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TABLE OF CONTENTS

1. General Studies Paper – 2	2
1) Judicial Appointments and Collegium System	2
2) Issue of Pending Cases.....	5
3) Recusal of Judges	9
4) Need of All India Judicial Service (AIJS)	10
5) E-Court (Online Justice Delivery).....	12
6) Livestreaming of Court Proceedings.....	15
7) Delhi Services Act, 2023 (Government of National Capital Territory of Delhi Act, 1991) with 2023 Amendment	16
8) Enforcement Directorate – Key issues and Concerns.....	19
9) Issue of Extension of Tenure of ED Head (Aug 2023)	21
10) CBI- Key Issues	22
11) Issue of General Consent to CBI.....	26
12) Indian Police System and Reforms.....	27
13) Prison Reforms.....	31
14) Model Prison Act, 2023	34
15) Cinematograph Act, 1952 and 2023 Amendments	35
2. General Studies Paper – 3	38
1) S&T: Space: Chandrayaan 3.0	38
A) Understanding the different phases and path taken by Chandrayaan	38
B) Components of Chandrayaan 3.0:	39
C) Landing was the most complicated part here:.....	40
D) Where did Lander Land?.....	40
E) Rover:.....	40
G) Comparing Chandrayaan-1, Chandrayaan-2 and Chandrayaan-3.....	40
H) Significance of Going to Moon:.....	41
I) Way Forward:.....	41

3. Prelims Facts.....	43
1) Geography: Places in News: Sea of Japan	43
2) Geography: Places in News: Iceland.....	43
3) Geography: Places in News: Ecuador	44
4) S&T: Space: Luna-25	44
5) EB&CC: The State of India's Birds 2023 (report published in Aug 2023).....	45
6) EB&CC: Biodiversity: White Bellied Sea Eagle	47
7) EB&CC: Biodiversity: Sahyadri Uttaraghati (Northern Sahyadri Keelback).....	47
8) Defence: ASTRA Missile.....	48



HISTORY

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1. GENERAL STUDIES PAPER – 2

1) JUDICIAL APPOINTMENTS AND COLLEGIUM SYSTEM

- Why in news?
 - » A question for the Collegium: Why was Justice S Muralidhar not brought to the Supreme Court (Aug 2023: IE)
 - Legal expert, Fali S Nariman writes that the collegium needs to explain its decision, considering Murlidhar's exemplary record as a judge and legal scholar.
 - » Chief Justice of India N.V. Ramanna was in conversation with U.S. Supreme Court judge Justice Stephen Bryer, on the "Comparative approaches of the Supreme Courts of the World's largest and oldest democracies". (April 2022)
 - He said that there is an impression that in India judges appoint judges. It is a wrong impression. The appointment is done through a lengthy consultative process. Many stakeholders are consulted. The Executive is one of the key stakeholders.
- Example Questions
 - » Critically examine the Supreme Court's judgment on 'National Judicial Appointment Commission Act, 2014' with reference to appointment of judges of higher judiciary in India? [10 marks, 150 words] [CSM 2017]
 - » Bring out the **issues involved in the appointment and transfer of judges** of the Supreme Court and High Courts in India. [CSM 1998]
 - » Discuss the evolution of the appointment process of the judges in Higher Judiciary in India. Why is there a demand for reform in the process? [10 marks, 150 words]
 - » "Judges should have an important role in the appointment process of Judges in higher judiciary but not an exclusive role" Elaborate. [10 marks, 150 words]
- Background
 - » Constitutional Provisions
 - Article 124(2) reads "*Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted*".
 - Article 217(1) reads "*Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court*".
 - » Idea behind the constitutional provisions
 - » Check politically motivated appointment
 - » BR Ambedkar in CA -> consultation didn't mean veto as it will result in unrestricted power in a single person.
 - » Thus, a careful **inter-institutional equilibrium was envisaged in CA**.

- **Two Phases in Judicial Appointment Procedure**

i. **Phase of Executive Led Appointment (1950-1993)**

- In this phase it was not mandatory for the President to follow the recommendation of CJI and other judges.
- **Criticism of this method:**
 - **14th report of LCI** raised concern on the constitutional envisaged system of appointment that the role of executive, especially in the state, was leading to the erosion of the independence of judiciary.
 - This was perhaps the beginning of belief that the judiciary itself, through its representatives was best placed to decide on its own composition, and thereby secure judicial independence.

ii. **Phase of Collegium Mode of Appointment (1993-present)**

- After the **2nd Judges case in 1993**, the recommendation of the CJI along with other senior judges of the Supreme court became mandatory.

- **Evolution of Collegium System (Various Supreme Court Judgments)**

- **What is collegium System?** - It is a system for appointment of judges in higher judiciary and transfer of judges between high courts. It is not a result of constitutional provision or a statutory provision and came into existence through the series of judgements called the "**Judges cases**". Since 1993, the collegium system has been followed for the appointment of judges in the Supreme Court and High Courts.

1. **Sankalchand Sheth's case, 1977:** Here the Supreme court held that the term 'consultation' can never mean concurrence. Hence the CJI's opinion was not binding on the executive.
2. **First Judges Case (SP Gupta vs Union of India), 1981**, the court repeated the above interpretation that consultation didn't mean concurrence. It also held that concept of primacy of the CJI was not really to be found in the constitution.
3. **Second Judges Case (The Supreme Court Advocates-on-Record Associations vs Union of India) , 1993**, the a nine judge constitutional bench of Supreme Court overruled its earlier decisions. It held that consultation really mean concurrence and CJI's view enjoys primacy, since he is best equipped to know and assess the worth of candidates. But the CJI was supposed to formulate his opinion through a body of senior most judges that court described as collegium.
 - Executive can ask the **collegium for reconsideration**, but after this the executive was **bound to adhere to collegium's decision**.
 - The Second judges case also **reiterated the convention of appointment of senior most judge of the Supreme Court as Chief Justice of India**.
4. **Third Judges Case (Presidential reference), 1998**, the court **further clarified the collegium system** by elaborating on its composition.
 - It held that the collegium shall consist of CJI and her four senior most judges (in case of appointments to the Supreme Court) and CJI and his two senior most judges (in case of appointments to the high court).

- Additionally, for appointments to the high courts, the collegium must consult such other senior judges serving in the Supreme Court who had previously served as judges of the high court concerned.
 - (The judgment didn't clarify if the views of the consultee judges are binding on the collegium or not).

5. NJAC - 99th constitutional amendment

- Attempt to create a separate, more transparent system for appointment of judges in Supreme court and High courts and transfer of judges between high courts. NJAC was to consist of members from Judiciary, Executive and General Public.
 - Chief Justice of India(Chairperson, ex officio)
 - Two other senior judges of Supreme Court next to CJI (ex officio)
 - The Union minister of law and Justice (ex officio)
 - Two eminent persons

6. In 4th Judges Case, 2015 the court struck down the NJAC system. It held that primacy of collegium was a part of the Constitution's basic structure, and this power could not, therefore, be removed even through a constitutional amendment.

- But the court also understood the hostilities this judgment will face and thus initiated a plan to make the system more transparent.

- What is the role of government in the current appointment process?

- Government has a role only after names have been decided by the collegium. It's role is limited to getting an enquiry conducted by the Intelligence Bureau (IB) if a lawyer is to be elevated as a judge in a High Court or the Supreme Court.
- It can also raise objection and seek clarifications regarding the collegium's choices, but if the collegium reiterates the same names, the government is bound, under the constitutional bench judgments, to appoint them as judges.

- Why collegium system is being criticized?

- » Constitutional makers didn't intend the current collegium system. It is a result of interpretive gloss.
- » Too much power to Chief Justice of India headed collegium
- » Autocratic: Judges selecting judges brings conflict of interest.
 - There have been several allegations of Nepotism while selecting judges at the top level.
 - There have been cases where the nearest relative of Supreme Court judges has been appointed as a high court judge, ignoring merit.
 - Further, the process is also criticized for not following the due process - Seniority not considered etc.
- » Lack of transparency in the process
 - For e.g. in Aug 2023, questions were raised when one of the country's finest judges in recent times, Justice Muralidhar, was not elevated to the Supreme Court.
 - Note: CJI Chandrachud has elaborated on the process of appointments - Merit, Seniority, Inclusivity (without sacrificing merit), Adequate representation from different High Courts, states, regions etc.
- » Lack of expert body like a standing committee to help the collegium

- **Administrative task diverts judges** of collegium from their principle judicial work of hearing and deciding cases.
 - Transferring judges of high court especially is a very time consuming effort.
- » **Collegium system limits field of choice**
 - Generally senior most judges from the high court are considered and the junior high quality judges or members of the bar are ignored in the process.
- **Steps taken for Reforming the Collegium System**
 - i. **Memorandum of Procedure** to cede some space to executive in appointment process.
 - Not finalized yet due to differences between judiciary and executive on several clauses including whether a candidature can be rejected on national security grounds.
 - ii. **Resolution to make collegium's decision** public on SC's website.
- **Steps that can be further taken to improve collegium system**
 - i. **More Transparency** on the 'Criteria of Merit', 'Norms of Selection' and the selection process.
 - **Formulate search-cum-Evaluation Committee (SEC)**, as proposed by Ministry of Law and Justice, to bring transparency in Judicial appointment through collegium system.
 - **Eligibility criteria** to judge the performance and suitability must be formulated objectives and must be made public.
 - Making Collegium decision come under RTI
 - ii. **A Secretariat** to enhance the efficiency in the working of collegium on the line of cabinet secretariat
 - iii. **Attracting More Talent in Judiciary**
 - AIJS
 - iv. **Mechanism to deal with complaints and adverse reports**
 - Collegium should appoint enquiry committees to examine those complaints on case by case basis.
 - An opportunity to be heard should also be provided.
- **Conclusion**
 - » As the possibility of replacing the collegium system is ruled out at least for the time being, it is important to bring reforms in the working of collegium system. It is important that while bringing these reforms the core constitutional values viz., independence of judiciary and integrity and effectiveness of judicial review shall be kept in mind.

2) ISSUE OF PENDING CASES

- **Why in news?**
 - » Cases pending in courts **cross 5 crore mark**: Government in Rajya Sabha (July 2023)
 - » Situation of Pending Cases on 23rd Aug 2023
 - **NJDG Data for district and taluka courts**



- More 70,000 cases are pending in Supreme Court of India.

- **Example Questions**
 - Justice delayed is Justice denied. Discuss the key causes and consequences of large number of pending cases in Indian Judiciary [15 marks, 250 words]
 - "Increasing the strength and filling vacancies in Judiciary alone can't solve the problem of pending cases. It's a multifaceted problem and would require multifaceted solution" Elaborate [15 marks, 250 words]

- **Quotes**
 - "*Justice delayed is justice denied*": William E. Gladstone

- **Key reasons for backlog of cases in Judiciary:**
 - The increasing number of pending cases is a complex problem. It has multiple facets associated with it. Some of the key reasons can be the following:
 1. **Low strength of judges**
 - In 1987, the Law Commission recommended 50 judges per million of population. But, currently, India has just 21 judges per million of its population.
 2. **Vacant positions**
 - Around 25% of the total posts in lower judiciary is vacant.
 3. Supreme Court in its March 2017 guidelines had complained of many inefficient/deadwood judges in lower judiciary.
 4. **Judges involved in non-judicial work.**
 5. **Complicated legal system** -> Unnecessary litigations and counter-litigations; Lawyers keep finding the loopholes in the system to delay/prevent conviction.
 6. **Liberal adjournment** of cases (March 2017, SC guidelines)
 7. **Increasing awareness of rights** by citizens
 - With increasing awareness and literacy.
 8. Inadequate data on pending cases and "**lack of scientific maintenance**" of data makes it difficult to analyze problems and propose sustainable solution for the judiciary: Report
 9. **Large number of cases by government**
 - Government is the biggest litigant in the court i.e., the court spends the highest amount of time in government cases
 10. **Understaffed Police**
 - Lack of manpower in police force not only affects investigation, but also leads to prosecution delays. This is one of the key factors crippling our justice system

- **Steps taken to deal with pendency of cases.**
 - i. **Guidelines by Supreme Court in March 2017**
 - Supreme Court issued a slew of guidelines for High Courts cracks down on judicial delays. It included monitoring of lower courts, timely disposal of very old cases, quick disposal of bail cases, ending frequent adjournment, dealing with dead woods in judiciary etc.

 - ii. **Lok Adalats** have been functioning since 1980s and have played an important role in reducing the burden of courts.

