

# Polity Concept Classes

## Part 1

**Forum** IAS

## Doctrine of Separation of Powers

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### #1 What is the doctrine of separation of powers?

- (1) horizontal distribution of power vs vertical distribution of power.
- (2) distribution of power among 3 organs of the state (E, L, J)
- (3) each organ supreme in its sphere

### #2 Why should we have separation of powers?

- (1) Prudent Argument vs Moral Argument
- (2) With power comes responsibility; one Institution not capable of performing all functions
- (3) Prevents concentration of power in single body; power corrupts, and absolute power..?
- (4) provides system of checks and balances
- (5) provides legitimacy to the State.
- (6) Conflicting Trinity vs Harmonious Government
- (7) Constitutional Vision & Mandate → Article 50

### #3 Do we have complete separation of powers?

- (1) Montesquieu's Theory of Separation of Power → one person not in 2 or more organs, non-interference, one organ should not perform function of other, trias politica
- (2) No rigid / watertight separation → neither possible, nor desirable (Appointment of Judges)
- (3) Indian model → principle of flexibility & interdependency
- (4) Not possible in a Parliamentary form of govt → Executive part of Legislature

### #4 How does Indian Model compare to American Model? \*

- (1) American System – Presidential System – Complete Separation of Power
- (2) Watertight/Complete Separation vs Fused Model (Ordinance Making Power, Parliamentary Majority of the Executive, Appointments to Judiciary, Doctrine of Complete Justice, President Decides Disqualification of Members of Parliament)
- (3) Based on Systems of Checks and Balances

\* Covered separately in Concept Class on Prime Ministerial vs Presidential Form of Government

### #5 What are some examples of violation of Separation of Powers?

- (1) Article 123, Executive has membership of Legislature
- (2) Judicial Overreach → Vishakha Guidelines, Policy Decisions etc.

### #6 What are the challenges with Indian Model of Separation of Power?

- (1) Slows down decision making → checks and balances, too many stakeholders etc.
- (2) Tyranny of the Executive behind Parliamentary Majority
- (3) Judicial Action turns into Judicial Overreach (Ban on Sale of Alcohol, Policy Paralysis etc.)

### #7 Conclusion

- (1) Indian Model designed to suit Indian Polity & Indian Concerns post-Independence
- (2) Sacrifices speed and efficiency for checks and balances & prevention of power concentration
- (3) Complete separation neither feasible nor desirable
- (4) Each organ must respect the sphere of others, harmonious balance needed.

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Associated Concepts: Judicial Activism, Presidential vs Prime Ministerial Form of Govt, Presidentialisation of Prime Ministerial Govt etc.

## Doctrine of Basic Structure

### #1 What is the doctrine of basic structure?

- (1) Judicial innovation → Keshavananda Bharti Case → All Parts of the Constitution can be amended as long as it does not alter the basic character of the Constitution
- (2) Was the outcome of debate between (a) Supremacy of Legislature vs Judiciary (b) Article 13 over Article 368 (c) Individual Rights vs Community Rights (d) Socialism vs Capitalism € Fundamental Rights over the DPSP

### #2 Can Constitution be amended? \*

- (1) Four Judgements: Shankari Prasad → (a) Constituent Function vs Legislative Function; Amendment to Constitution not ordinary law; cannot be reviewed by Courts; (b) Fundamental Rights can be amended by CAA = no protection of Article 13;
- (2) Sajjan Singh vs Rajasthan → (a) Upheld the distinction between Constituent Power & Legislative Power (b) CAA cannot be reviewed
- (3) Golak Nath vs State of Punjab → (a) No difference between ordinary Law and Amendment Law; constituent power and legislative power are not different (b) Fundamental Rights cannot be amended; 'sacrosanct' (c) Doctrine of Prospective Ruling: judgement would apply to future and not to past judgements;
- (4) Keshavananda Bharti → Thirteen judge Bench: Creation of "Basic Structure" Filter parliament can amend any part of the Constitution, as long as it did not alter the basic structure; FR can be taken away; gave power to courts to decide constitutionality of amendments

\*Covered Separately in Important Judgements

### #3 Which features of Constitution form part of Basic Structure?

- (1) Not enumerated by the Constitution or the Courts at one point of time
- (2) Evolve from time to time on basis of judicial pronouncements
- (3) Supremacy of the Constitution; Secularism; Parliamentary Form; Rule of Law; Judicial Review; Independence of Judiciary;

### #4 What good has the doctrine done?

- (1) Protected the Constitution and Indian State from Collapse ( how? )
- (2) Protected the Nation from moving into a sharply socialist direction
- (3) Provided the balance between → (a) individual rights and community rights (b) fundamental rights and DPSC (c) capitalism vs socialism.

### #5 What are the criticism of Basic Structure Doctrine?

- (1) Basic Structure Doctrine → no mention in the Constitution
- (2) Judicial Invention → circumscribe the Legislature / Executive
- (3) Violative of Constitution as a Living Document → bound Parliament in perpetuity.
- (4) Judges decided the ends → discovered legal means to achieve them.
- (5) Indian Judiciary → most powerful in the World; era of Judicial Supremacy in the name Constitutional Supremacy
- (6) Counter Majoritarian; power to an unelected and self-appointed body.

Related Concept Classes: [Judgements that Changed India](#), [Judicial Activism](#), [Amending Power of the Parliament](#)

## Basic Structure | Cases & Judgements

### #1 Basic Structure Doctrine's Evolution

- (1) Contest between Article 13 (Laws that violates FR can be declared null and void) and Article 368 (Power of Parliament to amend the Constitution)
- (2) Between Supremacy of Judiciary vs Parliament
- (3) Locus → Judicial interpretation of Land Reform Laws
- (4) Contest between (a) Community Rights: Land Acquisition vs Individual Right to Property (b) Supremacy of Parliament vs Supremacy of the Judiciary (c) Fundamental Rights vs Directive Principles of State Policy (d) Socialistic Policies: Land Reforms vs Capitalist Policies: Large Estate (e) Liberty vs Equality

### #2 What are some important Articles / provisions with respect to the Judgements

- (1) Art. 13(2) → law that violates rights in Part III → null & Void
- (2) Art. 368 → Procedure and Power to Amend Constitution
- (3) Art. 39(b), 39(c) → Equitable distribution of wealth & prevention of wealth in Hands of few
- (4) 9<sup>th</sup> Schedule → Added by 1<sup>st</sup> CAA; exempted from Judicial Review

### #3 Shankari Prasad vs Union of India

- (1) Can Parliament Amend Constitution?
- (2) Article 13 → Any law that takes away Part 3 shall be void
- (3) Outcome: Amendment NOT ordinary Law; Parliament Can Amend C / Takeaway FR
- (4) Article 368 > Article 13; Parliament > Judiciary

### #4 Sajjan Singh vs State of Rajasthan

- (1) Context : 17<sup>th</sup> CAA → Property can be confiscated even if it violates Article 14, 19, 21
- (2) Article 13 → Any law that takes away Part 3 shall be void
- (3) Upheld the verdict of Shankari Prasad [ 368>13]

### #5 Golaknath vs State of Punjab

- (1) Context: 1<sup>st</sup> CAA, 4<sup>th</sup> CAA, 17<sup>th</sup> CAA
- (2) Outcome #1 → Parliament has no power to abridge or take away FRs ; [ Art 368 > Art 13]
- (3) Outcome #2 → Constitutional Amendment = ordinary law ; restricted under Art. 13(2)
- (4) Outcome #3 – Art 368 only provides procedure of amendment; does not confer power to amend
- (5) Govt Reaction → 24<sup>th</sup> CAA ; Article 13(2) not applicable to CAA [ 368>13]

### #6 Keshavananda Bharti vs State of Kerala

- (1) Context: Land Acquisition under Kerala Land Reforms Act
- (2) Outcome #1 → Recognized Parliament Power to Amend Any Part of Constitution/ Art 368 = procedure + power to amend Constitution.
- (3) Outcome #2 → Constitutional Amendment = ordinary law; restricted under Art. 13(2)
- (4) Govt Reaction → 24<sup>th</sup> CAA; Article 13(2) not applicable to CAA [ 368>13]

### #7 Raj Narain Case vs Indira Nehru Gandhi

- (1) Context: Raj Narain → Indira Gandhi → Electoral malpractice → Election Void
- (2) Govt Reaction → 39<sup>th</sup> CAA → No Power to decide on Electoral Disputes
- (3) Judgement #1 → Power to Amend Constitution Accepted, Pass Laws with retrospective effect
- (4) Govt Reaction → Swaran Singh Committee & 42<sup>nd</sup> CAA

### #8 42<sup>nd</sup> CAA – Mini Constitution

- (1) 31C: Laws to implement 39(b)&(c) DPSP not void if violates FRs → changed to “ANY” DPSP
- (2) All past amendment & future amendment → not within scope of judicial review

### #9 Minerva Mills vs Union of India

- (1) What happened? Minerva Mill → nationalized (private property → public / national property)
- (2) Case moved from → infringement of fundamental right → wider questions of P’s p2amend
- (3) Judgement #1 → 31C Amendment null & void; harmony b/w FR and DPSP → basic feature
- (4) Judgement #2 → p2Amend is a limited power

### #10 Waman Rao vs Union of India

- (1) What happened? Private Property & Land Acquisition Case in Maharashtra; placed in 9<sup>th</sup> Schedule
- (2) Judgement #1 → Acts placed in 9<sup>th</sup> Schedule after Keshavananda → within judicial review

### #11 Final Position

- (1) P2Amend → Limited Power, subject to basic structure
- (2) 9<sup>th</sup> Schedule → Subject to Judicial Review
- (3) P2Amend → Take away Fundamental Rights

## Constitutionalism & Constitutional Morality

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### #1 What is Constitution?

- (1) Supreme Law of the Land; living document that reflects the aspirations of the people.
- (2) performs 4 functions – (a) rules of coordination between diverse groups (b) specifies distribution of power in society (c) limits power of the state (d) enable fulfillment of goals and aspirations of society

### #2 What is Constitutionalism?

- (1) Abiding by the Values / Spirit of the Constitution
- (2) Not what the Constitution says, but also what it does not say.
- (3) Can be absent despite having a Constitution (e.g. where Constitutional has not led explicit provisions)

### #3 What is Constitutional Morality

- (1) Two things – (a) morality of the Constitution – values explicitly mentioned in Constitution.
- (b) Conventions, protocols that govern decision making (where Constitution is silent)

### #4 What is Ambedkar's idea of Constitutional Morality?

- (1) Central Challenge in a Democratic Society – management of difference
- (2) 4 Elements - Freedom & Self Restraint – Self Restraint pre-condition to any freedom
- (3) Respect to Plurality in its widest form – management of differences, addressing plurality of competing claims.
- (4) Rejection of single body's claim to popular sovereignty – elected govt not representative of sole will of the people.
- (5) Open Culture of Criticism - Parliament's job is to question, and not to be sole representative of people's will; once a single body like Parliament has sole claim – no space for others to speak!

