GS PAPER 2

Constitution, Polity, And Governance – Aug'18

SC Rules Out Protest Is A Part Of Polity

Syllabus: Indian Constitution: Historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

In News

- The Supreme Court has passed an extremely significant order, restoring the right of protest at Jantar Mantar and at India Gate.
- Till the 1980s, Indian citizens had unrestricted rights to hold dharnas, protests and agitations in the Boat Club lawns near India Gate along the Rajpath in Delhi. After the Mahendra Singh Tikait led agitation in 1988, protests at the Boat Club lawns were restricted. The entire Central Delhi region, where several government establishments have their offices turned into a fortress and the fundamental right of the citizens to protest in this area was completely denied.
- With the ban on protests in all of central Delhi, a further ban on protests at Jantar Mantar, was following the National Green Tribunal (NGT) order last year. So, a separate civil appeal was filed challenging the NGT ban on protests at Jantar Mantar.

Importance Of Right To Protest

- ***Crucial role:*** Protests play a crucial role in the civil, political, economic, social and cultural landscape of any progressive democracy.
- ***Bring radical transformation:*** Peaceful resistance has been pivotal in bringing about radical positive transformation in the country's socio-political fabric.
- ***Protest where it's most visible:*** The essence of this fundamental right, as elucidated in international standards and verdicts of courts in other countries, is that protests will be held at places where they are most visible *i.e.* near the seat of power.
- ***SC decision:*** The courts have also upheld that a citizen's fundamental right to protest and assemble peacefully without arms is a distinguishing feature of a democracy. In **Anita Thakur and Ors v. Government of J & K and Ors (2016)**, the Supreme Court pointed out: "We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under **Articles 19(1)(a), 19(1)(b) and 19(1)(c)** of the Constitution."

Hurdles

- ***Room for executive intervention:*** The judgment seems to leave a lot of scope for executive intervention as the police commissioner will frame the regulations for the limited use of designated spaces. Thus, the idea of prior permission for protests also severely restricts the fullest realization of a constitutional right and subjects the exercise of this right to executive discretion.
- ***Technology as justification for restricting this right:*** In upholding the right and yet SC stated that citizens cannot demand a particular place for protest in the age of technology and social media. But the Court has ignored how mass organisations of farmers, Dalits, Adivasis, landless workers are far removed from the advances in digital technology or lack the means

of harnessing them for dissent. Moreover, social media can't be a substitute for physical assembly and protest.

- ***Further dilution:*** Subjecting the exercise of the right to the sensitivities of foreign dignitaries or high functionaries using the area is an unreasonable restriction. Thus, it amounts to a dilution of this right.

Punjab House Passes Bills To Curb Sacrilege

Syllabus: Indian Constitution: Historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

In News

Punjab Assembly unanimously passed Bills for an amendment to the Indian Penal Code and the Code of Criminal Procedure to make desecration of all religious texts punishable with life imprisonment. The amendments would need the *assent of the President*.

Provisions Of The Act

- ***Imprisonment for life:*** The **IPC (Punjab Amendment) Bill, 2018**, has inserted **Section 295AA** to provide that "whoever causes injury, damage or sacrilege to Sri Guru Granth Sahib, Srimad Bhagavad Gita, the Holy Quran and the Holy Bible with the intention to hurt the religious feelings of the people shall be punished with imprisonment for life.
- ***Amendment in Section 295:*** It also states, In the IPC, 1860, in its application to the State of Punjab in **Section 295**, for the words **"two years"** the words **"10 years"** shall be substituted.

Negative Implications

- ***Sign of intolerance & authoritarianism:*** As we have seen in the case of neighboring Pakistan, the progressive strengthening of anti-blasphemy laws during 1970s was a sign of a toxic combination of greater intolerance and authoritarianism.
- ***Leads to conflict:*** Making religious sentiments the basis for law, is a recipe for competitive political mobilization and conflict and not of peace.
- ***Against secularism:*** Using the state power to enforce the sacred aspect of the religion messes with the concept of secularism.
- ***New law was not needed:*** There are already Sections such as **Section 295-A** and **Section 153-A** of the IPC that give scope to prosecute people in the name of protecting the feelings of a section of society. Thus there was no need for a new law.
- ***Chances of misuse:*** The proposed amendments are vaguely worded so there is a chance of misuse of the said provisions. Moreover, it has sparked fears of misuse by the ruling dispensation to subdue and silence political opponents and the weak and to restrict the freedom of expression and protest in general.

Way forward

There are already laws in the IPC that only need to be implemented more impartially and efficiently to keep and enforce the communal peace.

The No Confidence Motion

Syllabus: Parliament and State Legislatures- structure, functioning, conduct of business, powers & privileges and issues arising out of these.

In News

- ***Introduction:*** After 15 years, Lok Sabha has debated a No confidence motion (NCM). In a parliamentary democracy, a government can be in power only if it commands a majority in the directly elected House. **Article 75(3)** of our Constitution embodies this rule by specifying that the Council of Ministers are collectively responsible to Lok Sabha.
- ***Lok Sabha rule on NCM:*** The rules of Lok Sabha provide a mechanism for testing this collective responsibility. They allow any Lok Sabha MP who can garner the support of *50 colleagues*, to introduce a motion of no confidence against the Council of Ministers. Thereafter, a discussion on the motion takes place. MPs who support the motion highlight the government's shortcomings and the Treasury Benches respond to the issues they raise.
- ***History of NCM:*** It was during the **third Lok Sabha** in 1963 that the first one was moved by **Acharya J B Kripalani** against the government headed by Prime Minister Jawaharlal Nehru. The first no-confidence motion that led to the falling of a government was moved by **Y B Chavan** in 1979 against the government of Prime Minister Morarji Desai. This time it will be **the 27th** No confidence motion in our Parliamentary history.

