

Constitution, Polity, And Governance**Citizenship Amendment Bill**

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

In News

- The Citizenship (Amendment) Bill was recently passed in the Lok Sabha. It **amends the Citizenship Act, 1955 by selectively relaxing the eligibility rules for immigrants in getting Indian citizenship.**
- Under the existing Act, an immigrant must have lived in India for 11 of the previous 14 years. The Bill **relaxes this to six years for certain sections of immigrants.** It is for immigrants belonging to six minority religions —Hindus, Sikhs, Buddhists, Jains, Parsis, Christians — from Afghanistan, Bangladesh or Pakistan. However, the Act doesn't have a provision for Muslim sects like Shias and Ahmediyas who also face persecution in Pakistan.
- If the bill is passed by in the Parliament, illegal migrants belonging to the said communities from Afghanistan, Bangladesh or Pakistan would not be imprisoned or deported.
- Illegal migrant: According to the Citizenship Act, 1955, an illegal immigrant is one who enters India without a valid passport or with forged documents or a person who stays beyond the visa permit.
- According to legal experts, when the Bill is read together with a Home Ministry notification of September 7, 2015 on The Passport (Entry into India) Amendment Rules, 2015 and with The Foreigners (Amendment) Order, 2015, the cut-off for citizenship becomes December 31, 2014.
- As the Bill makes illegal migrants eligible for citizenship on the basis of religion, it may violate Article 14 of the Constitution which guarantees right to equality. Article 14 guarantees equality to all persons, citizens and foreigners. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose.

Protests

- With states like Tripura and Assam already reeling under chronic illegal migration from Bangladesh, collectively, the region fears that the sad fortune of Tripura where its natives are now reduced to a minority by unabated influx from Bangladesh will be repeated in other states.
- In Arunachal Pradesh, the natives are anxious about the influx of Chakmas and Tibetans. In Meghalaya, the Khasis and Garos, as well as the Nagas of Nagaland, are wary of the Bengali migrants. On the other hand, the Mizos of Mizoram fear an influx of Buddhists Chakmas.
- Resonating the same sentiment, the seven North Eastern states allege that the agenda is to completely annihilate and wipe out the indigenous people of the North East by orchestrating a demographic invasion from across the border
- There is a fear that the move will lead to a **change in the demography and work against the political rights and the cultural and linguistic identity of the indigenous people.**
- It is also argued that the Bill, if made into an Act, will **nullify the updated National Registration of Citizenship (NRC).**
- The National Register of Citizens (NRC) is meant to identify a bona fide citizen. NRC is being currently updated in Assam to detect Bangladeshi nationals who might have entered the State illegally after the midnight of March 24, 1971. The date was decided in the 1985 Assam Accord,

which was signed between the then Prime Minister Rajiv Gandhi and the AASU. The NRC was first published after the 1951 Census in the independent India when parts of Assam went to the East Pakistan, now Bangladesh.

- **Government's defence:** The government defends the bill by claiming that the bill is not just for Assam and the Northeast, but for the entire country. It acts as atonement for mistakes committed during partition and the regularised immigrants would not be settled in Assam alone but be distributed among various states across the country. Further the proposed provision has general application beyond the Assam Accord and is intended to apply to the whole of India
- Given the fact that the North East is already grappling with communal tension, insurgency, social unrest, migration and corruption, regularising the influx of more migrants may once again fuel insurgency to bounce back stronger.

Freedom of Literature Bill

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

In News

In a Private member Bill that has been introduced in the Lok Sabha by Congress MP Shashi Tharoor has suggested far reaching amendments to various statutes to make it difficult for governments to ban books and to provide safeguards for authors and scholars from arbitrary and exhausting legal battles.

Provisions Of The Bill

- **Introduction:** The Bill puts on the government the onus of explaining why a book needs to be banned and removes the government's right to ban books indefinitely.
- **Purpose of the Bill:** The purpose of the Bill is to amend and remove the existing provisions of the laws, which can be misused to harass authors by vested interests.
- **Changing Existing Laws:** The Bill envisages reading down **Section 295A** of the Indian Penal Code that provides for imprisonment of up to **three years** for deliberate and malicious acts intended to outrage religious feelings or any class by insulting its religion or religious beliefs as well as **Section 298**, which is **similar to 295A** as it criminalises speech critical of religious organisations or religious figures, and therefore a major deterrent to free expression. **For Ex.-** Wendy Doniger's *The Hindus: An Alternative History* was withdrawn from circulation.
- **Amendment in Custom Act:** The most important part of the Bill is the proposal to amend the Customs Act that allows governments to suspend the shipping in of books over an indefinite period (as had happened with the ban on **Salman Rushdie's Satanic Verses**).
- **Changes in IT Act:** It wants to limit the bar on obscenity in the **Information Technology Act** to child pornography.
- **Change in procedure:** In the process of proscribing a book, the Bill proposes a tweak in the form of a **15-day prohibition**. Thereafter, the onus should be on the State government to approach the **High Court** to seek a permanent ban.

Final Analysis

As a private member's Bill, the legislation has hardly any hope of passing, but it reflects the contested terrain of freedom of speech and expression despite constitutional safeguards. Moreover, it is useful in highlighting gaps in the body of law.