### #5 How has doctrine of Constitutional Morality helped? (positives)

- (1) Enables the court to make decisions without worrying about what voters want
- (2) Helps the cause of unpopular, but progressive ideas. (Section 377, Sabrimala Case)

### #6 What are the criticism of Constitutional Morality?

- (1) Morality is a subjective concept; depends on value choice of each judge.
- (2) May run counter to public morality (Naz Foundation case)
- (3) Makes the court an anti-majoritarian institution

## Indian Constitution – Federal or Unitary?

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### #1 What is Federalism/ federation?

- (1) political system where political power is divided between the Center and the constituent units
- (2) each unit is autonomous in its own sphere; purpose of federation – unity of the Nation
- (3) two identities of people – one, national, the other regional
- (4) Usually marked by a (a) Written Constitution, and always by an (b) Independent Judiciary

### #2 What is Indian Model of Federalism?

- (1) Article 1 – “Union” instead of “Federation”
- (2) two implications (a) Union is not result of agreement between the States
- (3) (b) Constituent Provinces do not have the right to secede from the Union.

### #3 Why did we go for a federal polity?

- (1) Indian Society – regional & linguistic diversity – better to recognize this diversity
- (2) Conscious choice of no - forced National Identity, accommodating the diversity
- (3) Allaying the fears of Princely States + Southern States – linguistic differences;

### #4 Why Indian federation has “centralizing tendency”?

- (1) Why Unitary? – At Independence, goal - to unite not only British Provinces, but 500+ princely states.
- (2) Inequality, Illiteracy, Poverty, Hunger – required a central planning and coordination
- (3) Features (a) Indestructible “Union” of destructible States
- (4) (b) Strong emergency provisions – highly centralized structure; P makes Law on State Subjects
- (5) (c) Financial Powers – direct taxes and indirect taxes – in favor of Union; discretionary power of grants, loans, (d) Requirement of Union Approval for raising funds; (e) Governor – Agent of the Union – can dissolve legislature, reserve bills for President (f) Article 356 – primary tool for dealing with States (g) All India Services (g) Art 33, 34 – Armed Forces Special Powers Act

### #5 Co-operative Federalism vs Bargaining Federalism vs

- (1) States & Union Co-operate: early years of Independence – Congress Govts in Union & States; Central domination in federal relations
- (2) Bargain between the Union & States: Era of Coalition Politics.
- (3) Competitive Federalism: States competition with each other & Center: Labor Laws, Ease of Doing Business.

### #6 What are major irritants in working of Indian Federalism today?

- (1) Conventional Issues: Governor’s Office, Article 356, Panchayati Raj, Finance Commission, All India Service; MPLAD
- (2) Emerging Issues: GST & GST Compensation Cess, Use of Paramilitary by Central Agencies, Migrant Crisis, Increase in Cess as part of Taxation – not shared with States; DBT; J& K Reorganization – Article 3; Delhi Govt Lt Govt designated as Government of Delhi.
- (3) no tools with States to hold Union Accountable,

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Related Concept Classes – Fiscal Federalism, Asymmetric Federalism, Governor’s Office, GST, Cess Issue etc.



## Govt of India Act, 1935 – Blueprint for India’s Constitution

### #1 What is the Govt of India Act, 1935

- (1) Act of British Parliament; last set of Constitutional Reforms
- (2) All India Federation; Three Lists → Central, Provincial, Concurrent. Dyarchy the Center (Reserved & Transferred Subjects)
- (3) Abolished dyarchy at Provinces = Autonomy
- (4) Public Service Commissions (Federal, Provincial, Joint) ; Dyarchy at the Center ;

### #2 Why did the Govt of India Act, 1935 Fail?

- (1) Imagined a federation of British India+ Princely States → did not join ; Congress dissatisfied with representation of Princely States (nominated through committed princes) ;
- (2) Dyarchy at Center = Not Responsible govt = all Powers at Union with the British = not what the leaders aspired for;
- (3) Provincial autonomy was farce = half budget couldn’t be voted upon ; G could run govt in special circumstances ; did not inspire confidence in Indians

### #3 How much of the Constitution is derived from Government of India Act, 1935?

- (1) Federation & Provincial Autonomy = Union & Autonomous States
- (2) Federal, Provincial, Concurrent List = 7<sup>th</sup> Schedule
- (3) Responsible Govt @Provinces + Governor’s “Special Powers” = Presidents’ Rule + Power2Reserve Bills for President’s Assent
- (4) Institutions → Federal, Provincial, Joint Public Service Commission + Federal Court

### #4 Is the Constitution based on Govt of India Act, 1935 ?

- (1) Govt of India Act itself summed up previous reforms (Bicameralism, direct elections → Gol, 1919; provincial subjects → reserved and transferred ; Public Service Commission, Provincial Budgets, Nehru Report, Simon Commission Report etc.
- (2) 10% People got voting rights @Universal Adult Suffrage; Ignored rights that are central to any Constitution
- (3) Remained Colonial Instrument only to extend power = Privy Council, Separate Electorate.
- (1) Constitution much more progressive, forward looking document, aspirations of people, not just political administrative machinery of the State;
- (2) Assimilates the wisdom of all major Freedom Struggles and Revolutions, and Constitution Framing Experience (USA → FR, Judicial Review, Independent Judiciary, France → Liberty, Equality, Fraternity, Russia → Ideal of Justice, Duties, Ireland → DPSP etc.)



## Rights vs Duties

### #1 What are rights?

- (1) Claims of an Individual that are essential for the full realization of one's potential
- (2) Recognized by the State and Society ; fundamental to civilization.
- (3) Limitations on the actions of the State, Individuals and Society; not absolute
- (4) Natural Rights → granted by Nature itself; Human Rights → inalienable, universal, dynamic moral right of highest order; associated with human dignity; Post World War phenomenon ;

### #2 What are duties?

- (1) Obligations on the Individual ;
- (2) rights of one are the duty of another.

### #3 What are fundamental rights?

- (1) Most important socio-political-cultural rights that are recognized and enshrined in Constitution.
- (2) Fundamental = guaranteed by C + Violation in enforceable + necessary for full development of one's personality.
- (3) Ever evolving as per judicial interpretation → Golden Triangle of Art 14, 19, 21
- (4) Also added by Amendments (21A – Right2Education added;)

### #4 What are fundamental duties?

- (1) Expected obligations of individual towards the Society ; Reminder of collective duties and aspirations;
- (2) Not originally part of the Constitution → expected to be performed on their own ;
- (3) A → "A"bide ; B → no"B"le ideas ; C → "Sh"overeignty ; d → "d"efend ; e → broth"E"rhood ; f → fcc - composite culture ; g → green | forest, lakes, rivers ; h → humanism; l → vlolence ; j → exjellence ;
- (4) Importance → not following violates social contract ; President Kovind → rights and duties two sides of same coin ; Indira Gandhi → necessary for democratic balance ; Gandhi → Rights are a result of duties;

### #5 What are the criticism of Fundamental duties?

- (1) Non-justifiable; ambiguous and vague; skips important duties such as paying taxes, voting.
- (2) Usually found in kingdoms, Authoritarian regimes, theocracy; religion; Citizens have rights; subjects have duties; post-emergency addition - brought by 42<sup>nd</sup> CAA → Supremacy of Govt over Citizens.
- (3) Final: Was not repealed by 44<sup>th</sup> CAA ; position strengthened by 86<sup>th</sup> CAA → added 51A(k)-duty of parents/ guardians → education between 6-14 years;

## Preamble to the Indian Constitution

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### #1 What is a Preamble?

- (1) Introductory statement; Preface; Foreground to the constitution. Integral part of the Constitution (Kesavananda Bharati case; rejection of Berubari judgement)
- (2) Articulates the principles which precondition the possibility of our unity as a nation.
- (3) Basic philosophy and the fundamental values on which our constitution is based.

### #2 Parts of the Preamble

- (1) **Declaratory part** (who framed the constitution and with what authority. “we the people of India...In our constituent assembly this twenty sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution”)
- (2) **Nature of the State** (Why the document was framed – nature of the State envisioned) “solemnly resolved to constitute India into a sovereign socialist secular democratic republic”.
- (3) **Descriptive part** (explains how aims and objectives are going to be realized) Aimed at providing a right way of life. Notion of a happy life for everyone. “to secure to all its citizens Justice...Liberty...Equality...and to promote among them all Fraternity... (Sought to be achieved through FRs, DPSPs and FDs)

### #3 What does the Preamble tell about the nature of the Indian State?

- (1) SOVEREIGN – India has its own independent authority. Not a dominion or dependent authority.
- (2) SOCIALIST – Democratic socialism (not State socialism). More emphasis on socialist ideals rather than political and economic model.
- (3) SECULAR - All religions get equal respect, protection, and support from the state. Different from western model. No strict separation of religion from State. Positive Secularism.
- (4) DEMOCRATIC – Source of authority of the government → Will of the people. India → Representative democracy (other being Direct democracy) of Parliamentary form (other being Presidential form).
- (5) REPUBLIC – Elected head of the State (other being hereditary → Monarchy). Sovereignty → vested in people rather than individual.

### #4 Is Preamble a part of the Constitution?

- (1) **Berubari Union case, 1960** – SC recognized that the preamble is a ‘key to the minds of the makers of the constitution’. However, despite recognizing its importance, court ruled that Preamble is NOT a part of the constitution.
- (2) **Kesavananda Bharati case, 1973** – (a) Preamble is a part of the constitution (b) Preamble is not a source of power nor a source of limitations or prohibitions. (c) Preamble has a significant role in interpretations of statutes and that of the constitution itself. (d) Preamble was voted upon by the constituent assembly to form part of the constitution.

- (3) **LIC v Union of India Case, 1995** – SC reiterated that Preamble is an integral part of the constitution but it is not directly enforceable in the courts.

### #5 Amendment of the Preamble

- (1) Berubari case – Article 368 → can amend any part of the constitution; however, preamble is NOT part of constitution → cannot be amended.
- (2) Kesavananda Bharati case, 1973 - Preamble is a part of the constitution → can be amended (article 368) like any other part subject to basic structure doctrine.
- (3) Amended only once - 42nd Amendment 1976 – 3 words added – Secular, socialist and integrity.

### #6 Objectives in the Preamble

- (1) JUSTICE – social economic and political.
- (2) LIBERTY – thought, expression, belief, faith and worship.
- (3) EQUALITY – of status and of opportunity.
- (4) FRATERNITY – assuring the dignity of the individual and the unity and integrity of the nation.

\*Above concepts have been covered separately in related concept classes.



