

GS PAPER 2***Constitution, Polity, And Governance*****SC Decision On Reservation In Promotion**

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

In News

- In a historic decision (***Jarnail Singh v. Lachhmi Narain Gupta***), a five judge Constitution bench of the Supreme Court ruled that the reservation in promotion is legally and constitutionally correct but the creamy layer exclusion principle (till date that applied only to OBCs) can be extended to SCs and STs (in promotion) to deny reservation to the elite among the two underprivileged communities.
- In the ***M Nagaraj case (2006)***, a five-judge Bench upheld the Constitutional validity of the 77th, 81st, 82nd and 85th Amendments that were brought to reverse the effect of the decision in the ***Indra Sawhney case***. The court in Nagaraj case had ruled that if the state wishes to exercise their discretion and make provision for reservation in promotions for SCs/STs, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of *Article 335 (efficiency in administration)*.
- Thus, Nagaraj case held that before the SC and ST candidates can be promoted, the states had to prove by 'quantifiable data' that they were indeed 'backward'. But there was no definition of the expression 'backward' and there was also confusion that whether the term meant social backwardness, educational backwardness, economic backwardness or untouchability of which 'quantifiable data' was to be collected. As a result, all promotions made post-Nagaraj were struck down on the ground that there was no quantifiable data.

SC Decision

- ***Extension of creamy layer to SC-STs in promotion:*** The bench unanimously agreed to extend the creamy layer exclusion principle to SCs and STs in promotion. Thus, Court held that any executive or legislative action refusing to exclude the creamy layer from the benefits of reservation would be violative of Articles 14, Article 16(1) and also of Article 16(4).
- ***Collecting quantifiable data:*** The SC also gave relief to the Centre, States and SC & ST government employees in exempting states from collecting quantifiable data on backwardness to justify reservation in promotion for the two categories. The bench said their backwardness has been recognised as *inherent to them*. Earlier, the requirement to furnish quantifiable data, laid down in the M Nagaraj case to justify reservation in promotions for SC & ST employees has held up elevation of serving employees. Thus, in this aspect the court has overturned Nagaraj case. The Court also said that the M Nagaraj case misread the ***Indra Sawhney case (1992)***, which held that requirement of social, educational backwardness can't be applied to SCs/STs who are inevitably backward class of citizen.

While the court invalidated the requirement of collecting quantifiable data to show backwardness, the Bench said the state would still have to collect quantifiable data to establish inadequacy of representation before granting reservation in promotions. It also upheld the Nagaraj judgment's stipulation that the states must take into account the impact of

such promotion on administrative efficiency. Thus, the bench partially upheld the Nagraj ruling.

Challenges

- **Lack of sufficient eligible candidates:** The problem with introduction of creamy layer is that, currently there are no sufficient SC/ST candidates applying for various jobs. Consequently, if people are eliminated on ground of creamy layer, there may not be enough candidates available for promotion.
- **Continued discrimination:** The economically better off SCs will continue to face discrimination in employment. With this decision, there will be less promotion and less people of reserved categories in higher ranks.
- **Affirmative action can't be based on economic criteria:** Nowhere in the world is affirmative action policy based on economic criteria. The anti-poverty policy is a different thing, for example, in case of foreign scholarships, income criteria is applied by the Ministry of Social Justice and Empowerment but the economic criteria cannot be used for denying reservation to them. Even in **Northern Ireland**, there is affirmative action for Catholics who are rich and educated.
- **Defeats purpose of reservation in promotion:** The application of creamy layer will defeat the very purpose of reservation in promotions.

(Also refer to 'Promotions in govt. offices should go on: Supreme Court' in June 2018 CA Magazine)

Entry Of Women In Sabarimala Temple

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


In News

Recently, the Supreme Court's constitutional bench (in **Indian Young Lawyers Association v. State of Kerala**) has struck down a rule that disallowed girls and women in the 10-50 age group from entering the Sabarimala temple in Kerala on ground that temple rule violated their right to equality and right to worship.

SC Decision

- **Majority opinion:** The majority opinion held that the prohibition reduced the freedom of religion to a dead letter and the ban was a smear on the individual dignity of women.
- **Violative of various rights:** It held that the exclusionary practice violates the right of women to visit and enter a temple to freely practice Hindu religion besides violating their right to worship.
- **Application of Article 17:** Such exclusionary custom was termed as a form of untouchability, which cannot be allowed under the Constitution. As Article 17 certainly applies to untouchability practices in relation to lower castes, but it will also apply to the systemic humiliation, exclusion and subjugation faced by women.

