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*Governance, Constitution,
Polity, Social Justice and
International relations*



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CREDIT IMPERIALISM/ DEBT-TRAP DIPLOMACY/CHEQUEBOOK DIPLOMACY

Topic: Effect of policies and politics of developed and developing countries on India's interests.

Debt-trap diplomacy is a type of diplomacy based on debt carried out in the bilateral relations between countries. It involves one creditor country intentionally extending excessive credit to another debtor country with the alleged intention of extracting economic or political concessions from the debtor country when it becomes unable to honour its debt obligations (often asset-based lending, with assets including infrastructure). The conditions of the loans are often not made public and the loaned money is typically used to pay contractors from the creditor country.

- **In many vulnerable countries, much of the burdensome debt is owed to a single source: China. According to a study by the International Monetary Fund (IMF), from 2013 to 2016, China's contribution to the public debt of heavily indebted poor countries nearly doubled from 6.2 percent to 11.6 percent.**
- **A recent report (Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective) has shown that there are 23 BRI countries that are at risk of debt distress according to measures of debt sustainability, with 8 countries of particular concern.**
- More recently analysts often reference the practice with respect to the foreign policy of China, especially through China's foreign aid, infrastructure investment, energy engagement and interconnectedness.
- China is a world leader in infrastructure development, having undergone rapid economic growth since its reform and opening economy under Deng Xiaoping due to its infrastructure-based development strategy.
- Some commentators fear that China is buttressing repressive regimes, exploiting developing countries in a neo-colonialist manner through high-rate loans, and most of all, seeking to coerce the countries invested in to align with key strategic and military issues.
- China has been accused of requiring secret negotiations leading to non-competitive pricing on projects where bidding must go to Chinese state-owned or linked companies that charge significantly higher prices than would be charged in the open market.
- **Unlike the International Monetary Fund and World Bank lending, Chinese loans are collateralized by strategically important natural assets with high long-term value** (even if they lack short-term commercial viability). Hambantota, for example, straddles Indian Ocean trade routes linking Europe, Africa and the Middle East to Asia. **In exchange for financing and building the infrastructure that poorer countries need, China demands favourable access to their natural assets, from mineral resources to ports.**
- **Rather than offering grants or concessionary loans, China provides huge project-related loans at market-based rates, without transparency, and much less environmental- or social-impact assessments.**
- Private investment (**vulture capitalists**) supported by State can also push countries towards the debt-trap.
- **So, China uses sovereign debt to bend other states to its will, without having to fire a single shot. Thereby achieving two goals:**
 - **It wants to address overcapacity at home by boosting exports.**
 - **It hopes to advance its strategic interests, including expanding its diplomatic influence, securing natural resources, promoting the international use of its currency, and gaining a relative advantage over other powers.**

Some of the examples of China's Creditor Imperialism or Chequebook diplomacy

- Unable to repay China for a loan used to build a new port in the city of Hambantota, in 2017 Sri Lanka signed over to China a 99-year lease for its use, potentially as a strategic base for China's navy.
- There are concerns about Nepal falling into a similar debt trap with the government signing agreements worth \$2.4 billion ranging from infrastructure and energy projects to post-disaster reconstruction efforts.
- In Djibouti, public debt has risen to roughly 80 percent of the country's GDP (and China owns the lion's share), placing the country at high risk of debt distress.
- Several other countries, from Argentina to Namibia to Laos, Burundi, Chad, and Mozambique to Zambia, have been ensnared in a Chinese debt trap, forcing them to confront agonizing choices in order to stave off default. Kenya's crushing debt to China now threatens to turn its busy port of Mombasa—the gateway to East Africa.
- China Pakistan Economic Corridor (CPEC) Project can also have similar fate as Pakistan's current and future economic prospects are not that encouraging. The country currently suffers from declining foreign reserves, a skyrocketing current-account deficit and an export to GDP ratio of below 10%, lower than other countries in the region.

These experiences should serve as a warning that the BRI (Belt and road initiative of which CPEC is a part) is essentially an imperial project and few countries already realizing that have cancelled projects :

- Some countries are however realizing the downside of Chinese money. In 2017, Malaysia, cancelled a \$20 billion railway link and two pipeline projects that were being funded by the Chinese, because of their debt crisis. The newly elected government, coming to power on the back of a corruption scandal of the former prime minister, declared an investigation into the financing of Chinese projects in the country, announced that government debt had reached an equivalent of \$250 billion.
- Myanmar has rolled back plans for a \$7 billion Chinese-backed port on its western coast, seeking to negotiate the terms of its deal with China.

Some steps that can be taken regarding this:

- **Multilateralizing BRI Finances:**
The World Bank and other Multilateral Development Banks (MDBs) should work toward a more detailed agreement with the Chinese government when it comes to the lending standards that will apply to any BRI project, no matter the lender.
- A post-Paris Club approach to collective creditor action needs to be followed
- Proactive lending by WB and other MDBs
- India should help neighbouring countries by providing concessional loans, development grants, line of Credit and technological and other help for important projects so that they will not fall into such debt traps.

Given the evidence that China's lending imposes unsustainable burdens on vulnerable countries globally, it is past time for world leaders to insist that all projects adhere to internationally accepted best practices for transparency and financial sustainability and that lenders adopt modern labor, governance, and environmental standards for their development projects.

INTERNATIONAL COURT OF JUSTICE

Topic: Important International institutions, agencies and fora, their structure, mandate.

Context: The International Court of Justice (ICJ) has directed Pakistan to review the conviction order of Kulbhushan Jadhav and, until then, put his death sentence on hold. ICJ has also asked Pakistan to allow India consular access at earliest. And Also re-Election of an incumbent Indian Judge Dalveer Bhandari (in Nov 2017) to ICJ defeating Britain, a UNSC permanent member.

- * Role and Functions of ICJ in International dispute resolution and limitations therein
- * Significance of re-Election of an Indian Judge after defeating a Permanent UNSC member.
- * Significance of Jadhav Case verdict

About ICJ:

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1946 to replace the Permanent Court of International Justice. The statute of ICJ forms an integral part of United Nations Charter. by the Charter of the United Nations charter and began work in April 1946.

The seat of the Court: The Peace Palace in The Hague (Netherlands).

Function

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States. To give act as an advisory board opinions on legal questions/issues referred to it by authorized International Organisations. United Nations organs and specialized agencies.

Chapter XIV of the United Nations Charter authorizes the UN Security Council to enforce Court rulings. However, such enforcement is subject to the veto power of the five permanent members (France, U.K, China, U.S, and Russia) of the Council.

Composition

The Court is composed of 15 judges, who are elected for terms of office of nine years terms of office by the United Nations General Assembly and the Security Council. These two organs vote simultaneously but separately. A candidate must receive an absolute majority of votes in both sides for getting elected.

The 15 judges of the Court are distributed as per the regions:

- 3 from Africa.
- 2 from Latin America and Caribbean.
- 3 from Asia.
- 5 from Western Europe and other states.
- 2 from Eastern Europe.

Who nominates the candidates?

Every state government, party to the Charter, designates a group who propose candidates for the office of ICJ judges.

What are the qualifications of ICJ judges?

- A judge should have a high moral character.
- A judge should fit to the qualifications of appointment of highest judicial officers as prescribed by their respective states or.
- A judge should be a jurisconsult of recognized competence in international law.

Election Procedure

- Elections are conducted triennially, and five among these 15 judges are elected every three years for a nine-year term. This is to ensure a sense of continuity, especially in pending cases.
- A candidate needs to get **an absolute majority in both bodies chambers i.e. the UNGA and UNSC**, to get elected.
- Judges are eligible to stand for re-election.

Jurisdiction

ICJ acts as a World Court and is the principal legal organ body of the UN. The court's jurisdiction is two-fold:

Contentious Cases

- ICJ, in accordance with International Law, settles the disputes of legal nature that are submitted to it by states.
- Only states may apply to and appear before the ICJ. International Organizations, other authorities, and private individuals are not entitled to institute proceedings before the court.
- The Court can only deal with a dispute when the States concerned have recognized its jurisdiction.
- The judgment is final, binding on the parties to a case and without an appeal (at the most it may be subject to interpretation or, upon the discovery of a new fact, revision).

Advisory Opinions

- Advisory Procedure is available to five UN Organs, fifteen Specialized Agencies, and one Related Organization.
- Despite having no-binding force, the Court's advisory opinions nevertheless, carry great legal weight and moral authority and thus help in the development and clarification of International Laws.

Limitation on the Functioning of ICJ

- ICJ suffers from certain limitations, these are mainly structural, circumstantial and related to the material resources made available to the Court.
- It has no jurisdiction to try individuals accused of war crimes or crimes against humanity. As it is not a criminal court, it does not have a prosecutor able to initiate proceedings.
- The Court is not a Supreme Court to which national courts can turn; it does not act as a court of last resort for individuals. Nor is it an appeal court for any international tribunal. It can, however, rule on the validity of arbitral awards.
- The Court can only hear a dispute when requested to do so by one or more States. It cannot deal with a dispute on its own initiative. Neither is it permitted, under its Statute, to investigate and rule on acts of sovereign States as it chooses.
- The ICJ only has jurisdiction based on consent, not compulsory jurisdiction.
- It does not enjoy a full separation of powers, with permanent members of the Security Council being able to veto enforcement of cases, even those to which they consented to be bound.

Way Forward

The International Court of Justice is endowed with both a privileged institutional status and procedural instruments whose potential is frequently underestimated. It needs strengthening in for the promotion and development of international peace.

Kulbhushan Jadhav Case

- Kulbhushan Jadhav was arrested in March 2016 by Pakistani security forces in Balochistan province after he reportedly entered from Iran.

- He was sentenced to death by a Pakistani military court on the charges of espionage and terrorism in April 2017.
- In May 9, 2018, ICJ has stayed his death sentence after India had moved a petition before the UN body to seek justice for him, alleging violation of the Vienna Convention on Consular Relations by Pakistan.
- In February, 2019, India said Pakistan's continued custody of Indian national Kulbhushan Jadhav without any consular access should be declared "unlawful" as it was an egregious violation of the Vienna Convention.
- Recently, the International Court of Justice (ICJ) has directed Pakistan to review conviction order of Kulbhushan Jadhav and, until then, put his death sentence on hold. ICJ also asked Islamabad to allow New Delhi consular access at earliest. This is a major diplomatic and legal victory for India in Kulbhushan Jadhav case.

Key Highlights of Judgement

- **Pak Violated Vienna Convention:** ICJ upheld that Islamabad had violated Article 36 of the Vienna Convention on Consular Relations, 1963, by not informing India about Jadhav's arrest immediately after Pakistan Army had taken him into custody.
- ICJ found that India had been deprived of 'right to communicate with and have access to Jadhav, to visit him in detention and to arrange for his legal representation', which meant that Pakistan had breached obligations incumbent upon it under Article 36, paragraph 1 (a) and (c), of the Vienna Convention on Consular Relations.
- **The provisions of the 1963 Vienna Convention defines a framework for consular relations between countries.**

In November 2017, India's Dalveer Bhandari, has been re-elected to the International Court of Justice (ICJ), after Britain pulled out its candidate Christopher Greenwood before the 12th round of voting.

Election significance:

- Analysts say the election result was crucial for India to gauge the support it enjoys in the world body where New Delhi has been campaigning for reforms, including a permanent seat for itself in the powerful Security Council.
- This is the first time that one of the five permanent members of the UNSC lost out to an ordinary member in a race.
- This is the first time in the 70-year history of the United Nations that the U.K. will not be on the ICJ .
- Although he does not represent the Indian government, having a judge of Indian origin is seen as a strategic asset
- It particularly gains significance in the backdrop of the Kulbhushan Jadhav case.

OIC- INDIA'S PARTICIPATION

Topic: Bilateral, regional and global groupings and agreements involving India and/or affecting India's interests

- In a major diplomatic move, India hit out at Pakistan during a meeting of Foreign Ministers at the Organisation of Islamic Cooperation (OIC).

About OIC :

- The Organisation of Islamic Cooperation (OIC) is the second largest intergovernmental organization after the United Nations with a membership of 57 states spread over four continents.
- The Organization is the collective voice of the Muslim world.
- It endeavours to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world.
- It routinely expresses solidarity with conflict hit Muslim regions such as Palestine, Iraq, Afghanistan, Syria and Bosnia, as well as with the peoples of the Turkish Cypriot state, Kosovo and Jammu and Kashmir.
- The OIC has permanent delegations to the United Nations and the European Union.

India and OIC:

- India is not a member of the OIC, but was invited to the recently concluded Abu Dhabi meeting as the guest of honour.
- In 1969, the invite to then union minister was withdrawn at Pakistan's insistence.
- India has about 12% of the world's Muslim population. But India's entry into the organisation has been blocked by Pakistan.
- However, it is also important to note that the past record of the OIC with respect to India is most objectionable. India has been consistently criticised by the OIC for its alleged human rights violations in Kashmir, often seen at the behest of Pakistan.

Significance of Invitation

- There is no doubt that India's relations with West Asia have improved significantly in the past five years.
- India has never been invited to the OIC before and the latest development, coming at a time when the India-Pakistan tensions were running high, was seen as a diplomatic success. As the invitation by the OIC, which was the biggest supporter of the Pakistan and Pakistan had blocked all efforts of India to engage with OIC. This invitation is seen as a signal of changing geopolitical dynamics.
- India's first participation at the OIC came despite strong demands by Pakistan to rescind EAM's invitation to address the grouping. This was turned down by the host nation, the UAE, and resulted in Pakistan's Foreign Minister Shah Mahmood Qureshi boycotting the plenary.
- Qatar had first proposed observer status for India in 2002. After that many countries like Turkey and Bangladesh, Crown Prince of Saudi Arabia, Mohammed bin Salman had asked for India's inclusion.
- The official announcement by the UAE mentioned that the invitation to India was extended in recognition of India's global political stature as well as its time-honored and deep-rooted cultural and historical legacy and its important Islamic component.
- UAE's invitation to India highlights the desire of the UAE to go beyond rapidly growing close bilateral ties and forge a true multifaceted partnership at the multilateral and international level.
- The Invitation is seen as a milestone in the comprehensive strategic partnership with the UAE.
- The invitation is also recognition of the presence of 185 million Muslims in India and of their contribution to its pluralistic ethos, and of India's contribution to the Islamic world.

- OIC's growing economic and energy interdependence with India has become important in recent times. Much oil rich countries are members of this grouping, thus engagement with it can be beneficial for India in terms of energy security. Also, these countries provide employment for almost 6 million Indians and fetch a major part of remittances to India.

Concerns/Argument about not Joining:

- The OIC statements mean less these days because a number of OIC countries privately dissociate themselves from the grouping, considering it more of an irritant.
- India is a secular country, regardless of all the religions here, India does not prefer religion above nationality. Thus, the government must carefully consider its engagement with OIC.
- Thus, if India decides to engage with OIC it should be on the basis of our national interest not on account of religion.
- There are issues with respect to OIC's stands on Kashmir in the past.
- OIC stand on Kashmir
- In past decades, India had to spend lots of diplomatic capital to counter OIC's stands at many international organizations. By attending it, India is validating the same organization.

Issues raised by India at OIC:

- In a speech at the inaugural plenary of the 46th session of the OIC Council of Foreign Ministers, External Affairs Minister (EAM) stressed that the anti-terror fight was not a clash between civilisations.
- EAM said the fight against terrorism and extremism does not amount to a clash of cultures and instead described it as a fight between ideas. She presented India's pluralism and diversity as a source of strength and said Indian Muslims are a "microcosm" of India's larger diverse culture. "They speak Tamil and Telugu, Malayalam and Marathi, Bangla and Bhojpuri or any of the numerous languages of India. They have diverse culinary tastes, myriad choices of traditional attire, and they maintain strong cultural and linguistic heritage of the regions they loved and have lived for generations".
- India was able to indirectly target Pakistan for terrorism.

Concerns for India:

- The Abu Dhabi Declaration issued at the end of the meeting did not contain even a simple expression of thanks to the Indian External Affairs Minister for addressing the plenary session of the assembly.
- The document's only reference to the India-Pakistan stand-off stated that the OIC welcomes the "positive initiative undertaken by the Prime Minister of Pakistan Imran Khan to hand over the Indian pilot as a gesture of goodwill to de-escalate tensions in the region". The Pakistani "initiative" was given a very positive twist by decontextualising it totally.
- It is important to note that the language of the statements that were issued with Indian references are harsh, and while the OIC has regularly issued statements on the situation in Jammu and Kashmir that accuses Indian forces of atrocities, the statement on the "peace process between India-Pakistan" is unusual, not least given the tensions during the month of February, 2019 and the fact that there is no dialogue between the two countries at present.
- In one paragraph, the resolution "condemns the trend of unprecedented escalation of ceasefire violations by Indian occupation (sic) forces".
- In the resolution on Jammu and Kashmir, the recommendations included an appeal to OIC members to "mobilise funds" for "humanitarian assistance to the Kashmiri people[sic]."
- The Organisation of Islamic Cooperation (OIC) appointed Yousef Aldobeay of Saudi Arabia as its special envoy for Jammu & Kashmir.

India's Stand:

- Rejecting a resolution by the Organisation of Islamic Countries (OIC) on Jammu and Kashmir that referred to “Indian terrorism” and “mass blindings”, the External Affairs Ministry said its stand on the matter is “well known”.
- The resolution on Jammu and Kashmir, another on the “India-Pakistan Peace Process” that praised Pakistan for its “efforts”, and a statement on “Muslim minorities” worldwide that called upon the Indian government to rebuild the Babri Masjid in Ayodhya, came as an embarrassment for the government just a day after External Affairs Minister had addressed the gathering.
- “We reaffirm that Jammu and Kashmir is an integral part of India and is a matter strictly internal to India,” the Ministry said in a statement after the conclusion of the Council of Foreign Ministers in Abu Dhabi.
- Experts opine that the other resolutions “don’t reflect or need a consensus” of the entire 57-nation group. “They are essentially national positions of individual countries, and often go unopposed”.

So considering all these developments, it’s not quite the unalloyed triumph for India as is being made out in official circles, but it is an important development with portents for the future. Like the cross-border airstrike, the OIC invite has portents for the future. It marks a successful breaching of the OIC solidarity by New Delhi. Whether or not it remains a one-off affair depends as much on South Block’s diplomacy, as India’s ability to convince the world of its case in Kashmir.

