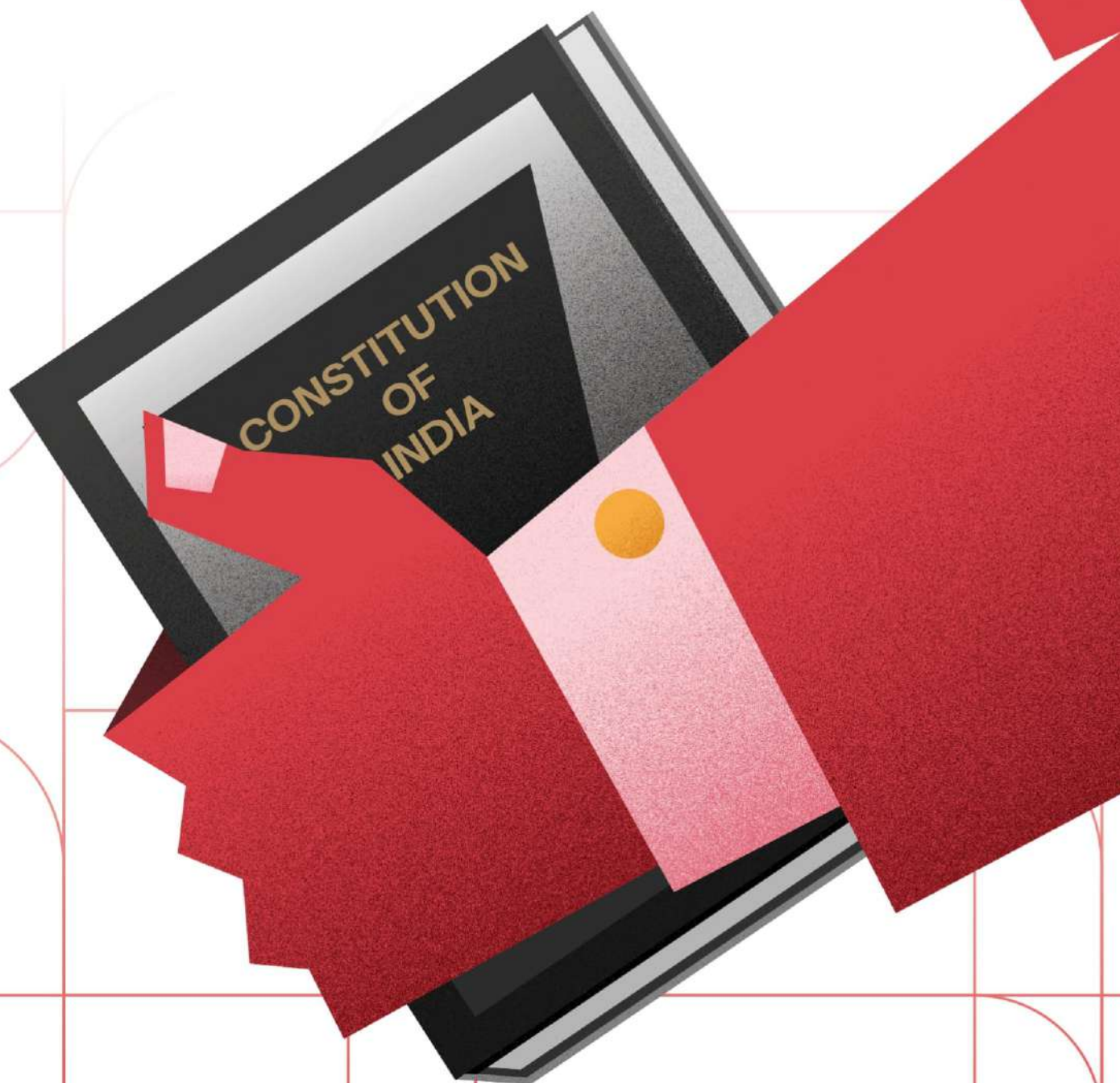




# Indian Polity

**UPSC Mains**

General Studies II  
Class Notes





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**UPSC MAINS**

**Indian Constitution & Polity**  
**GENERAL STUDIES - II**  
**(Class Notes)**

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**Year 2025-26**

# “Every Word Counts in Mains — And So Do These Notes”

## 1. Judiciary-Tested | Case Law-Backed

No more vague answers. These notes are embedded with latest Supreme Court verdicts and landmark constitutional cases — seamlessly woven into every topic to strengthen legal reasoning and boost answer credibility.

- ✓ Includes: Anoop Baranwal Case, Electoral Reforms Verdicts, Article 142 Interpretations (2023–24), and more.
- 

## 2. PYQ-Decoded | Trend-Mapped

Every theme is reverse-engineered from Previous Year Questions to reflect what UPSC truly demands.

You’ll know how topics have evolved, where emphasis has shifted, and what to expect in the next paper.

- ✓ Topic-wise PYQ insights from 2013–2024, with approach pathways.
- 

## 3. Keyword-Enriched | Mains-Ready Language

Don’t just write—score. The notes are packed with value-loaded keywords and ethical undercurrents that align with UPSC’s evolving expectations.

Ideal for polishing intro-body-conclusion structures and embedding constitutional values with finesse.

- ✓ Words like “constitutional morality,” “institutional autonomy,” “cooperative federalism,” “transformative constitutionalism” featured consistently.

#### **4. Diagrammatic & Tabular Goldmine**

Learn complex polity concepts through infographics, flowcharts, and comparative tables.

Because in UPSC, the ability to simplify wins you marks.

- ✓ Visual tools for: DPSP vs FR, Parliamentary procedures, 3-tier federalism, Constitutional amendment types, etc.
- 

#### **5. Polity Meets Ethics & Governance**

These are not just Polity notes. They help you build GS-2 & GS-4 integration — by connecting constitutionality with public ethics, social justice, and governance values.

- ✓ Ex: “Rule of Law” linked with accountability in GS-4; “Judicial Review” tied with institutional checks.
- 

#### **6. Structured for Speed + Depth**

Compact enough for revision. Rich enough for analysis.

Notes follow a smart layering approach — from definitions → constitutional backing → real-time examples → analytical edge → answer pointers.

- ✓ Optimized for 250-word answers and 10-marker precision.
- 

#### **7. Crafted for Mains, Backed by Mentorship**

These notes reflect the thinking of a topper, not just a compiler. Built on test series demands, mentorship inputs, and real answer-writing practice.

- ✓ You’re not memorizing facts. You’re absorbing insights.

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**Navigating the Syllabus: What You Need to Know****Indian Constitution: Historical Underpinnings, Evolution, Features, Amendments, Significant Provisions and Basic Structure**

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- **Citizenship**
- **Fundamental Rights**
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  - Criticisms
- **Directive Principles of State Policy**
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- **Fundamental Duties**
  - Features, Duties, Utility, Criticisms
- **Basic Structure of the Constitution**
  - Rationale (Why it is needed..?)
  - Elements of Basic Structure
  - Criticism of Basic Structure

## UPSC Previous Year Question

Question	Nature of Question	Core Demand
Right to privacy is intrinsic to life and personal liberty and is inherently protected under Article 21 of the constitution. Explain. In this reference discuss the law relating to D.N.A. (2024)	Fundamental Rights + Privacy + DNA law	Explain Article 21's privacy interpretation and connect it with legal and ethical concerns on DNA usage
Discuss India as a secular state and compare with the secular principles of the US constitution. (2024)	Secularism + Comparative Constitutionalism	Explain Indian secularism model and contrast with US model
Who are entitled to receive free legal aid? Assess the role of National Legal Services Authority (NALSA) in rendering free legal aid in India.	Legal Aid + DPSP + NALSA	Mention beneficiaries and assess NALSA's functioning and impact
The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a constitution made for a progressive society. (2023)	Living Constitution + Right to Life Expansion	Illustrate constitutional evolution using right to life expansion
Explain the constitutional perspectives of Gender Justice with the help of relevant Constitutional Provisions and case laws.(2023)	Gender Justice + Constitutional Law	Discuss constitutional guarantees and SC judgements on gender equality
Explain the significance of the 101st Constitutional Amendment Act. To what extent does it reflect the accommodative spirit of federalism. (2023)	Federalism + GST + Constitutional Amendment	Discuss GST features and its federal compromises
Right of movement and residence throughout the territory of India are freely available to the Indian citizens, but these rights are not absolute. (2022)	Fundamental Rights – Article 19(d)(e)	Discuss scope and limitations of movement/residence rights
Constitutional Morality is rooted in the constitution itself and is founded on its essential facets. (2021)	Constitutional Morality + Judicial Doctrine	Explain the concept with landmark cases
Indian Constitution exhibits centralising tendencies to maintain unity and integrity of the nation. (2020)	Federalism + Centralisation	Assess centralising laws in light of recent acts and constitutional structure
Parliament's power to amend the Constitution is a limited power... (2019)	Basic Structure Doctrine + Article 368	Explain limits of amending power and its relation with Basic Structure

Explain the salient features of the 101st Amendment... (2017)	GST + Federalism	Describe features and discuss cascading effect and market integration
Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (2017)	Right to Privacy + Article 21	Explain the expanded interpretation of right to privacy
Discuss each adjective attached to the word 'Republic' in the 'Preamble'. (2016)	Preamble Analysis	Explain and defend terms like sovereign, socialist, secular, etc.
In the integrity index of Transparency International, India stands very low. (2016)	Ethics + Governance + Corruption	Discuss causes of moral decline in public institutions
Discuss the possible factors that inhibit India from enacting a uniform civil code. (2015)	Directive Principles + UCC + Challenges	Discuss obstacles to implementing UCC
Does the right to clean environment entail legal regulation on burning crackers... (2015)	Right to Clean Environment + Article 21	Discuss if environmental rights justify such regulation
What do understand by the concept "freedom of speech and expression"? (2014)	Freedom of Speech + Article 19 + Films	Explain scope and whether hate speech/film censorship fit within
Discuss-Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution.(2013)	Article 19 + Section 66A	Explain 66A's conflict with freedom of speech

*"The Constitution is not a mere lawyer's document, it is a vehicle of Life, and its spirit is always the spirit of Age."*

– **Dr. B.R. Ambedkar**

## Introduction

Many features of the Indian constitution have roots in the administrative and legal systems introduced during British rule. Key developments under both the **Company Rule (1773–1858)** and the **Crown Rule (1858–1947)** laid the groundwork for India's modern political and constitutional structure.

## Company Rule (1773–1858)

### 1. Regulating Act of 1773

This Act was the first major step by the British Government to regulate the East India Company and laid the foundation for centralised administration in India.

#### Key Features:

- **Governor-General of Bengal:** The Governor of Bengal was designated as the Governor-General of Bengal, assisted by an Executive Council of four members. Lord Warren Hastings became the first to hold this position.
- **Subordination of Presidencies:** The Governors of Bombay and Madras were made subordinate to the Governor-General of Bengal, ending the previous arrangement of independent presidencies.
- **Establishment of Supreme Court:** A Supreme Court was established at Calcutta in 1774, comprising one Chief Justice and three other judges, to administer justice under British laws.
- **Ban on Private Trade:** Company officials were prohibited from engaging in private trade or accepting gifts and bribes from Indian subjects, aiming to curb corruption.
- **Increased Government Control:** The Court of Directors (Company's governing body) was required to regularly report on revenue, civil, and military affairs to the British Government, enhancing oversight.

### 2. Pitt's India Act of 1784

This Act was introduced to address the shortcomings of the Regulating Act of 1773 and strengthened British control over the Company's political affairs in

India.

#### Key Features:

- **Separation of Functions:** The Act distinguished between the commercial and political functions of the East India Company.
- **Board of Control:** A new body called the Board of Control was established to manage political affairs, while the Court of Directors continued to oversee commercial matters, creating a system of **double government**.
- **Government Supervision:** The Board of Control was empowered to supervise and direct all civil, military, and revenue operations of the Company in India.
- **British Possessions:** For the first time, the Company's territories in India were officially termed as **'British possessions in India'**.
- **Supreme Authority:** The Act gave the **British Government ultimate control** over the Company's administration and political decisions in India.

### 3. Charter Act of 1793

#### Key Features:

- **Extension of Override Powers:** The overriding power granted to Lord Cornwallis over his council was extended to all future Governor-Generals and Governors of Presidencies.
- **Increased Central Control:** The Governor-General was given greater authority over the subordinate governments of Bombay and Madras.
- **Trade Monopoly Continued:** The East India Company's trade monopoly in India was extended for another 20 years.
- **Commander-in-Chief Provision:** The Commander-in-Chief was excluded from the Governor-General's Council unless specifically appointed.
- **Board of Control Salaries:** Salaries of the Board of Control members and their staff were to be paid from Indian revenues.

### 4. Charter Act of 1813

#### Key Features:

- **Trade Liberalisation:** The East India Company's monopoly over Indian trade was ended,

allowing British merchants to trade freely, except in tea and with China.

- **Crown's Sovereignty Declared:** The Act clearly established that the British Crown held ultimate authority over Company territories in India.
- **Entry of Missionaries:** Christian missionaries were permitted to enter India for religious propagation and educational work.
- **Educational Provisions:** The Act encouraged the promotion of western education among Indians and marked the beginning of state-supported education.
- **Taxation Powers Introduced:** Local governments were empowered to levy taxes on individuals and penalize those who defaulted.

### 5. Charter Act of 1833

This Act marked the final phase of centralisation in British Indian administration.

#### Key Features:

- **Creation of a Central Authority:** The post of Governor-General of Bengal was upgraded to Governor-General of India, centralizing all administrative and military powers under one authority.
- **Unified Law-Making Power:** Legislative powers of the Bombay and Madras presidencies were withdrawn, making the Governor-General's council the sole legislative body for all British territories in India.
- **End of Company's Trade Role:** The East India Company's commercial activities were completely stopped, converting it into a purely administrative and governing body.
- **Laws Redefined:** Legal measures passed after this Act were termed Acts instead of Regulations, indicating a shift towards a more formal legislative process.
- **Civil Services Entry Proposed:** A clause was introduced to allow open competition for civil service jobs and remove racial barriers for Indians, but this faced strong opposition and was not implemented.

### 6. Charter Act of 1853

This was the last Charter Act passed by the British Parliament and marked a major shift in the constitutional development of British India.

#### Key Features:

- **Separation of Powers:** For the first time, the legislative and executive roles of the Governor-General's Council were separated. A new Legislative Council was created, functioning like a mini-Parliament with its own procedures.
- **Legislative Machinery Established:** The legislative wing adopted formal procedures similar to the British Parliament, marking legislation as a distinct and specialized function of governance.
- **Open Civil Service Exams:** The Act introduced open competition for recruitment to the civil services, allowing Indians to compete. This led to the formation of the Macaulay Committee in 1854 to oversee reforms in the Indian Civil Service.
- **No Fixed Tenure for Company Rule:** Unlike previous Charters, it did not renew Company rule for a fixed period. This implied that Parliament could end the Company's authority at any time.
- **Local Representation Introduced:** For the first time, provincial governments were allowed to nominate representatives to the Central Legislative Council. Out of six new members, four were nominated by the provinces of Madras, Bombay, Bengal, and Agra.

### Crown Rule (1858–1947)

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

Enacted in the aftermath of the Revolt of 1857, this Act marked the end of East India Company rule and the beginning of the British Crown rule in India.

#### Key Features:

- **Transfer of Power to the Crown:** The East India Company was abolished, and all its administrative powers, territories, and revenues were transferred to the British Crown.
- **Rule in the Name of the Queen:** India was to be governed directly in the name of Her Majesty, establishing a formal link between the British monarchy and Indian administration.
- **Governor-General Becomes Viceroy:** The title of Governor-General of India was changed to Viceroy of India, who would act as the direct representative of the Crown. Lord Canning

became the first Viceroy.

- **End of Double Government:** The dual system of control through the Board of Control and Court of Directors was abolished, centralizing authority.
- **Secretary of State for India:** A new office of Secretary of State for India was created, vested with full control over Indian affairs. He was a British Cabinet member and accountable to the British Parliament.
- **Council of India Formed:** A 15-member Council of India was established to assist the Secretary of State. This was an advisory body, with the Secretary serving as its Chairman.
- **Legal Entity Created:** The Secretary of State-in-Council was constituted as a corporate body, with the capacity to sue and be sued in both India and England.
- **Administrative Focus:** While the Act reorganized control over Indian administration in Britain, it did not bring significant changes to the actual system of governance within India.

## 2. Indian Councils Act of 1861

This Act marked the beginning of Indian participation in legislation and the revival of decentralisation, following the Revolt of 1857.

### Key Features:

- **Introduction of Indian Representation:** Indians were, for the first time, included in the legislative process as non-official members of the Viceroy's expanded council. In 1862, Raja of Benaras, Maharaja of Patiala, and Sir Dinkar Rao were nominated.
- **Start of Decentralisation:** Legislative powers were restored to the Bombay and Madras Presidencies, reversing the earlier trend of excessive centralisation.
- **Provincial Councils Established:** The Act allowed the creation of legislative councils in other provinces. Councils for Bengal (1862), North-Western Provinces (1886), and Punjab (1897) were later set up.
- **Recognition of Portfolio System:** It formally accepted the portfolio system, under which specific departments were assigned to members of the Viceroy's council, who could take final decisions in their domains.

- **Ordinance-Making Power:** The Viceroy was empowered to issue ordinances without council approval during emergencies. These ordinances had a validity of six months.

## 3. Indian Councils Act of 1892

This Act was a modest step toward expanding Indian participation in legislative processes, though still within limited boundaries.

### Key Features:

- **Expansion of Legislative Councils:** The number of non-official members was increased in both the Central and provincial legislative councils. However, officials continued to hold a majority.
- **Legislative Powers Slightly Increased:** Councils were given the right to discuss the budget and ask questions to the executive, though without the power to vote or demand answers.
- **Indirect Representation Introduced:** Some non-official members were to be nominated based on recommendations from bodies like provincial councils, district boards, municipalities, universities, and chambers of commerce.
- **Beginning of Electoral Element:** Though the term election wasn't used, the nomination process introduced an indirect electoral principle for the first time, laying the groundwork for future reforms.

## 4. Indian Councils Act of 1909 (Also known as Morley-Minto Reforms)

This Act marked a significant shift by expanding Indian participation in governance, but it also introduced communal divisions into the political process.

### Key Features:

- **Expansion of Legislative Councils:** The strength of legislative councils was significantly increased. At the Central level, the number of members rose from 16 to 60. Provincial councils were also enlarged, though not uniformly.
- **Official vs Non-Official Majority:** The official majority was retained in the Central Legislative Council, but non-official members were allowed to outnumber officials in provincial councils.

- **Wider Deliberative Powers:** Members were granted expanded powers, such as asking supplementary questions, discussing budgets, and moving resolutions, marking a limited step toward legislative debate.
- **Indians in Executive Councils:** For the first time, Indians were included in executive councils. Satyendra Prasad Sinha became the first Indian to join the Viceroy's Executive Council as the Law Member.
- **Introduction of Separate Electorates:** A system of communal representation was introduced for Muslims. Muslim voters could elect only Muslim candidates, institutionalising separate electorates and communalism in politics.
- **Representation of Special Interests:** Separate representation was also provided to presidency corporations, chambers of commerce, universities, and zamindars, giving specific interest groups a voice in governance.

### 5. Government of India Act, 1919 (Also known as Montagu-Chelmsford Reforms)

This Act was enacted to gradually introduce responsible government in India, as promised by the British Government in its declaration of August 20, 1917.

#### Key Features:

- **Division of Powers:** Subjects of administration were divided into Central and Provincial categories, laying the foundation for decentralised governance.
- **Introduction of Dyarchy:** Provincial subjects were further split into:
  - **Transferred subjects** (e.g., education, health, local self-government) handled by Indian ministers accountable to the legislature.
  - **Reserved subjects** (e.g., police, justice, finance) remained under the control of the Governor and his executive council. This dual system was termed '**Dyarchy**', meaning dual rule.
- **Bicameral Legislature Introduced:** A bicameral Central Legislature was established:
  - **Council of State** (Upper House)
  - **Legislative Assembly** (Lower House)

Most members were chosen through **direct elections**, for the first time.

- **Indian Representation in Executive:** Three out of six members (excluding the Commander-in-Chief) in the Viceroy's Executive Council were to be Indians.
- **Extension of Communal Representation:** Separate electorates were granted to additional communities like Sikhs, Indian Christians, Anglo-Indians, and Europeans.
- **Limited Franchise Introduced:** Voting rights were given to a small section of the population based on property, income, or tax qualifications.
- **High Commissioner for India:** A new post of High Commissioner was created in London to represent Indian interests and take over certain duties from the Secretary of State.
- **Public Service Commission:** The Act called for a Central Public Service Commission, which was established in 1926 to oversee civil service recruitment.
- **Separate Provincial Budgets:** For the first time, provincial budgets were separated from the Central budget and controlled by provincial legislatures.
- **Statutory Commission Provision:** The Act proposed a Statutory Commission to review its implementation after 10 years, which led to the formation of the Simon Commission in 1927.
- **Chamber of Princes:** A Chamber of Princes (Narendra Mandal) was established in 1921 as an advisory body representing princely states, headed by the Viceroy.

### 7. Government of India Act, 1935

This Act marked a major step toward establishing a responsible government in India and remains the most comprehensive British legislation on Indian governance.

#### Key Features:

- **Proposed All-India Federation:** The Act aimed to create a federation including British provinces and princely states, with power distribution through Federal (59 items), Provincial (54 items), and Concurrent Lists (36 items). However, the federation never materialized as princely states didn't join.

- **Provincial Autonomy Introduced:** Dyarchy was abolished at the provincial level. Provinces gained autonomy with elected ministers responsible to the legislature, though the Governor retained certain discretionary powers. This was implemented in 1937 but ended in 1939.
- **Dyarchy at the Centre:** The Act proposed dyarchy at the Central level, dividing subjects into reserved and transferred categories. However, this provision was never enforced.
- **Bicameralism in Provinces:** Legislatures in six provinces—Bengal, Bombay, Madras, Bihar, Assam, and United Provinces—were made bicameral with both a Legislative Assembly and a Legislative Council.
- **Reserved Representation:** Seats were reserved for Scheduled Castes, and special representation was extended to women, labour, and other interest groups.
- **Council of India Abolished:** The Council of India, created in 1858, was abolished. The Secretary of State for India was now advised by a small team of advisors.
- **Franchise Expanded:** The voting base was enlarged, giving around 14% of the population the right to vote based on property, income, or tax qualifications.
- **Reserve Bank of India Established:** The Act provided for the creation of the RBI to manage India's currency and credit. It began functioning in 1935.
- **Public Service Commissions:** The Act established a Federal Public Service Commission, and allowed the creation of Provincial and Joint Public Service Commissions.
- **Federal Court Set Up:** A Federal Court of India was established in 1937 to settle disputes between provinces and interpret constitutional provisions.
- **Burma Separated from India:** Burma (now Myanmar) was separated from British India and given a separate administration.
- **New Provinces Created:** Two new provinces—Orissa and Sind—were carved out to improve regional governance.

- **Minority Safeguards:** Special provisions were included to protect the interests of religious, linguistic, and cultural minorities.
- **Federal Railway Authority:** A Federal Railway Authority was to oversee the administration of the railway network across British India.
- **Auditor-General of India:** The post of Auditor-General was created to audit the accounts of the Central and provincial governments.

## 8. Indian Independence Act, 1947

This Act was enacted to implement the Mountbatten Plan and brought an end to British rule in India, leading to the creation of two sovereign nations—India and Pakistan.

### Key Features:

- **End of British Rule:** India was declared an independent and sovereign state from August 15, 1947, officially ending British authority.
- **Partition of India:** The Act provided for the creation of two independent dominions—India and Pakistan—with the right to secede from the British Commonwealth.
- **Abolition of Viceroy's Office:** The post of Viceroy was abolished and replaced by a Governor-General in each dominion, to be appointed by the British King on the advice of the respective dominion's cabinet.
- **Constituent Assemblies Empowered:** The Constituent Assemblies of both dominions were given the power to frame and adopt their own constitutions and repeal any previous British laws, including this Act.
- **Legislative Sovereignty:** Until new constitutions came into force, the Assemblies had full legislative powers. No British law passed after August 15, 1947 would apply unless adopted by the dominion's legislature.
- **Abolition of Secretary of State for India:** The office was abolished, and its powers were transferred to the Secretary of State for Commonwealth Affairs.
- **Lapse of Paramountcy:** British paramountcy over princely states and tribal areas ended, releasing them from treaty obligations.
- **Freedom to Princely States:** Princely states were given the option to join India, Pakistan, or

remain independent, though most acceded to one of the dominions.

- **Interim Governance Structure:** The Government of India Act, 1935 was to continue as the temporary constitution of both dominions until new constitutions were adopted. The dominions were also permitted to amend it as needed
- **No Veto for British Monarch:** The British King lost his right to veto or reserve bills. These powers were transferred to the Governor-General within each dominion.
- **Constitutional Heads:** The Governor-General and provincial governors were made constitutional heads, bound to act on the advice of their respective Council of Ministers.
- **Removal of Royal Title:** The title "Emperor of India" was dropped from the British King's official titles.
- **Civil Services Transition:** Appointments to Indian civil services by the British were discontinued. However, existing officers retained their service rights and benefits.

## Role of Freedom Struggle in Shaping Constitutional Ideals

- The demand for Swaraj since the formation of the Indian National Congress in 1885 laid the foundation for democratic governance. The Nehru Report (1928) proposed a parliamentary system with universal adult franchise.
- The Karachi Resolution of 1931, adopted under Nehru's leadership, outlined civil liberties such as freedom of speech, religion, and equality before law—many of which became part of the Fundamental Rights in the Constitution.
- The struggle against caste discrimination, led by reformers like Jyotiba Phule and B.R. Ambedkar, inspired constitutional provisions for social justice, abolition of untouchability (Article 17), and reservations for Scheduled Castes and Scheduled Tribes.
- Movements like the Khilafat and Gandhi's emphasis on religious unity contributed to the idea of secularism. The Constitution ensures equal rights to all religions and prohibits discrimination on religious grounds.

- Socio-economic demands raised by the Congress in the 1930s and Subhas Chandra Bose's call for economic planning influenced the Directive Principles of State Policy focused on welfare, labour rights, and reduction of inequality.
- Regional and linguistic mobilisation during the freedom struggle led to the acceptance of India's federal structure and linguistic pluralism, reflected in the Constitution through division of powers and recognition of multiple languages.
- Gandhian methods of non-violent protest and reliance on lawful means promoted a deep respect for rule of law and constitutionalism, shaping India's democratic ethos.
- Mass movements like Non-Cooperation (1920), Civil Disobedience (1930), and Quit India (1942) encouraged political awareness and participation, strengthening the principle of popular sovereignty.
- Key documents such as the Nehru Report (1928) and Karachi Resolution (1931) laid out a vision of fundamental and socio-economic rights, which later guided the work of the Constituent Assembly formed in 1946.

## Making of Indian Constitution

### Demand for a Constituent Assembly

- The idea was first proposed in 1934 by M.N. Roy, a pioneer of the communist movement in India.
- The Indian National Congress officially demanded a Constituent Assembly in 1935 to frame India's Constitution.
- In 1938, Jawaharlal Nehru declared that the Constitution must be framed by a body elected on the basis of adult franchise, without foreign interference.
- The August Offer (1940) marked the first official acceptance of the idea by the British Government.
- The Cripps Mission (1942) and later the Cabinet Mission Plan (1946) laid down the framework for setting up a single Constituent Assembly for India.

### Constituent Assembly

- The Constituent Assembly was initially elected

for undivided India and held its first session on 9 December 1946; it reassembled for divided India on 14 August 1947.

- Members were indirectly elected by the Provincial Legislative Assemblies formed under the Government of India Act, 1935.
- Seat allocation was based on population—1 seat per 10 lakh people. British Indian Provinces were allocated 292 seats, and Princely States were allotted a minimum of 93 seats.
- Seats within provinces were distributed among Muslims, Sikhs, and General communities based on their population share.
- Members of each community were elected by proportional representation using single transferable vote within the Provincial Assemblies.
- The method of selection in the case of representatives of Princely States was to be determined by consultation.

### Enactment of the Constitution

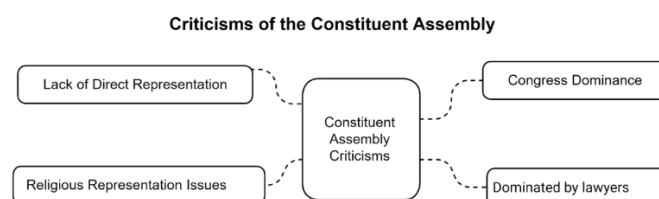
- The Constituent Assembly adopted the Constitution of India on 26 November 1949 after nearly three years of deliberation (total 2 years, 11 months, and 18 days).
- The Constitution came into full effect on 26 January 1950, a date chosen to honour the declaration of Purna Swaraj made in 1930.
- On this day, India became a Republic, and the Government of India Act, 1935, was replaced as the governing document.
- The first President of India, Dr. Rajendra Prasad, was sworn in, and the Constituent Assembly became the Provisional Parliament of India.
- The final Constitution contained 395 Articles, 8 Schedules, and 22 Parts at the time of commencement.

### Criticism of the Constituent Assembly

- **Lack of Direct Representation:** Formed through indirect elections with limited franchise under the 1935 Act, the Assembly did not fully reflect the democratic will of the people.
- **Congress Dominance:** With the Muslim League boycotting, the Assembly was largely controlled by the Congress. Granville Austin noted it was “a

one-party body in an essentially one-party country.”

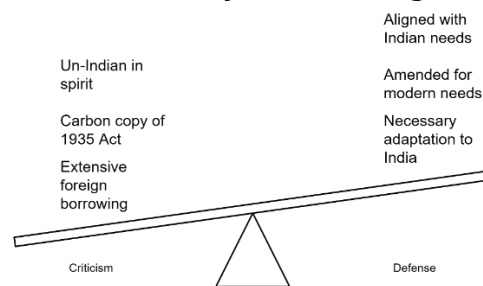
- **Elite Bias:** The Assembly was dominated by lawyers and political elites, with limited representation of workers, farmers, and marginalised groups—leading to a complex and bulky Constitution.
- **Religious Representation Issues:** Critics like Viscount Simon and Winston Churchill claimed the Assembly was Hindu-dominated and failed to adequately represent minority communities post-partition.



### Salient Features of the Indian Constitution

- **Longhiest Written Constitution:** Originally had 395 Articles, 22 Parts, and 8 Schedules. Due to its vastness and diversity, it covers a wide range of provisions, making it the most detailed constitution in the world.
- **Drawn from Multiple Sources:** It borrows features from various constitutions—e.g., Parliamentary system from the UK, Fundamental Rights from the USA, Directive Principles from Ireland, and emergency provisions from Germany.
- **Blend of Rigidity and Flexibility:** Some provisions can be amended by a simple majority, while others require a special majority or state ratification (Article 368), making it partly flexible and partly rigid.
- **Federal Structure with Unitary Bias:** It establishes a federal system with clear division of powers, but also allows the Centre to override states in certain situations—e.g., during emergencies.
- **Parliamentary Form of Government:** India follows the Westminster model with a bicameral legislature, collective responsibility of the Council of Ministers, and leadership by the Prime Minister.

- **Secular State:** The State maintains an equal distance from all religions. The Constitution guarantees freedom of religion (Articles 25–28) and prohibits discrimination on religious grounds.
- **Single Citizenship:** Unlike some federal states, India provides for single citizenship, promoting national unity and integration.
- **Independent Judiciary with Judicial Review:** The judiciary is independent of the executive and legislature, with the power to review laws and strike down unconstitutional acts.
- **Fundamental Rights:** Enshrined in Part III, these protect individual liberties and are enforceable by courts. They include rights to equality, freedom, protection against exploitation, etc.
- **Directive Principles of State Policy:** Part IV of the Constitution provides guidelines to the State for ensuring social and economic justice and establishing a welfare state.
- **Fundamental Duties:** Added by the 42nd Amendment (1976), these duties remind citizens of their responsibilities towards the nation.
- **Universal Adult Franchise:** Every citizen above 18 has the right to vote, ensuring political equality and democratic participation.
- **Emergency Provisions:** In times of crisis, the Constitution allows for centralisation of power—three types: National, State, and Financial Emergency (Articles 352, 356, 360).
- **Special Provisions for Minorities and Backward Classes:** Includes affirmative action through reservations and safeguards under Articles 15, 16, 17, 46, etc.
- **Un-Indian in Spirit:** Some members felt the Constitution lacked Indian political traditions and culture. K. Hanumanthaiah remarked, "We wanted the music of Veena, but got the music of an English band."
- **Un-Gandhian Approach:** Critics argued the Constitution ignored Gandhian ideals of decentralisation and village-based governance. It did not reflect Gandhi's vision of self-reliant village republics.
- **Too Lengthy and Detailed:** The Constitution was criticised for being excessively long and complex. Ivor Jennings called it the world's bulkiest constitution, and H.V. Kamath labelled it "elephantine."
- **Lawyer's Paradise:** The legalistic and verbose language made it difficult for common citizens to understand. Ivor Jennings and H.K. Maheswari argued it encouraged litigation and catered more to lawyers than the general public.



Balancing Criticism and Defense of the Indian Constitution

**Keywords :** Social Justice, Secularism, Directive Principles, Federal Structure, Non-violence, Popular Sovereignty, Constituent Assembly, Adult Franchise, Parliamentary Democracy, Fundamental Rights, Borrowed Constitution, Village Republics, Rule of Law

### Criticism of the Indian Constitution

- **Borrowed Constitution:** Critics called it a "bag of borrowings" or a "patchwork," as it extensively adopted features from foreign constitutions. However, Dr. B.R. Ambedkar defended this as necessary adaptation to Indian needs.
- **Copy of the 1935 Act:** Many provisions were taken directly from the Government of India Act, 1935. Scholars like N. Srinivasan and Sir Ivor Jennings termed it an "amended version" or a "carbon copy" of the 1935 Act.

### Mains Practice Questions :

Q1. The Indian Constitution reflects a synthesis of colonial legacies and indigenous aspirations. Discuss the influence of historical developments, such as British constitutional reforms, on its framing.

Q2. How did the freedom struggle shape the foundational principles of the Indian

Constitution? Analyze the role of key historical events in embedding democratic values.

Q3.The Indian Constitution has been criticized for being overly detailed and rigid. Critically examine the validity of this critique in light of its adaptability over time

"Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only top-dressing on Indian soil, which is essentially undemocratic."

- Dr B.R. Ambedkar

### Introduction

A Constitution is the supreme law of the land that lays down the framework of governance, defines rights and duties of citizens, and reflects the philosophy and vision of a nation.

The Indian Constitution, adopted on 26th November 1949 and enforced from 26th January 1950, is the longest written Constitution in the world, and a living document that evolves with time.

### Need for a Constitution

- **Legal Framework:** The Constitution provides the legal foundation for a country, establishing the structure, powers, and functions of government institutions. It defines the system of governance and the principles on which it operates.
- **Allocation of Power:** It clearly defines the distribution of powers among different organs of government—legislature, executive, and judiciary—as well as between the Centre and the States. This separation ensures checks and balances within the system.
- **Protection of Rights:** The Constitution safeguards fundamental rights and liberties of individuals, preventing arbitrary action by the State. It acts as a shield for citizens against misuse of power and promotes equality, dignity, and freedom.
- **Rule of Law:** It establishes the principle that everyone, including those in authority, is subject to the law. This promotes legal accountability, transparency, and fairness in governance, preventing the abuse of power.
- **Citizen Participation:** The Constitution enables citizens to participate in the political process through mechanisms such as elections, representation, and public discourse.
- **Development of Society:** Through provisions like the Directive Principles of State Policy, the Constitution guides the State in addressing

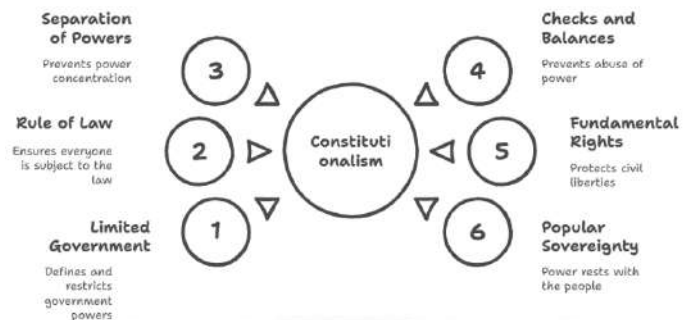
social and economic inequalities, promoting welfare, and achieving inclusive development.

- **National Identity:** The Constitution expresses the core values, history, and aspirations of the people, creating a shared sense of purpose and unity.
- **Limitations on Government:** It places fundamental restrictions on government authority to prevent overreach. These limits are essential in protecting individual freedoms and upholding democratic principles.

### Constitutionalism:

- Constitutionalism is the idea that government authority is derived from and limited by a body of fundamental law (Constitution).
- It emphasizes that government must operate within a legal framework ensuring accountability, separation of powers, and protection of individual rights.

#### Key Features of Constitutionalism



### Constitutionalism vs Constitution

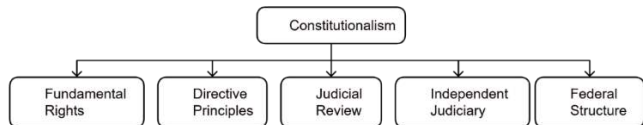
- A Constitution may exist in any form (democratic or autocratic).
- Constitutionalism implies a normative framework that values freedom, democracy, and rule of law.
- **Example:** North Korea has a constitution but lacks constitutionalism.

### Types of Constitutionalism

- **Liberal Constitutionalism:** Emphasizes individual liberty, rights, and limited government.
- **Social Constitutionalism:** Stresses on social justice, affirmative action, and welfare state (e.g., Indian model).
- **Authoritarian Constitutionalism:** Superficial adherence to constitutional structure with lack

- of real democracy.

#### Constitutionalism in the Indian Constitution Reflected through



### Important Judicial Judgments Related to Constitutionalism

#### 1. Kesavananda Bharati v. State of Kerala (1973)

- **Significance:** Established the **Basic Structure Doctrine**.
- **Relevance to Constitutionalism:** Asserted that Parliament's power to amend the Constitution is not unlimited. Core constitutional principles like **rule of law, separation of powers, and judicial review** cannot be altered.

#### 2. A.K. Gopalan v. State of Madras (1950)

- **Significance:** Early case interpreting **Article 21** narrowly.
- **Relevance:** Though the judgment took a positivist view of constitutional limits, it sparked future debates on the **importance of procedural fairness and liberty** under constitutionalism.

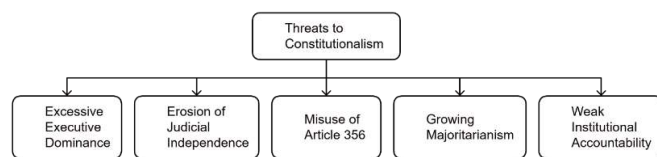
#### 3. Maneka Gandhi v. Union of India (1978)

- **Significance:** Overruled A.K. Gopalan and **expanded the scope of Article 21**.
- **Relevance:** Held that laws affecting personal liberty must be **just, fair, and reasonable**, reinforcing **constitutional limits on executive action**.

#### 4. S.R. Bommai v. Union of India (1994)

- **Significance:** Curbed misuse of **Article 356 (President's Rule)**.
- **Relevance:** Strengthened **federalism and limited central authority**, upholding the constitutional principle of **limited and accountable governance**.

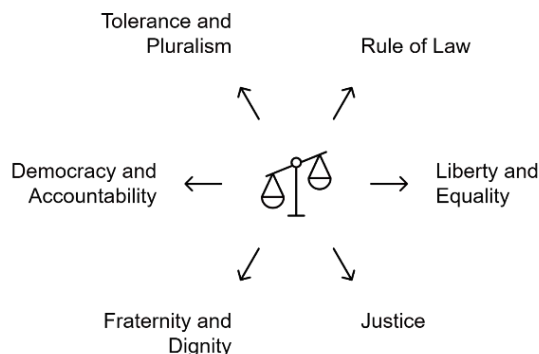
#### Threats to Constitutionalism



### Constitutional Morality

- Constitutional morality refers to the adherence to the core principles, values, and spirit of the Constitution, beyond its literal text.
- It guides ethical public behavior, governance, and interpretation of laws in a manner that upholds constitutional values.
- Coined by Dr. B.R. Ambedkar, who emphasized that mere provisions are not enough unless people and institutions act morally.

#### Core Values of Constitutional Morality



### Constitutional Morality vs Public Morality

- **Constitutional Morality:** Based on constitutional values, even if it goes against popular opinion or traditions.
- **Public/Social Morality:** Based on society's prevailing customs, beliefs, and majoritarian views.
- Example: Decriminalization of homosexuality in Navtej Singh Johar case (2018) upheld constitutional morality over social morality.

### Important Judicial Interpretations Related to Constitutional Morality

- **Navtej Singh Johar v. Union of India (2018):** Emphasized that constitutional morality trumps societal morality.
- **Sabarimala case (2018):** Bar on women violated constitutional morality of gender equality.
- **Joseph Shine v. Union of India (2018):** Decriminalized adultery citing individual dignity and equality.

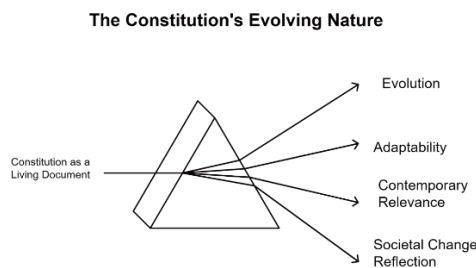
## Challenges to Constitutional Morality

- Rise in majoritarianism and mob sentiments.
- Conflict between traditional beliefs and modern constitutional values.
- Weak constitutional culture among citizens and politicians.
- Political expediency overriding ethical governance.
- Lack of awareness and understanding of constitutional values among the general public.
- Delayed or inconsistent judicial interventions in matters requiring upholding of constitutional morality.
- Influence of identity-based politics undermining principles of equality and fraternity.
- Resistance from entrenched socio-religious institutions towards progressive reforms.

## The Constitution as a Living Document

### Introduction

- A constitution is called a living document when it is flexible, adaptive, and capable of evolving with changing societal needs and values.
- The Indian Constitution, though detailed and written, has shown remarkable dynamism and resilience through interpretations, amendments, and conventions.



### Why is the Indian Constitution a Living Document?

- **Provision for Amendments** : The Constitution provides a formal mechanism for amendment under Article 368, allowing it to be modified in response to changing needs. Example: 42nd (1976), 44th (1978), 73rd and 74th Amendments (1992).
- **Judicial Interpretation** : The Supreme Court has expanded the scope of rights and principles through progressive interpretations.
- Example:

- Kesavananda Bharati v. State of Kerala (1973): Basic Structure Doctrine
- Navtej Singh Johar v. Union of India (2018): Decriminalization of Section 377
- Justice K.S. Puttaswamy v. Union of India (2017): Right to Privacy declared as a fundamental right
- **Doctrine of Basic Structure** : Ensures that the Constitution can be amended, but its core principles—like secularism, democracy, and federalism—remain protected.
- **Dynamic Nature of Fundamental Rights** : Fundamental Rights have been interpreted expansively to include socio-economic and digital rights.
- Example: Right to education, clean environment, and internet access.
- **Responsive to Societal Changes** : The Constitution has adapted to social justice movements, gender rights, and changing moral values over decades.

**Keywords** : Constitutionalism, Constitutional Morality, Living Document, Fundamental Rights, Judicial Review, Separation of Powers, Public Morality, Directive Principles,, Ethical Governance.

### Mains Practice Questions :

Q1. Constitutionalism ensures a balance between state power and individual rights. How has the Indian Constitution upheld this principle through its provisions and judicial interpretations?

Q2. Constitutional morality often clashes with societal morality in a diverse nation like India. Analyze its role in resolving such conflicts, citing specific examples.

Q3. The Indian Constitution is often described as a living document. Assess how its adaptability has shaped India's governance and addressed contemporary challenges.

The Preamble

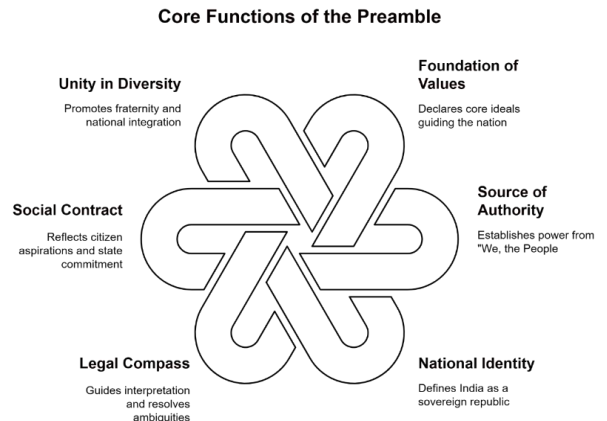
### Introduction

The Preamble, an introductory statement to the Indian Constitution, outlines its core philosophy and objectives. Dubbed the "identity card" (N.A. Palkhivala) and "horoscope" (K.M. Munshi). Rooted in Jawaharlal Nehru's Objectives Resolution of 1946, it was adopted by the Constituent

### Keywords in Preamble

Keyword	Meaning
<b>We, the People</b>	Indicates that the Constitution derives its authority from the citizens of India.
<b>Sovereign</b>	India is independent and free to govern itself, not subject to any external authority.
<b>Socialist</b>	Commitment to social and economic equality, reducing disparities in wealth and opportunities.
<b>Secular</b>	The state maintains neutrality in matters of religion and treats all religions equally.
<b>Democratic</b>	Governance is based on the will of the people, expressed through free and fair elections.
<b>Republic</b>	The head of state is elected by the people, not a hereditary monarch.
<b>Justice</b>	Ensures fairness in social, economic, and political spheres for all citizens.
<b>Liberty</b>	Guarantees individual freedoms such as thought, expression, belief, faith, and worship.
<b>Equality</b>	Provides equal status and opportunities to all citizens, prohibiting discrimination.
<b>Fraternity</b>	Promotes a sense of brotherhood and unity among the people, fostering national integration.

### Significance of the Preamble of the Indian Constitution:



### Debate around Whether Preamble is part of Constitution or not

#### Arguments Against the Preamble Being Part of the Constitution

- **Not Enforceable:** Critics argue that the Preamble is a prefatory statement, not a substantive legal provision, as it lacks enforceable rights or duties.
- **Separate Entity:** Some constitutional scholars, like Sir Ivor Jennings, viewed it as an introductory note, distinct from the operative articles of the Constitution.
- **Original Intent:** During early debates, it was seen as a summary of objectives, not a binding component, as evidenced by its placement before the articles.
- **Non-Amendable (Initially):** In the 1950s, some argued it wasn't amendable like the rest of the Constitution, suggesting it stood apart (e.g., Berubari Union Case, 1960).

#### Arguments For the Preamble Being Part of the Constitution

- **Integral to Interpretation:** The Supreme Court in the Kesavananda Bharati Case (1973) ruled that the Preamble is part of the Constitution, as it reflects its basic structure and aids in interpreting ambiguous provisions.
- **Source of Objectives:** It outlines the Constitution's aims—justice, liberty, equality, fraternity—making it inseparable from the document's spirit.

- **Amended in 1976:** The 42nd Amendment (adding "Socialist," "Secular," and "Integrity") proved it's a living part of the Constitution, subject to parliamentary amendment.
- **Judicial Recognition:** Courts have used the Preamble to support laws and rights matching its values, like in the Maneka Gandhi Case (1978) where it backed liberty and justice. This strengthens its legal importance despite not being enforceable.

### Resolution of the Debate: Is the Preamble Part of the Constitution?

- **Berubari Union Case (1960):** Supreme Court said Preamble is not part of the Constitution. It called it a "key-note" showing the Constitution's purpose and useful for understanding makers' intent or unclear articles.
- **Kesavananda Bharati Case (1973):** Supreme Court reversed earlier view, saying Preamble is part of the Constitution. It's vital, reflects the Constitution's vision, and is part of the "basic structure" that can't be changed.
- **Indira Nehru Gandhi v. Raj Narain (1975):** Supported Kesavananda, confirming Preamble's role in the Constitution. Upheld the 42nd Amendment adding "Socialist," "Secular," and "Integrity," showing it can be amended.
- **Minerva Mills Case (1980):** Reaffirmed Preamble as part of the basic structure. It guides the Constitution's balance but can't be used alone to challenge laws.
- **LIC of India Case (1995):** Held Preamble as an integral part of the Constitution. Emphasized its role in understanding the Constitution's spirit and intent.

### Amendability of the Preamble

- **Initial View:** Early on, some believed the Preamble couldn't be amended as it was seen as a fixed introduction. The Berubari Union Case (1960) hinted it wasn't part of the Constitution, supporting this idea.
- **Kesavananda Bharati Case (1973):** Supreme Court clarified Preamble is part of the Constitution and can be amended under Article 368. But its "basic structure" (core ideas like

justice, liberty) must stay intact.

- **42nd Amendment (1976):** Parliament amended the Preamble, adding "Socialist," "Secular," and "Integrity" to reflect India's evolving goals. This proved it's amendable like other parts.
- **Judicial Check:** Courts, like in the Minerva Mills Case (1980), said amendments are allowed but can't destroy the Preamble's basic essence. It balances flexibility with protection of its spirit.
- **Current Understanding:** Preamble can be changed by Parliament to meet new needs, as seen in 1976. However, its fundamental values remain untouchable due to the basic structure doctrine.

### Role of the Preamble in Shaping the Interpretation and Evolution of the Indian Constitution

- **Guides Constitutional Understanding:** Acts as a lens to interpret ambiguous provisions, ensuring laws align with its values like justice and equality. Courts use it to capture the Constitution's spirit.
- **Shapes Landmark Rulings:** In Kesavananda Bharati (1973), the Preamble helped define the "basic structure" doctrine, protecting core principles from being changed. It became a shield for constitutional integrity.
- **Promotes Fundamental Rights:** In Maneka Gandhi (1978), the Preamble's emphasis on liberty and justice expanded the scope of Article 21. It ensured fair procedure in law, enhancing personal freedoms.
- **Upholds Secularism:** In S.R. Bommai (1994), the Preamble's "secular" principle was used to check misuse of Article 356. It reinforced federalism and protected states' rights.
- **Drives Social Justice:** Courts refer to "socialist" and "equality" in cases like Indra Sawhney (1992) to support affirmative action. The Preamble justifies policies reducing disparities.
- **Evolves with Time:** The Preamble's amendment in 1976 (adding "Socialist," "Secular") shows it adapts to new goals. Courts use it to interpret modern challenges while staying true to its core.

## Criticism of the Preamble

- **Vague Terminology:** Words like "Socialist," "Secular," and "Equality" lack clear definitions, causing confusion in interpretation. Critics argue this ambiguity weakens their legal and practical application.
- **Non-Enforceable Nature:** The Preamble sets grand goals but isn't justiciable, meaning courts can't enforce it directly. This limits its power to ensure justice or liberty in real disputes.
- **Late Additions Questioned:** The 42nd Amendment (1976) added "Socialist" and "Secular" during Emergency, raising doubts about political motives. Some see it as a forced shift from the original intent.
- **Unrealistic Ideals:** Promises like equality and fraternity are criticized as impractical in India's diverse, unequal society. Caste, religion, and economic gaps often contradict these aspirations.
- **Over-Reliance in Courts:** Judges use the Preamble to interpret laws (e.g., Kesavananda Bharati, 1973), but critics say this risks subjective rulings. It may stretch its role beyond a guiding principle.
- **Socialism Debate:** "Socialist" sparks contention—some view it as outdated or anti-market, clashing with India's economic reforms since 1991. Critics question its relevance today.
- **Secularism Misunderstood:** "Secular" is seen by some as favoring minorities or diluting majority religion identity, despite meaning equal treatment. This fuels political and social debates.

## Contemporary issues associated with Preamble :

### Supreme Court Upholds "Socialist" and "Secular" in Preamble

**Context:** Supreme Court in November 2024 rejected challenges to the 42nd Amendment (1976). Confirmed "Socialist" and "Secular" as valid parts of the Preamble, reinforcing its constitutional importance.

### Court Observation:

- **Parliament's Authority:** Upheld Parliament's

right under Article 368 to amend the Preamble. Stated amendments are valid if they respect the Constitution's basic structure.

- **Alignment with Core Values:** Declared "Socialist" (welfare and equality) and "Secular" (religious harmony) as true to India's core principles. Said these strengthen the Constitution, not weaken it.
- **Contextual Interpretation:** Explained "Secular" as equal respect for all religions, not anti-religion, and "Socialist" as state support for fairness, not pure communism. Tied them to India's specific needs.
- **Relevance to Basic Structure:** Connected to Kesavananda Bharati (1973), showing these terms match the Constitution's unchangeable goals like justice and liberty. Rejected claims of damaging its identity.

**Keywords :** Sovereignty, Socialism, Secularism, Democracy, Republic, Justice, Liberty, Equality, Fraternity, Constitutional Identity, Basic Structure Doctrine, Non-Justiciable, Social Justice, Religious Neutrality, Welfare State, National Integration, Constitutional Vision, Socio-Economic Reality, Legal Weight, Guiding Principle

### UPSC Practice Questions :

Q1. How has the Supreme Court's interpretation of "Socialist" and "Secular" in the Preamble influenced India's constitutional framework? Cite recent developments and past cases to support your answer.

Q2. "The Preamble reflects India's aspirations but struggles to bridge the gap between vision and action." Critically examine

## Citizenship

*Citizenship consists in the service of the country - Jawaharlal Nehru*

### Introduction

Citizenship refers to the legal status granting individuals rights (like voting) and duties (like obeying laws) within a nation. In India, it is governed by Part II (Articles 5-11) of the Constitution, which outlines eligibility and empowers Parliament to regulate citizenship through laws like the Citizenship Act, 1955.

### Constitutional Provisions about Citizenship:

Article	Provision	Description
<b>Article 5</b>	Citizenship at Commencement	Grants citizenship on January 26, 1950, to those born or domiciled in India with intent to stay.
<b>Article 6</b>	Citizenship of Migrants from Pakistan	Provides citizenship to persons who migrated from Pakistan before July 19, 1948, and stayed.
<b>Article 7</b>	Citizenship of Migrants to Pakistan	Denies citizenship to those who migrated to Pakistan after March 1, 1947, unless returned with permit.
<b>Article 8</b>	Citizenship of Persons Abroad	Allows citizenship for persons of Indian origin abroad if registered with an Indian consulate.
<b>Article 9</b>	Voluntary Acquisition of Foreign Citizenship	Bars citizenship if a person voluntarily acquires citizenship of another country.
<b>Article 10</b>	Continuance of Citizenship	Ensures existing citizens retain

		rights, subject to laws made by Parliament.
<b>Article 11</b>	Parliament's Power to Regulate	Empowers Parliament to make laws on citizenship, overriding other provisions.

### Modes of Acquiring Citizenship in India

- **By Birth:** Rules before and after amendments (e.g., 1986, 2003 changes).
- **By Descent:** For children born abroad to Indian parents.
- **By Registration:** For persons of Indian origin or spouses of citizens.
- **By Naturalization:** For foreigners meeting residency and other criteria.
- **By Incorporation of Territory:** When new territory joins India (e.g., Sikkim).

### Loss of Citizenship in India

- **Renunciation:** Voluntarily giving up Indian citizenship.
- **Termination:** Acquiring foreign citizenship (single citizenship principle).
- **Deprivation:** By government order for fraud, disloyalty, or specific violations.

### Key Amendments to Citizenship Act, 1955

- **1957 Amendment:** Allowed Commonwealth citizens to register as Indian citizens with relaxed conditions. Later diluted as India emphasized single citizenship.
- **1986 Amendment:** Shifted birth-based citizenship from universal to conditional—one parent must be an Indian citizen. Responded to growing illegal migration, especially in Assam.
- **1992 Amendment:** Mandated registration for children born abroad to Indian parents by descent. Tightened documentation to prevent misuse of descent provisions.
- **2003 Amendment:** Introduced Overseas Citizenship of India (OCI) for persons of Indian origin abroad, granting lifelong visa and property rights but no political rights. Also

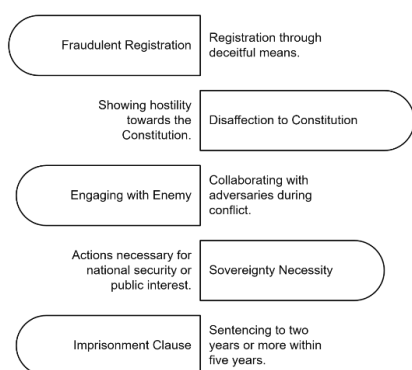
denied citizenship to children of illegal migrants, reflecting security priorities.

- **2015 Amendment:** Merged Person of Indian Origin (PIO) card with OCI, simplifying diaspora benefits. Eased travel and residency for overseas Indians.
- **2019 Amendment (CAA):** discussed more details as follows

### Citizenship Amendment Act (CAA), 2019

- **Core Provision:** Grants citizenship to illegal migrants from specific communities and countries, bypassing standard rules if conditions are met.
- **Eligible Groups:** Covers Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians—excludes Muslims—from Afghanistan, Bangladesh, or Pakistan.
- **Entry Cut-Off:** Applies to those who entered India on or before December 31, 2014, fleeing religious persecution.
- **Exempted Areas:** Excludes Sixth Schedule tribal areas (parts of Assam, Meghalaya, Mizoram, Tripura) and Inner Line Permit regions (Arunachal Pradesh, Mizoram, Nagaland).
- **Legal Relief:** Shields these migrants from penalties under the Passport Act, 1920, and Foreigners Act, 1946, as per Central Government exemption.
- **Reduced Residency:** Cuts naturalization period from 11 years to 5 years for these specified migrants.
- **OCI Cancellation:** Adds five grounds (e.g., fraud, disloyalty) for the Central Government to cancel Overseas Citizenship of India registration.

Grounds for Cancellation of OCIs



### Concerns Associated with CAA, 2019

- **Violation of Secularism:** Excludes Muslims from eligibility, seen as against India's secular ethos under Article 14. Critics argue it promotes religious bias in citizenship laws.
- **Discrimination Concerns:** Denies equal treatment to persecuted Muslim minorities (e.g., Ahmadis, Rohingya), raising questions on Article 15 (non-discrimination). Fuels communal tensions.
- **Federal Tensions:** Northeast states oppose CAA, fearing demographic changes and cultural erosion. Exclusion of tribal areas and ILP regions reflects regional unrest.
- **Link with NRC:** Paired with NRC, CAA risks statelessness for excluded Muslims, as they lack CAA's protection. Creates fears of mass exclusion, especially in Assam.
- **International Backlash:** Criticized globally for undermining India's pluralistic image. UN and human rights groups flagged it as discriminatory and divisive.
- **Implementation Gaps:** Lack of clarity on proving persecution or entry dates (pre-2014). May lead to bureaucratic delays and harassment of genuine applicants.
- **Political Misuse:** Seen as a polarizing tool during elections, deepening social divides. Critics allege it serves majoritarian politics over constitutional values.

### National Register of Citizens

#### About NRC

- **Definition:** NRC is an official record of bona fide Indian citizens, aimed at identifying legal residents and detecting illegal immigrants.
- **Origin:** Introduced under the Citizenship Act, 1955; first implemented in Assam in 1951 to address migration from East Pakistan (now Bangladesh).
- **Objective:** To ensure national security, curb illegal immigration, and protect socio-economic rights of citizens.
- **Legal Basis:** Governed by Citizenship Act, 1955, and Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
- **Assam Context:** Updated in Assam (2013-2019)

following the Assam Accord (1985) to tackle illegal migration; overseen by the Supreme Court.

- **Process:** Citizens must provide documentary proof (e.g., birth certificates, voter lists) pre-dating a cut-off (March 24, 1971, in Assam).
- **Outcome in Assam:** Final NRC list (August 2019) excluded ~19 lakh people out of 3.3 crore applicants; appeals ongoing via Foreigners Tribunals.

### **Need for the National Register of Citizens (NRC):**

- **National Security:** Identifies illegal immigrants, reducing risks of insurgency, terrorism, and external interference in border areas.
- **Demographic Stability:** Prevents unchecked migration from altering population composition, especially in sensitive states like Assam and Northeast India.
- **Resource Allocation:** Ensures welfare schemes, jobs, and subsidies reach legitimate citizens, addressing economic strain from undocumented migrants.
- **Ethnic Harmony:** Mitigates tensions between indigenous communities and settlers by resolving citizenship disputes (e.g., Assam's identity crisis).
- **Legal Clarity:** Provides a definitive record of citizens under the Citizenship Act, 1955, reducing ambiguity in status determination.
- **Sovereignty:** Strengthens India's ability to regulate who resides within its territory, a key aspect of state sovereignty.
- **Historical Context:** Addresses unresolved migration issues from Partition (1947) and Bangladesh Liberation War (1971), especially in eastern states.
- **Electoral Integrity:** Prevents fraudulent voting by non-citizens, safeguarding democratic processes.
- **Public Demand:** Responds to regional movements (e.g., Assam Movement) seeking protection of local culture, language, and rights.

