



MAINSTORMING 2021

POLITY & GOVERNANCE

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MAINSTORMING 2021
POLITY & GOVERNANCE
(DECEMBER 2020 TO SEPTEMBER 2021)

1. RIGHTS ISSUES

1.1 FIRs against Journalists for Inciting Violence

Why in news?

- Recently Congress MP Shashi Tharoor & other journalists were booked in sedition case for their social media posts.
- It is alleged that these posts were responsible for violence during 26 Jan tractor rally by farmers in Delhi.

What are the charges against them?

- The police have invoked the offences of sedition (124A of IPC), conspiracy (Section 120B of IPC), promotion of enmity between different sections and breach of harmony between groups.
- Besides, they have sought to portray it as a threat to national security and an attempt to instigate violence.
- A similar FIR has been filed based on the complaint in Bhopal, but it invokes only sections relating to promotion of enmity and ill-will.

How did the journalists respond to this?

- They said that it was natural for journalists to report emerging details on a day of protest when reports were coming from eyewitnesses on the ground and the police.
- They were concerned about the attempt made by police to portray these intentionally malicious.
- They said that it is not surprising to invoke sedition case against them by the police because it is a now familiar practice of creating an imagined threat to national security.
- And whenever police get an opportunity to slap criminal cases against journalists who are highly critical of current establishment, they invoke these sections of IPC.

What can we infer from this?

- It is strange that the police have sought to link the violence on January 26 with the circulation of a piece of misleading information.
- An enraging part is that all those who put similar information through their social media are seen to be acting in concert and even participating in the same conspiracy.
- Registration of cases in 2 different states from the place where violence occurred indicates an attempt to build a story that media misreports are the cause for the violence that day.
- It also shows a tendency not to miss an opportunity to harass and intimidate journalists.

1.2 Perarivalan Case

Why in news?

- Tamil Nadu Governor Banwarilal Purohit has declined to take a call on a plea for the early release of Rajiv Gandhi assassination case convict A.G. Perarivalan.
- The Governor said the President of India was the “appropriate competent authority” to deal with Perarivalan’s request for freedom.

What is the case on?

- Perarivalan is one of the 7 life convicts in the former Prime Minister Rajiv Gandhi assassination case.

- He has been in prison for almost 30 years for his role in the assassination of Rajiv Gandhi during the 1991 election campaign.
- He was taken away for ‘minor interrogation’ in the assassination case.
- It is 20 years since he was sentenced to death for procuring two nine-volt batteries that was used in the assassination, the purpose of which he was unaware of.

How has the case progressed?

- The CBI has charged Perarivalan for terrorist offences under the Terrorist and Disruptive Activities (Prevention) Act, or TADA.
- The CBI charges against him were upheld by the trial court along with the conspiracy to commit murder under the Indian Penal Code (IPC).
- Over the course of many rounds of litigation, his conviction only for the conspiracy to commit murder under the IPC has been sustained and the TADA charges against him were dropped.
- He has served 30 years as part of his life imprisonment sentence (his death sentence was commuted in February 2014).
- **Confession** - At the core of his conviction is his confession to a police officer, a legacy of the TADA that was carried forward under the Prevention of Terrorism Act (POTA).
- Confessions to a police officer are inadmissible as evidence under the Indian Evidence Act (to protect people from coerced police confessions).
- However, terrorism legislations such as TADA and POTA made confessions to the police admissible.
- This is as long as it was made to an officer not lower than the rank of Superintendent of Police.

What is the concern with this confession?

- The CBI's main weapon against Perarivalan was his confession to an SP.
- He allegedly confessed to his role in procuring a car battery for the main conspirator and purchasing two 9-volt batteries that were used in making the bomb.
- However the concerned SP came out in November 2013 and revealed that he had omitted to record Perarivalan's statement that he did not know the purpose for which the battery was procured.
- In effect, Perarivalan was convicted based on a manipulated confession to a police officer.

What are the legal shortcomings?

- The Supreme Court has dropped the TADA charges against Perarivalan.
- Despite this, his confession which was admissible only due to provisions of the TADA was then used to convict him for IPC offences.
- Justice M.C. Jain's Report (Jain Commission

PERARIVALAN'S CASE HISTORY

MAY 1991

Former Indian Prime Minister Rajiv Gandhi was assassinated by a suicide bomber on May 21, 1991, when he was visiting Sriperumbudur near Chennai.



JUNE 1991

Perarivalan was charged with providing two 9V batteries which were used in the explosive which killed Rajiv Gandhi and was also arrested.

JAN 1998

A designated Terrorist and Disruptive Activities Act (TADA) court sentences Perarivalan and 25 others to death.

MAY 1999

The SC upheld the death sentence of Santhan, Murugan, Perarivalan and Nalini and commutes the sentence to life for the other three accused and also frees 19 others.

FEB 2014

The SC commuted the death sentence of four accused to life sentence citing delay in deciding on the mercy pleas filed by the convicts.

FEB 2014

J Jayalalithaa, the then CM of Tamil Nadu announced the release of all 7 convicts under section 432 of CrPC but the SC stayed the release.

MAR 2016

TN government's proposal in 2016 for remission of life sentences was rejected by the Centre in 2018 citing that remission will set a "dangerous precedent" and have "International ramifications".

OCT 2017

A former CBI officer who recorded Perarivalan's statement in 1991 told the SC that he had omitted the part of his statement where he said he had no idea why the two 9V batteries were bought.

SEP 2018

The Govt of Tamil Nadu unanimously passed a cabinet resolution recommending the release of all 7 convicts under Article 161.

FEB 2021

TN Governor refrained from taking a decision on the resolution and states that the "President of India was the appropriate competent authority to deal with the remission."



Inquiry) to Parliament in March 1998 identified massive gaps in the CBI's investigation.

- To address these concerns, the CBI constituted the Multi-Disciplinary Monitoring Agency (MDMA) in December 1998.
- Over two decades, the MDMA has been submitting reports in sealed covers to the TADA Court.
- Perarivalan has been denied access to these.
- However, the MDMA has repeatedly stated that Perarivalan and the other accused are not part of these ongoing investigations.

How has Perarivalan's legal fight progressed?

- Having served 30 years of life imprisonment for the conspiracy to murder, his effort to get a remission under the Code Of Criminal Procedure was rejected by the Central Government in April 2018.
- However, Perarivalan continued to be entitled to have his pardon considered by the Governor of Tamil Nadu under Article 161 of the Constitution.
- His application for a pardon had been pending with the Governor since December 2015.
- Under the Constitution, the Governor is bound by the aid and advice of the State government in the exercise of pardon powers.
- Meanwhile, the central government employed obfuscation as a strategy to prolong Perarivalan's incarceration.
 - It had initially maintained that the issue of pardon was solely between the Governor and Perarivalan.
 - However, the Centre took a constitutionally untenable argument before the Supreme Court in December 2020.
 - It said that it was the President of India who had the power to consider Perarivalan's pardon.
 - Then on January 21, 2021, the Centre submitted to the Supreme Court that the Governor would take a decision on Perarivalan's pardon within a matter of days.

What is the recent development?

- On February 4, 2021, the Centre informed the Court that the Governor had finally considered Perarivalan's pardon.
- The Governor had decided that the President alone had the power to consider such an application.
- It is clearly an abdication of a constitutional duty and is unconstitutional to ignore the advice of the State government, which the Governor is constitutionally bound to follow.

1.3 A Relook into the Sedition Law

What is the issue?

- Recent charges of sedition [IPC Section 124A] against individuals have brought the focus back to a law introduced in 1870.
- The fact that this law is often used to control dissent calls for a relook into its relevance at the present age.

What was the Supreme Court's observation?

- In Kedar Nath Singh v. State of Bihar (1962), the Supreme Court upheld the constitutional validity of the sedition law.
- It noted it as being a reasonable restriction on free speech as provided in Article 19(2) of the Constitution.
- It made clear that a citizen has the right to say or write whatever she/he likes about the government, or its measures.
- But this is only as long as she/he does not incite people to violence against the government and not do things with the intention of creating public disorder.

What are the legal procedures to be followed?

- Following the Kedar Nath case, the Bombay High Court issued some guidelines in the case of cartoonist Aseem Trivedi.

- These include an objective evaluation of the material.
 1. This is to form an opinion on whether the words and actions cause disaffection, enmity and disloyalty to the government.
 2. They must be of the magnitude to incite violence or tend to create public disorder.
- The Court also directed obtaining a legal opinion in writing from a law officer of the district who must give reasons on how the pre-conditions are met.
- This needs to be followed by a second opinion from the State's public prosecutor.
- Courts have on numerous occasions cautioned law enforcement agencies not to misuse the provisions on sedition, and follow court directions.

Why is a relook on the law needed?

- Between 2016 and 2019, the number of cases of sedition under Section 124A increased by 160%.
- On the other hand, the rate of conviction dropped to 3.3% in 2019 from 33.3% in 2016.
- Many charged were individuals protesting government action.
- The Constitution Bench in Kedar Nath held that this falls outside the ambit of sedition.
- The circumstances thus require a complete relook at the provisions of the sedition law.
- In the Internet age, what can lead to public disorder has itself become debatable, as information travels at lightning speed.
- Interestingly, the U.K. repealed the offence of sedition in 2010 and India is holding onto a relic of the British Empire.

FAMOUS SEDITION TRIALS DURING FREEDOM MOVEMENT

Some of the most famous sedition trials of the late 19th and early 20th century involved Indian nationalist leaders and the initial cases that invoked the sedition law included numerous prosecutions against the editors of nationalist newspapers.

The first among them was the trial of *Jogendra Chandra Bose* in 1891. Bose, the editor of the newspaper, *Bangobasi*, wrote an article criticizing the Age of Consent Bill for posing a threat to the religion and for its coercive relationship with Indians.

The most well-known cases are the three sedition trials of *Bal Gangadhar Tilak* and the trial of *Mahatma Gandhi* in 1922. Gandhi was charged, along with Shankerlal Banker, the proprietor of *Young India*, for three articles published in the weekly.

1.4 Judicial Review on Sedition Law / Sec 124A of IPC

Why in news?

The Supreme Court indicated its intention to reconsider the sedition provision - Section 124A of the Indian Penal Code (IPC).

What is Section 124A?

- The Sedition law, or Section 124A, was inserted into the IPC in 1870.
- The colonial law was derived from the British Sedition Act of 1661.
- Under it, whoever brings or attempts to bring hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished.
- The punishment may involve imprisonment of 3 years to life term, to which a fine may be added.

What are the Court's recent remarks?

- Sedition is a colonial law. It suppresses freedoms. It was used against Mahatma Gandhi, Tilak.
- The CJI said the sedition provision was prone to misuse by the government.
- Central and State law enforcement agencies are using the sedition law arbitrarily.
- The conviction rate under the Section is very low, indicating the misuse of power by executive agencies.
- They use it to silence dissent, muffle free expression and for denying bail to incarcerated activists, journalists, students and civil society members.
- The Court thus asked, "Is this law necessary after 75 years of Independence?"

What is the significance?

- It is often argued that the misuse of a law alone does not render it invalid.
- But there is a special case to strike down Section 124A because of its inherent potential for misuse.
- There is a pattern of behaviour among all regimes that indicate a tendency to invoke Sec 124A without examining its applicability to the facts of any case.
- Recent cases show that sedition is used for three main political reasons:
 - i. to suppress criticism and protests against particular policies and projects of the government
 - ii. to criminalise dissenting opinion from human rights defenders, lawyers, activists and journalists
 - iii. to settle political scores, sometimes with communal hues
- Given these, the Court has sent a clear signal that Section 124A of the IPC may have passed its time.
- It has made it clear that it was sensitive to the public demand to judicially review the nature of the sedition provision.
- This has opened the floor for debate and introspection on the court's own judgment in 1962, in the Kedar Nath case, which upheld Section 124A.

1.5 Unwarranted Arrest

Why in news?

Recently the arrest of an MP from Andhra Pradesh on the charges of sedition is cause of concern due to the misuse of the provision.

What is Sedition?

- Sedition is an offence defined in **Section 124A IPC** which is often used by the police against the critics of the establishment and prominent dissenters.
- This section is invoked only if there is an imminent threat to public order or there is actual incitement to violence or against the person who excites disaffection against the government.
- It is a colonial-era provision which is used to imprison people for political writings in support of Indian independence which still remains in the statute book.

Why was the MP arrested?

- The MP was a vocal criticizer of the A.P. Chief Minister and was arrested for the political vendetta.
- The prosecution has claimed that his speeches have caused hatred against communities -MP referred to alleged rampant conversion activities in the state- by invoking Section 153-A or Section 505 of IPC.
- **Section 153A of IPC** deals with the offence of promoting disharmony, enmity or feelings of hatred between different groups.
- This is on the grounds of religion, race, place of birth, residence, language, etc and acts prejudicial to maintenance of harmony.
- **Section 505 of IPC** aims to check and punish the spreading of false and mischievous news intended to upset the public tranquillity.

Is the arrest justifiable?

- This arrest is unwarranted as the MP is being accused only for speech-based offences and the offences under this section attracts a prison term of only three years.
- In the **Arnesh Kumar case (2014)**, Supreme Court ruled that there is no need to arrest a person for an offence that invites a prison term of seven years and less.
- Further, even sedition, which allows a maximum sentence of life imprisonment, also prescribes an alternative jail term of three years.

What can we infer from this?

- While the legal process will take its course, it is once again the time to reflect on the need and relevance of this offence to remain on the statute book.

- State governments and various police departments are known for the casual resort to prosecution under this section.
- In most of the cases, this section is used despite the necessary conditions to invoke this section is absent.
- This indicates a poor reflection of the understanding of the law among civil servants everywhere.
- In addition, the terms are vaguely and broadly defined (disaffection includes disloyalty and feelings of enmity).
- This calls for a total reconsideration of this section and recently the Supreme Court decided to revisit its constitutionality.
- Though the judicial review is a welcome move, free speech will be even more protective if this provision is abolished.

1.6 CJI Remarks on Uniform Civil Code

What is the issue?

- Chief Justice of India (CJI) S A Bobde recently lauded Goa's Uniform Civil Code (UCC), and encouraged "intellectuals" indulging in "academic talk" to visit the state to learn more about it.
- In this backdrop, here is a look at UCC's status and the debate around it.

What is a Uniform Civil Code?

- A Uniform Civil Code is one that would provide for one law for the entire country.
- This would be applicable to all religious communities in their personal matters such as marriage, divorce, inheritance, adoption etc.
- Article 44 in Part IV of the Constitution lays down that the state shall endeavor to secure a UCC for the citizens throughout the territory of India.
- [Part IV deals with the Directive Principles of State Policy (DPSP).]
- But till date, no action has been taken in this regard.
- However, Goa has a Uniform Civil Code that applies in marriage and succession, governing all Goans irrespective of religious affiliation.

What is its status constitutionally?

- The DPSP, as defined in Article 37, are not justiciable (not enforceable by any court).
- However, the principles laid down therein are fundamental in governance.
- Article 44 uses the words "state shall endeavour."
- Other Articles in the DPSP chapter use words such as "in particular strive"; "shall in particular direct its policy"; "shall be obligation of the state" etc.
- Article 43 mentions "state shall endeavour by suitable legislation."
- But, the phrase "by suitable legislation" is absent in Article 44.
- All this implies that the duty of the state is greater in other directive principles than in Article 44.

Fundamental Rights or Directive Principles - Undoubtedly, Fundamental Rights are more important.

- The Supreme Court upheld this in the Minerva Mills (1980) case.
- Accordingly, the Indian Constitution is founded on the bed-rock of the balance between Parts III (Fundamental Rights) and IV (Directive Principles).
- So, to give absolute primacy to one over the other is to disturb the harmony of the Constitution.
- Article 31C, however, lays down that if a law is made to implement any DPSP, it cannot be challenged on the ground of being violative of the Fundamental Rights under Articles 14 and 19.
- [Article 31C was inserted by the 42nd Amendment in 1976.]

Does India have a uniform code in civil matters?

- Indian laws do follow a uniform code in most civil matters.
- These include the Indian Contract Act, Civil Procedure Code, Sale of Goods Act, Transfer of Property Act, Partnership Act, Evidence Act, etc.
- States, however, have made hundreds of amendments.
- So, in certain matters, there is diversity even under these secular civil laws.
- E.g. recently, several states refused to be governed by the uniform Motor Vehicles Act, 2019

How do personal laws work in the country?

- If the framers of the Constitution had intended to have a Uniform Civil Code, they would have given exclusive jurisdiction to Parliament in respect of personal laws.
- They could have done this by including the subject in the Union List.
- But “personal laws” are mentioned in the Concurrent List.
- Recently, the Law Commission too concluded that a Uniform Civil Code is neither feasible nor desirable.
- Notably, all Hindus of the country are not governed by one law, nor are all Muslims or all Christians.
- Not only British legal traditions, even those of the Portuguese and the French remain operative in some parts.
- In Jammu and Kashmir until August 5, 2019, local Hindu law statutes differed from central enactments.
- The Shariat Act of 1937 was extended to J&K a few years ago but has now been repealed.
- Muslims of Kashmir were thus governed by a customary law.
- This, in many ways, was at variance with Muslim Personal Law in the rest of the country and was, in fact, closer to Hindu law.
- Even on registration of marriage among Muslims, laws differ from place to place.
- In the Northeast, there are more than 200 tribes with their own varied customary laws.
- The Constitution itself protects local customs in Nagaland.
- Similar protections are enjoyed by Meghalaya and Mizoram as well.
- Even reformed Hindu law, in spite of codification, protects customary practices.

1.7 Treatment of Pre-Trial Political Prisoners

What is the issue?

- June 6 marks the third anniversary of the incarceration of five rights activists in the Bhima Koregaon conspiracy case.
- Here is a look at the case and the larger issue behind.

What is the Bhima Koregaon case?

- January 1, 2018 was the 200th anniversary of a battle fought at Bhima Koregaon, a small village in Pune.
- [It was where 500 Dalit Mahar soldiers of the British army defeated an army of the Peshwas.]
- Dalits converged in thousands from across the state for its commemoration.
- But violence broke out and one person died.
- Initially, the police investigated Hindutva leaders Milind Ekbote and Sambhaji Bhide for instigating the violence, and arrested Ekbote briefly.
- But some months later, the police claimed that the violence was a conspiracy by left activists and intellectuals.
- Five rights activists were arrested in this conspiracy case and eleven more were subsequently jailed for the same.
- These 16 women and men - the BK-16 accused - are intellectuals, lawyers, a poet, professors, cultural and rights activists.

- It includes an 84-year-old Jesuit priest, Father Stan Swamy.
- All these persons have sterling records of service with India's most oppressed people.

Why is the case contentious?

- The charge against BK-16 was that they had conspired to instigate Dalits into violent insurrection, and to assassinate the Prime Minister.
- 3 years later, the trial against them has still not commenced.
- The state has succeeded in misusing the law with the complicity of all institutions of criminal justice.
- It worked to confine behind bars the BK-16 accused, without any opportunity for either bail or to prove their innocence.
- [After a tortuous court battle, just one of them, poet Varavara Rao, was granted bail because of his critically deteriorating health.]
- The evidence marshalled against the accused rests on some alleged emails.
- But independent agencies contest that these are malign insertions through malware.
- The case reveals the ease with which it is possible for the executive to undermine reputations of activists.
- It has imprisoned indefinitely without bail or trial, people who dissent and organise struggles against state policies.
- Many among the BK-16 are suffering from various kinds of illnesses.
- They are now housed in the overcrowded Taloja and Byculla jails, ideal sites for super-spreading the Covid virus.
- Above all, it is the agenda of the state to ensure that political prisoners are kept well.

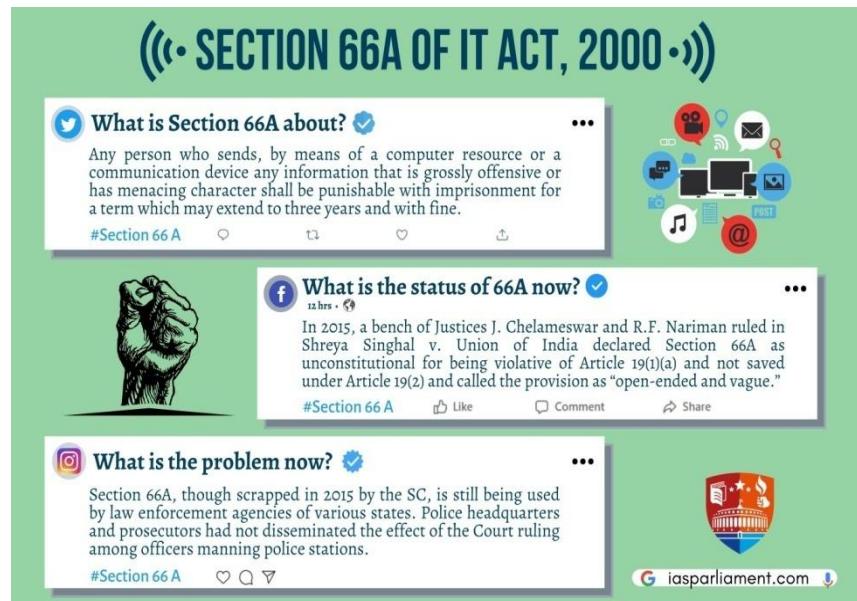
1.8 Section 66A of the IT Act

Why in news?

Section 66A of the Information Technology Act, 2000, scrapped in 2015 by the Supreme Court, is still being used by law enforcement agencies of various states.

What is the recent case on?

- A petition by the People's Union for Civil Liberties (PUCL) came up for hearing.
- The invalidated Sec 66A is being used by the police to register cases based on complaints.
- Police headquarters and prosecutors in various States had not disseminated the effect of the Court ruling among officers manning police stations.
- There were also instances of courts framing charges under Section 66A even after lawyers had cited the 2015 judgment.
- Possibly, police officers may not be aware of the judgment.
- But it cannot be ruled out that the section was also being invoked deliberately as a tool of harassment.
- In January 2019, too, the Court's attention was drawn to the same problem.
- The PUCL has said as many as 745 cases are still pending in district



The infographic features a central title 'SECTION 66A OF IT ACT, 2000' in large, bold, blue letters. Below it are three social media-style posts:

- What is Section 66A about?** (Twitter icon)
Any person who sends, by means of a computer resource or a communication device any information that is grossly offensive or has menacing character shall be punishable with imprisonment for a term which may extend to three years and with fine.
#Section 66 A
- What is the status of 66A now?** (Facebook icon)
In 2015, a bench of Justices J. Chelameswar and R.F. Nariman ruled in Shreya Singhal v. Union of India declared Section 66A as unconstitutional for being violative of Article 19(1)(a) and not saved under Article 19(2) and called the provision as "open-ended and vague."
#Section 66 A
- What is the problem now?** (Instagram icon)
Section 66A, though scrapped in 2015 by the SC, is still being used by law enforcement agencies of various states. Police headquarters and prosecutors had not disseminated the effect of the Court ruling among officers manning police stations.
#Section 66 A

In the bottom right corner of the infographic, there is a logo for 'iasparliament.com' featuring a shield with a torch and the text 'iasparliament.com'.

courts in 11 States.

- The Supreme Court termed the continued use of an invalid law as “a shocking state of affairs” and sought a response from the Centre.

What should be done?

- Ignorance of the law is no excuse for the citizen.
- It must equally be no excuse for police officers who include invalidated sections in FIRs.
- The current hearing may result in directions to States and the police, as well as the court registries.
- There has to be appropriate advisories to both station-house officers and magistrates.
- Police chiefs and the directorates of prosecution must begin a process of conveying to the lower courts and investigators all important judgments from time to time.

1.9 Official Secrets Act

Why in news?

The Delhi police have arrested a strategic affairs analyst and two others under the Official Secrets Act (OSA).

What is the story behind?

- The police claimed that the analyst had passed on information such as the deployment of Indian troops on the border to Chinese intelligence.
- The other two have been arrested for allegedly supplying the analyst money routed through hawala channels for conveying information.

What is the Official Secrets Act?

- OSA has its roots in the British colonial era.
- The original version was The Indian Official Secrets Act (Act XIV), 1889.
- This was brought in with the main objective of muzzling the voice of a large number of newspapers that had come up in several languages.
- They were opposing the Raj's policies, building political consciousness and facing police crackdowns and prison terms.
- It was amended and made more stringent in the form of The Indian Official Secrets Act, 1904, during Lord Curzon's tenure.

What are the matters covered?

- The 1923 version of the Indian Official Secrets Act was extended to all matters of secrecy and confidentiality in governance in the country.
- It broadly deals with two aspects,
 1. Spying or espionage, covered under Section 3, and
 2. Disclosure of other secret information of the government, under Section 5.

What is secret information?

- Secret information can be any official code, password, sketch, plan, model, article, note, document, or information.
- Under Section 5, both the person communicating the information and the person receiving the information can be punished.
- For classifying a document, a government Department follows the Manual of Departmental Security Instructions, 1994, not under OSA.
- Also, OSA itself does not say what a “secret” document is.
- It is the government’s discretion to decide what falls under the ambit of a “secret” document to be charged under OSA.

- It has often been argued that the law is in direct conflict with the Right to Information (RTI) Act, 2005.

Between the RTI Act and OSA, which has primacy?

- Section 22 of the RTI Act provides for its primacy vis-a-vis provisions of other laws, including OSA.
- So if there is any inconsistency in OSA with regard to furnishing of information, it will be **superseded by the RTI Act**.
- However, under Sections 8 and 9 of the RTI Act, the government can refuse information.
- Loophole - The government can classify a document as “secret” under OSA Clause 6, that document can be kept outside the ambit of the RTI Act, and the government can invoke Sections 8 or 9.

Has there been any effort to change provisions of OSA?

- **Law Commission** - In 1971, it became the first official body to make an observation regarding OSA.
- It observed that merely because a circular is marked secret, it should not attract the OSA's provisions if the publication is in the public interest and no question of national emergency and interest of the State arises.
- But the Law Commission did not recommend any changes to the Act.
- **ARC** - In 2006, the 2nd Administrative Reforms Commission (ARC) recommended that OSA be repealed.
- It wanted the OSA to be replaced with a chapter in the National Security Act containing provisions relating to official secrets.
- **Government Committee** - In 2015, the government had set up a committee to look into provisions of the OSA in light of the RTI Act.
- It reported to the Cabinet Secretariat in 2017, recommending that OSA be made more transparent and in line with the RTI Act.

What are the major instances when OSA has been invoked?

- One of the oldest and longest criminal trials involving OSA is the 1985 Coomar Narain spy case.
- The most recent conviction came in 2018, when a Delhi court sentenced former diplomat Madhuri Gupta who served at the Indian High Commission in Islamabad.
- He was sentenced to three years in jail for passing on sensitive information to the ISI.

2. PARLIAMENT AND STATE LEGISLATURE

2.1 Process of Converting a Bill into a Law

Why in news?

Recently government announced that the three contentious farm laws will be on hold for one to one-and-a-half years.

Does a law automatically come into force after the bill is passed by the parliament?

- Parliament has the power to make a law and to remove it from the statute books.
- Over the years, Parliament has repealed several laws & there are precedents where after it has been passed, it has not been in force for several years.
- Passing the bill does not mean that it will start working from the next day rather 3 steps are involved to become a functioning law.

What is the 1st step in this process?

- The first step is the President giving his or her assent to the bill & most of them receive assent in a few days.
- Article 111 of the Constitution specifies that the President can either sign off on the bill or withhold his consent and rarely he withdraws his assent to the bill.

- The last time it happened was in 2006 when President A P J Abdul Kalam refused to sign a bill protecting MPs from disqualification for holding an office of profit.
- If a bill is sent to Parliament for reconsideration & if Parliament sends it back to the President, he or she has no choice but to approve it.
- In 1986, President Zail Singh made use of a loophole in the Constitution which does not specify a time limit for the President to approve a bill.
- A bill which was criticised for violating the privacy of personal correspondence was sent to him & he decided not to take any action on the bill until his term ends.
- Today President Ram Nath Kovind signed the three farm bills into law within a week of their passing in September 2020.

PROCESS OF CONVERTING A BILL INTO A LAW

(After Parliament's Approval)



PRESIDENT'S ASSENT

- Article 111 of the Constitution specifies that the President can either sign off on the bill or withhold his consent and rarely he withholds his/her assent to the bill.
- If a bill is sent to the Parliament for reconsideration & if Parliament sends it back to the President, he/she has no choice but to approve it.



IMPLEMENTATION DATE

- The next step is deciding the date on which the law comes into effect & in many cases Parliament delegates power to government to determine this date.
- A bill will state that the law "shall come into force on such date when government may by notification in the Official Gazette appoint."



RULES & REGULATION

- A bill passed by the Parliament is the outline of a law & to come into effect, it needs rules & regulations.
- Parliament gives the government, the responsibility of making these regulations.
- Parliament has recommended that the government has to make rules within six months of passing a law

What is the 2nd step in this process?

- The next step is deciding the date on which the law comes into effect & in many cases Parliament delegates power to government to determine this date.
- The bill state that the law "shall come into force on such date when government may by notification in the Official Gazette appoint & different dates may be appointed for different provisions of Act".
- For example, Parliament passed the **Recycling of Ships Act** in December 2019 & in October 2020 government brought Section 3 of the law into force.
- This section empowers the government to designate an officer to supervise all ship recycling activities in India.

How is the date of implementation decided?

- A bill specifies the exact date on which it will come into effect & bills which replace ordinances mostly do that.
- In such cases, the bill sets the date on which the President signed the ordinance as the day the law will come into force.
- Similarly the three farm bills replacing their ordinances came into force on June 5, 2020.
- There are also instances when the government does not bring a law into force for many years.
- National Environment Tribunal Act** was never brought into force which were passed in 1995 and cleared by the President.

What is the 3rd step in this process?

- A bill passed by Parliament is the outline of a law & to come into effect, individuals need to be recruited or given the power to administer it.
- The implementing ministry also needs to finalise forms to gather information and provide benefits or services & these day-to-day operational details are called rules and regulations.
- Parliament gives the government the responsibility of making them & these regulations are critical for the functioning of law.
- In the case of farm laws, the government has made some rules in October 2020.
- If the government does not make rules and regulations, a law or parts of it will not get implemented &**Benami Transactions Act of 1988** went unimplemented due to absence of regulations.
- Parliament has recommended that the government has to make rules within six months of passing a law but parliamentary committees observed that this recommendation is breached.

- The government not only has the power to make rules but can also suppress rules made by it earlier.