NITI Aayog Proposes Nodal Energy Ministry

Syllabus: Structure, organization, and functioning of Executive and Ministries/Departments

In News

- The NITI Aayog has proposed in *Draft National Energy Policy* a common nodal Energy Ministry on the lines of the model followed in various other countries. The National Energy Policy, which has been in the works since 2015 will replace the Integrated Energy Policy of the erstwhile UPA government and lay the road map for the government's push towards clean energy and reducing fuel imports. The broad objectives of the policy are enhanced energy independence, increased access at affordable prices, greater sustainability and higher economic growth.
- The Aayog has proposed setting up of a single, all-powerful nodal ministry under which all existing ministries can be subsumed.

Benefits

- ***Resolve issues between different ministries:*** If implemented, the proposal would help sort out governance issues among the ministries of petroleum and natural gas, power, coal, new and renewable energy, and the Department of Atomic Energy.
- ***Speed up reform process in Energy sector:*** With one common ministry all crucial decisions would be taken unilaterally with no inter-ministerial differences, which in turn would speed up the reform process in the sector.
- ***Speed up decision-making:*** The setting up of unified Ministry will also speed up decision-making process.

Increasing The Retirement Age Of Judges

Syllabus: Structure, organization, and functioning of Judiciary and Related Issues

In News

- The idea of increasing the age of retirement, which has gained traction in recent times has now been brought into sharp focus by Justice Kurian Joseph of the Supreme Court.
- The issue of increasing the age of retirement for judges featured in the **Venkatachaliah Report** (Report of the National Commission to review the working of the Constitution) as early as 2002. A half-hearted attempt was made in 2010 to bring in the Constitution (**114th Amendment**) Bill to raise the retirement age of High Court judges to 65 from 62 years. The amendment never came through.

Need For Increasing Retirement Age

- ***The case in Western democracies:*** A retirement age of around 70 for judges is commonplace in most Western liberal democracies. Some of them even opt for tenures for life. In the Supreme Court of the United States and in constitutional courts in Austria and Greece, judges are appointed for life. In Belgium, Denmark, Ireland, the Netherlands, Norway and Australia, the retirement age for judges is 70 years. Judges in Canada and Germany retire at 75 and 68, respectively.
- ***Bring in years of experience:*** The time has come for India to consider increasing the retirement age for judges of the High Courts and the Supreme Court to 70. This will have significant benefits as senior serving judges will bring with them years of experience.
- ***Dealing with backlog of cases:*** The backlog of cases is touching 3.3 crore. According to **National Judicial Data Grid data**, more than 2.84 crore cases are pending in the subordinate courts, 43 lakh cases are pending before the High Courts, and 57,987 cases are pending before the Supreme Court. The fact that judges in India are retiring at 62 and 65 years is not helping alleviate this problem either. Thus increasing the retirement age will address the problem of mounting arrears.
- ***Act as a buffer:*** One aspect, which is as the Indian economy grows, the ratio of litigation to population will increase exponentially. Advanced economies such as Australia, Canada, France, the U.S., the U.K. and Japan have much higher litigation to population ratios. Thus, it will be a buffer against impending litigation explosion.
- ***Independence of judiciary:*** It will ensure and render post-retirement assignments unattractive and as a consequence, strengthen the rule of law and the independence of the judiciary, both of which are crucial to sustain democracy.

Way forward

The judge-population ratio in India is among the lowest in the world at **19.66 judges per million** people as of today. In 2016, the U.K. had 51 judges per million people, the U.S. had 107, Australia had 41 and Canada had 75. Thus it is also necessary at the same time to increase the number of judges in the pool to enable the judiciary to deal with the enormous pendency of cases.

SC Asks States To Appoint Managers To Unclog Courts

Syllabus: Structure, organization, and functioning of Judiciary and Related Issues

In News

- The Supreme Court has recently ordered state Chief Secretaries to form panels, which would ensure that each District or Sessions Court would have a manager armed with an MBA degree to unclog subordinate courts.
- The subordinate courts in the country are creaking under the weight of over **2 crore cases**.

Benefits

- ***Efficiency improvement:*** Such court managers would enable district judges to devote more time to their core work *i.e.* judicial functions. This in turn, would enhance the efficiency of the district judicial system.
- ***Identify weakness to resolve the same:*** These court managers would also help in identifying the weaknesses in the court management systems and recommending workable steps under the supervision of their respective judges for rectifying the same.

Prison Reforms

Syllabus: Structure, organization, and functioning of Judiciary and Related Issues

In News

The Supreme Court has decided to constitute a committee under the chairmanship of a retired Supreme Court judge to suggest measures for reforming the Prisons.

Issues in Jails

- Over **two-thirds of India's prisoners are undertrials** despite the **Section 436A of the Code of Criminal Procedure** stipulating that a prisoner shall be released on bail if he/she has undergone detention of half the maximum period of imprisonment specified.
- **Lok adalats are not held regularly in prisons** which are essential for disposal of petty offences for undertrials.
- In many jails, **overcrowding is over 150 per cent** due to lack of sufficient capacity in prisons and presence of undertrials.
- Medical facilities and general conditions of **hygiene & food in the jails** are not satisfactory.
- **Counselling centers in prisons are inadequate** which are important for young offenders and mentally sick prisoners who need special attention.
- There is **no proper curriculum for education** in many prisons due to which the prisoners fail to get decent jobs after their release.
- **Shortage of Prison staff (around 30%) and poor training** received by them renders the management of prisons ineffective.
- There is a lack of separate provision for ***women jails*** at many places. Also, there is shortage of female doctors for women prisoners.
- The court is also concerned about **children who have to live in jail with their jailed mothers** up to the age of six.