### **Challenges Associated with the National Register of Citizens (NRC):**

- **Documentation Issues:** Many lack valid pre-

1971 proof (e.g., birth records), especially rural poor and illiterate citizens.

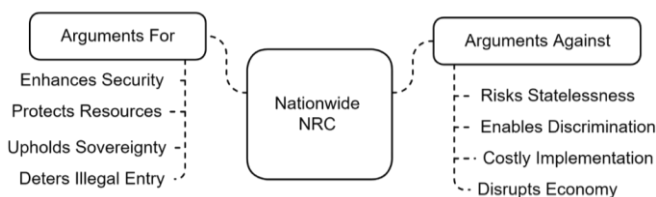
- **Scale and Logistics:** Nationwide exercise demands enormous resources—manpower, funds, and technology—beyond current capacity.
- **Statelessness Risk:** Exclusion (e.g., 19 lakh in Assam) creates stateless people, with no clear deportation framework.
- **Social Tensions:** Seen as targeting minorities (e.g., Muslims), risking communal strife and ethnic unrest in border regions.
- **Legal Ambiguity:** No consistent cut-off date for India; Foreigners Tribunals face criticism for bias and inefficiency.
- **Economic Burden:** High costs of implementation and litigation; excluded lose jobs, welfare access, deepening poverty.
- **Border Challenges:** Porous borders allow ongoing infiltration, diluting NRC's purpose without stronger controls.
- **Political Exploitation:** Used as a political tool, linked to CAA, raising fears of discrimination and vote-bank tactics.
- **Human Rights Concerns:** Detention camps and rights loss spark ethical debates and international scrutiny.
- **Implementation Gaps:** Post-NRC plan unclear—deportation or rehabilitation options remain unresolved.

### **Way Forward:**

- **Streamlined Documentation:** Simplify proof requirements; accept alternative records (e.g., school certificates, ration cards) for the poor.
- **Technological Integration:** Use Aadhaar, digitized records, and AI for efficient, error-free verification at scale.
- **Clear Legal Framework:** Define a uniform cut-off date and transparent process for nationwide NRC; reform Foreigners Tribunals.
- **Border Security:** Strengthen fencing, surveillance, and patrolling along porous borders to curb illegal inflows.
- **Bilateral Cooperation:** Negotiate with Bangladesh and Myanmar for repatriation agreements to manage excluded migrants.

- **Inclusive Approach:** Avoid communal bias; ensure NRC is citizenship-neutral, protecting minorities and vulnerable groups.
- **Humanitarian Safeguards:** Prevent statelessness—offer temporary residency or work permits to excluded individuals pending resolution.
- **Public Awareness:** Educate citizens on NRC's purpose and process to reduce fear, misinformation, and social unrest.

#### Arguments for and Against a Nationwide NRC



## Contemporary issues associated with Citizenship :

### 1. Supreme Court upholds Section 6A of Citizenship Act as valid law

**Context :** A Constitution Bench of the Supreme Court, in a majority judgment of 4:1 ratio, on Thursday upheld the constitutionality of Section 6A of the Citizenship Act, 1955.

#### What is Section 6A?

- **Provision:** Special clause in the Citizenship Act, 1955, exclusive to Assam:
  - Pre-January 1, 1966 entrants: Deemed Indian citizens.
  - January 1, 1966–March 25, 1971 entrants: Eligible for citizenship upon fulfilling conditions (e.g., registration).
  - Post-March 25, 1971 entrants: Barred from citizenship, labeled illegal immigrants.
- **Cut-off Date:** March 25, 1971, tied to the Bangladesh Liberation War's onset (Operation Searchlight, March 26, 1971).
- **Objective:** Address Assam's unique migration crisis while distinguishing Partition-era migrants from war refugees.

#### Significance of Recent Judgment

- **Constitutional Validity:** Supreme Court (4:1

majority) upheld Section 6A, affirming its alignment with the Preamble value of fraternity.

- **Legal Precedent:** Reinforces Parliament's legislative competence under Article 246 and Entry 17 (Union List—Citizenship).
- **Assam Accord Endorsed:** Validates the 1985 Accord as a legitimate political solution, strengthening its framework for citizenship and deportation.
- **NRC Implications:** Bolsters the legal basis of Assam's National Register of Citizens (NRC), which uses the 1971 cut-off, though implementation remains pending.

#### Court Observations

- **Majority View**
  - Fraternity as a guiding principle: "Live and let live" overrides selective exclusion; disenfranchising millions outweighs cultural preservation concerns.
  - Rational Cut-off: March 25, 1971, justified by historical context (Bangladesh War), balancing humanitarianism and Assam's interests.
  - No Violation: Section 6A aligns with Articles 6, 7 (citizenship), 14 (equality), and 29(1) (cultural rights); petitioners failed to prove cultural harm.
  - Migration Burden: Acknowledged Assam's strain but attributed it to weak enforcement, not Section 6A itself.
- **Dissent:**
  - Declared Section 6A unconstitutional prospectively, citing its outdated relevance and failure to curb ongoing migration effectively.
- **Monitoring Directive:** Court ordered a bench to oversee immigration law enforcement in Assam, highlighting inadequate machinery.

#### Challenges

- **Implementation Gaps:** Inefficient detection and deportation of post-1971 immigrants due to weak tribunals and statutory mechanisms.
- **Demographic Strain:** Persistent migration burdens Assam's resources, fueling local

- discontent over identity and development.
- **Legal Ambiguity:** Lack of time-bound processes in Section 6A complicates its execution, as noted by the court.
  - **Social Tensions:** Perception of bias against indigenous Assamese risks communal friction, despite judicial dismissal of cultural violation claims.
  - **Statelessness Risk:** Excluded post-1971 migrants face uncertain futures without clear repatriation policies.

Q2. Analyze the interplay between citizenship, national identity, and minority rights in India.

### Way Forward

- **Strengthen Enforcement:** Bolster Foreigners Tribunals, integrate with laws like the Foreigners Act, 1946, and Passport Act, 1967, for timely deportation.
- **Border Security:** Enhance surveillance and fencing along the Indo-Bangladesh border to prevent fresh inflows.
- **Judicial Oversight:** Implement the Supreme Court's monitoring bench to ensure accountability and efficiency in immigration processes.
- **Humanitarian Balance:** Offer temporary residency or rehabilitation for excluded migrants, avoiding statelessness, while respecting Assam's interests.
- **Public Engagement:** Increase awareness of Section 6A's intent to reduce misinformation and foster social harmony.
- **Regional Diplomacy:** Collaborate with Bangladesh for repatriation agreements, addressing the root of illegal migration.

**Keywords :** Citizenship, Naturalization, Immigration Status, National Registry, Legal Residency, Citizen Identification, Statelessness Risk.

### Mains Practice Question :

Q1. Can CAA and NRC ensure national security without compromising India's secular ethos? Critically examine

## Fundamental Rights

### Introduction

Fundamental Rights, outlined in Part III (Articles 12-35) of the Indian Constitution, are inspired by the U.S. Bill of Rights and are often called India's Magna Carta. They guarantee equality, freedom, and dignity to all individuals, protect against discrimination, and uphold political democracy by preventing arbitrary state action.

### Various Fundamental Rights

Article	Category	Fundamental Right	Key Provisions
12	General	Definition	Defines "State" (includes government, legislature, local authorities)
13		Laws inconsistent with FRs	voids laws violating FRs; empowers judicial review
14	Right to Equality	Equality before Law	Ensures equality before law and equal protection; allows reasonable classification
15		Prohibition of Discrimination	Bans discrimination on religion, race, caste, sex, place of birth; allows affirmative action

16	Right to Freedom	Equality of Opportunity in Public Employment	Equal access to jobs; permits reservations for backward classes
17		Abolition of Untouchability	Prohibits untouchability; punishable by law
18		Abolition of Titles	Bans titles except military/academic; restricts foreign titles
19	Right to Freedom	Freedom of Speech, Assembly, etc.	Six freedoms: speech, assembly, association, movement, residence, profession
20		Protection in Respect of Conviction	Safeguards against retrospective laws, double jeopardy, self-incrimination
21		Right to Life and Personal Liberty	Protects life and liberty; expanded to include dignity, privacy, education
21A		Right to Education	Free and compulsory education

			for children aged 6-14 (86th Amendment, 2002)
22		Protection Against Arrest and Detention	Rights to be informed, consult lawyer, produced before magistrate within 24 hours
23	Right Against Exploitation	Prohibition of Trafficking and Forced Labour	Bans human trafficking and forced labor (begar); allows compulsory public service
24		Prohibition of Child Labour	Bans employment of children below 14 in hazardous jobs
25	Right to Freedom of	Freedom of Conscience and Religion	Right to practice, profess, propagate religion
26		Freedom to Manage Religious Affairs	Right to establish/maintain religious institutions, manage affairs
27		Freedom from Taxation for Religion	No tax to promote any religion;

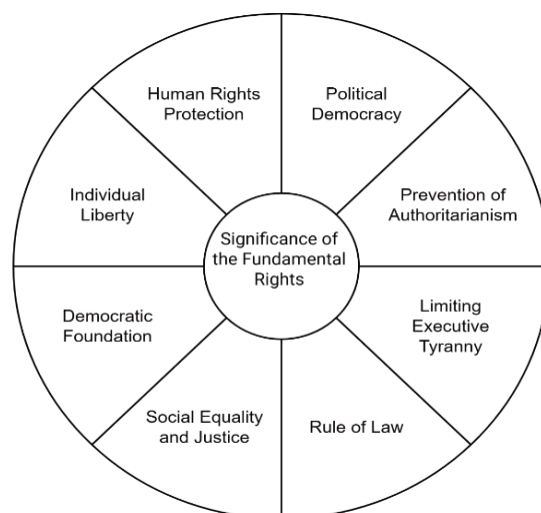
			ensures secularism
28		Freedom from Religious Instruction	Bans religious instruction in state-funded schools; protects choice in private
29	Cultural & Educational Rights	Cultural and Educational Rights	Protects minorities' right to conserve language, script, culture
30		Right to Establish Educational Institutions	Minorities (religious/linguistic) can set up and administer institutions
31	[Repealed]	[Right to Property – Repealed]	Removed as FR by 44th Amendment (1978); now a legal right under Article 300A
32	Right to Constitutional Remedies	Right to Constitutional Remedies	Allows approaching courts (writs: Habeas Corpus, Mandamus, etc.) for FR enforcement

### Features of Fundamental Rights

- **Constitutional Guarantee:** Enshrined in Part III; protected and enforced by the Constitution, the supreme law of the land.

- **Justiciable Nature:** Citizens can approach courts (Supreme Court via Article 32, High Courts via Article 226) for violations, ensuring enforceability.
- **Comprehensive Scope:** More elaborate than any other constitution, covering equality, freedom, religion, education, and remedies.
- **Universal Yet Selective:** Available to all persons (e.g., Articles 14, 21) or only citizens (e.g., Articles 15, 19), balancing inclusivity and exclusivity.
- **Inspired by Global Models:** Drawn from the U.S. Bill of Rights, French Declaration, and universal human rights principles.
- **Limitations on State Power:** Act as checks on executive tyranny and arbitrary legislation, promoting a government of laws.
- **Reasonable Restrictions:** Rights like Article 19 freedoms are subject to state-imposed restrictions for public order, morality, or security.
- **Amendable but Protected:** Can be amended by Parliament (Article 368), but their core (basic structure) is inviolable (Kesavananda Bharati Case, 1973).
- **Suspension During Emergency:** Can be suspended (Article 359) during a National Emergency, except Articles 20 and 21 (44th Amendment, 1978).
- **Dynamic Interpretation:** Judicial activism expands scope (e.g., right to privacy under Article 21, Justice K.S. Puttaswamy Case, 2017).
- **Promote Holistic Development:** Foster material, intellectual, moral, and spiritual growth, upholding dignity and equality.
- **Non-Absolute:** Balanced against public interest; no right is unrestricted to prevent misuse or societal harm.
- **Support Social Justice:** Enable affirmative action (e.g., reservations under Articles 15, 16) and abolish practices like untouchability (Article 17).
- **Magna Carta of India:** Described as India's Magna Carta for their role in safeguarding liberties and ensuring justice.

### Significance of Fundamental Rights



### Issues and Challenges Pertaining to Fundamental Rights:

- **Implementation Gaps:**
  - Poor enforcement in rural and marginalized areas limits access to rights like education (Article 21A) and equality (Article 14).
  - Socio-economic barriers (poverty, illiteracy) hinder awareness and exercise of rights, especially for SCs/STs and women.
- **Overuse of Restrictions:**
  - "Reasonable restrictions" under Article 19 (e.g., on free speech) misused via laws like sedition (Section 124A, IPC), curbing dissent.
  - Vague grounds like "public order" lead to arbitrary state actions, undermining freedoms.
- **Emergency Provisions:**
  - Suspension of FRs during National Emergency (Article 359) risks abuse, as seen during 1975-77 Emergency, threatening liberty.
  - Even with Articles 20, 21 protected (44th Amendment), other rights remain vulnerable.
- **Judicial Overload:**
  - Pendency in courts delays remedies under Article 32, weakening its role as the "heart and soul" of the Constitution.
  - Access to justice limited for the poor due to high legal costs and complex procedures.
- **Balancing Conflicts:**
  - Tensions between individual rights (e.g., free speech under Article 19) and collective

- interests (e.g., communal harmony) create dilemmas.
- Religious freedom (Article 25) vs. social reform (e.g., triple talaq ban) sparks debates over state intervention.
- **Discrimination Persists:**
  - Despite Article 17, untouchability and caste-based discrimination continue in rural areas, with weak enforcement of laws.
  - Gender and minority discrimination (Article 15) remains, evident in low female workforce participation and communal tensions.
- **Privacy and Surveillance:**
  - Post-Puttaswamy (2017), right to privacy (Article 21) faces threats from state surveillance (e.g., Aadhaar, Pegasus) and data misuse.
  - Lack of robust data protection laws undermines individual autonomy.
- **Child Labour and Exploitation:**
  - Article 24 violations persist; child labor in informal sectors (e.g., agriculture, domestic work) continues due to lax enforcement.
  - Human trafficking (Article 23) remains a challenge, driven by poverty and weak policing.
- **Minority Rights Concerns:**
  - Cultural rights (Articles 29-30) face challenges from majoritarian policies, raising fears of assimilation among linguistic/religious minorities.
  - Educational institutions under Article 30 struggle with state regulations, limiting autonomy.
- **Legislative Overreach:**
  - Laws bypassing FRs (e.g., preventive detention under Article 22) risk misuse, with inadequate judicial safeguards.
  - Amendments diluting rights (e.g., property right removed via 44th Amendment) raise concerns over erosion.
- **Regional Disparities:**
  - Uneven protection of FRs in conflict zones (e.g., J&K, Northeast) due to laws like AFSPA, which curtail life and liberty (Article 21).
  - Tribal rights are often neglected, with land alienation violating equality and dignity.
- **Misinformation and Polarization:**

- Free speech (Article 19) misused to spread fake news and hate speech, challenging social cohesion and equality principles.
- State clampdowns on media and activists sometimes overstep constitutional limits.

### Way Forward:

- **Strengthen Awareness Campaigns:** Promote public education on Fundamental Rights through schools, media, and community programs to empower citizens, especially marginalized groups.
- **Judicial Reforms:** Establish fast-track courts and expand legal aid to ensure timely remedies under Article 32, reducing case pendency and enhancing access to justice.
- **Clarify Restrictions:** Define “reasonable restrictions” (e.g., Article 19) with precise guidelines to prevent misuse of laws like sedition and ensure proportionality in state actions.
- **Robust Enforcement:** Enhance implementation of laws protecting rights (e.g., Article 17 against untouchability, Article 24 against child labor) through stricter monitoring and penalties.
- **Safeguard Privacy:** Enact a comprehensive data protection law to uphold the right to privacy (Article 21), addressing surveillance and data misuse concerns post-Puttaswamy (2017).
- **Balance Rights and Duties:** Encourage civic responsibility alongside rights to mitigate misuse (e.g., hate speech under Article 19), fostering harmony without curbing freedoms.

### Reasonable Restrictions on Fundamental Rights and Issues Arising Out of It

#### Constitutional Basis of Reasonable Restrictions

Fundamental Right	Article	Grounds for Restriction
Freedom of Speech	Article 19(2)	Sovereignty, public order, morality, contempt of court, defamation, incitement to offence, etc.

Freedom of Assembly	Article 19(3)	Public order and sovereignty of India
Freedom of Association	Article 19(4)	Public order, morality, and sovereignty
Freedom of Movement	Article 19(5)	Interests of general public and protection of Scheduled Tribes
Right to Life	Article 21	Subject to <b>procedure established by law</b> (e.g., preventive detention)
Religious Freedom	Article 25	Public order, health, morality, and other fundamental rights

- **Ambiguity in Morality Clause**
  - Judicial inconsistency on “morality” limits personal liberty.
  - **Example:** *Suresh Kumar Koushal v. Naz Foundation* upheld Section 377 (later reversed in *Navtej Johar*, 2018).
- **Preventive Detention Laws**
  - Restrictions under **Articles 21 and 22** allow detention without trial, raising **due process concerns**.
  - **Example:** Use of **NSA and PSA** against journalists and activists.

### Way Forward

- **Narrow Tailoring of Restrictions:** Laws restricting rights must be precise and proportionate to the objective.
- **Periodic Judicial Review:** Courts must continue to examine constitutionality of laws that curb rights (e.g., sedition, surveillance).
- **Codify ‘Morality’ Standards:** Avoid arbitrariness in interpreting “morality” by adopting **constitutional morality** (as upheld in *Navtej Johar*).
- **Uphold the Doctrine of Proportionality:** Adopt the *Puttaswamy* judgment's framework — any restriction must be **legal, necessary, and least restrictive**.
- **Legislative Oversight:** Scrutinize the use of emergency powers and preventive detention through **Parliamentary and judicial oversight**.

### Issues Arising Out of Restrictions

- **Vague and Broad Grounds**
  - Terms like “public order” or “morality” are **subjective** and can be misused.
  - **Example:** Section 66A of the IT Act (struck down in *Shreya Singhal v. Union of India*, 2015) was vague and stifled free speech.
- **Disproportionate Application**
  - Restrictions may **override rights disproportionately**, especially under sedition or UAPA.
  - **Example:** Arbitrary arrests under **sedition laws** have raised concerns of chilling dissent (*Kedar Nath Singh v. State of Bihar*, 1962 allows sedition only when incitement to violence is proven).
- **Misuse for Political Suppression**
  - Governments may invoke “public order” to **curb protests, ban associations, or detain activists**, impacting the democratic right to dissent.
  - **Example:** Frequent use of **Section 144 CrPC** during peaceful protests.

### Contemporary issues associated with Fundamental Rights :

#### 1. Right to Development a Priority Under Fundamental Rights

##### Context

- The Supreme Court’s recognition of the right to development through industrialization as a fundamental right in the **Auroville Universal Township vs. Union of India (2024)** case underscores its equal importance alongside environmental protection.

### Court Observations

- **Equal Priority:** The right to development via industrialization holds equal weight under

Articles 14 (equality), 19 (freedom of profession), and 21 (life and liberty) as the right to a clean environment.

- **Sustainable Balance:** The court emphasized achieving a “golden balance” between development and environmental rights, overturning restrictive NGT and Madras High Court orders.
- **Contextual Application:** While acknowledging the precautionary and polluter-pays principles, the court prioritized sustainable development to meet economic needs.
- **Judicial Oversight:** Highlighted the need for case-specific evaluations to ensure neither right overshadows the other.

### Issue of Environmental Protection vs. Development Debate

- **Fundamental Rights Clash:** The right to a clean environment (Articles 14, 21) often conflicts with the right to development (Articles 14, 19, 21), creating tension over resource use and industrial growth.
- **Economic Needs:** Industrialization drives jobs and GDP growth, but unchecked projects can degrade air, water, and land, harming marginalized communities.
- **Judicial Dilemma:** Courts face challenges balancing immediate economic benefits against long-term ecological damage, as seen in cases like Auroville’s halted projects.
- **Regulatory Gaps:** Weak enforcement of environmental laws (e.g., clearances) allows violations, while stringent rules can stall development, delaying public welfare projects.
- **Public Health vs. Livelihoods:** Pollution from industries impacts health (violating Article 21), yet shutting them down risks unemployment, affecting the same right to life.
- **Global Commitments:** India’s Paris Agreement goals (e.g., net-zero by 2070) push for green policies, but development demands energy-intensive industries, complicating compliance.

### Way Forward to Show Balance

- **Integrated Policy Framework:** Adopt a national policy merging environmental and

developmental goals, using tools like Environmental Impact Assessments (EIAs) to guide projects.

- **Green Technology Adoption:** Incentivize industries to use clean technologies (e.g., renewable energy, carbon capture) to minimize ecological harm while fostering growth.
- **Judicial Guidelines:** Establish clear criteria for courts to assess projects, ensuring neither environment nor development is disproportionately prioritized.
- **Stakeholder Engagement:** Involve communities, NGOs, and industries in decision-making to address local concerns and align projects with sustainable development goals.
- **Strengthen Enforcement:** Bolster regulatory bodies to monitor compliance, ensuring polluters are penalized without halting legitimate development initiatives.

### Notable SC judgements regarding Constitutionalization of Environmental issues

- **Rural Litigation and Entitlement Kendra vs. State (1988):**
  - Upheld the right to a healthy environment as implicit in Article 21, ordering the closure of polluting limestone quarries in Dehradun.
  - Emphasized ecological balance as essential for human dignity and survival.
- **M.C. Mehta vs. Union of India (1987):**
  - Declared the right to a pollution-free environment as part of Article 21, addressing Ganga river pollution.
  - Introduced the “polluter pays” principle, holding industries accountable for environmental damage.
- **Virender Gaur vs. State of Haryana (1995):**
  - Linked environmental protection to Article 21, mandating pollution-free ecological balance for urban planning.
  - Directed the state to prevent construction on ecologically sensitive land to safeguard public health.
- **T.N. Godavarman Thirumulpad vs. Union of India (1996):**
  - Redefined “forest” broadly to include all

green areas, regardless of ownership or classification, for conservation.

- Established the court's supervisory role in forest protection, curbing illegal logging nationwide.

## **2. Accessibility for disabled persons is a human and a fundamental right**

### **Context**

- The Supreme Court's landmark judgment on November 8, 2024, recognizes accessibility for persons with disabilities (PwDs) as a fundamental right, reinforcing India's commitment to inclusive equality.

### **Court Observations**

- **Fundamental Right Status:** Accessibility is not merely a convenience but an essential human and fundamental right under Article 21, enabling PwDs to exercise other rights meaningfully.
- **Societal Failure:** Disability becomes a tragedy only when society fails to provide necessary accommodations, as emphasized by former CJI D.Y. Chandrachud.
- **Non-Compliance Highlighted:** The court noted that existing guidelines under the Rights of Persons with Disabilities (RPwD) Act, 2016, are treated as recommendatory, undermining their effectiveness.
- **Holistic Needs:** Emotional and relational challenges, including access to privacy and intimacy, are often ignored, exacerbating exclusion for PwDs.

### **Issues in Ensuring Accessibility**

- **Inadequate Implementation:** Despite the RPwD Act, 2016, public spaces like government buildings, transport, and courts lack ramps, tactile paths, or accessible signage, limiting PwD inclusion.
- **Non-Mandatory Guidelines:** Rule 15 of the RPwD Rules, 2017, lacks enforceability, leading to inconsistent accessibility standards across states and sectors.
- **Social Stigma:** Societal attitudes marginalize PwDs, ignoring their emotional and relational

needs (e.g., privacy), which hinders their dignity and autonomy under Article 21.

- **Economic Barriers:** High costs of retrofitting infrastructure and assistive technologies deter compliance, especially in rural areas and small institutions.
- **Lack of Awareness:** Government officials and private entities often lack training on PwD needs, resulting in poorly designed or inaccessible facilities.

### **Way Forward**

- **Mandatory Accessibility Rules:** Enforce the Supreme Court's directive to frame binding accessibility standards within three months, with penalties for non-compliance.
- **Universal Design Adoption:** Mandate inclusive infrastructure (e.g., ramps, braille signage) in all public and private spaces, aligning with the Accessible India Campaign.
- **Capacity Building:** Train officials, architects, and service providers on PwD rights and accessibility norms to foster empathy and compliance.
- **Stakeholder Collaboration:** Consult PwD communities and experts (e.g., NALSAR's Centre for Disability Studies) to design practical, inclusive policies and monitor progress.
- **Financial Support:** Provide subsidies for assistive technologies and infrastructure upgrades, ensuring affordability for rural and small-scale entities.

### **3. Issue of Right to Privacy**

- **Introduction:** The right to privacy, enshrined under Article 21 of the Indian Constitution, ensures individuals' control over their personal information, choices, and private spaces. It stands as a fundamental pillar for upholding human dignity, autonomy, and freedom in modern societies.

#### **Need:**

- **Protection from Surveillance:** Shields individuals from unauthorized surveillance, ensuring personal security in physical and digital realms.

- **Safeguard Against Exploitation:** Prevents exploitation through data misuse, such as identity theft or targeted manipulation.
- **Building Institutional Trust:** Fosters trust in institutions, encouraging open communication and participation in society.
- **Empowering Vulnerable Groups:** Empowers marginalized groups by protecting their sensitive information from discrimination.
- **Mental Health Support:** Supports mental well-being by preserving personal boundaries and private spaces.

### Challenges:

- **Mass Data Collection:** Mass data collection by tech giants and governments undermines individual consent and transparency.
- **Outdated Legal Frameworks:** Evolving technologies like AI and facial recognition outstrip existing regulatory frameworks.
- **Security vs. Privacy Conflict:** Conflicts between national security demands and privacy rights create legal gray areas.
- **Jurisdictional Issues:** Cross-border data flows complicate enforcement of privacy laws across jurisdictions.
- **Lack of Public Awareness:** Public apathy and lack of awareness hinder demand for stronger privacy protections.
- **Corporate Profit Motives:** Corporate profit motives often prioritize data monetization over user privacy.

### Way Forward:

- **Robust Global Laws:** Enact robust, globally harmonized data protection laws with strict penalties for violations.
- **Privacy-by-Design:** Embed privacy-by-design principles in tech development to prioritize user control.
- **Transparency Measures:** Enhance transparency through mandatory disclosures on data collection practices.
- **International Collaboration:** Strengthen international cooperation to regulate cross-border data transfers effectively.
- **Digital Literacy Campaigns:** Invest in public

education campaigns to boost digital literacy and privacy awareness.

- **Regulatory Empowerment:** Empower independent regulatory bodies to enforce compliance and audit tech practices.
- **Decentralized Technologies:** Encourage decentralized technologies, like blockchain, to give users greater data sovereignty.

### Issue of Right to Privacy

- **K.S. Puttaswamy v. Union of India (2017, India):**
  - Declared privacy a fundamental right under Article 21, protecting against arbitrary state data collection.
  - Set a precedent for balancing individual autonomy with state interests, influencing data protection laws.
  - Overruled earlier judgments denying privacy's constitutional status, strengthening digital rights.
- **Anuradha Bhasin v. Union of India (2020, India):**
  - Recognized internet access as linked to privacy and free speech rights.
  - Ruled blanket communication shutdowns disproportionate, emphasizing proportionality in restrictions.
  - Reinforced privacy's role in enabling expression and access to information.

**Keywords :** Magna Carta of India, Judicial Review, Constitutional Remedies, Reasonable Restrictions, Socio-economic Justice, Right to Privacy, Sustainable Development, Accessibility Rights, Environmental Jurisprudence,, Right to Development, Article 21 Jurisprudence, Digital Rights, Affirmative Action, Inclusive Equality, Public Interest vs. Individual Rights, Federal Unity

### Mains Practice Question :

Q1. Evaluate the tension between the Right to Freedom of Speech and the state's interest in maintaining public order.

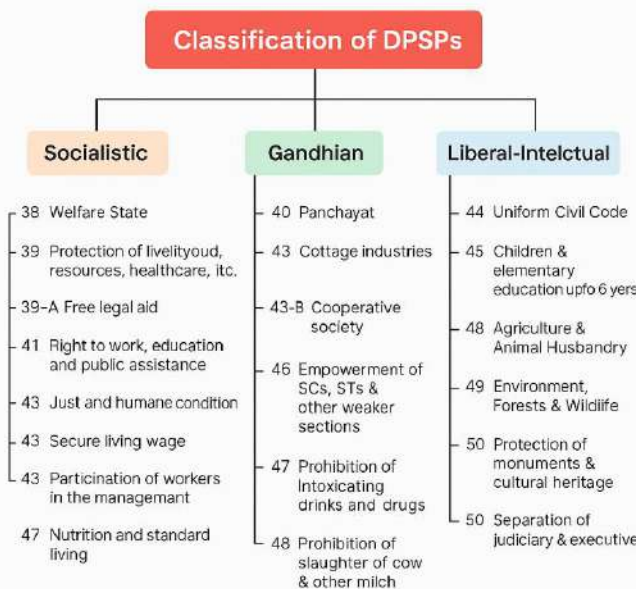
Q2.To what extent has the Supreme Court's interpretation of Article 21 expanded the meaning of 'life and personal liberty'? Illustrate.

## Directive Principle of State Policy

### Introduction

The Directive Principles of State Policy (DPSPs), outlined in Part IV (Articles 36–51) of the Indian Constitution, are inspired by the Irish Constitution of 1937 and embody the vision of a welfare state. Described by Dr. B.R. Ambedkar as 'novel features' and by Granville Austin as the 'conscience of the Constitution,' these principles, alongside Fundamental Rights, form the philosophical core of the Constitution, guiding the state toward social justice and equitable governance.

### Classifications of DPSP's



### Judicial Evolution of Conflict between DPSP and Fundamental Rights

- **Champakam Dorairajan Case (1951):** The Supreme Court held that Directive Principles of State Policy (DPSPs) are non-enforceable as per Article 37, establishing that Fundamental Rights prevail over DPSPs in cases of conflict.
- **Golak Nath Case (1967):** The Supreme Court ruled that Fundamental Rights cannot be abridged or diluted to implement DPSPs, asserting that Parliament lacks the power to amend Fundamental Rights to prioritize social policies.
- **Kesavananda Bharati Case (1973):** The Supreme Court introduced the basic structure doctrine, allowing Parliament to amend

Fundamental Rights for DPSP implementation but prohibiting changes that destroy the Constitution's core framework.

- **Minerva Mills Case (1980):** The Supreme Court stressed the need for harmony between Fundamental Rights and DPSPs, declaring them complementary and essential for an egalitarian social order, with neither overriding the other.

### Significance of Directive Principles of State Policy (DPSP)

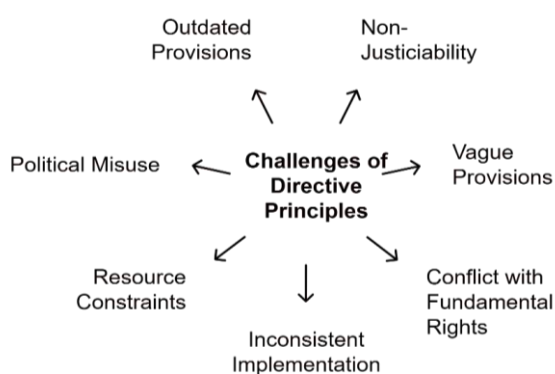
- **Guiding Governance:** DPSPs provide a roadmap for the state to achieve social, economic, and political justice, shaping policies for the welfare of citizens.
- **Promoting Social Equality:** They aim to reduce inequalities by ensuring equitable distribution of resources, opportunities, and access to basic needs like education and healthcare.
- **Inspiring Legislation:** DPSPs serve as a source of inspiration for laws and policies, encouraging measures like land reforms, labor welfare, and environmental protection.
- **Complementary to Fundamental Rights:** They complement Fundamental Rights by balancing individual liberties with collective welfare, fostering a just and egalitarian society.
- **Moral Obligation:** Though non-justiciable, DPSPs impose a moral duty on the state to strive for ideals like free legal aid, village empowerment, and cultural preservation.
- **Facilitating Economic Democracy:** DPSPs promote economic fairness by advocating for fair wages, wealth distribution, and protection of marginalized groups, reducing economic disparities.
- **Global Alignment:** They align India's governance with universal principles like human dignity and social justice, reflecting commitments to international charters and norms.

### Criticism and Challenges of Directive Principles of State Policy (DPSP)

- **Non-Justiciability:** DPSPs are not enforceable in courts, leading to criticism that they lack binding

authority and remain aspirational rather than actionable.

- **Vague Provisions:** Many DPSPs are broadly worded, causing ambiguity in implementation and allowing governments to interpret them selectively or minimally.
- **Conflict with Fundamental Rights:** Tensions arise when DPSP-driven policies, like affirmative action, clash with Fundamental Rights, such as equality, creating legal and political disputes.
- **Inconsistent Implementation:** Successive governments prioritize DPSPs unevenly, resulting in patchy progress on goals like poverty alleviation, education, and healthcare access.
- **Resource Constraints:** Achieving DPSP objectives, such as universal healthcare or employment, is hindered by limited financial and infrastructural resources, delaying outcomes.
- **Political Misuse:** Governments may exploit DPSPs for populist agendas, using them as rhetoric without genuine commitment to structural reforms or equitable development.
- **Outdated Provisions:** Some DPSPs, like prohibition or cow slaughter bans, are seen as outdated or divisive, challenging their relevance in a modern, pluralistic society.



### Can DPSPs Override Fundamental Rights?

- **Constitutional Position:** As per Article 37, DPSPs are non-justiciable, meaning they are not enforceable by courts. Fundamental Rights (FRs), on the other hand, are legally enforceable under Articles 12–35. Hence, *Fundamental Rights generally prevail* in case of direct conflict.
- **Initial Judicial View – FRs Prevail:** In *Champakam Dorairajan v. State of Madras* (1951),

the Supreme Court held that in case of conflict, Fundamental Rights would override DPSPs. This led to constitutional amendments to give more power to DPSPs.

- **Balancing Approach** – Both are Complementary: From the Kesavananda Bharati case (1973) onward, the Court began interpreting DPSPs and FRs as complementary and not conflicting. Parliament was given the power to amend Fundamental Rights to implement DPSPs, provided the basic structure is not violated.
- **Current Legal Position:** In *Minerva Mills v. Union of India* (1980), the Supreme Court held that a harmonious balance must be maintained between Fundamental Rights and DPSPs. Neither is superior; both are essential to constitutional governance.

### Contemporary issues associated with DPSP Uniform Civil Code

- **Introduction:** The Uniform Civil Code (UCC) proposes a single set of laws governing personal matters like marriage, divorce, and inheritance for all citizens, irrespective of religion. It aims to ensure equality before the law, fostering national unity and secularism in diverse societies. As per article 44 of the constitution, state shall endeavor to secure for citizens a Uniform Civil Code throughout the territory.
- **Need:**
  - **Ensuring Gender Justice:** Addresses discriminatory practices in personal laws, promoting equal rights for women across communities.
  - **Fostering National Integration:** Harmonizes diverse religious laws, reducing communal divides and strengthening social cohesion.
  - **Simplifying Legal Processes:** Replaces complex, religion-specific laws with a uniform framework, easing judicial administration.
  - **Upholding Constitutional Values:** Aligns personal laws with fundamental rights, ensuring equality and non-discrimination.
  - **Adapting to Modern Norms:** Updates

outdated customs to reflect contemporary values of fairness and individual dignity.

- **Challenges:**

- **Cultural Resistance:** Opposition from religious groups fearing erosion of traditional practices and identities.
- **Political Sensitivities:** Polarized debates hinder consensus, with accusations of majoritarianism or minority appeasement.
- **Legal Complexity:** Harmonizing diverse personal laws requires extensive reforms and stakeholder agreement.
- **Implementation Hurdles:** Enforcing UCC across varied regions and communities poses logistical and social challenges.
- **Balancing Uniformity and Diversity:** Ensuring uniformity without suppressing cultural diversity remains contentious.
- **Judicial Overload:** Transition to UCC may strain courts with disputes over interpretation and application.

- **Way Forward:**

- **Inclusive Consultations:** Engage religious leaders, scholars, and communities to build consensus and trust.
- **Gradual Implementation:** Introduce reforms incrementally, starting with non-contentious areas like marriage registration.
- **Robust Legal Framework:** Draft clear, equitable laws balancing constitutional rights and cultural sensitivities.
- **Public Awareness Campaigns:** Educate citizens on UCC's benefits to dispel myths and reduce resistance.
- **Gender-Sensitive Approach:** Prioritize reforms addressing discriminatory practices to uphold equality.

- **Significant Judgments:**

- **Shayara Bano v. Union of India (2017, India):** Declared triple talaq unconstitutional, pushing for gender-just reforms in Muslim personal law and highlighting the need for a UCC aligned with constitutional equality.
- **Sarla Mudgal v. Union of India (1995, India):** Ruled against bigamy across personal laws, advocating for a UCC to

ensure uniform marriage laws and prevent legal misuse.

- **John Vallamattom v. Union of India (2003, India):** Struck down discriminatory Christian succession laws, emphasizing UCC's role in eliminating inequalities in inheritance rights.
- **Mohd. Ahmed Khan v. Shah Bano Begum (1985, India):** Granted maintenance to a divorced Muslim woman, sparking UCC debates by exposing gender disparities and advocating uniform laws.

## 2. Constitution and the Redistribution of Wealth

- **Introduction:** The 17th Lok Sabha elections reignited debates on wealth redistribution. Articles 39(b) and 39(c) of the Directive Principles mandate the State to ensure equitable distribution of resources and prevent concentration of wealth, reinforcing the Constitution's commitment to social and economic justice.

- **Need:**

- **Addressing Economic Disparity:** Reduces stark income gaps, ensuring fair opportunities for marginalized sections.
- **Promoting Social Justice:** Aligns with constitutional goals to uplift disadvantaged groups and curb exploitation.
- **Ensuring Resource Access:** Guarantees equitable access to essential resources like land, education, and healthcare.
- **Preventing Wealth Concentration:** Checks monopolistic control, fostering economic democracy and fair competition.
- **Supporting Sustainable Development:** Encourages inclusive policies for long-term societal stability and growth.

- **Challenges:**

- **Resistance from Elites:** Opposition from wealthy groups fearing loss of privilege hinders policy implementation.
- **Policy Implementation Gaps:** Bureaucratic inefficiencies and corruption undermine effective wealth redistribution programs.
- **Balancing Growth and Equity:** Ensuring economic progress without stifling innovation or investment remains complex.

- **Legal Hurdles:** Judicial scrutiny of redistribution laws, like land reforms, often delays or dilutes efforts.
- **Regional Disparities:** Varying economic conditions across states complicate uniform policy application.
- **Public Perception Issues:** Misconceptions about redistribution as punitive measures reduce political support.
- **Significant Judgments:**
  - **State of Tamil Nadu v. L. Abu Kavur Bai (1984):** Upheld nationalization of transport, aligning with Article 39(b) for public welfare. Affirmed state's role in redistributing resources to serve common good.
  - **Ranganatha Reddy v. State of Karnataka (1978):** Supported nationalization of bus services to prevent private monopolies. Reinforced Article 39(b)'s mandate for community control over resources

**Keywords:** Conscience of the Constitution, Welfare State, Non-Justiciable Rights, Uniform Civil Code, Gender Justice, Wealth Redistribution, Economic Democracy, Progressive Taxation, Public Welfare, Legal Pluralism, Judicial Harmonization, Cultural Sensitivities, National Integration

**Mains Practice Question :**

Q1. "Directive Principles of State Policy are non-justiciable, yet they form the soul of the Constitution." Discuss the relevance of DPSPs in guiding governance in contemporary India.

Q2. Critically examine the relationship between Fundamental Rights and Directive Principles. Can the directive principles override the fundamental rights? Support your answer with constitutional provisions and case laws.

## Fundamental Duties

### Introduction

Fundamental Duties, enshrined in the Indian Constitution, outline responsibilities of citizens towards the nation and society. They promote civic consciousness, unity, and respect for the country's heritage and values. These duties complement fundamental rights, fostering a balanced framework for national development.

### Significance:

- **Promoting Civic Responsibility:** Encourage citizens to actively contribute to the nation's progress and well-being.
- **Strengthening National Unity:** Foster a sense of collective identity and harmony among diverse communities.
- **Balancing Rights and Duties:** Complement fundamental rights, ensuring citizens uphold obligations alongside enjoying freedoms.
- **Preserving Cultural Heritage:** Emphasize protecting India's rich traditions, environment, and composite culture.
- **Encouraging Discipline:** Instill values of respect for laws, institutions, and public order in society.
- **Guiding Ethical Conduct:** Provide a moral framework for citizens to uphold justice, equality, and fraternity.

### Criticism:

- **Lack of Enforceability:** Non-justiciable nature limits legal accountability, rendering duties symbolic.
- **Vague Provisions:** Some duties, like promoting scientific temper, lack clear implementation guidelines.
- **Limited Awareness:** Low public knowledge reduces their practical impact on civic behavior.
- **Potential for Misuse:** Ambiguity may lead to state overreach in interpreting duties against citizens.
- **Incomplete Coverage:** Absence of duties like tax compliance or voting weakens their scope.
- **Overemphasis on Morality:** Focus on ideals over practical obligations dilutes their effectiveness.

### Way Forward:

- **Enhance Public Awareness:** Launch campaigns to educate citizens about duties through schools and media.
- **Strengthen Legal Mechanisms:** Introduce incentives or soft enforcement measures to promote compliance.
- **Clarify Provisions:** Provide specific guidelines to make duties actionable and relevant.
- **Incorporate in Education:** Integrate duties into curricula to instill values from an early age.
- **Encourage Voluntary Adherence:** Promote community initiatives to foster a culture of responsibility.
- **Expand Scope:** Add contemporary duties like environmental sustainability and digital ethics.
- **Balance with Rights:** Ensure duties complement, not override, fundamental rights in practice.

### Legal Provisions Available for Enforcing Fundamental Duties:

- **Article 51A:** Lists 11 fundamental duties, though non-justiciable, serves as a guiding principle for citizens.
- **Prevention of Insults to National Honour Act, 1971:** Penalizes disrespect to national symbols like the flag or anthem, aligning with Article 51A(a).
- **Wildlife Protection Act, 1972:** Supports duty to protect the environment under Article 51A(g) by regulating wildlife conservation.
- **Protection of Civil Rights Act, 1955:** Reinforces Article 51A(e) by penalizing practices like untouchability, promoting equality.
- **Environment Protection Act, 1986:** Enforces duty to safeguard natural resources, supporting Article 51A(g).
- **Judicial Interpretations:** Courts may refer to duties in judgments to guide policy or interpret laws, though not directly enforceable.
- **Education Policies:** National Education Policy encourages teaching duties, indirectly promoting compliance with Article 51A.

**Keywords** : Civic Responsibility, Non-Justiciable Duties, Environmental Stewardship, Cultural Preservation, Ethical Citizenship, Scientific Temper, Legal Reinforcement, Symbolic Compliance, Value-Based Education, Preventive Legislation, Duty-Rights Balance, Public Awareness Campaigns

**Mains Practice Question :**

Q1. Discuss the relevance of Fundamental Duties in contemporary India. Should they be made enforceable by law? Substantiate your answer with examples.

Q2. Evaluate how Fundamental Duties can contribute to the realization of constitutional values and national integration.

## Amendment of the Constitution

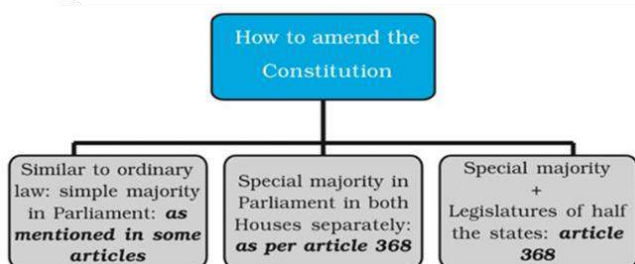
### Introduction:

The amendment process, outlined under Article 368 of the Indian Constitution, allows Parliament to modify the Constitution to meet evolving societal needs. It balances flexibility with stability, ensuring the document remains relevant while preserving its core principles. This mechanism reflects the Constitution's adaptability to changing times.

### Need:

- **Adapting to Change:** Enables updates to address emerging social, economic, and political challenges.
- **Correcting Flaws:** Rectifies ambiguities or outdated provisions to align with contemporary values.
- **Strengthening Democracy:** Facilitates reforms to enhance governance and protect citizens' rights.
- **Ensuring Federal Balance:** Allows adjustments to maintain harmony between Union and states.
- **Promoting Inclusivity:** Supports inclusion of marginalized groups through progressive amendments.
- **Responding to Crises:** Provides flexibility to enact laws addressing unforeseen national emergencies.

### Procedure:



### Limitations on Amending Power of Parliament:

- **Basic Structure Doctrine:** Established in Kesavananda Bharati (1973), Parliament cannot alter the Constitution's basic features like secularism or judicial review.
- **Judicial Oversight:** Courts can strike down amendments violating the basic structure, ensuring constitutional supremacy.

- **Federal Constraints:** Amendments affecting states' powers require ratification, protecting federal balance.
- **Fundamental Rights Protection:** Amendments cannot arbitrarily curtail core rights like equality or liberty.
- **Procedural Compliance:** Strict adherence to Article 368's special majority and ratification rules is mandatory.
- **No Retrospective Dilution:** Amendments cannot weaken the Constitution's foundational principles retroactively.

**Keywords :** Basic Structure Doctrine, Constitutional Supremacy, Federal Balance, Procedural Safeguards, Special Majority, Constitutional Flexibility, Parliamentary Limitations, Foundational Principles, Inclusive Governance, Crisis Response, Democratic Deepening, Retrospective Amendment Bar, Constitutional Stability

### Mains Practice Questions :

Q1.Explain the procedure for amending the Constitution of India under Article 368. How does it reflect a balance between rigidity and flexibility?

Q2.Do frequent constitutional amendments dilute the sanctity of the Constitution? Critically discuss.

## Basic Structure Doctrine

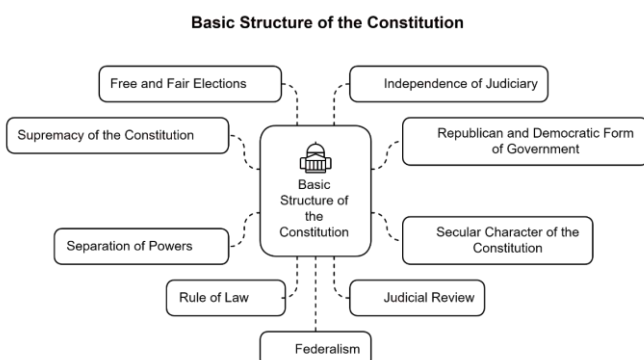
### Introduction

The Basic Structure Doctrine is a judicial principle that certain fundamental features of the Constitution cannot be altered or destroyed through amendments by the Parliament. Propounded by the Supreme Court in *Kesavananda Bharati v. State of Kerala* (1973). Basic Structure Doctrine reflects a balance between adaptability and preserving foundational values.

### Background and Evolution of Basic Structure Doctrine:

- **Early Conflicts:** In *Shankari Prasad* (1951) and *Sajjan Singh* (1965), the Supreme Court upheld Parliament's unrestricted amendment power, including over fundamental rights.
- **Golaknath Case (1967):** The Court ruled that amendments could not abridge fundamental rights, asserting their permanence, but this restricted constitutional flexibility.
- **Kesavananda Bharati Case (1973):** Landmark ruling introduced the doctrine, holding that Parliament could amend any part but not alter the Constitution's "basic structure."
- **Judicial Clarification:** *Indira Nehru Gandhi* (1975) and *Minerva Mills* (1980) cases refined the doctrine, identifying features like judicial review and secularism as protected.
- **Constitutional Amendments:** The 42nd Amendment (1976) attempted to curb judicial review, but courts struck down such provisions, reinforcing the doctrine's authority.
- **Global Influence:** Inspired by German constitutional principles, the doctrine evolved uniquely to suit India's democratic framework.

### Features of the Basic Structure



### Criticism:

- **Judicial Overreach:** Critics argue it grants excessive power to unelected judges, undermining parliamentary sovereignty.
- **Vagueness:** Lack of a definitive list of basic features creates ambiguity, leading to inconsistent application.
- **Democratic Concerns:** Restricting amendments may hinder elected representatives from addressing public needs.
- **Subjectivity:** Judicial discretion in identifying basic features risks bias or arbitrary rulings.
- **Stifling Progress:** Overprotection of certain principles may obstruct necessary constitutional reforms.
- **Conflict with Flexibility:** Critics claim it rigidifies the Constitution, contrary to its amendable design.

### Contemporary issues associated with Basic Structure Doctrine

#### Most recent SC Judgements :

- **NJAC Judgment (2015):** The Supreme Court struck down the National Judicial Appointments Commission, citing violation of judicial independence, a basic structure feature. It reaffirmed the collegium system's primacy in judicial appointments, prioritizing judiciary's autonomy over executive influence.
- **Most Recent Judgment - Article 370 Case (2019):** The Supreme Court upheld the abrogation of Article 370, ruling it did not violate the basic structure, as J&K's special status was temporary. The decision emphasized federalism and sovereignty but sparked debates on the doctrine's limits in protecting regional autonomy.
- **Electoral Bonds Case (2019):** The Court invalidated the Electoral Bonds Scheme for undermining transparency and voters' right to information under Article 19(1)(a). While the basic structure was invoked in arguments to protect democratic fairness, the ruling focused on fundamental rights, reinforcing free elections as a core principle.
- **Uttar Pradesh Madarsa Law (2024):** The Supreme Court upheld most provisions of the UP Madarsa Education Act, 2004, overturning a

High Court ruling that deemed it violative of secularism. The Court clarified that statutes cannot be struck down solely for breaching the basic structure, like secularism, unless they violate specific constitutional provisions, refining the doctrine's application to ordinary laws.

**Keywords :** Judicial Independence, Electoral Transparency, NJAC Judgment, Collegium System, Voter's Right to Information, Judicial Restraint, Constitutional Flexibility, Constitutional Supremacy

**Mains Practice Question :**

Q1."The Basic Structure Doctrine is a judicial innovation that seeks to preserve the soul of the Constitution." Examine.

Q2.Is it justifiable for an unelected judiciary to restrict the authority of a democratically elected Parliament in a constitutional democracy? Discuss with reference to the Basic Structure Doctrine.

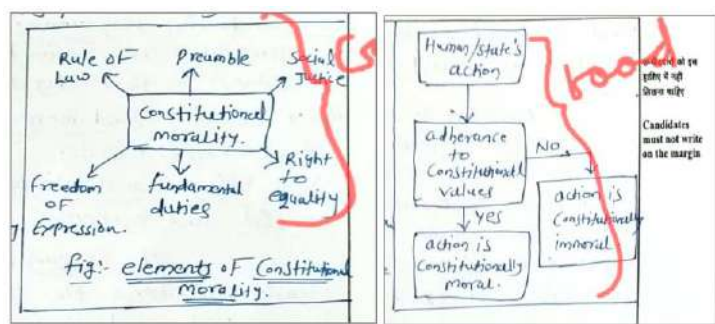
- DPSR, examining whether private property can be considered "material resources of the community" for redistribution, raising critical questions about balancing fundamental rights and socio-economic justice
- Recently, Justice B.R. Gavai, in a lecture at Columbia Law School, emphasized that judicial review and democratic principles are core to the basic structure doctrine, highlighting the Supreme Court's role in protecting fundamental rights through transformative constitutionalism
  - Recently, the Supreme Court questioned the Centre on the Citizenship (Amendment) Act, 2019, asking why rules for granting citizenship to persecuted minorities from neighboring countries were delayed, emphasizing the constitutional right to equality under Article 14.
  - Recently, the Supreme Court, in a case challenging the Electoral Bonds Scheme, reiterated that the right to information under Article 19(1)(a) is integral to democratic participation, reinforcing the basic structure doctrine's emphasis on transparency

**Value Addition for Unit 1**

**In news**

- Recently,, the Supreme Court continued hearings on the Waqf (Amendment) Act, 2025, questioning its constitutional validity and its impact on religious autonomy, highlighting tensions between fundamental rights and legislative powers
- Recently, the Supreme Court condemned bulldozer demolitions as punitive measures, calling them a subversion of the rule of law, reinforcing constitutionalism and the right to property
- Recently, the Supreme Court dismissed review petitions seeking to legalize same-sex marriage, upholding its October 2023 judgment, impacting fundamental rights discourse on equality and non-discrimination
- Recently, a nine-judge Supreme Court bench began hearings to interpret Article 39(b) of the

**Illustrations & Diagrams**



**Acronym**

**Writing answer on Constitutionalism, you can remember following Acronym**

**LIMITED"**

This helps structure your answer in a **logical and memorable** way:

- **L - Limited Government:** No absolute authority; power is constrained by law
- **I - Individual Rights:** Protection of fundamental rights and liberties
- **M - Mechanisms of Checks and Balances:** Judiciary, Parliament, Executive roles
- **I - Independent Judiciary:** To uphold constitutional values and rule of law
- **T - Transparent Governance:** Accountability, RTI, democratic ideals
- **E - Established Rule of Law:** Law is supreme, not will of the ruler
- **D - Doctrine of Basic Structure:** Ensures Parliament cannot destroy constitutional ethos

**PREAMBLE**

- **P** - Philosophy of the Constitution
- **R** - Reflects noble vision of constitution makers
- **E** - Embodies source of the Constitution i.e. People of India
- **A** - Aims and Aspirations of the people
- **M** - Moral foundation
- **B** - Basic objectives of the Constitution
- **L** - Legal assistance for interpretation of the Constitution
- **E** - Expresses goals of the Constitution

**Ready-Made Templates**

<b>Constitutional Morality</b>	At state level	<ul style="list-style-type: none"> <li>• Respecting separation of powers</li> <li>• Ensuring protection of fundamental rights of individual</li> <li>• Following directive principles of state policy</li> <li>• Protecting sovereignty and security of the State</li> </ul>
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	At societal level	<ul style="list-style-type: none"> <li>• Respect cultural diversity</li> <li>• Following of laws made by the state</li> <li>• Elimination of inhuman practices like sati, untouchability, etc.</li> </ul>
	At individual level	<ul style="list-style-type: none"> <li>• Fulfilling fundamental duties</li> <li>• Participation in democratic affairs of state through elections</li> <li>• Tolerant attitude towards others culture</li> <li>• Develop scientific temper</li> </ul>
<b>Constitutional Morality</b>	Political	<ul style="list-style-type: none"> <li>• Ensure speedy justice to victims</li> <li>• Maintaining transparency and accountability in democratic affairs of state</li> <li>• Free and fair elections</li> </ul>
	Social	<ul style="list-style-type: none"> <li>• Ensuring social justice</li> <li>• Elimination of poverty</li> <li>• Minimize inequalities</li> </ul>
	Environmental	<ul style="list-style-type: none"> <li>• Safeguarding forests and wildlife</li> <li>• Conservation of resources</li> </ul>
<b>Constitutional Morality</b>	For Legislature	<ul style="list-style-type: none"> <li>• Making of laws through deliberation and discussion</li> <li>• Ensure protection of liberty of individuals</li> </ul>

	Executive	<ul style="list-style-type: none"> <li>• Implementation of laws in an unbiased manner</li> <li>• Fostering democratic and just society</li> <li>• Adherence to constitutional principles</li> </ul>
	Judiciary	<ul style="list-style-type: none"> <li>• Ensure separation of powers</li> <li>• Ensure checks and balances</li> <li>• Defend and guarantee of fundamental rights of citizens</li> <li>• Ensure protection of basic structure of the Constitution</li> </ul>

### Introductions / Conclusions

- **For Preamble**
  - The Constitution is the fundamental law of the land and the Preamble is the preface or introduction to this fundamental law.
  - The spirit or ideology behind the Constitution is sufficiently crystallized in the Preamble. It embodies the soul, conscience and spirit of the Constitution.
- **For Reorganization of States**
  - The Indian Constitution provides for an indestructible Union of destructible States, where politico-socio-cultural factors contribute continuously to the reorganization of states.
  - In India's quasi-federal structure, the state has been constantly fiddling with its internal boundaries in order to maintain its unity in diversity.
- **For Fundamental Rights**  
(Starting the answer with a mention of the significance of the Article asked in the question is a suitable introduction.)
  - The chapter on Fundamental Rights is the Magna Carta of India that envisages the

- development of individuals through the establishment of the rule of law.
- The Supreme Court, in several cases, has acknowledged the need for reasonable restrictions on Fundamental Rights, but the State must ensure that such restrictions are enabled in the right spirit and not to curb the basic tenet of democracy, which may otherwise reduce to tyranny.
  - **For Directive Principles of State Policy (DPSPs)**  
(Start the answer by mentioning the Articles and Part related to the DPSPs.)
    - DPSPs are the life-giving provisions of the Constitution. They constitute the philosophy of social justice. If all these were implemented, our country would be heaven on earth.
    - DPSPs are ideals that the State should keep in mind while formulating policies. They are instructions to the legislature and executive.
    - DPSPs are moral precepts for the authorities of the State. They are interpretive guides and moral force behind Fundamental Rights.
  - **For Conflict between Fundamental Rights and DPSPs**
    - The Indian Constitution is founded on the bedrock of balance between Fundamental Rights and DPSPs.
    - They are two wheels of a chariot. Together, they constitute the core of the commitment to social revolution.
  - **For Fundamental Duties**  
(Start the answer by mentioning the Article related to the Fundamental Duties.)
    - Rights and duties are correlative and inseparable. For Gandhi, duties are rights in embryonic form.
    - Fundamental Duties refer to such values that serve as reminders to citizens, to be conscious of the duties they owe to their country, their society, and their fellow citizens.

**Navigating the Syllabus: What You Need to Know**

**Comparison of the Indian Constitutional Scheme with that of Other Countries**

- Comparison between constitutions of India with USA, UK. France

**UPSC Previous Year Mains Questions**

All Questions are from Static portion

Q1.Discuss India as a secular state and compare with the secular principles of the US constitution. (2024)

Q2.Compare and contrast the British and Indian approaches to Parliamentary sovereignty. (2023)

Q3.Critically examine the procedures through which the Presidents of India and France are elected. (2022)

Q4.Analyze the distinguishing features of the notion of Right to Equality in the Constitutions of the USA and India. (2021)

Q5.The judicial systems in India and UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.(2020)

Q6. What can France learn from the Indian Constitution’s approach to secularism? (2019)

Q7.Indian and USA are two large democracies. Examine the basic tenets on which the two political systems are based. (2018)

**1.Comparison of the Indian Constitutional Scheme with the USA**

Aspect	Indian Constitution	U.S. Constitution
<b>Adoption Date</b>	Adopted on November 26, 1949; effective January 26, 1950.	Adopted on September 17, 1787; effective March 4, 1789.
<b>Length and Nature</b>	Longest written constitution (~145,000 words); detailed, rigid, and flexible mix with elaborate provisions.	One of the shortest written constitutions (~4,400 words); brief, flexible, and skeletal framework.
<b>Source of Authority</b>	Derives authority from "We the People of India"; reflects collective will through Constituent Assembly.	Derives authority from "We the People of the United States"; framed by Constitutional Convention.