 - iii. **Fast Track Courts**

- iv. **Establishment of National Judicial Data grid (NJDG) (since Sep 2015)**
 - NJDG gives consolidated figure of pending cases in district judiciary across the country. It provides national, state and court wise info.
- v. **Establishment of separate commercial courts**
 - This was recommended by law commission to ensure specialization adjudication and reduced burden on lower judiciary. Separate Commercial Courts were established through the Commercial Courts (Amendment) Act, 2018.
- vi. **Simplification of laws:** For e.g., indirect tax reforms (GST) Reform and Labour Code reforms are expected bring clarity and reduce litigations and counter litigations.
- vii. **Increased use of technology to fast track and streamline things – ECourts Projects**
- **Impact of pending cases**
 - i. **Delay in Justice delivery**
 - There are cases in Indian judiciary which are pending for more than 20 years.
 - ii. **Poor Quality of Justice**
 - High court judges often have 30-40 cases every day. Expecting the judge to completely analyze the matter in hand in the best possible way would be chimerical.
 - iii. **Large percentage of under trials among prison inmates**
 - According to NCRB around 70% of inmates in Indian jails are undertrials.
 - iv. **Social Problems:**
 - Decreasing respect for law and criminal justice system in society
 - For justice, people prefer other mechanisms and role of local 'Bahubalis' increase.
 - The rich, the powerful and the wrongdoers have a field day by getting their cases expedited or delayed as they wish.
 - v. **Economic Loss: Hampers Ease of Doing Business** in the country.
 - In Word Bank's Ease of Doing business ranking, India performs badly on the enforcement of contract parameter because of judicial delays in India.
 - vi. **Political Problems:**
 - Increased criminalization of politics -> Poor quality of laws and governance
- **Way Forward**
 - i. **Efficient implementation of March 2017 Supreme Court guidelines**
 - ii. **Increasing the strength of judges**
 - » Fill all the vacancies as soon as possible.
 - Streamline the judges-appointment process.
 - Finding ways to deal with executive-judiciary tussle.
 - » **ESI 2018-19's analysis** shows that a case clearance rate of 100% could be achieved with the addition of merely 2,279 judges in the lower court and 93 judges in High courts even without efficiency gains. This is already within sanctioned strength and **only needs filling vacancies**.
 - » Prepare a 10-year plan to increase the strength of judges five-fold.

- » Raise the number of private law colleges and changing their curriculum to groom judges rather than only lawyers.
 - » High court and SC should use the provisions for ad hoc judges or retired judges to deal with the temporary shortcoming in the strength.
- iii. Attracting more talent to Judiciary**
- Increased salaries and well defined growth progression.
 - An All India Judicial Service can also play a crucial role in attracting talent in lower judiciary which would benefit the whole judicial system in long run.
- iv. Keeping courts open 365 days a year**
- Can't be done right now due to severe shortage of judges. This should be our long term goal.
 - We can also have special night shift magistrates who can handle emergency cases and not have people waiting till the court open.
- v. Modernization of courts and Scientific Court Management.**
- Our courts should be fully digitized. All the procedures should be streamlined, right from a person filing a case, updating it and the final verdict.
 - **The e-committee of the Supreme Court** which has been in existence since 2005 have made **three outstanding recommendations** which are still not being followed:
 - **Computer algorithm should decide on case listing**, case allocation and adjournments with only a 5% override given to judges.
 - **The courts should focus on e-filing:** The committee made detailed SOPs on how petitions and affidavits can be filed and payment of fees can be done electronically.
 - **Focus on virtual hearing of cases:** All the courts in the country must switch to hybrid virtual mode immediately and start disposing of cases.
- vi. Deal with stalling tactics of lawyers**
- Supreme court should create a committee who can deal with stalling techniques of lawyers such as absence, missing dates, medical emergencies, adjournments etc.
- vii. Overhauling the archaic laws**
- There are some laws and provisions in IPC which we don't need altogether. Law Commission should be asked to identify those laws and we should remove/replace it from our legal provisions.
- viii. Non acceptance of frivolous cases**
- There should be guidelines issued by Supreme Court of India to all judges on no accepting flippant/frivolous cases.
 - Government as biggest litigant also needs to reconsider the number of cases it files. For e.g., in case of Tax cases, the success rate is only 29%.
- ix. Create separate court for traffic violations and other fines.**
- These constitute around 1/3rd workload of lower judiciary.

- These cases don't need judicial mind and the judges should not be involved in these efforts

- x. **Strengthening the investigative mechanism**
 - To improve investigation system, the police reform needs to be properly implemented.
 - The police system needs to be provided more resources - financial and human both for its effective functioning.

- xi. **Free Judges of Administrative Work**
 - Create a specialized service called the Indian Courts and Tribunal Service ((ICTS) that focuses on administrative aspects of the legal system.

- **Conclusion**
 - Thus, the problem of pending cases is a complex multi-faceted problem and will require a multi-faceted solution. Here all the three wings - Executive - Legislature and Judiciary will need to work together and move towards a situation where Justice is available in timely manner.

3) RECUSAL OF JUDGES

- **Why in news?**
 - Supreme Court Judges from Karnataka & Tamil Nadu recuse from hearing Penniyar River Dispute (July 2023)
 - Justice Bopanna and Justice Sundresh indicated that since they belong to the states involved in the present dispute they would refrain from hearing the matter.
 - Earlier, in Jan 2022, Justice DY Chandrachud and AS Bopanna has recused from hearing Krishna River Water Dispute Matter (Jan 2022)

- **Understanding Recusals in detail**
 - Recusal generally takes place when a judge has a conflict of interest or has a prior association with the parties in the case.
 - For e.g. if a judge has equity shares in the company of one of the party involved or if the judge, in his lawyer days, had represented one of the parties in the case.
 - Avoiding these conflicts of interest are at the heart of the rule of law.
 - The practice stems from the cardinal principle of due process of law that nobody can be a judge in her own case.
 - **What do the rules say?**
 - There are no written rules on the recusal of judges from hearing cases listed before them in the constitutional courts. It is left to the discretion of a judge.
 - The reasons for recusal are not disclosed in an order of the court. It is either orally conveyed to the lawyer or no reasons are given. It depends on the conscience of the judge.
 - Sometimes, the parties involve also raise the apprehensions about a possible conflict of interest.

- A recusal inevitably **leads to delays** as the case goes back to the Chief Justice, who has to constitute a fresh Bench.
- **Should the reasons be put on record?**
 - In a separate opinion in the NJAC judgement 2015, Justice Kurian Joseph, who was a member of the Constitutional Bench, highlighted the **need for judges to give reasons** for recusal as a measure to build transparency.
- **Some Recent Cases**
 - **Penniyar River Dispute case and Krishan Water Dispute case.**
 - **Judge Loya Case, 2018**
 - Petitioners sought the recusal of Supreme Court judges, Justices A.M. Khanwilkar and D.Y. Chandrachud, from the bench as they both hailed from the Bombay High Court.
 - The **court refused the request** and called it a "Wanton Attack". The court observed that 'Recusal would mean abdication of duty'.
 - **Assam Detention Case, 2019**
 - In the middle of a PIL filed by activist Harsh Mander about the plight of inmates in Assam's detention centres, the then-Chief Justice Ranjan Gogoi was asked to recuse himself. In a lengthy order, Justice Gogoi said a litigant cannot seek recusal of the judge. The Court Observed "Judicial functions, sometimes, involve performance of unpleasant and difficult tasks, which require asking questions and soliciting answers to arrive at a just and fair decision. If the assertions of bias as stated are to be accepted, it would become impossible for a judge to seek clarifications and answers"
- **Analysis**
 - **Arguments against involuntary recusal:** Such recusals would set up a dangerous precedent for future litigants to cherry pick their benches and coerce judges they find unfavourable into stepping down. Such a position would severely undermine the administration of justice in the Indian legal system.

4) NEED OF ALL INDIA JUDICIAL SERVICE (AIJS)

- **Why in news?**
 - » **No consensus at present** on proposal to set up All-India-Judicial Service at district judge level: Government told Lok Sabha (July 2023)
 - There was a divergence of opinion among state governments and among high courts on the constitution of AIJS. Some state and High courts favored the proposal, some were not in favor of the creation of AIJS.
- **Example Questions**
 - » "There is a compelling need to have a centralized selection process to appoint members of the lower judiciary" Critically Analyze [15 marks, 250 words]
 - » "A properly framed All India Judicial Service (AIJS) is important to strengthen overall justice delivery system" Elaborate [10 marks, 150 words]

- **Background: How recruitment to lower judiciary is carried out currently?**
 - Article 233 and Article 234 of the Indian constitution vests all powers of recruitment and appointment of lower judiciary with the High Courts and State Public Service Commission.
 - » Article 233 provides that District Judge shall be appointed by the Governor of the state in consultation with the High Court.
 - » Article 234 provides that appointment of persons other than district judge to the Judicial Services of a state shall be made by the governor of the state in accordance with the rules made by him in that behalf in consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such state.
 - Article 235 puts the lower judiciary under the control of the High Court
 - **Some Key Problems faced by Lower Judiciary**
 - » Quality of judges
 - » Large vacancies
 - » Complaints of nepotism
 - » Complicated state processes etc.

- **All India Judicial Services**
 - The AIJS has been conceived to create a rigorous mechanism for appointment of persons of highest ability, impartiality and integrity to direct district courts and to equip the sub-ordinate judiciary in turn to serve as the feeder line for appointment of competent judges to the high courts or eventually Supreme Court.
 - The issue of AIJS is hanging fire since 1960 due to difference of opinion between the state and judiciary.
 - Infact, in 2023, government informed the Lok Sabha, that consensus couldn't be achieved among states and High courts on the issue of AIJS.
 - In the past, Law Commissions, Parliamentary Standing committee, NITI Aayog etc. have supported the AIJS.
 - NITI Aayog has said that AIJS examination on a ranking basis will contribute to high standards in Judiciary and the selection process may be entrusted to UPSC. For independence of Judiciary, the cadre should report to Chief Justice of each High Courts.
 - Similarly, Swaran Singh Committee also recommended the same, based on which, the Constitution (42nd Amendment) Act 1976, inserted "All India Judicial Services" provision into article 312 that lays down the legal ground for the creation of All India Services.

- **Article 312 of the constitution** allows creation of new All India Services (including judicial services).

- **Reasons given to support AIJS**
 - i. **Filling vacancies**
 - ii. **Attracting talent and improving efficiency**
 - iii. **Bring Uniformity** in the selection and training process.
 - iv. **Curb nepotism and favoritism** i.e. the uncle judge problem.
 - v. **Specialization through training**
 - Adjudication is a specialization, and specialized training for it should be provided.
 - vi. **Increasing Inclusiveness**

- AIJS through reservation for weaker sections and women can ensure better represented lower judiciary.
- **Criticism / Other suggestions**
- AIJS may be seen as an affront to federalism and an encroachment on powers of states granted by the Constitution.
 - **No empirical evidence to prove that AIJS will solve the problems.**
 - **Law commission** reported cited are from 1958, 1978, and 1986 and even these reports are based on personal observation and not empirical studies.
 - **Percentage of vacant seats** in different states vary from less than 10% to more than 40%. Therefore, proper implementation of current mechanisms in poorly performing states may be required, rather than a new system of AIJS
 - **Inability to attract talent may be due to low salaries or weak compensation;** Even All India services have huge vacancies (e.g. IAS-22% vacancies)
 - **Adjudication may be a specialized stream - but this is why we have judicial academies to train the selected candidates on the finer aspects of judging.**
 - **Efficiency can be improved by making judges focus only on adjudication task** (remove clerical tasks from their domain)
 - **Reservation is already provided by State Service Commission** so inclusivity may not be an issue presently.
 - **AIJS may hamper the career of State Judicial Services officers.**
 - **It may be less inclusive** as many communities which are covered by state quotas may not be covered in the central list.
 - **Language barriers**
- **Other challenges**
- Dichotomy between Article 312 and Art 233
 - Art 233 says that district judge would be appointed by Governor, whereas AIJS selection responsibility would be with Central government.
 - **Constitutional Limitations:** Article 312(3) says that AIJS shall not include any post inferior that that of a district judge as defined in Article 236. Thus **appointment of lower judiciary through AIJS** may face constitutional barrier.
 - **Question of Judicial Independence:** AIJS may dilute High Court's control over lower judiciary.
- **Way Forward**
- If the government finally decides to go for AIJS, it should be designed in a manner which limits the above shortcomings as far as possible.
 - Pay scale, issue of transfers, career growth etc. should be carefully designed to make it attractive for youth.
 - Post-selection training will be very crucial for AIJS cadre to ensure that language doesn't become a negative factor in delivery of justice.
 - After selection and initial appointment, all other kinds of control should remain with High Court to prevent dilution of High Court's control.