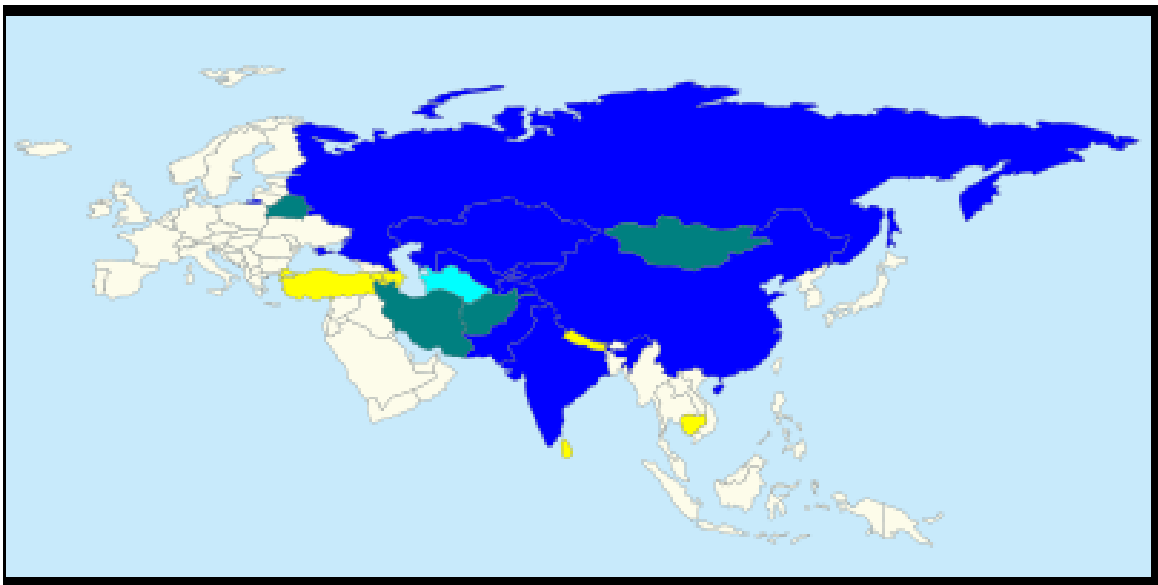


The Shanghai Cooperation Organisation (SCO)

Topic: Bilateral, regional and global groupings and agreements involving India and/or affecting India's interests.

The Shanghai Cooperation Organisation (SCO) is a permanent intergovernmental international organisation, the creation of which was announced on 15 June 2001 in Shanghai (China) by the Republic of Kazakhstan, the People's Republic of China, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan, and the Republic of Uzbekistan.

- The historical meeting of the Heads of State Council of the Shanghai Cooperation Organisation was held on 8-9 June 2017 in Astana. In the meeting the status of a full member of the Organization was granted to the Republic of India and the Islamic Republic of Pakistan.



Map of

Members countries (Highlighted in Blue) of SCO

SCO's main goals are as follows:

1. Strengthening mutual trust and neighbourliness among the member states;
2. promoting their effective cooperation in politics, trade, the economy, research, technology and culture, as well as in
3. Education, energy, transport, tourism, environmental protection, and other areas;
4. Making joint efforts to maintain and ensure peace, security and stability in the region; and
5. Moving towards the establishment of a democratic, fair and rational new international political and economic order.
6. SCO pursues its internal policy based on the principles of mutual trust, mutual benefit, equality, mutual consultations, respect for cultural diversity, and a desire for common development, while its external policy is conducted in accordance with the principles of non-alignment, non-targeting any third country, and openness.

Structure and working

- The Heads of State Council (HSC) is the supreme decision-making body in the SCO.
- It meets once a year and adopts decisions and guidelines on all important matters of the organisation.

- The SCO Heads of Government Council (HGC) meets once a year to discuss the organisation's multilateral cooperation strategy and priority areas, to resolve current important economic and other cooperation issues, and also to approve the organisation's annual budget.
- The organisation has two permanent bodies — the SCO Secretariat based in Beijing and the Executive Committee of the Regional Anti-Terrorist Structure (RATS) based in Tashkent.
- The SCO Secretary-General and the Director of the Executive Committee of the SCO RATS are appointed by the Council of Heads of State for a term of three years.

Importance of SCO for India:

- It is Part of India's stated policy of pursuing "**multi-alignments**".
- The geographical and strategic space which the SCO straddles is of critical importance for India. India's security, geopolitical, strategic, and economic interests are closely intertwined with developments in the region.
- The ever present and expanding challenges of terrorism, radicalism, and instability pose a grave threat to the sovereignty and integrity not only of India, but also of countries in its broader neighborhood.
- India wants access to intelligence and information from SCO's counter-terrorism body, the Tashkent-based Regional Anti-Terror Structure (RATS).
- A stable Afghanistan too is in India's interest, and RATS provides access to non-Pakistan-centred counter-terrorism information there.
- Connectivity is important for India's Connect Central Asia policy.
- With the Central Asian states landlocked, and Uzbekistan even doubly landlocked, accessing these resources becomes arduous and prohibitive. In this regard, India has also prioritized the construction of the International North-South Transport Corridor. Joining the SCO will be a welcome diplomatic boost to India's efforts to connect with Central Asia.
- The Central Asian region is richly endowed with natural resources and vital minerals.
- Energy cooperation dominates its interest – and it's in China's neighbourhood. But India will also have to deal with an assertive China, which will push its Belt and Road Initiative during the summit.
- SCO membership also bolsters India's status as a major pan-Asian player, which is boxed in the South Asian paradigm.

Central Asia is part of India's extended neighbourhood. India's relations with countries in the region, however, have failed to realize the enormous potential for enhancing ties in areas such as security, policy, economy, trade, investment, energy, connectivity, and capacity development. One reason is simply that India does not share common land-borders with the region, but another factor has been the infrequent visits at the highest level between India and Central Asian states.

India's membership in the SCO will provide a welcome opportunity for India's leadership, including prime ministers, to meet with their counterparts from Central Asia, Russia, China, Afghanistan, and others regularly and frequently. India's potential participation in the Eurasian Economic Union (EEU) will be an added advantage to make this partnership more fruitful.

India has demonstrated its keen interest in strengthening multi-faceted relations with Central Asia through Modi's historic visit to the five Central Asian republics in July 2015. Several agreements were signed and new initiatives launched. The TAPI gas pipeline represents a shining example of a mutually beneficial project. In the future, India's development experience, particularly in promoting agriculture, small and medium enterprises, pharmaceuticals, and information technology, can be of immense benefit to Central Asian countries.

India at SCO 2019:

- This year (2019), our PM has come up with another innovative acronym called HEALTH which brings together the Indian experience in development, and India's experience in engagement with other countries.
- Indian PM also specifically spoke about radicalization as well. In the acronym that the PM gave, called, "HEALTH", the alphabet "T" stands for countries that stand against terrorism.
- It is important to note that radicalization is an issue that bedevils the Central Asian Region in a very big way. India also called for an international conference on terrorism, the SCO can take a lead in that.
- Also in his 'HEALTH' acronym, the alphabet 'A' refers to alternative energy. It is here that he speaks about India's experience in terms of focusing on renewable energy. He also touched upon regional cooperation and spoke about how India is willing to share its expertise in all these areas.
- Focus on Afghanistan (as a matter of fact, this is very significant), even though Afghanistan is not a member of the SCO, but India has a contact group on Afghanistan, and the Prime Minister underlined what India's fundamental position on Afghanistan is.
- Finally, it is important to note that the SCO provides an opportunity to the Indian leadership to connect with the leadership of the Central Asian countries.

INDIA- AFRICA

Relations between India and Africa in general, and with important countries in particular

India and the African countries are in the news lately, however, the ties between the two regions date back to the ancient civilizations. Along with geographical proximity, there are factors such as the cultural connect colonial past and development hurdles that are more or less common to both and thus bring each other much closer.

Historical Perspective:

- Africa, Once known as the '**dark continent**' by the colonial exploiters due to inaccessibility into the interiors of the continent.
- The geographical proximity between the two was an important factor for building up relations during the ancient and the colonial period.

Ancient Period

- During the ancient period, the Indian merchants were in the constant lookout beyond the Arabian Sea towards the west for lucrative markets. Slowly, the increasing people-to-people contacts made them a part of '**Indian Ocean circuit of trade**'.
- They sailed regularly to the Zanj coast (Zanzibar) for palm oil, gold, copper, spices, ivory, rhino horn etc.
- They sold cloth, metal implements, foodstuffs like wheat, rice and jaggery, besides porcelain and glassware
- Trade developed through the knowledge of favourable sea winds and the development of a suitable marine technology
- Periplus of Erythrean Sea, a first century AD merchants' sailor guide throws light on the thriving trade between India and the Western Indian Ocean region
- It also stated that India's trading contacts were spread from Coastal Egypt to northern Somalia, ancient land of Punt, kingdom of Kush (Sudan) and Axum.

Islamic Era

- Indian presence in Africa was also seen during the Islamic age. The Venetian traveller Marco Polo mentioned explicitly about the Gujarati and Saurashtrian merchants on Africa's east coast.
- The use of Indian system of weights and measures and Cowries as currency, pointed to the fact that Indians were playing a key role in this area.
- Not only economic benefits, the trade also contributed to the development of internal links in the African continent even before the advent of Europeans.

Advent of Colonialism:

- With the advent of European colonial powers in India and Africa, the trade pattern underwent a significant change as Indo-African relations entered a new era of 'colonialism'
- The Indians who went to Africa as slaves and post abolition of slavery, as the indentured labourers, and the merchant class of Gujarat slowly settled down there.
- During the medieval time the Africans came to India and were part of the muslim rule in India.
- A good example could be of 'Malik Amber' and the 'Siddis' who are still a part of the Indian population and are settled in parts of Gujarat, Karnataka and Hyderabad.

Decolonisation and Asia-African Resurgence:

- India's link with the African continent dates back to the anti-apartheid struggle of Mahatma Gandhi with the colonial rulers in South Africa

- India has been aggressively putting forward the issue of apartheid on multilateral forums such as United Nations, Non Alignment Movement(NAM) And Commonwealth.
- Most of the countries of Asia and Africa at the time of their independence were suffering from chronic problems of poverty, unemployment, illiteracy and disease.
- To a large extent these problems were mainly the result of long exploitation by the colonial powers. The Colonial powers took away all the important raw materials and dumped manufactured goods, which greatly retarded the economic and social progress of these colonies.
- Most of the Asian-African countries the bear marke of oppressive colonial past, which is evident from below indicators
 - low standards of living
 - widespread illiteracy
 - parochial loyalties
 - economic stagnation
 - Political break down.
- The Afro-Asian resurgence gave a serious setback to imperialism, racialism and gave serious setback to colonial system.
- After independence these countries extended full support to the nationalist movements.
- Democratisation of International Relations
- Helped in strengthening world peace
- Played prominent role at the UNs and increased the importance of UNs.
- Significant role in the creation of the **New International Economic Order (NIEO)**.

The above discussion clearly establishes that the resurgence of Afro-Asian countries has left a deep impact on international relations significance of the resurgence of Asia-African Countries.

Present Prospects and changing relationships:

Africa today is definitely a 'happening continent'. All major powers across the globe have recognized this significant positive change across most of sub-Saharan Africa, once the 'basket case' and a 'dark continent'. Africa has made a turnaround from those depths that it had reached in the last century, and is today on the mend. Africa is home to over half a dozen of the fastest growing countries of this decade. Despite a few lingering ethnic and religious conflicts and governance issues in some countries, the people of this vast region are demanding and getting better governance, democracy, the rule of law and transparency like never before.

Globalization has incorporated this formerly neglected part of the earth in its march forward. Most of Africa is experiencing moderate to healthy economic growth rates, which is fuelling the growth of its middle class and demand for more goods and services. Poverty rates are also on the decline.

India- Africa relations in recent times:

India's relations with African nations have progressed at a fast pace in the last decade. Prime Minister of India has accorded Africa high priority in recent years.

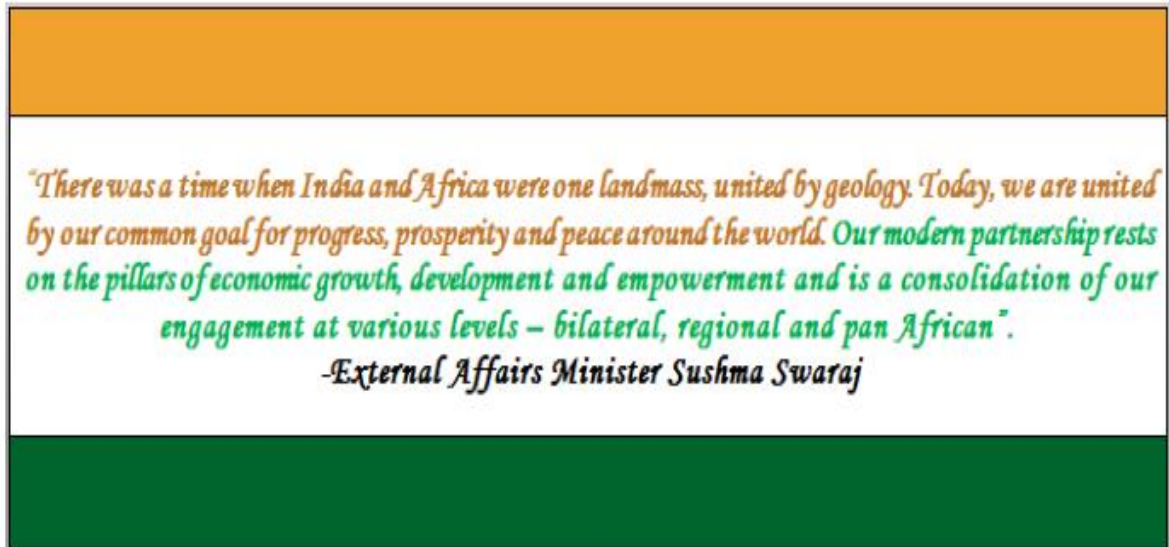
India entered into a structured engagement with African countries with the launch of the first Indian Africa Forum Summit in 2008 in New Delhi.

This was followed by the Second India Africa Forum Summit in Addis Ababa in 2011.

The third India-Africa Forum summit, held in New Delhi in October 2015, renewed the focus of India on strengthening and enhancing its partnership with countries in the African continent. It brought forth two important documents, **the Delhi Declaration and the India-Africa Framework for Strategic Cooperation**.

Both documents offer a direction for Indo-African relations in the coming years. They serve as a blueprint for India-Africa cooperation in political, economic, social, science and technology, cultural, security and other fields.

- Other initiatives include **India Africa Forum Summit (IAFS)**, **India Regional Economic Communities (RECs)** meetings, annual India – Africa trade ministers meeting, the ‘**Pan Africa e-network**’ and so on.



- In March 2015, Prime Minister visited Seychelles and Mauritius, signalling India’s intent to enhance ties with the African Indian Ocean Rim Countries
- He said : “**We seek a future of Indian Ocean that lives up to the name of SAGAR – Security and Growth for All**”
- India also signed an agreement for infrastructure development for improving sea and **air connectivity on Agalega Island**
- In **Seychelles**, India launched a coastal surveillance radar project, announced the transfer of a Dornier aircraft and signed an agreement to build infrastructure on Assumption Island.
- India announced a joint initiative with the United States to provide training for troops in five African countries before their deployment in **United Nations peacekeeping missions**.
- Similarly, **India and Japan** agreed to enhance cooperation with African countries.
- A three day **India-Africa Health Sciences Meet**, is being jointly organised by Indian Council of Medical Research (ICMR) and Ministry of External Affairs
- Discussions are likely to focus on capacity building for health and biomedical research, medical and health professionals’ education, disease priority and research areas of focus, human resource development for industrial processes, Africa based manufacturing and IPR/regulations/pharmacopeia.

10 principles guiding India’s engagement with Africa:

- One, Africa will be at the top of our priorities. We will continue to intensify and deepen our engagement with Africa. As we have shown, it will be sustained and regular.
- Two, our development partnership will be guided by your priorities. It will be on terms that will be comfortable for you, that will liberate your potential and not constrain your future. We will rely on African talent and skills. We will build as much local capacity and create as many local opportunities as possible.
- Three, we will keep our markets open and make it easier and more attractive to trade with India. We will support our industry to invest in Africa.

- Four, we will harness India's experience with digital revolution to support Africa's development; improve delivery of public services; extend education and health; spread digital literacy; expand financial inclusion; and mainstream the marginalised. This will not just be our partnership to advance the UN Sustainable Development Goals, but also to equip the youth of Africa for their place in the digital age.
- Five, Africa has 60 percent of the world's arable land, but produces just 10 per cent of the global output. We will work with you to improve Africa's agriculture.
- Six, our partnership will address the challenges of climate change. We will work with Africa to ensure a just international climate order; to preserve our biodiversity; and, adopt clean and efficient energy sources.
- Seven, we will strengthen our cooperation and mutual capabilities in combating terrorism and extremism; keeping our cyberspace safe and secure; and, supporting the UN in advancing and keeping peace.
- Eight, we will work with African nations to keep the oceans open and free for the benefit of all nations. The world needs cooperation and not competition in the eastern shores of Africa and the eastern Indian Ocean. That is why India's vision of Indian Ocean Security is cooperative and inclusive, rooted in security and growth for all in the region.
- Nine, and, this is especially important to me: as global engagement in Africa increases, we must all work together to ensure that Africa does not once again turn into a theater of rival ambitions, but becomes a nursery for the aspirations of Africa's youth.
- Ten, Just as India and Africa fought colonial rule together, we will work together for a just, representative and democratic global order that has a voice and a role for one-third of humanity that lives in Africa and India. India's own quest for reforms in the global institutions is incomplete without an equal place for Africa. That will be a key purpose of our foreign policy.

Importance of Africa for India:

Energy and other resource Security: With a consistent GDP growth and aim of becoming a developed country, there is a need for energy and other resources; Africa remains a crucial source of natural resources. Ex: crude oil and gas has emerged as Africa's leading export to India, diversifying sources of supply from middle-east.

Economic and Trade Interests:

- Most African countries will be "middle income" by 2025 providing huge trade and investment opportunities as well as market for Indian exports.
- For India, bolstering economic ties with Africa is of paramount importance though trading patterns currently remains small overall especially as compared to China.
- Development and exploitation of marine resources with littoral countries of Indian Ocean thereby harnessing fruits of Blue Economy.

