GS PAPER 2

Constitution, Polity, And Governance-Nov'18

Quota For Marathas

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

In News

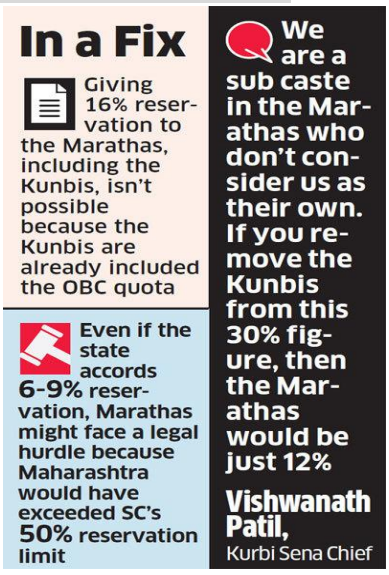
- After months of protests, the Maratha community has secured promise of reservation in government jobs and educational institutions. The proposal has been cleared by the Maharashtra legislature to provide ***16% reservation.***
- Previous government in 2014 moved to *reserve 16%* of seats in government jobs and educational institutions but it was stayed by the Bombay High Court.
- As per ***Article 340*** of the Constitution, the term socially and educationally backward class (SEBC) is being used for the OBCs.

Rationale For Grant Of Reservation

- ***As Per Recommendation of SBCC:*** Maharashtra government has defended this by saying that it is in line with the recommendations of a State Backward Class Commission (SBCC) report, mandating reservations for Marathas under a new separate SEBC category.
- ***General Backwardness:*** As per the report's assessment, Marathas are socially and educationally backward, with minuscule representation in government services and the State is liable to take action considering the extraordinary and exceptional conditions.
- According to the MSBCC's report, the percentage of Marathas below poverty line was ***37.28 %,*** higher than the 25 % base; the percentage of those with small and marginal land-holdings among Marathas was ***62.78 %***, much higher than the base 48.25 % which is considered for social economic backwardness. The grading for education (post Class X and Class XII) also showed Marathas lagged behind the national average literacy index. The community registered the highest number of suicides, especially in the agriculture sector.

Opposition To The Move

- ***Above 50% Limit:*** Creating a separate category now would increase the overall quota beyond the 50% limit which the Supreme Court has set.
- ***Not backed with data:*** The SBCC's reported findings that a significant proportion of Marathas constitute a socially and educationally backward class do not square with available data. As with Jats in Rajasthan and Patels in Gujarat, they enjoy a socio-economic status closer to that of the forward classes and castes in Maharashtra.
- ***Marathas comprises just 12% of population:*** The ***Kunbi community***, a sub-caste of the Marathas, which is considered backward, claims that if Kunbis are removed from this 30% figure, then the *Marathas would be just 12%.* So, if the Maharashtra government offers reservation of 15-16% to the Marathas, claiming that they are 30% of the state's population, then the matter could be



legally challenged. (Kunbis are already included in the OBC quota)

- ***No social stigma:*** There is no reason to argue that Marathas face any social stigma that calls for affirmative action.
- ***Reservation just to dole put benefits:*** The demand for reservations in this case is less an acknowledgement of social backwardness from a politically powerful community and more a call for the accrual of welfare benefits to less well-off sections among the community.
- ***Political motivation:*** The Cabinet's nod is in any case born of political exigency, not socio-economic reasons.
- ***Perception based reservation:*** The assertions of backwardness by sections of dominant communities such as Marathas, Patels and Jats have largely been due to perceptions about the relative inability to move up the economic ladder and the lack of adequate employment opportunities amid a sluggish agrarian economy.
- ***Claim by other communities:*** There are more than 300 different castes vying for just 27% reservations for OBCs, an exclusive 16% reservations for Marathas could see similar communities who do not enjoy reservations to stake claim by arguing that the 'socially and educationally backward caste class' criteria tag for Marathas suit them too.

Way Forward

- As judicial scrutiny is bound to be brought to bear on the government's decision, it will be well-advised to look at measures to alleviate the State's prolonged agrarian distress and the lack of adequate jobs, problems that affect all sections of society.
- Thus, reservation is indeed an instrument to rectify social and educational backwardness, but it does not have solutions for every social and economic ailment. The government will have to expand the economic cake and create fresh opportunities so that people, especially young people, who leave agriculture are absorbed in non-farm sectors.

SC on Double Jeopardy

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

In News

- The SC has held that the bar of double jeopardy does not arise if an accused was discharged of a criminal offence, even before the commencement of trial, on the basis of an invalid sanction for prosecution.
- The judgment is based on an appeal filed by the State of Mizoram against an order passed by the Guwahati High Court in August 2015, upholding a Special Court decision to decline to entertain a second charge sheet filed in a corruption case against the accused, Dr. C. Sangnghina on the ground of double jeopardy.
- **Article 20(2):** It mandates that a person can't be prosecuted or punished twice for same offence.

The Judgement

- ***No trial- no double jeopardy:*** A Bench of Justices R. Banumathi and Indira Banerjee held in a judgment that if an accused has not been tried at all and convicted or acquitted, the principles of double jeopardy cannot be invoked at all.
- ***No quashing of the proceedings:*** The courts are not to quash or stay the proceedings under the Prevention of Corruption Act merely on the ground of an error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in failure of justice.

Private Member's Bill

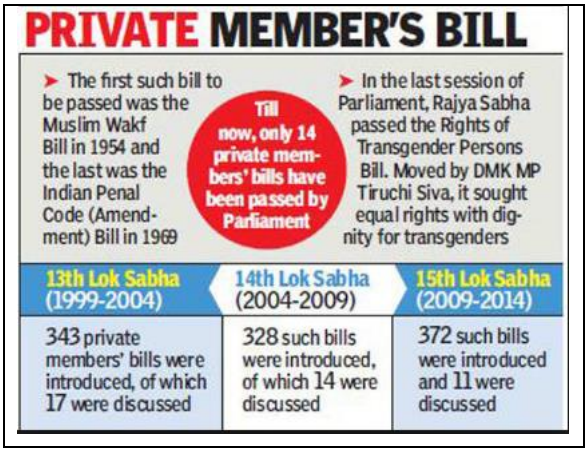
Syllabus: Parliament and State Legislatures- structure, functioning, conduct of business, powers & privileges and issues arising out of these.