All eyes on SC
The chronology of the long-standing petition in the Supreme Court against the restriction on women aged between 10 and 50 from entering the Sabarimala temple in Kerala:



1991: In *S. Mahendran versus the Secretary, Travancore* case, the Kerala High Court upheld the State's ban on menstruating women from entering the temple. The HC order went unchallenged for 15 years

2006: Kannada actor Jayamala claimed she had entered the sanctum

sanctum and touched the idol of the deity in Sabarimala. Her claims led to a furore, leading to a case against the actor

2006: A PIL against the Kerala HC order was filed by the India Young Lawyers Association, contending that the ban violated constitutional rights of women

2008: On March 7, a Bench of Justices S.B.Sinha and V.S. Sirpurkar referred the case to a three-judge Bench. The case lay in cold storage for 8 years

2016: On April 13, a Bench of Justices Dipak Misra, V. Gopala Gowda and Kurian Joseph heard a batch of petitions

2016: On April 25, senior advocate K.K. Venugopal, representing the Devaswom, said, "There is a reasonable classification by which certain class of women are excluded." The SC enquired if the defence was implying that menstruation was associated with purity of women

2018 SC Allows Entry of Women into the Sabari Mala temple in Kerala

- **Not a separate religious denomination:** It said Ayyappa devotees do not constitute a separate religious denomination within the meaning of Article 26 of the Constitution.
- **Not an essential religious practice:** SC also held that practice of excluding women from the temple at Sabarimala is not an essential religious practice. Further said that the court must decline to grant constitutional legitimacy to practices which derogate from the dignity of women and to their entitlement to an equal citizenship.
- **Patriarchy not allowed:** To exclude women from worship by allowing the right to worship to men is to place women in a position of subordination. The Constitution should not become an instrument for the perpetuation of patriarchy.

Please refer July 2018 CA Magazine for detailed debate on Sabarimala Temple Entry.

US 25th Amendment

Syllabus: Comparison of the Indian constitutional scheme with that of other countries

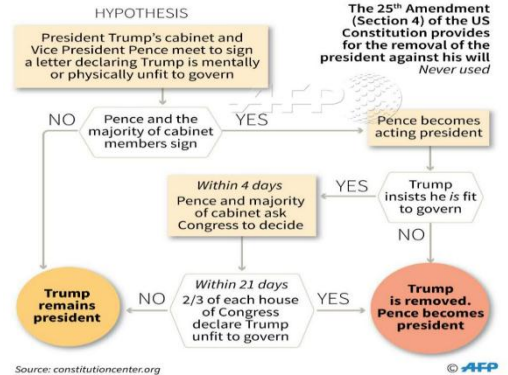
In News

Recently, the issue of removal of President Donald Trump has come up over the alleged sexual misconduct allegations.

Background

- **Article II (Section 1, Clause 6)** of the US Constitution deals with removal of the President from Office and mentions his disability or inability to discharge the Powers and Duties of the said Office, but does not explain- What is the extent of the term 'disability' and who is to be the judge of it?
- The procedure to remove a President under **Amendment XXV** is more difficult than impeachment under **Article II, Section 4**, wherein impeachment can happen by a *simple House majority* and the President can be removed by a *two-thirds vote* in the Senate.

The 25th Amendment



Amendment XXV Has Four Sections

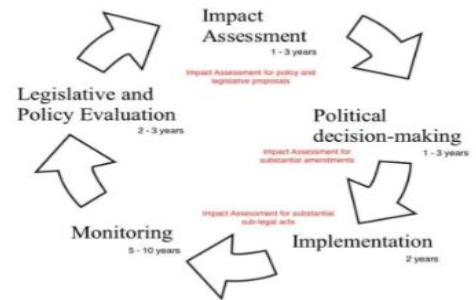
- **First Section:** The first section says in case of the removal of the President or of his death or resignation, the Vice President shall become President.
- **Second Section:** The second says that whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.
- **Third Section:** The President can after informing the President pro tempore of the Senate and Speaker of the House of Representatives, temporarily hand over his responsibilities to the Vice President.
- **Fourth section:** It allows the Vice President and a majority of either the principal officers of the executive departments (the Cabinet) to declare to the President pro tempore and Speaker that the President is unable to discharge the powers and duties of his office. In such a case, the Vice President shall immediately assume the powers and duties of the office as Acting President. If the President submits that no inability exists, Congress shall decide the issue by *two-thirds* vote of both Houses.
- **Procedure:** Congress would have to assemble within 48 hours and vote on the issue within 21 days. If two-thirds of both Houses agree that President (Trump) can't remain President he would have to go and Pence (Vice President) would become President. Otherwise, Trump would be back as President.

Legislative Impact Assessment

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

In News

- Legislation and policies in the country are often passed with inadequate scrutiny and assessment. Increasingly, the '**rush towards law**' results in policies and legal frameworks that are mostly reactive and seek to offer quick fix solutions to complex problems.
- As a result, both lawmakers and citizens are frequently blindsided by the unanticipated impact of these moves and the laws often run aground on issues of implementation.
- The idea of **legislative impact assessments** is slowly getting traction around the world, since there is widespread acceptance of the idea that laws and rules need to be comprehensively analyzed prior to their enactment so as to minimise such negative externalities or at the very least, to identify them.



