GS PAPER 2

Constitution, Polity, And Governance – Sept'18

Reservation In Promotions

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

In News

Supreme Court has declined to refer its 2006 verdict on quotas in promotions for SC/ST to a seven-judge bench.

Supreme Court Verdict (September 2018)

- The Supreme Court said, its 2006 verdict putting conditions for granting benefits of quotas in job promotions for SC/ST employees need not be referred to a seven-judge bench.
- It also turned down the Centre's plea that overall population of SC/ST be considered for granting quota for them. i.e. states need not collect quantifiable data on backwardness of SC/ST for giving quota in job promotion to SC/ST employees.
- Comment: The judgement will boost efforts to provide "accelerated promotion with consequential seniority" for scheduled castes/scheduled tribes members in government services.

For details, refer topic "Promotions In Govt. Offices Should Go On: SC" in CA of June 2018.

SC/STs Can Claim Quota Only In Home State

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

In News

- Supreme Court held that SC/ST status entitling a person to quotas in jobs and admissions in one state will not automatically continue in another when the person migrates, except when he goes to Delhi, as it is the national capital and a microcosm of India.
- Thus, a five-judge bench, led by Justice Ranjan Gogoi, said that when a person migrates to another state, he doesn't automatically get included in that state's list of SCs/STs.

Rationale for the Decision

- ***Detrimental to local community:*** Court held that this would be detrimental to the interests of local communities and hence unconstitutional. However, the central list doesn't discriminate between the reserved categories of one state from that of another. The same principle would apply to Delhi.
- ***Presidential order is vis-à-vis state:*** The court observed that the Presidential orders identifying such communities are only vis-à-vis a state and not the entire country. Thus, any changes in these lists can *only be made by Parliament.*
- ***In consonance with GOI circular:*** The ruling is in line with past Government of India circulars, according to which SCs/ STs will not lose their SC/ ST status in their state of origin and will be entitled to reservation benefits there, but not in the state to which they have migrated if their caste is not notified there.

Criticism

- ***Replacement of backwardness as criteria:*** The judgment would appear to be deeply flawed in replacing experienced backwardness as the factor with location for reservation.
- ***Create ambiguity:*** The state-specific listing of scheduled castes, sub-castes and scheduled tribes throws up ambiguities. Eg., Gurjars are a scheduled tribe in Himachal Pradesh and Jammu & Kashmir, but an Other Backward Caste elsewhere.
- ***Backwardness not removed by moving to other state:*** When a person grows up experiencing the deprivation and backwardness associated with his social and educational class, his moving to another state does not remove the hardship he had experienced in his state, merely because his community's standing in state to which he has moved is altogether better than that the home state.
- ***Give boost to son of the soil doctrine:*** The court's view would resonate and could feed demands in every locality to keep outsiders away in the quest for jobs.
- ***Violates other fundamental rights:*** It will also conflict with the fundamental freedom of a citizen to move freely and reside anywhere.

Law Commission's Consultation Paper On Sedition Law

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

In News

- The Law Commission has come out with a consultation paper, in order to study revision of ***Section 124-A (sedition).***
- The consultation paper says that an expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the government with violence and illegal means.
- It also says that every irresponsible exercise of right to free speech and expression cannot be termed seditious. For merely expressing a thought that is not in consonance with the policy of the government of the day, a person should not be charged under the section. It added that Right to criticize one's own history and the right to offend are rights protected under free speech.
- Law commission also points out that, while it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression must be carefully scrutinized to avoid unwarranted restrictions.

Final Analysis

- The Section 124-A of the Indian Penal Code, enacted under colonial rule, remains on the statute book. There have been repeated instances of its misuse. Regimes at the Centre and the States have often been shown in poor light after they invoked the section against activists, detractors, writers and even cartoonists.

- Since Independence, many have seen the irony of retaining a provision that was used extensively to suppress the freedom struggle. Despite all this, Section 124-A has tenaciously survived all attempts by successive generations to reconsider it, if not repeal it altogether.
- The Law Commission, for the third time in five decades, is now in process of revisiting the section.
- The foremost objection to the provision on sedition is that its definition remains too wide. As under the present law, strong criticism against government policies and personalities, slogans voicing disapprobation of leaders and stinging depictions of an unresponsive or insensitive regime are all likely to be treated as seditious and not merely those that overtly threaten public order or constitute actual incitement to violence.
- There can only be two ways of undoing the harm it does to citizen's fundamental rights *i.e.* it can be amended so that there is a much narrower definition of what constitutes sedition but the far better course is to do away with it altogether.

Law Panel Says Uniform Civil Code Not Desirable Now

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

In News

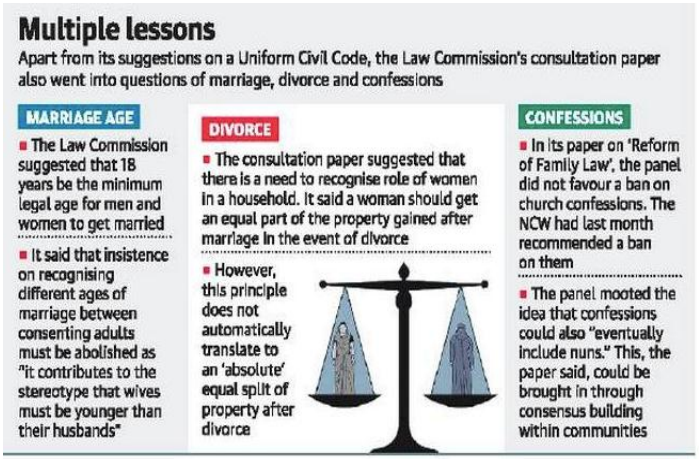
The Law Commission of India (LCI), in its consultation paper on ***Family Law Reforms,*** said that a Uniform Civil Code (UCC) is neither necessary nor desirable at this stage.