In News

- As the Ram Janmabhoomi-Babri Masjid issue arose, the nominated Member of Rajya Sabha Rakesh Sinha said he would bring a private member's Bill on the Ram Temple.
- The last time a private member's Bill was passed by both Houses was in 1970. This was the *Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Bill, 1968*.
- 14 private member's Bills, 5 of which were introduced in Rajya Sabha, have become law so far.

About Private Members And Their Bills

- Any MP who is not a Minister is referred to as a private member. Parliament's key role is to debate and make laws. Both Ministers and private members contribute to the lawmaking process.
- ***Government's Bill:*** Bills introduced by Ministers are referred to as government bills. They are backed by the government and reflect its legislative agenda.
- ***Private Member's Bill:*** Private member's bills are piloted by non-Minister MPs. Their purpose is to draw the government's attention to what individual MPs see as issues and gaps in the existing legal framework, which require legislative intervention.



Introduction Of Private Member's Bill

- ***Admissibility:*** The admissibility of a private member's Bill is decided by the Rajya Sabha Chairman. (In case of Lok Sabha, it is the Speaker; the procedure is roughly the same for both Houses.)
- ***Procedure:*** The Member must give at least *a month's notice* before the Bill can be listed for introduction. The House secretariat examines it for compliance with constitutional provisions and rules on legislation before listing.
- ***Number of private bills per session:*** Up to 1997, private members could introduce up to *3 Bills* in a week. This led to a piling up of Bills that were introduced but never discussed;

Chairman K R Narayanan, therefore, capped the number of private member's Bills to ***3 per session***.

- ***Day reserved for discussion:*** While government Bills can be introduced and discussed on any day, private member's Bills can be *introduced and discussed only on Fridays*.
- ***Introduction and discussion on bill:*** On the scheduled Friday, the private member moves a motion for introduction of the Bill, which is usually not opposed. Only a fraction of private member's bills that are introduced, are taken up for discussion. Rajya Sabha draws a ballot to decide the sequence of discussion of Bills. If a Bill is successful in the ballot, it has to wait for the discussion to conclude on a Bill currently being debated by the House. Over the last three years, Rajya Sabha saw the introduction of 165 private member's Bills; discussion was concluded on only 18.
- ***Lapse:*** A private member's Bill that is introduced but not discussed in Rajya Sabha lapses when Member retires.
- ***After end of discussion:*** Upon conclusion of the discussion, the Member piloting the Bill can either withdraw it on the request of the Minister concerned or he may choose to press ahead with its passage. In the latter case, the Bill is put to vote and, if the private member gets the support of the House, it is passed. In 2015, Rajya Sabha passed *The Rights of Transgender Persons Bill, 2014,* a private member's Bill piloted by Tiruchi Siva of the DMK. The Bill is now pending before Lok Sabha.

Issue Over Dissolution Of J&K Assembly

Syllabus: Issues & challenges pertaining to federal relations

In News

- Jammu and Kashmir (J&K) Governor Satya Pal Malik dissolved the State Assembly, citing the impossibility of forming a stable government.
- Malik moved shortly after PDP leader Mehbooba Mufti staked claim to form a government with the support of the National Conference and Congress. She cited a collective strength of 56 MLAs in the 87 member House.

Constitutional And Legal Position

- ***SC Judgments***
  - A nine-judge bench of the Supreme Court in the ***SR Bommai (1994)*** case had observed that the power under *Article 356* is extraordinary, must be *used sparingly* and should never be used for political gain for the party in power at the Centre.
  - As indicated in ***Rameshwar Prasad Case 2006***, a Governor can't shut out *post poll alliances* altogether. Moreover, the court had also said unsubstantiated claims of horse trading or corruption in efforts at govt formation can't be cited as reasons to dissolve the Assembly.
  - The SC has held in various judgements that the *floor test is mandatory* before any decision on the dissolution of the assembly and dissolution should be a measure of last resort.
  - The action of Governor is not in consonance with the recent apex court judgement on dissolution of Uttarakhand and Arunachal Assembly. In these cases, the Court held that

the goal of attainment of the glory of constitutional democracy should be through representative democracy rather than nominated Governors.

- The ***Sarkaria Commission*** makes it clear that where pre-poll alliance and largest party principles cannot apply, then a third and fourth option must be first tried, before the extreme step of dissolution *viz.* post electoral coalition of parties or some of the parties in the alliance forming a govt and the remaining parties supporting the government from outside. Clearly, the J&K context falls in these categories which the governor deliberately and illegally avoided.

Arguments In Favour Of Dissolution

- ***Opportunistic Alliance With Opposing Political Ideologies:*** There is impossibility of forming a stable government by coming together of political parties with opposing political ideologies. Moreover, the experience of the past few years shows that with the fractured mandate, it is not possible to form a stable government. The coming together of such parties in a grouping is nothing but an attempt to gain power rather than to form a responsive government.
- ***Allegation Of Horse Trading:*** There were reports of extensive horse trading and possible exchange of money in order to secure the support of legislators belonging to widely diverging political ideologies just to be able to form a government. Such activities are not healthy for democracy and vitiate the political process.
- ***Doubt Over Longevity Of Government:*** Serious doubts about the longevity of any such arrangement, where there are competing claims of majority.
- ***Security Situation of J&K:*** There is a fragile security scenario in the state of J&K and it need to have a stable and supportive environment for security forces which are engaged in extensive anti-militancy operations and are gradually gaining control over the security situation.

Arguments Against Dissolution

- ***Against Legal Position:*** The decision seems to be against the SC judgments and Committee's recommendation as mentioned above.
- ***Politically Motivated Action:*** Governor of J&K decided to dissolve the assembly within minutes of the claim of formation of government by the PDP, NC and Congress, which show that action was not legally based.
- ***Flawed reasoning:*** The Governor has no power to examine the ideologies of the political parties prior to inviting them to form government. Moreover, the Governor can't oppose the coming together of parties of opposing ideologies when the BJP itself was in a coalition government with the PDP for more than two years.
- ***Violates basic structure of constitution:*** Dissolution of the assembly to prevent the formation of a popular government shows a lack of belief in parliamentary democracy, which comes under the basic structure of Constitution.

