent; or
- The Chief Justice of High Court is unable to perform the duties of his office.

Additional and Acting Judges (Art. 224)

A duly qualified person can be appointed as an additional judge by the President for a temporary period of not more than two years, if:

1. There is a temporary increase in the business of high court,
2. There are arrears of work in high court.

Similarly, a duly qualified person can be appointed as an acting judge by the President when a judge of that high court (other than chief justice) is:

1. Unable to perform the duties of his office due to absence or any other reason.
2. Appointed to at temporarily as chief justice of that high court.

An Acting Judge holds office until the permanent judge resumes his office, however both the additional and acting judges cannot hold office after attaining the age of 62 years.

Retired Judges (Art.224A)

The Chief Justice of a High Court can request a retired judge of that High Court or any other High Court to sit and act as a judge of High Court for that state. The President's previous consent is necessary. Such a person will enjoy all the Jurisdiction, powers and privileges of a Supreme Court Judge. But, he will not otherwise be deemed to be a judge of that High Court.

1.5. Oath

Every person appointed to be a Judge of a High Court before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule of the Indian Constitution.

Judge of High Court takes oath to bear true faith and allegiance to the Constitution of India as by law established, uphold the sovereignty and integrity of India and duly and faithfully and to the best of ability, knowledge and judgment perform the duties of the office without fear or favour, affection or ill-will and uphold the Constitution and the laws.

1.6. Salaries of Judges

- The salaries and allowances of state high court judges including chief justices are charged from the Consolidated Fund of State (Art.266).
- Retired Judges of all the High Courts are entitled to pension which is drawn from the Consolidated Fund of India (Art.266).
- The salaries of the Judges of High Courts are decided by the Parliament by law according to the Article 221 of the Constitution of India.

1.7. Removal of Judges

Article 217 (b) provides that the removal of the High Court judges will be done in a manner similar to that provided under Article 124(4) for the Supreme Court judges. Thus, based upon that, along with Judges Inquiry Act 1968, the impeachment of judges can be done only on grounds of 'proved misbehaviour' or 'incapacity' in a process explained for the Supreme Court judges.

1.8. Transfer of Judges

Article 222 of the Constitution makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court. The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India (CJI). Consent of the Judge for transfer would not be required. CJI is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred and Chief Justice of the High Court to which the transfer is to be effected.

The proposal once referred to the Government, the Union Minister of Law, Justice and Company Affairs would submit a recommendation to the Prime Minister who will then advise the President as to the transfer of the Judge concerned. After the President approves the transfer, the notification will be gazette and the judge remains transferred. In case of transfer, the judge is entitled to receive compensatory allowances in addition to his salary as determined by the President.

The Supreme Court ruled that transfer of High Court Judges could be resorted to only as an exceptional measure and only in public interest, not by way of punishment. In **Third Judges case (1998),** the Supreme Court opined that in case of transfer of judges, Chief Justice of India should consult in addition to collegiums of four senior most judges of Supreme Court, the Chief Justices of two High Courts (one from which the judge is being transferred and other receiving him). The Supreme Court also ruled that judicial review is necessary to check arbitrariness in transfer of judges, but only the judge who is transferred can challenge it.

1.9. Jurisdiction and Powers of High Court

Besides being the protector of Fundamental Rights of citizens, the high court is the highest court of appeal in the state. It is vested with power to interpret the Constitution along with the supervisory and consultative roles. However, no detailed provisions with regard to jurisdiction and powers of the High Court are mentioned in the Constitution. It only lays down that the jurisdiction and powers of a high court are to be the same as immediately before the commencement of the Constitution. New additions post-independence are jurisdictions over revenue matters, writ jurisdiction, power of superintendence, etc.

At present, a high court enjoys the following jurisdiction and powers:

1.9.1. Original Jurisdiction

1. Enforcement of Fundamental Rights (**under Article 226**).
2. Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.

3. Matters related to will, marriage, divorce, company laws and contempt of court.
4. Disputes relating to the election of members of parliament and state legislature.
5. Regarding revenue matter or an act ordered or done in revenue collection.
6. The four High Courts (i.e. Calcutta, Bombay, Madras and Delhi) have original civil jurisdiction in cases of higher value.

The three Presidency towns of Calcutta, Bombay and Madras had Original jurisdiction, both civil and criminal, over cases arising within their respective territory. However, the original criminal jurisdiction has been completely taken away by the Code of Criminal Procedure, 1973.

1.9.2. Writ Jurisdiction

Article 226 empowers High Court to **issue writs, including *habeas corpus, mandamus, certiorari*, prohibition and *quo warranto*** for enforcing fundamental rights and for any other purpose as well (**enforcement of an ordinary legal right**). The High Court can issue writs to any government authority, any person not only within its territorial jurisdiction, but also outside it if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the High Court is wider than that of the Supreme Court. The Supreme Court can issue writs only to enforce fundamental rights whereas the High Court can issue writs for the breach of any ordinary legal right. Writ jurisdiction of the High Court is also the part of basic structure of the constitution.

1.9.3. Appellate Jurisdiction

This is for cases where people have risen a complaint about a review of the judgement given by the district level or subordinate court of that territory. It is further divided into two categories:

Civil Jurisdiction:

1. On civil side appeal to high court is either first appeal or second appeal.
2. Appeals from decisions of District Judges and from those of subordinate judges in cases of higher value (broadly speaking) lie direct to the high court on questions of fact as well as law.
3. When any subordinate court decides an appeal from decision of an inferior court, a second appeal lies to the high court from the decision of lower appellate court, but on question of law only not questions of facts.
4. Provisions for Intra-court appeals in Calcutta, Bombay and Madras high court are there if a case is decided by a single judge then an appeal lies to the division bench of same court.
5. In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of high court. Thus, an individual cannot go directly to Supreme Court against the decision of a tribunal rather he has to go to high court first.

Criminal Matters:

1. The decisions of Sessions Judge or an Additional Sessions Judge can be appealed in the high court where the sentence of imprisonment exceeds seven years. Any death sentence awarded by lower court should be confirmed by the High Court whether there's an appeal or not.
2. Appeals from the judgments of Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than petty cases.

1.9.4. Power of Superintendence

A High Court has also the power of superintendence over all the Courts and Tribunals except those dealing with the armed forces functioning in the State. In exercise of this power it may:

1. Call for returns from such Courts.
2. Make and issue, general rules and prescribe forms for regulating the practice and proceedings of such Courts, and

Student Notes:

3. Prescribe forms in which books and accounts are being kept by the Officers of any Court.
4. May settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

This power has made the **High Court responsible for the entire administration of Justice in the State**. It is **both judicial as well as administrative** in nature. The Constitution does not place any restriction on its power of superintendence over the subordinate Courts and this power can be exercised *suo-motu*. It may be noted the Supreme Court has no similar power vis-a-vis the High Court.

Control over Subordinate Court

a. A High court is consulted by the governor in the matters of appointment, posting, and promotion of the district judges and in the appointments of persons to the judicial service of the state other than the district judges.
b. It deals with matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than the district judges).
c. It can withdraw a case pending in a subordinate court if it involves a substantial question of law that requires interpretation of constitution. It can either dispose the case itself or determine the question and return it to subordinate court with its judgment.
d. Its law is binding on all subordinate courts functioning within its territorial jurisdiction.

1.9.5. A Court of Record

The powers of a High Court as a Court of Record are identical to that of Supreme Court. It involves recording of judgments, proceedings and acts of high courts to be recorded for the perpetual memory. These records cannot be further questioned in any court. On the basis of this record, it has power to punish for the contempt of court either with simple imprisonment or with fine or both.

1.9.6. Power of Judicial Review (Art. 13 and Art. 226)

The High Court has the power to examine the constitutionality of legislative and executive orders of both central and state government. Though, the word judicial review is nowhere mentioned in the Constitution but the Article 13 and 226 explicitly provide High Court with this power.

So the High Court can declare any legislative enactments of centre and states and any executive orders as null and void if they violate constitution. The constitutional validity of legislative enactments and executive orders can be challenged in a high court on following three grounds:

1. If it infringes the fundamental rights,
2. It is outside the competence of authority which frames it,
3. It is repugnant to the constitutional provisions.

2. Subordinate Courts

Articles 233 to 237 in Part VI of the Constitution makes following provisions to regulate the organization of subordinate courts and ensures their independence from the executive.

Appointment of District Judges (Art.233)

The appointment, posting and promotion of district judges in a state are made by the Governor of State, in consultation with the High Court. The qualifications of a person for appointment to the post are:

1. He should not already be in the service of the central or state government.
2. He should have been an advocate or pleader for not less than seven years
3. He should be recommended by the high court for appointment.

Student Notes:

The term 'District Judge' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, session's judge, additional session's judge and assistant session's judge.

Appointment of other Judges (Art.234)

Appointments of persons (other than district judges) to the judicial services of a state are made by the Governor of the state after consultation with State Public Service Commission and the concerned High Court.

Control over Subordinate Courts (Art.235)

The control over the district courts and other subordinate courts, including the posting, promotion, and leave of the persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the High Court.

Structure and Jurisdiction

Structure of subordinate courts has been explained in the diagram at the beginning of the chapter of Supreme Court – General Structure of Indian Judiciary.

The architecture of subordinate judiciary varies across the states and is broadly classified as shown in figure. At the lowest stage, two branches of justice - civil and criminal are bifurcated. The Panchayat courts functioning in civil and criminal areas under various regional names like Nyaya Panchayat, Panchayat Adalat, Gram Kutchery etc.

Munsiff's courts are next level civil courts, the jurisdictions of which are determined by High Courts. Above Munsiffs are subordinate judges who have unlimited pecuniary jurisdiction and act as first appeals from munsiffs.

At District level, District Judge is the highest judicial authority in the district having original and appellate jurisdiction in both civil and criminal matters. The District judge hears first appeals from subordinate judges as well as Munsiffs (unless dealt by subordinate judges) and possess unlimited jurisdiction over both civil and criminal suits. He also has supervisory powers over subordinate judges. He's known as district judge when he deals with civil cases and session's judge when dealing with criminal cases. Appeals against his order lie with the High Court. The Sessions judge can impose any sentence including life imprisonment and capital punishment. However, the High Court needs to confirm the sentence of capital punishment even if there is no appeal from the convict. Since enactment of the Code of Criminal Procedure, 1973, trial of criminal cases is done by the judicial magistrates only.

The Judicial and Metropolitan magistrates discharge judicial functions under administrative control of High Courts in contrast to Executive Magistrates who discharge executive function of maintaining law and order, under control of the state government. The civil judicial administration in previously presidency towns is currently taken up by metropolitan courts. Original jurisdiction of High Courts tries bigger civil suits arising within the previously presidency areas. Civil suits of lower value are tried by civil courts.

2.1. Gram Nyayalayas Act, 2008

The act is aimed at providing speedy and inexpensive justice to people in rural areas at their doorsteps by establishing a village court at the grassroot level. This came into force from 2nd October, 2009. This system was also aimed to clear the **backlog of more than 2.6 crore cases** that are pending before the subordinate courts.

2.1.1. Structure

The Gram Nyayalaya is court of Judicial Magistrate of the first class and its Presiding Officer (Nyayadhikari) is appointed by the State Government in consultation with the High Court. The

Gram Nyayalayas are established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or for a group of Panchayats if there is no Panchayat at intermediate level. The Nyayadhikaris who preside over these Gram Nyayalayas are strictly judicial officers and draws the same salary, deriving the same powers as First Class Magistrates working under the High Courts.

Student Notes:

2.1.2. Jurisdiction

The Gram Nyayalaya is a mobile court and exercises the powers of both Criminal and Civil Courts. The seat of the Gram Nyayalaya is located at the headquarters of the intermediate Panchayat, but they go to villages, work there and dispose of the cases. The Gram Nyayalayas try criminal cases (where the alleged offence attracts a punishment of not more than 2 years or when the value of the property involved in criminal case is not more than 20000 rupees), civil suits(cases over cattle trespassing act, minimum wages act, protection of women from domestic violence act and property disputes etc.), claims or disputes.

2.1.3. Procedure followed by Gram Nyayalayas

Gram Nyayalayas can follow special procedures in civil matters, in a manner it deem just and reasonable in the interest of Justice. They, in the first instance, allow for conciliation of the dispute and settlement of the same. The Gram Nyayalayas are not strictly bound by the rules of evidence provided in the Indian Evidence Act, 1872 but are guided by the principles of natural justice and subject to any rule made by the High Court.

2.1.4. Appeal against the decision of Nyayalayas

An appeal in criminal cases shall be made before the Session court, which shall be heard and disposed of within a period of six months from the date of filing of such appeal.

An appeal in civil cases shall be made before the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal.

2.1.5. Issue with Gram Nyayalayas

So far only 11 states have taken steps to notify Gram Nyayalayas. Several states have issued notifications for establishing 'Gram Nyayalayas' but all of them were not functioning except in Kerala, Maharashtra and Rajasthan.

At present, only 208 'Gram Nyayalayas' are functioning in the country as against 2,500 estimated to be required by the 12th Five Year Plan.

2.2. Alternative Dispute Resolution (ADR)

ADR is a mechanism of dispute resolution that is non adversarial, i.e. working together co-operatively to reach the best resolution for everyone. Section 89(1) of Civil Procedure Code (CPC) provides an option for the settlement of dispute outside the court. Such dispute resolution without a trial can be brought about with the help of negotiation, good office (friendly third party different from mediator), mediation, conciliation, arbitration etc. where the parties to the disputes are encouraged to resolve their dispute amicably without taking reports to the regular courts.

It not only benefits the litigants, but also helps in reducing the number of cases before the subordinate courts. Arbitration and Conciliation Act, 1996 is a standard western approach towards ADR, while the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach. Apart from this, a vision document prepared by Ministry of Law and Justice provided for this and ADR centers are established in each district. It also provides for extended financial assistance by Centre to state to hold 10 mega Lok Adalats per high court every year along with holding the regular five Lok Adalats every year in each judicial district of the state.

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2.2.1. Tools of Alternative Dispute Redressal

- **Arbitration** is a process in which a neutral third party or parties render a decision based on the merits of the case. It is less formal than a trial, and the rules of evidence are often relaxed.
    - It can start only if there exists a valid arbitration agreement between the parties prior to the emergence of the dispute.
- **Mediation** is a process in which a non-partisan third party "the mediator" facilitates the development of a consensual solution by the disputing parties.
    - The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. The authority of the mediator vests on the consent of the parties that he should facilitate their negotiations.
- **Conciliation** is a process by which resolution of disputes is achieved by compromise or voluntary agreement. It is a less formal form of arbitration.
    - In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator.

2.2.2. Advantages of ADRs

- The resolution of disputes takes place usually in private which helps in maintaining confidentiality.
- It seems more viable, economic, and efficient as compared to conventional trials.
- It often results in creative solutions, sustainable outcomes, greater satisfaction of the parties, and improved relationships between the parties involved.
- Procedural flexibility saves the valuable time and money and absence of stress of a conventional trial.
- The possibility of ensuring that specialized expertise is available on the tribunal in the person of the arbitrator, mediator, conciliator or neutral adviser.
- Further, it offers greater direct control over the outcome. Personal relationships may also suffer less.

2.2.3. Disadvantages of ADRs

- There is no guaranteed resolution. With the exception of arbitration, alternative dispute resolution processes do not always lead to a resolution and still ends up having to proceed with litigation.
- The finality and binding nature of an arbitrator's decision can sometimes be viewed as a disadvantage because it may not always please the parties and courts will often refuse to review it.
- The neutral party – arbitrator, mediator, conciliator, will charge a fee for their time and expertise and depending on their popularity, these fees may be substantial. A judge, on the other hand, charges no fee for his decision.
- Non-binding arbitration. Sometimes the court may order nonbinding or Judicial Arbitration. This means that if a party is not satisfied with the decision of the arbitrator, they can file a request for trial with the court within a specified time period after the arbitration award. Depending on the process ordered, if that party does not receive a more favorable result at trial, they may have to pay a penalty or fees to the other side.

2.2.4. High Level Committee on institutionalization of arbitration

A High-Level Committee, under the **Chairmanship of Justice B. N. Srikrishna,** to review the institutionalization of arbitration mechanism and suggest reforms thereto has submitted its report recently.

The Committee has **divided its Report in three parts**:

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The **first part** is devoted to suggest measures to improve the overall quality and performance of arbitral institutions in India and to promote the standing of the country as preferred seat of arbitration. In this direction the Committee recommended:

- **(i)** Setting up an **Autonomous Body, styled the Arbitration Promotion Council of India (APCI),** having representatives from all stakeholders for grading arbitral institutions in India.
- **(ii)** The APCI may recognize professional institutes providing for **accreditation of arbitrators.**
- **(iii)** The APCI may also hold **training workshops** and interact with law firms and law schools to train advocates with interest in arbitration and with a goal to create a specialist arbitration bar comprising of advocates dedicated to the field.
- **(iv)** Creation of a **specialist Arbitration Bench** to deal with such Commercial disputes, in the domain of the Courts.
- **(v)** Changes have been suggested to **make arbitration speedier and more efficacious and incorporate international best practices**.
- **(vi)** The Committee are also of the opinion that the **National Litigation Policy (NLP)** must promote arbitration in Government Contracts.

The Committee in **Part II** of the Report reviewed the working of the International Centre for Alternative Dispute Resolution (**ICADR)** working under the aegis of the Ministry of Law and Justice, Department of Legal Affairs. The Institution was set up with the objective of promoting ADR methods and providing requisite facilities for the same. The committee recommended declaring the ICADR as an Institution of national importance and takeover of the institution by a statute as revamped ICADR has the potential be a globally competitive institution.

As regards the role of arbitrations in matters involving the Union of India, including bilateral investment treaties (BIT) arbitrations, the Committee in **Part III** of the Report has *recommended* for creation of the post of an **'International Law Adviser' (ILA).** It shall advise the Government and coordinate dispute resolution strategy for the Government in disputes arising out of its international law obligations, particularly disputes arising out of BITs. The Committee has emphasized that ILA may be consulted by the Department of Economic Affairs (DEA), at the time of negotiating and entering into BITs.

The roadmap of suggested reforms after an in depth examination of the issues, by the High Level Committee can result in a paradigm shift from the current perception of delay in resolution of commercial disputes in India to it being viewed as an investor friendly destination. The suggested reforms will not only lessen the burden of the judiciary, but give a boost to the development agenda of the Government and aid the financial strength of the country and serve the goal of welfare of the citizens.

3. The National Legal Services Authority

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes.

NALSA lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities to implement the Legal Services Programmes throughout the country.

Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, etc. have been asked to discharge the following **main functions** on regular basis:

1. To **provide Free and Competent Legal Services** to the eligible persons;
2. To **organize Lok Adalats** for amicable settlement of disputes; and

3. To **organize legal awareness camps in the rural areas.**

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The Free Legal Services include:-

a) Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
b) Providing service of lawyers in legal proceedings;
c) Obtaining and supply of certified copies of orders and other documents in legal proceedings.
d) Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

3.1. NALSA Eligibility Criteria for Free Legal Services

Article 39 A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. **Articles 14 and 22(1) of the Constitution** also make it obligatory for the State to ensure equality before law and a legal system, which promotes justice on the basis of equal opportunity to all. To receive those services, the person acquiring them should fall under the following categories:

- People with disability
- Women and children
- People who are members of SC & ST communities
- Victims of poverty (beggars) and human trafficking
- Industrial workmen
- People under custody
- People who are victims of natural disasters, caste or ethnic violence, etc.
- People with an annual income lower than 1 lakh

Supreme Court Legal Services Committee has also been constituted to administer and implement the legal services programme so far as it relates to the Supreme Court of India.

4. Lok Adalats

Lok Adalat, meaning **'People's Court'** is one of ADR (Alternative Dispute Redressal) mechanism. They are based on Gandhian principles, aims to settle disputes through arbitration at the grass-root level. They were given the **statutory status under the Legal Services Authorities Act, 1987** which aims to constitute legal service authorities to provide free legal services to the weaker sections of the society according to Article 39 A of the Indian Constitution.

Lok Adalat is presided by a sitting or a retired judicial officer as Chairman with two other members usually a lawyer and a social worker. The parties are not allowed to be represented by the lawyers and encouraged to interact with judge who helps in arriving at amicable settlement. No fee is paid by the parties. Strict rule of Civil Procedural Court and evidence is not applied. Decision is by informal sitting and binding on the parties and **no appeal lies against the order of the Lok Adalat.**
It disposes of largely cases involving claims in the form of Motor Vehicle accident claims, Electricity and water bill related cases, land acquisition, Matrimonial and Family cases, Cheque dishonor etc.

4.1. Levels of Lok Adalat

1. **State Authority Level:** The benches at this level would be constituted by the Member Secretary of the State Legal Services Authority organising the Lok Adalat. Each bench would comprise of sitting or retired High Court Judge or a sitting or retired judicial officer, a member from the legal profession, and a social worker. This social worker should be involved in the upliftment of the weaker areas and must be interested in the implementation of legal services, plans or projects.

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2. **High Court Level:** The Secretary of the High Court Legal Services Committee constitutes benches for Lok Adalat at High Court level. Each bench will be consist of a sitting or retired judge of the High Court and any one or both of either a member from the legal profession and/or a social worker, who should be involved in the upliftment of the weaker areas.
3. **District Level:** At this level, the Secretary of the District Legal Services Authority will establish benches of Lok Adalat. The bench consists of sitting or retired judicial officer and any one or both of either a member from the legal profession and/or social worker engaged in the upliftment of the weaker sections of the society. This social worker must also be interested in the implementation of legal services schemes or programmes or a person involved in para-legal activities in the area and should preferably be a woman.
4. **Taluk Level:** The Secretary of the Taluk Legal Services Committee establishes benches of Lok Adalat. Each bench consists of a sitting or retired legal officer and any one or both of either a member from the legal profession as well as a social worker involved in the upliftment of the weaker areas. The social worker must be interested in the execution of the legal services or should be involved in para-legal exercises of the area, ideally a woman.

4.2. Types of Lok Adalat

1. **National Lok Adalat:** National Level Lok Adalats are held for at regular interals on a single day throughout the nation, in every one of the courts, from the Supreme Court till the Taluk Levels, wherein the cases are disposed of in huge numbers. They are held every two months across the country to dispose of the pending cases. According to the statistics of the Ministry of Law, more than 50 lakh cases are disposed of annually on an average by these courts.
2. **Permanent Lok Adalat:** It was established according to Section 22 B of the Legal Service Authorities Act, 1987. These are permanent bodies with a Chairman and two members giving an obligatory pre-litigation system for conciliation and settlement of cases pertaining to public utility services. In these courts, even if there is a failure in reaching settlement, the Permanent Lok Adalat has the jurisdiction to decide the matter, provided, the dispute does not relate to any offence. The award given by the Permanent Lok Adalat is last and official for every one of the parties. The jurisdiction of Permanent Lok Adalat is up to Rs.10 Lakhs.
3. **Portable Lok Adalats:** These are mobile dispute settlement bodies and are set up in different parts of the country to resolve matters by encouraging resolution of disputes and easing the burden on the formal judiciary.

4.3. Criticism of Lok Adalats

1. They meet infrequently and disposes of a large number of cases on a single day without giving the parties enough time to discuss the issue properly and arrive at a certain settlement **(justice hurried is justice buried).**
2. If the parties do not arrive at a consensus, the case is either returned to the court of law or the parties are advised to seek a remedy in the court of law. It leads to unnecessary delays in the dispensation of justice.
3. There are also instances of parties pressurising their lawyers to stick up to strict procedures of the court.

5. Fast Track Courts (FTCs)

These are **additional Session Courts set up for speeding up the trials of long pending cases, particularly those involving under trials**.

5.1. Evolution and Structure

Fast Track Courts were initially established for a period of five years (2000-2005). The 11thFinance Commission recommended for establishment of 1734 FTCs for expeditious disposal of cases pending in lower courts. FTCs were established by state governments in consultation

with respective high courts. Judges of these FTCs were appointed on an adhoc basis and they were selected by the High Court of respective states.

There are primarily three sources of recruitment:

- by promoting members from amongst the eligible judicial officers;
- by appointing retired high court judges and
- recruited from amongst the member of bar of the respected state.

The cases are heard on a daily basis and no adjournments are allowed in the fast track courts. The cases are disposed within a given time frame.

In 2005, the Supreme Court directed the central government to continue with the FTC scheme, which was extended until 2010-2011. Subsequently, the government discontinued the FTC scheme in March 2011 due to financial problems and stopped financing FTCs. But as state governments enjoyed liberty to continue if they want, some states like Arunachal Pradesh, Assam, Maharashtra, Tamil Nadu and Kerala decided to continue with FTCs, while Haryana and Chhattisgarh discontinued. Some states like Delhi and Karnataka extended for a limited period of time. After the Delhi Rape Case, High Court of Delhi directed the state government to establish FTCs for the expeditious adjudication of cases relating to sexual assault. Some other states like Maharashtra and Tamil Nadu have also begun the process of establishing FTCs for rape cases.

5.2. Challenges

FTCs were established for speeding up long pending trials. However, success rate of FTCs in disposing of pending criminal cases is a mixed one. Southern states, along with Gujarat and Maharashtra have succeeded in making good use of FTCs. Bihar and UP, which account for 40% of all pending criminal cases have not succeeded much. Further, FTCs are accused of speeding up the trial so fast that they look like summary trials where enough opportunity is not given to the defender to present the case. Therefore, it is said that in fast track court justice is hurried that is equivalent to justice buried. The lack of mechanisms of judicial accountability for retired judges is another issue, which needs to be tackled for effectiveness of FTCs**.**

6. Commercial Courts

The Law Commission of India, in its 253rd report, had recommended for the establishment of the Commercial Courts at various level for speedy disposal of commercial disputes. The bill for the same was introduced in the Rajya Sabha in April 2015 and passed through Lok Sabha on December 2015. Subsequently **the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act** was passed. The commercial courts have started functioning under the jurisdiction of the Delhi High Court, Bombay High Court, Himachal Pradesh High Court and the Gujarat High Court.

6.1. Key features of the 2015 Act

- The term “Commercial Dispute” has been very broadly defined in the Act to encompass almost every kind of transaction that gives rise to a commercial relationship.
- The Section 3 of the Act provided for the constitution of “Commercial Courts” in every district in all states and union territories where the High Court of that state or union territory does not have/exercise ordinary original civil jurisdiction and “Commercial Divisions” within High Courts exercising ordinary original civil jurisdiction.
- The Act provided for the adjudication of Commercial Disputes of more than INR 1,00,00,000 (defined as “Specified Value” in the Act), by the Commercial Courts/Divisions.
- All suits and/or applications relating to a Commercial Dispute of a Specified Value pending before any civil court are required to be transferred to the constituted Commercial Courts/Divisions for fast and speedy disposal of cases.

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- In line with the Arbitration and Conciliation (Amendment) Act, 2015, all matters pertaining to international commercial arbitrations were brought within the purview of the High Court,
- Applications and appeals arising out of domestic arbitrations involving purely local Indian parties, which would ordinarily lie before any principal civil court of original jurisdiction (not being a High Court), will now lie before a Commercial Court (where constituted) exercising territorial jurisdiction over such arbitration.
- The provisions of the CPC, to the extent of its application to any suit in respect of a Commercial Dispute have been amended by the Act to streamline the conduct of Commercial Disputes.
- The Act had also introduced strict timelines to ensure prompt resolution of disputes including but not limited to all appeals to the Commercial Appellate Division must be filed within 60 days from the impugned judgment and the Commercial Appellate Division must endeavour to dispose of the case within a period of 6 months
- The Act required appointment of persons having such experience to be judges of the Commercial Courts/Divisions.
- The Act sets an outer limit of 120 days for filing defense beyond which the right to file the defense is forfeited and the Court would be bound to not take such a delayed submission on record.

6.2. Significance

It will not only change the speed at which Commercial Disputes will attain finality, but also improve the perception of investors about India as an investment destination.

6.3. Issues

- **Vagueness**
  - The definition of "Commercial Disputes" is very vague and wide. The list is not exhaustive and hence it can give rise to a number of litigations.
  - It is extremely difficult to ascertain the value of an intellectual property right and this can give rise to a number of litigations.
- **Exclusion**
  - Breach of confidentiality disputes has not been included in the definition of "Commercial Disputes", which are really common in this era of competition.
- The qualification that the immovable property must be used exclusively in trade or commerce could raise debates as to whether the property must have been in use for trade or commerce before an agreement is entered into or whether it would also cover agreements entered into for the purpose of using immovable property for the first time for commercial purposes.
- Having the same pecuniary value limit for all High Courts does not take into account the variable factor in such dispute cases.
- Conflict with regular courts
  - Keeping in mind the Act's objective to reduce pendency, one must recognize the need for appointment of more judges.
  - There is overlapping jurisdiction of the Commercial Divisions proposed for in the five High Courts exercising original jurisdiction.
  - The transfer of pending cases in civil courts to these Commercial Court/Divisions may lead to practical and logistical difficulties.
  - The Act also does not provide for a statutory right to appeal to the Supreme Court from an order of the Commercial Appellate Division.

The Act does not provide for any new or technologically advanced method of conducting the court procedures. For example, the suggestions of e-filing, video conferencing of witness and

use of latest technology will go a long way in making these courts at par with the systems being followed in some countries.

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6.4. The 2018 Amendment to the Act

It seeks to achieve the following objectives:

- The Bill **brings down the specified value of a commercial dispute to 3 Lakhs** from the present one Crore. Therefore, commercial disputes of a reasonable value can be decided by commercial courts. This would bring down the time taken (presently 1445 days) in resolution of commercial disputes of lesser value and thus further improve India's ranking in the Ease of Doing Business.
- The amendment provides for **establishment of Commercial Courts at district Judge level for the territories over which respective High Courts have ordinary original civil jurisdiction** i.e in the cities of Chennai, Delhi, Kolkata, Mumbai and State of Himachal Pradesh. The State Governments, in such territories may by notification specify such pecuniary value of commercial disputes to be adjudicated at the district level, which shall 'not be less than three lakhs rupees and not more than the pecuniary jurisdiction of the district court. In the jurisdiction of High Courts other than those exercising ordinary original jurisdiction a forum of Appeal in commercial dispute decided by commercial courts below the level of District judge is being provided, in the form of Commercial Appellate Courts to be at district judge level.
- The introduction of the **Pre-Institution Mediation process** in cases where no urgent, interim relief is contemplated will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of the courts through the authorities constituted under the Legal Services Authorities Act, 1987.will also help in reinforcing investor's confidence in the resolution of commercial disputes.
- Insertion of **new section of 21A** which enables the Central Government to make rules and procedures for Pre-Institution Mediation.
- To **give prospective effect to the amendment** so as not to disturb the authority of the judicial forum presently adjudicating the commercial disputes as per the extant provisions of the Act.

7. All India Judicial Service (AIJS)

7.1. Historical background

- The proposal for an All-India Judicial Service (AIJS) in lines of All-India Services was proposed as early as 1950. The First Law Commission of India (LCI) in its 14th Report on Reforms on the Judicial Administration, recommended an AIJS in the interests of efficiency of the judiciary. In its 77th Report the LCI once again said the AIJS needed serious consideration.
- Further idea of creation of All-India Judicial Services was favoured by the Chief Justices conferences in 1961, 1963, and 1965 and even the Law Commissions (8th and 11th, 116th) suggested for the creation of the service. However, each time it was faced with opposition.
- After the Swaran Singh Committee's recommendations in 1976, Article 312 was modified to include the judicial services.
- Most recently the Central Government revisited the possibility of recruiting judges through an All India Judicial Service (AIJS).

7.2. Rationale for AIJS

- It **focuses on quality** of judges rather than quantity.
- Appropriate way to **recruit the best talent required** for fulfilling the role that is demanded of a judge.

- **Currently,** the subordinate judiciary depends entirely on **state recruitment**. But the brighter law students do not join the state judicial services because they are **not attractive**.
- With **no career progression**, no one with a respectable Bar practice wants to become an additional district judge, and deal with the hassles of transfers and postings. Hence, the quality of the subordinate judiciary is by and large average.
- In this scheme of things, the measure of uniformity in the standards for selection will improve the quality of personnel in different High Courts, as one-third of the judges come there on promotion from the subordinate courts.
- In addition, the objective of inducting an outside element in High Court benches can be achieved in better way as a member of an all India judicial service will have no mental block about interstate transfers.

7.3. Arguments against AIJS

- Issue of **differences in laws** across states.
- Difference in **local languages and dialects**.
- **Mismanagement of legal education** by Bar Council and UGC. Except for a few national law schools, others do not prioritize the legal education too much.
- **Low pay** is a big issue. Despite an effort by the Supreme Court to ensure uniformity in pay scales across States in the All India Judges' Association case, it is still very low.
- **Fewer avenues for growth**, promotion and limited avenues for career advancement.
- **Low district judge representation in the High Courts**, as less than a third of seats in the High Courts is filled by judges from district cadre. The rest are appointed directly from the Bar.
- It will **increase the competition** and it will be difficult from less privileged background to enter the profession.
- Legal education would be commercialized and **aid coachings**.
- Currently, the judges of subordinate courts are appointed by the governor in consultation with the High Court which will not be so if AIJS is implemented. Hence, it **will go against the Independence of Judiciary** as some other body will have a control in appointment and integration because in the judiciary, higher level controls and evaluates lower level.

Hence, it is argued that without addressing these identifiable lacunae, any new reform will not make a difference. A career judicial service will make the judiciary more accountable, more professional, and arguably, also more equitable. This can have far-reaching impact on the quality of justice and on people's access to justice as well.

8. Judicial Activism and Judicial Overreach

The Supreme Court has cautioned judges many times against judicial overreach and advised that judges must remain within the limits of the law and not peddle individual perceptions and notions of justice.

8.1. Difference between Judicial Activism and Judicial Overreach

Under our Constitutional scheme, the judiciary has to enforce the laws laid down by the legislature in accordance with our Constitution for which it has wide powers ranging from issuing writs of certain nature to the entertainment of petitions by special leave etc.

- Further, new innovations like the concept of Public Interest Litigations in recent times, has led to an enormous expansion of unaccountable judicial power in the nation's politics.
- Thus, the exercise of judicial powers in a manner which leads to redefinition of power equations between different organs of the state and the judiciary is called as judicial activism.
- However, Judicial Activism doesn't necessary mean that judiciary is inclined to expand its powers. It is more about the positive role played by the judiciary owing to the factors like a

near collapse of responsible government, a legislative vacuum due to coalition governments and public confidence in the judiciary.

- Judicial Activism when overtly exercised results in usurping the powers of the Executive or the Legislature, which are the other two important organs of governance and is called as Judicial Overreach.
- The power to legislate is squarely conferred on the Legislature by the Constitution. No such legislative power is given to the Courts by the Constitution. Judicial Activism cannot be used for filling up the lacunae in Legislation or for providing rights or creating liabilities not provided by the Legislation.

What did the Supreme Court say in its recent judgment?

- The court said that judges should not peddle individual perceptions and notions of justice. A judge's solemn pledge has to remain embedded to Constitution and the laws.
- The apex court said if a judge considered himself or herself a "candle of hope" and took decisions under the influence of such a notion, it might do more harm than good to the society.
- While using the power one has to bear in mind that 'discipline' and 'restriction' are the two basic golden virtues within which a judge functions as per the Supreme Court.

Way Forward

- There is a very fine line between Judicial Activism and Judicial Overreach. It would be would be in the best interest of our country if judges understand this and restrain themselves from crossing this line too often.
- The judiciary cannot rule the nation by legislating as well as executing through its judgments. It's simply not meant to do that. It can rightly be argued that a legitimate judicial intervention is the one which clearly falls within the permissible scope of judicial review.
- Purely political questions and policy matters not involving decision of a core legal issue should therefore remain outside the domain of judiciary.

8.2. Examples of Judicial Activism in India

Following are some of the examples of Judicial Activism in India:

8.2.1. Persons in custody to be debarred from contesting elections

As per the 2004 judgment of the Patna High Court in **Jan Chaukidari vs. Union of India** — upheld by the Supreme Court in July, 2013— all those in lawful police or judicial custody, other than those held in preventive detention, will forfeit their right to stand for election. The judges relied on the Representation of the People Act 1951 (RPA), which says that one of the qualifications for membership of Parliament or State legislature is that the contestant must be an 'elector'. Since Section 62(5) of the Act prevents those in lawful custody from voting, the reasoning goes, those in such custody are not qualified for membership of legislative bodies.

