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1 Women in Judiciary

Context:

Stressing the need for greater gender sensitization among members of the judiciary, Attorney General K K Venugopal said that "improving the representation of women in the judiciary could go a long way towards a more balanced and empathetic approach in cases involving sexual violence".

What is the current scenario?

- In a country where almost 48 percent of the population is women, including the current women workforce, less than 3.3% of the women have made it to the highest courts of India.
- As Justice R Banumathi retired as a judge of the Supreme Court (SC) of India in July 2020, the top court is reduced to two women judges among the 31 sitting judges.

Right available to a woman

The rights available to a woman in India can be classified into two categories:

Constitutional rights:

- The right to equality and equal protection of laws [Article 14]
- The state shall not discriminate against any citizen of India on the ground of sex [Article 15(1)].
- The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favor of women [Article15(3)].
- No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [Article 16(2)].
- Traffic in human beings and forced labor are prohibited [Article 23(1)].
- The state to secure for men and women equally the right to an adequate means of livelihood [Article 39(a)].
- The state to secure equal pay for equal work for both Indian men and women [Article 39(d)].
- The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [Article 39(e)].
- It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [Article 51-A(e)].
- One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D(3)].

Legal rights:

- The legal rights, on the other hand, are those which are provided in the various laws. The Constitution of India pledges equality of status and opportunity for men and women.
- Being a custodian of the constitution apex court has been trying to fulfill constitutional objectives by numerous pronouncements in several cases.

The Shocking Numbers

- There are 677 sitting judges in both Supreme Court and high courts, of which, only 81 are women.
- This is only 12 percent of the number of sitting judges.
- Of the 256 Supreme Court judges appointed in the past 71 years, only 11 (or 4.2%) have been women.
- Out of the 25 High Courts, five of them don't have even one woman sitting judge. Out of 2,791 'past judges' in the High Courts (barring Madras), only 102 are women.
- This accounts for only 3.65 percent of the total number.

Women Chief Justice of India

- It is equally poignant to note that India has never seen a woman Chief Justice of India.
- Thirteen High Courts share the distinction of not having had a woman Chief Justice (barring present chief justices).
- At present, there is **no women Chief Justice** in any High Court.

Why Women's participation in the Judiciary matter?

- **Powerful assurance:** Women judges enhance the legitimacy of courts, sending a powerful signal that they are open and accessible to those who seek recourse to justice.
- **Increasing public trust:** Women judges are strengthening the judiciary and helping to gain the public's trust.
- **Enhancing quality of justice:** Female judges and lawyers contribute far more to justice than improving its appearance: they also contribute significantly to the quality of decision-making, and thus to the quality of justice itself.
- **Empathic perspective is the judgment:** Women judges bring those lived experiences to their judicial actions, experiences that tend toward a more comprehensive and empathetic perspective- one that encompasses not only the legal basis for judicial action but also awareness of consequences on the people affected.
- **Reduced discrimination and biases:** With more women in the judiciary, gender discrimination and bias will reduce. Greater gender diversity could change the culture of the system positively.
- **To uphold the dignity of women:** When it comes to the distinct perspectives that women judges have brought to the bench, several judgments that uphold the dignity of rape victims are noteworthy.

For example

- An all-women bench of the Supreme Court comprising Justice R. Banumathi and Justice Indira Banerjee in State (Govt. of NCT of Delhi) vs Pankaj Chaudhary held in 2018 that even if "the victim was habituated to sexual intercourse", it could not be inferred that she was a "woman of loose moral character" and that even if the prosecutrix was of "easy virtue", she has right to refuse to submit herself to sexual intercourse.
- The judgment stands in contrast with and ignores a 2016 all-male verdict in Raja vs the State of Karnataka with similar circumstances wherein the judges had imputed an implication to the victim being "accustomed to sexual intercourse".

What adds to the challenge?

- Poor representation
- Low number of women advocates
- Poor retainment
- Societal issue

2 'Can Non Resident Indians (NRIs) cast their vote in India?'

Context:

The Government is planning to move to introduce Electronically Transmitted Postal Ballot System for NRIs.

The current strength of NRI

As per the **United Nations Report (2015),** Indian diaspora population is the largest in the world at 16 million people.

What are the existing norms?

- As per the existing norms, overseas voters would have to be physically present for casting vote.
- An NRI can vote in the constituency in which his/her place of residence, as mentioned in the passport, is located.
- He/she can only vote in person and will have to produce his/her passport in original at the polling station for establishing identity.
- Voting rights for NRIs were introduced only in 2011, through an amendment to the **Representation of the People Act 1950.**
- Practical difficulties and expenses incurred in travelling to India was the reason why a major chunk of the 30 lakh odd NRIs from Kerala have kept off from voting.
- Hence the e-postal ballot facility would be well received by the overseas voters from the state.

Primary condition

- The primary condition is that he/she should be a citizen of India, absent from the country owing to employment, education etc.
- He/she must not have acquired citizenship of any other country and are otherwise eligible to be registered as a voter in the address mentioned in his/her passport.

Why NRI support is important for Indian political parties?

- From the perspective of the Indian political parties, this diaspora support is crucial.

- In ideological terms, the NRI community has always been a placeholder for the success of the entrepreneurial Indian who has made it.
- An NRI is seen by many in India as a mark of success and influence. For an influential NRI to back a political party or candidate can become a very strong endorsement.

3 Speedy Trial is a Fundamental Right: SC

Context:

In the case of the Bhima Koregaon violence, which highlights the issue of mortuary, the Supreme Court has ruled that "a speedy trial is a fundamental right".

What is the problem?

Charges were not included in this case. Many witnesses are still under investigation. They worked hard in prison without trial.

Right to Speedy Trial

- An immediate case is a constitutional and legal right of a person to be brought before a court at the "immediate" time or to be released.
- The main aim of the **Right to speedy trial** is to inculcate Justice in the society.
- It was first mentioned in that historic document of English law, the Magna Carta.
- In India, it is enshrined in Article 21 which states that "no person shall be deprived of his life or liberty by any means provided for by law."

Evolution of the right to speedy trial

- **1978 Babu Singh v. State of UP:** The court noted that, "Our justice system, even in the most extreme cases, has a slow motion that kills the 'right trial' or any final decision. Immediate justice is part of social justice as the whole community is concerned that the criminal will be humbled and eventually punished in due time and that the innocent will be released from the extreme hardships of criminal justice. "
- **Hussainara Khatoon v. State of Bihar, 1979:** Forms the basis for the concept of Quick Test. It was found that in a trial, prisoners are more likely to stay in prison than ordered, and if convicted, their detention is baseless and violates the fundamental rights under Article 21.
- **Kartar Singh Singh v. State of Punjab 1994**: It was declared that the right to a speedy trial is an integral part of the fundamental right to life and liberty.

Factors for pendency of the Cases

- Delays in criminal prosecution due to major deviations
- Delays due to Lawyer/advocates
- Infrastructure issue
- Provision for adjournment
- Vacation of the court
- Investigative agencies such as the police also play a role in delay the cases

4 "Right to be Forgotten"

Context:

Ashutosh Kaushik (TV personality and MTV Roadies winner) has sought the erasure of his personal data that exists online by reasoning that this data is a source of agony for him as their availability on the internet is a source of "utmost psychological pain" to him.

What is 'right to be forgotten'?

- As governments look to hand more control to people over information related to them, the 'right to be forgotten' or the 'right to erasure' is recognized as a necessary element of personal data protection laws.
- Simply put, it is the concept that individuals have the civil right to request that personal information be removed from the Internet.

Orissa HC on right to be forgotten

- In 2020, the Orissa High Court (Subhranshu Rout @ Gugul v. State of Odisha) mentioned the issue of the right to be forgotten.
  - The observation was made in a case where the accused uploaded videos of his former partner that he surreptitiously recorded.
- The court stated that in the absence of right to erase electronic data in specific cases, "any accused will surreptitiously outrage the modesty of a woman and misuse the same in cyberspace unhindered."

Is this right available in India?

■ PDP Bill

- The **Personal Data Protection (PDP)** Bill lays down regulations for the protection of personal data of individuals.
- It also covers the 'right to be forgotten'. However, the Bill has not become law yet.
- The Bill states that:
  - **Fundamental Right:** The **right to privacy is a FR**. It is necessary to protect personal data as an **essential facet** of **informational privacy.**
  - **Defining personal data: Personal data is** data about or relating to a natural person who is directly or indirectly identifiable.
  - **Right to restrict or prevent data disclosure: Section 20** of the Bill says that a **data principal** can rightfully ask a **data fiduciary** to "restrict or prevent the continuing disclosure of his personal data" in specific circumstances.
    - **Data principal** is the person who generates the data or to whom the information pertains.
    - **Data fiduciary** is any entity that stores or processes data.

What about Information Technology Rules, 2011 ?

- In the meantime, the **IT Rules, 2011** — which is the current regime governing digital data — does not have any provisions relating to the '**right to be forgotten'.**

Right to Privacy

- In 207, in its landmark verdict, the Supreme Court declared the Right to Privacy as a **fundamental right**.
- The right to privacy is protected as an intrinsic part of the right to life and personal liberty under **Article 21** and as a part of the freedoms guaranteed by **Part III of the Constitution".**

When can the 'right to privacy' be exercised?

- The recognition of the right to privacy "does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification".
- Right to privacy cannot be exercised where the information or data is necessary for the following:
  - exercising the 'right of freedom of expression and information'
  - compliance with legal obligations
  - the performance of a task carried out in public interest, or public health
  - archiving purposes in the public interest
  - scientific or historical research purposes or statistical purposes
  - the establishment, exercise or defence of legal claims

India's commitment under international law

- **Privacy** is a **fundamental human right** specifically recognized under:
  - **Article 12** of the **Universal Declaration of Human Rights**
  - **Article 17** of the **International Covenant on Civil and Political Rights (ICCPR)**
- The **Protection of Human Rights Act, 1993** has referred to the ICCPR as a human rights instrument and the latter makes it mandatory for states to take steps for realization of such right and ensure protection against interference by private parties.

Article 51 of the Indian Constitution (**Directive Principles of State Policy),** requires the state to endeavour to "foster respect for international law and treaty obligations in the dealings of organized people with one another".

How other countries handle its citizen's personal data?

- **European Union:** The **European Union (EU)'s General Data Protection Regulation (GDPR)** allows individuals to have their personal data deleted, but the authorities note that "organisations don't always have to do it".
  - The GDPR provisions read like a template for the **Indian PDP Bill**.
  - It states that individuals can seek that their data be erased when "they no longer consent to processing, when there are significant errors within the data, or if they believe information is being stored unnecessarily".
- **California:** the California Consumer Privacy Act (CCPA)
- **South Africa:** Protection of Personal Information Act (POPI Act)

Initiatives taken by Indian Government

- **DEPA:** In August 2020, NITI Aayog released a draft framework on the **Data Empowerment and Protection Architecture ("DEPA")** to institute a mechanism for secure consent-based data sharing in the fintech sector.
- **NDHM:** National Digital Health Mission ("NDHM") was announced by the Central Government.
- **HDM Policy:** In December, 2020 the government approved a Health Data Management Policy (HDM Policy) largely based on the PDP Bill to govern data in the Ecosystem.

5 Shifting health to Concurrent List

Context:

The pandemic has exposed the precariousness of the Indian health system. The ongoing 15th Finance Commission (FC) has suggested that the subject of 'health' should be transferred to the concurrent list of the Indian Constitution from the state list.

State list and concurrent list in the Indian Constitution

- The subjects under the state list are legislated by the state governments whereas the concurrent list includes subjects that give legislative powers to both centre and the state governments.
- The concurrent list or List III (Seventh Schedule) is a list of 52 items given in the Seventh Schedule of the Constitution of India.

The present constitutional status of the health sector in India

- Public health and allied subjects, such as sanitation, hospitals and dispensaries are under the states' responsibility under the seventh schedule of the Indian Constitution.
- On the other hand, prevention of the infectious and contiguous diseases from one state to another, falls under the concurrent list.
- In practice, the centre has consistently played an active role in shaping public health policies.
- Additionally, various health related subjects such as food adulteration, drug and poisons, population control, family planning and medical profession have been operating under the concurrent list.
- The centre determines the national standards and governance framework about these subjects and the states implement these according to the standards.

Right to Health

- Articles 39, 41, 42 and 47 in the Directive Principles of State Policy (DPSP) contain provisions regarding Health.
- Article 21 provides for the right to life and personal liberty and is a fundamental right.

Issues in the Sector

- **Inadequate reach:** The inadequate reach of basic healthcare services, shortage of medical personnel, quality assurance, the inadequate outlay for health, and most importantly insufficient impetus to research.