5) E-COURT (ONLINE JUSTICE DELIVERY)

- **Why in news?**

- » CJI DY Chandrachud said a "**huge budget**" allotted for the third phase of the e-Courts project will see technology make inroads into the working of the judiciary, especially the lower courts (Aug 2023)
- **Example Questions:**
 - » Why is it important to Digitize the Judicial Administration in India? Discuss the key challenges being faced towards achieving this digitization in Judiciary.
 - » "Embedding the basic premise of equity in the vision for a digitalised judicial process is a prerequisite to ensure that India's march towards technical expertise is in tune with the social and political realities within which people access justice in India" Discuss the statement in light of the recent emphasis on e-Courts in India. [15 marks, 250 words]
- **Beginning of digitization in the field of administration of justice** happened in late 1990s, but it accelerated after the enactment of the IT Act, 2000; The real push though was given by the COVID-19 lockdown which hastened the process of digitization.
- **Key initiatives towards Digitization:**
 - » Even before COVID-19 pandemic, some significant steps had been taken towards use of digital technology in Judiciary. It included digitization of Judicial records and establishment of eCourts.
- **What is eCourts Project?**
 - » The eCourts Project was conceptualized on the basis of the "**National Policy and Action Plan for Implementation of ICT in the Indian Judiciary - 2005**".
 - The Policy was submitted by e-Committee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.
 - It is a mission mode, pan-India project, monitored and funded by Department of Justice, Ministry of Law and Justice, GoI for the District Courts across the country.
 - **Phase-1 and Phase-2** had dealt with digitization of the Judiciary, i.e., e-filing, tracking cases online, uploading judgments online, etc.
 - Some work still needs to be done, especially at the lower levels of the Judiciary, but the program can still be considered a success.
 - It made it possible for Supreme Court and High Court to function, specially during the Pandemic.
 - Phase-2 also saw the development of the National Service and Tracking of Electronic Process, a software that enabled e-service of summons.
 - **Phase-3:**
 - In Feb 2023, the Union Budget had announced the launch of third phase of the e-courts projects with an outlay of Rs 7,000 crore while the first two phases of the project were planned and executed with an overall budget of Rs 639 crores and Rs 1,670 crores.
 - Third phase of the project seeks to inter-link courts across the country besides setting up the infrastructure of paperless court, digitization of court records, and setting up advanced e-sewa kendras in court complexes.

- » **Virtual Hearing:**
 - Before the pandemic, virtual hearing was used only in a limited manner; for e.g., in criminal cases where it was not possible to produce the accused physically before the court or while extending the remand of the accused.
 - Cases related to matrimonial issues and domestic violence, bounced cheques, motor accident compensation referred to mediation centres and Lok Adalats could be included in the list of cases fit for disposal through the virtual hearing.
- » **Live Streaming** already started in 7 High courts in India and the Supreme Court of India.
- » To explore the use of latest tech like Artificial Intelligence and Machine Learning in the Judicial domain, the Supreme Court of India has constituted an Artificial Intelligence Committee.

- **Advantages of Online Justice Delivery:**
 - » **Digitization** reduces the physical space required for storage of files.
 - » It also increases traceability of files. Missing court records may lead to acquittal of Convicts (State of Uttar Pradesh v. Abhay Raj Singh).
 - » **Fast-track the Judicial Process:**
 - For e.g.: With digitization, it will take much less time for the lower courts to transmit the records as and when called for.
 - **Reduction in adjournments:** Sometimes adjournments happen due to affidavits which were filed years ago were not restored with the records or were not traceable. Once the documents are digitized and e-filed by Counsels, at least the cases would not get adjourned by the Courts on this account.
 - » **Status of the case can be much easily traced:** Once a lawyer or a litigant file a case digitally, he or she can check the status of the filing, the status of applications, and affidavits, data of next hearing, orders passed by the courts etc. just by clicking on an app.
 - This has been sought to be implemented by the e-committee of the Supreme Court by issuing directions to ensure that e-filing of cases/petitions by state governments in all matters be made mandatory from 1st Jan 2022.
 - » **Virtual hearing** can also save a lot of time and money for lots of people who spend a lot of time while commuting to the courts.
 - » **Livestreaming** is an extension of the principle of open justice and open courts.
- **Key concerns of Digitization of Judiciary:**
 - » **Poor Infrastructure:** Internet connectivity and the need of well-equipped space where lawyers can conduct their cases are some of the major problems requiring attention.
 - » **Lack of comfortability with digital technologies:** Judges, Court staff, and lawyers are not well-versed with digital technology and its benefits.
 - » **Privacy Concerns:** Increasing digitization may lead to privacy violations. For e.g. in the ecosystem approach provided by Phase-3 of the eCourts project, centralized data can be misused for surveillance purposes.
 - » **Cyber Security threats**

- **Way Forward:**
 - » **Digital Literacy:** Train Judges, Court staff and lawyers to ensure that they are very comfortable with the digital system.
 - For this political will and support of judges and lawyers are also necessary.
 - » **Infrastructure:** To ensure uninterrupted accessibility for the Court, lawyers as well as litigants.
 - » **In appropriate cases, and certain categories of cases** as identified by the court administration in consultation with the members of the Bar, virtual hearing should be made mandatory.
 - » **Look into the concerns raised against the vision document of Phase-III of the e-Courts Project.**
 - The draft can be reviewed to abandon the ecosystem approach.
 - Right to privacy should be protected and for this the e-Courts must move towards localization of data rather than centralization.
 - The e-Committee must prevent the "seamless exchange" of data between the branches of the state that ought to remain separate.
- **Conclusion1**
 - » Embedding the basic premise of equity in the vision for a digitalized judicial process is a prerequisite to ensure that India's march towards technical expertise is in tune with the social and political realities within which people access justice in India.
- **Conclusion2:**
 - » As courts expand digitally, they also need to account for the digital rights of their users, which are in relation to access, privacy, security, anti-discrimination, and equality.

6) LIVESTREAMING OF COURT PROCEEDINGS

- The Supreme Court in **Swapnil Tripathi vs Supreme Court of India** (2018) had ruled in favor of opening up the apex court through live-streaming.
 - It held that live streaming proceedings is part of the right to access justice under Article 21 of the Constitution. However, the judgment has remained unimplemented.
- As of July 2023, seven High Courts in India (Gujarat, Guwahati, Orissa, Karnataka, Jharkhand, Patna and MP) have initiated live streaming of the court proceedings. It is available on the website of e-committee of the Supreme Court.
- **Significance:**
 - An extension of the principle of open court and open justice.
 - **Increased transparency in the court proceedings**
 - **Increases accountability and responsibility of lawyers** - They can't make any excuse to the client or lie about whether they were present [for the hearing] or not.
 - **Help academics, lawyers and law students** who study and research the law.
 - **Important step in maintaining archives** of courtroom proceedings.
- **Skeptics:**
 - They argue that live-streaming proceedings will lead judges and lawyers to appeal to populism and hampering of legal process.

- **Also puts judges under pressure** - for e.g., "now the judges are constantly worried if something is said in lighter vein, it might be construed otherwise".
- **Privacy Issues** - Rape cases, marital dispute cases
- **Security Issues** - Judges, lawyers handling politically sensitive cases may face issues. National security matters being discussed and telecasted in courts may become an issue.

7) DELHI SERVICES ACT, 2023 (GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI ACT, 1991) WITH 2023 AMENDMENT

- **Why in news?**
 - » The Government of National Capital Territory of Delhi (Amendment) Bill, 2023 passed in both houses of Parliament and given assent by the President (Aug 2023)
- **About the Act**
 - The GNCTD act was passed in 1991 to supplement the constitutional provisions relating to the assembly and the Council of Ministers in the national capital. It lays down framework for functioning of Delhi Assembly and the Delhi Government.
 - It outlines the powers of assembly, the discretionary powers enjoyed by the L-G, and the duties of the Chief Minister with respect to the need to furnish information to the L-G.
- **2018 Supreme Court Judgment: Government of Delhi vs Lt. Governor**
 - » **Background:**
 - **Turf war between LG and the CM of Delhi:** Interpretation of Article 239AA(4) – If LG could go against the aid and advise of the council of Ministers, and whether LG is the real head or only the titular head of the Delhi Government.
 - » **Supreme Court Verdict:**
 1. '**Chief Minister**' is the executive head of the Delhi government, and not the L.G. LG has to act as per the aid and advice of council of ministers except in matters of land, police and public order and those which he refers to President for final decision.
 - LG can't interfere in each and every decision of the Delhi government.
 2. The LG shouldn't act in a mechanical manner without due application of mind so as to refer every decision of the Council of Ministers to the President. The LG can do so only as a last resort and shall be bound by the President's advice.
 - The Difference of opinion between LG and the Council of Ministers should have a sound rationale and there should not be exposition of phenomenon of an obstructionist but reflection of the philosophy of affirmative constructionism and profound sagacity and judiciousness.
 3. Council of Minister didn't require LG's concurrence to implement its decisions even though it had the responsibility to keep him apprised of its every decision.
 4. The court also held that Delhi was not a 'state', and occupied a special status under the constitution.
- **Other Important Constitutional Principle highlighted in the judgment**
 - Constitution has to be interpreted in such a manner so as to enhance its democratic spirit

- **Spirit of Constitutional morality** ('absolute and unqualified adherence to constitutional principles') negates the concentration of power in the hands of few.
 - **Parliamentary form of government** is based on principle of collective responsibility of the cabinet.
 - The Union and the State governments must embrace a collaborative federal architecture by displaying harmonious co-existence and interdependence so as to avoid any possible constitutional discord.
 - Recognizing that the constitution envisages quasi-federalism (a mixture of federal and unitary elements, leaning more towards later) the bench added that acceptance of "pragmatic federalism" was the need of the hour as its object was to come up with innovative solutions to problems that emerged in a federal set up.

- **Government of National Capital Territory of Delhi (Amendment) Act, 2021**
 - The statement of Object and reasons of the amendment says that the act seeks to give effect to the Supreme Court's interpretation and that it "further defines" the responsibilities of the elected government and Lt Governor in line with the Constitutional Scheme.
 - **Key changes:**
 - » The expression "Government" referred to in any law to be made by the Legislative Assembly shall mean the Lieutenant Governor (LG).
 - **Support:** Clears ambiguities in the roles of various stakeholder
 - **Criticism:** It deals a body blow to the popularly elected government of Delhi.
 - » The Legislative Assembly shall not make any rule to enable itself or its committees to consider the matters of day-to-day administration of the Capital or conduct inquiries in relation to administrative decisions.
 - **Criticism:** It would virtually put to the rest proceedings of multiple committees that the state government has constituted to examine matters ranging from riots to environment
 - » LG's opinion shall be obtained before the government takes any executive action based on decision taken by the Cabinet or any individual minister.
 - **Criticism:** This provision would force the elected government to take LG's "advice" before taking any action - It may be against the parliamentary principles and would add to unnecessary delays in the day today work of the government.

- **Verdict of the Constitutional bench of Supreme in May 2023:**
 - **The Question before the court** was whether the Delhi government (headed by the elected CM) or the LG (appointed by the President) would have control over services and civil servants in Delhi.
 - **The Court ruled** that Delhi government will have control over services in Delhi. Such control, will not extend to subject of Police, Public Order, Land, over which central government will have exclusive say.
 - It reaffirmed the 2018 verdict which said that LG didn't have independent decision making powers and was bound to follow the aid and advice of the Council of Ministers.

- After the Supreme Court's verdict on control over services in Delhi, the GNCTD (Amendment) Ordinance, 2023 was promulgated which was replaced by a Parliamentary law in Aug 2023.
- The Government of National Capital Territory of Delhi (Amendment) Act, 2023
 - Establishment of the National Capital Civil Services Authority (NCCSA): It consists of the Chief Minister (Chairperson), the Chief Secretary of Delhi and the Principle Home Secretary of Delhi. The central government will appoint both Home Secretary and Chief Secretary. The authority will make recommendations to the LG regarding transfers and postings of officials and disciplinary matters.
 - The amendment expands the discretionary power of the LG to include powers to approve the recommendations of the authority, or return for reconsideration. In the case of a difference of opinion between the LG and the authority, the former's decision will be final.
 - Matters which needs to be submitted before LG for his opinion prior to issue of order has been expanded to include the relations of the Delhi Government with the Central Government. Additionally, the amendment expands the LG's power to have sole discretionary power on these matters. If there is a difference between LG and CM, LG's opinion will take precedence.
 - It authorized department secretaries to bring to the notice of LG, the chief minister and the Chief Secretary any matter that may bring Delhi Government into controversy with the Central Government.
- Concerns being raised:
 - The amendment may be violating principles of Parliamentary Democracy: Conferring powers of transfers, postings, disciplinary action to the authority may break the triple chain of accountability that links Civil Servant, the legislature and the citizens.
 - Note: The Supreme Court explained the triple chain accountability principle in its 2023 judgment. It stated that Democratic government rests on a triple chain of accountability (i) Civil servants are accountable to ministers (ii) Ministers are accountable to the legislature and (iii) Legislatures are accountable to electorates/citizens.
 - Thus, a democratically elected government must be able to have control over and hold accountable public officers posted in services of its government.
 - It is also in violation of SC constitutional bench verdict in 2018 and 2023 where primacy has been given to council of minister.
 - The amendment may violate the principle that LG should act on the aid and advice of the council of ministers as the discretionary powers of LG have been expanded.
 - Chief Minister gets weakened and can't even convene a session of the legislative assembly himself for some important government business
 - Role of Council of Minister weakened, as the department secretaries are expected to bring certain matters direct to LG, CM and chief secretary. This may go against the collective responsibility of the cabinet, as the concerned ministers can't provide his inputs.
 - The act thus has the effect of disturbing this unique federal relationship of asymmetric federalism envisaged by the Constitution.
- Therefore, Delhi government had challenged the ordinance in the Supreme Court and the Supreme Court has directed the formation of a 5 Judge Constitutional bench.

- **Way Forward:**
 - Cooperative Federalism
 - **Ending politicization:** The control over government of Delhi has become a contest between two national parties.