- Several states have not yet appointed the **board of visitors** who regularly inspect prisons to ensure that they are being run in accordance with rules.

Way Forward

- **Provide free legal aid for those who can't afford it**. This will help prisoners in understanding their legal rights and legal procedure about filing appeals.
- **Sensitization programs and training sessions** should be conducted regularly to check hygiene and control health problems in prisons.
- To minimize the incidents of jail wars or fights between inmates, proper **security arrangements should be deployed through the optimal use of ICT**.
- Recruit more **psychologists** to understand the mental condition of prisoners and to reform them.
- **Offer futuristic job-oriented courses** to prisoners which could provide them a decent life after serving the prison term.
- There should be **regular and periodic training** of personnel who deal with inmates to improve jail administration.
- **Shift the subject of 'prisons' from state list to concurrent list** for achieving uniformity across the nation in formulation and implementation of prison provisions.

Two Constituency Norm

Syllabus: Elections and Representation of People's Act

In News

- The government has objected to a plea in Supreme Court to stop candidates from contesting from two different constituencies.
- A Bench led by Chief Justice of India Dipak Misra is hearing the petition filed by advocate Ashwini Upadhyay seeking a declaration that **Section 33(7)** of the Representation of the People Act of 1951, which allows candidates to contest from two constituencies at a time as invalid and unconstitutional. Before the amendment, candidates could contest from any number of constituencies.

In Favour Of Two Constituency Norms

- ***Curtails rights of contesting and choosing:*** Such a limitation infringes on a person's right to contest the polls and curtails the polity's choice of candidates.
- ***Requires legislative amendment:*** The government also said that one-candidate-one-constituency restriction would require a legislative amendment.

Opposition

- ***Suggested also by EC:*** The EC also that it had proposed the amendment of Section 33(7) way back in July 2004. It was one of the 22 urgent electoral reforms the Election Commission had suggested to a Rajya Sabha Parliamentary Standing Committee.
- ***Additional labour and expenditure:*** The poll body has also pointed out that there have been cases where a person contests election from two constituencies and wins from both. In such a situation he vacates the seat in one of the two constituencies. The consequence is that a

by-election would be required from one constituency involving avoidable labour and expenditure on the conduct of that by-election.

- ***Suggestion by the EC:*** The poll body suggested that a candidate should deposit an amount of **Rs. 5 lakh** for contesting in two constituencies in an Assembly election or **Rs. 10 lakh** in a general election. This would be used to conduct a by election in the eventuality that he or she is victorious in both constituencies and has to relinquish one.

Lok Sabha Passes Bill To Allow NRIs To Vote By Proxy

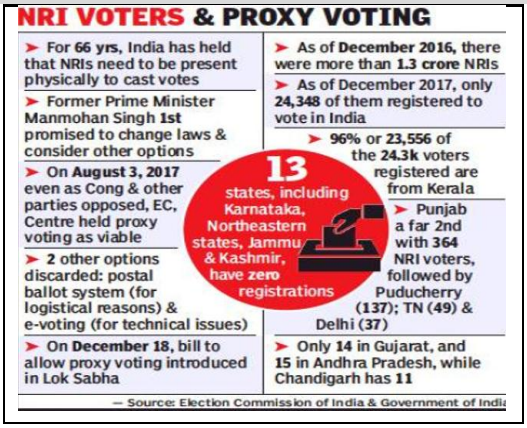
Syllabus: Elections and Representation of People's Act

In News

- The Lok Sabha passed a bill to amend the Representation of the People Act to allow non-resident Indians (NRI) to vote in elections through a proxy. Earlier many NRIs had complained that they were unable to vote in elections and thus the government had decided to allow proxy voting for them.
- Proxy voting essentially allows an absentee voter to nominate someone else in his constituency to cast his vote.
- According to a UN report of 2015, India's diaspora population is the largest in the world at 16 million. Registration of NRI voters in comparison has been low. In 2014, 11846 people were registered as overseas electors, of whom 11448 were registered in Kerala.

Provisions Of The Bill

- ***Amendment bill:*** **The Representation of the People (Amendment) Bill, 2017**, proposes to amend **Section 60** and extend the facility of proxy voting to Indian voters living abroad.
- ***Relevant rules:*** The said rules **(Registration of Electors Rules, 1960)** stipulate the physical presence of the overseas electors in the respective polling station in India on the day of polling. This causes hardship to the overseas electors in exercising their franchise by being present in India on the day of polling.



Concerns About NRI Voting

- ***Possible misuse:*** Several members of the Opposition raised concerns that the proxy voting could be misused.
- ***Proxy may not vote as per NRI:*** There is also a concern that the proxy chosen by an NRI may not vote as per the NRI's choice.
- ***Violates concept of one person one vote:*** The Constitution only allows one vote to every person, but the proxy get a chance to vote again.