- **Inadequate Fund:** The inadequate fund allocation by the administrations is one of the grave concerns.
- **Optimal Insurance:** The concept of health insurance is still not clear in India and the market is still virgin.
- **No focus on Preventive Care:** In India, there is a very low emphasis on preventive care, which can be proved very effective in solving a lot of problems for the patient in terms of misery or financial losses.
- **Less emphasis on Medical Research:** In India, there is no much impetus is being given to R&D and cutting-edge technology-led new initiatives. Such technologies could be useful in an unprecedented situation like Covid-19.
- **Issue of Policymaking**: For providing effective and efficient healthcare services policymaking is certainly an important aspect. In India, the problem is fundamental of supply than demand, where policymaking can be effective.
- **Shortage of Medical Workforce:** In India, there is a shortage of doctors, nurses, and other staff in the health sector. As per a report laid down by a minister in Parliament, there is a shortage of 600,000 doctors in India.
- **Inadequate outlay for health**: As per National Health Policy 2002, India contributes only 0.9 percent of its GDP to the Health care sector.
- **Lack of structure:** Private hospitals are expensive and public hospitals are either not enough for the Indian Population or lack the basic facilities.

Shifting health to the concurrent list

- Shifting health to the concurrent list is not the only suggestion of the HLG.
- The initiation of a Development Finance Institute (DFI) dedicated to healthcare investment has also been suggested.
- Additionally, suggestions for enhancement of the Union government's share of health spending of the GDP by 2025, coordinating all states to establish their fundamental commitment for the development of healthcare and allocating two-third of the whole health related spending in this area are all welcome suggestions.
- When the health sector is in the concurrent list, the central government would allocate more funds in this sector and give more attention and develop the sector by coordinating with the state governments.
- All the suggestions mentioned above, if implemented properly, will boost the healthcare sector of the country.
- But from experience, it is also seen that at times, the state and the central governments get involved in legal and political disputes among themselves in dealing with the subjects in the concurrent list.

6 "Personal Laws versus Gender Justice: Will a Uniform Civil Code Solve the Problem?

Context:

The Chief Justice of India (CJI) recently applauded Goa's Uniform Civil Code. He also encouraged "intellectuals" who are involved in 'academic talk' to visit the state to learn about it.

What is Uniform Civil Code?

- A Uniform Civil Code means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall apply to all uniformly.
- It covers areas like - Inheritance, Marriage, adoption, divorce, maintenance, etc. It is based on the presumption that no connection exists between religion and law in modern civilization.
- Article 44 present in the Directive Principles of State Policy (Part IV) of the Indian Constitution states, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India".

The two crucial debates

DPSP vs Fundamental Rights

- Fundamental Rights are justiciable while DPSP is not, this makes Fundamental Rights inherently more important than DPSP.
- The 42nd Amendment Act, inserted Article 31C which stated that, if a law is made to implement any directive principle, it cannot be challenged on the ground of being violative of the fundamental rights under Articles 14 and 19.
- In the Minerva Mills Judgement (1980), Supreme Court held, "Indian Constitution is founded on the bedrock of the balance between Parts III (Fundamental Rights) and IV (Directive Principles). To give absolute primacy to one over the other is to disturb the harmony of the Constitution."
- Thus, Supreme Court held, that a balance between Fundamental Rights and DPSP is needed in policy-making.

Uniform Civil Code vs Fundamental Right to Religion

- Some important Article relating to Fundamental Right to Religion in the current debate are
  - **Article 25** - lays down the individual right to religion
  - **Article 26** - Right of each religious denomination to or any section to manage its affairs in matters of religion
  - **Article 29** - includes the right to conserve distinctive culture (is a part of Cultural and Educational Rights)
- An individual's freedom of religion under Article 25 is subject to "public order, health, morality" and other provisions relating to fundamental rights.
- The Constituent Assembly was divided on the matter of whether UCC and the Right to religion should be in the same Part.
- But eventually, the assembly voted by 5:4 ratio of keeping UCC in Part IV, thus giving it lesser importance than the Fundamental Right to religion.

How will Uniform Civil Code Help?

- It will help in the integration of India, as today personal laws vary across states as well as religion.
- Modern and progressive laws can be made. For example, current laws which discriminate against women can be done away with.
- It will help reduce vote bank politics.
- It will reduce the burden on the judiciary as currently, a plethora of personal law leaves many loopholes and uncertainty.
- It will lead to a truly secular state where everyone would be treated equally despite his/her religion.

What are the arguments against UCC?

- The term 'secularism' in our constitution has meaning only if it assures that every religious group has freedom of expression of any form of difference. UCC goes against this principle.
- Both religious and regional diversity may get subsumed under the louder voice of the majority.
- Discriminatory practices within a religion can hide behind the cloak of that faith to gain legitimacy

Challenges in implementation of UCC

- Vast range of interests
- Misinformation about UCC
- Lack of political interest
- Communalization

7 The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

Context:

The Delhi High Court has recently granted Twitter three weeks' time to state on record that it has appointed a resident grievance officer and observed that it has to comply with the IT Rules, 2021, if they have not been stayed.

IT Act, 2000

- The Act provides a legal framework for electronic governance by giving recognition to electronic records and digital signatures.
- It also defines cybercrimes and prescribes penalties for them.
- The Act directed the formation of a Controller of Certifying Authorities to regulate the issuance of digital signatures.
- It established a Cyber Appellate Tribunal to resolve disputes arising from this new law.
- The Act amended various sections of the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Banker's Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934 to make them compliant with new technologies.

What are IT Rules, 2021?

- The Rules aim to empower ordinary users of social media and OTT platforms with a mechanism for redressal and timely resolution of their grievance with the help of a Grievance Redressal Officer (GRO) who should be a resident in India.
- **Safety measures:** Special emphasis has been given on the protection of women and children from sexual offences, fake news and other misuse of the social media.
- **Source identification:** Identification of the "first originator of the information" would be required in case of an offence related to sovereignty and integrity of India.

- **Appointment of Chief Compliance Officer**: A Chief Compliance Officer, a resident of India, also needs to be appointed and that person shall be responsible for ensuring compliance with the Act and Rules.
- **Complaint monitoring:** A monthly compliance report mentioning the details of complaints received and action taken on the complaints would be necessary.
- **Code of Ethics:** The OTT platforms, online news and digital media entities, on the other hand, would need to follow a **Code of Ethics.**
- **Self-classification:** OTT platforms would be called as 'publishers of online curated content' under the new rules.
- They would have to self-classify the content into five categories based on age and use parental locks for age above 13 or higher. They also need to include age verification mechanisms for content classified as 'Adult'.
- **Redressal mechanism:** A three-level grievance redressal mechanism has been mandated. This includes the appointment of a GRO, self-regulatory bodies registered with the Ministry of Information & Broadcasting (MIB) to look after the Code of Ethics and a Charter for the self-regulating bodies formulated by MIB.

Grounds for challenge

- While the new rules were challenged by many on grounds of **violation of free speech**, the government has clarified that these rules permit social media platforms to operate in India freely but with due accordance to the law.
- Every entity has to abide by the Constitution of the country and the Rule of Law.
- Also, as per **Article 19** of the Constitution, freedom of speech and expression is not absolute and is subject to reasonable restrictions, especially in case of a threat to national sovereignty and security.
- Failure to comply with any one of these requirements would take away the indemnity provided to social media intermediaries under **Section 79** of the Information Technology Act.

Section 79 of the IT Act, 2000

- It says any intermediary shall not be held legally or otherwise liable for any third party information, data, or communication link made available or hosted on its platform.
- This protection, the Act says, shall be applicable only if the intermediary acts just as the messenger carrying a message from point A to point B, without interfering in any manner. It will be safe from any legal prosecution brought upon due to the message being transmitted.
- The protection accorded under **Section 79,** however, is not granted if the intermediary, despite being informed or notified by the government or its agencies, does not immediately disables access to the material under question.
- The intermediary must not tamper with any evidence of these messages or content present on its platform, failing which it lose its protection under the Act.
- Like **Section 79 of India's IT Act**, **Section 230** of the **Communications Decency Act** of the US states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider".

Need for the new Rules

The rules come at a time when the country is constantly striving to ensure the safety and sovereignty of the cyberspace and of personal data.

- **Wide coverage:** Social media is increasingly becoming an important part of our life.

For example, WhatsApp currently has a user base of 340 million in the country, accounting for the largest number of subscribers in the world, even more than the US. Facebook has 290 million, Twitter 17.5 million, YouTube 265 million and Instagram, 120 million.

- **Bundle of issues:** With such a huge population dependent on social media platforms, the tech-giants cannot ignore the new and emerging challenges like-
  - persistent spread of fake news
  - rampant abuse of the platforms to share morphed images of women
  - deep fakes and other contents that threaten the dignity of women
  - child pornography
  - threat to security
- **Hate speech:** Instances of use of abusive language, defamatory contents and hate speech in these platforms have become very common.

8 Right to protest and Ethics

Context:

The judgment of the Supreme Court of India to a petition asking for the Shaheen Bagh protests against CAA, to be cleared, on the grounds that the protests inconvenienced several commuters by shutting off an arterial road, assumes crucial significance.

What is the right to protest? Is it a 'right' OR 'moral' duty too?

- The right to peaceful protest is granted to citizens of India by our Constitution. It is part of the freedom of speech and expression, which is a fundamental right under **Article 19(1)(a).**

Important Provisions

- **Article 19(1)(a)** guarantees the freedom of speech and expression.
- **Article 19(1)(b)** states about the right to assemble peaceably and without arms.
- **Article 19(2)** imposes reasonable restrictions on the right to assemble peaceably and without arms and to freedom of speech and expression and none of these rights are absolute in nature.
- These reasonable restrictions are imposed in the interests of the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

- However, there is more to it. Protesting against injustice is also a moral duty.

Reasonable Restrictions

- Article 19(1)(3) says this right is subject to "reasonable restrictions" in the interest of public order.
- If the security of the state is in jeopardy
- If the friendly relationship we share with a neighbouring country is at stake

- If public order is disturbed
- If there is contempt of court
- If the sovereignty and integrity of India are threatened

How State handles protest?

- Article 246 of the Constitution places 'public order' and 'police' under the jurisdiction of the state.
- This gives each state government full legislative and administrative powers over the police. Each state's police force has two components:
  - the civil police
  - the armed police
- While the civil police control crime, the armed police are specialised police units that deal with extraordinary law and order situations.
- They are organised in the form of battalions which are used as striking reserves to deal with emergency situations arising in the state.
- Although matters of the police are a state subject, the Constitution empowers the central government to intervene in certain police matters in order to protect the state in times of emergency.

Important SC's Judgement on protest

- In 1973, a Constitution bench of the apex court had held, in its judgment in the case of Himat Lal K Shah vs Commissioner of Police, Ahmedabad (AIR 1973 SC 87), that the State's power to regulate public meetings on streets doesn't extend to closing all the streets or open areas for public meetings, thereby denying the fundamental right which flows from Article 19(1)(a) and (b).
- In the case of **Ramlila Maidan Incident v. Home Secretary, Union Of India &Ors.,** the Supreme Court had stated, "Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action."
- It was in **Maneka Gandhi vs. Union of India that** Justice Bhagwati had said, "If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is absolutely essential."

The Position in International Law

- This all-encompassing ban on protests in public spaces except designated areas doesn't just go against the court's own judgments from the past, it also runs contrary to international law.
- A UN Special Rapporteurs' report on the **right to freedom of peaceful assembly** notes that while restrictions to the right of peaceful assembly can be made in the interest of national security or public order, these must be lawful, necessary and proportionate to the aim pursued.
- It also notes that these restrictions are to be the exception, not the norm, and, very importantly, that they "must not impair the essence of the right."
- "To this end, blanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.

International law on 'right to protest'

- The right of peaceful protest is enshrined in the Universal Declaration of Human Rights, adopted by the United Nations in December 1948.
- In terms of international law, the rights to freedom of association, peaceful assembly and expression are recognised in various treaties, including the International Covenant on Civil and Political Rights.
- Together, these rights constitute the right to protest.

Why SC's views assume significance?

- The judgment deals a further blow to the right to civil protests in India. Even though the petition itself had been rendered infructuous over the past seven months because of the protestors having voluntarily cleared the protest site due to the Covid pandemic.
- The judgement holds that the occupation of public ways indefinitely anywhere "for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions".
- It further rules that "demonstrations expressing dissent have to be in designated places alone". To drive home the point, it expressly posits that "future... protests are subject to the legal position... enunciated above".

When does protest cross an ethical line?

- Non-violent protests, also known as civil disobedience, have been utilized by some of our greatest historical leaders. Gandhi, Martin Luther King Jr. and Nelson Mandela all lead their followers in peaceful protests including marches and sit-ins.
- However, over the past few years, there have been several instances of protests for legitimate causes, which have turned into violent protests or riots.

Why protest is so important for democracy?

- **Contributing to all spheres of life:** Protests play an important part in the civil, political, economic, social and cultural life of all societies.
- **Positive social change:** Historically, protests have often inspired positive social change and the advancement of human rights, and they continue to help define and protect civic space in all parts of the world.
- **Advancement of human rights:** Protests encourage the development of an engaged and informed citizenry.
- **Strengthening democracy:** They strengthen representative democracy by enabling direct participation in public affairs.
- **Making authorities accountable:** They enable individuals and groups to express dissent and grievances, to share views and opinions, to expose flaws in governance and to publicly demand that the authorities and other powerful entities rectify problems and are accountable for their actions.
- **Essential for marginalised section:** This is especially important for those whose interests are otherwise poorly represented or marginalised.

