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Indian Polity and Governance – Panchayati Raj, Public Policy, Rights

Chapter 9

Short Answers

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22

This chapter contains:

- Scheduled And Tribal Areas
- Coalition Government In India
- Basic Structure Doctrine Of The Indian Constitution
- Regional Parties And Indian Politics
- Federalism In India: Issues And Challenges
- MPLADS: Members Of Parliament
- CAUVERY WATER DISPUTE: BACKGROUND; CONSTITUTIONAL PROVISIONS; LATEST VERDICT AND ISSUES
- CIVIL SERVICES REFORM: LATERAL ENTRY INTO THE SERVICES.
- JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT IN INDIA
- Lokpal And Lokayukta Act

Contents

1 SCHEDULED AND TRIBAL AREAS

Article 244 in Part X of the Constitution has special provisions for administration of certain areas designated as “scheduled areas” and “Tribal areas”. The areas under the Fifth schedule deals with the administration and control of scheduled areas and scheduled tribes in all states except for the four states of Assam, Tripura, Meghalaya and Mizoram. While the Sixth schedule deals with the administration of the tribal areas of Assam, Tripura, Meghalaya and Mizoram.

1.1 Scheduled And Tribal Areas: Provisions under schedule 5; Provisions under schedule 6

Why Scheduled areas are treated differently from the other areas in the country?

This is because they are inhabited by the ‘aboriginals’ who are socially and economically rather backwards, and needs affirmative actions to improve their conditions. Therefore the administrative machinery which works in the normal state doesn’t extend to the scheduled areas and central government has a greater responsibility in dealing with these areas.

1.2 Provisions under schedule 5:

In 2016, 10 states of India had scheduled areas these include Andhra Pradesh, Telangana, Jharkhand, Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The various provisions of administration in the Fifth schedule area are as follows:-

1. The President is empowered to declare any such area as scheduled area. He can also alter the boundary of these areas by either increasing it or decreasing the areas in consultation with the governor of the concerned state.
2. **Powers of State and Centre:** The executive power of a state extends to the scheduled areas in the state. But the governor has special power with regard to such areas. He had to submit a report to the President regarding the administration of such areas, annually or whenever so required by the President. The executive power of the centre extends to giving directions to the states regarding the administration of scheduled areas.
3. The governor has the power to direct that any particular act of Parliament or the state legislature doesn’t apply to a scheduled area or apply with certain modifications. He can also make rules for the peace and good governance of these areas after consulting with the tribe advisory council. Such regulations by the governor have an immense impact such as regulation to prohibit or restrict the transfer of land by or among members of the scheduled tribes. Also, a regulation has the power to repeal or amend any act of Parliament or the State Legislature, which is applicable to scheduled areas. But all such regulations require the assent of the President.

4. **Tribe Advisory Council (Composition and work):** States having scheduled areas have to establish a tribe advisory council to advise on the subject of welfare and advancement of the scheduled tribes. It consists of 20 members, out of which three-fourths are to be the representative of the scheduled tribes in the state legislative assembly. A similar council can be established in a state having schedules tribes but not scheduled areas if the President directs.
5. The Constitution requires the President to establish a commission to report on the administration of scheduled areas and scheduled tribes in the states. He can appoint such a commission at any time but it's compulsory to constitute one after 10 years of the commencement of the Indian Constitution. Therefore in 1960s **U.N. Dhebar Commission** was established. In 2002 another commission was established under the chairmanship of Dilip Singh Bhuria.

1.3 Provisions under schedule 6:

The Constitution under this schedule contains special provisions for the administration of tribal areas in the four north-eastern states of Assam, Tripura, Meghalaya and Mizoram. The causes behind special provision for this state were – the tribes in these four states haven't much assimilated in the life and ways of other people in these states. The tribe in these areas haven't adopted the culture of the majority of the people among which they live. These tribes are a unique embodiment of culture, customs and civilization.

The various **features of administration in Sixth Schedule** areas as enshrined in our constitution are:-

1. The tribal areas in these four states are provided with a sizable amount of autonomy by the Constitution.
2. The tribal areas in these four states have been constituted as autonomous districts. These autonomous districts fall inside the executive authority of the state concerned.
3. The governor has the power to organise and reorganise the autonomous districts.
4. If there are different types of tribes in an autonomous district, then the governor can divide the district into several autonomous regions.
5. Each autonomous council consists of 30 members, out of which 26 are elected on the basis of adult Franchise and 4 are nominated by the governor. The term of elected members is 5 years and nominated members hold office as per the pleasure of the governor.
6. Each autonomous district also has a regional council.
7. The regional and district councils administer the areas under their jurisdiction. They can make laws on specified matters like forest, land, canal, water, shifting cultivation, village administration, marriage and divorce and others. But the lawmaking on such subjects requires the assent of the governor.
8. The district and regional council can constitute courts for trial of cases between the tribes in their administrative areas.

9. The district council can establish, construct or manage primary schools, markets, ferries, fisheries, roads, dispensaries, markets and so on in the district. It can also make rules and regulations for the control of money lending and trading by non – tribal's. But such kind of regulations requires the assent of the governor.
10. The acts of Parliament or the State Legislatures don't apply to autonomous districts and autonomous regions. Even if applied, the applicant with specific modifications and exceptions.
11. These councils are empowered to assess and collect land revenue and impose certain specified taxes.
12. The governor can appoint a commission to report on the matters related to the administration of the autonomous districts or regions. He may dissolve a regional or district council on the recommendation of the commission.

Thus provisions of Schedule Five and Schedule Sixth of the Indian Constitution have proven to be very effective in the effective administration of the areas coming under their ambit.

2 COALITION GOVERNMENT IN INDIA

The term 'coalition' is derived from the Latin word 'coalitio', and it means to grow together. As per dictionary meaning, coalition means the act of coalescing or uniting in one body. In political terms, it means an alliance of distinct political parties. When various political parties come together to form a government on the basis of commonly agreed agenda, it is called as coalition politics. This arrangement arises when no political party on its own can gain a majority in the parliament. Other situations of national crisis, for example, wartime, can also give birth to the coalition government so that a high degree of political legitimacy can be given to the government. In coalition, power is more shared among partners. Many splinter groups agree to join by sinking broad differences.

Coalition Government in India: Features; History; Growth; Merits And Demerits of Coalition Politics

2.1 Features of Coalition Government:

- Principally coalition governance has two concepts involved. One is 'common governance' which is based on a common decision-making process. Other is 'joint governance' which is based on the distribution of power.
- Operation of the coalition is not regulated by any legal staff.
- Pragmatism is the hallmark of coalition politics and not ideology.
- The pre-poll coalition is considered fairer and advantageous as electorates get to know about the joint manifesto.

2.2 History of Coalition Governments:

- It draws its roots from the time of warring states used to ally with each other to defeat a common enemy.
- In independent India, when there was split in Congress party in 1969, the minority government of Indira Gandhi continued with outside support of CPI, DMK and others.
- The first formal coalition was of Janta Party during period 1977 – 1979 which had Congress (O), Bharatiya Jana Sangha, Bhartiya Lok Dal, Socialist party, Congress for Democracy, Charan Shekhar Group and others.

Following are coalition formed at Centre:

Sr. No.	Period	Coalition	Prime Minister	Partners
1.	1979 – 1980	Janata Party (Secular)	Charan Singh	Janata (S) and Congress (U). Congress (I) supported from outside.
2.	1989 – 1990	National Front	V.P.Singh	Janata Dal, TDP, DMK, AGP and Congress (Socialist). BJP and Left parties supported from outside.
3.	1990 – 1991	Janata Dal (Socialist) or Samajwadi Janata Party	Chandra Shekhar	Janata Dal (S), Janata Party. Congress (I) supported from outside.
4.	1996 – 1997	United Front	H.D.Deve Gowda	Janata Dal, CPI, Congress (T), DMK, TDP, TMC, AGP, SP and others. Congress and CPM supported from outside.
5.	1997 – 1998	United Front	I.K.Gujral	Janata Dal, CPI, TMC, SP, DMK, AGP, TDP and others. Congress supported from outside.
6.	1998 – 1999	BJP- led coalition	A.B.Vajpayee	BJP, AIDMK, BJD, Shiv Sena, Lok Shakti, Arunachal Congress, Samata, Akali Dal, PMK, TRC and others. TDP and Trinamool Congress supported from outside.
7.	1999 - 2004	National Democratic Alliance (NDA)	A.B.Vajpayee	BJP, JD(U), Trinamool Congress, Shiv Sena, BJD, LJP, DMK, PMK, INLD, MDMK, National Conference, Akali Dal, RLD, AGP and others.
8.	2004 – 2009	United Progressive Alliance (UPA)	Manmohan Singh	Congress, NCP, DMK, RJD, LJP, PMK and others. CPI and CPM supported from outside.
9.	2009 – 2014	United Progressive Alliance	Manmohan Singh	Congress, NCP, DMK, Trinamool Congress, National Conference and others.

		(UPA - II)		
10.	2014 – 2019	NDA	Narendra Modi	BJP, LJP, TDP, Shiv Sena, Akali Dal, Rashtriya Lok Samata Party, Apna Dal (S) and others. TDP left NDA in 2018.
11.	2019–till date	NDA	Narendra Modi	BJP, Akali Dal, LJP, Shiv Sena and others. Shiv Sena left NDA in November 2019.

2.3 Reasons of Growth of Coalition Politics In India:

- The democratisation of politics as there is growth in regional parties. The regional and caste identities have begun to assert themselves in political space.
- National parties are unable to represent a huge diversity of India. The coalition represents disparate interests more adequately.
- Single party acclaim concentration of power. There is a loss of trust because extreme views and politics are invariably denied to accommodate.
- If we take cognisance of recent incidences in Indian politics, there is moral degeneration of political parties.

2.4 Merits of Coalition Government:

- It leads to consensus-based politics. It rules out the possibility of majoritarianism.
- It better reflects popular opinion of the electorate within a country. A coalition government is more democratic.
- Cabinet based on a coalition with a majority in parliament is more stable, dynamic and long-lived.
- Government need not go for populistic measures in fear of no-confidence or losing power. It can give more concentration on governance.
- Government policies can be more flexible, and there is more possibility of corrections with enhanced scrutiny.
- In this type of political system, distinct identities are more accommodated, preserved and promoted within the larger political union.

2.5 Demerits of Coalition Government:

- Distribution and separation of policy fields make control of Prime Minister difficult over portfolios belonging to coalition partners.
- Decision-making process gets shifted from clear procedure to informal conversations. Separation of power is circumvented in a coalition government.

- Though the political position of party leaders gets strengthened, political organisations get weakened.
- It is basically based on compromises and considerations. This is an arrangement to remain in power. It has a tendency to be fractious and prone to disharmony.
- Parties belonging to contrasting ideologies come together. There is no coherence in government policy. The government can not push its bold decisions because of a lack of a majority.
- It weakens the political efficiency of government. Slower decision-making process threatens the effectiveness of governance.

3 BASIC STRUCTURE DOCTRINE OF THE INDIAN CONSTITUTION

Indian constitution is a synthesis of parliamentary sovereignty and judicial supremacy. According to the Constitution, Parliament and therefore, the state legislatures in India have the power to form laws within their respective jurisdictions. This power is not absolute in nature. Art 368 of the constitution provides power to the parliament for the amendment of the constitution. On the other hand, Art 13 of the constitution stated that the state could not make any law that can derogate the Fundamental Rights. So the **'Basic Structure of the Constitution'** evolved through time to time judicial interpretation of both the article, i.e. Art 13 and Art 368. This debate came into light when the Nehru Government amended the Constitution for the acquisition of land from Jamindars, who are the major landholder in the country.