Reasoning Against the Judgment:

For a person to be qualified for the membership of legislature, RPA, 1951 states that one has to be an 'elector' as defined in Section 2(e). Section 2(e) defines an elector as "a person whose name is entered in the electoral roll of that constituency and who is not subject to any of the disqualifications mentioned in Section 16 of the RPA, 1950."

Since the law mentions Section 16 of RPA, 1950 as the basis of disqualification from being an elector, the SC relied on Section 62(5), which does not define 'elector' and only debars a person in jail from voting, not from contesting an election. Thus, Section 62(5) distinguishes between an 'elector' and a 'voter'.

The Supreme Court's judgement effectively amends the law passed by the Parliament.

Student Notes:

8.2.2. MPs, MLAs to be Disqualified on Date of Criminal Conviction

In *Lily Thomas v. Union of India* case in 2013, the Supreme Court declared **Section 8 (4)** of the Representation of the People Act, 1951, (RPA) which allowed legislators a three-month window to appeal against their conviction — effectively delaying their disqualification until such appeals were exhausted — as unconstitutional.

Section 8 of the Representation of People Act, 1951 deals with disqualification on conviction for certain offences: A person convicted of any offence and sentenced to imprisonment for varying terms under Sections 8 (1) (2) and (3) shall be disqualified from the date of conviction and shall continue to be disqualified for a further period of six years since his release. But **Section 8 (4) of the RP Act gives protection to MPs and MLAs as they can continue in office even after conviction if an appeal is filed within three months.**

The Bench found it unconstitutional that the convicted persons could be disqualified from contesting the elections but could continue to be the Members of Parliament and State Legislatures, once elected.

Reasoning Against the Judgment:

The Constitution enlists the disqualification criteria in Article 102(1), which is on the basis of office of profit, unsound mind, undischarged insolvency and citizenship. This article also empowers the Parliament to make law specifying any other criterion for disqualification. In accordance with the constitutional mandate, the Parliament enacted the RPA 1951, mentioning the disqualification criteria in Section 8.

The Supreme Court has given two reasons for its verdict:

First, it held Section 8(4) to be in violation of Article 102, and its corresponding provision for the States, Article 191, of the Constitution. A careful reading of the article 102 clearly empowers the Parliament to define the criterion for disqualification by enacting a law and none of the five clauses of Article 102(1) are attracted to invalidate Section 8(4).

Second, the Supreme Court has held that Parliament had no legislative competence to enact Section 8(4). This reasoning, too, is difficult to accept because Entry 72 to List 1 of the 7th Schedule in the Constitution specifically allows Parliament to legislate on elections to the Parliament or the State legislatures. It is well settled that legislative entries in the Constitution are to be widely construed, and in any case the Parliament has residual power to legislate under Entry 97 to List 1.

8.2.3. SC Ruling on Appointments in Central Information Commission

The Supreme Court in September 2012 ruled that only sitting or retired Chief Justices of High Courts or a Supreme Court judge can head the Central and State Information Commissions and that hearing can only be carried out by benches having a judicial member and an expert.

This judgment amounted to a *suo-motu* amendment in the Right to Information Act, 2005 by the Supreme Court. The reasoning stated by the SC was that since the work of the Commission was quasi-judicial in nature it should be manned by the judges. Interestingly enough, the retirement age for Central Information Commission (CIC) is 65 years, while the retirement age for judges is 65 in SC. Thus, it is practically impossible to have a retired SC judge as the head of the CIC.

The aim of SC was to ensure that a rational and transparent process be used to fill the vacancies in the CIC. But any aim, however noble, cannot justify the means used in a scenario when a clear separation of powers is enunciated in the Constitution.

In 2013, the above judgement was recalled by the Supreme Court.

8.2.4. Supreme Court's Ruling on Fixed Tenure for Bureaucrats

To insulate the bureaucracy from political interference and to put an end to frequent transfers of civil servants by political bosses, the Supreme Court in October, 2013 directed the Centre and

the States to set up a **Civil Services Board (CSB)** for the management of transfers, postings, inquiries, process of promotion, reward, punishment and disciplinary matters. A Bench also said that the bureaucrats should not act on verbal orders given by politicians and suggested a fixed tenure for them.

The Bench asked the **Parliament to enact a Civil Services Act under Article 309** of the Constitution, setting up a CSB, "which can guide and advise the political executive transfer and postings, disciplinary action, etc." The Bench directed the Centre, State governments and the Union Territories to constitute such Boards "within three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB."

The decision clearly encroached the legislative domain of the Parliament.

8.2.5. Voter's right to cast negative vote

With a view to bring about purity in elections, the Supreme Court held that a voter could exercise the option of negative voting and reject all candidates as unworthy of being elected. The voter could press the 'None of the Above' (NOTA) button in the electronic voting machine. The Court directed the Election Commission to provide the NOTA button in the EVM.

The NOTA option would indeed compel political parties to nominate sound candidates. The bench noted that giving right to a voter to not vote for any candidate, while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval to the kind of candidates being put up by the Political Parties. Gradually, there will be a systemic change and the Parties will be forced to accept the will of the people and field candidates who are known for their integrity.

The right to cast a negative vote will foster the purity of the electoral process and also fulfill one of its objectives, namely, wide participation of people. Not allowing a person to cast a negative vote defeats the freedom of expression and the right to liberty.

The Bench held that Election Conduct Rules 41(2) and (3) and 49-O of the Rules were *ultra vires* Section 128 of the Representation of the People Act and Article 19(1)(a) of the Constitution to the extent they violate the secrecy of voting.

8.2.6. The VVPAT Ruling

Supreme Court (SC), in the case of **Subramanian Swamy vs. Election Commission of India (ECI**), has held that VVPAT (Vote Verifiable Paper Audit Trial) is "indispensable for free and fair elections". In accordance to that, the Supreme Court has directed the ECI to equip Electronic Voting Machines (EVMs) with VVPAT systems to "ensure accuracy of the VVPAT system". The Court directed the government to provide key financial assistance to the ECI to cause VVPAT systems to be deployed along with EVMs. Reiterating the stand of the Delhi High Court in an earlier judgment, the Apex Court maintained that costs and finances cannot and should not be a deterrent to the conduct of free and fair elections. This ruling is obviously a victory for accountable voting in India, but it leaves a few questions unanswered. While it was an exclusive prerogative of the Executive to decide the manner in which fair and efficient elections can be held, but in this case the court not only decided the mechanism but also asked the government to allocate funds.

8.2.7. Ruling on Election Manifesto

On a petition filed by an advocate S Subramaniam Balaji, challenging the state's decision to distribute freebies, the Supreme Court said that freebies promised by political parties in their election manifestos shake the roots of free and fair polls, and directed the Election Commission to frame guidelines for regulating content of manifestos.

It was stated in the petition that freebies amount to bribery under Section 123(1).The Supreme Court rejected the contention that the promises made by a political party are violative of Section 123(1) of the RPA. The provisions of the RPA place no fetter on the power of political parties to make promises in the election manifesto, the Court held.

Student Notes:

Secondly, the Court held that the concept of state largesse is essentially linked to the Directive Principles of State Policy. Whether the state should frame a scheme, which directly gives benefits to improve the living standards or indirectly does so by increasing the means of livelihood, is for the state to decide and the role of the Court is very limited in this regard. It held that judicial interference was permissible when the action of the government was unconstitutional and not when such action was unwise or when the extent of expenditure was not for the good of the state.

The Court, however, agreed with the appellant that distribution of freebies of any kind undoubtedly influenced all people. “Freebies shake the root of free and fair elections to a large degree,” it said.

Considering that there was no enactment that directly governed the contents of the election manifesto, the Court directed the E.C. to frame guidelines for the same in consultation with all the recognised political parties. The Court also suggested the enactment of a separate law for governing political parties.

8.2.8. Stay on Caste-Based Rallies in UP

The Allahabad High Court stayed caste-based rallies in Uttar Pradesh, a move that will block off a key avenue that the major political parties use to expand their support base, especially before elections.

The Lucknow bench of the High Court sent a notice staying caste-based rallies to four major political parties, the Union and the State governments, and the Election Commission. The four parties are the Congress, the Bharatiya Janata Party (BJP), the Samajwadi Party (SP) and the Bahujan Samaj Party (BSP).

Holding political rallies by certain groups to address issues specific to them and seeking to win their electoral support is a common practice in the country, most prominently in Uttar Pradesh, where two of the major parties have specific caste bases. The petitioner said there had been a spurt of such rallies in the state, damaging social unity and harmony, and that they were against the spirit of the Constitution.

There is no legal bar to a caste rally, as long as no law is violated. In fact, Article 19(1)(b) of the Constitution gives citizens a Fundamental Right to assemble peacefully. A political party can call a meeting of a caste to discuss the problems facing that community, and there is no law barring such a meeting.

The aforementioned decisions of the Supreme Court and the Allahabad High Court may be perceived as making or amending the law, a function that is in the domain of the legislature.

8.2.9. Ruling on Nomination Papers

The Supreme Court in September, 2013 ruled that a returning officer could reject nomination papers of a candidate for non-disclosure and suppression of information, including that of assets and their criminal background.

The apex court said that voters have a fundamental right to know about their candidates and leaving columns blank in the nomination paper amounts to violation of their right.

The Court passed the judgment on a **Public Interest Litigation filed in 2008 by NGO Resurgence India**, a civil rights group, which detected a trend among candidates of leaving blank the columns demanding critical information about them.

The Election Commission had supported the NGO's plea that no column should be allowed to be left blank, which tantamount to concealing information and not filing a complete affidavit.

It had also taken a stand that the returning officer should be empowered to reject the nomination papers of a candidate who provides incomplete information by leaving some columns blank in the affidavit.

Student Notes:

Student Notes:

8.2.10. Judgment on Commutation of Death Sentence

In a landmark judgment, the Supreme Court in January, 2014 ruled that an inexplicable, inordinate delay in deciding on mercy plea of a death row convict is sufficient ground for commutation of death sentence to life. The Court said that the government cannot keep mercy pleas pending for years. It said that if there is a procedural lapse in deciding on the mercy plea of a death row convict then it can be a ground for commuting death sentence to life. The Apex Court also laid down important guidelines on dealing with death row convicts and their mercy pleas.

The Court directed that death row convicts should not be placed under solitary confinement. Also, such convicts must be provided all legal aid if he/she wishes to submit a mercy plea. The Court also mandated the respective state governments to place necessary material before the Governor while sending the mercy plea. Once the mercy plea is rejected, it should be conveyed in writing to the convict.

8.2.11. Supreme Court's Ruling on Acid Sale

In July, 2013 the Supreme Court issued detailed directions to all State governments and Union Territories to frame rules within three months for regulating the sale of acid. In December, 2013 the Supreme Court gave another four-month time to the States and Union Territories to frame rules for regulating the sale of acid. A Bench headed by Justice R M Lodha also asked all Chief Secretaries to file a response on providing free-of-cost treatment, including plastic surgery, to acid attack victims.

It directed that whenever an FIR is lodged in an acid attack case, the Sub-Divisional Magistrate (SDM) of the area concerned will hold inquiry into the procurement of acid by the "wrongdoer". Taking the Haryana government schemes as model, the SC asks the government to respond why they should not bear cost of corrective plastic surgery required by acid attack victims and follow up psychiatric treatment to enable the victim to recover from the horrific experience.

The SC also asked the police to inform the concerned SDM immediately about an acid attack case so that he could inquire how the corrosive substance was procured.

8.2.12. Interlinking of Rivers

The Supreme Court directed the Centre to constitute a 'Special Committee' forthwith for inter-linking of rivers for the benefit of the entire nation.

A Bench of Chief Justice S.H. Kapadia and Justices A.K. Patnaik and Swatanter Kumar, in its judgment in a 2002 case relating to networking of rivers, said the committee should submit a bi-annual report to the Union Cabinet, which must consider the report and take decisions.

The bench noted, "As pointed out in the report by National Council of Applied Economic Research and by the Standing Committee, the delay has adversely affected the financial benefits that could have accrued to the concerned parties and the people at large, and is in fact now putting a financial strain on all concerned."

8.2.13. Earlier Cases of Judicial Activism

Judicial activism was made possible largely due to PILs (Public Interest Litigation). PIL, a manifestation of judicial activism, has introduced a new dimension regarding judiciary's involvement in public administration. The sanctity of *locus standi* and the procedural complexities are totally side-tracked in the cases brought before the courts through PIL. In the beginning, the application of PIL was confined only to improving the lot of the disadvantaged sections of the society, who by reason of their poverty and ignorance, were not in a position to seek justice from the Courts and, therefore, any member of the public was permitted to maintain an application for appropriate directions.

After the Constitution (Twenty-fifth Amendment) Act, 1971, by which primacy was accorded to a limited extent to the Directive Principles vis-a-vis the Fundamental Rights making the former

enforceable rights, the expectations of the public soared high and demands on the courts to improve the administration by giving appropriate directions for ensuring compliance with statutory and constitutional prescriptions have increased. Beginning with the **Ratlam Municipality** case, the sweep of PIL had encompassed a variety of causes. Ensuring green belts and open spaces for maintaining ecological balance; forbidding stone-crushing activities near residential complexes; earmarking a part of the reserved forest for Adivasis to ensure their habitat and means of livelihood; compelling the municipal authorities of the Delhi Municipal Corporation to perform their statutory obligations for protecting the health of the community; compelling the industrial units to set up effluent treatment plants; directing installation of air-pollution-controlling devices for preventing air pollution; directing closure of recalcitrant factories in order to save the community from the hazards of environmental pollution.

The decision of the Supreme Court in **Bela Banerjee case,** in which even after the Constitution (Fourth Amendment) Act, 1955 specifically laying down that no law concerning acquisition of property for a public purpose shall be called in question on the ground that the compensation provided by that law is not adequate, the Supreme Court reiterated its earlier view expressed **in Subodh Gopal and Dwarkadas cases** to the effect that compensation is a justiciable issue and what is provided by way of compensation must **be "a just equivalent of what the owner has been deprived of".**

Golak Nath case is also an example of judicial activism in that the Supreme Court for the first time, by a majority of 6 against 5, despite the earlier holding that the Parliament in exercise of its constituent power can amend any provision of the Constitution, declared that the fundamental rights as enshrined in Part III of the Constitution are immutable and so beyond the reach of the amendment process. The doctrine of "prospective overruling", a feature of the American Constitutional Law, was invoked by the Supreme Court to avoid unsettling matters, which attained finality because of the earlier amendments to the Constitution. The declaration of law by the Supreme Court that the Indian Parliament has no power to amend any of the provisions of Part III of the Constitution became the subject matter of animated discussion.

Kesavananda Bharati case had given a quietus to the controversy as to the immutability of any of the provisions of the Constitution. By a majority of seven against six, the Court held that under Article 368 of the Constitution, Parliament has power to amend any provision in the Constitution, but the amendment power does not extend to alter the **basic structure** or framework of the Constitution. Illustratively, it was pointed out by the Supreme Court that the following, among others, are the basic features: (i) Supremacy of the Constitution; (ii) Republican and Democratic form of Government; (iii) Secularism; (iv) Separation of powers between the legislature, the executive and the judiciary; and (v) Federal character of the Constitution. Supremacy and permanence of the Constitution have thus been ensured by the pronouncement of the summit court of the country with the result that the **basic features of the Constitution** are now beyond the reach of Parliament.

Vishakha vs. State of Rajasthan case

Vishakha, a non-governmental organization working for gender equality, had filed a writ petition seeking the upholding of the fundamental rights of working women under Article 21 of the constitution. The immediate reason for the petition was the gang rape of a *saath in* (a social worker involved in women's development programme) of Rajasthan in 1992.The assault was an act of revenge as the saath in had intervened to prevent a child marriage. The Supreme Court provided a landmark judgment in the area of sexual harassment against women. Since in this particular aspect there was no law or enactment by the legislature, so the judiciary applied its activist power and provided some guidelines.

After providing the guidelines, the Court said "Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the rights to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field''.

Student Notes:

Student Notes:

Supreme Court directives on Police Reform

In 1996, two former Director Generals of Police took the issue to the Supreme Court, requesting the Court to direct central and state governments to address the most glaring gaps and bad practice in the functioning of the police.

On 22 September 2006, the Supreme Court of India delivered a historic judgement in **Prakash Singh vs. Union of India** case instructing central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start police reform. The Court's directives seek to achieve two main objectives:

1. **Functional Autonomy for Police:** through security of tenure, streamlined appointment and transfer processes, and the creation of a "buffer body" between the police and the government
2. **Enhanced Police Accountability:** both for organizational performance and individual misconduct.

The Supreme Court required all governments, at centre and state levels, to comply with its directives and file affidavits of compliance.

9. Comparison between the Supreme Court and High Court

BASIS FOR COMPARISON	SUPREME COURT	HIGH COURT
Meaning	The Supreme Court is the primary court of justice in the country.	The High Court is the apex judiciary body of a State's administration.
Articles in the Constitution	(Articles 124-147) in Part V	(Articles 214-231) in Part VI
Headed by	It is headed by the Chief Justice of India.	It is headed by the Chief Justice of the State.
Number of Courts	There is only one Supreme Court in India.	There are total 25 High Courts in India, three of which have jurisdiction in more than one state.
Superintendence/ Territorial jurisdiction	Over all courts and tribunals of the country.	Over all courts, under its jurisdiction, which in turn is limited by the boundary of the concerned state.
Writ jurisdiction	Supreme Court can issue writs only where a fundamental right has been infringed.	High Courts can issue writs for enforcement of Fundamental Rights as well as for any other purpose i.e. ordinary legal rights of the citizen.
Qualifications of Judges	**He should** • be a citizen of India. • have been a judge of a High Court (or high courts in succession) for five years; or • have been an advocate of a High Court (or High Courts in succession) for ten years; or • be a distinguished jurist in the opinion of the President.	**He should** • be a citizen of India. • have been a Barrister for more than five years; or • been a civil servant for over 10 years along with serving the Zila court for at least 3 years; or • have been a pleader for over 10 years in any High Court.
Appointment of Judges	By the President by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States.	By the President in consultation with the Chief Justice of India and the Governor of the state in question.
Number of judges	31 judges (including the Chief Justice and 30 other judges). Recently, the strength was increased from 31 to 34.	For every High Court, there is a Chief Justice and many other judges. The number of judges appointed is defined by the President of India.
Retirement of Judges	Judges retire at the age of 65 years.	Judges retire at the age of 62 years.
Pleading	The judge of Supreme Court cannot plead before any court during his or her tenure or after his or her retirement.	The judge of High Court cannot plead before any court during his or her tenure and after retirement cannot plead in a court below the high court.
Removal/Transfer of Judge	The President can issue the removal order only after an address by Parliament which must be supported by a special majority of each House of Parliament.	He can be removed by President on recommendation of Parliament.
Salaries and Pensions	The salaries and allowances of Chief Justice of India and Supreme Court judges are charged from Consolidated Fund of India.	The salaries and allowances of state high court judges including chief justices are charged from Consolidated Fund of State while pension is drawn from Consolidated Fund of India.

10. Previous Year UPSC GS Prelims Questions

Student Notes:

2019

1. With reference to the Constitution of India, consider the following statements:
1. No High Court shall have the jurisdiction to declare any central law to be constitutionally invalid.
2. An amendment to the Constitution of India cannot be called into question by the Supreme Court of India.
Which of the statements give above is/are correct?
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2
Ans. (d)

2016

2. With reference to the 'Gram Nyayalaya Act', which of the following statements is/are correct?
1. As per the Act, Gram Nyayalayas can hear only civil cases and not criminal cases.
2. The Act allows local social activists as mediators/reconciliators.
Select the correct answer using the code given below.
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2
Ans. (b)

2013

3. With reference to National Legal Services Authority consider the following statements:
1. Its objective is to provide free and competent legal services to the weaker section of the society on the basis of equal opportunity.
2. It issues guidelines for the State Legal Services Authorities to implement the legal programmes and schemes throughout the country.

Which of the statements given above is/are correct?
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2
Ans. (c)

2008

4. How many High Courts in India have jurisdiction over more than one State (Union Territories not included)?
(a) 2
(b) 3
(c) 4
(d) 5
Ans. (b)

2007

5. Consider the following statements:
1. The mode of removal of a Judge of a High Court in India is same as that removal of a Judge of the Supreme Court.

Student Notes:

2. After retirement from the office, a permanent Judge of a High Court cannot plead or act in any court or before any authority in India.

Which of the statements given above is/are correct?
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2
Ans. (a)

2006

6. **Assertion (A):** In India, every state has a High Court in its territory.
Reason (R): The Constitution of India provides for a High Court for each state.
Which of the statements given above is/are correct?
(a) Both reason and assertion are true and (R) is a correct explanation of (A).
(b) Both reason and assertion are true but (R) is not a correct explanation of (A).
(c) Assertion (A) is right while reason (R) is wrong.
(d) Assertion (A) is wrong while reason (R) is right.
Ans. (d)

7. Consider the following statements:
1. A person who has held office as a permanent Judge of a High Court cannot plead or act in any court or before any authority in India except the Supreme Court.
2. A person is not qualified for appointment as a Judge of a High Court in India unless he has for at least five years held a judicial office in the territory of India.

Which of the statements given above is/are correct?
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2
Ans. (d)

2005

8. Consider the following statements:
1. There are 25 High Courts in India
2. Punjab, Haryana and the Union Territory of Chandigarh have a common High Court.
3. National Capital Territory of Delhi has a High Court of its own.

Which of the statements given above is/are correct?
(a) 2 and 3
(b) 1 and 2
(c) 1, 2 and 3
(d) 3 only
Ans. (a)

2005

9. Consider the following:
1. Disputes with mobile cellular companies
2. Motor accident cases
3. Pension cases

For which of the above are Lok Adalats held?
(a) 1 only
(d) 1 and 2
(c) 2 only
(d) 1, 2 and 3
Ans (c)

Student Notes:

2004

10. Consider the following statements:
1. The highest criminal court of the district is the Court of District and Sessions Judge.
2. The District Judges are appointed by the Governor in consultation with the High Courts.
3. A person to be eligible for appointment as a District Judge should be an advocate or a pleader of seven years' standing or more, or an officer in judicial service of the Union or the State.
4. When the Sessions Judge awards death sentence, if must be confirmed by the High Court before it is carried out.

Which of the statements given above are correct?
(a) 1 and 2
(b) 2, 3 and 4
(c) 3 and 4
(d) 1, 2, 3 and 4
Ans. (d)

2003

11. Which one of the following High Courts has the Territorial Jurisdiction over Andaman and Nicobar Islands?
(a) Andhra Pradesh
(b) Calcutta
(c) Madras
(d) Orissa
Ans. (b)

2002

12. The salaries and allowances of the Judges of the High Court are charged to the
(a) Consolidated Fund of India
(b) Consolidated Fund of the State
(c) Contingency Fund of India
(d) Contingency Fund of the State
Ans. (a)

2001

13. Consider the following statements regarding the High Courts in India:
1. There are eighteen High Courts in the country.
2. Three of them have jurisdiction over more than one state.
3. No Union Territory has a High Court of its own.
4. Judges of the High Court hold office till the age of 62.

Which of these statements is/are correct?
(a) 1, 2 and 4
(b) 2 and 4
(c) 1 and 4
(d) 4 only
Ans. (b)

Student Notes:

11. Previous Year UPSC GS Mains Questions

1. How are Chief Justices of High Courts in India appointed? 3 marks (1987)
2. Bring out the issues involved in the appointments and transfer of judges of the Supreme Court and High courts in India. 6 marks (1998)
3. What is the common point between Articles 14 and 226 of the Indian Constitution? 20 marks (2008)
4. Is the High Courts' power to issue 'writs' wider than that of the Supreme Court of India? 15 marks (2006)
5. Write short notes, notes not exceeding 150 words on Role of the Judiciary in India. 20 marks (1979)
6. Discuss the importance of the independence of judiciary in a democracy. 20 marks (1984)
7. Present your views for and against the creation of an All India Judicial Service. 20 marks (1997)
8. What constitutes the doctrine of 'basic features' as introduced into the Constitution of India by the Judiciary? 30marks (2000)
9. Write notes on the Lokpal bill. 10 marks (2007)
10. Do you think there is a need for a review of the Indian Constitution? Justify your view. 30 marks (2008)
11. What are the major changes brought in the Arbitration and Conciliation Act, 1966 through the recent ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss. 12.5 marks (2015)

12. Previous Year Vision IAS GS Mains Questions

1. ***Examine the need of ADR mechanisms in India and comment on their efficacy in dispute redressal.***

Approach:

- The question is about the need and efficacy of ADR mechanisms. First and foremost one should know what ADR mechanisms are.
- The need of ADR mechanisms can be examined by highlighting the shortcomings that exist in the formal justice system. It also needs to be explained how the ADR mechanisms curb these shortcomings.
- Thereafter, the efficacy should be examined. While doing this, the limitations that exist in the ADR mechanisms should be discussed. A trade-off between the strengths and weaknesses would explain whether these are effective or not vis. a vis. the formal justice system.

Answer:

Justice delivery system plays a fundamental role in promoting public interest and preservation of order in the society. An effective system for resolution of disputes is essential for dispensing justice. However, the formal justice delivery system suffers from various limitations. Consider for instance, the following:

- To get justice through courts one has to often go through difficult and expensive procedures involved in litigation. Moreover, there exist serious concerns regarding costs, delays and congestion in the courts.
- Dispute resolution through legal proceedings in the courts has become excessively procedural and adversarial in nature, thereby resulting in undue delays, high costs and unfairness in litigation. Huge pendency of cases has created serious implications for the trust and credibility, which the society is supposed to have in the judicial system.

Student Notes:

- Besides this, the adversarial nature of litigation in formal courts is found to be unconducive to social and business relationships, which need to be preserved. Thus this system neither generates a climate of consensus, compromise and co-operation nor does it end in harmony. This state of affair often causes dissatisfaction among disputants and creates a need for a more flexible means of dispute resolution.

It is in light of these limitations that the need for Alternative Dispute Resolution (ADR) mechanisms arise. Under ADR disputes are settled with the assistance of a neutral third person, who is generally of parties' own choice. Moreover, this person is usually familiar with the nature of dispute.

Further, the proceedings are informal, without any procedural technicalities. The process is not only expeditious, inexpensive and confidential, but it also aims at substantial justice. The goal here is to provide more effective dispute resolution. Thus, the availability of ADR creates more choices within the justice system. This is how the shortcomings faced in the formal justice delivery system can be overcome through the ADR methods.

However, despite the advantages that ADR enjoys over the formal justice system, it is not a substitute to litigation. There exists a different set of limitations in the ADR too. For instance:

- ADR processes cannot be used in those situations where the dispute is regarding systematic injustice, discrimination, and violation of human rights or serious frauds.
- ADR processes do not set precedent, since they function in private. They seek to resolve individual disputes. Moreover, resolution may be different in two similar cases, depending on the surrounding conditions.
- In cases that involve an extreme power imbalance between the parties, ADR processes cannot work well. A more powerful party may coerce the weaker party to accept the unfair consensus.
- In multi-party disputes, ADR processes cannot work effectively, if some of the parties do not participate.
- ADR settlements do not have any educational or deterrent effect on the public, since they are settled privately. Only courts can award punitive damages.
- Many people are not aware of the existence of ADR methods. Unless they are aware they cannot use these methods.

So, the efficacy of ADR depends on the trade-off between its benefits and limitations. It needs to be stressed once again that though ADR mechanisms are effective, they cannot be a substitute for litigation and a formal justice system.

2. Elaborate the functions and structure of Nyaya Panchayats. Also discuss how it works at the grass-root level for the dispensation of justice.

Approach:

- Brief introduction of Nyaya Panchayats.
- Briefly write the structure
- Functions or objectives of Nyaya Panchayats
- Analysis of its working at the grass-root level.

Answer:

- Nyaya Panchayats can be described as village courts. It works on principles of natural justice and tends to remain procedurally as simple as possible. It helps in

settlement of disputes at the local level, thus speeding up of justice and decongesting mainstream courts.

- Structure of Nyaya Panchayats:
  - Nyaya Panchayats are constituted for every Village Panchayat area or a group of Village Panchayat areas depending on the population and area
  - Nyaya Panchayats consist of five Panchas who are elected by the voters enrolled in the voter's list of that Village Panchayat or group of Village panchayats
  - Every Panch holds the office of Nyaya Pramukh for a period of one year by rotation on the basis of seniority by age.
- Functions of Nyaya Panchayats
  - To provide speedy and cheap disposal of cases.
  - To bring justice nearer to the grass root levels without involving the expenditure which would otherwise have to be incurred in establishing regular courts.
  - To dispose of a large number of cases and thus relieve the burden of regular courts.
  - To succeed in getting a large number of cases compromised through peaceful conciliation.
  - To provide better chances of conciliatory method of approach.
- Though Nyaya Panchayats do not exist throughout the country, but its positives in various states can be taken up as:
  - To a large extent, they have justified their existence.
  - They have brought justice to the very doorsteps of villagers –which is cheap, speedy and free from procedural techniques.
  - They have helped the partiesin reaching compromise which reduced burden of the regular courts.
- Yet it also suffers from limitations and defects:
  - The big land holders, casteism, social and religious taboos continue to play a major role in influencing the Nyaya Panchayats.
  - Low budget reduces Nyaya Panchayats activities considerably.
  - Fear of official favouritism and factionalism
  - Low educational level of Panchs makes it difficult to handle Nyaya Panchayat operations.

3. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has a larger jurisdiction but the Supreme Court still remains the elder brother. -Justice R.C Lahoti. In the context of the above statements describe the relationship between the apex court and the high courts in India.

Approach:

The Answer needs to highlight how both Supreme Court and High Courts have defined areas of jurisdiction under the provisions of constitution. Mention the provisions that make Supreme Court the apex court within India as well as the provisions that provide High Court a wider Jurisdiction. Keep in mind particularly Articles 132 to 136, 139A, 141, 144, 226 and 227. Also Remember Tirupati Balaji Developers Pvt. Ltd. and Ors. Vs. State of Bihar Case 2003.

Answer:

The relationship between the Supreme Court and High court in the constitutional scheme of things includes independence and hierarchy both. There are provisions

which give an edge, and assign a superior place in the hierarchy, to Supreme Court over High Courts. For instance,

- Article 139-A empowers the Apex Court to transfer any case pending before one High Court to another High Court or may withdraw the case to itself.
- Article 141 makes the law declared by the Supreme Court binding on all courts, including High Courts, within the territory of India. And
- Article 144 mandates that all authorities, civil and judicial, in the territory of India — and that would include High Court as well — shall act in aid of the Supreme Court.

The cases involving the interpretation of the Constitution are decided only by the Supreme Court, while the cases of constitutional interpretation cannot be decided by the High courts, the High Court issues the certificates that the cases require constitutional interpretations and should be taken by the Supreme court. The Constitutional provisions that attest to a larger jurisdiction of High Court are:

- Under Article 226 regarding writ jurisdiction the high court has wider powers than the Supreme Court. However, power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.
- Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces.

The Supreme Courts apex status in judicial matters is further affirmed by the Article 136 which provides an extraordinary jurisdiction to it. However, the Constitution has clearly divided the jurisdiction between these two institutions in exercise of their constitutional mandate but while doing so these institutions have to have mutual respect for each other as was observed Justice Lahoti by in the Tirupati Balaji Developers Pvt. Ltd. and Ors. Vs. State of Bihar Case 2003.

4. Give an account of the factors responsible for the limited success of Lok Adalats. What measures are required to ensure that Lok Adalats function as an effective dispute redressal mechanism?

Approach:

- Factors responsible for limited success of Lok Adalats
- Measures to improve functioning of Lok Adalats

Answer:

Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Lok Adalats serve very crucial functions in India due to many factors like pending cases, illiteracy, poverty, high vacancy in courts etc.

Several limitations of Lok Adalats include:

- **LOK ADALATS ARE NOT APPOSITE FOR COMPLEX CASES:** the biggest disadvantage with Lok Adalats is that repeated sittings at short intervals with the same judge are almost not possible which breaks the continuity of the deliberations.
- **LACK OF CONFIDENTIALITY:** Lok Adalat proceedings are held in the open court and any member of public may witness these proceedings. Thus, the element of confidentiality is also lacking.

This also impedes the process of exploration of various resolution options and ultimately the success rate in matters where parties desire confidentiality.

- **AURA OF COURT PROCEEDINGS:** Lok Adalats are fora where voluntary efforts intended to bring about settlement of disputes between the parties are made through conciliatory and persuasive efforts. However, they are conducted in regular courts only. Therefore some amount of formality still remains attached with Lok Adalats.
- **DIMINISHED PARTY AUTONOMY:** It cannot be said that the parties remain in absolute control of the proceedings in contradistinction to what happens in mediation.
- **NEEDS CONSENT OF BOTH THE PARTIES:** The most important factor to be considered while deciding the cases at the Lok Adalat is the consent of both the parties. It cannot be forced on any party that the matter has to be decided by the Lok Adalat.

At this juncture the endeavour should be to organize more and more Lok Adalats, ensure greater participation, reduce formalism, spare more time and personalized attention thereby ensuring quality justice through Lok Adalats.

Measures to improve functioning of Lok Adalats

- Establishing permanent and continuous Lok Adalats in all the Districts in the country for the disposal of pending matters as well as disputes at pre-litigative stage.
- Establishing separate Permanent and Continuous Lok Adalats for Government departments, PSUs etc. for disposal of pending cases.
- Accreditation of NGOs for Legal Literacy and Legal Awareness Campaign
- Appointment of "Legal Aid Counsel" in all Courts of Magistrates in the country.
- Sensitization of Judicial officers in regard of legal Services Scheme.
- Legal literacy and legal aid programmes need to expand to take care of poor and ignorant by organizing awareness camps at grass-root level besides, the mass media like newspapers, television and radios can also be desirable for this purpose.
- To increase its utility, the concerned Legal services Authority or Committee should disseminate information to the public about the holding of various Lok Adalat by it and success achieved thereby in providing speedy, equitable and inexpensive justice.
- There is need for improvement in quality of legal aid provided by lawyers and advocates. The remunerations offered from legal services authorities to lawyers should be revised and thus encouraged to render effective legal assistance to needy persons.

The Lok Adalat Movement can be successful only if the people participate on voluntary basis in the functioning of Lok Adalat. This can be achieved by restraining themselves from invoking the jurisdiction of traditional Courts in trifle disputes.

5. Centralising recruitment through an All-India Judicial Service (AIJS) will not address the multiple problems in the judiciary and cause new ones instead. Critically evaluate.

Approach:

- Briefly discuss the problems being faced by the judiciary.
- Discuss whether the government's proposal of an All-India Judicial Service (AIJS) will address the problems or further exacerbate them.
- Suggest a way forward.

Student Notes:

Answer:

Student Notes:

Indian Judiciary has been battling multiple issues that have affected speed, efficiency and quality of justice. For example:

- Steady increase in number of cases reaching higher courts from lower levels, indicating substandard justice delivery.
- In 2015, approximately 25-30 million cases were pending in various courts.
- In 2015, there were about 400 vacancies of judges in 24 High Courts. Judge-population ratio of 10.5-11 to one million is one of the lowest in world.
- Corruption and lack of transparency in the appointment of judges.
- Issues such as large number of undertrails, long duration of resolution, inefficient and time consuming processes etc.

In this context, All India Judicial Services (AIJS) has been proposed through which district judges will get recruited centrally through an all-India examination and allocated to each State. The rationale of recruitment through AIJS is based on the following grounds:

- **Wide selection pool:** Through AIJS, judges will be selected at the national level and thus it is expected to make judiciary more professional and equitable leading to an improvement in the quality of judgments.
- **Reduction in vacancy**: It is expected to reduce vacancies by avoiding delays in examinations and recruitment.
- **Attractive career option**: Currently, the subordinate judiciary depends entirely on state level recruitment by respective High Courts. But the brighter among the law students do not join the state judicial services because they are not attractive. An 'All India Service' status with associated privileges may change this.
- **Uniform standards**: The measure of uniformity in the standards for selection will improve the quality of personnel in different High Courts, as one-third of the judges come there on promotion from the subordinate courts.