Rationale Given by LCI

- ***Diversity can' be compromised for uniformity:*** The Commission said secularism can't contradict plurality prevalent in the country. Moreover, cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation.
- ***Difference not equivalent to discrimination:*** LCI further said that difference does not always imply discrimination in a robust democracy. Moreover, most countries are now moving towards recognition of difference and the mere existence of difference does not imply discrimination but is indicative of a robust democracy.
- ***Should not lead to rule of majority:*** The diversity, both religious and regional should not get subsumed under the louder voice of the majority.
- ***Codification necessary rather than UCC:*** It said the way forward may not be UCC, but the codification of all personal laws so that prejudices and stereotypes in every one of them would come to light and can be tested on the anvil of fundamental rights of the Constitution.
- ***Equality within community more important:*** The Law Commission has taken a stand in favour of equality within communities between men and women (personal law reform), rather than equality between communities (UCC).
- ***Changes in Marriage ad Divorce:*** It suggested certain measures in marriage and divorce, which should be uniformly accepted in the personal laws of all religions.
    - These amendments in personal laws include fixing the marriageable age for boys and girls at 18 years so that they marry as equals as it simply contributes to the stereotype that wives must be younger than their husbands.

- Introduce new grounds for 'no fault' divorce accompanied by corresponding changes to provisions on alimony and maintenance. Upon divorce, a woman should get an equal part of the property gained after marriage.

- ***Abolition of HUF:*** One of the most significant recommendations with regards to the Hindu personal law is the abolition of the Hindu Undivided Family, which the paper notes has been used only for tax evasion. The Commission also notes that it is high time it is understood that justifying this institution on the ground of deep-rooted sentiments at the cost of the country's revenues may not be judicious.
- ***Other reforms in Hindu law:*** Among other reforms suggested in Hindu laws are doing away with the provision of restitution of conjugal rights to force wives to cohabit, bringing in a new legislation to address the issue of legitimization of children born of live-in relationships and their right to inherit.
- **Under Muslim law** the paper suggests the following:
  - **Nikahnamas** should make it clear that polygamy is a criminal offence and this should apply to "all communities.
  - Reform inheritance law by codifying Muslim law on inheritance, but ensuring that the codified law is gender just.
- ***Other general reforms:*** Some of the other significant recommendations of the Commission include compulsory marriage registration, allowing transgender persons to adopt, taking best interest of child as the basis for matters of custody, and defining the rights of persons with disabilities within marriage.



SC Backs Author's Creative Licence

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

In News

- ***Introduction:*** The Supreme Court held that the creative freedom of writers cannot be curbed in a democratic state and that the court will speak up for author's right of expression even if it does not agree with their views.
- ***Petition:*** The ruling came on a petition that sought a ban on Malayalam novel **Meesha** for allegedly carrying disparaging remarks about women who visit temples. The petition was filed by Delhi resident N Radhakrishnan, alleged that the literary work was derogatory to temple-going women and hurt the sentiments of a particular faith/community.
- ***End of creativity:*** The court rejected the plea saying authors have creative licence and can write what they want within the boundaries of the law. Court also held that if books are banned on such allegations, there can be no creativity. Such interference by constitutional courts will cause the death of art. The culture of banning books directly impacts the free flow of ideas

and is an affront to the freedom of speech, thought and expression. The SC bench also urged readers and admirers of literature and art to exhibit a certain degree of adherence to the unwritten codes of maturity, humanity and tolerance.

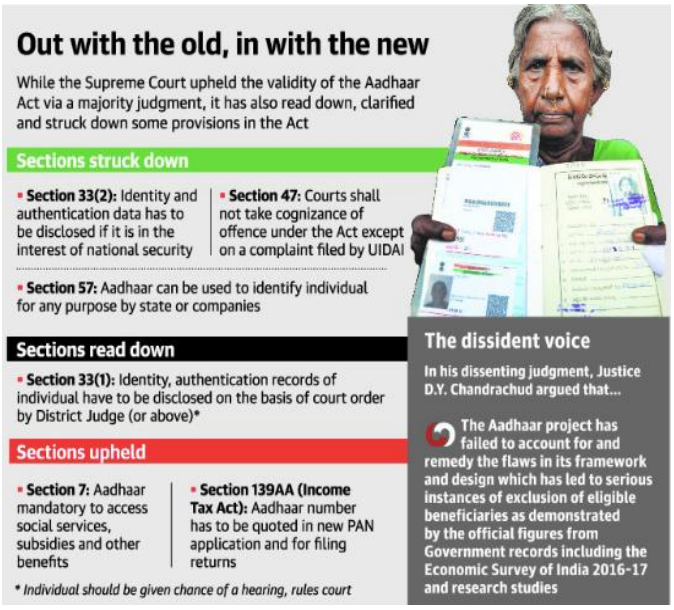
Supreme Court Verdict on Aadhaar

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

In News

- Supreme Court upheld the constitutional validity of Aadhaar scheme as pro-poor and inclusionary, but scrapped provisions of the legislation that were seen as enabling surveillance by the state.
- SC held Aadhaar won't be mandatory for opening bank accounts, getting a phone connection or school admissions.
- It also said an Aadhaar holder's data can't be disclosed on the grounds of national security.