Basic Structure Doctrine of the Indian Constitution: Basic Structure Doctrine; Shankari Prasad Case; Golaknath case; Kesavananda Bharati case; Indra Sawhney Case; Minerva Mills case; S.R. Bommai case

3.1 Basic Structure Doctrine:

- This doctrine was propounded by Justice Hans Raj Khanna, in Kesavananda Bharti Case (1973) that the Constitution of India has certain basic features that can't be altered or destroyed through amendments by the parliament.
- Though **basic structure** is not defined anywhere in the constitution, it reflects through some of its constituents (as many time defined and narrated by the judiciary), i.e. Republic nature of India, sovereignty, Rule of Law, republic nature of Indian polity, liberty, judicial review, secularism, Separation of power etc.
- The primary purpose of this doctrine is to preserve the soul idea and philosophy of the original constitution.
- This doctrine only applies to constitutional amendments, mainly those amendments that can destroy or change basic philosophical ideas of the original constitution.
- Any law that violates basic structure doctrine is declared as null by Supreme Court.

Evolution of Doctrine

This doctrine evolved through so many cases, i.e. through many judicial and legal interpretations:

3.1.1

3.1.2 Shankari Prasad Case (1951)

- For the acquisition of land, the Nehru government used Art 368, i.e. amendment power of the constitution.
- Inserted Art 31A, 31B and 9th schedule to constitution. It was the 1st amendment act of the Constitution (passed in 1951).
- This amendment was challenged in the Supreme Court of India.
- Supreme Court declared Art 368 stronger than Art 13. It means parliament can amend any part of the constitution.
- So the 1st amendment was considered valid and legally acceptable.

3.1.3 Sajjan Singh case (1965)

- Through the 17th amendment act (1964), Parliament inserted 44 new act in the 9th
- This amendment was challenged by Sajjan Singh vs State of Rajasthan case.
- But Supreme Court repeated the same judgment of Shankari Prasad case.
- But one of the judge justice Mudholkar presented a different opinion. According to him 'Every Constitution has a certain feature which is basic in nature, and those features cannot be changed'.

Golaknath case (1967)

- In Golaknath vs state of Punjab case, the earlier decisions of the Supreme Court were overruled by eleven judge's bench.
- In its decision, the supreme court stated that Art 368 could not touch Art 13, i.e. fundament rights.
- Supreme Court interpreted that fundamental rights are the basic part of the constitution of India. For the first time fundament right has been considered as sacrosanct.

In 1971, the 24th amendment act was passed by the parliament. By this amendment Art, 13 were amended and seek provided 'From now onward nothing in Art 13 shall affect the amending power of article 368'.

3.1.4 Kesavananda Bharati case (1973)

- 24th amendment act was challenged in Supreme Court by Kesavananda Bharti vs State of Kerala case. This was the landmark case for 'Basic Structure Doctrine'.
- This case was heard by 13 Judges Bench.
- By 7:6 ratio Supreme Court ruled that "*Verdict of Golakhnath case was not correct and Government can amend the fundamental rights by virtue of Article 13(4) and Art 368(3), and the constitution by Art 368, but without changing the basic structure and nature of the Constitution*".
- This mean Parliament can't take away a fundamental right that forms a part of the basic structure of the constitution.
- In this case, Justice H.R. Khanna laid down the principle of "Basic Structure Doctrine".

The 39th amendment act was passed in 1975, which inserted clause 4 in Art 329A. According to this clause, the judiciary cannot review the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha.

3.1.5 Indira Gandhi vs Raj Narain case (1975)

- In this case, the Supreme Court invalidated the 39th amendment act.
- The Court ruled that this provision was beyond the amending power of parliament as it affected the basic structure of the constitution.

Again by 42nd amendment act of 1976 parliament amended Art 368 and stated that constituent power of parliament has no limitation and no amendment can be questioned in any court on any ground including that of the infringement of any of the fundamental rights.

3.1.6 Minerva Mills case (1980)

- In this case, the Supreme Court invalidated the 42nd amendment act.
- Supreme Court stated in its judgment that this amendment is excluded the '**Judicial Review**', which is part of the basic structure of the constitution.

3.1.7 Waman Rao Case (1981)

- Again, in this case, the Supreme Court accepted the 'basic structure doctrine'.
- Supreme Court clarified that this doctrine would apply to constitutional amendment enacted after Kesavananda Bharti case (i.e. after the 24 April 1973).

3.1.8 Indra Sawhney and Union of India (1992)

- In this case, the Supreme Court examined the scope and extent of Article 16(4).

- The court sustained the constitutional validity of 27% reservation for the OBCs with certain conditions (like total reservation should not exceed 50%, exclusion of creamy layer, no reservation in promotion).
- In this case, 'Rule of Law' was added to the basic features of the constitution.

3.1.9 S.R. Bommai case (1994)

- In this case, the Supreme Court stated that proclamation of art 356 (i.e. imposition of president rule) is subject to judicial review.
- Though this case was not on the ground of constitutional amendment concept of the basic structure of the Constitution was applied.
- The court ruled that, if the policies of the States government is against the **basic structure of the constitution**, then Art 356 can be exercised.

This doctrine is the Judicial Innovation that works as a shield for the Indian constitution. The sole principle of this doctrine is- 'The basic idea of the Constitution cannot be destroyed by any amendment by the parliament'.

4 REGIONAL PARTIES AND INDIAN POLITICS

Regional parties are the parties having a regional agenda and mostly limited to a particular region. for example in India – Shiv Sena, DMK, National conference party etc. Regional parties play an important role in Indian politics as we have a multiparty system in India. The new era of coalition politics has increased the significance of regional parties substantially.

Regional parties and Indian politics: Causes of its Rise; Features of Regional parties; Role of Regional Parties; Negative Impacts of Regional Parties

4.1 Cause of the rise of Regional parties:

- The decline of Congress:- after the death of former PM Pt. Jawaharlal Nehru and later on Indira Gandhi, the masses felt the need for increased regional representation. This, in turn, invited the rise of many regional parties.
- The cultural diversity of India and plurality in terms of class, caste and ethnicity. This leads to the regionalisation of Indian politics based on dominant castes and classes e.g. Jats (in Haryana, U.P. and Rajasthan), Yadavs in Bihar etc.
- The linguistic reorganisation of India, leading to a rise of regional identities among people.
- Uneven development caused by the Green revolution, leading to prosperity in some areas and backwardness in other areas.
- Emergency imposed by Indira Gandhi also gave rise to new parties.

- The self-interest of some previous Maharajas and Zamindars.
- Failure of National politics or Central Government to meet regional aspirations.
- Division among large parties on the basis of ideologies and political disagreements.
- Centralising tendencies of Congress party creating fear among people.

4.2 Features of Regional parties:

- It generally operates in a state or in a particular region, with limited electoral base.
- They work for regional interest based on ethnic, cultural and linguistic lines. for example demand for reservation of seats in jobs for the original inhabitants of that state only.
- It usually focuses on local and regional issues. It has no inclination to form government at the centre.
- It has a desire for greater political autonomy in India.

4.3 Classification of Regional Parties In India:

- Parties based on Regional culture and ethnicity: - Shiromani Akali Dal, Jharkhand Mukti Morcha, Mizo National Front etc.
- Parties formed by a split in National Party:-Bangla congress, Utkal Congress, Kerala Congress, Biju Janta Dal etc.
- Regional parties based on Charismatic personality of the leader:- Lok Janshakti Party, Himachal Vikas Congress and Haryana Vikas party etc.

4.4 Role of Regional Parties:

The following points highlight the important role played by regional parties in a rich democracy like India:-

- Making democracy more representative by widening the ambit of participation.
- by providing better governance at the regional level and especially in neglected areas.
- They have provided a place for better representation of local issues like Mizo National Front, putting forward the demands of tribes.
- Regional parties also have strengthened the federal axis of Indian democracy by providing voice and bargaining powers to the state.
- They have made the political process more competitive and brought leadership role out of the clutches of major parties only.
- They have challenged the One Party Dominant system, especially the Congress Era. And thus helping in breaking the monopoly of one party.

- They also have helped in widening the choices for the voters. Now a voter can vote the party represent ting the interest of his state.
- the political awareness of the people have been raised due to the efforts of Regional parties, they look at narrow and local social issues and brought them in front of the public. Therefore generating more political consciousness among masses.
- They provide a ground for the representation of minority, therefore making democracy successful. As democracy aims at equal representation of both majority as well as the minority.
- Regional parties also help in preventing tyranny of party in power. As a party which is in power at both centre and state may have a dictatorial and bias attitude.
- They have played an important role in the times of coalition politics, by providing support to other parties in lieu of benefits for their regions.

4.5 Negative impacts of Regional Parties:

However, there are some negative effects associated with the formation of regional parties' like-

- They have undermined National interests in lieu of narrow regional interests, thus harming National interest.
- Fragmentation of national parties has led to instability in the government.
- They have given a boost to the tendencies of the division of states on the basis of language, caste, tribe and other ethnic factors.
- They focus more on populist policies like frequent loan waiver by various states, in order to enhance their voter base, This, in turn, harms fiscal balance in the economy. This also leads to broadening of the fiscal deficit of the country.
- This frequent representation by regional parties leads to a rise of separationist tendencies among the public.
- Rise of regional parties has made politics as cut-throat competition, therefore promoting greater use of irrational means like money and muscle power to gain political power. This can be seen in terms of violence in various Indian states during elections.
- Rise of corruption in politics can also be associated with this, as widening of power makes it hard to find the culprit of corruption.
- Regional parties also hinder the solution of interstate disputes as well as interstate water disputes. Therefore undermining cooperative federalism and welfare of the nation as a whole.
- They have also involved in nepotism, corruption, favouritism and other misadventures. Therefore undermining the spirit of our Constitution.

- They also hinder the timely implementation of foreign treaties and policies. for example - constant intervention of Trinamool Congress in West Bengal against the water-sharing arrangement of Indian Government with Bangladesh Government.

Regional parties though having some shortcomings yet have proved to be helpful in providing representation to the rich and diverse culture of India and also helped in widening Democratic culture.

5 FEDERALISM IN INDIA: ISSUES AND CHALLENGES

Federalism in India: India is Quasi Federal Nation in which Power is more aligned to the Centre but at the same time India does have essential features to be called as Federal Nation. In this article, we will discuss various challenges faced by Indian Federalism and issues like Fiscal federalism in India, Cooperative federalism in India, Federalism in Indian Constitution etc. This is an important topic for UPSC General Studies 2 Paper and also for UPSC Prelims 2020.

Federalism in India: Issues and Challenges

The Constitution of India establishes a federal system of government where the powers are divided between the national and the regional governments. They have separate jurisdictions and responsibilities. Indian federal system is modelled on the '**Canadian model**' which establishes a strong 'Centre'.

According to Dr B R Ambedkar, "the Constitution is a federal Constitution in as much as it establishes a dual polity. It avoids the tight mould of federalism and could be both unitary and federal as per time and circumstances."

In general, there are **two types** of federations:

- **Holding together federation**: A large country decides to share its power between the Centre and the States. The powers are tilted towards the central government. e.g. India, Belgium, Spain etc.
- **Coming together federation**: The Independent States coming together to form a bigger unit. The States enjoy more autonomy. e.g. USA, Australia,Switzerland etc.

Federal features of Indian Constitution:

- Dual government,
- Written Constitution,
- The Supremacy of the Constitution,
- Division Of Power
- Independent judiciary,
- Bicameral legislature

Non-Federal/Unitary Features of Indian Constitution:

- Strong Centre
- Single Constitution
- Single Citizenship
- Integrated Judiciary
- Constitutional Flexibility
- All India Services
- Governor's appointment by Centre
- Emergency Provision

Different Constitutional experts have different views about the federal character of the Indian Constitution:

- **KC Wheare**: Quasi-Federal
- **Paul Appleby**: Extremely federal
- **Moris Jones:** bargaining federalism
- **Granville Austin:** Cooperative Federalism.

In **SR Bommai vs Union of India(1994) case**, the Supreme Court held that federalism is the basic feature of the Constitution.