10% Quota for Low Income Groups

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

In News

The Parliament has approved *124th Constitutional Amendment Bill (103rd Amendment Act)* to give 10% reservation to the economically weaker sections (EWS) of society, over and above the 49.5% quota in place for SC, ST and OBCs. (It is a type of horizontal reservation like for PH category not like vertical reservation for SCs/STs)

Background

- **2006 Commission:** The UPA government in 2006 had formed the Commission for Economically Backward Classes under the Ministry of Social Justice and Empowerment (MoSJE). Maj Gen (Retd) SR Sinho headed the Commission. It had given 14 recommendations, one of the major recommendations was to qualify upper caste members who don't pay income tax as EWS and treat them at par with other backward classes.
- **Other recommendations:** The Commission also recommended that EWS children should be eligible for soft loans for higher education, scholarships, coaching for IAS and PCS exams and subsidized health facilities. Further, they can also be helped in the housing sector with soft loans.

Provisions Of The Bill

- **Aim:** The Bill aims to add **Clause 6 in Articles 15 and 16** of the Constitution to extend reservation in educational institutions and government jobs for EWS. The beneficiaries include EWS from *all religions*.
- **Article 15(6):** The new clause (6) to Article 15 allows the government to carve reservation for the EWS of society in higher educational institutions, including private ones, whether they are aided or not by the State. **Minority educational institutions are exempted.**
- **Article 16(6):** Likewise, the new clause (6) to Article 16 provides for quota for economically deprived sections in the initial appointment in government services.
- **Exclusions:** The person not entitled to EWS reservation include those family having annual income **above Rs 8 Lakh**, persons whose family owns or possesses five acres of agricultural land, residential flat of 1000 square feet and above, residential plot of 10 yards and above in notified municipalities and residential plot of 200 yards and above in areas other than notified municipalities.

Test	To	Determine
Reasonableness		Of
Reservation		
<p>To determine whether economic reservation violates basic structure or not, the M Nagraj Case (2006) applied two tests. One is the width test, on the boundaries of the amending power. This would include examination of four issues <i>i.e.</i> quantitative limitations such as violation of the 50% ceiling for all reservations taken together;</p> <p>(ii) exclusion of creamy layer or qualitative exclusion; (iii) compelling reasons such as backwardness of the economically weaker sections for whom this reservation has been made; (iv) that overall administrative efficiency is not obliterated by the new reservation. The second test is called the identity test, under which the Supreme Court will examine whether, after the amendment, there is any alteration in the identity of the Constitution. The amendment cannot change this.</p>		

Arguments In Favour Of The Bill

- **50% limit does not apply:** The Amendment Act does not violate the **Indra Sawhney judgment of 50% ceiling** as it applies only in the case of socially and educationally backward classes, whereas amendment deals with quota for the EWS of society.
- **Implementation of Article 46:** The government has invoked the

Directive Principles of State policy contained in Article 46 to defend its proposal for reservation for the economically weaker sections. Article 46 says that the State shall promote with special care the educational and economic interests of the weaker sections of the people.

- **De-stigmatization:** The people from the SC and ST have supported the amendment in anticipation that it is the beginning of the process of de-stigmatization of reservation.
- **Secular initiative:** The 10% quota for the EWS, (those, not SC, ST or OBC) was the first time in India's history that a government welfare programme specifically included Muslims under its umbrella of recipients.
- **Larger beneficiaries:** The EWS reservation cuts across erstwhile limitations of caste and religion, enabling a policy that serves a larger segment of beneficiaries.

Challenges

- **Overall issues:** It primarily affects the **basic structure of the Constitution**. At the same time the Constitution does not provide for economic reservation.
- **Against SC decision:** Further, the **Indira Sawhney judgment** has capped the reservation limit to 50%, but the new amendment increases reservation to 59%. Moreover, the court has said economically deprived is not a homogenous group and **economic backwardness cannot be the sole criterion** for reservation.
- **Against Article 14:** A total of **59% (49%+10%) quota** would leave other candidates with just 41% government jobs or seats. This may amount to sacrifice of merit and violate Article 14.
- **Lack of compelling necessity:** Similarly, the government has to justify compelling reasons of going beyond the 50% limit. In some states, upper castes number less than 10% and this scheme may be difficult to justify as for 52% backward classes there is just 27% OBC reservation.
- **Not an affirmative action:** Affirmative action was designed for those who have suffered social discrimination, not as a poverty alleviation, employment measure. Thus, the government has overlooked the fact that upper castes neither face social injustice nor are subjected to any form of exploitation.
- **Fluctuating criteria's:** The economic criteria was too fluctuating a basis for providing quota.
- **Limit too high:** The cut off of **Rs 8 lakh** is too high and will not benefit the truly poor families. The National Sample Survey (NSS) of 2011-12 shows that with this annual per capita income criteria, 99% of households will fall under this threshold.

Cabinet Decides To Strengthen North-East Autonomous Councils

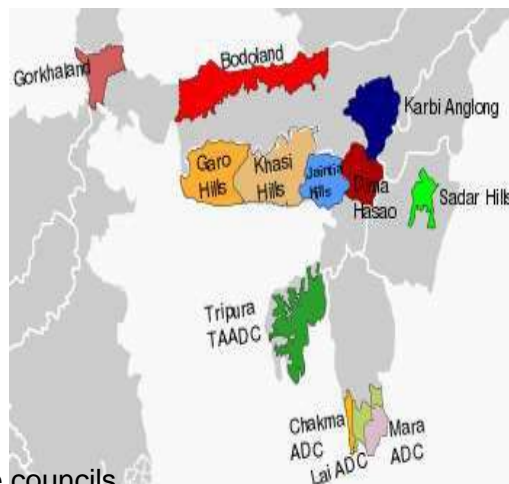
Syllabus: Indian Constitution - Historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

In News

- The Cabinet has approved the landmark amendment to **Article 280** and **Sixth Schedule** of the Constitution. The most important part of these amendments is that these will significantly improve the financial resources and powers of the **10 autonomous districts councils** in **Assam, Meghalaya, Mizoram and Tripura**, fulfilling long-standing aspirations of the tribal population in these northeastern States.
- Till now, the autonomous councils have depended on grants from Central Ministries and the State governments for specific projects.