Way Forward

- The decision of the Governor *prima facie* seems to be in violation of the SC's order that has made floor test mandatory before any decision on the dissolution.

- To avoid such fiasco, there is need to make the officer of Governor independent by implementing the recommendations of *Sarkaria Commission*.

Supreme Court in-house Think-tank

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

In News

- Recently, the Chief Justice of India started an in-house think-tank by establishing ***Centre for Research & Planning***.
- The aim is to build a network of independent professionals to speed up justice delivery and ushering in much needed judicial reforms.
- ***Composition:*** The think tank will initially comprise a select few persons. But it will also have the authority to build a network of independent professionals who will pitch in with ideas and inputs which can help improve the system in terms of both jurisprudence and hastening the justice delivery mechanism.

Analysis Of The Decision

- ***Welcome step:*** The court procedures and work distribution in courts need an urgent look but it cannot be done by judges and academicians. There must be professionals at the helm of affairs in the court who understand work flows *etc.* Therefore, establishment of such an independent research unit to look in these affairs is a positive step.
- ***Precondition for success:*** The expert believe that it can bring in judicial reform only if it is independent and comprises of domain experts.
- ***Actual implementation of recommendation a must:*** Moreover, above all, the system (judiciary) must heed the inputs given by any in-house think tank. Therefore, some policy syncing is a must.
- ***Upgradation of existing institution was required:*** Moreover, the court would have done well to upgrade the institutions already in existence rather than create a new one. Institutions such as the *ILI (Indian Law Institute)* could have been galvanized.
- ***No such mechanism at HC level:*** Such think tanks are, in fact, needed more at the High Court level than the Supreme Court.

Way Forward

There are many such private institutions, which can give inputs on ushering in much-needed changes in the system. The court would therefore do well to institutionalize the new think tank and also make it wholly independent of the registry (the court bureaucracy) to ensure its independence. Otherwise it will not be efficient.

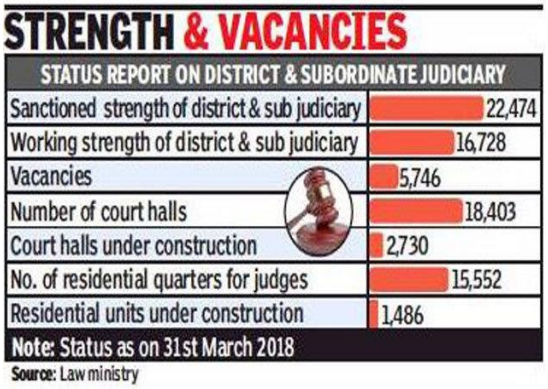
Central Recruitment To Fill Judge's Vacancies

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

In News

- The Union Law Ministry is working with the Supreme Court to conduct a nationwide examination to recruit around 6,000 judges for the lower judiciary as a one-time measure.

- The appointment of judges in district and subordinate courts is the responsibility of state governments and the High Courts concerned. But things have come to this pass because of inordinate delays in holding examinations for judicial recruitment at the state level.
- Under the nationwide recruitment scheme, a Central Agency will conduct the test with due importance given to local languages for those opting for a particular state.
- Subsequently, an all-India merit list will be prepared based on which the state governments will make the final appointments.



Impact

- This is much needed given the high pendency of cases. In fact, lower courts currently have a backlog of ***2.78 crore cases***.
- It is generally said that the ***justice delayed is justice denied***, but the current step will resolve such dilemma.
- Moreover, access to court and fast pace of justice delivery is important considering that the judiciary is the last ***hope for ordinary aggrieved citizens***.
- This will also help ensure ***uniformity in judicial recruitment*** across the country and reduce delay in appointment.
- High pendency creates an impression that the courts only work for the powerful, undermining faith in the justice system. Resolving pendency will create trust in judiciary.

Way Forward

- Although several states are not in favour of the central selection mechanism, current Chief Justice Ranjan Gogoi deserves credit for favoring the one-time exercise to reduce pendency.
- Although this has been proposed as a one-time measure, there is a case here to have a permanent central judicial recruitment mechanism.
- The Union govt would do well to get all states on board a permanent central selection mechanism. That's the only way case backlogs can be reduced and the credibility of the judiciary protected.

Bill For Renaming High Courts

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

In News

- A Bill seeks to rechristen the iconic High Courts of Madras, Calcutta and Bombay has run into trouble and a fresh bill has to be introduced in Parliament to do the same.
- The ***High Court (Alteration of Names) Bill, 2016*** was introduced in the Lok Sabha in July 2016 to change the names of *Calcutta, Madras and Bombay High Courts* to Kolkata, Chennai and Mumbai High Courts, respectively.
- ***Rationale:*** Since the names of the cities in which the High Courts are located have been changed, the names of the High Courts are being consequently modified.

- ***Government to modify relevant laws:*** As per the Bill, in order to give effect to the alteration of names of the three High Courts, the appropriate government will have the power to amend or repeal any laws. This must be done *within one year* of the coming into force of this Act.
- ***Concern Areas***
  - The Tamil Nadu government has asked the Centre to rename the Madras High Court to High Court of Tamil Nadu instead of High Court of Chennai as proposed in the Bill.
  - While West Bengal wants the Calcutta High Court to be renamed as Kolkata High Court but the High Court has itself not agreed for revised nomenclature.
- ***State's views sought:*** The Central government has sought views from the State governments concerned and the respective High Courts for finalizing a fresh Bill.

MCA Panel For Allowing Audit Firms To Offer Legal Services

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

In News

- An expert panel constituted by the Ministry of Corporate Affairs (MCA) has recommended that ***Advocates Act*** be amended to allow audit firms to offer legal services, a proposal which is being opposed by domestic law firms.
- In 2015, the Society of Indian Law Firms had complained to the Delhi Bar Council against the Big 4 *i.e.* PwC, Deloitte, KPMG, and EY for unauthorized practice of law.