<b>Type of Federalism</b>	Quasi-federal; "Union of States" with a strong central bias; cooperative and competitive federalism.	Dual federalism; clear division of powers between federal and state governments; cooperative federalism in practice.
<b>Division of Powers</b>	Three lists: Union List (97 subjects), State List (66 subjects), Concurrent List (47 subjects); residuary powers with Centre.	Enumerated powers for federal government (e.g., defense, commerce); residuary powers with states; implied powers via "necessary and proper" clause.
<b>Supremacy</b>	Constitution is supreme; Parliament and state legislatures derive powers from it.	Constitution is supreme; federal and state laws must conform to it (Supremacy Clause, Article VI).
<b>Executive Structure</b>	Parliamentary system; President as nominal head, Prime Minister as real executive; Council of Ministers accountable to Lok Sabha.	Presidential system; President as both head of state and government, directly elected (via Electoral College), not accountable to Congress.
<b>Legislative Structure</b>	Bicameral Parliament: Lok Sabha (Lower House, elected) and Rajya Sabha (Upper House, representing states, partly elected).	Bicameral Congress: House of Representatives (elected, population-based) and Senate (equal state representation, elected).
<b>Judicial System</b>	Integrated judiciary; Supreme Court at apex, High Courts, and subordinate courts; single system for Centre and states.	Dual judiciary; federal courts (Supreme Court, Circuit Courts) and state courts operate independently.
<b>Judicial Review</b>	Explicit power of judicial review; courts can strike down laws violating constitutional provisions (e.g., Kesavananda Bharati case).	Implicit power of judicial review established by Marbury v. Madison (1803); courts can invalidate unconstitutional laws.
<b>Amendment Process</b>	Flexible yet rigid; amendments via special majority (2/3rd in both Houses) and, for certain provisions, state ratification (Article 368).	Rigid; amendments require 2/3rd majority in both Houses of Congress and ratification by 3/4th of states (Article V).
<b>Bill of Rights</b>	Fundamental Rights (Articles 12–35); justiciable, can be suspended during emergencies (except Articles 20, 21).	Bill of Rights (first 10 Amendments); absolute, cannot be suspended; protects individual liberties.
<b>Directive Principles</b>	Directive Principles of State Policy (Articles 36–51); non-justiciable, guide state policy for social and economic justice.	No equivalent; policy guidance left to legislative and executive discretion.
<b>Emergency Provisions</b>	Detailed provisions for National Emergency (Article 356), State Emergency (Article 356), and Financial Emergency (Article 360).	No specific emergency provisions; federal government assumes expanded powers during crises (e.g., war, natural disasters).
<b>Citizenship</b>	Single citizenship for the Union; no state-level citizenship.	Dual citizenship; citizens of both the U.S. and their state of residence.

<b>Elections</b>	Conducted by independent Election Commission; uniform election laws across states.	Managed by state governments; federal oversight for national elections; varying state election laws.
<b>Local Governance</b>	Constitutional recognition via 73rd and 74th Amendments (Part IX, IX-A) for Panchayats and Municipalities.	No constitutional provision; local governance entirely under state control (e.g., counties, cities).
<b>Secularism</b>	Explicitly secular; "Secular" added by 42nd Amendment (1976); state maintains principled distance from religion.	Implicitly secular; First Amendment ensures separation of church and state; no state religion.
<b>Preamble</b>	Emphasizes justice, liberty, equality, fraternity, and unity; reflects socialistic and secular ideals.	Emphasizes liberty, justice, tranquility, defense, and welfare; focuses on limited government.
<b>Role of States</b>	States have significant autonomy but limited by Centre's overriding powers (e.g., Article 356, residuary powers).	States enjoy substantial autonomy; federal government's powers are limited to enumerated ones.
<b>Fundamental Duties</b>	Enumerated in Article 51A (added by 42nd Amendment); non-justiciable but promote civic responsibility.	No equivalent; civic duties implied but not constitutionally mandated.
<b>Basic Structure Doctrine</b>	Established by Kesavananda Bharati case (1973); limits Parliament's power to amend core constitutional principles.	No equivalent; amendments can alter any part of the Constitution if procedure is followed.
<b>Sovereignty</b>	Sovereignty resides in the people; Parliament exercises it within constitutional limits.	Sovereignty divided between federal and state governments; people as ultimate sovereign.
<b>Foreign Policy</b>	Exclusive domain of the Centre (Union List); states have no role.	Federal government controls foreign policy; states have limited international engagement (e.g., trade).
<b>Language Policy</b>	Recognizes 22 scheduled languages (8th Schedule); Hindi and English as official languages; states have linguistic autonomy.	No official language at federal level; English as de facto language; states may designate official languages.
<b>Social Justice</b>	Strong emphasis via reservations (SCs/STs/OBCs), affirmative action, and Directive Principles.	Limited constitutional provisions; affirmative action via legislation and judicial rulings (e.g., Civil Rights Act).
<b>Rigidity vs. Flexibility</b>	Mix of rigid (e.g., federal provisions) and flexible (e.g., ordinary laws) amendment processes; over 100 amendments.	Highly rigid; only 27 amendments in over 230 years due to stringent process.

## 2. Comparison of the Indian Constitutional Scheme with the United Kingdom

Aspect	Indian Constitution	UK Constitution
<b>Nature</b>	Written, codified, and enacted on November 26, 1949; longest in the world (~145,000 words).	Unwritten, uncodified; based on statutes, conventions, judicial precedents, and parliamentary sovereignty.
<b>Adoption</b>	Adopted by Constituent Assembly; effective January 26, 1950.	Evolved over centuries; no single adoption date; key documents include Magna Carta (1215), Bill of Rights (1689).
<b>Source of Authority</b>	Derives from "We the People of India"; reflects collective will through Constituent Assembly.	Derives from historical evolution; sovereignty vested in Parliament (Crown-in-Parliament).
<b>Type of Government</b>	Parliamentary democracy with a federal structure; quasi-federal with strong central bias.	Parliamentary democracy with a unitary structure; devolved powers to Scotland, Wales, and Northern Ireland.
<b>Sovereignty</b>	Constitution is supreme; Parliament and state legislatures derive powers from it.	Parliamentary sovereignty; Parliament is supreme, can make or unmake any law; no law binds future Parliaments.
<b>Federalism</b>	Quasi-federal; Union of States with three lists (Union, State, Concurrent); residuary powers with Centre.	Unitary; centralized authority in Westminster; devolution to Scotland, Wales, and Northern Ireland is not federalism but delegated power.
<b>Executive Structure</b>	President as nominal head, Prime Minister as real executive; Council of Ministers accountable to Lok Sabha.	Monarch as nominal head (ceremonial), Prime Minister as real executive; Cabinet accountable to House of Commons.
<b>Legislative Structure</b>	Bicameral Parliament: Lok Sabha (elected, population-based) and Rajya Sabha (partly elected, represents states).	Bicameral Parliament: House of Commons (elected) and House of Lords (unelected, appointed/hereditary peers).
<b>Judicial System</b>	Integrated judiciary; Supreme Court at apex, High Courts, and subordinate courts; constitutional and statutory law.	Independent judiciary; Supreme Court (since 2009) as apex for civil/criminal cases; no constitutional court; common law tradition.
<b>Judicial Review</b>	Explicit; courts can strike down laws violating constitutional provisions (e.g., Kesavananda Bharati case).	Limited; courts cannot strike down primary legislation due to parliamentary sovereignty; can review secondary legislation or compatibility with Human Rights Act.
<b>Amendment Process</b>	Defined in Article 368; requires special majority (2/3rd in both Houses) and, for some provisions, state ratification.	No formal process; constitutional changes via ordinary legislation or conventions; flexible due to parliamentary sovereignty.

<b>Bill of Rights</b>	Fundamental Rights (Articles 12–35); justiciable, can be suspended during emergencies (except Articles 20, 21).	No codified bill of rights; rights protected via statutes (e.g., Human Rights Act 1998) and common law; non-entrenched.
<b>Directive Principles</b>	Directive Principles of State Policy (Articles 36–51); non-justiciable, guide state policy for social/economic justice.	No equivalent; policy guidance through party manifestos and parliamentary debates.
<b>Fundamental Duties</b>	Enumerated in Article 51A; non-justiciable, promote civic responsibility.	No equivalent; civic duties implied through laws and conventions.
<b>Emergency Provisions</b>	Detailed provisions for National, State, and Financial Emergencies (Articles 352, 356, 360).	No specific constitutional provisions; emergency powers via statutes (e.g., Civil Contingencies Act 2004).
<b>Citizenship</b>	Single citizenship for the Union; no state-level citizenship.	Single citizenship; British citizenship applies uniformly across the UK.
<b>Elections</b>	Conducted by independent Election Commission; uniform laws across states.	Regulated by Parliament and Electoral Commission; uniform national framework with local variations.
<b>Local Governance</b>	Constitutional recognition via 73rd and 74th Amendments (Parts IX, IX-A) for Panchayats and Municipalities.	No constitutional status; local governance under statutory framework (e.g., Local Government Act); devolved to councils.
<b>Secularism</b>	Explicitly secular; "Secular" added by 42nd Amendment (1976); state maintains principled distance from religion.	No formal secular status; Church of England as established church; monarch as head of church; secular in practice.
<b>Preamble</b>	Emphasizes justice, liberty, equality, fraternity, and unity; reflects socialistic and secular ideals.	No formal preamble; constitutional principles inferred from key documents and conventions.
<b>Basic Structure Doctrine</b>	Established by Kesavananda Bharati (1973); limits Parliament's power to amend core principles.	No equivalent; Parliament can alter any constitutional principle due to sovereignty.
<b>Role of States/Regions</b>	States have constitutional autonomy but subject to Centre's overriding powers (e.g., Article 356).	Devolved regions (Scotland, Wales, Northern Ireland) have limited powers granted by Parliament; can be revoked.
<b>Foreign Policy</b>	Exclusive domain of the Centre (Union List); states have no role.	Exclusive domain of Westminster; devolved regions have limited international engagement (e.g., trade promotion).
<b>Language Policy</b>	Recognizes 22 scheduled languages (8th Schedule); Hindi and English as official languages; states have linguistic autonomy.	English as de facto language; Welsh, Scottish Gaelic recognized in devolved regions; no formal language policy.

<b>Social Justice</b>	Strong emphasis via reservations (SCs/STs/OBCs), affirmative action, and Directive Principles.	Limited constitutional provisions; equality laws (e.g., Equality Act 2010) and welfare policies address social justice.
<b>Monarchy</b>	No monarchy; President as elected head of state.	Constitutional monarchy; monarch as ceremonial head with symbolic roles (e.g., royal assent).
<b>Rigidity vs. Flexibility</b>	Mix of rigid (federal provisions) and flexible (ordinary laws); over 100 amendments.	Highly flexible; constitutional changes via ordinary legislation; no formal amendment process.
<b>Historical Influence</b>	Draws heavily from UK (parliamentary system, rule of law) but also U.S., Ireland, and others; tailored to Indian diversity.	Evolved organically; influenced by Magna Carta, English Civil War, Glorious Revolution; model for parliamentary democracy.

### 3. Comparison of the Indian Constitutional Scheme with France

Aspect	Indian Constitution	French Constitution (Fifth Republic)
<b>Adoption Date</b>	Adopted on November 26, 1949; effective January 26, 1950.	Adopted on October 4, 1958; effective same day.
<b>Length and Nature</b>	Longest written constitution (~145,000 words); detailed, rigid, and flexible mix.	Relatively concise (~15,000 words); clear, with a focus on executive authority and republican principles.
<b>Source of Authority</b>	Derives from "We the People of India"; enacted by Constituent Assembly.	Derives from the French people; approved via referendum under Charles de Gaulle.
<b>Type of Government</b>	Parliamentary democracy with a quasi-federal structure; strong central bias.	Semi-presidential democracy with a unitary structure; strong executive presidency.
<b>Sovereignty</b>	Constitution is supreme; Parliament and state legislatures derive powers from it.	Constitution is supreme; laws and actions must conform to it, with Constitutional Council oversight.
<b>Federalism</b>	Quasi-federal; Union of States with Union, State, and Concurrent Lists; residuary powers with Centre.	Unitary; centralized governance; regions and departments have limited delegated powers.
<b>Executive Structure</b>	President as nominal head, Prime Minister as real executive; Council of Ministers accountable to Lok Sabha.	Dual executive: President (directly elected, significant powers) and Prime Minister (appointed, accountable to National Assembly).
<b>Legislative Structure</b>	Bicameral Parliament: Lok Sabha (elected, population-based) and Rajya Sabha (partly elected, represents states).	Bicameral Parliament: National Assembly (directly elected) and Senate (indirectly elected, represents regions).

<b>Judicial System</b>	Integrated judiciary; Supreme Court at apex, High Courts, and subordinate courts; single system for Centre and states.	Dual judiciary; ordinary courts (civil/criminal) and administrative courts; Constitutional Council for constitutional matters.
<b>Judicial Review</b>	Explicit; courts can strike down laws violating constitutional provisions (e.g., Kesavananda Bharati case).	Limited; Constitutional Council reviews laws before promulgation for constitutionality; no ex-post facto review by ordinary courts.
<b>Amendment Process</b>	Defined in Article 368; requires special majority (2/3rd in both Houses) and, for some provisions, state ratification.	Requires approval by both Houses (3/5th majority in joint session) or referendum; President initiates amendments.
<b>Bill of Rights</b>	Fundamental Rights (Articles 12–35); justiciable, can be suspended during emergencies (except Articles 20, 21).	Declaration of the Rights of Man and Citizen (1789) incorporated; rights protected under Constitution and European Convention on Human Rights.
<b>Directive Principles</b>	Directive Principles of State Policy (Articles 36–51); non-justiciable, guide social/economic justice.	No equivalent; social and economic policies guided by legislation and government programs.
<b>Fundamental Duties</b>	Enumerated in Article 51A; non-justiciable, promote civic responsibility.	No explicit duties; civic responsibilities implied through laws and republican values.
<b>Emergency Provisions</b>	Detailed provisions for National, State, and Financial Emergencies (Articles 352, 356, 360).	Article 16 grants President emergency powers in grave crises; limited checks by Constitutional Council.
<b>Citizenship</b>	Single citizenship for the Union; no state-level citizenship.	Single citizenship; applies uniformly across France and its territories.
<b>Elections</b>	Conducted by independent Election Commission; uniform laws across states.	Managed by Ministry of Interior and Constitutional Council; uniform national framework.
<b>Local Governance</b>	Constitutional recognition via 73rd and 74th Amendments (Parts IX, IX-A) for Panchayats and Municipalities.	Decentralized but not constitutionalized; regions, departments, and communes governed by statutes.
<b>Secularism</b>	Explicitly secular; "Secular" added by 42nd Amendment (1976); state maintains principled distance from religion.	Explicitly secular (laïcité); 1905 law separates church and state; strict neutrality in public sphere.
<b>Preamble</b>	Emphasizes justice, liberty, equality, fraternity, and unity; socialistic and secular ideals.	Emphasizes human rights, democracy, and republican principles; references 1789 Declaration and 1946 Preamble.
<b>Basic Structure Doctrine</b>	Established by Kesavananda Bharati (1973); limits Parliament's power to amend core principles.	No equivalent; Constitutional Council ensures amendments align with republican principles.

<b>Role of States/Regions</b>	States have constitutional autonomy but subject to Centre's overriding powers (e.g., Article 356).	Regions and departments have limited autonomy; powers delegated by central government, revocable.
<b>Foreign Policy</b>	Exclusive domain of the Centre (Union List); states have no role.	Exclusive domain of the President and central government; regions have minimal international roles.
<b>Language Policy</b>	Recognizes 22 scheduled languages (8th Schedule); Hindi and English as official languages; states have linguistic autonomy.	French as official language (Article 2); regional languages (e.g., Breton) recognized but not official.
<b>Social Justice</b>	Strong emphasis via reservations (SCs/STs/OBCs), affirmative action, and Directive Principles.	Emphasis on equality; social welfare through universal policies; no caste-based reservations.
<b>Head of State</b>	President; elected indirectly by electoral college; ceremonial role.	President; directly elected; significant powers in foreign policy, defense, and emergencies.
<b>Rigidity vs. Flexibility</b>	Mix of rigid (federal provisions) and flexible (ordinary laws); over 100 amendments.	Moderately rigid; 24 amendments since 1958; referendum or joint session required.
<b>Historical Influence</b>	Draws from UK (parliamentary system), US (federalism), and France (secularism, rights); tailored for diversity.	Rooted in French Revolution, republicanism, and de Gaulle's vision; influenced by 1789 Declaration.

#### 4. Comparison of the Indian Constitutional Scheme with Japan

Aspect	Indian Constitution	Japanese Constitution (1947)
<b>Adoption Date</b>	Adopted on November 26, 1949; effective January 26, 1950.	Adopted on November 3, 1946; effective May 3, 1947.
<b>Length and Nature</b>	Longest written constitution (~145,000 words); detailed, mix of rigid and flexible provisions.	Short (~5,000 words); concise, rigid, focused on democracy and pacifism.
<b>Source of Authority</b>	Derives from "We the People of India"; enacted by Constituent Assembly.	Derives from the Japanese people; drafted under U.S. influence post-WWII, approved by Diet.
<b>Type of Government</b>	Parliamentary democracy with quasi-federal structure; strong central bias.	Parliamentary democracy with unitary structure; constitutional monarchy.
<b>Sovereignty</b>	Constitution is supreme; Parliament and state legislatures derive powers from it.	Constitution is supreme; Diet and government operate within constitutional limits.

<b>Federalism</b>	Quasi-federal; Union of States with Union, State, and Concurrent Lists; residuary powers with Centre.	Unitary; centralized governance; 47 prefectures have delegated powers, not autonomous.
<b>Executive Structure</b>	President as nominal head, Prime Minister as real executive; Council of Ministers accountable to Lok Sabha.	Emperor as ceremonial head (symbol of state); Prime Minister as real executive, accountable to Diet.
<b>Legislative Structure</b>	Bicameral Parliament: Lok Sabha (elected, population-based) and Rajya Sabha (partly elected, represents states).	Bicameral Diet: House of Representatives (elected, population-based) and House of Councillors (elected, regional representation).
<b>Judicial System</b>	Integrated judiciary; Supreme Court at apex, High Courts, and subordinate courts; single system for Centre and states.	Independent judiciary; Supreme Court at apex, High Courts, and lower courts; unitary system.
<b>Judicial Review</b>	Explicit; courts can strike down laws violating constitutional provisions (e.g., Kesavananda Bharati case).	Explicit; Supreme Court can review laws for constitutionality but exercises restraint (few laws struck down).
<b>Amendment Process</b>	Defined in Article 368; requires special majority (2/3rd in both Houses) and, for some provisions, state ratification; over 100 amendments.	Rigid; requires 2/3rd majority in both Houses of Diet and majority in national referendum (Article 96); no amendments since 1947.
<b>Bill of Rights</b>	Fundamental Rights (Articles 12–35); justiciable, can be suspended during emergencies (except Articles 20, 21).	Chapter III (Articles 10–40); justiciable, guarantees individual rights; cannot be suspended.
<b>Directive Principles</b>	Directive Principles of State Policy (Articles 36–51); non-justiciable, guide social/economic justice.	No equivalent; social welfare and economic policies addressed through legislation.
<b>Fundamental Duties</b>	Enumerated in Article 51A; non-justiciable, promote civic responsibility.	No explicit duties; civic responsibilities implied through laws and cultural norms.
<b>Emergency Provisions</b>	Detailed provisions for National, State, and Financial Emergencies (Articles 352, 356, 360).	No specific emergency provisions; government assumes expanded powers during crises via legislation (e.g., Disaster Countermeasures Act).
<b>Citizenship</b>	Single citizenship for the Union; no state-level citizenship.	Single citizenship; applies uniformly across Japan.
<b>Elections</b>	Conducted by independent Election Commission; uniform laws across states.	Managed by Ministry of Internal Affairs and Election Management Commissions; uniform national framework.

<b>Local Governance</b>	Constitutional recognition via 73rd and 74th Amendments (Parts IX, IX-A) for Panchayats and Municipalities.	No constitutional status; prefectures and municipalities governed by Local Autonomy Law (1947).
<b>Secularism</b>	Explicitly secular; "Secular" added by 42nd Amendment (1976); state maintains principled distance from religion.	Implicitly secular; Article 20 separates religion and state; Shinto has cultural but not official status.
<b>Preamble</b>	Emphasizes justice, liberty, equality, fraternity, and unity; socialistic and secular ideals.	Emphasizes peace, democracy, and human rights; reflects post-war pacifist ideals.
<b>Basic Structure Doctrine</b>	Established by Kesavananda Bharati (1973); limits Parliament's power to amend core principles.	No equivalent; amendments must align with constitutional principles, but no formal doctrine.
<b>Role of States/Regions</b>	States have constitutional autonomy but subject to Centre's overriding powers (e.g., Article 356).	Prefectures have limited autonomy; powers delegated by central government, revocable.
<b>Foreign Policy</b>	Exclusive domain of the Centre (Union List); states have no role.	Exclusive domain of central government; prefectures have minimal international roles (e.g., cultural exchanges).
<b>Language Policy</b>	Recognizes 22 scheduled languages (8th Schedule); Hindi and English as official languages; states have linguistic autonomy.	Japanese as de facto official language; no constitutional language policy; regional dialects recognized culturally.
<b>Social Justice</b>	Strong emphasis via reservations (SCs/STs/OBCs), affirmative action, and Directive Principles.	Limited constitutional provisions; equality under Article 14; social welfare through universal policies, not reservations.
<b>Head of State</b>	President; elected indirectly by electoral college; ceremonial role.	Emperor; hereditary, ceremonial role; no political powers (Article 1).
<b>Pacifism</b>	No specific provision; defense and foreign policy under Union List; maintains armed forces.	Article 9 renounces war and prohibits offensive military forces; Japan maintains Self-Defense Forces.
<b>Rigidity vs. Flexibility</b>	Mix of rigid (federal provisions) and flexible (ordinary laws); frequent amendments.	Highly rigid; no amendments due to stringent process and political consensus requirements.
<b>Historical Influence</b>	Draws from UK (parliamentary system), US (federalism), and others; tailored for diversity.	Influenced by U.S. post-WWII; reflects democratic and pacifist ideals to prevent militarism.

## 5. Comparison of the Indian Constitutional Scheme with South Africa

Aspect	Indian Constitution	South African Constitution (1996)
<b>Adoption Date</b>	Adopted on November 26, 1949; effective January 26, 1950.	Adopted on December 10, 1996; effective February 4, 1997.
<b>Length and Nature</b>	Longest written constitution (~145,000 words); detailed, mix of rigid and flexible provisions.	Comprehensive (~40,000 words); detailed, rights-focused, and transformative.
<b>Source of Authority</b>	Derives from "We the People of India"; enacted by Constituent Assembly.	Derives from "We, the People of South Africa"; enacted by Constitutional Assembly post-apartheid.
<b>Type of Government</b>	Parliamentary democracy with a quasi-federal structure; strong central bias.	Parliamentary democracy with a unitary structure; cooperative federalism with provinces.
<b>Sovereignty</b>	Constitution is supreme; Parliament and state legislatures derive powers from it.	Constitution is supreme; all laws and actions must conform to it (Section 2).
<b>Federalism</b>	Quasi-federal; Union of States with Union, State, and Concurrent Lists; residuary powers with Centre.	Unitary with federal elements; 9 provinces have limited autonomy; cooperative governance (Chapter 3).
<b>Division of Powers</b>	Three lists: Union List (97 subjects), State List (66 subjects), Concurrent List (47 subjects); Centre has overriding powers.	National, provincial, and concurrent legislative powers (Schedules 4 and 5); national government can override in conflicts (Section 146).
<b>Executive Structure</b>	President as nominal head, Prime Minister as real executive; Council of Ministers accountable to Lok Sabha.	President as head of state and government, elected by National Assembly; Cabinet accountable to Parliament.
<b>Legislative Structure</b>	Bicameral Parliament: Lok Sabha (elected, population-based) and Rajya Sabha (partly elected, represents states).	Bicameral Parliament: National Assembly (elected, population-based) and National Council of Provinces (represents provinces).
<b>Judicial System</b>	Integrated judiciary; Supreme Court at apex, High Courts, and subordinate courts; single system for Centre and states.	Independent judiciary; Constitutional Court at apex for constitutional matters, Supreme Court of Appeal for others.
<b>Judicial Review</b>	Explicit; courts can strike down laws violating constitutional provisions (e.g., Kesavananda Bharati case).	Explicit; Constitutional Court can invalidate laws inconsistent with Constitution (Section 172).

<b>Amendment Process</b>	Defined in Article 368; requires special majority (2/3rd in both Houses) and, for some provisions, state ratification; over 100 amendments.	Requires 2/3rd majority in National Assembly and, for certain provisions, 6/9 provinces' approval (Section 74); amended several times.
<b>Bill of Rights</b>	Fundamental Rights (Articles 12–35); justiciable, can be suspended during emergencies (except Articles 20, 21).	Bill of Rights (Chapter 2, Sections 7–39); justiciable, comprehensive, includes socio-economic rights; cannot be suspended.
<b>Directive Principles</b>	Directive Principles of State Policy (Articles 36–51); non-justiciable, guide social/economic justice.	No equivalent; socio-economic goals embedded in Bill of Rights (e.g., rights to housing, healthcare).
<b>Fundamental Duties</b>	Enumerated in Article 51A; non-justiciable, promote civic responsibility.	No explicit duties; civic responsibilities implied in rights and equality clauses.
<b>Emergency Provisions</b>	Detailed provisions for National, State, and Financial Emergencies (Articles 352, 356, 360).	State of Emergency (Section 37); strictly regulated, requires parliamentary approval, limited duration.
<b>Citizenship</b>	Single citizenship for the Union; no state-level citizenship.	Single citizenship; applies uniformly across South Africa.
<b>Elections</b>	Conducted by independent Election Commission; uniform laws across states.	Conducted by Independent Electoral Commission; uniform national framework.
<b>Local Governance</b>	Constitutional recognition via 73rd and 74th Amendments (Parts IX, IX-A) for Panchayats and Municipalities.	Constitutional recognition (Chapter 7); municipalities have significant autonomy for local governance.
<b>Secularism</b>	Explicitly secular; "Secular" added by 42nd Amendment (1976); state maintains principled distance from religion.	Secular; no state religion; Constitution protects religious freedom (Section 15).
<b>Preamble</b>	Emphasizes justice, liberty, equality, fraternity, and unity; socialistic and secular ideals.	Emphasizes unity, equality, human dignity, and healing past divisions; transformative ideals.
<b>Basic Structure Doctrine</b>	Established by Kesavananda Bharati (1973); limits Parliament's power to amend core principles.	No explicit doctrine; Constitutional Court ensures amendments align with foundational principles.
<b>Role of States/Provinces</b>	States have constitutional autonomy but subject to Centre's overriding powers (e.g., Article 356).	Provinces have limited legislative and executive powers; cooperative governance with national government.

<b>Foreign Policy</b>	Exclusive domain of the Centre (Union List); states have no role.	Exclusive domain of national government; provinces have no role.
<b>Language Policy</b>	Recognizes 22 scheduled languages (8th Schedule); Hindi and English as official languages; states have linguistic autonomy.	Recognizes 11 official languages (Section 6); promotes multilingualism and indigenous languages.
<b>Social Justice</b>	Strong emphasis via reservations (SCs/STs/OBCs), affirmative action, and Directive Principles.	Strong emphasis via affirmative action, redress for apartheid inequalities, and socio-economic rights (e.g., housing, education).
<b>Head of State</b>	President; elected indirectly by electoral college; ceremonial role.	President; elected by National Assembly; combines head of state and government roles.
<b>Transformative Nature</b>	Aims to establish social and economic justice in a post-colonial society; addresses caste and diversity.	Transformative; seeks to redress apartheid's legacy, promote equality, and build inclusive society.
<b>Rigidity vs. Flexibility</b>	Mix of rigid (federal provisions) and flexible (ordinary laws); frequent amendments.	Moderately rigid; amendments require special majorities; balanced to ensure stability and adaptability.
<b>Historical Influence</b>	Draws from UK (parliamentary system), US (federalism), and others; tailored for diversity.	Influenced by global constitutional models (e.g., Germany, Canada); designed to transition from apartheid to democracy.

**Keywords :** Quasi-federalism, Parliamentary Sovereignty, Constitutional Monarchy, Presidential System, Unitary Structure, Transformative Constitution, Bicameral Legislature, Rule of Law, Written vs. Unwritten Constitution

**Mains Practice Question :**

Q1. How does the concept of judicial review in India differ from that in the United States? Discuss the implications of these differences on constitutional interpretation.

Q2. Discuss the similarities and differences in the approach to secularism in India and France. What constitutional safeguards ensure religious freedom in both countries?

## Value Addition for Unit 2

### Acronym

#### "COMPARE"

This word itself is intuitive and perfect for this topic. Here's the breakdown:

- **C – Checks and Balances**
  - Compare India's separation of powers with USA (rigid) vs UK (fusion of powers)
- **O – Office of the Executive**
  - India's **Parliamentary Executive** vs US **Presidential System**, France's Semi-presidential
- **M – Method of Election**
  - President (India: Indirect, US: Electoral College), PM (India vs UK), etc.
- **P – Provisions on Rights**
  - India's FRs vs US Bill of Rights vs South African model of socio-economic rights
- **A – Amendment Process**
  - India's flexible-rigid mix vs USA's rigidity, UK's parliamentary supremacy
- **R – Rule of Law & Judicial Review**
  - Indian vs UK (Parliamentary Sovereignty), US (strong JR), France (Constitutional Council)
- **E – Election System & Federalism**
  - Indian FPTP vs PR (Germany), Federalism (India vs USA vs Canada)

<b>System of Election</b>	<ul style="list-style-type: none"> <li>● First Past The Post</li> <li>● Proportional Representation</li> </ul>
<b>Checks and Balance</b>	<ul style="list-style-type: none"> <li>● Strict separation of Powers</li> <li>● Interwoven executive and legislature</li> </ul>
<b>President/Governor</b>	<ul style="list-style-type: none"> <li>● Nominated/Elected</li> <li>● De jure/De facto</li> </ul>
<b>Other point for comparison</b>	<ul style="list-style-type: none"> <li>● Secularism</li> <li>● Judicial System</li> <li>● Fundamental Rights</li> <li>● Impeachment Procedure</li> <li>● Speaker</li> <li>● Prime Minister</li> <li>● Legislature</li> </ul>

### Ready Template

(Use the following template while comparing two Constitutions.)

<b>Nature of Constitution</b>	<ul style="list-style-type: none"> <li>● Written</li> <li>● Unwritten</li> </ul>
<b>Nature of State</b>	<ul style="list-style-type: none"> <li>● Federal</li> <li>● Unitary</li> </ul>
<b>Form of Government</b>	<ul style="list-style-type: none"> <li>● Presidential</li> <li>● Parliamentary</li> </ul>

## Navigating the Syllabus: What You Need to Know

- **Functions and Responsibilities of the Union and the States**
  - Role of State
  - Regulating, Development and Service Providing functions of the Government
  - Interactions between various stakeholders in implementing functions
  - Problems
  - Solution
- **Issues and Challenges Pertaining to the Federal Structure**
  - Federal and Unitary System
  - Cooperative and Competitive Federalism
  - Centre-State Relations
    - Legislative Relations
    - Administrative Relations
    - Financial Relations
    - Trends in Centre-State Relations
    - Problems in Centre-State Relations
    - Sarkaria and Punchhi Commission
  - Inter-State Relations
    - Inter-State Water Disputes
    - Inter-State Councils
- **Emergency Provisions**
  - National Emergency
    - Why..? (Necessity)
    - Grounds of declaration and its approval
    - Effects
  - President's Rule
    - Grounds of imposition and approval
    - Consequences
    - Proper and Improper use
  - Financial Emergency
    - Grounds of imposition and approval
    - Effects
- **Devolution of Powers and Finances up to Local Levels and Challenges Therein**
  - Meaning of the concept of Devolution of Powers
  - Evolution of Panchayati Raj
  - Necessity of Devolution of Powers
  - **73rd and 74th Amendments**
    - Significance
    - Salient Features
    - Issues Associated (Reasons for ineffective performance)
    - Solution

## UPSC Mains Previous Year Questions

Question	Nature of Question	Core Demand
Analyse the role of local bodies in providing good governance at local level and bring out the pros and cons of merging rural with urban local bodies. (2024)	Local Governance + Structural Reform	Analyse local bodies' governance role and assess pros and cons of merging RLBs with ULBs.
What changes has the Union Government recently introduced in Centre-State relations? Suggest measures to strengthen federalism. (2024)	Federalism + Reforms	State recent changes and suggest steps to strengthen trust and federalism.
The states in India seem reluctant to empower urban local bodies functionally and financially. (2023)	Urban Local Bodies + Fiscal Devolution	Explain reluctance of states to empower ULBs and its implications.
To what extent has decentralization changed grassroots governance? (2022)	Decentralization + Impact Analysis	Assess impact of decentralization on grassroots governance.
National parties favour centralisation; regional parties favour state autonomy. Comment. (2022)	Party Politics + Federal Balance	Comment on national vs regional party stance on federalism.
CBI jurisdiction and states' power to withhold consent — federal character of India. (2021)	CBI Jurisdiction + Federalism	Explain limits of state power in withholding CBI consent in federal context.
Cooperation, competition and confrontation shaping federalism — examples. (2020)	Federal Dynamics + Examples	Explain how these forces shape Indian federalism with examples.
Local institutions have moved from 3Fs to Functionality — discuss challenges. (2020)	Local Institutions + Functionality	Highlight recent challenges to local bodies' functional effectiveness.
Federal Supremacy and Harmonious Construction in legislative disputes. (2019)	Judicial Doctrine + Legislative Federalism	Explain principles developed by judiciary in Centre-State power disputes.
Importance of Panchayats and alternative funding sources. (2018)	Panchayat Functioning + Resource Mobilization	Assess Panchayat importance and suggest non-grant funding sources.
Local self-government not effective — critically examine and suggest reforms. (2017)	Decentralization + Evaluation	Critically assess performance of LSG and suggest improvements.
Essentials and issues with 69th Amendment — Delhi governance	69th Amendment + Federal Conflict	Explain Delhi governance issues

conflict. (2016)		arising from 69th Amendment.
Did the GOI Act, 1935 lay a federal constitution? Discuss. (2016)	Constitutional History + Federalism	Assess whether GOI Act 1935 was federal in nature.
Cooperative federalism in recent years — drawbacks and solutions. (2015)	Federalism + Reform	Highlight drawbacks in federal structure and how cooperation helps.
Panchayats and Samitis are political not governance bodies — critically discuss. (2015)	Local Governance + Institutional Weakness	Critique performance of rural bodies and suggest reforms.
Indian federalism favours strong Centre — critique. (2014)	Centre-State Balance + Federalism	Assess how Indian federalism leans towards Centre and implications.
Judicial activism and democratic ideals — evaluate. (2014)	Judiciary + Democracy	Evaluate judiciary's role in promoting democratic values via activism.
More smaller states for effective governance — justify. (2013)	State Reorganization + Governance	Assess whether smaller states lead to better governance.
Why inter-state water dispute mechanisms have failed — structure or process? (2013)	Water Disputes + Mechanism Analysis	Discuss causes for failure of inter-state water dispute resolution.

**Introduction:**

The Indian Constitution establishes a federal framework, delineating functions and responsibilities between the Union and states to ensure effective governance. Through the division of powers under the Seventh Schedule and structured Centre-state relations, it balances national unity with regional autonomy. This framework fosters cooperation while addressing diverse needs across administrative, legislative, and financial spheres.

**Division of Powers (Seventh Schedule):**

- **Union List:** Grants Parliament exclusive legislative authority over 98 subjects of national importance, such as defence, foreign affairs, banking, and atomic energy, ensuring uniformity across the country.
- **State List:** Empowers state legislatures with exclusive jurisdiction over 59 subjects like public order, police, agriculture, and local governance, reflecting regional priorities.
- **Concurrent List:** Allows both Parliament and state legislatures to legislate on 52 subjects, including criminal law, marriage, and education, promoting cooperative federalism.
- **Residuary Powers:** Vests in Parliament the authority to legislate on matters not listed in any schedule, ensuring flexibility for emerging issues.
- **Predominance of Union List:** In case of conflict, Union laws prevail over state laws in overlapping areas, with Concurrent List laws taking precedence over State List laws.
- **Special Provisions:** The 101st Amendment Act (2016) introduced concurrent powers for Goods and Services Tax (GST), with Parliament holding exclusive authority over inter-state GST.
- **Territorial Extent:** Parliament can legislate for the entire country or specific regions, including extraterritorial laws, while state laws are confined to their territory unless a sufficient nexus exists.

**Centre-State Relationship:**

- **Legislative Relations:**
  - **Territorial Jurisdiction:** Parliament's laws

apply across India, including Union Territories, while state laws are limited to their boundaries, except with adequate nexus.

- **Parliamentary Legislation in State Field:** Parliament can legislate on State List matters under extraordinary circumstances, such as Rajya Sabha resolution, national emergency, state requests, international agreements, or President's Rule.
- **Centre's Control:** The President's assent is required for certain state bills, and the Governor can reserve bills for presidential consideration, ensuring Union oversight.
- **Conflict Resolution:** Union laws prevail in conflicts on Concurrent List matters unless a state law receives presidential assent, which Parliament can later override.
- **Examples of Cooperation:** Laws like the Wildlife Protection Act (1972) and Water Pollution Act (1974) were enacted following state resolutions, showcasing collaborative legislative efforts.
- **Administrative Relations:**
  - **Executive Power Alignment:** Executive powers follow legislative powers, with the Union handling Union List matters and states managing State List matters, while Concurrent List execution typically rests with states unless specified otherwise.
  - **Centre's Directions:** The Union can issue directions to states to ensure compliance with parliamentary laws and prevent obstruction of Union executive functions, with non-compliance potentially leading to President's Rule under Article 365.
  - **Specific Obligations:** The Centre can direct states on matters like railway protection, minority language education, and welfare schemes for Scheduled Tribes.
  - **Mutual Delegation:** The President or Parliament can delegate Union functions to states, and states can delegate to the Union with consent, promoting administrative flexibility.
  - **All-India Services:** IAS, IPS, and IFoS, controlled by the Centre but serving both levels, ensure administrative uniformity and

coordination.

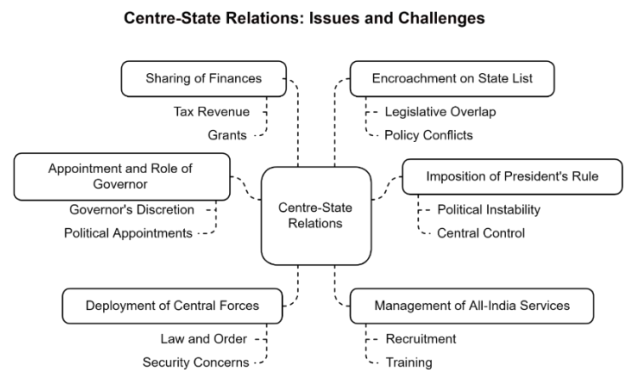
- **Inter-State Council:** Established under Article 263, it facilitates dialogue on common issues, enhancing administrative cooperation.
- **Judicial Integration:** A unified judicial system with the Supreme Court and high courts enforces both Union and state laws, eliminating dual judiciary conflicts.

- **Financial Relations:**

- **Taxing Powers:** The Union levies taxes on 13 Union List subjects (e.g., income tax), states on 18 State List subjects (e.g., land revenue), with GST as a concurrent power post-101st Amendment.
- **Revenue Distribution:** Taxes like income tax are shared with states per Finance Commission recommendations, while certain Union taxes (e.g., stamp duties) are fully assigned to states.
- **Grants-in-Aid:** Statutory grants under Article 275 and discretionary grants under Article 282 support states financially, with specific grants for tribal welfare and scheduled areas.
- **GST Council:** Established under Article 279A, it ensures coordination on GST policies, recommending tax rates, exemptions, and revenue apportionment.
- **Finance Commission:** A quasi-judicial body under Article 280, it determines tax-sharing formulas, grants-in-aid, and measures to strengthen state finances.
- **Borrowing Powers:** The Union can borrow domestically or internationally, while states are limited to domestic borrowing, subject to Union consent if indebted to the Centre.
- **Tax Immunities:** Union property is exempt from state taxation, and state property from Union taxation, except for commercial activities, ensuring fiscal autonomy.
- **Emergency Provisions:** During national or financial emergencies, the Centre can modify revenue distribution or impose financial discipline on states, centralizing fiscal control.

## Problems in Centre-State Relations

Note : We will study more details about this in next topic



**Keywords :**Seventh Schedule, Quasi-Federalism, Union List, State List, Concurrent List, Residuary Powers,, Administrative Delegation, All-India Services, Inter-State Council.

### Mains Practice Questions :

Q1.Explain the constitutional provisions relating to Centre-State relations in India. How are these relations categorized and what mechanisms exist to resolve inter-governmental disputes?

Political analyst **K. C. Wheare** describes Indian federalism as quasi-federalism. In a quasi-federal system, the union has more authority than the states.

### Introduction:

- Federalism in India refers to a system of governance in which power is constitutionally divided between the Union and the States, enabling both levels to function autonomously within their spheres.
- Although **the term 'federation' is not explicitly mentioned in the Constitution**, India is described as a "**Union of States**" under **Article 1**, reflecting its unique **quasi-federal character**.
- Unlike classical federations formed by an agreement among states, **Indian federalism is structurally tilted towards a strong Centre** while still promoting the principles of shared governance and self-rule.

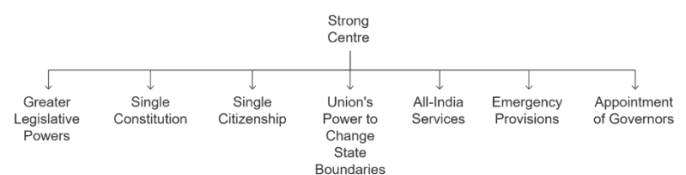
### Features of Indian Federalism:

- **Federal Characteristics:**
  - **Dual Government:** Establishes distinct Union and state governments, each with defined roles under the Constitution.
  - **Division of Powers:** The Seventh Schedule delineates powers through Union, State, and Concurrent Lists, ensuring clear jurisdictional boundaries.
  - **Written Constitution:** A comprehensive, codified document outlines the structure, powers, and functions of both levels of government.
  - **Supremacy of the Constitution:** The Constitution is the supreme law, binding both Union and states, with judicial review to enforce compliance.
  - **Rigidity of the Constitution:** Amendments, especially on federal matters, require special majorities and, in some cases, state ratification, preventing arbitrary changes.
  - **Independent Judiciary:** The Supreme Court and high courts act as impartial

arbiters, resolving disputes and protecting constitutional integrity.

- **Bicameralism:** The Parliament's bicameral structure, with Lok Sabha and Rajya Sabha, represents both people and states, balancing federal interests.
- **Non-Federal (Unitary) Characteristics:**
  - **Single Constitution:** A unified Constitution governs both Union and states, unlike federations with separate state constitutions.
  - **Single Citizenship:** Indian citizenship is singular, fostering national identity over regional affiliations.
  - **Integrated Judiciary:** A single judicial system, with the Supreme Court at the apex, enforces both Union and state laws, ensuring uniformity.
  - **Strong Centre:** The Union holds significant powers, including residuary authority and precedence in legislative conflicts.
  - **Appointment of Governor:** Governors, appointed by the President, act as Union agents in states, influencing state autonomy.
  - **Emergency Provisions:** During emergencies, the Centre assumes overriding powers, centralizing governance under Articles 352, 356, and 360.
  - **All India Services:** IAS, IPS, and IFoS, controlled by the Centre, unify administration but limit state autonomy in key postings.
  - **Residual Power with Centre:** Matters not listed in any schedule fall under Parliament's jurisdiction, tilting power towards the Union.

Contrasting Features to Federalism in the Indian Constitution



## Constitutional Provisions Reflecting Centric Tendencies of Indian Federalism:

Constitutional Provision	Centric Tendency
<b>Article 3</b>	Allows Parliament to alter state boundaries, names, or create new states without state consent, undermining federal autonomy.
<b>Article 200</b>	Empowers Governors to reserve state bills for presidential assent, enabling Union oversight over state legislation.
<b>Article 248</b>	Grants Parliament residuary powers to legislate on matters not enumerated in any list, centralizing authority.
<b>Article 249</b>	Permits Parliament to legislate on State List matters if Rajya Sabha passes a resolution in national interest, overriding state jurisdiction.
<b>Article 254</b>	Declares Union laws on Concurrent List matters prevail over state laws in case of conflict, reinforcing Union supremacy.
<b>Article 256</b>	Obliges states to comply with Union laws, with the Centre empowered to issue binding directions, limiting state executive freedom.
<b>Article 312</b>	Authorizes Parliament to create All India Services, controlled by the Centre, reducing state control over key administrative posts.
<b>Article 352</b>	During a national emergency, the Centre assumes sweeping powers, including over state subjects, centralizing governance.

<b>Article 356</b>	Enables imposition of President's Rule, allowing the Centre to take over state governance, often for political reasons.
<b>Article 360</b>	During a financial emergency, the Centre can direct states on fiscal matters, including salary cuts, eroding fiscal autonomy.

## Evolution of Federalism in India

### 1. Inner-Party Federalism (1950-1968)

- Dominated by the Congress Party's "Congress System," where Centre-state disputes were resolved within party forums, ensuring consensus-based federalism.
- Centralization intensified under Indira Gandhi post-1969 Congress split, subordinating regional leaders and eroding state autonomy.
- Key event: 1959 dismissal of Kerala's state government signaled Centre's dominance; crises in Assam, Punjab, Kashmir, and Mizoram emerged in the late 1970s-1980s due to centralizing policies.
- Post-1971, "Garibi Hatao" and the 20-point programme bolstered Congress's national image, but local organizational weaknesses led to declining state-level support.

### 2. Multi-Party Federalism (1990s-Early 2000s)

- Coalition governments emerged as national parties (Congress-UPA, BJP-NDA) relied on regional parties, reducing Centre-state confrontations.
- Economic liberalization (1991) empowered states to attract investment, enabling chief ministers to build development-focused political brands.
- The 73rd and 74th Constitutional Amendments (1992) strengthened local self-governance, deepening federalism.
- Key event: 1994 SR Bommai v. Union of India verdict curbed misuse of Article 356, reinforcing federal principles.

### 3. Co-operative Federalism (2000s-2014)

- Centre and states collaborated on reforms like

GST, with the GST Council and NITI Aayog (2015) fostering cooperative governance.

- Finance Commission's recommendations increased states' share in central taxes, enhancing fiscal autonomy.
- States gained administrative freedom post-liberalization, promoting growth-oriented policies.
- Key event: 73rd/74th Amendments empowered local bodies, laying the foundation for grassroots federalism.

#### 4. Competitive Federalism (2014 Onwards)

- NITI Aayog promoted competition among states through performance rankings like State Health Index, India Innovation Index, and Aspirational Districts' delta rankings.
- GST implementation and increased fund devolution encouraged states to innovate and attract investment.
- Policy disputes over Citizenship Amendment Act, farm laws, and GST compensation highlighted Centre-state tensions.
- Key event: Establishment of NITI Aayog (2015) shifted focus from planning to competitive and cooperative federalism.

#### 5. Confrontational Federalism (2014 Onwards)

- Rise of BJP-led NDA as a dominant party led to conflicts with opposition-ruled states over fiscal centralization and state autonomy.
- Issues like governor misuse, blocking state programmes, and disputes over CAA and farm laws fueled Centre-state friction.
- Regional parties challenged NDA's state-level dominance, asserting federal rights.
- Key event: Protests against farm laws (2020–2021) and CAA (2019–2020) underscored confrontational federal dynamics.

#### 6. Bargaining Federalism (1990s Onwards)

- States gained bargaining power post-1991 due to coalition politics and economic liberalization, negotiating with the Centre on political and economic issues.
- Centre retained greater negotiating strength, but regional parties' rise enhanced states' leverage.

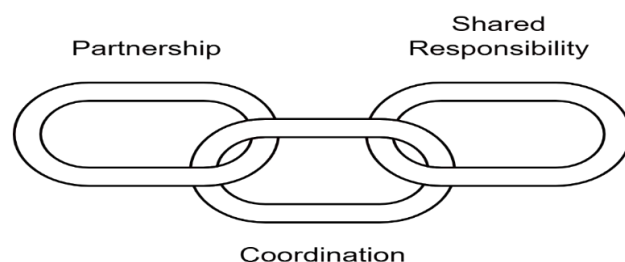
- Disputes like Karnataka-Goa territorial issues and Tamil Nadu-Karnataka water-sharing were resolved through negotiation.
- Key event: Post-1991 economic reforms empowered states to negotiate for resources and investments, marking a shift to negotiation-based federalism.

### Cooperative Federalism in India

#### Definition

- Cooperative federalism refers to a collaborative model of governance where the Union and State governments work together harmoniously to formulate and implement policies for national development. It emphasizes partnership, coordination, and shared responsibility rather than competition or conflict.

#### Cooperative Federalism



#### Key Features

- **Division of Powers:** Constitution delineates powers via Union, State, and Concurrent Lists (7th Schedule), fostering joint responsibility on key issues like education and health.
- **Institutional Mechanisms:** Bodies like NITI Aayog, GST Council, and Inter-State Council facilitate dialogue, policy alignment, and dispute resolution.
- **Financial Cooperation:** Revenue-sharing through Finance Commission recommendations (e.g., 15th FC's 41% devolution) ensures equitable resource distribution.
- **Policy Coordination:** Joint initiatives like Swachh Bharat, Ayushman Bharat, and Smart Cities reflect collaborative governance for development.
- **Judicial Support:** Supreme Court upholds federal balance (e.g., S.R. Bommai Case, 1994), ensuring neither Centre nor States overstep.

constitutional limits.

## Challenges to cooperative Federalism in India

- **Central Overreach:**
  - Overuse of Article 356 (e.g., imposition of President's Rule in Jammu & Kashmir, 2018) and rigid guidelines in schemes like PM-KISAN undermine State autonomy.
  - **Example:** Delays in GST compensation to States like Kerala and Tamil Nadu (2020-22) strained Centre-State trust.
- **Fiscal Imbalance:**
  - States' reliance on Union funds, with cesses like the Agri Infra Cess not shared, limits financial independence (e.g., Maharashtra raised this in GST Council, 2023).
  - **Example:** Punjab's fiscal crisis (2024) due to delayed central grants for rural development programs highlighted dependency issues.
- **Political Differences:**
  - Partisan conflicts, such as West Bengal's disputes with the Centre over MGNREGA fund releases (2022-23), hamper collaborative governance.
  - **Example:** Tamil Nadu's opposition to NEET (2021-24) as a central imposition sparked tensions with the Union, stalling education reforms.
- **Uneven Capacity:**
  - Weaker States like Bihar and Jharkhand lack administrative infrastructure to implement Ayushman Bharat effectively, leading to uneven health outcomes.
  - **Example:** Odisha's delay in Smart Cities Mission projects (2023) due to limited technical expertise reflects capacity gaps.
- **Inter-State Disparities:**
  - Competitive federalism overshadows cooperation, as States like Gujarat and Karnataka compete for semiconductor investments (2024), neglecting collective goals.
  - **Example:** Water-sharing disputes, such as Tamil Nadu vs. Karnataka over Cauvery (2023), prioritize regional interests over federal harmony.

## Competitive Federalism in India

### Definition

- Competitive federalism refers to a framework where states compete with each other and with the Centre to attract investments, improve governance, and deliver better services.
- It fosters innovation, efficiency, and accountability by encouraging states to perform better through healthy competition.
- In India, this model gained prominence post-2014 with the rise of NITI Aayog rankings, Ease of Doing Business Index, and performance-based fund allocation.

### Key Features

- **State Autonomy:** States compete to attract investments, improve governance, and implement reforms, leveraging their constitutional powers (State List, 7th Schedule).
- **Ranking Mechanisms:** Indices like Ease of Doing Business, Swachh Survekshan, and NITI Aayog's SDG Index incentivize performance-based competition.
- **Policy Innovation:** States experiment with unique models (e.g., Gujarat's solar policy, Andhra Pradesh's e-governance), setting benchmarks for others.
- **Fiscal Incentives:** Central schemes (e.g., Aspirational Districts Programme) reward high-performing States with additional funds, promoting efficiency.
- **Decentralized Governance:** Empowers States to tailor policies to local needs, enhancing accountability and responsiveness.

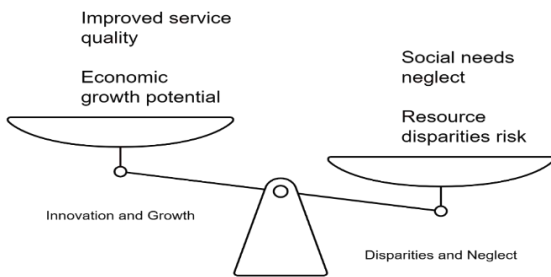
### Challenges

- **Regional Imbalances:** Advanced States like Maharashtra outpace lagging ones like Bihar, widening economic and social disparities (e.g., per capita income gaps, 2023).
- **Neglect of Cooperation:** Overemphasis on competition undermines cooperative federalism, as seen in inter-State disputes like Karnataka vs. Tamil Nadu over Cauvery water (2023).
- **Uneven Capacity:** Weaker States lack resources and expertise to compete, evident in

Jharkhand's lag in Ease of Doing Business rankings (2022).

- **Short-Term Focus:** States prioritize visible projects (e.g., smart cities) over long-term goals like education, skewing development priorities.
- **Central Bias:** Union's influence in rankings and fund allocation (e.g., Smart Cities Mission) creates perceptions of favoritism, discouraging some States.

Balancing Economic Growth and Social Needs in Competitive Federalism



## Asymmetric Federalism in India

### Definition :

- **Asymmetric federalism** refers to a system where different states or regions within a federation enjoy varying degrees of autonomy and powers.
- In India, this asymmetry is both **constitutional** (e.g., special provisions under Article 370 for Jammu & Kashmir, Article 371 for northeastern states) and **political** (e.g., financial grants, administrative flexibility).
- It recognizes the country's vast regional diversity and accommodates unique historical, cultural, and socio-political contexts. .

### Key Features

- **Special Status for Some States:** Certain States like Jammu & Kashmir (before 2019) or Nagaland get extra powers under the Constitution to protect their identity.
- **Articles 370 and 371:** These give special provisions, like autonomy in local laws or governance, to places like Northeast States or Himachal Pradesh.
- **Fifth and Sixth Schedules:** Tribal areas in States like Jharkhand or Assam have self-governing councils to manage their land and culture.
- **Union Territories:** Places like Delhi and Puducherry have partial State-like powers,

unlike fully Union-controlled areas like Lakshadweep.

- **Financial Support:** Some States get more central funds (e.g., Northeast) to help with development due to their challenges like hilly terrain.

### Challenges

- **Unequal Treatment:** Some States feel left out when others get special powers, like Bihar demanding similar benefits as J&K once had.
- **Central Interference:** The Union sometimes limits autonomy, like scrapping Article 370 in J&K (2019), upsetting local trust.
- **Political Tensions:** Special provisions spark debates, like Assam's protests over Nagaland's autonomy affecting border areas.
- **Implementation Issues:** Tribal councils under Sixth Schedule often lack funds or power, slowing progress in places like Tripura.
- **Risk of Separatism:** If special status is mishandled, it can fuel demands for independence, as seen in some Northeast movements.

## Key Recommendations to strengthen federalism in India

### Sarkaria Commission Recommendations (1988):

- **Judicious Use of Article 356:** President's Rule should be invoked sparingly, only in cases of genuine constitutional breakdown, to respect state autonomy.
- **Strengthening All-India Services:** Existing services like IAS, IPS, and IFoS should be reinforced, and new services created to ensure administrative uniformity.
- **Residuary Powers in Concurrent List:** Residuary powers should be shifted to the Concurrent List to balance Union and state authority.
- **Transparency in Bill Assent:** When the President withholds assent to state bills, reasons must be clearly communicated to the state government.
- **Reconstituting NDC:** The National Development Council should be renamed the National Economic and Development Council

- (NEDC) for broader economic coordination.
- **Reactivating Zonal Councils:** Zonal councils should be restructured and revitalized to promote inter-state cooperation and federalism.
- **Central Armed Forces Deployment:** The Centre should have authority to deploy forces without state consent but must consult states for better coordination.
- **Consultation on Concurrent List:** The Centre should mandatorily consult states before legislating on Concurrent List subjects to respect state interests.
- **Constitutional Governor Appointment Process:** The Chief Minister should be formally consulted for governor appointments, with the process enshrined in the Constitution.
- **Protecting State Governments:** Governors cannot dismiss a council of ministers if it enjoys assembly majority, safeguarding elected governments.
- **Stable Governor Tenure:** A governor's five-year term should remain undisturbed except for compelling reasons, ensuring impartiality.
- **Restricting Enquiry Commissions:** No enquiry commission should target state ministers unless demanded by Parliament, preventing political misuse.

### **Punchhi Commission Recommendations (2010):**

- **National Integration Council:** Establish a council to address internal security, fostering Centre-state collaboration on law and order.
- **Amending Articles 355 and 356:** Revise these articles to limit misuse of President's Rule and clarify the Centre's duty to protect states.
- **Communication on Bills:** Presidents must inform states of reasons for delaying or rejecting bills, enhancing transparency.
- **State Flexibility on Lists:** Grant states greater autonomy over State List subjects and transferred Concurrent List items, like education and forests.
- **Limiting Governor's Discretion:** Narrow the scope of discretionary powers under Article 163

to prevent governors from acting as political agents.

- **Apolitical Governor Appointments:** Governors should be non-political figures, inactive in politics for at least two years before appointment.
- **Committee for Governor Selection:** Form a committee including the Prime Minister, Home Minister, Lok Sabha Speaker, and state Chief Minister for governor appointments.
- **State Role in Governor Removal:** Allow state legislatures to pass resolutions for removing governors, strengthening state influence.
- **Guidelines for Hung Assemblies:** Define clear protocols for appointing Chief Ministers in hung assemblies to avoid arbitrary decisions.
- **Recognizing Pre-Election Coalitions:** Treat pre-election coalitions as single political entities for clarity in electoral and governance processes.
- **Permanent Finance Commission:** Make the Finance Commission a standing body with membership refreshed every five years for consistent fiscal planning.
- **Judicial Councils for Budget:** Establish councils to prepare and equitably share budgets between Centre and states, ensuring fiscal fairness.
- **Equal Rajya Sabha Representation:** Allocate equal seats to states in the Rajya Sabha to enhance federal equity and state voice in national legislation.

### **Contemporary issues associated with Federalism in India**

#### **1. Role of the Governor & Federalism Context**

- The Supreme Court's April 8, 2025, ruling against Tamil Nadu Governor R.N. Ravi for illegally delaying assent to 10 Bills brought the Governor's role under scrutiny for undermining federalism.

#### **Court Observations**

- **Unconstitutional Delay:** Declared Governor R.N. Ravi's prolonged inaction on 10 Bills (some pending since 2020) as illegal, violating Article 200's timely action mandate.

- **No Pocket Veto:** Rejected indefinite withholding of assent, stating it undermines democracy; Governors must act promptly.
- **Limited Discretion:** Governors cannot reserve re-passed Bills for the President unless materially altered, nor act on personal/political motives.
- **Judicial Review:** Gubernatorial actions are subject to scrutiny to uphold elected legislatures' will and federal principles.
- **Timelines Set:** Prescribed one-month deadline for assent and three months for reservation/President's decision to avoid legislative delays.

### Key Supreme Court Rulings on Governor's Role

- **S.R. Bommai vs. Union of India (1994):** Curbed misuse of Article 356, mandating objective use and judicial review to protect State autonomy.
- **Nabam Rebia vs. Deputy Speaker (2016):** Struck down Arunachal Governor's overreach, reinforcing constitutional limits.
- **State of Punjab vs. Principal Secretary (2023):** Ruled Governors must return Bills for reconsideration, not delay indefinitely.
- **Tamil Nadu vs. Governor R.N. Ravi (2025):** Declared delays unconstitutional, set timelines, and deemed 10 Bills assented under Article 142.
- **Government of NCT of Delhi vs. Union of India (2018):** Held Governors act on Cabinet advice, supporting federal balance.

### Challenges Related to the Governor's Role for Indian Federalism

- **Political Bias:** Governors, as Centre's appointees, favor Union interests (e.g., Ravi delaying Tamil Nadu Bills, 2020-23), clashing with Opposition-ruled States.
- **Legislative Overreach:** Delaying assent (e.g., Tamil Nadu's university Bills) obstructs State lawmaking, weakening elected governments.
- **Misuse of Discretion:** Reserving Bills without valid grounds (e.g., Ravi's referral of re-passed Bills, 2023) exploits Article 200's vagueness.
- **Erosion of Trust:** Delays by Governors in Kerala, Punjab (2023-24) foster Centre-State mistrust, harming cooperative federalism.
- **Lack of Accountability:** No clear timelines (pre-

2025) and secure tenure allow arbitrary actions, challenging State sovereignty.

- **Conflict with Diversity:** Interventions in States with special provisions (e.g., J&K pre-2019) disrupt asymmetric federalism's tailored governance.

### Way Forward

- **Enforce Timelines:** Strictly implement SC's 2025 deadlines (one month for assent, three for reservation) to ensure accountability.
- **Neutral Governors:** Appoint impartial figures (e.g., non-political) through consultation to minimize bias.
- **Strengthen Dialogue:** Use Inter-State Council to resolve Centre-State disputes, boosting federal cooperation.
- **Clarify Article 200:** Amend to set fixed deadlines for "as soon as possible," preventing delays.
- **Judicial Recourse:** Encourage States to seek quick court intervention for overreach, following Tamil Nadu's 2025 example.
- **Educate Public:** Raise awareness on Governors' roles to demand democratic and federal accountability.