Security:

- Terrorism: Terrorism has been on the rise in Africa in recent years. While India is not directly affected by the localized terrorist organizations in Africa, the troubling links between Somali and other groups with militant groups in Afghanistan and Pakistan region could significantly threaten India's future security.
- Piracy and Securing trade routes: Focus on Indian Ocean related issues, security and development. Secure freedom of navigation in sea lines of communication protecting India's international trade moving by sea.
- Controlling drug, human trafficking and other Organised crimes.

Strategic interests:

- Africa remains vital for India's emergence as a global actor in the international institutional arena. Ex: In reforming existing global governance structures like U.N. Security Council (UNSC), and shape the emerging global regimes related to food, energy, climate, water, cybersecurity, and use of outer space for development purposes.
- China factor: increasing Chinese presence (military base at Djibouti) and signs of Chinese neo-colonialism through Debt-trap diplomacy/Creditor imperialism/chequebook diplomacy as seen in multiple African countries.
- India and African countries can oppose skewed policies and rules in World Trade Organisation(WTO) put forward by developed countries, especially in the areas of Agriculture, anti-dumping provisions, E-commerce and Intellectual Property Rights etc .
- Also due to its geographical location, huge potential for achieving Climate Change goals through India's flagship initiative International Solar Alliance.
- Controlling Poaching and hunting, thereby conserving biodiversity, sharing of benefits and further R&D for sustainable development.
- People-to-people relationship and cultural cooperation between India and African continent and shared vision for Humanity's future.

Challenges for India:

There is "**considerable competition**" for India within Asia for ambitious African projects

- Being "**sensitive**" towards **local concerns** and contribute to the development and prosperity of local communities is a prerequisite
- **Piracy** related activities off the coast of Somalia. However, India's most significant achievement in Africa has been the naval escorting of more than 3000 merchantmen since 2008, in the pirate-infested waters off the Horn of Africa. The MEA also remarked " no piracy attacks have taken place east of 65 degree East Longitude for more than 3 years now"
- The **disease** outbreak such as Ebola needs to be given special attention
- **Racial discrimination** is one of the biggest challenges.
- The rise of **terrorism** with organisations operating such as the Al Qaeda, ISIS, Boko Haram etc. give dangerous signals as India too has long been a victim of terrorism itself.

Difference in the Approaches of Indian and Chinese engagement with African Countries.

Indian engagement lays emphasis on the long term ties, which People centric, based on mutual cooperation and aspirations.

- **People Centric** -Enhancing Africa's productive capacities, diversifying skills and knowledge, and investing in SMEs are on the cards
India is also seeking to reinvigorate its cultural links with East Africa under the rubric of Project 'Mausam', it seeks to revival of lost linkages between -East Africa, the Arabian Peninsula, the Indian subcontinent and Southeast Asia.
Contrarily, China's approach is more trade oriented and resource-extraction, infrastructure development and elite-level wealth creation.
- **Connectivity**-India's African cross-border connectivity initiatives has three primary forms:
Maritime-port connectivity under the government's "Security and Growth for All in the Region" (SAGAR) and the Sagar Mala initiative
Digital connectivity under the Pan African e-Network project on tele-education and tele-medicine (launched in 2004)
Air connectivity through direct flights between Indian and African cities.
In contrast, China's focus is solely on big ticket investments that will provide strategic control to it for enhancing its economic might.

- **Joint Initiatives** -India, Japan and many African nations have also launched a trilateral initiative, the Asia Africa Growth Corridor (AAGC- The AAGC is a consultative initiative between three equal partners India, Japan and Africa which contrasts it to China's BRI) .
This is to develop 'industrial corridors', 'institutional networks' for the growth of Asia and Africa, and to promote development cooperation.
Notably, BRI is structured more as a top-down, unilateral approach to secure and enhance China's economic and strategic interests.
- **Military and security:** African region is important for the security and geo-strategic considerations of both India and China.
India -India's security and defence cooperation with Africa is mainly limited to anti-piracy operations off the coast of Africa.
 - ✓ Other aspects include -deployment of Indian forces to UN peacekeeping missions in Africa, and joint-naval patrolling of Western Indian Ocean.
 - ✓ These engagements are mainly with Tanzania, Kenya, Mozambique, and the island nations of "Mauritius, Seychelles, Madagascar and Comoros".

China -China supports Africa's military transformation by providing equipment, advanced technology, and independent capacity-building. The "China-Africa Defence and Security Forum" is an important development in this context.

Way Forward:

There should also be greater connectivity and people-to-people contact, which is vital for growth of relations. To generate and incubate more ideas, both India and Africa should look to engage with one another in more programmes and platforms at the Track I diplomacy and Track II diplomacy levels. The declaration of the Ten Guiding Principles for India-Africa engagement is a welcome step in creating a concrete framework for India's relations with Africa.



THE UNITED NATIONS SECURITY COUNCIL (UNSC) REFORMS

About UNSC:

The United Nations Security Council (UNSC) is one of the six principal organs of the United Nations.

Composition:

The Security Council consists of 15 members among which five are permanent and 10 are non-permanent that serves for a term of two years. The five permanent members of the UNSC are United States of America, Russia, the People's Republic of China, United Kingdom and France.

In accordance with rule 142 of the rules of procedure, the General Assembly elects each year five non-permanent members of the Security Council. At its eighteenth session, in 1963, the Assembly decided that the non-permanent members of the Council should be elected according to the following pattern (resolution 1991 A (XVIII)):

1. Five from African and Asian States;
 2. One from Eastern European States;
 3. Two from Latin American States;
 4. Two from Western European and other States.
- As stipulated in rule 144 of the rules of procedure, a retiring member is not eligible for immediate re-election.
 - In accordance with rule 92 of the rules of procedure, the election is held by secret ballot and there are no nominations.
 - Under rule 83 of the rules of procedure, the non-permanent members of the Security Council are elected by a two-thirds majority.

Functions/Mandate of UNSC:

United Nations (UN) charter gives UNSC primary responsibility for maintaining international peace and security.

All members of the United Nations agree to accept and carry out the decisions of the Security Council. While other organs of the United Nations make recommendations to member states, only the Security Council has the power to make decisions that member states are then obligated to implement under the Charter.

The UNSC charter seeks to promote harmonious relationships among the member nations by maintaining international peace and security. The Council is also tasked with investigating the issues that threaten international peace and can expel and even isolate a country at fault. It conducts peacekeeping operations around the world in a bid to resolve disputes among countries. India, as a UN member, sent its peacekeeping force IPKF in Sri Lanka in 1987 to end the Civil War that engulfed the island nation.

Maintaining Peace and security

When a complaint concerning a threat to peace is brought before it, the Council's first action is usually to recommend that the parties try to reach an agreement by peaceful means. The Council may:

1. set forth principles for such an agreement;
2. undertake investigation and mediation, in some cases;
3. dispatch a mission;

4. appoint special envoys; or
5. Request the Secretary-General to use his good offices to achieve a pacific settlement of the dispute.

When a dispute leads to hostilities, the Council's primary concern is to bring them to an end as soon as possible. In that case, the Council may:

1. Issue ceasefire directives that can help prevent an escalation of the conflict;
2. Dispatch military observers or a peacekeeping force to help reduce tensions, separate opposing forces and establish a calm in which peaceful settlements may be sought.

Beyond this, the Council may opt for enforcement measures, including:

1. economic sanctions, arms embargoes, financial penalties and restrictions, and travel bans;
2. severance of diplomatic relations;
3. blockade;
4. or even collective military action.

A chief concern is to focus action on those responsible for the policies or practices condemned by the international community, while minimizing the impact of the measures taken on other parts of the population and economy.

India has criticised the slow pace of UNSC reform process, saying the adoption of "opaque" methodologies, non-attribution of assertions and "obfuscation" of references by the member states is blocking the early reform of the world body.

What constitute UNSC reforms?

Five sets of issues have been identified by the General Assembly. These are

1. Categories of membership
2. The question of the veto
3. Regional representation
4. Size of an enlarged Council and its working methods and
5. The Security Council-General Assembly relationship.

Why reforms are needed?

- **Changing geopolitical situation:** The Security Council's membership and working methods reflect a bygone era. Though geopolitics have changed drastically, the Council has changed relatively little since 1945, when wartime victors crafted a Charter in their interest and awarded "permanent" veto-wielding Council seats for themselves.
- **Reforms Long Overdue:** It was expanded only once in 1963 to add 4 non-permanent members. Although the overall membership of the UN has increased from 113 to 193, but no change in the composition of the UNSC happened.
- **Inequitable economic and geographical representation:** While Europe is over-represented, Asia is underrepresented. Africa and South America have no representation at all.
- **Crisis of legitimacy and credibility:** Stalled reform agenda and various issues including its Interventions in Libya and Syria in the name of responsibility have put the credibility of the institution in jeopardy.
- **North-South Divide:** The permanent UNSC membership of portrays the big North-South divide in the decision making of security measures. For instance, there is no permanent member from Africa, despite the fact that 75% of its work is focused on Africa.
- **Emerging issues:** Issues such as transnational threats, deepening economic interdependence, worsening environmental degradation also call for effective multilateral negotiations based on

consensus yet all critical decisions are still being taken by the veto-wielding permanent members of the Security Council.

India's chances

The position taken by the G-4 (India, Japan, Germany and Brazil) and the L-69 group of developing countries over UN reforms has the support of close to 110-115 countries out of 193 member states. This ensures a simple majority at the UNGA for any reforms resolution but unfortunately the 1998 decision of the UNGA makes it necessary to secure a special majority (129 votes) for these sorts of amendments to the UN charter. So India should keep working towards weaning away countries to support its position over UN reforms.

India has also displayed a great deal of flexibility to garner popular support. For example, India has expressed its approval to withhold the exercising of the veto power by new permanent members up to a 15 year review period.

India needs to rally support at the UN for its initiatives by actively campaigning for core issues such as – counter-terrorism, climate change, global finance etc. India has already proposed a UN convention to combat terrorism; it plays a lead role in climate change negotiations and is actively working to reform the Bretton wood institutions (World Bank and IMF) which are also outdated institutions established in the post-second world war era.

India should watch out for conflicting interests within the UNGA such as the Coffee Club(prime movers of the club include Italy, Spain, Australia, Canada, South Korea, Argentina and Pakistan) which could derail the process.

Way forward:

In the current circumstances, it has become crucial for the UNSC to reform itself and uphold its legitimacy and representativeness in the world. However, for that to happen, political will, especially of P-5 nations and strong consensus among all the nations is the need of the hour.

MILITARISATION OF SPACE

The **militarisation of space** involves the placement and development of weaponry and military technology in outer space.

The early exploration of space in the mid-20th century had, in part, a military motivation, as the United States and the Soviet Union used it as an opportunity to demonstrate missile technology and other technologies having the potential for military application.

Outer space has since been used as an operating location for military spacecraft such as imaging and communications satellites, and some ballistic missiles pass through outer space during their flight.

During the Cold War, the world's two great superpowers—the Soviet Union and the United States of America—spent large proportions of their GDP on developing military technologies.

As the Cold War ended with the implosion of the Soviet Union the space race between the two superpowers ended. The United States of America was left as the only superpower on Earth with a large concentration of the world's wealth and technological advancement.

Despite the United States' new status in the world, the monopoly of space militarisation is in no way certain. Countries such as China, Japan, and India have begun their own space programmes, while the European Union collectively works to create satellite systems to rival those of the United States.

The emergence of counter-space: A new frontier?

- The new measure of space supremacy lurks in counter-space now, and not so much in planetary excursions and astronauts' outings.
- This is why Russia, the U.S., and China have been relentlessly pursuing for decades activities that enable them to rule space militarily, for offence or defence purposes.

Counter-space capabilities and Space espionage:

- According to academic reports, policymakers and those tracking the military space, for several years now, the space between 600 km and 36,000 km above the earth has been the playground for such secret activities.
- Around the time Mission Shakti took place, the Center for Strategic and International Studies based in Washington, D.C. and the Secure World Foundation came out with reports detailing counter-space capabilities that different countries have today and their sense of threat to space assets.
- Satellites with robotic arms or handles have touched or nudged their siblings in orbit. Mother (or nesting) spacecraft have gone up to 'deliver' baby spy satellites in orbit.
- Satellites have sneaked up to high perches to see, overhear and sense all that happens in space and on the ground. The intent of being in counter-space is thus surveillance and espionage.
- In times of war, the intent could be to capture or disable a rival's space assets in orbit.
- However, this century, they have reportedly developed deadly armouries that can be either unleashed into or from space.
- The motive could be to inspect and assess the target's nature, eavesdrop on it, or even subvert its functions. The fear is that in extreme cases, the target may even be 'abducted' or taken control of.

Other issues like Space junk :

- Since the Sputnik was launched in 1957, more than 8,000 satellites/man-made orbiting objects have been launched, of which about 5,000 remain in orbit; more than half are non-functional.
- Currently, more than 50 countries own/operate the nearly 2,000 functional satellites in orbit.

- Of these 2,000 satellites, over 300 are dedicated military satellites.
- Once again, the U.S. has the biggest share here, with nearly 140, followed by Russia with nearly 90 and China with nearly 40.
- India has two dedicated satellites, one each for the Indian Navy and the Indian Air Force.
- Indian defence forces also use the civilian government owned satellites extensively for communications, remote sensing, and location accuracy and meteorology.
- Growing amounts of space debris poses a real risk to satellites and spacecraft.
- There are over 20,000 objects of debris which are the size of golf balls while those of smaller size run into hundreds of thousands, totalling nearly 6,000 tonnes.

The Risk of a Space Pearl Harbour:

- Satellites of each of the countries such as Russia, the U.S., and China have been caught loitering in orbit at different times, and the victims have cried foul.
- U.S. policymakers Jim Cooper says, “Every nation’s satellites face increasing threats... The risk of a space Pearl Harbour is growing every day.”
- He cautions that today countries depend so much on their satellites that “cripple our satellites and you cripple us”.
- Possibility of space debris and defunct satellites colliding with satellites.

Is India entering into an arms race in outer space?

Recently, India carried out an anti-satellite (ASAT) test using an interceptor missile (as a kinetic kill vehicle) to neutralise a target satellite (possibly the Microsat-R launched in January this year) in a Low Earth Orbit (LEO) at an altitude of around 300 km. Many countries raised concerns over ASAT.

- India has no intention of entering into an arms race in outer space. India has always maintained that space must be used only for peaceful purposes. India is against the weaponization of Outer Space and support international efforts to reinforce the safety and security of space based assets.
- India believes that Outer space is the common heritage of humankind and it is the responsibility of all space-faring nations to preserve and promote the benefits flowing from advances made in space technology and its applications for all.
- India is a party to all the major international treaties relating to Outer Space. India already implements a number of Transparency and Confidence Building Measures(TCBMs) – including registering space objects with the UN register, pre-launch notifications, measures in harmony with the UN Space Mitigation Guidelines, participation in Inter Agency Space Debris Coordination (IADC) activities with regard to space debris management, undertaking SOPA (Space Object Proximity Awareness and COLA (Collision Avoidance).
- Analysis and numerous international cooperation activities, including hosting the UN affiliated Centre for Space and Science Technology Education in Asia and Pacific. India has been participating in all sessions of the UN Committee on the Peaceful Uses of Outer Space.
- India supported UNGA resolution 69/32 on No First Placement of Weapons in Outer Space. India’s sees the No First Placement of weapons in outer space as only an interim step and not a substitute for concluding substantive legal measures to ensure the prevention of an arms race in outer space, which should continue to be a priority for the international community.
- India supports the substantive consideration of the issue of Prevention of an Arms Race in Outer Space (PAROS) in the Conference on Disarmament where it has been on the agenda since 1982.
- Countries are also honing non-kinetic, electronics and cyber-based methods to prevent satellites of other countries from spying on their regions.
- It is important to note that cyber-attacks can destroy, steal or distort other satellites or ground stations.

Taking into consideration the extreme fragility and volatility of the outer space environment, it must not be allowed to turn into another battlefield or a scene for military conflicts that could have catastrophic implications.

Outer space is a shared heritage owned equally by all the peoples of the world and a common asset for humanity. Therefore, there is a clear need for a legally binding instrument to prevent an arms race and fill existing legal gaps. Such an instrument should have a comprehensive scope that includes four prohibitions: **the placement of any weapons, defensive or offensive; armed attacks against satellites or any outer space assets; intentional, harmful interference that interrupts the normal functioning of such assets; and developing, testing and stockpiling weapons designed to attack outer space assets.**

STATEHOOD FOR DELHI

Topic: Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein.

There has been considerable debate over the statehood issue of Delhi.

SPECIAL PROVISIONS FOR DELHI - Article 239AA

- The 69th Constitutional Amendment Act of 1991 provided a special status to the Union Territory of Delhi, and redesignated it the National Capital Territory of Delhi and designated the administrator of Delhi as the lieutenant (Lt.) governor.
- It created a legislative assembly and a council of ministers for Delhi.
- The assembly can make laws on all the matters of the State List and the Concurrent List except the three matters of the State List, that is, public order, police and land. But, the laws of Parliament prevail over those made by the Assembly.
- The council of ministers headed by the chief minister aid and advise the Lt. Governor in the exercise of his functions except in so far as he is required to act in his discretion. In the case of difference of opinion between the Lt. governor and his ministers, the Lt. Governor is to refer the matter to the president for decision and act accordingly.
- The Lt. governor is empowered to promulgate ordinances during recess of the assembly. An ordinance has the same force as an act of the assembly. Every such ordinance must be approved by the assembly within six weeks from its reassembly. He can also withdraw an ordinance at any time. But, he cannot promulgate an ordinance when the assembly is dissolved or suspended. Further, no such ordinance can be promulgated or withdrawn without the prior permission of the President.

Background:

When did the demand for Delhi's statehood first come up?

- The demand for statehood came up as a result of the report of the Committee on Reorganisation of Delhi Set-Up or the Balakrishnan committee in 1987. The committee recommended setting up a legislative system and examined overlapping of authorities in matters of municipal governance. It agreed to give the national capital a special status and the union territory to have a legislative assembly that would be given powers to form laws on matters under the state list with exception to matters related to land, police, and public order.
- Not long after the AAP government registered a victory of 67 on 70 seats in Delhi Assembly election of 2015, the Ministry of Home Affairs pulled back the services of Anti Corruption Bureau (ACB) from the Delhi government. With this move, the centre snatched away the right of Delhi government to take any kind of action (disciplinary or removal) against officers who engage in corrupt practices.

Why is there a demand for complete statehood?