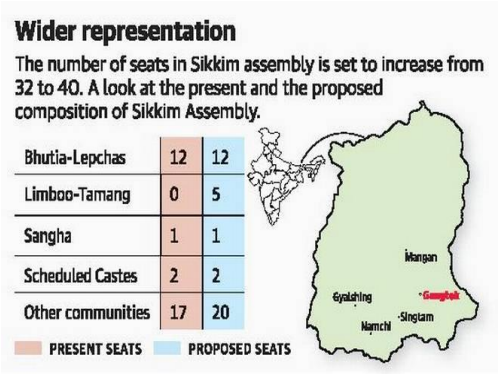
- ***Breaches confidentiality:*** The proxy voting will be against the confidentiality of the voting process.
- ***Distort level playing field:*** There has also been the opposition that the current government has conducted large rallies across countries with NRIs in the audience at the cost of the government money, and smaller parties will not be able to use government machinery in the same manner, thus distorting the level playing field.
- ***No proxy voting right for the domestic migrants:*** There has also been the opposition that the government should first provide the proxy voting rights to the domestic migrant rather than NRIs as they are more in number. Moreover, there is no reason to place NRI voters on a special footing vis-a-vis Indian voters.

More Assembly Seats for Sikkim

Syllabus: Elections and Representation of People's Act

In News

- ***Proposal to increase the seats:*** The Home Ministry has moved the Union Cabinet to increase the number of seats in the Sikkim Assembly from ***32 to 40***.
- ***Inadequate tribal representation:*** The seats are being increased to accommodate the **Limboo and Tamang communities**, notified as Scheduled Tribes in January 2003. Of the eight new seats, five will be reserved for them. A petition was moved in the Supreme Court that Limboos and Tamangs were not adequately represented in the Assembly, and the Court in January, 2016 directed the Home Ministry to take action.



- ***Cabinet committee to decide:*** The Cabinet Committee on Political Affairs, headed by Prime Minister will soon decide on the proposal. If approved, it will be the first expansion of the Assembly since Sikkim merged with India in 1975.

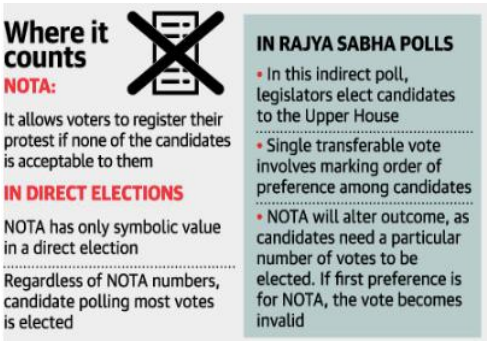
Supreme Court Quashes NOTA in Rajya Sabha Polls

Syllabus: Elections and Representation of People's Act

In News

- The Supreme Court has recently quashed a June 2014 notification of the Election Commission that had allowed use of the None Of The Above (NOTA) option in Rajya Sabha elections.
- The ruling came on a petition by **Shailesh Parmar**, who was Congress chief whip in Gujarat, challenging the EC decision to allow NOTA in Rajya Sabha polls.
- NOTA was introduced in Lok Sabha polls following a 2013 decision of the Supreme Court. The EC extended this to Rajya Sabha polls via a notification in January 2014.

Justification for Quashing



- ***Encourage defection and corruption:*** NOTA destroys the concept of value of a vote and representation and encourage defection that opens the doors for corruption.
- ***Runs against principle of Anti-defection:*** Further where the discipline of the political party/parties matters, it is clear that such choice will have a negative impact. As in the voting in Rajya Sabha elections, there is a whip and the elector is bound to obey the command of the party. The party discipline is of extreme significance. Thus, NOTA in an indirect election would not only run counter to the discipline expected from an elector under the **Tenth Schedule** but also be counterproductive to the basic grammar of the law of disqualification on the ground of defection.
- ***Destroys democratic values:*** The introduction of NOTA in indirect elections completely ignores the role of an elector in such an election and fully destroys the democratic value. As a candidate after being elected becomes a representative of the State and does not represent a particular constituency. The cumulative effect of all these aspects clearly conveys that the introduction of NOTA to the election process for electing members of the Council of States will be an anathema to the fundamental criterion of democracy, which is a basic feature of the Constitution.
- ***For RS NOTA not warranted:*** The exercise of NOTA is not warranted in the voting process of the Council of States where open ballot is permissible and secrecy of voting has no room.
- ***Against the constitutional provisions:*** Moreover the Election Commission cannot sanction the use of NOTA in Rajya Sabha elections by way of mere circulars, which have the effect of overriding the provisions of **Article 80(4),** that provides for proportional representation by means of the single transferable vote.

Cap On Election Expenses By Parties And Candidates

Syllabus: Elections and Representation of People's Act

In News

- At an all-party meeting called by the Election Commission (EC), all major parties except the BJP pushed for a cap on election expenditure by parties.
- The EC has asked the government to amend the **Representation of People's Act** and **Rule 90** of **The Conduct of Elections Rules, 1961**, to introduce a ceiling on campaign expenditure by political parties in the Lok Sabha and Assembly polls. And recommended that it should be either 50% of or not more than the expenditure ceiling limit provided for the candidate multiplied by the number of candidates of the party contesting the election.

Current Scenario

- ***Limits on expenditure by a candidate:*** The EC imposes limits on campaign expenditure incurred by a candidate, not political parties. Expenditure by a Lok Sabha candidate is capped between **Rs 50 lakh and Rs 70 lakh**, depending on the state he/she is fighting from. In Assembly elections, the ceiling is between **Rs 20 lakh and Rs 28 lakh**. This includes money spent by a political party or a supporter towards the candidate's campaign.

- ***Applicable law:*** Candidates must mandatorily file a true account of election expenses with the EC. An incorrect account, or expenditure beyond the ceiling can attract disqualification for **up to three years** under **Section 10A** of **The Representation of the People Act, 1951**.
- ***No limit on expenditure by political party:*** However, expenses incurred either by a party or the leaders of a party for propagating the party's programme are not covered.
- ***Effectiveness of cap:*** There is evidence to suggest that candidates may be spending beyond their ceilings. An analysis of expenses for the 2014 Lok Sabha elections by the nonprofit **Association for Democratic Reforms (ADR)** found that even though candidates complained that the EC's limits were too low and unrealistic, as many as 176 MPs (33%) had declared election expenses that were less than 50% of the limit in their constituency, indicating that candidates may not be providing true accounts of their poll expenses to the EC.