Challenges

- **No legislative impact assessment:** The law making in India is still largely conducted in silos, which ensures that there is little consciousness of how these might potentially impact, either directly or indirectly, aspects of the economy, ecology, development and society in ways that might be wholly unintended by their framers.
- **Further compound existing problem:** Ultimately, the time and effort it takes to undo and resolve the issues caused by such hasty law making can compound these problem that the law was intended to resolve, making the entire exercise of fixing the issue futile. The current *issue of Aadhaar* is one such example.
- **Multiple causes:** The problem further stems from multiple causes, including the nature of political economy in India, the lack of a formal assessment structure for these laws and rules and the increasing complexity of law making in today's diverse and interconnected societies.

Way forward

- The need of the hour is an impact assessment that focuses on policy and legal frameworks before they are passed. Countries like **Kenya and Finland** have mechanisms in place for the assessment of regulatory and legislative proposals as an essential part of their legislative process.
- A **Policy And Legislative Impact Assessment (PLIA) Framework** be submitted and released to the public along with every proposed Bill. At a minimum, a framework would (a) identify the policy problem, its root cause and the need for action; (b) benchmark it against available alternatives; (c) conduct stakeholder meetings and identify potential impact; and d) pre-empt possible conflicts by identifying and planning for the mitigation of any and all negative effects of taking such an action.
- Thus, establishing and following a PLIA framework in both letter and spirit would allow us to identify optimal law and policy changes and ensure that preferred options are those that are economically feasible, operationally viable and socially acceptable, among several other considerations.
- Above all, such a framework would promote transparent and democratic law making in the country and allow citizens to understand and debate trade offs created by such laws even before they are formalized.

Issue Of Clemency To Rajiv Gandhi Killers


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

In News

- After failing to get the seven convicts in the Rajiv Gandhi assassination case released by exercising its statutory power to remit life sentences, the AIADMK government has decided to invoke the Governor's clemency power under **Article 161** of the Constitution.
- The earlier attempt in 2014 to remit the sentences (after 14 years of imprisonment) under the provisions of the Code of Criminal Procedure (Section 435) was stayed by the Supreme Court, which ultimately held that the Centre had primacy in according remission to life convicts in a case that involves consultation between the Centre and the State.
- Tamil Nadu Governor will now have to take a call on the advice of the State's Council of Ministers and decide whether he is bound by it. The moot question is whether he will pause to consider the Centre's opinion against releasing these convicts and either reject the proposal or seek its reconsideration. In either case, he will also be mindful of the fact that his decision will be subject to judicial review.

Raj Bhavan to take call

T.N. govt. has invoked Article 161, which grants clemency power to the Governor, to recommend the release of seven convicts in the Rajiv Gandhi assassination case. What are the options before Banwarilal Purohit?



1 Advice of Council of Ministers is binding on the Governor; so he may accept it immediately


2 No time limit is prescribed in the Constitution, and the Governor can take his time

3 The Governor can seek Centre's opinion in the matter

4 The Governor can seek reconsideration of the decision

POSSIBLE GROUNDS FOR REMISSION

- Change in circumstances, as the convicts have completed 27 years in prison
- Earlier rejection of mercy petitions by Governor/President was made while some of them were death row convicts; as they are all life convicts now, there is no bar on granting remission
- Sovereign power has not been exercised so far in respect of three convicts originally sentenced to life



Ray of hope: Perarivalan's mother Arputhammal thanking CM Edappadi K. Palaniswami on Sunday.

■ SPECIAL ARRANGEMENT

■ Supreme Court judgments have ruled that rejection of clemency once does not exhaust the power, and it can be invoked again

Arguments In Favour

- **Provisions of Article 14:** The hundreds of prisoners who have been convicted of similar crimes have had their sentences pardoned under *Article 161*. Thus, by not exercising clemency in present case government runs the risk of violating Article 14.
- **Effect of Long Incarceration:** In principle the idea, that convicts who have suffered prolonged incarceration require compassion, cannot be faulted. The idea of locking away a person for life, without so much as a sliver of hope of freedom is not in keeping with the ideals of a truly modern society.
- **Humane Consideration:** A case may be made to say that the perpetrator and the principal conspirator are dead and that those who were imprisoned were mere pawns some of whom may not have known the entirety of the enterprise. In these circumstances, to routinely deny the benefit of remission may not always be appropriate.
- **Reforming prisoners:** The focus of our prison system should be in bringing about reform in the moral character of each prisoner and enabling him to restart his life outside the jail complex after serving his sentence.

