POLITY
IMPORTANT CONSTITUTIONAL ARTICLES, JUDGEMENTS AND ACTS
FOR UPSC MAINS 2020
PURPOSE OF THE POLITY-IMPORTANT ARTICLES, JUDGEMENTS and ACTS DOCUMENT

The document pertains to important constitutional articles, Supreme Court judgements and key legislation, which can be used for content enrichment in the upcoming UPSC Mains Examination, 2020. The topics have been linked with the latest facts, data, committee reports, etc., wherever deemed necessary.

The document can assist in fulfilling the demands of the various sections of your answers, including:

- Writing a compelling introduction.
- Substantiating your arguments with relevant facts and figures while giving a solid constitutional basis to the answer.
- Suggesting a constructive way forward by highlighting the observations of various committees, commissions and judiciary.

Much data has been represented and provided in the form of attractive tables and charts, which will aid the memorization of essential facts and facets and make the same easier. The presentation can be emulated in the answers in order to increase their visual appeal.

The document has been kept in a compact form to facilitate its usage in a time-constrained schedule. The student may keep this document as a ready-reference material for rather quick revisions before the exam.
Polity - Important Constitutional Articles, Judgements and Acts for UPSC Mains 2020

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1. Judiciary

1.1. Higher Judiciary

1.1.1. Contempt of Court

1. **Article 129** and **Article 215** of the Constitution conferred powers on the Supreme Court and High Court respectively to punish for contempt of itself.

2. **Contempt of Courts Act, 1971** defines contempt - the expression contempt of court is not defined in the constitution.


1.1.2. Transfer of Judges

1. **Article 222 (1)** - Transfer of Judges from one High Court to another High Court by the President after consultations with the Chief Justice of India (CJI).

2. **Third Judges case (1998)**, the Supreme Court opined that, CJI should consult in addition to collegiums of four senior most judges of Supreme Court, the Chief Justices of two High Courts.

3. Issue: Unusual transfer of the Chief Justice of the Madras High Court (Justice Tahilramani) to Meghalaya High Court and former’s resignation from the post.

1.1.3. Vacancy of Judges

1. As per Department of Justice data - The current vacancy status in the 25 high courts of India reveals that out of 1,079 sanctioned judges’ posts, which include both permanent as well as additional judges, 404 posts (approximately 37.44 per cent) are vacant.

2. Further, around 6000 posts are lying empty in the subordinate courts.

3. Poor Judges to Population Ratio: India has only 20 judges per million population. Whereas, Law Commission had recommended 50 judges per million.

4. Recent developments: **Article 217** deals with appointment and conditions of the office of a Judge of a High Court. Recently, President, in exercise of his powers under Article 217, appointed additional judges as permanent judges in the Allahabad High Court. An additional judge is usually elevated as a permanent judge after two years based on performance. They are appointed in case of a temporary increase in business of a High Court, for a maximum of 2 years.

1.1.4. Post-Retirement Appointment of Judges

1. Context: The former Chief Justice of India, Ranjan Gogoi was nominated to the Rajya Sabha.

2. **Article 124(7)**: Restricts post-retirement appointments in Judiciary itself, but not in posts of president, governor, member of parliament, etc.

3. Other Instances of Post-Retirement Appointment of Judges: In 1952, Justice Fazl Ali was appointed the Governor of Orissa, In 1967 - Chief Justice Subba Rao resigned from the Supreme Court to contest elections for President and in recent times, Chief Justice P Sathasivam was appointed the Governor of Kerala.

1.1.5. Article 131 - Original jurisdiction of the Supreme Court

1. Recently Kerala and Chhattisgarh have filed a suit in the Supreme court challenging the constitutional validity of various central laws such as Citizenship Amendment Act (Kerala) and the National Investigation Agency Act (Chhattisgarh), under Article 131 of the Indian Constitution.

1.1.6. Article 137 - Review of judgments or orders by the Supreme Court

1. Context: Curative petition was filed by Nirbhaya case convicts in the Supreme Court after mercy petition and review petition which has been rejected.

2. Concept of the curative petition: It is based on the interpretation of **Article 137**, which provides that in the matter of laws and rules made under **Article 145**, the Supreme Court has the power to review any judgement.
pronounced (or order made) by it. Its objectives are two: avoid miscarriage of justice and to prevent abuse of process.

3. It is not mentioned in the constitution and was first evolved by the Supreme Court of India in *Rupa Ashok Hurra vs. Ashok Hurra and another case* (2002) on the question of whether an aggrieved person is entitled to any relief against the final judgement/order of the Supreme Court, even *after the dismissal of a review petition*.

4. Earlier, the Supreme Court had agreed for a review petition of the Sabarimala case.

### 1.1.7. Special powers- Under Article 142

1. **Context**: Recently, the Supreme Court invoked its special powers under Article 142 of the Constitution to *remove a Manipur minister*.

2. **Under Article 142**, the Supreme Court can pass any decree or judgment for "complete justice" in any matter pending before it and any such matter can be enforced in the entire country. This practically gives unlimited power to the SC.

3. **Article 212** of the Constitution bars courts from inquiring into proceedings of the Legislature.

4. In this case, however, prompted by the fact that the Speaker’s conduct has been called into question on several occasions, the Court said it was “constrained” to invoke the court’s extraordinary powers under Article 142 of the Constitution.

### 1.1.8. Pendency of Cases

1. **As per the National Judicial Data Grid (NJDG)**: In 2018, 2.93 crore cases are pending in the subordinate courts, 49 lakhs in High Courts and 57,987 cases in Supreme Court.

2. **According to the Economic Survey 2018-19**: There are about 3.5 crore cases pending in the judicial system, especially in district and subordinate courts. About 87.54 per cent of the total pendency of cases is in the district and subordinate courts.

### 1.1.9. Regional Bench of Supreme Court

1. **Context**: Vice President of India has suggested setting up of four Regional Benches of the Supreme Court. Currently, the Supreme Court sits at Delhi. Earlier, Law Commission in its 229 report had recommended, Supreme Court of India should consist of two Divisions, namely (a) Constitutional Division, and (b) Legal Division.

2. **Article 130**: The Supreme Court may sit at place(s) other than Delhi on the order of the Chief Justice of India with the prior approval of the President of India.


### 1.1.10. RTI and Judiciary

1. **Context**: In *Supreme Court of India vs Subhash Chandra Agarwal case*: A five-judge Constitution Bench of Supreme Court declared that the Office of the Chief Justice of India (CJI) is a ‘public authority’ under the Right to Information (RTI) Act.

2. Through the judgement, the SC upheld the *Delhi High Court judgment (2010)* which ruled that the CJI and the other justices of SC are liable to disclose information as in the case of other public authorities under the purview of the RTI Act.

### 1.1.11. Gender Gap and Sensitisation in Judiciary

1. **Context**: The Attorney General (AG), K K Venugopal, in his written submission to the Supreme Court (SC), has emphasised the need for greater gender sensitisation among members of the judiciary.

2. **Data on Gender Gap in Judiciary**: There are only 80 women judges out of the total sanctioned strength of 1,113 judges in the SC and the HCs. Out of these 80 women judges, there are only two in the SC, and the other 78 are in various HCs, comprising only 7.2% of the total number of judges.

### 1.1.12. CJI as the “master of the roster”

1. **Article 145**: Supreme Court with the approval of the President may make rules regulating the practice and procedure of the Court.
2. In November 2018, Constitution Bench, led by the CJI, Dipak Misra, declared that “the Chief Justice is the master of the roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted.”

3. Earlier in 2017, four senior most judges of the SC had blamed the present CJI for selectively allotting cases to preferred benches. In response to that, the CJI published a new subject wise roster for allocation of cases.

1.2. Judicial Reforms

1.2.1. All India Judicial Services

1. Article 312 of the Constitution provides for creation of an all-India Judicial service.

2. Context: Recently, the proposal of the All India Judicial Services (AIJS) has been revisited by the legal think tank Vidhi.

3. Other committees recommending it: The idea was first introduced by the 14th Report of the Law Commission in 1958. Then, Swaran Singh Committee in its recommendation in 1976 called for creation of the same. In 2013, Parliamentary Standing Committee on Law and Justice also recommended for creation of AIJS to fill up vacancies.