Powerful protests that shook India

- **Nirbhaya Movement- 2012:** After, 2012 Delhi Gang Rape thousands of people came out on streets to protest in several parts of the country. Finally, new laws were formed. The government also announced the Nirbhaya Fund for the safety of the girls.

- **Chipko Movement – 1973:** The Chipko Movement was based on **Gandhian principles of non-violence**. People, especially women, protested against deforestation by hugging trees. Thousands of people across India came out in support of the green movement.
- **Save Silent Valley Movement – 1973:** A social movement aimed at the protection of Silent Valley, an evergreen tropical forest in the Palakkad district of Kerala, started in 1973 brought many activists and people together. The controversy surrounding the valley still exists and people are still waiting for the final result.
- **Narmada Bachao Andolan – 1985:** This Andolan changed the way people looked at the development projects. This protest was to express the views against a large number of dams being constructed near the Narmada River. It brought a large number of Adivasis, farmers, environmentalists, and human rights activists together. The court ordered an immediate stoppage of work at the dam.
- **Jan Lokpal Bill, 2011:** When anti-corruption activist Anna Hazare began a hunger strike at Jantar Mantar, the whole nation came together and stood by him. This initiative was a one-of-its-kind event in decades.
- **The Assam Protests, 1979-1985:** This was a movement against undocumented immigrants in Assam. The movement was led by All Assam Students Union and the All Assam Gana Sangram Parishad. They were fighting for the right of indigenous people of the state to protect their rights, their homeland against the illegal migrants. The Assam accord was signed and modified many times.

9 'The unrest on the Assam-Mizoram border'

Context:

The recent clash on the Assam-Mizoram border underlines the differences the two States have had since 1972.

Previous stand-off

- The region has remained relatively calm though there have been a few instances of clashes in 1994, 2006 and 2018.
- In 1994, tensions escalated in Vairengte when a skirmish broke out between the police personnel of the two states, and a major crisis was averted with the intervention of the home ministry.
- The previous border stand-off had taken place in Zophai area near Bairabi town in Kolasib district of Mizoram in March, 2018 when MZP activists (a Mizo students' body) had tried to reconstruct a resting shed destroyed by Assam's Hailakandi district administration.
- More than 60 people, mostly students, were injured when Assam Police allegedly resorted to lathi-charge and opened fire to disperse the agitators.

What is the dispute all about?

- Mizoram was carved out of Assam in 1972, when it became a separate Union Territory. In 1987, it became a full-fledged state.
- The three South Assam districts of Cachar, Hailakandi and Karimganj share a 164.6 kilometre-long border with Mizoram's Kolasib, Mamit and Aizawl districts.

- Formerly known as Lushai Hills, Mizoram is located on the southern fringes of Northeast India.
- The state shares borders with three northeastern states of Tripura, Assam and Manipur, and a 722-km border with the neighbouring countries of Bangladesh and Myanmar.
- The India-Myanmar border in Mizoram is open, and an unhindered movement of people from both sides has escalated cross-border smuggling.
- The two countries have a **Free Movement Regime (FMR)** that allows people living along the border to travel 16 km into each other's territory without visa.
- At several points, the boundary between the two states is contested. Assam and Mizoram have often sparred over it, sometimes violently.
- Several rounds of dialogue, at various levels, since 1994 have failed to resolve the disagreement.

The Cachar-Mizoram boundary

- The **North-Eastern Areas (Reorganisation) Act, 1971**, provided for the establishment of the states of Manipur and Tripura and the formation of Meghalaya.
- It also provided for the formation of the Union Territories of Mizoram and Arunachal Pradesh — by the reorganisation of the existing state of Assam.
- **Barak Valley**, comprising the Cachar, Hailakandi and Karimganj districts, is the southernmost tip of Assam.
- Cachar is surrounded on three sides by the hill ranges of Manipur, Mizoram and Meghalaya, and also shares an international boundary, spread across the Barak Valley region, with Bangladesh.
- Mizoram was earlier a part of undivided Assam. The Mizos are an indigenous minority group in Northeast that continues to seek protection of rights and privileges under the Indian Constitution.
- The signing of the **Mizoram Peace Accord** in June 1986, between the Government of India and the Mizo National Front (MNF), ended the 20-year-old insurgency by the Mizos, and led Mizoram to acquire statehood.
- However, boundary issues that remained suppressed earlier became a border dispute after the separation.
- The boundary between Mizoram and Assam follows naturally occurring barriers of hills, valleys, rivers and forests, and both sides have attributed border skirmishes to perceptional differences over an imaginary line.
- Villagers in Mizoram and Assam, not fully aware of the boundary demarcation, would often cross over to either side for various purposes.

Important Commissions

- The Centre's attempts to resolve the dispute through commissions – the **KVK Sundaram Commission** in 1971 and then the **Shastri Commission** in 1985 – failed.
- Assam then moved the Supreme Court seeking a permanent injunction restraining Nagaland from encroaching upon its land.

What are the other boundary issues in the Northeast?

The 'Seven Sisters', as the NE states are collectively known, are notorious for their interstate boundary disputes. Assam has a long history of land tussles with states such as Nagaland, Mizoram,

Meghalaya and Arunachal Pradesh which were once part of it. During British rule, Assam included present-day Nagaland, Arunachal Pradesh, and Meghalaya besides Mizoram, which became separate states one by one. Today, Assam has boundary problems with each of them.

- **Assam-Nagaland:** Nagaland shares a 500-km boundary with Assam. Violent clashes and armed conflicts, marked by killings, have occurred on the Assam-Nagaland border since 1965.
  - In two major incidents of violence in 1979 and 1985, at least 100 persons were killed.
  - The boundary dispute is now in the Supreme Court.
- **Assam-Arunachal Pradesh boundary:** On the Assam-Arunachal Pradesh boundary (over 800 km), clashes were first reported in 1992, according to the same research paper.
  - Since then, there have been several accusations of illegal encroachment from both sides, and intermittent clashes.
  - This boundary issue too is being heard by the Supreme Court.
- **Assam-Meghalaya boundary:** The 884-km Assam-Meghalaya boundary, too, witnesses flare-ups frequently.
  - As per Meghalaya government statements, today there are 12 areas of dispute between the two states.

Inter-State Border Areas	
Assam and Mizoram	164.6 km
Assam and Meghalaya	884.9 km
Assam and West Bengal	127.0 km
Assam and Tripura	46.3 km
Assam and Manipur	204.1 km
Assam and Arunachal Pradesh	804.1 Km
Assam and Nagaland	512.1 km

10 Virtual Courts and Way forward

Context:

The Supreme Court passed directions for all courts across the country to extensively use video-conferencing for judicial proceedings saying congregation of lawyers and litigants must be suspended to maintain social distancing amid the coronavirus pandemic.

What are virtual courts?

- A virtual court is a conceptual idea of a judicial forum that has no physical presence but still provides the same justice services that are available in courtrooms.
- Virtual courts do not exist in physical form nor do they enjoin upon the defendants and petitioners to be physically present at their premises. This is a technology-based system where the internet is heavily relied upon for its smooth functioning.

- Access to virtual courts would, however, be limited to online access, videoconferencing and teleconferencing.
- Videoconference technology allows witnesses to testify at trial without being physically present in the courtroom.
- In contrast to a traditional, in-person witness, the videoconference witness is not physically present in the courtroom, but 'virtually present' through the use of technology.
- This enables the witness and those in the courtroom to interact with each other.

What is the importance of artificial intelligence (AI) for courtrooms?

- With nearly 3 crore cases pending, delays in courts remain a grave concern. Technology can, indeed, be a major catalyst in facilitating reduction of backlog in courts.
- The judiciary could explore the assimilation of technology that is disruptive and seamless to build upon its proactive effort to integrate IT and communication-led technologies, including through the e-courts project.
- Tools derived from AI will help expedite case-flow management, unclog the processes that are slowing justice down, and in many cases, ease administrative aspects.
- The use of AI in Indian courts does not envision replacing the wisdom, experience and objectivity of judges in determining verdicts.
- AI would enable real-time governance of courts based on simple metrics like frequency of case disposal per judge, or categorisation of subject matter with respect to judges.
- The CJI and chief justices of high courts can have a live dashboard constantly updating them on the performance of lower courts based on colour-coded markers for various key performance indicators (KPIs). This would bring a great deal of accountability and trust in the system.

AI in Other countries

- AI systems in the US and Canada have been implemented to assist judges with matters that include bail applications and parole matters.
- In the US, algorithms reportedly help recommend criminal sentences in certain states.
- Chinese courts are believed to have established dedicated public platforms to facilitate the availability of information to litigants through IT-based options.

Can a litigant raise a challenge based upon the doctrine of "coram non judice"?

The concept of virtual court can raise an issue of legality of a potential challenge to the proceedings on the ground that the adjudication happened neither in a courtroom nor even a place declared to be a Court. Can a litigant raise a challenge based upon the doctrine of "**coram non judice**" on the ground that neither the adjudication took place in the court room/court precincts declared as such nor the Judges and/or the lawyers even attended the Courtroom?

- Though the Civil Procedure Code, the Criminal Procedure Code and the Rules framed for the High Courts and the Supreme Court provide for the "**seat**" of the court, it does not provide for the "**venue**" (to loosely borrow the expressions used in arbitration law).
- Though the issue appears to be a mere twattle, the ingenuity of a legal mind and the dauntless adventurous nature of some compulsive litigants can never be underestimated.

What are the pros of this concept?

- **Cost effective:** Through virtual courts, video and audio enabled hearings is beneficial as it saves significant court costs in terms of building, staff, infrastructure, security, transportation costs for all parties to the court proceedings, especially transfer of prisoners from jails.

- **Saving manpower:** Virtual courts will cut much police work and spare a large number of them for other duties. On an average, one in every five policemen is generally out on duty for court-related matters—serving of summons.
- **Transparency & accountability:** Virtual courts can bring transparency and accountability in the judicial system as they can bring a lot more judicial reforms in India while helping in dealing with the long pending cases.
- **Boosting India's legal framework:** E-courts will prove to be a major step in the evolution of India's legal framework and will play a major role in boosting the confidence of domestic and foreign businesses as they explore investments in India.

What are the major challenges?

- **Authenticity issues**
- **Connectivity issues**
- **Difficult in confidential discussions**

11 Preventive Detention: A necessary evil?

Context

Recently a two judge bench of Supreme Court has quashed a preventive detention order which was earlier upheld by the High Court for the State of Telangana at Hyderabad.

What is the difference between preventive detention and an arrest?

- An 'arrest' is done when a person is charged with a crime. An arrested person is produced before a magistrate within the next 24 hours.
- In case of preventive detention, a person is detained as he/she is simply restricted from doing something that might deteriorate the public order.
- In the case of **Union of India v. Paul Nanickan and Anr**, the Supreme Court stated that the purpose of the preventive detention isn't to punish any person for doing something but to obstruct him before he does it and deter him from doing so.
- The reasoning for such detention is based on suspicion or reasonable possibility and not a criminal conviction, which can be justified only by valid proof.

Regulations in post independence India for Preventive Detention

- The first Preventive Detention Act was passed after independence in 1950. But this act was questioned on its validity in the case of **AK Gopalan v. the State of Madras**at the Supreme Court and with the exception of some provisions, the Supreme Court held the act constitutionally valid.
- Starting from pre-independence till now there have been several laws made in regard to preventive detention such as:
  - Maintenance of Internal Security Act (MISA), 1971
  - Foreign Exchange Conservation and Prevention of Smuggling Activities (COFEPOSA), 1974
  - Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985

- Prevention of Terrorist Activities Act (POTA), 2002
- Unlawful Activities (Prevention) Act, 2008

Judiciary in Preventive Detention Cases

- In the case of **Prem Narayan v. Union of India**, the Allahabad High Court stated that preventive detention is an infringement upon the personal freedom of an individual and it can't be infringed in an easy-going way.
- In the case of **Shibban Lal v. State of Uttar Pradesh**, the Supreme Court of India stated that a courtroom isn't even competent to enquire into reality or in any case of the facts which are referenced as the grounds of detainment.
- In **Haradhan Saha case**, the Supreme Court held that if a person is liable to be tried for a criminal offence, but the ordinary criminal laws are not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.
- In the case of **Banka Sneha v. State of Telangana**, the Supreme Court held that Preventive Detention Order can only be passed against a Detenu if his activities adversely affect or are likely to adversely affect the maintenance of public order.

Why Preventive Detention laws should find no place in our statute books?

- There have been different circumstances of abuse of Preventive Detention powers for political advantages or to control free discourse and articulation.
- **National Security Act** was utilized in Uttar Pradesh to ensure transparent and corruption-free examinations or captures were made for the issues rising up out of neighbourhood cricket disagreements.
- Unreasonable capacity to detain an individual without much checks and balances and the least legal impedance expands the chance of conceivable abuse of power to detain an individual.
- In the case of **Rekha v. State of Tamil Nadu**, the Supreme Court of India stated that Prevention detention is, ordinarily, repugnant to democratic ideas and abhorrent to the rule of law.
- No such law exists in the USA and in England (with the exception during wartime).