### 2. Delimitation debate: A conflict between the principle of democracy and one of federalism Context

- The delimitation debate, intensified ahead of the post-2026 Census, highlights tensions between democratic representation ("one person, one vote") and federal equity in State parliamentary representation.

### Challenges of Ongoing Delimitation to Federalism

- **Unequal Representation:** Population-based delimitation boosts seats for populous States (e.g., Uttar Pradesh may gain 63 seats, Bihar 39), while southern States like Tamil Nadu (39 to 49) and Kerala (unchanged at 20) lose relative influence.
- **Penalizing Population Control:** States like Kerala and Tamil Nadu, effective in population control, face reduced Lok Sabha seats compared to high-growth States like Rajasthan,

undermining fairness for following national policies.

- **Regional Disparities:** Wealthier southern States (e.g., Karnataka) risk losing clout to poorer, populous States (e.g., Bihar), skewing resource allocation, as seen in 2024 tax devolution disputes.
- **Erosion of Federal Balance:** Northern States' seat gains (e.g., Rajasthan's share rising from 4.6% to 5.5%) could dominate Parliament, marginalizing smaller States like Sikkim, challenging the "union of States" ethos.
- **Political Tensions:** Southern States' concerns (e.g., Tamil Nadu CM Stalin's 2025 all-party meet) over diminished voice fuel Centre-State mistrust, straining cooperative federalism.

### Way Forward

- **Cap Lok Sabha Seats:** Freeze Lok Sabha at 543 seats to preserve State representation, adjusting only State Assembly seats to reflect population, balancing democracy and federalism.
- **Broader Allocation Criteria:** Include economic contribution, development indices (e.g., Kerala's high HDI), and geographic factors alongside population for fair seat distribution.
- **Strengthen Federal Dialogue:** Leverage NITI Aayog and Inter-State Council to address southern States' concerns (e.g., Tamil Nadu's JAC), building trust in delimitation.
- **Transparent Commission:** Ensure the post-2026 Delimitation Commission, with impartial leadership, consults all States and shares clear methodologies to avoid bias.
- **Empower Local Governance:** Enhance funds and powers for panchayats and municipalities to reduce reliance on Lok Sabha seats for regional influence.

## 3. One Nation One Election & Challenges to Federalism

### Context

- One Nation One Election (ONOE), a proposal to synchronize Lok Sabha and State Assembly elections, has sparked debate for its potential to streamline governance but risks straining India's federal structure.

### Benefits of One Nation, One Election

- **Cost Efficiency:** Conducting simultaneous elections will significantly reduce the recurring expenditure on election logistics, security deployment, and administrative machinery.
- **Administrative Convenience:** Reduces the frequent imposition of the Model Code of Conduct, which often delays policy decisions and development projects.
- **Governance Stability:** Synchronised elections ensure that governments at both Centre and State can function for a fixed term without the uncertainty of mid-term polls.
- **Boost to Voter Turnout:** Fewer elections reduce voter fatigue and can encourage greater participation, especially in rural and tribal areas.
- **Reduced Political Polarisation:** Continuous campaigning and populist measures can be curtailed, encouraging more long-term and policy-driven governance.
- **Better Use of Security and Administrative Resources:** One-time deployment of personnel reduces pressure on security forces and administrative staff who are otherwise pulled from core duties frequently.
- **Encourages National Integration:** A common electoral rhythm fosters a collective democratic spirit and reinforces the idea of "One Nation".

### Challenges of One Nation One Election to Federalism

- **Erosion of State Autonomy:** Uniform election schedules may prioritize national issues over State-specific concerns, sidelining regional priorities (e.g., Tamil Nadu's focus on social justice vs. national economic reforms).
- **Centralized Control Risk:** Central oversight of simultaneous polls, possibly via Election Commission directives, could encroach on States' constitutional powers to manage their elections (State List, 7th Schedule).
- **Political Disadvantage for States:** Smaller or Opposition-ruled States (e.g., Kerala, West Bengal) fear national parties' dominance in a single campaign, reducing their electoral influence and diversity.
- **Logistical Strain on States:** Weaker States like

Jharkhand or Northeast lack resources for mega-elections, risking uneven implementation and voter access, challenging federal equity.

- **Disruption of Federal Balance:** Premature dissolution of State Assemblies to align terms (e.g., Delhi's 2020 term cut short) undermines elected governments' mandates, weakening State sovereignty.
- **Neglect of Local Issues:** A unified poll risks overshadowing State-level governance records (e.g., Odisha's cyclone management) with national narratives, diluting federal accountability.

### Way Forward

- **Consultative Approach:** Engage States via Inter-State Council and NITI Aayog to build consensus, ensuring ONOE respects regional diversity and federal principles.
- **Flexible Framework:** Allow staggered implementation (e.g., grouping States by region) to ease logistical burdens while preserving State-specific election cycles.
- **Strengthen State Capacity:** Provide central funds and training to weaker States (e.g., Bihar) for election preparedness, ensuring equitable federal participation.
- **Safeguard Autonomy:** Amend Constitution (e.g., Article 356 safeguards) to prevent forced alignment of State terms, protecting elected governments' tenures.
- **Balanced Campaigns:** Regulate campaign spending and media to give regional parties (e.g., DMK, BJD) fair visibility, countering national party dominance.
- **Pilot Testing:** Trial ONOE in select States (e.g., Gujarat, Karnataka) to assess feasibility, addressing federal concerns before nationwide rollout.

## 4. Emergency Provisions & Threat to Federalism in India

### Introduction

- Emergency provisions in the Indian Constitution, intended to tackle crisis, risk centralizing power, threatening the federal structure and State autonomy.

### Emergency Provisions: Overview

- **National Emergency (Article 352):** Declared for war, external aggression, or armed rebellion; centralized authority and suspends Fundamental Rights (except Articles 20, 21).
- **State Emergency (Article 356):** Imposed for failure of constitutional machinery (President's Rule), enabling Union control over State governance.
- **Financial Emergency (Article 360):** Invoked for financial instability threats; allows Union to issue fiscal directives to States.
- **Constitutional Checks:** Provisions subject to parliamentary approval and judicial review to curb misuse.

### Threat to Federalism

- **Centralization of Power:** National Emergency shifts legislative and executive control to the Union (e.g., 1975-77), sidelining State governments and federal balance.
- **Misuse of Article 356:** Frequent imposition of President's Rule disrupts State autonomy, often for political gains, weakening democratic federalism.
- **Suspension of Fundamental Rights:** Emergency provisions (Article 359) limit rights like Article 19, curbing State-level dissent and accountability.
- **Fiscal Overreach:** Financial Emergency (Article 360) empowers Union to control State budgets, undermining financial independence critical to federalism.
- **Erosion of Cooperation:** Central dominance during emergencies strains Centre-State trust, disrupting cooperative federalism's collaborative spirit.
- **Political Manipulation:** Partisan use of emergency powers by ruling parties threatens federal fairness, subordinating State sovereignty.

### Important Supreme Court Judgments Associated with Misuse

- **State of Rajasthan vs. Union of India (1977):** Upheld Centre's power under Article 356 but cautioned against arbitrary use, emphasizing federal balance.

- **S.R. Bommai vs. Union of India (1994):** Landmark ruling; limited Article 356 misuse by mandating judicial review, proof of constitutional breakdown, and protecting State autonomy.
- **Nabam Rebia vs. Deputy Speaker (2016):** Struck down Arunachal Pradesh's President's Rule, reinforcing Bommai principles against politically motivated invocations.
- **Government of NCT of Delhi vs. Union of India (2018):** Clarified federal limits; curbed Union's overreach in Delhi, indirectly supporting checks on emergency-like powers.
- **Shivraj Singh Chouhan vs. Speaker, MP Assembly (2020):** Upheld judicial scrutiny of Article 356 in Madhya Pradesh, ensuring Centre justifies State government dismissals.

### Way Forward

- **Robust Judicial Oversight:** Strengthen Bommai guidelines, ensuring swift judicial review of Article 356 invocations to prevent political misuse.
- **Consultative Approach:** Involve States via Inter-State Council during emergency declarations to uphold cooperative federalism and trust.
- **Clear Legal Framework:** Define precise criteria for emergencies (Articles 352, 356, 360) to minimize ambiguity and arbitrary application.
- **Protect State Autonomy:** Limit suspension of non-essential rights and ensure States retain functional governance during emergencies.
- **Parliamentary Accountability:** Mandate detailed justification and time-bound parliamentary approval for emergency measures to check executive overreach.

## 5. Issue of Fiscal Federalism in India

### Introduction

- Fiscal federalism in India means how money and financial powers are shared between the central and state governments.
- Though the Constitution has a system for this, in recent times, states have raised concerns about getting less money and having less control over their finances compared to the Centre.

### Key Features

- **Revenue Division:** The Constitution assigns tax powers—Centre handles big taxes like income tax, States manage taxes like sales tax, with sharing guided by rules.
- **Finance Commission:** Suggests how to split taxes (e.g., 15th Finance Commission gave States 41% of central taxes for 2021-26).
- **GST Council:** Centre and States together decide GST rates and rules, ensuring teamwork in tax matters.
- **Grants-in-Aid:** Centre gives extra funds to States for projects like roads or to help poorer States catch up.
- **Borrowing Powers:** Both can borrow money, but States need Centre's permission if they owe the Union (Article 293).

### Significance

- **Equal Growth:** Helps poorer States develop schools and hospitals, narrowing gaps with richer ones.
- **State Freedom:** Lets States spend on local priorities, like health in Kerala or industries in Gujarat.
- **Stronger Unity:** Fair money-sharing prevents fights between States, keeping India united.
- **Better Planning:** States can design schemes that fit their people's needs, improving lives.
- **Stable Economy:** Common rules like GST make trade easier, helping businesses grow.

### Challenges

- **Unequal Sharing:** Some States feel they get less money than they deserve, despite contributing more taxes, which creates resentment.
  - Example: Tamil Nadu argued in 2023 that it receives fewer funds compared to its high tax contributions.
- **Central Control:** The Centre sometimes delays or controls funds, leaving States unable to pay for important services like health or education.
  - Example: Kerala faced delays in GST compensation in 2022, struggling to fund its healthcare programs.
- **Political Bias:** States ruled by opposition parties may face delays or cuts in funds, suggesting political motives over fairness.

- Example: West Bengal claimed in 2024 that the Centre withheld MGNREGA funds due to political differences.
- **Debt Limits:** Strict rules on State borrowing stop them from funding projects like roads, limiting their ability to grow.
  - Example: Punjab was restricted from borrowing in 2023, delaying infrastructure projects.
- **Poor State Capacity:** Some States struggle to collect taxes or manage money well, making them depend too much on the Centre.
  - Example: Jharkhand's weak tax collection in 2024 left it relying heavily on central grants.
- **River Boards Act, 1956:** Empowers the Centre to create boards for managing interstate rivers, though rarely used effectively.
- **Inter-State River Water Disputes Act, 1956:** Provides for tribunals to resolve disputes, with decisions binding and immune from judicial review.
- **Tribunals:** Examples include Cauvery Water Disputes Tribunal (1990) and Krishna Water Disputes Tribunal, set up to allocate water shares.
- **Cooperative Mechanisms:** Bodies like the Inter-State Council and NITI Aayog facilitate dialogue to prevent escalation of disputes.

### Way Forward

- **Fairer Sharing:** Give States a bigger tax share and reward those who pay more, keeping the process open and clear.
- **Quick Fund Release:** Ensure States get GST and grants on time so they can run schemes without delays.
- **No Politics in Funds:** Allocate money fairly to all States, whether they support the Centre or not, for schemes like housing.
- **Help States Grow:** Train poorer States to collect taxes better, so they rely less on the Centre.
- **Ease Borrowing Rules:** Let responsible States borrow more to build things like schools or roads.

## 6. Issue of Interstate Water Dispute and Federalism in India

### Context

- Interstate water disputes in India arise when two or more states disagree over the sharing of river waters, which affects their agriculture, drinking water, and development needs.
- These disputes often create tension between states and challenge the spirit of cooperative federalism in India

### Key Features

- **Constitutional Framework:** Water is a State subject (Entry 17, State List), but the Centre can regulate interstate rivers (Entry 56, Union List) and mediate disputes (Article 262).

### Challenges

- **Delayed Resolutions:** Tribunals take years to deliver verdicts, prolonging tensions between States.
  - Example: The Cauvery dispute between Karnataka and Tamil Nadu, ongoing since 1990, saw delays until the Supreme Court's 2018 verdict.
- **Non-Compliance:** States often ignore tribunal orders or central directives, undermining federal authority.
  - Example: Punjab's reluctance to share Ravi-Beas water with Haryana (2023) defied earlier agreements.
- **Political Exploitation:** State governments politicize disputes for electoral gains, escalating inter-State rivalry.
  - Example: Maharashtra and Karnataka clashed over the Mahadayi river in 2022, with leaders rallying voters around water rights.
- **Lack of Data Sharing:** States withhold hydrological data, hindering fair allocation and trust-building.
  - Example: Andhra Pradesh and Telangana's Krishna river dispute (2021) worsened due to opaque data sharing.
- **Central Inaction:** The Centre's reluctance to enforce tribunal awards or form river boards weakens federal mediation.
  - Example: The Godavari dispute between Odisha and Chhattisgarh (2023) lingered due to delayed central intervention.

## Way Forward

- **Faster Tribunals:** Set strict timelines for tribunals (e.g., 3-5 years) and empower them with enforcement mechanisms to resolve disputes quickly.
- **Data Transparency:** Mandate real-time sharing of river data through a central platform, ensuring fair and scientific water allocation.
- **Strengthen River Boards:** Activate the River Boards Act, 1956, to create permanent bodies for managing interstate rivers collaboratively.
- **Neutral Mediation:** Use the Inter-State Council and NITI Aayog for impartial dialogue, reducing political interference in disputes.
- **Integrated Water Policy:** Develop a national framework balancing agriculture, industry, and ecology, encouraging States to prioritize sustainability.

**Keywords :** Federal Overreach, Tyranny of the Majority, Holding Together Federation, Coming Together Federation, Asymmetrical Federation, Quasi-federal structure, Dual polity, Collaborative federalism, Fiscal federalism, Federal overreach, Tyranny of the majority, Legislative encroachment, Backdoor centralisation, Institutional trust deficit, Federal morality, Democratic decentralisation.

## Mains Practice Questions :

Q1. "Indian federalism is a unique blend of federal and unitary features." Examine this statement in the context of constitutional provisions.

Q2. In recent times, disputes between the Centre and States over issues like tax devolution, law enforcement jurisdiction, and Governor's role have intensified. Discuss how these reflect a shift towards confrontational federalism in India.

### Introduction

- "Devolution of Powers and Finances up to Local Levels", devolution means the transfer or delegation of powers and responsibilities from the higher levels of government (Centre and States) to local self-government institutions like Panchayats and Municipalities.

### Three Types of Devolution:

- **Devolution of Powers (Functions):** Giving local bodies authority over subjects like sanitation, water supply, rural roads, primary health, and education (listed in the 11th and 12th Schedules).
- **Devolution of Finances:** Providing adequate funds, taxation powers, and grants to enable local bodies to carry out their functions effectively.
- **Devolution of Functionaries:** Transferring staff and administrative machinery to local governments so they can implement schemes independently.

### Constitutional Provisions – Devolution to Local Bodies (Panchayats and Municipalities)

#### 1. 73rd Constitutional Amendment Act, 1992

(For Panchayati Raj Institutions – PRIs)

- **Part IX of the Constitution (Articles 243 to 243-O)** was inserted.
- Introduced a **three-tier system** of Panchayats:
  - Gram Panchayat (Village level)
  - Panchayat Samiti (Intermediate/Block level)
  - Zila Parishad (District level)

### Articles under Part IX of the Indian Constitution (Panchayats)

Article	Key Provisions
243	Defines key terms like "Panchayat," "Village," "Intermediate level," and "Population" for Part IX.
243A	Establishes Gram Sabha as a body of registered voters in a village, empowered to perform functions as per state legislature.

243B	Mandates Panchayats at village, intermediate, and district levels; intermediate level optional for states with population below 20 lakhs.
243C	Provides for direct election of Panchayat members; state legislature may include chairpersons of lower-level Panchayats and MPs/MLAs.
243D	Mandates reservation for SCs/STs proportional to population; one-third seats for women; provisions for backward classes.
243E	Specifies five-year term for Panchayats; elections before term expiry or within six months of dissolution.
243F	Lists disqualifications for membership (e.g., unsound mind, bankruptcy); state legislature may add more.
243G	Empowers state legislatures to assign Panchayats responsibilities for economic development and social justice schemes.
243H	Authorizes Panchayats to levy taxes, duties, and fees; provides for grants-in-aid from state's Consolidated Fund.
243I	Mandates State Finance Commission every five years to review Panchayats' financial position and recommend tax-sharing, grants.
243J	Empowers state legislatures to provide for the audit of Panchayat accounts.
243K	Vests Panchayat election control in State Election Commission; state to make electoral provisions.
243L	Extends Part IX to Union Territories with modifications as specified by the President.
243M	Excludes Scheduled Areas, Tribal Areas, and certain states from Part IX; Parliament may extend provisions with modifications.

<b>243N</b>	Allows existing inconsistent laws to continue for one year; existing Panchayats remain until term expiry or new ones are formed.
<b>243O</b>	Bars courts from interfering in electoral matters like delimitation; only election petitions allowed as per state law.

## 2. 74th Constitutional Amendment Act, 1992

(For Urban Local Bodies – ULBs)

- **Part IX-A of the Constitution (Articles 243P to 243ZG)** was added.
- Created **three types of urban local bodies**:
  - **Municipal Corporations** (for large urban areas)
  - **Municipal Councils** (for smaller urban areas)
  - **Nagar Panchayats** (for transitional areas)

### Articles under Part IX-A of the Indian Constitution (Municipalities)

Article	Key Provisions
<b>243P</b>	Defines terms like "Municipality," "Metropolitan area," "Municipal area," and "Population" for Part IX-A.
<b>243Q</b>	Mandates constitution of three types of Municipalities: Nagar Panchayat (transitional areas), Municipal Council (smaller urban areas), and Municipal Corporation (larger urban areas); Governor specifies areas considering population, revenue, and other factors.
<b>243R</b>	Provides for direct election of Municipality members; state legislature may include chairpersons of wards committees, MPs/MLAs, and persons with special knowledge (without voting rights).
<b>243S</b>	Mandates constitution of Wards Committees in Municipalities with a population of 3 lakhs or more; state legislature to specify composition and functions.

<b>243T</b>	Mandates reservation of seats for SCs/STs proportional to population; one-third seats reserved for women; state legislature may provide reservations for backward classes.
<b>243U</b>	Specifies a five-year term for Municipalities; elections to be held before term expiry or within six months of dissolution; reconstituted Municipality continues for remaining term.
<b>243V</b>	Lists disqualifications for membership (e.g., unsound mind, bankruptcy, criminal conviction); state legislature may specify additional disqualifications.
<b>243W</b>	Empowers state legislatures to endow Municipalities with powers to function as institutions of self-government, including planning and implementing schemes for economic development and social justice (as per 12th Schedule).
<b>243X</b>	Authorizes Municipalities to levy, collect, and appropriate taxes, duties, tolls, and fees; provides for grants-in-aid from state's Consolidated Fund.
<b>243Y</b>	Mandates State Finance Commission to review Municipalities' financial position and recommend tax-sharing, grants, and other financial measures.
<b>243Z</b>	Empowers state legislatures to make provisions for the audit of Municipality accounts.
<b>243ZA</b>	Vests superintendence, direction, and control of Municipality elections in State Election Commission; state to make electoral provisions.
<b>243ZB</b>	Extends provisions of Part IX-A to Union Territories, with modifications as specified by the President.
<b>243ZC</b>	Excludes Scheduled Areas and Tribal Areas from Part IX-A; Parliament may

	extend provisions to these areas with modifications.
<b>243ZD</b>	Mandates constitution of District Planning Committees to consolidate plans prepared by Panchayats and Municipalities and prepare draft development plans for the district.
<b>243ZE</b>	Mandates constitution of Metropolitan Planning Committees in metropolitan areas to prepare draft development plans, considering regional needs and resources.
<b>243ZF</b>	Allows existing laws inconsistent with Part IX-A to continue for one year or until amended/repealed; existing Municipalities remain until term expiry or new ones are formed.
<b>243ZG</b>	Bars courts from interfering in electoral matters like delimitation or reservation; only election petitions allowed as per state law.

## Evolution of Panchayati Raj in India

### During British Rule:

- **Mayo's Resolution (1870):** Initiated the development of local institutions, laying the groundwork for decentralized governance in rural areas.
- **Ripon Resolution (1882):** Emphasized urban local governance, with limited focus on rural decentralization, neglecting village-level structures.
- **Royal Commission on Decentralization (1907):** Recognized the importance of village panchayats as vital units for local self-governance.
- **Montagu-Chelmsford Reforms (1919):** Transferred local governance to provinces, but financial and administrative constraints limited effective decentralization.
- **Government of India Act, 1935:** Advanced panchayat evolution by assigning limited responsibilities to grassroots bodies, though under centralized control.

### Post-Independence Developments:

- **Balwant Rai Mehta Committee (1957):** Recommended a three-tier Panchayati Raj system—Gram Panchayats at the village level, Panchayat Samitis at the block level, and Zila Parishads at the district level—to promote democratic decentralization.
- **Rajasthan's Pioneering Step (1959):** Became the first state to establish Panchayati Raj on October 2, 1959, in Nagaur district, setting a model for others.
- **Ashok Mehta Committee (1977):** Proposed a two-tier system with Gram Panchayats and Zila Parishads, emphasizing stronger roles and financial autonomy for panchayats.
- **G.V.K. Rao Committee (1985):** Advocated regular elections for Panchayati Raj institutions to ensure democratic continuity and effective local governance.
- **L.M. Singhvi Committee (1986):** Urged constitutional recognition for Panchayati Raj and enhanced financial resources for village panchayats to bolster their capacity.
- **Thungon Committee (1988):** Suggested a fixed five-year tenure for Panchayati Raj bodies and the creation of State Finance Commissions to allocate resources.
- **Gadgil Committee (1988):** Recommended establishing State Election Commissions and reserving seats for Scheduled Castes (SCs), Scheduled Tribes (STs), and women to ensure inclusivity.
- **73rd Constitutional Amendment Act (1992):** Granted constitutional status to Panchayati Raj, introducing Part IX with provisions for a three-tier system, mandatory elections, and reservations for SCs, STs, and women, ensuring grassroots empowerment.
- **74th Constitutional Amendment Act (1992):** Extended similar principles to urban local governance, establishing Nagar Palikas and Municipalities with defined roles and structures.

### Salient Features 73rd Constitutional Amendment Act

- **Three-Tier Panchayati Raj System:** The 73rd Amendment mandated the establishment of a

three-tier Panchayati Raj system in all rural areas of India, which includes Gram Panchayats, Panchayat Samitis, and Zila Parishads.

- **Direct Elections:** The members of the Panchayats are elected through direct elections. The people of the village elect the Gram Panchayat members, while the members of the Gram Panchayats elect the members of the Panchayat Samitis and Zila Parishads.
- **Reservation of Seats:** The 73rd Amendment Act provides for the reservation of seats for women and Scheduled Castes and Scheduled Tribes in the Panchayats.
- **Powers and Functions:** The Panchayats are empowered to undertake various development works in their respective areas, such as sanitation, water supply, and street lighting.
- **State Finance Commissions:** The 73rd Amendment also provides for establishing State Finance Commissions to recommend the distribution of finances between the state governments and the Panchayats.

### **Salient Features 74th Constitutional Amendment Act**

- **Constitution of Municipalities :** The Act provides for the constitution of 3 types of municipalities, depending upon the size and area in every state.
- **Composition of Municipalities :** The seats shall be filled by direct elections. The state legislature may provide the manner of election of the chairperson of a municipality.
- **Reservation of seats :** The Act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in the proportion of their population to the total population in the municipal area. Further, it provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for women belonging to the SCs and the STs).
- **Duration of Municipalities :** The municipality has a fixed term of 5 years from the date appointed for its first meeting.
- **Powers and Functions of the Municipalities :** All municipalities would be empowered with

such powers and responsibilities as may be necessary to enable them to function as effective institutions of self-government. An illustrative list of functions that may be entrusted to the municipalities has been incorporated as the Twelfth Schedule of the Constitution.

- **Finances of Municipalities :** It has been left to the Legislature of a State to specify by law matters relating to imposition of taxes.
- **Finance Commission** The Finance Commission, constituted under Article 243-I to review the financial positions of Panchayati Raj Institutions, shall also review the financial position of the municipalities and will make recommendations to the Governor.
- **Elections to Municipalities :** The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the panchayats and municipalities shall be vested in the State Election Commissions.
- **Audit and Accounts :** The maintenance of the accounts of the municipalities and other audits shall be done in accordance with the provisions in the State law.
- **Committee for District Planning :** Every state shall constitute, at the district level, a district planning committee to consolidate the plans prepared by panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole.

### **Necessity of Devolution of Powers and Finances at Local Level**

- **Meeting Local Needs:** Enables local bodies to address specific issues like water scarcity in Rajasthan, ensuring context-relevant solutions.
- **Fostering Grassroots Democracy:** Empowers communities to shape their development, as seen in Gram Sabha-driven plans in Kerala.
- **Improving Administrative Efficiency:** Reduces delays by decentralizing tasks like rural infrastructure projects under MGNREGA.
- **Promoting Inclusive Growth:** Prioritizes marginalized groups, with women-led panchayats in Tamil Nadu advancing gender

- equity.
- **Enhancing Accountability:** Ensures local leaders are answerable to citizens, unlike distant state or central authorities.
- **Reducing Regional Inequalities:** Tailors development to local conditions, addressing disparities in states like Bihar compared to Gujarat.
- **Encouraging Innovation:** Facilitates local experiments, such as community sanitation drives in Himachal Pradesh.
- **Ensuring Financial Sustainability:** Provides funds for essential functions, as seen with State Finance Commission grants to panchayats.
- **Reducing Dependency:** Financial autonomy prevents delays, like those faced by West Bengal in GST compensation, ensuring smooth operations.
- **Supporting Infrastructure:** Enables local bodies to build schools and clinics, as evident in Odisha's rural areas.
- **Strengthening Welfare Delivery:** Funds local execution of schemes like PDS, improving food security in tribal regions of Jharkhand.
- **Promoting Fiscal Discipline:** Local control over budgets, as in Surat's municipal model, fosters prudent financial management.

### Reasons for Ineffective Performance of Local Bodies

- **Inadequate Devolution of Powers:** Local bodies lack full functional autonomy, with states retaining control over key areas like urban planning. For instance, in 2024, many Uttar Pradesh municipalities struggled to implement waste management due to state oversight.
- **Insufficient Financial Resources:** Local bodies receive only 1-2% of GDP, limiting their capacity. A 2024 report noted irregular State Finance Commission setups, delaying funds to panchayats in Bihar.
- **Capacity and Skill Gaps:** Shortage of trained personnel hampers efficiency. In 2024, rural panchayats in Jharkhand faced delays in MGNREGA projects due to untrained staff handling complex schemes.
- **Political Interference:** State governments often

influence local decisions, undermining autonomy. In 2025, opposition-led panchayats in West Bengal reported delays in fund releases due to political biases.

- **Irregular Elections:** Delayed or irregular elections weaken democratic functioning. In 2024, several Odisha panchayats operated under administrators as elections were postponed beyond their five-year term.
- **Limited Revenue Generation:** Local bodies struggle to raise own-source revenue. A 2024 study showed that 70% of urban local bodies in Madhya Pradesh depended on state grants, lacking tax collection mechanisms.
- **Weak Accountability Mechanisms:** Inadequate oversight leads to mismanagement. In 2024, audits in Tamil Nadu municipalities revealed unspent funds due to poor monitoring of centrally sponsored schemes.
- **Low Community Participation:** Limited public engagement hampers effectiveness. In 2025, Gram Sabhas in Chhattisgarh saw low attendance, weakening local planning, as reported in state surveys.
- **Urban-Rural Disparity:** Urban bodies receive more attention, leaving rural panchayats underfunded. In 2024, rural Maharashtra panchayats had 30% less funding per capita than urban bodies, per state data.
- **Bureaucratic Resistance:** Bureaucrats often override elected representatives. In 2024, Delhi municipal decisions were stalled by state-appointed officials, delaying sanitation projects.

### Recommendations of the for Strengthening Local Government

#### Second Administrative Reforms Commission (2nd ARC) Recommendations

- **Principle of Subsidiarity:** Apply the subsidiarity principle, ensuring functions that can be handled at lower government levels are not centralized at higher levels for efficient decentralization.
- **Clear Delineation of Functions:** Define roles distinctly between state governments and local bodies, and among different tiers of local governments, to prevent overlaps and enhance

- clarity.
- **Effective Devolution with Capacity Building:** Ensure comprehensive devolution of functions and resources, supported by training and accountability mechanisms to empower local bodies.
  - **Integrated Service Delivery:** Promote a unified approach to local services and development through program convergence, prioritizing citizen-centric governance.
  - **Financial Devolution and Convergence:** Strengthen financial autonomy through effective fund devolution and service integration, fostering citizen-focused governance structures.
  - **Activity Mapping for 11th Schedule:** States should conduct thorough activity mapping for all 11th Schedule matters, guided by the subsidiarity principle, to streamline responsibilities.
  - **Model Law for Local Governments:** Circulate a model law to standardize and strengthen the legal framework for local governance across states.
  - **Fund Devolution Across Tiers:** Allocate funds to all levels of panchayats to ensure equitable resource distribution and operational sustainability.

### 15th Finance Commission Recommendations for Strengthening Local Government Finances

- **Inclusive Coverage of Panchayats:** Recommended grants for all tiers of rural panchayats—village, block, and district—and included panchayats in scheduled areas, ensuring broader reach compared to the 14th FC, which limited grants to village panchayats and excluded scheduled areas.
- **Substantial Grants to Local Bodies:** Allocated ₹4.36 lakh crore for 2021-26 from the central tax pool to rural (₹2.4 lakh crore) and urban (₹1.2 lakh crore) local bodies, plus ₹70,051 crore for health grants, to enhance local infrastructure and services.
- **Grant Distribution Criteria:** Non-health grants to be distributed among states based on 90%

weightage to population and 10% to area, ensuring equitable allocation reflecting demographic and geographic needs.

- **Performance-Linked Grants:** Introduced performance-based grants, notably for million-plus cities via the Million-Plus Cities Challenge Fund, tied to improvements in air quality, water supply, sanitation, and solid waste management.
- **Health Sector Focus:** Recommended ₹70,051 crore for health through local bodies to strengthen primary healthcare, including urban health centers and rural wellness facilities.
- **Untied and Tied Grants:** Provided 40% untied grants for flexible local needs (e.g., road maintenance) and 60% tied grants for specific priorities like sanitation and water supply, balancing autonomy with accountability.
- **Disaster Management Support:** Allocated funds to local bodies for disaster mitigation, integrating with State Disaster Response Funds, to enhance local preparedness.

### Case Studies /Best Practices

- **Rajasthan's BRTS (Bhagidari):** It emphasizes community participation in planning and decision-making. It encourages collaboration between local communities, Panchayati Raj Institutions, and the government for sustainable development.
- **Maharashtra's Water Cup Competition:** The Water Cup competition, organized by the Paani Foundation in Maharashtra, involves Panchayats in water conservation efforts. It encourages communities to actively participate in watershed management, fostering a sense of ownership and responsibility.
- **Andhra Pradesh's Community Managed Tank Systems:** It involves local Panchayats in the restoration and management of water tanks. This decentralized approach has improved water availability for agriculture and reduced dependence on external agencies.
- **Karnataka's Gram Panchayat Development Plan (GPDP):** It involves local communities in the planning and implementation of development projects. This participatory approach has led to

better alignment of development initiatives with the actual needs and priorities of the villagers.

- **Participatory Budgeting in Kerala:** Kerala has embraced participatory budgeting, involving local communities through Panchayati Raj in decision-making related to budget allocations. This approach has enhanced transparency, accountability, and citizen engagement in the development process
- **Citizen Charter:** In order to focus on the commitment of the Panchayati Raj Institutions (PRIs) towards its Citizens in respects of Standard of Services, the Panchayati Raj Ministry has provided platform to upload Citizen Charter document with the slogan “Meri Panchayat Mera Adhikaar – Jan Sevaayein Hamaare Dwaar”.
- **e-Gram Swaraj e-Financial Management System:** e-Gram Swaraj is a Simplified Work Based Accounting Application for Panchayati Raj. It assists in enhancing the credibility of Panchayat through inducing greater devolution of funds to Panchayati Raj Institutions. It brings better transparency through decentralized planning, progress reporting and work-based accounting.
- **Revamped Rashtriya Gram Swaraj Abhiyan (2022-23 to 2025-26):** The focus of the scheme of Revamped RGSA is on re-imagining Panchayati Raj Institutions as vibrant centers of local self-governance with special focus on Localization of Sustainable Development Goals (LSDGs) at grassroot level adopting thematic approach through concerted and collaborative efforts of Central Ministries and State Line departments and other Stakeholders with ‘Whole of Government and Whole of Society’ approach.

## Contemporary issues Associated with Local Self Government :

### 1. Panchayat Extension to Scheduled Areas (PESA) Act, 1996

#### Introduction:

The Panchayat Extension to Scheduled Areas (PESA) Act, 1996, is a landmark legislation aimed at extending the provisions of Part IX of the Indian Constitution to Scheduled Areas, ensuring self-

governance for tribal communities. Enacted to empower Gram Sabhas and Panchayats in these regions, PESA recognizes the traditional rights of tribals over resources and their systems of self-government, fostering autonomy and inclusive development.

#### Provisions:

- Applies to Scheduled Areas as defined under Article 244(1), covering regions in ten states—Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana—excluding Assam, Meghalaya, Tripura, and Mizoram.
- Aligns with the Fifth Schedule, which provides special protections for Scheduled Areas and Scheduled Tribes, including safeguards for land and cultural rights.
- Mandates state laws to align with PESA, ensuring Gram Sabhas have significant powers over local governance and resource management.

#### Objectives:

- Promote self-governance through empowered Gram Sabhas, enabling tribal communities to manage their affairs independently.
- Recognize and protect traditional tribal rights over natural resources, such as forests and water, to preserve their livelihood systems.
- Strengthen Gram Sabhas’ authority to approve development plans, control social sectors, and regulate local institutions for inclusive growth.

#### Significance:

- **Tribal Empowerment:** Grants tribal communities control over resources and governance, safeguarding their economic and cultural interests, as seen in Odisha’s tribal areas.
- **Local Self-Governance:** Establishes robust Panchayats with decision-making powers, enabling tailored solutions like minor forest produce management in Jharkhand.
- **Decision-Making Autonomy:** Reduces reliance on external authorities by empowering Gram

Sabhas to regulate land use and social justice, evident in Madhya Pradesh's tribal regions.

- **Cultural Preservation:** Protects tribal customs and traditions, ensuring their heritage thrives, as demonstrated by community practices in Chhattisgarh.
- **Inclusive Development:** Aligns policies with tribal needs, promoting equitable growth in remote areas like Rajasthan's Scheduled Areas.

### Challenges to PESA (Panchayats Extension to Scheduled Areas Act, 1996)

- **Low Awareness Among Tribal Communities**
  - Many tribal communities are unaware of their rights under PESA, which limits the effective use of self-governance mechanisms.
  - **Example:** In Jharkhand, the Pathalgadi movement emerged in districts like Khunti and Gumla due to lack of awareness and misunderstanding of PESA, where tribals asserted absolute autonomy through symbolic stone plaques.
- **Capacity Constraints in Tribal Panchayats**
  - Panchayats in Scheduled Areas often lack the necessary training, administrative skills, and resources to effectively govern.
  - **Example:** In Maharashtra, Gram Sabha members have faced difficulty in managing local resources and executing development projects due to inadequate training and institutional support.
- **Legal Conflicts with Other Laws**
  - PESA provisions sometimes conflict with other central and state laws, leading to confusion and delays in implementation.
  - **Example:** In Odisha, PESA's mandate has been diluted by making it subordinate to existing forest and land acquisition laws, restricting the powers of Gram Sabhas.
- **Incomplete Devolution of Powers**
  - Many states have failed to fully transfer powers regarding natural resources, land, and minor minerals to the Gram Sabhas.
  - **Example:** In Maharashtra, despite having PESA rules, powers over minor forest produce and minor minerals are still

retained by government departments.

- **External Interference by State Authorities**
  - Decisions made by Gram Sabhas are sometimes ignored or overridden by state officials, undermining tribal autonomy.
  - **Example:** In Jharkhand, there have been instances where Gram Sabha resolutions have been disregarded by authorities, leading to protests and demands for implementation of PESA in letter and spirit.
- **Political and Corporate Pressure**
  - Resource-rich tribal areas often witness attempts to bypass Gram Sabha consent for mining and industrial projects.
  - **Example:** In Odisha's Niyamgiri Hills, the decision of the Gram Sabhas to deny mining clearance was repeatedly challenged by corporate and political interests.
- **Delayed Rule Framing and Implementation**
  - Several states took decades to frame rules under PESA, and some are yet to do so.
  - **Example:** Jharkhand notified its PESA rules only in 2021—25 years after the Act was passed—leading to long-standing governance gaps in tribal regions.

### Way Forward:

- **Awareness Initiatives:** Launch targeted campaigns to educate tribal communities about PESA, replicating successful drives in Odisha to boost participation.
- **Capacity Enhancement:** Provide governance and financial management training to Panchayat members, following Kerala's model for local body empowerment.
- **Legal Harmonization:** Align PESA with central laws through clear guidelines to resolve conflicts, ensuring seamless implementation across states like Chhattisgarh.
- **Full Empowerment:** Ensure complete devolution of powers to Gram Sabhas, with strict compliance monitoring, as needed in Rajasthan's tribal areas.
- **Inclusive Engagement:** Promote participation of women and marginalized groups in Gram Sabhas, drawing from Jharkhand's inclusive governance practices.

- **NGO Collaboration:** Partner with NGOs to provide resources and expertise, enhancing PESA's grassroots impact, as seen in Madhya Pradesh's tribal projects.

## 2. Role of Women in Local Self-Government in India

### Introduction:

Women's participation in India's local self-government, facilitated by Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs), is pivotal for inclusive and responsive governance. The 73rd and 74th Constitutional Amendments have enabled women to take on leadership roles, influence community development, and address grassroots issues, though they face persistent challenges that require targeted reforms.

### Constitutional and Legal Framework:

- **Mandatory Reservations:** The 73rd and 74th Amendments (1992) mandate at least one-third reservation for women in PRIs and ULBs, ensuring their representation in decision-making bodies.
- **Leadership Opportunities:** Reservations have enabled women to serve as Sarpanchs, Ward Members, and Mayors, fostering their active involvement in local governance.
- **State Support Mechanisms:** Various states have introduced programs to integrate women into local governance, enhancing their capacity to contribute effectively.

### Contributions to Local Governance:

- **Addressing Gender-Specific Needs:** Women prioritize issues like safety, education, and healthcare, ensuring policies reflect the needs of women and children.
- **Driving Community Development:** They lead initiatives in critical areas such as sanitation, water supply, and infrastructure, strengthening local service delivery.
- **Promoting Social Inclusion:** Women representatives advocate for marginalized groups, ensuring equitable access to welfare schemes and resources.
- **Economic Empowerment:** By supporting self-

help groups and local enterprises, women foster economic opportunities at the grassroots level.

- **Environmental Sustainability:** They contribute to sustainable practices, focusing on resource conservation and eco-friendly development strategies.

## Challenges Faced by Women in Local Governance

### • Patriarchal Constraints

- Societal norms often limit women's authority, with male relatives (husbands, fathers, or brothers) influencing or overshadowing their decisions in Panchayats or Municipalities.
- **Example:** The issue of "Sarpanch Pati" is common in states like Rajasthan, Bihar, and Madhya Pradesh, where husbands unofficially make decisions on behalf of elected women representatives.

### • Capacity Gaps

- Lack of training in governance, finance, and policy implementation limits women's ability to participate meaningfully in decision-making.
- **Example:** A Ministry of Panchayati Raj report noted that many women elected representatives lacked knowledge of budgeting processes, leading to under-utilization of development funds in rural Jharkhand and Odisha.

### • Financial Dependence

- Women leaders often lack control over Panchayat funds or lack direct access to finance, which curbs their ability to initiate developmental projects.
- **Example:** In Uttar Pradesh, studies show that many women sarpanches must seek approval from male panchayat members to use funds, despite being officially in charge.

### • Political Overreach

- Interference from state-level political parties or male-dominated party structures undermines the independence of women leaders.
- **Example:** In West Bengal, multiple reports have shown that political party workers

often control women candidates post-election, especially in highly politicized local elections.

- **Safety Concerns**

- Women in public roles often face threats, harassment, or intimidation, reducing their willingness to participate in governance.
- **Example:** A woman Panchayat member in Chhattisgarh was attacked in 2021 for taking a stand against local corruption, highlighting the unsafe environment for women in leadership.

### Way Forward:

- **Comprehensive Training:** Develop robust training programs focusing on governance, financial management, and leadership to enhance women's capabilities.
- **Strengthened Reservations:** Expand reservation policies to 50% across all states to ensure greater representation and influence in local bodies.
- **Financial Autonomy:** Allocate dedicated budgets to women-led initiatives, ensuring timely and sufficient funding for their projects.
- **Gender Sensitization:** Promote awareness campaigns to challenge patriarchal attitudes, creating an enabling environment for women leaders.
- **Safe Governance Spaces:** Establish strict measures to ensure secure participation, protecting women from harassment or threats in public roles.
- **Mentorship Networks:** Create platforms for experienced women leaders to guide newcomers, fostering confidence and knowledge sharing.

**Keywords :** Democratic Decentralization, Three-Tier Governance, Activity Mapping, Subsidiarity Principle, Gram Sabha Empowerment, State Finance Commission, Own Source Revenue, Participatory Planning, Localization of SDGs, Inter-tier Functional Overlap, Bureaucratic Encroachment, Social Audit Deficit, Urban-Rural Fiscal Asymmetry

### Mains Practice Questions :

Q1. Discuss the challenges faced by Panchayati Raj Institutions in realizing the goals of grassroots democracy, especially with respect to financial autonomy.

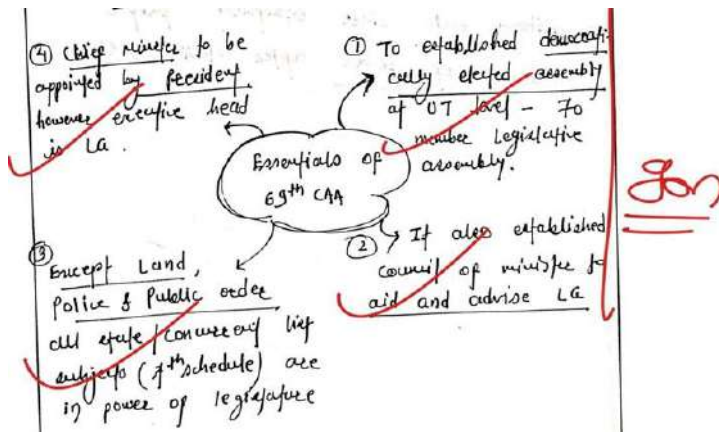
Q2. Analyze the status of urban local bodies in India with regard to functional devolution. What reforms are necessary to make them more effective agents of urban governance?

### Value Addition for Unit 3

#### In news

- Recently, Tamil Nadu opposed the Centre's PM SHRI scheme, asserting its constitutional right to frame state-specific education policies under Entry 25 of the Concurrent List, underscoring the state's role in education governance.
- Recently, Karnataka CM criticized the Centre for unfair tax devolution, alleging coercive federalism that undermines state autonomy in financial relations.
- Recently, the imposition of President's Rule in Manipur underscored India's quasi-federal nature, with the Centre assuming control during emergencies, as per Article 356
- Recently, the Supreme Court urged the Centre to expedite the resolution of the Cauvery water dispute, emphasizing the need for a permanent platform for inter-state river governance.
- Recently, Panchayati Raj Secretary Raj Vivek Bharadwaj emphasized that grassroots development through PRIs reflects patriotism, highlighting their role in implementing government schemes for sustainable rural progress
- Recently, the "**Sashakt Panchayat-Netri Abhiyan**" was launched to empower women elected representatives in PRIs, introducing training modules to address gender-based violence and enhance leadership, tackling issues of proxy leadership

## Illustration / Diagram



## Acronym

### 1. FEDERAL :

- **F – Functional Division of Powers**
  - Union, State, Concurrent Lists; Article 245–263
- **E – Evolving Nature of Federalism**
  - From cooperative to competitive; post-GST, NITI Aayog
- **D – Devolution to Local Bodies**
  - 73rd & 74th Amendments; functional, financial, and administrative devolution
- **E – Equity in Resource Allocation**
  - Finance Commission, vertical and horizontal imbalances
- **R – Regional Demands & Asymmetry**
  - Special category status, Article 370, NE states
- **A – Administrative Challenges**
  - Overlap, bureaucratic delays, lack of capacity at grassroots
- **L – Legislative and Political Issues**
  - Central overreach, misuse of Article 356, role of Governor

### 2. "BALANCE"

(Reflects the essence of federalism: balance of power)

- **B – Bifurcation of Powers**
  - 7th Schedule: Union, State, Concurrent Lists
- **A – Asymmetrical Federalism**
  - Special provisions for NE, J&K (Art. 370, 371)

- **L – Local Governance**
  - Panchayats & Municipalities, decentralization post 73rd/74th Amendments
- **A – Administrative Overlap**
  - All-India Services, concurrent subjects
- **N – NITI Aayog and New Federalism**
  - Shift from Planning Commission, collaborative approach
- **C – Cooperative and Competitive Federalism**
  - Recent trends: GST, health sector, education reforms
- **E – Economic Devolution**
  - Finance Commission, resource allocation, GST Council

## Ready - Made templates

### Introductions / Conclusions

#### **Federalism**

- Federalism is a system of government wherein power is divided between a central authority and its constituent political units. It is a basic structure of the Indian Constitution that provides for a quasi-federal state.
- Federalism in India has turned into a major source of legitimization and democratization of power in India.
- "Federalism is no longer the fault line of Centre–State relations but the definition of a new partnership of Team India." – PM Modi

#### **Cooperative Federalism**

- Cooperative federalism in India reflects an ideology of a stable relationship between the Centre and other units. It guides all the governing bodies to come forward and cooperate to resolve common social, political, economic, and civic problems.
- Cooperative federalism is key to enhancing democratic choices and

governance quality. Therefore, the Centre and State governments must work together, using forums like the Inter-State Councils to devise common plans and strategies to combat federal issues.

### **Asymmetric Federalism**

- Asymmetric federalism means federalism based on unequal powers and relationships in political, administrative, and fiscal arrangements between the units constituting a federation.
- Asymmetric federalism is an integral part of India's complex and layered federal structure. It provides a unique framework to deal with India's incredible diversity and varied regional requirements.

### **Inter-State Relations**

- The successful functioning of the Indian federal system not only depends upon Centre-State relations, but upon inter-state relations too.
- Harmonious inter-state relations are essential for maintaining national unity, crucial for maintaining law and order, encouraging economic development, and ensuring the smooth functioning of the country as a single entity. Therefore, cooperation from states on platforms like the Inter-State Council, Zonal Councils, etc. is a prerequisite to ensure harmonious interstate relations.

### **Emergency Provisions**

- In Part XVIII, the Indian Constitution provides for emergency provisions to safeguard the sovereignty, unity, integrity, and security of the country. It converts the federal structure into a unitary one to meet any abnormal situation effectively.
- (Use specific Articles 352, 356, 360 in the introduction itself as per the demand of the question.)
- They act as a safety valve and thus help in the maintenance of the Constitution.
- Considering their misuse, the government in power should use them very sparingly. As Dr. Ambedkar

expected, these provisions should remain dead letters. Rational use of these provisions is necessary to protect state autonomy and follow the spirit of the Constitution.

Navigating the Syllabus: What You Need to Know

- **Separation of Powers between various organs**
  - Concept and objective of Doctrine of Separation of Power
  - Benefits of Separation of Power
  - Examples and Provisions in the Constitution
  - Exceptions to Separation of Power (Checks and Balances)
  - Evaluation of Doctrine of Separation of Powers

UPSC Previous Year Questions

Question	Nature of Question	Core Demand
Explain the reasons for the growth of public interest litigation in India. As a result of it, has the Indian Supreme Court emerged as the world’s most powerful judiciary? (2024)	PIL + Judicial Power	State reasons for rise of PILs and assess SC's global judicial stature.
Constitutionally guaranteed judicial independence is a prerequisite of democracy. Comment. (2023)	Judicial Independence + Democracy	Comment on importance of judicial independence for democratic functioning.
Judicial legislation is antithetical to separation of powers. Justify public interest petitions seeking executive guidelines. (2020)	Separation of Powers + PIL	Justify why PILs seek guidelines despite separation of powers doctrine.
Constitution of India prefers checks and balances over strict separation of powers. Explain. (2019)	Checks and Balances + Separation of Powers	Explain how Indian Constitution favors checks and balances framework.
Ordinances raise concern on separation of powers. Analyze SC decisions and whether power should be repealed. (2015)	Ordinance Power + Judicial Review	Analyze SC rulings on ordinances and debate repeal of ordinance power.
SC checks Parliament’s arbitrary power to amend Constitution. Critically discuss. (2013)	Amendment Power + Judicial Review	Critically assess SC’s role in restricting arbitrary constitutional amendments.

## Introduction

The Separation of Powers is a cornerstone of democratic governance, **dividing state authority among the Legislature, Executive, and Judiciary to prevent concentration of power.** In India, while not explicitly stated, this doctrine is embedded in the Constitution through distinct roles, checks, and balances, adopting a **flexible model of separation of powers** tailored to its parliamentary system. This flexibility fosters cooperation among organs while safeguarding the rule of law and citizen rights.

## Constitutional Provisions Regarding Separation of Powers

### A. Roles and Powers of the Three Organs

- **Legislature:**
  - **Article 245:** Grants Parliament and State Legislatures the power to make laws within their respective jurisdictions, subject to the Constitution.
  - **Article 246:** Defines the distribution of legislative powers between the Union (List I), States (List II), and Concurrent subjects (List III) in the Seventh Schedule.
  - **Articles 107-108:** Outline the procedure for the passage of bills in Parliament, including ordinary bills, money bills, and financial bills, ensuring legislative authority in law-making.
- **Executive:**
  - **Article 53:** Vests the executive power of the Union in the President, who exercises it directly or through officers subordinate to him.
  - **Article 73:** Specifies the extent of the Union's executive power, which aligns with Parliament's legislative authority, covering matters in the Union List and other specified areas.
  - **Article 74:** Mandates that the President act on the aid and advice of the Council of Ministers, headed by the Prime Minister, making the Executive accountable to the Legislature.
- **Judiciary:**
  - **Article 124:** Establishes the Supreme Court of India, defining its composition, appointment of judges, and jurisdiction.

- **Article 214:** Provides for the establishment of High Courts in states, outlining their structure and powers.
- **Article 32:** Empowers the Supreme Court to issue writs for the enforcement of Fundamental Rights, making it a guardian of constitutional rights.
- **Article 226:** Grants High Courts the power to issue writs for Fundamental Rights and other purposes, reinforcing judicial oversight at the state level.
- **Role:** The Judiciary interprets laws, protects Fundamental Rights, and reviews the constitutionality of legislative and executive actions through judicial review.

### B. Key Articles Ensuring Separation of Powers

- **Article 50:** Directs the State to take steps to separate the Judiciary from the Executive in public services.
- **Articles 121 and 211:**
  - **Article 121:** Prohibits the discussion of the conduct of Supreme Court or High Court judges in Parliament, except during impeachment proceedings.
  - **Article 211:** Imposes a similar restriction on State Legislatures regarding judicial conduct.
- **Articles 122 and 212:**
  - **Article 122:** Prevents courts from inquiring into the proceedings of Parliament, granting immunity to legislative processes.
  - **Article 212:** Extends similar protection to State Legislatures, safeguarding their internal proceedings from judicial scrutiny.

### C. Checks and Balances

- **Judicial Review (Article 13):** Empowers the Judiciary to review and strike down laws or executive actions that violate the Constitution or Fundamental Rights.
- **President's Veto Power (Article 111):** Allows the President to withhold assent to bills passed by Parliament, return them for reconsideration (except money bills), or exercise a pocket veto.
- **Impeachment of Judges (Article 124(4)):** Permits Parliament to remove Supreme Court or High Court judges for proven misbehavior or

incapacity through a prescribed impeachment process.

## Functional Overlaps Between Various Organs of Government :

### 1. Functional Overlap Between Judiciary and Legislature in India

- **Judicial Review of Legislation:**
  - Judiciary examines the constitutional validity of laws passed by the Legislature, potentially striking them down.
  - **Example:**
    - In **Kesavananda Bharati vs. State of Kerala (1973)**, the Supreme Court established the Basic Structure Doctrine, limiting Parliament's power to amend the Constitution if it violates core principles.
- **Judicial Law-Making through Public Interest Litigations (PILs):**
  - Judiciary sometimes creates guidelines or directives in the absence of legislation, effectively performing a legislative role.
  - **Example:**
    - In **Vishaka vs. State of Rajasthan (1997)**, the Supreme Court issued guidelines on workplace sexual harassment, filling a legislative vacuum until the Sexual Harassment of Women at Workplace Act, 2013 was enacted.
    - **Hussainara Khatoon vs. State of Bihar (1979)** led to judicial directives on undertrial prisoners' rights, influencing prison reforms.
- **Legislative Privileges vs. Judicial Scrutiny:**
  - Legislature enjoys privileges (e.g., freedom of speech in Parliament under Article 105), but the Judiciary can review actions violating fundamental rights or constitutional norms.
  - **Example:**
    - In **Kihoto Hollohan vs. Zachillhu (1992)**, the Supreme Court upheld judicial review of decisions under the Tenth Schedule (anti-defection law), despite legislative objections claiming privilege.
    - **Raja Ram Pal vs. Speaker, Lok Sabha (2007)** clarified that legislative privileges are subject to judicial scrutiny if they infringe fundamental rights.

### ● **Judiciary's Role in Policy Matters:**

- Judiciary sometimes influences policy through orders in PILs or constitutional interpretations, encroaching on legislative policy-making.
- **Example:**
  - In **MC Mehta vs. Union of India (1986 onwards)**, the Supreme Court issued environmental protection orders (e.g., CNG in Delhi), effectively shaping public policy.
  - **Common Cause vs. Union of India (2018)** on euthanasia led to judicial guidelines on passive euthanasia, prompting legislative debate.

### ● **Impeachment of Judges:**

- Legislature has the power to impeach judges (Article 124(4)), creating a functional overlap where it exercises authority over the Judiciary.
- **Example:** The attempted impeachment of Justice V. Ramaswami (1993) failed in Parliament, highlighting legislative checks on judicial conduct.

### **Challenges Arising from Overlap:**

- **Judicial Overreach:** Excessive judicial intervention (e.g., striking down NJAC in Supreme Court Advocates-on-Record Association vs. Union of India, 2015) can undermine legislative authority.
- **Legislative Resistance:** Parliament may perceive judicial review as encroachment, leading to tensions (e.g., 42nd Amendment during Emergency to curb judicial power).
- **Balance of Power:** Overlaps risk tilting the balance, with either organ dominating (e.g., judicial activism vs. legislative supremacy).
- **Public Perception:** Frequent overlaps create confusion about institutional roles, affecting democratic trust.
- **Governance Delays:** Judicial interventions in policy matters (e.g., environmental orders in MC Mehta cases) may delay legislative processes, creating implementation bottlenecks.
- **Erosion of Institutional Credibility:** Repeated conflicts, such as the collegium vs. NJAC debate, may weaken public confidence in both Judiciary and Legislature as impartial institutions.

## Way Forward:

- **Judicial Restraint:** The Judiciary should exercise restraint, limiting interventions to constitutional violations, respecting the Legislature's policy-making domain (e.g., avoiding expansive PIL directives).
- **Legislative Proactivity:** Parliament must address social and legal gaps promptly through timely legislation to reduce reliance on judicial law-making (e.g., enacting data protection laws post-Puttaswamy).
- **Institutional Dialogue:** Foster regular consultations between Judiciary and Legislature to clarify roles, resolve tensions, and align on constitutional goals (e.g., reforming judicial appointments).
- **Transparent Mechanisms:** Establish clear, accountable processes for judicial appointments and legislative privileges to minimize perceptions of overreach or resistance (e.g., revisiting the collegium system).
- **Public Awareness:** Educate citizens on India's flexible Separation of Powers model to enhance understanding of institutional overlaps and strengthen democratic trust.

## 2.Functional Overlap Between Judiciary and Executive in India

- **Judicial Review of Executive Actions:**
  - Judiciary examines the constitutionality of executive decisions, policies, and orders, ensuring they align with the Constitution and laws.
  - **Example:**
    - In S.R. Bommai vs. Union of India (1994), the Supreme Court reviewed the misuse of Article 356 (President's Rule), setting guidelines to curb executive overreach.
    - In State of Tamil Nadu vs. Governor of Tamil Nadu (2025), the Supreme Court ruled that the Tamil Nadu Governor's prolonged delay in assenting to 10 state bills and reserving them for the President was "illegal" and "erroneous," violating Article 200, thus subjecting executive actions to judicial scrutiny.

- **Judicial Directions in Policy Implementation:**
  - Judiciary issues directives to the Executive to enforce laws or address implementation gaps, effectively guiding executive action.
  - **Example:**
    - In PUCL vs. Union of India (2003), the Supreme Court directed the Executive to implement the right to food through mid-day meal schemes.
    - Vineet Narain vs. Union of India (1998) led to judicial guidelines on CBI autonomy, influencing executive reforms in investigative agencies.
- **Judicial Appointments and Executive Influence:**
  - Executive plays a role in judicial appointments (e.g., consultation with the President under Article 124), while the Judiciary asserts primacy through the collegium system.
  - **Example:**
    - The NJAC Case (Supreme Court Advocates-on-Record Association vs. Union of India, 2015) struck down the National Judicial Appointments Commission, rejecting executive involvement in judicial appointments.
    - Second Judges Case (1993) established the collegium system, limiting executive influence but sparking debates on accountability.
- **Judiciary's Role in Executive Accountability:**
  - Judiciary holds the Executive accountable through writ petitions (Articles 32, 226), reviewing arbitrary actions or inaction.
  - **Example:**
    - In L. Chandra Kumar vs. Union of India (1997), the Supreme Court upheld judicial review of administrative tribunal decisions, ensuring executive accountability.
    - Parmanand Katara vs. Union of India (1989) directed the Executive to ensure emergency medical care, addressing administrative lapses.
- **Executive's Role in Judicial Administration:**
  - Executive influences judicial functioning through budgetary allocations,

infrastructure support, and appointments to tribunals or subordinate courts.

○ **Example:**

- The Tribunal Reforms Act, 2021 increased executive control over tribunal appointments, raising concerns about judicial independence.

### Challenges Arising from Overlap:

- **Judicial Overreach:** Excessive judicial intervention in executive functions (e.g., Vineet Narain guidelines on CBI) can undermine administrative autonomy.
- **Executive Resistance:** Executive may resist judicial directives, delaying implementation (e.g., delays in police reforms post-Prakash Singh vs. Union of India, 2006).
- **Balance of Power:** Overlaps risk creating friction, with either organ asserting dominance (e.g., collegium vs. NJAC conflict).
- **Public Perception:** Frequent judicial-executive disputes (e.g., tribunal reforms) confuse citizens about institutional roles, eroding trust.
- **Governance Delays:** Judicial orders requiring executive action (e.g., environmental compliance in MC Mehta cases) may slow down administrative processes.
- **Erosion of Institutional Credibility:** Ongoing tensions, such as the NJAC controversy, may weaken public confidence in both Judiciary and Executive as impartial institutions.

### Way Forward:

- **Judicial Restraint:** Judiciary should limit interventions to constitutional violations, respecting the Executive's administrative domain (e.g., avoiding detailed policy directives).
- **Executive Compliance:** Executive must promptly implement judicial orders to uphold the rule of law (e.g., expediting police reforms post-Prakash Singh).
- **Institutional Dialogue:** Regular consultations between Judiciary and Executive to align on governance goals and reduce conflicts (e.g., on tribunal reforms).
- **Transparent Mechanisms:** Establish clear, accountable processes for judicial

appointments and tribunal administration to balance independence and executive input (e.g., revisiting NJAC framework).