2.2 Language of the Law

What is the issue?

- There is a recent litigation over the language in which the Draft EIA Notification, 2020 was published.
- This has brought much needed attention to the issue of official languages used by the central government in its functioning.

What is the trigger?

- The trigger for this debate has been litigation by the citizens.
- They have protested against the publication of the draft EIA notification in only English and Hindi.
- They said that this policy excludes many Indians who do not speak Hindi or English from participating in the public consultation process.

What did the courts say?

- Two High Courts have asked the government to publish the notification in all 22 languages mentioned in Schedule VIII to the Constitution.
- The central government is pushing back against this order.
- It argues that it is not required by the law to publish these notifications in the 22 languages mentioned in the Constitution.
- It is also resisting the translation into 22 languages saying it may result in the meaning of the words being obfuscated and often even lost.

Is it true that there is no legal requirement?

- The Authoritative Texts (Central Laws) Act, 1973 creates a legal mechanism to recognise authoritative translations of all central laws into 22 languages of the Constitution.
- This law extends to rules and delegated legislation issued under central laws.
- The Legislative Department of the Law Ministry hosts these translations on its website.

So, why did the government make such a claim?

- Separate from the question of accuracy of translations is the larger policy question regarding the languages used by the central government for communicating with the public.
- The Official Languages Act, 1963 requires the publication of the law in only English and Hindi.
- As a result, the central government, de facto, ends up excluding non-English and non-Hindi speaking citizens from the law-making process.

What is the language politics?

- This issue is yet to garner the political attention it deserves despite the fact that since Independence, language has been one of the main marker of political identity in India.
- The reorganisation of Indian States on linguistic lines took place in 1956.
- Ever since, language has played a key role in shaping Indian politics.
- Therefore, language is a powerful marker of political identity in India.

What is needed?

- The key regional political parties should ensure that all 22 languages are used by the central government while communicating with the public.
- At the very least, an inclusive language policy must be integral to the law-making and enforcement process.
- This should include mandatorily publishing all parliamentary debates and associated records, the Gazette of India, all legislation and delegated legislation of the central government in all 22 languages.

- The central government offices dealing with citizens across the country should give citizens the option to engage in a language of their choice.
- So far, only the Unique Identification Authority of India has an inclusive language policy allowing citizens to get identity cards in languages other than English and Hindi.

What did the Supreme Court say?

- The Supreme Court of India (Harla v. State of Rajasthan, 1951) has ruled that citizens are not bound by laws which have not been published and publicised.
- At the least, there must be some special rule or customary channel by which such knowledge can be acquired with the exercise of due and reasonable diligence.
- It does not take much to extend this reasoning to argue that citizens are not bound by central laws unless Parliament makes its laws available in languages understood by all Indians.

What is the case in the European Union?

- In this multi-linguistic jurisdiction, all EU-level official documents are made available in all 24 official languages of member States.
- This is so because the EU has a policy in place to respect the linguistic diversity of its member nations.
- This policy allows all EU nationals to communicate with EU institutions in any of the 24 official languages.
- Also, these institutions are required to respond in the same language.
- The Government of India should also have a similar policy in place.

2.3 Presidential Address in the Parliament

What is the issue?

As the first Parliament session of 2021 begins with President Ram Nath Kovind addressing members of the Parliament, it is pertinent to know about the practice of Presidential address.

How did this practice originate?

- In the United Kingdom, the history of the monarch addressing the Parliament goes back to the 16th century.
- In the United States, President George Washington addressed Congress for the first time in 1790.
- In India, the practice of the President addressing Parliament can be traced back to the Government of India Act of 1919.
- This law gave the Governor-General the right of addressing the Legislative Assembly and the Council of State.
 - The law did not have a provision for a joint address.
 - But the Governor-General did address the Assembly and the Council together on multiple occasions.
- There was no address by him to the Constituent Assembly (Legislative) from 1947 to 1950.
- After the Constitution came into force, President Rajendra Prasad addressed members of Lok Sabha and Rajya Sabha for the first time on January 31, 1950.

What does the Constitution specify?

- The Constitution gives the President the power to address either House or a joint sitting of the two Houses of Parliament.
- Article 87 provides two special occasions on which the President addresses a joint sitting.
 1. to address the opening session of a new legislature after a general election
 2. to address the first sitting of Parliament each year
- A session of a new or continuing legislature cannot begin without fulfilling this requirement.
- When the Constitution came into force, the President was required to address each session of Parliament.
- So during the provisional Parliament in 1950, President Prasad gave an address before every session.

- The First Amendment to the Constitution in 1951 changed this position and made the President's address once a year.
- The President's address is one of the most solemn occasions in the Parliamentary calendar.
- It is the only occasion in the year when the entire Parliament, i.e. the President, Lok Sabha, and Rajya Sabha come together.
- The Lok Sabha Secretariat prepares extensively for this annual event associated with ceremony and protocol.

What is the speech about?

- There is no set format for the President's speech.
- The Constitution states that the President shall "inform Parliament of the cause of the summons".
- The address of the President follows a general structure in which it -
 - highlights the government's accomplishments from the previous year
 - sets the broad governance agenda for the coming year

How is it finalised?

- The speech that the President reads is the viewpoint of the government and is written by it.
- Usually, in December, the Prime Minister's Office asks the various ministries to start sending in their inputs for the speech.
- A message also goes out from the Ministry of Parliamentary Affairs asking ministries to send information about any legislative proposals that need to be included in the President's address.
- All this information is aggregated and shaped into a speech, which is then sent to the President.
- The government uses the President's address to make policy and legislative announcements.

Voice Vote (Rule 252)

*Vote taken by calling for ayes and noes and estimating which response is stronger
No names of the voters are recorded*

What is the further procedure?

- In the days following the President's address, a motion is moved in the two Houses thanking the President for his address.
- This is an occasion for MPs in the two Houses to have a broad debate on governance in the country.
- The Prime Minister replies to this 'motion of thanks' in both Houses, and responds to the issues raised by the MPs.
- The motion is then put to vote and MPs can express their disagreement by moving amendments to the motion.
 - Opposition MPs have been successful in getting amendments passed to the motion of thanks in Rajya Sabha on five occasions (1980, 1989, 2001, 2015, and 2016).
 - They have been less successful in Lok Sabha.
 - For example in 2018, Lok Sabha MPs tabled 845 amendments of which 375 were moved and negated (rejected).

2.4 Voice Vote as Constitutional Subterfuge

What is the issue?

- The Karnataka Prevention of Slaughter and Preservation of Cattle Bill was recently passed by the State's Legislative Council by voice vote.
- The practice of resorting to voice vote and passing bills despite lack of a majority is increasing, and here is a constitutional assessment of it.

How was the Bill passed?

- The law was passed by the Upper House despite the lack of a majority.
- A division vote based on actual voting is the usual practice.

- But, instead of this, the presiding officer just declared the Bill passed by voice vote without any division.

Why is this notable?

- A similar process was followed to pass the controversial farm laws (by the Rajya Sabha) in September 2020.
- Here too, the government seemed to lack a majority to pass the bills in the Upper House.
- And instead of a division vote, a voice vote was deemed to be adequate by the Deputy Speaker of the House.
- In both cases, the disturbance caused by the Opposition was used as a pretext to resort to a voice vote.
- The government has repeatedly invoked multiple consultations around these laws.
- However, the fact that the pieces of legislation were passed without an actual legislative majority voting has not been given due attention.

What do these practices imply?

- The increasing use of this route was defended by the Leader of the Rajya Sabha.
- He condemned the repeated questioning by the indirectly elected Rajya Sabha of the wisdom of the directly elected Lok Sabha.
- Underlying this common sentiment is a tendency to devalue bicameralism itself.
- Lok Sabha is seen as directly representing the will of the people, and the Rajya Sabha as standing in its way.
- Democracy itself is seen purely in terms of parliamentary majority in the Lower House.
- So, the countervailing function of the Upper House is rarely seen as legitimate.

Why is bicameralism crucial?

- The two Houses are chosen by different processes of representation and elected on a different schedule.
- The very questioning of the monopoly of the Lower House to represent the ‘people’ makes bicameralism desirable.
- In India, the Rajya Sabha membership is determined by elections to State Assemblies.
- This leads to a different principle of representation, often allowing different factors to prevail than those in the Lok Sabha elections.
- The second chamber’s performance of a review role becomes particularly important.
- This offers the opportunity for a second legislative scrutiny.

2.5 Parliamentary Scrutiny

Why in news?

The three agricultural bills and the three labour Bills were not scrutinised by Select Committees of the Parliament.

Around what does the parliamentary democracy in India revolve?

- The appropriateness of parliamentary democracy for India is based on the grounds of representativeness, responsiveness and accountability.
- There is a running thread across the Constituent Assembly Debates that Parliament and States legislature would be the key institutions around which parliamentary democracy in India would revolve.
- The State legislatures in India have tended to largely imitate Parliament, without evolving an institutional culture of their own.
- So, much rested on Parliament to provide a lead in this regard.

What is the Committee system?

- Over the years, the Indian Parliament has increasingly taken recourse to the committee system (as its counterparts did elsewhere).
- This was not merely meant for housekeeping.

- But to enhance the efficacy of the House to cope with the technical issues confronting it and to feel the public pulse, to guard its turf and keep it abreast to exercise accountability on the government.
- Some committees such as the Estimates Committee and Public Accounts Committee have a commendable record in this regard.
- Besides the **standing committees**, the Houses of Parliament set up, from time to time, **ad hoc committees** to enquire and report on specific subjects.

What is the importance?

- The Committees were guardians of the autonomy of the House.
- The committees of scrutiny and oversight, as the case with other committees of the House, are not divided on party lines.
- They work away from the public glare.
- They remain informal compared to the codes that govern parliamentary proceedings.
- In the discharge of their mandate, they can solicit expert advice and elicit public opinion.

What are some of its fault lines?

- Indian parliamentary committee system has not been creative or imaginative.
- The presiding officers of the Houses have tended to imitate changes and innovations done elsewhere (like Britain).
- The chairman of the Rajya Sabha, being the Vice-President of India, cannot distance himself much from the stance of the Cabinet.
- But when it comes to the Lok Sabha, very few Speakers have taken cudgels with their party leaders to uphold the autonomy of the House.
- In 1993, however, 17 Departmentally-related Standing Committees (DRSCs) of the Parliament were set up.

What are DRSCs?

- DRSCs drew members from both Houses roughly in proportion to the strength of the political parties in the Houses.
- They were envisaged to be the face of Parliament in a set of inter-related departments and ministries.
- They were assigned the task of looking into the demands for grants of the ministries/departments concerned.
- They will examine Bills pertaining to them, consider their annual reports, and look into their long-term plans and report to Parliament.

What did the executives do?

- The executive in independent India was not very disposed to committees of scrutiny and oversight, sometimes on the false plea that they usurped the powers of Parliament.
- The officialdom in India has often attempted to take cover under political masters to avoid the scrutiny of committees.

How are these committees getting marginalised gradually?

- It is important to point out that committees of scrutiny and advice have been confined to the margins or left in the lurch in the last few years.
- While 71% in the 15th Lok Sabha were wetted by the DRSCs concerned, this proportion came down to 27% in the 16th Lok Sabha.
- The government has shown extreme reluctance to refer Bills also to Select Committees of the Houses or Joint Parliamentary Committees.
- The last Bill referred to a Parliamentary Committee was in 2015.

What were the recent examples?

- Some of the recent momentous Acts of Parliament such as the radical overhaul of Article 370 were not processed by any House committee.
- The protested three Bills related to agricultural produce and the three labour Bills that were cases that definitely deserved to be scrutinised by Select Committees of the Houses.
- But the government used its majority in both the Houses of Parliament and steamrolled the Bills.

What is needed?

- The reason why ruling dispensation neglected these Committees is unclear.
- One of the reasons given at this point in time is the novel coronavirus pandemic and the urgent need to enact safety measures.
- The argument of urgency seems false.
- Clearly, this regime is not disposed to a reflection and reconsideration of Bills proposed in the House.
- It should see that the primary role of Parliament is deliberation, discussion and reconsideration, the hallmarks of democratic institutions.

2.6 Crime in Politics

Why in news?

The Supreme Court said that it was surprised to learn that there are 2,556 criminal cases pending against sitting lawmakers (MPs and MLAs).

What are the crimes?

- The breadth of offences lawmakers were charged with covers corruption, offences under the child sexual abuse law, tax offences, murder, etc.
- There are 413 cases where the offences are punishable with life imprisonment; 174 of these involve sitting lawmakers.
- This should show how mammoth the task before the judiciary is.
- The fact is that crime in politics has gone unchecked despite many interventions by the Supreme Court.

What were the SC's interventions?

- **2017** - The SC had ordered the setting up of special courts to fast-track trial: completion within a year of framing of charges.
- Then, 12 such courts had been set up to cater for different states.
- The SC ordered High Courts to form a special bench to monitor the progress on cases against lawmakers within their jurisdictions.
- The HCs are to list all pending criminal cases involving sitting/former lawmakers, including those in which a stay has been granted.
- As per a report submitted to the apex court, there are 352 cases stayed by the HCs or SC.
- **2018** - The SC had ordered political parties to publish details of criminal candidates they fielded in polls in mainstream media.
- But, there are 233 candidates who face criminal charges were elected to the Lok Sabha in 2019, with 159 facing serious criminal charges.
- It is clear that the court's order was either not complied with or had little effect.
- **February 2020** - The SC ordered parties to list 'criminal' candidates along with details on their websites, social media and news media within 48 hours of announcing such candidates.
- The parties also had to explain the basis of selection.
- They have to file a compliance report with the Election Commission of India (ECI).

Did the ECI do anything?

- The ECI never took action against parties for failing to do this.
- But, under the Election Symbol Order 1968, it can suspend recognition of a party for failing to comply with its lawful orders.

What is the difficulty?

- The problem is quite deep-rooted.
- The politicians are flexing power to keep themselves out of trials and parties showing little political will to confront this.
- So, there are many cases that are pending at the appearance stage, with many in which non-bailable warrants have failed to get executed.

What is needed?

- The SC has done well to instruct the HC special benches to examine the merit of stay granted in cases involving MPs/MLAs.
- These grants cannot be unconditional or of indefinite duration.
- With judiciary pulling all stops to tackle crime in politics, the onus is now on the mainline political parties and the ECI to act.

2.7 Cancelling Question Hour

Why in news?

The Monsoon Session of Parliament, beginning September 14, 2020, would go without “Question Hour”.

What is Question Hour?

- Question Hour is an opportunity for the members to raise questions.
- It is a parliamentary device primarily meant for exercising legislative control over executive actions.
- It is also a device to criticise government policies and programmes.
- It will ventilate public grievances, expose the government's lapses and extract promises from ministers.
- Thereby, they ensure accountability and transparency in governance.

What is the effectiveness of the Question Hour?

- The annals of history of parliamentary proceedings in India remind us of the scope of Question Hour as armour to raise people's concerns.
- A classic illustration of this role can be gleaned from this exchange in the Lok Sabha in November 1957.

What was the incident?

- A Congress Member of Parliament asked whether LIC had purchased large blocks of shares from different companies owned by Mundhra.
- The reply was given by the Deputy Minister of Finance.
- Feroze Gandhi of the Congress asked a Supplementary question.
- For this question, the reply of the Union Minister for Finance was dissatisfactory to Feroze Gandhi.
- So, he initiated a half-an-hour discussion on the subject.
- This led to the resignation of the Finance Minister.
- This instance points out the relevance of the half-an-hour discussion and the contributing character of Question Hour in the proceedings.

What is the present government trying to do?

- It is in dire need to avoid these types of situations.
- The time has come to ask about different issues such as its failure in handling the pandemic, the New Education Policy, border tensions, rising unemployment, and so forth.

- The government is bound to respond to these questions in Parliament.
- By doing away with the Question Hour, the government has opted for a face-saving measure.

What is the history?

- The right to question the executive has been exercised by members of the House from the colonial period.
- The first Legislative Council in British India under the Charter Act, 1853, gave members the power to **ask questions** to the executive.
- The Indian Council Act of 1861 allowed members to elicit **information** by means of questions.
- The Indian Council Act, 1892, formulated the **rules** for asking questions including short notice questions.
- The Indian Council Act, 1909, incorporated provisions for asking **supplementary questions** by members.
- The Montague-Chelmsford reforms in 1919 incorporated a rule that the first hour of every meeting was earmarked for questions.
- Parliament has continued this tradition. In 1921, the question on which a member desired to have an oral answer was distinguished by him with an asterisk, a star.
- This marked the beginning of **starred questions**.

What is worrisome?

- These are democratic rights the MPs have enjoyed even under the colonial rule.
- But, these rights are being denied to the elected representatives of Independent India, by the present government.
- However, this isn't an isolated action in the midst of the pandemic.

What are the other actions?

- The government passed important bills in the first session of the 17th LS before the formation of department-related standing committees.
- Even the Constitution Amendment Bill on J&K was introduced without circulating copies to the members.
- Several important bills were passed as Finance Bills to avoid scrutiny of the Rajya Sabha.
- Standing committees are an extension of Parliament.
- Any person has the right to present his/her opinion to a Bill during the process of consideration.

What do these government actions mean?

- The government's actions erode the mandate of parliamentary oversight over executive actions envisaged under Article 75 (3) of the Constitution.
- Such actions prevent the MPs from carrying out their constitutional mandate of questioning, debating, and scrutinising government policies and actions.
- These actions are a planned attempt by the government to diminish the role of Parliament and turn itself into an Executive Parliament.

3. THE STATES AND UNION TERRITORIES

3.1 Andhra-Odisha Border Dispute

Why in news?

Andhra Pradesh recently held panchayat elections in three villages in the Kotia cluster, which is at the centre of a dispute between Andhra Pradesh and Odisha.

What are these disputed villages?

- The 21 villages, with a population of nearly 5,000, are located on a remote hilltop on the inter-state border.
- These are inhabited by the Kondh tribals.

- The region was once a Maoist hotbed and still reports sporadic incidents of violence.
- It is also rich in mineral resources like gold, platinum, manganese, bauxite, graphite and limestone.

What is the origin of the dispute?

- Prior to April 1, 1936, villages under Kotia panchayat were part of Jeypore Estate.
- In the Constitution of Orissa Order, 1936, the Government of India demarcated Odisha from the erstwhile Madras Presidency.
- The Presidency included the present-day Andhra Pradesh.
- In 1942, the Madras government contested the boundary and ordered re-demarcation of the two states.
- In a joint survey of Odisha, Bihar and Madhya Pradesh, seven villages of Kotia gram panchayat were recorded as revenue villages.
- Revenue was collected by the Odisha government.
- But, the exercise left out the 21 villages now under dispute.
- When the state of Andhra Pradesh was created in 1955, the villages were not surveyed by the Andhra Pradesh government either.

What is the administrative position?

- This is the first time Andhra has held panchayat polls in any of these 21 villages.
- But the villages participate in Assembly and Lok Sabha elections for both states.
- They are registered as voters for -
 - Salur Assembly and Araku Lok Sabha seats of Andhra
 - Pottangi Assembly and Koraput Lok Sabha seats of Odisha
- The villagers enjoy benefits from both states under various schemes.

What is the current status?

- In the early 1980s, Odisha filed a case in the Supreme Court demanding right and possession of jurisdiction over the 21 villages.
- In 2006 however, the court said that disputes belonging to the state boundaries are not within the jurisdiction of the Supreme Court.
- So, it ruled that the matter can only be resolved by the Parliament.
- The Court thus passed a permanent injunction on the disputed area.
- In Andhra, Vizianagaram District Collector said the three villages are separate gram panchayats and fall under Salur Mandal, hence elections were held.
- A day after Andhra notified the panchayat elections here, Odisha Chief Minister Naveen Patnaik inaugurated projects worth Rs.18 crore.
- The Odisha government has also moved the Supreme Court now.

3.2 Centre's J&K Outreach - India's Kashmir Policy

Why in news?

The Union Home Secretary has extended invitation to the leadership of the J&K-based political parties to discuss on the Kashmir issue.

What is the significance?

- On August 5, 2019, the State of J&K was stripped of its special constitutional status and dismembered into two Union Territories.
- The Prime Minister has now decided to meet 14 party leaders from the Union Territory.

- It includes those who were incarcerated for opposing the Centre's move.
- [The leaders of mainstream parties, including former CMs, were jailed after 2019.]
- This will be the first political engagement since the August 5 move.
- The decision signals a revival of the political process in Jammu and Kashmir.
- It demonstrates a desirable flexibility in the Centre's approach towards resolving the Kashmir issue.

Why now?

- The political environment has changed since the 2019 move.
- The Joe Biden administration is eager to end the U.S. entanglement in Afghanistan.
- It is also keen of resisting China's attempts to dominate the world.
- India is in a stand-off with China on the border.
- The Biden administration is publicly disapproving of India's Kashmir policy.
- Pakistan is also trying to reclaim its strategic advantage.
- Besides, the mishandling of the COVID-19 pandemic has dented India's global image.
- This has triggered new political challenges domestically.
- All these make rigidity less rewarding in India's Kashmir policy and call for a flexible approach.

What is the way forward?

- The Centre must now engage the political parties in good faith and with an open mind.
- Corruption investigations in Kashmir, legitimate as they may be, must not be used to debase politics itself.
- Efforts to tackle corruption and pilferage should not amount to furthering instability in J&K.
- There is no clear agenda for the meeting and a sense of betrayal prevails among Kashmiris.
- So, any hope of a quick resolution to the frozen political questions is not realistic.
- Nevertheless, it could be a beginning towards a durable and democratic resolution of the Kashmir question.

3.3 Ladakh's Current Status

What is the issue?

- When Jammu and Kashmir was bifurcated into two Union Territories on August 5, 2019, Ladakh was seen welcoming the reorganisation.
- But various demands and concerns have been raised from its two districts, Leh and Kargil, over the last two years.

What is the government's response?

- The government appears to be paying more attention to the concerns now, after two years of bifurcation.
- This happens parallel to the Centre's outreach to the Jammu and Kashmir political leadership.
- Reportedly, a committee under Minister of State for Home will seek to address these demands from Ladakh.
- If the committee with planned representation from Leh and Kargil is set up, it would enable leaders from both the districts to work out a common negotiating front.

What are the different concerns in Leh and Kargil?

- **Kargil** - Of Ladakh's two districts, the August 2019 changes were immediately opposed by the people of Kargil.
- The people of Kargil see themselves as a minority in Buddhist majority Ladakh.
- So, the leaders of the majority Shia population in Kargil demanded that the district should remain part of J&K.
- They also demanded that special status be restored.

- This was to safeguard the rights of Kargil people over their land and employment opportunities.
- **Leh** - Opposition from Leh came later.
- Leh believed that it was being marginalised in the larger state of J&K.
- So, a UT for Ladakh had been a long-standing demand in Buddhist majority Leh.
- But what Leh leaders did not bargain for was the complete loss of legislative powers.
- Earlier, Leh and Kargil each sent four representatives to the J&K legislature.
- After the changes, they were down to one legislator - their sole MP, and with all powers vested in the UT bureaucracy.
- Unlike the UT of J&K, Ladakh was a UT without an assembly.
- So, the Ladakh districts fear that alienation of land, loss of identity, culture, language, and change in demography would follow their political disempowerment.

What about the Hill Development Councils?

- Leh and Kargil have separate Autonomous Hill Development Councils (AHDCs).
- These were set up under the Ladakh Autonomous Hill Development Councils Act, 1997.
- The councils are elected.
- However, the AHDCs have no legislative powers.
- They have executive powers over the allotment, use and occupation of land vested in them by the Centre.
- They also have the powers to collect some local taxes, such as parking fees, taxes on shops etc.
- But the real powers are now wielded by the UT administration.
- Worryingly, the UT administration is seen as even more remote than the erstwhile state government of J&K.

What is the recent demand in this regard?

- Various groups in Ladakh are demanding for an autonomous hill council under the Sixth Schedule.
- The Sixth Schedule is a provision of Article 224(a) of the Constitution.
- It was originally meant for the creation of autonomous tribal regions in Assam, Meghalaya, Mizoram and Tripura.
- Notably, hill councils under this provision will have legislative powers.
- **Evolving demands** - There is no progress on Leh's demand for Sixth Schedule protections.
- So, the Leh leadership has now upped its demands asking for a Union Territory with an elected Assembly.
- Meanwhile, another delegation demanded full statehood to Ladakh, as well as restoration of special status with Article 35 and 370 of the Constitution.
- Other issues include protections for language, culture, land and jobs.
- Another long-standing demand is the route between Kargil and Skardu in territory under Pakistan in Gilgit-Baltistan.

3.4 Krishna & Godavari River Management Boards

Why in news?

The Centre (Union Ministry of Jal Shakti) has notified the jurisdiction of Krishna and Godavari River Management Boards (KRMB and GRMB).

What is the long-drawn dispute between A.P. and Telangana?

- The dispute between the two States over project works and hydel generation at Srisailam, Nagarjunsagar and Pulichintals reservoirs was going on for long.
- Andhra Pradesh has been demanding notification of the boards' purview for long.

- But Telangana has been opposing it.
- It feels that handing over projects' operation without clarity on the States' share of water would be meaningless.
- Andhra Pradesh has been proposing a few projects, including a lift irrigation scheme for Rayalaseema.
- In turn, Telangana has been coming up with half-a-dozen projects of its own.
- It has been 7 years since the boards were constituted under the provisions of the Andhra Pradesh Reorganisation Act, 2014.
- The Centre has only notified now the jurisdiction of Krishna and Godavari River Management Boards (KRMB and GRMB).

What does this mean?

- The notification transfers to the Boards the operation of all projects in the two river basins in A.P. and Telangana effective from October 14, 2021.
- The operations include the generation of hydel power.
- The two river boards can now administer, regulate, operate and maintain 36 projects in the Krishna Basin and 71 in the Godavari.
- The Boards are empowered to operate the headworks of barrages, dams, reservoirs, regulating structures, part of canal network, transmission lines and the power houses at the projects.
- The notification authorises the Central Industrial Security Force (CISF) to assist the KRMB in the day-to-day management.
- This applies to the specified projects and other works related to security assigned by the KRMB.

What are the challenges?

- The Centre's efforts are aimed at defusing the increasing tension between the two States over water sharing and power generation.
- But implementation is bound to face challenges as regulation of water is going to be a tough job.
- This is especially given the absence of clarity on water share of the two States as also the project-wise allocation.
- [Project-wise supply for irrigation and drinking needs as also hydel generation at projects]

4. ISSUES IN FEDERALISM

4.1 Structural Flaws in UTs

What is the issue?

- Recently in Puducherry, resignation of ruling party MLAs has lead to fall of the government.
- This highlights the structural issues present in creation of Union Territories (UTs) in Indian federation.

What are the structural issues in UTs' constitutional setup?

- The issues pertain to legislature composition, nomination of member to the assembly and administrators power.
- In order to fulfil the democratic aspirations of the people in UTs, Constitution-makers provided legislature and Council of Ministers (CoM's) to some of the UTs.
- In 1962, **Article 239A** was brought in which enabled the Parliament to create legislatures for the UTs.
- But detailed analysis of this provision reveals that it goes against the policy of the state to promote democracy.
- In UTs, legislatures can be a body that is elected or partly elected or partly nominated.
- There can also be CoM's without legislature or there can be a legislature as well as a CoM's.

- Legislature without a CoM's or a CoM's without legislature is absurd because in our constitutional scheme the government is responsible to the legislature.
- Similarly, a legislature that is partly elected and partly nominated is another absurdity.
- This is because simple amendment in the Government of Union Territories Act, 1963 can create a legislature with more than 50% nominated members which cannot be a representative democracy.

What is the issue with nomination in UTs?

- The purpose of nomination is to enrich the debate in the House by their expertise.
- In Puducherry, **Government of Union Territories Act** provides for 33-member House where in three are nominated by Centre.
- When the centre nominated its members to the Assembly without consulting the state, it was challenged in the Supreme Court.
- In **K. Lakshminarayanan v. Union of India case**, Court held that centre is not required to consult for nominating & nominated members have the same right to vote as the elected members.
- **Article 80** also has the provision for nomination of members to the Rajya Sabha but it clearly specifies the fields from which they can be nominated.
- But in case of Puducherry Assembly, no such qualification is laid down.
- This creates arbitrariness where centre can nominate anyone irrespective of whether he or she is suitable.

What is the issue in Administrator's power?

- **Article 239 AA** states that administrator or Lieutenant Governor can disagree with the decisions of COMs and refer it to the President for final decision.
- Then it is the President who decides based on the advice given by the Union government.
- So it is the Union government which finally determines the disputed issue.
- The administrator of UTs can in fact disagree with all crucial decisions taken by the State when the territory is ruled by a different political party.
- In **NCT of Delhi v. Union of India case**, Court said that the administrator should not misuse the power provided in Article 239 AA & use it if all other methods fail to reconcile the differences.
- But the reality is very much different from the court's verdict.

What can we infer from this?

- No Union government will like the idea of a free and autonomous government in the UTs and it tries to control UTs with an administrator.
- But experience shows that the UTs having legislatures with ultimate control vested in the central administrator is not workable.
- Hence the legal and constitutional provisions which enable the administrator to stand over the elected government needs to be removed.

4.2 Government of NCT of Delhi Act, 2021

What is the issue?

- The Government of National Capital Territory of Delhi (GNCTD)(Amendment) Act, 2021 was passed recently.
- It has been extensively criticised as a retrograde law that backtracks on representative democracy.

What are the contentious provisions?

- The GNCTD (Amendment) Act prohibits the exercise of free speech in the Assembly and its committees.
- It reduces the autonomy of the elected government.
- Also, it vests several crucial powers in the unelected Lieutenant Governor (LG).

- The Act thus undermines the functioning of Delhi's Legislative Assembly, which has been sought to be reduced to a lame duck.
- The Assembly has no more functional independence worth its name.
- Its standards of procedure and conduct of business have been firmly tethered to that of the Lok Sabha.
- It deprives Delhi's elected MLAs of an effective say in how their Assembly should be run.
- The Act also prohibits the Assembly from making any rule enabling either itself or its committees -
 - i. to consider any issue concerned with "the day-to-day administration of the capital" (or)
 - ii. to "conduct inquiries in relation to administrative decisions"
- Also, any rule made before the Amendment Act came into effect that runs counter to this formulation shall be void.

How was it earlier?