## THE IDEA OF JUSTICE IN INDIAN CONSTITUTION

### #1 What is the position of Justice in the Preamble to the Constitution?

- (1) The pre-eminent place in the Preamble is given to JUSTICE - social, economic and political. (a) Without JUSTICE the other concepts, such as LIBERTY, EQUALITY and FRATERNITY would be illusory. (b) If democratic institutions are informed by JUSTICE → LIBERTY, EQUALITY and FRATERNITY will be automatically fostered. (c) According to Ambedkar, "Justice is simply another name for Equality, Liberty and Fraternity".
- (2) The Preamble → reflects the general spirit of the Constitution → fully corresponds to the Rawlsian schemes. (Rawls Justice → first virtue of social institution, First objective of the preamble)
- (3) Preamble talks about 3 types of JUSTICE –
  - SOCIAL – Equal treatment of all citizens without any discrimination or privileges.
  - ECONOMIC – Remove inequality of wealth. Establish a welfare state.
  - POLITICAL – Equal rights in political participation. Universal Adult suffrage. Access to all political offices.

### #2 How does the Indian Constitution conforms to the concept of Justice?

- (1) Indian Constitution is first and foremost a 'social document'. Socio-economic and political Justice is the prime concern of the Constitution.
  - Part III → ensures political justice
  - Part IV → ensures socio-economic justice
- (2) Comparison with Rawls theory of Justice –
  - Liberties in Part III of Indian Constitution → includes almost all liberties which Rawls considers important. Also, in Rawls theory → liberty gets the precedence over equality. Constitution → list of liberties is far longer than that of the equalities. (For liberty → Articles 19, 20, 21, 22, 26, 27, 28, 30 and 32; For equality → Articles 14, 15, 16 and 18).
  - Upholds Rawls' second principle of justice - The word "socialist" used in the Preamble read with the context of Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 → seek to reduce inequalities in income and status and to provide equality of opportunity and facilities.
  - Difference principle - special provisions for least advantaged section of Indian society. Eg, Article 15 and 16 → provide for positive discrimination, Article 28 → prohibits
  - exploitation of the least advantaged,
- (3) As a directive to the State under **Article 38** - "to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life"

## CONCEPT OF JUSTICE

### #1 What is Rawls theory of Justice?

- (1) **Rawls** → 'justice is the first virtue of the social institutions. (a) Justice does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. (b) Injustice is tolerable only when it is necessary to avoid an even greater injustice.
- (2) Methodology used → '**original position**' and '**veil of ignorance**'.
- (3) Describes Justice as 'fairness'. Yardstick of fairness → 'human dignity'. 'Each person possesses inviolability founded on justice...Loss of freedom for some cannot be made right for the greater good of others' (against Utilitarianism).
- (4) Rawls orders the principles of justice lexically,
  - a) **Greatest equal liberty** - concerned with the distribution of rights and liberties.
  - b) **Equal opportunity principle** - offices and positions open to all → fair equality of opportunity.
  - c) **Difference principle** - benefit of the least advantaged members of society (positive discrimination) (eg. Reservation in India)
- (5) Criticism by **Amartya Sen** – (a) Real behaviours and outcomes are different from rational assumptions. (b) Gives example of justice over distribution of a Flute.

### Amartya Sen's Idea of Justice

- (1) The Idea of Justice → book by Amartya Sen in 2009.
- (2) Problem of distribution of a Flute – 3 claimants (i) knows how to play it; (ii) flute is a product of his labour; (iii) could not afford to have his own flute. (utilitarian (fulfillment of happiness, merit) v libertarian (entitled to enjoy the product of his labor) v egalitarianism (economic equity))
- (3) Human beings have an innate desire to eliminate injustice where possible; Ideal institutions are not required to inculcate a sense of fairness or to persuade people to act fairly.
- (4) Social justice should not be evaluated in binary terms, as either achieved or not. Justice should be existing in a matter of degree, and should be evaluated along a continuum.

### Ambedkar's idea of Justice

- (1) Stood for the establishment of society based on the socio-economic and political justice.
- (2) The idea of social justice is built upon the foundation of 'liberty, equality and fraternity' where every person residing is capable of getting equal opportunities.
- (3) Social justice implies that all benefits and privileges in the society should be shared by all its members.
- (4) In case of structural inequality → government should take affirmative action.

# Equality

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## #1 What is Equality?

- (1) State of being equal – status, rights and opportunity; Absence of special privileges; provide opportunities for all individuals without discrimination (equality of opportunity).
- (2) Two types – (a) Formal Equality and Substantive equality (b) Legal-political equality and Socio-economic equality. Legal-political equality → only formal equality; socio-economic equality → substantive equality.

## #2 How does the Constitution ensure equality?

- (1) Preamble → equality of status and opportunity; This provision embraces three dimensions of equality – civic, political and economic.
- (2) Civic equality → Fundamental Rights (Right to Equality) → Equality before the law (Article 14); Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15); Equality of opportunity in matters of public employment (Article 16); Abolition of untouchability (Article 17); Abolition of titles (Article 18)
- (3) Political Equality – no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325); elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage. (Article 326);
- (4) Economic equality → Directive to the State – Article 39 → secures to men and women equal right to an adequate mean of livelihood and equal pay for equal work.

## Concepts in the Preamble

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### #1 Objectives in the Preamble

- (1) JUSTICE – (Rawls Justice → first virtue of social institution, First objective of the preamble)  
According to Ambedkar, “Justice is simply another name for Equality, Liberty and Fraternity”.
  - SOCIAL – Equal treatment of all citizens without any discrimination or privileges.
  - ECONOMIC – Remove inequality of wealth. Establish a welfare state.
  - POLITICAL – Equal rights in political participation. Universal Adult suffrage. Access to all political offices.
- (2) LIBERTY – thought, expression, belief, faith and worship. Positive liberty. Broad meaning taken - It is the opportunity to develop oneself fully. Articles 19, 20, 21, 22, 26, 27, 28, 30 and 32 are devoted to the liberties of citizens.
- (3) EQUALITY – of status and of opportunity. Civil, political and economic. Absence of special privileges. Articles 14, 16, 18 and 15.
- (4) FRATERNITY – assuring the dignity of the individual and the unity and integrity of the nation. Brotherhood in society. Psychological and territorial dimension (states have no right to secede) of national integration. Overcome hindrances in national integration like – regionalism, communalism, secessionism etc.





## President of India - A mere Rubber Stamp?

### #1 What is the Constitutional position of the President?

- (1) Article 52; head of the Indian State; first citizen of India;
- (2) Executive power of the Union shall be vested in the President (All executive actions of the government are taken in his name) [Article 53]. All executive functions are executed in the name of President [Article 77]. President → nominal head of the government; Real head → Council of ministers.
- (3) Ambedkar – President is 'head of the State but not of the Executive, He represents the nation, but does not rule the nation. He is the symbol of the nation'.

### #2 Why has the president said to be a mere Rubber stamp?

- (1) Exercise his functions at the aid and advice of the CoM with the PM at the head. [Article 74]
  - a. 42<sup>nd</sup> AA → obligatory for the President to act only on the advice of the CoM. 44<sup>th</sup> AA → did not completely reverse the provisions made in 42<sup>nd</sup> AA → allowed President to send back for reconsideration only once.
  - b. If the President tries to act against the wishes of ministers, it is said to be a constitutional crisis; President may get impeached for "violation of the constitution".
- (2) Legislative powers → (a) can summon, prorogue, dissolve, call joint sitting but on aid and advise of CoM. (b) Cannot reject a bill without advice of CoM; can send back of reconsideration only once [suspensive veto] (c) bound to give assent in case of Money bill and constitutional amendment bill. (d) promulgation of ordinance → aid and advise of CoM.
- (3) Judicial powers → (a) Pardoning power → aid and advice of CoM. (b) Appointment of judge → through collegium.

### #3 Why the President cannot be considered as merely a 'Rubber stamp'

- (1) Acts as a symbol of unity, integrity and solidarity of the nation; Often regarded as the conscience-keeper of the nation.
- (2) Constitution does not envisage the office of President to play active role in day to day governance [Parliamentary form]. Would create conflict of power between President and PM.
- (3) Enjoys situational discretionary powers – (a) Appointment of PM when no clear majority in LS. (b) Dismissal of CoM when unable to prove majority (c) Dissolution of LS when CoM lost majority. (d) Can ask for information about anything related to the Union Government. → PM duty-bound to furnish such information [Article 78]. (e) Sending back advise of CoM for reconsideration [Article 74] (f) Passing of bill → using Suspensive veto and Pocket veto.
- (4) Ultimate person responsible for upholding the rule of law, as the head of state, and must ensure that no major violations happen.
  - a. If the PM indulges in corruption or extreme situations → a citizen can approach the President → President can proceed against the PM under the Prevention of Corruption Act.
- (5) Non-interference in routine governance → preserves dignity of office. Ability to play non-partisan role in national politics.

## Anti-Defection Law

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### #1 What is the Anti-Defection Law?

- (1) Through 52nd Amendment Act, 1985 → 10th Schedule inserted.
- (2) Lays down the process by which legislators may be disqualified on grounds of defection.
  - a. If a member of a house belonging to a political party – (a) Voluntarily gives up the membership of his political party (b) Votes against/abstains contrary to the directions of his political party (to vote contrary → needs prior permission 15 days in advance) (c) If an independent candidate joins a political party after the election. (d) Nominated member joins a party six months after he becomes a member of the legislature.
  - b. Exception – (a) merger with approval of 2/3rd members (b) elected presiding officer.
- (3) Amended by 91<sup>st</sup> AA, 2003 [Pranab Mukherjee committee] → omitted the exception provision → disqualification on grounds of split.

### #2 What is the need of the Anti-defection Law?

- (1) Prevent political instability [‘aya ram gaya ram’]; shift of party allegiances and discipline.
- (2) Prevent breach of trust of the mandate of people.
- (3) Reduce corruption → Prevent money luring (horse trading), office luring of legislators.

### #3 What are the various concerns regarding the Anti-defection law?

- (1) Weakens checks and balances → legislators act on directions of executive [parliamentary form]; No distinction between defect and disagreement.
- (2) Weakens deliberative democracy → preventing in-depth, non-partisan analysis of laws and issues.
- (3) Unable to prevent defection → exemption rule of 2/3 members joining another party → mass defections. [banned individual defection, legalized mass defection]
- (4) Judicial powers to the Speaker on disqualification of members [initially → no judicial review; Kihoto Hollohan case → under judicial review]

### #4 How can the issues related to ADL be addressed?

- (1) Law commission → (a) pre-poll electoral fronts → treated as parties under ADL (b) limiting of whips to rare cases.
- (2) Election commission → Disqualification of MPs/MLAs be made by President/Governor on the advice of Election Commission. [Also by Dinesh Goswami committee on electoral reforms]
- (3) Free vote sessions [as in UK] → members are free to vote as they desire.
- (4) More clarity in law [e.g vague wording like “voluntarily giving up membership”]

## Office of Speaker – Challenges and Suggestions

### #1 What is the constitutional position of the office of Speaker?

- (1) Guardian and head of the lower house; maintains decorum, discipline and effective running of parliamentary business, principal spokesperson of the house.
- (2) Final interpreter of (a) Constitution (b) Rules of procedure and conduct of business of LS (c) Parliamentary conventions and precedents.