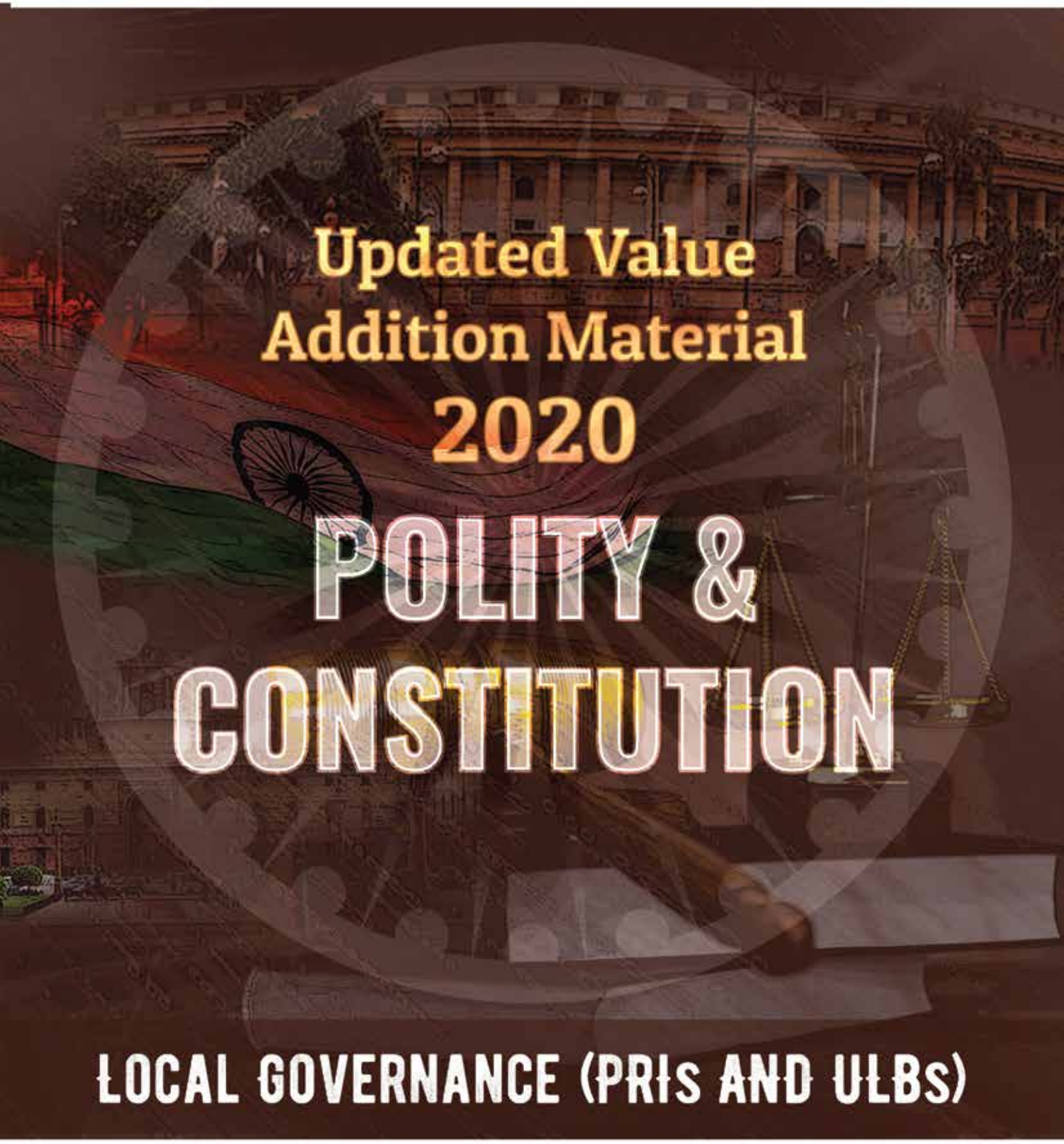
However, the idea has been criticized for not addressing core issues and creating new ones. For example:

- It ignores the fact that Bar Council of India has mismanaged legal education and there has been a lack of effort to improve the standard of legal education in the country.
- While efforts have been taken by the Supreme Court to promote uniform pay scales across States, pay is abysmally low when compared to the private sector.
- Trial court judges face similar problems in case of transfers and other issues as civil servants and have even lesser avenues for growth and promotion.
- Those High court judges appointed from District cadre are already in advanced stage of their careers and have shorter tenures than judges appointed directly from the Bar.

New problems that may arise due to AIJS:

- Being a centralised recruitment, it risks preventing the less privileged from entering judicial services.
- Also, it may be difficult for it to take into account local language, laws, practices and customs, which vary across States.

VISIONIAS
INSPIRING INNOVATION



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POLITY & CONSTITUTION

LOCAL GOVERNANCE (PRIs AND ULBs)

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LOCAL GOVERNANCE

Student Notes:

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1. Panchayati Raj in India: Historical Background and Evolution

The Panchayats or village assemblies existed in ancient India as self-governing institutions which had distinct and well-defined functions. The institution of Panchayat represented not only the collective will, but also the collective wisdom of the entire rural community. The system of local self-governance in India can be traced back to ancient (Vedic) period:

1.1. Ancient Period

- In the Vedic state, village acted as a basic unit of administration with **'Gramini'** as an important village functionary. In the Vedic texts, there are also references to **the Samiti** (Assembly) and **Sabha** where discussions took place mainly concerning with agricultural problems.
- **Arthashatra by Kautilya** provides an exhaustive account of the system of village administration prevailing at that time. He outlined the ideal size of the village, its demarcation, distance between one village and another, and grouping of villages for purposes of posting police force and other state officials.

1.2. Medieval Period

- This period witnessed a period of political change that was marked with centralization of leadership and decline in local governance. However, The hands of the administration reached only the district level. The village communities continued to exist.

1.3. Colonial Period

- The onset of colonial rule completely broke the old age self-sufficiency of the villages. Production for the market took the place of production for consumption in the village itself.
- Britishers adopted policies that established a direct connection between the central and provincial governments on one side and central government and the individual inhabitants of the village on the other. For instance, under Ryotwari system, the government dealt directly with the individual cultivator and not through the village panchayat. In addition, the government took the responsibility of construction and maintenance of irrigation works, roads, schools. payment of grants to them.
- However, the Britishers did take some initiatives to sustain and restore local self-governing institutions in India:
    - **The Regulation of 1816** conferred judicial authority to the village panchayats in a few provinces. Under this Regulation, the Panchayats under the Madres Presidency were allowed to try cases if both the parties agreed to submit the dispute to the panchayat
    - **The Mayo's resolution, 1870** gave impetus to the development of local institutions by enlarging their powers and responsibilities.
    - **Bengal Village Chowkidary Act, 1870** empowered the District Magistrate to constitute a panchayat in any village if majority of the adult male residents apply in writing to the District Magistrate to constitute a panchayat in such village.
    - **The Resolution on Local Self Government (Lord Ripon's Resolution) 1882** intended to build local self-government institutions on the foundations of local self-government system of ancient India and he designed them as an instrument of political and popular education.
    - **Morley Minto Reforms, 1909** incorporated the recommendations of Royal Commission on Decentralization (1907) which led to the enlargement of the election process in the Local Self Government structure in India.
    - **Montagu Chelmsford reforms of 1919** introduced dyarchy system where responsibility of the local government was given to ministers and the ministers enacted number of laws to revive the Panchayati raj institutions. Also The municipalities were vested with

more powers to impose taxes. Village Panchayat Act was also passed and made the panchayats a legal body. It established the village panchayat in many parts of the country and this continued up to 1940.

1.4. Mahatma Gandhi and Panchayati Raj

- Mahatma Gandhi was a staunch advocate of local self-government. In his book – ***India of My Dreams*** – he writes '*Independence must begin at the bottom. Thus, every village will be a Republic or Panchayat having full powers. It follows,* therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world'.

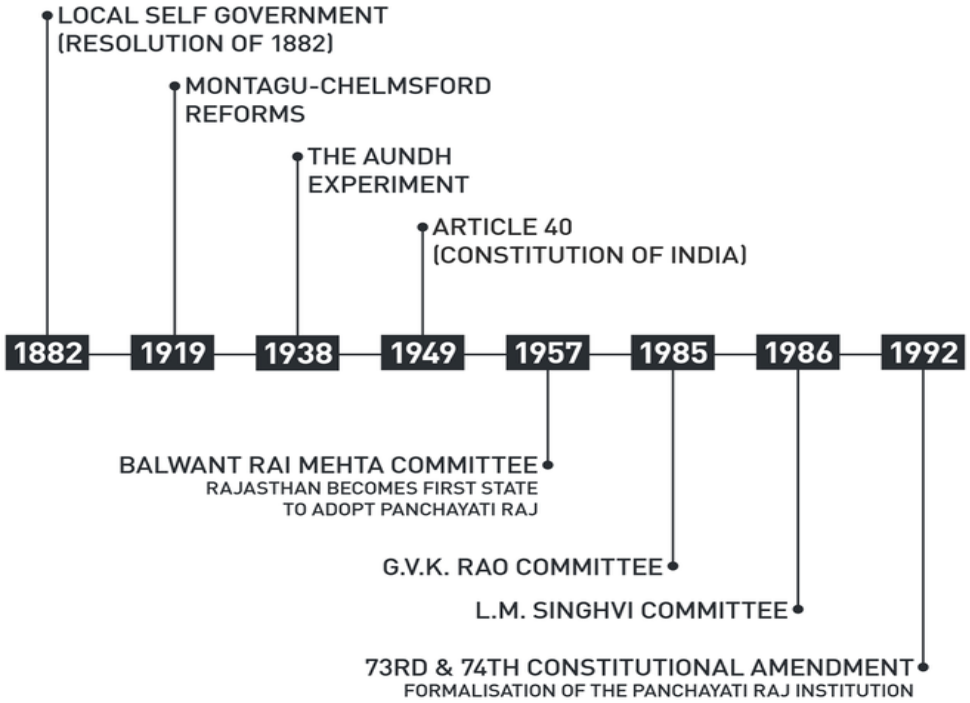
AUNDH EXPERIMENT

In November 1938, the ruler Aundh abdicated and declared that its affairs shall, henceforth, be managed by the people of Aundh themselves. In what was an unprecedented step, a 'Swaraj Constitution' was drafted for the people of Aundh with the help of Mahatma Gandhi and Maurice Frydman, a Polish Engineer, and Gandhian. The Aundh Experiment served as a base experiment and example of 'Swaraj', as envisaged by Gandhi, and was one of the earliest tests of local self-government in the princely states of India. While it is hard to gauge the extent of progress achieved in the decade that followed, the arrangement persisted till India gained independence, and Aundh merged with rest of India. The Aundh Experiment was successful in demonstrating that 'Panchayati Raj' was a realisable dream.

- In 1920, Gandhiji made a strong plea for the introduction of Self-Government in the villages with a view to improve their economy and self-sufficiency. He put forth the idea of **'Gram Swarajya'** or village republic.
- In the meantime; Indian National Congress had also undertaken a campaign to organize Panchayats in the villages. Thus, it became a part of the **ideology of Indian National Movement.** The boycott of the government courts and the establishment of peoples' private court had been one of the important aspects of the **Non-Cooperation Movement** under the leadership of Mahatma Gandhi.
- This was indeed a call for the revival of village panchayats and empowering of the village authorities to look after the administrative affairs of their locality.

1.5. Post Independence period

- Soon after the Independence, the political dispensation realized the importance of grassroots democracy. The Constitution of India, under **Article 40,** provisioned that "the state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary for them to function as units of self-government.''
- In 1957, the Government of India appointed the **Balwant Rai Mehta Committee** to examine the workings of **the National Extension Service and Community Development Program.** The Committee recommended a scheme for **"democratic decentralisation",** as well as a three-tier system with directly elected members at the village level. The recommendations of the Committee were accepted by the **National Development Council.** Rajasthan became the first state to adopt the system.
- Later the **G.V.K. Rao Committee 1985** recommended making the "district" as the basic unit of planning while the **L. M. Singhvi committee** recommended providing more financial resources and constitutional status to the panchayats to strengthen the.
- While many states implemented Panchayati Raj in some form, **there was a lack of uniformity** among the models adopted by different states.
- The formalisation of the system of Panchayati Raj in India culminated in the **73rd and 74th Constitutional Amendment Acts of 1992.**



PANCHAYATI RAJ: A TIMELINE

2. 73rd Constitutional Amendment Act of 1992

2.1. Introduction

- The passage of the Constitution (73rd Amendment) Act, 1992 marks a new era in the **federal democratic** set up of the country. It inserted **Part IX** in the Constitution of India and accorded Panchayats a Constitutional status as institutions of local self-governance for rural India. It also added Eleventh Schedule to the constitution that contains 29 functional items for Panchayats.
- As a result, 2,32,278 Panchayats at village level; 6,022 Panchayats at intermediate level and 535 Panchayats at district level have been constituted in the country. These Panchayats are being manned by about **29.2 lakh elected representatives** of Panchayats at all levels. This is the **broadest representative base that exists in any country of the world – developed or under- developed.**

2.2. Mains features of the act

The mains features of the Act are

- A 3-tier system of Panchayati Raj for all States having population of over 20 lakh. The Panchayats have been established in each state through acts of the respective states.
- Panchayat elections regularly every 5 years
- Reservation of seats for Scheduled Castes, Scheduled Tribes and women (not less than one-third of seats).
- The seats are to be reserved for SCs and STs in proportion to their population at each level. Out of the Reserved Seats, 1/3rd have to be reserved for the women of the SC and ST. Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for women.
- Appointment of State Finance Commission to make recommendations as regards the financial powers of the Panchayats

Student Notes:

As per the Constitution (73rd Amendment) Act, the Panchayati Raj Institutions have been endowed with such powers and authority as may be necessary to function as institutions of self- government and contains provisions of devolution of powers and responsibilities upon Panchayats at the appropriate level with reference to

(a) the preparation of plans for economic development and social justice
(b) the implementation of such schemes for economic development and social justice as may be entrusted to them.

2.3. Administrative Structure of the PRIs

- All States now have a uniform three tier Panchayati Raj structure. At the base is the 'Gram Panchayat'. A Gram Panchayat covers a village or group of villages.
- The intermediary level is the Mandal (also referred to as Block or Taluka). These bodies are called Mandal or Taluka Panchayats. The intermediary level body need not be constituted in smaller States. At the apex is the Zilla Panchayat covering the entire rural area of the District.
- The amendment also made a provision for the mandatory creation of the Gram Sabha. The Gram Sabha would comprise all the adult members registered as voters in the Panchayat area. Its role and functions are decided by State legislation.

2.4. Elections to the PRIs

- All the three levels of Panchayati Raj institutions are **elected directly** by the people. The term of each Panchayat body is five years.
- If the State government dissolves the Panchayat before the end of its five year term, fresh elections must be held within six months of such dissolution. A panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued had it not been so dissolved.
- This is an important provision that ensures the existence of elected local bodies. Before the 73rd amendment, in many States, there used to be indirect elections to the district bodies and there was no provision for immediate elections after dissolution.
- Also no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years.

2.5. State Election Commission

- The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats is vested in the state election commission who is appointed by the governor. The conditions of service and tenure of his office shall is also determined by the governor.
- Earlier, this task was performed by the State administration which was under the control of the State government. Now, the office of the State Election Commissioner is autonomous like the Election Commissioner of India.
- However, the State Election Commission is **an independent office** and is not linked to nor is this officer under the control of the Election Commission of India.

2.6. Financial Powers of the PRIs

- Article 243-G of the Constitution of India provides that the States/UTs may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and to prepare plans for economic development and social justice and their implementation including those in relation to the matters listed in the Eleventh Schedule.

Student Notes:

- As per Article 243-H of the Constitution, State Legislatures have been empowered to enact laws;
  i. to authorise a Panchayat to levy, collect and appropriate some taxes, duties, tolls and fees;
  ii. to assign to the Panchayat, some taxes, duties, tolls levied and collected by the State Government;
  iii. to provide for making grants-in-aid to the Panchayats from the Consolidated Fund of the State
  iv. to provide for constitution of such funds for Panchayats for crediting all money received by or on behalf of Panchayats and also the withdrawal of such money therefrom.

2.7. State Finance Commission

- According to the act, the State government is also required to appoint a State Finance Commission once in five years. This Commission would examine the financial position of the local governments in the State.
- It would also review the distribution of revenues between the State and local governments on the one hand and between rural and urban local governments on the other.
- This innovation ensures that allocation of funds to the rural local governments will no more be dictated by political consideration.

2.8. Role of Panchayati Raj in the democracy

The Panchayati raj is no more an experiment in the Indian democratic process. It is an established administrative device. It's major contribution includes:

- **Political consciousness**: It enabled a large number of people to acquire leadership at local levels, especially women (since one-third of seats are reserved for the women candidates).
- **Strengthening democratic institutions and processes :** The experience gained by the new generation of leadership in democratic management has raised the quality of legislative debates and working of other higher level institutions. It has provided opportunity for the circulation of political elite which is very essential for maintaining democratic forms in their true spirit.
- **Planning and development**: The PRIs have been designed to play a crucial role in planning and development. A number of studies indicate that as units of planning and development, be it at the district or lower level, the Panchayati Raj institutions have contributed substantially. In Maharashtra, Karnataka, West Bengal and several other states, local level planning has been successfully formulated and implemented by these institutions. Ultimately to what extent the local bodies have the necessary autonomy and financial resources to take up developmental activities, depends largely on the state government.
- **Giving voice to local demands:** PRIs have become the connecting link between the Parliament and State Legislature on the one hand and local bodies on the other so that the respective members can exchange views on the objectives of a plan and its priorities. The local members talk about the local needs, urgencies and difficulties in the implementation whereas the members of Parliament and State Legislature can explain the possible solution since they decide national priorities and at the same time they are financially in a better position to help the rural bodies. This two way link has served the dual purpose of modifying the state policies at point of maladjustment as well as communicated the message from centre and/or state to the remote corner of the rural society.
- **Executive Institution:** Certain civic functions such as rural sanitation, public health, street lighting, drinking water supply, maintenance of village roads, culverts, management of primary and secondary education, etc., have been carried out by the Panchayati Raj bodies.
- **Breaking hierarchies:** Panchayati Raj has become a powerful tool where caste and local

interests interact, clash, compromise and arrive at common understanding on various issues.

Student Notes:

2.9. Challenges related to PRIs

While the State Panchayati Raj Acts have been enacted, State Election Commission and State Finance Commissions have been set up and regular Panchayat elections have been held providing reservation for SCs/STs/Women in Panchayats, the results of actual implementation of the Constitution (73rd Amendment) Act, 1992 have fallen far short of expectations on the ground level:

- Though the political decentralisation has been largely successful, with elections held regularly and with ample participation of people, there is only **minimum administrative and fiscal decentralisation**, which remain de facto under the control of the State Governments.
- Panchayats have not given adequate responsibilities to **levy and collect taxes, fees, duties or tolls**. Panchayats should have been granted appropriate powers to generate their own resources.
- Recommendations of State Finance Commissions have been either **accepted partially or implemented half-heartedly.**
- **Powers given to the State Election Commissions vary from State to State.** These Commissions should have been given powers to deal all matter relating to Panchayat elections namely, delimitation of constituencies, rotation of reserved seats in Panchayats, finalisation of electoral rolls, etc.
- Gram Sabhas have not been empowered and strengthened to ensure people's participation and transparency in functioning of Panchayats as envisaged.
- The Constitution does **not stipulate any size for Panchayats**, either in terms of population or in area
- In most States, Panchayats **do not have the power to recruit their staff** and determine their salaries, allowances and other conditions of service. Besides, due to the lack of financial resources, the power to recruit staff, even if such power exists remains grossly under utilised or not utilised at all.
- Under various State Panchayati Raj Acts, the respective **State Government** or their nominated functionaries command **considerable power** with regard to review and revision of actions taken by PRIs. These controls are in the form of power to suspend a Panchayat resolution; inquire into its affairs; power to remove elected Panchayat representatives; approval of the budget of a Panchayat etc.

2.10. 2nd ARC recommendation for rural governance

- States should ensure that as far as possible Gram Panchayats should be of an **appropriate size** which would make them viable units of self-governance and also enable effective popular participation. This exercise will need to take into account local geographical and demographic conditions.
    - Wherever there are large Gram Panchayats, States should take steps to constitute Ward Sabhas which will exercise in such Panchayats, certain powers and functions of the Gram Sabha and of the Gram Panchayat as may be entrusted to them.
- Panchayats should have power to **recruit personnel** and to regulate their service conditions subject to such laws and standards as laid down by the State Government.
- The provisions in some State Acts regarding approval of the budget of a Panchayat by the higher tier or any other State authority should be abolished.
- **State Governments should not have the power to suspend or rescind** any resolution passed by the PRIs or take action against the elected representatives on the ground of abuse of office, corruption etc. or to supersede/dissolve the Panchayats. In all such cases,

the powers to investigate and recommend action should lie with the l**ocal Ombudsman** who will send his report through the Lokayukta to the Governor.

- States must **undertake comprehensive activity mapping** with regard to all the matters mentioned in the Eleventh Schedule. This process should cover all aspects of the subject viz planning, budgeting and provisioning of finances. The State Government should set-up a task force to complete this work within one year.
- A comprehensive exercise needs to be taken up regarding **broadening and deepening of the revenue base** of local governments. This exercise will have to simultaneously look into four major aspects of resource mobilisation viz. (i) potential for taxation (ii) fixation of realistic tax rates (iii) widening of tax base and (iv) improved collection.
    - Except for the specifically tied, major Centrally Sponsored Schemes and special purpose programmes of the States, all other allocations to the Panchayati Raj Institutions should be in the form of untied funds. The allocation order should contain only a brief description of broad objectives and expected outcomes.
    - State Governments should release funds to the Panchayats in such a manner that these institutions get adequate time to use the allocation during the year itself. The fund release could be in the form of equally spaced instalments. It could be done in two instalments; one at the beginning of the financial year and the other by the end of September of that year
    - For their infrastructure needs, the Panchayats should be encouraged to borrow from banks/financial institutions. The role of the State Government should remain confined only to fixing the limits of borrowing.

Student Notes:

3. The provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA), 1996

Context: The provisions of the 73rd amendment were not made applicable to the areas inhabited by the Adivasi populations in many States of India. In 1996, a separate act was passed extending the provisions of the Panchayat system to these areas. Many Adivasi communities have their traditional customs of managing common resources such as forests and small water reservoirs, etc. Therefore, the new act protects the rights of these communities to manage their resources in ways acceptable to them.

3.1. Objective

- The act extends Part IX of the Constitution with certain modifications and exceptions, to the Fifth Schedule Areas notified under article 244(1) of the Constitution.
- The Fifth Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes residing in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.
- At present, Fifth Schedule Areas exist in 10 States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

3.2. Definition of Village and Gram Sabha

- Under the PESA Act, {section 4 (b)}, a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
- Under the PESA Act, {section 4 (c)}, every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.

Student Notes:

3.3. PESA and Gram Sabha

The act exclusively empowers Gram Sabha to

- safeguard and preserve the
  a. traditions and customs of the people, and their cultural identity
  b. community resources
  c. customary mode of dispute resolution
- carry out executive functions to
  a. approve plans, programmes and projects for social and economic development;
  b. identify persons as beneficiaries under the poverty alleviation and other programmes
  c. issue a certificate of utilisation of funds by the Panchayat for the plans; programmes and projects.

PESA Empowers Gram Sabha/Panchayat at appropriate level with:

- right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons
- panchayat at an appropriate level is entrusted with planning and management of minor water bodies
- mandatory recommendations by Gram Sabha or Panchayat at appropriate level for prospective licenses/lease for mines and concession for the exploitation of minor minerals
- regulate sale/consumption of intoxicants
- ownership of minor forest produce
- prevent land alienation and restore alienated land
- manage village markets
- control over money lending to STs
- control over institutions and functionaries in social sector, local plans including Tribal sub plans and resources .

3.4. Importance of PESA

Effective implementation of PESA will not only bring development but will also deepen democracy in Fifth Schedule Areas. There benefits of PESA include:

- It will enhance people's participation in decision making.
- PESA will reduce alienation in tribal areas as they will have better control over the utilisation of public resources.
- PESA will reduce poverty and out-migration among tribal population as they will have control and management of natural resources will improve their livelihoods and incomes.
- PESA will minimise exploitation of tribal population as they will be able to control and manage money lending, consumption and sale of liquor and also village markets.
- Effective implementation of PESA will check illegal land alienation and also restore unlawfully alienated tribal land.
- And most importantly PESA will promote cultural heritage through preservation of traditions, customs and cultural identity of tribal population.

4. Urban Local Bodies (ULBs)

4.1. Historical Background

- The formation of **Madras Municipal Corporation in 1687** earmarked the era of Urban Local Governance in India. Later similar corporation were formed in Calcutta and Bombay Municipal Corporation in 1726.

- In 1882, **Lord Ripon** – the Viceroy of India - passed a resolution of local self-government which laid the democratic forms of municipal governance in India.
- Indian Independence ushered a new era of local governance in India. The Constitution of India allotted the local self-government to the state list of functions.
- In 1953, the U.P. Government took a decision to set-up Municipal Corporations in five big cities of Kanpur, Agra, Varanasi, Allahabad and Lucknow, popularly known as KAVAL Towns. As a result, the state of U.P. adopted a new Act for Municipal Corporations in 1959.
- In 1985, the Central Government appointed the **National Commission on Urbanization,** which gave its report in 1988. This was the first commission to study and give suggestions **on all aspects of urban management**. Also several committees were appointed in different states in order to improve the municipal organizations and administration there under.
- Finally, it was the Constitution (74th Amendment) Act, 1992 that gave constitutional status to the Urban Local governance bodies.

5. 74th Constitutional Amendment Act of 1992

5.1. Main features of the act

The mandate of the Municipalities is to undertake the tasks of planning for 'economic development and social justice' and implement city/town development plans. The main features of the 74th Constitutional Amendment are as under:

- The Act stipulated three levels of municipal bodies to be set up in the country:
  - a *'nagar panchayat* (town council)*'* for transitional areas
  - a 'municipal council' for a smaller urban area
  - a 'municipal corporation' for a larger urban area.
- The term for the **ULBs was five years**. Unless there were overwhelming reasons, a municipal body was not to be superseded by the state. In case a decision in regard to dissolution was under consideration, it was made mandatory that the **ULB would be heard.** If after a hearing, the state decided to dissolve the elected body before the completion of its full term, it would necessarily have to be reconstituted within a period of **six months**.
- The Act empowered an independent **State Election Commission** for the conduct, superintendence and control of municipal elections.
- The Act also stipulated that seats be reserved for **Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion** to their population in the municipal area.
- A revolutionary feature of the enactment was the **mandatory provision of reserving one-third of every elected urban body for women representatives**. Reservations were also provided for in the position of chairpersons of municipalities.
- For the larger municipalities with populations of 300,000 and above, wards committees were made mandatory.
- For the purposes of planning, a **District Panning Committee** had to be constituted. In addition, for every metropolitan area, defined as an Urban Local Body with more than a million population, a **Metropolitan Planning Committee** had to be formed.
- A **State Finance Commission** was also made mandatory, charged with the task of reviewing the financial position of the municipalities and making recommendations for the financial health of ULBs.

5.2. Constitution of Municipalities

As per Article 243Q, every State should constitute three types of municipalities in urban areas. The constitution of three type of municipalities by every State are as under:

- **Nagar Panchayat:** Nagar Panchayat (by whatever name called) for a transitional area, that is to say, is an area in transition from a rural area to an urban area.
- **Municipal Council:** A Municipal Council is constituted for a smaller urban area
- **Municipal Corporation:** A Municipal Corporation is constituted for a larger urban area.

Student Notes:

5.3. Composition of Municipalities

Article 243R of the Constitution makes the provision for the composition of Municipalities.

- All the seats in a Municipality are filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.
- The Legislature of a State may, by law, provide the manner of election of the Chairperson of a Municipality.

5.4. Reservation of Seats

Article 243T makes the provisions for the reservation of seats.

- Seats are reserved for the Scheduled Castes and the Scheduled Tribes according to the proportion of their population.
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality are reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
- The office of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

5.5. Duration of Municipalities

As per Article 243U of the Constitution, every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting.

5.6. Powers, authority and responsibilities of Municipalities

As per Article 243W of the Constitution, the state legislature by law may endow:

a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-
   i. the preparation of plans for economic development and social justice;
   ii. the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule

b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

5.7. Impact of the act on the Urban governance

- **Recognition of ULBs as the third tier of governance:** In addition to the constitutional recognition of civic bodies as the third tier of governance, the act ensured that the municipal bodies had an independent right to exist. Prior to the enactment, states could either extend the life of ULBs beyond their term or prematurely dissolve them based on political consideration. The act divested state government of this power.
- **Wider political representation:** In keeping with the spirit of inclusion and equity principles, space has been mandated for the SCs and STs in proportion to their population in the geographical area of the ULB. This has had a salutary effect in terms of political representation and effective participation in all local decision-making.
- **Gender Empowerment:** The act introduces democratic principle of gender justice. The Act acknowledged that the socio-economic prosperity of the country cannot be achieved if half

the population is bereft of a voice and denied participation in the democratic process.

- **Independent Municipal Elections:** The local electoral process was also taken out of the state's purview. An independent State Election Commission, outside the influence of states, ensues transparency and fair play in the process of civic elections. The supervision, direction and control of all elections to the municipalities were vested in this Commission.
- **Introduction of ward committees:** This laudable innovation takes take local administration as close to the people as possible. A wards committee is an administrative entity for a group of electoral wards to look after the civic affairs of their geographical area. It is a process mandated towards greater decentralisation within a city.
- **Reformation of Municipal Financial :** State Financial Commission's report on municipal finance and its mandatory tabling in the state legislature achieves two objectives:
  - First, there is now a compulsory quinquennial review of the state of the fiscal health of ULBs.
  - Second, its submission to the legislature ensured that the report would be studied and discussed.

5.8. Challenges related to ULBs

- **Use of discretionary power by states:** The act made some of its provisions mandatory and others discretionary. States have used the discretionary power in favour local political consideration, sometimes, against the spirit of the act. Since acts do not provide uniform parameters for delineation of local bodies, Very large settlements are still dubbed as villages and smaller ones are converted into towns.
- **Political patronage:** At the ward level, the Act desired the induction of individuals of knowledge and experience in local governance. However, this became a means of providing refuge to party functionaries or those who were unable to win elections.
- **Status of Mayor:** The act is silent on the status of the mayor. There is wide variation in the manner of elections of Mayors. They could be in office for one year, or two, or five; they could be directly or indirectly elected; and they could have some powers or fulfil a purely ceremonial role.
- **Lack of devolution of power:** Since, the powers and responsibilities of the ULBs are to be decided by state, states have devolved nominal functional authority to ULBs, in effect, making them dysfunctional.
- **Finances:** The recommendations of State Finance Commission's for financial devolution to municipalities, have not led to any substantive transfer of resources to ULBs. The recommendations of the SFCs have largely been ignored at the state level, as states themselves reel under severe financial crunch.
- **Passage of GST:** GST has made the financial position of ULBs even more precarious. On the one hand, GST is silent on the financial share of ULBs; on the other, it has subsumed many of the local taxes.

5.9. 2nd ARC recommendation on Urban governance

- The functions of chairing the municipal council and exercising executive authority in urban local government should be combined in the same functionary i.e. Chairperson or Mayor.
  - The Chairperson/Mayor should be directly elected by popular mandate through a city-wide election.
  - The Chairperson/Mayor will be the chief executive of the municipal body. Executive power should vest in that functionary.
- The following principles should be followed while administering all taxes:
  - The manner of determination of tax should be made totally transparent and objective;
  - As far as possible, all levies may be based on self-declaration of the tax payer but this should be accompanied by stringent penalties in case of fraud or suppression of facts by the tax payer

Student Notes:

Student Notes:

- There should be an independent unit under the Chief Executive to monitor the collection of all taxes; and

- The capacity of the municipalities to handle legal and financial requirements of responsible borrowing must be enhanced.
  - The limits of borrowings for various municipal bodies in a State may be fixed on the recommendation of the SFC.
  - Municipal bodies should be encouraged to borrow without Government Guarantees.
- Land banks available with the municipalities as well as with the development authorities should be leveraged for generating resources for the municipalities. However, such resources should be used exclusively to finance infrastructure and capital expenditure and not to meet recurring costs.
- Citizens' charters in all Urban Local Bodies should specify time limits for approvals relating to regulatory services such as licenses and permits and these should be scrupulously adhered to. The charter should also specify the relief available to the citizens in case of non-adherence.
- Municipal governments should have full autonomy over the functions/ activities devolved to them. If the State Government feels that there are circumstances that make it necessary to suspend or rescind any resolution passed by the Urban Local Bodies or to dissolve or supersede them, it should not do so unless the matter has been referred to the concerned local body Ombudsman and the Ombudsman recommends such action.

6. UPSC Previous Years Prelim Questions

1. The Government enacted the Panchayat Extension to Scheduled Areas (PESA) Act in 1996. Which one of the following is not identified as its objective?
(a) To provide self-governance
(b) To recognize traditional rights
(c) To create autonomous regions in tribal areas
(d) To free tribal people from exploitation

Answer: B

2. Consider the following statements:
1. National Development Council is an organ of the Planning Commission.
2. The Economic and Social Planning is kept in the Concurrent List in the Constitution of India.
3. The Constitution of India prescribes that Panchayats should be assigned the task of preparation of plans for economic development and social justice.

Which of the statements given above is/are correct?
(a) 1 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Answer: B

7. UPSC Previous Year Mains Questions

1. Discuss the recommendations of the 13th Finance Commission which have been a departure from the previous commissions for strengthening the local government finances. (2013)

2. In the absence of well – educated and organised local level government system, Panchayats and Samitis have remained mainly political institutions and not effective instrument of governance. Critically Discuss. (2015)

3. Khap panchayats have been in the news for functioning as extra – constitutional authorities, often delivering pronouncements amounting to human right violations. Discuss critically the actions taken by the legislative, executive and judiciary to set the things right in this regard. (2015)

Student Notes:

4. The local self-government system in India has not proved to be effective instrument of governance". Critically examine the statement and give your views to improve the situation. (2017)
5. Assess the importance of Panchayat system in India as a part of local government. Apart from government grants, what sources the Panchayats can look out for financing developmental projects. (2018)
6. "The reservation of seats for women in the institutions of local self- government has had a limited impact on the patriarchal character of the Indian Political Process." Comment. (2019)

8. Vision IAS GS Mains Test Series Questions

1. What are the different aspects of capacity building that need to be taken into account to address the capacity deficit within Panchayats and Municipal bodies?

Approach:

Capacity building is generally equated just to training of personnel and elected elements of these bodies. Other aspects include organizational development, development of institutional and legal framework, adequate staffing, special focus on women etc. Cover all these points in the answer.

Answers:

The crucial issue of capacity building in urban and rural local bodies remains a largely neglected area in decentralised self-governance. Beyond short term 'training' of personnel and elected elements of these bodies, little has so far been contemplated, and even in this sphere there has been limited initiative and fitful progress. As a result, there is capacity deficit within the Panchayat and Municipal Institutions.

Capacity building is much more than training, and has other major components, namely:

1. Individual development
2. Organisational development
3. Development of institutional and legal framework
4. Adequate staffing
5. Capacity building of women

Individual development involves the development of human resources including enhancement of an individual's knowledge, skills and access to information which enables them to improve their performance and that of their organisation.

Organisational development on the other hand is about enabling an organisation to respond to two major challenges that it has to confront:

- External adaptation and survival
- Internal integration.
    - **External adaptation and survival** has to do with how the organisation copes with its constantly changing external environment.
    - **Internal integration** is about establishing harmonious and effective working relationships in the organisation.

Development of institutional and legal framework enables the organisations to enhance their capacity to pursue their objective and goals by making the necessary legal and regulatory changes.

Adequate staffing of local bodies is a matter that requires considerable attention of the State Finance Commissions in active association with the State Governments in order to endow these bodies with greater capacities.

There is also a need to give special attention to **capacity building of women** panchayat leaders and members so that they are truly equipped to carry out their envisaged role in the third tier of government.

With the responsibilities of rural and urban local government institutions expanding and with their role and reach poised for further enlargement in the foreseeable future, there is a clear need to bring about a 'networking' of the existing training institutions in various subjects like financial management, rural development, disaster management and general management to formulate compendia of training methodology and training modules to build institutional and individual capacities.

Student Notes:

2. Though Parliament had enacted The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, but it has been implemented very poorly across the states. Bring out the various reasons behind its poor implementation and the measures needed for its success.

Approach:

- The most significant aspects of PESA relate to definition of a Village and Gram Sabha, rules, responsibilities and powers of the Gram Sabha, Principle of Subsidiarity and consistency of other Laws with PESA. You need to write the answer in term of these factors.