1.2.2. Virtual Courts and Live Streaming of Court Proceedings

1. Context: Recently, the Gujarat High Court has become the first Court to live stream judicial proceedings on YouTube channel.

2. The Supreme Court in Swapnil Tripathi v Supreme Court of India (2018) case had ruled in favour of opening up the apex court through live-streaming.


1.2.3. Criminal Law Reform

1. Context: In mid of 2020, the Ministry of Home Affairs (MHA) constituted a national level committee (under Ranbir Singh) for reform in criminal law.

2. Criminal law in India is governed by Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Indian Evidence Act, 1872, etc.

3. Other Committees on similar lines: Malimath Committee Report (2003) and Madhav Menon Committee (2007) had provided recommendations on the Criminal Justice System of India (CJSI).

1.3. Subordinate courts

1.3.1. Gram Nyayalayas

1. Context: Supreme Court has directed all the states to come out with notifications for establishing ‘Gram Nyayalayas’.

2. Gram Nyayalayas or village courts are established under the Gram Nyayalayas Act, 2008 and has both Civil and Criminal jurisdiction over the offences.

3. Expected to reduce around 50% of the pendency of cases in subordinate courts. However, only 208 ‘Gram Nyayalayas’ are functioning in the country as against 2,500 estimated to be required by the 12th five-year plan.

1.4. Miscellaneous

1.4.1. New rules for Tribunals

1. Article 323A deals with administrative tribunals and Article 323B deals with tribunals for other matters.

2. Context: Union Ministry of Finance has framed new rules prescribing uniform norms for the appointment and service conditions of members to various Tribunals.

3. Union of India vs R. Gandhi case, 2010: SC laid certain principles like only judges and advocates should be considered for appointment as judicial member, administrative support for all Tribunals and its members should be from the Ministry of Law and Justice.
1.4.2. Fast Track Special Courts
1. **Context:** Ministry of Law and Justice has started a scheme for setting up 1023 Fast Track Special Courts (FTSCs) for rape and POSCO act cases.
2. **Verma Committee Report** (2013) Requested to set up fast track special courts for trying cases of sexual assault.
3. In 2000, 11th Finance Commission recommended a scheme for creation of 1734 Fast Track Courts (FTCs) for disposal of long pending cases in lower courts.

1.4.3. Alternative Dispute Resolution (ADR) Mechanisms
1. The Legal Services Authorities Act was passed in 1987 to encourage out-of-court settlements. ADR comprises of Arbitration, Mediation, Conciliation, and Negotiation.
2. **Clearing the backlog of cases:** Lok Adalats have disposed more than 50 lakh cases every year on average in the last three years.
3. Lok Adalats and state legal services authorities dispose off over 14 lakh cases in a single day.
4. A High-Level Committee, under the **Chairmanship of Justice B. N. Srikrishna**, to review the institutionalization of arbitration mechanism and suggest reforms thereto has submitted its report recently.

2. Elections

2.1. Criminalization of Politics

2.1.1. Extent of Criminalization of Politics in India
1. **Legal Provisions:** Section 8 of the Representation of People Act, 1951, bans convicted politicians. Article 102(1) and 191(1) disqualifies an MP and an MLA respectively on certain grounds.
2. According to **Association for Democratic Reforms (ADR) report**, 30% of the members of the Lok Sabha in 2009 had criminals cases against them which went up to 34% in 2014 and has further reached an alarming level of 43% as regards the elected members in the Lok Sabha in 2019.
3. There is an increase of 109% (in 2019) in the number of MPs with declared serious criminal cases since 2009. The ADR analysis shows that candidates facing criminal charges had double the chances of winning as compared to those with clean record.

2.1.2. Steps taken by Judiciary to control Criminalisation of Politics
1. **Context:** In February 2020, Supreme Court made it mandatory for political parties to publish, including on official social media pages, details of cases against their candidates and the reasons for selecting them over others.
2. **Key Judgements:** In **People's Union for Civil Liberties (PUCL) vs Union of India 2014** case introduced NOTA option, **Lok Prahari Vs UOI case 2018** (mandatory the disclosure of the source of income of political candidates), **Lily Thomas v. Union of India ,2013 case** (Struck down as unconstitutional Section 8(4) of the Representation of the People Act (RPA)-1951). Also, the SC stated that if a sitting MP/MLA is convicted in a case, the punishment for which is more than 2 years’ imprisonment, then (s) he will be disqualified immediately and the seat declared vacant.
3. In 2017, the Supreme Court had ordered that special courts be set up across the country to fast-track the long-pending trials of lawmakers.
4. In 2014, in **Public Interest Foundation vs. Union of India**, SC ordered that criminal trial pending against any MP or MLA must be disposed of within one year from the date of framing of the charge.

2.1.3. Steps taken by Election Commission to control Criminalization of Politics
1. **Context:** In October 2020, ECI constituted a 2 member committee to examine the issues concerning the expenditure limit for a candidate.
2. **Other Steps:** System of flying squads has been introduced to seize black money, EC directed all the Returning Officers (ROs) to reject the nomination papers of any candidate who stands convicted on the day of filing the nomination papers, intense voter awareness campaign.
3. **EC Imposed Limits on Campaign Expenditure by a Candidate, But Not By a Political Party.**

   It is mandatory for all candidates to open an account in the bank for expenses, payment of which will be made through cheque. Every candidate is to declare their criminal antecedents three times before an election, in a national daily and two regional language newspapers.

4. **Recent new Guidelines** – The declaration will have to spread over three rounds of publicity beginning with soon after filing nomination and ending towards the end of campaign period. In March 2020, EC announced a new self-declaration format for political parties - public details of criminal antecedents of every candidate and explain reasons for their selection. This follows the Supreme Court order and earlier EC instructions of 2018 and 2019.


### 2.2. Electoral Reforms

#### 2.2.1. Electoral Bonds

1. **Context**: The information received under the Right to Information revealed some startling facts on electoral bonds. Around 99.7% of the bonds purchased by value are of Rs 1 crore & Rs 10 lakh denominations.

2. Introduced in **Union Budget 2017-18** in an attempt to cleanse the system of political funding in the country.

3. **Chanel of Black-money**: Elimination of a cap of 7.5% on corporate donations, electoral bonds have also been exempted from IT Act and are also opened for foreign funding. Further, as of November 2019, nearly 76.5% of the electoral bonds purchased during 2018-19, cannot be traced to any specific political party.

#### 2.2.2. One Nation One Election

1. **Context**: Prime Minister of India has once again advocated ‘One Nation, One Election’ system to prevent the impact of the model code of conduct on development works due to frequent elections.

2. They were the norm until 1967. But following dissolution of some Legislative Assemblies in 1968 and 1969 and that of the Lok Sabha in December 1970, elections to State Assemblies and Parliament have been held separately.

3. **Recommendations**: Law Commission of India and Election Commission recommended for simultaneous elections. The 79th report of the parliamentary standing committee on Law and Justice recommended a two phase election schedule – one concurrent with Lok Sabha elections, the second in the mid-term of the Lok Sabha.

#### 2.2.3. State Funding of Elections

1. **Context**: In October 2020, ECI constituted a 2 member committee to examine the issues concerning the expenditure limit for a candidate.

2. **Recommendations on State Funding**: Indrajit Gupta Committee (1998) & Dinesh Goswami committee suggested that state funding would ensure a level playing field for poorer political parties, Law Commission Report (1999) stated that state funding of elections is desirable.

#### 2.2.4. A Single Voters’ List

1. **Context**: In August 2020, Prime Minister’s Office (PMO) held a meeting to discuss the possibility of preparing a common voters’ list for elections to all local bodies, state assemblies and Lok Sabha.

2. **Article 324(1)** empowers the EC to supervise, direct, and control and revision of electoral rolls for all the elections to Parliament and state legislatures. While, Articles 243K and 243ZA deal with elections to panchayats & municipalities in the states and a constitutional amendment would be required for common voters’ list.

3. **Recommendations by Various Committees**: Law Commission in its 255th report recommended for a single electoral roll. Earlier, Election Commission of India in 2004 had called for common electoral roll to avoid confusion in electoral list.

#### 2.2.5. Model Code of Conduct

1. **Context**: Election Commission had revoked former Madhya Pradesh CM’s (Kamal Nath's) 'star campaigner' status citing repeated violations of Model Code of Conduct.