MCA Panel View

- ***Allowing such services:*** The MCA panel, which was set up to look into the regulation of audit firms and their networks, is of the view that development of multi-disciplinary practice (MDP) firms should be facilitated in the country and to meet this goal, auditors should be allowed to expand their portfolio of services.
- ***A necessary step:*** For Indian firms to evolve into global leaders in auditing, legal, consultancy and ancillary services, it is necessary to rationalize the *Advocate Act, 1961* to facilitate development of Indian audit firms as well as legal firms.
- ***Law firms also venturing into MDPs:*** The law firms are diversifying into multi-disciplinary practice (MDPs) such as forensic operations and undertaking commercial diligence and investigation for their clients, traditionally considered as a domain of audit firms.

Opposition To The Proposal

- ***Foreign law firms not allowed to operate in India:*** If the proposal to allow audit firms to provide legal services is accepted, lawyers apprehend that it could create a scenario where the Big 4 could also offer legal services, at a time when foreign law firms are not allowed to operate in the country.
- ***Difficult to manage and regulate:*** Big 4 are basically Charted Accountant (CA) and Company Secretaries (CS) firms and they practicing law and starting law firms would only create havoc and it would be very difficult for any regulator to manage them.
- ***Impact independence:*** Allowing MDPs would be a retrograde step as it would destroy independence of the legal profession, which would become a business and there is also a

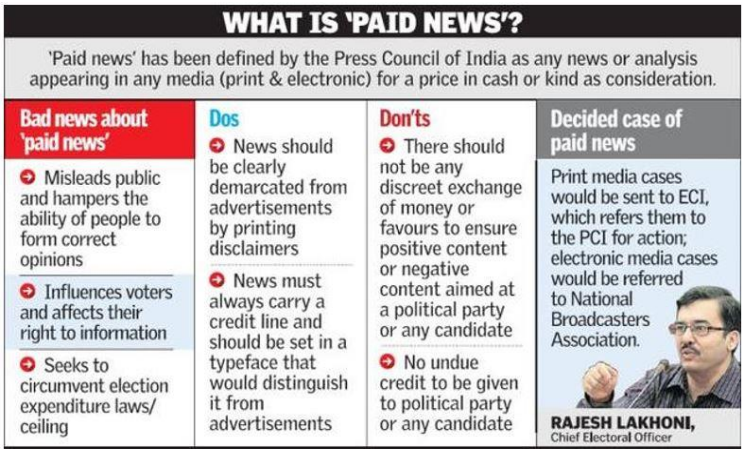
clear case of conflict on the audit side. Moreover, the independence and role of auditors is under the scanner in an increasing number of cases already.

SC On Paid News

Syllabus: Elections and Representation of People's Act

In News

- In a breather to the Election Commission (EC) of India, days before five states go to elections, the Supreme Court has stayed a Delhi High Court order that questioned EC's remit over content of speech and hence paid news.
- EC had filed a special leave petition before the apex court challenging the Delhi High Court order in the ***Narottam Mishra paid news case***.



Background Of The Case

- EC had disqualified Narottam Mishra, MLA from Datia constituency in Madhya Pradesh in July 2017, after it claimed to have established 42 cases of paid news in the newspapers in the run-up to polls in 2008.
- The 69-page EC order observed how the local administration and electoral office bearers ignored the plying of promotional media material disguised as news in newspapers between November 8 and 27, 2008.

Impact Of The Decision

- ***Help in dealing paid news:*** The stay is crucial to upcoming state elections as it will now allow the poll panel to crack down on all instances of paid news in the five states.
- ***Level playing field:*** This will ensure that the EC's *locus standi* on paid news is established, which will ensure level playing field between the candidates.
- ***Not part of freedom of speech:*** This will ensure that the motivated propaganda by politicians published in newspapers cannot be considered part of their fundamental right to free speech.

Andhra, West Bengal Withdraws CBI Power To Investigate

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

In News

- Escalating the political fight between non-BJP ruled states and the Centre in the run-up to the 2019 elections, Andhra Pradesh and West Bengal has withdrawn the ***general consent*** given to the CBI to investigate any case in the state.
- ***Kinds Of Consent:*** There are two kinds of consent – *case specific and general.* Given that the CBI has jurisdiction only over central

▪ General consent is the approval given by a State government concerned from time to time to the CBI (the agency originated from the Special Police Establishment) and other agencies covered by the Delhi Special Police Establishment Act, 1946 (Central Act No. 25 of 1946)

▪ The consent is necessary as the jurisdiction of these agencies is confined to Delhi and Union Territories under this Act

government departments and employees, it can investigate a case involving state government employees or a violent crime in a given state only after that state government gives its consent. General consent is normally given to help the CBI seamlessly conduct its investigation into cases of corruption against central government employees in the concerned state.

- This is not the first time that a state government has revoked general consent for CBI probes. Several states, have done it in the past. For example- in 1998, the Janata Dal led government of J H Patel in Karnataka had similarly withdrawn general consent to CBI.

Legal Position

- ***Section 5 of the Delhi Special Police Establishment Act (DSPEA)*** gives powers to the CBI over all areas in the country, but ***Section 6*** states that without the consent of the state concerned, it cannot enter that state's jurisdiction.
- ***Ambiguity In The Provisions:*** There is ambiguity, however, on whether the agency can carry out a search in the state in connection with an old case without the consent of the state government.
- ***Court's Judgement***
  - An Oct' 2018 order of the Delhi High Court (HC) makes it clear that the agency can probe anyone in a state that has withdrawn general consent, *if the case is not registered in that state*. The order came on a case of corruption in Chhattisgarh. The Court ordered that CBI could probe the case without prior consent of Chhattisgarh government, even the case was registered in Delhi.
  - The Supreme Court (SC) has made it clear that *when SC or a HC directs that a particular investigation be handed over to CBI*, there is no need for any consent under the DSPE Act. A landmark judgment in this regard was the 2010 Supreme Court decision by which the case of killing of 11 Trinamool Congress workers in West Bengal in 2001 was handed over to the CBI.
- ***Current position:*** In most cases, States have given consent for a CBI probe against only Central government employees. The agency can also investigate *a Member of Parliament.* Apart from Mizoram, West Bengal and Andhra Pradesh, the agency has consent in one form or the other for carrying out investigations across the country.