The Cabinet Decision

- **Transfer of subjects:** The amendment provides for transfer of **additional 30 subjects**, including the departments of Public Works, Forests, Public Health Engineering, Health and Family Welfare, Urban Development and Food and Civil Supply to **Karbi Anglong Autonomous Territorial Council** and **Dima Hasao Autonomous Territorial Council** in Assam.
- **Reservation for women:** As per the proposed amendment, at least **one third** of the seats would be reserved for women in the village and municipal councils in the Sixth Schedule areas of **Assam, Mizoram and Tripura**.
- **Role of FC:** The Finance Commission (FC) would be mandated to recommend devolution of financial resources to the councils.
- **Democracy:** The proposed amendments also provide for elected village municipal councils, ensuring democracy at the grass roots level. Further, the village councils will be empowered to prepare plans for economic development and social justice, including those related to agriculture, land improvement, implementation of land reforms, minor irrigation, water management, animal husbandry, rural electrification, small scale industries and social forestry.
- **Role of SEC:** The **State Election Commissions** would hold elections to the autonomous councils, village and municipal councils in the areas of **Assam, Mizoram and Tripura**.



Benefits

- **Direct impact on tribal:** The amendment would impact a population of about **1 crore tribals** living in **Assam, Meghalaya, Tripura and Mizoram**.
- **Availability of finance:** This will be a game changer, as it will substantially enhance the funds available to these local government institutions for undertaking development works in these tribal areas.

Final Analysis

The move is a step in right direction but the decision such as devolution of financial resources by Finance Commission to ensure more funds to local government institutions can only be successful, if Centre is able to plug loopholes and ensure funds are used for development purposes unlike in the past when autonomous councils in Assam were charged by CBI and NIA for indulging in corruption and terror related activities.

Issue About Sedition Law

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

In News

- The slapping of sedition charges (**under Section 124A of Indian Penal code**) against noted **Assamese scholar Hiren Gohain** and two others for remarks made against the proposed citizenship law is a textbook case of misuse of the law relating to sedition.

- The sedition charges are also filed against an ex-president of the JNU Student's Union, **Kanhaiya Kumar** and former students for allegedly raising and supporting anti-national slogans.

SC On Sedition Law

- Imminent threat must:** To prevent a heavy handed response to strident political criticism that courts have often pointed out that the essential ingredient of any offence of sedition is an imminent threat to public order. (**Kedarnath v. State of Bihar case, 1962**)
- Actual violence:** SC has also said that unless there is actual incitement to take up arms or resort to violence, even demands that go against the legal or

constitutional scheme of things would not amount to sedition.

1891: The British first invoked the charge of sedition against Jyotindra Chandra Bose, editor of "Bangalasi", in 1891 for his criticism of the "Age of Consent Bill".

1908: Bal Gangadhar Tilak was held for sedition for criticizing hanging of Chapekar brothers and blaming British for taking the country to the brink, instigating revolutionaries.

1921-22: Master Tara Singh, a politician and religious head, was charged with sedition for speeches against the British rule for its involvement in a dispute of Golden Temple.

1922: Mahatma Gandhi was convicted for sedition for his articles published in Young India.

2003: 2003: Vishwa Hindu Parishad leader Prafulla Togadia was charged with sedition by the Rajasthan government in 2001.

2005: Suresh Singh Meen, ex-IPS and president of the SAD-Amritsar, was charged with 4 different sedition cases.

2007: Dr Binayak Sen, a parliamentarian, was arrested for sedition for allegedly helping carry messages to Maoists in Chhattisgarh. He was sentenced by a trial court in 2010, and was given bail by the SC in 2011. His appeal is pending in the Chhattisgarh High Court.

2009: Tamil Nadu politician Velupillai Prabhakaran (V. Gopalsamy) was slapped with sedition charges for his statements against India's sovereignty in a speech on Sri Lanka's war with LTTE.

2010: Nour Mohammad Bhat, a lecturer from Gandhi Memorial College, was arrested for setting an anti-India question paper.

2012: Cartoonist Anand Trivedi was arrested on sedition charges for his alleged cartoons and cartoons mocking the Constitution, Parliament and the National Flag. The Bombay HC struck down the charge.

2013: Mugh-e-Firhad Maskeen MLA Akbaruddin Owaisi was slapped with sedition charges by the Karnataka police.

WHAT IS SEDITION 124A, SEDITION

WHosoever, by words, either spoken or written, or by signs, or by visible representations, or otherwise, brings or attempts to bring hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be imprisoned for life.

EXPLANATION 1. The expression "disaffection" includes disloyalty and all feelings of enmity.

EXPLANATION 2. Comments expressing disapprobation of the measures of government with a view to obtaining their alteration by lawful means, without attempting to excite hatred, do not constitute an offence under this section.

EXPLANATION 3. Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Misuse Of The Sedition Law

- Misuse of law:** It is being invoked even in cases where there is no incitement to violence or tendency to create public disorder.
- Containing dissent:** In recent years, there have been many instances of state governments seeking to silence political dissent by accusing dissenters of promoting disaffection.
- Vague and broad:** It is also argued that the provision is overbroad i.e., it defines the offence in wide terms threatening the liberty of citizens.
- Colonial law:** The Britain abolished it more than a decade ago and this raises the question, whether a provision introduced by the British to put down the freedom struggle should continue to be law in India.
- Law commission:** Even the Law Commission, in a consultation paper released last year, had called for a reconsideration of the sedition section in the IPC.