2. **MCC** is a set of guidelines issued by the Election Commission (EC), which helps it in keeping with Article 324 of the Constitution.
3. Though MCC does not have any statutory backing but certain provisions of the MCC may be enforced through invoking corresponding provisions in other statutes such as the Indian Penal Code 1860, Code of Criminal Procedure 1973, and Representation of the People Act 1951.
4. Standing Committee on Personnel, Public Grievances, Law and Justice, recommended making the MCC legally binding and recommended that the MCC be made a part of the RPA 1951.

2.3. Miscellaneous

2.3.1. Delimitation Commission
1. Context: The government has constituted a Delimitation Commission to redraw Lok Sabha and assembly constituencies of the Union Territory Jammu and Kashmir and the northeastern states of Assam, Arunachal Pradesh, Manipur and Nagaland.
2. Under Article 82, the Parliament enacts a Delimitation Act which establishes a delimitation commission. Under Article 170, States also get divided into territorial constituencies as per Delimitation Act after every Census.
3. In 2002, the 84th Constitutional Amendment was used to freeze the process of delimitation for Lok Sabha and State assemblies till at least 2026.
4. Chairman of Delimitation Commission 2002 recommended that delimitation should be carried out after every census so that changes are not too extensive and the value of every elector's vote remains more or less steady.

2.3.2. Women Participation in politics
1. Context: Lokniti-CSDS and Konrad Adenauer Stiftung released a survey report which assessed the perception of women on different dimensions of political participation and representation in India.
2. Between the First Lok Sabha (1952) and the Seventeenth Lok Sabha (2019) women’s representation has increased from 4.4 per cent to 14.4 per cent, while Global average is 22.9 per cent.
3. More women representation in local bodies: There are approximately 13.45 lakh Elected Women Representatives (EWRs) in PRIs which constitute 46.14% of total Elected Representatives (ERs). Women sarpanchs accounted for 43 per cent of total gram panchayats (GPs) across the country.

2.3.3. Rule 49MA of the Conduct of Election Rules
1. Context: Election Commission of India may revisit penal provision on false EVM or VVPAT machine claim
2. Under Rule 49MA of the Conduct of Election Rules, a voter who claims that the EVM or the paper trail machine did not record his or her vote correctly is allowed to cast a test vote.
3. If the voter fails to prove the mismatch, poll officials can initiate action against the complainant under Section 177 of the Indian Penal Code, which deals with giving false submission.

2.3.4. Proliferation of social media
1. The number of social media users in India has doubled in the last 3 years to presently over 350 millions, of which 70% are active social media users.
2. Influence public sentiment through exchange of unverified, directed and fake news as was evident in the 2016 US Presidential elections.
3. The recommendations of Umesh Sinha Committee on Section 126 of RPA Act and provisions of Model Code of Conduct in view of social media expansion need to be adopted.

3. Executive

3.1. Mercy petition
1. Article 72: President alone has the sole authority to grant mercy petition in criminal cases on the aid and advice of the council of ministers.
2. Shatrughan Case judgment: Laid down certain procedural guidelines for mercy petition.
3. Judicial review of Mercy Power: In Epuru Sudhakar & Anr. vs. Govt. of A.P. case, apex court said that pardon power by the President or Governor, as the case may be, is not immune from judicial review.

3.2. Custodial Violence and need for Police Reforms
1. Context: Recent custodial death of a father and son by police in Tamil Nadu and the death of a gangster (with alleged political connections) in an encounter by Uttar Pradesh police has put a question mark on objectivity and credentials of the police in delivering justice.
2. According to the National Campaign Against Torture, about 3/4th deaths in police custody occurred primarily as a result of torture in 2019.

3. Vohra Committee report, that highlighted the nexus between the criminals, politicians and government functionaries. Second Administrative Reforms Commission (2007) also noted the excessive power in the hands of police.

4. Supreme Court’s directions in Prakash Singh case 2006 on police reforms must be implemented. Also, Model Police Act, 2006 requires each state to set up an Independent Complaints Authority. India should ratify the UN Convention against Torture and Section 197 of the CrPC needs to be reformed.

3.3. Powers of Governor and issues involved

1. Context: Recent controversy in Rajasthan around Governor’s refusal to summon a session as desired by Council of Ministers has brought in light certain issues about Powers of Governors.

2. Article 163 (1): Council of ministers to aid and advise the governor in the exercise of his functions. While, Article 163 (2) highlights that if any question arises whether a matter falls within the governor’s discretion or not, the decision of the governor is final.

3. Constitutional discretion: Reservation of a bill for the consideration of the President (Articles 200 and 201), Recommendation for the imposition of the President’s Rule in the state (Article 356), Special responsibility in 5th and 6th schedule areas.

4. Supreme Court Judgement in B.P. Singhal v. Union of India called for a fixed tenure for Governors. In Bommai case, Supreme court laid down grounds for when Article 356 can be imposed. Also, Sarkaria commission and Punchhi Commission have given recommendations on effective use of discretionary powers.

3.4. Impeachment of US President

- Context: In December 2019, Donald Trump has become the third US President in history to be impeached by the House of Representatives.

<table>
<thead>
<tr>
<th>Procedure for Impeachment of President of India (Article 61)</th>
<th>Procedure for Impeachment of President of US</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Indian President can be removed from office for “violation of the constitution” whose meaning is not defined in the constitution.</td>
<td>1. US president can be removed from office for ‘Treason, Bribery, or other high Crimes and Misdemeanours’.</td>
</tr>
<tr>
<td>2. The impeachment charges can be initiated by either House of Parliament.</td>
<td>2. Only House of Representatives (lower house) can initiate impeachment proceedings.</td>
</tr>
<tr>
<td>3. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days’ notice should be given to the President.</td>
<td>3. Once this is passed with a simple majority, the process goes for trial.</td>
</tr>
<tr>
<td>4. After the impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges.</td>
<td>4. Next, the Senate (upper house) is convened like a court, with both sides presenting evidence.</td>
</tr>
<tr>
<td>5. If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the bill is so passed.</td>
<td>5. At the conclusion of these hearings, the President can be removed from office only if two-thirds of the Senate votes for it.</td>
</tr>
</tbody>
</table>
### 3.5. US Presidential Election

**Context:** Recently, US Presidential elections were held.

<table>
<thead>
<tr>
<th>Process of Indian Presidential Election</th>
<th>Process of US Presidential Election</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> To be eligible for election as President she should be a citizen of India and should have completed 35 years of age, among other things.</td>
<td><strong>1.</strong> President must be 35 years of age, be a natural-born citizen, and must have lived in the United States for at least 14 years.</td>
</tr>
<tr>
<td><strong>2.</strong> President's election is held in accordance with the system of proportional representation by means of the single transferable vote.</td>
<td><strong>2.</strong> The two main political parties -Republican and Democratic- hold primaries and caucuses to choose the best candidate to represent them in the general election.</td>
</tr>
<tr>
<td><strong>3.</strong> Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates.</td>
<td><strong>3.</strong> Each party holds a national convention to select a final presidential nominee. State delegates from the primaries and caucuses will &quot;endorse&quot; their favorite candidates.</td>
</tr>
<tr>
<td><strong>4.</strong> President is elected by members of electoral college consisting of elected members of -both the Houses of Parliament, legislative assemblies of the states; and legislative assemblies of the Union Territories of Delhi and Puducherry.</td>
<td><strong>4.</strong> US citizens vote to elect a group of officials called electors, (the total being 538) who choose the president and vice-president. The number of electors in a state is proportionate to the size of its population.</td>
</tr>
<tr>
<td><strong>5.</strong> Candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes.</td>
<td><strong>5.</strong> The candidate who receives the majority of the votes from the people of a state will receive all electoral votes of that state. The presidential nominee with the most electoral votes becomes the President.</td>
</tr>
</tbody>
</table>

### 3.6. Foreigners Tribunals

1. **Context:** Ministry of Home Affairs (MHA) has amended the Foreigners (Tribunals) Order, 1964, and has empowered district magistrates in all States and Union Territories to set up tribunals.

2. **Issues:** Amnesty International in its report “Designed to exclude” has raised allegations over the functioning of the Foreigners Tribunals (FTs) in Assam.