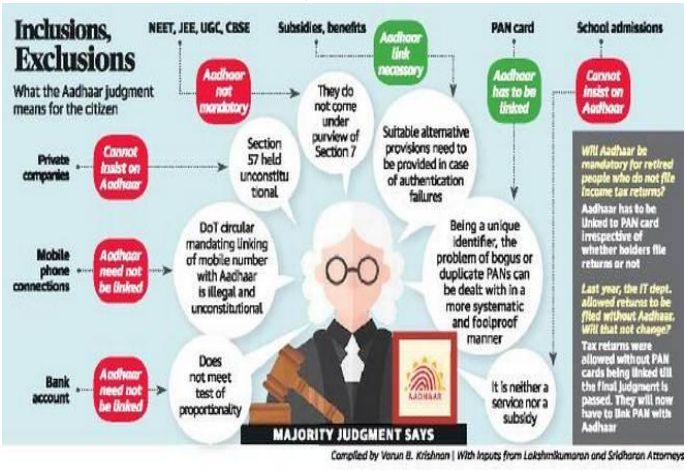
The SC Decision



- ***Public interest overweighs privacy concern:*** The SC held that privacy concerns of a few must make way for larger public interest as we cannot throw the baby out with the bath water. Thus, Court held that Right to privacy has to be balanced with other rights and it cannot be extended too much that other constitutional rights get a go-by.
- ***Passed triple test:*** It held that the Aadhaar Act passes the **triple test** laid down in the **Privacy judgment** under which there ought to be a law, a legitimate state interest and an element of proportionality in any law that seeks to abridge the right of privacy.
- ***Curtail Aadhaar Limit:*** The court curtailed the broad sweep of the scheme, pegging it back to its original remit *i.e.* helping the government target services and subsidies so that they go to the deserving. As it was subsequently been expanded to include the fight against terrorism and financial fraud.
- ***Act constitutional:*** Aadhaar Act was constitutional on several counts — it was proportional, had rational goals, had a rational connection with the object sought to be achieved and fulfilled the necessity test. Thus, Aadhaar Act is a beneficial legislation, which is aimed at empowering millions of people in this country. The court also noted that the failure rate of the scheme was just **0.232%.**
- ***Aadhaar voluntary:*** The court also said Aadhaar cannot be made mandatory and was by nature voluntary. People can only be enrolled for the scheme with their informed consent. Those who gave consent in absence of a law authorizing Aadhaar can withdraw consent and

exit the scheme. This consent is required to be free, informed, specific, clear and in addition, capable of being withdrawn.

- ***No denial of benefit for lack of Aadhaar*:** Only those who wish to avail direct benefit transfer (DBT) schemes of government — cooking gas, public distribution system, the rural jobs programme and so on, would have to enroll for Aadhaar. But no one can be denied benefits for lack of Aadhaar or if authentication fails. Alternate identity proofs can be used to claim benefits in such instances.
- ***Individual or corporate can't collect Aadhaar details:*** The Supreme Court has struck down **Section 57** of the Aadhaar Act, which allowed private entities to use the 12-digit number to validate the identities of customers. Thus, individuals and corporates can't collect Aadhaar data and any such information collected has to be destroyed. Court also observed that private entities using Aadhar data would have otherwise enabled commercial exploitation of biometric and demographic information by private entities.
- ***Section 47:*** Section 47 of the Aadhaar Act, which deprived citizens of any right to file an FIR against anyone violating his or her privacy by illegally using his or her Aadhaar number or *via* any other fraud has also been struck down. The Court also gave any victim, who believes rights have been violated, the right to file a complaint against UIDAI. Earlier, Section 47 of the Aadhaar Act allowed cognizance of offence only on a complaint made by the UIDAI or officers authorised by it.
- ***Section 33:*** It read down **Section 33 (1),** which allowed the disclosure of Aadhaar information on the orders of a District Judge. This cannot be done now without giving the person concerned an opportunity to be heard. The SC also struck down **Section 33(2),** which allowed the disclosure of Aadhaar information for national security reasons on the orders of an officer not below a Joint Secretary. It suggested that this will have to be done by a more senior official, which will need to be enabled through legislation.



- ***Section 59:*** The court has upheld the validity of Section 59 that also validates all Aadhaar enrolment done prior to the enactment of the Aadhaar Act, 2016. The court has said that since enrolment was voluntary in nature, those who specifically refuse to give consent would be allowed to exit the Aadhaar scheme.
- ***Amending the Law:*** The court asked the government to change the law to prevent collation and storage of metadata. Authentication data cannot be stored for more than **six months** as opposed to **five years** now.
- ***Need for Data Protection Law:*** The court also asked the government to come up with a robust data protection law based on the recommendations of the **BN Srikrishna committee** report.
- ***Aadhaar for children:*** The Court insulated children from the Aadhaar regime. The card was not necessary for children *aged between 6 and 14* under the Sarva Shiksha Abhiyan as right

to education was a fundamental right. Statutory bodies such as the CBSE and the UGC cannot ask students to produce their Aadhaar cards for examinations like the NEET and the JEE. Permission of parents and guardians was a must before enrolling children into Aadhaar. Once they attained the age of majority, children could opt out of Aadhaar.