Way Forward

- While the provision, which is couched in broad terms, needs a much narrower definition, the right course is to scrap **Section 124A**, a relic of the colonial era, altogether.
- Further, the misuse of the sedition law should attract appropriate penalties for law enforcement agencies coupled with a provision for compensation to the injured party.

Vote On Account

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

In News

- There is a speculation that the NDA government may present a regular full budget instead of a vote on account. The main opposition says that it will oppose the same in Parliament, as it would be violative of parliamentary conventions, procedures and traditions.
- The opposition also says that the parliamentary convention prohibits a government from taking major policy or legal change through Vote on account before the last parliament session.

Background

• Since 1948, when Finance Minister R K Shanmukham Chetty presented a vote on account and followed it up with Independent India's first regular budget, most governments have followed this convention.

• However, if govt announce a major policy decision on February 1, the NDA-II Government will not be the first to disregard convention. Then Finance Minister P. Chidambaram had, in the vote on account in 2014-15,

announced the One Rank One Pension scheme, which Opposition members claimed was an attempt to garner votes from the members of the armed forces.

• The NDA-I also announced several policy decisions that affected not just the poor population, but also farmers & government employees. For example, then Finance Minister Jaswant Singh announced the extension of the Antyodaya Anna Yojana.

About Vote on account

A vote on account, also known as Interim Budget, essentially means that the government seeks the approval of Parliament for meeting expenditure for the **first four months** of the fiscal year (April-March) in paying salaries, ongoing programmes in various sectors *etc.* but, with no changes in the taxation structure, until a new government takes over and presents a full Budget.

Issues

- **Rules silent:** There is nothing in the House rules, which says that the government cannot amend an Act of Parliament during last session of the Parliament before general election. The only factor to be considered is that doing so would go against the established convention.
- **Little time:** The changes in the law is avoided as there is little time to get approvals from Parliament for various grants to ministries and departments and to debate these grant.
- **New government:** More importantly, the reasoning against introducing full budget is that any change in law or taxation is the prerogative of the new government to signal its policy direction.

All India Judicial Services (AIJS)

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

In News

The vision document titled Strategy for New India @ 75, released by NITI Aayog, amongst other things, proposes creation of an AIJS, akin to the other central services like the IAS and the IPS.

Background

The idea of an AIJS has been deliberated since Independence. In fact, the *First law commission's 14th Report* on 'Reform of Judicial Administration' suggested the need for creating a separate All India service for judicial officers.

Rationale For Creation Of AIJS:

- **Incentivizing:** It will ensure that subordinate court judges are paid salaries and given perks at parity with government bureaucrats, thereby incentivizing the option of the state judiciary as a viable career prospect.
- **Quality:** The quality of judges will improve as the best legal talent across the country would be selected on the basis of merit.
- **Reduce shortage of judges:** The AIJS is also being proposed as a panacea to cure the chronic vacancy crisis plaguing the Indian subordinate judiciary.
- **Streamlined procedure:** An All India service will offers a more streamlined and regularized recruitment process for the vacancies for District judges in the country.
- **Constitutionally permissible:** The **Article 312** of the Constitution permits the Rajya Sabha to create an All India Services. Presently, the appointments to the subordinate judiciary are made under **Articles 233 and 234** of the Constitution. However, the **Article 312** commences with a non-obstante clause, thus will override these provisions. Furthermore, **Entry 70** of the Union List provides Parliament exclusive authority to enact a law creating such an AIJS and all connected matters.
- **Other benefits:** The efficiency and efficacy of judiciary would be increased and the issue of corruption, nepotism etc. would be strongly dealt with.

Challenges

- **Shortage of judges may remain:** As the Constitution only permits the appointments of District Judges to such a prospective AIJS, it will not magically remedy the shortage of judges at the subordinate level.
- **Opposition of stakeholders:** The idea of an AIJS has been significantly contentious within the legal fraternity and other concerned stakeholders. The idea has been vehement disagreed by **almost half the High Courts**.
- **Issue of federalism:** Many State see this as an attempt by the central govt to encroach is state's domain. Thus, it will be another ground for conflict between the Union and other federal units.
- **Issue of independence of judiciary:** If the control over State judiciary is transferred to Union government by removing control of High Court as currently provided under **Article 235**, the independence of judiciary would be undermined.
- **Other issues:** The judges appointed by the All India process will need to familiarize themselves with the **local languages, customs and laws of the State**.

Conclusion

Despite the limitations, there is a strong case for the establishment of AIJS as a meritocratic judiciary is the need of the hour, which is possible with a competitive recruitment process.

Collegium Controversy

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

In News

- A controversy arose after collegium's January 10 resolution that dropped names of two High Court (HC) Chief Justices picked for elevation to the Supreme Court (SC) a month ago and recommended instead two new names (Justice Dinesh Maheshwari and Justice Sanjiv Khanna).

- Further, the appointment Justice Sanjiv Khanna was made by supersession of 32 judges who were senior to him.