3. Under the provisions of Foreigners Act 1946 and Foreigners (Tribunals) Order 1964, only Foreigners Tribunals are empowered to declare a person as a foreigner.

### 3.7. Alternative Mechanisms

1. **Context:** The current Government to fast track ministerial decision making is setting up Alternative mechanisms.
   - For instance, Cabinet allowed setting up of Alternative mechanism to fast-track strategic sale of CPSEs, mergers of state-owned banks, planned privatisation in state-owned companies, etc.

4. Legislature

4.1. Parliamentary Committees

1. **Context:** Recently, suggestions were made to increase the tenure of parliamentary committees from 1 year to two years in the backdrop of COVID-19.

2. **Bypassing parliamentary committees:** E.g. only 25% of the bills introduced were referred to the Committees in the 16th Lok Sabha, as compared to 71% and 60% in the 15th and 14th Lok Sabha respectively.

3. In the first session of the 17th Lok Sabha, 14 bills were passed and none were scrutinised by any Parliamentary Committee. Important bills like the RTI amendment Bill 2019, UAPA bill 2019 etc. were passed without their scrutiny and critical analysis by the Standing Committees.

4. Recommendations of the National Commission to Review the Working of the Constitution, 2002 like referring all bills to the Committees, longer tenure for its members and strengthening the Committees with adequate research support shall be taken up.

4.2. Parliamentary privileges

1. **Article 105 and Article 194** mentions two privileges, i.e. freedom of speech in Parliament & State Legislature and right of publication of its proceedings respectively.

2. **Recent cases of Breach of Parliamentary privileges:** Maharashtra State Legislature moved motions of breach of privilege against Arnab Goswami and Kangana Ranaut. Earlier, a member of the Indian parliament had moved a privilege motion against a TV channel for reporting that members’ first speech in the Lok Sabha was plagiarised.

3. Currently, there is no law that codifies all the privileges of the legislators in India. Therefore, there is a need for proper codification of privileges. E.g. Australia passed Parliamentary Privileges Act in 1987.

4.3. Anti-Defection Law

1. **Context:** Recently, some of the sitting MLAs in the Manipur government defected to the opposition creating instability in the state’s polity. Some other recent examples of defection could be seen in the states of Karnataka, Madhya Pradesh, Arunachal Pradesh and Uttarakhand.

2. **Tenth Schedule** also known as Anti-defection Law, was inserted in the Constitution in 1985, by the 52nd Amendment Act.

3. Supreme Court in the *Kihoto Hollohan versus Zachillu and Others, 1992* has said that judicial review is applicable on Speaker’s decision but *cannot be available at a stage prior to the making of a decision* by the Speaker/Chairman.

4. Various commissions such as National Commission to review the working of the constitution (NCRWC) have recommended that rather than the Presiding Officer, the decision to disqualify a member should be made by the President (in case of MPs) or the Governor (in case of MLAs) on the advice of the Election Commission.

4.4. Misuse of powers of Speaker

1. **Instances of Misuse of Powers:** The partisan role of the speaker in states like Manipur, Karnataka, Rajasthan, etc. with respect to disqualification of members of legislature.

2. Supreme Court in *Jagjit Singh versus State of Haryana (2006)* case highlighted the similar allegations about the confidence on the role of Speaker in the matters of impartiality.

3. Supreme Court in *Keisham Meghachandra Singh vs. the Hon’ble Speaker Manipur Legislative Assembly & Ors. (2020)* case held that disqualification petitions under the Tenth Schedule should be decided by Speakers within three months.

4.5. 9TH Schedule of The Indian Constitution

1. **Context:** Recently, a Union Minister emphasised the need to include all reservation-related laws in the Ninth Schedule of the Constitution, so that they are shielded from judicial review.
2. The Ninth Schedule was added by the 1st Amendment to the Constitution, which inserted Article 31B to shield laws being inconsistent with the Fundamental Rights. It also has Retrospective Operation.

3. In IR Coelho versus State of Tamil Nadu case, SC observed that Judicial review is a basic feature of the Constitution and laws placed under 9th schedule after 24th April, 1973 are open to Judicial scrutiny. SC laid down dual test to examine the validity of a law placed in the Ninth Schedule i.e. Whether it violates any fundamental right and if yes whether the violation also damages or destroys the basic structure.

5. Separation of powers

5.1. Constitutional Provisions safeguarding separation of powers among 3 organs

5.2. Judicial Activism and Judicial Overreach

1. Context: The Supreme Court has cautioned judges many times against judicial overreach and advised that judges must remain within the limits of the law and not peddle individual perceptions and notions of justice.

2. Judicial Activism stems from Article 142, wherein the SC can grant appropriate relief for doing complete justice. Article 13, Articles 32 (Supreme Court) and 226 (High Court) provides for Judicial review. However, Judicial activism is an approach to the exercise of judicial review, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions. Eg: Suo moto (on its own) cases, Public Interest Litigations (PIL), new doctrines etc.

3. Judicial Activism when overtly exercised results in usurping the powers of the Executive or the Legislature, which are the other two important organs of governance and is called Judicial Overreach.

4. Examples of Judicial activism: In Lily Thomas v. Union of India case 2013, the Supreme Court declared Section 8(4) of the Representation of the People Act, 1951, (RPA) as unconstitutional, Voter’s right to cast negative vote, Stay on Caste-Based Rallies in UP, Ruling on Election Manifesto(against Freebies given by Political parties), etc.

5. Examples of Judicial Overreach: Shyam Narayan Chouksey v. Union of India case 2016 , SC made it mandatory for Cinema halls to play National Anthem. Other instances of Judicial over-reach alleged by experts such as questioning Government policy decisions like 2G spectrum and coal mines allocation cases.

5.3. State Govt & Judiciary Tussle

1. Context: Chief Minister of A.P has accused the Supreme Court judge, Justice N.V. Ramana and some judges of Andhra Pradesh (AP) High Court of misconduct, corruption and political bias.

2. Article 121 and 211 expressly bars the Parliament and State Legislatures from discussing the misconduct of judges.

3. The allegation against the judges is unprecedented since it has been made publicly and thus threatens the credibility and independence of Judiciary. Supreme court Judgements: SC in the Kesavananda Bharati case (1973), stated that the doctrine of separation of powers is an integral part of the basic feature of the Constitution. Further, in Indira Nehru Gandhi v. Raj Narain, 1975 case SC held that in the Indian Constitution, there is separation of powers in a broad sense only. A rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to India.

6. Federalism

6.1. The Inter-State River Water Disputes (Amendment) Bill, 2019

1. Context: Inter-state river water disputes have been among the most pressing issues faced by the Indian federal system.

2. Federal Issue: Water governance in India is perceived and practised as the states’ exclusive domain. However, their powers are subject to those of the Union under Entry 56 about inter-state river water governance.

3. As per Article 262, the Parliament has enacted Inter-State Water Dispute Act, 1956 but fraught with issues like Separate Tribunals, lack of enforceability & uniform standards, etc.
4. Main provisions of Amended Bill: Dispute Resolution Committee, single Inter-State River Water Dispute Tribunal, maintenance of a databank at national level for each river basin.

6.2. GST Council and compensation related issues

1. Context: In a sharp retraction of its earlier position (act of God), the Finance Ministry said the Centre would borrow from the market to pay the GST compensation shortfall of Rs 1.1 lakh crore to states.
2. GST Council is a constitutional body under Article 279A, providing recommendations to the Union and State. The GST Compensation Act, 2017 guaranteed states that they would be compensated for any loss of revenue in the first five years of GST implementation (2017-22).
3. Issues: GST compensation cess is appropriated by the Union, Tax collections missed budgeted targets and caused severe fiscal distress to both the Union and States in FY19 and FY20, Lesser tax sharing, Meddling with state list, etc.
4. Other related news: A centralised AAAR (Appellate Authority for Advanced Ruling) has been created for any conflict of decisions between two or more SAAARs. This will provide certainty to taxpayers.

6.3. Centre-State Relations During COVID-19

1. Context: COVID-19 has brought to the fore the friction between Centre and States with respect to the current legal framework in managing a crisis.
2. Issues involved: Issues with Epidemic Diseases Act (EDA) 1897 (act does not describe the government’s duties); the Seventh Schedule to the Constitution does not have an explicit entry on disaster management, Issues with DM Act.
3. ARC had recommended the addition of a new entry in the Concurrent List for “Management of Disasters and Emergencies, Natural or Man-made.”