Purpose Of Imposing Cap On Election Expanses

- ***Level playing field:*** Limits on campaign expenditure are meant to provide a level playing field for everyone contesting elections. It ensures that a candidate can't win only because he/she is rich.
- ***Leads to corruption in political arena:*** The **255th Report of the Law Commission** on electoral reforms argued that unregulated or under-regulated election financing could lead to lobbying and capture, where a sort of quid pro quo transpires between big donors and political parties/candidates.
- ***Check on use of unaccounted money:*** The limit will curb the menace of unaccounted money in elections. It will also control the money power used by political parties and their allies.

Law Commission's View

- ***Difficult to monitor:*** The Law Commission was against identifying a ceiling for expenditure by parties. The **255th Report** on electoral reforms said that it would be very difficult to fix an actual, viable limit of such a cap and then implement such a cap.
- ***Underreporting may prevail:*** In any event, as the experience with **Section 77(1)** (which asks candidates to keep correct accounts of all election-related expenditure) reveals that, in the 2009 Lok Sabha elections, on average candidates showed election expenditures of 59% of the total expenses limit. And the same phenomenon of under-reporting will also transpire amongst parties.
- ***Past experience:*** Further the Law commission added that previous experience in prohibiting corporate donations in 1969 did not lead to a reduction in corporate donations. Instead, in the absence of any alternative model for raising funds, it greatly increased illegal, under the table and black money donations.
- ***Parties submit accounts to EC:*** Moreover as all parties have to mandatorily file their income and expenditure accounts with the EC, there is no need for a ceiling on expenses during elections.

Panel Recommends For More Powers To SEBI

Syllabus: Constitutional/Statutory/Regulatory/Quasi-Judicial Bodies

In News

- A high-level committee under **T K Viswanathan** on fair market conduct constituted by the Securities and Exchange Board of India (SEBI) has recommended that the regulator should seek more powers.
- The committee was formed in August 2017 as it was felt that a strong legal framework and strict enforcement actions are required to deal with market abuse and ensure fair market conduct in the securities market.
- The recommendations of the committee assume significance as SEBI is currently probing several high-profile cases where relatives of senior executives, as also various employees, at listed companies have come under scanner. Some of these cases include those related to ICICI Bank, Videocon Industries, Fortis Healthcare and listed companies such as HDFC Bank, Axis Bank and Tata Motors where sensitive financial information allegedly got leaked over WhatsApp before it was formally announced.

Recommendation of The Committee

- ***Overall recommendations:*** The committee's report has suggested a series of changes in rules on market frauds, insider trading, surveillance and investigations.
- ***Power to act against listed companies:*** The committee seeks to empower SEBI to act directly against a listed company, its directors and auditors where its books of accounts are falsified. Rather than rely on provisions of the Companies Act, the committee has sensibly recommended that the SEBI Act be amended to allow SEBI to prosecute entities manipulating accounts. This is a good move given that SEBI has proved a far more proactive regulator than the Ministry of Corporate Affairs.
- ***Power to intercept:*** SEBI be given direct power to intercept calls to aid in investigation, akin to the power granted to the Central Board of Direct Taxes. Sebi currently has powers to seek call data records of those being probed, but it cannot intercept calls. However, recommended that a proper checks and balances must be ensured for use of the power.
- ***Whistle blower policy:*** As the whistle-blowers play a key role in alerting regulators to malpractice and the report recommends that SEBI, **rather than the Central Government,** be empowered to grant immunity to whistle-blowers. And also recommended mandatory whistle blower policies at listed firms.
- ***On Insider trading:*** A searchable list of all immediate relatives and persons living at the same address with those in possession of price-sensitive information should be maintained.
- ***Fraud regulation should cover all:*** For the regulations against frauds should cover all market participants and their employees as well as agents of intermediaries. The report said that due to lack of explicit provision in the regulations, the intermediaries alone are held responsible for any fraud. This gives scope to the employees and agents of these intermediaries to escape after indulging in fraudulent activity, therefore, the scope of the regulations should cover market participants including employees and agents of intermediaries.
- ***Adding new provisions:*** The committee has recommended the inclusion of a new sub-section within the SEBI Act, 1992, which would specifically prohibit devices, schemes or artifices employed for manipulating the books of accounts or financial statements of a listed company to directly or indirectly manipulate price of a listed securities or to hide the diversion, misutilisation or siphoning off public issue proceeds or assets or earnings of a listed company or to be listed company.

Final Analysis

- The Securities Exchange Board of India (SEBI) has also been anointed with sweeping powers to haul up offenders. But this has clearly failed to have a deterrent effect on the conduct of market players with scams, frauds and accounting manipulations cropping up all too frequently at India Inc.
- A couple of recommendations could result in regulatory overreach. One is the suggestion to characterize trading by market players in excess of their verifiable financial resources as fraud. The other is granting SEBI powers to intercept calls. Otherwise, most of the committee's recommendations are worth taking forward and if implemented can significantly raise the bar on the conduct of market players.
- But the sheer number of gaps flagged in this report also highlights the need for an ongoing review and updates to securities market laws at more frequent intervals.