- **Public Awareness:** Educate citizens on India's flexible Separation of Powers model to foster understanding of judicial-executive overlaps and strengthen democratic trust.

### 3. Functional Overlap Between Executive and Legislature in India

- **Executive's Role in Law-Making (Ordinance-Making Power):**
  - The Executive can promulgate ordinances under Article 123 (President) or Article 213 (Governor) when the Legislature is not in session, effectively performing a legislative function.
  - **Example:** The Farm Laws Ordinance (2020) was issued by the Executive before parliamentary approval, later repealed due to protests, highlighting ordinance misuse.
  - D.C. Wadhwa vs. State of Bihar (1987) ruled against repetitive ordinances, emphasizing they should not replace legislative processes.
- **Delegated Legislation:**
  - Legislature delegates rule-making powers to the Executive to implement laws, allowing the Executive to create detailed regulations.
  - **Example:** The Executive issued rules under the Information Technology Act, 2000 to regulate digital platforms, shaping policy implementation.
  - Hamdard Dawakhana vs. Union of India (1960) upheld delegated legislation but stressed it must align with the parent law.
- **Legislative Oversight of Executive:**
  - Legislature exercises control over the Executive through mechanisms like Question Hour, no-confidence motions, and budget approval, creating a functional overlap.
  - **Example:** The Lok Sabha's rejection of the Finance Bill in 2019 forced the Executive to revise budgetary proposals, showcasing legislative checks.

- Ram Jawaya Kapur vs. State of Punjab (1955) clarified that the Executive is accountable to the Legislature in a parliamentary system.
- **Executive Influence in Legislative Process:**
  - The Executive (Council of Ministers) initiates most bills, controls parliamentary agenda, and influences law-making through its majority in the Legislature.
  - **Example:** The Aadhaar Act, 2016 was introduced as a Money Bill by the Executive, bypassing Rajya Sabha's amendments, raising procedural concerns.
  - K.S. Puttaswamy vs. Union of India (2017) indirectly led to legislative amendments in the Aadhaar Act, prompted by executive response to judicial rulings.
- **Dissolution and Summoning of Legislature:**
  - The Executive (President on the advice of the Council of Ministers) can summon, prorogue, or dissolve the Legislature (Article 85), influencing its functioning.
  - **Example:** The dissolution of the 16th Lok Sabha in 2019 by the President, on the Executive's advice, paved the way for fresh elections.

### Challenges Arising from Overlap:

- **Executive Dominance:** Overuse of ordinances or Money Bills (e.g., Aadhaar Act) undermines legislative deliberation, weakening parliamentary authority.
- **Legislative Weakness:** Weak opposition or anti-defection laws (Tenth Schedule) limit effective scrutiny, allowing executive control over the Legislature.
- **Balance of Power:** Overlaps risk tilting power toward the Executive, especially in a majority government (e.g., frequent ordinances).
- **Public Perception:** Excessive executive influence in law-making (e.g., farm laws controversy) creates distrust in democratic processes.
- **Governance Delays:** Legislative resistance to executive proposals (e.g., stalled GST Bill debates) can delay critical reforms.
- **Erosion of Institutional Credibility:** Repeated conflicts, such as ordinance controversies,

weaken public confidence in both Executive and Legislature as democratic institutions.

### Way Forward:

- **Executive Restraint:** Limit ordinance use to emergencies and ensure prompt legislative approval to respect parliamentary authority (e.g., adhering to D.C. Wadhwa guidelines).
- **Legislative Strengthening:** Enhance parliamentary committees and opposition roles to improve scrutiny of executive actions (e.g., robust Finance Bill debates).
- **Institutional Dialogue:** Foster collaboration between Executive and Legislature to align on legislative priorities and reduce conflicts (e.g., on Money Bill classifications).
- **Transparent Mechanisms:** Establish clear guidelines for delegated legislation and Money Bills to prevent executive overreach (e.g., revisiting Aadhaar Act processes).
- **Public Awareness:** Educate citizens on India's flexible Separation of Powers model to enhance understanding of executive-legislative overlaps and strengthen democratic trust.

### System of Checks & Balance

<b>System of Checks and Balance</b>	<b>Legislative Control</b>	<b>On Executive</b>	<ul style="list-style-type: none"> <li>● No Confidence Motion</li> <li>● Question Hour</li> <li>● Zero Hour</li> </ul>
		<b>On Judiciary</b>	<ul style="list-style-type: none"> <li>● Impeachment and Removal of Judges</li> <li>● Power to amend the laws declared ultra vires by the Court</li> </ul>
	<b>Executive Control</b>	<b>On Legislature</b>	<ul style="list-style-type: none"> <li>● Delegated Legislation</li> <li>● Rule making for regulating respective procedures</li> </ul>
		<b>On Judiciary</b>	<ul style="list-style-type: none"> <li>● Appointment and Transfer of Judges</li> <li>● Pardoning power of President and Governor</li> </ul>

Judicial Control	On Executive	<ul style="list-style-type: none"> <li>Judicial Review of Executive Actions</li> <li>Giving guidelines to Executive Authorities</li> <li>To bring about the complete justice Supreme Court can functions as an Executive in order (Article 142)</li> </ul>
	On Legislature	<ul style="list-style-type: none"> <li>Judicial Review of Legislative Actions</li> <li>Protection of Basic Structure Doctrine</li> <li>Striking down Unconstitutional Law</li> </ul>

## Contemporary issues Associated with Separation of Powers :

### 1. Judicial Overreach:

**Definition :** Judiciary exceeding its constitutional role by encroaching on legislative or executive functions, often through expansive interpretations or Article 142 orders.

#### Tamil Nadu Governor Case (2025):

- **Context :** In State of Tamil Nadu vs. Governor of Tamil Nadu (2025), the Supreme Court deemed the Governor's delay in assenting to 10 bills "illegal," using Article 142 to declare them assent on November 18, 2023, and setting a three-month deadline for Presidential decisions.
- **Overreach:** Critics argue the Court's bypassing of the President's veto (Article 201) and imposition of timelines rewrote Article 200's procedural framework, a legislative function under Article 368.
- **Implication:** Protects legislative will but risks judicial supremacy, prompting calls for review petitions and Vice President Dhankhar's critique of judges as a "super-government."

#### Waqf Act Conflict (2025):

- **Context :** The Supreme Court's hearings on the Waqf (Amendment) Act, 2025 question

provisions like non-Muslim Waqf Board members, invoking Article 26 (religious freedom).

- **Overreach:** CJI Sanjiv Khanna's analogy to Hindu endowment boards is seen as preempting legislative intent, potentially undermining Parliament's authority under Concurrent List (Entry 28).
- **Implication:** Safeguards minority rights but fuels legislative pushback, with Dhankhar labeling judges a "super parliament," highlighting tensions over parliamentary sovereignty.

#### Collegium System Debate:

- **Context:** The collegium's primacy in judicial appointments, reaffirmed in the NJAC Case (2015), faces criticism for opacity and nepotism, with the Judiciary rejecting executive input.
- **Overreach:** Threats to invoke Article 142 for delayed appointments (e.g., 2019-2025 delays) encroach on executive discretion under Article 124, escalating tensions.
- **Implication:** Ensures judicial independence but erodes public trust due to lack of transparency, necessitating reforms for accountability.

**Critical Analysis:** Judicial overreach, while protecting constitutional values, risks transforming the Judiciary into a policy-making body, as warned by Dr. Ambedkar, requiring restraint to maintain institutional balance.

### 2. Executive Overreach:

**Definition:** Executive exceeding its constitutional mandate by bypassing legislative or judicial checks, often through ordinances or administrative actions.

#### Impact of Ordinances:

- **Context :** Frequent ordinances under Article 123 (e.g., Tribunals Reforms Ordinance, 2021) bypass parliamentary scrutiny, undermining legislative authority.
- **Overreach:** The Farm Laws Ordinances (2020) were enacted without debate, leading to protests and repeal, violating D.C. Wadhwa vs. State of Bihar (1987) guidelines against repetitive ordinances.
- **Implication:** Expedites governance but erodes democratic trust, inviting judicial review (e.g.,

Krishna Kumar Singh vs. State of Bihar, 2017) and public backlash.

### Tribunal Reforms (2021-2025):

- **Context** : The Tribunal Reforms Act, 2021 re-enacted provisions struck down in Madras Bar Association vs. Union of India (2021), enhancing executive control over tribunal appointments.
- **Overreach**: Executive-dominated nomination processes undermine tribunals' quasi-judicial independence, clashing with the Judiciary's push for a National Tribunals Commission.
- **Implication**: Centralizes administrative power but risks judicial invalidation, highlighting executive-judiciary friction over separation of powers.

### Tamil Nadu Governor Case (2025):

- **Context** : Governor R.N. Ravi's delay in assenting to 10 bills and reserving them for the President was ruled "erroneous" by the Supreme Court, reflecting executive inaction.
- **Overreach**: The Governor's inaction and President's rejection of seven bills bypassed the elected legislature's will, violating Article 200's intent.
- **Implication**: Undermines federalism, prompting judicial intervention, but the Executive's potential review petition signals resistance to judicial oversight.

**Critical Analysis:** Executive overreach, through ordinances and gubernatorial delays, centralizes power and weakens legislative checks, necessitating stricter adherence to constitutional limits to prevent authoritarian tendencies.

### 3. Legislative Overreach:

**Definition:** Legislature exceeding its constitutional authority by enacting laws that infringe on judicial or executive domains or fundamental rights.

### Waqf Act Conflict (2025):

- **Context** : The Waqf (Amendment) Act, 2025, passed on April 5, 2025, expands Union control over Waqf properties, requiring non-Muslim Waqf Board members and five years of Islamic practice for Waqf creation.

- **Overreach**: Petitions argue the Act violates Article 26 (freedom to manage religious affairs) and federalism, as Waqf is a state subject (Concurrent List, Entry 28), encroaching on minority rights and state autonomy.
- **Implication**: Strengthens central oversight but invites judicial scrutiny, with the Supreme Court's April 17, 2025, hearing signaling potential invalidation, escalating judiciary-legislature tensions.

### Tribunal Reforms Act (2021):

- **Context** : The Act's provisions for executive-dominated tribunal appointments were seen as legislative encroachment on judicial independence, previously struck down in Madras Bar Association (2021).
- **Overreach**: By re-enacting unconstitutional provisions, Parliament undermined judicial rulings, challenging the Judiciary's role as constitutional guardian.
- **Implication**: Risks judicial invalidation, as seen in ongoing 2025 hearings, highlighting legislative attempts to assert dominance over quasi-judicial bodies.

**Critical Analysis:** Legislative overreach, as in the Waqf Act and tribunal reforms, reflects Parliament's regulatory ambitions but risks violating constitutional checks and minority protections, necessitating judicial review and federal dialogue to balance powers.

**Keywords** : Checks and Balances, Judicial Overreach, Executive Overreach, Legislative Overreach, Accountability Mechanisms, Constitutional Morality, Sarpanch Pati Syndrome, State Autonomy, Institutional Dialogue

### Mains Practice Question :

Q1.How does the system of checks and balances operate among the three organs of government in India? Illustrate with recent examples.

Q2. Judicial activism and overreach are often seen as threats to the doctrine of separation of powers. Critically evaluate.

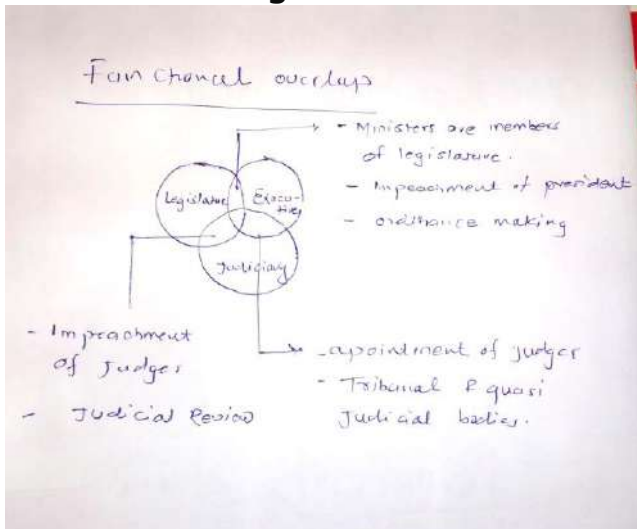
### Value Addition for unit 4

#### In news

- Recently, the Supreme Court questioned the Centre's delay in notifying state Bills under Article 200, emphasizing the judiciary's role in upholding separation of powers by scrutinizing executive inaction.
- Recently, the Supreme Court's condemnation of bulldozer demolitions as executive overreach cited Article 142, showcasing the judiciary's power to enforce constitutional limits on executive actions, a key example of separation of powers.
- Recently, the Supreme Court criticized the Centre for delaying the appointment of judges recommended by the Collegium, stressing that Article 50 mandates an independent judiciary to maintain the separation of powers from the executive.

- ensure liberty and accountability
- O – Organs of Government**
  - Legislature, Executive, Judiciary – their roles and functional areas
- W – What the Constitution Says**
  - Articles 50, 121, 211, 361, judicial pronouncements (e.g., Kesavananda, Indira Nehru Gandhi case)
- E – Exceptions & Checks and Balances**
  - Judicial review, ordinances by the executive, executive's role in law-making, legislature in removal of judges
- R – Real-World Applications & Issues**
  - Judicial activism, legislative overreach, executive dominance in Parliament
- S – Strengths and Evaluation**
  - Ensures accountability, avoids abuse of power, but not absolute separation; Indian model is **"functional" not rigid**

#### Illustration / Diagram



#### Acronym

##### "POWERS"

This can be your mental map for answer writing:

- P – Purpose of the Doctrine**
  - Prevent concentration of power,

#### Ready - Made templates

##### Checks & Balance

System of Checks and Balance	Legislative Control	On Executive	<ul style="list-style-type: none"> <li>No Confidence Motion</li> <li>Question Hour</li> <li>Zero Hour</li> </ul>
		On Judiciary	<ul style="list-style-type: none"> <li>Impeachment and Removal of Judges</li> <li>Power to amend the laws declared ultra vires by the Court</li> </ul>

	Executive Control	On Legislature	<ul style="list-style-type: none"> <li>• Delegate d Legislati on</li> <li>• Rule making for regulatin g respectiv e procedur es</li> </ul>
		On Judiciary	<ul style="list-style-type: none"> <li>• Appoint ment and Transfer of Judges</li> <li>• Pardonin g power of Presiden t and Governor</li> </ul>
	Judicial Control	On Executive	<ul style="list-style-type: none"> <li>• Judicial Review of Executive Actions</li> <li>• Giving guideline s to Executive Authoriti es</li> <li>• To bring about the complete justice Supreme Court can functions as an Executive in order (Article 142)</li> </ul>

		On Legislature	<ul style="list-style-type: none"> <li>• Judicial Review of Legislativ e Actions</li> <li>• Protectio n of Basic Structure Doctrine</li> <li>• Striking down Unconsti tutional Law</li> </ul>
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## Introduction / Conclusion

### Introduction Template

- **Option 1 (Constitutional Basis):**

- The doctrine of separation of powers, though not explicitly mentioned in the Indian Constitution, is a foundational principle embedded in its structure. It ensures that the three organs of the State—Legislature, Executive, and Judiciary—function independently within their defined domains, promoting checks and balances essential for democratic governance.

- **Option 2 (Philosophical Approach):**

- Inspired by Montesquieu's theory, the separation of powers aims to prevent the concentration of authority and uphold individual liberty by distributing state functions among different organs. In the Indian context, it is implemented through a nuanced and pragmatic framework ensuring harmony and accountability among the organs.

### Conclusion Template

- **Option 1 (Balanced Functioning):**

- While a complete separation of powers is neither feasible nor

practiced in India, the functional separation along with institutional checks and balances is vital to preserve constitutional morality and prevent authoritarian tendencies. Strengthening this balance is essential for a robust democracy.

- **Option 2 (Way Forward):**

- To uphold the spirit of the Constitution, it is imperative that each organ respects the domain of the other while ensuring accountability and transparency. Strengthening inter-institutional cooperation and maintaining mutual respect is the way forward for an effective democratic system.

## Navigating the Syllabus: What You Need to Know

**Structure, Organization and Functioning of the Executive and the Judiciary;  
Ministries and Departments of the Government****Executive**

- **President**
  - Constitutional Position of President
  - Election
- **Powers and Functions**
  - Executive Powers
  - Legislative Powers
  - Financial Powers
  - Judicial Powers
  - Diplomatic Powers
  - Military Powers
  - Emergency Power
  - Veto Powers
  - Ordinance Making Power
  - Pardoning Power
- **Governor of State**
  - Constitutional Position
  - Appointment
  - Powers and Functions of Governor
  - Comparing Powers of the President and the Governor
  - Issues associated with Governor's office
- **Prime Minister**
  - Appointment
  - Powers and Functions
  - Coalition Government: Benefits and Drawbacks
- **Central Council of Ministers**
  - Constitutional Provisions
  - Individual and Collective Responsibility
  - Comparison between Council of Ministers and Cabinet
  - Role of Cabinet
  - Kitchen Cabinet and Small Cabinet: Benefit and Drawbacks

**Judiciary**

- **Supreme Court**
  - Organisation, Appointment and Removal
  - Jurisdiction and Powers
- **Judicial Review**
  - Meaning
  - Importance
  - Scope and Constitutional Provisions
  - Ninth Schedule and Judicial Review
- **Judicial Activism**
  - Meaning

- Importance
- Issues Associated
- Judicial Activism vs Overreach
- Judicial Activism vs Judicial Restraint
- **Public Interest Litigation**
- **High Court**
  - Organisation, Appointment, Transfer and Removal
  - Jurisdiction and Powers
- **Scope of Judicial Review**
- **Independence of Judiciary and its significance**
- **Judicial Accountability**
- **Issues Associated with Pressure Groups, Formal/Informal Associations and Their Role in the Polity**
  - Concept and Meaning
  - Comparison between Formal/Informal Associations and Civil Society
  - Characteristics, Importance, Functions, Role of Formal/Informal Associations in
  - Indian Democracy
  - Limitations, Issues, Evaluation
  - Ways to Improve the Participation of Formal/Informal Associations

### UPSC Previous Year Questions

Question	Nature of Question	Core Demand
The growth of cabinet system has practically resulted in the marginalisation of the parliamentary supremacy. Elucidate. (2024)	Cabinet System + Parliamentary Accountability	Explain how cabinet dominance affects parliamentary supremacy.
Explain the reasons for the growth of public interest litigation in India. Has the SC emerged as world's most powerful judiciary? (2024)	PIL + Judicial Power	State reasons for PIL growth and assess SC's global stature.
Constitutionalization of environmental problems by SC — discuss with case laws. (2022)	Judiciary + Environmental Jurisprudence	Discuss SC's role in environment protection with case examples.
Pressure Groups in India — how do business associations influence public policy? (2021)	Pressure Groups + Policy Influence	Explain how business groups impact public policy in India.
Need for greater women representation in higher judiciary for diversity and equity. (2021)	Judiciary + Gender Diversity	Discuss desirability of more women judges for judicial inclusiveness.
Methods used by farmers' organizations to influence policy-makers — effectiveness. (2019)	Farmer Movements + Pressure Methods	Describe methods and assess their effectiveness in

		influencing policy.
Attorney General as chief legal adviser of the Government of India — discuss. (2019)	Constitutional Post + Legal Advisory Role	Discuss role, powers and responsibilities of Attorney General.
Can SC's 2018 judgment resolve Delhi Govt vs LG tussle? Examine. (2018)	SC Verdict + Federal Conflict	Examine if SC ruling addressed LG vs Delhi Govt conflict.
Do tribunals curtail ordinary courts' jurisdiction? Discuss constitutional validity. (2018)	Tribunals + Judicial Competence	Assess tribunal structure and its impact on regular courts.
Critically examine SC's judgment on NJAC Act, 2014 and judicial appointments. (2017)	Judicial Independence + NJAC	Critically evaluate SC stand on NJAC and judicial appointments.
How do pressure groups influence political process? Are informal groups more powerful? (2017)	Pressure Politics + Informal Influence	Compare influence of informal vs formal pressure groups.
Simultaneous elections — reduce election cost but also affect accountability? Discuss. (2017)	Electoral Reform + Accountability	Discuss pros and cons of simultaneous elections in India.
Indian party system in transition — contradictions and paradoxes. Discuss. (2016)	Party System + Political Trends	Analyze evolving nature of India's party system.
Khap Panchayats — extra-constitutional actions and human rights. Legislative, executive, judicial response. (2015)	Khap Panchayats + Constitutional Governance	Critically assess institutional response to Khap Panchayat issues.
Arbitration Act 1996 amended by Ordinance — what changes? Impact on dispute resolution. (2015)	Legal Reform + Dispute Resolution	Discuss amendments and their effectiveness in improving justice delivery.
President's delay in commuting death sentence — should there be a time limit? Analyze. (2014)	Presidential Power + Justice Delay	Analyze arguments for specifying time limit in clemency cases.
Cabinet size and governance efficacy — discuss the inverse relation. (2014)	Executive Size + Governance	Discuss how cabinet size impacts government functioning.
Pressure group politics as informal face — structure and functioning in India. (2013)	Pressure Groups + Political Role	Assess how pressure groups operate and influence Indian politics.

## The President of India

### Introduction

The Union executive consists of the President, the Vice- President, the Prime Minister, the council of ministers and the attorney general of India. The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

### Constitutional Provisions

- **Article 52:** Establishes the office of the President of India.
- **Article 53:** Vests the executive power of the Union in the President.
- **Article 54:** Specifies that the President is elected by an electoral college consisting of:
  - Elected members of both Houses of Parliament.
  - Elected members of the Legislative Assemblies of the States.
- **Article 55:** Outlines the manner of election of the President.
- **Article 61:** Details the procedure for the impeachment of the President.
- **Article 123:** Grants the President ordinance-making power.

### Election Process

**The President is elected indirectly by an electoral college, which includes:**

- Elected members of both Houses of Parliament.
- Elected members of the Legislative Assemblies of the States.
- Elected members of the Legislative Assemblies of the Union Territories of Delhi and Puducherry.

### Exclusions from Electoral College

- Nominated members of both Houses of Parliament.
- Nominated members of State Legislative Assemblies.
- Members (elected and nominated) of State Legislative Councils (in states with bicameral legislatures).

- Nominated members of the Legislative Assemblies of Delhi and Puducherry.

## Powers and Functions of the President

### 1. Executive Powers

- **Rule-Making Authority:** Establishes rules for authenticating official documents and streamlining government administration, including task allocation among ministers (Article 77).
- **Appointments:** Appoints the Prime Minister, other ministers, and key officials (Article 75).
- **Information and Investigations:** Seeks information from ministers and initiates investigations (Article 78).
- **Union Territories:** Appoints administrators for Union Territories (Article 239).
- **Scheduled/Tribal Areas:** Declares scheduled or tribal areas (Article 244).

### 2. Judicial Powers

- **Judicial Appointments:** Appoints the Chief Justice and other judges.
- **Supreme Court Consultation:** Seeks advisory opinions from the Supreme Court (Article 143).
- **Clemency:** Exercises powers of pardon, reprieve, or commutation of sentences (Article 72).

### 3. Legislative Powers

- **Parliamentary Sessions:** Summons, prorogues Parliament, and dissolves the Lok Sabha.
- **Addressing Parliament:** Addresses Parliament at the commencement of sessions (Article 87).
- **Messages to Parliament:** Sends messages to Parliament on legislative matters (Article 86).
- **Nominations and Disqualifications:** Nominates members to the Rajya Sabha and decides on disqualifications of MPs (Articles 80, 103).
- **Bills and Ordinances:** Recommends or permits certain bills and promulgates ordinances when Parliament is not in session (Articles 117, 123).

### 4. Financial Powers

- **Money Bills:** Requires prior recommendation for the introduction of money bills (Article 110).
- **Union Budget:** Oversees the presentation of the Union Budget.

- **Grants and Funds:** Recommends demands for grants, authorizes advances from the contingency fund, and facilitates the formation of the Finance Commission (Articles 113, 267, 280).

## 5. Diplomatic Powers

- **Treaties:** Negotiates treaties, subject to parliamentary approval (Article 253).
- **International Representation:** Represents India in international forums and oversees the sending/receiving of diplomats.

## 6. Military Powers

- **Supreme Commander:** Acts as the supreme commander of the Indian defense forces.
- **Appointments:** Appoints the chiefs of the Army, Navy, and Air Force.
- **War and Peace:** Declares war or peace, subject to parliamentary approval.

## 7. Emergency Powers

- **National Emergency:** Proclaims a National Emergency in cases of war, external aggression, or armed rebellion (Article 352).
- **President's Rule:** Imposes President's Rule in states during a breakdown of constitutional machinery (Articles 356, 365).
- **Financial Emergency:** Declares a Financial Emergency during severe financial crises (Article 360).

## Veto Power of the President of India Constitutional Provision

- **Article 111:** When a bill is presented to the President after being passed by both Houses of Parliament, the President may:
  - Give assent to the bill, making it law.
  - Withhold assent (exercise veto).
  - Return the bill (if not a Money Bill) to Parliament for reconsideration, with or without suggestions.
- If Parliament passes the bill again, with or without amendments, the President is constitutionally bound to give assent.

## Types of Veto Power

### 1. Absolute Veto

- The President completely withholds assent to a bill, effectively preventing it from becoming law.
- **Applicability:**
  - Primarily used for **private member's bills** or bills passed by state legislatures requiring presidential assent under **Article 201**.
  - Rarely exercised for bills passed by Parliament due to the parliamentary system's reliance on the Council of Ministers' advice.
- **Example:** In 1954, President Dr. Rajendra Prasad withheld assent to the **PEPSU Appropriation Bill** passed by the Punjab Legislative Assembly.

### 2. Qualified Veto

- A **Qualified Veto** is a type of veto power that allows the executive (such as a President) to reject a bill passed by the legislature, but with the possibility for the legislature to override the veto by a specified majority (often two-thirds or three-fourths).
- The President of India does not possess a Qualified Veto

### 3. Suspensive Veto

- The President delays the bill by neither giving assent nor returning it immediately, effectively keeping it in abeyance.
- **Usage:**
  - Often referred to as a **pocket veto**, where the President holds the bill without taking action.
  - Most relevant for bills where the Constitution does not mandate a time limit for the President to act (e.g., state bills under Article 201).
- **Example:** In 1986, President Zail Singh exercised a pocket veto by withholding action on the **Indian Post Office (Amendment) Bill** after Parliament did not accept his reconsideration suggestions.

### 4. Veto Over Money Bills

- The President has **no effective veto power** over Money Bills (Article 110).

- The President can either give assent or withhold assent but cannot return a Money Bill for reconsideration.
- In practice, withholding assent is rare, as Money Bills are introduced with the President's prior recommendation and backed by the Council of Ministers.

### Limitations on Veto Power

- **Parliamentary System:** The President is bound to act on the advice of the Council of Ministers (Article 74), limiting discretionary use of veto power.
- **Constitutional Amendment Bills:** The President cannot withhold assent to Constitutional Amendment Bills passed under Article 368, as seen in the **24th Amendment case** (1971).
- **Obligation After Reconsideration:** If Parliament repasses a bill after the President returns it, the President must assent, making the veto suspensive rather than absolute.
- **Judicial Review:** The exercise of veto power is subject to judicial scrutiny to ensure it aligns with constitutional provisions.

### Significance of Veto Power

- **Check on Hasty Legislation:** Allows the President to ensure that bills are thoroughly reviewed, preventing poorly drafted or controversial laws.
- **Safeguard for Federalism:** The President's veto over state bills (Article 201) ensures alignment with national interests.
- **Constitutional Balance:** Acts as a balancing mechanism between the executive and legislature, reinforcing democratic accountability.
- **Moral Authority:** The President can use the veto to highlight issues of public interest, as seen in cases involving freedom of expression or minority rights.

### Challenges and Criticisms

- **Limited Discretion:** The binding nature of the Council of Ministers' advice restricts the President's ability to act independently, reducing the veto to a formal power.

- **Potential for Conflict:** Disagreements between the President and the government, as seen during President Zail Singh's tenure, can lead to constitutional crises.
- **Pocket Veto Ambiguity:** The lack of a time limit for acting on certain bills creates uncertainty, potentially allowing indefinite delays.
- **Minimal Impact:** The requirement to assent after Parliament repasses a bill limits the veto's effectiveness in blocking legislation permanently.

## Ordinance Making Power of the President of India

### Constitutional Provision

#### Article 123:

- If the President is satisfied that circumstances exist necessitating immediate action, and both Houses of Parliament are not in session, the President may promulgate an ordinance.
- An ordinance has the same force and effect as a law passed by Parliament.
- The ordinance must be laid before both Houses of Parliament when they reconvene.
- It ceases to operate after **six weeks** from the reassembly of Parliament unless approved by both Houses, or if the President withdraws it earlier.
- If Parliament passes resolutions disapproving the ordinance, it ceases to have effect.

### Key Features of the Ordinance-Making Power of the President of India

- **Conditions for Promulgation:** The President can promulgate an ordinance only when both Houses of Parliament are not in session, either due to adjournment or prorogation. The President must be satisfied that circumstances necessitate immediate action, with this satisfaction being subjective but open to judicial review for mala fide intent or constitutional violations.
- **Scope:** An ordinance can cover any subject within Parliament's legislative competence, including matters in the Union and Concurrent Lists. It can amend or repeal existing laws but is prohibited from amending the Constitution.

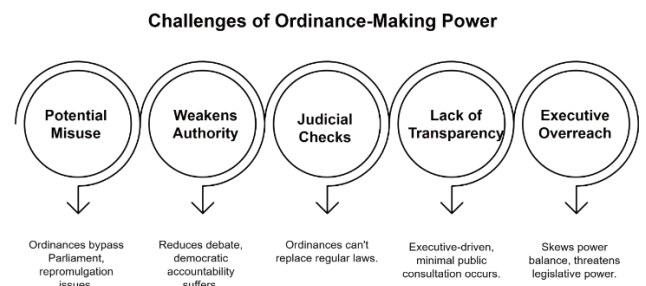
- **Duration:** An ordinance remains valid for up to six months from its promulgation, plus an additional six weeks from the reassembly of Parliament. It lapses if not replaced by a parliamentary law, disapproved, or withdrawn by the President earlier.
- **Parliamentary Approval:** Every ordinance must be presented before both Houses of Parliament when they reconvene. It can be replaced by a regular bill, and if both Houses pass resolutions disapproving it, the ordinance becomes void.
- **Repromulgation:** Repromulgating ordinances without parliamentary approval is controversial and deemed a fraud on the Constitution, as ruled by the Supreme Court in *D.C. Wadhwa vs. State of Bihar* (1987). Such practice is permissible only in exceptional circumstances.

### Limitations of the Ordinance-Making Power of the President of India

- **Judicial Review:** The President's decision to promulgate an ordinance is subject to judicial scrutiny for mala fide intent, irrelevance, or constitutional violations. In *Krishna Kumar Singh vs. State of Bihar* (2017), the Supreme Court ruled that ordinances must meet a necessity test and declared repromulgation unconstitutional.
- **Parliamentary Supremacy:** An ordinance is a temporary measure, subordinate to Parliament's legislative authority. It lapses if not approved by both Houses within six weeks of Parliament's reassembly, ensuring Parliament's primacy.
- **Constitutional Restrictions:** The ordinance-making power cannot be used to amend the Constitution. It must comply with fundamental rights and other constitutional provisions to remain valid.
- **Advice of Council of Ministers:** Under Article 74, the President acts on the advice of the Council of Ministers, rendering the ordinance-making power an executive-driven process. This limits the President's independent discretion in promulgating ordinances.

### Challenges and Criticisms of the Ordinance-Making Power of the President of India

- **Potential for Misuse:** Successive governments have been criticized for using ordinances to bypass parliamentary scrutiny, especially through repromulgation. The Bihar government's repeated repromulgation, struck down in *D.C. Wadhwa vs. State of Bihar* (1987), exemplifies this misuse.
- **Undermines Parliamentary Authority:** Frequent use of ordinances reduces Parliament's legislative role by limiting opportunities for debate and deliberation. This practice can weaken democratic accountability and parliamentary supremacy.
- **Judicial Concerns:** Courts have emphasized that ordinances are not substitutes for regular legislation and must be used sparingly. In *Krishna Kumar Singh vs. State of Bihar* (2017), the Supreme Court clarified that ordinances have no lasting effect post-expiry unless converted into law.
- **Lack of Transparency:** The ordinance-making process often lacks public consultation and transparency, as it is driven by executive discretion. This can lead to laws that may not reflect broader societal consensus or input.
- **Risk of Executive Overreach:** The power to promulgate ordinances, exercised on the advice of the Council of Ministers, can lead to excessive executive dominance. This risks upsetting the constitutional balance between the legislature and the executive.



### Pardoning Power of the President of India Constitutional Provision

- **Article 72:**
- The President has the power to grant:
  - **Pardon:** Completely absolves the convict of the offense and penalty.

- **Reprieve:** Temporarily postpones the execution of a sentence, typically a death penalty, to allow further consideration.
- **Respite:** Reduces the severity of punishment due to special circumstances, such as pregnancy or disability.
- **Remission:** Reduces the duration of the sentence without altering its nature.
- **Commutation:** Substitutes a severe punishment with a less severe one, e.g., converting a death sentence to life imprisonment.

### Key Features of the Pardoning Power of the President of India

- **Scope of Application:** The President's pardoning power applies to offenses under Union laws, including the Indian Penal Code, central statutes, and courts-martial. It holds particular importance in death penalty cases, where the President can grant pardons or commute sentences.
- **Executive Discretion:** The President exercises the pardoning power based on the advice of the Council of Ministers, making it an executive-driven process. It is used to correct judicial errors, extend mercy, or address humanitarian concerns.
- **Judicial Review:** The pardoning power is subject to limited judicial review to ensure it is not arbitrary, mala fide, or violative of constitutional principles. In *Maru Ram vs. Union of India* (1980), the Supreme Court emphasized that the power must adhere to constitutional limits.
- **No Time Limit:** There is no fixed timeline for deciding mercy petitions, often leading to delays in the process. The Supreme Court in *Shatrughan Chauhan vs. Union of India* (2014) ruled that undue delays violate Article 21, affecting the convict's right to life.
- **Comparison with Governor's Power:** The Governor's pardoning power under Article 161 is restricted to state laws and excludes death sentences. The President's authority supersedes the Governor's for Union laws and death penalty cases.

### Challenges and Criticisms

- **Potential for Political Influence:** The reliance on the Council of Ministers' advice raises concerns about political considerations influencing decisions, potentially undermining fairness.
- **Inconsistent Application:** Variations in granting pardons across cases have led to accusations of arbitrariness or favoritism.
- **Delay in Death Penalty Cases:** Prolonged delays in deciding mercy petitions cause mental agony for convicts, as highlighted in *Shatrughan Chauhan vs. Union of India* (2014).
- **Limited Scope:** The power does not extend to state laws (except death sentences), creating a disparity with the Governor's powers under Article 161.

### Notable Instances

- **Kehar Singh (1988):** President Zail Singh rejected the mercy petition of Kehar Singh, convicted in the Indira Gandhi assassination case, after extensive review.
- **Ajmal Kasab (2012):** President Pranab Mukherjee rejected the mercy petition of the 26/11 Mumbai attack convict, citing the gravity of the offense.
- **Yakub Memon (2015):** President Pranab Mukherjee rejected the mercy petition in the 1993 Mumbai blasts case, despite debates over procedural fairness.
- **Nirbhaya Case (2020):** President Ram Nath Kovind rejected mercy petitions of all four convicts, reflecting public sentiment and judicial consensus.

### Criticisms of the Office of the President in Indian Polity

- **Rubber Stamp Role:** The President is often seen as a ceremonial figurehead, bound by the Council of Ministers' advice (Article 74), with powers like ordinance-making (Article 123) and pardoning (Article 72) exercised under executive control, limiting independent authority.
- **Limited Discretionary Power:** The President's discretion, such as vetoing bills or acting in a hung Parliament, is minimal and rarely used.

independently, as seen in Zail Singh's 1986 pocket veto, rendering the office ineffective in shaping governance.

- **Potential for Political Misuse:** Appointed by the government (Article 54), the President may face pressure to align with the ruling party, risking impartiality, as seen during Fakhruddin Ali Ahmed's assent to the 1975 Emergency.
- **Irrelevance in Parliamentary Democracy:** Critics view the office as redundant, with real power vested in the Prime Minister, questioning its necessity compared to active presidential roles in systems like the U.S.
- **Delays in Decision-Making:** Delays in mercy petitions, especially in death penalty cases, violate Article 21, as ruled in *Shatrughan Chauhan vs. Union of India* (2014), harming the office's reputation.
- **Lack of Accountability:** Immunity under Article 361 shields the President from legal scrutiny, and indirect election creates a democratic disconnect, raising concerns about unchecked executive influence.
- **Partisan Conduct:** Presidents like Zail Singh and K.R. Narayanan faced accusations of bias, with actions like social activism or disputes with the government seen as overstepping constitutional boundaries.
- **Financial Burden:** The upkeep of Rashtrapati Bhavan and perks is criticized as an unjustifiable expense in a resource-constrained country, given the office's ceremonial role.

### Counterarguments

- Supporters argue the President symbolizes national unity and acts as a constitutional check through limited discretionary powers, like A.P.J. Abdul Kalam's return of the Office of Profit Bill (2006). The office's role in emergencies (Article 356) and pardoning (Article 72) ensures stability without disrupting the parliamentary system.

## Vice President of India

### Introduction

The **Vice President of India**, established under **Article 63** of the Constitution, is the second-highest constitutional office and serves as the ex-officio **Chairman of the Rajya Sabha**. The Vice President

acts as a ceremonial figure, stepping in as Acting President when the President is unavailable or the office is vacant. While the role is largely formal, it holds significance in maintaining legislative balance and constitutional continuity.

### Constitutional Provisions

- **Article 63:** There shall be a Vice President of India.
- **Article 64:** The Vice President is the ex-officio Chairman of the Rajya Sabha, presiding over its proceedings.
- **Article 65:** The Vice President acts as President in case of the President's death, resignation, removal, or absence.
- **Article 66:** The Vice President is elected by an electoral college consisting of members (elected and nominated) of both Houses of Parliament.
- **Article 67:** The term of office is five years, with eligibility for re-election.
- **Article 71:** Disputes regarding the election of the Vice President are resolved by the Supreme Court.

### Election Process

- **Electoral College:** Comprises all members (elected and nominated) of both Houses of Parliament (Lok Sabha and Rajya Sabha), unlike the President's election, which includes state assemblies.
- **Method:** Elected through a **secret ballot** using the **single transferable vote** system of proportional representation (Article 66).
- **Eligibility:**
  - Must be a citizen of India.
  - Must be at least 35 years old.
  - Must be qualified for election as a Rajya Sabha member.
  - Must not hold any office of profit.
- **Oath:** Administered by the President or a person appointed by the President.
- **Removal:** Can be removed by a resolution of the Rajya Sabha passed by an effective majority and agreed to by the Lok Sabha (Article 67). No formal impeachment is required.

## Powers and Functions

- **Chairman of the Rajya Sabha:** The Vice President presides over Rajya Sabha proceedings, ensuring orderly conduct and adherence to parliamentary rules (Article 64). They maintain discipline, interpret procedural norms, and exercise a **casting vote** in case of a tie, though they lack a deliberative vote.
- **Acting President:** Under Article 65, the Vice President assumes the role of Acting President during the President's absence, death, resignation, or removal. They wield all presidential powers, including ordinance-making (Article 123), pardoning (Article 72), and emergency declarations (Article 356), for up to six months until a new President is elected.
- **Ceremonial Role:** The Vice President represents India at national and international events, complementing the President's symbolic duties. They deliver addresses, attend public functions, and promote issues like education, cultural unity, and national integration.
- **Administration of Oaths:** The Vice President, as Rajya Sabha Chairman, administers oaths to newly elected or nominated members of the Rajya Sabha. This ensures members formally assume their roles, upholding the constitutional process.
- **Role in Anti-Defection Law:** The Vice President, as Chairman, decides on matters of disqualification of Rajya Sabha members under the **Tenth Schedule** (anti-defection law). Their decisions, subject to judicial review, help maintain party discipline and legislative integrity.
- **Diplomatic Engagements:** The Vice President undertakes diplomatic visits and hosts foreign dignitaries, fostering India's international relations. These engagements enhance India's global image and strengthen bilateral ties.

## Criticisms of the Office of the Vice President

- **Ceremonial and Redundant Role:** The Vice President's office is often criticized as ceremonial and redundant, with its primary role as Rajya Sabha Chairman potentially executable by an elected Speaker. The limited executive or

legislative influence, except in rare cases like acting as President, leads critics to question its necessity in a parliamentary system where real power lies with the Prime Minister and Council of Ministers.

- **Limited Powers and Influence:** The Vice President's powers are restricted, with no deliberative vote in the Rajya Sabha (only a casting vote in ties) and no independent executive authority, as actions during the Acting President role are bound by ministerial advice (Article 74). This minimal influence, even in significant functions like anti-defection rulings, renders the office largely symbolic.
- **Potential for Political Bias:** Elected by members of both Houses of Parliament (Article 66), the Vice President may face accusations of partisanship, especially as Rajya Sabha Chairman. Decisions on proceedings or disqualifications under the Tenth Schedule have occasionally sparked controversy, as seen during Vice President Hamid Ansari's tenure (2007–2017), raising concerns about impartiality.
- **Lack of Direct Accountability:** The Vice President is not elected by universal suffrage but by Parliament, creating a disconnect from direct public accountability. Combined with constitutional protections, this limits democratic oversight, leading critics to argue that the office operates in a vacuum, insulated from public scrutiny.
- **Financial Burden:** The maintenance of the Vice President's office, including official residences, staff, and perks, is criticized as an unnecessary financial burden on the exchequer. In a country with pressing socio-economic challenges, the expenditure on a largely ceremonial role is seen as unjustifiable by some.
- **Underutilized Constitutional Role:** The Vice President's role as Acting President (Article 65) is rarely invoked, occurring only during brief vacancies or absences, making it an underutilized function. Critics argue that this contingency role does not justify the office's prominence, as such duties could be managed by other constitutional mechanisms.

- **Perceived Ineffectiveness in Rajya Sabha:** As Rajya Sabha Chairman, the Vice President's ability to manage disruptive proceedings or ensure legislative productivity is often questioned, particularly in polarized sessions. Critics point to instances of disorderly conduct in the Rajya Sabha, despite the Vice President's authority, as evidence of the office's limited effectiveness.

## Governor Introduction

The **Governor** is the constitutional head of a state in India, appointed under **Article 153** of the Constitution to act as the representative of the President at the state level. As a key link between the Union and the states, the Governor ensures the smooth functioning of state governance while upholding constitutional principles. The office, however, is often criticized for its limited discretionary powers and perceived political bias. This note covers the Governor's role, powers, functions, and associated criticisms for UPSC Mains preparation.

## Constitutional Provisions

- **Article 153:** There shall be a Governor for each state, though one Governor can serve multiple states (7th Amendment, 1956).
- **Article 154:** The executive power of the state is vested in the Governor, exercised directly or through officers subordinate to them.
- **Article 155:** The Governor is appointed by the President.
- **Article 156:** The Governor holds office for five years at the President's pleasure, subject to removal or transfer.
- **Article 159:** The Governor takes an oath to preserve, protect, and defend the Constitution.
- **Article 161:** Grants the Governor pardoning powers for state offenses, excluding death sentences.
- **Article 163:** The Governor acts on the advice of the Council of Ministers, except in areas of discretionary powers.
- **Article 174:** Empowers the Governor to summon, prorogue, or dissolve the state

Legislative Assembly.

- **Article 200:** Governs the Governor's role in assenting to or returning state bills.
- **Article 356:** Allows the Governor to recommend President's Rule in case of a breakdown of constitutional machinery.

## Appointment and Tenure

- **Appointment:** Appointed by the President, typically from outside the state to ensure impartiality (Article 155).
- **Eligibility:**
  - Must be a citizen of India.
  - Must be at least 35 years old.
  - Must not hold any office of profit.
- **Tenure:** Five years, but removable at the President's discretion (Article 156). In practice, removals often align with changes in the Union government.
- **Oath:** Administered by the Chief Justice of the state High Court or a senior judge (Article 159).

## Powers and Functions of the Governor of India

- **Executive Powers:** The Governor appoints the Chief Minister and other ministers based on the Chief Minister's advice, ensuring the formation of the state government (Article 164). They also appoint key officials like the Advocate General and State Election Commissioner, acting as the nominal head of the state executive (Article 154).
- **Legislative Powers:** The Governor summons, prorogues, or dissolves the state Legislative Assembly and addresses its sessions to outline government policies (Articles 174, 175). They assent to, return, or reserve state bills for the President's consideration and can promulgate ordinances when the legislature is not in session (Articles 200, 213).
- **Judicial Powers:** The Governor can grant pardons, reprieves, respites, or remissions for offenses under state laws, except death sentences (Article 161). They are consulted in the appointment of High Court and district judges, contributing to the state's judicial framework.
- **Financial Powers:** The Governor ensures the state budget is presented to the legislature and

recommends money bills for introduction (Articles 202, 203). They also authorize grants from the state's contingency fund to address unforeseen financial needs (Article 267).

- **Discretionary Powers:** The Governor exercises discretion in appointing a Chief Minister during a hung assembly, reserving bills for the President, or recommending President's Rule (Article 356). These powers, though limited, are subject to judicial review to prevent misuse.
- **Emergency Powers:** The Governor recommends President's Rule if the state's constitutional machinery fails, triggering central intervention (Article 356). During President's Rule, they assume executive control, acting on the President's instructions to restore governance.

### Criticism of the Office of the Governor in Indian Polity

- **Political Bias and Misuse:** The Governor, appointed by the President (Article 155), is often accused of acting as an agent of the Union government, favoring the ruling party's interests. Controversial actions, like recommending President's Rule in Arunachal Pradesh (2016) or delaying government formation in Maharashtra (2019), highlight perceived partisan misuse of discretionary powers.
- **Rubber Stamp Role:** Bound by the Council of Ministers' advice (Article 163), the Governor is criticized as a ceremonial figure with limited independent authority, acting primarily as a formal extension of the Union executive. This diminishes the office's ability to check state government actions effectively.
- **Lack of Security of Tenure:** The Governor's tenure is at the President's pleasure (Article 156), making the office vulnerable to political pressures and frequent removals, especially during changes in the Union government, as seen in the 2014 reshuffles, undermining independence.
- **Irrelevance in Federal Structure:** Critics argue that the office undermines federal autonomy, as an appointed Governor overshadows elected

state governments. Some propose abolishing the office or making it elected to align with democratic and federal principles.

- **Inconsistent Discretionary Powers:** The lack of clear constitutional guidelines on discretionary powers leads to inconsistent and controversial decisions, such as reserving bills or appointing Chief Ministers, causing friction with state governments, as seen in Tamil Nadu (2016–2017).
- **Financial Burden:** The maintenance of Raj Bhavans and associated perks is criticized as an unnecessary expense in a resource-constrained country. The financial cost of a largely ceremonial office is questioned given its limited practical impact on governance.

### Important Supreme Court Judgments on the Role of the Governor

- **State of Tamil Nadu vs. The Governor of Tamil Nadu (2025):** The Supreme Court ruled Tamil Nadu Governor R.N. Ravi's delay in assenting to 10 re-passed bills unconstitutional, deeming them assented under Article 142 and setting a one-month timeline for Governors to act on re-presented bills.
- **Nabam Rebia vs. Deputy Speaker (2016):** The Court declared the Arunachal Pradesh Governor's unilateral preponing of the assembly session unconstitutional, emphasizing that Governors must act on the Council of Ministers' advice, with discretionary powers subject to judicial review.
- **B.P. Singhal vs. Union of India (2010):** The Supreme Court held that the President's power to remove a Governor (Article 156) is not absolute and must be based on valid, non-arbitrary reasons, subject to judicial review to ensure constitutional propriety.
- **Rameshwar Prasad vs. Union of India (2006):** The Court struck down the unconstitutional dissolution of the Bihar Assembly, ruling that the Governor's recommendation for President's Rule lacked objective evidence and emphasized floor tests to verify majority claims.
- **S.R. Bommai vs. Union of India (1994):** The Supreme Court established that the Governor's

recommendation for President's Rule (Article 356) is subject to judicial review, requiring objective material to prove constitutional breakdown, curbing arbitrary dismissals.

- **Hargovind Pant vs. Raghukul Tilak (1979):** The Court clarified that the Governor is a constitutional functionary, not an employee of the Union government, emphasizing their independent role despite being appointed by the President.
- **State of Karnataka vs. Union of India (1977):** The Court upheld the federal balance, ruling that the Governor's actions, such as recommending President's Rule, must respect state autonomy and not serve as a tool for central overreach.

### Recommendations of Various Commissions on the Role of the Governor in India

Commission (Year)	Key Recommendations
<b>ARC (1968)</b>	<ul style="list-style-type: none"> <li>• The ARC recommended that the Governor's report on President's Rule (Article 356) be objective and independent, free from Union government influence.</li> <li>• It suggested appointing non-partisan individuals with administrative experience as Governors to ensure impartiality, believing existing constitutional provisions were sufficient without amendments.</li> </ul>
<b>Rajamannar Committee (1971)</b>	<ul style="list-style-type: none"> <li>• The committee proposed deleting Articles 356 and 357 to prevent misuse of President's Rule, criticizing Governors for acting as Centre's agents.</li> <li>• It recommended that Governors function purely as constitutional heads and suggested consulting state governments during their appointment.</li> </ul>

<b>Sarkaria Commission (1988)</b>	<ul style="list-style-type: none"> <li>• The commission advised appointing eminent, non-political Governors from outside the state after consulting the Chief Minister, using Article 356 only as a last resort with prior warning.</li> <li>• It defined limited discretionary powers (e.g., Chief Minister appointment, bill reservation) and urged Governors to avoid overriding ministerial advice on bills sent to the President.</li> </ul>
<b>Punchhi Commission (2010)</b>	<ul style="list-style-type: none"> <li>• The commission proposed amending Articles 355 and 356 to limit President's Rule misuse and suggested state-led impeachment of Governors for accountability.</li> <li>• It advocated Chief Minister involvement in appointments, barring Governors from roles like university chancellors, and setting a six-month deadline for acting on bills.</li> </ul>

## Prime Minister & Chief Minister

### Introduction

The **Prime Minister of India** and the **Chief Minister of a State** are pivotal executive heads in India's parliamentary and federal framework, leading the Union and State governments, respectively. Operating under similar constitutional principles (Articles 74, 75 for PM; Articles 163, 164 for CM), both wield significant authority over governance and policy-making.

### Constitutional Provisions

Aspect	Prime Minister (Union)	Chief Minister (State)
<b>Aid and Advice</b>	<b>Article 74:</b> The Prime Minister and the Council of Ministers aid and advise the President, who acts in accordance with this advice.	<b>Article 163:</b> The Chief Minister and the Council of Ministers aid and advise the Governor, who acts in accordance with this advice, subject to the

		Governor's discretionary powers.
<b>Appointment and Tenure</b>	<b>Article 75:</b> The Prime Minister is appointed by the President and holds office at the President's pleasure. Other ministers are appointed on the Prime Minister's advice.	<b>Article 164:</b> The Chief Minister is appointed by the Governor and holds office at the Governor's pleasure. Other ministers are appointed on the Chief Minister's advice.
<b>Collective Responsibility</b>	<b>Article 75:</b> The Council of Ministers is collectively responsible to the Lok Sabha, ensuring accountability to the lower house of Parliament.	<b>Article 164:</b> The Council of Ministers is collectively responsible to the State Legislative Assembly, ensuring accountability to the state's lower house.
<b>Communication and Information</b>	<b>Article 78:</b> The Prime Minister communicates decisions of the Council of Ministers to the President and provides information as required.	<b>Article 167:</b> The Chief Minister communicates decisions of the Council of Ministers to the Governor and provides information as required.
<b>Executive Actions</b>	<b>Article 77:</b> All executive actions of the Union are taken in the name of the President but are effectively directed by the Prime Minister and the Council of Ministers.	<b>Article 166:</b> All executive actions of the State are taken in the name of the Governor but are effectively directed by the Chief Minister and the Council of Ministers.

### Powers and Functions of the Prime Minister and Chief Minister in Indian Polity

Power/Function	Prime Minister (Union)	Chief Minister (State)
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<b>Head of Government</b>	<ul style="list-style-type: none"> <li>The Prime Minister leads the Council of Ministers, coordinating their efforts to implement government policies effectively.</li> <li>He holds ultimate authority over executive decisions, spanning critical areas like defense, economy, and internal security.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister leads the State Council of Ministers, coordinating their efforts to implement state policies effectively.</li> <li>He holds authority over executive decisions in areas like state law and order, agriculture, and public health.</li> </ul>
<b>Advisor to Constitutional Head</b>	<ul style="list-style-type: none"> <li>The Prime Minister advises the President on key appointments, including ministers, governors, and judges, as well as on ordinances and emergency declarations (Articles 74, 78).</li> <li>This role ensures the President's actions align with the government's agenda.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister advises the Governor on key appointments, such as state ministers and advocate generals, and on state-specific ordinances (Articles 163, 167).</li> <li>This role aligns the Governor's actions with the state government's priorities, subject to the Governor's discretion.</li> </ul>
<b>Leader of Legislature</b>	<ul style="list-style-type: none"> <li>As the majority leader in the Lok Sabha, the Prime Minister drives the legislative agenda, introducing and steering key bills.</li> <li>He ensures the passage of government policies through parliamentary support and coalition management.</li> </ul>	<ul style="list-style-type: none"> <li>As the majority leader in the State Legislative Assembly, the Chief Minister drives the state's legislative agenda, introducing and steering key bills.</li> <li>He secures passage of state policies through assembly support and coalition coordination.</li> </ul>

<b>Cabinet Formation and Leadership</b>	<ul style="list-style-type: none"> <li>The Prime Minister recommends ministers for appointment and allocates portfolios, shaping the government's structure.</li> <li>He preside over Cabinet meetings, resolving disputes and upholding collective responsibility to the Lok Sabha.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister recommends state ministers for appointment and allocates portfolios, shaping the state government's structure.</li> <li>He preside over state Cabinet meetings, resolving conflicts and ensuring collective responsibility to the Legislative Assembly.</li> </ul>
<b>Policy Formulation</b>	<ul style="list-style-type: none"> <li>The Prime Minister sets the national agenda, formulating policies in foreign affairs, economy, and social welfare.</li> <li>He represent India globally, negotiating treaties and strengthening international relations.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister sets the state's policy agenda, focusing on areas like education, health, and infrastructure within the State List.</li> <li>He represent the state in inter-state forums and coordinate with the Union for Concurrent List matters.</li> </ul>
<b>Crisis Management</b>	<ul style="list-style-type: none"> <li>Both leads the nation during crises, such as wars, natural disasters, or economic challenges.</li> <li>They coordinate responses through agencies like the NDRF or armed forces, ensuring swift and effective action.</li> </ul>	
<b>Public Leadership</b>	<ul style="list-style-type: none"> <li>As the government's public face, the Prime Minister addresses the nation to build trust and shape public opinion.</li> <li>He engages through speeches, media, and public events to communicate policies and vision.</li> </ul>	<ul style="list-style-type: none"> <li>As the state government's public face, the Chief Minister addresses the state's populace to build trust and influence public opinion.</li> <li>He engages through speeches, media, and public events to promote state policies and vision.</li> </ul>

## Criticisms of the Office of the Prime Minister and Chief Minister in Indian Polity

Criticism	Prime Minister (Union)	Chief Minister (State)
<b>Excessive Centralization of Power</b>	<ul style="list-style-type: none"> <li>The Prime Minister is often criticized for centralizing authority, overshadowing the Council of Ministers and undermining collective decision-making.</li> <li>For instance, during Indira Gandhi's tenure (1966-1977, 1980-1984), key decisions, like the Emergency (1975), were made unilaterally, sidelining Cabinet input.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister is frequently criticized for centralizing power within the state, marginalizing the State Council of Ministers and bypassing collective decision-making.</li> <li>For example, during M. Karunanidhi's tenure in Tamil Nadu, key policies were often driven by the CM, reducing Cabinet influence.</li> </ul>
<b>Susceptibility to Political Pressures</b>	<ul style="list-style-type: none"> <li>The Prime Minister's decisions can be influenced by party politics or coalition dynamics, prioritizing political survival over national interest.</li> <li>Coalition governments, like Manmohan Singh's (2004-2014), faced criticism for policy compromises to appease allies, diluting effective governance.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister's decisions are often swayed by regional party politics or coalition pressures, prioritizing electoral gains over state welfare.</li> <li>For instance, coalition governments under H.D. Deve Gowda in Karnataka (1994-1996) faced criticism for policy concessions to maintain alliances.</li> </ul>

<p><b>Lack of Constitutional Definition</b></p>	<ul style="list-style-type: none"> <li>The Constitution does not explicitly define the Prime Minister's powers, relying on conventions and parliamentary majority.</li> <li>This ambiguity can lead to varying interpretations of authority, as seen in debates over the Prime Minister's role during hung Parliaments.</li> </ul>	<ul style="list-style-type: none"> <li>The Constitution similarly lacks a clear definition of the Chief Minister's powers, relying on conventions and state assembly majority.</li> <li>This vagueness can create disputes, as seen in controversies over the CM's authority during hung assemblies, like in Maharashtra (2019).</li> </ul>
<p><b>Weak Accountability Mechanisms</b></p>	<ul style="list-style-type: none"> <li>In strong majority governments, the Prime Minister's dominance can weaken accountability to the Lok Sabha, especially with a subdued opposition.</li> <li>Critics argue this creates a quasi-presidential style of governance, as observed during Narendra Modi's tenure with centralized initiatives like GST.</li> </ul>	<ul style="list-style-type: none"> <li>In dominant state governments, the Chief Minister's authority can undermine accountability to the State Legislative Assembly, particularly with a weak opposition.</li> <li>This leads to centralized governance, as seen in Mamata Banerjee's tenure in West Bengal with strong party control.</li> </ul>
<p><b>Bureaucratic Dependence</b></p>	<ul style="list-style-type: none"> <li>The Prime Minister's effectiveness relies heavily on bureaucratic cooperation, and misalignment can hinder policy implementation.</li> <li>For example, delays in</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister's success depends on state bureaucratic support, and lack of alignment can stall policy execution.</li> </ul>

	<p>economic reforms under P.V. Narasimha Rao (1991-1996) were partly attributed to bureaucratic resistance.</p>	<ul style="list-style-type: none"> <li>For instance, delays in infrastructure projects under Akhilesh Yadav in Uttar Pradesh (2012-2017) were linked to bureaucratic inefficiencies.</li> </ul>
<p><b>Potential for Populist Policies</b></p>	<ul style="list-style-type: none"> <li>The Prime Minister may prioritize populist measures to gain public favor, sometimes at the cost of long-term economic or social stability.</li> <li>Critics point to policies like loan waivers or subsidies, often announced before elections, as examples of short-term political gains over sustainable development.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister often resorts to populist schemes to secure electoral support, risking fiscal stability.</li> <li>Examples include free electricity or cash transfers, like those announced by Arvind Kejriwal in Delhi, criticized for prioritizing votes over long-term development.</li> </ul>
<p><b>Media and Public Perception Management</b></p>	<ul style="list-style-type: none"> <li>The Prime Minister's extensive use of media to shape public opinion is criticized for focusing on image-building rather than substantive governance.</li> <li>Excessive reliance on public addresses, as seen in some modern tenures, can divert attention from addressing critical issues.</li> </ul>	<ul style="list-style-type: none"> <li>The Chief Minister's heavy reliance on media to craft public perception is criticized for emphasizing publicity over governance.</li> <li>For example, extensive media campaigns by Yogi Adityanath in Uttar Pradesh have been seen as prioritizing image over addressing</li> </ul>

		core state challenges.
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### Counterarguments to Criticisms of the Office of the Prime Minister and Chief Minister in Indian Polity

Criticism	Prime Minister (Union) - Counterargument	Chief Minister (State) - Counterargument
<b>Excessive Centralization of Power</b>	<ul style="list-style-type: none"> <li>Strong leadership by the PM is essential for cohesive governance in a diverse nation, ensuring swift decision-making in crises like the Kargil War (1999) under Atal Bihari Vajpayee.</li> <li>Collective responsibility (Article 75) and Cabinet consultations balance centralized authority.</li> </ul>	<ul style="list-style-type: none"> <li>Centralized leadership by the CM is crucial for effective state governance, especially in diverse states, as seen in Naveen Patnaik's Odisha tenure, driving development.</li> <li>Collective responsibility (Article 164) ensures the State Cabinet's role in decision-making.</li> </ul>
<b>Susceptibility to Political Pressures</b>	<ul style="list-style-type: none"> <li>Political pressures are inherent in democracy, and the PM navigates them to maintain coalition stability, as P.V. Narasimha Rao did for economic reforms (1991). The Lok Sabha's oversight ensures decisions align with national interest.</li> </ul>	<ul style="list-style-type: none"> <li>Political pressures are part of democratic governance, and the CM balances them to sustain state coalitions, as seen in Nitish Kumar's Bihar tenure.</li> <li>The State Legislative Assembly's accountability ensures state welfare remains a priority.</li> </ul>

<b>Lack of Constitutional Definition</b>	<ul style="list-style-type: none"> <li>The flexibility from undefined powers allows the PM to adapt to evolving challenges, as demonstrated by Jawaharlal Nehru's nation-building efforts.</li> <li>Conventions and judicial oversight, like S.R. Bommai (1994), provide sufficient checks.</li> </ul>	<ul style="list-style-type: none"> <li>The lack of rigid constitutional definition enables the CM to address state-specific needs flexibly, as seen in Chandrababu Naidu's Andhra Pradesh reforms.</li> <li>Conventions and judicial review ensure compliance with constitutional norms.</li> </ul>
<b>Weak Accountability Mechanisms</b>	<ul style="list-style-type: none"> <li>The PM is accountable to the Lok Sabha through collective responsibility, with robust checks like Question Hour and no-confidence motions.</li> </ul>	<ul style="list-style-type: none"> <li>The CM is accountable to the State Legislative Assembly via collective responsibility, with mechanisms like debates and no-confidence motions.</li> </ul>
<b>Bureaucratic Dependence</b>	<ul style="list-style-type: none"> <li>Bureaucratic dependence is a feature of governance, and effective PMs, like Narendra Modi with GST implementation, align bureaucracy through reforms like lateral entry.</li> <li>The PM's leadership ensures bureaucratic efficiency.</li> </ul>	<ul style="list-style-type: none"> <li>Bureaucratic dependence is inherent, but dynamic CMs, like Arvind Kejriwal in Delhi, streamline administration through initiatives like doorstep delivery.</li> <li>The CM's authority drives bureaucratic alignment for state policies.</li> </ul>
<b>Potential for Populist Policies</b>	<ul style="list-style-type: none"> <li>Populist policies, like subsidies, address immediate public needs and foster inclusivity, as seen in Rajiv Gandhi's telecom push.</li> <li>The PM balances short-term relief with long-term planning through bodies like NITI Aayog.</li> </ul>	<ul style="list-style-type: none"> <li>Populist measures, like free education schemes by Mamata Banerjee, meet urgent state needs and promote equity.</li> <li>The CM aligns short-term benefits with long-term development via state planning boards.</li> </ul>
<b>Media and Public Perception Management</b>	<ul style="list-style-type: none"> <li>Media engagement by the PM strengthens democratic communication, as seen in Modi's Mann Ki Baat, fostering public</li> </ul>	<ul style="list-style-type: none"> <li>Media outreach by the CM enhances public engagement, as seen in Yogi Adityanath's campaigns on law enforcement, building trust.</li> </ul>

	trust and awareness. • It complements governance by mobilizing support for policies like Swachh Bharat.	• It supports governance by rallying public support for state initiatives like health schemes.
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## Council of Minister

### Introduction

The **Council of Ministers** is the real executive authority in India's parliamentary system, operating at both the **central** and **state** levels. At the Centre, the Council of Ministers, headed by the **Prime Minister**, aids and advises the President (Article 74), driving national policy and governance. At the state level, the Council of Ministers, led by the **Chief Minister**, advises the Governor (Article 163), managing state administration

### Constitutional Provisions: Central and State Council of Ministers

Aspect	Central Council of Ministers	State Council of Ministers
<b>Establishment</b>	Article 74: There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President.	Article 163: There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor.
<b>Appointment</b>	Article 75(1): The Prime Minister is appointed by the President; other ministers are appointed on the Prime Minister's advice.	Article 164(1): The Chief Minister is appointed by the Governor; other ministers are appointed on the Chief Minister's advice.
<b>Responsibility</b>	Article 75(3): The Council is collectively responsible to the Lok Sabha.	Article 164(2): The Council is collectively responsible to the state Legislative Assembly.
<b>Tenure</b>	Article 75(2): Ministers hold office during the President's pleasure, removable on Prime Minister's recommendation.	Article 164(1): Ministers hold office during the Governor's pleasure, removable on Chief Minister's recommendation.