12 UAPA and the growing crisis of judicial credibility in India

Context:

- **In a first such instance, the Delhi High Court has called out alleged misuse of the Unlawful Activities Prevention Act, 1967 (UAPA) against individuals in cases that do not necessarily fall in the category of "terrorism" cases.**
- **Quoting sections of the UAPA, and a string of key Supreme Court rulings on terrorism and terror laws, the court reasoned that "the more stringent a penal provision, the more strictly it must be construed". By doing so, it raised the bar for the State to book an individual for terrorism under the UAPA.**

What are the problems with the UAPA?

- While the last few years have witnessed a sharp spike in UAPA cases, the UAPA's misuse has been going on for much longer and across all regimes and government types (Centre and states).
- The UAPA was enacted in 1967 to promote and ensure national integration.
- In 2004, after the notorious and highly abused Prevention of Terrorism Act, 2002 (POTA) was repealed by the Congress-led United Progressive Alliance (UPA) government, in its place the UAPA was amended to include provisions to counter terrorism and other unlawful activities.
- The POTA, which was enacted in 2001 in the aftermath of the 11 September 2001 terrorist attacks on the United States, had retained many provisions of TADA (Terrorist and Disruptive Activities Prevention Act), one of the most draconian laws that India ever enacted.
- Similar to previous laws, POTA defined "terrorist" and "terrorist activities" rather vaguely. This allowed for indiscriminate applications by police and security agencies.
- While TADA and POTA were repealed after massive civil society outcries and strong judicial rebukes to the governments, the governments have found it convenient to enlarge this once-moribund law (the UAPA) to cover many things including some of the key features of the repealed POTA.
- For instance, the government repealed POTA in 2004, amended the 1967 UAPA to make it an omnibus preventive detention law.
- UAPA expanded the definition of 'unlawful activity' to include 'terrorist act' and 'terrorist organization', which were key derivatives of POTA.
- After the 2008 terror attack in Mumbai, the government added more provisions similar to POTA and TADA regarding the maximum period a person can be held in police custody and incarcerated without a charge sheet, and it also incorporated restrictions on bail into the UAPA.
- In July 2019, the government further amended the Act giving the State and its security agencies far more expansive teeth.
- While the definition of a 'terrorist' remains vague in this law, the amendments in 2019 have allowed the Central government wider power to designate a person as a "terrorist" without a trial.
- Besides, individuals can be named as terrorists even though they may not have any connection or affiliation with the 36 terrorist organizations listed in the First Schedule of the UAPA.

What about the 'Judicial mechanism' in UAPA?

- What is particularly worrisome is that the UAPA does not provide a judicial mechanism for either individuals or organizations listed as terrorists to challenge such a designation.
- For denotification, an application is to be made to the Central Government. To conclude such an application, a Review Committee is set up.
- The Chairperson of this Committee, though a High Court Judge, is appointed by the Central Government.
- Thus, even the review procedures that are supposed to be part of a free and fair trial are mere extensions of biased institutions — institutions that are responsible for the arrest in the first place.
- On the whole, the major problem with the UAPA is that it deems an individual to be a terrorist without a trial and sees them as someone who cannot be granted bail because they pose a threat to society.

How Lower Courts are dealing with UAPA cases?

- The lower courts are showing extra caution while granting bail in UAPA cases.
- The best illustration is the reluctance of the Bombay High Court to grant bail to those arrested over the Elgar Parishad-Bhima Koregaon case, after having spent more than two years in jail.
- The Maharashtra police and the National Investigation Agency (NIA) have taken one extension after another on the pretext of finding new evidence, yet the Bombay High Court is still not able to take a call on bail for the accused.
- Even those with serious medical conditions, such as Varavara Rao and Sudha Bharadwaja, have not been granted bail with the court citing one procedure or the other to deny them bail.
- Whereas, those who move writ petitions under Article 32 of the Constitution have been in for a rude shock with the Chief Justice of India, in the Siddique Kappan case, admitting the court's policy of discouraging Article 32 petitions.
- Incidentally, Article 32 is a Fundamental Right, which B.R. Ambedkar once claimed as the "heart and soul" of the constitution.

13 Karnataka Government seeks quota for locals

Context:

The State government of Karnataka has reiterated its stance on 80 percent reservation in jobs for locals (Kannadigas) in private firms.

Who are Kannadigas?

- The state government has not stated who will be considered a Kannadiga.
- But it is likely that only those who have lived in Karnataka for at least 15 years and can speak, read and write Kannada reasonably well will qualify as Kannadigas.
- This definition was used by the committee headed by former union minister **Sarojini Mahishi**.
- The committee, which submitted its report in 1986, recommended a slew of quotas for Kannadigas, including 65-100% in state and central government departments and public sector units, and all jobs in the private sector except in senior and skilled positions.
- At one point of time, close to 27 percent of Bengaluru's population comprised Kannadigas, now it has dropped to nearly 21 percent.
- It also indicates that there is a drop in the number of Kannadigas getting jobs.

- A committee under Sarojini Mahishi (now the leader of the Janata Party) was appointed to look into the matter of reservation in the state of Karnataka in 1983.
- It submitted its report which sought reservation for Kannadigas in central government department for 'Group C' and 'Group D' jobs.

What is 'Locals First' Policy?

- The 'locals first' policy implies that jobs that will be created in a state will be first offered to only people who belong to that state i.e., local people.

- This policy is becoming popular due to unemployment and fear of some locals who believe that their jobs are being taken away from them and provided to the people not belonging to the state.
- However, it has been seen that such laws remain in the statute books and are not enforced.

Assessing the case for nativism:

- Nativism, the cry for job protection of locals, is rearing its head again in India.
- In 2019, the newly elected government of Andhra Pradesh passed the Andhra Pradesh Employment of Local Candidates in the Industries/Factories Bill, 2019. As per this law, 75% of jobs in industries are to be reserved for locals.
- Madhya Pradesh is mulling over a similar law. Goa and Odisha may be next in line. Maharashtra and Assam have seen similar nativist agitations for decades in varying intensities.
- The 2011 census shows that state-level job reservation for native residents is unnecessary and driven by politics.
- The calls for nativism should also be seen against the backdrop of the economic slowdown. The best way to grow out of nativism is to ensure economic recovery.

How is it linked to migration?

- The new insight the census offers is a decisive directional shift in India's migration story—with the Hindi heartland exodus no longer directed at just the economic hubs along the western coast, but also along a newly emerging north-to-south corridor.
- More Indians are also moving across state lines in search of better educational opportunities. But despite these newly emerging trails, in a majority of India's districts, less than one in 10 (or less than 10%) of the urban workforce is an interstate migrant.
- In Madhya Pradesh, where there are calls for a quota for locals, that share is 5%.

Indian Constitution & Migration:

- The **Constitution of India** guarantees 'freedom of movement' and consequently employment within India through several provisions.
- Article 19 ensures that citizens can "move freely throughout the territory of India".
- Article 16 guarantees no birthplace-based discrimination in public employment.
- Article 15 guards against discrimination based on place of birth and Article 14 provides for equality before law irrespective of place of birth.
- Some of these Articles were invoked in a landmark 2014 case—
- **Charu Khurana vs. Union of India**—when a trade union had declined membership to a make-up artist because she had not lived in Maharashtra for at least five years, as per the union's rules. The trade union lost the case.

How migration affects employment opportunities for locals?

- The numbers on interstate migration should also influence the debate on **'job protection for locals'**.
- Census figures on absolute magnitudes of interstate migration are usually underestimates since they do not capture short-term and circular migration very well, but inferences can still be gleaned from growth rates and comparative percentages.
- As per the census, the stock of interstate migrants grew from 41 million in 2001 to 54 million in 2011, but the share in total population remained roughly the same at around 4%.

- Migration flows in the decade before the census rose from 20 million (1991-2001) to 26 million (2001-2011).
- Between 1991 and 2011, the share of interstate migration in overall internal migration also remained roughly constant at around 12% (19% for males and 10% for females).
- While migration rates surged between 2001 and 2011, the bulk of this surge came from migration within states rather than interstate migration.
- Between 2001 and 2011, the total number of interstate migrants who moved for economic reasons, in particular, rose marginally from 11.6 million to 13 million.
- Their share in the urban workforce hovered at only 8%, with substantial regional variation.
- In only 26 out of 640 districts did the figure exceed 25% and none of those districts were in Madhya Pradesh or Andhra Pradesh.
- **Female interstate migration:** Much of the interstate migration for women occurs as reciprocal flows in districts along state boundaries as marriage is a primary reason for migration, but the 2011 census shows a sharp pick up in interstate female migration for economic reasons such as employment or business.
- **Male interstate migration:** Over half of male interstate migration is for economic reasons but, even there, most interstate migration is confined to neighbouring states—barring large corridors from Uttar Pradesh and Bihar to Maharashtra (mainly Mumbai), Gujarat, and other relatively prosperous regions.

Why local quota is not a good idea?

- Job quotas are economic insanity. With GST (goods and services tax), we are trying to make India one national market, but with quotas for locals, we are going the other way.
- Having a law which mandates this quota is a violation of Article 14 of the Indian Constitution, which prohibits discrimination on the basis of religion, race, caste, sex or place of birth.
- Local reservation in the private sector may not be the ideal solution to tackle the unemployment crisis; in fact, it can deter the corporate sector from investing in states that come up with such a rule.
- The idea of reservations for locals also goes against the established fact that migration of labour is good for the economy. Many Indian states, Punjab, Gujarat, and Maharashtra, to name a few, have benefited from migrant labour.
- One India, one market. That was the hope when the goods and services tax (GST) was enacted. This idea of local reservation hits the ideal of one unified Indian market.

14 NGOs foreign contribution financing

Context:

The government has modified foreign contribution rules in a manner that will require each office-bearer of an NGO to declare they were not involved in religious conversion. Earlier, only directors of the NGO were supposed to make such a declaration.

About

- Under the amended rules, office-bearers, key functionaries and all members of the NGO will have to declare before the government that they were not prosecuted or convicted in a religious conversion case.

- The ministry also announced the changes in the Foreign Contribution (Regulation) Rules, 2011, which includes that individuals receiving personal gift valued up to Rs 1 lakh need not inform the government about it anymore. Earlier, the threshold value was Rs 25,000, as per the market value of the gift item in India.
- In addition, every member of an NGO must also now, under oath, through an affidavit, certify that they have never been involved in "diverting" foreign funds or propagating "sedition" or "advocating violent means".
- In case of emergent medical aid needed during a visit abroad, the acceptance of foreign hospitality has to be intimated to the government within a month of such receipt, according to the amended rules.

Foreign Contribution Regulation Act 2010

- **The FCRA was enacted in** 1976 in order to maintain strict control over voluntary organisations and political associations that received foreign fundings. In the year 1984, an amendment was made to the act requiring all the Non-Governmental Organisations to register them with the Home Ministry. In 2010, the act was repealed and a new act with strict provisions was enacted**.**
- **Foreign Contribution Regulation Act** is a consolidating act whose scope is to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Salient features:

- The central government has the power to prohibit any persons or organizations from accepting foreign contribution or hospitality if it is determined that such acceptance would likely "affect prejudicially" (i) the sovereignty and integrity of India, (ii) public interest, (iii) freedom or fairness of election to any legislature, (iv) friendly relations with any foreign State, or (v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.
- The focus of the Act is to ensure that the foreign contribution and foreign hospitality is not utilized to affect or influence electoral politics, public servants, judges and other people working the important areas of national life like journalists, printers and publishers of newspapers, etc.
- The Act also seeks to regulate flow of foreign funds to voluntary organizations with the objective of preventing any possible diversion of such funds towards activities detrimental to the national interest and to ensure that individuals and organizations may function in a manner consistent with the values of the sovereign democratic republic.
- Foreign funds received as fees for service, costs incurred for goods or services in the ordinary course of business, and trade or commerce are excluded from the definition of foreign contribution.

15 Recusal in Judiciary

Context:

In less than a week, two Supreme Court judges hailing from Kolkata have now withdrawn themselves from two politically sensitive cases involving the state government.

Doctrine of Recusal: The Concept

- Recusal is removal of oneself as a judge or policy maker in a particular matter, especially because of a conflict of interest.
- It is a basic precept that no one should be a judge in his or her own case.
- Courts must keep the promise of dispensing fair and impartial justice, and must decide controversies without bias.

Need of Recusal in Judiciary

- The requirement is that the judge must be impartial and must decide the case objectively on the basis of the evidence on record.
- A person cannot take an objective decision in a case in which he has interests, for as human psychology tells us, very rarely can people take decisions against their own interests.
- This concept of recusal is applied not only to avoid the possibility of a partial decision but also to ensure public confidence in the in the impartiality of the adjudicatory process.
- In this manner Impartiality, objectivity and public confidence provide the foundation on which the superstructure of rule against bias is built.

Recusal in India

- **Absence of statute:** In India there is no statute laying down the minimum procedure which judges must follow in order to ensure the impartiality. However, courts have always insisted that judges and other adjudicatory authorities must ensure that they have to ensure principles of impartiality.
- **Inspired from Natural Justice:** The principles of Natural Justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. It implies fairness, reasonableness, equity and equality.
- **Constitutional ethos:** Though the Indian constitution does not use the expression of recusal, the concept divested of all its metaphysical and theological trappings pervades the whole scheme of the Constitution.
  - Duty to act fairly and impartially is ingrained in articles 14 and 21 of the constitution. Indian courts have nourished these values with reference to administrative decision making and emphasized on the test of 'real likelihood of bias.'
- **Supreme Court views:** The reasonableness of the apprehension in the mind of the partyis relevant according to Supreme Court.
  - Hence the proper approach in case of bias for the Court is not to look into his own mind and ask "am I biased?" but to look into the mind of the party before it.