- **Conclusion:**

The solution to all these problems lies in collaborative federal architecture by displaying harmonious co-existence and interdependence so as to avoid any possible constitutional discord: SC in 2018 judgment.

8) ENFORCEMENT DIRECTORATE – KEY ISSUES AND CONCERNS

- **Why in news?**
 - » Third extension for ED chief is 'illegal': Supreme Court (July 2023)
- **Introduction**
 - » The **Directorate General of Economic Enforcement** is a law enforcement and economic intelligence agency responsible for economic laws and fighting economic crimes in India.
 - » It is part of Department of Revenue, Ministry of Finance. It comprises of officers of the IRS, IPS and IAS.
- **History**
 - » The origin of this Directorate goes back to 1st May, 1956, when an 'Enforcement Unit' was formed, in Department of Economic Affairs, for handling Exchange Control Laws violation under Foreign Exchange Regulation Act, 1947. In the year 1957, this unit was renamed as 'Enforcement Directorate'.
- **Objective**
 - » Presently, ED deals with four laws:
 - Foreign Exchange Management Act, 1999 (FEMA)**
 - It is a civil law dealing with foreign exchange market in India.
 - ED has the responsibility to investigate suspected contraventions of foreign exchange laws and regulations, to adjudicate and impose penalties on those adjudged to have contravened the law.
 - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)**
 - The ED is the sponsoring agency of COFEPOSA. Under this the ED is empowered to sponsor cases of preventive detention with regard to contravention of FEMA.
 - Prevention of Money Laundering Act, 2002 (PMLA)**
 - It is a criminal law to prevent money laundering and to provide for confiscation of property involved in money laundering.
 - Fugitive Economic Offenders Act, 2018 (FEOA)**
 - It deals with Indian offenders who leave India to escape laws. This allows ED to attack properties of fugitive offenders who have escaped India.
- **What makes ED so Strong?**
 - The ED has a set of powers that CBI or state police don't have, making it a feared agency it is.

- These powers are:
 - a. Under PMLA which ED deals with, a statement before an investigation officer is admissible in court as evidence.
 - b. The burden of proof is on the accused.
 - c. All offences under PMLA are non-bailable.
 - d. Unlike CBI or state police, ED doesn't have its lockups, so there are no special cells with ED for VIPs in its custody. People in ED custody go to lockup of the nearest police station, irrespective of its status.
 - e. It's very hard to retrieve property attached by ED.
- Controversies/Issues/Critique:
- i. The PMLA, created in 2022, has periodically undergone several significant reforms to strengthen it against money laundering.
 - However, due to these revisions, several petitions have been submitted nationwide, questioning the ED's nearly unrestricted powers under the PMLA to search for, seize, look into, and attach property deemed to be proceeds of crime.
 - ii. Overreach and Selective Targeting:
 - PMLA has been used for investigation of common crimes as well.
 - Allegation of becoming more active before elections.
 - Allegation of ED going soft on government supporters:
 - For e.g. no proceedings against Himanta Biswa Sarma after he changed his party to move to BJP.
 - Cases against Ramdev and Balkrishna were shut down by the ED after government changed in 2014.
 - iii. Lack of transparency and Clarity:
 - Because it is an "internal document", the Enforcement Case Information Report (ECIR), the FIR's equivalent, is not provided to the accused.
 - Similarly, there is also a lack of transparency about how ED selects its cases to investigate.
 - iv. Very low rate of conviction:
 - As per a data published in Indian Express in 2019, the ED had approximately 2,400 PMLA cases between 2005-19 and convictions were secured only in eight and investigation was pending in 898 cases.
 - v. Delays in Investigation - The investigation process of the ED can be quite time consuming, leading to delays in delivering justice. This can also impact the business operations of the entities being investigate.
 - vi. Third extension for Enforcement Directorate (ED) chief is illegal: Supreme Court
- Way Forward:
- Oversight Committee - An oversight committee needs to be created to overlook and streamline the case selection process based on objective criteria and to boost transparency in the functioning of ED.
 - Increased Resources - To deal with pending number of cases.
- Conclusion:

- While the ED plays a significant role in tackling economic offenses and financial crimes in India, there are valid concerns about its functioning, including issues of accountability, selective targeting and legal ambiguity.
- Striking a balance between its investigatory powers and safeguarding individual rights is crucial for its effective functioning. Reforms that address these concerns and enhance transparency can improve the agency's overall credibility and effectiveness.

9) ISSUE OF EXTENSION OF TENURE OF ED HEAD (AUG 2023)

- What was held in 2021 verdict?**
 - The Union government's order of Nov 2020 extending Mr. Mishra's tenure with retrospective effect was challenged before the Supreme Court in the Common Cause v. Union of India (2021).
 - In Sep 2021, a Supreme Court bench upheld the tenure extension but clarified that Mishra would not be given any further extension beyond Nov 17, 2021, upon completion of three years of his tenure, issuing a writ of mandamus to this effect.
 - It also held that extension of tenure of ED officials who has attained the age of superannuation should be done in 'rare and exceptional cases' and that such extensions should be for a short period only.
 - The court held that in Section 25(d) of the CVC Act, the words "no less than two years" cannot be read to mean "not more than two years" and there is no fetter on the power of the Central government in appointing the Directorate of Enforcement beyond a period of two years.
- Nov 2021 Amendments:**
 - In Nov 2021, three days before Mr. Mishra was about to retire, two ordinance were promulgated by then-President Ram Nath Kovind, amending the **CVC Act, The Delhi Special Police Establishment Act, 1946** and the Fundamental Rules.
 - It allowed ED and CBI chief's tenures to be extended by upto three years after the mandated term of two years.
 - This allowed government to keep two chiefs in their posts for a year after the completion of their two year terms and to keep these one year extension until they complete five years as chiefs.
- Thus, Mr. Mishra was granted another one-year extension of tenure for the second time. In Nov 2022, he was granted a third tenure extension upto Nov 18, 2023.**
- Challenge in Supreme Court:**
 - A batch of petitions was filed in the Supreme Court challenging the orders allowing the extension of Mr. Mishra's tenure as well as amendments to the law.
 - Why the amendment were challenged?**
 - Centre could use the prospect of service extension as a 'carrot and stick' policy to ensure that the CBI and ED Directors work according to its wishes.
 - On 11th July 2023, (in **Jaya Thakur vs Union of India**), the SC upheld the amendments made by the legislature but ruled that extension granted to Mr. Mishra were contrary to the court's 2021 judgement in Common Cause and thus was illegal.

- » The court upheld the amendment and observed that the extensions were not given at the "sweet will" of the government but instead were recommended by a five member High-Level Committee comprising of Central Vigilance Commissioner and Vigilance Commissioners.
 - » Besides the committee was required to record reasons in writing in support of their recommendations.
 - » It further held that amendments were passed by elected representatives of the people who are "supposed to know and be aware of the needs of the people and what is good or bad for them".
- **However, on July 27, the Supreme Court extended the tenure of the incumbent ED Director Sanjay Kumar Mishra till Sep 15, 2023, to serve 'public and national interest'.**
 - Government had made a submission that Mishra's presence was necessary for the ongoing FATF evaluation of India's money-laundering probe operations which is at a critical stage.
 - **Concerns raised:**
 - Experts have flagged the judgment for being an instance of judicial deference to the Centre.
 - Constitutional law expert Gaurav Bhatia wrote "If the Supreme Court is unable – or unwilling – to enforce its own previous, direct orders (not once, not twice, but *many times*) in the face of executive recalcitrance, then what hope – if any – ought citizens to have in its ability or willingness to adjudicate cases involving serious and far-reaching constitutional breaches by the executive?"

10) CBI- KEY ISSUES

- **Why in news?**
 - Allowing piecemeal extension to ED, CBI heads is a setback to their independence (July 2023: Source - TH)
 - Under BJP led NDA-II's eight years in power so far, even as the opposition's political footprint has shrunk, at least 124 prominent leaders have faced CBI probes and as many as 118 are from opposition - i.e. 95% : Indian Express Study (Sep 2022)
 - In last 18 years, of the close to 200 politicians CBI has



booked, arrested, raided or questioned, over 80% have been from the rank of opposition.

- **Timing of CBI raids** have also raised eyebrows. For e.g. in Aug 2022, the CBI raided multiple premises associated with RJD leaders, including one allegedly linked to Bihar's current deputy CM Tejaswi Yadav, on the day the new JD(U)-RJD government was facing a trust vote in the Assembly.

- **Example Questions**

- "The absence of institutional autonomy has turned CBI from a premiere investigating agency to a 'caged parrot'" Discuss. In this light elaborate on the key steps required to ensure proper functioning of CBI. [15 marks, 250 words]
- Discuss the key changes that Lokpal and Lokayukta Act, 2013, brought in the Delhi Special Police Establishment Act, 1946. Have these changes ensured the effectiveness and autonomy of CBI? Give reasons. [15 marks, 250 words]
- It is imperative in a democracy that every organization of the government must draw its powers, privileges and authority from clearly defined legal statutes. In this light discuss the powers and functions of Central Bureau of Investigation. Suggest some measures to reduce political interference in the working of the CBI. [15 marks, 250 words]

- **Introduction**

▫ **Background: Special Police Establishment (SPE)**

- The CBI owes its origins to an executive order passed by the British government in the early stages of World War II (1941) to look into vigilance cases by establishing Special Police Establishment (SPE) in the Department of War. This body was mandated to look into cases of bribery and corruption in War and Supply department and later Railways (1942).
- Delhi Special Police Establishment Act, 1946 expanded the function of SPE to cover all departments.
- **Central Bureau of Investigation (CBI)** was set up in 1963 by a resolution of the Ministry of Home Affairs on recommendations of the Santhanam Committee on Prevention of Corruption (1962-64). The Special Police Establishment set up in 1941 was also merged with the CBI.
 - It was later transferred to Ministry of Personnel. Currently it comes under administrative control of the DoPT of the Ministry of Personnel.
- It is not a statutory body and derives its powers from the Delhi Special Police Establishment Act, 1946.

- **Which cases can be investigated by CBI?**

- Matters pertaining to central government.
- Matters pertaining to state government if requested by state government concerned or directed by the high court or Supreme Court.

- **Key Functions/Vision of CBI:** CBI's function can be divided into two broad categories:

- A. **Investigating Agency:** CBI is the premiere investigation agency in the country and investigates grievous cases (Corruption, economic and violent crimes; cyber and high tech crime; national and transnational organized crime)
- B. **Leadership and Direction:** CBI provides leadership and direction to police forces across the country.
- C. **Other Functions**
 - **Assistance to CVC and Lokpal** in investigating corruption cases.
 - CBI is the **country's unit for the international police organization**.

- **Declining Credibility of CBI:** In its initial years the organization was widely respected on account of high caliber and integrity of its directors like DP Kohli, FV Arul and others backed by the high degree of professionalism of its investigating officers and inbuilt multi-layered decision making procedure and strict internal vigilance mechanism. But, over the years CBI has been losing its credibility. In fact in 2013, the Supreme Court called it a "Caged Parrot". The main factors responsible for poor functioning of CBI have been:
 - A. **Political Interference** both in selection of personnel and day-to-day governance
 - B. **Dependency on government to initiate a case:**
 - For e.g., to prosecute MLAs, State Ministers, or MP, the CBI has to take sanctions from the Speaker of the state assembly (in case of MLAs) and the Governor of the State (in case of ministers). In case of Member of Parliament (MP), the sanction is sought from the Speaker of Lok Sabha or the Vice Chairperson of Rajya Sabha. Since all **these sanctioning authorities have links to the ruling dispensation**, the opposition parties feel that they are unfairly targeted.
 - C. **Dependence on other ministries**
 - CBI is dependent on home Ministry for staffing and law ministry for lawyers and lacks functional autonomy in certain cases.
 - Administrative and financial control rests with the Ministry of Personnel
 - D. **Run by IPS officers on deputation:**
 - CBI mostly consists of IPS officers on deputation and since these officers depend on government for future postings, they can be manipulated by government.
 - E. The **DPSE Act** was amended in 2021 to increase the term of Service of CBI director to five years. But there is a caveat that after completion of the Supreme Court mandated 2 year term, the Director would get extension of tenure each year at the pleasure of the Government. This is also seen by many as dangling a carrot before the Director.
 - **Carrot of post-retirement jobs** is also something which is hampering independence of CBI. For e.g. former CBI director Ashwini Kumar, was appointed governor of Nagaland by UPA in 2013.
 - F. Further, the work of CBI has also been impacted by various states have withdrawn general consent to CBI.

- **Steps taken to ensure Independence of CBI**
 - **Steps taken by Supreme Court in Vineet Narain vs Union of India, 1997**
 - » CBI director shall be appointed on the recommendation of a committee comprising of CVC, VCs, secretary (home) and secretary (personnel).
 - » Director shall have a minimum tenure of 2 years.