- ***Dissenting opinion:*** Justice Chandrachud, in its dissenting opinion, held that the entire Aadhaar programme, since 2009, suffers from constitutional infirmities and violations of fundamental rights. The enactment of Aadhaar Act does not save the Aadhaar project. The Aadhaar Act, the Rules and Regulations framed under it, & the framework prior to the enactment of the Act are unconstitutional.

Positives

- ***Prevent abuse:*** The judgment scrapping of **Section 57** of the Aadhaar Act, which allowed private entities to use Aadhaar for verification purposes. Far too many people have been duped into opening accounts in mobile phone payment banks while being forced to conduct an e-KYC procedure with Aadhaar for their SIM cards. This was an ethical and legal violation and the abolition of Section 57 should stop such abuse.
- ***Preventing identity theft:*** Minimizing the use of Aadhaar in private sector businesses and institutions will reduce the risk of identity theft and other forms of forgeries.
- ***Individual can seek redressal of grievance:*** UIDAI wanted the power to file complaint for breach of Aadhar privacy to rest solely with itself. It had also used Section 47 against journalists and ethical hackers who had demonstrated security and privacy lacunae in the Aadhaar ecosystem. Now, citizens have their democratic right to seek redressal directly for such violations.
- ***Tackling threats of data breach:*** Another positive move is the Supreme Court declaring the mandatory use of Aadhaar for school admissions and entry into educational entities such as University Grant Commission (UGC) & National Eligibility-cum-Entrance Test (NEET) institutions, to be invalid. One of Aadhaar's most disturbing features has been that so many disparate institutions, including schools and universities, possessing Aadhaar data & biometry have very weak security for their IT systems. They are easy targets for hackers in search of a treasure trove of data.
- ***Limiting the Aadhar to its original purpose:*** The judgment narrows the scope of Aadhaar but provides a framework within which it can work. The majority opinion has sought to limit the import of the scheme to aspects directly related to welfare benefits, subsidies and money spent from the Consolidated Fund of India.

Negative Implication

- ***Delay and increased cost:*** In the last few years, Banks, Fintech companies and telecom service providers have used Aadhaar based electronic know your customer (eKYC) to acquire millions of new users, but with the court ruling that private companies cannot mandate Aadhaar-based authentication. Thus, they are likely to face increased costs and a slowdown in enrolment of new subscribers after the Supreme Court struck down provisions in **Section 57** of the Aadhaar Act. The telecom industry expects the lack of eKYC will delay penetration in rural areas where tele-density is just about 60% compared to 150% in urban India, while also raising the cost of customer acquisition by **as much as ten times**.

- ***Impact on Fintech firms:*** Some experts said fintech startups, specifically digital lending platforms that use Aadhaar to decide on the creditworthiness of borrowers will be affected by the Supreme Court restricting storage of Aadhaar data to six months from five years earlier.
- ***Impact on ease of doing business:*** By striking down Section 57 of the Aadhaar Act, which allowed private entities to use the process, the Supreme Court unfortunately has done the ease of doing business a great disservice.
- ***Hurt delivery of services by government:*** The Supreme Court's decision to bar agencies from using Aadhaar authentication except for welfare schemes threatens also to undo the linking of a host of government services with the biometrics-based identity system for verification as well as to improve efficiency. Some of these being Passport issuance, employee provident fund, DigiLocker, among other state services as well as the government's drive to link voter identity cards and even driving licences to Aadhaar are expected to be severely affected by the verdict.
- ***Grey area:*** The issue of the right to be forgotten, in case of Aadhaar data that have been collected, remains a grey area. The judgment does not clearly state that entities such as banks and mobile companies will have to delete the collected information.
- ***Unclear verdict:*** For instance, while the SC has upheld the linkage of the Aadhaar number to PAN under the Income Tax Act, it has held that Aadhaar cannot be mandated for bank accounts, insurance products, *et al* under the *Prevention of Money-laundering (Maintenance of Records) (Second Amendment) Rules, 2017*. But it is unclear that what happens if the Centre were to simply mandate PAN for some of these products? The Court hasn't adequately answered why an Aadhaar linked-PAN is less disproportionate than simply linking one's Aadhaar number with a bank account.

Final Analysis

- In short, the judgment gives ample indication that Supreme Court expects any future use of Aadhaar must satisfy the proportionality principle, where restrictive means employed to further legitimate state interest must seek out equally effective alternatives and invade individual rights only to the minimum degree necessary.
- What the Court merely should have done is allowed Section 57 to stand and directed the Government to create a strong legal framework that would set out terms of use and protect the privacy of individuals who provided their Aadhaar details for authentication purposes. Privacy cannot and should not be linked directly to Aadhaar enabling.

Aadhar As Money Bill

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

In News

- The majority view in Aadhar judgment concluded that government was justified in the passage of the Aadhaar Act as a Money bill.
- The Court has addressed this issue by accepting government's argument that ***Section 7***, which enables the use of Aadhaar to avail of any government subsidy, benefit or service for which expenditure is incurred out of the Consolidated Fund of India is the core provision in law and that this makes it a Money bill.
- In short, the majority view justified that Aadhaar was vital to ensure that government aid reached the targeted beneficiaries and hence, the Act was validly passed as a Money Bill.