Issue About The Recent Controversy

- **Opaqueness:** The instance shows that the Collegium system continues to be opaque, secretive and unaccountable.
- **Issue of nepotism:** The appointments made reek of biases of self selection and in breeding. Sons and nephews of previous judges or senior lawyers tend to be popular choices for judicial roles.
- **Lack of objective criteria:** With collegium's *ad hoc* informal consultations with other judges, which do not significantly investigate criteria such as work, standing, integrity and so on, the collegium remains outside the sphere of legitimate checks and balances.
- **Independence of judiciary:** The controversy seriously undermines the independence of judges and raises unnecessary doubts about the credibility of the SC as the government is only the biggest litigator.
- **Violation of seniority principle:** Although, the seniority convention for higher judicial appointments is not set in stone. But, the **Second Judges' case of 1993**, which led to the formation of a collegium, held that unless there be any strong cogent reason to justify a departure, that order of inter-se seniority amongst Judges of High Courts must be maintained between them while making their appointment to the SC.
- **Lack of justification:** The collegium own previous decision to appoint other persons to the SC was reversed, without any explanation or justification.
- **Lack of reformative step:** Although the SC did not upheld the constitutionality of **National Judicial appointment Commission (NJAC)**, but it failed to introduce important reformatory changes in the functioning of the judiciary and appointment procedure. Thus, it reverted to the old Collegium based appointments mechanism.

Final Analysis

- The lack of a written manual for functioning, the absence of selection criteria, the arbitrary reversal of decisions already taken, the selective publication of records of meetings, all of these point to the fact that the Collegium is not only as opaque as it was, it may perhaps have become worse.
- Thus, this is a time to revisit the Collegium issue, either through a Presidential reference to the SC or a constitutional amendment with appropriate changes in the original NJAC law.

Possible End Of Oral Mentioning In SC

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

In News

- The Supreme Court (SC) is drafting new guidelines that would help ensure that urgent cases automatically come up before a Bench for hearing within four days of their being filed, obviating the need for lawyers to appear before the Chief Justice of India (CJI) to orally mention their cases for urgent listing.

About Oral mentioning

Oral mentioning is a convention by which lawyers circumvent the long winded filing procedures and make a direct appeal to the CJI, who is the court's administrative head and master of the roster, for early hearing.

- Further, if such cases did not come up for hearing, the lawyers concerned could make a mention before the Registrar to have their cases listed.

Benefit

- **Saving of time:** Earlier, the urgent mentioning before the SC, unnecessarily wasted the precious time of the court.
- **Impact on other cases:** When the CJI takes a call on the spot, *i.e.* whether the case deserves to be heard out of turn. This would mean pushing other cases off the list.
- **Not urgent:** The CJI has also often complained about how cases that were orally represented by a lawyer during mentioning, did not turn out to be urgent.
- **Level playing field:** The convention was also misused by the Senior Advocates by taking advantage of their standing in court to get early dates during oral mentioning. Thus, new rule will create a level playing field for all lawyers by allowing only advocates on record to mention cases.

The Propriety Of New Andhra High Court

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

In News

- **Retired SC Justice Jasti Chelameswar** has recently called into question the creation of the new High Court of Andhra Pradesh and described it as a flagrant violation of the Constitution.
- The new Andhra Pradesh High Court was constituted through a notification issued by the President and published in the Gazette of India on Dec' 26, 2018 and came into existence on Jan' 1, 2019.

The Rationale

- **Bypassing Parliament:** The Constitution prescribes a certain procedure to be followed in establishing or constituting High Courts. In this case, they have virtually bypassed Parliament.
- **Prior authorization of Parliament:** Constitutionally, the President can notify the creation of a new High Court only after Parliament has authorized him to do so. The Parliament has to fix a date (for creation of new HC) and it can delegate the authority to the President as has been done in all other such cases in the past.

National Voter's Day

Syllabus: Elections and Representation of People's Act and Related Issue

In News

- The 9th National Voters' Day (NVD) was recently celebrated all over the country on **January 25**.
- It is being **celebrated every year since 2011 to mark the Foundation day of Election Commission of India**, which was **established on this day in the year 1950**.
- The main purpose of the NVD celebration is to encourage, facilitate and maximize the enrollment, especially for the new voters.
- Dedicated to the voters of the country, the day is utilized to spread awareness among voters for promoting informed participation in the electoral process.
- **My Vote Matters**, a quarterly magazine was launched on the occasion and the first copy was presented by the Election Commission to the President.
- The National Awards for the Best Electoral Practices were also conferred to officers for outstanding performance in the conduct of elections. In addition, awards were also given to CSOs and Media Houses who have made outstanding contribution in the field of voter awareness and outreach.

I&B Drops Paid News Regulation In Draft Bill

Syllabus: Elections and Representation of People’s Act and Related Issue

In News

After yearlong deliberations, the Ministry of Information & Broadcasting has decided to drop regulation against paid news in newspapers and magazines from the proposed **Press and Registration of Books and Periodicals (PRBP) Bill**. At present, there is no law to tackle paid news.

Background

- A Parliamentary panel in August 2015 had asked the Ministry to expeditiously formulate an appropriate policy to make paid news a punishable electoral malpractice and also empowering the Press Council to adjudicate complains of paid news and giving final judgment in the matter.
- The Election Commission of India has certain rules on paid news in place, under which it disqualified Madhya Pradesh minister Narottam Mishra for three years in June 2017.

The Rationale

- **PRBP deals with other matters:** The PRBP is not the right legislation for paid news as the former only related to title verification, registration and circulation verification of newspapers, books and periodicals.
- **Dealt separately:** According to the Ministry, the paid news pertains to “content”, an issue that should be dealt through an amendment in the *Press Council Act*, which is concerned with standards of newspapers and news agencies in India.