Answer

- PESA has been very poorly implemented across the nine States. One major impediment in operationalisation of PESA is the absence of a proper administrative definition of the village that is in consonance with the Act. All States, without exception, have continued with their earlier revenue definitions of the village. Thereby, not only does a village at times consist of 10–12 scattered hamlets, but several revenue villages are clubbed together to form a Gram Panchayat. This effectively precludes the functioning of a 'face to face' community as envisaged in PESA and eliminates the likelihood of a functioning Gram Sabha, which could shoulder the responsibilities of a unit of self governance.
- The success of PESA hinges crucially on the effective functioning of the Gram Sabha. Today, even in tribal areas, there is no automaticity to the functioning of the Gram Sabha and there is a large measure of exclusion of women. With growing socio-economic differentiation within and across Adivasi communities, there is also exclusion of those who are poorer or whose voice is weaker.
- To ensure that Gram Sabhas actually meet and become vibrant fora of participatory democracy, as visualised under PESA, there is a need to facilitate this process by giving energy to it. This requires a *dedicated cadre of social mobilisers* at each GP level, specifically assigned with the task of mobilising the Gram Sabha and ensuring the effective participation of the marginalised, as also spreading greater awareness of laws such as PESA and Forest Rights Act (FRA) and key flagship programmes of the government.
- *Land Alienation and Land Acquisition*: A clear and categorical provision should be made in the Panchayati Raj Act or the Revenue Law to empower the Gram Sabha to restore the unlawfully alienated land to its lawful owner.
- *Community Resources*: The term 'community resources' which is used in PESA has not generally been defined. There is a need to define it as 'natural resources including land, water and forest within the area of the village'.
- *Mines and Minerals*: The mineral rules should be amended transferring all quarries with annual lease value up to `10 lakhs to the Gram Sabha and panchayats at

different levels. This dispensation should cover all minor minerals. The consent of concerned Gram Sabha before awarding a lease should be made mandatory.

- *Intoxicants*: A clear and categorical provision should be made in the Panchayati Raj Act or the excise law to empower the Gram Sabha, in all matters concerning intoxicants such as establishment of liquor shops, manufacturing units and so on, the views of women members in the Gram Sabha should be decisive, irrespective of the strength of their presence in the relevant meeting.
- *Effective Administrative Mechanism*: It is abundantly clear that the existing administrative structures have been found inadequate in the process of implementation of PESA. It may be time now to consider the setting up of a permanent empowered body in each Fifth Schedule Area to oversee and monitor compliance with PESA and FRA. The details of such a body, including its powers, its constituents and its precise relationship with and accountability towards existing constitutional bodies, would each need to be carefully worked out.
- *Institutionalised Mechanism of Conflict Resolution*: There is also need to facilitate creation of institutional mechanisms of conflict resolution in India of the kind that exist across the world in countries which have faced conflicts over use of natural resources, especially in the context of indigenous people. A conflict resolution framework designed to suit our specific circumstances, would help mitigate conflicts before they reach a point of no return.

Student Notes:

3. Tracing the evolution of panchayati raj since independence highlight its achievements in facilitating the inclusion of vulnerable sections of society in the political process.

Approach:

- Mention efforts made to establish PRI before 73rd Constitutional amendment.
- Highlight its achievements regarding social inclusion.

Answer:

Panchayats in India have existed since Mauryan times. To further strengthen the institution it was included in DPSP through Art 40. Hence, various efforts were made in this direction by different governments.

- **Balwant Rai Mehta Committee, 1957**: It was constituted to assess the Community Development Programme. The committee recommended the need of 'democratic decentralization' through 3-tier Panchayati raj system.

After this, various states such as Rajasthan, Andhra Pradesh etc. established panchayati raj system. Other committees constituted regarding Panchayats were:

- **Ashok Mehta Committee, 1977**: Recommended 2-tier system and power of taxation with PRIs to mobilise their own resources
- **GVK Rao Committee, 1985**: Recommended elections should be held regularly.
- **LM Singhvi Committee, 1986**: Recommended constitutional status to PRIs and increased financial resources for panchayats.

Prior to 1992, many state governments had established panchayati system which differed in many aspects – number of tiers, devolution of powers, reservation system etc. With 73rd Constitution amendment, a uniform system was created. It gave constitutional status to PRIs, brought them under the purview of justiciable part of Constitution, and ensured elections at regular intervals. Above all, it played instrumental role in social inclusion of vulnerable sections of population.

- **Political Participation:** Increased political participation of women, SC and STs through reservation.

Student Notes:

- **Women Empowerment:** Enabled women to come out of home and take part in developmental activities, politics and decision making.
- **Policy process:** Empowering different sections to be a part of policy process from inception to implementation**.**
- **Engendering:** Brought gender perspective to policies and programme.
- **Opportunities:** Various anti-poverty programmes implemented by PRIs helped in providing employment opportunities, housing facilities etc.
- **Improving Society**: It has helped to achieve social objectives such as caste equality, family planning, girls education, arresting girl child death, preventing dowry
- **Against social ills**: Several panchayats have also successfully restricted use of intoxicating drinks and drugs.

The process of social inclusion can be further accelerated if greater powers, funds, functions and functionaries are devolved to panchayats by the states. 13th and 14th Finance Commissions have increased the allocation of funds to panchayats. Similar steps are also being taken by states signaling greater power to poor and deprived.

4. Panchayati raj institutions (PRIs) are simultaneously a remarkable success and a staggering failure, depending on the goalposts against which they are evaluated. Discuss.

Approach:

- Write introduction about 73rd amendment and PRIs.
- Highlight the parameters where PRIs can be considered as success.
- Highlight the failures of PRIs on various parameters.
- Conclude accordingly.

Answer:

With the constitutional mandates deriving from the 73rd amendment the Panchayati Raj Institutions (PRIs) are key pillars of democratic governance in India. In more than two decades of their existence the PRIs have some impressive achievements along with unrealized potential seen as their failure.

Success:

- **Number of elected Representatives:** with nearly 3 million elected representatives at the village, intermediate and district level, the PRIs have enhanced representation
- **Empowerment of women**: A constitutional mandate of 33% reservation for women has yielded excellent results. Many states have provided for 50 percent reservation for women. Female PRI leaders are more likely to focus on issues pertinent to women.
- **Political representation at the grassroots level for marginalized**: This is the only level of government, where SC/ST candidates have a genuine voice in governance. Reports suggest that SC Sarpanchs are more likely to invest in public goods in SC hamlets.

Failures:

- **Authority and functions:** State government, meant to transfer functions listed as per 73rd AA has undertaken very little devolution of authority and functions to PRIs. Core functions like water, sanitation, maintenance of community assets, etc. continue to be in the hands of State governments.

Student Notes:

- **Finances**: The power to tax, even for subjects falling within the purview of PRIs, has to be specifically authorized by the state legislature. Though State Finance Commissions have advocated for greater devolution of funds, there has been little action by states.
- **Functionaries**: Many State Governments have not transferred the required staff to the PRIs after the devolution of powers. Government officers are not willing to work under the administrative control of elected PRIs and administrative personnel serving under Panchayats are accountable to state government and not local bodies.
- **District Planning Committee**: The mandate to establish a DPC to prepare a draft development plan has been violated and distorted in most States. Parallel bodies encroach upon the domain of Local Governments (LGs).
- **Capacity Building**: There haven't been adequate capacity building exercises for members of Panchayats belonging to weaker section. For example, women participation has been mired by challenges such as 'sarpanch patis'.
- **Parallel schemes and agencies** such as MPLAD and MLALAD continue to bypass local governments.

Hence for governance efficacy at grassroots level, the only long-term solution is to foster genuine fiscal federalism where PRIs have authority to levy, collect and appropriate taxes to augment their resources and there is adequate devolution of functions making PRIs well equipped to solve their problems.

5. Absence of a powerful and politically accountable leadership in the cities is considered as one of the primary reasons for urban woes. Do you think that direct election of mayor can help in overcoming this issue? What other alternatives can be explored for improving the working of urban local bodies?

Approach:

- In the introduction write about the urbanisation challenge in India.
- Briefly discuss the current position of the mayor.
- Examine how direct elections will help in improving the efficacy of the municipalities.
- Suggest some alternatives.

Answer:

By 2050, about 60 percent of the Indian population will reside in urban areas. This rapid speed of urbanization poses the challenge of improving the quality of urbanization, which needs to be tackled by reforming urban governance.

Position of Mayor

- The Constitution provides discretion to states in manner of election – direct or indirect of the Mayor. Thus, in most of the states, Mayors are appointed indirectly and not through direct elections.
- The Mayor has been reduced to a figurehead while most powers reside with the Municipal Commissioner appointed by the state government.

As a result, the municipal government lacks accountability to the public which is one of the important reasons for the poor performance of the municipalities.

Necessity of direct elections

Direct elections of mayors will help to address these lacunae in the following ways:

- **Responsiveness** of directly elected mayor will be greater than that of indirectly elected.

Student Notes:

- It will strengthen **grass root democracy**.
- Direct elections combined with greater executive and financial powers to the Mayor will improve his **performance**.
- Since mayor is directly elected he can be held **accountable** by people.
- The Mayor will be more attuned with problems of people.
- It will **reduce interference** of the local MPs/MLAs in municipal functioning.

However, it is also fraught with certain issues and this system has not been too encouraging in some states like Tamil Nadu, which are reverting to indirect elections. This is because of the following reasons:

- **Less Powers**: Not only direct elections but devolving financial and executive powers municipalities is also needed which states are reluctant to do.
- **Political Deadlock**: If the mayor is of different political party and majority of council members are from different parties then it leads to deadlock in decision making, which is often the case.
- Due to the party system, Mayors are still more inclined towards party than being accountable to people.

Yet, these issues are not impossible to smoothen out and strong will on the part of state governments and personality characteristics of mayors can make the system a success like that in Kolkata.

Alternative to direct elections

Since, these reforms are still far-fetched, some alternatives of improving the efficiency of the municipalities can be:

- Greater devolution of **funds, functions and functionaries** (3Fs) to local bodies.
- The Commissioner to be responsive to mayor. This will enhance accountability.
- Municipal officials and staff should be provided training and imparted skill sets needed for specialised functions like waste management, sewage treatment, city planning etc.
- Greater synergy between elected members and officials who should be brought under elected members and appointed as full time members rather than birds of passage.
- Building transparency and implementing citizen's charter.

These measures will help to improve the efficiency of the local bodies and fulfil its purpose as envisioned by constitution.

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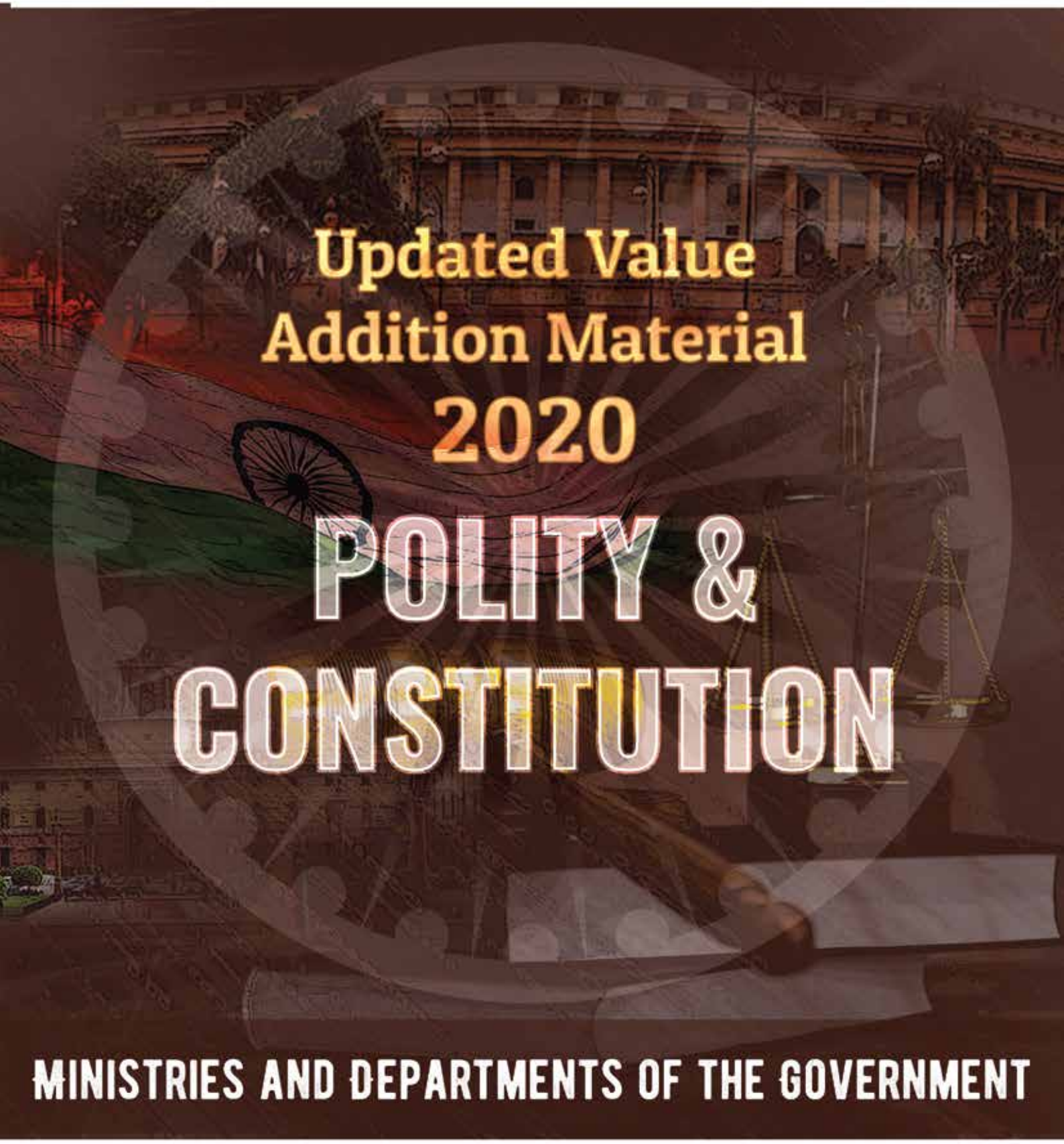

Updated Value Addition Material 2020

POLITY & CONSTITUTION

MINISTRIES AND DEPARTMENTS OF THE GOVERNMENT

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Student Notes:

MINISTRIES AND DEPARTMENTS OF THE GOVERNMENT

Contents

Student Notes:

1. Existing Organizational Structure

Article 77 of the Indian Constitution specifies the power of the President in terms of the conduct of business of the Government of India. It vests the following powers in the President:

- All executive action of the Government of India shall be expressed to be taken in the name of the President
- Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall nor be called in question on the ground that it is not an order or instrument made or executed by the President
- The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business

Exercising powers vested by virtue of Article 77, the President has made the "The Government of India (Allocation of Business) Rules". The Rules stipulate that the business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First schedule to these rules. The Allocation of Business Rules, thus, forms the basis of the structure of Government of India by specifying the Departments among whom the functional division of work of Government of India has been done.

The Allocation of Business Rules comprises an exhaustive listing of the subjects and activities of various Departments of Government of India. It also enlists the attached and subordinate offices and other organizations, including Public Sector Undertakings. This detailed listing has the advantage of clearly demarcating the turf of individual departments so that there is no ambiguity with regard to their responsibilities. The allocation of Business has been kept up to date by a series of amendments and has stood the test of time.

2. Structure within the Departments

a. A department is responsible for formulation of policies of the government in relation to business allocated to it and also for the execution and review of those policies.

b. For the efficient disposal of business allotted to it, a department is divided into wings, divisions, branches and sections.

c. A department is normally headed by a Secretary to the Government of India, who acts as the administrative head of the department and principal adviser of the Minister on all matters of policy and administration within the department.

d. **Wing**: The work in a department is normally divided into wings with a Special Secretary/Additional Secretary/Joint Secretary in charge of each wing. Such a functionary is normally vested with the maximum measure of independent functioning and responsibility in respect of the business falling within his wing subject, to the overall responsibility of the Secretary for the administration of the department as a whole.

e. **Division:** A wing normally comprises a number of divisions each functioning under the charge of an officer of the level of Director/Joint Director/Deputy Secretary.

f. **Branches:** A division may have several branches each under the charge of an Under Secretary or equivalent officer.

g. **Section:** A section is generally the lowest organizational unit in a department with a well-defined area of work. It normally consists of assistants and clerks supervised by a Section Officer. Initial handling of cases (including noting and drafting) is generally done by, assistants and clerks who are also known as the dealing hands.

h. **Desk Officer System:** While the above represents the commonly adopted pattern of organization of a department, there are certain variations, the most notable among them being the desk officer system. In this system the work of a department at the lowest level is

organised into distinct functional desks each manned by two desk functionaries of appropriate ranks e.g. Under Secretary or Section Officer.

i. Each desk functionary handles the cases himself and is provided adequate stenographic and clerical assistance.

Under the Government of India, Rules of Business, 1961, there are presently 51 Ministries, 56 Departments and 2 Independent Departments. Out of these 51 Ministries, only 20 have one or more departments attached to them.

Ministry	Department Associated
Ministry of Agriculture and Farmers Welfare	• Department of Agricultural Research and Education (DARE) • Department of Agriculture, Cooperation and Farmers Welfare
Ministry of AYUSH	
Ministry of Chemicals and Fertilizers	• Department of Chemicals and Petrochemicals • Department of Fertilizers • Department of Pharmaceuticals
Ministry of Civil Aviation	
Ministry of Coal	
Ministry of Commerce and Industry	• Department for Promotion of Industry and Internal Trade • Department of Commerce
Ministry of Communications	• Department of Posts • Department of Telecommunications (DOT)
Ministry of Consumer Affairs, Food and Public Distribution	• Department of Consumer Affairs • Department of Food and Public Distribution
Ministry of Corporate Affairs	
Ministry of Culture	
Ministry of Defence	• Department of Defence • Department of Defence Production • Department of Defence Research & Development • Department of Ex-Servicemen Welfare
Ministry of Development of North Eastern Region	
Ministry of Earth Sciences	• India Meteorological Department (IMD)
Ministry of Education	• Department of Higher Education • Department of School Education and Literacy
Ministry of Electronics and Information Technology	
Ministry of Environment, Forest and Climate Change	
Ministry of External Affairs	
Ministry of Finance	• Department of Economic Affairs • Department of Expenditure • Department of Financial Services • Department of Investment and Public Asset Management • Department of Revenue
Ministry of Fisheries, Animal Husbandry and Dairying	• Department of Animal Husbandry and Dairying • Department of Fisheries
Ministry of Food Processing Industries	

Student Notes:

Ministry of Health and Family Welfare	• Department of Health and Family Welfare • Department of Health Research, Ministry of Health & Family Welfare
Ministry of Heavy Industries and Public Enterprises	• Department of Heavy Industry • Department of Public Enterprises
Ministry of Home Affairs	• Department of Border Management • Department of Home • Department of Internal Security • Department of Jammu & Kashmir (J & K) Affairs • Department of Official Language • Department of States
Ministry of Housing and Urban Affairs	
Ministry of Information and Broadcasting	
Ministry of Jal Shakti	• Department of Drinking Water and Sanitation • Department of Water Resources, River Development and Ganga Rejuvenation
Ministry of Labour and Employment	
Ministry of Law and Justice	• Department of Justice • Department of Legal Affairs • Legislative Department
Ministry of Micro, Small and Medium Enterprises	
Ministry of Mines	
Ministry of Minority Affairs	
Ministry of New and Renewable Energy	
Ministry of Panchayati Raj	
Ministry of Parliamentary Affairs	
Ministry of Personnel, Public Grievances and Pensions	• Department of Administrative Reforms and Public Grievances (DARPG) • Department of Pension & Pensioner's Welfare • Department of Personnel and Training
Ministry of Petroleum and Natural Gas	
Ministry of Power	
Ministry of Railways	
Ministry of Road Transport and Highways	
Ministry of Rural Development	• Department of Land Resources (DLR) • Department of Rural Development (DRD)
Ministry of Science and Technology	• Department of Biotechnology (DBT), Government of India • Department of Science and Technology (DST) • Department of Scientific and Industrial Research (DSIR)
Ministry of Shipping	
Ministry of Skill Development and Entrepreneurship	

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Ministry of Social Justice and Empowerment	• Department of Empowerment of Persons with Disabilities • Department of Social Justice and Empowerment
Ministry of Statistics and Programme Implementation	
Ministry of Steel	
Ministry of Textiles	
Ministry of Tourism	
Ministry of Tribal Affairs	
Ministry of Women and Child Development	
Ministry of Youth Affairs and Sports	• Department of Sports • Department of Youth Affairs
Independent Departments	
1. Department of Atomic Energy **2.** Department of Space	

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3. Attached or Subordinate Offices

Each Department may have one or more attached or subordinate offices. For instance, Department of Pharmaceuticals under the Ministry of Chemicals and Fertilizers has National Pharmaceutical Pricing Authority (NPPA) as an attached office. The role of these offices is:

- Attached offices are generally responsible for providing executive direction required in the implementation of the policies laid down by the department to which they are attached. They also serve as repository of technical information and advise the department on technical aspects of question dealt with by them.
- Subordinate offices generally function as field establishments or as agencies responsible for the detailed execution of the policies of government. They function under the direction of an attached office, or where the volume of executive direction involved is not considerable, directly under a department.

4. Sample Case

4.1. Ministry of Home Affairs

The Ministry of Home Affairs (MHA) has multifarious responsibilities, important among them being internal security, management of para-military forces, border management, Centre-State relations, administration of Union Territories, disaster management, etc. Though in terms of Entries 1 and 2 of List II – 'State List' – in the Seventh Schedule to the Constitution of India, 'public order' and 'police' are the responsibilities of States, Article 355 of the Constitution enjoins the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.

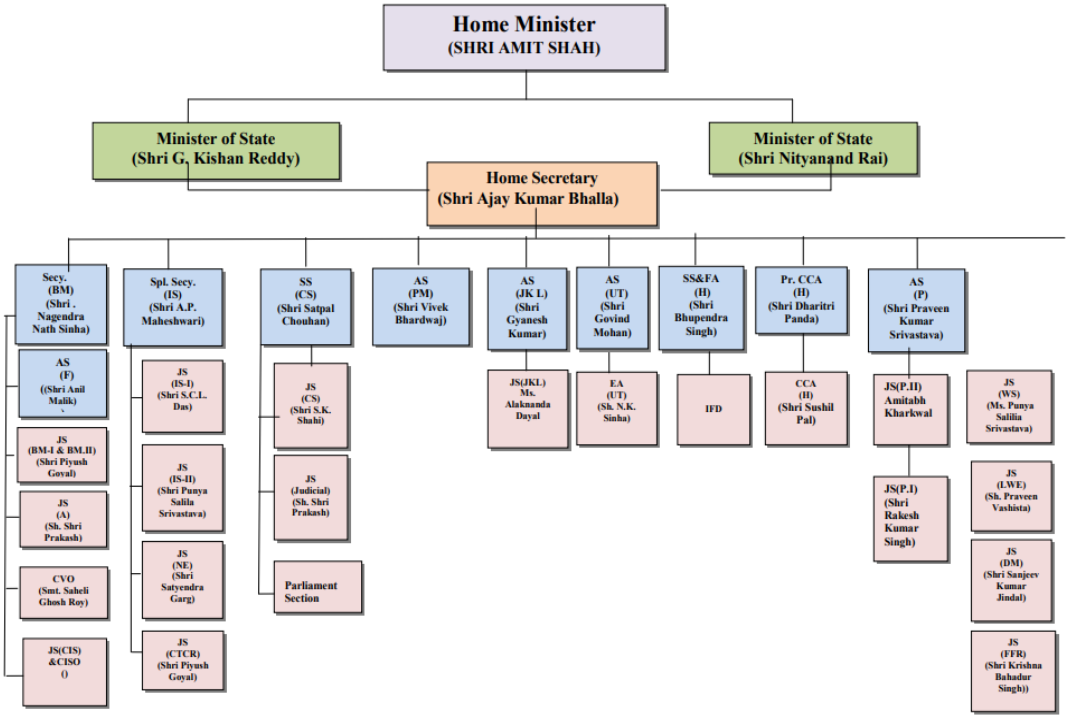
Under the Government of India (Allocation of Business) Rules, 1961, the Ministry of Home Affairs has the following constituent Departments:

a. **Department of Internal Security**, dealing with the Indian Police Service, Central Police Forces, internal security and law & order, insurgency, terrorism, naxalism, activities of inimical foreign agencies, rehabilitation, grant of visa and other immigration matters, security clearances, etc.;
b. **Department of States,** dealing with Centre-State relations, Inter-State relations, administration of Union Territories, Freedom Fighters' pension, Human rights, Prison Reforms, Police Reforms, etc.;

Student Notes:

c. **Department of Home,** dealing with the notification of assumption of office by the President and Vice-President, notification of appointment/resignation of the Prime Minister, Ministers, Governors, nomination to Rajya Sabha/Lok Sabha, Census of population, registration of births and deaths, etc.;
d. **Department of Jammu and Kashmir (J&K) Affairs,** dealing with the constitutional provisions in respect of the State of Jammu and Kashmir and all other matters relating to the State, excluding those with which the Ministry of External Affairs is concerned;
e. **Department of Border Management,** dealing with management of international borders, including coastal borders, strengthening of border guarding and creation of related infrastructure, border areas development, etc.; and
f. **Department of Official Language,** dealing with the implementation of the provisions of the Constitution relating to official languages and the provisions of the Official Languages Act, 1963.

ORGANIZATIONAL CHART OF MINISTRY OF HOME AFFAIRS (AS ON 13.11.2019)



5. Empowered Group of Ministers

Empowered Group of Ministers (EGoM) is a Group of Ministers (GoM) of the Union Government who, after being appointed by the Cabinet, a Cabinet Committee or the Prime Minister for investigating and reporting on such matters as may be specified, are also authorized (empowered) by the appointing authority to take decisions in such matters after investigation.

It is distinct from a Group of Ministers (GoM) in the sense that a GoM only investigates and reports to the Cabinet, which takes the decision. On the other hand, an EGoM additionally takes decisions on matters it is authorised for, and such decisions have the force of the Government decision.

5.1. Appointment of EGoM

Both EGoM as well as the GoM get appointed under the Government of India's Transaction of Business Rules 1961, which provides that 'Ad hoc Committees of Ministers including Group of

Ministers may be appointed by the Cabinet, the Standing Committees of the Cabinet or by the Prime Minister for investigating and reporting to the Cabinet on such matters as may be specified, and, if so authorised by the Cabinet, Standing Committees of the Cabinet or the Prime Minister, for taking decisions on such matters.'

Rule 6(6) of the Government of India's Transaction of Business Rules 1961 additionally provides that 'any decision taken by a Standing or Ad hoc Committee may be reviewed by the Cabinet'. Therefore decisions in a matter taken by EGoM remain subject to review by the Cabinet at the latter's discretion.

5.2. Latest Status of GoM / EGoM

As part of empowering the Ministries and Departments, the Prime Minister on 31 May 2014 decided to abolish all the existing nine Empowered Group of Ministers (EGoMs) and twenty-one Groups of Ministers (GoMs). The rationale behind this move is to expedite the process of decision making and bring in greater accountability in the system.

The issues pending before the EGoMs and GoMs will be processed by respective Ministries /Departments to take appropriate decisions at the level of Ministries and Departments itself. Wherever the Ministries face any difficulties, the Cabinet Secretariat and the Prime Minister's Office will facilitate the decision making process.

6. Alternative Mechanisms

'Alternative Mechanisms' are instruments usually appointed by the Cabinet, a Cabinet Committee or the Prime Minister for deliberating over or investigating and reporting on such matters as may be specified by the appointing authority. For instance in 2017, the government set up an alternative mechanism to fast-track consolidation among public sector banks to create strong lenders. Similarly, there are alternative mechanisms to oversee mergers of state-owned banks, planned privatisation in state-owned companies, minority stake sales etc.

6.1. Similarity with EGoMs

Usually, it is a group of ministers empowered with taking certain decisions on the behalf of the Cabinet, on such matters as have been assigned to them by the appointing authority. The decisions taken by such 'Alternative Mechanisms' have the force of a government decision. Prior to the practice of establishing 'Alternative Mechanisms', the government appointed Empowered Group of Ministers and Group of Ministers under the Government of India's Transaction of Business Rules 1961.

6.2. Rationale behind setting up Alternative Mechanisms

The rationale behind setting up 'Alternative Mechanims' include:

1. Improved Coordination: To bring synergies and ensure timely clearances on matters of critical importance from different departments and Ministries.
2. Faster Decision Making: This would expedite the process of decision making specially for strategic issues, since prior to this each ministry had to approach the cabinet at each stagefor clearances.
3. Reduced workload: To take away some of the workload from the Union Cabinet, and select cabinet committees.
4. Due Diligence: By following due diligence at each step and necessary safeguards are in place to ensure that probing agencies do not interrupt the process later.
5. Lower Litigation: To reduce litigation and pendency of cases with the judiciary, by following due process at each step.
6. Stable Policy Environment: Due diligence, smooth decision making processes and reduced rates of litigation would ensure policy stability & consistency benefitting the overall investment environment in the country.

Student Notes:

Accelerated and effective decision-making is a critical element for the government to address key priorities quickly and effectively. This makes 'alternative mechanisms' imperative since these enhance existing decision frameworks and associated governance structures. However, the composition of these alternative mechanisms and their number must be conducive to the end objectives.

Student Notes:

7. Strengths and Weaknesses of the Existing Structure

The existing structure of the Government of India has evolved over a long period. It has certain inherent strengths, which have helped it stand the test of time.

However, there are weaknesses also which render the system slow, cumbersome and unresponsive.

7.1. Strengths

a. **Time Tested System:** adherence to rules and established norms: The Government of India has evolved an elaborate structure, rules and procedures for carrying out its functions which have contributed to nation building and the creation of an inclusive state. These have ensured stability both during crises as well as normal times. It has also experimented with several innovative structures in form of empowered commissions, statutory boards, autonomous societies and institutions, especially in the fields related to research, science and technology.
b. **Stability:** The structure of Government staffed by the permanent civil servants has provided continuity and stability during the transfer of power from one elected government to the other. This has contributed to the maturing of our democracy.
c. **Commitment to the Constitution – political neutrality:** The well laid down rules and procedures of government have upheld the neutrality of the civil services and prevented politicisation of government programmes and services. This has helped in the evolution of institutions based on the principles enshrined in the constitution.
d. **Link between policy making and its implementation:** The framework of the Government of India has facilitated a staffing pattern which promotes a link between policy making and implementation. This has also helped the structure of both the Government of India and the states and promoted the concept of cooperative federalism.
e. A national outlook amongst the public functionaries: Public servants working in Government of India as well as its attached and subordinate offices have developed a national outlook transcending parochial boundaries. This has contributed to strengthening national integration.

7.2. Weaknesses

a. **Undue emphasis on routine functions:** The Ministries are burdened by the large volumes of routine work and are thus unable to focus on policy analysis and policy making. This leads to national priorities not receiving due attention. There is an excessive tendency of centralization even in case of routine jobs, which can easily be outsourced or delegated to other levels of Government.
b. **Proliferation of Ministries/Departments:** weak integration and coordination: The creation of a large number of Ministries and Departments sometimes due to the compulsion of coalition politics has led to illogical division of work and lack of an integrated approach and silo mentality even on closely related subjects.
c. **An extended hierarchy with too many levels:** Government of India has an extended vertical structure which leads to examination of issues at many levels frequently causing delays in decision making on the one hand and lack of accountability on the other.
d. **Risk avoidance:** A fall-out of a multi-layered structure has been the tendency towards reverse delegation and avoidance of risk in decision making. This structure puts an

increased emphasis on consultations through movement of files as a substitute for taking decisions. This leads to multiplication of work, delays and inefficiency.

e. **Absence of team work:** The present rigid hierarchal structure effectively rules out team work so necessary in the present context where an inter-disciplinary approach often is the need of the hour to respond effectively to emerging challenges.

f. **Fragmentation of functions:** At the operational level also, there has been a general trend to divide and subdivide functions making delivery of services inefficient and time-consuming.

g. Except in the case of a few committees and boards, there has been considerable weakening of the autonomy conceived at the time of their formation.

8. Recommendations at Various Levels of Government Machinery

8.1. Core Principles of Reforming the Structure of Government

The Second Administrative Reforms Commission enunciates following principles, which must act central to the idea of reforms in the structure of the Government:

a) The union Government should primarily focus on the following core areas:

- **i.** Defence, International Relations, National security, Justice and rule of law
- **ii.** Human development through access to good quality education and healthcare to every citizen
- **iii.** Infrastructure and sustainable natural resource development
- **iv.** Social security and social justice
- **v.** Macro-economic management and national economic planning
- **vi.** National policies in respect of other sectors
    a. The principle of subsidiarity should be followed to decentralize functions to state and local Governments.

b) **Subjects which are closely inter-related should be dealt with together:** While restructuring Government into Ministries and Departments, a golden mean between the need for functional specialization and the adoption of an integrated approach should be adopted. This would involve an in-depth analysis of all the government functions followed by their grouping into certain key categories to be linked to a Ministry.

c) **Separation of policy-making functions from execution:** The Ministries should give greater emphasis to the policy-making functions while delegating the implementation functions to the operational units or independent organizations/agencies. This is all the more necessary because policy-making today is a specialized function, which requires a broader perspective, conceptual understanding of the domain and proper appreciation of the external environment. Implementation of the policies, on the other hand require in-depth knowledge of the subject and managerial skills.

d) **Coordinated implementation:** Coordination is essential in implementation as in policy making. The proliferation of vertical departments makes this an impossible task except in cases where empowered commissions, statutory bodies and autonomous societies have been created. There is considerable scope for more of such inter-disciplinary bodies in important sectors.

e) **Flatter structures:** reducing the number of levels and encouraging team work: The structure of an organization including those in government should be tailor-made to suit the specific objectives it is supposed to achieve. The conventional approach in the Government of India has been to adopt uniform vertical hierarchies (as prescribed in the Manual for Office Procedure). There is a need to shift to flatter organizations with greater emphasis on teamwork.

f) **Well defined accountability:** The present multi-layered organizational structure with fragmented decision-making leads to a culture of alibis for non-performance. The tendency to have large number of on-file consultations, often unnecessary, lead to diffused

accountability. A clearer demarcation of organizational responsibilities would also help in developing a performance management system for individual functionaries.

g) **Appropriate delegation:** Lack of delegation leads to delays, inefficiency and demoralization of the subordinate staff. The principle of subsidiarity should be followed to locate authority closer to the citizens.

h) **Criticality of operational units:** Government organizations have tended to become top-heavy coupled with fragmentation and lack of authority, manpower and resources at the operational levels that have a direct bearing on citizens' lives. Rationalization of Government staff pattern is necessary, commensurate with the requirements of the citizens.

Student Notes:

9. Prelims Questions

2016

1. Consider the following statements:
1. The Chief Secretary in a State is appointed by the Governor of that State.
2. The Chief Secretary in a State has a fixed tenure.

Which of the statements given above is/are correct?
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2

Ans: (a)

2015

2. The Fair and Remunerative Price of Sugarcane is approved by the
(a) Cabinet Committee on Economic Affairs
(b) Commission for Agricultural Costs and Prices
(c) Directorate of Marketing and Inspection, Ministry of Agriculture
(d) Agricultural Produce Marketing Committee

Ans: (a)

3. Which of the following brings out the 'Consumer Price Index Number for the Industrial Workers'?
(a) The Reserve Bank of India
(b) The Department of Economic Affairs
(c) The Labour Bureau
(d) The department of Personnel and Training

Ans: (c)

2014

4. Which of the following is / are the function/functions of the Cabinet Secretariat?
1. Preparation of agenda for Cabinet Meetings
2. Secretarial assistance to Cabinet Committees
3. Allocation of financial resources to the Ministries

Select the correct answer using the code given below.
(a) 1 only
(b) 2 and 3 only
(c) 1 and 2 only
(d) 1, 2 and 3

Ans: (c)

Student Notes:

2008

5. Department of Border Management is a Department of which one of the following Union Ministries?

(a) Ministry of Defence
(b) Ministry of home Affairs
(c) Ministry of Shipping, Road Transport and Highways
(d) Ministry of Environment and Forests

Ans: (b)

The Ministry of Home Affairs consists of the following departments:

- Department of Internal Security
- Department of States
- Department of Official Language
- Department of Home
- Department of Jammu and Kashmir Affairs
- Department of Border Management

2005

6. Under which one of the Ministries of the Government of India does the Food and Nutrition Board Work?

(a) Ministry of Agriculture
(b) Ministry of Health and Family Welfare
(c) Ministry of Human Resource Development
(d) Ministry of Rural Development

Ans: (c)

Under the Ministry of Human Resource Development does the Food and Nutrition Board Work.