Arguments Against

- **Limited discretionary power:** The SC decision in *Nabam Rebia v. Deputy Speaker (2016)* held that the discretionary power of the Governor is extremely limited and entirely amenable to judicial review.
- **Centre's primacy:** Since in the present case the CBI is the prosecuting agency and not the State. Therefore, the State has no say and even after the State government recommends and the Governor takes a decision to release the convicts, there still needs to be reaffirmation by the Centre.
- **International ramification:** There is no legal bar on the convicts getting the benefit of Article 161, even though the mercy petitions of some of them have been rejected by both the Governor and the President. But the issue has thrown up a number of questions. For instance, what happens to the four Sri Lankan nationals among the convicts? Will they remain in India or be repatriated?
- **Case by case analysis:** Also, shouldn't there be a case-by-case evaluation for releasing those sentenced for life? An omnibus order of release clearly will not address the particularities in each case or evaluate the gravity of their role in the crime and the effect on society of releasing them.
- **India will be perceived soft on terror:** Another factor that may need to be taken into account is the social impact of a remission order, in the event that it is passed in this case. If people can be freed even after being convicted for the murder of a former Prime Minister in a terror incident, questions could be asked whether India is a soft state on matters of terrorism?
- **Set precedent:** A release order in this case may be cited as a precedent in other cases where terrorists and their co-conspirators are serving sentences of imprisonment for life.
- **Clemency already exercised:** In the present case, earlier the sentence was commuted from death to life imprisonment. So, the power has already been exercised. Thus, keeping the issue open would not be fair.
- **Life imprisonment vis-à-vis capital punishment:** When lifelong imprisonment is regarded as a humane alternative to capital punishment, releasing life convicts may only strengthen the demand for the imposition of the death penalty, which would be retrograde.

Way forward

Although there are many political considerations behind the move to release the convicts, this case must be decided on the basis of legal principles alone.

Live Streaming Of Court Proceedings

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

In News

The Supreme Court took a major leap in imparting transparency in the functioning of the judiciary by allowing live streaming of court proceedings of cases of constitutional and national importance, saying this openness was like sunlight, which is the best disinfectant.

Other Points Of The Decision

- **Pilot project:** The live streaming will start as a pilot project in the Supreme Court for cases of national importance.

- **Exclusion from live streaming:** The top court said that sensitive cases such as those dealing with *matrimonial disputes or sexual assault* should not be live streamed. It also pointed out that in some cases the parties may have genuine reservations and may claim right of privacy and dignity. Such a claim will have to be examined by the court and for which a just regulatory framework must be provided for, including obtaining prior consent of the parties to the proceedings to be live streamed.
- **No appeal:** The final decision whether to live stream a case or not, lies with the court, especially in sensitive ones and such decision cannot be appealed.
- **Time gap:** There must be a reasonable time delay (say 10 minutes) between the live court proceedings and the broadcast, in order to ensure that any information that ought not to be shown, as directed by the court, can be edited from being broadcast.
- **Gist of the judgement:** The live streaming will be subject to two broad conditions: *one* that the court permission can be revoked any time; *two* the consent of all parties to be taken. Where there are many petitioners in a constitutional case, all have a no-consent veto that can be examined by the court for reasons. This will create a case within a case before any broadcasting.

For detailed analysis (Benefits and Challenges) on this topic, please refer July 2018 CA Magazine

Government Weighing Law Panel's Report on Unfair Prosecution

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

In News

- The recent Supreme Court judgement on acquitted *ISRO scientist Nambi Narayanan*, being awarded a compensation of Rs. 50 lakh for implication in a fabricated case, has put the spotlight on the Law Commission report on wrongful prosecution.
- Submitting the report, the Law Commission expressed deep concern over the absence of any effective response from the state to victims of wrongful prosecution. For, there is no statutory or legal scheme to this effect.

Law Commission Recommendations

- **Legislative framework:** The Law Commission suggested that the need for a legislative framework for redressal of harms inflicted by wrongful prosecution. It has recommended enactment of a specific legal provision for effective redressal of such cases.
- **Compensation:** The panel has also suggested a statutory obligation on the state to compensate victims of wrongful prosecution and a corresponding statutory right of compensation for such victims.
- **Components of compensation:** On compensation the panel has suggested that since it will not be feasible to lay down a fixed compensation, the law should include certain guiding factors for the special court to consider while determining it. The compensation should include both pecuniary and non-pecuniary assistance.
- **Indemnification:** In such cases, where the state pays compensation for the errant acts of its officials, it can seek indemnification from the concerned officials. It also adds that the state can initiate appropriate proceedings against them in accordance with the law.

- **Speedy adjudication:** For speedy adjudication of such cases, the panel has opined that special courts be set up for this purpose and summary proceedings be conducted.
- **Other features of framework:** Law Commission adds that the framework will also include prescribed timelines for the disposal of the application, payment of compensation; period of limitation for filing the claim for compensation and for filing an appeal against the order of the special court.