- The Lokpal and Lokayukta Act (2013) amended the Delhi Special Police Establishment Act (1946) and made following changes with respect to CBI:
 - » Improving the appointment Process of Director
 - The act provides that director of the DSPE will be appointed by a Selection Panel comprising of the Prime Minister, the Leader of Opposition in LS(Leader of the largest opposition party - 2014 amendment DSPE Act), and Chief Justice of India (or a judge nominated by him).
 - Earlier, the director was appointed by a committee full of government functionaries.
 - » Security of Tenure for director of 2 years was given statutory backing
 - » Selection of officers of the Rank of SP and above in CBI will be done by central government on the recommendation of the a committee (with CVC as chairperson, the Vigilance Commissioners, the Secretary of Home Affairs and the Secretary of DoPT)
 - » Lokpal will have power of supintendence over CBI with respect to cases referred by it to CBI
 - » CBI officers investigating the cases referred by Lokpal can't be transferred without Lokpal's approval.
 - » Establishment of Directorate of Prosecution with CBI to be headed by Director who is an officer not below the rank of joint secretary for conduction of prosecution of cases under Lokpal.

- Way forward/Steps that needs to be taken

- i. A new CBI Act: The foremost reform would be to ensure that CBI is run under a formal, modern legal framework that has been written for a contemporary investigating agency. The new CBI act should ensure autonomy and improve the quality of supervision.
 - This is not a new demand. LP Singh committee in 1978 and 2nd ARC in 2007 also suggested this new law.
- ii. CBI should be made independent of government and thus political interference
 - Making CBI accountable directly to parliament can be a possibility
 - A more efficient parliamentary oversight over the federal criminal and intelligence agencies could be a way forward to ensure better accountability, despite concerns regarding the political misuse of the oversight.
 - Political neutral selection procedure
 - For e.g. the director of CBI could be appointed by a committee consisting of CJI, the chairman of UPSC and other judge nominated by CJI.
 - Extending the tenure of director from 2 years to 3-5 years will also go a long way forward in ensuring CBI's autonomy.
 - Make director in-eligible for any post under GoI or government of any state
 - Dedicated Cadre of Officers
 - CBI should develop its own dedicated cadre of officers rather than depending on officers on deputation. This is international best practice and will ensure independence in the working of the body.
- iii. A governing board consisting of PM, Home Minister and 4-5 chief ministers should be created to keep a watch on the working of CBI.

- This will instil a sense of confidence within states, and help in building consensus for a central law for CBI.
- iv. **Bifurcating CBI into anti-corruption body and National Crime Bureau**
 - The NCB should be responsible for matters relating to criminal offence which has national or international ramifications
 - This specialization will help in better functioning of both the sub-sections.
- v. **Lay down Specific Charter for CBI**
 - The work of CBI should be judged with reference to these charters
- vi. **Bring CBI under RTI**
 - It may be stipulated that no-information on any case currently being investigated will be made available, but that all information pertaining to cases which were withdrawn, or cases which were closed, or were dismissed by the court would be made available to people.
 - Such social audit will go a long way in making CBI more accountable.

- **Conclusion**
 - The frequent controversies surrounding CBI have not just ruined the image and credibility of the premiere investigating agency, but India's image as a country committed to rule of law is at stake.
 - It's high time that government takes the above suggested steps to make CBI a truly independent, efficient and impartial investigating agency which is capable of dealing with various threats our country faces internally as well as externally.

11) ISSUE OF GENERAL CONSENT TO CBI

- **Why in news?**
 - Tamil Nadu withdraws general consent for CBI within state (June 2023)
 - » In the past few years several states including Punjab, Jharkhand, WB, Rajasthan, MHA, Mizoram, Chhattisgarh and Kerala have withdrawn the general consent.
- **Understanding General Consent:**
 - The CBI is governed by the Delhi Special Police Establishment Act (DPSEA). This law makes CBI a special wing of Delhi Police and thus its original jurisdiction is limited to the territory of Delhi.
 - **How does CBI operate in cases outside Delhi?**
 - » **Section 5 and Section 6 of the DPSE:**
 - Section 5 of the Delhi Special Police Establishment Act (DPSE) enables the Central government to extend the powers and jurisdiction of members of the DSPE beyond the Union Territories to a state. But the same is not permissible unless a state grants its consent for such extension within the area of state concerned under Section 6 of the DSPE Act.
 - » **The CBI Manual** says, "The central government can authorize CBI to investigate such a crime in a state but only with the consent of the concerned state government.
 - Note: The Supreme Court and High Courts, however, can order CBI to investigate such a crime anywhere in the country without the consent of the state"

- » Supreme Court in Nov 2020 clarified that **state government's consent is mandatory** for a CBI investigation in its jurisdiction and agency cannot conduct probe without a nod.

- The apex court had referred to Section 5 and Section 6 of the Delhi Special Police Establishment (DSPE) Act.

- **Types of Consent for CBI: General and Specific**

- » When a state gives **general consent** to the CBI for probing a case, the agency doesn't need to seek a fresh consent every time it enters that state in connection with investigation for every case.

- » But, if a **general consent is not there** (or if a general consent is withdrawn) CBI needs to seek a case wise consent for investigation from the concerned state government. This case wise consent is called **specific consent**. If this specific consent is not granted, the CBI officials will not have the power of police personnel when they enter the state.

- **Does withdrawal of general consent stop all CBI cases?**

- » No. The CBI continues to probe old cases (unless specifically taken away by the state government) and cases allocated to it by a court order.

- **Way Forward:**

- **Reforming CBI** to make it more autonomous (discussed above)
- **Cooperative and Collaborative Federalism** (discussed separately in details)

12) INDIAN POLICE SYSTEM AND REFORMS

- **Basics about Police System of India**

- The current governing instrument of the Indian Police force is the **Police Act of 1861**. Together with the **Indian Penal Code, Indian Evidence Act** and the **Code of Criminal Procedure** it forms the current but outdated police system in India.

- Police is a state subject under constitution.

- **Main Responsibilities:** The police force in Modern India is typically burdened with the handling of disparate responsibilities
 1. Maintaining Routine law and order
 2. Riot Control
 3. Protection of state assets
 4. Crime Investigation
 5. VIP protection
 6. Traffic control

- **Structure**

- » **Hierarchical structure:** The structure of the police force is strictly hierarchical and the decision making is centralized with a few high ranking officers.

- » **Four level entry system** to the Indian police force with little or no scope for a fresh recruit rising from the very bottom to the very top within the hierarchy.

- » **Political influence:** Posting and transfers are commonly interfered in, by political influence.

- Dual System vs Commissionerate System

Dual System	Commissionerate System (50+ cities)
<p>Dual command structure over the district police means that <u>control and direction over the police</u> vests with the SP (head of district police) and the District Magistrate (executive).</p> <p>Separation of Powers of DM (e.g., issues arrest warrants and licenses) and the Police (e.g., investigate crimes and make arrests). Therefore, there is <u>less concentration of power in the police</u>, and accountability to DM at the district level.</p> <p>SP is assisted by Additional/Assistant/Deputy SPs, Inspectors and constabulary.</p>	<p>Unified Command Structure with the Commissioner of Police (rank of the Deputy IG or above) as the sole head of the force within the city. This allows <u>quicker responses</u> to law-and-order situations.</p> <p>Power of policing and magistracy concentrated in Commissioner. Directly accountable to state government and state police chief. Lesser accountability to local administration.</p> <p>Commissioner is assisted by Special/Joint/Additional/Deputy Commissioners, etc. Inspector downwards rank structure is same.</p>

- Main Structural and Design Defects of Indian Police System

1. Colonial Police Act, was meant for subjects and not for the free citizens of democracy
2. Political interference in appointment, transfer and promotions.
 - Choice of officers to head the districts police forces is often one the basis of their political leaning and pliability, rather than on their professional competence
3. Disparate functions performed by an overburdened police force hindering efficiency and domain specialization
4. Lack of genuine empowerment of personnel
5. Lack of independent oversight body
6. Inadequate collaboration between the police and the prosecutor

- Some other inefficiencies of Indian Police System

1. Under resourced and over-burdened
 - Highly understaffed
 - United Nations recommend the Police: Citizens ratio of **1:222**, but in India the ratio is **1:694**
 - Decreasing Financial Resources for Police
 - According to a recent study by PRS, between 2011 to 2015, states were **spending 4.4% of their budgeted expenditure** on police, which has **reduced to 4%** over the past four years.
 - Technical infrastructure in most of the police forces is of a poor quality.
 - All the above deficiencies have not only impacted the quality of law & order and investigation in the country, but it has also led to long hours of work, no holidays and thus stress and depression among police force.

2. **Training of police personnel is lacking on several fronts** -> this is visible in custodial deaths, fake encounters, insensitivity towards victims, lack of awareness related to human rights etc.
 3. **Public perception**
 - The image of the police today is not that of protector of the innocents but of an extortionist, colluder with criminals and one of the most corrupt arms of the government.
 4. **Corruption level in Police**
 - Graft goes unchecked at police stations because of the graft at supervisory levels
- **Attempts of Reformation:** There have been many attempts to reform the Indian Police system both on a state level and on a central level. Since 1971, there have been **six major reform committee.**
 - i. Gore Committee (1971-73)
 - ii. National Police Commission, 1977-81
 - iii. Ribeiro Committee on Police reform, 1998
 - iv. Padmanabhaiah Committee on Police Reform, 2000
 - v. Group of Ministers on National Security
 - vi. Malinath Committee on Reforms of Criminal Justice System.
- **Prakash Singh Case: Guidelines of supreme Court**
 - » **Background:** After non-implementation of major recommendations of National Police Commission for almost two decades, in 1996 two former DGPs filed a PIL in the Supreme Court asking the court to direct governments to implement the NPC recommendations.
 - » **Verdict in 2006:**
 - The states and UTs were directed to comply with 7 binding directives that would kickstart reforms. These directives pulled together various strands of improvement generated since 1979.
 - **Directive One:** Constitute a State Security Commission (SSC) to reduce government's unwarranted influence or pressure on police, to lay down broad policy guidelines and to evaluate performance of state police.
 - **Directive Two:** Ensure that the DGP is appointed through merit based transparent process and secure a minimum tenure of two years
 - **Directive Three:** Ensure that other police officers on operational duties (including Superintendents of Police in-charge of a district and Station House Officers in-charge of a police station) are also provided a minimum tenure of two years
 - **Directive Four:** Separate the investigation and law and order functions of the police
 - **Directive Five:** Set up a Police Establishment Board (PEB) to decide transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers above the rank of Deputy Superintendent of Police.
 - **Directive Six:** Set up a Police Complaints Authority (PCA)

- at **state level** to inquire into public complaints against police officers of and above the rank of Deputy Superintendent of Police in cases of serious misconduct, including custodial death, grievous hurt, or rape in police custody and;
- at **district levels** to inquire into public complaints against the police personnel below the rank of Deputy Superintendent of Police in cases of serious misconduct
- **Directive Seven** Set up a National Security Commission (NSC) at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organisations (CPO) with a minimum tenure of two years

- **Some suggestions for improvements**

1. **Reduce Political interference** - in selection, promotion and transfer -> Follow the guidelines of Prakash Singh Case - Establish State Security Commission, Ensure security of tenure, set up Police Establishment Board.
2. **An independent oversight body/Grievance Redressal body** - to look into complains of abuse of authority by police - should be accessible through a toll free number/online. [**Police Complaint Authority** as per Supreme Court Directives in Prakash Singh case]
3. **More Resources** both in terms of Human Resource and Capital
 - **Police: Population ratio** needs to go up
 - **Modernization of Police Force** by ensuring better technical infrastructure, faster vehicles, communication equipment and weapons.
4. **Divide functions of Police force in 3 different ways** - Crime Investigation, Maintenance of Law & Order and, Local Police Force Units.
5. **Specialized Units with specialized training for** Cyber Security, Anti-terrorism cells, VIP Security, etc.
6. **Training and sensitization**
 - Focus on constant upgradation of knowledge and skills, human rights etc. There is a need of **National Curriculum Framework (NCF)** for police education and training.
7. **More number women in Police**
 - In 2014 they formed **minuscule (6.1%)** of the total police force in the country according to Bureau of Police Research and Development's Data on Police Organization.
 - **Why more women are needed in policy force?**
 - Diversity of thought -> better police force
 - Can better understand/sympathize with issues of domestic violence, dowry harassment and child abuse.
 - **Social change:** More police personnel on the frontlines will have an overall positive impact on community and would promote the cause of gender equality.
 - **How to ensure more women in police force?**
 - Some all women police stations.
 - Reserving in appointment

8. Legal Backing to the Police

- Upgrade the outdated laws else in spite of police's hard work, the criminal would roam free.

9. Focus on Mental Health:

- Police Leaders should start having communication with all the ranks.
- Sports and cultural programs
- Access to counsellors
- Work-Life Balance

- **Conclusion:** The prescription for carrying out police reforms already exists in the form of findings of various police commissions, judicial pronouncements and advice of retired officers. What we need is the **political will to implement this recommendation** and this would come with increased awareness among citizens and sustained pressure from civil society organizations.