6.4. One Nation One Language

1. Context: On the occasion of Hindi Diwas, the Union home minister had proposed to promote Hindi as the country’s common language which resurfaced debate over one nation one language in the country.
2. Basis for promoting Hindi: Article 351: It shall be the duty of the Union to promote the spread of the Hindi language. Article 343 gives power to parliament to decide by law, the languages to be used for official work. Article 344 provides for constitution of a parliamentary committee every 10 years to recommend to the President regarding progressive use of the Hindi language.
3. Key Debates: Relation between Language and Identity (The 2011 Census listed 1,369 ‘mother tongues’ in the country. Hindi is only one among them), Language vs Nationalism. Three-Language Formula.

6.5. Demand for Sixth Schedule Status

1. Context: Arunachal Pradesh assembly unanimously passed a resolution for the entire state to be included in the Sixth Schedule of the Constitution.
2. Earlier, State government had also demanded to amend the Constitution and waive Article 371(H) and put Arunachal Pradesh under the provisions of Article 371(A) and 371(G) in line with Nagaland and Mizoram (provides special protection with respect to religious and social practices, customary laws).
3. Special provision with respect to 6th schedule is provided under Article 244(2) and Article 275(1) of the Constitution. It was based on the reports of Bardoloi Committee formed by the Constituent Assembly. The tribals have been given freedom to exercise legislative and executive powers through an autonomous regional council and autonomous district councils (ADCs).

6.6. Asymmetric Federalism in practice in India

1. Special provisions to some states: Special provisions’ applicable to States are mainly in the form of empowering the Governors to discharge some special responsibilities. E.g. Articles 371 to 371J.
2. Union Territories: These are directly administered by Centre. Also, there are Union Territories with a legislature, and Union Territories without a legislature.
3. Tribal areas and scheduled areas under 5th and 6th schedule.
4. Economic asymmetry: E.g. Finance Commission Grants, Special category States, state disaster relief funds and compensates for any revenue loss to states after devolution of taxes.
7. Fundamental Rights

7.1. Rights and Various important Judgements & issues concerning them

7.1.1. Internet as Basic Right

1. **Context:** Kerala High court in *Faheema Shirin v. State of Kerala* case declared the right to Internet access as a fundamental right.

2. **SC in Anuradha Bhasin vs Union of India:** Declared that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of Internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g) respectively.

3. **Internet issue in J & k:** Supreme Court refused to restore 4G services in J & K and ordered setting up of a high-powered committee to look into the contentions raised by petitioners against limited 2G services in the Union Territory.

4. **Legislative provisions on Internet shutdowms:** Issued under Rule 2 (2) of the Temporary Suspension of Telecom Services [Public Emergency or Public Service] Rules, 2017. These rules are framed under the Indian Telegraph Act, 1885.

7.1.2. Right to Property

1. **Context:** Supreme Court has reiterated that forcible dispossession of a person of his private property without due process of law is a human right violation.

2. **Article 300-A** states that no person shall be deprived of his property save by authority of law.

3. **The Fair Balance test** to protect right to property. *Universal Declaration of Human Rights 1948* under Section 17(i) and (ii) also recognizes right to property.

7.1.3. Sedition

1. **Context:** Recent arrests in Bengaluru and Kashmir, on the grounds of protesting against the Citizenship Amendment Act and raising pro-Pakistan Slogans have reignited the debate around India’s sedition law.

2. As per **National Crime Records Bureau (NCRB),** there were 47 cases of sedition in 2014 but that number increased to 70 in 2018.

3. **Sedition falls under Section 124A of the Indian Penal Code.** In *Kedar Nath Singh v State of Bihar* case SC upheld the constitutionality of sedition, but limited its application to “acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence”.

4. In 1995, the Supreme Court, in *Balwant Singh v State of Punjab*, held that mere sloganeering which evoked no public response did not amount to sedition.

7.1.4. Sabarimala Temple Issue

1. **Context:** Supreme Court has deferred its decision on review of “2018 Sabarimala verdict” until a Seven Judges’ Bench examines broader issues such as essentiality of religious practices and constitutional morality.

2. In the “Indian Young Lawyers Association & Others vs The State of Kerala & Others” case, 2018, SC set aside the decades-old restrictions on the entry of women of reproductive age inside Sabarimala Temple and termed the restriction violating of Article 17.

3. **Key Constitutional questions:** Balancing the freedom of religion under Articles 25 and 26 with other FR’s, particularly the Right to equality (Article 14). Essentiality vs right to freedom of religion, Religious morality vs Constitutional morality, Group rights vs Individual Rights.

4. Supreme Court in *‘Ratilal Gandhi vs the State of Bombay’ (1954)* acknowledged that “every person has a fundamental right to entertain such religious beliefs as may be approved by his judgment or conscience”.

7.1.5. Right to Protest

1. **Context:** Recently, the Supreme Court (SC) has upheld the right to peaceful protest against the law but also cleared that public ways and public spaces cannot be occupied and that too indefinitely.

2. Right to protest peacefully is enshrined in the Indian Constitution—*Article 19(1)(a)* guarantees the freedom of speech and expression. Further, *Article 19(1)(b)* assures citizens the right to assemble peaceably and without arms.
3. SC referred to its 2018 judgment in the Mazdoor Kisan Shakti Sangathan vs Union of India and Another case, which tried to balance the interests of local residents with those of protesters to hold demonstrations.

4. SC’s Observations on Dissent: It upheld the existence of the right to peaceful protest against the legislation and held that “democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone That means, public ways and public spaces cannot be occupied, and that too indefinitely.

7.1.6. Right to Freedom of Press and related issues

1. Context: SC has asked the Centre to create an authority to check fake news and bigotry on air. Further, various PILs were filed objecting to the reporting by certain television news channels and news portals on the Tablighi Jamaat event held in March 2020.

2. Article 19(1) (a) implicitly protects freedom of Press under Right to freedom of speech and expression. Further, in 1950, the Supreme Court in Romesh Thapar v. State of Madras observed that freedom of the press lay at the foundation of all democratic organisations.

3. Issues: Violating Right to privacy under Article 21 and issue of Media Trials. Eg- Aarushi Talwar Murder Case (resulted in tarnishing the reputation of the victim and her family members). Further, the proliferation of fake and paid news in media content in the recent times.

4. Fake News- In India, there is no overarching framework to tackle it. Framework to tackle fake news is primarily limited to the IPC, IT Act etc. However, the application of these provisions is limited to specific offences. Some countries already have a legislative framework in place to deal with fake news like Singapore.

5. Statutory status should be given to News Broadcasters Association (NBA) which represents the private television news and current affairs broadcasters and Adherence to Media Ethics.

7.1.7. Prevention of Damage to Public Property


2. SC had laid down 10-point guidelines for the assessment of damages and liability in its judgment in Destruction of Public and Private Properties Vs State of A.P and others on April 16, 2009 based on Thomas Committee and Nariman recommendations.

3. According to the National Crime Records Bureau (NCRB) data, there were 14,876 cases of damage to public property pending before various courts in 2017.

4. Loss to property in recent protests: In 2016, Cauvery water dispute violence, an estimated loss of Rs 20,000 crore to Karnataka and Tamil Nadu, Jat quota protests cost Rs 34,000 crore loss to northern states.

5. Constitutional & Statutory provisions: Right to protest under Article 19 but also Right to property under Article 300(a). Also, Prevention of Damage to Public Property Act, 1984 punishes anyone “who commits mischief by doing any act in respect of any public property”.

7.2. Reservation

7.2.1. Reservation Policy

1. Context: Supreme Court’s five-judge Constitution bench held that providing 100 per cent reservation for Scheduled Tribes in scheduled areas of a State is not permissible. As it violated Articles 14 (equality before law), 15 (discrimination against citizens) and 16 (equal opportunity) of the Constitution.

2. Constitutional Provisions regarding Reservation: Article 15(4) and 16(4) for reservation for socially and educationally backward classes in admissions and Jobs. Article 330 and Article 332 provides for reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Lok Sabha and Legislative Assemblies of the States respectively.