Prison Reforms

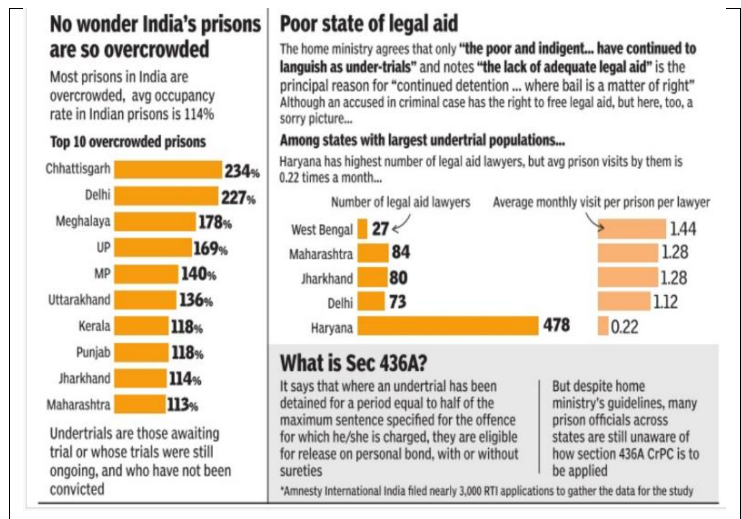
Syllabus: Structure, organization, and functioning of Judiciary and Related Issues

In News

- In an acknowledgment that the more than a century-old system of prisons in India needs repair, the Supreme Court (SC) has formed a committee on prison reforms. Former SC judge, **Justice Amitava Roy**, will head the committee and it is to look into the entire gamut of reforms to the prison system.
- But this is not the first time that such a body is being set up, examples being the **Justice A.N. Mulla committee** and the **Justice Krishna Iyer committee** on women prisoners (both in the 1980s).
- While marginal reforms have taken place, these have not been enough to ensure that prison conditions are in tune with human rights norms.

Challenges

- **Overcrowding:** There is a concern about growing numbers of prisoners and the woeful incapacity of governments to build more and larger prisons. In India, the *publication (Prison Statistics India)*, brought out by the National Crime Records Bureau (NCRB) provides that there has been an average occupancy rate of 114% in most of the prisons.



- **Shortage of staff:** The ratio between the prison staff and the prison population is approximately 1:7. In the absence of adequate prison staff, overcrowding of prisons leads to rampant violence and other criminal activities inside the jails.
- **Large number of undertrials:** About 67% of total inmates were undertrials, which has further complicated the problem.
- **Long incarceration:** The incarceration in any form is uncivilized, especially when it is so long drawn out and when the objective of criminal punishment should be one of reform rather than wreaking vengeance on a perpetrator of crime.
- **Problems in acquiring bail:** For poor and marginalized, it is also difficult to get bail, which leaves them no option but to stay in jails and wait for courts final order.

- **Unnecessary arrests:** Over 60 per cent of arrests were unnecessary, and such arrests accounted for 3 % of jail expenditure.
- **Lack of legal aid:** Legal aid lawyers are poorly paid and often over-burdened with cases. Further, there is no monitoring mechanism to evaluate the quality of legal aid representation in most states.
- **Unsatisfactory living conditions:** Prison structures in India are in dilapidated condition. Further, lack of space, poor ventilation, poor sanitation and hygiene make living conditions deplorable in Indian prisons.
- **Loss of human rights:** Another complaint against prisons is the brutality and venality of prison officials, again common across the world.
- **Custodial deaths:** In 2015, a total of 1,584 prisoners died in jails. A large proportion of the deaths in custody were from natural and easily curable causes aggravated by poor prison conditions. Further, there have been allegations of custodial deaths due to torture.

Suggestion by Mulla Committee (1983)

- **Formation of NPC:** The setting up of a *National Prison Commission* to oversee the modernization of the prisons in India.
- **Segregation:** Putting a ban on clubbing together juvenile offenders with the hardened criminals in prison and enacting a comprehensive and protective legislation for the security and protective care of delinquent juveniles. Segregation of mentally ill prisoners to a mental asylum.
- **Conditions in prisons:** The conditions of prison should be improved by making adequate arrangements for food, clothing, sanitation and ventilation *etc.*
- **Under trials:** Lodging of under trial in jails should be reduced to bare minimum and they should be kept separate from the convicted prisoners

Best Practices

- Norway's incarceration rate is only 75 per 100,000 people.
- The criminal justice system in Norway focuses on the principle of restorative justice and rehabilitating prisoners.
- 30% of prisons in Norway are open and all prisons ensure healthy living conditions, vocational training and recreational facilities.

Way forward

- There is a belief that improving prison conditions, there is likely to be an attendant impact on the incidence of crime. This accounts for the reluctance of many criminal justice administrators to employ or enlarge non-prison alternatives such as community service.
- Moreover, there is a popular view that in order to reduce prison populations, proven non-violent offenders could be dealt differently and white-collar crime are one of such kind of offences. Devising swift processes of attachment of properties and freezing of bank accounts are alternatives to a jail term.

Relevance of NITI Aayog

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

In News

The NITI Aayog was formed to replace Planning Commission and bring fresh ideas to the government. Its first mandate is to act as a think tank.