13) PRISON REFORMS

- Quotes

- i. "Hate The Crime and Not The Criminal" - Mahatma Gandhi

- Example Question

- i. "Prison reforms are key to the reforming prisoners". Discuss in light of the key problems faced by Indian Jails [12.5 marks, 200 words]
- ii. "Prisons are meant to facilitate rehabilitation but have become disempowering spaces with a mental health crisis" Discuss in light of the recently released NCRB Prison Statistics India Report [10 marks, 150 words]

- Introduction

- The basic purpose of the prison is to reform and transform criminals into honest and law abiding citizens by inculcating in them a distaste for crime and criminality. Prisons are supposed to bring the offenders back to mainstream of the society. The United Nations also mandates the Standard Minimum Rules for treatment of Prisoners (Nelson Mandela Rules) which enlists the rights of the prisoners such as Right to life including right to contact outside world, right to proper sleep and clothing, right to security, right to proper healthcare etc.
- The current situation in Indian prisons is in contrast to above requirements. The basic human rights of prisoners are getting violated every day and prisons are not able to serve the purpose of reformation properly. In fact the rot in India's criminal justice system impacts the psychological condition of prisoners making them more vulnerable than before to criminal propensities. The prisoners get out of jail ruined and not reformed.

- Major Problems Faced by Indian Prisons

▫ Overcrowding

- According to NCRB data, India had more than 4,33,000 prisoners in 2016 which was around 20% more than its capacity. In states like UP and WB the overcapacity is by more than 100% and in some prisons this overcrowding is by more than 500%.

- Bigger concern is **the high percentage of undertrials** which contribute to about 68% of India's population.
 - **Understaffing**
 - 33% of the total requirement of prison officials still lies vacant. The man power recruited inside this prison is almost 50% short of its actual requirement.
 - Overcrowding and understaffing leads to **rampant violence and other criminal activities in jails**.
 - **Underfunding -> Poor Infrastructure**
 - Poor health and hygiene conditions
 - Insufficient food and inadequate clothing
 - **Variation of prison rules among different states**
 - Since **Prison management is a state subject** - there is a lot of variation in Prison manual among different states
 - **Very less focus on reformation, vocational training etc** - focus is on retribution.
 - **Lack of after-care, rehabilitation and probation**
 - There also nothing in existence which takes care of prisoners after they get out of the prison. These facilities are important for their rehabilitation in the society.
 - It makes their integration in society difficult
 - **Lack of continuous study**
 - Most states don't have a board of visitors who review the jails. The boards that do exist rarely meet.
- **Impacts of the above Problems**
- i. **Human Rights Violation for Prisoners**
 - The bad condition is violative of the basic human rights of Indian prisoners and should not be accepted.
 - **Increasing unnatural deaths and mental illness in Prisons**
 - According to 2021 NCRB Report, there are more than 9,000 prisoners who suffer from mental illness and more than 150 deaths by suicide has taken place. Further, there is almost no availability of psychiatrist/psychologists in Indian prisons.
 - ii. **Poor Security, Corruption, discrimination and inequality in Indian Prisons**
 - Not all prisoners are treated in same way.
 - Politicians get better treatment, whereas general public have to undergo inhuman condition. It remains hellish for socio-economically disadvantaged.
 - **Corruption in Indian prisons allow a number of illegal activities to be run from the prisons.**
 - **Security of the Prison** also gets challenged due to poor infrastructure and understaffing. Therefore, there are incidences of prisoners escaping from them.
 - iii. **Negligible focus on Reforming prisoners**
 - Reformation can only take place once the basic human rights of prisoners are taken care of.
 - iv. **Difficulty in extraditing Criminals to India**
 - On many occasions, courts in foreign countries deny extradition of offenders to India on the grounds of poor human rights conditions of Indian Jails.

- **Committee formed in the Past**
 - » **Justice A.N Mulla Committee and Justice Krishan Iyer Committee** (on women prisoners) - both in 1980s
 - Mulla committee batted for more rights and better condition of prisons. It also emphasized on dealing with overcrowding and high percentage of undertrial population in India.
 - Similarly, there were measures suggested to increase the number of staff through mechanisms such as an All India Services to deal with vacancies in Prisons.
 - Bringing prison management under concurrent list would have also contributed towards bringing uniformity in the process of jail management.
 - » But **most of these recommendations have remained ignored so far.**
- **Steps that need to be taken**
 - i. **Revise the Prison Act, 1894**
 - The act is more than a century old and doesn't serve the needs of today's socio-economic and political condition.
 - Many of the provisions are obsolete and redundant.
 - ii. **Creation of a National Prison Commission** as a continuing body to bring about modernization of prisons in India.
 - Suggested by Mulla Committee (All India Committee on Jail Reforms 1980-83).
 - iii. **More Resources to prisons (including Human Resource)**
 - For basic requirements
 - Improved hygienic conditions
 - Infrastructure -> more number of prisons
 - Separate prisons for undertrials, convicts, hardened criminals etc with different level of security.
 - Introduction of Jammers in the prisons to prevent unauthorized outside communication using mobile phones in Prisons.
 - iv. **Steps to deal with overcrowding**
 - Strictly implement **Section 436A of CrPC**, increase awareness among the prison authorities regarding the provision
 - **Implement the 2017 LCI recommendation** -> undertrials who have completed a third of their maximum sentence for offences attracting up to seven years of imprisonment be released on bail.
 - **Enhancing infrastructure**, promoting concepts like **open prisons** of Rajasthan
 - **Steps to fast track judicial process**
 - v. **After-care, rehabilitation and probation** should constitute an **integral part of prison service**
 - Rehabilitation will be meaningful only if they are employed after release and for the purpose vocational education facilities should be introduced or upgraded in prisons.
 - vi. **Continuous study of prison**
 - There is a need of periodical study of Indian prisons by objective, independent and committed observers and publication of their finding in order to monitor the extent to which the human rights of prisoners are respected.
 - vii. **Increased focus on mental health:**

- National Mental Health Policy, 2014 considers prisoners as a class of people vulnerable to mental health.
- We need to take a more all-encompassing approach, to fight mental illness in prison. Treatment of individuals, Identifying the social and underlying determinants of mental health in prisons.

- **Conclusion**

- Today, there is a **need of model prisons**, where inmates are accommodated with due regard to their basic human needs and are handled with dignity. This can only be achieved by **strong political will which seems to be completely lacking** for now as inmates are not allowed to vote. Here, **Civil Society Organizations** can play an important role in increasing awareness about need of prison reforms and acting as a pressure group on legislators to bring these reforms. We already have recommendations from a number of expert committees regarding jail reforms, its high time that we start implementing them.

14) MODEL PRISON ACT, 2023

- **Why in news?**

- The Ministry of Home Affairs (MHA) announced that it has finalized the preparation of the Model Prisons Act, 2023, to replace the existing 130-year-old colonial law (May 2023)

- **Background: What is being changed?**

- Prisons Act, 1894, The Prisoners Act, 1900, and the Transfer of Prisoners Act, 1950 have been reviewed by the MHA, and their relevant provisions have been assimilated into the Model Prisons Act, 2023.
- **Prisons Act, 1894:**
 - This is the first legislation that governed the management and administration of prisons in India.
 - It defined a "prison" as "any jail or place used permanently or temporarily under the general or special order of a state government for the detention of prisoners".
 - It demarcated prisoners into three different categories as per the nature of crime - "Criminal Prisoners", "Convicted Criminal Prisoners" and "Civil Prisoners".
- **The Prisoners Act 1900** was introduced with the objective of consolidating the "several acts relating to prisoners" and replacing the "separate enactments by a single act".
- Besides these there were other legislations, like the Transfer of Prisoners Act, 1950, which also provided for the removal of prisoners from one state prison to another.
- Currently, the Jail Manuals of each state also deal with the administration and management of its prisons.

- **Details of Change:**

- It is an attempt to shift focus of incarceration from "retributive deterrence" to "reform and rehabilitation". It intends to provide guidance and address gaps in the existing prison laws.

- **New Provisions being proposed:**

- Create provisions for the grant of parole, furlough, and remission to prisoners to encourage good conduct.
 - Separate accommodation for women and transgender inmates.
 - Ensure physical and mental well being of prisoners.
 - Focus on reforms and rehabilitation of prisoners.
 - Bring about attitudinal change towards prisoners and initiate vocational training and skill development for prisoners for their integration into society.
 - **Transparency in Prison Management:**
 - Provisions for security assessment and segregation of prisoners;
 - Individual sentence planning
 - Grievance redressal
 - Prison development board
 - Use of technology in prison administration
 - **Different types of jails:**
 - **High Security**
 - **Semi-open jail**
 - **Open Jails**
 - **Measures for video-conferencing with courts.**
- **Is the Model Prisons Act, 2023, binding on states?**
- 'Prisons' and 'persons detained therein' fall under the state list. This means that the responsibility of prison management and administration solely vests with the state government, which alone is competent to make appropriate legislative provisions in this regard.
 - **So why the Model Prisons Act?**
 - MHA states that owing to the critical role played by "efficient prison management" in the criminal justice system, the centre finds it crucial to support the states and Uts in this regard.
 - There were several lacunas in existing prisons act, which regulates the prison administration in most states and Uts, the government thought it fit to revise the law to align it with "modern day needs and requirements of prison management"

15) CINEMATOGRAPH ACT, 1952 AND 2023 AMENDMENTS

- **Why in news?**
 - Parliament passed the amendment in July 2023.
- **The Cinematograph Act, 1952**
 - It is an Indian law which governs the certification of films for public exhibition, regulates cinema exhibitions, and provides for related matters.
 - **Key Provisions:**
 - The Act empowers the CBFC to certify the film based on categories: "U" (Universal); "UA" (Parental Guidance); "A" (Adult), "S" (Special).
 - It also establishes Film Certification Appellate Tribunal (FCAT) to appeal the decision of the CBFC. It can uphold, modify or reverse CBFC decisions.
 - It prohibits use of recording devices in cinemas without proper authorization.
- **Shyam Benegal Committee and its recommendations:**

- The committee was formed to lay down holistic framework for the certification of films. It was formed in the backdrop of increasing controversial decision making of CBFC headed by Pahlaj Nihlani, whose role in censoring films was widely criticized.
- **Major Recommendations:**
 - Role of CBFC should only be to certification (categorization) of film as per the suitability to audience groups. It should not have right to censor films.
 - Certification can be refused on the following grounds:
 - When a film contains anything that contravenes the provisions of Section 5B (1) of the Cinematograph Act, 1952
 - When content in a film crosses the ceiling laid down in the highest category of certification.
 - More subcategorization of UA and A Category.
 - Staffing Pattern of CBFC: Given the limited functions, the size of the board should be compact with one member representing each regional office. Therefore, the total composition of the Board should not be more than nine members and one chairman.
 - Recommendations regarding regional advisory panel
 - Other Guidelines
 - Online submission and simplification
 - Online submission of applications as well as simplification of forms and accompanying documentation
 - Recertification
 - Recertification of a film for purposes of telecast on television or for any other purpose should be permitted
 - Director's cut in the National Film Archive of India (NFAI)
 - In order to preserve Indian Cinema, the committee recommends that every applicant be asked to deposit the Director's Cut in the NFAI for preservation of Indian Cinema, instead of the certified version, in order to truly reflect the cinematic history of Indian cinema
 - Out of turn certification with higher fees
 - Complaints received by central government referred to CBFC
 - The Chairperson may, if he considers it necessary to do so, refer the film to a Revising Committee for examination once again, on account of alleged violation of Section 5B(1) of the Cinematograph Act, 1952
- The Objective of these guidelines
 - Children and adults are protected from potentially harmful or unsuitable content
 - Audiences, particularly parents are empowered to make informed viewing decisions
 - Artistic expression and creative freedom are not unduly curbed in the process of classification of films
 - The process of certification by CBFC is responsive, at all times, to social change
 - The certification by CBFC keeps within the rights and obligations as laid down in the Indian Constitution

- Cinematograph (Amendment) Act, 2023: Key Highlights

- This is the first amendment of Cinematograph act in around 40 years, the last amendment was made in 1984.
- It aims to curb menace of 'Piracy' causing losses of Rs 20,000 crores to the film industry, based on certain estimates.
 - **Provisions to check Unauthorized Recording and Exhibition of Films Amounting to Piracy:**
 - Check film piracy by way of cam-cording in the theatres
 - Prohibits any unauthorized copying and online transmission & exhibition of a pirated copy of any film
 - Strict Punishment of minimum 3 months and fine of Rs 3 Lakh which can be extended upto 3 years imprisonment and fine upto 5% of the audited gross production cost.
- It improves the procedure of certification of films of public exhibition by CBFC, as well as improve the categorizations of the certifications of the films.
 - Introduction of age based certification by further sub-division of the existing UA category into three age-categories, viz. seven years (UA 7+), 13 years (UA 13+), and sixteen years (UA 16+), instead of 12 years.
 - The IT Rules 2021, has implemented these graded ratings for streaming platforms.
 - These age-based markers would be only recommendatory, meant for the parents or guardians to consider whether their children should view such a film.
- It also harmonize the law with extant executive orders, Supreme Court Judgements, and other relevant legislations.
 - Omission of revision power of central government as per the judgement of Supreme Court in the case of K.M. Shakarappa vs Union of India.
- **Perpetual Validity of Certificates:** It removes the restriction in the act on validity of certificate for only 10 years for perpetual validity of certificates of CBFC.
- **Change of category of film for television:** Recertification of the edited film for television broadcast, as only Unrestricted Public Exhibition category films can be shown on television.
- **Reference to Jammu and Kashmir:** Omission of reference to the erstwhile State of J&K in line with the J&K Reorganization Act, 2019

- **Some Criticism:**

- Shyam Benegal Committee had recommended removal of censorship power by the CBFC and it should be merely a classification agency.