2004

7. Which of the following pairs is correctly matched?

Departments Ministry of the Government of India

1. Department of Child Development : Ministry of Health and Family Welfare
2. Department of Official Language : Ministry of Human Resource Development
3. Department of Drinking Water Supply : Ministry of Water Resources

Select the correct answer using the codes given below:

(a) 1
(b) 2
(c) 3
(d) None

Ans: (d)

Department of Child Development: Ministry of Social Justice and Empowerment.

Department of Official Language: Ministry of Home.

Department of Drinking Water Supply: Ministry of Rural Development.

2002

8. The Consultative Committee of Members of Parliament for Railway Zones is constituted by the

(a) President of India
(b) Ministry of Railways
(c) Ministry of Parliamentary Affairs
(d) Ministry of Transport

Ans: (c)

The Ministry of Parliamentary Affairs constitutes Consultative Committees of M.P.s attached to various ministries and arranges meetings thereof.

Student Notes:

10. Previous Year Vision IAS GS Mains Questions

1. The Cabinet Secretariat has to play a creative, functional, informative and coordinative role in the Cabinet's functioning. Elaborate.

Approach:

Answer should not just list the functions of cabinet secretariat but also correlate them with the keywords (creative, functional, etc) mentioned in the statement.

Answer:

- Cabinet Secretariat is a very important institution in the structure of central administration. It is responsible for secretarial assistance to the cabinet, its committees and ad hoc Group of Ministers, and for maintenance of record of their decisions and proceedings. Prime Minister is the political head while Cabinet Secretary is the administrative head of the Cabinet Secretariat.
- Cabinet Secretariat functions are creative in the sense that it it prepares agenda for the cabinet meetings. Its primary responsibility is to provide such information and material as necessary for deliberations of the cabinet, Cabinet Committees, Group of Ministers and Committee of Secretaries.
- Cabinet Secretariat has to facilitate smooth transaction of business in ministries/departments by ensuring adherence to 'transaction of business' and 'allocation of business' rules. Its role is functional as it has to monitor the implementation of the decisions of the Cabinet.
- An important function of the Cabinet Secretariat is to ensure that the President, the Vice-President and Ministers are kept informed of the major activities of all ministries and departments by means of monthly summary of their activities. So it plays a major informative role in the functioning of the central government.
- Cabinet Secretariat also assists in the decision-making of the government by ensuring inter-ministerial co-ordination. It helps in ironing out differences among ministries and evolving consensus through the standing/ad hoc committees of secretaries. So it plays a major coordinative role as well.
- By preparing the agenda for cabinet meetings, taking minutes, circulating decisions and following them up to see that action has been taken, the Cabinet Secretariat is playing a very important role.

2. "A periodic cleaning-up of the statute books helps prevent conflicts and ambiguities creeping into the legal system." Discuss the statement in light of the initiative taken by the government to repeal old laws.

Approach:

Question needs to be answered in three different parts. Start with the advantages of the unambiguous and efficient legal system. Throw light on the present Indian system and its consequences. Explain the initiatives by entities like Law commission along with detailed discussion on the sectors listed for repealing the laws. Conclude with the recent government efforts in this regard.

Answer:

Rule of law is the defining principle of a well-functioning modern democratic polity. The essence of good governance is upgrade the statute books as per demands of market, state and society; for rule of law to operate, statute books must be free from ambiguities, repetitions and redundancies. In India cumbersome statute books are often misused and result in pernicious rent seeking legal system.

Student Notes:

- Sensing the need to revamp the legal system, government announced its intentions to repeal obsolete laws. It observed that these laws should be repealed on account of three reasons—they are redundant having outlived their purpose, have been superseded by more current laws, or pose a material impediment to growth, development, governance and freedom.
- Subsequent to government announcement, the 20th law commission initiated project titled the **Legal Enactments Simplification and Streamlining (LESS)** aimed at preparing various reports on the laws, rules, regulations which need to be repealed or amended.

Law commission observed that-

- There are over 300 **colonial-era enactments** in force in India. Many of these are redundant, not implemented, and sometimes even misused. The subject matter of these Acts is now governed by laws enacted post-Independence, which are much more in tune with contemporary realities.
- Many British era levies are now replaced by new taxes this often leads to double taxation without any substantial increase in revenue. E.g. the Ganges Tolls Act, 1867.
- Currently, there are 44 **labour related statutes** enacted by the central government dealing with wages, social security, welfare, occupational safety and health, and industrial relations. The obvious cost of India's labour laws is corruption, since, 'it is impossible to comply with 100% of the laws without violating 10% of them.
- There are laws dealing with speech and expression like sedition law. These laws define offences in widely worded terms, perpetrate confusion and ambiguity, and often used as a tool of harassment. They are left to the arbitrary interpretation of public authorities, and are often misused.

Government taking serious note of the issues raised by the 20th Law commission has introduced a bill in parliament to repeal 36 laws. It is planning to repeal 287 different laws related with labour market and the financial system. However, government needs to be cautious in its approach. It should not be done like outright downsizing of laws but rightsizing giving due consideration to needs of effective legal framework.

3. Proliferation of Ministries and Departments in the government not only leads to weak coordination and integration but also fragmentation of functions. Comment in the context of India.

Approach:

- Start with reason of proliferation of ministries and departments in India, advantage and disadvantage of proliferation
- Explain the proliferation with example and address both the aspects of argument
- Conclude answer by suggesting solution

Answer:

There has been proliferation of the Ministries and Departments in Government to achieve welfare objectives of the Constitution. It has the advantage of specialization, focus and resource channelization but it also has the disadvantages of lack of coordination and inability to adopt an integrated approach to national priorities and problems.

For example, different aspects of transport are dealt by different Ministries. Ministry of Civil Aviation deals with civil aviation; while Ministry of Railways with rail transport; Ministry of Shipping, Road Transport and Highways deals with maritime shipping,

highways and motor vehicles and the Ministry of Urban Development deals with urban transport systems. Thus, it has been fragmented into multiple disciplines making the necessary integrated national approach to this important sector difficult. For example, the proposed scheme of integrated travelling card across different modes of transport is still in infancy.

Similarly initiatives like 'Housing for All' often require approvals from Ministries of Defence, Environment and Forests & Climate Change, Civil Aviation etc. Streamlining approvals for construction projects in urban areas is being pushed so as to enable time bound and hassle free clearances for projects.

From the above examples it is clear that there is a need to strike a balance between requirements of functional specialization and need for a holistic approach. In order to evolve an integrated approach, it would be desirable to categorize the functions of Government into a reasonable number of groups. In India, Departmental Standing Committees of Parliament is a good example of integration of inter-connected subject matters. **Privatization and disinvestments** of loss making public sector enterprises is also useful in restricting the number of ministries and departments in post liberation period. This will enable government of the day to streamline ministries and departments and retaining only those which have direct relevance for core governance functions.

But the size of the Council of Ministers reflects the needs of representative democracy for a large and diverse country like India. It would also be unrealistic to expect curtailment in the size of the Council of Ministers in a multiparty democracy.

Instead, a more pragmatic approach would be to retain the existing size of the Council of Ministers but increase the level of coordination by providing for a senior Cabinet Minister to head each of the 20-25 closely related Departments. And Individual departments could be headed by the Minister of State. For this arrangement to work, adequate delegation and division of work among the concerned Ministers would have to be worked out.

The office of cabinet secretary should be used with greater efficiency. The committee of secretaries is a good platform providing ample scope to bring inter-ministerial coordination.

It would lead to enhanced coordination and adequate Ministerial representation in a large and diverse country, without causing a proliferation. The era of coalition politics, which at times necessitated ministerial proliferation to please allies is behind us at least for some time now and this is the opportune moment to kick in this reform.

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PRESSURE GROUPS

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PRESSURE GROUPS

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Student Notes:

1. What is a Pressure Group?

A pressure group is an organized group of people that aims to influence public opinion or policies/actions of government. It includes *churches and charities, businesses and trade associations, trade unions and professional associations, think tanks of various complexions etc*.

Purpose of a Pressure Group

Although some pressure groups were set up for the specific purpose of influencing government, many pressure groups exist for other purposes and only engage in politics as a secondary or associated activity. As pressure groups exert influence on government from outside, they do not therefore put candidates up for election. In that sense, they are part of **civil society**. These groups use various **methods** to achieve their aims including lobbying, research campaigns, media campaigns, policy briefs and polls.

Pressure groups can therefore act as a channel of communication between the people and government.

Pressure groups are defined by the following key **features**:

- **External to the Govt**.: Pressure groups do not make policy decisions, but rather try to influence those who do (the policy-makers). In that sense, they are 'external' to government.
- **Narrow Domain**: They typically have a narrow issue focus. In some cases, they may focus on a single issue (for instance opposing a planned road development).
- **Shared beliefs or interests**: Their members are united by either a shared belief in a particular cause or a common set of interests. People with different ideological and party preferences may thus work happily together as members of the same pressure group.
- **Protection of interests**: Each pressure group organises itself keeping in view certain interests and thus tries to adopt the structure of power in the political systems. In every government and political party there are clashing interest groups. These groups try to dominate the political structure and to see that groups whose interests clash with theirs are suppressed.
- **Use of modern as well as traditional means**: They try to follow modern means of exerting pressure, without fully giving up the traditional or old ways of operation. They adopt techniques like financing of political parties, sponsoring their close candidates at the time of elections and maintaining relations with the bureaucracy. Their traditional means include exploitation of caste, creed and religious feelings to promote their interests.

2. Types of Pressure Groups

There are various ways to classify pressure groups on the basis of their structure and organization such as-

i. **Interest Groups and Cause Groups**
ii. **Insider and outsider groups**

i. Interest and Cause Groups

The interest/cause classification is based on the purpose of the group in question. It therefore reflects the nature of the group's goals, the kind of people who belong to it, and their motivation for joining.

Interest groups (sometimes called 'sectional', 'protective' or 'functional' groups) are groups that represent a particular section of society: workers, employers, consumers, an ethnic or religious group, and so on.

Student Notes:

Interest groups have the following features:

- They are concerned to protect or advance the interests of their members.
- Membership is limited to people in a particular occupation, career or economic position.
- Members are motivated by material self-interest.

Trade unions, business corporations, trade associations and professional bodies are the prime examples of this type of group. They are called **'sectional' groups** because they represent a particular section of the population. Some of the examples of interest groups are FICCI, CII, AITUC etc.

While sometimes, the terms interest groups and pressure groups are used interchangeably, there are following differences between the two:

Interest groups can be classified into four categories-

i) **Institutional Interest Groups**: These groups are formally organised which consist of professionally employed persons. They are a part of government machinery and try to exert their influence. But they do have much autonomy. These groups include political parties, legislatures, armies, bureaucracies, churches etc. An **example** of institutional group can be the West Bengal Civil Services Association. Whenever such an association raises protest it does so by constitutional means and in accordance with the rules and regulations.

ii) **Associational Interest Groups:** These are organised specialised groups formed for interest articulation, but to pursue limited goals. These include trade unions, organisations of businessmen and industrialists and civic groups. Some **examples** of Associational Interest Groups in India are Bengal Chamber of Commerce and Industry, Indian Chambers of Commerce, Trade Unions such as AITUC (All India Trade Union Congress), Teachers Associations, Students Associations such as National Students Union of India (NSUI) etc.

iii) **Anomic Interest Groups:** These are the groups that have analogy with individual self-representation. In such type of groups, perpetual infiltrations such as riots, demonstrations are observed. These groups are found in the shape of movement demonstrations and processions, signature campaigns, street corner meetings, etc. Their activities may either be constitutional or unconstitutional.

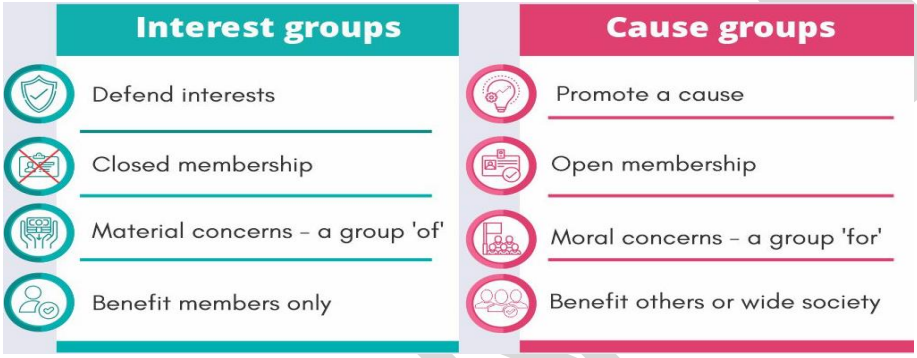
iv) **Non-Associational Interest Groups:** These are the kinship and lineage groups and ethnic, regional, status and class groups that articulate interests on the basis of individuals, family and religious heads. These groups have informal structure. These include caste groups, language groups, etc.

Cause groups (sometimes called 'promotional', 'attitude' or 'issue' groups) are groups that are based on shared attitudes or values, rather than the common interests of its members. The causes they seek to advance are many and various. They range from charity activities, poverty reduction, education and the environment, to human rights, transparency in governance etc.

Cause groups have the following features:

- They seek to advance particular ideals or principles.
- Membership is open to all.
- Members are motivated by moral or altruistic concerns (the betterment of others).

Mazdoor Kisan Shakti Sangathan (MKSS) can be cited as a prime example of a cause group as it seeks to promote transparency in governance, for example, by creating pressure for the introduction of right to information to citizens. Other examples could be PETA, India against Corruption etc.



ii. Insiders and Outsiders

The insider/outsider distinction is based on a group's relationship to government. It therefore affects both the strategies adopted by a group and its status i.e. whether or not it is considered 'legitimate' or 'established'.

Insider groups are groups that are consulted on a regular basis by government. They operate 'inside' the decision-making process. They may also sit on government policy committees and agencies and have links to parliamentary select committees. Therefore, the insider pressure groups have a better chance of creating an impact on how the policy shapes up, as they are consulted at various stages of policy formulation. Some of the examples of insider groups are **National Advisory Council, CII** etc.

Outsider groups, on the other hand, are the ones that are not so closely involved with the decision makers and who find it harder to get their voices heard in the higher echelons of policy making. They are kept, or choose to remain, at arm's length from government. They therefore try to exert influence indirectly via the *mass media* or through *public opinion campaigns*. One of the examples of an outsider group is the **Association for Democratic Reforms (ADR)** which has been pushing for reforms in the way representatives are elected by the citizens of India.

But at times many groups employ both insider and outsider tactics. This certainly applies in the

case of high-profile insider groups, which recognize that the ability to mount public-opinion and media campaigns strengthens their hands when it comes to bargaining with government.

Student Notes:

3. Roles/Functions of Pressure Groups

Pressure groups carry out a range of functions including:

Representation

Pressure groups provide a mouthpiece for groups and interests that are not adequately represented through the electoral process or by political parties. This occurs, in part, because groups are concerned with the specific rather than the general. In other words, while the political parties attempt to broaden their appeal in order to attract all voters, the pressure groups articulate the views or interests of particular groups and focus on specific causes. It has even been argued that pressure groups provide an alternative to the formal representative process through what has been called **functional representation**.

However, questions have also been raised about the capacity of pressure groups to carry out representation:

- Pressure groups have a low level of internal democracy, creating the possibility that they express the views of their leaders and not their members.
- The influence of pressure groups on government does not always reflect their membership size or their popular support.

Political Participation

Pressure groups have become an increasingly important agent of political participation. In UK, 40–50 per cent citizens belong to at least one voluntary association, and a large minority (20 per cent) belong to two or more. Moreover, a range of pressure groups, mainly outsider groups, seek to exert influence precisely by mobilizing popular support through activities such as *petitions, marches, demonstrations* and other forms of political protest. Such forms of political participation have been particularly attractive to young people.

Education

Much of what the public knows about politics is through pressure groups of one kind or another. Many pressure groups operate largely through their ability to communicate with the public and raise political consciousness. Groups, therefore, often devote significant resources to carry out research, maintaining websites, commenting on government policy and using high-profile academics, scientists and even celebrities to get their views across. An emphasis is therefore placed on cultivating **expert authority**.

Policy Formulation

Although pressure groups, by definition, are not policy-makers, this does not prevent them from participating in the policy-making process. The pressure groups are a vital source of information and advice to the governments. Many groups are therefore regularly consulted in the process of policy formulation, with government policy increasingly being developed through **policy networks**. An example of such group is **Observer Research Foundation (ORF)**, which works on policy issues primarily related to foreign affairs.

Policy Implementation

The role of some pressure groups extends beyond trying to shape the content of public policy to playing a role in putting the policy into practice. Not only do such links further blur the distinction between groups and government, but they also give the groups in question clear leverage when it comes to influencing the content of policy.

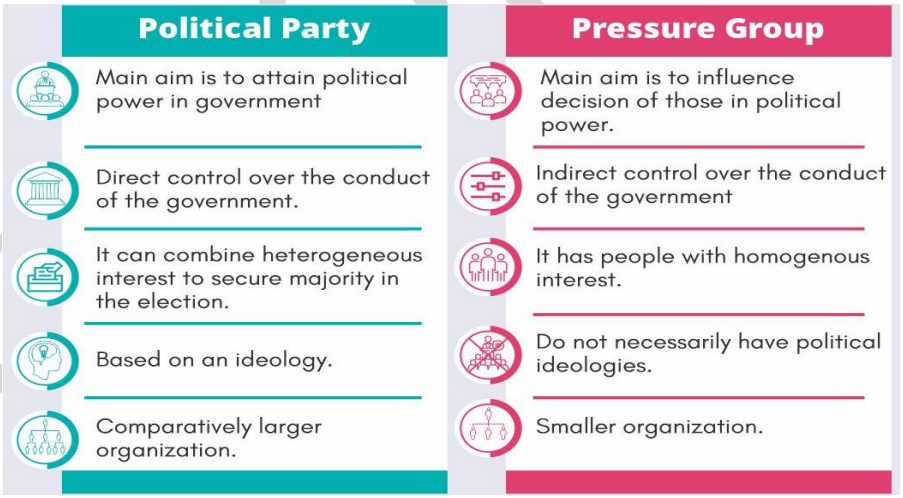
However, questions have also been raised about the role of groups in implementing policy. Some have criticized such groups for being very close to government and thereby endangering their independence. Others have argued that policy implementation gives groups unfair political leverage in influencing policy decisions.

4. Pressure Groups and Political Parties

Pressure groups and political parties greatly resemble each other. Both of them are channels through which public can communicate with the government. Prima facie, both of them carry out representation, facilitate political participation and contribute to the policy process. However, in reality, groups and parties are very different from each other.

Conventionally, political parties are the bodies which are regarded as providing the way through which people's interests are represented in the political system. They also function as a means of political communication, since individuals can express their own views to politicians by becoming members of political parties and can represent their party's viewpoint to others in the community.

On the other hand, pressure groups can be seen as providing an additional form of representation within the political system and an additional channel of political communication. Some of the differences between Political parties and the pressure groups have been mentioned below:



There are several reasons why political parties are often confused with the pressure groups such as-

- Many small political parties resemble pressure groups in that sometimes they may have a **narrow issue focus**. For example, the British National Party (BNP) is primarily concerned with issues of race and immigration. The Green Party, despite developing wide-ranging manifestos, places greatest emphasis on environmental issues such as pollution, economic sustainability and climate change.
- Some pressure groups **use elections as a tactical weapon**. Any group that puts candidates up for election is technically a party, not a pressure group. But some pressure groups use

elections as a means of gaining publicity and attracting media attention, with little or no expectation of winning the election.

The **relationship between the pressure groups and political parties** is an interesting one. A pressure group with a close relationship to a political party may work to its advantage. But this can be harmful at times, especially when the opposing party comes to power, as the pressure group's influence on policy formulation is bound to decrease. National Students Union of India (NSUI) provides future leadership to the Congress while the Akhil Bharatiya Vidyarthi Parishad (ABVP) does so for the Bharatiya Janata Party. While some pressure groups are linked to particular political parties, there are many which have no linkages to any political party.

5. How Pressure Groups Exert Influence?

The choice of targets and methods used by the pressure groups depends on two factors.

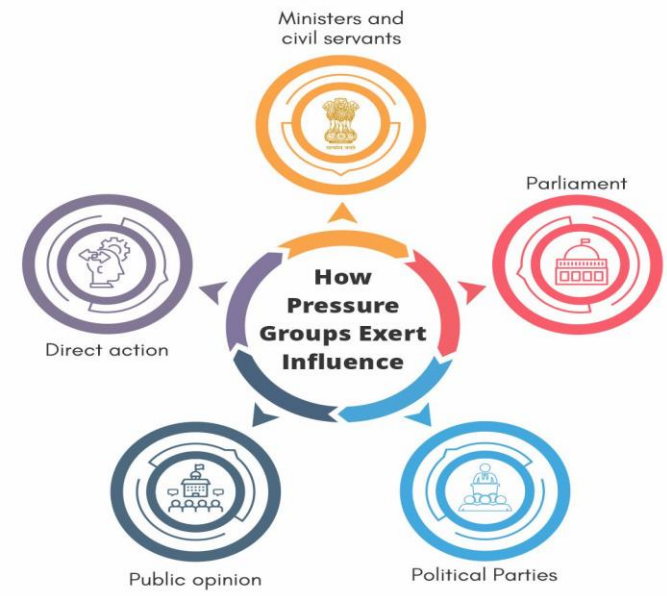
First, how *effective* is a particular strategy likely to be?

Second, given the group's aims and resources, which strategies are *available*?

Pressure groups can exert influence through a variety of ways, such as:

Ministers and Civil Servants

Ministers and civil servants work at the heart of the 'core executive', the network of bodies headed by the Prime Minister and Cabinet, which develop the government policy. This is where power lies. Many groups therefore aspire to get in touch with senior civil servants and ministers to get some sort of influence over the policies while they are being implemented.



Although such influence may involve formal and informal meetings with ministers, routine behind-the scenes meetings with civil servants and membership of policy committees may be the most important way of exerting influence.

Parliament

Groups that cannot gain access to the executive may look to exert influence through Parliament. In some cases, groups may use parliamentary lobbying to supplement contacts with ministers and civil servants. Although less can be achieved by influencing Parliament than by influencing the executive, changes can nevertheless be made to the details of legislation or the profile of a political issue. This can happen through influence on, for instance, private members' bills, parliamentary questions (written and oral) and select committee enquiries.

Political Parties

The most obvious way in which groups influence parties is through funding and donations. Influencing party policy can lead to influence on government policy.

Public Opinion

These strategies are adopted by outsider groups, although high-profile insider groups may also engage in public-opinion campaigning. The purpose of such strategies is to influence

government *indirectly* by pushing issues up the political agenda and demonstrating both the strength of commitment and the level of public support for a particular cause. The hope is that government will pay attention for fear of suffering electoral consequences. **Association for Democratic Reforms** has helped in shaping public opinion to some extent by putting up details of political representatives of various political parties from each constituency on www.myneta.info.

Direct Action

Direct action as a political strategy overlaps with some forms of public-opinion campaigning. However, whereas most political protests take place within the constitutional and legal framework based on established rights of freedom of speech, assembly and movement, direct action aims to cause disruption or inconvenience. **Strikes, blockades, boycotts and sit-ins** are all examples of direct action. Direct action may be violent or non-violent. A non-violent example of direct action is the protests organized at Ramleela Maidan by **India Against Corruption (IAC)**.

Techniques used by Pressure Groups

Overall, the pressure groups resort to broadly three different **techniques** in securing their purposes.

- **Electioneering**: Placing in public office persons who are favorably disposed towards the interests the concerned pressure group seeks to promote.
- **Lobbying**: Persuading public officers, whether they are initially favorably disposed towards them or not, to adopt and enforce the policies that they think will prove most beneficial to their interests.
- **Propagandizing**: Influencing public opinion and thereby gaining an indirect influence over government, since the government in a democracy is substantially affected by public opinion.

6. Pressure Groups and Lobbying

People often confuse pressure groups with lobbying but both of them are not one and the same thing. Lobbying takes place when a few members of the pressure groups loiter in the lobbies of legislatures/public offices with a view to securing an opportunity to interact with them and to influence their decision. Lobbyists are representatives of particular interest groups. Lobbying is a communication process used for persuasion, it cannot be treated as an organization. Lobbying is different from pressure groups in a sense that pressure groups are organized groups and lobbying is just one of the functions performed by them.

Global Experience with Lobbying

Many countries see lobbying as an integral part of democratic functioning that allows individuals and groups to legitimately influence decisions that affect them. No country in the world, including India, has banned lobbying. In fact, a few countries even regulate the activity, prominent among these are USA, Canada, Australia, Germany and Taiwan. These countries treat lobbying as a legitimate right of citizens.

Regulations serve as a tool to enhance transparency in the policymaking process rather than restricting access to policymakers. In fact, that is one of the key reasons why the UK regulates the lobbied rather than lobbying. The effectiveness of the law largely depends on how it defines lobbying and lobbyists. In USA, lobbying is regulated under the Lobbying Disclosure Act, 1995. This Act requires lobbyists to register and report lobbying fees above a certain amount. It also requires companies to report all the lobbying expenditure along with the list of issues, lobbyists involved and the public officials and offices contacted.

Lobbying in India

Student Notes:

In India, where there is no law regulating the process, lobbying had traditionally been a tool for industry bodies and other pressure groups to engage with the government ahead of the national budget. For decades, organisations such as the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Confederation of Indian Industry (CII), among others, have worked hard on behalf of their members to influence key ministries and policies. In recent years, the need for this continuous engagement has increased and so has the sophistication.

Why Lobbying is equated with corruption in India?

Lobbying is arguably one of the most controversial activities in modern democracies. Lobbyists provide governments with valuable policy-related information and expertise but if the activity is not transparent, *public interest may be put at risk in favour of specific interests*. It is easy to equate lobbying, which is an attempt to influence policy through legal and ethical means, with corruption in India because a large chunk of the population believes that almost every dealing with the government requires bribes to be paid to officials. Lobbying is a dirty word in India, one reason being that lobbying activities were repeatedly identified in the context of corruption cases. *For example*, in 2010 , leaked audio transcripts of conversations of an influential Indian lobbyist, Nira Radia, revealed suspicious dealings between the government and several business groups , reinforcing public perceptions about lobbying.

In reality, lobbying is not corruption; at least not the western model that is increasingly gaining traction in India, as an open economy pulls in new rules of engagement from developed economies. Given that most foreign companies have to follow strict anti-corruption laws in their own countries, few are keen to come under the lens of their regulators, lose face and pay fines. The Indian government itself spends millions of dollars every year to influence the U.S. government and other interest groups there. *Few examples* include:

- Ranbaxy paid $90,000 to Patton Boggs to preserve access to affordable generics.
- Wipro, like many Indian software firms, lobbied in the U.S for favourable visa policies.
- Not only private companies but even Indian government has been paying a fee every year since 2005 to a US firm to lobby for the Indo-US civilian nuclear deal. As reported by the Daily Mail in November 2012, Washington-based Barbour Griffith & Rogers (BGR), hired by the Indian embassy, also used to seek media interviews for Prime Minister Manmohan Singh and get Congressional resolutions passed in his support ahead of a US visit.

While lobbying is not a new phenomenon in India, it is *largely unregulated*. There are no laws that defined the scope of lobbying, who could undertake it, or the extent of disclosure necessary. Companies are not mandated to disclose their activities and lobbyists are neither authorized nor encouraged to reveal the names of clients or public officials they have contacted. The distinction between lobbying and bribery still remains unclear.

A private member's Bill to regulate lobbying, *Disclosure of Lobbying Activities Bill, 2013*, was introduced in the Lok Sabha by Kalikesh Narayan Singh Deo, which defined the term as "an act of communication with and payment to a public servant with the aim of influencing" legislation or securing a government contract. The Bill required lobbyists to register with an authority and declare certain information.

It is not lobbying that is the problem, but the lack of transparency, lack of comprehensive regulations and lack of mechanisms to monitor the activities of the powerful that is at the root of the problem. Right to Information Act (RTI) is a good step in this direction. But until comprehensive levels of transparency are achieved, legalising lobbying would mean no good. Also, regulations need to evolve and be documented in an iterative manner before embarking upon such a move. India needs to determine a regulatory model that suits its socio-political needs. Furthermore, it should tread a fine line while drafting the disclosure requirements. Very high disclosure requirements could drive lobbyists underground while very low penalties may not act as sufficient deterrent for law-breakers.

Student Notes:

Controversy regarding Walmart Lobbying

In 2012, as part of a routine disclosure under U.S. law, Walmart revealed it had spent $25 million since 2008 on lobbying to "enhance market access for investment in India." This disclosure, which came weeks after the Indian government made a controversial decision to permit FDI in the country's multi-brand retail sector, created uproar in India. Groups protesting against FDI in multi-brand retail used Walmart's disclosure to advocate their case. The US retailer's lobbying had drawn sharp criticism from the opposition parties, forcing the Indian government to order an inquiry by a former Chief Justice of the Punjab and Haryana High Court Mukul Mudgal but the report of the panel remained inconclusive due to alleged non-cooperation by Walmart.

Views in favour of Lobbying

- Proponents of lobbying feel that it is inherent in any democracy to convince a policy maker of a particular position.
- Industry chambers such as FICCI and ASSOCHAM feel that business groups should be entitled to voice their concerns related to a particular policy matter with the government if they feel their interests may be jeopardised.
- It is argued that making lobbying and advocacy legal would lead to a clean way of approaching the policymakers and lawmakers if they have any legitimate and genuine interests.

Views against Lobbying

- Critics argue that corporates or people with mighty socioeconomic power, by themselves or through their industry bodies, corrupt the laws to serve a self-serving agenda by bending or deflecting them away from general fairness to majority of the population.
- It would also be against the right to equality guaranteed to citizens of the country, as businessmen with extensive money power can indulge in lobbying and get things done. While common man has to wait for hours or days to meet his MP/MLA. Thus, those with (financial) resources will win and those without cash will lose.

Difference between advocacy and lobbying

When non-profit organizations advocate on their own behalf, they seek to positively affect majority of the society, whereas lobbying refers specifically to advocacy efforts that attempt to influence policy or legislation of a country by interested groups, irrespective of its best outcome to the society.

7. Are Pressure Groups Becoming More Powerful?

Not all debates about pressure-group power focus on the power of individual groups. Others address the *overall* power of groups, and whether or not they have generally become more powerful. Commentators increasingly argue, for instance, that pressure groups have become more influential in recent years, perhaps even more influential than political parties.

The rise of pressure-group power

Those who argue that pressure groups have become more powerful usually draw attention to one of three developments:

1. **The growth of cause groups -** Looked at simply in terms of political participation, groups certainly appear to be becoming more important. This is best demonstrated by the growth of cause groups in particular. Some of the reasons cited for increase in the number of pressure groups are:

Student Notes:

i. **Increased leisure time**, both in terms of the shorter working week and more early retirement, has increased the number of people with time to devote to such activities
ii. **Higher educational standards** have increased the numbers of people with the organisational skills to contribute to pressure groups.
iii. **Changes in gender roles** have removed many of the barriers to participation by women in pressure group activity
iv. **Membership of political parties has declined**. It has been argued that this reflects the failure of the political parties adequately to reflect the needs of different groups of people in society, and that cause groups offer a more promising route for bringing about political change.

2. **The widening of access points through devolution –** A variety of pressure groups have benefited from the fact that new pressure points have emerged in politics, such as:
   I. Devolution has allowed pressure groups to exert influence through the local/grassroots level, especially after the **73rd/74th Constitutional Amendment Act**.
   II. The passage of the **Protection of Human Rights Act, 1993**, has substantially increased pressure-group activity focused on the courts. This has especially benefited groups that represent the interests of religious or ethnic minorities, and groups that have an interest in civil liberties issues (such as Liberty).
   III. Similarly, the **Right to Information Act, 2005** has also enabled more pressure groups to grow stronger and ask tough questions to those in power.
3. **Globalization** - Globalization has strengthened pressure groups in a number of ways. In particular, there is general agreement that business groups have become more powerful in a global age. This is because they are easily able to relocate production and investment, so exerting greater leverage on national governments. Such trends have strengthened pressures on governments, for instance, to cut business taxes and reduce corporate regulation.
   Another feature of globalization has been the emergence of NGOs, such as the World Development Movement and the World Social Forum, as major actors on the global stage. Some 2,400 NGOs, for example, took part in the Earth Summit in Rio de Janeiro in 1992.

The decline of pressure groups

However, not everyone believes that pressure groups have become more important. Some even talk in terms of the decline in pressure-group power in recent years. Such arguments are usually based on one of two developments:

1. **The end of corporatism**. For some, the high point of pressure-group influence came in the 1970s, especially in the case of developed countries. This was a period of so-called tripartite government or **corporatism**. Economic policy was therefore developed through a process of routine consultation and group bargaining. However, corporatism was dismantled in the 1980s and it has never been re-established.

> 'Corporatism' refers to the close relationship between the government and economic interest groups (trade unions and employers' organisations) in decision making on economic matters.

2. **A decline in meaningful and active participation**. An alternative explanation of the decline of pressure groups challenges the idea that recent years have witnessed an upsurge in group activity. This suggests that while group membership may have increased, these members have become increasingly passive.

8. Pressure Groups and Democracy

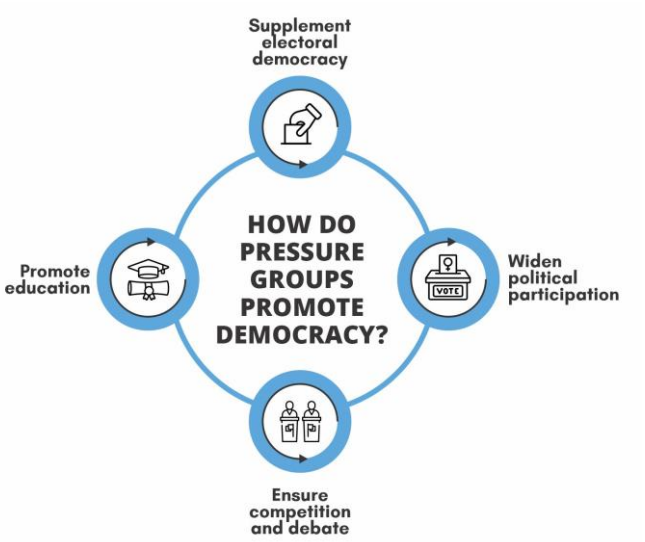
8.1. How Pressure Groups promote Democracy?

Pressure groups promote democracy in a number of ways, such as:

Student Notes:

Supplement electoral democracy

Pluralists often highlight the advantages of group representation over representation through elections and political parties. Pressure groups may either supplement electoral democracy (making up for its defects and limitations) or they may replace political parties as the main way in which people express their views and interests:



- **Pressure groups keep government in touch with public opinion in-between elections**. One of the weaknesses of elections is that they only take place every few years. By contrast, pressure groups force the government to engage in an ongoing dialogue with the people, in which the interests or views of the various sections of society cannot be ignored.
    - ***IAC's anti-corruption movement*** was one such example where the pressure groups made the government aware of rising sentiment in general public against corruption in public life.
- **Pressure groups give a political voice to minority groups** and articulate concerns that are overlooked by political parties. Elections, at best, determine the general direction of government policy, with parties being anxious to develop policies that appeal to the mass of voters. Pressure groups are therefore often more effective in articulating concerns about issues such as the environment, civil liberties, global poverty, violence against women and the plight of the elderly.
    - Women's organizations such as **SEWA, NCW** have campaigned for women-friendly laws such as the Protection of Women from Domestic Violence Act, 2005.
    - In the North-Eastern State of Manipur, many groups including 'Just Peace', Apunba Lup (students' organization) and Meira Paibis (women's groups) are trying to influence the government to listen to people's genuine grievances. Together, these groups are associated with Irom Sharmila, a civil rights activist known as 'the Iron Lady of Manipur' who has been on a hunger strike since November 2000.

Widen political participation

The level of political participation is an important indicator of the health of democracy. Democracy, at heart, means government *by* the people. Pressure groups have become increasingly effective agents of political participation. Not only has single-issue politics proved to be popular but the grass roots activism and decentralized organization of many campaigning groups have proved to be attractive to many young people and those who may be disillusioned with conventional politics.