Types of judiciary recusal in practise

In India two methods are normally being practiced, automatic recusal and if no one objects, a judge may proceed with the matter.

■ Automatic Recusal

- **Case of Justice Markandey Katju**
  - He followed the practice of automatic recusal when he withdrew his name from the Novartis case by saying that it would not be proper for him to deal with the appeal filed by Novartis.
  - His withdrawal from the case was apparently meant to preclude fears of bias in the MNC camp on account of an article he had written five years earlier against liberal grant of pharma patents.

- **If no one objects, judge may proceed**
  - **Case of Justice S. H. Kapadia**
    - Disclosing the fact that he owns some shares in Vedanta, he asked the lawyers appearing in the case at Punjab High Court whether he should recuse himself from hearing the case if the lawyers had any objections.
    - Had there been any objections the judge would have recused from the case

Usual Grounds of Recusal

- **Disqualification by interest**: it is where some direct or indirect interest in the proceedings, whether pecuniary or otherwise, gives rise to a reasonable apprehension of prejudice, partiality or prejudgment.
- **Disqualification by conduct:** it includes 'published statements' and 'consists of cases in which conduct, either in the course of, or outside, the proceedings, gives rise to such an apprehension of bias'.
- **Disqualification by association**: it consists of cases where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings.
- **Disqualification by extraneous information:** overlaps with the third, but commonly 'consists of cases where knowledge of some prejudicial but inadmissible fact or circumstance gives rise to the apprehension of bias'.

16 Simultaneous Elections

Context:

It is interesting to note that the concept of simultaneous elections is in-fact not new to the country. Post adoption of the Constitution, the elections to Lok Sabha and all State Legislative Assemblies were held simultaneously between 1951 till 1967 when the cycle of synchronized elections got disrupted.

Why is the debate?

- It won't be unreasonable to state that the Indian polity is perennially in an election mode. Barring a few exceptional years within a normal 5 year tenure of the Lok Sabha, thecountry witnesses, on an average, elections to about 5-7 State Assemblies every year.
- Election expenditures both 'declared' and 'government' in India are humongous. The "total expenditure" incurred in the last general election comes to roughly about Rs.3, 500 crores. This expenditure multiplies when different states go to polls at different times thus different experts have recommended for the initiation of simultaneous elections in India.
- Should the concept of simultaneous elections be implemented in the nation? Will it be feasible?

Impact of frequent elections

- The Model Code is enforced from the date of announcement of election schedule by the Election Commission and is operational till the process of elections is completed. During general elections to Lok Sabha, the code is applicable throughout the country. During general elections to the Legislative Assembly, the code is applicable in the entire State. Once the Model Code of Conduct is in force, the government cannot announce grants, new schemes or projects, thus hampers governance.

- Elections lead to huge expenditures by various stakeholders. Every year, the Government of India and/or respective State Governments bear expenditures on account of conduct, control and supervision of elections. Besides the Government, candidates contesting elections and political parties also incur huge expenditures.
- Engagement of security forces for significantly prolonged periods:
  - Frequent elections disrupt normal public life as holding of political rallies disrupts road traffic and also leads to noise pollution.
  - Frequent elections perpetuate caste, religion and communal issues across the country.

Thus, the holding of simultaneous elections to Lok Sabha and state assemblies would reduce:

- The massive expenditure that is currently incurred for the conduct of separate elections.
- The policy paralysis that results from the imposition of the Model Code of Conduct during election time.
- Impact on delivery of essential services and burden on crucial manpower that is deployed during election time.
- This will reduce the role of black money in election funding since political parties will not be tempted to seek illegal sources of funding for election.

Issues in implementation:

- To hold simultaneous elections, the Centre will have to make some states agree to curtail the terms of their houses while others to extend theirs. While extension may not be a problem, curtailment of Assembly terms may be a major issue.
- Several constitutional amendments are required to see the plan through. For instance, Article 83 of the Constitution provides for the tenure of both Houses of the Parliament (Lok Sabha and Rajya Sabha). Article 83(2)11 provides for a term of five years for Lok Sabha, from the date of its first sitting unless dissolved earlier.
- Holding simultaneous polls to the Lok Sabha and state assemblies would require the procurement of 24 lakh Electronic Voting Machines (EVMs) and an equal number of voter-verifiable paper audit trail (VVPAT) units. This double the number required to hold only parliamentary polls.
- Similar provisions under Article 172 (1) provides for five year tenure for State Legislative Assembly from the date of its first sitting.
- Further, the provisions under Article 83 (2) of the Constitution provides that when a proclamation of emergency is in operation, the term of the House may be extended for a period not exceeding one year at a time by Parliament by law and not extending in any case beyond a period of six months after the Proclamation has ceased to operate. Similar provision also exists for State Legislative Assembly under the provision to Article 172 (1) of the Constitution.
- Article 85 (2)(b) of the Constitution of India provides the President with the power to dissolve Lok Sabha. Similar provision for dissolution of State Legislative Assemblies by the Governor of State is provided under Article 174 (2)(b).
- Further, in respect of premature dissolution of a State Legislative Assembly, Article 356 is also relevant.
- The Representation of People Act 1951, which covers various modalities of conducting elections in the country, also needs to be amended. Section 14 of the Act provides for the notification for General Elections to the Lok Sabha.
- The provision to the Section 14(2) states: "... Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of the House would expire under the provisions of clause (2) of Article 83."

- Unless there is deployment of adequate number of paramilitary forces, even simultaneous elections will have to be carried out over a period of 2-3 months which will defeat the purpose.

Conclusion

In sum, "one nation, one election" will only serve the interests of those bent on further centralization of an already overly centralized union, and do a grave disservice to the federal character of our union as envisaged by the founders

17 Lacunas in Parliamentary functioning in India

Context:

- **Parliamentary functioning in India is deteriorating. Indiscipline and disruptions in Parliament are much talked about issues. Not only are disruptions a waste of Parliament's valuable time, these significantly taint the image of this esteemed institution.**

What is Parliamenary Functioning?

- Parliamentary functioning is cornerstone of the nation as it maintains accountability in the system. What are the steps needed to make Parliament more representative?
- The Parliamentary system of government refers to a system of government having the real executive power vested in a cabinet composed of members of the legislature who are individually and collectively responsible to the legislature.

Issues in Parliamentary functioning

■ Low productivity:

- Between the 1950s and the 1960s, the Lok Sabha used to meet for an average of 120 days in a year. In comparison, in the last decade, it has met for an average of 70 days a year. Its productivity in the 2017 Lok Sabha worked for 78% of the scheduled hours and Rajya Sabha for 54%.

■ Frequent disruptions:

- In winter session 2017, the Rajya Sabha lost almost 34 hours due to frequent disruptions. This reduces the efficiency of parliamentary system.

■ Poor women representation:

- The Lok Sabha and the Rajya Sabha have not seen women MPs cross the 12% mark. In 2012, India ranked 20th from the bottom in terms of representation of women in Parliament. While the 73rd and 74th constitutional amendments enabled the reservation of 33% of seats in local government, political representation by women candidates continues to be subdued, with no significant rise in the number of women MLAs in recent Assembly elections; women constitute less than 10% of the Assemblies in Tamil Nadu, West Bengal, Assam, Kerala and Puducherry. This needs to be changed dramatically, beginning with the passage of the Women's Reservation Bill (108th amendment) reserving 33% of all seats in Parliament and State legislatures for women.

- **Passing Bills:**
  - To improve the bill procedure, Public participation and feedback in the pre-legislative process is needed. It would strengthen a draft Bill by ensuring that differences in viewpoints are addressed before its introduction. This would make it easier for Parliamentarians to resolve conflicting objectives while considering it in Parliament. In its 2002 Report, the National Commission to Review the Working of the Constitution also recommended that, "all major social and economic legislation should be circulated for public discussion to professional bodies, business organisations, trade unions, academics and other interested persons."

- **On debates and research:**
  - MPs have limited or no research staff, leaving them bereft of expert in-house advice budgetary expenses allocated for their secretarial staff and constituency expenditure leaves little for conducting primary research.

- **Strengthening the committee system:**
  - Parliamentary standing committees were established to strengthen the expertise of Parliament when examining legislative, financial and policy matters of the government. The effectiveness of these committees is constrained by various factors. The technical support available to parliamentary committees are very limited and only include a secretariat that enables scheduling of meetings, note-taking etc. The reports of standing committees are not deliberated in Parliament and their recommendations are not binding on the government.
  - The Chairman of the Rajya Sabha had suggested, "The committee system can be strengthened by having a higher attendance requirement and by the induction of experts in an advisory capacity. The present practice of exempting ministers from appearance before the committees should be reviewed. As in other parliamentary democracies, the examination of witnesses (but not the finalization of reports) should be open to the public. This would make the public better aware of this important aspect of the work of legislatures."

Way Forward

- India tryst with democracy began with its efforts to overcome the colonial legacy marked by underdeveloped, poverty, illiteracy and social and economic inequalities. Democracy was constructed as flexible system wherein every citizen makes his/her contribution to the society.
- However, the past few decades since independence have clearly demonstrated that in India, democracy has failed to deliver its purpose, both theoretically and practically.
- In the present context of rapid degradation of democratic norms, criminalization of politics, corruption in the legal, executive and political sects of the government meant for facilitating and catering to people's needs and open violation of electoral reforms, alternative form of democracy have become increasingly needed in India. The alternative form of democracy that could be made applicable in India is that of Participatory Democracy.

18 Freebies Politics in India

Context:

With five states going to the polls next month, political parties are vying desperately with each other to woo voters through freebies — in cash or in kind. Most of the grand promises, if implemented, are likely to drain the fast-depleting financial resources of states such as Punjab.

What is the debate about?

- The competitive populism in India has given space for freebies during the election. In competitive populism governments/parties, in the name of welfare, establish client-patron relationship with poor, especially those deprived of private goods. Freebies politics and its impact on the free and fair election process have to be properly studied, as freebies are sort of bribes to voters from public exchequer. What are the socio-economic implications of the freebies politics? Does it reduces the political decision making power of the citizens?
- Freebies often in the form of private goods are doled out by the parties to patronize this poor yet loyal section of the society and its apparent success in garnering votes and creating a vote-bank in election. Its mandatory practice by parties has predominantly overtaken the centre stage in all election campaigns.
- Freebies often take the form of cash, bribes, free rice, saris, and loan wavers. In fact, the kind of "freebie culture" that has developed few states, such as Tamil Nadu, in the last one and a half decade is quite unique — "gifts" have now evolved from "welfare goods" to "consumer goods" like TV sets, mobile phones, sewing machines, etc.

Impact

These facts are well known and widely publicized. However, what is not so publicized is the consequence of shelling out such generous dole programs.

- **Loss of exchequer:** Freebies in election cause loss of exchequer of the state. For example- In Tamil Nadu, if one has to implement all the dole programs as promised by DMK/AIADMK parties in last election, then it will cost the government exchequer an additional Rs. 10,000 crore every year.
- **Increasing debt burden:** Due to distribution of freebies, Tamil Nadu's public debt has exceeded Rs. 2, 00,000 crore in 2015-16. West Bengal has doubled its outstanding state liability in excess of Rs. 3, 00,000 crore over the last five years.
- **Quality of expenditure:** One can argue that Maharashtra, an industrially advanced state, has the highest debt at around Rs. 3, 50,000 crore. But then most of this debt is because of industrialization, and due to a spurt in manufacturing and services. On the other hand, for West Bengal and to some extent in Tamil Nadu, a large component of public debt has originated from unproductive freebies. Further, major expenditure is done on private goods which affect the revenue for public goods which have potential to pace the economic growth.
- **Unsustainable Fiscal deficit:** Unfortunately, an increase in subsidies on non-merit goods such as freebies makes the fiscal deficit of any government unsustainable. While freebies may keep voters in oblivion and even blissfully happy, the fact of the matter is that between 2011 and 2014, West Bengal's per capita income was less than the all-India average by 12.2%. This figure is higher than it was during the Left rule between 2004 and 2011, when West Bengal's per capita income lagged behind the all-India average by 10.4%.

Election Commission guidelines

The guidelines are:

- The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the later and spirit of other provisions of Model Code of Conduct.
- Political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.
- In the interest of transparency, level playing field and credibility of promises, it is expected that manifestos also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirements for it. Trust of voters should be sought only on those promises which are possible to be fulfilled.

Judgement by the Court:

- That the promises to distribute election freebies in an election manifesto cannot be read into the language of the Section 123 of the RP Act, for asserting it to be corrupt practices under the prevalent law in force.
- That the schemes do not violate of Art. 14 of public purpose and reasonable classification as it is in the realm of fulfilling the DPSP's.

Conclusion

Elections are the festival of democracy, extravagant doling out of freebies and monies are being utilized for captivating the elections, and the widespread 'gifting' of items to tempt votes and the disregard of the poll manifesto is a trend that is worrisome for the health of democracy.

This can be summed up by the following quote by Ronald Reagan "We should measure welfare success by how many people leave welfare, not by how many are added".

19 Does Social Media Threaten Democracy?

Context:

The advent of social media has introduced transformative platforms for people to share thoughts and information in entertaining and connective ways. But the benefits are increasingly being overshadowed by negative consequences as monetization and manipulation.

Why is the Debate

- The effects of social media on public discourse, civility and fact-based debate given the massive scale necessitate increased attention to its impact on democracy. The early optimism about social media's potential for democratizing access to information, and giving voice to those who were traditionally marginalized or censored, is eroding. Social media amplify a politics of division by spreading untruth and outrage, corroding voters' judgment and aggravating partisanship.
- Social Media in recent times has become synonymous with Social Networking sites such as Facebook or Micro-Blogging sites such as Twitter.
- Whether social media is a threat for democracy or not?

Need for Using Social Media

With the ever increasing diffusion of ICTs in all walks of lives, connectedness is increasingly becoming a given part of our lives. This connectedness brings with it many opportunities and also presents many challenges. From the perspective of governments, the following represent some of the reasons for using social media:

- As the recent world events have demonstrated, social media have emerged as a powerful platform for forming an opinion as well as generating mass support.
- Social Media releases the shackles of time and place for engagement. They can connect policy makers to stakeholders in real time.
- In traditional forms of media, interaction with individual user is either not possible or is very limited. Social Media platform offers the ability to connect with each and every individual. Such an interaction also enables the marginalized to participate in discussions and present their

point of view, thereby improving the political position of marginalized or vulnerable groups. It is specifically useful when seeking feedback on services rendered.

- One of the big challenges for government is to avoid propagation of unverified facts and frivolous misleading rumors with respect to government policies.
- Leveraging these platforms can help to counter such perceptions and present the facts to enable informed opinion making.

Key Risks associated with Social Media

Though there are a number of different ways to analyze the risks that social media poses for democracy, here we focus on six key issues at the core of the discussion:

- **Spread of False and/or Misleading Information**
- **Conversion of Popularity into Legitimacy overwhelming the public domain with multiple, conflicting assertions.**
- Social media platform design, combined with the proliferation of partisan media in traditional channels, has exacerbated political divisions and polarization.
- Some social media platforms have user policies and technical features that enable unintended consequences, like hate speech, terrorist appeals and racial and sexual harassment, thus encouraging uncivil debate. This can lead members of frequently targeted groups such as women and minorities to self-censor or opt out of participating in public discourse.
- Social media platforms have become a preferred channel for advertising.
- The resulting financial strain has left news organizations financially depleted and has reduced their ability to produce quality news and hold the powerful to account.
- In addition, advanced methods for capturing personal data have led to sophisticated psychographic analysis, behavioural profiling, and micro-targeting of individuals to influence their actions via so-called “dark ads.”

Way Forward

- Social media platforms are ingrained in our daily lives and provide much of the infrastructure of democratic debate. They have essentially become the modern “public square,” and they have command over both our attention and much of our personal data.
- The social-media companies should adjust their sites to make clearer if a post comes from a friend or a trusted source. They could accompany the sharing of posts with reminders of the harm from misinformation.
- Twitter could disallow the worst—or mark them as such. Most powerfully, they could adapt their algorithms to put click bait lower down the feed. Because these changes cut against a business-model designed to monopolize attention, they may well have to be imposed by law or by a regulator.

20 Political Manipulation Threatens Free Press

Context:

Media freedom has been deteriorating around the world over the past decade. In some of the most influential democracies in the world, populist leaders have overseen concerted attempts to throttle the independence of the media sector. While the threats to global media freedom are real and concerning in their own right, their impact on the state of democracy is what makes them truly dangerous.

Why is the Debate?

- The media in South Asian countries like India, Pakistan and Bangladesh has never been more obedient to corporate and political forces as it is today. As these countries are scrutinized for human rights violations and atrocities committed against minority groups, the freedom of journalists to objectively report is ceasing to exist, with governments and legal systems failing to protect or rescue them.
- As the fourth pillar of democracy along with judiciary, executive and legislature, media of today has an all-embracing role to act against the injustice, oppression, misdeeds and partiality of our society.
- Today, prominent Indian politicians and corporate entities are making increasingly underhanded investments in news media, and the press is failing to serve as a potent, unbiased tool to inform public perception.
- Also to suppress the Media, the law of the defamation or the law of the contempt or laws of sedition all of these are routinely and worryingly used against the press in India by the political bosses' misutilizing/over utilizing their powers.

Press is threatened

- Unlike many democracies, where political and corporate entities are ostensibly supposed to be prohibited from holding news media broadcasting and publishing rights, media outlets in India are openly owned and controlled by political and business conglomerates, which are using the media to undermine the relevance of their opponents with scant regard for overall national interest.
- The Indian media is often criticized for its deteriorating reporting standards, jaundiced coverage of politics and regurgitation of online trends as prime time news. The 2017 World Press Freedom Index by Reporters, Without Borders ranks India at 136 out of 180 countries. A rank as dismal as 136, can only is a blot on the largest democracy in the world.
- The main casualty has been the ability of the citizen to find out the objective truth, as different media outlets divide into camps on any major issue, polarizing the reporting and their readerships. This has become so evident that in a report to the government, India's regulatory body, Telecom Regulatory Authority of India (TRAI), recommended legislation to empower journalists for free and fair expression.
- The trend of interference in Media extends to political actors having close ties to news media also.

Issues

- Every day, journalists' battle for autonomy, fight for their rights to speak out freely, protect media pluralism and counter the ills of monopolies.
- While Pakistan and Bangladesh have been well-known press freedom battlefields in recent years, with many journalists and bloggers killed, wounded or sued for speaking the truth.
- Today, prominent Indian politicians and corporate entities are making increasingly underhanded investments in news media, and the press is failing to serve as a potent, unbiased tool to inform public perception. In this way, it is also increasingly unable to provide an arena for public debates where issues of shared interest can be represented and discussed.
- The main casualty has been the ability of the citizen to find out the objective truth, as different media outlets divide into camps on any major issue, polarizing the reporting and their readerships.
- This has become so evident that in a report to the government, India's regulatory body, Telecom Regulatory Authority of India (TRAI), recommended legislation to empower journalists for free and fair expression.

- The TRAI Report suggests that Indian journalism, with its lack of freedom and self-regulation, cannot be trusted now and — it is currently known for manipulation and bias. The report also says that "the Instances of irresponsible reporting and sensationalization are common these days when controversial news stories are bandied in the public domain through media outlets."
- Persecution is fast becoming the norm for Indian journalists. "What was earlier intermittent is now increasingly taking the shape of a distinct trend in the targeting of journalists. While more journalists want to expose corporate corruption and crony capitalism, it is increasingly being seen that corporations are openly intimidating writers and journalists."
- In this environment, how can journalists not be forced—or feel compelled for the sake of job security—to report in ways that reflect the political opinions and corporate interests of shareholders?
- TRAI has therefore recommended for regulations of media ownership and stated that "media influences ideas and therefore can swing opinions. It is, therefore, important that an arm's length distance is ensured between the media and organs of governance, political institutions and other entities which have a profound sway over public opinion. It is, thus, essential in the public interest, as a guarantee of the plurality and diversity of opinion.

21 Tribunals Reforms Bill, 2021

Context

Lok Sabha recently passed the Tribunals Reforms Bill, 2021 to dissolve at least eight courts.

Key-Provisions of the Bill

- The Bill replaces the **Rationalization and Conditions of Service Ordinance, 2021**, which was repealed by the High Court.
- **Dissolution of Existing Bodies:** The Bill seeks to eliminate certain appeal bodies and transfer their functions to other existing judicial bodies. For example, disputes heard by the Film Certification Appellate Tribunal will be resolved by the Supreme Court.
- **Consolidation of Existing Bodies:** The Finance Act, 2017 includes court-based courts. For example, the Competition Appellate Tribunal is affiliated with the National Company Law Appellate Tribunal.
- **Candidate Selection Committees:** The Chairperson and Members of the Courts will be elected by the central government on the recommendations of the Search-cum-Selection Selection Committee. The Committee will consist of:
  - The Chief Justice of India, or the Judge of the Supreme Court nominated by him, as Chairperson (by casting vote)
  - Two secretaries nominated by central governments
  - The incumbent Chairperson, or a retired High Court Judge, or a retired Chief Justice of the High Court
  - Secretary of the Department under which the Tribunal is located (excluding the right to vote).
- **State Administrative Courts:** Will have separate search electoral committees and the Chief Justice of the Supreme Court of the country concerned, such as the Chairperson (by a casting vote).

- **Eligibility and Term of Office:** The Bill provides for a term of four years (subject to a maximum of 70 years for the Chairperson, and a maximum of 67 years for members).
- In addition, it specifies a minimum age requirement of 50 years for the appointment of a chairperson or member.
- **Removal of Councillors:** It states that the central government, on the recommendation of the Select Committee of Investigators, removes the Chairperson or Member.

Additional information

What are tribunals?

- The Tribunal is a quasi-judicial institution set up to deal with issues such as resolving administrative or tax-related disputes.
- It performs many functions such as resolving disputes, determining rights between opposing parties, making administrative decisions, reviewing existing decisions to govern and so on.

Constitutional Provisions:

- They were not part of the Constitution at first.
- Amendment Act 42 introduces these provisions in accordance with the recommendations of the **Swaran Singh Committee.**
- The amendment introduces **Part XIV-A** in the Constitution, which deals with 'courts' and contains two articles:
  - **Article 323A** deals with administrative courts. These are judicial institutions that resolve disputes related to employment and the conditions of service of public servants.
  - **Article 323B** deals with the courts of other jurisdictions such as Tax, industrial and labour, Foreign Exchange, Import and Export, Land Reform, Food, Urban Roofing, Elections in Parliament and State Legislatures, Employment and Employment Rights.

What was the Court's decision and what are the key issues with the Bill?

- Supreme Court in the case of **Madras Bar Association v. The Union of India** has set a minimum requirement for a minimum of 50 years of office and membership and defines a term of four years.
- It said such conditions violate the principles of separation of powers, freedom of law, law and **Article 14** of the Constitution of India.

Problems associated to it:

- The Bill attempted to reverse the decision of the High Court in terms of the following provisions:
- The minimum requirement for 50 years still finds its place in the Bill.
- The term of office of the Chairperson and members of the court is four years.
- The two-word recommendation for each post is the Search-cum-Selection Committee and requires a better government decision within three months.

Issues Raised by Supreme Court

- **Unconstitutional Violations:** There was no discussion of the bill, and the government re-enacted the same principles as those overturned by the Court in the case of the Madras Bar Association (2021). This is similar to the "unconstitutional repeal of the law" of the judgment passed by SC.

- **Repeated Violations of SC Orders:** The Center does not follow repeated instructions issued by the Court to ensure the proper functioning of the Courts. The provisions of the Act relating to the conditions of service and the appointment of Councilors and the Chairperson have been overturned by the High Court.
- **Security of Tenure:** The Tribunals Reforms Act, 2021 prohibits the appointment of persons to the courts of persons under the age of 50 years. It undermines the length / security of hiring.
- **It undermines the separation of powers:** This bill allows the Central Government to decide on recommendations made by the Electoral Committee, preferably within three months from the date of such recommendation. Section 3 (7) of the bill authorizes the recommendation of a two-word panel by the search-cum selection committee in the Central Government, violating the principles of separation of powers and legal independence.
- **Vacancies in Courts:** India now has 16 courts including the National Green Tribunal, the Armed Forces Appellate Tribunal, and the Debt Recovery Tribunal and, among other things, suffers from disability. The presence of a large number of vacancies for Members and Chairpersons and excessive delays due to their filling have led to the weakening of the courts.
- **Damage to the Decision-Making Process:** These cases will be referred to the higher courts or commercial courts as soon as possible.
- Lack of expertise in ordinary courts can disrupt the decision-making process.

22 'One Nation, One Election', assessing the idea

Context:

Elections in 5 states of India in February-March 2022 has once again put the question of One Nation, One Election, i.e. holding simultaneous elections to Lok Sabha and all state assemblies, at the centre-stage.

Background

- Simultaneous elections are not new to India. They were the norm until 1967.
- The idea of reverting to simultaneous polls was mooted in the annual report of the Election Commission in 1983.
- The Law Commission's Report also referred to it in 1999.
- The recent push came ahead of the 2014 Lok Sabha polls in the BJP manifesto. After Mr. Modi floated the idea once again in 2016, the Niti Aayog prepared a working paper on the subject in January 2017.
- In the working paper that the Law Commission brought out in April 2018, it said that at least "five Constitutional recommendations" would be required to get this off the ground.
- The final decision on holding simultaneous elections is yet to be taken.

Analysis

■ What are simultaneous polls?

- Currently, elections to the state assemblies and the Lok Sabha are held separately — that is whenever the incumbent government's five-year term ends or whenever it is dissolved due to various reasons.

- This applies to both the state legislatures and the Lok Sabha.
- The terms of Legislative Assemblies and the Lok Sabha may not synchronise with one another.
- For instance, Rajasthan faced elections in late 2018, whereas Tamil Nadu will go to elections only in 2021.
- But the idea of "One Nation, One Election" envisages a system where elections to all states and the Lok Sabha will have to be held simultaneously.
- This will involve the restructuring of the Indian election cycle in a manner that elections to the states and the centre synchronise.
- This would mean that the voters will cast their vote for electing members of the LS and the state assemblies on a single day, at the same time (or in a phased manner as the case may be).

What are the pros & cons of the idea?

■ Arguments in favour

- **Cost reduction:** One Nation, One Election would reduce the cost of holding elections, and limit all elections to a single event.
- **Public welfare:** The occurrence of elections somewhere or the other almost all the time, according to some, leads to the Model Code of Conduct getting in the way of the government announcing projects or policy plans for the benefit of the people.
- The **Model Code of Conduct** comes into force immediately on the announcement of the election schedule by the commission for the need of ensuring free and fair elections
- Its main purpose is to ensure that ruling parties, at the Centre and in the States, do not misuse their position of advantage to gain an unfair edge. Mode Code of Conduct prohibit launching of scheme or project by Central or state government after the announcement of election schedule.

■ Arguments against

- **Complex process:** It is argued that holding just one mega election (for Lok Sabha and all state assemblies) would be too complex an exercise to be tackled in a country as large and as complex as India.
- **Logistics issue:** Holding of simultaneous elections could be a logistic nightmare — requiring, for example, about twice as many electronic voting machines and Voter Verifiable Paper Audit Trail machines as are used now.
- **Favouring one player:** There is also the view that simultaneous elections would benefit the party that is nationally dominant at the cost of smaller regional players.
- **Going against the basic objective:** The idea of **One Nation, One Election** could also lead to a situation where a particular government, either of the Centre or of any state, may lose confidence of the legislature. In such a case, allowing the government to function would mean going against the basic tenets of parliamentary democracy.

Brief history of simultaneous elections in India-

- India did start-off with simultaneous elections. Lok Sabha and state legislatures went to polls together in 1952 and 1957.
- The cycle was first broken in Kerala, in July 1959, when the Union Government of Jawaharlal Nehru used Article 356 of the Constitution to dismiss the state government of the M. S. Namboodiripad (Communist Party of India).

- Under **Article 356** of the **Constitution of India**, if a state government is unable to function according to Constitutional provisions, the Union government can take direct control of the state machinery.
- M. S. Namboodiripad had become Chief Minister after the elections of April 1957 and the above occurrence resulted in Kerala voting for a new five-year Assembly again in February 1960.
- In the 1967 elections, the Congress suffered setbacks in Bihar, UP, Rajasthan, Punjab, West Bengal, Orissa, Madras and Kerala and governments of the Samyukta Vidhayak Dal, comprising the Bharatiya Kranti Dal, Samyukta Socialist Party, Praja Socialist Party, Swatantra Party, Bharatiya Jana Sangh and defectors from the Congress were formed.
- These governments were unstable, there were rampant defections, and many of these Assemblies were dissolved before their terms were over, resulting in the separation of the election cycles of many states from that of the Lok Sabha.
- At present, Assembly elections in only Andhra Pradesh, Odisha, Arunachal Pradesh and Sikkim are held together with the Lok Sabha elections.

Early explorations of the idea:

- In 1983, the Election Commission had suggested simultaneous elections.
- The Law Commission headed by Justice B P Jeevan Reddy, in its 170th Report in May 1999, had stated: "We must go back to the situation where the elections to Lok Sabha and all the Legislative Assemblies are held at once".
- In 2003, Prime Minister Atal Bihari Vajpayee took up the matter with Congress president Sonia Gandhi who was receptive to begin with, but the idea could not be ultimately pursued.
- In 2010, L K Advani discussed the matter with former Prime Minister Manmohan Singh but no result came out of the same.

What Next?

- The Opposition parties, especially the regional ones, are likely to remain wary of an idea that has the potential to take away the local element of state elections, and allow national leaders to overshadow the regional ones.
- The 2019 Lok Sabha elections demonstrated the unmatched appeal of Prime Minister Modi, and a single campaign and election for all state Assemblies and the Lok Sabha might, according to the opposition parties, give the BJP an overwhelming advantage across the country.
- On the other hand, the Prime Minister's clear commitment to the idea suggests that the current national government will push the envelope as much as it can.

23 Freedom of religion & 'attire'

Context

Owing to entry ban of students who were wearing hijab, the debated over the hijab and issues of freedom of religion and attire has risen in the southern Indian state of Karnataka.

Background

- After 6 female students from Udupi were not allowed to enter their college campus, because they were wearing the hijab, the question on freedom of religion and its profession has aroused.

- Right to profess religion may include the right to dress according to religious injunctions and hence protection of this right is constitutionally mandated.
- Karnataka government has argued that it has not made uniforms compulsory in pre-university colleges but it is also not against the imposition of ban on hijabs in educational institutions and banning them is not against right to practice and profess religion.

Analysis

■ What does the latest order of Karnataka Government say?

- Uniforms prescribed by the local college development council should be followed by students of government Pre-University colleges.
- Where no uniform is prescribed for Pre-University students, the order mandates that unity amongst students must be ensured.
- All public schools have to strictly abide by the uniform policy mandated by the government and the private schools can have uniforms as decided by their councils.

■ Where does the state government get its power to mandate uniform?

- According to Section 7 (2) (g) (v) of the Karnataka Education Act, 1983, the state government can prescribe rules for curricula to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women.
- State government has powers under Section 133 (2) of the Education Act, 2002 to issue directions to educational institutions for implementing provisions of the law according to needs of the state.

■ What does the Indian Constitution say about freedom of religion?

- **Article 25** guarantees the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens.

■ What is the reason given by the Government of Karnataka to support ban on Hizab?

- Wearing hizab, according to the Department of Education, Government of Karnataka- is affecting equality and uniformity amongst students in the education institutions.

Judiciary's stand on the issue

- The Supreme Court of India has put forward the Doctrine of Essentiality in Shirur Matt case of 1954.
- The SC in the above case stated that the term religion in the Constitution of India included all those rituals and practices that are integral to a particular religion. Such rituals and practises are to be considered essential for the religion.
- The SC in the above case decreed that protection of such essential rituals and practices is the duty of Supreme Court of India.
- Supreme Court in this case did not define what all are the essential practices and rituals but reserved with judiciary the right to decide about the same as per the facts and circumstances of each case.
- In Amna Bint Basheer vs Central Board of Secondary Education, the Kerala High Court held that wearing Hizab is an essential religious custom in Islam. But it also refrained from striking down the dress code prescribed by the CSBE for students.

- In 2018, in the Kerala High Court in FathimaTasneem vs State of Kerala held that the collective right of institution will have precedence over the individual right of the petitioner.
- In the above case two girls had filed petition after their school declined to allow them to wear headscarf.

What Next?

- The Karnataka High Court would hear the petition on whether girls have the right to wear Hizab in the educational institutions.

24 The era of combative federalism

Context:

Proposed amendments to Indian Administrative Cadre Rules, 1954.

Background

- The relationship between the Union and state governments in India has not always been smooth.
- In recent years though, Centre's relationship with the states has seen more downs than usual.
- Centre's attempt to gain more say in deciding on Central deputation of civil servant by the proposed amendments of Administrative Cadre Rules, 1954, as suggested by the Department of Personnel and Training, has become the latest is the list of irritants that has caused friction between the Centre and state governments.

Analysis

■ Relations between Centre and State Government as per the Constitution:

- The Constitution of India establishes a **federal polity** in India. This means **presence of Union Government** at the center and **state governments** at regional level.
- For effective and efficient administrative functioning of the country, the **Constitution has allotted** both the Centre and the state with **specific domains.**
- The federal structure of India though is **not full-proof** is tilted towards the Union Government.
- It also needs to be understood that the framers of Indian Constitution did not possess a divine pen and **presence of ambiguities,** between the areas of operation of Centre and state in the legal framework is only natural.
- The problem further gets complicated when **different political parties are in charge of the governments in the Centre and in the state.**

■ Recent controversies related to disputes between Center and states in India:

- **Passing of farm laws** (now withdrawn) were, according to states, drafted without taking into consideration the views of the latter.
- The **issue of GST compensation** has caused a wedge to be developed between the central and the provisional governments.

- **Action taken by central agencies** like CBI and ED against the leaders of state government, perceived to be done at the behest of the Central government, has led to bittering of relationship between the two sets of government in the country.
- **The extension of territorial jurisdiction of BSF** by the Union Home Ministry is seen as the attack on the powers of state police and has brought the border states of India at loggerheads with the Central Government.

■ What is the Cadre Rules issue?

- The Central Government has proposed the Amendment of the Administrative Cadre Rules, 1954.
- If this proposed amendments are implemented the results will be as follows-
- It will **take away the liberty of the States to deny consent** for handing over Civil Servants, working in state, for Central deputation.
- If there is a difference between the central and state government with respect to the central deputation of civil servants, who at that particular time is serving the state, then the reason for not releasing him/her should be communicated to the Centre.
- In the event of state not communicating the reason in the above situation, the decision of the Central Government shall prevail.

■ What are the current rules on Central Deputation?

- The current rule says that the Central and state government concerned, with concurrence, can depute an officer for services under the Central Government or any other state government.
- In case of difference between the Central and concerned state government, a decision shall be taken on the above matter by both sets of governments together.

■ What are the complaints of states against the proposed change in rules?

- Insistence on deputation of an officer would hamper the administration of the state as it would impede the planning of policies and their execution.
- This would be the result because the state would find it difficult to predict the human resource available with the state.

25 Positive Secularism in India

Context

Argument made in the Supreme Court of India by Senior Advocate Devdatt Kamat stating that India's secularism is 'positive' in nature.

Background

- Petition has been made in the Supreme Court of India against the decision of colleges in Karnataka banning Hijab.
- Councilor for the petitioners stated in the Supreme Court that because India follows positive version of secularism, it is important for the state to protect the religious right of the citizens.

Analysis

- The Preamble of Indian Constitution aims to constitute India a **Sovereign, Socialist, Democratic Republic.**
- The terms Socialist and Secular were added to it by the 42nd amendment.
- The whole constitution is summarized in the preamble.
- It is the mirror to the spirit of the constitution.
- The arrangement of the words in the preamble is also very significant. Indian society is a multi – religious society, it is having different caste, religion along with several religion diversification.
- So, all these are the divisive factor in some way or the other and if not handled carefully then can cause a threat to the unity and integrity of the nation.

What is secularism?

- The definition of secularism that came up after the **French revolution** essentially meant that the State (politics) will maintain distance from religion.
- This was the result of people of Europe and more specifically the people of France not wanting to be governed by the dictates of the Church in all aspects of life including politics.
- In the western societies therefore religion is an 'independent aspect' of life which is considered to be outside the influence of politics.
- This is idea of secularism is termed as negative secularism.

India's version of secularism:

- Indian version of secularism on the other hand believes in the **vedic concept** called **Sarva Dharma Samubhav**.
- The above concept literally means that the state will be at equidistance from religion.
- It also means that Indian state is not atheists and believes in existence of religion though it does not favor any particular religion.
- Indian Constitution, following to the concept of Sarva Dharma Samubhav, places the responsibility of defending the religious rights of the citizens of India on the Indian State.
- The above is termed as positive version of secularism.

Is the concept 'static' in nature?

- The concepts of secularism are not static; it is elastic in connotation.
- In this area, flexibility is most desirable as there cannot be any fixed views in this concept for all time to come.
- The courts decide from time to time the contours of the concepts of secularism and enforce it in practice.

How is the above debate relevant to the current petition?

- In the current petition, revocation of order banning Hizab is colleges is sought.
- According to petitioners, wearing hizab is an essential religious practice whose defense falls upon the Indian State including the Supreme Court.

Freedom of Religion in Indian Constitution

- The **Preamble of the Indian Constitution** mentions India to be a Secular State.
- **Article 14 to 16** prohibit discrimination against any Indian citizen on the grounds of religion.
- **Articles 25 to 28** of the Indian Constitution mention grant the Indian Citizen Freedom of Religion.

26 Judicial Appointment: a mix of Judiciary + Executive

Context:

Appointment of Anoop Kumar Mendiratta as the Judge of Delhi High Court.

Analysis

■ Who is Anoop Kumar Mendiratta?

- Anoop Kumar Mendiratta is the first Union Law Secretary to be appointed as a Judge of High Court.
- He was also the first district judge to be appointed as Union Law Secretary.

■ Was his appointment as per law?

- The appointment of Mr. Mendiratta was done after **following the required procedure** and his name being **recommended** for the post **by the Collegium.**
- Hence he becoming the Judge of Delhi High Court may be considered as **unconventional but not unconstitutional or unlawful.**
- Constitutionally there is no bar as such on a serving secretary of the Government of India being appointed as Judge of a High Court.

■ Why is his appointment in news?

- Indian polity believes in the principle of separation of powers.
- Appointment of a member from the executive branch of government to the judicial branch has therefore raised some eyebrows.

■ What is Separation of Powers?

- It is vesting of the legislative, executive, and judiciary powers of government in separate bodies.
- This concept was put forward by French Philosopher Montesquieu.
- Separation of power is considered important so that the members for judiciary can perform their function as per the law and principle of natural justice without getting influenced by those in power.
- Organizations like judiciary and the executive branch of government carry the weight of people's trust.

- And for the sake of safeguarding this trust it is not just important that they carry out their functions in ethical manner, but it is also extremely crucial for the occupants of these high offices to be seen as functionaries that are performing their duties in morally upright way.
- The occurrence of suspicion, even if this is to a very limited extend, accompanied with the above appointment will dented the confidence of Indian people in both executive and judiciary. This therefore is ought to be avoided.

What is Collegium system?

- It is the system of appointment and transfer of judges that has evolved through judgments of the Supreme Court, and not by an Act of Parliament or by a provision of the Constitution.
- Under the system, the collegium decides the following:
  - appointments and elevations of judges and lawyers to the Supreme Court and the High Courts.
  - transfer of judges to High Courts and the Apex court.

Composition of Collegium

- **SC Collegium:** The Supreme Court collegium is headed by the Chief Justice of India and comprises four other seniormost judges of the court.
- **HC Collegium:** A High Court collegium is led by its Chief Justice and four other seniormost judges of that court.

The procedure

- **CJI and SC Judges:** The President of India appoints the CJI and the other SC judges.
  - **CJI:** As far as the CJI is concerned, the outgoing CJI recommends his successor.
- In practice, it has been strictly by seniority ever since the supersession controversy of the 1970s.
- The Union Law Minister forwards the recommendation to the Prime Minister who, in turn, advises the President.
  - **SC Judges:** For other judges of the top court, the proposal is initiated by the CJI.
- The CJI consults the rest of the Collegium members, as well as the senior-most judge of the court hailing from the High Court to which the recommended person belongs.
- The consultees must record their opinions in writing and it should form part of the file.
- The Collegium sends the recommendation to the Law Minister, who forwards it to the Prime Minister to advise the President.
- **Chief Justice of HC:** The Chief Justice of High Courts is appointed as per the policy of having Chief Justices from outside the respective States. The Collegium takes the call on the elevation.
- **HC Judge:** High Court judges are recommended by a Collegium comprising the CJI and two senior-most judges.
  - The proposal, however, is initiated by the Chief Justice of the High Court concerned in consultation with two senior-most colleagues.
  - The recommendation is sent to the Chief Minister, who advises the Governor to send the proposal to the Union Law Minister.

Consultation with Judges

- The constitution also has another condition specific to the appointment of the judges in the High Courts and the Supreme Court.
- **Article 124 (2)** mandates the President to consult the judges of the court before appointing a judge in the same court.
- The 'consultation' however did not bind the president in the same way he is bound by the council of ministers and the president's power to appoint judges before 1973 was just a formality and the appointments were on behalf of the executive government.

■ Is the system provided in the Constitution?

- The Collegium of judges is the Supreme Court's invention.
- It does not figure in the Constitution, which says judges of the Supreme Court and High Courts are appointed by the President and speaks of a process of consultation.

■ What about 'independence of judiciary'?

- The Constitution of India has embodied the concept of Independence of Judiciary.
- However, the appointment of judges in the High Court and the Supreme Court has been left to the President, who works on the aid and advice of the council of ministers.
- The President shall act in accordance with such advice

27 Increasing role of OTT platforms

Context

Public service broadcaster, Prasar Bharati has inked a Memorandum of Understanding (MoU) with YuppTV, an over-the-top (OTT) platform, which will act as gateway for Doordarshan viewers across the globe.

Background

- The content hosting agreement was signed by Shashi Shekhar Vempati, CEO of Prasar Bharati, and Uday Reddy, founder and CEO of YuppTV.
- DD India is now available on the OTT platform of YuppTV in the USA, UK, Europe, Middle East, Singapore, Australia and New Zealand.

About OTT:

- OTT stands for "**over-the-top**".
- It refers to the productized practice of **streaming content to customers directly over the web.**
- An "**over-the-top" media service is any online content provider that offers streaming media as a standalone product**.
- The term is commonly applied to **video-on-demand platforms**, but also refers to audio streaming, messaging services, or internet-based voice calling solutions.

- OTT services **circumvent traditional media distribution channels** such as telecommunications networks or cable television providers.
- As long as you have access to an internet connection — either locally or through a mobile network — you can access the complete service at your leisure.
- OTT services are typically monetized via paid subscriptions, but there are exceptions. For example, some OTT platforms might offer in-app purchases or advertising.

What is the aim of this move?

- **Expanding reach at global level:** With this move, Prasar Bharati aims to expand the global reach of DD India channel, to put forth the country's perspective on various international developments on global platforms and to showcase its culture and values to the world.
- **Increasing viewership:** The move can be speculated owing to the increasing viewership of OTT platforms in India.
- At present, several broadcasters such as Star India, Zee Entertainment, Tata Play and Sony Pictures have made their presence on OTT platforms to widen audience engagement on their shows as well as channels.
- **Towards development:** The country's age-old DD India channel tying up with an OTT platform is a sure shot precursor of unfolded developments in the coming times.

About DD India Channel:

- DD India, **Prasar Bharati's international channel, is India's window to the world**.
- The channel, through its various programmes, **offers international viewers India's perspective on all domestic and global developments.**
- Available in more than 190 countries, DD India also acts as a "**bridge between India and the Indian diaspora**" spread across the world.

Significance of the move

- DD India channel will put forth the **country's perspective on various international developments on global platforms.**
- With the new MOU signed, DD India would be available on the **OTT platform of Yupp TV** in the **United States, United Kingdom, UK, Europe, Middle East, Singapore, Australia and New Zealand.**
- The content hosting agreement was signed by Prasar Bharati's chief executive officer and Yupp TV founder.

IT Rules, 2021

- The Rules aim to empower ordinary users of social media and OTT platforms with a mechanism for redressal and timely resolution of their grievance with the help of a Grievance Redressal Officer (GRO) who should be a resident in India.
- **Safety measures:** Special emphasis has been given on the protection of women and children from sexual offences, fake news and other misuse of the social media.
- **Source identification:** Identification of the "first originator of the information" would be required in case of an offence related to sovereignty and integrity of India.

- **Appointment of Chief Compliance Officer:** A Chief Compliance Officer, a resident of India, also needs to be appointed and that person shall be responsible for ensuring compliance with the Act and Rules.
- **Complaint monitoring:** A monthly compliance report mentioning the details of complaints received and action taken on the complaints would be necessary.
- **Code of Ethics:** The OTT platforms, online news and digital media entities, on the other hand, would need to follow a Code of Ethics.
- **Self-classification:** OTT platforms would be called as 'publishers of online curated content' under the new rules.
- They would have to self-classify the content into five categories based on age and use parental locks for age above 13 or higher. They also need to include age verification mechanisms for content classified as 'Adult'.
- **Redressal mechanism:** A three-level grievance redressal mechanism has been mandated. This includes the appointment of a GRO, self-regulatory bodies registered with the Ministry of Information & Broadcasting (MIB) to look after the Code of Ethics and a Charter for the self-regulating bodies formulated by MIB.

What lies ahead?

With the increase in the user base of streaming content, thanks to deeper internet penetration, affordable data and Indian young consumers, the stage is all set for startups to play bigger role in mass media industry.

28 Anti-lynching Bills & implementation issues

Context

Bills passed against mob lynching in the past four years by at least three States have not been implemented with the Union government taking a view that lynching is not defined as a crime under the Indian Penal Code (IPC).

What is Lynching?

- Lynching is an affront to the Rule of law and to the exalted values of the Constitution itself.
- Lynching by unruly mobs and barbaric violence arising out of instigation cannot be allowed to become the order of the day.
- The act of lynching is not as simple as murder, it is a public spectacle committed against a victim whose crime is an fictitious as allegorical.
- Dictionary meaning of Lynch says, 'kill someone for an alleged offence without a legal trial'.
- The word 'lynching' originated in mid-18th century America. Back then the term referred to vigilante justice meted out to black people.
- The term 'Lynch' has its origin after the name of a Virginia Planter named Charles Lynch who headed an irregular court, during the American Revolution, formed to punish loyalists.
- Lynching is not a problem that is limited to a specific country. Various UN reports refer to lynching cases from Sudan, Nigeria, Haiti and other countries.

Case studies

- **Dadri Lynching case** was held in Bisra Village, Uttar Pradesh in 2015. The person was lynched due to regional and communal differences. The person's name was Mohammad Akhlaq. He was accused of slaughtering a cow for storing its meat for consumption. When this came into the knowledge of the Hindu community of the village, they lynched both the father and son. The fact of the matter is that this case is considered as one of the first cases which were religious-based and in the name of the cow the person was lynched.
- **Alwar, Rajasthan:** Another instance happened in the Alwar District of Rajasthan in 2017. The issue pertinent in this case was that some people belonging to the Muslim community were accused of cattle smuggling and slaughtering of calves. The police department of Alwar filed a case against Khan for smuggling but he was permitted by the government to do so.
- **Delhi:** In 2017, a lynching case happened in Delhi. It was based on the caste system prevailing that people belonging to lower case or backward classes of people need to suffer. In this case, a rickshaw driver stopped some of the college students as they were urinating on the public wall due to intoxication. The students who were intoxicated became furious and lynched the rickshaw driver.
- **Palghar mob Lynching case:** It is pertinent to note that, on 16th April, 2020 a driver and two Sadhus were lynched by an angry mob. All the victims belonged to a village called Gadchinchale located in the Palghar district of Maharashtra. This unfortunate incident was fuelled by a rumour which was circulated on WhatsApp, wherein it was stated that there have been thieves operating in the village amidst the coronavirus lockdown.

Lynching laws in India

- There is no national law made on mob lynching. Mob lynching is not defined in IPC, CRPC, and nor defined in the constitution.
- **Though there are certain provisions in the IPC, for example-**
  - **Section 223 (a)** of the Code of Criminal Procedure (CrPC), 1973 states that persons or a mob involved in the same offence in the same act can be tried together.
  - **Sections 302** (murder)
  - **Section 304** (culpable homicide not amounting to murder)
  - **Section 307** (attempt to murder)

Which states have anti-lynching laws?

- **Jharkhand:** In Jharkhand, the **Prevention of Mob Violence and Mob Lynching Bill, 2021** envisages imprisonment for those pronounced guilty of mob violence and lynching for periods ranging from three years to life term, besides fine and attachment of property.
- **Rajasthan:** In August 2019, the Rajasthan government passed the **'The Rajasthan Protection from Lynching Bill, 2019'** providing for life imprisonment and a fine from Rs 1 lakh to Rs 5 lakh to those convicted in cases of mob lynching leading to victim's death.
- **West Bengal:** In August 2019, the West Bengal Assembly passed '**The West Bengal (Prevention of Lynching) Bill, 2019'**, proposing a maximum punishment of life imprisonment and fines ranging from Rs 1 lakh to Rs 5 lakh for offences.

What are the impacts of mob lynching in India?

- **Threat to law:** This act of people taking the law into their hands because of the shallow knowledge of the Justice System poses a serious threat to the Rule of Law and principles of Natural Justice.

- **Threat to minority:** Such acts have also posed serious threats to minority groups in the country.
- **Suppressing basic rights of minorities:** Such crime results in promoting majoritarianism by propagating the beliefs of the majority by suppressing the basic rights of the minorities.
- Normalising heinous crimes: It normalise such heinous crimes.
- **Economic loss:** An important fact about lynching in India is its effect on the economy of the country. The greatest number of attacks have been on drivers carrying dead animals, traders of beef and owners of slaughterhouses; as a result, they will tend to abandon these jobs due to fear of suffering lynching.
- **Health impacts:** Lynching incidents are an issue of public health. In the short-term, lynching leads to death and injury for the victims whereas in the long-term it can lead to psychological and physiological effects on present and future generations.

A serious question

- **Mob lynchings also raise another disturbing question: are people losing faith in the judicial/democratic system of governance?** And because a mob dispenses what it thinks is justice by itself, it often chooses its victim and the mode of justice. The targets are often the most vulnerable of society.

Where does the problem lie?

- However, there is lack of implementations. These need to be implemented strongly and effectively.

What measures are actually required?

- **Strong measures:** States must take strong measures, including appointing nodal officers at district level, to curb such instances of violence in the name of cow protection.
- **Proactive measures:** States should be far more vigilant and proactive in flagging rumours using social media and other platforms. Some states are doing it, others need to emulate these examples.
- **For example:** Telangana police officer, Rema Rajeshwari (Superintendent of Police, Jogulamba Gadwal district), has trained a team of 500 police officers to tackle the fake news menace. These officers go to villages to spread awareness about social issues. Police personnel have also been added to local WhatsApp groups in villages to spot rumours that could lead to violence.
- More **campaigns and awareness** among people
- **Control on the spread of fake news**

Conclusion

In a country like India, people taking law into their own hands is unacceptable since citizens of the country have been granted various fundamental rights and such lynching cases are abusing their right to life, right to a fair trial, etc. India is a secular state and it's important to ensure that interests of the minority are being protected and they are not suppressed by the majority.

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