3. Judicial pronouncements regarding Reservation: In Indra Sawhney vs. Union of India (1992) case, SC held that reservations shall not exceed 50 per cent and came out with creamy layer criteria. In M. Nagaraj vs. Union of India (2006), SC validated parliament’s decision to extend reservations for SCs and STs to include promotions with certain conditions.

4. Recently the Supreme Court upheld Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018.
7.2.2. Creamy Layer Criteria for SC/ST in Promotions

1. **Context:** Central Government has demanded for a review of 2018 Supreme Court Verdict in *Jarnail Singh vs Lachhmi Gupta Case*, related to reservations in promotions for SC/ST.

2. The concept of creamy layer criteria has its genesis in the *Indira Sawhney Case* (1992). In *Jarnail Singh vs Lachhmi Gupta Case* (2018) Supreme Court asked the government to examine the possibility of introducing creamy layer for Scheduled Castes (SCs) and Scheduled Tribes (STs).

7.2.3. Reservation in States

**RESERVATION- RESIDENCE, PLACE OF BIRTH**

1. As per Article 16(3), only the Parliament can make a law and not State Legislatures.

2. However, exceptions have been allowed only in special instances- Andhra Pradesh, Manipur, Tripura and Himachal Pradesh.

3. Constitutionally, some states have been provided special provisions under Art 371. For example, Uttarakhand, for locals in class III and IV jobs.

4. Some states go around Article 16(2) by specifying language as a criterion.

**EWS QUOTA IN STATES**

1. **Context:** Central government recently told the Supreme Court that state governments were free to decide whether to implement the 10% reservation for the economically backward in jobs and admissions.

2. The 103rd Constitution Amendment Act 2019 inserted Article 15 (6) and Article 16 (6) in the Constitution to allow reservation for the Economically Weaker Section (EWS) among the general category in central govt jobs, government educational institutions (EIs) as well as for admissions to private higher EIs. It was drafted with a will to mandate Article 46 of the Constitution of India which urges the government to protect the educational and economic interests of the weaker sections of society.

3. In *Ram Singh v. Union of India* (2015), SC asserted that social deficiencies may exist beyond the concept of caste (e.g. economic status / gender identity as in transgenders). However, in *M. Nagaraj v. Union of India* (2006), a Constitution Bench ruled that 50% ceiling is a constitutional requirement without which the structure of equality of opportunity would collapse.

7.2.4. Issue of Local Reservation in Private Sector Jobs

1. **Context:** Haryana Assembly has passed the *Haryana State Employment of Local Candidates Bill, 2020* to reserve 75% of private-sector jobs in the state for local residents. Similar demands are being raised in other states like Andhra Pradesh, Madhya Pradesh, Karnataka, Gujarat, Maharashtra etc.

2. **Constitutional provisions in question:** Violate Article 14 (Right to equality), Article 16 (Right to equal opportunity) and Article 19 (ensures that citizens can move freely throughout the territory of India).

3. Moreover, Article 16 does not empower the state government but rather the Parliament to provide reservation in jobs on the basis of residence but that too is limited to public sector.

7.2.5. Job Reservations, Promotion Quotas not a Fundamental Right

1. **Context:** Supreme Court ruled that there is no fundamental right to reservations in appointments and promotions under articles 16(4) and 16(4A) of the Constitution.

2. **Reservation vs Administrative efficiency:** Court held that Article 16 (4) and 16 (4-A) are in the nature of enabling provisions, vesting a discretion on the State Government and general efficiency of administration as mandated by Article 335 should not be affected for the same.

3. SC in several judgements such as *Indra Sawhney v. Union of India* (1992) and *M Nagaraj v. Union of India* (2006) case held that the government is under no constitutional duty to provide reservations for SCs and STs.

7.2.6. Sub-Categorization of Other Backward Classes (OBCs)

1. **Context:** Recently, the Union Cabinet approved the term extension of the commission to examine the issue of sub-categorization of Other Backward Classes (OBCs).

2. **Article 340** lays down conditions for the appointment of a Commission to investigate the conditions of backward classes.

3. **Idea of sub-categorization:** The *First Backward Class Commission report of 1955* had proposed sub-categorization of OBCs into backward and extremely backward communities. In 2015, the NCBC had proposed
that OBCs be divided into the following three categories - Extremely Backward Classes, More backward Classes and Backward classes.

7.2.7. SC, ST Reservation: States Given the Leeway for Sub-Classification

1. As per Article 341 and 342, the central list is notified by the President with respect to Scheduled Castes and Scheduled Tribes respectively.
2. States can now sub-classify SCs and STs in the central List to provide preferential treatment to certain SCs over other SCs, thereby allowing for equal representation.

8. Local Governance (PRIs & ULBs)

8.1. Important Constitutional Provisions Related to PRIs and ULBs

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<th>Gram Sabha</th>
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<td>Three-tier system of panchayats at village, intermediate and district levels</td>
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<td>Article 243C</td>
<td>Composition of Panchayats</td>
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<td>Article 243D</td>
<td>Seats are to be reserved for Scheduled Castes, and Scheduled Tribes.</td>
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<tr>
<td>Article 243F</td>
<td>All persons who are qualified to be chosen to the State Legislature shall be qualified to be chosen as a member of a Panchayat.</td>
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<td>Article 243G</td>
<td>Subjects as devolved by law to the various levels of Panchayats including the subjects as illustrated in Eleventh Schedule</td>
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<td>Article 243I</td>
<td>Establishment of Finance Commission in each State</td>
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<td>Article 243K</td>
<td>Independent Election Commission in each State</td>
</tr>
<tr>
<td>Article 243ZD</td>
<td>District Planning Committee to consolidate the plans prepared by Panchayats and Municipalities</td>
</tr>
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8.2. Securing State Election Commission’s autonomy

1. **Context:** Andhra Pradesh Government had passed **Andhra Pradesh Panchayat Raj Ordinance**, which in turn cut short the term of the State Election Commissioner (SEC) from five to three years resulting in end of term of incumbent SEC. The Ordinance was struck down by A.P High court as unconstitutional and HC’s decision was upheld by Supreme Court.

2. **Article 243K** states that the SEC shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court. The above ordinance was violation of Article 243K.

3. In **Kishan Singh Tomar case of 2006**, SC clarified that ECI and SEC enjoy the same status and power. **2nd ARC** suggested the use of a collegium system for appointment of the members of the poll panel.

8.3. The provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA), 1996

1. The **Bhuria Committee 1991** recommendations paved the way for the enactment of the PESA Act, 1996. It was enacted by the Centre to ensure **self-governance through Gram Sabhas** for people living in scheduled areas which are **not covered in the 73rd Constitutional Amendment Act**.

2. The act extends **Part IX of the Constitution** with certain modifications and exceptions, to the Fifth Schedule Areas notified under **article 244(1)**.

3. **Significance of PESA act:** Empowers Gram Sabha to safeguard and preserve traditions, Customs and cultural identity of people, check illegal land alienation, enhance people’s participation in decision making, etc.

4. **Problems/issues:** Dilution of role of Tribal advisory councils, Still forest department & it laws prevent the tribes to own the Minor Forest Produce, land Alienation and Acquisition.

5. **XAXA committee recommendations:** Restoration of alienated land to the tribal owners as per the provisions of the PESA and the confirmatory Acts by various States, FRA, 2006 could be utilized in eco-forestry rather than for food grain cultivation, which could give more return to the ST farmers

6. **Current news-** Since the PESA Act was passed, six states – Andhra Pradesh, Telangana, Himachal Pradesh, Maharashtra and Gujarat have made rules while Chhattisgarh, Odisha, MP and Jharkhand are yet to do so for implementation of the Act. Recently, Chhattisgarh started the process of framing rules for implementing the PESA Act- The rules will focus on empowering gram sabhas; protect their ‘cultural identity’ etc.

8.4. Urban Local Bodies & Issues associated

1. **Article 243Q** provides every State should constitute three types of municipalities in urban areas- Nagar Panchayat, Municipal Council and Municipal Corporation.

2. **Impact of the act on the Urban governance:** Recognition of ULBs as the third tier of governance, wider Political representation, Gender empowerment, Reformation of Municipal Financial, etc.