<b>Size</b>	Article 75 (amended by 91st Amendment, 2003): The Council's size shall not exceed 15% of the Lok Sabha's strength.	Article 164 (amended by 91st Amendment, 2003): The Council's size shall not exceed 15% of the Legislative Assembly's strength.
<b>Oath</b>	Article 75(4): Ministers take an oath of office and secrecy, administered by the President.	Article 164(3): Ministers take an oath of office and secrecy, administered by the Governor.
<b>Qualifications</b>	Article 75(5): A minister must be a member of either House of Parliament or become one within six months.	Article 164(4): A minister must be a member of the state legislature or become one within six months.
<b>Communication</b>	Article 78: The Prime Minister communicates Council decisions to the President and provides information as required.	Article 167: The Chief Minister communicates Council decisions to the Governor and provides information as required.

### Functions of the Council of Ministers

Function	Central Council of Ministers	State Council of Ministers
<b>Policy Formulation</b>	Frames national policies on defense, foreign affairs, economy, and social issues, setting the government's agenda.	Develops state-specific policies on agriculture, education, health, and law enforcement, aligning with local needs.
<b>Executive Administration</b>	Oversees implementation of laws and policies through Union ministries, coordinating with agencies like NITI Aayog or RBI.	Manages state administration through departments like public works or police, ensuring effective governance at the grassroots.
<b>Legislative Role</b>	Initiates and steers bills in Parliament, ensuring passage of key legislation like the Finance Bill or GST Act.	Proposes and guides bills in the state legislature, such as state budgets or local governance laws, to meet regional priorities.

<b>Advisory Role</b>	Advises the President on appointments (judges, governors), ordinances, and emergencies, guiding executive actions (Article 74).	Advises the Governor on appointments (Advocate General, SPSC members), ordinances, and state emergencies (Article 163).
<b>International/State Relations</b>	Represents India in global forums, negotiates treaties, and fosters international cooperation (e.g., G20, UN).	Coordinates with the Centre and other states on shared issues like river water disputes or inter-state trade, often via Inter-State Council.

<b>Bureaucratic Dependence</b>	Over-reliance on bureaucracy can delay or dilute policy execution, as seen in slow implementation of schemes like Smart Cities.	State ministers depend heavily on bureaucrats, leading to inefficiencies in programs like rural electrification or housing schemes.
<b>Size and Efficiency</b>	Despite the 91st Amendment capping size, bloated Councils (e.g., 70+ ministers in UPA-II) strain resources and reduce efficiency.	Large state Councils, even within the 15% cap, create administrative overlaps, as seen in states like Uttar Pradesh with numerous ministers.

## Criticisms of the Council of Ministers

Criticism	Central Council of Ministers	State Council of Ministers
<b>Excessive Centralization</b>	The Prime Minister's dominance often overshadows the Council, reducing collective decision-making, as seen during Indira Gandhi's tenure.	Chief Ministers may centralize power, sidelining other ministers, leading to unilateral decisions, as observed in some states like Tamil Nadu.
<b>Political Influence</b>	Coalition pressures or party politics can compromise national interests, as seen in the UPA's policy compromises (2004-2014).	Regional party agendas or coalition dynamics can prioritize political survival over state welfare, as in Maharashtra's coalition governments.
<b>Lack of Expertise</b>	Ministers are often appointed based on political loyalty rather than domain expertise, impacting sectors like finance or defense.	Ministers may lack specialized knowledge in portfolios like health or education, affecting state policy implementation.
<b>Accountability Gaps</b>	Strong parliamentary majorities can weaken accountability, allowing unchecked decisions, as seen in some economic reforms.	Dominant state governments may evade scrutiny due to weak opposition, leading to issues like corruption or policy failures.

## Cabinet System in India

### Introduction

The Cabinet, comprising Cabinet Ministers, is the apex executive body within the Council of Ministers, wielding significant authority in India's governance framework at both central and state levels. Its multifaceted roles are critical to the functioning of the government:

### Role of the Cabinet System

- **Supreme Decision-Making Body:** The Cabinet is the highest authority for policy and administrative decisions, shaping national (e.g., economic reforms) or state (e.g., welfare schemes) priorities.
- **Chief Policy Formulator:** It designs key policies, such as the National Education Policy (Centre) or state-specific agricultural programs, setting the government's agenda.
- **Primary Executive Authority:** The Cabinet oversees the execution of laws and policies across ministries (Centre) or departments (states), ensuring effective governance.
- **Chief Coordinator:** It harmonizes inter-ministerial or inter-departmental efforts, resolving conflicts to align initiatives like infrastructure projects or public health campaigns.
- **Advisory Role:** The Cabinet advises the President (Article 74) or Governor (Article 163), with its advice being binding, guiding appointments, ordinances, and emergencies.

- **Crisis Management:** It leads responses to crises, such as national security threats (Centre) or state-level disasters like floods, coordinating with relevant agencies.
- **Legislative and Financial Oversight:** The Cabinet initiates major bills (e.g., Union Budget) and manages fiscal policies, ensuring legislative and financial alignment.
- **Appointment Authority:** It recommends high-level appointments, including constitutional authorities (e.g., Election Commissioners) and senior bureaucrats.
- **Foreign Policy Management (Central Cabinet):** At the Centre, the Cabinet formulates and executes foreign policies, representing India in global forums like the UN or G20.

### Kitchen Cabinet

- The Kitchen Cabinet is an informal advisory group comprising the Prime Minister and a small circle of trusted colleagues or aides.
- It provides confidential counsel on critical political and administrative issues, aiding swift decision-making.
- Its influence often extends beyond the formal Cabinet, shaping key government strategies.

### Merits and Demerits of Kitchen Cabinet

Merits	Demerits
Its compact size enables rapid, efficient decision-making, ideal for urgent or sensitive issues.	Undermines the formal Cabinet's authority, reducing its role as the primary decision-making body.
Ensures secrecy in discussing critical political matters, fostering trust and candid advice.	Risks alienating formal Cabinet members, creating resentment or mistrust within the government.
Allows flexible, informal consultations, expediting responses to complex challenges.	Bypasses constitutional processes by involving non-elected individuals in influential decisions.

### Cabinet Committees

- Cabinet Committees are specialized sub-groups of the Cabinet, established by the Prime Minister (Centre) or Chief Minister (states) to address specific policy or administrative tasks.
- They streamline governance by analyzing issues, formulating proposals, and making decisions, subject to Cabinet review.
- They are categorized as Standing Committees (permanent, e.g., Cabinet Committee on Security) and Ad Hoc Committees (temporary, for specific purposes).

### Features of Cabinet Committees

- **Extra-Constitutional:** Not explicitly mentioned in the Constitution; created under the Government of India Transaction of Business Rules, 1961 (Centre) or state equivalents.
- **Flexible Structure:** Composition, size, and functions vary based on situational needs, determined by the Prime Minister/Chief Minister.
- **Decision-Making Power:** Authorized to make decisions on delegated matters, though the full Cabinet can review or modify these decisions.

### Merits and Demerits of Cabinet Committees

Merits	Demerits
Alleviates the Cabinet's workload by delegating specific tasks, enhancing governance efficiency.	May overlook critical governance areas unless explicitly referred by the Cabinet or concerned minister.
Enables detailed scrutiny of policy issues, improving coordination and decision quality.	Decisions depend on referrals, limiting proactive action on emerging challenges.
Saves time through smaller, focused groups, optimizing resources and speeding up deliberations.	Irregular meetings hinder sustained focus on complex issues, delaying policy execution.
Reinforces collective responsibility by checking ministerial autonomy and	Can fragment decision-making, potentially weakening the full

aligning with Cabinet goals.

Cabinet's cohesive authority.

**Keywords** : First Citizen, Constitutional Head, Indirect Election, Electoral College, Absolute Veto, Suspensive Veto, Pocket Veto, Qualified Veto, Ordinance-Making Power, Repromulgation, Clemency Powers, Mercy Petitions, Impeachment Process, Symbol of Unity, Rubber Stamp Allegation, Presidential Discretion.

**Mains Practice Questions :**

Q1."The Indian executive is a fusion of ceremonial and real authority." Discuss the roles of the President and the Prime Minister in light of this statement.

Q2.Examine the relationship between the political executive and the permanent executive in India. How does this dynamic affect governance and accountability?

## A. Supreme Court of India

### Introduction

- The Supreme Court of India (SC) is the apex judicial body, established under **Article 124** of the Constitution, serving as the guardian of the Constitution and protector of Fundamental Rights.
- **Established:** January 26, 1950, succeeding the Federal Court (1935) and Privy Council.
- **Role:** Ensures rule of law, upholds constitutional supremacy, and balances powers among the legislature, executive, and judiciary.
- **Motto:** “Yato Dharmastato Jayah” (Where there is justice, there is victory).

### Constitutional Provisions

- **Part V, Articles 124–147** govern the Supreme Court’s structure, powers, and functions.
- Key Articles:
  - **Article 124:** Establishment and composition (CJI + maximum 33 other judges).
  - **Article 131:** Original jurisdiction (Centre-State or inter-State disputes).
  - **Article 132–134:** Appellate jurisdiction (constitutional, civil, criminal matters).
  - **Article 137:** Power of judicial review.
  - **Article 141:** Law declared by SC is binding on all courts.
  - **Article 143:** Advisory jurisdiction.
  - **Article 32:** Writ jurisdiction for Fundamental Rights enforcement.

### Composition and Appointment

- **Strength:** Chief Justice of India (CJI) + up to 33 judges (increased from 31 to 34 in 2019).
- **Qualifications** (Article 124):
  - Citizen of India.
  - At least 5 years as a High Court judge, or 10 years as a High Court advocate, or a distinguished jurist.
- **Appointment Process:**
  - Judges appointed by the President in consultation with the CJI and other judges (Collegium System).
  - **Collegium System:** Established via **Second Judges Case (1993)** and reaffirmed in **NJAC**

### Case (2015).

- Collegium comprises CJI + 4 senior-most SC judges for SC appointments.
- **Tenure:** Judges retire at 65; removable only by impeachment (Article 124(4)).
- **Salaries:** Charged on Consolidated Fund of India, ensuring financial independence.

### Jurisdiction and Powers of the Supreme Court

- **Original Jurisdiction (Article 131) :**
  - The Supreme Court has exclusive authority to adjudicate disputes between the Centre and one or more States or between different States. It ensures federal balance and constitutional integrity. However, it does not cover matters related to treaties or inter-state water disputes (covered under Article 262).
  - **Example:** Cauvery River dispute (Karnataka vs Tamil Nadu).
- **Appellate Jurisdiction :**
  - The Court hears appeals in constitutional (Art. 132), civil (Art. 133), and criminal cases (Art. 134) from High Courts.
  - Under Article 136, it has discretionary power to grant Special Leave Petitions (SLPs) from any judgment or order of any court/tribunal (except military tribunals), making its appellate reach exceptionally wide.
- **Writ Jurisdiction (Article 32) :**
  - Empowered to issue writs for enforcement of Fundamental Rights, it acts as the guardian of individual liberties. Dr. Ambedkar termed this the “heart and soul” of the Constitution.
  - **Example:** Hussainara Khatoon (1979) – rights of undertrial prisoners.
- **Judicial Review (Article 137) :**
  - The Court can review laws, executive actions, and constitutional amendments to ensure they conform to the Constitution. This forms the basis of judicial supremacy.
  - **Example:** Kesavananda Bharati (1973) – Basic Structure Doctrine.
- **Advisory Jurisdiction (Article 143) :**
  - The President may seek the Supreme Court’s opinion on legal/factual matters of public importance. Though not binding, such

- o opinions guide constitutional governance.
- o **Example:** Advisory opinion on Ayodhya dispute (1994).
- **Court of Record (Article 129) :**
  - o Its judgments serve as precedents, and it has the power to punish for contempt. This upholds the dignity and authority of the judiciary across the country.
- **Public Interest Litigation (PIL) :**
  - o Allows citizens to approach the Court for issues of public concern, especially for the marginalized. It democratizes access to justice.
  - o **Example:** Vishaka Guidelines (1997) on workplace harassment.
- **Suo Motu Powers :**
  - o The Court can initiate proceedings on its own based on media reports or letters, especially in cases of human rights violations or public interest.
  - o **Example:** Suo motu cognizance of migrant workers' crisis during COVID-19 (2020).

## B. High Courts of India

### Introduction

- High Courts (HCs) are the highest judicial bodies at the state level, established under **Article 214** of the Indian Constitution.
- They act as intermediaries between the Supreme Court (SC) and subordinate courts, ensuring justice delivery, constitutional compliance, and protection of Fundamental Rights.
- **Role:** Supervise lower courts, resolve disputes, and uphold the rule of law within states/Union Territories (UTs).
- **Number:** 25 High Courts in India (as of 2025), covering states and UTs.

### Constitutional Provisions

- **Part VI, Articles 214–237** govern the establishment, powers, and functions of High Courts.
- **Key Articles:**
  - o **Article 214:** Establishment of High Courts for each state or group of states/UTs.

- o **Article 216:** Composition (Chief Justice + other judges, appointed by the President).
- o **Article 226:** Power to issue writs for Fundamental Rights and other purposes.
- o **Article 227:** Supervisory jurisdiction over subordinate courts and tribunals.
- o **Article 229:** Administrative control over HC staff and expenses.
- o **Article 231:** Common High Courts for two or more states/UTs (e.g., Punjab and Haryana HC)

### Composition and Appointment

- **Composition:**
  - o Each HC has a Chief Justice and other judges, as determined by the President.
  - o Strength varies (e.g., Allahabad HC: 160 judges; Sikkim HC: 3 judges).
- **Qualifications (Article 217):**
  - o Citizen of India.
  - o Has for at least ten years held a judicial office in the territory of India; or
  - o has for at least ten years been an advocate of a High Court
- **Appointment Process:**
  - o Appointed by the President in consultation with:
    - Chief Justice of India (CJI).
    - Chief Justice of the concerned High Court.
    - Governor of the state.
  - o **Collegium System:** HC appointments recommended by a Collegium comprising the CJI + two senior-most SC judges, based on inputs from the HC Chief Justice.
  - o **Memorandum of Procedure (MoP):** Guides appointments, though disputes between Centre and judiciary persist.
- **Tenure:**
  - o Judges retire at 62; removable only by impeachment (Article 217(1)(b)).
  - o Impeachment process same as SC judges (Article 124(4)).
- **Salaries:**
  - o Charged on Consolidated Fund of the State, ensuring financial independence.

## Jurisdiction & Powers of High Courts

- **Writ Jurisdiction (Article 226):** High Courts can issue writs for the enforcement of Fundamental Rights as well as for any other legal right, making their writ jurisdiction wider than that of the Supreme Court. High Courts have often issued writs in matters like police excesses, service disputes, and admission issues in educational institutions.
- **Original Jurisdiction:** High Courts have original jurisdiction in cases related to wills, divorce, admiralty matters, and contempt of court. In some states like Bombay, Madras, and Calcutta, they also enjoy wider original jurisdiction due to their historical legacy as Presidency towns.
- **Appellate Jurisdiction:** High Courts hear appeals in civil and criminal cases from subordinate courts under them. They can confirm, reverse, or modify the decisions of lower courts and ensure justice through judicial scrutiny.
- **Supervisory Jurisdiction (Article 227):** High Courts can supervise the functioning of all subordinate courts and tribunals within their territorial jurisdiction. This ensures procedural correctness and legal compliance in the lower judiciary.
- **Control over Subordinate Judiciary (Article 235):** High Courts exercise administrative control over the subordinate judiciary in matters of recruitment, posting, promotion, leave, and discipline of judicial officers, which is crucial for maintaining judicial independence and efficiency at the grassroots.
- **Court of Record:** Like the Supreme Court, every High Court is also a Court of Record under Article 215. Its judgments hold evidentiary value, and it can punish for contempt of itself or subordinate courts.
- **Power of Judicial Review:** High Courts can review laws passed by the State Legislature or actions taken by the State Executive to ensure they conform to the Constitution. This acts as a check on arbitrary governance at the state level.

### C. District and Subordinate Courts in India

#### Introduction

District and subordinate courts form the base of the Indian judicial system, providing first-level access to

justice for the vast majority of citizens. Functioning under the supervision of the respective High Courts, they play a crucial role in adjudicating civil, criminal, and revenue disputes at the grassroots level. These courts ensure justice is not only done, but also made accessible and affordable.

#### Constitutional Provisions

The framework for the district judiciary is laid down in **Articles 233–237** of the Constitution:

- **Article 233:** District judges are appointed by the Governor in consultation with the High Court.
- **Article 234:** Judicial officers below the rank of district judges are recruited by the Governor based on recommendations from the High Court.
- **Article 235:** High Courts exercise administrative control over the subordinate judiciary, including transfers, promotions, and disciplinary actions.
- **Article 236 & 237:** Define the terms “district judge” and “judicial service,” and allow legislative application of these provisions to other courts, such as revenue courts.

#### Structure and Composition

- **District Courts:**  
Presided over by **District Judges**, these courts hear complex civil and criminal matters and serve as appellate courts for lower civil and criminal courts.
- **Subordinate Courts:**  
Include a variety of lower-level courts, such as:
  - **Civil Courts:** Munsif Courts, Sub-Judge Courts handle civil issues like property disputes and contracts.
  - **Criminal Courts:** Judicial Magistrates (First and Second Class), Chief Judicial Magistrates, and Assistant Sessions Judges deal with criminal matters based on severity.
  - **Revenue Courts:** Handle land and revenue-related cases under state revenue laws.
- **Specialized Courts:** Family Courts, Labour Courts, Juvenile Justice Boards, and Consumer Forums also operate at the district level to address specific legal domains.
- **Scale:** India has over **25,000 subordinate courts**, with numbers and jurisdiction varying

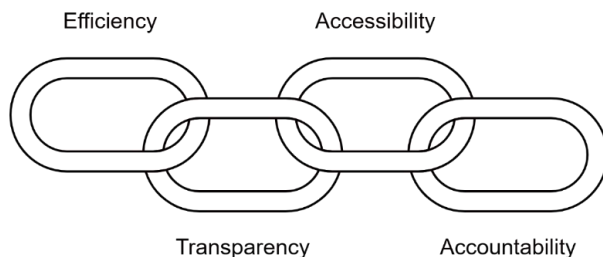
by state.

## Jurisdiction and Functions

- **Civil Jurisdiction:** These courts resolve family matters (e.g., divorce, inheritance), property disputes, and contract enforcement. Lower-value cases are tried in Munsif courts, while appellate jurisdiction lies with District Courts.
- **Criminal Jurisdiction:** They handle cases under the IPC and CrPC. **Sessions Courts** deal with serious crimes such as murder, rape, or cases involving life imprisonment or death penalty, while **Magistrate Courts** handle less severe offenses.
- **Revenue Jurisdiction:** Revenue courts adjudicate land ownership, tenancy disputes, and tax-related agricultural issues under state revenue laws.
- **Appellate and Revisional Functions :** District Courts also function as appellate and revisional authorities for decisions by subordinate courts, ensuring fairness and legality.
- **Administrative Functions:** These include case listing, record maintenance, and staff management under the supervision of the High Court.
- **Social Justice Role:** They play a proactive role in addressing grassroots legal concerns—such as dowry, domestic violence, child custody, and consumer grievances. **Example:** Family Courts Act, 1984 promotes mediation over litigation in family disputes.

Judicial Reforms (you can use these diagram in your answers directly )

### Core Principles of Judicial Reform



## Need for Judicial Reforms in India

Characteristic	Description
<b>Case Backlog</b>	4.7 crore pending cases
<b>Diversity</b>	Imbalance and underrepresentation
<b>Transparency</b>	Opaque appointments, unaccountable system
<b>Infrastructure</b>	Outdated procedures, manual systems
<b>Accessibility</b>	Insufficient legal aid for poor

## Contemporary Issues associated with Judiciary in India

### 1. Collegium System

#### Introduction

- The Collegium System is a mechanism developed by judicial interpretation, where judges appoint judges to the higher judiciary (Supreme Court and High Courts) without executive interference.
- It evolved through three key judgments known as the **Three Judges Cases** (1981, 1993, 1998), where the Supreme Court asserted primacy of the judiciary in appointments and transfers.

#### Composition:

- For Supreme Court appointments: Chief Justice of India (CJI) + 4 senior-most SC judges.
- For High Court appointments: CJI + 2 senior-most SC judges + consultation with concerned HC collegium (CJI and 2 senior HC judges).

## Issues and Challenges with the Collegium System

- **Lack of Transparency** – Decisions are made behind closed doors without clear reasons or public scrutiny.

- **No Objective Criteria** – Appointments rely on subjective assessments; no standardized evaluation process.
- **Perceived Elitism** – Seen as a "closed group," limiting diversity and broader representation within the judiciary.
- **Accountability Deficit** – No mechanism to question or review Collegium decisions, reducing accountability.
- **Executive Pushback** – Frequent delays or rejections of recommendations by the government create friction and opacity.
- **Favoritism and Nepotism Allegations** – Accusations of preferential treatment based on personal relationships.
- **Opaque Transfer System** – Judicial transfers lack explanation, affecting judicial independence and stability.
- **Resistance to Reform** – Judiciary has been resistant to introducing greater transparency or alternative appointment mechanisms.
- **Provisions for Appointment and Removal:** Judges of the Supreme Court and High Courts are appointed by the President in consultation with the judiciary, evolving into the **Collegium system**, which limits executive influence. Removal requires a special majority in Parliament, making arbitrary dismissal almost impossible.
- **Fixed Salaries and Service Conditions:** Judges' salaries and allowances are charged on the Consolidated Fund of India (or State), and cannot be altered to their disadvantage during their tenure.
- **Prohibition on Practice After Retirement:** Supreme Court judges cannot practice after retirement in any court, preventing any conflict of interest or post-retirement inducement.
- **Power to Punish for Contempt:** Both Supreme Court (Article 129) and High Courts (Article 215) can punish for contempt of court, thereby defending their dignity and authority against external influence.
- **Judicial Review and Activism:** The judiciary's power to review laws and executive actions (Articles 13, 32, 226, 137) further enhances its independence by enabling it to act as a constitutional watchdog.

## 2. Judicial Independence

### Introduction

Independence refers to the ability of judges to decide cases free from external pressures—political, economic, or personal. It is essential for upholding the rule of law, protecting Fundamental Rights, and ensuring checks and balances in a constitutional democracy.

### Provisions for securing the independence of the Judiciary

- **Constitutional Safeguards:** The Indian Constitution provides multiple safeguards to protect judicial independence, including security of tenure (Articles 124(4), 217), fixed service conditions (Articles 125, 221), and a difficult process for removal of judges (impeachment by Parliament on proven grounds).
- **Separation of Powers (Article 50):** A Directive Principle which urges the separation of the judiciary from the executive in the public services of the State. Though not enforceable, it guides legislative and executive behavior.

### Challenges to Judicial Independence

- **Opaque Collegium System:** The Collegium lacks transparency and objective criteria in selecting judges, making the process appear elitist and insulated from public accountability.
- **Executive Interference:** The government often delays or selectively approves Collegium recommendations, indirectly influencing judicial appointments and undermining institutional autonomy.
- **Post-Retirement Appointments:** Judges accepting posts in tribunals or commissions soon after retirement raises apprehensions of judgments being influenced by future prospects, affecting impartiality.
- **Lack of Performance Accountability:** There is no formal mechanism to review judges' performance, leading to concerns over inefficiency and reduced judicial standards, despite guaranteed tenure and protection.

- **Contempt of Court Misuse:** While essential to preserve court authority, contempt powers are sometimes perceived as suppressing legitimate criticism, deterring openness and reform discourse.

Threats to Judicial Independence



## Way Forward to Strengthen Judicial Independence

- **Transparent Appointments:** Reform the Collegium system to ensure openness and merit-based selections.
- **Time-bound Clearances:** Mandate strict timelines for government action on judicial appointments.
- **Cooling-off Period:** Introduce a minimum gap before retired judges accept government posts.
- **Performance Assessment:** Create an independent, non-intrusive evaluation mechanism for judges.
- **Limit Contempt Powers:** Prevent misuse of contempt laws against fair criticism.
- **Internal Judicial Reforms:** Enhance transparency in case allocation and court administration.

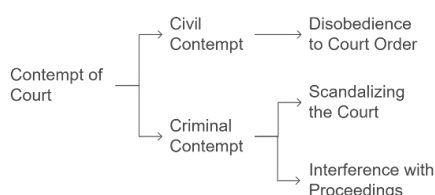
## 3. Contempt of Court

### Introduction:

Contempt of court refers to any act that defies or disrespects the authority, dignity, or orders of a court, potentially obstructing the administration of justice.

### Types:

Types of Contempt of Court



### Constitutional Basis:

- **Article 129:** Empowers the Supreme Court to punish for contempt of itself.
- **Article 215:** Empowers High Courts to do the same.
- Also governed by the **Contempt of Courts Act, 1971.**

## Issues and Challenges with Contempt of Court

- **Vague Definition:** Phrases like “scandalizing the court” under the Contempt of Courts Act, 1971 are loosely defined and open to subjective interpretation.
- **Chilling Effect on Free Speech:**
  - The fear of contempt discourages journalists, lawyers, and citizens from voicing legitimate criticism, weakening judicial accountability.
  - **Example:** Prashant Bhushan case (2020), where the lawyer was convicted for tweets critical of the judiciary, raised concerns over freedom of speech.
- **Overuse and Misuse:** Contempt has occasionally been used to silence criticism rather than protect justice delivery.
- **Conflict with Article 19(1)(a):**
  - The law can potentially override the right to free speech, unless strictly defined and narrowly applied.
  - **Example:** In EMS Namboodiripad v. T.N. Nambiar (1970), the Court held that even politically motivated criticism could amount to contempt.
- **Judiciary as Complainant and Judge:** The judiciary itself initiates and decides contempt cases, raising concerns of impartiality and lack of external oversight.
- **Outdated Compared to Global Standards:**
  - Many democracies like the UK have abolished “scandalising the court” as a form of contempt, focusing only on disruption of proceedings.
  - **Example:** UK abolished this form of contempt in 2013 after concluding it was unnecessary in a modern democracy.

## Way Forward

- **Define Contempt Narrowly:** Amend the Contempt of Courts Act to precisely define what constitutes "scandalizing the court," aligning it with democratic norms.
- **Protect Free Speech:** Balance judicial authority with Article 19(1)(a) by allowing fair and reasoned criticism of judgments and judicial conduct in public interest.
- **Introduce External Oversight:** Set up an independent review mechanism (like a judicial conduct commission) for handling contempt cases involving public criticism.
- **Use Contempt Sparingly :** Courts should reserve contempt powers for only clear cases of obstruction or disruption of justice, not criticism or satire

## 4. Public Interest Litigation (PIL)

### Introduction :

PIL is a legal mechanism that allows any individual or group to approach the courts in matters concerning public interest, especially where the affected parties are unable to access justice themselves. It marks a shift from traditional locus standi to "epistolary jurisdiction", expanding access to justice.

### Origin in India:

- Evolved in the **late 1970s and early 1980s** through the activism of judges like **Justice P.N. Bhagwati** and **Justice V.R. Krishna Iyer**, who liberalized access to the judiciary to protect the rights of the marginalized.
- **Constitutional Basis:** PILs are primarily filed under **Article 32 (Supreme Court)** and **Article 226 (High Courts)** for enforcement of Fundamental Rights and larger public interest.

### Significance

- **Democratization of Access to Justice:** PIL enabled access to courts for the poor, illiterate, and marginalized, breaking the traditional barriers of standing in legal cases.
- **Judicial Activism:** It allowed the judiciary to step into governance spaces like environmental

protection, prison reforms, and rights of vulnerable groups.

Example: Vishaka v. State of Rajasthan (1997) – PIL led to guidelines on workplace sexual harassment.

- **Accountability of State and Public Institutions:** PILs have exposed corruption, administrative failures, and compelled the State to act in cases of public harm.
- **Evolution of Socio-Economic Jurisprudence:** Courts used PIL to expand the scope of Article 21 (Right to Life) to include rights like health, clean environment, education, and shelter.

## Concerns and Criticism

- **Judicial Overreach into Executive Domain:**
  - Courts have, at times, issued directions on matters best handled by the executive or legislature, leading to a violation of the separation of powers.
  - **Example:** In the Yamuna cleaning PILs, the Supreme Court issued directions on administrative and policy matters, often criticized as executive interference.
- **Rise in Frivolous and Motivated PILs:**
  - Many PILs are now filed for publicity, personal gains, or political rivalry rather than genuine public interest.
  - **Example:** The Supreme Court, in Ashok Kumar Pandey v. State of West Bengal (2004), warned against "PILs filed for extraneous considerations" and imposed costs for abuse.
- **Judicial Time and Resources Wasted:**
  - Frivolous PILs burden the judiciary and delay genuine cases. The misuse of PIL clogs already overburdened courts.
  - **Example:** In Subramanian Swamy v. Raju, the Court emphasized the need for careful scrutiny before admitting PILs.
- **Lack of Accountability of Petitioners:**
  - Unlike traditional litigation, PIL petitioners face minimal consequences for false or exaggerated claims, which may lead to misuse.
  - **Example:** In State of Uttaranchal v. Balwant Singh Chauhal (2010), the Court noted the

absence of a regulatory framework and laid down guidelines for filing PILs.

- **Disruption of Democratic Processes:**
  - Frequent judicial interventions may dilute the role of elected institutions and create policy instability.
  - **Example:** The SC's directions in the banning of firecrackers case, though aimed at public health, were seen by some as overstepping into legislative policy without wide consultation.

### Way Forward

- **Screening Mechanism:** Courts should adopt stricter norms to filter out frivolous or publicity-oriented PILs at the admission stage.
- **Code of Ethics for PIL Filers:** Mandatory declaration of interest by the petitioner and accountability measures for misuse.
- **Institutional Support:** Establish dedicated benches or fast-track mechanisms for genuine PILs to avoid delays.
- **Judicial Restraint:** Courts should exercise caution and defer to elected branches where policy matters are involved.

### 5. Pendency of Cases in Indian Judiciary

- **Scale of Pendency:** As of 2023, over **4.7 crore cases** are pending across various tiers of the judiciary:
  - **Supreme Court:** ~80,000 cases
  - **High Courts:** ~60 lakh cases
  - **Subordinate Courts:** ~4 crore cases

The volume reflects systemic stress on India's justice delivery system. (Source: National Judicial Data Grid, 2023)

#### Causes of Pendency

- **Judicial Vacancies and Low Judge-to-Population Ratio:** India has only about **17 judges per million population**, far below the Law Commission's recommendation of 50. Persistent vacancies, especially in High Courts and lower judiciary, slow case disposal.
- **Procedural Inefficiencies:** Frequent adjournments, prolonged oral arguments, and outdated legal procedures contribute to delay. Complex cases like the **Ayodhya land dispute**

remained unresolved for decades due to procedural wrangling.

- **Inadequate Infrastructure:** Many trial courts operate without basic amenities like adequate courtrooms, digital systems, or recording facilities, affecting case management and scheduling.
- **Rising Caseload and Delays in Investigation:** Increased litigation, especially in service, land, and criminal matters, outpaces the judiciary's capacity. In criminal cases, delayed police investigation and charge-sheet filing worsen pendency. For instance, over **70% of India's prisoners are undertrials**, reflecting how slow trials clog the system.

### Impact of Pendency

#### Impact of Pendency of Cases in Judiciary



### Way Forward to Address Pendency of Cases

- **Filling Judicial Vacancies Promptly:** Expedite appointments in higher and lower judiciary through timely action by the Collegium and executive. The **114th Law Commission Report (1986)** recommended increasing the judge-to-population ratio to **50 per million** to manage rising caseloads effectively.
- **Strengthening Infrastructure and Technology:** Expand courtroom capacity, digitize records, and implement virtual hearings to improve efficiency. The **e-Courts Project** and recommendations by the **Justice**

**Ramachandran Committee (2017)** support end-to-end digital integration of courts.

- **Case Management and Procedural Reforms:** Introduce stricter rules to discourage unnecessary adjournments and promote alternative dispute resolution (ADR) methods like mediation. The **Malimath Committee (2003)** suggested reforms in criminal procedures to ensure speedy trials.
- **Fast-Track and Specialised Courts:** Establish fast-track courts for specific categories like sexual offences, commercial disputes, and undertrial cases. The **14th Finance Commission** also recommended setting up **fast-track courts** with targeted funding for reducing backlog.

## 6. Skewed Gender Representation in Indian Judiciary

### Data/Facts:

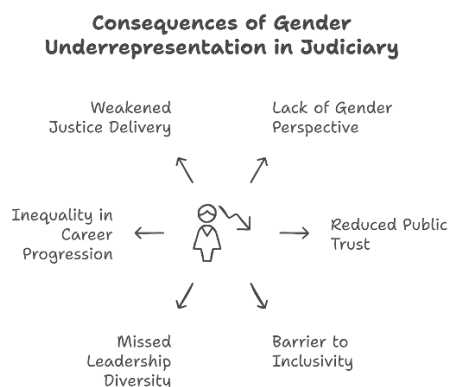
Gender disparity remains a persistent issue in the Indian judiciary, particularly in higher courts. According to the **Supreme Court's "State of the Judiciary" Report (2023):**

- **District Judiciary:** Women make up **36.3%** of judges—an encouraging sign of progress.
- **High Courts:** As of January 2024, women constitute only **13.4%** of sitting judges.
- **Supreme Court:** Representation is even lower, at just **9.3%**.
- In some High Courts—such as those in Bihar, Chhattisgarh, Jharkhand, Manipur, Meghalaya, Odisha, Tripura, and Uttarakhand—there is **either no woman judge or only one.**
- **Bar Representation:** Data from the **Department of Legal Affairs (2022)** shows that only **15.31%** of enrolled advocates in India are women, indicating a weak pipeline for judicial elevation from the Bar.

### Causes of Underrepresentation

- **Leaky Pipeline in Legal Profession:** Fewer women enter and remain in the profession due to workplace bias, lack of mentorship, and societal pressures.
- **Opaque Appointment and Promotion Mechanisms:** The Collegium system does not follow any structured policy for ensuring gender diversity in judicial appointments.

- **Workplace and Structural Barriers:** Inadequate gender-sensitive infrastructure (e.g. restrooms, childcare) and absence of flexible work options deter long-term retention.
- **Unconscious Bias and Lack of Support:** Women are often stereotyped as less suited for senior judicial roles, especially in criminal or commercial domains.



### Way Forward

- **Gender-Sensitive Appointment Policies:** Introduce diversity targets or reservations in lower judiciary; consider institutionalising such measures in higher judiciary as well.
- **Inclusive Collegium Reforms:** Include gender and regional representation as factors in recommending candidates for elevation.
- **Supportive Infrastructure and Policies:** Ensure availability of facilities such as creches, flexible schedules, and internal gender sensitization measures across courts.
- **Strengthen Legal Education and Entry-Level Support:** Promote scholarships, judicial clerkships, and structured mentoring for women law graduates to build a stronger pool of future judges.

**Keywords :** Guardian of Constitution, Suo Motu Powers, Judicial Independence, Impeachment, Court of Record, Advisory Opinion, Appellate Jurisdiction, Original Jurisdiction,, Access to Justice, Epistolary Jurisdiction, Pendency of Cases, Gender Imbalance in Judiciary, e-Courts Project, Tribunal Reforms, Transparency in Appointments, Performance Accountability, Judicial Control

**Mains Practice Questions :**

Q1."The independence of the judiciary is essential for the success of constitutional democracy." Examine the constitutional provisions and challenges to judicial independence in India.

Q2.Critically analyze the evolution and impact of the Collegium system for judicial appointments in India. Should it be reformed?

### Introduction

In a democratic polity, governance is influenced not just by elected representatives but also by pressure groups and formal/informal associations that articulate, aggregate, and channel public demands. These entities operate outside the formal institutional framework but play a vital role in shaping policy, influencing public opinion, and holding the government accountable. Their presence strengthens participatory democracy and acts as a bridge between the state and society.

### Pressure Groups vs Formal/Informal Associations

Aspect	Pressure Groups	Formal/Informal Associations
<b>Definition</b>	Organized groups that seek to <b>influence public policy</b> or decisions without directly seeking political power.	Groups formed for <b>social, cultural, economic, or religious purposes</b> , which may or may not engage in political influence.
<b>Main Objective</b>	Policy advocacy and interest protection (e.g., business, farmers, students).	May include social service, community building, or representation, not always aimed at policymaking.
<b>Examples</b>	FICCI, Bharatiya Kisan Union, All India Trade Union Congress (AITUC).	NGOs, caste associations, self-help groups, religious trusts, professional bodies.
<b>Political Role</b>	Actively seek to <b>influence the legislature and executive</b> .	May have <b>indirect or passive influence</b> on politics and policy.

<b>Nature</b>	More focused and interest-specific.	Broader in purpose, often non-political in origin.
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- All pressure groups are formal/informal associations, but not all associations are pressure groups.
- The key difference lies in intent and activity: Pressure groups aim to influence public policy, while associations may or may not.

### Types of Pressure Groups in India

- **Business Groups**
  - Represent industrial and corporate interests; influence economic and industrial policies.
  - **Examples:** Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), ASSOCHAM.
- **Trade Unions**
  - Represent the working class; lobby for labour rights, wage protection, and workplace conditions.
  - **Examples:** Indian National Trade Union Congress (INTUC), Bharatiya Mazdoor Sangh (BMS), All India Trade Union Congress (AITUC).
- **Agrarian or Farmer Groups**
  - Advocate for farmer welfare, MSP, debt relief, and subsidies.
  - **Examples:** Bharatiya Kisan Union (BKU), Shetkari Sanghatana, All India Kisan Sabha.
- **Student and Youth Organisations**
  - Represent youth interests, especially in education, employment, and ideological movements.
  - **Examples:** Akhil Bharatiya Vidyarthi Parishad (ABVP), National Students' Union of India (NSUI), All India Students' Federation (AISF).
- **Religious and Caste-Based Groups**
  - Influence policy through identity-based mobilization on caste, religion, and community issues.
  - **Examples:** All India Muslim Personal Law Board, Vishwa Hindu Parishad (VHP), Dalit organisations like BAMCEF.

- **Professional Associations**

- Comprise professionals like lawyers, doctors, engineers, who influence policy in their domains.
- **Examples:** Bar Council of India, Indian Medical Association (IMA).

- **Civil Society and Advocacy Groups**

- Promote human rights, environmental protection, transparency, and social justice.
- **Examples:** Greenpeace India, Association for Democratic Reforms (ADR), PUCL, MKSS.

- **Ethnic and Regional Groups**

- Represent regional, linguistic, or ethnic interests, often influencing state or local politics.
- **Examples:** Gorkha Janmukti Morcha, Naga Students' Federation.

- **Acting as Watchdogs**

- They monitor government actions, highlight policy failures, and bring public attention to misuse of power or resources.
- **Example:** Civil society's role in exposing the 2G and coal block allocation scams.

- **Support to Bureaucracy and Legislature**

- They provide expert inputs to policymakers and legislative committees, particularly in technical or sector-specific areas.
- **Example:** Medical associations offering advice on public health policies during COVID-19.

- **Strengthening Participatory Democracy**

- Pressure groups complement representative democracy by enabling **continuous dialogue** between the state and society, beyond periodic elections.

## Role and Significance of Pressure Groups in Indian Democracy

- **Policy Influence and Advocacy**

- Pressure groups help shape government policies by lobbying for specific economic, social, or political interests.
- **Example:** FICCI and CII influence industrial and economic policy through regular consultations.

- **Representation of Marginalized Voices**

- They give voice to communities and interests that may otherwise be ignored by mainstream political parties.
- **Example:** PUCL advocates for civil liberties and rights of the underrepresented.

- **Promoting Accountability and Transparency**

- Groups like the **Association for Democratic Reforms (ADR)** and **MKSS** campaign for electoral reforms and right to information, pushing the state towards transparent functioning.

- **Political Socialization and Awareness**

- They educate citizens about their rights, encourage participation, and mobilize public opinion on important issues.
- **Example:** Environmental groups like **Greenpeace India** raise awareness about ecological concerns.

## Challenges and Threats Associated with Pressure Groups

- **Lack of Internal Democracy :** Most pressure groups lack transparency and internal accountability, being dominated by a few leaders or interest elites.

- **Influence of Money and Muscle Power**

- Well-funded groups, especially business lobbies, often dominate policy discourse, sidelining weaker or marginalized interests.
- **Example:** Allegations of corporate lobbying in policy formulation (e.g., telecom, land acquisition).

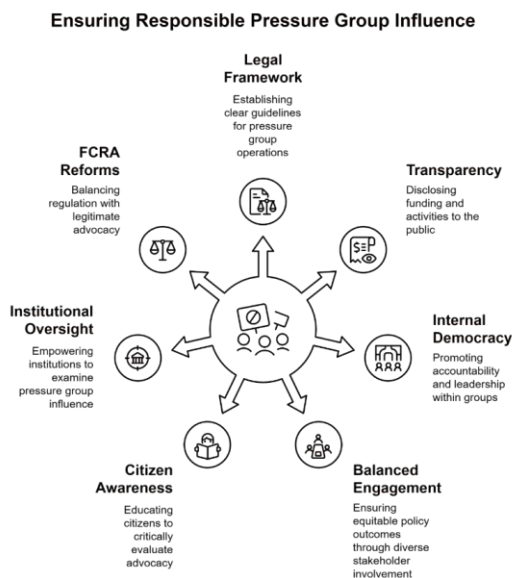
- **Narrow and Vested Interests :** Pressure groups focus on sectional interests rather than national good, which may fragment consensus and delay reforms.

- **Undue Pressure and Disruption**

- At times, pressure tactics escalate into protests, strikes, or blockades that disrupt public order and essential services.
- **Example:** Prolonged highway blockades during certain farmer protests.

- **Lack of Regulation :** There is no legal framework to regulate pressure groups or NGOs in terms of funding, lobbying activity, or disclosure, leading to opacity.

- **Foreign Influence and Misuse of NGOs**
  - Some groups receive foreign funding and may promote agendas misaligned with national priorities.
  - **Example:** Cancellation of FCRA licenses of certain NGOs for violating norms.
- **Politicisation and Hidden Affiliations :** Many pressure groups operate as proxies of political parties or ideologies, compromising their independence and credibility.



**Keywords :**

**Mains Practice Question :**

Pluralist Democracy, Policy Lobbying, Interest Articulation, Participatory Governance, Political Socialization, Civil Society Mobilization, Advocacy Networks, Identity-based Mobilisation, Issue-based Activism, Watchdog Role, Pressure Tactics, Elite Capture, Vested Interests, Institutional Mediation, Democratic Deepening, Regulatory Vacuum

**Value Addition for unit 5**

**In news**

- Recently Justice A.S. Bopanna, Judge, Supreme Court of India, reiterated that Judicial activism is the judiciary's duty against legislative

adventurism.

- Recently, the Kerala government moved the Supreme Court against the Governor's refusal to assent to four Bills, highlighting tensions over Article 200 and the Governor's discretionary powers eroding state autonomy.
- At the Sai University's S. Krishnamurti endowment lecture, Mr. Panchu spoke on the 'Doctrine of judicial review said, **Judicial review enables court to uphold the power of Constitution**
- Recently Former Chief Justice of India D.Y. Chandrachud observed , A heavy dose of "frivolous" public interest litigation (PIL) petitions in the Supreme Court is prompting judges to take to task petitioners and the lawyers who put their signature on them, for wasting judicial time.

**Acronym**

**1. "GOVERN"**

(To cover executive and judicial structure + function)

- **G – Government Structure**
  - Union Executive: President, PM, CoM; Ministries and Departments
  - Judiciary: SC, HCs, Subordinate Courts
- **O – Organizational Hierarchy**
  - Cabinet Secretariat, Line Ministries, Departments, attached offices
- **V – Vertical & Horizontal Functions**
  - Division of responsibilities between Union and State executives; judicial independence
- **E – Execution & Implementation**
  - Policy execution, rule-making power, delegated legislation
- **R – Role of Judiciary**
  - Interpretation of Constitution, guardian of FRs, PILs, judicial activism
- **N – Need for Reforms**
  - Judicial pendency, bureaucratic inefficiency, executive overreach

## 2. "PRESSURE"

(For Pressure Groups & Associations)

- **P – Public Opinion Formation**
  - Civil society, NGOs, media shaping policies
- **R – Representation of Interests**
  - Trade unions, business lobbies, caste/community groups
- **E – Electoral Influence**
  - Campaign support, funding, lobbying
- **S – Social Movements**
  - RTI, Narmada Bachao, farmers' protests – informal groups leading change
- **S – Strengthening Democracy**
  - Ensures participative governance, voice for the voiceless
- **U – Unregulated Influence Risks**
  - Corporate lobbying, elite capture, hidden financing
- **R – Regulation Needed**
  - Transparency, guidelines, institutional engagement
- **E – Effective Policy Shaping**
  - As feedback mechanisms for ministries & parliamentary committees

federalism and acts as a check on tyranny and a bulwark against abuse of power.

- Soli Sorabjee: "Governors can do great good if they are good governors. They can do great harm, if they are bad governors."

### Prime Minister

- The Prime Minister is the de facto head of the Constitution. He/she is the Sun around which the planets of government revolve.
- The Prime Minister is the captain of the ship of the state. He/she is the pivot around which the whole political machinery revolves.

### Cabinet / Council of Ministers

- The Cabinet is the central directing instrument of government. It is a hyphen that joins, a buckle that binds the executive and legislative departments together.
- The Cabinet is the pivot around which the whole political machinery revolves.

## Ready - Made templates

### President

- R. Venkataraman (former President) described the position of the President as an emergency lamp. Only when the main switch (Prime Minister) is off does the emergency lamp come to light.
- The role of the President in a parliamentary democracy is pivotal, embodying the ceremonial and constitutional head of the state. The President serves as a symbol of unity, the guardian of the Constitution, and a key actor in the functioning of the government.

### Governor

- The Governor acts as the nominal head of the state. He/she is the lynchpin in cooperative

## Navigating the Syllabus: What You Need to Know

**Dispute Redressal Mechanisms and Institutions**

- What is Dispute Redressal Mechanism?
- Necessity of Dispute Redressal Mechanisms
- Arbitration Mechanism
- Mediation Centres
- Issues Associated with Various Dispute Redressal Mechanisms

## UPSC Previous Year Questions

Question	Nature of Question	Core Demand
What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? (2015)	Legal Reform + Dispute Resolution	List key amendments introduced through the Ordinance and assess their impact on improving efficiency, credibility, and timeliness of India's arbitration system.

## Introduction

Alternate Dispute Redressal (ADR) refers to mechanisms that provide an alternative to formal judicial litigation for resolving disputes. ADR methods aim to deliver **speedy, cost-effective, and amicable solutions**, reducing the burden on traditional courts and promoting access to justice.

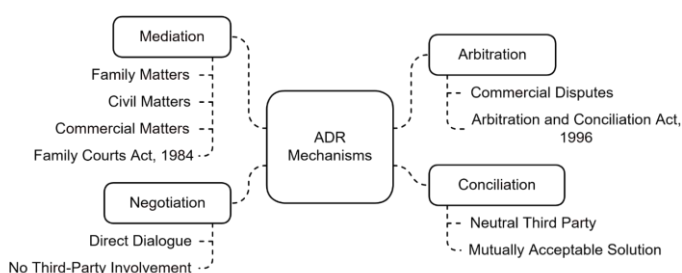
## Constitutional and Legal Backing

- **Article 39A** (Directive Principle): Ensures equal justice and free legal aid.
- **Section 89 of the Civil Procedure Code (CPC), 1908**: Encourages courts to refer cases to ADR mechanisms.
- Recognized under various statutes like the **Arbitration and Conciliation Act, 1996** and **Legal Services Authorities Act, 1987**.

## Types of ADR Mechanisms

- **Arbitration**: A private adjudicatory process where parties appoint an arbitrator whose decision (award) is binding. Suitable for commercial disputes.  
Governing Law: Arbitration and Conciliation Act, 1996.
- **Conciliation**: A non-binding process where a neutral third party helps parties reach a mutually acceptable solution. Less formal than arbitration.
- **Mediation**: A structured process where a mediator facilitates dialogue but does not impose a decision. Widely used in family, civil, and commercial matters.  
Example: Mediation in matrimonial disputes is promoted under Family Courts Act, 1984.
- **Negotiation**: An informal process where parties resolve disputes through direct dialogue, often without third-party involvement.

Alternative Dispute Resolution Mechanisms



## Institutional Mechanism for ADR in India

- **Lok Adalats** : Statutory bodies under the **Legal Services Authorities Act, 1987** that resolve civil and compoundable criminal disputes. Their awards are final and enforceable like court decrees.
- **Permanent Lok Adalats (PLA)** : Special forums for resolving disputes related to **public utility services** (e.g., transport, postal, electricity) under Section 22B of the Legal Services Authorities Act. They can pass binding decisions if conciliation fails.
- **Arbitration and Mediation Institutions** : Established under the **Arbitration and Conciliation Act, 1996**, these institutions offer professional arbitration and mediation services:
  - **Indian Council of Arbitration (ICA)**
  - **Mumbai Centre for International Arbitration (MCIA)**
  - **Delhi International Arbitration Centre (DIAC)**
  - **Court-annexed Mediation Centres** (e.g., Samadhan at Delhi HC)
- **Legal Services Authorities (NALSA/SLSA/DLSA)** : National and state bodies created under the **Legal Services Authorities Act, 1987**, which organize Lok Adalats, offer legal aid, and promote ADR methods.
- **Gram Nyayalayas** : Village-level mobile courts established under the **Gram Nyayalayas Act, 2008** for resolving disputes at the local level, often through conciliation.

## Significance of ADR

- **Reduces Judicial Backlog**: Diverts a significant number of cases from formal courts, easing the burden on an overburdened judiciary.
- **Cost-Effective and Time-Saving**: ADR avoids prolonged litigation, lowering legal costs and saving time for both parties.
- **Preserves Relationships**: Focuses on amicable resolution, making it ideal for family, matrimonial, and business disputes.
- **Accessible and Informal**: Offers a simpler, user-friendly forum for individuals, particularly in rural or under-resourced regions.

- **Promotes Party Autonomy:** Parties have greater control over the process—choice of venue, procedure, and even the neutral third party (e.g., arbitrator or mediator).
- **Encourages Innovative Solutions:** ADR processes are flexible and can result in creative, win-win outcomes not typically available through court judgments.
- **Supports Justice in Specialized Fields:** Mechanisms like arbitration and tribunals handle technical and commercial matters more efficiently, using subject-matter experts.
- **Enhance Legal Awareness:** Launch legal literacy drives through Legal Services Authorities (NALSA, SLA) to increase public awareness, especially in rural and marginalized communities.
- **Training and Accreditation:** Develop certified training programs for mediators, arbitrators, and conciliators to ensure professionalism and quality standards.
- **Strengthen Institutional Infrastructure:** Expand court-annexed mediation centres, upgrade Lok Adalat facilities, and promote specialized arbitration centres across states.

### Challenges in ADR

- **Lack of Public Awareness:** Many citizens, especially in rural and semi-urban areas, are unaware of ADR mechanisms or how to access them, limiting their reach.
- **Quality and Availability of Neutrals:** Shortage of trained and accredited arbitrators, mediators, and conciliators affects the credibility and effectiveness of the process.
- **Enforceability Issues:** While arbitration awards are binding, settlements through mediation or Lok Adalats may face difficulties in enforcement, especially if one party withdraws post-settlement.
- **Urban-Rural Disparity:** ADR infrastructure is largely concentrated in urban areas; rural regions often lack functional Lok Adalats, mediation centres, or trained personnel.
- **Delays and High Costs in Arbitration:** Institutional arbitration in India can be expensive and slow, particularly in high-stake commercial disputes, undermining its “alternative” character.
- **Lack of Regulatory Oversight:** Absence of a uniform regulatory framework for mediators and private arbitrators can lead to inconsistent standards and misuse.
- **Promote Online Dispute Resolution (ODR):** Encourage use of digital platforms for low-stake disputes (e.g., consumer, financial, tenancy cases), leveraging technology for wider reach and faster resolution.
- **Integrate ADR in Legal Education:** Introduce ADR-focused curriculum and practical training in law schools to build a skilled pipeline of dispute resolution professionals.
- **Use ADR in Government Litigation:** Encourage government departments to adopt ADR for service, land, and contractual disputes to reduce litigation burden and promote early settlement.
- **Monitoring and Data Collection:** Establish mechanisms to track ADR case outcomes, success rates, and pendency to enable evidence-based policy decisions.

**Keywords :** Alternate Dispute Resolution (ADR), Party Autonomy,, Court-annexed Mediation, Institutional Arbitration, Online Dispute Resolution (ODR), Conciliatory Justice, Mediation, Gram Nyayalaya, Access to Justice, Justice Dispensation Efficiency, Judicial Decongestion, Public Utility Dispute Resolution, Enforcement of Settlements,, Legal Empowerment, Preventive Litigation, Low-Cost Justice, Justice at Doorstep, Mediation Council of India

### Measures to Strengthen ADR Mechanism

- **Pass the Mediation Bill, 2021:** Expedite passage of the bill to provide a statutory framework for institutional mediation and establish the **Mediation Council of India** for standardization and oversight.

### Mains Practice Questions :

Q1.What are the challenges faced by ADR mechanisms in India in terms of implementation,

awareness, and legal sanctity? Suggest reforms.

Q2. Discuss the institutional framework supporting ADR in India. How can digital and community-based dispute resolution be strengthened at the grassroots level?

## Value Addition unit 6

### In news :

- Recently, the Arbitration and Conciliation (Amendment) Bill, 2024, was discussed for enhancing digital arbitration, aiming to speed up debt recovery and improve transparency in ADR processes for financial institutions.
- Recently, the Supreme Court emphasized mediation as a preferred ADR mechanism in commercial disputes, directing lower courts to refer cases to mediation centers under the Mediation Act, 2023, to reduce judicial backlog.
- Recently, the Ministry of Law and Justice launched a nationwide campaign to strengthen Lok Adalats, highlighting their role in resolving over 1 crore cases annually, including motor accident and consumer disputes, through ADR.