Government Claims RBI Has Enough Power To Regulate Banks

Syllabus: Constitutional/Statutory/Regulatory/Quasi-Judicial Bodies

In News

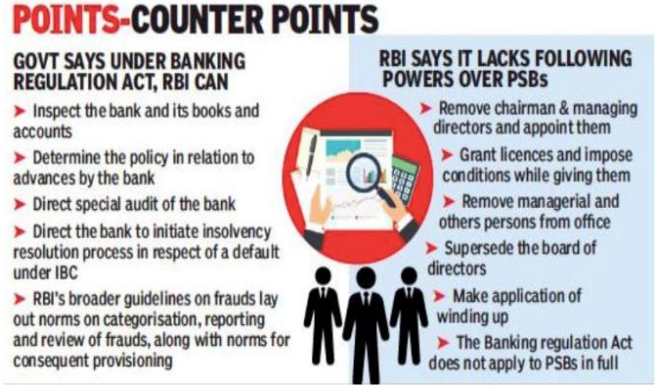
- The government has claimed that the Reserve Bank of India has adequate powers to regulate both public and private sector lenders and put the onus back on the regulator to monitor lapses by all lenders, including state-run ones.
- The central bank had earlier claimed after the Punjab National Bank fraud that state owned banks are not completely regulated by the RBI.

RBI's Contention

Lacuna in 1949 Act: RBI says a banking company is defined in **Section 69 (c)** of that Act as any company, which transacts the business of banking in India. State Bank of India and nationalized banks, which are PSBs are not companies but corporations formed by statutes. They are therefore not banking companies. Thus, Banking regulation Act, 1949 does not apply to PSBs in full. Only those provisions of the BR Act specifically enumerated in **Section 51** of the Act or elsewhere in that Act, apply to PSBs. This forms a great constraint for a regulator and supervisor.

Provisions Empowering RBI As Per Government Claim

- ***The 1949 Act:*** The **Banking Regulation Act of 1949** allows the regulator to inspect the bank and its books and accounts, examine on oath any director or officer of the bank, direct special audits and order the bank to initiate insolvency resolution proceedings in respect of defaults, among others.
- ***RBI's nominee director:*** In the case of nationalized banks and the State Bank of India, the government claimed that the RBI's nominee director is a member of the management committee of the board that exercises the powers with regard to credit proposals above a specified threshold. Besides, the whole-time directors of nationalized banks and the SBI are appointed in consultation with the RBI.



- ***Power to prevent fraud:*** RBI also maintains the Central Repository of Information on Large Credits on aggregate fund based and non fund based exposures of **Rs. 5 crore and above** of all banks. Further, RBI maintains the Central Fraud Registry and banks report all frauds involving amount above Rs. 1 lakh to RBI. In addition, RBI's master directions on frauds lay out guidelines on categorization, reporting and review of frauds, along with norms for consequent provisioning.
- ***Other powers:*** RBI approves the appointment and sets the remuneration of bank auditors and can appoint additional directors on the boards of nationalized banks and SBI's central board.

National Sports University Bill, 2018

Syllabus: Government Policies and Interventions For Development In Various Sectors and issues arising out of their design and implementation.

In News

- The Parliament has passed a Bill to replace an Ordinance promulgated in May to establish a National Sports University in **Manipur.**
- The key objectives of the university are research, development and dissemination of knowledge in physical education & sports sciences and strengthening training programs.
- The University would offer diplomas, bachelor and master's degree in various fields including sports management and sports science.
- There will be enhanced focus on sports coaching, physiology, nutrition, journalism and other areas associated with sports.
- The central government will review and inspect the functioning of University. Thus, **opposition parties have argued that it is not an autonomous university.**
- University will maintain a fund credited with the money received from the central and state government, fees and money received from any other sources (grants & gifts).

Authorities

The University will have the following key authorities:

- An **Executive Council** will be the primary body responsible for all administrative affairs of the University. It will be composed of (i) the **Vice-Chancellor** (appointed by the central government), (ii) **Additional Secretary and Financial Advisor, Ministry of Youth Affairs and Sports** and (iii) **four eminent sports persons.**
- A **Board of Sports Studies** will approve the subjects for research and recommend measures to improve standards of teaching.
- A **Court** to review the policies of the University and suggest measures for its development.

Swadesh Darshan Scheme - Development of North East Circuit

Syllabus: Government Policies and Interventions For Development In Various Sectors and issues arising out of their design and implementation.

In News

- Dr. Najma Heptulla, Governor of Manipur, launched the project "**Development of North East Circuit: Imphal & Khongjom**" being implemented under the **Swadesh Darshan Scheme of Ministry of Tourism**.
- The project covers two sites i.e. Kangla Fort and Khongjom and is the first project under the Swadesh Darshan Scheme being inaugurated in the country.
- Kangla Fort is one of the most important historic and archaeological site of Manipur located in the heart of the Imphal city. It served as the seat of Manipur's power till 1891.
- Under this project, the Ministry has carried out works such as restoration and improvement of outer and inner moat of the old Govindajee temple and rejuvenation of sacred ponds, reconstruction of old rampart, among others.
- **Khongjom** is the place where the **last war of resistance of Anglo Manipur War of 1891** was fought. Under the project a pedestrian bridge and rejuvenation of Kombirei Lake has been carried out.
- Development of Tourism in North Eastern Region is prime area of focus for the Ministry of Tourism. The Ministry is developing the tourism infrastructure in the region under its schemes of Swadesh Darshan and PRASAD.