- **Conclusion:**

- The Cinematograph (Amendment) Act, 2023 will go a long way in curbing the menace of piracy and also empowerment of Indian Film Industry with Ease of Doing Business

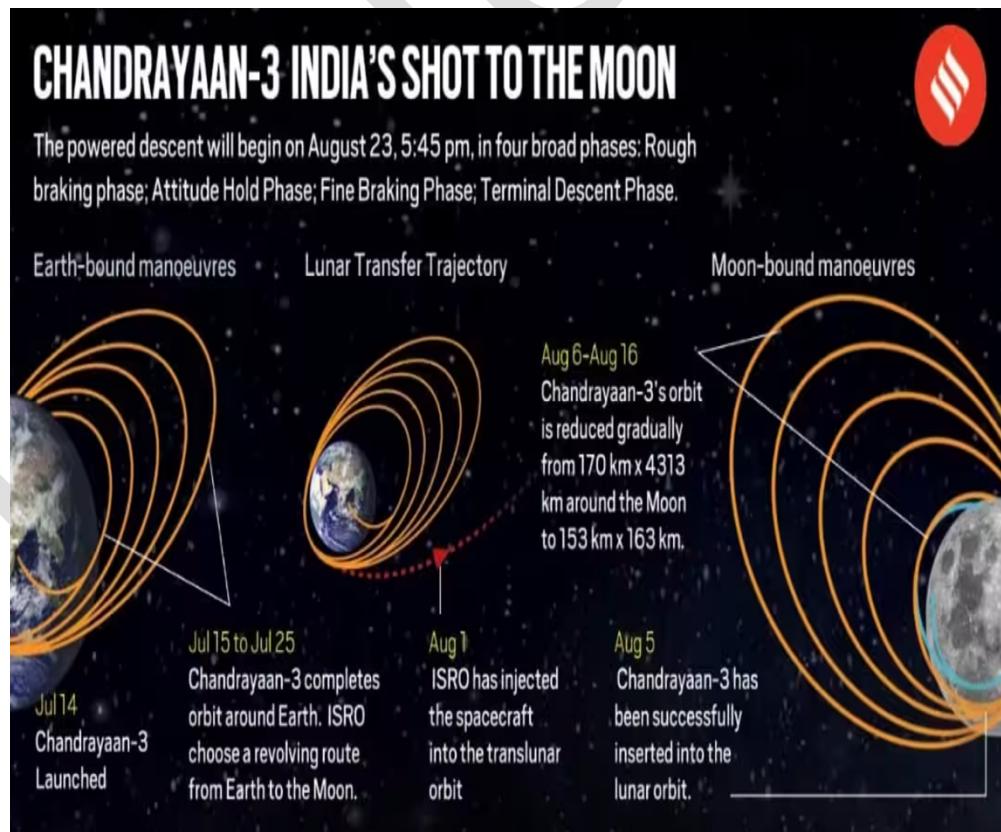
1) S&T: SPACE: CHANDRAYAAN 3.0

- **Why in news?**
 - Chandrayaan-3 becomes the first to land near Moon's south pole (Aug 2023)
 - ISRO launched India's third lunar mission Chandrayaan-3 perched on GSLV Mark-3 heavy lift launch vehicle, named '**Bahubali**' rocket, at 2:35 pm on 14th July from Sriharikota (July 2024)

- **Details**
 - Chandrayaan -3 is the third Moon Mission of ISRO that was launched in July 2023 perched on GSLV-MK-3 heavy lift vehicle. It is a follow-on mission to Chandrayaan-2 and demonstrated end-to-end capability in safe landing and roving in lunar surface when it landed on the south pole of Moon on 23rd Aug 2023.
 - With this, India has become the fourth country in the world after USA, Russia and China to successfully land on Moon.

A) UNDERSTANDING THE DIFFERENT PHASES AND PATH TAKEN BY CHANDRAYAAN

- LVM-3 launched the Chandrayaan-3 in an elliptical parking orbit of 170 X 36500 km.
- Chandrayaan was launched on 14th July 2023. The whole process took 42 days, with the landing taking place on Aug 23.



B) COMPONENTS OF CHANDRAYAAN 3.0:

- It consists of a **Propulsion Module (PM)**, **Lander Module (LM)**, and a **Rover** with an objective of developing and demonstrating new technologies required for inter-planetary mission. **Note:** It doesn't have an orbiter module.

Propulsion Module (PM)

The main function of PM is to carry the LM from launch vehicle injection till final lunar 100 km circular orbit and separate LM from PM.

This propulsion module has Spectro-Polarimetry of Habitable Planet Earth (SHAPE) payload to study the spectral and Polarimetric measurements of Earth from the lunar orbit.

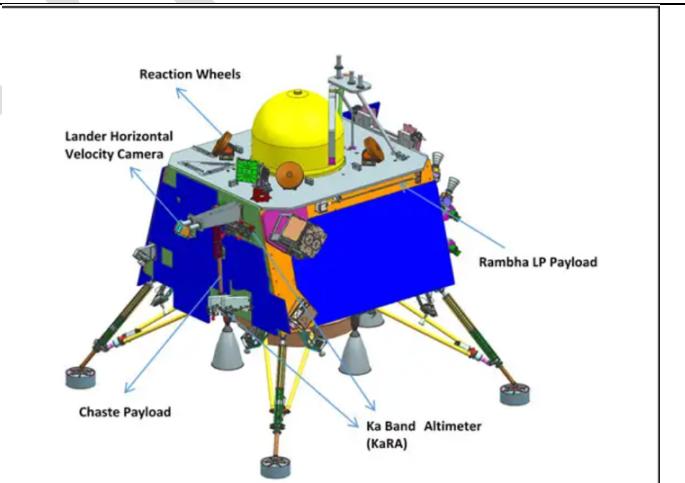
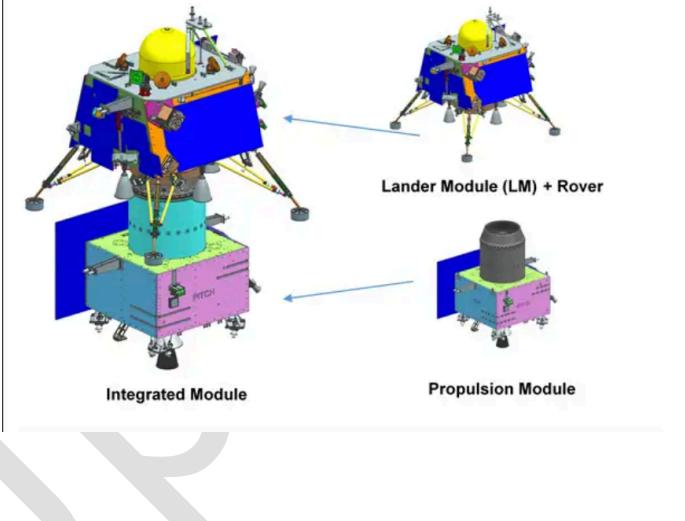
Note: Lander module separated from propulsion module on Aug 17, 2023. Here propulsion module was still left with 150 kg fuel. Thus, it could remain operational for several years to come.

The Lander (Vikram) had the capability to soft land at a specified lunar site and deploy rover. It happened on 23rd Aug 2023. It will remain stationary on the surface and carries four payloads which would record the chemical, thermal, and seismic instruments of the moon's surface.

Lander Payloads: Lander module has four payloads (Chaste, RAMBHA, ILSA and LRA)

Chandra Surface Thermophysical Experiment (ChaSTE): To carry out the measurements of thermal properties of lunar surface near polar region.

Instrument for Lunar Seismic Activity (ILSA) for measuring the seismicity around the landing site and delineating the structure of the lunar crust and mantle.



RAMBHA- LP (Radio Anatomy of Moon Bound Hypersensitive ionosphere and atmosphere) - RAMBHA: To measure the near surface plasma (ions and electrons) density and its changes with time.

A passive Laser Retroreflector Array (LRA) from NASA is accommodated for lunar laser ranging studies. It acts as a target for lasers for very accurate measurements for future missions.

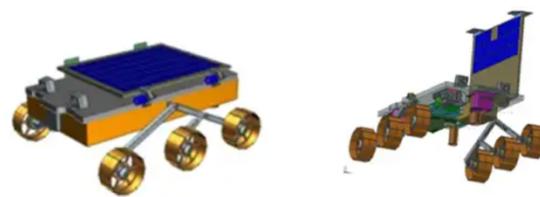
Rover (Pragyaan) is a 6 wheeled robotic vehicle.

Life: One lunar day (14 earth day)

Payload:

Laser Induced breakdown Spectrometer (**LIBS**): It will determine the chemical and mineral composition of the lunar surface.

Alpha Particle X-Ray Spectrometer (**APXS**): It will determine the composition of elements such as magnesium, aluminium, silicon, potassium, calcium, titanium and iron in the lunar soil and rocks.



▫ **Mission objectives of Chandrayaan 3.0**

- To demonstrate safe and soft landing on Lunar Surface
- TO demonstrate Rover roving on the moon
- To conduct in-situ experiments.

- **Note:** The most important discovery made by instruments on board

C) LANDING WAS THE MOST COMPLICATED PART HERE:

- Landing was the most complicated part of the mission. The Lander and Rover get ejected at a speed of around 6,000 km/hr and have to be slowed down to roughly 3 km/hr before it lands. Since moon doesn't have atmosphere, parachute kind of mechanism can't be used. Here, thrusters had to be fired in opposite direction to slow down the lander.

D) WHERE DID LANDER LAND?

- i. It landed at around 70-degree S near the southern pole of the moon.
- ii. **Why?**
 - a. The site was selected as there are several craters here that are permanent in shade and can be reservoir of frozen water which is key to the future space mission.

E) ROVER:

- i. Within a few hours of landing, ISRO also released a 26-kg rover from the lander module, which slid on the ramp to reach the moon's surface. The six wheeled rover, which is carrying two instruments and moves very slowly, is expected to crawl on the surface for 14 days, conducting chemical and elemental analysis of lunar soil and rocks.

G) COMPARING CHANDRAYAAN-1, CHANDRAYAAN-2 AND CHANDRAYAAN-3

	Chandrayaan-1	Chandrayaan-2	Chandrayaan-3
Year	2008	2019	2023

Rocket Used	PSLV	LVM-3	LVM-3
Payloads	Orbiter + Impactor Module (for crash landing)	Orbiter + Lander (Vikram) + Rover (Pragyan)	Lander + Rover
Successful	Yes	Partially Yes (Lander failed)	Yes
	<p>Perhaps the <u>most important discovery</u> of Chandrayaan-1 was the <u>discovery of water and hydroxyl (OH) molecules</u> in the Moon's thin atmosphere (exosphere) as well on the lunar surface.</p> <p>Buried Lava Tubes: The terrain mapping camera and hyperspectral imager on board Chandrayaan-1 detected an <u>underground lava tube</u>, which, scientists believe, can provide a <u>safe environment for human habitation in the future</u>. It can protect against hazardous radiation, small meteoric impacts, extreme temperature and dust storms on the surface.</p>	<p>It helped in <u>separately identifying the water and hydroxyl molecules, and mapping water features across the moon for the first time</u>.</p>	

H) SIGNIFICANCE OF GOING TO MOON:

- It underlined India's rise as a space and technology powerhouse. It will also strengthen India's soft power in the global community.
- Since moon is the closest cosmic body to Earth, the plans to explore rest of the universe starts with exploration of the moon. Moon can also act as a promising test bed to demonstrate technologies required for future deep-space missions.
- It would further help "stimulate the advancement of technology, promote global alliances and inspire a future generation of explorers and scientists."
- **Resources:** Recent increase in interest in Moon is primarily due to possibility of important minerals being found on Moon.

I) WAY FORWARD:

- While the current achievement of being the first country to land on the south pole of the moon is commendation, India still needs to do a lot to compete with bigger space giants like USA, and China.

- 1) **Look Beyond frugal engineering** as it is no longer enough to make a difference to global activity on the moon. To do more impactful moon projects, ISRO needs bigger budgets and more powerful rockets that can arrive quicker and with heavier payloads too.
 - 2) **Encourage bigger contribution from private sectors:** Globally, space programs are being animated by commerce, and private sector is emerging as bigger player than state (E.g SpaceX)
 - 3) **Increased International Cooperation:** Joint programs can be economical, have shorter gestation period, and higher science outputs. Even NASA (USA) has realized that massive space program would not be feasible by external support and hence have launched initiatives like Artemis Accord. India also needs to raise its lunar profile through international cooperation.
 - 4) **Keep Geopolitics in Mind:** Both USA and China have drastically increased their interest and investment in Moon. USA plans to send humans again to moon in 2025 and China plans to do the same before 2030. Given India's tensed relations with China, India needs to embark on serious negotiations with the USA on the possible terms of mutually beneficial Indian participation in the Artemis Mission.
 - 5) **Getting domestic and international legal framework ready:**
 - India needs to follow up its pace policy with legislation that facilitate and regulates space business.
 - India also needs to pay serious attention to shaping the global governance of space. The existing international regimes like Outer Space Treaty, 1967 and the 1979 Moon treaty are under considerable stress. Therefore, India should join hands with like-minded nations to reform the current outer space order.
- **Conclusion:** Chandrayaan-3's success will inspire generations of scientists and engineers – and all those who seek knowledge – to set the bar higher. For India, the moon is not the destination. It is a springboard.