Ensure competition and debate

Pressure groups help to promote democracy by widening the distribution of political power. They do this, in part, because these pressure groups compete against one another. This ensures that no group or interest can remain dominant permanently.

Promote education

Pressure groups promote political debates, discussions and arguments. In so doing, they create a better-informed and more educated electorate. This, in turn, helps to improve the quality of

public policy.

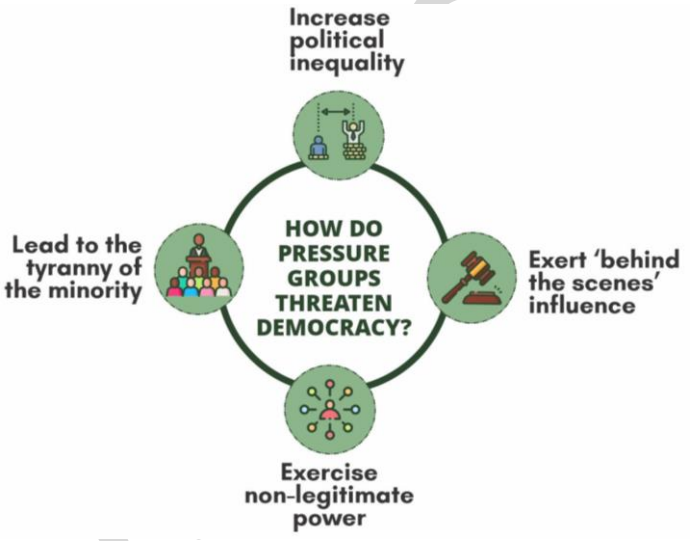
Student Notes:

8.2. How pressure groups threaten democracy?

Some political scientists and politicians have taken the view that pressure groups are non-democratic, or even anti-democratic, in the sense that they intervene in the political process, which is based on electoral accountability. A 2014 Intelligence Bureau report had also highlighted that foreign-funded NGOs were "negatively impacting economic development" in India. The ways in which the pressure groups threaten democracy are listed below:

Increase political inequality

A central argument against the pluralist image of group politics is that, far from dispersing power more widely and empowering ordinary citizens, pressure groups tend to empower the already powerful. They therefore increase, rather than reduce, political inequality. Pluralists argue that political inequality is broadly democratic, in that the most successful groups tend to be ones with large membership, and which enjoy wide and possibly intense public support. This is very difficult to sustain. In practice, the most powerful pressure groups tend to be the ones that possess money, expertise, institutional leverage and privileged links to government.



Exert 'behind the scenes' influence

Regardless of which groups are most powerful, pressure-group influence is exerted in a way that is not subject to scrutiny and public accountability. Pressure groups usually exert influence '***behind closed doors'***. This particularly applies in the case of insider groups, whose representatives stalk the 'corridors of power' unseen by the public and away from media scrutiny. No one knows (apart from occasional leaks) who said what to whom, or who influenced whom, and how.

Not only does this contrast sharply with the workings of representative bodies such as Parliament, but it also undermines parliamentary democracy. Insider links between groups and the executive bypass Parliament, rendering elected MPs impotent as policy is increasingly made through deals between government and influential groups that the Parliament does not get to discuss.

Exercise non-legitimate power

Critics have questioned whether pressure groups exercise rightful or legitimate power in any circumstances. This is because, unlike conventional politicians, pressure-group leaders have not been elected. Pressure groups are therefore ***not publicly accountable***, meaning that the influence they exert is not democratically legitimate.

This problem is compounded by the fact that ***very few pressure groups operate on the basis of internal democracy***. Leaders are very rarely elected by their members, and when they are (as in the case of trade unions) this is often on the basis of very low turnouts. Indeed, there has been a growing trend for pressure groups to be dominated by a small number of senior professionals. Some pressure-group leaders may, in fact, be little more than self-appointed political spokespeople.

Lead to the tyranny of the minority

Pressure groups, by their very nature, represent minorities rather than majorities. For pluralists, of course, this is one of their strengths. Pressure groups help to prevent a 'tyranny of the majority' that is, perhaps, one of the inevitable features of electoral democracy. However, pressure groups may create the opposite problem. Minority views or 'special' interests may prevail at the expense of the interests of the majority or the larger public.

9. Pressure Groups in India

9.1. Nature of Pressure Groups in India

The different types of pressure groups found in India are *business groups, trade unions, peasant groups, student groups, teachers' association, caste and religious associations, women's associations,* etc.

Business Groups

- The Business Groups are the most important and organised pressure groups in India. They are also most effective. They are **independent of the political parties** that exist and they have enough resources with which they can safeguard their interests. Business associations have existed in India even before Independence.
- The **important business groups** include the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI) and Associated Chamber of Commerce. They exert varied kinds of pressures, they try to influence planning, licensing bodies and economic ministries.
- The businesspersons are **usually present in different legislatures at the Central as well as State level**. Every Ministry of the Government of India has some kind of consultative committee and business groups are represented there. During pre-budget meetings the Finance Ministry interacts with the groups, to secure suitable inputs which helps in budget formulation.

Trade Unions

- The trade unions in India have been **present since even before the Independence** such as the All India Trade Union Congress (AITUC), which was established in 1920 and the Indian National Trade Union Congress (INTUC) established in 1947. The emergence of the communist movement also played an important role in the growth of trade unions in India.
- Trade Unions in India are **closely affiliated with the political parties**; many national political parties have got their own federations of trade unions. In fact, very little amount of independence from political parties exists in trade unions. They seem to have been able to exert significant pressure at the policy formulation level and their strength is well recognised by political parties and government.
- The trade unions when required can be very vocal and militant in their actions to meet their demands. They work through the **weapon of strike** and have been able to achieve monetary gains in terms of wage increase, bonus, change in wage structure, etc. These types of pressure groups have been able to encourage class consciousness and class solidarity among the workers.
- India has witnessed the trade unions resorting to demonstrations, during the disinvestment by the government in public sector undertakings over the past few years. Despite certain institutional limitations, such as, ideological differences, internal splits, external pressures, lack of international backing, the trade unions exert **significant pressure at various levels of policy formulation**.

Peasant Organisations

- The rise of peasants groups in India has been mainly due to **factors** such as abolition of Zamindari System and other land reform measures, implementation of Panchayati Raj, and

Green Revolution Movement. They gained huge power since 1960s. Although, the peasant organisations such as the All India Kisan Sabha (1936) have been existing since pre-independence.

- Different parties have got their own peasant organisations. **Like the trade unions, there is no peasant organisation, which may be independent of party control**, though at the state level, their organisations are non-political, independent of the political parties and homogenous.
- Even though there are some important All India Kisan Associations like All India Kisan Congress, All India Kisan Kamgar Sammelan, Akhil Bharatiya Kisan Sangh, peasant groups have been **mainly organised on territorial basis rather than on all-India basis**. Their **demands** relate to procurement prices of agricultural products, fertiliser subsidy, tenancy rights, electricity charges, etc.
- The Bharatiya Kisan Party (BKP) in Western U.P. is considered the most significant pressure group. The **interplay of language, caste factor, weak financial positions, etc**. have been greatly responsible for lack of emergence of multiple national level peasants' pressure groups.

Student Organisations

- The student organisations in India have acted as pressure groups both prior to Independence and after Independence. Some **pre-independence student organisations** were the All Bengal Students Association formed in 1928 and All India Students Federation (AISF) in 1936.
- **After Independence** the political parties continue to be affiliated with student organisations.
    - The All India Students Congress and later on the National Students Union of India (NSUI) is affiliated to the Congress Party.
    - The All India Students Federation and Students Federation of India (SFI) is associated with the Communist Party of India.
    - The Akhil Bharatiya Vidyarthi Parishad (ABVP) etc. is affiliated to BJP.
- Their **activities** are not just confined to educational issues. They try to pressurise governmental policy on various crucial issues such as fees, hostel facilities, curriculum etc.

Community Associations

- There are various community associations in India. These community groups are organised on the basis of caste, class and religion.
    - Some examples of **caste organisations** are Scheduled Caste Federation, Backward Caste Federation, etc.
- Amongst other organisations there are some like Vishwa Hindu Parishad, Northern and Southern India Christian Conference, etc. which represent interests that are supposed to **safeguard their respective religions**.

Civil Society Organizations

- India has a very **large number of Civil Society Organizations (CSOs)** i.e. organizations established by citizens of the country, to pursue certain interests. Many of these organizations act as pressure groups on the government, to promote implementation of policies in their areas of concerns.
- These organizations are **run by ordinary persons** who feel strongly committed to certain issues. Many ordinary persons come together informally or formally to share their feelings about different issues and prevailing social injustice. People take up issues of gender discrimination, child labour, street children and so on, and contribute through individual and collective action. Such organizations are able to mobilize public opinion because these issues are relevant to many people in society.
- Some of the **Civil Society Organizations** include Mazdoor Kisan Shakti Sangathan (MKSS,

Student Notes:

Rajasthan), People's Union for Civil Liberties (PUCL), National Alliance of People's Movements (NAPM), National Alliance of Women's Organizations (NAWO), Medico Friends Circle (MFC), and many others.

- Such organizations **put pressure on the government** for changing policies on many important issues such as corruption, human rights, livelihood of different people, environmental protection, women empowerment, educational and health issues. All these organizations involve a large number of people who struggle to bring about changes in State policies. Many of the organizations and groups believe in following non-violent methods.

Student Notes:

9.2. Methods of Operation of Pressure Groups in India

The pressure groups adopt different methods to achieve their goals. These methods *range from cordial rapport with the political party in power, to resorting to agitational methods.*

The pressure groups **finance the political parties** during the election time and sometimes even during the non-election times. They control the parties through this funding mechanism. Once the parties receive financial support, they cannot oppose these groups and their interests. On the other hand, they have to promote their interests.

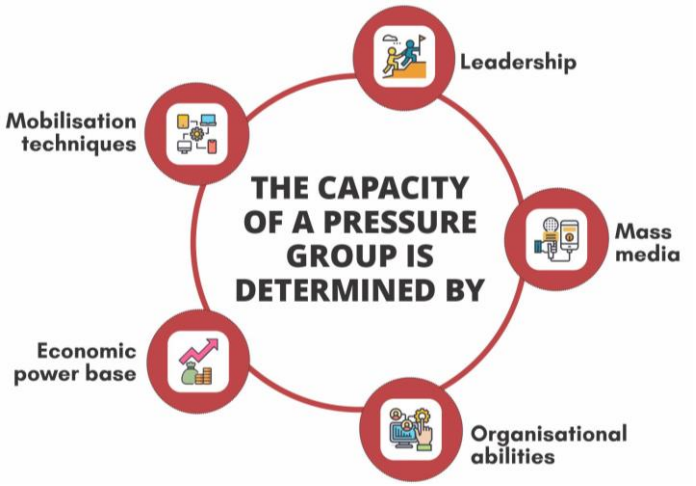
The pressure groups also maintain close **rapport with the State apparatus, viz., the bureaucratic machinery.** The organised pressure groups maintain a relationship with the key bureaucrats. The liaison officers are appointed to take care of the bureaucrats, particularly when they are stubborn. The lobbyists, middlemen, etc. have acquired enough of skills to manage them. This has also given rise to favouritism, corruption and other maladies in bureaucracy.

While one cannot find anything seriously wrong with the pressure groups, it is the methods of operation which have become controversial. Although all the pressure groups use identical methods, there are some groups which are far more effective than the others.

The capacity of a pressure group is determined by following factors:

Leadership

- Leadership is one of the essential components of pressure groups, as it has the prime responsibility to protect the interests of the group. The leadership should **regularly communicate to the political parties, policy-making agencies and the public**. The support of all these three forces is essential.
- The leadership should be able to **establish credibility and be able to carry public opinion**. The leadership should be, therefore, capable of communicating the viewpoint of their group orally, in writing and through dialogue. In short, the success of leadership lies in universalising the particular interest.



Mass Media

In India, the mass media is gaining increasing importance. The newspapers are by and large owned by the major industrial houses. Now, the regional newspapers are also becoming influential. The print as well as the television in present time, through their skills of communication, create powerful public images and

through continuous debate and propaganda influence the public opinion. The political parties and policy-making agencies are sometimes kept on tenterhooks by the media.

- For example, in the post-Independent India one issue on which government had to retreat is the issue of freedom of press. Whenever the bills were introduced either in the state legislatures or Parliament, they had to be withdrawn. Enough public pressure could be built on this issue. Therefore, this is a major weapon in the hands of the industrial houses or private sector to influence the policy-making process.

Organisational Abilities

There is a need for an extensive organisational network for building capacity of pressure groups, especially in a country like India with its size and magnitude. These organisations are needed for two reasons:

- To associate the various facets of the pressure groups and consolidate them.
- In a highly diversified society, communication should take place at multiple points so that rapport with different agencies at different levels is maintained.

The size and organisational strength can always play a significant role in terms of the response of political system to the demands that the pressure group puts forward.

Economic Power Base

The influence a pressure group commands is proportionate to its economic strength. From financing the elections and party funds to carrying propaganda, the economic power of the group plays an important role. Due to their economic might, the industrial and trading houses in India have been far more influential and powerful than the farmer's associations, despite farmers being spread all over the country. It is clear that without adequate economic resources, the pressure groups cannot exert enough and sustained pressure.

Mobilization Techniques

Effectiveness of the pressure groups also depends on their capacity to mobilize the people. The pressure groups not only create public opinion but sometimes draw the general masses into agitational and protest politics.

- For example, if they want to set an industry in a particular area, they create the necessary climate and make the people of the area demand for the industry. If they want infrastructure facilities, they pressurise the government through its network at first and through public demand and an agitation, later, if necessary. This is how a major irrigation dam can also be demanded and realised.

In a society where the majority is semi-literate and semiconscious, private interests can always be converted into public interests.

10. Limitations of Pressure Groups

- **Focus of the pressure groups**: In India, organised groups largely influence the administrative process rather than the formulation of policy. This is dangerous as a *gap is created between policy formulation and implementation.*
- **Issues raised by pressure groups**: Many a time *issues dominated by caste and religion eclipse those related to socio-economic interests*. The result is that instead of serving a useful purpose in the political administrative process, they are reduced to work for narrow selfish interests.
- **Lack of resources**: Many of the groups have a *very short life* because of the lack of resources. This explains the reason for the mushroom growth of pressure groups as well as

their withering away as it becomes difficult to sustain the interest of the persons, initially attracted to form these pressure groups.

- **Serving political interests**: In a country like India, the tendency to politicise every issue, whether it has social, economic, cultural import, restricts the scope, working, and effectiveness of pressure groups. Instead of exerting influence on political process, the pressure groups *become tools and implements to subserve political interests.*
- **Low level of internal democracy**: Pressure groups have a low level of internal democracy, creating the possibility that they express the views of their leaders and not their members.

Student Notes:

11. Comparison of Indian and Western Pressure Groups

India and most countries of the West are democracies with either Presidential or Parliamentary form of government. India, a parliamentary democracy, differs from countries of the West in terms of development. Therefore, there are some **differences** in the role of pressure groups.

- **Significance of pressure groups:** The American pressure groups are regarded as the fourth organ of the government but the Indian pressure groups are not yet able to play such significant role in politics.
- **Targets of pressure groups:** In India and Great Britain the cabinet and civil service are the main targets of pressure groups for lobbying purposes rather than the Parliament. However, the targets of American pressure groups are the Congress and its committees rather than the President for lobbying purposes.
- **Themes or issues raised**: Indian pressure groups based on caste, religion, region, etc. are more powerful than the modern groups such as business organisations.
- **Foreign policy:** A significant feature of American pressure groups is that their pressure groups take interest in foreign policy issues while in India pressure groups do not seem to have interest in foreign policy matters. Comparatively, the Indian pressure groups are concerned more with domestic policy issues and problems.

However, in general, despite the differences, democratic politics presupposes the crucial role of pressure groups for serving the interests of different sections of society.

12. Conclusion

Pressure groups are now considered as an helpful and indispensable element of the democratic process. The society has become highly complex and individuals cannot pursue their interests on their own. They need the support of other fellow beings in order to gain greater bargaining power. This gives rise to pressure groups based on common interests.

For a long time, these groups remained unnoticed. Initially they were considered as harmful for the democratic process, but now their role in the political process has become very important. Democratic politics has to be politics through consultation and negotiation and some amount of bargaining is also involved as well. Thus, it is very essential for the government to consult these organised groups at the time of policy formulation and implementation.

13. UPSC Previous Years' Questions

1. Pressure group politics is sometimes seen as the informal face of politics. With regards to the above, assess the structure and functioning of pressure groups in India. (2013)
2. How do pressure groups influence Indian political process? Do you agree with this view that informal pressure groups have emerged as more powerful than formal pressure groups in recent years? (2017)

14. Vision IAS Previous Years' Questions

Student Notes:

1. Discuss the role of Pressure Groups in Indian polity. Are they strengthening or hindering our democracy?

Approach:

Discuss briefly what pressure groups are. Then analyze how they affect the major aspects of Indian democracy. Their strengthening and hindering roles can be covered separately.

Answer:

A pressure group is an organized group of people that aims to influence the policies or actions of the Government. Pressure groups can therefore act as a channel of communication between people and the government.

Pressure groups are defined by three key features:

- They seek to exert *influence* from outside, rather than to directly exercise government power. Pressure groups do not make policy decisions, but rather try to influence those who do (the policy-makers). In that sense, they are 'external' to the government.
- They typically have a *narrow* focus. In some cases, they may focus on a single issue (for instance opposing a planned road development).
- Their members are *united* by either a shared belief in a particular cause or a common set of interests. People with different ideological and party preferences may thus work happily together as members of the same pressure group.

Pressure groups promote democracy in a number of ways:

- Supplementing electoral democracy
- Widening political participation
- Promoting education
- Ensuring competition and debate

Supplementing electoral democracy- Pressure groups supplement electoral democracy (making up for its defects and limitations) through the following:

- *Pressure groups keep government in touch with public opinion between elections*.

One of the weaknesses of elections is that they only take place every few years. By contrast, pressure groups force the government to engage in an ongoing dialogue with the people, in which the interests or views of the various sections of society cannot be ignored.

- *Pressure groups give a political voice to minority groups and articulate concerns that are overlooked by political parties*. Elections, at best, determine the general direction of the government policy, with parties being anxious to develop policies that appeal to the mass of voters. Pressure groups are therefore often more effective in articulating concerns about issues such as the environment, civil liberties, global poverty, abortion, violence against women and the plight of the elderly.

Widening Political Participation

The level of political participation is an important indicator of the health of democracy. Democracy, at heart, means government *by* the people. If this is the case, declining electoral turnout and steadily falling party membership highlights a major 'democratic deficit' in Indian politics. In this context, pressure groups have become increasingly effective agents of political participation. Not only has single-issue politics proved to be

popular but the grass roots activism and decentralized organization of many campaigning groups have proved to be attractive to many young people and those who may be disillusioned with conventional politics.

Student Notes:

Promoting Education

Pressure groups promote political debate, discussion and argument. In so doing, they create a better-informed and more educated electorate. This, in turn, helps to improve the quality of public policy. Without pressure groups, the public and the media would have to rely on a relatively narrow range of political views, those expressed by the government of the day and a small number of major parties. Pressure groups challenge established views and conventional wisdom. They offer alternative viewpoints and widen the information available to the public, especially through their access to the mass media and the use of 'new' communications technology such as the Internet. Pressure groups are therefore prepared to 'speak truth to power'. In many cases, pressure groups raise the quality of political debate by introducing specialist knowledge and greater expertise.

Ensuring Competition and Debate

Pressure groups help to promote democracy by widening the distribution of political power. They do this, in part, because groups compete against one another. This ensures that no group or interest can remain dominant permanently. Group politics is therefore characterized by a rough balance of power. This is the essence of pluralist democracy.

However Pressure groups also threaten democracy in a number of ways. They:

- **Concentrate power**. Groups widen political inequality by strengthening the voice of the wealthy and the privileged: those who have access to financial, educational, organizational or other resources. Other groups are poorly organized, lack resources or are ignored by government.
- **Narrow self-interest**. Groups are socially and politically divisive, in that they are concerned with the particular, not the general. In defending minority views or interests, pressure groups may make it more difficult for governments to act in the interest of the larger society.
- **Unaccountable power**. Being non-elected, groups exercise power without responsibility. Unlike politicians, group leaders are not publicly accountable. Pressure groups usually lack internal democracy, meaning that leaders are rarely elected and so are unaccountable to their members.
- **Undermine Parliament**. Groups undermine parliamentary democracy by bypassing representative processes. They also make the policy process 'closed' and more secretive by exerting influence through negotiations and deals that are in no way subject to public scrutiny.

2. Compare pressure groups in India with those in the west.

Approach:

- Briefly write why there are differences
- Then write the differences.

Answer:

Within western countries there are differences between Presidential and Parliamentary form of government. India though a parliamentary democracy differs from west in terms of developmental levels. Therefore there are some differences in the role of pressure groups. Some of the differences are:

Student Notes:

- The American pressure groups are regarded as the fourth organ of the government but the Indian pressure groups are not yet able to play such significant role in politics.
- In India and Great Britain the cabinet and civil service are the main targets of pressure groups for lobbying purposes rather than the parliament. However, the targets of American pressure groups are the Congress and its committees rather than the President for lobbying purposes.
- Indian pressure groups based on caste, religion, region, etc. are more powerful than the modern groups like business organisations.
- A significant feature of American pressure groups is that in the USA, pressure groups take interest in foreign policy issues while in India, pressure groups do not seem to have interest in foreign policy matters. Comparatively, the Indian pressure groups are concerned more with domestic policy issues and problems, and less with foreign policy matters.

However in general, despite the differences, democratic politics presupposes the crucial role of pressure groups for serving the interests of different sections of society.

3. The capacity of a pressure group to promote its interests is contingent upon a number of internal and external factors. Discuss.

Approach:

- Very briefly describe pressure groups.
- List out the internal and external factors that influence it, with suitable examples wherever possible.

Answers:

Pressure groups are groups which may be profit or non-profit based and usually voluntary organization whose members have a common cause for which they seek to influence political or corporate decision makers to achieve a desired objectives. Numbers of internal and external factors that influence the promotion of these interests are:

Internal Factors

Wealth

- They can have high public profile, access to media, can run expensive advertising campaigns.
- They can also meet huge electoral expenses and manipulate the electoral results in their favor. E.g Corporate and media lobbies have a better influence than trade unions specially in U.S.A.

Size

- Large groups can claim to represent public opinion; hence it can have a major electoral impact.
- Many groups can manage their finances with the help of its huge group and its financial support itself.

Organisation and its leadership

- Organized groups are more powerful and more efficient than the less organized groups.
- A good leadership can also provide better concerted efforts and better management and channelization of resources, towards success of the group. E.g

Kailash Styarthi as a Nobel Laureate can better advocate and champion the cause of Child rights.

- A good leadership can also provide the organization with:
  1. Acute political Skills
  2. Contacts
  3. Developed media Skills
  4. A high public profile.

External Factors

Public support

- Groups with high level of support from public also enjoy higher political influence.
- E.g. India against Corruption could gain huge popularity because of anti-corruption sentiments boiling in the country at that point.

Views of the Government

- Groups which have their interests and ideology coinciding with the goals of the government enjoy greater influence. E.g Rashtriya Swayam Sevak Sangh during BJP government.
- Groups with interests antithetical to government interests, have least chances of meeting their interests.

Opposition Groups

- Where an interest group is lucky enough not to face serious opposition from other interest groups they may have better chances of meeting their political demands.

Source of funds

- In the needs of the funds the pressure groups are many a times forced to also further the interests of their financers.

Thus the performance and influence of the pressure groups are not just determined by the legitimacy of their demands but also by other internal and external factors that are used to manufacture the consent and put pressure on the government to push forward their demands.

4. Pressure groups ensure that an individual's democratic rights are not confined just to the act of voting. Discuss.

Approach:

- Introduce by defining pressure groups.
- Then discuss how pressure groups facilitate citizens' involvement in democracy- through education, representation, policy formulation, policy implementation etc.

Answer:

A pressure group is an organized group of people that aims to influence the policies or actions of government. The pressure group universe may include churches and charities, businesses and trade associations, trade unions and professional associations, think tanks of various complexions, and so forth.

Pressure groups help in citizens' participation in democracy in following ways:

- **Representation:** Pressure groups provide a mouthpiece for groups and interests that are not adequately represented through the electoral process or by political parties.

Student Notes:

- **Education:** Much of what the public knows about politics it finds out through pressure groups of one kind or another. Many pressure groups, indeed, operate largely through their ability to communicate with the public and raise political consciousness.
- **Policy formulation:** Pressure groups are a vital source of information and advice to governments. Many groups are therefore regularly consulted in the process of policy formulation, with government policy increasingly being developed through policy networks.
- **Policy implementation:** The role of some pressure groups extends beyond trying to shape the content of public policy to playing a role in putting policy into practice.
- Pressure groups keep government in touch with public opinion between elections.
- Pressure groups give a political voice to minority groups and articulate concerns that are overlooked by political parties.

Democratic politics has to be politics through consultation and negotiation. The society has become highly complex and individuals cannot pursue their interests on their own. Pressure groups ensure that an individual's democratic rights are not confined just to the act of voting.

5. Compare and contrast pressure groups with political parties. Describe the different techniques through which pressure groups influence policies in India.

Approach:

- Firstly, define pressure groups.
- Then elaborate upon their differences from political parties.
- Lastly discuss various techniques that they use like electioneering, lobbying etc.
- Conclude by commenting on their role in a democracy.

Answer:

A pressure group is a group of people who are organised actively for promoting and defending their common interest. They try to influence public opinion as well as government policies. It is not necessary that they will exert any 'pressure' (such as through protests) to influence the decision. They may resort to mass communications, advocating, lobbying, etc. to achieve their aims.

Pressure Groups and Political Parties

Pressure groups	**Political Parties**
Pressure groups do not seek direct power; they only influence those who are in power for moulding decisions in their favour.	Political parties operate and seek political power to translate its policies into practice.
Pressure groups do not contest elections; they may support political parties of their choice.	Political parties nominate candidates, contest elections, and participate in election campaigns.
Pressure groups do not necessarily have political ideologies. They may seek to influence economic or cultural policy based on their needs.	Ideology for political parties is very important as they organize people around them based on ideology.
Pressure groups are not based on personality of an individual.	Apart from ideology, personality cult of individual leaders is important.
The interests of the pressure groups are usually specific and particular. Their activities are confined to the protection and promotion of those interests only.	The political parties have policies and programmes with national and international ramifications.

Their membership is limited	The membership is very broad based.
Pressure groups resort to agitation a politics like marches, demonstrations, strikes, fasts etc.	Political parties use Constitutional means to achieve their aims.

Techniques used by Pressure Groups

- The pressure groups influence the policy-making and policy-implementation in the government through legal and legitimate methods like lobbying, correspondence, publicity, propagandising, petitioning, public debating, maintaining contacts with their legislators and so forth.
- However, sometimes they resort to illegitimate and illegal methods like strikes, violent activities and corruption/bribing which damages public interest and administrative integrity.

> ***Electioneering*:** Try to place in public office persons who are favourably disposed towards the interests they seek to promote.
>
> *Lobbying*: Try to persuade public officers, whether they are initially favourably disposed toward them or not, to adopt and enforce the policies that they think will prove most beneficial to their interests.
>
> *Propagandizing*: To influence public opinion and thereby gain an indirect influence over government, since the government in a democracy is substantially affected by public opinion.

Pressure Groups can enhance as well as distort the political system. Because of the complexities of modern government, and the pluralistic nature of Indian society, pressure groups provide a means by which ordinary citizens can participate in the decision making process, as well as maintaining a check on government activity. Similarly, governments can be better informed of the electorate's sensitivities to policies, because of the pressures articulated by these groups.

6. Illustrate how pressure groups have emerged as a strong mechanism for making democracy participatory and responsive.

Approach:

- Briefly, write about pressure groups.
- Explain the role of pressure groups in making democracy participatory and responsive.

Answer:

A pressure group is a interest group organized to promote the interests of its members and influence the policies of the government without seeking themselves to exercise the formal powers of government. They use instruments like lobbying, campaigns and polls.

Role of pressure groups in making Democracy Participative:

- Democracy enables citizens to participate in election; however, it limits citizen participation after formation of government. Civil society and pressure groups fill this void in a democratic polity.
- Provides representation to a wide range of diverse interests and opinions which modern political parties often fail to do due to socio-political compulsions.
- Keeps government in touch with the public opinion in between elections. For e.g. Anti-corruption movement, 2011 led to passage of the Lokpal Act.
- Gives political voice to minority groups and articulate their concerns like Naz Foundation's fight for rights of LGBT community.

Student Notes:

Role of Pressure groups in making Democracy Responsive:

- Provide alternative platform to citizens to redress grievances and hold government responsible.
- Single-issue politics has led to mobilization of pressure groups and public on issues like environment, transparency etc. For e.g. Mazdoor Kisan Shakti Sangathan led the people's movement, which got the government to bring about the law on 'Right to Information'.
- Grass root activism and decentralized groups provides an alternative to youth disillusioned with conventional politics.
- Promote political education through political debate thus creating a better-informed and educated electorate and improving the quality of public policy.
- Competing pressure groups ensure that no group or interest remain dominant or dormant permanently.

Further, pressure groups also happen to be an indicator of political maturity and accommodation in a political system, for only in a truly democratized country, would such groups be allowed to have a say in the policies of the government.

7. Delineate the differences between pressure groups and interest groups. Citing examples, elaborate on the ways in which pressure groups influence government decisions and policy making in India.

Approach:

- Briefly introduce the answer with interest groups and write the difference between interest and pressure groups.
- Mention the different techniques and methods used by pressure groups. Provide relevant examples.
- Conclude appropriately.

Answer:

Interest Groups basically are organized groups of people which seek to attain certain interests. Their goal could be a policy that exclusively benefits group members or one segment of society (e.g., government subsidies for farmers) or a policy that advances a broader public purpose (e.g., improving air quality).

Pressure groups are a sub-type of interest groups. While interest groups vary widely in their form, focus area and organization, pressure groups are rather formally organized and focus more on engaging with political actors. While all pressure groups are interest groups, not every interest group is a pressure group.

Pressure groups make use of different techniques and methods to achieve their objectives. Some of the most common techniques are as follows:

- **Lobbying**: This includes making representations to the legislature or other departments of governments in order to influence public policy in favour of themselves. For instance, organizations like CII and FICCI often make representation to government to influence economic policies.
- **Strikes and demonstations**: This involves using non-violent methods in order to influence decision-making. For instance, Mazdoor Kisan Shakti Sangathan organized public hearings, strikes for demanding Right to Information Act.
- **Physical demonstrations and violence**: These methods are employed by anomic pressure groups. For instance, use of violence by Naxalites, ULFA.

- **Association or affiliation with political parties**: Examples include trade unions, student organizations etc.
- **Propagandizing:** Influencing the public opinion by publishing information in mass domain using media and other means.
- **Use of traditional social structure**: This include communal groups and religious bodies which seek to influence government decision making. Rashtriya Swayam Sevak Sangh (RSS), All India Muslim Personal Law Board are examples of such a pressure group.

Pressure groups are now considered as an indispensable and helpful element of the democratic process. The society has become highly complex and individuals cannot pursue their interests on their own. They need the support of other fellow beings in order to gain greater bargaining power; this gives rise to pressure groups based on common interests.

Democratic politics has to be politics through consultation, through negotiation and some amount of bargaining is also involved. Thus, it is very essential for the government to consult these organised groups at the time of policy formulation and implementation.

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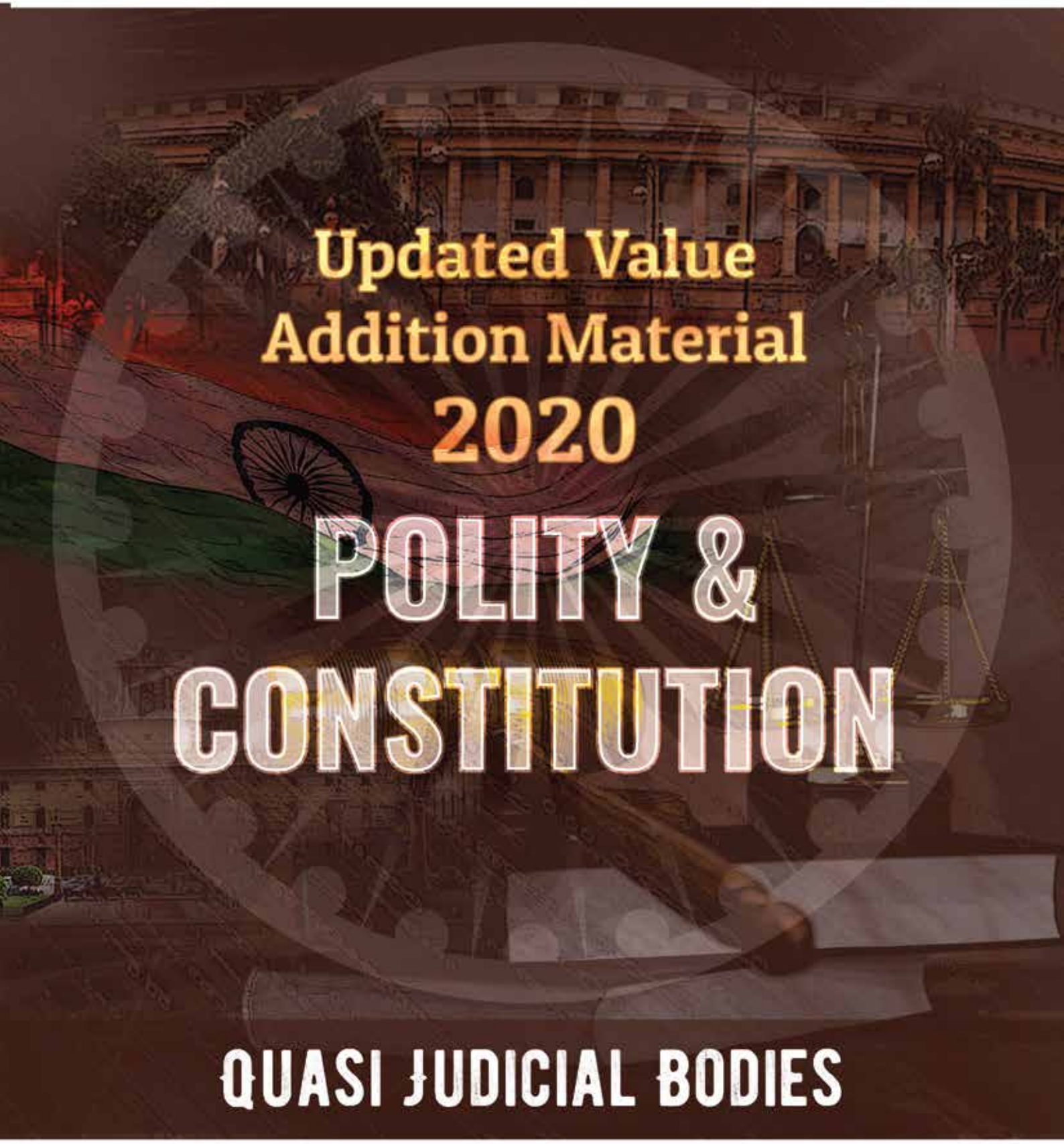
VISIONIAS
INSPIRING INNOVATION



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POLITY & CONSTITUTION

QUASI JUDICIAL BODIES

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QUASI JUDICIAL BODIES

Student Notes:

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Student Notes:

1. Quasi-Judicial Bodies in India

A **quasi-judicial body** is an organization or individual on which powers resembling a court of law have been conferred. Such a body can adjudicate and decide upon a situation and impose penalty upon the guilty or regulate the conduct of an individual or entity.

A quasi-judicial body has also been defined as "an organ of government, other than a court or legislature, which affects the rights of private parties through adjudication or rule-making.

1.1. Examples of Quasi-Judicial Bodies

- National and State Human Rights Commissions
- Lok Adalats
- Central and State Information Commissions
- Central Vigilance Commission
- Consumer Disputes Redressal Commission
- Central Administrative Tribunals
- Competition Commission of India
- Appellate Tribunal for Electricity
- Railway Claims Tribunal
- Income Tax Appellate Tribunal
- Intellectual Property Appellate Tribunal

1.2. Features of Quasi-Judicial bodies

- These bodies act as a medium where parties can resolve their disputes without approaching the judiciary. These disputes can be in the form of monetary, conduct of rules or any particular dispute that do not directly concern the judiciary.
- These bodies not just give advice or resolve issues, but they also act as a punishing authority concerning matter that involve their jurisdictions, such as the Consumer Disputes Redressal Commissions. The punishments are usually non encroaching on independence of judiciary at any cost.
- These bodies only handle those cases which come under its expertise, such as tax tribunals, unlike the judiciary whose powers are much more wide-ranged.