Arguments In Favour Of The Move

- Some experts have said that the decision was purely an administrative one taken in context of ***law and order being a State subject*** that necessitated any Central investigation agency taking prior consent. Earlier, the consent was given routinely and now instead of a blanket permission, it should be on the merit of each case.
- Every ***state's anti-corruption bureau*** has capability to carry out various functions of the CBI.
- *Section 6* provision is incorporated in the DSPE Act to ***maintain the federal structure***.
- The act of withdrawal of consent can be judicially reviewed and withdrawal of consent is ***no bar for a Constitutional Court*** to use its inherent and extraordinary powers to order a CBI investigation into individual cases for purpose of delivery of complete justice.

- The CBI could continue to register new cases in other States, having links to the one in which the general consent has been rescinded.
- Some experts points out that the decision by Andhra Pradesh and West Bengal has come amid concerns being voiced that Central agencies such as the CBI, Enforcement Directorate and Income Tax (IT) Department are being used against them with ***political motivation and to harass state governments*** that don't toe Centre's line.
- These State Governments found it necessary to take the decision on withdrawing consent to the CBI *in the background of recent internal fissures in CBI*, resulting in ***loss of trust and credibility*** over its independent and objective conduct.

Arguments Against The Move

- The withdrawal of consent simply means that ***CBI officers will lose all powers*** of a police officer as soon as they enter the state unless the state government has allowed them.
- The CBI will ***no longer be able to carry out searches, raids or investigation*** in these states without the state government's consent.
- ***Operational problems:*** The agency will now have to seek permission of the state government for every case and every search, making it difficult to carry out surprise searches or register a case not agreeable to the State Government.
- ***Dilute deterrence to corruption:*** Putting up hurdles in its operation will not improve things. Instead, it can dilute a deterrent to corruption.

Way Forward

- Both state governments should roll back their positions in larger interest. At the same time CBI too needs to transform itself into an agency which evokes respect and not derision.
- Making CBI accountable to a bipartisan committee of Parliament or perhaps a special governing body consisting of the PM, Home Minister, CJI and Leader of Opposition can be the way out.
- The current deputation system should be ended and CBI must cultivate its own cadre of officers. Moreover, the office of CBI director should come with its own prestige and his post-retirement reemployment in any government supported organisation should be banned.
- Perhaps full records of closed cases should also be made accessible under RTI, after the lapse of five or 10 years. This would act as a deterrent and provide incentive for adopting good practices.

Government May Invoke Section 7 Of RBI Act

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

In News

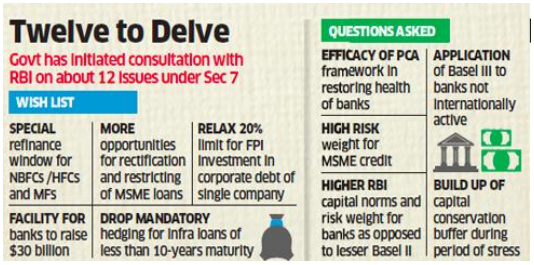
- The issue of government invoking the never used before powers under ***Section 7 of the RBI Act***, thereby allowing it to issue directions to the Central Bank Governor, is a development that gives a new twist to the ongoing skirmish between RBI and the Government.

- There is a possibility that the government may issue direction on issues ranging from liquidity for Non-Banking Financial Companies (NBFCs), capital requirement for weak banks, imposition of prompt corrective action (PCA), and lending to SMEs.

About Section 7 of RBI Act

- The Section 7 of the RBI Act empowers government to consult and give instructions to the Governor to act on certain issues that the government considers *serious and in public interest*.
- This section had never been used in independent India till now. It was not used even when the country was close to default in the dark days of 1991, nor in the aftermath of the 2008 crisis.

Positive Impact Of Government's Move



- ***Government's Accountability to People:*** This reflects the right of the government in a democracy to question an institution that is answerable to it.
- ***RBI autonomy is not independent of accountability:*** A democratically-elected government has the right to demand accountability of any institution created under the statute.
- ***Coordinating With Other:*** The RBI has full independence in monetary policy, enshrined in the inflation targeting framework. But with the *Financial Stability and Development Council (FSDC)* having been set up, the RBI has to coordinate with other regulators on financial stability issues.
- ***Urgent Steps Required:*** Inadequate or delayed response by RBI to short-term illiquidity in NBFC sector after IL&FS crisis can create irreversible long-term asset destruction.
- ***RBI Enjoys Sufficient Powers:*** The RBI has been slammed for poor regulation following the *fraud at Punjab National Bank* but RBI claims that it does not have enough powers over PSBs. But the RBI does have nominee directors on bank boards. Further, it leads physical inspection at banks and financial audits. It has also orchestrated mergers between banks whenever a bank has been on the verge of collapse (*for instance, Global Trust Bank merged with Oriental Bank of Commerce).* So, the RBI does have adequate control over PSBs but may not be exercising it fully.

Negative Impact Of Government's Move

- ***RBI's Autonomy:*** The aggressive move raises questions about the government's intentions and the impact on RBI's autonomy.
- ***Less Maneuverability:*** Using the powers under Section 7 is considered sacrilegious among central bankers as it leaves little scope for regulator to conduct affairs in a way they deem fit.
- ***RBI's Contentions:*** RBI contention is that the government has been trying to undermine RBI *first*, by appointing government affiliated officials instead of subject matter experts to key central bank positions. Second, by eroding independent powers of the central bank through piecemeal legislative amendments. Third, by blocking rule-based banking policies in favour of *ad-hoc* discretionary interventions. And fourth, by setting up parallel regulatory agencies to perform financial intermediation functions outside the remit of the central bank.

- ***Sets Wrong Precedence:*** It would also set a precedent for future governments to push through their agenda even on minor issues, if there are differences.

Way Forward

- There are enough mechanisms available for effective communication between RBI and government. Such as the government has nominees on the RBI board and the government can use that channel to let the RBI know its concerns. Then, there is also the *forum of FSDC*.
- Moreover, if the autonomy of the RBI as the manager of the banking system needs to be respected, that has to be circumscribed within the economic goals set by the elected government. Further, the center, while asking legitimate questions, should refrain from invoking desperate clauses or encroaching upon the management of *payments and settlements systems.*
- RBI is autonomous and accountable to the people ultimately, through the government. The onus is thus on responsible behaviour by both sides. There is a need for coordinated action from both sides to meet economic challenges and both the Government and the Central Bank, in their functioning, have to be guided by public interest and the requirements of the Indian economy.