- Statehood would bring control of administration completely under the state government. This set up would avoid multiplicity of authorities and the confusion caused thereby.
- Delhi government claims that its lack of control over public order, police and land hinders its ability to efficiently plan Delhi's development.
- The disadvantages of not having full statehood status have been felt by many elected regimes in Delhi. But at present, the extent of bitterness has been severe.
- Battles have been fought in the political and judicial spheres over whether some subject or the other falls under the Delhi government or is the exclusive preserve of the Centre.

Should Delhi be given complete statehood? What are the arguments for and against this?

Arguments in Favour

- So far as granting statehood to Delhi is concerned, it is important to note that whichever party has come to power, every party while in power has said that Delhi should be granted statehood. But we need to look at the background of the issue.
- Delhi which has a growing population of 2.7 crore people, as of today, is no longer just a Union Territory. In Delhi, issues such as housing, water, electricity, transport, etc.
- The government also has no say in the issues pertaining to recruitment and conditions of service of officials of IAS, clerks etc. Also, present Delhi government has accused the centre to be meddling in its work and putting barricade through LG.
- Delhi Development Authority (DDA): The Delhi government has no say over the affairs of DDA. This hinders the effective allocation, use of land and implementing welfare schemes.
- Police: Due to the absence of control over the police force, the Delhi government faces problem in proper maintenance of law and order in the state.
- Municipal Corporation of Delhi: Government of Delhi has no control over the MCD. The government is of the opinion that it hinders in implementing development measures.
- Role of LG: The role and power of LG and Delhi government's Council of Ministers has always been an area of contestation. The LG has often been accused of delays and disruptions in the work of the elected government
- Statehood will bring control of administration under one umbrella – the state government, led by the CM and his Council of Ministers and avoid multiplicity of authorities.

Arguments against

- When Delhi was declared as a National Capital Territory (NCT) in 1991, by way of a Constitutional Amendment, the concept was very clear, and that is that when Delhi is the seat of the Central Government, there cannot be two authorities. Also, when we look at examples from the world over, the practice is the same. Example: Washington DC. In Washington, there is only a mayor. There isn't an elected government there.
- Being the national capital, Delhi hosts various critical infrastructures such as parliament, presidential estates, and embassies. Maintenance of these is extremely important and cannot be handed over to a different entity
- Granting statehood might lead to various administrative problems especially in law and order which would be detrimental for the national capital
- Quality of governance might decline due to the impact on finances
- Security concerns Security of embassies, parliaments. Further, there is the issue of safety and security of visiting dignitaries from different countries and also head of states. The responsibility of ensuring security to them lies on Centre and state cannot be entrusted with it
- Control over land is required especially in areas with central government institutions, embassies.

A Constitution Bench ruling provided a framework to resolve issues between Central Government and Government of Delhi

- It held that the Lt. Governor has to act either on the aid and advice of the Council of Ministers, or abide by the decision of the President on a reference made by him.
- The power to refer to “any matter” to the President did not mean “every matter” should go that way.
- It has upheld the Delhi government's power to appoint prosecutors, levy and revise stamp duty on property transactions and issue notifications under the Delhi Electricity Reform Act.

Way forward:

- Experiment Like how Washington D.C. has been carved out of the state of Virginia, a similar kind of an example can be created here also. One can possibly carve out the New Delhi area as the seat of the Central Government and administered by the central government directly, and the rest of it can be made a state.

- The elected government in Delhi should be provided a decisive say in the municipal body for a cohesive approach, and proper urban planning.
- The state government should also be given more authority on the police and made accountable in controlling crime.
- Coordinated efforts by the Centre and the Delhi government for effective governance and to uphold public interest
- The dispute over the powers of L-G of Delhi and elected government of Delhi should be resolved.

The need is to find a way out of the complexities and problems thrown up by the multiple forms of federalism and power-sharing arrangements through which relations between the Centre and its constituent units are regulated..

SELECT COMMITTEE OF PARLIAMENT

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

Context : Opposition parties in the Rajya Sabha have told the government that they wanted seven key legislations to be sent to a Select Committee of Parliament for further scrutiny.

The Parliament is too unwieldy a body to deliberate effectively the issues that come up before it. The functions of the Parliament are varied, complex and voluminous. Moreover, it has neither adequate time nor necessary expertise to make a detailed scrutiny of all legislative measures and other matters. Therefore, it is assisted by a number of committees in the discharge of its duties.

Details:

- The seven Bills that the opposition has demanded be sent to a standing committee are the Muslim Women (Protection of Rights of Marriage) Bill, 2019; Right to Information (Amendment) Bill, 2019; Code Wages Bill, 2019; Occupational Safety, Health and Working Conditions Code Bill, 2019; Inter-State River Water Disputes (Amendment) Bill, 2019; DNA Technology (Use and Application) Regulation Bill, 2019 and Unlawful Activities (Prevention) Amendment Bill 2019.
- The Unlawful Activities (Prevention) Amendment Bill, 2019, the Right to Information (Amendment) Bill, 2019, and the DNA Technology (Use and Application) Regulation Bill, 2019 have been cleared by the Lok Sabha in the current session of Parliament.

Concerns:

- The current session has had the highest productivity so far, clearing 15 Bills, however, not a single bill has gone to a select or a standing committee.
- In every session, more or less, Bills go to the standing committee but this is the first session where not a single legislation has gone for scrutiny.
- TMC leader Derek O'Brien opined that said if Rajya Sabha lets through the RTI Bill, the Council of States would be failing in its duty to uphold the spirit of federalism.
- While the government plans to extend the session, it is opined by the opposition that passing more Bills without scrutiny would be a futile exercise.

What are the types of committees?

- Most committees are 'standing' as their existence is uninterrupted and usually reconstituted on an annual basis.
- Some are 'select' committees formed for a specific purpose, for instance, to deliberate on a particular bill. Once the Bill is disposed of, that select committee ceases to exist.
- Some standing committees are departmentally related, an example being the Standing Committee on Human Resource Development. A Bill related to education could either be considered by the department standing committee or a select committee that will be specifically set up.
- The chair uses her discretion to refer the matter to a parliamentary committee but this is usually done in consultation with leaders of parties in the House.
- Financial control is a critical tool for Parliament's authority over the executive; hence finance committees are considered to be particularly powerful.
- The three financial committees are the Public Accounts Committee, the Estimates Committee and the Committee on Public Undertakings.
- Parliamentary committees draw their authority from Article 105 (on privileges of Parliament members) and Article 118 (on Parliament's authority to make rules for regulating its procedure and conduct of business).

- Committee reports are usually exhaustive and provide authentic information on matters related to governance. Bills that are referred to committees are returned to the House with significant value addition.

Who chairs the committees?

- Of the 24 committees, 16 are administered by Lok Sabha and eight by Rajya Sabha. The chairperson is from the respective house.
- Political parties are allocated chairs based on their strength in Parliament.
- Some committees such as home affairs, finance and external affairs are customarily chaired by a senior member of an opposition party.

Why should the bill be referred to a Standing Committee?

- When a Bill is referred to a standing committee or a select committee, there will be wider consultation.
- The standing committees were conceived so that laws are not made just on the basis of the individual opinion of the MPs.
- In a parliamentary democracy, Parliament has broadly two functions, which are lawmaking and oversight of the executive branch of the government. Parliament is the embodiment of the people's will.
- Committees are an instrument of Parliament for its own effective functioning.
- Given the volume of legislative business, discussing all Bills under the consideration of Parliament in detail on the floor of the House is impossible.
- Committees are platforms for threadbare discussion on a proposed law.
- At least in principle, the assumption is that the smaller cohort of lawmakers, assembled on the basis of the proportional strength of individual parties and interests and expertise of individual lawmakers, could have a more open, intensive and better informed discussion.
- Committee meetings are 'closed door' and members are not bound by party whips, which allows them the latitude for a more meaningful exchange of views as against discussions in full and open Houses where grandstanding and party positions invariably take precedence.
- Disruptive changes in technology and the expansion of trade, commerce and economy, in general, throw up new policy challenges that require a constant reform of legal and institutional structures.
- While lawmaking gets increasingly complex, lawmakers cannot infinitely expand their knowledge into ever-expanding areas of human activities.
- Members of Parliament may have great acumen but they would require the assistance of experts in dealing with such situations. It is through committees that such expertise is drawn into lawmaking.
- Executive accountability to the legislature is enforced through questions in Parliament also, which are answered by ministers.
- However, department standing committees go one step further and hear from senior officials of the government in a closed setting, allowing for more detailed discussions.
- This mechanism also enables parliamentarians to understand the executive processes closely.

Are the committee's recommendations binding?

- Parliament is not bound by the recommendations of committees.
- It is the role of all MPs in each house of Parliament to examine the recommendations and move suitable amendments.
- Following this, Parliament can vote on these amendments, and finalise the bill.

Way Forward:

Parliamentary committees don't have dedicated subject-wise research support available. The national commission to review the working of the Constitution has recommended that in order to strengthen the committee system, research support should be made available to them. If the committees had full-time, sector-specific research staff.

Currently, the rules of Parliament don't require every bill to be referred to a parliamentary committee for scrutiny. While this allows the government greater flexibility and the ability to speed up legislative business, it comes at the cost of ineffective scrutiny by the highest law-making body. Mandatory scrutiny of all bills by parliamentary committees would ensure better planning of the legislative business.



CABINET COMMITTEES

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

Context: Recently the central government has reconstituted eight key cabinet committees including the creation of two new committees, one on investment and growth and another on employment and skill development.

Cabinet Committees are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.

- They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition vary from time to time.
- They are of two types—standing and ad hoc. The former is of a permanent nature, while the latter is of a temporary nature.
- The ad hoc committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.

Composition of Cabinet Committees

- Their membership varies from three to eight.
- They usually include only Cabinet Ministers.
- However, the non-cabinet Ministers are not debarred from their membership.
- They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
- They are mostly headed by the Prime Minister. Sometimes other Cabinet Ministers, particularly the Home Minister or the Finance Minister, also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.

Role of Cabinet Committees

- They are an organisational device to reduce the enormous workload of the Cabinet. They facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.
- They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.

Difference between Cabinet Committees and Council of Ministers (COMs)

They are different from Council of Ministers as COMs is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution, unlike cabinet committees which are extra-constitutional in emergence. It is a wider body consisting of 60 to 70 ministers. It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers. It is vested with all powers but in theory. It implements the decisions taken by the cabinet while Cabinet committees help the cabinet in decision making. COMs is collectively responsible to the Lower House of the Parliament while there is no such clause for cabinet committees. Although Cabinet Committees are not constitutional bodies but their work can't be under-estimated as they provide crucial guidance to the cabinet.

UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT

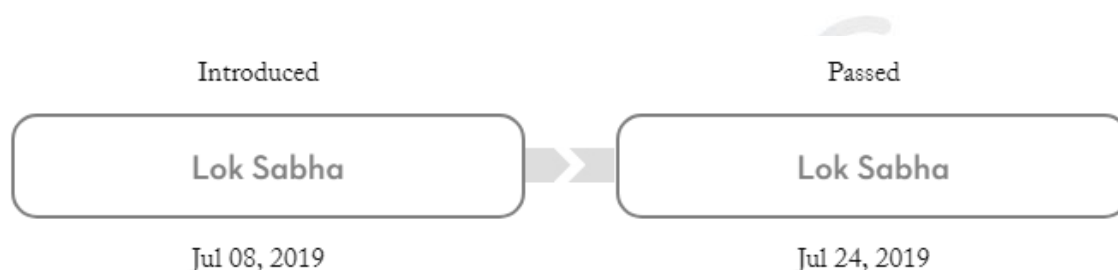
Topic: Functions and responsibilities of the Union and the States

Context: Seeking to give more teeth to the National Investigation Agency (NIA), the government plans to amend two laws the NIA Act and the Unlawful Activities (Prevention) Act to allow it to probe terrorist acts against Indians and to give more power to the NIA to meet fresh challenges, the sources pointed out.

Background :

The UAPA – an upgrade on the Terrorist and Disruptive Activities (Prevention) Act TADA, which was allowed to lapse in 1995 and the Prevention of Terrorism Act (POTA) was repealed in 2004 — was originally passed in 1967 under the then Congress government led by former Prime Minister Indira Gandhi. Eventually amendments were brought in under the successive United Progressive Alliance (UPA) governments in 2004, 2008 and 2013.

At present, NIA is functioning as the Central Counter Terrorism Law Enforcement Agency in India established under NIA Act 2008.



Unlawful Activities (Prevention) Amendment act passed in Lok Sabha :

- The Act provides special procedures to deal with terrorist activities, among other things.
- **Who may commit terrorism:** Under the Act, the central government may designate an organisation as a terrorist organisation if it: (i) commits or participates in acts of terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. The Bill also empowers the government to designate individuals as terrorists on the same grounds.
- **Approval for seizure of property by NIA:** Under the Act, an investigating officer is required to obtain the prior approval of the Director General of Police to seize properties that may be connected with terrorism. The Bill adds that if the investigation is conducted by an officer of the National Investigation Agency (NIA), the approval of the Director General of NIA would be required for seizure of such property.
- **Investigation by NIA:** Under the Act, investigation of cases may be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The Bill additionally empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases.
- **Insertion to schedule of treaties:** The Act defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Schedule lists nine treaties, including the Convention for the Suppression of Terrorist Bombings (1997), and the Convention against Taking of Hostages (1979). The Bill adds another treaty to the list. This is the International Convention for Suppression of Acts of Nuclear Terrorism (2005).

Arguments in Favour of Amendments:

- The object of the proposed amendments is to facilitate speedy investigation and prosecution of terrorist offences and designating an individual as terrorist in line with international practices.
- The amendments will also allow the NIA probe cybercrimes and cases of human trafficking, sources aware of the proposal said Sunday.
- Amendment to Schedule 4 of the UAPA will allow the NIA to designate an individual suspected to have terror links as a terrorist. As of now, only organisations are designated as 'terrorist organisations'.
- A strict law is utmost necessary to strengthen the investigation agencies and to uproot terrorism from this country in this regard
- Hon'ble Home Minister stated in Lok Sabha that law can not be misused against any individual, yet, those individuals who engage in terrorist activities against the security and sovereignty of India, including the urban maoists, would not be spared by the investigating agencies either.
- There are no changes being made in arrest or bail provisions. Therefore, it is clear that there will be no violation of fundamental rights of any person. Also, the burden of proof is on the investigating agency and not on the accused.
- The amendment about attaching properties acquired through proceeds of terrorism is being proposed in order to expedite investigation in terror cases and is not against the federal principles.
- Currently as per section 25 of the UAPA, forfeiture of property representing proceeds of terrorism can only be made with prior approval in writing by the DGPs of the state wherein such property is located. However, many times terror accused own properties in different states. In such cases, seeking approval of DGPs of different states becomes very difficult, and the delay caused by the same may enable the accused to transfer properties etc.

Concerns/Criticism:

- The Act assigns absolute power to the central government, by way of which if the Centre deems an activity as unlawful then it may, by way of an Official Gazette, declare it so.
- Opposition raised concern over the amendments, saying the provisions were against the federal structure of the country.
- There was no pre-legislative consultation
- Designating an individual as a terrorist raises serious constitutional questions and has the potential for misuse.
- An individual cannot be called a 'terrorist' prior to conviction in a court of law, It subverts the principle of "innocent until proven guilty. A wrongful designation will cause irreparable damage to a person's reputation, career and livelihood.

While none will question the need for stringent laws that show 'zero tolerance' towards terrorism, the government should be mindful of its obligations to preserve fundamental rights while enacting legislation on the subject.

CENTRAL BUREAU OF INVESTIGATION (CBI)

Topic: Ministries and Departments of the Government

CBI- Establishment, its functioning, issues related to its autonomy and need for consent in investigations. And recent internal feud.

About CBI:

- The CBI was established as the Special Police Establishment in 1941, to enquire into cases of corruption in the procurement during the Second World War.
- With time the Santhanam Committee on Prevention of Corruption recommends the establishment of CBI. The CBI was then established by a resolution of the Ministry of Home Affairs. The Ministry of Personnel eventually took over the responsibility of CBI and now it plays the role of an attached office.

Function of CBI:

- The CBI is the premier investigating agency of the Central Government. It is not a statutory body; it derives its powers from the Delhi Special Police Establishment Act, 1946.
- The important role of CBI is prevention of corruption and maintaining integrity in administration. It works under the overall supervision of Central Vigilance Commission in matters related to the Prevention of Corruption Act, 1988.
- Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.
- Investigating serious crimes, having national and international ramifications, committed by organised gangs of professional criminals.
- Coordinating the activities of the anti-corruption agencies and the various state police forces
- Taking up, on the request of a state government, any case of public importance for investigation.
- Maintaining crime statistics and disseminating criminal information.
- Central Bureau of Investigation is the representative of this country for the purposes of correspondence with the INTERPOL.

Problems associated with CBI:

- The agency is dependent on the home ministry for staffing, since many of its investigators come from the Indian Police Service. The agency depends on the law ministry for lawyers and also lacks functional autonomy to some extent.
- The CBI, run by IPS officers on deputation, is also susceptible to the government's ability to manipulate the senior officers, because they are dependent on the Central government for future postings.
- Since police is a State subject under the Constitution, and the CBI acts as per the procedure prescribed by the Code of Criminal Procedure (CrPC), which makes it a police agency, the CBI needs the consent of the State government in question before it can make its presence in that State. This can lead to certain cases not being investigated and seeing a silent deadlock. Recently, states like Andhra Pradesh (consent again given after change of government in state) and West Bengal withdrawn consent.
- CBI which handles cases which are of national importance has been criticised for its mishandling of several scams due to political pressure. It has also been criticized for interfering in the investigation of prominent politicians, such as P. V. Narasimha Rao, Jayalalithaa, Lalu Prasad Yadav, Mayawati and Mulayam Singh Yadav; this tactic leads to their acquittal or non-prosecution. Some of the examples in which CBI was misused are Bofors scandal, Hawala scandal, 2G spectrum scam, coal scam, etc.

Financial independence

Financial independence is key for functioning of any organisation.