Challenges for Indian Federation

Though India's federal experiment has on the whole been a success, there have also been some challenges:

- The States have been of the view that they are not being provided with enough **fiscal space** in central grants and a free hand in spending. There have been instances of States demanding funds from the centre, which makes the rationalisation of funds a critical task.
    - To address this issue, the 14th Finance Commission had increased the share of States in the Central pool from **32%** to **42%**(15th Finance Commission has recommended for 41%). Centrally Sponsored Schemes have been rationalised, and increased choice and flexibility have been given to the States to select the optional schemes. The flexible funds in each CSS have been raised from 10% to 25% for the States.
- The States have surrendered their taxation rights by implementing **GST**.GST collections had fallen 2.7% in September and 5.3% in October from the corresponding months in 2018 which has led to the States asking the 15th Finance Commission to extend the compensation period under GST beyond 2022.
    - **Article 279A** of the Constitution allows for the constitution of GST Council for making recommendations to the Union and the State governments on the matters related to GST. It is mandated to establish an adjudication mechanism between the Centre and one or more states. In the recently held 39th meeting of the GST Council, there has been no consensus on creating such a mechanism.
- There have been instances of a **tussle between the agencies** of the central and state governments such as IT raids at the offices and residence of aides of CM of Madhya Pradesh which saw a face-off between CRPF officers and state police. Such instances have also been seen in West Bengal, Karnataka, Andhra Pradesh where central agencies went to probe corruption cases. The states have often blamed the centre for misusing central agencies.

    - Any interference by state agencies to prevent central agencies from doing their jobs creates law and order issue. This requires close coordination and cooperation between them.

- The office of the **Governor** sometimes is misused which poses a threat to the federal system. The imposition of President's Rule in Arunachal Pradesh in 2016 despite having the elected government in the State is an example. However, the Supreme Court termed it unconstitutional and ordered for the restoration of the previous government.
    - In **SR Bommai vs Union of India 1994 case**, the Supreme Court tried to curb the misuse of **Article 356**.
- **The Citizenship (Amendment) Act 2019** has presented the latest challenge to Indian federal system where several States such as Maharashtra, Punjab, Kerala, West Bengal, Bihar etc. have declared that they will not implement the CAA in their states.
    - Under the Constitution of India, the laws made by the Parliament are constitutional unless the court holds it otherwise. In India's quasi-federal structure, the disputes between the governments are familiar instances.
- **Regionalism** is one of the most significant challenges to the federal structure. North East, though strategically important, has been in neglect politically. There are many tribal districts that are governed by their own laws, and many of them have been given autonomy. The agitations for **Gorkhaland**, **Bodoland** etc. have intensified. There are demands for separate **Vidarbha** state in Maharashtra and **Harit Pradesh** and **Poorvanchal** in Uttar Pradesh.
- **Foreign Policy of India** takes a beating when a state refuses to implement the decisions acting on the regional interests. **Teesta River Water Treaty** between India and Bangladesh was met with objection from West Bengal government citing that it was deterrent to the interest of farmers of West Bengal.
- **The linguistic diversity** coupled with parochial mindset can become an impediment in the path of the federation. The Southern states have been opposed to the idea of Hindi as the official language of India.

Conclusion:

- Though there are challenges to the federal structure of India, **Indian federalism have been successful** in many ways. Over the last few decades, more powers have been shared between the states and the national government.
- **NITI Aayog** has been created to work towards participative governance. All States have been given representation in **GST Council**. **Inter-State Council** has been working for holistic Centre-State relationship.
- A shift has been witnessed towards "**cooperative federalism**". States are being given more say in Centrally Sponsored Schemes. The vision of **Sabka Sath, Sabka Vikas,** is the priority of the government to move towards inclusiveness.

- The present situation of COVID-19 pandemic has witnessed greater collaboration and cooperation between the Centre and the States, which fulfils the vision of **Ek Bharat, Shreshtha Bharat**.

6 MPLADS: MEMBERS OF PARLIAMENT LOCAL AREA DEVELOPMENT SCHEME

Recently the government suspended the Member of Parliament Local Area Development (MPLAD) Scheme for two years so that these funds could be utilised for COVID-19 management efforts. MPLAD Scheme has been very controversial since the last 2 decades and the recent Suspension of MPLAD Scheme has opened up yet again the discussion on the need of MPLAD. This topic is important for upcoming UPSC Prelim and Main Exam.

6.1 Historical Background:

- The MPLAD scheme was introduced in December **1993** by **Prime Minister, P.V. Narasimha Rao** to fulfil the urgent needs of the legislator's constituency.
- The scheme was mooted after MPs demanded that they should be able to recommend certain development projects in their constituencies.
- It is **under the aegis** of the **Ministry of Statistics and Programme Implementation.**

6.2 Features

- It is a **Central Sector Scheme.**
- It is budgeted through the government's finances and continues as long as the government is agreeable.
- In 2018, the Cabinet Committee on Economic Affairs approved the scheme until the term of the 14th Finance Commission, that is March 31, 2020
- Lok Sabha Members can recommend works within their constituencies and elected Members of Rajya Sabha can recommend works within the State they are elected from.
- Nominated MPs both the Upper House and Lower House can recommend works anywhere in the country.
- It aims to create **durable assets** of national priorities -
    - Drinking water
    - Primary education
    - Public health
    - Sanitation and roads

- **Non-durable assets** can be created only under special circumstances. **For example,** Recently, MPLADs funds are utilised for the purchase of personal protection equipment, coronavirus testing kits etc.
- MPLADS works can be carried out in areas affected by natural disasters, chemical, biological and radiological hazards.
- **Implementation:**
    - The role of the MP is limited only to the recommendation of works to District authority.
    - **At the National level,** The Ministry of Statistics and Programme formulates the guidelines, releases funds, and monitors implementation.
    - **At the State level,** a nodal department is responsible for coordinating, monitoring and supervising the implementation
    - **At District Level;** District Authority scrutinises and sanction the recommended works and identifies an implementing agency to execute the work.
    - **Implementation Agency: Panchayati Raj Institutions and Urban Local Bodies** are one of the few designated agencies to carry out implementation work.
    -
- **MPLADS Fund**
    - Every MP gets **₹5 crores** for carrying out developmental works in one's constituency.
    - The Government of India releases the annual entitlement in the form of **grants-in-aid** of ₹ **5 crores** in two equal instalments of ₹ 2.5 crores each, directly to the district authority.
    - **Nature of funds**: **Non-lapsable**, i.e., they are carried forward to the subsequent years if not utilised in a particular year.
    - 15 percent of MPLADS funds are earmarked for Scheduled Caste areas and 7.5 percent funds to be utilized for Schedule Tribe population.

6.3 Issues:

- **Undermining the Separation of Power doctrine:** Scheme co-opts legislators into executive functioning
- **Inconsistent with the Federal spirit:**
    - Union Government can make expenditure on the subjects enshrined in Union List as per that of Seventh Schedule of Indian Constitution.
    - It encroaches upon the Local self-government domain that violates the Part IX and IX-A of the Indian constitution.

- **No proper accounting and monitoring** system put in place by the government for the works allotted under the scheme.
    - As soon as the Budget grants are sanctioned, the nodal ministry sends the grant to the district head and treats it as an expenditure. After that, accounting or monitoring for it is absent.
- **Inefficiency:** Big Gap between the recommendations made by MPs and their implementation by the district administration.
- **Unused Funds:** Funds by many MPs remains unutilised even after 5 Years.
- **Laps in Implementation:**
    - There are **lapses on the supervision front,** with the District Authorities failing to inspect the required number of sanctioned works as well as in sending regular monitoring reports.
    - **Comptroller and Auditor General (CAG) Observed that** Expenditure incurred by the executing agencies are less than the amount booked. Further, they flagged the issue of financial mismanagement as well as artificial inflation of the spent amount.
    - The scheme mandates that as soon as a work is completed, it should be transferred to the user agency for public use.
    - Out of the 15,049 sample works created during 2004-09, handing over was not on record for 98.53 per cent of the works created.
- **Promotion of Patronage Politics:** MPLADS provides scope for MPs to utilise the funds allocated via MPLADS as a source of patronage which they can dispense at their will.
- The National Commission to Review the Working of the Constitution (NCRWC) in 2002 suggested immediate discontinuation of the MPLAD scheme. A similar view was presented by the 2nd ARC Report.

6.4 Assessment:

- Until 2017, nearly 19 lakh projects worth Rs 45,000 crore had been sanctioned under the MPLAD Scheme.
- **Third-party evaluators** appointed by the government **reported** that the creation of good quality assets had a **positive impact on the local economy,** social fabric and feasible environment.
- The **2nd ARC's report on Ethics in Governance** took a firm stand against the scheme arguing that it seriously erodes the notion of separation of powers, as the legislator directly becomes the executive.
- Lok Sabha constituencies in the southern states have not utilized the entire allocation of MPLAD Funds

- **India Spend Report Observations:**
    - Even a year after 298 of 542 members in 16th Lok Sabha have not spent a rupee from the ₹5 crores that are set aside annually for them to develop their constituencies.
- **Unspent Funds:** As on March 4, 2020, it has been found that a cumulative sum of Rs 5,275.24 crore MPLAD fund remained unspent.

6.5 Supreme Court View:

- The Constitutional validity of MPLADS was challenged on the grounds that this scheme violates the spirit of federalism and distribution of powers between the Union and the States in the Supreme Court of India in 1999, followed by petitions in 2000, 2003, 2004, and 2005.
- The combined judgment on all these petitions was delivered by the Apex Court on May 6, **2010**, with the **scheme being held to be constitutional**. SC held that:
    - Indian COnstitution does not recognise the strict separation of powers as is done in the USA Constitution.
    - India is a Quasi-Federal state wherein as per Article 282, the Union and the State government, both have the power to provide grants for the "public purpose" within the meaning of the Constitution. This is done irrespective of whether the subject matter of the purpose falls in the Seventh Schedule of the Indian Constitution.
    - MPLAD comes in the purview of RTI Act so there is provision for transparency.

6.6 Way forward

- The Ministry of Statistics and Programme Implementation has suggested that a single parliamentary committee be formed comprising members of both Houses of Parliament to monitor MPLAD schemes.
- **Social Audit** should be made mandatory.
- MPLAD **funds should be made lapsable** and return the funds annually to the Ministry for effective utilisation of funds.
- For the scheme to be more effective, an **impact assessment study** should be **undertaken** at the constituency level, on a yearly basis, to assess the benefits of the works implemented to the community at large.
- Implementing agencies could involve the local community in the voluntary supervision of works.
- There needs to be a greater focus on regular monitoring by the District Authorities.

- The practice of random inspections by the District Authority, both before the release of the second instalment and after the completion of the work.
- A legal obligation should be made to ensure transparency in recommending works by an MP.

7 CAUVERY WATER DISPUTE: BACKGROUND; CONSTITUTIONAL PROVISIONS; LATEST VERDICT AND ISSUES

India has many **river basins** running through the nation and most of these traverses **more than one state which leads to conflicts** regarding the use and distribution of water. The Inter-State River Water Disputes has been among the **most contentious issues** for Indian federalism even today and many Inter-State Water Disputes Tribunals have been constituted but each had their own issues. In this article, we will discuss the **Cauvery Water Dispute** and all the aspects related to it. This is an important topic for the Prelims and Main exam of UPSC.

What is the Cauvery water dispute?

The Cauvery water dispute is a Water sharing dispute **between Karnataka and Tamil Nadu since British Raj**. Many districts in both states are dependent on the Cauvery River for irrigation while the city of Bengaluru gets its water mostly from this river.
In its 2018 verdict, the Apex court increased Karnataka's share of the Cauvery water than what was awarded by the Cauvery Water Disputes Tribunal in February 2007.