About New Press and Registration of Books (PRB) Act

- **New Legislation:** It was in June 2017 that the Ministry decided to scrap the 150 year-old archaic Press and Registration of Books (PRB) Act of 1867 and drafted a fresh Bill to regulate newspapers and publications as well as their registration.
- **Punishment:** It provides that if any publication was found to have indulged in or continued indulging in publishing paid news, the Press Registrar General could suspend the publication for a period of 45 days after holding an inquiry under the *Press Council Act, 1978*. It further states that if the publication continues to publish paid news even after suspension, the press registrar general can also order cancellation of the registration of the publication.
- **Proviso to the punishment:** However, the publisher will be given an opportunity to present his view in such a case, the provision mentions.

Analysis of Electoral Bond Scheme

Syllabus: Elections and Representation of People’s Act and Related Issue

In News

Last year the government introduced an **Electoral Bond Scheme** purportedly with a view to cleansing the prevailing culture of political sponsorship. But many experts have pointed out loophole in the scheme.

Loopholes

- **Major issues:** Firstly, there is no ceiling on party expenditure and the EC (Election Commission) cannot monitor the scheme as the government administers it.



- **Issue of black money:** Further, there is no surety that the money that is being invested in the scheme is not black money as there is *secrecy of the donor*.
- **Issue of foreign influence:** Even foreign money can come under the scheme so *prima facie* there is chance that domestic independence of the government may be lost.
- **Too opaque:** In its present form, the scheme permits not only individuals and body corporates, but also every artificial juridical person, to purchase bonds, issued by the State Bank of India, in denominations of Rs. 1,000; Rs. 10,000; Rs. 1 lakh; Rs. 10 lakh and Rs. 1 crore, during specified periods of the year. Further, it is issued in the form of promissory notes and once a bond is purchased the buyer can donate it to any political party, which can then encash it on demand.
- **Removal of existing ceiling:** The scheme removes an existing condition that had prohibited companies from donating anything *more than 7.5% of their average net profit over the previous three years*. This now means that even loss making entities can make unlimited contributions.
- **Removal of safeguard:** Additionally, the requirement that a corporation ought to have been in existence for at least three years before it could make donations, a system that was meant to stop shell concerns from being created with a view purely to syphoning money into politics has also been removed.
- **Violation of fundamental rights:** Indian Courts have nearly consistently seen that freedom of voting as distinct from the right to vote, as a facet of the right to freedom of expression and as an essential condition of political equality. In the absence of complete knowledge about the identities of those funding the various different parties, it's difficult to exercise Right to Vote.

Rajasthan Government Removes Educational Criteria For Local Bodies Election

Syllabus: Elections and Representation of People's Act and Related Issue In News

- The Rajasthan government has decided to **scrap minimum educational requirements** for candidates contesting local body elections.
- The previous government had made it mandatory for candidates contesting for the post of Sarpanch to have cleared Class 8 and for those in the fray in Zila Parishad and Panchayat Samiti elections to have passed Class 10.

Positive Impact

- **Restore right to contest:** This is a progressive move and will restore the right to contest, at least in theory, to a large section of the population in the State, where the literacy rate, according to the 2011 Census was *52% for women and 79% for men*.
- **Restoration of state's responsibility:** The earlier rule were ill considered as it penalized the people for failure to meet certain social indicators, when in fact it is the state's responsibility to provide the infrastructure and incentives for school and adult education.
- **Restoration of the purpose of PRI:** Earlier rule

PANCHAYAT POLLS: WHAT STATES SAY

HARYANA

Class X for general candidates Class VIII for women and Dalits. Class V for Dalit women. No criminal conviction, pending electricity bills or loan payments. Toilet at home must.

RAJASTHAN

Class X for zila parishad, panchayat samiti. Class VIII for sarpanch. Class V for scheduled areas. No leprosy patient.

ANDHRA PRADESH

Hearing and speech impaired, leprosy patients cannot contest.

ODISHA

No hearing and speech impaired.

tuberculosis, leprosy patients.

KARNATAKA

Toilet at home must, or must give written undertaking that it would be built within one year.

MAHARASHTRA

Cannot have more than two children. State disqualifies those who defecate in the open.

GUJARAT

Toilet at home must.

CHHATTISGARH

Toilet at home must.

Source: PRS Legislative Research & ENS

also defeated the very purpose of the panchayati raj institutions, to include citizens in multi tier local governance from all sections of society. These requirements had the effect of excluding the marginalized.

- **More choices:** The earlier rule effectively restricted universal franchise by severely limiting the pool from which voters could choose their representatives, as well as denting the gains made by the 33 per cent reservation for women in local bodies.
- **Protection of marginalized:** The earlier rule disproportionately disenfranchised the more marginal sections of society i.e. women, Dalits and poor.

Final Analysis

- Rajasthan government has done well to ensure that the right to represent and choose one’s representatives is no longer circumscribed.
- In a liberal democracy, governments must desist from putting bars on who may contest, except in exceptional circumstances, such as when a candidate is in breach of particular laws. To mandate paternalistically what makes a person a ‘good’ candidate goes against the spirit of the attempt to deepen democracy by taking self-government to the grassroots.