Issues :

• CBI and RTI

- CBI is placed in the second schedule section 24 of RTI act. Sec 24 states that 'act not to apply to certain organizations'. It provides an exception to obtaining information from intelligence and security organisations specified in the second schedule to the RTI act or any information furnished by them to the government.
- The CBI was not one of the organizations included in the exempted category. It was much later in 2012 that the CBI was brought in. There was a purpose as to why the CBI was not brought into the ambit of the RTI- this was because the CBI was not considered to be one of those organizations which really looks into the strategic interests of India.
- Section 8 of the RTI Act, which guarantees various forms of exemption, begins by saying that all the information which has a strategic significance should not be disclosed. Further, since the Intelligence Bureau (IB), the Research & Analysis Wing or RAW and such organizations which gather intelligence, are dealing with strategic matters and so they were from the very beginning kept in the exempted category.
- The CBI was never considered to be one which collects or maintains such information which are of strategic importance for the country.
- However, the CBI made out a case that they are also investigating into all kinds of cases- and that these cases include those which are of strategic importance for India and therefore, if they would be subjected to the RTI, much of that information would go out into the public domain. The then government had agreed to this.
- So CBI can still be brought under the RTI with all the exemptions already protecting its important information.

Issue of Consent:

- Since police is a State subject under the Constitution, and the CBI acts as per the procedure prescribed by the Code of Criminal Procedure (CrPC), which makes it a police agency, the CBI needs the consent of the State government in question before it can make its presence in that State. This can lead to certain cases not being investigated and seeing a silent deadlock. Recently, states like Andhra Pradesh (consent again given after change of government in state) and West Bengal withdrawn consent.
- There are two kinds of consent:
 - ✓ case-specific and general– Given that the CBI has jurisdiction only over central 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. Almost all states have given such consent. Otherwise, the CBI would require consent in every case.
- Consent can be withdrawn under in exercise of power conferred by Section 6 of the Delhi Special Police Establishment Act, 1946, the state governments can withdraw the general consent accorded
- The CBI would still have the power to investigate old cases registered when general consent existed. Also, cases registered anywhere else in the country, but involving people stationed in states which have withdrawn consent, would allow CBI's jurisdiction to extend to these states.
- Withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of states which have withdrawn consent. However, the CBI could still file cases in Delhi and continue to probe people inside such states.

CBI VS. STATE POLICE

- **Kolkata Police detained a team of Central Bureau of Investigation (CBI) officials**

The role of the Special Police Establishment (a division of CBI) is supplementary to that of the state police forces. Along with state police forces, the Special Police Establishment (SPE) enjoys the concurrent powers of investigation and prosecution for offences under the Delhi Police. Establishment Act, 1946. However, to avoid duplication and overlapping of cases between these two agencies, the following administrative arrangements have been made:

- The SPE shall take up such cases which are essentially and substantially concerned with the Central Government's affairs or employees, even if they also involve certain state government employees.
- The state police force shall take up such cases which are substantially concerned with the state government's affairs or employees, even if they also involve certain Central Government employees.
- The SPE shall also take up cases against employees of public undertakings or statutory bodies established and financed by the Central Government.

CBI Autonomy

In the Coalgate scam case the SC raised the question of CBI's independence and said that "The CBI has become the state's parrot. Only screaming, repeating the master's voice" The SC had then asked the Centre to make the CBI impartial and said it needs to be ensured that the CBI functions free of all external pressures.

Why called "caged parrot" ?

- Increasing government interference like transfer, postings.
- suo motu cognizance not allowed.
- Barred from prosecuting high officials without prior permission e.g. Jain Hawala Case.
- Under supervision of CVC, which is further controlled by the government?
- Issue of consent
- Financial autonomy

SC over CBI's autonomy: In the Vineet Narain case, 1997 The Supreme Court agreed that the CBI had failed in its responsibility to investigate allegations of public corruption. It laid down guidelines to ensure independence and autonomy of the CBI and ordered that the CBI be placed under the supervision of the Central Vigilance Commission (CVC), an independent governmental agency intended to be free from executive control or interference.

The Supreme Court gave the following directions:

1. The CVC should be given statutory status and be entrusted with responsibility to supervise the work of the CBI ensuring its efficiency and impartiality;
2. Its head be selected by a team of the prime minister, the home minister and leader of the opposition in Parliament from a panel of eminent people and the CBI director be appointed for a minimum tenure of two years by a committee headed by the CVC including the union home secretary and the secretary, personnel;
3. A report on the activities of the CBI be submitted in three months.
4. A nodal agency be set up for dealing with the emerging political-criminal-bureaucratic nexus;
5. A directorate of prosecution be set up.

The Government Of India has shown little interest in implementing many of these recommendations.

What needs to be done?

- The first measure is to make sure that CBI operates under a formal, legal framework in the lines of contemporary investigative agencies. In order to ensure autonomy of CBI a new CBI Act should be promulgated giving it a statutory backing.
- The Lokpal Act prescribes for a three-member committee comprising of the prime minister, the leader of the opposition and the chief justice of the Supreme Court to select the director. Even after Lokpal act political interference has been the main hurdle in the working of the CBI. In order to rectify, a new Act should be promulgated and it must specify criminal culpability for government interference.
- CBI should develop its own dedicated cadre of officers who are not bothered about deputation and abrupt transfers. But all senior posts in the CBI are now held by Indian Police Service (IPS) officers.
- Along the lines of Comptroller and Auditor General, CBI should be made to be accountable to Parliament. A more efficient parliamentary oversight over the CBI could be a way forward to ensure better accountability, despite concerns regarding political misuse of the oversight.
- The CBI recruitment should be done on the lines of UPSC exam. This makes a case for a fresh look at the service conditions for direct recruitment to the CBI.

Way forward:

- **L.P. Singh Committee in 1978 and a Parliamentary standing committee in 2008** recommended the “enactment of a comprehensive central legislation to remedy the issue of autonomy. Government has to take into consideration these recommendations.
- A Parliamentary law for the autonomy, powers, etc. is the first step towards improving the CBI’s autonomy.
- CBI is an agency of the Central Government, it was formed with a dual responsibility to investigate grievous cases and provide leadership and direction in fighting corruption to the Police force across the country.
- Agencies like the CIA and FBI in USA are run exceptionally well by the government with a great autonomy so the goal of reforms should be to make CBI more autonomous in nature like the CIA and FBI. Greater Political will is required to achieve it which should also keep in mind that it will not deprive them of accountability.

MODERNIZING CITY GOVERNANCE FOR URBAN TRANSFORMATION

Topic : Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, **devolution of powers and finances up to local levels and challenges therein.**

Objective

To transform our cities into economically vibrant and environmentally sustainable habitats that provide equitable access to basic infrastructure, public services and opportunities to all citizens and platforms for democratic participation.

Current Situation

Global experience indicates that cities are central to raising economic productivity, enhancing job creation and improving public finance at all levels. Successful and long-lasting urban transformation critically depends on reforming the way our cities are governed. Hence, city governance is a key enabler for urban transformation, and sustained economic growth and job creation.

India is urbanizing at a fast pace and it is expected that by 2050, close to 50 per cent of India's population will be residing in urban areas, requiring the availability of sustainable infrastructure and services for a better quality of life.

Such infrastructure and services can only be ensured through modern urban governance. Indian cities are in the process of modernizing their governance structures. The government has undertaken various initiatives focusing on tourism (HRIDAY - Heritage City Development and Augmentation Yojana), infrastructure All, Smart Cities Mission, AMRUT - Atal Mission for Rejuvenation and Urban Transformation) and sanitation (Swachh Bharat Mission), among others. The current status of urban governance can be assessed through an analysis of its constraints.

The key challenges plaguing urban governance in India include the following.

- The absence of a modern spatial planning framework, public utility design standards and land titling in cities takes a huge toll on economic growth and productivity, environmental sustainability and living conditions in cities.
- There is a lack of human resource capacities in the urban sphere at all levels, especially in urban local bodies (ULBs). The municipalities are heavily under-staffed and there are significant gaps in the skills required for urban management.
- Indian ULBs have huge scope to improve their financial autonomy and capacity to raise resources. Some of the key reasons behind the poor state of municipal finances are the narrow, inflexible and non-buoyant tax base, broken financial accounting and audit systems, and the inability of municipalities to levy and recover taxes and user charges.
- Multiple institutions like parastatals, development authorities, public works departments, and ULBs themselves report to different departments of the state government and have been entrusted with overlapping responsibilities. The distribution of power between elected officials at the city level (mayors and councillors) and central administrative service cadres at the city/ district levels are highly tilted towards the latter. The 74th Constitutional Amendment (CAA) to decentralise urban governance has not translated into reality, affecting citizen participation in cities.

Way Forward

The following strategies are proposed to improve urban governance in India by 2022-23.

Leveraging city economy

- Each city needs to be recognized as a distinct unit of the economy. In larger cities, City Economic Councils can serve as a clearinghouse between business and governments to hasten the progress of specific projects, improve the ease of doing business and catalyse investments into the city
- Concomitantly, a quarterly city dashboard capturing city-level investments, GDP and employment growth, financial position and financial performance, and status of infrastructure projects can provide a framework for data-driven decisions. This will measure transformation and encourage competition among cities. For this, the Ministry of Housing and Urban Affairs (MoHUA), the Ministry of Finance and the Ministry of Statistics and Programme Implementation may create frameworks for a dashboard subsuming scheme-specific performance.

Figure 39.1: Key strategies to improve urban governance by 2022-23



Decentralization and metropolitan governance

- The multiplicity of agencies with overlapping jurisdictions and fragmented roles and responsibilities is common in Indian cities. This leads to delays in implementation of projects and inefficient service delivery. To achieve the decentralization goals of 74th CAA, there is an urgent need for articulating a framework for governance of cities that includes development authorities, other parastatals, special purpose vehicles (SPVs) and Census Towns.
- Metropolitan governance systems are also needed in million-plus cities. There is a strong case for having a two-tier governance structure where all local functions are transferred to the ward committees and citywide services, such as transportation, water supply, sewerage, etc., are vested with the city council or regional authorities.
- Moreover, state governments can be encouraged to transfer 12th Schedule funds, functions and functionaries to the ULBs. At the same time, governance should be devolved to the ward and area levels to enhance downstream accountability mechanisms. States can learn from innovative governance frameworks involving the ULB and the state government as seen in models like the Greater Shimla Water Supply and Sewerage Circle.

Spatial planning and land titling

- There is an urgent need for a synchronous and modern national framework for the spatial planning of cities that replaces the current Urban Development Plans Formulation and Implementation (UDPFI) guidelines. This framework should factor in plan preparation, implementation and enforcement at metropolitan, municipal and ward levels. It should also include congruent endpoints, predefined success measures and a transparent mechanism for consultative modification.
- Guaranteed land titling may also be evaluated to foster a transparent land market. In this regard, cities should lay out their own action plans to provide infrastructure and formalize existing settlements of the underprivileged.

Strengthening finances of ULBs and civic agencies

- Cities require a financial sustainability roadmap to be financially self-sufficient to support high-quality infrastructure and the delivery of services.
- This comprises fiscal decentralization, medium term fiscal plans, innovative models to improve revenue collection, optimizing return on assets especially land and buildings, value capture methods,

market-oriented revenue models, PPPs in urban infrastructure and services, and financial accountability through audited balance sheets and performance MIS reports.

- MoHUA, in consultation with the Ministry of Finance, may draw up model provisions for consideration by the states in their municipal and civic agency acts.
- New and innovative financial structures/instruments like Municipal bond markets needs to be strengthened.

Capacity building by skilling for municipal jobs and strengthening institutions

- There is huge potential for the creation of direct and indirect skilled jobs in ULBs to improve the quality of infrastructure and services and the management of ULBs. MoHUA will develop model municipal talent and in/outsourcing guidelines to leverage efficiencies generated by technology and outsourcing.
- The National Skill Development Corporation (NSDC) should be leveraged to improve understanding of municipal jobs including job definitions, technical competencies and key result areas, which can be considered for inclusion in recruitment rules at the state level and for performance standards/accreditation for training institutes to foster a functional platform for knowledge sharing. A separate sector skill council for municipal services may be considered.

Citizen participation

- Enhanced citizen participation is needed for greater trust between citizens and governments, improved sustainability, better service delivery and accountability. Ward committees and area sabhas should be activated with a technology enabled 'Open Cities Framework' and the use of digital tools for feedback and reporting.
- ULBs should also encourage the participation of all community associations, including settlements of the underprivileged and civil society organizations. ULBs should engage with them frequently through city watch groups, public hearings and city consultations to create a framework for formal partnerships. Rules and procedures need to be simplified for faster implementation of constructive recommendations.



ANTI DEFECTION, ROLE OF SPEAKER, 10TH SCHEDULE

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

The Tenth Schedule of the Constitution (which embodies the anti-defection law) is designed to prevent the evil or mischief of political defections motivated by the lure of office or material benefits or other similar considerations.

- The 10th Schedule of the Indian Constitution popularly referred to as the 'Anti-Defection Law' was inserted by the 52nd Amendment (1985) to the Constitution.
- 'Defection' has been defined as, "To abandon a position or association, often to join an opposing group".
- The anti-defection law was enacted to ensure that a party member does not violate the mandate of the party and in case he does so, he will be disqualified from participating in the election.
- The aim of Anti-Defection Law is to prevent members of Parliament from changing parties for any personal motive.

PROVISIONS OF THE ACT

The Tenth Schedule contains the following provisions with respect to the disqualification of members of Parliament and the state legislatures on the ground of defection:

Grounds for disqualification:

- If an elected member voluntarily gives up his membership of a political party
- If he votes or abstains from voting in such House, contrary to any direction issued by his political party.
- If any independently elected member joins any political party.
- If any nominated member joins any political party after the expiry of six months.
- The decision on questions are to disqualification on ground of defection is referred to the chairman or the Speaker of the House, and his decision is final.
- All proceedings in relation to disqualification under this Schedule are deemed to be proceedings in Parliament or the Legislature of a state.

Exceptions under the law:

- Under the circumstance where 2/3rd of the legislators of a party decide to merge into another party, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.
- A split in a political party won't be considered a defection if a complete political party merges with another political party.
- Any person elected as speaker or chairman could resign from his party, and rejoin the party if he demitted that post.
- The law initially permitted splitting of parties, but that has now been outlawed.

Deciding Authority

- Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House.

Is the decision of the Presiding Officer subject to judicial review?

- Originally, the act provided that the decision of the presiding officer is final and cannot be questioned in any court. However, in Kihoto Hollohan case (1993), the Supreme Court declared this

provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the Supreme Court and the high courts.

- It held that the presiding officer while deciding a question under the Tenth Schedule, function as a tribunal. Hence, his/her decision like that of any other tribunal is subject to judicial review on the grounds of malafides, perversity, etc. But, the court rejected the contention that the vesting of adjudicatory powers in the presiding officer is by itself invalid on the ground of political bias.
- However, it held that there may not be any judicial intervention until the Presiding Officer gives his order. An important example to cite in this regard is from the year 2015, when the Hyderabad High Court, refused to intervene after hearing a petition which alleged that there had been a delay by the Telangana Assembly Speaker in acting against a member under the anti-defection law.

Is there a time limit within which the Presiding Officer has to decide?

- The law does not specify a time period for the Presiding Officer to decide on a disqualification plea. Given that courts can intervene only after the Presiding Officer has decided on the matter, the petitioner seeking disqualification has no option but to wait for this decision to be made.
- There have been several cases where the Courts have expressed concern about the unnecessary delay in deciding such petitions.
- In some cases this delay in decision making has resulted in members, who have defected from their parties, continuing to be members of the House.
- There have also been instances where opposition members have been appointed ministers in the government while still retaining the membership of their original parties in the legislature.

Rule-Making Power

- The presiding officer of a House is empowered to make rules to give effect to the provisions of the Tenth Schedule.
- All such rules must be placed before the House for 30 days.
- The House may approve or modify or disapprove them. Further, he/she may direct that any willful contravention by any member of such rules may be dealt with in the same manner as a breach of privilege of the House.
- According to the rules made so, the presiding officer can take up a defection case only when he/she receives a complaint from a member of the house. Before making the final decision, he/she must give the member (against whom the complaint has been made) a chance to submit his explanation.
- He/she may also refer the matter to the committee of privileges for inquiry. Hence, defection has no immediate and automatic effect.

How has the law been interpreted by the Courts while deciding on related matters?

- The Supreme Court has interpreted different provisions of the law.
- The phrase '**Voluntarily gives up his membership**' has a wider connotation than resignation.
- The law provides for a member to be disqualified if he 'voluntarily gives up his membership'. However, the Supreme Court has interpreted that in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct.
- In other judgments, members who have publicly expressed opposition to their party or support for another party were deemed to have resigned.
- Recently the Chairman of the Rajya Sabha disqualified two Janta Dal leaders from the house based on the allegation that indulging in anti-party politics, they had "voluntarily" given up their membership of the party (which is not synonymous to resignation as per the Supreme court orders).

Does the anti-defection law affect the ability of legislators to make decisions?

- The anti-defection law seeks to provide a stable government by ensuring the legislators do not switch sides. However, this law also restricts a legislator from voting in line with his conscience, judgement and interests of his electorate.

- Such a situation impedes the oversight functions of the legislature over the government, by ensuring that members vote based on the decisions taken by the party leadership, and not what their constituents would like them to vote for.
- Political parties issue a direction to MPs on how to vote on most issues, irrespective of the nature of the issue.
- Anti-defection does not provide sufficient incentive to an MP or MLA to examine an issue in-depth and think through it to participate in the debate.
- The Law breaks the link between the elected legislator and his elector.
- Importantly, several experts have suggested that the law should be valid only for those votes that determine the stability of the government (passage of the annual budget or no-confidence motions).

Several recommendations have come up regarding this issue:

- **Dinesh Goswami Committee:** Recommends that disqualification should be limited to cases like
 - Member voluntarily gives up his membership to his political party.
 - Member voting or abstaining from voting, contrary to party directions.
- **Law Commission 170th Report:**
 - Delete the exemption in case of splits and mergers.
 - Treat the pre-poll electoral fronts as one party under the tenth schedule.
 - Parties should limit the issuance of whips to only critical situations.
- **Election Commission:**
 - Make the President/Governor the decision maker with respect to disqualification subject to a binding advice from the election commission on the line of disqualifications based on Representation of Peoples Act provisions regarding Office of Profit.

To conclude, regulation of tenth schedule along with proper working directives that confirms transparency and accountability in the democracy is the need of the hour. This provision is important on the other hand to maintain stability in the government that would reduce corruption and increase the focus of the parliamentarians/legislators towards governance.

ROAD SAFETY AND MOTOR VEHICLES (AMENDMENT) BILL 2019

Importance of Road Safety

Road transport is essential for development as it provides mobility to people and goods. However, it also exposes people to the risk of road accidents, injuries and fatalities. Exposure to adverse traffic environment is high in India because of the unprecedented rate of motorization and growing urbanization fueled by high rate of economic growth.