Significance of NITI Aayog

- **Congregation of Ideas:** NITI Aayog act as a funnel through which new and innovative ideas come from all possible sources *i.e.* industry, academia, civil society or foreign specialists and flow into the government system for implementation.
- **Drafting of Policies And Laws:** Initiatives like *Ayushman Bharat*, policy on *Artificial Intelligence* and water conservation measures and the Draft Bill to establish the National Medical Commission to replace the Medical Council of India have all been conceptualized in NITI Aayog and are being taken forward by the respective Ministries.
- **An Action Think Tank:** NITI Aayog has acted as an action tank rather than just a think tank by collecting fresh ideas and sharing them with the Central and State governments, it pushes frontiers and ensures that there is no inertia. If it succeeds, NITI Aayog can emerge as an agent of change over time and contribute to the agenda of improving governance and implementing innovative measures for better delivery of public services.
- **Ensure Convergence:** NITI Aayog works to cut across the silos within the government. It is best placed to achieve this convergence and push the agenda forward.
- **Bring In Accountability:** NITI Aayog is also bringing in greater level of accountability in the system. Earlier, there were Five-Year Plans, but they were mostly evaluated long after the plan period had ended. Hence, there was no real accountability. But NITI Aayog has established a *Development Monitoring and Evaluation Office*, which collects data on the performance of various Ministries on a real-time basis. The data are then used at the highest policymaking levels to establish accountability and improve performance. This performance and outcome based real time monitoring and evaluation of government work can have a significant impact on improving the efficiency of governance.
- **Promote Cooperative as well as Competitive Federalism:** NITI Aayog identifies the best practices in different States in various sectors and then try to replicate them in other States. NITI Aayog also come up with performance-based rankings of States across various verticals to foster a spirit of competitive federalism. It also plays an important role of being the State's representative in Delhi and facilitate direct interactions with the line Ministries, which can address issues in a relatively shorter time.
- **Improving Innovation:** The *Atal Innovation Mission*, which is also established under NITI Aayog, has already done commendable work in improving the innovation ecosystem in India. It has established more than 1,500 *Atal Tinkering Labs* in schools across the country and this number is expected to go up to 5,000 by March 2019. It has also set up 20 *Atal Incubation Centres* for encouraging young innovators and start-ups.

Criticism Of NITI Aayog

- **Uncritical praise:** NITI Aayog is supposed to be a think tank. This implies that while generating new ideas, it maintains a respectable intellectual distance from the government of the day. Instead, it is seen that Aayog has been putting uncritical praise of government-sponsored schemes.
- **Planning is essential:** The country like India can't transform itself with new ideas and strategies if it doesn't have a paradigm of planning for development. India requires planning

that addresses social justice, reduces regional and gender inequalities and ensures environmental sustainability.

Conclusion

With its current mandate that is spread across a range of sectors and activities and with its unique and vibrant work culture, NITI Aayog remains an integral and relevant component of the government's plans to put in place an efficient, transparent, innovative and accountable governance system in the country.

Rift In CBI

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

In News

- The Central Bureau of Investigation (CBI) Joint Director Nageshwar Rao has been appointed as interim director with immediate effect. While the CBI Director Alok Verma, along with Special Director Rakesh Asthana have been sent on leave, who accused each other of corruption.
- The crisis within the CBI started building up in October 2017 when the director, Alok Verma opposed the appointment of Rakesh Asthana as special director in the CBI on the ground that he did not have a clean image.
- The Supreme Court also stepped into the present institutional, when Alok Verma challenged his forcible leave on ground that **Section 4B of the Delhi Special Police Establishment Act** doesn't allow the government to transfer the CBI Director during the *two-year fixed* tenure without the previous consent of the high-powered committee consisting of the Chief Justice of India, the Prime Minister and the Leader of the Opposition. The same was also introduced in *Lokpal Act, 2013*.
- The SC in its interim order has clipped the wings of the interim Director, restraining him from making any policy or major decisions, except those that are routine and essential for the CBI to function.
- Further, a *retired SC judge Justice A.K. Patnaik* has been appointed to supervise the investigation into the complaints against Alok Verma and submit report within 2 weeks.

Challenges Faced By CBI

- **Overall Issues:** The CBI has been facing charges on various counts such as its alleged politicization, serious charges against its various chiefs, its very poor conviction rate, its delays in carrying out timely investigation, not to mention its lack of core competence and domain knowledge are indicative of a much more serious malaise.
- **Lack of legal backing:** The real problem for the CBI lies in its charter of duties. These are not protected by legislation. Instead, its functions are based merely on a government resolution that draws its powers from the *Delhi Special Police Establishment Act 1946*.
- **Caged parrot:** Excoriating the agency's investigation of the coal scam, the SC had in 2013, described it as a caged parrot who works according to the wishes of the government in power.
- **Professional impropriety:** The Verma-Asthana face-off is not the first time that the CBI's top brass has come under the scanner for professional impropriety. Former director, Ranjit Sinha, for instance, came under cloud in both the 2G and coal scams.