3. **Issues/challenges:** lack of effective devolution of power (as per **Article 243U**), Use of discretionary power by states, Lack of clarity on status of Mayor, GST has made the financial position of ULBs even more precarious, Multiple agencies (Housing Board, water Board, etc)
4. **2nd ARC recommendations**: Chairperson/Mayor should be directly elected, Full autonomy over the functions/activities devolved, Land banks should be leveraged for generating resources.

9. **Constitutional Bodies**

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<tr>
<th>CONSTITUTIONAL BODIES</th>
<th>IMPORTANT CONSTITUTIONAL PROVISIONS AND RELATED ISSUES</th>
</tr>
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</table>
| 1. Finance Commission  | • Under Article 280, Finance Commission is constituted by the President of India every Fifth year.  
• Functions: Govern the grants-in-aid (Article 275), sharing net proceeds between Centre & States, augment the Consolidated Fund of a state, etc  
• Current aspects: 15th Finance Commission (Chair: Mr. N. K. Singh) submitted 2 reports- First for the financial year 2020-21 and final report with recommendations for the 2021-26 period.  
• The final report titled 'Finance Commission in Covid Times' has recommendations on a various range of issues such as vertical and horizontal tax devolution, local government grants and disaster management grant. |
| 2. National Commission for SCs | • Article 338 establishes the National Commission for SCs.  
• Functions: Investigate and monitor constitutional and other legal safeguards for the SCs, advice on the socio-economic development of SCs, powers of a civil court trying a suit, etc  
• Current aspects: NCSC has been without a chairman and other members for five months now.  
• Other issues: Non-binding recommendations, irregularity in preparing annual report, delays in conducting the inquiry and in delivering judgements. |
| 3. National Commission for Schedule Tribes | • Article 338A establishes the National Commission for STs.  
• Besides, functions similar to National Commission on SCs, the following functions were entrusted to the Commission in 2005:  
  (a) Measures conferring ownership rights  
  (b) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc  
  (c) Measures to prevent alienation of tribal people from land and to effectively rehabilitate such people  
  (d) Measures to be taken for the development of tribes and for work for more viable livelihood strategies  
  (e) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996. |
| 4. National Commission for Backward Classes | • It has been constituted under **new article 338B** of the Constitution of India as amended by the Constitution 102nd Amendment Act 2018.  
• Earlier, Backward Class Commissions (as per Article 340) were appointed in 1950s and 1970s under Kaka Kalekar and B.P. Mandal respectively.  
• SC in **Indira Sawhney case 1992**, held that a permanent statutory body should be established to examine complaints of over-inclusion and under-inclusion in the list of OBCs. |
| 5. Special Officer for Linguistic Minorities | • Article 350-B states that there should be a Special Officer for Linguistic Minorities.  
• Functions: Duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.  
• Constitutional safeguards for linguistic minorities: Article 29 & 50, Article 550, 550A & B. |
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<tr>
<th>6. Comptroller and Auditor General of India</th>
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<tbody>
<tr>
<td><strong>Article 148</strong> provides for an independent office of CAG of India.</td>
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<tr>
<td><strong>Other Constitutional provisions:</strong> Articles 149-151 (Duties &amp; Powers), Article 279 (calculation of net proceeds).</td>
</tr>
<tr>
<td><strong>Examples highlighting key role:</strong> 2G Spectrum allocation, Coal mine allocation, Fodder scam.</td>
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<tr>
<td><strong>Controversies and criticisms:</strong> only a recommendatory role to play, Lack of clarity on the issue of whether CAG can audit the power distribution companies or Public-Private Partnership projects, no mechanism for CAG to enforce its fiat.</td>
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<th>7. Attorney General of India</th>
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<tr>
<td><strong>Article 76</strong> provides for the office of Attorney General of India.</td>
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<tr>
<td><strong>Functions:</strong> Advice Government on legal matters, appear on behalf of the Government in all cases in the Supreme Court or in any case in any High Court, etc.</td>
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<tr>
<td>In B P Singhal case 2010, the Supreme Court has stated that AG hold public office.</td>
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<th>8. Advocate General of State</th>
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<tr>
<td><strong>Article 165</strong> provides for the office of Advocate general of State.</td>
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<td><strong>Same functions as the Attorney General at the Centre in respect of the State.</strong></td>
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<tr>
<td>As per <strong>Article 279A</strong>, GST council is constituted.</td>
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<td><strong>Impact of GST Council:</strong> Rationalization of Tax rates, Simplification of compliance burden, Council has also recommended the formation of a Group of Ministers (GoM) to study the revenue trend.</td>
</tr>
<tr>
<td><strong>Issues:</strong> Recent GST compensation related issues, Falling states economy(because of COVID).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10. Election Commission of India</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 324</strong> states that power of superintendence, direction and control of elections to the Parliament, State Legislatures, the office of President and Vice-President shall be vested in the Election Commission.</td>
</tr>
<tr>
<td><strong>Contribution of ECI:</strong> Recently, the Commission has taken steps to check paid news, use of money power, abuse of social media etc.</td>
</tr>
<tr>
<td><strong>Issues:</strong> No prescribed qualifications in Constitution, Post-retirement appointment, lack of legal backing of MCC.</td>
</tr>
<tr>
<td>In its 255th report, the Law Commission recommended a collegium, consisting of the Prime Minister, the Leader of the Opposition and the Chief Justice of India for the appointment of the Election Commissioners.</td>
</tr>
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<table>
<thead>
<tr>
<th>11. Union Public Service Commission</th>
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</thead>
<tbody>
<tr>
<td><strong>Articles 315 to 323</strong>, has elaborately defined powers &amp; functions of UPSC.</td>
</tr>
<tr>
<td><strong>Functions:</strong> Recruitment to services &amp; posts under the Union and all India services, advising for appointment on promotion or transfer-on-deputation, etc.</td>
</tr>
<tr>
<td><strong>Limitations:</strong> Recommendations are only advisory in nature, not concerned with the classification of services, pay and service conditions, cadre management, training, reservation etc.</td>
</tr>
</tbody>
</table>
### CRITERIA FOR DEVOLUTION (2020-21)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>14th FC (2015-20)</th>
<th>15th FC (2020-21)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income Distance</td>
<td>50%</td>
<td>45%</td>
</tr>
<tr>
<td>Population 1971</td>
<td>17.5%</td>
<td>————</td>
</tr>
<tr>
<td>Population 2011</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>Area</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Forest Cover</td>
<td>7.5%</td>
<td>————</td>
</tr>
<tr>
<td>Forest &amp; Ecology</td>
<td>————</td>
<td>10%</td>
</tr>
<tr>
<td>Demographic Performance</td>
<td>————</td>
<td>12.5%</td>
</tr>
<tr>
<td>Tax Effort</td>
<td>————</td>
<td>2.5%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

### 15th FC's - Key Recommendations in the first report (2019-20)

- **Devolution of taxes to states**: Decreased from 42% during 2015-20 period to 41% for 2020-21
- **Grants to Local Bodies**
  - Rural Local Bodies: Rs 60,750 Crore (67.5%)
  - Urban Local Bodies: Rs 27,250 Crore (32.5%)
- **Disaster Risk Management**: Recommended for setting up National and state Disaster Mgt Fund for promotion of Local Mitigation activities
## Landmark Judgements of Supreme Court of India