RBI Board

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

In News

- Recently there was a public spat between the central bank and the Finance Ministry on ***Section 7 of the RBI Act***, as discussed in previous topic.
- After this issue the role and powers of the ***Committee Of The Central Board (CCB)*** of the RBI are in the spotlight. It will also be a key element in the debate on governance at RBI and the responsibilities of its board of directors.
- The Government thinks that the structure and influence of CCB may be disproportionately high, and thus is in favour of reviewing the role and even the composition of the committee.

About RBI Board

- ***Composition:*** The RBI Board is a body comprising officials from the Central bank and the Government of India, including officials nominated by the government. Thus, the Board consists of
    - *Official Directors*, who include the Governor and up to four Deputy Governors,
    - *Non-official Directors*, who include up to 10 Directors from various fields and 2 government officials and one director from each of *four local boards* of the RBI.
- ***Term of office:*** The Governor and Deputy Governors hold office for *not more than five years*, the ten directors nominated by the government hold office for *four years* and the government officials are to hold a term on the RBI Board as long as the government sees fit.
- ***Power of CCB:*** According to the RBI General Rules, the CCB shall have full powers to transact all the usual business of a banking regulator except in such matters that are specifically reserved by the Act to the Central government or the central board.

Challenges/Lacunas In RBI Board

- ***Conflict of interest:*** The board has members from the corporate world who have a stake in the financial markets, which poses serious conflict of interest. *For example*- the present board has N. Chandrasekaran, who is the chairman of Tata Sons, the holding company and promoter of more than 100 Tata operating companies. Thus, there will be conflict of interest if the businessmen who are part of the RBI's board have advance information of RBI's regulations.
- ***Unclear Legal Provisions:*** Section 7 of the RBI Act is a mix of things. *Section 7(2)* gives powers to the board over administration and management of RBI's functions, but *Section 7(3)* gives the concurrent power to the RBI Governor.
- ***Approval Of Significant Decision Without Much External Oversight:*** The CCB, which enjoys similar powers as the central bank's main board of directors, *meets every Wednesday* and is authorised to approve significant decisions as long as just one external director attends the meeting with the governor and deputy governors.
- ***Old Rules:*** The committee of the central board draws its powers from the *RBI General Rules*, which were drafted in 1949 when the central bank was nationalized. Thus, may not be in tune with the current requirements.

Way Forward

To avoid conflict of interest, the RBI board should be reconstituted with academicians and technocrats who have no business interest in financial markets and could aid the RBI management with valuable inputs.

NFRA Rules Notified

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

In News

- The Centre has notified the National Financial Reporting Authority (NFRA) rules, taking away the CA Institute's monitoring and disciplinary powers over auditors of listed entities and large unlisted companies besides banks and insurance companies.

- With the latest Corporate Affairs Ministry move, the NFRA (the newly set up independent regulator of the audit profession) has become the all-powerful body when it comes to disciplining auditors and overseeing the quality of service rendered by chartered accountants at large entities.

New NFRA Rules

- **Power and Function*:*** The NFRA will have the power to monitor and enforce compliance with accounting standards and auditing standards and undertake investigation of the auditors of listed entities; unlisted entities with paid-up capital of not less than *Rs. 500 crore or annual turnover of over Rs. 1,000 crore or those having aggregate loans, debentures or deposits of not less than Rs. 500 crore* as of March 31 of the preceding financial year.
- ***Oversight:*** The NFRA will also have oversight over auditors of banks, insurers, electricity firms and also those body corporates referred to it by the Centre.
- ***Duties:*** The NFRA will maintain details of particulars of auditors appointed by companies; recommend accounting and auditing standards for approval by the Central government; monitor and enforce compliance with accounting standards and auditing standards. The authority will also oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in quality of service.
- The NFRA will cooperate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards.
- ***Procedure For Disciplinary Action:*** The rules also provide for a detailed procedure on disciplinary proceedings that will be undertaken by the NFRA. It has mandated time bound disposal ***(90 days)*** of the show cause notice through a summary procedure. The order disposing of a show cause notice may provide for no action; caution and action of imposing penalty on auditor or debarring the auditor from engaging in the profession.

Yuva Sahakar - Cooperative Enterprise Support and Innovation Scheme

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

In News

- To cater to the needs and aspirations of the youth, the *National Cooperative Development Corporation (NCDC)* has come up with a youth-friendly scheme Yuva Sahakar-Cooperative Enterprise Support and Innovation Scheme for attracting them to cooperative business ventures.
- The scheme will be linked to Rs 1000 crore Cooperative Start-up and Innovation Fund **(CSIF)**, created by the NCDC. It would have more incentives for cooperatives of North Eastern region, aspirational districts, and cooperatives with women or SC or ST or PwD members.
- The funding for the project will be up to 80% of the project cost for these special categories as against 70% for others.

- The scheme envisages 2% less than the applicable rate of interest on term loan for the project cost up to Rs 3 crore including 2 years moratorium on payment of principal.
- All types of cooperatives in operation for at least one year are eligible.

NCDC

- NCDC was established by an Act of Parliament in 1963 as a ***statutory Corporation*** under the **Ministry of Agriculture & Farmers Welfare**.
- It has the unique distinction of being the sole statutory organisation functioning as an apex financial and developmental institution exclusively devoted to cooperative sector. It supports cooperatives in diverse fields apart from agriculture and allied sectors.
- It is an ISO 9001:2015 compliant organisation and has a distinctive edge of competitive financing.