- **Manpower shortage:** CBI is facing the staff shortage, which is required to deal with the daily dealings of the CBI office. Further, Supreme Court and High Courts are handing over a large number of sensitive cases to the CBI for investigation without additional manpower.
- **Issue about CVC:** In the present case, many experts have pointed out that the CVC has acted in partisan manner. Moreover, it has also been claimed that the CVC usually acts as a postbox for forwarding complaints to the requisite government departments, without even bothering to ask for a reply from the department concerned. Moreover, the questions such as whether the CVC's power of superintendence extends to recommending stripping a Director of his powers and functions have also arisen.

Way forward

- **Formation of SIT:** Officers of proven integrity can still be found and they should be gathered in a Special Investigation Team charged with getting to the bottom of the police wars.
- **Legal backing:** The structural deficiency need to be removed such as CBI continued to work under Delhi Special Police Establishment Act of 1946. As far back as 1978, the L P Singh committee and Second Administrative Reforms Commission (2007) had recommended enactment of a comprehensive Central legislation to remove the deficiency of not having a central investigative agency with a self-sufficient statutory charter of duties and functions. Thus, it is high time the CBI is vested with the required legal mandate and is given pan-India jurisdiction.
- **Specialized cadre:** This should also serve as the occasion to think of institutional reform. Perhaps it is time to act on the proposal to create a specialized cadre for the CBI. The CBI, just like its counterpart in the US, the FBI should now convert itself into a multidisciplinary corruption-fighting force with experts from diverse fields such as finance, banking, purchase, procurement, insurance and engineering.
- **Improving functioning:** There's a dire need to improve the capability of the intelligence-collection machinery and upgrade its resources, the intelligence-sharing mechanism.
- **Accountability:** Moreover, the police should ideally have multiple lines of accountability, to the executive, the legislature *via* a committee and to the Human Rights Commission. These multiple lines of accountability would, instead of making them dysfunctional, give them functional autonomy in their professional conduct, shielding them from undue influence.

Issue of Payment Regulatory Board

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

In News

- The Reserve Bank of India (RBI) released its dissent note on the report of an Inter-Ministerial Committee, which has recommended that the proposed **Payments Regulatory Board (PRB)** should be an independent regulator (moreover, Committee recommended that the Chairman of this body should be appointed by the government). While, the RBI wants the body to be under its purview as had been stated in the **Finance Bill of 2017**.
- Before report of Inter-Ministerial Committee report in August 2018, the panel formed by the government for finalization of amendments to the **Payment & Settlement Systems Act, 2007** under Economic Affairs Secretary **Subhash Chandra Garg's** chairmanship had recommended that the PRB should be an independent regulator outside RBI's purview.

- RBI says that the composition of the PRB is also not in conformity with the announcements made in the Finance Bill, 2017 that suggested that the RBI governor would be in charge of the board. The RBI also says that the PRB must remain with the RBI and headed by the governor, RBI.

RBI Contentions

- Subset of currency:** Payment systems are actually technology-based substitutes for currency. The RBI does the distribution of currency, therefore payment system also need to be regulated by the RBI.
- Digital payments settles at banks:** The RBI says that the digital payments get eventually settled between bank accounts that is why the RBI wants to be in charge of the board.
- Dual regulation not warranted:** The RBI has also pointed out that Banks issue credit and debit cards globally and dual regulation over such instruments will not be desirable. Moreover, as India's payment system is bank-dominated, oversight by the same regulator inspires public confidence.
- Reduction of compliance cost:** RBI also contends that since the RBI regulates the banks, a holistic regulation by the RBI would be more effective and will not result in increased compliance costs unless multiple regulators exist for related systems.
- Impacts monetary policy:** The overarching impact of monetary policy on Payment and Settlement systems and *vice versa* provides support for regulation of payment systems to be with monetary authority.
- Global practices:** Central banks are in charge of payment systems globally and moreover there has been no evidence of any inefficiency in existing payment systems of India. Thus, given this, there need not be any change in a well functioning system.

Recommendations of the Inter-ministerial Committee

- | | |
|--|--|
| 1. Keep Payments Regulatory Board outside control of RBI | 3. Deputy chairman nominated by RBI not below the rank of ED |
| 2. Appoint a chairman as per govt recommendations | 4. Make non-banks a bigger stakeholder in the process |

Dissent by RBI

- | | |
|---|---|
| 1. Keep payments regulation within Reserve Bank | 3. Have a seven-member committee: 3 members nominated by the govt and 3 from RBI, plus RBI govt as chairman with a casting vote |
| 2. Keep RBI govt as chairman of PRB | |



Way Forward

- The RBI's case makes good sense when seen from the perspective of the cost of regulatory compliance. As stated above, there is definite overlapping between the current regulatory powers of the RBI and the proposed regulations for the payments industry. A unified regulator can thus help in lowering the compliance costs and enabling the seamless implementation of rules.
- Further, there is the real risk that a brand new regulator may be unable to match the expertise of the RBI in carrying out necessary regulatory duties. So it makes better sense to have the RBI take charge of the rapidly growing payments industry, which can ill afford regulatory errors at this point.
- However, the RBI's demand for the centralization of regulatory powers also brings with it the need for exercising a greater degree of responsibility. At a time when there are increasing risks to the stability of the domestic financial system, both the government and the RBI must look to work together to tackle these risks instead of battling over regulatory powers.