- The Government of National Capital Territory of Delhi (GNCTD) Act was originally enacted in 1992. Under it, the Legislative Assembly was given the power to regulate its own procedure.
- It could as well regulate the conduct of its business. This was subject to very limited exceptions.
- The exceptions concerned financial matters and scrutiny over the LG's discretionary role.
- The Act thus sought to realise a delicate balance reflecting Delhi's unique constitutional position. [It was neither full state nor a centrally governed Union Territory.]

What are the implications of the amendments?

- The most dangerous impact could be to the exercise of free speech in the Assembly and its committees.
- The Assembly might fall short of performing its most basic legislative function of holding the executive to account.
- Because, it cannot guarantee itself the ability to freely discuss the happenings of the capital and articulate the concerns of the electorate.
- **Committees** - The deliberations and inputs of the Assembly committees often pave the way for intelligent legislative action.
- It would be impossible for committees to perform this function without the power to conduct inquiries.
- This negates the ability of committees to function effectively as the Assembly's advisors and agents.
- The quality of legislative work emanating from the Assembly is thus ultimately bound to suffer.

4.3 State Governor-Regime Disagreement

What is the issue?

- West Bengal Governor Jagdeep Dhankhar made a visit to areas hit by post-poll violence in Cooch Behar.
- In this context, it is imperative to understand if this would constitute a transgression of the bounds of constitutional propriety.

What are the recent disagreements?

- Governor Dhankhar has been a habitual critic of the Mamata Banerjee (Chief Minister) regime in West Bengal.
- He has been seen ignoring the principle that constitutional heads should not air their differences with the elected regimes in public.
- As recently as December 2020, Ms. Banerjee had appealed to the President to recall the Governor.
- This was for political statements that she believed were being made by him at the behest of the BJP-led Union government.

What is the larger concern in this regard?

- The norms of representative government ought to be a natural restraint on the Governor's gubernatorial tendency to breach limits.

- A former West Bengal Governor, Gopalkrishna Gandhi, came in for some criticism for setting aside the restraints of constitutional office.
- He was criticised for expressing “cold horror” at the police firing that left 14 protesters dead at Nandigram in 2007.
- So, the gubernatorial office ought not to be an impediment to the Governor yielding to the moral urge to condemn incidents of rare enormity.
- But, the larger principle that the Governor should not offer public comment on situations best handled by the representative regime has to be upheld.
- In the case of Mr. Dhankhar, what worsens his persistent criticism of the TMC regime is the congruency between his words and the interests of the BJP.

What is the right way forward?

- Post-poll celebrations in West Bengal degenerated into triumphalism and attacks on the losing side.
- Post-election violence is something that should not be witnessed at all in an electoral democracy.
- The onus is on Ms. Banerjee to restore order and end the violence.
- This should be the case even if she believed that the extent of the violence was being exaggerated by the Opposition.
- On the other hand, regardless of one’s view of a regime’s inaction, there should be no departure from constitutional prescriptions of governor’s powers.
- Any advice or warning the Governor wants to give to the elected government ought to be in private and in confidence, and not in public.

4.4 Bypassing Political Leadership - Centre-State Relations

What is the issue?

- The Centre has a duty not to bypass political leadership in dealing with States.
- But two recent developments have raised concern that the Centre wants to give direct instructions to officials functioning under elected State regimes.

How important is Centre’s role?

- India is a ‘federal country with strong centralising features.’
- A major responsibility for the Centre is to maintain the balance, as well as mutual respect, between political structures at the central and State levels.
- In particular, it is an obligation of the Centre to refrain from bypassing the elected leadership while dealing with States.

What are the recent events?

- Prime Minister Narendra Modi has held two virtual meetings with district magistrates and State officials to review the COVID-19 situation.
- Union Education Minister Ramesh Pokhriyal held a virtual meeting with State Secretaries in charge of education.
- This was on the National Education Policy, and related matters such as the conduct of Class XII examinations.
- Such meetings are usual and help get some feedback from the field across India.
- But, it is quite unusual for leaders in the central political executive to bypass their counterparts in the States.
- The Tamil Nadu Minister for School Education took the right stand by not deputing any official to represent the State in Mr. Pokhriyal’s interaction.
- The idea was not to boycott the meeting, but to say the Minister ought to have been included in a discussion on the NEP.

- Likewise, West Bengal CM Mamata Banerjee highlighted that Chief Ministers felt humiliated when all of them were not allowed to speak to the PM in a virtual interaction.

Is this the first time?

- The Prime Minister addressing district magistrates, or collectors, does have a precedent.
- Former PM Rajiv Gandhi addressed the heads of the district administration in Uttar Pradesh on the issue of Panchayati Raj.
- The defence then was that such direct interactions were permissible under the Constitution, citing Articles 256 and 257.
- These provisions stipulate that the States are obliged to comply with laws made by Parliament.
- They also allow some directions from the Union government.

What is the concern then?

- There is also scope for resentment that the elected representatives of the States are being bypassed.
- This is especially true if the Prime Minister belongs to one party, and the officials addressed are from a State run by another.

What is the way forward?

- In the present case, it is true that the Centre has a major role in the pandemic response.
- The Disaster Management Act has been invoked to specify guidelines on lockdowns and relaxations and to ensure smooth medical supplies.
- However, in the larger interest, it is better if events and discussions are held without undermining the political structures at the States.

4.5 Lakshadweep Administrator Row

Why in news?

- Praful K. Patel, a BJP politician from Gujarat, was appointed as Administrator in Lakshadweep in December 2020.
- The draft Lakshadweep Development Authority Regulation 2021 was introduced recently. The proposals have led to many concerns.

What is the controversy over the Administrator?

- Mr. Patel is the first politician to become the Administrator of Lakshadweep.
- Since his arrival in Lakshadweep, he has demonstrated a unique disregard for the people's concerns and priorities.
- In March 2021, the Mumbai police named Mr. Patel as an accused in a case.
- It was related to the death by suicide of seven-time Dadra and Nagar Haveli MP Mohan Delkar.
- Mr. Patel was named in the suicide note.

What are the key provisions in the draft?

- The draft Lakshadweep Development Authority Regulation 2021 gives sweeping powers to the Administrator.
- It offers power to take over land and forcibly relocate people, and proposes harsh punishment to those who resist.
- The consumption or sale of beef, a part of the food habits of many, could be an offence punishable by 7 years in prison.
- Those who have more than two children cannot contest panchayat elections.
- Anyone could be held in prison without reason up to a year, under a new Goonda Act; in a place that has a very low crime rate.

- The traditional livelihood of fishing communities has been impeded by the regulations that deny them access to coastlines.
- Their sheds on the coastal areas have been demolished, saying they violated the Coast Guard Act.
- Dairy farms run by the administration have been shut.

What are the concerns?

- The changes introduced come as a serious threat to the people of Lakshadweep and the fragile ecosystem.
- There is clear absence of any administrative rationale or public good in the above arbitrary measures.
- There are thus fears of other motivations.
- Commercial interests could be at play.
- The land that inhabitants are forced to part with could be transferred to buyers from outside.
- There could also be ill-advised political plans to change the demography of the islands.

What is the larger priority?

- Lakshadweep is an archipelago of 36 islands totalling 32 square kilometres in the Arabian Sea.
- It has had an idyllic existence as a Union Territory (UT), with a population of around 70,000.
- The rationale for carving out UTs as administrative units is to protect the unique cultural and historical situations of their inhabitants.
- This being under threat, people have risen in protest.
- But far from listening to them, the Administrator seems insistent on his plans.
- The Centre is inverting its responsibility to protect into a licence to interfere.
- The Centre should recall the Lakshadweep Administrator and drop his ill-conceived plans.
- The territory and its ecology should be protected and the islanders should be reassured.

4.6 Roles of the Centre and States - COVID-19 Management

What is the issue?

- The second wave of the COVID-19 pandemic has brought to light some fundamental gaps in dealing with medical emergencies as the current one.
- It calls for an assessment of the roles of the Centre and States in this regard.

What should the Centre be clear about?

- Clearly, events like that the current pandemic are national crises.
- They call for concerted efforts by both, the Government of India (GoI) and state governments.
- Denials, finger-pointing, and media management will not help in rightfully dealing with these.
- It is time the GoI realises that health is a state subject.
- The number of employees in the health wing of the GoI is negligible as compared to that in any state government.
- The implication is that if anything good in health or Covid management happens, the credit must rightly go to the state government.
- The GoI must however help the states, motivate them to do better and assist them in their task.

What key role can the Centre play?

- Where the GoI must and can play a major role is in vaccination.
- So far, all vaccine procurement has been by the GoI, which allots vaccines to states depending on the need.
- The task before it is to procure 160 crore doses before December 2021, the stated target.

- This works out to 26 crore doses per month as against the current production capacity of 6 crore.
- The Centre must thus try to augment supplies by encouraging companies to produce more and through imports/gifts.
- It is doubtful whether this can be achieved. However, whatever it procures must be allotted to states in proportion to their eligible population.
- State governments must be involved in this policy. The vaccination policy may be left to the state governments based on the allocation.
- The GoI must also augment supplies of critical medical goods in view of their acute shortage, through imports and donations from friendly nations.
- It must distribute them to the needy states transparently and equitably.

What role should the states play?

- State governments have rightly opted for need-based lockdowns and relaxations, which have helped arrest the spread of the virus.
- But lockdowns are not the solution. They just buy breathing time for the governments to ramp up capacity.
- State governments must set up efficient and well-functioning control rooms and telemedicine centres. This should guide people on home treatment and timely admission to hospitals.
- The private sector can also be fully involved in these efforts.
- It is also important to put in place a standard guidance protocol for health workers and control rooms to guide patients through the disease.

What is the way forward?

- Another wave may be lurking. This calls for total co-operation of the central and the state governments and also the public.
- The central government must realise that states are on the forefront in this war, and therefore, play a supporting and proactive role.
- Above all, a high level of transparency on Covid management, particularly on vaccination, beds, supplies, infections and deaths, is essential.

5. JUDICIARY

5.1 Consent for Contempt of Court

Why in news?

Attorney General of India consented to initiate criminal contempt of court proceedings against a comic illustrator.

What is the procedure for initiating a criminal contempt against an individual?

- Section 15 of **Contempt of Courts Act 1971**, describes the procedure.
- In the case of the Supreme Court, the Attorney General or the Solicitor General, and in the case of High Courts, the Advocate General, may bring in a motion for initiating a case of criminal contempt.
- However, if the motion is brought by any other person, the consent of the Attorney General or the Advocate General in writing is required.
- It has to specify the contempt for which the person charged is alleged to be guilty.

Is AG's consent mandatory for all contempt of court cases?

- It is mandatory when a private citizen wants to initiate a case of contempt of court against a person.
- The objective behind AG's consent is to save the judicial time of the court as it will be wasted if a frivolous petition occurs.

- AG's consent is not required when the court itself initiates a contempt of court case (suo motu) as it did in the case of Prashant Bhushan case.
- **Article 129** of the Constitution gives the Supreme Court the power to initiate contempt cases on its own, independent of the motion brought before it by the AG or with the consent of the AG.

What happens if AG denies consent?

- If AG denies consent, petition ends there itself.
- Earlier AG denied consent to initiate criminal contempt proceedings against actor Swara Bhasker & against author Shefali Vaidya.
- However, complainant can urge the court to take suo motu cognizance.

What happens after the AG has granted consent?

- After the consent, notice is served personally to the person against whom the proceedings are sought to be initiated by the court.
- If the court decides not to serve the notice personally, the court has to record the reasons for it.
- If the court is satisfied that the alleged contemnor is likely to abscond or evade judicial proceedings, it can order attachment of property of a value that it deems reasonable.
- Once the notice is served, the alleged contemnor may file an affidavit in support of his defence, explaining the nature and circumstances of her remarks.
- Then the case has to be heard by at least two judge bench which will take into account any evidence available to check the affidavit and pass appropriate orders.

5.2 Judges Pro Term - SC Decision

Why in news?

The Supreme Court recently decided to invoke a "dormant provision" in the Constitution (Article 224A) to clear the way for appointment of retired judges as ad hoc judges.

What is the rationale?

- The objective is to clear the mounting arrears in various High Courts.
- The numbers both in respect of pendency of cases and vacancies in the High Courts are quite concerning.
- There exists a backlog of over 57 lakh cases, and a vacancy level of 40%.
- Five High Courts account for 54% of these cases.
- Therefore, it is welcome that the Court has chosen to activate Article 224A of the Constitution.
- Article 224A provides for appointment of ad hoc judges in the High Courts, based on their consent.

What is the concern?

- The move reflects the extraordinary delay in filling up judicial vacancies.
- The fault may lie with the Collegium system or the Centre's tardiness.
- But, there is little doubt that the unacceptable delay in the appointment process in recent times has caused huge vacancies in the High Courts.
- On the other hand, interestingly, official data suggests that there need not be a correlation between the number of vacancies and the large backlog.
- The Madras High Court has 5.8 lakh cases against a relatively low level of vacancy at 7%.
- As many as 44% of the posts in the Calcutta High Court are vacant, but the cases in arrears stand at 2.7 lakh.

What are the guidelines provided?

- The provision (Article 224A) has been utilised only sparingly in the past.
- It has been used for the limited purpose of disposing of particular kinds of cases.

- So, the endeavour to appoint ad hoc judges will have to come with some guidelines.
- The Court has made a beginning by directing that the trigger point for such an appointment will be -
 1. when the vacancies go beyond 20% of the sanctioned strength, (or) when more than 10% of the backlog of pending cases are over 5 years old
 2. when cases in a particular category are pending for over 5 years, or when the rate of disposal is slower than the rate of institution of fresh cases
- The Bench has ruled that the current Memorandum of Procedure be also followed for appointing ad hoc judges with a suggested tenure of 2 to 3 years.
 - This is a process initiated by the Chief Justice of a High Court.
- The Court has also clarified that this is a “transitory methodology” and does not constrain the regular appointment process.

What should the government do now?

- Roping in retired HC judges to clear backlog should not be at the cost of regular appointments. So, the government would do well to expedite the regular appointment process from its end.
- It should give up its tendency to hold back some recommendations selectively.
- The judiciary too should ensure that only retired judges with experience and expertise are offered the temporary positions, and there is no hint of favouritism.

5.3 Collegium Recommendations

Why in news?

For the first time ever, the Supreme Court Collegium led by the Chief Justice of India (CJI) has recommended as many as 9 persons at one go to be appointed as Supreme Court judges.

What is the collegium?

- Currently, the Supreme Court of India comprises the CJI and 30 other Judges (totally 31).
- The Constitution mandated consultation by President with the CJI for appointments and transfers of judges.
- The collegium is an evolved model in this “consultation” process, brought in after various Supreme Court judgements in three ‘Judges Cases’.
- The collegium consists of the CJI who heads it and 4 senior-most judges of the Supreme Court. In case of difference of opinion, the majority view will prevail.

Why is the current selection laudable?

- If the 9 judges are appointed, barring one vacancy (which arose after the Collegium met), all the vacancies in the Supreme Court will be filled up.
- The selections break the 22-month-long impasse, as no consensus could emerge within the Collegium even as vacancies remained unfilled
- Significantly, the recommendations of the collegium include -
 1. three women judges, with one of them having a chance to get to be the CJI
 2. a judge belonging to the Scheduled Caste
 3. a judge from a backward community
- Also, the 9 selected persons belong to 9 different States (Kerala, TN, Karnataka, Andhra Pradesh, Maharashtra, MP, UP, Delhi and Gujarat)
- Notably, many of those selected have distinguished records of upholding citizens' freedoms and public interest.
- Reportedly, the selection process, a complex one, was concluded in the first ever formal meeting of the Collegium.

- The current CJI, Justice N.V. Ramana, being the first among the equals, deserves credit for taking along the members and building consensus for selecting as many as 9 judges.

What are the parameters to be considered?

- India is perhaps the only country where the judges themselves select judges to the higher judiciary.
- So, members of the Collegium have to take extra care to ensure that -
 1. the process of selection remains transparent
 2. the suitability of the persons selected gets the highest level of approbation (approval/acceptance)
- The essence of the norms to be followed in judicial appointments is a judicious blend of Merit /the ability to deliver complete justice, Seniority and Equal opportunities to all classes of people to preserve the interests of the marginalised and deprived sections of society, women, religions, regions and communities

5.4 Four Capitals

Why in news?

Recently, West Bengal CM suggested that India should have four capitals.

What is the issue of having four capitals?

- Four capitals means that there should be Parliament buildings in three other regions & accommodation for all MPs and adjunct staff has to be constructed.
- MPs in the northern parts of the country would prefer to be in their existing accommodations while others prefer to settle in the capital close to their region.

Article 124 - Appointment of SC judges should be made by the President after consultation with such judges of the HCs and the SC as the President may deem necessary (optional). The CJI is to be consulted (mandatory) in all appointments, except his or her own.

Article 217 - HC judges should be appointed by the President after consultation with the CJI and the Governor of the state. The Chief Justice of the HC concerned too should be consulted.

Article 142 (1) allows the Supreme Court to pass any order necessary to do "complete justice" in any case.

- During Parliament sessions, MPs will descend to their envisaged capitals leaving the residential accommodations vacant for months after every session.
- This involves huge expenditure as MPs and their staffs have to fly to and from these capitals.
- In 1980s, Tamil Nadu CM proposed to shift the State capital to Tiruchirappalli but it was dropped later.
- Moreover providing security to all the MPs will be a huge burden for the State Police and also their vacant accommodations needs to be guarded round the clock.

Can this model be adopted for Supreme Court?

- In January 2021, the Bar Councils of five southern States asked for a Supreme Court bench in South India.
- This is because all people can't afford to travel to New Delhi to engage lawyers and plead their cases.
- The exorbitant fee of the Supreme Court lawyers in New Delhi is another deterrent.
- Even the Attorney General suggested for four benches of Court of Appeal with 15 judges across the country to reduce the burden of the Supreme Court.
- This enables judges to go through each case thoroughly and deliver a well-thought-out verdict and leaving the apex court to deal with constitutional issues.
- But this requires amendment the Constitution.
- Easy accessibility to justice for every citizen is a right that cannot be countered.

5.5 Law and Technology

Why in news?

Recently draft vision document of the e-Courts Project has articulated how Covid-19 gives an opportunity to bring change in the justice system.

What are problems in the justice delivery?

1. Pendency of cases:

- Despite working overtime and rapidly disposing of cases, courts still have not been able to reverse the trend of increasing pendency.
- According to the National Judicial Data Grid, the pendency of cases waiting to be adjudicated upon is 3,81,44,088 at lower courts, 57,51,173 at high courts, and 67,279 at the Supreme Court.

2. Cost of litigation:

- A survey was conducted in 2016 to ascertain the cost borne by individuals on litigation.
- The study states that on average, per day, civil litigants spend Rs 497 for court hearings and incurred a loss of Rs 844 due to loss of pay.
- Criminal litigants spend Rs 542 for court hearings and incurred a cost of Rs 902 due to loss of pay.

3. Ease of doing business:

- India was ranked 163rd in 'Enforcing Contracts' in the World Bank's Ease of Doing Business rankings 2020.
- A study was conducted in 2020 that covered about 60 lakh cases in 195 district courts with an extensive sample of 13,928 companies.
- It reports that sales revenue, wage bills and profits are negatively associated with longer average duration for case disposal.
- The paper 'Justice Delayed is Growth Denied: The Effect of Slow Courts on Relationship-Specific Industries in India' finds the effect of speedy justice on the economy.
- It is found that if the fraction of trials resolved in less than one year, it could have led to an extra Rs 5.43 lakh crore in the GDP in 2018.

What does the draft report say?

- The draft has articulated how Covid-19 has brought with it an unprecedented opportunity for change in the justice system.
- It has recognised the potential of technology in accelerating and transforming access to justice.
- It would use data-led analytics to boost processes, simplify procedures for litigants, lawyers and judicial officers with user-centric design principles.
- It aims to augment digital infrastructure with seamless connectivity across prisons, courts, legal aid authorities via open standards and APIs.
- It seeks to build new governance institutions such as the National Judicial Technology Council for augmenting the judicial-tech ecosystem.

What further can be done?

- One, Indian statutes have a legacy of over 150 years, with the Indian Penal Code coming into force in 1862.
- Therefore, obsolete statutes which trigger unnecessary litigation need to be eliminated.
- Two, any new law should have a sunset review clause so that after every few years it is reviewed for its relevance in the society.
- Three, non-compliance with certain legal provisions which don't involve mala fide intent can be addressed through monetary compensation rather than prison time.
- Finally, large number of ongoing litigations in the Indian court doesn't require interpretation of the law by a judge but simply adjudication on facts.

- So, the route of online dispute resolution (ODR) can be adopted which also has the potential for dispute avoidance by promoting legal education and inducing informed choices.
- It can also help in making use of mediation, conciliation or arbitration and resolving disputes outside the court system.

5.6 Restructuring the Tribunals System - National Tribunals Commission

What is the issue?

- The Centre has passed the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance 2021.
- With the ordinance being challenged in the Supreme Court, here is an overview on its various elements.

What is the objective?

- Through the ordinance, the Centre has abolished several appellate tribunals and authorities.
- It has transferred their jurisdiction to other existing judicial bodies.
- The tribunals abolished include the Film Certification Appellate Tribunal.

What are the concerns?

- The Ordinance has met with sharp criticism for bypassing the usual legislative process.
- It was also passed without any stakeholder consultation.
- No judicial impact assessment was conducted prior to abolishing the tribunals.
- This goes against the Supreme Court's direction in Rojer Mathew v. South Indian Bank (2019).
- The Ordinance has incorporated the suggestions made in Madras Bar Association v. Union of India (2020).
- This applies to the composition of a search-cum-selection committee and its role in disciplinary proceedings.
- But, the ordinance has also fixed a four-year tenure for Chairpersons and members of tribunals.
- This has disregarded the court's direction for fixing a five-year term.
- Further, the Centre is yet to constitute a National Tribunals Commission (NTC).
- The idea of an NTC was first mooted in L. Chandra Kumar v. Union of India (1997), but it has still not been constituted.

What is the NTC and what are its roles and responsibilities?

- The NTC would ideally take on some duties relating to administration and oversight.
- It could set performance standards for the efficiency of tribunals and their own administrative processes.
- Importantly, it could function as an independent recruitment body.
- This is to develop and operationalise the procedure for disciplinary proceedings and appointment of tribunal members.
- Giving the NTC the authority to set members' salaries, allowances, and other service conditions, subject to regulations, would help maintain tribunals' independence.
- Administrative roles of the NTC include providing support services to tribunal members, litigants, and their lawyers.
- For this purpose, it would need to be able to hire and supervise administrative staff.
- It will also have to consolidate, improve, and modernise tribunals' infrastructure.

What is the significance of NTC?

- A key rationale for demanding the NTC is the need for an authority to support uniform administration across all tribunals.
- The NTC could therefore pave the way for the separation of the administrative and judicial functions carried out by various tribunals.
- A 'corporatised' structure of NTC with a Board, a CEO and a Secretariat will allow it to scale up its services.

- It could thus provide requisite administrative support to all tribunals across the country.

Why is legal backing for NTC essential?

- Developing an independent oversight body for accountable governance requires a legal framework that protects its independence and impartiality.
- Where the institutional design is not properly conceived, partisan interests can twist the law to serve political or private interests.
- In India, executive interference in the functioning of tribunals is often seen in matters of appointment and removal of tribunal members.
- It is also evident in provision of finances, infrastructure, personnel and other resources required for day-to-day functioning of the tribunals.
- Therefore, the NTC must be established vide a constitutional amendment.
- Or, it should be backed by a statute that guarantees its functional, operational and financial independence.

5.7 Ensuring Quality Justice Delivery - Lok Adalats

What is the issue?

The Lok Adalats system must look beyond swift disposal of cases and focus on just and fair outcomes.

What are Lok Adalats?

- Access to justice for the poor is a constitutional mandate to ensure fair treatment under the legal system.
- Hence, Lok Adalats (literally, ‘People’s Court’) were established to make justice accessible and affordable to all.
- Lok Adalat is one of the alternative dispute redressal mechanisms.
- It is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably.
- Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.
- Motor-accident claims, disputes related to public-utility services, cases related to dishonour of cheques, and land, labour and matrimonial disputes (except divorce) are usually taken up by Lok Adalats.

How did Lok Adalats evolve?

- Lok Adalats had existed even before the concept received statutory recognition.
- In 1949, Harivallabh Parikh, a disciple of Mahatma Gandhi, popularised them in Rangpur, Gujarat.
- The Constitution (42nd Amendment) Act, 1976, inserted Article 39A to ensure “equal justice and free legal aid”.
- To this end, the Legal Services Authorities Act, 1987, was enacted by the Parliament.
- It came into force in 1995 -
 - i. to provide free and competent legal services to weaker sections of the society
 - ii. to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity

Why are Lok Adalats significant?

- The Indian judicial system is often criticised, perhaps justifiably, for its endemic delays and excessive backlogs.
- Over 66,000 cases are pending before the Supreme Court, over 57 lakh cases before various HCs.
- Over 3 crore cases are pending before various district and subordinate courts.
- As a result, litigants are forced to approach Lok Adalats mainly because it is a party-driven process, allowing them to reach an amicable settlement.

What are the advantages?

- Lok Adalats offer parties speed of settlement, as cases are disposed of in a single day.
- In this aspect, it is better when compared to litigation, and even other dispute resolution devices, such as arbitration and mediation.
- It also offers procedural flexibility, as there is no strict application of procedural laws such as the Code of Civil Procedure, 1908, and the Indian Evidence Act, 1872.
- There is also economic affordability, as there are no court fees for placing matters before the Lok Adalat.
- Another advantage is the finality of awards, as no further appeal is allowed.
- This prevents delays in settlement of disputes.
- More importantly, the award issued by a Lok Adalat, after the filing of a joint compromise petition, has the status of a civil court decree.

What are the concerns to be addressed?

- The Supreme Court, in State of Punjab vs Jalour Singh (2008), held that a Lok Adalat is purely conciliatory.
- It has no adjudicatory or judicial function.
- As compromise is its central idea, there is a valid concern that in the endeavour for speedy disposal of cases, it undermines the idea of justice.
- In a majority of cases, litigants are pitted against powerful entities such as insurance companies, banks, electricity boards, among others.
- In many cases, compromises are imposed on the poor who often have no choice but to accept them.
- In most cases, such litigants have to accept discounted future values of their claims instead of their just entitlements, or small compensations.
- It is being done just to bring a long-pending legal process to an end.
- Similarly, poor women under the so-called 'harmony ideology' of the state are virtually dictated by family courts to compromise matrimonial disputes.
- Even a disaster like the Bhopal gas tragedy was coercively settled for a paltry sum, with real justice still eluding thousands of victims.

6. JUDGMENTS

6.1 SC Verdict on Merit and Reservation

Why in news?

The Supreme Court, in the recent Saurav Yadav v State of Uttar Pradesh, has ruled that the quota policy was not intended at denying meritorious candidates job opportunities even if they belong to reserved categories.

What does this mean?

- Candidates belonging to reserved categories like SCs, STs, and OBCs can be appointed under open or general category, if they qualified on their own merit.
- These candidates will not be counted under the reserved category.

What is the case about?

- The case came up in the context of complications that arise from trying to specify the relationship between vertical and horizontal reservations.
- Articles 15(4) and 16(4) enable **vertical reservation**.
 - This is based on categorising the population in terms of SC, ST, OBC and General Category.
- On the other hand, **horizontal reservation** cuts across these vertical reservation categories.
 - These can include reservation for women, differently-abled persons, freedom fighters, army veterans and such

- The Supreme Court called it as “interlocking reservations” in *Indra Sawhney and Others v Union of India (1992)*.
- Earlier, the Court had made it clear that horizontal reservation ought to be generally understood in compartmentalised terms.
- This came as a nod to recognition of inequalities within each vertical category.
- But, in the present case, the problem was different. It is however illustrative of some of the interpretive absurdities of the system.

What is the challenge in the present case?

- There were 3,295 constable posts in the General Category of which 188 went to women (20% reservation for women).
- In filling up the General Category vacancies, OBC women were not considered.
- To note, the last female candidate selected in General Category secured 274.8298 marks. 21 applicants in the OBC female category scored more than these marks.
- However, these OBC candidates were not considered against the available General Category seats.
- In short, they were **excluded from competing from the General Category positions even though they have scored more**, simply because they were OBC.
- This, in effect, shows that some state governments are trying to use the open category seats as a quota for general category candidates or in other words, for upper castes.
 - Uttar Pradesh and Madhya Pradesh excluded reserved category women for consideration in the general category.
 - Rajasthan and Gujarat, amongst others, included them.

What is the present SC verdict?

- The Supreme Court has ruled against the UP government, clarifying the relationship between horizontal and vertical reservations.
- It reiterated the principle that groups eligible for horizontal reservation cannot be excluded from the open category seats just because they are from other vertical reservation categories.
- E.g. women from all categories (vertical) are eligible to be considered for the open category
- The open category seats are not meant to be a quota for the non-reserved categories.
- **Merit** - The Court has often, very unhelpfully, contrasted merit with reservation.
- In popular parlance too, merit is seen to be a deviation from reservation.
- But this has always been a mistaken view of the relationship between merit and reservation.
- In principle, reservation is an instrument for identifying merit in individuals from historically marginalised communities.
- In the present case, the UP government was ironically using the General Category to exclude meritorious candidates.
- By ruling this out, the court has rightfully upheld merit and reservation.
- The Court clarified on the fairness in the application of the selection criteria (merit) within the overall framework of reservation.

6.2 Defamation as Crime

Why in news?

Recently Supreme Court has acquitted the journalist Priya Ramani in a criminal defamation case.

What is the case all about?

- In 2018, Ramani had made allegations of sexual misconduct against the minister Mr. Akbar in the wake of Me Too movement in the twitter.

- Due to the media storm, Mr. Akbar was forced to resign his position as a Minister & later filed a criminal complaint for defamation against Ms. Ramani.
- Now the court acquitted her stating that woman cannot be punished for criminal defamation when she raises her voice against sexual harassment.

What was the Court Verdict?

- The court accepted the evidence of Ms. Ramani & said it is credible, detailed enough and said the right of reputation cannot be protected at the cost of right of life and dignity of woman.
- It has taken note of the unequal equations of power between the harasser and victim in most situations.
- The court highlighted that though the tweets may result in loss of dignity and self-confidence of women but she has every right to put her grievance at any platform of her choice.
- It also mentions that women need to have freedom, equality, equal opportunity and social protection, if they were to excel in their workforce & their participation is undesirably low.

6.3 Disturbing Order

Why in news?