7.1 Background:

- In order to understand the issue one has to go back to 1892. The Cauvery water sharing **dispute began in 1892 between the Madras Presidency** under the British Raj **and** the princely state of **Mysore** because the two regions could not agree over how to divide the water between themselves.
- After Tamil Nadu's appeal in 1986 to constitute a tribunal for solving the issue under the Inter-State Water Disputes Act 1956, the Union government formed the **Cauvery Water Disputes Tribunal (CWDT) in 1990**.
- It was **adjudicated by** the Cauvery Water Disputes Tribunal **(CWDT) in 2007.**
- **Both** Tamil Nadu and Karnataka **challenged** the order of the Tribunal.
- The Supreme court reserved its order in 2017.

7.2 Constitutional Provisions for Interstate Water Disputes:

- **Article 262(1)** provides that the Parliament may by law provide for the adjudication of any dispute related to any inter-State river or river valley.

- Article 262(2) empowers the Parliament to provide that neither the Supreme Court nor any other court shall exercise their jurisdiction in respect of any such disputes or complaints. The Interstate River Water Disputes Act 1956 (IRWD Act, 1956) was enacted under Article 262 of the Constitution of India.
- Seventh Schedule:
    1. Entry 17 of State List: Water i.e. water supplies, irrigation and canals, drainage, water storage and water power subject to entry 56 of the Union List
    2. Entry 56 of the Union List: Regulation and development of the inter-State rivers and river valleys.

7.3 Supreme Court Judgment of 2018:

- The Supreme Court pronounced its verdict on the sharing of Cauvery water among Tamil Nadu, Puducherry, Karnataka, and Kerala and declared **Cauvery a "national asset".** It upheld the **principle of equality** of inter-State river water among riparian States.
- The judgment concluded that **Cauvery Water Disputes Tribunal (CWDT)** did not take into account Tamil Nadu's stock of an "empirical" 20 TMC of groundwater and **Karnataka is "entitled to marginal relief"** Hence the apex court reduced the allocation of Cauvery River water from Karnataka to Tamil Nadu.
- This meant a **reduction of 14.75 TMC of Cauvery water to Tamil Nadu** from the earlier 192 TMC as Awarded by the tribunal and this change will be adjusted from the Biligundlu site. Karnataka will release only 177.25 TMC of Cauvery water from the Billigundlu site to the Mettur dam in Tamil Nadu.
- The Court gave the Centre six weeks to frame a scheme to make sure that the final decisions are implemented and also directed the formation of the **Cauvery Management Board (CMB).** CMB to act as an inter-state forum which will have the responsibility to ensure the implementation of orders of the CWDT and will be under the control of the Ministry of Water Resources (now Ministry of Jal Shakti).

7.4 Cauvery Water Management Scheme, 2018 :

The Center established the **Cauvery Water Management Authority (CWMA) and the Cauvery Water Regulation Committee (CWRC).**

- CWMA is a permanent body and will be to regulate and control Cauvery water releases with the assistance of the Cauvery Water Regulation Committee.
- **CWRC** acts as a **technical arm** and it will ensure the implementation of the final Award by periodically collecting data regarding levels, inflows, storages, and release of water.

7.5 The Interstate River Water Disputes Act, 1956 (IRWD Act):

- The IRWD Act confers power upon the union government to constitute tribunals to resolve Interstate River Water Disputes.
- It also excludes the jurisdiction of the Supreme Court over such disputes.
- The union government has constituted eight Tribunals under the Inter-State River Water Dispute Act

7.6 Issues with the present Inter-State River Water Dispute Act, 1956:

- A Separate Tribunal for each Inter-State River Water Dispute has to be established.
- Delay in securing settlement of such disputes as tribunals like Cauvery and Ravi Beas has been in existence for more than 30 years.
- There is no time limit for adjudication and delay happens at the stage of the constitution of tribunals as well. No adequate machinery to enforce the award of the Tribunal.
- Lack of uniform standards could be applied in resolving such disputes and Lack of adequate resources both physical and human to assess the facts of the case.
- Issue of finality as when the Tribunal holding against any Party, that Party is quick to seek redressal in the Supreme Court. Only three out of eight Tribunals awards were accepted by the States.

7.7 Inter-State River Water Disputes (Amendment) Bill, 2019:

- **Dispute Resolution Committee (DRC)** will be established by the Central Government to resolve the dispute amicably by negotiations **within one year** (extendable by six months) and submit its report to the central government. If a dispute will not be settled by the DRC, then the central government will refer it to the Inter-State River Water Disputes Tribunal.
- **Establishment of a Single Inter-State River Water Disputes Tribunal** by the Central Government with multiple benches. All existing Tribunals will be dissolved, and the disputes pending before such existing Tribunals will be transferred to the new Tribunal.
- The proposed Tribunal must give its verdict on the dispute **within a timeline of two years**, which may be extended by **another year**.
- The decision of the Tribunal will be **final and binding**. The bill will also remove the requirement of publication of the decision in the official gazette in the original Act. It also makes mandatory for the Central Government to make a scheme to give effect to the decision of the Tribunal.
- **Data Collection and maintenance of a databank** at the national level for each river basin by an agency to be appointed and authorized by the central government.

7.8 Way forward:

- Declaration of **Rivers as National Property** as done by SC in Cauvery Verdict may reduce the tendency of states. **Water disputes** need to be **depoliticised** and not be made an emotional issue linked with regional pride.
- **Inter-State Council (ISC)** can play a crucial role in facilitating dialogue & discussion towards resolving conflicts.
- **Bringing water into the concurrent list** as recommended by **Mihir shah report** and supported by a parliamentary Standing Committee on Water Resources.
- **Scientific management of crop patterns** by bringing out a policy that promotes water-efficient crops and varieties in water scare areas.
- **Interlinking of rivers** can also help in the adequate distribution of river water in the basin areas.
- There is a requirement for a permanent mechanism to solve water disputes between states without seeking recourse to the judiciary.
- Enacting the Inter-State River Water **Disputes (Amendment) Bill, 2019** may also help in streamlining the procedure for resolving such disputes.
- Practice the **concept of 4Rs** (Reduce, Reuse, Recycle, Recover) for water management to achieve goal 6 of the SDGs (Ensure access to water and sanitation for all).
- Following National Water Policy which emphasised rational use of water and conservation of water sources. Urban water management in cities like Bengaluru should incorporate conservation of wetlands along with appropriate sewage treatment.

8 CIVIL SERVICES REFORM: LATERAL ENTRY INTO THE SERVICES.

- The centre's decision to give a green signal to lateral entry into the civil services has opened the floodgates of a complex debate that has been going on for a long time. There are two factions in this regard. One seems to be rooting for it while the other believes that it would hamper the work culture.
- The government has advertised for openings for 10 joint secretary posts on a contractual basis. The most vivid argument in favour of such a move is that it will infuse bureaucracy with much-needed freshness.
- The faction against such a move of the government opines that this will end the era of a neutral and impartial civil service and introduce a cult of loyalists to the present government. They see this as a move threatening their hegemony. It is also being viewed as the start of "privatisation of the IAS".
- Nonetheless, this bold move needs to be given a level playing field.
- The 'lateral entry' advocacy was made based on ARC recommendation

- Expertise becomes crucial when we talk about broad areas like environment, water. Thus, an expert like an environmentalist can be roped in to formulate appropriate policies.
- When civil servants are made to compete with outside talent, it will induce competition among the personnel.
- However, we cannot overlook the challenges inherent in implementing such a reform. The high corruption index in states might act as a catalyst for the private people recruited for a short-term to leave without any accountability.
- It can hamper the fairness of the selection process and influence it politically. The way the private professionals/experts are to be chosen and what degree of involvement must the UPSC have.
- It might also leave a trail of legal matters which would require resolution by the incoming (new) officials which would become cumbersome.
- In retrospect, what we can say is that this prospect of lateral entry seems good enough for sectors that require more of technical and domain knowledge.
- For others, as the UPSC follows the norm, the ones to be appointed at top positions in critical areas must be reserved for within the government. They are recruited from the best in India with a cross-sectoral experience of 10-15 sectors.
- In principle lateral entry seems like a good idea but it should be considered that factors like accountability and transparency must be kept intact. It must be ensured that the private sector's involvement must be used to bridge the gap and for a longer tenure.

9 JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT IN INDIA

India has separation of power as one of the basic features of Constitution where domains of Legislative, executive and Judiciary have their own roles to play. Our constitution makers envisaged the Judicial system as independent (though integrated) along with the responsibility of being a guardian of Constitution.

In recent times, incidents like Unnao rape case, the ongoing debate over parallel governance, etc have brought Judicial activism and judicial restraint in the limelight. In this article, all details regarding **Judicial activism and Judicial restraint** are thoroughly discussed.

Judicial Activism and Judicial Restraint

9.1 Meaning of Judicial Activism

- The overactive role played by the Judiciary in upholding the constitutional and legal rights of the citizens is called **Judicial Activism.**

- It is a judicial philosophy in which judiciary exercises its power to implement and enforce the constitutionally correct laws which are beneficial for the people of society at large.
- In Judicial Activism, the judiciary exercises its power to strike down the laws or rules which infringes the basic rights of the citizens or goes against the constitutional values.
- It empowers the judiciary to correct the mistakes or injustices of the other organs/branches of the government.
- The Supreme Court judgments in Golak Nath Case (1967), Kesavanand Bharti Case (1973), Menaka Case (1973), Vishaka case (1997) etc are some of the examples of the Judicial Activism.

9.2 Meaning of Judicial Restraint

- The theory, in which the judiciary restraints while sticking down any law or rule passed by the Parliament unless it goes totally against the constitutional values of the country, is called **Judicial Restraint.**
- Judicial restraint encourages the judiciary in considering the fact that the laws/rules passed by the elected representatives of the parliament may be the need of the hour and needs to be respected by the judiciary unless it gets necessary for upholding the constitution.

9.3 Important Facts

- Article 13 of the constitution empowers the judiciary to review any Law/Act/Rule that infringes upon the fundamental rights guaranteed to the citizens by the constitution of the country.
- This power of the judiciary to review any law/act/rule became dominant and was termed as judicial activism in later years. However, the term 'judicial activism' has nowhere been used in the constitution.
- Judicial activism is an invention of the Indian Judiciary for giving pro-active decisions by taking Suo-Moto action through Public Interest Litigation (PIL) or through other ways.
- The journey of judicial activism started from the **Golak Nath case (1967)** in which the Supreme Court gave a judgment that the fundamental rights as stated in Part-III of the constitution are not amendable by the legislature.
- In the **Kesavanand Bharti case (1973)** the Supreme Court gave a historical judgment by introducing the concept of 'Basic Structure' of the constitution and stated that the 'Basic Structure' of the constitution couldn't be changed/ amended.
- In **SP Gupta case (1981)**, a new concept of Public Interest Litigation was introduced and accepted by the Supreme Court.

- From here onwards, the Supreme Court started using its powers of judicial review more randomly, even in governance issues.

9.4 Recent cases of Judicial Activism

- Recently, the Supreme Court made the playing of national anthem compulsory in cinema hall before the screening of movies. The decision was later amended and made it optional.
- The Supreme Court recently in **Arjun Gopal Case**, prohibited the use of non-green firecrackers in Delhi/NCR and even fixed the timing for bursting firecrackers.
- In **Subhash Kashinath case**, the Supreme Court declared to amend the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.
- The National Green Tribunal recently banned the use of more than 15-year-old petrol vehicle and 10-year-old diesel vehicle.
- A Tamilnadu judge made the study of Tirukkural mandatory for every student in Tamilnadu, which is actually prerogative of legislature and executive.
- There are many such other judgments in which the judges have excessively used the powers and interfered in the domain of legislator and judiciary.