3. PRELIMS FACTS

1) GEOGRAPHY: PLACES IN NEWS: SEA OF JAPAN

It is a marginal sea of the West Pacific Ocean. It is partially enclosed by Islands, archipelagos or peninsulas.

Land Boundaries: Boundaries:

It is bound by Russia north; North Korea in the West, South Korea in South West and by the Japanese Archipelago (Hokkaido island, Honshu Island, and Kyushu Island) in the east and South.

News (July 2023)

China and Russia have started joint air and sea drill in Sea of Japan. Codenamed "Northern/Interaction - 2023", the drill marks enhanced military cooperation between China and Russia since Moscow's invasion of Ukraine and is taking place as Beijing continues to rebuff U.S. calls to resume military communication.



2) GEOGRAPHY: PLACES IN NEWS: ICELAND

It is located in North Atlantic Ocean and is one of the least populated countries of Europe.

After great Britain, it is Europe's largest island.

Its capital Reykjavik, is the northernmost national capital in the world.

Location: It is located halfway between Europe mainland and North America and is just below the Arctic circle.

The country is famous for its geo-thermal pools, volcanoes, and glaciers.

News (July 2023)

Almost 2200 earthquakes have been recorded in the vicinity of Reykjavik, the capital of Iceland, within 24 hours.

This surge of seismic activity has prompted the Icelandic Meteorological Office to issue a warning, suggesting the



Note: Iceland's name is misnomer as the country is quite green and fertile.

possibility of an imminent volcanic eruption. The earthquakes originated beneath Mount Fagradalsfjall, a mountain situated on the Reykjanes Peninsula, which has witnessed two eruptions in the past 2 years.

3) GEOGRAPHY: PLACES IN NEWS: ECUADOR

Ecuador is a country located in north-western South America. It is one of the most environmentally diverse country in the world.

Geography: It straddles parts of Andes mountains and occupies part of Amazon basin. It is situated on the Equator (from which the name is derived). Most of the country observes an humid tropical climate.

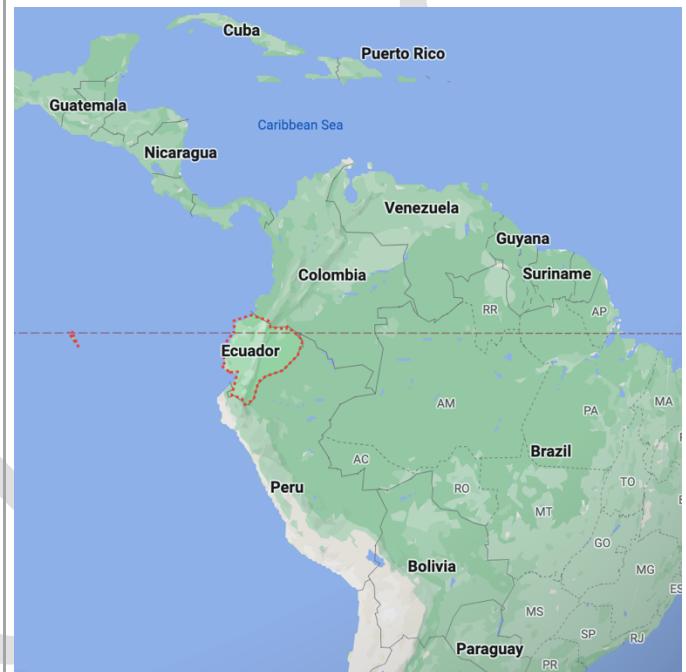
Neighbours: Colombia and Peru

It include the pacific archipelago of Galapagos Islands.

News:

In a historic decision, Ecuadorians voted on Sunday against the oil drilling of a protected area in the Amazon that's home to two uncontacted tribes and serves as a biodiversity hotspot. Around 6/10 Ecuadorian have rejected the oil exploration in Block 44, situated within Yasuni National Park, one of the world's most biodiverse region.

The area is inhabited by the Tagaeri and Taromenani, who live in self-isolation.



4) S&T: SPACE: LUNA-25

- **Why in news?**
 - Russia's LUNA-25 failed to land on Moon and crashed onto Moon's surface (Aug 2023)
- **Details**
 - **Why the failure?**
 - An anomalous engine burn-> Instead of a planned propulsive nudge of 84 seconds, the engine operated for 127 seconds, more than the "required value" in readying the probe for its descent burn. This added impulse caused Luna-25 to smash into the moon.
 - **More about Luna-25:**

- It was modern Russia's first Moon mission. It was heralded as the first domestically produced moon probe in Modern Russia history. Luna-25's flight was important in both political and scientific terms. The implication of its failure is likely to be considerable.
- The final soviet moon mission, Luna-24, successfully hauled home to Earth about 170 grams of lunar samples in 1976.

5) EB&CC: THE STATE OF INDIA'S BIRDS 2023 (REPORT PUBLISHED IN AUG 2023)

- **About the report:**
 - It is the 2nd iteration (first released in 2020) of the report and is an assessment of the distribution range, trends in abundance and conservation and status of 942 of India's 12,00 bird species and has been carried out by 13 partner organizations, including the WII and Zoological Survey of India.
 - The report is based on data from about 30,000 birdwatchers.
- **The assessment relies on 3 indices:**
 - Two are related to change in abundance
 - Long term trend (change over 30 years)
 - Current Annual Trend (change over past seven years)
 - Third is a measure of distribution range size in India.
- **Key Highlights:**
 - General decline in number of most bird species in the country.
 - » Raptors, migratory shore birds and ducks have declined the most.
 - » There were 338 species (out of 942 species studied) for which long term trend has been determined.
 - 60% (204) have declined in long term.
 - 98 species are stable
 - 36 have increased
 - » For 359 species current annual trends could be determined
 - 142 species or 39% are declining
 - 64 are in rapid decline
 - 189 are stable
 - 27 bird species are increasing.
 - » **Specialists** (birds restricted to narrow habitats like wetlands, rainforests and grasslands), as opposed to species that can inhabit a wide range of habitats such as plantations and agricultural fields - are rapidly declining.
 - » **Generalists** (birds that can live in multiple habitat types are doing well as a group)
 - » **Migrants:** Abundance trend of migratory species show that long-distance migrants, such as migratory birds from Eurasia or the Arctic, have declined the most - by more than 50% - followed by short distance migrants.
 - » **Birds which are endemic to the Western Ghats** and SriLanka biodiversity hotspots have rapidly declined in India over the past few decades.
 - The Great Grey Shrike has shown a long-term decline of more than 80%.
 - » **Ducks** are also rapidly declining in India. India hosts eight resident and 35 migratory species.

- Baer's Pochard, Common Pochard, Andaman Teal have been found to be most vulnerable.
- » **Riverine Sandbar-nesting birds** are also showing a decline due to widespread pressure on rivers from irrigation schemes, transportation, human disturbance, domestic use, and pollution from agriculture and industrial chemicals, variation in the water level and sand mining.
- » **Spoonbill** has declined by more than 50% in the long term and by over 6% annually since 2015.
- » **Sarus Crane** has rapidly declined over the long term and continues to do so.
- » Of the 11 species of woodpeckers for which clear long-term trends could be obtained, seven appear stable, two are declining, and two are in rapid decline.
 - **Yellow crowned woodpecker**, inhabiting widespread thorn and scrub forest, has declined by more than 70% in the past three decades.
- » **Bustards** (Great Indian Bustard, the Lesser Florican, and the Bengal Florican - have been found to be most vulnerable)
- Several Bird Species like **India Peafowl**, Rock Pigeon, Asian Koel, and House Crow are not only healthy in both abundance and distribution, but showing an "increasing trend".
 - » **Peafowl**, which is the national bird of India, is one of the most rapidly increasing species in the country today. It is expanding into habitats where it has never occurred previously. In last 20 years it has expanded into High Himalayas and Western Ghats. It also appears to be expanding population density in areas where it occurred earlier.
 - » **Asian Koel** has shown a rapid increase in abundance of 75%, with an annual current increase of 2.7% per year.
 - » **House crow, Rock Pigeon, and Alexandrine Parakeet** has also established new populations in several cities.
- India is home to **232 endemic species** found nowhere in the world.

THE MAJOR THREATS FACING INDIAN BIRDS

CLIMATE CRISIS

Timings of annual events (e.g. migration, nesting, insect emergence) become asynchronous.

For sedentary birds, dealing with climate change will require rapid adaptive changes.

Higher temperatures also cause birds to alter their behaviour, making them more likely to seek shade and spend less time foraging.

Bird species are shifting their ranges to higher latitudes (i.e., away from the tropics and towards the poles) and in mountains, to higher elevations.

DISEASE

Nearly 7% of globally threatened bird species have declined due to avian malaria.

Avian influenza outbreaks in 2020-2021 across India, caused mass mortality of wild birds.



ENERGY INFRA

Collision of birds with rotating wind turbine blades; Displacement of birds from the turbine area due to disturbance

URBANISATION

Urban habitats tend to be unsuitable for rare and specialist species, while promoting common species.

In central Delhi, fruiting trees offer resources for arboreal frugivorous birds such as Brown-headed Barbet and Yellow-footed Green Pigeon. But, urbanisation leads to a homogenisation of bird communities due to the increased abundance of birds adept at exploiting ecological niches.

6) EB&CC: BIODIVERSITY: WHITE BELLIED SEA EAGLE

News: White bellied sea eagle are beginning to emulate their counterpart in Australia and Thailand by making their homes on power towers holding high tension wires (Aug 2023).

- These nests of the white-bellied sea eagles were found on powerline towers about 2 km from the sea in Ramanathapuram of TN. The nesting sites were strategic for birds to conveniently scan the marine area for food.

Implication: A lack of trees and other natural nesting alternative.

More details about the bird:

The White bellied sea eagle (*Haliaeetus leucogaster*) is a resident raptor belonging to the family *Accipitridae*.

It is a diurnal monogamous bird of prey.

IUCN Red List: LC

Other Features: it feeds mainly on sea snakes and fish. It is occasionally seen in inland waters along the tidal rivers and in freshwater lakes. It occupies the same localities for years and generally build nests in tall tree near the seacoast, tidal creeks, and estuaries.



Distribution: It has wide distribution range on the seacoast of India from Mumbai to the eastern coast of Bangladesh, and Sri Lanka in Southern Asia, through all coastal south east Asia, Southern China Sea to Australia.

7) EB&CC: BIODIVERSITY: SAHYADRI UTTARAGHATI (NORTHERN SAHYADRI KEELBACK)

It is a new species of snake discovered in Western Ghats.

The discovery has been published in the international journal Taxonomy on Aug 21.

The new genus has been named *Sahyadriophis*, a combination of the Sanskrit word for the western ghats 'Sahyadri' and the Greek word for snakes 'Ophis'.

It is found in northern parts of the Western Ghats and therefore Uttaraghathi.



8) DEFENCE: ASTRA MISSILE

- Why in news?
 - LCA Tejas successfully test-fires Astra Beyond Visual Range Air to Air Missile (Aug 2023)
 - The missile release was successfully carried out from the aircraft at an altitude of about 20,000 feet. All the objectives of the test were met and it was perfect textbook launch.
- More about ASTRA
 - It is India's first indigenously developed active radar homing beyond-visual-range air-to-air missile (BVRAAM). It has been developed by DRDO.
 - It is intended to engage and destroy aerial targets with high maneuverability and supersonic speeds. The missile's advanced air combat capabilities allow it to engage multiple high-performance targets.
- Fighter planes which are planned to carry this missile
 - Su-30 MKI, Mirage 2000 multi-role combat fighters, and Mig-29 and MiG-21 Bison fighter jet platforms, as well as Indian Navy's Sea Harrier jet fighter.
 - It has also been integrated with LCA Tejas.
- Key Advanced Features
 - **Smokeless propulsion system** of ASTRA lets it kill its target without giving any clue about the location of launching aircraft.
 - It is very versatile as it is an all aspect, all weather weapon. This enables the missile to be launched irrespective of relative position of the target with respect to the missile.
 - ASTRA has highly effective multi-target scenario.
- Understanding some key terms:
 - i. **Active Radar homing (ARH)** is a missile guidance method in which missile contains a radar transceiver (in contrast to semi-active radar homing, which uses only a receiver) and the electronics necessary for it to find and track its target autonomously.
 - ii. **Beyond Visible Range (BVR)** is an air-to-air missile that is capable of engaging in ranges of 20 nmi (37 kms) or beyond.