Recently, Varanasi civil court ordered Archaeological Survey of India to conduct a survey to ascertain whether the Gyanvapi mosque was built over a demolished Hindu temple.

Why was the order issued now?

- Earlier petitioners have filed a suit as representatives of Hindu faith to reclaim the land on which the mosque stands.
- Now they have succeeded in getting the court to commission an ASI survey to look for the evidence.
- This order has been issued despite the fact that the Allahabad High Court reserved its order and it is yet to pronounce the ruling.
- It is not clear why the civil judge did not wait for the ruling and went ahead with the directive to the ASI.
- The court also said that by an order in 1997 it decided that the suit was not barred by Places of Worship (Special Provisions) Act, 1991.

What does Places of Worship Act, 1991 say?

- The act says all pending suits concerning the status of places of worship will get abated and none can be instituted.
- It also froze the status of all places of worship, barring the then disputed site in Ayodhya, as on August 15, 1947.
- An exception to this act is- any place of worship that was an archaeological site or ancient monument covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

What will happen after this order?

- It will open the floodgates for another prolonged religious dispute.
- It will likely give a fillip to majoritarian forces that earlier carried on the Ram Janmabhoomi movement over a site in Ayodhya.
- These forces conspired to illegally demolish the Babri Masjid Mosque.
- Moreover this order in gross violation of the explicit legislative prohibition on any litigation over the status of places of worship.

What can we infer from this?

- Regardless of the merits of either side's case, attempts to revive disputes buried by law is a serious setback to the cause of secularism.
- It undermines harmony and peaceful coexistence.
- It is highly worrying that court admitted such contention over religious sites.

- It also poses new challenges to the wisdom of Parliament.

6.4 Delhi HC Ruling on UAPA - Terrorist Act

Why in news?

- The Delhi High Court granted bail to three student activists, who were arrested under the stringent Unlawful Activities (Prevention) Act (UAPA).
- The Court also ruled that “terrorist activity” cannot be broadly defined to include ordinary penal offences.

What is the case about?

- The three accused were JNU students Natasha Narwal and Devangana Kalita, and Jamia Millia Islamia student Asif Iqbal Tanha.
- They were arrested in May 2020 in connection with the riots in north east Delhi.
- Communal clashes had broken out in north east Delhi on 24 February 2020 after violence between citizenship law supporters and protesters.

What did the Court observe?

- Section 15 of the UAPA defines the phrase ‘terrorist act’ in a very wide and detailed manner.
- The Court thus stressed on how terrorism was different even from conventional, heinous crime.
- It reasoned that “the more stringent a penal provision, the more strictly it must be construed”.
- This is a “sacrosanct principle of interpretation of penal provisions.”
- This ensures that a person who was not covered by the legislative ambit does not get roped into a penal provision.
- The Supreme Court itself, in the 1994 case of Kartar Singh v State of Punjab, flagged similar concerns.
- It addressed the misuse of another anti-terror law, the Terrorists and Disruptive Activities (Prevention) Act, 1987.

UNLAWFUL ACTIVITIES (PREVENTION) ACT (UAPA)

- The ‘terrorist act’ (including conspiracy and act preparatory to the commission of a terrorist act) was brought within the purview of UAPA by an amendment made in 2004.
- This came on the heels of Parliament repealing Prevention of Terrorism Act (POTA).
- POTA’s precursor, the Terrorist & Disruptive Activities (Prevention) Act (TADA) was repealed in 1995.
- Section 15 of the UAPA defines “terrorist act” and it is punishable with imprisonment for a term of at least 5 years to life.
- In case the terrorist act results in death, the punishment is death or imprisonment for life.
- To be forgotten was subject to reasonable restrictions based on countervailing rights such as free speech.

What constitutes a terror activity then?

- The UAPA is meant to deal with matters of profound impact on the ‘Defence of India’ and address threats to the very existence of our Nation.
- So, the extent and reach of terrorist activity must travel beyond the effect of an ordinary crime.
- It must not arise merely by causing disturbance of law and order or even public order.
- It must be such that it travels beyond the capacity of the ordinary law enforcement agencies to deal with it under the ordinary penal law.
- The Court clarified this, citing a 1992 SC ruling in the case of Hitendra Vishnu Thakur v State of Maharashtra.

What is the significance of the ruling?

- This is perhaps the first instance of a court calling out alleged misuse of the UAPA.
- UAPA relaxes timelines for the state to file chargesheets and has stringent conditions for bail.
- So, it gives the state more powers compared to the Indian Penal Code.

- But the Act is being used against individuals even in cases that do not necessarily fall in the category of “terrorism.”
- A total of 1126 cases were registered under UAPA in 2019, a sharp rise from 897 in 2015.
- It was frequently used against tribals in Chhattisgarh, those using social media through proxy servers in Jammu and Kashmir, and journalists in Manipur among others.
- The Court ruling has now, in effect, raised the bar for the State to book an individual for terrorism under the UAPA.

6.5 Delhi High Court on ‘Right to be Forgotten’

Why in news?

The Delhi High Court, in a recent case, upheld the view that the “Right to Privacy” includes the “Right to be Forgotten” and the “Right to be Left Alone”.

What is the case on?

- The court’s order came in response to a suit filed by a Bengali actor.
- Some of the demonstrational videos of her that did not go for streaming are in circulation in the internet.
- She has not permitted even the producer of the videos to publish them.
- The videos are being portrayed in a manner that infringes her privacy.
- Earlier, Ashutosh Kaushik who won a reality TV show made a plea saying that his videos, photographs and articles etc. be removed from the internet citing his “Right to be Forgotten”.

What are the Court’s remarks?

- The Court has already held that “right to privacy” includes the right to be forgotten and the right to be left alone as “inherent aspects”.
- Explicit videos that are being circulated have a clear and immediate impact on the reputation of the person seen in the videos.
- The court thus called for protection of the plaintiff from invasion of her privacy on account of such publication/transmission of the videos.

How legally sound is the ‘Right to be Forgotten’ in India?

- **Fundamental right** - In 2017, the Right to Privacy was declared a fundamental right by the Supreme Court in its landmark verdict.
- It held that the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution.
- It is thus part of the freedoms guaranteed by Part III of the Constitution.
- **Section 20 of the Personal Data Protection Bill** - The data principal shall have the right to restrict or prevent the continuing disclosure of his/her personal data by a data fiduciary where such disclosure -
 1. has served the purpose for which it was collected or is no longer necessary for the purpose;
 2. was made with the consent of the data principal under section 11 and such consent has since been withdrawn; or
 3. was made contrary to the provisions of this Act or any other law for the time being in force.

Right to be forgotten or the right to erasure - The right to have personal information removed from the Internet and other directories.

Right to be left alone - The State or the society will not interfere in the individual choices of a person so long as they do not cause harm to others. State intrusion is allowed only if necessitated by a just, reasonable, and fair law.

How is it in practice?

- Despite the Supreme Court’s judgment, the right remains underdeveloped in India.
- For now, individuals may request data hosts to take down some content.

- It may be taken down based on the policies of the respective hosts.

What are the concerns?

- There is a general consensus that people should be allowed to modify or delete information uploaded by themselves.
- However, whether this extends to information uploaded by third parties is uncertain.
- If the person was never convicted, should they continue to bear the infamy is a big question.
- The U.S. Supreme Court, in a similar case, has disallowed suppression of criticism and accountability, especially against powerful figures.
- There may be significant merit to the right to be forgotten.
- But, whether it extends to the removal of judgments of courts of record is questionable.
- Judgments are published for good reasons. Trials held under public scrutiny act as a check against judicial arbitrariness.

What could have been done?

- This is perhaps the first instance of a court ordering the removal of access to its complete final judgment from certain spaces.
- Instead, the Delhi HC could have ordered that the name and personal details of the petitioner be redacted.
- And the public access to the judgment itself could have been maintained.
- The Streisand effect should also be taken into account.
- [It is a social phenomenon that occurs when an attempt to hide, remove, or censor information has the unintended consequence of further publicizing that information, often via the Internet.]
- The issue has been listed for a final hearing and the outcome is keenly awaited.

6.6 Kanwar Yatra - Supreme Court Intervention

Why in news?

- The Supreme Court asked the Uttar Pradesh government to either withdraw the decision to allow the Kanwar yatra or invite an order from the court, given the fear of a third Covid-19 wave.
- Uttar Pradesh government cancelled the Yatra after the Supreme Court intervention.

What is the case about?

- In the Kanwar yatra, the Kanwarias, devotees of Shiva, make a pilgrimage to collect water from the Ganga.
- It was not held last year (2020) due to COVID-19.
- The Uttarakhand government had earlier cancelled the yatra in its territory.
- It rightly heeded to warnings by experts that such large gatherings posed a major risk to public health, amidst fears of a third wave.
- But Uttar Pradesh CM Yogi Adityanath appeared keen that the pilgrimage be held this year (2021).
- The Court was disturbed by reports of the plan to conduct the yatra, resulting in the initiation of suo motu proceedings.

What were the Court's remarks?

- The Court disagreed with even the idea of a 'symbolic yatra' in deference to religious sentiment.
- It emphasised, "the health of the citizenry of India and their right to 'life' are paramount".
- It said that all other sentiments, albeit religious, were subservient to this most basic fundamental right.
- This is a matter which concerns every one of us as citizens of India, and goes to the very heart of Article 21 of the Constitution of India.

Why is the case significant?

- The organisation of the Kumbh Mela earlier in 2021 was seen as responsible for a surge in infections in the run-up to the disastrous second wave.
- There may be a case for lockdown relaxations aimed at economic revival and restoration of normality in most parts of the country.
- But there cannot be justifications for large gatherings in the name of religion.
- Clearly, right to life and safety takes precedence over religious rights.
- Any relaxation after a long spell of severe curbs will have to be based on a scientific assessment of the number of daily infections, the rate of positivity and signs of fall in cases.

6.7 SC Verdict on 97th Constitutional Amendment

Why in news?

The Supreme Court in a majority verdict quashed Part IX B of the Constitution on cooperatives inserted by 97th constitutional amendment.

What is the recent case?

- Part IXB delineated the jurisdictions of what State legislation on cooperative societies ought to contain.
- This applied to provisions on -
 - i. the maximum number of directors in each society
 - ii. reservation of seats for SCs, or STs, and women
 - iii. the duration of the terms of elected members, among others
- The question before the Court was whether the 97th Amendment impacted the legislative domain of the State Legislatures.
- If so, then it would require ratification by half of the states' legislatures, in addition to the required two-thirds majority in Parliament.
- The Gujarat High Court had found the amendment invalid for want of such ratification.
- It struck down certain provisions of the amendment.
- It held that the Parliament could not enact laws with regard to cooperative societies as it was a State subject.
- The Centre challenged this 2013 decision of the Gujarat High Court in the Supreme Court.
- It believed that the subject of 'cooperative societies' in the State List was not altered in any way by the 97th Amendment.
- It only outlined the guidelines on any law on cooperatives that the State Assemblies may enact.
- The provision does not denude the States of its power to enact laws with regard to cooperatives.
- So, it felt the ratification by states was not necessary.

97TH CONSTITUTIONAL AMENDMENT

- It dealt with issues related to effective management of co-operative societies in the country.
- It was passed by the Parliament in 2011 and had come into effect from 2012.
- The change in the Constitution has amended Article 19(1) (c).
- The Act gave protection to the cooperatives and inserted Article 43 B and Part IX B.

What is the SC verdict?

- The Supreme Court, by a 2:1 majority, upheld the Gujarat HC judgment holding the amendment invalid.
- But this is only in relation to cooperatives under the States.
- The elaborate amendment would hold good for multi-State cooperative societies, on which Parliament was competent to enact laws.
- So, the Supreme Court upheld the validity of the 97th constitutional amendment.
- It has however struck down part IX B of the Constitution.

What does this imply?

- Significantly, the 97th Constitutional Amendment infused autonomy, democratic functioning and professional management into the cooperatives.
- But the recent verdict implies that even well-intentioned efforts towards reforms cannot be at the cost of the quasi-federal principles.
- In other words, reforms in cooperative sector should not be at the cost of federal principles.
- The ratification requirement will apply if there is any attempt to constrain the State legislatures in any way.
- In the absence of States' ratification, the amendment that sought to prescribe the outlines of State laws on a State subject becomes invalid.
- The judgment may also mean that the concern expressed, that the formation of a new Ministry of Cooperation would affect federal principles, could be true.
- Having said all these, undeniably, the cooperative movement needs reform and revitalisation, (within constitutional parameters).

6.8 SC Order on Govt's' Power to Withdraw Cases Against MPs-MLAs

Why in news?

The Supreme Court has spelled out limitations on governments' power to withdraw cases against MPs-MLAs.

What was the judgment?

- **Case** - In August 2020, Karnataka government decided to drop charges in 61 criminal cases, several of which involved elected representatives and ministers.
- **Karnataka HC** restrained the state government from acting on that order.
- The High Court rejected on the ground that the courts are duty-bound to assess whether *prima facie* a case is made or not.
- **Principles behind HC's order**
 1. Due process to be followed in criminal cases involving members of the political class.
 2. Public prosecutors had the right to disagree when governments invoked Article 21 of the CrPC to withdraw criminal cases.
- SC endorsed the HC's stance in restoring **public prosecutor's autonomy** and has held the following limitations
 1. Power to withdraw cases "cannot be used for political purposes."
 2. No prosecution against a sitting or former MP/MLA shall be withdrawn without the leave of the high court.
 3. The court can scrutinize the nature and gravity of the offense to determine if the withdrawal of the prosecution would subserve the administration of justice.

Directive - Political parties to publicly disclose the criminal antecedents of candidates put up by them in elections to Parliament and state assemblies.

Why is the case significant?

- Governments often overlook the primacy of public interest in favoring members of ruling parties or alliances.
- Money and muscle power in politics continue to undermine democracy.
- Various governments in the States and Centre have failed to abide by the SC's 2020 directive.
- This directive enables voters to have all necessary information, for them to exercise their right to franchise in an effective manner.
- **Recommendation** - Addressing the "malignancy of criminalization of politics" and ensuring cleaner politics call for far-reaching changes in the system.

6.9 Censorship Rulings

Why in news?

Different courts gave conflicting rulings involving the broadcast of two shows.

What is the problem?

- The two shows that are in focus are, a program on Sudarshan TV and the Netflix documentary Bad Boy Billionaires.
- In each case, one court restricted the broadcast and another refused to interfere.
- It raises question on the fundamental right to freedom of speech and expression.
- It also raises question of whether these shows can be restrained prior to broadcast or publishing.

What are the cases about?

- **Sudarshan TV case** -The channel's Bindas Bol was scheduled for telecast on August 28, 2020.
- A 49-second trailer posted on Twitter claimed the show would contain an expose on conspiracy to infiltrate Muslims in government service.
- The Supreme Court (SC) refused to stay the broadcast.
- But, the Delhi High Court (HC) granted an interim injunction restraining the telecast.
- Later, the same HC Bench refused to vacate its stay order.
- **Netflix case** - Following a plea, a court in Bihar passed an interim order staying the release of a documentary.
- But, the Delhi HC had refused to grant a stay against the release.

What are the provisions of the Cable TV Network Act?

- The Delhi HC noted that the proposed telecast on Sudarshan TV violated the code prescribed in the Cable TV Network (Regulation) Act, 1995.
- **Section 5** prescribes that no person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.
- **Section 19** gives the power to prohibit a broadcast in the public interest.
- This can be done if the programme is likely to promote disharmony or feelings of enmity between different religious, racial, linguistic or regional groups or which is likely to disturb the public tranquillity.

Why did the courts decide the same issue differently?

- **Sudarshan TV case** - The Ministry of I&B informed the SC that it had received complaints against the broadcast.
- It had sought the channel's response.
- The SC said that the petition against the channel's show raises issues bearing on the protection of constitutional rights.
- However, it desisted from imposing a prior restraint on publication or the airing of views based on an unverified transcript of a trailer.
- It noted that under statutory provisions, competent authorities are vested with powers to ensure compliance with the law.
- **Netflix case** - The Delhi HC dismissed petition seeking a stay against the release, saying only an individual was personally affected by it.
- It added that the appropriate remedy would be to file a civil suit.

What is prior restraint?

- It is prohibiting the exercise of free speech before it can take place.
- Imposition of pre-censorship or prior restraint on speech is a violation of fundamental right under Article 19(1)(a) of the Constitution.

- [Article 19(1)(a) - Right to freedom of speech and expression.]
- Any restrictions imposed on this right have to be found under Article 19(2) of the Constitution.
- Article 19(2) lists out reasonable restrictions that include interests of the sovereignty and integrity of India, security of the state, public order, and incitement to an offence.
- Any legislation that imposes a prior restraint on speech should show that the reason for such restraint can be found under Article 19(2).
- It is generally allowed only in exceptional circumstances.
- The speech can be restricted only when judged on its actual content.
- The speech cannot be restricted pre-emptively based on perceptions of what it could be.

How did the court test this?

- The court has adopted the **proximity test** to determine if public order would be affected to allow prior restraint.
- Proximity test means that the state is required to demonstrate a proximate link between public order and the speech.

What are the previous SC rulings?

- The 1950 SC rulings held that legislation imposing prior restraint on the press were unconstitutional citing that the restrictions were too broad.
- These rulings led to the First Amendment of the Constitution.
- This amendment tinkered with the scope of restrictions on free speech under Article 19(2), by adding the word “reasonable” before the “restrictions”.

6.10 Sterlite Issue

Why in news?

The Madras High Court has refused to allow the reopening of the Sterlite copper plant at Thoothukudi, Tamil Nadu.

What is the story behind?

- The plant was closed in 2018 after 13 people were killed by the police.
- The police fired on protesters demonstrating outside the factory premises against environmental pollution.
- The merits and demerits of the Sterlite case have been extensively discussed in courts.

What was the company's response to the Madras HC order?

- The company has moved the Supreme Court against the order.
- The issue will be further dissected when the SC takes it up again.
- Ultimately, the apex court will have the final say in the matter.
- The whole discussion, thus far, has been on the alleged environmental impact of the project in and around the region.
- The other key issues have been deliberately avoided.

How did the factory find refuge in Tamil Nadu?

- The project was driven out by Maharashtra and Goa for various reasons.
- Surprisingly, it found refuge in Tamil Nadu.
- The initial culpability should rest with the State government of the day that allowed the project to come into the State in the first instance.
- The State has been under the dispensation of either of the two Dravidian parties, all through the development of the Sterlite plant.

- There were intermittent protests against the project all these years. But the project went from strength to strength.
- With close to 4,000 direct and 20,000 indirect jobs, the project helped the region around the port to prosper.
- It also helped India become a copper-exporting nation.

What are the impacts of the closure?

- With the closure of the plant, India has been forced to become a net importer of copper after nearly 18 years.
- The closure resulted in the complete evaporation of livelihoods in the entire region.
- The Covid-19 pandemic has only worsened the misery.

How did the problem assume significance?

- State leaderships of all hues let the project continue all these years, despite the intermittent anti-Sterlite sentiments.
- All of a sudden, the problem assumed a magnified proportion when the company proposed an expansion.
- It took an ugly turn when police fired on protesters.
- In this instance, the government ordered immediate closure of the plant after the police firing outside the plant premises.
- Sterlite has now become a reference point – for all the wrong reasons – for any prospective manufacturers to set up plants in Tamil Nadu.
- Sterlite was the alibi when a rifle project was moved to Amethi by Russia.

What is needed?

- In a socioeconomic context, a trade-off is an inevitable necessity in the debate between development and environment.
- With a population of over 130 crore, the issue of development cannot be wished away. This calls for a responsible **political leadership**.
- It also needs **professionalism** from assorted government agencies like the Pollution Control Board.

6.11 Misuse of Security Law

Why in news?

The Allahabad High Court laid bare the malefic manner in which Dr. Kafeel Khan was detained under the National Security Act (NSA), 1980.

What is NSA?

- It is a preventive detention law.
- It empowers the Central and State governments to detain a person for upto 12 months without any charge.

What is the story behind?

- Dr. Kafeel Khan addressed the students of Aligarh Muslim University in December, 2019.
- His speech on the Citizenship (Amendment) Act was deemed inflammatory weeks after he had made it.
- For this speech, he was arrested on January 29, 2020.
- Shortly after he was granted bail in an earlier case, he was detained under the NSA on February 13, 2020.

What was the earlier case?

- In 2017, Dr. Khan, a government doctor, was suspended after a shortage of oxygen cylinders took a deadly toll among children admitted in a Gorakhpur Hospital.
- The circumstances indicated that he took strenuous efforts to ensure continuous oxygen supply.
- However, he was arrested on charges of negligence and corruption.
- He spent months in prison before an inquiry absolved him of the charges of negligence and corruption.

What did the Allahabad High Court rule?

- The court has found that the speech does not disclose any effort to promote hatred or violence; and nowhere does it threaten peace in Aligarh.
- It says that the District Magistrate (DM) of Aligarh used selective reading of some phrases and ignored its true intent while passing the detention order under NSA.
- The grounds for detention provided nothing that indicated any attempt by Dr. Khan to disturb peace and tranquillity between the speech in December 2019 and his detention in February 2020.

What is the inference?

- The inference is that the NSA was invoked only to avoid releasing him following the Chief Judicial Magistrate court's order granting him bail.
- The process to invoke the NSA itself began only after the bail order, the Bench noted.

What is unacceptable?

- The use of stringent national security laws against political dissenters, in the absence of any appeal to violence, should be condemned in all cases.
- However, there is something unacceptable about the resort to preventive detention just to frustrate bail orders.
- The authorities have shown excessive zeal in dealing with Dr. Khan.
- Though the verdict gives him relief, it comes after he spent 7 months in jail. And his case will someday go to trial.

What does this case show?

- The case of Dr. Khan is poor advertisement for India's democratic credentials.
- It brings to light India's propensity to criminalise dissent and single out individuals for persecution.
- It also displays a general disregard for basic rights.

6.12 Overcrowded Jails

Why in news?

Recently, the judgment of the Supreme Court in a bail petition has offered opportunity to look into the state of affairs of jails.

What is the case about?

- The imprisonment of a priest with Parkinson's disease and a senior academic suffering from a serious eye infection after contracting COVID-19, has exposed the overcrowded condition in the Taloja jail.
- As a result, the Bombay High Court has granted hospitalisation and medical check-ups to the prisoners but their pleas for interim medical bail was deferred.
- There is also a stark disparity between what the jail authorities say about the jail conditions and the evidence placed by the advocates for the undertrials.
- The conditions in several Indian prisons are pathetic with zero or next to zero monitoring by committees.
- Jails are overcrowded, have poor hygiene conditions, and has little or no statutory monitoring.

What was the verdict of the court?

- The SC urged the courts to actively use the option of house arrest in cases where age, health conditions and antecedents of the accused are a criterion.
- It expressed special concern over the overcrowding of jails — on an average at least 118 per cent higher than the limit.
- Following this order, the Calcutta High Court, in the case of three serving elected officials and ministers of the TMC-led Bengal government, ordered house arrest.
- The court even allowed them to perform some official duties under observation.

What is the global status of house arrest?

- In Medieval Europe, St Paul at the age of 60 was awarded house arrest for two years where he continued his profession as a tent maker and paid his own rent.
- Galileo Galilei, the Florentine physicist, philosopher and astronomer after a second trial in Rome in 1633 was confined to house arrest for the rest of his life.
- In more recent times in the West, some societies use it post-trial and conviction as confinement with surveillance.
- Elsewhere, house arrest has been used to repress political dissent before trial.

What is the case with India?

- Only a few governments have evolved any legal understanding around the issue of political prisoners.
- West Bengal has engaged with this issue and, in 1992, passed the West Bengal Correctional Services Act that provides for residence in correctional homes.
- Also, under Section 19(4), it has created a special categorisation of a prisoner as a political prisoner.
- Any offence committed or alleged to have been committed in furtherance of any political or democratic movement is regarded as a political offence.

What can we infer from this?

- The pandemic has highlighted the inhumane conditions present in the Indian prisons.
- House arrest as a punitive measure has been viewed differently depending on the socio-political context.
- Due to the poor conditions of Indian prisons and the absence of political will in proper monitoring, the option of house arrest must be seen as a positive opportunity.
- The familiarity of the undertrial with her or his place of residence and the ability to get prompt medical attention must surely bend courts towards actively using and implementing this as an option.
- In Independent India, house arrest can be used as a means of restricting movement and ensuring surveillance when an individual or groups of individuals are subject to preventive detention.

7. ELECTIONS

7.1 Supreme Court Order on State Election Commissioners

Why in news?

- The Supreme Court (SC) recently ruled that the State Election Commissioners (SECs) across the country should be completely independent.
- They should not be persons holding office with the central government or a state government.

What is the case about?

- The observation came in a case relating to the municipal elections in Goa.
- The Goa government had moved the Supreme Court against a ruling of the High Court of Bombay at Goa.
- The HC had quashed an order of the Goa government.
- The order determined the reservation of seats in wards of five of the 11 municipal councils that were set to go to polls.
- The High Court ruling had come on a clutch of petitions filed by Goan residents.
- They had urged the court to set aside an earlier order of the Director of Municipal Administration.
- The petitioners alleged that, in the order, wards were arbitrarily reserved.
- Also, constitutional provisions mandating 33% seats for women and rotation of seats reserved for SC/ST candidates were not followed.

- The HC was of the opinion that the course adopted by the state government violates the constitutional mandate of law in reserving one-third seats for women in all local body polls.
- The High Court directed the Director, Municipal Administration to carry out the reservation of the wards afresh “rectifying gross illegalities”.
- It was also asked to issue a fresh election schedule.
- The state government had contended that the courts cannot interfere in the election schedule since they were imminent.
- But the Supreme Court has upheld the ruling of the High Court.

What did the Supreme Court rule?

- The SC directed the Goa government to redo the exercise of delimitation and reservation of municipal wards for women and SC/ST candidates in five municipal councils that were set to go to polls in a week.
- The Court also directed the State to appoint an independent SEC.
- The government is now in the process of doing.
- The Court has also asked all SECs who are under the direct control of the respective State governments to step down from their posts.
- It has done this by invoking its extraordinary power under Article 142 of the Constitution.
- The Court has boosted the power of the SEC by holding that it is open to the SECs to revoke any violations of the law made by the State government in the course of preparing for local body polls.

What were SC's observations on State Election Commissioners?

- The SEC (State Election Commissioner) in Goa was the state Law Secretary.
- Noting this, the apex Court described it as the “most disturbing feature of the case”.
- The court noted that the Law Secretary, an IAS officer, was appointed SEC by the Goa Governor in November, 2020, handing him an additional duty.
- In this regard, the Court said the following:
 - The SEC is an important constitutional functionary who is to oversee the entire election process in the state for panchayats and municipalities.
 - The SEC thus has to be a person who is independent of the State Government.

What makes the ruling significant?

- More than a quarter century has elapsed since the Constitution was amended to make urban and rural local bodies a self-contained third tier of governance.
- But it is evident that there is inadequate devolution of powers to them.
- Their relative lack of autonomy is a key factor.
- On a different note, a key concern is the manner in which their representatives are elected.
- Notably, it is often beset by controversies.
- Local polls are often marred by violence, and charges of arbitrary delimitation and reservation of wards.
- A key factor in any local body polls being conducted in a free and fair manner is the extent to which the SEC is independent and autonomous.
- Unfortunately, most regimes in the States appoint senior bureaucrats from among their favourites to this office.
- So, in practice, SECs frequently face charges of being partisan.
- Routine exercises such as delimiting wards, rotating the wards reserved for women and SCs and fixing election dates become mired in controversy.
- This cannot be generalised in respect of all States and all those manning the position.
- However, it is undeniable that SECs do not seem to enjoy the confidence of political parties and the public.

- Seen in this context, the Supreme Court's recent ruling has significantly boosted the independence of SECs in holding local body elections.

7.2 Defining the Extent & Nature of ECI's Powers

What is the issue?

- With recent assembly elections in some states, the role of Election Commission of India (ECI) is again into sharp focus.
- It becomes imperative to reflect on the confusion about the extent and nature of the powers that are available to the Election Commission.

How has the ECI's role and powers evolved?

- Interestingly, in the ECI's history, before T.N. Seshan came on the scene as the Chief Election Commissioner, no one ever knew or felt that the ECI had any powers.
- Seshan discovered the ECI's powers hidden in Article 324 of the Constitution.
- It was then used to discipline unruly political parties which had till then believed that it was their birth right to rig elections.
- From then on, there was a very high level of confidence about the ECI's role restoring the purity of the elected legislative bodies in the country.
- It became easier for Seshan to locate the powers of the ECI after the Supreme Court's ruling in Mohinder Singh Gill vs Chief Election Commissioner (AIR 1978 SC 851).
- The Court ruled that Article 324 contains plenary powers to ensure free and fair elections.
- These are vested in the ECI which can take all necessary steps to achieve this constitutional object.
- All subsequent decisions of the SC reaffirmed Gill's decision.
- Thus, the ECI was fortified by these court decisions in taking tough measures.

How does the model code of conduct work?

- The model code of conduct issued by the ECI is a set of guidelines.
- This is meant for political parties, candidates and governments to adhere to during an election.
- This code is based on consensus among political parties.
 - Its origin can be traced to a code of conduct for political parties prepared by the Kerala government in 1960 for the Assembly elections.
 - It was adopted and refined and enlarged by the ECI in later years.
 - It was enforced strictly from 1991 onwards.
- The code has been issued in exercise of ECI's powers under Article 324.
- Besides the code, the ECI issues from time to time directions, instructions and clarifications on issues that crop up in the course of an election.

What are the grey areas?

- Since it is a code of conduct framed on the basis of a consensus among political parties, it has not been given any legal backing.
- It was recommended that the code should be made part of the Representation of the People Act 1951.
- But, the ECI did not agree to it.
- This is because once it becomes a part of law, all matters connected with its enforcement will be taken to court, which would delay elections.
- The position taken by the ECI is sound from a practical point of view.
- But then, the question about the enforceability of the code remains unresolved.

- Moreover, the commission may suspend or withdraw recognition of a recognised political party if it refuses to observe the model code of conduct.
- Paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968 mentions this.
- The withdrawal of the recognition of a party recognised under these orders seriously affects the functioning of political parties.
- When the code is legally not enforceable, the ECI resorting to a punitive action such as withdrawal of recognition is arbitrary.
- Besides these, there are two crucial issues which need to be examined in the context of the model code and the exercise of powers by the ECI under Article 324:
 1. Transfer of officials
 2. Administrative moves

What is the role in transfer of officials?