9.5 Reasons for the evolution of Judicial Activism

- **Failure of Law** – In many sensitive cases, when the present law fails to handle the issue, judicial activism permits the judges to use their powers to act as per the demand of the situation. Ex – Triple Talaq judgment of the Supreme Court.
- **For Reviewing the previous judgments** – In many cases, the situation demands to take a relook of its own earlier judgments with a new frame of mind. In this case, also, the concept of judicial activism helps.
- **For filling the legal vacuum** – Many times, the Supreme Court is required to act Suo-Motto for stopping of reoccurrence of any similar incidents. For example, the Supreme Court framed the Vishaka guidelines for handling issues of harassment of women at workplace in the Vishaka case of 1997.
- **For checks and balances** – Many times, the government in powers takes a decision in haste and in such cases, the courts check the legality of the law/act according to the constitution.
- **For timely and complete judgment** – Many times, the situation demands a pro-active response of the courts for timely and complete justice. In such cases, the courts can use the power to enforce the law.
- **Rising demands of Human Rights** – Around the world and in India also there has been gradual demands for establishing the supremacy of the Human Rights. This motivated the judiciary to take necessary steps under its power of judicial activism.

9.6 Judicial Independence

- The Constitution has separated the functions and powers of legislature and judiciary through its various provisions.
- Article 121 and 211 of the constitution restricts the power of the legislature to discuss the conduct of the Judges while performing their duty.
- The Supreme Court and High Court judges have been provided with the security of tenure, appointment, salary and allowances etc.
- Judges have the independence of performing their duties in an impartial way without getting influenced by the legislature and executive.
- No objection or opposition can be made by anyone on the orders of courts. The decision of the court is final and binding and can be challenged only in higher courts.

9.7 Demerits of Judicial Activism

- The overriding powers of the judiciary have many times interfered in the domain of legislature and executive, which goes against the spirit of separation of power enumerated in the constitution.
- Many times, the personal and prejudiced views of the judges get reflected in their judgments, which are big drawbacks of the concept of judicial activism.
- One judgment becomes standard ruling for other cases which resulted in a chain of judicial overreach.
- Judicial activism restricts the law-making power of the parliament and the legislature.
- The chances of turning of judicial activism into judicial overreach are huge and need to be understood by the judiciary while exercising its powers.
- Many times, the decisions taken by the judiciary has eroded the public faith in the law made by the elected representative in the parliament.
- At large, judicial activism has become a challenge in the law-making process of the legislature.

9.8 Way forward

- Judiciary needs to understand the thin line between judicial activism and judicial overreach and needs to act accordingly.
- The concept of separation of power should be taken into consideration by the judiciary while using its judicial powers.
- Judiciary needs to be accountable, and for this, some new methods may be adopted by the government.

- The legislature needs to be more active in filling the legislative gaps so that the need for judicial reviews and intervention is less.
- Judiciary needs to be more disciplined and accountable while using its powers under the concept of judicial activism.

10 LOKPAL AND LOKAYUKTA ACT:

In this article, we are sharing the **Lokpal and Lokayukta Act** for UPSC exam along with the **PDF download in Hindi and English**. Also, know important facts, evaluation, major highlights and implementation of Lokpal and Lokayukta Act 2013 here.

Lokpal and Lokayukta Act

Important Facts

- The **Lokpal and Lokayukta is** an anti-corruption ombudsman established by the Lokpal and Lokayukta **Act, 2013.**
- It has the provision of appointing 'Lokpal' at the centre and 'Lokayukta' on every state.
- These are **statutory bodies established** without any constitutional status.
- The former Supreme Court Judge Justice Pinaki Chandra Ghose is the first Lokpal of India.

10.1 Evolution of Lokpal and Lokayukta in India

- For the first time, an office ombudsman was established in Sweden in 1809.
- The concept of ombudsman developed significantly after the Second World War.
- The United Kingdom adopted it in 1967.
- In India, this concept was first proposed by the then law minister Ashok Kumar Sen in the early 1960s.
- In 1966 the recommendations of the First Administrative Reforms Commission suggested the setting up of independent authority for looking after the complaint against public functionaries.
- In 2005 the 2nd ARC the chaired by Veerappa Moily also recommended for provision of Lokpal.
- In India for the first time, the Lokpal bill was introduced in the Lok Sabha in 1968 but could be not passed, and till 2011 a total of eight failed attempts were made to pass the Bill.
- Finally, massive pressure from civil societies and demand from the social groups resulted in the passing of the Lokpal and Lokayuktas Bill, 2013.

10.2 Highlights of the Lokpal Act of 2013

- This Act allows for setting up of anti-corruption ombudsman known as Lokpal at the Centre and Lokayukta for every state.
- The bill extends to the whole of India. The state of Jammu & Kashmir also comes under this Act.
- The Lokpal covers all categories of public servants, including the Prime Minister.
- The officers/personnel of the armed forces do not come under Lokpal.
- It has provisions for attachment and confiscation of property acquired by corrupt means, even during the prosecution.
- The States is to establish the office of Lokayukta within one year of the commencement of the Act.
- It has provisions for the protection of public servants who *Act as* whistleblowers.

10.3 Composition of the Lokpal

- The office of Lokpal consists of a chairperson and a maximum of 8 members.
- The Chairman and half of the members should be from legal backgrounds.
- The 50% of the seats are reserved for SC, ST, OBC, minorities or women.

10.4 Criteria for selection of Chairperson

- She/he should be either former Chief Justice of India or Judge of the Supreme Court.
- She/he should be an eminent person with impeccable integrity and outstanding ability with at least 25 years experience in matters related to anti-corruption policy, law, management etc.

10.5 Appointment of Chairperson and Members

The President appoints the chairperson and members on the recommendation of a select committee consisting of the following:-

- The Prime Minister
- The Speaker of Lok Sabha
- The Leader of Opposition in Lok Sabha
- The Chief Justice of India
- One eminent jurist appointed by the President

10.6 Term of Office

- The Chairman and members of Lokpal hold office for five years or upto the age of 70 yrs.
- The salary, allowances and other condition of service of the chairperson shall be equivalent to the Chief Justice of India, and members are comparable to the Judge of the Supreme Court.
- All expenses are charged from the consolidated fund of India.

10.7 Jurisdiction and powers of the Lokpal

- Lokpal has the Jurisdiction over all Groups A, B, C and D officers and officials of Central Government, PSUs, members of parliament, minister and it also includes Prime Minister.
- The Prime Minister comes under the ambit of Lokpal except on the matters of corruption relating to international relations, security, the public order, atomic energy and
- Any other person involved in the Act of abetting, bribe giving, or bribe-taking comes under the ambit of Lokpal.
- It mandates the furnishing of the assets and liabilities of themselves as well as their dependents to all public officials.
- It has **the powers to give directions to all agencies like CBI, CVC etc. It can assign a task. On assignment of any task by Lokpal, the concerned officer can't be transferred without the permission of the Lokpal.**
- The Inquiry Wing of the Lokpal has the powers of a civil court.
- Lokpal has the powers of confiscation of property earned through corrupt means even during the prosecution.
- It has the power of suspension or transfer of public servants connected with the allegation of corruption.
- It can recommend the central government for the establishment of special courts to hear and decide any case.

10.8 Working procedure of Lokpal

- Lokpal acts only on the complaint. It can't take suo moto action.
- After receiving it can order a preliminary inquiry.
- The Lokpal has two major wings: investigation wing and prosecution wing.
- Through his investigation wing, the Lokpal can conduct a preliminary investigation of any offence alleged to be committed under the Prevention of Corruption Act, 1988.
- It can also conduct a detailed inquiry. After the inquiry, if the individual is found using corrupt practices, then the Lokpal can recommend disciplinary action.

10.9 Procedure for removal of Lokpal from office

- The Chairmen or members of the Lokpal can be **removed** only by the President on the recommendations of the Supreme Court. The grounds of removal are misbehaviour, infirmity of body or mind, insolvent, taken paid employment outside the office.
- For the removal of the chairman or members of Lokpal petition signed by at least 100 members of Parliament is required. After that, it will be referred to the Supreme Court for enquiry.
- After the investigation, if the Supreme Court finds the charges as valid against the chairperson or a member and recommends removal, then he shall be removed by the President.

10.10 Post-retirement provisions

- She/he cannot be reappointed as chairman or member.
- She/he can't take any diplomatic assignment.
- She/he can't be appointed to any constitutional or statutory post in which appointment is made by the President.
- She/he can't contest any of the election such as the President/ Vice-President, MLA, MLC or local bodies' upto five years after retirement.

10.11 Decriminalising of section 377 of the IPC

Section 377 reflected the imposition of Victorian values and was never a reflection of Indian values. In this regard, the Supreme Court's judgment has come out as a victory which will challenge the existing inequalities. Comment.

- The colonial hangover, section 377 of the IPC was struck down by the supreme court of India upholding human rights and putting an end to the violation of constitutional rights of the homosexual community.
- They are now permitted to live as an equal citizen sans harassment.
- Four out of the five judges of Supreme Court overturned the archaic section which described consensual same sex relationship as "against the order of nature."
- The bench has retained only sexual activity with animals and any other such acts under the definition of "unnatural sex", which can be see more like a version of Victorian morality.

10.12 What made this change imperative?

- The constitution is an ever-evolving document and hence it is important that pragmatic interpretation time and again is given to combat inequality and injustice. As an evolving

nation-state and a society, we had to take this stand for our own wellbeing and prosperity.

- Also, there hasn't been any full proof of homosexuality being abhorred in India in the past. Instead, the regional heritage and culture of India depict and immortalizes the homosexual culture. This is evident from stone carvings of Khajuraho, Ajanta and many more.
- It clearly shows that fluid sexuality was present in India since ancient times.
- According to historians, neither did Indian scriptures nor did ancient rulers criminalized sexual relations between same sexes. It was reported that during the 16th and 17th-century Mughal era, Transgenders were holding high positions in the courts.
- Thus, homosexuality as an offense was developed only in the 1830s, the imposition of foreign morality on the Indian subcontinent.
- Though the practice was not banned, it was criminalized. The law confirmed more with the Christian belief systems rather than Indian's attitude towards homosexuality.
- Historians opine that there certainly was some disapproval for homosexuality, but the homosexuals weren't hounded.
- The bid to get done with this law was initiated in 2009 by the Naz Foundation and the organization stated that section 377 was violative of the fundamental rights of the LGBT community.
- While legally the law has been dismantled, we cannot deny the fact that in a country like India where religiosity and cultural prejudices hinder scientific temperament, homosexuality is still considered as a taboo and big no!
- It is about time that the state realized that sexual minorities needed rights and protection to live a productive life with fulfilling relationships irrespective of gender biases.
- An anti-discriminatory law in this regard would further propel efforts towards the fight against homophobia.
- The judgment will go a long way in preventing social stigma and ostracism attached to this practice and affirming the fact that any such condition is not a mental disorder but something inborn in a human being.
- India must keep in mind that as a major rising global power, her fight and role in this regard will set an example before countries and campaigners and will strengthen their voices. These may include Malaysia, where there was an incident of two women being canned; Singapore, where the court has ruled that the law outlawing same-sex relationships is valid etc.

Indian Polity and Governance – Panchayati Raj, Public Policy, Rights Issues

Chapter 10

Short Answers

CSM – 04 Compiled by Dr Mamta Pathania

22

This chapter contains:

- **Indian Polity Notes: Non-Constitutional Bodies**
- **J & K: ARTICLE 35 A**
- **Public Interest Litigation (PIL)**
- **CONSTITUTION**
- **PM- PRIME MINISTER COM- COUNCIL OF MINISTERS LS- LOK SABHA**
- **CM- CHIEF MINISTER COM- COUNCIL OF MINISTERS**
- **LOCAL GOVERNMENT SYSTEM IN INDIA**
- **73rd Constitutional Amendment Act of 1992**

Contents

1 INDIAN POLITY NOTES: NON-CONSTITUTIONAL BODIES

Non-Constitutional or **Extra Constitutional bodies** are the same. These **bodies** are not defined in the **Constitution of India**. Such bodies that are not defined in the **Constitution and derive their power** either through some statue or from an **executive order of the government** but not directly from the **constitution**. Let us explore and discuss about such bodies in detail.