<table>
<thead>
<tr>
<th>No.</th>
<th>Case</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>A.K. Gopalan vs. State of Madras Case 1950</td>
<td>SC contended that there was no violation of Fundamental Rights enshrined in Articles 15, 19, 21 and 22 under the provisions of the Preventive Detention Act, if the detention was as per the procedure established by law. Here, the SC took a narrow view of Article 21.</td>
</tr>
<tr>
<td>2.</td>
<td>State of Madras vs. Champakam Dorairajan 1951</td>
<td>Supreme Court ruled that the supremacy of fundamental rights would prevail in case of any conflict between Fundamental Rights and DPSP. However, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendment acts to implement the Directives.</td>
</tr>
<tr>
<td>3.</td>
<td>Shankari Prasad vs. Union of India 1951</td>
<td>Held that Parliament’s amending power under Article 368 also includes the power to amend the Fundamental Rights guaranteed in Part 3 of the constitution. The court upheld the validity of 17 constitutional amendment, which curtailed the right of property by inserting Article 31A and 31B.</td>
</tr>
<tr>
<td>4.</td>
<td>Re Berubari Union Case 1960</td>
<td>Related to the exchange of territories between India and Pakistan as per the Nehru-Noon Agreement of 1958. The SC examined Article 3 in detail and held that the Parliament cannot make laws under this article in order to execute the above agreement. Hence, the 9th Amendment Act was passed to enforce the agreement.</td>
</tr>
<tr>
<td>5.</td>
<td>I. C. Golaknath &amp; Ors vs State Of Punjab &amp; Anrs 1967</td>
<td>Supreme Court held that Parliament could not amend Fundamental Rights, and power to amend the Constitution would be only with a Constituent Assembly. It held that an amendment under Article 368 is “law” within the meaning of Article 13 of the Constitution and therefore, if an amendment “takes away or abridges” a Fundamental Right conferred by Part III, it is void.</td>
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<tr>
<td>6.</td>
<td>Kesavananda Bharati vs. State of Kerala 1973</td>
<td>Upheld the validity of the 24th amendment: SC held that Parliament had the power to amend any or all provisions of the Constitution (including FRs), with a condition that the amendments should not alter, damage or destroy the essential features or the fundamental principles of the Constitution. This came to be known as the &quot;Basic Structure Doctrine&quot;. Held that Article 368 contained both the power and the procedure for amending the Constitution and that amending powers and legislative powers of Parliament were different. Asserted that the Preamble is a part of the Constitution and hence amendable.</td>
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<td>7.</td>
<td>Maneka Gandhi vs. Union of India, 1978</td>
<td>A main issue in this case was whether the right to go abroad is a part of the Right to Personal Liberty under Article 21. Supreme Court took a wider interpretation of Article 21 and held that it is included in the Right to Personal Liberty. The SC also ruled that the mere existence of an enabling law was not enough to restrain personal liberty. Such a law must also be “just, fair and reasonable.” One of the significant interpretation of this case is the discovery of inter-connections between the three Articles 14, 19 and 21.</td>
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<tr>
<td>8.</td>
<td>Minerva Mills vs. Union of India 1980</td>
<td>Supreme Court provided key clarifications on the interpretation of the basic structure doctrine. The court ruled that the power of the parliament to amend the constitution is limited by the constitution. Hence the parliament cannot exercise this limited power to grant itself an unlimited power. The judgement struck down 2 changes (such as extension of shield of Article of 51C) made to the Constitution by the 42nd Amendment Act 1976, declaring them to be violative of the basic structure. It held that the balance between part III and part IV is integral for the constitution as they together constituted the core of commitment to social revolution.</td>
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<tr>
<td>Case Study</td>
<td>Description</td>
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<td>9. Waman Rao Vs Union of India 1981</td>
<td>In this case, the implications of the basic structure doctrine for Article 31-B were re-examined. The Court drew a line of demarcation on April 24th, 1973 (the date of Kesavananda Bharti’s decision) and held it should not be applied retrospectively to reopen the validity of any amendment to the Constitution, which took place prior to 24-04-1973. It meant all the amendments which added to the Ninth Schedule before that date were valid.</td>
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<td>10. Mohd. Ahmed Khan vs. Shah Bano Begum 1985</td>
<td>The SC upheld the right to alimony for a Muslim woman and said that the Section 125 of Code of Criminal Procedure, 1973 is applicable to all citizens irrespective of their religion. The Supreme Court for the first time directed the Parliament to frame a Uniform Civil code(UCC).</td>
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<td>11. MC Mehta vs. Union of India, 1986</td>
<td>The case is also famous as Bhopal Gas Tragedy. The court in this case extended the scope of Article 21 and 32 of the Constitution of India. SC held that its power under Article 32 is not restricted to preventive measures, but also remedial measures when rights are violated. It also held that in the case of industries engaged in hazardous or inherently dangerous activities, Absolute Liability was to be followed.</td>
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<td>12. Indra Sawhney v. Union Of India 1992</td>
<td>In this case, the scope and extent of Article 16(4), which provides for reservation of jobs in favour of backward classes was thoroughly examined by the Supreme court. It upheld the constitutional validity of 27% reservation for the OBCs with certain conditions (like creamy layer exclusion, no reservation in promotion, total reserved quota should not exceed 50%, etc.) It held that a permanent statutory body should be established to examine complaints of over-inclusion and under-inclusion in the list of OBCs.</td>
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<td>13. SR Bommai vs. Union of India, 1993</td>
<td>In this judgement, the SC tried to curb the blatant misuse of Article 356 (regarding the imposition of President’s Rule on states). The verdict concluded that the power of the President to dismiss a State government is not absolute. It also held that secularism is the basic structure of the Constitution.</td>
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<td>14. Vishakha and others vs. State of Rajasthan 1997</td>
<td>The verdict gave the Vishaka guidelines to prevent sexual harassment of working women. It held that sexual harassment is against women dignity and is violative of Articles 14, 15 (1) and 21 of the Constitution. Later Parliament formulated, “THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013”.</td>
<td></td>
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<tr>
<td>15. I.R. Coelho vs. State of Tamil Nadu 2007</td>
<td>The Supreme Court ruled that laws falling under the Ninth Schedule can not have any blanket immunity from judicial review. Supreme Court further opined that judicial review is a ‘basic feature’ of the constitution and cannot be taken away by even using Ninth Schedule. The Waman Rao ruling ensured that acts and laws mentioned in the IX schedule till 24 April 1973, shall not be changed or challenged, but any attempt to amend or add more acts to that schedule, will suffer close inspection and examination by the judiciary system.</td>
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<tr>
<td>16. Aruna Ramchandra Shanbaug vs Union Of India &amp; Ors 2011</td>
<td>The SC ruled that individuals had a right to die with dignity, allowing passive euthanasia with guidelines.</td>
<td></td>
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<tr>
<td>Case</td>
<td>Description</td>
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</tbody>
</table>
| 17. Lily Thomas vs. Union of India 2013  | - The court struck down Section 8(4) of the Representation of the People Act (RPA)-1951 as unconstitutional.  
- It held that charge sheeted Members of Parliament and MLAs, on conviction for offences (minimum of 2 years), will be immediately disqualified from holding membership of the House without being given three months’ time for appeal, as was the case before. |
| 18. PUCL vs Union of India 2013          | - The verdict directed the use of None of the above (NOTA) option in the context of direct elections to the Lok Sabha and the respective state assemblies.                                                        |
| 19. National Legal Services Authority vs.| - This case resulted in the recognition of transgender persons as a third gender.  
- It affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to them, and gave them the right to self-identification of their gender as male, female or third gender.  
- SC also instructed the government to treat them as minorities and expand the reservations in education, jobs, education, etc. |
| Union of India 2014                      |                                                                                                                                                                                                             |
| 20. Justice K.S. Puttaswamy vs. Union of | - SC ruled that Fundamental Right to Privacy is intrinsic to life and liberty and thus, comes under Article 21 of the Indian constitution.  
- It laid proportionality test stating that it would not be an Absolute right and will have some reasonable restrictions in matters of national security and mutual interest of the citizens and the state. |
| India 2017                               |                                                                                                                                                                                                             |
| 21. Navtej Singh Johar vs. Union Of India | - Held that Section 377 of the Indian Penal Code 1860 (IPC), as unconstitutional.  
- SC made it clear that Article 14 of the Constitution guarantees equality before law and this applies to all classes of citizens thereby restoring ‘inclusiveness’ of LGBTQ Community.  
- SC upheld the pre-eminence of Constitutional morality in India by observing that equality before law cannot be denied by giving precedence to public or religious morality. |
| 2018                                    |                                                                                                                                                                                                             |
| 22. Joseph Shine vs. Union Of India 2018 | - The Verdict scrapped the pre-independence provision of adultery law under section 497 of Indian Penal Code (IPC).  
- It stated that Section 497 seems outdated and it appears to violate the Articles 14 and 21. |
| 23. Indian Young Lawyers Association vs  | - Court declared unconstitutional the Sabarimala Temple’s custom of prohibiting women in their ‘menstruating years’ from entering the temple.  
- SC held that prohibition founded on the notion that menstruating women are “polluted and impure” is a form of untouchability under Article 17. |
| The State Of Kerala 2018                 |                                                                                                                                                                                                             |