- Abrupt transfer of senior officials working under State governments by an order of the commission is evident.
- Probably, the observers of the ECI report to it about the conduct of certain officials of the States where elections are to be held.
- The ECI apparently acts on such reports.
- It thus orders the transfer on the assumption that the presence of those officials will adversely affect the free and fair election in that State.
- **Procedure** - Transfer of an official is within the exclusive jurisdiction of the government.
- It is actually not clear whether the ECI can transfer a State government official in exercise of the general powers under Article 324 or under the model code.
 - The code does not say what the ECI can do; it contains only guidelines for the candidates, political parties and the governments.
 - Further, Article 324 does not confer unhampered powers on the ECI to do anything in connection with the elections.
- **Supreme court** - In Mohinder Singh Gill's case, the Court had made it abundantly clear that the ECI can draw power from Article 324 only when no law exists which governs a particular matter.
- It means that the ECI is bound to act in accordance with the law in force.
- Transfer of officials, etc is governed by rules made under Article 309 of the Constitution.
- This cannot be bypassed by the ECI under the purported exercise of power conferred by Article 324.

How is ECI's interference in the administrative moves?

- Another issue relates to the ECI's intervention in the administrative decisions of a State government or even the union government.
- According to the model code, Ministers cannot -
 - i. announce any financial grants in any form
 - ii. make any promise of construction of roads, provision of drinking water facilities, etc
 - iii. make any ad hoc appointments in the government, departments or public undertakings
- But in reality, no government is allowed by the ECI to take any action, administrative or otherwise, if the ECI believes that such actions or decisions will affect free and fair elections.
- **Recent case** - ECI's recent decision to stop the Kerala Government from continuing to supply kits containing rice, pulses, cooking oil, etc is a case in point.
- The State government has been distributing such free kits for nearly a year to meet the situation arising out of the pandemic.
- The decision to stop it was reportedly on a complaint from the Leader of the Opposition in the Assembly.

- The question now is whether the ECI could have taken such a decision either under the model code or Article 324.
- The model code does not provide any clue.
- As regards Article 324, the key question is whether distribution of food items to those in need in a pandemic will affect free and fair elections.
- **SC ruling** - The Supreme Court had in S. Subramaniam Balaji vs Govt. of T. Nadu & Ors (2013) held the following.
- The distribution of colour TVs, computers, cycles, goats, cows, etc, done or promised by the government is in the nature of welfare measures.
- It is in accordance with the directive principles of state policy.
- Therefore, it is permissible during an election.
- So, in this line, the distribution of essential food articles which are used to stave off starvation cannot logically be an electoral malpractice.
- Further, Section 123 (2)(b) of the Representation of the People Act, 1951 says that declaration of a public policy or the exercise of a legal right will not be regarded as interfering with the free exercise of the electoral right.

7.3 Time for Simultaneous Polls

What is the issue?

- Elections in four states and one UT in March-April 2021 are suspected to have contributed to the second wave of Covid infections.
- This has again called for a well-reasoned debate on the concept of “one nation, one election.”

Why simultaneous elections?

- Simultaneous Elections refers to structuring the Indian election cycle so that elections to Lok Sabha and State Assemblies are synchronized.
- The idea has been around since at least 1983, when the Election Commission first mooted it.
- The concept of simultaneous elections needs to be debated mainly around five issues:
 1. Financial costs of conducting elections
 2. cost of repeated administrative freezes
 3. visible and invisible costs of repeatedly deploying security forces
 4. campaign and finance costs of political parties
 5. the question of regional/smaller parties having a level playing field

What about the cost factor?

- Directly budgeted costs of conducting elections are around Rs 300 crore for a state the size of Bihar.
- But there are other financial costs, and incalculable economic costs.
- Before each election, a “revision” of electoral rolls is mandatory.
- Each election means teachers missing from schools and colleges.
- The economic costs of lost teaching weeks, delayed public works, badly delivered or undelivered welfare schemes to the poor have never been calculated.
- The Model Code of Conduct (MCC) has economic costs too.
- Works may have been announced long before an election is announced.
- But tenders cannot be finalised, nor work awarded, once the MCC comes into effect.
- Add to this the invisible cost of a missing leadership.

- The time for Ministers' (politicians too) ministerial duties reduces sharply.
- There are also huge and visible costs of deploying security forces and transporting them, repeatedly.
- A NITI Aayog paper says that the country has at least one election each year; actually, each state has an election every year, too.
- So, these financial and economic costs are incurred repeatedly.

Will simultaneous elections impact regional parties?

- There are fears that the Centre might gain greater power and regional parties might be at a disadvantage.
- Fixed five-year terms for state legislatures in fact take away the central government's power to dissolve state assemblies.
- But regional parties may be at a disadvantage because in simultaneously held elections, voters are likely to predominantly vote one way.
- This might give the dominant party at the Centre an advantage.
- Nevertheless, in any case, votes cast the same way may help regional parties tot up a nice enough number in Parliament to be a part of the central government.

What is the concern with instability?

- There is an argument that if a government loses its majority in the House, it necessarily means fresh elections.
- Firstly, with the current anti-defection law, it is virtually impossible for a ruling party/coalition to lose numbers.
- Secondly, even if a Prime Minister or Chief Minister loses a vote of confidence, those who voted against him/her have a majority.
- And their leader should become the Prime Minister or the Chief Minister.
- So, the dissolution of Parliament or Assembly is not a necessary consequence.

7.4 Electoral Bonds Scheme

Why in news?

Recently Supreme Court refused to stay the sale of electoral bonds ahead of Assembly elections.

What is the issue with Electoral Bond scheme?

- It is a promissory note which can be bought by any Indian citizen or company incorporated in India from select branches of SBI which can be donated to any eligible political party.
- In India, for the last three years, electoral bonds have become the dominant method of political party funding.
- It allows for limitless and anonymous donations to political party which means that well-resourced corporations can buy politicians by paying immense sums of money.
- Since the donations are routed through the SBI, it is possible for the government to find out who is donating to which party.
- It becomes a very effective way to squeeze donations to rival political parties.

Why transparency in political funding is required?

- If democracy has to thrive, the role of money in influencing politics ought to be limited.
- Across the Democratic societies, it has been proven that money is the most effective way of buying policy and it skews the playing field towards one parties' favour.
- When citizens are unable to find the source of funds for the political parties, it denies them the right to know the complete information of candidate contesting in the election.
- Moreover Supreme Court held that right to know, especially in the context of elections, is an integral part of the right to freedom of expression.

- By keeping this knowledge from citizens and voters, the electoral bonds scheme violates core principles of the Indian Constitution.
- In many advanced countries, elections are funded publicly and principles of parity ensure that there is no big resource gap between the ruling party and the opposition.
- In countries where elections are not publicly funded, there are caps on financial contributions to political parties.
- This guarantees a somewhat level playing field among the political parties.
- But the government justifies the scheme by arguing that it prevents the flow of black money into elections.

Why Judiciary needs to act now?

- One of the most critical functions of an independent judiciary in a functioning democracy is to referee the fundamentals of the democratic process.
- Governments derive their legitimacy from elections and it is elections that grant governments the mandate to pursue their policy goals.
- The electoral legitimacy of the government is questionable if the electoral process has become questionable.
- Since the government itself cannot regulate the process, the courts remain as the only independent body that can adequately enforce the ground rules of democracy.
- Hence courts must be sensitive to and cognisant of laws and rules that seek to skew the democratic process and the level playing field.

What can we infer from this?

- It is unclear that how donor anonymity, limitless donations prevents the flow of black money.
- Since this scheme allows foreign source funding to political parties, the prospects of institutional corruption increases.
- It is clear that the objection to the scheme is not objections rooted in political morality but they are constitutional objections.
- The right to know has long been enshrined as a part of the right to freedom of expression.
- Moreover no cap in political donations violates the principle of equality before law and creates arbitrariness in the election process.
- Thus, the electoral bonds scheme deserves to be struck down by the courts as unconstitutional.

8. LEGISLATIONS AND POLICIES

8.1 Constitution (Scheduled Castes) Order (Amendment) Bill 2021

Why in news?

- The Government of India tabled the Constitution (Scheduled Castes) Order (Amendment) Bill 2021.
- It groups 7 SC sub-sects under one name (Devendrakula Velalar).

What is the Bill about?

- The Tamil Nadu government proposed certain modifications to the list of the Scheduled Castes.
- It groups seven Scheduled Caste sub-sects in Tamil Nadu under the heritage name 'Devendrakula Velalar'. These castes existed as separate entries.
- Any change in the lists of the Scheduled Castes and Tribes requires a constitutional amendment.
- The Constitution (Scheduled Castes) Order (Amendment) Bill 2021 would give effect to the change.
- The grouping of the castes is a long-standing political demand in Tamil Nadu.
- However, the Bill does not address the other demand of some community leaders i.e. removal of their castes from the Scheduled Caste list.

What is the rationale for grouping?

- Caste-based political parties and organisations feel that shedding individual Dalit caste tags would help in the social advancement of the community.
- Their argument is that existing caste names were being used more in a derogatory sense to belittle the community.
- Besides, these seven Scheduled Caste subsects share similarities, culturally.

What are the concerns and challenges with the move?

- Delisting and shuffling of castes from one reserved social class to another is fraught with political and administrative risks.
- It could disturb the internal sharing of the communal reservation quota pool by existing castes.
- Also, it could invite objections from other communities or spur political demands for similar reclassification.
- Among the Dalits too, opinion is divided on the grouping of subsects under a common title.
- They argue that Dalits as such cannot be treated as a homogeneous group.
- There are differences within the entities in terms of social status and geographical identity.

CONSTITUTION (SCHEDULED CASTES) ORDER (AMENDMENT) BILL, 2021

CONSTITUTIONAL PROVISIONS

- The Constitution empowers the President to specify the Scheduled Castes (SCs) in various states and union territories.
- Further, it permits Parliament to modify this list of notified SCs.

PROVISIONS OF THE BILL

- The Constitution (Scheduled Castes) Order (Amendment) Bill, amends the Constitution (Scheduled Castes) Order, 1950.
- The Bill replaces the entry for the Devendrakulathan community with DevendrakulaVelalar, which includes 7 communities that are currently listed separately within the Act.
- The Bill also replaces the separate entry for Kadaiyan community with the Kadaiyan community living in certain districts.
- Members of the Kadaiyan community living in other than the said districts are included in the DevendrakulaVelalar grouping.

8.2 Constitution (Scheduled Tribes) Order (Amendment) Bill 2021

Why in news?

- Parliament has passed the Constitution (Scheduled Tribes) Order (Amendment) Bill 2021.
- The Bill seeks to amend the nomenclature of certain tribes from Arunachal Pradesh mentioned in the Constitution (Scheduled Tribes) Order, 1950.

What are the key features?

- Part-XVIII of the 1950 Order lists 16 tribes of Arunachal which are - Abor, Aka, Apatani, Nyishi, Galong, Khampti, Khowa, Mishmi [Idu, Taroon], Momba, Any Naga tribes, Sherdukpen, Singpho, Hrusso, Tagin, Khamba and Adi.
- The Bill -
 - modifies Part-XVIII of the Schedule to the Constitution (Scheduled Tribes) Order, 1950.
 - corrects the names of tribes spelt incorrectly
 - adds names of a few tribes that were either named ambiguously or had only their parent group named.

THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) BILL, 2021

CONSTITUTIONAL PROVISIONS

- The Constitution empowers the President to specify the Scheduled Tribes (STs) in various states and union territories.
- Further, it permits Parliament to modify this list of notified STs.

PROVISIONS OF THE BILL

- The Constitution (Scheduled Tribes) Order (Amendment) Bill, 2021, amends the Constitution (Scheduled Tribes) Order, 1950.
- The Bill has been introduced to give effect to modifications proposed by the state of Arunachal Pradesh.

Original List	Proposed Changes under the Bill
Abor	Abor Deleted from the list
Khampti	Tai Khamti
Mishmi, Idu, & Tarao	Mishmi-Kaman (Miju Mishmi), Idu (Mishmi), & Taraon (Digaru Mishmi)
Momba	Monpa, Memba, Sartang, and Sajolang (Miji)
Any Naga Tribes	Nocte, Tangsa, Tutsa, & Wancho

What is the need?

- Officially listed names of the tribes are out of "colonial interpretations".
- But many other tribes, sub-tribes exist with diversity in terms of language or culture.
- E.g., There are 3 groups of Mishmis - Idu, Kaman and Taraon - mentioned just as Mishmi.
- Similarly, Nocte, Tangsa, Tutsa and Wancho, mentioned as "other Naga tribes" have their own nomenclature and are culturally diverse.

- This creates problems while applying for central jobs, as individual tribes are not recognised.
- So self-identification and indigenous nomenclature of tribes has been a long-standing demand.

Who is opposing and why?

- The term 'Any Naga Tribe' has been removed by the Bill, replacing it with four different tribes.
- So, opposition from the Naga separatist group NSCN(IM) which aims at creating Nagaland or greater Nagaland (a territory that comprises all Naga-inhabited areas around Nagaland, including neighbouring states).
- But the change just gives them their individual identity through names, still within the larger Naga identity.

8.3 Essential Commodities (Amendment) Bill, 2020

Why in news?

The Essential Commodities (Amendment) Bill, 2020 that seeks to amend the Essential Commodities (EC) Act, 1955, was passed by Rajya Sabha.

What is the EC Act, 1955?

- Section 3(1) of the Act gives the Government the powers to regulate the production, supply and distribution of essential commodities.
- The Centre can notify an item as 'essential' commodity.
- By declaring a commodity as essential, the government can also impose a stock limit.
- The Ministry of Consumer Affairs, Food and Public Distribution implements the Act.

What is the Bill about?

- This Bill seeks to introduce a new Subsection (1A) in Section 3.
- It aims to deregulate commodities such as cereals, pulses, oilseeds, edible oils, onion and potatoes.
- It takes these items out from the purview of Section 3(1).
- The Bill states that such order for regulating stock limit shall not apply to processors and value chain participant of any agricultural produce under a condition.
- Such order shall not apply if the stock limit does not exceed the overall ceiling of installed capacity of processing, or the demand for export.

THE ESSENTIAL COMMODITIES (AMENDMENT) BILL, 2020

The Essential Commodities Act, 1955 empowers the central government to control the production, supply, distribution, storage, and trade of essential commodities.

PROVISIONS OF THE AMENDMENT BILL

- **REGULATION OF FOOD ITEMS** - The Bill provides that the Union government can regulate the supply of certain food items including cereals, pulses, potato, onions, edible oilseeds, and oils, only under extraordinary circumstances such as war, famine, extraordinary price rise, and natural calamity of grave nature.
- **STOCK LIMIT** - The Bill specifies that stock limits should be imposed only based on price rise and may be imposed on agricultural produce only if there is: (i) a 100% increase in the retail price in case of horticultural produce, or (ii) a 50% increase in the retail price in case of non-perishable agricultural food items.
- **EXEMPTION** - The Bill provides that any stock limit imposed on agricultural produce will not apply to a processor or value chain participant if the stock held by such person is less than the overall ceiling of installed processing capacity, or demand for export in case of an exporter.
- The provisions of the Bill regarding regulation & stock limits will not apply to any government order relating to the Public Distribution System or the Targeted Public Distribution System.

What will happen after the amendment?

- After the amendment, the supply of certain foodstuffs can be regulated only under extraordinary circumstances.
- These circumstances include an extraordinary price rise, war, famine, and natural calamity of a severe nature.

How is an 'essential commodity' defined?

- There is **no specific definition** of essential commodities in the Essential Commodities Act, 1955.
- **Section 2(A)** states that an "essential commodity" means a commodity specified in the Schedule of the Act.
- As per the Act, the Centre, if it is satisfied, can add or remove an item as 'essential' commodity, in consultation with state governments.
- Currently, there are seven commodities in the Schedule.

- The list of items under the Act includes drugs, fertilisers, pulses and edible oils, and petroleum and petroleum products.

Under what circumstances, stock limits can be imposed?

- The 1955 Act did not provide a clear framework to impose stock limits.
- But, the amended Act provides for a price trigger.
- It says that agricultural foodstuffs can only be regulated under extraordinary circumstances.
- However, any action on imposing stock limits will be based on the price trigger.
- Exemptions from stock limits will be provided to value chain participants of agricultural produce, and orders relating to the Public Distribution System.
- Price triggers will also minimise the earlier uncertainties associated with the imposition of orders under stock limits.

Why was the need for this felt?

- The 1955 Act was legislated when India was facing a scarcity of foodstuffs due to persistent low levels of foodgrains production.
- India was dependent on imports and assistance to feed the population.
- To prevent hoarding and black marketing of foodstuffs, the EC Act was enacted in 1955.
- But now the situation has changed.
- The production of wheat, rice and pulses has increased 10 times, 4 times and 2.5 times respectively between 1955-56 and 2018-19.
- In fact, India has become an exporter of several agricultural products.

What will be the impact of the amendments?

- The key changes seek to free agricultural markets from the limitations imposed by permits and mandis that were designed for an era of scarcity.
- The move is expected to attract private investment in the value chain of commodities removed from the list of essentials.
- The Act has become a hurdle for investment in the agriculture sector in general, and in post-harvesting activities in particular.
- The private sector had so far hesitated about investing in cold chains and storage facilities for perishable items.
- This hesitation is due to the fact that most of these commodities were under the ambit of the EC Act, and could attract sudden stock limits.
- The amendment seeks to address such concerns.

Why is it being opposed?

- This was one of the three ordinances/Bills that have seen protests from farmers in parts of the country.
- The Opposition says the amendment will hurt farmers and consumers, and will only benefit hoarders.
- They say the price triggers envisioned in the Bill are unrealistic — so high that they will hardly ever be invoked.

8.4 India's IT Rules 2021

Why in news?

The central government has recently released the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Why now?

- The government had been working on these guidelines for over 3 years.
- The immediate push came in the form of the violent incidents at the Red Fort on January 26, 2021.
- Following this, the government and Twitter had disagreements over the removal of certain accounts from the social media platform.

What are the key provisions related to social media?

- **Social Media Intermediaries** - Social media intermediaries are platforms that host user-generated content.
 - E.g. Twitter, Facebook, YouTube, WhatsApp
- The Rules create two Categories of Social Media Intermediaries which are:
 1. social media intermediaries
 2. significant social media intermediaries
- This is to encourage innovations and enable growth of new social media intermediaries without subjecting smaller platforms to significant compliance requirement.
- The distinction is based on the number of users on the social media platform.
- Government is empowered to notify the threshold of user base for these categories.
- The Rules require the ‘significant social media intermediaries’ to follow certain additional due diligence.
- **Due diligence** - Section 79 of the IT Act provides a “safe harbour” to social media intermediaries.
- It exempts them from liability for the actions of users if they adhere to government-prescribed guidelines.
- The new guidelines prescribe an element of due diligence to be followed by the intermediary.
- Failing this would mean that their safe harbour provisions would cease to apply.
- **Grievance redressal** -The Rules mandates that the intermediaries, including social media platforms, should establish a mechanism for receiving and resolving complaints from users.
- These platforms will need to appoint a grievance officer to deal with such complaints.
- The officer must acknowledge the complaint within 24 hours, and resolve it within 15 days of receipt.
- In addition to a grievance officer, social media platforms will have to appoint a chief compliance officer resident in India.
- The chief compliance officer will be responsible for ensuring compliance with the rules.
- The platforms will also be required to appoint a nodal contact person for 24x7 coordination with law enforcement agencies.
- Further, the platforms will need to publish a monthly compliance report.
- This should have details of -
 - complaints received and action taken on the complaints
 - contents removed proactively by the significant social media intermediary
- The due diligence requirements will come into effect after 3 months from the notification of the rules.

INDIA'S IT RULES 2021

ABOUT THE GUIDELINES

- The guidelines related to social media will be administered by the Ministry of Electronics and IT.
- The Digital Media Ethics Code relating to Digital Media and OTT Platforms will be administered by the Ministry of Information and Broadcasting.

OBJECTIVE

- The guidelines aim to regulate social media, digital news media, and over-the-top (OTT) content providers.
- They were released following the instructions from the Supreme Court and the concerns raised in Parliament about social media abuse.
- The government wanted to create a level playing field in regulating online news and media platforms vis-à-vis traditional media outlets.

The Rules also seek to -

1. empower the ordinary users of digital platforms to seek redressal for their grievances
2. command accountability in case of infringement of users' rights

- **Removal of content** - The rules lay down 10 categories of content that the social media platform should not host.
- **Penalties for violation** - In case an intermediary fails to observe the rules, it would lose the safe harbour, and will be liable for punishment.

How do the Rules benefit?

- The need for the IT Rules can hardly be disputed.
- They make accountable the “significant” internet platforms (those above 5 million users) such as Facebook, Google and WhatsApp.
- These have so far enjoyed immunity under Section 79 of the Information Technology Act under the ‘safe harbour’ clause.
- The world over, these tech giants have been associated with breach of data, national security and individual privacy.
- Besides, they have hosted incendiary stuff that can disrupt peace and harmony.
- Secondly, the OTT platforms such as Amazon Prime, Netflix and Hotstar, which carry curated content without certification can no longer continue in this manner.
- In a positive move, they will have to grade their content under various types of adult and child viewing.
- They will also have to adhere to the grievance redressal mechanisms.
- These checks and balances are necessary and go a long way in streamlining the content.

What are the concerns?

- **Free speech** - The rules force digital news publishers and OTT services to adhere to a cumbersome three-tier structure of regulation.
- It comes with a government committee at its apex.
- This, in itself, is unprecedented in a country where the news media have been given the space all along to self-regulate.
- This has been in place based on the understanding that any government presence could have an effect on free speech and conversations.
- The rules might have serious implications for freedom of expression and right to information of online news publishers and intermediaries.
- **Regulation** - Any person having a grievance regarding content published by a publisher in relation to the Code of Ethics may furnish his/her grievance.
- The grievance mechanism established by the publisher will receive them.
- So, literally anyone could force a digital platform to take up any issue.
- To note, many of the digital publishers are small entities.
- The regulations thus impose a compliance burden on such entities.
- Moreover, the Rules allow government to influence the appointment of panel members in the higher level regulatory bodies.
- All these leaves way for all kinds of interventions, and the potential for misuse is enormous.
- **Social media platforms** - The new rules have increased the compliance burden for social media platforms too.
- Such platforms in the messaging space will have to “enable the identification of the first originator of the information on its computer resource” based on a judicial order.
- Thus, the rules require messaging apps such as WhatsApp and Signal to trace problematic messages to the originator.
- The triggers for a judicial order that require such an identification are serious offences.
- Nevertheless, it raises concerns as these apps have their messages encrypted end-to-end.

- **Classification** - Digital news media has been unfairly and arbitrarily clubbed with OTT platforms and subjected to the same set of rules.
- Moreover, the purview of the IT Act, 2000, has been expanded to bring digital news media under its regulatory ambit without legislative action.
- This combination does not correspond with the provisions of the IT Act, and opens itself to legal challenge.
- Also, the new rules pertain only to digital news media, and not to the whole of the news media.
- This raise concerns as the former is increasingly becoming a prime source of news and views.

8.5 Intermediary Guidelines and Digital Media Ethics Code

Why in news?

The new rules in India for social media platforms and digital news outlets, called the Intermediary Guidelines and Digital Media Ethics Code, came into effect.

What are the key provisions in the Guidelines?

- The guidelines had asked all social media platforms to set up a grievances redressal and compliance mechanism.
- This includes appointing a resident grievance officer, chief compliance officer (CCO) and a nodal contact person.
- The Ministry of Electronics & Information Technology had also asked these platforms to submit monthly reports.
- It should have details on complaints received from users and action taken.
- A third requirement is for instant messaging apps to make provisions for tracking the first originator of a message.
- Failure to comply with any one of these requirements would take away the indemnity provided to social media intermediaries under Section 79 of the Information Technology Act.

What protection does Section 79 of the IT Act offer?

- Section 79 says any intermediary shall not be held legally or otherwise liable for any third party information, data, or communication link made available or hosted on its platform.
- This protection shall be applicable if the said intermediary does not in any way, -
 - i. initiate the transmission of the message in question
 - ii. select the receiver of the transmitted message
 - iii. modify any information contained in the transmission
- So the platform should act just as the messenger carrying a message from point A to point B, without interfering in any manner.
- If this is ensured, it will be safe from any legal prosecution brought upon due to the message being transmitted.
- The protection, however, is not granted if the intermediary, despite being notified by the government, does not immediately disable access to the material under question.
- The intermediary must also not tamper with any evidence of these messages or content present on its platform.
- Failing this, it will lose its protection under the Act.
- [In the U.S., Section 230 of the 1996 Communications Decency Act provides Internet companies a similar safe harbour from any content users post of internet platforms.
- It was this provision that enabled companies such as Facebook, Twitter, and Google to become global conglomerates.]

What is the concern now?

- Social media intermediaries such as Twitter, Facebook, and Instagram have so far not appointed personnel as required under the new rules in India.
- They have also failed to submit monthly reports on action taken on grievances and complaints submitted to them by users.
- Thus, protection under Section 79 of the IT Act will not hold for them.

What happens if the protection is withdrawn?

- Nothing changes overnight, and social media intermediaries will continue to function as they were.
- People will also be able to post and share content on their pages without any disturbance.
- But, if a tweet, a Facebook post or a post on Instagram violates the local laws, the law enforcement agency can book not only the person sharing the content, but the executives of these companies as well.
- Reading the provisions of the IT Rules in consonance with Section 69(a) of the IT Act suggests that this liability can even be criminal in nature.
- In other words, the CCO (chief compliance officer) can be made to serve a prison term of up to 7 years.
- The absence of the umbrella protection of Section 79 could also lead to situations where employees of the platform may be held liable for no fault on their part.

8.6 Ending Encryption

What is the issue?

- The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 recently came into force.
- WhatsApp has moved the Delhi High Court against the rules, especially the traceability clause; here is a look at the various aspects of it.

What is the traceability rule?

- It applies to significant social media intermediary providing services primarily in the nature of messaging.
- A “significant social media intermediary” is one with more than 50 lakh registered users.
- These “shall enable the identification of the first originator of the information on its computer resource as may be required by a judicial order.”

Why has WhatsApp challenged this?

- For compliance and traceability, WhatsApp will have to break its end-to-end encryption service.
- The encryption service allows messages to be read only by the sender and the receiver.
- Its argument is that the encryption feature allows for privacy protections.
- So, breaking it would mean a violation of privacy.

What are the concerns?

- The question to be asked is whether the traceability guidelines (by breaking encryption) are vital to law enforcement in cases of harmful content.
- The problem with enforcing traceability is that, there are no safeguards like any independent or judicial oversight.
- So, government agencies could seek any user's identity on vague grounds.
- This could compromise the anonymity of whistle-blowers and journalistic sources acting in public interest.
- It fundamentally undermines users' right to privacy.

What is the government's stance?

- The traceability measure will be used by law enforcement as the “last resort.”
- It will come only in specific situations.

- These may include prevention, detection, investigation, prosecution or punishment of an offence related to the sovereignty and integrity of India.
- Child sexual abuse material, punishable with imprisonment could also be a case.
- The assertion suggests that this requirement is in line with the Puttaswamy judgment.
- The judgement clarified that any restriction to the right of privacy must be necessary, proportionate and include safeguards against abuse.

Is there no other alternative?

- The Government, as the law stands now, can already seek access to encrypted data.
- It is provided under Section 69(3) of the IT Act, and Rules 17 and 13 of the 2009 Surveillance Rules.
- These require intermediaries to assist with decryption when they have the technical ability to do so.
- It is carried out when law enforcement has no other alternative.
- Besides, the government can still seek unencrypted data, metadata and digital trails from intermediaries.

What is the way forward?

- The Government needs to revisit its position on traceability commitments of intermediaries.
- It could instead revise the IT Act, 2000 in line with existing global best practices.
- Besides, the government should finalise the long-pending Data Protection Bill.

8.7 Mines and Minerals (Development and Regulation) Amendment Bill, 2021

Why in news?

Coal and Mines Minister introduced the Mines and Minerals (Development and Regulation) Amendment Bill, 2021 in Lok Sabha.

What are the key changes?

- **Sale** - The amendment proposes to allow captive miners of both coal and other minerals to sell up to 50% of their production.
- This is allowed after meeting the requirements of the end-use plant and on paying additional royalty to the state government.
 - Operators are currently only allowed to use coal and minerals extracted from captive mines for their own industrial use.
- The increased flexibility would allow miners to maximise output from captive mines.
- They would be able to sell output in excess of their own requirements.
- **Additional royalty payments** - The Bill proposes to fix additional royalty payments to states for the extension of mining leases for central public sector enterprises.
 - There were disagreements over the additional royalty to be paid by state-owned NMDC to the Karnataka government.
 - This was over the extension of mining rights at the Donimalai mine.
 - The issue led to NMDC suspending operations at the mine for over two years.
 - NMDC recently resumed operations after an interim agreement on the additional royalty to be paid to the Karnataka government.
- It is anticipated that the state governments would object to the fixing of an additional royalty to be paid by CPSEs for such extensions.
- This is because it may lead to lower revenues compared to a transparent auction process.
- **Auctions or re-auction processes** - The Bill aims at streamlining the renewal of the auction process for minerals and coal mining rights.

- It proposes to empower the central government to conduct auctions or re-auction processes for the grant of a mining lease.
- This is only in case if a state government fails to complete the auction process in a specified period.
- The period will be decided after consultations between the Centre and state.
- Industry players may welcome the move as it would likely lead to greater transparency in the auction process.
- This is significant because there is a perception that state governments might in some cases prefer some bidders.
- They may even try to delay or cancel mining rights if their preferred bidders do not win mining rights.

Could there be a legal challenge?

- The amendment, if passed, is likely to face legal challenges.
- The Bill in a way seems to take away the state government's discretionary power and their rights or benefits seems to be infringed.
- It is thus likely to be challenged in the Supreme Court, especially in the case of state governments where there is an Opposition party in power.

8.8 Aircraft (Amendment) Bill 2020

Why in news?

Rajya Sabha has passed the Aircraft (Amendment) Bill 2020.

What does the amendment seek to do?

- The bill will amend the **Aircraft Act of 1934**.
- It seeks to provide statutory status to the
 1. Directorate General of Civil Aviation (DGCA),
 2. Bureau of Civil Aviation Security (BCAS), and
 3. Aircraft Accidents Investigation Bureau (AAIB).
- It seeks to expand the role of the two regulators, DGCA and BCAS.

What will change when this Bill becomes law?