Suggestion Of The Committee To Amend MCC

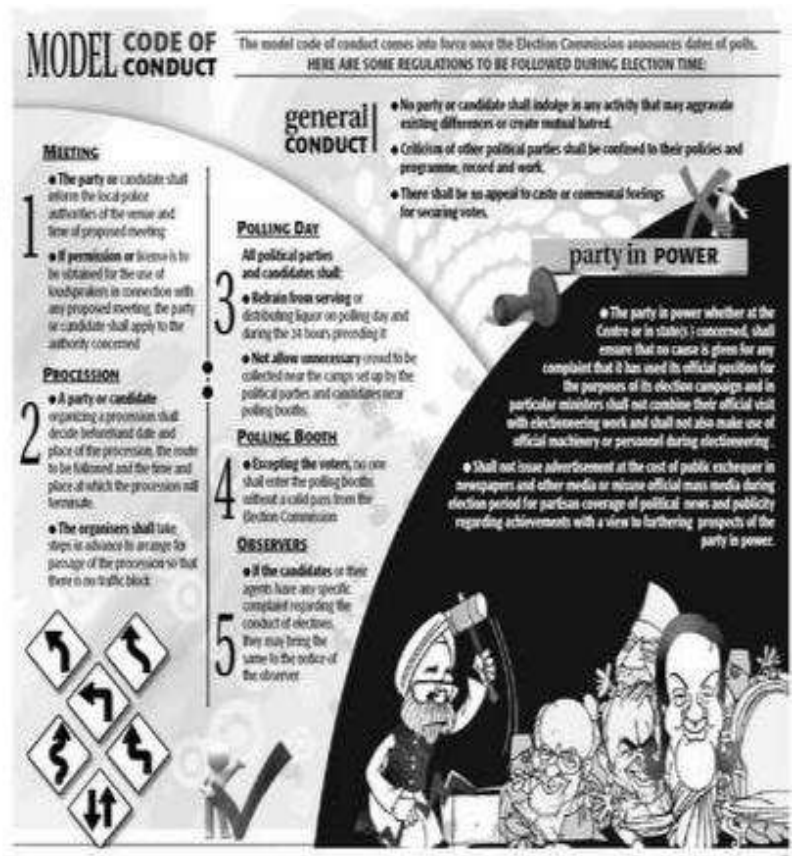
Syllabus: Elections and Representation of People’s Act and Related Issue

In News

- **Umesh Sinha committee** set up by the Election Commission has recommended changes in the Model Code of Conduct (MCC).
- The committee was tasked to revisit the MCC, **Section 126** of the Representation of the People (RP) Act and other related provisions in the wake of rapid expansion in the media.

Other Suggestions Of The Committee

- **Releasing manifesto:** It recommended that political parties should release their manifesto at least 72 hours before voting ends in the first phase of polls. Currently, the provisions are silent on this issue.
- **Election silence:** The panel has also suggested that the provision of ‘election silence’ be extended to cover print and social media, internet, cable channels and online version of print media. **Section 126** of the RP Act, embodies principle of election silence, which prohibits any form of poll campaign in the **last 48 hours** leading up to voting. This section also restrains display of any election



matter by means of cinematograph, television or other similar apparatus.

- **Responsibility of social media:** The social media agencies be asked to label political advertisements to separate them from other content, and maintain an account of expenditure incurred by political parties and candidates for advertising on their platforms. Further, social media platforms should work with the EC to evolve a mechanism by which the latter can flag content violating electoral law and social media sites can take it down as soon as possible.

Issues Concerning CBI’s Working

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

In News

- Two days after CBI Director Alok Verma was reinstated by the Supreme Court (SC), the high-powered selection committee headed by Prime Minister removed him from the post over charges of corruption and dereliction of duty. He is the **first CBI chief** to be ousted from the post.
- The SC had earlier held that any transfer of the CBI chief could not be effected without the prior consent of a high-powered selection committee comprising the **PM, LoP and the CJI (or his nominee)**. But the SC said that the issue of Verma’s divestment remains open to be decided by the selection committee.

Issues

- **Non-fulfillment of natural justice:** Questions have been raised about the committee refusing Mr. Verma a personal hearing before divesting him of the powers.
- **Possible political interference:** An important learning from the entire episode is that the bipartisan appointment process for the post with the presence of a high judicial

<p>Under a Cloud</p> <p>HERE'S WHY THE SELECTION COMMITTEE SHUNTED OUT VERMA:</p>	<p>PM Modi-headed panel took into account the extremely serious nature of observations made by CVC</p>	<p>Believed that since a detailed investigation, including criminal probe, was necessary in some cases, Verma's continuation as CBI director was not desirable</p>	<p>CVC report found instances of wilful non-production and fabrication of records</p>
	<p>Committee felt that being the head of a sensitive organisation, Verma was not functioning with the integrity expected of him</p>	<p>Committee also took note of Verma's attempts to induct officers of doubtful integrity into CBI</p>	<p>(*As per sources)</p>

functionary as envisaged by the 2003 amendments may not be enough to thwart political stratagems.

- **Issue of reputation:** It has not only dented CBI’s reputation but also eroded the public faith in our premier investigating agency.

Way forward

- The lack of transparency in the decision to remove CBI chief ensured that grave issues such as the autonomy and independence of the CBI and the proper role and powers of the government *vis a vis* the agency, are thrown up without closure or resolution.
- At this critical juncture, it is crucial that the governing class avoids knee-jerk reactions that could irretrievably damage an organisation. Despite misadventures, it has ordained task of combating corruption and malfeasance in high places.
- Rather than tinkering with the powers of the CBI, we need to evolve a much better system of appointments at all levels in the organisation. Like in other spheres, the CBI needs individuals of high integrity rather than more powers or freedom.

Legal Status For SSC

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

In News

- A Parliamentary Standing Committee (PSC) has recommended that the Centre accord statutory status to the Staff Selection Commission (SSC), one of the largest recruitment agencies in the country.