Emergency Response Support System (ERSS) for Himachal Pradesh

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

In News

- Himachal Pradesh has become the **first state in the country to implement the Emergency Response Support System (ERSS)** as the Union Home Ministry launched ERSS number 112 for the state.
- The event marks the beginning of commencement of a single number based 112 emergency services which will connect to Police, Fire, Health and other help lines through an Emergency Response Centre in the State. The service obviates the need for citizens to remember multiple helpline numbers.
- The service also includes a **'112 India' mobile app** integrated with panic button of smart phones and ERSS State website for ease of citizen in availing immediate assistance. To increase its effectiveness the ERC has also been integrated with location based services provided by telecom service providers.
- It will provide a 24*7 efficient and effective response system which can receive inputs from various voice and data services like voice call, SMS, e-mail and panic buttons in public transport, to attend to citizens in distress.
- It can also identify the location of persons in distress and immediate assistance will be provided to the affected.
- Furthermore, it will help in optimum utilisation of manpower and problems related to coordination will also be simplified.
- The app will be subsequently rolled out **in all States & Union Territories** to help people across the country access the unified emergency services. Central Government has **allocated ₹321.69 Crore under Nirbhaya Fund** for implementation of ERSS project across the country.

Location Tracking Devices In Public Service Vehicles

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

In News

- The Ministry of Road Transport & Highways has mandated that all new public service vehicles**,** except auto rickshaws and e-Rickshaws, registered on and after 1st January 2019, will have to be equipped with **Vehicle Location Tracking (VLT) and Emergency Buttons**.
- The regulation is being brought in to **ensure safety of passengers, especially women**.
- The Motor Vehicles (Vehicle Location Tracking Device and Emergency Button) Order, 2018 will apply to all public service vehicles specified under the Central Motor Vehicles Rules, 1989.
- In case of older public service vehicles – those registered up to 31st December, 2018, the respective State/UT Governments will notify the date by which these vehicles have to install VLT devices and Panic Buttons.
- Command and Control Centres will be setup by the State or VLT manufacturers or any other agency authorized by the State Government, and these centers will provide interface to various stakeholders such as state emergency response centre, Regional Transport Offices, Ministry of Road Transport and Highways and its designated agencies.
- The details of each VLT device will be uploaded on the VAHAN database by the manufacturer, using its secured authenticated access.

Vahan is a software that enables easy computerisation of processes related to vehicle registration, fitness, taxes, permits and enforcement. It has been conceptualised as a facility to capture and correlate these government functions by central and state motor vehicle regulations.

- Further, the VLT devices will be registered along with details of vehicle on the corresponding back-end systems in real-time.
- The public service vehicle owners have to ensure that the VLT devices installed in their vehicles are in working condition and regularly send required data to the corresponding backend system through cellular connectivity.
- The manufacturers will have to get their devices tested for conformity of production every year after the first certification from the testing agencies.

International Tourism Mart

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

In News

- The Union Ministry of Tourism in association with the Department of Tourism, Government of Tripura and the North Eastern States had recently organized the **International Tourism Mart (ITM) in Agartala, Tripura**.
- It was the 7th edition of ITM, an annual event organised in the North Eastern region with the objective of **highlighting the tourism potential of the region in the domestic and international markets**.

- ITM is organised in the North Eastern States on rotation basis. The earlier editions of this mart have been held in Guwahati, Tawang, Shillong, Gangtok and Imphal.
- North East is endowed with diverse tourist attractions and products. The varied topography of the region, its flora and fauna, the ethnic communities with their rich heritage of ancient traditions and lifestyles, its festivals, arts and crafts, make it an excellent holiday destination.
- ITM brings together the tourism business fraternity and entrepreneurs from the eight North Eastern States. The event has been planned and scheduled to facilitate interaction between buyers, sellers, media, government agencies and other stakeholders.
- It saw wide participation of International buyers and media delegates from countries around the world and from different regions of the country and enabled the tourism product suppliers from the region to reach out to international and domestic buyers.
- In addition to the business interactions between the tour operators, the three-day event included presentations by state governments of the region on their tourism potential, panel discussion, cultural evenings and sightseeing visits to local attractions in and around Agartala.
- An exhibition by State Tourism Departments from the North Eastern States including display of beautiful handicrafts and handlooms was also organized, to show case the tourism products of respective participating States
- Post-mart familiarisation tours to the North Eastern states were arranged for the international delegates to create awareness of the region and to give them a first-hand experience of the destination.

Beyond Fake News Project

Syllabus: The role of NGOs, SHGs, various groups and associations in Development

In News

- The UK-based broadcasting channel BBC has launched the **Beyond Fake News Project** on how and why misinformation is shared.
- Around the globe, disinformation has been seen to **cause social and political harm**, with people having less trust in the news, or in some cases being subjected to violence or death as a result.
- Poor standards of global media literacy and ease with which malicious content can spread unchecked on digital platforms mean there's never been a greater need for trustworthy news providers to take proactive steps.
- The project is based on findings from original BBC research by accessing the user's encrypted messaging app in India, Kenya, and Nigeria.
- The programme has already begun delivering workshops in India and Kenya. It draws on the BBC's pioneering work to tackle disinformation in the UK, where digital literacy workshops have also been delivered to schools across the country.
- The project aims to fight back with a major focus on global media literacy, panel debates, hackathons exploring tech solutions and a special season of programming across the BBC's networks in Africa, India, Asia Pacific, Europe, and the Americas.

Dr. Ambedkar International Centre to be Developed into Think Tank

Syllabus: Important aspects of governance, transparency and accountability

In News

- ***Introduction:*** The Ministry of Social Justice and Empowerment has moved an inter-ministerial consultation note to conceptualize Dr Ambedkar International Centre as a think tank for socio-economic transformation.
- ***Other Aims:*** The Centre also plans to develop it as a think tank and an institution offering government recognized academic courses, research opportunities and training programmes for government officials and corporates. Further it will also have a *Center of Excellence* for Buddhist studies. The center will also advise the government and the corporate sector on inclusive growth and various means of affirmative action for the Scheduled Castes.
- ***Five Schools:*** The Centre will have five schools *i.e.* School of Sustainable Development and Livelihood, School of Buddhist Studies, School of Policy Making and Policy Advocacy, School of Studies on Ambedkar and School of Socio-economic Transformation. The five schools would offer short term accredited courses, training and internships, data mining opportunities, research programmes, conferences and symposiums, lecture series and study tours.