- The DGCA will be empowered to impose penalties for certain violations.
- It will increase the maximum penalty limit to Rs 1 crore from the existing Rs 10 lakh.
- It will allow the Ministry of Civil Aviation to review any order passed by the Director General of Civil Aviation and the Director General of Civil Aviation Security.
- The Ministry can direct them to rescind or modify such order.

Why are these amendments being made to the Aircraft Act?

- The Aircraft Act of 1934 was enacted to control the manufacture, possession, use, operation, sale, import and export of aircraft.
- It secures the safety of aircraft operations in India.
- It makes provisions for carrying out civil aviation operations as per standards, procedures and practices laid down by the International Civil Aviation Organisation (ICAO).
- From time to time, the government has made amendments to the Act to meet the evolving global and Indian aviation scenario.
- The various changes that needed to be made necessitated amendments to the Aircraft Act.

What was the trigger for these changes now?

- India, as a signatory, is subjected to **audits** by ICAO and the Federal Aviation Administration (FAA).
- The audits conducted by the ICAO in 2012 and 2015 indicated a need to amend the Aircraft Act,

1. To give proper recognition to the regulators under the Act,
 2. To enhance the maximum quantum of fines,
 3. To empower the departmental officers to impose financial penalties on individuals or organisations involved in violations of the legal provisions and
 4. To include certain areas of air navigation services for rulemaking purposes under Section 5 of the Act.
- These are the triggers for proposal to amend the Aircraft Act of 1934.

How are the audits conducted?

- **ICAO** - The ICAO regularly conducts safety and security audits of all countries which are signatory to the Chicago Convention.
- These audits are done to ensure these countries are carrying out their safety and security oversight functions.
- These audits are conducted under its Universal Safety Oversight Audit Programme and the Universal Security Audit Programme.
- **FAA** - The FAA of the US also conducts safety audits of countries whose airlines operate to the US.
- These audits are conducted under its International Aviation Safety Assessment Programme.

8.9 Revising the National Electricity Policy

Why in news?

The government has decided to revise the National Electricity Policy (NEP) by invoking Section 3 of the Electricity Act, 2003.

What is the move about?

- The 2003 Act mandates that the central government shall prepare the NEP in consultation with the state governments and the Central Electricity Authority.
- The government has constituted a committee now. It would finalise the draft NEP which has been circulated, after seeking views of stakeholders.
- The first NEP was formulated in 2005.

What progress has happened since 2005?

- Between 2005 and 2021, generation capacity (inclusive of renewable capacity) has gone up by about 251 GW.
- The renewable generating capacity has gone up to 94 GW (from wind, solar, small hydro and biomass) from almost nothing.
- This led to about 10% of generation from renewable sources.
- An additional 2.5 lakh circuit-km of transmission lines (above 220 kV) were added during this time.
- Per capita consumption has almost doubled from 630 units to approximately 1,200 units today.
- Besides, peak and energy shortages have come down from double digit figures to about half a percentage point.
- Rural electrification is almost complete with near 100% electricity access to households (not necessarily 24 hours supply).

Why is revising the NEP essential?

- The government did not bother to revise its NEP for almost 16 years.
- The government keeps pointing to the fact that peak and energy shortages have come down drastically implying that all is well.
- But the reality is quite to the contrary.
- The situation of excess supply is illusory.
- This is because the demand has not grown at the rate it should have because of the economic downturn since the last couple of years, even before the pandemic.

- Distribution companies (discoms) have accumulated outstanding of over Rs. 6 lakh crore.
- And this seems to be going up year after year despite all government programmes to improve distribution infrastructure and restructuring of loans.
- There are other areas to be addressed too such as solar power.
- India could not join the world leaders in the area of solar power despite having the advantage of geography. It continues to rely on imports for capital equipment.
- India has been slow in adopting more stringent environment norms for power stations. It has done practically nothing on carbon capture and sequestration.
- It has not been able to add to the hydro capacity, which could play a crucial role in balancing the grid with increasing thrust on renewable generation.
- India also has fuel supply issues (coal) and is unable to meet the domestic demand through indigenous mining.

What are the shortfalls to be addressed in the new policy?

- **Policy statements** - Our policy statements are too verbose and lengthy.
- The first NEP as also the draft circulated now run into several pages, and are not incisive enough or reader-friendly.
- Ideally, policy statements should be crisp and pithy, and should be able to hold on to readers' interest.
- **Effectiveness** – Another issue is regarding the effectiveness of the policy.
- The draft policy has a lot to say on renewable generation, and rightly so, but what is the guarantee that it would be followed.
- While the central government may fix targets on renewable generation capacity, the implementation will mainly be done by private enterprises.
- Now, private enterprises will move according to the investment climate as it exists in states.
- All stakeholders should treat the NEP as mandatory and act accordingly.
- Problems have arisen in the case of the National Tariff Policy (NTP) in the past.
- Certain states have expressed unwillingness to comply with certain sections of this document.
- Incidentally, both the NEP and the NTP emanate from Section 3 of the Act.
- **NEP and NTP** – A fundamental issue is whether there is a need for two separate policy statements, the NEP and the NTP.
- The first NTP was formulated in 2006 with some minor amendments carried out in 2008, 2011 and 2016.
- Both these documents exist concurrently, but they practically run into each other's domain.
- It is not really possible to segregate tariff-related issues from electricity policy in general since they are all interlinked.
- Thus, it would be appropriate to subsume the NTP into the NEP, and tariff would be one of the several issues which would be a matter of electricity policy.
- It will have the benefit of a single holistic policy statement which would take into account all the interlinkages. This will not entail an amendment to the Act.

8.10 Vehicle Scrappage Policy

Why in news?

Recently Ministry of Transport announced the vehicle scrappage policy for age old vehicles.

Why new policy is needed?

- India's automobile ecosystem is complex where fossil-fuel driven vehicles dominate and there is only a nascent EV segment.

- Heavy commercial vehicles contribute disproportionately to pollution and about 1.7 million vehicles lack fitness certificates.
- Moreover the amended Motor Vehicles Act of 2019 met with limited success in its enforcement.

What are the features of vehicle scrappage policy?

- Customers will get a scrap value which is 4-6% of ex-showroom price of a new vehicle.
- State governments can offer a road tax rebate of up to 25 % for personal vehicles and up to 15% for commercial vehicles.
- Vehicle manufacturers can provide a discount of 5% on purchase of new vehicle against the scrapping certificate.
- The registration fees may be waived for purchase of new vehicle against the scrapping certificate.
- Old vehicles have to undergo a mandatory automated fitness test, if not they will be deregistered.
- Vehicles that would be automatically scrapped are:
 - a) 15 year plus government & PSU-owned vehicles;
 - b) those damaged in fire, riots or any devastation;
 - c) declared as defective by manufacturers;
 - e) those confiscated by enforcement agencies.

What are the positive outcomes of this policy?

- The policy aims to create more economic benefits, cleaner environment and thousands of jobs opportunities.
- It will reduce the population of old and defective vehicles, reduce vehicular air pollutants and improve road - vehicular safety.
- Besides it will achieve better fuel efficiency, formalise the informal vehicle scrapping industry and boost the availability of low-cost raw materials for the automotive, steel and electronics industry.
- It will also make India the world's largest automobile hub in the next 5 years.

What are the issues in this policy?

- It will take around 2024 to identify vehicles belonging to the government and the public sector through mandatory fitness checks and get scrapped.
- States need to cooperate to put a credible system of automated fitness checking centres and come on board to provide concessions in road tax and registration.
- It is challenging to scrap the unfit vehicles and stop them from moving to smaller towns.
- It is difficult to ensure that the scrappage plan gets the support from the manufacturers.
- Scrapped vehicles cannot be replaced quickly in the absence of financial arrangements for small operators.

8.11 U.P.'s New Population Policy

Why in news?

- Uttar Pradesh Chief Minister Yogi Adityanath launched the State's population policy for 2021-2030.
- Also, draft of the Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill, 2021 was published earlier.

What are the key features of the policy?

- The new policy aims to achieve the following targets:
 - decrease the Total Fertility Rate from 2.7 to 2.1 by 2026 and 1.7 by 2030
 - increase Modern Contraceptive Prevalence Rate from 31.7 to 45 by 2026 and to 52 by 2030
 - increase male methods of contraception use from 10.8 to 15.1 by 2026 and to 16.4 by 2030
 - decrease Maternal Mortality Rate from 197 to 150 to 98

- v. decrease Infant Mortality Rate from 43 to 32 to 22
- vi. decrease Under 5 Infant Mortality Rate from 47 to 35 to 25
- The state would attempt to maintain a balance of population among the various communities.
- Awareness and extensive programmes would be held among communities, cadres and geographical areas that have a higher fertility rate.

What does the draft bill propose?

- Under the draft bill, a two-child norm would be implemented and promoted.
- A person who will have more than two children after the law comes into force would be debarred from the benefits of government welfare schemes.
- Ration card units would be limited to four.
- The person will be barred from contesting elections to local authority or any body of the local self-government.
- Such persons would also become ineligible to apply for government jobs under the State government. They will be barred from promotion in government services and will not receive any kind of subsidy.
- The provisions would come into force one year after the date of publication of the gazette.
- The draft also proposes to incentivise one-child and two-child families.
- These include perks in government schemes, rebates in taxes and loans, and cash awards if family planning is done, among other sops.

What are the concerns?

- While the above intention is welcome, the government fails to take affirmative steps in that direction.
- It instead seems to have taken the path of a mixture of incentives and penalties.
- It is approaching the socio-economic issue as a demographic one.
- The incentives/disincentives approach has been denounced in the past by the National Human Rights Commission too.
- Also, empirical studies of coercive measures have shown such policies' discrimination against the poor and the marginalised.
- Studies have also found no discernible effect of such measures on population control.

8.12 Health Data Management Policy

What is the issue?

The CoWin portal for COVID-19 vaccines has come under criticism due to the absence of a privacy policy.

What is the Health Data Management Policy?

- CoWin follows the privacy policy of the National Digital Health Mission (NDHM) - the Health Data Management Policy.
- Other digital health initiatives, such as telemedicine, hospital management systems and insurance claims management, are also tied to this Policy.
- The Policy seeks to develop a national health information system.
- It facilitates the creation of Unique Health Identification (UHID) for individuals and healthcare providers.
- It also facilitates the collection, storage, processing and sharing of personal health information, as electronic health records (EHRs).
- Every individual's UHID is linked to his or her EHR.

What are the shortcomings?

- **Privacy** - Despite the benefits, digitisation entails significant risks to privacy, confidentiality and security of personal health data.

- The Policy aims to mitigate these risks, through two guiding principles:
 1. “security and privacy by design”
 2. individual autonomy over personal health data
- But fundamental ‘design flaws’ may end up increasing instances of personal health data breaches.
- **Legal backup** - The Supreme Court, in Puttaswamy case, held that the right to informational privacy is a fundamental right.
- Any encroachment on this must be supported by law.
- It also calls for enacting a comprehensive data protection legislation.
- Contrary to this, the digitisation process being rolled out under the NDHM Policy is not supported by any law.
- **Regulation** - Setting up a regulatory authority entails a law that defines the boundaries within which it can function.
- It should also ensure independence from government interference and accountability to Parliament.
- But the Policy itself establishes the NDHM to function like a regulator.
- It authorises the NDHM to perform legislative, executive and quasi-judicial functions and define its own governance structure.

What are the risks involved?

- There is a possibility of secondary use of digital health data for research and policy planning by private firms.
- Anonymised datasets can be easily de-anonymised to link back to personally identifiable information, risking individual privacy.
- The policy also does not stipulate 'data masking' available to individuals to ensure confidentiality.
- [Data masking - technique to hide specific sensitive health information in EHRs accessible even to health care providers only with the specific consent of the individual.]
- The Policy also does not limit the use of aggregate health data to public health purposes.
- Without strict purpose limitation, private firms may use people's health data to enhance profits.
- The Policy also does not require reporting of personal data breaches to affected individuals.
- The guiding principle of individual autonomy is invoked through ‘informed consent’ for collecting and processing personal health data.
- The Policy mandates informed consent only prior to the collection of data.
- It applies in case of any change in the privacy policy or in relation to any new or unidentified purpose.
- This suggests that one-time consent for one or more broad purposes may be sufficient.
- But with this, individuals may ultimately end up with little or no control over their data.

9. GOVERNANCE

9.1 New Union Ministry of Cooperation

Why in news?

As part of the latest Cabinet reshuffle, the government announced the formation of a separate Union Ministry of Cooperation, a subject that was till date looked after by the Ministry of Agriculture.

What is the cooperative movement?

- Simply, cooperatives are organisations formed at the grassroots level by people to harness
- the power of collective bargaining towards a common goal.
- In agriculture, cooperative dairies, sugar mills, spinning mills etc are formed.

- Village-level primary agricultural credit societies (PACSS) formed by farmer associations are the best example of grassroots-level credit flow.
- There are also cooperative marketing societies in rural areas and cooperative housing societies in urban areas.
- As market conditions are evolving, cooperatives in States such as Kerala have got into complex operations: running IT parks and medical colleges.
- More avenues for expansion, such as insurance, remain untapped and the regulatory regime must evolve in step.
- Though not uniform across India, cooperatives have made significant contributions in poverty alleviation, food security, management of natural resources and the environment.

How are cooperative societies governed?

- The legal architecture of the sector began evolving since 1904 under colonial rule.
- In 2002, the Multi State Cooperative Societies Act was passed, taking into account the challenges arising out of liberalisation.
- Agriculture and cooperation are in the state list.
- So, a majority of the cooperative societies are governed by laws in their respective states.
- The MultiState Cooperative Societies Act, 2002 allowed for registration of societies with operations in more than one state.
- The Central Registrar of Societies is their controlling authority. But on the ground, the State Registrar takes actions on his/her behalf.

What is the need for a new Ministry?

- **Policy focus** - Alongside the state and the market, cooperatives play a vital role in the country's development.
- But they are seldom the focus of policy planning.
- The creation of a new Union Ministry will redeem the cooperatives sector from this negligence.
- **Management** - Despite regulatory oversight by the RBI and States, there is considerable autonomy for the sector which is often misused.
- Consequently, the cooperatives sector has become an instrument of patronage and pilferage.
- Mismanagement and corruption destroyed the sector in some States.
- Cooperatives are also effective in mediating politics at the local level, outside of the parliamentary system.
- It is thus essential to restore the importance of the cooperative societies for their intended purposes.
- **Funding** - The cooperative structure has managed to flourish and make an impact only in a handful of states.
- These include states like Maharashtra, Gujarat, Karnataka etc.
- [Cooperative institutions get capital from the Centre, either as equity or as working capital, for which the state governments stand guarantee.
- This formula had seen most of the funds coming to a few states while other states failed to keep up.]
- Over the years, the cooperative sector has witnessed drying out of funding.
- Under the new Ministry, the cooperative movement would get the required financial and legal power to penetrate into other states also.

9.2 Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

Why in news?

The Ministry of Corporate Affairs has published The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 to further amend the Companies (CSR Policy) Rules, 2014.

What is CSR?

- CSR is a corporate initiative to assess and take responsibility for the company's effects on the environment and impact on social welfare.
- CSR projects are taken up to promote positive social and environmental change.
- Currently, the CSR rules apply to the companies with any of the following criteria:
 - i. a net worth of Rs 500 crore or more
 - ii. a turnover of Rs 1,000 crore or more
 - iii. net profit of Rs 5 crore or more
- These companies are required to spend 2% of their average profits of the previous 3 years on CSR activities every year.

What are the key changes?

- **Registration** - The Amendment substitutes Rule 4 which implements CSR in the companies.
- Every entity, which intends to undertake any CSR activity, shall register itself with the Central Government.
- This is to be done by filing the form CSR-1 electronically with the Registrar, with effect from the 1st day of April 2021.
- The provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 1st day of April 2021.
- Form CSR-1 shall be signed and submitted electronically by the entity.
- It shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.
- **Action plan** - Under Rule 5, the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy.
- This shall include the following, namely:
 - i. the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act
 - ii. the manner of execution of such projects or programmes
- **Impact assessment** - Under Rule 8, any corporation with a CSR obligation of Rs 10 crore or more for the 3 preceding financial years would be required to hire an independent agency.
- This is to conduct impact assessment of all of their project with outlays of Rs 1 crore or more.
- Companies will be allowed to count 5% of the CSR expenditure for the year up to Rs 50 lakh on impact assessment towards CSR expenditure.
- **Transparency** - Under rule 9, the Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee.
- The CSR Policy and Projects approved by the Board should also be disclosed on their website, if any, for public access.

What are the changes required for implementing agencies?

- A large number of companies conduct CSR expenditure through implementing agencies.
- But the new amendment mandates that the companies authorise either a Section 8 company or a registered public charitable trust to conduct CSR projects on their behalf.
 - A Section 8 company is a company –
 - i. that is registered with the purpose of promoting charitable causes
 - ii. that applies profits to promoting its objectives
 - iii. that is prohibited from distributing dividends to shareholders
- Further, all such entities will have to be registered with the government by 1 April 2021.

9.3 Lateral Entry into Bureaucracy

Why in news?

UPSC has recently issued an advertisement to recruit through lateral entry in the second round.

What is 'lateral entry' into government?

- This refers to the induction of new personnel at middle and senior management levels in the central government.
- These 'lateral entrants' would be part of the central secretariat.
- The secretariat, in the normal course, has only career bureaucrats from the All India Services/ Central Civil Services.

What are the recent lateral appointments?

- Applications were open for appointment of 30 persons at the Joint Secretary and Director level in the Central administration.
- These individuals, who would make a "lateral entry" into the government secretariat, would be contracted for 3 to 5 years.
- These posts were "unreserved", meaning no quotas for SCs, STs and OBCs.
- The new advertisement is for the second round of such recruitments.
- Earlier, lateral appointments were made for 10 positions of Joint Secretary in different Ministries/Departments and 40 positions at the level of Deputy Secretary/Director.
 1. A Joint Secretary, appointed by the Appointments Committee of the Cabinet (ACC), has the third highest rank (after Secretary and Additional Secretary) in a Department.
 2. S/he functions as administrative head of a wing in the Department.
 3. Directors are a rank below that of Joint Secretary.

What is the government's rationale?

- Government has, from time to time, appointed some prominent persons for specific assignments in government.
- This is keeping in view their specialised knowledge and expertise in the domain area.
- Lateral recruitment is thus aimed at achieving the twin objectives of bringing in fresh talent and augmenting the availability of manpower.
- However, groups representing SCs, STs and OBCs have protested the fact that there is no reservation in these appointments.
- The move is seen as another ploy to sideline and reduce reservations for deprived sections.

Why are these posts claimed to be "unreserved"?

- As per the currently applicable "13-point roster", there is no reservation up to three posts.
 - The expression "13-point roster" reflects the fact that 13.33 (or 14) vacancies are required to complete one cycle of reservations.
 - Based on this, every 4th, 7th, 8th, 12th, and 14th vacancies are reserved for OBCs, SCs, OBCs, OBCs, and STs respectively in the 13-point roster.
- In a single post cadre, reservation does not apply.
- Since each post to be filled under the above scheme is a Single Post, reservation is not applicable.
- Each of the nine individuals appointed in 2019 was recruited as a separate appointment.
- If they had been considered as a group of nine, there would have been at least two seats for OBCs and one seat for an SC candidate as per the Centre's reservation rules.
- But presently too, the posts have been advertised/ considered separately for each Department.
- So, all of them have been declared "unreserved".

9.4 Defining the terms

What is the issue?

There are some undefined provisions in Civil Services conduct rules which can be misused by the disciplinary authorities.

What does the conduct rules mention?

- All India Services (AIS), State Service or Central Service officials are governed by Central and State Civil Services conduct rules.
- Similarly, the conduct of army officers and jawans are administered under the Army Act.
- AIS conduct rules require its members to maintain absolute integrity and devotion to duty and do nothing which is unbecoming of a member of the service.
- Army Act contains penal provisions for displaying unbecoming conduct or disgraceful conduct.
- But the terms unbecoming conduct or unbecoming of a member of service is not clearly defined.
- This leaves ample scope for the disciplinary authority to set parameters of misconduct according to him for his subordinates.
- Moreover there is long standing debate whether illicit relation (adultery) with another woman or man amounts to misconduct under service rules or not.

What was the Supreme Court verdict regarding it?

- In **Joseph Shine vs Union of India case**, Supreme Court held that Section 497 of IPC (adultery) is arbitrary and should be decriminalised.
- But the centre approached the SC saying that its judgment in decriminalising adultery should not be applied to armed forces.
- The court observed that something which is not adultery will still be unbecoming conduct & army act is on different footing.
- This observation is in contrast to the judgments made by various High Courts in the past.

What were the High Court verdicts regarding this?

- In **Rabindra Nath Ghosh case** (1985), Calcutta Court held that a head constable who was living with another woman ignoring his married wife is not guilty of any misconduct.
- In **State of U.P. vs BN Singh** (1989), Allahabad Court ruled that to bring a case against government servant for his personal immorality on the habit of sex there should be valid reason.
- The reason must be that this habit should have reduced his utility as a public servant & damaged the government in public esteem.
- In **Pravina Solanki vs State of U.P.** (2001), court held that employees act in his/her private life cannot be regarded as misconduct.
- In **Mahesh Chand Sharma vs State of Rajasthan** (2019) case, court held that employer should not do moral policing on its employees that go beyond the domain of his public life.

What can we infer from this?

- Various High Courts held that the act of adultery is not a sufficient ground to initiate departmental proceeding unless it interferes with an employee's official functions.
- But the Supreme Court's observation that Army Act is on a different footing raises contention between misconduct and immoral act.
- It is generally understood that misconduct is unlawful behaviour, which involves moral turpitude, improper or wrong behaviour and should be wilful in character.
- Government want its employees to maintain integrity both in public and private domain.
- Hence, SC should state whether adulterous conduct is sufficient to initiate departmental action.
- It must also define expressions such as unbecoming of a civil servant or unbecoming or disgraceful conduct.

9.5 Outdated Nature of Bureaucracy

What is the issue?

- Despite the efforts of all public institutions, bureaucracy has emerged as a major concern for the ineffective response to the COVID-19 crisis.
- This inadequacy is the reflection of the outdated nature of public bureaucracy, and its high time that bureaucracy is overhauled.

How does traditional bureaucracy work?

- In the 21st century, democratic countries are still relying on traditional bureaucracies.
- They perform primarily the public policy formulation and implementation roles.
- This traditional bureaucracy/Weberian bureaucracy still prefers a generalist over a specialist.
- A generalist officer (IAS and State civil service officials) is deemed an expert and as a result, a superior.
- Traditional bureaucracy is still stuck with the leadership of position over leadership of function.
- Under this, bureaucracy has become an end in itself rather than a means to an end.
- Further, the rigid adherence to rules has resulted in the rejection of innovation.

How has it performed during the COVID-19 crisis?

- Under the above structure, specialists in every government department have to remain subordinate to the generalist officers.
- The COVID-19 pandemic has exposed this weakness.
- Healthcare professionals who are specialists have been made to work under generalist officers.
- The policy options have been left to the generalists when they should be in the hands of the specialists.
- The justification was that the generalist provides a broader perspective compared to the specialist.
- Also, under rigid adherence to rules, COVID-19 aid got stuck in cumbersome clearance processes even during the pandemic.

What is the alternative?

- Leadership of function is when a person has expert knowledge of a particular responsibility in a particular situation.
- The role of the leader is to explain the situation instead of issuing orders.
- Every official involved in a particular role responds to the situation.
- They do not rely on some dictation from someone occupying a particular position.

Is New Public Management the right choice?

- The reform often suggested in India is new public management (NPM).
- NPM as a reform movement promotes privatisation and managerial techniques of the private sector.
- This is seen as an effective tool to seek improvements in public service delivery and governance.
- But this is not a viable solution, not the least in India where there is social inequality and regional variations in development.
- It renders the state a bystander among the multiple market players with accountability being constantly shifted, especially during a crisis.
- COVID-19 too has shown that the private sector has also failed in public service delivery.

What is appropriate for India?

- The most appropriate administrative reform is the model of new public governance. This model is based on collaborative governance.
- Here, the public sector, private players and civil society, especially public service organisations (NGOs), work together for effective public service delivery.

- There is no domination of public bureaucracy as the sole agency in policy formulation and implementation.
- As part of new public governance, a network of social actors and private players would take responsibility in various aspects of governance.

9.6 Restrictions on Government Servants

Why in news?

- With a notification dated May 31, 2021, the Centre has amended its pension rules.
- It has put new restrictions on officials of intelligence and security organisations after retirement.

What are the changes made?

- The government has amended the CCS (Central Civil Services) Pension Rules-1972.
- Amended Rule-8(3)(a) talks about officials retired from any intelligence or security-related organisation included in the Second Schedule of the RTI Act.
- With the new provision, they are barred from writing anything about their organisation without permission.
- [The Second Schedule of the RTI Act covers 26 organisations.
- These include the Intelligence Bureau, R&AW, Directorate of Revenue Intelligence, CBI, NCB, BSF, CRPF, ITBP and CISF.]

What are the existing provisions after retirement?

- **Pension** - The pension of government servants is already subject to their good conduct after retirement.
- The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof.
- This applies if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.
- The expression 'grave misconduct' includes the communication or disclosure of any sensitive information obtained while holding office.
- **Employment** - Rule 26, Death-cum-Benefits Rules, restricts a pensioner from any commercial employment for one year after retirement.
- This cooling-off period was 2 years until 2007, when an amendment reduced it to one year.
- Exceptions are allowed with previous sanction of the central government.
- Non-compliance may have implications on receiving pensions.

What are the restrictions while in service?

- The CCS (Central Civil Services) Conduct Rules deal with this.
- Rule 7 restricts government servants from resorting to or abetting any form of strike or coercion.
- Rule 8 restricts them, except with government sanction, from owning or participating in the editing or management of any newspaper.
- It applies to other periodical publication or electronic media as well.
- They can publish book or participate in public media.
- But, they shall at all such times clarify that the views expressed are their own and not that of the Government.
- Rule 9 restricts them from making statements or opinion that adversely criticize any current or recent policy or action of the Central Government or a State Government.
- Rule 9 of the CCS Pension Rules deals with any government official committing any misconduct and retiring.
- In that case, he or she may face departmental proceedings only until 4 years of the date of committing that misconduct.

What about involvement in political activity?

- **While in service-** The Conduct Rules bars government servants from being associated with any political party or organisation.

- They can also not take part or assist any political activity.
- Every government employee shall at all times maintain political neutrality.
- **After retirement** - There is no rule to stop them from joining politics after retirement.
- In 2013, the Election Commission wrote to the DoPT and Law Ministry in this regard.
- It suggested a cooling-off period for bureaucrats joining politics after retirement.
- But this was rejected, saying "it may not stand the test of valid classification under Article 14 of the Constitution."

Why is the amendment now?

- Some high-profile retired officers had written books on their tenure as officials.
- Some of these had revealed some confidential information.
- The move was thus prompted by concerns arising out of these.
- The Committee of Secretaries recommended, and the amendment was in process for around 4 years.
- It was approved recently and notified on May 31, 2021.

9.7 Civil Society for Governmental Accountability

What is the issue?

- The second wave of Covid has exposed the gaps in holding the government in power accountable.
- This necessitates a relook into the role of the civil society.

What constitutes the civil society?

- Civil society refers to associations or communities that work above and beyond the state.
- India's civil society has many actors:
 - i. grassroots organisations that connect to the last mile and provide essential services
 - ii. think tanks and academic institutions that offer new policy ideas and generate evidence
 - iii. advocacy organisations that amplify and build support for causes
 - iv. large impact funds and philanthropists who decide how these organisations get funded

What are the shortfalls in its functioning?

- Successive governments in India have been wary of the potential contributions of the civil society.
- Governments have significantly curtailed the kind of activities that civil society actors can engage in.
- Philanthropists and donor organisations are unable to support initiatives that strengthen India's democracy and its accountability mechanisms, for fear of retribution.
- Reportedly, close to 90% of total donor interest in India was targeted towards primary education, primary healthcare, rural infrastructure and disaster relief.
- This leaves other challenging areas such as human rights and governance with minimal funding.
- Many civil society actors also focus on engaging with narrow policy problems.
- They often ignore the core politics around policy and focusses disproportionately on technocratic solutions.

What is the implication?

- In the absence of a strong push from civil society, the democratic institutions have no intrinsic incentive to reform.
- Evidently, in challenging times such as the current pandemic, the country had no effective mechanism to hold a sitting government accountable.
- The judiciary was helpless, with judges having trouble in getting answers from the government.
- Even Parliament was unable to perform its oversight duty; it barely met in 2020.

- Evidently, the system of checks and balances in India's democracy has been weakened.

9.8 Autonomy of IIMs is at peril

Why in news?

Recently, IIM-Ahmedabad and IIM-Calcutta are surrounded by controversies which questions the autonomy they possess.

What are the controversies surrounding them?

1. IIM-Ahmedabad:

- The Director has approved a PhD thesis of three essays which is based on electoral democracy.
- It is alleged that the thesis described political parties like BJP & BSP as ethnically constituted one and BJP as a pro-Hindu upper caste party.
- Later the Ministry of Education asked the Institute for a copy of the thesis after a MP sent letter to the Prime Minister.
- The MP urged that the thesis should be re-examined by independent professors and the PhD be kept on hold till the review is complete.
- But the director said that government is not an arbiter of complaints regarding PhD thesis and complaints should be raised in appropriate academic forums present in the Institute.

2. IIM Calcutta:

- There is a dispute between the Institute's Director and the Chairman of the Board.
- The Board passed a resolution against the Director and stripped his key powers of making appointments and taking disciplinary action.
- The above instances raise **questions on the autonomy** which IIMs posses.

How was the autonomy of IIMs earlier?

- Before the enactment of the IIM act in 2017, these IIMs functioned as Societies.
- They had a fair amount of autonomy in academic matters and other issues such as the fixing of fees.
- They were not dependent on the government for funds and were in a better position to assert their autonomy.
- But the appointment of Directors and Chairmen remained in the government's hands and government often used this leverage to influence the IIMs.
- However this autonomy was only a product of convention and it functioned well as long as both sides respected it.
- When this respect was compromised, friction has occurred.

What are the other instances of friction between them?

- IIMs tend to protect their autonomy and opposed government's attempt to curtail their freedom.
- In 2003-04, government issued an order which drastically reduced the admission fees in six IIMs from Rs 1.5 lakh to Rs 30,000.
- A face-off existed between the government and the IIMs.
- It got resolved only after the government reversed the order.