Article 110: Definition of Money Bill---

For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—

- The imposition, abolition, remission, alteration or regulation of any tax;
- The regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- The custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund.
- The appropriation of moneys out of the consolidated Fund of India;
- The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- Any matter incidental to any of the matters specified in above sub clause.

- Whereas, Justice D.Y. Chandrachud in his dissent opinion, argued that the Rajya Sabha's authority has been superseded & that this constitutes a fraud on the Constitution. As a result of this debasement of a democratic institution, he held the Aadhaar Act unconstitutional.

Challenges

- ***Wrong future precedence:*** Any Bill can now be given a Consolidated Fund of India dimension and passed off as a Money Bill. This would effectively destroy the bicameral system of Parliament, which is the part of basic feature of the Constitution.
- ***Strict interpretation not followed:*** Under a strict interpretation of Article 110 it is a difficult position to defend it as Money bill. As the Centre's objective was seen as bypassing the Rajya Sabha, where it did not have a majority.
- ***Alien to Article 110:*** The various other sections of the Aadhaar Act that dealt with several aspects relating to the Aadhaar numbers were alien to the scope of **Article 110** of the Constitution, which defines a Money Bill.

Odisha Plans for Legislative Council

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

In News

The Odisha government is expected to introduce a Bill for the creation of a Vidhan Parishad or Legislative Council, a second House of legislature. This follows a report submitted in July 2018 by a panel of MLAs of various parties, which examined the proposal.

About Second House of Assembly

- ***Article 171:*** India has a bicameral system of legislature, just as Parliament has two Houses, the states can, if they choose, have a Legislative Council in addition to the Legislative Assembly. The Constitution provides for this option under Article 171.
- ***Article 169:*** Under Article 169 a Legislative Council can be formed, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting. Parliament can then pass a law to this effect.
- ***Members:*** Under Article 171 of the Constitution, the Legislative Council of a state shall not have more than one-third of the total number of MLAs of the state and not less than 40 members. But in Jammu & Kashmir, as per Section 50 of the state's Constitution, the Assembly has 87 members and the Legislative Council 36. As with Rajya Sabha MPs, the tenure of a Member of the Legislative Council (MLC) is six years, with one-third of the members retiring every two years.
- ***Election:*** One-third of the MLCs are elected by the state's MLAs, another 1/3rd by a special electorate comprising sitting members of local governments such as municipalities and district boards, 1/12th by an electorate of teachers and another 1/12th by registered graduates. The remaining members are appointed by the Governor for distinguished services in various fields.
- ***States having second house:*** *7 States* have second house of state legislature these are Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra, Telangana and Uttar Pradesh.

Arguments In Favour

- ***Prevent hasty decisions:*** A second House can help check hasty actions by Lower House.
- ***Another chance for non-elected individuals:*** It will also enable non-elected individuals to contribute to the legislative process.
- ***Chance for academicians:*** Upper House also provides a forum for academicians and intellectuals to contribute to the electoral politics.

Arguments Against

- ***Main challenges:*** a Legislative Council can be used to delay legislation and to park leaders who have not been able to win an election.
- ***Limited powers:*** The legislative power of Councils are limited. Unlike Rajya Sabha, which has substantial powers to shape non-financial legislation, Legislative Councils lack a constitutional mandate to do so. Assemblies can override suggestions/amendments made to a legislation by the Council. Also, unlike Rajya Sabha MP, MLC can't vote in elections for President & Vice President.
- ***Lack of support:*** Two Bills introduced in the Rajya Sabha in 2013 for establishing Legislative Councils in Assam and Rajasthan are still pending, indicating the lack of support for such a move.

- ***Lack of real advantage:*** If there was any real benefit in having a Legislative Council, all States in the country should and arguably would have a second chamber. The fact that there are only seven such Councils suggests the lack of any real advantage, apart from the absence of a broad political consensus on the issue.
- ***Drain on exchequer:*** The second house is also an unnecessary drain on the exchequer in form of one time cost and recurring cost.
- ***Dipping educational standards:*** Another issue is that graduates are no longer a rare breed as with dipping educational standards, a graduate degree is no guarantee of any real intellectual heft. And then question arises, why should graduates be privileged as people's representatives in a democracy?

Way Forward

- Parliamentary committee, that went into clearing these Bills, also struck a cautionary note. It wanted a ***national policy on having an Upper House*** in State legislatures to be framed by the Union government, so that a subsequent government doesn't abolish it.
- It also favoured a review of the provision in law for Councils to have seats for graduates & teachers.
- Thus, Odisha's proposal give the country at large an opportunity to evolve a national consensus on Legislative Councils.

SC Decision On Criminalization Of Politics

Syllabus: Elections and Representation of People's Act

In News

- The Supreme Court expressed its inability to make a law to check creeping criminalization of the polity, insisting Parliament must respond to public sentiment and frame a law to ensure that those charge-sheeted cannot contest.
- **Section 8** of the Representation of People Act, 1951, bans convicted politicians. But those facing trial, no matter how serious the charges are free to contest elections.

Decision of SC

- ***Duty of electorate:*** The constitution bench led by CJI Dipak Misra sidestepped the demand made in several PILs to lay down the law to prevent those against whom charges have been framed by any court of law from entering the poll fray. Court held it is for the electorate to ensure that suitable (not merely eligible) persons are elected to the legislature and it is for the legislature to enact or not enact a more restrictive law.
- ***No ambiguity in RPA:*** The court also said that it cannot do indirectly what cannot be done directly. The grounds for disqualification of members were already specified in the Representation of the Peoples' Act. The legislature has very clearly enumerated the grounds for disqualification and the language of the provision leaves no room for any new ground to be added or introduced. Therefore, directing the Election Commission to deregister a party, refuse to renew registration of a political party or to not register a party if they associated themselves with persons who were charged with offences would amount to doing indirectly what was clearly prohibited.