### Ready- Made Template

#### 1. "FAIR"

(Focuses on the qualities and utility of ADR)

- **F – Flexibility of Process**
  - Informal, adaptable to parties' needs (esp. in Mediation & Conciliation)
- **A – Accessibility & Affordability**
  - Useful for marginalized communities, avoids lengthy court processes
- **I – Institutions & Initiatives**
  - Lok Adalats, NALSA, Arbitration Councils, Legal Aid Clinics
- **R – Reduced Burden on Judiciary**
  - Supports pendency reduction and ease of doing business

#### 2. "LOKA"

(India-specific, rooted in grassroots justice)

- **L – Lok Adalats**
  - Statutory under Legal Services Authorities Act, quick, final, and binding awards
- **O – Online Dispute Resolution (ODR)**
  - Emerging tech-driven ADR, especially in digital and commercial disputes
- **K – Knowledge-Based Settlement**
  - Mediation and Conciliation allow win-win via mutual understanding
- **A – Arbitration as Formal ADR**
  - Especially in commercial disputes, governed by Arbitration Act

#### 3. "RESOLVE"

(A general structure for any ADR-related essay/GS2 answer)

- **R – Role in Justice Delivery**
  - Supplement to courts, enables faster justice
- **E – Evolution of ADR in India**
  - From informal systems to structured frameworks under legislation
- **S – Statutory Framework**
  - Legal Services Authorities Act, Arbitration & Conciliation Act, Mediation Bill 2023
- **O – Outreach through Institutions**
  - NALSA, State Authorities, Legal Aid Clinics
- **L – Limitations & Challenges**
  - Enforceability issues, lack of awareness, quality of arbitrators/mediators
- **V – Value in Reducing Pendency**
  - Over 4 crore cases pending – ADR is a crucial solution
- **E – Enhancing Access to Justice**
  - Constitutional mandate (Art. 39A), inclusive justice delivery

## Dispute Redressal Mechanisms

<p><b>Common Template for Tribunals, Gram Nyayalayas, Family Courts, Lok Adalats, etc.</b></p>	Advantages	<ul style="list-style-type: none"> <li>• Speedy Trials</li> <li>• Cost Effective</li> <li>• Reduce Judicial Pendency</li> <li>• Innovative Approach</li> <li>• Affordable, Accessible</li> </ul>
	Disadvantages	<ul style="list-style-type: none"> <li>• Overlapping Jurisdiction</li> <li>• Human Resource and Infrastructure Shortages</li> <li>• Executive Interference</li> <li>• Lack of Awareness</li> <li>• Delay in Appointment</li> </ul>
	Way Forward	<ul style="list-style-type: none"> <li>• Raise Awareness</li> <li>• Clarity on Mandates</li> <li>• Vacancy Filling</li> <li>• Involvement of Expertise</li> <li>• Dedicated Infrastructure</li> </ul>

## Navigating the Syllabus: What You Need to Know

**Parliament and State Legislatures – Structure, Functioning, Conduct of Business, Powers and Privileges, and Issues Arising out of These**

- **Parliament**
  - Role and functions of Parliament
  - Means of sovereignty of Parliament
  - Composition of Lok Sabha and Rajya Sabha
  - Proportional Representation and First Past the Post
- **Disqualification of Members**
  - Disqualification on account of Office of Profit
  - Disqualification through Representation of People's Act
  - Disqualification on the ground of Defection
  - Anti-Defection Law – Provisions, Exceptions, Advantages, Criticism
- **Presiding Officers**
  - Speaker – Role, Power and Functions
  - Chairman of Rajya Sabha
- **Leaders in Parliament**
  - Leader of Opposition – Role, Significance, Issues, Solution
  - Whip – Role, Significance, Issues, Solution
  - Sessions of Parliament
  - Devices of Parliamentary Proceedings
- **Legislative Procedure in Parliament**
  - Issues associated with functioning of Parliament
  - Parliamentary Reforms
- **Position of Rajya Sabha vis-à-vis Lok Sabha**
- **Parliamentary Privileges**
  - Meaning, Concept and Source.
  - Codification of Privileges – Necessity, Benefits and Drawbacks
  - Evaluation of Parliamentary Privileges
- **State Legislature**
  - Organisation of State Legislature
  - Composition of Legislative Council
  - Legislative Procedure in State Legislature
  - Position of Legislative Council vis-à-vis Legislative Assembly

**UPSC Previous Year Questions**

Question	Nature of Question	Core Demand
What are the aims and objects of recently passed and enforced, The Public Examination (Prevention of Unfair Means) Act, 2024? Whether University/State Education Board? (2024)	Recent Legislation + Education Governance	State objectives of the Act and whether it covers universities/state boards.

Discuss the role of Presiding Officers of state legislatures in maintaining order and impartiality in conducting legislative work and in facilitating best democratic practices. (2023)	Presiding Officers + Legislative Conduct	Explain responsibilities of state Presiding Officers in ensuring order and fairness.
Discuss the role of the Vice-President of India as the chairman of the Rajya Sabha. (2022)	Vice President + Parliamentary Functioning	Describe VP's role as RS Chairman in maintaining decorum and productivity.
Discuss essential conditions for Governor's legislative powers. Examine re-promulgation of ordinances without legislature. (2022)	Governor + Ordinance Power	List conditions for ordinance and assess legality of re-promulgation.
Do Department-related Parliamentary Standing Committees ensure accountability? Evaluate with examples. (2021)	Parliamentary Committees + Accountability	Evaluate functioning of DRSCs in ensuring executive accountability.
Constitutional provisions for Legislative Councils. Review their working and status with examples. (2021)	Legislative Councils + Federal Structure	Explain creation, role and relevance of Legislative Councils in states.
To what extent does Parliament ensure accountability of the executive? (2021)	Parliament + Executive Accountability	Assess effectiveness of Parliament in holding executive accountable.
'Once a Speaker, Always a Speaker' — Should this norm be adopted? Implications? (2020)	Speaker's Office + Objectivity	Debate merit of continuity in Speaker's office and its effects.
Rajya Sabha transformed from 'stepney tyre' to supporting organ — discuss. (2020)	Rajya Sabha + Functional Evolution	Highlight how RS has become more relevant and contributory.
Decline in role of individual parliamentarians affecting debates and outcome. Discuss. (2019)	MPs Role + Legislative Quality	Discuss reasons for decline in MP effectiveness and its impact.
Why are committees useful? Role of Estimates Committee. (2018)	Parliamentary Committees + Budget Oversight	Explain significance of committees with focus on Estimates Committee.
Role of Public Accounts Committee in ensuring govt accountability. (2017)	PAC + Financial Oversight	Discuss PAC's role in examining public expenditure and

		ensuring accountability.
Enumerate occasions when joint sitting of Parliament happens and when not, with reasons. (2017)	Legislative Procedure + Joint Sitting	List permissible and impermissible scenarios for joint sitting.
Critically evaluate Whistle-blowers Protection Amendment Bill 2015. (2015)	Whistleblower Law + Legislative Critique	Critique proposed changes and their effect on whistleblower safety.
Uncodified privileges under Article 105 — why no legal codification? How to address? (2014)	Parliamentary Privileges + Legal Reform	Explain absence of codification and suggest possible solutions.
Decline of MPs' role and weak policy debates — role of Anti-Defection Law? (2013)	Anti-Defection Law + Parliamentary Debate	Assess impact of anti-defection law on individual MP's role in debates.

## Introduction

India follows a parliamentary form of government based on the Westminster model, where the legislature plays a pivotal role in law-making, ensuring executive accountability, and representing the will of the people. The Constitution establishes a bicameral legislature at the Union level and unicameral or bicameral legislatures at the State level, depending on the state's needs.

## Features of Parliamentary Form of Government

- **Collective Responsibility:** The Council of Ministers is collectively responsible to the Lower House (Lok Sabha in India). If the Lok Sabha passes a no-confidence motion, the entire ministry must resign.
- **Dual Executive:** There is a **nominal executive** (President/Monarch) and a **real executive** (Prime Minister and Council of Ministers). The head of state acts on the advice of the council.
- **Fusion of Powers:** Unlike the separation in a presidential system, the executive and legislature are **interconnected**—ministers are part of the legislature and accountable to it.
- **Leadership of the Prime Minister:** The Prime Minister is the de facto head of government and exercises effective executive powers. He/she leads the Cabinet and sets the policy agenda.
- **Dissolution of Lower House:** The Lower House (e.g., Lok Sabha) can be **dissolved** by the head of state on the advice of the Prime Minister, leading to fresh elections.
- **Bicameral Legislature (generally):** Parliamentary systems often have two Houses (e.g., Lok Sabha and Rajya Sabha in India), although unicameral parliaments also exist in some countries.
- **Ministerial Accountability:** Ministers are individually responsible for their departments and collectively for government decisions, ensuring democratic oversight.
- **Flexible Tenure:** The Council of Ministers remains in office **as long as it enjoys the confidence** of the Lower House, making tenure dependent on legislative support.

## Why India Adopted the Parliamentary Form of Government

- **Familiarity from British Rule:** India had long experience with the parliamentary system under colonial rule, especially post-1919 (Montagu-Chelmsford Reforms) and post-1935 (Government of India Act). The system was tested and somewhat internalized by Indian political leadership.
- **Alignment with Democratic Ideals:** The parliamentary system promotes **accountability, responsiveness, and representative governance** by making the executive directly answerable to the legislature.
- **Diversity and Pluralism:** In a socially and culturally diverse country like India, the **collective responsibility and consensus-building** inherent in the parliamentary model suited the need for accommodating multiple voices and regional interests.
- **Avoidance of Executive Autocracy:** By choosing a **dual executive**, the Constituent Assembly avoided the **concentration of powers** in a single individual, as seen in a presidential system.
- **Easier Removal of Executive:** The Prime Minister and Council of Ministers can be **removed by a no-confidence motion**, ensuring greater flexibility and democratic checks compared to the fixed tenure in a presidential system.
- **Preference of the Constituent Assembly:** Debates in the Assembly showed overwhelming support for the parliamentary system. Leaders like **Dr. B.R. Ambedkar** argued that it ensured more **continuity and responsibility** than a rigid presidential model.
- **Successful Adaptation by Other Countries:** Countries like the UK and Commonwealth nations had effectively run parliamentary democracies, offering a tested model that India could adapt and localize.

## Structure of the Legislature – Parliament and State Legislatures

Component	Details	Article(s)
<b>A. Parliament (Union Legislature)</b>	Comprises the <b>President, Rajya Sabha, and Lok Sabha</b>	Article 79
<b>2. Rajya Sabha (Council of States)</b>	<ul style="list-style-type: none"> <li><b>Total Strength:</b> 245-233 elected by State Legislative Assemblies (Proportional Representation)- 12 nominated by President for expertise in art, literature, science, social service</li> <li><b>Permanent House;</b> 1/3rd members retire every 2 years-</li> <li><b>Chairman:</b> Vice President of India</li> </ul>	Articles 80, 84, 99
<b>3. Lok Sabha (House of the People)</b>	<ul style="list-style-type: none"> <li><b>Total Strength:</b> 545 (543 elected + 2 nominated (nominated seats removed by 104th Amendment)-</li> <li>Direct elections through <b>First-Past-the-Post</b></li> <li>Tenure: 5 years unless dissolved earlier</li> <li><b>Presiding Officer:</b> Speaker</li> </ul>	Articles 81, 83, 84, 93, 110
<b>B. State Legislatures</b>	Can be <b>unicameral</b> or <b>bicameral</b> , depending on the state	Articles 168-212
<b>3. Legislative Assembly (Vidhan Sabha)</b>	<ul style="list-style-type: none"> <li>Directly elected by people of the state</li> <li>Tenure: 5 years- Makes laws on State List &amp; Concurrent List</li> <li>Controls state executive via questions, debates, motions</li> </ul>	Articles 170-172

### 4. Legislative Council (Vidhan Parishad)

- **Partly elected, partly nominated:**
  - 1/3 by local bodies
  - 1/12 by graduates
  - 1/12 by teachers
  - 1/3 by MLAs 1/6 nominated by Governor-
- **Permanent body,** 1/3rd members retire every 2 years- Limited legislative powers, esp. in Money Bills (can delay, not reject)
- **Procedure to form legislative council in states:**
  - **Constitutional Provision:** Article 169 allows creation or abolition of Legislative Councils in states.
  - **State Assembly Resolution:** State Legislative Assembly passes a resolution by **special majority** (majority of total membership **and** two-thirds of members present and voting).
  - **Parliamentary Approval:**
    - Resolution is sent to Parliament.
    - Parliament enacts a law by **simple majority** (ordinary legislation).
  - **Presidential Assent:**
    - Bill is sent to the President for assent.
    - Upon assent, the Legislative Council is established in the state.

Articles 169, 171, 182, 196-200

## Role of Presiding Officers – Union vs State Legislature

Union Legislature  
(Lok Sabha & Rajya Sabha)

State Legislature  
(Legislative Assembly & Council)

<b>1. Conduct of Proceedings</b> <ul style="list-style-type: none"> <li>• Speaker (Lok Sabha) and Chairman (Rajya Sabha) preside over sessions, maintain order, and regulate debates.</li> </ul>	<ul style="list-style-type: none"> <li>• Speaker (Assembly) and Chairman (Council) perform similar roles in state legislatures, ensuring orderly proceedings.</li> </ul>
<b>2. Certification of Bills</b> <ul style="list-style-type: none"> <li>• Speaker certifies Money Bills (Article 110).</li> <li>• Chairman has no role in Money Bill certification.</li> </ul>	<ul style="list-style-type: none"> <li>• Speaker of the Assembly certifies Money Bills (Article 199).</li> <li>• Chairman has no such power.</li> </ul>
<b>3. Anti-Defection Law</b> <ul style="list-style-type: none"> <li>• Both Speaker and Chairman decide disqualification of members under Tenth Schedule.</li> </ul>	<ul style="list-style-type: none"> <li>• Speaker and Chairman decide on anti-defection cases in their respective Houses under the Tenth Schedule.</li> </ul>
<b>4. Joint Sittings</b> <ul style="list-style-type: none"> <li>• Speaker presides over joint sitting of Parliament (Article 108) in case of legislative deadlock.</li> </ul>	<ul style="list-style-type: none"> <li>• No provision for joint sittings in State Legislatures.</li> </ul>
<b>5. Committee Oversight</b> <ul style="list-style-type: none"> <li>• Speaker chairs key committees like Business Advisory, Rules, and General Purposes Committee.</li> </ul>	<ul style="list-style-type: none"> <li>• Speaker performs similar committee functions at the state level.</li> </ul>
<b>6. Neutrality and Discipline</b> <ul style="list-style-type: none"> <li>• Can suspend members for unruly conduct; expected to function impartially.</li> </ul>	<ul style="list-style-type: none"> <li>• Speaker and Chairman ensure discipline and can suspend members to maintain decorum.</li> </ul>
<b>7. Administrative Functions</b> <ul style="list-style-type: none"> <li>• Oversee the Lok Sabha/Rajya Sabha Secretariat and legislative administration.</li> </ul>	<ul style="list-style-type: none"> <li>• Similar administrative control over the Assembly/Council Secretariat.</li> </ul>
<b>8. Representation</b> <ul style="list-style-type: none"> <li>• Speaker represents the House in all official capacities; plays a key role in inter-parliamentary diplomacy.</li> </ul>	<ul style="list-style-type: none"> <li>• Speaker represents the State Assembly in inter-state and central meetings or conferences.</li> </ul>

**amendment bills** (except Money Bills, where RS has limited role).

- **Electoral Functions:** Participates in the **election and impeachment of the President**, and the **election of the Vice-President**.
- **Approval of Executive Actions:** Both Houses approve:
  - Ordinances issued by the President.
  - Proclamations under all three types of emergencies — National, State, and Financial.
- **Oversight Functions:**
  - Considers reports of constitutional bodies like the CAG, Finance Commission, and UPSC.
  - Approves laws for expanding the jurisdiction of the Supreme Court and UPSC.

### Areas Where Rajya Sabha Has a Lower Standing

- **Money and Finance:**
  - Money Bills can only be introduced in the Lok Sabha.
  - Rajya Sabha can only recommend amendments, which Lok Sabha may accept or reject.
  - Annual Budget and Demand for Grants are voted only in the Lok Sabha.
- **Control over the Executive:**
  - The Council of Ministers is collectively responsible only to the Lok Sabha.
  - Rajya Sabha cannot pass a no-confidence motion to remove the government.
- **Emergency Powers:**
  - While it can approve emergency proclamations, only Lok Sabha can revoke a National Emergency (under Article 352).
- **Joint Sessions:**
  - In case of legislative deadlock, Speaker of the Lok Sabha presides over the joint sitting.

## Comparing Powers of Rajya Sabha and Lok Sabha

### Areas of Equal Power

- **Legislative Process:** Both Houses can introduce and pass **ordinary bills** and **Constitutional**

### Special or Exclusive Powers of Rajya Sabha

- **Empowering Parliament to Legislate on State List Subjects** (Article 249):

By passing a resolution with a **two-thirds majority**, Rajya Sabha can authorize Parliament

to make laws on State List subjects in the national interest.

- **Creation of All-India Services** (Article 312): It can recommend the creation of new All-India Services (e.g., Indian Health Service) by passing a resolution, empowering Parliament to legislate on this matter.
- **Initiation of Vice-President's Removal** (Article 67): A resolution for the removal of the **Vice-President can only be initiated in the Rajya Sabha**, making it an exclusive function.
- **Approval of Emergency Proclamations in Absence of Lok Sabha:** If the **Lok Sabha is dissolved**, proclamations under **Articles 352, 356, and 360** (national, state, and financial emergencies) can remain effective **if approved solely by the Rajya Sabha**.

### Role of Parliament in Ensuring Accountability of the Executive

- **Question Hour and Zero Hour**
  - **Question Hour** allows MPs to ask questions that compel ministers to explain government actions or inaction, ensuring real-time accountability.
  - **Zero Hour** provides space for members to raise urgent matters without prior notice.
- **Debates and Discussions** : Parliament debates key national issues, budget allocations, and government performance, ensuring **transparency**, public scrutiny, and ministerial accountability.  
Example: Debates on COVID-19 management, farm laws, and defence procurement have held the executive accountable.
- **No-Confidence Motion** : Under Article 75, the Council of Ministers must enjoy the confidence of the Lok Sabha. A **no-confidence motion**, if passed, forces the government to resign.  
Example: The 1979 fall of the Janata government due to a no-confidence vote.
- **Parliamentary Committees** : Standing Committees, Public Accounts Committee (PAC), and Estimates Committee scrutinize **government expenditure, policy**

**implementation**, and administrative efficiency in detail.

Example: PAC examining the CAG report on coal block allocation (Coalgate scandal).

- **Budgetary Control** : Parliament exercises **financial control** through discussion and voting on the annual budget, demand for grants, and cut motions, limiting unregulated executive spending.
- **Legislative Oversight** : All executive actions must flow from law. Parliament's power to pass, amend, or repeal legislation ensures that executive functioning is **within legal boundaries**.
- **Calling Attention and Adjournment Motions** : These tools compel ministers to explain urgent public issues, bringing immediate accountability before the House.

### Parliamentary Privileges

#### Introduction

Parliamentary privileges refer to the special rights, immunities, and exemptions conferred on Members of Parliament (under Article 105) and State Legislatures (under Article 194) to enable them to discharge their legislative duties effectively and independently. These privileges are essential to maintain the dignity, authority, and functional autonomy of legislative bodies in a democratic setup.

#### Types of Parliamentary Privileges

- **Individual Privileges (For MPs/MLAs)**
  - **Freedom of Speech in the House (Article 105(1))**: Members enjoy absolute freedom of speech within the House. They cannot be held liable in any court for anything said or any vote cast during parliamentary proceedings.
  - **Immunity from Legal Proceedings**: Legislators are protected from civil or criminal proceedings for actions performed in the discharge of their official duties within the House.
  - **Exemption from Jury Service and Arrest**: Members are exempt from arrest in civil cases during the session and 40 days before

and after it. However, this immunity does **not extend to criminal cases.**

- **Collective Privileges (For the House)**

- **Right to Regulate Internal Proceedings:** Each House of Parliament has the exclusive authority to manage its internal affairs without interference from any external authority, including the courts.
- **Right to Publish Debates and Reports:** The House has the power to control the publication of its debates and proceedings, especially on sensitive matters. Though most proceedings are now publicly available, the right remains.
- **Right to Punish for Contempt:** The House can take disciplinary action—including imprisonment or reprimand—against members or outsiders for breach of privilege or contempt, such as obstructing legislative work or insulting its dignity.

## Issues and Challenges with Parliamentary Privileges

- **Lack of Codification :** Privileges are not clearly defined in law; governed by conventions, leading to ambiguity and arbitrary interpretation.
- **Conflict with Fundamental Rights :** Uncodified privileges often come into tension with Article 19(1)(a) (freedom of speech) and Article 21 (right to life and liberty).
- **Potential for Misuse :** Powers to punish for breach of privilege or contempt are sometimes used to suppress dissent, including action against journalists or civil society members.
- **Judicial vs. Legislative Clash :** Unclear boundaries have led to jurisdictional conflicts between the legislature and the judiciary (e.g., Keshav Singh case).
- **Lack of Accountability :** Immunity from legal action may lead to irresponsible or unethical conduct inside the House without repercussions.
- **Elitism and Opaqueness :** Parliamentary privilege is seen as a shield of privilege for the political elite, disconnected from transparency and public accountability.

- **No Clear Redressal for Citizens :** Citizens have limited or no legal recourse if affected by misuse of privileges.

## Notable Examples – Parliamentary Privileges

- **Keshav Singh Case (1964):** Judicial review upheld over legislative privilege; Supreme Court ruled that courts can review privilege actions violating constitutional rights.
- **Searchlight Case (1959):** Bihar Assembly held a newspaper editor in contempt. SC upheld House's right to restrict publication, even if reports were true.
- **Raja Ram Pal Case (2007):** SC upheld expulsion of MPs in the cash-for-query scam, validating Parliament's privilege to maintain its integrity.

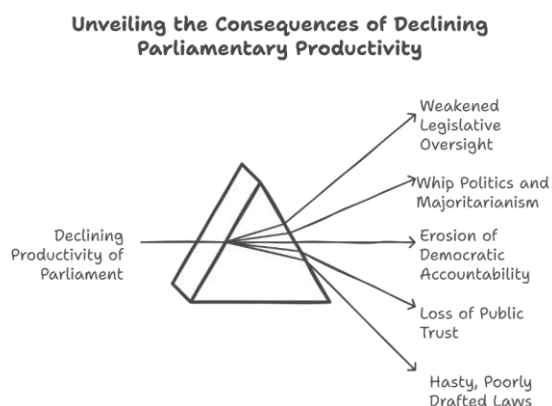
## Declining Productivity of Parliament Introduction

The Indian Parliament, envisioned as the supreme deliberative and legislative body, has witnessed a **steady decline in productivity** in recent years. This erosion affects the quality of legislation, executive accountability, and democratic functioning.

### Indicators of Decline

- **Reduced Sitting Days:**
  - Parliamentary sittings have decreased drastically—from 100+ days a year (1950s–60s) to 50–70 days in recent years.
  - **Example:** The 2023 Monsoon Session sat for only 17 days.
- **Disruptions and Adjournments:** Frequent walkouts, sloganeering, and adjournments waste valuable time and reduce effective deliberation.
- **Decline in Debates and Discussions:**
  - Major bills are often passed without meaningful debate, sometimes in minutes.
  - Example: The Farm Laws (2020) and three criminal law bills (2023) were passed with minimal discussion.
- **Rise in Ordinances:** Increased use of ordinances bypasses parliamentary scrutiny, undermining its legislative role.
- **Low Question Hour Utility:** Question Hour, a key tool for executive accountability, is often

disrupted or suspended (e.g., during COVID-19 sessions in 2020).



## Way Forward

- **Fix Minimum Sitting Days:** Implement the National Commission to Review the Working of the Constitution (NCRWC) recommendation of 120 days (LS) and 100 days (RS).
- **Empower Committees:** Make referral to parliamentary committees mandatory for all major bills.
- **Reform Rules of Procedure:** Introduce stricter rules to minimise disruptions and incentivize constructive debate.
- **Enhance Transparency and Engagement:** Digitise parliamentary processes and promote greater citizen engagement and feedback.

## Role of Opposition in a Parliamentary Democracy

### Introduction

The opposition is a critical component of a healthy parliamentary democracy. It functions as a counterbalance to the ruling party, ensuring that governance remains transparent, accountable, and inclusive.

### Key Roles of the Opposition

- **Ensuring executive accountability :** The opposition questions government actions during Question Hour, Zero Hour, and debates, compelling the executive to justify its policies and decisions.
- **Providing alternative policies :** It offers constructive criticism and presents alternate viewpoints, helping refine policy choices and giving voters informed options.

- **Legislative scrutiny :** Opposition members actively participate in standing and select committees, reviewing bills and government expenditure, improving the quality of legislation.
- **Safeguarding constitutional values :** The opposition plays a watchdog role by resisting any move that threatens democratic institutions, civil liberties, or federal balance.
- **Mobilizing public opinion :** It brings public grievances to the fore through protests, media interactions, and campaigns, acting as a voice for the people.
- **Facilitating debate and dialogue :** Through active participation in discussions, the opposition ensures that diverse perspectives are heard on key national issues.

## Constitutional and Legal Recognition

- The office of the Leader of Opposition (LoP), while not mentioned in the Constitution, is recognized under several statutes related to appointments in bodies like the CVC, CIC, and NHRC.
- A party must have at least 10% of the total strength of the House to claim the LoP position officially.

## Present Challenges with Opposition in India

- **Fragmentation and Lack of Unity :** The opposition space is divided among multiple parties with differing ideologies, regional interests, and leadership ambitions. This fragmentation weakens their collective strength and reduces their ability to present a cohesive alternative to the ruling party.
- **Dominance of the Ruling Party :** A strong majority in the Lok Sabha limits the opposition's influence in legislative affairs. The government's ability to pass laws without adequate consultation has sidelined opposition voices in key policy decisions.
- **Frequent Disruptions over Deliberation :** Parliamentary sessions often see disruptions rather than substantive debate. While disruption can be a protest tool, its overuse has reduced the quality of deliberation and eroded

the public's perception of the opposition's role.

- **Diminished Role in Parliamentary Committees** : In recent years, fewer bills are being referred to standing committees, and the opposition is not always given adequate representation or chairpersonship, reducing its oversight role.
- **Lack of Effective Leadership** : Absence of a clear, nationally accepted leader among opposition ranks has limited their appeal as a credible alternative. This also affects coordination and strategic planning.
- **Weak Public Connect and Narrative** : The opposition often struggles to connect with voters on core issues or build consistent narratives. In contrast, the ruling party dominates the political discourse through well-organized outreach and media strategies.
- **Misuse or Overuse of Legal and Investigative Agencies** : Opposition leaders have alleged selective targeting through raids, arrests, and investigations, which may create a chilling effect and hinder effective political mobilisation.

### Way Forward

- **Build Ideological Unity and Issue-Based Alliances** : Opposition parties should focus on common minimum programmes and national issues to present a united front despite ideological differences.
- **Shift from Disruption to Deliberation** : Adopt constructive engagement in Parliament through informed debate, policy critique, and committee participation.
- **Strengthen Leadership and Communication** : Develop credible national leadership and clear public narratives to effectively challenge government policies and mobilize citizen support.
- **Institutionalize Role of LoP** : Amend rules to grant formal recognition to the Leader of Opposition regardless of the 10% seat rule, ensuring fair participation in key appointments and decisions.

### Anti-Defection Law in India Constitutional Basis

The Anti-Defection Law was introduced through the 52nd Constitutional Amendment Act, 1985, inserting the Tenth Schedule into the Constitution. Its main aim is to curb political defections that destabilize elected governments and erode democratic mandates.

### Key Provisions of the Tenth Schedule

- **Grounds for Disqualification:**  
A legislator (MP or MLA) can be disqualified if:
  - They voluntarily give up membership of their party.
  - They vote or abstain from voting in the House contrary to the party whip without prior permission.
- **Exceptions:**
  - **Merger provision:** If two-thirds of a legislative party merges with another party, it is not considered defection.
  - **Presiding Officers:** Initially exempted, but the 91st Constitutional Amendment Act, 2003 removed this protection.
- **Decision-making Authority:**
- The power to decide disqualification lies with the Speaker or Chairman of the House. The Supreme Court in *Kihoto Hollohan v. Zachillhu* (1992) upheld this but allowed judicial review after the decision.

### Issues and Challenges with the Anti-Defection Law

- **Discretionary and Delayed Role of the Speaker**
  - The power to decide on disqualification lies with the Speaker or Chairman, who is often affiliated with a political party. This creates room for bias and delays in decision-making.
  - **Example:** In the Manipur case (2020), the Speaker delayed disqualification of a legislator who had defied the party whip and even took oath as a minister, despite clear evidence.
- **Absence of Time-bound Mechanism**
  - The Constitution does not specify a deadline for deciding defection cases, allowing delays that defeat the purpose of the law.

- **Example:** During the Karnataka crisis (2019), disqualification of rebel MLAs was delayed, enabling political manoeuvres that changed the government.
- **Misuse of the Merger Provision**
  - The two-thirds merger clause is often misused to engineer defections without facing disqualification.
  - **Example:** In Goa (2019), 10 of 15 Congress MLAs switched to the BJP under the merger clause, without any real merger of the party units.
- **Stifling of Legitimate Dissent**
  - The law enforces party whip even in non-confidence motions, discouraging MPs and MLAs from expressing independent views.
  - **Example:** During the GST bill discussions, members across parties who had reservations were compelled to vote along party lines.
- **Selective Enforcement**
  - Disqualification is often applied selectively, depending on the political context, undermining the rule of law.
  - **Example:** In Rajasthan (2020), defiant MLAs were not disqualified during the Congress internal rift, raising questions of unequal treatment.
- **Limited Scope for Judicial Review**
  - Courts can intervene only after the Speaker's decision, allowing unjustified delays to go unchecked in the interim.
  - **Example:** In several cases, including Kihoto Hollohan (1992), the court upheld this limitation, which still hampers quick redress.

- **Codify Timelines:** Mandate statutory deadlines (e.g., 60–90 days) for deciding defection cases to prevent political misuse.
- **Revisit the Merger Clause:** Plug the two-thirds loophole by requiring not just numerical strength, but also genuine ideological realignment.

#### **Keywords :**

Parliamentary Sovereignty, Collective Responsibility, Fusion of Powers, Dual Executive, First-Past-the-Post, Legislative Privileges, Tenth Schedule, Merger Clause, Codification of Privileges, Westminster Model, Office of Profit, Floor Crossing, Parliamentary Oversight, Confidence Motion, Motion of Thanks, Legislative Deadlock

#### **Mains Practice Questions :**

Q1. "The decline of legislative productivity in India is a serious threat to democratic governance." Discuss with examples from recent sessions of Parliament and State Assemblies.

Q2. How do the powers of the Rajya Sabha differ from those of the Lok Sabha? Analyze their role in the federal and legislative framework.

#### **Value Addition for unit 7 In news**

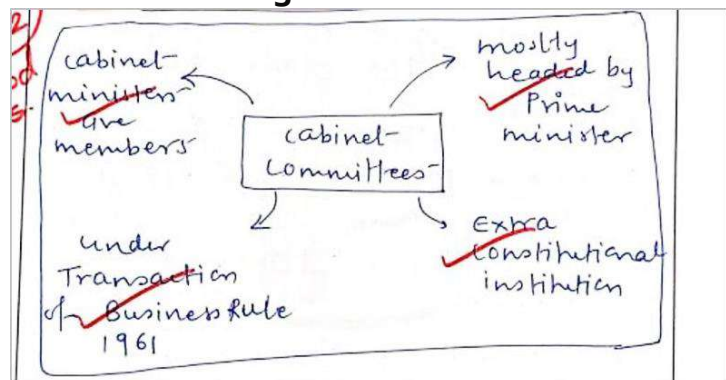
- Recently, Lok Sabha Speaker Om Birla highlighted the role of parliamentary committees as "mini Parliaments" in ensuring effective oversight and social justice legislation, emphasizing their complementary function to Parliament's structure.
- SC, as guardian of the Constitution, is not powerless if a Speaker decides to sit on anti-defection pleas: **Justice B.R. Gavai**
- **Former Vice President M. Venkaiah Naidu** has called for amendments to the 10th schedule of

#### **Way Forward**

- **Transfer Power to an Independent Body:** Shift disqualification authority from Speaker to an independent tribunal or Election Commission, as recommended by the Law Commission (170th Report) and Dinesh Goswami Committee.
- **Limit Scope of Whip:** Restrict whip enforcement only to confidence motions and money bills, to encourage intra-party democracy.

the Constitution or Anti-Defection Law to make elected representatives resign from their posts if they intend to change parties.

### Illustration / Diagram



- motions, censure, questions
- **T – Types of Bills**
  - Ordinary, Money, Constitutional, Private Member's Bill
- **E – Ethics & Conduct**
  - Disruptions, privileges, anti-defection, code of conduct
- **S – State Legislature Framework**
  - Legislative Assembly, Council, Governor's legislative role

### Ready - Made templates President

### Acronym

#### 1. "PARLIAMENT"

(A bit longer but good for essay-type answers)

- **P – Powers & Privileges**
- **A – Accountability Mechanisms**
- **R – Representation of the People**
- **L – Law-making Function**
- **I – Institutional Checks (Speaker, committees)**
- **A – Anti-Defection and Discipline**
- **M – Money Bills and Budgetary Control**
- **E – Elections & Qualifications**
- **N – Need for Reforms**
- **T – Transparency and Public Engagement**

#### 2. DEBATES"

(Captures key themes related to the working of legislatures)

- **D – Deliberative Role**
  - Debates, discussions, question hour, zero hour
- **E – Elections & Composition**
  - LS/RS elections, nomination system, SC/ST reservation
- **B – Budget and Financial Control**
  - Money Bill vs Financial Bill, Appropriation Bill, CAG, PAC
- **A – Accountability Tools**
  - No-confidence, adjournment

Powers and Functions of the President	
Executive Powers	<ul style="list-style-type: none"> <li>● Appointment powers for the Prime Minister, ministers, and key officials</li> <li>● Seeking information from ministers, initiating investigations</li> <li>● Appointing administrators for Union Territories</li> <li>● Declaration of scheduled or tribal areas</li> </ul>
Legislative Powers	<ul style="list-style-type: none"> <li>● Summon/Prorogue/Dissolve Lok Sabha</li> <li>● Addressing Parliament sessions</li> <li>● Nomination of members to Rajya Sabha</li> <li>● Deciding on disqualifications</li> <li>● Promulgating ordinances</li> </ul>
Financial Powers	<ul style="list-style-type: none"> <li>● Introduction of money bills</li> <li>● Presentation of the Union Budget</li> <li>● Recommendations for grants, advances from the contingency fund</li> <li>● Finance Commission formation</li> </ul>
Judicial Powers	<ul style="list-style-type: none"> <li>● Appointing the Chief Justice and judges.</li> <li>● Consultation with the Supreme Court.</li> <li>● Powers of clemency, including pardons and reprieves.</li> </ul>

	Military Powers	<ul style="list-style-type: none"> <li>• Acting as the supreme commander of defense forces.</li> <li>• Appointing chiefs of the Army, Navy, and Air Force.</li> <li>• Declaring war or peace</li> </ul>
	Diplomatic Powers	<ul style="list-style-type: none"> <li>• Negotiating treaties</li> <li>• Representation in international forums</li> <li>• Sending/receiving diplomats.</li> </ul>
	Emergency Powers	<ul style="list-style-type: none"> <li>• Declaration of a National Emergency (Article 352).</li> <li>• Implementation of President's Rule (Article 356 &amp; 365).</li> <li>• Proclamation of a Financial Emergency (Article 360).</li> </ul>
	Veto Powers	<ul style="list-style-type: none"> <li>• He may give his assent to the bill</li> <li>• He may withhold his assent to the bill</li> <li>• He may return the bill</li> </ul>
	Ordinance Making Power	<ul style="list-style-type: none"> <li>• Promulgation of ordinances to deal with urgent circumstances</li> </ul>
	Pardoning Powers	<ul style="list-style-type: none"> <li>• Respite, pardon, reprieve, remit, commute the punishment</li> </ul>

### Navigating the Syllabus: What You Need to Know

#### Appointment to Various Constitutional Posts, Powers, Functions and Responsibilities of Various Constitutional Bodies

- Election Commission
- UPSC (Union Public Service Commission)
- Finance Commission
- Comptroller and Auditor General of India
- Attorney General of India
- GST Council
- National Commission for Scheduled Castes
- National Commission for Scheduled Tribes
- National Commission for Backward Classes

#### UPSC Previous Year Questions

Question	Nature of Question	Core Demand
The duty of the Comptroller and Auditor General is not merely to ensure the legality of expenditure but also its propriety. Comment. (2024)	CAG + Public Accountability	Explain the dual responsibility of the CAG to ensure both legality and propriety of expenditure.
Discuss the role of the Election Commission of India in the light of the evolution of the Model Code of Conduct. (2022)	ECI + Model Code of Conduct	Discuss how ECI enforces MCC and its role in free and fair elections.
How have the recommendations of the 14th Finance Commission of India enabled the States to improve their fiscal position? (2021)	Finance Commission + Fiscal Federalism	Explain 14th FC recommendations and their impact on state finances.
What steps are required for constitutionalization of a Commission? Should NCW be given constitutional status for better gender justice? (2020)	NCW + Constitutionalization	Explain process of making a commission constitutional and assess need for NCW's status upgrade.
CAG's role reflected in method of appointment and powers. Explain. (2018)	CAG + Institutional Integrity	Discuss how appointment and powers ensure CAG's independence and role.
Can NCSC enforce reservation in religious minority institutions? Examine.	NCSC + Reservation Enforcement	Examine scope of NCSC's power in

(2018)		religious minority institutions.
How is the Finance Commission constituted? Discuss terms of reference of recent Finance Commission. (2018)	Finance Commission + TOR	Explain composition and TOR of latest Finance Commission.
CAG's power under Article 149 — does auditing policy implementation overstep jurisdiction? (2016)	CAG + Audit Jurisdiction	Discuss limits of CAG's audit scope in policy matters.
13th Finance Commission recommendations for strengthening local finances. (2013)	Finance Commission + Local Governance	Discuss how 13th FC recommendations differ and support local governments.
A national Lokpal alone cannot resolve public immorality. Discuss. (2013)	Lokpal + Ethical Governance	Discuss limits of Lokpal in addressing deeper ethical problems in public life.

## 1. Election Commission of India

### Constitutional Status and Role

The Election Commission of India is a constitutional body established under Article 324 of the Constitution. It is entrusted with the powers of superintendence, direction, and control of elections to the Parliament, State Legislatures, and the offices of the President and Vice-President. It functions as a common electoral authority for both the Central and State governments.

### Provisions Ensuring Independence

- **Security of tenure** : The Chief Election Commissioner (CEC) can be removed only through a process similar to that for a Supreme Court judge, by Parliament, ensuring protection from arbitrary removal.
- **Protection of service conditions** : The service conditions of the CEC cannot be varied to his disadvantage after appointment.
- **Limited executive control over other commissioners** : Election Commissioners and Regional Commissioners cannot be removed except on the recommendation of the CEC, thereby reducing direct executive influence.

### Gaps in Ensuring Independence and Impartiality

- **Absence of qualification criteria** : The Constitution does not prescribe any specific qualifications for appointment, increasing the scope for politicisation of the office.
- **No fixed tenure** : The term of office is not constitutionally defined, allowing the government to curtail or influence tenures through service rules.
- **Post-retirement appointments allowed** : There is no restriction on retiring Election Commissioners taking up government appointments, which may incentivise biased behaviour in hope of future rewards.

### Powers and Functions of the ECI

#### 1. Administrative Functions

- Determines the territorial boundaries of constituencies in accordance with the Delimitation Commission Act.
- Prepares and periodically revises electoral rolls.

- Notifies the schedule and dates of elections.
- Scrutinizes nomination papers filed by candidates.
- Supervises the entire election process to ensure free and fair elections.
- Appoints officers to inquire into disputes related to electoral arrangements.
- Ensures compliance with the Model Code of Conduct (MCC).
- Cancels or postpones polls in cases of irregularities.

#### 2. Advisory Functions

- Advises the President and the Governors regarding disqualification of MPs and MLAs under Articles 103 and 192.
- Advises the President on whether elections can be conducted in a state under President's Rule.

#### 3. Quasi-Judicial Functions

- Registers political parties and allots them election symbols.
- Grants or withdraws recognition of parties as national or state parties based on their performance.
- Resolves disputes related to party symbols and recognition.

#### Issues and Challenges with the ECI

- Complete executive control over the appointment process of the Chief Election Commissioner and other Election Commissioners raises concerns about autonomy.
- Short tenures affect consistency and institutional memory. Between 2015 and 2022, seven CECs were appointed.
- The ECI lacks an independent secretariat and staff, relying heavily on officers deputed from the executive.
- Disparity in the removal process of Election Commissioners compared to the Chief Election Commissioner compromises their equal status.
- The ECI cannot de-register political parties, despite being the registering authority under Section 29A of the Representation of People Act, 1951.
- Article 324(2) envisions a law by Parliament for

appointments to the ECI, but no such law has been enacted to date.

## Way Forward

- Establish a collegium system involving the Prime Minister, Leader of Opposition, and Chief Justice of India for appointing Election Commissioners.
- Ensure wider consultation and consensus in appointments to enhance public trust.
- Charge ECI's expenditure from the Consolidated Fund of India to guarantee financial independence.
- Create an independent secretariat and staff structure, separate from the executive, for operational autonomy.
- Empower the ECI to de-register political parties for violations of electoral laws.
- Provide equal security of tenure to all Election Commissioners to ensure parity and institutional stability.
- Grant ECI contempt powers similar to courts for enforcing compliance.
- Promote transparency in political funding through mandatory disclosures and real-time auditing.
- Amend the Representation of People Act to allow ECI rule-making powers.
- Authorise the ECI to audit political party accounts.
- Declare paid news and misinformation campaigns as electoral offences under the law.

## 2. Comptroller and Auditor General (CAG) of India

### Introduction

The Comptroller and Auditor General (CAG) of India is a constitutional authority established under Article 148 of the Constitution. It is the guardian of public finances and ensures accountability of the executive to the legislature in matters of public expenditure. CAG audits all receipts and expenditure of the Union and State governments, including bodies substantially financed by them.

### Constitutional and Legal Provisions

- Article 148 establishes the office of the CAG.

- Article 149 empowers the Parliament to define CAG's duties and powers through law.
- The CAG (Duties, Powers and Conditions of Service) Act, 1971 was enacted to operationalise Article 149.

### Powers and Functions of the CAG

CAG performs legal, regulatory, propriety, and performance audits as per constitutional and statutory mandates.

- Audits all expenditures from the Consolidated Fund, Contingency Fund, and Public Account of India and states.
- Audits receipts and expenditures to ensure accuracy, transparency, and fairness in assessment, collection, and allocation.
- Audits all government companies, corporations, and bodies substantially funded by the government.
- Conducts performance audits evaluating economy, efficiency, and effectiveness in the use of public resources.
- Acts as a key advisor to the Public Accounts Committee (PAC) of Parliament.
- Submits three main audit reports to the President:
  - Audit Report on Appropriation Accounts
  - Audit Report on Finance Accounts
  - Audit Report on Public Sector Undertakings

### Significance of the CAG

- Ensures financial accountability of the executive to the legislature.
- Upholds principles of transparency and good governance.
- Conducts propriety audits to assess the wisdom, faithfulness, and economy of government spending.
- Recognized globally, CAG of India serves as external auditor for 11 UN organizations.
- Holds a status equivalent to a Supreme Court judge in terms of oath and removal procedure, highlighting its constitutional importance.
- As stated by Dr. B.R. Ambedkar, the CAG is the most important officer under the Constitution, acting as the guardian of the public purse.

## Issues and Challenges

- Appointment process is solely controlled by the executive, raising concerns about independence.
- Centralization of auditing functions reduces effectiveness at the state level.
- Growing use of off-budget financing mechanisms by the executive avoids scrutiny.
- NGOs and Public-Private Partnerships (PPPs), despite receiving public funds, often remain outside CAG's audit scope.
- Frequent delays by government departments in furnishing documents hinder audit efficiency.
- Allegations of overstepping mandate, especially in high-profile cases like the 2G and Coal Block allocations.
- Lack of consideration for administrative constraints may discourage innovation within bureaucracy.
- Delays in tabling and discussing audit reports in Parliament dilute their impact.

## Way Forward

- Constitute a multi-member selection committee including the PAC Chairperson for appointing the CAG.
- Expand audit jurisdiction to include NGOs and PPPs receiving substantial public funds.
- Empower the CAG to file RTIs to obtain information from departments in a time-bound manner.
- Leverage digital tools and ICT to improve audit accuracy and speed.
- Integrate social audit mechanisms into CAG's formal audit framework.
- Regularly audit major welfare schemes to ensure proper use of funds and service delivery.

## Suggested Reforms

- **Former CAG Vinod Rai**
  - Include PPPs, Panchayati Raj Institutions, and government-funded societies under CAG's ambit.
  - Amend the CAG Act of 1971 to align with changing governance practices.
  - Establish a collegium system for appointment, similar to the CVC model.

## Second Administrative Reforms Commission (ARC)

- Recommend bipartisan, multi-member appointment committee.
- Mandate time-bound presentation of CAG reports to Parliament.
- **Ramaswamy Iyer (Former IA&AS officer)**
  - Reposition the CAG as a proactive financial investigator rather than a post-facto auditor.

## Comparison: CAG in India vs United Kingdom

- In the UK, the CAG functions as both Comptroller and Auditor General; in India, the CAG does not perform the role of a Comptroller.
- The UK CAG is a member of Parliament; the Indian CAG is constitutionally independent and not part of the legislature.
- UK CAG's approval is required before any expenditure from the treasury; in India, audits are conducted ex post facto.
- Indian CAG does not question policy decisions, while in the UK the role is broader and includes pre-expenditure scrutiny.

## 3. Finance Commission of India

### Introduction

The Finance Commission is a constitutional body established under Article 280 of the Constitution. It plays a central role in India's fiscal federal structure by recommending the distribution of tax revenues between the Union and the States. It also suggests measures to strengthen fiscal discipline, improve public finance management, and promote cooperative federalism through extensive consultations with all levels of government.

### Functions of the Finance Commission

- Recommends the distribution of the net proceeds of taxes between the Centre and the States, and the inter se distribution among the States.
- Lays down principles for providing grants-in-aid from the Consolidated Fund of India to the States.
- Suggests measures to augment the Consolidated Fund of a State to supplement the resources of Panchayats and Municipalities,

based on the recommendations of the respective State Finance Commissions.

- Examines and reports on any other matter referred to it by the President in the interest of sound public finance.

## Issues and Challenges with the Finance Commission

- **Non-binding nature of recommendations**
  - The Commission's recommendations, though made after detailed consultations, are advisory in nature. The Union government is not constitutionally bound to accept them, leading to selective implementation.
  - **Example:** Several recommendations of the 15th Finance Commission on performance-linked grants were not fully adopted.
- **Lack of permanency and continuity**
  - Being a non-permanent body, reconstituted every five years, the Finance Commission lacks institutional memory and continuity in fiscal planning. This limits its ability to address evolving fiscal challenges holistically.
- **Politicisation and trust deficit**
  - States have raised concerns over perceived political bias in fund allocation. Allegations of favouring certain states undermine the Commission's credibility and threaten cooperative federalism.
  - **Example:** Southern states expressed dissatisfaction over being penalised for population control successes under the 15th Finance Commission's formula.
- **Limited scope for long-term fiscal reforms**
  - Due to its short tenure and limited mandate, the Commission often focuses on distribution rather than structural reforms in public finance, like tax efficiency, debt sustainability, or improving fiscal discipline.
- **Overlap with other bodies**
  - There is growing overlap with institutions like the GST Council, NITI Aayog, and State Finance Commissions, causing ambiguity in fiscal roles and dilution of accountability.
- **Insufficient role in local body empowerment**

- Though tasked with suggesting measures for strengthening the Consolidated Fund of States to support local bodies, the Finance Commission often relies on central guidelines, limiting tailored support to local needs.

## Devolution Criterion Used by the 14th & 15th Finance Commission (2021–2026)

Criteria	14th FC (2015–20)	15th FC (2020–21)
Income Distance	50.0	45.0
Area	15.0	15.0
Population (1971)	17.5	-
Population (2011)	10.0	15.0
Demographic Performance	-	12.5
Forest Cover	7.5	-
Forest and Ecology	-	10.0
Tax and Fiscal Efforts	-	2.5
<b>Total</b>	<b>100</b>	<b>100</b>

## 4. National Commissions for SCs, STs, and BCs Introduction

These commissions are constitutional/statutory bodies tasked with safeguarding the rights and promoting the welfare of Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

### Constitutional and Legal Status

Commission	Article/Act	Key Amendments/Provisions
National Commission for SCs (NCSC)	Article 338	Established by 65th Amendment; bifurcated from STs in 2003 (89th)
National Commission for STs (NCST)	Article 338A	Created through the 89th Constitutional Amendment Act (2003)

National Commission for BCs (NCBC)	Article 338B	Granted constitutional status via 102nd Constitutional Amendment (2018)
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## Functions of the Commissions

- **Monitoring Safeguards** : Investigate and monitor implementation of constitutional and legal safeguards for SCs, STs, and BCs.
- **Enquiry into Complaints** : Enquire into specific complaints regarding deprivation of rights and safeguards of these communities.
- **Advisory Role** : Advise governments on socio-economic planning and development for the welfare of SCs/STs/BCs.
- **Annual Reporting** : Submit annual reports to the President detailing implementation and gaps in protections.
- **Recommendations** : Recommend measures to improve the effectiveness of safeguards and welfare schemes.
- **Protection and Welfare** : Promote protection, development, and advancement of these communities.
- **Inclusion/Exclusion from Lists (NCBC-specific)** : Recommend inclusion or exclusion of communities from the central list of backward classes for reservation in jobs and education.

## Powers of the Commissions

The commissions possess powers equivalent to a civil court while investigating complaints:

- Summoning and enforcing attendance of any person from any part of India.
- Requiring the discovery and production of documents.
- Receiving evidence on affidavits.
- Requisitioning public records or copies from any court or office.
- Mandatory consultation by central and state governments on policies and laws affecting SCs/STs/BCs.

## Issues and Challenges

- **Politicization of Appointments** : Positions often filled by political appointees, affecting credibility and neutrality.

- **Non-binding Recommendations** : Government is not legally obligated to act on the commissions' findings or suggestions.
- **Delays and Inefficiencies** : Slow inquiry process, delayed submission and tabling of reports, and poor follow-up.
- **Perceived Government Bias** : Commissions are often seen as echoing official positions rather than acting independently.
- **Underutilization of Powers** : Suo motu powers are rarely invoked; elite bias affects outreach to the most vulnerable.
- **Limited Impact on Atrocity Prevention** : Despite their mandate, commissions have had little success in reducing caste and tribal atrocities.
- **Administrative Conflicts** : Overlapping roles with line ministries (e.g., Social Justice or Tribal Affairs) cause friction.
- **Lack of Resources** : Staff shortages, inadequate funding, and poor infrastructure hinder effective functioning.
- **Institutional Weakness** : Working more like departments within the government rather than autonomous constitutional bodies.

## Recommendations and Way Forward

- **Broadening Membership** : Include experts, NGO members, and social activists with field-level experience for broader perspectives.
- **Assert Suo Motu Authority** : Proactively initiate investigations rather than waiting for complaints.
- **Internal Performance Audits** : Establish internal evaluation mechanisms to track effectiveness and responsiveness.
- **Institutional Independence** : Clearly demarcate functions from concerned ministries and assert constitutional autonomy.
- **Improve Capacity** : Address chronic underfunding and understaffing to enhance institutional capability.
- **Legal Strengthening** : Make key recommendations binding on executive authorities to ensure follow-through.

## 5. GST Council

### Constitutional Status

- Established under Article 279-A through the 101st Constitutional Amendment Act, 2016.
- Aimed at ensuring **cooperative federalism** in the administration of the Goods and Services Tax (GST).
- Constituted by the President to facilitate coordination between the Centre and the States.

### Functions of the GST Council

- Decide on the subsuming of various taxes, cesses, and surcharges into GST.
- Recommend goods and services to be included or exempted from GST.
- Formulate GST laws, principles of levy, and apportionment for inter-state trade.
- Determine threshold limits for exemption based on turnover.
- Recommend GST rates, including floor rates with bands.
- Fix the date for the imposition of GST on petroleum products like crude oil, natural gas, ATF, etc.
- Recommend compensation to states for revenue losses due to the implementation of GST (for five years).
- Decide on any other matter related to the GST framework as referred by the Council.

## 6. Attorney General of India

### Constitutional Status

- Appointed under Article 76 of the Constitution.
- He/she is the **highest law officer of India** and acts as the principal legal adviser to the Government of India.

### Duties and Functions

- Advises the Government of India on legal matters referred by the President.
- Performs legal duties assigned by the President.
- Appears on behalf of the Government in the Supreme Court and High Courts.
- Represents the Government in Presidential references to the Supreme Court under Article 143.

- Discharges any other functions assigned by the Constitution or a law.

### Rights

- Right of audience in all Indian courts.
- Right to participate in the proceedings of both Houses of Parliament, though without the right to vote.
- Entitled to all privileges and immunities of a Member of Parliament.
- Not barred from private legal practice.

### Limitations

- Cannot advise or appear against the Government of India.
- Cannot act in cases where he has advised or represented the Government.
- Cannot defend accused persons in criminal cases without government permission.
- Cannot accept directorships in companies without government approval.
- Must route legal advice to ministries through the Ministry of Law and Justice.
- Is not a full-time government counsel or government servant.

**Keywords :** Electoral integrity, Model Code of Conduct, Institutional autonomy, Collegium system, Propriety audit, Performance-based grants, Fiscal federalism, Cooperative federalism, Social audit, Quasi-judicial powers, Guardian of public purse, Elite capture, Suo motu powers, Revenue devolution, Principal legal adviser.

### Mains Practice Questions :

Q1. Analyze the structure, powers, and functioning of the Union Public Service Commission (UPSC). How does it uphold merit in civil services recruitment?

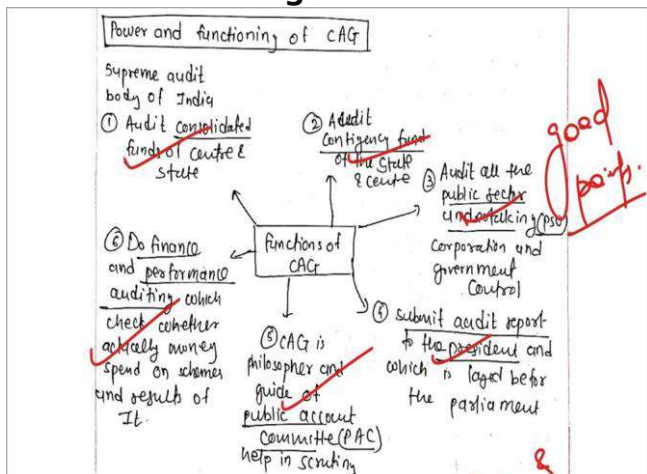
Q2. Critically examine the role and autonomy of the Finance Commission in India. How does it balance fiscal needs between the Centre and the States?

## Value Addition for unit 8

### In news

- Recently, the Election Commission told the Supreme Court that NOTA (None of the Above) has failed to ensure fair elections, prompting discussions on its powers under Article 324 to regulate electoral processes and propose reforms.
- Recently, the NCBC recommended revising the OBC creamy layer criteria, exercising its Article 338B powers to enhance socio-economic welfare for backward classes amidst debates on implementation.
- Recently, the NCSC announced a report on caste violence in Vadakadu, Tamil Nadu, recommending Dalit rehabilitation, fulfilling its Article 338 duty to protect SC rights and propose welfare measures.
- Recently, the GST Council, chaired by the Union Finance Minister, recommended reducing GST rates on eco-friendly products, exercising its Article 279A authority to ensure uniform tax policies across states.

### Illustrations / Diagram



## Ready Templates

(Common Template pertaining to the functioning of the constitutional bodies.)

<p><b>Significance/ Functions</b></p>	<ol style="list-style-type: none"> <li>1. Ensure democratic character of the Constitution</li> <li>2. Enquire into specific complaints</li> <li>3. Advise on planning in socio economic development</li> <li>4. Make recommendations for effective working of safeguards</li> <li>5. Discharge other functions referred by the President</li> <li>6. Investigate and monitor matters relating to the constitutional and other safeguards</li> <li>7. Submitting reports to the President/Governor</li> </ol>
<p><b>Issues</b></p>	<ol style="list-style-type: none"> <li>1. Executive control over appointments</li> <li>2. Delays in tabling the reports in the Parliament</li> <li>3. Non binding recommendations</li> <li>4. Staff crunch</li> <li>5. Conflicts with ministries</li> <li>6. Not use suo motu powers effectively</li> </ol>
<p><b>Way Forward</b></p>	<ol style="list-style-type: none"> <li>1. Institutionalization of appointments</li> <li>2. Inclusion of members from NGOs, eminent personalities, etc.</li> <li>3. Use of suo motu power effectively</li> <li>4. Overlap with ministries need to be examined and independence of the body need to be asserted</li> <li>5. Filling of vacancies</li> <li>6. Make binding recommendations</li> </ol>

Navigating the Syllabus: What You Need to Know

- **Statutory, Regulatory and Various Quasi-Judicial Bodies**
  - Concept and Meaning
  - Significance, Role, Functions, Importance
  - Issues associated, Drawbacks, Limitations
- **Some Important Bodies (Focus only on bodies which are in news)**
  - NITI Aayog
  - National Human Rights Commission (NHRC)
  - Central Information Commission (CIC)
  - Central Vigilance Commission (CVC)
  - Central Bureau of Investigation (CBI)
  - Lokpal and Lokayuktas
- **Regulatory Bodies**
  - Securities and Exchange Board of India (SEBI)
  - Insurance Regulatory and Development Authority (IRDA)
  - Reserve Bank of India (RBI)
  - Telecom Regulatory Authority of India (TRAI)

UPSC Previous Year Questions

Sr. No	PYQ	Nature of Question
1	Discuss the role of the Competition Commission of India in containing the abuse of dominant position by the Multi-National Corporations in India. Refer to the recent decisions. [2023]	Contemporary + Regulatory Oversight
2	Discuss the role of the National Commission for Backward Classes in the wake of its transformation from a statutory body to a constitutional body. [2022]	Static + Institutional Change
3	Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analyzing their structural and practical limitations, suggest remedial measures. [2021]	Analytical + Structural Limitation
4	“Recent amendments to the Right to Information Act will have profound impact on the autonomy and independence of the Information Commission”. Discuss. [2020]	Contemporary + Institutional Autonomy
5	“The Central Administration 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]	Static + Quasi-Judicial Role

6	Is the National Commission for Women able to strategize and tackle the problems that women face in both public and private spheres? Give reasons in support of your answer. [2017]	Institutional Performance + Gender Justice
7	What is quasi-judicial body? Explain with the help of concrete examples. [2016]	Conceptual + Illustrative Examples
8	For achieving the desired objectives, it is necessary to ensure that the regulatory institution remain independent and autonomous. Discuss in the light of experiences in recent past. [2015]	Contemporary + Regulatory Autonomy
8	The setting up of a Rail Tariff Authority to regulate fares will subject the cash strapped Indian Railways to demand subsidy for obligation to operate non-profitable routes and services. Taking into account the experience in the power sector, discuss if the proposed reform is expected to benefit the consumers, the Indian Railways or the private container operators. [2014]	Policy Reform + Regulatory Impact
10	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 above observation assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards. [2014]	Static + Accountability Mechanism
11	The product diversification of financial institutions and insurance companies, resulting in overlapping of products and services strengthens the case for the merger of the two regulatory agencies, namely SEBI and IRDA. Justify. [2013]	Contemporary + Regulatory Reform

## 1. Statutory Bodies

### Introduction

Statutory bodies are institutions created by an Act of Parliament or State Legislature to carry out specific functions. Unlike constitutional bodies, they are not mentioned in the Constitution but derive their authority from statutes.

### Key Features

- Created through legislation passed by the legislature (e.g., Parliament).
- Functions, powers, and structure are defined in the parent Act.
- Can be altered, merged, or abolished by amending the relevant law.
- Meant to implement or oversee specific areas of governance or regulation.

### Examples of Statutory Bodies in India

Body	Parent Act
National & State Human Rights Commissions	Protection of Human Rights Act, 1993
Central & State Information Commissions	Right to Information Act, 2005
National Commission for Women	National Commission for Women Act, 1990
Securities and Exchange Board of India (SEBI)	SEBI Act, 1992
Telecom Regulatory Authority of India (TRAI)	TRAI Act, 1997
Competition Commission of India	Competition Act, 2002
Lokpal	Lokpal and Lokayuktas Act, 2013

## National and State Human Rights Commissions (NHRC & SHRC)

### Introduction

The NHRC and SHRCs are statutory institutions established to protect and promote human rights in India. They act as independent watchdogs to ensure that fundamental rights and dignity of individuals are respected and protected by public authorities.

## Statutory Basis

- Both NHRC and SHRCs are constituted under the **Protection of Human Rights Act, 1993** (amended in 2006 and 2019).
- NHRC deals with human rights issues at the **national level**, while SHRCs function at the **state level**.

## Composition

Post	NHRC	SHRC
Chairperson	Former Chief Justice of the Supreme Court or or a Judge of the Supreme Court.	Former Chief Justice of a High Court or or a Judge of the high Court.
Members	<ul style="list-style-type: none"> <li>• One serving or retired Supreme Court judge</li> <li>• One serving or retired Chief Justice of a High Court</li> <li>• Two members with knowledge of human rights</li> </ul>	<ul style="list-style-type: none"> <li>• One serving or retired High Court judge</li> <li>• Two members with human rights expertise</li> </ul>
Ex-officio Members	Chairpersons of NCW, NCM, NCBC, NCSC, and NCST	None
Appointment Authority	President of India	Governor of the State

## Powers and Functions (Applicable to both NHRC and SHRC)

- **Investigation of Human Rights Violations :** Inquire into complaints or suo motu cases of human rights violations by public authorities or negligence in preventing such violations.
- **Review of Safeguards :** Examine existing constitutional and legal safeguards and recommend changes for better protection of human rights.
- **Monitoring of Detention Facilities :** Visit jails, detention centres, and psychiatric institutions to check conditions and treatment of inmates.