How does government funding affect their autonomy?

- All over the world higher education system is supported by the government in one form or the other.
- Normally this should not impact the autonomy of universities.
- But government can interfere in their autonomy irrespective of whether these institutions are funded by the government or not.
- This was the case with IIM-A which is financially independent.

What are the implications this turmoil on the IIMs?

- The new IIM Act has created a dramatic shift in power dynamics in these institutions.
- The government has relinquished control on paper.
- But the implementation of the Act will face issues as the Board assumes greater power in the functioning of the IIMs.

9.9 Digital Divide

Why in news?

The report of the National Statistics Office's (NSO's) the survey of 'Household Social Consumption on Education in India' for July 2017-June 2018 was released.

What does the report highlight?

- It highlights the poor state of computer and internet access in several States.
- The disparities are glaring among different economic strata as well.
- The digital gap that separates the privileged from the deprived remains unbridged years after the broadband policy of 2004.
- Its effects are painfully evident during the pandemic as students struggle to log on to online classes.
- Some poorly connected States have improved since the survey period.
- But, the gaps are so stark that any development could only be modest.

What are the findings?

- Only Delhi, Himachal Pradesh and Kerala had internet access exceeding 50% for urban and rural households taken together.
- Punjab, Haryana and Uttarakhand exceeded 40%, unimpressive numbers still.
- Large States like Uttar Pradesh, Tamil Nadu, Andhra Pradesh and Karnataka had access below 20%.

What is critical?

- In today's environment, net access is critical.
- Even where mobile phones and laptops are available, they cannot be meaningfully used in the absence of net access.
- If net connectivity is 5% to 10% in rural Odisha, Madhya Pradesh, Telangana, Karnataka and West Bengal, only a slim minority can hope to do any academic work.
- Many remote locations have reliability problems and power deficits, making it a challenge to keep gadgets operational even offline.

What is the target?

- Prime Minister has announced in his Independence Day address that all villages would be connected with optical fibre cable in 1,000 days.
- This enhanced target follows the one set in 2011 to link panchayats through a national optical fibre network.
 - to raise administrative capacities through information infrastructure.
- Evidently, successive governments have dropped the ball.
- States have not shown the alacrity to make a big leap either, and the deficit has now dealt a blow to students.

What could be done?

- To make up for lost time, connectivity for education must be prioritised.
- Mapping the needs of each district based on the NSO data will help identify areas where children do need equipment and connectivity.

- Such efforts have been launched globally in the wake of COVID-19, some in partnership with the telecom sector to leverage its capacity for surveys and mapping.
- Some companies in India have made the valuable suggestion that their used desktop computers could be refurbished and donated.
- For this, the governments need to open a programme. The government needs to look at all possibilities and go into overdrive to bridge the digital divide.

9.10 From a digital India to a digital Bharat - PM-WANI

Why in news?

The Union Cabinet recently gave its approval for the proposal of DoT for setting up of Public Wi-Fi Networks by Public Data Office Aggregators (PDOAs).

What is the PM-WANI project?

- PM-WANI - Prime Minister's Wi-Fi Access Network Interface
- It aims at setting up of Public Wi-Fi Networks by Public Data Office Aggregators (PDOAs).
- The objective is to provide public Wi-Fi service through Public Data Offices (PDOs) spread across the length and breadth of the country.
- The project will accelerate proliferation of Broadband Internet services through Public Wi-Fi network in the country.
- There shall be no license fee for providing Broadband Internet through these public Wi-Fi networks.

Who are the key players in the project?

- **Public Data Office (PDO)** - The PDO can be anyone.
- So, along with Internet infrastructure, this is also a way to generate revenue for individuals and small shopkeepers.
- It is important to note that PDOs will not require registration of any kind, thus easing the regulatory burden on them.
- **Public Data Office Aggregators (PDOAs)** - The PDOA is basically the aggregator who will buy bandwidth from Internet service provider (ISPs) and telecom companies and sell it to PDOs.
- They will also account for data used by all PDOs.
- **App provider** - The app provider will create an app through which users can access and discover the Wi-Fi access points.

What are the key operating mechanisms?

- The first is interoperability, where the user will be required to login only once and stay connected across access points.
 - The requirement of authentication through a one-time password for each instance of access may be cumbersome.
 - So, automatic authentication through stored e-know your customer (KYC) is encouraged.
 - This inevitably means a linking with Aadhaar.
- The second is multiple payment options, allowing the user to pay both online and offline.
- The TRAI report on the details of the project show how products should start from low denominations, starting with Rs. 2.

How is internet penetration in India?

- As per the latest Telecom Regulatory Authority of India (TRAI) data, about 54% of India's population has access to the Internet.
- The 75th round of the National Statistical Organisation survey shows that only 20% of the population has the ability to use the Internet.

- The India Internet 2019 report shows that rural India has half the Internet penetration as urban, and twice as many users who access the Internet less than once a week.
- So, with each move towards digitisation, the country is threatening to leave behind a large part of the population to suffer in digital poverty.
 - E.g. the Umang App (Unified Mobile Application for New-age Governance) allows access to 2,084 services, across 194 government departments
 - The ability to access and utilise the app enhances an individual's capabilities to benefit from services that they are entitled to. Those who cannot access are left behind.

How significant does PM-WANI become then?

- India can create \$1 trillion of economic value using digital technology by 2025.
- With PM-WANI, anyone living in their house, a paan shop owner or a tea seller can all provide public Wi-Fi hot posts, and anyone within range can access it.
- Certainly, the project's focus is on last mile delivery.
- So, essentially, the project would mean the ability to connect to a Wi-Fi broadband connection almost anywhere.
- This can help to bridge the increasing digital divide in India.
- It will also help to reduce the pressure on mobile Internet in India.
 - The India Internet report shows that 99% of all users in India access the Internet on mobile, and about 88% are connected on the 4G network.
 - This leads to a situation where everyone is connected to a limited network, which is getting overloaded.
 - This, in turn, results in bad speed and quality of Internet access.

How could it aid rural connectivity?

- The PM-WANI has the potential to change the fortunes of Bharat Net as well.
- Bharat Net envisions broadband connectivity in all villages in India.
 - The project has missed multiple deadlines.
 - Even where the infrastructure has been created, usage data is not enough to incentivise ISPs to use Bharat Net infra to provide services.
- One of the reasons is simply the lack of last mile availability of the Internet.
- Another key reason for the lack of demand is the deficit in digital literacy in India.
- In terms of digital literacy, it is not enough to look at digital literacy as a set of specific skills.
- This is because the skills required to navigate technology keep changing.
- A more appropriate framework is to see it as an evolving decentralised concept.
 - This depends on how people interact with technology in other aspects of their life, and is influenced by local social and cultural factors.
- The PM-WANI seems to fit within this framework.
- It seeks to make accessing the Internet as easy as having tea at a shop.
- This is not a substitute for the abysmal digital literacy efforts of the government, but will definitely help.

What about security and privacy issues?

- A study conducted at public Wi-Fi spots in 15 airports across the U.S., Germany, Australia, and India discovered that two thirds of users leak private information whilst accessing the Internet.
- Further, the TRAI report recommends that 'community interest' data be stored locally.
- This raises questions about data protection in a scenario where the country currently does not have a data protection law in place.

- These are however, problems of regulation, state capacity and awareness.
- They do not directly affect the framework for this scheme.
- Certainly, with the PM-WANI, the state is expanding the reach of digital transformation to those who have been excluded till now.

9.11 Police Reforms

What is the issue?

- An efficient criminal justice system helps a country politically, socially and economically.
- But political masters show reluctance to implement the Supreme Court-mandated police reforms of 2006. Here is a look at the importance of police reforms.

How important are police reforms?

- **Social** - The social implications of lack of police reforms can be gauged from the report, "Crime in India 2019" published by NCRB.
- As per the report, more than 25,000 cases of assault on women, close to 12,000 rape cases and 4000 "dowry deaths" have been pending trial for 5 to 10 years.
- **Economic** - The cost of the failed criminal justice system is reflected in the reluctance of foreign companies to set up manufacturing and commercial ventures in India.
- They see quick settlement of criminal, labour and civil disputes as a precondition.

What are the additional roles performed by police stations?

- Besides prevention and detection of crime and maintenance of law and order, police stations in India undertake numerous daily tasks.
- They provide verifications and no objection certificates of different kinds to citizens.
- They supply crucial documents.
- Police stations also verify domestic help/employees of central and state governments/public sector undertakings/students going abroad for studies.
- The procedures are non-transparent and timelines are often blurred, thus encouraging corrupt practices.

What are the reforms needed?

- A definite attempt can be to ensure time-bound delivery of the above-mentioned services to citizens.
- States need to invest more resources to upgrade their e-portals for providing the 45 identified basic services to the citizens.
- Adhering to a defined process with a timeline and clear delineation of the levels of police officers involved can ensure transparent and non-corrupt service delivery.
- Along with English or Hindi, the state languages should also be incorporated for ease of access to all citizens.
- Investigation and prosecution need improvement and all criminal trials must be completed within a year.
- Technology-driven service delivery mechanisms can help achieve this.

9.12 Police Reforms - Prakash Singh Judgement

What is the issue?

- Political interference in police postings continues despite the landmark Prakash Singh judgment nearly a decade-and-a-half ago.
- The latest episode of allegations of lobbying by several IPS officers in Maharashtra has brought the issue to the fore.

What is the Prakash Singh v. Union of India case?

- Prakash Singh served as DGP of UP Police and Assam Police, besides other postings.

- He filed a PIL in the Supreme Court post retirement, in 1996, seeking police reforms.
- In a landmark judgment, the Supreme Court in September 2006 had directed all states and UTs to bring in police reforms.
- The ruling issued a series of measures that were to be undertaken by the governments.
- These were in line with ensuring that the police could do their work without worrying about any political interference.

What were the measures suggested in the Prakash Singh judgment?

- The main directive in the verdict was fixing the tenure and selection of the DGP (Director General of Police).
- This is to avoid situations where officers about to retire in a few months are given the post.
- In order to ensure no political interference, a minimum tenure was sought for the Inspector General of Police.
- This is to ensure that they are not transferred mid-term by politicians.
- The SC further directed postings of officers being done by Police Establishment Boards (PEB).
- The idea is to insulate powers of postings and transfers from political leaders.
 - The PEBs comprise police officers and senior bureaucrats.
- Further, there was a recommendation of setting up State Police Complaints Authority (SPCA).
- This should work as a platform where common people aggrieved by police action could approach.
- Apart from this, the SC directed separation of investigation and law and order functions to better improve policing.
- It also suggested setting up of State Security Commissions (SSC) that would have members from civil society and forming a National Security Commission.

How is the implementation?

- Up till 2020, not even one state was fully compliant with the apex court directives.
- While 18 states passed or amended their Police Acts in this time, not one fully matches legislative models.
- Five contempt petitions were issued in the past decades to states found to be non-compliant.
- Bigger states like Maharashtra, Tamil Nadu and UP have been the worst when it comes to bringing about systemic changes in line with the judgement.
- It is only the North-Eastern states that have followed the suggested changes in spirit.

What is the case with Maharashtra?

- The Maharashtra government under former CM Devendra Fadnavis passed the Maharashtra Police (Amendment and Continuance) Act, 2014.
- This was meant to incorporate the changes suggested in the Prakash Singh judgment.
- However, recently too, there were allegations of rampant political interference in transfers.
- The state Acts were deliberately formulated in such a way that “it just gave legal garb to the status quo that existed before”.
- In the updated Maharashtra Police Act of 2014 too, a section 22(N)(2) had been added.
- This gave the CM special powers to transfer officers at any point in case of ‘administrative exigencies’.
- The SC directive was that an officer should not be transferred before the given tenure.
- But CMs have used this section for mid-term transfer thereby maintaining control on transfers.

How is the government interfering despite PEBs?

- The officers in the Police Establishment Boards (PEB) are ‘unofficially’ informed by the government about which officer would be preferred for which post.
- Either that or in meetings to decide postings of senior IPS officers, when even the Additional Chief Secretary (home) is present, the officers go with what the ACS Home says.

- Among the five officers in the PEB, even if one or two do not agree, the majority usually sides with the opinions of the government of the day.
- Thus, in spite of PEBs in place, the system has continued as before.

What about the State Police Complaints Authority (SPCA)?

- In January 2017, the SPCA was set up by the Maharashtra government.
- The complaints body did receive several complaints at their office in Mumbai.
- But, the SPCA was struggling to set up offices in rural areas.
- Several activists had alleged that the SPCA was toothless.
- While the SPCA could recommend action against any officer found guilty, the decision on taking actions eventually rested with the government.
- Over the past years, the SPCA has also struggled due to lack of staff members.

9.13 Towards a More Humane Police Force

What is the issue?

Chief Justice of India N.V. Ramana expressed concern at the degree of human rights violations in police stations in the country

What does NCRB data reveals?

- Human rights violations in police stations include
 1. torture
 2. custodial deaths
 3. atrocities against women
 4. fake encounters, etc.
- An average of about 100 custodial deaths have taken place every year between 2010 and 2019
- A judicial inquiry which is mandatory for every suspicious custodial death was conducted in 26.4 cases
- Ratio of the number of arrests to the number of IPC offences has decreased from 1.33 in 2010 to 0.96 in 2019
- On an average about 47.2 criminal cases were registered annually against policemen in last 10 years

As per the NCRB data, Tamil Nadu ranks on the 2nd spot in number of custodial deaths behind Uttar Pradesh

What are the reasons for human rights violations?

- to extract quick confession from the suspect
- to teach the person concerned a lesson
- taking law in their own hand through extrajudicial actions
- to assert power or authority

What are the safeguards available in this regard?

Constitutional safeguards

- **Article 21** - Right to life, Right of persons to life with human dignity. For example, handcuffing is *prima facie* inhuman
- **Article 22** - Rights to the arrested and detained persons
 - right to be informed of the ground of arrest
 - right to consult a lawyer and to be defended by a lawyer of his choice
 - right to be produced before a magistrate within twenty four hours

International efforts

- **Universal Declaration of Human Rights (UDHR)** - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- **International Covenant on Civil and Political Rights** - Every human being has the inherent right to life and no one shall be arbitrarily deprived of his life

What kind of reforms are needed?

- **Reducing the number of arrests** - arrests should be made only when it is necessary to prevent the person from tampering with evidence, committing any further offence,etc.
- **Separation of investigating police**- the investigating police should be separated from the law-and-order police to ensure better expertise in investigation
- **Increase in number of investigating officers** - Malimath Committee recommended that an investigating officer should preferably investigate not more than 10 cases every year
- **Subject experts** - With increase in newer types of crime like white collar crime and cybercrime, subject experts are needed
- **CCTV cameras** - Supreme Court has directed States to install CCTV cameras in police stations with a storage facility of audio-video recording for 18 months
- **Scientific tools of interrogation** - like the lie detection test, narco test and brain fingerprinting test must be encouraged
- **Display boards on human rights** - CJI suggested to install display boards on human rights to disseminate information about the free legal aid services to deter police excesses

9.14 Privacy and Surveillance

Why in news?

- WhatsApp's users are switching to telegram & other apps after its new policy creates privacy fears among its users.
- The Ministry of Electronics and Information Technology (MeitY) has warned WhatsApp once again to roll back its latest update in privacy policy.
- This time, the Ministry has also warned of legal action if it does not get a satisfactory reply within a specified time (May 25, 2021).

What is the recent privacy policy of WhatsApp?

- WhatsApp, early in 2021, updated its privacy policy.
- Accordingly, WhatsApp users would no longer be able to stop the app from sharing data (such as location and number) with its parent Facebook.
- Deleting their accounts altogether is the only option to avoid this.
- WhatsApp initially proposed a February 8, 2021 deadline.
- But an intense backlash against this decision, triggered users moving to rival platforms such as Signal.
- This forced WhatsApp to push the update to May 15, 2021.
- Eventually, it decided not to enforce this as well, preferring to “follow up with reminders to people over the next several weeks”.
- WhatsApp has over 2 billion users in the world, about half a billion of whom are in India, and who use it for free.
- Its privacy updates are designed to make the business interactions that take place on its platform easier while also personalising ads on Facebook.
- That is how it will have to make its money.

What is the aim of WhatsApp's new policy?

- Facebook owns Instagram, WhatsApp & has sought to integrate the offerings from WhatsApp, Instagram and Facebook.
- This integration of three large consumption products is a means to monetise their everyday use by their consumers.
- This is because Facebook's revenue model uses data on its platform to allow advertisers to target ads towards users which can benefit from the WhatsApp data as well when new policy comes in.
- However such data transfer is not possible in EU since they have strict data protection laws.
- Hence Ministry of Electronics and IT has sent series of queries to WhatsApp why Indian users would be sharing information with Facebook unlike in Europe.
- So WhatsApp has postponed the date for users to accept its new privacy policy terms to May 15, 2021.

What has the Ministry said now?

- The changes to privacy policy and the manner of introducing them undermine the sacrosanct values of informational privacy, data security and user choice for Indian users.
- Indians depend on WhatsApp to communicate.
- It is thus irresponsible for WhatsApp to impose unfair terms and conditions on Indian users.
- Particularly, this discriminate against Indian users vis-à-vis users in Europe.
- MeitY has said it would pursue all legal options available to it "to protect the sovereign rights" of Indian citizens.
- This marks the first time that the Ministry has warned WhatsApp of legal action.

What were the earlier exchanges?

- Communication between the IT Ministry and WhatsApp on the issue of the updated privacy policy has been going on since January 2021.
- The Ministry had sent its first letter on the issue to Will Cathcart, the global Chief Executive Officer of WhatsApp.
- In it, the Ministry had said the updated policy and the subsequent changes enabled WhatsApp and other Facebook companies "to make invasive and precise inferences about users".
- The Ministry had then sent a set of 14 questions to WhatsApp.
- The questions were on –
 - i. the various ways in which it collected data
 - ii. the permissions and consents it obtained from domestic users
 - iii. whether they were different from what it collected from users in other parts of the world
- The Ministry had also sought to know whether the company conducted any profiling and what the nature of such profiling was.
- There are two government warnings and at least two court cases in this regard, making it hard for WhatsApp to proceed with the changes.

What is the contention now?

- It is to be noted that Europe's citizens are protected by strong data laws - General Data Protection Regulation or GDPR.
- There is no Indian equivalent of such laws.
- India must have data protection laws in place before acting against WhatsApp.
- WhatsApp has reportedly said in its affidavit that it is being singled out.
- Its policy is not different from those of private apps such as Google, BigBasket, Koo, as well as public apps such as AarogyaSetu, Bhim, IRCTC, and others.

- Moreover, if WhatsApp is ready to take the risk of users abandoning it, the government intervening in the process is illogical.
- The Ministry's intermittent approach to issues concerning the user may do more harm to India's approach to data protection and freedom than anything else.

What can be done now?

- Indian government has to quickly take up a robust data protection law aligning with the recommendations of Srikrishna committee.
- The committee tried to address concerns about online data privacy that was in line with the 2018 Puttaswamy judgment.
- However the draft Bill proposed by the government in 2019 diluted some of its provisions.
- It mandated that only sensitive personal data needed to be mirrored in the country & not all personal data as mandated by the committee.
- But data localisation as proposed by the committee may not necessarily lead to better data privacy as it carries the possibility of domestic surveillance over Indian citizens.
- Though the proposed Bill has some of these features, similar to Europe's General Data Protection Regulation, it requires strong checks on state surveillance before it is passed.

9.15 Issues with MGNREGA

What is the issue?

- It is highly worrying that today legislations are promulgated without consulting those it wanted to serve.
- This can be witnessed in the recent farmers protest against the farm laws as they were enacted without public consultation.

Why do any policy/law does require deliberations?

- Continuous dialogue is the norm for effective programme implementation & it is more required during the initial stages of law making of a government programme.
- Though policies are formulated with good principles, their implementations go in mess and are frequently amended due to people's concerns.
- In particular, redistributive, people-facing welfare policies require constant feedback which can be seen in MGNREGA policy.
- MGNREGA has the problem of payment rejections, software flaws& these issues occur due to lack of stakeholder's consultations.

What is the concern with the issue of payment rejections?

- Payments get rejected when government initiates the payment but money doesn't get credited due to technical issues.
- For example, on occasions, the block level data entry operators make errors in entering the account or Aadhaar details of workers.
- At other times, banks consider accounts as 'dormant' when the accounts are not used for some time leading to depriving money for the workers.
- Hence thorough understanding of the complex payment architecture is required which involves various line departments, banks & National Payments Corporation of India (NPCI).

What is the concern with software flaws?

- Software flaws breaks the link between workers's Aadhaar and their bank account in which software is maintained by the NPCI.
- Hence the workers face rejection stating that 'Inactive Aadhaar' exists & government officials, bank officials are unaware of these complex errors.
- Workers had to make multiple trips to short-staffed & overcrowded banks and are rudely replied that their payments have not come.

- Sometimes the reasons for rejections are rarely provided creating uncertainty to their existing insecure situation.
- Field officials often resort to temporary and incorrect quick fixes which backfire leaving the workers in despair.
- These issues were resolved by Rajasthan in a sensible manner.

How did the state of Rajasthan addressed this issue?

- Department of Rural Development of the Government of Rajasthan has held numerous discussions which resulted in a workshop.
- It involved worker groups, CSO's who interacted directly with the aggrieved workers, administrative officers from the village level to the State level, and bankers.
- They gave detailed guidelines on well-defined responsibility, timelines, monitoring and protocols to be followed by officials which resulted in a significant reduction in payment rejections.
- In a period of one year from the workshop, the Rajasthan government cleared Rs 380 crore worth payments to workers that were earlier stuck due to rejections.
- Currently, only 2.7% payments are pending for regeneration from the State government & 12.3% are under process by the banks.
- Its goal was to ensure that every person who worked gets their full payment on time.

What are the key takeaways from this?

- Open communication channels, eagerness to work with worker groups and a keen ear to the ground are necessary to successfully implement policy/laws.
- This approach helped in benefitting thousands of MGNREGA workers in Rajasthan.
- Mandatory disclosure of information is required for any programme which can be seen in Rajasthan's Jan Soochna Portal (JSP).
- JSP is a single platform in the public domain providing information across 60 departments of over 104 schemes.
- The design and formats of each scheme should be arrived through dialogue involving government officials & numerous CSO's.
- In Rajasthan's MGNREGA, engagement with civil society organisations has been institutionalised through MGNREGA samvads some of which are attended by the Chief Minister.
- Hence if government is committed to its constitutional principles, then it must pay attention to multiple view points and listen to the voices of the marginalised.

9.16 Real Estate Regulatory Authority

Why in news?

RERA has infused governance & has cleansed black money in the hitherto unregulated real estate sector.

What is Real Estate Regulatory Authority?

- The RERA act aims to protect the interests of homebuyers & boost investment in the real estate sector.
- It aims to bring transparency & efficiency in sale/purchase of real estate by establishing RERA in each state to regulate real estate sector.

What are the provisions of the act?

- The Act stipulates that no project can be sold without project plans being approved by the competent authority.
- Every project has to be registered with the regulatory authority thereby putting end to the practice of selling properties based on false advertisements.
- This authority also acts as an adjudicating body for speedy dispute resolution.

- The promoters of the project have to maintain project based separate bank accounts to prevent fund diversion & they have to mandatorily disclose unit size based on carpet area.
- Either the promoter or the buyer has to pay equal rate of interest in case of default of project thereby reinforcing equity.

How did the various states implement the act?

- Since RERA came into force, 34 states & UT's have notified rules, 30 states & UT's have set up real estate regulatory authorities and 26 have set up appellate tribunals.
- The web-portal for project information was operationalised by 26 regulatory authorities which ensures full project transparency.
- **Maharashtra** - While the 2013 bill was pending in the Parliament, the government in Maharashtra enacted its own law in the Assembly in 2012 by taking Presidential assent under Article 254.
- The state law was not consumer-friendly & central government approved the law for its political gains which could have caused permanent damage to the home buyers of Maharashtra.
- Later this anomaly was corrected by repealing the state Act under section 92 of RERA by invoking the provision under the same Article 254.
- **West Bengal** - In 2017, West Bengal has enacted its own state law — the West Bengal Housing Industry Regulation Act (WBHIRA) knowing well that there was already a central law on the subject.
- Despite multiple efforts by the Centre, West Bengal refused to implement RERA, causing irreparable loss to home buyers.

How does RERA establish cooperative federalism?

- Though the Act has been piloted by the Central government, appointment of regulatory authorities & appellate tribunals, notifying the rules are done by state governments.
- These regulatory authorities are required to manage the day-to-day operations, resolve disputes, and run an active and informative website for project information.
- What SEBI is to the securities market, RERA is to the real estate sector.
- RERA provisions are transformative in nature, has empowered consumers, helping in eliminating unfair trade practices & rectified power asymmetry prevalent in the sector.

9.17 Media Regulation

What is the issue?

- The Mumbai Police recently filed a supplementary chargesheet containing WhatsApp messages between Republic TV Editor Arnab Goswami and former Broadcast Audience Research Council CEO Partho Dasgupta.
- The incident has brought to light the shortfalls in media regulation.

What are some of the concerns?

- Since the above event, the discussions in the media have been about –
 - ethical transgressions
 - manipulating institutional arrangements to show increased audience reach
 - breaching the line meant to protect the autonomy and efficacy of regulating bodies and external research entities
- For a news ombudsman, the main issue is that an effective institution of self-regulation for the Indian media does not exist.

How does media regulation work in India?

- There are four bodies in India for media regulation.
- The first is the **Press Council of India**, created through an act of Parliament.

- It is headed by a former Supreme Court judge.
- Its mandate is to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies in India.
- It has 28 members including editors, senior journalists, media managers, representative from a news agency.
- Besides it also has one nominee each from the Bar Council of India, the UGC, and the Sahitya Akademi as well as members of the Lok Sabha and the Rajya Sabha.
- To note, the regulatory tilt is towards the executive writ.
- The second is the **News Broadcasting Standards Authority** created by the News Broadcasters Association (NBA), an industry body.
- The broadcast industry has a third body, the **Broadcasting Content Complaints Council**.
- This is to deal with complaints against entertainment and general segment television programmes.
- A fourth body was created by those who left the NBA, called the **News Broadcasters Federation**. This is promoted by Mr. Goswami's Republic TV.
- A close examination of the functioning of these bodies reveals their inability to implement their primary mandate of ensuring freedom while adhering to agreed ethical and professional standards.

How will in-house mechanisms work?

- Self-regulation would ensure freedom not only from the government, but also from other vested interests.
- If media organisations are serious about effective self-regulation, the need of the hour is to actively build in-house mechanisms.
- For instance, the Readers' Editor (RE) of The Hindu is an independent, full-time internal ombudsman.
 - Readers and other complainants have a designated pointsperson to reach out to.
 - The RE not only examines all the complaints that are received, but also effects course correction if the paper errs.
- The Organization of News Ombudsmen and Standards Editors has spelled out the responsibility in this regard in clear terms:
 - promote the values of accuracy, fairness and balance in news reporting for the public good
 - assist media organizations to provide mechanisms to ensure they remain accountable to consumers of their news
- Many studies reveal that having an internal mechanism often helps news media organisations to improve transparency.
- It also helps in developing trust with the audience.

What is the way forward?

- The legal route rarely addresses the importance of a toxic-free information ecology.
- Unless the news-consuming public demands for an independent, internal ombudsman, the ethical conundrum will continue to haunt us.
 - E.g. A programme, 'Bindas Bol-UPSC Jihad', by Sudarshan TV was found offensive by almost everyone from the Information and Broadcasting Ministry to the apex Court.
 - But that did not prevent the spread of venom and wrath in the public sphere.

9.18 Wrong Patent Regime

What is the issue?

Despite the ongoing COVID-19 crises, intellectual property rules is been a barrier for right to access healthcare.

What is patent?

- A patent is a conferral by the state of an exclusive right to make, use and sell an inventive product or process.
- Patent laws are usually justified on three distinct grounds:
 1. People have natural and moral right to claim control over their inventions;
 2. Exclusive licenses promote invention and benefit society;
 3. Individuals must be allowed to benefit from the fruits of their labour and merit;

How does patent rules function in India?

- There is a constant tension in offering exclusive rights over medicines and state's obligation of ensuring in equal access to basic healthcare.
- The colonial-era law which allowed for pharmaceutical patents was changed when committee chaired by **N. Rajagopala Ayyangar** in 1959 objected it on ethical grounds.
- It found that foreign corporations used patents to suppress competition from Indian entities and thus medicines were priced at high rates.
- **Patents Act, 1970** was enacted subsequently that removed the monopolies over pharmaceutical drugs, with protections offered only over claims to processes.
- This change in rule allowed generic manufacturers in India to grow and as a result life-saving drugs were available at affordable prices.
- This was affected when negotiations began to create WTO which would give a binding set of rules governing intellectual property.
- It was also said that countries which fail to subscribe to the common laws of WTO will be barred in global trading circuit.
- But with the advent of the **TRIPS agreement** in 1995 this concern was addressed and it was only after this Indian companies began to manufacture generic versions of medicines at low prices.

What is the problem now?

- Last year, India and South Africa requested WTO to temporarily suspend the rules under the 1995 TRIPS agreement.
- A waiver was sought to the extent that the protections offered by TRIPS impinged on the containment and treatment of COVID-19.
- If waiver was allowed, countries will be in a position to facilitate a free exchange of know-how and technology surrounding the production of vaccines.
- But a small group of states — the U.S., the European Union, the U.K. and Canada among them — blocked the move.

Why these countries objected?

- These nations put forward two arguments for their objections which have been refuted time and again.
- One, that unless corporations are rewarded for their inventions, they would be unable to recoup amounts invested by them in research and development.
- Two, that without the right to monopolise production there will be no incentive to innovate.
- Recently, it has been reported that in U.S. Moderna vaccine was produced from the basic research conducted by the federal government agency and other publicly funded universities.
- Similarly, public money accounted for more than 97% of the funding towards the development of the Oxford/AstraZeneca vaccine.
- Therefore, the claim that a removal of patents would somehow invade on a company's ability to recoup costs is simply untrue.
- The second objection — the idea that patents are the only means available to promote innovation — has become a dogma.

What are the alternatives proposed?

- Under the current system, poor are unfortunate enough to have the disease and are forced to pay the price.
- Therefore a system that replaces patents with prizes will be more efficient and more equitable.
- Several economists are proposing a prize fund for medical research in place of patents.
- This ensures incentives for research will flow from public funds while the biases associated with monopolies are removed.
- The pandemic has demonstrated how immoral the existing world order is which should not be allowed to persist.
- If nation states are to act as a force of good, they must attend to the demands of global justice.