### #2 What are the controversies/challenges associated with the office of the speaker?

- (1) Anti-defection law (52nd AA) → elevates the position of the speaker to that of a judge. [Kihoto Hollohan case] [e.g. Uttarakhand, Arunachal Pradesh]
- (2) Political activism → no compulsion to resign from the party membership. Electoral system → not developed to ensure protection to the office → Speakers to retain party membership.
- (3) Final decision on Money bill [e.g. Aadhar bill]
- (4) Acceptance passing of critical motions like censure motion and no confidence motion.
- (5) Order of the house; Allocation of less time for discussion on important issues to the opposition members.
- (6) Final authority to decide on cases of whether a case of privilege has at all arisen. [e.g. Karnataka assembly speaker summoning journalists]

### #3 What are the suggestions to remove those challenges?

- (1) Political Activism - Resignation from the party post or refraining from the party meetings and active party politics. [E.g. Position of the speaker in House of Commons, Parliament of England].
  - a. “Once a speaker, Always a speaker”! Do you think the practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India. **[GS2 Mains 2020]**
- (2) Lifetime pension; can be barred from holding political office after speakership (Except President and VP)
- (3) Anti-Defection Law → power to disqualify → divested with either the Election Commission or any neutral body outside the legislature.
- (4) Money Bill [Article 110] → Consultation with the specific parliamentary committee can be made mandatory.
- (5) Acceptance of motion → In place of individual discretion, leaders of all parties be consulted for crucial motions.
- (6) Privileges → Codification of parliamentary privileges.

## Concept of Judicial Activism

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### #1 What is the meaning of Judicial activism?

- (1) Proactive role of judiciary; protection of rights; promotion of justice; exercise of judicial powers → (a) active interpretation of laws (b) progressive social policies (c) delivery of justice is ensured irrespective of lack of legislative and executive actions.
- (2) Tools of Judicial activism (a) PIL (b) Judicial review (c) Article 21 – Procedure established by Law and Due process of Law (d) ‘complete justice’ under Article 142 (e) Contempt of court.

### #2 What are the benefits/justifications of Judicial Activism?

- (1) Protecting the core of constitution from executive adventurism; misuse of power; Judiciary → Guardian of the constitution. [e.g. Kesavananda Bharati case]
- (2) Filling the legislative and executive vacuum. [e.g. vishakha guidelines] [e.g. MC Mehta case (environmental jurisprudence)]
- (3) PIL → Shift from locus standi → judicial process more accessible and democratic.
- (4) Preserve the faith of people in the Constitution and democracy; Last resort for people to seek justice. [e.g. Shatrughan Chauhan case]
- (5) Adapt constitutional and legal interpretation to emerging challenges. [e.g. Justice K.S. Puttaswamy case]
- (6) Taking hard/unpopular decisions → popular government may be fearful of [e.g. Indra Sawhney case]

### #3 What are the concerns/issues with Judicial Activism?

- (1) Violation of principle of Separation of Power – in executive and legislative spheres. [e.g. Prakash Singh case on police reforms, Sealing of commercial entities in residential areas of Delhi]
- (2) Unlimited powers in the name of ‘complete justice’ [Article 142] → against constitutionalism. (worth mentioning → Lack of Judicial accountability [99th AA])
- (3) Unpredictability of laws and judgements; Lack of expertise on many important issues.
- (4) PILs → (1) increasing judicial pendency (2) diminishing faith in political class (democracy)

## Judicial Activism v Judicial Overreach

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### #1 When does Judicial Activism become Judicial Overreach?

- (1) When judicial activism crosses its limits and becomes judicial adventurism; extreme form of judicial activism → arbitrary, unreasonable and frequent interventions are made.
- (2) Compel performance of duty by the designated authority in case of its inaction or failure → Activism; while a takeover by the judiciary of the function allocated to another branch → Overreach.
- (3) Example – [Shyam Narayan Chouksey case – National Anthem in cinema halls] [Allahabad high court order public officials to send children to government schools] [NJAC case]
- (4) Paradox → Judicial overreach violates doctrine of Basic structure [Separation of power]

### #2 What are the solutions to avoid Judicial overreach?

- (1) Indian constitution does not envisage a strict separation of power; objective is that respective 3 branches work within the framework of the constitution.
  - a. SC in Lakshmi Kutty v State of Kerala case - *“Special responsibility devolves upon the judges to avoid an over activist approach and to ensure that they do not trespass within the spheres earmarked for the other two branches of the State.”*
- (2) Need → Judicial Restraint (a) recognizes the equality of the other two branches with the judiciary (b) tends to protect the independence of the judiciary [independent judiciary → removal from the political and administrative process]
- (3) Judiciary must exercise self-restraint and eschew the temptation to act as a super legislature or as a super executive.

## Office of Profit

### #1 What is an 'Office of Profit'?

- (1) Office of Profit → a position that brings to the person holding it some financial gain, or advantage, or benefit.
- (2) Idea imported from Britain; Objectives → (a) Secure independence of the legislature → no conflict between duties and interest of elected members; (b) Preserve separation of powers (c) Restrict vulnerability to temptations an executive can offer; (d) Protect the democratic fabric from being corrupted by executive patronage.
- (3) Article 102(1)(a) & Article 191(1)(a) → Disqualification of MPs and MLAs; Parliament (Prevention of Disqualification) Act, 1959 → bars holding any office of profit under the central or state government unless it is exempted.

### #2 What constitutes an 'Office of Profit'?

- (1) No clear definition in the constitution/1959 Law/RPA; Definition evolved over the years → judicial interpretations; Any place or position that carries or offers some remuneration, financial advantage, benefit etc.
- (2) SC [Swapan Roy v Pradyut Bordoloi case (2001)] → factors determining office of profit –
  - a. Whether the government is the appointing authority,
  - b. Whether the government has the power to terminate the appointment,
  - c. Whether the government determines the remuneration,
  - d. What is the source of remuneration, and
  - e. The power that comes with the position.
- (3) Jaya Bacchan v. Union of India case, 2006 → “*what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain*”.

### #3 What are the controversies associated with 'office of profit'?

- (1) 91st AA → limited the size of CoM to 15% (10% for Delhi). Use of Chairmanships of Corporations, Parliamentary Secretaries of various ministries, and other offices of profit → inducements to legislators.
  - a. Satisfy aspirations for rank, status and privilege of elected party members; Way of buying peace for the government.
- (2) Concerns with posts of Parliamentary secretaries → (a) Violates constitutional provisions of limited CoM (b) Violates Separation of Power (c) Parliamentary secretaries → no Oath of Secrecy → threat to national security (d) Misuse of public money.

### #4 How can the issues associated with 'Office of Profit' be resolved?

- (1) 2nd ARC → (a) Offices with executive decision making and control → OOP; (b) Offices with advisory role, using expertise, experience of legislators not be treated as OOP.
- (2) NCRWC → Power to EC to determine OOP.
- (3) Amendment of Constitution/RPA to provide more clarity.

## Public Interest Litigation

### #1 What is a Public Interest Litigation?

- (1) PIL → a legal instrument → for enforcement or use laws to advance human rights, ensure justice, liberty and equality and address issues of broad public concern.
- (2) Hussainara Khatoon vs. State of Bihar (1979) → Right to speedy justice. [Justice PN Bhagwati]
- (3) Made possible by relaxation of the traditional rule of '*locus standi*'.
- (4) Not defined in any law or statute. Can be filed through → Article 32, 226, Sec 133 (CrPC).
  - a. PIL can be filed against the 'State' [Article 12] and NOT any private party.

### #2 What are the factors responsible for popularity of PILs in India?

- (1) Corresponding rise in level and extent of Judicial activism [Judicial review, Due process (Article 21); Article 142; Enforcement of DPSPs as FRs].
- (2) Growth in Civil Society Organizations; Educated, informed and empowered citizens;
- (3) Lackadaisical implementation of progressive legislations.
- (4) Approaching court made easy [e.g. approach SC directly; post cards].

### #3 What has been the impact of PILs?

- (1) Offers a ladder to justice to disadvantaged sections of society;
- (2) Avenue to enforce diffused or collective right; important instrument of social change.
- (3) Enables civil society to spread awareness about human rights; Protection of HRs [e.g. monitoring prisons, care homes etc.]
- (4) Expanding the scope of fundamental rights;
- (5) Good governance by ensuring accountability and constitutionalism.

### #4 What are the various challenges associated with PILs?

- (1) Frivolous, non-genuine use for political/private gains/vested interests;
- (2) Slowing down pace of development projects
- (3) Had led to self-aggrandizement of power by judiciary → Judicial Overreach [India → most powerful judiciary].
- (4) Excessive load → Judicial pendency.
- (5) Adding to the list of FRs (from DPSPs) without considering capacity of the State.

### #5 What are the solutions to the above issues?

- (1) Striking a balance between legitimate cases and frivolous cases.
- (2) Court should be fully satisfied that substantial public interest is involved before entertaining the petition
- (3) SC → "Guidelines to be Followed for Entertaining Letters/Petitions Received by it as PIL" → limiting the categories of cases on which PIL can be filed.



## Special Status of Delhi

### #1 What is the special status of Delhi?

- (1) Delhi → made UT after State Reorganization Act, 1956. Demand from People of Delhi & political parties.
- (2) Balakrishnan Committee (1987) – (a) Give the national capital a special status (not full statehood) (b) Setting up a legislative system.
- (3) 69th CAA, 1991 → special status given to Delhi. Provisions laid down in GNCT of Delhi Act, 1991. Elected legislative assembly and a responsible government. Administrator by President → Lieutenant Governor (LG).
- (4) Legislative assembly → 70 members; Powers to legislate → State List + Concurrent List, except (a) public order (b) police (c) land. [3 powers held because Delhi is a national capital of a sovereign nation]

### #2 What is the controversy regarding powers of LG vis-à-vis CM?

- (1) Lack of clarity in Provisions (a) CoM with CM as head → aid and advise LG... except when LG is required to act in his discretion. (b) In case of 'difference of opinion' on "any matter" between LG and CoM, matter → referred to the President by the LG.
- (2) Lots of conflict between CM Arvind Kejriwal and LG [e.g. controversy of Chief Secretary, MHA → Anti Corruption Bureau (ACB)].
- (3) HC (2016) → Complete control of matter regarding NCT with LG. No decisions without his concurrence.
- (4) SC (2018) → verdict in favour of Delhi government (a) LG must take aid and advise of the CoM (b) All decisions by Delhi govt. → communicated to LG [communication not equals concurrence] (c) Except public order, police and land, LG → bound by aid and advice of CoM (d) for referring to President, "any matter" cannot be every matter. (e) LG → 'facilitator'; not an 'adversary'.
  - a. Q. Whether the Supreme Court Judgement (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine. [GS-2 Mains (2018)]

### #3 Should Delhi be granted full statehood?

- (1) **Arguments in favour** – (a) very large population → day-to-day governance issues (b) No control over law and order, land and police inhibits → functions of a responsible government (c) inability in implementing welfare schemes (d) Continued conflict with LG – delay and disruption of administration.
- (2) **Arguments against** – (a) Balakrishnan report → "Delhi as the national capital belongs to the nation as a whole" (b) law and order and maintenance for city having → Union government, SC, Parliament, Foreign embassies cannot be given to a State government (c) Control of Union → National Interest (d) examples from world [Washington DC, Canberra].
- (3) **Way forward** - (a) Pragmatic federalism; (b) More say in law and order, municipal and land management matters to the State government; (c) Removal of conflicts between LG and Cm through detailed provisions.