India Slips In Global RTI Ratings

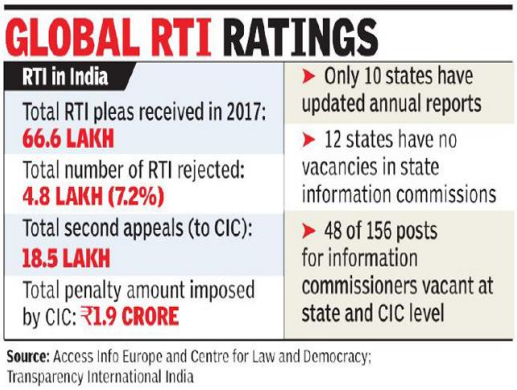
Syllabus: Important aspects of governance, transparency and accountability

In News

It is surprising to note that despite the RTI statute in India remaining the same along with its legal framework, India has slipped from its 2nd position in 2011 to 4th, 5th, and 6th position in 2016, 2017, and 2018 respectively on Global RTI rating.

About The Rating System

- The Global RTI ratings, based on 61 indicators, is a programme founded by the ***Centre for Law and Democracy (CLD)***, a Canada-based non-governmental organisation, along with ***Access Info Europe***.
- ***Purpose of Ranking:*** According to CLD, the global RTI rating is a system for assessing the strength of the legal framework for guaranteeing the right to information in a given country.
- ***Comparative Ranking:*** India ranks lower than smaller nations like Afghanistan, which adopted the RTI later than India and Serbia.



- India scored 128 out of a possible total of 150 points. Out of the 61 indicators, there are nine indicator categories under which India's points have been downgraded.

Lacunas In Ranking

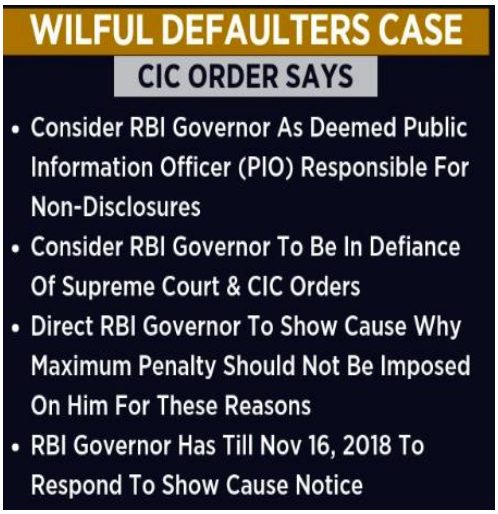
- ***No rationale for fall in ranking:*** It is surprising to note that despite the RTI statute in India remaining the same along with its legal framework, India has slipped in the ranking.
- ***Does not consider quality of implementation:*** The ranking is limited to measuring the legal framework only and does not gauge the quality of implementation.

Disclosure of List Of Willful Defaulters

Syllabus: Important aspects of governance, transparency and accountability

In News

- The Central Information Commission (CIC) has issued a show cause notice to the Reserve Bank of India (RBI) to reveal the list of willful borrowers.
- The CIC has also asked the RBI Governor to explain why a maximum penalty be not imposed on him for dishonouring the verdict.



RBI's Stand For Non-Disclosure

- ***Twin challenge:*** RBI has claimed that it involves risk to the country's economic interest and its fiduciary relationship with lenders/bankers to avoid sharing information on the largest defaulters with RTI applicants.
- ***Impact ongoing probe:*** The RBI had also reasoned that any disclosure of information might jeopardize probe against defaulters.
- ***Steps already initiated:*** The RBI has started setting up a digital ***Public Credit Registry (PCR)*** to capture details of all borrowers, including willful defaulters and also the pending legal suits in order to check financial delinquencies.
- ***Asset Quality Review:*** Moreover, RBI's AQR has forced banks to come clean on the dodgy loans and more stringent recognition norms are put in place.

Arguments In Favour Of Disclosure

- ***In Sync With SC Order***: The Supreme Court (SC), in its 2015 order, has also mandated disclosure of names of the willful defaulters.
- ***Legally Mandated:***
  - The RBI is liable to provide information regarding inspection report and other documents to the general public. Thus, the central bank should comply with the provisions of the *RTI Act*, which mandate disclosure of public information.
  - The *Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act* allow publication of photographs of defaulting borrowers. Their names get revealed when banks file bankruptcy suits and the case is referred to the National Company Law Tribunal.
- ***No Fiduciary Relationship:*** The RBI has no legal duty to maximize the benefit of any public sector or private sector bank and thus there is no relationship of trust between them. The

SC also endorsed the same in 2015, when it held that the RBI is clearly not in any fiduciary relationship with any bank.

- ***Practically Possible:*** The compliance with the verdict is possible since the RBI has the right to obtain information from the banks under *Section 27 of Banking Regulation Act*. Under this, RBI collect information from the banks in due course to update their voluntary disclosures from time to time as a practice under *Section 4(1)(b) of RTI Act*.
- ***Taxpayer Finally Faces The Brunt:*** RBI argument that contract between bankers and their borrowers forbid it from making these details public does not hold water as due to the misdeeds of willful defaulters, the taxpayer are being asked to bear the cost.
- ***Involvement of Public Money:*** RBI should also comply with the CIC's directive as loans to corporate borrowers are disbursed from public deposits and bad loans are a cost to the economy.
- ***Deterrent Effect:*** The disclosure will also put pressure on defaulters, even as banks have to use every possible way to recover loans. Thus, there is no reason why fraud and mala fide should be hidden from the public.
- ***Misconceived Basis:*** The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived.
- ***Disclosure Essential For Taking Rational Decisions:*** If defaults are not made public the day they happen, then it is impossible for any credit rating agency or the stock markets or any analyst to take a view on the company. Moreover, when defaulters data is immediately made public that serious analysis of the causes and projections can be made that are critical for any form of analysis and resolution of the problem.
- ***International Best Practice:*** Countries such as *Sweden, Finland, and Norway* even publish everyone's income-tax returns. India has a distance to go.

Way Forward

- Though all large unpaid loans are by-products of *mala fide* borrowing, the onus is on the RBI and the government to initiate steps retaining public trust.
- Further, it is also to be kept in mind that there is no use in just name shaming the defaulters and insolvency process has to begin as quickly as possible to retrieve the defaulted the money.