9.19 Denial of Rations

Why in news?

Recently Supreme Court asked the centre to respond to a PIL alleging that ration cards were cancelled due to insistence on Aadhaar linkage.

What are the findings of the survey related to this?

- In 2019 National Election Study (NES), people were asked whether they had been denied food grains due to non-possession of Aadhaar or failure of biometric authentication.
- Based on the responses from the ration-card (RC) holding households, it turned out that one in four households were denied food grains due to such issues.
- Moreover the frequency of such denial was on rise that has raised the concern over food security.
- Ever since Aadhaar-based biometric authentication was introduced in PDS, people complain about fingerprints not getting confirmed, no backup of iris poor Internet connection.
- This has forced people to spend on another trip to the shop.

What are the other findings in the survey?

- These seeding and authentication problems not only occur in remote areas but also in urban areas.
- In rural areas, 28% of respondents belonging to RC-holding households were refused ration due to Aadhaar-related issues and in urban areas this was around 27%.
- In both rural and urban areas, the poorest were worst affected – 39% of households whose monthly income below Rs 2,000 -were at some point denied PDS ration due to Aadhaar problems.
- There was a striking difference noticed based on the responses of the Hindi-speaking heartland states vis-à-vis the other states.
- In the Hindi belt-'Bimaru' states- as many as 40% of RC-holding households reported a denial of ration due to Aadhaar issues as compared to 20% households in the rest of the country.
- The problem was less due to non-possession of Aadhaar and more due to biometric authentication and server issues.
- In states like Bihar, Jharkhand, MP, Rajasthan and Chhattisgarh the situation is as grave as the NES data suggests.
- The proportion of RC-holding households who were denied ration due to Aadhaar-related factors was: Rajasthan-36%; Chhattisgarh, -39%; MP& Jharkhand- 40%; Bihar, high as 56%.

9.20 Approaching the CCI

Why in news?

The Competition Commission of India's (CCI's) order has dispelled the ambiguity over who can approach it.

What is the ambiguity?

- There was an ambiguity about who can approach the CCI against anti-competitive practice by an enterprise that breaches the Competition Act.
- This issue has often been raised in debates.
- The accused parties, in their defence, use this as a preliminary ground for dismissal of the case at the very threshold.
- The Commission has not accepted this defence.

What did the NCLAT rule?

- The National Company Law Appellate Tribunal (NCLAT) made a ruling in the appeal case of Samir Agarwal v. CCI.
- It ruled that, to have the locus standi to file information before the CCI, a person must be one who has suffered an invasion of their legal rights as a consumer.

What is the concern that the NCLAT express?

- It said that any other interpretation would make room for people to raise issues of anti-competitive agreements or abuse of dominant position targeting some enterprises with oblique motives.
- The restrictive ruling of the NCLAT has dismayed many students and experts of competition law.
- It amounted to severe circumscribing the opportunities to unravel alleged violations of the Competition Act.

What is the objective of the Competition Act?

- The objective of the Competition Act is to provide for the establishment of a Commission to prevent practices having bad effect on competition.
- It aims to promote and sustain competition in markets.
- It also wants to protect the interests of consumers.
- It aims to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith.
- In pursuit of this objective, the Act duly empowers the Commission to inquire into and penalise such practices.

Why competition should be maintained?

- Competition is sought to be maintained for its considerable benefits for consumers and for the economy on the whole.
- Countries across the world have discarded state-directed policies and monopolies in favour of market-contest.
- Competition offers choice and freedom to consumers, lowers the prices, incentivises innovation and enhances efficiencies of various kinds.
- Most countries have also enacted competition/anti-trust laws to punish practices that suppress competition.

What did the CCI clarify in its recent order?

- The CCI recently, in an order in Harshita Chawla vs WhatsApp and Facebook, clarified the legal position in respect of locus standi.
- The CCI's order asserted the point that violations of the Act are offences in rem and not in personam.[In rem - Applies to "all the world", In personam - Meaning "against a particular person"]
- The CCI said that the proceedings before it are inquisitorial in nature.
- It said that the locus of the informant is not as relevant in deciding whether the case filed before the CCI should be entertained or not.
- If the matter reported to the CCI involves anti-competitive issues falling within the ambit of the Act, the CCI can proceed with the matter.
- The CCI is entitled to proceed suo motu or on any reference being made by the Governments or any Statutory Authority.

What are CCI's amendments?

- The Commission's role as an overarching market regulator also finds its foundational footing in the amendments.
- It amended the provisions of Section 19 (1) (a) by **substituting the words** "receipt of a complaint" with "receipt of any information".
- This amendment reflected the legislative intention of emphasising the inquisitorial nature of the proceedings of the Commission.
- Further, there are several other amendments, as also the other provisions of the Act, which reverberate this inquisitorial scheme.
- This approach is evident from the powers available to the CCI. It can direct investigation and hold inquiries against entities or persons who are suspected to be involved in an anti-competitive conduct.

What is the conclusion?

- The CCI is more concerned with the facts and allegations highlighted in the information rather than the locus of the person who provided it.
- Given the order of the CCI, no informant requires a locus to approach the CCI, this issue is conclusively settled. Now, the parties will not be able to stymie an inquiry on this ground.

9.21 New Labour Codes

Why in news?

The government has introduced new versions of labour codes in Lok Sabha.

What are the three labour codes?

- Industrial Relations (IR) Code Bill, 2020 - Proposed to introduce more conditions restricting the workers' rights to strike.
- Code on Social Security Bill, 2020 - Proposed changes for expanding social security and
- Occupational Safety, Health and Working Conditions Code Bill, 2020 – Proposed to include inter-state migrant workers in the definition of workers.

What are the key proposals in IR Code?

- In industrial establishments having 300 or more workers, the IR Code Bill has proposed to,
 - a) Introduce more conditions restricting the workers' rights to strike,
 - b) Increase the threshold relating to layoffs and retrenchment.
- This number is increased from 100 workers or more at present. These steps are likely to provide more flexibility to employers for hiring and firing workers without government permission.

What is the proposal regarding strike?

- The IR Code proposes that no employee of a company shall go on strike without a 60-day notice.
- It also proposes that no employee during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and 60 days after the conclusion of such proceedings.

What is the proposal regarding standing order?

- The Standing orders are the rules of conduct for workmen employed in industrial establishments.
- The IR Code has raised the threshold for requirement of a standing order to over 300 workers. This implies industrial establishments with up to 300 workers will not be required to furnish a standing order.
- This is a move which experts say would enable companies to introduce arbitrary service conditions for workers.

What did the Standing Committee on Labour suggest?

- The Standing Committee on Labour, in its report submitted in April, had also suggested hiking the threshold to 300 workers.

- According to the Labour Ministry, this will result in an increase in employment and decrease in retrenchment.
- The Committee desires that the threshold be increased accordingly in the Code itself.
- It said that the words “as may be notified by the Appropriate Government” be removed because reform of labour laws through the executive route is undesirable and should be avoided.

What are the concerns raised over the new labour codes?

- The increase in the threshold for standing orders will water down the labour rights for workers in companies having less than 300 workers.
- The IR Code introduces new conditions for carrying out a legal strike.
- Elongating the legally permissible time frame before the workers can go on a legal strike has made a legal strike well-nigh impossible.
- The IR code has expanded to cover all industrial establishments for the required notice period and other conditions for a legal strike.
- The Standing Committee had recommended against the expansion of the required notice period for strike beyond the public utility services like water, electricity, and other essential services.

What are the other proposals?

- The IR Code Bill has also proposed a **worker re-skilling fund**.
- The contributions for the fund are only detailed from the employer of a company along with the contribution from such other sources.
- The employer contribution will amount to 15 days wages last drawn by the worker before the retrenchment.
- The mention of ‘other sources’ for funding the re-skilling fund is vague.

What does the Social Security Code propose?

- It proposes a **National Social Security Board**.
- This Board shall recommend to the central government for formulating suitable schemes for different sections of unorganised workers, gig workers and platform workers.
- Aggregators employing gig workers will have to contribute 1-2% of their annual turnover for social security.
- The total contribution should not exceed 5% of the amount payable by the aggregator to gig and platform workers.

What do the Occupational Safety, Health and Working Conditions Code propose?

- It has defined **inter-state migrant workers**.
- They are the workers who have come on his own from one state and obtained employment in another state, earning up to Rs 18,000 a month.
- The proposed definition makes a distinction from the present definition of only contractual employment.
- It has proposed a **journey allowance** to be paid by the employer for to and fro journey of the worker to his/her native from the place of his/her employment.
- However, the Code has dropped the earlier provision for temporary accommodation for workers near the worksites.

9.22 National Automated Facial Recognition System

What is the issue?

- The implementation of National Automated Facial Recognition System has raised concerns regarding the inadequate safeguards.

What is National Automated Facial Recognition System (NAFRS)?

- It is a biometric technology that uses distinctive features of the face to identify and distinguish an individual.

- It works primarily by capturing the face & its features through camera and algorithms are used to reconstruct the faceprint
- The system compares the faceprint generated with a large existing database of faceprints for identification or verification

Was AFRS used in India Earlier?

- In August 2018, Telangana police launched their own facial recognition facility.
- Ministry of Civil Aviation's "**DigiYatra**" has used the facial recognition system, on a trial basis in Hyderabad airport
- NCRB's Crime and Criminal Tracking Network & Systems (**CCTNS**) uses automated facial recognition

How is it useful?

- To identify criminals, missing people, and unidentified dead bodies as used in CCTNS
- It will prevent the use of fake citizen IDs by fraudsters, infiltration of terrorists, illegal immigrants, etc.
- It is easier and automatic and doesn't need huge manpower
- Use of NAFRS eases the checking procedural delays in airports

What are the implications of using NAFRS?

- **Mass surveillance** – Automated face recognition might lead to a police state
- For instance, China uses automated face recognition system for surveillance of Uighur Muslims in Xingiang province
- **Accuracy** - The accuracy of facial recognition is around 70% with the possibility of producing false positives
- **Right to privacy** – this system violates the privacy of individuals which is a fundamental right as envisaged in *Justice K.S. Puttaswamy vs Union of India (2017)*
- **Storage of data** - Personal Data Protection Bill (PDPB) is still pending and absence of clear guidelines compromises data security
- **Impact on civil liberties** – The technology disincentivises independent journalism, right to assemble peacefully without arms etc.

How can the issues be addressed?

- Proper data protection framework must be in place before implementing the Automated Facial Recognition System
- NAFRS needs statutory backing for legitimacy
- Since police and law and order are state subjects, indepth analysis of the system by states is needed before implementation.

9.23 Issues of Cartelisation

What is the issue?

The Competition Commission of India has slapped a penalty of Rs.873 crore on three beer companies as well as All-India Brewers Association and 11 individuals for colluding to fix beer prices for between 2009 and 2018.

WHAT IS A CARTEL?

According to the Competition Commission of India, a "Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services".

The International Competition Network defines a cartel as "an agreement between competitors to restrict competition".

HOW DO THEY OPERATE?

**PRICE FIXING**

Companies agree to act in concert to raise or drop prices, fix prices according to a formula, introduce and withdraw discounts and withdraw low-priced products

**MARKET SHARING**

Companies divide markets by territory or customers among themselves. More restrictive than price-fixing as carving up markets leave no room for competition.

**OUTPUT RESTRICTION**

Companies agree to restrict output with the objective of creating a scarcity of a product and thus create an environment where prices can be raised

**BID RIGGING**

Also known as collusive tendering. Competing firms agree to restrict competition by bidding at the same price or in a manner that predetermined companies win in rotation.

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How do cartels hurt?

- The agreement that forms a cartel need not be formal or written.
- Cartels are mostly secret conspiracies.
- The recent issue of brewing companies is an example of price fixing where the competitors colluded together to fix the prices.
- Cartel raises the price above the competitive level and reduces output.
- Cartel either force some consumers out of the market by making the commodity more scarce or by earning profits that free competition would not have allowed.
- A cartel shelters its members from full exposure to market forces, reducing pressures on them to control costs.
- It undermines the overall economic efficiency and innovations.

How to stop the spread of cartelization?

- Cartels are not easy to detect and identify.
- Providing a strong deterrence to the cartels that are found guilty in the form of a monetary penalty that exceeding the amount gained by the cartel can stop its spread although it is difficult to ascertain the profits gained by them.

9.24 SC Order on Relief for COVID-19 Victims and Unorganised Workers

Why in news?

The judiciary made significant interventions to assert the rights of pandemic-hit workers and families.

What is the SC's order on COVID-19 Victims' families?

- The Supreme Court called out the government for its failure to provide relief to the next of kin of Covid victims.
- It pulled up the National Disaster Management Authority (NDMA) for “failing to perform its duty.”
- The Court gave the NDMA 6 weeks to fix rules for compensation to COVID-19 victims’ kin. The court, however, did not fix a compensation amount for each death and left it to the policy decision of the NDMA and the Centre.

What were the other observations made?

- Unlike more frequent disasters such as cyclones, earthquakes and floods, a pandemic is not a one-time calamity.
- It is an ongoing and prolonged phenomenon. However, the Court found that this was not reason enough for the Government to evade its duty.
- It could not excuse itself of its duty to pay ex gratia by saying that such payments would entail huge expenditure.
- The government had itself declared COVID-19 a national disaster.
- The court thus pointed to Section 12 of the Disaster Management Act of 2005. It said the term ‘minimum standards of relief’ mentioned there included payment of ex gratia.
- The Solicitor General argued that Section 12 was merely “recommendatory” and not mandatory. But the court pointed to the word “shall” used in Section 12.
- It thus said the provision made the payment of ex gratia to victims’ families a “mandatory and statutory duty”.

What is the Centre's response?

- The Centre initially took the stand that it lacked the financial resources to compensate for every COVID-19 death.
- However, later, the Centre clarified that it had money for ex gratia aid.
- But, it is prioritising the expenditure in response to the pandemic.

- It said the focus now was on utilising funds for food, medical care, oxygen, vaccination and to pump up the economy.

What are the directives on unorganised workers?

- In an earlier order, the Court dealt with the need for comprehensive registration of all inter-State and unorganised workers in the country.
- It made this while disposing suo motu proceedings on the miseries of migrant labourers.
- The Court has fixed a deadline of December 31, 2021 for all States and UTs to complete the process.
- The Centre has been given a deadline of July 31, 2021 to make available a portal for its National Database for Unorganised Workers (NDUW) project.
- This may be used for registering unorganised workers across the country.
- The verdict opens up the possibility that the inter-State and unorganised workers will be able to reap the benefits of welfare laws enacted for them.

9.25 Spectrum Auctions

Why in news?

Recently Spectrum auctions ended with bids worth Rs 77,815 crore.

What are the details about this spectrum auctions?

- Out of the total 2,308.8 MHz offered, 855.6 megahertz was successfully bid.
- The largest telecom services providers optimised their purchases of radio spectrum and acquired only what they deemed as essential airwaves for renewing and strengthening their network.
- They entirely avoided costlier bandwidth offerings.
- Reliance Jio- new entrant -was the most acquisitive, accounting for close to 60% of the spectrum and contributed to almost three-fourths of Rs 77,815 crore which was garnered from the sale.

What are the drawbacks in this auction?

- Due to the COVID-19 pandemic and the high level of indebtedness in the industry, the government appears to have moderated its expectations to a more realistic level.
- In a repeat of the 2016 auctions, the significantly more efficient 700 MHz was yet again avoided by all bidders due to its prohibitive reserve price.
- It is a valuable resource for accelerating the digitisation of the economy which includes broadening and deepening the digital delivery of public services to India's far places.
- It is also considered as ideal for enhancing network availability in the densely built-up cities where there is an issue of poor signal penetration.

What are the takeaways from this?

- Reduced number of players in spectrum bidding, its unrealistic price, government's regulatory norms and tax practices are affecting the telecom sector badly.
- The telecom authorities need to analyse the entire policy framework in order to find out the uncertainty prevailing in the industry.
- They must act quickly to ensure this does not end up hurting the sector further as this sector has become a key multiplier of economic empowerment and progress.

9.26 Spectrum Dues and Insolvency

Why in news?

Recently the verdict of the National Company Law Appellate Tribunal has created a confusion.

What was the ruling of National Company Law Appellate Tribunal?

- It has said that the final ownership of spectrum lies with the government -Department of Telecom (DOT) and it will be treated as an operational creditor.
- It has also said that the spectrum cannot be treated as a security interest by the lenders.
- The telecom operators have to first clear pending dues to DoT before filing for bankruptcy.
- This order of NCLAT treats DoT ahead of all the financial creditors when it comes to telecom assets.
- This is contradictory as company is unlikely to be insolvent even if it clears DoT's dues.
- This also sends confused signals to banks and can derail the IBC process in the sector.

What will be the effect of this order?

- The banks enter into a tripartite agreement with the telecom operator and the DoT at the time of lending money to operators which takes into account quantum of spectrum held by them.
- Though the operators don't own spectrum, they have rights over it for the period of 20 years during which they can use it themselves or sell it to another entity.
- Even the tribunal itself acknowledged that spectrum is an intangible asset and can be subjected to insolvency proceedings.
- But by making IBC proceedings conditional to payment of dues to DoT ahead of all other creditors, NCLAT's ruling could scramble the entire debt resolution process.
- This is because telecom operators will have to first pay dues to the DoT before filing for debt resolution under IBC.
- This would lead to zero recovery of dues owed by the operators to the banks and DoT will get back the spectrum but not the licence fee dues.

9.27 No Back-Door Pact for Defaulting Promoters

Why in news?

Recently, Supreme Court barred the promoter from bidding for his company which is undergoing insolvency proceedings.

What is the history of the case?

- In April 2017, the promoter of Gujarat NRE Coke Company voluntarily admitted the company under insolvency proceedings and submitted a resolution plan.
- But government inserted Section 29A in the IBC retrospectively making the promoter ineligible for bidding the company.
- In 2018, NCLT ordered the liquidation of Gujarat NRE Coke but the promoter moved against the order mentioning the Section 230 of Companies Act of 2013.
- This application was allowed by the NCLT through its order but Jindal Steel and Power (JSPL) filed appeal in NCLAT against this order.
- NCLAT upheld JSPL's petition and denied the promoter from participating in the liquidation process.
- Following this, the promoter filed an appeal in SC.

What was the Supreme Court ruling?

- The apex court said that Section 230 of the Companies Act will be applicable for the promoters and creditors in normal course of the workings of the company.
- **Section 230 of the Companies Act** allows a defaulting company to enter into a compromise with the creditors for restructuring the debt of the company.
- But this section is not applicable if the company is facing liquidation under Section 29A of IBC.
- **Section 29A of IBC** bars the promoters of insolvent companies from bidding their own companies.

- Hence Section 230 of the Companies Act cannot be used for gaining control of their company if it goes into liquidation.
- So it becomes necessary to read both the sets of provisions in harmony.

What are the implications of this verdict?

- Any other interpretation of Section 29A of the IBC act would have defeated the objective of barring the promoter in the resolution and liquidation processes of the company.
- This verdict by the apex court will speed up the resolution process and maximise the asset value of the company.
- It also settles down the conflicting judgments given by different benches of the National Company Law Tribunal wherein promoters were allowed to re-bid for the company.

9.28 SDG India Index 2020-21

Why in news?

SDG (Sustainable Development Goals) India Index 2020-21 was recently released by the NITI Aayog.

What is the SDG India Index?

- The SDG India Index was first launched in December 2018 in collaboration with the United Nations in India.
- It tracks the progress of all states and UTs on 16 Goals and 115 indicators.
- These are aligned with the National Indicator Framework (NIF) of the Ministry of Statistics and Programme Implementation.
- It considers parameters including health, education, gender, economic growth, institutions, climate change and environment.
- The SDG India Index scores range between 0–100.
- States and UTs are classified into four categories based on their score as aspirant: 0–49, performer: 50–64, front-runner: 65–99, achiever: 100.

What are the highlights of the recent report?

- The country's overall SDG score improved by 6 points — from 60 in 2019 to 66 in 2020-21.
- Kerala has retained the top rank with a score of 75.
- Himachal Pradesh and Tamil Nadu both took the second spot with a score of 74.
- Bihar, Jharkhand and Assam were the worst performing states.
- Chandigarh maintained its top spot among the UTs with a score of 79, followed by Delhi (68).
- Mizoram, Haryana, and Uttarakhand are the top gainers in terms of improvement in their rankings from 2019.
- In 2019, 10 states/UTs belonged to the front-runners category.
- In 2020-21, 12 more states/UTs graduated to this category. These are Uttarakhand, Gujarat, Maharashtra, Mizoram, Punjab, Haryana, Tripura, Delhi, Lakshadweep, A&N Islands, J&K, and Ladakh.
- 15 states/UTs are in the performer category.
- Currently, there are no states in the aspirant and achiever category.

What do specific indicators show?

- Measures related to the availability of affordable, clean energy showed improvements across several States and UTs.
- The campaign to improve the access of households to electricity and clean cooking fuel has been shown to be an important factor.

- But there has been a major decline in the areas of industry, innovation and infrastructure besides decent work and economic growth.
- These were made worse by the lockdowns imposed to tackle the COVID-19 pandemic.

What is a key concern?

- There were stark differences between the southern and western States on the one hand and the north-central and eastern States on the other.
- This points to the persisting socio-economic and governance disparities. These, if left unaddressed, will exacerbate federal challenges and outcomes.
- It is already visible in public health challenges during the second wave of COVID-19 across some of the worse-off States.
- The Index has also made some methodological changes.

What is the impact created by the methodological changes?

- The SDG on inequality shows an improvement over 2019, but the indicators used to measure the score have changed.
- The 2020-21 Index drops several economic indicators.
- It gives greater weightage to social equality indicators such as -
 - i. representation of women and people from marginalised communities in legislatures and local governance institutions
 - ii. crimes against SC/ST communities
- The index has dropped the well-recognised Gini coefficient measure. It has also dropped the growth rate for household expenditure per capita among 40% of rural and urban populations.
- Instead, only the percentage of population in the lowest two wealth quintiles is used.
- The SDG score on inequality thus seems to have missed out on capturing the impact of the pandemic on wealth inequality.
- A UN assessment of the impact of COVID-19 had notably said that the South Asian region may see rising inequality.
- While the better score for India will bring some cheer, governments must work on addressing issues such as increased inequality and economic despair.

9.29 Performance Grading Index - School Education

Why in news?

The Education Ministry recently released the latest edition of the Performance Grading Index (PGI).

What is the Index for?

- The Education Ministry released the first PGI in 2019 for the reference year 2017-18, to measure the performance of states in school education.
- The objective is to help the states prioritise areas for intervention in school education.
- States are only graded and not ranked.
- This is to avoid discouraging the practice of one improving only at the cost of others and casting a stigma of underperformance on some.

How does it work?

- The PGI assesses states' performance in school education based on data drawn from several sources including
 - i. the Unified District Information System for Education Plus
 - ii. National Achievement Survey
 - iii. Mid-Day Meal

- States are scored on a total of 1,000 points across 70 parameters.
- The parameters are grouped under five broad categories:
 1. access (eg. enrolment ratio, transition rate and retention rate)
 2. governance and management
 3. infrastructure
 4. equity (difference in performance between scheduled caste students and general category students)
 5. learning outcomes (average score in mathematics, science, languages and social science)
- The PGI grading system has 10 levels.
- Level 1 indicates top-notch performance and a score between 951 and 1,000 points.
- Level II, also known as Grade 1++, indicates a score between 901 and 950.
- Level III, or Grade 1+, indicates a score between 851 and 900.
- The lowest level is Grade VII, and it means a score between 0 and 550 points.

What are the highlights of the recent Index?

- In PGI 2019-20 too, no state/UT could achieve the highest grade/Level I, same as in 2017-18 and 2018-19 editions.
- Chandigarh, Punjab, Tamil Nadu, Andaman and Nicobar and Kerala have scored more than 90%.
- They have obtained Grade 1++ (or Level II), which makes them the best performing states.
- This is the first time that any state has reached Level II.
- Only the UT of Ladakh has been placed in the lowest grade, that is Grade VII.
- But this is because it was the first time it was assessed after it was carved out of J&K in 2019.
- **Progress** - A total of 33 States and UTs have improved their total PGI score in 2019-20 as compared to 2018-19.
- However, there are still 31 states/UTs placed in Level III (Grade 1) or lower.
- The biggest improvement in PGI this year has been shown by Andaman and Nicobar Islands, Punjab, and Arunachal Pradesh.
- All three have improved their score by 20%.

10. CORRUPTION

10.1 CBI Arrest in Narada Bribery Case

Why in news?

The Central Bureau of Investigation (CBI) arrested four ministers, Firhad Hakim and Subrata Mukherjee, TMC MLA Madan Mitra and former Kolkata Mayor Sovan Chattopadhyay in the Narada bribery case.

What is the Narada case?

- The Narada sting operation was conducted by Narada news founder Mathew Samuel for over two years in West Bengal.
- It was conducted in 2014 for the news magazine Tehelka. Samuel is the former managing editor of Tehelka.
- It was published on a private news website Narada News months before the 2016 West Bengal Assembly elections.
- As part of the operation, Samuel formed a fictitious company named Impex Consultancy Solutions.
- He then approached several TMC ministers, MPs and leaders, asking them for favours in return for money.
- It was a 52-hour footage photographed by Samuel and his colleague Angel Abraham.

- In it, then TMC (Trinamool Congress) MPs and state ministers were seen accepting alleged bribes in the form of wads of cash.
- This was allegedly in exchange for extending unofficial favours for Impex Consultancy Solutions, which was floated by Samuel himself.
- Samuel claimed that K. D. Singh, TMC Rajya Sabha MP and majority owner of Tehelka, knew and funded the entire operation.
- Singh, however, refuted his involvement with any aspect of the sting.

Who all were involved?

- The MPs include Mukul Roy, Sougata Roy, Kakoli Ghosh Dastidar, Prasun Bannerjee, Suvendu Adhikari, Aparupa Poddar and Sultan Ahmad (he died in 2017).
- The state ministers were Madan Mitra, Subrata Mukherjee, Firhad Hakim and Iqbal Ahmed.
- IPS HMS Mirza (now suspended) was also seen taking cash from Samuel.
- TMC leader Shanku Deb Panda was also seen asking for shares in Samuel's fictitious company in exchange of promised favours.
- Of the above, Mukul Roy, Suvendu Adhikari, Sovan Chatterjee and Panda are with the BJP now.

What was the State response?

- The state government initiated its own probe.
- It booked Samuel under multiple sections of the IPC 469 (forgery to harm reputation), 500 (defamation), 120(B) (criminal conspiracy) etc.
- In August 2016, the Calcutta High Court stayed the state probe for ad infimum. The court observed that the police cannot run a concurrent investigation along with a court-monitored probe.
- In March 2017, the Calcutta High Court ordered that a preliminary probe will be conducted by the CBI.
- The court also directed the CBI to register an FIR against those who were involved in the case, if required.
- Soon, the state initiated disciplinary proceedings against HMS Mirza.

What are the various proceedings underway?

- In April 2017, the CBI filed a First Information Report against 12 Trinamool leaders for "criminal conspiracy".
- The CBI also subsequently summoned all of the leaders involved to assist in the investigation.
- All of them were booked under Section 120 B of IPC (criminal conspiracy), Section 13 (2), 13 (1D) and Section 7 of Prevention of Corruption Act.
- The Enforcement Directorate is also running a parallel investigation.
- It has lodged a case about misappropriation of public funds under Anti-Corruption-Act.
- It has also issued multiple summons to the accused and Samuel, himself.
- Since the sting operation involved Members of Parliament, a Lok Sabha ethics committee was also set up.
- This was to initiate a probe to determine if the persons committed a breach of privilege of the house concerned.
- The committee sat only once after the incident.

What is the recent move?

- Recently, West Bengal Governor Jagdeep Dhankhar, on a request by the CBI, sanctioned the prosecution of Subrata Mukherjee, Firhad Hakim, Madan Mitra and Sovan Chatterjee.
- [Governor is the competent authority to accord sanction in terms of law as he happens to be the appointing authority for such ministers in terms of Article 164 of the Constitution.]

Robert Klitgaard, "Systemic corruption is due to monopoly (M), discretion (D), accountability (A) which can be denoted in formula as
$$C = M + D - A.$$
"

- The CBI arrest thus came days after the Governor gave his consent to the CBI for filing a chargesheet against the four accused and sanctioned prosecution against them.

10.2 Fighting Against Corruption

Why in news?

Recently Odisha government declared that all public servants are mandatorily required to file their property returns with the Lok Ayukta.

What is the existing mechanism to fight corruption?

- In India, politico-bureaucratic nexus is the cause for systematic corruption & the preventive aspect of it is often neglected.
- Lokpal and Lok Ayuktas Act, 2013 which fights against corruption is existing for more than half a decade.
- But its implementation is uneven and the deadline to file the property declarations is constantly deferred.
- Initially it was set at September 15, 2014, but later this date was extended for six times.

What causes corruption?

- Information asymmetry is the primary culprit behind illegal wealth acquired by bureaucrats and political functionaries.
- Now Odisha government stated that all political and bureaucratic functionaries have to publicly declare their assets at the end of every year.
- This baseline data-base of assets provides significant insights into the asset ownership pattern of officials at different positions.
- It also creates transparency between the citizens and those in power at every level, reduces information asymmetry.
- Moreover, lack of accountability is another cause for corruption.

How accountability can be promoted?

- People's participation (P) is also critical in preventing, detecting and reducing corruption in the system.
- Hence this formula can be rearranged as $C = M + D - A - P$.
- Odisha declaration can enhance people's participation and more the people's participation; less is the likelihood of corruption.
- People's participation can also be increased if more information about assets of public officials is published regularly.
- The Odisha government has adopted technology and online transactions to reduce discretion.
- In the last one year alone, state government has either dismissed, removed or compulsorily retired 100's of non-cooperative government servants.

What more can be done?

- Currently monitoring practices rely only on inspections, raids, intelligence reports which has to be a institutional approach in identifying targets of those inspections.
- Randomised audits using technology and artificial intelligence without any human bias in the selection of auditee can be another logical step.
- The anti-corruption exercise should promote and safeguard whistle-blowers & the existing **Whistle Blower Protection Act, 2014** needs to be operationalised.
- It can also notify a separate framework for protection of whistle-blowers.
- Those who enjoy power should also be subjected to the **Prohibition of Benami Property Transactions Act, 1988**.