## GNCT Delhi (Amendment) Act, 2021

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### #1 What are the key changes introduced in the GNCT Delhi (Amendment) Act, 2021?

- (1) Term “government” → Lieutenant Governor (LG); All executive action by the government → in the name of the LG.
  - a. On certain matters → opinion → compulsory.
- (2) Legislative Assembly → Rules of Procedure and Conduct of Business → LS.
- (3) Prohibits Legislative Assembly to: (a) consider matters of day-to-day administration (ii) conduct inquiry in relation to administrative decisions.
- (4) LG → reserve certain Bills passed by the LA for President + any matter outside purview of LA.

### #2 What are the criticisms against the GNCT Delhi (Amendment) Act, 2021?

- (1) Undermines authority of elected government + legitimacy of electoral democracy.
- (2) Position of CM and CoM of Delhi → rendered meaningless. Adversely impacts → federal polity.
- (3) Requirement of LG's opinion + no time frame → delays in pressing matters of governance.
- (4) Bill passed through voice vote. Not much deliberation/debate/scrutiny.

### #3 Why has the Union decided to bring the GNCT Delhi (Amendment) Act, 2021?

- (1) Government → (a) clearly define duties of LG (b) to give effect to SC judgment in 2018.
- (2) Law → much-needed clarity on relation between LG and CoM [1991 act lacked clarity] → reduce conflicts in national capital.
- (3) Delhi ≠ any other State or UT. It is the capital of a sovereign nation. Requirement of control of Union government.

## Parliamentary v Presidential Form of Govt.

### #1 What is the difference between Parliamentary and Presidential form of government?

Parliamentary form	Presidential form
Two executives	One executive
Executive responsible → legislature [individual + collective]	President → people; not legislature
Cabinet/CoMs → part of legislature	Not necessary
Strict separation of power → not feasible	Strict separation of power

### #2 Why India chose Parliamentary form over Presidential form?

- (1) Prior experience/familiarity; historical legacy → Govt Act, 1919, Govt Act, 1935;
- (2) Nascent democracy; Threat of personality cult, autocracy.
- (3) More representative, democratic, accountable → regions, religions, castes, interests.
- (4) Avoid executive-legislature friction/deadlock; Ease → passing/implementing laws

### #3 Is there an increasing trend towards Presidentialization of Parliamentary system?

- (1) General Elections → PM-candidate centric; [diminishing role → individual candidate/party]
- (2) PM/PMO → centre of all power/decision-making [diminishing role cabinet consensus; individual ministry]
- (3) Diminishing accountability → Parliament – (a) Decline in debate/discussion/scrutiny (b) increase → use of Ordinance (c) Anti-defection law.

### #4 Is there a case for switching to presidential system?

- (1) **Arguments in favour** – (a) Ability to appoint experts/qualified cabinet executives [Parliamentary form → Unqualified Legislators; position of legislator → not considered important; criminalization of politics (b) clear Separation of Powers; checks and balances → constitutionalism (c) Stable government; no 'Coalition Dharma' (d) less internal party politics → better decision-making/administration (e) no distortion of Voter Preferences.
- (2) **Arguments against** – (a) legislature → dominated by President's party → bulldozing legislature (b) legislature → dominated by opposition party → deadlock/stalemate (c) dangers of autocratic/totalitarian govt. (d) no consensus-building → overshadow diversity; majoritarianism (e) developing country → accountability by parliament required (f) violates basic structure.
- (3) **Conclusion** – (a) sporadic debate → super majority/PM-centric government; weakened → regional parties/coalition politics. (b) Diversity → prominent factor in India [prismatic society] (c) reform → electoral process; reduce → criminalization of politics (d) emphasis on democratic decentralization.

## Politicization of Governor

### What is the constitutional position of the governor?

- (1) Constitutional head of state; envisioned → constitutional link between Centre and state.
- (2) CoM with CM as head → aid and advice the governor → exercise of his function except → using his discretion. [Article 163]

### What factors have led to politicization of the office of governor?

- (1) Appointment → President [advice of Union]; no eligibility criteria; no consultation with states.
- (2) Tenure → Pleasure of President [Union government] → has to tow line of the party in power at Centre.
- (3) Appointment → unsuited partisan persons; active in politics; Office of Governor → retiring office → senior politicians, heads of constitutional bodies etc.
- (4) Large amount of discretionary powers → origin of many conflicts.
- (5) Commenting adversely → specific policies of state government; biased ideology

### Why are states unhappy with the office of Governor?

- (1) Discretionary powers -
  - a. Constitutional discretion – (a) Reserve bills → President (b) Recommend → President's rule (c) When given additional charge as administrator of a UT (d) vis-à-vis tribal District Councils (e) seek information from CM → administrative affairs.
  - b. Situational discretion – (a) appoint a CM → no party with clear majority (b) dismiss CoM (c) dissolves SLA.
- (2) Partisan politics → inviting CM → form government [e.g. Karnataka]
- (3) Misuse of Article 356. [e.g. Uttarakhand]
- (4) Withholding State Bills indefinitely or reserving → President [Article 201]
- (5) Misuse power to call assembly → save/bring down a government (defection) [e.g. Rajasthan]
- (6) Interference → day to day governance + Meddling in party politics at state level.

### How can the office of Governor be reformed?

- (1) **Sarkaria Commission** – (a) eminent person (b) outside of state (c) detached, not intimately concerned with local politics (d) desirable → not from ruling party at Centre (e) consultation with CM (f) security of tenure.
- (2) **Punchi Commission** – (a) Fixed term (5 years) (b) Removal by SLA (c) Amend 356.
- (3) **S.R. Bommai case** - (a) power of President (356) → not absolute + approved by LS+RS (b) If not approved → dismissed government → revived, suspended LA → reactivated. (c) imposition of 356 → subject to judicial review. (d) test of majority → floor of the Assembly
- (4) **NCRWC** → Governor → appointed by a committee → PM + HM + Speaker (LS) + CM.

## Rajya Sabha – Issues and Utility

### #1 What is the role of Rajya Sabha in the Indian parliamentary system?

- (1) Permanent house; Revisionary house; Degree of continuity → underlying policies of laws.
- (2) Means to institutionalize federal principle of power-sharing; safety valve within legislature → easing federal tensions.
- (3) Deliberative Body → enables debate → major issues of public & national importance.
- (4) Representing Vulnerable Sections [e.g. Women, religious, ethnic and linguistic minority groups] → not adequately represented in LS (FPTP system).
- (5) Special powers – (a) authorize Parliament → State List [Article 249] (b) creation → All India Service (c) removal → Vice President [Article 90]

### #2 What are the various issues related to Rajya Sabha?

- (1) Unequal representation of states – states represented proportionally → relative populations [e.g. comparison → seats of UP | north-eastern states]
- (2) Bypassing the Rajya Sabha – ordinary bills passed as Money Bill → circumventing RS [e.g. Aadhar Act]
- (3) Undermining of Federal character of RS – RPA (Amendment) Act, 2003 → removed the word 'domicile'. → non-residents → contest RS elections from that state
- (4) Low Participation of Nominated Members – sincerity of nominated members → questionable; Nominations made → satisfy sentiments of followers; [e.g. Sachin Tendulkar]

### #3 Should Rajya Sabha be scrapped?

- (1) **Arguments in favour** – (a) Parliamentary logjams/deadlock/stalling of legislations between LS and RS (b) Cronyism and patronage in appointments (c) Unqualified members (d) backdoor entry for unelectable/unpopular leaders (e) least connected members elected from a state (f) SC (2006) → RS → turned out to be another chamber of Parliament akin to the LS.
- (2) **Arguments against** – (a) required to maintain the federal equilibrium → protecting interests of states. (b) enables reflective expression of representative opinion (c) Checks majoritarianism and parliamentary tyranny (d) Legislative check by members → experienced, sober, wise, well-informed with domain knowledge + deliberative body → holding high-quality debates (e) retaining talent → essential for democratic system.
- (3) (a) passed scrutiny → Constituent Assembly; vanguard socio-political values; (b) equal seats for all states (c) reform election process (d) members → follow ethical guidelines for RS member [2<sup>nd</sup> ARC].

## Right to Information – Issues and Challenges

### #1 What is the significance of the RTI Act?

- (1) Key to strengthening participatory democracy; people-centred governance; Information → 'public good'.
- (2) RTI → implicit in Right to Freedom of Speech and Expression [Article 19]. Act ensures FR.
- (3) Empowers citizen → question secrecy/abuse of power in governance.
- (4) Access to information – (a) empower vulnerable section of society → entitlement to welfare; (b) public scrutiny → accountability of government; (c) ensuring protection of rights.

### #2 What are the various issues and challenges facing effective implementation of RTI Act?

- (1) Misuse → harass/blackmail/pressurize → public authorities; publicity, malafide intentions and frivolous use.
- (2) Backlogs; Delays; Poor record keeping; Rejection; Misuse of certain clauses.
- (3) Issues → secrecy [Official Secrets Act, 1923, Evidence Act]
- (4) CIC → minimal powers for enforcement → toothless institution;
- (5) Attacks/harassment/intimidation → RTI activists.

### #3 What are the criticisms against RTI (Amendment) Act, 2019?

- (1) Changes – (a) Term in office (b) Salaries and allowances
- (2) Criticisms – (a) reduce independence of Commission → reduced → Department of government; (b) diminishes status of CIC, ICs → ability to issue the directives → government officials (c) Centre → unilaterally decide → terms of service → threatens Federalism.
- (3) Argument by government – (a) EC and CIC/SIC → different mandate → status/ service conditions → rationalized (b) 2005 Act → CIC → status of SC judge → rationalized.

### #4 How can the functioning of RTI Act be improved?

- (1) 2<sup>nd</sup> ARC → training of civil servants to match spirit of RTI; NCRWC → oath of transparency.
- (2) Rationalization of certain laws [e.g. Official Secrets Act, 1923, Evidence Act, 1972]
- (3) Terms of service → independence [2<sup>nd</sup> ARC].
- (4) Protection of RTI activists [Whistleblower's Protection Act]
- (5) Increase awareness; digitization of records; reduce pendency; filling up vacancy.