Code of Conduct For MPs and MLAs

Syllabus: Important aspects of governance, transparency and accountability

In News

- Recently, Vice President has called on political parties to evolve a consensus on a code of conduct for their members, both inside the legislature and out of it, so that people do not lose faith in political processes and institutions. A Code of Conduct for members of Rajya Sabha has been in force since 2005; there is no such code for Lok Sabha.
- Similarly, a conference of Chief Justices in 1999 resolved to adopt a Code of conduct for judges of the SC and High Courts, this 15-point '**Reinstatement of Values in Judicial Life**' recommended that serving judges should maintain an air of aloofness in their official and personal lives.
- In **UK**, a code of conduct for MPs was prepared pursuant to Resolution of House of 19 July 1995.
- The Canadian House of Commons has a **Conflict of Interest and Ethics Commissioner** with powers to examine violations of the Conflict of Interest Code at the request of another Member or by Resolution of the House or on his own initiative.
- **Germany** has had a Code of Conduct for members of the Bundestag since 1972; the US has had a Code since 1968. Pakistan has a Code of Conduct for members of the Senate.

Background

- Codes of conduct for high constitutional functionaries and representatives of the people have been discussed for long. A Code for Union Ministers was adopted in 1964 and state governments were advised to adopt it as well.
- In the case of MPs, the first step was the constitution of Parliamentary Standing Committees on Ethics in both Houses. *Chairman K R Narayanan* inaugurated the Committee in Rajya Sabha on May 30, 1997 to oversee the moral and ethical conduct of the Members and to examine the cases referred to it with reference to ethical and other misconduct of Members.

Provisions of Rajya Sabha 14 point Code of Conduct

- **Public interest primary:** If Members find that there is a conflict between their personal interests and the public trust which they hold, they should resolve such a conflict in a manner that their private interests are subordinated to the duty of their public office.
- **Guarding against conflict of interest:** Members should always see that their private financial interests and those of the members of their immediate family do not come in conflict with the public interest and if any such conflict ever arises, they should try to resolve such a conflict in a manner that the public interest is not jeopardized.
- **Non-participation:** According to the rule, a member should not participate in any debate if there is direct conflict of interest, without first declaring it and that in case of a vote on any issue in the House, the vote of such a member could be challenged.
- **Expectation from members:** Members should never expect or accept any fee, remuneration or benefit for a vote given or not given by them on the floor of the House, for introducing a Bill, for moving a resolution or desisting from moving a resolution, putting a question or abstaining from asking a question or participating in the deliberations of the House or a Parliamentary Committee.
- **Rule 293 of Rajya Sabha:** Rule 293 of the Rules of Procedure and Conduct of Business in the Council of States states that there shall be maintained a **Register of Member's Interests**

in such form as may be determined by the Ethics Committee which shall be available to members for inspection on request. This is accessible to ordinary citizens under the RTI Act.

Right to Privacy vis-à-vis Right to Information Act

Syllabus: Important aspects of governance, transparency and accountability

In News

- The Central Information Commission (CIC) plans to make clear its objections against recommendations made by the **BN Srikrishna Committee** on data protection on the grounds that they infringe upon the freedom of speech, undermine the Right to Information (RTI) Act and could prevent the exposure of corruption.
- The Srikrishna Committee suggested amending RTI Act to authorize public information officers (PIOs) to deny information containing personal data, if they feel that such disclosure is likely to cause harm to the '**data principal**' and if such harm outweighs public interest. (The current laws says that the information can be given access even if it violates privacy, where the public interest demand so) The Bill defines 'data principal' as whomsoever the data relates to.

Objection by CIC

- **Put curb on RTI:** The Draft Privacy bill undermines the RTI Act and proposes curbs on information, which should ideally be in public domain.
- **Chances of misuse:** The Privacy tool can easily be misused and put curbs as serious as those implemented during the Emergency.
- **Shield from public scrutiny:** The Right to privacy, which is meant to protect citizens from arbitrary state and corporate surveillance might be deployed first and foremost to shield authorities from scrutiny by citizens.
- **Privacy exemption already under the Act:** The RTI Act has various provisions (including Section 8(1)(j)), which carve out privacy exemption, thus there is no need for further widening the privacy exemption.
- **PIO will play safe:** The amended clause will chill the RTI Act, as PIOs will now have a strong legal ground to play safe and deny RTI requests.
- **Confusion:** A citizen seeking access to alleged private information will be confused whether to approach the CIC or Data Protection Authority (DPA).
- **Question about Right to Forgotten:** Reservations were also expressed about the so-called Right to be forgotten, which gives an individual the power to restrict or prevent the disclosure of personal information by a data fiduciary.

Please refer August 2018 CA Magazine for Srikrishna Panel's Data Protection Report.