- **Awareness and Education** : Undertake research and promote awareness of human rights through media, seminars, and educational campaigns.
- **Advisory Role to Government** : Recommend policy or legislative measures for effective implementation of human rights protections.
- **Civil Court Powers** : Possess powers of a civil court: summoning witnesses, ordering document production, and taking evidence on affidavits.

- **Transparent Appointments** : Introduce bipartisan and merit-based selection committees to enhance independence and credibility.
- **Expand Jurisdiction** : Amend the Act to enable direct action in cases involving non-state actors and armed forces (especially for NHRC).
- **Empower SHRCs** : Provide SHRCs with adequate funds, infrastructure, and staffing to ensure they operate on par with NHRC.

## Jurisdiction

- NHRC can investigate cases involving **central government** institutions and **armed forces** (with limitations).
- SHRCs can investigate matters related to the **State List** and institutions under the state government's jurisdiction.

## Limitations and Challenges

- **Non-binding Recommendations** : Recommendations are advisory, limiting their enforcement potential.
- **Armed Forces Exemption (NHRC only)** : Cannot directly investigate complaints involving armed forces; can only seek reports from the Union Government.
- **Political Appointments and Delays** : Both commissions face criticism over politically motivated appointments and long-standing vacancies.
- **Implementation Gaps** : Governments often delay or ignore the execution of recommendations made by the commissions.
- **Underfunding and Staff Shortage** : Many SHRCs function with limited resources, affecting the scope and quality of investigations.
- **Low Visibility at the Grassroots** : Limited public awareness and lack of accessibility to rural and marginalised communities reduce effectiveness.

## Way Forward

- **Strengthen Enforcement Powers** : Provide statutory mechanisms for partial or full binding effect of recommendations in select categories.

## Central and State Information Commissions

### Introduction

The Central Information Commission (CIC) and State Information Commissions (SICs) are statutory bodies established under the **Right to Information (RTI) Act, 2005** to uphold the citizen's right to access public information and promote transparency and accountability in governance.

### Statutory Basis

- **Central Information Commission**: Established under **Section 12** of the RTI Act, 2005.
- **State Information Commissions**: Established under **Section 15** of the RTI Act, 2005.

### Composition

Post	Central Information Commission (CIC)	State Information Commission (SIC)
Chairperson	Chief Information Commissioner	State Chief Information Commissioner
Members	Up to 10 Information Commissioners	Up to 10 State Information Commissioners
Appointment Authority	President of India on the recommendation of a committee	Governor of the State on the recommendation of a similar committee
Recommending Committee	PM (Chair), LoP in Lok Sabha, Union Cabinet Minister	CM (Chair), LoP in State Legislature, State Cabinet Minister

## Functions and Powers (Common to CIC and SIC)

- **Hear Complaints and Appeals** : Hear complaints and second appeals from citizens regarding denial or delay in information by public authorities.
- **Order Disclosure of Information** : Direct public authorities to disclose information or take corrective action in line with the RTI Act.
- **Ensure Compliance** : Ensure public authorities comply with the provisions of the RTI Act, including maintaining records and proactive disclosures.
- **Impose Penalties** : Impose penalties on Public Information Officers (PIOs) for unjustified refusal or delay in providing information.
- **Recommend Disciplinary Action** : Recommend disciplinary action against erring officials where necessary.
- **Powers of Civil Court** : Both commissions have powers of a civil court for summoning, examining witnesses, and requisitioning documents.

## Issues and Challenges

- **Backlogs and Delays** : Large pendency of cases due to understaffing and delays in appointments.
- **Autonomy Concerns** : RTI (Amendment) Act, 2019 diluted the fixed tenure and salary protections, undermining institutional independence.
- **Lack of Enforcement Powers** : Commissions can recommend and penalize but **cannot enforce** compliance beyond monetary fines.
- **Decline in Proactive Disclosures** : Public authorities often fail to update Section 4 disclosures; commissions lack capacity to enforce compliance fully.
- **Poor Infrastructure at State Level** : Many SICs function with inadequate funds, staff, and digital infrastructure, reducing accessibility and effectiveness.
- **Non-compliance with Orders** : Many public authorities ignore the Commission's directives, and there is no binding legal mechanism to enforce decisions.

## Way Forward

- **Restore Autonomy** : Reconsider the RTI (Amendment) Act, 2019 and restore fixed tenure and status parity with Election Commissioners.
- **Digitisation and Transparency** : Strengthen online portals for filing, tracking, and disposal of RTI applications and appeals at both Centre and State levels.
- **Time-bound Disposal** : Impose statutory timelines for second appeal resolution to avoid unreasonable delays.
- **Fill Vacancies Promptly** : Ensure timely appointments through transparent and merit-based selection to avoid backlogs.
- **Capacity Building** : Improve infrastructure and train staff at both CIC and SICs for better implementation of the Act.
- **Monitoring and Accountability** : Periodic audits and parliamentary reviews of commission performance can help improve institutional accountability.

## National Commission for Women (NCW)

### Introduction

The National Commission for Women (NCW) is a **statutory body** established to safeguard and promote the rights and welfare of women in India. It serves as a platform for redressal of grievances and advocates gender justice across legal, political, and social domains.

### Statutory Basis

- Constituted under the **National Commission for Women Act, 1990**.
- Became operational in **1992** as the apex national body for women's rights and welfare.

### Composition

Post	Details
Chairperson	Nominated by the Central Government
Members	Five members with experience in law, administration, health, education, or social work (at least one from SC/ST)
Member Secretary	An expert in the field of management, organizational structure, or sociological movement, or a civil servant

## Functions and Powers

- **Review of Safeguards** : Examines existing constitutional and legal safeguards for women and recommends reforms.
- **Policy Advisory** : Advises the government on all policy matters affecting women and suggests measures for improving their representation and rights.
- **Handling Complaints** : Inquires into specific complaints regarding deprivation of rights or injustice done to women.
- **Suo Motu Powers** : Takes up cases suo motu involving denial of women's rights, non-implementation of laws, or policy violations.
- **Legal and Financial Assistance** : Facilitates legal support, counselling, and rehabilitation for women facing abuse or discrimination.
- **Research and Advocacy** : Conducts studies, brings out reports, and promotes awareness through seminars and publications on gender issues.
- **Monitoring Implementation** : Evaluates the working of laws and policies related to women and recommends improvements.
- **Civil Court Powers** : Possesses powers of a civil court in summoning, examining witnesses, and requisitioning documents during inquiries.

## Issues and Challenges

- **Limited Enforcement Powers** : The NCW can only recommend action; it lacks authority to enforce its decisions.
- **Political Appointments** : Appointment process often lacks transparency, leading to concerns of politicisation.
- **Urban Bias** : Limited outreach and presence in rural or tribal areas reduce its effectiveness at the grassroots level.
- **Understaffed and Underfunded** : Insufficient resources hamper the Commission's ability to act swiftly and comprehensively.
- **Reactive, Not Proactive** : Often criticized for acting after incidents occur rather than proactively monitoring gender-based violations.
- **Overlapping Mandates** : Coordination issues with other bodies (like State Women Commissions or the Ministry of Women and

Child Development) sometimes lead to confusion and inefficiency.

## Way Forward

- **Strengthen Legal Authority** : Empower NCW with quasi-judicial powers to enforce its recommendations in cases of serious violations.
- **Transparent and Inclusive Appointments** : Ensure merit-based, bipartisan, and diverse representation, including from marginalised communities.
- **Enhanced Grassroots Outreach** : Expand regional offices and partner with NGOs to improve access in rural and tribal areas.
- **Capacity Building and Resources** : Improve funding, staffing, and training to ensure prompt and effective responses.
- **Regular Monitoring and Auditing** : Establish robust performance tracking and auditing mechanisms to improve institutional accountability.

## Lokpal of India

### Introduction

The Lokpal is a statutory anti-corruption authority established to inquire into allegations of corruption against public functionaries in India. It seeks to enhance accountability and integrity in public administration, particularly at higher levels of government.

### Statutory Basis

- Established under the Lokpal and Lokayuktas Act, 2013
- Came into effect on 16th January 2014
- Aims to implement the United Nations Convention against Corruption, which India ratified in 2011

### Composition

Post	Details
Chairperson	A former Chief Justice of India, a former Supreme Court judge, or an eminent person with integrity and anti-corruption record

Members	Maximum of 8: 50% judicial members (former SC/HC judges) and 50% from SCs, STs, OBCs, minorities, and women (at least one each)
Appointment	Appointed by the President on the recommendation of a <b>Selection Committee</b>
Selection Committee	Prime Minister (Chairperson), Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or nominee, and an eminent jurist

### Jurisdiction

- Covers the **Prime Minister** (with some exceptions), **Ministers, Members of Parliament**, and **Group A, B, C, D officers** of the Central Government
- Also covers **officials of NGOs** receiving foreign donations or public funds above a prescribed limit

Powers and Functions	Issues and Challenges
<ul style="list-style-type: none"> <li><b>Inquiry and Investigation</b> : Can conduct inquiries into allegations of corruption against public functionaries through its inquiry wing or CBI.</li> <li><b>Prosecution</b> : Refers cases to the prosecution wing for further legal action upon completion of investigation.</li> <li><b>Supervision of CBI</b> : Has supervisory authority over CBI in corruption cases referred to it.</li> <li><b>Confiscation of Assets</b> : Can</li> </ul>	<ul style="list-style-type: none"> <li><b>Delay in Operationalisation</b> : Though the Act was passed in 2013, the first Lokpal was appointed only in 2019. Even now, it lacks full staffing and infrastructure.</li> <li><b>Absence of Lokayuktas in Many States</b> : The Act mandates states to establish Lokayuktas within one year, but several states are yet to do so or have created weak institutions.</li> <li><b>Lack of Proactive Enforcement</b> : The</li> </ul>

recommend seizure and confiscation of assets acquired through corrupt means.

- Direction to Agencies** : Can direct any central agency to assist in investigation or prosecution.

Lokpal has not taken up major investigations independently, raising questions about its effectiveness.

- Jurisdictional Overlap** : Overlap with existing bodies like CVC, CBI, and departmental vigilance wings leads to institutional ambiguity.
- Limited Autonomy of CBI** : Despite supervisory control, CBI's lack of independence in investigations undermines Lokpal's effectiveness.
- Whistleblower Protection Not Integrated** : Whistleblower Protection Act, 2014 has not been effectively integrated with Lokpal processes.

### National Commission for Minorities (NCM) Introduction

The National Commission for Minorities (NCM) is a **statutory body** established to safeguard the rights and interests of minority communities in India. It works to ensure equality, non-discrimination, and protection of cultural and educational rights for minorities as guaranteed under the Constitution.

### Statutory Basis

- Constituted under the **National Commission for Minorities Act, 1992**

- The Act gives the Commission a statutory mandate to monitor and evaluate the progress of minorities

**Notified Minorities (as per the Government of India under Section 2(c) of the NCM Act):**

Muslims, Christians, Sikhs, Buddhists, Parsis (Zoroastrians), Jains (notified in 2014)

**Composition**

Post	Details
Chairperson	Appointed by the Central Government
Members	Six members including the Chairperson; must include individuals from minority communities
Appointment Authority	Central Government
Tenure	3 years from the date of assumption of office

Functions and Powers	Issues and Challenges
<ul style="list-style-type: none"> <li>• <b>Review of Safeguards</b> : Evaluates the working of constitutional and legal safeguards for minorities.</li> <li>• <b>Complaint Redressal</b> : Looks into specific complaints regarding deprivation of rights and safeguards of minorities.</li> <li>• <b>Advisory Role</b> : Advises the central and state governments on policy matters affecting minority</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Non-binding Recommendations</b> : The Commission can only recommend, not enforce, its decisions.</li> <li>• <b>Perception of Limited Impact</b> : Its role is often seen as symbolic or passive, with limited proactive interventions in major communal or policy matters.</li> <li>• <b>Political Appointments</b> : Appointments are</li> </ul>

<p>welfare and development.</p> <ul style="list-style-type: none"> <li>• <b>Monitoring Development</b> : Assesses the socio-economic development of minorities through studies, research, and reports.</li> <li>• <b>Educational and Cultural Right</b> : Ensures protection of minority rights under Articles 29 and 30 of the Constitution.</li> <li>• <b>Legal Powers</b> : Has powers of a civil court to summon witnesses, requisition documents, and receive evidence under oath.</li> </ul>	<p>often alleged to be politically motivated, affecting the body's neutrality and credibility.</p> <ul style="list-style-type: none"> <li>• <b>Lack of Regional Outreach</b> : The NCM is centrally located, with no statutory presence or strong coordination with State Minority Commissions.</li> <li>• <b>Poor Follow-up Mechanism</b> : There is limited follow-through on its reports and recommendations by ministries and departments.</li> <li>• <b>Resource Constraints</b> : The Commission suffers from insufficient staff and budget, limiting its research and monitoring capacity.</li> </ul>
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**2. Regulatory Bodies**

**Securities and Exchange Board of India (SEBI)**

**Introduction**

SEBI is the **statutory regulator** for the securities market in India. It was established to protect investor interests, promote market transparency, and regulate the securities industry.

**Statutory Basis**

- Established in **1988** as a non-statutory body.
- Given statutory status through the **SEBI Act, 1992**.

**Structure**

- **Chairperson**: Appointed by the Government of India.
- **Members**:

- Two members from the Union Finance Ministry
- One member from the RBI
- Five other members appointed by the central government
- **Headquarters:** Mumbai, with regional offices across India.

for regulating, promoting, and ensuring the orderly growth of the insurance and reinsurance industry in India. It aims to protect policyholders' interests and foster fair competition among insurers.

### Statutory Basis

- Constituted under the **Insurance Regulatory and Development Authority Act, 1999**
- Empowered under provisions of the **Insurance Act, 1938** and the **IRDAI Act, 1999**

### Structure

Post	Details
Chairperson	Appointed by the central government
Whole-time Members	Up to 5, appointed by the government
Part-time Members	Up to 4, appointed by the government
Headquarters	Hyderabad

### IRDAI: Functions and Powers vs Challenges

Functions and Powers	Challenges
<ul style="list-style-type: none"> <li>● Issues licenses and regulates insurance companies, agents, brokers, and third-party administrators</li> <li>● Protects interests of policyholders by ensuring fair practices and grievance redressal</li> <li>● Specifies required solvency margins and capital adequacy norms for insurers</li> <li>● Frames regulations on premium rates, commissions, and investment of funds</li> <li>● Promotes competition and financial inclusion in the insurance sector</li> <li>● Conducts inspections, audits, and inquiries to enforce compliance</li> </ul>	<ul style="list-style-type: none"> <li>● Ensuring compliance among a vast and growing number of insurers and intermediaries</li> <li>● Delays in resolving complaints and inconsistent grievance redress mechanisms</li> <li>● Monitoring solvency and financial health in times of macroeconomic stress</li> <li>● Balancing insurer profitability with affordability for consumers</li> <li>● Low insurance penetration in rural and informal sectors despite long-standing efforts</li> </ul>

Functions and Powers	Challenges
<ul style="list-style-type: none"> <li>● Regulates stock exchanges, brokers, mutual funds, and other market intermediaries</li> <li>● Frames rules for fair practices and transparency in capital markets</li> <li>● Prohibits insider trading and unfair trade practices</li> <li>● Promotes investor awareness and education</li> <li>● Registers and supervises intermediaries like portfolio managers, merchant bankers etc.</li> <li>● Develops infrastructure and systems like electronic trading platforms</li> <li>● Has quasi-legislative, executive, and quasi-judicial powers under SEBI Act</li> </ul>	<ul style="list-style-type: none"> <li>● Market manipulation through complex and evolving trading strategies</li> <li>● Delay in enforcement reduces effectiveness of regulatory actions</li> <li>● Jurisdictional overlaps with other regulators (RBI, IRDAI, PFRDA) in case of hybrid products</li> <li>● Difficulty in tackling unregulated investment schemes and Ponzi scams</li> <li>● Limited capacity and manpower to monitor increasing number of transactions</li> <li>● Challenges in keeping pace with rapid technological changes in securities markets</li> <li>● Prolonged legal proceedings and appeals dilute deterrence value of SEBI orders</li> </ul>

## Insurance Regulatory and Development Authority of India (IRDAI)

### Introduction

IRDAI is the **statutory regulatory body** responsible

<ul style="list-style-type: none"> <li>Facilitates development of new insurance products and innovation</li> </ul>	<ul style="list-style-type: none"> <li>Challenges in supervising digital insurers and tech-based intermediaries (InsurTech)</li> <li>Regulatory lag in keeping up with rapidly evolving insurance technologies and consumer expectations</li> </ul>
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## Telecom Regulatory Authority of India (TRAI)

### Introduction

TRAI is the **statutory regulatory body** for telecommunications in India. It was established to regulate telecom services, promote competition, ensure consumer protection, and oversee the orderly growth of the telecom and broadcasting sectors.

### Statutory Basis

- Established under the **Telecom Regulatory Authority of India Act, 1997**
- Amended in **2000** to separate regulatory and adjudicatory powers by establishing the **Telecom Disputes Settlement and Appellate Tribunal (TDSAT)**

### Structure

Post	Details
Chairperson	Appointed by the Central Government
Full-time Members	Up to 2
Part-time Members	Up to 2
Headquarters	New Delhi

## TRAI: Functions and Powers vs Challenges

Functions and Powers	Challenges
<ul style="list-style-type: none"> <li>Regulates telecom services including tariffs, interconnection,</li> </ul>	<ul style="list-style-type: none"> <li>Balancing affordability for consumers with the financial health of telecom operators</li> </ul>

<ul style="list-style-type: none"> <li>Ensures compliance with licensing conditions</li> <li>Promotes competition, efficiency, and innovation in telecom and broadcasting sectors</li> <li>Facilitates technological advancement and consumer choice</li> <li>Advises the government on spectrum allocation, licensing, and policy matters</li> <li>Protects consumer interests and enables grievance redressal</li> <li>Regulates DTH, cable TV, and broadcasting pricing and quality</li> <li>Conducts research and public consultations to ensure transparency</li> </ul>	<ul style="list-style-type: none"> <li>Resistance from telecom companies in complying with regulations and tariff orders</li> <li>High market concentration and dominance of few players reduce effective competition</li> <li>Keeping pace with emerging technologies like 5G, AI in telecom, and OTT convergence</li> <li>Government often bypasses TRAI's recommendations on critical policy issues</li> <li>Inadequate enforcement of consumer rights, especially in rural and low-connectivity areas</li> <li>Legal challenges from broadcasters on tariff orders and pricing caps</li> <li>Stakeholder consultations often diluted due to political and commercial pressures</li> </ul>
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## 3. Quasi-judicial Bodies.

### Quasi-Judicial Bodies

#### Introduction

Quasi-judicial bodies are **non-judicial institutions** that have powers resembling those of a court. They can adjudicate disputes, conduct hearings, and make binding decisions in specific legal or administrative matters. While they are not part of

the regular judiciary, they act as tribunals or commissions created under statutes.

### Key Features

- Created by statutes, not the Constitution
- Have limited jurisdiction over specific subject matters
- Empowered to summon, examine, and pass orders like civil court
- Headed by experts or retired judges, often with technical knowledge
- Decisions are subject to judicial review by High Courts or the Supreme Court

### Functions

- Resolve disputes between individuals and government, or among individuals in regulated sectors
- Provide a less formal, faster, and cost-effective alternative to regular courts
- Enforce specific laws and ensure compliance with statutory provisions
- Protect rights and offer grievance redress in specialized domains

### Examples of Quasi-Judicial Bodies in India

Body	Jurisdiction / Domain	Legal Basis
National Human Rights Commission (NHRC)	Human rights violations	Protection of Human Rights Act, 1993
Central Information Commission (CIC)	Right to Information appeals and complaints	Right to Information Act, 2005
National Green Tribunal (NGT)	Environmental protection and conservation	National Green Tribunal Act, 2010
Competition Commission of India (CCI)	Prevention of anti-competitive practices	Competition Act, 2002
Securities Appellate Tribunal (SAT)	Appeals against SEBI orders	SEBI Act, 1992

Telecom Disputes Settlement Appellate Tribunal (TDSAT)	Telecom and broadcasting disputes	TRAI Act, 1997 (amended 2000)
Appellate Tribunal for Electricity	Electricity sector disputes	Electricity Act, 2003
Income Tax Appellate Tribunal (ITAT)	Appeals on direct tax matters	Income Tax Act, 1961
Central Administrative Tribunal (CAT)	Disputes relating to recruitment and service of public servants	Administrative Tribunals Act, 1985

### Importance

- Reduces burden on judiciary by handling technical and specialized matters
- Speeds up adjudication and ensures sector-specific resolution
- Promotes transparency and accountability in governance
- Empowers citizens with grievance redress in decentralised settings

### Challenges

- Overlapping jurisdictions with courts or other bodies
- Lack of independence in some cases due to executive control over appointments
- Delays and backlogs, defeating the purpose of speedy justice
- Limited enforcement powers for some commissions and tribunals
- Inconsistent quality of adjudication due to lack of trained legal personnel in some bodies

**Keywords :** Statutory oversight, Institutional autonomy,, Regulatory capture, Sectoral adjudication, Civil court powers, Appointment politicisation, Non-binding recommendations, Grievance redressal, Public accountability, Functional overlap, Suo motu jurisdiction, Tribunalisation of justice, Sectoral regulation

## Mains Practice Questions :

Q1. Analyze the challenges in ensuring independence and efficiency of regulatory bodies in India. Should there be a uniform framework for their functioning?

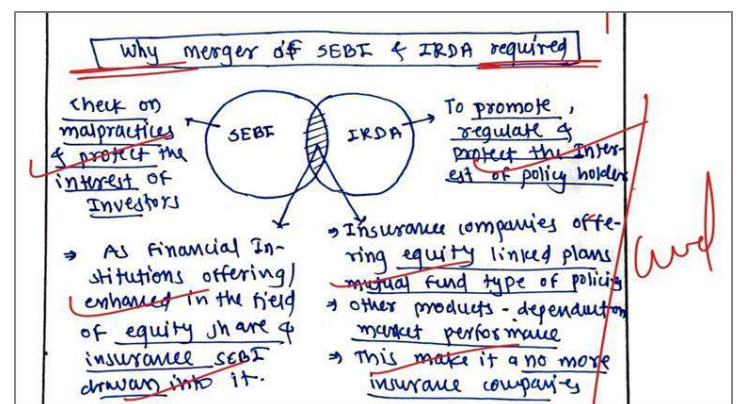
Q2. Discuss the role of the National Human Rights Commission (NHRC) as a statutory body. What are the constraints in its functioning, and how can they be addressed?

## Illustration / Diagram



## Value Addition for unit 9 In news

- Recently, the Lokpal's limitations were criticized due to its inability to investigate complaints older than seven years, restricting its effectiveness in addressing historical corruption cases.
- Recently, the NHRC's report on Sandeshkhali highlighted human rights violations, including forced migration and sexual exploitation, underscoring its role in investigating abuses despite criticism of political bias.
- Recently, the CIC directed the disclosure of PM CARES Fund details under the RTI Act, reinforcing its quasi-judicial role in ensuring transparency, though delays in appointments raised concerns about its efficacy.
- Recently, the CVC ordered a vigilance inquiry into the poor quality of a night shelter in Ahmedabad, showcasing its role in supervising public administration integrity, though limited enforcement powers were noted as a drawback.
- Recently, TRAI introduced regulations to curb spam calls, reinforcing its dispute resolution and consumer protection roles, though enforcement challenges due to technological advancements were highlighted as a limitation.



## Acronym

### 1. "BODIES"

This acronym gives you a logical answer-writing structure:

- **B – Basic Concept & Classification**
  - What are statutory, regulatory, quasi-judicial bodies?
  - Established by Constitution, statute, executive resolution
- **O – Objectives & Functions**
  - Regulation, rights protection, grievance redressal, transparency, policy advice
- **D – Drawbacks & Limitations**
  - Politicization, lack of autonomy, delays, overlapping functions
- **I – Important Institutions in News**
  - NITI Aayog, NHRC, CIC, CVC, CBI, Lokpal, SEBI, IRDAI, RBI, TRAI
- **E – Evaluation of Performance**
  - Successes vs shortcomings, reforms needed, judicial observations

- **S – Suggestions & Strengthening**
  - Independent appointments, budget autonomy, transparency reforms

## 2."REGULATE"

(Useful for answers focusing more on **regulatory bodies**)

- **R – Role in Governance**
  - Bridge between market and state; protect consumer interest
- **E – Empowered by Statutes**
  - SEBI Act, RBI Act, IRDA Act, TRAI Act
- **G – Good Governance Tools**
  - Ensure accountability, transparency, market stability
- **U – Unresolved Issues**
  - Conflicts with ministries, regulatory capture, judicial overreach
- **L – Legal Powers & Autonomy**
  - Quasi-legislative, quasi-judicial, quasi-executive
- **A – Administrative Overlaps**
  - Example: SEBI vs RBI on crypto; CBI vs State police
- **T – Transparency & Accountability Reforms**
  - Parliamentary oversight, citizen charters
- **E – Examples in News**
  - SEBI (Adani case), RBI (monetary policy), TRAI (5G rollout), NHRC (Manipur)

## Ready - Made templates

### Introductions / Conclusions

*(Providing Acts and Establishments of Statutory/Regulatory/Quasi-Judicial Bodies or related Current Affairs in the introduction itself is advisable.)*

#### **NITI Aayog**

- On January 1, 2015, NITI Aayog was established with emphasis on a 'Bottom-Up' approach to envisage the vision of Maximum Governance, Minimum Government, echoing the spirit of 'Cooperative Federalism'.
- NITI Aayog, established by an executive resolution, acts as a think tank for providing

directional and policy inputs to the government. It acts as a catalyst to the development process by nurturing an overall enabling environment.

#### **NHRC (National Human Rights Commission)**

- The National Human Rights Commission or NHRC is a standalone entity of the Government of India with the mission of promoting and protecting human rights.
- Lack of independence makes NHRC a 'lapdog, instead of watchdog'. H. L. Dattu (former NHRC chief) criticized it as a 'toothless tiger'.
- Soli Sorabjee (former Attorney General) criticized it as "India's teasing illusion".
- "To deny people their human rights is to challenge their very humanity." – Nelson Mandela

#### **NCW (National Commission for Women)**

- Empowered by the National Commission for Women Act, the NCW, established in 1992, plays a crucial role in addressing issues related to gender equality, discrimination, and violence against women.
- As we navigate the complexities of gender dynamics, the NCW remains a pivotal force in promoting a society that upholds the principles of equality and justice for women.

#### **NCM (National Commission for Minorities)**

- Tahir Mehmood (former chairperson)
  - "NCM has a minor role in major affairs."
  - "All commissions are white elephants, are a drain on the state exchequer and ultimately unwarranted burden on taxpayers."
- Established to address the unique challenges faced by minorities, the NCM serves as a crucial institution in promoting inclusivity, tolerance, and social harmony.
- The NCM stands as a beacon of hope for marginalized communities, working tirelessly to ensure their rights are protected and their voices are heard.

#### **CIC (Central Information Commission)**

- "Information is the currency of democracy." – Thomas Jefferson
- The CIC acts as a guardian of citizens' right to access information, fostering an informed and empowered society.
- The CIC plays a crucial role in promoting

democratic values by ensuring the free flow of information. Its adjudicatory functions contribute to a more transparent and accountable government.

#### ***CVC (Central Vigilance Commission)***

- The CVC, established in 1964, serves as a crucial institution in upholding integrity and transparency within the government.
- The Central Vigilance Commission stands as a guardian of probity in India's public sector. By fostering a culture of vigilance, it contributes significantly to building public trust and maintaining the ethical fabric of government institutions.

#### ***CBI (Central Bureau of Investigation)***

- The CBI, established in 1941, stands as the premier investigative agency in India, entrusted with the responsibility of probing complex and high-profile cases.
- In conclusion, the Central Bureau of Investigation remains a cornerstone in India's law enforcement framework. Its commitment to impartial investigations, tackling corruption, and maintaining transparency underscores its significance in upholding the principles of justice.

#### ***Lokpal and Lokayuktas***

- Envisioned as ombudsman institutions, Lokpal and Lokayuktas play a pivotal role in investigating allegations of corruption against public officials and promoting transparency in government functioning.
- The presence of Lokpal and Lokayuktas signifies a commitment to fostering a corruption-free society and reinforcing trust in public institutions.

#### ***SEBI (Securities and Exchange Board of India)***

- The SEBI, the regulatory authority established in 1988, plays a crucial role in ensuring investor protection, maintaining market integrity, and fostering a transparent and efficient capital market.
- The SEBI stands as a cornerstone in the Indian financial landscape, diligently working to uphold market integrity and safeguard the interests of investors.

#### ***RBI (Reserve Bank of India)***

- The RBI, established in 1935, serves as the central banking institution, overseeing monetary policy, regulating financial markets, and maintaining stability in the financial system.
- The RBI stands as the cornerstone of India's financial framework, navigating economic challenges and fostering growth.
- Through its strategic policies and regulatory measures, the RBI remains committed to ensuring monetary stability, financial inclusion, and sustainable economic development in the nation.

#### ***TRAI (Telecom Regulatory Authority of India)***

- Established in 1997, TRAI has been instrumental in ensuring fair competition, protecting consumer interests, and fostering the growth of the telecom industry.
- Without TRAI, India's telecom sector could turn into monopolies of the few and hamper consumer interests.
- As technology advances, TRAI's role remains essential in balancing the interests of service providers and consumers, ultimately contributing to the development and accessibility of telecommunications services across the nation.

***(To deal with the question, when you have no idea about a particular body, use the following generic template.)***

<p><b>Functions</b></p>	<ol style="list-style-type: none"> <li>1. To make recommendations to the government</li> <li>2. To look into the complaints, matters relating to it</li> <li>3. To work for the empowerment/development of the particular community/sector</li> <li>4. To undertake research, studies</li> <li>5. To influence/help the government in policy making</li> <li>6. To formulate rules and regulations</li> <li>7. To make periodic/special reports</li> <li>8. To evaluate the progress</li> </ol>
<p><b>Challenges</b></p>	<ol style="list-style-type: none"> <li>1. Executive interference in functioning/appointments</li> <li>2. Understaffed</li> <li>3. Lack of infrastructure</li> <li>4. Lack of accountability of officers</li> <li>5. Contention with ministries</li> <li>6. Lack of autonomy</li> <li>7. Not binding recommendations</li> <li>8. Delays in conducting inquiry</li> </ol>
<p><b>Way Forward</b></p>	<ol style="list-style-type: none"> <li>1. Depoliticization of appointment procedure/functioning</li> <li>2. Address staff crunch</li> <li>3. Creation of infrastructure</li> <li>4. Ensuring autonomy and independence in working</li> <li>5. Make recommendations binding</li> <li>6. Government should consult the body while making policies</li> <li>7. Targeted approach for addressing pendency</li> <li>8. Create mechanism for ensuring public accountability</li> </ol>

**Navigating the Syllabus: What You Need to Know**

- **Salient Features of the Representation of People's Act**
- **Political Party System in India:-** Salient Features and Issues Associated
- **Elections in India**
  - Electoral System
  - Election Process
  - Voting Behaviour
- **Election Laws**
  - Representation of People's Act, 1950 and 1951
  - Salient Features
  - Significance
  - Lacunae
  - Suggested amendments in Representation of People's Act
  - RPA and provisions of Disqualification
- **Delimitation Act**
- **Electoral Reforms**
  - Why need of electoral reforms..??
  - Reforms before 1996
  - Reforms of 1996
  - Reforms after 1996

**UPSC Previous Year Questions**

Question	Nature of Question	Core Demand
Examine the need for electoral reforms as suggested by various committees with particular reference to "one nation – one election" principle. (2024)	Electoral Reforms + One Nation-One Election	Discuss need for reforms and highlight committee recommendations supporting simultaneous elections.
Discuss the procedures to decide the disputes arising out of the election of a Member of the Parliament or State Legislature under The Representation of the People Act, 1951. What are the grounds on which the election of any returned candidate may be declared void? What remedy is available to the aggrieved party against the decision? Refer to the case laws. (2022)	Election Disputes + RPA, 1951	Explain procedure to settle election disputes, grounds for declaring void, and legal remedies with relevant case laws.

<p>There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of Peoples Act. Comment. (2020)</p>	<p>Disqualification + RPA, 1951</p>	<p>Critically assess the existing procedure and justify the need for its simplification.</p>
<p>On what grounds a people's representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such person against his disqualification. (2019)</p>	<p>Disqualification Grounds + Legal Remedy</p>	<p>List disqualification grounds and explain legal recourse available under the Act.</p>
<p>In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India? (2018)</p>	<p>EVM + Electoral Trust</p>	<p>Discuss challenges related to EVMs and steps needed to strengthen public trust.</p>
<p>To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful? (2017)</p>	<p>ECI Suggested Reforms + Electoral Quality</p>	<p>List 2016 reforms proposed by ECI and evaluate their relevance for strengthening democracy.</p>

# 1. Electoral System in India

## Introduction

India follows a **representative democracy**, where elections serve as the mechanism for translating the will of the people into government. The **First-Past-The-Post (FPTP)** system is the predominant electoral model used for legislative elections in India.

## First-Past-The-Post (FPTP) System

- Under FPTP, the **candidate securing the highest number of votes** in a constituency is declared the winner, regardless of whether they achieve an absolute majority.
- It is a **single-member constituency** system.

## Used for:

- Lok Sabha elections
- State Legislative Assembly elections
- Panchayati Raj Institutions and Municipal Bodies

## FPTP System: Merits vs Demerits

Merits	Demerits
<ul style="list-style-type: none"> <li>• <b>Simplicity:</b> Easy to understand and administer; encourages participation</li> <li>• <b>Stable Governments:</b> Often leads to clear majorities and reduces instability</li> <li>• <b>Geographical Representation:</b> Strong local connection between voters and elected representatives</li> <li>• <b>Quick Results:</b> Counting is fast; results are declared quickly</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Disproportionate Representation:</b> A party may win majority of seats without majority of votes</li> <li>• <i>Example: BJP in 2019 won 55% seats with 37% vote share</i></li> <li>• <b>Marginalisation of Smaller Parties:</b> Even with significant vote share, smaller parties may win few or no seats</li> <li>• <b>Wasted Votes:</b> Votes cast for losing candidates do not impact the final outcome</li> <li>• <b>Strategic Voting:</b> Voters may avoid their preferred candidate to defeat a more disliked one</li> </ul>

## Comparison with Proportional Representation (PR)

Aspect	FPTP	Proportional Representation (PR)
Basis of Representation	Candidate with most votes in a constituency	Seats distributed based on total vote share of parties
Constituency Type	Single-member	Multi-member or national/large region-based lists
Used In India For	Lok Sabha, State Assemblies	Rajya Sabha, President and Vice-President elections (STV format)
Impact on Smaller Parties	Marginalised	Better represented
Government Stability	Promotes stable governments	May lead to coalition governments
Complexity	Simple to understand and implement	Relatively complex voting and counting processes

# 2. Election Laws in India

## Introduction

Election laws in India form the legal and institutional framework that governs the conduct of free and fair elections. They aim to ensure transparency, integrity, and inclusiveness in the democratic process.

## Key Legislations Governing Elections

Act	Key Provisions
<b>Representation of the People Act, 1950</b>	Deals with allocation of seats, delimitation of constituencies, and preparation of electoral rolls
<b>Representation of the People Act, 1951</b>	Provides for the conduct of elections, disqualifications, corrupt practices, and election offences

<b>Delimitation Acts (1952, 1962, 1972, 2002)</b>	Facilitate the redrawing of constituency boundaries based on census data
<b>Presidential and Vice-Presidential Elections Act, 1952</b>	Governs elections for the highest constitutional posts
<b>Anti-Defection Law (52nd Amendment, 1985)</b>	Aims to curb political defections through disqualification of legislators under the Tenth Schedule
<b>Conduct of Election Rules, 1961</b>	Framed under the RPA, 1951 to regulate the operational aspects of the election process

( Among the above Representation of the People Act, 1950 & 51 are two important electoral acts in India )

## Representation of the People Act, 1950

### Introduction

The Representation of the People Act, 1950 lays the foundational framework for the conduct of elections in India. It primarily deals with pre-election processes such as delimitation of constituencies, preparation of electoral rolls, and allocation of seats in the Parliament and State Legislatures.

### Key Provisions

Provision	Details
<b>Allocation of Seats</b>	Provides for the allocation of seats in the Lok Sabha and State Legislative Assemblies.
<b>Delimitation of Constituencies</b>	Establishes the basis for drawing constituency boundaries based on population figures.
<b>Preparation of Electoral Rolls</b>	Lays down procedures for compiling, revising, and updating electoral rolls in each constituency.
<b>Qualification of Voters</b>	Ensures <b>universal adult suffrage</b> —any Indian citizen aged <b>18 or above</b> can vote, subject to conditions.

<b>No Person to be Registered in More than One Constituency</b>	Prevents dual/multiple entries in electoral rolls to ensure fairness.
<b>Non-discrimination in Electoral Rolls</b>	No person can be denied registration in the rolls based on religion, race, caste, sex, or any of them (Article 325 aligned).
<b>Electoral Registration Officers (EROs)</b>	Empowers EROs to oversee and manage electoral roll processes under supervision of the Election Commission.
<b>Disqualification from Voting</b>	Provides for disqualification from voting for reasons such as unsound mind or non-citizenship.

### Significance

- Lays the foundation of electoral democracy by enabling adult suffrage and structured voter registration.
- Ensures inclusivity and non-discrimination in the electoral process.
- Empowers the Election Commission to supervise voter list preparation in a uniform and regulated manner.
- Provides the basis for periodic revisions to accommodate demographic changes.
- Establishes a legal framework for transparent and credible **electoral rolls**, ensuring a level playing field.
- Helps in **preventing electoral fraud** by mandating one-person-one-vote and prohibiting multiple registrations.

## Representation of the People Act, 1951

### Introduction

The Representation of the People Act, 1951 is a comprehensive law that governs the conduct of elections to the Parliament and State Legislatures in India. It also lays down the qualifications, disqualifications, and election offences associated with the electoral process.

## Key Provisions

Area	Details
<b>Conduct of Elections</b>	Provides detailed provisions regarding the conduct of Lok Sabha and State Assembly elections, including bye-elections.
<b>Election Commission's Powers</b>	Empowers the EC to supervise elections and frame rules for conduct.
<b>Qualifications and Disqualifications</b>	Specifies qualifications and grounds for disqualification of MPs and MLAs (e.g., conviction, corrupt practices).
<b>Corrupt Practices</b>	Defines corrupt practices such as bribery, undue influence, impersonation, and use of religion/caste for votes (Section 123).
<b>Electoral Offences</b>	Details offences like booth capturing, false declaration, and exceeding expenditure limits.
<b>Election Expenditure</b>	Prescribes limits on campaign expenditure and mandates maintenance and audit of accounts.
<b>Election Petitions</b>	Establishes procedure for filing petitions and adjudication by High Courts.
<b>Model Code of Conduct (Enforcement)</b>	Though MCC is not part of the Act, violations may attract action under this Act and the IPC.
<b>Notification and Nomination</b>	Prescribes the process for filing of nomination papers and scrutiny by Returning Officers.

## Significance

- Provides a legal backbone for conducting free, fair, and periodic elections in India.
- Empowers the Election Commission with enforcement and supervisory powers.
- Defines corrupt and illegal practices, ensuring electoral integrity.
- Enables disqualification of candidates for violations, upholding accountability.

- Regulates money power and prescribes penalties for financial violations.
- Lays out a legal framework for resolving electoral disputes through petitions.

## 3. Contemporary issue related to the Electoral politics in India

### Model Code of Conduct (MCC)

#### Introduction

The Model Code of Conduct is a set of guidelines issued by the Election Commission of India (ECI) for political parties, candidates, and government officials to ensure free, fair, and ethical elections. It comes into effect from the date of election announcement and remains in force until the completion of the election process.

#### Nature and Legal Status

- **Non-statutory:** Not backed by any law; however, violations may be dealt with under the Representation of the People Act, 1951, Indian Penal Code, and Conduct of Election Rules, 1961.
- Based on consensus among political parties and enforced by the Election Commission through advisories, censure, or criminal action under relevant laws.

### Key Provisions of the MCC

#### I. General Conduct

- No activity shall aggravate communal, caste, linguistic, or regional tensions.
- Criticism of opponents must focus only on policies, programs, past records—not on personal lives or unverifiable allegations.
- Religious places shall not be used for election propaganda.
- Practices like bribery, intimidation, impersonation, and canvassing within 100 meters of polling stations are prohibited.
- Demonstrations or picketing outside homes of individuals for political disagreement is not permitted.
- No use of private property (like walls, land, etc.) for election material without permission.
- Obstruction or disruption of rival meetings or processions is strictly prohibited.

## II. Meetings

- Police must be informed well in advance of meetings to ensure security and public order.
- Parties must follow prohibitory orders, obtain necessary permissions (e.g., for loudspeakers), and not confront disruptors directly but involve police.

## III. Processions

- Time, route, and end location must be fixed in advance.
- Organizers must notify local police and comply with traffic and security protocols.
- No carrying or burning of effigies of rival leaders.
- Processions should avoid conflict with other political events and maintain public decorum.

## IV. Polling Day

- Cooperate with election officials to ensure peaceful voting.
- Use only plain identity slips—no symbols, names, or slogans allowed.
- No serving of liquor 48 hours before polling and on polling day.
- Maintain discipline around booths; no crowding or campaigning.
- Candidate camps near booths should be simple, without posters or food distribution.

## V. Polling Booth

- If there are any issues regarding conduct, complaints must be submitted to the Election Observer.

## VI. Party in Power

- Ministers should not combine official duties with campaign work or use official machinery, vehicles, or personnel for elections.
- No monopolization of public spaces, rest houses, helipads, or transport by ruling party candidates.
- Government advertisements or media coverage favoring ruling party is prohibited.
- No sanction of grants, laying of foundation stones, or announcements of new schemes once elections are declared.

## VII. Election Manifestos

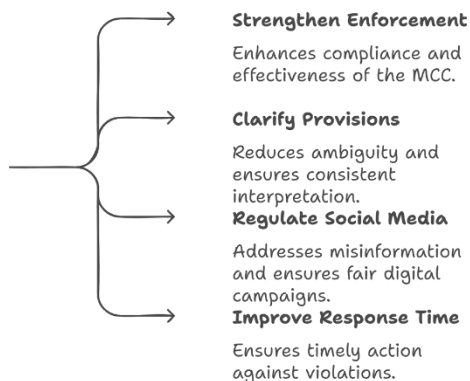
As per Supreme Court directions (S. Subramaniam Balaji v. Govt. of Tamil Nadu, 2013):

- Manifestos must adhere to constitutional ideals and MCC principles.
- Promises should not vitiate electoral purity or unduly influence voters.
- Parties are expected to provide rationale and financial implications of major promises to ensure transparency and accountability.
- Manifestos cannot be released during the prohibitory period under Section 126 of the RPA, 1951.

## Issues and Challenges with MCC

- **Non-binding Nature** : Since the MCC is not a law, the ECI lacks the power to impose strong penalties. It can only advise, censure, or file complaints under other laws.
- **Selective Enforcement** : Allegations are often made that the MCC is enforced more strictly against opposition parties, while ruling parties may go unchecked.
- **Lack of Deterrence** : In many cases, repeated violations go unpunished or only attract mild censure, reducing the effectiveness of MCC as a deterrent.
- **Ambiguity in Provisions** : Several provisions (like those related to freebies, announcements, social media) lack clear interpretation, allowing for loopholes and misuse.
- **Inadequate Regulation of Social Media** : The rapid spread of fake news, hate speech, and paid promotion through digital platforms is difficult to track under MCC guidelines.
- **Model vs. Statutory Conduct** : Since the MCC is a code of ethics, there's no uniformity in interpretation, and political parties often exploit grey areas.
- **Delayed Action and Response** : Even in serious cases, Election Commission's response is often delayed, reducing its impact on voter awareness and campaign fairness.

### How to address challenges with the Model Code of Conduct?



## Electronic Voting Machines (EVMs) and VVPAT

### Introduction

The Electronic Voting Machine (EVM) is a technological innovation used in Indian elections to record votes electronically. To enhance transparency and voter confidence, the Voter Verifiable Paper Audit Trail (VVPAT) was introduced alongside EVMs, enabling voters to verify that their vote has been correctly recorded.

### Merits and Demerits of EVMs & VVPATs

Merits	Demerits
<ul style="list-style-type: none"> <li>• <b>Faster Counting:</b> Speeds up result declaration compared to manual ballot counting.</li> <li>• <b>Eliminates Invalid Votes:</b> No scope for wrongly marked ballots.</li> <li>• <b>Eco-Friendly:</b> Reduces paper usage significantly.</li> <li>• <b>Tamper-Resistant Design:</b> EVMs are standalone and not connected to any network.</li> <li>• <b>Portable and Easy to Use:</b> Operates on battery, usable in remote or rural areas.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Transparency Concerns:</b> Voters can't independently verify votes unless full VVPAT count is done.</li> <li>• <b>Limited VVPAT Verification:</b> Only 5 VVPATs per Assembly segment are counted, raising reliability concerns.</li> <li>• <b>Trust Deficit:</b> Political parties and voters continue to raise doubts about tampering.</li> <li>• <b>Technical Glitches:</b> Malfunctions in VVPAT printing or syncing have been reported.</li> </ul>

- **Supports Electoral Reforms:** Facilitates simultaneous elections and easier logistics.
- **No Individual Verification:** Voters can only see the slip briefly; no receipt is retained.
- **Delayed Results (If VVPAT Verified):** Full slip counting can lead to delays in result declaration.

## Criminalisation of Politics

### Introduction

Criminalisation of politics refers to the increasing participation of individuals with criminal backgrounds in the electoral and political process. It poses a serious threat to the integrity of democratic institutions and erodes public trust.

### Alarming Trends

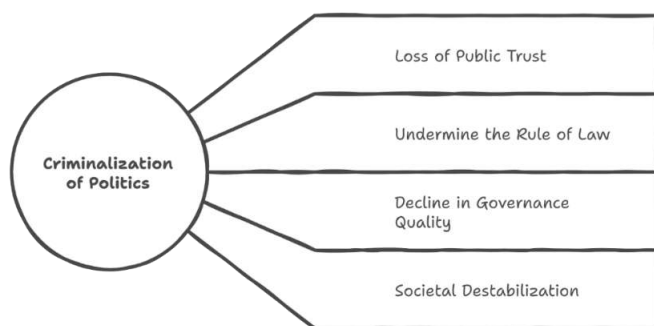
- As per the **Association for Democratic Reforms (ADR)** report (2024):
  - **43% of MPs** in the Lok Sabha have declared criminal cases.
  - **29% face serious charges**, including murder, rape, kidnapping, and corruption.
- Similar patterns are observed in many state assemblies.

### Factors Leading to Criminalisation of Politics

- **Electoral Compulsions and Winnability:** Political parties prioritize candidates with muscle and money power who can win elections, even if they have criminal backgrounds.
- **Delays in Judicial Process:** Slow trials and low conviction rates allow accused politicians to contest multiple elections without consequences.
- **Weak Legal Provisions:** The **Representation of the People Act (RPA), 1951** disqualifies only after conviction, not during the pendency of serious criminal charges.
- **Misuse of Identity Politics:** Caste, religion, and regional loyalties often overshadow a candidate's criminal record, enabling them to mobilize loyal vote banks.

- **Lack of Internal Democracy in Political Parties:** Absence of transparent candidate selection mechanisms allows arbitrary nominations based on influence and resources.
- **Voter Ignorance and Apathy:** Low awareness, poor literacy, and short-term populist promises often prevent voters from evaluating criminal backgrounds seriously.
- **Use of Politics as a Shield:** Individuals with criminal records enter politics to gain legitimacy, social standing, and protection from prosecution.
- **Weak Enforcement of Disclosure Norms:** While candidates must disclose criminal records in affidavits, there is limited scrutiny or voter response to these disclosures.

Unraveling the Consequences of Criminalized Politics



## Measures Taken

- **SC Judgments:**
  - **Lily Thomas v. Union of India (2013):** Immediate disqualification of convicted legislators.
  - **Public Interest Foundation v. Union of India (2018):** Directed political parties to publish criminal records of candidates.
- **ECI Recommendations:** Urged for **lifetime ban** on convicted politicians and faster trials in criminal cases.
- **Disclosure Mandates:** Candidates must declare criminal records in affidavits (as per SC orders and RPA, 1951).

## Way Forward

- **Fast-Track Courts:** Set up dedicated courts for speedy trial of cases against politicians (as directed by SC in 2017).

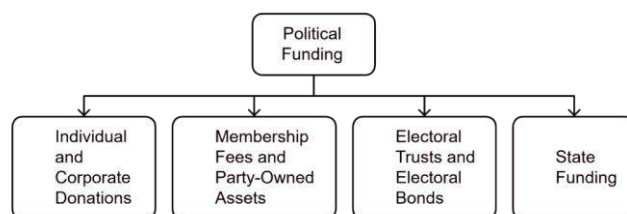
- **Stronger Disqualification Laws:** Amend the Representation of the People Act to bar candidates with serious charges even before conviction (with safeguards against misuse).
- **Political Party Reforms:** Enforce internal democracy, candidate selection transparency, and disincentivize parties that field tainted candidates.
- **Voter Awareness Campaigns:** Strengthen civic education through Election Commission and civil society partnerships.

## Electoral Funding and Issues Associated with It

### Introduction

Electoral funding refers to the collection and use of money by political parties and candidates for election-related activities. In India, concerns around opacity, corporate influence, and unregulated donations have made electoral funding a key issue in political reform.

Sources of Political Funding



### Issues Associated with Electoral Funding

- **Lack of Transparency:** A large portion of political donations are **undisclosed**, particularly those below ₹20,000 or routed through opaque channels.
- **Corporate Influence and Cronyism:** Companies may donate to parties in power in expectation of **policy favours or regulatory leniency**, undermining public interest.
- **Anonymity and Unaccountability (Electoral Bonds):** The **Electoral Bond Scheme**, introduced in 2018, allowed **anonymous donations**, making it impossible for citizens to know who funded which party.
- **Uneven Playing Field:** Ruling parties receive the **bulk of high-value donations**, distorting

the level playing field and disadvantaging smaller or new parties.

- **Black Money and Illicit Funding:** Lack of robust audit and regulation mechanisms opens the door for **black money**, benami contributions, and foreign influence.

### Supreme Court Verdict on Electoral Bonds (2024)

- In **Association for Democratic Reforms v. Union of India**, the Supreme Court **struck down the Electoral Bond Scheme as unconstitutional**, citing:
  - Violation of Right to Information (Article 19(1)(a))
  - Lack of transparency and arbitrary nature of donor anonymity
  - Potential for quid pro quo between corporations and political parties
- The Court also directed disclosure of all past bond transactions and the dismantling of the scheme.

### Electoral Reforms in India

#### Introduction

Electoral reforms refer to changes aimed at improving the credibility, transparency, and fairness of the electoral system. India has seen both legislative and procedural reforms, along with suggestions from several expert committees and judicial interventions to address persistent issues like criminalisation, money power, and lack of transparency.

#### Major Electoral Reforms Over Time

Reform	Year/Act	Key Features
Lowering of voting age	61st Amendment (1988)	Reduced voting age from 21 to 18
Anti-Defection Law	52nd Amendment (1985)	Disqualifies legislators on grounds of defection
Use of EVMs	1999 onwards	Prevents booth capturing, vote tampering

Voter ID (EPIC)	1993	Strengthened voter verification
NOTA Option	2013	Allows rejection of all candidates
VVPAT	2013 onwards	Adds transparency to EVMs
Capping Cash Donations	2017	Reduced anonymous cash donations to ₹2,000

### Major Committees on Electoral Reforms

#### 1. Dinesh Goswami Committee (1990)

Focused on electoral reforms to strengthen democratic processes and transparency:

- Recommended state funding of elections in kind (e.g., providing election materials to recognized parties).
- Urged disqualification of candidates with serious criminal charges at the time of nomination.
- Suggested cutting down campaign period to reduce cost and misuse of resources.
- Favoured independent machinery for conducting free and fair elections and reduction in use of money power.

#### 2. Indrajit Gupta Committee (1998)

Focused on public funding of elections:

- Recommended state funding for national and state-recognized parties to ensure fair competition.
- Suggested initial funding be in-kind support (e.g., printing materials, travel facilities).
- Called for transparency in party finances and mandatory audits.
- Proposed internal democracy within political parties.

#### 3. Law Commission (255th Report, 2015)

Addressed criminalisation and transparency in elections:

- Proposed disqualification of candidates if charges framed for serious crimes (punishable with  $\geq 5$  years), even before conviction.
- Recommended greater financial transparency in campaign expenditure and party donations.

- Called for independent regulation of political parties' internal democracy.
- Supported election finance reform to curb black money.

#### 4. Vohra Committee (1993)

Explored criminal-politician-bureaucrat nexus:

- Highlighted how criminal networks influence elections and policy-making.
- Recommended better coordination between intelligence agencies, police, and election authorities.
- Urged monitoring of candidates and parties with criminal background.

**Keywords :** Electoral integrity, Proportional representation, Model Code of Conduct, Electoral disqualification, Criminalisation of politics, Voter verified audit trail, Electoral bonds, Electoral reforms, Election expenditure regulation, Fast-track courts for politicians, Electoral trust deficit, Judicial oversight in elections

#### Mains Practice Questions :

Q1. Critically analyze the role of money, muscle, and media in influencing electoral outcomes in India. How can electoral reforms address these issues?

Q2. Discuss the significance of the Model Code of Conduct (MCC) in ensuring free and fair elections. How effective is the Election Commission in enforcing it?

#### Value Addition for unit 10

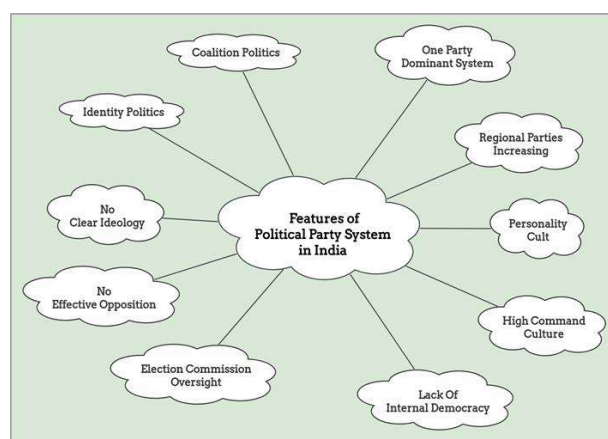
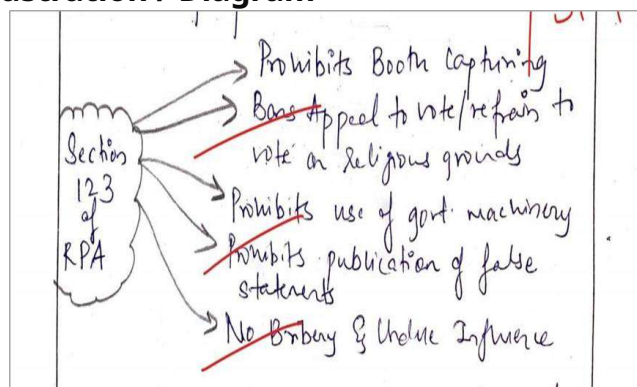
##### In news

- Recently, the Supreme Court emphasized Section 8 of the RPA 1951, which disqualifies convicted individuals from contesting elections, reinforcing the Act's role in preventing criminalization of politics.
- Recently, an editorial criticized the lack of internal

democracy in political parties, noting that the RPA 1951's Section 29A registration process fails to mandate transparent leadership elections, weakening democratic accountability.

- Recently, the Election Commission extended the "vote-from-home" facility for voters above 85 years and PwD in Delhi Assembly elections, streamlining the election process under RPA 1951 for greater accessibility.
- Recently, a study highlighted urban voter apathy in the 2024 Lok Sabha elections, with turnout dropping to 52% in major cities, underscoring the need for voter education to influence voting behavior.

#### Illustration / Diagram



#### Acronym

##### 1. "REFORMS"

(For answers focused specifically on Electoral Reforms)

- **R - Rationale for Reforms**
  - Electoral malpractices, loss of public trust, declining voter turnout

- **E – Evolution of Reforms**
  - Before 1996 (Anti-defection law, ECI strengthening),
  - 1996 (disclosure of criminal cases, asset declarations),
  - Post-1996 (NOTA, VVPAT, EVMs, awareness)
- **F – Funding Transparency**
  - Electoral bonds issue, need for state funding, audit of party finances
- **O – One Nation, One Election**
  - Arguments for and against
- **R – Role of Judiciary**
  - Landmark judgments: Lily Thomas, PUCJ, Union of India vs ADR
- **M – Model Code of Conduct**
  - Legal vs moral force, need for statutory backing
- **S – Structural Suggestions**
  - National Election Fund, simultaneous elections, candidate selection reforms

## 2."POLITICAL"

*(To cover Party System and related issues)*

- **P – Party Registration and Recognition**
  - By ECI, under RPA 1951
- **O – One-party vs Multi-party Traits**
  - India's coalition politics and regionalism
- **L – Lack of Inner-party Democracy**
  - Arbitrary leadership selection, dynastic trends
- **I – Ideological Decline**
  - Personality cults replacing ideological coherence
- **T – Trust Deficit**
  - Due to criminalization, funding secrecy
- **I – Influence of Caste and Community**
  - Electoral mobilization around identities
- **C – Coalition Politics**
  - Impact on governance, policy instability
- **A – Amendments Suggested**

- Party audits, primary elections, stricter registration norms
- **L – Legal Reforms Needed**
  - RTI for parties, party manifesto regulation, donation limits

## Ready - Made templates

### Introductions / Conclusions

#### **Introductions / Conclusions**

##### **Electoral Reforms**

- "Cleansing politics from criminal elements begins with purifying political parties itself, as they are the central institution of India's democracy." – CJI Deepak Mishra
- "No electoral reforms can be successful without reforming the political party system in our country." – National Commission to Review the Working of the Constitution (NCRWC)
- Electoral reforms are crucial for fortifying India's democratic foundation. Drawing insights from global best practices, policymakers and citizens must engage in constructive dialogue to tailor reforms that align with our unique socio-political context.

##### **Representation of the People Act, 1951**

- The RPA stands as a cornerstone of India's democratic framework, shaping the contours of electoral processes and political representation. This comprehensive legislation serves to safeguard the democratic principles enshrined in the Constitution by delineating the modalities of elections, qualifications for membership, and various aspects related to the conduct of free and fair polls.
- As India continues to navigate the complex landscape of electoral politics, the Act's continued relevance and effectiveness underscore its pivotal role in shaping the nation's democratic narrative. Vigilant amendments and judicious implementation will be imperative to ensure that the Act remains a robust and dynamic framework for the expression of the people's will through the ballot box.

- As it is said that the Indian Parliament has traveled its journey from lawyers to criminals, the RPA 1951 has only partly been successful in creating deterrence against wrongful activities of elected representatives.

### **Criminalization of Politics**

- Criminalization of politics is a complex issue that raises fundamental questions about the health of democratic institutions. In this context, exploring the impact of criminal elements in politics is crucial for understanding the challenges posed to governance, rule of law, and the democratic ethos.
- Addressing the criminalization of politics requires multifaceted strategies that involve legal, electoral, and societal dimensions. While legal reforms to disqualify candidates with criminal records are essential, they must be complemented by efforts to enhance political transparency, strengthen law enforcement, and promote civic awareness.

### **Criminalization of Politics**

<b>Ways to address the issue of Criminalization of Politics</b>	Political	<ul style="list-style-type: none"> <li>• Legislation on decriminalization</li> <li>• Stringent guidelines for disqualification</li> <li>• Hold political parties accountable for the criminal backgrounds of their candidates</li> <li>• Electoral reforms</li> </ul>
	Legal	<ul style="list-style-type: none"> <li>• Judicial activism in cases involving politicians</li> <li>• Introduce stringent eligibility criteria for candidates</li> <li>• Fast track courts</li> <li>• Independent oversight bodies with the authority to investigate</li> </ul>

		allegations of criminality in politics
	Social	<ul style="list-style-type: none"> <li>• Civil society organizations to monitor and report on the criminal backgrounds of political candidates</li> <li>• Fostering a culture that rejects the acceptance of criminality in politics</li> <li>• Public awareness campaigns to inform voters about the criminal backgrounds of candidates</li> </ul>
	Economic	<ul style="list-style-type: none"> <li>• Mandate comprehensive disclosure of assets, including those of family members</li> <li>• Limitations on election spending</li> </ul>
	International	<ul style="list-style-type: none"> <li>• Collaborate with international organizations</li> <li>• Learn from global best practices</li> </ul>



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