## Role of NGOs – Issues and criticisms

### #1 What is the role played by NGOs in the development process of India?

- (1) Influencing Government policies and bringing reforms [e.g. RTI, ICDS, Juvenile justice]; last-mile delivery in government schemes [e.g. MGNREGS, eradication tuberculosis].
- (2) Grass-roots level Development – (a) stimulating/mobilizing voluntary action (personal touch), Involve community → developmental activities; (b) mobilize local resources - self-employment activities; (c) mobilizing rural people → social action → create awareness (d) promote rural health, sanitation, population control & family planning
- (3) Help specific target groups / vulnerable sections [women, children, SCs/ STs, landless agricultural labors] [e.g. Safai Karamchari Abhiyan]; (a) Encouraging participation; conscious instilling; dissemination of information; Balwant Rai Mehta committee (1957) → involving the NGOs in tribal development.
- (4) Women empowerment / Poverty alleviation – (a) Training (b) self-employment (c) information, knowledge, technology, managerial techniques (d) awareness → legal rights (e) credit/loan [e.g. SEWA foundation]
- (5) Environment protection & sustainable development + Disaster management – (a) policy formulation (b) information dissemination (c) rescue and relief operation (d) rehabilitation programmes (e) high-acceptance in communities. [e.g. Sulabh International, Help Age India][Role during pandemic]
- (6) Protecting Human Rights and Dignity - Restoring dignity of deprived/discriminated sections; [gender, racial and religious discriminations] [Naz foundation (section 377)]

### #2 What are the issues faced by NGOs in India?

- (1) Lack of Fund – (a) difficult to garner sufficient/continuous funding; (b) dependence → govt. funding (c) CSR partnerships (d) international donors
- (2) Absence of Strategic Planning and Development Approaches – (a) “hardware” approach to development; (b) lack of cohesive, strategic plan (c) technologically challenged.
- (3) Poor Governance and Networking – (a) duplicated efforts (b) inefficiencies (c) conflicting strategies (d) fear to connect with International NGOs.
- (4) Relationship with Government machinery –common perception → ‘opposition to government’
- (5) Lack of Volunteerism/Social work among Youth

### #3 What are the criticisms against working of NGOs in India?

- (1) Propagation → foreign propaganda → stalling developmental projects. [e.g. Kudankulam nuclear plant, GM seeds]
- (2) ED → some NGOs → front → banned naxal organizations
- (3) Proxies for political parties → (a) unaccounted money (b) campaign → agenda. (c) lobbying with parliamentarians → manipulate issues
- (4) Involved in organized crime - conduits → money laundering.
- (5) Misuse/ misappropriation of funds → grant-in-aid → government, foreign. [e.g. Greenpeace]



#### #4 How can the NGOs be made more transparent and accountable?

- (1) S. Vijay Kumar committee - self-regulation + comprehensive law → transparency → receipt and utilization of funds.
- (2) Regulatory mechanisms → track of the money especially public funds; appoint commission → cross-check misuse of funds.
- (3) Government → scrutiny procedures through Foreign Contribution (Regulation) Act, 2010. [amendments in 2020]
- (4) Motivate NGOs → adopt the 'National Policy on Voluntary Sector (2007)'
- (5) NGO-DARPAN → NGOs → enroll centrally → creation of repository of information.

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## FCRA (Amendment) Act, 2020

### #1 What are aims and objectives of the FCRA act?

- (1) FCRA, 1976 → regulates foreign donations + ensures such contributions do not adversely affect internal security. Aim → protect 'sovereignty' of India from 'foreign hands' (context → cold war);
- (2) Amended → 2010 → foreign contribution/ hospitality [companies/associations/individuals]
  - a. Renewal of registrations → 5 years + 50% limit → administrative expenses.
  - b. Cancellation of registrations (NGOs) → MHA → organization → political/not neutral.
  - c. Separate account → maintained by organisations → deposit Foreign Contributions; no other funds except foreign contributions → account. [Banks →obligated to report].
  - d. Debarred from receiving foreign contribution (a) candidate contesting election (b) Cartoonist, editor, publishers of a registered newspaper (c) Judge (d) Member of any legislature (e) Political parties
- (3) Issues – (a) foreign inflow → doubled (last decade) but entities → not using for declared purpose (b) lobbying (c) fictitious PILs (d) religious conversions (e) peddle narratives → challenging to national interest.

### #2 What changes have been introduced through the 2020 amendment?

- (1) Aadhaar → mandatory identification document → 'all' office bearers [foreigner → passport]
- (2) Designated "FCRA account" → branch of SBI, New Delhi.
- (3) Limiting administrative expenses → 20%.
- (4) Prohibits → transfer of foreign contribution to 'any other person'
- (5) Ineligible → donations "public servant" & "corporation owned/controlled by Government"
- (6) Aims – (a) strengthening compliance mechanisms (b) utilization of funds → intended purpose (c) root out NGOs → against national interest. [e.g. allegations → Amnesty International]

### #3 What are the criticisms of the FCRA (amendment) Act, 2020?

- (1) Provisions → too vague; Not clearly defined; no guidelines; discretionary powers to officials; (a) target NGOs → Humanitarian causes/ critical of government (b) political opponents (c) religious minorities.
- (2) Serious consequences → rights to free speech [19(1)(a)] and freedom of association [19(1)(c)]
- (3) Over-regulation → decrease in foreign donations → closing down of NGOs.
- (4) 20% cap – limits efficient functioning; recruit experts; less manpower.
- (5) Paves way for licence-raj; red-tapism; bureaucratic harassment;
- (6) Impact collaborative work among NGOs → inability →transfer to grassroots NGOs

### #4 How can the intended objectives of the FCRA be achieved?

- (1) Government → liberal stance towards NGOs. [facilitation; not suspicion]
- (2) Salaries below certain amounts → not categorized → "administrative expenses".
- (3) Sub-categorization of NGOs → not putting them in one basket
- (4) Better internal/external auditing.

## Role of SHGs

### What is a Self Help Group?

- (1) Self-governed, peer controlled informal group → similar socio-economic background + desire to collectively perform common purpose.
- (2) Normal strength → 10-20; similar economic outlook & social status; their own → by-laws/rules
- (3) Objectives → economic improvement/self-reliance; resource mobilization; gainful employment; collective development; deal with exploitation; basis → action and change + mutual trust.

### What has been the impact/benefits of SHGs?

- (1) Financial Inclusion + Financial literacy + propensity to save.
- (2) Social Change – ↓social evils [dowry/alcoholism/early marriage etc.] + Social Upliftment → marginalized sections – voice to underrepresented/ voiceless sections.
- (3) Women Empowerment – ↑status of women → participators/decision-makers/ beneficiaries.
- (4) Act as Pressure Groups → (a) influence government policies & schemes (b) implement & improve efficiency (c) reduce corruption → social audits.
- (5) Alternate source of livelihood/employment –vocational training + improve → source of livelihood → offering tools/capital + ↓ dependency on agriculture.
- (6) Social Indicators – (a) better family planning (b) ↓child mortality (c) ↑maternal health (d) ↑ healthcare facilities and housing (e) ↑ Food + nutritional security

### What have been the impediments in the growth of SHGs?

- (1) Inadequate finance/profitability – (a) poor value addition (b) scale up (c) lack of avenues → non-traditional activity (c) profitability →traditional activities (d) market linkage (e) 'melas'
- (2) Very few SHGs → transcend → micro finance and entrepreneurship [Inadequate support → government agencies & banks → perception → not commercially viable]
- (3) Lack of qualified resource personnel → skill development + capacity building. [illiteracy + lack information/awareness/practical knowledge]
- (4) Rural areas → caste/ religion → dominant. Group formations → based on caste/ religious lines.
- (5) Women SHGs → (a) patriarchal mindset (b) perception → caretaker /housewife (c) married women → relocate/migrate → instability of SHGs; (d) harassment by bankers.
- (6) SHGs → unable to outgrow their dependence on NGOs for hand-holding.

### How can the issues faced by SHGs be addressed?

- (1) Government Initiative – (a) SHG-Bank Linkage Programme (b) Saras Collection (c) Self-Employment Programme (SEP).
- (2) Increase access to credit [e.g. SHG-MFI linkage]; support from government/NGOs.
- (3) Removing taboos; gender sensitization; ↑ women participation; check on discrimination.
- (4) Basic education; financial literacy; awareness; motivation; training.

## Citizen's Charter

### #1 What is a Citizen's Charter?

- (1) Written, voluntary declaration by service providers about their service standards, choice, accessibility, non-discrimination, transparency and accountability.
- (2) Rationale - expression of understanding → citizen & public service provider [partnership between people & government] → quantity/quality of services. rights of the public; obligations of public servants; expectations from citizens'.
- (3) Components – (a) Vision & mission statement; (b) business of organization; (c) clients; (d) services provided; (e) grievance redress mechanism; (f) expectations from clients.

### #2 What is the Sevottam model of citizen's charter?

- (1) Sevottam Model → proposed by 2nd ARC → public service delivery ['Seva' (service) + 'Uttam' (excellence)]
- (2) Regarded → standard model → providing citizen centric governance.
  - a. Three components – (a) effective charter implementation; (b) public grievance redressal; (c) excellence in service delivery
- (3) Enables implementing organizations undertake → (a) self-assessment/gap analysis; (b) practical solutions; (c) establishing benchmarks; (d) rating model → recognize/ reward organizations.

### #3 Why has Citizen's charter failed in India?

- (1) Issue with charter implementation – (a) perception → command from top, mere formality;(b) no involvement from personnel; (c) unrealistic drafts/expectations; (d) stakeholders not consulted.
- (2) Issues with implementation – (a) diverts attention → routine work;(b) merely drafted → not implemented;(c) infrastructure → doesn't meet charter expectations;(d) not periodically updated;
- (3) Issues with bureaucracy → training/ communication gap/hierarchy gap/ inter-agency coordination/ lack of incentives/motivation.
- (4) Issues with outcomes – (a) expectations not met; (b) not legally enforceable → ineffective;(c) not inclusive;(d) excessively complicated; (e) awareness/empowerment; (f) vague/non-quantifiable standards; (g) one-size-fits-all approach.

### #4 What can be done for effective implementation of citizen's charter?

- (1) 2nd ARC – (a) mention → only deliverable promises/expectations (b) defined penalty/compensation → not meeting set standards (c) suit local conditions (d) consultations → stakeholders (e) evaluate/update periodically.
- (2) Successful models / best practice → Charter Mark [UK] & Malcolm Baldrige model [USA]
- (3) Re-introduction → Citizen's Charter bill → legally enforceable; overseeing committees at state/district levels;

## Panchayati Raj Institutions

### #1 What is democratic decentralization?

- (1) Devolution of powers, functions & resources → democratic institutions → lower levels → facilitate greater + direct participation of people → process of governance.
- (2) Gandhi's vision of 'swaraj'; motto of 'Power to People'; horizontal distribution of power; DPSP → Article 40.
- (3) Benefits – (a) people → sense of ownership → development projects; (b) Elected authorities → decisions → local needs; (c) ↑ acceptability of programs.