As a result, incidents of road accidents, traffic injuries and fatalities have remained unacceptably high in India, which can be highlighted from below arguments:

- Today, road traffic injuries are one of the leading causes of death, disabilities and hospitalization in the country. Road traffic injuries constitute the 8th leading causes of death in India in 2016 (IMHE; <http://healthdata.org/india>), and are the leading cause of health loss among young men of age 15-49 years.
- India loses 3% of its GDP due to road accidents, most of which were preventable.
- Taking road safety as a serious issue, in 2015, India signed the **Brasilia declaration** and committed to reducing road accidents and fatalities by half by 2020. So far, the fall in road accidents has not been substantial.
- Road accident victims largely constitute young people in the productive age groups underscoring major implication on economic cost of road accidents, apart from their emotional and psychological impact. Young adults in the age group of 18 - 45 years accounted for the highest share of 72.1% and working age group, 18 – 60 accounted for a share of 87.2% in the total road accident fatalities.
- Road accidents tend to be concentrated in urban areas because of dense population and road traffic congestion.
- As per World Road Statistics 2017 published by International Road Federation, Geneva, road accident fatality risk, i.e., fatality per 1,00,000 population and injury risk, i.e., road accident injury per 1,00,000 population is higher in India (around 11 per lakh), second to Russian federation (16 per lakh) among 22 countries.



CAUSES OF ROAD ACCIDENTS

Road accidents are multi-causal and are the result of interplay of various factors which can broadly be categorized into:

- Human errors:

- Over speeding and driving on the wrong side together accounted for 76.7% of total accidents and 73.1% of total deaths.
- Violation of other rules, viz., drunken driving, red light jumping and use of mobile phones
- Violation of any traffic rule constitutes human error or driver's fault. But from the perspective of road safety strategy, violations such as speeding and driving on the wrong side does not constitute human error alone, but also possible fault in road design. The approach opens up the scope for road engineering measures to address problems which are, *prima facie*, considered to be human error and enforcement issues.
- Road condition/environment:
 - Data on road accidents by road environment shows that major portion (50.5%) of accidents took place on roads in open area. Similarly, data on road accidents by road features reveals that 64.2 % of accidents during 2017 occurred on straight roads. Vehicle speed tends to be high on straight road in open areas which corroborates the high percentage share of over speeding in traffic violations associated with road accidents in 2017.
- Vehicular condition.
 - Old vehicles are prone to breakdowns and lack functioning safety features.
 - Tyre bursts on highways have been resulted in several incidences of road accident on high speed expressways.
 - Also no safety measures such as airbags, use of helmet also contributed to higher rates of fatalities.

ROAD SAFETY INITIATIVES BY THE GOVERNMENT OF INDIA

- **National Transportation Policy:**

The Policy will: (i) establish a planning framework for road transport, (ii) develop a framework for grant of permits, and (iii) specify priorities for the transport system, among other things.

- **Constitution of National Road Safety Council (NRSC)/ State Road Safety Councils and District Committees:** The Government has constituted the National Road Safety Council as the apex body to take policy decisions in matters of road safety in pursuance of Section 215 of Motor Vehicle Act 1988.
 - The GOI has requested all States/UTs for setting up of State Road Safety Council and District Road Safety Committees, and to hold their meetings, regularly.
- **Multipronged strategy based on the 4 'E's:** The GOI has formulated a multipronged strategy to address the issue of road safety based on the 4 'E's viz. **Education, Engineering (both roads and vehicles), Enforcement and Emergency Care.**
 - Road safety has been made an integral part of road design at planning stage.
 - Road Safety Audit of selected stretches of National Highways has been taken up.
 - High priority has been accorded to identification and rectification of black spots (accident prone spots) on national highways.
 - Vehicular Safety Standards and IT Enabled Safety Measures : The Government is taking steps to ensure that safety features are built in at the stage of design, manufacture, usage, operation and maintenance of both motorized and non motorized vehicles in line with international standards
 - Tightening of safety standards for vehicles like seat belts, anti-lock braking system, child restraint, Bus Body Code, Ambulance Code, etc.
 - To check the fitness of in use vehicle, the GOI is implementing a scheme for setting up of Inspection and Certification (I & C) Centre.

POST-CRASH RESPONSE AND TRAUMA CARE:

- To protect Good Samaritans from harassment on the actions being taken by them to save the life of the road accident victims, the Ministry of Road Transport & Highways have issued guidelines vide Notification dated 12th May, 2015 to be followed by hospitals, police and all other authorities for the protection of Good Samaritan.
- Further, the Ministry has also issued Standard Operating Procedure (SOP) for the examination of Good Samaritans by the Police or during trial. Both the guidelines have been mandated by Hon'ble Supreme Court of India.
- Now people need not hesitate to help the road accident victims to reach the nearest hospital, in case they come across one.
- Road safety activities have also been included in Schedule (vii) of the Companies Act, 2013. The Companies will now be able to undertake road safety related activities under CSR.
- Raise Awareness about Road Safety Issues
- HRD & Research for Road Safety.
- Motor Vehicles (Amendment) Bill 2019

Motor Vehicles (Amendment) Bill 2019

The Motor Vehicles (Amendment) Bill, 2019

Ministry: Road Transport and Highways



The Bill seeks to amend the Motor Vehicles Act, 1988 to provide for road safety. The Act provides for grant of licenses and permits related to motor vehicles, standards for motor vehicles, and penalties for violation of these provisions.

The amendments will improve road safety, facilitate citizens in their dealings with transport departments, strengthen rural transport, public transport and last mile connectivity through automation, computerization and online services.

Some of the important areas of amendment are as follows:

- **Road Safety:**
 - ✓ In the area of road safety, the Bill proposes to increase penalties to act as a deterrent against traffic violations.
 - ✓ Stricter provisions are being proposed in respect of offences like juvenile driving, drunken driving, driving without a licence, dangerous driving, over-speeding, overloading etc.
 - ✓ Penalty regarding motor vehicles is to be increased by 10 % every year
- **Vehicle Fitness :**
 - ✓ The Bill mandates automated fitness testing for vehicles. This would reduce corruption in the transport department while improving the road worthiness of the vehicle.
 - ✓ Penalty has been provided for deliberate violation of safety/environmental regulations as well as body part builders and spare part suppliers.
 - ✓ The process for testing and certification for automobiles is proposed to be regulated more effectively. The testing agencies issuing automobile approvals have been brought under the ambit of the Act and standards will be set for motor vehicle testing institutes.
 - ✓ The Bill also provides for compulsory recall of defective vehicles and power to examine irregularities of vehicle companies.

- **Recall of Vehicles**

- ✓ The Bill allows the central government to order for recall of motor vehicles if a defect in the vehicle may cause damage to the environment, or the driver, or other road users.
- ✓ The manufacturer of the recalled vehicle will be required to: (i) reimburse the buyers for the full cost of the vehicle, or (ii) replace the defective vehicle with another vehicle with similar or better specifications.

- **Road Safety Board**

The Bill provides for a National Road Safety Board, to be created by the central government through a notification. The Board will advise the central and state governments on all aspects of road safety and traffic management including standards of motor vehicles, registration and licensing of vehicles, standards for road safety, and promotion of new vehicle technology.

- **Protection of Good Samaritan**

To help road accident victims, Good Samaritan guidelines have been incorporated in the Bill. The Bill defines a Good Samaritan as a person who renders emergency medical or non-medical assistance to a victim at the scene of an accident, and provides rules to prevent harassment of such a person.

- **Cashless Treatment during Golden Hour**

The Bill provides for a scheme for cashless treatment of road accident victims during the golden hour.

- **Motor Vehicle Accident Fund**

- ✓ The Bill requires the central government to constitute a Motor Vehicle Accident Fund, to provide compulsory insurance cover to all road users in India.
- ✓ It will be utilised for: treatment of persons injured in road accidents as per the golden hour scheme, compensation to representatives of a person who died in a hit and run accident, compensation to a person grievously hurt in a hit and run accident, and compensation to any other persons as prescribed by the central government.
- ✓ This Fund will be credited through: payment of a nature notified by the central government, a grant or loan made by the central government, balance of the Solatium Fund (existing fund under the Act to provide compensation for hit and run accidents), or any other source as prescribed by the central government.

- **Improving Services using e-Governance:**

- ✓ Provision for online driving licenses. to avoid fake D.L.
- ✓ The Bill will bring transparency in RTO offices.

- **Process of Vehicle Registration**

- ✓ To improve the registration process for new vehicles, registration at the end of the dealer is being enabled and restrictions have been imposed on temporary registration.
- ✓ The Minister has however said that state transport departments can inspect the vehicles at dealers end.
- ✓ To bring harmony of the registration and licensing process, it is proposed to create National Register for Driving Licence and National Register for Vehicle registration through “Vahan” & “Sarathi” platforms. This will facilitate uniformity of the process across the country.

- **Taxi aggregators:**

- ✓ The Bill defines aggregators as digital intermediaries or market places which can be used by passengers to connect with a driver for transportation purposes (taxi services). The Bill provides guidelines for Aggregators.

- ✓ At present there are no rules in many states for regulating aggregators, taxis etc. These aggregators will be issued licenses by state Further, they must comply with the Information Technology Act, 2000.

Along with the above mentioned provisions some states also have raised concerns about their powers being curtailed in the Motor Vehicle (Amendment) Bill. Despite concerns, certainly the bill is a welcome step towards providing an efficient, safe and corruption free transport system in the country.



NEED FOR A LAW TO PROTECT DOCTORS

Context: In view of the recent assault on doctors in West Bengal, Need for a central legislation to protect Human Resources in Health (HRH) in India.

Human Resources for Health

Current Situation:

- India's health workforce is characterised by a diversity of providers delivering services in allopathy and alternative systems of medicine like Ayurveda, Homoeopathy, Unani and Siddha.
- As of March 2017, the doctor population ratio is 1:1613.
- The current nurse-population ratio is 1:588.
Due to the suboptimal quality of training offered by several institutions that have mushroomed over the years, limited career prospects and poor working conditions, especially in the private sector, there is a significant shortage of skilled nurses in the country.
- Moreover, the distribution of doctors and nurses across the country is uneven. Urban areas have four times as many doctors and three times as many nurses as compared to rural areas.
- Nurses and ASHA workers are underpaid, especially in rural areas and do not have any career prospects.
- There are also severe shortages in the category of allied health professionals (AHPs) including medical lab technicians, optometrists and radiologists.
- As far as specialists are concerned, a large number of posts are vacant all over the country. According to estimates, India needs close to 0.5 million additional specialists. Ayushman Bharat has triggered the need for even more human resources for health (HRH). There is also an acute shortage of medical faculty.

Constraints

- The regulatory system (Medical Council of India, Nursing Council of India) has failed to ensure adequate availability and quality of health professionals.
- There is an inadequate capacity to train doctors, especially specialists and super-specialists.
- Private practice by medical faculty in teaching institutions is rampant in several states, compromising on the commitment to teaching and institutional clinical work.
- Many state and private medical/nursing/dental colleges have poor infrastructure.
- There is no comprehensive and consistent HRH policy.
- Workforce shortages and uneven distribution of doctors, nurses, specialists and allied health professionals plague the sector.
- The quality of health professional training and adherence to standards is sub-optimal, including in the private sector.
- Health professionals in the public sector are inadequately compensated and motivation levels are extremely poor. Fair compensation in the private sector, e.g., for nurses, is also a challenge.
- There is a paucity of data on HRH in the country.

Measures need to be taken:

- Reform the governance of medical, nursing, dentistry and pharmacy education in India through the passage of the National Medical Commission (NMC) Bill, 2017, the establishment of a Council for Allied Health Professionals and so on.
Take steps to revamp the regulatory system of nursing education, ensure quality training in nursing schools, develop specialities in nursing, develop centres of excellence in nursing and enhance the stature of government nurses.

- Enhance the production of doctors (especially specialists and super-specialists) through training of doctors in specialities and super-specialities at private hospitals (certification, short courses, exchange programmes, etc.).
- Doctors spend a lot of time taking non-medical decisions, mostly administrative and management decisions. The good support system must be put in place so that doctors can focus on their work.
- Formulation of a comprehensive Human Resources in Health policy in states for all categories, develop a model policy covering issues pertaining to staff recruitment, retention, transfer, incentive structures for posting in difficult areas including access to housing facilities, performance management and competency-based career tracks for professional advancement.
- Skill and deploy non-physicians and other health providers.
Develop plans for training a full range of allied health professionals such that it meets national requirements as well as creates a surplus for placements abroad.
- Generate data on Human Resources in Health, track progress.
- Engage the private sector for skilling and training Human Resources in Health.

Violence against Doctors:

According to a study by the Indian Medical Association (IMA), more than 75% of doctors have faced physical or verbal violence during their lifetime. Our doctors face verbal abuse almost every day.

Reasons:

- Poor doctor-patient ratio
- Lack of infrastructure -
 - ✓ Poor quality of emergency care in hospitals.
 - ✓ Poor pre-hospital emergency care network about which hospital patient needs to be admitted based on type of medical illness/emergency.
 - ✓ Lack of emergency resources i.e blood, laboratory services workforce, relevant drugs, etc.
 - ✓ Emergency service capacity is critically low.
 - ✓ Nursing homes run emergency services without proper training.
- Absence of postgraduate training in emergency medicine in India
- Poor communication skills of healthcare workers, administrative staff and also no specific training regarding Public relationship management.
- Poor grievance redressal mechanism – Majority of the hospitals in India do not have a good grievance redressal system in place. A legal procedure in India also takes an inordinately long time.
- Lack of civic responsibility in the public.
- Lack of proper enforcement of laws protecting doctors
- The negative image of doctors portrayed in the media.
- Feeling of wrongdoing by the doctors for financial gain or for avoiding his/her duties.
- In a majority of cases, the perpetrators of violence go unpunished.

At least 19 states have enacted laws to protect doctors and other health-care personnel from violence, which is cognisable and non-bailable offence in many states. But laws currently in place are simply not working which is evident from the frequent assaults on doctors reported from various parts of the country. For 10 years Maharashtra has a legislation to protect the doctors. But nobody has ever been convicted under that law because of its poor implementation. No one takes the law seriously, which remains only on paper. Recently Union Minister for Health and Family Welfare wrote a letter to the Chief Ministers of all States and UTs drawing their attention for strict action against any person who assaults doctors.

As 'Health' is a state subject and considering various issues like lack of enforcement of various legal safeguards available, there is demand of Central legislation for the protection of doctors.

Indian medical Association has many times raised demand for a central law. IMA also drafted “The Protection of Medical Service Persons and Medical Service Institutions (Prevention of Violence and Damage or Loss of Property) Act, 2017. It was also circulated to the States vide the 2017 letter from the Ministry of Health last year. The draft Act includes clauses on penalty and recovery in case of loss/damage to property.

Way forward:

The issue is complex both from legal and implementation perspective. But treating issues as a law and order situation is just one way. The real solution may lie in improving health infrastructure, counselling patients about possible adverse treatment outcomes/impacts, and providing security in medical institutions and effective implementation of legal provisions.

Our doctors rank among the best in the world and work for long hours under stressful conditions, grappling with a huge load of patients. It is the duty of State to ensure the safety and security of doctors who assure that the healthcare needs of society are met.

NATIONAL MEDICAL COMMISSION BILL, 2019

Context: President Ram Nath Kovind has approved the National Medical Commission Bill, 2019.

Background:

Key issues regarding the regulation of medical education and practice:

- Several experts have examined the functioning of the MCI and suggested a different structure and governance system for its regulatory powers. Some of the issues raised by them include:

(a) Separation of regulatory powers

- Over the years, the MCI has been criticised for its slow and unwieldy functioning owing to the concentration and centralisation of all regulatory functions in one single body.
- This is because the Council regulates medical education as well as medical practice.
- In this context, there have been recommendations that all professional councils like the MCI, should be divested of their academic functions, which should be subsumed under an apex body for higher education to be called the National Commission for Higher Education and Research.
- This way there would be a separation between the regulation of medical education from regulation of medical practice.

(b) Looking at Recommendations by an Expert Committee:

- As a matter of fact, an Expert Committee led by Prof. Ranjit Roy Chaudhury (2015), recommended structurally reconfiguring the MCI's functions and suggested the formation of a National Medical Commission through a new Act.
- Here, the National Medical Commission would be an umbrella body for supervision of medical education and oversight of medical practice.
- It will have four segregated verticals under it to look at: (i) under-graduate medical education, (ii) post-graduate medical education, (iii) accreditation of medical institutions, and (iv) the registration of doctors.

(c) Composition of MCI

- With most members of the MCI being elected, the NITI Aayog Committee (2016) noted the conflict of interest where the regulated elect the regulators, preventing the entry of skilled professionals for the job.
- The Committee recommended that a framework must be set up under which regulators are appointed through an independent selection process instead.

(d) Fee Regulation:

- The NITI Aayog Committee (2016) recommended that a medical regulatory authority, such as MCI, should not engage in fee regulation of private colleges.
- Such regulation of fee by regulatory authorities may encourage an underground economy for medical education seats with capitation fees (any payment in excess of the regular fee), in regulated private colleges.
- Further, the Committee stated that having a fee cap may discourage the entry of private colleges limiting the expansion of medical education in the country.

(e) Professional conduct:

- The Standing Committee on Health (2016) observed that the present focus of the MCI is only on licensing of medical colleges.

- There is no emphasis given to the enforcement of medical ethics in education and on instances of corruption noted within the MCI.
- In light of this, the Committee recommended that the areas of medical education and medical practice should be separated in terms of enforcement of the appropriate ethics for each of these stages.

NMC Act 2019:

The act paves the way for the establishment of the country's new regulator of medical education and certification.

The Union Health Minister described the NMC Act as a 'progressive' legislation that would help to reduce

1. The burden on students,
2. Ensure probity in medical education,
3. Bring down costs of medical education,
4. Simplify procedures,
5. Help to enhance the number of medical seats in India,
6. Ensure quality education,
7. And provide wider access to people for quality healthcare.

The Minister also sought to dispel an impression about the NMC being dominated by central government nominees. Stating that there will be 10 Vice Chancellors of State Health Universities and 9 elected members of State Medical Councils in the NMC.