1.1 PLANNING COMMISSION

- Established in March 1950 by an executive resolution of the Government of India, (i.e., union cabinet) on the recommendation of the Advisory Planning Board constituted in 1946, under the chairmanship of K.C. Neogi. Thus, the Planning Commission is neither a statutory institution nor a constitutional one. In other words, it is a non-constitutional or extra-constitutional body (i.e., not created by the Constitution) and a non-statutory body (not created by an act of Parliament). In India, it is the supreme organ of planning for social and economic development. Now, it has been replaced by another body named NITI Aayog from 1st January 2015.
- The P.M of India is the *ex-officio* chairman of the commission. He presides over the meetings of the commission.
- The commission has a deputy chairman. He is the *de facto* executive head (i.e., full-time functional head) of the commission. He is responsible for the formulation and submission of the draft Five-Year Plan to the Central cabinet. He is appointed by the Central cabinet for a fixed tenure and enjoys the rank of a cabinet minister. Though he is not a member of the cabinet, he is invited to attend all its meeting (without a right to vote).
- It is discontinued in 2015 and replaced by NITI Aayog.

1.2 NITI (NATIONAL INSTITUTION FOR TRANSFORMING INDIA) AAYOG

- It is established in 2015 by the government to replace the Planning commission (was based on top-down model).
- It is based on the bottom-up model.
- It is the policy-making body for whole India.
- The Ex-officio chairman of aayog is prime minister.
- Current Vice President of aayog is Rajiv Kumar.

- Permanent members of the governing council-
  (a) All state Chief Ministers
  (b) Chief ministers of Delhi and Puducherry
  (c) Lieutenant Governor of Andaman and Nicobar
  (d) Vice chairman nominated by the Prime Minister.

1.3 NATIONAL DEVELOPMENT COUNCIL

- The National Development Council (NDC) was established in August 1952 by an executive resolution of the Government of India on the recommendation of the first five year plan (draft outline). Like the Planning Commission, it is neither a constitutional body nor a statutory body.
- The NDC is composed of the following members.
  - A. P.M of India (as its chairman/head).
  - B. All Union cabinet ministers (since 1967).
  - C. Chief Ministers of all the states.
    D. Chief Ministers/administrators of all the union territories.
    E. Members of the Planning Commission.

1.4 NATIONAL HUMAN RIGHTS COMMISSION

- The NHRC is a statutory (and not a constitutional) body. It was established in **1993** under a legislation enacted by the Parliament, namely, the **Protection of Human Rights Act, 1993**. This Act was amended in 2006.
- The commission is a multi-member body consisting of a chairman and four members. The chairman should be **retired chief justice of India**.
- The chairman and members are appointed by the president on the recommendations of a **six-member committee** consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or sitting chief justice of a high court can be appointed only after consultation with the chief justice of India.
- The chairman and members hold office for a term of **five years** or until they attain the age of **70 years**, whichever is earlier. They are not eligible for further employment under the Central or a state government.

1.5 CENTRAL INFORMATION COMMISSION

- The CIC was established by the Central Government in **2005**. It was constituted through an Official Gazette Notification under the provisions of the Right to Information Act (2005). Hence, it is not a constitutional body.
- The Commission consists of a Chief Information Commissioner and not-more-than ten Information Commissioners.
- They are appointed by the President on the recommendation of a committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister.
- They should be persons of eminence in public life with wide knowledge and experience in social service, science, and technology, mass media, management, journalism, law, or administration and governance.
- They should not be **M.Ps** or MLAs of any State or Union Territory. They should not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.
- The term of office is 5 years and/or retirement age is 65 years, whichever comes earlier. They are ineligible for reappointment.
- They can be removed by the President only as per the conditions as mentioned in the case of NHRC.

1.6 CENTRAL VIGILANCE COMMISSION

- The CVC is the main agency for preventing corruption in the Central government. It was established in **1964** by an executive resolution of the Central government. Its establishment was recommended by the **Santhanam Committee** on Prevention of Corruption (1962–64).
- Thus, originally the CVC was neither a constitutional body nor a statutory body. In **September 2003,** the Parliament enacted a law conferring statutory status on the CVC.
- The CVC is a multi-member body consisting of a Central Vigilance Commissioner (chairperson) and not more than two vigilance commissioners.
- They are appointed by the president by warrant under his hand and seal on the recommendation of a three-member committee consisting of the prime minister as its head, the Union minister of home affairs and the Leader of the Opposition in the Lok Sabha.

- They hold office for a term of **four years** or until they attain the age of **65 years**, whichever is earlier. After their tenure, they are not eligible for further employment under the Central or a state government.

2 J & K: ARTICLE 35 A

A political storm is brewing up as the central government has sought a "larger debate" over Article 35A of the Constitution, which empowers the Jammu and Kashmir legislature to define "permanent residents" of the state and provide special rights and privileges to them.

Approximately, 1.5 lakh Hindu's, mostly Dalits migrated from West Pakistan in August 1947 as an aftermath of communal partition. These migrants, even after having stayed in the State of J&K for more than 70 years, have been denied citizenship rights to the State. Let's read about this in detail.

2.1 What is Article 35A?

Background of Issue:

Jammu and Kashmir became a part of India through the instrument of accession signed by its ruler Hari Singh in October 1947.

After Jammu and Kashmir's accession, Sheikh Abdullah (Sadr-i-Riyasat) negotiated Jammu and Kashmir's political relationship with New Delhi, which led to the inclusion of Article 370 in the Constitution.

However, under the Delhi Agreement 1952 between Sheikh Abdullah and PM Jawahar Lal Nehru, several provisions of the Constitution were extended to Jammu and Kashmir via Presidential Order in 1954 including Article 35A.

Article 35A was added to the Constitution as a testimony of the special consideration the Indian government accorded to the 'permanent residents' of Jammu and Kashmir

2.2 Reasons Leading to Art. 35A:

The Kashmir Constituent-cum-Legislative Assembly, using the provisions of Article 370 of Constitution of India, adopted Sections 6, 8 and 9 for incorporation in the J&K Constitution, under which the State was to be governed in the future.

The provisions of Section 6 included the following:

(I) "Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May 1954:

- He was a state subject of class I or of class II, or

- Having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten years prior to this date" and

(II) "any person who, before the fourteenth day of May, 1954 was a State Subject of class I or of class II and who, having migrated after the first day of March, 1947, to the territory – now included in Pakistan, returns to state under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State (basically meaning that Muslim migrants from Pakistan who had moved to India between March 1947 and May 1954 were given citizenship rights).

However, "no persons who had crossed over to the state of J&K after May 1944 will be considered eligible for citizenship rights". The prime motive of this legislation was to deny citizenship rights to Hindu migrants from West Pakistan, who had migrated to the State in the wake of the hostile environment that existed during partition.

Sections 8 and 9 further strengthened the hands of the policymakers, as the former gives the State Legislature the right to define Permanent Residents and the latter empowers the State Legislature to alter the definition of Permanent Residents.

2.3 What does Article 35A entail?

(a) Defines the classes of persons who are, or shall be permanent residents of the State of Jammu & Kashmir, or

(b) Confers on such permanent residents any special rights and privileges or imposing upon other persons any restrictions, like:

- Employment under the State Government;
- Acquisition of immovable property in the State;
- Settlement in the State; or
- Right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this part".

Article 35A enabled the Jammu & Kashmir Constituent Assembly to deny citizenship rights to the refugees from West Pakistan and all other Indians, barring Permanent Residents of the State.

2.4 Major Objections Pertaining to the Provisions of Article 35A

Article 35A was added to the Constitution through a Presidential Order and not by following the procedure prescribed for amendment of the Constitution of India under Article 368, where this Constitutional amendment can only be made through a Parliamentary debate and voting. Hence, its legality is being questioned.

The classification of Permanent Resident Certificate created under the provisions of Article 35A suffers from the violation of Article 14, i.e. “Equality before Law”. Hence, the non-resident Indian citizens cannot have the rights and privileges, the same as permanent residents of Jammu and Kashmir.

Article 35A violates the rights of women to ‘marry a man of their choice’ by not giving the heirs any right to property or given a Permanent Resident Certificate if the woman marries a man who is not a permanent resident.

Safai Karamcharis (scavengers) who were brought to the State in 1957 were promised that they would be given Permanent Resident Certificates on the condition that they and their future generations continued to perform their scavenger duties. However, even after six decades of service in the State, their children are Safai-Karmacharis and they have been denied the right to quit scavenging and choose any other profession.

The industrial sector & private sector is suffering on account of no domestic investments coming in from other parts of India or businesses can be set up in the State due to the property ownership restrictions.

The refugees from West Pakistan who have been staying in J&K for 70 years are unable to enjoy the basic rights and privileges as being enjoyed by permanent residents of Jammu and Kashmir.

Lastly, it gives a free hand to the State government and politicians to discriminate between citizens of India, on an unfair basis and give preferential treatment to the State subjects.

2.5 Points in Support of Article 35A

It is being argued that similar provisions have been provided for other states, like Himachal and North Eastern states. However, no objections are being raised over there. Moreover, Article 370 was enacted on 26 November 1949 as part of the Constitution of India by the Constituent Assembly of India which was a sovereign body, and, Article 35A "flows inexorably" from it.

Further, Article 35A protects the demographic status of the Jammu and Kashmir state in its prescribed constitutional form. Any move to abrogate Article 35A would open the gates for a demographic transformation of the valley, amounting to breaking a promise made to the people of J&K at the time of the accession of the State to the Indian Union.

Article 35(A) of the Constitution of India, which has been applied to the State of Jammu and Kashmir, not only recognizes but clarifies the already existing constitutional and legal position and does not extend something new to the state of Jammu and Kashmir.

It is being argued that the provisions of Article 14 (as applicable to the State of J&K) are not being violated as it provides equal protection of laws to all its State subjects/citizens.

Lastly, as pointed out by the ex-chief minister of J&K, Mehbooba Mufti, “if we endeavour to weaken the uniqueness of Kashmir through judiciary, then those forces in Kashmir Valley, who want to put an end to the composite culture in Kashmir Valley and want to have people from one community (Muslims) only, with one attire and one way of life, you will only make them successful”.

2.6 Way Out:

Article 35A (1954) was incorporated in the Indian Constitution through a Constitutional amendment even before the Constitution of J&K came into existence (1956).

All above-mentioned provisions and legislation were drafted and accepted by 'senior' leaders of Independent India with the concurrence of the people of J&K and hence, it may be unfair to accuse only the people of J&K (Kashmir Valley) of creation / holding to such like provisions.

However, the evolution of a democracy is an ongoing process and it is never too late to bring about corrective actions that are for the overall betterment of the society.

The evaluation of the constitutional validity of Article 35A is what falls within the preview of the judiciary; it is the executive that will have to take the tricky call regarding the abrogation Article 35A. Centre government appointed interlocutor is already in the process of interacting with various stakeholders in the State to obtain their views.

J & K: ARTICLE 370

"You wish India should protect your borders, she should build roads in your area, she should supply you food grains, and Kashmir should get equal status as India. But the Government of India should have only limited powers and Indian people should have no rights in Kashmir. To give consent to this proposal, would be a treacherous thing against the interests of India and ***I, as the Law Minister of India, will never do it"***

These were the words of the law minister, BR Ambedkar who refused to give assent to article 370 which was later incorporated by N Gopalswami Ayyangar on recommendation J.L Nehru.

Article 370 of the Constitution of India grants special status to the State of Jammu and Kashmir, which is a constituent state of the Indian Union.

Signup for Free Mock Test

The article is drafted in Part XXI of the Constitution. All the provisions of the Constitution of India do not apply to the State of Jammu and Kashmir. Also, Jammu and Kashmir is the only Indian state to have its own separate state Constitution i.e. the Constitution of Jammu and Kashmir.

The article that was meant to be a temporary provision but became permanent when the State's constituent assembly dissolved itself on 25 January 1957 without recommending abrogation/ amendment of Article 370.

Accordingly, the Indian Parliament needs the State Government's cooperation for applying any law in the State except for three subjects surrendered to the Dominion of India at the time of accession. These are Defence, External Affairs and Communications.