### #2 How have Panchayati Raj Institutions led to democratic decentralization?

- (1) 73rd Amendment, 1993 → institutionalized democracy at grassroots (constitutional status) [Part IX - "The Panchayats"; 11th Schedule]
- (2) Balwant Rai Mehta Committee [1957] → establishment of democratic, decentralized local government.
- (3) Political decentralization – 3-tier → village level → Gram Sabha – (a) participation and accountability; (b) elections held regularly; (c) high voter participation; Societal → Reservation [1/3rd – women; SC/ST – proportional to population]
- (4) Gram Sabha – (a) review annual statement of accounts + report on preceding financial year; (b) development programmes → Social audit; (c) identification of beneficiaries' → schemes.

### #3 What are the various issues faced by PRIs?

- (1) Inadequate financial autonomy – (a) levy and collect taxes, fees, duties etc. (b) Recommendation of SFC → partially/not implemented; (c) devolution of funds → tied with schemes [conditional]
- (2) Inadequate devolution of powers / functions – (a) states → not devolved required subjects + power; (b) reluctance → bureaucrats/ministers/ MLAs → share powers/authority; (c) encroachment → agencies/departments of state government; (d) District Magistrate → control/hinder → approvals and sanctions.
- (3) Inadequate Functionaries – (a) dependence on state machinery → implementation; (b) deficiency of man-power (c) inadequate training/access to technology/incentive/motivation.
- (4) General trend - (a) decentralization of corruption; (b) sarpanch-bureaucracy nexus; (c) sarpanch-pati phenomenon; (d) variation among states; (e) intensified caste/religion politics

### #4 What can be done to resolve these issues?

- (1) Mani Shankar Ayer Committee – (a) Centre-drafted model Gram Sabha law → motivate State legislation; (b) freezing rotation of reserved seats [2-3 terms] → incentivize good work + facilitate capacity building of leadership; (c) incentivize PRIs for transparency & accountability; (d) reorient outlook → lower bureaucracy (e) setup → National Commission for Panchayat Raj
- (2) Punchi Commission –Legislative councils in all state → representation → local governments.
- (3) Encourage → NGOs/CSOs; land reforms; empowerment of people; levy/ collection/ appropriation → taxes, duties, tolls and fees.

## NHRC - Issues and challenges

### #1 What are Human Rights?

- (1) Universal rights inherent to human, regardless of nationality/sex/national/ethnic origin/color/ religion/ language/ status.
- (2) Range - from fundamental → right to life to right → make life worth living
- (3) HRs are – (a) Universal and inalienable; (b) indivisible and interdependent; (c) Equal and non-discriminatory; (d) Both rights and obligations.

### #2 What is the National Human Right Commission?

- (1) Protection of Human Rights Act of 1993; independent statutory body; Chairman + 4 full-time + 4 ex-officio members; watchdog of human rights.
- (2) Compliance → Paris Principles of Human Rights, 1991.
- (3) Roles – (a) Investigate complaints → violation of Human Rights → suo moto | receiving petition [e.g. Sterlite Protest, HR violation in Kashmir, Best Bakery case]; (b) recommend → compensation / damages [power of civil court → grant interim relief]; (c) interfere → judicial process → allegation of HR violation; (d) visit prison/institute; (e) review Constitution/Laws (f) Research + raise awareness & literacy

### #3 What are the various issues/criticisms facing the working of the NHRC?

- (1) Recommendations → not binding; only investigative & recommendatory powers; no prosecution powers; independent investigative apparatus → not available; [SC (2017) → “reduced a toothless tiger.”
- (2) No jurisdiction → private entities; No power to penalize non-compliance; Limited jurisdiction → armed forces/ para-military forces; One year limit to receive complains
- (3) Perception → post-retirement destinations → judges/ police officers / bureaucrats → political clout.
- (4) Issues of frivolous cases; excessive case-load; lack of trained staff / expertise / funds

### #4 What are the criticisms against the Protection of Human Rights (Amendment) ACT, 2019?

- (1) Changes – (a) Judge of SC → eligible → Chairperson; (b) reduced term chairman + members → 3 years [earlier 5] + eligible for reappointment; (c) members → 3 [from 2] [1 woman]; (d) ex-officio members → include chairperson NCBC + NCPCR + (Chief Commissioner) Persons with Disabilities; (d) HR issues of UTs → SHRCs [Delhi → NHRC]
- (2) Justification – (a) benefit → filling vacancy of positions; (b) enable both the NHRC and SHRCs to be more compliant with the Paris Principles;
- (3) Criticisms – (a) Lead → more favoritism / nepotism → appointing chairperson / members; (b) Shorter terms + chances for re-appointment → increase scope for government appeasement; (c) 3 year term – insufficient → accustom members + efficiently contribute (d) create → another platform → internal conflict/ unhealthy competition → SC judges.

**#5 Should NHRC be given a Constitutional status?**

- (1) Arguments in favor – (a) protection against frequent/easy amendments → structure/ independence/ functions; (b) ↑ legitimacy → recommendations considered more seriously; (c) stable/ increased access to funds [CFI]; (d) ↑ recognition → India's Human Rights credentials.
- (2) Arguments against – (a) may be mere cosmetic change; (b) does not address structural / functional challenges; (c) rigidity against evolving nature of human rights; (d) increased powers → increased conflict with executive/ judiciary.

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## National Education Policy 2020

### #1 What is the need for a new education policy?

- (1) Current policy → outdated [last updated → 1986 → 1992]
- (2) Paradigm shift - nature of economy/ industries/ technology/ skills; [capitalize on 4th Industrial revolution]; rise in middle class → growing aspirations.
- (3) Current issues – (a) poor learning outcomes [ASER] (b) focus → rote learning / degree-oriented; (c) inadequate capital / infrastructure / investment (d) neglect → Indian languages; (e) brain-drain; (f) early dropouts (g) lack of focus → skills (h) not suited to global demands.

### #2 What are the features of the NEP 2020?

- (1) Drafted by **Dr. K. Kasturirangan**; MHRD → Ministry of Education; increased expenditure → 6% of GDP; integration of technology → all levels of learning.
- (2) **Principles** – (a) Flexibility → subjects/ curricular/ extra-curricular activities; (b) Multi-disciplinary education (c) Conceptual understanding; (d) Critical thinking (e) Ethical Values (f) Teachers → heart of learning process; (g) strong public education system
- (3) **School Education** – (a) Curriculum framework → 5+3+3+4 [replace 10+2 framework]; (b) universalization [100% GER] by 2030; (c) emphasis on mother tongue/ regional languages; (d) vocational education + 21st century skill like coding; (e) Assessment → 360° Holistic Progress Card; (f) National Curriculum Framework for Teacher Education; (g) 3-language formula.
- (4) **Higher Education** – (a) GER → 50% by 2035; (b) flexible/ holistic/ multi-disciplinary; (c) Graduation → 3-4 year, Masters → 1-2 years; (d) multiple exit options; (e) Multidisciplinary Education and Research Universities [MERUs]; (f) transferable Academic Bank of Credit; (g) single umbrella body → HECI; (h) PPP + foreign universities.

### #3 What is the significance of the NEP?

- (1) Education → **more inclusive** - inclusion funds; prevent early dropouts; inclusion of vulnerable sections; prevent unrestricted commercialization of education sector
- (2) Transform India from '**degree hungry nation**' → '**employable nation**' - inter-disciplinary; vocational training; shift – rote learning → core competencies;
- (3) **Expands the ambit** of Universal education from 6-14 year to 3-18 years.
- (4) Promote → **healthy competition + best practices**.

### #4 What are the various criticisms against the NEP?

- (1) May reduce global comparative strength - Shift from English-orientation; ignores new technologies.
- (2) Centralization of education sector → issues with states' autonomy [federal structure]
- (3) Sets unrealistic expectations [e.g. 6% GDP expenditure; free breakfast scheme]
- (4) Absence of exams → may reduce learning outcomes; vague ideas of focus on critical thinking / creative learning → no defined/ concrete plan.

## Contempt of Court - Issues and challenges

### #1 What is contempt of court?

- (1) Protect judicial institutions from motivated attacks & unwarranted criticism + a legal mechanism → punish those who lower its authority.
- (2) **Objective** - safeguard public interest; prevent denigration → authority of Court; preserve public confidence → administration of justice; preserve rule of law
- (3) Recent controversy – **Prashant Bhushan case**; suo motu cognizance; Observation – guilty of Contempt + tweets → “*shaken the very foundation of constitutional democracy*”.

### #2 What is the law regarding contempt of court?

- (1) **Constitution** – (a) Article 129; (b) Article 142(2); (c) Article 215; Article 19(2).
- (2) **Contempt of Court Act, 1971** - outlines procedure → investigation/ punishment → contempt; Divides → civil + criminal contempt;
  - a. Civil contempt – wilful disobedience → judgment/decree/direction/order/writ/ processes/ undertakings
  - b. Criminal contempt – Scandalising + Interference + Obstruction
  - c. Section 13 – restrict powers of court → **due process of justice**; Amendment [2006] → ‘defence of truth’.

### #3 What the various issues/criticisms surrounding contempt of court?

- (1) Liable to misuse - Wide and elastic text of law → any criticism → ambit of contempt.
- (2) Antithetical to the idea of deliberative democracy [Article 19]
- (3) Colonial Hangover; “scandalizing the court” → abolished in England.
- (4) Not aligned with jurisprudence on Sedition law; obstructs judicial reforms.

### #4 Do we need a Contempt of Court law?

- (1) **Arguments in Favour** – (a) Contempt – derived from constitution / continue to exist; (b) reduce → reputation + authority of court; (c) high number → instances/cases; (d) has safeguards against misuse [section 13]; (e) impact subordinate courts.
- (2) **Arguments Against** – (a) Against Civil Liberties + democratic principles; (b) easily invoked [suo motu] + wide interpretation; (c) dichotomy and arbitrariness → judicial precedents (d) obsolete in foreign democracies (archaic); (e) era of social media.
- (3) **Need of the hour** – (a) Law Commission - need to retain; restrict → civil contempt; (b) Courts → follow ‘Mulgaonkar principles’; (c) need to revisit tests/ punishments on contempt.