Features of the bill

- The bill provides for the setting up of a medical commission in place of the Medical Council of India (MCI) and repeal of the Indian Medical Council Act, 1956.
- The NMC will be 25-member body partly selected and partly elected.
- The NMC will have authority over medical education — approvals for colleges, admissions, tests and fee-fixation.
- A 'singular' feature of the NMC Act is that it provides for the regulation of fees and all other charges in 50% seats in private colleges as well as deemed Universities.
- Medical Advisory Council: Under the Bill, the central government will constitute a Medical Advisory Council. The Council will be the primary platform through which the states/union territories can put forth their views and concerns before the NMC.
- The medical colleges will have to conform to standards the NMC will lay down. Once they conform and are permitted to operate, there would be no need for annual renewals.
- The bill provides that the National Medical Commission will have four autonomous boards,
 - ✓ under-graduate medical education board,
 - ✓ post-graduate medical education board,
 - ✓ medical assessment and rating board and
 - ✓ Ethics and medical registration board.
- There will be a uniform **National Eligibility-cum-Entrance** Test for admission to under-graduate and postgraduate superspeciality medical education in all medical institutions regulated under the Act.
- Further, the Act introduces a common final year undergraduate examination called the **National Exit Test** for students graduating from medical institutions to obtain the license for practice. This test will also serve as the basis for admission into postgraduate courses at medical institutions.
- Under this Act, Foreign medical practitioners may be permitted temporary registration to practice in India.

To fill in the gaps of availability of medical professionals, the Act provides for the NMC to grant limited license to certain mid-level practitioners called community health providers, connected with the modern medical profession to practice medicine. These mid-level medical practitioners may prescribe specified

medicines in primary and preventive healthcare. However, in any other cases, these practitioners may only prescribe medicine under the supervision of a registered medical practitioner.

Concerns:

Community Health Provider

- The Indian Medical Association (IMA) has raised concerned over Section 32 of the NMC Bill that provides for licensing of 3.5 lakhs non-medical persons or Community Health Providers to practise modern medicine.
- Earlier there was a proposal of a bridge course clearing which alternative medicine doctors could practise modern medicine. The provision was majorly opposed by doctors when the Bill was proposed. The government made changes in the bill for the provision but proposed similar idea of Community Health Providers to help tackle the disease burden in rural areas.
- The term Community Health Provider has been vaguely defined to allow anyone connected with modern medicine to get registered in NMC and be licensed to practise modern medicine.
- This means persons without medical background are becoming eligible to practise modern medicine and prescribe independently.

National Exit Test (NEXT)

- Section 15 (1) of the bill proposes a common final-year MBBS exam, the National Exit Test (NEXT), before an individual starts practising medicine and for seeking admission to postgraduate medical courses and for enrolment in the State Register or the National Register.
- Medical student fraternity has rejected NEXT in its present format stating ,“Merit should be the determining factor in securing a PG seat and the current NEET-PG should not be scrapped”.

Private colleges Fee regulation

- NMC would also regulate fees and all other charges for 50% of the seats in private medical colleges and deemed universities.
- There should be capping on the fee charged by the unaided medical institutions. Thus, in the current system of fee regulation by Fee Regulating Authority should prevail and the said provision in the bill is to be amended accordingly.

Composition of Commision:

- As per the Bill, of 25 members proposed for the NMC, only five would be elected which means the non-elected members would be either government officials or those nominated by the government.
- Indian Medical Association (IMA) opposed the bill that it will cripple the functioning of medical professionals by making them completely answerable to the bureaucracy and non-medical administrators.

SEXUAL HARASSMENT AT WORK PLACE

What is Sexual Harassment?

- Sexual harassment is any unwelcome sexually defined behaviour which can range from misbehaviour of an irritating nature to the most serious forms such as sexual abuse and assault, including rape.
- The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 defines sexual harassment to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:
 1. Physical contact and advances
 2. A demand or request for sexual favours
 3. Making sexually coloured remarks
 4. Showing pornography
 5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

What is sexual harassment at workplace?

Sexual harassment at the workplace is any unwelcome sexually defined behaviour which has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment.

The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 states that if the following circumstances occur or are present in relation to, or connected with any act or behaviour of sexual harassment, it may amount to sexual harassment at the workplace:

1. Implied or explicit promise of preferential treatment in her employment in her employment; or
2. Implied or explicit threat of detrimental treatment in her employment; or
3. Implied or explicit threat about her present or future employment status; or
4. Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
5. Humiliating treatment likely to affect her health or safety.

Can an aggrieved file a case of sexual harassment in the workplace?

Yes, a court case suit can be filed for damages under laws. The basis for filing the case would be mental anguish, physical harassment, loss of income and employment caused by the sexual harassment.

Under what circumstances can complaints be filed?

Complaints may be filed under the following circumstances:

- Cases involving individuals from the same organization
- Cases that concern third-party harassment, which implies harassment from an outsider.

Where a complaint can be filed?

- **Internal Complaints Committee** – within that organization
- **Local Complaints Committee** – if you are an employee from an establishment where the Internal Complaints Committee has not been constituted due to having less than 10 workers. In the case that the complaint is against the employer himself/herself and the individual feels that the case may be compromised, he/she can also lodge a complaint in the LCC.
- For instances where the LCC may not be immediately accessible, the Act instructs the District officer to designate one nodal officer in every block, taluka and tehsil in rural or tribal areas and ward or municipality in the urban area, who will receive the complaint and forward it to the concerned LCC within 7 days.
- **Local police station**, in case provisions under the Indian Penal Code are applicable.

An Indian Context:

- India has signed and ratified the **Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**.
- In 1997 as part of the Vishaka judgment, the Supreme Court drew upon the CEDAW and laid down specific guidelines on the prevention of sexual harassment of women at the workplace.
- The **Vishaka guidelines** defined sexual harassment and codified preventive measures and redressal mechanisms to be undertaken by employers.

Currently in the News:

- Many Allegations were raised by actress against fellow actors, directors.
- There has also been the recent development where at last count, Minister of State for External Affairs has been accused of sexual harassment by at least 10 women journalists.
- In the immediate aftermath of this development, women have been speaking of their experiences and the trauma, mostly on Twitter and Facebook.
- The testimonies that have so far been expressed have mostly concerned the film world and the mainstream media, and cover both the workplace and private spaces.
- These testimonies range from stories of assault to propositioning, suggestiveness to stalking.
- Currently, in India, many questions arise. **What is perhaps of even greater disquiet is that for so long an official silence was kept around what were, in many instances, open secrets.**

#MeToo MOVEMENT

Origins of the MeToo Movement:

- The **MeToo** hashtag gained currency a year ago in the U.S.
- In the U.S., women came out one after another to first corroborate allegations of sexual assault against Hollywood mogul Harvey Weinstein.
- There were many allegations levelled and each further account made it clear that there was a systemic pattern of abuse and silence.

A Note on the Due Process:

- Experts believe that there has been an utter failure of due process.
- Unfortunately, victims have written formal complaints and have also tried to get their organisations to act, but they **have mostly found themselves facing a system that prefers to be complicit with the perpetrators.**
- A couple of cases further illustrate this:
 1. In the case of the **former TERI chairman, R.K. Pachauri**, for instance, despite the victim filing a police complaint and compelling the organisation to initiate an inquiry, he not only continued in TERI for another year but was publicly supported by the board members.
 2. There is another case of rape that one can sight against the former Editor of Tehelka, Tarun Tejpal. In spite of being a “fast track” case, five years on, it has only seen a series of adjournments, with no sign of justice on the horizon.

It is important to note that these events, when added to the daily news cycle of multiple rapes, stalking, and harassment from all across the country, have resulted in victims of sexual crimes losing faith in the justice system.

Experts believe that the failure of due process is the success of #MeToo. After decades of witnessing the impunity of the perpetrators, #MeToo is fuelled by an impunity of sorts of the ‘victims’.

Certain areas that need clarity:

- Currently the floodgates have been opened and various kinds of stories are getting exposed. These stories range from awkward flirting to physical assault.
- One other factor that is dividing the discussion into two is the nature of consent.
- It is important to note that what consent is often a construct/function of society. For example, many aspects of intersexual behaviour especially in the workplace that were acceptable 30 years ago, needless to say, are not tolerated any more.
- However, we observe that with the advent of smartphones and instant messaging, interpersonal behaviour and the definition of consent have undergone a major change in the last decade.
- Thus, stemming from this, it is imperative at this point to understand that consent is not static, but needs to be continuous and incremental.
 - ✓ In these cases, We find that social media became the multiplier and aggregator of voices.
 - ✓ During these revelations, we find that women are raging about how they thought they were lone victims, how they could not speak up for fear of inflicting familial ‘shame’, and how they feared benevolent ‘protection’ would mean confinement at home or being married off.
 - ✓ Women are revealing how seniors and officials they complained to, reinforced fears- such as that of losing a job, losing face and losing independence.
 - ✓ Unfortunately, we find that women have been subjected to humiliation and harassment.
- It is felt that without this massive collation of narratives, single episodes would have remained isolated transgressions that could be defused.

There are certain negative trends that have been associated with this movement. These are as follows:

1. We observe that first-person accounts are dissolving into unverified lists.
2. Fakes are jumping onto the bandwagon.
3. People are urging disclosures, offering up their timelines almost like a panacea or certificate of courage. It is important to note that this is unwise because vulnerable women might be pressured to think it could be just that.
4. Further, while being cathartic, disclosures might not always help in either healing or closure, especially in low-profile cases.

Things to be kept in Mind:

- It is important to identify the exact transgression in the various cases that are being expressed, and to ensure that action is taken with due process.
- Further, it is important to note that no one can be deemed guilty only because he/she had been named and any punishment must be proportionate to the misdemeanour.
- It is also important to consider that many people, especially men, have raised concerns regarding false accusations.
- No movement is perfect, and all battles have a certain amount of collateral damage.
- It is important that men be active allies in making the due process a fair and functional one in which all victims, including those of false allegations, can seek justice.
- It is imperative now that the building of a new, fair system that delivers brisk justice, critical to everyone's interests is initiated.
- we should note that there has been a systemic disregard for making workplaces and common spaces free of harassment.
- What is disturbing is that a thread that binds so many allegations now coming out is that many women thought that their words and feelings would be dismissed, their careers would suffer, or their families would pull them back into the safety of home.
- It is this fear of making a complaint that needs to be overcome in all workspaces, not only the media and the film industry.
- All of society needs to internalise a new normal that protects a woman's autonomy and her freedom from discrimination at the workplace.
- Further, desire cannot be moral-policed and judged by age, sex or marital status. **Do we want the excision of all expression of sexual interest at workplaces? Or is it possible we will learn a language of trust where desire can be expressed and rejected/accepted without repercussions.**
- In the case of men, it would mean subordinating desire to respect and learning that reciprocation is not a divine right. For women, it means learning to reject with confidence, learning how to deploy power.
- Further, it is important to point out that once the dust settles, substantial solutions are needed.

Few steps that can be taken :

- Institutional responses must become quicker, wiser, and more robust, but behavioural changes are even more urgent.
- There must be efforts to incorporate a gender curriculum in all school and college classrooms, establish anti-sexual harassment cells, organise regular awareness programmes on consent across the country, and formulate measures to address incidents of sexual harassment.
- The police should initiate community engagement drives so that students know how to report sexual harassment.
- Campaigns like Operation Nirbheek, initiated to improve safety and security of girls in schools, have proven to be successful to a large extent.

Steps already taken in wake up of MeToo:

- The Centre has recently established a Group of Ministers to recommend measures to effectively implement the law against sexual harassment at the workplace and to strengthen the legal and institutional framework in response to the #MeToo campaign.
- A government sub-committee formed in the wake of the #MeToo movement to recommend ways to prevent sexual harassment at workplace is likely to propose waiving the three-month time limit for victims to file complaints as laid down under the law.
- The Committee is also likely to propose that members of Internal Committees be treated on a par with “public servants” as defined under Section 21 of the Indian Penal Code so that they have immunity from prosecution. “It will ensure that the members don’t get entangled in court cases,” the source said.

Conclusion : The problem is fundamentally one of socialisation. Men have to unlearn a lifetime of imbibed contempt for women. It must be pointed out that this can only be addressed by familial and social sensitisation that begins from infancy, creating a society that grants women equality and dignity by default. If today’s anger can begin that process, it will have been a success.

IN- HOUSE POWER OF INQUIRY OF THE SUPREME COURT OF INDIA

Context: This is an important issue as it involves an allegation of sexual harassment on part of the Chief Justice of India.

Important facets of the complaint filed:

- 1) The complaint made by the victim of sexual harassment to the judges of the Supreme Court had two equally serious facets.
- 2) One related to sexual harassment, a very serious charge.
- 3) The other related to the victimisation of the complainant and her family “at the hands of the Chief Justice of India [CJI]”, as claimed by her.
- 4) The in-house committee of the Supreme Court spoke: “No substance in the allegations contained in the Complaint dated 19th April, 2019 of a former Employee of the Supreme Court.”
- 5) In the absence of any known procedure, the non-observance of the principles of natural justice and the absence of effective representation of the victim, the report, even though not for the public, is non-est and void ab initio.

A Critical Perspective:

- Critics opine that in this particular case, the main question was whether the Supreme Court would live up to the standards of fairness it expects of all authorities while inquiring into a former woman employee’s complaint of sexual harassment and victimisation against the Chief Justice of India.
- The unprecedented in the constitutional history of India, the CJI himself constituted an extraordinary hearing in the Supreme Court, along with two other judges, on a non-working day in a case titled “Matter of great public importance touching upon the independence of the judiciary”.
- The complainant, in her absence, was defamed and her motives questioned. The highest law officers of the country, the Attorney General and the Solicitor General, joined this judicial proceeding. Within no time, an allegation of sexual harassment turned into a matter of judicial independence.
- The third development was the constitution of an **“in-house” panel** comprising three judges of the Supreme Court. It did not seem to be of concern that to ensure independence of the inquiry and check for bias, members other than judges should have constituted the committee.

An Opaque report?

- How can judges inquire into allegations against a colleague, no less the CJI, who is the ‘master of roster’ assigning cases to fellow judges and, most significantly, the highest judicial authority in the country, wielding an enormous amount of power and influence?
- Further, it is important to note that the constitution of the “in-house” panel was not in compliance with the provisions of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, a special legislation to curb harassment.

Thereafter, the complainant was forced to abstain from the panel, citing various reasons such as the refusal of the panel to allow the presence of her lawyer, refusal to record the proceedings or to inform her of the procedure followed and prohibition on conveying the details of the proceedings to anybody else, including her lawyer.

- Experts opine that the finding of the panel that the allegations are baseless is the final blow in a process that has violated all principles of fairness, due process and impartiality.
- The panel’s report is not available to the public on reasons of confidentiality.

Critics ask certain probing questions:

- a) What grounds did the panel cover to reach its conclusion?
- b) What evidence did it examine and rely on?
- Unfortunately, the public have been kept in the dark, having no access to and no knowledge of what transpired in the proceedings. **This has happened at a time when the Right to Information Act, 2005 has revolutionised access to information by the public.**

The emergence of judicial oligarchy?

- However, the current episode points to a larger problem in the Indian democracy: **the emergence of judicial oligarchy.**
- An allegation against a sitting judge is inquired into by three other judges of the court, the accused is exonerated, the panel report is made available only to the CJI and the senior most judge of the court, and this secrecy is justified by relying on the judgment of the Supreme Court itself.

The normal process that is observed:

- Let us assume, for example, that an average employee in a government department is accused of sexual harassment at the workplace.
- If at the outset, reasonable material is found in favour of the complaint, the accused is suspended from employment pending an inquiry.
- This is considered necessary in administrative law to ensure that the accused does not tamper with evidence or intimidate or influence witnesses.
- Usually, an independent inquiry will follow which will give both parties an opportunity to present evidence and arguments and to examine and cross-examine witnesses.
- If the allegations are found to be true and grave, the accused's employment is terminated; if not, other forms of departmental penalties are imposed.

Dealings of the Court: Less than fair?

- Critics opine that the manner in which the court dealt with the complaint on the administrative side has been less than fair.
- It is true that the in-house procedure devised in 1999 envisages only a committee of three judges to deal with allegations against serving Supreme Court judges.
- The fact that a special law to deal with sexual harassment at the workplace is in force since 2013 appears to have made no difference.
- Unfortunately, the court could not bring itself, even in the interest of appearing fair, to adopt a formal procedure or allow the complainant to have legal representation.
- It is important to note that even the office of the Chief Justice of India is not above the law.

What is often forgotten is that an independent judiciary also importantly acts as a check on itself, and must apply the principles of natural justice and fair procedure to itself with greater rigour than it would to the parties that appear before the court. The expectation of citizens is that the court will lead by example. The expectation is also that constitutional morality will guide the court, especially the Justices of the court, at all times; the constitutional presumption is that the court is not above the Constitution.

DOCTRINE OF PROPORTIONALITY

Context: Relevance in Puttaswamy (Privacy) judgment and Aadhar judgement.

Hon'ble Chandrachud J. Supreme Court judge in Puttaswamy (Privacy) judgment, notes that any invasion of life or personal liberty must meet the three requirements of

- legality, i.e. there must be a law in existence
- legitimate aim/State interest, which he illustrates as including goals like national security, proper deployment of national resources, and protection of revenue, social welfare; and
- Proportionality of the legitimate aims with the object sought to be achieved. There should be a rational nexus between the objects and the means adopted to achieve them.

The concept of proportionality is used as a criterion of fairness and justice in statutory interpretation processes, as a logical method to assist in discerning the correct balance between the objects of a legislation and the means adopted to achieve them

Doctrine of Proportionality relates to the principle of interpretation of statutory provisions maintaining fairness and justice.

It is a mode of restricting the legislative enactments/ administrative action from being drastic, when it is used for obtaining desired results, so that a sense of proportion is maintained between its goals along with preserving the public interest with minimal effect on the individual rights

This criterion was also applied in Aadhar case.

TRIPLE TALAQ BILL

Context: The Muslim Women (Protection of Rights on Marriage) Bill, 2019

About Triple Talaq:

Triple Talaq is the process of divorce under Sharia Law (Islamic law) where a husband can divorce his wife by pronouncing 'Talaq' three times. This is also called oral talaq.

There are three types of divorce under Islamic law, namely, Ahsan, Hasan and Talaq-e-Biddat (triple talaq). While the former two are revocable, the last one is irrevocable. It is mainly prevalent among India's Muslim communities that follow the Hanafi School of Islamic Law.

Under this law, wives cannot divorce husbands by means of triple talaq. Women have to move a court for divorcing her husband under the Muslim Personal Law (Shariat) Application Act 1937. (This Act was passed to make provisions for the application of Sharia or Islamic personal law to Muslims in India).