Article 370 would cease to exist if President declares so on the recommendation of Constituent Assembly of the state.

The present relationship of the State of Jammu and Kashmir with the Union is as follows:

1. J&K is the constituent state of the Indian Union, but its name, area or boundary cannot be altered without the consent of its legislature.
2. Part VI of the Constitution of India (regarding State Governments) is not applicable to the state of J&K as it has its own Constitution and the administration works according to that Constitution.
3. The residuary power to make laws belongs to the state except in a few matters. In addition to this, the power to make laws of preventive detention in the state belongs to the state legislature. In other words, the preventive detention laws made by the Parliament are not applicable to the State of J&K.
4. The Fundamental Rights are applicable to the State but the difference is that unlike otherwise, the Fundamental Right to Property is still guaranteed in the state.
5. Directive Principles and Fundamental Duties are not applicable to the State.
6. If National Emergency is declared on the ground of internal disturbance, it would be ineffective in the State except with the cooperation of the state government. Also, the President has no right to declare a financial emergency in the State.
7. The President cannot suspend the Constitution of the State on any grounds, even on the grounds of failure to act in compliance with the directions given by him.
8. The Fifth and Sixth Schedule of the Constitution, dealing with administration and control of scheduled areas and scheduled tribes and tribal areas respectively do not apply to the State.
9. The High Court of J&K unlike the High Courts of other states of India cannot issue a writ for any reason other than the enforcement of Fundamental Rights.
10. The provisions of Part II of the Constitution regarding the denial of citizenship rights of migrants to Pakistan do not apply to the permanent residents of the state of Jammu and Kashmir.

The consequence of Article 370:

Due to this article, the Indians feel alienated to go the land which belongs to each citizen.

The citizens living outside India cannot buy land in J & K.

Any female citizen of J&K if marries any outsider is stripped of its rightful ancestral land.

What if Article 370 is repealed?

Repealing Article 370, which was prescribed in the constitution as a temporary provision has been a debatable issue since then.

The govt if wants in its full capacity can repeal article 370, but thus abrogation could lead to serious consequences:

1. If Art 370 is repealed, then there might be chances that the foreign powers such as Pakistan and China would try and influence people of the valley against India to start protesting against the government.
2. There might be serious repercussions as it will lead to a rise of militancy in Kashmir with greater vigor as people would think it as an act of pressuring them.
3. The image of India being an exemplary democracy would take a severe beating and parallels would be being drawn with countries like Isreal which has forcefully occupied Palestine.

Way Out:

The way out of such a situation is the amendments that are being previously done:

Frequent Confidence Building Measures such as Operation Sadhbhavana by the Indian Army would build trust and faith amongst the people of the country.

Somehow, the arguments in favor and against the abrogation of Article 370 are equally valid and perfectly balanced. People arguing for abrogation of the Article say it has created certain psychological barriers between the state and the rest of the country thereby making it the root cause of all the problems.

Article 370 raises doubt on the union of the state with India. In a way, Article 370 encourages secessionist activities in the country. It constantly reminds that the state of Jammu and Kashmir is yet to merge completely with India.

It is the time to construct a logistic interpretation of the article, keeping in mind the intention of the framers of the constitution.

The framers of the constitution must have incorporated a provision for the amendment with an intention to provide a bit of flexibility to keep pace with ever-changing needs and functions of society.

They never intended to bestow the operation of the constitution with complete rigidity. It is true that the Amendment of Article 370 in present circumstances is nothing else but a myth.

3 PUBLIC INTEREST LITIGATION (PIL)

The topic 'Public Interest Litigation' forms part of GS paper 2 of UPSC and 'Polity section' of State PCS exams. This is very important from the exam point of view. In this article, all relevant information regarding PILs is well covered.

Public Interest Litigation (PIL)

"Law without justice is wound without care."

3.1 Introduction

- Public Interest Litigation(PIL) is a legal measure that can be initiated in a court of law in the interest of nebulous entity or case in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. It is the power given through judicial activism.
- Any citizen can approach the court by filing litigation under Article 32 of the Constitution to the Supreme Court, under article 226 of the Constitution to the High Court and under Section 133 of CRPC to the Court of Magistrate.
- The efforts of Justice P.N.Bhagwati and Justice V.R.Krishna Iyer played key role in bringing this juristic revolution.
- The principles enshrined in Article 39A (Equal justice and free legal aid) of the Constitution are in consonance with the concept of PIL.
- PIL can be filed against the state or central government, municipal authorities, and not any private party. Definition of the state is as given in Article 12 of the Constitution.

3.2 Objectives

- To secure equal access to justice for common people, especially destitute, underprivileged masses.
- To broaden the issue that affected classes of consumers and the public at large.
- Rejecting the laissez-faire notion of the traditional justice system.
- To make the judicial process more democratic through awareness, assertiveness and resources for judicial redressal.

Categories that will be entertained as PIL

1. Matters related to bonded labour.

2. Matters related to neglected children.
3. Non-payment of minimum wages to workers.
4. Complaints related to harassment, death in jail, speedy trial etc.
5. Petitions against police for not filing a case, harassment of bride, rape, murder, kidnapping etc.
6. Litigation against atrocities on women.
7. Complaints related to harassment of SC/ST people.
8. Petition pertaining to the environment.

3.3 Pros of PIL

- It is a measure that instrumentalises free legal right by giving inexpensive remedy at a nominal rate of court fees.
- The court can focus on larger public interests involving issues related to human rights, environment and consumer welfare.
- When the executive is not performing its duties properly, the judiciary can haul up them.
- Provides check and balance against arbitrary and mala fide use of executive discretion.
- Court orders appointed commission can investigate the matters where the petitioner is socially or economically weak and unable to provide evidence to support his case.
- Poor and exploited people can obtain justice because of radical changes and alterations made in locus standi requirements.
- Provides legal representation to previously unrepresented voices.

3.4 Cons of PIL

- It became an instrument of harassing innocents because of frivolous cases that can be filed at nominal fee charges.
- Because of relaxation in locus standi requirements, privately motivated interests pose as public interests.
- Criticism against the judiciary, for judicial overreach and passing of orders that are unable to implement effectively.
- Delayed justice because of the addition of frivolous PIL to already overburdened judiciary.
- Abuse by political pressure groups, NGOs influenced with external interests etc. blocking the developmental process.

3.5 Challenges

- Rampant misuse of PIL than its genuine use has generated suspicion in the disguise of so-called public interests.
- Delay in legitimate administrative actions for obtaining political gain by some political pressure groups.
- No clear way to find out vested aims and interests.
- Still, many people are unaware of the mechanism and procedure to file it, limiting its utility.

3.6 Landmark Cases

- Hussainara Khatoon vs. the State of Bihar: It is considered as the first case of PIL in India. It was filed by various prisoners of Bihar jail. Supreme court bench headed by Justice P.N.Bhagwati upheld that prisoners should have access to free legal aid and fast hearing.
- People's Union for Democratic Rights vs. Union of India: In this case, the Supreme court held that a third party could seek intervention directly through a letter or other means in case another party's fundamental rights are violated.
- DC Wadhwa vs. State of Bihar (1986): Petition was filed by a professor of political science to ensure proper implementation of Constitutional provision. He challenged the practice of re-promulgation of ordinances without getting it passed by the legislature.
- C.Mehta vs. Union of India(1988): PIL was filed to prevent Ganga water pollution. Supreme Court, in this case, recognized the right to a healthy environment as a fundamental right under Article 21.
- Shreya Singhal vs. Union of India: This was a landmark case for freedom of speech. Supreme Court quashed section 66A which had some arbitrary provision acting against free speech.

3.7 Way Forward

- Court need to keep in mind that under the guise of redressing grievances, PIL does not breach the separation of power principle set by Constitution.
- Introduce punishment for those who abuse the power given by PIL.
- The petitioner should be taken into account and proper mechanism should be drawn to ensure responsibility.
- The long-pending decisions should not hinder the development process or be responsible for red-tapism.
- The fast-tracking mechanism can be availed for pending litigations.

Conclusion

PIL is playing key role in bringing social change. It is an institutional innovation for the welfare of society. Looking at changing needs of the time, PIL machinery is undergoing reconstruction or rethinking for development prospects so that deserving people should be awarded justice and those who misuse should be punished.

Indian Polity is an important subject in General Studies sections. In every competitive exam in the GS section, there are questions related to Amendments in the Indian Constitution are asked. In this post, we sharing you with a full list of "Important Amendments in the Indian

4 CONSTITUTION

India's constitution is neither rigid nor flexible. Parliament is empowered to amend the Indian Constitution under Article 368, subjected to 'Basic structure of Constitution'. It is done in three ways:

1. By simple majority

2. By special majority

3. By special majority with ratification by half of the states.

Important Amendments in the Indian Constitution

First Constitutional Amendment Act, 1951

• Added Ninth schedule to protect land reforms and other laws from the scrutiny of Judicial review.

• Insertion of new Article 31A and Article 31 B.

• Amended Article 19 by adding three more ground of reasonable restriction on freedom of speech and expression.

Seventh Constitutional Amendment Act, 1956

• State reorganization on a linguistic basis. Abolished classification of states into four categories and reorganized them into 14 states and 6 UTs.

• Appointment of a Governor for two or more states.

• Establishment of common High Court for two or more states, extended jurisdiction of the High Court to union territories. Appointment of additional and acting judges of High Court.

• Insertion of new Article 350 A (instruction in mother-tongue at primary education to children belonging to linguistic minority) and 350B (Special Officer for linguistic minorities is provided) in part XVII.

Eighth Constitutional Amendment Act, 1960

• Extended reservation of seats for the SCs and STs and special representation for Anglo-Indians in the Lok Sabha and state legislature.

Twenty-Fourth Constitutional Amendment Act, 1971

• Amended Article 368 and Article 13, affirming the power of Parliament to amend any part of the Constitution including fundamental rights.

• When an amendment to the Constitution adopted by both Houses of Parliament is submitted to the President for his approval, he is obliged to give his consent.

Twenty-Fifth Constitutional Amendment Act, 1971

• Curtailment of the fundamental right to property.

• Insertion of new Article 31 C, which provides that if any law is passed in order to give result to the DPSP contained in 39(b) and (c), that law will not be considered to be void on the ground that it removes or reduces any of the rights under Article 14, 19 or 31 and will not be challenged on the ground that it doesn't give effect to those principles.

Twenty-Sixth Constitutional Amendment Act, 1971

• Insertion of Article 363 A giving effect to the abolishment of Privy purse paid to former rulers of princely states.

Forty-Second Constitutional Amendment Act, 1976

• Amendment in Preamble by addition of three words- ‘Socialist’, ‘Secular’ and ‘Integrity’.

• Addition of new Part IVA (Article 51 A) for fundamental duties.

• Insertion of new Article 31 D for saving laws in respect of anti-national activities, taking precedence over fundamental rights.

• Insertion of new Article 32 A for Constitutional validity of State laws not to be considered in proceedings under Article 32. Also added Article 226 A for

Constitutional validity of Central laws not to be considered in proceedings under Article 226.

• Insertion of three new Articles regarding DPSP.

(i) Article 39 A: Free legal aid and Equal justice

(ii) Article 43 A: Participation of workers in the management of industries and

(ii) Article 48 A: Protection and improvement of environment and safeguarding of forests and wildlife.

• Curtailment of power of Supreme Court and High Court with respect to judicial review and writ jurisdiction.

• Made Constitutional amendment beyond judicial review.

• The tenure (period) of Lok Sabha and State Legislative assemblies raised to 6 years by amending Article 83 and Article 172.

• Frozen seats in Lok Sabha and State

• Parliament is empowered to decide the powers, privileges and immunities of the members and the committees of each House of Parliament and State Legislature by amending Article 105 and Article 194.

• Added new Part XIV regarding administrative tribunal and tribunal for other matters under Article 323 A and 323 B.

• Addition of new Article 257 A for assistance to States by the deployment of armed forces or other forces of the Union.