- ***Suggestion:*** Parliament ought to bring out a strong law whereby it is mandatory for parties to revoke membership of those against whom charges are framed in heinous and grievous offences and not to set up such persons in elections, both for Parliament and state Assemblies.
- ***Right to know:*** The top court, however said that nothing stood in the way of the elector's right to know and ordered candidates to declare their criminal records to the Election Commission in bold.
- ***Wide publicity:*** Political parties were charged with the task of making this information public on their websites. In addition, both the candidate and parties were mandated to publish this information in newspapers and TV at least three times after nomination papers were filed. The candidate and the political party shall issue a declaration in widely circulated newspapers in the locality about antecedents of the candidate and also give wide publicity in the electronic media.

Positive Implication

- ***Focus also on cleansing political parties:*** Though the Representation of the People Act disqualifies a sitting legislator or a candidate on certain grounds, there is nothing regulating the appointments to offices within the party. But the judgement, compels political parties to come clean about the criminal elements within their apparatus, is unique as it opens a new vista that the process of breaking crime-politics nexus extends much beyond purity of legislators and encompasses purity of political parties as well.
- ***Informed choice:*** It ensures that ordinary voters can have an informed choice about who he or she has to vote for in a country which already feels agonized when money and muscle power become the supreme power.

Issues

- ***Expenditure limit:*** Question arises whether the negative advertising cost should be added to a candidate's expenditure limit. As of now, the expenditure limit for a state assembly candidate is capped at **Rs. 28 lakh** while it is **Rs. 70 lakh** for candidates for general elections. All newspaper and electronic media advertisements/publicity material are included within this limit. The order could mean that even the criminal record advertising could fall in the same ambit - something that could have huge impact especially for candidates in urban centres where newspaper and TV ad pricing is high. The EC may have to therefore, factor in this and even consider keeping them out of the expenditure cap.
- ***Practicality:*** Another concern will be the practicality of a situation where a candidate is expected to advertise his or her own criminal antecedents before elections. It appears as unreal, artificial and divorced from reality. It reflects a rather academic viewpoint. As it will be unreal to expect the candidate through advertisements to ask people not to vote for him or her or to exhibit and spread his own unpopularity.

Final Analysis

- The Supreme Court has wisely refrained from disqualifying those charged by courts from elected office. Criminalization of politics accompanied by rising influence of money and muscle power pose a fundamental threat to democracy. But half-baked and drastic solutions like disqualifying those charged by courts as sought by the petitioners are not the answer.

- The framing of charges by a court is just an intermediate stage in criminal law procedure between the filing of charge sheet by police and commencement of trial. Conviction or acquittal follows a rigorous process of examining prosecution and defence witnesses and evidence during trial. In contrast, framing charges require judges to merely take a *prima facie* view of the charge sheet and supporting/opposing arguments to decide whether there is sufficient evidence to put a person on trial. Moreover, disqualifying at the inconclusive stage of framing charges will lead to bias and political witch hunts. The EC's proposal has safeguards against this. First, all criminal cases will not invite a ban, only the heinous offences will do. Second, the case should be registered at least six months before the elections. Third, the court must have framed the charges.
- It is to be noted that the tactic of shaming politicians and parties to reveal criminal records hasn't had much success in changing voter perception.
- The real problem lies with the slow pace of trials in India and the influence commanded by politicians conspire to give MPs and MLAs a long rope. Thus, solution lies in fast tracking the serious cases to conviction, acquittal, discharge or closure will clean up the Augean stables.

On Election Commission's Model code of Conduct

Syllabus: Elections and Representation of People's Act

In News

- ***Introduction:*** The Election Commission is considering passing an order shortly to ensure that the Model Code of Conduct kicks in immediately after a state dissolves its Assembly and seeks early elections. This will mean that states may be barred from taking any policy decision, which may be in the nature of influencing the electorate. The kicking in of the Model Code of Conduct may not have to wait for the Commission to announce the poll schedule as is the norm now.
- ***Current practice a result of agreement:*** The date of enforcement of the Model Code of Conduct has evolved over years of tussle between the Election Commission (EC) and the government. Currently, the Code kicks in the day the EC announces the poll dates. This is based on an agreement between the poll panel and the Central government reached on April 16, 2001. However, the agreement imposes a condition on the Commission that the announcement cannot be more than three weeks before the date of notification of polls. It was also agreed that that the inauguration of any completed or new projects will be done by civil servants so that the MCC does not stand in the way of public interest.
- ***Supreme Court decision:*** The EC has relied on the Supreme Court's 1994 judgment in the **S R Bommai v. Union of India** case. In this, the apex court had ruled that once the Assembly is dissolved based on the Governor's recommendation, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day-to-day government and desist from taking any major policy decision, the order said.

State Finance Commission (SFC)

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

In News

- The SFC is a unique institution created by the ***73rd and 74th Constitutional Amendments (CAs)*** to rationalize and systematize State/sub-State-level fiscal relations in India.
- **Article 243I** of the Constitution mandated the State Governor to constitute a Finance Commission within one year of the CAs (before April 24, 1994) and thereafter every five years.
- Its primary task is to rectify growing horizontal imbalances in the delivery of essential public services to citizens. But there has been inadequate appreciation of the significance of this institution by the Union, States as well as the professional community.