Swadesh Darshan Scheme

- It is one of the flagship scheme of Ministry of tourism for **development of thematic circuits** in the country in a planned and prioritised manner.
- It intends to **promote cultural and heritage value of the country** by developing world-class infrastructure in the circuit destination.
- Under this scheme, **13 thematic circuits have been identified** for development. They are Buddhist Circuit, North-East India Circuit, Coastal Circuit, Himalayan Circuit, Krishna Circuit, Desert Circuit, Eco Circuit, Wildlife Circuit, Tribal Circuit, Rural Circuit, Spiritual Circuit, Ramayana Circuit, and Heritage Circuit.

PRASAD Scheme

- **Pilgrimage Rejuvenation and Spiritual Augmentation Drive (PRASAD)** aims to beautify and improve the amenities and infrastructure at pilgrimage centres of all faiths and harness the value of religious tourism.
- Under the PRASAD scheme, **13 sites** have been identified for development, namely: Amritsar, Ajmer, Dwaraka, Mathura, Varanasi, Gaya, Puri, Amaravati, Kanchipuram, Vellankanni, Kedarnath, Kamakhya, and Patna.

Srikrishna Panel's Data Protection Report

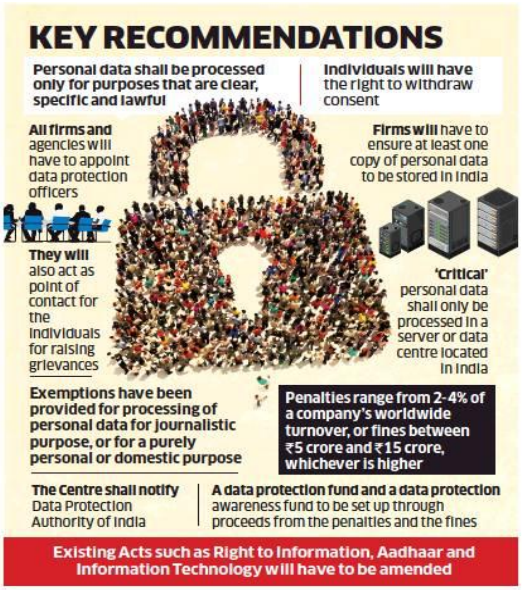
Syllabus: Government Policies and Interventions For Development In Various Sectors and issues arising out of their design and implementation.

In News

- The Srikrishna committee on data protection submitted its much-awaited report titled ***"A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians"*** and its recommendations, if accepted by the government will sharply increase citizen's privacy levels, affect technology and ecommerce companies, and redefine government's access to personal

information. Also, key laws such as those on Aadhaar, Right to Information, and Information Technology may have to change.

- Recently, the ***Clarifying Lawful Overseas Use of Data (CLOUD) Act*,** passed by the U.S. Congress, seeks to de-monopolize control over data from USA authorities. The law will for the first time allow tech companies to share data directly with certain foreign governments. This, however, requires an executive agreement between the U.S. and the foreign country certifying that the state has robust privacy protections and respect for due process and the rule of law.



Key Recommendations

- ***Draft Bill:*** The Justice BN Srikrishna-headed committee submitted its recommendations along with the draft *Personal Data Protection Bill, 2018.*
- ***Citizen Right Over Data:*** Citizens and Internet users will have the final say on how and for which purpose personal data can be used and they will also have the right to withdraw consent and further once the purpose is fulfilled, the data will need to be deleted.
- There will also be the option of ***Right To Be Forgotten***, which entails that the person has the power to restrict or prevent continuing disclosure of personal data by a data fiduciary. However, the applicability of the right to be forgotten will be determined by the adjudication wing of the *Data Protection Authority (DPA)* based on the sensitivity of the personal data sought to be restricted.
- ***Data Protection Authority and Fund:*** It also calls for setting up of a Data protection Authority (DPA) on the lines of regulators such as SEBI and a ***data protection fund*.** The authority will be governed by a board consisting of six whole-time members and a chairperson appointed by the Union government on the recommendation of a selection committee. And the selection committee shall consist of the Chief Justice of India or her nominee (who is a judge of the Supreme Court of India), the Cabinet Secretary, Government of India and one expert of repute who has special knowledge of and professional experience in areas related to data protection, information technology, data management, data science, cyber and Internet laws and related subjects. Moreover, DPA shall perform the following primary functions i.e. monitoring and enforcement; legal affairs, policy and standard setting; research and awareness; inquiry, grievance handling and adjudication.
- ***Critical personal data:*** The draft bill states that the government can notify categories of personal data as critical personal data that can only be processed in a server or data centre located in India.
- ***Sensitive personal data:*** The bill has expanded the definition of sensitive personal data to *13 types*, compared with only five earlier. These include passwords, data relating to finances, health, sexual orientation, sex life, biometrics, genetics, transgender status, intersex status, caste or tribe, religious or political beliefs.
- ***Data localization:*** For technology and Internet companies it recommended on storing one copy of personal data in India i.e. creating a *mirror of data* stored in servers abroad. Moreover,

it said that data localization requirements may be considered for certain sensitive sectors, but may not be advisable across the board.