1.3. Reasons for emergence of Quasi-Judicial Bodies in India

- **Overburdening of judiciary**: As the welfare state has grown up in size and functions, more and more litigations are pending in the judiciary, making it over-burdened. It requires having an alternative justice system.
- **Complexity of laws**: With scientific and economic development, laws have become more complex, demanding more technical knowledge about specific sectors.
- **Cost**: Ordinary judiciary has become dilatory and costly, resulting in the emergence of quasi-judicial bodies.
- **Other factors include:**
  - The conventional judiciary is suffering from procedural rigidity, which delays the justice.
  - Further, a bulk of decisions, which affect a private individual come not from courts, but from administrative agencies exercising ad judicatory powers.

1.4. Quasi-judicial bodies vs judicial bodies

- Judicial decisions are bound by precedent in common law, whereas quasi-judicial decisions usually are not so bound.
- In the absence of precedent in common law, judicial decisions may create new law, whereas quasi-judicial decisions must be based on conclusions of existing law.
- Quasi-judicial bodies need not follow strict judicial rules of evidence and procedure.

Student Notes:

- Quasi-judicial bodies must hold formal hearings only if mandated to do so under their governing laws or regulations.
- Quasi-judicial bodies, unlike courts, may be a party in a matter and issue a decision thereon at the same time.

Quasi-judicial Action vs. Administrative Action

Though the distinction between quasi-judicial and administrative action has become blurred, yet it does not mean that there is no distinction between the two.

In A.K. Kraipak vs. Union of India, the Supreme Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.

Thus broadly speaking, acts, which are required to be done on the **subjective satisfaction** of the administrative authority, are called **'administrative' acts**, while acts, which are required to be done on **objective satisfaction** of the administrative authority, can be termed as **quasi-judicial acts**.

In case of administrative decision there is no legal obligation upon the person charged with the duty of reaching the decision, to consider and weigh submissions and arguments or to collate any evidence. The grounds upon which he acts, and the means which he takes to inform himself before acting are left entirely to his discretion.

However, the Supreme Court observed, "It is well settled that the old distinction between a judicial act and administrative act has withered away and we have been liberated from the pestilent incantation of administrative action."

2. Tribunals

There are a large number of laws, which charge the Executive with adjudicatory functions, and the authorities so charged are, in the strict scene, administrative tribunals. These are agencies created by specific enactments.

Administrative adjudication is a term synonymously used with administrative decision-making, which is exercised in a variety of ways. However, the most popular mode of adjudication is through tribunals.

2.1. Characteristics of Tribunals

- It is a creation of a statute and required to act openly, fairly and impartially.
- It is bound to act judicially and follow the principles of natural justice.
- An Administrative Tribunal is vested in the judicial power of the State and thereby performs quasi-judicial functions as distinguished from pure administrative functions.
- An administrative Tribunal is not bound by the strict rules of procedure and evidence prescribed by the civil procedure court.

2.2. Evolution of Tribunals

The growth of Administrative Tribunals, both in developed and developing countries, has been a significant phenomenon of the twentieth century. In India also, innumerable Tribunals have been set up from time to time, both at the center and the states, covering various areas of activities like trade, industry, banking, taxation etc.

The question of establishment of Administrative Tribunals to provide speedy and inexpensive relief to the government employees, relating to grievances on recruitment and other conditions of service, had been under the consideration of Government of India for a long time. Due to their heavy preoccupation, long pending and backlog of cases, costs involved and time factors, Judicial Courts could not offer the much-needed remedy to government servants, in their disputes with the government. A need arose to set up an institution, which would help in dispensing prompt relief to harassed employees, who perceive a sense of injustice and lack of fair play in dealing with their service grievances. This would motivate the employees better and raise their morale, which in turn would increase their productivity.

Differences between Article 323A and 323B

- While Article 323 A contemplates establishment of tribunals for public service matters only, Article 323 B contemplates establishment of tribunals for certain other matters such as taxation, foreign exchange, industrial and labour, land reforms etc.
- While tribunals under Article 323 A can be established only by Parliament, tribunals under Article 323 B can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.
- Under Article 323 A, only one tribunal for the Centre and one for each state or two or more states may be established. There is no question of hierarchy of tribunals, whereas under Article 323 B a hierarchy of tribunals may be created.

The First ARC and a Committee under J.C. Shah recommended the establishment of an independent tribunal to exclusively deal with service matters. The same was validated by the Supreme Court in 1980.

The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles—Article 323 A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.

The Constitution (Article 323-A) empowered the Parliament to provide for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and constitution of service of persons appointed to public service and posts in connection with the affairs of the union or of any state or local or other authority within the territory of India or under the control of the government or any corporation, owned or controlled by the government.

In pursuance of the provisions of Article 323-A of the Constitution, the Administrative Tribunals Bill was introduced in Lok Sabha and received the assent of the President of India in 1985. The act authorised the Central government to establish one Central Administrative Tribunal and the State Administrative Tribunals.

2.3. Central Administrative Tribunal (CAT)

The Central Administrative Tribunal (CAT) was set up in 1985 with the principal bench at Delhi and additional benches in different states.

2.3.1. Benches

At present, it has 17 regular benches, 15 of which operate at the principal seats of high courts and the remaining two at Jaipur and Lucknow. These benches also hold circuit sittings at other seats of high courts.

2.3.2. Jurisdiction

The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it. Its jurisdiction extends to the All-India services, the Central civil services, civil posts under the Centre and civilian employees of defence services. However, the

members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.

Student Notes:

2.3.3. Composition

- The CAT is a multi-member body consisting of a chairman and members. At present, the sanctioned strength of the Chairman is one and sanctioned strength of the Members is 65.
- A Chairman who has been a sitting or retired Judge of a High Court heads the Central Administrative Tribunal.
- With the amendment in Administrative Tribunals Act, 1985 in 2006, the members have been given the status of judges of High Courts. They are drawn from both judicial and administrative streams and are appointed by the President.

2.3.4. Functioning

- The CAT is not bound by the procedure laid down in the Civil Procedure Code of 1908. It is guided by the principles of natural justice. These principles keep the CAT flexible in approach.
- Only a nominal fee of 50 is to be paid by the applicant. The applicant may appear either in person or through a lawyer.

2.3.5. Appeals against CAT orders

- Originally, appeals against the orders of the CAT could be made only in the Supreme Court and not in the high courts.
- However, in the Chandra Kumar case (1997), the Supreme Court declared this restriction on the jurisdiction of the high courts as unconstitutional, holding that judicial review is a part of the basic structure of the Constitution.
    - It laid down that appeals against the orders of the CAT shall lie before the division bench of the concerned high court.
- Consequently, now it is not possible for an aggrieved public servant to approach the Supreme Court directly against an order of the CAT, without first going to the concerned high court.

NOTE: Kindly refer to the New Rules for Tribunals (2020) mentioned below for provisions related to term, appointment and removal of CAT members.

2.4. State Administrative Tribunals

- The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments.
- Like the CAT, the SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees.
- The chairman and members of the SATs are appointed by the President after consultation with the Governor of the state concerned.
- The act also makes a provision for setting up of Joint Administrative Tribunal (JAT) for two or more states. A JAT exercises all the jurisdiction and powers exercisable by the administrative tribunals for such states.
    - The chairman and members of a JAT are appointed by the President after consultation with the Governors of the concerned states.

2.5. Judicial Review of Tribunals decisions

The Administrative Tribunals became an effective and real substitute for the High Courts In **S. P. Sampath Kumar case** (1987).

Student Notes:

However, in **1997**, a seven-Judge Bench of the Supreme Court in ***L. Chandra Kumar case*** (as mentioned above) held that clause 2 (d) of article 323A and clause 3(d) of article 323B, to the extent they empower Parliament to exclude the jurisdiction of the High Courts and the Supreme Court under articles 226/227 and 32 of the Constitution, are unconstitutional. **The Court held that the jurisdiction conferred upon the High Courts under articles 226/227 and upon the Supreme Court under article 32 of the Constitution is part of the inviolable basic structure of our Constitution**.

All decisions of the Administrative Tribunals are subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. As a result, orders of the Administrative Tribunals are being routinely appealed against in High Courts, whereas this was not the position prior to the *L. Chandra Kumar*'s case.

On 18th March 2006, the Administrative Tribunals (Amendment) Bill, 2006 was introduced in Rajya Sabha to amend the Act by incorporating therein, *inter alia*, provisions empowering the Central Government to abolish Administrative Tribunals, and for appeal to High Court to bring the Act in line with *L. Chandra Kumar*.

The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 17th Report said that the appeal to High Court is unnecessary, and if a statutory appeal is to be provided it should lie to the Supreme Court only.

The Law Commission also took up the topic suo-moto and agreed with the opinion put forward by the Parliamentary Standing Committee.

2.6. Categories of Tribunals in India

There are **four categories** of tribunals in India:

1. **Administrative bodies exercising quasi-judicial functions**, whether as part and parcel of the Department or otherwise.
2. **Administrative adjudicatory bodies**, which are outside the control of the Department involved in the dispute and hence decide disputes like a judge free from judicial bias. For example: **The Income Tax Appellate Tribunal** is under the Ministry of Law and not under Ministry of Finance.
3. **Tribunals constituted under Article 323A and 323B** having constitutional origin and enjoying the powers and status of a High Court.

2.7. Issues faced by Tribunals

- **Lack of independence**: Ministries, which are often litigants in the matters sub-judice in the tribunals are the ones that handle staff, finance and administration of tribunal as well. Also, unlike Supreme Court and High Court, procedure for removal lies with the executive.
- **Jurisdiction of High Courts**: By-passing the jurisdiction of High Courts has been a major criticism against tribunals which has been partly resolved under LC Kumar Case where appeals were allowed in division bench of High Courts. This has diluted the original intent behind the formation of tribunals i.e. speedy justice.
- **Administrative concerns**: There is non-uniformity in appointment process, qualification of members, age of retirement, resources and infrastructure of different tribunals working under different ministries which hampers their overall efficiency.
- **Pendency and vacancy**: There is high pendency in tribunals due to reasons such as shortage of personnel et al. According to 272nd Law Commission Report, the pendency figures for the CAT is 44,333 cases.

Student Notes:

2.8. National Tribunal Commission (NTC)

The 74th report of the Parliamentary standing committee, endorsing the view of the Law Commission, recommended the creation of a **National Tribunal Commission (NTC)** to regulate issues linked with tribunals such as:

- oversee selection process,
- set eligibility criteria for appointment
- introduction of common eligibility criteria for removal of Chairman and Members
- meeting the requirement of infrastructural and financial resources.

As such the NTC can help in:

- Maintaining independence from the executive since such a body would be established through a law of Parliament.
- Remedy the issue of non-uniformity in administration of tribunals as well as service conditions of tribunal members as a single body will be regulating all tribunals.
- Regularising the system of appointment to tribunals by establishing an Indian Tribunals Service and carrying out an All India Entrance Examination for Tribunals (AIEET).

However, to make NTC successful, one needs to be cautious about issues such as adhering to the standards set by judiciary regarding its composition to maintain its independence, impartial non-partisan appointment to the NTC board, doing away with the system of re-appointment of the tribunal members, ensuring enough political will to reform tribunal system etc.

2.9. New Rules for Tribunals (2020)

The 'Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020', were framed by the Ministry of Finance in exercise of powers under Section 184 of the Finance Act 2017.

These rules replace the 2017 Rules, which were struck down by the SC, which directed the government to re-formulate the rules in conformity with the principles delineated by the court.

Provisions of the New Rules:

- These apply to 19 Tribunals including Central Administrative Tribunals; Income Tax Appellate Tribunal; Customs, Excise, Service Tax Appellate Tribunal etc.
- Foreigners Tribunals are not covered.
- **Appointment**: appointments to the above Tribunals will be made by Central Government on the recommendations by the "**Search cum Selection Committee**" composed of:
  - The Chief Justice of India, or a judge nominated by the CJI
  - President/chairperson of concerned tribunal
  - Two government secretaries from the concerned ministry/department.
- **Removal**: Search Cum Selection Committee has the power to recommend the removal of a member, and also to conduct inquiry into allegations of misconduct by a member.
- **Qualifications for tribunal members**: Only persons having judicial or legal experience are eligible for appointment.
- **Term**: Rules also provide a fixed term of four years to the Tribunal members.
- **Independence**: The condition in the 2017 Rules (which were set aside by Court) that the members will be eligible for re-appointment has also been dropped in 2020 Rules.

2.10. Foreigners Tribunal

Foreigners' Tribunals (FTs) are **quasi-judicial** bodies in India meant to determine whether a person is or is not a foreigner under **Foreigner's Act, 1946**.

- FTs were **first setup in 1964** and are **unique to Assam**. In rest of the country, a foreigner apprehended by the police for staying illegally is prosecuted in a local court and later deported/put in detention centres.
- Each FT is headed by a member who can be **a retired judicial officer, bureaucrat or lawyer with minimum seven years of legal practice.**
- The Tribunal shall have the **powers of a civil court** while trying a suit under the Code of Civil Procedure, 1908.
- If declared a foreigner or placed under the doubtful category '**the burden of proof lies with the accused**'. A person falling under such a category will have the right to appeal at the Foreigners Tribunal
- The Tribunal can **summon and ask for the attendance** of any person and examine him/her on oath.
- The Tribunal can **ask anyone to produce the required documents**.
- The Tribunal can **commission examining any witness**, as and when required

Earlier, powers to constitute tribunals were vested only with Centre. Recently amended **Foreigners (Tribunal) Order, 2019** has empowered district magistrates in all States & Union Territories to set up tribunals to decide whether a person staying illegally in India is a foreigner or not.

It has also empowered individuals to approach the Tribunals. Earlier, only the State administration could move the Tribunal against a suspect. The **time limit for filing of appeals** before the Foreigners Tribunal has been extended from 60 days to **120 days**.

2.11. National Green Tribunal (NGT)

NGT was established under the National Green Tribunal Act, 2010 for effective and expeditious disposal of cases relating to environmental protection. India became the third country in the world to set up a specialised environmental tribunal, only after Australia and New Zealand, and the first developing country to do so.

New Delhi is NGT's Principal Bench with Bhopal, Pune, Kolkata and Chennai being other benches.

2.11.1. Composition

- The Tribunal comprises of the Chairperson, the Judicial Members and Expert Members. They shall hold office for term of five years and are not eligible for reappointment.
- The Chairperson is appointed by the Central Government in consultation with Chief Justice of India (CJI).
- A Selection Committee shall be formed by central government to appoint the Judicial Members and Expert Members.
- There are to be least 10 and maximum 20 full time Judicial members as well as Expert Members in the tribunal.
- Only an existing or retired judge of a High Court or Supreme Court can be a judicial member
- Expert members need to have been in any environment related field with at least 15 years of administrative experience.

2.11.2. Jurisdiction

The NGT adjudicates matters relating to following legislations:

- Water (Prevention and Control of Pollution) Act, 1974,
- Water (Prevention and Control of Pollution) Cess Act, 1977,
- Forest (Conservation) Act, 1980,

- Air (Prevention and Control of Pollution) Act, 1981,
- Environment (Protection) Act, 1986,
- The Public Liability Insurance Act, 1991 and
- Biological Diversity Act, 2002.

2.11.3. Powers and Functions

- NGT is mandated to make disposal of applications or appeals finally within 6 months of filing of the same.
- As per the NGT Act, NGT does not have the power to take *suo motu* cognisance.
  *Note-*The Supreme Court, in 2019, has agreed to examine a legal question whether the National Green Tribunal (NGT), established in 2010 to deal with cases pertaining to environmental issues, has the power to take cognisance of a matter on its own. The matter is sub judice.*
- As per Section 22 of the NGT Act, appeals from NGT lie directly to the Supreme Court.
  *Note- *The Supreme Court has clarified that an appeal under Section 22 of the NGT Act cannot be treated as a matter of right unless it involves a substantial question of law.*
- The Tribunal is not bound by the procedure laid down under the Code of Civil Procedure 1908, but shall be guided by principles of 'natural justice'.
- While passing any order/decision/ award, it shall apply the principles of sustainable development, the precautionary principle and the polluter pays principle.
- NGT by an order, can provide
  - relief and compensation to the victims of pollution and other environmental damage (including accident occurring while handling any hazardous substance),
  - for restitution of property damaged, and
  - for restitution of the environment for such area or areas, as the Tribunal may think fit.
- The NGT Act also provides a procedure for a penalty for non-compliance:
  - Imprisonment for a term which may extend to three years,
  - Fine which may extend to ten crore rupees, and
  - Both fine and imprisonment

3. Lok Adalats

The concept of Lok Adalat (People's Court) is an innovative Indian contribution to the world jurisprudence.

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the victims for satisfactory settlement of their disputes.

This system is based on Gandhian principles. It is one of the components of **ADR (Alternative Dispute Resolution) systems.** This concept of settlement of disputes through mediation, negotiation or arbitration is conceptualized and institutionalized in the philosophy of Lok Adalat. It involves people who are directly or indirectly affected by dispute resolution. It has proved to be a very effective alternative to litigation.

3.1. Origin of Lok Adalats

The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat. Maharashtra commenced the Lok Nyayalaya in 1984.

The advent of **Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats**, pursuant to the constitutional mandate in Article 39A (free legal aid to the poor and weaker sections of the society and justice for all) of the Constitution of India. It contains provisions such as:

- This Act mandates constitution of legal services authorities to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- It also mandates organization of Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity.
- The award passed by the Lok Adalat formulating the terms of compromise will have the force of decree of a court, which can be executed as a civil court decree.

The evolution of movement called Lok Adalat was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice.

- The parties don't have to be represented by the lawyers and are encouraged to interact with judge who helps in arriving at amicable settlement.
- **No fee** is paid by the parties.
- Strict rule of Civil Procedural Court and Evidence is not applied.
- Decision is by informal sitting and **binding on the parties** and **no appeal lies against the order of the Lok Adalat.**

3.2. Jurisdiction of Lok Adalats

A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:

i. any case pending before; or
ii. any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

The Lok Adalat can compromise and settle even criminal cases, which are compoundable under the relevant laws.

Compoundable offences are those that can be compromised, i.e. the complainant can agree to take back the charges levied against the accused.

Lok Adalats have competence to deal with a number of cases like:

- Compoundable civil, revenue and criminal cases
- Motor accident compensation claims cases
- Partition Claims
- Damages Cases
- Matrimonial and family disputes
- Mutation of lands case
- Land Pattas cases
- Bonded Labor cases
- Land acquisition disputes
- Bank's unpaid loan cases
- Arrears of retirement benefits cases
- Family Court cases
- Cases, which are not sub-judice

3.3. Powers of Lok Adalats

- The Lok Adalat shall have the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:
  - Power to summon and enforce the attendance of any witness and to examine him/her on oath.
  - Power to enforce the discovery and production of any document.
  - Power to receive evidence on affidavits,

- Power for requisitioning of any public record or document or copy thereof or from any court.
- Such other matters as may be prescribed.

- Every Lok Adalat shall have the power to specify its own procedure for the determination of any dispute coming before it.
- All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of IPC.
- Every Lok Adalat shall be deemed to be a Civil Court for the purpose of Sec 195 and Chapter XXVI of CrPC.

3.4. Permanent Lok Adalats

In 2002, the Parliament brought about certain amendments to the Legal Services Authorities Act, 1987 to institutionalize the Lok Adalats by making them a permanent body to settle the disputes related to public utility services such as transport, postal, telegraph etc.

- Permanent Lok Adalats have been set up as permanent bodies with a Chairman and two members for providing compulsory **pre-litigative** mechanism for conciliation and settlement of cases relating to public utility services.
- The **jurisdiction** of the Permanent Lok Adalats is upto Rs. One Crore.
- The **award** of the Permanent Lok Adalat is final and binding upon the parties

Kindly note that Permanent Lok Adalats have jurisdiction over pre-litigation matters only, while Lok Adalat have jurisdiction over pending and pre-litigation matters. Otherwise, Permanent Lok Adalats have the same powers that are vested in the Lok Adalats.

Mobile Lok Adalats are also organized in various parts of the country which travel from one location to another to resolve disputes in order to facilitate the resolution of disputes through this mechanism.

3.5. Advantages of Lok Adalats

- **Speedy Justice a**nd Saving From The Lengthy Court Procedures
  - Lok adalats ensure speedier justice because it can be conducted at suitable places, arranged very fast, in local languages too, even for the illiterates.
  - The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. Hence, Lok Adalats are also known as “People’s Festivals of Justice”
  - The victims and the offender may be represented by their advocate or they can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons thereof, which is not possible in a regular court of law.
- **Economical justice**
  - There is no court fee in Lok Adalat. If the case is already filed in the regular court, the fee paid is refunded in the manner provided under the Court Fees Act if the dispute is settled at the Lok Adalat. This kind of refund is an incentive given to parties to negotiate for settlement.
- **Unburdening of Courts by reducing the backlog of cases**
  - In a Lok Adalat, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgment by consent.
- **Maintenance of Cordial Relations**
  - The main thrust of Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court.

Student Notes:

- While conducting the proceedings, a Lok Adalat acts as a conciliator and not as an arbitrator. Its role is to persuade the parties to hit upon a solution and help in reconciling the contesting differences.
- Lok Adalats are also required to follow the principles of natural justice and other legal principles.

3.6. Issues with Lok Adalats

- **Lack of confidentiality**: Lok Adalat proceedings are held in the open court and any member of public may witness these proceedings. Thus, the element of confidentiality is lacking. This also impedes the process of exploration of various resolution options and ultimately the success rate in matters where parties desire confidentiality.
- **Aura of Court proceedings**: Lok Adalats are fora where voluntary efforts intended to bring about settlement of disputes between the parties are made through conciliatory and persuasive efforts. However, they are conducted in regular courts only. Therefore, some amount of formality still remains attached with Lok Adalats.
- **Needs consent of both parties**: The most important factor to be considered while deciding the cases at the Lok Adalat is the consent of both the parties. It cannot be forced on any party that the matter has to be decided by the Lok Adalat.
- **Other issues**
  - The biggest disadvantage with Lok Adalats is that repeated sittings at short intervals with the same judge are almost not possible which breaks the continuity of the deliberations.
  - It cannot be said that the parties remain in absolute control of the proceedings in contradistinction to what happens in mediation

3.7. Measures to improve functioning of Lok Adalats

- Establishing permanent and continuous Lok Adalats in all the Districts in the country for the disposal of pending matters as well as disputes at pre-litigative stage.
- Establishing separate Permanent and Continuous Lok Adalats for Government departments, PSUs etc. for disposal of pending cases.
- Appointment of "Legal Aid Counsel" in all Courts of Magistrates in the country.
- Sensitization of Judicial officers in regard of Legal Services Scheme.
- Legal literacy and legal aid programmes need to expand to take care of poor and ignorant by organizing awareness camps at grass-root level besides, the mass media like newspapers, television and radios can also be desirable for this purpose.
- To increase its utility, the concerned Legal Services Authority should disseminate information to the public about the holding of various Lok Adalat by it and success achieved thereby in providing speedy, equitable and inexpensive justice.
- There is need for improvement in quality of legal aid provided by lawyers and advocates. The remunerations offered from legal services authorities to lawyers should be revised and thus encouraged to render effective legal assistance to needy persons.

The Lok Adalat Movement can be successful only if the people participate on voluntary basis in the functioning of Lok Adalat. This can be achieved by restraining themselves from invoking the jurisdiction of traditional Courts in trifle disputes. Further, the endeavour should be to organize more and more Lok Adalats, ensure greater participation, reduce formalism, spare more time and personalized attention thereby ensuring quality justice through Lok Adalats.

4. National Human Rights Commission (NHRC)

In keeping with spirit of human rights movement all over the world, National Human Rights Commission (NHRC) came into existence in India through an Ordinance promulgated on 28th September 1993 by the President of India. However, soon the ordinance was replaced by a

statute called **Protection of Human Rights Act, 1993** (which came into force in 1994). This Act provides for setting up NHRC at Centre as well as one Commission each at State level.

National Human Rights Commission is designed to protect human rights, defined as "rights relating to life, liberty, equality and dignity of individual guaranteed by Constitution or embodied in International Covenant and which are enforceable by Courts in India".

In 2019, the **Protection of Human Rights (Amendment) Act** was enacted in order to make NHRC more inclusive and efficient in its functioning.

Student Notes:

4.1. Comparison of 2019 Amended Act with the 1993 Act

Provisions	Original Act of 1993	Amended Act of 2019
Composition of NHRC	• Under the Act, the chairperson of the NHRC is a person who has been a Chief Justice of the Supreme Court. • The Act provides for two persons having knowledge of human rights to be appointed as members of the NHRC. • Under the Act, chairpersons of various commissions such as the National Commission for Scheduled Castes, National Commission for Scheduled Tribes, and National Commission for Women are members of the NHRC.	• The Act amends this to provide that a person who has been Chief Justice of the Supreme Court, or a **Judge of the Supreme Court** will be the chairperson of the NHRC. • The Act amends this to allow **three members** to be appointed, of which **at least one will be a woman.** • The Act provides for **including** the chairpersons of the **National Commission for Backward Classes**, the **National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities** as members of the NHRC.
Chairperson of SHRC	• Under the Act, the chairperson of a SHRC is a person who has been a Chief Justice of a High Court.	• The Act amends this to provide that a person who has been Chief Justice or **Judge of a High Court** will be chairperson of a SHRC.
Term of office	• The Act states that the chairperson and members of the NHRC and SHRC will hold office for five years or till the age of seventy years, whichever is earlier. • Further, the Act allows for the reappointment of members of the NHRC and SHRCs for a period of five years.	• The Act reduces the term of office to **three years** or till the age of seventy years, whichever is earlier. • The Act **removes the five-year limit for reappointment.**
Union Territories		The Act provides that the central government may confer on a SHRC human rights functions being discharged by Union Territories. Functions relating to human rights in the case of Delhi will be dealt with by the NHRC.

4.2. Need for the amendment in the 1993 Act

- The NHRC was denied A-grade accreditation in 2017 by the Global Alliance of National Human Rights Institutions (GANHRI), a UN body based in Geneva, due Commission's failure in ensuring gender balance and pluralism in its staff and lack of transparency in selecting its members and rising political interference.

- However, in February 2018, GANHRI, re-accredited India's apex rights watchdog with the 'A' status.

- Demand from the certain State Governments had also proposed for amendment of the Act, as they had been facing difficulties in finding suitable candidates to the post of Chairperson of the respective State Commissions owing to the existing eligibility criteria to the said post.

4.3. Significance of the amendment

- **Compliance with the Paris Principles**: The proposed amendments will enable both the National Commission as well as the State Commissions to be more compliant with the Paris Principles concerning its autonomy, independence, pluralism and wide- ranging functions in order to effectively protect and promote human rights.
- **Filling up the Vacancies**: The appointment conditions/eligibility have been relaxed which will ensure that the vacancies are filled without delay.
- **Enabling conditions to incorporate Civil Society**: Effort is to also to increase the presence of civil Society in the composition of the Commission.
- **Ease of accessibility**: The applicants in Union Territories can now appeal in the Human Rights Commission of nearby states instead of coming all the way to Delhi.

4.4. Composition of NHRC

Post the 2019 Amendment Act, the NHRC consists of: The Chairman and Four members (excluding the ex-officio members)

- A Chairperson, who has been a Chief Justice of India or a Judge of the Supreme Court.
- One member who is, or has been, a Judge of the Supreme Court of India, or, One member who is, or has been, the Chief Justice of a High Court.
- Three Members, out of which at least one shall be a woman to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
- In addition, the Chairpersons of National Commissions viz., National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women, National Commission for Minorities, National Commission for Backward Classes, National Commission for Protection of Child Rights; and the Chief Commissioner for Persons with Disabilities serve as ex officio members.

4.5. Appointment

The Chairperson and members of the NHRC are appointed by the President of India, on the recommendation of a Committee consisting of:

- The Prime Minister (Chairperson)
- The Home Minister
- The Leader of Opposition in the Lok Sabha
- The Leader of Opposition in the Rajya Sabha
- The Speaker of the Lok Sabha
- The Deputy Chairman of the Rajya Sabha

4.6. Removal

The President may remove the Chairperson or any other Member if he:

- Is adjudged an insolvent; or
- Engages during his term of office in any paid employment outside the duties of his office; or
- Is unfit to continue in office by reason of infirmity of mind or body; or
- Is of unsound mind and stands so declared by a competent court; or
- Is convicted and sentenced to imprisonment for an offence, which in the opinion of the President involves moral turpitude.

Additionally, the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the Chairman or a member.

Student Notes:

4.7. Emoluments

The salaries, allowances and other conditions of service of the chairman or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment.

4.8. Functions of NHRC

- Proactively or reactively **inquire into violations of human rights** or negligence in the prevention of such violation by a public servant
- By leave of the court, to **intervene in court proceeding relating to human rights**.
- **Visit any jail or other institution** under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for study of the living conditions of the inmates and make recommendations.
- **Review the Constitutional or legal safeguards** in force for the protection of human rights and recommend measures for their effective implementation.
- **Review the factors**, including acts of terrorism that **inhibit the enjoyment of human rights** and recommend appropriate remedial measures.
- **Study treaties and other international instruments on human rights** and make recommendations for their effective implementation.
- **Undertake and promote research in the field of human rights**.
- Engage in **human rights education among various sections of society** and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- **Encourage the efforts of NGOs** and institutions working in the field of human rights.
- Such other function as it may consider it necessary for the protection of human rights.

4.9. Working of NHRC

The Commission has all powers of a Civil Court. It has its own investigating staff for investigation into complaints of Human Rights violations. It is open to it to utilize services of any officer or investigation agency of the Central Government or any State Government.

The Commission while inquiring into complaints of violations of human rights may call for information or report from the Central Government or any State Government, or any other authority or organization subordinate thereto within such time as may be specified by it.

The Commission is not empowered to inquire into any matter **after the expiry of one year** from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence.

The Commission may take any of following steps upon completion of an enquiry:

- Where enquiry discloses the Commission of violation of Human Rights or negligence in prevention of violation of Human Rights by a public servant, it may recommend to the concerned Government or authority initiation of proceedings for prosecution or such other function.
- It may recommend to the concerned government or authority to make payment of compensation or damages to the victim.
- Approach SC or HC concerned for such directions, orders, or writs as the court may deem necessary.

- Recommend to the concerned Government or authority for grant of such immediate interim relief to victim or members of his family.

4.10. Strengths of NHRC

- The **selection procedure** of the members of NHRC is the main factor of its strength. The composition of the Selection Committee is such that it involves members of ruling as well as opposition party and both the Houses of Parliament. Also, the composition of NHRC is such that it involves Legislative, Executive, Judiciary, academicians and NGOs. This gives the Commission a broad vision to deal with the issues of Human Rights.
- **Financial autonomy**, **though limited**, has provided NHRC independence of Central Government. The Commission is free to make its own budget and spend it according to its own planning. The draft of the proposed budget is placed before both the Houses of Parliament and after the approval of the budget, the Government, without making any amendment, has to provide finances to the Commission.
- The Commission has the power to conduct ***suo-moto*** **inquiry** into the complaints of Human Rights violations.
- **Easy accessibility** to the Commission has made it one of the most popular organizations. Anyone can approach NHRC through telephone, letter, application, mobile phone and the Internet. All the documents, reports, newsletters, speeches, etc. of the Commission are also available on this website. The status of the complaint too can be known through its website. The popularity and trust on NHRC is quite evident from the fact that while it had registered only 496 complaints in 1993-94, in 2004-05 the total number of cases were 74,4019.
- NHRC has **advised the government** a number of times on the issues of Human Rights. Be it the cases of custodial deaths or suicide by the farmers or health issues or POTA, child marriage, trafficking of women and children etc., the government has been taking suggestions from NHRC.
- NHRC, in a true democratic fashion, has worked immensely to create **awareness among public on Human Rights issues** through seminars, workshops, lectures, literature, NGOs' participation, universities' collaborations, etc.
- The Commission has **extended its sphere** from time to time. Support for right to information, health care issues, disables' rights, HIV/AIDS patients' rights etc. are some of the issues where NHRC has worked successfully.

4.11. Weaknesses of NHRC

- In the process of selection of the members of the Commission, the Chairman is not consulted.
- it does not have powers to investigate armed forces, BSF or any other paramilitary forces.
- NHRC is only an investigative and recommendatory body. It does not have power of prosecution.
- It is dependent on the Government for manpower and money. The Central Government shall pay to the Commission by way of grants such sums of money as it may consider fit.

5. State Human Rights Commission (SHRC)

Protection of Human Rights Act, 1993 (which came into force in 1994) provides for setting up NHRC at Centre as well as one Commission (SHRC) each at State level. Although, not every Indian state has created a SHRC yet.

A State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution. However, if any such case is already being inquired into by the

National Human Rights Commission or any other Statutory Commission, then the State Human Rights Commission does not inquire into that case

Student Notes:

5.1. Composition of SHRC

The State Human Rights Commission is a multi-member body consisting of a chairperson and few members. The chairperson should be a retired Chief Justice of a High Court or Judge of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years' experience as District Judge and a person having knowledge or practical experience with respect to human rights.

5.2. Term

The chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier and are allowed for the reappointment.

5.3. Appointment

- The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the Chief Minister as its head, the Speaker of the Legislative Assembly, the state Home Minister and the Leader of the Opposition in the Legislative Assembly.
- In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee. Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state.

5.4. Removal

Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by the governor). The President can remove them on the same grounds and in the same manner as he can remove the chairperson or a member of the National Human Rights Commission. Thus, he can remove the chairperson or a member under the following circumstances:

- If he is adjudged an insolvent;
- If he engages, during his term of office, in any paid employment outside the duties of his office;
- If he is unfit to continue in office by reason of infirmity of mind or body;
- If he is of unsound mind and stands so declared by a competent court:
- If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the President can also remove the chairperson or a member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member.

5.5. Emoluments

The salaries, allowances and other conditions of service of the chairman or a member are determined by the state government. But, they cannot be varied to his disadvantage after his appointment

5.6. Functions of SHRC

- To **inquire into any violation of human rights** or negligence in the prevention of such violation by a public servant, **either suo motu or on a petition** presented to it or on an order of a court.

- To **intervene in any proceeding** involving allegation of violation of human rights pending before a court.
- To **visit jails and detention places to study the living conditions** of inmates and make recommendation thereon.
- To **review the constitutional and other legal safeguards** for the protection of human rights and recommend measures for their effective implementation.
- To **review the factors including acts of terrorism that inhibit the enjoyment of human rights** and recommend remedial measures.
- To **study treaties and other international instruments on human rights** and make recommendations for their effective implementation.
- To **undertake and promote research in the field of human rights**.
- To **spread human rights literacy** among the people and promote awareness of the safeguards available for the protection of these rights.
- To **encourage the efforts of non-governmental organizations (NGOs)** working in the field of human rights.
- To undertake such **other functions** as it may consider necessary for the promotion of human rights.

5.7. Working of SHRC

The Commission is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the state government or any other authority subordinate thereto.

The Commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look

nto a matter within one year of its occurrence.

The Commission may take any of the following steps during or upon the completion of an inquiry:

- it may recommend to the state government or authority to make payment of compensation or damages to the victim;
- it may recommend to the state government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- it may recommend to the state government or authority for the grant of immediate interim relief to the victim;
- it may approach the Supreme Court or the state high court for the necessary directions, orders or writs.

The functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the state government or authority. But, it should be informed about the action taken on its recommendations within one month.

The Commission submits its annual or special reports to the state government. These reports are laid before the state legislature, along with a memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations.

6. Central Vigilance Commission (CVC)

The CVC was established in 1964 by an executive resolution upon the recommendation of Santhanam Committee on Prevention of Corruption (1962-64). In 2003, the Parliament enacted a law conferring statutory status on the CVC.

In 2004, the Government of India authorized the CVC as the "Designated Agency" to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action. The CVC is conceived to be the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work.

Student Notes:

6.1. Composition and Eligibility

The CVC is composed of a Chairperson (Central Vigilance Commissioner) and not more than two members.

Section 3(3) of the CVC Act, 2003 provides that the Chief Vigilance Commissioner and Vigilance Commissioners shall be appointed from amongst persons-

- Who have been or are in All India Services or any civil service of Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including policy administration; or
- Who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance, and investigations.