Problems Faced by SFC

- ***Not constituted timely:*** The large majority of the states have violated the mandate of the Constitution with impunity by not timely constituting the SFC.
- ***Recommendation not taken seriously:*** The seriousness, regularity, acceptance of recommendations and their implementations, which characterize the Union Finance Commission (UFCs) are conspicuously absent when it comes to SFCs.
- ***Problems in constitution and composition:*** The UFC has been widely acknowledged as a professional and quasi-judicial body when compared to the SFC. A cursory survey of the composition of SFCs would reveal the overwhelming presence of serving and/or retired bureaucrats rather than academics.
- ***Availability of data:*** UFCs had no data problem in reviewing the finances of the Union and States. The financial reporting system of the Union and States is well laid down. On the other hand, local governments with no proper budgetary system are in deep disarray and because of that, SFCs face a crucial problem of reliable data.
- ***No handholding support:*** Moreover, UFCs have failed to play a handholding role in placing decentralized governance properly in the cooperative federal map of India. As no UFC has done it's homework in reading and analyzing SFC reports. And without presenting a consolidated account of the reality at the sub-State level or highlighting which report went wrong, where and how no UFC can legitimately guide States or contribute to improving the goals of constitutional amendments.

Government Sets up Lokpal Search Panel

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

In News

- The government has finally constituted the search committee to recommend the names of chairman and members of anti-corruption watchdog Lokpal. The search committee will be **chaired by former Supreme Court judge Ranjana Prakash Desai** and have retired Allahabad high court judge Sakha Ram Singh Yadav, former solicitor general Ranjit Kumar, former SBI chief Arundhati Bhattacharya, Indian Space Research Organisation head AS Kiran Kumar, Prasar Bharati chairperson A Surya Prakash, former Gujarat Police DGP SS Khandwawala and retired IAS officer of Rajasthan cadre Lalit K Panwar as members.
- The Supreme Court has been repeatedly pressing the government to go ahead with the process of setting up a Lokpal. The search committee was finally constituted despite concerns raised by the Congress and its leader in the Lok Sabha, Mallikarjun Kharge, who boycotted meetings of the selection committee on five occasions since February 2018.

- The search committee was appointed by the selection committee, which comprises Prime Minister, Chief Justice of India, Lok Sabha Speaker, leader of the largest Opposition party, which in this case was Congress's Mallikarjun Kharge, and eminent jurist Mukul Rohatgi.

RBI's Internal Ombudsman Scheme, 2018

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

In News

- ***Purpose of the scheme:*** The scheme was introduced to strengthen the internal grievance of banks and to ensure that the complaints of the customers are redressed at the level of the bank itself by an authority placed at the highest level of bank's grievance redressal mechanism so as to minimise the need for the customers to approach other fora for redressal.
- ***Applicability:*** The banking regulator has asked all commercial banks having **10 or more banking outlets** to have an independent internal ombudsman (IO) to review customer complaints that are either partly or fully rejected by the banks. The central bank has, however, **excluded regional rural banks (RRBs)** from appointing ombudsman.
- ***Function of IO:*** The IO should examine customer complaints, which are in the nature of deficiency in service on the part of the bank that are partly or wholly rejected by the bank.
- ***Security of tenure:*** According to bankers, the **Internal Ombudsman Scheme of 2018** mandates banks to grant a fixed term of three to five years, which cannot be renewed, to the IO. The IO can be removed only with prior approval from RBI. The remuneration would have to be decided by the customer sub-committee of the board.
- ***Decision of IO:*** If a complaint is not settled by agreement within a period of **one month** from the date of receipt of the complaint or such further period as the Banking Ombudsman may allow the parties, he may, after affording the parties a reasonable opportunity to present their case, pass an Award or reject the complaint.
- ***Dual monitoring:*** The implementation of IO Scheme, 2018 will be monitored by the bank's internal audit mechanism apart from regulatory oversight by RBI.

Setting Up Of An Independent Payments Regulatory Board (PRB)

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

In News

- A government-appointed committee under **Subhash Garg** has batted for sweeping changes to the legal framework governing payments and settlements, some of which could potentially trigger a fresh row between the Reserve Bank of India and the Finance Ministry.
- The growth in the financial tech sector has enabled non-banks to play a significant role in payments. The government itself is keen to promote digital payment systems and set up a **Committee on digital payments in 2016**.
- The recommendations are aimed at revamping the **Payment and Settlement Systems Act, 2007**, which was the first dedicated law to regulate and supervise payment systems in India such as the National Electronics Funds Transfer system, the Real Time Gross Settlement System and ATM and card transactions. It allowed the RBI to constitute a board to regulate

the sector and provided the legal basis for basic features of a payment system framework, *i.e.* netting and settlement finality.