• Creation of All India Judicial Services under Article 236.

• Facilitated a Proclamation of emergency in operation in any part of the territory of India.

• Made President bound by the advice of Council of Ministers by amending Article 74.

• Amendment in Seventh Schedule by shifting five subjects from the state list to the concurrent list

These are: (a) education, (b) forests, (c) protection of wild animals and birds, (d) weights and measures (e) administration of justice.

• Extended one-time duration of President's rule from six months to one year.

Forty-Fourth Constitutional Amendment Act, 1978

• Substituted term 'Armed rebellion' with earlier 'Internal disturbance' in case of national emergency.

• President can proclaim emergency only on the basis of written advice tendered by the cabinet.

• Removal of right to property from the list of fundamental right and recognized as a mere legal right.

• Provided that during national emergency fundamental right guaranteed under Article 20 and Article 21 cannot be suspended.

• Restored the original term of Lok Sabha and State Legislative assembly to five years.

• Restored the power of Election Commission in deciding matters related to election dispute of President, Vice-President, Prime Minister and Speaker of Lok Sabha.

• Guaranteed right of the media to report the proceedings in Parliament and the State Legislatures freely and without censorship.

• Set some procedural safeguards with respect to a national emergency and President's rule.

• Restored the powers of Supreme Court and High Court taken away in earlier amendments.

• In the case of issuing ordinances, the amendment did away with the provision that made the satisfaction of the President or Governor as final justification.

• President can now send back the advice of cabinet for reconsideration. Reconsidered advice, however, is binding on the President.

Sixty-First Constitutional Amendment Act, 1988

• Proposed to reduce the voting age from 21 years to 18 years for Lok Sabha and State legislative assembly election.

Sixty-Ninth Constitutional Amendment Act, 1991

• Granted the National Capital a special status among the Union territories to ensure stability and permanence. Amendment also provided with a Legislative Assembly and a Council of Ministers for Delhi.

Seventy-Third Constitutional Amendment Act, 1992

• Added new Part IX that gave Constitutional status to the Panchayati Raj Institution.

Inserted new Eleventh schedule having 29 functions of Panchayat.

Seventy-Fourth Constitutional Amendment Act, 1992

• Granted Constitutional status to Urban Local Bodies. Added 'The Municipalities' as new Part XI-A in the Constitution. Inserted Twelfth schedule having 18 functions of the municipality.

Eighty-Fourth Constitutional Amendment Act, 2002

• Readjustment and rationalization of territorial constituencies, without altering the number of seats allotted in the Lok Sabha and State Legislative assemblies to be fixed on the basis of 1991 census till 2026.

Eighty-sixth Constitutional Amendment Act, 2002

• Inserted new Article 21-A in the Constitution which provided for free and compulsory education to all children of the age of 6 to 14 years.

• Inserted Article 51-A as a fundamental duty which provided for the education of a child between the age of 6 and 14 years.

• Changes in the DPSP Article 45 which provided free and compulsory education for all children up to the age of 14 years.

Eighty-Seventh Constitutional Amendment Act, 2003

• Readjustment and rationalization of territorial constituencies in the states to be fixed as per 2001 census instead of earlier 1991 census.

Eighty-Ninth Constitutional Amendment Act, 2003

• Creation of two separate bodies out of combined body namely 'National Commission for Scheduled Castes' under Article 338 and 'National Commission for Scheduled Tribes' under Article 338-A.

Ninety-First Constitutional Amendment Act, 2003

• Inserted new clause Article 75 (1A): provides that the total number of ministers, including the PM, in the COM shall not exceed 15% of the total number of members of LS.

5 PM- PRIME MINISTER COM- COUNCIL OF MINISTERS LS- LOK SABHA

• Inserted fresh clause Article 75 (1B): Provides that a member of either House of Parliament belonging to any political party that is disqualified on grounds of defection from being a member of that House shall also be disqualified from being a Minister.

• New clause Article 164(1A): Provides that the total number of ministers, including the CM, in the COM shall not exceed 15% of the total number of members of the State Legislative Assembly.

6 CM- CHIEF MINISTER COM- COUNCIL OF MINISTERS

• Inserted new clause Article 164 (1B) which says, a member of Legislative assembly of the State or either House of State Legislature belonging to any political party who is disqualified on the ground of defection for being a member of that House shall also be disqualified to be appointed as a minister.

• Removal of the provision in Tenth Schedule pertaining to an exemption from disqualification in case of the split by one-third members of the legislature party.

Ninety-Seventh Constitutional Amendment Act, 2011

• It gave Constitutional protection to Co-operative societies by making the following changes.

• Right to form Co-operative society as a fundamental right under Article 19.

• Insertion of the new Directive Principle of State Policy under Article 45-B for **promotion of Co-operative societies**.

• Added new Part IX B under the Constitution as 'The Co-operative societies' under Article 243-ZH to 243-ZT.

Ninety-Ninth Constitutional Amendment Act, 2014

• Insertion of new Article 124-A which provided for the establishment of National Judicial Appointments Commission (NJAC) for the appointment and transfer of judges of the higher judiciary. However, it was later struck down by apex court and

held as unconstitutional and void.

Hundredth Constitutional Amendment Act, 2015

• This amendment gave effect to the acquisition of territories by India and transfer of certain territories to Bangladesh in pursuance of the Land Boundary Agreement and its protocol entered into between the Governments of India and Bangladesh.

Hundred and First Constitutional Amendment Act, 2016

• Insertion of new Article 246-A, 269-A and 279-A for enrollment of Goods and Service Tax (GST) that made changes in Seventh Schedule and course of inter-state trade and commerce.

Hundred and Second Constitutional Amendment Act, 2018

• It provided for the establishment of National Commission for Backward Classes (NCBC) as a Constitutional body under Article 338-B of the Constitution. It is vested with the responsibility of considering inclusion and exclusion of communities in the list of backward communities for reservation in jobs.

Hundred and Third Constitutional Amendment Act, 2019

• In relation to the current reservation, the reservation of up to 10% for "economically weaker segments" in academic organizations and government jobs has been made.

• It gives effect to the mandate of the Directive Principle of State Policy under Article 46.

• It added new provisions under Article 15 (6) and Article 16 (6) to permit the government to ensure the advancement of "economically weaker segments."

7 LOCAL GOVERNMENT SYSTEM IN INDIA

Panchayati Raj System is a significant landmark in the evolution of grass root democratic institutions in the country. It showcases Representative democracy turning into a participative democracy. Ministry of Panchayati Raj celebrates 24th of April, every year, as **National Panchayati Raj Day** as on this very day, the 73rd Constitutional Amendment Bill got the President accent. This gave constitutional backing to the Panchayati Raj Institution in India.

7.1 LOCAL GOVERNMENT SYSTEM IN INDIA

7.1.1 BACKGROUND

Local self-government in India has been a topic of debate even before independence. Where few like Gandhi, wanted village republics and principle of subsidiarity, Nehru and Ambedkar favoured a strong centre. Due to the differences, only Panchayati raj got mentioned in the constitution at the time of its framing under DPSP. However, after several deliberations and bills, ultimately in 1992 through 73rd and 74th Amendment acts, Panchayati raj and urban governance were given constitutional status respectively.

7.1.2 Evolution of Panchayati Raj System

The first Panchayati raj system in India was established by the state of Rajasthan in 1959, in Nagaur district followed by Andhra Pradesh. Thereafter the system was adopted by most of the status. The major concern regarding the local self-government was its architecture, amount of power to be devolved, finances etc. Several committees were constituted by respective union governments to devise a method for the same.

Some of the **important committees** are:

1. Balwant Rai Mehta Committee
2. Ashok Mehta Committee
3. G V K Rao Committee
4. L M Singhvi Committee
5. Thungon Committee
6. Gadgil Committee

After several committees, Rajiv Gandhi government introduced 64th constitutional amendment bill however it was defeated in Rajya Sabha on the ground that it sought to strengthen centralization in the federal system. However, the Narasimha Rao government modified the bill removing all the controversial aspects and introduced the bill. Both the 73rd and 74th amendment act was hence passed to give constitutional status.

8 73rd Constitutional Amendment Act of 1992

8.1 Salient features of the act

- The act added Part-IX to the constitution of India named as “The Panchayats”. It contains provisions from Article 243 to 243 O. Also a new schedule, the eleventh schedule was added which deals with 243 G. It has 29 functional items of the panchayats.
- The act gave practical shape to a DPSP, Article 40 of the constitution.

- The act consists of some mandatory and few voluntary provisions to be adopted by states.
- Gram Sabha acts as the foundation of the Panchayati raj system. The body consists of all persons who are registered as electorates in the corresponding villages. It also provides for a mandatory three-tier structure (village, intermediate and district levels) bringing uniformity throughout the country. But a state with a population less than 2 Million are exempted from constituting at an intermediate level.
- The Act provides that all members at all the three levels shall be elected directly by the people. Chairman at the upper two levels shall be elected indirectly and it is voluntary on the state legislature to have provisions regarding panchayats.
- Seats are reserved for SC and ST in every panchayat in proportion to their population. It is on the state to make voluntary provisions regarding reservations of offices of chairperson at all three levels. Also, not less than $1/3^{rd}$ of the seats and office of the chairperson shall be reserved for women.
- The panchayats shall be of 5 years' duration and the elections shall be constituted before the expiry of the tenure of existing.
- The act creates a post of state finance commission and state election commission for the devolution of finances and conduct of elections respectively. It would upon the state to decide the ways of auditing and mechanisms for accounts of panchayats.
- The Act gives power to the state legislative assembly to formulate laws regarding finances of panchayat and how and on what terms they can levy, collect and appropriate taxes.
- Several states and areas are exempted from the law. Also in the scheduled areas under schedule fifth, PESA Act of 1996 shall be applied. The president may direct, how the provisions of the act should apply to union territories.

8.2 Reasons for ineffective performances

- Although given constitutional status, it is said that the act only provides skeleton leaving much on the state to decide. Several states have not taken adequate mechanisms to strengthen grass-root democracy.
- There has been reluctance in the transfer of 3Fs (Funds, Functions and Functionaries). They are hence unable to discharge the responsibilities. It is imperative that they should have enough funds to work, however, neither they have the power to charge nor finances are devolved from states or centre.
- It is seen that the auditing mechanisms are very weak and there is immense corruption among the leaders in the panchayats. There are no regular meeting of Gram Sabha and also many times, the panchayats even in reserved areas are dominated by upper castes.
- Bureaucracy has got immense power in the country and further many a times gram panchayats have been placed as subordinates to them. Even, due to egoistic nature and apartheid, there is little respect provided by the bureaucrats to the leaders.

- Many a time, funds are tied to certain schemes or policies and panchayats have been made only an executive body. They despite knowing the problems at grass root cannot take decisions to spend the funds themselves.
- The state acts do not lay out the powers of the Gram Sabha. Even procedures for their functioning has not been stated. They can be a powerful body to evaluate and audit policies and schemes and their execution at all three levels of government.
- Infrastructure is in a very poor state. They lack offices, computers and internet connections. The database for planning, monitoring etc. is absent in many cases. Also, the panchayats lack optimum human resources. Many representatives are semi-literate or illiterate and do not have digital knowledge.
- Also, there have been cases of Pati Panchayat where powers are in the hands of the husband even if a woman is elected from there.

Way Forward

- States should devise proper mechanisms to devolve funds to the panchayats. They should be conferred power to generate their own revenue. This can be done by including the third tier in GST or can tax lands or local activities. State finance commission should be empowered and it should make the governments accountable regarding this.
- Proper uniform cadre should be created for the panchayats. Education programs for the representatives should be conducted, teaching them about their powers, roles and responsibilities.
- Powers of the panchayats should be properly demarcated. Gram Sabha should be empowered and regular meetings must be conducted. It should take place under a video recording camera. Social auditing mechanisms should be developed.
- Office building and infrastructure creation should be linked to the MGNREGA so that employees can also be created.