## Role of Civil Services – Issues and Challenges

### #1 What is the importance of civil services in the governance process?

- (1) All India character; binding; Administrative + managerial capacity
- (2) Recruitment → independent /autonomous [UPSC]; rigorous training & selection process.
- (3) Effective policymaking + regulation + effective coordination + leadership role → governance
- (4) Service delivery → Technological adoption & adaptability + high integrity + code of conduct.
- (5) Permanent executives - 'continuity & change' → administration [stability/certainty in policies + repository of new ideas]

### #2 How do civil servants act as an agent of socio-economic and political transformation?

- (1) Social – policy formulation/ implementation; protection to vulnerable sections; equality, justice and equal protection of law.
- (2) Economic – Impartial public service delivery; Identification of beneficiaries [welfare schemes]; food security; tax collection + wealth redistribution; employment/ livelihood; financial bodies → recommendatory [Finance Commission] /regulatory [SEBI, IRDA]/ taxation [IT, GST]
- (3) Political – unity & integrity; participatory democracy; fair and transparent elections; guide to political executives; continuity in governance/policies; Protect national interest in international arena.

### #3 What are the various issues plaguing the civil services?

- (1) **Structural impediments** – (a) poor capacity building + professionalism; (b) mismatch → skills/tasks [generalists v specialists]; (c) outdated rules/procedures; (d) promotions → years of service/reservation [dis-incentivize merit]; (e) simultaneous instances of vacancy + overstaffing;
- (2) **Operational impediments** – (a) Lack of incentives/motivation [job-security; Article 311 – Dismissal/removal] (b) arbitrary transfers; (c) upright and outstanding civil servants → not rewarded/recognized; (d) Political interference/ pressure/patronage [committed bureaucracy]; (e) ethical code of conduct/ misappropriation of funds.

## Civil Services Reforms – Mission Karmayogi

### #1 What is the need for reforming civil services?

- (1) Technological advances; globalization; greater decentralization, informed/empowered citizenry and social activism → increasing expectations → better governance.
- (2) Instances of abuse of power [e.g. Surajpur DM case]; corruption; committed bureaucracy
- (3) Expanded role → administrators → agents of development; increased capacity of State.

### #2 What are the various reforms undertaken/required in civil services?

- (1) **2nd ARC** – (a) review → 14 years service; (b) mandatory training → induction/ mid-career (b) National Institutes of Public Administration; (c) Civil Services Board → appointments; (d) Performance Management System; (e) Code of Ethics.
- (2) **NITI Aayog's Strategy for New India @75 document** – (a) Recruitment → Rationalize number of officers/services/ cadres; central talent pool; Lateral entry; (b) Training → Reorient → shifting economy; urban areas; online avenues for training; Mid-career exams/ assessment; (c) Evaluation → ACRs → MSF; goal setting/ tracking; online SPARROW template; (d) Governance → ICT + RTI; reduce external influence; protect honest civil servants; (e) E-initiatives and Probity → review → vigilance operating manuals; strengthen CPGRAMs.
- (3) Effective implementation of reforms proposed in “Mission Karmayogi”.

### #3 What is “Mission Karmayogi”?

- (1) **National Programme on Civil Service Capacity Building** – human resource development → civil services; reforming → training & capacity → individual/ procedural/ institutional level.
- (2) **Objective** → creation of ‘citizen centric civil service’; capable → creating /delivering services → economic growth and public welfare.
- (3) **Framework** – (a) Human Resource Council [HRC] → PM; (b) Capacity Building Commission → aid HRC → formulating training standards + creating shared faculty / resources; (c) Wholly owned SPV → own /operate iGOT (integrated government online training) platform.

### #4 How can ‘Mission Karmayogi’ be a transformative step?

- (1) 'Rules based' → 'Roles based' human resource management; aligns work → competencies; framework of roles, activities and competencies approach (FRAC)
- (2) Undertake courses + learn international best practices [iGoT]; ‘off-site’ + ‘on-site’ learning; emphasis → lifelong learning; fight complacency; update → changing needs.
- (3) Performance-based evaluation → identify areas of expertise; HRC/PM → monitor capacity + building plans; centralized online database → individual skill sets → better personnel management.

## Lateral Entry in Civil Services

### What is lateral entry into civil services?

- (1) Initiative to attract capable/talented/motivated people → not selected through UPSC/not part of bureaucratic setup → administrative posts of the government.
- (2) Opened 10 positions → Joint Secretary level; period of contract → 3 years [extendable → 5 years]; minimum 15 years work experience.

### What is the need of introducing lateral entry into civil services?

- (1) Changing nature of governance – more complex; ↑ role in development process; rapid growth in emerging sectors – climate change, cyber-security/digital infrastructure, renewable energy etc.
- (2) Lack of specialization → top tier → bureaucracy; training different vis-a-vis tasks/postings; not updated → specialized knowledge.
- (3) Officers recruited → very early age → difficult to gauge administrative capabilities/ judgments; lateral entry → seasoned professionals/experts.

### What are the benefits from lateral entry into civil services?

- (1) Bring fresh ideas/ new approach → governance; understanding of impact of policy → private/voluntary sector.
- (2) Outcome/target oriented new leadership talent + corporate work culture + efficiency + enthusiasm.
- (3) Introduce merit + competitive environment; compel civil servants to increase efficiency/ competency.
- (4) Baswan Committee → lateral entry → fill vacancies in All India Services [21%]; lesser burden on exchequer → lifetime salaries/pensions/training/induction.

### What are the various issues/apprehensions related to lateral entry?

- (1) Against constitutional ethos – (a) reduces role of UPSC → central recruitment agency; (b) apprehensions → political influence /partiality/ favoritism in hiring; (c) Ad-hoc solution to a structural problem; (d) reservation → not applicable.
- (2) Lateral entrant → no long-term interest in government [opposed to career bureaucrats]; work on resume development; short tenure → difficult to establish accountability/ responsibility [revolving door problem].
- (3) Apprehension - (a) lateral entrant → face resistance/ non-cooperation from bureaucrats; (b) offers → not lucrative enough; (c) fitting in government work-culture → difficult (d) may create conflict of interest → private players in decision making role.

## Panchayats (Extension to Scheduled Areas) Act

### #1 What is PESA Act of 1996?

- (1) Law → ensuring self-governance [Gram Sabhas] → people living in 5<sup>th</sup> Scheduled Areas.
- (2) Part IX → not applicable to the Fifth Schedule areas [10 states]; PESA → extend provisions of Part IX to 5<sup>th</sup> Schedule [with exceptions & modifications]
- (3) Objectives – (a) enable Gram Sabhas → nucleus; govern natural resources + protect common properties → traditional systems; (b) self-governance → tribal people; (c) administrative provisions → traditional practices; (d) ensure Panchayats [higher level] → not assume powers/authority → GS. [2013 SC case → Niyamgiri hills]

### #2 What are the salient features of the act?

- (1) State legislation → (a) consonance → customary law/ socio-religious practices /traditional management practices; (b) administrative pattern → follow pattern of 6<sup>th</sup> schedule
- (2) Gram Sabha → (a) Approve plans/programmes/ projects → socio-economic development; (b) identification of beneficiaries; (c) acquisition of land/project devt./ relocation /rehabilitation; (e) license/lease → mining minor minerals; (f) ownership → minor forest produce.
- (3) Representation - Reservation → proportion to population [min 50% → ST] + Chairperson [panchayats → all levels] → STs + nomination of STs [if inadequate rep]
- (4) State legislature → ensure GS have power to - (a) regulate/prohibit intoxicants; (b) prevent + restore alienation; (c) manage village markets; (d) exercise control → money lending → STs; (e) control → institutions/functionary → social sectors; (f) control local plans & tribal sub-plans.

### #3 What are the problems associated with the act?

- (1) After 25 years → (a) disempowered → 40% states [4/10] → not framed rules for implementation; (b) bureaucratized system of functioning [panchayats secretaries] (c) Powerful people → still control natural resources; (d) poor implementation; (e) ambiguous definitions → interpretation by bureaucracy.
- (2) lack protective umbrella of a district level body (like District Council of 6<sup>th</sup> Schedule) → their decisions are routinely ignored/ overruled by state officials;
- (3) Dilution/conflict → role of TACs; 2 ministries → Pachayati raj + Tribal Affairs; lack of coordination; inactive role of Centre.
- (4) State legislations → omitting fundamental principles → losing spirit of PESA;

### #4 What is the Pathalgadi movement?

- (1) Practice → Adivasi villages erect huge stone structure at entry point of villages → notifying power & rights of gram sabhas.
- (2) Concentrated → 4 districts [Khunti, Gumla, Simdega, West Singhbhum]; spread Jharkhand/ chhattisgarh; 10000+ arrests; highlighted tribal issues;
- (3) Demand – Self-rule; supremacy of Gram Sabhas; outsiders not allowed to live/work in adivasi villages without permission, etc.

## Scheduled Areas (5th and 6th Schedule)

### #1 What are scheduled areas?

- (1) Area approach → for administrative + developmental → tribal people.
- (2) Article 244 [Part X] “Scheduled Areas” → declared by President [consultation → Governors]
  - a. scheduled areas → inhabited by ‘aboriginals’ → socially/economically backward → special efforts → improve condition.
- (3) Criterion → “scheduled area” – (a) preponderance → tribal population; (b) compactness + reasonable size; (c) under-developed nature; (d) marked disparity in economic standard.

### #2 What is the difference between fifth schedule and sixth schedule areas?

- (1) Fifth Schedule – Establish Tribes Advisory Council [20 → ¾ → ST representatives in SLA]; Governor → decide if central/state laws apply (consultation with TAC) + repeal/amend state regulation (assent of President); tribal population → minority vis-à-vis outsider
- (2) Sixth Schedule – Assam, Tripura, Meghalaya, Mizoram; [not assimilated, “anthropological specimen”]; Autonomous districts [30 → 26+4] → make laws [assent of governor], constitute courts for trial; assess/collect land revenue + taxes; work like “mini Parliaments.” establish/ manage public infrastructure; Central/state laws → not applicable/ applicable with exceptions.

### #3 What are the problems faced by tribal communities in scheduled areas?

- (1) Post-independence policy → “development through integration” → paternalistic/ patronizing → fails to capture aspirations → ‘develop according to their own genius.’
- (2) Land-based identity; law recognizes → individual ownership [documented]; reality → community ownership [no documentation].
- (3) No prohibition on state acquiring land [for development purposes]; dams/ mines/ industries/ wildlife sanctuaries/ national parks → biggest displacer + No restrictions → movement/ settling of non-tribal communities → displace STs.
- (4) Governments → selling/encroachment of lands → loss of livelihood + displacement from ancestral lands + disruption of community-based cooperative living, forced → undignified labor; migration.
- (5) Forest department officials → twin roles of police + landlords; considered STs → “encroachers”.

### #4 What are the issues facing working of TACs & ADCs?

- (1) State governments [not Governor] → framed rules regarding TAC functioning → usurpation of these bodies by political parties in power.
- (2) ADC – male dominated [tribal traditions don’t normally recognize role of women in social politics; no mention → women reservation.
- (3) Developmental role → ADCs → badly constraints → financial dependency on state + interference by bureaucracy + lack of coordination.