The Muslim Women (Protection of Rights on Marriage) Bill, 2019

After getting passed in both houses of Parliament, President has given assent to the triple talaq bill passed by Parliament, turning it into a law which makes the practice of instant divorce among Muslims a punishable offence. The Act will replace an ordinance promulgated on February 21 this year to the same effect

Introduced in Lok Sabha June 21, 2019	Passed Lok Sabha June 25, 2019	Passed Rajya Sabha July 30, 2019	Received Presidential Assent
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Background :

Shah Bano case (1985):- The Supreme Court ruled in her favour in 1985 under the "maintenance of wives, children and parents" provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, It recommended that a uniform civil code be set up.

Facts about the case:

- Under Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days).
- Section 125 of CrPC (criminal procedure code) that applied to all citizens, provided for maintenance of the wife

Impact- After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure passed The Muslim Women's (Right to protection on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

Daniel Latifi case- Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14& 15 as well as the right to life under Article 21.

The Supreme Court while holding the law as constitutional harmonised it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

Sarla Mudgal Case- In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955.

Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian Penal Code(IPC).

Shayara Bano, a 35-year-old woman, challenged the practice after getting divorced under the triple talaq custom. In 2017, the Supreme Court, in a landmark 3-2 verdict, had struck down instant triple talaq . Three of the five judges on the Constitution Bench had called the practise un-Islamic and “arbitrary” and disagreed with the view that triple talaq was an integral part of religious practice.

The ruling of SC is truly a watershed moment in women empowerment movement in India. The court has given progressive thoughts enshrined in the Constitution precedence over personal law in society.

What is there in the triple talaq bill?

- The triple talaq bill makes declaration of talaq-e-bidat in spoken, written or through SMS or WhatsApp or any other electronic chat illegal.
- Talaq-e-biddat refers to the pronouncement of talaq three times by a Muslim man in one sitting to his wife resulting in an instant and irrevocable divorce.
- The triple talaq bill also makes declaration of talaq-e-bidat cognisable offence that gives a police officer powers to arrest the offender without requiring a warrant.
- To check misuse of cognisable nature of the offence, the triple talaq bill makes declaration of talaq-e-biddat only if the complaint is filed by the aggrieved woman or any of her relation by blood or marriage.
- A Muslim man pronouncing instant triple talaq attracts a jail term of three years under the triple talaq bill. The accused under the triple talaq bill is entitled to bail, which can be granted by a magistrate. But the bail can be granted only after the magistrate has heard the aggrieved woman.
- The triple talaq bill also provides scope for reconciliation without undergoing the process of nikah halala if the two sides agree to stop legal proceedings and settle the dispute.
 - ✓ Nikah halala refers to practice under which a divorced Muslim woman has to marry another man and consummate the marriage and get a divorce. Only then can she be eligible to remarry her former husband.
- Under the triple talaq bill, the divorced Muslim woman is entitled to seek custody of minor children. This would be determined by a magistrate.
- A woman divorced through talaq-e-biddat is entitled to demand a maintenance for her and her dependent children under the triple talaq bill. The magistrate has the power to determine the amount of subsistence allowance.

Arguments against triple talaq:

- According to a study, 92% of Muslim women in India wanted the triple talaq to be banned.
- It goes against the rights of equality and women’s empowerment. It propagates the dominance of men over women.
- It gave men the right to arbitrarily divorce their wives without any valid reason.
- New-age technology has given birth to new modes of triple talaq such as through skype, text messages and email.
- The ‘triple talaq’ has been abolished in 21 Islamic theocratic countries including Pakistan, Bangladesh, and Indonesia. There is no reason for a democratic and secular India to continue this lopsided practice.
- It goes against the constitutional principles of gender equality, secularism, right to life of dignity, etc. It goes against Article 14 (Right to Equality) and Article 15(1) which states that there shall be no discrimination against any citizen on the basis of gender, race, etc. and this kind of talaq is biased against the interests of women.

- The constitution of the country says that it shall strive to bring a uniform civil code for the entire country. Doing away with triple talaq will definitely be a step closer to the constitution-makers' dream of having a uniform civil code for all citizens.
- However, the National Commission of Women says that this matter cannot be linked to uniform civil code. Nevertheless, it should be banned in order to protect the interests of Muslim women.
- The Supreme Court has also declared that this practice is unconstitutional and not protected by Article 25 which regards the freedom of religion. Also in December 2016, the Allahabad High Court had said that no personal law board was above the constitution.
- Experts also opine that only the essential or integral features and aspects of a religion are protected by the Constitution. Triple talaq was not an integral feature of Islam

Arguments in favour triple talaq:

- It is well established that criminalising something does not have any deterrent effect on its practice. The harsh punishment defies the doctrine of proportionality.
- Three years in prison of the convicted husband will end up penalising the already aggrieved wife and children too.
- The punishment will aggravate the insecurity and alienation of the Indian Muslim community.
- In the recent Supreme Court judgement, it never said that triple talaq is to be criminally punished.
- Parliament should have passed a law stating that the utterance of the words "talaq, talaq, talaq" would amount to "domestic violence" as defined in the Protection of Women from Domestic Violence Act (PWDVA), 2005.
- The PWDVA was conceived as a law that ensures speedy relief — ideally within three months — to an aggrieved woman.
- While PWDVA is civil in nature, it has a reasonably stringent penal provision built into it.
- Since marriage is a civil contract, the procedures to be followed on its breakdown should also be of civil nature only.
- Civil redress mechanisms must ensure that Muslim women are able to negotiate for their rights both within and outside of the marriage.
- Five arguments the All India Muslim Personal Law Board (AIMPLB) provided to the SC in favour triple talaq:
 - ✓ Triple talaq provides security to wife.
 - ✓ Women get killed when men don't have easy divorce.
 - ✓ Obtaining divorce from courts scandalises women's character, for men the damage is little.
 - ✓ Obtaining divorce from courts "deters re-marriage" prospects of men, women.
 - ✓ Triple Talaq is sin, but 'valid and effective' form of divorce.

Challenges in banning triple talaq:

- Religious groups infer the banning of a traditional practice sanctified by Sharia as interfering in the religious aspects of minorities.
- Low literacy rate among Muslim Women and knowledge about their rights.
- It might be possible that Womens will not get support from her parents/relatives during legal proceedings.

The act is a right step to put an end to the suffering of Muslim women who have been at the receiving end of instant talaq for several years. But still there are certain provisions like criminalisation of Triple Talaq which need careful thought and should be debated. On the same lines, steps should be taken to end evil practises/discriminations against women in the other religions/society as a whole.

VIOLENCE AGAINST CHILDREN

Context

- The Parliament recently passed the Criminal Law (Amendment) Bill 2018, which awards death penalty to convicts of child rapes in India.
- The Bill provides for death penalty as the maximum punishment in cases of rape of a child under 12.

What are the issues with Child Abuse in India?

- According to a report by child rights NGO CRY, sexual offence is committed against a child in India every 15 minutes and there has been an increase of more than 500 per cent over the past 10 years in crime against minors. The rising cases is a disturbing scenario.
- As per NCRB statistics on rape of women and children, 94% of the rapists are known to the victim, and almost half are a close relative, and neighbours.
- Low conviction rate – it is only about 3 percent of the total cases brought before the courts as per the NCRB Report 2016. One of the main causes for the low rate of conviction under the Act is a lack of infrastructure and manpower in the criminal justice system.
- Failure of previous acts – Despite the enactment of the POCSO Act in 2012, there has been no decline in the number of crimes against children. Inference – The new law was no deterrent.
- Delay in justice – It is common for court cases to last years or even decades- one of the reasons is the serious shortage of judges. More than 6 million criminal cases that have been pending for more than 10 years. Timelines for completion of the investigation, for recording of evidence, and for completion of trial are almost never adhered to due to pendency of cases and the lack of facilities.
- Politicians' attitude – Samajwadi Party supremo Mulayam Singh Yadav went on record in 2014 to say that crimes like rapes shouldn't lead to death sentence because "boys are boys and they make mistakes".
- In a 2017 report, "Everyone Blames Me," Human Rights Watch found that survivors (of the crime), particularly among marginalized communities, still find it difficult to register police complaints.
- They often suffer humiliation at police stations and hospitals, are still subjected to degrading tests by medical professionals, and feel intimidated and scared when the case reaches the courts. They face significant barriers when trying to obtain critical support services such as health care, counseling, and legal aid.

Some incidents :

The brutal gang rape and murder of an eight-year old girl Asifa Bano, who belonged to a Muslim nomadic tribe on 17 January near Kathua, a town in Kashmir shook the collective conscience of the nation and sparked outrage and anger across India.

- In the Nagaon district of Assam, an 11-year-old girl was raped and then burnt alive, and then an entire village came together to help the police catch the accused.
- It gets more disgusting. A four-month-old baby was raped and murdered in the historic Rajwada area of Indore. Hardened policemen were nearly moved to tears as they conducted a preliminary examination of the ravaged body.
- Seventeen men have been charged in India with the gang-rape of an 11-year-old deaf girl in the city of Chennai in July 2018.

Salient features of the Criminal Law (Amendment) Bill 2018

- The Bill seeks to replace the Criminal Law (Amendment) Ordinance promulgated on April 21, 2018 following an outcry over the rape and murder of a minor girl in Kathua in Jammu and Kashmir and the rape of another woman at Unnao in Uttar Pradesh.

- The Criminal Law (Amendment) Bill 2018 will amend relevant Sections of the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC) and also the Protection of Children from Sexual Offences Act (POCSO Act) 2012.
- The Bill provides for a time-bound investigation in cases of rape of girl children. The investigation into the rape of a child must be completed within two months.
- The cases are to be tried in a fast track court. The Bill states that any appeal against a sentence by the trial court must be disposed of within six months.
- Under the new law, if the victim is under 12 years of age, the culprit faces a minimum sentence of 20 years. The maximum punishment is death. In the cases of gangrape of a child under 12, the minimum punishment is life sentence while the maximum is death penalty.
- In cases of children aged between 12 and 16, the offence of rape is punishable with the minimum sentence of 20 years. The maximum punishment in such cases is life imprisonment. If a girl aged between 12 and 16 is gangraped, the convicts face a minimum punishment of life sentence.
- If the victim is aged between 16 and 18, the offence of rape is punishable with a minimum punishment of 10-year jail term and the maximum is life imprisonment. Repeat offenders will be punished with life imprisonment or death.
- However, the punishment for rape of boys has remained unchanged. This has resulted in greater difference in the quantum of punishment for rape of minor boys and girls.

Demerits of the Capital Punishment/ Arguments against the provisions:

Capital punishment is a debatable subject and criminologists, sociologists and the legal fraternity are always divided on this issue.

- Justice P Bhagwati while delivering a dissenting opinion in the case of Bachan Singh vs State of Punjab (1982) case held capital punishment to be unconstitutional.
- The Law Commission of India in its report on death penalty said that after many years of research and debate a view has emerged that there is no evidence to suggest that the death penalty has a deterrent effect over and above its alternative – life imprisonment.
- The Justice JS Verma committee, which was formed after the December 2012 Delhi gang rape and murder case, in its report concluded that death penalty would be a regressive step in the field of sentencing and reformation.
- Human Rights Watch opposes the use of the death penalty in all cases. Capital punishment for rape is the easiest and most convenient demand to raise, yet the most harmful one for rape survivors. It is all about retribution, disregards the reformatory aspect of the criminal justice system, and, most importantly, is said to have little deterrent effect.
- There are rapists who kill the victims, and there are rapists who don't. Now, if the maximum punishment in either case is the same, the rapist would reason that by killing victim he/she may never be exposed. There are numerous instances of the perpetrators killing their victims, so stringent anti-rape laws are perceived not to be deterrents but measures that further instigate rapists to kill the victims.
- Rape is already underreported in India largely because of social stigma, victim-blaming, poor response by the criminal justice system, and lack of any national victim and witness protection law making them highly vulnerable to pressure from the accused as well as the police. Children are even more vulnerable due to pressure from family and society. Increase in punishment, including the death penalty may lead to a decrease in reporting of such crimes.

Way Forward

- The Indian government has, in recent years, adopted significant legal reforms for sexual violence cases but major gaps remain in their implementation.
- It is the certainty and uniformity of the punishment, rather than the nature of it, which actually deters an offender from committing a crime.
- Deterrence of the crime and the victim's access to justice require both better implementation of existing laws and systemic changes.

- India's growing rape culture can be best reversed by enhancing conviction rates through reforms in the police and judicial systems, and by augmenting measures to rehabilitate and empower rape survivors.
- Criminal justice system remains vulnerable to political pressures and allows many of the accused to go scot-free.
- The re-training of police officers dealing with various aspects of sexual crimes.
- Strict action is taken against the police officer found guilty of obstructing the probe or colluding with perpetrators of such cases.
- The court infrastructure needs to be strengthened, and the police must be sensitized to handle and support victims of the crime. This will ensure better investigations which in turn will translate into a better conviction rate of the offenders.
- Greater allocation of state resources towards the setting up of fast-track courts; more one-stop crisis centres; proper witness protection; more expansive compensation for rape survivors, and an overhaul of existing child protection services is the need of the hour.



THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) BILL, 2019

Details:

The amendment bill has a number of provisions to safeguard children from offences of sexual assault and sexual harassment.

- The bill aims at making offences against children gender-neutral.
- The definition of 'Sexual Assault' has been extended to incorporate administration of hormones or chemical substances to children to attain early sexual maturity for the purpose of penetrative sexual assault.
- The bill is critical because it clearly defines child pornography and makes it punishable.
 - ✓ The Bill defines child pornography as any visual depiction of sexually explicit conduct involving a child including photograph, video, digital or computer generated image indistinguishable from an actual child.
 - ✓ The amendments also penalize the transmitting of pornographic material to children and propose to synchronise it with the Information Technology Act.
- The bill seeks to enhance punishment for sexual offences against children, with a provision of death penalty.
 - ✓ According to the amendment bill, those committing penetrative sexual assaults on a child below 16 years of age would be punished with imprisonment up to 20 years, which might extend to life imprisonment as well as fine
 - ✓ In case of aggravated penetrative sexual assault, the bill increases the minimum punishment from ten years to 20 years, and the maximum punishment to death penalty.
- To curb child pornography, the Bill provides that those who use a child for pornographic purposes should be punished with imprisonment up to five years and fine.
- However, in the event of a second or subsequent conviction, the punishment would be up to seven years and fine.

The government has also sanctioned over one thousand fast track courts for speedy disposal of pending cases under POCSO.

In a bid to crack down heavily on child pornography, the Ministry of Women and Child Development has laid down a clear definition of what constitutes the offence and has included sexually explicit digital content involving children under its purview as per an amendment to the existing Protection of Children from Sexual Offences (POCSO) Act which is soon to be tabled before the Lok Sabha.

Details:

- The new Bill defines child pornography as: "any visual depiction of sexually explicit conduct involving a child which includes a photograph, video, digital or computer-generated image (that is) indistinguishable from an actual child."
- Additionally, "an image created, adapted, modified" to depict a child would also be treated as child pornography. This would also include cartoons, animated pictures, etc.,
- The Cabinet has also enhanced the fine for possessing child porn but not deleting or reporting it to 5,000 from the earlier proposal of Rs. 1,000. If a person stores such content for distributing it further, except for when presenting it in court as evidence, he could face a punishment of upto three years.
- Henceforth, there will be zero tolerance for child pornography.
- Some of these provisions were also contained in the Protection of Children from Sexual Offences (POCSO) Amendment Bill, 2019, but lapsed.

Significance:

- So far, there had been no definition of child pornography in Indian law.
- It was a big lacuna which could be used to evade the law.
- Neither Section 67 of the IT Act nor Section 293 of the Indian Penal Code define child pornography.
- Its definition derived from what constitutes pornography, which is defined as “any material which is lascivious or appeals to the prurient interests or if its effect is such as to tend to deprave or corrupt the minds of those who are likely to see, read and hear the same.”
- “Child porn” has now been redefined to ensure that the punishment can be implemented properly.
- The amended law will also apply to pornographic content where adults or young adults pretending to be children.



ELECTORAL BONDS

Context: The present government continuing their war against both the problems (black money and corruption) has proposed a set of reforms related to political funding like issuing of Electoral Bonds.

The Electoral bonds are instruments/securities which will be used henceforth to donate funds to the political parties. These bonds will be on the lines of bearer bonds or promissory notes wherein the issuer (bank) will be the custodian and will pay the one who holds the bonds (political party). The features of electoral bonds and the process involved are:

- These bonds will be issued by notified banks.
- The donor to the political party may approach these banks and purchase the bonds.
- The donor will be allowed to purchase the bonds through cheque/digital payment. Hence the identity of the donors will be protected (if the donors are identified, they may get caught up in political rivalry-especially if the donor is a businessman).
- The donor will donate these bonds to the political party.
- The political party has to encash it into the account which is registered with the Election Commission of India.

Importance of the Electoral Bonds

- They ensure that the funds being collected by the political parties are accounted money or clean money.

Concerns with respect to Electoral Bonds:

While Electoral Bond Scheme acts as a check against traditional under-the-table donations as it insists on cheque and digital paper trails of transactions, several key provisions of the scheme make it highly controversial.

Anonymity: Neither the donor (who could be an individual or a corporate) nor the political party is obligated to reveal from whom the donation comes from.

Transparency: It will also defeat the fundamental principle of transparency in political finance.

Companies no longer need to declare the names of the parties to which they have donated so shareholders won't know where their money has gone.

Provisions such as elimination of a cap of 7.5% when it comes to corporate donations, elimination of the requirement that corporations must reveal political contributions in profit and loss statements, and the elimination of the requirement that a corporation must be three years in existence undercuts the intent of the scheme and thus any troubled companies, dying companies, shell companies can donate to an unlimited amount, and do so anonymously. So the possibility of making it a convenient channel for black money.

Because the bonds are purchased through the SBI, the government is always in a position to know who the donor is. This asymmetry of information threatens to colour the process in favour of whichever political party is ruling at the time.

The Election Commission of India (ECI) had demanded that the limit for reporting the donations (which is Rs 20000) should be brought down to Rs 2000, but instead the government has brought down the maximum cash contribution to Rs 2000.

It could become a convenient channel for business to **round-trip their cash parked in tax havens to political parties** for a favour or advantage granted in return for something.

Hence there are some concerns associated with the usage of electoral bonds. Then, what is the way out of this?

- As per T S Krishnamurthy (Former CEC), the government will not know how many times, the bond had been sold in the market before being encashed by the political party.
- Indrajit Gupta Committee suggested an Election Fund can be set up by the EC and donations to various political parties are collected by ECI (with compulsory PAN number).
- State funding of elections can also be an alternative.