- ***Significant data fiduciaries:*** Companies processing huge amounts of personal and sensitive data will have to register themselves as significant data fiduciaries with a new authority and undergo data audits, keep records and create a data protection officer post.
- ***Security audit:*** It calls for mandatory security audits of *all companies,* both foreign and Indian; appointment of data protection officers by them.
- ***Exemption for the government:*** The government will be exempted from certain rules applicable to the collection and storage of personal and sensitive data if such processing is required for the functioning of the government or Parliament or for the exercise of any function of a State authorised by law for the provision of any service or benefit to the person from the State or for issuance of any certification, license or permit.
- ***Other exemptions:*** The expert committee also recommended that processing of data for certain interests such as security of the state, legal proceedings, research and journalistic purpose, may be exempt from certain obligations of the proposed data protection law.
- ***Penalties:*** The Committee recommends appointing adjudicatory officer for imposing stiff monetary penalties as well as criminal prosecution has been recommended for companies violating data privacy rules. The Bill makes senior management of companies and heads of government departments accountable for any breach in data privacy. The Bill has mandated penalties anywhere between **two and four percent** of a company's worldwide turnover or fines between **Rs 5 crore** and **Rs 15 crore**, whichever is higher for violations such as failing to notify a personal data breach or large scale profiling or use of genetic data or biometric data which may cause harm to the people concerned. The European Union's **General Data Protection Regulation** (GDPR) also mandates companies violating rules to cough up penalties to the range of 2-4% of their annual revenues or nearly $25 million.
- ***Protection of data regarding children:*** The committee has made specific mention of the need for separate and more stringent norms for protecting the data of children, recommending that companies be barred from certain types of data processing such as behavioral monitoring, tracking, targeted advertising and any other type of processing which is not in the best interest of the child. As it is widely accepted that processing of personal data of children ought to be subject to greater protection than regular processing of data. The justification for such differential treatment arises from the recognition that children are unable to fully understand the consequences of their actions and is exacerbated in the digital world where data collection and processing is largely opaque and mired in complex consent forms.

Positives

- ***Better enforcement:*** The proposed Digital Protection Authority (DPA) as an independent regulatory body will be beneficial in the enforcement of the data protection law.
- ***Public authorities also covered:*** The recommendation for bringing public entities under the ambit of law would not only strengthen the confidence of citizens but also define specific safety measures for their personal data while using e-governance services.
- ***More protection to Aadhar data:*** The committee has proposed enforcement powers to UIDAI like other regulatory bodies and the power to impose civil penalties of up to **Rs. 1 crore** on any entity that violates the Aadhaar Act, besides powers of search, seizure and requisitioning help of the police to stop such a violation. The maximum jail sentence for illegally

accessing Aadhaar data from UIDAI's Central Identities Data Repository has been proposed to be enhanced from three years at present to **10 years**. This will add more teeth to the agency that manages the Aadhaar data. Moreover, the new provision of offline verification proposed by the committee in which Aadhaar holders do not have to disclose their Aadhaar number for routine transactions is also a welcome move.

- ***Incorporate best practices:*** The Bill has also draws features from various global privacy laws, including the EU's GDPR.

Negative

- ***Increase cost of doing business:*** The mandate could, however, prove detrimental to the country's startup and innovation ecosystem since smaller companies or foreign application providers may not be able to afford the additional costs and compliance burden. There are also fears of backlash from the country's IT industry.
- ***Opposition to data localization:*** Data localization requirements are contrary to the goals of promoting a Digital India, as global data transfers were critical to cloud computing and data analytics. Moreover, it will increase cyber security risks since cross border flow of data can lead to better fraud analysis.
- ***Tricky to implement Right to be Forgotten Clause:*** As It will be difficult for the fiduciary to track all the places where data is shared and overall it may not be feasible. Moreover, there could also be operational costs involved for companies to comply with the clause.
- ***Didn't define critical data:*** The committee's decision to leave the definition of critical personal data to the government had put tremendous obligation on the authorities.
- ***Doesn't specify threshold for reporting breach:*** In the report, the committee has explained that due to the complicated nature of breaches it was not advisable to list specific thresholds in the law of what can be reported to the DPA, thus leaving it to the wisdom of the authority to take necessary action.
- ***No timeline for reporting data breach:*** The authority is to determine whether a data breach needs to be reported to the affected individuals or not. This creates a bottleneck and comes in the way of timely notification to affected parties so as to take precautionary measures to prevent further damage. Further, the draft Bill does not specify any timeline for notification once the breach is identified. In the case of GDPR, for instance, it is **72 hours** once the breach is identified.
- ***Broadly carved out exceptions:*** The model for data protection that the committee has proposed leaves too many exceptions, especially when the government is the data collector and user. It proposes that the basic requirement of notice-and-consent could be lowered or waived altogether for "state functions" or social welfare purposes, among others. These are broadly worded carve outs that can be abused and need to be carefully reviewed.
- ***Surveillance reform not suggested:*** The principal shortcoming is that it does not detail a legal framework for regulating state infringement of privacy by Intelligence agencies. The panel had an opportunity to recommend judicial oversight for India's surveillance system, but it did not do so. India does not have any transparency in reporting requirements for the surveillance that is conducted by intelligence agencies. Rather, it calls for a separate law to regulate intelligence agencies and their working.

- ***DPA being overloaded:*** The overloading of the proposed DPA with functions (committee has allotted 24 onerous functions to the DPA) as mentioned in the current form of the Bill could prove to be one of the bottlenecks in the implementation of a data protection framework in India.
- ***Independence of the regulator missing:*** The bill leaves the procedure of selection and tenure of the adjudicating officer entirely up to the central government. It is likely that this regulator will never be sufficiently independent to enforce rights against the government.

Final Analysis

- Given the vast amounts of personal data being collected by private companies and state agencies and their flow across national jurisdictions, the absence of a data protection legal framework in India earlier had been a cause for deep concern.
- Moreover, the need for legislation was also underlined last year with the landmark judgment in *Justice K.S Puttaswamy* v. *Union of India* that held the right to privacy to be a fundamental right.
- Taken together, the draft bill and the report mark a welcome step forward, but there are some grey areas. The exemptions granted to state institutions from acquiring informed consent from principals or processing personal data in many cases appear to be too blanket. The grey areas must spark public and parliamentary debate before a final legislation comes to fruition.