The President appoints them upon the recommendation of a committee comprising of:

- The Prime Minister as its head
- Union Minister of Home Affairs
- Leader of Opposition or Leader of largest opposition party in Lok Sabha

They hold office for a term of four years or until they attain the age of sixty-five years, whichever is earlier. They are not eligible for further employment under the Central or a State Government upon expiry of their term.

6.2. Removal

The President can remove any member from office under the following circumstances:

- If he is adjudged insolvent; or
- If he has been convicted of an offence which (in the opinion of the Central Government) involves a moral turpitude; or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is (in the opinion of the President), unfit to continue in office by reason of infirmity of mind or body; or
- If he has acquired such financial or other interest as is likely to affect prejudicially his official functions.

In addition, the President can remove any member on the grounds of proved misbehaviour or incapacity. However, in this case, the President has to refer the matter to the Supreme Court for an enquiry. If, after the enquiry, the Supreme Court upholds the cause of removal and advises so, the President can remove him. He is deemed to be guilty of misbehavior if:

- He is concerned or interested in any contract or agreement made by the Central Government, or
- He participates in any way in the profit of such contract or agreement or in any benefit or emolument arising there from, otherwise than as a member and in common with the other members of an incorporated company.

Student Notes:

6.3. Emoluments

The salary, allowances and other conditions of service of the Central Vigilance Commissioner are similar to those of the Chairman of UPSC and that of the vigilance commissioner are similar to those of a member of UPSC. But they cannot be varied to his disadvantage after his appointment.

6.4. Functions

With respect to CBI:

- To exercise superintendence over the functioning of the Delhi Special Police Establishment (DSPE) (i.e. CBI) with respect to investigation under the Prevention of Corruption Act, 1988; or offence under CrPC for certain categories of public servants and to give directions to the DSPE for purpose of discharging this responsibility;
- To give directions and to review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the Prevention of Corruption Act;

With respect to Vigilance:

- To undertake an inquiry or cause an inquiry or investigation to be made into any transaction in which a public servant working in any organization, to which the executive control of the Government of India extends, is suspected or alleged to have acted for an improper purpose or in a corrupt manner;
- To tender independent and impartial advice to the disciplinary and other authorities in disciplinary cases, involving vigilance angle at different stages i.e. investigation, inquiry, appeal, review etc.
- To exercise a general check and supervision over vigilance and anti-corruption work in Ministries or Departments of the Government of India and other organizations to which the executive power of the Union extends; and
- To undertake or cause an inquiry into complaints received under the Public Interest Disclosure and Protection of Informer and recommend appropriate action.
- The Central Government is required to consult the CVC in making rules and regulations governing the vigilance and disciplinary matters relating to the members of Central Services and All India Services.

6.5. Working of CVC

- The CVC conducts its proceedings at its headquarters (New Delhi). It has the powers of a Civil Court and is empowered to regulate its own procedure. It may call for information or report from the Central Government or its authorities so as to enable it to exercise general supervision over the vigilance and anti-corruption work.
- The CVC, after receiving the report of the inquiry undertaken by an agency, advises the Central Government or its authorities upon further course of action. The Central Government or its authorities shall consider such advice and take appropriate action. If it does not agree with the advice of the CVC, it shall communicate the reasons for the same to the CVC.
- Annual report of performance of CVC has to be presented to the President. The President places this report before each House of the Parliament.
- All Ministries/Departments in the Union Government have a Chief Vigilance Officer (CVO) who heads the Vigilance Division of the organization concerned, assisting and advising the Secretary or Head of Office in all matters pertaining to vigilance. He also provides a link between his organization and the Central Vigilance Commission on the one hand and his organization and the Central Bureau of Investigation on the other.

Student Notes:

7. Central Bureau of Investigation (CBI)

The CBI owes its origin to the Special Police Establishment, established by Government of India in 1941, to enquire into cases of corruption in the procurement during the Second World War. Later, based on the recommendations of the Santhanam Committee on Prevention of Corruption (1962-64), CBI was established by a resolution of the Ministry of Home Affairs. Later, it was transferred to the Ministry of Personnel and now it enjoys the status of an attached office. (CBI comes under the administrative control of Ministry of Personnel, Public Grievances and Pensions)

The CBI is not a statutory body. It derives its powers from the Delhi Special Police Establishment Act, 1946.The CBI is the main investigating agency of the Central Government. It plays an important role in the prevention of corruption and maintaining integrity in administration. It works under the overall superintendence of Central Vigilance Commission in matters related to the Prevention of Corruption Act, 1988.

7.1. Composition of CBI

The CBI is headed by a Director. He is assisted by a Special Director or an Additional Director. Additionally, it has a number of joint directors, deputy inspector generals, superintendents of police and all other usual ranks of police personnel.

The Director of CBI as Inspector-General of Police, Delhi Special Police Establishment, is responsible for the administration of the organization.

The Director of CBI has been provided security of two-year tenure in office by the CVC Act, 2003 (*Vineet Narain Case*).

7.2. Organization of CBI

At present (2013), the CBI has the following divisions:

1. Anti-Corruption Division
2. Economic Offences Division
3. Special Crimes Division
4. Policy and International Police Cooperation Division
5. Administration Division
6. Directorate of Prosecution
7. Central Forensic Science Laboratory

7.3. Functions of CBI

The functions of CBI are:

- Investigating cases of corruption, bribery and misconduct of Central government employees.
- Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.
- Investigating serious crimes, having national and international ramifications, committed by organized gangs of professional criminals.
- Coordinating the activities of the anti-corruption agencies and the various state police forces.
- Taking up, **on the request of a state government,** any case of public importance for investigation.
- Maintaining crime statistics and disseminating criminal information.

Student Notes:

The CBI is a multidisciplinary investigation agency of the Government of India and undertakes investigation of corruption-related cases, economic offences and cases of conventional crime. It normally confines its activities in the anti-corruption field to offences committed by the employees of the Central Government and Union Territories and their public sector undertakings.

It takes up investigation of conventional crimes like murder, kidnapping, rape etc., on reference from the state governments or when directed by the Supreme Court/High Courts.

The CBI acts as the "National Central Bureau" of Interpol in India. The Interpol Wing of the CBI coordinates requests for investigation-related activities originating from Indian law enforcement agencies and the member countries of the Interpol.

7.4. CBI as 'Caged Parrot' and steps to make it free

The SC raised questions on the CBI's independence while hearing the coal allocation (coalgate) scam case, called it a "caged parrot speaking in its master's voice". The SC had then asked the Centre to make the CBI impartial and said it needs to be ensured that the CBI functions free of all external pressures.

In response to this, the Centre filed an affidavit stating following measures will be adopted to ensure the autonomy of the CBI. Some of those measures have been adopted, such as:

- CBI director is be **appointed by a collegium comprising of the Prime Minister, Chief Justice of India and Leader of the Opposition (or Leader of largest opposition party)**. The CBI director cannot be appointed or removed without the consent of this collegium.
- The CBI director can be removed on the grounds of misbehaviour only by an order from the President after an inquiry.
- There will be an accountability commission headed by three retired Supreme Court or High Court judges. The committee will look into cases of grievances against the CBI.
- The affidavit said that CVC will have the power of superintendence and administration over the CBI for all cases to be probed under the Prevention of Corruption Act but such power would vest in the Centre for rest of the cases.

8. Central Information Commission (CIC)

The CIC was established by the Central Government in 2005 in accordance with the provisions of Right to Information Act (2005).

8.1. Composition and Appointment

The Commission consists of a Chief Information Commissioner and not more than ten Information Commissioners. They are appointed by the President upon the recommendation of a committee comprising:

- The Prime Minister as Chairperson
- The Leader of Opposition in the Lok Sabha
- A Union Cabinet Minister nominated by the Prime Minister

They should be people of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. They should not be a Member of Parliament or Member of the Legislature of any State or Union Territory. They should not hold any other office of profit or connected with any political party or carrying any business or pursuing any profession.

8.2. Tenure and Removal

Earlier, the members of CIC used to hold office for a term of five years or until they attained the age of sixty-five years, whichever was earlier. **But the RTI Amendment Act**, **2019** has removed

this provision and it states that the Central government will notify the term of office for the CIC and the ICs (at both Central and state level).

They are not eligible for reappointment.

The President can remove any member from office under the following circumstances:

- If he is adjudged insolvent; or
- If he has been convicted of an offence which (in the opinion of the Central Government) involves a moral turpitude; or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is (in the opinion of the President), unfit to continue in office by reason of infirmity of mind or body; or
- If he has acquired such financial or other interest as is likely to affect prejudicially his official functions.

In addition, the President can remove any member on the grounds of proved misbehaviour or incapacity. However, in this case, the President has to refer the matter to the Supreme Court for an enquiry. If, after the enquiry, Supreme Court upholds the cause of removal and advises so, the President can remove him. He is deemed to be guilty of misbehaviour if:

- He is concerned or interested in any contract or agreement made by the Central Government, or
- He participates in any way in the profit of such contract or agreement or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company.

8.3. Emoluments

Earlier, the salary, allowances and other service conditions of the Chief Information Commissioner were similar to those of the Chief Election Commissioner and that of the Information Commissioner were similar to those of an Election Commissioner.

But the **RTI Amendment Act, 2019** has empowered the Central Government to determine the salaries, allowances, and other terms and conditions of service of the Central and state CIC and ICs. However, they cannot be varied to their disadvantage during service.

8.4. Powers and Functions of Information Commissions

- The Central Information Commission/State Information Commission has a duty to receive complaints from any person:
  - Who has not been able to submit an information request because a PIO has not been appointed.
  - Who has been refused information that was requested.
  - Who has received no response to his/her information request within the specified time limits.
  - Who thinks the fees charged are unreasonable.
  - Who thinks information given is incomplete or false or misleading.
  - Any other matter relating to obtaining information under this law.
- Power to order inquiry if there are reasonable grounds (***suo moto* power**)
- The Commission has the powers of Civil Court in following matter:
  - summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
  - requiring the discovery and inspection of documents;
  - receiving evidence on affidavit;
  - requisitioning any public record from any court or office;

Student Notes:

  - issuing summons for examination of witnesses or documents; and
  - any other matter which may be prescribed.
- All records covered by RTI law (including those covered by exemptions) must be given to CIC/SIC during inquiry for examination.
- Power to secure compliance of its decisions from the public authority includes:
  - Providing access to information in a particular form.
  - Directing the public authority to appoint a PIO/APIO where none exists.
  - Publishing information or categories of information.
  - Making necessary changes to the practices relating to management, maintenance and destruction of records.
  - Enhancing training provision for officials on RTI.
  - Seeking an annual report from the public authority on compliance with this law.
  - Requiring it to compensate for any loss or other detriment suffered by the applicant.
  - Imposing penalties under this law.
  - Rejecting the application.
- The CIC submits annual report to the Central Government, which tables it in both the Houses of Parliament. The SIC will submit the annual report to State Government, which places it before the State Legislature (both Houses wherever applicable).
- When a public authority does not confirm to provisions of RTI Act, the Commission may recommend (to the authority) steps, which ought to be taken for promoting such conformity.

The **State Information Commission** performs similar functions with respect to offices, financial institutions, public sector undertakings, etc. which fall under the concerned State Government.

9. Lokpal

The Lokpal and Lokayukta Act, 2013 was enacted after the Indian anti-corruption movement of 2011 with series of protests for the Jan Lokpal Bill. It establishes **Lokpal for the Union and Lokayukta for States** to inquire into allegations of corruption against certain public functionaries.

However, the appointment of the Lokpal was **delayed because of absence of leader of opposition,** who is a member of selection panel to recommend Lokpal. After this the Supreme Court intervened and set deadlines for appointing the Lokpal at the earliest. Hence, the PM-led selection panel, in 2019, cleared the former Supreme Court Judge Pinaki Chandra Ghose as **first Lokpal** of India.

9.1. Composition

Lokpal will consist of **a chairperson and a maximum of eight members**, of which 50% shall be judicial members and 50% shall be from SC/ST/OBCs, minorities and women.

9.2. Appointment

It is a two-stage process consisting of:

- A **search committee** which recommends a panel of names to the high-power selection committee.
- The **selection committee** comprises the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition, the Chief Justice of India (or his nominee) and an eminent jurist (nominated by President based on the recommendation of other members of the panel).
- President will appoint the recommended names.

Student Notes:

9.3. Removal

The Chairperson or any Member shall be removed from his office by order of the President on **grounds of misbehaviour after the Supreme Court report.** For that a petition has to be signed by at least one hundred Members of Parliament.

9.4. Jurisdiction

The jurisdiction of Lokpal extends to:

- Anyone who is or has **been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union government under Groups A, B, C and D.**
- The chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either **established by an Act of Parliament or wholly or partly funded by the Centre.**
- Any society or trust or body that receives **foreign contribution above ₹10 lakh.**

9.4.1 Exceptions for Prime Minister

- It does not allow a Lokpal inquiry if the allegation against the PM relates to international relations, external and internal security, public order, atomic energy and space.
- Complaints against the PM are not to be probed unless the full Lokpal bench considers the initiation of inquiry and at least 2/3rds of the members approve it.
- Such an inquiry against the PM (if conducted) is to be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry are not to be published or made available to anyone.

9.5. Emoluments

- The **salaries, allowances and service conditions** of the Lokpal Chairperson will be the same as those for the Chief Justice of India; those for other members will be the same as those for a judge of the Supreme Court.
- The administrative expenses of the Lokpal, including all **salaries, allowances and pensions of the Chairperson, Members or Secretary or other officers or staff of the Lokpal**, will be charged upon the **Consolidated Fund of India** and any fees or other money taken by the Lokpal shall form part of that Fund.

9.6. Functioning

- **Power with respect to CBI**: Power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal. Transfer of officers of CBI investigating cases referred by Lokpal would need approval of Lokpal.
- **Inquiry wing and prosecution wing:** Inquiry Wing for conducting **preliminary inquiry** and Prosecution Wing for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act.
- **Timelines for enquiry, investigation:** Act specifies a time limit of **60 days for completion of inquiry and 6 months for completion of investigation** by the CBI. This period of 6 months can be extended by the Lokpal on a written request from CBI.
- **Confiscation of property:** The act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.
- **Special Court** shall be setup to hear and decide the cases referred by the Lokpal.

9.7. Issues

- **Requirement of Government Approval:** The Act does not vest power of prior sanction with Lokpal for enquiry and investigation of government officials.

Student Notes:

- **Timeframe limitation:** The Act envisages that the Lokpal **shall not inquire into any complaint, made after seven years from the date** on which the offence has been committed. This restricts the scope, especially in relation to some of the large and complex scams that are exposed from time to time.
- **No Suo Moto power with Lokpal:** The Lokpal has been deprived of the authority of taking suo moto cognizance of the cases of corruption and maladministration.
- **Constitution of Lokayukta**: The Act mandates establishment of the Lokayukta in every state within a period of one year from the date of commencement of this Act. However, there are many states who have not taken action in this regard.
- **Power and Jurisdiction of the Lokayuktas in States:** State legislatures are free to determine the powers and jurisdictions of the Lokayukta which may establish weak Lokayuktas.

9.8. Way forward

- Lokpal can be given **constitutional status** to make it truly independent of political intervention.
- To prevent **Leader of Opposition** issue in future, an amendment to treat the leader of the largest Opposition party as the Leader of the Opposition for this purpose can be brought as done in respect of appointments of CBI Director and Central Vigilance Commissioner.
- Strict **guidelines and norms need to be setup to ensure** that the institution of Lokpal does not get buried into day to day complaints regarding administrative inefficiency, corruption etc.
- Provisions for the **protection to whistleblowers** shall be included in the Act, which was demanded in Jan Lokpal Bill.

10. Press Council of India (PCI)

The Press Council of India functions under the *Press Council Act*, *1978*. It is a statutory, quasi-judicial body which acts as a watchdog to oversee the conduct of the print media (press). It adjudicates the complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively.

10.1. Composition

The PCI consists of a chairman and 28 other members, who serve for a term of three years.

- The Chairman, by convention a retired judge of the Supreme Court of India, is selected by the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha and a member elected by the PCI.
- The members consist of members of the three Lok Sabha members, two members of the Rajya Sabha, six editors of newspapers, seven working journalists other than editors of newspapers, six persons in the business of managing newspapers, one person who is engaged in the business of managing news agencies, and three persons with special knowledge of public life.

10.2. Functions

- The functions of the PCI include among others:
- Helping newspapers maintain their independence;
- Build a code of conduct for journalists and news agencies;
- Help maintain “high standards of public taste” and foster responsibility among citizens;
- Review developments likely to restrict flow of news.

10.3. Powers

- The PCI has the power to receive complaints of violation of the journalistic ethics, or professional misconduct by an editor or journalist.
- The PCI is responsible for enquiring in to complaints received. It may summon witnesses and take evidence under oath, demand copies of public records to be submitted, even issue warnings and admonish the newspaper, news agency, editor or journalist.
- The Council is also empowered to make such observations as it may deem fit in respect of the conduct of any authority, including Government, for interfering with the freedom of the press.
- It can even require any newspaper to publish details of the inquiry. Decisions of the PCI are final and cannot be appealed before a court of law.
- The Council has been entrusted by the Parliament with the additional responsibility of functioning as Appellate Authority under the Press and Registration of Books Act, 1867 and the Appellate Board comprises of the Chairman of the Council and a member of the Council. The Board meets regularly and decides the Appeals placed before it.

The Council has rendered its opinion on the references received from Law Commission regarding astrology advertisement. Election Commission of India has also approached the Council for providing some concrete parameters to adjudge Paid News.

10.4. Limitations on its powers

- The powers of the PCI are restricted in two ways.
  - The PCI has limited powers of enforcing the guidelines issued. It cannot penalize newspapers, news agencies, editors and journalists for violation of the guidelines.
  - The PCI only overviews the functioning of press media. That is, it can enforce standards upon newspapers, journals, magazines and other forms of print media. It does not have the power to review the functioning of the electronic media like radio, television and internet media.

11. National Commission for Minority Educational Institutions (NCMEI)

- NCMEI, a quasi-judicial body, regulates the certification of minority educational institutions all over India.
- Its Chairman should be who has been a Judge of the High Court and three members are to be nominated by Central Government.
- It has the powers of a Civil Court. It has both original and appellate jurisdiction in such matters, as laid down by the SC in Joseph of Cluny v/s The State of West Bengal case.
- It has adjudicatory functions and recommendatory powers.
- It decides on disputes regarding affiliation of a minority educational institution to a university.
- It has power to enquire, suo motu, into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice.

NCMEI Act defines MEI as a college or an educational institution established and administered by a minority or minorities.

As per notification of the Government of India, there are **6 notified religious minority communities** - Muslim, Sikh, Christian, Buddhist, Parsis and Jain. **No linguistic minority** has been notified by the Central Government till date.

Eligibility criteria of MEIs-

-Educational institution is **established and being administered** by the minority community.

-If it is run by a trust/ registered society, **majority of members** must be from the minority community.

-It has been established **for the benefit** of the minority community.

- It specifies measures to promote and preserve the minority status and character of institutions of their choice established by minorities.
- It can also cancel the minority status granted to institutions if they are found to have violated the conditions of the grant.

12. Consumer Disputes Redressal Commissions

Till recently, the Consumer Disputes Redressal Commissions used to function under the ambit of the Consumer Protection Act, 1986. This act has been replaced by the **Consumer Protection Act, 2019**, which envisages setting up of C**onsumer Disputes Redressal Commissions** at the **District, State and National levels** for adjudicating consumer complaints. Appeals from the District and State Commissions will be heard at the next level and from the National Commission by the Supreme Court.

The Commissions will protect the "**consumer rights**" as defined by the 2019 Act as the right:

- to be protected against the marketing of goods, products or services which are hazardous to life and property.
- to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services;
- to be assured of access to a variety of goods, products or services at competitive prices.
- It also includes the right to be heard and to be assured that the consumer's interests will receive due consideration at appropriate forum; and
- the right to consumer awareness.

The powers and jurisdiction of these Commissions have been modified due to the new law, as shown below:

	1986 Act	2019 Act
Ambit of law	All goods and services for consideration, while free and personal services are excluded.	All goods and services, including telecom and housing construction, and all modes of transactions (online, teleshopping, etc.) for consideration. Free and personal services are excluded.
Unfair trade practices	Includes six types of such practices, like false representation, misleading advertisement.	The Act adds three types of practices to the list, namely: • failure to issue a bill or receipt; • refusal to accept a good returned within 30 days; and • disclosure of personal information given in confidence, unless required by law or in public interest. Contests/ lotteries may be notified as not falling under the ambit of unfair trade practices.
Product liability	No provision. Consumer could approach civil court but not consumer court.	Claim for product liability can be made against manufacturer, service provider, and seller.
Unfair contracts	No provision.	The Act recognizes and addresses the menace of unilateral and unfair contracts.
Regulator	No separate regulator.	Establishes the Central Consumer Protection Authority.
Pecuniary jurisdiction of Commissions	**District**: Up to Rs 20 lakh; **State**: Between Rs 20 lakh and up to Rs one crore; **National**: Above Rs one crore	**District**: Up to Rs one crore; **State**: Between Rs one crore and up to Rs 10 crore; **National**: above Rs 10 crore.

Consumer court	Complaints could be filed in a consumer court where sellers (defendant) office is located.	Complaints can be filed in a consumer court where consumer resides or work.
E-commerce	No provision.	Defines direct selling, e-commerce and electronic service provider. The central government may prescribe rules for preventing unfair trade practices in e-commerce and direct selling.
Mediation Cells	No legal Provision.	Court can refer settlement through mediation.

The **National Commission** is empowered to issue instructions regarding:

- Adoption of uniform procedure in the hearing of the matters,
- Prior service of copies of documents produced by one party to the opposite parties,
- Speedy grant of copies of documents, and
- Generally over-seeing the functioning of the State Commissions and the District Forums to ensure that the objects and purposes of the Act are best served, **without interfering with their quasi-judicial freedom.**
- In order to help achieve the objects of the Consumer Protection Act, the National Commission has also been conferred with the power of administrative control over all the State Commissions by calling for periodical returns regarding the institution, disposal and pendency of cases.

The remedy under the Consumer Protection Act is an alternative in addition to that already available to the aggrieved persons/consumers by way of civil suit. In the complaint/appeal/ petition submitted under the Act, a consumer is not required to pay any court fee, but only a nominal fee.

13. UPSC Previous Years' Questions

1. "The Central Administrative Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain. (2019)

2. National Human Rights Commission (NHRC) in India can be most effective when its tasks are adequately supported by other mechanisms that ensure the accountability of a government. In light of the above observation assess the role of NHRC as an effective complement to the judiciary and the judiciary and other institutions. In promoting and protecting human rights standards. (2014)

3. 'A national Lokpal, however strong it may be, cannot resolve the problems of immorality in public affairs.' Discuss. (2013)

14. Vision IAS Previous Years' Questions

1. What is the legal sanction behind the establishment of Foreigners' Tribunals? Comment on the need of strict judicial supervision given the context in which they function.

Approach:

- Briefly explain Foreigners Tribunals.
- Explain how they have been created, and mention their powers as well.
- With the help of facts, explain how these tribunals are functioning and whether they require a strict judicial supervision or not.
- Conclude as per the discussion.

Answer:

Student Notes:

The Foreigners Tribunal is a quasi-judicial body created through an executive order namely- **Foreigners Tribunal Order, 1964** under **Section 3 the Foreigners Act, 1946**. When referred by the Central/State Government /District Magistrate, foreigner tribunals decide on matters related to:

- Whether a person is a foreigner within the meaning of **Foreigners Act, 1946.**
- Whether a person of Indian origin complies with the requirements under **Clause 6A (Assam Accord) of the Citizenship Act, 1955.**

Foreigners Tribunals can regulate their own procedure. They have **powers equivalent to that of a Civil Court.** They can summon and enforce the attendance of any person and can also examine them under oath. At present, Foreigners Tribunals have been created in Assam to hear appeals of people who are excluded from the final National Register of Citizens (NRC). The judgments of these tribunals can be challenged in higher courts.

The power to declare a person as foreigner lies with these tribunals only. Therefore, fair functioning of these bodies is very essential. However, **following issues have been observed**:

- These tribunals have been created through an executive order. This is in **violation of Article 323B** of Indian Constitution, which requires that only the Legislature through law can provide for adjudication of matters by tribunal.
- These Tribunals often fail to mention in the notices to alleged foreigners the main grounds on which that person is alleged to be a foreigner, thus, flouting Section 3(1) of the Foreigners Tribunals Order, 1964 requiring them to mention the main grounds.
- The 1964 order contains **'Judicial Experience'** as an essential appointment criteria, whereas, this eligibility has been relaxed through a notification recently and now **even retired civil servants and advocates with just seven years of practice can be appointed as members** of these tribunals.
- Executive decides the tenure of tribunal members and extension of their terms on the basis of their **'performance'**. Pay and allowances of members are also **regulated by the government**.

Arbitrary decisions and lack of impartiality has been observed during Assam NRC and therefore the Guwahati High Court has ordered fresh hearing by the Foreigners Tribunals (FTs) in many cases. Since, there is a demand for a nation-wide NRC, these FTs must be brought under the strict supervision of concerned High courts and should be freed from the governmental control.

2. What are the different rights available to the consumers under the Consumer Protection Act, 1986? Explaining the three layered quasi-judicial mechanism put in place under the Act, mention the measures that can be taken to improve the functioning of these forums.

Approach:

- Briefly define consumer rights.
- Mention the rights of the consumers mention in the Consumer protection Act.
- Explain the structure of consumer forums in India.
- Emphasize on the need for improving the functioning of the Consumer Forums.
- Suggest measures.

Answer:

Student Notes:

The Consumer Protection Act, 1986 (COPRA) aims at simple, speedy and inexpensive redressal of consumer disputes. The rights recognized under COPRA are:

- **Protection** against marketing of goods and services hazardous to life and property.
- **Information** about quality, quantity, standard and price of goods and services.
- Right to **choose** i.e. right to be assured of satisfactory quality and service at a fair price.
- Right to be **heard** i.e. consumer's interest to receive due consideration at appropriate forums.
- Right to seek **redressal.** It includes right to fair settlement of genuine grievances of the consumer.
- Right to **consumer education.**

Structure of Consumer Forums in India- COPRA provides for a 3-tier approach in resolving consumer disputes**:**

- **District Consumer Disputes Redressal Forum:** Entertains cases where the value of claim is up to Rs. 20 lakhs. The District Forums and State Commissions are formed by States with the permission of the Central Government
- **State Consumer Disputes Redressal Forum:** Value of claims exceeds Rs. 20 lakhs up to Rs. 1 Crore.
- **National Consumer Dispute Redressal Forum:** Value of claims exceeds Rs. 1 crore. the National Commission is formed by the Central Government.

The following measures can be adopted to further strengthen the functioning of these forums:

- Less emphasis on procedure and more emphasis on effective settlement of the dispute with a focus on the rights of the consumer.
- Introducing provisions regarding **product liability** and **unfair contract** on part of manufacturer / seller/service provider of a defective product.
- Usage of alternate dispute redressal methods making the process of dispute resolution quicker.
- Simplification of the process of adjudication in consumer foras.
- Setting up of a regulator i.e. Central Consumer Protection Authority to promote, protect and enforce consumer rights as a class.
- Establishment of Consumer Councils along with the Consumer Courts to render advise on consumer protection.
- Strong filtering mechanism at entry level to prevent false consumer complaints.

In this context the Consumer Protection Bill, 2018 is a step in the right direction.

3. Tribunals in India have not just replicated some of the problems that our judiciary suffers from but added a few more. Discuss.

Approach:

- Briefly comment upon the tribunal framework in India and the intention behind creating it.
- Highlight how the problems facing Tribunals are in common with those of Judiciary itself.
- Discuss a few additional problems created by the tribunal network in India.
- Conclude.

Answer:

Student Notes:

Tribunals serve as an important specialised dispute resolution mechanism alongside the regular courts. The 42nd Amendment in 1976, which inserted Article 323-A and 323-B in the Constitution, empowered both the Parliament and state legislatures to establish administrative and other tribunals. By involving expert members, administrative and logistical support from the executive, and specialised procedures, tribunals promise a speedy and more technical resolution of disputes under certain statutes.

Unfortunately, despite its intentions, tribunals have often replicated some of the problems our judiciary suffers from and in fact added some more:

A. Pendency and Vacancy in Tribunals

Pendency: The problem of pendency of cases is neither new nor exclusive to the courts. The 272nd Law Commission Report highlighted pendency figures for the Central Administrative Tribunal (44,333 cases), Income Tax Appellate Tribunal (90,538 cases) and the Armed Forces Tribunal (10,222 cases). The high pendency figures exist despite a high disposal rate. This is often high due to systemic issues like failed hearings, filing delays and absenteeism.
Vacancy: Tribunals also suffer from the same problems of shortage of personnel as other courts. The 74th Parliamentary Standing Committee Report analysed a list of 13 tribunals wherein around 40% of a sanctioned strength were lying vacant in 2014.

B. Lack of Independence with Tribunals:

Appointment: While tribunal chairpersons are appointed after consulting the Chief Justice of India, members are typically recommended by selection committees, which are often not independent, since secretaries of the sponsoring department are a part of them. Moreover, several department bureaucrats are appointed as tribunal members. Since departments also fund and assist with the day-to-day administration of these tribunals, it creates a clear conflict of interest when decisions by these departments are challenged in the tribunals they administer.
Removal: Since the procedure for removal of members lies with the executive, there exists a possibility of influencing the decisions passed by the tribunals. No such safeguard as impeachment exists for tribunal members.
Nodal Ministry: Tribunals are entirely dependent on their nodal ministries for their day-to-day functioning. These ministries can compromise the functioning of the tribunal by providing inadequate resources with the aim of arm-twisting the tribunal into passing favourable orders or not able to function at all.
Proclivity to Appoint Retired Judges and Bureaucrats: It has the potential to compromise the integrity of the judiciary as such positions act as a lure for post-retirement plans for government servants.

C. Administrative Concerns: Non-Uniformity in Regulation

Qualifications: Different qualification requirements lead to varying competencies, maturity and status of members, which is problematic since tribunals often operate at the same level as that of High Courts.
Tenure: Short tenure of 3-5 years precludes the cultivation of domain expertise, which can impact the efficacy of tribunals.
Variance: There is a degree of variance in the appointment process, qualification of members, age of retirement, resources and infrastructure of different tribunals. This is due to tribunals operating under different ministries.

D. Jurisdiction of the High Courts

Student Notes:

Direct Appeal to the Supreme Court: There are issues with provisions allowing for direct appeals to the Supreme Court (SC) thereby by-passing the jurisdiction of the High Courts. Firstly, a direct appeal to the SC is too costly and inaccessible for litigants; and secondly, such a provision of appeal would lead to congestion of the docket of the SC.

Problems pertaining to the lack of independence, ad-hoc regulation and by passing the jurisdiction of High Courts have been the major criticisms against the tribunal system in India. Therefore, any attempts at reform must adequately address these issues.

4. Effective protection of consumer rights is sine qua non for promoting the culture of good governance. In this context, critically examine the state of consumer rights protection in India and discuss the need for reforms in this regard.

Approach:

- Briefly discuss the present state of consumer rights protection in India and its relevance for good governance.
- Mention the issues faced in effective consumer protection thereby implying the need for its reforms.
- Highlight a few measures needed to ensure proper consumer protection in India.

Answer:

Consumer rights in India are protected by the **Consumer Protection Act 1986** which lays down six basic rights for consumer empowerment viz. Right to safety, information, choose, being heard, redressal and education. These rights are imperative for promoting the culture of good governance which focuses on efficiency, effectiveness, ethics, equality, economy, transparency, accountability, empowerment, rationality, impartiality and participation.

In India, the consumer rights are protected through a three tier redressal system at Centre, State and District level to provide simple, speedy and inexpensive redressal to consumer grievances. Despite this, consumer protection in India is facing following **issues**:

- Consumer Protection Act 1986 focuses more on redressal and less on prevention of disputes.
- **Consumer Protection Councils** which are entrusted to protect and promote the consumer rights are toothless and non-existent in many states and districts.
- **Mechanism** for enforcement is available for only 1 out of the 6 rights mentioned in the 1986 Act i.e. right to redressal of grievances.
- Inordinate **delays** in providing justice to the consumers.
- Lack of quality **infrastructure** such as poor laboratory testing facilities, digital infrastructure of the consumer courts etc.
- Poor enforcing mechanisms to ensure minimum **standard** of services and standardization of products.
- **Issues with Consumer Courts**:
    - Inordinate delays in appointment of members of adjudication panels by state governments.
    - Unnecessary technicalities in the judgement's procedures.
    - Frequent adjournments of the proceedings.
    - Miserly compensation discourages consumers to approach these forums.

Student Notes:

- **New issues** have emerged due to the rapid advances in digital technologies such as online frauds, identity thefts, credit card cloning, e-commerce related issues etc.

In order to reform the present state, **Consumer Protection Bill, 2018** needs to be passed quickly. It includes important provisions such as:

- Setting up of an executive agency, to be known as the Central Consumer Protection Agency, to promote, protect and enforce the consumer rights.
- The Bill proposes time-bound settlement of consumer disputes i.e., 3 months from the date of receipt of notice by opposite party and 5 months for cases which involve testing product samples..
- It also proposes use of Alternate Dispute Resolution (ADR) mechanism.
- Penalising of celebrity endorsements for false and misleading advertisements.

An effective Consumer protection movement needs the proactive support of the government, business, civil society, educational and research institutions. It is time that we expand our horizons of consumer protection by recognizing "Digital Content" as a third category along with goods and services (as has been done by the UK recently). Additionally alternative dispute resolution methods like Online Dispute Resolution (ODR) need to be adopted.

5. ***During the recent ruling on extra-judicial killings in Manipur, the Supreme court used the expression 'toothless-tiger' to refer to the NHRC. Has the NHRC failed in its mandate to counter systematic human rights violations? Critically analyse its working and suggest some measures to improve its effectiveness.***

Approach:

- Briefly introduce NHRC and major reasons behind calling toothless-tiger.
- Discuss the instances where NHRC failed to use its power effectively.
- Discuss various aspects of NHRC working along with supporting and opposing arguments and evidences.
- List the measures to improve its functioning.

Answer:

NHRC is a statutory body responsible for protection and promotion of human rights in India. It was sought to be an independent human rights watchdog and stand against violations of rights by state. But its functioning has been checkered and it has been found many a times to be towing the line of state. For instance, recently the Supreme Court, in case of extra-judicial killings in Manipur, observed that NHRC failed to maintain complete information regarding its investigations and the reports submitted are of poor quality.

Analysis of NHRC's working

- **Functions and Powers**: For implementation of recommendations, it depends on state and in case of non-implementation; it does not have power to take coercive measures against person or authorities.
- **Acts as Civil Court**: In case of summoning witnesses or documents, NHRC can act as civil court. But it lacks the power to implement orders that the civil courts has. It cannot penalise authorities who do not implement its recommendations in a time bound manner.
- **Availability of Resources**: Due to limited availability of human, financial and material resources, it faces difficulties in performing its role effectively and efficiently. To investigate the cases, it depends on staff recruited by the state. But

the state's ignorance to request to recruit is leading to long delays and inability to follow up on steps undertaken.

- **Limited Specialisation**: Staff mainly consists of operational and administrative members while specialists who can deliver on its mandate are limited. There is serious lack of competencies in jurisprudence, investigation, data collection, documentation, communication and capacity development.
- **Conflict of interest**: While it has to investigate the offences of state officials, its dependence upon state for funds and functionaries. Hence, its independence and impartiality is compromised.
- **Applicability of Act**: NHRC Act gives it power to investigate cases of human right violations in India but excludes J&K. Similarly, NHRC powers with respect to armed forces are limited. Also the act does not categorically empower NHRC to investigate matters of human rights violation by private parties.

Suggestions

- Funding of NHRC and SHRCs should be made through budgetary allocations. Increase in funds, reduction of operational costs and improving competencies through more specialists.
- Its recommendations must be implemented by government in a time bound manner and its reports must be sincerely discussed in legislatures.
- Ensure independence and autonomy by providing for Independent recruitment and management of staff.
- Allow NHRC to independently investigate complaints against armed forces personnel.
- Separate body to investigate cases where police are allegedly involved in human rights violation.

Moreover, it is important that the commission does perceive itself as independent. It should believe that it is not answerable to government but citizens. This changed mindset coupled with tangible reforms will go a long way in ensuring its credibility.

Student Notes: