

# 1. Indian constitution, Union and states, Federal structure, local governance



GS 2 Constitutional Articles -

## Anudeep AIR 1-watermark.pdf Important amendments to the Constitution

1. **7th amendment:** Reorganisation of states on linguistic basis, Abolition of Class A, B, C and D states and Introduction of Union Territories
2. **42nd amendment**
  1. Added three new words.
  2. Added FD.
  3. Made the president bound by the cabinet.
  4. 323A and 323B.
  5. Froze the seats in lok sabha and State legislative assemblies.
  6. Added three new directive principles.
  7. Shifted five subjects from the state list to concurrent list -- education, forests, environment, weights, etc.
  8. Provided for creation of all-India judicial services.
3. **44th amendment**
  1. Constitutional protection to publication in newspaper of the proceedings of the Parliament and State Legislatures.
  2. Restored the jurisdiction of High court and the Supreme Court in respect of judicial review and issue of writs.
  3. Empowered president to send back advice of council of minister for reconsideration.
  4. Fundamental Rights Guaranteed by Articles 20 and 21 cannot be suspended during a national emergency. It replaced the word “internal disturbance” with “armed rebellion”. It made president to declare national emergency only on written recommendation of cabinet. Duration of national emergency should not be extended more than 6 months at a time. Also made certain procedural safeguards with respect to national emergency and President's rule.
  5. The Right to Property was deleted from the list of fundamental right. It is now only a legal right under the Constitution.

6. It restored the power of judicial review of election of president, governors and LS speaker.
4. **61st Amendment:** To **reduce the voting age from 21 years to 18 years.**
5. **73rd and 74th amendment:** **PRIs** and **ULBs.**
6. **86<sup>th</sup> Amendment:** **Free and compulsory education** to children between 6 and 14 years.
7. **91st amendment:** **Anti-defection law.**
8. **93rd amendment:** Provided for **27 percent reservation for OBCs** in government as well as private higher educational institutions.

### **Historical underpinning**

1. **Regulating act, 1773 prohibited** company **civil servants** from engaging in **private trade** or accepting gifts, etc.
2. **Charter act of 1833**, for the **first time** called the Governor General's government as the **Government of India.**
3. Charter Act of **1853** introduced **open competition** for selection and recruitment of civil servants. This was also open to Indians.
4. Indian councils act, **1861** introduced a grain of popular element by including some **non-official members** in the executive council while **transacting legislative business like legislative council.** It also empowered the Viceroy to **issue ordinances** and also gave recognition to the **portfolio system.**
5. Indian councils act, **1892** gave the legislative councils the **power of discussing the budget** and addressing questions to the executive.
6. An **element of election was introduced** for the first time in Indian Councils act of **1909.** The **1909 act** introduced a system of **communal representation** for Muslims by accepting the concept of separate electorate.
7. **1919 act demarcated the central and provincial subjects.** Provincial budget was separated from the Central budget. Through the GOI Act of **1919, bicameralism** was introduced at the centre. The **concept of direct elections** was introduced in the **1919 act.** 1919 act provided for the establishment of **Public Service Commission (PSC).** Accordingly the Public Service Commission was set up for recruiting civil servants.
8. Under **Poona pact** of 1932 there shall be **seats reserved** for the **depressed classes** out of general electoral seats in the provincial **legislature.**

9. 1935 act prescribed a federation and established a responsible Government at the centre. 1935 act also divided powers into federal, provincial and concurrent list.

## Elections

1. Elections have today become the most visible symbol of the democratic process.
2. The reason for the popularity and success of the FPTP system is its simplicity and familiarity. The entire election system is extremely simple and a clear choice presented to the voters at the time of elections.
3. Also, depending on the nature of actual politics, voters may either give greater importance to the party or to candidate or balance the two.
4. Also, in constituency based system like the FPTP, the voters know who their own representative is and can hold him or her accountable.
5. Also, the makers of our Constitution also felt that PR based election may not be suitable for giving a stable government in a parliamentary system.
6. Finally, the FPTP system encourages voters from different social groups to come together to win an election in a locality. In a diverse country like India, a PR system would encourage each community to form its own nation wide party.
7. But FPTP often works to the disadvantage of the smaller social groups. This is even more significant in the Indian social context where we have had a history of caste based discrimination. Our constitution makers were aware of this difficulty and the need to provide a way to ensure fair and just representation to the oppressed social groups.
8. The people who argue against the PR feel that it will not accommodate the concerns and interests of the minuscule or smaller castes and religions. Because of their smaller number of votes, these areas may not get any representation in the Parliament. While FPTP may not be representative enough, PR may put smaller and regional parties at an unfair disadvantage.

## Hybrid system

1. A hybrid/mixed system refers to an electoral system in which two

**systems are merged** into one combining the positive features from more than one electoral system.

2. Many point out that the **current system** reflects a “**Minority democracy**” which has been ruling the country since independence. It is argued that the **majority aspirations** and the will of the people is not getting reflected in election results with the current electoral system.
3. This system is followed by various **European countries** successfully. Ex: Germany.
4. The **Law Commission** report also have suggested that **25% or more seats** should be added to the present Lok Sabha and be filled by Proportional Representation.

### **Constitution as living document**

1. **Too rigid a constitution** is likely to break under the weight of change and a constitution that is **too flexible** will give no security, predictability or identity to people. It must strike the right balance between preserving **core values** and **adapting** them to new circumstances.
2. Amendments made so far may be classified in **three groups**. In the first group there are amendments, which are of a **technical or administrative nature** and were only **minor modifications** of the original provisions. Ex: **Increasing retirement age of high court judges to 62 years, extending reservations** to SCs and STs by 10 years every time.
3. Second group of amendments belong to **different interpretations** of the Constitution given by the judiciary and the government. When these clashed, the Parliament had to insert an **amendment** underlining **one particular interpretation as the authentic one**.
4. Thirdly, there is another **large group of amendments** that have been made as a **result of the consensus** among the political parties. Ex: **Anti-defection** amendment, amendment bringing down the **minimum age for voting** from 21 to 18 years and the **73rd and the 74th amendments**, etc.
5. Supreme court came to the conclusion that a **mere text of the law** is less important than the **social circumstances and aspirations** that have produced that law or document.

### **Philosophy of constitution**

1. It is true that **all laws do not have a moral content**, but many laws are closely connected to our deeply held values. For example, a law might **prohibit discrimination** of person on grounds of language or religion. **Such a law is connected to the** idea of **equality**. Such a law exists because we value equality. So, there is a connection between **laws and moral values**.
2. We must therefore, look upon the constitution as a document that is based on a certain **moral vision**. Constitution is committed to **freedom, equality, social justice**, and some form of national unity. But underneath all this, there is a clear emphasis on **peaceful and democratic measures** for putting this philosophy into practice.
3. When we say that the Indian Constitution is **liberal**, we do not mean that it is liberal only in the classical western sense. Western liberalism always privileges rights of the individuals over demands of social justice and community values.
4. The **liberalism** of the Indian Constitution **differs** from this version in two ways. First, it was always linked to **social justice**. The best example of this is the provision for **reservations for Scheduled Castes** and Scheduled Tribes in the Constitution. The makers of the Constitution believed that the mere granting of the **right to equality was not enough to overcome age old injustices** suffered by these groups or to give **real meaning** to their right to vote. Special constitutional measures were required to advance their interests.
5. The Indian Constitution encourages **equal respect between communities**. This was not easy in our country, first because communities do not always have a relationship of **equality** and they tend to have **hierarchical relationships** with one another. Second, when these communities do see each other as equals, they also tend to become **rivals**.
6. **Not recognising the communities**, as most western constitutions does is **not desirable** and **neither workable in India**. It is because we **openly acknowledge the value of communities**. More importantly, India is a land of multiple cultural communities. This made it mandatory for our Constitution to recognise community based rights. One such right is the right of religious communities to establish and run their own educational institutions.

## **How can political parties be reformed**

1. **Anti-defection law has been passed.** This was done because many elected representatives were indulging in defection in order to become ministers or for cash rewards.
2. It is **mandatory** for every candidate who contests elections to file an affidavit giving **details of his property and criminal cases** pending against him. The new system has made a lot of information available to the **public**. But there is no system to check if the information given by the candidates is true.
3. The EC has passed an **order** making it necessary for **political parties** to hold their **organisational elections** and file their income tax returns. The parties have started doing so but sometimes it is **mere formality**. It is not clear if this step has led to greater **internal democracy** in political parties.
4. It should be made **compulsory for political parties** to maintain a register of its members, to follow its **own constitution**, to have an **independent authority**, to act as a judge in case of party disputes, to hold **open elections** to the highest posts.
5. It should be made mandatory for political parties to give a **minimum number of tickets**, about one third, to **women** candidates. Similarly, there should be a **quota for women** in the decision making bodies of the party.
6. There **should be state funding of elections**. The government should give parties money to support their election expenses. This **support could be given** in the form of **fuel, paper, telephone etc**. Or it could be given in cash on the basis of the votes secured by the party in the last election.

## Federalism

**Federalism** is a system of government in which the same territory is controlled by two levels of government. In this system, the Central Government usually oversees the issues that are of importance for the entire country, whereas the government at the lower level looks after issues of local concern. The purpose of this Division of Power between the two tiers of government is twofold: i) Preventing concentration of power in the hand of one tier of government ii)

1. Generating strength of the nation through the Union.



So what exactly are the **characteristics of federalism**?

- i. There should be two levels of governments, with each having its own independent sphere of administrative and legislative competence.
- ii. Each level of the government should have an independent tax base.
- iii. A Written Constitution from which respective governments derive power.
- iv. An independent judiciary to adjudicate if conflict arises between the two tiers of government.

## 2. Unitary provisions of constitution

1. The Constitution has certain **very powerful emergency provisions**, which can turn our federal polity into a highly centralised system. Parliament also assumes the power to make laws on subjects within the jurisdiction of the States.
2. Even during normal circumstances, the **central government** has **very effective financial powers** and responsibilities. In the first place, **items generating revenue are under the control of the central government**. Secondly, India adopted planning as the instrument of rapid economic progress and development after independence. Besides, the Union government uses its **discretion to give grants and loans to States**.
3. The constitution clearly states that **executive powers of the centre are superior** to the executive powers of the States.
  - Residuary powers are with the Union Government
  - States can be created or diminished without their consent
  - Concept of single citizenship, unlike that of USA
  - All India Services officers head important positions in States
  - The role of Governor in States is very important and he is appointed by the Central Government
  - The system of audit is headed by the CAG, who is appointed by the Central Government
4.
  - The judges of High Courts are appointed by the President

## 3. Federal features of our constitution

1. **Dual polity** consisting the Union at the Centre and the States at the Periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them. **Division of powers in the 7th schedule**.
2. **Written constitution of India** specifies the structure, functions and powers of the both Centre and State Governments and prescribe limits within which they must operate. Thus, it **avoids misunderstandings and dis-agreements** between the two.
3. **Supremacy of the constitution**.
4. **Independent Judiciary**.

5. **Bicameralism.**

6. **Rigid constitution.** The provisions that relate to federal structure can be amended only by the consent of half the state legislatures.

#### 4. **Evaluation of our federal system**

1. **Granville Austin** described the Indian federation as "a new kind of federation to meet India's peculiar needs."

2. In **Bommai case**, the supreme court laid down that the **constitution is federal and characterised federalism as its 'basic structure'**.

#### 5. **Union Government can legislate in state list**

1. (i) If the Council of States (Rajya Sabha) declares that it is necessary for the Centre to legislate upon a subject in the State list, in national interest, and passes a resolution to this effect, with a majority of at least 2/3<sup>rd</sup> of members present and voting (**Article 249**). This
2. (ii) When two or more State Legislatures pass a resolution, requesting the Parliament to legislate upon a subject in the State List (**Article 252**). The law passed by Union Parliament shall be applicable only to the States, which demanded such legislation. Any other State
3. (iii) For the enforcement of International Treaties and Agreements. This provision enables the central government to fulfil its international obligations (**Art. 253**). The Lokpal and the Lokayuktas Bill, 2011 was introduced in the Parliament through the provisions of this particular article.
4. (iv) During national emergency, the Parliament can legislate upon any subject in the State List. Such a law becomes inoperative on expiration of six months after the emergency has
5. (v) During President's rule in a State, the Parliament can make laws with respect to any subject in the State list, in relation to that state. Such a law continues to be operative even

#### 6. **Centre's control over state legislation**

Some other provisions provide for Centre's control over State legislation:

(i) The Constitution empowers the Governor to reserve certain types of bills passed by the State Legislature for consideration of the President (**Art. 200**).

This provision has led to a considerable degree of resentment among the State governments, especially due to excessive delays in communicating the Centre's decision to the State, on the bills so reserved.

(ii) Bills on certain matters in the State list can be introduced in the State legislature only with the prior approval of the President (Art. 304), i.e. bills imposing restriction on the freedom of trade and commerce.

(iii) The President can direct the States to reserve Money Bills as well as other financial bills passed by the State Legislature for his consideration, during a Financial Emergency (**Art. 360**).

Apart from this, **Art. 169** empowers the Union Parliament to provide by law, for the abolition of the Legislative Council (Vidhan Parishad) of a State having such a Council.

#### 7. **Centre's executive direction to the States**

1. The executive power of every state is to be exercised in such a way a) as to **ensure compliance with the laws made by the Parliament** and b) as **not to impede the exercise of executive**



power of the Centre. The sanction behind these directions of the Centre is coercive in nature. Thus, Article 365 says that where any state has failed to comply with any directions given by the Centre, it will be lawful for the President to impose president rule.

2. In addition to the above two cases, the Centre is empowered to give directions to the states with regard to the exercise of their executive power in the following matters
  1. Construction and maintenance of means of communication (declared to be of national or military importance) by the state.
  2. The measures to be taken for the protection of the railways within the state.
  3. The provision of adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups in the state.
  4. The drawing up and execution of the specified schemes for the welfare of the STs in the state.

## 8. How federalism evolved in India

1. The first phase of India's federalism extended from the time of independence to the mid 1960s. Prime Minister Nehru took great efforts to keep the Chief Ministers of all the states apprised of the activities at the Centre and tried to build consensus. This smooth phase of Indian federalism was helped by the reason that a single party ruled in almost all the states and at the centre.
2. In the middle of the 1960s single party dominance declined somewhat and in a large number of State opposition parties came to power who opposed increasing centralisation. It resulted in demands for greater powers and greater autonomy to the states. This caused tensions in centre-state relations over various issues such as mode of appointment and dismissal of Governor, impositions of President's rule for partisan interests, reservation of State bills for consideration of the President, etc.
3. Finally, since the 1990s, we have entered an era of coalition politics especially at the centre. In the states too more regional parties have come to power. This has resulted in a greater say for the states, a respect for diversity and the beginning of a more mature federalism.
4. Once the principle of identity of the State is accepted, it is quite

natural that the States would expect a greater role and powers in the governance of the State and the country as a whole. This has led to demands from the States for autonomy. While the legal disputes can be resolved by the judiciary, demands for autonomy are of political nature and need to be resolved through negotiations.

5. The constitution is only a framework or a skeleton, its flesh and blood is provided by the actual processes of politics. Hence federalism in India has to a large extent been influenced by the changing nature of the political process.

#### 9. **Autonomy demands**

1. Sometimes, these demands expect that the division of powers should be changed in favour of the states and more powers and important powers be assigned to the states.
2. Another demand is that States should have an independent sources of revenue and greater control over the resources. This is also known as financial autonomy.
3. The third aspect of the autonomy demands relates to administrative powers of the states. States resent the control of the centre over the administrative machinery.
4. Fourthly, autonomy demands may also be related to cultural and linguistic issues. The opposition to the domination of Hindi (in Tamil Nadu) or demand for advancing the Punjabi language and culture are instances of this.

#### 10. **Constitutional provisions for cooperation between centre and states**

1. **Delegation of executive functions:** Under Article 258, the President is empowered to delegate some of the executive functions of the Union to the State with its consent. Under Article 258A, similarly, the Governor of a State may entrust, with the consent of the Government of India, any of the executive functions which exclusively fall under the State's jurisdiction.
2. **Full faith and credit clause:** Article 261, lays down that the final judgements delivered by the civil courts of one state shall be equally enforceable in other States, if they wish so.
3. **Adjudicative mechanism:** Under Article 262, the Parliament has passed the Inter-states water disputes act, 1956 to adjudicate on any dispute or complaint with respect to the use, distribution or control of the waters of inter state rivers or river valleys.

4. **Consultative mechanism:** Under **Article 263**, the President is empowered to constitute an **Inter-State Council** for resolving the dispute arising between the centre and the states, so as to avoid the need to go through the judicial proceedings for the same.
  5. **Immunity from mutual taxation:** **Article 285** says that **the property of the Union is exempted from the State taxation**, except if the Parliament by law provides otherwise. Similarly under **Article 289**, the State property and income is exempted from the Union taxation. This is basically not only to avoid unnecessary conflicts but also to create space for mutual cooperation between the Centre and the States.
11. **Extra-constitutional devices to promote Centre-State cooperation**
1. A **number of advisory bodies** such as **NITI Aayog**, National Integration Council (**NIC**), **Zonal Councils**, North-Eastern Council, **University Grants Commission (UGC)**, recently created **GST council**, etc.
  2. **Several conferences** take place frequently such as **Governor's conference** {presided by President}, **Chief Ministers' conference** {presided by PM}, **Chief Secretaries' conference** {presided by Cabinet Secretary} etc.
12. **Tension Areas in Centre-State relations**
1. **Mode of appointment and dismissal** of the Governor (Article 153, 155, 156).
  2. **Discriminatory and Partisan role** of Governor.
  3. **Discretionary Powers** of the Governor (Article 356, reservation of state bills, role in appointing chief minister, etc).
  4. **Deployment of central forces** in the state to maintain law and order.
  5. Discrimination in financial allocations to the state and **sharing of finances between Centre and states**.
  6. **Management of AIS officers**.
  7. **Encroachment** by the Centre on the State list and **shifting of items from state list to concurrent list**.
  8. Use of **CBI** and other investigating agencies.
13. **Protection of state interest in financial matters. Bills can be introduced only on recommendation of president.**
1. A bill which **imposes or varies any tax or duty** in which states are

interested.

2. A bill which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income tax.
3. A bill which affects the principles on which moneys are or may be distributable to states.
4. A bill which imposes any surcharge on any specified tax or duty for the purpose of the Centre.

#### 14. **Inter-state comity**

1. **Setting up of an Inter-state council (ISC).**
2. **Full faith and credit** is to be given through out the territory of India to **Public acts, records and Judicial proceedings** of the Centre and the every state.
3. **Article 301** declares that **Inter-state trade and commerce** through out the territory of India shall be free. The object of this provision is to **break down the border barriers between the states** and to create one unit with a view to encourage the free flow of trade.
4. **Zonal Councils.**

#### 15. **Sarkaria recommendations**

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
2. Article 356 (President's rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.
3. The institution of All-India Services should be further strengthened and some more such services should be created.
4. The residuary power of taxation should continue to remain with the parliament, while the other residuary powers should be placed in the concurrent list.
5. When the President withholds his assent to the state bills, the reason should be communicated to state government.
6. The Zonal Councils should be constituted afresh and reactivated to promote the spirit of federalism.
7. The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.
8. The Centre should consult the states before making a law on a subject of the Concurrent List.
9. The procedure of consulting the Chief Minister in the appointment of State Governor should be prescribed in the Constitution itself.
10. The Governor's term of five years in a state should not be disrupted except for extremely compelling reasons.
11. Steps should be taken to uniformly implement the three language formula in its true spirit.
12. No autonomy in for radio and television but decentralization in their operations.
13. The Commissioner for Linguistic Minorities should be activated.

#### 16. Zonal councils

1. Under the **States Re-organization Act, 1956** five Zonal Councils were created ostensibly for **curbing** the rising regional and **sectarian feelings** and to promote co-operation in resolving **regional disputes**. Later the North Eastern Council was created under the North Eastern Council Act, 1971.
2. Zonal Councils provide a **forum** where irritants between **Centre** and **States** and amongst States can be **resolved through discussions and consultations**. Though there are a large number of other fora like the National Development Council, inter State Council, etc., the **Zonal Councils are different**, both in content and character.
3. They are **regional fora** of cooperative endeavour for States **linked with each other** economically, **politically** and **culturally**. Being small and high level bodies, specially meant for looking after the interests of respective zones they are **capable of focusing attention** on specific issues taking into account regional factors while keeping the national perspective in view.
4. The scope of functions of these **Zonal Councils is very wide**, as they can discuss any matter in which some or all of the **states**



represented in that council, or the Union and one or more of the States represented in that Council, have a common interest.

#### 17. Federalism and foreign policy

1. Even though **foreign policy** is the prerogative of the **Central government** and the Constitution does not allow the states to take initiatives in these matters, the **West Bengal Government challenged** the central foreign policy on sharing the waters of river **Teesta** by stalling the bilateral treaty with Bangladesh.
2. Some of the states have been arguing in **favour of a role for the states** in the foreign policy of the country, especially those with **international border**. Similarly, when the issue of **border trade with China** came up for discussion, Sikkim's views were sought.
3. **Tamil Nadu** has demanded the intervention on the issue of **Tamil killings** in Sri Lanka every now and then.
4. **North Eastern State leaders** have been **asserting that their views should be sought** while **conducting negotiations** with neighbouring countries on economic and political issues.
5. There is a case for **institutionalising the process of consultation** and involvement of states, **which are affected by a particular foreign** or security policy measure.

#### 18. Other

1. One of the major reasons for **break up of USSR** was the **excessive centralisation** and concentration of power, and **the domination of Russia over other regions** with independent languages and cultures of their own. **Yugoslavia** and **Pakistan** also had to face a division of the country. **Canada came very close** to a break up between the English speaking and the French speaking regions of that country.
2. All the countries mentioned above were federations. Yet they could not remain united. Therefore, **apart from adopting a federal constitution**, the nature of that federal system and the practice of federalism must also be important factors. **Real politics, culture, ideology and history** determine the actual working of a federation.
3. A culture of **trust, cooperation, mutual respect** and **restraint helps federations to function smoothly**. Political parties also determine the way a constitution would work. If any single unit or state or **linguistic group** or ideology comes to dominate the **entire federation** it could generate a deep resentment among people or its units not sharing the dominant voice.

4. One of the important aspects of the **division of powers**, between states and central, is that **economic powers** are centralised in the hands of the central government by the Constitution. The states have immense responsibilities but very meagre revenue sources.
5. **Besides the concern for unity**, the makers of the Constitution also believed that the **socio-economic problems of the country** needed to be handled by a strong central government in cooperation with the States. **Poverty, illiteracy and inequalities of wealth were some of the problems** that required planning and coordination. Thus, the concerns for unity and development prompted the makers of the Constitution to create a strong central Government.

## **Fiscal relations between centre and state**

### **1. State Finance commission (SFC)**

1. State Finance Commission is the Constitutional body appointed by each state government at regular intervals of five years under the **article 243(I)** of the Constitution to **review and revise the financial position of PRIs and ULBs**. They recommend principles and methodology as regards the devolution of funds to PRIs and ULBs.

### **2. The recommendations**

1. The **distribution between the State and the local bodies** of the **net proceeds of the taxes**, duties, tolls and fees leviable by the State.
2. **Determination of the taxes**, duties, tolls and fees levied or **appropriated by the local bodies**.
3. **Measures** needed to improve the **financial position of the local bodies**.
4. **Any other matter referred to the Finance Commission by the Governor** in the interests of sound finance of the local bodies.

### **3. Issues relating to SFC**

1. **SFCs are not appointed on time** and that **the period covered by the SFCs does not synchronise** with the period covered by the Central Finance Commission. There is **absence of uniform standards and formats** in various SFC reports.
2. **State governments cherry pick** from the SFC's recommendations and **don't accept the inconvenient ones**.

3. There is **undue delay** on the part of the states in **placing the Action Taken Reports (ATR)** on the recommendations of SFCs in state legislatures.
  4. Equally worrisome is the practice of **states appointing people not well versed** in the affairs of local bodies or their finances as members of the SFCs. The quality of SFCs reports continues to remain poor.
  5. While estimating the resource gap, **SFCs normally just make forecasts based on historical trends.**
  6. **SFCs have also not identified the issues** requiring action by the Central Finance commission (CFC) to **augment the consolidated fund of the state.** The lack of quality of SFC reports has been ascribed to lack of data and limited capacity of the commissions.
- 4. Recommendations to improve SFCs**
1. SFCs should be constituted **at least 2 years before** the required date of submission of their recommendations, and the deadline should be so decided as to allow the State Government **at least 6 months time for tabling the ATR.** SFC reports should be readily available to the CFC.
  2. The **healthy precedent** established by the Union Government in generally **accepting the devolution proposals** made by the CFC should also be followed by the State Government.
  3. The SFCs follow the **procedures and guidelines adopted by the CFC.**
  4. SFCs should follow a **normative approach in estimating resource gaps.** They should **link the devolution of funds to the level of civic amenities** that the citizens could expect consistent with some uniform standards of service delivery.
  5. SFCs should have people of **eminence** and **competence.** They should follow the requirements as for the CFC. **Serving bureaucrats should not be appointed.**
  6. There **should be a permanent SFC cell** in the finance department.

### **States to pursue cross border economic partnership**

1. In any federal setup, there is **limited scope for state governments** to

undergo into treaties with foreign entities. The limit of such scope can be debated considering benefits and drawbacks of such deals.

## 2. Limits setup by the constitution

1. **A state in India is not sovereign itself.** According to Union list of schedule 7, the powers related to international treaties, further ratification is vested on the center.
  2. **Article 292 and 293 prohibits states borrowing from external sources.**
  3. **FRBM act** limits state's freedom to borrow from other sources.
  4. **Only center can represent India in global forums** such as UN, BRICS, G20 etc.
  5. **States have no role in trade matters** such as customs and WTO related rules.
3. However, current set up also allows states to enter into non-sovereign treaties subjected to above limits. For example, **AP Govt signed MOU with Singapore** to develop new capital Amaravati.
- ## 4. Advantages of cross border economic partnership
1. **States compete with each other**, and improvement of competitive federalism.
  2. **Every state has its own unique needs.** Drought hit states can take help from countries such as Israel etc.
  3. **Industrialization** of states i.e. a state can encourage international companies to set up units in their states.
  4. In nutshell, **states should be encouraged to undergo international treaties** to realize their economic and social obligations.
- ## 5. Disadvantages of such partnerships
1. **Non-uniformity of rules** among different states hinders objectives. For example, every state has its own labour laws and tax systems.
  2. **Multiplicity** of treaties. What if there is a treaty signed by both Center and state with foreign entity.

## Special category status

1. The **Constitution does not include any provision** for categorisation of any State in India as a Special Category Status (SCS) State. Central government has started granting **SCS to states from 1969 based on the suggestions of the 5th FC.** It is basically a device to **devolve more funds**

from the centre to the needy states like Himachal Pradesh and Jammu and Kashmir.

## 2. Criteria

1. Hilly and difficult terrain.
2. Low population density or the presence of sizeable tribal population.
3. Strategic location along international borders.
4. Economic and infrastructural backwardness.
5. Non-viable nature of State finances.

## 3. Benefits enjoyed

1. A major portion of the normal central assistance (NCA) (56.25%) is distributed to 11 special category states and the remaining (43.75%) among 18 General Category States.
2. Only special category states receive special plan assistance (SPA) and special central Assistance grants.
3. The assistance for Externally Aided Projects (EAPs) flows to SCS states as 90% in grant and 10% in loan whereas for General Category States, it flows as loans.
4. The state share in centrally sponsored schemes (CSS) is usually lower for Special Category States as compared to general category states.
5. Special category states get a significant excise duty concession and other tax breaks that attract industries to locate manufacturing units within their territory.

## 4. Why the demand

1. 70% of the revenue of undivided AP came from Hyderabad, which is now in Telangana. This has led to Rs. 20000 crore revenue deficit for the Andhra Government.
2. To adhere to the promise of last government and expectations due to build the capital, Amaravati, the Polavaram dam, and infrastructure projects like Metros.
3. The economical and development indicators of Rayalaseema and North Andhra are as bad as poorly developed states.
4. Hud-hud cyclone and drought like condition in some districts last year compounded problems.

## 5. Reasons why it should not be given

1. The policy of granting Special Category status has been



**discontinued** as per the recommendations of the 14th Finance Commission.

2. The **only criterion AP lacks** in the listed criteria for special status is **infrastructural backwardness** which is the resultant of bifurcation as Hyderabad has geographically gone to Telangana. However, this was compensated to an extent with the **settlement of sharing the capital** for 10 years.
  3. There are many other **deserving states** such as **Chhattisgarh** and **Jharkhand** which should get the status prior to AP.
  4. **Demands from other states** may arise. Bihar is already firming up.
  5. **Special category status hasn't worked** that well. Many special status awarded states remain to be poor.
  6. **Fiscal deficit** target of the central Govt might not be met.
- 6. Issues with working of special category states**
1. The **way** Special Category Status were **assigned** to a state has been a matter of **debate**.
  2. There is **also no consensus among states** related to principles used for granting the SCS.
  3. From the earlier experience, there is **no guarantee** that even after awarding Special category status, **economic progress will take place**.
  4. This means that for economic development, it is **important to follow sound economic policies**. The positives of SCS may act as a **stimulus** but everything depends on the each state policy.
  5. The amount of proceeds that states receive has **increased after 14th finance commission recommendations** have been accepted. SCS may lose relevance altogether.

## **NITI Ayoog**

1. **Strong state** means government and the rule of law provide a **stable political, social and economic environment** where citizens can plan and build and invest for the future.
2. **Characteristics of strong state**
  1. Political and **economic autonomy**.
  2. **Cooperation** from the **centre**.
  3. **Decentralised planning**.

4. Implementation of principle of **subsidiarity**.
3. But for the establishment of strong state in such **diverse nation**, support from centre is must i.e. **implementation of cooperative federalism**. Niti Aayog acts as a coordinating bridge between state and centre. It envisages formation of **national development priorities** with the active involvement of states.
4. **Niti Aayog is relevant as follows**
  1. **Premier think tank of the government:** Initiatives like **Ayushman Bharat**, Model Land leasing Act, etc.
  2. **Bridge between various ministries:** Any important government scheme requires a **huge degree of convergence** across a number of Ministries and between Central and state governments.
  3. **Bringing about a greater accountability in the system:** NITI Aayog has established a **Development Monitoring and Evaluation Office** which collects data on the **performance of various Ministries** on a real-time basis. NITI Aayog also comes up with **performance based rankings of States** across various verticals to foster a spirit of competitive federalism.
  4. **Instrumental in Improving innovation:** The Atal Innovation Mission has established more than **1,500 Atal Tinkering Labs in schools** and also set up **20 Atal Incubation Centers**. NITI Aayog identifies the best practices in different States in various sectors and then replicates them in other States.
  5. **States representation:** It also plays an important role of being the **States' representative in Delhi**, and facilitates **direct interactions with the line ministries**, which can address issues in a relatively shorter time.
5. **Role of Niti-Ayooog**
  1. Niti-Ayooog has brought out perspective plan. It brought out the **action plan** (3 years), **strategy document** (7 years) and **vision document** (15 years).
  2. It has brought up a **model agricultural land leasing Act, 2016** to recognise the rights of the tenant and safeguard interest of landowners. States like **MP** have gone ahead with the act. NITI has also launched **Agricultural Marketing and Farmer Friendly Reform Index** to sensitise states about agriculture reforms.
  3. It is acting as **monitoring agency** via various indices measuring

states performance in **health, education and water management**.

4. **Atal Innovation Mission (AIM)** is under NITI to promote innovation and entrepreneurship.
5. It has spearheaded the **digital payment** initiative of the government. Ex: Digi Dhan Yojana, **Lucky Grahak Yojana**, etc.
6. Constitution of **three sub-groups of Chief Ministers** to advise the central government on rationalisation of Centrally Sponsored Schemes (**CSS**), Skill Development and Swachh Bharat Abhiyaan (**SBM**).
7. A new regulatory body for **medical education** by **scrapping MCI** is being contemplated by the NITI.
8. It has strengthened decentralisation and spirit of co-operative federalism via **regular annual meet of states and center**. Governing council comprising LG/CMs of states gets greater autonomy in decision making.
9. Niti Aayog **knowledge hub** to act as knowledge and **best practises** repository for all states who want to emulate. Niti Aayog is playing a greater role in **assisting states** where **centre-state investment agreements** signed for bilateral invest treaty to boost investments in states.
10. NITI aayog role in ensuring **implementation** of **SDGs** analysing the present targets and demanding of each state.

## 6. Challenges

1. The aayog is still unable to address problems like **farm distress, job creation, innovations, environmental challenges**, growing interstate water dispute etc.
2. Also many **states are still skipping the meeting** and demanding special financial package which dilutes the feeling of co-operative federalism.
3. In addition to this **local government** is still being neglected.
4. It appears that the institution's **agenda** are more or less **set by the government** rather than an organic and independent process.
5. It focuses mostly on **policy recommendations** which must also be on implementation challenges.
6. Aayog has replaced the **5 year plan with 15 year vision document**. It focused on **farm distress** mitigation by **doubling the farmers**

**income**. It provides funds and support to **startup** via Atal innovation funds etc to create employment opportunities. It is inclined for developing a world class social and physical infrastructure via **Urban Housing**, Transport and **Digital Connectivity**.

## **Urban governance**

1. Urban India now form about **one-third of the population** and they produce more than **three-fifths of the country's GDP**. 74th amendment gave constitutional status to Urban Local Bodies (ULBs) and led to **uniformity** of the structure across the country. The Act aims at **revitalising and strengthening the urban governments** so that they function effectively as units of local government.
2. **Salient features**
  1. The Act provides for the **constitution of three types of municipalities** -- Nagar Panchayat, Municipality, Municipal Corporation -- in every state.
  2. The Act provides for a **five year term of office for every municipality**. However, it can be dissolved before the completion of its term.
  3. All the members of a municipality shall be **elected directly** by the people of the municipal area.
  4. The Act provides for the **reservation of seats for the scheduled castes and the scheduled tribes** in every municipality in proportion of their population to the total population in the municipal area.
  5. Further, it provides for the **reservation of not less than one-third of the total number of seats for women**.
  6. The **superintendence**, direction and control of the **preparation of electoral rolls** and the conduct of all elections of the municipalities shall be vested in the **State Election Commission (SEC)**.
  7. The **state legislature** may endow the municipalities with such **powers** and authority as may be necessary to enable them to **function as institutions of self-government**.
  8. The **Finance commission** (which is constituted for the Panchayats) shall also, for every five years, **review the financial position of municipalities** and make recommendation to the Governor.

9. The Act **does not apply to the scheduled areas and tribal areas** referred in Article 244 of the Indian Constitution.
10. Every state shall constitute at the district level, a **District Planning Committee (DPC)** to consolidate the plans prepared by Panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole.

### 3. Governance challenges

1. **Cities do not have a single city government.** There is **fragmentation** of responsibilities and service delivery across a gamut of institutions like **municipality, state departments** and **parastatal agencies** reporting directly to state government.
2. The **Municipal Councils have restricted autonomy** as compared to the Municipal Corporations.
3. **Poor transparency and accountability** because of non-uniform implementation of e-governance initiatives.
4. **Lack of good urban development policy, poor urban planning** coupled with poor implementation and regulation are big challenges for municipalities.
5. **Disqualification** of members of municipal bodies is **governed by the state legislature.** It is not consistent in all states and that leads to a lot of disparity and non-security among members.

### 4. Infrastructure deficit

1. Every Indian city faces **serious challenges** related to **water and power supply, waste management, public transport, education, health care, safety, and pollution.**
2. Due to **rapid urbanisation, law and order becomes difficult** to maintain, **slums develop** etc., leading to additional problems for these already stressed out urban local governance bodies.

### 5. Urban finances

1.

Municipal Corporations and Municipalities raise their own resources from a variety of sources, as provided for in the respective municipal laws. Their own revenue sources are income from (i) taxes, (ii) fees and fines, and; (iii) earning from municipal enterprises like land, tanks, markets, shops, etc. Besides these bodies receive grants from the State.

Property tax on land and buildings is the most important source of income of most urban local bodies. Other taxes levied by them are advertisement tax, professional tax etc. Octroi still remains an important source of income of municipalities in Western India. Now, the trend is toward abolishing this tax as it obstructs the free flow of traffic on highways. Municipalities also

2.



Some of the taxes and rates collected by urban bodies are: Property Tax; Water tax for water supplied; Sewerage Tax, Fire Tax; Taxes on animals and vehicles; Theatre Tax; Duty on transfer of Property; Octroi Duty on certain items brought into the city; Education Cess (Tax); and Professional Tax.

Some other sources of income are finances and fees such as Fees on Tehbazari on takhats and chabutras (in market area); licence fees – on cycle rickshaw, bicycles etc.; rent from municipal shops; and finances imposed for violation of municipal by-laws.

## 6. Problems in Urban finances

1. **Revenue generated by urban local government** accounts for **less than 0.9% of the total GDP** despite cities contributing almost 2/3rd towards GDP.
2. **Lack of sources:** Most of the income generating **taxes** are levied by the **union and state governments**.
3. **Ill-equipped staff:** The **staff** at the disposal of these bodies is **ill-trained** and **ill-equipped** to effectively collect the taxes levied.
4. **Low charges:** User charges for water, sanitation, etc., are **lower than actual cost** of provisioning such services, because **Municipal bodies fear increasing tax** for loss of popularity among people.
5. **Poor realisation of property tax:** **Property tax** is the most important source of revenue for local governments. But problems like **low coverage**, **low rates**, low **collection efficiency**, and **lack of indexation of property** values, making it a non-buoyant source of revenue. It is estimated that only about **60-70% of the properties** in urban areas are actually **assessed**. Some states have not even allowed the municipalities to levy property taxes.
6. **Peri-urban:** The **boundaries** of municipal bodies are **not expanded** to keep pace with the **urban sprawl** and as a result, a **large number of properties** fall outside the legal jurisdiction of the municipal bodies.

## 7. Way ahead with finances

1. States should empower cities to **levy all feasible taxes**. Finance commission can play a vital role by allocating more resources to ULBs.
2. **Grants to ULBs by MoUD** can be more tightly linked to comprehensive and updated **data disclosure** and transparency. **NITI Aayog should compile comparative indices** of municipalities performance annually. This index should be based on actual **accountability**.
3. **Property details** for all properties should be placed in the **public domain** to bring transparency and end collusion between the

assessing authorities.

4. There is need to adopt **satellite based mapping techniques** to map **urban properties** in order to tap full potential of property tax. Steps are already being taken under **JNNURM** for reforms of the property tax regime including use of **GIS**.
5. A **periodic physical verification of the properties** and taxes levied on them should be carried out in each municipal area.
6. **Credit rating of cities** is the first step towards **raising money** through the bond market, sub-national governments, and **international lenders**.
7. When a government invests in **developing a particular area**, for example, building a new airport outside a city, land prices around the area rise. A **portion of this benefit** could accrue to the local government.
8. A **congestion charge** and **betterment levy** in relation to such projects may be levied wherever warranted.
8. Competition between states is becoming a powerful dynamic of change and progress. It must be extended to **competition** between **cities** to give rise to **competitive sub-federalism**.
9. **Success of JNNURM**
  1. Its **uniqueness** lies in linking **federal grants to reform governance**. It has helped **raise awareness** and concerns about problems of urban growth and management. Urban matters are now more widely talked about than ever before.
  2. It has helped in the **expansion of sewage collection**, treatment and sanitation to enable more hygienic environment in the cities.
  3. With the launch of JNNURM, the environment for implementation of schemes in the **PPP mode** has become more congenial.
  4. JNNURM has managed to provide a **strong impetus to investments** in urban sector and incentivised cities to develop **sustainable investment** frameworks through **service delivery** reforms and cost recovery of services provided.
  5. Many of the urban spaces have become **liveable again** and some of the notable achievements in this regard are 24x7 **water supply in some cities**, **Ahmedabad Bus Rapid Transit System**, property tax collection system in Bengaluru etc.
  6. The mission has partially contributed to the achievement of **MDGs** like providing sustainable **access to safe drinking water** and basic

**sanitation**, ensuring environmental sustainability and the eradication of slums and to achieve significant improvement in lives.

#### 10. **Peri-urban Areas**

1. They are the outskirts of a large urban area, more accurately areas which are **outside jurisdiction of ULBs** but are in the process of urbanisation and have certain characteristics of urban areas.
2. **Such areas are created partly** by the influx from the deeper countryside, but also from those in the cities seeking to move out some migrating from congested areas to larger residences or new industries and some shifting away from expensive **city living**.

#### 11. **Issues with peri-urban areas**

1. Land use change from **agricultural to residential or industrial**.
  2. Changes in the use of **natural resources** such as water and forestry.
  3. New forms of pollution and **waste management**.
  4. Creation of **infrastructure**.
  5. Managing new **cultural ethos**.
12. To be able to control untidy sprawls, it is necessary to ensure that the planning laws applicable to a present city area are also **applicable to future areas of the city**.

### **Local Governance**

1.

The 73<sup>rd</sup> amendment to the Constitution enacted in 1992 added a new part-IX to the Constitution. It also added a new XI schedule containing list of 29 functional items for Panchyats and made statutory provisions for the establishment, empowerment and functioning of Panchayati Raj institutions. Some provisions of this amendment are binding on the States, while others have been left to be decided by respective State Legislatures at their discretion. The salient features of this amendment are as follows:

#### 2. **Salient features of 73rd amendment**

Some of the compulsory requirements/bindings on States of the new law are:

- Organization of Gram Sabhas;
- Creation of a three-tier Panchayati Raj Structure at the District (Zila), Block and Village levels;

- Almost all posts, at all levels to be filled by direct elections;
- Minimum age for contesting elections to the Panchayati Raj institutions be twenty one years;
- The post of Chairman at the District and Block levels should be filled by indirect election;
- There should be reservation of seats for Scheduled Castes/ Scheduled Tribes in Panchayats, in proportion to their population, and for women in Panchayats up to one-third seats;
- State Election Commission to be set up in each State to conduct elections to Panchayati Raj institutions;
- The tenure of Panchayati Raj institutions is five years, if dissolved earlier, fresh elections to be held within six months; and a State Finance Commission is to be set up in each State every five years.

Some of the provisions, which are not binding on the States, but are only guidelines:

- Giving representation to the members of the Central and State legislatures in these bodies;
- Providing reservation for backward classes; and
- The Panchayati Raj institutions should be given financial powers in relation to taxes, levy fees etc. and efforts shall be made to make Panchayats autonomous bodies.

### 3. Issues in local governance

1. There is lack of clarity in regard to the concept of Panchayati Raj itself and the objectives for which it stands. They are still seen as administrative vessels for implementing programmes of the Central and State governments and not as democratic organisations.
2. The functions assigned to the Panchayat and the Samiti overlap, leading to confusion, duplication of efforts and shifting of responsibility.
3. The increasing trend towards politicisation of local body elections. This seriously prevents these institutions from concentrating on local issues. Elections to local governments are not held on time.
4. The attendance at Gram Sabhas is thin, attendees expect direct benefits and meetings are dominated by activists of political groups.
5. Parastatal agencies continue to play a major role in matters relating to urban planning, regulation of land use, water supply and sewerage, and slum improvement. This leads to weakening of the authority of the LSBs.
6. The powers transferred by states are often just a repetition of the eleventh or twelfth schedules. The precision in specifying tasks to different layers is missing.

7. The **indirect election** of most of the members to Panchayat Samiti only increases the possibility of **corruption** and **bribery**. Even the zilla parishad consists of mainly ex-officio members.
8. Transfer of **funds did not match devolutions**. Central funds constitute the bulk of the funding to local bodies. When it comes to raising **own resources** the picture is **very dismal**.
9. There is **no transfer of functionaries** and this is not only because of reluctance of State Governments but also because of **resistance of state cadres** to work under local bodies.

#### 4. Sources of income to panchayats

1. Panchayats can **discharge their functions efficiently** only if they have sufficient **financial resources**. For resources, Panchayats depend mainly on **grants** from the State Government. They also have **taxation powers** and have some **income from owned or vested assets**. They may get a share in the taxes, duties, tolls and fees that are levied and collected by the State Government.
2. **Gram Panchayat:** In most States the power of levying taxes is vested in Gram Panchayats. **House tax**, tax on cattle, **immovable property**, **commercial crops**, drainage tax, **sanitation fee**, **tax on produce sold in village**, etc. Panchayats can also levy **entertainment tax**. Gram Panchayats also **receive funds as income from property owned** by them as **common grounds**, jungles, cattle ground etc. They also receive their **share in land revenue** from the State.
3. **Panchayat Samiti:** Panchayat Samitis can impose tax on facilities provided by them as **water for drinking or irrigation purposes**, etc. Panchayats receive income from the property vested in them. **They also receive grants from the State Governments**. Funds are **transferred by Zila Panchayats** or State Governments along with schemes to be implemented by the intermediate institutions of Panchayati Raj.
4. **Zilla Parishad:** Zilla Parishads are also authorised to impose taxes. They may impose taxes on persons **carrying on business in rural areas** for six months, taxes on brokers, **commission agents in markets** established by them, also tax on sale of goods in these markets. **Tax on land revenue can also be imposed by Zilla Parishads**. When **development schemes** are entrusted to them,



necessary funds are also provided. They also receive grants from the State, **donations from charitable institutions**, and may also raise loans.

## 5. Challenges in fiscal transfers

1. **Dependence:** Panchayats are **heavily dependent on government grant** and **internal resource** generation at the panchayat level is **weak**. This is partly due to a **thin tax** domain and partly due to **panchayats reluctance** in collecting revenue.
2. **Inflexibility:** A **major portion of the grants** is **scheme specific** and panchayats have limited discretion and flexibility in spending. The **transferred funds are uneven and untimely**.
3. **Power devolution:** The critical factor that crippled the **fiscal autonomy** of the PRIs is the **imperfect process of power devolution** to the PRIs by different state governments. While some states have devolved desired powers to the PRIs, other states are lagging behind in the process.
4. **CSS:** Most CSS operate through **parallel structures** which ignore the Panchayats and deal directly with NGOs and user groups. Some of the CSS implementation **concentrates powers** in **district missions**, which have a wide flexibility to deploy funds.
5. **SFCs:** Reports of **SFCs were not taken into account** which is another grey area in fiscal decentralisation.

## 6. Way ahead

1. **Additional sources:** Rural bodies need to **look beyond the traditional areas** of lands and buildings and augment their resources by operating in newly emerging sectors through innovative tax measures. Ex: **Fee on tourist vehicles, special amenities, restaurant, theatre, cyber cafe** etc.
2. **Incentivising performance:** The **Ministry of Panchayati Raj** has evolved a Panchayats Empowerment and Accountability Fund (**PEAF**) to **incentivise** both **empowerment** of the Panchayats by the States and **accountability of Panchayats to Gram Sabhas**.
3. **Royalty:** PRIs should be given a **substantial share** in the **royalty** from **minerals** collected by the State Government. This aspect should be considered by the **SFCs** while recommending grants to the PRIs.



4. **Village panchayats:** In the **tax domain** assigned to PRIs, **village panchayats** must have **primary authority** over taxation. However, where such taxation has inter-panchayat ramifications, the local government institutions at higher levels such as intermediate panchayat and **zilla parishad** could be given concurrent powers subject to a ceiling.
5. **Octroi** should be abolished, but the States should evolve mechanisms to **compensate the local governments** for the loss of revenue caused by such abolition.
7. Only through fiscal autonomy, we can truly achieve Swaraj as envisaged by Gandhi in India.
8. **Limitations of local bodies**
  1. Local bodies are not a **panacea** for all manner of **administrative problems** and challenges. Highly technical activities require **specialised organisations**. The exploitation of natural resources may need a regional approach necessitating setting up of **parastatals** catering to a number of local bodies.
  2. **Local bodies** are also political organizations and **suffer** from all the **deficiencies of political systems**. Excessive decentralisation has its own sets of problems.
  3. Moreover **modern governance** calls for **innovative methods**. There should be administrative space for different types of organizations each contributing in their own manner to the general good. **Women SHGs** and **NGOs** can be examples in this regard. The **convergence** of the activities of all **such bodies** and **local authorities** should be done best through the planning process.
  4. On the role of **local bodies** in planning and implementation of **mega projects** there is consensus that their **constructive involvement** can reduce land related disputes, ease the process of **acquisition** and **rehabilitation** of affected people. **Information disseminated** through local bodies has **allayed fears** of local people. They became a fora wherein to voice local grievances.

## 9. DPC

District Planning Committee (DPC) is the committee created as per article 243ZD of the Constitution of India at the district level [1] for planning at the district and below. The Committee in each district should consolidate the plans prepared by the Panchayats and the Municipalities in the district and prepare a draft development plan for the district.

In preparing the draft development plan, the DPC shall have regard to matters of common interest between the panchayats and the municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation and the extent and type of available resources, both financial

#### 10. Shortcomings of District planning committee (DPC)

1. A **number of parallel planning bodies** continue to function at each level with little contact with the PRIs. The Gram Sabhas are functional but **attendance** of residents of villages at a distance is poor. They meet only twice a year. There are **no representatives of the village level** and intermediate panchayats in the DPC.
2. **In most states DPCs** are yet to function as envisaged in the Constitution. They **neither consolidate nor prepare** draft district developmental **plans**. In several States, where there is **no separation of the budget** into District and State sectors, allocation of funds to Panchayats does not match the legislative devolution of functions to them.
3. Planning exercise's **quality suffers** seriously for **lack of sufficient time**. Thus planning process does not stir meaningful debates in the Panchayats. DPCs lack **technical expertise**.
4. **Funds** given to panchayats and **DPCs are tied down to schemes**, thus limiting the scope for determining and addressing **local priorities** through a planning exercise. Actual provision in State budgets also differs from the gross outlays communicated.
5. Many **DPCs are headed by state ministers** who are not members of local bodies.

#### 11. Way forward with DPCs

1. The **guidelines issued** by the **Planning commission** pertaining to the preparation of the **plan for the district** and the recommendations of the expert group regarding the planning process at the district level should be strictly implemented.
2. Each state Government should develop the methodology of **participatory local level planning** and provide such support as is necessary to institutionalise a regime of decentralised planning.
3. States may design a **planning calendar** prescribing the **time limits**

within which each local body has to finalise its plan and send it to the next higher level, to facilitate the **preparation of a comprehensive plan** for the district.

4. State Planning Boards should ensure that the **district plans are integrated** with the state plans that are prepared by them. It should be made mandatory for the states to prepare their development plans only after consolidating the plans of the local bodies.
5. For urban districts where **town planning** functions are being done by **development authorities**, these authorities should become the **planning arms** of the DPCs and ultimately of the District Council.

## 12. Weaknesses with the traditional institutions in Tribal areas

1. Not allowing full participatory rights to all members of the community since **women** are **excluded** from decision making.
2. They are exclusive and ethnocentric and **cater only to the ethnic tribal** population.
3. **Non-transparent.**
4. They expect compliance from members, defaulters being penalised or **socially ostracised** without a formalised system of due process.

## 13. 13th FC on local bodies

1. **Grant:** The local grant recommended by the 13th FC has two components, a **basic component** and a **performance based component**. The **performance grant** allocated to each state is subject to fulfilling a **nine-point conditionality package**. This should help promote results based accountability.
2. **Role of SFC:** One major contribution is the template prepared by **13th FC** with the help of an expert committee to **help future SFCs in preparing their reports**. This is a big step towards streamlining SFC reports in the future.
3. **Amend Article 280:** The words of the article 280 were changed from ‘on the **basis** of the recommendations of the finance commission’ to ‘**consideration** the recommendations of the finance commission of the State’. This recommendation, already approved by several expert bodies fully appreciates the spirit of the clause.
4. **Parallel Agencies and bodies:** The **13th FC** rightly points out

that **parallel agencies** and bodies are emasculating local governments both **financially** and **operationally**. Having constitutionally assigned a certain functional domain to local governments it is for the **union and state governments** to help this process of decentralised planning and governance with funds, functionaries and technical support.

#### 14. **Some shortcomings of recommendations**

1. A **large chunk of the performance grant** remains **un-utilised** by 2015 is a distinct possibility. If state governments do not take necessary legal and administrative action, everything will remain in cold storage.
2. The 13th FC has dispensed with the **tax or revenue effort criterion** with regard to **local grants on the plea** that credible data are not available. It had data for six years and it could have obtained better outcomes by using the tax or revenue effort criterion. The **13th FC criteria may be unfair** as it is biased towards highly populated states.
3. The 13th FC Report says the **quality of SFC reports continues to be patchy**, but it is silent on where and how they continue to be so. Actually the 13th FC is **only reiterating the sweeping**, general comments against SFCs made by the 11th and 12th FC.
4. The **criteria chosen** for inter-se distribution of local grants leave **many things to be desired** and so is its silence on SFCs. The **third tier** has to be made an **integral component** of India's federal public finance and UFCs of the future cannot afford to shirk that responsibility any more.

### **Direct Democracy**

1. **Democracy is a novel feature** of modern state without any doubt. **But what is debatable is the extent of democracy**. There are both positives and negatives of direct democracy.
2. **Positive implications**
  1. This gives **respect to people's right of taking decision** about their life which is going to be affected by national decisions.
  2. This provides opportunity to **gather public views on controversial**

**issues** and giving respect to what majority of people wants to have.

3. This keeps idea of **supremacy** of people which combined form a nation.
4. This helps in removing **unpopular regimes** in country.

### 3. **Negative implications**

1. Public decision making is easily **affected by political propaganda**. So the decision may be manipulated.
2. Also referendum based on **emotional decision** making can be detrimental to its objectives in the **long run** as people don't focus on the challenges and lost opportunities with a informed and **rational mind**.
3. **Expertise lies with the Govt**. Hence they can solve such disputes bilaterally in more efficient way.
4. Too much democracy may lead to **delay in decision making** on certain urgent decisions of national importance.
5. It has been witnessed that the fate of these deals has been decided by razor **thin margins**, not reflecting true aspirations and consensus of the people.
6. Too much democracy tends to give **preference to majority view**. In such a condition, **minority rights** may be severely undermined.
7. Too much democracy may sometimes **lead to separatist tendencies** leading to impact on **unity** of country.
8. It may sometimes lead to **instability in the country** which is harmful for a country not only national security point of view but also from **economic point of view** by turning **investment away** from country. Ex: Recent chaos created by Brexit.

### 4. **Can we have referendum in India**

1. Countries like **Switzerland** have a strong democratic temper, a **tradition of public service** by the administration, and are not saddled with a venal political leadership. The **Indian electorate** is also **not mature** enough to understand the implications.
2. If we were to have referendums for every issue, the majority could end up having their way always. This is not suitable in **plural countries** like India.
3. Given our cultural pluralism represented by the wide array of political parties, how would we decide what issue is worthy of a

**referendum**. Unlike Britain, that had a three, now four-party system, **India has 6 national and 49 regional parties** recognized by the Election Commission of India.

4. Also, some times, referendums are **very artificial**. Government can control the **timing**, which is a key factor in deciding **who wins**. The media, by playing an irresponsible role, can further distort the result.
5. It is for this reason the framers of the Constitution embraced the idea of **representative democracy** over the kind of direct democracy that referendums borrow from. What a representative ideally does is to act as mixture of interests.
5. To conclude too much democracy holds both positive and negative implications. It all **depends on various factors** like population of country, education level etc. in country that to which extent a country should be democratic.

## **Local emergency**

1. The commission has proposed “**localising emergency provisions**” under **Articles 355 and 356**, contending that localised areas **either a district or parts of a district** be brought under Governor’s rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.
2. It can be imposed **within the territory of a state** in cases of widespread **violence**, or a large scale **natural disaster** and which, in the opinion of the Union, is beyond the means of the State to control and the State is unwilling to control or react to.
3. **Needed**
  1. **State government can continue to function** and the Legislative Assembly would not have to be dissolved.
  2. **Response of the central government** would be **issue specific** and the Central Government would have to exit the moment the situation is back under control. Examples are **Gujarat riots**, Kosi floods.
  3. It would also reduce the temptation of the **Centre to misuse the emergency** provisions in Article 352 and **Article 356**.
  4. Given the strict parameters now set for invoking the emergency



provisions under Articles 352 and 356, exercise of duty under **Article 355 should be codified.**

4. **Not needed**

1. There are **other existing provisions like the Disturbed Areas Act.**
2. It will lead to **undermining of federal system.**

**Secular provision in our constitution**

- 
- (a) The term 'secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
- (b) The Preamble secures to all citizens of India liberty of belief, faith and worship.
- (c) The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).
- (d) The State shall not discriminate against any citizen on the ground of religion (Article 15).
- (e) Equality of opportunity for all citizens in matters of public employment (Article 16).
- ★ (f) All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).

- tion (Article 25).
- (g) Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).
  - (h) No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).
  - (i) No religious instruction shall be provided  
★ in any educational institution maintained by the State (Article 28).
  - (j) Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).
  - (k) All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).
  - (l) The State shall endeavour to secure for all the citizens a Uniform Civil Code (Article 44).

## Preamble

1.

dreamt so long .  
According to K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the Preamble is the 'horoscope of our sovereign democratic republic'.



## 2. Ingredients

### INGREDIENTS OF THE PREAMBLE

The Preamble reveals four ingredients or components:

1. Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.
2. Nature of Indian State: It declares India to be of a sovereign, socialist, secular democratic and republican polity.
3. Objectives of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.
4. Date of adoption of the Constitution: It stipulates November 26, 1949 as the date.

## 3. Justice

## 6. Justice—

The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.

Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women.

Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as distributive justice.

Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917). ★ ★

## 4. Equality



The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.

The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic.

The following provisions of the chapter on Fundamental Rights ensure civic equality:

- (a) Equality before the law (Article 14).
- (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
- (c) Equality of opportunity in matters of public employment (Article 16).
- (d) Abolition of untouchability (Article 17).
- (e) Abolition of titles (Article 18).

There are two provisions in the Constitution that seek to achieve political equality. One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325). Two, elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326).

## 5. Fraternity

### 9. Fraternity

... sense of brotherhood. The

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.

The Preamble declares that fraternity has to assure two things—the dignity of the individual and the unity and integrity of the nation. The word 'integrity' has been added to the preamble by the 42nd Constitutional Amendment (1976).

According to K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the phrase 'dignity of the individual' signifies that the Constitution not only ensures material betterment and maintain a democratic set-up, but that it also recognises that the personality of every individual is sacred. This is highlighted through some of the provisions of the Fundamental Rights and Directive Principles of State Policy, which ensure the dignity of individuals. Further, the Fundamental Duties (Article 51A) also protect the dignity of women by stating that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women and also



... and also  
> makes it the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

The phrase 'unity and integrity of the nation' embraces both the psychological and territorial dimensions of national integration. Article 1 of the Constitution describes India as a 'Union of States' to make it clear that the states have no right to secede from the Union, implying the indestructible nature of the Indian Union.

## **Citizenship**

### **1. Constitutional provisions**

## CONSTITUTIONAL PROVISIONS

The Constitution deals with the citizenship from Articles 5 to 11 under Part II. However, it contains neither any permanent nor any elaborate provisions in this regard. It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement. It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act, 1955, which has been amended in 1986, 1992, 2003 and 2005.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on 26 January, 1950:

To sum up, these provisions deal with the citizenship of (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) persons migrated to Pakistan but later returned;

- 2.
- 3.



and (d) persons of Indian origin residing outside India.

The other constitutional provisions with respect to the citizenship are as follows:

1. No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state (Article 9).

2. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament (Article 10).

3. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship (Article 11).

4.

### Acquisition of Citizenship

The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent, registration, naturalisation and incorporation of territory:

5. Loss of citizenship

### Loss of Citizenship

The Citizenship Act, 1955, prescribes three ways of losing citizenship whether acquired

under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation:

**1. By Renunciation** Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.

Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.

**2. By Termination** When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.

**3. By Deprivation** It is a compulsory termination of Indian citizenship by the Central government, if:

(a) the citizen has obtained the citizenship by fraud:

(b) the citizen has shown disloyalty to the



(b) the citizen has shown disloyalty to the  
Constitution of India:

6.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them. However, this general rule of absence of discrimination is subject to some exceptions, viz,

1. The Parliament (under Article 16) can prescribe residence within a state or union territory as a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or union territory. Accordingly, the Parliament enacted the Public Employment (Requirement

7.

as to Residence) Act, 1957 and thereby authorised the Government of India to prescribe residential qualification only for appointment to (non-Gazetted posts) in Andhra Pradesh, Himachal Pradesh, Manipur and Tripura. As this Act expired in 1974, there is no such provision for any state except Andhra Pradesh.<sup>5</sup>

2. The Constitution of India



2. The Constitution (under Article 15) prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth and not on the ground of residence. This means that the state can provide special benefits or give preference to its residents in matters that do not come within the purview of the rights given by the Constitution to the Indian citizens. For example, a state may offer concession in fees for education to its residents.

3. The freedom of movement and residence (under Article 19) is subjected to the protection of interests of any schedule tribe. In other words, the right of outsiders to enter, reside and settle in tribal areas is restricted. Of course, this is done to protect the distinctive culture, language, customs and manners of schedule tribes and to safeguard their traditional vocation and property against exploitation.

In the case of Jammu and Kashmir, the state legislature is empowered to define the persons who are permanent residents of the state and confer any special rights and privileges in matters of employment



under the state government, acquisition of immovable property in the state, settlement in the state and scholarships and such other forms of aid provided by the state government.<sup>6</sup>

## Article 35A

Article 35A of the Constitution gives Jammu and Kashmir legislature a blanket veto to decide who all are 'permanent residents' of the State and confer upon them special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare.

### Significance of the article:

- It limits the privileges to Kashmiris alone in the state of Kashmir, thus ensuring that Kashmiri demography and culture of Kashmiriyat remains intact.
- Article 35A gives effect to the legislative history of the constitutional status of J&K. The significance of legislative history, as also underlined by the constitution bench of the Supreme Court in Delhi government vs the L-G case, when interpreting statutes is to understand the true intent of the legislature while making them.
- It ensures that the property, jobs and other state welfare schemes are not abused by the outsiders thus facilitating developmental opportunities for the Kashmiris.
- It helps the state of J&K exercise autonomy that the state of India agreed with, through the instrument of accession, thus limiting the secessionist tendencies and providing incentives for integration and cooperation of J&K with the Indian state.

### The controversy

- **Insecurities of the Kashmiri masses-** Article 35A provides autonomy to the state. However, it also reduces the opportunity for the Kashmiris to integrate with the rest of India which may breed insecurity.
- **Denies rights and autonomy to Kashmiri woman-** A Kashmiri woman may be dismembered from ownership of property if chooses her marriage partner from outside Kashmir.
- **Discriminatory provision-** By conferring special protection to the permanent citizens of the J&K, Article 35(A) is alleged to create a "class within a class of Indian citizens".
- **Constitutionality of the provision-** A section of people believes that Article 35A should be held "unconstitutional" as the President could not have "amended the Constitution" by way of the 1954 order, and that it was only supposed to be a "temporary provision". The Article was never presented before Parliament, and came into effect immediately.

The two sides of this controversy have their valid points on the issue of scrapping or not scrapping article 35A, but any further steps can be taken only after reaching a consensus and after addressing the anxieties of the Kashmiri people.

## Article 35A and Article 370

1. **Article 35A** of the constitution empowers J&K legislature to define state's **permanent residents** and their **special rights and privileges**

without attracting a challenge on grounds of violating the Right to equality. It was incorporated into the constitution in 1954 by a **Presidential order** issued under **Article 370 (1) (d) of the Constitution**.

## 2. Arguments against Article 35

1. **Bypassing Parliament:** Article 368 (i) of the Constitution empowers **only Parliament to amend the Constitution**. The parliamentary route of law making was bypassed when the **President incorporated Article 35A** into the Constitution.
2. **Denial of rights of women:** It protects certain provisions of the J&K constitution which **denies property rights to native women who marry from outside the State**. The denial of these rights extends to her children also.
3. **Violation of fundamental rights:** under **Article 14, 19 and 21** as **it is discriminatory against non-residents** as far as government jobs and real estate purchases are concerned.
4. **Temporary provision:** Article 370 was only a '**temporary provision**' and the Constitution makers did not intend Article 370 to be a tool to bring permanent amendments, like Article 35A, in the Constitution. Thus the Article 35 A is against the "**very spirit of oneness of India**" as it creates a "class within a class" of Indian citizens.

## 3. Arguments for Article 35A

1. It is feared that it would lead to further **erosion of J&K's autonomy** and trigger demographic change in valley.
2. It increases the possibility of **flooding the valley by people from outside** the valley which may increase trust deficit.
3. If article 35A is not upheld, the **legality of many presidential orders** issued under art 370 may become questionable.
4. Though it was not passed as per the amending process given in Article 368, but was **inserted** on the **recommendation of J&K's Constituent Assembly** through a Presidential Order.
5. Since **Article 35A predates basic structure theory of 1973**, it cannot be tested on the touchstone of basic structure.
6. Also, **similar provisions are also in place in several other states**, including some in the Northeast and Himachal Pradesh. Domicile-based reservation in admissions and even jobs is followed in a number of states, including under Article 371D for undivided Andhra Pradesh.

#### 4. Views of J&K HC on Article 370

1. Supreme court earlier ruled that **Article 370 assumed a place of permanence** in the Constitution and the feature was beyond amendment, repeal or abrogation.
2. It also observed that the **President under Article 370 (1)** was conferred with power to extend any provision of the Constitution to the State.
3. It said that J&K, while acceding to the Dominion of India, **retained limited sovereignty and did not merge with it.**
4. It also clarified that **Article 35A gave protection to existing laws** in force in the State.



## 2. Indian constitution, Union and states, Federal structure, local governance

### Fundamental rights

#### 1. Exceptions to Equality

be destroyed even by an act of Parliament.

### Exceptions to Equality

The rule of equality before law is not absolute and there are constitutional and other exceptions to it. These are mentioned below:

1. The President of India and the Governor of States enjoy the following immunities (Article 361):
  - (i) The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office.
  - (ii) No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term of office.
  - (iii) No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.
  - (iv) No civil proceedings against the President or the Governor shall be instituted during his term of office in any court in respect of any act done

✓ by him in his personal capacity,  
whether before or after he entered  
upon his office, until the expiration  
of two months next after notice has  
been delivered to him.

2.

2. No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).
3. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105).
4. No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194).
5. Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause



(c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that "where Article 31-C comes in, Article 14 goes out".

6. The foreign sovereigns (rulers),  
★ ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
7. ★ The UNO and its agencies enjoy the diplomatic immunity.

### 3. Exceptions to equality of opportunity



There are three exceptions to this general rule of equality of opportunity in public employment:

- (a) Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh.<sup>5</sup>
- (b) The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.
- (c) A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

#### 4. Exceptions to Article 19

The State can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

## 5. Exceptions to freedom of movement

The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and the protection of interests of any scheduled tribe. The entry of outsiders in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

The Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the interest of public morals. The Bombay High Court validated the restrictions on the movement of persons affected by AIDS.

## 6. Article 28



Thus, Article 28 distinguishes between four types of educational institutions:

- (a) Institutions wholly maintained by the State.
- (b) Institutions administered by the State but established under any endowment or trust.
- (c) Institutions recognised by the State.
- (d) Institutions receiving aid from the State.

In (a) religious instruction is completely prohibited while in (b), religious instruction is permitted. In (c) and (d), religious instruction is permitted on a voluntary basis.

#### 7. Article 30

The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

Minority educational institutions are of three types:

- (a) institutions that seek recognition as well as aid from the State;
- (b) institutions that seek only recognition from the State and not aid; and
- (c) institutions that neither seek recognition nor aid from the State.

The institutions of first and second type are subject to the regulatory power of the state with regard to syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff and so on. The institutions of third type are free to administer their affairs but subject to operation of general laws like contract law, labour law, industrial law, tax law, economic regulations, and so on.

#### 8. Exceptions to fundamental rights



## EXCEPTIONS TO FUNDAMENTAL RIGHTS

### 1. Saving of Laws Providing for Acquisition of Estates, etc.

Article 31A<sup>16</sup> saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of speech, assembly, movement, etc.). They are related to agricultural land reforms, industry and commerce and include the following:

### 2. Validation of Certain Acts and Regulations

Article 31B saves the acts and regulations included in the Ninth Schedule<sup>18</sup> from being

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challenged and invalidated on the ground of contravention of any of the fundamental rights.

11.

However, in a significant judgement delivered in January 2007, the Supreme Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule. The court held that judicial review is a 'basic feature' of the constitution

### 3. Saving of Laws Giving Effect to Certain Directive Principles

Article 31C, as inserted by the 25th Amendment Act of 1971, contained the following two provisions:

- (a) No law that seeks to implement the socialistic directive principles specified in Article 39(b)<sup>21</sup> or (c)<sup>22</sup> shall be void on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) or Article 19 (protection of six

12.

13. **Significance of fundamental rights**

1. They constitute the bedrock of democratic system in the country.

2. They provide necessary conditions for the material and moral protection of man.

3. They serve as a formidable bulwark of individual liberty.



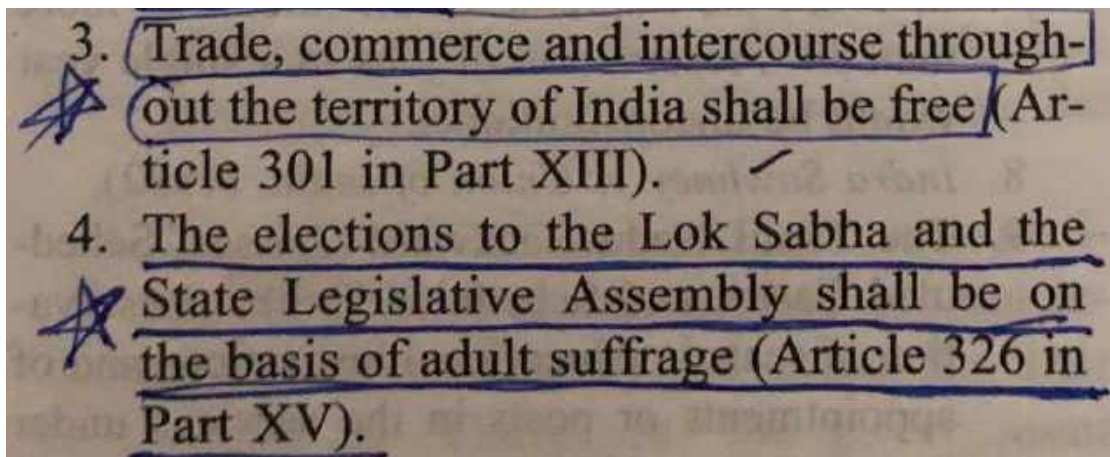
4. They facilitate the establishment of rule of law in the country.
5. They protect the interests of minorities and weaker sections of society.
6. They strengthen the secular fabric of the Indian State.
7. They check the absoluteness of the authority of the government.
8. They lay down the foundation stone of social equality and social justice.
9. They ensure the dignity and respect of individuals.
10. They facilitate the participation of people in the political and administrative process.

### RIGHTS OUTSIDE PART III

Besides the Fundamental Rights included in Part III, there are certain other rights contained in other parts of the Constitution. These rights are known as constitutional rights or legal rights or non-fundamental rights. They are:

1. No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
2. No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).

14.



## Directive principles

1. The **Directive Principles of State Policy** are considered fundamental in the governance of the country, and **establish socio-economic democracy** in India. The DPSP draws its power from **Irish constitution** including Gandhian principles. They are described under **Part-IV** of our constitution.

### 2. Features of DPSP

1. These are **constitutional instructions** or recommendations to the state in legislative, executive and administrative matters.
2. They resemble '**Instrument of Instruction**' enumerated in Government of India Act, 1935.
3. DPSP **constitute a very comprehensive economic, social and political programme** for modern democratic state. They embody the concept of the welfare state.
4. **BR Ambedkar** had pointed out that the directives have great value because they lay down that the goal of Indian polity is '**economic democracy**' as distinguished from 'political democracy'.

### 3. Significance to governance

- Right to free legal aid (Article 39 A) – Legal Services Authorities Act, 1987
- Organization of panchayats (~~Article 42~~ **Article 40**) – 72<sup>nd</sup> and 73<sup>rd</sup> Constitutional Amendment Act.
- Right to work and public assistance (Article 41) – Minimum Wages Act, Old age and disability pension, etc.
- Just and humane conditions of work (Article 42) – Maternity Benefit Act
- Early childhood care and education (Article 45)– National Food Security Act, Right to Education
- Promotion of interest of backward classes (Article 46) – policy of affirmative action, National Commission for SC and ST (Article 338 and 338A)
- Separation of Judiciary from Executive (Article 50) – Criminal procedure code, 1973



#### 4. Socio-economic principles

1. **Land reforms and abolition of zamindari system.** Ceiling has been placed on land and property to fix the limit of person's holdings.
2. **National commission for the welfare of women** has been established by the Government. **Maternity benefit act, 2016** has been enacted to protect interests of women workers.
3. Parliament has brought a **Minimum wages act, 1948** under which rules require that **both men and women be paid equal wages for equal work.**
4. Schemes like **MGNREGA** (Right to work), **SABLA**, **ICDS**, National Social Assistance, Mid-day meal etc. are examples of state attempt to follow the principles embodied in the **articles 39, 41.**
5. Creation of **NALSA** has led to a nation-wide network to provide **free and competent legal aid to the poor** and to organise lok adalats for promoting equal justice.

#### 5. Gandhian Principles

1. Through **73rd and 74th Amendments** to the constitution, **Panchayati Raj** has been given the **constitutional status** with more powers (Article 40).
2. **Khadi and Village industries board**, KVIC, Coir board, **Silk board** and so on have been setup for the development of cottage industries in rural areas.
3. **Seats are reserved for SCs and STs** and other weaker sections in educational institutions and government services. The **protection of civil rights act, 1976** and **Schedule Castes and Scheduled Tribes (prevention of atrocities act, 1989)** have been enacted to protect the SCs and STs from social injustice and exploitation.
4. **Laws to prohibit slaughter of the cows, calves** and bullocks have been enacted in some states.

#### 6. Liberal-intellectual

1. **Article 44:** To secure for all citizens a **uniform civil code (UCC)** throughout the country.
2. **Article 45:** To provide **early childhood care and education** for all children until they complete the age of six years.
3. **Article 48:** To organise **agriculture and animal husbandry** on modern and scientific lines. Agriculture and animal husbandry

have been modernised by providing **irrigation facilities**, **HYV seeds**, etc. Cow and calf slaughter have been banned in certain areas.

4. **Article 48-A:** To **protect and improve the environment** and to safeguard forests and wild life. The **wildlife protection act, 1972** and **Forest conservation act, 1980** have been enacted to safeguard wildlife and forests respectively.
5. **Article 49:** To **protect monuments**, places and objects of artistic or historic interest which are declared to be of national importance. The **Ancient and Historical monument act (1951)** has been enacted to protect the monuments, places and objects of national importance.
6. **Article 50:** To **separate the judiciary from the executive** in the public services of the State. **Criminal procedure code (1973)** separated judiciary from the executive.
7. **Article 51:** To **promote international peace and security**. India has been promoting policies of **non-alignment** and **Panchsheel** to promote international peace and security.

## 7. Importance of DPSP

1. It helps courts in examining and **determining constitutional validity of law** in the light of socio-economic propriety.

The Directives also play the following roles:

1. They **facilitate stability and continuity** in domestic and foreign policies in political, economic and social spheres in spite of the changes of the party in power.
2. They are **supplementary to the fundamental rights of the citizens**. They are intended to fill in the vacuum in Part III by **providing for social and economic rights**.
3. Their implementation creates a favourable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy without

citizens. Political democracy, without economic democracy has no meaning.

4. They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.
5. They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
6. They serve as common political manifesto. 'A ruling party, irrespective of its political ideology, has to recognise the fact that these principles are intended to be its guide, philosopher and friend in its legislative and executive acts'<sup>19</sup>.

They amplify the Preamble, which solemnly resolves to secure to all citizens of India justice, liberty, equality and fraternity.

#### 8. Directives outside Part-IV

### DIRECTIVES OUTSIDE PART IV

Apart from the Directives included in Part IV, there are some other Directives contained in



other Parts of the Constitution. They are:

1. Claims of SCs and STs to Services: The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State (Article 335 in Part XVI).
2. Instruction in mother tongue: It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350-A in Part XVII).
3. Development of the Hindi Language: It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (Article 351 in Part XVII).

## 9. Criticism

1. The DPSP are non-justiciable in nature i.e. they are not legally



enforceable by the courts for their violation.

2. The **directives are neither properly classified nor logically arranged**. The declaration mixes up relatively unimportant issues with the most vital economic and social questions.
3. **DPSP lead to constitutional conflict** between Centre and states, Centre and President, Chief minister and governor.

#### 10. Failure of state to implement DPSP

1. The **concentration of wealth has increased**. India's top 1% holds close to half of the country's total wealth.
2. Although the school enrolment has almost reached universal, the high dropout rate and **quality of education remains an area of concern**.
3. **PRI** suffers from the lacunae of **funds, functions and functionaries**.
4. **Women labour force participation** rate have come down to 22.4 percent (ILO global employment trends report 2013).
5. **Limited material resources**.
6. **Lack of political will** and lack of awareness and organized action on the part of the people.

#### 11. Fundamental rights vs DPSP

**CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES**

The justiciability of Fundamental Rights and non-justiciability of Directive Principles on the one hand and the moral obligation of State to implement Directive Principles (Article 37) on the other hand have led to a conflict between the two since the commencement of the Constitution. In the Champakam Dorairajan case<sup>20</sup> (1951), the Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail. It declared that the Directive Principles have to conform to and run as subsidiary to the Fundamental Rights. But, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendments acts. As a result, the Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

—The above situation underwent a major change in 1967 following the Supreme Court's judgement in the Golaknath case<sup>21</sup> (1967). In that case, the Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are "sacrosanct in nature". In other words, the Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles. The Parliament reacted to the Supreme Court's judgement in the Golaknath Case (1967) by enacting the 24th Amendment Act (1971) and the 25th Amendment Act (1971). The 24th Amendment Act declared that the Parliament has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. The 25th Amendment Act inserted a new Article 31C which contained the following two provisions:

1. No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)<sup>22</sup> and (c)<sup>23</sup> shall be void on the ground of contravention of the

In the Kesavananda Bharati case<sup>24</sup> (1973),

the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid.

Later, the 42nd Amendment Act (1976) extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the Directive Principles and not merely those specified in Article 39 (b) and (c). In other words, the 42nd Amendment Act accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31. However, this extension was declared as unconstitutional and invalid by the Supreme Court in the *Minerva Mills case*<sup>25</sup> (1980). It means that the Directive Principles were once again made subordinate to the Fundamental Rights. But the Fundamental Rights conferred by Article 14 and Article 19 were accepted as subordinate to the Directive Principles specified in Article 39 (b) and (c). Further, Article 31 (right to property) was abolished by the 44th Amendment Act (1978). In the *Minerva Mills case* (1980), the Supreme Court also held that 'the Indian Constitution is the bedrock of the balance



tution is founded on the bedrock of the  
between the Fundamental Rights and the Di-  
rective Principles. They together constitute the  
core of commitment to social revolution. They  
are like two wheels of a chariot, one no less  
than the other. To give absolute primacy to

12. Though much has been achieved but still there is a **long way to go to accomplish this objective of a welfare state**. The DPSP have long **shaped the policy making in India** and will continue to do so, as the principles enshrined are fundamental in nature. The recent enactment of right to education, Housing for All scheme, Mission Indradhanush etc. showcase the vigils of the state to abide by the DPSP.

## Fundamental Duties

1. Fundamental duties in the Indian constitution are **inspired by the constitution of erstwhile USSR. Article 51A**, which contains fundamental duties, was added into the constitution through **42nd amendment** after **Swaran singh** committee recommendations.
2. **Scope of FD**
  1. As **rights and duties are the two side of the same coin**, it is expected that one should observe one's duties in order to seek the enforcement of one's fundamental rights. For example, if a person approaches the court for the enforcement of any of his fundamental rights, the court may refuse to take a lenient view of him if it comes to know that the concerned individual has no respect for what is expected of him by the state as a citizen of the country.
  2. While **determining the constitutionality of any law**, if court finds that it seeks to give effect to any of the duties, it may consider such law to be reasonable, and thereby, save such law from unconstitutionality.
3. **Importance**
  1. They **serve as a reminder** to the citizens that while enjoying their

rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.

2. They serve as a **warning against anti-social activities** like burning the national flag, destroying public property and so on.
3. They **serve as a source of inspiration** for the citizens and **promote a sense of discipline** and commitment among them. They create a feeling that the **citizens are no mere spectators** but active participants in the realisation of national goals.
4. They help the courts in examining and **determining the constitutional validity** of a law. In 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to **give effect to a fundamental duty**, it may consider such law to be **reasonable**.
5. **They are enforceable by law**. Hence, the Parliament can provide for the imposition of appropriate penalty for failure to fulfill any of them.

#### 4. Drawbacks

1. **They are not well defined**. Their **ambiguity** and **vagueness** make it difficult for common man to understand them.
2. They are merely moral postulates and do not have justiciability. **There is no provision in the constitution for direct enforcement** of these duties. There is no sanction either to prevent their violation.
3. They prescribe **duties for the citizens** and **not for the government** for better life and social progress.
4. Fundamental duties **miss some important duties** such as cast vote, pay taxes, family planning etc.
5. They **should have added after Part III** so as to keep them on par with fundamental rights.

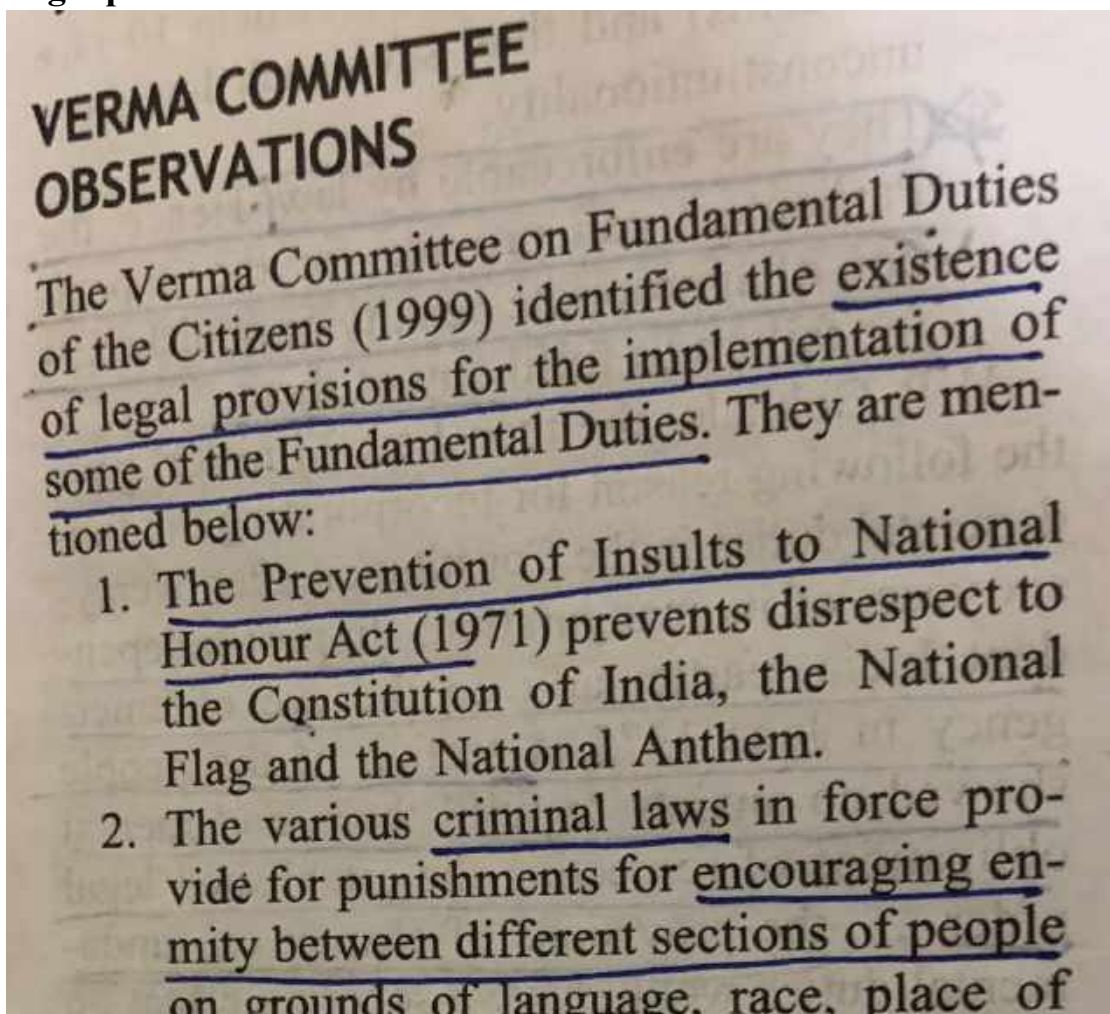
#### 5. What duties can be added

1. **Duty to vote:** The state can take several steps to ensure that this duty to vote is made operational and effective. One method through which this may be achieved is by **developing a system of incentives for voters** and conversely disadvantages for those who abstain from performing their duty to vote.
2. **Duty to pay taxes:** The incorporation of the right to pay taxes as part of Fundamental Duties in the Constitution **will shift the onus**



onto the taxpayer to pay taxes rather than the tax department to collect them.

3. **Duty to help accident victims:** With the **increase in the number of accidents**, it has become pertinent for India to recognise this duty as one owed by its citizens towards each other.
  4. **Duty to keep the premises clean:** The most effective mechanism to tackle **uncleanliness is to sensitise people** about this duty. Therefore, it is imperative that a Fundamental Duty to this effect be added to the Constitution.
  5. **Duty to prevent civil wrongs:** It is not enough that a citizen refrains from committing wrong, he has a duty to see that fellow citizens **do not indulge in the commission of wrongs**.
  6. Fundamental Duties constitute the **conscience of our constitution** and they should be treated as constitutional values that must be propagated by all citizens.
6. **Legal provisions for FD**



birth, religion and so on.

3. The Protection of Civil Rights Act<sup>4</sup> (1955) provides for punishments for offences related to caste and religion.
4. The Indian Penal Code (IPC) declares the imputations and assertions prejudicial to national integration as punishable offences.
5. The Unlawful Activities (Prevention) Act of 1967 provides for the declaration of a communal organisation as an unlawful association.
6. The Representation of People Act (1951) provides for the disqualification of members of the Parliament or a state legislature for indulging in corrupt practice, that is, soliciting votes on the ground of religion or promoting enmity between dif-

ferent sections of people on grounds of caste, race, language, religion and so on.

7. The Wildlife (Protection) Act of 1972 prohibits trade in rare and endangered species.

8. The Forest (Conservation) Act of 1980 checks indiscriminate deforestation and diversion of forest land for non-forest purposes.

### **Unique character of Indian constitution**

1. Indian constitution **borrowed** its **structural part** from **1935 act**, **philosophical part** from American and Irish constitutions, **political part** from British constitutions. Also it borrowed major features from Canadian, Soviet and French constitutions. Though our constitution borrowed from so many sources, it is unique in character.

#### **2. Uniqueness**

1. **Blend of rigidity and flexibility:** Some provisions can be **amended with a special majority**, some with **simple majority** and some with **special majority** along with **ratification** of half of the total states. No country has such different procedures.

2. **Parliament and SC:** **Parliament** in India isn't as strong as in **Britain** and **Judiciary** not as supreme as in **USA** which recognises no limit on scope of judicial review. Our constitution **provides Judiciary with judicial review** however avoid expressions like due process of law.

3. **Emergency provisions:** Emergency provision enables the **transformation of federal structure** into a **unitary one** without any formal amendments. This is very unique to India.

4. **Adult suffrage:** India adopted **adult suffrage from the very start** which was bold highly remarkable and unique. Even UK, USA failed to do so.

5. **Three tier government:** **73rd and 74th constitutional amendment Act** established a **three tier** government with panchayat and municipality formations. Thus the vision of grass root self governance is achieved.



3. As **Dr BR Ambedkar** said that **nobody holds any patent rights** in the fundamental ideas of a constitution. Borrowing from other sources is no plagiarism. Framers of the constitution borrowed but suitably modified the contents rectifying the mistakes.

## **Direct election of Mayor**

1. The passage of the **74th** Constitution Amendment in 1992 **resulted** in **Urban Local Bodies (ULBs)**. However, it did not prescribe the manner of election, tenure or powers of the Mayors of ULBs. The **current election** of Mayor is regulated by **Municipal elections act of different states**. Recently, a private member's bill was brought in Parliament advocating direct election of Mayor in large Indian cities.

### **2. Pros of direct election**

1. While there are multiple reasons for India's **urban woes**, one of the underlying problems is the absence of **powerful and politically accountable leadership** in the city.
2. It will create politically relevant Mayors, hence it will create a culture of **meritocracy, performance** and accountability.
3. Since the actions of Mayor is going to **directly affect** citizens (works related to water supply, **sanitation, cleanliness, birth registration** etc.,) hence it makes a **strong case** for direct election.
4. It will **ensure autonomy** as she doesn't have to comply to diktats from the party ruling the state. Ensures no hijacking of agenda of the Municipality by the ruling party.
5. Chances are there that Mayor might prioritise **interest of his own ward** over others. Direct election would help in making him accountable to all.
6. It will be helpful in creating more **transparency** as **communication** and reporting will be directly done by mayor.

### **3. Challenges in direct election**

1. The first challenge is the **status quo** itself and the vested interests it has entrenched. State governments do not wish to delegate more authority to city level institutions.
2. There is a possibility that the **mayor** belongs to a party commanding **minority support** in the municipality. In such a case, **conflicts between councillors and Mayor** would be frequent. This

may lead to more deadlocks. Ex: Shimla.

3. The state government appoints an **Municipal Commissioner**, to discharge the executive functions. He can be used to cut the mayor down to size.
4. There is **little evidence** to suggest that directly **elected mayors are better**. States like **Rajasthan** and **HP** which introduced directly elected Mayors reversed the decision due to the difficulties posed by such a system.

#### 4. **Way forward**

1. We **need a powerful political executive** in the city with **more autonomy**, whether directly or indirectly elected.
2. **Greater devolution of funds**, functions and functionaries (3Fs) to local bodies.
3. The **commissioner** can be made responsible to the **mayor**. This will enhance accountability.
4. **Municipal officials** and staff should be provided **training** and imparted skill sets needed for specialised functions like **waste management**, sewage treatment, city planning etc.
5. **Greater synergy between elected members and officials** who should be brought under elected members and appointed as full time members rather than birds of passage.
6. Building **transparency** and implementing **citizen's charter**.

## **Aadhar**

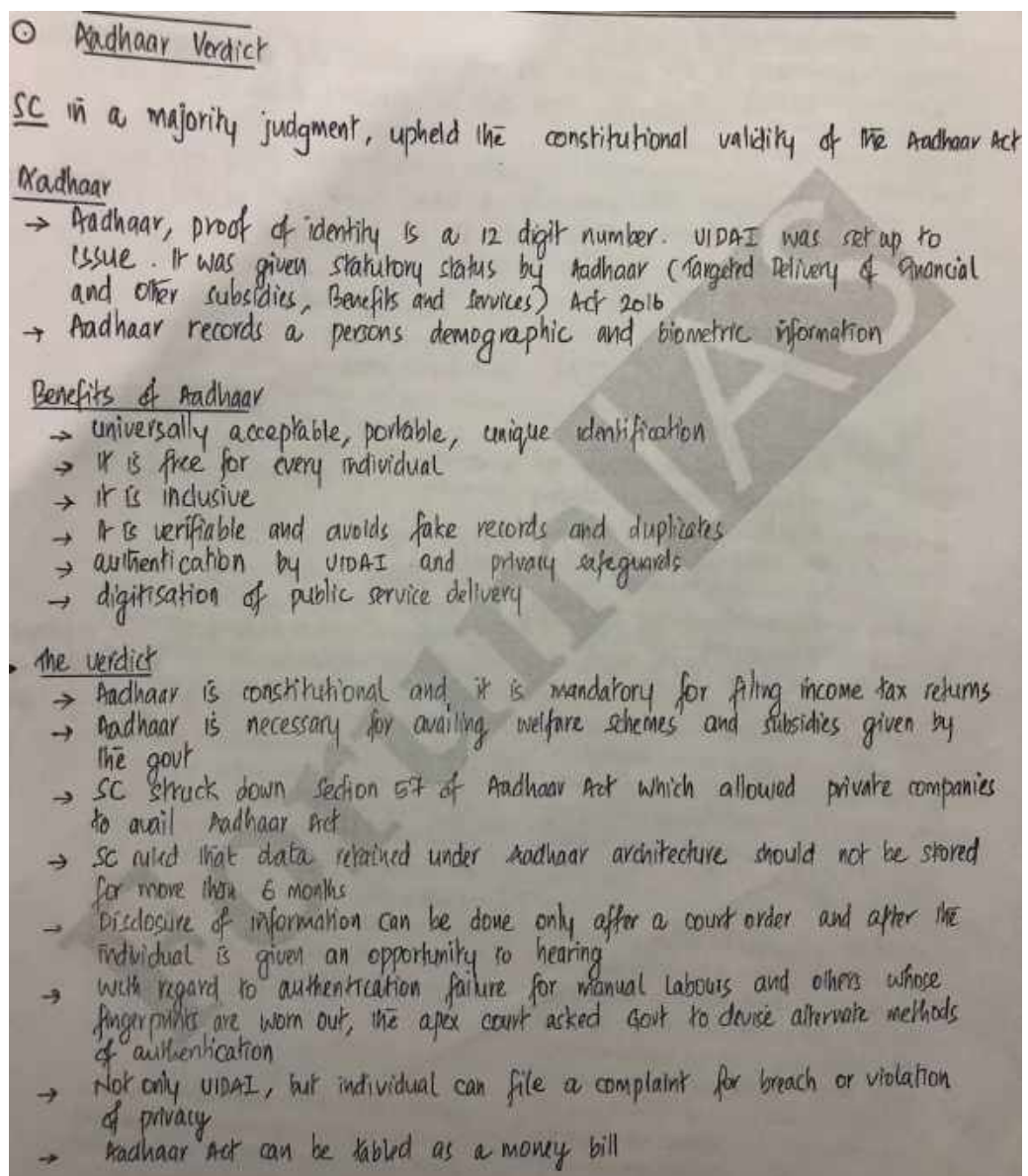
1. "The government estimates that **₹90,000 crore** have been saved in the past few years till March 2018 by the use of Aadhaar," Mr. Jaitley said. The **Digital Dividend Report prepared by the World Bank** estimates that India can save **₹77,000 crore every year** by the use of Aadhaar.

#### 2. **Facts of Aadhar**

1. **More than 122 crore Aadhaar numbers** had been issued, covering 99% of India's population above the age of 18.
2. **Many state supported schemes**, including some by the DBT mechanism, **have been linked to Aadhaar**. 10.33 crore MGNREGA card holders get wage payment through DBT in their bank accounts.

3. **22.80 crore of PAHAL and Ujjwala beneficiaries** are given cooking gas subsidies through DBT in their Aadhaar-linked bank accounts.
  4. The Income Tax Department has already linked **21 crore PAN card holders** with their **Aadhaar numbers**.
3. **SC judgement on Aadhar**
1. While **upholding the constitutional validity of Aadhaar scheme**, the Supreme Court has also ruled that **Aadhaar Act doesn't violate your right to privacy** when you agree to share biometric data.

2.



1. **Students of CBSE, NEET, UGC also do not require Aadhaar number** to appear in exams. Even schools cannot seek Aadhaar



card for admissions.

2. The constitution bench of the top court has also **struck down the national security exception under the Aadhaar Act**. This will indirectly ensure greater privacy of individual's Aadhaar data while restricting the government accessibility to it.
3. Justice Sikri said Aadhaar would not lead to a surveillance state because the **data was kept in silos**. The program's **invasion of privacy was minimal** and served a much larger public interest by providing identities to India's poor and marginalized citizens. After going through the Aadhaar scheme and structure, **it is difficult to profile a person** on the basis of minimal biometric information collected, the court said.

Observations of judges

- Privacy is not violated as only minimalist and necessary information is collected
- Aadhaar passes the triple test -
  - existence of law
  - legitimate state interest
  - test of proportionality
- Dignity of the community is linked with their right to welfare schemes
- the act has been established for the public good
- Aadhaar is a tool for inclusion
- Power of the choice rests with the individual, so Aadhaar cannot be made mandatory
- Aadhaar does not create surveillance state

Arguments against

- Aadhaar as a money bill is a fraud on the constitution
- safety of biometric system
- violates right to informational privacy
- no independent regulatory framework
- different logic for different rights → not required for RTE, but required for NPSA
- delinking with Bank etc but linking with PAN
- Now an individual can approach court; it will lead to unending legal battles
- Issues with Aadhaar implementation

Committees

- B.N. Srikrishna committee on Data Protection

4.

## Uniform Civil Code (UCC)

## ○ Uniform civil code

### Constitution

Article 44 says 'the state shall endeavor to secure for the citizens a uniform civil code through out the territory of India'

### UCC

a common set of laws governing personal matters for all the citizens of the country irrespective of religion presently different laws regulate these aspects for the adherents of different religions

### Law Commission

Law commission in its consultation paper on 'family Law Reforms' stated that 'a ucc is neither necessary nor desirable at this stage'.  
Law commission also said 'a unified nation does not necessarily need to have uniformity'

### Sc cases

- 1) Shirur murt case (1954), sc supported the cause for a ucc
- 2) Sarla mudgal case (2015) sc supported the introduction of a ucc

### Analysis

#### Benefits

- divest religion from social relations and personal laws
- ensure equality and justice to both men and women
- improve the conditions of women
- personal laws at present are exploited by those wielding power
- reduce vote bank politics

#### Challenges

- three impediments as said by Law ministry
  - conservatism
  - misconceived notions about personal laws
  - separatism
- India's long history of personal laws cannot be given up easily
- to reach a consensus and drafting a law

### Law Commissions recommendations

- 1) Removal of discriminatory provisions in personal laws in all religions
- 2) Division of property equally after divorce
- 3) Uniform age of marriage of 18 years
- 4) Stricter ban on child marriage
- 5) 'Nikahnamas' should make it clear that 'polygamy is a criminal offence and this should apply to all communities'

### **Fundamental right to freedom of speech and expression**

1. **Ban on books:** Satanic verses, Kancha Ilaiah, Wendy Dongier, Perumal Murugan. In both Kancha Ilaiah and Perumal Murugan case.
2. **Ban on Films:** Padmaavat, Lipstick under my Burkha.

#### 2) Constitution

Article 19(1)(a)  
Article 19(2)

#### 3) Issues

- 1) Threat to public order
- 2) against creative freedom
- 3) chilling effect on free speech (Self-Censorship)
- 4) majoritarianism
- 5) indiscriminate use of section 95 of CrPc
- 6) concerns of judicial censorship
- 7) "hecklers veto" (Goons threatening directors and producers)
- 8) state acting like 'Parens Patriae'
- 9) influence the masses

#### 4) Case of films

- 1) Pre-censorship (Only films undergo pre-censorship)
- 2) CBFC is a statutory body under cinematograph Act. Films can be publically exhibited only after they get certification from CBFC
- 3) New guidelines issued under cinematograph Act by each govt



## 5) Imp Judgements

SC in Rangarajan vs P. Jagjeevan ram case held that a mere threat to public order cannot be a ground to suppress freedom of expression

In KA Abbas case, the constitutional validity of CBFC was challenged. However SC held that censorship of films including prior restraint is valid under the constitution

## 6) Shyam Benegal committee recommendations

- 1) emphasis on certification over censorship
- 2) selection of Board members should be based on criteria
- 3) 50% representation for women
- 4) more categories of certifi

3. Dissent is safety valve in democracy -- Justice Chandrachud.

## Laws for banning books

**Changing Existing Laws:** The Bill envisages reading down **Section 295A** of the Indian Penal Code that provides for imprisonment of up to **three years** for deliberate and malicious acts intended to outrage religious feelings or any class by insulting its religion or religious beliefs as well as **Section 298**, which is **similar to 295A** as it criminalises speech critical of religious organisations or religious figures, and therefore a major deterrent to free expression. **For Ex.-** Wendy Doniger's *The Hindus: An Alternative History* was withdrawn from circulation.

**Amendment in Custom Act:** The most important part of the Bill is the proposal to **amend the Customs Act** that allows governments to suspend the shipping in of books over an indefinite period (as had happened with the ban on **Salman Rushdie's Satanic Verses**).

**Changes in IT Act:** It wants to limit the **bar on obscenity in the Information Technology Act** to **child pornography**.

## △ Right to marriage & Right to convert

### 1) Context

- 1) SC reversed the order of the Kerala HC which nullified the marriage of Hadiya
- 2) Anti-conversion laws in some states

### 2) Constitution

- 1) Article 21
- 2) Article 25

### 3) SC judgement in Shafin Jahan vs Asokan case 2018

- 1) SC said that right to choose religion and marry is an intrinsic part of meaningful existence - neither the state nor 'patriarchal supremacy' can interfere in a person's decision
- 2) Matters of belief and faith, including whether to believe or not are at the core of constitutional liberty

### 4) Issues related to religious conversion

- 1) Constitution guarantees the right to freedom of religion, however it does not explicitly mention right to conversion
- 2) Religious conversion is a sensitive social issue and has wider socio-political implications
- 3) Indian society is pluralist and heterogeneous
- 4) There are also concerns of forced conversions
- 5) Religious practices and social exclusion has forced many people to voluntarily convert to another religion

### 5) Anti-conversion laws

states like MP, Odisha, Arunachal Pradesh enacted anti-conversion laws

## △ Hate Speech

### 1) Context

G. K. Viswanathan Committee constituted by the Centre has recommended strict laws to deal with cases of hate speech and the use of cyber space to spread hatred and incitement

### 2) Definition

SC observed that hate speech is an effort to marginalise individuals based on their membership in a group.

267th Law Commission report (2017) defines hate speech as an "incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious beliefs and the like"

### 3) Constitution

Freedom of speech is subjected to reasonable restrictions

### 4) Concerns

- 1) Targeting minorities or vulnerable groups
- 2) Increasing incidents of online hate speech
- 3) Cyber bullying and affecting the dignity of women
- 4) Incitement to violence
- 5) Defamation
- 6) Majoritarianism

### 5) Viswanathan Committee recommendations

- 1) Appointment of cybercrime coordinators in all states and anti-cybercrime cells in each district to deal with online hate speech
- 2) Amend IPC and insert section 153C to prohibit incitement to hatred
- 3) Insert section 505A in the IPC to prevent provocation of violence on the grounds of identity