Rationale

- **Other bodies enjoy legal/constitutional status:** The Union Public Service Commission (UPSC) and all State Public Service Commissions (SPSC) either have constitutional or legal status. The SSC is the only such organisation that performs similar functions on a much larger scale, but does not enjoy statutory status.
- **Rising workload:** There has been a phenomenal increase in the workload of the SSC, from 9.94 lakh candidates in 2008-09 to over 2 crore in 2016-17. While the workload and responsibilities of the SSC have increased exponentially over the years, it has remained an **'attached body' under the Department of Personnel and Training (DoPT)**.
- **Issue of autonomy:** SSC has to depend entirely on the government for all its needs with no or little autonomy. Thus, according statutory status to the SSC would contribute to greater functional autonomy, faster decision making and efficiency in the overall performance and delivery of results by the SSC in the recruitment process.
- **Suggestion of other committee:** An expert group constituted by the government in 2014, for reviewing the examination system in the SSC, had recommended according statutory status to the Commission.

Proposal For An Independent Regulator For Spot Exchanges

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

In News

- The Centre will soon announce a separate regulator for spot exchanges, on the lines of SEBI. Further, the Finance Ministry has been trying to speed up the process of making spot exchanges operational, and the announcement on a new regulator is expected in the Interim Budget 2019-20.
- SEBI was the first choice of the **Ramesh Chand Committee**, but the capital market regulator said that it may not be able to take up the task. Regulating spot exchange has become an issue post the NSEL fiasco.

Aim/Purpose Of New Regulator

- **Greater transparency:** The Centre wants greater transparency in the price discovery of the physical bullion trading market, for which it is imperative to have spot exchanges. Currently, jewellers charge their own rates while buying and selling gold in the spot market, with little regulation. Thus, there is a marked difference between the bullion futures price and the spot price of jewellers.
- **Standardization:** In most cases, the price and purity of bullion vary. But, the spot exchanges can potentially put the entire physical bullion market on an exchange platform.
- **Focussed attention:** The new regulator is likely to have a full scale bureaucratic set up involving experts. It is expected to keep lobby groups such as the World Gold Council and Indian Bullion and

Jewellers Association, which have a direct vested interest in price discovery out of the decision making process.

SC On The Lokpal Act

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

In News

Recently, the Supreme Court (SC) has asked the eight-member Search Committee under the Lokpal Act to recommend a panel of names before the end of February 2019. This shortlist has to be sent to the Selection Committee, headed by the Prime Minister.

Background

It has been five years since the Lokpal Act 2013, received the President’s assent on January 1, 2014. Search Committee was formed only on September 27, 2018, after Common Cause, an NGO, filed a contempt petition against the government over the delay in constituting the authority despite a Supreme Court verdict in April 2017.

Lokpal and Lokayuktas Act

- **Composition:** The Lokpal and Lokayuktas Act, 2013 provides for establishing a body to be headed by a Chairperson, who is or has been a Chief Justice of India, or is or has been a judge of the Supreme Court or an eminent person who fulfils eligibility criteria as specified. Of its other members, **not exceeding eight, 50% are to be judicial members**, provided that **not less than 50%** of the members belong to the Scheduled Caste, Scheduled Tribes, OBCs, minorities and women.

- **Lokayukta at state level:** Every State shall establish a body to be known as the Lokayuktas for the State, if not so

established, constituted or appointed, then to be established **within a period of one year** from the date of commencement of this Act.

- **Structure:** Lokpal will have an **Inquiry Wing**, headed by the Director of Inquiry, for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the **Prevention of Corruption Act, 1988**. It will also have a **Prosecution Wing** headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act.

- **Jurisdiction:** The Lokpal Act covers a wide range of public servants *i.e.* from the **Prime Minister** (except the matters related to international relations, external and internal security, public order, atomic energy and space and only if a full Lokpal bench considers the initiation of inquiry in camera and **at least 2/3rd** of the members approve it), ministers and MP, to groups A, B, C and D officers of the central government. Further, the chairperson and members of the Lokpal too come under the definition of public servant.

A long-drawn debate
A short history of the Lokpal Bill from the 1960s to the present

- 1963:** The idea of an Ombudsman first came up in Parliament during a discussion on budget allocation for the Law Ministry
- 1966:** The First Administrative Reforms Commission recommended two independent authorities – one at the Centre and one at the State level – to probe complaints against public functionaries, including MPs
- 1968:** Lokpal Bill introduced in Parliament, but was not passed. Eight attempts were made till 2011 to pass the Bill, but all in vain
- 2002:** The Constitution review commission headed by M.N. Venkatachaliah recommended appointment of the Lokpal and the Lokayuktas. It also recommended that the Prime Minister be kept out of the Lokpal’s ambit
- 2005:** The second ARC recommended that a Lokpal be established without delay
- 2013:** Lokpal Act, 2013, passed in Parliament
- 2016:** Lok Sabha agreed to amend the 2013 Act
- 2017:** The SC on April 27 clarified that the Lokpal appointment process need not be stalled merely due to the absence of the Leader of the Opposition, who is a member of the Lokpal selection committee as per the 2013 Act

Current Challenges

- **Infra issues:** Even after it was formed, the Search Committee has been handicapped because of lack of office space, manpower, infrastructure and a secretariat.
- **Political issues:** The Selection Committee, which includes the **PM, Lok Sabha Speaker, the Leader of the Opposition, the Chief Justice of India and an eminent jurist**, has met in the past without Mallikarjun Kharge, who heads the Congress in the Lok Sabha. He has been skipping meetings, as he is aggrieved that the government has not made him a full member and has roped him in as a 'special invitee'.