Proposal Of The Panel

- ***Purpose:*** The updated Bill seeks to foster competition, provide consumer protection and systemic stability and resilience and establish an independent regulator for the payments sector including non-banks as significant players and to consolidate and amend the laws related to payments.
- ***Overall suggestions:*** This panel made a detailed case for independent regulation of payments & its separation from Central banking, management of monetary policy & operation of payment systems.
- ***Creation of PRB:*** The panel has proposed the creation of an **independent PRB** and suggested replacing the Central bank governor as chairperson with a person appointed by the government in consultation with RBI. This was at variance with the RBI member on the panel who suggested that the payment regulator should be with Central bank and proposed that the chairperson of PRB should be from RBI and have a casting vote.
- ***Section 10 in the Bill:*** The Bill provides for the PRB to be an independent payments regulator. It provides for the RBI to have significant representation on the PRB and envisages a formal mechanism for coordination between the RBI and the PRB so that the regulation of payments, insofar as it may be relevant in the context of financial stability, monetary policy and credit policy, is achieved harmoniously. The committee also said the Bill provides for the chairperson of the PRB to have experience in central banking functions.
- ***Reference to the RBI:*** The draft law provides that the PRB shall make a reference to the RBI when it proposes any designated payment system regulation and the Central bank can give its opinion in this regard. If PRB disagrees with the opinion of RBI and RBI does not agree with the reasons given by the PRB, the RBI can also make a reference to the central government.

RBI's View

- ***Disagreement with recommendation:*** The RBI disagreed with recommendations on the composition of PRB and a suggestion to provide for majority public or govt ownership of entities such as the National Payments Corporation of India and Central govt nominees on their boards.
- ***Situation in other countries:*** RBI highlighted that Central bank is regulator of payment systems in many countries. The committee did not disagree with this but cited the **UK and Australia** as examples of having multiple regulators with concurrent jurisdiction over payment systems.
- ***RBI suggestion:*** The RBI has suggested that the PRB should be with the RBI and the Chairperson of the PRB should be from the RBI and also have a casting vote. According to the RBI, this would provide the RBI with the necessary powers in the context of its monetary policy function to issue directions to the payment system provider(s).
- ***Risk of regulatory arbitrage:*** The RBI's also asserted that there could be an intrinsic problem in regulation of payments if they are not within the ambit of the central bank and might result in regulatory arbitrage.

First Tribal Circuit Under Swadesh Darshan

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

In News

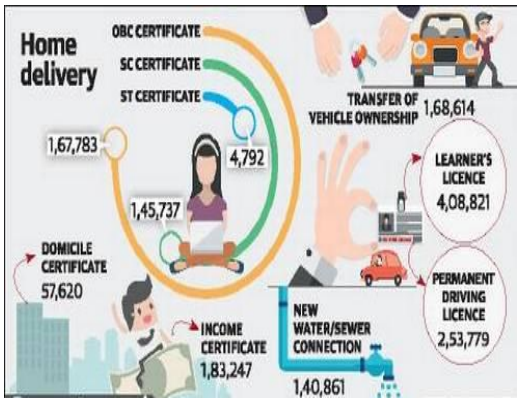
- Govt has launched country's first tribal circuit project connecting 13 tourism sites in Chhattisgarh. The project is being implemented under Tourism Ministry's Swadesh Darshan scheme.
- **Objective of Swadesh Darshan is** Development of thematic circuits in the country in a planned and prioritised manner.
- Under this, Ministry of Tourism provides **Central Financial Assistance (CFA)** to State/UT's for various tourism projects.
- **The scheme was launched in 2014 -15** and as on date the Ministry has sanctioned 70 projects for Rs.5700 Crore to 29 States/UTs under the Scheme.
- Some of the **thematic circuits identified under the scheme are:** North-East India Circuit, Himalayan Circuit, Buddhist Circuit, Ramayana Circuit, Tribal Circuit etc.

Delhi Launches Doorstep Delivery Of Government Services

Syllabus: Important aspects of governance, transparency and accountability

In News

- Delhi government has launched its ambitious project ***Phone-a-sahayak scheme*** to deliver public services at the doorstep of residents. From driving licences to marriage certificates, Delhiites can now apply for *40 govt documents* to be delivered at their homes for a fee of Rs. 50 per service.
- The applicant would have to call 1076 and fix an appointment with a *mobile sahayak*, who will go to their home and help with filling forms, payment of fees and collection of documents.
- The mobile sahayak would then submit the documents at the government office concerned, which would post the certificate or licence once issued.
- The project has been outsourced by the Administrative Reforms Department to **VFS Global.** The number of services to be home-delivered would be **increased to 100** within three months.
- The Delhi is not the first to try and mobilize the Right to Service Act (RSA) to greater efficacy. Only recently, Manipur govt announced a single-window services centre in Imphal, to be operational from November 2018 that will also include door-to-door delivery of government services.



- The test of government's new initiative will not be the range of services it offers. Instead, it will depend on how efficiently it guides consumers past administrative red tapes that often straitjacket such application procedures.

Government Scraps Scientific Panels

Syllabus: Important aspects of governance, transparency and accountability

In News

- The government has scrapped two Scientific Advisory Committees (SAC) for the Prime Minister and the Cabinet, and replaced them with a **nine member**, **Prime Minister's Science, Technology and Innovation Advisory Council (PM-STIAC).**
- Unlike in the earlier SACs, secretaries of various scientific Ministries such as education, environment and health would be special invitees to the council meetings. The PM-STIAC will be chaired by the government's Principal Scientific Advisor, **Dr. K. Vijay Raghavan.** This is so that members are allowed free discussions outside the comfort zone of officials.
- The newly constituted body is expected to act as a high level advisory body to several ministries and execute mission-oriented programmes. The office of the PSA was earlier led by **R. Chidambaram**, who played a key role in shaping India's nuclear programme.